REQUIREMENTS FOR TRANSFORMING THE CIVIL SOCIETY SECTOR IN SOUTH AFRICA

RESEARCH REPORT

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Executive Summary

The ToRs identify that a capable, ethical and developmental state cannot be achieved without an active and fully participating civil society sector, which represents those who struggle having their voices heard in a democratic state, such as South Africa. Civil society plays a key role in sustaining and facilitating the democratic strengthening and consolidation of the country. The ToRs note that the responsibility of holding the state and private interests accountable are the citizens themselves, both as individuals and collectively. It is for this reason that the civil society sector is a critical vehicle for collectively ensuring that the state and private interests are fulfilling the constitutional mandate set out in the Preamble to the Constitution to:

- '…Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; [and]
- Improve the quality of life of all citizens and free the potential of each person;…'.

While CSOs play an important role in the social, political and economic development of the country, they are confronted with many challenges to bridge the gap between the state and society. Against this background, the NDA sought a study to engage in an exploration of the transformative context of civil society in South Africa to facilitate debate and consultation between the state and civil society in advancing a common agenda of social justice. Specifically, the NDA seeks to understand the transformative requirements within civil society and its impact on its perspective of key issues, what support may be needed to encourage and drive the transformation of the civil society sector, including how to promote a fairer gender balance among organisational and sectoral leadership, how to better to capacitate civil society for enhanced sectoral coherence and coordination, funding sustainability, effective advocacy, accountability and in-built checks and balances, and to facilitate the development of norms and

standards for civil society to improve self-regulation that all help build trust with social partners and funders. As reflected in the ToRs, the objectives of the study are to:

1. Provide a context of transformation in the civil society sector in South Africa. What are the requirements for the sector to transform itself? What are the current impediments affecting the transformation of the sector?

2. Provide research-based guidance to the civil society sector on how to engage with itself on processes and requirements for the sector to have effective engagements on its transformative agenda and participation of the sector as a whole.

3. Provide best examples of global perspectives on how civil society has approached the transformative process including engagements and role played by the state.

4. Provide areas of transformation of the sector that need to be addressed by the sector to ensure that the outcomes of its transformation project are acceptable to all members and organisations operating in the sector.

5. Provide concrete recommendations on how the sector and the state can assist each other to address transformation of the sector for the benefit of the public.

Drawing on a literature review and key expert interviews, this report presents key findings on the transformative dynamics of state and civil society in a South African context. The study consisted of desktop research on secondary literature on the civil society sector and state-civil society relations complemented by qualitative interviews. Interviews with key informants constituted the empirical aspect of the study which will aim at providing first-hand experience of the transformation challenges of the civil society sector and state-civil society relations. Although the study is primarily a desktop study, interviews were held with five key stakeholders to supplement and verify the findings from the systematic literature review.

Specifically, the report engages critical themes of state and civil society relations, the political context of South African civil society, gender dynamics and transformation within civil society, and the challenges and opportunities of transformation within South African civil society. The report demonstrates that:

1. Although South Africa's civil society political context is relatively open in relation to free speech, there are serious concerns that the state is   becoming

more arbitrary in the interaction with civil society. This is driven by an increasingly non-responsive and unaccountable state, which, in turn, shapes a more confrontational relationship with civil society at certain levels of society.

2. Gender representativity and gender inclusiveness remain a challenge within civil society, most notably concerning marginalised gender identities such as the LGBTQI community.

3. There is a lack of consistency in how different levels of government interact with civil society, thus highlighting a need for a model of good practice built on democratic principles to facilitate a collaborative state/civil society relationship.

4. There are vast sectoral differences within civil society, which in turn, also determines the nature of interaction with the government as well as what issues government prioritises. This has had a negative impact on deliberative and participatory democracy in South Africa. There is a need for consistency in how government, regardless of the level of CSO and type of issue, engages with civil society.

The ToRs highlight challenges in relation to governance, accountability, self-regulation, as well as inequitable access to funding, which undermines sustainability within the civil society sector. These challenges, according to the ToRs, undermine the necessity of creating and

effectively pursuing a common purpose and overarching goal among CSOs and hampers civil society in achieving its full mandate and potential in terms of the South African Constitution. Furthermore, the ToRs emphasise that weak regional and national structures hamper the effective functioning of civil society organisations resulting in a weak centre, and poor development and coordination to achieve shared objectives.

Thus, it is evident that three critical elements are in play. First, governance of civil society organisations, specifically in relation to self-regulation and accountability within the sector; second, facilitating the transformation of civil society to fulfil its constitutional mandate; and, third, the relationship between the state and civil society. To achieve the overall purpose of the research study, it will thus be essential to engage the socio-political context in which civil society operates, key factors that shape governance and accountability within civil society organisations and facilitating a

a mutually cooperative relationship between the state and civil society to advance the constitutional mandate of social justice. Key recommendations include:

1. Development of a national code of conduct for the government at all levels to structure their engagement with civil society to meet the requirements of participatory and deliberative democracy
2. Establish specific engagement offices and advisory support committees to facilitate co-governance across key social and economic departments
3. Develop, in consultation with CSOs across various sectors, a code of conduct to facilitate co-governance and collaboration
4. Provide training focused on the principles of participatory and deliberative democracy in a South African context and quality deliberations for public officials in their engagement with civil society.
5. Provide training across the spectrum of civil society organisations on the participatory mechanisms for civil society engagement.

Introduction and background

The ToRs identify that a capable, ethical and developmental state cannot be achieved without an active and fully participating civil society sector, which represents those who struggle to have their voices heard in a democratic state, such as South Africa. Civil society plays a key role in sustaining and facilitating the democratic strengthening and consolidation of the country. The ToRs note that the responsibility of holding the state and private interests accountable are the citizens themselves, both as individuals and collectively. It is for this reason that the civil society sector is a critical vehicle for collectively ensuring that the state and private interests are fulfilling the constitutional mandate set out in the Preamble to the Constitution to:

- '…Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; [and]
- Improve the quality of life of all citizens and free the potential of each person;…'.

While CSOs play an important role in the social, political and economic development of the country, they are confronted with many challenges to bridge the gap between the state and society. Against this background, the NDA sought a study to engage in an exploration of the transformative context of civil society in South Africa to facilitate debate and consultation between the state and civil society in advancing a common agenda of social justice. Specifically, the NDA seeks to understand the transformative requirements within civil society and its impact on its perspective of key issues, what support may be needed to encourage and drive transformation of the civil society sector, including how to promote a fairer gender balance among organisational and sectoral leadership, how to better to capacitate civil society for enhanced sectoral coherence and coordination, funding sustainability, effective advocacy, accountability and in-built checks and balances, and to facilitate the development of norms and standards for civil society to improve self-regulation that all help build trust with social partners and funders.

Research Objectives

This is an exploratory study that aims to identify the challenges Civil Society Organisations (CSOs) face with regards to self-governance and aims at facilitating state-civil society relations towards democratic sustainability. As reflected in the ToRs, the objectives of the study are to:

1. Provide a context of transformation in the civil society sector in South Africa. What are the requirements for the sector to transform itself? What are the current impediments affecting transformation of the sector?

2. Provide research-based guidance to the civil society sector on how to engage with itself on processes and requirements for the sector to have effective engagements on its transformative agenda and participation of the sector as whole.

3. Provide best examples of global perspectives on how civil society has approached the transformative process including engagements and role played by the state.

4. Provide areas of transformation of the sector that need to be addressed by the sector to ensure that the outcomes of its transformation project is acceptable to all members and organisations operating in the sector.

5. Provide concrete recommendations on how the sector and the state can assist each other to address transformation of the sector for the benefit of the public.

Key Research Questions

The ToRs stipulate that the purpose of the research is 'to identify and understand the transformative requirements needed for the sector to enable it to have [effective] control of its functions and business'. Therefore, the broader questions the research must answer include, but will not be limited to:

1. What are the elements of the sector that require transformation to ensure that the sector is fair and just in its perspective?

2. Who should drive the sector transformation agenda and what assistance or support would be needed in order to transform?

3. How should the sector be restructured to achieve coherence, better voice, better response to development programmes, better funding mechanisms, better coordination, better accountability and better systems for checks and balances for [both] state organs and [the] private sector?

4. How does the sector see itself creating mechanisms and processes for self-regulation to ensure accountability within the sector, norms and standards for the sector and building trust between the sector and its social partners and funders?

Research Methodology

One of the methods to be employed in the research is a desktop analysis that will involve a literature review on transformation challenges of the civil society sector to inform the theoretical and transformation needs assessment approach adopted by the study. This method enabled the research team to generate a comprehensive understanding of the current status and extent of transformation and associated dynamics, as well as the capacity/readiness, constraints and need for transformation of the civil society sector in response to the demands of society both to hold the state and private sector accountable and to support an ethical and developmental state. This included an overview of the legislative frameworks that frame the government's approach and output concerning civil society activity. Data is thematically categorised based on the specific issues / questions they interrogate.

This method enabled the research team to generate a comprehensive understanding of the current status and extent of transformation and associated dynamics, as well as the capacity/readiness, constraints and need for transformation of the civil society sector in response to the demands of society both to hold the state and private sector accountable and to support an ethical and developmental state.

Data Collection Methods

Primary data

Interviews with key informants constituted the empirical aspect of the study which will aim at providing first-hand experience of the transformation challenges of the civil society sector and stat-civil society relations. Key informants were academic experts and practitioners within civil society organisations. Although the study is primarily a desktop study, interviews were conducted to supplement and verify the findings from the systematic literature review. The study draws on deep case-study analytical methods which require a small sample size. Therefore, five key informant interviews with academic experts with a research specialism and focus on South African civil society transformative dynamics is an appropriate sample size. As this is an exploratory research project that engages critical transformative issues and dynamics within South African civil society, the small sample size is in line with good methodological research practice. This study does not provide generalisations across case studies but instead teases out critical themes within a specific case study. Therefore, the study falls within what is seen as the in-depth case-orientated analysis, drawing on a small sample size to generate a rich and thorough data set that engages the central theme of the research project.

Secondary data

The literature was systematically reviewed using the PRISMA method.. PRISMA (Preferred Reporting Items for Systematic and Meta-Analysis) entails systematically searching for literature with specific and predetermined guidelines, such as civil society in South Africa, accountability and civil society activity in South Africa. Through this literature review, we identified, selected, and critically appraised all relevant research pertaining to the focus area of transforming civil society and state-civil society relationships in South Africa to present a consolidated scholarly overview. While this method is favoured within reviews in health sciences, it was for this particular study given the focus on specific demography (civil society) and South Africa (country). For the purpose of this study, the systematic literature review was limited to scholarly databases such as EBSCOHOST and Google Scholar.

Social and political context of South African civil society

Analysing state-civil society relations will depend on how the concept of civil society is constructed. If one draws on a Gramscian perspective, civil society is seen as a

"…realm of contestation, where organized social actors challenge the power of the state and other social forces" (Bernhard *et. al.* 2015). From a Tocquevillian perspective, "…civil society is the very integument of democracy…an engaged and organized citizenry [that] enables more egalitarian, mass-based forms of rule" (Bernhard *et. al* 2015). Therefore, there are two contending views of civil society. The Gramscian perspective sees civil society as a space for contestation and challenge, while the Tocquevillian construct regards civil society as a space for dialogue and collaboration. These views of civil society are not mutually exclusive, and one may find a more nuanced conceptualization of civil society as a space of both dialogue and contestation.

Conceptualising civil society in a South African sense remains difficult due to a variety of political cultures that shape state-civic relationships, and by default, political connectedness to the state as well as relationships with donors, constituencies, and overall advocacy and lobbying capacity. One also has to consider the political context of a dominant-party state where one political party enjoys electorally and governance hegemony.

One cannot negate the influence of the United Democratic Front (UDF) on South Africa's political culture. Born in 1983, the UDF was a non-racial and largely non-violent means of resisting the apartheid regime. It had sought to mobilise communities along the lines of key daily issues that affected their members' quality of life under the apartheid regime. In this sense, the UDF had:

> reframed the struggle by using local issues to mobilise apolitical groups and build a broad base of support through non-violent tactics. The move to non-violent forms of resistance led to a beneficial form of 'ungovernability'. Ultimately, the shift from violence to non-violence, and the localisation of issues, became an inclusive strategy that allowed all South Africans to fight against apartheid (Katz, 2008).

It was not necessarily a political organisation, but a social movement geared towards achieving a society based on the vision of the Freedom Charter. By adopting this non-racial vision of what a future South Africa could look like, the UDF effectively created a focus on the nation; as such, it could transcend racial and cultural boundaries in the fight against apartheid (Katz, 2008). A key strategy was to localise issues:

Rather than trying to mobilise support based on the complete elimination of the oppressive system the government enforced, the UDF brought the struggle down to the local level and framed the fight in terms of everyday issues that average people could relate to (Katz, 2008).

While the UDF was disbanded in the early 1990s and many activists joined the ranks of the ANC, a lasting impact of the UDF is the notion of people's power and localised community struggles. To this effect, the narrative of rights of the local communities in their daily struggles for survival was not removed from the discourse of liberation – as such, liberation had to occur first for communities' rights within a non-racial democracy to be realised (Suttner, 2004). It is within the ambit of the UDF social movement structures that the conceptualisation of a future participatory South African democracy emerged (Suttner, 2004).

At the birth of the South African democracy, the idea of a participatory and democratic political culture was written into the Constitution. Furthermore, local government is the sphere of government where democratic participation and participatory is most strongly rooted given that this level of government is the closest to people. Here, the notion is that communities should engage their representatives through the ward committee structures and influence policy and developmental plans. This has remained an elusive ideal, however. However, post-apartheid ANC has taken on an increasingly hegemonic role; as such, participatory democracy is often reduced to a 'feedback' workshop in which party officials inform communities what policy and development directives will be. The voice of communities is limited in that they are not able to influence policy and developmental directives directly.

As a result, community-based organisations are increasingly emerging. Much like the UDF, these organisations mobilise their communities around local issues that directly affect their daily lives. These organisations take up issues with which the state should be concerned, such as HIV/Aids; education; empowerment initiatives; and skills training and adult basic education. In addition, peoples' power is an ongoing theme of these organisations. Working on an apparently similar premise to the UDF, these organisations seek to mobilise people to claim their legitimate and democratic right to

material and economic goods like education and housing. However, given the narrowed space for interaction with the state and the hegemonic position that the ANC seeks to construct, the space for volatile, destructive and violent protests also opens up. A similar phenomenon was found within the UDF movement: some streams employed tactics of violence and intimidation to achieve their political goals. There is a need to guard against romanticising struggle and protest; very often, protestors engage in radical political discourse that can mobilise communities against foreigners, for example, and allow protests to descend into violence and destruction.

The political context of party-dominance is also an important consideration for state-civil society transformative dynamics. Dominant party system generally emerges following major periods of "…nation-building, revolution, independence, or reconstruction after war" (Greene, 2007: 10). These periods of reconciliation and post-conflict reconstruction creates a sense of legitimacy built on the idea of societal transformation for a better and peaceful future (Greene, 2007: 10). Legitimacy is built on the perception that the dominant party acts a proverbial custodian of some future political project to advance a just society. In order for a political system to be classified as and sustain dominance, three conditions must be met (Dunleavy 2010: 23 – 24). Firstly, the dominant political party is able to get an overwhelming portion of the vote in at least four consecutive elections. Secondly, by securing an overwhelming slice of the electoral pie, a dominant party must have an extensive core which the opposition seems unable to penetrate. Lastly, the dominant party needs to maintain a perception of effectiveness within this protected core. The perception of effectiveness is used to get supporters to the polls, thus ensuring that the dominant party is seen as having a wider appeal than the opposition.

The ANC emerged as a dominant political force with the dawn of democracy in 1994. This was not surprising, during the struggle years, the ANC generated representative power through transcending racial, class, and social division of the black population through constructing its ideological commitment to non-racialism and calling for a state that would be representative of all South Africans, regardless of race. Through presenting a common base of struggle against white oppression and supremacy, the ANC was able to unite different race groups for one common goal: A democratic and free non-racial South Africa (ANC, 1955) where the state would advance the interests

of all citizens, regardless of race, religion, gender, or sexual orientation. It was in the early years of South Africa's democracy that the discourse within the ANC created a sense of custodianship over South Africa's democratic and transformation agenda. The party was the *liberator* that held all the aspirations and promise of what post-apartheid society would look like in the palm of its hands. It had battled the ruthless apartheid state and won. It brought democracy with a negotiated settlement and avoided a civil war. And, as Southall (2014: 7) highlights, it enabled the ANC to structure elections around history and identity "with the ANC the undoubted victor as the party with the most powerful claim to have liberated the country from apartheid". It is therefore not surprising that the ANC received an overwhelming majority of 63 % of the vote with the Founding Elections of 1994 and set out with a solid mandate to recreate the South African state as an entity that will cater for all South Africans. Drawing on historical legacy, monopolising political loyalties capturing the institutional architecture, drawing on liberation political culture, and advancing a narrative of its successes in government performance. The ANC advanced its legitimation narrative of continued **rule,** not **govern.**

The relationship between the ANC as the governing party and broader civil society is shaped by the liberation dynamics and struggle against apartheid (Du Plessis, 2014). In this sense, the ANC constructs itself as the custodian and caretaker of South Africa's hard-won democracy, in the achievement of which it had a central liberation role. Therefore, by virtue of being the liberator of South African society, the ANC constructs itself as the only viable political party to govern and ensure the continuation of democracy in South Africa. To this effect, the ANC thus creates an all-encompassing relationship between itself and broader society that extends beyond party membership and voting (Du Plessis, 2014). Therefore, its existence as the 'only legitimate representative of the people … has become the essence of the "legacy" of the ANC over the past twenty years' (Du Plessis, 2014).

The ANC still portrays itself as a liberation movement, committed to the advancement of a non-racial democracy. This implies that the liberation project is not complete and that only the ANC can achieve this and will do it on the basis of principles of democratic centralism.

Centralised leadership with a strong focus on leading from the top has become part of

the South African political culture in that the ANC advances policy choices to civil and broader society, regardless of whether there is severe resistance to those policy choices in some cases. Key examples include e-tolls and the decision to implement the National Development Plan despite severe criticism from the union movement. This creates the view that the ANC constructs its electoral mandate to make decisions for the broader society and not on behalf of society. The consequence of this is that 'little room has been provided for popular grievances to be expressed outside these institutional challenges, and especially outside the party' (Neocosmos, 2002). The idea of democracy is reduced to state-led development where the ruling party drives economic transformation in the name of democracy (Neocosmos, 2002).

To maintain legitimacy, the liberator constructs a hegemonic discourse justified on a historical mission of liberation and transformation (both political and economic). This discourse frames the liberator as the only legitimate contender for ensuring that complete societal transformation occurs. The risk is that by limiting 'legitimate' discourse within a context of democracy, the cultural context of liberation may facilitate the development of an authoritarian political culture in which the political space is dominated by ethnocentrism, prejudice and inter-group hostility (Stellmacher and Petzel, 2005). Reflecting on the development of South African political culture over the past 20 years, Du Plessis (2014) notes that while the ANC still holds electoral dominance, the re-emergence of people's power – not in Parliament but on the pavements – is starting to challenge the hegemonic discourse of the ANC and could result in a fundamental shift in political culture for South Africa. The fundamental shift may reflect a withdrawal from the electoral process and general apathy towards voting and elections as well as other participatory measures and structures in the South African democracy.

Citizen-centred governance is at the core of participatory and deliberative democracy in South Africa. It draws on the notion of inclusive governance, social justice, political efficacy, and constitutionalism in measuring to what extent the exercise of political power facilitates the expansion of social and political citizenship. Therefore, within the constitutional and legislative domains, civil society is constructed in the Tocquevillian sense whereby the state and civil society collaborate and engage in order to deepen democracy (See Table 1).

Table 1: Overview of Legislation for Citizen-Centred Governance

Legislation	Main Purpose
Constitution	Public Participation is an inherent right
S. 59 – NA; S. 72 - NCOP	Local government with regard to public participation. Some of the key responsibilities of local government include; • To encourage (i.e. must) encourage the involvement of communities and community organizations in local government (section 151 (1)(e)) • To provide a democratic and accountable government for local communities (section 152) • To encourage the involvement of communities and community organizations in the matters of local government (section 152) • To publish annual reports for public comment (section 162(1)(3)) • To conduct council meetings and related business in and "open manner" (section 160(7)) • To ensure (i.e. must) that council sittings take place in public (section 160(7)) • To ensure (i.e. must) that budgetary processes promote

	transparency and accountability (section 215)
Local Government Structures Act, 1998	Key piece of legislation for public participation at the local government sphere. The Act, in section 152, calls for the establishment of ward committees in all municipalities to (section 72.3) "enhance participatory democracy".
Local Government Municipal Systems Act, 2000	Important in legislating the parameters of public participation at the local government level; emphasizes the need for community participation in governance processes; and sets out various methods and responsibilities for municipalities in facilitating engagement with the communities they serve
Local Government Municipal Planning and Performance Management Regulations, 2001	Sets out several key regulations for public participation at the local government level. Section 15 stipulates that communities should participate in monitoring, measuring and reviewing municipal performance; Section 1(a) legislates that in the absence of another structure for public participation, the municipality must set up a forum for community participation; Section 1(b) states that the local community must be invited to identify representatives, including from ward committees, and that these (c) must be representative of

	the composition of the local community. Section 15(2) calls for regular meetings and 14 days of consultation prior to such meetings.
White Paper on Local Government, 1998	As voters: to ensure maximum democratic accountability of the elected political leadership for the policies they are empowered to promote. As citizens: who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that policies reflect community preferences as far as possible. As consumers and end-users: who expect value-for-money, affordable services and courteous and responsive service. As organised partners involved in the mobilisation of resources for development via for-profit businesses, non-governmental organisations and community-based institutions.

One notes a strong focus on government inclusion of citizens in decision-making, government rationale for policies geared to reducing inequality, government upholding citizens' rights, and representation, financial administration and government response to citizens' demands. These policy initiatives supported by other constitutional civil

and political liberties work to institutionalise a democratic and open civic space. The civic space is defined as "…the set of legal, policy, and practical conditions necessary for non-governmental actors to access information, express themselves, associate, organize and participate in public life" (OECD, 2018). Further to this, the civic space is seen as a necessary precondition of inclusive development and growth, good governance, including open policies and stakeholder engagement (OECD, 2018).

A cursory glance at the relevant legislation brings key themes on participatory democracy to the fore as a central element of societal transformation and as such, requires strong collaboration and engagement with civil society. Participation in the legislative and policy process is an inherent democratic right and citizens are at the centre of the policymaking process, and as such, must be provided with adequate opportunity to participate and influence the policy-making process, especially as local government level. To this effect, thus, the principles of citizen participation is built around the political knowledge (citizens can participate), an enabling environment for participation (opportunity); responsiveness (citizens see evidence of policy influence), and political culture of participation (civil society mobilisation and commitment to political engagement) (DPLG, 2007). It is thus evident that the policy narrative that shapes public participation and civic engagement in South Africa draws strongly on principles of deliberative democracy and political participation as a form of citizen empowerment. Through this system of deliberative democracy, the state can build legitimacy and gain authorisation for decisions taken in *partnership* with citizens. This, however, requires a collaborative relationship between the state and civil society that entails both dialogue and dissent to enable participatory policy-making and citizen-centred governance. Therefore, an enabling civic space is central to democracy and transformation, as well as inclusive development and good governance.

Literature Review

The objectives of the study and key questions draw attention to, firstly, several goals of transformation of the civil society sector. These include a civil society sector that is fair and just in its perspective; a civil society sector that is coherent has a better voice, responds better to development programmes, has better funding mechanisms, is well-coordinated, is accountable and has appropriate systems for checks and balances; a civil society sector that has mechanisms and processes for self-regulation to ensure

accountability within the sector, and has norms and standards for the sector; and a civil society sector that has mechanisms and processes that build trust between the sector and its social partners and funders. Secondly, they draw attention to the context within which transformation must take place, including the requirements for the sector to transform itself and impediments affecting the transformation of the sector. Thirdly, they draw attention to the process of transformation, including global perspectives on how civil society has approached the transformative process, the role played by the state and identifying areas of transformation that could lead to consensus s on the transformation process among all members of civil society. Finally, the objectives and key questions stipulate the need for recommendations to be made in each broad area identified above. Consequently, this literature review is structured as follows:

1. A review of the literature on the goals of civil society transformation
2. A review of the literature on the context within which transformation must take place; and
3. A review of the literature on the process of transformation.

The goals of civil society transformation

The political context of civil society and the transformative dynamics within the civic space is an essential first step in assessing the transformative opportunity and challenges Key to assessing the political context to civil society transformation is an understanding that in order to deepen democracy, politics must be inclusive and the state must be accountable (Jenkins, 2007: 55). To facilitate inclusive politics, one needs to look at principles and varieties of representation within the civil society sector. This includes who is represented, as well as whose voices are heard in advocacy and political contestation. Thus, questions of the nature of political relations are central. In assessing Indian civil society, for example, Van Wessel *et. al.* (2019) found that how representative roles and legitimacy is constructed is a key element of changing power dynamics in civil society. Thus, *who speaks for whom* is a critical component that impacts on the ability of civil society to influence the policy agenda, as well as shapes the relationship of civil society organisations (CSOs) with the state. As Van Wessel *et. al.* (2019) state:

…representation often means performing the role of an intermediary between constituencies and the state—connecting marginalized groups and the state,

raising people's awareness of entitlements, articulating issues and needs, and translating to facilitate communication between marginalized groups and the state. The capacity to represent is constructed as dependent on the CSO's expertise, experience, and knowledge of a context and a group, which makes it possible to translate their issues and needs (coming to varying extents from the people themselves) in light of state entitlements and possibilities determined by politics and policy. Notably, although CSOs commonly claim a leading role for marginalized groups, many CSOs involved in this study exhibit little facilitation or inclusion of leadership emerging from these marginalized groups themselves.

Representation within civil society is also determined by the context in which civil society operates (Van Wessel *et. al.* 2019). To this effect, Van Wessel *et. al.* (2019) highlights that CSOs will consider "…their own political connectedness and relations with the state and with donors…", rendering representation a *negotiated position* where CSOs navigate various relational and contextual dynamics in order to make their voices heard (see figure 1).
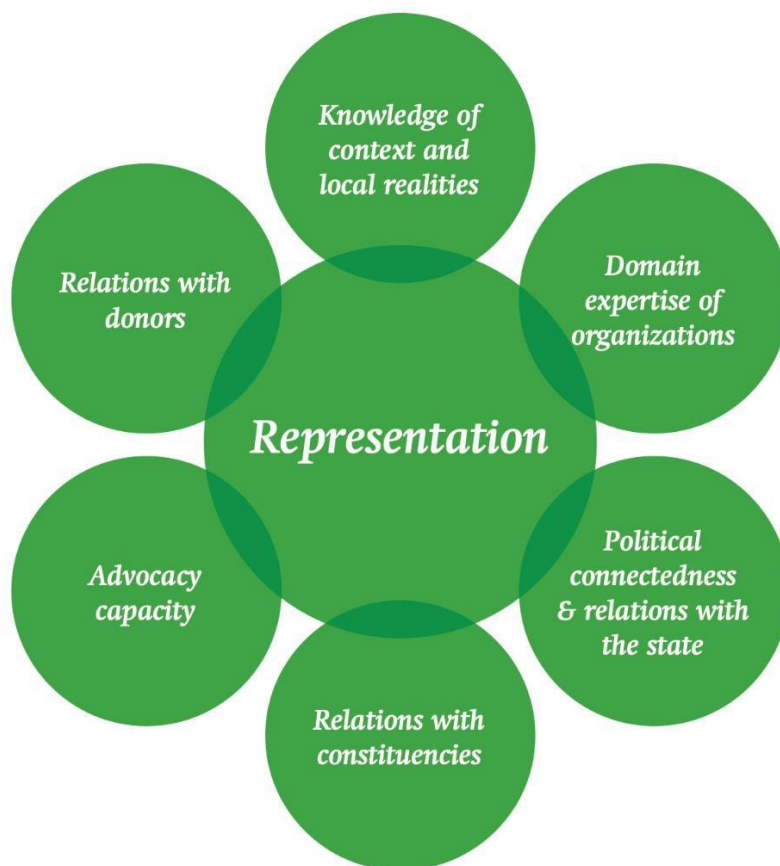
Figure 1: Dynamics of representation that shape CSOs interaction (Van Wessel *et. al.* 2019).

