State, Civil Society and the Reconfiguration of Power in Post-apartheid South Africa

by

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## Table of Contents

**INTRODUCTION** .............................................................................................................................. 1  
**TRANSITIONS** .................................................................................................................................. 2  
**CIVIL SOCIETY, STATE AND POWER: THEORETICAL REFLECTIONS** ........................ 4  
  CIVIL SOCIETY UNDER POST-COLONIAL CONDITIONS ................................................................. 9  
**CIVIL SOCIETY AND THE STATE: HISTORICAL REFLECTIONS** ........................................... 11  
**POST-APARtheid SOUTH AFRICA** .................................................................................................. 14  
  CIVIL SOCIETY, STATE, AND DEMOCRACY .................................................................................. 14  
  THE NEW-OLD STATE IN TRANSITION ......................................................................................... 17  
**CIVIL SOCIETY AND THE QUEST FOR PARTNERSHIPS** ............................................................... 20  
  THE SIZE AND SCOPE OF THE NGO/CBO SECTOR ................................................................. 21  
  ROLE AND IMPACT OF THE SECTOR ............................................................................................ 23  
  PARTNERSHIPS: OPPORTUNITIES AND CHALLENGES .............................................................. 26  
**BEYOND PARTNERSHIPS: SOCIAL MOVEMENTS, POWER AND DEMOCRACY** ......... 31  
**RIGHTS DISCOURSE AND SOCIAL MOBILISATION** ................................................................. 36  
  SOCIO-ECONOMIC RIGHTS IN PRACTICE .................................................................................... 38  
    The activist route ......................................................................................................................... 39  
    The legal-activist route .............................................................................................................. 43  
**CONCLUSION** ................................................................................................................................ 47  
**ENDNOTES** ...................................................................................................................................... 48
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Introduction
This report looks at state and civil society in South Africa in the context of local and global social and political developments, with a focus on notions of power and democracy. In contrast to conventional political analysis, which looks at state and civil society as mutually exclusive and internally consolidated sectors, this report regards them as spaces of power. Within their boundaries political identities, principles of organisation, and modes of operation are formed, shaped and modified in interaction between actors and institutions. The precise nature of these interactions should be established by historically specific analysis rather than in abstract terms that are valid across time and space.

Central to the analysis presented here is the concept of power, defined as a set of practices and discourses that govern 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 of particular importance. These are: social power (access by individuals and groups to resources and control over their allocation), institutional power (strategies employed by groups and institutions in exercising administrative and legal authority), and discursive power (shaping social, political and cultural agendas through contestations over meanings).

Scholarly literature on transitions in contemporary South Africa, focuses on the social dimension of power, discusses to a limited and insufficient extent the institutional dimension, and largely ignores the discursive dimension of power. This means that the operation of power is incompletely understood, and that one of its crucial dimensions, which makes sense of the others, is missing from the analysis. As a result we are left with a truncated picture in which state and civil society are regarded as actors that operate on behalf of other social forces (usually defined in class or race terms). Alternatively they are seen as blank slates that merely reflect conflicts and interests that are generated from outside their boundaries, in the economy and society at large.

Thus, for example, some left-wing activists regard the state as an agent of capital, operating wittingly and unwittingly to further local and global business interests, while civil society in the form of unions, NGOs and new social movements represents the interests of workers and the dispossessed. Conservative observers regard the South African state as a tool in the hands of an elite black racial group serving to empower and enrich themselves at the expense of established white interests and the black masses. Supporters of the government like to see themselves as a vanguard representing the black population (elite and masses alike), who had been denied political rights by the apartheid regime, and are now moving to assume their full role in the new political dispensation, and so on.

The analyses above offer different and opposed political viewpoints, but they share an understanding of politics as a forum for representation of and struggle between consolidated interest groups. What is missing from such analysis, however, is precisely what is unique and interesting about the state and civil society as spaces of power: the extent to which they create and shape rather than merely reflect pre-existing social interests and identities; the specific organisational logics developed and deployed within their boundaries; the policy debates informed by discourses of democracy, modernity, rights, representation and popular
participation; the contestation over the meanings of widely-used concepts (such as development, empowerment, transformation and capacity building), which may be interpreted and applied in many different ways; and the local and global alliances formed between actors in different locations, which undermine the notion of internally homogenous and externally bounded sectors.

In brief, the limitation of conventional approaches, of the left and the right varieties alike, is that politics as an independent field of action, discourse and analysis disappears from view. In its place an analysis of social forces is conducted, as if these forces had a meaningful pre-political and pre-discursive existence. Of course, social differences (between men and women, rich and poor people, people of various skin colours, etc.) exist independently of our conceptualisations of them, but they become bases for the formation of identities and interests and for social mobilisation only when they are endowed with meaning by discursive-political processes. It is the aim of this report to contribute to the development of a theoretical approach based on this insight.

**Transitions**

Before we can address gaps in the existing literature on state and civil society we must consider briefly a broader issue: the ways in which power has been conceptualised, shaped, exercised and contested, and the nature of transitions in contemporary South Africa. While this is not the main theme of this report, a few notes on it would help situate the specific discussion of state and civil society in a historical and theoretical context.

The reference to ‘transitions’ in the plural makes a theoretical point. Societies consist of many different spheres; states develop and implement policies in relation to these spheres in a manner that is uneven, internally contradictory and incoherent. No single sphere is inherently and invariably privileged, though one or more of them may acquire prominence under concrete circumstances. At the very least we can talk about the economy, class structure, the provision of social services, media and culture, collective identities, political structures, and the legal system as important spheres. It is rarely the case that transition processes in all these spheres are synchronised or coordinated. They do not necessarily move in the same direction, and the extent to which they present a coherent overall picture differs from place to place and across time.

For this reason we cannot meaningfully talk about *The Transition* or *The Transformation* (the two terms are frequently used interchangeably), as if it were – or could possibly be – a single unified process. Instead, we should refer to a series of transition processes (or transitions) that may unfold simultaneously but at different paces, working at times to reinforce one another, and at other times independently of each other or at cross purposes. For three decades South African society has been going through processes of change, working their way in disparate directions – some conventionally defined as progressive and others not. We must study them as they unfold in their diverse ways, without assuming they all necessarily lead in the same direction. There is no grand ring of power to bring them all and in the darkness bind them.

Further, the notions of transition and transformation must themselves be open to interrogation. They signify a move from one state of affairs towards another, but they do not tell us precisely what is the starting and the expected end points of the process. Where does transformation begin and how will it conclude in South Africa? Do we regard 1994 and everything that preceded it, with its enormous historical diversity, as a homogenous dark age from which transformation would deliver us into the light? Do we expect the arrival of a democratic, non-racial and non-sexist South Africa to function as the end of history, after which no change would be possible or
desirable? How and when will we be able to determine that such a point has been reached and that South Africa has become a ‘normal’ society? Are there any model societies where this normal state of affairs exists, and in which transformation is no longer needed?

A related question is whether we can treat concepts such as democracy, equality, progress, and development, to name a few, as if we all understand them in the same way and do not need to debate their meanings, desirability and consequences. Such concepts are valuable of course, but their adoption and mechanical recitation disguises the multiple ways in which they have been used to serve different social and political ends. We must rather break these concepts down into their components, explore the relationships between them, examine how they are being articulated, and interrogate their concrete meanings in the case of South Africa.

The public discourse of transformation frequently boils down to the need to make public institutions more racially representative of the general population. Usually the call for racial representation is made with little discussion of why this is desirable in each specific case, and whether representation is an end in itself or a vehicle for other goals. We may ask, for example, what values are being advanced if sports teams mirror in their composition the racial breakdown of the population? Is this important as a universal principle applicable everywhere, or only in South Africa, and even here under specific circumstances?

In the same vein, we can ask if the appointment of senior black civil service officials is important because of considerations of racial representation or because they are expected to bring democratic and humane sensitivities to their jobs? If both reasons are important, how are they related (are they contradictory, independent of one another, related in complex ways or logically flow one from the other)?

Can we consider the South African Broadcasting Corporation to have been transformed when its management structure has changed its colour, even when its journalists stick to the same appalling standards of reporting as their apartheid-era predecessors? And when dealing with representation, is racial nationalism the only possible perspective? Why should the Universities of the Witwatersrand, Natal or the Western Cape, for instance, reflect the racial realities of South Africa as a whole rather than those of the regions in which they are located and are meant to serve?

To be clear, all this is not meant to challenge the need to open up institutions to members of racial groups who had been excluded from them in the past. Nor is this intended to deny the importance of overcoming legacies of exclusion. On the contrary, recognising the central role of racial identity and organisation is crucial to any analysis of South Africa, today no less than under apartheid. There is definitely a need to remove obstacles to the free mobility (geographical, social, professional) of people and to redress the legacies of racial discrimination. This does not translate however, into seeing racial representation as a goal in itself. We need to examine the meanings and implications of racial strategies on issues of power, social equity, democracy, service provision, and so on. While considerations of race have been central to the formation and functioning of every social institution and practice in South Africa, change cannot be reduced to them. Race may be seen as a necessary but insufficient component of all transition processes in South Africa.

Referring to multiple and uneven transition processes does not mean that we are doomed to observe a chaotic picture of random events with nothing around which they can cohere. Theoretical principles can be used to introduce order into the chaos and direct our attention
towards key trends, which articulate together disparate developments. At the same time, we must not ignore or disguise the diversity that underlies these developments and the contingent and inherently unstable nature of such articulations.

For our purposes here the concept of power on its various dimensions, as defined above, will serve as one guiding principle for the discussion, with a focus on the links between material configurations of power and the discourses that endow them with meaning. This will provide an angle from which to examine transitions in state and civil society relations, as well as broader issues affecting South African politics and society.

Civil society, state and power: Theoretical reflections
Since the late 1980s, a large body of literature on the concept of civil society and its relevance to the analysis of social and political processes has been produced. This section explores some of the work in the field in order to derive relevant concepts for the concrete historical analysis. A prominent theorist in the field, John Keane, distinguishes between three main approaches:

- An *analytical* approach, which aims to “develop an explanatory understanding of a complex socio-political reality by means of theoretical distinctions, empirical research and informed judgements about its origins, patterns of development and (unintended) consequences.”

- A *strategic* approach aimed at “defining what must or must not be done so as to reach a given political goal”

- A *normative* approach, which emphasises “the multiplicity of often incommensurable normative codes and forms of contemporary social life”. It places value on political and cultural pluralism in order to create space that provides people and groups with the freedom to debate, agree with and oppose each other. Civil society, in this approach, is a way of subjecting power to mechanisms that enable disputation, accountability, representation and participation. In this sense, Keane argues, civil society is “either an actual or anticipated *a priori* of the struggle for egalitarian diversity”.

Keane’s classification scheme is not exhaustive, and its categories are not mutually exclusive, but they do point out to distinct emphases in the study of civil society. A similar scheme is found in the work of Charles Taylor, with a stronger focus on the relations between civil society and the state. Taylor argues that, in a minimal sense, civil society is a sphere of free associations that are independent of state power. In a stronger sense, civil society is an ensemble of associations that interact with the state and can significantly determine or inflect the course of its policy. In a stronger sense still, society as whole may be structured and coordinated through free associations, thus reducing or even eliminating the role of the state as an organising principle of power.

Civil society in the minimal sense above may be regarded as a private domain, and thus is not part of the public sphere. Taylor consequently focuses on the latter two senses, which can be differentiated by the extent to which civil society is seen to be complementing state power (weaker sense) or providing an alternative to it (stronger sense). Both present a challenge to the monopoly of state power in ways that will be explored later on in the report. However, whereas the former sense is more of a corrective mechanism – monitoring and influencing state policy from the outside, while retaining the state’s leading role in policy formulation and implementation – the latter potentially opens up a radical challenge to established notions of politics and state organisation.
Precisely what such a radical challenge might entail is a theme explored by Gideon Baker in his innovative work on visions of civil society, democratic transitions, and political theory and practice in Eastern Europe and Latin America. Baker focuses on the extent to which “the democracy of civil society represents a coherent alternative for democratic theory and practice.”

Baker examines the conceptualisation of civil society common in liberal and left political theory, and concludes that it views civil society in instrumental terms, as a counter-balance to state power. This means that civil society itself is seen as being essentially apolitical, important only to the extent that it influence state policy. Through studying the role civil society theory and practice played in democratic struggles in the 1970s and 1980s, Baker aims to identify and develop an alternative view of civil society as “a democratic end in itself, as a space for the realisation of that elusive promise of democracy – self-government”.

Largely drawing on the theory and practices of the Zapatista movement in Chiapas, Mexico, Baker’s approach leads us away from a focus on the capture of state power (which is seen as inherently oppressive and exclusionary) towards the creation of counter-public spheres, where democratic practices of communal organisation prevail.

This focus on decentralised and self-determining democratic practices, and the rejection of the quest for a takeover of the state, clearly resonate with Michel Foucault’s opposition to “global, totalitarian theories” and his emphasis on the “local character of criticism”. For Foucault, these are derived from an “autonomous, non-centralised kind of theoretical production” that is linked to “particular, local, regional knowledge” of academic and popular nature. Interestingly though, Foucault’s notion of power, which denies the autonomy of individuals and the possible existence of a sphere of freedom outside of power, clashes with some of the elements in civil society theory.

Using the work of Hanna Arendt and Vaclav Havel in particular, Baker constructs a model of civil society that combines the quest for an autonomous private sphere with a notion of active citizenship based on a model of decentralised self-government. This model does not clarify, however, the relationship of civil society to the state, and how the state might be reconfigured to allow self-rule in civil society. This clarification is essential, unless we adhere to utopian notions of the withering away of the state, or of the gradual extension of spaces of freedom in civil society until they encompass the entire social body. The model also fails to outline the relationship between local organisation and global forms of economic and political domination. We need then “a more ambitious, wide-ranging imagery of republican politics in a global network of civil society, even if only as an animating ideal, rather than as a putatively practical goal”.

Baker’s discussion leaves us with three analytical challenges, with which to frame the discussion of civil society and its relations to state and power. His analysis of the theory and practice of political opposition and civil society in the democratic struggles in Eastern Europe and Latin America gives rise to the following crucial questions, relevant as well for our discussion of civil society and the state in the South African context:

- How to combine and transcend autonomous forms of self-rule located in civil society, in order to create a macro-political democratic order, without undermining the vitality of its micro-political foundations in the process? A related question is how local self-rule can challenge global power, without constructing a global counter-power, which would resurrect the same forms of oppression that gave rise to the quest for self-rule in the first place?
- How to move beyond the definition of civil society as an independent sphere of freedom and self-rule residing outside of state boundaries, and link it to the state, but without regarding civil
society merely as an interest group, seeking to constrain state power and gain rights from it (thus entrenching the state’s political supremacy)?

- How to recognise the diversity of identities and interests in the sphere of civil society, without portraying a picture of incoherent disparate multiple voices on the one hand, and without marginalizing some of these voices in the name of others on the other hand? In other words, how to recognise diversity without excluding the possibility of unity?

These challenges are usefully addressed by Chantal Mouffe, who has put forward the notion of radical democratic citizenship, seen as “an articulating principle that affects the different subject positions of the social agent…while allowing for a plurality of specific allegiances and for the respect of individual liberty.” She goes on to argue that radical democracy depends on “a collective form of identification among the democratic demands found in a variety of movements: women, workers, black, gay, ecological, as well as in several other ‘new social movements’. Through a common identification with a radical democratic interpretation of the principles of liberty and equality, this conception of citizenship aims at constructing a ‘we’, a chain of equivalence among their demands so as to articulate them through the principle of democratic equivalence.”

From this perspective, radical democracy is not a form of governance that gives equal weight to all social interests. Rather it is oriented towards enhancing specific political values, centred on the quest for liberty and equality. Civil society organisations are democratic only to the extent that they pursue these goals. We cannot look at civil society then, as a consolidated sector that is internally homogeneous and inherently good, and that always stands in the same relation to the state. As was argued earlier, it is a space in which multiple actors operate, interact with each other, and modify their identities in the process. Some of these actors promote socially progressive goals, and others do not. What matters in the analysis is not only or primarily their institutional location and mode of operation, but also the goals they seek to serve and the nature of the alliances they form with actors within the state and outside its boundaries.

These alliances involve compromises and trade-offs, if we wish to advance simultaneously a number of goals, all of which may fall under the label of transformation but without necessarily being linked to one another. It is not obvious that the goals of land reform and environmental conservation, to take one example, or of respecting religious and cultural traditions and advancing popular participation in governance, to take another, are compatible. The extent to which they are compatible, their internal tensions, contradictions and overlaps, must be demonstrated empirically. Merely to produce a long list of desirable goals and assert they all form part of an overall progressive agenda, without considering their interrelationships and possible trade-offs, is inadequate. Much of the literature on transition in South Africa ignores this point.

Ernesto Laclau, working in a similar vein to Mouffe, elaborates this point further. He maintains a distinction between the notion, which he accepts, that social and political demands are discrete “in the sense that each of them does not necessarily involve the others”, and the notion, which he rejects, that “they can be politically met only through a gradualist process of dealing with them one by one”. He moves on to argue that universality – an overall discourse of democracy and emancipation – can be the outcome of interaction between particularities or specific demands. Under conditions in which issue-specific demands are rapidly proliferating, and the grand narratives of the past such as class emancipation and national liberation are in decline, the task facing the left is “the construction of languages providing that element of universality
which makes possible the establishment of equivalential links”.\textsuperscript{17} The language of radical democracy provides the potential of linking various demands in that way, according to him.

