The Influence of Civil Society Organisations in the New Governance Framework of Democratic South Africa

by

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DECLARATION

I, **Mmoloki Saviour Cwaile**, hereby declare that all the work contained in this study is my original work. I further declare that any part of work or idea taken from any source is properly acknowledged in this research.

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Cwaile, M.S. Date

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ABSTRACT

The study set out to investigate whether the influence of Civil Society Organisations (CSOs) had diminished in the new government framework of democratic South Africa, and if so, what the attributing factors were. This study used a qualitative research approach.

The aim of the study was to identify and examine the possible impediments to the effective and positive contribution of CSOs in the new government framework in democratic South Africa. The study investigated whether the role of CSOs had diminished in the new governance framework in democratic South Africa, and how CSOs could be made more effective in the face of all the challenges that undermined their presence and space.

This study collected, collated, and analysed the data on the selected CSOs. The research enabled an explanation and description of the identified and the excluded tools and/or mechanisms through which the influence of CSOs could be or was exercised in the context of the new governance framework of democratic South Africa.

The findings demonstrated that there was a multiplicity of factors that had contributed to the diminished influence of CSOs. CSOs have however found alternative means, including the use of the courts or litigation, to ensure that their views find expression and that they are able to exercise some form of influence.

Based on the findings, recommendations were made, which if considered and implemented, could help to redress and/or mitigate the diminishing influence of CSOs in the post-apartheid era, in the new democratic framework of South Africa.

ABBREVIATIONS AND ACRONYMS

AFU	Asset Forfeiture Unit
AG, SA	Auditor-General, South Africa
ANC	African National Congress
AUCPCC	African Union Convention on Preventing and Combating Corruption
BST	Black Sash Trust
CALS	Centre for Applied Legal Studies
CBO	Community Based Organisation
CC	Constitutional Court
CEO	Chief Executive Officer
CFICP	Centre for International Crime Prevention
COSATU	Congress of South African Trade Unions
CW	Corruption Watch
CPI	Corruption Perception Index
CS	Civil Society
CSCSO	Confederation of Sudanese Civil Society Organisations
CSO	Civil Society Organisation
DPCI	Directorate of Police Crime Investigations

DPSA	Department of Public Service and Administration
DSO	Directorate of Special Operations
EU	European Union
FIC	Financial Intelligence Centre
HAC	Humanitarian Aid Commission
ICC	International Criminal Court
ICD	Internal Complaints Directorate
IDASA	Institute for Democracy Alternatives for South Africa
FUL	Freedom Under Law
HSF	Helen Suzman Foundation
NCF	National Civic Forum
MFMA	Municipal Finance Management Act
NDP	National Development Plan
NDPP	National Directorate of Public Prosecution
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
ODI	Overseas Development Institute
PAIA	Promotion of Administrative Justice Act
PDA	Protected Disclosure Act

PEPFAR	Presidential Emergency Plan for AIDS Relief
PFMA	Public Finance Management Act
PRECCA	Prevention and Combating of Corrupt Activities
PSC	Public Service Commission
POCA	Prevention of Organised Crime Act
RAPID	Research and Policy in Development
RSA	Republic of South Africa
SADC	Southern African Development Community
SADC – SPAC	Southern African Development Community – Protocol on Corruption
SGB	School Governing Body
SAIRR	South African Institute of Race Relations
SAHRC	South African Human Rights Commission
SANCO	South African Nation Civic Organisation
SANGOCO	South African National Coalition of NGOs
SAPS	South African Police Service
SASSA	South African Social Security Agency

SARS	South African Revenue Services
SHRM	Sudanese Human Rights Monitor
SIU	Special Investigation Unit
SOE	State Owned Enterprise
SUDIA	Sudanese Development Initiative
TRC	Truth and Reconciliation Commission
UNDP	United Nations Development Programme
UNCAC	United Nations Convention Agency on Corruption
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNHRC	United Nations Human Rights Commission
UNODC	United Nations Office on Drugs and Crime
USAID	United States AID
UNCESRC	United Nations Committee on Economic, Social and Cultural Rights
WB	World Bank
WPTPSD	White Paper on Transformation of Public Service Delivery

KEYWORDS

Civil Society organizations

Civil Society

Participatory Democracy

Democracy

Governance

Participation

Influence

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CHAPTER 1

1.1. BACKGROUND AND INTRODUCTION

This chapter presents a general introduction to the study, which focuses on the influence of Civil Society Organisations (CSOs) in the new government framework of a democratic South Africa.

In affirming its commitment to the promotion and protection of economic, social, cultural, civil and political rights, South Africa has consciously signed and ratified most of the African and international human rights instruments in addition to enshrining them in the Constitution of South Africa. The Constitution of the Republic of South Africa (1996) contains an extensive justiciable Bill of Rights, which is meant to effectively protect the political, social, and economic rights that have been fought for by the masses of the people of South Africa through sustained anti-colonialism and apartheid struggles. These fundamental rights cover a multiplicity of the areas of human rights interests, including equality, privacy, property, freedom of expression and freedom of association, as well as a number of socio-economic rights, such as the right to housing and education. The Constitution binds private persons as well as the state to observe and honour the said rights (RSA Act 108 of 1996).

International Charity Law (2004) states that the right to freedom of association guarantees an individual's freedom to establish, to join, or to take part in the activities of an association and is of great significance to civil society in South Africa. This allows individuals to associate with others to achieve a common objective and the state may in principle not prevent the establishment of associations. Currently there are no statutory provisions in place that allow the government to ban an association. The Internal Security Act 74 of 1982 was amended by the Abolition of Restrictions on Free Political Activity Act of 1993. The amended Act however still sets out and identifies the nature of the offences related to acts of terrorism and sabotage. This may hold the potential to impact on associational freedom, even though the Act does no longer explicitly provide for the banning of associations.

1.2. PARTICIPATORY DEMOCRACY – THEORETICAL FRAMEWORK

According to Baker (1997), the idea that ordinary citizens should participate more in deciding their collective affairs is as old as democracy itself. Baker (1997) suggests that democracy is not a new phenomenon as natives have been able to participate in community life and were represented through structures chosen by them to lead debates and give advice to those in authority for ages. Therefore, the idea of participatory democracy represents, amongst others, a debate about power, as much as it is about democratic principles in relation to matters of procedures and institutions. It is more about how best to achieve the desired results and maximise or increase equality in the distribution of power in society. In a democracy and through its practices, it is probable that power can be facilitated and obtained by means of or through transparency and interactions, seeking the views of communities and the ability to influence the people. Huntington (1991 cited in Mhone and Edigheji, 2003:31) states that democracy can be defined with respect to the sources of government authority, the purposes served by government, and the procedures for constituting government. The first two components of the concept of democracy primarily focus on what is known as 'the will of the people as the source of authority", and 'the pursuit of the common good as the main purpose of government'. The people are bestowed with the constitutional power to voluntarily vote their government of choice into power as part of the democratic process. The government, in turn, is responsible for fulfilling the constitutional needs of the people in an ethical manner. This definition means that there is no government without the will of the people.

The proper interpretation of participatory democracy suggests that the individual citizen is entitled to have a view and speak it, and it should be heard and be taken into consideration. That is what democracy means in the contextual understanding of public participation in democratic South Africa. In South Africa, participatory democracy is exercised across all levels of government, which includes local, provincial and national government, through elected political representation and direct involvement in decision making and law making by the people. Through participation, people have the capacity to influence each other. The process of deliberations and engagements through consultative and participatory mechanisms and processes provide an opportunity for citizens to speak and

express their views and to be heard. Oelofse (1998:25) states that participatory democracy is [used with reference to] a community in which “every citizen is recognised as … both enabled and encouraged … to participate directly and actively in the dialogues and practices which define, build, and sustain the common life, and the general will”.

Haus and Sweeting (2006:27) cite Huntington (1991) who defines participatory democracy as the claim that the construction, articulation, and promotion of the common good cannot be delegated but must evolve from the communicative interactions of active citizens. It is for this reason that direct public involvement and participation legitimises policy formulation process and creates an environment in which it becomes possible for the people to be able to take ownership of a policy and implement it. Communities should be mobilised to partake in policymaking processes. Citizen activism and interests in public life should add value to the process of democratic participation, whilst the government provides sufficient space and an enabling environment for civil society to influence policymaking. King (2003) asserts that for there to be legitimacy there needs to be deliberation in decision making. It is also probable that some individuals and/or other groups may remain on the periphery of mainstream public participation, yet often deliberation unintentionally results in marginalising those groups who have limited power (Hall, 2007). If we have strong democratic institutions that can interact and consult communities and their organised representative structures and delegates, including CSOs, the scope of participatory democracy is expanded. Mafunisa (2004:492) argues that a robust civil society is a clear indicator of a strong democracy; furthermore, the idea that a citizen in a democracy has a say in how that democracy is run is the basic premise of participatory democracy.

1.3. CONCEPTUALISING CIVIL SOCIETY AND CIVIL SOCIETY ORGANISATIONS

According to the Charities Aid Foundation (2012:9), civil society is broadly understood as occupying the space between the state, the market and the family, often referred to as the voluntary sector, and in South Africa as the non-profit sector. The United Nations Development Program (2001) similarly views it as a

“third sector existing alongside and interacting with the state and private industry”. Non-profit institutions or organisations in South Africa are defined by Statistics South Africa as organisations that are “not-for-profit” and, by law or custom, do not distribute any surplus they may generate to those who own or control them; are separate from government; are self-governing; and are non-compulsory. In its nature, civil society is not privately owned; it is not a government substitute; it does not operate for the purpose of making profits; it survives on government grants and private donations; and lastly, it does not pay tax.

Under the bigger umbrella of civil society there exists a range of structures, which include Non-Governmental Organisations (NGOs), social movements, Community-Based Organisations (CBOs), civics, school governing bodies (SGBs), women’s groups, peace, pressure and justice groups, academics, students, faith-based organisations, and trade unions. These structures form part of the most powerful means and a necessary space for social cohesion and solidarity, service delivery, and a consolidated voice of critique and expression. Correctly so, civil society is a key partner in a democratic and free society (National Development Agency, 2008:8). Albrow et al. (2008:42) view it as a medium through which social contracts or bargains are negotiated between the individual and the centres of political and economic authority. In its representative role, they are broadly viewed as the voice of the voiceless and they have the capacity to delve deeply into matters ignored by the authorities. Civil society presents a balance between the government’s efforts to support the needs of society and the effects or impacts thereof exposed to society in the long run.

Trócaire (2012:6) defines civil society as the arena distinct from the state and the market; similarly, the UNDP (2001: 23) views “civil society as an arena” of both collaboration and contention. The arena can be seen as a space or a centre stage where a range of activities happen, or a field of conflict. However, it is not obvious that within this arena, civil society should always conflict with the government or private sector. So, the civil society arena becomes a space for the people to champion their own interests; influence and shape governance, policy formulation and development for the benefit of all in society including those who may be marginalised or excluded; and it is arena not for commercial profit and/or official

power and authoritative positions. It is important to note that even democracy itself is not a necessarily a perfect system of government in that democracy has a tendency to sometimes exclude the minority or other groups from decision making or policy making of the country. This creates the opportunity for civil society to fill that gap.

According to Laine (2014: 43), civil society "remains one of the most misunderstood and misused concepts". It continues to mean vastly different things in different countries and languages. Using it in a global context easily obscures more than it illuminates. As a concept it remains "normative, loaded, complex, and context-dependent" (Liane, 2014: 43). As a framework, which places less emphasis on organisational forms and allows for a broader focus on the functions and roles of informal associations, movements, and instances of collective citizen action, makes it more difficult to dictate strictly who is in and who is out. Only such an action-oriented or function-oriented definition can consider the entire range of civil society actors.

1.3.1. Roles of Civil Society Organisations

The various forms of community mobilisation, collectivism and collective action outside of family establishments, the structures of state and market paradigms have been unfolding for a long time and in recent times the organisations of civil society have grown and increased at an unprecedented rate. This trend of the emergence of a form of action and collectivism is relevant and common to South Africa with CSOs playing a fundamental role in the struggle towards democracy and the transition to democracy. During the apartheid era, civil society was defined by its relationship to the state – if it served white minority interests and aligned to the apartheid state or if it was in opposition to the state and stood counterposed to state policies. But in the post-apartheid democratic era many CSOs had to engage in reshaping their relationship with the state. In realisation that the government did not deliver on some of its promises and/or failed to satisfy the expectations of some citizens and/or certain groups, CSOs then began the work of serving the poor or marginalised communities or groups.

As noted in the Civil Society Index developed by CIVICUS, civil society plays an increasingly significant role in governance and development around the world. In South Africa, the role of civil society has changed since 1994 when the organs of CSOs (and NGOs in particular) had to move from a position of opposition to the government to redefining how to relate to the government (National Development Agency, 2008:18).

According to Nguyeãn (2008:19), civil society and CSOs have three main roles:

A Social Role

A critical role or function of organised civil society is to help to construct, accumulate, sustain and preserve the desired cooperative attitudes, orientate on cultural values, and build creative knowledge. It becomes the means through which people are empowered and equipped with the necessary skills, creating capable progressive and good citizens in communities in an environment that stimulates and encourages cooperative attitudes and a shared set of values and beliefs that make them work for common interests. CSOs are the instruments that can help individuals develop trust in each other, and support and take care of each other, especially in vulnerable situations. In this context, communities can mobilise for the development and advancement of the country to build trust, cooperation and shared beliefs, which help to create the necessary social capital.

An Economic Role

A market economy cannot operate efficiently without civil society for two reasons. The first is because market transactions in any economic system require the participation of good citizens and a degree of mutual trust among those citizens. Secondly, civil society provides critical public services in areas such as poverty alleviation, environmental protection, health care, and care for children and the disabled.

A Political Role

Civil society helps channel the voices of poor and marginalised people in society into the process of developing, implementing and examining the enforcement of

state policies. A country that strives towards good governance is one in which people can participate in decision-making processes. CSOs conduct research and obtain broad public consultation on state laws and policies, especially among marginalised or excluded groups. Such input helps to ensure that laws and regulations are more practical, applicable, and responsive to the interests of the common people. “In this way, social consensus is achieved and potential social conflicts in the development process are resolved” (Nguyeãn, 2008:21).

1.3.2. Effectiveness of Civil Society Organisations

A vibrant, strong, and free civil society is essential to development. This vital role has long been acknowledged by the international community. The 1990s were a ‘golden age’ for civil society in development, with international recognition of the roles of civil society actors in promoting democracy in Latin America and Eastern Europe. “This was reflected in increased resources for civil society activities, and political support from donors for protecting and expanding human rights and space for civil society participation” (Trócaire, 2012:3). Therefore, the effectiveness of CSOs depends on the supportive environment they exist and operate in and government plays a vital role in ensuring an enabling environment for CSOs to function.

According to Thindwa (2001:3 cited in Brinkerhoff, 2004:3), “An enabling environment is a set of interrelated conditions (such as legal, bureaucratic, fiscal, informational, political, and cultural) that impact on the capacity of development actors to engage in development processes in a sustained and effective manner”. Fox et al. (2002 cited in Brinkerhoff, 2004) identified five roles for government that could contribute to an enabling environment being fostered for CSOs to participate effectively:

- Mandating, which refers to the legal and regulatory environment within which CSOs operate;
- A facilitating role is where government incentivises CSOs as service providers or provides information easily and in an acceptable format;
- Resourcing refers to the direct funding of CSO work;

- Partnering is where both parties gain mutual benefit through collaboration. An example of this is the South African National Aids Council, which includes strong civil society membership, and which collectively developed the National Five-Year Strategic Plan for HIV, AIDS, TB and Malaria for the period 2012 to 2016; and
- Endorsing refers to actions by the government, which recognise the contribution of CSOs. One such example is the work of the National Development Agency (NDA) in supporting CSOs through grant funding, training, and capacity building.

1.4. GOVERNANCE AND THE GOVERNANCE FRAMEWORK

Heywood (1997: 12) explains the study of governance as a study of "authority and how such authority is exercised". The World Bank PRSP Handbook defines it as the study of the way "power is exercised through a country's economic, political and social institutions". The ability to exercise authority ranges from economic to political and administrative authority, which facilitates the management of the affairs of the country at various levels. It also provides mechanisms, methodologies, processes, and institutions that can be used for the people individually and as groups to articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences (UN Country's Governance Assessment, 2005: 67). According to the UNDP (1997: 5), governance refers to "how any organization, including a nation is run". It includes all the processes, systems, and controls that are used to safeguard and grow assets.

Governance has been characterised by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) (2011) as "the process of decision-making and the process by which decisions are implemented" or alternatively as "the exercise of political authority and the use institutional resources to manage society problems and affairs" (World Bank, 1991: 2). As such, governance has to do with the totality of decisions, steps and influences that have a bearing upon what organisations do and how they do what they do. Governance

activity is therefore not confined to the public sphere. All organisations have governance structures and systems, and they engage in governance activities.

A government as an institution exists to serve particular reasons or to perform certain functions for which it was created. A government framework consists of parliament (legislator), the cabinet (executive), and the administration. It is responsible at various levels to ensure that services are provided to citizens as mandated in the constitution. The work that consolidated the development of a governance framework for South Africa was an effort to integrate all existing governance processes into one framework, which ensured that the strategic objectives would be achieved by getting maximum outputs with minimum inputs whilst operating in an ethical environment. A governance framework assists managers to follow the given processes, from selecting a strategic objective to the actual objective thereof, its planning, reporting, monitoring, evaluation, and oversight. This integrated and consolidated approach can enable decision makers to select the best viable options to achieve objectives, implement controls that are designed to mitigate pre-determined risks, and to receive the correct information timeously “in order to track down progress made and to make interventions when required” (Provincial Government of the Western Cape, 2008: 3).

1.5. PROBLEM STATEMENT

The National Development Plan (NDP) (2012:401) states that South Africa has elevated levels of corruption, which undermine the rule of law and hinder the state’s ability to effect development and socio-economic transformation. It is known that the state systems of accountability are ineffective in their performance as they enable or do not prevent corruption from finding expression as corruption continues to thrive despite their existence. Maladministration, unprecedented irregularities, malfeasance, and corruption in the South African public sector have been extensively exposed and reported to the authorities, leaders, and law enforcement agencies. Cameron (1995:76) states that the notion of transparency in the public sector is necessary as the public sector spends taxpayers’ money. Politicians and government officials serve the public, therefore they must account, as various

South African legislative documents suggest. It is known that corruption harms the country, and that the poor are the most affected as this affects the quality and delivery of services, as well as the accessibility of public services. The NDP (2012:401) states that overcoming the twin challenges of corruption and lack of accountability in South African society requires a resilient system consisting of political will, sound institutions, a solid legal foundation, and an active citizenry, who are empowered to hold public officials accountable. Recent media reports on the Seriti Commission and the Constitutional Court Judgement, and the Public Protector's Report on Nkandla, to name a few, revealed an unacceptable situation where public finances had been grossly mismanaged. The good news is that South Africans have not been silent nor inactive as the unprecedented instances of corruption unfolded.

The NDP (2012:384) emphasises that in a democracy the link between the legislature and the executive is important to ensure that the executive is held to account, that policies are subject to rigorous debate, and that questions are asked when things go awry. Serious concerns exist amongst South Africans on whether the Parliament is currently fulfilling its role adequately in building a capable, accountable, and responsive state that works effectively for its citizens. As a Diagnostic Report of the National Planning Commission states, "... poor governance can fatally undermine national development". It is an assertion by the NDP that public institutions at national, provincial, and local level may experience an erosion of legitimacy, usually referred to as a lack of credibility, when an accepted moral ethical dimension or basis of these institutions is lacking (NDP, 2012:384). Government establishments should win the war against corruption using a public accounting system that facilitates transparency and openness, value for money, and redress as purported by the Government's White Paper on the Transformation of the Public Service, which was published on 24 November 1995.

Cameron (1995:77) states that the kind of ethical culture that prevails in the public sector depends on what society allows public officials to get away with. Cameron (1995) further argues that legal means of control are not sufficient to combat corruption, and will never be. It is also necessary to sharpen public opinion and to work towards the formation of appropriate community mores. A government is

positioned most advantageously to lead the war against corruption, but its reluctance makes corruption the work of CSOs, especially when it affects most senior government leaders (NDA, 2016). There may be an abundance of government policies and legal documents that speak against corruption in the new South Africa; however, implementation of such policies is dependent on people's capacity and involvement to hold government accountable. Hence, RSA (2007:5) states that in the new democratic dispensation, transformation can only be led by an appropriately activist state dedicated to correcting imbalances and ensuring justice for all. The Constitution (cited on Government's WPTPSD, 18 September 1997) stipulates that the public administration should adhere to a number of principles, including that a high standard of professional ethics must be promoted and maintained, the public must be encouraged to participate in policymaking, and the state must be accountable, transparent and development-oriented.

Before 1994, the apartheid legislative policy frameworks governing the public service were highly centralised and regulated, resulting in a bureaucratic, unresponsive, and risk-averse public service (RSA, 2014:20). It is worth noting that the apartheid government represented the interests of the minority and misrepresented those in the majority. As a result, the public service lacked transparency and accountability, providing space for the abuse of power and corruption (RSA, 2014:20). The challenges that faced the people of South Africa during the apartheid era led to the formation of new civil society groupings that were different to those that had previously existed. Civil society formations during the apartheid era in South Africa were based on race, ethnicity and class, and were largely involved in advocacy work; that is, opposing the apartheid state (National Development Agency, 2008:15).

According to Swilling and Russell (2002: 20), historically, CSOs were "vocal and active players in the struggle against apartheid". The "resurgence of popular participation" has made it possible for CSOs "to play an important role in maintaining the momentum for reform and transformation, as dictated by the Constitution" (Seekings, 1997: 11). Their role remains relevant and gives credence to many of South Africa's progressive democratic legislation. Civil society has engaged and influenced "the drafting of the new constitution"; they helped draft the

legislation that “established the Truth and Reconciliation Commission (TRC)”; and the contributed to “dismantling apartheid legislation and policies. With the focus moving to service delivery, CSOs have continued to play key roles in filling the gaps and advocating on behalf of those living in poverty, and in providing health care and education” (Charities Aid Foundation, 2012:9).

In the recent times there has been a considerable increase in the number of CSOs and in the scope of their various activities. In South Africa alone, there are more than 100 000 registered non-profit organisations and in Kenya the number grew by over 400% between 1997 and 2006. CSOs continue to play a rapidly growing influential role in policy making and policy setting, and in implementing development agendas across the globe. Many CSOs have been at the forefront of advocating for principles of social justice and equity (UNDP, 2005: 44). CSOs play a significant role today “typically picking up the government’s deficits” in services and social protection for citizens via the philanthropy of donors and the socially aware (UNDP, 2005: 18). In other situations, CSOs have either complemented or replaced weak or ill-capacitated governments, especially in many poverty and war-stricken communities. They give hope to hopeless people and provide critical basic services to communities, including those who are displaced. In response to disasters, they are able to establish services or functions where they did not exist.

With the African National Congress’s (ANC) victory in 1994, civil society (like the rest of the country) entered a transition phase. Assumptions about the role and the ability of the post-apartheid state led to many anti-apartheid formations being absorbed into the state or co-opted by the ANC. It was realised that key role players, activists, and leaders of CSOs in different historically progressive organisations moved out of the sector to participate in the Parliament and the government for the initiation and advancement of the transformation of state structures. They influenced the direction of the private sector with the resulting negative impact on the institutional memory and experience, which was necessary for the survival and sustenance of CSOs. According to Kuljian (2009:125), international funding priorities began to focus more on developmental goals and to have a greater programmatic coherence. Most international funding was channelled through the government, and CSOs had to rely on the funds channelled

through the government, or funds, or grants from the government itself. It has been said that the Department of Social Development is the key source of funding for CSOs in South Africa, while 23% comes from international government donors, and 9% from private donations. Some major CSOs, especially those in urban areas, are assisted by international donors and rely on international sources. Given the fears and views that to rely on government funding could detract from and disrupt the active citizenry needed to engage post-apartheid, democratic tools of social change, it is probable that decreasing funding has weakened the advocacy function of CSOs in post-apartheid South Africa. There is also growing criticism and scepticism that CSOs are more accountable to their funders than those they are meant to serve in that CSOs are largely dependent on funding. It is for this reason that their projects are crafted in line with donor preferences, instead of those they are meant to represent. Numerous NGOs face serious financial challenges with many closing down or scaling back their activities or diversifying and realigning with funders' policy priorities; but, the country faces increasing developmental challenges in many areas, including health, education, and poverty alleviation.

The influence that CSOs had in pre-democratic South Africa helped to add positive impetus to collective efforts to liberate the country and usher in democracy and freedom. Although the influence of CSOs has reduced in the new governance framework, there is a standard activist formula for social justice change with some of the key court cases that have recently had effect and impacted the body politic. In democratic South Africa, their influence has diminished in the new governance framework to the point that they are seen as relying on the courts to help them realise their goals or to have their views on various matters of interest finding expression in policy and programme decisions. We increasingly see CSOs themselves taking the government to court with a significant impact on the political, social, and economic landscape. This is good for governance and democracy. Evans (2011: 30) however states that their influence in the new governance framework in a democratic South Africa seems to be undermined by a multiplicity of factors, including being suspected of standing counter-pose to the work of the democratic government.

1.6. RESEARCH QUESTIONS

The study's research questions are as follows:

- Does South Africa have any legal provisions that empower and legitimise the role of CSOs in exposing or revealing any information on corruption in the government?
- Are CSOs aware of the role of the government's anti-corruption work and bodies and is this information available and accessible?
- Are CSOs actively promoting civil society's participation and building coalitions with key stakeholders to influence the public policy debate?

1.7. PURPOSE OF THE STUDY

An investigation into the factors contributing to the diminished influence of CSOs in the new governance framework in the democratic South African society could help provide clarity on what occurred to compound the causes of the decline in CSOs' influence, which should be exercised without necessarily being assisted by the courts. This could contribute to the body of knowledge on the probable factors that would explain the reasons for the diminished influence of CSOs – even in an era when CSOs' role is appreciated and especially at a time when the country is experiencing an increase in the number of CSOs being registered.

The purpose of this study is to examine the new dominant features, such as the use of litigation processes, as undertaken by CSOs as a means to continue to exercise influence in the new governance in a democratic South Africa and the extent to which such processes are able to assist CSOs exercise influence in the new governance framework. Recently the country recorded a rapidly increasing number of litigations, including that of Corruption Watch versus the CEO of SASSA when it made a decision to pay Cashmaster an amount of R317 million without following supply chain management procedures, and its intervention as amicus curiae (friend of the court) in the case of Hlaudi Motsoeneng versus the Democratic

Alliance (DA) and Others in August 2015 in a case that involved the nature and status of the Public Protector's remedial directions and powers.

It should be investigated/established as to what compounded the challenges faced by CSOs in relation to the influence they should exercise in the new governance framework in a democratic South Africa. This study seeks to, amongst others, evaluate the causes for their diminished influence and the relationship of the conduct of the new democratic government and the diminished influence and/or interests of CSOs. The study will further enable an explanation and description of the most effective tools or mechanisms through which the influence of CSOs could be exercised in the context of the new governance framework of democratic South Africa.

1.8. OBJECTIVES OF THE STUDY

The main aim of this study is to identify possible impediments to the effective and positive influence or contribution of CSOs in the new government framework in democratic South Africa. The study will examine whether the role of CSOs has diminished in the new governance framework in democratic South Africa and, if so, the factors involved, and how CSOs' role could be made more effective in the face of all the challenges that undermine their presence today. Hence, the objectives of this study are as follows:

- To determine CSOs' experiences in South Africa. The study will further investigate the role and nature of CSOs and what they stand for in a democratic society. CSOs are understood to occupy the space between the state, the market, and the family; they are known to be voluntary in nature; they consist of structures that form a space for social cohesion and solidarity; they are known to hold government accountable; and they influence government policies for the benefit of the society.
- To examine the available mechanisms enabling CSOs to play an effective role in government. The use of constitutional legislative prescripts and/or the involvement of the courts have emerged as critical means to help CSOs more effectively to achieve their goals on any matter or to add positive impetus to their work. The courts can provide

immediate relief where it is sought and can force the state to comply or to be cooperative and to meet the needs/desires of the constituencies being represented by CSOs. CSOs can campaign and lobby influential personalities and/or persons with authority and even use opportunities for the politics of opposition and/or influence electoral politics' outcomes in some circumstances. At the centre of the study is the endeavour to examine the methods and approaches in use by CSOs and to explore which means are most effective under the given circumstances at a particular time.

- To analyse the relationship between CSOs and the government in democratic South Africa. The study aims to clearly describe the interactions between CSOs and the government. The literature suggests that the role of CSOs has changed from opposing government to being advocates of government policies. CSOs can fulfil government mandates and responsibilities, and the government has a commitment to support CSOs by providing funding and direction through policy.
- To examine the strong and effective role played by CSOs in government. CSOs have a challenging task to remain relevant and committed to the course in the ever-changing political, social, and economic climate of a developing South Africa. Constitutionally, CSOs have the right to exist, represent, interact, oppose, and participate without any impediments or manipulation by those in power or those whose decisions and actions are challenged in the public space. In South Africa it is the duty of the state to create a conducive environment for CSOs to operate in, and to create platforms for CSOs to influence decisions in both the public and private sector.