It is therefore evident that for civil society to have a fair and just in its perspective is that it must be as representative of as many groups and interests in as possible. In addition to representativity as negotiated positions, position, context, political relationships, and advocacy also impact on the degree of representation within civil society. This includes gender representativity. While women account for a preponderance of the nonprofit sector workforce, according to Ahmed (2018), they are under-represented in organisational leadership roles within civil society. The lack of women in top positions is similar to that in the public and private sectors. This situation prevails even in those NPOs / NGOs that work to promote gender equality and women's empowerment.

According to Tiessen (2004), male dominance of leadership positions in CSOs and other similar organisations is a result of the gendered norms, attitudes and practices of individuals within them. One significant consequence of this is that this leads to the privileging of male/masculine interests over female/feminine interests. In Malawi, gender mainstreaming has been adopted by many CSOs to transform them and to facilitate women's empowerment. Not only has gender mainstreaming been adopted to address gender inequality within these organisations but also with the communities where they work. The activities engaged in include hiring more women staff members, designing policies within the organisation to promote gender equality and educating staff members about gender issues through training workshops. Tiessen examines the extent to which these policies and initiatives are translating into meaningful change within CSOs in Malawi.

However, gender mainstreaming may have negative consequences for women leadership. In Bolivia, the Law of Popular Participation (LPP) is an attempt to mainstream gender into a national development initiative by devolving power and resources from the national to the local level. In addition, it aims to increase the prominence of women in local political and development spheres. However, Clisby (2005) argues that in some respects the LPP has had the effect of displacing women from political activism at the community level. As a greater status, power, and resources have been devolved to politics at this level, men have become more

prominent in this previously neglected, 'feminised' sphere. The article argues that, to some extent, the goal of mainstreaming gender into national development via the LPP was missed. Reasons include a lack of effective and systematic gendered analysis of the structural barriers to women's participation, and the failure to support gender mainstreaming, and women's participation, through capacity building at all levels.

Nagar and Raju (2003) critically examine women's and feminist organisations in India with a focus on several issues of concern. These include the problems arising from trying to implement women empowerment in nongovernmental organisations in India while women NGOs of the South are becoming increasingly professional and globalized. The article includes conversations between the two authors on this and several other issues around women's empowerment.

Antrobus (2000) looks at the concept of 'transformational leadership', with a focus on a particular form of leadership: leadership which advances the cause of justice for women. She shares her personal experience of becoming a leader in the international women's movement, and of women mobilising as a group to transform the agenda of international development. From these, she draws out some lessons which may help women who wish to transform the world to attain full human rights for all women. One of the most important of these is to acknowledge the structural limitations of the positions of women in leadership positions in all institutions. This must be coupled with a commitment of the values of caring, sharing and cooperation.

Civil society self-regulation and transformative dynamics

According to Warren and Lloyd (2009), in 2009 there were approximately 390 initiatives globally to bring about self-regulation of the civil society sector. They note that a growing number of CSOs at national, regional and international levels have sought to develop common norms and standards to build public trust, protecting the political space for CSOs to operate, and sharing good practice and learning (Warren & Lloyd 2009: 1). The process can occur in three primary ways: firstly, two or more CSOs get together to either define common norms and standards to which they can be held to account or share good practices to improve programme effectiveness, addressing a range of issues from how CSOs are governed, what information they should be making public to how they should evaluate their activities; or, secondly,

involving a third party such as a peer CSO or watchdog undertaking external assessments of organisations; or, finally, involving the government in which power is partially delegated to an umbrella organisation or other association representing CSOs to regulate behaviour or set standards for the sector to which CSOs voluntary submit. However, Warren and Lloyd contend that the form that initiatives take are shaped by contextual factors such as the level of development of civil society, the available resources, and the nature of relations with the state (Warren & Lloyd 2009: 1). This will also be shaped by the nature of the civic space and degree of representativity within civil society. In a restricted civic space, we may find, for example, a number of CSOs operating with the goal of getting an array for public issues on the national policy agenda. This may impact on how CSOs engage with each other as well as the politics of contestation with the state. We may therefore see a high degree of contestation within the civic space as CSOs engage with each other as well as adversarial relations with the state, which in turn impact on quality representation, public engagement and the openness and transparency of the civic space.

Self-regulation is necessary to have a civil society sector that positively contributes to social development, is a good steward of financial resources, and is effective and accountable in its activities (Warren & Lloyd 2009: 3). In the first place, these are responses to questions of representation, accountability, quality and effectiveness of their programmes, financial management and governance raised by donors, governments, other CSOs and the wider public. Secondly, self-regulation can be motivated by the desire to build public trust by making public commitments to clear principles, norms and standards and thereby provide beneficiaries, supporters, donors and the wider public with something to which they can hold CSOs to account. Finally, initiatives at self-regulation can be motivated by the desire to fill gaps in government regulation and protect civil society from burdensome and inappropriate government intervention (Warren & Lloyd 2009: 3-4).

Warren and Lloyd identify five broad categories of CSO self-regulation:

- Codes of conduct and ethics that provide a detailed set of basic principles that guide the behaviour of members. They are typically quite formalised, but generally do not include a compliance mechanism.
- Certification schemes that involve self, peer or third-party assessment of compliance with principles or standards. These mechanisms tend to be highly

formalised and contain strong compliance mechanisms. Self-certification schemes involve a CSO undergoing an internal verification process and making a formal declaration of compliance with a clear set of standards developed by a group of CSOs. This should include submission of evidence of compliance with the body overseeing the scheme. However, self-certification schemes do not require verification of compliance from any external party. Peer certification schemes involve a group of organisations working in a similar area, such as human rights or service to the aged, coming together to set standards. In these schemes, compliance of CSOs is verified by a peer organisation. Third-party certification schemes generally involve an organisation that is not a peer developing and/or verifying compliance against a set of principles or standards. This could lead to a formal certificate or seal of approval being awarded to the organisation.

- Information services involve CSOs sharing information about themselves with the general public and across the sector. Such information can include, among other things, the activities a CSO undertakes, its administration costs, and its annual accounts. In most cases, these schemes do not have compliance mechanisms.

- Working groups that bring together peer organisations regularly to discuss, share and define best practice on a particular issue. IN this scheme, it is normal to encourage the adoption of best practice by developing self-assessments, toolkits and guides for their members. Most working groups lack a formalised structure and compliance mechanisms, but can often give rise to more formalised and compliance-based forms of self-regulation such as codes of conduct and certification schemes.

- Awards schemes administered by a peer, umbrella or third party organisation that identify, highlight, and reward good practice (Warren & Lloyd 2009: 5-6).

The OECD (2020) also highlights the need for clear policy guidelines and accountability measures to guide CSOs and their engagement with the state and the broader public. Codes of conduct and ethics are by far the most common type of CSO self-regulatory initiative globally, and examples include the International Non-Governmental Organisation (INGO) Charter, International Committee of Fundraising Organisations' International Standards, Australian Council for International

Development (ACFID) Code of Conduct, and Code of Conduct for NGOs engaged in Humanitarian Action, Reconstruction, and Development in Afghanistan. The principles of the INGO Charter, for instance, included respect for international principles such as the rights to freedom of speech, assembly and association in the Universal Declaration of Human Rights and international and national laws that promote human rights, ecosystem protection, sustainable development and other public goods; financial and political independence; responsible advocacy; effective programmes that involve genuine partnership with local communities, NGOs and other organisations aiming at sustainable development responding to local needs; non-discrimination which aims at diversity, and seeks to be impartial and non-discriminatory in all activities; transparency; good governance; ethical fundraising; and professional management.

Lloyd's (2005) study of self-regulatory initiatives is particularly concerned with developing an understanding of the conditions under which self-regulation initiatives can increase NGOs' accountability to their beneficiaries. For example, he describes the Pakistani Centre for Philanthropy, which certifies NGOs in that country, and includes an accountability criterion which asks: 'Does the NPO engage all stakeholders (including donors, colleague organisations, staff, beneficiaries (especially underrepresented groups/women/minorities) at various stages of programme/project design, development and implementation?' The NGO Code of Conduct for Ethiopia has developed a similar understanding: 'all men, women, young people, and children of our target communities [are to be involved] to the greatest possible extent, making them responsible for the conception, implementation and evaluation of projects and programmes.'

Olugbuo (2014) examines civil society regulation in West Africa and finds that the dominant form of regulation in the region is state regulation. However, this has the effect of stifling the activities of CSOs, particularly in those countries in the region where they are perceived as enemies of the state or part of the opposition. He finds that state regulation effectively muzzles the activities of CSOs in West Africa by limiting the assistance they can acquire through foreign funding and infringe on the constitutional rights of individuals and organisations (Olugbuo 2014: 24). For instance, the Gambia's NGO Decree 81 of 1996 provides for a government Agency, the NGO Affairs Agency, with which all CSOs must register. The Agency also ensures the compliance of CSOs with the provisions of its protocol of accord and the CSO code of

conduct (Olugbuo 2014: 22-3). Nevertheless, self-regulatory mechanisms in West Africa include:

- The Ghana Association of Private Voluntary Organisations in Development's NGO/CSO Standards for Excellence, which helps to ensure transparency, accountability and good governance in the operation of CSOs by voluntary self-regulation while improving the quality and sustenance of services provided by CSOs to the Ghanaian public. The organisations are assessed on various criteria including their legal status, governance structure, conflict of interest, financial accountability, resource mobilisation, autonomy, human resources, NGO/CSO work and public affair and public policy.

- The Nigeria Network of NGOs' Code of Conduct for NGOs in Nigeria, which provides the principles for actions of non-governmental organisations aimed at increasing the reliability of the organisations and the non-profit sector in the society.

- The Conseil des Organisations d'Appui au Développement's Code of Ethics, which is a form of code of conduct for Senegalese based CSOs. It does not seem as if the Code of Ethics has wide application in Senegal.

- The Gambia's Association of NGOs' CSO Code of Conduct and Ethics, which aims at ensuring transparency and accountability in the operation of member CSOs through voluntary self-regulation and improving the quality of services provided by member organisations by helping them to adopt high standards of conduct and ethical practice and to develop efficient decision-making processes. Included are a set of sanctions for non-compliance such as: (1) deference of graduation of an associate member to full membership status or that of an observer to associate status; (2) suspension of the particular organisation's membership, or (3) termination the membership of such member (Olugbuo 2014: 12-17).

In a review of self-regulation mechanisms in 20 African countries, Gugerty (2007) found that there are three types of self-regulation initiatives on the continent: national guilds; NGO-led clubs; and voluntary codes of conduct. National guilds arise through CSO-state collaboration to develop a guild type association of CSOs that has standards for admission. The government sets the mandatory membership

requirement for all CSOs, usually as a condition of registration. In the process, the government cedes some powers to the CSO association charged with regulating entry and standards. NGO-led clubs are voluntary associations that create a set of standards, reporting requirements, and monitoring mechanisms to which participating organisations agree to adhere. The third are codes of conduct and ethics, which may vary in how stringent the standards and reporting are. The effectiveness of each type of self-regulation is also dependent on the stringency of the standards, monitoring systems and sanctions for non-compliance. The more stringent the standards, monitoring system and sanctions, the more effective the self-regulation mechanism. National guilds are seen as the most effective, but least pervasive mechanism in Africa, while codes of conduct and ethics, which are the weakest, are more evident than the other self-regulation mechanisms (Gugerty 2007).

Burger and Seabe (2014) conducted a study of accountability mechanisms in Africa. They conclude that the focus on the development of accountability mechanisms has often been one of the responsibilities and obligations of NGOs toward donors and governments because the accountability movement has largely been driven by donors and governments. This emphasis appears misplaced given that governments and donors already exert substantial influence over the NGO sector via funding and legislation. In contrast, NGO accountability toward community beneficiaries requires more attention and more advocacy because beneficiaries are often dependent on NGOs that have been contracted by third parties to serve them but are voiceless and powerless in this relationship. As a result, community beneficiaries frequently struggle to hold NGOs accountable. There have been calls for new ways of thinking about accountability and a focus on improving the quality and appropriateness of accountability mechanisms. Burger and Seabe find that in African countries there is an additional motivation to rethink existing mechanisms because of concerns about the suitability of many of the CSOs to the context and circumstances of the continent. While there is a strong theoretical case for promoting accountability—especially within the African context—there is little evidence to suggest that the dominant models of accountability have been successful in promoting ethical behaviour, transparency, and effectiveness among African NGOs.

There are thus two elements to consider when developing a set of proposals for the transformation of the civil society sector in this regard: the choice of the   category of

CSO self-regulation – national guilds, CSO-led clubs, codes of conduct and ethics, certification schemes, information services, working groups and/or awards schemes, or state regulation; and the emphasis in the category of self-regulation mechanism on the responsibilities and obligations of CSOs toward donors and governments, on accountability toward community beneficiaries, or on both.

As indicated above, codes of conduct and ethics are the dominant mechanisms used for CSO self-regulation, while state regulation is the least recommended. The most widely followed process is that of a group of CSOs voluntarily coming together to develop a Code of Conduct and Ethics and acceding to it. In rare occasions, i.e. where civil society is not highly developed and lacks resources, the state contributes to the development of the codes. Codes that include sanctions for non-compliance are also seen as more effective and should be as comprehensive as possible by including principles and norms and standards that take into account both the responsibilities and obligations of NGOs toward donors and governments and accountability toward community beneficiaries. Self-regulation will be enhanced if voluntary codes are supplemented by some or all of the other categories of self-regulation. For instance, accountability and public trust will be better achieved if a CSO that engages in a self-certification exercise by undergoing an internal verification process and making a formal declaration of compliance with a clear set of standards developed by a group of CSOs submits evidence of this compliance to a third party for review; shares information about its activities, its administration costs, and its annual accounts, among other things, with the public; is part of a working group that adopts best practices and develops self-assessments, toolkits and guides for its members; and is a member of an award scheme that recognises and awards good practices.

Building trust between partners, the public and the state

Mechanisms such as the self-regulatory initiatives discussed above promote trust between CSOs and social partners and funders. Complying with widely accepted standards and norms found in a code of conduct and ethics, opening up to review of compliance with standards and norms by peers or third parties, and making public information about the CSO such as its activities, administrative costs and annual accounts all contribute to building trust with stakeholders. Brown points out, however,

that CSOs have a broader range of stakeholders to which they are accountable than most other actors, and include accountability towards donors, governments, clients and beneficiaries, staff and members, and partners (i.e. who they are accountable to). They are accountable to donors for their resources, governments for complying with regulations, clients and beneficiaries for delivery of goods and services, staff and members for meeting expectations, and to partners for the performance of joint activities (i.e. what they are accountable for) (Brown 2008: 2-3). It is necessary to build trust with all these stakeholders. The mechanisms through which this trust is built (and by which CSOs are held accountable) include regular reporting on how funding is being used and the impact of their activities, and consultative mechanisms such as meetings (i.e. how they discharge accountability) (Cordery & Sim 2018). CSOs use disclosure statements and reports, performance assessments and evaluations, participation, self-regulation and social auditing to build trust with their stakeholders (Carolei 2019: 49).

CSOs raise funds from members, private donors, businesses, service recipients and governments, and mechanisms have to be in place to ensure that they do not act opportunistically with governments' and donors' funds. Further, CSOs may digress from their goals and mission, and should be held accountable to donors, members and beneficiaries in this regard in a situation where there is increasing expectations for accountability and transparency. Also, different mechanisms may be expected, with funders demanding formal reports (Cordery & Sim 2018: 4).

A review of the expectations of funding agencies that partner with CSOs from the South indicates some of the accountability requirements of funders that can contribute to the building of trust. The Canadian Council for International Cooperation engages in partnerships with CSOs of the South in which the partners are expected to be accountable to one another, respect each other's autonomy and constraints, and strive to foster a climate of mutual trust in all their partnership activities (Blagescu & Young 2005: 9). Mechanisms which encourage all three of these are thus important.

The Swiss Commission for Research Partnerships with Developing Countries advises that genuine partnerships require mutual respect, honesty and openness and that a basic requirement for the establishment of mutual trust is a continuing dialogue and the exchange of experience amongst all those involved, including the members of the

local community (Blagescu & Young 2005: 13-14). The Royal Danish Ministry of Foreign Affairs sees development cooperation requiring trust, openness and a will to bring about gradual development of the cooperation, and which involves obligations and all partners living up to the commitments that they agree on after thorough analysis and discussion. Equally important, the partners need to focus on quality performance, evaluation and compliance (Blagescu & Young 2005: 14-15). For the United States Agency for International Development, partnerships are constructive and mutually beneficial interactive processes which require a balance between respect for the principles of 'privateness' and independence with the maintenance of clear, results-oriented standards of accountability in the pursuit of mutually agreed objectives. This is fostered by communication at all levels and from matters of policy and programme strategy to activity design as well as participatory processes that promote broad-based, equitable participation (Blagescu & Young 2005: 15).

Carolei's (2019) study of accountability highlights some of the mechanisms used by CSOs to maintain trust with their various stakeholders. For instance, regular financial reports, performance assessments and evaluations are important tools to maintain the trust of donors. The trust of the government in CSOs is maintained through disclosure statements and reports, which are legal tools that are among the most widely used to verify compliance with laws governing CSOs. Included here are application requirements for tax exemption, external disclosure of organisational information (e.g. finances, organisational structure, and programmes), and reporting to CSO regulators. CSOs may use social auditing, involving dialogue with stakeholders to assess, report, and improve upon their social performance and ethical behaviour, as a mechanism to maintain trust with all stakeholders. CSOs also used participation to maintain trust, including sharing information, collaboration with stakeholders in their activities, shared decision-making, and the involvement of members or beneficiaries in the initiation and implementation of organisational activities. Finally, self-regulation mechanisms play a significant role in building or maintaining trust with stakeholders (Carolei 2019: 49-51).

CSOs with large membership or beneficiaries build trust through mechanisms that ensure that their structures are representative, provide for widespread participation and consultation, and demonstrate that the services they provide impact on the lives of their members or beneficiaries. Mechanisms may include regular elections, consultative meetings and information sharing on activities and outcomes. The latter

may be included in self-regulatory mechanisms that ensure transparency and participation and may include a complaints procedure for members or beneficiaries (see Carolei 2019: 164ff for more details about these mechanisms). For instance, the NGO Code of Conduct for Ethiopia and the NGO Code of Conduct for Afghanistan require CSOs to involve beneficiaries within their decision-making process, from design to implementation, to evaluation. The Nigerian Code of Conduct identifies the need for greater transparency for beneficiaries and the importance of maintaining complaints mechanisms through which their concerns can be addressed, while the Pakistan NGO Forum Code of Conduct requires NGOs to communicate financial information in a way that is accessible to beneficiaries (Carolei 2019: 73).

However, most studies find that CSOs are weakest in the area of beneficiary accountability (Carolei 2019: 75).

Impediments affecting transformation of the sector

The literature on the context for transformation of the civil society sector identifies three key factors that can impede any efforts at transformation that are relevant to this study: a weak civil sector capacities to engage in transformation; the socio-economic context that places constraints on the ability of CSOs to engage in transformation; and the political environment within which transformation takes place, in particular the nature of state-civil society relations that can limit the autonomy of CSOs to lead the process of their transformation.

In a context in which civil society is weak, the capacity to engage in any action is almost non-existent. Writing in 1996, Gyimah-Boadi noted that in Africa:

> On the whole, civil society is too weak to redress state-society relations in favour of the latter. Despite the return to formal democracy and the promulgation of constitutions with all the usual checks and balances, officials retain enormous power. In all but a handful of Africa's new democracies, the threat of an "executive coup" *à la* Fujimori is ever-present. Vague and illiberal laws, enacted by colonial or authoritarian regimes in the name of "public order" or "national security," have been used to suppress free discussion and activism. Thus in Zimbabwe, senior staffers of the *Financial Gazette* found themselves detained and charged under a pre-independence "criminal defamation" statute

because they reported on the personal life of President Robert Mugabe. Similarly, the Ivorian newspaper *La Voie* was suspended, and its editor and two reporters were given two years in jail apiece, for a story suggesting that the president's presence at a continent-wide soccer championship had brought bad luck to the national team (Gyimah-Boadi 1996: 120).

The weakness of the sector is compounded by a whole range of cleavages – for example, ethnic, religious and regional – that promote fracture (Gyimah-Boadi 1996: 120-121).

This situation of a weak civil society sector is highlighted in an article written by Carbonne, who investigates the role of civil society in Botswana within the broader context of the state-civil society dynamic in Africa. Carbonne notes that civil society in Botswana is weak, while the state is strong. There are several important consequences of this for state-civil society relations: first, the political culture makes it difficult to question authority; second, it is arduous to mobilise citizens because of the culture of dependency created by the clientelistic state; third, the state has for a long time denied – and still does –a role for civil society in the development process; fourth, civil society is not a cohesive group and lacks funds, especially the advocacy groups.

The civil society sector in South Africa cannot be described as weak. Nevertheless, it is constituted by organisations with highly unequal capacities and capabilities. For instance, Patel (2012) demonstrates the weakness of those CSOs that are key partners with the state "to deliver social welfare services to poor and vulnerable persons and populations at risk". While it had been envisaged in 1996 that the state would "promote inclusive development, grow the economy, build a democratic society and reduce poverty, inequality and improve the livelihoods of the poor", the entrenchment of a partnership with CSOs to perform several of the tasks associated with these goals gave rise to an explosion of non-profit organisations. About a quarter of these became involved in providing social welfare services. However, these CSOs face a host of challenges, including inadequate funding and high staff turnover, which render them weak.

One of the most significant factors that render CSOs weak is the socio-economic environment in which they operate. According to Dörner and List (2012: 18), socio-economic factors such as an economic depression can impact on civil society

negatively. Most importantly in this regard, it is the access of these organisations to resources that can be a major impediment to transformation. In a study of the socio-economic context within which CSOs operated in Bolivia, Tuckerman and De la Torre (2005: 52-3) identified eight variables that could impact on CSOs: the level of poverty in the society; the outbreak of civil war; incidents of ethnic conflict; severe social crises; socio-economic inequities; the adult literacy rate; and the availability of and access to information technology infrastructure.

Hermien Kotzé examined the effect of an economic crisis in South Africa in the early 2000s on the civil society sector. In this article, attention is giving to the increasing levels of poverty and growing inequality in the country, ever-increasing unemployment, the HIV-AIDS epidemic, and the increasing levels of hunger and malnutrition. In this context, the division between the bigger, professionalised NGOs, largely involved in service delivery, and smaller community-based groupings and social movements generally opposed to the ruling party's neoliberal agenda was exacerbated (Kotzé 2003: 18-19). The effects of the economic crisis on the smaller CSOs in particular, according to Kotzé, "contributed not only to a struggle to survive but also to a widespread existential crisis, regarding 'who we are and what we are going to do'. In their search for survival and new direction, many turned their focus and organisational energies inward, often resulting in terrible internal conflict and near organisational paralysis" (Kotzé 2003: 18). These smaller CSOs were also the least likely to be funded, with most funding in the sector going to the "bigger, more established organisations, which often serve urban working and middle-class constituencies" (Kotzé 2003: 21).

Perhaps one of the most important aspects of the context within which CSOs operate that can affect any efforts to transform the civil society sector is CSO-state relations. The political environment within which CSOs operate is important, as Dörner and List (2012: 18) point out, for instance in cases where restrictions on freedom and association and the legal framework governing CSOs can hamper their activities.

In South Africa, several scholars have drawn attention to the dramatic change that civil society experienced in the period immediately after the first democratic elections in 1994. Most importantly, by the late 1990s, several journal articles appeared that lamented the decline in civic activity in the country. Glaser (1997) draws attention   to

the growing capacity of civic associations in South Africa to exert influence during the 1980s in apartheid South Africa and an unfolding process during the early 1990s in which the view that civics should form an autonomous sphere from the state gained credence. He adds, however, that by 1997 it had become evident that democracy had brought with a declining influence of civics, a loss of key personnel to government and increasing difficulties to acquire funding. This was accompanied, in the first five years of democratic rule, by increasingly tense relations between civics and the ruling party, and the incorporation (corporatism) of civics and other CSOs into government activities that takes the form of collaboration as junior partners (Glaser 1997: 23-4).

In an article published in the same year, Habib and Taylor (1997) also drew attention to the unprecedented growth in the civil society sector during the 1980s in apartheid South Africa as a result of a relatively liberal political environment at the time and an influx of funds from abroad. These organisations had an antagonistic relationship with the state, and "made up the core of an emerging non-racial democratic society independent of, and set against, the apartheid state" (Habib & Taylor 1997: 75). This made them very vulnerable to state action, with most operating under severe restrictions and many of their leaders and members experiencing bannings, arrests, detentions without trial, death threats and assassination attempts, imprisonment and being forced into exile. However, although the ending of apartheid ushered in a less hostile environment, there have been several negative consequences, including the absorption, or fusion of many CSOs with the institutions of the new state, with many of their key policy positions, personnel as well as funding moving into the state; the most significant remaining CSOs positioning themselves to complement the state by "undertaking partnerships with government departments, developing policies, or providing welfare and development services"; and others who have fashioned themselves as "watchdogs" of the state (Habib & Taylor 1997: 76). All these had the potential of giving rise to a full-blown crisis of legitimacy and effectiveness (Habib & Taylor 1997: 80).

Several other studies written at the time drew attention to the same challenges that CSOs in general faced by the middle of the first democratic administration under President Nelson Mandela (Lanegan 1995a, 1995b and 1996; Friedman & Reitzes 1996; Baskin 1996; Seekings 1997; Buhlungu 1997).

Just over a decade later, Fioramonti and Fiori (2010: 24) described how the onset of the democratic dispensation in South Africa in 1994 "presented new opportunities as well as challenges to civil society actors, thereby reshaping the balances and roles within the civic arena and also its interplay with the political sphere". During the apartheid era, CSOs had been drawn into the liberation struggle, particularly after the formation of the United Democratic Front (UDF) in 1983. This non-racial coalition of over 600 civic groups, church-based organizations, students' movements and trade unions spearheaded the anti-apartheid resistance until the release of Nelson Mandela and unbanning of organisations in 1990 that set the basis for the negotiations that led to the first democratic elections in 1994. The prominent role played by civic organisations such as trade unions, youth, women and civic organisations in the struggle and the intensification of their resistance during the 1980s was a major factor behind the collapse of the apartheid regime in that country. According to Fioramonti and Fiori, the democratic dispensation had two important effects in CSOs in South Arica: the first was a general shift in the role of civil society as a whole away from opposition to apartheid after the demise of this system; and, secondly, the brain-drain they experienced many civic leaders left the civil society arena to take up highly remunerative positions in government or the private sector. Coupled with these dramatic changes was a drying up of funds that had been so accessible during the course of the struggle, forcing many CSOs to compete for funding from government and a small group of national and international donors (many becoming consultancies in the process). Many of the traditional social movements that had played such a significant role in the struggle disbanded or were co-opted by other structures, while smaller organisations based in the rural areas entered into a persistent crisis, which persisted for the next decade (Fioramonti & Fiori 2010: 24-30).

Global perspectives on how civil society has approached the transformative process, including engagements and role played by the state

Warren and Lloyd (2009) stipulate that, in most cases, CSO self-regulation involves two or more organisations coming together to develop the norms and standards. Carolei (2019: 57-8) notes that collective self-regulation has generally been a process undertaken by a significant number of CSOs to set normative standards for themselves without any formal state intervention in the regulatory process. There   is

no involvement or control by the state (or by any other external stakeholder) in the standard-setting phase, and state intervention is also absent during the monitoring and sanctioning phases: self-regulatory norms are self-specified, self-monitored and self-enforced by CSOs themselves.

Gizaw (2008: 46ff) describes how the Ethiopian NGOs *Code of Conduct on Accountability and Transparency of NGOs* was developed. The process began when a network of NGOs was initiated to discuss the basic principles for a Code of Ethics and Conduct after identifying a need for transparency and accountability. The network included NGOs in the Council of Ethiopian Voluntary Organizations (CEVO) (now defunct), the Inter Africa Group (IAG) and the Christian Relief and Development Association (CRDA), and was later joined by umbrella organisations such as the Society for Participatory Development in Ethiopia (SPADE) and Consortium of Family Planning NGOs in Ethiopia (COFAP). The consortium appointed an Ad Hoc NGO Consultation Working Group to spearhead the process in March 1997. The Working group was made up of the umbrella organisations and two resource NGOs (IAG and PACT) to develop a draft with CRDA as the secretariat. The Working Group explored codes of conduct in other countries and invited a guest speaker from Kenya to share the experience of the Kenyan NGO community on its code. With the support of the United Nations Development Program (UNDP), a group of Ethiopian NGO officials travelled to Zimbabwe, the Philippines, and South Africa to gain perspectives on government-NGO relations. The first draft of the code was presented to over 200 NGOs at a meeting in February 1998, where the draft was enriched and a legal person was mandated to review its consistency with the existing laws of the country. The second draft was presented in October 1998, and the Code was formally adopted by 165 NGOs in March 1999.

