

**Confrontational, Complementary, Co-operative or Co-opted? Social Justice Organisations working with the State.**

**PARI** Public Affairs  
Research Institute

THE RAITH  
FOUNDATION

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## Executive summary

This report was commissioned by the RAITH foundation to review various engagements between social justice organisations (SJOs) and state bodies with a view to determining under what conditions they have been successful in pursuing and deepening social justice and democratic outcomes. The findings and analysis presented in this report are based on 12 qualitative case studies of particular programmes run by SJOs that have in some way engaged with or worked with the state.

The report offers an analysis of the state which avoids viewing it as a monolithic and coherent entity. Instead we offer a view of the state which attempts to make the institutional life of the state visible with all of its contradictions and internal contestations. Decentralisation has been a major feature of the post-apartheid state with decision-making powers devolved to provincial and local government. SJOs must navigate this terrain in the context of differing government departments and spheres of government operating under differing constraints and often in isolation from one another. Furthermore, SJOs confront a state where the administration has increasingly become fused with the political agenda of the dominant political party, the African National Congress (ANC). However, this political agenda is internally contested across different spheres and sites of government. SJOs must operate under these often tense political situations.

Under such conditions the legitimacy, autonomy and rights of SJOs to work with the state have increasingly been contested. The report considers under what conditions are SJOs deemed as 'legitimate' and 'useful' by state actors. It was observed that when SJOs took on 'gap-filling' roles for government they were more likely to be readily accepted than when there is an attempt to question or shift the broader social justice and democratic agenda.

The report develops a 4-C model of SJO-state relations that considers the degree of congruence or divergence between institutional means and ends as fundamentally shaping the likelihood of success or failure. This report does not attempt to provide a formula through which successful engagements between SJOs and the state can be forged. Nor does it prioritise one kind of relationship over another. It is argued instead that all of these relations are necessary for pursuing a social justice agenda with and against the state. Rather what the report provides is a means to think about and question the forms of relations that SJOs may and can have with the South African state. It was found that all of the relationships – cooperative, complementary, co-option and confrontation – had the potential to deepen a social justice agenda. However, there were particular political and institutional contexts that shaped which kinds of relations were possible and the degree to which they could be successful.

In general terms, the report finds that if a social justice organisation aims to strengthen or contribute to relations that will assist the state in delivering a largely state-determined social justice agenda then cooperative, complementary or relations of co-option are most likely to strengthen social justice claims and outcomes. If an SJO wishes to pose a wider challenge or to question the state's social justice agenda it is likely, and may be necessary,

that confrontational relations are required. However, as stated above, there is no idealised way in which to conceptualise relations with the state and, in fact, multiple strategies are likely to be necessary. This confirms the experience of the SJOs reviewed here which tended to employ multiple strategies, sometimes simultaneously, in their engagements with state actors.

Finally, the report proposes some strategies that may help to build and consolidate successful SJO-state relations. These include: sector or issue-based working groups, communication to clarify ends and means and mediation. These strategies are contingent upon SJOs being recognised as 'legitimate' and 'useful' by the state. As the report highlights, this may not always be the case and therefore other strategies are required to forge that 'legitimacy'.

## Abbreviations

ANC	African National Congress
CER	Centre for Environmental Rights
DA	Democratic Alliance
DSD	Department of Social Development
EFF	Economic Freedom Fighters
GEAR	Growth, Employment and Redistribution
LRC	Legal Resources Centre
MTT	Ministerial Task Team
NDA	National Development Agency
NDP	National Development Plan
NGO	Non-governmental Organisation
NICRO	National Institute for Crime Prevention and the Reintegration of Offenders
NPO	Non-profit Organisation
NUMSA	National Union of Metalworkers South Africa
PARI	Public Affairs Research Institute
RDP	Reconstruction and Development Programme
SACP	South African Communist Party
SALGA	South African Local Government Association
SERI	Socio-Economic Rights Institute
SJC	Social Justice Coalition
SJO	Social Justice Organisation
TAC	Treatment Action Campaign
TOC	Theory of Change
UDF	United Democratic Front

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## 1. Introduction

This report reviews various engagements between social justice organisations (SJOs) and state bodies with a view to determine under what conditions they have been successful in pursuing and deepening social justice and democratic outcomes. All these terms require explanation (engagement, state body, social justice organisation, success) and the value of this report will lie in the ability to provide theoretical and practical definitions to them. Furthermore, this report will situate its analysis within a wider engagement and analysis of the democratic settlement post-apartheid.

Today South Africa is ruled by a political organisation which, at least from the 1980s, had roots (if only symbolically) in community organisations that mobilised around grassroots issues. Indeed, what was characteristic about organisations that broadly worked under the banner of the United Democratic Front (UDF) was that they linked struggles for affordable services (water, electricity, sanitation, housing) to larger national, political campaigns (for the transformation of the 'Apartheid City', for the unbanning of the ANC and political organisations, for a democratic South Africa). We will say more about this in a moment, but already we have a working definition of one of our terms: an SJO is one that links campaigns to address systemic inequalities to attempts to broaden and deepen democracy. This context is relevant because for so many it seemed a truism that democratic rule in post-apartheid South Africa would be synonymous with partnerships between civil society and state bodies.

Even prior to democracy national political organisations, civic organisations and some in the trade unions were mooted a democratic developmental model that placed civil society and 'community' involvement at its centre. Planact, an organisation that provided research and legal and strategic support to civic organisations, discussed a model of 'community-driven development' as early as 1989. These ideas were taken up by the ANC in its electoral manifesto in 1994 and formed the central tenets of the Reconstruction and Development Programme (RDP). In its more radical versions, such a project envisaged organs of representative democracy (elected councils, for example) being supplemented by organs of more direct, popular democracy. The RDP document was itself ambiguous about the precise institutional relationship between state and community organs, though the experience of civic organisations in the 1980s and early 1990s was deemed informative. In the period after 1994 there were attempts to include or accommodate local and community development forums in government processes and mechanisms. In some cases, government resources were channelled in and through community bodies, which were then mandated with developmental targets.

It is not the purpose of this report to investigate the fortunes of this model of state-society relations, other than to note that in most cases it was displaced in favour of a more limited definition of their respective roles. Even though the spirit of this earlier period lives on in some of the phrases and provisions of the Municipal Structures Act (developmental local

government, ward committees), after the demise of the office of the RDP the relationship between state and society has changed in important ways.

It is reflected, in part, by a shift in the discourse. The challenge of *governance* became defined as determining the appropriate relationship between government and civil-society. In most cases, this has cast the relationship in instrumental terms – what can civil society do to help government realise its mandate? – and not in democratic terms. Furthermore, what was not anticipated by the ANC-led state was the degree to which the post-transition ‘political honeymoon’ would be relatively short-lived and that civil society actors may politically oppose ANC policies or the party itself. This raises important questions about the nature of state-civil society relations: twenty plus years into democracy what do we expect of the relation between the state and civil society?

South Africa is characterised by a vibrant civil society from a range of community-based organisations normally focussed upon localised issues to SJOs which link their work in the service of broader, democratic goals. We call these SJOs and this report explores a sample of such organisations to a) describe the various ways in which they have engaged the state and b) to analyse when and the conditions under which they engaged successfully with state bodies.

The report is presented in 7 sections:

- Section 1 is the present introduction to the report.
- Section 2 provides an overview of the key concepts used within this report.
- Section 3 briefly describes the research methodology.
- Section 4 discusses the conceptual framework used in the report.
- Section 5 provides an analysis of the post-apartheid state, civil society and state-civil society relations.
- Section 6 presents the main research findings.
- Section 7 summarises the main findings of this report.

## 2. Key concepts

This section provides a brief overview of the key concepts used in this report.

### 2.1 Civil Society

Civil society is generally understood as the sphere separate from but related to both the state, the family and the market. Often when interpreted by scholars in the Global North civil society is narrowly conceived as organisations that engage in legitimate and legal interactions with the state. Typically organisations such as trade unions, faith-based organisations and NGOs are said to make up civil society. However, the specificities of South African history require us to draw a much broader conception of civil society that can capture the multiple and overlapping layers as well as the ‘civil’ and ‘uncivil’ elements which have historically characterised South African civil society (Habib 2013). Analysts of South African civil society (see Friedman and McKaiser 2009; Habib 2013) draw attention to the significant grassroots component of civil society often organised through survivalist community-based organisations, ‘Concerned Residents Groups’ and social movements. Indeed, the community protests that are frequently organised by these sections of civil society have been a significant feature of the recent post-apartheid political landscape. Habib (2013) argues that the fact that South African civil society is made up of various different actors engaged in a range of relations with the State from conflictual to collaborative is a cause for celebration as a diverse and vibrant civil society is an essential component in a robust democracy.

### 2.2 Social Justice

Social justice is not a politically neutral concept. The lineage of the term can be traced to the wake of the industrial revolution in Europe and is thus almost inextricably bound to challenging the exploitation inherent within a capitalist system. In general terms, social justice can be understood as ‘a situation where economic goods, political rights and social status are distributed fairly’ (Chipkin 2013: 8). However, this raises important questions as to what is considered ‘fair’. Common aspects of the social justice agenda focus on the equality of rights, the equality of opportunities and the reduction of socio-economic inequality as essential components of social justice (UN 2006). In the South Africa context, procedurally the equality of rights is now enshrined in our constitution. However, socio-economic inequalities and inequality in opportunities often mean in practice that rights continue to be accessed unequally. Therefore, in broad terms, social justice seeks to address the issues of rights, opportunities and socio-economic inequalities. However, challenging socio-economic inequalities does not necessarily mean their elimination. For some analysts and practitioners using the term, social justice does not seek to transform the system that generates inequality but rather to mitigate its worst excesses.

### 2.3 Social Justice Organisation

There is no commonly agreed definition as to how to define an SJO. Broadly, an SJO can be defined as a particular type of civil society organisation. Arguably, what distinguishes an SJO from other kinds of civil society organisations is the explicit focus on social justice issues, that is a focus on attempting to address systemic inequalities. Therefore SJOs do not simply

seek to resolve particular concerns at a micro-level (foster care, renewable energy, government accountability and so on) but link this to an attempt to build a substantive democracy in the vision of achieving social justice.

## 2.4 The State

The state is another term that can be open to multiple theoretical and philosophical interpretations. Again the purpose here is not to provide an overview of these discussions but to provide a clear and concise definition as to what is understood as the state for the purposes of this report. The state is understood as the range of institutions, the legislature, the central and local administration, the judiciary, the police and the armed forces, which can be said to act as a system of political domination with the monopoly on the legitimate use of violence. In line with PARI's work, this report discusses the state not as an abstract entity that has a will and/or that operates according to its own or others' interests. Rather, when we explore state-society relations we consider the way that SJOs relate to the concrete organisations (departments, agencies, municipalities) that, collectively, congeal (in theory) into a corporate entity, the State. Thus, this report does not approach the state as an abstract, monolithic or congruent entity, it instead recognises the state in its disaggregated and uneven forms. In other words, we do not assume that the respective departments and entities of the state somehow sing from the same hymn sheet. Instead, we assume that their internal structures, cultures and histories influence their forms and the kinds of relations that they entertain with each other, with political parties, with businesses and with civil society.

## 2.5 Success

The focus of this report is to understand the relative 'success' or 'failure' of SJO and state engagements to further social justice aims. In the terms set out above, a successful social justice outcome would be one in which not only specific outcomes are achieved (more people receive social grants, more people have access to toilets, etc.) but that these campaigns also form part of broader processes in which substantive democracy is deepened and structural inequalities are addressed. Although outcomes are an important factor in understanding the relative success of SJO and state engagements looking only at outcomes would provide a narrow basis upon which to analyse and understand SJO-state relations. Therefore, this report adopts a relational approach that considers the extent to which particular programmes and engagements have forged and developed processes or social relations which strengthen social justice as well as examining the extent to which outcomes were achieved.

### 3. Methodology

This section outlines and describes the research methodology used within this report.

#### 3.1 Sampling

This report is based on 12 qualitative case studies of programmes, campaigns and social justice issues that SJOs have undertaken in some form with or against the state. The sampling was purposive, with organisations selected meeting three criteria. One, they had to be social justice organisations, that is a particular type of civil society organisation that links struggles over particular issues (foster care, renewable energy, government accountability and so on) to broader questions of substantive democracy and addressing systematic inequalities. Second, the organisations chosen undertook a programme that saw it interact with the state. This allowed us to focus on a particular programme undertaken by an SJO, rather than all of its programmes, to better understand the nature of engagements with the state over time around a particular issue. The programme selected needed to meet the criteria of fulfilling a broad social justice agenda. Finally, organisations were selected in an attempt to provide diversity in the thematic focus of programmes in order to reflect a spectrum of social justice issues and relations to and with the state.

Organisation	Programme
Afesis-Corplan	Local government ward key performance indicators
Black Sash	Hands off our grants campaign
Centre for Environmental Rights (CER)	Mining
The Children’s Institute	Extended child grant
CHoICE Trust	HIV-AIDs testing and education
Corruption Watch	Corruption in public housing
Equal Education	Norms and standards in school infrastructure
Legal Resources Centre	Land reform and restitution
National Institute for Crime Prevention and the Reintegration of Offenders (NICRO)	Social crime prevention programme
Social Economic Rights Institute (SERI)	Right to housing, evictions and alternative accommodation jurisprudence
Social Justice Coalition (SJC)	Janitorial social audit
Treatment Action Campaign (TAC)	Stop the Free State health crisis

Table 1: Case studies

Although the main research question was to determine under what conditions SJO-state engagement led to successful outcomes for social justice, the degree to which outcomes were successful did not inform the sampling frame with regards to the selection of SJOs. The relational approach taken in understanding and defining success meant that it was not possible to abstractly determine what success or outcomes the SJOs and their programmes had achieved prior to undertaking the research. Interviews with SJO actors tended to cover

more than one programme and this gave us the ability to make an informed selection on which programme should be the feature of the case study which could illuminate differing kinds of outcomes, processes and relations of interest to this report. Table 1, above, provides a summary of the case studies covered in this research. Further details can be found in appendix A, which provides a descriptive analytic account of the individual case studies.

### 3.2 Data collection and analysis

The case studies were qualitative in nature and each case study comprised of at least two interviews with a representative from the SJO and a representative from government who had ideally worked on or with a particular programme with the SJO. Additional interviews were also undertaken with individuals who had been partner to, or involved in the engagements between the state and an SJO under a particular programme. Further interviews were also conducted with individuals considered to have particular expertise or insight into this field. In some cases it was not possible to identify an official from government who had worked directly on a programme. This was due to the fragility of relations between SJOs and government. In such cases, the researchers contacted relevant government departments independently.

Over 30 in-depth qualitative interviews inform this report. Barring four telephonic interviews, all were conducted face-to-face. Interviews were approximately an hour long, with questions based on a semi-structured interview schedule for both SJOs and government respectively. This semi-structured approach allowed both for a set of standardised questions to be used with each type of respondent, as well as to allow flexibility to develop questions pertinent to particular programmes and topics as they unfolded during the interview process. Most of the interviews were conducted in Gauteng and the Western Cape, with some undertaken in Limpopo and the Eastern Cape. In the interests of not compromising relations between SJOs and government it was decided to anonymise individuals while identifying the particular programmes or organisations that they are associated with. While it may still be possible to identify individuals, particularly those working within SJOs, we felt it was important to anonymise responses considering that they often discussed sensitive issues.

The data was analysed thematically and coded into themes. Coding themes were largely established inductively although some important analytic themes such as legitimacy and outcomes were established prior to the data analysis phase. The initial findings of these interviews informed a draft report that was the subject of a half-day participatory workshop with participants from SJOs and government actors in early February. Lively discussion and input in this workshop proved crucial to refining the initial findings and rethinking conclusions. This was particularly important in shaping the purpose of this report and the discussions on relations, and the way forward for SJOs and government.

### 3.3 Conclusion

Having discussed the research methodology of this report the following section shall now outline the conceptual framework which informs the analysis presented.

## 4. Conceptualising SJO-government relations

Based upon the current literature, this section develops a conceptual framework to analyse SJO-government relationships. It is argued that the current literature presents a number of significant limitations when attempting to understand the broad and diverse kinds of relations engaged in between SJOs and the state. Drawing upon the work of Najam (2000), a model of civil society-government relations is presented as a lens through which to analyse which kinds of relations may be more or less conducive for deepening the aims of social justice.

### 4.1 The limitations of current theory

In reviewing the literature, a number of limitations are apparent within some of the most common frameworks used to analyse civil society-government relations. Many models, Gazley (2008) notes, tend towards an analysis of *formal contractual relations* with the state and how these impact the autonomy of SJOs. Such frameworks provide limited understanding as to the value and effectiveness of more *informal kinds of relationships*. Another weakness of current theoretical frameworks is the tendency to only analyse one side of the relationship either by focussing exclusively on the state or SJOs. Thus Commuri (1995) presents a framework geared towards analysing government attitudes towards CSOs which range from supportive to facilitative to neutral to regulative to repressive. While these are important factors to consider, the weakness of such a model is that it limits an understanding of the agency of SJOs to shape the attitude of government towards them. Analysts that theorise the relation from the perspective of CSOs often tend towards analysing three factors: resource flows, comparative advantage and inter-organisational interaction styles (Seibel 1992; Coston 1998) – that is, the way funding from the state can influence the relation CSOs have to it, the ability of CSOs to carry out state functions more efficiently than the state and the degree of formality or informality in the relations between CSOs and the state. Each of these models have strengths and weaknesses and their application depends on the particular research question that needs to be answered. While not discounting the factors raised in the frameworks examined above, we argue that a theoretical approach to analysing the relative success or failure of SJO-government relations needs to focus on a theory of strategic institutional interests. The following section elaborates this approach through reference to the 4-C model of SJO-government relations developed by Najam (2000).

### 4.2 The four-C model of SJO-government relations

In developing a conceptual framework for this project we seek to establish a correlation between the measures of success discussed earlier (outcomes, processes and social relations) and different modes of engagement between SJOs and state bodies (cooperation, co-option, complementarity, confrontation). We recall our earlier distinction between a civil-society organisation and a social-justice organisation to insist on the *democratic dimensions of successful engagements*. In other words, a successful engagement in terms of outcomes is one where a particular service is rendered in a way that deepens democratic

outcomes (where, for example, houses are built in a way that improves the security of women and children in public), where processes are strengthened that make them more transparent and/or open to public engagement and where engagements strengthen those sympathetic to democratic (instead of authoritarian or patrimonial) modes of development.

An alternative framework that appears to overcome some of the difficulties raised above is presented by Najam (2000) in his construction of a ‘four-C model’. For Najam the crucial factors determining the kinds of relations between SJOs and government rests on the question of ends and means. Each actor has certain goals and each has a preference for certain strategies which can be either similar or dissimilar, as demonstrated by figure 1. A further explanation of the different categories now follows.

		Goals (Ends)	
		Similar	Dissimilar
Preferred Strategies (Means)	Similar	Cooperation	Co-optation
	Dissimilar	Complementarity	Confrontation

Figure 1: The 4-Cs of SJO-governmental relations

A cooperative relationship is likely to exist when CSOs and government share similar goals and strategies. Confrontational relations are likely when the goals and strategies preferred by CSOs and government are antithetical to each other. In cases where there is a total divergence in both goals and strategies, open confrontation is likely to be the only form of engagement as both actors are likely to feel ‘threatened by the intentions and actions of the other, and therefore are more likely to sink into confrontational behaviour’ (Najam 2000: 386). Complementary relations are defined by circumstances in which CSOs and government share similar goals but have divergent strategies. Co-optive relations exist, according to Najam (2000), when CSOs share similar strategies but have divergent goals. Co-optation is a much discussed theme in the literature where it is generally understood as a partial or total loss of autonomy from the state. This appears to be a particular ‘risk’ with contracting relations where the nature of the contract means that the SJO must fulfil the needs and requirements of the government rather than its own constituency (Brinkerhoff 2002).

#### 4.3 Limitations of the four-C model

While we think that SJO-government relations can be best understood through an understanding of shared or divergent means and ends, this model still presents three primary limitations for the purposes of the analysis pursued in this report. One, it is assumed that the ends and means of both actors are objectively understood. From our analysis it is clear that the *perception* of means and ends is critical in determining the kinds



of relations SJOs and government departments are likely to have. Two, it abstracts these relations from an understanding of the specific political and institutional context. As explained in section 2, our analytical approach to the state shows that the internal structures, cultures, histories and politics that play out within and between government departments will shape the kinds of relationships they engage in with SJOs. Finally, current theoretical frameworks such as Najam and others assume that only one relationship can be held with government at any one time. A key finding of this research was to uncover the way in which simultaneous kinds of relationships – confrontational and cooperative – could be held at the same time. In other words, while publicly an SJO may appear to be engaged in a highly conflictual relationship with government departments, behind closed doors there may be relations which are far more cooperative in nature.

#### 4.4 A refined model for analysing SJO-government relation

Based upon our reading and interpretation of the current literature we propose a more nuanced approach to analysing SJO-state relations which seeks to overcome the limitations described above. As argued above, it is important to understand the state not as a unified institution but to have an analytical approach that seeks to disaggregate our understanding of the state in order to place different government departments within their specific institutional and political contexts. Therefore, the analysis presented in this report draws explicit connections between the kinds of relations engaged in between SJOs and the state and the wider political and institutional context.