This operation, which links particular demands in the same universal chain, is termed \textit{hegemonic articulation}. In contrast to the grand narratives of the past, which asserted universal validity, and into which all particular cases were forced, Laclau’s radical democratic articulation is based on the notion that universality can only emerge “through an equivalence between particularities, and such equivalences are always contingent and context-dependent”.\textsuperscript{18} In other words, there is no inherent logic that always unites social demands regardless of context.

It is important to bear in mind here that political identities and interests are not fixed, and that few causes or movements can be regarded as inherently progressive regardless of circumstances. Many worthy causes have contradictory effects and it is unlikely that all of them could be incorporated in a coherent radical democratic framework as Laclau implies. The links between struggles for extending women’s control over their own bodies, protecting endangered wildlife, improving working conditions, creating jobs, promoting racial equality, and defending press freedom, to take a few examples, are tenuous. Gender equality and the maintenance of traditional cultural and religious rights cannot be reconciled without struggle. In a similar manner, environmental protection, indigenous land claims, and job creation efforts, cannot be reconciled without conflict, as debates over the future of conservation areas in southern Africa have shown. A certain balance between these causes may be arrived at through political compromises, but there is no universal valid logic of emancipation – be it defined as radical democracy or socialism – that can determine the correct balance independently of particular historical circumstances.

The approach offered by Laclau and Mouffe focuses on the \textit{multiplicity} of social demands and the \textit{contingent} and \textit{context-specific} nature of progressive articulations. While sharing their focus on multiplicity, David Harvey emphasises instead the need not for “dispersed, autonomous, localised, and essentially communitarian solutions” but for “more complex politics that recognises how environmental and social justice must be sought by a rational ordering of activities at different scales.” This is essential in order to confront “the realities of global power politics” and to “displace the hegemonic powers of capitalism”.\textsuperscript{19}

Harvey, earlier than many other Marxist academics and more readily than most, recognised the importance of the proliferation of local-specific politics, informed by a variety of concerns over race, ethnicity, gender, ecology and sexuality, and regarded them as the (only) progressive aspect of the condition of postmodernity. He also saw this proliferation as a dangerous development because of its tendency to fragment what should be a unified struggle against Capital: “It is hard to stop the slide into parochialism, myopia, and self-referentiality in the face of the universalising force of capital circulation.”\textsuperscript{20} Given this danger, the way forward for him involves the recuperation of “such aspects of social organisation as race, gender, religion, within the overall frame of historical materialist enquiry (with its emphasis upon the power of money and capital circulation) and class politics (with its emphasis upon the unity of the emancipatory struggle)”\textsuperscript{21}

Harvey fails to realise that it was precisely the inadequacy of political ideas and practices premised on the universalising logic of capital that triggered the rise of new social movements in the first place. The women and environmental movements, to take two examples, came into being because of the inherent inability of class theory and politics to address gender and ecological issues, without subordinating them to its own concerns. Harvey’s depiction of new
social movements as parochial, narrow, sectarian, with a fascist potential, is derived from the notion that a universal logic of oppression can only be countered with a universal logic of emancipation, both of which defined in class terms. Anything that detracts from that should be ignored or discarded. We should keep in mind in this respect, however, poet Audre Lorde's warning that ‘the master's tools will never dismantle the master's house’. Emancipation cannot be achieved by using oppressive methods of analysis and organisation, such as Harvey’s view that progressive politics inevitably speaks the ‘tacit language of class’, which defines the common experience within the differences (this itself is a class-supremacist notion). Further on in the report, the different logics of Laclau and Mouffe on the one hand, and Harvey on the other, will be examined in the concrete historical and contemporary context of South African civil society.

To what extent can we use the focus on the articulation of diverse elements in order to produce a contingent unity in civil society, in order to understand the nature of the state as well? Drawing on the work of Pierre Bourdieu, Joel Migdal advances a definition of the state as ‘a field of power’, which is shaped by “the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by that territory”, and at the same time by “the actual practices of its multiple parts”.22 Whereas the state’s image is usually that of a unified and centralised entity, its diverse practices may serve to reinforce the image as well as to undermine it.

The state then, is a “contradictory entity that acts against itself”. It projects a powerful image of a unified actor but can also be seen as “the practices of a heap of loosely connected parts or fragments, frequently with ill-defined boundaries between them and other groupings inside and outside the official state borders and often promoting conflicting sets of rules with one another and with ‘official’ laws”.23 To make sense of Migdal’s approach, we must keep in mind that the state extends beyond government to cover a range of institutions, including the courts, security services, parliament, public companies and so on. Thus for example, state agencies in South Africa may be involved in the violation of human rights (the police, Department of Home Affairs) as well as in monitoring their practice (Human Rights Commission), promoting them (Department of Justice) and protecting them from offenders (Constitutional Court). These agencies may pursue different and even contradictory policy agendas, and some of them may find greater affinities with agencies external to the state than with other state institutions.

I would add here to Migdal’s account that the balance between the unity (image) and fragmentation (practices) of the state varies historically and from one state to another. Further, the extent to which state officials manage to project a unified image varies as well. They are not always successful, and different elements within the state may wish simultaneously to advance different images, which are not necessarily compatible with one another. In other words, although the state has a more tangible existence and usually is better organised than civil society, it can present a unified image only when forces within it succeed in bringing different elements together in a hegemonic articulation, which may include elements in civil society as well.

At the core of political analysis then, is the examination of various projects at state and civil society levels, aimed at articulating different concerns under unifying hegemonic themes and images, and the extent to which these projects intersect, clash with and modify each other. They do not pit a unified state against an equally unified civil society but rather allow for the interpenetration of sectors and crossing of boundaries between them. This point will be further illustrated later on in the report.
Civil society under post-colonial conditions

If we take the notions outlined above of contingency and context-specificity seriously, can we regard theories developed in the context of Europe and in relation to its historically specific realities, as necessarily valid for other realities, such as those of the Third World, Africa, and specifically South Africa?

One answer is that although most of our notions of state, power, civil society, and rights were conceptualised in their current form in Europe, based on its historical and intellectual experiences, they are equally applicable to societies in other parts of the world (as long as we take the historical specificity of each into consideration).24

In a similar manner, Partha Chatterjee uses the term civil society to refer to modern institutions of associational life which are based on notions of equality, autonomy, freedom of entry and exit, contract, deliberative procedures of decision-making, and recognised rights and duties of members. Even though non-European societies may have given rise to different norms and organisations, the civil society model is useful in order “precisely to identify these marks of difference, to understand their significance, to appreciate how by the continued invocation of a ‘pure’ model of origin – the institutions of modernity as they were meant to be – a normative discourse can still continue to energize and shape the evolving forms of social institutions in the non-Western world”.25

Having acknowledged the relevance of the concept of civil society, Chatterjee introduces the notion of political society to account for a range of institutions and practices that mediate between the population and the state in post-colonial societies, but fall outside the boundaries of modern civil society. They work in the context of a developmental state, which seeks to relate to different sections of the population through the governmental function of welfare.

Post-colonial political society has four distinctive features: many of its mobilisations are illegal, including squatting, using public property, refusal to pay taxes, illegal service connections, etc; people use the language of rights to demand welfare provision; the rights so demanded are seen as being vested in a collective or a community, which may be very recent in origin, and not as individual rights; state agencies and NGOs treat these people “not as bodies of citizens belonging to a lawfully constituted civil society, but as population groups deserving welfare. The degree to which they will be so recognised depends entirely on the pressure they are able to exert on those state and non-state agencies through their strategic manoeuvres in political society”.26 The affinities this description bears with current South African social protest movements seem obvious, as will be explored later on in the report.

The distinction Chatterjee draws above between civil society, and ‘illegal’ political society as a form of organisation specific to post-colonial democracies, parallels the distinction drawn between citizen and subject in Mahmood Mamdani’s work on the legacy of colonial rule in contemporary Africa.27 Mamdani argues that under colonialism civil society was restricted to citizens – white settlers and other non-African minority groups. A minority of urban Africans were able to organise in trade unions and other civic associations, while the vast majority of rural Africans were subjects, deprived of civil and political rights and ruled by their native authorities in accordance with ‘customary law’. Only in the post-colonial period, has a civil society emerged among Africans, through the extension of rights to urban African residents. In many cases, however, civil society has become dominated by the on-going colonial legacy of
ethnic divisions and control by native authorities in the countryside, which continue to rule the bulk of the indigenous population in a system of decentralised despotism.

The major historical exception to this trend is South Africa. Due to high levels of industrialisation and urbanisation, a multi-racial civil society emerged early on there. The resistance to apartheid centred on worker and student struggles, not on peasant revolts, and it succeeded in dismantling white political supremacy. However, in the post-apartheid era the danger is, according to Mamdani, that organisation at the level of urban civil society would result in neglecting the need to dismantle structures of power and tribal authority in the countryside. This would mean incomplete democratisation, which may eventually lead to the reversal of urban democratic gains as well.

Mamdani’s perspective is similar to Chatterjee’s in its emphasis on the limited utility of the civil society concept in understanding political organisation in post-colonial societies. Whereas Mamdani focuses on its failure to address rural organisation and resistance, Chatterjee focuses on its inability to include the dominant form of political organisation among destitute urban masses. In both cases the civil society concept captures only part of the full range of social and political forms of organisation. This failure does not affect only post-colonial societies of course, and may be an inherent flaw of the concept that is problematic in the developed world as well.

Patrick Chabal and Jean-Pascal Daloz take this point further, to argue against any utility of the concept in Africa. They maintain that the state in sub-Saharan Africa is “so poorly institutionalised, so weakly emancipated from society, that there is very little scope for conceptualizing politics in Africa as a contest between a functionally strong state and a homogeneously coherent civil society”. While there are many instances of political protests and dissent, the normal business of politics in Africa is conducted along informal vertical channels of relations, such as patron-client networks and communal organisation, which link the elites with the rest of society. The notion of civil society as a counter-hegemonic opposition is meaningless under conditions in which the state is not hegemonic and its capacity to dominate society is limited. It is little more than an ideological instrument in the hands of Northern donor agencies, supported by local NGOs who benefit from the flow of external funds and their ability to act as a channel for it, and thereby disburse patronage.

Achille Mbembe presents a more elaborate picture in which civil society becomes possible only when “places and spaces where ideas of autonomy, representation, and pluralism can publicly crystallize, and where juridical subjects enjoying rights and capable of freeing themselves from the arbitrariness of both state and primary group (kin, tribe, etc.) can come into being”. It is not the mere existence of associations that matters, but their capacity to “articulate, autonomously and publicly, an idea of the general interest”. This is not happening in post-colonial Africa, as the disintegration of state power has led to the multiplication of separate normative, economic, military and government spheres, reflecting a “heteronomous and fragmented conception of the political community”, rather than a consolidation of a constitutional state and right-bearing citizens organised in civil society.

Against the background of this negative evaluation of civil society in Africa, John and Jean Comaroff offer a more positive perspective. While they acknowledge the multiple meanings of the term, and that it has been used to exclude those who do not qualify as ‘civil’ or ‘modern’ enough, they argue that it can also be used to “open up spaces of democratising aspiration”. When freed from its Eurocentric deployment it may “mandate practical experimentation in the
building of new publics, new modes of association, new media of expression, new sorts of moral community, new politics”.

Seen in this way, the Comaroffs concur with Baker’s notion of the emancipatory potential of civil society.

Where do the preceding theoretical reflections, and their post-colonial applications, leave us? We can summarise them in the following points:

- The concept of civil society has acquired different meanings and has been used to different ends. Most important of these are: (1) its use as a descriptive-analytical tool to examine relations between different sectors as well as their internal structure and function, and (2) its use to challenge existing power relations and put forward an alternative radical democratic vision. Several questions follow from this distinction and its application to South African civil society.

- From the approach to civil society as an analytical tool, the main questions that emerge deal with the size and scope of civil society, the relations between civil society organisations and state institutions, the role they play in service delivery, policy critique and advocacy, and the extent to which these relations vary across time and space.

- From the approach to civil society as an angle from which to challenge established power, the main questions that emerge deal with the nature of power and resistance, the organisation of elements of civil society such as new social movements, and their application of notions of radical democracy, and the extent to which they seek to balance the excesses of established power or rather to provide alternatives to the ways in which it is conceptualised, organised and exercised.

In the following sections these questions are examined concretely, beginning with reflections on the context for the historical development of civil society in South Africa. This is important since the discussion of post-colonial and African politics makes it clear that the position of civil society vis-à-vis the state is influenced by a specific historical legacy. Civil society forces are unlikely to adopt the same attitude towards the state in Eastern European countries, for example, which have emerged from a background of decades of total state control, and in South Africa, in which the private sector has played a prominent role, economically, politically and socially, and the state was subject to market constraints as well as certain legal and international constraints.

**Civil society and the state: Historical reflections**

The relations between state and civil society were not a major issue in the struggle for democracy in South Africa. During the apartheid era, 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 consisted of organisations and structures that positioned themselves outside of 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.

Tensions were thus inevitable between opposition forces – primarily those affiliated with the African National Congress – that were oriented primarily towards the seizure of power, and for whom a base in civil society was a temporary tactical position, and forces rooted in civil society. Although these tensions were largely suppressed during the 1980s, to allow a united front against the common enemy, they started rising to the surface with the demise of apartheid and the beginning of the transition process in the 1990s. As we shall see later on, they formed the background for subsequent political developments.
To appreciate how state and civil society relations unfolded in South Africa we need to keep in mind that the nation-state, which until the 1980s wielded ultimate political authority, must not be studied in isolation from its regional and international environment. Tighter integration of markets and of global social and political relations has affected the capacity of each state to be the absolute master of its own domain. It is impossible to understand specific South African developments outside of their context: the decline of the welfare state in the West, the collapse of socialism in the East, and the disillusionment with the state-oriented development paradigm in the South. In addition, the prominence of free trade and export-oriented policies, multiculturalism, the expansion of media such as the Internet, and the blurring of boundaries between the local and the global, all impact on specific state-civil society interactions.

Of particular interest within this framework, is the relevance of the broad African environment to our understanding of relations in South Africa. It has been argued by many that the state is increasingly incapable of delivering services and meeting popular expectations across Africa. Its authoritarianism and use of force masks its inability to be authoritative and wield effective power. While this generalisation cannot be true for all countries in the same way, it contains valid observations that might be relevant for South Africa as well.

In several respects, the history of South Africa is different from that of most other countries on the continent. Earlier colonial expansion, stronger settler presence, higher rates of industrialisation and urbanisation, and the need to deal with ‘the native question’ and maintain settler domination, led to the development of a thick network of state structures that could not be found elsewhere in Africa. The development of civil society as an array of associations and practices for protecting the interests of diverse groups was stunted for a long time among the black majority of the population. While whites enjoyed the freedom to form associations and exert pressure on the state through institutionalised channels, African indigenous social structures were marginalised and destroyed, or modified and co-opted into structures of power through the system of homeland rule. New social and political organisations had very limited access to the state, and they could not interact with it. As a result, they were forced to exert pressure on the state from the outside.

During the colonial era, indigenous people in most African countries shared with black South Africans their exclusion from the white-dominated state. However, many countries in Africa inherited extensive civil networks from pre-colonial times, which allowed them to run their social affairs parallel to the state. Claims frequently made in the immediate post-independence period that colonialism was merely an episode in African history, and that indigenous institutions continued operating unhindered under colonialism, were exaggerated. It seems clear however that in many countries, particularly in West Africa, these institutions were not as vulnerable and disrupted by colonial powers as they were in South Africa. Although marginalised by the new political elites after independence, these civil networks retained their vitality. With the retreat of the state from over-ambitious commitments throughout the continent, and its inability to deliver services in many areas, a space has been created for civil society to expand, building on these indigenous foundations.

In South Africa, the length, intensity and impact of colonial and settler interventions severely undermined indigenous structures and social networks. Since the 1970s, a new set of social and political institutions, rooted in contemporary developments and only loosely connected to pre-existing networks, have come into being. They have confronted a state that historically was strong and managed to reach deep into civil society and the market, though its ability to deliver
services and maintain order has eroded over time. In particular its capacity to control the ‘influx’ of people into the urban areas, and gain the consent of the population diminished in the 1980s. Resorting to massive repression was a sign of weakness rather than strength, and it failed to stem the tide of resistance. A mixture of brutal repression with limited concessions fuelled resistance further, and opened the way for expanding the role of new civil society structures, which emerged in the course of struggle. The negotiations that opened in 1990 were an outcome of the realisation by state officials that their capacity to control the political process was limited and they needed to reach an accommodation with opposition forces if they were to retain any power in the long term.

Related processes that unfolded in the late 1980s and early 1990s involved shedding off state functions to the private sector and communities in many areas, ranging from education to security. This was part of a global trend towards state disengagement from society (the so-called Thatcherite revolution). In South Africa it was additionally motivated by a desire to replace politically illegitimate control mechanisms by cheaper, more efficient, and legitimate market mechanisms, which would decrease the need for extra-economic coercion to secure white privilege. The steps taken in this direction were also prompted by fear that with the imminent transition, a strong state would use its power to radically shift the distribution of resources. To a large extent reducing state role was a preventative measure to ensure that the new state would not be able to disrupt the prevailing socio-economic relations.

With the political transition of 1994, there were expectations that the diminishing role of the state would be reversed, and that the new government would take on further tasks and commitments. While the new government has committed itself to a range of new programmes and policies, not much has changed in practice. Budgetary constrains, the legacy of inefficient and corrupt state management, and the growing realisation in state circles that their capacity to intervene in society is inherently limited, have prevented the state from broadening its reach. At the same time, power hunger, the impact of the 1980s rhetoric, and pressure on government by the labour movement to keep market trends at bay, have encouraged some state structures to attempt greater involvement in economy and society. These contradictory dynamics will continue to be displayed in coming years.