One international code of conduct and ethics for CSOs that is used as an example in this study (see Appendix) is the World Association of Non-Governmental Organisations Code of Ethics and Conduct for NGOs. The process of drafting the Code began when a Code of Ethics Project was initiated by the association at its 2002 Annual Conference in Washington following the recommendation of conference speakers, prominent attendees, and the advocacy of WANGO members. It was recognised that while standards of conduct existed for various national and   regional

NGO associations, and associations with a particular area of focus (humanitarian aid, human rights, etc.), a more broadly applicable code of ethics was desirable to guide NGOs globally. A committee made up of leaders of NGOs from 42 countries, which was seen as representative of the wide spectrum of NGOs, was established to develop a set of fundamental principles, operational principles and standards to guide the actions and management of NGOs. The input was obtained from other leaders of NGOs from all regions of the world, and numerous standards and codes of conduct of NGOs and NGO associations around the world were reviewed by the committee. Many members of the committee were able to gather at the 2003 Annual Conference in Bangkok to continue with the drafting process. A preliminary *Code of Ethics and Conduct* was submitted one-and-a-half years after the process began to the delegates at the WANGO Latin America and Caribbean Regional Conference in Montevideo, Uruguay, in March 2004. Thereafter, it was presented to leading experts in academia and the non-governmental and governmental sectors and the entire WANGO membership in 140 countries. The final version of the Code, which emerged after revisions were made based on the recommendations arising from the latter process, was completed in March 2005, the culmination of a two-year process (WANGO n.d.).

Another global code is the INGO Accountability Charter. The Charter was first discussed at the International Advocacy Non-Government Organisations (IANGO) Workshop hosted by Transparency International in June 2003. Participants at the workshop raised the issue of INGO legitimacy and accountability in the light of their increasingly influential role in the international arena and their increased access to resources and policy-making circles. A decision was taken to request Harvard University's Hauser Center for Non-Profit Organisations to prepare a research paper on the issue to serve as a basis for subsequent discussions. At the 2004 IANGO Workshop held at Oxfam International, a task force was created consisting of the heads of Amnesty International, Greenpeace International, Oxfam International and the International Save the Children Alliance to review and synthesise the experiences of workshop attendees regarding their accountability.

At the following meeting hosted by Greenpeace International in 2005, the task force shared its initial draft of the 'Charter of Accountability' for INGOs. Workshop participants committed themselves to present the draft to their national affiliates, partner organisations and networks for inputs and suggestions to integrate into a

revised version of the draft. Inputs from an independent consultant specialist on accountability and reporting issues were solicited to finalise the document. Workshop participants continued the development of the INGO Accountability Charter for an additional year, prior to publicly launching it at the Fourth Annual INGO Workshop hosted by Amnesty International in June 2006 in London (INGO Accountability Charter n.d.).

Carolei outlines the process followed by a regional network of CSOs in Italy when they established self-regulation mechanisms in 2015. The process was driven by FTS Lazio, a regional network of 27 CSOs belonging to the largest Italian umbrella organisation (Il Forum Nationale del Terzo Settore) in Italy. FTS, the most representative network of CSOs in Italy that coordinates the activities of over 141,400 associations, embarked on the process after a scandal in December 2014 revealed that CSOs in the country had been infiltrated by the Mafia, and also because of the perceived need for capacity building and learning among its members. Soon after the revelations of corruption, FTS Lazio appointed a Panel of Experts composed of academics and well-established practitioners to find the most appropriate solution to address the widespread lack of trust in the sector. The Panel of Experts then developed a Code of Conduct, which was ratified by the General Assembly of the network in mid-2015 (Carolei 2019: 119-124). Although CSO representatives were constantly consulted by the Panel during the approximately six-month drafting process, and the code was ratified by a general assembly, some CSOs complained about their lack of participation in the drafting process:

> Empowering a panel of experts to define self-regulatory norms took power away from the ruling bodies of our network. Even if there have been moments of consultation between the panel and the network during the drafting process, the experts left a technocratic imprint on self-regulatory norms. Empowering a panel of experts of such important function made practitioners think that their contribution to the CDV was pointless and, in the end, we [practitioners] did not realise how much each of us should have committed to drafting this instrument (Delegate FTS Lazio, J. cited in Carolei 2019: 140).

According to Carolei, the CSO practitioners should have drafted the Code of Conduct and not a Panel of Experts, or the network assembly. The consequence is that the

Code is seen by some CSOs as an instrument *for* CSOs and not as a code of conduct written *by* CSOs, which raised the potential for non-compliance by CSOs (Carolei 2019: 140).

The potential for non-compliance indicates that the process of establishing a Code of Conduct, or any self-regulation mechanism for that matter, is important for its legitimation (Ebrahim 2003: 820). It is generally common practice for the process to involve widespread participation and numerous engagements. Schweitz and Kunugi (1999) conducted a study of the process of developing Codes of Conduct in several countries, including South Africa. The codes development process in all of these cases involved some degree of participatory negotiation, frequently lasting over two years (Ebahim 2003: 820). Some networks of CSOs have included beneficiaries in the process of developing their self-regulation mechanisms. For instance, the Uganda National NGOs Forum consulted beneficiaries at the draft stage when developing its NGOs Quality Assurance Mechanism (Carolei 2019: 74).

South African CSOs have also embarked on processes to develop self-regulation mechanisms. The Working Group on the Independent Code of Governance for Non-profit Organisations in South Africa (2012: iii) describes the process of developing an Independent Code of Governance for the Non-Profit Sector in South Africa. The process was initiated at a meeting of CSOs from all parts of the country held in Cape Town on 25 August 2010 that was organised to consider the implications for the non-profit sector of the King III Code (corporate code) which had come into effect six months earlier without consultation with the non-profit sector. The meeting also considered a report back on a meeting with representatives of the King Committee and the Institute of Directors on 19 August 2010 where the concerns of the non-profit sector had been discussed.

The civil society meeting agreed that the implementation of a corporate code of governance presented a threat to the sustainability of the majority of organisations in the non-profit sector. Of further concern was the language and cadence of the corporate code which was largely inaccessible to non-profit organisation (NPO) personnel and which did not adequately reflect the values and ethos of the NPO sector. The civil society representatives at the meeting recognised that there was a need for a widely accepted code of governance for NPOs in South Africa and that   it

was preferable to self-regulate rather than be regulated, either by the state or the corporate sector. The meeting elected an ad hoc working group with a mandate to consult the sector more broadly, with the view to developing a separate code of governance. Over the ensuing months, a series of consultative meetings took place in different parts of the country. The first phase of consultations took place between May and August in 2011 and sought to inform the content, structure and applicability of the code. The second phase was held during March and April 2012 at which the draft version of the code was made publicly available for comment. Five consultative workshops were held across the country (The Working Group on The Independent Code of Governance for Non-profit Organisations in South Africa 2012: iii).

Several governments prescribe the process of developing Codes of Ethics and Conduct by CSOs in legislation. In such instances, the legislation provides for a government agency that plays a role in this process. For instance, a Draft Bill for Trust and Non-Profit Making Civil Society Organisations put forward by the Ghanaian government in 2007 included provisions for the establishment of a Trust Commission that would have the power to enter into a partnership with CSOs to develop a code of conduct (Olugbuo 2014).

Other accountability schemes: Other mechanisms described above, such as certification schemes, information services, working groups and awards schemes, also follow distinct processes in their development. For instance, Chege (2013: 1) and (Deloffre n.d.: 14ff) describe the process that gave rise to the Humanitarian Accountability Partnership International, a third-party certification scheme for the humanitarian CSO sector. According to Chege, the Partnership was established after the British Red Cross suggested the idea of a humanitarian ombudsman after evaluating its Rwanda programme in 2001. The idea gained international support among many NGOs, and the Humanitarian Accountability Project was established with three field trials in Sierra Leone, Afghanistan and Cambodia. The report on these trials recommended an international self-regulatory body focused on affected populations. This prompted a move from the idea of an ombudsman to an accountability membership organisation. The HAP Standard, a quality assurance system against which humanitarian organisations can self-regulate, was published in 2007.

By contrast, Deloffre ascribes an important role to the Joint Evaluation of Emergency Assistance to Rwanda (JEEAR), a multi-agency, multi-donor evaluation of the international response to the Rwandan crisis, in the formation of the Humanitarian Assistance Partnership. The JEEAR, which undertook the first system-wide analysis of the humanitarian sector, articulated the need for humanitarian organisations to develop self-regulatory institutions to monitor their accountability. This gave rise to engagements between humanitarian CSOs and donors active in the area, with the CSOs playing a leading role in taking the process forward. JEEAR meetings and working groups served as a venue for social interaction and provided a forum for elaborating new norms of evaluation and accountability, giving rise to the recommendation to have an ombudsman. The idea of the ombudsman was approved at the 1997 World Disasters Forum (WDF) hosted by the British Red Cross Society, and an agreement was reached to research the feasibility of various models of ombudsmen-type systems. The results of this eight-month study, known as the Ombudsman Project and coordinated by the British Red Cross, were presented at the subsequent WDF in June 1998. A pilot project was suggested to test the rationale, feasibility and effectiveness of the proposed Ombudsman through research and consultation with beneficiaries and field offices. At a meeting at the headquarters of the International Federation of the Red Cross and Red Crescent Societies (IFRC) in Geneva in March 2000, fifty senior representatives from key humanitarian organisations agreed to a two-year pilot study called the Humanitarian Accountability Project (HAP). In 2003, the Humanitarian Accountability Partnership-International (HAP-I) was established as an accountability mechanism for humanitarianism CSOs (Deloffre n.d.: 14-24).

Mechanisms to build trust: The analysis here focus on only some of the CSO stakeholders – donors, governments, members and beneficiaries/clients. Initiatives to establish mechanisms to build trust between donors and CSOs are more often than not exclusively undertaken by the donors, with few exceptions. The donor-CSO relationship is largely a vertical one, primarily because of the intense competition for funds. In this regard, Merea and Stoica (2007) investigate the impact of the eligibility criteria for grants that are set by donors on CSOs in Romania. The first relevant finding of this study was that "established donors were looking for the same one thing", the experience CSOs had with managing funds. Secondly, their analysis illustrates   that

donors expect CSOs that they fund to: internalise obligations and be responsible for adhering to programme guidelines set by the donors; and define and report on measurable goals, which "were never the object of any negotiations between donors and grant receivers". In essence, CSOs that are grant receivers "aimed to do their best to stay in line with their donors' instructions for the grants they offered". They "had to recognize the need to carefully observe donor interests, priorities and formal requirements" (Merea & Stoica: 2007: 83-7). The latter include mechanisms determined by donors such as regular financial reports, performance assessments and evaluations are important tools to maintain the trust of donors.

Some scholars note that these demands placed on grant receiving CSOs have, firstly, a distorting effect arising from chasing targets and key performance indicators, and, secondly, the time burden imposed by reporting demands. Instead, it is recommended, a significant proportion of standard documentation (reports, etc.) could be substituted by visits between donors and grant receivers. The benefits of this include:

- A reduction in the tremendous time burden imposed by office-based tasks arising from the need to prepare reports;
- Provide the opportunity for donors to learn more about the grant receiving CSOs through in-country visits, including sensitizing them to local/regional specificities and to the realities of lives, livelihoods, needs, and limitations in the country they are visiting, thereby improving the dialogue between donors and grantees and enable the latter to have more of a voice in setting the agenda;
- Enabling donors to interact with the beneficiaries or clients of CSOs they fund and thereby promote downward accountability;
- Enable grantees to get a better understanding of the mission, goals, and styles of working of donors and obtain greater opportunities for feedback and dialogue;
- Repeated visits that could contribute to a more rigorous monitoring system and enable donors to get a more realistic understanding of the performance of the grantees (Mawdsley, Townsend & Porter 2005: 79-80).

Initiatives to develop the legal framework for civil society – in which are found the primary mechanisms for government's trust in CSOs – often takes several different trajectories, all dependent on factors such as the strength of the civil society   sector,

the nature of the state-civil society relationship, and the prevalence of democratic or autocratic practices in the society. However, it is normally the government which initiates the process, although there are exceptions. Olugbuo (2014) describes how this process was undertaken in Ghana and Nigeria. In 2007, the Ghanaian government proposed a Draft Bill for Trust and Non-Profit Making Civil Society Organisations that included provisions for the establishment of a Trust Commission to regulate the activities of CSOs. In addition to the regulation of CSOs, the Commission was to also have the power to enter into a partnership with CSOs in Ghana to develop a code of conduct. By contrast, a private member Bill sponsored by several members of the House of Representatives in Nigeria was introduced in 2014. The Bill provided for the establishment of a regulatory agency for CSOs in the country, and also for the agency to be made responsible for the development of a Code of Conduct to facilitate self-regulation by CSOs on matters relating to their activities, funding programmes, foreign affiliations, national security, training the development of national manpower, institution building, scientific and technological development and such other matters as may be of national interest. In addition, the Bill provides that the Code of Conduct shall prescribe the responsibilities of the organizations, which, once approved by the Board, shall be construed as legally binding obligations under Nigerian law.

Mechanisms to build trust with beneficiaries: O'Dwyer and Unerman (2009) note that several scholars argue that the effectiveness of CSOs can be enhanced when they engage in accountability dialogues with their beneficiaries so they can better identify, and assess how responsive they are to, their core needs. They then make a study of a government initiative in Ireland to foster downward accountability among CSOs. In 2003, the representative body of development NGOs in Ireland, Dóchas, began actively promoting the development of downward accountability among its members, including establishing a working group to examine experiences of downward accountability elsewhere to inform the Dóchas membership and Dóchas" ongoing consultations with Irish Aid. The focus was on prioritising beneficiary perspectives and needs in NGO accountability. This was in response to the conditions found in the Irish government's funding scheme, the Multi-Annual Programme Scheme (MAPS), for medium-term funding made to NGOs that included requiring the NGOs to develop downward accountability mechanisms. This initiative was introduced by the government in 2003, and, according to O'Dwyer and Unerman, had the effect of

promoting the development of downward accountability towards beneficiaries or clients among Irish NGOs.

Mechanisms to build trust with members: Membership CSOs such as employer associations, women's organisations, youth organisations, civic organisations and trade unions usually arise from processes that bring together people or groupings with similar interests into an organisation whose membership then determines the rules and processes – in most cases found in a constitution – that include mechanisms that build trust with the membership. An illustration of this process is found in Howes' (1999) description of how Saptagram – an innovative Bangladesh NGO, which uses a process of group-based development to empower poor rural women – establishes such women's groups. The first step is to elect a chairperson, secretary and treasurer at an initial meeting. Regular meetings are then held weekly, fortnightly or monthly that are normally attended by a Saptaram field worker. At each meeting, every member contributes a small sum – set at a level the group has decided – in savings for a group fund. The next step is often for groups to start making small loans to individual members for pressing short-term problems. In time, confidence in collective decision-making grows (Howes 1999: 5). In more established organisations, however, founding documents normally include procedures for holding the leadership accountable and voting them out of office as well as participatory decision-making processes (Hadenias and Uggla 1998: 46).

Transformative dynamics in the South African Civil Society: Expert views

For this report, we drew on key expert interviews with a focus on academic experts that specialize in South African civil society. While interviews generally focus on individual experiences and perspectives, expert interviews highlight the "…individual relevancies of experts…[as] individual perceptions and orientations of experts are seen as essential for shaping social practices in a field of action" (Döringer, 2020). Therefore, there is a need for a "…broader understanding of expert knowledge that goes to technical data and facts by highlighting the implicit dimension of expert knowledge" (Döringer, 2020). Given that the focus of the study is on the transformative dynamics of South African civil society, the expert interviews focused on the following themes:

1. The political context of South African civil society, which included questions on the ability and rights of citizens to organize and act towards the collective public good, including the dynamics that shape the relationship between the state and civil society in South Africa.
2. Key opportunities and challenges for civil society to engage the government in bringing the voice of the ordinary citizen
3. Key challenges for civil society to engage government, including internal dynamics within South African civil society, and relationships and collaboration between different CSOs and CSOs and government
4. Gender dynamics, inclusion and representativity within South African civil society,
5. Key interventions to invigorate state-civil society relationships

In addition to expert interviews, we also engaged with datasets on civil society in South Africa. Specifically, we engaged with the Varieties of Democracy's Core Civil Society Index, Civil Society Participation Index, and the Women Civil Society Participation Index. The Core Civil Society Index measures the robustness of civil society understood as "…one that enjoys autonomy from the state and in which citizens freely and actively pursue their political and civic goals, however, conceived" (V-Dem, 2020a). The Civil Society Participation Index measures to what extent policymakers routinely consult CSOs, the level of public involvement in CSOs, and whether women are prevented from participating (V-Dem, 2020b). The Women Civil Society

Participation Index measures the ability of women to express themselves and to form and participation in groups. This is measured by looking at the level of open discussion women enjoy on political issues, participation in CSOs and representation in ranks of journalists (V-Dem, 2020c). To supplement the Women Civil Society Participation Index, we also engaged V-Dem data on women's participation in CSOs, freedom of discussion for women, and the women's political empowerment index, which focusses "…increasing capacity for women, leading to greater choice, agency and participation in societal decision making" through fundamental liberties, open discussion of political issues and participation in CSOs as well as the formal representation of women in formal political positions (V-Dem, 2020d).

South Africa's civic space: The political context

South African civic space is built on the rich history of the liberation struggle, most notably the UDF as discussed earlier. However, the civic space in apartheid South Africa was severely restrictive, and as such, did not allow for quality engagement with the public. At the dawn of the South African democracy, as illustrated earlier, the South African civic space was reimagined to be one of collaboration and engagement, drawing on the Tocquevillian tradition of civil society. This reconceptualization of civil society was in contradiction with the more Gramscian nature of civil society that characterized the apartheid years where the relationship between the state and civil society was one of contestation and reshaping power dynamics.
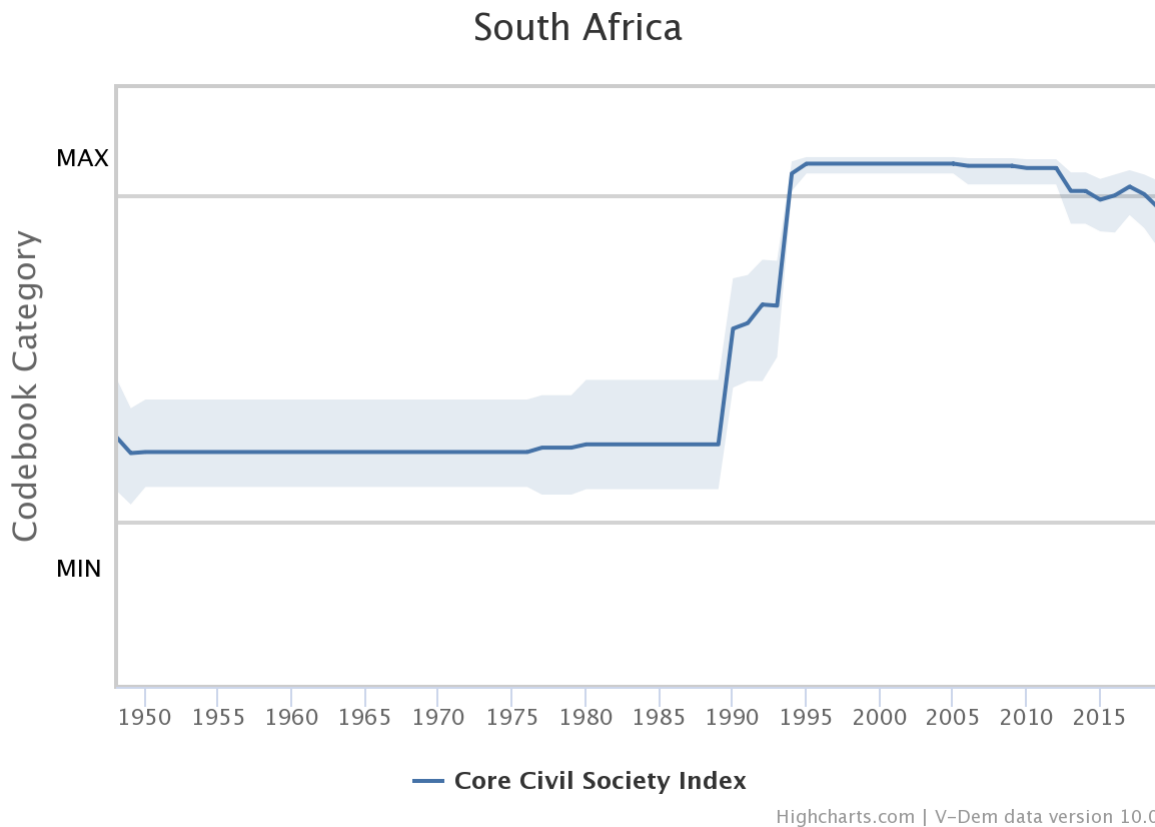
Figure 2: South African Core Civil Society Index, 1948 – 2019 (V-Dem, 2020a)

Figure 2 demonstrates that between 1948 and 1989 South Africa's civic space was characterized by repression and limited autonomy. Indeed, the civic space became more restrictive between 1976 and 1980, which is not surprising given the escalation of resistance to the apartheid state. With the political unbanning of liberation movements in the late 1980s the civic space in South Africa became a little more open and autonomous. As South Africa progressed through its historic negotiations to end apartheid and install democracy, as well as the development of new legislation, saw the transformation of South African civic space from restrictive to more autonomous. Indeed, as Moyo (no date) notes, in the South African context, there are

> …enabling laws…[and] relations between civil society and the state are cordial and of mutual respect, the laws are embedded in their constitution. In other words, there is an effort to align the letter and spirit of the constitution, with the policies and further legislation on specifics.

Moyo (no date) notes that the Non-Profit Organisation Act of 1997, for example, "…makes a clear distinction between creating an enabling environment for civil society and the other objectives regarding administration and regulation…[the Act] promoted

cooperation and shared responsibility between the state and civil society". Indeed, the objectives of the NPO Act of 1997 are:

1. To encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the Republic by
   a. Creating an environment in which nonprofit organisations can flourish
   b. Establishing an administrative and regulatory framework within which nonprofit organisations can conduct their affairs
   c. Encouraging nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards
   d. Creating an enabling environment within which the public may have access to information concerning registered nonprofit organisations
   e. Promoting a spirit of cooperation and shared responsibility within government, donors and amongst other interested persons in their dealings with nonprofit organisations (Republic of South Africa, 1997).

Figure 2 demonstrates that from 2013 onwards we note a constriction of South Africa's civic space. This period aligns with the Zuma administration and an increasingly autocratic approach towards South African civil society. The infamous Protection of State Information Bill of 2011, commonly known as the Secrecy Bill, sought to severely limit access to information. Indeed, as Chipkin (2018) observe,

The Act was especially controversial for giving government officials the right to classify as 'top secret' any government information in the 'national interest' while also criminalizing 'whistleblowing' and investigative journalism. The definition of 'national interest' excluded virtually nothing from censorship and the mandate of the South African intelligence services was so broadly defined that ordinary democratic activity could be construed as a national security threat.

In 2011 Freedom House's Media Freedom Index downgraded South Africa from Free to Partly Free due to increased harassment of journalists (Freedom House, 2012). In 2012, South Africa's score for press freedom further declined. Karlekar and Dunham (2012: 11) highlight

South Africa's performance has steadily eroded in recent years due to state interference in the public broadcaster, an increasingly hostile climate for government critics, and progression through the legislature of the Protection of State Information Bill, which would allow government officials and state agencies to withhold a wide range of information in the national interest or on national security grounds. The country's score dropped another point, to 35, for 2012 due to de facto restrictions on media coverage of wildcat mining strikes in August and September.

The general decline in press freedom, coupled with increased measures to curb accountability for state capture during the Zuma administration, as well as subverting political institutions for personal protection and gain, saw a climate of autocratisation (democratic backsliding) emerge in South Africa. A case in point being the appointment of Hlaudi Motsoeneng as a chief operating officer of the South African Broadcasting Corporation (SABC). Motsoeneng has managed to maintain his position despite a damning report by the Public Protector Thuli Madonsela that Motsoeneng had lied about his educational qualifications (claiming he had a matric), had intimidated staff and had irregularly increased his salary from R1.5m to R2.4m in one year. The report concluded that his appointment as then acting chief operating officer was irregular. Instead of implementing disciplinary action, the government's response was to appoint him permanently; strongly indicating that the controversial COO enjoys political protection from the executive. In turn, Motsoeneng has embarked on a sunshine stories approach, requiring that at least 70% of the SABC's stories be positive and has promoted the idea of licensing journalists – in direct contravention of the constitutionally endorsed freedom of expression (Kruger, 2014). Ironically, the last time there was a call for the licensing of journalists was under apartheid.

The most evident expression of decline in accountability, respect for the rule of law, and control of corruption is found in Jacob Zuma's court bid to challenge the constitutional powers of the former Public Protector, Thuli Mandosela, and her recommendation that he must repay a portion of costs for non-security upgrades to his homestead, Nkandla, constructed with state money under the guise of security upgrades in excess of R246 million (Rossouw, 2009). There were numerous instances where the constitutional powers of the Public Protector were undermined as

President Jacob Zuma tried to avoid accountability on the misuse of state money to renovate his homestead for R246 million. These included an interdict[1] by the Security Cluster to stop the Public Protector from releasing the *Secure in Comfort* Report, a report by the Department of Public Works exonerating President Jacob Zuma from any wrongdoing,[2] President Jacob Zuma refuting the binding nature of the Public Protector's remedial recommendations,[3] and a parliamentary report finding President Zuma innocent of corruption.[4] The Constitutional Court of South Africa confirmed the remedial binding powers of the Office of the Public Protector, and more importantly, found that President Jacob Zuma had violated the Constitution and his oath of office.[5]

The controversial State Capture Report[6] released shortly after the 2016 Local Government Election provided evidence of former President Jacob Zuma violating the Constitution and his oath of office. Here the Public Protector investigated allegations that the economically powerful Gupta[7] family had undue influence over President Jacob Zuma in the appointment of ministers and securing lucrative government business contracts for their personal enrichment. Again, President Jacob Zuma attempted to use the courts to block the release of the report, claiming he did not have sufficient time to respond to the questions of the Public Protector,[8] but later withdrew his application.

Through the ANC's policy of 'cadre deployment', Jacob Zuma was able to undermine the quality of governance by placing loyalists in key positions as he fought his constitutional battles and used Parliament, a key oversight body, as a theatre to

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[1] See https://africacheck.org/wp-content/uploads/2016/04/Founding-affidavit-minister-of-police.pdf.
[2] See http://www.gov.za/sites/www.gov.za/files/nkandla.pdf.
[3] See http://www.thepresidency.gov.za/MediaLib/Downloads/Downloads/Letter%20from%20President%20Zuma%20to%20Advocate%20Mandonsela.pdf.
[4] See http://www.news24.com/SouthAfrica/News/Parliament-adopts-Nkandla-report-20150818.
[5] See http://www.saflii.org/za/cases/ZACC/2016/11.pdf.
[6] This report entitled *State of Capture* outlines various areas of undue influence and interference by President Jacob Zuma that benefitted both the Gupta family and his son, who has intimate business connections with the family through undue interference and influence in various tender contracts in the electricity supplier, Eskom, as well as influencing the appointments of the Minister of Finance and irregular visits and appointment with the Minister of Mineral Resoureces (http://www.rdm.co.za/politics/2016/11/03/madonsela-s-state-capture-report-five-key-findings). A full copy of the State of Capture Report can be found at https://www.scribd.com/document/329757135/State-Capture-Report-2016#from_embed.
[7] See http://www.bbc.com/news/world-africa-22513410.
[8] See http://www.iol.co.za/news/politics/zuma-state-capture-report-unlawful-2085117.

exonerate him from any wrong-doing. One noted the extension of the government to 34 ministries under President Zuma (from Mbeki's 28), highly likely a move to accommodate his indebtedness to those who had ensured his ascendency to the presidency. In such a patronage network, facilitated by cadre deployment, and justified by a belief in controlling all centres of power, access to the state and its resources comes down to being able to offer positions and power for political loyalty and is less about representation and delivery to the public (Du Toit and De Jager, 2013, 112).