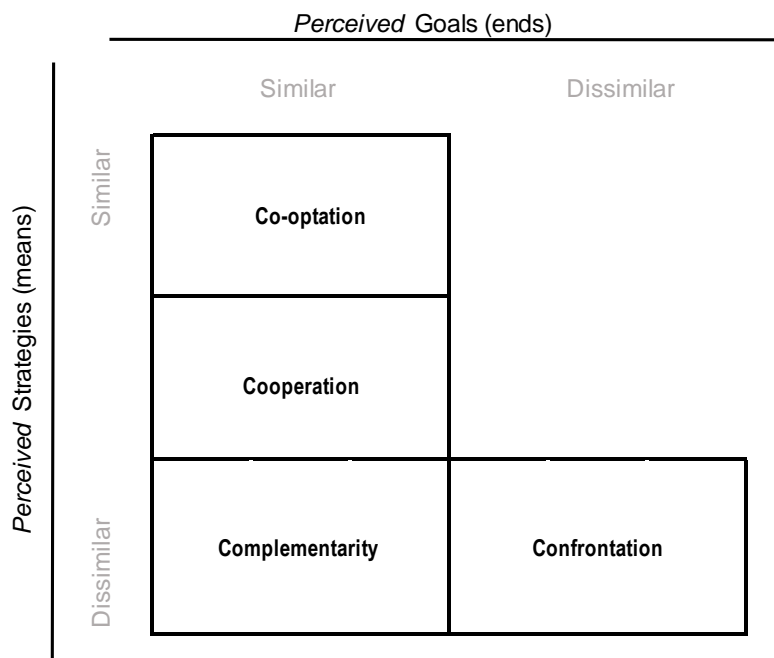


Figure 2: Refined 4-C model of SJO-government relations

The report draws upon and refines Najam's four-C model. As stated above, we argue that it is important that ends and means are not understood as being objectively defined but something which is interpreted and therefore perceived by actors on both sides.

Furthermore, we argue that the degree of similarity or otherwise between ends and means should be viewed as more broadly on a continuum. In so doing, we also reject Najam's (2000) conceptualisation of co-optation as dissimilar ends with similar means. We believe that the more conventional understanding of co-optation is more useful for our purposes here. Figure 2 presents the reconceptualised model. Using this model the case study analysis (see appendix 1) traces how relationships between SJOs and the state evolve through time, identifying key moments or turning points that prove to be influential in changing the nature of the relationship.

We will explore how these relationships (co-optation, cooperation, complementarity and confrontation) differ and change given the context, with the purpose of exploring which ones are more conducive to advancing a social justice agenda, understood, as discussed earlier in terms of deepening substantive democracy. In other words, what kinds of relations lend themselves to expanding the space of engagement from the particular issue at hand (grants, toilets, etc.) to wider democratic campaigns about citizen participation, the right to the city, and substantive equality?

#### 4.5 Conclusion

This section has developed a theoretical framework through which to analyse the kinds of relations that exist between government actors and SJOs. Building upon the framework provided by Najam (2000) we have suggested that while the congruence of means and ends is important in structuring government-SJO relations, it is the *perception* of those means and ends which is more important. In addition, we have argued that the degree of congruence or divergence between similar and dissimilar means and ends lies along a continuum. Furthermore, we have argued for an approach that does not seek to treat the state as a unified institution but to have an analytical approach that seeks to disaggregate our understanding of the state in order to place different government departments within their specific institutional and political contexts. Therefore, the analysis presented in this report draws explicit connections between the kinds of relations engaged in between SJOs and the state and the wider political and institutional context. In order to deepen this analysis, the next section provides an analysis of the state of the South African state and the current prospects for a social justice agenda.

## 5. The post-apartheid state and the prospects for social justice

In order to analyse what makes for successful and unsuccessful working relations between SJOs and the state it is vital that that analysis is placed within the current institutional and political context. This section begins by offering an analysis of the state of the current South African state. In so doing we draw attention to the unevenness of the state and some of its key features such as decentralisation, outsourcing, capacity issues and the fusion of state and party. The analysis then offers a broad overview of the policy and legislative environment for SJOs, which in policy terms is generally regarded as enabling. However, as the final section of analysis demonstrates, the space for civil society, and in turn SJOs, is increasingly becoming contested and arguably undermines the ability to forge successful SJO-state relations.

### 5.1 The state of the state

There are several tendencies today when it comes to analysing the South African state. The first, drawn from postcolonial studies, tends to emphasise the ‘ordinariness’ of the apartheid experience in relationship to broader patterns of colonialism. Such a position sets itself up against the argument that South Africa was a ‘special case’. What is at stake in these debates is the primacy of white racism in the organisation of the state and its institutions. At least since the late 1960s, the ANC and the South African Communist Party (SACP) had argued that racial oppression was not simply a feature of white racism but was also structured by the way that capitalism developed and industrialised in South Africa. The result of this debate is that the state is conceived in highly abstract terms and there is usually little engagement with the state at the level of its institutions.

The second, no less abstract, tends to analyse the South African state in terms of its outcomes, especially as measured by the promise of the Constitution and/or another foundational documents, like the Freedom Charter. When outcomes fall short, especially very short of promises, various authors have declared the state as ‘failing’ or having failed (see Boraine 2014, Mbeki 2009). Analysts making this argument point to the way in which the state and the ANC have increasingly become fused in a way that undermines the ability for state departments to function. While not dismissing the salience of these arguments, PARI (2014) has argued that the danger is that such narratives homogenise the complex entity that is the South African state and do not sufficiently capture the unevenness in government performance or provide scope for change. In other words, like their colleagues in postcolonial studies, those working from a failed or failing state paradigm obscure the state in terms of its institutions, their history, how they are structured, who they employ and how they work, etc. *If we are to understand the relationship between state bodies and SJOs, however, one needs a perspective that allows organisations of the state to become visible and to appreciate their institutional lives.*

One of the major features of the post-apartheid state has been the formation of an intergovernmental system, and the concept of ‘cooperative governance’ of the ‘spheres’ of

national, provincial and local government. Under this system, subnational administration and decision-making is significantly decentralised to the provincial and local government, but subject to national government's policy and fiscal mandates, and oversight. As Koeble and Siddle note,

*Decentralization was introduced to the South African constitution for all the 'right' reasons – it promises democratic decision-making from the grassroots level upwards; it promises citizen participation in both democratic structures and developmental debates; and it promises to deliver appropriate vehicles for the establishment of democratic legitimacy to the new democratic dispensation. (2014: 1117)*

Inheriting the legacy of apartheid's spatial and racial inequalities and differentiated, fragmented administrations, the net effect of decentralization however, has been to create a variegated state. Departments and administrations at various levels operate under contrasting constraints, seemingly in isolation from one another, and each with its own political economy. This has created a state which is highly uneven in its performance. Where the state is under-performing, especially in critical areas such as basic infrastructure, there are a range of common explanations for the problems, including corruption, skills shortages, high staff turnover, poor leadership and political interference (PARI 2015: 17). However, often this kind of analysis tends towards the descriptive and does not offer a deeper historical or analytical account of these problems. For instance, issues of capacity have varied historical sources. Research conducted by PARI on capacity within the water sector highlighted that skills shortages needed to be understood within a longer historical trajectory in which technical trades have been held in low regard, this was compounded by problems in the system of education and training as well as changes in the economy. Other departments and sectors will face different skills challenges for different reasons and these require to be unpacked and understood within the context of their own institutional histories.

In addition, such analysis should also be grounded in an understanding of the fundamental way in which the state has been reshaped post-apartheid through the increased use of contracting-out of government services to third-party providers. Analysis by PARI (2014) has highlighted that in 2012/13 42% of government spending, R372.9 billion, was allocated for procurement and that between 2009 and 2013 spending on procurement increased by an average of 10% annually. It is estimated that in the next three years, across all spheres of government, procurement of goods, services and works in South Africa will amount to R 1.5 trillion (National Treasury 2016). The procurement of goods, services and works by the state has three significant impacts on government and governance in South Africa. One, service delivery is decreasingly directly performed by government and increasingly undertaken by private companies. Two, this has increasingly changed the role of public servants from administrators to managers of contracts and thus deskills them from having technical skills. Three, procurement is highly decentralised and fragmented, making it more difficult to coordinate activities across departments as well as creating thousands of sites in which local

groups compete for contract opportunities and resources. PARI (2014) has argued that these factors taken together mean that South Africa can be best understood as a 'contract state'. This has particular dynamics and impacts on the state, as government increasingly outsources its functions. In particular, there is concern that in an 'open' bureaucracy, where politicians have substantial lawful oversight in the appointment of public servants, that proliferation of decentralized procurement sites leaves the system susceptible to dynamics of patronage and corruption.

The South African state is, as highlighted above, highly uneven with many departments and administrations acting almost as if they are standalone institutions, each with its own internal politics and histories. Furthermore, it has increasingly outsourced a number of key functions. This has all occurred in a highly politicised environment where, as a number of commentators argue, there has been a gradual and increasing fusion between the ANC, as the dominant political party, and the state. This has significant implications for the strength of democratic institutions, as increasingly the internal politics of the party are imposed onto government (Booyesen 2015). One pertinent feature of the fusion of the party with the state has been the impact of cadre deployment and redeployment. Frequent reshuffles and new appointments often destabilise the running of departments and furthermore, political deployments frequently have questionable credentials for their portfolios which can serve to undermine the functioning of departments further. Between May 2009 and August 2013 there have been 114 directors-general of 33 national government departments, 24 newly appointed ministers, 30 new deputy ministers and 81 new directors-general (van Onselen cited in Booyesen 2015: 73-74).

Alongside these dynamics, the South African state faces an increasingly constraining economic climate. The recent budget aims to cut R25 billion in expenditure. Alongside moves to reduce unnecessary government spending and 'leakage', there has been a cut in the equitable share received by provinces. Subnational governments are highly dependent on revenue from national government, with equitable share accounting for a high proportion of the total budget for provinces and municipalities. In the case of Gauteng the equitable share accounts for 95% of the budget (Flanagan 2016). As the primary sites of service delivery, a reduction in equitable share will have severely constraining impacts on subnational governments. At the same time, some provincial departments are returning significant amounts of their budget unspent. At the end of the 2015/16 financial year, Gauteng returned 18% about R908 million of its Human Settlements Grant (Flanagan 2016). Similarly, a grant made to the Eastern Cape provincial government for the upgrading of school infrastructure returned R530 million to National Treasury (Ngcukana 2016). The combination of the constraining economic climate combined with the financial management inefficiencies of the state creates critical challenges for social justice.

## 5.2 Policy and legislative framework for SJOs

Given the features and the internal dynamics of the South African state analysed above, civil society in general and SJOs in particular have a critical role to play in defending and

deepening post-apartheid democracy. This section outlines what role the current policy and legislative context envisions for civil society involvement in governance.

In 1994 civil society was seen as playing a critical role in the democratisation of South African society and the RDP strongly articulates its centrality to the democratisation project. Over time the understanding and role of civil society to government has varied. Policies such as Growth, Employment and Redistribution (GEAR) and Accelerated and Shared Growth Initiative for South Africa (AsgiSA) had relatively little to say about the involvement of civil society with the state but this has shifted in the National Development Plan (NDP), which makes far more extensive reference to the involvement of civil society in working with government to address development needs and goals.

Most, but not all, SJOs are registered as Non-Profit Organisations (NPOs) and the NPO Act is the main piece of legislation that governs the establishment and functioning of NPOs. The Act replaced previous apartheid-era legislation that had previously constrained the fundraising and advocacy activities of CSOs. The aim of the Act was to provide an environment through which registered NPOs could operate with freedom and autonomy as well as transparency and public accountability. The Act established the NPO directorate for the registration of NPOs which requires them to submit financial and narrative reports every year. This process has not been without criticisms and there have been particular difficulties with NPOs submitting reports through the online portal. In recognition of some of the difficulties amendments to the NPO Act are being considered. Some of the proposals include the establishment of 2 new statutory bodies, which has raised concerns of the prospect of greater state oversight and regulatory authority over the sector (Pather 2016).

While the NPO Act establishes a framework in which NPOs can legally operate, a question arises as to what extent government is compelled to work with such organisations and SJOs in particular. The NPO Act describes the State's responsibility to NPOs as follows: 'Within the limits prescribed by law, every organ of state must determine and coordinate 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 can be interpreted as government must provide an enabling environment for SJOs to operate and does not specifically place a mandate on government to work with SJOs. However, an analysis of South Africa's legislation on participatory governance provides an important mandate for government to work with SJOs, amongst others.

Section 152(1) of the Constitution states that 'local government must encourage the involvement of communities and community organisations in the matters of local government.' This is developed further within the Municipal Systems Act (2000). The Act mandates municipalities to

*develop a culture of municipal governance that complements formal representative government within a system of participatory governance and must for this purpose –*  
*(a) encourage, and create conditions for, the local community to participate in the affairs of the municipality.*

The definition of 'local community' is important here as it is laid out in the Act as residents, ratepayers and visitors to the municipality as well as 'any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality'. Thus the Act makes provision for SJOs to play an active role in participatory governance in South Africa.

A recent review of the policy and legislative environment for civil society and SJOs concluded that South Africa has what can generally be regarded as an 'enabling environment' (ENNA 2015), however, this term requires unpacking. While legislation that promotes the establishment and autonomy of a broad range of civil society organisations may exist on paper, such legislation is only meaningful when it is enacted in practice. A necessary condition for a truly enabling environment for civil society organisations and SJOs is that they should receive adequate funding. The National Development Agency (NDA) was established in 1998 with the aim to promote 'an appropriate and sustainable partnership between Government and CSOs' (NDA Act). The NDA Act stipulates that the Agency must act as a key conduit for funding as well as to support CSOs in capacity building. In addition, the Act stipulates that the NDA should promote consultation and dialogue between CSOs and relevant organs of the State. However, the NDA has been beset with administrative inefficiencies and financial misconduct with many CSOs complaining that they have been unable to access funding. This has raised further concerns that the NDA does not retain sufficient autonomy from the state and the ANC in deciding funding priorities (Habib 2013: 149-150). The impact of party-state fusion also has wider repercussions for how the role of civil society is viewed in the current context beyond the legislative and policy environment.

### 5.3 The contested role of civil society post-apartheid

Prior to the democratic transition there were debates about the role of civil society in fighting for social justice in a post-apartheid society. Steven Friedman in a critique published in 1992 argued that there was a danger that civil society was increasingly being viewed as only organisations that were aligned to the ANC, a phenomenon he described as the colonisation of civil society. While this critique was debated at the time (see Swilling 1992), today it seems to have prescient salience.

When the ANC came to power, civil society was seen as playing an important and vital role in the development of a post-apartheid society. This could be seen in the numerous references to civil society within the RDP document. However, as Friedman (1992) argues, civil society was arguably conceived as organisations that were broadly aligned to the ANC-Alliance. Today, organisations which appear to be critical of the ANC have come in for derogatory public criticism from ANC-aligned actors. The SACP has labelled trade unions and other civil society formations as 'liberal constitutionalists' which are seen as a threat to the ANC to be defeated (see Booysen 2015: 111). In 2015, the ANCYL in the Free State organised a march demanding the deregistration of the TAC, accusing the organisation of being in cahoots with the DA following its criticism of Health MEC Benny Malakoane (eNCA 2015). In addition, the criticism of civil society organisations has in some cases become racialized. For

instance, in 2013 the Minister of Basic Education labelled Equal Education as a ‘a group of white adults organising black African children with half-truths’ (see Appendix A).

This is not solely a trend within the ANC, however. Civil society protests and dynamics of political party contestation are similarly faced by the DA-run Western Cape government. This has also been accompanied by increased sensitivity to criticism and political challenges (February 2015). In 2015, the Mayor of the DA-run City of Cape Town, Patricia de Lille, openly attacked two influential civil society organisations, the Social Justice Coalition and Ndifuna Ukwazi – labelling their research as ‘lies’ and suggesting that they are driven by a foreign-donor agenda (February 2015). This follows criticism of a similar vein in 2014, when De Lille attacked the South African Human Rights Commission (SAHRC) for its report on the City’s sanitation programme, accusing the research of having a political motive in the run-up to the 2016 local elections (Molefe 2014). This points to a general trend in which there is less tolerance towards public opposition, particularly in the arena of social justice.

As Herbert (2015) highlights, there is a global trend towards the restriction of democratic space for civil society which rises above the level of public personal attacks. Some of the features she highlights, such as restrictions on freedom of assembly, freedom of expression and physical and verbal attacks are pertinent to the current South African context. As highlighted above, there has been the implication that the NDA has not exercised independence and autonomy from the ANC in deciding which organisations should be awarded funding. In addition, over the course of our research we were made aware of an organisation that had state funding withdrawn after joining a campaign against e-tolls, the implication being the withdrawal of funding was directly related to the organisation’s political stance.

Restrictions on freedom of assembly and expression have been documented through the way in which democratic rights to protest are increasingly being constrained. Work by Jane Duncan (2010) has highlighted the ways in which both the police and municipal officials regularly subvert the interpretation of the Regulations of Gatherings Act (1993) to deny ‘permission’ for marches. As Duncan’s analysis shows, local authorities tend to ‘conflate the notification process with a process of permission seeking. Police have been known to stop a march if the protestors were unable to provide a permit, in spite of the fact that, in terms of the Act, permits are not required’ (2010: 107). Furthermore, incidents such as the death of Andries Tatane and the Marikana massacre have raised significant concerns over the policing of protest. In addition, the Right2Know campaign (see Right2Know 2015) has highlighted the increasing use of surveillance on community activists and most recently, an apartheid-era style raid on the Helen Suzman Foundation, all contribute to an environment which is increasingly hostile to civil society, its autonomy and independence. This raises a concern that civil society’s role in the post-apartheid South African state is increasingly delegitimised and attacked by the ANC when it openly confronts or opposes the ruling party’s mandates, policies or practices.



#### 5.4 Prospects for alternative political spaces for social justice

The post-Marikana period has borne witness to some of the most rapid and significant political changes post-apartheid. An analysis of SJOs would be incomplete without a broader reflection on the prospect for a wider political movement for social justice. For some, the best path forward is to recover the political agenda of the ANC as put forth in documents such as the Freedom Charter or the RDP. For others, answers will lie outside of the ruling party and an orientation towards other political formations and movements. At present, there appears to be three strands of an alternative political movement on the Left emerging in South Africa. The first can be represented in the form of political parties such as the Economic Freedom Fighters (EFF) and the proposed worker's party by the National Union of Metalworkers South Africa (NUMSA). The second lies in the alternative NUMSA-led trade union federation. The final possibility lies in the emergence of new social movements. Each of these strands represents something different and has its own political histories and trajectories (for a further analysis see Paret and Runciman, forthcoming). However, regardless of our political attitude to such alternative formations in the path towards social justice, they cannot be ignored.

#### 5.5 Conclusion

This section has offered an analysis of the institutional and political context which provides the foundations upon which any relationship between SJOs and the state will be forged. While the policy and legislative environment is enabling, the fragmentation of the ANC's hegemony poses challenges for civil society. In particular, we note a general environment in which there is increased sensitivity and, in some cases, hyper-sensitivity from governing political parties to criticism. This leads to a wider environment in which there appears to be greater suspicion of civil society at large. Against this context alternatives to the ruling ANC have emerged and this creates a new political environment for a social justice agenda.

## 6. Forging a social justice agenda with the state

This section provides a discussion of the main findings of this report. It summarises how different relations to the state result in successful or unsuccessful outcomes in relation to social justice. The first section examines who is ‘legitimately’ allowed to shape the social justice agenda. It argues that within the current context it may be difficult for certain kinds of SJOs to be deemed as ‘legitimate’ by the state. This is important because the perception of the state towards SJOs has a powerful influence on the kinds of working relations that are available. The second section then goes on to assess what kinds of relations, drawing from the four-C model, influence what kinds of social justice outcomes.

### 6.1 Who ‘legitimately’ shapes a social justice agenda?

The RAITH Foundation’s ‘theory of change’ (TOC) for a capable state is founded on a number of ‘assumptions’ and ‘preconditions’. The concept of a ‘capable state’ is drawn from the NDP, which makes reference to the role of civil society in the forging a ‘capable and developmental state’. Two key assumptions and preconditions within RAITH’s TOC are that ‘civil society is seen as legitimate and useful’ and ‘the state is willing to accept external support, especially from civil society organisations’. These two assumptions and preconditions inform the basis upon which collaborations between SJOs and the state can happen.

Our analysis illustrated that implicit to the nature of relations between the state and SJOs was the question of legitimacy. Whether or not an SJO was recognised by the state as a genuine actor in shaping a social justice agenda, and engaged with as such, depended in a large part on the state’s assessment of the organisation’s legitimacy. Across the case studies, SJOs were not simply endowed with the legitimacy to contribute to a social justice agenda in the state’s post-apartheid project, but in fact had to earn this legitimacy. Although legitimacy was often earned by an SJO proving its organisational credibility and track-record, it was also shown to be crucially shaped by the palatability of its politics.