It is useful to consider here that transition in South Africa has unfolded in a global environment very different from the one affecting anti-colonial struggles in other parts of the continent and the world. The 1960s and 1970s saw a wave of liberation movements carried to power in Asia, Africa, and Latin America. Deeply influenced by state-oriented development paradigms, many of these movements sought to create strong centralised institutions in order to direct socio-economic development, and to nationalise private enterprises, frequently overseen by ruling party officials in a one-party state. Markets and civil society institutions were marginalised as a result. In southern Africa, countries such as Tanzania, Zambia, Mozambique, and Angola epitomised this approach. The dominant force in the South African liberation movement – the ANC in alliance with the South African Communist Party (SACP) – shared these sentiments. It was taken for granted in those days that de-colonisation would entail nationalisation of foreign-owned companies, to allow the new state to control economic resources and play a central role in directing development efforts.

By the late 1980s, when the prospect of political transition in South Africa became realistic, the environment had changed. The economic situation in most countries that followed the state-oriented paradigm was deteriorating. State-directed development had led to the creation of bloated bureaucracies, inefficient management, loss of productivity, corruption, deterioration of services, the rise of new elites feeding off the public trough, and widespread public discontent.
The notion of a strong state as the key to development had been discredited. The breakdown of the welfare state in many countries in the West, due to its inability to deliver social services as it used to (referred to as ‘the fiscal crisis of the state’), further contributed to disillusionment with the role of the state.

The impact of this paradigm shift on South African opposition forces was uneven. Those who were based in places that followed this state-oriented course (such as Eastern Europe, Angola and Zambia) experienced the problems directly. Those based inside the country were less affected by these developments. To a large extent, this was a result of insularity and inherent suspicion towards external information. The explicit anti-communist stance of the government and the local press made notions of state control and socialist orientation popular among opposition forces. To people living under circumstances in which basic needs were not met, the potential problems of a large and inefficient state bureaucracy were not seen as important.

The prominent role in the anti-apartheid struggle that was played by the organised labour movement, with its entrenched interest in state ownership and secure employment, contributed to this attitude. The search for profit frequently is not compatible with the pursuit of social goals, including full employment, and greater state control was seen as the only answer to the free reign of market forces. Unions that were in the forefront of the anti-apartheid struggle, such as the Congress of South African Trade Unions (COSATU), unions whose white-only members were among the staunchest supporters of apartheid, and new white unions such as Solidarity, have thus found common ground in asserting the value of state ownership and control of public enterprises.

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, elements in civil society have had to carve a new niche for themselves. They have been assisted in this task by the 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. The extent to which this can become a valid answer will be explored in the next section.

Post-Apartheid South Africa

Civil society, state, and democracy

It is important to bear in mind that civil society is composed of many diverse elements, and is divided between supporters of different and opposed social and political agendas. In countries such as the United States and South Africa, where state-sponsored racism was abolished but racist institutions and practices are prevalent in the private sphere, a simplistic identification of civil society with the realm of freedom, and of the state with the realm of coercion is untenable. In other words, we cannot look up to civil society as a magic solution to all social problems. Rather we must examine it critically, and evaluate the ways in which elements within it can act (possibly together with elements from other sectors) to advance worthwhile causes.

The relations between the state and civil society are in particular need of clarification in South Africa, due to the equation of democracy with majority rule in this country. The exclusion of the majority of the population from having a say in the way the country was governed, made the demand for a political system based on the principle of ‘one person, one vote’ central to the anti-apartheid struggle. Slogans such as ‘power to the people’ or ‘the people shall govern’ were used
interchangeably with this demand. In essence they called for the creation of a system in which all citizens would have access to the vote and thus to power. More radical notions of transformation, involving a change in the way in which power is conceptualised and exercised, were mooted as well, but rarely given an operational definition. The notion of ‘the people’ was seen in the 1980s as a unified whole, which does not allow for much internal differentiation and contestation. Even today, that the people are composed of different groups, with sometimes overlapping and sometimes contradictory interests, which cannot be collapsed into a larger unity, is not a common notion in South African political discourse.

In a democratic political system, civil society organisations can be a force for making the government accountable to its constituencies, giving people greater control over their lives, and embarking on new forms of democratic experimentation. Holding regular elections ensures that citizens can choose the party that best represents their general interests, but it does not allow them to monitor and have an impact on the day-to-day performance of government in specific areas of concern. They have no institutional channels through which to voice on-going concerns, express preferences, and force the state to deal with their grievances. A large, diverse and active civil society can supplement elections, by developing additional mechanisms for popular participation in governance. This is not to deny the right of elected government to claim a popular mandate for its policies, but rather to point out that the popular will can be expressed through different channels. Multiparty elections are one such channel and others alongside it must be explored. In this sense elections are a necessary but not sufficient condition for democracy. Political systems in which no additional channels for popular expression exist are democratic in name only.

The structural limitations of formal democracy are particularly evident in countries such as South Africa, which are burdened by the historical legacy of an obtuse bureaucracy ruling over large masses of subjects who were not regarded as citizens. South Africa is politically led by a government that has formally committed itself to the welfare of all citizens, and the need to overcome the legacy of past neglect and misrule. The state however, is burdened by the same bureaucratic mentality and organisational culture that prevailed under apartheid. More often than not new officials have assimilated the existing ethos of state departments, and now operate in a similar manner to that of officials left from the old order. The hostility of the Department of Home Affairs to so-called ‘illegal aliens’ from other African countries, and the appalling conditions under which they are kept and treated, is a case in point.

As argued earlier, much of the concern with transformation of the state in the post-1994 period has focused on the need to change policy frameworks and the racial complexion of the public service. Little attention has been paid to the need to transform the ways in which state power is conceptualised and exercised, and the ways in which it interacts with society. The ANC and its alliance partners share an emphasis on the state as the guiding force of economy and society. Frequently qualified as ‘the developmental state’, or ‘the new democratic state’ or ‘the national democratic state’, this conceptualisation of the state is similar in principle to that common in the 1980s. Alliance partners sometime make concessions to the reality of limited capacity of the state to transform society and control the economy under conditions of globalisation. They frequently mention the need to involve popular forces in the process of governance, and invoke the notion of partnerships with civil society and the private sector. Popular participation is invariably seen, however, as a way of bolstering the role of the state under ANC leadership, rather than as potentially contradicting, challenging or forcing it to re-think its policies and practices. Invoking participation then, does not reflect genuine recognition that civil society forces may play a role independently of, let alone in opposition to, the ruling party.
The frequent calls to allocate more powers and control over budgets to central government, nationally and at the metropolitan level, at the expense of provinces and local tiers of government, are related to this approach. State officials and political leaders seem to operate on the assumption that bigger is always better, that formal deserves more attention than informal, and that management and control on a large scale automatically implies the ability to shift resources and priorities to benefit poor constituencies. From broadcasting and telecommunications to education and urban planning, centralised control is adhered to in principle, though practices vary a great deal, depending on resources and capacity.

The concern with the need to redistribute resources and allow planning to address the legacies of the apartheid past is understandable and justified, but centralisation gives rise to problems. It tends to shift power upwards, away from people and structures closer to the ground. It empowers an expanding non-elected and unaccountable bureaucracy, which is needed to administer affairs and transmit policies from the upper echelons of power to lower levels of implementation. It makes the incorporation of local inputs, which of necessity are diffuse, unsystematic and location-specific, difficult. It creates filters through which the concerns expressed by the grassroots become diluted or marginalised. It encourages the formulation of large-scale policy frameworks that are usually removed from practical constraints of implementation at the local level, and therefore can make even the best policy intentions unrealisable.

This problematic relationship between the political centre and its margins has been captured brilliantly by journalist Jonny Steinberg in his portrayal of the relationship between the South African Police headquarters (known as Wachthuis – guard house) and local police stations:

\[\text{Wachthuis is a blind animal. Its relationship with its 1100 neighbourhood police stations, 42 area offices and nine provincial commands is a tenuous one to say the least...Commands, blueprints, restructuring plans, policy guidelines are transmitted from Wachthuis to be sure, but they vanish into the ether. The concrete beast stands in the middle of Pretoria alone; the giant organisation to which it is ostensibly attached lives in another universe. Or perhaps I should say a thousand little universes, each hermetically sealed. For the South African Police Service is a myriad of tiny places, and each runs on the steam of its own legacy. Memos are faxed from head office to provincial office, from provincial office to area office. Area office calls a workshop of all station commissioners and unit heads. The instructions from head office are represented as graphs and bullet-form text on overhead projectors...And then everyone goes back to work and does what he has always done.}\]

Particularly problematic from our perspective is that centralisation subverts the logic of participatory democracy, which operates at the level in which policy matters most, and where intended beneficiaries, people and communities are located. It replaces it with a logic that is based on the nature of the state as an articulated complex of structures, with a distinct mode of operation, which structurally serves to exclude popular participation, regardless of the intentions of politicians. To understand the logic of the state, we must consider its operation in the post-apartheid era.
The new-old state in transition

Literature on political transition in South Africa has focused on the role of external constraints on the state in policy making: limited financial resources, pressure from international agencies, conflict between powerful old and new social groups, demobilisation of the labour movement and the masses, capitulation of political elites to local and global business interests, self-enrichment drive on the part of new political and business elites, and so on. In particular, the notion that the ANC-led government has failed to meet the goals it set itself before 1994 has been highlighted and various explanations advanced to account for it. What John Saul refers to as the ‘neo-liberal logic of global capitalism’ and its adoption by the South African government, has been identified as the main culprit for critics on the left.43

All these explanations contain kernels of truth, but they generally suffer from a focus on social forces and political economy to the exclusion of discourse and power. Consequently they fail to consider an essential aspect of politics: a process involving contestation within and between collective actors over the mode of organising and exercising power, and a process of repositioning social and political relations within wider discourses, which endow them with meaning (such as the discourses of nationalism, race, development, and alternative paths to modernity). In terms of the conceptual framework outlined earlier, these accounts of transition in South Africa focus on social power, ignore institutional and discursive power, and regard state and identity formation processes as derived directly from socio-economic developments.

It is argued in this report, in contrast, that political, institutional and discursive processes must be analysed in their own terms, in relation to socio-economic developments, but not as determined by them. State structures, which form an articulated institutional network governed by a hegemonic logic and mode of operation, are independent of the specific social interests they may serve at any point in time. While they can further a variety of concerns (organised around race, class, ethnicity), they are never passive actors in the service of pre-existing interests. Rather they act to create, define and consolidate social interests. In analysing policy in the context of political transition, then, we must consider state structures, mechanisms and practices, shifting relations between institutions and forces (within as well as outside state boundaries), and the discourses that shape their operation.

The 1994 elections marked a shift in the configuration of power in South Africa. The opposition between ‘the regime’ and ‘the people’ was laid to rest. This is not to say that relations of political and social domination have been transformed since then. In fact, in many areas little change has taken place and in some respects the change is for the worse.44 What have decisively changed, however, are the terms in which power is conceptualised and exercised. The conflict between two mutually exclusive and internally homogeneous camps has given way to the interpenetration of partially opposing and partially collaborating forces, which are internally heterogeneous. This is not entirely a new phenomenon. It has been argued that the state in South Africa was never homogeneous and always subject to deep divisions.45 While this is true, these divisions involved mostly different white factions and interest groups. In the way state power was experienced by most people who were excluded from it, this internal heterogeneity was not very meaningful as it rarely applied across racial boundaries. Now it does.

The reconfiguration of state power poses challenges for political analysis. Soon after the 1994 elections and the victory of the ANC nationally and in most of the provinces (repeated in 1999), deep chasms opened up within what had been a relatively coherent movement. Old and new bureaucrats, national and provincial departments, line departments and RDP authorities, politicians and civil servants, the in-government and out-of-government forces, various
stakeholder bodies – all of these have been positioning themselves and competing for power. New political identities, alliances and enmities have been forged, and in the process transformed the terms of debates between political actors. Actual socio-economic conditions may not have been affected much, but the channels through which transformation can be effected, and the terms in which it is advocated and used as a basis for mobilisation, have been changing.

The post-1994 period has seen a change in the nature of policy formulation and debate in South Africa. Many senior and middle management positions in the state apparatus remain in the hands of bureaucrats inherited from the apartheid order, who have been working alongside growing number of new officials drawn from the ranks of former activists as well as from a new generation of young and aspiring black graduates, all operating under a single political leadership. State transformation is expressed in a new modus vivendi in which different elements coexist in shared structures, with the initial tensions that characterised this environment gradually subsiding.

Given this convergence between officials of different backgrounds, it would be wrong to look at conflicts within the state, and in the political arena more broadly, as a reflection of an ongoing conflict between the old and the new, in which both keep their pre-existing identities, and the former is trying to block the advance of the latter with varying degrees of success. Some forces in the ANC and government have offered precisely this kind of analysis, portraying an ongoing struggle between ‘the national liberation movement’ and ‘the white minority regime’ or its remnants (variously defined as ‘the old ruling block’, ‘forces of reaction’, ‘enemies of transformation’, ‘forces of counter-revolution’, ‘the New Right’ and so on).46 This notion of two clearly identifiable and hostile camps, adhering to mutually exclusive discourses and agendas, and fighting it out in the corridors of power and society at large, bears little resemblance to post-apartheid realities, however.

Past political affiliations are important, no doubt, but they are not frozen in time. The re-alignment of forces in the post-1994 period has led to the emergence of a new style of governance that combines elements from the old and the new, but is not a direct continuation of either. It can be termed a New-Old State, the contours of which are becoming increasingly visible with time.

A process of merger has been taking place, in which the political edges on each side were shed, and a new politics of the centre has arisen. Members of the apartheid bureaucracy who discarded the discredited discourse and practices of the past, and embraced change in principle, and ANC-aligned bureaucrats willing to accommodate the existing structures and adopt a cautious and gradual attitude towards change, have found a common language. This language and its related institutional arrangements exclude die-hard guardians of the old order on the one hand, and advocates of radical change of policies and institutions on the other. The dividing lines of the pre-1994 have dissolved to a large extent, and other alliances are taking their place.

This realignment of forces is grounded in a new discourse of power, which comprises three principal components. The first consists of a series of buzzwords drawn from the New South African political lexicon: reconstruction, development, empowerment, equity, capacity building, participation, consultation, stakeholders, role-players, etc. The meaning of these terms is frequently unclear, and mechanical chanting robs them of value, but their usage in policy documents is mandatory.
The second component is a converse of the first. It is the language of respectability that is sometimes used by those coming from an activist political background to establish their legitimacy in the eyes of the global powers that be. This is expressed in an emphasis on continuity, stability, avoiding changes that would shake the system, adhering to formal and laborious procedures of appointment, promotion, and tendering, reaching consensus at the expense of proposed changes, legitimating new policies by drawing on real or contrived international models.

The third component consists in moving from an explicitly political and value-laden approach, to an approach increasingly dominated by a technocratic and ostensibly politically neutral discourse. Macro-economic policy is a good example of this, as well as the adoption of outcome-based education, science and technology policies, military procurement and modernisation, and so on. This serves as a ground on which officials and activists of various persuasions can come together. In their combination, all three components contribute to greater acceptability of the system domestically as well as internationally.

Although this process of convergence was facilitated initially by the coalition between the ANC and the National Party in a government of national unity, it has acquired an independent life. It did not collapse with the withdrawal of the National Party from government in 1996 and did not change with its return in 2002. It is likely to continue, regardless of the precise composition of the political leadership. In the international arena the new discourse of power seems to have worked reasonably well. It represents South Africa as a nation undergoing much needed and delayed transformation, establishing a unique identity while joining the modern western world, and thus deserving of generous and sympathetic donor assistance, at the same time that it is portrayed as a stable and growing economy, free of racial conflict, and thus a worthy target for investment and joint ventures.

Behind this new discourse of power is the implicit notion of South Africa as following a distinct developmental path, an alternative modernity, which combines advanced economic and political technology and forms of governance on the one hand, with new-old social and cultural forms that borrow from real and imaginary African values and tradition on the other. Occupying this unique intersection, South Africa can speak on behalf of modernity when addressing Africa and on behalf of Africa when addressing the modern world.47

The view of the state advanced above does not imply the state is becoming homogenous and that no internal conflicts within its structures take place. Rather it serves to question whether such conflicts can be meaningfully seen as a continuation of the struggles of the apartheid era, pitting two mutually exclusive camps against each other. With some exceptions in the state repressive apparatus, which continues to contain unreconstructed elements from the old order, most state structures have embraced change and moderate reform, but have managed it through the particular discourse and institutional arrangements of the new-old state.

With the rise of new style politics, a discourse shared by the state, international agencies and many civil society organisations has put the notion of partnerships at the centre of attention. In particular, the role of non-governmental organisations (NGOs) and community-based organisations (CBOs) – variously defined civil society, or the voluntary sector, or the non-profit sector – has attracted attention. Although strictly speaking the scope of each term is somewhat different, they broadly refer to the same phenomena: a large number of associations and networks, which play an important role in community organisation, service provision, and
policy and advocacy activities. These organisations exist and operate independently of the state though sometimes in alliance with some of its structures.

The following section addresses specific issues raised in the discussion of civil society organisations in South Africa, with a focus on partnerships with the structures of the new-old state. It covers research that is based on one of the uses of the civil society concept identified earlier in the report, as a descriptive-analytical tool to examine relations between different sectors as well as their internal structure and function. In particular this research focuses on the size and scope of the sector, its role and impact, and the different perspectives put forward by various actors in the field about the actual and desirable relationships between the state and civil society organisations.