1.9. METHODOLOGY

The research approach applicable to this study is aimed at investigating the diminishing influence of CSOs in the new government framework. The way a problem is presented guides the type of research approach to be used. The stated problem provides guidance in terms of the issues that need investigation; and the research methodology serves as the parameters that can be used to arrive at viable

solutions. This section presents the research methodology of the study. It also explains the rationale for using the selected methodology, tools, and designs. It further discusses the participants in the study and why they were chosen for the study.

The qualitative method is the chosen research approach for this study. The qualitative methodology offers certain advantages to the researcher because it requires one-on-one interaction with the participants that allows one to understand the research topic fully and in terms of the richness of the information one can collect from the participants (Leedy and Ormrod, 1985: 4). It is asserted that this approach can help to obtain an inside view of how others see the world; it is also concerned with achieving a holistic understanding of feelings and of a worldview (Neuman, 1997:73).

This study will identify the potential impediments to the effective and positive contribution by CSOs to the new government framework in South Africa; hence, the selection of the qualitative approach. Furthermore, the qualitative approach was selected because it provides rich, deep data from each participant (the selected CSOs), and this allows the researcher to acquire a deeper and clearer understanding of the topic under study. Hence, this methodology is to be used to provide a detailed description of what was observed.

By using qualitative data collection methods, the researcher thus obtains richness and depth of data, gathered from complex and multi-faceted phenomena in a specific social context. According to Neuman (2011:424), a researcher attempts to capture all the details of a social setting in a specific social setting in an extremely detailed way and conveys an intimate feeling for the setting and the inner lives of the people in it. Hence, I am interested in understanding subjective experience, which will allow me to see things through the participant/s eyes or in the context of the source from which information may be derived. It affords the opportunity to “understand the why and what and how of the phenomena” (Bezuidenhout et al, 2014:173).

1.10. RESEARCH DESIGN

There are various types of research designs used in qualitative studies and the researcher selected a case study as the most suitable research method for this study. Babbie and Mouton (2001:281) define a case study as an intensive/in-depth investigation of a single unit. Leedy (2001:157) states that the purpose of a case study is to understand a one-person situation or a small number of cases in great depth. A case study uses observations, interviews, written documents and/or audiovisual material as methods of data collection. The researcher will use the Helen Suzman Foundation (HSF), Freedom Under Law (FUL), Corruption Watch, the Freedom of Expression Institute and Black Sash Trust (BST) as the case study to conduct an in-depth investigation.

A case study is a thick and detailed description of a social phenomenon that exists within a real-world context. The case study recounts a real-life situation by rigorously describing the scenario in which the phenomena exist. It is also an attempt to understand a phenomenon within specific circumstances. The case study method allows for a deep exploration within a natural context; hence, it provides a full and thorough understanding of the particular and lived experience of a participant. Moreover, it is viewed as a method to give a voice to ordinary people (Bezuidenhout et al., 2014:173).

1.11. THE TARGET POPULATION

Taking into consideration the CSOs identified for the case study, the study will be confined to the Helen Suzman Foundation, Freedom Under Law, Corruption Watch, the Freedom of Expression Institute, and the Black Sash Trust, which are national organisations, and the umbrella body of Non-Governmental Organisations, SANGOCO. The National Department of Social Development has also been selected for use in this study for its role as the guardian and registrar of Non-Profit Organisations in South Africa.

1.12. LAYOUT OF THE STUDY

The study consists of the following chapters:

Chapter 1 : Background and Introduction

Chapter 1 of the study provides a general background to the entire study. It includes background to the study, an explanation to the research problem and objectives, as well as the research questions and the research methods.

Chapter 2 : Theoretical framework and conceptualisation of terms

In Chapter two, participatory democracy is identified and explained as an appropriate theory for this study. The meaning of the concepts 'Civil Society Organisations' and 'Civil Society' is investigated, and the governance and government framework will be outlined.

Chapter 3 : CSOs in South Africa, their role and influence in governance

In Chapter 3, the role of CSOs in South Africa's new government framework is clearly outlined. The extent to which CSOs influence policy, government proceedings and democracy will be explained with a focus from different political timelines in South Africa and the selected country, Sudan. The work of CSOs in Sudan will be compared to the work of CSOs in South Africa, giving the historical similarities of the two countries.

Chapter 4 : Assessment and Evaluation

This chapter provides an assessment of how the theoretical framework and the conceptualisation of terms assisted in enabling the research and it evaluates if the critical research objectives, questions, and aim of the research were achieved. Moreover, it provides for an interpretation of the work done and alludes to/articulates the generated understanding and/or view.

Chapter 5 : Findings and Recommendations

This chapter provides a summary of the findings of the study and a conclusion based on the findings and the recommendations thereof. The findings will represent the facts of the investigation using the proposed research methodology. The facts will be set out in a logical and coherent way, as the literature suggests. The

recommendations will follow as actions that should be taken in relation to the findings and should be expressed at a low level of abstraction.

CHAPTER 2: THEORY AND CONCEPTUALISATION

2.1. INTRODUCTION

This chapter forms part of the research with particular focus on key concepts that will be utilised in this study; the chapter will seek to analyse and align them to the topic under study. The concepts in relation to the applicable literature will be explained and articulated in terms of their meaning and applicability, as they are defined and utilised throughout the study. The research investigates the influence of CSOs in the new governance framework of democratic South Africa and therefore all its applicable and relative concepts are explained in the context of their definitions.

This study is important as it intends to contribute to the body of knowledge on what happened to compound the influence of CSOs in the context of the new governance framework of democratic South Africa, by exploring the extent to which such influence is exercised, and importantly to identify and explain the impediments that contributed to the diminishing influence of CSOs. It further seeks to identify what became the methods and/or means and/or tools that were utilised by CSOs in pursuit of the desire to exercise influence in the new government framework in democratic South Africa.

This study will further investigate the purpose of the establishment and/or existence of CSOs as they seek to exercise influence on/around/about a particular interest that informed the choice to have an organisation with a civil society perspective. It thus appreciates that to have influence is a rationale for the formation of CSOs; this forms one of the important concepts to be unpacked. This research also intends to identify the factors that diminish such influence in the present paradigm of governance in democratic South Africa. It is the researcher's view that the influence of CSOs has diminished to the extent where they use alternative methods to champion their particular interests/disputes, as they find it difficult to exercise their influence with ease in a democratic society. Their influence has diminished despite the presence of the most progressive new democratic framework being in place, which enables community participation and civil rights. It is my view that the directly voted representation in various fora forming the governance of the country do not

necessarily always allow citizens to play a role beyond elections or to comply with community participation. CSOs are, at times, seen as not being mandated and not having been empowered through electoral political means. However, the new democratic framework makes provision for citizenry activism and the right to champion any initiative freely, including the establishment of CSOs as the most organised method of activism for citizens outside of the government and family institutions.

2.2. THEORETICAL FRAMEWORK

The theory that will be utilised, unpacked and applied in this study is participatory democracy. The theory will be explained in the context of its applicability to the study or topic of this study addressing its characteristics and relevancy to the matters under review, knowing it should be a well substantiated explanation of some aspects based on the body of knowledge and facts that have been repeatedly confirmed through observation and experiment.

Participatory democracy is a form of government in which the citizens themselves can make decisions about public policy. According to Bevir (2009:2), participatory democracy is an enabling environment and arrangement in which individuals actively participate in decisions and decision-making processes that help them determine how they are governed and how they want to be governed. Therefore, the people are participants, and their participation provides a means of communication, which promotes political engagement and deliberations, and a critical dialogue platform for the governors and those who are governed.

The idea of participatory democracy is explained by Hendricks (2010:3) citing Bevir (2009:3) as having been established as a tradition dating “back to antiquity, relating to the Greek type of developmental republicanism”; it places emphasis on the intrinsic, more than the instrumental, value of political participation for the direct involvement of the people in the processes of policy crafting, planning and implementation. The argument is that participatory democracy is not fully expressed in how the state conducts its business in the new democratic South

Africa, as it is not in full compliance with the determinations of the new governance framework that provides for full participation at all levels of the issues that affect the people. Therefore, civil society and CSOs are not given sufficient opportunity to make decisions about or become involved in public policy, as contemplated by Bevir (2009:2) of what compound participatory democracy is.

The discourse about participatory democracy gave rise to a variety of expressions, including concepts of communicative and deliberative democracy influenced strongly by the work of the German philosopher, Jürgen Habermas, whose normative arguments were for greater citizen involvement (Hendriks, 2010:3). The emergence of many and various social movements including those that came into existence in the 1960s, such as the American Civil Rights and Women's Liberation Movements, sought to bring to the fore the interests of those who were left at the periphery of mainstream policymaking, as they were excluded from representative institutions (Bevir, 2009:2). Participatory democracy remains a tool through which governance or good governance could be exercised and even measured, if it is done, and the extent to which it is applied. It finds lesser expression in descriptive than in prescriptive democratic theory. According to Hendriks (2010:3), to be able to realise and exercise this principle of participatory democracy detailed analytical attention should be paid.

In Dryzek's view the various methods of participatory democracy are mainly found in the networks of New Social Movements (NSMs). They have taken the form of seeking to influence governance at various levels of government in sub-political post-parliamentary ways, with such initiation emerging from the bottom to the upper levels, and they are mostly influenced from outside in or in governments towards the inside. The set precedence has become a means through which influence may be exercised. Many popular movements of new patterns have had immeasurable effects or influence, such as the anti-apartheid, anti-nuclear, the greens, the squatters, and women's rights and human rights (Hendriks, 2010:4).

Moreover, participatory democracy has been implemented where it is initiated from the bottom or the general masses and driven by participants in the public domain and not necessarily by guardians in the political and professional domain. The participation must be exercised both in planning or policy decision and

implementation. Hendriks (2010:2) further argues that participatory democracy is self-government by the citizens, rather than representative government in the name of the citizens. Hendriks (2010:2) asserts that designated institutions facilitate continuous public participation in setting agendas, engagements, legislation direction and policy implementation.

According to Bevir (2009:2), there are divergent opinions on the cost-effectiveness of the processes of civic or public participation as it can be extremely difficult to exercise and operate effectively, especially in large, diverse, and modern societies. It could also be the reason governments, at times, find it difficult to facilitate the public in exercising democracy; thus, they fail to satisfy all interested parties. As a result, various private and voluntary sector organisations constitute themselves as cooperatives and/or adopt high participatory democracy activism, instigating change in their respective communities (Bevir, 2009:2).

It is uncertain whether participatory democracy is a valuable tool to facilitate citizen involvement in policy and governance; thus, it is not always fully applied on account of various obstacles and continuous developing factors. Furthermore, it can be used as a measurement to determine if democracy and governance provides for people to enjoy public participation as their democratic right. In instances where the institutions designed to facilitate and ensure public participation fail to honour their own key deliverables, not only the government fails, but the consequence is that the influence of civil society diminishes.

2.3. CONCEPTUALISATION OF TERMS

This section deals with the relative key concepts, which include participatory democracy, CSOs and civil society, government and governance, participation, democracy, and influence. The conceptualisation in this section will clarify the terms applicable to this research as abstract ideas with specific characteristics. The models and types of many of the concepts will be explained to elucidate what they mean in their application.

2.3.1. Defining Civil Society and Civil Society Organisations

Members of civil society worldwide have assorted reasons for establishing CSOs. However, CSOs have consistently played similar roles in society and because of their nature, structure, and mandate it was easy for theorists to conceptualise them. According to Brelàz and Alves (2009:138), CSOs, Non-Profit Organisations (NPOs), and Non-Governmental Organisations (NGOs) are different terms used to designate CSOs active in the public sphere. They are also referred to as 'the third sector', a term coined in the 1970s that was revamped in the 1990s, which has been influencing academia, especially in Libero-American countries. The common dominant character or factor shared by the various organisations that make up this sector is their private nature and their non-economic orientation; that is, the lack of profit as their core purpose and the intent of providing benefits to the community or to specific groups (Brelàz and Alves, 2009:138). The said organisations perform certain roles in society like service provision through hospitals, schools, social care institutions, and environmental organisations. They are also important as a way of expressing the pluralism of society and the diversity of cultural, religious, and ethnic groups, to build the concept of community, and to stimulate individual initiatives for the public good (Salamon, 2002 cited in Brelàz and Alves, 2009:138). Beside these roles, another important activity is advocacy. Advocacy is a vital role for CSOs and is considered a traditional function in the United States, where citizens have always gathered in CSOs and contributed to shaping the country's political, economic, and social characteristics (Brelàz and Alves, 2009:138).

In the view of Salamon, Sokolowski and List (2003), the term 'civil society' is used to refer to an array of organisations that are private and outside the institutional establishments of government; they are not primarily commercial and do not exist to distribute profits to their owners as their primary focus; and they are self-governing and people are free to join or support them voluntarily. In the context provided in the work of Petrella, the informal as well as formally registered organisations are included in this definition (Petrella, 2009:28).

It is true that civil society is a critical area of the societal platform that creates an enabling environment for the easy and effective interaction between the persons in communities and the state, which is manifested in the norms of community cooperatives, the structures of voluntary associations, and the networks of public communication with the norms being the values of trust, reciprocity, tolerance and inclusion. These are critical for collaborations and cooperation, and for community-based problem-solving mechanisms, with their structure of association meaning the inclusion of the full range of informal and formal organisations through which communities are able to pursue and advance common interests collectively (Veneklasen, 1994 cited in Ghaus-Pasha, 2004:2).

Civil societies are compounded by independent and/or autonomous linkages and associations which develop an intensified, differentiated, and pluralistic network. In the process of their developmental growth civil society is constituted by organised but generalised structures such as groups existing at particular localities on shared but differentiated interests, specific focus and certain interest oriented structures, and linkages amongst themselves that enable the strong and consolidated voices of civil society acting in partnership with the governance establishment framework and even the market (Connor, 1999 cited in Ghaus-Pasha, 2004:2). Their connectivity as CSOs in a particular area or because of their shared interests or focus or specialised programmes gives them superior control. They should be able to make the necessary impact in pursuit of their agenda and in the enabling environment, but there are factors that reduce their impact and diminish their influence regardless of the intensified enabling factors, including the new governance framework in democratic South Africa.

It is obviously an advantage to have CSOs established outside of the government mandate and processes, and which are composed of and led by persons with shared and common interests independent from the state. The existence of CSOs outside of the formalities of the market and their drive from within themselves makes it difficult to control them. It creates an arrangement that cannot be controlled from outside. According to Ghaus-Pasha (2004: 3), in the environment of developing societies, there are many sizes and capacities of CSOs, which range from large registered formal bodies to informal local organisations, with the informal

local structures being far more numerous and less visible to outsiders. These include traditional organisations, such as religious organisations, and modern groups and organisations, mass movements and action groups, political parties, trade and professional associations, non-commercial organisations, and community-based organisations.

The contestation and assertion that CSOs are not necessarily alike or exist in place of NPOs remains correct. CSOs are about engaging the market and the government, and they do not necessarily complement the work of the government. According to Ghaus-Pasha (2004:2), “Civil society should not be equated to NGOs. NGOs are a part of civil society though they play an important and sometimes leading role in activating citizen participation in socio-economic development and politics and in shaping or influencing policy. Civil society is a broader concept, encompassing all organizations and associations that exist outside the state and the market.”

In recent years, the concept has been criticised and “understood as a wide range of associational activity outside of or opposed to the state and to the idea of civil society as a realm outside the family and the state” (Zharkevich, 2010:17). The classical notion of civil society, which has often been used as a universal prescriptive model, obliterating the value of indigenous societal structures, does not always work in contexts outside the Western world (Zharkevich, 2010:17). It is understood that “the traditional forms of civil society” have not been sufficiently “explored and exhausted”, but it is should be noted that the “historical orientation and classical notion of civil society” cannot at all times be automatically applied to locations where civil society is rooted “in clan, kinship and tribal alliances rather than formal membership in organisations” (Zharkevich, 2010:17). “The classical notion of civil society has been quite suspicious towards what is known as primordial ties, which are taken to strengthen and reinforce historical and contemporaneous hierarchical inequalities, relationships of patronage and corruption. Anthropological studies have shown that forms of associational life based on communal and familial ties can play a crucial role in organising persons or communities for particular given causes or interests” (ibid.). This is because the failure to appreciate a different form of associational life made it difficult for donor

agencies in different contexts, whereas many more radically oriented establishments or organisations understand the existence of informal networks and maximally use them in their recruitment patterns (Zharkevich, 2010:17).

CSOs exist for various reasons and donors are sceptical and suspicious of donating when their money could be used for negative or injurious purposes. Moreover, CSOs can be weakened by the agenda of donors or the agenda CSOs pursue that could stand contrary to the interests of wider societal communities. Zharkevich (2010:17) states, “Tajikistan is an example of the country where secular forms of civil society dominate the donor’s priority list”, leaving considerable religious constituency and influential religious associations outside the area of concern; thus, “creating a niche not only for alternative donors but also for radical Islamic networks”.

According to Smismans (2006:3), complex modern society has come to see a common definition of civil society as a social sphere different from and contrary to both state and market. The author (2006:4) adds, “Since the 1990s the claimed democratic benefits of civil society have been stressed in the context of an increasing dissatisfaction with present-day representative democracy, which has often been linked to processes of techno-cratisation of governance, individualisation of society and globalisation of markets and centres of decision-making”. Moreover, Smismans (2006:4) states, “Even in African countries the concept of civil society has been used to draw attention to traditional forms of social organisation in confrontation with Western European imposed state structures. Meanwhile, the role of civil society organisations has been stressed in democratising international governance structures, which lack the established democratic institutions of the nation-state’s but invade increasingly the policy-making space of the latter”.

It is the nature of CSOs to contest space and agitate for their influence. In so doing they seek to exercise influence and allow their views or interests to find expression, even where it was previously impossible. The influence of CSOs is historical and in the new governance framework of democratic South Africa is contested to the detriment of CSOs as their influence is undermined by many other factors this study aims to establish and identify. It remains my view and argument that their influence

has diminished, and alternative methods should be found to exercise their influence and champion their cause.

According to Armstrong (2002:2), civil society as a distinct social sphere can be defined considering different variables, including the characteristics and rationality of that social sphere, the nature or composition of its actors, and the relation between that social sphere and other spheres, identifying in particular its place in a democratic society. Whereas many explanatory variables confirm the importance of this social sphere, their characteristics cannot be separated from each other, and the collective explains it better. They exist collectively and they are linked together or intertwined, and it is not easy to disengage or disentangle them from each other. Their dominant characteristics offer explanatory clarity on what composes the distinct sphere of civil society. By examining how social spheres are different and how they are distinguished within a particular society, the bipolar and/or varying or opposite interpretation between the state and civil society is more often replaced by a distinction between the state, the market, and civil society. It is in this context that, according to the oft-quoted definition of Cohen and Arato (1992: 12), one can distinguish a political society composed of parties, political organisations and political publics (in particular parliaments); an economic society composed of organisations of production and distribution, such as firms, cooperatives and partnerships; and civil society composed of the intimate sphere, the sphere of associations, social movements, and forms of public communication (Smismans, 2006:6).

The assertive position of many authors that CSOs should be distinguished and separated from the state and market has repeatedly been used as a critical defining character of CSOs. Many theories account for the beneficial democratic effects of civil society; however, it is possible to differentiate between those stressing above all the independence of civil society and those stressing the intermediary function of civil society. Theories using the dualistic state-civil society conception emphasise the independence of civil society from the state, yet some theories distinguishing between the state, market and civil society are built on the (strong) independence of the latter from the former. This is, for instance, the case in the social capital approach – the idea of "civil society as a learning school for

democracy," or the "independent role" of social movements (Smismans, 2006:6). But the state has failed to fully facilitate compliance to its constitutional policy imperatives on a need to consult, be transparent and open, and enable community participation and full involvement in policy crafting, implementation, review or drawing benefits from an existing policy, thereby ensuring citizenry activism. If it is the state that fails or the market not necessarily creating an environment for community participation, it agitates desires for communities' enabling processes, which are easily realised through CSOs emanating from civic society. In the event that CSOs play a complementary role to the work of the market and the state or exist for the purpose of redressing the acts and omissions of the state or market, it can be difficult to draw distinguishing elements on the difference between the state, CSOs, and/or the market. It is for this reason that that there are other theories that are largely and extensively focused on the role of organised civil society as structured for the intermediation between the state, the market, and the private sphere. "This intermediating function" borders (organised) civil society, the state, the market, and the private sphere, and it is not always easy to draw distinguishing lines (Smismans, 2006:7). In many instances one may find that the difficulty to draw differences may be because of the state having off-loaded its duties and/or delegated its mandatory responsibilities, which are core or non-core to the work of the state, to civil society actors, which may imply a bureaucratisation of the latter. It is also common for the "typical market actors as individual firms to form organizations as associations only to seek to defend, consolidate and advance their sectoral or industrial interest in policymaking," implementation, or in drawing the benefit or maximising the benefits of the policy applicable to them (Smismans, 2006:7).

Business associations are not general interest associations, to which some intend to limit the definition of civil society, but they also do not correspond to the characteristics of market actors. They have an intermediating function between the market and the state (Smismans, 2006:7). So, it is true that even the existence of such associations can make it difficult for CSOs to maximise their benefits for beneficiaries when they are equally contested by the structures taking the posture of their form or the structures with which they collaborate. It could have serious ramifications in the form of diminished influence for CSOs to exercise their power

in that it is contested, serves a complementary role to their contestants, or even contradicts the expectations of their constituencies. It is obvious that the influence of CSOs could be reduced with ease, even of their own accord. In the instance where associations stand counterpose to their role, such as employer's associations, CSOs do not find it difficult to collaborate and cooperate with such associations and even play a complementary role in areas where either the market or the state has delegated its roles to them or simply by virtue of their actions and omissions being acted upon in pursuit of redress. It also happens that the conditions of donors weaken strong CSOs.

In post-apartheid South Africa, according to Habib (2008), there are three main kinds of civil society actors, each of which, he says, has different relationships with the state for different ends. He (2008) identifies these three kinds of third sector actors as formal NGOs, informal survivalist community organisations, and social movements. Formal NGOs, Habib (2008) says, are engaged in service delivery and policy development and they have a collegial and collaborative relationship with the state. The other two kinds of organisations differ from formal NGOs in that both have emerged in response to the adoption of neo-liberal economic policies by the post-apartheid state. Survivalist organisations are informal community-based organisations concerned with helping communities to survive (Donoghue, 2009). The other kind, known as social movements, are more formal community-based structures and are explicitly political in their aims and actions. They are concerned with the explicit political aim of organising and mobilising the poor and marginalised, and contesting and/or engaging the state and other social actors around the implementation of neo-liberal social policies (Habib, 2007a:7). Although survivalist organisations have no relationship with the state, concerned as they are with service delivery to the poor and marginalised, the other two kinds of formal organisations – NGOs and social movements – have explicit and engaged relationships, the former more collegiate and the latter more adversarial (ibid.). All kinds of CSOs have diverse roles and collectively they create adversarial and collaborative relationships, which assist and compel the state to be responsive to and responsible for their citizens (Donoghue, 2009:51).

According to Neumayr et al. (2009), “To approach a common understanding of the function of a CSO, we refer to a conceptual framework that introduces a systematic approach on CSOs’ contributions to society”. This approach is based on a literature review and on case studies in Austria and the Czech Republic and condenses various CSOs’ functions to the empirically most relevant ones. In the main, it identifies service delivery, advocacy and community building as CSOs’ three principal functions. Conceptually, the term ‘function’ refers to the contribution that CSOs make to society. More explicitly phrased, we define CSOs’ functions as (the total of) single actions and decisions that they perform, each of which serves a certain sub-system of society. The systems are defined as the economic sub-system, the political sub-system, and the community subset. The theoretical background of this conceptual triangle refers to social systems theory, with each of the three functions referring to a certain functional sub-system of society (Neumayr et al., 2009: 14):

- Service delivery is the function towards the sub-system economy, as hereby CSOs deliver outputs that can be priced and are somehow paid for either by the beneficiaries themselves or by some other public or private organisation. These services are marketable, although often the positive externalities are more important than the service itself (quasi-public goods or meritory goods) or some non-marketable benefits are linked with these services (public goods such as social security or democratic participation). Mostly these outputs will also concern other societal sub-systems such as the healthcare system in the case of hospitals, the educational system in the case of schools or kindergartens, or the scholarly system in the case of universities (Neumayr et al., 2009: 14).
- Advocacy is tied to the political subsystem of society. Hereby CSOs contribute to political decision-making and governance; thus, to the making of collectively binding rules. There are numerous ways to fulfil this function: they range from formal contributions to legislation, and from executive processes to informal lobbying and PR campaigns to raise public awareness on specific problems (Neumayr et al., 2009:14).
- Community building is the third function, which is directed at enhancing social capital; that is, establishing and consolidating relationships between

> individuals and/or organisations. This means either strengthening groups (in-groups, bonding social capital) or fostering social inclusion and integration (bridging social capital). Thus, the function comprises all activities that lead to generating a sense of community and to uniting individuals – either on a certain issue or based on their shared locality (Neumayr et al., 2009:15).

According to this model, all decisions and actions of a CSO fulfil functions, and these can be directed towards one, two, or all three sub-systems of society. Thus, we assume CSOs to be multifunctional, contributing to up to three different aspects, even though, most often, at different levels.

2.3.2. Influence

According to Nikoloski (2015:31), influence is a force one person exerts on someone else to induce a change in the target, including changes in behaviours, opinions, attitudes, goals, needs and values, and the ability to affect the behaviour of others in a particular direction. To influence, a leader uses strategies or tactics, or actual behaviours designed to change another person's attitudes, beliefs, values, or actions. Correctly so, an advanced ability to influence could potentially result in the ability to guide subordinates, bosses, and outsiders towards organisational goals, increased competitive advantage, and an increase in organisational flexibility and adaptation, rather than restrictive bureaucracy, increased personal fulfilment, and excitement within the leadership role. An awareness of the power of influence protects as much as it enables because "managerial and professional excellence requires the knack of knowing how to make power dynamics in corporate life work for us, instead of against us" (Nikoloski, 2015:31).

Influence is the means through which power and authority are transacted. Power is defined in terms of the potential or capacity for action. In the same way, "authority refers to the organisational or situational mediators of power" (Faeth, 2004:19). Well-managed power and authority determine the availability of resources and

views that support engagements in the public sphere. Faeth (2004:19) further stated that there are two capacities of effective power: access to resources and the ability to obtain cooperation, as identified by Kanter in 1979. According to Faeth (2004: 3), obtaining cooperation from people refers to the exercise of influence. This view implies that those without power and authority have no ability to influence; however, Faeth (2004:19) emphasised that influence is not identical to power and authority. Empirical research has demonstrated that power and influence are distinct constructs (Hinkin and Schriesheim, 1990; Yukl, Kim and Falbe, 1996 cited in Faeth, 2004).

Influence has been labelled the bridge between the power approach and the behaviour approach to leadership by theorists. One of the more recent developments in the field of leadership research has been the translation of earlier taxonomies of power and authority into dynamic models that attempt to explain influence processes. Kelman (1958:8) developed a tripartite description of influence processes that distinguished between instrumental compliance, internalisation, and identification. Instrumental compliance refers to those processes wherein the agent's power is determined by control over rewards and punishments. Internalisation occurs when the target's compliance is based upon a connection between their values and beliefs and the nature of the task, while the process of identification is closely related to the concept of referent power. In this type of influence process, the agent relies upon the target's need for acceptance or esteem to gain compliance (Kelman, 1974:8). Kipnis (1976:2) developed the Power Act Model, which attempts to explain the rational process whereby leaders choose influence strategies based upon their social resources, the constraints upon their use of power, the anticipated resistance of the target, and the perceived costs and benefits of various influence tactics. Raven (1992) built upon his earlier work on the bases of social power by developing the Power/Interaction Model of Interpersonal Influence. This model depicts the process of interpersonal influence in terms of the agent's bases of power and leadership motivation, and the perceived costs and benefits of various influence strategies (Faeth, 2004:20).

On a parallel track, another field of social science inquiry was born and matured – the study of influence. Research on social influence considered the forces that

allow one individual to cause attitudinal and behavioural change in another individual (Deutsch and Gerard, 1958; Kelman, 1958). Deutsch and Gerard (1958) argued that there were two basic types of influence: one seeks to change what the target believes (informational influence), and the other seeks to leverage the target's desire for a particular type of relationship with the influencer (normative influence). Kelman (1958) suggested that there were three primary tactics of influence: sanctions, personal charm, and credibility. In the years that followed, classifications of influence tactics proliferated, with researchers in the fields of marketing, sales, organisational behaviour, and social psychology all weighing in. Mowday (1978) proposed five influence tactics, while Schilit and Locke (1982) proposed 18 different tactics. One of the more popular typologies of influence was proposed by Kipnis, Schmidt and Wilkinson (1980) and Kipnis and Schmidt (1988). Seven meaningfully distinct influence tactics were introduced: reason, coalition, ingratiation, exchange, assertiveness, higher authority, and sanctions (Malhotra and Bazerman, 2008:10).