It was clear that different government departments and the differing spheres of government – national, provincial and local – would have different attitudes and experiences in working with SJOs – and thus held varying conceptions of whether organisations were legitimate and useful actors in forging a social justice agenda. One official from the Department of Social Development explained, ‘We rely on them. They’re an asset to have’ (Government Respondent 8). This contrasted with the experience of one respondent from local government,

*In local government we don’t take civil society organisations seriously, we don’t understand their role in the community. They are seen as a nuisance.*

(Government Respondent 12)

‘Not understanding’ the role of civil society in shaping the social justice agenda was also related to the state-centric ways that some government departments work, as a respondent who had worked both in government and within an SJO commented,

*I think probably the thing that struck me most coming back to the NGO sector was kind of how arrogant we were in government and how arrogant I was also in*

*government, when you think that you have got all the information... when we were in government we were so focussed on fixing problems that we saw, we never really thought to reach out [to SJOs]. (SJO Respondent 3)*

SJOs that were perceived as legitimate actors by the state in shaping a social justice agenda noted the importance of their organisation's earned credibility, built by a history and a proven track record in their field. Additionally, legitimacy was often granted when the research produced by SJOs was seen by government as 'balanced, fair and well researched' (Government Respondent 10). An SJO's perceived legitimacy in shaping a social justice agenda also rested considerably in people – those it represented, its funders, and its staff. This included its ability to demonstrate that it genuinely represented a grassroots constituency. Questions of whose interests an SJO represented were an important concern of the state – and, as discussed previously, are regularly used to question civil society legitimacy in South Africa. This extends to concerns around the autonomy of SJOs from their funders and funding demands. Often, however, gaining credibility was aided considerably by personal relationships between individuals in SJOs and the state. When recognised as legitimate actors, this enabled a relation with the state characterised by particular levels of engagement but did not necessarily determine the nature or outcome of this engagement. SJOs were not simply engaged with by virtue of being part of civil society, but instead had to fulfil some criteria by the state to validate their involvement in the shaping of social justice outcomes. This varied across SJOs, the issues that they worked on, the government actors they interacted with, and the geographies that they worked within. The subjectivity and capriciousness of the state in determining an SJO's legitimacy became starkly clear in instances where civil society organisations which were openly critical and challenged fundamental practices or policies of the state were delegitimised.

What we found in particular was extreme variability to the degree to which the state was sympathetic towards democratic modes of organisation. In general, the state was happy to engage with non-state actors as service providers or if there was a strong congruence between the goals of SJOs and government. For example, one government official commented,

*We have the same goals, the same objective. We all have the same interests in ensuring that we eradicate fraud and corruption in the housing sector... We have to collaborate. (Government Respondent 6)*

If an SJO sought to leverage their roles to achieve democratic social justice outcomes or to democratise service delivery processes this was often regarded as 'political' and therefore not legitimate:

*Well, they are out to prove that we are a useless government, that we are failing as a government, we are not delivering to the people, we are not interested in the people – so they try to create a political mind-set in that it impacts on people's decision when they come to vote, they may be ANC supporters, maybe EFF supporters, I don't know. What I am saying is, that very clearly, the intention is not only about solving the problem, the intention is also to get a political outcome, that is politicisation. (Government Respondent 11)*

This reflects the previous discussion in section 4 that highlighted a general trend to view civil society as a hostile actor in relation to the state. Describing an SJO as ‘too political’ is therefore a common refrain in attempts to delegitimise it.

From our analysis, most government actors recognised the ‘usefulness’ of civil society - if, importantly, it was considered legitimate and credible. Across the board, government actors noted that civil society organisations, particularly the SJOs in question, took on important issues and work that was outside of the capacity, scope, or skill set of government. SJOs were considered useful in providing important issue-specific research to inform government policy and programmes. Further, one of the perceived strengths of SJOs by government was in cases where they had access to communities and community issues that the state did not always have.

In most of the government interviews we conducted, there appeared to be a willingness to accept external support from legitimate and useful SJOs. However, this was very context-specific, and highly dependent on the kinds of relations that government had had with SJOs over time. In some of our government interviews however, and in interviews with SJOs, there is evidence that in certain cases there is a lack of will to accept the input or engagement of civil society, or to only accept it superficially and within bounds:

*You see, I think there needs to be role definition because first of all, the governing party got a mandate in an election to deliver on what it said it was going to do, so you can't have a situation where civil society tries to second guess that, they can't come along and say, no, well you can't have used that agenda because we have a different one. (Government Respondent 11)*

The question of whether SJOs are considered legitimate, and relatedly, useful and their input or support willingly accepted sets the hard limits to the kinds of relations that can be forged with the state to deepen social justice outcomes. As noted above, for the State there is a tension in how it relates to SJOs. When SJOs take on ‘useful’, ‘gap-filling’ roles for government they are more readily accepted than when there is an attempt to question or shift the broader social justice and democratic agenda.

## 6.2 What kinds of relations deepen social justice outcomes?

All of the SJOs analysed here have multiple and ongoing relationships to the state. A weakness of previous research has been to assume that only one relationship can be held with government at any one time. A key finding of this research was to uncover the way in which simultaneous kinds of relationships – confrontational and cooperative – could be held at the same time. In other words, while publicly an SJO may appear to be engaged in a highly conflictual relationship with government departments, behind closed doors there may be relations which are far more cooperative in nature. The case studies provided in appendix 1 provide an analysis of the differing and changing relations SJOs have had with state actors through time. The following section discusses how certain kinds of relations have contributed to furthering social justice goals.

### 6.2.1 Cooperative and complementary relations for social justice

As outlined in section 5, cooperative and complementary relations are created when both parties share similar goals but may have more or less divergent strategies on how such goals should be achieved. The difference between a cooperative and complementary relationship is the degree of congruence between the ends and means between the SJO and the state. A cooperative relationship is characterised by a closer degree of convergence than a complementary relationship. Given the similarities between the relations, they are analysed comparatively here to underscore the comparative advantages and limitations of the relationships. Of the 12 case studies, 2 were largely co-operative relations and 4 were largely complementary. However, as argued above, this does not mean this was the only kind of relationship with the state (refer to appendix 1).

In order to engage in either a cooperative or complementary relationship with the state, an SJO has to first be seen as a ‘legitimate’ actor, as discussed above. Beyond this, the ability to forge cooperative and complementary relations with the state were often strongly influenced by personal networks which could create relations of trust with state actors. Table 3 presents a summary of some of the primary characteristics and challenges in cooperative and complementary relations.

Main characteristics of cooperative and complementary relations	<ul style="list-style-type: none"> <li>• Cooperative and complementary relations tended to be forged from pre-existing networks</li> <li>• Tended to be more successful when there was high level support</li> </ul>
Main challenges for cooperative and complementary relations for social justice	<ul style="list-style-type: none"> <li>• But equally could be frustrated by other arms of the state or lower levels within the same department</li> <li>• Relations could be undermined by a lack of political will.</li> </ul>

Table 2: Characteristics and challenges of cooperative and complementary relations

In order to explore these themes more concretely it is worth comparing and contrasting the experience of three organisations; the Black Sash, the Children’s Institute, and Afesis-Corplan. The Black Sash’s ‘Hands Off our Grants’ campaign can largely be described as a cooperative relationship while the Children’s Institute can be regarded as largely complementary. In this section we examine the differences, opportunities and constraints these approaches have for deepening social justice gains.

When the Black Sash began to uncover the phenomenon of unlawful deductions it had to make a decision about how to strategically engage the issue. As one respondent from the Black Sash explained,

*At the beginning there was a lot of pressure inside our organisation to go the legal route and we decided to work the advocacy first and build relations with the state and get them to understand.*

As examined in further detail in appendix 1, the Black Sash engaged with various different arms of the state and a period of 2 years elapsed between the first discovery of the deductions and the meeting with the Minister of Social Development. While 2 years may be

considered to be a long time, this period allowed the Black Sash and other SJOs to gather critical evidence which they presented to the Minister of Social Development. From that point onwards it is clear that the Minister supported the Black Sash's campaign and established the Ministerial Task Team (MTT) in order to investigate unlawful deductions, and the Black Sash formed part of that task team.

Forming part of the MTT was strategically important but also carried with it the risk of co-optation. These risks were mitigated by ensuring the Black Sash's autonomy as an SJO was written into the memorandum of understanding between the parties. However, the inclusion on the MTT did not necessarily mean that the relationship was plain sailing and that there were, and continue to be, 'healthy' tensions inside the MTT. As one government respondent explained, 'We aren't all friends, we still all argue even up to today and I think it's healthy... it helps us to find workable solutions' (Government Respondent 2). Eventually the Minister accepted all of the recommendations of the report by the MTT and the Black Sash has continued to play a monitoring role.

Inclusion on the MTT allowed the Black Sash to engage in 'discourse change', as a representative from the Black Sash explained, 'As the outsourcing [of the administering and payment of grants] happened, in came the language of business, client rather than citizen, out went the human rights language'. The Black Sash's role altered that and it has, in more recent times, even played a role in setting out the terms of the new tender process for grants payment and administration (see appendix 1). The relatively quick move to resolve the unlawful deductions contrasts with the experience of the Children's Institute in campaigning for an 'extended child grant' for children being cared for by relatives.

Since 1996, a variety of organisations have been campaigning and been making recommendations to government about the need for an extended child grant. In forging relations with the state, the Children's Institute was able to access the government's own data and conduct research with it to demonstrate the scale of the problem. Alongside this the Children's Institute also engaged in a body of participatory research. This was critical because although there were a number of organisations campaigning in the same area this was often done 'with no evidence... so we started to paint that big picture' (SJO Respondent 4).

Despite co-operation from officials within the Department of Social Development there were two obstacles to change, the Minister and the Chief Director for Children. The Minister was described as 'struggl[ing] to understand the need for change' (SJO Respondent 4). Furthermore, relations were complicated by poor relations between directorates within Social Development. Thus although many of the people within Social Development supported the need for the extended child grant there was little they could do internally:

*our friends in high places, if they are not high enough they can't stick their neck out... even chief directors, even acting DGs [Directors-General] are not willing to stick their neck out in public if it is something that is anti- the minister or opposing the minister's point of view or opposing the ANC point of view. They will not stick their neck out but they will, in private, tell us that they agree and they would like*

*to do something about it but they don't really have the power to do anything about it. (SJO Respondent 4)*

Thus despite good working relations with the government this had little to no effect on the mindset of the Minister. After an extensive period of engagement, this left litigation as the only route left through which to engage the state. The litigation action was undertaken by the Centre for Child Law in the North Gauteng High Court and they were successful in obtaining an order instructing Social Development to resolve the issue. This highlights, as observed above, that SJOs rarely tactically engage with government in one way. Furthermore, it highlights the strategic usefulness of litigation which shall be discussed further in this report.

As a result of the Children's Institute's past work in this area and its previous good relations with Social Development, in the aftermath of the court case the Children's Institute was strategically in the right place and it was subsequently commissioned with the Community Agency for Social Enquiry (CASE) to produce a report recommending reform. However, despite announcing the intention to introduce a kinship grant in 2012 it took until November 2015 for the 'extended child grant' to be approved by Cabinet and then only in a 'significantly watered down' (SJO respondent 4) version.

Both the cases of the Black Sash and the Children's Institute reflect the experiences of forging complementary and cooperative relations with national departments. In contrast, Afesis-Corplan has largely sought to build complementary relationships with local and provincial government. Since 2004 Afesis-Corplan has developed programmes aimed at strengthening the role of ward committees in participatory governance. As the case study provided in appendix 1 demonstrates, despite official memoranda of understanding entered into between municipalities and Afesis-Corplan the programme was frustrated by the internal political contestations within the municipalities. Furthermore, attempts to develop ward committees to be able to play an effective role in monitoring municipal performance were regarded as threatening by municipal actors:

*In an number of municipalities where a partnership between ward committees and civil society aimed at jointly monitoring the municipality's performance ward committees were informed (threatened) by their political bosses not to participate in the project and so in almost the same time, ward committees withdrew from the project. (Ngamlana and Mathoho 2013: 14)*

The difficulties in implementing this programme have meant that it has now ended. On reflecting on the failures of the programme, Afesis-Corplan note that the matrix developed for their programme did not take sufficient account of the degree to which politics would penetrate the ward committee system. The case of Afesis-Corplan also highlights that even when an SJO does not engage in a confrontational relationship with government it may still be regarded as threatening if it is seen to be challenging an entrenched status quo of government.

By comparing the experiences of the Black Sash, the Children's Institute and Afesis-Corplan, the possibilities and limitations of cooperative and complementary relations with the state

become apparent. In the cases of the Black Sash and the Children’s Institute positive working relations existed between the SJOs and the relevant arms of the State. In fact, these good relations meant that in both cases SJOs almost acted as mediators between different arms of the state. However, the critical difference between the two cases is the extent to which they had high level support and backing. In the case of the Black Sash, the endorsement from the Minister was critical to effecting change while in the case of the Children’s Institute the absence of support for the overall goal limited the ability to effect change solely in a complementary relationship. In the case of Afesis-Corplan, while there was a memorandum of understanding to guide the working relationship, the political realities meant that in reality such an agreement was meaningless. Cooperative and complementary relationships are effective for creating positive working relationships with the state, however, if there is a need to propose changes or goals that the state does not support then these forms of relations are likely to have limited impact on outcomes. This is strongly illustrated in the case of Afesis-Corplan where the attempt to build and strengthen ward committees was deemed to be a political threat to certain actors in the municipality, which eventually led to the cessation of the programme.

#### 6.2.2 Relations of co-optation for social justice

On the surface it may appear that a co-opted relationship with the state may be antithetical to the pursuit of social justice. However, another way to look at it is to understand a co-opted relationship as an attempt to influence government from the inside. A co-opted relation with the state suggests that both parties share the same goals and strategies in pursuit of that goal. Therefore, in comparison to other relations discussed in this report, SJOs which engage in these kinds of relations believe that the state’s conception of social justice is broadly correct and view their role as supporting the state to achieve it. Arguably such relations focus less on influencing the outcomes of social justice but on the processes and social relations with the state to achieve it. A co-opted relation is a less common form of relationship between SJOs and the state. More commonly, these kinds of relations are witnessed and documented within organisations that take on service provision as a primary function. Indeed only 2 of our case studies could be described as having a predominantly co-opted relationship with government. Furthermore, in cases where evidence of co-opted relations was present it should be noted that the SJOs in question took on some degree of service provision with government. Table 4 presents a summary of the main characteristics and challenges encountered in a co-opted relationship.

Main characteristics of co-opted relations for social justice	<ul style="list-style-type: none"> <li>• A relationship where there is a high degree of congruence between SJOs and the state over the means and ends to achieve social justice.</li> <li>• Although regarded as ‘partnerships’, the state is often the more powerful partner.</li> <li>• Often involving some form of service provision for the state.</li> </ul>
Main challenges for co-opted relations for social justice	<ul style="list-style-type: none"> <li>• Potential for loss of SJO autonomy.</li> <li>• Often partial or more total dependence on state funding</li> </ul>

Table 3: Characteristics and challenges of co-opted relationship



The decision to work with government in a relation of co-option was found to be determined by a number of factors. Some of them were structural, such as expectations from donors to work with government. This was particularly noted in the health sector where at a minimum you would have to report to government but could also be expected to work with government more extensively. Other factors shaping a co-opted relationship were found to be more directly related to individual political and institutional circumstances. Comparing the CHoiCE Trust with the experiences of NICRO highlights the positive and negative experiences of a co-opted relationship.

The CHoiCE Trust works in a number of areas related to health, particularly with regard to HIV-AIDSs counselling and testing. Their co-opted relationship with government evolved from a previously more adversarial relationship. This change was predicated by a recognition of the limitations of an adversarial relationship in achieving social justice outcomes: 'It was clear that we weren't winning. They're frustrated and we're frustrated, it's not working' (SJO Respondent 5). Other factors that precipitated the change included the appointment of Aaron Motsoaledi as Health Minister, who is credited by CHoiCE and other SJOs with creating spaces in which there is greater scope for civil society engagement with government. For CHoiCE this resulted in a situation where it was no longer possible to work in conflict because 'there's just no space for it'. The second important factor in shaping CHoiCE's relationship was the placing of the provincial health department under administration, which caused severe constraints to the functioning of the Department of Health. A situation was described where health officials were without basic office supplies and therefore greatly constrained in their ability to function. In such a context a relationship was forged where CHoiCE not only undertook to do things like buy office supplies but also assisted extensively in the monitoring and evaluation work undertaken by government. As one respondent commented,

*Collaboration is better than anything else... it's easy to look at government and go... 'it's just not providing'... but go and speak to people in the Department who are just as frustrated as anything... then you realise that it's not people, it's a system... you can either sit about and complain... or I can do what I can do to strengthen that system. (SJO Respondent 5)*

However, a co-opted relationship does not necessarily mean one that is devoid of tension or criticism. Indeed, contrary to expectations the respondent from the CHoiCE Trust argued, 'There's more space for criticism in a partnership... because you can be critical with people who are trying to get things done' (SJO Respondent 5).

The favourable way in which CHoiCE view their relationship with government differs from the experiences of NICRO. NICRO has played a crucial role in reforming the criminal justice system in South Africa and pioneered work in social crime prevention. Through the 1990s NICRO worked closely with the Department of Justice in developing diversion programmes. Although working closely together, the relationship at this time could be described as a mixture of confrontational and complementary. At this time, NICRO was able to maintain its independence and autonomy from government by being primarily funded by international donors. However, into the 2000s this began to change with international donors orientating

more to government departments, leading NICRO to rely more and more on state funds. NICRO has continued its pioneering work in social crime prevention and many of their programmes and initiatives have been adopted by National and Provincial government, but this has brought its own problems.

Funding constraints have seen NICRO moving more towards becoming a service provider for government, although the nature of this service provision varies across provinces. The money NICRO receives from the Department of Social Development is not enough to fully implement many of its programmes and NICRO has had to scale down some of its work. An official from a Provincial Department of Social Development said, in her view, the organisation's dependency on government funding is compromising its ability to be critical and innovative:

*Our meetings and our engagements recently, it's just about funding. It's not so much around how we can better the sphere, and work. Most of the time it's about funding, struggling. That's the reality of the NGO sector. (Government Respondent 9)*

At a national level, NICRO admits to being hamstrung by its funding relationship with the Department of Social Development: 'We depend on their subsidy, we don't have much room'. This overreliance on the DSD's funding is compounded by the fact that the Departments of Justice and Correctional Services do not formally fund the organisation, despite NICRO providing them with services. At a provincial level, NICRO often sees itself enter into contractual arrangements that are constraining: 'They [Provincial Department] fund us in a way that ties our hands.'

At the moment, NICRO feels taken advantage of, with while the integrity of the organisation's work being undermined by its funding relationships. Wielding limited power in engaging with government, increasingly a service provider, and financially dependent on government, NICRO worries about the impact that this is having on successful social crime prevention.

*There's an unequal balance of power here. If you hold the purse strings, you have the power... We want to be independent from [government] funding. We want to implement our policies and programmes as we see fit.*

Comparing the cases of CHoiCE and NICRO highlights interesting lessons for the ability of co-opted relations to further social justice. Although both SJOs have means and ends that closely align with government, a key difference between the two co-opted relations is the extent to which the state is the more powerful partner. This power relation impacts the SJO's ability to maintain its autonomy and a more equal relationship. The power of the state in these two cases is shaped significantly by resources, and how these are distributed by actors in the relationship. In the case of CHoiCE, the co-opted relationship is one which has been entered into willingly as the political and institutional context has been favourable to forging a relationship in which CHoiCE has been able to maintain its autonomy while working closely with, and often assisting, government. The ability to maintain independence can largely be attributed to the fact that CHoiCE does not rely upon government funding.

Instead, in the context of a struggling Limpopo Department of Health, ChoiCE has in some instances used its available resources to support the government department. On the contrary, for NICRO the co-opted relationship is one that it has had to unwillingly adopt due to lack of alternative funding outside of the state.

Despite the discomfort that NICRO experiences with its relationship with government, there is evidence from both cases that a co-opted relationship can offer gains for social justice under certain conditions. In the case of NICRO, it has pioneered work that has led to significant legislative and policy changes in social crime prevention and criminal justice reform. In a similar vein, at a more local level, ChoiCE’s work has seen real improvements in health care in the Mopani District. However, as NICRO’s experience demonstrates, the real danger of a co-opted relationship is that it can undermine the autonomy of the organisation and limit its ability to be innovative.

### 6.2.3 Confrontation for social justice

As discussed in section 5, relations between SJOs and state can be considered confrontational when their preferred goals and strategies are antithetical to each other. In discussing the limitations of the four-C model, we noted the added importance of *perception* in influencing relations between SJOs and government. Based on our case studies, it became evident that instances of confrontational relations can also be the result of a *perception* of antithetical goals and strategies. Perceptions of differences become particularly acute in instances when CSOs and government were not communicating directly or openly with one another and where perceptions were largely built upon media portrayals of each party.

Main characteristics of confrontational relations for social justice	<ul style="list-style-type: none"> <li>• A relationship where there is fundamental disagreement about what is required to advance social justice between SJOs and the state.</li> <li>• Usually a last resort when other channels have been exhausted.</li> <li>• Tendency to result in better outcomes for social justice</li> </ul>
Main challenge for confrontational relations for social justice	<ul style="list-style-type: none"> <li>• Risks creating a state which is more hostile to working with SJOs.</li> </ul>

Table 4: Characteristics and challenges of confrontational relations for social justice

Of the 12 case studies examined here, 4 could be described as having an overall confrontational relation with the state. However, this is not to say that the other case studies did not have points of confrontation (see appendix 1). Table 5 provides a summary of the main characteristics and challenges of these forms of relation. In our case studies, SJOs variously navigated their pursuit of social justice outcomes under the context of fundamental disagreements, or perception of disagreement. SJOs used different forms of protest or collective action, utilised formal avenues within the state to air grievances, appealed to higher state authorities, or, as a last resort, undertook litigation. The media emerged as an important third actor in instances of confrontation, with newspaper reports often fuelling antagonism. In many instances, confrontation was fuelled by a breakdown of communication and a lack of will to engage openly by government.