**Civil society and the quest for partnerships**

Research on civil society in post-apartheid South Africa has centred on the question of partnerships. Most studies seek to review the relations between state structures and civil society organisations, and make recommendations on how these may be structured to enhance co-operation in the common cause of development. Broader theoretical questions about state and power, and the potential for re-shaping the meaning of democracy in South Africa are rarely posed in this literature. In light of this, in what follows some of the relevant studies will be surveyed, to provide a sense of the importance of the issue to government, donors and civil society organisations themselves.

A clear definition of our object of investigation is important. In 1993 the Development Resources Centre (DRC) defined NGOs as “self-governing, voluntary, non-profit distributing organizations operating, not for commercial purposes but in the public interest, for the promotion of social welfare and development, religion, charity, education and research”. This definition limits its scope to organisations working in the public interest, excluding those that have a more private function or that have no clear social-public agenda. Precisely for this reason, it may be of interest for our purposes here (though it excludes a large number of community-based organisations and activities).

In a similar manner to the DRC definition, the Nonprofit Organisations Act of 1997 defines its scope to encompass trusts, companies and associations that are established for a public purpose. Building on this definition, the Taxation Laws Amendment Act of 2000 exempts under certain conditions organisations engaged in ‘public benefit activities’, which cover a range of activities in welfare, education, health and related areas.

A recent comprehensive study of South Africa’s non-profit sector (part of the Johns Hopkins comparative international non-profit sector study) adopts a broad structural approach that uses five operational criteria to define its scope. Non-profit organisations must be organised (have some institutional form), private (but may receive funds from government and other sources), self-governing (control their own activities), operate not for profit (profits are possible but they must be reinvested in the mission of the organisation), and voluntary (must engage volunteers and have non-compulsory contributions and membership). These criteria have been used in all the case studies in the international project to enhance comparability.

To the organisations included in public interest and benefit definitions presented above, the Johns Hopkins South African study adds associations that have no clear public agenda, such as co-operatives (small scale operations based on self help principles), stokvels (consisting of a group of people who contribute money to a pool, from which each member benefits in turn),
burial societies (groups to which members contribute to assist with burial costs), religious organisations (which play a role in welfare, cultural, educational, and recreational life of communities), and local and community-oriented branches of political parties.

And finally, another recent study undertaken in the framework of the international Civicus civil society diamond study asked NGO members to identify characteristics that they associate with South African civil society. These included among others, being non-profit (operating not for private gain), voluntarism (using voluntary workers), having delivery orientation, being independent or autonomous of government and having their own constitution, rules, and governance structures.49

Some participants in the Civicus study felt that civil society organisations represented the poor and the disadvantaged who live on the margins of society. Others felt that they operated on a mandate from members or beneficiaries regardless of social origins, were driven by the interests of communities and were established to respond to the needs of people and communities in the areas of welfare, service provision, training and technical assistance, community-based burial and savings groups, income generation, community development, advocacy and networking.

The discussion above points to a distinction we must make between the comprehensive and restrictive definitions of civil society organisations. As noted earlier, the restrictive definition, which focuses on those working in the public interest or benefit, is more relevant here as it focuses on organisations playing a developmental role by seeking to improve the social, cultural, and economic well being of communities and sectors in society. Other organisations may focus on survival activities, such as savings and burial societies, and lobbying and advocacy activities. They are important for an overall understanding of the nature of civil society organisations in South Africa, particularly as they focus on community-based activities, but are of less direct relevance to the notion of partnerships.

A series of studies conducted in the last five years have addressed various issues regarding the NGO, non-profit, voluntary sector, dealing among other issues with the notion of partnerships and the role of the sector in relation to the state. The following sections will examine some of these studies in order to reach conclusions about the state-of-the-art of civil society research, and follow this with a discussion of the limitations of existing work and the way to overcome them.

**The size and scope of the NGO/CBO sector**

The Johns Hopkins report on the size and scope of the non-profit sector is the most comprehensive study to date of NGOs and CBOs in South Africa. The focus of the report is on employment and revenue figures for the sector, and the findings based on a large sample of organisations located in a cross-section of communities. It is far less useful with regard to the nature and impact of the activities undertaken in the sector, a topic it discusses to some extent but unfortunately without reference to empirical research, making the discussion speculative with no grounding in new findings.50

The number of organisations in the sector is estimated at 100,000, with more than half of them (53%) classified as less formal community-based organisations. A large proportion of these are smaller, and they operate only at community level. The report asserts that these organisations may make important contributions to poverty alleviation, since they can respond to problems at that level quickly and efficiently. Only 11% of the total number can be strictly identified as Non-Governmental Organisations (section 21 companies).51
Of the different fields in which organisations operate, the largest are social services (22% of the total number), culture and recreation (20%), and development and housing (20%), trailing by health (7%), education (6%) and environment (3%). Putting together the sectors involved directly in service delivery (education, health, social services, environment, and development and housing) gives us a total of 58,000 organisations throughout the country, of which 32,000 (55%) are informal and voluntary CBOs and about 10,000 (17%) are NGOs.

We can break these figures further down to more specific components of each field. In education the majority of organisations are involved in primary and secondary education (82%), while 18% are active in adult and continuing education. In health, 33% of organisations are nursing homes, 23% are involved in mental health and crisis intervention, 20% provide emergency medical services, 16% are active in public health education, and 9% in outpatient treatment and rehabilitative medical services.

The field of social services is very diverse. More than a third of organisations (36%) are engaged in providing material assistance in the field of income support and maintenance, 4% in emergency and relief (mostly temporary shelters) and 60% in specific social services. Among the latter are child welfare (22% of the total number of organisations in the field), family services (10%), youth services (10%), self help services (7%), services for the elderly (6%) and for the handicapped (5%).

The development and housing sector is equally diverse, with community and neighbourhood organisations accounting for 45% of the total. The rest are involved in job training (19%), economic development (18%), social development (8%), vocational rehabilitation and workshops (5%), vocational counselling and guidance (4%), and housing associations and assistance (2%). Most environmental organisations deal with animal protection (particularly veterinary services).

The report estimates that the non-profit sector is a major employer, generating the equivalent of 650,000 full-time positions (making it a bigger employer than the mining or public sectors). Overall, full-time employees occupy about half of these positions, and the rest are filled by part-time employees and by volunteers. Volunteer labour is particularly important in the fields of culture and recreation, religion, advocacy and politics, where they account for the majority of positions. In fields concerned with delivery (health, education and social services), the reverse is true, and most positions are filled by full-time paid employees. Service delivery sectors are thus likely to have a more professional staff, implying perhaps a greater capacity to administer services.

The largest number of employees is to be found in social services (22% of the total of full-time equivalent employees for the sector, including volunteers), development and housing (16%) and culture and recreation (15%). Health (9%), education and environment (5% each) lagged behind. Overall the majority of employees and management in the sector are women and black. When we break these figures down the picture, especially at management level, is further differentiated. Women dominate in education, health, social services, and development and housing, while men dominate in environmental organisations. Blacks dominate numerically in management position in all fields except for health and the environment.

The total income of the non-profit sector in South Africa is estimated at R14 billion, of which government provided R5.8 billion (42%), R500 million of which were derived from overseas development assistance, channelled through the South African government. Self-generated
income derived from fees, sales, and membership dues accounted for 29% of total income, private sector donations accounted for 25% and investment income accounted for the remaining 5%.

It is important to realise that government contribution was in the form of grants as well as contracts for work done, frequently as an outcome of a competitive process. The fields benefiting the most from this source were social services (receiving 36% of government contribution), health (29%), and development and housing (20%), with education and environment receiving very little amounts. Of the total government contribution then, 86% went to the service delivery sectors.

As noted earlier, the useful breakdown of empirical information provided in the Johns Hopkins study is not followed by an analytical discussion, based on the findings, of the implications of all this for our understanding of the current and potential role and impact of civil society in South Africa. This task was undertaken in another project discussed below, though unfortunately without the empirical rigour and detail provided in the Johns Hopkins study. The lack of integration between good empirical and analytical research on civil society in South Africa remains a serious problem.

**Role and impact of the sector**

Participants in workshops conducted in the course of the 2001 Civicus study identified two complementary tasks for civil society organisations in South Africa, that of consolidating an enabling environment for the sector, and that of responding effectively to the challenge of poverty eradication. A related question raised by participants was how civil society organisations (including NGOs and CBOs) can engage other forces, such as trade unions and business associations, and work towards more effective co-operation with the private sector, donors and government. NGOs agreed that the space available for their operations increased dramatically since 1994 with new enabling legislation and regulations. They saw a need, particularly among those working in remote and disadvantaged communities, to enhance their capacity in order to influence government policy and to access government support for programme implementation.

To make the notion of partnership meaningful, and to allow organisations to work together with government, there is a need for information regarding the legislative and regulatory environment and opportunities for collaboration between the state and the NGO/CBO sector, to reach grassroots organisations. It is the responsibility of individual organisations to keep themselves informed and obtain access to government in order to make well-informed, constructive representations on behalf of their constituencies. However, government must also ensure that its information reaches all those who can benefit from it, and all those who can use it to the benefit of communities, and listen willingly and carefully to the input made by civil society organisations.

In a more self-critical vein, workshop participants recognised that civil society organisations need to enhance their public and financial accountability through discipline, good governance and transparency. Crucially, they should move away from an entitlement mentality, understanding that: “No one owes us a living!”. In addition organisations must ensure that their programmes become consistent with the values they promote, by encouraging volunteerism and public participation as means of empowering communities.
It was recognised by participants that the impact of civil society organisations on policy and implementation was not clear. They should therefore improve their capacity to measure impact and communicate effectively to others regarding the positive impact they might have on government policy and on the lives of ordinary South Africans, with a focus on poverty eradication. They – and government – should develop baseline data, identify appropriate indicators and means of quantifying them, and report on the results widely.

Another recent report, produced in 2001 by Interfund (a grant-making agency that has regularly monitored the NGO/CBO sector) provides an evaluation of relationships and partnerships between government and the voluntary sector. The report focuses on tensions in this relationship due to policy disagreements and difficulties involving funding and money distributed through the National Development Agency and the National Lottery. In the area of service delivery, cooperation with government remained uneven from sector to sector and across the levels of government involved. The urgency of forging effective delivery partnerships between government and the voluntary sector is underscored by the revelation that many government departments have failed to spend millions of Rands destined for the provision of basic services and poverty relief. The main cause of non-delivery was serious capacity constraints.

The Interfund report draws on an earlier study of service delivery partnerships, produced by the Transitional Development National Trust (TNDT). The study identified several obstacles to partnerships between government and NGOs and CBOs:

- **Negative attitudes:** some government actors felt that civil society organisations wanted to deliver services to or for government, at the same time that they retained independence to advocate and lobby. Civil society organisations often felt they were unable to assert themselves because power was skewed in favour of government, that their work was undervalued, and that government did not take them seriously.
- **Lack of clarity:** government did not have an overall vision for interaction with civil society organisations. There was a view in government that participation and capacity building by and for civil society organisations was secondary to the need for quick service delivery and spending budgetary allocations. Organisations on the other hand, felt that their contribution to development was largely ignored or misunderstood.
- **Institutional capacity constraints:** on all sides problems related to poor institutional capacity were manifested, including lack of skilled staff and of proper financial, management and human resources systems.
- **Financial difficulties:** the decision by many international agencies to shift funding from civil society organisations towards government pushed a large number of organisations to turn to government for financial assistance (not always being successful). Many organisations were forced to spend much time on raising funds than on development work and service delivery.
- **Legal obstacles:** obstacles to partnerships between government and civil society organisations included the complex tender system, strict government financial regulations, cumbersome budget approval procedures, and a lack of tax incentives for donors.

On the basis of this identification of problems and a study of successful cases of partnerships, the report made the following recommendations:

- **Legal obstacles should be addressed through consultation and negotiation between the parties.**
- **Both parties need to assess what changes they could make to improve partnerships.** A paradigm shift in both sectors towards mutual understanding and respect is crucial. Government needs to outline its development objectives and the basis on which it seeks to interact with civil society organisations. It has to simplify bureaucratic procedures and improve communication
between departments. Organisations have to strengthen ties with the communities they serve, improve networking, and become more professional.

- Communication between government and civil society has to be strengthened, through the establishment of dedicated units in line departments to take the lead in sharing information and promoting a dialogue, and the creation of databases on organisational capacities and expertise in order to facilitate contact and interaction.
- Contractual interaction needs to be streamlined. The responsibilities and activities of each party should be clarified, and proper management systems and procedures put in place.

As an outcome of this report, and the growing awareness in some government circles of the importance of partnerships, there has been progress in addressing legal obstacles and moving to more progressive tax policies. Government’s tendering and procurement policies and procedures were improved to some extent in 1999/2000, and the National Treasury formulated a new framework for public-private partnerships (PPP). Many of these changes were technical in nature, however, and did not address the crucial issue of government attitudes towards partnerships with civil society organisations. Government’s focus has been on forming partnerships with the business sector, and civil society organisations have been relegated to the role of potential training providers or watchdogs, rather than partners in service delivery.

A 1999 report by the Centre for Policy Studies argued that many civil society organisations were involved in formulating green and white papers for national and provincial governments, but had much less to do with local government. In the same year, a workshop on relations between government and civil society organisations showed that many among the latter were increasingly frustrated regarding the possibility of engaging with the government policy process.

These perceptions highlight the need to investigate the nature and role of civil society organisations in development. In particular, developmental organizations could enhance their role as agents of change in eradicating poverty and bringing about social justice. This would mean building capacity and mobilising poor and disadvantaged communities to speak for themselves, as well as working independently and with government to formulate development policy and oversee its successful implementation.

The context for such efforts is the visible increase in expenditure on social service delivery over the last few years. Since the state has not assumed an expanded role, this means at least some of this increase was made up by work and contribution on the part of civil society organisations and business. The Johns Hopkins non-profit sector study outlined the following contextual elements that may frame this development:

- A state controlled by a confident, ascendant, black middle class in close alliance with large-scale business interests and certain unionised sectors of the working class. The state is interested in meeting socio-economic needs effectively in order to maintain social stability.
- A well-organised non-profit sector with considerable capacity to deliver: This includes the large, established health and social service organisations that have positioned themselves to service the urban middle and working classes, as well as smaller, less formal and less capacitated community based organisations that aim to serve the needs of the poor.
- A macro-economic model that encourages the state to enhance social development by mobilising financial and human resources in partnership with other sectors (business, donor agencies, NGOs, CBOs, communities).
- An organised corporate sector committed to corporate social responsibility and investment.
- An international donor environment, where many donors prefer again to fund civil society organisations rather than governments as key agents of poverty eradication.
In the Reconstruction and Development Programme the state formally committed itself to fostering a wide range of institutions of participatory democracy in partnership with civil society, including trade unions, mass organisations, sectoral movements and CBOs. NGOs were seen to be playing a role in capacity building with regard to CBOs and the development process, as well as engaging in service delivery, mobilisation, advocacy, planning, lobbying and financing. This was qualified by the need for NGOs to adopt transparent processes, and operate in a manner that responds to the communities they serve.

A partial legal codification of these principles is found in the Nonprofit Organisations Act of 1997, which defines non-profit organisations (NPOs) as being involved in governance and delivery. By defining themselves as NPOs via the registration process, NPOs qualify to access large potential funds in terms of the Lotteries Act of 1997, the National Development Agency (NDA) Act of 1998, and the Taxation Laws Amendment Act of 2000. The Nonprofit Organisations Act mandates every organ of state to determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of NPOs to perform their functions.

This approach is reiterated in the National Development Agency Act, which defines the primary objective of the NDA as that of making a contribution towards the eradication of poverty and its causes. This by granting funds to civil society organisations to carry out projects aimed at meeting development needs of poor communities, and strengthening the institutional capacity of other organisations involved in direct service provision to poor communities. To access these resources, NPOs must be willing and able to register legally and deal with complex registration procedures, funding applications, forms, reports, annual audits regular inspections, and record keeping. This environment is more conducive to the operation of large and well-organised NGOs than for small NGOs and CBOs that operate in less formal circumstances and cater to poor and marginalised communities. The latter could possibly benefit from becoming intermediaries between NGOs that receive funds and the communities where the funds are to be spent.

**Partnerships: Opportunities and challenges**

As the discussion above has demonstrated, NGOs and CBOs have managed to raise substantial funds from the state and private sources, and they employ a large number of staff and volunteers. This financial and organisational standing puts them in a good position to address issues of poverty eradication, especially if the new funding mechanisms take effect as planned. At the same time, they must address questions of capacity and policy direction to make the most of their resources.

Community-based organisations, which dominate civil society numerically, are concentrated in areas of service delivery at local level, to address immediate needs of poor communities. Many of them go about their activities without needing or seeking partnership with government. If they were to be integrated to a greater extent with government’s efforts this will most likely be done locally, based on immediate circumstances, rather than through an overall national or provincial policy framework. The larger formal NGOs are in a better position to get involved directly in policy and implementation and to benefit from new funding opportunities. They must balance their roles as delivery agents acting for or together with government, and their role as critical watchdogs.

As part of the Johns Hopkins study, organisations were asked about their perspectives and priorities. Issues related to capacity (training, lack of policy direction, professionalism,
managing volunteers, and skills) were not rated highly as concerns. The only capacity problem that was rated high was lack of experience in fundraising. The problem seems to be not the availability of funds in itself, but the capacity to access and manage them effectively and compete with other sectors for them.