In Wood's (2000:540) view, the hallmark of social influence research is the delineation of the multiple motives that spur agreement or disagreement with others. For over 40 years, the central organising perspective in this area has been a dual-motive scheme that differentiates between "informational influence, which involves accepting information obtained from others as evidence about reality, and normative influence, which involves conformity with the positive expectations of another, who could be another person, a group, or oneself" (Deutsch and Gerard, 1955:629). Contemporary theories of motives for attitude change and resistance appear to be converging on a tripartite distinction. Although these typologies each possess unique features, a common thread is the recognition that attitude change can be motivated by normative concerns for (a) ensuring the coherence and favourable evaluation of the self, and (b) ensuring satisfactory relations with others given the rewards/punishments they can provide, along with an informational concern for (c) understanding the entity or issue featured in influence appeals (Wood, 2000:540). Thus, for example, Cialdini and Trost (1998:3) identify the behavioural goals of social influence recipients as managing the self-concept, building and maintaining relationships, and acting effectively. Similarly, Chaiken et al. (1996a) distinguished between people's ego-defensive motives to achieve a

valued, coherent self-identity, impression-related motive to convey a particular impression to others, and “validity-seeking motives to accurately assess external reality” (Wood, 2000:541).

2.3.3. Governance

The modern formations and models of governance are influenced by common global trends. However, Deacon (2007) and others have argued that they are shaped more by the historical socio-political and cultural context in which they emerge. Although governance theorists welcome these opportunities as the ultimate in hands-off government, governmentality theorists describe how the compliance of willing subjects is secured, arguing that the NGO sector is constructed as a governable terrain and community transformed from a language of resistance into an expert discourse and professional vocation. Governmentality theory argues that what we are witnessing is in fact a process whereby the state expands its reach and extends its power by governing through non-state institutions. Thus, Miller and Rose (2008) argue that each of these emergent political rationalities seek a way of governing, not through the politically directed, nationally territorialised, bureaucratically staffed and programmatically rationalised projects of a centrally concentrated state, but “through instrumentalising the self-governing properties of the subjects of government themselves in a whole variety of locales and localities-enterprises, associations, neighbourhoods, interest groups and, of course, communities” (Miller et al., 2009:74).

In the Global North, governance is understood as a response to complexity and “wicked problems” that cannot be solved by governments or markets alone (Rhodes, 1997; Stoker, 1998). There is also the challenge to address the democratic deficit in both old and newer democracies across the North and South, understood as a loss of citizen faith in political parties and political systems, as evidenced by a decline in party membership, public opinion polls, and electoral turnout. Governmentality theory suggests that by bringing non-governmental actors into governance spaces, as well as the private sector, governments can channel such resources (skills, knowledge, and networks), and extend their control to address problems such as social exclusion and unsafe neighbourhoods. Governance theory offers an alternative perspective suggesting that it opens new

ways in which citizens can engage in the politics of localities and regions, and participate in “project politics” on specific issues (Miller et al., 2009:75).

In the light of the events related to the public sector reforms of the 1980s and 1990s, the utilisation of the term ‘governance’ appears acceptable to describe changes in the nature and role of the state. These reforms are said to have led to a significant change in thinking from a hierarchical bureaucracy towards a greater use of markets, quasi-markets, and networks, especially in the delivery of public services. The effects of the reforms were intensified by global changes, including an increase in transnational economic activity and the rise of regional institutions such as the European Union. So understood, governance expresses a widespread belief that the state increasingly depends on other organisations to secure its intentions and deliver its policies (Bevir, 2009:2). It is my view that in the process of governing, in the context of democratic governance or democracy in general, there are no start and finish points; governance in any country cannot be limited to its geographical boundary, and various factors can affect how a country is governed. In instances where civic society views governance as not considerate of their roles or the interests of those they govern, a reason exists for CSOs to effectively champion the interests of those marginalised or not well governed.

Governance can also mean other things than actual ruling itself and describe any pattern of ruling that could arise from the following scenarios: when the state is dependent upon others, or when the state plays a lesser role than expected, or no role at all. The term ‘global governance’ refers to the pattern of rule or governing at the international level where the United Nations is too weak to resemble the kind of state that can impose its will upon its territory. Likewise, the term ‘corporate governance’ refers to patterns of rules within businesses – that is, the systems, institutions, and norms by which corporations are directed and controlled. It is therefore not only about when the government exercises its power and/or responsibility within its own bureaucracy but also the environment within which governing should occur, and the roles of all elements of the ruling elite, or the space within which governing should be exercised. Forms of power and authority can be exercised in many ways. In this context, governance expresses a growing awareness of the ways in which forms of power and authority can secure order,

even in the absence of state activity (Bevir, 2009:2). The typical use of governance as it is applied in various forms and settings of society enables theorists to explore abstract analyses of the construction of social orders, social coordination, or social practices, irrespective of their specific content. It occurs in the corporate world, in the state, and in the international space, and theorists can draw distinguishing points. According to Bevir (2009:2), if we are to use the term 'governance' in a generic way, it may be necessary to describe the changes in the state in the context of the new governance concept following the 1980s, or the use of it as an alternative phrase.

According to Enjolras (2008:5), public governance involves only "actors" in the public arena, who are characterised as public actors. "In the provision of the social services administered by public organisations or delegated to third-sector organisations," which could be funded by public funds in the context of the applicable legislative regulatory framework and means to serve as a guardian or patron or protector is possible and probable grounds for such an arrangement (ibid.). It is for this reason that the process of policy crafting is usually a serious sequence of procedural arrangements, which are also measurement mechanisms for compliance with the process of policy development and implementation, to the benefit of compliance and to a lesser extent to the benefit of public participation. This process of policy making therefore by its nature and character is technocratic. This element of governance known as **'**corporatist governance' is shaped and based on a monopoly representation and implementation given by public government to a third-sector umbrella organisation within a specific field of services. The regulation and financing models and patterns are mostly public and coercive. The description of 'competitive governance' states that it is a regime in which a market is developed using incentive measures and regulated by public authorities, and in the context of the determinations of public accountability.

Partnership or multi-actor governance encapsulates the roles of many and various actors, institutional and non-institutional ones, including citizens in their individuality in the policy-making process. The different services are provided by a mix of actors and financed by various types of public and private resources. Negotiation, deliberation, and compromises qualify the way in which public policy is designed

and implemented (Enjolras, 2008:5). Fraisse et al. (2008) assert that the "partnership is often initiated by public bodies" and are formalised and "institutionalised" in the contextual understanding of the partnership governance type; hence, it becomes necessary to appreciate the need to explain governance in which similar multi-role partners are involved but initiatives emanate from civic society (other than the state).

There is a fifth type, civic governance, in which its regime characterises the involvement of multiple actors. In the main, the multi actors include civil society users and third-sector organisations, such as associations or co-operatives, which have in common emerging social demands, which may not at all or only partially be recognised by public authorities (Fraisse et al., 2008: 24). In this case, the civil society actors hold the power and capacity to make initiatives or initiate partnerships. Their influence is weakened when they experience limitations arising from controlled funding and/or project-targeted funding. Their public funding is limited to individual projects and aimed at financing risk-taking and experimentation. Hence, both in partnership or multi-actor governance and civic governance, CSOs' funding is not necessarily as per the wish for the CSOs, but in response to the need or project identified by key role players, the state, or the market. Therefore, the CSO initiative is funded to the limitation of how best their own initiative responds to or correlates with the funder's objectives or agenda. This pattern of funding holds the potential to weaken a CSO and diminish their influence, even in instances where the CSO is allowed to play a role. By its nature, the relationship is an unequal one. Thus, there are special rules established for the purpose of said service, which result from the engagements and negotiations between the association and public actors, and they are limited and confined to the framework of the agreement reached. The coordination roles of local institutional actors coalesce into coordination bodies open to a range of participants, but still able to include some institutional partners and role players.

Civic governance is viewed as less stable, but it is seen as being useful to characterise a horizontal or bottom-up approach of governance through which citizens and/or CSOs can reorganise themselves with a focus on continuing their influences of the processes of decision-making, and development planning and

implementation. This coordination enables CSOs to increase their upper leverage through building cooperative blocks in pursuit of their interests and in the environment, in contrast with the competitive governance regime. Adopting a dynamic perspective, civic governance forms can lead to more institutionalised partnership governance, or it can prefigure the definition of a public tutelary governance, as was the case of most social policies during the development of welfare-state policies (Petrella, 2009:29). This understanding is accepted as probable and practical in giving CSOs upper leverage for the exercise of their influence, but the actual results are in the form of the output, outcome, and desired impact on which their influence should not only be exercised but should yield desired results. Upper leverage is sought through coordinated concerted efforts because their space to exercise influence is being contested. This helps to add positive impetus to the role of CSOs and their ability to exercise influence, especially in an environment where their influence diminishes.

2.3.4. Democracy

Democracy is a political system in which citizens govern, either by themselves or through others that are elected, influenced, and controlled by the people, in a way that puts each citizen on a par with every other citizen (Hendriks, 2010:7). It is further asserted that democracy is about the people's rule and/or through delegations to public representatives. Therefore, it makes it easy for everybody to participate and play a role in policy making and implementation, and they should equally draw benefits from the realisation of the established objectives of democracy.

Any public issue or space is for the public or for communities, and in exercising democracy the state should ensure that the people are at centre and the driving force and touchstone of all that happens in the public domain. This is central in characterising democracy. Democracy has enjoyed various characterisations over time, such as 'responsive rule' or 'popular rule', and 'popular government' or 'popular sovereignty'. In the context of democracy, equality is its critical performance indicator. On all public matters, including in choosing public officials or settling public matters, the contribution of each citizen is equal to that of every

other citizen. Democracy is also called a system of politics in which citizens directly and by themselves have equal effective input into the making of binding collective decisions. Thus, democracy is about popular influence on government and equality in exercising such influence (Hendriks, 2010:7). Whereas it is accepted that democracy is about popular influence on government it is my argument that not all civic society's components are able for their interests to find expression in the initial development and implementation of policy and/or the resulting outcomes of policy benefits. Equality in the exercising of influence by citizens strengthens their hold on government by virtue of them being citizens first and secondly participants in unfolding governance processes which may, at times, be denied by acts of omission on the part of the state.

The existence of CSOs is a direct response to the denial of the benefits of participation, equal influence, and the exercising of influence from civic society. However, the existence of CSOs does not guarantee that the influence by organised civic society in the form of organisations can be exercised with ease; but the ideal should be pursued, even if it is never entirely realised in large-scale systems. What can be achieved and sustained is not an ideal democracy – the government of all – but a realistic democracy or polyarchy – the government of many, alternating and correcting one another. The hard core of both of them is grounded on the principle that, in a democracy, there is political equality among the members of the community in deciding community policy (Hendricks, 2010). A more sustainable democracy is moulded and the closer it gets to the democratic ideal, the better it is (Hendriks, 2010:10).

Democracy can be named and described in many different ways. In this study, I will present an abstraction of this multitude of definitions by distinguishing four basic models of democracy. These four models are the result of interrelating two dimensions that are well known but commonly kept apart in theories of democracy:

- **Aggregative versus integrative democracy**. The key question here is: how are democratic decisions taken? Are decisions taken in an aggregative (majoritarian, competitive) process, in which a simple majority of 50% + 1 eventually tips the scales, even if this majority is up against sizeable minorities? Or are decisions taken in an integrative (non-majoritarian,

deliberative) process, in which people attempt to reach the widest possible – ideally complete – agreement? Is it majoritarian 'voting' or deliberative 'conferring'? Is it 'the winner takes all' or is it a process of consensus building?

- **Direct versus indirect democracy**. The key question here is: who eventually takes the decisions? Do citizens designate representatives who eventually take the decisions (the option of representative or indirect democracy) or do members of the community eventually take the decisions themselves (the option of self-governance or direct democracy)? Is it public decision-making 'by all concerned' or 'in other people's stead'? Is it audience democracy of 'lookers-on', or popular rule of the 'do-it-yourselfers'?

There are four basic models of democracy, namely:

Pendulum democracy refers to the model of democracy in which political power alternates between two competing political parties or formations and their protagonists like the pendulum of a clock. Its best-known manifestation is the so-called Westminster Model. Pendulum democracy is fundamentally indirect and representative in nature. Citizens periodically cast their votes and hand over decision-making powers to their elected representatives. Decision-making is largely majoritarian and aggregative: in constituencies, because of the 'first-past-the-post' electoral system, the winner takes all; executive power is monopolised by the winning party and its leadership, even if the winning majority is minimal. In pendulum democracy, broad-based citizen participation focuses on the brief period of elections. Policy implementation, policy preparation, agenda-setting, and political control are taken over from citizens by elected politicians as much as possible. According to its supporters, a major advantage of pendulum democracy is that the voters, through general elections, make themselves vigorously felt, first in political representation, and then in government formation and policymaking.

Voter democracy combines aggregative decision-making with direct, unmediated popular rule. Citizens participate in voter democracy by casting their votes in plebiscites, either on a small scale, as in town meetings, or on a large scale, as in referendums. A more large-scale manifestation of this type is the California style

decision-making referendum, in which a simple majority decides binary questions (for or against a particular proposition; aye or nay). Such plebiscites are often foreshadowed by opinion polls, consumer surveys and the like, which can also be aggregated efficiently and numerically. Its proponents feel that the strength of voter democracy lies in citizens' non-dependence on others for having their voices heard and their preferences in public matters counted – a critical mass of preference indicators enables them to compel attention and force decisions clearly and straightforward (Hendricks, 2010: 13).

Participatory democracy combines direct self-governance with integrative decision-making. It is illustrated by classic as well as contemporary cases of communal self-rule, and communicative and deliberative citizen governance. In a participatory democracy, a minority will never be overruled by a straightforward numerical majority; minorities should not be excluded but included. If done at all, counting heads only takes place in the final stages of decision-making, and serves to confirm shared views rather than to take decisions. The matter of the numbers of those who participate and the need to apply rules of compliance to it should not mean confirmation of having exercised participation in democracy. Decision-making is primarily a process of engaging in thorough, preferably transformative, and usually lengthy deliberations to seek consensus. The widespread participation of all involved – in agenda-setting, policy preparation, implementation, and control – is considered the best way of warranting the legitimacy of collective decision-making. In a participatory democracy, everyone has the same right to raise and debate an issue, and relations are largely horizontal, open, and power-free; that is, no one can issue an ultimatum or a veto from a position of power. The strength of participatory democracy is the cultivation of concord and commonality (Hendricks, 2010: 13).

Consensus democracy refers to a general model of democracy, a specific version of which can be found in countries like the Netherlands, Belgium, Switzerland, and Austria. This version, developed in the context of historically divided societies, is called consensual democracy. The general model of consensus democracy is indirect and integrative. Representatives of groups and sections of society are the prime decision-makers. They go about their business in an integrative and

consensus-seeking way, usually in a conference room or round-table type of setting. Collective decision-making tends to take place in co-producing, co-governing, and coalition-oriented ways and aims to establish consensus and broad-based support. The majority preferably does not overrule substantial minorities by simply counting heads; policies are built on a broad platform of support, both politically and socially. In the agenda-setting and preparatory stages, representatives of social interest groups and specific sections of the population are widely consulted; in implementing policies, civil society and third sector organisations are also widely involved. Integration and collaboration are seen as core qualities of this type of democracy (Hendriks, 2010:15). The process of engagements and consultations are at times thorough but not necessarily effective and efficient; it does not necessarily envelop all those who are citizens and it does not assure the outcome of a particular interest group.

Democracy is a system of government which includes the people in its governing mechanism; enabling people to participate in their politics (Eken, 2008:71). Democracy is opposed to and counter-poses dictatorship where people's participation in the political decision-making process is heavily restricted or at worst absent. Therefore, the idea of consensus democracy or civilian participation in decision-making processes has been central to any discussion of democratisation. Consensus democracy and democracy are intricately linked and inseparably intertwined; thus, one cannot function properly without the other. Consensus democracy is further seen as a sociological counterpart of democracy in the political sphere or even a subset of democracy (Calvert and Burnell, 2004:279).

While the role of consensus democracy as conducive, compensatory, and supplementary to democracy is known, the dysfunctional role it can play is not taken into account. Consensus democracy is either seen as force that could bring about democracy where it is absent and strengthen it where it is already in place, but it also seen as a negative force that might make a democracy dysfunctional. Therefore, it is important that one gives equal consideration to the good and the bad role consensus democracy plays in democracy (Thang, 2013:24).

2.3.4. Participation

Participation suggests how or the way in which power and responsibility are shared among the state and the different social groups and classes in the development process. Development, in this context, is qualitative and quantitative social transformation, in directions participants consider favourable, brought about by internal and external forces. For this transformation to happen there must be predefined social, economic, and political goals (Mallya, 2009:104).

It is historical and contemporaneous that few people in South Africa enjoy the wealth and riches of our society and apartheid has played its part in the issue of inequality; hence, the minority of the people share most of the power and wealth, while the majority remain powerless and wretched. At times, participation is viewed and/or exercised as a means for confrontational engagements among the haves and the have not in communities. It is because the word 'participation' is, at times, used in conjunction with another term, 'popular', impressing that those who hold less power have an opportunity to have a greater say and input in decision-making, policy posture and the allocation of resources, and those who have been left on the periphery should be included in some critical processes. The conception of popular participation, which is the struggle by the disadvantaged to gain greater control over the resources and institutions they depend upon for their living, is close to reality. Participation by everyone in making decisions that most affect their lives, along with holding leaders accountable, and the enjoyment by all groups and individuals of basic human and civic rights, is the essence of democracy (Mallya, 2009:105).

Participation is central to and a critically defining character of the meaning of democracy even if it could be short-circuited for the purpose of saving costs and reducing responsibilities. At times it happens that the government finds it easier to offload its service delivery responsibilities to NGOs or community groups, or to convince residents to donate volunteer labour or materials (Ackerman, 2004:447). However, this approach does not necessarily consider that the involvement of CSOs in providing the core activities of the state forms societal participation, which is one of the most effective ways to improve accountability and governance. Citizen

participation in governance is also viewed as holding the potential to mitigate against and reduce poverty, as well as providing redress on social injustices by strengthening citizens' rights, influencing policymaking, and shaping policy posture, improving and enhancing governance at the local level, and improving the accountability and responsiveness of institutions. This is an assertion held by Taylor and Fransman (2004:1). For whatever reason, the assumption remains that as governments develop and expand their expertise in facilitating more and expanded levels of participation, the quality of service delivery is improved, especially for those who live in poverty. More and increased participation helps to respond to and redress "poverty reduction and social justice but from varying perspectives" (Buccus, 2011). Moreover, it is true that when the majority of a particular constituency is consulted, the involved policies are likely to be easily accepted and even supported. When contestation for exercising of influence occurs it is usually because not many of the people were involved or certain interest groups contradicted the policy posture and/or a conflict of interests existed. It then makes CSOs relevant to occupy the space left unoccupied – or being able to reach many outside of the formalities of the state or the market.

Participation is vital to social and political life in the sense that democratic regimes are sustained by many types of citizen participation (voting in elections, joining political parties, signing petitions, engaging in local and civic affairs, discussing politics or supporting local voluntary associations). At the same time, democratic development and the maintenance of democracy require that citizens participate actively in society, not only as voters, but also in all kinds of civil and political bodies and organisations (Vázquez-García, 2009:198). Their own responses to invitations to participate, or to initiate participation, or to make efforts to redress or influence occurs within the available means provided, but it does not mean it cannot be contested.

CHAPTER 3: CSOs AND THEIR ROLE AND INFLUENCE IN GOVERNANCE

3. INTRODUCTION

In this chapter, through established qualitative research methodologies, the subject matter of the study will be explored. The questions for the research were developed to respond to the objectives of this study. The three research questions are as follows:

(1) Does South Africa have any legal provisions that empower and legitimise the role of CSOs in exposing or revealing any information on corruption in the government?

(2) Are CSOs aware of the government's anti-corruption work and anti-corruption bodies, and is information readily available and accessible?

(3) Do CSOs actively promote their participation and build coalitions with key stakeholders to influence the public policy debate?

In this chapter I will investigate the CSOs identified for the purpose of the research and respond to the research questions in pursuit of the research objectives and aim. It is herein that reflections are made on the role of CSOs in influencing governance and whether they are relevant and add positive impetus to governance. Moreover, the challenges faced by the CSOs are investigated and the causes of their challenges are explored. This chapter will further establish if there is an enabling environment for the CSOs to play their role in the new democratic framework and will investigate if their influence is diminishing, remaining stagnant, or increasing. In addition, the various tools will be explored, including the constitutional legislative framework and the policy imperatives in place, including the policies meant to support and legitimise the CSOs. Furthermore, the role of the CSOs in the fight against corruption, especially government corruption, will be investigated and how the CSOs execute their roles in pursuit of their responsibilities. The chapter will also articulate on the actual work of the identified CSOs for the purpose of this research to identify how best CSOs can hold government accountable, enable public participation, ensure compliance to the

legislative framework, and/or redress where the government has erred. It is from this chapter's content that an analysis and an assessment will be made in Chapter 4; this will help shape the way forward in Chapter 5.

3.1. CSOs' PERSPECTIVES IN INFLUENCING GOVERNANCE IN SOUTH AFRICA

3.1.1. The role of CSOs during the apartheid government

Whereas segregation and inequality between various races were observed tendencies and a reality in practice in South Africa, those practices were formalised into law after the 1948 elections, which were won by the National Party, introducing and legalising apartheid to facilitate separateness in pursuit of white supremacy in the country. RSA (2007:53) states that the 1950 Population Registration Act, which uses colour as the dominant distinguishing character amongst persons, and the 1950 Groups Areas Act, which determined where each race should reside as a means of separating them, were passed as the law that advances separateness. According to Habib and Taylor (1999:13), the efforts to advance economic and social dominance by whites for whites was evidenced by the promulgation of the Bantu Education Act to exclude black children from science subjects at schools and the establishment of the homelands (called Bantustans) to divide the black population by dividing them into ethnic groups, creating Bophuthatswana, Ciskei, Gazankulu, KaNgwane, Kwa Ndebele, KwaZulu, Lebowa, QwaQwa, Transkei and Venda. RSA (2016:25) suggests that the passing of the Land and Trust Act to enable blacks to own land was a means to appease blacks (RSA, 2007:53). On 5 October 1960, South Africa became a Republic following an only white referendum and subsequent it exited from the Commonwealth of Nations on 31 May 1961. The domination of whites was further consolidated by the 1961 Constitution, which allowed the electoral system that denied blacks, Indians, and Coloureds the right to vote for national office bearers. Moreover, the Bantu Authorities Act restricted blacks' political participation to the homelands (RSA, 2007:53).

The policies on and around apartheid were not left unchallenged and resistance grew and intensified over time. The resistant civil society had to organise themselves and stand together against the injustices of the apartheid government and laws and fight for what was rightfully theirs. It is however important to note that

at the beginning of the apartheid era, civil society did not have the ability to conquer the oppressive government. As a result of assistance from the international community, the society acclimatised and adopted Western influences and their modern ways, including foreign CSO models and/or systems of aggression. Weidman (2015:2) states that a mature and strengthened society was witnessed in South Africa under apartheid and the sector grew enormously in the early 1980s when it stood together against the apartheid system's policies. However, the relations between the state and civil society were not a major issue in the struggle for democracy in South Africa. Greenstein (2003:18) argues that during the apartheid era, opposition forces did not challenge the prominence of the state as such, but rather the specific uses to which state power was put.

Civil society in apartheid South Africa consisted of organisations and structures that positioned themselves outside of the state, due to its inherently undemocratic and exclusionary character, but acted to change the distribution of power in society (Greenstein, 2003:8). Of interest were those organisations whose oppositionist role was outside of the formalities of parliament but who sought cooperation and collaboration with the apartheid government to influence and change the status quo; hence, they assumed political neutrality whilst championing service delivery. Weidman (2015:4) highlighted that the most celebrated structures in the 1980s were the South African Coalition of NGOs (SANGOCO) and the Democratic Front, which became umbrella bodies that represented the CSO sector during the most difficult times of apartheid and during the new dispensation. It should however be noted that even though there was a relationship between the government and CSOs, support and preference were only given to NGOs directly serving the white minority and the racial order (Habib and Taylor, 1999:74). There were only a few identified NGOs that were against the apartheid government and its laws, and they were subjected to "continuous harassment" and "banning". This political environment was transformed with the liberalisation of the South African polity and economy in the early 1980s.

Although not supportive of anti-apartheid NGOs, the PW Botha regime allowed many to emerge, organise, and serve the disenfranchised and marginalised majority black population. Habib and Taylor (1999:74) suggest it was in this context

that most NGOs emerged, being created and run by professional people aligned to the anti-apartheid cause and concerned about giving assistance and support to the struggle. Such organisations constituted a self-mobilised and heavily interlocked network that adopted a number of roles, but which broadly speaking could be divided into two distinct groups (Greenstein, 2003:18). First, there were those such as the Urban Foundation, Black Sash, the South African Institute of Race Relations (SAIRR), and the Institute for Democratic Alternatives for South Africa (IDASA) that conceived of themselves as liberal-oriented organisations and positioned themselves somewhere between the ideological extremes of Afrikaner and African nationalism. Second, there were NGOs such as the National Education Crisis Committee, the Legal Resources Centre, the Transvaal Rural Action Committee, and the Trade Union Research Project that more openly associated themselves with the African National Congress (ANC) and serviced the mass-based people's organisations of the national liberation movement (principally the United Democratic Front and the Congress of South African Trade Unions). Altogether, these NGOs worked to weaken and undermine National Party rule; they made up the core of an emerging non-racial democratic society independent of, and set against, the apartheid state (Weideman, 2015:4). Collectively, NGOs provided a non-racial social service delivery function for the disenfranchised, offering a kind of shadow (alternative) welfare system in support of the mass-based movements and the poor (Habib and Taylor, 1999:74).

3.1.2. CSOs' role in influencing good governance in a democratic South Africa

According to Bevir (2009:2), there is no agreed definition of good governance. Definitions usually consist of a wish list of reforms, practices, and outcomes, usually with a particular eye on developing states. Some definitions of good governance emphasise political and legal institutions – participation, accountability, the rule of law, and human rights. Thang (2013:26) suggests that good governance is no longer seen as the sole responsibility of governments but every citizen of the world, including CSOs, are responsible for that. Good governance is understood as including some form of democratic government. Moreover, governance will have to include a minimum level of democracy to be called 'good'. Thang (2013:27) and Bevir (2009:10) state that good governance has eight major characteristics, which

include participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. It assures that corruption is minimised, the views of minorities are considered, and that the voices of the most vulnerable in society are heard in decision making. It is also responsive to the present and future needs of society.

Bevir (2009:2) argues that the purpose of good governance is commonly seen as being to promote development; while it is also regarded as the main driving force behind healthy development and prosperity (Thang, 2013:26). Bad governance, in contrast, is seen as the root cause of all evil in society; it is also identified with corruption, wastefulness, incompetence and unresponsiveness, all of which impede economic development and perpetuate poverty.

Civil society has been widely recognised as an essential 'third sector' and it can have a positive influence on the state and the market. According to Ghaus-Pasha (2004:3), civil society is therefore seen as an increasingly important agent for promoting good governance like transparency, effectiveness, openness, responsiveness and accountability; it can further good governance by policy analysis and advocacy, by regulation and monitoring of state performance and the action and behaviour of public officials, by building social capital and enabling citizens to identify and articulate their values, beliefs, civic norms and democratic practices, by mobilising particular constituencies, particularly the vulnerable and marginalised sections of the masses, to participate more fully in politics and public affairs, and finally, by development work to improve the wellbeing of their own and other communities (Ghaus-Pasha, 2004:2). Thang (2013:15) states that civil society can also contribute to good governance by building state capability, such as participatory policy and budget formulation, delivering basic services, providing training to public service providers such as health workers, delivering civic education and raising citizens' awareness about national policies and their rights and responsibilities (e.g. voting rights, democratic freedoms), safety, security and access to justice. CSOs can raise citizens' awareness about rights and services so that official security and justice institutions are more accessible and effective. Civil society is also capable of building state accountability by influencing standard setting (e.g. lobbying for legislation on transparency and adherence to international

commitments on human rights); carrying out investigations (e.g. monitoring and evaluating government programmes through social audits, citizen report cards or participatory expenditure tracking systems); demanding answers from the state (e.g. questioning state institutions about progress and parliamentary public hearings); and applying sanctions where the state is found to be lacking (e.g. protests, boycotts, strikes or negative publicity). Finally, Thang (2013:27) suggests that civil society is responsible for building state responsiveness; identifying and voicing the needs of citizens, including the poor; pursuing social inclusion through strategies, including advocacy (e.g., lobbying reformers within government or the international community); feeding back research results and informing debates (e.g. inequality assessments and poverty and social impact analysis); and social mobilisation (e.g. campaigns).