The case study of the Social Justice Coalition (SJC) and its relation with the City of Cape Town is a particularly illustrative example. Since 2011, SJC has attempted to engage with the City around issues of water and sanitation in informal settlements. Initially, the City, particularly the Mayor, appeared responsive to the social justice mandate. Although their means differed, there seemed to be some consensus on their goals. Both the SJC and Mayor Patricia de Lille agreed in 2012 that urgent action needed to take place to improve access to water and sanitation for the City's poor – a first step toward this was the City's commitment to a janitorial service project (see appendix 1). However, when the City did not keep to its commitments on this project, relations began to sour and attempts to constructively engage the City failed. What could be described as a confrontational relationship ensued. In the years that followed, the SJC protested outside the Mayor's office, used community-driven social audits to pressure government, mobilised mass budget applications, and, in 2015, threatened to take the City to court. As direct communication between the City and the SJC became infrequent, much of their engagement was mediated through a war of words in print media. The City perceived the SJC as having ulterior political motives in its campaigns, and attempted to delegitimise its claims about sanitation services and resource allocation in the city. The SJC sees the City as unwilling to engage constructively and uncommitted to the poor. The means and ends of the SJC and City of Cape Town appear today as considerably divergent.

In this case, the SJC has decided to yield on using the courts. At present, there is a renewed attempt to rebuild avenues of communication and open engagement between the Mayor's office and the SJC. The City appears to be shifting its discourse on its prioritisation of the poor, but no significant outcomes or commitments to sanitation in informal settlements have been achieved.

When analysing confrontational relations there can be a tendency to see confrontation as emanating only from SJOs. However, in some cases it is the hostility from the state that creates a situation in which confrontation is the only available mode of engagement. SJC's hesitancy to litigate echoes a finding across our interviews: litigation was used against the state for social justice outcomes largely as a last resort and with the recognition that it could severely compromise relations.

Litigation was used within confrontational as well as other kinds of relationships. Across the case studies the use of litigation was complex – sometimes litigation helped build relations with one arm of the state by confronting another (as discussed in the Children's Institute case). Namely, litigation was often strategically used by SJOs to pressure some levels of government, with the tacit cooperation or support of other levels of government that agreed with the particular social justice agenda or issue. This reflected both on the complexity of the South African state as not a coherent unified whole, and complicates the suggestion that litigation is an unambiguously adversarial engagement. However, such tactics can carry risks and benefits, as one government respondent explored:

*When you sue government you immediately put us on the back foot, the defensive foot... you defend and when you defend you have to come up with an argument and that forces you to create a strong argument for something you might not*

*even believe in yourself... so sometimes litigation doesn't help, it forces you to think about why not do something rather than pushing you to do something. Even though you may have been convinced this was the thing to do... Then again there are instances when it's useful... for example, the refugees. I don't think we would have ever, not in the current mind-set of South Africans, opened up our social assistance space to foreigners. (Government Respondent 2)*

Litigation could be a double-edged sword. In many points in the case studies (see appendix 1), litigation was often pivotal in achieving outcomes. However, the risk is that it shuts down space for future engagements with government. This was evident in SERI's partnership with the South African Local Government Association (SALGA) where one of the primary challenges was the history of litigation between SERI and several municipalities. It must be noted that confrontational relations were seldom the preferred strategy of SJOs, however, confrontational relations can be critical in pursuing social justice outcomes.

### 6.3 Conclusion

This section has considered what makes for successful and unsuccessful outcomes for social justice in working relations between SJOs and the state. We began by considering the extent to which SJOs are regarded as 'legitimate' and 'useful' by the state. It was noted that the attitudes to SJOs varied across the state and were contingent on a variety of context-specific political and institutional histories. In general terms, when SJOs played roles in 'gap filling' and supplementing the work of the state they were more likely to be deemed as credible players than if there were attempts to question or shift the broader social justice and democratic agenda. Having analysed the basis on which SJOs are regarded as legitimate and useful, the analysis moved on to assess what kinds of relations, drawing from the four-C model, influence what kinds of social justice outcomes.

It was found that all of the relationships analysed – cooperative, complementary, co-option and confrontation – had the potential to support positive outcomes for deepening a social justice agenda. The relative success of these relations was dependent upon the congruence between the perceived institutional ends and goals understood within a broader political and institutional context. Relations of cooperation, complementarity and co-option were generally more successful at improving processes and social relations between SJOs and the state, and supporting the state to produce better social justice outcomes. However, these relationships depended upon there being more or less some agreement that the state's conception of what was required to achieve a social justice outcome was correct. If there was disagreement about this, confrontational relations were often the only avenue in which SJOs could have the necessary impact to shift the social justice agenda. However, as discussed, such confrontational relations carry with them implicit risks for future relations and this was something SJOs were cognisant of.

## 7. Conclusion

This review of SJO and state relations is unable to provide a 'one size fits all' approach to achieving successful relations and outcomes for deepening a social justice agenda. Rather, what we present is a means to think about, and question, the forms of relations that SJOs have and can have with the South African state under the current context – and in turn, the success of these relations in forging a progressive social justice agenda. It has been argued throughout this report that the kinds of relations that are possible between SJOs and the state is dependent upon an understanding and analysis of the wider political and institutional context, as well as the particularities of the state/SJO relationship. In this concluding section we return to an analysis of the current context before moving on to suggest what kinds of relations are necessary and possible.

### 7.1 Civil society-state relations in 2016

The post-apartheid state was built on a social justice mandate. It emerged led by a liberation party that claimed roots in community movements, on the foundation of work by a vibrant coalition of civil society and community organisations. In the 1990s, South Africa was a nascent state, with a coherent national project, and with a seemingly cohesive ANC leadership taking the reins of the state with broad engagements with civil society. In 2016 the picture looks quite different.

This report has highlighted the various ways in which the freedom and autonomy of civil society is seemingly under threat. This is deeply concerning and compromises the promise of post-apartheid democracy. However, it is also clear that the terrain in which SJOs engage the state is highly variable across departments, government spheres and geographies and this is testament to the state's unevenness. The experiences of SJOs illustrates that the South African state is far from monolithic, nor easily characterised. In the sphere of local government the case studies demonstrate the challenges SJOs face in navigating spaces of intense politicisation. Furthermore, the case studies draw attention to the lack of coordination and communication between government departments and spheres of government, especially between local and provincial, resulting in a situation where SJOs often act as mediator between different spheres of government. At a national level the case studies highlight a number of instances of positive engagement between government departments and SJOs but also a number of instances where SJOs and civil society are shut out from participating in governance. The likelihood for exclusion or inclusion seemed to be heavily shaped by institutional experiences and histories of working with civil society as well as political considerations from leadership. In addition to dealing directly with government, some of the case studies drew attention to the role of outsourced services within government – for example, the payment of social grants – and how this impacts working with the state for social justice. The state that SJOs engage with is not only uneven and fragmented, but also politically charged and seemingly increasingly so.

SJOs attest to operating under tense political environments where different spheres of government may represent particular party political blocs, and where provincial and local governments are sites of both internal contestation and power tussles between parties. In these political contexts, SJOs are forced to carefully navigate politics, partnerships and their

perceived political alignment to avoid their social justice claims being delegitimised or captured for particular interests. The struggle for the legitimacy of SJOs as actors within governance has been one of the key concerns of this report as it seems we are in an environment in which the independence and autonomy of civil society is under threat and SJOs are no longer seen as an important part of the democratic agenda. In 1992 Steven Friedman made a prescient warning against the dangers of the ‘colonisation’ of civil society, that is a civil society that only becomes legible to the state when it is palatable to the ruling party, and its world view. Civil society was able to function most effectively in symbiosis with the state, he argued, when it was pluralist, representative, democratic, and well-resourced.

The findings contained within this report seem to bear out some of Friedman’s concerns. Civil society is not unequivocally or easily considered by the state as legitimate, useful, and able to provide support or input. Across government, there is a great deal of unevenness in whether the state regards civil society as a viable actor in contributing to social justice outcomes. For the SJOs which participated in our research, there appears to be broad wariness that, in the present political context, things are challenging. Although there is variability in the ways that SJOs interact with different parts of the South Africa state, there is a prevailing sense among SJOs that they are facing increased tension and animosity. The Polokwane moment and the pluralist wave of the Zuma Presidency has not, as many political commentators had envisaged (see Friedman and McKaiser 2009), opened doors for the pursuit of a progressive social justice agenda in post-apartheid South Africa. Instead, the current context is presented as difficult – perhaps the most difficult it has been under a democratic state. Indeed, it is likely that for the foreseeable future things will get more difficult.

Over the course of this research the integrity of the South African state has appeared to be increasingly compromised by the fusion of the party-state. The firing of Finance Minister Nhlanhla Nene and the events that have unfolded since then are the result of internal factional battles within the ANC playing out in the state. Furthermore, the constitutional court judgement on Nkandla has provided further evidence of the ill effects of the fusion of the party with the State. While the Constitutional Court judgment on the Nkandla matter is a testament to the robustness and independence of the judiciary, it has also unleashed a further destabilising of the ANC’s hegemony. Arguably, the challenges faced by the state could be an opportunity for SJOs, as government turns to these kinds of organisations for support, or a constraint where the state becomes more hostile to civil society in general. It seems, for the moment, the current context is likely to act as a constraint as there is evidence to suggest increasing hostility and threats to the autonomy of civil society. In such a context, coalition amongst civil society actors will be vital.

## 7.2 Successes and failures in working with the state

Against the context analysed above, what kinds of working relations and engagements with the state promote social justice outcomes? As this report has argued, there is no formula to determine how SJOs and the state should engage, nor is there an ideal relation. Rather, what this report presents is a means to think about, and question, the forms of relations

that SJOs have and can have with the South African state in the current context to forge a progressive social justice agenda.

Despite the difficulties outlined in working with the state, the report finds much evidence of successful working relations for social justice whether measured on outcomes, processes or relations. It was found that all of the relationships analysed – cooperative, complementary, co-option and confrontation – had the potential to support positive outcomes for deepening a social justice agenda. What influenced the relative success or failure of such engagements was dependent upon both the individual political and institutional contexts of particular arms of the state as well as the degree of congruence between the perceived institutional ends. Where there was more or less some agreement with the state's perspective, relations of cooperation, complementarity and co-option were found to be most often successful in improving relations and processes but often had a weaker ability to influence outcomes. This is because such relations were often less able to contest the overall goal of a particular programme but sought more to improve the delivery of a particular goal. In cases where SJOs sought to contest government's overall vision for social justice, confrontational relations were often the only avenue through which SJOs could have the necessary impact to shift the social justice agenda. However, as discussed, confrontational relations carry with them implicit risks for future relations, something that SJOs are highly cognisant of.

However, relations are not merely shaped by the congruence between the ends and means of SJO and state actors. The report found multiple cases in which a lack of political will or political interference can result in the failure or stalling of working relations between SJOs and the state. While people working in SJOs are astute readers of political contexts, on occasion, this does not always translate itself into the strategies and programmes embarked on by SJOs. Indeed on reflecting on the failures of the Ward Key Indicators programme, Afesis-Corplan note that part of the failure of the programme can be attributed to not designing a programme that was cognisant enough of the political terrain in which ward committees operate.

Within the current context the findings of this report indicate several things for SJO-state working relations. As the case studies demonstrate, SJOs have built working relations with the state often under difficult circumstances. While there is evidence to demonstrate that government departments that have long histories of engaging with SJOs are likely to continue to do so, the general environment appears to be moving in a direction which is seemingly increasingly hostile to civil society. Furthermore, in a context of a seemingly fragmented ANC, it is likely that local government will become an increasingly politicised environment. These factors combined make the likelihood of needing to embark on confrontational strategies of engaging with the state for social justice arguably more likely and this, in turn, may increase hostility.

### 7.3 Strategic litigation for social change



One of the key findings in this report was the strength litigation has for producing social justice outcomes. Litigation is often widely perceived as only building adversarial relations with the state, and it does indeed carry that risk, but our findings proved that it was a complex yet useful tool. Litigation offered the opportunity to unblock certain pathways to parts of the state that prevented action on important social justice issues, compelling action on strategically placed government spheres or departments. There were also examples where a court ruling forced a government department to build working relations with an SJO in pursuit of a social justice outcome. Legal action was particularly useful when it received support, whether implicit or explicitly, from other government actors who lacked decision-making power, but supported the SJO. Rather than only conceived as uniformly compromising relations with the state, strategic litigation can also strengthen relations with parts of the state in the pursuit of a social justice agenda. However, this is not to say that litigation could only be successful with the tacit support of the state. The report documents a number of cases where litigation, in the face of state intransigence, has been the only available tool with which SJOs can push for social change.

All of the SJOs documented in this report viewed litigation as one element of wider campaigns. As one SJO respondent put it, 'You never just litigate, you have to mobilise people. You can't litigate in vacuum... it has to be part of a bigger advocacy strategy' (SJO Respondent 12). Therefore, litigation is as much about what happens outside the courtroom as within it. In most cases, litigation was done in partnership with affected grassroots constituents and this can carry costs and benefits. The use of litigation is often an effective mobilisation tool that can draw people into a campaign and provide crucial education and popularise information about rights. However, as Dugard (2010) documents in her reflection on the Constitutional Court challenge to pre-paid water meters, there is also a danger that litigation can demobilise existing community organisations. Under the best conditions, litigation should provide a platform to build alliances for social justice across society and even, as suggested above, within particular arms of the state. However, litigation can often be a long and drawn-out process, as the case studies attest, and it can be difficult to sustain momentum through time. This is the tightrope that SJOs and their constituents must walk when embarking on strategic litigation.

The planning that goes into strategic litigation does not cease after a victory in court. Indeed, as the case studies document, it is at the point of success that the ability to implement positive social change becomes possible. Reflecting his experience of using litigation one respondent reflected,

*Litigation can be useful and the Constitution is extremely powerful, you can use it to get very strong judgements, pro-poor, social justice type judgements and you should use it in that way, but that in itself is never enough. The court case hardly ever solves a problem. You need to follow it up and monitor the implementation.*  
(SJO Respondent 12)

The question of monitoring and evaluation after a court victory is one that faces all SJOs embarking on litigation. While, in some cases, litigation results in courts handing down decisions which mandate processes and goals to be achieved within certain time frames,

often this is not the case. It is therefore important for SJOs to consider how they may monitor and evaluate the implementation of programmes following court action, especially as this is likely to occur in a context of increased hostility from the state departments in question. This again returns us to the importance of engaging with the multiple faces of the state prior to and even during litigation action in order to build a greater picture of potential allies within sections of the state which may, in the event of successful litigation, be effective partners for implementing change.

The findings of this report suggest that litigation is, in the current context, a particularly useful tool for achieving social justice outcomes. The circumstances which shape the decision to embark on litigation are always contingent on a range of strategic and political questions. The report suggests that litigation works best when it is part of a wider strategy and campaign that looks for alliances both within civil society as well as within the state.

#### 7.4 Forging working relations with the state and building social justice

This report has highlighted many of the challenges and constraints SJOs have in working with the state to pursue and deepen a social justice agenda. However, it also documented the multiple ways in which SJOs work through these difficulties which may provide useful pathways for other organisations. Below are some of these ways of working.

- **Clarifying means and ends**

The interviews and participatory workshop indicated that there was often a lack of clarity or misunderstanding by both SJOs and government actors of the other's structure, work, and processes. Perceptions, rather than an understanding of the means and ends of SJOs by government (and vice versa) often blocked communication.

SJOs often noted that they required clarity on government processes and protocol to provide directed and strategic input. In turn, attempts to dismiss SJOs based on claims of their funding, agenda, and constituency by government could be contested by SJOs through providing unambiguous clarity and communication on these questions. This requires both directed and clear presentation of information by SJOs in engagements with the state, as well as improved avenues of communication and responsiveness by the state. In one case, an initial meeting to clarify means and ends proved crucial in determining the scope and limits of a relationship between a government actor and an SJO. This 'testing of the waters' is conducted by the SJO's head of stakeholder management and is used strategically to determine the form of its subsequent relations with government.

*We had a meeting whereby they introduced themselves, who they are, what is they do, what they stand for, and so forth. Also we introduced ourselves, this is us, this is what we do. Also, we educated them in terms of...you know in government there is protocol in terms of this information can only be given provided this happens...we educated them on that...Then we agreed, we can continue to engage each other.*  
(Government Respondent 6)

- **Sector or issue-based working groups or forums**

In our research, a few cases emerged of working groups, forums or task teams that convened key civil society and government actors around a social justice issue or sector. In two cases these were regularly convened, in other cases they were organised around an urgent policy issue. In most instances, these working groups were cited by participants as spaces where SJOs and key state actors could robustly engage as equal actors around a specific issue or sector that all actors had a direct interest in. These spaces, particularly if hosted by a neutral third-party, allowed for diffusion and negotiation of ideas, and in some cases led to working solutions. They were not, however, devoid of tension or disagreement. The effectiveness of these forums or groups was heavily dependent on the state actors involved approaching the SJO(s) in question as a legitimate actor on the issue. Further, action on an issue was more likely to take place when state actors with decision-making power or influence were participants. However, in most cases such focused forums or working groups had made some steps toward realising a social justice agenda.

- **Mediation in cases where relations have reached an impasse**

In some cases, relations between a state actor and SJO can break down to the point that they reach an impasse. In such instances, mediation can prove to be a crucial tool in re-enabling communication and clarifying points of disagreement. One government respondent noted the benefits of mediation by a nearby university when relations had all but broken down with a particular civil society organisation. Another case study showed the value of a government actor with authority mediating a relationship that had broken down between an SJO and another government actor. In both instances, mediation enabled a new space for engagement between the state and civil society, where previously there was no communication at all.

All of these proposed strategies require that, at a minimum, the preconditions and underlying assumptions of RAITH's theory of change are met where civil society is seen as 'legitimate' and 'useful' and 'the State is willing to accept external support, especially from civil society organisations'. However, one of the overarching, challenging tasks that faces South African civil society today is staking its claim to being legitimate, useful and a necessary contributor to shaping a social justice agenda – irrespective of whether it is critical or supportive of a state project. Arguably, civil society is not sufficiently recognised both legislatively, in practice, and ideologically, across the South African state as a legitimate actor in shaping a social justice agenda. This may present an opportunity for a broader campaign around the role of civil society in the post-apartheid state. How civil society asserts and demands this legitimacy as a voice for social justice, whether it is outside or working with the state, while protecting its autonomy and independence, remains to be seen. Whether this requires demanding that current participatory processes are more than a formality, calling for more robust mechanisms for civil society involvement in the development of legislation, or raising awareness of the historical role civil society has played in social justice gains in South Africa, it remains to be seen. Underpinning this is a wider

campaign to protect the independence and autonomy of civil society, as a legitimate voice for social justice outside of the state.

Beyond this, there is also needs to be a wider consideration of what other kinds of actors are necessary to building and forging social justice in a post-apartheid South Africa. Historically, many universities played an important role in the struggle against apartheid and furthering democratic and social justice aims. For instance, in the formation of the independent trade union movement the involvement of university students and staff in the Wages Commission played an important supportive role to the emerging movement. In many of our interviews with government officials they stated that SJOs would be better placed to press claims if backed up with rigorous research. On the side of SJOs, while they recognised the need for such research, it was often outside their capacity given the time and resources that research can often consume. Government has recently placed new obligations on Higher Education to engage in more community research and this may provide an avenue through which SJOs can leverage the research expertise of universities for social justice.

Beyond this it may be necessary to strengthen and build coalitions within civil society. As discussed in section 5.4, the political context post-Marikana has been fast moving with the emergence of new political parties, student movements and a new workers federation seemingly imminent. These kinds of political developments offer SJOs potential new allies in building social justice.

## 7.5 Conclusion

The case studies presented in this report provide a nuanced and varied picture of relations with the state. The state is far from monolithic or without its internal political contestations and contradictions. Thus, there is no formulaic approach through which successful relations between SJOs and the state can be forged. It is argued instead that cooperative, complementary, co-optative and confrontational relations are all necessary under different circumstances for pursuing a social justice agenda with and against the state. This report thus offers, not an idealised way in which to understand SJO-state relations, but a means to conceptualise, contextualise and question the forms of relations that SJOs may and can have with the South African state today, in their pursuit of a social justice agenda.

The report has drawn attention to the way in which SJOs are working in an environment in which they are often not regarded as 'legitimate' and 'useful' actors by the state and noted that this appears to be a growing trend. It has argued that there is a need to defend the rights, independence and autonomy of SJOs and civil society as a whole in order to validate their role in the South African state in the pursuit of social justice. Despite the difficulties faced by SJOs in working with the state, the report highlights many aspects of positive practice and suggests pathways for the future.

## Appendix A: Case Studies

### Afesis-corporplan – Ward Key Performance Indicators

**Key theme:** Local government

**Key aim:** Improve the functioning of ward committees and embed them in the functions of local government.

**Key actors:**

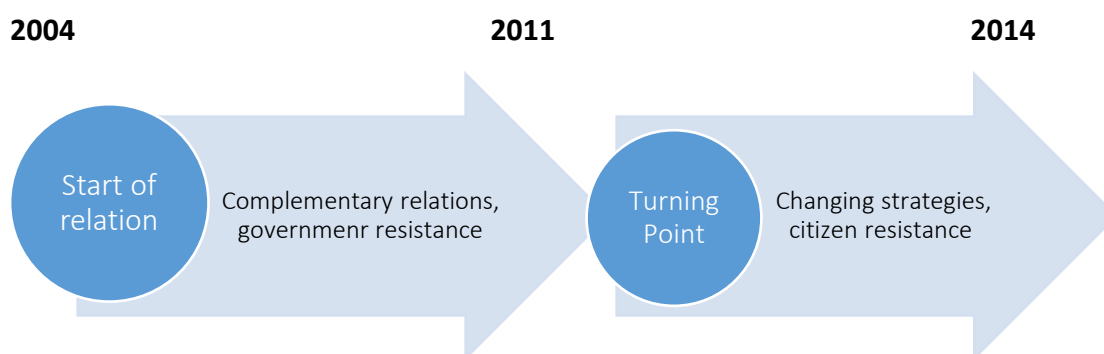
- Department of Cooperative Governance and Traditional Affairs
- Local municipality
- District municipality

**Timeline:** 2004 - 2015

**Key challenges:** The key challenge of this project has been the politically contested terrain of local government which has significantly impacted the ability of ward committees to function in the way envisioned by policy makers. Another significant challenge Afesis-corporplan has had in working with various government departments has been high staff turnover within government, which has compromised the ability to build meaningful relationships.