When presented with statements to which they responded, organisations expressed the most disagreement with the notion that non-profit organisations are as bureaucratic and unresponsive as government, that the public tends to view NPOs with suspicion, and that government tends to view NPOs with suspicion. Statements that generated high strongest levels of agreement were that:

- The main role of NPOs is to service the needs of people rather than seek profit margins
- NPOs are located much closer to the needs of the people than government
- The needy would be ignored if not catered for by NPOs
- NPOs are able to create a sense of community that government agencies cannot
- NPOs serve those in greatest need.

Respondents showed lack of concern about the impact that partnerships with government could have on NPOs through funding agreements. It was not seen as something that could interfere with the goals or purposes of NPOs, undermine their critical watchdog role, or turn them into businesses. Questions on the relationship between NPOs and government revealed that NPOs think that they are closer to the people and do a better job of serving their needs, that they are more innovative and less bureaucratic, and that government is shifting more and more tasks onto NPOs due to its own lack of capacity. This confidence is tempered by concerns with growing competition on the part of the private sector, for jobs and contracts with government.

The interest in partnerships for delivery is not unique to South Africa. It has been motivated in many places by various reasons, some of which are outlined below:\(^55\)

- A perception of the limitations of the state as a vehicle for social change due to its inability or unwillingness to be accountable to society. Recent analysis has also questioned the accountability of NGOs, as opposed to elected representatives in government, or membership organisations.
- Recognition of the comparative advantage of NGOs to deliver at local level. A 1998 World Bank evaluation noted that NGO/CBO involvement in development projects contributed to the projects’ success, by providing opportunities for poor communities to participate.
- Serious concerns over the economic inefficiencies of state delivery mechanisms have also been expressed by international institutions, especially with regard to bloated bureaucracies of many developing countries and inefficiencies of centralised government control over development.
- NGOs do not represent a recurrent cost for the state, and they frequently manage to raise funds to match state contribution.

Having identified the limitations of state action and the advantages of NGOs, we must realise that the purpose of partnerships is precisely that of combining the strengths that different sectors bring to the task of development delivery, rather than replacing one sector (with its limitations) by another (with its own limitations). The state has a direct role to play both in service delivery and in creating an enabling environment for the work of other sectors. The nature of the relationship is likely to be collaborative when the state and NGOs share goals and strategies. They may work together well even if they adopt different strategies, as long as their goals – efficient and comprehensive service delivery – are similar, in which case their strategies must be complementary.
In a 2000 study Alan Fowler gives examples of partnerships that may include support by the state to civil society organisations through grants or subsidies, seconding staff from the state to non-state schools or clinics, and paying subsidies to welfare organisations by the Department of Social Development for providing welfare services on behalf of the state. In other instances the state may offer contracts to organisations to do work for it: for example, NGOs undertake work on land rights for the Department of Land Affairs, and health education initiatives on behalf of the Department of Health.

In a contractual relationship there are three starting conditions, which allow some space for negotiation and thus determine the nature of the partnership and its effects:

- The degree of goal coherence between the state and the NGO: for example, when dealing with the protection of street children, the shared goal might be the return of the children to their families.
- Room for negotiation over contract conditions: for example, the methodologies to be used or the processes to be put in place to achieve the goal.
- Direction of influence: answering the question of who is trying to co-opt whom? NGOs may be successful in co-opting the state into their approaches, for example ensuring that a project design includes participatory needs assessments.

A crucial issue here is the concrete advantages and disadvantages that NGOs bring to such partnerships with the state. In their efficiency analysis of developmental NGOs, Shirin Motala and Dave Husy examined case studies to illustrate concretely and not just theoretically whether the claims that NGOs are more efficient agents of delivery – as mentioned earlier – are indeed true, due to the NGOs’ values, ability to reach marginalised communities and identify their needs, and be flexible in implementing programmes. Issues of efficiency, they argue, are not restricted to the implementation of projects, but to all levels of the policy cycle, including policy formulation, planning, project implementation, and monitoring and evaluation. For example, at the policy and planning level, the facilitation of stakeholder participation is a critical area, and one of the comparative advantages the non-profit sector provides.

NGOs suffer from limitations as well, in the areas of service delivery and development interventions, which include the following:

- The local focus of NGOs and CBOs makes it difficult for them to implement programmes on a large scale.
- NGOs and CBOs usually have no uniform approach. Putting in place uniform standards would help standardise outcomes, though the approaches adopted for reaching those outcomes and meeting standards may vary because of local conditions and needs.
- Lack of co-ordination with stakeholders and with other NGOs can lead to the duplication of services and fragmentation of delivery.
- NGOs cannot guarantee the continuity of their inputs. They may be diverted from their core function and mission.

To study efficiency in delivery in a project commissioned by the Non Profit Partnership, Motala and Husy used several indicators. They conclude that NGOs provide qualitative benefits for the state through their roles and relationships in service delivery for development. In addition they provide financial benefits, though these are not always easy to define and measure. Looking at each of the nine indicators in turn, they reach the following conclusions from their case studies:

- **Values base driven programmes and methodologies:** the commitment to participatory approaches to development facilitation is reflected in the involvement of stakeholders in
decision-making. This has costs – participatory processes require time and money. Pressures can lead to an undermining of values and principles. Power brokering is sometimes an outcome of using traditional methods of facilitating ‘community participation’. The notion of ‘community’ is frequently not clearly defined and broken down to its components.

- **Impact and coverage:** Coverage was uneven in the case studies. Some NGOs are tackling issues at a national level, while others operate at a provincial or local level. Coverage is constrained by institutional capacity and resources, both human and financial. Interventions are reaching rural and other previously disadvantaged communities, although on a relatively small scale.

- **Co-ordination and integration with other work and stakeholders:** All the NGOs in the case studies demonstrated considerable investment in supporting co-ordination and integration across development interventions. The benefits are evident in the shared responsibility for implementation, the expansion of capacity and the impact on target communities.

- **Continuity and sustainability of interventions:** The case studies reflect a wide range of initiatives aimed at ensuring the sustainability of the intervention beyond the life span of the project. These include building local capacity, enhancing the capacity of relevant authorities and transferring skills and technologies that can be sustained without the continued use of external resources. Not all of the interventions are sustainable without external funding. If NGOs cannot cover costs, the consequence will be lost capacity.

- **Accountability:** In the case studies it was clear that systems were in place for effective management and financial accountability. The view of NGOs as driven by passion but with no internal efficiency did not prove true.

- **Delivery effectiveness:** The following emerged from the case studies:
  - The sector is using international and other sources of funding which would not necessarily be available to the state.
  - NGOs have the ability to charge lower rates, draw on a pool of existing resources within the organisation, build on existing relationships and networks and thereby add value to a project. This may even go so far as subsidising the project with other resources.
  - The state ends up receiving a subsidy to meet its statutory obligations because the NGO sector is filling key gaps with its own resources. Even where the state makes a contribution, via a subsidy or contract, the value of the input received from NGOs usually exceeds the costs to the state.
  - Relying on tenders and subsidies meant considerable risks for NGOs. Their ability to manage and adapt to the potential risks is key to their success.

- **Flexibility in delivery:** The NGO sector is flexible, enhancing its capacity to respond to needs when they arise. However, the sector is often accused of lacking focus due to the diversity of its approaches and interests. The costs to NGOs themselves include staff burnout, disruption of programmes, and the diversion of resources intended for other work.

- **Employment generation:** The NGOs in the case studies had different capacities to generate employment and it is impossible to generalise about the matter.

- **Volunteer mobilisation:** The sector mobilises volunteers to take part in the work of NGOs, and extend the scope and impact of their projects despite financial constraints. It is important to realise though, that effective volunteer mobilisation requires training and supervision, which are costly (mostly in terms of staff time but also money – transport, food, etc).

From this study we can conclude that there is a need to introduce analysis of efficiency in service delivery, which should include cost analysis in project planning and implementation, and enable comparisons between sectors (state, private sector, NGO or NPO sector). This analysis would allow us to identify the strengths and weaknesses of each sector, and on that basis devise
partnership that would enhance optimal collaboration in the common cause of development. Clearly, the notion of efficiency should not be restricted to financial calculations and it must consider other aspects such as quality of delivery outcomes, popular participation, encouragement of voluntary activity, solidarity, etc.

A subsequent study undertaken by Dave Husy for the European Union involved consultative workshops with developmental NGOs and CBOs in mid-2002. The study covered a range of issues, including two that are of direct relevance here: delivery of basic services and public private partnerships.

One of the issues that emerged from the consultations was the tension that participants experienced between playing a direct role in service delivery and playing a role in monitoring and assisting delivery by the state. Some NGOs were concerned that their critical independence would be compromised, and emphasised that not all NGOs should or could engage in service delivery. Another concern was that the necessary attention to the priorities of local people would be sacrificed in order to meet contractual obligations to government. To overcome this problem it was suggested that participation and people-centred development should become a performance indicator alongside the more quantitative delivery targets.

NGOs argued that their advantages relative to government include greater ability to coordinate relations with communities and CBOs, a focus on empowerment to enhance community ownership of projects, better response time to development needs, less bureaucratic procedures and ability to offer cheaper and cost-effective services. Problems included, among others, lack of clear mandate from communities and accountability to them, and internal tension in the NGO sector that may hamper delivery.

With regard to CBOs, they were seen to be playing a crucial role in delivery and giving communities a sense of ownership of the development process. They were regarded as providing important links between communities and external forces (be they NGOs, government, or donors). However, generally they seemed to suffer from weak capacity that hampers their ability to function effectively in order to facilitate delivery. The relations between NGOs and CBOs were also a source of concern, with the former at times using the latter to facilitate access, without acknowledging their contribution. Direct relations between the state (and donors) and CBOs may also become a problem, with NGO playing an intermediary role.

Partnerships with government were viewed favourably as long as they did not force NGOs to abandon their independence and become mere delivery agents on behalf of government. The need to meet strict bureaucratic rules, follow complex tender procedures and observe cumbersome reporting and accounting requirements was an issue frequently raised as an obstacle to constructive relations with government. From a community-based perspective, contracts with government tend to be signed with larger and better-organised NGOs, marginalising informal CBOs and smaller NGOs with limited capacity to adhere to the requirements of contractual work.

Having surveyed the outcomes of recent relevant research processes, which focus on issues of NGOs, CBOs and service delivery, a few conclusions can be drawn regarding partnerships between these organisations and the state. While there is no magic formula that would guarantee the perfect relations between the different sectors, the following points for consideration may be distilled from the various studies reviewed above:

- Partnerships between NGOs, CBOs and government are desirable. All parties concerned seem to favour them. To make them feasible and successful, clear understanding of the role of
each partner must be established. Such as understanding should be arrived at through negotiations between the parties rather than through the imposition by one – the state – on the others.

- NGOs and CBOs enjoy comparative advantage in service delivery due to their more consultative approach, a focus on community empowerment, and greater ability than government to respond more directly and immediately to community needs.
- NGOs and CBOs suffer from relative lack of capacity, and they cannot guarantee continued and sustained interventions. Their accountability to communities (this point is applicable in particular to NGOs) is questionable and their mandate is not always clear. Their dependence on external financial support may compromise their ability to pursue developmental policies according to their values and preferred mode of operation. Without such ability their contribution will be diminished.
- The strengths and weaknesses of the NGOs and CBOs, combined with those of the state, make them ideal partners. The state can guarantee institutional and financial continuity as well administrative capacity through its own or outsourced personnel. However, it operates through formal and user-unfriendly procedures that are not always conducive to effective delivery.
- The best way forward would be to combine the immediate and more equal relationship that NGOs/CBOs can establish with communities, with the more structured and organised approach that can be provided by government. In order to do that, service delivery and development objectives should be planned, implemented and monitored in collaboration between these partners, as well as with the communities affected through CBOs, local government and direct representatives.
- The precise arrangement of the partnership should be determined by the particular circumstances of each case. There cannot be a model that is applicable to all cases, but the principle of joint planning can apply across the board.

While the political accountability for delivery remains with various levels of government, the social accountability must be shared with NGOs, CBOs and donor agencies. This is a burden as well as a source of power that must be used to benefit the target communities.

**Beyond partnerships: Social movements, power and democracy**

The survey of existing research on civil society in South Africa shows a clear focus on questions of size and reach of the sector, and the relationships of civil society organisations (NGOs and to a lesser extent CBOs) with government, in the area of service delivery. Much of this research is conducted in an applied vein, advocating a cooperative model that would secure the role of civil society in implementing developmental programmes that are designed by the state and funded by international agencies. In Steven Friedman’s formulation, civil society associations are becoming “delivery intermediaries between the framers of social policy and those for whom it is intended.”56 Their ability to play this role would depend on their capacity to articulate the needs and concerns of their constituencies, their extent to which they develop a coherent programme of action and win public support for it, and their success in forming alliances with other like-minded actors.57

In this perspective, the critical role of civil society organisations is restricted to monitoring government performance, and helping marginalised communities and constituencies to make their voices heard in the policy process. More visionary perspectives, seeking to provide a new understanding of power and propose a strategy for those who find existing analyses limited and limiting are rare, as the scene has become dominated by technical arguments about efficiency in service provision. Some of the critical power of the civil society concept, however, has been taken over by new social movements that have come into being in the last few years. It is to their potential as part of civil society that we should turn now.
In order to understand the challenges facing us today, a step back into the 1980s is needed. The anti-apartheid movement, led by the United Democratic Front (UDF) inside South Africa, sought to bring down the regime and replace it with a democratic government. At the same time, in the course of struggle, many other concerns were raised by affiliate organisations, including working conditions, rent, environmental degradation, urban services, agricultural productivity, AIDS awareness, liberation theology, people’s education, school curriculum, and so on. These reflected the range of issues of interest to civil society organisations, communities and activists, who were deeply politicised but whose concerns extended beyond the question of state power. Specific local conditions and grievances, and issues of sheer survival in many localities throughout the country, fed into a strategy of overall political mobilisation.

The ability to articulate numerous disparate local concerns into a global anti-apartheid movement was the strongest asset of the opposition, as it allowed it to present a united front against the regime. At the same time, it left a dangerous legacy that eventually led to the demise of the movement. Forming a united front left little room for voices expressing dissenting interests and values. Although after 1990s, during the transition period, much of ANC rhetoric stressed the need for an independent civil society, and accepted the vision of a pluralist political system, many civil society organisations found it was not easy to maintain a balance between political support for the movement on the one hand, and critical independence from it on the other. This difficulty extended into the post-transition period, when the ANC assumed the leading role in government.

The return of the ANC to South Africa in 1990 forced affiliates of the UDF, and the UDF itself, to reconsider their position vis-à-vis the liberation movement, and particularly in relation to the ANC. Within a short period of time many of them “allowed themselves to be subordinated to the ANC’s dominating presence”. By mid-1990 the UDF effectively ceased to exist except in name. Some activists called for the formation a new organisation that would be similar to the UDF but without the close political ties to the ANC. This structure never came into being, but the proposal reflected a need for some co-ordination between organisations that chose not to sacrifice their independence by aligning themselves directly to the ANC. At its last national conference in March 1991, the UDF called for a national association of civics, to ensure the continuity of an autonomous and institutionalised voice of grassroots movements, and in 1992 the South African National Civics Organisation (Sanco) was formed. However, with the election of new local government structures in 1995, much of the civics movement lost its raison d’etre and all but disappeared from view.

The relations between the ANC and civil society organisations remained contested throughout the transition period. The contradictory legacies of the top-down structured ANC in exile, and the mass-based and participatory UDF, produced tensions within the movement, but not a break. Having just returned from exile, the ANC relied heavily on the organisational and human resources of civil society allies. Civil society organisations without much popular backing outside their own ranks relied on the ANC for political legitimacy and leadership. Political transition and the assumption of power by a legitimate government tilted the balance in favour of a more authoritarian and less participatory mode of governance that remains in place today. Despite developments such as the formation of the South African National NGO Coalition (Sangoco), civil society organisations were left with no ability to provide leadership and pursue an agenda independently of the state.
When we look today at post-apartheid realities in the light of the experience of the previous decade we must realise that the goal of toppling oppressive white rule, which unified the anti-apartheid movement, is no longer relevant, although the local concerns that fuelled the struggle are still much alive. With the benefit of hindsight, one of the major reasons for the slow – or no – progress towards meeting these local concerns, is paradoxically the success of the anti-apartheid struggle. To be more precise, it is the conceptualisation of the demise of apartheid and the victory of the ANC as an overarching goal, which required the suspension of local struggles in the name of national unity against the common enemy. This has led to the continued marginalisation of these concerns in the successful aftermath of ‘the struggle’.62

Let me clarify the argument. The anti-apartheid struggle had a coherent centre as well as disparate, uncoordinated, locally focused and untidy margins, expressed in the proliferation of multiple terrains of struggles spread geographically and thematically all over the country. It was natural to attempt to unify these disparate strands into a force that could meet apartheid head-on, confront power with power, and present an overall challenge to the regime, forcing it to yield ground and embark on negotiations. This did not necessitate, however, a surrender of local concerns and their relegation to the background until the larger question of political transition was settled. The ANC chose this path, and its allies and UDF affiliates followed suit, because of the legacy of a centralist political discourse, which glorified national unity (and reviled internal dissent) as a sacred principle of the struggle.

Reverting to the theoretical language introduced earlier in this report, we can see this development as the subordination of local, decentralised and regional criticisms to a global totalitarian theory (Foucault), or the articulation of particularities into a universal chain of equivalencies, not in a contingent and context-dependent manner as advocated by Laclau, but in a manner that served to subordinate the particular to the universal as Harvey argues for (though to a different universal than his). It is based on what legal theorist Roberto Mangabeira Unger calls ‘false necessity’, the political approach that proceeds from the notion that “real transformation requires the replacement of a supposedly indivisible system like capitalism by an equally indivisible and fantasmagorical alternative like socialism”63.