In conclusion, Gumede (2018) states that South Africa's CSOs have increasingly been the last line of defence fighting on behalf of ordinary citizens against out-of-control corruption, public service delivery failure, and the abuse of power by elected and public representatives. The civil society landscape in South Africa is much more diverse, dynamic, and assertive in holding government accountable, fighting corruption, and supporting democracy and democratic institutions than in many comparable developing countries (Mathekga, 2017:23). South Africa's Constitution provides a special place for civil society to play an oversight role over democratic institutions, monitor human rights, and to give citizens, especially the poor, vulnerable and excluded, the tools to know and assert their rights. In South Africa, civil society groups in the post-1994 era have continued to hold the democratic government to account.

3.1.3. The relationship of CSOs and the new democratic government

According to Mecer (2002:54), since the 1950s, CSOs have come to play an increasingly important part in the formulation and implementation of development policy, becoming key actors in the political economy of development. There has been an increased collaboration with both governments and aid agencies based on a growing belief over the period that the promotion of CSOs could offer an alternative model of development and play a key role in the processes of democratisation. CSOs were seen as more administratively flexible, closer to the

poor, innovative to the poor, innovative in problem solving, and more cost-effective than corresponding state partners (Mecer, 2002:54). Donor pressure towards structural reform and privatisation underlies the increased interest in CSOs as "service providers" – part of a wider and explicit objective to facilitate productive CSOs partnerships (Desai and Potter, 2008:525).

Though civil society has become important in most countries, its magnitude, scope and influence (hence, its contribution to society and to development) varies enormously. Several factors account for this, including the tradition for philanthropy, and exposure to Western ideas and education, and national religions, but one factor that is of paramount importance is the CSO-state relationship. Civil society sometimes prefer to keep their distance from government, or side with the opposition. Sometimes government resent and mistrust CSOs. Tandon (1991:25) describes a typology of state-CSOs relations according to whether the regime is autocratic, weak and unpredictable, or a mature democracy. The key determinant of this relationship is often the framework of laws and regulations governing the formation and operation of CSOs. Ideally this framework is fully enabling, while encouraging in some disciplines. Laws which hamper the formation of independent CSOs, which deny citizens' rights to join or support CSOs, or which subject CSOs' operations to restrict government control and unpredictable intervention fetter the CSO sector. Not only are the citizens thereby denied the positive contributions CSOs offer, but they are denied the rights of association guaranteed by most states who have signed the UN International Covenants on Civil and Political Rights (Desai and Potter, 2008: 532). Government should not seek to manage CSOs as this would undermine CSOs and inappropriately stretch government capacity. Instead, they should create conditions that encourage effective self-regulation of the sector. CSOs that seek benefits from the state, or the public should be expected to be transparent and accountable, proportionate to the scale of these benefits (Desai and Potter, 2008:533).

CSOs provide expertise in "development software" (participatory approaches, community organising, public-private partnerships, and stakeholder ownership strategies); they are more innovative, adaptable, cost-effective, and aware of the local situation; and their grassroots representation brings legitimacy and

community mobilisation to programmes and projects (Coe, 2002:4). Civil society strengthens the state through their participation in improving the efficiency of government services, acting as strategic partners for reform-oriented ministries, filling the gaps in service provision, and helping the government to forge ties with the grassroots. The impact of states on CSOs is central in defining the role that CSOs can play in national development, for it is governments which give CSOs the space and the autonomy to organise, network and campaign (Clarke, 1998:14). Of course, it is difficult to generalise about state-CSOs relations, as local political networks are always diverse (Desai and Potter, 2008:528). Zharkevich (2010:27) suggests that governments need CSOs to help ensure that their programmes are effective, well targeted, socially responsible, and well understood. The public needs them because of their services and mobilising capacity – helping citizens to express their voice or challenge authority. Parliamentarians need them for policy guidance, for feedback on what people want, and as watchdogs in monitoring public programmes and enhancing the accountability of officials. The legitimacy of individual NGOs rests not necessarily in their mass membership or their budget, but in their usefulness to these constituencies. The NGO sector, therefore, is symbiotic with a well-functioning, democratic state, parasitic or undermining (Desai and Potter, 2008:531).

Weideman (2015:14) states that in a South African context, complex relationships were established following the transfer of personnel from the CSO sector to the government sector, the deployment of ANC cadres to strategic local CSOs, and the formation of development committees. CSOs played a significant role in policy formations and development, and the CSO-government relationship enjoyed institutionalisation and formalisation (Coe, 2002:4). Various methods were employed to enable institutionalisation, which included the demilitarisation of society; the abolishment of some repressive laws; the introduction of laws for the registration of NPOs and exemption from tax; and the creation of additional funding opportunities and agencies. CSOs became reluctant to assume a critical role against new democratic government, especially those with a relationship with the ANC, and they were unable to show their might in pursuit of their role and their own desires for survival and personal growth contributed to their reluctance and weakness. It was clear that the new democratic government led by the ANC also

expected loyalty from CSOs. From 1998 onward, the state-CSOs' relationship was poisoned and deteriorated as CSOs increased their criticism of the ANC-led government and its policies, especially its macro-economic policies (Coe, 2002:4). The deteriorating relationship was evidenced by community protests, the non-payment of basic services, and the emergence of a new type of CSOs focusing on poverty challenges. This caused the ruling ANC to be more suspicious of CSOs, while CSOs were not tolerant of the criticism and increased surveillance over them and the tactics intended at undermining them. This stage also witnessed a shifting of social welfare responsibilities from the government to CSOs and the private sector, with a reduction in the dissemination of information from the government (Weideman, 2015:15).

According to Weideman (2015:15), an improved relationship between the government and CSOs will facilitate joint concerted efforts in pursuit of efforts to reconstruct and deliver services and advance transformational goal. Cooperation appears to improve when CSOs and the government share the same developmental goals. Whereas a spirit of cooperation is important, equally, democracy requires a vibrant civil society to act in good faith in the interests of the people and to do so independently from the government, and as its watchdog. Jagwanth (2003:15) states that during the apartheid era the relationship of CSOs with the state was oppositionist in nature and posture, and easy to understand, contrary to the era of democracy where the requirement to balance between supporting the new government and maintaining independence from it remains critically important. This is important, especially when considering the relationship between CSOs and the ANC from the time of the liberation struggle and during the transition to democracy.

3.1.4. Challenges CSOs in South Africa face

It is no secret that many NGOs confront serious financial and capacity challenges, resulting in the weakening of civil society since 1994. The NGO sector is under severe pressure, with many NGOs having closed their doors or teetering on the brink of closure. At the same time, South Africa faces overwhelming development challenges relating to education, health, and poverty. Increasingly, government departments and agencies are incapable of responding to these challenges –

factors such as corruption and a lack of capacity and leadership result in slow or absent service delivery, which in turn has led to an alarming increase in social unrest in many parts of the country. According to Van der Elst and Volmink (2017:8), funding is viewed as the main barrier hindering the work of individual CSOs and CSOs at large. However, these authors (2017:8) argue that it is not necessarily the lack of funding that hinders the work of CSOs; rather, it is the nature of the relationships between funders and NGOs, the lack of alignment between national education priorities and funders' strategies, and the ineffective use of funds to drive nationwide and sustainable changes to the education system. Post-1994 the landscape changed considerably – with a new democratic government, and NGOs witnessed a shift to bilateral funding arrangements (Magongo, 2016:108; Van der Elst and Volmink, 2017:5). This has meant that most funding flowing into the country is diverted through the government for delivery on its own mandate, with most funders supporting only that which is aligned to government policy, leaving minimal space for innovation. More recently, large donor agencies have begun to explore social entrepreneurship as an alternative to donor funding (Van der Elst and Volmink, 2017:8).

CIVICUS (2015:25), USAID (2016:33) and Magongo (2016:108) reported that CSOs play a crucial and often under-valued role. The reports also indicated that one of the challenges currently faced by this sector is that of financial sustainability. Whereas, under apartheid, the international donor community generously funded the sector, with democracy much of the international funding has been channelled through an often-ineffective state apparatus. Weideman (2015:7) states that while there are no current and reliable statistics on funding to the sector, most organisations rely on a combination of diminishing international funding, corporate social investment, donations from individuals, and a degree of income generation, often via government contracts. This situation is exacerbated by the current economic recession. Traditional foreign donor agencies have scaled down their funding drastically or withdrawn completely, mainly due to the global recession. In the past, the US President's Emergency Plan for AIDS Relief (PEPFAR) and the Global Fund provided essential funds for health and other HIV- and AIDS-related services. PEPFAR funds have however decreased and Round 11 of the Global Fund has collapsed due to a lack of funds. Moreover, some major foreign donors'

funding agencies (such as the Mott Foundation, the Kellogg Foundation and DANIDA) have reduced their global funding, in some cases by as much as 30 per cent (USAID, 2016:108). In addition, as donor attention is drawn to post-conflict reconstruction in North Africa or countries with greater levels of poverty, major foreign donors are increasingly viewing South Africa as a middle-income country and not a deserving donor-recipient country. For NPOs relying on international sources of funding, this has been catastrophic. The current round of donor funding cutbacks has created a terminal situation, the likes of which was only witnessed back in the early 1990s. Between 1992 and 1994, approximately 1000 NPOs found themselves in severe financial trouble due to donor funding cuts, with between 200 and 400 organisations eventually closing down. How these massive shortfalls in funding will be addressed remains to be seen. According to Weideman (2015), lack of financial sustainability has impacted negatively on various CSOs as they lost effectiveness in their work on and around poverty, inequality and socio-economic issues, with their capacity diminishing. This affected structures, such as SANCO, with many structures making alterations and amendments to their programmes to facilitate access to funding and realign their programmes to the strategic objectives of the funders and/or donor agenda. Many other smaller and informal CSOs closed their doors and in general CSOs lacked funds and related resources with the capacity of the sector extensively reduced and continuing to shrink (Magongo, 2016:107).

According to Zharkevich (2010:38), the human capital that CSOs had, which included key leaders, thinkers and skilled managers, were lost to the public sector, especially during the transition to democracy, with a resulting negative impact on the effectiveness of the sector and its ability to engage the state critically. The loss of this sector's institutional memory resulted from high staff turnover (Weideman, 2015:6). This has contributed to low levels of capacity and a lack of knowledge in the sector. For civil society to make an input in the state-building process, it should possess a great degree of knowledge, skills and understanding of complex societal processes. Insufficient knowledge and low levels of NGO capacity are major obstacles for performing quality work in political accountability. Habib and Taylor (1999) describe this as "brain drain", as many civic leaders left the civil society

arena to accept highly remunerated positions in the government or in the private sector.

Whereas the Reconstruction and Developmental Programme (RDP) set out the adversarial relationship between the state and society and committed the state to redistributive policies and programmes to meet the basic needs of the majority of South Africans, the introduction of the Growth, Employment and Redistribution (GEAR) strategy shifted the discourse from a new social contract to building new social partnerships. An ANC discussion document entitled 'The State and Social Transformation' drafted in November 1996 by and under the leadership of the then President of the ANC and South Africa, Thabo Mbeki, responded to and redressed the emerging and growing tensions "within the alliance partners of the ANC and the broader democratic movement" because of/or on the posture being assumed by the state. Amongst others this discussion document sought to redefine "the roles of the state and civil society in the process of social transformation in the post-transition era". It also attempted to establish the "rules" and mechanisms or regulatory faculty for the management of the relationship between the state and the society. In advancing the implementation of the GEAR strategy, the process of privatisation was sped up, as announced in September 1999 by then Minister of Public Enterprise, Jeff Radebe. He said, "By 2004 the programme of privatization would be completed" (*Sunday Independent*, 26 September 1999). This posture of the state, as shaped by GEAR, was vigorously opposed as much as it was defended. John Gomomo, the former President of COSATU, argued as follows: "As labour we remain opposed to the basic thrust of the GEAR Strategy. We reject its approach to fiscal and monetary policies which continue to see major cuts in government spending on social security and basic infrastructure as well as continued rising interest rates. It would also perpetuate the gap in wealth and incomes between the rich and the poor" (*The Shop Steward*, 1997:6). The Director-General for the Department of Finance, Maria Ramos, argued that a year after its implementation the GEAR policy had reaped some positive benefits at macro-economic level (*Mail & Guardian*, June 27-July 3, 1997). Ramos (1997) defended GEAR by arguing that the strategy would not undermine the delivery of the RDP, stating that, "The RDP spells out the government's social agenda. GEAR creates

an enabling environment and describes the aggregate level of government spending that would be consistent with maintaining macro-economic balance".

The potential beneficiaries became voices for GEAR when CSOs were in mute mode with less activism for the interests of the masses of the people. Other proponents and champions of GEAR argued that the strategy was aimed at ensuring the cost effectiveness of government departments and described GEAR as "…a medium-term strategy to achieve specific targets of economic development, investment and growth, fiscal constraint, enhanced exports and trade employment creation" (Goldin and Heymans, 1999:112). The movement of the leaders, thinkers, and activists from civil society to the government left organised trade unions as the champions of the social transformation agenda with weakened CSOs – even if theirs was more inward-looking on the interests of the workers.

The 1996 ANC discussion document entitled 'The State and Social Transformation' proposed reconstruction of the terms of relations between CSOs and the state in a hierarchical and highly institutionalised fashion. "The issue turns on the combination of the expertise and professionalism concentrated in the democratic state and the capacity for popular mobilization which resides within the trade unions and genuinely representative non-governmental sector has necessary strength to play its role in…ensuring that the people themselves ... in their own interest, become conscious for development and social transformation". According to Johnston (2002:40), assuming President Thabo Mbeki (and his party) regarded "popular participation and people-driven development" seriously, he left "no room for popular political participation" outside of the state or the ruling party, arguing that "…the democratic movement must resist the liberal concept of less government", which, while being presented as a philosophical approach towards the state in general, is in fact aimed specifically at the weakening of the democratic state. "The purpose of this offensive is precisely to deny the people the possibility to use the collective strength and means concentrated in the democratic state to bring about the transformation of society. Johnson (2002) added that it was more about incorporating "popular organizations into corporatist arrangements with the state, reducing all politics to state politics". The activists, leaders and thinkers who were initially key role players in CSOs did not only move into the government, but

government delegated to itself the duty to mobilise and coordinate grassroots level work and sought to serve the people without CSOs.

3.2. AN ENABLING ENVIRONMENT FOR CSOs IN SA

An ‘enabling environment’ is defined as a set of varying but interrelated conditions, such as legal, bureaucratic, fiscal, informational, political and cultural, which impact on the capacity of CSOs and other development actors to engage in development processes in a sustained and effective manner (Thindwa 2002:12). According to Brinkerhoff (2004:3), an enabling environment can be determined by a number of factors, such as the legislative framework, bureaucracy, financial support, access to information, and the political landscape. These circumstances may differ from country to country. ‘Enabling’ can also be understood as capacity, empowerment, support and encouragement, while ‘environment’ could mean the civil society space free of political intrusion and intimidation.

According to CIVICUS (2015:6), the civil society space had retracted worldwide and “as the frequency and severity of restrictions increases, international mechanisms must be effected to ensure that CSOs remain fit for purpose, including through creating policies which will ensure substantive participation and by providing more sophisticated avenues to respond to human rights crises”. For an environment to be enabling, laws must be respected and fully implemented. In most African countries, laws are enabling but they are not implemented by the authorities, which renders the laws useless. Restrictions and cumbersome requirements, which hinder the setting-up of organisations and which restrict them when they operate, do not create an enabling environment.

According to USAID’s 2016 CSO Sustainability Index for Sub-Saharan Africa, after efforts by the Helen Suzman Foundation to challenge the appointment of the new head of the Anti-corruption Unit in South Africa, their offices were burglarised. While there was no evidence or proof, it was believed that there was either harassment of, or interference with CSOs, especially with the burglary of the Helen Suzman Foundation. The Foundation, which promotes liberal constitutional democracy, has litigated against the government on various issues. When the media reported on the burglary at the Foundation’s offices, where computers were stolen, 18 CSOs

condemned the robbery. It was characterised as an attempt to intimidate the sector, especially CSOs that fight corruption. There were also serious concerns about allegations made by the Security Minister in April 2016 that citizens of the country were cooperating with external forces seeking to “undermine and destabilise” South Africa. He asserted that some “CSOs were fronts for covert operations and were funding the students unrests linked to the #FeesMustFall movement” (USAID, 2016:7).

If the environment is enabling for CSOs it protects and promotes the exercise of the freedom of association, which is the cornerstone of an effective civil society as it allows people to come together to improve their lives, communities, and the world at large. It enables citizen participation and advocacy, including working collectively towards open and responsive governance. An enabling legal and policy environment for CSOs not only safeguards the freedom of association afforded to all individuals; it also promotes CSOs’ ability to maximise their impact. South African legislation is the most crucial apparatus utilised by and/or for the government in organising society and protecting citizens. According to De Jager (2000: 3) “legislation determines the rights and responsibilities of individuals and authorities to whom the legislation applies”. On the other hand, a law has little or no value if there is neither discipline nor enforcement. The nature and role of CSOs in South Africa has been shaped by two important historic periods, apartheid and democracy, during which they operated differently. The report by the Hans Seidel Foundation in 2015 states that South Africa had a large and vibrant CSO sector, which grew dramatically in the 1980s, and presented a “unified civil action” against the apartheid state. The sector played “a vital part” in the success of the struggle against apartheid, and the establishment of a democratic society (Weideman, 2015: 5). The sector was said to be represented by various umbrella bodies (for example, by the United Democratic Front in the 1980s, and the South African NGO Coalition in the 1990s). Under the apartheid state, civil society operated under conditions of state control, but nevertheless played a critical role in the anti-apartheid work in form of resistance movements. The apartheid state broadly categorised CSOs into two key groups: those that were sympathetic to and supportive of the state (such as the Broederbond and the Dutch Reformed Church) and those that were critical and opposed the state, such as the UDF in the 1980s.

This division was also characterised by racial postures as white-run CSOs faced few of the obstacles that black organisations faced. The state actively and aggressively suppressed CSOs that opposed apartheid and/or those that did not share interests with it. This harassment and suppression took different forms. First, the state sought to discourage and prevent CSOs through legislative and regulatory mechanisms that “limited their ability to raise funds” (under the 1978 Fundraising Act) and by banning meetings, gatherings, protest action and other collective action. Secondly, the state engaged in direct violence against CSOs’ members and, particularly under the state of emergency in the late 1980s, through “mass arrests” (Lupin, 2022: 233).

A significant growth in the number of states using legislative measures to limit the work and funding of CSOs has effectively demonstrated the extent to which the sector is influenced by legal frameworks and how vulnerable civic action is to state suppression, subversion, and control. Nevertheless, the state sometimes adopts legal measures that are seen as “good” civil society law: that is, law that facilitates the establishment of CSOs; enables their fundraising activities; allows them to pursue their chosen activities and agendas, including through advocacy and other political engagement; and advances good CSO governance, including through self-regulation. With the end of apartheid in South Africa in 1994, laws designed to oppress and control CSOs were repealed and replaced with laws designed to facilitate a thriving civil society sector, rooted in self-regulation. The South African government adopted laws regulating civil society, which were widely seen as “good” laws: laws designed to encourage and facilitate a thriving civil society sector.

The National Development Agency (NDA) reported that CSOs have had to “renegotiate their relationship to the state”. Many organisations found that the government has not delivered on its promises and as a result have focused on serving poor communities, often without state assistance or interest. These structures form a powerful space for social cohesion and solidarity, service delivery and a “voice of critique and expression”. Civil society is thus a key partner in a democratic and free society (NDA, 2018: 32).

CSOs in a democratic South Africa were afforded an opportunity and space to operate independently, freely, and without any form of intimidation. Civil society

helps citizens, especially the poor, vulnerable and excluded, with the tools to participate in legislative decision making and policymaking, to know and assert their rights. South Africa's CSOs have increasingly become the last line of defence, "fighting on behalf of ordinary citizens to secure their input in parliamentary policies and decisions and holding elected representatives, the executive and country's president accountable," according to the Democracy Works Foundation. The Parliament, which is the law-making body in the country, has the constitutional obligation to facilitate "public involvement and participation" in the legislative and other processes of Parliament through the Public Education Office. Thus far, CSOs have interacted in policy making and have had an opportunity to make inputs and have their views and/or concerns reflected in legislation, especially in policies that intend to deal with corruption in South Africa, and in the government. Moreover, there is no evidence of information or activities that suggest that CSOs in a democratic South Africa were prevented to do their work, expose, or reveal government corruption by the state or its laws.

South Africa, like other countries, has a legal framework for CSOs. The NPO Act 71 of 1997 enables CSOs to establish themselves as legal structures and regulates the way in which such legal structures operate. The Non-Profit Act repeals the Fund-Raising Act 107 of 1978 (apart from its Chapter 2, which deals with disaster and relief funds). The Fund-Raising Act was able to be misused by the apartheid government to control the fundraising activities of CSOs and often to close them down. The NPO Act is the result of a lengthy policy and legal reform process in which CSOs and the state negotiated and made compromises. Primarily its objectives are to create an enabling environment for NPOs, and set and maintain adequate standards of governance, accountability, and transparency. It aims to meet these objectives by creating a voluntary registration facility for NPOs. The Act encourages NPOs to be accountable to the public, rather than penalising those which are not, by allowing existing South African legal structures for NPOs (VAs, trusts, Section 21 companies and other non-profit associations) to register with the NPO Directorate of the Department of Welfare - if they want to and if the organisation meets certain minimum establishment and other ongoing reporting requirements, such as filing annual narrative and financial reports. Registration and the ongoing reporting requirements which go with it are intended to improve the

standards of governance and increase accountability and transparency, which will increase public and donor confidence in NPOs (and, in turn, encourage organisations to register).

NPOs have reported that the NPO Directorate is “not timeously responsive”, often loses documents, and delays are encountered in obtaining responses from designated officials. It was also reported that there are inconsistent responses between officials at the provincial level and the national level. Moreover, NPOs reported that there is limited contact with the NPO Directorate after receiving an NPO Certificate. Where an NPO registration application is rejected, no suggestions are made to remedy the declined applications. Additionally, provincial officials are not able to assist constructively. Lawyers also charge high fees for registration processes and the cost are not necessarily affordable for new or emerging CSOs. Furthermore, they are not fully informed on the processes for an appeal when their applications are rejected. In some locations, NPOs are confronted by registered cooperatives providing duplicate services, often for a fee. This duplication causes conflict and affects the credibility of all organisations concerned (NDA, 2013:43).

Whereas there is a progressive legislative framework in South Africa that enables the legitimacy, recognition and increased activism of and for CSOs, and even if there are some legislative policy provisions relating to NPOs that make compliance difficult, the concern is about the extent to which individuals, groups and activists in communities are aware of such supportive policies. At worst, the reality is that implementation and enforcement are not necessarily observed, and this overshadows the progressive legislative framework.

3.2.1. Civil Society Organisations’ funding and capacity building

In the post-democratic era, one of the main challenges for CSOs remains the insufficiency of funding by their partners or funders in South Africa and internationally (NDA, 2013:24). In a leading publication on Corporate Social Investment (CSI), *Trialogue* (2012) reported that private sector funding for CSOs amounted to R8 billion through CSI schemes. In 2009, the listed companies on the Johannesburg Stock Exchange (JSE) indicated that R1.9 billion was spent on social and development projects. In the NDA (2015:5) study on National and

Provincial Departments' transfers to NPOs, it was said that in 2012/13 the government allocated over R20 billion to NPOs and in 2013/14, the funding was over R15 billion (NDA, 2020:17). According to Kraak (2002: 21) the CSO sector is well-resourced, employing just over half a million people and generating income more than R10 billion per year. Moreover, the NDA (2013:26) indicated that despite perceived tough times, more than half the responding CSOs experienced an increase in their budget in the 2012/2013 financial year, 16% experienced a slight decline in funding due to foreign or local funding, and for some, working on government projects was costlier than anticipated.

In the 1970s and 1980s, at a time of conflictual apartheid politics, a plethora of initiatives and organisations arose in opposition to the state, and it was these CSOs that many donors funded (Hearn, 2000: 819). But at the time of the 1994 elections there was a significant shift of "democracy assistance" or aid towards the state, with the aim of strengthening government structures. For example, Denmark described its assistance programme to South Africa as "targeted towards facilitating the transition from an authoritarian minority rule to a democratic system of government" (Hearn, 2000:820). Instead, CSOs began to feel the financial pressure as "foreign donors redirected their funding away from CSOs to the state" (Habib, 2003:234). Even in those situations where donors such as the European Union were committed to funding both the government and civil society, most of the funds were to be administered by government-controlled agencies like the NDA (De Jager, 2006:76). Weideman (2015:8) argues that the "empirical data" that is available suggests that although there are "changes in funding priorities and methods of distribution", as well as "fluctuations in the overall amount available" to South African CSOs, the foreign donor "funding crisis" as a primary cause for the contraction of the CSO sector is a myth. Overall, foreign donor funding did not decrease in the period 1994 to 2014. A crude analysis of funding patterns for the period 1990 to 2014 of 14 international donors showed that funding to South African civil society increased from US $82.5 million in 1990 to US $156.7 in 1994, to US $601.2 million in 2008, and to over US 1 billion in 2013 (Weideman, 2015:9).

The data highlights the extent to which CSOs' dependence on foreign donor funding is exaggerated and illustrates that much of the funding is obtained from the

state, the private sector and self-generated income. South Africa has an eclectic spread of funding resources from the corporate world to state agencies, government departments, as well as individuals. The major CSOs funders in South Africa include the NDA, the National Lottery Distributing Trust Fund (NLDTF) and the Independent Development Trust (IDT). This is further supplemented by the European Union, foreign philanthropic organisations, embassies, and various international CSOs present in South Africa. The United Nations and its various agencies have also become active in South Africa since 1994. The NDA (2013:32) reported that given the different accounting periods as well as inconsistent reporting, it was not possible to estimate the total funds being generated for the sector and/or the different components of such funding. It is safe to say that certain areas of funding have diminished, such as human rights and governance, while others have increased, such as health and HIV/AIDS, and new sectors have emerged, such as environmental protection (NDA, 2013:32). South African CSOs have also relied far too heavily on historical resources for their funding. A feeling of entitlement, and the accompanying false sense of financial security it brings, has seen many CSOs fail in sustaining themselves in the long term (NDA, 2013:25; NDA, 2018: 34). The NDA (2013:13) further reported that funding challenges negatively impacted CSOs' sustainability and development across the nine provinces of South Africa. This partly arose from a dependence on external sources of funding while there was donor funding decline and limited South African government funding. Funding challenges were further exacerbated by the lack of cohesion in funding approaches and strategies within the civil society sector.

Various NDA reports indicated that the CSO sector complained about the lack of financial support, particularly from the government. As Sibanda (2009: 12) puts it, when looking at government funding the sector lacks access to financial support and to an extent, broad support, as well as public contributions. The sector is also seen as lacking contact with relevant and potential funding sources. CSOs also operate without sufficient office space, equipment, and supplies. In addition, some CSOs cannot retain staff because of low salaries and benefits resulting in the high turnover of skilled staff. Experience in fundraising seems to also be a concern for most CSOs. Furthermore, there are issues of delays and red tape involved in the distribution of funding to CSOs, especially by government departments (Youth

Development Network, 2005). The NDA and the National Lottery were established primarily to be a solution to the CSO sectors' funding; however, CSOs continues to voice their dissatisfaction at the operations and lack of support from these institutions. These institutions have received their fair share of criticisms from the CSO sector. The National Lottery has been chastised for not adequately distributing funds that have been allocated for CSOs. They face difficulties when applying for funds and complain that there is no transparency. These institutions allocate a sizeable percentage of their funds to administrative expenditure. Moreover, the NDA is accused of not distributing funds allocated for civil society because of corruption and the mismanagement of funds (Youth Development Network, 2005).

The changing political environment has influenced government funding to CSOs. Grants funding has evolved from simple non-formal agreements to more formalised service level agreement contracts with specific deliverables and timelines. Even though the government allocates a substantial percentage of funding to CSOs, this has the potential of creating dependency on the government as their single or major funding source, which in turn has a negative effect on organisations should funding be limited or not forthcoming from the government (NDA, 2016:12).