**Characteristics of the relationship:** The relationship can largely be regarded as complementary in that government has, officially, at least endorsed the Ward Key Performance Indicators programme. However, informally many government actors have resisted the role of ward committees in providing oversight and input into local government.

#### Relationship over time



#### 2004 – 2011: Complementary engagements and attempting to embed ward committees in local government

Afesis-corporplan's work on ward committees began in 2004 when it conducted research on ward committees, in partnership with the then Institute for Democracy in Southern Africa commissioned by the then Department of Provincial and Local Government. Working primarily in 4 district municipalities, the research aimed to assess the performance of the first ward committees at the end of their term. The report produced by Afesis-corporplan was

used to develop the first edition of the ward committee handbook that is still used by ward committees today.

In 2005, ward committees became mandatory and Afesis-corplan worked toward building the capacity of ward committees on the one hand, and to create a space for their meaningful participation in local governance. Afesis-corplan worked in 12 municipalities to develop a matrix that ward committees could use in monitoring the performance of local municipalities.

Over time, the number of municipalities in which the ward key performance indicators matrix was implemented was reduced to 7. Explaining why some municipalities dropped out, one respondent from Afesis-corplan attributed this to unease and confusion about the role of ward committees and how to effectively embed them within local governance:

*They were not quite sure where to position ward committees and they weren't quite sure about whether they wanted ward committees to play the role they were playing around performance monitoring because most of the municipalities didn't know how they wanted to institutionalise performance monitoring themselves. So it became quite an uncomfortable space and they felt then that Afesis-corplan was an onlooker to an uncomfortable space that they were at... there was nothing Afesis-corplan had done wrong or that the ward committees had done wrong. They were stalling, they didn't quite know what to do with the report backs that were coming from ward committees, they didn't know where to take these reports. There was a lot of contestation and there was a lot of information that was coming from ward committees and ward councillors didn't know what to do.*

Despite these difficulties Afesis-corplan persevered with the programme.

### **2011 – 2014: Increasing politicisation of local government, altering strategies**

Following local government elections in 2011, Afesis-corplan developed the matrix to include a greater focus on community feedback. However, ward committees were still not functioning as they should and still received resistance from being incorporated fully into the structures of local governance.

This led Afesis-corplan to attempt a 'sector'-based approach that involved a greater coalition between different sections of civil society. The idea of this approach was that different groups, for example, taxi associations, faith-based groups and women's groups, could nominate someone from their sector to be represented on the ward committee and thereby make the ward committee a truly representative structure as was originally intended:

*The idea was that these people would then carry the mandate of the sector onto the ward committee... while we realised that... this might not capture the needs of the entire ward, but the point of the matter was that all the people in the sector live in this ward, so if there is no water in the ward, it affects all of them, if there is no electricity, that affects all of them but beyond that, there are needs that are specific to disabled people that only disabled people can raise, there are needs*

*specific to farmers that only farmers can raise and so, it was then to make sure that all of those needs and those voices are heard as well*

But Afesis-corplan soon found that what they had conceptualised as a 'sector' and what the municipality understood to be a sector were two different things. In addition, Afesis-corplan faced significant challenges in bringing the different sectors together which were suspicious of the politicisation of ward committees:

*They were just not interested, they were not interested in the ward committee, they saw the ward committee as being political. They were not interested in anything that had political undertones, they had lost faith completely in the ward committee system.*

At the same time, ward committees still faced political resistance from municipalities. An Afesis-corplan report states,

*In an number of municipalities where a partnership between ward committees and civil society aimed at jointly monitoring the municipality's performance ward committees were informed (threatened) by their political bosses not to participate in the project and so in almost the same time, ward committees withdrew from the project. (Ngamla and Mathoho 2013: 14 )*

These experiences combined led Afesis-corplan to abandon the programme and concentrate on other strategies to increase citizen empowerment.

### **Key lessons and turning points**

The WKPI project highlights the difficulties of operating in the politically contested environment of local government. Reflecting on the programme, a report from Afesis-corplan concluded that the matrix was not designed with these political realities in mind and any future programme would have to consider how local politics impacts the running of such programmes.

### **Success and failure for social justice**

At the levels of outcomes the WKPI would largely be described as a failure as it did not achieve its goal of developing and embedding ward committees in local governance. However, the work of Afesis-corplan has also provided invaluable insights into the practical realities of participatory governance and what processes may be needed to entrench it in our democracy. This work has informed Afesis-corplan's future plans to develop a new advocacy strategy for citizen participation in local governance.

## Black Sash – ‘Hands off our grants’ campaign

**Key theme:** Social grants

**Key aim:** To prevent unlawful deductions being made to social grants

**Key actors:**

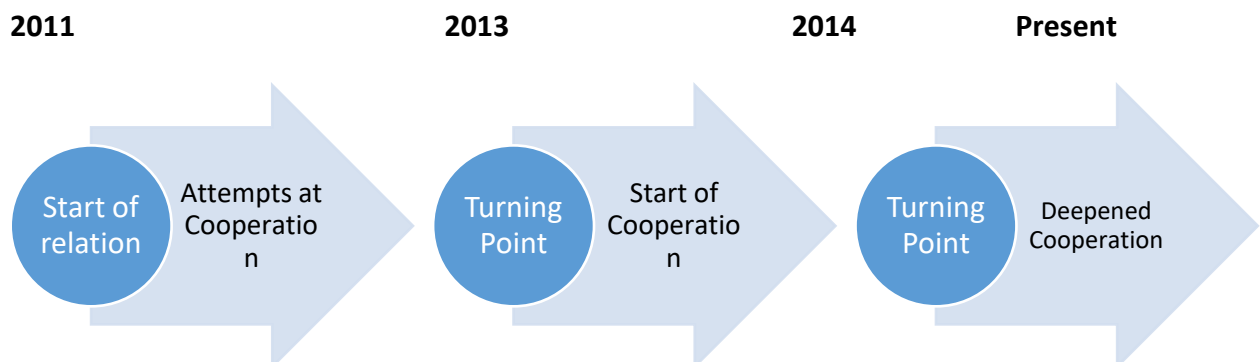
- South African Social Security Agency (SASSA)
- National Department of Social Development
- National Treasury
- Reserve Bank of South Africa
- Payment Association of South Africa
- National Credit Regular
- Banking Ombudsman
- Financial Services Board
- Constitutional Court
- Range of other SJOs, including the Association of Community-based Advice Offices of South African (ACAOSA).

**Timeline:** 2011 – to present (2016).

**Characteristics of the relationship:** The relationship between the Black Sash and the state can largely be characterised as a cooperative relationship. Both the Black Sash and state actors participated in a Ministerial Task Team (MTT) in order to address the issue of unlawful deductions of small amounts of money from social grant recipients’ bank account by companies.

**Key challenges:** The key challenge for both actors within SJOs and government was ‘silo’ thinking on the side of government, where government departments ‘don’t work co-operatively’ (SJO Respondent 2). The challenges within government was also noted by officials who commented that government departments ‘were really arguing amongst ourselves about whose responsibility this is to clean up’ (Government Respondent 2). Another challenge faced by the Black Sash is that its relationships with the Department of Social Development vary across provinces.

**Relationship over time**





**July 2011 – April 2012: Period of attempting to elicit cooperative engagement from the State.**

In July 2011 the Black Sash Community Monitoring and Advocacy Project (CMAP) began to uncover violations of Norms and Standards at social grant pay points, as well as evidence of irregular, unauthorised and undocumented third party debit deductions from the social grants beneficiaries' bank accounts. There was initial pressure from within the organisation to take a legal route with the state, but it was decided to 'work the advocacy first and build relations with the state' (SJO Respondent 2). The Black Sash began meeting with a number of government departments and high-ranking officials. The Black Sash's history was pivotal to 'opening doors' as it had established legitimacy over a long period of time. These meetings also enabled the Black Sash to better understand how government viewed the problem and therefore how to respond. As one representative from the Black Sash explained,

*The view of the CEO of SASSA was that deductions were unintended consequences and that it wasn't a big thing. We had to shoot that view out of the water to show that it is systemic and it requires your [SASSA's] intervention.*

**April 2012 – February 2014: Building cooperative relations within civil society, gathering evidence and engaging the state.**

In this period the Black Sash concentrated on gathering evidence and building awareness campaigns in civil society. Education materials such as the flyer titled 'You and Your Rights: Lawful Deductions from your Grants' were distributed amongst other civil society organisations and advice offices. The official 'Stop SASSA-CPS Debits Campaign' was launched in October 2013 in partnership with other SJOs. During this same period the Black Sash began collecting evidence on the impact of deductions on grant recipients. This evidence gathering was later to become influential.

Throughout this period Black Sash continues to engage various arms of the state and in November 2013 it wrote to the Reserve Bank of South Africa and the Department of Social Development stating its demands. It requested that the Reserve Bank and the Department of Social Development act in the public interest through invoking a directive to demand that the companies that are making debits from accounts immediately stop.

At the same time, in a case independent of the Black Sash, AllPay 2 Consolidated Investment Holdings won its Constitutional Court case against the tender process in which Cash Paymaster Services (CPS) was awarded the tender. A judgment order to determine the way forward and to ensure there is no interruption to the payment of grants was set for 17 April 2014. Black Sash raised concerns that the renewal of any contract to CPS or a new service provider must prevent the current system of deductions. Furthermore, the Black Sash argued that SASSA must resume payment of social grants.

**January 2014 – onwards: Cooperative working relations established.**

In January 2014 the Black Sash along with other organisations involved in the 'Stop SASSA-CPS debits campaign' met with government officials. This was followed by a meeting with the Minister for Social Development in February 2014 where the Black Sash and other SJOs

made a presentation to the Minister outlining the impact of deductions on grant recipients. The evidence collected by the Black Sash was vital according to one government respondent:

*It brings the reality home a lot faster. In government we look from the top at the numbers... 16 million grant recipients, 500,000 affected, 100,000 severely affected... the ratios and the numbers look small but suddenly you have 5 living, real case studies in front of you and that abuse clearly becomes quantifiable... you respond differently. Rather than looking at the statistics and thinking it's not that big a deal... without Black Sash the government's response would have been slower. (Government Respondent 2)*

Following the meetings and open letters, the Minister for Social Development established a Ministerial Task Team (MTT) to consider the available remedies. The Black Sash was represented on the MTT, which met 8 times for discussion and the formulation of a report to be tabled to the Minister of Social Development by the end of July 2014. The participation of the Black Sash on the MTT was conducted under certain conditions stipulated in a memorandum of understanding. This memorandum was important to the Black Sash in order to retain its autonomy and to avoid entering into or appearing to enter into a co-opted relationship. This included agreeing in the Terms of Reference that they would receive no money from the state.

Participating in the MTT allowed the Black Sash the opportunity to engage in what it describes as 'discourse change'. As a representative from the Black Sash explained, 'As the outsourcing [of the administering and payment of grants] happened, in came the language of business, client rather than citizen, out went the human rights language' (SJO Respondent 2). The Black Sash therefore had to work at re-centering social justice and human rights within the context of an outsourced service.

While the expectation was that the MTT would last only 6 months, it has continued. Furthermore, the Black Sash has been admitted as *Amicus Curiae* in the AllPay 2 Constitutional Court Case in March 2015. This provides an example of where litigation may actually strengthen the hand of the state in pursuing social justice. In representing the interests of social grant recipients in the case the Black Sash is attempting to ensure that the new tender process operates in a way that protects the rights of grant recipients.

### **Key lessons and turning points**

The Black Sash's experience of working with the state in the 'Hands off our Grants' campaign is an example of a particularly successful cooperative relationship. However, it should be noted that it took an initial period of engagement lasting two and a half years before substantive progress was made through the establishment of the MTT. It would appear that there were two critical turning points in the relationship. The first, the judgement in the Constitutional Court at the end of 2013 that the tender process followed in awarding the contract to CPS was irregular, was unconnected to the Black Sash. The fact that the tender process will be re-opened and a hearing established changes the political and institutional context. The second turning point was the presentation to the Minister in February 2014 that appears to have been pivotal in prompting the Minister to establish the

MTT. This meeting was influential because of the quality of evidence the Black Sash could present. Furthermore, the Constitutional Court judgement had created an environment in which it would be more likely that changes to the outsourcing process could be achieved.

### **Successes and failures for social justice**

The Black Sash's campaign achieved a number of successes. The Black Sash's advocacy work, both within and outside of the MTT, was crucial in bringing the scale of the problem to the attention of government. Its involvement in the MTT was able to develop and strengthen processes to ensure the rights of grant recipients are not being compromised by the outsourcing of grant payment and administration. The positive relations developed with government have also allowed the Black Sash to continue to play an ongoing role in the protection of grant recipients. Furthermore, the Black Sash has managed to work closely with government while retaining its independence and autonomy.

## Centre for Environmental Rights – Pollution and Climate Change

**Key theme:** Improving Air Quality

### **Key aim**

The Centre for Environmental Rights (CER) along with the Highveld Environmental Justice Network (representing an array of community networks and organisations) are advocating for the implementation of statutory processes to reduce air pollution in the nationally declared air pollution hotspot, the Highveld Priority Area. The area runs from Ekurhuleni to eastern Mpumalanga. The CER and its partners work within the institutional framework mandated by the Air Quality Act (2004) to reduce air pollution in the area. These include the Multi-Stakeholder Reference Group (MSRG), chaired by the national Department of Environmental Affairs, and the Implementation Task Teams (ITT), run by local government officials.

### **Key actors**

- Centre for Environmental Rights (CER)
- Highveld Environmental Justice Network
- Department of Environmental Affairs
- Municipalities in Mpumalanga Highveld
- Other civil society organisations, including groundWork.
- Industrial & energy entities such as Eskom, steel companies, and mines.

**Timeline:** 2014 - present (2016).

**Characteristics of the relationship:** The CER and its partners engage with national, provincial, and local government on this issue. Their relationship with the national Department of Environmental Affairs (DEA) has, at times, been confrontational and tense. This is despite positive and respectful working relations with the Department in its other programmes. In the sphere of local government, working relations with municipalities in the area have been largely cooperative and complementary. They largely agree on the envisioned environmental outcomes and CER has found itself playing a supportive role to local government. As a respondent from CER explained:

*We tried to...assist the local government guys because we know they need help and sometimes they actually need help from national government, you know? So we also put pressure on national government to assist the local government.*

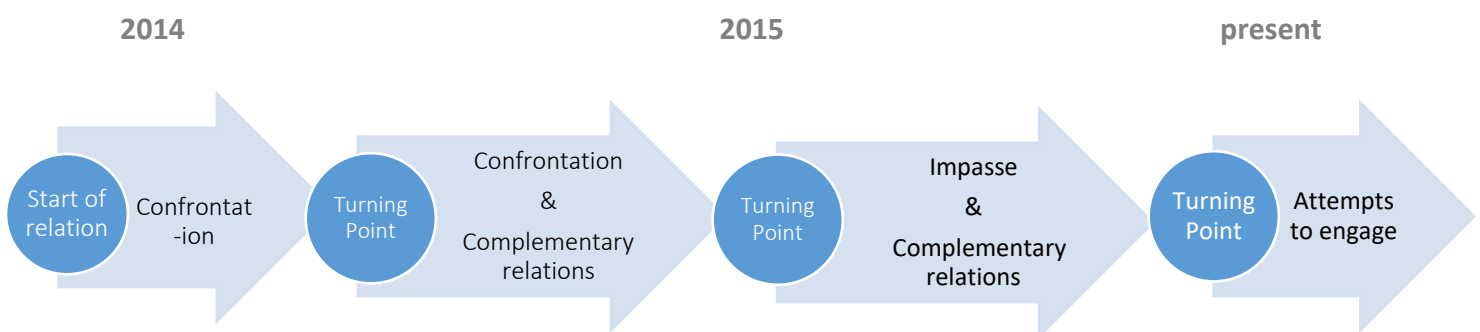
Relations with provincial government, meanwhile, are largely neutral – with the Province playing an oversight role.

**Key challenges:** The DEA is criticised by CER for granting too much leeway to major companies in the region on their obligations to reduce pollution. The difficult relationship with the DEA is attributed largely to its staff's interpersonal dealings in this case, and their strong aversion to criticism. The DEA has dealt poorly with communities involved. Relations between the DEA and community members deteriorated to the point that the DEA would no longer engage on the issue, and CER was forced to act to mend relations. The relationship

with the DEA, as national government, is crucial to high-level commitment to air quality standards and holding companies to account to reduce pollution levels.

Although there are good working relations with local government, municipalities do not have much power in holding polluting companies to account. This is despite their responsibilities in licensing and by-laws. Further, these municipalities and their environmental offices are under-resourced and overburdened. The CER describes its relations with local government as ‘not particularly successful, but we engage constructively’.

### Relationship over time



#### **Beginning of 2014: Companies apply for postponement and confrontation ensues**

In 2014, a host of large companies applied to national government to postpone their compliance with air quality standards. The standards were set by the Minister of Environmental Affairs in 2010, and companies would have been expected to comply with these standards by April 2015. In light of this application, CER, a number of community organisations, and NGOs launched a highly publicised opposition to this postponement. The lack of action in line with the 2010 defined standards was blamed on the companies and government for not enforcing regulations. A heated public participation process ensued, and the decision was to grant the majority of the postponements sought. The companies were given more time to comply with the standards, in most cases up to 5 years.

#### **2014: Confrontation with national government**

Despite the decision largely being in favour of the companies, the CER and its partners continued to engage government on holding the companies accountable to air quality standards. The engagement with the national department happened through the MSRSG, chaired by the DEA and attended by a range of national and local stakeholders. Their engagement with local government officials and local stakeholders happened in the Implementation Task Teams. The engagement with national government continued to be confrontational, while relations with local government are described as better: ‘*We speak to them more easily... we’re respected*’. Many municipal officials engaged openly and complementarily, with some of the CER’s recommendations for air quality by-laws implemented at a municipal level:

*I mean it hasn't been a great relationship with national government on this because we really disagree with what they are doing, so this is where they have given Eskom and Sasol and all the big polluters five years, in some instances more, to come into compliance with certain standards. We had a big fight with them about that, but at the same time we have also challenged some of the licensing decisions made as a consequence of that national postponement... in a constructive way. We actually got some good results, we had to go do oral submissions to the mayoral committee and we also engaged, relatively constructively with the local government guys because we know they are totally under capacitated, they don't have the people, so we tried to help them also and support them in some of their struggles.*

Relations between the coalition and the DEA were becoming increasingly tense. In September 2014, after one of the MSRGS meetings, engagement between the DEA and local communities broke down and reached an impasse. The Department had organised a meeting in an area that was not easily accessible by public transport, and far from many of the communities involved. Communities were angered by this and increasingly frustrated by the lack of progress in reducing pollution. As the meeting became increasingly heated, the Department's key official on air quality called it to an end and refused to engage any further with the community. This brought the issue and engagement to a standstill:

*We had a big breakdown...where there was a meeting that people got quite rowdy and the national environmental quality officer...ended the meeting and said, I am not coming back and so the whole thing fell apart, we are not having any meetings.*

### **2015-present: Navigating an impasse in relations**

In February 2015, the DEA advised the CER that it was suspending meetings on the air quality issues due to 'disruptions' in meetings. In the same month, a decision was made by the official on air quality to grant large industrial polluters in the Highveld, including Sasol and Eskom, a postponement on their required compliance with air quality controls. This exacerbated already tense relations between the DEA and the community organisations represented by the CER. Compromised relations with the national Department and this particular official would severely hamper the chances of realising decisive action to improve air quality in the region. From February, the CER worked to rebuild relations:

*I, on behalf of CER, and the director of one of our partners...travelled to Pretoria at our own cost to meet with [the official] to see if the situation could be resolved, which we followed with a letter proposing a way forward. No reply was ever received, but the meetings were reinstated on 29 June 2015 and have continued uninterrupted so far.*

Today, the CER and its partners continue attempts to engage and confront the DEA on the question of compliance with air quality standards. The CER and its partners are becoming increasingly frustrated by the lack of progress and the continued leniency on industrial polluters.

**Key themes and turning points:**

This case study illustrates that the state is characterised by different faces, with different degrees of power. Confrontational relations with one sphere of government can often be accompanied by complementary relations with another sphere around the same issue. Relatedly, high-level government will or commitment is crucial to ensuring action on social justice agendas even when there may be local government cooperation. Further, it illustrates the influence of actors outside of civil society and government in stalling outcomes that may be contrary to their interests in this case the influence of big companies. A crucial turning point in this case study was the MSRSG meeting in 2014. This illustrated a lack of consideration for the involvement of communities and raises questions about the veracity of certain kinds of state-run 'engagement'.

**Successes and failures for social justice:**

For the CER, there is very little that can be deemed 'successful' about this relationship. The social justice outcomes have been nominal. There has been no significant improvement in air quality, or action towards improving air quality, and the environment and communities continue to be negatively impacted. If we consider 'success' in terms of democratic outcomes, however, it is notable that local government considers the CER as a legitimate and useful partner in pursuing a shared goal of environmental and social justice. What is worrying, however, is the undue and undemocratic influence of certain stakeholders who act contrary to the community's will and wellbeing.