Under Zuma's tenure, the Constitution was presented as a hindrance to achieving the full liberation and transformation of South African society 22 years after the fall of apartheid. Although there had been 16 constitutional revisions by 2012 (De Vos, 2012), we now see an argument that the constitution was only a "…compromise document foisted on the people of South Africa by evil right-wingers, that the document has become a stumbling block to effective governing of the country and hence has become a hindrance to the economic transformation of the country" (De Vos, 2012). The constitution, a document that commits the state to impartiality, rule of law, and constitutionalism is now seen as a primary obstacle in achieving the great post-apartheid transformation. By 2015, however, the ANC noted a "…slow progress in…key transformative programmes" in the sphere of the state due to "…constitutional and resources constraints" (ANC, 2015). These constraints, the ANC maintains, undermines their ability to deliver *a better for all* (Ndou, 2014). Indeed, Chipkin (2018) note

> Tyranny, as opposed to despotism, refers to a form of government that breaks its own rules, a useful starting point for discussing recent South African political developments and civil society responses. The African National Congress (ANC) government under Jacob Zuma became increasingly tyrannical over the last decade, as it positioned itself against the constitution and the rule of law. This move to tyranny was not simply the result of corruption—it was also a political response to South Africa's racially defined inequality, which incorrectly identified the constitution as an obstacle to radical economic transformation. Zuma's actions justified growing lawlessness in key parts of the government and enabled widespread corruption in the state marketplace. In response, largely to force the government to play by the rules, civil society has been reinvigorated and several new coalitions have emerged.

This overview is important in order to contextualise the expert views given that the study is commissioned a mere two years after the Zuma administration. When asked to reflect on the political context of South African civic space, there was overwhelming agreement that while the institutional and constitutional structure facilitates agency as part of citizens' rights, South African civic space, however, is constricting due to an increasingly strong and adversarial response from the state. In describing the political context in which civil society operates, there was general agreement that South Africa's civic space openness is constricting. Indeed, one interviewee observes

The civil society space is pretty open in the sense that you can say more or less anything you want, and that people are quite free to organize and mobilize and do, but the state is becoming increasingly weak. And as it weakens, particularly, the security becomes less responsive… in particular the security forces become more arbitrary and their response to things. So, if you do march, for example, if you do protest like most people do because you have no other means of accessing and getting the state to come to you, the only way to do it is through to do it is to protest…it seems to me that the state has become more and more unpredictable and arbitrary as the quality of the policing has deteriorated…So, it's the sense that it's still a lot of political freedom, but the state is becoming less and less predictable and more and more generally less responsive and more and more part of the unpredictability is that it can respond arbitrarily and violently and especially in poor areas. I think people know if you protest you take a chance because if the state comes it can often respond to that way (NDA-1-14-10-2020).

Similarly, another interviewee highlighted

The state is increasingly blind. Whether it's blind by design or capacity is a question to be looked at more closely various odds of the state. I think the state is defensive, and, that may indicate a perception of weakness, it does not necessarily mean the state is weak. And, I think the state is largely corrupt and that certainly makes them highly defensive. For example, I sent a team of fieldworkers to go and discuss with a local government the possibility of us undertaking a project in collaboration with that local government. When the team arrived, and no one would see them, and they were told that people had left their

offices. And the reason for that was that they had assumed that my team were members of Hawks. There is no indication from my team either, either in branding or in the way they had approached the office to suggest. It was purely an internal threat perception from that local government. And, as we discovered now that local government had a good reason for that. So, we've experienced all over the country. public servants who are happy to talk with civil society and engage civil society, and political appointees who are not. And, we've gone places where people will say one thing and act another, so they'll invite collaboration, but they will not make it possible to achieve that collaboration. We found plenty of other places where people are perfectly willing to interact with national bodies, but not local bodies as they are somehow different. And, often we find people willing to allow civil society to operate, but only if they bring their own money to the table. And then you discover that that particular project, those massive amounts of state money behind it, that just wasn't spent. So, it really is a bit of a mixed bag, one could almost say, like the great egg in the original sense of that word, which is that you know, the great is willing to eat part of the egg because they're okay, but actually buy eggs rotten. For me, it feels like a somewhat unhealthy situation at the moment (NDA-2020-10-19-05).

Another interviewee noted

I've been involved with a lot of civil society organisations in township areas, including Delft, Phillipi, Inyanga, and other areas, when there is a breakdown, a real breakdown of trust with government, which is sometimes precipitated by the things that government officials do that make civil society organisations believe that they're not being listened to or not being taken seriously or that they're just being dismissed or that all the decisions are just being made elsewhere where they can't be involved, it does, the room for manoeuvre for civil society organisations becomes very restrictive and the tactics that they use then deliberately become more antagonistic. And, that then spirals into, you know, riots or other kinds, or it can then spiral into riots or other kinds of violence. And there is a huge, huge amount of frustration with a lot of activists, you know. I've been working a lot on gender-based violence for the last 10 or 15 years, and that's an area where I think the levels of frustration in civil society are just, you

know, so high that it's very hard to believe anything that is coming from the government (NDA-02-22-09-2020)

The South African context I would say, at least in a regional context, is a far more conducive environment for civil society and advocacy, I would say. But, at the same time, there is a definite sense of a more restricted and confined to civic space, despite reforms that seems or feels enabling. A good example would be media, the media space, which obviously is front and center in terms of civil society engagement. And, I would say in that space there is a definite or increasing sense of restriction or censoring of the media and of activists who are within that space all that space of open access and access to information and so on. While the repression is not comparable to repression that we would see in Tanzania where colleagues of ours who speak in any context, when they speak, really have to be careful of the kind of risks to their personal well-being and safety is very immediate. The South African context, this space is more about perhaps pervasive reform that seeks to close the space, in some ways, not always directly or obviously. Maybe, a quick recent example would be, the Public Procurement Bill, which on the one hand is an important space of reform, and on the other is a sense of closing spaces for public scrutiny and civil society scrutiny. You know, there are some spaces, it is legally more about reform and the space being closed from that perspective, rather than direct repression in the way that we see in some of the other countries. There are some instances for example in the Instance of human rights defenders and environmental activists where the risks are perhaps also not just from internal or domestic risks, but also those multinational companies, and so on. And that still has the impact of closing civil space (NDA-03-08-10-2020).

Common themes associated with the constricting civic space in South Africa relates to dysfunctional governance (see figure 3).
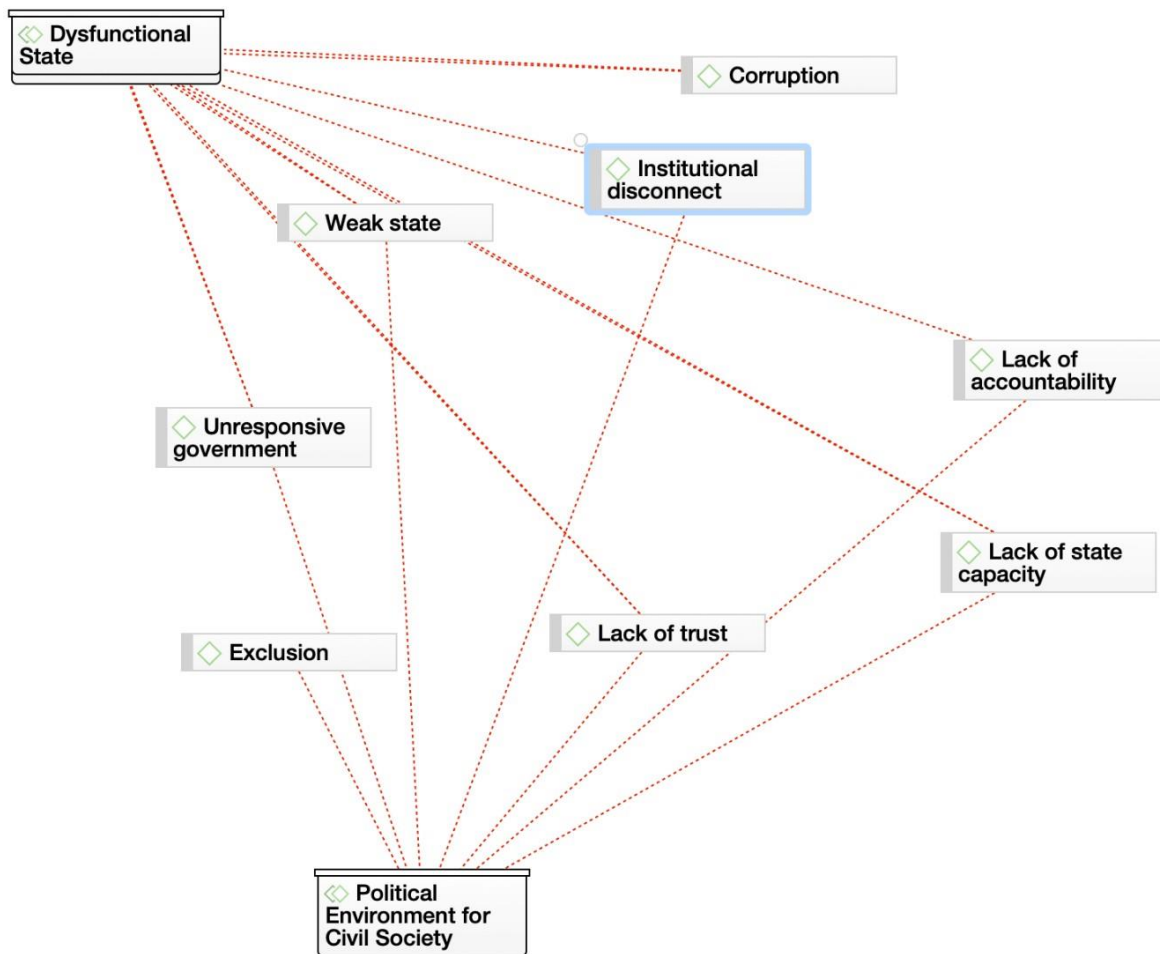
Figure 3: Dysfunctional Governance: Created with Atlas.ti.

Figure 3 demonstrates that interviewees flagged several factors that impact on the political environment for civil society to operate that relate to state dysfunctionality. Due to corruption and state capture, coupled with a lack of accountability, has laid the foundation for a weak state, an unresponsive government, and an overall lack of state capacity. This, in turn, results in feelings of exclusion, a lack of political trust and overall exclusion.

Another key factor is that of institutional disconnect between the various levels of government and civic organisations. Institutional disconnect finds expression in the manner in which there is a lack of consistency in how government at all levels engage with civil society as well as varied experiences that civil society has when engaging government. Indeed, interviewees noted:

But I have seen examples of where there is still cooperation, but it tends to be limited within where you build an alliance with a particular person or group of

people within government. So, for example, with, I did like an evaluation of a civil society network in Phillip that was working on gender-based violence in Phillipi that has been quite a success. One of the reasons is that they've got a very strong alley in the police force, who has opened the door to working with other officials and departments. Therefore, that group of civil society organisations has been able to make significant progress. Now that doesn't mean that it won't be reversed, but, you know, there are still examples of that. I don't want to sort of condemn the entire system, even though I think there are lots of examples of heavy-handed, anti-democratic, corruption within government as well. So, I don't know. I'm not really giving you a very clear answer (NDA-.22-09-2020-02).

But they're not designed to deal with the real issues that bother people where they live. So, they're not designed to deal security. It's more of a national issue with policing. They're not designed to deal with education; that's more of a provincial and national issue, policy gets set there and money spent at the province. They're not really designed to deal with health, similar problems, a national issue that kind of involves a department, but always as a partner, and livelihoods. Those are the big five issues that bother most people where they live in their neighbourhoods, like, in our neighbourhood we want to sort of security, in our neighbourhood we want to deal with issues around transport. And, the municipality is not really that involved. So, if you complain to your ward councillor doesn't really help a lot, even the functional municipality when the issue is security or when the issue is livelihoods, or the issue is housing. That's the other big one. So, the municipality is a kind of bit players, even in a functional one, they are kind of part players in a more complex governance process. So, that's what we mean by democracy disconnected. It means that all these democratic institutions and they do work with the tend to work when they connect to a local government can do directly. The moment it's connected to local government in partnership with other branches of government or partnership with the private sector, the relationship breaks down and it's you know and unreliable and it varies quite a lot from case to case. So, that was really that argument. So, I think that's a huge problem and it's exacerbated by the fact, well, I mean, it's not uncommon, but the other related issues we don't have constituency-based provincial and national MPs. [inaudible] I mean, it's a real issue, like how do you

access national governments, and that people get frustrated and there are only two ways you can hold government accountable, no three ways you can hold government accountable and so in our country one is one in elections, and parties do worry about elections. But, as you know, these massive drop-offs and participation rates. Half of the voting age population is not voting, like 50, no 49% are not voting in the last election. And, if you unpack that, I guarantee you it's going to be the poor black rural people…The second way you hold to account is through the courts, but for that, you need money and knowledge. So that's a middle-class option. Old-school middle-class people don't like confrontation violence and marching which understandable. Getting more used to it, but, you know, it's not an easy thing to do and you know, like a fact of daily life in quite the same way as living in a township or an informal settlement. And then the third way is protest but protest, Yeah, I mean, can get the state extension and it can stop stuff from happening. Quite hard to make stuff happen, but I suppose the same is true of the courts. It's easier to stop things happening using the courts than make stuff happen. So those are three ways you can keep government accountable (NDA-1-14-10-2020).

I think the answer to that question is layered in the sense that there are some serious sectoral differences. So, for instance, if we look at activists who are working to inform communities or impart knowledge to communities, and in fact empower communities in terms of land, access to land, you know, housing activists, for example, I think, you know, if we look at the work of the Khayelitsha work and some of the organisations like the Social Justice Coalition, the collective and kind of community mobilization work that is an ongoing threat. So, the state does 10 to use policing and quite repressive, yes I suppose repressive policing tactics to silence, to intimidate and ultimately it has the effect of closing civic space. On the other hand, there is in some areas a much greater openness to civil society inputs and activity where, perhaps, less direct activism is concerned. So, one example is, you know, I work within the fiscal transparency, which we have found that you know, the relevant government departments and the state are relatively responsive and open do engagement from that perspective, and will tend to take on suggestions or consider submissions, for instance, which in some ways have similar, all the same, intentions activists

would be taking to the street, to either deliver petitions or engage municipalities or engage political leaders. But, perhaps the difference is in the type and level of engagement. In some respects the entry-level, which government department you are engaging. I think there is also the kind of more pernicious, you know state issues, which relate to the unresponsive state. So, where, you know, for example, most recently we provided some support to community health workers, both from a budget analysis perspective, so figuring out, you know what the state is providing in that regard, and on the other, providing some evidence on why community health workers, for instance, you know, are under-represented and under-supported by the Department of Health. The difference between, you know, presenting a budget analysis that spells out that why community health workers should be recognised and supported, and community health activists and workers themselves taking to the streets and protesting at the Department of Health because of unresponsiveness. Those two differences are all those two types of activism, or intervention, you know, have very similar objectives, but are met in very different ways. So, in the Eastern Cape, one example that comes to mind with the community health workers with them being, you know, essentially physically removed and hosed down at the municipal offices or the provincial premier's offices that they were at in a largely peaceful protest context. And so, that level of, the combative approach to protest has a negative impact of, on the one hand, intimidating activists, intimidating those who are, you know, wanting to raise fundamental concerns. And, on the other hand, increasing tensions between the state and civic actors (NDA-03-08-10-2020).

There is thus a need to build a model of good practice and consistency for all levels of government in their engagement with civil society and civic organisations. A model of good practice needs to ensure that the principles of democratic participation are sufficiently upheld to facilitate collaborative, citizen-centred engagement with civil society in South Africa (see figure 4).
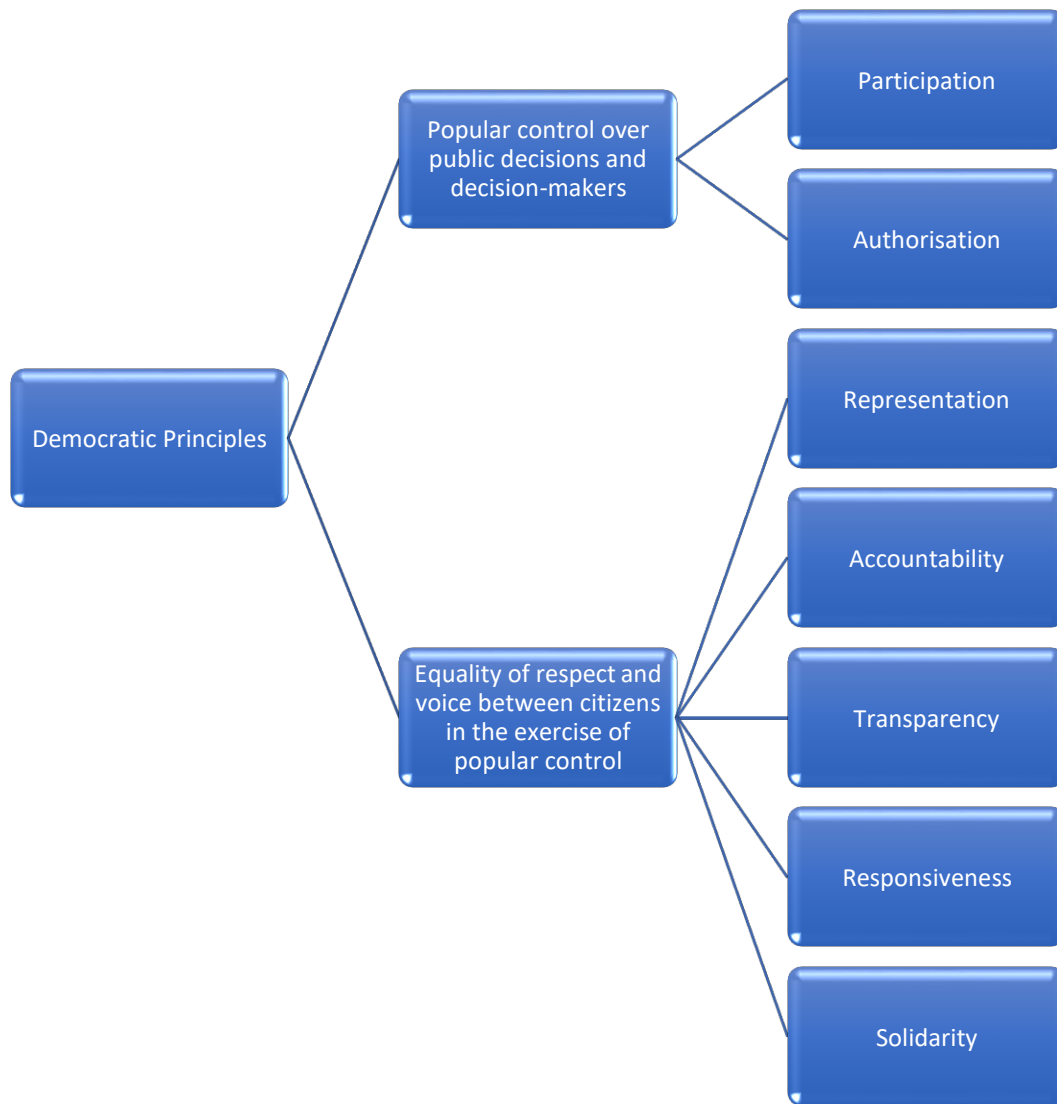
Figure 4: Democratic principles for State and Civil Society interaction

Indeed, as one interviewee reflected,

If your client wants a simple answer, then they can't get it. I'm aware, for example, during the COVID-19 pandemic of grassroots institutions interacting comfortably with a local government on issues of COVID-19 in public education distribution and that self-same health organization taking the national government to court on other issues in an adversarial relationship. If the client wants to know whether it is possible to align civil society and to create a non-adversarial, collaborative approach, on all issues the answer is no. If the client wants to know whether it's possible in certain circumstances and certain issues and certain matters to build social compact or to align civil society or to get collaborative action, then the

answer is yes. The one thing about South Africa that is clear is that not in the present environment, in which civil society is unwelcome and no regard therefore because its non-repressive and civil society is legally capable of working and it is not subject to significant censorship of their actions and views. It creates this very complex environment, and anyone who's working in that environment, especially on the state side, need to understand that in order to mobilize effort from civil society, I think what I can say in a general sense is that members of the ruling party and those whom they employ at senior levels within most institutions are not very understanding of the complexities of civil society and have do attempt to create a sense of as civil society as an underling in the affairs of the state; a cheap service provider to undertake what the state decides. And, so I think that attitude of the state at certain levels in all three tiers of government is somewhat problematic. And, obviously, because they have the power that occasionally has implications for the manner in which some parts of civil society and some civil society leaders respond publicly to them. But in an overall sense as a friend of mine says, when you come to a country and you see civil society criticizing the government that probably tells you that the society is a democratic one, which is an appropriate environment (NDA-2020-10-19-05).

Another key element that impacts on the political context of civil society is that of a party-dominant political system in which the South African democratic system is premised.

So, partly is it about the design of the democratic system. That's only part of the story and I would say that probably not even half the story. The other half the story as we all know is the story of this dominant party syndrome, that's now become this hollowing out of not just the party, but the party and state, you know through these practices of corruption and patronage and nepotism and so forth. So that people in the office are basically quite good at looting the state rather than doing a job. So, they're not interested in listening to people are responding because that's not what they're there to do. So that's probably half to two-thirds of the problem is the kind of lack of accountability from below and from above for both public servants and politicians, but actually especially public service, because without public servants there's no way you are actually able to do all

this corrupt stuff. So, as you know you have all these networks between politicians and civil servants who informally arranged to undercut various processes and to extract as much money as they can for their families and their little networks and this has become like a culture almost. Look, I think it's been the crucial thing is if you don't have your national leader stamping down on it, I mean, basically, I don't think Zuma invented this practice… it was already happening all over the country, but then it's like a green light goes when Zuma comes to power and everyone's trying to plunder the state (NDA-1-14-10-2020).

I'm critical of the ANC government, but that's because they say so dominant, but it may well be that all the parties are really very images of one another and that it's a particular qualitative attitude. Certainly, the DA has found it hard to interact with the human rights community, but also with the development community. And there are occasions when they've managed to interact perhaps more effectively with environmental communities and if you think about the Cape Town Day Zero, you know, Zero Hour period, I think that they may, they did eventually get the certain level of collaboration from some certain types of civil society. But, most of our parties are somewhat hegemonic. Or they, put it this way, they would like to be hegemonic. And, that's not new as was the case under apartheid as well with both the National Party and the resistance to the National Party saw civil society groups and co-opted civil society groups into their particular lager and expected them to give allegiance. It was an unfortunate homogenizing of civil society and fortunately in 1994 or between 1990 and 1995 some organizations, at least whether, under the most democratic movement or indeed under the National Party sort of banner, did manage to do re-establish an independent identity (NDA-2020-10-19-05).

The interview data correlates with the Varieties of Democracy Index findings that the consultative and openness of the civic space in South Africa has declined (see figure 5 and figure 6).
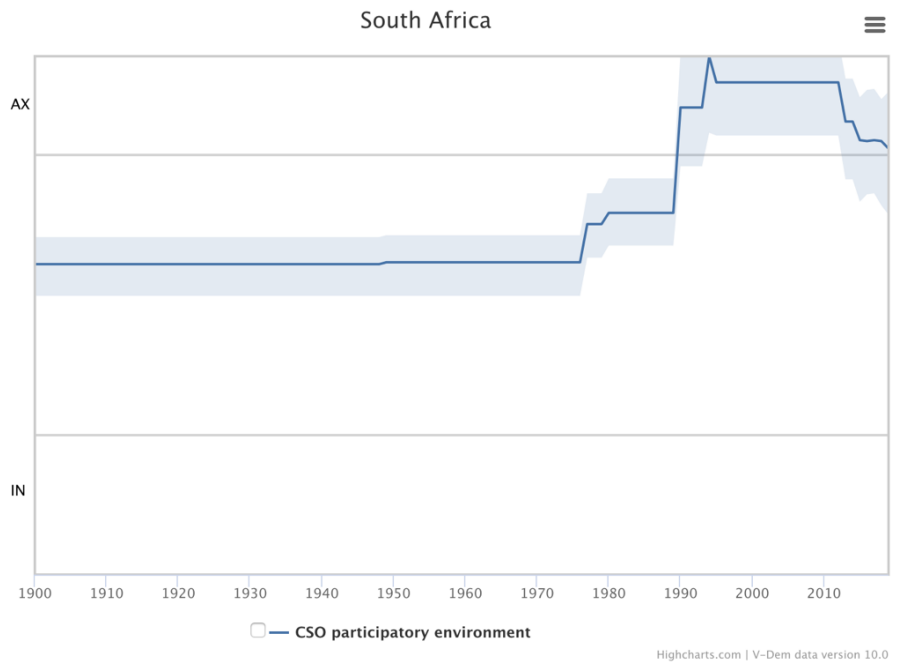
Figure 5: CSO Participatory Environment: South Africa (V-Dem, 2020).

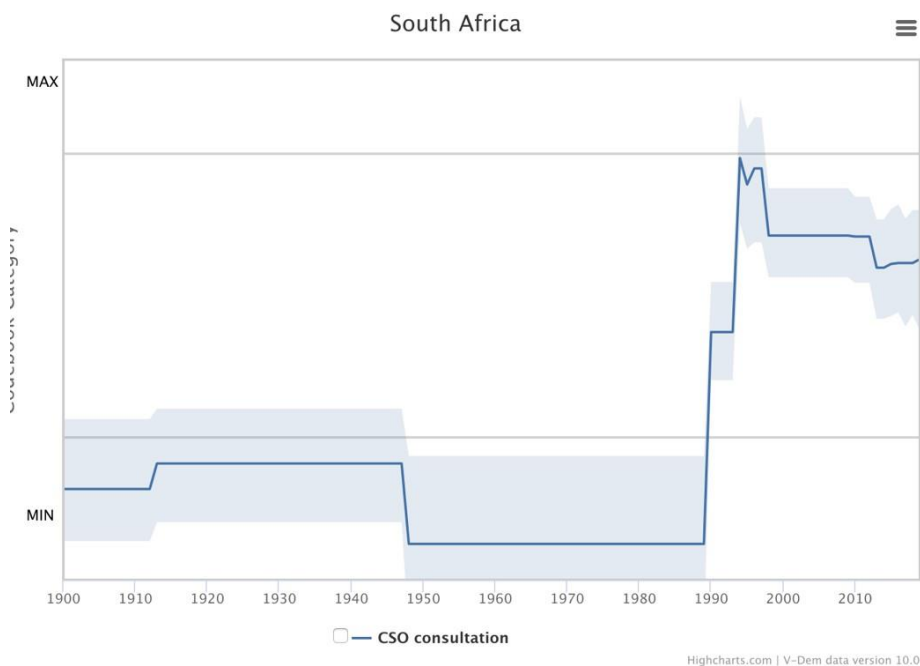
Figure 6: CSO Consultation: South Africa (V-Dem, 2020).

It is thus evident that over the course of South Africa's democratic history, the democratic gains made by civil society has somewhat reduced. Both V-Dem data and the qualitative interview data flag a constriction of the political context in which civil society operates, as well as highlights worrying trends in the development   of

state-civil society relations as South Africa moves towards the fourth decade of democracy. A central theme in the contraction of civic space is the nature of a dysfunctional state underpinned by challenges of corruption, patronage, unresponsiveness, and a lack of sufficient capacity which leads to a lack of trust and feelings of exclusion, resulting in a somewhat adversarial interaction between state and civil society. However, this is not the case across all levels of government and would depend on which issue as well as which level of government one is analysis in determining the nature of state-civil society engagement.