Of course, local, community-based and constituency-specific concerns and demands were only suspended to allow the political process of transition to proceed, with the idea that the new government would take care of basic needs once it had consolidated its control. In practice, once a new power took office it tended to retain or re-invent the same disregard for local concerns as the power it had replaced. While the ANC government is clearly different from and superior to the apartheid government in its social basis, values and policy goals, it shares to some extent its mode of operation and disdain for dissent. While the why and who of power changed, the how of power changed to a much lesser extent.64

An interesting reflection on the way social mobilisation has become subordinated to the nationalist project led by the ANC is found in a response by a leading member of the SACP, Jeremy Cronin, to a critique from the left. According to Cronin, the decline in popular mobilisation in the post-apartheid era has had an impact “on the coherence and resourcing of grassroots structures in our mass constituency.” In facing this situation, “it would be a betrayal to simply retreat back into the social movement alone, for the left is also in parliament, in government, in the security forces, in the Constitutional Court, in the educational and public broadcast institutions, and many more sites of institutional power. Each of these is a site of struggle, to be sure. We are not alone in these places. In each of these sites, the key strategic
struggle is between all ANC-aligned forces on the one hand and a range of neoconservative forces, ranged outside of and indeed within these state institutions.”65

Clearly, Cronin cannot think of mass mobilisation as anything other than the organisation of popular forces aligned with the ANC, serving its strategic struggle against the remnants of the old order. That people may regard the ANC alliance as part of the problem rather than part of the solution, or that they may wish to organise against both the ‘ANC-aligned forces’ and the ‘neoconservative forces’ that he identifies, is inconceivable from his perspective.

The focus on gaining control of the state, central to the traditional thinking and practices of the left, is countered by John Holloway’s critique of the instrumental notion of power, which “subordinates the infinite richness of struggle, which is important precisely because it is a struggle for infinite richness, to the single aim of taking power”. The problem, according to Holloway, is that “in doing so, it inevitably reproduces power-over (the subordination of the struggles to the Struggle) and ensures continuity rather than the rupture that it sought”, therefore “to struggle through the state is to become involved in the active process of defeating yourself”.66

How are these historical and theoretical reflections expressed in our present conditions? To illustrate the argument let us have a look at one incident that captures some of the positions in the debate over power, civil society and democracy. In August 2002, the World Summit on Sustainable Development was convened in Johannesburg. Among the activities that took place on this occasion, on the margins of the official meeting, was a march from Alexandra township to the Sandton convention centre, called by a range of organisations and social movements, which came together under the name of United Social Movements. They reflected a range of concerns including land, housing, water, electricity, environmental degradation and so on.67

In joining the call for the march, Indymedia South Africa, a left-wing group, announced that “multiple subjectivities that constitute the South African social movements” will not only target poverty and living conditions, but also the way much of the left “have tried to ‘represent’ the social subjectivity of the poor, their struggles, desires and, especially, the immediately subversive power of their actions”. It claimed that the left has “systematically tried to recruit social movements’ politics for the pursuit of political agendas that developed entirely above their heads: national liberation, the party of the working class, sustainable development, international workshops”.68

In this view, social movements are “plural and diversified”, “un-representable and unpredictable”, and “express a qualitatively new level of the struggle, a level in which life itself becomes the stake”. This makes them “radicalized and militant in completely new ways”, which threaten not only state control but also the established left’s understanding of struggle and politics.68 In the words of one activist, it is a critique “of the leadership practices of a left that has historically tended to reproduce subordination and discursive expropriation of the movements’ grassroots subjectivity”.69

This critique of the conventional left – and by implication of its view of power – celebrates new social movements whose practices are based on “forms of community self-management, construction of grassroots discourse, direct action in ways that are so rich, plural and diversified to be totally at odds with the hierarchical organisational practices of the traditional Left”. These “grassroots subjectivities” based in communities, struggles over housing, land, service provision, health and education rights, question the validity of “unifying identities (be they
called ‘class’, ‘party’, ‘union’) as the form of expression of common desires. This is simply because these forms of representation and delegation, quite effective when the stake of conflict is State Power, simply no longer work when the stake becomes immediate reappropriation of life, which is as radical and subversive as the constraints imposed by the market and the commodity form are tight and is, especially, unavailable to mediate, to be channelled, represented, predictable.”

In a similar manner, researcher and activist Ashwin Desai talks about “a plethora of community movements”, which mobilise “around diverse demands like land titles, water and electricity supplies, and access to housing and health facilities” with a focus on the family and the community as “a fighting unit”. By refusing to go through the normal political channels of parties, unions and NGOs, these movements challenge the boundaries of politics, becoming “a source of tremendous potential counter-power, if not counter-politics”. The linkages between them and other organisations and movements, locally and globally, are not clear however, and the extent to which they would be able to sustain their activities or even see a need for them if their local demands are met is equally unclear.

Desai’s focus on community struggles is similar to Chatterjee’s notion of political society discussed earlier in the report. In both, the unruly masses are seen as posing a fundamental challenge to power in the post-colonial state precisely by bypassing the formal channels of parties and NGOs, and overcoming the limitations of civil society. Desai’s concern with the possibility of demobilisation once basic needs are met seems misguided, however. Social mobilisation is always aimed at achieving particular goals. To expect people to remain in a permanent state of mobilisation in order to satisfy the concern of analysts and activists with total transformation is unrealistic and involves the imposition of external agendas on people’s own sense of urgency and priorities.

The approach outlined above, which focuses on the proliferation of ‘militant particularisms’ that must not be forcibly unified under the banner of the universal, even if they have a common enemy, contrasts sharply with the official views of the march’s organisers. In a press statement issued after the march, the Social Movement Indaba celebrated “a turning point in the country’s political landscape. A new movement is being built that for the first time since 1994, poses the potential of a serious challenge to the South African government amongst its historic core constituency – the broad working class”.

This centralist attitude is evident in the words of a prominent activist, Trevor Ngwane, talking about the links between daily local concerns and global issues: “In Soweto, it’s electricity. In another area, it is water. We’ve learned that you have to actually organize — to talk to people, door to door; to connect with the masses. But you have to build with a vision. From Day One we argued that electricity cuts are the result of privatization. Privatization is the result of GEAR. GEAR reflects the demands of global capital, which the ANC are bent on pushing through. We cannot finally win this immediate struggle unless we win that greater one. But still, connecting with what touches people on a daily basis, in a direct fashion, is the way to move history forward.” Although Ngwane concedes the disparate nature of local issues, he undermines this by asserting that they must be seen and solved in terms of a ‘greater’ struggle. In a similar manner, drawing on the work of David Harvey, Patrick Bond and Thulani Guliwe see in the march and events surrounding it a preparation for “a deep-rooted challenge to capitalism”, which will create unity between “radical communities, labour, women, environmentalists and health activists”.

Interestingly, in this view above the value of the coming together of disparate movements consists in posing a unified challenge to state power, countering it with the power of the masses. In this process, the incoherent and untidy diversity and multiplicity of social movements are overcome and superseded. However, it is precisely this uncontrolled untidiness that is the source of strength of social movements as argued earlier.

None of the approaches discussed above uses the concept of civil society explicitly. I would argue though, that it is the emphasis on self-organisation, internal diversity and resistance to forcible unification of social movements under a universal banner, which allows elements within civil society to develop its radical potential. In this way some civil society organisations may pose a challenge to state power that would not result in replacing one set of relations of domination with another. The line taken by the Social Movement Indaba replicates, obviously on a much smaller scale, the same move that had led to the demise of the radical potential of social movement under the UDF umbrella before the 1994 transition.

Beyond service delivery partnerships with government, and playing a watchdog role in monitoring its performance, civil society organisations may challenge the way power is conceptualised and exercised by supporting community struggles, social movements and popular campaigns that contest the uses to which state power is put, and take part in the re-shaping of social life outside the control of state authorities. Obviously this will not be done by civil society as a whole but by those elements within it that share a critical perspective on the state. All this, not by trying to impose a unity that will meet power with counter-power, but by allowing the untidy nature of the new social movements to flourish and spread to hitherto unaffected aspects of society.

The kind of politics addressed here conforms to Unger’s notion of ‘transformative politics’, which focuses on shaping the practical and discursive routines of social life. It works towards an ‘empowered democracy’ precisely by adopting a piecemeal and cumulative approach and eschewing grandiose revolutionary rhetoric, which sounds radical but ends up achieving very little because it is removed from people’s daily concerns. It seeks to bypass the two ‘languages of fatalism’ that have dominated developmental challenges, “the language of a fossilized and truncated Marxism, and the language of applied, positive social science”. Of necessity the new language would not be universal in nature but adapted to the specific concerns and issues affecting local struggles wherever they take place.

An important component of the new language of power is the notion of rights, and specifically social or socio-economic rights. As was argued by Partha Chatterjee earlier in this report, politics in post-colonial societies is characterised by a collective notion of rights, which replaces the individual focus of liberal political discourse. This is a central feature of politics in many places, including India, Latin America and southern Africa, which share a combination of relatively open political systems with massive social inequalities. It is to the examination of the relations between the discourse of rights, social mobilisation and power that I now turn. The purpose of the following section is to discuss different political strategies to the question of state power in South Africa today. In doing this I wish to demonstrate the range of options available to civil society organisations and in particular social movements wishing to challenge state power, and the role of political discourse in shaping these options and their chances of success.

**Rights discourse and social mobilisation**

One of the distinguishing features of the transition away from apartheid towards a new political order in South Africa is the role that debates regarding social and human rights, and their
relationships to discourses of popular power and democracy, have played in the process. Most anti-apartheid activists in the 1980s expected social transformation to follow the political demise of apartheid. In addition to abolishing racially discriminatory legislation, as a necessary first step, this called for some form of redistribution of material resources. Various conceptualisations existed of what a future socio-economic policy might entail – from social-democratic reforms to the application of radically egalitarian principles – but there was a consensus that the transition process would begin with the ‘one person, one vote’ principle rather than culminate with it.

Most activists took it for granted that the state would play a major role in efforts to redress the legacy of apartheid, but rarely thought about the concrete legal and political mechanisms, practices and discourses that would facilitate achieving that goal. One such mechanism is the Bill of Rights, which became part of the 1996 Constitution. It sets the framework for exercising the role of the state, and defines conditions that must be met in order for the state to comply with constitutional requirements. These conditions have to do with the services and policies needed to ensure a basic standard of social justice and human dignity. They are usually referred to as socio-economic rights. They include the right to a healthy environment, access to adequate housing, health care services, sufficient food and water, social security, and basic and further education.

There are different ways in which discourses of socio-economic rights intersect with relations of power. One such way, the legal route, seeks to use the courts to enforce compliance by the state with its constitutional obligations. It does not challenge the primacy of the state in policy formulation and implementation, but rather aims to extend the scope of policy in order to provide relief to individuals and communities in crisis conditions. The activist route uses rights discourse as a mechanism to force the state to change its policies, but again without challenging the role of the state as such. It may use a legal strategy when it is deemed capable of yielding results, but usually regards it as a supplementary measure alongside the primary strategy of political struggle for change. The legal-activist route combines legal and popular mobilisation strategies in order to change policy but also to put in place an expanded definition of rights that may implications beyond each specific case. This latter route potentially poses a fundamental challenge to the organisation and the reach of state power, and therefore is of most interest here.

Challenges to the dominant role of government in social policy have come from different directions, from ‘below’ and ‘above’. They focus respectively on the role of civil society organisations in giving voice to marginalised constituencies that fall between the cracks of representative democracy, and on the role of human rights mechanisms (the courts, the Constitution, the South African Human Rights Commission, legal and activist NGOs) in shaping the operation of state structures. At times these challenges have been linked, serving to reinforce each other with the use of a similar notion of rights as a legitimating discourse. Although not opposed to the power of the state as such, these challenges raise questions about the scope of state power, the ways in which it shapes and is being shaped by other forms of power in society, and the extent to which it may be reconfigured in order to ensure a deeper and more meaningful democracy.

The Constitution does not provide clear guidelines with regard to the concrete obligations of government in relation to socio-economic rights, such as the creation of administrative and financial mechanisms or the adoption and implementation of policies. In most areas, with the exception of the provision of emergency medical treatment and prevention of house demolition or eviction, the Bill of Rights recognises that the realisation of rights cannot be expected to be
immediate. The language used in the text emphasises that such realisation must be gradual, reasonable and practicable. Explicitly with regard to housing, health care, food, water, and social security, and implicitly with regard to other areas, steps taken by the state must be ‘reasonable’, the state must operate ‘within its available resources’, and realise the rights ‘progressively’.

Socio-economic rights are commonly seen as a mechanism to advance social demands and increase the pressure on government to provide basic services to disadvantaged citizens. Beyond that, the notion of rights potentially opens a broader challenge to power, which may lead to a shift in political discourse involving the state as well as the popular forces facing it. The most interesting issue that emerges in this context, then, is the role the discourse of rights plays in the way people articulate their needs. They may regard the socio-economic clauses in the Bill of Rights as rights, thus establishing their inalienable claim to certain material and symbolic goods independently of state policies and priorities. On the other hand, they may regard these rights merely as social demands to be advanced and met in a political process, thus retaining the political primacy of the state. These are not mutually exclusive strategies of course, but the choice of focus on one or the other has implications for the configuration of power in society at large.

To clarify this point, people in need of emergency shelter, medical care, or clean water cannot be expected to concern themselves with the impact of their campaigns on the organisation of state power. Normally they would seek assistance from all available sources, and would regard the solution to their immediate needs as a primary goal to be achieved in the most effective manner possible. At the same time, their local campaigns may become linked to wider strategies used by legal authorities, civil society organisations and political movements to re-shape power beyond the specific issues at stake. Such linkages between the local and the global can be forged or articulated in different ways, and may contest or re-affirm the existing power relations.

I argue here that neither the legal discourse of rights nor popular mobilisation could provide on their own a strong challenge to the political primacy of state officials. This can only be done when the two are articulated in a critique of state power simultaneously from above and from below. The combination of legal-constitutional mechanisms and grassroots organisation is the best guarantee for a successful challenge to the state-centred politics as usual, which tends to leave citizens as subjects relying on the state for their survival. An alliance between forces in civil society and critical forces within other sectors (business, international agencies and the state itself) can facilitate such a challenge.

**Socio-economic rights in practice**

Two prominent Constitutional Court cases, known as Soobramoney and Grootboom and dealing respectively with the right to health and to housing, gave rise to public interest and concern, but were not accompanied by active popular and political mobilisation. Some local NGOs and political organisations took up these cases, and their legal implications have become a basis for debate among scholars and activists. However, they were not primarily derived from or became precursors to social and political struggles.79

The two cases discussed here are different in this respect. They both explore the intersection between rights and power with varying emphases on the relations between the discourse of rights, legal strategies and political mobilisation. I begin by discussing the activist route as exemplified in the case of struggle over the provision of water and electricity and preventing cut-offs of these services, and follow this with a discussion of the legal-activist route as
exemplified in the struggle over the provision of antiretroviral medication to prevent mother-to-child transmission of HIV and improve the condition of people living with HIV/AIDS.

It is important to realise that the distinction between the activist and the legal-activist routes does not indicate the existence of two completely distinct strategies. Rather they involve differences over the ways in which political and legal strategies may be combined, and over the extent to which route facilitates effective linkages between local and national campaigns in the service of a common cause.

The activist route

In the last few years, criticisms of the slow pace and limited scope of service delivery by state agencies have mounted in a number of areas, ranging from job creation through housing to medical care and education provision. Most of these criticisms have been presented and pursued as political matters rather than as matters calling for constitutional or legal intervention. In some areas, however, notions of rights have been used more prominently, though never to the exclusion of more politically explicit concerns. In particular, evictions of ‘squatters’ from private and state land, and cut-offs of water and electricity services to people in marginalized communities who cannot (or will not) pay for them, have been discussed in these terms. The primary route taken by residents and activists in these areas, however, remains social mobilisation, aimed at putting pressure on the state and its various agencies to cease these practices.

Of interest here is that mobilisation in such cases has focused more on ‘negative’ rights – rights not to be hampered by the state in gaining access to services, such as the right not to be evicted or the right not to be cut off – than on ‘positive’ rights to be provided services such as water and electricity by the state. In other words, social movements have demanded primarily that the state refrain from interfering in residents’ exercise of their rights. Although they maintain that the state must promote the rights in question, this is not always a pronounced element in their campaigns. In part this is due to the lack of specific Constitutional rights to land ownership and service provision (though there is a provision for “equitable access to land”), and in part this may reflect a low level of expectations of the state. Usually this is a matter of emphasis and degree rather than absolute distinction between different approaches, and the language of rights does play an important role in both.

Although water and electricity are treated differently in the Bill of Rights – everyone is granted the right of access to sufficient water and there is no mention of a right to electricity – the two have been conflated frequently in popular and political discourse. The reason for this is technical in part – both are usually provided by the same authority and charged on the same bill – and substantive in part, as these are the most important utilities managed by a public service provider and channelled directly to people’s homes, frequently through a common access point. This latter fact makes disconnections and re-connections public events and facilitates mobilisation around the issue.