## The Children’s Institute – Campaign for an ‘extended’ child grant

**Key theme:** Social grants

**Key aim:** To increase provision of social grants to orphans in the care of relatives through the introduction of an ‘extended’ child grant.

**Key actors:**

- National Department of Social Development
- National Treasury
- Centre for Child Law

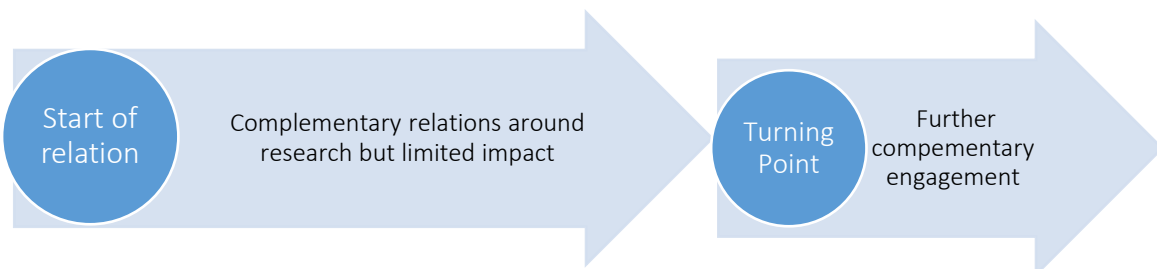
**Timeline:** 2005 – present (2016).

**Key challenges:** The key challenge in this relationship has been that two of the key directorates within Social Development are in conflict with one another. This has meant the Children’s Institute has often had to act as a mediator between the directorates. Furthermore, a key actor, the Chief Director for Children, opposed the idea of an extended child social grant and has therefore presented a significant obstacle in the process.

**Characteristics of the relationship:** The relationship has been largely complementary involving engagements with the state over a prolonged period of time.

**Relationship over time**

2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014



**1996 – 2002: Identifying the problem**

A range of SJOs, preceding the establishment of the Children’s Institute, began to identify and raise concerns about the inability of the foster care system to provide foster care grants in the wake of the HIV-AIDS epidemic and the rapid increase in the numbers of orphans being cared for by relatives. In 2001 the South African Law Reform Commission proposed a kinship grant as a way to address the problem. This was included within the Draft Children’s Bill but was removed when the Bill was tabled in parliament.

**2002 – 2011: Complimentary relations around research but limited impact**

The establishment and entry of the Children’s Institute into this campaign was important as it began to compile research into the problem. This was important as it provided a comprehensive evidence base that did not previously exist:

*So we started to do a lot of participatory research to highlight this problem, I don’t know – five, six years of research, both data analysis and participatory*



*research and legal research, so we put that all together and we kept highlighting this problem to government. Civil society was... the NGOs were doing the same but often with no evidence... So, we started to paint that big picture.*

This research included accessing the Social Pensions System (SOCPEN), government's system for grant administration. This was important as this database is described as something that government 'don't have capacity' to analyse. Access to this system was facilitated by the personal relations between researchers in the Children's Institute and Social Development officials. This has given the Children's Institute the ability to analyse trends in grant recipients every year. This has also been important to counter the way in which the Department of Social Development has been reporting statistics, which Children's Institute researchers claim is made on a flawed methodological basis:

*They will present to parliament... the foster care grants have gone up whereas in fact they have been going down for the past four years and the way they do that is that they compare November 2012 with July 2013 and you have got a trend where grants go up, up, up and then in December they chuck off about 90 000 kids when they reach the age of 18 and then it drops down again, so it is very important that you use the same month when you do your annual analysis.*

In 2007 Parliament instructed the Department of Social Development to review the foster care system.

### **2011 – 2013: High Court ruling and further complementary engagement**

After years of engagement around the issue the Centre for Child Law embarked on litigation action against the Department of Social Development. The North Gauteng Court ordered the DSD to design a comprehensive legal solution to the foster care crisis. As a result of this ruling the Children's Institute and CASE were commissioned to produce a report recommending reform. The years the Children's Institute had spent researching the issue meant that they were in an ideal position to carry out this work following the court order.

### **2012 – 2015: A slow and partial victory**

Following the report Social Development announced its intention to introduce a kinship grant. This appeared as a victory, but the process continued to move slowly. The Children's Institute and other organisations engaged in the process of reviewing proposed amendments to the Children's Act and in November 2013 a draft Third Children's Amendment Act was presented at the Department's Child Care and Protection Forum.

Another year rolled by and by October 2014 there was little change. Frustrated by the lack of progress the Children's Institute and other SJOs issued a press statement calling for the Draft Social Assistance Bill and draft regulations to be published for public comment and tabled in parliament by early 2015. Finally in November 2015 the 'extended' child social grant was approved by Cabinet but in a form that was 'significantly watered down' from the drafts contained in the 2013 document.

### **Key lessons and turning points**

The experience of the Children's Institute highlights the limitations of a complimentary relationship for effecting social change. While the Children's Institute has been able to work

with various arms of government in a constructive way over a period of many years, this has had little impact on the view of decision makers. The Minister is described by the Children's Institute as 'struggl[ing] to understand the need for change'. This is despite the fact that the proposals suggested by the Children's Institute enjoyed support at more junior levels. It appears that only when litigation is undertaken by the Centre for Child Law that genuine engagement to implement a solution begins. However, the latest legislation still falls short of the amendments that the Children's Institute and others have campaigned for.

### **Success and failure for social justice**

The definitive success of this campaign is that despite resistance over a long period of time, it has been able to see the extended child grant be approved by Cabinet. This is particularly notable as it has largely done so without recourse to confrontational relations witnessed in other case studies. However, the challenge is that the amendments fall short of what the Children's Institute and others have campaigned for and therefore may not affect the social justice outcomes that have been hoped for.

## CHoiCE Trust – Community dialogues for the improvement of health

**Key theme:** Community health and HIV/AIDs testing and awareness.

**Key aim:** To provide HIV/AIDS testing and counselling services combined with community dialogues to empower communities to improve community health and other services.

**Key actors:**

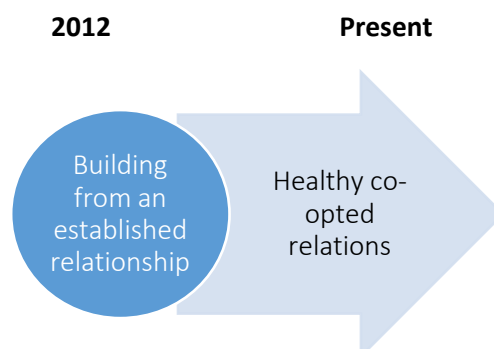
- Limpopo provincial Department of Health
- District Municipality

**Timeline:** 2012 – present (although the programme has existed in comparable forms prior to 2012).

**Key challenges:** The CHoiCE Trust is based in Limpopo and this has a particular influence on the kind of relationship and the challenges it has with government. The Department of Health in Limpopo has been under particular pressure, especially when five departments in the province were placed under administration, including the Department of Health. The CHoiCE Trust witnessed a department that was so dysfunctional that it was unable to buy toner and paper for printers. This led to the CHoiCE Trust stepping in to buy such equipment. Indeed, it is these resource and capacity constraints that are the key challenge that the CHoiCE Trust has faced in working with government, but this has also presented the organisation with opportunities to work with government for social justice.

**Characteristics of the relationship:** The work of the CHoiCE trust presents an example where the means and ends of government and the SJO are aligned and therefore this can be characterised as a relationship of co-optation. This does not mean that the CHoiCE Trust does not exercise independence and autonomy from the state, but that it enjoys a close and generally productive relationship with the state. This provides an example where an SJO is regarded as a legitimate actor and has played a considerable role in supporting the work of government.

**Relationship over time**



Although the current programme began in 2012 the CHoiCE Trust has a relationship with government that pre-dates this current programme. Recalling the history of their engagements with the State, a respondent for CHoiCE noted that previously the

organisation had taken a more critical stance in its relations with government, however, 'it was clear that we weren't winning'. Two things occurred that altered how the CHoiCE Trust approaches working with government. The first was a series of meetings organised by the US-funded President's Emergency Plan for Aids Relief (PEPFAR). This allowed people within CHoiCE to better understand the challenges of government:

*We learned a lot more about the challenges they were facing and ways we could work together, we are now working together very well. Of course, there's always some frustrations... [but] it's become a mutual frustration... we can pick up phones now... we've all realised that we are moving towards the same end goal.*

The second important factor has been the placing of the Limpopo Department of Health under administration, as discussed above. This has laid a solid foundation from which CHoiCE works with government on its programmes.

The community dialogue programme uses a community capacity enhancement methodology in order to identify both the problems community members are experiencing, but to also give them the tools to attempt to address these problems themselves. This approach attempts to fix a 'flawed' system at a very localised level: 'Changing things at district, provincial or national will take years. You have a problem with your clinic, go organise and go and tell the clinic'.

One example of the implementation of this programme was in Mavele village, outside Tzaneen. Through participating in the programme the community created a Clinic Committee that meets once a month with the clinic to address issues. Since the programme started residents note a marked improvement in waiting times at the clinic. This work also comes in the context of the CHoiCE Trust's extensive work in HIV/AIDS testing and counselling.

### **Key lessons and turning points**

The case of the CHoiCE Trust provides an example where a relationship that had previously been more confrontational has developed into one in which there is a close working relationship between arms of the state and the SJO. This is largely due to the strong congruence between the aims of the Department of Health and CHoiCE. It is important to note that the intervention of PEPFAR in assisting CHoiCE to better understand the challenges of government led to a changed attitude to the working relationship with government.

### **Successes and failures for social justice**

CHoiCE's approach is not to advocate for wholesale change in the provision of health facilities in South Africa but to operate within a system it describes as 'flawed' to mitigate its failures. The focus on citizen empowerment therefore seeks not only to improve health services but also the engagements between citizens and the front-line services of the state they encounter. This programme has therefore had positive impacts on processes and relations within government, and between government and citizens. Furthermore, it has also produced concrete outcomes such as reduced waiting times at clinics. However, given

the programme's localised focus it is unlikely to be able to overcome the structural constraints and weaknesses of state health provision in South Africa. It is likely that this would require an approach that would challenge the state on a larger scale.

## Corruption Watch – Corruption in the public housing sector

**Key theme:** Corruption in public housing.

### Key actors

- Corruption Watch
- Gauteng Department of Human Settlements' Anti-Fraud and Corruption Unit (AFCU)

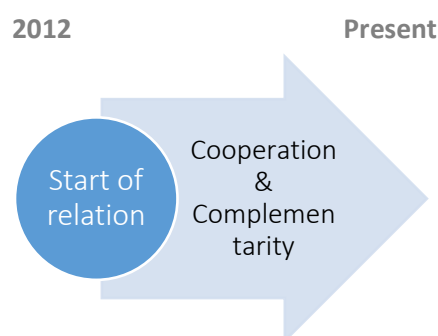
**Key aim:** Investigating and combatting corruption in the public housing sector in Gauteng.

**Timeline:** 2012 – present (2016).

**Characteristics of the relationship:** The relationship between Corruption Watch and the Gauteng Department of Human Settlements' Anti-Fraud and Corruption Unit (AFCU) is best described as a complementary, cooperative, and mutually beneficial relationship. Both actors share a clear common goal, and, largely, share similar views on how this goal should be achieved. Further, there is openness in sharing information and a good relationship between key individuals in government and the SJO. In combatting corruption in housing they perform different functions – Corruption Watch shares public reports of corruption submitted to the organisation, and the AFCU investigates these. Corruption Watch then tracks the progress of investigations into these allegations. Corruption Watch has also been asked to help AFCU with communications for anti-corruption campaigns and disseminating information to the public.

**Key challenges:** AFCU and Corruption Watch appear to differ on whether to sign a memorandum of understanding (MOU) to formalise their complementary relationship as it currently stands. Corruption Watch sees this as potentially compromising their ability to hold the AFCU to account for investigations, and slowing down processes, while the AFCU sees it as a means to improve current anti-corruption measures through clear objectives and to give Corruption Watch formal authority.

### Relationship over time



### 2012: Building understanding and changing perceptions

When Corruption Watch approached the AFCU it was clear about its goals, campaign and the information at its disposal on corruption in the department. This approach of 'building a relationship' is considered by Corruption Watch as an important precursor to implementing

a campaign or programme, and depending on the response by the government unit in question, shapes the subsequent approach to interaction with the department. The process of building and managing relationships is undertaken by a stakeholder management officer. The AFCU appreciated that this initial engagement was ‘not aggressive...but just an enquiry’. Subsequently, a formal meeting was organised, where both explained their strategies, position, protocol and goals. The government unit says that this was important in building the SJO’s understanding around government protocol. In this meeting they agreed to collaborate and continue to engage.

### **2012 – 2015: A working complementary relationship, but wariness of co-option**

In the relationship that ensued, Corruption Watch provided information to the unit on corruption in Human Settlements, and the unit then investigated and addressed these complaints. Corruption Watch held the unit accountable for its dealing with the allegations. They shared reports and research, and invited each other to participate in relevant workshops and events.

After the working relationship solidified, AFCU asked for input from Corruption Watch on communication strategies to build public awareness around housing corruption. Further, both parties are participants in the Province’s Anti-Corruption Steering Committee, along with other civil society, government and business actors. The committee is convened a few times a year and the outcome of discussions informs provincial mandates.

The AFCU considers its partnership with Corruption Watch as a collaborative working relationship aided considerably by the fact that they share the same goal. Further, Corruption Watch is seen as a crucial partner as they have access to information and communities that AFCU does not:

*We have the same goals, the same objective. We all have the same interests in ensuring that we eradicate fraud and corruption in the housing sector. We can’t not collaborate. We have to collaborate. I don’t ever think we can be in conflict, because our objectives and goals are the same...Our ideas are the same, and we have the main goal at hand. That’s why our relationship works. It’s not even an enforced relationship. It’s not a relationship that has perceptions. There’s trust, there’s honesty, and most importantly – there’s same goals and same objective that we want to achieve. (Government Respondent 6)*

However, for Corruption Watch, this complementary working relationship does not mean that they are ‘friends’ and will not hold the AFCU accountable for investigations into corruption: they maintain elements of confrontation where necessary. In fact, they suggest that the better relations are with government departments, the more likely they are to hold them to account:

*They are learning the hard way because we are not stopping. The more we become partners with them is the more we actually use even longer whips.*

The Unit would like to formalise the responsibilities of the relationship through an MOU. Corruption Watch is generally reluctant to sign MOUs with government departments,

believing that this may undermine their independence in holding government to account. As a representative of Corruption Watch noted about MOUs generally:

*So, if you are going to sign a MOU with them [government], it means we are signing it with them to say we will give you our information but you will do as you please with it, so we will be stuck because now we will have people who have reported to us but we are unable to report back to them because they are working on these particular matters and they are taking seven years, they say 'but you signed with us'. So, we have avoided signing these MOUs with them because those are the specifications that they come with, that it will be their terms, and their terms only.*

### **Key lessons and Turning Points**

The Corruption Watch case study indicates a kind of relationship that can be built when the state and an SJO share similar means and ends to achieving a social justice outcome, and are willing to recognise each other as partners in achieving this outcome. An important formative 'turning point' in this relationship was the initial meetings to establish an understanding by both parties on what their strategies, processes and objectives are, who it is they represent, and what it is they do. This common understanding of ends and means shaped the subsequent form of relation, and also allows both parties to hold each other to account based on a common understanding, albeit informally. A potential turning point in the future is whether parties choose to sign an MOU and formalise responsibilities.

### **Successes and failures for social justice**

This case study provides an example where a complementary and cooperative relationship has been successful. The example of the Corruption Watch case study underlines the efficacy of complementary and cooperative relations in situations where there is a shared goal and the state views an SJO as having a useful role to play.



## Equal Education – School Infrastructure

**Key theme:** School infrastructure

**Key aim:** To legislate minimum norms and standards in school infrastructure

**Key actors:**

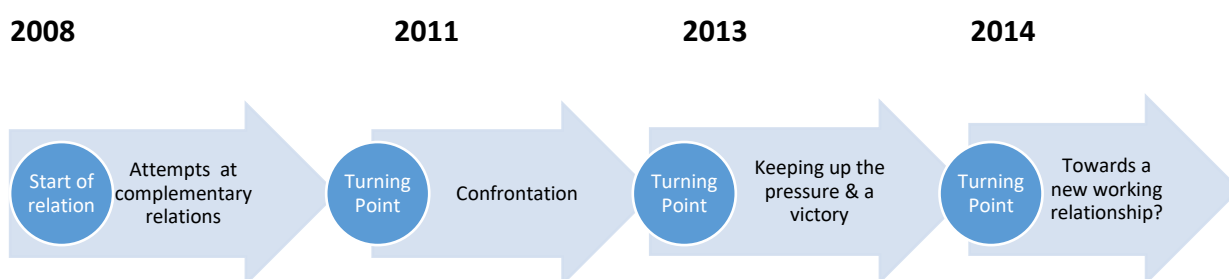
- Department of Basic Education
- Provincial Departments of Education
- Legal Resources Centre (LRC)
- Equal Education Law Centre

**Timeline:** 2011 – present (5 years)

**Key challenges:** This campaign has encountered two main challenges. One seems to be the reluctance from the Minister of Basic Education to implement legislation on minimum norms and standards in school infrastructure. Two, the mobilisation efforts undertaken by Equal Education are seen as ‘politically motivated’ and therefore Equal Education is oftentimes not seen as a ‘legitimate’ actor.

**Characteristics of the relationship:** The relationship can mostly be characterised as conflictual on both sides. The Minister in particular appears to be hostile to Equal Education, but this hostility also needs to be contextualised in a period of time where the Minister has become a prominent figure of attack from trade unions.

**Relationship over time**



### **2008 – 2010: Identifying the problem and beginning to engage complementary relations with the state**

In 2008 the Minister of Basic Education published a Draft Norms and Standards (N&S) for School Infrastructure, which, although it had a clear timeframe, was never adopted into law. Over a two-year period various commitments were made over the N&S but the legislation was never promulgated. Equal Education had written engagements with the Minister over this period.

### **2011: Mobilisation and confrontation with the state**

After more than two years of waiting for the N&S to be promulgated, EE expanded its existing mobilisation campaigns around school libraries into a broader campaign for Minimum Norms and Standards for School Infrastructure. Various campaign strategy were

used over this period including letter-writing campaigns to the Minister, marches, setting up of 'school classrooms' outside parliament to create awareness around the problem of mud schools.

In June 2011 the Minister attended EE's People's Summit for Quality Education. The Minister blamed the opposition MECs for causing the delay to the adoption of the N&S. She stated, 'I am not by law, able to move'. However, the law requires no agreement from MECs. Following the summit Equal Education maintained their mobilisation efforts including holding a two night vigil outside Parliament in July 2011 where protesters were threatened with arrest.

### **2011 – 2013: Escalating confrontation and the use of litigation**

Following mobilisation efforts, Equal Education embarked on the use of legal action. In August 2011 the LRC, on behalf of EE, sent a letter of demand to the Minister stating that if the norms and standards were not published then EE would launch an application in the High Court. In response the Minister stated that she was not compelled to pass legislation for norms and standards and would, instead, adopt non-binding guidelines. This was the first time the Minister publicly stated an unwillingness to adopt norms and standards. In the same period, the LRC and EE began to document evidence of urgent infrastructural needs in 7 provinces and collected over 20 affidavits from principals, learners, teachers and parents.

In February 2012 the High Court case was launched with the LRC representing EE. The case was filed in the Bhisho High Court against the Minister, the 9 provincial MECs and the Minister of Finance. By April 2012 the Minister filed her notice to oppose EE's court case but the 9 provincial MECs and the Minister of Finance filed notices indicating they would not oppose the case. This suggested internal conflict within the state over the issue. The Minister was granted 3 extensions to provide her time to file an answering affidavit, but when she requested a fourth EE opposed this. While the court case was ongoing EE maintained their mobilisation efforts.

By November 2012 the case was settled with the Minister agreeing to binding minimum norms and standards for school infrastructure. A timetable was set that the norms and standards must be published for public comment by 13 January 2013 and promulgated by 15 May 2013.

### **2013: Keeping up the pressure and a victory**

On 9 January 2013 a draft on N&S was published but the draft fell short of expectations. EE continued their mobilisation efforts but also participated in the public hearings and made written submissions on the draft N&S.

Following the public hearings the Minister wrote to EE requesting a 6 month extension for the promulgation of the N&S in light of public comment received. The membership of EE was polled and the request for a 6 month extension was rejected and the membership decided to offer 1 month instead. On behalf of EE, the LRC wrote to the Minister offering a one month extension on condition she signed an addendum to the original settlement agreeing to the new deadline but the Minister rejects the one month extension. Following

this the Minister publicly attacked EE describing them as ‘a group of white adults organising black African children with half-truths’.

Following these comments, a delegation from EE met with the Minister and the Deputy Minister, but the timeline for implementation was not resolved. EE then obtained an order-by-consent from the Bhisho High Court creating a new binding timeframe. The draft had to be published for public comment no later than 12 September 2013 and had to be promulgated by 30 November 2013. EE and the EELC filed a joint submission on the new draft N&S and held public hearings in 5 provinces. They also maintained their mobilisation efforts throughout this period.

### **2013 – present: Towards a new working relationship?**

By November 2013 the N&S were promulgated and the campaign now shifted focus to implementation. To that end a conference attended by government and civil society organisations was held on the monitoring and implementation challenges of the N&S.