Civil society dynamics: A cursory glance

The second theme we engage is a cursory glance at the internal dynamics of South African civil society and the transformative needs that emanates from civil society sectoral dynamics. Figure 7 presents a key overview of internal civil society dynamics that characterise the civic space in South Africa identified by key informants.
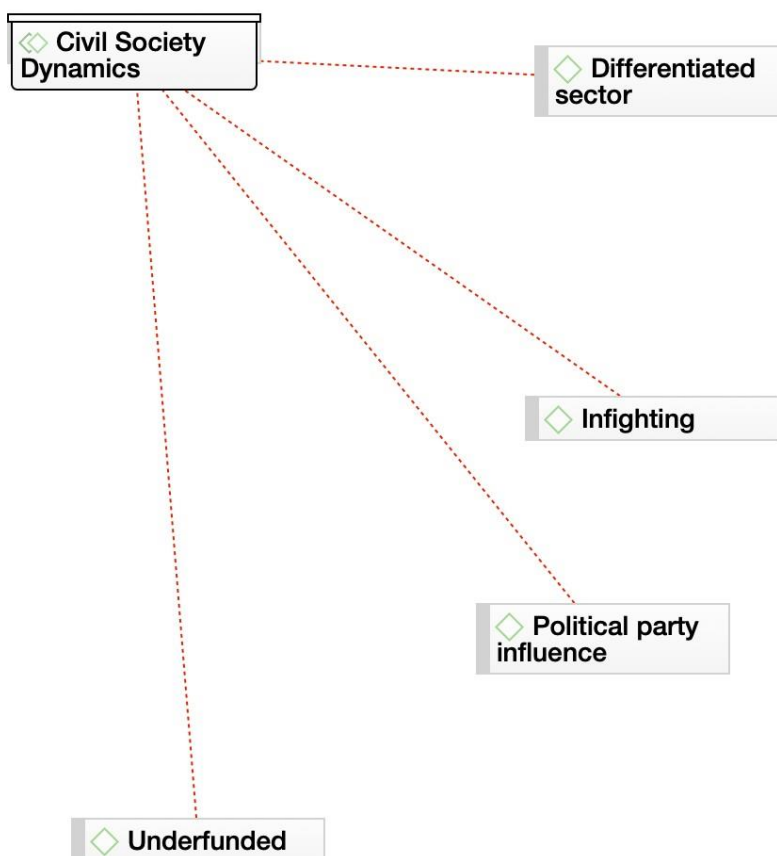
Figure 7: Civil Society Internal Dynamics (created with Atlas.ti)

Key factors that shape internal civil society dynamics relate to issues of infighting, underfunding of CSOs, political party influence, and a high degree of differentiation within the civil society sector. Interviewees highlighted that when looking at South Africa's civic space one needs to distinguish what is conceptualized as the professionalized NGO sector, community-based organisations, and a more localized and politicised type of organization that compete for political influence within communities. In this regard, interviewees highlighted

…it's helpful to distinguish between different kinds of associations. So, for the NGO sector, which is kind of professionalized, let's call it the professionalised sector, I can't really comment on where there is a competition between them, but I would say generally they're quite weak. It's, you know, they have been underfunded for a long time now and they're limited to a few organisations that big cities. And even in the cities, those organizations won't have popular routes, right, so, then they're more like policy lobbying think tank type organisations. So, there's that kind of civil society and I think they've shrunk in significance since say 2000 because of funding cuts. You think of IDASA, it's the classic example, we miss IDASA badly actually. The organization did the work, and, you know, we need organizations like that. Some of them will be well run and some of them won't, but I actually think there's a whole other world of civil society out there as well. So, some of that will be like a philanthropic civil society that's quite important. So, the churches are massive right…Religious or faith-based organizations are the most common and, you know, I think the biggest sector by far. They tend not to engage in politics directly that much and when they do engage in politics that cuts both ways. So, they can often be, you know, conservative or they can be more liberal, or they can be more pro-poor or they could be more basically a business extracting money from the poor…And, then there are lots of sort of local civil society NGOs. Not NGOs, the community-based organizations, civics SANCO type organizations. I mean SANCO is just basically usually an extension of the ANC, Communist Party networks. And, sometimes they compete amongst themselves between those three organizations that often, they're just networked across each other as well, and they're really, and I'll talk about that in a minute, there is quite a lot of other sorts of independent civil

society organizations. If you consider a stokvel a sort of civil society organization or a football club a civil society organization, there quite a lot of those out there as well. They're quite disconnected from any kind of politics often very localized; you know issue based in the area they live and work in. And then you have the sort of SANCO, trying to be the voice of the township, type of organization. Sometimes it is the ANC branch or the Communist Party branch or some combination, the use of the front of one of those as well. And those are all just as a kind of extensions of this ANC party dominance and trying to extend it down into the community level, but generally, they don't, they're not very effective because they're not able to; their whole strategy is to mediate development. So, the whole strategy is to be the people you go to get a house. And, to be the ones between whoever's bringing the housing and the people, okay, to play that local representative role. But the supply is so far behind the demand that they're not really able to make much of a living out of it and they're not able to get that much legitimacy out of it. And typically, they spend a lot of energy fighting amongst themselves of quite small crumbs and if they get any good they climb higher up the hierarchy and get to government higher levels and they able to accumulate much better there. So, if I think if you look at civil society with all the fundamental pictures, it's quite deeply fractured. So, deeply fractured between the sort of professional NGO sector which is quite good, but small and now underfunded between the sort of almost the other extreme, if you like, the kind of the politicized sector linked to political parties that largely falls under the logic of what political parties are doing, and that kind of state capture dynamic. And, then in-between the sort of community-level organizations that are kind of disconnected from a lot of politics and the church is also quite disconnected from a lot of politics and each other (NDA-1-14-10-2020).

I think the answer to that question is layered in the sense that there are some serious sectoral differences. So, for instance, if we look at activists who are working to inform communities or impart knowledge to communities, and in fact empower communities in terms of land, access to land, you know, housing activists, for example, I think, you know, if we look at the work of the Khayelitsha work and some of the organisations like the Social Justice Coalition, the collective and kind of community mobilization work that is an ongoing threat. So,

the state does 10 to use policing and quite repressive, yes I suppose repressive policing tactics to silence, to intimidate and ultimately it has the effect of closing civic space. On the other hand, there is in some areas a much greater openness to civil society inputs and activity where, perhaps, less direct activism is concerned. So, one example is, you know, I work within the fiscal transparency, which we have found that you know, the relevant government departments and the state are relatively responsive and open do engagement from that perspective, and will tend to take on suggestions or consider submissions, for instance, which in some ways have similar, all the same, intentions activists would be taking to the street, to either deliver petitions or engage municipalities or engage political leaders. But, perhaps the difference is in the type and level of engagement. In some respects, the entry-level, which government department you are engaging. I think there is also the kind of more pernicious, you know state issues, which relate to the unresponsive state. So, where, you know, for example, most recently we provided some support to community health workers, both from a budget analysis perspective, so figuring out, you know what the state is providing in that regard, and on the other, providing some evidence on why community health workers, for instance, you know, are under-represented and under-supported by the Department of Health. The difference between, you know, presenting a budget analysis that spells out that why community health workers should be recognised and supported, and community health activists and workers themselves taking to the streets and protesting at the Department of Health because of unresponsiveness. Those two differences are all those two types of activism, or intervention, you know, have very similar objectives, but are met in very different ways. So, in the Eastern Cape, one example that comes to mind with the community health workers with them being, you know, essentially physically removed and hosed down at the municipal offices or at the provincial premiers' offices that they were at in a largely peaceful protest context. And so, that level of, the combative approach to protest has a negative impact of, on the one hand, intimidating activists, intimidating those who are, you know, wanting to raise fundamental concerns. And, on the other hand, increasing tensions between the state and civic actors (NDA-03-08-10-2020).

Internal civil society dynamics are thus characterized by a number of caveats that may impact on civil society effectiveness. Questions of representation, access, ability to successfully engage the state as well as the nature of engagement impact on civil society effectiveness. Key to understanding civil society dynamics would be to distinguish between the type and level of civil society organization the state will engage. As demonstrated with the extensive quotations, key experts distinguished between what is constructed as a more professionalized civic organization, however, these organisations are seen as having limited reach and generally work to influence policy. Another level of civil society is found in associational life, most notably churches, but can also include social and sports clubs, as well as stokvels. These organisations may, however, have deep community reach, but remain largely apolitical. A third distinction is found in what is seen at a more localized level to mediate development and basic service provision. These organisations are highly politicised and often open to competing among each other to become the representative voice of the community. Therefore, sectoral differences within the sector, as well as the level of government with which different CSOs engage with, and the type of issue and whether a specific issues is a priority area for government impact on civil society effectiveness. Indeed, one interviewee highlighted that in the areas where the state may want to seem effective, for example, with an anti-corruption political agenda, civil society may be more willing to engage, but on more difficult issues related to housing, land, and socio-economic rights, the political will for civil society engagement may be lacking, and creates a more combative and adversarial engagement with civil society actors. Therefore, in determining civil society effectiveness, we need to pay attention to which activists and which actors are involved, as well as the nature of the issue under contestation. Indeed, as one interviewee noted

> I think there are opportunities and some creative ways that civil society has been able to leverage, you know, community voices. So, one of perhaps, you know, there's quite a broad spectrum. One for me that, maybe as the most recent example actually, just in the context now of COVID-19, is partners and other communities or civil society organisations who partner, has been to profile key service delivery issues, I think water and sanitation in particular, in a range of municipalities. So, asking people who live in those areas themselves to do regular reports on what services have been delivered. So, having people where

they live speak for themselves and to profile what's happening and to report that and the link between community, voice and municipalities. Another example where service delivery issues can be reported directly, and they can be a connection to responsiveness…And I think another type of example is being able to, to some extent less directly link, where community activists are also able to, you know, to be a link between community issues and problems and try to provide paralegal support…linking to relevant officials, you know, particularly in rural communities. I think, there as well civil society in the past had a role to play and continue to play a role. There is that link between community voice for people who may not be necessarily likely and get to the desk of the Minister or the table of a Minister of Social Development, you know. This is the problem at the community level where the advice office provides a link to that and a civil society organisation is able to create some level of legal support or legal advice or to then really elevate or take the issue through the official channels…But that is a complex link in the sense that at this point, you know, the direct link between communities and people in communities, people on the ground, to decision-makers and policymakers, that link is still very convoluted, and it is not as direct as it could be in a democratic space where participation and openness are central. So I would say they definitely are mechanisms, so I think, kind of I would say some mechanisms are created by civil society that work adequately in terms of participatory democracy and then there are mechanisms where civil society do make attempts to strengthen existing mechanisms… It's probably building awareness of community activists about the roles and responsibilities of provincial legislatures. And oversight being a key space, and of constituencies and constituency offices. But even there, because of capacity issues, to some extent political issues, to another extent just pure weakened processes and weakened oversight and monitoring processes that lack knowledge more or less about the way people actually have their issues addressed. So that I think is where we need to have a substantial discussion. There are so many enabling laws and policies, but the ability to leverage those is tough...[Internet connection broke down]... Intermediaries between civil society and the state.

When engaging V-Dem data on civil society effectiveness, responsiveness, as well as the V-Dem Deliberative Democracy and the V-Dem Participatory Democracy Index,

we note a decline in civil society effectiveness as well as quality of engagement between state and civil society. Figure 8 demonstrates that the quality of deliberative democracy in South Africa has declined. Deliberative democracy is conceptualised as

The deliberative principle of democracy focuses on the process by which decisions are reached in a policy. A deliberative process is one in which public reasoning focuses on the common good motivates political decisions – as contrasted by emotional appeals, solidarity attachments, parochial interests, or coercion. According to this principle, democracy requires more than an aggregation of existing preferences. There should also be a respectful dialogue at all levels – from preference to final decision…(V-Dem, 2020e).
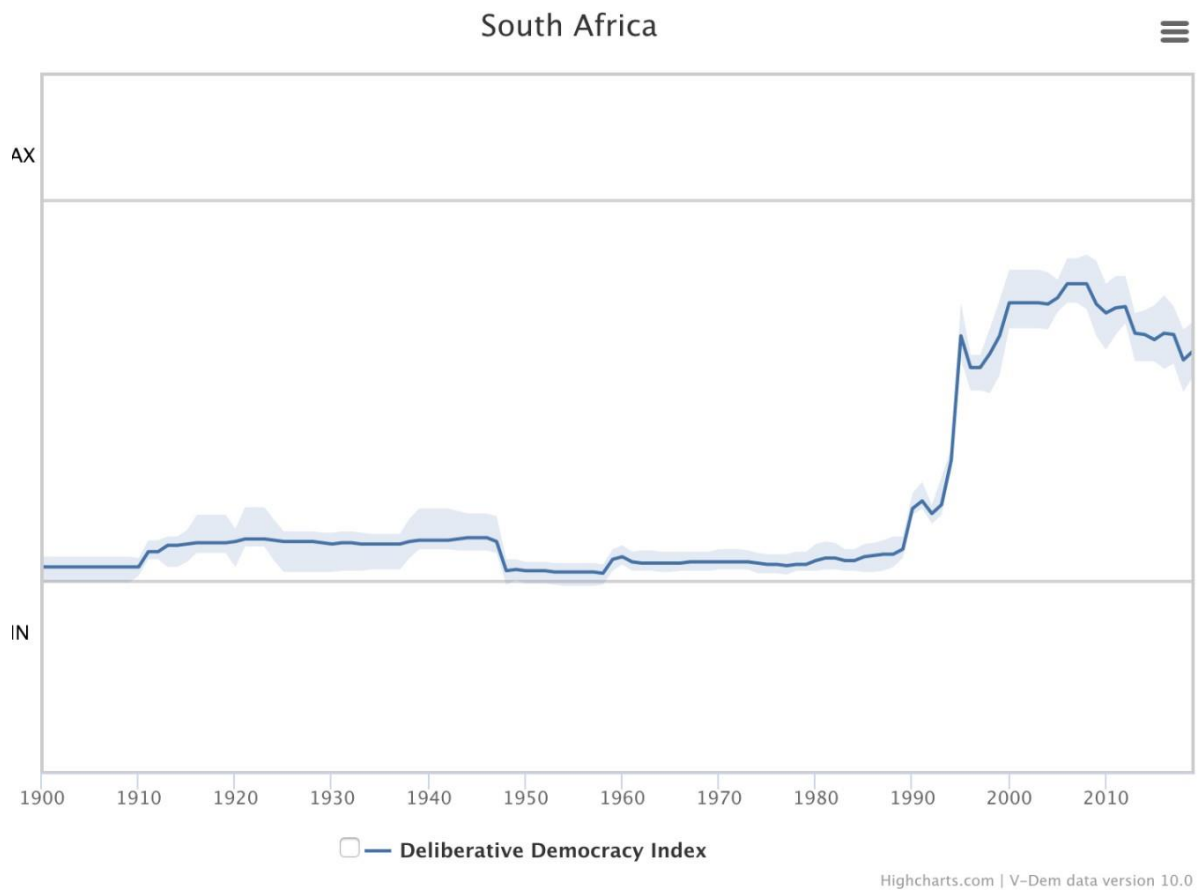

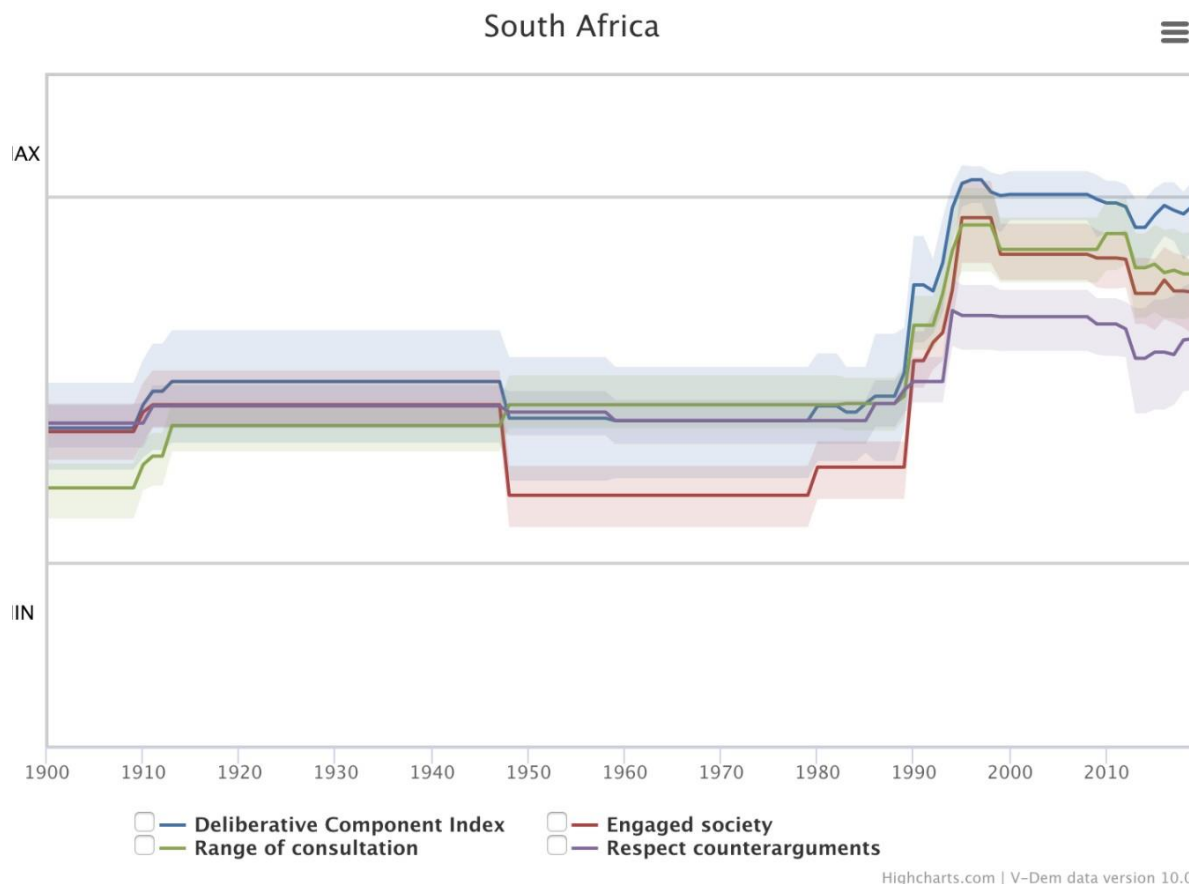**Figure 8: Deliberative Democracy Index, South Africa (V-Dem, 2020e).**

Figure 9: Civil Society effectiveness, engagement, consultation, and respect for difference of opinion, South Africa. (V-Dem, 2020f).

Figure 9 demonstrates that civil society effectiveness is also impacted by a decline in a range of consultation, a decline in societal engagement, as well as a growing intolerance for difference of opinion. Thus, the dynamics flagged by interviewees, most notably a differentiated sector, the level of government being engaged, as well as the nature of the issue of contestation, has a negative impact on the principles of deliberative democracy in South Africa. With a decline in deliberative democracy in South Africa, one also notes a complimentary decline in participatory democracy (see Figure 10). V-Dem (2020g) conceptualises "participatory democracy as the participatory principle of democracy [that emphasises] active participation by citizens in all political processes, electoral and non-electoral".
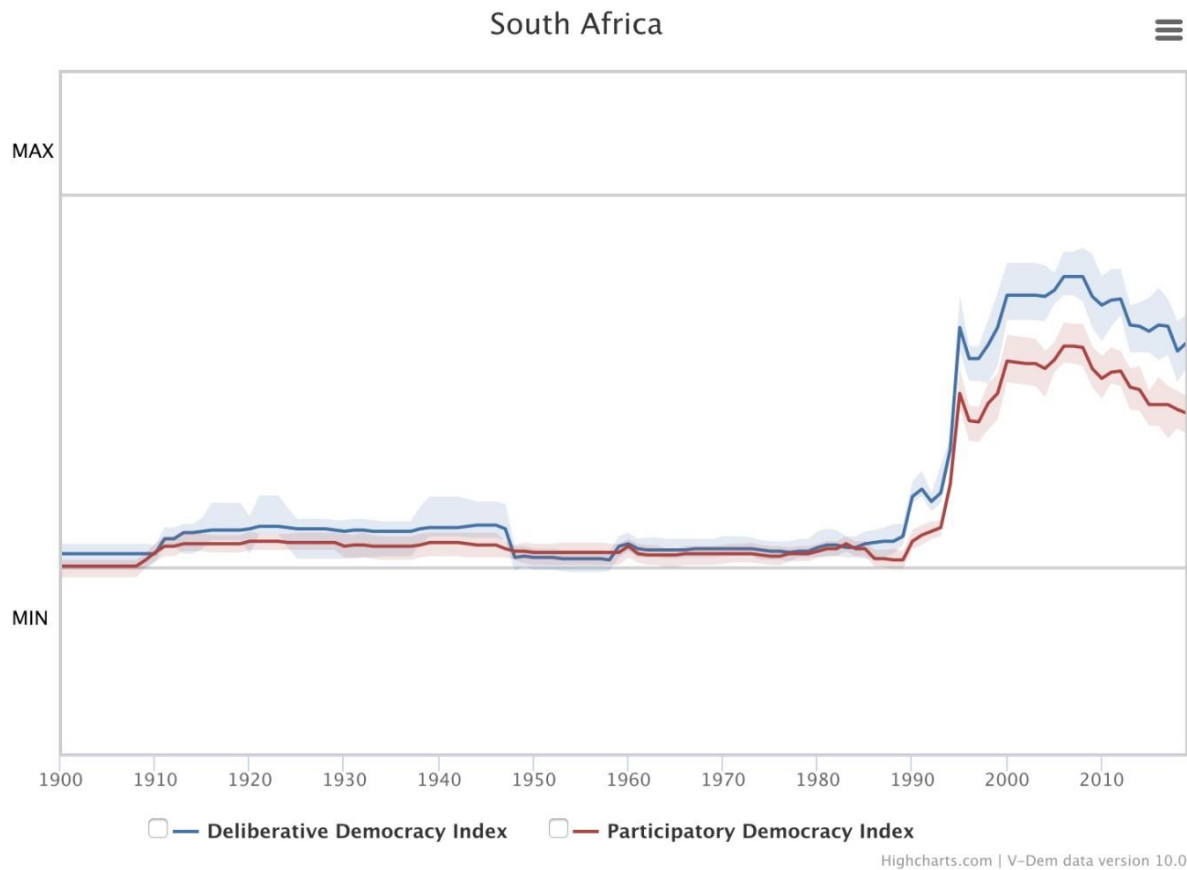
Figure 10: South Africa Participatory and Deliberative Democracy Index (V-Dem, 2020g).

It is therefore evident that the quality of deliberative and participatory democracy, as well as civil society effectiveness, is declining.

Gender dynamics in civil society: Representation and Voice

A critical theme when engaging transformative dynamics in civil society is that of gender and marginalised gender identities such as LGBTQI communities. V-Dem data demonstrates that the civic space for the inclusion of women's voices, as well as the ability of women to speak their political minds, is narrowing (see Figure 11).

Figure 11: Women's civil and political liberties, political empowerment and freedom of expression (V-Dem, 2020i).

Women's political empowerment, civil liberties and freedom of expression have declined from around 2009 in South Africa. From 2019, we also noted the narrative of a "war on women" or "Shadow Pandemic" (UNWomen, 2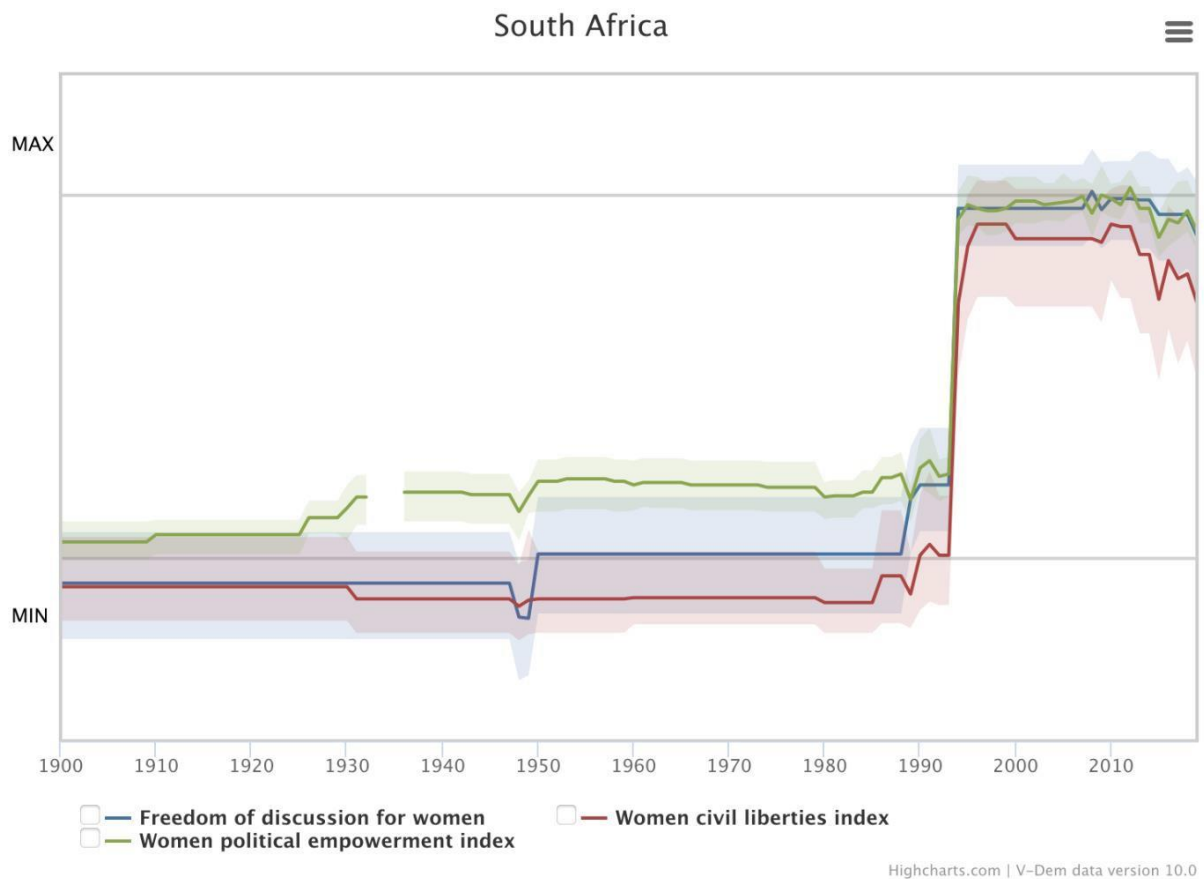020) highlighting an embedded culture of patriarchy and chauvinism that finds expression in a "structural problem of violence against women" (Moos, 2019). South Africa has one of the highest rates of femicide globally where one woman is murdered every three hours (Khumalo, 2019). This is not surprising given that an enduring legacy of apartheid is inequality, not just racially, but based on gender as well. Women endured discrimination based on race, gender, and class - often constructed as the three yokes of oppression of women in apartheid South Africa. As the country progressed towards its fourth decade of democracy, under the banner of #AmINext, South African women put gender-based violence (GBV) on the national agenda where "it sent a clear message to the government that women's safety cannot be sidelined and women will not be silenced. The truth is, too many people are motivated to act when they identify with an injustice" (Elliot, 2020).

One cannot negate the fact that women continue to face oppression, marginalisation, and injustice based not only on race and class but gender as well. As Nussbaum (2012: 1) says:

> Women in much of the world lack support for fundamental functions of human life. They are less well-nourished than men, less healthy, more vulnerable to physical violence and sexual abuse. They are much less likely than men to be literate, and still less likely to have a preprofessional or technical education. Should they attempt to enter the work-place, they face greater obstacles, including intimidation from family or spouse, sex discrimination in hiring, and sexual harassment in the workplace – all, frequently, without effective legal recourse. Similar obstacles often impede their effective participation in political life.

Poverty and gender inequality are strongly correlated (Nussbaum, 2012). As Nussbaum further notes, "when poverty combines with gender inequality, the result is an acute failure of central human capabilities." This means that full freedom, rights, and justice for women cannot be attained because of inequality of opportunity (which includes inequality in literacy, school enrolment, and income).

South Africa's political transition in 1994 towards democracy and the advancement of gender equality saw an increased focus on the interplay between masculinity and culture, referencing a potential *crisis in masculinity* in South African society (Dworkin, Colvin, Hatcher, Hatcher, and Peacock, 2012: 99-100). And, as demonstrated in Figure 11, the early democracy period indeed saw a marked increase in civil and political liberties for women as well as women's political empowerment. However, Dworkin *et al.* highlight a contested area: the impact of change on gender relations and the construction of gender in a post-apartheid context: "…some men have adapted to feelings of disempowerment and alienation by constructing masculinities through seeking more sexual opportunities, engaging in 'hypermasculinity', engaging in violence, and detaching from family life to seek self-worth and status in all-male contexts".