Furthermore, CSOs must operate in a business-like fashion due to contractual obligations linked to government funding and they have to look for opportunities beyond traditional non-profit activities in order to maintain government funding (Singh and Mofokeng, 2014:17). Financial sustainability remains a major concern for CSOs, current and potential funders, and the communities these CSOs serve. Sustainability refers to the capacity of NPOs to manage financial possibilities, to be able to compete with other NPOs, to build relationships and partnerships, to show value and accountability to funders and overall increase the participation of leadership in society (Harding, 2014:21). It is apparent that lack of funding for the CSOs remains one of the biggest challenges, and government has faced scathing criticism regarding the lack of support to CSOs. According to Agere (2014:8), the availability of funding is critical for the service delivery of CSOs, while an unavailability of funds plays a debilitating role in the effective running of these institutions. Since most or all CSOs operate on a non-profit basis and depend on

donations, it therefore makes their survival unpredictable especially if market fluctuations occur and recessions descend upon global economies (Kang'ethe and Manomano, 2014:4). Undoubtedly, the NGO fraternity has been seriously affected by the recent global economic recession. This is because most donors stopped donating when their financial houses suffered economic malaise (Davis, 2013). Gravely, the economic meltdown has not spared some South African CSOs, with some of them brought to their knees by the dearth of funding. The effects have been very grave, especially among CSOs specialising in the domain of HIV/AIDS treatment and prevention. Cuts in funding saw organisations like the Treatment Action Group (TAC) closing six of its provincial offices. This also resulted in some clinics offering ARV treatment to stop enrolling patients on the ARV treatment programme due to severe ARV shortages at the clinics (Hecker, 2009:12). Other organisations, such as IDASA in Cape Town, closed their offices (Kang'ethe and Manomano, 2014:4). Unpublished evidence further indicates that agencies such as FAMSA in East London forced their employees to work in shifts and seek other income-generating options and modalities to sustain their livelihoods because of the meagre funding they received in 2012 (Kang'ethe and Manomano, 2014:4). Worrying reports indicated that the South African government had promised to support NGOs because of the sterling role they do in supporting government service delivery, but on the ground, this was not the case. Equally, other donor bodies such as the National Lottery Fund were accused of failing to foster a good working relationship with NGOs (Barnard, 2012:19).

USAID (2016:8) and USAID (2018: 87) reported that CSOs' financial sustainability in South Africa was unchanged in comparison to previous years in that there were no notable retrenchments nor shutting down of CSOs. This contradicted practical real occurrences where there was no improvement in funding conditions' uncertainties about how best to adapt to financial constraints and the scarcity of resources. It also contradicted the CSOs' own views that funding was scarce. According to OECD the total value of aid to South Africa's CSOs reduced from $1.3 billion to $1.1 billion in 2013 and 2014 as foreign donors focused more on fewer well established and/or well-known CSOs operating nationally to the detriment of other CSOs, which were left to struggle and contest for limited national funds. Localised funding was dominated by corporate donors, which availed R8.6 billion

in CSI in 2016. The concern of donors about their own image propelled them to focus on more appealing projects in education and related capacity building initiatives and/or projects. Other role players in funding responsibility included government departments like Social Development, the National Lottery Distribution Trust Fund, and the NDA. Another issue to factor in was that insufficient funding for the increasing number of CSOs caused the competition for available funding to intensify.

De Jager (2006:70) acknowledges that all institutions, whether they be state, CSOs or political parties, are guided and controlled by individuals capable of mismanagement, corruption, and self-interested pursuits. David Loxton, a specialist in cyber-crime and fraud, having accumulated considerable experience as a lawyer focusing on white-collar crime and have worked with a number of CSOs in various sectors throughout Africa, warned that South Africa's vibrant CSO sector could be damaged by the prevalence of corruption in the organisations themselves. Loxton said that CSOs are often not transparent to the public or they are not held accountable. For example, the failure to institute internal controls, the lack of oversight and the absence of checks and balances in procedures and practices in CSOs bred corruption. Villanueva (2020:553) asserts that CSOs suffer from occupational fraud and thereby experience financial losses due to their limited financial management capacity where "essential tasks are undertaken by individuals with little financial expertise and no training in the design of appropriate controls against errors and fraud", coupled with an atmosphere that discourages monitoring.

Corruption and its ramifications manifesting in the "embezzlement of organizational funds", paying "ghost workers", and the "misuse of organizational infrastructure" such as vehicles for one's personal gain continue to undermine the productivity of organisations, CSOs included (Agere, 2014:32). It is surmised that the CSO fraternity in African countries are "echoing and mimicking the state of corruption" happening within the leadership circles of their countries (ibid.). Moreover, media reports have indicated that those entrusted with managing the funds of some CSOs have misused them for personal gain and in some instances corruptly accessed funding (*The Herald*, 2014: 78; Agere, 2014: 32). It is unfortunate that all these

unethical actions are at the expense of the targeted beneficiaries, who in most cases are needy and vulnerable. Perhaps the fact that most directors of CSOs could be connected to those in power is an indicator that they may not fear the wrath of the law. In the same vein, some CSOs are platforms for political expediency, instituted to make some individuals popular in readiness to vie for either a civic or parliamentary post (Kang'ethe and Manomano, 2014:4). Such personalities may be closely related to high-ranking government officials. The goal of such CSOs may not intrinsically be to address social development concerns. Such CSOs may suffer from the process of the politicisation of NGOs. Such NGOs may also not be following legal government channels, such as filing annual returns (Erasmus, 2012: 61). CSOs that have opened up to manipulation by politicians and serve the political interests of particular political parties have clouded their mission and authority and descended on the floor to service the government and not the people. In addition, the policy interests of international donor and private donors have negatively shaped the focus and agenda of various benefitting CSOs, and the government tends to fund certain CSOs, which enables them to serve the government's policy mandate and interest. The mushrooming of CSOs has made many of them the vehicle through which public funds were misappropriated, given how public officials colluded with CSOs to milk the state of its scarce resources. Corruption within the ranks and file of CSOs also threatened or compromised their access to funds or make funders sceptical about supporting them. Moreover, poor financial management practices and insufficient/a lack of financial skills among CSOs decapacitated them from accessing and/or utilising the resources at their disposal for maximum benefit.

3.2.2. Government-CSO partnerships in recognising CSOs' contributions

The position of a government on CSOs can either be non-interventionist, encouraging, offering partnerships, seeking co-option, or controlling. Desai and Potter (2008:533) suggest that a better government-CSO relationship and partnership in the policy environment could be promoted by a government in the following ways:

- sharing information about state programmes and policies,

- offering opportunities for operational collaboration,
- commissioning CSO activities that complement their programmes and strengthening CSOs,
- involving CSOs in policy debate and public consultation on new policies or major government projects, and
- helping finance CSOs through grant funding, loans, or contracts.

To understand the relationship between the CSOs and the state, Habib (2005:237) present two distinct ways in which CSOs are reconstituted. The first involves the proliferation of informal, survivalist community-based organisations, networks and associations, which enable poor and marginalised communities to survive against the daily ravages of neoliberalism. According to a Johns Hopkins survey on the shape and size of civil society in South Africa, these associations comprise 53% of the 98 920 CSOs and thereby constitute the largest category of institutional formations within the sector (Swilling and Russel, 2002). The second involves CSOs that have emerged within civil society in response to the effects of neoliberalism, and they are a category of organisations that have been described by some studies as social movements (Habib, 2005:237). This category comprises a diverse set of organisations, not all of whom meet the criteria of social movements. Some of them, like the TAC, are more nationally based associations, and, in this case, focuses on challenging the state's AIDS policy and enabling the provision of anti-retroviral drugs to AIDS sufferers. Others, like the Soweto Electricity Crisis Committee and the Concerned Citizens Group, are located at the local level, and organise against electricity cut-offs in Soweto and rates evictions and water terminations in Chatsworth and surrounding townships in Durban, respectively. Nevertheless, when compared to the above category of associations, both types of organisations are more formal community-based structures, which have a distinct leadership and membership, often supported by a middle-class activist base. Moreover, their mode of operations is fundamentally different. They are not survivalist agencies but are more political. They have been established with the explicit political aim of organising and mobilising the poor and marginalised, and contesting and/or engaging the state and other social actors around the implementation of neoliberal social policies. As a result, they implicitly launch a fundamental challenge to the hegemonic political and socio-economic discourse

that defines the prevailing status quo (Habib, 2005:236). These two vastly different blocs within civil society, which have emerged in response to globalisation's neoliberal manifestation in South Africa, have different relations with the state. The informal organisations and associations have no relationship with the state. They receive neither resources, nor do they want recognition, from the state. They are preoccupied by the task of simply surviving the effects of the state's policies. Indeed, it is doubtful whether most of these associations even recognise that the plight of the communities in which they are located is largely a result of the policy choices of political elites. The second bloc of more formal organisations whose activists covet the status of social movements have an explicit relationship with the state. This relationship, depending on the organisation and the issue area, hovers somewhere between "adversarialism" and engagement, and sometimes involves both (Desai, 2002:13). But even when engaging the state this is of a qualitatively different kind to that of formal NGOs. The latter have a relationship with the state that is largely defined by their sub-contractual role, whereas the former is on a relatively more even footing, engaging the state in an attempt to persuade it through lobbying, court action, and even outright resistance. The reconstitution of civil society in response to globalisation and neoliberalism, then, has led to the evolution of a plurality of relationships between civil society and the post-apartheid state (Habib, 2005:237).

The experiences and tactics previously employed by the Western Cape Anti-Eviction Campaign, SANCO, TAC, or the Homeless People's Alliance demonstrate that relationships with government structures can be both cooperative and oppositional. As the reliance on CSOs for the provision of social welfare services and the roll-out of medication (e.g., TAC) suggests, the government is not unwilling to use cooperative engagements to achieve its own mandate. Furthermore, the state-CSO discourse continues to take place in a liberal democratic framework (Weideman, 2015:17). The CSO sector-state relationship is equally diverse, ranging from collaborative to adversarial, and takes place within a liberal democratic framework. De Jager (2006:17) strongly argues that the strength of civil society and the state is not to be found in an adversarial relationship, but instead in partnerships and co-operative arrangements. Habib (2003:228) takes the middle ground in recognising the plurality of civil society's social and political agendas,

which in turn will be reflected in the relations between the state and society. By implication, it is only natural that some of these relationships will be characterised by co-operation, and others by conflict.

Civil society is an avenue for articulating the concerns and issues of a diverse population. In rhetoric, South African politicians and government officials acknowledge the plurality of civil society, yet there is an expectation of a "single homogenous set of relations between the state and civil society" (Habib, 2003:239). In an ANC (1998: 32) discussion paper entitled 'The State, Property Relations and Social Transformation' it is asserted that ideally a developmental state and civil society should co-exist in a broad partnership of nation-building, reconstruction, and development. While it is agreed that civil society needs not be in opposition to the state, what is paramount and should not be negotiable is that it maintains its autonomy vis-à-vis the state. With South Africa's promotion of partnerships between the state and civil society, in which the state sets the policy and determines the objectives, civil society is reduced to a mere implementer of state policy. The lines of separation thus become indistinct and blurred. The development of more formal and regulated relations between civil society and the state may subvert the character of civil society and compromise its role in enhancing democracy, especially if the operating space for adversarial relationships between the state and civil society is not recognised (De Jager, 2006:72).

Thabo Mbeki clearly found fault with the counter-hegemonic role of civil society. His reaction, to be found in the ANC discussion document entitled 'The State and Social Transformation', which he drafted in 1996 as Deputy President, is instructive: "The democratic movement must resist the liberal concept of less government, which, while being presented as a philosophical approach towards the state in general, is in fact, aimed specifically at the weakening of the democratic state. The purpose of this offensive is precisely to deny the people the possibility to use the collective strength and means concentrated in the democratic state to bring about the transformation of society" (ANC, 1996). The former President, Nelson Mandela, had earlier been disapproving of CSOs that sought to adopt the role of critical overseer of the ANC government and that served as channels for

grassroots grievances (Johnson, 2002:231). At the National Civil Society Conference in April 2001, Mandela is quoted as saying:

> We cannot approach the subject of civil society from the point of view that government represents an inherent negative force in society and that civil society is needed to curb government. Such an approach runs the risk of projecting civil society as adjunct to the organised political opposition. We cannot in the long term afford a situation where most of the population perceives civil society as something oppositional to their needs, wishes and interests because it is seen to instinctively oppose the government they voted into office.

At the same conference, Mandela asserted the following:

> The challenge to society is how various organs of civil society can co-operate to advance overall national goals of transformation and trust that these efforts at cooperative partnerships will bear fruit for our society. In that manner we can ensure that the energies of civil society are harnessed for progress and unity rather than for division and dissipation of efforts.

In President Jacob Zuma's address to the Non-Profit Organisations Summit on 16 August 2012 he emphasised that "the NPO sector remains an indispensable partner for government as we pursue the development agenda". He indicated that the power of partnerships can be seen in the government's management of the HIV and AIDS pandemic. Zuma added that initially there was an "us versus them" situation where the likes of the TAC, for example, had an adversarial relationship with the government.

As part of the Women's Month celebrations, the Minister of Women, Children and People with Disabilities, Lulu Xingwana, commended the Motsepe Foundation on the Gender Responsive Budget Initiative (GRBI). "What impresses me most about this initiative and other initiatives of this nature, is that they are driven by non-governmental organisations to help government achieve part of its mandate and objectives, but most importantly, to improve the quality of the lives of our women, both in urban and rural areas," she said. The GRBI, launched in February 2012, is an initiative of the Department of Women and People with Disabilities and the

Motsepe Foundation. It aims to strengthen the capacity of the government to review and analyse budgets to ensure that the needs of women are specifically and equally addressed.

In terms of the relations between civil society and the state, it appears that the state is assigned the role of knowledge producer, policy developer, decision-maker and writer of the agenda for social transformation, while civil society should merely support the government through the mobilisation and implementation of its directives. Thus, according to the government, civil society has no function except to pursue the goals set by the state. It should be noted, though, that in contrast to the call for a single, homogenous role for civil society, CSOs in South Africa are vibrant and diverse (De Jager, 2006:72).

Moreover, meaningful engagement between CSOs and the state is essential for there to be an understanding of each other's positions and aims. It is given that CSOs cannot be reduced to simply supporting the state agenda or policy but must also be able to agitate for policy change and direction in support of the service to the masses of the people. The discomfort of government leaders with the roles played by CSOs became the dominant feature of many senior government leaders and officials arising from how the heads of state expressed their views on CSOs.

3.2.3. The Constitutional Legislative Policy Framework

The prescripts of the Constitution (1996) make provision that the Constitution is the only basis for the rule of law and in Section 2 it states that the Constitution is the "Supreme law of the Republic". Therefore, no legislation, policy or practice should contradict the provisions of the Constitution. Furthermore, the Constitution makes provision for a set of rights that are inalienable, which include the right to freedom of association, to demonstrate, to enjoy equality before the law and equal protection and benefit protection against discrimination, to freedom of religion, and opinion, and enjoyment of the right to language and culture (RSA, 2007:59).

According to Jagwanth (2003:10), the transformation of society and calculated response to the history of inequality and oppression are among key the issues that focus on South Africa's historical injustices and seeks to honour those who struggled for freedom with active intention to heal the divisions of the past, as

purported or asserted in the preamble of the Constitution. It makes assertive provision for social rights and unpacks equality, states the responsibility on affirmative action as a need for “participating governance, multiculturalism and historical self-consciousness” (RSA, 2007:5).

The input made by the public and the involvement of civil society in engagements and negotiations processes largely influenced the content and context of the Constitution. The Constitution protects the ongoing involvement and participation of the public and civil society in governance in various platforms and in a differentiated way. The Constitution further provides for access to information and administrative justice, the basic values and principles of public administration in South Africa, and for the establishment of state institutions supporting constitutional democracy, which are independent and account to the Parliament (Jagwanth, 2003:10).

The legal provisions empowering and legitimising the role of CSOs in exposing or revealing information on corruption in government are available and applicable and create mechanisms for the empowerment of CSOs to act on the behalf of the interests of the public or affected groupings and/or individuals. According to Budlender (2017:7), “The essence of law is the regulation and control of the exercise of power; laws are rules and regulations that are binding to citizens and can be imposed by the justice system”. Krygier (2015:29) states that laws determine processes and procedures to outline when and how power and authority may be exercised, and when it may not, and the rationale for acts and omissions. It is also true that simultaneously with restraining power, law also legitimises power. It is worth reflecting, however, that restraint on power and the legitimacy of power are two sides of the same coin. If there is no restraint on the exercise of power, or if the exercise of power is untrammelled, then the powerless are likely to accept the legitimacy of that power. Moreover, it is stated that law and order are important in all societies and are essential for the development, production, and growth of a country (Krygier, 2019: 29). A society that obeys the law can plan for the future, provide a safe working environment, and act faithfully and honestly when conducting business. Order refers to stability in a modern society while laws provide limitations so that citizens can realise when they are committing an offence.

One of the main objectives of law is to protect citizens' basic rights, which give them the freedom to live (Krygier, 2019: 30).

One of the founding principles of democratic South Africa is the supremacy of the Constitution and the rule of law. The level of a country's democracy is determined by its adherence to the basic principles to which all people, regardless of their economic and political status, are subject (Burger, 2016). The principle of the rule of law is critically important for the success of any country. It provides a clear national system that is to be applied fairly to every group or person. Without this, the system will increasingly lose credibility and public trust, and it will result in high criminality and instability.

According to Moyo (2008:11), civil society is viewed as a partner in development and as such many rights are respected in enabling environments like South Africa. Since the end of white minority rule in 1994, South Africa has transformed its legal and constitutional rights framework, becoming party to most international and African human rights treaties and adopting the Constitution, which includes a wide-ranging Bill of Rights. In addition, there has been widespread reform of national legislation (Marais et al, 2021: 66). In its war to fight corruption, South Africa is seen to be "commitment-rich but implementation-poor" (Van Schalkwyk, 2007:23). However, through its international memberships, South Africa expresses solidarity with global partners in fighting corruption, and the country has a strong legal framework and several oversight agencies to combat corruption. Moreover, the government has made high-level commitments to combating corruption in the country, such as its statement on anti-corruption commitments at the Anti-Corruption Summit held in the United Kingdom in May 2016. South Africa is also a founding member of the Open Government Partnership (OGP), a global organisation that promotes more open and transparent governments and it is a member of the G20 group of countries (Van Schalkwyk, 2007:23). At the Anti-Corruption Summit held in London on 12 May 2016, South Africa released a public country statement on anti-corruption. South Africa's anti-corruption strategy, as spelt out in that statement, centres on recommendations contained in its National Development Plan and on the redrafting of a National Anti-Corruption Strategy, which was launched on 9 December 2016 as a discussion document for

consultation. It also lists key legislation promulgated to combat corruption in the country, pointing to the government's belief that a robust legislative framework is in place to root out corruption in the public sector. A White Paper on Reconstruction and Development, which represented the post-apartheid blueprint for policy and administrative transformation, explicitly noted in Section 3.12.4 that the government would act "decisively against corruption in the welfare system through a system of audit trails" (RSA, 1994). The Reconstruction and Development White Paper also mentioned in Section 3.15 that legislation was being prepared to introduce a public protector "to give public recourse to deal with corruption and maladministration". A Special Investigating Units and Special Tribunals Act (No. 74 of 1996) was passed in 1996. It mandated the president to establish the structures that would investigate and adjudicate on civil court cases involving serious malpractice or maladministration in the functioning of state institutions (Jackson et al., 2009:5). The Act further authorised the President to call for the establishment of these entities on the grounds of a range of alleged corruption and corruption-related activities.

Moreover, Jackson et al. (2009:6) state that "the high-level government interventions directed at corruption" began to accelerate in the period between 1997 and 1999; in the latter year Thabo Mbeki succeeded Nelson Mandela as the President of South Africa. A useful account of the activities that occurred during this period is given in the country's Assessment Report (2003), published by the Department of Public Service and Administration (DPSA) and the United Nations Office on Drugs and Crime (UNODC). In a period of two years, South Africa had allocated ministerial responsibility to investigate a government-wide strategy to address corruption and hosted two high-profile domestic conferences/summits on the issue, as well as an international conference. The 1999 National Anti-Corruption summit represented a comprehensive yardstick for evaluating the implementation of future anti-corruption measures. The momentum that had been created during 1997 and 1999 continued in the ensuing three years. This saw the national DPSA drafting a public, service-specific, anti-corruption strategy; the launch of a National Anti-Corruption Forum (NACF) in June 2001; and the adoption of the Public Service Anti-Corruption Strategy (PSACS) in January 2002 (DPSA, 2003:21). The PSACS contains nine proposals, the majority of which dovetail with

those taken at the Summit three years earlier. The inaugural National Anti-Corruption Summit was followed by a second summit in 2005, which concluded with a set of resolutions including reviewing and revising existing legislation directed at corruption. This resulted in the passing of the 2004 Prevention and Combating of Corrupt Activities Act, which replaced the 1992 Corruption Act, which capped off earlier statutory efforts at creating a more conducive environment for reporting corruption. This took the form of a Protected Disclosures Act (PDA) (No. 26 of 2000) intended to facilitate the reporting of corrupt activities.

The main anti-corruption statute in South Africa is the Prevention and Combating of Corrupt Activities Act (PCCA). The preamble to the Act recognises that corrupt activities can negatively affect constitutionally protected rights, sustainable development, and the rule of law (RSA, 2004). It also recognises that corrupt activities have a negative effect on democratic institutions, national economies, and ethical values. It further aims to criminalise general corruption and various corrupt activities, and it places a duty on certain persons holding positions of authority to report corrupt activities. The PCCA is very comprehensive. It creates the general offence of corruption and offences in respect of corrupt activities relating to public officers, members of the legislative authority, judicial officers, and members of the prosecuting authority. Section 10 also creates offences of receiving or offering of unauthorised gratification by or to a party to an employment relationship. Sections 11 to 15 provide for offences in respect of corrupt activities relating to witnesses and evidential material during certain proceedings, offences in respect of corrupt activities relating to contracts, procuring and withdrawal of tenders, auctions, and offences in respect of corrupt activities relating to sporting events (RSA, 2004). The PCCA further makes provision for the establishment and endorsement of a register to place certain restrictions on persons and enterprises that have been convicted of corrupt activities relating to tenders and contracts. In that regard, Sections 28(1)(a) and (b) provide that where a person or enterprise has been found guilty and sentenced to an offence of corrupt activities relating to contracts or tenders, that person or enterprise's name, conviction, sentence, and the order made by the court will be endorsed in the register. Any other business or enterprise belonging to a person who has been convicted of corrupt activities, which was involved in the

commission of a crime, may also be entered into the register. Under Section 32, this register becomes a public record.

Another relevant anti-corruption statute in South Africa is the Prevention of Organized Crime Act (RSA, 1998). It provides for measures to combat organised crime, money laundering and criminal gang activities. It also prohibits certain activities relating to racketeering and provides for the prohibition of money laundering. An important aspect of the Act is that it creates an obligation to report certain information. In that regard, Sections 2 to 6 provide for offences related to racketeering activities, money laundering, assisting a person to benefit from the proceeds of unlawful activities, and acquiring or using the proceeds of unlawful activities. Also relevant is the Protected Disclosures Act (PDA) which makes provision for the procedure in terms of which employees and workers, in the private and public sectors, may disclose information relating to unlawful or irregular conduct by their employers or employees. It also provides protection for employees or workers who make such disclosures. The objectives of the PDA, in terms of Section 2, are to protect employees/workers from occupational detriment on account of making a protected disclosure, to provide remedies if the employee/worker has suffered an occupational detriment, and to provide procedures in terms of which the disclosure is made (RSA, 2000).

The Public Finance Management Act (PFMA) is another relevant statute. It was adopted to modernise financial management by ensuring transparency, accountability and the sound management of the revenue, expenditure, assets and liabilities of the provincial and national governments. It sets out procedures for the efficient and effective management of all revenue, expenditure, assets and liabilities. It also provides for certain responsibilities of persons entrusted with financial management in the government (RSA, 1999). The Municipal Finance Management Act (MFMA) further provides for the sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government. The object of the Act is, inter alia, to ensure transparency, accountability, and appropriate responsibility in the financial affairs of municipalities and municipal entities. Accordingly, it provides the legal framework for the implementation of an integrated supply chain management process in local

government (RSA, 2003). Other relevant statutes include the Companies Act whose regulations create a duty to combat corruption and addresses certain issues relating to whistle-blowers (RSA, 2008), and the Public Services Act which provides for the organisation and administration of the public service (RSA, 1994). It also regulates conditions of employment and discipline within the public service. It should be noted that Section 41(1) (b) (v) of the Act requires the Minister to make regulations on a Code of Conduct in terms of which public servants must act in the best interests of the public, act honestly in dealing with public money, and report fraud and corruption. The Code also prohibits employees from undertaking outside remunerative work without prior approval. A contravention of the Code amounts to misconduct. Another relevant statute is the Executive Members' Ethics Act (EMEA) (RSA, 1998), which provides for the publishing of a Code of Ethics (after consultation with Parliament and by proclamation in the Government Gazette) governing the conduct of members of the Cabinet, Deputy Ministers, and members of the Provincial Executive Councils.

In analysing South African anti-corruption legislation, mention should be made of the Promotion of Access to Information Act (PAIA) (RSA, 2000), which gives effect to the constitutional right of access to any information held by the state or by any other person. The Act is intended to foster a culture of transparency and accountability in public and private bodies. Similarly, the Promotion of Administrative Justice Act (PAJA) (RSA, 2000) aims to give effect to the constitutional right to procedurally fair, lawful, and reasonable administrative action. Finally, mention also should be made of subsidiary legislation, such as the PFMA Regulations, which provide for a practical framework within which supply chain management practices are to take place; the MFMA: Municipal Supply Chain Management Regulations, which regulate the procedure for competitive bidding procurement, the PFMA Regulations; and the Preferential Procurement Policy Framework Act (PPPFA) Regulations, which provide for an operational framework for the preference point system envisaged in the PPPFA.

Masiloane and Dintwe (2014:180) state that despite the existence of policy frameworks pertinent to fraud and corruption in South Africa's public sector, the statistics and reports of corrupt activities in government remain epidemic. The

enhancement of pieces of legislation, such as the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), and the Public Finance Management Act, 1999 (Act 1 of 1999), augured a positive turning point in corruption after the advent of democracy. However, amid those legislative ramifications, little positive results have been recorded 23 years into the democratic dispensation. Masiloane and Dintwe (2014:180) further argue that due to legislative deficiency and the inadequacy of investigation agencies such as the Hawks, the Public Protector and other oversight bodies, corruption continues to emasculate public accountability leading to the continuous subversion of public interests for personal gain. One could safely arrive at the decision that the government has made progress in legislating anti-corruption laws and put various complementing law enforcement structures in place, demonstrating the political willingness and commitment of the political leaders at a particular time over different periods of electoral terms. Equally, the lack of commitment coming with the changing of leaders caused laxity and a laissez-faire attitude in government establishments and represented a rise in government corruption. Many of the registered criminal cases were left unresolved and where law enforcements agencies have succeeded in taking matters to the court, some cases could not pass the test for successful conviction, whilst many other cases could not be prosecuted. With the passing of time the act of whistleblowing was undermined by occupational prejudices, dismissals from work, threats to the lives of whistle-blowers, and even the deaths of whistle-blowers. The collapse of ethical and moral leadership in the public sector and irregular and unethical decision-making in public institutions threaten the excellent work on and around anti-corruption; this has also enabled and aided massive corruption pushing many SOEs and municipalities to the brink of collapse (Kekae, 2017:83).

3.2.4. CSOs and participation mechanisms: how they participate

The history of mass mobilisation, which facilitated participation of the people in large numbers in the light against apartheid, helped the apartheid government to appreciate the importance of participating governance to the extent that it found expression in the new democratic dispensation. The demand for people's power remain expressed through the clenching of a fist in the air with the slogan 'Amandla' or 'power', which is 'people's power', which is a motion about popular participation

in governance. This was a result of exclusion of the majority of South Africans from the decision-making process (Friedman, 2006:13). Buccus (2011:8) points out that it has always been the concern of the people, especially for the black majority, that the white minority were making unilateral decisions without their participation; thus, it caused increased resistance amongst blacks who had to seek alternative means to facilitate their own participation. The increasing resistance prompted the negotiated settlement. The workers organised themselves and the Congress of South Africa Trade Unions also demanded a joint decision-making process, which facilitated participation in processes that included business and related resistance groups and enabled political parties to partake in discussions of social and economic policy (Friedman, 2006:13). However, Eliasson (2016:65) argues that the balance of power between the resistance groups and the white authorities increasingly prompted negotiation between civic organisations representing disenfranchised black city-dwellers and the white authorities, and so the participatory local forum became a key instrument of the fight for majority rule.