### **Key lessons and turning points**

The example of EE demonstrates the efficacy of confrontational relations in the face of a state that appears to be dragging its feet. Sustained pressure through the combined use of mobilisation and litigation achieved significant gains.

### **Successes and failures for social justice**

The experience of EE demonstrates how confrontational relations can be successful in promoting social justice. The promulgation of the N&S may not have happened in the timeframe it did without a confrontational relationship, particularly if we compare the experience of EE with the Children’s Institute. However, confrontational relations often carry the danger that they foreclose any other form of relationship. As EE goes forth in monitoring and pushing for the implementation of the N&S, questions will be raised about how effective confrontational relations may be in these circumstances.

## Legal Resources Centre (LRC) – Land Project

**Key theme:** Land reform.

**Key aim:** Access to essential agricultural infrastructure and security of tenure for a group of previously disadvantaged farmers organised under the Stellenbosch Small Farm Holdings Trust (SFHT), who move onto commonage land in Stellenbosch Municipality.

**Key actors:**

- Legal Resources Centre (LRC) Land Project
- Stellenbosch Small Farm Holdings Trust (SFHT)
- Stellenbosch Municipality
- Department of Land Affairs (DLA) (prior to 2009)
- Ministry of Rural Development and Land Reform (DRDLR)
- Department of Agriculture

**Timeline:** October 2002 – to present (2016).

**Characteristics of the relationship:** This interaction with the state has been complex, with adversarial and cooperative relations occurring simultaneously with different spheres and departments of government. The relationship between the state and the LRC has ‘ebbed and flowed’ (LRC respondent), both with national departments, as well as with the municipality. Despite periods of cooperation, relations have been predominantly confrontational. The LRC and farmers are frustrated by the drawn-out process and limited gains.

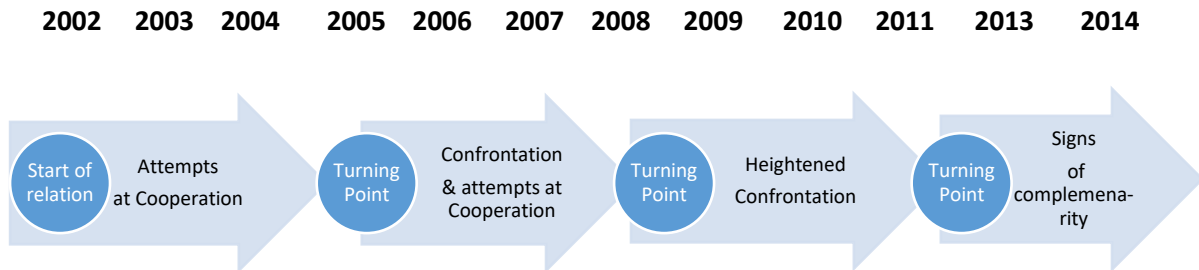
**Key challenges:** This project has been subject to numerous, complex and intersecting challenges related partly to the length of time over which the project has unfolded. One of the frustrating challenges faced by the LRC and small farmers for over 10 years is related to what government requires of them in order to access grants for infrastructure. The LRC and farmers have had to contend with constantly changing requirements from government, miscommunication, and a lack of institutional capacity and continuity. At key points when they appeared to have made progress in accessing government grants, changes in staff and shifting bureaucratic requirements reversed any gains:

*These are the [bureaucratic challenges] we’ve faced. They’ve all been about meeting the new, changed regulations...We would say ‘no no, we’ve applied for that’. They’ll say, ‘that’s the past, we changed. It’s a new set of rules from the government. That money is not available anymore’. That is cross cut by people who change jobs all the time...We’ll sometimes make good contacts, and suddenly discover they’re no longer there. They’ve been promoted or have gone somewhere else. (SJO Respondent 15).*

The municipality on one hand, and the LRC and the Trust on the other have also differed on what it is they envision for the land reform project. While farmers have been primarily concerned with gaining access to adequate irrigation and tenure, the municipality has focused on making the project commercially viable. This all occurs in contested political

terrain and around a politicised issue. This has made the project prone to political power plays between subnational government and national government, and their respective party affiliations.

### Relationship over time



### October 2002- July 2005: Period of organising and signs of a cooperative engagement from the state:

A group of 14 farmers from previously disadvantaged backgrounds moved onto and began tilling commonage land in Stellenbosch Municipality. They organised themselves in 2003, with the help of the LRC, into the Stellenbosch Small Farm Holdings Trust (SFHT). The Trust communicated with municipal actors and the Department of Agriculture to explain their proposal for land reform. Initially, there were signs of a potentially cooperative relationship developing with key government actors, both nationally and locally. The Department of Land Affairs, as well as the Municipality, committed themselves to land reform and agreed to assist the farmers in accessing the necessary infrastructure. The farmers saw some material gains in this time, with an emergency irrigation system built by the District Municipality and the Department of Agriculture providing them with a tractor and some equipment.

### July 2005-2010: Unsuccessfully attempting to engage the municipality and navigate bureaucracy

In order to gain access to funds for infrastructure for its land reform project, the Trust was required to submit a grant application to the Municipality. For five years the Trust faced an uphill battle in this grant application process. The municipality displayed a lack of will and capacity, stalling on the process of submitting the grant application, not attending meetings, and not communicating effectively with the farmers or the relevant national departments:

*The ideal was always to create a partnership with the municipality - that's always what the farmers wanted. We've always, for many many years, tried to work with the municipality and give them all the support possible, legally and administratively, and ideas as to how to run this project...how to best support the farmers. But there were times when there just was a real lack of political will within the municipality, to the extent that at times there was an active, kind of, dismissal of the project where some people in the municipality actively tried to stop this land reform project. In those times, our relationship with the municipality*

*changed completely. When you're in that situation it then becomes an adversarial relationship (SJO Respondent 8).*

During this time, the Department of Land Affairs (later the Department of Rural Development and Land Reform) was supportive and cooperative, but required the grant application from the municipality to move forward on the process. Miscommunication between the DLDR and municipality created constant confusion on the grant process.

However, what appeared to be capacity, communication and operational problems was complicated by evidence of a 'turf war' between different levels of government looking to 'claim' the land reform project. Politics, and political will, although latent, was shown to play a role in undermining the farmer's struggle to farm the land:

*The political considerations are seen to be, by those affected, as key. [Rather] than just a failure to understand, or incompetence...but...something far more insidious which is the use of position and political status to exercise power in different ways. (SJO Respondent 15)*

Eventually, in 2008, the Sustainability Institute of Stellenbosch was approached by the Trust for help in navigating the bureaucracy. The Institute assisted the municipality with the grant application. The institute in turn committed R200,000 to the application process. Finally, in 2010, the municipality submitted the grant claim to the DLDR.

### **2010-2013: A breakdown of communication and progress**

The grant claim was rejected by the DRDLR. The Department claims that in the time it had taken for the municipality to complete the application requirements had changed. This required the LRC and the Trust to begin the process again. In this period, the relationship between the municipality, and the LRC and the SFHT had all but broken down.

An external service provider was contracted by the DRDLR to help with assessments for the grant application, as required by the municipality. The service provider did not do the work as required, and displayed a contemptuous attitude towards the farmers and they became increasingly frustrated with having to 'jump hoops' for the municipality.

In this time the relationship with the DRDLR also appeared to wane. Communication from the department was less regular, and they lack commitment to meetings:

*We've moved forward and backwards in our relationship with government [DRDLR]. We've had such problems with the department at one stage, that we even reported their ineffectiveness to parliament, to the portfolio committee on rural development, which was probably the height of our adversarial relationship. (SJO Respondent 8)*

For much of 2012/2013 the municipality was also unwilling to meet with the farmers and the LRC. The Trust continued to try and move the municipality forward on the new grant application process. Eventually, the grant application was submitted DRDLR, and was reviewed by other national stakeholders. At this point, things seemed to be on track.

However, all of this turned around in August 2013 when the official dealing with the case

and application in DRDLR left. The new official was not briefed on the Trust's land reform case, and the grant application 'disappeared'. The DRDLR told the Trust to begin the application process again. This was after over half a million rand had been spent on two previous 'failed' applications. At this point, there was no institutional memory of the Trust's land reform project within the DRDLR.

### **2014-2015: Signs of municipal complementarity and continuing confrontation with the DRDLR**

Tensions with the DRDLR continued after they again changed the requirements for the Trust to access the grant, requiring that they find a 'strategic partner'. However, in 2014 there were also signs of the beginning of improved relations with the municipality, after Stellenbosch Municipality committed to the Trust's case as a pilot project for land reform. The change of one staff member to head the project in the municipality yielded a new attitude and commitment to the farmers' cause.

*When I started there, there was a lack of trust between the farmers and the municipality. I managed to build relations with the farmers...just understanding their situation and listening to their problems played a huge role in mending those relationships (Government Respondent 8).*

What was positive is that for the first time since the project's inception the municipality displayed a will to act on land reform, despite different ideas of how to get there. This was almost entirely attributed to the new staff member championing the project. They made progress towards water pipelines being secured, individual lease agreements being signed and a commitment to fencing. The municipality even drafted a policy for land reform based on the experience with the Trust that is approved by Council:

*She's the best person we've ever had in the local authority, without exception. She's committed to what we're trying to do. She has an attitude to working with poor people which shouldn't be unique, but it is among bureaucrats. And she's just accepted a job at SALGA. We're faced with another change. (SJO Respondent 15)*

At the end of 2014, the staff member who had championed the farmers' cause left the municipality. Considering its tumultuous experience of engagement with the state, the LRC and the Trust were wary of losing the gains of recent years.

### **Key lessons and turning points**

The municipality's poor communication with the farmers and national departments for many years frustrated any attempts to move forward on land reform. This lack of communication and action, however, seems to be explicitly tied to a lack of political will. Crucially, the major turning points in this case study concerned staff changes. The abrupt staff change in the DRDLR undermined years of work by the Trust and LRC, while a staff change in the municipality led to a renewed commitment to land reform. The LRC's work with the SFHT is indicative of the importance of communication, staff, and political will by government actors to the pursuit of a social justice agenda. Further, these cannot be viewed in isolation from broader political power plays.

**Successes and failures for social justice**

Until the commonage land is irrigated and protected, the LRC and the Trust are unlikely to view their relationship with the state in this case as successful. However, what is noteworthy is the favourable assessment that the LRC and Trust have of their recent relationship with the municipality. This is thanks to the work of a particularly motivated and committed staff member and renewed political will by the municipality. An improved working relationship between the municipality and the LRC and the Trust has led to important policy changes in the municipality that, if implemented, are likely to have long-term benefits for land reform in Stellenbosch. Although not an immediate material gain, this, after over 10 years, represents a significant step for deepening a progressive social justice agenda.



## NICRO – Social Crime Prevention

### **Key actors**

- NICRO
- National I Department of Social Development
- Provincial Departments of Social Development
- Department of Justice
- Department of Correctional Services

### **Key theme**

Social Crime Prevention.

### **Key aim**

NICRO's diversion and non-custodial sentencing programmes intend to provide offenders with alternatives to imprisonment. Through these programmes and other social crime prevention initiatives, NICRO aims to reform criminal justice, including juvenile justice, and reduce crime in South Africa.

**Timeline:** 1980s – present.

### **Characteristics of the relationship**

NICRO has played a seminal role in reforming criminal justice in South Africa. In its early years, NICRO played an advocacy role and acted as a 'gap-filler' for government – researching, developing, driving and running social crime prevention programmes in the country. Through this, NICRO established complementary and cooperative relationship with the Departments of Social Development, Correctional Services and Justice. In recent years, however, NICRO's relationship with the state could be described as moving from cooperation to co-optation. As NICRO's policy and programmes became integrated into state policy and practice, the organisation increasingly became a government service provider. At the same time, its financial autonomy was compromised by reduced foreign funding, and increased reliance on government funds. In this current period, NICRO faces the challenge of balancing being a service provider, continuing to lobby for improved criminal justice reform, and holding the government to account for its implementation of its social crime prevention policies.

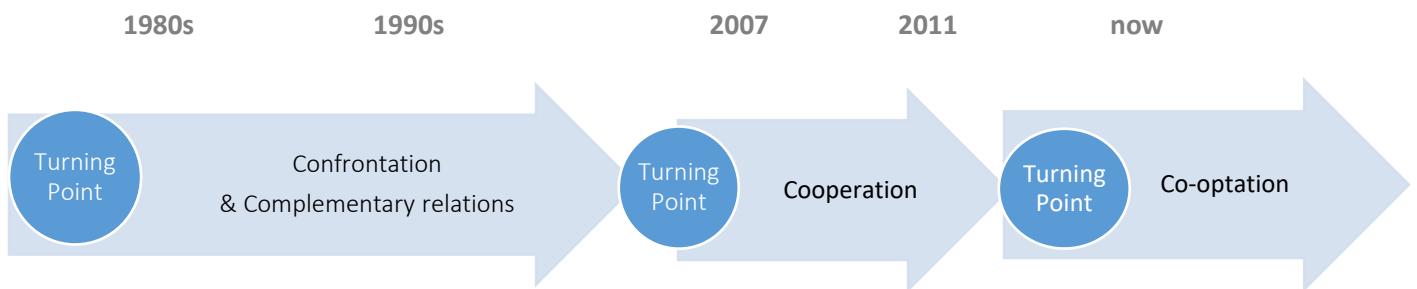
### **Key issues**

The Department of Social Development has 'taken over' work that NICRO initially pioneered in social crime prevention, but has not credited them for developing the programmes. NICRO is reliant on funding from the Department of Social Development and income from providing services to provincial Departments of Social Development. It is trying to formalise relationships with other government departments to pay for NICRO's services, and has recently started a Pty Ltd. company to provide paid services to customers. At a provincial level, a provincial Department of Social Development is concerned that their relationship with NICRO is bordering on 'coercion' due to its increased reliance on the Department's

funding. The Department claims that its opportunities to engage more equally with NICRO as a 'partner' occur only outside of the contractual relationship:

*They have, every second month, a round table with various topics. On that platform, NICRO is a strategic partner. On that platform we engage, and advocate, and critique one another – we really vigorously engage one another...this partnership is not only around rands and cents. (Government Respondent 9)*

### Relationship over time



#### 1980s: Changing South Africa's criminal justice system

NICRO spearheaded non-custodial sentencing in South Africa in the 1980s by pioneering community service orders in Cape Town. This provided offenders with an alternative to imprisonment through community service. Non-custodial sentencing became a cornerstone of NICRO's work.

#### 1990s: Pioneering diversion, a gap-filler for government

In 1992, NICRO, along with Lawyers for Human Rights and senior state prosecutors, pioneered a formalised diversion programme in South Africa. Alongside this, they organised a campaign for reforms to the way children are treated by South Africa's criminal justice system. Over the course of the 1990s the organisation researched, developed and implemented policies and programmes for diversion across South Africa. In the early 1990s and 2000s, NICRO worked closely with the Department of Justice in developing diversion programmes prior to their being legislated. One provincial Department of Social Development official says NICRO's pioneering work in the 1990s played a crucial 'gap-filling role' in the South African state's criminal justice, acting on a social justice issue before government realised its significance. NICRO's funding came primarily from the international donors during this time and the organisation considered itself 'financially strong'.

#### 2000 – 2007: Driving social crime prevention amid dwindling foreign funding

Through its research and programme development, NICRO continued to push for systematic reform to criminal justice. It also provided crucial social crime prevention services across the country. However, the 2000s saw a notable reduction in foreign funding directed to NICRO. Increasingly, foreign funders chose to sign bi-lateral and multi-lateral agreements with government, which saw funding for criminal justice reform funnelled to the state. Increasingly, NICRO began to rely more on state funds.

### **2007 – 2011: A change in legislation and policy, the state takes over**

In 2007, NICRO and the Department of Justice piloted a non-custodial programme, funded primarily by the Department. Between 2007 and 2011, significant legislation and policy changes happened in South Africa in the interest of social crime prevention and criminal justice reform. In 2008, the Child Justice Act was passed, legislating diversion for children in conflict with the law. This was the first time that diversion became a legislated state mandate. This represented a significant victory for NICRO and its work. In the next few years, Social Crime Prevention became part of government policy. Its models and programmes informing policy, NICRO also provided input which helped guide the Department of Social Development when launching the Integrated Social Crime Prevention Strategy in 2011.

### **2012 to present: Co-opted policies, funding challenges and a lack of autonomy**

In the years that followed the legislation and new policy, many of the social crime prevention initiatives that NICRO had developed were adopted soon national and provincial government. NICRO claims that they were sometimes ‘taken advantage of’ by Government and not credited for their programmes and policies being adopted. Although this is something that the organisation had conceded to, what is more worrying to them is that the programmes were not implemented effectively. The impacts can be detrimental to offenders and the outcomes unsuccessful. In order to monitor the government’s implementation of social crime prevention, NICRO sought funding from an external funder, the Human Dignity Foundation.

As provinces and national government coordinate social crime prevention, NICRO is one of several NGOs contracted out to run some of the programmes. As a service provider to government, NICRO has become increasingly dependent on the Department of Social Development, both nationally and provincially, for funding. There is significant inconsistency, however, in the way that the provinces run and fund their projects. The national Department of Social Development is one of NICRO’s biggest funders. The increased reliance on government funding has led to unequal power relations, with NICRO’s autonomy severely compromised:

*There’s an unequal balance of power here. If you hold the purse strings, you have the power. (SJO Respondent 9).*

*For me, it’s not a real...let me carefully choose my words...it’s not a real equal partnership. I would say because of funding. Because the NGO is so dependent on government, so they would, sort of...do as government asks them...Isn’t it?  
(Government Respondent 9)*

The money NICRO receives from the Department of Social Development is not enough to fully implement many of its programmes. NICRO has had to scale down some of its work. An official from a Provincial Department of Social Development admitted to being frustrated by the shortcomings of NICRO’s services in recent years. She is also wary that the organisation’s dependency on government funding is compromising its ability to be critical, and innovative:

*Our meetings and our engagements recently, it's just about funding. It's not so much around how we can better the sphere, and work. Most of the time it's about funding, struggling. That's the reality of the NGO sector. (Government Respondent 9)*

At a national level, NICRO admits to being hamstrung by its funding relationship with the Department of Social Development: 'We depend on their subsidy, we don't have much room'. This overreliance on the DSD's funding is compounded by the fact that the Departments of Justice and Correctional Services do not formally fund the organisation, despite NICRO providing them with services.

At a provincial level, NICRO often sees itself enter into contractual arrangements that are constraining: 'They [Provincial Department] fund us in a way that ties our hands.' At the moment, NICRO feels taken advantage of, while the integrity of the organisation's work is being undermined by its funding relationships. Wielding limited power in engaging with government, increasingly a service provider, and financially dependent on government, NICRO worries about the impact that this is having on successful social crime prevention:

*We want to be independent from [government] funding. We want to implement our policies and programmes as we see fit.*

### **Key themes and turning points**

This case study illustrates how NICRO's relationship with the state shifted as the national government's policy stance on criminal justice aligned with NICRO's. While NICRO's programmes and policies became mainstreamed into government, foreign funding was increasingly directed toward the government. By the mid-2000s, government became NICRO's main source of funding. Further, in the same period, as the Department of Social Development adopted a social crime prevention strategy, the organisation was contracted to undertake social crime prevention programmes. Without financial autonomy from government, and under severe funding constraints, NICRO's ability to monitor government's social crime prevention reform and ensure effective implementation of its programmes is being compromised.

### **Successes and failures for Social Justice**

The fact that NICRO's social justice agenda became mainstreamed into official government policy could be considered a success for social justice. However, as the organisation has come to rely on government funding, this has compromised its ability to effectively implement its programmes as it sees fit, and its ability to monitor and hold government to account. In the organisation's view, this is undermining the effective realisation of criminal justice reform in South Africa.

## Socio-Economic Rights Institute (SERI) – Rights to housing

**Key theme:** Right to housing, evictions and alternative accommodation jurisprudence

**Key aim:** To offer education and training to local municipalities on their obligations under the Prevention of Illegal Eviction from and Unlawful Occupation of Land (PIE) Act and to help facilitate a process where local municipalities institute more effective planning in the provision of alternative accommodation.

**Key actors:**

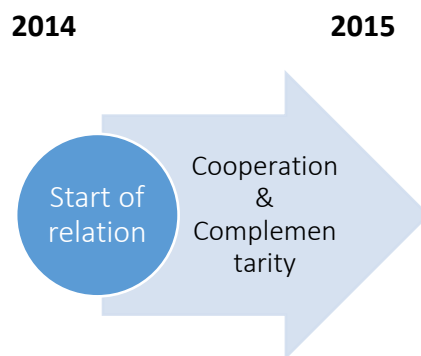
- South African Local Government Association (SALGA)
- Local municipalities nationwide

**Timeline:** 2014-2015

**Key challenges:** The reluctance by some municipalities to receive training from SERI due to the history of litigation between the municipality and SERI.

**Characteristics of the relationship:** The relationship between SERI and SALGA can best be described as complimentary as both organisations share the same end goal – better municipal planning for alternative accommodation – but have divergent strategies on how this can best be achieved. However, this relationship was complicated by the more confrontational relationship SERI has historically had to municipalities it has litigated against.