Civil society is thus a keyspace to facilitate and include the voices of women as critical issues that affect them have to be placed on the political agenda for transformation. Yet, women's CSO participation has also declined in South Africa, most notably from under the Zuma administration (see Figure 12).
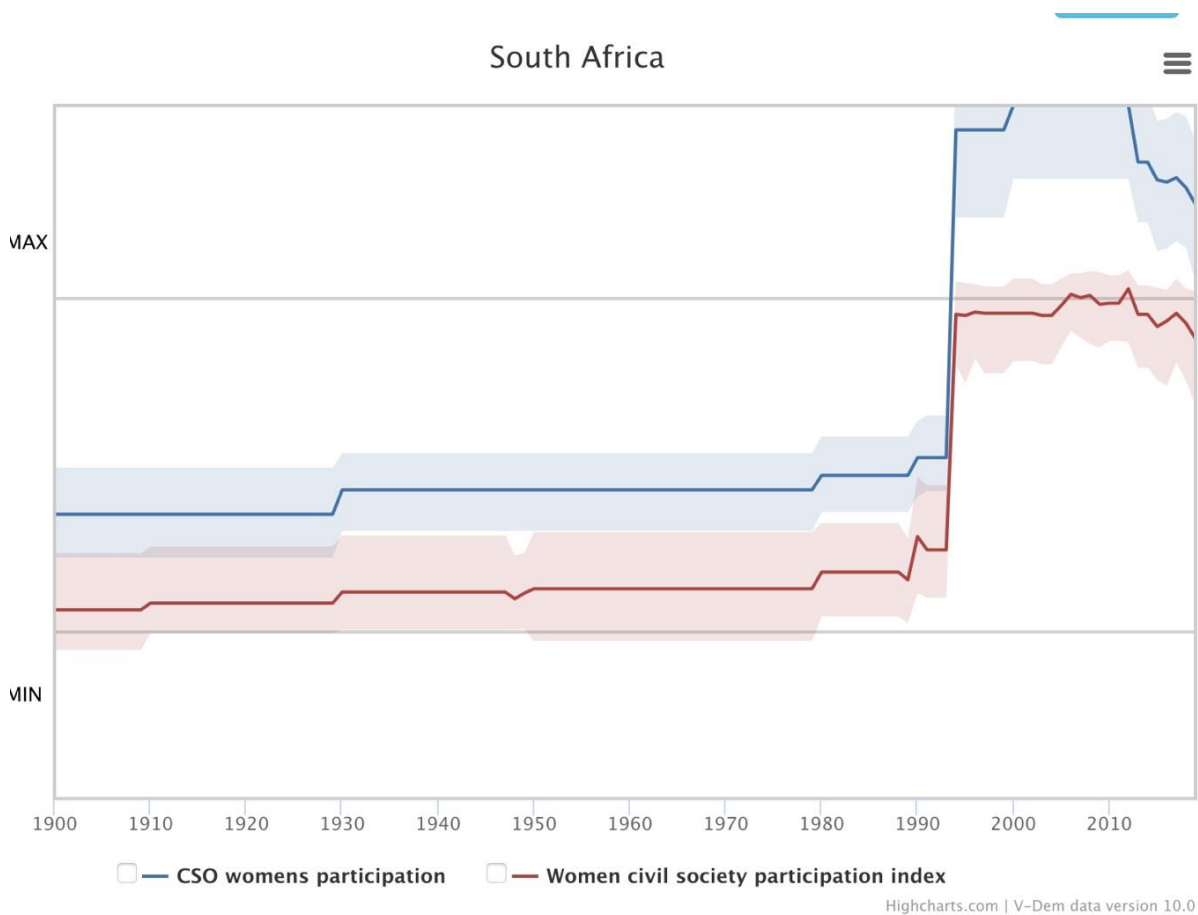
South Africa

Figure 12: Women's CSO participation, South Africa (V-Dem, 2020j)

It was thus critical to engage questions of gender and gender representativity within South African civil society with key experts. However, while V-Dem data does demonstrate a decline in women's political empowerment, there is limited data available on representation, voice, and inclusion of other gender identities such as the LGBTQI community. This is a key caveat that will need to be addressed in order to facilitate a more inclusive and transformed civil society sector. Indeed, as one interviewee noted, there are a number of gender organisations that work on sexual diversity…but I don't know if that means there is adequate representation in terms of gender for civil society" (NDA-22-09-2020-02).

Key themes that shaped gender representivity in South African civil society included patriarchal societal norms, exclusion, lack of representation, and differences in the sector (see Figure 13).
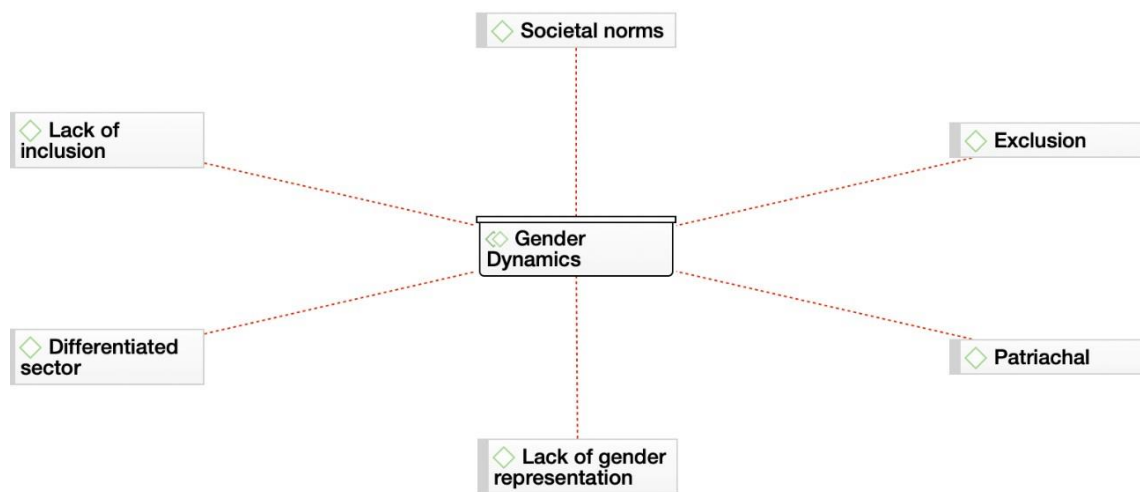
Figure 13: Gender dynamics and factors in South African civil society (created with Atlas.ti).

Interviewees noted,

> it depends on what part of the city you are talking about, and in my experience, it has been kind of more, there would be plenty examples of very well established civil society organisations that have a culture of toxic masculinity, and where there is definitely no space for gender equality and for you know sort of different gender diversity to be recognised in the overall organisation or their work. So, it really depends on the particular area of civil society that you're looking at and I'm sure that the organisations that aren't specifically focused on gender would agree that they need to go further. You know there's one that I won't name where the focus is on gender, but almost all of the senior staff are white men. So, you know there's obviously still a lot of those issues. If you're talking community-based civil society, my experience with that is that it is 90% women. You know, I've done a lot of work with, for example, community care workers, almost entirely women. In fact, I don't think I've met a single man who is a community care worker or yeah someone who is I don't know. They are all women who work as community care workers. And that's a large contingency of local civil society all community-

based organisations. Same for a lot of activists that I've worked with on violence, also working on issues of women's rights, and it's quite rare to find men involved in those groups. So, I think that the gender dynamics that characterise why does civil society in South Africa and wider society in South Africa are reflected across the organisations. And some organisations are really dedicated to trying to change that, but I guess they would be in the minority (NDA-22-09-2020-02).

I would maybe just reflect on the one space that for me that has brought some of these questions or issues for me really startling to the forefront and it's in engaging with the Budget Justice Coalition. And, one of the things that have become quite clear in a coalition of different organisations, is that not only is it about the silencing that is societal at this point, you know, it's almost structural and societal, it is also the fact that even within civil society there is still much educating to be done about inclusiveness and equality in relation to gender dynamics, and particularly, as you say, LGBTQI communities. So, one key example is that in developing a position paper on what responsive budgeting looks like and how we would want to engage an entity like the Ministry of Finance and the National Treasury, formulating a clear position of what the exclusions are, is it, are we talking about feminist economics, are we talking about gender budgeting? And, so just within the context of civil society, and fairly progressive civil society organisations, that as a starting point is indicative of just how deep, I guess, the fault lines must be beyond civil society and in the spaces that perhaps matter most. I think there is actually, for me, even more, critical issue which is that there is still a lot more to be done in progressive formations in the country to even get to the stage where we are speaking a language of transformation that is adequate, not to say that everyone must speak the same language, but it is adequately progressive that we are all on the same page in as far as what it means to have inclusion from that perspective. So, I mean, I definitely wouldn't say that this is something that is a fundamental problem, but I think for me it is problem enough for me to want to see a deepening of civil society to provide support to those we want to provide support to. This is a barrier in itself (NDA-03-08-10-2020).

With few exceptions, it is just a part of our rather patriarchal society and even those parts of civil society, which fight against it, are constrained by these structural limitations. But, I'm aware of, you know, of a small group of local almost grassroots that I have worked with closely in the last couple of years, probably half of them are woman-led made and successfully woman-led. Nearly all the organization and development specialists, with whom we've worked were women around the country. And so, it does sort of as depend a little bit where one looks. If the organizations are community or membership-based, then I think that when can safely assume that a reproduce vital norms in the leadership choice, but and some of the smaller pressure groups like to fight that. I mean, usually, if you just look at, for example, the traditional think tanks, like for example South African Institute of International Affairs, which is one of the globally recognized think tanks, which is South African, it's women-led, has been for years. It's very successful. If you look at some of the activist's groups down in Cape Town with some of these supporting some of these house occupation campaigns, whatever you might think of those campaigns. Some of them are led by women and very successfully. Pro Bono, which is the most successful public interest law organization, I would say, has been women-led since the beginning; founded and women-led since inception. So, it sort of depends on where you look (NDA-2020-10-19-05).

An interesting phenomenon that emerges from the interview data, most notably around community care workers being predominantly female, is that seemingly traditional gender roles are also at play. Women are generally constructed as caring and nurturing, as opposed to women going out and claiming land, which could be interpreted as a more masculine role. However, it is also important to note that within younger generations, those traditional gender roles are increasingly being questioned and challenged: "I think there are some aspects of those gender roles which are being questioned more in a younger generation. Not to say that it is all fixed, and much better, but there is maybe less rigid than with older adults or elders or people who are more invested in those delusions… I think there's definitely a lot of pressure coming from young people in terms of lots of areas but also gender norms. (NDA-22-09-2020-02). Therefore, societal norms may shift towards a more gender-just society, but that may take some time. There is a need to engage in community awareness on gender

justice in order to facilitate a transformed society underpinned by a commitment to gender justice, equality of voice, and representation, not just of traditional gender identities such as male and female, but also marginalised gender identities within the LGBTQI community.

Conclusion and Recommendations: Interventions to invigorate state-civil society relationships

In order to facilitate a reinvigoration for civil society effectiveness, and by default strengthen deliberative and participatory the country, interviewees flagged some key interventions. Key for interviewees is transforming how CSO consultation happens and the principles that drive CSO consultation. This is not surprising given that V-Dem (2020h) also demonstrates a decline in the quality of CSO consultation (See Figure 14).
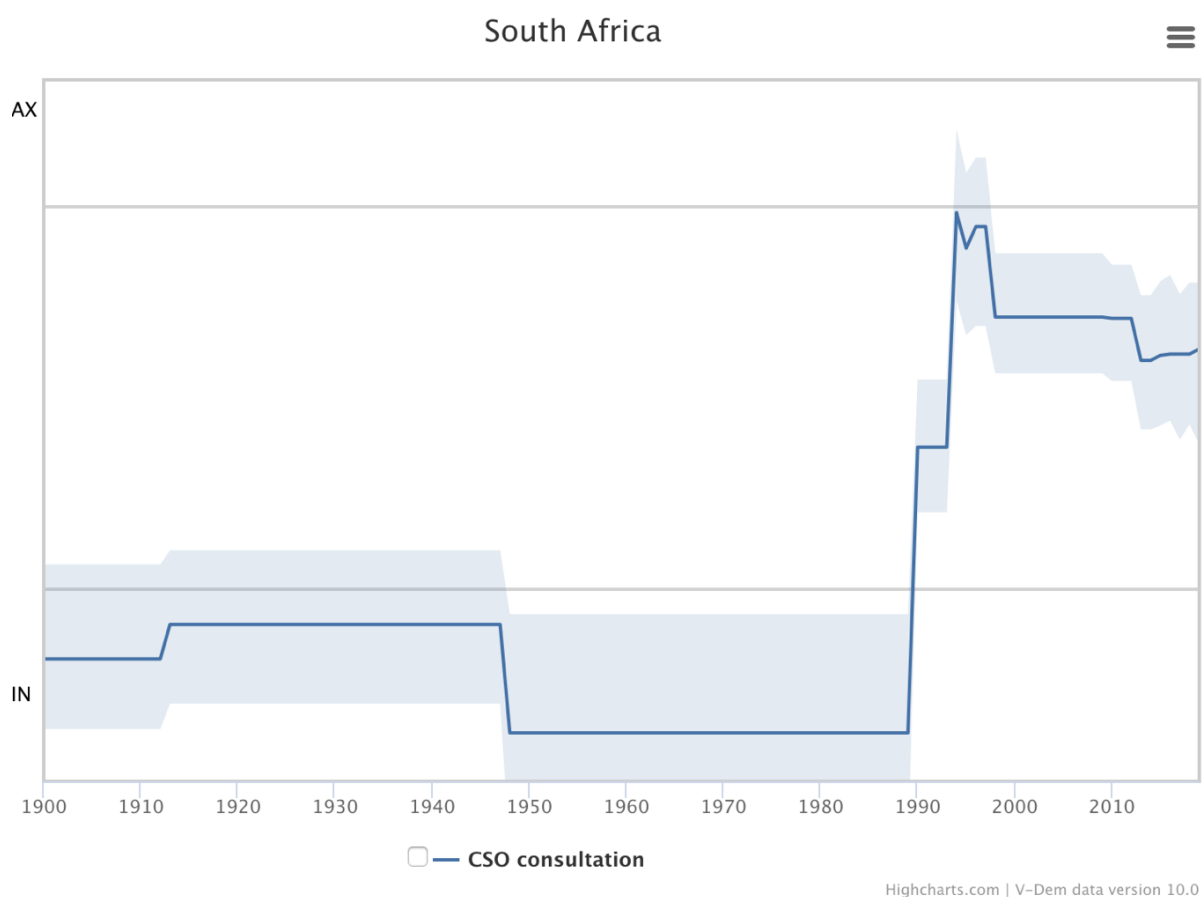

Highcharts.com | V–Dem data version 10.0

Figure 14: CSO consultation South Africa (V-Dem, 2020h).

A critical area for transformation in state-civil society engagement is how co-governance between state and civil society is conceptualised, especially to facilitate the inclusion of marginalised groups. Indeed, one interviewee noted

> you need to find a way to encourage focused, sustained co-governance between civil society and government, and citizens who may not be part of organisations all organised civil society. And, that is more likely to happen where there's a common interest or a shared purpose. So, to make it sort of generic would just mean that it would fall apart and there need to be resources to support that to happen, including the facilitation of it. There needs to be some kind of, there needs to be an actor that can help to coordinate and help the process move forward. It won't just happen by magic. Where you are able to, and there are some very good examples of this working in other countries, but also in South Africa, so for that policy framework development, I spoke at some length with some of the government officials in other countries, and one of the successful examples is in Brazil where this co-governance approach in the health system. And so, while I don't think you could necessarily do that overnight across the whole of government because it would immediately just be subverted by political party agendas all other interests. If you were able to identify champions or supporters within the government who were open to that and saw it as important, you could similarly find counterparts in civil society who had enough trust left to try, and you focus on a problem or area where they are trying to work on, you know, and you had a kind of two-year time frame for what that would look like in terms of what that would look like for co-governance, then I think you could really see some positive results In terms of much more transformative effects of civil Society in participating in governance. And, you know, DPME, has been documenting cases of this across different provinces. So, there's a lot of ifs, but I think that that is a much more pragmatic approach, you know. South Africa is just, you know, we're littered with examples of really progressive policies that don't go off the paper. So, there is not much point in changing the system unless you really look at the capability to take that up (NDA-22-09-2020-02).

State effectiveness, quality of governance, as well as government responsive is an essential element for transformation to facilitate co-governance and civil society

effectiveness. This is not surprising, given that South Africa's quality of government has declined significantly from 1995 (see Figure 15).
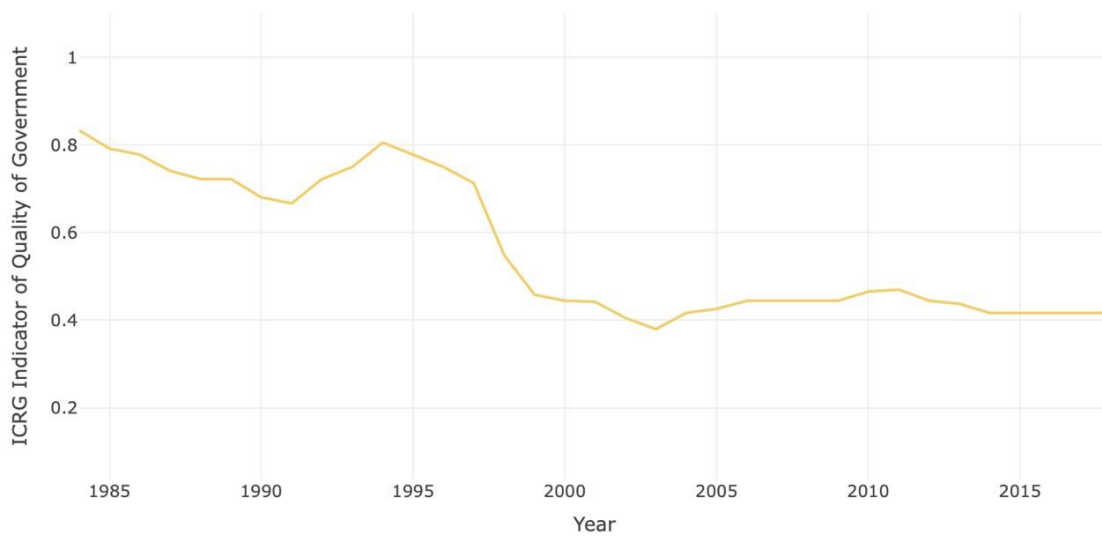
Figure 15: South Africa Quality of Government (Dahlberg *et al,* 2020).

Indeed, interviewees highlighted in their reflection:

Well, I think if the state decided to his job properly that will make a big difference. Well, doing your job and doing something would actually doing something. I mean, I know people in the refugee right sector. It's a very tough sector. And I people in the Small Business Development sector, which is comparatively much easier space and they hate working with the government. The government doesn't do anything. It just holds stuff up…It needs to have a way of holding government officials to account, employing people actually want to do something. You know, I mean, maybe they need a different model. Maybe they need a model where you, you know, you decentralized functions to different agencies and those agencies perform better. I mean, you know, if you look at our decentralized, if you look at our parastatals, it doesn't seem like a great idea. Maybe you could set up a different kind of agency that more like a public-private partnership or community partnership type thing. I don't know. I don't have a solution, but my experience with people in civil society is the problems with the government. If the government wants people to view them better, they need to do their job. Sitting around and getting in the way and not doing anything, also not paying, but

actually just not doing anything is the biggest problem because they don't really have an incentive to do anything (NDA-1-14-10-2020).

… that's a really important question and something that, you know, even in some of our strategic discussion it has come up and different ways in the sense that what, I mean it does obviously influence your strategy, it has an influence on your opportunity for engagement. And, I would say that there are dynamics that over time from both a political context and otherwise, made it perhaps a little bit more complicated and perhaps challenging to create those dynamics. If you look at the contents of public finance reform, for example, I would say that in some respects the opportunities to develop trust and therefore much better working relations or opportunities to come together and co-produce around dealing with societal challenges, is easier because, and again I would say that in the context of public finance reform, emerging out of the 90s and so they were activists involved on both sides. So, there was activist to after 1994 moved out of the activist space and into the public service and National Treasury. And so, reform was being developed by activist-orientated public servants in the public service and activists outside the public service for whom there was a clear collective objective around public finance reform. What it would look like, what it should look like, it should be responsive and create a post-democratic state that everybody wanted. So, you know, there was in some respects already a clear trust that had developed. And then, I would say over time, with changes and with people moving out of the public service and with others coming in, and so on, and changes within the civil society space, I would say, and of course the political change that came with that, I would say there needs kind of reinvigorate discussions about trust and objectives, and, you know, mandates, has been become increasingly important and maybe hasn't happened in the same way. And, I think the politics have also changed in that it was more difficult for civil society activist to see that people within the public service have the same fixation on building democracy as those perhaps who came straight out of the space of 1994 and wanted to see this amazing nation emerge. And, it has not helped that, you know, what we've seen come out of that in terms of corruption, maladministration in the public service can only deplete trust. And then we have an increase in a sense of us and them and an increasing salt of an   adversarial

relationship. So, it does mean that, to some extent, that it's likely not uniform across all departments and entities. But, broadly speaking, I think the activist orientation inside and outside the state has changed. But then, at the same time, there's also this professionalisation kind of song that is sung and the question that is whether this is at the expense of development-oriented reform, in a sense, like focusing quite a lot on legislation and fixing that. Does that happen at the expense of inclusion and participatory democracy spaces? So, it is quite complex as well and I think the other barriers are maybe the ones are very much connected to trust. I think we can't get away from trust, first for those within the public service. Perhaps, maybe 20 years ago you would have had the space for more radical approaches to legislative spaces because there were some crafting responsiveness and a constitutional mandate, it was about creating, creating, creating, and now I think there is a sense of compliance and what happens to public officials when they feel that they need to step out of bounds, they feel they will be hammered. They'll become part of the untrustworthy, the kind of maligned public servants. There is a lot of, yeah, distrust, and there's a lot of maligning of public officials, some of which is deserved and much of which is probably not deserved. And so, there is so much of that, that I thinkrevolves around the human dynamics, which also then is complex because as soon as you depend on human relations and dynamics there's a risk of patronage inside and outside the state. (NDA-03-08-10-2020)

…and that's very important, you know because I think ultimately key to the success of any institution is should a person vacate offers that institution is still able to operate (NDA-2020-10-19-05).

Yes, well, you know, in fact the rationale of the participatory processes is for them to be consultative, so you know that doesn't go very far in terms of decision making and holding government officials to account for ensuring that they have responded, you know, they don't have to show that because that's not how the process is designed. I mean if we want more transformative forms of participation than the system needs to change to make the incentives there for that happen. And there are examples of it happening, you know. There's a group of a couple of people working in DPME on evaluation and monitoring, who are working   on

local co-governance models that have shown a lot of promise and in certain contexts in South Africa, but they're very, those are in a very small minority. So, let's say in in the 90% of cases are 95% of cases it's just tick box exercise or is just being used to sort of a legitimate decisions that have been made elsewhere (NDA-22-09-2020-02).

There are number of caveats that will need to be addressed in the socio-political space of South African civil society. Figure 16 demonstrates the primary characteristics key experts identified with South African civil society. The most common themes include a differentiated sector, societal norms, patriarchy, structural flaws in the participatory structure, lack of accountability, disconnect, and dysfunctionality within the state sector. In order to facilitate a transformed civil society towards co-governance, there is a need to engage in a policy review to facilitate quality deliberation as opposed to consultation. A key intervention to curb this democratic disillusionment is to work on creating public participation structures that produce quality interaction. This entails working on rebuilding political trust, which entails "…an expectation that government will do 'what is right'" (Boulainne, 2018: 6 – 7). However, we find differences in political trust for different political actors (civil servants, local politicians, and party leaders, among others) compared to institutions (Boulainne, 2018: 7). And, in South Africa, only approximately 28 % of the population trust local government compared to 57 % who distrust local government (SASAS, 2018). Political parties and politicians registered similarly low levels of trust with 20 % and 15% of South Africans indicating trust in these respective political actors. Conceptualising new means of civil society engagement can act as a catalyst for rebuilding political trust by focussing on quality engagements. Boulainne (2018: 7) found that deliberative public engagements can foster and increase trust in political institutions and leaders and may work to increase faith in policy decisions. This, however, is dependent on the sense that people's viewpoints are indeed taken into consideration and increased exposure of citizens to how government decisions are taken (Boulainne, 2018: 7). Further to this, if the political goal is to foster empowerment, then political efficacy will be central (Boulainne, 2018: 9). This means that people perceive that they can influence government. There are two levels of political efficacy. The first is internal efficacy which deals with individual perceptions of their ability to influence political decisions.

The second is external efficacy which relates to whether there is an opportunity to influence political decisions. Therefore, the creation and facilitation of opportunity through deliberation coupled with responsiveness and taking citizens' views seriously in making political and governance decisions is central to foster deliberative democracy. To this effect, in reconceptualising how civic engagement is done, political efficacy and political engagement are key elements that need focus as these are central to building political trust and co-governance. This will entail capacity building programmes for key government personnel, as well as for the communities they represent as well. A key intervention may relate to the depoliticization of engagements with CSOs and a change in view that these bodies do indeed represent diverse community interests. A deeper institutionalisation of the participatory mechanisms in terms of political decision-making may be necessary to facilitate a sense of political efficacy. This may entail a revision of the process whereby government departments will need to demonstrate quality engagement and consultation with communities before decisions are taken. Lastly, to foster political trust, engagement, and efficacy, participatory structures should be adequately resourced, both in terms of monetary needs and necessary infrastructure, as well as softer skills such as communication skills, political engagement, and facilitating quality deliberations.

[Apolitical] [Arbitrary state action] [Consultative] [Corruption] [Differentiated sector] Disconnect] [Dysfunctional] [Exclusion] [Freedom of Association] [Freedom of Speech] [Infighting] [Institutional disconnect] [Lack of accountability] [Lack of gender representation] [Lack of inclusion] [Lack of quality participation] [Lack of state capacity] [Lack of trust] [Open] [Patriachal] [Patronage] [Political party influence] [Representation] [Restrictive environment] [Societal norms] [Structural flaws] [Tick-box exercise] [Underfunded] [Unresponsive government] [Weak state]

Figure 16: Word Cloud of Common Characterisation of South African Civil Society (constructed with Atlas.ti)

Key recommendations include:

1. Development of a national code of conduct for the government at all levels to structure their engagement with civil society to meet the requirements of participatory and deliberative democracy. This will be essential to ensure that there is consistency in how government interacts with CSOs as well as establish a code of conduct based on the constitutional principles of deliberative and participatory democracy.

2. Establish specific engagement offices and advisory support committees to facilitate co-governance across key social and economic departments. Critical public offices would include health, local government, the presidency, and other key departments in the administration that deal with critical issues around the transformation of South African broader society. A dedicated office to engage with key CSOs could establish a structure to facilitate a more nuanced and streamlined approach to state-civil society engagement.

3. Develop, in consultation with CSOs across various sectors, a code of conduct to facilitate co-governance and collaboration. A possible intervention is to call for a national conference where CSOs can develop and agree to a code of conduct to ensure representativity, voice, and inclusion, especially of marginalised groups.

4. Provide training focused on the principles of participatory and deliberative democracy in a South African context and quality deliberations for public officials in their engagement with civil society. Key personnel that engage CSOs may need to undergo training with a focus on softer skills for civil society engagement to facilitate co-governance and collaboration, as well as to build quality deliberations with civil society.

5. Provide training across the spectrum of civil society organisations on the participatory mechanisms for civil society engagement. Given the differentiation and diversity within the CSO sector, there may be a need to provide training for CSOs on South Africa's participatory mechanisms.

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Appendix A

Case snapshot 1: World Association of Non-Governmental Organisations
Code of Ethics and Conduct for NGOs

I. Guiding Principles

Every actor operates on the basis of fundamental principles, whether plainly stated or implicitly understood. Further, an examination of organisations that are held in universal esteem reveals a great commonality in these principles. In other words, to a great extent, good NGOs from throughout the world tend to share the same fundamental assumptions or beliefs that make their successful operation possible. The following is an articulation of the more important of these shared fundamental principles.

A. Responsibility, Service, and Public Mindedness

Sustainable progress, peace, and justice require that all organisations contribute to the common good. Thus, an NGO should integrate self-development and service to others, balancing individual and public concerns, focusing on higher, broader, and more public levels of service.