During the negotiation period of the early 1990s, a core concern of the liberation movement was to prevent the minority government from making unilateral decisions, which would bind the new democracy (Eliasson, 2016:66). By far the most successful demand for joint decision-making was agreeing to the demand by the Congress of South African Trade Unions for a National Economic Forum, which would allow for negotiated decisions on economic policy. This became part of a broader trend in which around a dozen national negotiating forums, each dealing with a social policy sector and bringing together resistance groups, business and, in some cases, political parties, discussed social and economic policy (Friedman, 2006:16). Friedman (2006:16) further states that the resistance grew but what was obvious was that the minority rule could not be defeated militarily, resulting in consideration of the negotiations for a settlement which ushered in the new democracy. Whereas a settlement was achieved with majority rule, the white minority continued to control the capital and continued to have human capital critical to grow the economy within their control. As a result, policy needed to be negotiated with a range of social interests in that neither the white minority nor the new government could function and succeed alone and none of them could impose solutions unilaterally. Therefore, a need to incorporate both grassroots citizens and

affluent interests in decision-making remained important. This history ensured that formal mechanisms of participation became an important feature of post-apartheid governance. According to Buccus (2011:8), besides allowing citizen participation through elected representatives, South Africa has several mechanisms that encourage further dialogue and involvement. Examples of such mechanisms are public hearings, ward committees, izimbiso, and the Presidential Hotline. Public hearings are platforms where members of the public and civil society are meant to contribute verbal comments to the legislature in relation to specific issues or legislation. Ward committees are facilitated by the Municipal Structures Act of 1998 and are meant to enable local communities to contribute to important municipal decisions.

According to USAID (2016-2018), CSOs' ability to influence policy posture continued into the new democratic government and in 2016 advocacy by CSOs intensified. Many CSOs collaborated with the government and finalised systems of communication enabled CSOs' participation and involvement. The inputs by various CSOs found expression, like the input of the Legal Resources Centre to the Portfolio Committee on Public Works about the process for the Expropriation Bill before 2015, which was well received with their inputs incorporated into the Bill. Moreover, CSOs were able to participate in public hearings and policy consultations when Parliament established an independent high-level panel to investigate the impact of legislation on poverty, unemployment, inequality, reform and nation building in 2016. Many CSOs enjoyed full and effective participation nationwide in the public hearings held by the panel and made inputs in relation to the mandate of the panel. Amongst them was The Gender and Equality Programme of Lawyers for Human Rights, which made oral submissions on and about systems for monitoring implementation of the Sexual Offences Act and Domestic Violence Act (USAID, 2016:225).

In instances where the government does not seem to take cognisance of the views of CSOs, litigation has been explored as an option for engagements and enforcing consideration of the inputs of CSOs. The SABC was dragged to court by the Helen Suzman Foundation over an attempt to implement a censorship policy preventing the broadcasting of pre-election violent protests, and the Foundation won.

Moreover, Section 27 and TAC championed access to HIV treatment and took to court the matter of the Bophelo 94, when 94 community health workers were arrested for attending an overnight vigil protesting their dismissal and the Free State High Court ruled in their favour. Both these cases were seen as a victory for free speech and the right to protest (USAID, 2018:85). At the time that health systems in the Free State and Eastern Cape Provinces were collapsing and cervical cancer and drug-resistant tuberculosis were serious challenges, TAC led high-profile public advocacy campaigns in 2016 and helped to raise awareness on such challenges and lobbied for the reform of patient laws to improve access to affordable medicines. Another example of CSOs' effective campaigns was the #FeesMustFall movement led by students as their own advocacy initiative, which enabled an increase in universities' subsidies and allocations to the National Student Financial Aid Scheme. In addition, the joint announcement by a number of CSOs in April 2016 on the demand for the removal of the then President of South Africa, Jacob Zuma, led to the formation of Save South Africa, a coalition of CSOs united around concerns about the President's leadership (USAID, 2016:214). This was characterised as "Colour Revolution" in some political circles – a means through which legitimately elected government is forcefully removed from office without the use of the military by people in the cheapest possible way – with no loss of lives.

3.3. CORRUPTION IN A DEMOCRATIC GOVERNMENT

In the 1990s, when the global political context changed after the post-war order, much of the political focus that had been put on international power and security issues was now redirected towards the internal affairs of states. At the time it became clear that no nation is immune to the destructive impact of corruption and that it is a major burden on societies. Referring to a definition of corruption, Eliasson (2016:3) states, "Despite centuries of efforts there is no single definition of corruption that is accepted by all researchers or practitioners. However, there are some pervading ideas here that could be conceptualised. Rose-Ackerman states that corruption should be understood as the misuse of public power for private or political gain". The definition of corruption as the "misuse of public power for private

or political gain" builds on the "idea of a power relationship between a principal and an agent" (Eliasson, 2016:3). In explaining the relationship, Eliasson (2016:3) states that the people of a country play the role of a principal, while those elected to government or parliament have the responsibility to make decisions as agents representing the citizens. Therefore, the prevalence of corruption in government implies the inability and failure of the 'agent' to fulfil the mandate and directives of the 'principals'.

In South Africa, the Prevention and Combating of Corrupt Activities Act of 2004 (PRECCA) states that corruption prevails in instances where any individual directly or indirectly receives or awards "any form of gratification" with an intention to benefit themselves or another individual. The rationale behind soliciting any form of hand-outs or gratification from the "corrupter is mainly to act on a personal capacity or influence others with the necessary power to act in a manner that is illegal, dishonest, unauthorised, incomplete, or biased;" or "misuse or sell information or material acquired in the course of carrying out powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;" or "act in a manner which amounts to the abuse of a position of authority; a breach of trust; or the violation of a legal duty or a set of rules, designed to achieve an unjustified result; or that amounts to any other unauthorised or improper inducement to do or not to do anything" (RSA, 2016:3).

Corruption manifests where private wealth and public power overlap (Desai and Potter, 2008:495). It represents the illicit use of willingness-to-pay as a decision-making criterion. Frequently, bribes induce officials to take actions that are against the interest of the principals, who may be bureaucratic supervisors, politically appointed ministers, or multiple principals such as the public. Pathologies in the agency/principal relation are at the heart of the corrupt transaction. The manifestation of corruption in government can take place in multiple ways and can be identified as low-level opportunistic, pay-offs, and systemic corruption, and it implicates an entire bureaucratic hierarchy, electoral system, or government structure, from top to bottom. Low level corruption occurs within a framework where basic laws and regulations are in place, and officials and private individuals seize on opportunities to benefit personally (Rose-Ackerman, 1999:21). Mbaku (2007:12)

identifies political and bureaucratic corruption as two interrelated forms of corruption prevalent in Africa and other developing nations. “Bureaucratic corruption is described as the illegal access of government funds by officials and to be directed to individuals for private benefit or enrichment, while on the other hand, political corruption is understood as the intentional disregard of public laws, policies and regulations with a clear mandate of benefiting a certain political party (ibid.). According to De Wet (2015:35), in various African states, state capturers usually use the power they have in these states to create “benefits and privileges” for their own good and for their supporters.

Low levels of income and growth are both a cause and consequence of corruption. Furthermore, trade openness and other measures of competitiveness appear to reduce corruption. Lambsdorff (2003:54), for example, finds that weak law and order and insecure property rights encourage corruption, which in turn discourages foreign capital inflows. Inequality has a negative effect on growth and that connection may be the result of its impact on corruption. An unequal system may be maintained by corrupt links between wealthy elites and the state (You and Khagram, 2005:11). Social scientists have observed the connection between corruption and the state in South Africa and have indicated that the greater influence of corruption is the “inadequate separation of powers” between the ruling party and the government, varying conceptions of politics and of the state, “and is compounded by conflicts of interest, information asymmetries and lack of or inappropriate regulation in the private health sector” (Fonn et al., 2015:340).

There has been a notable change in corruption in South Africa, as indicated by the Corruption Perceptions Index. South Africa was ranked as number 72 of the 177 least corrupt countries in 2013, and dropped to 61 in 2015; however, studies still indicated that South Africa’s corruption has worsened in the public sector (Mathekga, 2017:223). Fonn et al. (2015:340) state that the decrease is a result of democratisation where various organs of state, organisations, and society at large have participated effectively in the war against crime and corruption in government. According to these authors (2017:223), “Provincial government administrations” were nests and harbours of corruption, which allegedly was inherited from the “apartheid government and Bantustan structures”. The former Public Protector,

Adv. Thuli Madonsela, once suggested that the practice of corruption in the country may be deeply rooted in various elements, which may include “a will to counter the historical injustices of oppression that resulted in many current African leaders having very little in the past; and/or the influence of various actors seeking to exploit bureaucratic and political weaknesses for their own gain” (Masterson and Meirotti, 2017:186).

The prevalence of corruption in the public and private sector cannot be disputed and is undeniable, and it has spread into almost all state entities and sectors of the economy (Van Vuuren, 2014:28). The failure of South Africa as a democratic state is one of the anticipated long-term effects of corruption in government, as corruption has the tendency to compromise the government’s most important and effective social policies aimed at reducing poverty and ending unemployment and societal inequalities. According to Van Vuuren (2014:28) and Mathekga (2017:223), elite political figures in South Africa follow the trend of enriching themselves, which contradicts South Africa’s constitutional vision of a transparent and accountable society. Corruption has become part of politics in South Africa in two distinct ways. Firstly, corruption has an influence on politics in the country in that it is resorted to attain political influence, such as in instances where political processes are infiltrated through patronage. Secondly, corruption has an impact on the effectiveness and legitimacy of state institutions, including those of democracy. In the case of South Africa, where institutions of democracy are still in their formative stages, the intense proliferation of corruption competes with the legitimate institutions of democracy as channels for distributing resources. The experience in South Africa shows a disturbing trend in which political elites accused of corruption and impropriety attack the state institutions tasked with investigating the acts. This has the potential to undermine the legitimacy of institutions of democracy and accountability, which have also been used to fight political battles under the pretext of fighting against corruption. This weakens genuine investigations into corruption (Mathekga, 2017:224).

According to Mathekga (2017:12), South Africa experienced a significant rise in corruption with Transparency International’s Corruption Perception Index ranking South Africa 67 out of 175 countries on corruption, stating that South Africa lost

R700 billion to corruption in 20 years of democracy. In 2013, almost half of the people of South Africa who came to contact with the government paid bribes (SAPA, 2013). Moreover, there were serious concerns on and around the “negative effects of inefficient public sector supply chain management”, particularly in the procurement phase of the chain with notable “perennial violations of supply chain guidelines becoming a norm in the public service” (Public Sector Supply Chain Management Review Report, 2015). The Review Report also exposed the “price distortions due to the established practice of overcharging for goods and services” in the public service. All this happened despite South Africa having signed and/or ratified various conventions on the fight against corruption, including the United Nations Convention against Corruption (UNCAC); the African Union Convention on Preventing and Combating Corruption (AUCPCC); and the Southern African Development Communities’ (SADC) Protocol Against Corruption (SPAC). South Africa also has multiple agencies focusing on combating corruption both in the public and private sector. The said agencies are relatively stable, capable and resourced to some significant degree but are at times affected by political interference, especially those agencies whose leaderships are appointed by the Executive Authority unlike those that are appointed through parliamentary processes. Nevertheless, they at times fail in their investigations and where investigations are successful, prosecution or convictions are not successful. The failures of prosecutions necessitated exploring the avenue of private prosecution, which is a procedure in terms of the Criminal Procedure Act where private individuals can or are able to “prosecute an accused person in circumstances where the National Prosecuting Authority declines to do so”. However, this is costly as it can only be done at the cost of the person pursuing private prosecution, which requires acquiring legal services that might include senior counsel/s.

It has becomes necessary that the role, influence, and participation of civil society should be strengthened, enhanced, consolidated, defended and advanced for the good of its purpose and for the benefit of the many who could draw benefits, mostly the downtrodden, the poor, and those who live on the fringes of the mainstream economy. The empowerment and strengthening become the bricks and mortar and/or the means to build the cornerstones necessary for democracy, accountability and participation so as to hold policy makers accountable, mobilise

communities, and enact democracy. Furthermore, the World Bank (1991) states that civil societies are more effective than public institutions in reaching out to the rural poor. Thus, empowerment has to do with sharing control, with entitlements, with the ability to participate, and with the ability to influence decisions about the allocation of resources (Holcombe, 1995). In the mainstream national development literature, consensus is that CSOs must be empowered and integrated in society. According to Bennett (2002 as cited in Asaduzzaman et al., 2020), empowerment is the development of the resources and competencies that will ensure that various individuals and groups can participate in organisations, influence them, and hold them responsible. It is also defined as a process aimed at changing the nature and direction of systematic forces (Batliwala, 1993: 91). It is understood that CSOs are not only able to reach out to the poor effectively but are also able to deliver services and implement programmes more efficiently. CSOs can mobilise the poor and ensure their participation in programme formulation and implementation better than public institutions (Kabeer et al., 2012: 11; Asaduzzaman, 2008: 18; Jinia, 2016: 27).

Asaduzzaman et al. (2020: 56) state that empowerment is positive and that it can be defined as the efforts of communities and individuals struggling for development, liberation, rights, economic growth, resources, and change by which individuals or groups with little or no power gain the ability and resources to make choices that affect their lives. Asaduzzaman et al. (2020: 56) further cites Sen (1981), who uses the term ‘entitlement’ interchangeably with ‘empowerment’ in his renowned book *Poverty and Famines,* suggesting that genuine rights and an equitable share of society’s resources are necessary for empowerment. Empowerment is context and population specific, and it takes on different forms for different people in different contexts. It is debated from different perspectives and as a concept it could have common features including social, political, cultural, economic and psychological in the academic and developmental communities. This implies that the universal measure of empowerment could be an impossible matter. In dealing with this matter emphasise might be on three key dominant dimensions of defining empowerment of civil society; thus, “the familial dimension, socio-economic dimension, and psychological dimension” (Malhotra et al., 2002 cited in Asaduzzaman, 2020:3). According to Malhotra et al. (2002), “familial dimension”

outlines factors of empowerment such as “self-determination, autonomy and power, self-esteem, bargaining power, control over resources, and status”; and the “socio-economic dimension” entails “ownership of productive and non-productive resources and access to socio-economic goods”; and lastly, the “psychological dimension” alludes to “awareness, fundamental rights, and capabilities”.

In 2021, 87% of the world’s population lived in countries rated as ‘closed’, ‘repressed’, or ‘obstructed’, and there was a considerable decline in the protection of global political and civic rights. Notable has been the challenges on and around respecting and ensuring fundamental freedoms, such as the freedom of association and the freedom of assembly, with trends including crackdowns on peaceful protests. Recommendations were made to create ambitious civic spaces to broker and strengthen relationships with a broad coalition of civic society partners, engaging the legislative sector, and strengthening and supporting more systemic participation of civic society, with diversity and inclusivity in responding to the needs of beneficiaries. Moreover, the power of the voices of CSOs should find expression in political participation, mobilisation, and activation to increase the leverage of CSOs (Government of the Netherlands, n.d.).

3.3.1. The impact of corruption on South Africa as a developmental state

There is an absence of verifiable data that “accurately quantifies” the effects of corruption, “but the conclusions relevant to South Africa can be drawn based on literature” (RSA, 2016:17). There is a glut of literature on how corruption has impacted negatively on the transformation of developing economies and social justice. Elevated levels of corruption are associated with lower levels of investment and growth, and corruption discourages both capital inflows and foreign direct investment (Kaufmann, 2003:36). Corruption lowers productivity, reduces the effectiveness of industrial policies, and encourages business to operate in the unofficial sector, in violation of tax and regulatory laws. Moreover, highly corrupt countries tend to under-invest in human capital by spending less on education (Mauro, 1997); to overinvest in public infrastructure relative to private investment (Tanzi and Davoodi, 2002:33); and to have lower levels of environmental quality (Esty and Potter, 2002:5). In addition, elevated levels of corruption can produce a

more unequal distribution of income and can undermine programmes designed to help the poor. Corrupt governments further lack political legitimacy (Desai and Potter, 2008:495).

Surveys conducted in four Latin American countries showed that those exposed to corruption had both lower levels of belief in the political system and lower interpersonal trust (Seligman, 2002:29). Surveys in countries making a transition from socialism provided complementary findings. In circumstances of low government legitimacy, citizens try to avoid paying taxes, and firms go underground to hide from the burden of bureaucracy. Elevated levels of perceived corruption are associated with elevated levels of tax evasion and lower obligation to pay taxes (Desai and Potter, 2008: 324). Consequently, corrupt governments tend to be smaller than more honest governments.

Furthermore, corruption is seen as a symptom that state-society relations are dysfunctional. Pervasive corruption undermines the legitimacy of the state and leads to wasteful public policies. Good policies are also unlikely to be chosen or to be implemented effectively without honest institutions (Desai and Potter, 2008:495). The manifestation of corrupt activities in a government further can compromise the basic rights of citizens, which are enshrined in a country's constitution. Corrupt practices misappropriate the budget allocated for social services; this undermines the delivery of a wide array of services such as "health, education and welfare services, which are essential for the realization of economic, social and cultural rights" (United Nations, 2007:57). Poor and marginalised citizens are more likely to be affected by corruption as these policies are pioneered to benefit them the most and they rely on social services for survival. In nature, corruption is discriminatory, and it prevents the poor from accessing public services and favours any person who offers bribes, and the consequence could be weakened democratic institutions. Moreover, the needs and interests of the public are disregarded by corrupt officials when making decisions; this may result in a lack of support and distrust. In such circumstances, the society become reluctant to participate in exercising their democratic rights; they are also discouraged "from demanding that these rights be respected" (United Nations, 2007:57).

Corruption can erode the legitimacy of the state, which can undermine the democratic process. It further weakens democratic institutions, inhibits the rule of law, undermines public trust, and negatively affects economic performance. As it interlinked with the abuse of power it fosters inequalities and injustices; it can also lead to discrimination between different groups in society. Therefore, it is a severe obstacle to political stability and to social and economic advancements (Rek, 2015:13). Mathekga (2017:222) states that South Africa has credible institutions of accountability that could prevent corruption, but they are subverted in the interest of political expediency. Moreover, there is an emerging trend among government departments to ignore the findings of the Public Protector. This will have a long-term impact on the credibility of the entire institution of democracy. There is a viable anti-corruption institutional framework in South Africa; what is lacking is the commitment to respect those institutions and allow them to conduct their functions, as provided for in the Constitution.

The 2014/2015 Afro Barometer survey indicates that citizens' approval of democratically elected leaders in South Africa is on the decline due to increasing incidents of corruption – a clear indication of the impact that corruption can have on democracy. If corruption is not uprooted, democracy will be deemed a poor means to achieve societal wellbeing (Mathekga, 2017:222). Deterioration in the quality of public infrastructure (such as transport) and public services (such as education and health) caused by corruption more profoundly impacts on those who cannot afford private sector provision of this infrastructure and services. The poor also have fewer resources and less power to demand remedial action where corruption directly affects their access to public goods (RSA, 2016:18). Moreover, when corruption is involved in large capital projects of the kind undertaken by several SOEs and the Departments of Public Works, substantial state funds are lost.

3.3.2. Government efforts to fight corruption

Corruption in South Africa's public service has been prevalent during the apartheid and post-apartheid era. Since 1994, the South Africa government strived to achieve good governance and to combat corruption, but there has been a "widespread

perception that corruption has in fact increased during the period of political and economic transition" (CFICP, 2001:4). The Centre for International Crime Prevention however acknowledges that the South African government has prioritised the war against corruption in the private and public sector and that various anti-corruption initiatives have been initiated since 1994. These initiatives mostly concentrated on "promoting accountability, transparency, and the rule of law; the practice of good governance; a free press to forcefully report to the public on corrupt practices (Eliasson, 2016:4); and the establishment of government watchdog agencies to "identify corrupt practices and bring them to the public attention" (CFICP, 2001:4). The government has shown its commitment by ensuring that the country's plan to combat corruption is well aligned to international practices as directed by various protocols and conventions, which include the United Nations Convention Against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption, and the Southern African Development Community (SADC) Protocol against Corruption (Tamukamoyo, 2013:12). This is a clear indication that the South African government has enacted and directed its laws and policies towards preventing corruption and that it will establish and resource agencies that are at least partly, if not completely, dedicated to tackling corruption.

According to McLennan (2017:88), a plethora of constitutional legislation and policy directives to fight corruption have been enacted and various progressive strategies and institutions were developed as infrastructure critical to fight and defeat corruption. International audit standards and protocols against corruption have been adopted and various international conventions on preventing and combating corruption have been ratified (RSA, 2007:283). Amongst them are the Protected Disclosures Act of 2000, the Financial Intelligence Centre Act of 2001, the Promotion of Administrative Justice Act of 2000, and the Prevention and Combating of Corrupt Activities of 2004. Some were amended to improve their relevancy to changing conditions and to respond to lapses in the systems that enabled corruption to happen (RSA, 2007:284).

The South African government's response to corruption challenges in the public sector also included the development of a variety of anti-corruption measures,

which metamorphosised into the adoption of the comprehensive Public Service Anti-Corruption Strategy and the formation of partnerships between the government, civil society and the private sector leading to the hosting of two National Anti-Corruption Summits in 1999 and 2005, and the launch of a Tripartite National Anti-Corruption Forum in 2001. The National Anti-Corruption Forum raised R3 million in 2007 to launch an educational and awareness campaign focusing on the business sector and the bribery of foreign officials (Masterson and Meirotti, 2007:187). The National Anti-Corruption Forum was just another effort to combat corruption as 11 more organisations focus on anti-corruption work as part of their mandate. South Africa has established the necessary institutional capacity at national and provincial levels to add positive impetus to the efforts and work of the police to fight corruption. They include the National Prosecuting Authority (NPA), the Special Investigation Unit (SIU), the Public Service Commission (PSC), the Financial Intelligence Centre (FIC), and the Auditor-General (AG). This was further complemented by the establishment of specialised commercial courts to help prosecute corrupt offenders. The Asset Register was also created for accounting officers and senior management to disclose their financial assets and interests (RSA, 2007:284).

In South Africa, there is no supreme or single seamless anti-corruption independent body or institution, and the coordination of multiple structures is required, unlike in other countries. In many provinces there have been and continue to be corruption scandals and allegations, but in local municipalities there is weak reporting of and action against corruption, whereas at national level, corruption receives widespread media coverage. This makes national level anti-corruption bodies more effective in comparison to those at provincial and local levels (RSA, 2016:32).

The former head of state, President Thabo Mbeki, in his first state of the nation address, reiterated the commitment of the South African government to honest, transparent and accountable government and the government's determination to act against anybody who transgresses these norms. In his speech he emphasised the importance of enacting the Open Democracy Bill, which would provide for the protection of whistle-blowers and the coming into force of the Public Finance Management Act to ensure proper control and accountability regarding public

finances (CFICP, 2001:4). Other significant aspects of the architecture are policy and legislative mechanisms. An example of policy is the Public Service Integrity Management Framework's policy on the disclosure of financial interests. This states that an employee in the public service, who might gain from a contract between his/her department and a person he/she knows, is obligated to disclose the details of the potential gain and then refrain from participating in matters involving that contract (DPSA, 2015:10). In terms of legislation, the Prevention and Combating of Corrupt Activities Act is a good example because it encourages exposing corruption and makes it an offence to not report corrupt activities. Also, vital in this instance is the Protected Disclosures Act, as it protects whistle-blowers from being retaliated against in the workplace and the Witness Protection Act, which makes provisions to keep witnesses of corruption safe by means of a protective custody system (McLennan, 2017:91). An additional element of the anti-corruption system is a National Anti-Corruption Hotline, which conveniently makes it possible for members of the public to anonymously report corrupt public sector activities through a toll-free, 24-hour hotline (Masterson and Meirotti, 2017:186). An additional element of the anti-corruption system is a National Anti-Corruption Hotline, which conveniently makes it possible for members of the public to anonymously report corrupt public sector activities through a toll-free, 24-hour hotline (Masterson and Meirotti, 2017:186).

Measures have also been put in place to curb the occurrence of corrupt practices in the private sector with the government making it mandatory for companies to adopt the anti-corruption recommendations from the OECD. The recommendations discourage bribery, extortion and practices geared towards gaining any undue advantages. The Companies Act of 2008 also establishes multiple safeguards against corruption, with one being that a company's Social and Ethics Committee should oversee the company's anti-corruption procedures. This helps to enforce adherence to OECD recommendations.

Since the end of the apartheid regime, "South Africa has moved from an oppressive racist state characterized by corruption and political patronage to a modern constitutional democracy" (Van Vuuren, 2004:2). The end of the apartheid state was however "not in itself the beginning of a new anti-corruption government";

rather, it heralded in a process of profound transformation of the state (Van Vuuren, 2004:2). The first task was thus “not to design a plan to combat corruption”; rather, it was to build the institutions that were required “to fulfil the obligations of the state”, as established by the Constitution. In addition, this had to be done with “elements of the former regime maintaining key functions within the public service”, “security apparatus” as well as the economy, following “the negotiated transition” (ibid.). Thus, the plan initially was not to combat corruption. Establishing a framework for combating corruption became a priority well into the presidency of Nelson Mandela (1994-1999). It was a necessary means towards safeguarding the achievements that had been made during the first years after the fall of the apartheid system, and it gained further momentum during the first presidency of Thabo Mbeki (1999-2004). What followed was the adoption by the democratically elected National Assembly of a number of laws relating to combating corruption, as well as the establishment of a number of different agencies with the mandate to counter corruption – a devolved anti-corruption mandate as opposed to a single anti-corruption agency. In addition, civil society and the media have also played a role in keeping up the reform momentum. Although the legislation related to corruption is generally deemed to be adequate, the case has been made that implementation of these laws has not been adequate. This has been attributed partly to a lack of resources (Transparency International, 2004:259).

In addition, there has been an “overlap in the mandate” of and a “lack of coordination” between the different agencies with a mandate to combat corruption (UNODC, 2003:22). Despite discussions on whether to establish a single anti-corruption agency, the South African government decided to maintain the devolved institutional structure for combating corruption, opting to instead implement incremental improvements to existing agencies, as proposed by the 2002 Public Service Anti-Corruption Strategy. In line with the recommendations put forward in the Strategy, an Anti-Corruption Coordinating Committee was established to coordinate the work of the different agencies (UNODC, 2003:21). The adoption of the Public Service Anti-Corruption Strategy was a positive development providing a comprehensive framework aimed at preventing and combating corruption in the public service. However, although the level of corruption in South Africa is relatively low compared to its neighbours, the Country Corruption Assessment Report carried

out by the United Nations Office on Drugs and Crime (UNODC) and the government showed that the “perception of corruption” is high, although the number of people reporting to have been exposed to corruption have declined.

Furthermore, no single anti-corruption agency exists in South Africa. Instead, the anti-corruption mandate has been devolved to a number of separate institutions. The investigation and prosecution of corruption primarily lies with the National Prosecuting Agency of South Africa (NPA), the Special Investigating Unit (SIU) and the South African Police Services (SAPS). Bodies viewed to be Institutions Supporting Democracy (ISD’s), such as the Office of the Auditor-General (AG, SA), the Office of the Public Protector (PP), the South African Revenue Services (SARS), and the Public Service Commission (PSC), have as their core function or among their mandatory functions to strengthen employee integrity, financial management, and the quality of administration within the public service, all of which are central to the prevention and detection of corruption. The NPA, headed by the National Director of Public Prosecutions (NDPP) and appointed by the President, was established in terms of Section 179 of the Constitution, which also states that the NPA must exercise its functions “without fear, favour or prejudice”. The NDPP reports to the Parliament and is accountable to the Minister of Justice. The functions and duties of the NPA, as outlined in the NPA Act, are as follows: to institute and conduct criminal proceedings on behalf of the State; to carry out any necessary function incidental to instituting and conducting such criminal proceedings; and to discontinue criminal proceedings. As such, the NPA is the institution most strongly associated with state efforts to combat corruption and organised crime in South Africa. The two units of the NPA who play the most direct role in combating corruption are the Directorate of Special Operations (DSO) and the Asset Forfeiture Unit (AFU). One of the key objectives of the NPA is to implement the asset forfeiture provisions in Chapter 5 and 6 of the Prevention of Organised Crime Act 121 of 1998 (POCA). The AFU was established to pursue this objective. Although the AFU does not have a direct mandate to combat corruption, its work is of fundamental importance to “its prevention through the recovery of profits and assets gained as result of involvement in criminal activities”, including corruption.

The DSO was launched in 1999 as part of the establishment of state capacity to effectively investigate and prosecute national priority crime. As such, the DSO is a multidisciplinary agency specifically mandated to deal with crimes committed in an organised fashion. This mandate includes investigating and prosecuting organised crime and corruption. The DSO has adopted a unique law enforcement approach that combines crime analysis, investigation, and prosecution in an integrated manner, making use of modern technology.

The SIU was created under Act No. 74 and is accountable to the Minister of Justice and Parliament. The SIU is a semi-independent statutory body tasked with investigating fraud, corruption and maladministration of state assets and public money. As such, the SIU is the only agency that has an exclusive mandate to combat corruption. If, following an investigation, there is evidence of fraud, corruption and maladministration, the SIU is empowered to take civil action in the Special Tribunal to recover any state assets or public money that may have been misappropriated or misused. The SIU concentrates on civil protection and recovery and is not empowered to take any criminal action. It works in close cooperation with the NPA, the DSO, the AFU, and SAPS. When the SIU comes across alleged criminal activity or uncovers criminal acts, the information is passed on to the relevant criminal investigation body for corruption to be pursued on a civil as well as a criminal basis. Within SAPS, it is the Commercial Branch of the Detective Service Division that has the main responsibility in relation to corruption. This followed the merger of the SAPS Anti-Corruption Unit and the Detective Service Division. The Internal Complaints Directorate (ICD), established by virtue of Chapter 10, Section 50(1) of the South African Police Service Act, No. 68 of 1995 (Act No. 68), is mandated to investigate any alleged misconduct of a member of SAPS, as well as the Municipal Police Service (Section 53(2), Act No. 68), with the purpose of promoting proper police conduct. This includes investigating allegations of SAPS members being involved in any form of corruption. The ICD is a government department, headed by an Executive Director nominated by the Minister and appointed by the Parliamentary Committee, which operates independently of SAPS (Section 51, Act No. 68).