**Relationship over time**



### **2014 – 2015: A complementary relationship with challenges**

SERI approached SALGA about research it had produced about the jurisprudence in relation to right to housing, evictions and alternative accommodation jurisprudence. The relationship was, in part, initiated through the fact that the individuals involved had previously worked together in other capacities related to housing. This personal and professional relationship therefore provided a pre-established relationship of trust. This was important because the idea of SERI offering education and training met with resistance both within SALGA and from some of the municipalities that were being offered the training:

*There was quite a bit of controversy around having SERI speak to these delegates because to a lot of the municipalities... SERI is the enemy and it took a little bit of selling...*

With one metropolitan municipality, in particular, there was a high degree of resistance to the workshop. After the invitation was issued, *'they immediately sent us an acrid letter... written by their lawyers and not by them [housing officials], saying we resent the fact that SERI is participating... and we don't think that SALGA should be basically preaching SERI's gospel'*. From there SALGA met with the municipality in question in order to address their concerns. This was important because SALGA's governance structures include important and powerful people from municipalities and it is therefore important for SALGA to retain good relationships with them. After engaging with the municipality there was an agreement to reshape the agenda and this was supposed to be approved by officials within the municipality. However, as time went on SALGA received no response from the municipality. The decision was then taken to hold the workshop either with or without the municipality in question, who did in the end attend, and the workshop was described as *'probably our best workshop'*:

*They were tremendously useful workshops and I think from both sides because obviously, in some of the workshops we got the politicians as well as the officials and the municipalities brought not just their human settlements guys but their legal services guys as well, so we were getting all corners of it and they could hear the whole evolution of the jurisprudence and we tried, as I said, very much to focus on the future and what does this mean for your planning.*

### **Key lessons and turning points in promoting social justice**

The SERI case study demonstrates that a history of conformational relations with the state does not necessarily foreclose other forms of working relationships. In this case, the fact that there was a pre-established relationship between individuals in SALGA and SERI allowed the SALGA representative to champion the involvement of SERI. Although this particular relationship was short-lived, as it was focussed around the delivery of workshops, it has opened the door to future collaborations of a both formal and informal kind.

### **Successes and failures for social justice**

While the nature of this particular engagement was relatively short-lived it has created the basis for SERI to work with SALGA in an ongoing and informal basis. As in other relationships between SJOs and government, SALGA has called on SERI to offer informal comment on policy and legislation, thus laying stronger foundations for future relations.

## Social Justice Coalition – Clean and Safe Sanitation

**Key theme:** Water and Sanitation

**Key aim:** One of the SJC's sustained campaigns is focused on improving water and sanitation service provision in informal settlements in Khayelitsha. The SJC has used social audits and a budget campaign (in collaboration with Ndifuna Ukwazi) to support its pursuit of improved sanitation.

### Key actors

- Social Justice Coalition (SJC)
- Ndifuna Ukwazi (NU)
- City of Cape Town:
  - Mayor: Patricia De Lille
  - Deputy Mayor: Ian Neilson
  - Mayoral Council Member on Water & Sanitation: Ernest Sonnenberg
- International Budget Partnership

**Timeline:** 2011 – present.

**Characteristics of the relationship:** This relationship has been largely confrontational, particularly between the SJC and the Mayor's office and the Mayoral Council. Initially there were signs of a working relationship on issues of sanitation, but engagement became adversarial once the SJC began to openly criticise the City and hold it accountable on its sanitation commitments and claims.

**Key challenges:** The City and the SJC disagree fundamentally on information and claims around water and sanitation in the City's informal settlements. The SJC has challenged the City of Cape Town's narrative about delivering water and sanitation services to the poor by using budget analysis, social audits and other first-hand accounts by residents to the City. The City has been dismissive of findings presented by the SJC, and has refuted its claims and proposals related to water and sanitation provision. The information that the City has in turn used to dispute the SJC is largely expert operational technical knowledge and quantitative data. The SJC has been criticised as being misinformed by the City. In the SJC's view, this is due to having faced challenges when attempting to access official City data and information that would assist its analysis.

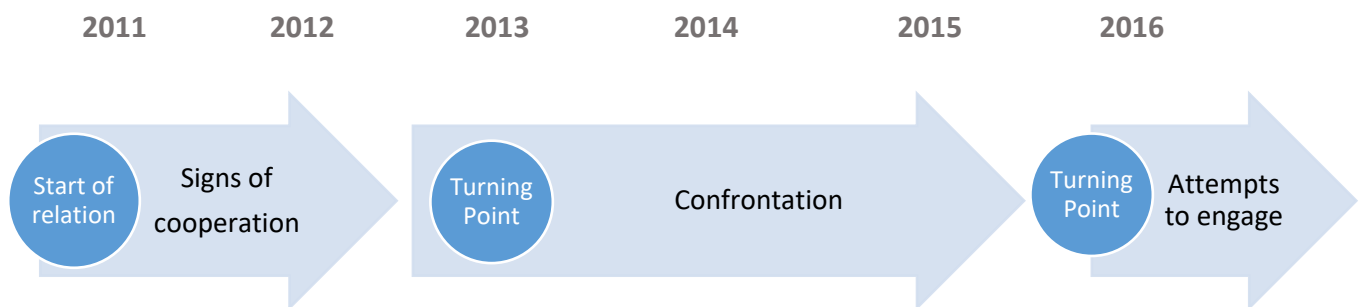
The political environment of a DA-led government in the City of Cape Town and the Western Cape lends itself to heightened political sensitivity. The City of Cape Town constantly raises questions around the credibility and legitimacy of the SJC, particularly with regards to its politics and funding. The SJC is accused of being informed by political motives aligned with opposition parties, and being overly critical of the DA-led city. These perceptions of being 'targeted' in turn inform the City's claims that that SJC's forms of engagement are unconstructive or illegitimate.

Simultaneously, there is a prevailing perception within the City's leadership that the SJC looks to appease and attract foreign funding:

*I think the, you see the issue with some like SJC is they get funding from whoever ...there are paid people there, paid researchers, paid organisers and so on, in some ways a little business, they have to keep their donors happy so they have to continue to show results and of course, it requires them to show success in the work that they do, if they are going to continue to get such donor funding and I mean that might sound a little bit cynical but it is a reality. (Government Respondent 11)*

The unsavoury relationship, and back and forth between the two parties, is well-covered by the media. Sometimes engagement in the media has been the only way in which the two parties have communicated.

### Relationship over time



#### **2011- October 2012: Attempts at cooperation and a commitment by the City**

The SJC launched a Budget and Sanitation Campaign in 2010. On Freedom Day the following year, over a thousand people marched to the Mayor’s office to protest the struggle that the poor in the City faced in accessing clean and reliable sanitation. A memorandum was handed to the Mayor with over 10,000 signatures.

In 2012, a sanitation summit was hosted by the SJC with a host of stakeholders, including Mayor of the City of Cape Town, Patricia De Lille. One of the suggestions that emerges from the summit is that the City makes a commitment to Janitorial Services in the City’s poor areas. At the time, the Mayor was sympathetic to these calls. After recommendations from SJC, the Janitorial Services project is allocated money and rolled out by the City of Cape Town. De Lille displayed a commitment to the initiative, and the SJC noted her ‘openness’ to engagement. The SJC began monitoring the quality of the janitorial service to track the City’s progress.

In September 2012, the SJC released a report that showed problems with the roll out of the service, and that many toilets were still in a state of disrepair. The Mayor openly admitted in October that the City ineffectively managed the roll out of the programme and apologised to affected communities. She committed to remedy a number of issues within the next few months. However, this did not happen.

As the SJC began to ask more questions of the City, its relationship with the Mayor began to break down:



*[Initially] she gave that amount of money [R32 million] so that we get a maintenance project and then problems occurred as the project was not operated in a way that we wanted... we were trying to ask the questions and then she was so defensive...our relationship now was not working anymore because she didn't want us to tell her when she is wrong. (SJO Respondent 11)*

Towards the end of 2012, the SJC launched a social audit exercise in collaboration with the International Budget Partnership (IBP). The audit was to assess the largest private supplier of chemical toilets in Khayelitsha, Mshengu Chemical Toilets. Social audits involved resident-led monitoring of services and government spending in their communities.

#### **April 2013 - October 2014: Audits, accusations and confrontation between the City and SJC**

In April 2013, the SJC released its audit report of four areas in Khayelitsha. The audit provided first-hand data from residents on the state of disrepair and abandonment of chemical toilets. A few months later, in June, Mayor De Lille released a statement criticising the social audit exercise by SJC for its 'lack of historical context' and 'technical understanding'. This open criticism by the Mayor signalled an important turning point in the SJC's relationship with the Mayor, and with the City. For the SJC, it appeared that the City was cooperative when the SJC was not critical.

In the same month, the Coalition intensified its campaign for improved janitorial services by turning to collective action. Over 300 SJC members marched to the Mayor's office and the South African Human Rights Commission Office to deliver memorandums and demand a timeframe for the development of the Janitorial Services plan. Once again the SJC was accused by the City of misrepresenting data. In June, arguably spurred by the SJC's advocacy and activism, the City launched a 'Know your Community, know your Contractor' campaign to publicise formal channels to report maintenance and other service provision issues in the City.

A few months later, in September 2013, SJC activists and supporters are arrested after peacefully protesting inaction on the janitorial services project outside the Mayor's office:

*We do pickets, we do marches, we do press statements – so that is the way of us engaging with the government but also another way of sometimes sitting in round tables trying to find the solution for the problem that we have. (SJO Respondent 11)*

Finally, in March 2014, the City appeared to respond to the pressure by holding a janitorial services summit. After a period of tense relations, there were small signs of potential progress. The City committed to developing an implementation plan in three months. The SJC in turn offered to assist the City in developing a plan and called for it to commit to engaging communities and janitors in the process. However by June, three months later, the City had still not produced a plan.

Meanwhile, the SJC continued its social audits of sanitation services. An audit report of the City's janitorial services for flushed toilets was released in October. The report reflected the

views of over 200 residents and highlighted the dire state of flushed toilets in some of Khayelitsha's informal settlements.

By the end of 2014, the SJC had engaged the City on sanitation issues through discussions, summits, social audits, memoranda, and protests. Despite some commitments by the City, these strategies had not yielded decisive action on sanitation issues.

### **March 2015 – December 2015: Conflict over Budgets and a War of Words in the Media**

In March 2015, Mayor De Lille tabled the City of Cape Town's draft budget. In the budget, she made the claim that the City is pro-poor. The SJC responded by undertaking research into the City's budget documentation with the IBP. They published the preliminary results of their findings, demonstrating unjust capital allocation to informal settlements. In response, Ernest Sonnenberg released a statement in the media saying that the SJC had 'proven their obsession with budgets and their incompetence at interpreting them' by basing their research and claims on incorrect documentation. Sonnenberg also made reference to the influence of the 'SJC's funders'. In April, Deputy Mayor Ian Neilson weighed in on the debate about data and figures, releasing a statement claiming that 'the SJC's analysis was faulty'.

Continuing its engagement with the budget, the SJC conducted a campaign across Khayelitsha to collect 500 written submissions on the draft budget. On 22 April, the 500 submissions on water and sanitation were handed to the Mayor's Office by 150 SJC members. The City grouped these submissions together and did not deal with them individually. The community's submissions were dealt with dismissively by the City, echoing the response to the social audits:

*Government has been, and when I say government it is basically the City of Cape Town, they have been very dismissive of us and our methodologies and...the way that we are actually running these things, saying they are actually not really legitimate, that our findings don't actually hold that much water...it is not surprising that they would respond with this because it often paints them in a very negative light. But they seem to miss the point that this [social audits] is quite a powerful new process that, and has great potential to get the buy in from communities and NGOs and a lot of other people. (SJO Respondent 11)*

At the May 2015 budget speech, the Mayor of Cape Town, Patricia de Lille, launched the most direct attack on the SJC to date. She openly criticized the SJC, and an affiliate organisation, Ndifuna Ukwazi (NU), in her budget speech to the Council for the 2015/2016 financial year. The criticism was directed at some of the SJC's leadership who she labels as 'puppet masters behind their MacBooks':

*We have repeatedly corrected the false claims by the SJC but they have persisted in their supposed ignorance. I can only then assume some other motive or malicious intent and not an honest attempt to engage with the budget. And I find that disgraceful. Every day seems to bring a new SJC stunt to impress their international donors with false information. Every day we correct their figures but still they peddle untruths.*

The war of words between SJC and the City of Cape Town continued in the media, and Mayor De Lille stood by her statements in the Budget Speech. In June 2015, the SJC and

Ndifuna Ukwazi threatened to launch legal action against the City for its budgeting practices.

### **December 2015 – now: Admitting mistakes and attempting dialogue**

In December 2015, the SJC met with the Deputy Mayor Ian Nielson where he admitted that the City had treated the budget submissions by Khayelitsha's residents 'differently' to other residents, and admitted that the process could be improved. This admission was an important turning point and the SJC decided not to pursue litigation. Instead, an agreement was made that the City would respond to each letter, that a public apology would be made by the City, and that a space would be opened to discuss reform of the current budget process.

In February 2016, the Mayor's Office was attempting to respond individually to each budget submission. Relations appeared to be less adversarial, with attempts to open new avenues of communication between the City and the SJC. However, those in key leadership positions in the City continue to see the SJC as lacking understanding of the broader issues and constraints in the City and being politically motivated. As it continues its campaigns, the SJC is also cognisant of being accused of being aligned with opposition party interests.

### **Key Lessons and Turning Points**

Initially, the SJC thought the new City administration under Mayor De Lille was willing to engage more than the previous Mayor's Office. However, things appear to have soured once the SJC looked to hold the City to account for its commitments, using research and advocacy work. Its authority questioned, under politically tense circumstances, this saw the beginning of the City's accusations of ulterior motives and questions around the SJC's credibility.

### **Success and failure for social justice**

When it comes to material social justice outcomes for the poor, the SJC's campaign looks to have achieved few successes. The City has felt targeted by the SJC and its responses have been defensive, rather than in the interest of social justice or democratising governance. The SJC has pressured the City to make commitments (despite not adhering to them) and act in ways that it has never done before. This could be considered a 'success'. Further, the SJC is forcing the City to engage with bottom-up practices to hold government to account. Arguably, the SJC has shifted the discourse, and the realm of possibilities, for pro-poor policies and practices in the City.

## Treatment Action Campaign – Stop the Free State Health Crisis

**Key theme:** Health care.

**Key aim:** To improve health care services in the Free State.

**Key actors:**

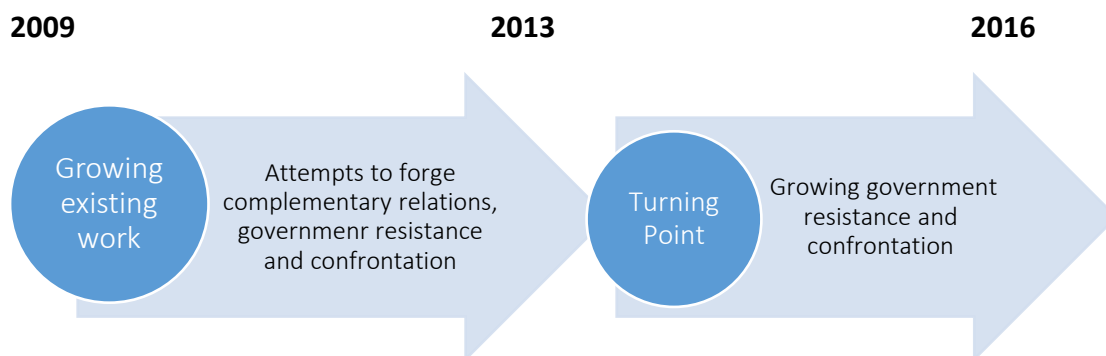
- National Department of Health
- Provincial Department of Health
- Provincial AIDS council

**Timeline:** 2009 – present.

**Key challenges:** The challenges faced in the Free State are multiple and intersecting. One of the primary issues faced is the MEC for Health is largely considered to be corrupt and not qualified for his office, but he is politically powerful and protected. Thus the politics of patronage seem to penetrate the health system deeply in the Free State. This is compounded, in the view of one TAC respondent, by a more generalised issue of lack of capacity within the healthcare system, which is further compounded by the fact that spending on health has in real terms been falling. For the TAC these challenges have been faced at a time in which there have been considerable cuts in donor funding to the organisation leading to a significant reorganisation. While this has been difficult, it has forced them to prioritise certain areas of work and reconsider how they work.

**Characteristics of the relationship:** The TAC's relationship to Provincial government is almost entirely confrontational. At the National level there appears to be a combination of complementary and confrontational relations.

### Relationship over time



### 2009-2012: Developing TAC branches in the Free State and attempting to develop state structures

The health system's record has been particularly bleak in the Free State for some time. Various reports, including one published by the South African Human Rights Commission in 2007 and the 2009 Integrated Support Team report commissioned by former Minister of Health Barbara Hogan, highlight the gravity of the situation. Local community members

approached the TAC to form branches and the TAC offered 'low level' support to these branches.

The TAC's work in the area included supporting a number of marches which drew attention to problems in the Free State health system. In particular, there was a focus upon establishing and strengthening the Provincial AIDS Council. According to the TAC, the Premier, whose office must establish the council, has consistently blocked efforts to establish and support the council properly (TAC 2010).

### **2013: State resistance, building a focus on the Free State**

The crisis continued, with the Stop Stockouts Project highlights alarmingly high levels of drug stockouts and shortages, specifically TB and HIV medication. The report found that the Free State is the poorest performing of all the provinces. While TAC activists and officials attest to a relatively healthy relationship with national government, which allows them to bring some of the problems in the Free State to the direct attention of the Minister, at the provincial level it is far more difficult. One respondent recounted how meetings with Provincial Officials were frequently either cancelled at the last minute or officials simply didn't show up. With a lack of engagement at the Provincial level, the TAC leveraged their research work in the media try and bring pressure to bear upon government.

The response from the Province was deeply concerning with leading activists complaining of harassment, intimidation and death threats. Furthermore, on 3 December computers in the Free State TAC office were confiscated by the MEC for Health with no explanation (TAC 2013). At the same time, doctors were reporting the grave problems faced by the health care system in the Free State to the TAC, but many were fearful of publicly speaking out. These factors combined led the TAC to begin focussing on the Free State more systematically by building the TAC's presence in the province through building more branches, employing staff and providing more support from the TAC national office.

### **2014: A campaign of civil disobedience**

Stepping up their campaign in the Free State, it began to focus extensively on removing the MEC for Health, particularly after the contracts of 3,000 Community Health Workers were unilaterally terminated in April 2014. After attempting to engage in the MEC in meetings and letters over the issue, the TAC embarked on a campaign of civil disobedience, as a media statement explains:

*Our decision to embark on a campaign of civil disobedience is not taken lightly. However, attempts at addressing the Free State health crisis through meetings and letters has failed. We are therefore left with few other options. (TAC 2014a)*

Over 9 and 10 July more than 100 Community Health Workers held a peaceful vigil at the headquarters of the Free State Department of Health in Bloemfontein. At the vigil Community Health Workers reported receiving phone calls from the MEC warning them they would be arrested. Similarly, reports claimed that the police said to protestors that they had been sent by the MEC. Those present were subsequently arrested for contravening the Gatherings Act and the TAC began a campaign to support them (TAC 2014b).

Following the protests, the MEC for Health appeared in the Welkom Magistrate's court on charges of fraud and corruption from his time as a municipal manager in August 2014. The TAC continued its campaign against the MEC by holding a picket outside the court but also by meeting the Public Protector on the charges and an ANC delegation at Luthuli House.

### **2015 - present: Research for advocacy**

Although the TAC has engaged with the ANC leadership over the crisis in the Free State healthcare system, in February 2015 the ANC Youth League embarked on a march calling for the TAC to be deregistered, accusing it of being a political party in disguise and of working with the DA (eNCA 2015). Despite facing the pressure of both state and party political opposition, the TAC continued its efforts in the Free State with a renewed focus on utilising research for advocacy.

The TAC launched a People's Commission of Inquiry into the Free State Healthcare System which was held over 7 and 8 July. One respondent highlighted that part of the reason for launching the inquiry was to refocus attention on the state of the health care system as there was a growing perception in the media that it was 'TAC versus the MEC for Health and we didn't want that to be the main message, the main message must be the state of the health care system, that's what ultimately matters'.

Presided over by independent commissioners appointed by the TAC, the report produced by the Commission made a number of critical findings and recommendations about the state of health care in the Free State. As a result of the report, 'the Minister of Health intervened behind the scenes' (TAC respondent). However, relations with the Provincial government remain poor.

Keeping up the pressure on the MEC, on 20 April 2016 the TAC release an open letter demanding that MEC Malakoane resign or be removed from his position. For the TAC the campaign in the Free State is about more than improving health care in one province or removing one problematic individual, as one TAC respondent explained:

*We see it as emblematic of what's wrong with our health care system... he's [the MEC for Health] facing pretty serious charges of fraud and corruption, but he is politically connected and that's the only reason he's in his job. That's part of what is happening across the public service. People get deployed because they're loyal... it's not done in the public interest.*

### **Key lessons and turning points in promoting social justice**

In a highly politicised environment and with a lack of engagement from provincial government confrontational relations have realistically been the only way for the TAC to engage provincial government. This is coupled with a more complementary but often confrontational relationship with national government. The TAC is clear that change is unlikely to come quickly in the Free State due to the political environment and that sustained campaigning will be required.

### **Successes and failures for social justice**

While the case study may appear to paint a particularly negative case of government-SJO

relations, there have been some successes. One TAC respondent noted that in the Free State, 'there's been some pockets of improvement due to our work'. The MEC is seen by the TAC as a major blockage to achieving improved health care in the Free State. What is less clear is the extent to which the TAC has engaged with or attempted to build allies within government at more junior levels. Experience from other case studies demonstrates that even while in confrontational relations with the state it can often be useful to build strategic alliances within it. Although the TAC enjoys a fruitful relationship with national government they admit that the 'Minister is relatively powerless to intervene as he does not carry enough political clout' (TAC respondent).

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