Standards

- Responsibly maintaining itself, an NGO should conduct its activities for the sake of others, whether for the public at large or a particular segment of the public.
- Public money must not be misused for selfish purposes and all public assets are to be treated with utmost seriousness, as a public trust.
- An NGO should recognize that its conduct and activities impact on the public's perception of NGOs and that it shares responsibility for the public's trust of NGOs.
- An NGO should exhibit a responsible and caring attitude toward the environment in all of its activities.

B. Cooperation Beyond Boundaries

Significant progress toward world peace and global well-being can be fostered through inter-religious, intercultural, and interracial work, and across artificial barriers of politics and ethnicity that tend to separate people and their institutions. NGOs should maintain ethical, cooperative relationships with other NGOs, and should partner where possible and appropriate for the sake of the greater public good.

Standards

- An NGO should be willing to work beyond borders of politics, religion, culture, race and ethnicity, within the limits of the organising documents and with organisations and individuals that share common values and objectives.

C. Human Rights and Dignity

As the *Universal Declaration of Human Rights* states, "All human beings are born free and equal in dignity and rights, are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood." (*Universal Declaration of Human Rights*, Article 1)

The family is the fundamental natural group unit of society promoting human rights and human dignity. (*Universal Declaration of Human Rights*, Article 16)

Standards

• An NGO should not violate any person's fundamental human rights, with which each person is endowed.

• An NGO should recognize that all people are born free and equal in dignity.

• An NGO should be sensitive to the moral values, religion, customs, traditions, and culture of the communities they serve.

• An NGO should respect the integrity of families and support family-based life.

D. Religious Freedom

"Everyone has the right of freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." (*Universal Declaration of Human Rights*, Article 18)

Standards

• An NGO should respect religious freedom.

E. Transparency and Accountability

NGOs should strive for openness and honesty internally and toward donors and members of the public. Periodic accountings should be made.

Standards

• An NGO should be transparent in all of its dealings with the government, the public, donors, partners, beneficiaries, and other interested parties, except for personnel matters and proprietary information.

• An NGO should not engage in any activities that are unlawful under the laws of the nation in which it is organised or works, and must be strongly opposed to, and not be a willing partner to, corruption, bribery, and other financial improprieties or illegalities.

• An NGO should be accountable for its actions and decisions, not only to its funding agencies and the government, but also to the people it serves, its staff and members, partner organisations, and the public at large.

F. Truthfulness and Legality

An NGO should be honest and truthful in its dealings with its donors, project beneficiaries, staff, membership, partner organisations, government, and the public in general, and should respect the laws of any jurisdiction in which it is active.

Standards

• An NGO should give out accurate information, whether regarding itself and its projects, or regarding any individual, organisation, project, or legislation it opposes or is discussing.

• An NGO should not engage in any activities that are unlawful under the laws of the nation in which it is organised or works, and must be strongly opposed to, and not be a willing partner to, corruption, bribery, and other financial improprieties or illegalities.

• An NGO should have a policy for staff and volunteers to confidentially bring evidence to the governing body of misconduct of anyone associated with the organisation.

- An NGO should meet all of the legal obligations in the countries in which it is organised or works. Such obligations may include laws of incorporation, fundraising legislation, equal employment opportunity principles, health and safety standards, privacy rules, trademark and copyright legislation, and so forth.
- An NGO should take prompt corrective action whenever wrongdoing is discovered among its staff, governing body, volunteers, contractors, and partners.

II. NGO Integrity

Fundamental to the very character of each NGO is that it be not-for-profit, nongovernmental, organised, independent, self-governing, and voluntary. While these general criteria may appear self-evident, particularly for those NGOs whose national law codifies and requires such standards, they remain basic for the integrity and conduct of an NGO.

A. Nonprofit

Standards

1. N**ot-for-profit.** The NGO is to be organised and operated as a not-for-profit organisation. Any surplus that is generated through its operations is to be utilized solely to help the organisation fulfill its mission and objectives. No part of the net earnings of the NGO is to inure to the benefit of the directors, officers, members or employees of the organisation, or to any other private persons, except that the NGO may provide reasonable compensation for services provided to the organisation.
2. **Trade or business**. The organisation is not to be operated for the primary purpose of carrying on a trade or business, unrelated to its mission and stated objectives.
3. **Governing instrument**. The NGO's governing instrument shall prevent the organisation from distributing profits or assets for the benefit of individuals both during operation and when winding up.

B. Non-governmental

Standards

1. **Non-governmental**. The organisation is not to be part of, or controlled by, government or an intergovernmental agency.
2. **Politically independent**. The organisation shall maintain independence and not be rigidly aligned or affiliated with any political party, although it may share a common political or legislative cause within the limit of its mission, stated objectives and legal structure. By itself, being non-governmental does not mean that an NGO is prohibited from political activity, although certain types of NGOs may be proscribed by their nations from political and legislative activity, such as tax-exempt organisations in the United States, which are prohibited from participating or intervening to any substantial extent in attempts to influence legislation or participating in political campaigns to support or oppose any candidate(s) for political office. However, an NGO that is permitted to do political and legislative activity shall only engage within the limit of its mission and stated objectives.
3. **Foreign policy**. The organisation shall not act as an instrument of government foreign policy, but act independently of governments. The NGO shall not seek to implement the

policy of any government, unless it coincides with the mission of the organisation and the organisation's own independent policy.

C. Organised

Standards

1. **Organising features**. The NGO shall have an organising document, an executive board, officers, and regular meetings and activities.
2. **Organising documents**. The organising documents (such as bylaws, a written constitution, or memorandum of association) shall clearly define the mission, objectives, governance structure, membership rights and obligations, if any, and rules of procedure.
3. **Legal recognition**. These organising principles apply whether or not the NGO is legally recognized by any government.

D. Independent and Self-Governing

Standards

1. **Independent**. The organisation shall be independent. Its policies, vision, and activities shall not be determined by any for-profit corporation, donor, government, government official, political party, or other NGO.
2. **Self-governing**. The organisation shall govern itself autonomously, according to whatever governance structure it selects for itself. It shall be equipped to control its own activities.

E. Voluntary

Standards

1. **Voluntary values and principles**. Rather than being required to exist by law, NGOs are formed by private initiative, resulting from the voluntary actions of individuals who have chosen to pursue a shared interest or concern. The retaining of voluntary values and principles shall remain a primary force in the way of working of the NGO.
2. **Contributions from volunteers**. In order to achieve its mission and objectives, the organisation is to have meaningful contributions from volunteers. These may include both the target group and supporters.
3. **Volunteerism of governing board**. Those who are part of the NGO's governing body (generally the board of directors) are to serve in a voluntary capacity, for no pay.

III. Mission and Activities

An NGO's mission is its raison d'etre — the reason or purpose why the NGO exists and what it hopes to accomplish. NGOs have an obligation to clearly identify and articulate their mission. This well-defined mission should serve as the foundation and frame of reference for all activities and organisational planning of the NGO. An NGO has an obligation to utilize its resources in an effective and efficient manner toward accomplishment of its stated purpose.

A. Mission

Standards

1. **Formal statement**. The organisation shall formally and succinctly state its mission in a written statement approved by the governing body of the NGO. This statement shall clearly set forth why the NGO exists and what it hopes to accomplish.
2. **Board of directors**. Each member of the board of directors shall fully understand and support the mission of the organisation.
3. **Public availability**. The mission statement of the NGO shall be made available to all officers, members, staff, partners, donors, progamme beneficiaries, and the public in general.
4. **Evaluation.** The mission of the NGO shall be reviewed periodically (every two or three years) to determine if it is still relevant. Among issues to evaluate: (a) whether the mission has been fulfilled, either by the organisation or another entity, and thus whether there is a need for the organisation as currently constituted to continue to exist; (b) whether the mission should be revised to reflect societal changes; or (c) whether there is a desire for the organisation to address new needs which might require a new mission statement.

B. Activities

Standards

1. **Consistent with mission**. Activities shall be consistent with the organisation's mission. The NGO's mission is to serve as the foundation for strategic planning and as the blueprint for the organisation's activities. The NGO's focus shall be directed toward making sure that its goals are met.
2. **Effective and Efficient**. The progammes of the organisation shall effectively and efficiently work toward achieving its stated mission.
3. **Feedback.** The organisation shall regularly seek feedback on its activities from project beneficiaries, as well as other stakeholders.
4. **Evaluation**. The activities of the organisation shall be critically examined periodically to determine their relevancy to the mission, their efficiency and effectiveness, the value of continuing the progammes or revising them, and the need for new progammes. Among issues to evaluate: (1) whether the activities are consistent with the current mission of the organisation or whether they need to be revised or discontinued in light of changes in the mission; (2) the efficiency and effectiveness of the progammes in achieving the NGO's objectives; (3) the outcomes for the progamme beneficiaries; (4) the cost of the progamme relative to its outcomes; and (5) whether new services should be offered. Evaluations shall be open and honest and include input from stakeholders.
5. **Professionalism**. The organisation shall carry out its activities with professionalism and centered on the concept of serving others.
6. **Percentage of expenditures**. The organisation shall spend at least 65% of its total expenditures (including fundraising costs) on progamme activities, and ideally more than 80%. If the organisation does not meet this 65% standard, it should provide reasons why its higher overhead and fundraising expenditures are reasonable. Possible explanations for not meeting this standard could be the higher administrative and fundraising costs of a new organisation and exceptions related to donor restrictions or unusual political and social factors.

An effective governance structure and a strong, active, and committed governing body is crucial to the soundness of an organisation and its ability to achieve its mission and objectives. The plan of governance of an NGO should reflect the core values, mission, and cultural standards of the organisation. Democratic principles should be used where applicable. The governing body of an NGO (generally a board of directors or trustees) holds ultimate responsibility for all activities and resources of the organisation. This includes establishing the direction of the organisation, beginning with its mission statement, and assuring that the mission statement is appropriate and relevant as times change. The governing body also determines the organisation's activities and monitors their compliance with the mission. The governing body exercises responsibility for obtaining and appropriately employing the human and financial resources to carry out the organisation's mission and sustain the organisation, and oversee fiduciary and legal requirements.

A. Governance Structure

Standards

1. **Plan of governance**. The NGO shall establish a plan of governance that best allows it to fulfill its mission, and reflects the core values and cultural standards of the organisation. Democratic principles are to be used where appropriate and applicable.
2. **Organising documents**. The organisation's governance structure — including rules relating to the conducting of business by the governing body and, if applicable, an executive committee that acts between board meetings, and the procedure for electing and appointing officers and their roles — is to be clearly specified in the organising documents (bylaws, etc.) and available to all interested parties.

B. Structure of the Governing Body

Standards

1. **Director resources**. The NGO's governing body shall consist of individuals who are dedicated to the mission of the organisation, willing to volunteer their time and energies toward achievement of the mission, and able to offer substantial contributions to the organisation. Among resources they may bring to the governing body are experience and wisdom; prestige; the ability to raise money for the organisation; and professional skills, such as legal, accounting, management, fundraising and marketing.
2. **Unrelated directors**. The governing body is to have at least three unrelated members and should have at least five unrelated members. Family relationships are accepted between two members at most, but then the board should have seven or more members.
3. **Policies on paid staff.** The organisation shall have a policy restricting the number of paid staff who are voting members of the governing body, ideally to no more than one person or 10% of the governing body. An indirectly or directly compensated person should not serve as the governing body's chairman or treasurer.
4. **Term limits**. Term limits are to be established for membership on the governing body. Ideally, individual terms should be set at a maximum of three years, no more than three consecutive terms should be allowed, and at least one year should be required before a

member becomes eligible for re-election after completing the maximum number of consecutive terms.

5. **Nominating committee**. The procedure for nominating individuals to serve on the governing body shall be known to members and other relevant parties.
6. **Diversity.** The governing body should have broad representation, reflecting the diversity of the NGO's constituencies. The NGO may enhance participation of members from diverse geographical distances if the organisation's bylaws, and the local or national law, allow meetings via such technologies as teleconferencing.
7. **Bylaws**. Each member of the governing body is to be presented with the bylaws of the organisation and be familiar with these bylaws.
8. **Compensation**. Members of the governing body are not to receive compensation for their board service. They may receive reimbursement for expenses directly related to their board duties.

C. Responsibilities of the Governing Body

Standards

1. **Mission statement**. The governing body shall establish the direction of the NGO, by creating or adopting the mission statement, reviewing it periodically for accuracy and validity, and revising it as necessary or desirable.
2. **Progammes and compliance**. The governing body shall determine the NGO's progammes and services, and monitor their compliance with the mission and their effectiveness and efficiency.
3. **Resources**. The governing body shall ensure the organisation has the proper resources to fulfill the mission.
4. **Annual budget and fundraising**. The governing board shall approve the annual budget and actively participate in the fundraising process. In approving the annual budget, the governing body is to ascertain the percentage of the resources spent on administration and fundraising, versus progamme expenses, and strive for a goal of at least 65% of revenue being used for progammes, and ideally greater than 80%.
5. **Resource management**. The governing body shall manage the resources effectively, and provide oversight regarding fiduciary and legal requirements.
6. **Chief executive officer hiring and evaluation**. The governing body shall hire the chief executive officer, undertaking a careful search process to find the most qualified individual. The governing body also shall set the chief executive officer's compensation, ensure that he or she has the moral and professional support needed to advance the goals of the NGO, and periodically evaluate his or her performance.
7. **Strategic planning**. The governing body shall actively participate with the staff in long-term and short-term strategic planning processes, including defining goals and objectives and the success of the NGO toward achieving its mission.
8. **Code of ethics and conduct**. The governing board shall approve a code of ethics and/or conduct for the NGO, and assure that the organisation is in compliance with this code.
9. **Ambassadors for the NGO**. Members of the governing board shall serve as ambassadors for the organisation, articulating its mission, accomplishments and goals to the public, and garnering support for the organisation.

D. Conduct of the Governing Body

Standards

1. **Meetings of the governing body.** The governing body, and any subset of the governing body (executive committee) which is authorized to conduct the affairs of the organisation between meetings of the governing body, are to meet as frequently as is necessary to fully and adequately conduct the business of the organisation. At a minimum, there should be a least 4 meetings annually of the governing body, or the governing body and the executive committee combined. If face-to-face meetings are not required by local or national law and the organising documents, then communication technologies can aid in conducting frequent meetings.

2. **Minutes.** Minutes of each meeting of the governing body and executive committee, and reports of each committee when acting in the place of the governing body, are to be produced, distributed to each member of the governing board, and archived for future reference. The minutes also are to be available to an association's membership, officers, staff, and the general public, with the exception of discussions related to personnel evaluation and other such confidential information.

3. **Responsibility for conduct.** The governing body shall be responsible for its own conduct. The governing body is to establish written expectations for board members (including expectations related to service on committees, attendance at meetings, and participation in fundraising and progamme activities), and annually evaluate its own performance. If not already established in the organising document, the governing body is to establish job descriptions for its officers (chair, treasurer, secretary, etc.).

E. Conflict of interest

Standards

1. **Best Interest of the NGO.** In serving on the governing body, directors shall put organisational goals before personal goals, and put the best interests of the organisation ahead of individual desires.

2. **Matters impacting a director.** No director shall participate in deciding a matter directly impacting that individual (such as re-election to the governing body, personal remuneration, etc.)

3. **Disclosure.** Each director shall disclose all potential and actual conflicts of interest, including each institutional affiliation he or she has that might possibly involve a conflict of interest (such as sitting on a board of another NGO with overlapping goals and missions). Such disclosure does not preclude or imply ethical impropriety.

4. **Written conflict of interest policy.** The governing body shall develop a written conflict of interest policy, which is applicable to the directors and to any staff and volunteers who have significant decision-making authority regarding the organisation's activities or resources, as well as relevant organisational partners.

5. **Signature.** The governing body shall provide its members with the written conflict of interest statement, which should be signed by the individual at the outset of each term of service.

6. **Loans to members of the governing body.** If an NGO has provision for making loans to members of the governing body, there shall be a policy describing how the loans operate. All loans or transactions with members of the governing body are to be included in the NGO's full financial reports and publicly disclosed.

A committed, capable and responsible staff is vital for the success of an NGO. The foundation for this is effective human resource policies. For most NGOs, these should address both paid employees and unpaid volunteers, given the use of volunteers in many roles, including in management and as individuals rendering progamme and support services. An NGO should seek qualified staff, offer them proper training and supervision, treat them with fairness and equity, and provide them with avenues for individual growth and development. On the other hand, the NGO should expect employees and volunteers to maintain the highest standards of professional and personal conduct, use information and resources responsibly, and avoid conflicts of interest.

A. Responsibilities of the NGO

Standards

1. **Capable and responsible staff**. The organisation shall seek capable and responsible employees and volunteers (collectively, "staff"), who are committed to the mission of the organisation.
2. **Training and working conditions**. The organisation shall provide proper training and orientation for new staff, and provide them with suitable working conditions.
3. **Written human resource policies**. If the organisation has ten or more staff, it is to have written human resource policies (or an employment manual) for its staff, including basic aspects of employment (benefits, vacation days, sick leave, etc.), and other fundamental policies such as confidentiality of information, computer policies (use of computer resources for personal work, ownership of computer resources), drug and alcohol policy, conflict of interest, and grievance procedures. If the organisation has fewer than ten staff, it is encouraged to have written human resource policies for its staff.
4. **Staff growth and development**. The organisation shall provide opportunities for individual growth and staff development, and foster an atmosphere whereby supervisors encourage personal growth of staff.
5. **Fairness and rights**. All staff shall be treated with fairness and equity, and as individuals with rights to be honored and defended. Their rights to freedom of association, conscience and expression must be respected and protected.
6. **Code of ethics and conduct**. Each staff member shall be provided with the NGO's code of ethics and/or conduct and any written human resource policies.
7. **Communication of serious concerns**. Key staff shall be enabled to communicate serious concerns to a member of the governing board or officer.
8. **Standards and responsibility**. Staff shall be encouraged and guided in maintaining the highest standards of professional and personal conduct, and in taking personal and professional responsibility for their actions and decisions.
9. **Confidentiality**. Guidance shall be provided staff with access to official documentation or information regarding maintenance of the integrity, confidentiality, and privacy of such information to protect any individual concerned.

B. Conflicts of Interest

Standards

1. **Written policy**. The governing body shall provide staff who have decision-making power a written statement of how they shall handle potential conflicts of interest. Ideally, this statement will be signed by each individual at the time of their beginning service with the NGO and periodically thereafter.
2. **Disclosure**. Each officer shall disclose each institutional affiliation that he or she has that might possibly involve a conflict of interest.
3. **Gifts**. The NGO shall establish a policy regarding gifts to staff members, such as requiring that staff refuse all significant gifts connected with their position, or turn them over to the organisation.
4. **Using position for personal benefit**. Staff members shall refrain from using their official position, either regular or volunteer, to secure special privilege, gain or benefit for themselves.
5. **Loans**. If the organisation has provision for making loans to staff, there is to be a policy describing how the loans operate and all loans shall be disclosed to the governing body.
6. **Best interests of the NGO**. Employees and staff should put organisational goals before personal goals, putting the best interests of the entire progamme ahead of individual desires.

VI. Public Trust

Trust is the lifeblood of an NGO — trust by the public, trust by the media, trust by the government, trust by corporations, trust by donors, trust by other NGOs, trust by beneficiaries, and trust by its employees and those who volunteer their time. To develop and maintain trust, each NGO should exhibit genuine public accountability and transparency, and should be honest in the information that it makes available to the public.

A. Public Information on the NGO

Standards

1. **Accuracy and timeliness**. Information provided about the organisation to donors, members, clients, staff, and the general public shall be accurate and timely.
2. **Annual report**. At least annually, the organisation shall prepare and make available to the public information on its progammes and services, and provide public access to appropriate records of those progammes and services.
3. **Financial information**. The NGO annually shall prepare and make available to the public basic financial information on the organisation, including the source of its funding; the use of those funds; the percentage of the funds used for service and progammes, administration activities, and fundraising; and any compensation provided to the governing body. The NGO shall also provide public access to appropriate financial records.
4. **Listing of governing body and officers**. The organisation shall make available the names of its governing body and management staff, publicize any changes in its governing board, and provide access to appropriate minutes of meetings of its governing board.
5. **Partnerships**. The organisation shall make available, in a timely and accurate manner, information on any partnerships or other joint ventures into which it has entered.

6. **Confidentiality**. The organisation shall maintain the confidentiality of personal information on staff, clients and others, unless the individuals waive this right, or disclosure is required by law.
7. **Comparison**. The organisation shall describe itself in terms of its own merits, not in depreciation of other NGOs. Communications regarding another NGO shall not be made with the purpose of creating a self-benefit at the expense of the other.
8. **Communications channel**. The organisation shall provide a communication channel for the public should they wish to make inquiries regarding the NGO and its activities.
9. **Disclosure**. The NGO shall assign at least one person to assure that the organisation is complying with national and local laws regarding disclosure of information to the public.

B. Public Advocacy

Standards
1. **Accuracy and in context**. Information that the organisation chooses to disseminate to the media, policy makers or the public must be accurate and presented with proper context. This includes information presented by the NGO with respect to any legislation, policy, individual, organisation, or projects it opposes, supports, or is discussing. Forward-looking projections are to be presented clearly as such, and not as fact.
2. **Verbal and written statements**. The organisation shall have clear guidelines and approval processes for the issuing of verbal and written statements.
3. **Disclosure of bias**. The organisation shall present information in a fair and unbiased manner. Where a possible bias is unavoidable or inherent, it is to be disclosed.
4. **Authority for statements**. An NGO's statements must reflect its actual authority. A membership NGO may be able to represent its membership, if such a role is provided in its organising document and the views of the membership are determined by proper means. A public benefit NGO shall not improperly assume the authority of the community it serves.

VII. Financial and Legal

A. Financial Transparency and Accountability

Standards
1. **Fiscal responsibility**. Members of the governing body hold ultimate fiscal responsibility for their organisation and are to understand the organisation's financial statements and reporting requirements.
2. **Annual budget**. The organisation's annual budget is to be approved by the governing body, and is to outline projected expenses for progamme activities, fundraising, and administration. The NGO is to operate in accordance with that budget.
3. **Internal financial statements**. Internal financial statements shall be prepared regularly and provided to the governing body. Any and all significant variations between budgeted expenses and actual expenditures, and between budgeted revenues and actual revenues, are to be identified and explained to the governing body.
4. **Financial policies**. The NGO shall have established financial policies, suitable for the size of the organisation, regarding the receiving and disbursement of financial resources,

investment of assets, purchasing practices, internal control procedures (such as policies for signing checks), and so forth.

5. **Internal control procedures**. The organisation's internal control procedures shall have a safeguard against a person having the power to issue a check to himself or herself, such as requiring an additional signature. The organisation's internal control procedures shall have a safeguard against one person being able to issue a check over a certain amount (such as two signatures being needed over $5,000) and shall have restrictions on checks made out to cash.

6. **Audit**. If the organisation has substantial annual revenue, the accuracy of the financial reports shall be subject to audit by an independent, qualified accountant. NGOs with small gross incomes are to have a review by a qualified accountant. For NGOs with very small revenues, an internally produced, complete financial statement may suffice.

7. **Professional standards**. The organisation shall adhere to professional standards of accountancy and audit procedures as stipulated by the law in its nation, and fulfill all financial and reporting requirements.

B. Legal Compliance

Standards

1. **Laws and regulations**. The organisation's activities, governance, and other matters shall conform to the laws and regulations of its nation and locality. (An NGO may seek to change those laws and regulations, if such activity is consistent with its mission.)

2. **Attorney review**. The organisation shall obtain attorney review of the organising documents of the NGO to make sure that they are in compliance with existing laws and regulations, and shall make recourse to attorney services as appropriate to ensure continued legal compliance.

3. **Liability insurance**. The organisation should consider having liability insurance, if available and applicable.

4. **Internal review**. The organisation periodically shall conduct an internal review regarding compliance of the organisation with current laws and regulations and summaries of this review should be presented to members of the governing body.

V111. Fundraising

A. General Fundraising Principles

Standards

1. **Governing body**. The governing body should be very active in the fundraising effort, including being active in solicitations and in making individual contributions.

2. **Consistency with mission**. The organisation shall only accept funding that is consistent with its mission, does not compromise its core principles, and does not restrict its ability to address relevant issues freely, thoroughly, and objectively.

3. **Truthful**. The organisation must be truthful in all matters relating to the raising of funds and their use.

4. **Mission priority**. Progammes shall be designed to meet the mission of the NGO and never designed simply to meet the needs of a funding source.

5. **Unethical actions.** The organisation must not tolerate any unethical activities such as double funding for one project, diversion of dedicated funds to uses other than the project for which funds were approved, or overstatement of achievements.

B. Solicitations

Standards

1. **Solicitation materials.** The organisation shall be careful to ensure that all solicitation and promotional materials are accurate, and that they clearly and truthful present the NGO, its mission, and its progammes. All solicitations are to correctly reflect the NGO's planned use of the solicited funds, and fundraising solicitations shall only make claims that the organisation can fulfill. There shall not be any exaggerations of fact or material omissions, nor any communication or images that would create a false or misleading impression

2. **Tax benefits.** The organisation shall ensure that donors receive informed, accurate, and ethical information regarding the tax implications of potential gifts.

3. **Fundraising principles.** Fundraising shall be for the purpose of the NGO's mission, and free of coercion, improper motive, inappropriate conduct, unreasonable reward, or personal inurement.

4. **Excess funds.** When funding for a particular purpose is invited from the public, there shall be a plan for handling any excess funds, and, where appropriate, the appeal should include information on how any excess funds will be used.

5. **Compensation to fundraisers.** The organisation shall not provide compensation to fundraisers that is based on a percentage of charitable contributions raised or expected to be raised, nor should it provide a finder's fee. Percentage-based compensation can be an impediment to keeping the donor's and NGO's best interests primary, and may foster unethical behaviour or inappropriate conduct on the part of the fundraiser. It likewise can be a hindrance toward maintaining a volunteer spirit and keeping the mission of the NGO at the forefront, and may offer reward without merit in the case of a large donation that may be the product of many individuals. The organisation may provide compensation based on skill, effort and time expended, and performance-based compensation, such as bonuses, provided such bonuses are in according with prevailing practices of the NGO and not based on a percentage of charitable contributions raised.

6. **Sales promotions.** Fundraising promotions involving the sale of products or services shall indicate the duration of the campaign, and the actual or anticipated portion of the purchase price that will benefit the NGO or progamme.

7. **Percentage of fundraising costs.** The costs involved in fundraising shall be reasonable relative to the revenue generated. Over the course of a number of years, the NGO's average expenditure on fundraising activities should be one-third or less of the amount of revenue generated from these activities, and ideally fundraising costs should be less than 25% of fundraising income. An organisation that does not meet this ceiling of 33 1/3% (fundraising costs/fundraising revenue) over a five-year period should demonstrate that it is progressing toward this goal or explain why its fundraising costs are reasonable (such as the higher fundraising costs of a newly-created organisation, or unique donor, social or political factors).

8. **Information on solicitors.** The NGO shall have policies in place to protect the donor's right to be informed whether the solicitors are paid staff, volunteers, or agents of the NGO.

C. Use of Funds

Standards

1. **Use of contributions**. The organisation shall ensure that contributions are used as promised or implied in fundraising appeals or for the purposes intended by the donors.
2. **Grant commitment**. When the organisation accepts a grant, it is entering into a contract to carry out the progamme activities in an agreed-upon manner, and has an ethical and legal responsibility to honor that commitment.
3. **Donor consent for changes**. The organisation may alter the conditions of a gift or grant only by obtaining explicit consent by the donor.
4. **Efficient and effective use**. The organisation shall ensure efficient and effective use of grants and charitable contributions.

D. Accountability

Standards

1. **Tracking expenditures**. The organisation shall set up an organised system to track grant expenditures.
2. **Timely reports**. The organisation shall produce timely reports on the use and management of funds.
3. **Financial statements**. Financial statements regarding donations shall be available upon request by the donor and interested parties.