By virtue of Chapter 9 of the Constitution, a number of independent state institutions were created. Of these, the Office of the Auditor-General and the Office of the Public Protector are of relevance to the National Integrity System. These institutions are protected against outside interference and are accountable to the National Assembly, to which they are also required to report on their activities and the performance of their functions on an annual basis (Section 181 of the Constitution). The Auditor-General, SA who heads the Office of the Auditor-General, as prescribed by Section 188 of the Constitution, must audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations, all municipalities, and any other institution or accounting entity as required. The Auditor-General, SA thus has a key role to play in the control of economic crime in South Africa, including contributing towards the prevention of corruption. The functions of the Office of the Public Protector are provided by Section 182 of the Constitution. The Public Protector has the power, as regulated by national legislation, to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action. In addition to the main institutions listed above, there are also several additional agencies that play a role in the prevention of corruption, such as the Public Service Commission and the South African Revenue Service, as well as the National Anti-Corruption Forum – a body consisting of the government, the private sector, and civil society representatives. The increase in corruption activities, the collapse of the public services, and increased killing of whistle-blowers may suggest that the beneficiaries of corruption are not disengaging and are increasingly becoming more dangerous and sophisticated.

3.3.3. CSOs' role in fighting government corruption in South Africa

According to Freedom Under Law (FUL), its primary objective is "to use litigations before the courts as its defining method of promoting and defending the rule of law and democracy across the region". In 2018, the Black Sash Trust, a rights group, approached the court after SASSA acknowledged it would not be able to pay millions of social grants from 1 April 2017, despite promising the court in November 2015 that it would do so. On 1 April 2021, in case CCT48/17: 2021: ZACC 05, the

Constitutional Court handed down judgement in an application brought by FUL NPC in which it sought compliance with a court order dated 17 March 2017 that was granted in an application by the Black Sash Trust, seeking to provide with the directive to the South African Social Security Agency (SASSA) and Cash Paymaster Services (Pty) Limited (CPS) to ensure payment of social grants to grant beneficiaries from 1 April 2017, which, for a period of 12 months, extended the tender contract that was awarded by SASSA to CPS for the payment of social grants, which was declared invalid. In this ruling, the Constitutional Court granted the unopposed relief sought by FUL and had effectively deferred the portion of the relief that was opposed by CPS which concerned the determination and repayment of profits made by CPS from an unlawful contract (Constitutional Court, n.d.). In September 2018, in the joint statement of the Black Sash Trust and Centre for Applied Legal Services (CALS), welcoming the judgement, the Black Sash Trust National Director, Lynette Maart said, “This is a victory for the South African public”. She further said, “The judgement sets an important precedent for holding public officials accountable for their reckless and negligent actions in executing their duties”. The retired Judge Bernard Ngoepe, the Chair of an inquiry into the role of the Minister of Social Services, Bathabile Dlamini, in the grants’ crisis, found that the former Social Development Minister “had lied under oath in her affidavit which she filed at the CC and when she gave oral evidence in the inquiry” (*Dispatch Live*, 27 October 2018).

According to Southern African Legal Information Centre (2021), in another matter, Case no 2021/43482, in the High Court of South Africa (South Gauteng, Johannesburg) Hlophe v Freedom under Law; Moseneke and Others v Hlophe in re: Hlophe v Judicial Services Commission and Others (2021/43482) (2021) ZAGP JHC 743; (2022) 1 ALL SA 71 (GJ); 2022(2) SA 523 (GJ) (29 November 2021), one application for the joinder was made by several Justices of the Constitutional Court who were implicated in the initial complaint laid against Hlophe and Others and was opposed by Hlophe invoking a Rule 30 application in respect of the replying of FUL. The applications concerned an application by FUL to join an application brought by Hlophe JP to set aside the replying affidavit of FUL in its joinder application. In outlining the background, FUL explained that the first phase of the decision in 2009 of the JSC to decline to refer the allegations of gross

misconduct for an enquiry that included a cross examination of the persons involved in the alleged acts of insubordination. An allegation levelled against Hlophe was that he tried to suborn two Justices of the Constitutional Court to "pervert their judgement to favour President Jacob Zuma". FUL had entered the fray to seek, and succeed, in obtaining an order overturning the non-referral; thereupon, an order directing the JSC to undertake the disciplinary enquiry (The Southern African Legal Information Institute, 2021). A full bench of the court dismissed with costs Hlophe's application to bar FUL from joining as an opposing party in his bid to have a finding that he had committed "impeachable misconduct" set aside. On this matter, and in this instance, Deputy Judge President R. Sutherland said, "The issue was not only of great constitutional significance" but that Hlophe's objections to FUL's joinder "paradoxically" supported its case. It was Hlophe's assertion in his arguments that FUL's history of legal interventions relating to the misconduct inquiry into his "attempt to sway two constitutional judges 13 years ago" disqualified it, because it constituted a "vendetta and not a legitimate public-interest claim" (*Mail & Guardian*, 29 November 2021).

FUL has engaged in litigation on various other matters, including challenging the National Directorate of Public Prosecution (NDPP) in the Richard Mdluli (the Crime Intelligence boss) case (case No: 26912/12) in the North Gauteng High Court, questioning "whether certain decisions made by various respondents" to withdraw criminal and disciplinary charges against Lieutenant-General Richard Mdluli, the Head of Crime intelligence within the South African Police Service, were unlawful (Constitutionally Speaking, n.d.). In an equally interesting matter between the FUL versus Judge Motata, the FUL sought review application proceedings because the JSC decided not to adopt the findings of the Judicial Conduct Tribunal (the Tribunal), which found that Judge Motate's conduct at the scene of his motor accident and the remarks he made were racist and thus impinged on and were prejudicial to the impartiality and dignity of the courts (Judges Matter, n.d.).

On 13 August 2018, In the matter between Corruption Watch, FUL NPC, and the Council for the Advancement of the South African Constitution as applicants and the President of the Republic Of South Africa and Others (Minister of Justice, Mxolisi Nxasana; Shaun Abrahams; Director-General: Department of Justice and

Constitutional Development); the Chief Executive Officer of the National Prosecuting Authority; the National Prosecuting Authority; the Deputy President of the Republic of South Africa; and the Helen Suzman Foundation as the respondents, the CC upheld the decision of the High Court of South Africa, Gauteng Division, Pretoria and ruled on the related appeals. The appeal by Nxasana was upheld with no order on costs and his explanatory affidavit was admitted and set aside with a costs order by the High Court; the appeal of Advocate Shaun Abrahams and the NPA was dismissed with costs; and it upheld the declaration by the High Court that the termination of Nxasana as the Head of NDP was constitutionally invalid; and confirmed the declaration of the High Court that the appointment of Advocate Abrahams as NDPP is invalid. The applicants sought the CC to confirm the orders of the constitutional invalidity made by the High Court (North Gauteng, Pretoria, High Court) including a settlement agreement concluded by former President Jacob Zuma, the Minister of Justice and Correctional Services; and the former National Director of Public Prosecutions. Nxasana, who is a third respondent in the confirmation application, in terms of which Nxasana's incumbency as the NDPP was terminated; and the actual termination of Nxasana's incumbency as the NDPP; a decision to authorise payment to Nxasana of an amount of more than R17 million in terms of the settlement agreement; and the appointment of Advocate Shaun Abrahams as the NDPP in the position vacated by Nxasana (The Southern African Legal Information Institute, 2018).

In 2019, Corruption Watch and Another v Arms Procurement Commission and Others, 2019 (10) BCLR 1218 (GP); (2019 4 All SA 53 (GP), the applicants approached the court to review and set aside the findings of the Commission, when it argued that the Commission failed to carry out its constitutional and statutory functions, in that it failed to properly investigate the allegations of fraud and corruption and the applicants contended that the Commission failed to fulfil the requirements of legality and rationality, as required by the administrative law. It was a Commission established on 23 December 2015 to investigate allegations of the 1997 process of procurement of the strategic defence package. The findings by the Commission were that "despite allegations of criminal conduct, no evidence" was found or presented to the Commission which substantiated the allegations. According to Davis JP, Leeuw JP and Mlambo JP, the court found that the

Commission had failed to inquire fully into the issues which it was required to investigate. The judges arrived at the conclusion that the witnesses before the Commission were not approached critically and their versions were not tested rigorously. The court was of the view that “the refusal of the Commission to take in account documentary evidence” containing the most serious allegations that were relevant to its inquiry meant that “the principle of legality dictated that the findings of the Commission had to be set aside” (Schindlers Attorneys, 2019).

On 8 March 2011, in the matter between Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae), case no. CCT45/10, the applicants made an application for leave to appeal a decision of the Supreme Court and of Appeal: Le Roux and Others v Dey 2010 (4) SA 210 (SCA) which was first heard by in the North Gauteng High Court, Pretoria: Dey v Le Roux en Andere, Case No: 21377/06. An application was sought to confirm and properly adjudicate upon an alleged defamation of a school principal by school children who put up a picture in which the principal’s face was superimposed on an image of a gay man engaged in a sexually explicit pose. The Court held that such conduct amounted to defamation on the basis that the reasonable observer would understand the image or statement conveyed by the picture as associating or connecting the principal with the indecent situation that the picture portrays and that the average person would regard the picture as defamatory. The majority of the Judges concluded that if the defamation claim had not prevailed the image was in any event an injury to the principal’s feelings and his dignity. The Constitutional Court “set aside the orders granted in the High Court and The Supreme Court of Appeal” and ordered the “children to pay principal R25 000 as compensation and ordered the children to apologise unconditionally to the principal for the injury they caused him” The Constitutional Court “set aside the orders granted in the High Court and The Supreme Court of Appeal” and ordered the “children to pay the principal R25 000 as compensation and ordered the children to apologise unconditionally to the principal for the injury they caused him” (Constitutional Court, n.d.)

On 23 June 2015, the Helen Suzman Foundation took the suspension of the Head of the Department of Police for Crime Investigations (DPCI) (called The Hawks),

Anwa Dramat, to court and brought an urgent court application requesting that the then Police Minister Nathi Nhleko's decision to suspend Dramat be set aside. The court ruled that the suspension contravened a Constitutional Court judgement. He and others were suspended for the allegations that they handed over unlawfully two Zimbabweans nationals to the Zimbabwe police and that the Zimbabwean police murdered them. The power of the Minister to suspend the Head of The Hawks was under question. David Unterhalter for the Helen Suzman Foundation challenged Dramat's suspension in that the Minister had acted unlawfully when he acted on a matter which is the competence or prerogative of the parliamentary process, which the Minister did not follow per procedural arrangements, and replaced him with Benny Ntlemeza, a "man of the minister's own choice". The suspension was marred by allegations and counter-allegations and in court papers Dramat alleged that he was been suspended because he was investigating the "Nkandla scandal", which affected the sitting President at the time on and around an "irregular procurement" in supply chain management for security details at the then President's private property in Nkandla. The Court found the "suspension of Dramat" to be unlawful and overturned it (*Mail & Guardian*, 23 January 2015).

According to Gumede (2018), CSOs have tenaciously fought public and private corruption. In 2012, the Congress of South Africa Trade Unions (COSATU) initiated the establishment of Corruption Watch, a dedicated organisation to fight public and private corruption. CSOs from across the ideological spectrum, under the banner 'United against Corruption', from 2015 onwards marched against rising public corruption. CSOs have also gone to court to challenge corruption. The Black Sash, South Africa's famous liberal CSO that fought human right abuses during apartheid, took Social Development Minister Bathabile Dlamini to court for irregularly using a company with ties with governing ANC leaders to pay social grants to the poor on behalf of the government.

Gumede (2018) states that civil society in South Africa is loud, often disorganised, and spread across a large country. By far most CSOs are service oriented and many of them work closely with the government in providing social services such as access to medication or home-based healthcare. In the immediate post-apartheid period, many urban-based NGOs were stuck in a rut, and so only a small

group of social movements were highly critical of the manner in which power was exercised (such as the Anti-Privatisation Forum or think-tanks aligned with opposition parties such as the South African Institute for Race Relations, and the Helen Suzman Foundation). Criticism of corruption issues meant a confrontation with the business and political establishment. The former was a donor to some, but the latter (and in particular, the ANC) was and remains a movement to which many activists felt a deep allegiance (Van Vuuren, 2014:24).

The anti-corruption space was, therefore, dominated by think-tanks and specialised NGOs who had been working on these issues for many years. They were the source of research, awareness-raising, and often soundbites to the media (Eliasson, 2016:60). However, over the past few years just as reported cases of corruption have become most pronounced, important trends emerged among CSOs working on corruption issues. Blue Chip NGOs were forced to diversify their work beyond South Africa as many donors argued that the country had corruption under control. Other organisations that continued to work on aspects of corruption are the Council for the Advancement of the South African Constitution (CASAC), the Helen Suzman Foundation and the Institute for Accountability in Southern Africa. The emerging new organisations, such as Corruption Watch (Blue/Red Chip NGOs) (with backing from the labour federation, COSATU), aim to engage the public in their work while retaining a largely urban base, which allows them to fill part of the space left by the declining Blue Chips (Van Vuuren, 2014:24).

Van Vuuren (2014:24) elaborates on the different types of Red Chip organisations and movements:

Red Chip-Trade Unions: Under the leadership of Zwelinzima Vavi, COSATU has become far more active in confronting corruption. This has ranged from diverse issues such as private sector corruption, criticism of public servants who use their office to set up business interests which they realise after leaving office, funding of political parties, and the Protection of State Information Bill (known as the Secrecy Bill). Their sharp criticism of corruption within the state has put them in direct conflict with some beneficiaries of such corruption.

Red Chip-Social Movements/Campaigns: Largely to the left of the dominant political discourse, a number of important social movements have emerged that tackle issues of poor governance, corruption, and structural inequality, and that have provided the basis for broad-based social activism. Their organisation and activism are the envy of most opposition political parties. They work with limited funding and build strategic alliances with other organisations such as COSATU and a mix of community organisations, urban NGOs, and academics. These are single-issue led initiatives. One example is the Right2Know Campaign, a campaign of over 400 CSOs which ensured that the Secrecy Bill was held back for a period of two years. This is significant because while the campaign has now broadened its focus to tackle the broader climate of secrecy in South Africa, including issues such as whistle blower protection and the free flow of access to information, it built a movement out of what is a political demand. Other examples include Abahlali-baseMjondolo (the shack-dwellers movement), Equal Education (working for equal access to education), Social Justice Coalition (campaigning for safer communities and universal access to sanitation), and the Treatment Action Campaign (a model on which many of the later campaigns were based given its ground-breaking work on improved access to medicines and quality health care).

Red Chip-Community Organisations: These are community organisations that are most active in advocacy around issues of corruption, mismanagement, and the abuse of power at a local level. Victim to a discourse which identifies them as violent in nature they are a significant indication of citizens who are using the tools of a functioning democracy, such as popular protest and freedom of expression, to demand greater accountability and equitable access to resources (Van Vuuren, 2014:25).

Many communities have organised themselves in different forms, including as business forums, and they mobilise each other on the basis of the challenges at hand and driven by issue/s that happen to be their concerns. Issue-based mobilisation is common, and individuals and groupings around communities are able to work together in seeking solutions to their problems and concerns, especially as they relate to service delivery issues and gender-based violence and femicide (GBVF) against women and children. This can bring together persons and

groups from different political formations, different countries, and different cultures, and are able to be joined by various CSOs. According to Khayati (2012:181), many "diaspora populations have created considerable civil society structures that function not only as a substantial means of integration in their residing societies, but also as genuine transnational institutions that aim, in one way or another, to effect the politics of their former homelands, especially in the direction of democracy, the promotion of human rights, and peace settlements with non-violent means" (DiVA Portal, n.d.).

3.4. THE ROLE OF CSOs IN ACTIVELY PROMOTING CIVIL SOCIETY PARTICIPATION IN PUBLIC POLICY

South Africa has a vibrant culture of civil society activism and civic engagement (Connolly, 2017), and the ability of CSOs to influence the public policy-making process is an issue that has profound implications for the future of the country's democracy (Thuynsma, 2012:258). In South Africa, CSOs are well-positioned to increase public participation in the policymaking process by deepening democracy. Deepening democracy occurs when CSOs and the government bring communities into the policymaking process, which strengthens the reach of democracy so that more ordinary citizens, particularly marginalised groups, can participate in it (Buccus and Hicks, 2008:13). CSOs sit in a unique space between the government and ordinary citizens, and, if managed properly and effectively, they are in an advantageous position to influence policies and ensure that they are effective. However, their advocacy techniques have not always been successful, especially in ensuring that ordinary citizens and marginalised groups have a voice in the policy influencing and policymaking processes (Connolly, 2017:21). Therefore, it is important to evaluate these techniques to uncover what strategies are the most effective at strengthening public policies so that more organisations can employ them and hopefully increase the influence of their policy advocacy. While the country's free and fair elections and its level of voter security are highly rated, the state of participatory democracy, whereby citizens can make a meaningful input into policy making by means other than voting for representative, is far less developed. Thuynsma (2012:258) argues that the tendency and ability of the

government to make decisions without direct input from civil society represents a flaw in South African democracy.

Since the inception of democracy in 1994, South Africa has exhibited a democracy deficit. A democracy deficit occurs when established democratic institutions fail to effectively integrate ordinary citizens into the decision-making and policymaking processes. When democracy deficits exist, the state is less accountable to its citizens and less representative of its people (Buccus and Hicks, 2008:38). Regardless of this deficit, Buccus and Hicks (2008:38) assert their belief "that ordinary people have the right to participate in the decision-making processes that affect their lives, and that informed policymaking leads to better policy that is more responsive to communities' needs". CSOs have the potential to play a significant role in influencing the policymaking process, but these organisations are typically run by elites with access to materials and resources, and, therefore, they often exclude ordinary citizens and marginalised groups from the policymaking process, just as much as the government (Buccus and Hicks, 2008). The question of who participates and what biases exist in the participation process are increasingly significant for policy making. The level of participation determines the potential impact of any CSO. Dalton's (2017:61) insights on the participation gap, which explicates how participation is "unequally meaningful for different social groups" in democracies is of relevance here. This, it could be argued, results in different public policy outcomes that impact the lived conditions of ordinary citizens in ways that do not necessarily add value for the marginalised in even the most sophisticated democracies. In Africa, poverty and social distinctions exacerbate the participation gap (Dalton, 2016:61). Mano and Milton (2020:11) therefore argue for a more nuanced approach to collaboration within and across CSOs who could be more resourced, more empowered and emboldened to exercise their right to participate in deliberative policymaking in South Africa. For CSOs to better participate in an attempt to influence the policymaking process, they need to first question how they represent marginalised groups and implement mechanisms to better represent them (Buccus and Hicks, 2008). While the state bears the constitutional obligation to enable citizen participation and has crafted spaces to this end, these spaces are often limited, and not designed or facilitated in a way so that marginalised groups can influence policy. They typically are only for sharing information or raising

concerns, rather than for lobbying or influencing policies (Buccus and Hicks, 2008:40). State departments and institutions typically do not provide marginalised groups with the information and resources that they need to influence policy. Therefore, they are often unable to obtain information and reflect on proposed policies or obtain the representation that they are guaranteed in the Constitution. Although South Africa makes legislative provision for participatory mechanisms and has many such provisions in place, this is not enabling civil society and local communities to participate meaningfully. Policymakers often acknowledge the limitations of these mechanisms, and civil society experience leaves us in no doubt that these are inadequate, inaccessible, and disempowering, and that innovative approaches to community participation in development planning and policymaking are required (Buccus et al., 2008:11).

Magongo (2016:4) acknowledges that the civil society sector is fragmented and needs a rebuild internally and externally for it to present a coherent approach towards development. The current CSO structures in South Africa are non-existent, except for the very few who may see themselves occupying the void created by the fragmentation and disenfranchisement of the sector. The danger with this is that the few CSOs that are vocal may present themselves as representing the interest and ideologies of the entire sector. On 1 September 2017 at the civil society strategy workshop hosted by African Monitor in partnership with UNDP, Jimmy Gotyana from SANGOCO highlighted the importance of civil society coming together and sharing ideas and thoughts, giving a background of the South African landscape before and after CSOs decided to form a coalition on the Millennium Development Goals (MDGs). He further pointed out that the shadow report produced by civil society created spaces for engagement between the government and CSOs during the MDG era. If CSOs remain coalition-less, their ability to drive change in and for their affected constituents will be diminished (Mano and Milton, 2020:28). Coalitions formed by policy actors to advocate for a common policy position have become an important means of political engagement (Weible and Ingold, 2018:32). Actors form coalitions to push for policy change, to defend material interests, or to uphold an existing social order. It is often crucial for a policy actor to be a member of a coalition to achieve success in the policy process. Mano and Milton (2020:11) state that such a civic role can be achieved via robust civic

alliances and trans-disciplinary networks. Civic society coalitions are formed when "various CSOs including NGOs, people's movements, community-based organisations, activists, unions, plus researchers, lawyers and journalists" come together to shape policy, engage in policy negotiations and ensure that policy is implemented (Barnes et al., 2016:95). This, in their view, creates a broad alliance which has an unusual blend of talent and skills to drive public participation in policy. In many Southern African societies, it is such broad-based CSOs that can help increase citizen activism towards democratic change (Mano and Milton, 2020:27).

In South Africa, there have been CSOs that have lobbied and advocated the state to address some fundamental developmental policies and actions. In the early 2000, TAC, a CSO, challenged the state to make ARVs available in the country for people living with HIV. Thuynsma (2012:261) argues that TAC's ability to operate well in coalition with other organisations and movements bolstered the campaign. TAC was seen as a hybrid organisation because, in one instance, it was a social movement with a formal membership base, and in another instance, it was a partner in a coalition and part of a broader mass movement. Section 21, another CSO, took the state to the task to deal with access to textbooks in schools. These cited examples are a typical reaction of some CSOs on how they would make their voices heard by the state. However, there are tens of thousands of CSOs across the country that are operating in dire conditions with no outlet to challenge the state. The sector needs leadership that can galvanise the sector to advocate and lobby for the interests of the sector.

There are fundamentals that need to be put in place and be supported by the state to reignite the abilities and capabilities of the CSO sector to becoming partners in development. The sector needs to re-organise itself. This may be a tall order, given the fragmentation and inequalities that exist in the sector. However, there are CSOs that are working hard to achieve their expectations. The only requirement needed is for state entities such as the NDA and the National Lotteries Commission to create the platform for the sector to rescue itself from the current situation. This requires a mind shift from these state agencies (Magongo, 2016: 5). There are various strategies that South African CSOs could use to ensure the representation and participation of affected groups in their policy advocacy initiatives. These

strategies could include CSOs hosting training sessions for ordinary citizens to learn how to participate in policy monitoring or creating publicity campaigns for people to learn more about different policies (Buccus and Hicks, 2008). As Buccus and Hicks (2008:224) further state, “CSOs should exert the necessary pressure to create an environment for political will to champion public participation, through awareness-raising and a variety of advocacy interventions”. In addition, CSOs can work to create a more inclusive policy-influencing environment by establishing links between the state and civil society at provincial and local levels because it is easier for ordinary people to participate in local government (Buccus and Hicks, 2008). To influence South African policy and ensure that they respond to the needs of all affected stakeholders, CSOs need to dedicate themselves to bringing marginalised groups into their activities more effectively.

3.5. THE SHRINKING/CLOSING CIVIC SPACE AND CSOs’ INFLUENCE IN SOUTH AFRICA

The term ‘shrinking space’ can be understood as a concept or framework that captures the dynamic relationship between repressive methods and political struggle, including the ways in which political struggle responds to these methods to “reclaim space”, and the impact this response has upon how political struggles relate to one another (Hayes et al., 2017:3). Its value as a framework is that it helps us to think through common trends of repression, including their sources, effects, and mechanisms, which political actors face. According to Aho and Grinde (2017:6), a shrinking space is realised when the space is closing for civil society to organise and foster civic engagement, and when external support for democracy and human rights is shrinking. According to Poppe and Wolff (2017:5), CSOs are facing “increasing political restrictions” all over the world. Carothers and Brechenmacher (2014:23) add that the “closing civic space” is a universal challenge that occurs in many ways, although not in all countries but in all regions of the world. Aho and Grinde (2017:6) argue that although the shrinking space has similarities on a global level, the actions or threats against democracy manifest themselves in diverse ways in different regional and national contexts, as well as at different levels within countries, and in numerous ways for different CSOs.

Indeed, there are countries that do not have visible indications of a shrinking space, and countries where the space for civil society is open for participation and dialogue with the government and public institutions. Generally, space is enabled for CSOs only as far as it does not challenge power. The enabling environment legally is good on paper but remains a serious challenge in practice. Most constitutions promote an open civic space protecting the right to freedom of assembly, freedom of association, and freedom of expression. However, in practice, CSOs and human rights defenders face impediments, especially on freedom of assembly and freedom of association (Mawarire, 2018:7). What CSOs face in practice is often vastly different to what is written in law.

This so-called closing or shrinking or diminishing space phenomenon has received growing attention from civil society activists, policymakers, and academics. In Herbert's (2015:8) observation, there is consensus in the literature that a wide range of "restrictions are increasing for civil society". In most cases, these restrictions apply to the foreign funding of NGOs and thus "curtail the space for external civil society support", which, since the 1990s, has become a key element in international democracy and human rights promotion. It is occurring in all regime types and not just authoritarian countries. Notably there are a number of countries that have retained stable and high levels of restrictions over this time, such as Syria, Eritrea, Saudi Arabia, Cuba and Sudan. Restrictions on civil society space come from a range of actors; various levels of state actors (central, regional, local); security forces; businesses; organised crime; and religious groups. A variety of methods are used, including legal or quasi-legal, bureaucratic, financial, political, and security related methods (Herbert, 2015:8). Carothers and Brechenmacher (2014:24) state that CSOs that engage in politically sensitive activities are often targeted across all types of regimes from the more autocratic to the more democratic. Politically sensitive activities are context specific, and include activities in areas like corruption, transparency, and accountability, as well as activities around formal political institutions, parties, and ideologies. Rutzen (2014:12) identifies patterns in autocratic countries where some allow CSOs to operate if they stay away from politics, while others co-opt CSOs and shut down those that resist (especially those receiving international funding). Hayman et al. (2013:2) assert that "service delivery seems to be an accepted and often expected role for CSOs'

but when they are perceived as engaging in more politically sensitive areas, they are more likely to experience clampdowns on their operations". They may be identified as "political opponents and subject to attacks and harassment" (ibid.).

The dominant discourse is that the CSO sector in South Africa has been in decline since 1994. Weideman (2015:5) observes that the researchers who contest the "sector-in-decline-argument", cite the emergence of the "new social movements", the "cyber movement", newly established CBOs and CSOs, and the continued existence of many CSOs as evidence to the contrary. Critics also cite evidence of CSOs' impact on policy, societal perceptions, legislation, and service delivery, as evidence in support of the argument that the sector is not in decline (Ballard et al., 2006:27; Robbins, 2008:31). Organisations in particular sectors are also cited as having been influential. These include health, land rights, human rights, social justice, and gender-based violence (Weideman, 2015:5). The empirical evidence available also undermines the argument for contraction. Evidence suggests that the NPO sector has grown since the early 1990s. In 1998/9, the NPO sector in South Africa was estimated to be a R9.3 billion industry, employing 645 315 persons, and consisting of 98 920 NPOs, and 245 000 in 2020. However, there is consensus in the literature that the CSO sector lost many of its key leaders, thinkers, and skilled managers to the public sector in the period following the transition to democracy (Winkler 2009:20; Kotze 2002:12). The consequent loss of capacity and skills had a negative impact on the effectiveness of the sector, and on the sector's ability/willingness to critically engage government (Greenberg and Ndlovu, 2004). It also arguably increased staff turnover and contributed to a loss of institutional memory (Kotze, 2002:12).

In Warshawsky's (2015:35) analysis using the influential heuristic developed by Young (2000, 2006), South African CSOs can be understood as either adversarial (in opposition), supplementary (in addition), or complementary (in cooperation) to the state. In South Africa, adversarial CSOs played a key role in destroying apartheid and have continued to actively pressure the state, with no sign of diminishing (Ballard et al., 2006; Desai, 2002). Supplementary and complementary CSOs have always been part of the South African social fabric, with the growth of complementary CSOs notable in the post-apartheid years as the state funded many

CSOs (Swilling et al., 2004). Importantly though, the struggles of Operation Hunger in KwaZulu-Natal may be indicative of a weakening supplementary CSO sector, as the central state has actively funded certain complementary CSOs at the expense of some supplemental CSOs. Private donors have compounded this move away from many South African supplemental CSOs and increased competition from the growing number of supplemental CSOs. Overall, this suggests that South African democratisation may have simultaneously produced new opportunities for some CSOs yet reinforced "unequal power relations" for other CSOs and thus produced a "highly polarized CSO landscape" (Warshawsky, 2015:36).