By the end of the apartheid era in 1994, millions of South Africans remained without access to electricity and clean drinking water. The Reconstruction and Development Programme, which served as the 1994 election platform of the ANC, identified its first priority as the need “to begin to meet the basic needs of people – jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare”. In general, the RDP advocated paying for meeting the needs of un- and under-serviced communities, though cross subsidisation, whereby wealthy users would pay part of the cost of supplying poor
and rural users, to ensure that everyone is provided with basic levels of consumption. In practice, various ideas including indigent grants, free lifeline services, flat rate basic provision and full cost-recovery have been advanced in subsequent years, with mixed results.\textsuperscript{80}

Residents in a number of places have organised to put forward a demand for free provision of water and electricity to those who cannot afford to pay for them, continued provision of service regardless of payment and, in a more activist vein, re-connecting those who have been cut off due to inability or unwillingness to pay. Some of the prominent community-based organisations operating in this vein are the Soweto Electricity Crisis Committee (SECC), the Water Crisis Committee in the informal settlement of Orange Farm, the Concerned Citizens Forum in Durban and many other resident groups working in a more localised and less publicised fashion.

Although water clearly is essential to human survival and electricity clearly is not, debates about rights of access and costs of provision have usually ignored this distinction. Among other issues, discussion has focused on the role of the state in service provision, the meaning, feasibility and desirability of public ownership, privatisation and public-private partnerships, and the extent to which service provision has improved, remained the same or even deteriorated in post-apartheid era. These socio-political debates have obscured to a large extent considerations of legal entitlements and rights in the specific context of the Constitution and the Bill of Rights.

The SECC was formed in 2000 in response to the perceived failure by government to provide residents with affordable electricity in line with its election campaign promises of 1994 and 1999. The shift in policy from cross-subsidisation (costs to be borne by beneficiaries together with other established customers) to cost recovery (cost of infrastructure connections and ongoing service provision to be borne primarily by direct beneficiaries, with some cross-subsidisation as well), resulted in taking services beyond the reach of many households in poor communities. This has led to the accumulation of payment arrears and subsequently to the disconnection of service to thousands of households in poor communities by municipalities and the state electricity company (Eskom).\textsuperscript{81} Alternative sources of energy – such as coal, paraffin and wood – are cheaper but more burdensome to collect and use and less safe.

On the face of it, the provision of electricity is related to issues of economic and energy policy, transport and communication infrastructure, quality of housing, and so on. However, rights have entered the debate on electricity in two ways. In a more formal way, legal arguments about the obligations of the national electricity regulator, arbitrary and unfair billing practices and procedural issues regarding cut-offs, have been advanced by socially-engaged lawyers.\textsuperscript{82} In a less formal manner, the SECC has engaged in discussions about possible legal challenges that invoke the Bill of Rights in support of the campaign to stop disconnections, reconnect houses to the electricity grid and put in place policies that provide affordable electricity to poor people, and particularly women, pensioners, the disabled and members of other vulnerable groups.\textsuperscript{83}

Shortly after its formation, the SECC started to explore the possibility of using the Constitution to bolster its position. It adopted the slogan ‘electricity is a right not a privilege’, and justified that by arguing that “We as the SECC we know for sure that electricity is a right not a privilege because it is enshrined in the Bill of Rights of the South African Constitution Act 108 of 1996, that people are to live in an environment that is not harmful to their health and well being as opposed to paraffin fumes and pollution from coals.”\textsuperscript{84}

In this interesting formulation, the SECC claims that the right is ‘enshrined’ in the Bill of Rights ‘for sure’, and goes on to prove it by quoting other rights (to health, clean environment) as
evidence. This does not seem to stem from confusion and carelessness but rather from a conscious strategy attempting to annex electricity into the list of socio-economic rights, as an implied rather than explicit right. Extending the application of rights from original texts to new areas through logical argument has a long history in civil rights legislation and constitutional innovation in the USA. It has been countered by a focus on the original intent of the framers of the Constitution.

An example of the above would be the application of the statement “all men are created equal” to women and slaves who were excluded from it at the time the Constitution was framed. What was accepted as common wisdom in the late 18th century was no longer so a century or two later. This approach may not work in South Africa, however. The Constitution was finalised a few years ago under circumstances that have remained essentially the same. Its framers were aware of other rights that could have been added to the Bill of Rights, and chose not to include electricity among them. It would be difficult to convince the Court that developments since 1996 justify a modification of the Constitution or alternatively that its framers ignored its obvious implications. There is not much room for interpretation here as the Bill of Rights is clear on what it does define as rights.

On Human Rights day 2002, the SECC together with a related organisation (Anti Privatisation Forum – APF) organised a march in Soweto, focusing on the gap between government’s human rights rhetoric and its practice. In calling for the march, the APF argued that, “the government celebrates Human Rights Day but tramples on the Human Rights of our communities. The constitution of the country says the government should protect and advance the living and working rights of our people. But every day the government breaks these rights.”

Not surprisingly, the statement is vague on the specific content of the ‘living and working rights’ that government is accused of breaking, and the manner in which this is happening (by failing to advance new rights, or to protect existing ones, or by violating them directly and indirectly, etc). In a more concrete vein, referring to service provision, the poster carried by the marchers on that day included the following:

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Baba u Government tell us
Where are our rights?
We’re Sick and Tired of Your Promises
No to Electricity Cut-Offs
No to Water Cut-Offs
No to Eviction...
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The feasibility and desirability of taking rights forward, from the realm of political rhetoric and social mobilisation into the legal arena, to exert pressure on government to meet explicit and implicit constitutional obligations, is an issue debated by activists and lawyers. Electricity in particular presents a difficult challenge. Losing a legal battle (a distinct possibility as electricity is not mentioned in the Constitution) would result in demoralisation and a setback for the cause, in addition to becoming a drain on meagre financial resources. Beyond these tactical concerns, the broader question of how legal strategies help or hinder political mobilisation must be considered.

Although in some contexts a legal strategy may be seen as an alternative to mass action, and would thus lead to demobilisation of social movements, this does not seem to be the case for South Africa. According to the APF chair, John Appolis, a legal approach should be “linked to
the kind of struggles we are having at the moment. We will see that as one of our tactical options that we will be using… So we will have a whole process of awareness raising, consciousness raising around the issue of the Bill of Rights.”

In this view, a legal strategy may play a useful role in raising awareness of the issues of basic needs and of electricity and water disconnections, among community members and the public at large. Of course, consciousness raising is an essential element of political campaigns, both by attracting support for the cause and gaining legitimacy for direct action and mass mobilisation. A focus on rights, from this perspective, serves political struggle though it may be of little interest on its own.

Legitimacy is very important in this context, as it may transform activities bordering on the criminal (such as illegal re-connections of houses to the water mains and electricity grid, and re-occupation of houses by evicted tenants) into civic action undertaken by residents who technically may be violating the law but are morally in the right. A sense of operating within a broader framework legitimised by an authority higher than local government or public service providers may encourage people to join such action despite the risks involved in it, and convince themselves and others that they are justified in taking this route. Just as notions of justice, liberation and democracy legitimised the anti-apartheid political struggle (also technically illegal at the time), activists may hope that the language of rights would play a similar role in current social struggles.

There are two important differences between the apartheid era struggles and conditions today, however. First, the apartheid regime was internationally regarded as illegal, due to the disenfranchisement of the majority of the South African population. In contrast, the current South African government has been democratically elected and enjoys international legitimacy. This poses a challenge to activists. A way of dealing with this challenge would be to argue that the legitimacy of the post-apartheid government must depend on the extent to which it has transcended the practices of its predecessors, and has managed to deal effectively with the legacy of apartheid.

Many water and electricity rights activists argue, in fact, that the legacy of apartheid is not being addressed but rather is being entrenched and even strengthened by the current government’s policies. The principle of cost-recovery makes the cost of services to poor communities higher than the cost to well-off communities – in absolute terms as well as a proportion of income – as the latter are more centrally located and do not have to bear the cost of new infrastructure, having benefited from subsidised public service provision under apartheid. Thus those who were disadvantaged under apartheid continue to be so under the new dispensation.

A second challenge to activists is that whereas fighting political oppression in the name of justice and democracy is logically consistent, using illegal tactics in the fight to assert legal rights is internally contradictory. This means that activists must navigate carefully to avoid undermining their own rights-oriented rhetorical strategy. A possible distinction between the Constitution as a higher moral and legal authority, and ordinary ‘law and order’ legislation as a tool in the hands of government to enforce compliance with its regulations, would go some way to address this issue. Activists have used both arguments to legitimise their approach, though the extent to which they may convince the courts in the viability of their approach has not yet been tested in practice.
Developing a legal-constitutional framework to defend the case for free lifeline water and electricity provision, involves making a distinction between private and public market approaches to service delivery. With the latter, essential services must not be seen as commodities, access to which is regulated by supply and demand forces and ability to pay. According to this interpretation, government must either supply the goods in question, to which all citizens have an equal entitlement, or else avoid cutting them off if consumers cannot pay. The mode of service delivery (whether by government directly or through subsidising private providers and prohibiting them from disconnecting essential services) is a secondary issue. The constitutional obligation of government is to ensure that citizens are not deprived of essential goods and services (though of course what these services are and how they may be provided and paid for are contested issues).89

Partly as a result of the activities of organisations such as the SECC, and partly because of the approaching 2004 elections, the state electricity company Eskom announced a write-off of the bulk of payment arrears in poor townships in May 2003. This was done in a way that gave credit to the government and its ally, the South African National Civics Organisation (Sanco), and ignored the pressure applied on government from the outside by community organisations and social movements.90 Similar steps may be expected in the area of water services as well, in particular action to address the problem of disconnections. Fierce debates about the issue – the number of cut-offs, the impact they have had on the affected people and communities, and their importance in the framework of overall government policies – have ensued since the beginning of 2003, pitting government officials against academic and activist critics.

Triggered by a New York Times article on water cut-offs in South Africa, the debate involved the Minister of Water Affairs and Forestry, Ronnie Kasrils, who vehemently denied claims made in David McDonald’s article cited above, that up to 10 million people have been affected by water cut-offs, and rejected “the allegations of the coterie of self-proclaimed ‘real revolutionaries’ that government has failed on its RDP promises”. Responses to his attack appeared in the local press. An undertone of blaming ‘foreign agitators’ for criticising government – some academics involved in the debate are North Americans – is evident in government’s response, echoed recently in President Mbeki’s attack on “the ‘friends’ who populate our ranks, originating from the world of the rich, who come to us, perhaps dressed in jeans and T-shirts as advisers and consultants”.91

With these developments, the political focus of the debate on service provision and socio-economic rights, concerning government’s achievements and failures, is likely to overwhelm the specific legal aspect of the meaning of rights and their relevance to social mobilisation. This may result in concrete gains for the communities affected by inadequate and even regressive service delivery. Using the discourse of rights to attract support for a political campaign and facilitate mobilisation may prove to be an effective strategy, but it is unlikely to lead to a fundamental challenge to the way that power is reconfigured in post-apartheid South Africa. For such a challenge and its impact on power we must turn to the legal-activist route.

**The legal-activist route**

To illustrate this approach let us examine one case study, that of the Treatment Action Campaign (TAC) which is using the discourse of human and socio-economic rights to convey the voices and address the concerns of a particular constituency, and in the process to challenge power.
The TAC is an association independent of government and the pharmaceutical industry. It has campaigned for affordable treatment for people with HIV/AIDS, treatment for pregnant women with HIV to reduce the number of children infected by the virus, awareness about HIV/AIDS treatment and how to live healthier lives, and training a leadership of people living with HIV. By combining legal and political modes of action, and addressing a range of HIV/AIDS-related issues at local, national and international levels, the TAC has acquired a name as a well-organised social movement and effective policy lobby. Recent political and legal victories in the struggle to make treatment of HIV/AIDS widespread and affordable have enhanced its reputation, though the extent to which these have resolved or even alleviated the problem of access remains in doubt.

On 8th August 2003, the South African government announced its intention to develop a detailed operational plan for a national anti-retroviral AIDS treatment programme, following on a report by a joint health and treasury task team on treatment options and their budgetary implications. The report was submitted to the Department of Health in October 2003. This decision may not seem surprising when we keep in mind that South Africa has the world's highest number of HIV infections, near five million, approximately 20% of the adult population, and that it is estimated that hundreds of thousands of people die of AIDS-related diseases every year. However, for years the government rejected the call to provide anti-retroviral drugs to people living with AIDS, using various excuses from lack of funds to logistical difficulties to the toxicity of drugs, culminating with the notion that AIDS is not caused by HIV but rather by poverty and its manifestations (inadequate nutrition and living conditions). If poverty causes AIDS, drugs would not help with the problem.

The denial of the link between HIV and AIDS has become a personal trademark of President Thabo Mbeki, and has never been adopted by the ANC, the government or any state department. In fact, due to international outrage at Mbeki’s position, government frequently asserts that its policies are premised on such a link, but it is widely assumed that denialism is a main reason behind the refusal to embark on a wide-ranging treatment programme. This has been expressed not only in failing to provide people living with AIDS, who are dependent on the public health system, with the necessary drugs (such as AZT), but also in the reluctance to provide HIV-positive pregnant women with a dosage of the drug Nevirapine that would reduce mother to child transmission of HIV by 50% and save the lives of hundreds of babies a day.

Whatever the precise combination of reasons behind government’s policy, it is clear that the TAC has played a major role in debunking its arguments and forcing government to adopt policies to which it was opposed. Combining educational efforts, public campaigns, and legal strategies, the TAC has shown remarkable persistence and tactical flexibility in striving to achieve its goals. The struggle over the provision of Nevirapine to HIV-positive pregnant women is a case in point.

Since 1999 the TAC has campaigned for a programme to prevent transmission of HIV from mother to child during birth. Government raised concerns regarding the safety and efficacy of the drug, despite its registration by the Medicines Control Council (MCC) in the previous year. Following the International AIDS Conference in Durban, in August 2000, the Minister of Health announced that the provision of Nevirapine would be restricted to pilot sites (two in each province) for further research into possible complications, and not be made available to the public at large. In response, TAC decided to give the Health Department a chance to roll out these projects to the whole country, but with the subsequent failure of government to extend the programme, the TAC took it to court.
The case revolved around the question of whether government could reasonably refuse to make Nevirapine available in the public health system to pregnant women with HIV, even though the drug is registered, considered safe, is free (or costs very little) and is medically indicated. A related issue – on a more practical note – was whether government was required not merely to adopt policy, but to put in place concrete time frames for implementation of various aspects, including counselling, testing, drug therapy, and the use of formula milk for feeding.

In a unanimous judgement affirming the decisions of lower courts, the Constitutional Court ruled in July 2002 that government policy regarding mother-to-child transmission of HIV was inadequate. Government violated the Constitutional clauses mandating that it must formulate and implement a comprehensive programme to realise progressively the right of pregnant women and their newborn children to have access to health care services. The Court ordered the government to remove without delay the restrictions preventing Nevirapine from being made available, in order to reduce the risk of mother-to-child transmission of HIV at public hospitals and clinics that were not research training sites, and to permit and facilitate the use of Nevirapine to that end.

The victory achieved in court was an occasion for a big celebration, though the compliance of the government with the ruling since then has been sluggish and uneven, eventually leading to a dissipation of much of the initial enthusiasm. An interesting analysis published at the time sought to capture some of the implications of the TAC’s victory, and is worthy of presenting here. It examines the court case through the prism of relations between state, civil society and the courts.

First, it argues, the Court asserted that social and economic rights could be legally enforced. This is particularly important in the context of addressing poverty, as they are “poor people's rights”, forcing government to focus on the most vulnerable and disadvantaged sectors of society. Second, the Court reinforced the notion of public accountability of government, whose policies must conform to the Constitution and may be reviewed by the courts. Third, it confirmed the importance of protecting children’s rights. Fourth, the decision demonstrated the effectiveness of civil society alliances, bringing together social movements, trade unions, churches and media, and showed the importance of social mobilisation to challenge government. Fifth, it illustrated how civil society, using the Constitution, can ensure that government attends to the basic needs of the poor, the vulnerable and the marginalised.93

It is important to realise that the legal victory came against the background of an elaborate public campaign, and it led, in turn, to a continued campaign to broaden access to treatment (not just drugs) throughout the country, to all people affected by HIV/AIDS. The August 2003 policy shift by government recognising the need for a national anti-retroviral treatment programme is a testimony to the ongoing efforts of the TAC, bolstered by supportive media, other civil society organisations, and international agencies. Doctors and nurses who have provided medication off-list independently and even in opposition to government policies (sometimes paying for the drugs out of their own pockets) made a crucial contribution to the gradual erosion of government’s position.

In its response to the decision, the TAC praised it as a “critical step to develop a more comprehensive treatment and prevention plan for managing the HIV/AIDS epidemic. Properly implemented, this will restore hope, dignity and life for millions of people in our country, and, hope throughout the continent. This will also give doctors, nurses and communities the
opportunity to work together with government to build a better health care system that meets the needs of all people in South Africa.”

Of course, it is premature to celebrate the new direction taken by government, which might end up being no more than a publicity stunt in preparation for the 2004 elections. The dragging of its feet in the aftermath of Constitutional Court ruling of July 2002 is a bad omen in this respect. Government has been criticised already for declaring the need for a ‘detailed operational plan’ before beginning to deal with the problem, when a large number of hospitals and clinics in several provinces are ready to start immediately. Having said that, it is a positive sign that on the day before the policy statement, the South African government signed a pending agreement with the Global Fund to Fight AIDS, Tuberculosis and Malaria, long held up due to national Department of Health’s objections to its focus on anti-retroviral treatment.