E. Relationship with Donor

Standards

1. **Donor relationship**. The directors, management, staff and volunteers of the organisation shall not exploit any relationship with a donor or prospective donor for personal benefit or the benefit of any relative, friends, associates, colleagues, and so forth.
2. **Confidentiality**. Privileged or confidential information regarding the donor or donation must not be disclosed to unauthorized parties.
3. **Donor privacy**. A donor's privacy shall be respected and an NGO must safeguard any confidential information regarding the donor or the gift. Donors are to have the opportunity to remain anonymous, and to not have their names added to any lists that are sold, rented or given to others, unless the donor has had an opportunity to approve such lists or have their names removed.
4. **Privacy policy**. The organisation shall have a clear and easily accessible privacy policy that informs the public what information is being collected on individuals and donors and how that information will be used, how to contact the organisation to review personal information collected and to request corrections, how to inform the NGO that the individual does not wish his or her personal information to be shared outside the NGO, and what security measures are in place to protect personal information.
5. **Unethical solicitations**. The NGO or its agents must not use excessive pressure, coercion, undue influence or other unethical means in their solicitations.

IX. Partnerships, Collaboration and Networks

When appropriate, NGOs may find that cooperation with other civil society organisations, government and intergovernmental agencies, and for-profit corporations may be beneficial in advancing their mission-related objectives. Such collaboration for common good may reduce duplication of services and eliminate using resources for competitive purposes rather than serving constituencies. Collaboration may allow pairing diverse strengths and resources and promote effectiveness in tackling priorities. However, an NGO may enter into such a relationship only if it is consistent with its mission.

A. General Principles of Partnerships and Collaboration

Standards

1. **Mission consistency.** The organisation shall collaborate with other entities only if the relationship is consistent with the mission of the NGO.
2. **Shared values.** The organisation shall collaborate on the basis of shared values, common ground, and for the good of society.
3. **Mutual benefit.** The NGO shall collaborate on the basis of equitable and genuine mutual benefit to each organisation.
4. **Transparency.** NGO collaboration shall allow financial transparency and a two-way flow of information, ideas, and experiences.
5. **Adaptive to change.** Collaborations are to be adaptive to change. Changes in the relationship are to be developed through cooperation, and not forced by one or the other organisation.

B. Relations with other NGOs and CSOs

Standards

1. **Common objectives.** When appropriate, NGOs with overlapping missions, values, and target groups should partner with each other and civil society organisations, when it would be beneficial for the common target groups and for the achievement of common objectives.
2. **Competition and service duplication.** NGOs with overlapping missions, values, and target groups should refrain from competing with each other and with other civil society organisations, and should refrain from unnecessary duplication of services and disruption of each other's projects.
3. **Information sharing.** NGOs with overlapping missions, values and target groups should share relevant project information with other NGOs and civil society organisations, and mutually support each other.
4. **Support for other NGOs.** The NGO shall express solidarity with campaigns and actions of other NGOs, and promote the effectiveness and success of other NGOs, when it does not compromise the integrity or values of the NGO.
5. **Networking.** The organisation shall network with other ethical NGOs as a means for promoting the growth, effectiveness and efficiency of the NGO sector and the ability to advance the public good.

C. Relations with Government Agencies and Intergovernmental Bodies

Standards

1. **NGO objectives and independence**. The organisation shall enter into a partnership agreement with a government or intergovernmental body only when it is beneficial to achievement of the NGO's objectives and does not compromise the independence or self-control of the organisation.
2. **Appropriate and mutually beneficial**. The organisation shall seek to dialogue and cooperate with government and intergovernmental agencies when such cooperation would be both appropriate and mutually beneficial and could increase the NGO's effectiveness in dealing with issues and priorities in its agenda.
3. **Mission-led**. The organisation shall not enter into a partnership with a governmental or intergovernmental body solely to promote the sustainability or competitive advantage of the NGO independent of achieving its mission objectives.
4. **Political favor**. The organisation shall not change its policies or non-partisan nature in order to curry political favor.

D. Relations with For-Profit Corporations

Standards
1. **NGO objectives and independence**. The organisation shall enter into collaboration with a for-profit corporation only when it is beneficial to achievement of the NGO's objectives and does not compromise the independence or self-control of the organisation.
2. **Mission-led**. The organisation shall not enter into collaboration with a for-profit corporation if motivated by financial reasons versus achieving its mission objectives.
3. **Market advantage**. The organisation shall not enter into collaboration with a for-profit corporation if the main motivation of the corporation is to gain a market advantage over competitors.

Case snapshot 2: The Independent Code of Governance for Non-profit Organisations in South Africa

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1. **PRINCIPLES OF GOOD GOVERNANCE**

1.1. Ensuring adherence to values

The fundamental responsibility of the Board of an NPO is to endorse, practice, and ensure a commitment to the core values that are inherent in ubuntu. The need for a commitment to these core values is both implicit and explicit. Some values are embodied in legislation, such as the Nonprofit Organisations Act; the Trust Property Control Act; and the Companies Act. Other values form part of our culture, tradition, and the common law. Values that are of particular relevance and concern to the NPO sector are outlined below.

Value 1: Fidelity to Purpose

For an NPO to be committed to the principle of fidelity, or loyalty, to purpose means that all its resources, energies and activities must be devoted to promoting its public benefit purpose and not to some personal or private objective.

- The purpose of an NPO must be clearly defined in its founding document, and the Board must ensure that the organisation remains true to that purpose, and does not become sidetracked into unrelated causes and activities, however worthy. Any significant change of purpose must result from a formal decision to this effect, following a process of consultation that should, if possible, include members, donors and the beneficiary community. Such decisions must then be formalised by an amendment of the NPO's founding document.

- The importance of remaining true to purpose involves not only a duty that is owed to members, and a duty of trust that is owed to beneficiaries; but also a duty that is owed to donors and volunteer supporters. Conversely, donors owe a duty to NPOs to support their adherence to their constitution's stated objects and purposes. In terms of the Income Tax Act, notice of a change of purpose must be promptly sent to the Tax Exemption Unit of SARS, which may then review its initial approval of the organisation's PBO status. A change of purpose can lead to the loss of tax exemption under Section 10(1)(cN)of the Income Tax Act. In certain instances, a change of purpose can also lead to the loss of approval for purposes of Section 18A (the right of donors to claim tax deductibility of their donations to that organisation).

Value 2: Altruism and Benevolence

An NPO is constituted for a public benefit purpose. This implies that its actions and decisions must be motivated by reasons consistent with that purpose. The underlying motivation must be one of advancing the public interest, and not some self-interest, although certain NPOs may serve the shared interests of members of communities, provided they are not 'small and exclusive groups' (Section 30 of the Income Tax Act, 1962).

- The Board has a responsibility to ensure that neither its members, nor any of the organisation's employees or donors, uses the organisation to advance personal agendas. Examples of such agendas could be private profit, political candidacy, individual reputation, promotion, advertising, or other self-benefit.

- Altruism or benevolence implies that the purpose underlying an action is a desire to benefit others, without seeking advantage for oneself. It is the foundation of philanthropy or charity, and represents an intention to benefit society as a whole.

Value 3: Integrity

It is a primary responsibility of the Board to demonstrate a commitment to the highest standards of integrity, and to require that all persons who represent or act on behalf of the organisation live up to these expectations.

- Integrity in this context has both active and passive aspects. Thus, a Board should be concerned not only with decisions and actions, but also with a failure to take necessary decisions and act appropriately. Thus, for example, integrity is concerned with acts of dishonesty such as theft, fraud, corruption, lying and deceit. It is also concerned with the failure to fulfil a mandate of trust. There can be a failure of integrity both in the doing something, as well as in not doing something – or in doing nothing.

- The Board must ensure that standards of integrity are effectively propagated and enforced throughout the organisation. It must, for example, create mechanisms to protect 'whistleblowers', and must ensure that procedures and policies exist to deal with instances of dishonesty or malpractice. This may involve internal disciplinary proceedings but, in serious cases, it must be prepared to lay criminal charges and allow the courts to determine appropriate sanctions.

Value 4: Optimising Resources

An NPO stands in a position of trust. It is given funds and resources for a specific purpose. Decisions of the Board and actions of management must be consistent with that purpose. Funds and resources must be put to use in a responsible manner, and without extravagance or undue risk. Even when funds are donated without a designated purpose, care and prudence must be the watchwords.

- This important value has particular relevance to the issue of remuneration, including reimbursement of expenses incurred by Board members. As far as non-profit companies are concerned, the guiding principles are now set out in the new Companies Act, which prescribes that remuneration may only be paid to directors if the founding document so permits, and if there is prior approval of a general meeting of members passed by special resolution within the preceding two years. Annual financial statements must disclose any such remuneration individually in respect of each director (and any other financial benefits such as a bonus or loan). Similar principles should be regarded as applicable to all NPOs, and not just those which are constituted as non-profit companies.

- The Income Tax Act (Section 30) prescribes that a tax-exempt PBO may not pay remuneration to any person, including a director or trustee, 'which is excessive, having regard to what is generally considered reasonable in the sector, and in relation to the service rendered'.

- Ensuring compliance with these principles and statutory prescriptions represents an important board responsibility. A material failure to comply represents a breach of trust, and may result in civil and even criminal consequences.

Value 5: Conflicts of Interest and Self-Dealing
A fundamental principle and value of NPO governance is the avoidance of 'conflicts of interest'. Such conflicts arise when a person in a position of trust makes a decision or enters into a contract from which they themselves, or friends, relatives or associates, stand to benefit.

- Occasionally, but rarely, such conflicts of interest cannot be avoided. In the NPO sector, a special problem arises in the case of community-based organisations, where community members are not only beneficiaries but often also serve on the organisation's executive committee. Such situations require particular care and management, which may include the need for special approval by members of the community, or the independent assurance of some independent, knowledgeable, and disinterested person. The appointment of relatives or friends as employees of an NPO, or as paid consultants or service providers, should also be avoided wherever possible, except in the most unusual circumstances.

- As to how these situations should best be handled, the Companies Act provides important principles and directions in respect of companies – including non-profit companies. Similar principles should be regarded as applicable generally to all NPOs, and not just those constituted as non-profit companies. Thus, the Companies Act stipulates that in the event of a 'conflict of interest' arising, the affected person:—

a. must disclose the interest and its general nature before the matter is considered at the meeting;

b. must disclose to the meeting any material information relating to the matter, and known to the director;

c. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;

d. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c);

e. must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);

f. while absent from the meeting in terms of this subsection — i. is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constitute the meeting; and ii. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

g. must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the Board.

Value 6: Equality and Non-Discrimination
NPOs, like all other members of society, are bound by rights, duties and obligations set out in the South African Constitution. In fact, the right to form an NPO is itself reflected in the fundamental right described as 'freedom of association'.

- In terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, it is the responsibility of a board to take proactive steps to prevent unfairness in the

conduct of the affairs of an organisation. In particular, a board must be vigilant in preventing unfair discrimination based on grounds of race, gender, or one of the other prohibited grounds referred to in the Act. A board must also promote a principle of fairness in its relationships with other organisations, and in its programmes and activities – including its selection of beneficiaries, and the principle of equal access to its services and support.

Value 7: Democracy and Empowerment
In the conduct of its affairs and in its relationships with each of its stakeholders, an NPO must demonstrate a clear commitment to democratic process and decision-making. An NPO ultimately makes its own decisions, but these should be informed by knowledge, research, and a participative process, allowing for wide-ranging consultation and feedback.

- Thus, for example, a board is responsible for ensuring that employees are fairly treated, adequately represented, and appropriately consulted; and that a culture of participatory decision making is encouraged throughout the organisation.
- In its dealings with beneficiaries and communities, a similar value and principle should be encouraged by the organisation, in recognition of the need for involving consultation and empowerment. Beneficiaries should be shown respect, and given the opportunity to evaluate, and to praise or, if necessary, criticise, the quality of products and services received. The dignity, value, and empowerment of each individual person should be the hallmark of an NPO's relationships.

Value 8: Independence and Impartiality
A fundamental value that needs to be observed by NPOs is that of independence and impartiality. A public benefit purpose implies that all eligible beneficiaries must be treated equally and fairly, without special favour or prejudice. Where it is necessary, because of limited resources, to choose between particular individuals or communities, the basis for choice must be such as to avoid the reality – or the possible perception – of unfair discrimination. This is particularly important where members of the Board – or senior executives – are identified with one beneficiary group rather than another.
A commitment to independence extends beyond the choice of beneficiaries, and includes a duty to make choices and arrive at decisions at arm's length, and without being dictated to by any particular constituency or interest group. Similarly, although donors will generally designate their intended grant purpose, which could include identifying particular needy communities or groups, they may not control the final selection of individual beneficiaries, or attempt to advantage their own employees or persons with whom they may have some special relationship.
Similarly, although NPOs must ensure that they communicate effectively with official bodies, including local government, in order to ensure that their efforts are complementary and that there is no wasteful duplication of efforts and resources, they must always act independently and take particular care to avoid the perception of political preference or patronage.

1.2. Exercising effective leadership

Effective leadership is the core quality of good governance. It relates not only to the external role of presenting and propagating the cause or mission of an NPO in the public domain; but also to the internal role that should be played by the Board in setting standards, giving direction, and determining strategy. Once again, it is not the function of a board to manage

the organisation; but it is the function of the Board to encourage initiative, including income generation; and to hold managers to account; to provide them with the resources they need; and to ensure that the organisation has a common vision and strategy, which is carried into practical effect by management.

The Board should also be concerned to promote harmonious relationships; facilitate the resolution of conflict issues, preferably by negotiation, mediation, or ADR [alternative dispute resolution]. Whilst affirming the authority of the Executive, the Board should make it possible for employees and others with relevant information, whether inside or outside the organisation, to confidentially raise issues such as a lack of integrity or unfair discrimination. The substance and scope of the Board's responsibility to exercise effective leadership is considered under the six headings below.

Key leadership area 1: Vision, Purpose and Values

It is the responsibility of the Board to ensure that the vision, purpose, and values of an organisation are clearly defined and instilled throughout the organisation; that they are formally recorded in writing; and that they are reviewed at regular intervals, to ensure that they remain relevant, and are 'owned' and carried into effect at all levels of the organisation.

- It is recommended that basic statements of vision, purpose, and values are not only incorporated in the founding documents, but are also prominently displayed in the offices of the organisation; on its website (if applicable); and repeated in the organisation's literature, pamphlets, and other documentation, including its strategic plans, annual reports, newsletters, etc.

- To ensure that these matters are given due weight and prominence, it is a governance responsibility regularly to monitor and evaluate individual and collective performance against specific objectives; to identify strengths and weaknesses; and to provide opportunities for organisational learning and staff development. Issues such as favouritism, nepotism, self-dealing, bias, and preference should be given particular attention.

Key leadership area 2: Accountability and Transparency

A critical responsibility of the Board is to ensure commitment to accountability and transparency. The way in which an organisation addresses this basic responsibility is an important indicator and barometer by which it will be evaluated and judged.

- The Board must ensure that there is effective and transparent financial reporting; and it must satisfy itself as to the existence of adequate financial systems and controls. Within a reasonable time (not exceeding six months) following the end of each financial year, an organisation should prepare, publish, and present its annual financial statements, which should be either professionally audited, or at least reviewed by an independent person, in the way described in the Companies Act. Such statements should include, as a minimum, a statement of financial position; a statement of comprehensive income; a statement of changes in reserves; and a statement of cash flows (with comparative figures for the preceding financial year). For small organisations, a statement of financial position accompanied by a statement of income and expenditure (with comparative figures for the preceding year) may be adequate. However, in the absence of an audit, an independent review of financial statements is essential.

- The Board's duty of accountability and transparency is not restricted to the financial situation of an organisation, but includes its duty to give an account of its programmes and activities, including the way in which it has sourced and applied its funds; the measure of its impact, including both failures and successes; and its plans and proposals for the future. It should also be concerned with respect to the organisation's environmental impact, and its compliance with relevant laws and regulations. This duty requires open and honest communication with stakeholders, including the general public through the media.
- NPOs are accountable to a number of constituencies and stakeholders. These include, but are not limited to:—

a. Donors – with respect to the organisation's integrity and effective use of funds.

b. Beneficiaries – with respect to the organisation's awareness of needs, and deployment of resources.

c. Members – with respect to democratic governance and fidelity to purpose.

d. Employees – with respect to fair remuneration, employment conditions, transformation and empathetic human relations.

e. Volunteers – with respect to their contributions of time, energy and skills.

f. Government – with respect to legal and fiscal compliance, and effectiveness in allocating resources and addressing needs.

g. Other NPOs – with respect to possible synergies and opportunities for collaboration.

h. The general public – with respect to tax benefits and fiscal privileges.

Key leadership area 3: Fundraising, Sustainability and Risk

It is the Board's responsibility not only to monitor expenditures and appropriation of funds, but also to ensure that the organisation remains adequately funded; and that it will be in a position to meet its anticipated costs and commitments to employees, beneficiaries and, importantly, to SARS.

- Board members should be encouraged not only to give of their time, knowledge and skills, but also, where possible, to make a personal financial contribution as tangible evidence of their commitment; and to provide support to those primarily responsible for fundraising and advancement.
- Part of the Board's responsibility is to ensure that the organisation communicates effectively with its various stakeholders, including donors and members. Depending on the size of the organisation, the nature of its activities, and the extent of its resources, this may require periodic project and programme reports; the establishment and maintenance of a website; the publication of newsletters; and the prompt and efficient handling of correspondence and other communications, including information provided to the media.
- It may also be appropriate for an NPO to recoup at least part of its expenditures through the levy of affordable fees and charges for its services. In some instances, there may be opportunities to generate income from other activities to supplement the organisation's

donation income. However, in these circumstances, there are a number of considerations which must be carefully considered. These include the following:

a. Any such income-generating activity must remain secondary and not become a primary focus, to the detriment of the organisation's public benefit purpose.

b. Net profits derived from 'unrelated' income-generating activity are likely to be subject to tax, and must be separately accounted for and recorded.

c. Board members and employees – and their relatives or friends – must be particularly careful to avoid conflicts of interest or draw personal profit in these situations.

d. Such activities should never involve undue commercial risk, which may put the organisation's financial sustainability in jeopardy.

- Apart from the financial risks associated with the need for sustained funding, the Board must ensure that due consideration is given to identifying, managing, and where possible anticipating other systemic risks which may threaten the organisation's ability to deliver on its mandate. In a large organisation this may justify the appointment of a special committee charged with responsibility for risk; but for most NPOs, issues of risk will need to be managed in a manner that is affordable and appropriate to the resources of the organisation concerned.

Key leadership area 4: Collaboration and Synergy
NPOs exist to serve a public benefit purpose, and they should not act competitively or seek exclusivity, to the detriment of other organisations involved with similar work. When opportunities arise, NPOs should act collaboratively and co-operate with similar entities – including, where appropriate, other NPOs, welfare agencies, and relevant bodies in the public and private sectors. The overriding concern should be to advance the interests of the intended beneficiaries, and of society as a whole, rather than to promote the self-benefit or self-aggrandisement of the organisation itself.

Key leadership area 5: The Board and other Governance Structures
The way the Board is composed is a crucial issue which impacts directly on the quality of governance of an NPO. For example, it is generally considered undesirable for the Director or Chief Executive to act as Chairperson of the Board. Board members should be recruited with due regard to a number of factors, including knowledge, skills, diversity, and available time. There should also be a policy directed at achieving, from year to year, a balance between the twin benefits of continuity and of renewal. Thus, new Board members should periodically be introduced, and long-serving members should periodically retire. In the case of self-funded, family or corporate foundations, the founders and funders are likely to require representation on the Board, but they may not exercise unilateral control over decision-making.

- Board members should be committed to attending and actively participating at Board meetings. Upon initial appointment, new Board members should be supported with background documentation, and with a process designed to familiarise them with relevant information.

- Traditionally, most Board members regard their appointment as an opportunity for service, and agree to make themselves available without remuneration. However, where the level of involvement is significant, NPOs sometimes pay a modest fee, and for the reimbursement of reasonable travel and accommodation expenses. It must be emphasised that any such remuneration or reimbursement must always be modest and

proportionate to the resources of the organisation. Actual attendance or other active participation in the business of the Board should be a condition for payment of any such fee.

- Larger NPOs may require subordinate governance sub-structures to assist the Board in undertaking its responsibilities. Such sub-structures may include, for example:

a. An Executive Committee.

b. A Regional Committee.

c. A Project Committee.

d. A Fundraising Committee.

e. An Audit Committee.

f. A Remuneration Committee.

- The terms of reference and composition of any such committee should be carefully considered and managed to ensure that there is an appropriate balance between internal and external members; that the Committee remains fully answerable to the Board; and that it does not supersede or override the limits of its delegated authority and responsibility. Moreover, the Board should be aware that the appointment of any such committee and the delegation of specific areas of responsibility does not absolve it from responsibility for ensuring the overall good governance of the organisation.
- It is strongly recommended that boards and their committees should regularly review their own performance – and that of their individual members – usually on an annual basis. Boards should also conduct an annual review of the performance of the Director or Chief Executive.
- A further board responsibility is to give timely attention to the need for succession planning about its own composition, and also to the CEO and senior executive appointments.

Key leadership area 6: Procedural Governance
The founding documents of an NPO will usually prescribe a number of procedural issues related to board meetings and meetings of board sub-committees.

- Procedural formalities prescribed in founding documents must be thoroughly observed, including, for example:

a. Period of notice of meetings.

b. Prior delivery of meeting papers.

c. Participation by video or teleconference.

d. A formal agenda.

e. Circulation and confirmation of prior minutes.

f. Declaration of interests.

g. Quorum.

h. Preparation of minutes.

i. Voting, which can include a chairperson's casting vote.

j. Provision for 'round robin' resolutions.

k. The frequency and minimum number of meetings.

- It is important that the Director or Chief Executive of an organisation attends Board meetings – with or without formal membership of the Board, and with or without voting rights. However, there should be a part of every Board meeting (usually at the end of the meeting) when that person is asked to leave the meeting so that the Board has an opportunity to discuss any confidential matters (including the performance of the CEO). The presence of other managers or members of the executive during relevant parts of the meeting may be desirable and important – both in recognition of their roles and responsibilities and for the benefit of the Board.
- The CEO should preferably not chair Board meetings; and care must be taken to facilitate the full participation of all Board members, and to ensure that meetings are not confined to, or dominated by, statements by, and views of, the organisation's executive.

1.3. Ensuring Legal and Fiscal Compliance

It is the responsibility of the Board to monitor and ensure full compliance with relevant laws, including those that relate to registration, tax status, and the submission of statutory returns. This is not merely a formal or nominal responsibility, as directors and those having fiduciary responsibility can be held personally liable in the event of non-compliance in terms of various laws. Such personal liability can arise, for example, if Board members do not pay attention to their duties or are dilatory (unintentionally cause delays); or fail to seek reasonable assurance where necessary from management or those responsible for providing information or verification.

There are many different laws which impose duties upon those responsible for the governance of NPOs. A board should, where necessary, seek professional advice and assurance about such duties and whether these obligations are being timeously and effectively addressed and monitored.

Key legal and fiscal compliance matters that should be considered by the Board are discussed below.

Key legal/fiscal area 1: Establishment and Incorporation

The form of legal structure of an NPO may determine how and when governance responsibilities arise.

- A non-profit company must comply with the registration requirements of the Companies and Intellectual Property Commission (CIPC) in accordance with the Companies Act. As proof of such compliance, the original incorporators are issued with a Certificate of Incorporation, under the seal and signature of the CIPC. The initial directors then assume responsibility for the ongoing governance of the company.

- A trust must be registered at the office of one of the Masters of the High Court in accordance with the requirements of the Trust Property Control Act. Upon such registration being effected, the trustees are issued with Letters of Authority under the seal and signature of the Master; and the trustees then assume their ongoing responsibility for governance.

- A voluntary association requires no formal statutory registration, and there is no dedicated office where such associations must be registered. In fact, in terms of the common law, a voluntary association can come into being simply by an agreement by a minimum of three people. Such an agreement is usually supported by a   written

constitution although, technically, this is not an essential legal requirement. Their responsibility for governance arises after such an agreement has been reached, whether it is verbal or written. Responsibility then rests upon the members collectively, unless provision is made for responsibility to be carried by a management committee, or similar structure.

Key legal/fiscal area 2: Administrative and Procedural Requirements
Each form of alternative legal structure, with the exception of the common law structure of a voluntary association, has certain specific reporting obligations with which it must comply in terms of the applicable laws and regulations.

- It is the responsibility of a Board to seek and obtain assurance of compliance with prescribed requirements, and this duty is normally delegated to the Chief Executive, assisted by staff, auditors and/ or independent verifiers, where applicable.

Key legal/fiscal area 3: NPO Act – Consequences and Benefits of Registration
Provision is made under the Nonprofit Organisations Act 71 of 1997 for the voluntary registration of NPOs, irrespective of the particular form they take. However, registration under the NPO Act is not a precondition for the legal existence of the organisation, or the commencement of responsibilities for organisational governance. The optional registration under the NPO Act is effected by the Non-profit Organisations Directorate in the Department of Social Development.

- Although registration under the NPO Act is voluntary, there are certain benefits and advantages which result from such registration. These include: a. The issuance of a Certificate of Registration, which serves as proof of the legal existence of the organisation, and the fact that it is a so-called body corporate, which means that it is a duly formed legal entity with an identity of its own, which is separate from the identities of its members. b. Only registered NPOs are eligible to apply to become grant recipients of Lotteries Funding; the National Development Agency (NDA); the Independent Development Trust (IDT); local and provincial authorities, and various other public and private funding agencies.

- Registration under the NPO Act gives rise to certain ongoing reporting duties, including a requirement for the submission of annual financial statements, supported by the report of an independent accounting officer within nine months of the end of each financial year; and a requirement for the submission of an annual narrative report describing the activities of the NPO during the preceding period. Both of these documents must be prepared and lodged in the prescribed form.

- The Directorate has powers of inspection and enquiry with respect to registered NPOs, and it maintains a registry and database that is open for public inspection, subject to payment of a nominal fee. In addition to annual reports, the Directorate records details of the constituting documents; the current office bearers; their addresses and contact details, and other prescribed information.

- Accordingly, NPO registration implies a commitment to transparency and public accountability. It is therefore recognised as evidence of at least the intention to demonstrate best practice values.

Key legal/fiscal area 4: PBO Status – Fiscal Benefits and Conditions
In terms of the Income Tax Act (Section 30), an NPO may apply to SARS for approval as a so-called public benefit organisation (PBO). The most important benefit of approval as a PBO involves exemption from income tax; but approval also leads to exemption from certain other taxes and duties, including donations tax (on donations made by or to the PBO); estate duty on bequests received from a deceased estate – and, in certain circumstances, exemption from the Skills Development Levy.

Some approved PBOs may be eligible for another important fiscal benefit (Section 18A) – which involves the right granted to taxpaying donors to deduct the amount or value of donations they have made to a PBO from their taxable income. This benefit is available only in respect of certain public benefit activities (e.g., activities in such areas as welfare; humanitarian; health care; education; development; conservation; and housing – all public benefit activities listed in Part 11 of the 9th Schedule).

The VAT Act also contains provisions that may be of concern and benefit to certain eligible PBOs. For example, if an NPO's activities fall within certain narrowly defined categories, it is deemed to be a 'welfare organisation', which allows it to register under the VAT Act without having to satisfy the usual eligibility condition of a minimum annual turnover of R1 million. Registration then enables it to reclaim VAT paid on its purchases relating to qualifying activities. The services provided by a 'welfare organisation' may also be zero- rated for VAT purposes; and there are similar exemptions from VAT applicable to the provision of educational services, and services involving caring for children by a crèche or after-school care centre. However, registration under the VAT Act also brings with it administrative and compliance duties, and therefore the potential costs and benefits of VAT registration need to be carefully considered.

- Needless to say, tax legislation is complex, and each organisation should obtain professional advice concerning its liability for tax and its eligibility for tax benefits. Such tax benefits represent a valuable privilege that should not be abused, and amount to an indirect financial subsidy for eligible NPOs, which is made available at an indirect cost to other taxpayers. This is a further reason why tax-exempt PBOs should consider themselves broadly accountable to the general public.

- It is a fundamental responsibility of the Board to ensure that fiscal privileges are not squandered or abused, and to ensure that an NPO approved as a PBO is thorough in its compliance with the prescribed conditions, including the timeous submission of its tax returns, and that it promptly and accurately discharges its reporting requirements to the Tax Exemption Unit of SARS.

Key legal/fiscal area 5: Other Legislative and Regulatory Compliance
In addition to the general laws referred to above, there are naturally other laws and regulations which have specific reference to the conduct of activities of certain NPOs. The Board's responsibility for governance includes a responsibility to ensure that the organisation remains compliant with