Following the government’s decision, the TAC has pursued a two-pronged approach. On the one hand it continued to develop its policy analysis and critique with a focus on how government should meet its constitutional obligations. This was deemed necessary given that the government team in charge of the policy indicated that it would take many months before medication would be offered to patients and that the programme would affect initially only a few centres around the country. In a memorandum to the chairperson of the operational treatment plan task team on 9th September 2003, the TAC maintained that those parts of the programme that can be made available immediately, must be provided where this was feasible, even where the full programme was not immediately available, and that sites should be able to identify themselves as being ready to provide treatment on whatever scale they can manage and not wait for all the elements to be in place before they proceed. These points were made to ensure that government does not use the uneven distribution of service capacity to force more advanced test and treatment sites to wait until all other sites catch up with them (and in the meantime leave thousands of patients without treatment).

At the same time, the TAC decided not to wait for government to take action and launched its own project to provide antiretrovirals to community members and treatment activists. This was part of a call to organised business, organised labour, civil society and private healthcare providers to help relieve some of the burden from the public healthcare system. To facilitate this avenue, operating alongside the state health system, the TAC created the TAC Treatment Project (TP) as a non-profit association. This project aims to treat activists and ordinary non-activist community members in equal measures, initially 25 of each group (50 patients altogether), with the target of 1000 by the end of 2004. Even with generous funding these efforts would meet the needs of only a tiny fraction of the total population of people with HIV/AIDS, but the symbolic statement is just as important here: one cannot leave policy or service provision to the state alone. Everyone must contribute even if on a small scale.

In addition to policy work, since its inception the TAC has been involved in raising public awareness about AIDS treatments and facilitating access to treatment through public protests, demonstrations, petitions, presentations to Parliament, regular media coverage, working with labour and religious groups, workshops, importing and disseminating generic drugs, and lobbying efforts, using hundreds of volunteers in these processes. These efforts culminated with a ‘disobedience campaign’, which was launched to force the government to comply with the Court ruling and stop using delaying tactics to avoid putting in place a treatment plan. The decision by TAC’s most prominent representative Zackie Achmat to avoid taking antiretroviral drugs to deal with his personal condition as a person living with AIDS grabbed international
headlines. This decision was reversed just a few days before government’s policy shift and the disobedience campaign was suspended immediately after that shift.

The ability of the organisation to address the needs of its immediate constituency (people living with HIV and AIDS) and gather support from diverse local and international sources is due in large part to the prominence of the issue of treatment in South Africa and its vast implications for society, economy and politics in the country at present and the foreseeable future. In addition, being led by activists with legal background has facilitated the design and conduct of legal and constitutional campaigns. It is the linkage between the grassroots constituency directly affected by the outcome of the campaigns, the contributions by doctors and nurses, NGOs, scholars, activists and their networks on the margins of power, and dissenters within the ANC and its allies at the centre of power (including former president Nelson Mandela), which has allowed the TAC’s to have made its impact. In a unique way, the TAC has combined challenges from ‘above’ (through the courts and public lobbying) and ‘below’ (through constituency-based grassroots campaigns) to the dominant role of the state, bypassing in the process the limitations of formal democracy. The challenges facing social activists was eloquently put by the Constitutional Court in its description of the context in which the Bill of Rights was to be interpreted:

*We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration have a hollow ring.*

Tackling this enormous challenge calls for a multi-dimensional approach that combines different ways and means to achieve the lofty goals set out by the Court. A legal approach on its own is not adequate without social and political mobilisation alongside it, as the lack of follow-up on similar legal victories has demonstrated. An activist approach on its own may result in certain tangible achievements (cancellation of payment arrears for electricity for example, or halting of evictions of illegal tenants). However, it uses a conception of power that leaves intact the dominant position of the state, even though its policies are affected by popular pressure from the outside. Once the pressure eases, the state may easily revert to its erstwhile practices.

**Conclusion**

It is only by addressing the organisation of power itself, by challenging the dominant position of the state in the policy process, that a more meaningful and sustainable change may take place. By bringing together disparate constituencies who approach the issue of treatment from a variety of political perspectives, but share the belief that state policy is woefully inadequate, the claims of the state to be in control – legally, morally and politically – have been shattered. No other failure to provide services in South Africa has undermined the notion that policy must be left to the state, and that civil society and constituencies should be relegated to the role of external pressure groups, as the HIV/AIDS issue has managed to do. In a sense, the courts together with popular constituencies, the media, civil society organisations and some state officials, to a large extent have confiscated control over the process from the hands of state officials, though the obstructive capacity of the latter is still significant.
In conclusion, the perspective advocated in this report, with its focus on politics as a contested terrain involving conflict and cooperation between disparate elements, is not conducive for the development of a universal model of relations between state and civil society. The main argument though, is that the notion of civil society has a radical dimension with the potential to challenge the practical dominance of the state in the political arena and the analytical dominance of state-centred approaches in political theory. Examining social and political actors, their modes of operation and concrete interactions, is essential for our understanding of the politics of transformation in South Africa, and for developing empirically informed theoretical insights into the challenges and opportunities presented by political change more broadly.

Endnotes

1 To illustrate the point, let us consider the composition of European football teams such as Manchester United or Real Madrid. The success of such teams is frequently inversely related to the degree they are representative of the local population. Similarly, that the French national football (or American basketball) teams should become more representative of their countries’ racial composition is a proposition few would take seriously. South Africa may be different in this respect due to the racial meanings historically associated with certain sports. A case may be made for the value of racial representation in sports, but it must be made, narrowly tailored to meet specific circumstances and their implications. It cannot be taken for granted as if it were obvious.

2 A typical example may illustrate the point. Under the heading “De Lange calls for the transformation of judiciary”, Sapa reported that the chair of Parliament’s justice committee identified a “serious crisis of credibility, legitimacy and efficacy” affecting the judiciary due to its record under apartheid. The solution, according to De Lange, is for the judiciary to become more reflective of South Africa’s racial composition (Business Day, 18/2/2003). Questions of access to justice, cumbersome legal procedures, lack of sensitivity to human rights, and the oppressive content of some laws do not seem to be linked to the credibility and efficacy of the judiciary. The change in racial composition is sufficient or perhaps it is expected somehow to bring about changes in other aspects of the legal system. This may indeed turn out to be the case, but there is need for an explicit argument as to how a change in racial composition of institutions would bring about other needed changes. This would not happen automatically and there is no reason to assume that black officials would behave differently than white ones. Business Day has put it succinctly with regard to a related issue: “Rich black people are no better at redistributing their wealth than rich white people” (24/1/2003).

4 ibid, p. 41.
5 ibid, p. 53.
6 ibid, p. 64.
8 Gideon Baker, Civil Society and Democratic Theory (Routledge, 2002), p. 3.
9 ibid, p. 148.
10 ibid, pp. 130-44. In somewhat similar vein, see John Holloway, Change the World without Taking Power (Pluto Press, 2002).
11 Michel Foucault, “Two Lectures”, in Power/Knowledge (Pantheon, 1980), pp. 80-82.
12 Baker, Civil Society and Democratic Theory, p. 166.
13 In a similar vein, but with a focus on domination rather than on challenges to power, the question is posed as “how are the macro-social order, and macro-forms of domination, constructed out of the diversity of micropowers”, in Mitchell Dean, Critical and Effective Histories: Foucault’s Methods and Historical Sociology (Routledge, 1994), p. 156. The answer given by Dean is that Foucault uses the notion of ‘strategy’ as “the condition of the assemblage of the diverse relations of power into a code” that gives domination coherence (ibid, p. 157). We must examine whether the same logic can be applied to resistance to domination.

15 Progressive wish lists, like those advanced in the Reconstruction and Development Programme (RDP) of 1994, suffer from other practical problems, such as the absence of costing and sources of budgetary allocation, lack of understanding of the institutional requirements of change, which include management capacity and bureaucratic organisation, and an implicit belief that developmental goals can be set globally and implemented locally without giving rise to debilitating tensions between central control and local participation.


17 *ibid*, p. 209.

18 *ibid*, p. 211.


21 *ibid*, p. 355. In a subsequent work Harvey defines working-class politics as reflecting “situationalness or positionality in relation to the processes of capital accumulation” (*Justice, Nature and the Geography of Difference*, p. 359). While these processes are uneven and give rise to a “wide array of diverse and seemingly disparate questions”, such as AIDS, global warming, and the destruction of local cultural traditions, all these are “inherently class issues”. Political analysis must “uncover the raw class content of a wide array of anti-capitalist concerns” (*ibid*, p. 431-32). His initial recognition of infinite social diversity is thus negated by a dual restrictive move: collapsing all progressive concerns into an anti-capitalist cause, and collapsing all anti-capitalist concerns into class politics.


23 *ibid*, p. 22.

24 Jack Goody, “Civil Society in an Extra-European Perspective” in *Civil Society: History and Possibilities*, edited by Sudipta Kaviraj and Sunil Khilnani (Cambridge University Press, 2001), pp. 149-64. It should be added of course that Europe itself has never been homogenous and there is no reason to believe that what may have applied in 18th century Britain, say, necessarily has more relevance to 20th century Portugal or Poland than to India and China.


26 *ibid*, p. 177. The resonance of this with South African developments is obvious, and will be discussed later on.


28 Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder as Political Instrument* (James Currey, 1999), p. 21. A similar focus on the operation of patronage network and the disintegration of formal politics is found in Jean-François Bayart, Stephen Ellis and Béatrice Hibou, “From Kleptocracy to the Felonious State?” in *The Criminalization of the State in Africa* (James Currey, 1999), pp. 1-32.


31 *Ibid*, italics in the original.


in African History”, in Comparative Perspectives on South Africa, edited by Ran Greenstein (Macmillan, 1998), pp. 1-32 and 287-302 respectively. Mamdani’s Citizen and Subject makes the same argument against South African ‘exceptionalism’, notable by his notion that peasants in colonial and post-colonial Africa have been trapped in a ‘nonracial version of apartheid’. See also Frederick Cooper, “Conflict and Connection: Rethinking Colonial African History”, American Historical Review, 99, 5 (December 1994): 1516-45


Bearing in mind Mbembe’s point above, that civil society emerges only when associations manage to articulate a conception of the public good, and do not merely exist for their own sake.


A common feature of colonial rule in Africa, as argued by Mamdani, Citizen and Subject (1996).


The notion of centralisation as a panacea has found recent expression with a proposal to form a national social security agency that would take over payment of grants from provincial governments. The rationale for this is that the current system is afflicted by corruption and inefficiency, resulting in long delays in approving grants and recording beneficiaries, long queues at pay points and low levels of service delivery (”Agency could save state R1bn a year”, Business Day, 1/9/2003). In the absence of a new pool of officials and different service ethos, it is a mystery how the transfer of political responsibility from provincial capitals to Pretoria could possibly result in any improvement of the system.

Useful critiques of modernist state-centred large-scale development planning, and calls for a focus on local and contextual knowledge are found in Arturo Escobar, Encountering Development: The Making and Unmaking of the Third World (Princeton University Press, 1995); James Scott, Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed (Yale University Press, 1998); Bent Flyvbjerg, Making Social Science Matter: Why Social Inquiry Fails and How It Can Succeed Again? (Cambridge University Press, 2001).


This can be commonly found in ANC party documents and public proclamations and submissions (to the TRC and racism in the media investigations for example) and in frequent pronouncements by Thabo Mbeki, when he wears his presidential party rather than government hat. His column in the ANC Today, the party’s on-line newspaper, has become notorious for this kind of rhetoric, especially when debating the opposition.
47 Although this is President Mbeki’s particular ambition, pursued in countless international forums and extending beyond Africa to claim South Africa as a leader of the entire developing world, the overall approach is not restricted to his personal obsessions. On the notion of alternative modernity see Dilip Parameshwar Gaonkar (ed.), “Alter/Native Modernities”, Public Culture, 27 (1999).


49 Two Commas and a Full Stop: Civicus Index on Civil Society South Africa Country report, Cooperative on Research and Education (CORE) and Idasa, 2001. The study relied primarily on workshops at which participants from NGOs and CBOs reflected on their own experience as civil society activists.

50 The first part of this section draws on The Size and Scope of the Non-Profit Sector in South Africa. Figures in the report are based on projections from a sample, and are valid for 1999. They are estimates rather than definitive figures. Various issues arise from the methodology used in the survey but they cannot be addressed here.

51 Of course, not all NGOs are Section 21 companies and not all Section 21 companies are NGOs, but for our purposes here we can safely regard the two categories as covering essentially the same ground.

52 When the report was published, this point was highlighted as challenging conventional assumptions about the sector. It was not pointed out though, that ‘the sector’ in question was not the NGO sector but rather the non-profit sector, and the majority of its members were CBOs (which have always been dominated by blacks and women) rather than NGOs.


55 This is based on Umhlaba Development Services, An Efficiency Analysis of NGOs in Development Delivery: Five Case Studies of NGO Delivery in South Africa, a research report for the Non-Profit Partnership by Shirin Motala and Dave Husy (March 2001).


57 Civil Society and Poverty Reduction in Southern Africa (Centre for Policy Studies, July 2002).


61 For a detailed overview of state, opposition and civil society relations from the late apartheid period to 1998 see Ran Greenstein, Volkart Heinrich and Kumi Naidoo, Civil Society and the State in South Africa: Past Legacies, Present Realities and Future Prospects (Community Agency for Social Enquiry and Sangoco, 1998).

62 As Ashwin Desai puts it in his We are the Poors: Community Struggles in Post-Apartheid South Africa (Monthly Review Press, 2002), “this revolt had a flaw. The multitude that brought down the apartheid regime had a millennial faith in the exiled and imprisoned leadership of the ANC. The multitude that brought that ANC to power with millions of acts of rebellion, from strikes to burning barricades to refusing to stay and pay and obey, became a (just slightly fractious) people under the ANC.” (my italics)

63 Roberto Mangabeira Unger, False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy (new edition, Verso, 2001), p. xxv. Obviously, the universal alternative in this case was not socialism or working-class politics, but nationalism.


For background on WSSD and the protest against it see Patrick Bond and Thulani Guliwe “Contesting ‘Sustainable Development’: South African Civil Society Critiques and Advocacy”, November 2002.

“Marching on the Left”, statement by IndymediaSA, 30 August 2002.

“After the March on the Left”, by Franco Barchiesi, 31 August 2002.

ibid.


The Social Movement Indaba, press statement, 1 September 2002. It is not made clear here how the various community organisations, landless people and the ‘poors’ mysteriously transformed into the ‘broad working class’ or indeed what this terms means.


Bond and Guliwe, “Contesting ‘Sustainable Development’: South African Civil Society Critiques and Advocacy”. They call for a hybrid ‘red’ and ‘green’ network (an eco-socialist movement) but make it clear that shades of green that are incompatible with it would be excluded. In other words, red + green = red. This is not an articulation of two elements of equal standing but the subordination of one to the other. In a similar vein Dale McKinley asserts that social movements share a “commonality of themes around the prospect of anti-capitalist liberation”, in his “Beware Ideological Absolutism: A Reply to Barchiesi”, August 2003. A more measured evaluation is found in “Starting from Scratch? A Reply to Jeremy S. Cronin”, *Monthly Review*, 54, 7, (December 2002), by John Saul, who asserts that “it would be naive to overestimate the strength and unity of the new social movements, the breadth of their reach and of their alliances, the clarity of their strategies, and the current level of their organizational capacity”. He shares the quest for an overall unity in the name of a “working-class civil society”, however, but believes an alliance with the unions is essential for that purpose. Useful insights regarding the lessons South African movements can draw from the experience of global social movements are offered in Jacklyn Cock, *A Better or Worse World? The Third World Social Forum Porto Alegre 2003*, Centre for Civil Society Research Report 5 (April 2003).

Though to be sure, not even the most centralist of social movement activists share Cronin’s reverence to a unified national project under a single leadership as outlined above.

Perhaps this is what Michael Hardt and Antonio Negri refer to as the ‘democracy of the multitude’, which goes beyond resistance and abandons the goals of insurrection and constituent power (that is of challenging power and building an alternative at the national level) to focus instead on the “power of unbounded invention” under conditions of globalisation. See their “Globalization and Democracy”, pp. 109-121 in *Implicating Empire: Globalization and Resistance in the 21st Century World Order*, edited by Stanley Aronowitz and Heather Gautney (Basic Books, 2003).

Roberto Mangabeira Unger, *False Necessity*, p. xxii. While referring specifically to Brazil here, this characterisation resonates with South African debates, pitting a technocratic political-economic discourse against state-centred leftist critique championed by Cosatu and its intellectual allies.


See discussion of the cases in Ran Greenstein, “Socio-Economic Rights, Radical Democracy and Power”.

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Page 52
81 The scale of the problem is documented in Maj Fill-Flynn, The Electricity Crisis in Soweto, Municipal Services Project Occasional Papers, Number 4 (August 2001).
82 The Electricity Rights Project at the University of the Witwatersrand produced work in this vein. See Theunix Roux and Rebecca Vahle, Electricity Rights in Soweto: An Analysis of Possible Legal Arguments (Law and Transformation Programme, CALS, 2002).
83 The best source on the SECC is the MA dissertation by Peter McInnes, “Making the Kettle Boil: Socio-Economic Rights and Community Struggles for Affordable Water and Electricity Services in Soweto”, (University of the Witwatersrand, forthcoming).
84 SECC press release, 4th June 2001, quoted in McInnes, Making the Kettle Boil.
85 SECC statement, 21st March 2002, emphasis in the original.
86 Text and picture of poster in McInness, Making the Kettle Boil.
87 Quoted in ibid.
89 See Flynn, Rights to Essential Services, for a discussion of modalities of provision meeting this criterion.
92 The best sources on TAC policy positions and activities, as well as other AIDS-related issues in South Africa are the TAC website: www.tac.org.za, and a health news website: www.health-e.org.za.