According to Mawarire (2018:6), there is no country in the Southern Africa Development Community (SADC) region that has an open civic space. The CIVICUS Monitor, a tool measuring civic spaces globally, indicates that the civic space in South Africa has been narrowed. This means that while the state allows individuals and CSOs to exercise their rights to freedom of association, peaceful assembly and expression, violations of these rights also take place. People can form associations to pursue a wide range of interests, but full enjoyment of this right is impeded by occasional harassment. In 2018, the Ibrahim Index of African Governance ranked South Africa's judicial independence at 92.6, freedom of expression at 79.7, and freedom of association at 58.3% (Mawarire, 2018:7). In 2018 the UN Committee on Economic, Social and Cultural Rights (UNCESCR) released concluding country observations expressing its concern regarding the treatment of CSOs defending human rights in South Africa. In particular, the UNCESCR noted the intimidation and harassment of CSOs working as individuals or in association with others to promote and defend human rights in the mining and environmental sectors. It further noted the application of laws, policies and bureaucratic processes that limit citizens' enjoyment of the rights to freedom of assembly and association when claiming socio-economic rights, such as education, healthcare, and basic services. This all has contributed to the closing of the political space (Matthews, 2018:39). Despite the formal recognition and equal protection of civil, political, economic, social, and cultural rights in the South African Constitution, many South Africans experience numerous human rights violations by the state. This is evidenced by the number of complaints received by the South African Human Rights Commission (SAHRC). Between 2015 and 2016, the

SAHRC recorded 2307 complaints specifically related to civil and political rights violations. These violations involved issues of personal privacy and surveillance, political violence, excessive use of force during protests, freedom of association, access to justice, just administrative action, and freedom of expression. These problems have become increasingly worrying as the country grapples with the triple threat of unsustainable levels of inequality, high unemployment, and extreme forms of poverty (Matthews, 2018:39). The observations made by UNCESRC is not the first time that concern has been raised by international human rights bodies regarding the status of CSOs defending human rights in South Africa. In its 2016 concluding country observations, the UN Human Rights Committee noted reports of threats, intimidation, harassment, and excessive use of force by private security personnel and police forces against humans rights defenders (HRDs), particularly those working on corporate accountability, land rights, transparency issues, LGBTI rights, and HIV issues. It also highlighted law enforcement officers' lack of due diligence in protecting CSOs, including the registration and investigation of allegations of human rights violations and achieving accountability for such violations (Matthews, 2018:39).

The SAHRC report provides an overview of the current landscape and environment for human rights activism in South Africa. The report further highlights the complex way the deliberate application of a number of laws, policies and bureaucratic processes limit citizens' enjoyment of various constitutionally guaranteed human rights, particularly as it relates to freedom of assembly, association, expression and access to information. For example, the Regulations of Gathering Act of 1993 (RGA) regulates public demonstrations in South Africa. Under the RGA, legitimate use of force by the police against protestors is only applicable in instances where it is necessary to prevent injury or death to a person or destruction of property, and when negotiation and all other measures have failed. Given the country's apartheid past, the RGA was drafted with the intention of recognising public demonstrations as essential forms of democratic expression, requiring the state to facilitate rather than repress gatherings and to treat activists with tolerance and empathy to avoid provoking confrontation that may result in violence (Matthews, 2018:40). Given the country's apartheid past, the RGA was drafted with the intention of recognising public demonstrations as essential forms of democratic expression, requiring the

state to facilitate rather than repress gatherings, and to treat activists with tolerance and empathy to avoid provoking confrontations that might result in violence (Matthews, 2018:40). The Non-Profit Organisation Act of 1997 provides that every organ of state must determine and coordinate the implementation of its policies and measures in a manner designed to promote, support, and enhance the capacity of NPOs to perform their functions. Noting the constrained resource environment and bureaucratic challenges in accessing funding from the state, NPOs in South Africa have also had to depend on external sources of funding to do their work. Executive members of the state security agencies have subsequently proposed to monitor international funding sources of NPOs under the guise of protecting the state from potential "financing of terrorist activities". This has been viewed by many in the NPO sector as a means of closing the space of civil society's agency. While it is recognised that NPOs should be held publicly accountable in terms of its governance structures, CSOs have cautioned that the legislation regulating the non-profit sector in South Africa may become a tool used by the government to restrict community activism and prevent the legal formation of NPOs (Matthews, 2018:40).

Numerous challenges have been identified with South Africa's existing access to information laws, including that information from public and private bodies is only available on request, as opposed to proactive release. At times it becomes courts that enforce allowance of access to information by the public. The legislative challenges inherent to the Promotion of Access to Information Act of 2000 have hindered the implementation and utilisation of the right to access information. The formalised nature of the process has limited the ability of communities to use the right independently without assistance from lawyers. Other challenges involve the inconsistency and uncertainty of grounds of refusals of disclosure of information and the lack of an independent, swift, and inexpensive appeal mechanism. Consequently, not only is information to which communities are entitled denied because of bureaucratic failures, but the uncertainty surrounding reasons for the lack of disclosure presents fertile ground for secrecy. This leads individuals and groups to take risks at great personal costs to themselves to ensure that the public is able to make an informed assessment of the current status of South Africa's democracy (Matthews, 2018:41). The government at times view, and even label,

CSOs as counter-revolutionary and oppositionist and go all out to oppose their views and/or requests in courts up to the highest court in the land, the Constitutional Court, and even where the courts have ruled in favour of CSOs, the rulings are appealed against and challenged, if not ignored, or delayed to be implemented. The civic space is being reduced and only left to those CSOs that seem to support the government and/or those that are aligned to the ruling party and/or those that are used as fronting CSOs controlled and funded by politicians or government officials.

3.6. THE ROLE OF CSOs IN INFLUENCING GOVERNANCE AND FIGHTING CORRUPTION IN SUDAN AND PERSPECTIVES ON CSOs in SUDAN

The rise of CSOs in Sudan is acknowledged and appreciated by "policymakers, activists, and analysts" and has led some observers to claim that CSOs are in the midst of a "quiet revolution" (Ahmed and Werker, 2007:4). Independent CSOs are idealised for their commitment to doing greater good for society and are less concerned about making profits or taking political sides. According to Ahmed and Werker (2007:5), "In the realm of international development" CSOs have been characterised as the new "favoured child" of official development agencies and proclaimed as a "magic bullet to target and fix the problems that have befallen the development process". They played a significant role in influencing and changing public perceptions and attitudes in addition to being agents of social service provision to the broader society. Sudan gained its 'independence from the British colonisers in 1956' and has since been divided by civil unrest and wars, and "ethnic, religious and economic conflicts involving Northern and Southern Sudan" (Coe, 2002:4). The self-proclaimed president of Sudan in 1993, Colonel Omar al-Bashir, vowed to fight corruption, financial mismanagement, and nepotism. However, Sudan's new government moved swiftly to establish the "most repressive rule" the country has had since its independence (Martini, 2012:2). It shocked the world when it banned political parties, silenced independent newspapers, dissolved Parliament and tackled trade unions and went on to introduce an Islamic legal code, which resulted in the rapid deterioration of human rights. Sudan was ranked as one of the nine countries with the worst human rights record by Freedom House

(Martini, 2012:2), especially at national level, transiting the country to an authoritarian Islamic Single-Party State over a short space of time. It was further viewed as the most corrupt country, with data and imports confirming perceptions of persisting widespread and endemic forms of corruption. It was also ranked as most corrupt country by the 2011 Transparency International Corruption Perceptions Index and performed extremely poor according to the outcome of the 2010 World Banks Worldwide Governance Indicators, which showed inferior performance in all the areas of governance assessed and with no indication of improvement over subsequent years. The key performance areas included political stability, the rule of law, regulatory quality, government effectiveness and control of corruption. It was found that corruption existed in all key sectors of the economy, and importantly, at almost all levels of Sudan's state apparatus with its various manifestations evidenced in political and financial corruption, nepotism, and the abuse of power (Martini, 2012:2). The widespread corruption fuelled instability and created a sense of insecurity with dire consequences on the fragile peace-building process.

According to Munzoul (2016:18), insufficient human capital, the instability of the economy and the political environment, coupled with the underdevelopment of infrastructure, made the impact of corruption visible on investments and service delivery. Exacerbating the situation was Sudan's limited industrial development and large informal economy (Heritage Foundation, 2012). Nevertheless, the tendency on the part of the government to choose companies linked to the ruling elite undermined the growth and diversity of Sudan's private sector, which continued to face serious developmental challenges. The International Crisis Group (2011) has indicated how patronage has a negative impact on competition, which is necessary to help grow an economy. International companies that had links with Islamic companies were often awarded government contracts for major construction projects, such as the Merowe Dam, roads and bridges, with no regard to due procurement procedures (Emefiele, 2016:14). Furthermore, the subcontractors were chosen based on their connections to the ruling party, which undermined competition. New and small companies also closed their businesses because of being undermined by a lack of competition and the dominance of party-affiliated companies (Martini, 2012:6).

USAID (2018:63) stated that Sudan had not shown the appetite or desire to tackle corruption and had no capacity due to the weak administrative set-up. Moreover, there was severely constrained, wavering political will and insufficient differentiation between the state and the ruling party (Martini, 2012:10). Although Sudan had an anti-corruption framework in place, it faced implementation challenges. The 2003 Sudan Panel Code criminalised all or any forms of corruption, including bribery and money laundering. In addition, although Sudan did not ratify the United Nations Convention against Corruption and the African Union Convention on the Prevention and Combatting of Corruption, it had signed them. Moreover, Sudan ratified the United Nations Convention against Transitional Organised Crime, with reservations. There were no means available for financial disclosures for government officials and no law provided for public access to government information (US Department of State, 2011). In principle, whistle-blowers were protected by criminal law, including civil servants who reported cases of corruption, graft, abuse of power or resources, but the likelihood was that they might suffer negative consequences, especially of reporting that involved persons in high positions (Global Integrity Sudan, 2006). The membership of Sudan of the common market for Eastern and Southern Africa committed Sudan to comply with certain determinations, including to appoint proper procurement officials, but there was a lack of political will and enforcement mechanisms (Global Integrity, 2006). Additionally, the banning of companies involved in the violation of the procurement rules only existed on paper and not in practice (Martini, 2012).

Civil society in Sudan finds it extremely difficult to operate because of political and legal restrictions (Munzoul, 2016:12). According to Freedom House (2012), conditions for CSOs had deteriorated, resulting from government hostility towards groups that criticised and/or challenged policies in Darfur. The response of government to the issuing of a warrant of arrest for the arrest of Sudan's President by the ICC saw the expulsion of international humanitarian aid organisations from the country, and the "revoking of the permits of 13 foreign NGOs and the closing down of three domestic NGOs" (Freedom House, 2010).

According to Martini (2012), the legal enabling conditions for Sudanese CSOs worsened, as they were required to register as voluntary organisations, cultural

groups, non-profit companies, or training centres with the Humanitarian Aid Commission (HAC). The 2006 Voluntary Organizations Law gave HAC wide discretionary authority to deny registration, with no explanation. The changes made to HAC's powers through amendments of laws in 2016 enabled the authorities to halt CSOs' activities until their registration was reviewed or renewed. Various CSOs' registrations were delayed, including the Sudanese Development initiative (SUDIA) and the Sudanese Human Rights Monitor (SHRM) for months or longer, despite having submitted all the required registration documents. The National Civic Forum (NCF) and the Sudanese Writers Union registrations were cancelled in January 2015 by the Cultural Groups Registrar, but they won court cases challenging such decisions against the Ministry of Culture and were reinstated towards the end of 2016. In this year, many CSOs operated with no proper registration and used social media platforms in an attempt to avoid government restrictions and harassment (USAID, 2016:152).

Sykes (2018:8) states that the "2006 Voluntary Organizational Law was amended through the introduction of the Organization of Voluntary Work and Humanitarian Affairs Bill of 2016, which was a review made by the Confederation of Sudanese Civil Society Organization (CSCSO)", showing increased focus on funding and other duties. It made provision for soliciting funds through a project document, approved only by the HAC, and prohibited CSOs from accepting donations from international sources or donors without approval of the HAC. The Bill did not only give the HAC unlimited discretionary powers over registration, but also enabled the HAC to refuse the disposal of assets by CSOs through donations, sale, exchanges, or mortgages, without HAC approval. The affected CSOs were smaller CSOs, which depended on donations made by larger CSOs to them of used assets (USAID, 2018:226).

According to the Ministry of International Cooperation, humanitarian assistance reduced significantly in 2016, in that the number of Western donors declined – because much of the funds were redirected to other countries as Sudan had severe restrictions and US sanctions on foreign donations worsened the situation. It was also exacerbated by the EU's decision to channel donor funds to the government

rather than to independent CSOs; as a result, no CSOs had long-term commitments from donors and relied on annual project-based funds.

GNGOs benefitted from funding from the Gulf States for projects in Darfur. However, there was no local support for CSOs and government funds were channelled to CSOs aligned to the state or affiliated to GNGOs, such as Al Shaheed and Alzubeir charity organisations, which received direct support from the government and/or had their own investments such as Sanad, which was headed by the wife of the President. The government also did not necessarily comply with or honour determinations made through agreements with the UN or international CSOs; therefore, they did not support local CSOs freely. The failure to sustain most local projects resulted from a lack of support to CSOs because the private sector feared antagonising the government. Nevertheless, the private sector and members of the public (even the poor) did make donations for emergency purposes. Even unregistered CSOs were able to collect donations in response to crises and emergency situations, such as floods (USAID, 2018:229).

In the wake of the US sanctions, affected CSOs carried out campaigns against the sanctions and did so in collaboration with the Sudan Human Rights Consultative Council and the Sudanese business community, and progressive independent CSOs were blocked from attending government's meetings with international organisations, donor agencies and human rights representatives (Emefiele, 2016:14). The civil society leaders of Sudan were also prevented from attending the human rights meeting in Geneva in March 2016 and the UPR review in May (USAID, 2018:231).

At the centre of the challenges faced by CSOs in Sudan is the heavy-handed regulatory system imposed by the government using its body established for purpose of coordination, the HAC. HAC's work is supposed to be related to coordinating humanitarian interventions of national and international NGOs that provide emergency relief. However, HAC has been transformed into a security body that, instead of facilitating the work of civil society and overseeing emergency interventions is hampering it through imposing restrictions on movements and interventions. Amnesty International has thus reported "restrictions on the work of

humanitarian agencies by government forces and armed opposition groups have narrowed the space in which humanitarian assistance can be provided in Darfur".

Civil society in Sudan is discouraged, and sometimes prohibited, from engaging in political issues like human rights and governance (Munzoul, 2016:12). Even their engagement in service delivery is sometimes restricted. In Sudan it is extremely difficult to draw a clear line between political parties and civil society. This is so because the government has instrumentalised civil society for its own purposes. This is the case with the incumbent government that took power in a military coup in June 1989. "It formed unions with organs associated with the one-party system and interfered directly in selecting the leadership of independent organizations ranging from sporting clubs to the Sudanese Red Crescent Committee" (Abdel Ati, 2006: 69). Creating its own proxies, the government not only has shrunk the space for civil society, but also directed the work of its proxies towards an agenda that serves the interests of the government, and not the people.

A review of the literature on CSOs in Sudan and South Africa reveals that there are major differences in the nature and operation of CSOs in the two countries. This reflects the different historical, political, economic, and cultural experiences of the two countries. In Sudan, CSOs tend to be controlled by and be dependent on the government. The majority of Sudan's CSOs are government-organised CSOs, which have close ties with the government, though they have shown increasing signs of independence in recent years. In South Africa, not only are CSOs regarded as more efficient, innovative, and dynamic than state bureaucracies, they are also seen as important for the institutionalisation of mechanisms of democratic accountability, like those which emerged in the liberal democracies of the West about a century ago. Putnam (1993:65) asserts, "Democracy, it is argued, flourishes if it is sustained from below by a vibrant civil society". Theoretically, the growing popularity of CSOs in the development field seems to be associated with the emergence in recent years of a so-called "New Policy Agenda" (Clayton et al., 2000:26).

3.6.1. Perspectives on CSOs in South Africa

South Africa's dramatic transition to democracy began with the historic elections of April 1994. However, the transition and transformation agendas of CSOs still needed to be developed and consolidated through building a popular human rights culture through fostering lasting reconciliation, through the transformation of inherited state institutions – particularly in the criminal justice and social welfare fields and through consolidating democracy and development in South Africa. "Formal political change has simply provided the context for transformation in South Africa, and this is a fundamental process that will reach well into the new period," stated Graeme (1997:2).

CSOs have a critical ongoing role to play in consolidating democracy in South Africa. Far from being an irreversible process, "the democratization of South African society remains vulnerable to future government abuse of power, as well as to the re-emergence of residual sources of racial and political conflict" (Graeme, 1997:43). Furthermore, burgeoning violent crime continues to present a fundamental threat to an embryonic human rights commitment on the part of government. It is the responsibility of organisations such as CSOs to play an ongoing role in building sustainable reconciliation strategies and sustainable civil society institutions, as it is only these vehicles that can secure democracy and good government in South Africa. The institutionally complex relationship between government and CSOs means that government's commitment to the CSO sector is likely to be increasingly tenuous in the future. It is therefore critical that capacity building is built into the operations of CSOs. Among the key challenges presented by the South Africa transition has been the process of translating new policy development by the government into direct service delivery to previously marginalised and impoverished South Africans. Whilst substantial strides have been achieved in generating visionary policy development, less success has been attained in translating this into effective service provision. Therefore, whilst formal governmental accountability has been substantially achieved through constitutional means, the accountability of government in the delivery of services and development processes remains incomplete.

The sustained prospects of conflict and violence in South African society at the end of the 1990s also posed fundamental challenges to the agenda of human rights organisations. Whilst the Constitution provides a vital yardstick through the Bill of Rights, these "paper rights", although enshrined in legal principle, still remained dependent on an underlying popular "culture of human rights" if they were to be sustainable (Graeme, 1997:4). Residual racial, ethnic, and political or gender bias is not inherently resolved through the constitutionalising of these rights. This is especially true as "the Truth and Reconciliation Commission wound down its operations in mid-1998, and the resultant challenges revolving around the primary responsibility, which falls to CSOs in seeking to translate the findings and recommendations of the TRC into such a vibrant human rights culture" (Graeme, 1997:4). A related concern is the substantial vacuum that currently exists in South African society in respect of HIV/AIDS aid, environmental protection, poverty alleviation, job creation, victim aid, and empowerment services and policies. It has been increasingly acknowledged that the government by itself cannot effectively fill this vacuum; hence, the increasing emphasis on the role of public/private and public/CSO partnerships in service delivery. For example, the Oasis Association for intellectual disability has been awarded an Impumelelo Gold Award for its work in recycling and helping to uplift intellectually disabled people. By employing over 400 people with intellectual disabilities at seven centres throughout Cape Town, the aim of Oasis is to "enable persons with intellectual disability to realise their full potential and thereby become as independent and productive as possible within the community" (Stuart, 2004:11). In 2003, Oasis launched an environmental education campaign in which representatives visited schools to give talks on recycling and environmental protection. They also talk to learners about the rights of disabled people. Fourteen schools are now part of Oasis' green bag project. After visiting a school, Oasis leaves green bags for each learner to fill with waste for recycling. These are collected by the project (Stuart, 2004:11).

3.6.2. Why it is relevant to compare South Africa to Sudan

South Africa and Sudan are easily comparable given their similarities on critical indicators of development, whilst appreciating certain differences. In addition, both can draw lessons from each other given their experiences and the challenges they

are facing. The two countries are both on the African continent, and Sudan is in the north and South Africa in the south of the continent and therefore offer reflections on the continent. Both are developmental states and they both experience inequality, unemployment, and under-development. The two countries have a history of colonisation, liberation movements, and a struggle for freedom, and have gone through periods of conflict and strife. Importantly, they both experience unprecedented rates of corruption, and they have anti-corruption frameworks and CSOs trying to fight corruption. In the 1890s, Sudan was colonised by Britain when British forces invaded the Mahdi bringing it under its control and imposing its policies and taking over its administration. This necessitated the emergence of liberation movements in Sudan, which sought freedom from British rule as Sudan became a British colony. According to Zirulnick (2011:2), post-World War 1 the Sudanese nationalism movement gained steam and Britain realised it could not ignore popular demands for the liberation and freedom of Sudan. In 1953, the British colonisers signed an agreement that granted the Sudanese self-governance (*The Christian Science Monitor*, n.d.). The British separated the Muslim and Arabic-speaking north from the multi-religious, multi-ethnic, and multilingual south. The access to the Nile River and its markets was attractive and enabled Britian to gain significant profits from the sales and trading of British manufactured goods and establishing new trading relationships with the growing cities. The complete control of Sudan was gained in 1898 when Anglo-Egyptian combined forces took advantage of their advanced weaponry, military tactics and training and engaged in the battle of Omdurman, which led to the capturing of the city of Khartoum (Weebly, n.d.).

Since the 15th century many African countries were captured forcefully and became colonies through colonisation by the European world powers, Great Britain, France, Portugal, Germany, Spain, Italy, and Belgium. In 1652, the history of colonisation began with South Africa being colonised by the Dutch, setting the scene for a model of colonisation which brought about slavery and forced labour. In 1795, Britain established a military base in the Cape Colony to fend off the French and preserve their trade routes to India. At the time, the Colony was under control of Dutch rule but was a strategic location for the British as it offered natural resources and a growing trade market. In the 1820s, greater numbers of British immigrants arrived

in South Africa seeking new opportunities. In the 1890s, South Africa became a colony of Britain, just like Sudan. Whereas this colonisation started from the south of the continent up to the north, South Africa experienced migration and invasion of people and groups from north. The Dutch were also on a trading mission when they arrived in the Cape Colony and conquered it and settled in the Cape (Noire Histoir, n.d).

Turning to modern day Sudan, the most concerning threat for the development of the country is the elevated levels of corruption, which has hit its all agencies. In 2017 Sudan was ranked as the world's fifth most corrupt country and South Africa ranked 71st according to the Corruption Perception Index (CPI) by Transparency International. The 2017 CPI results compared and ranked 180 countries by their perceived levels of public sector corruption, according to experts and businesspeople. The results also reflected how civil liberties were affected by the increasing levels of corruption but importantly it shed light on the importance of CSOs and independent media in anti-corruption efforts. There was a considerable increase in the attacks on journalists and greater restrictions on the operations of CSOs, especially those working on governance and human rights. CSOs and the independent media were identified as critical in applying pressure and forcing governments to be honest and accountable, and in pursuing the freedom of association that enabled people to form groups and make efforts to influence public policy, with CSOs playing a key and leading role to denounce violations of human rights and speaking out when laws were contravened to agitate for or trigger action by law enforcements agencies. The 2017 CPI results suggested that countries, which respected press freedom and allowed open dialogue and full participation of CSOs in the public arena, tended to be successful at controlling corruption. It was further established by the 2017 CPI that the countries that repressed journalists, restricted civil liberties and stifled CSOs typically scored lower on the CPI. Of interest is that the CPI concluded that the inability of the citizens to hold their governments accountable contributed to even greater abuse and that the civic spaces, which posed challenges to authorities, were targeted and restricted (Transparency International, n.d.).

Sudan has unprecedented inequality rates, with about a quarter of the population in Khartoum living being below the poverty line, while in North Darfur more than two-thirds of the population living below poverty line. Poverty varies from one location to another with estimates that half the population live in poverty, according to CIA World Fact Book (2021), and the country remains largely under-developed. The Southern provinces that were side-lined during British rule continued to be marginalised and underdeveloped in the present-day independent Sudan, which is controlled by Northerners. Whereas the British had helped prevent oppression and exploitation of the Southern Sudanese by their Northern countrymen, British did little to help the South to develop economically nor to help it participate in the modern world with regional differences resulting in a deeply divided and economically differentiated Sudan. The Arab-dominated North is economically and politically stronger than underdeveloped South Sudan. This caused conflict with the South, which demanded independence from the North. South Sudan voted for independence in a referendum and became a Republic in July 2011. This deepened the divisions of the nation along lines of religion, ethnicity, and language. Whereas conflict has subsided in Sudan, the Darfuri insurgents continue to launch attacks on the government, which responds with brutal campaigns of ethnic cleansing of non-Arab Darfuris. According to Human Rights Watch, the conflict and ensuing insecurity continues has left more than 2.7 million displaced people in Darfur. Public anger had been building up over rising prices and other economic hardships. The country has experienced food and fuel shortages causing protests. In October 2017, the USA Trump administration lifted the economic sanctions that had been in place for more than 20 years, but the sanctions relief did not deliver a dramatic improvement of the economic situation with the government instituting austerity measures resulting in increased prices of staple food due to subsidy cuts in compliance with World Bank and International Monetary Fund measures. In 2019, Sudan was estimated to have 45% of its population living below the poverty line, with poverty rates higher in rural areas at 55% and unemployment standing at 17%, with low employment opportunities contributing to the economic disparity in Sudan (Ohio State University, n.d.).

According to the World Bank Report of 2022, South Africa is characterised as the world’s most unequal country with race playing a determining factor in a society

where 10% of the population own more than 80% of the wealth. It ranks first among 164 countries, with race remaining a key driver of high inequality in South Africa, given its impact on education and the labour market. Whereas corruption has seriously impacted on development of Sudan, South Africa has also been affected by corruption, which delays development progress and causes more inequality. For South Africa, the legacy of colonialism and apartheid has caused racial and spatial segregation, which continues to reinforce inequality, according to the 2022 World Bank Report. The Report also refers to gender-based inequality with women earning on average 30% less than men with the same level of education (*Al Jazeera*, 3 October 2022). According to StatsSA, 60% of households are dependent on social grants and less on income from the labour market; and it further reports a per capita expenditure Gini coefficient of 0.67 in 2006, dropping to 0.65 in 2015. The decline in inequality levels were minimal, with only 10% of the population spending 8.6 times more than the bottom 40% in 2006. The ratio reduced to 7.9 in 2015, according to the Palma ratio, indicating overall inequality as measured at a national level, showing a decline between 2006 and 2015. Black Africans earn the lowest wages when employed and white workers, in contrast, earn higher wages than all other population groups. The mean real earnings between 2011 and 2015 among employed black Africans was R6 899 (real earnings) per month, Coloureds and Indians/Asians had corresponding figures from R9339 to R 14 234 per month, respectively. Amongst whites, it was R24 646 per month, making it more than three times as high as it was amongst black Africans. But like in Sudan, different regions or provinces of South Africa have varying inequalities, with the Eastern Cape being the most unequal province in 2015, and the Western Cape and Mpumalanga coming second after the Eastern Cape. All provinces were reported by StatsSA as experiencing a decline in inequality between 2006 and 2015, except Limpopo and the Eastern Cape. The differences in annual mean and median expenditures by province showed the reality of “interprovincial inequality”. This means that individuals living in Limpopo and the Eastern Cape had the “lowest annual mean and median expenditures for all four data points” (Stats SA, n.d.).

According to key performance indicators, countries are divided into two major categories by the United Nations, as developed and developing; both South Africa

and Sudan are classified as developing countries despite variations on their performance indicators. The classification of the countries is made based on or shaped by factors such as their economic status, as it relates to Gross Domestic Product (GDP), Gross National Product (GNP), per capita income, industrialisation, and standard of living. South Africa and Sudan both have a low industrialisation and low development index and are therefore classified as developing countries. They both have comparatively higher unemployment and poverty rates, moderate living conditions, comparatively lower standards of living, and they rely on developed countries for their growth. Both countries also have a slow rate of industrialisation and lower per capita income, and experience high infant mortality, high death rates, along with low life expectancy rates, and both countries struggle with social illnesses (Key Differences, n.d.).

According to the UN, many developing countries experience almost similar challenges, which range from income inequality, widespread poverty and low education and literacy levels to inadequate infrastructure and government corruption with possibilities of inadequate energy production and higher rates of violence against women and children. They tend to present with the same health risks, such as decreased access to safe water and sanitation, elevated levels of pollution, and higher percentages of people living with or contracting infectious diseases. They are usually assisted through donations or donor grants by the UN and other agencies to respond to and overcome social, political, economic and/or environmental challenges they face from time to time (World Population Review, n.d.).

According to the Shai et al (2022: 11) femicide was five times higher in South Africa than the global average. Moreover, South Africa ranked the fourth highest in terms of female interpersonal violence death rates out of 183 countries. Regarding Sudan, the Special Rapporteur on Violence against Women, Rashida Manjoo (2015:7), reported unprecedented rates of domestic violence, rape, including marital rape, early and forced marriages, female genital mutilation, violence against women in custodial settings, racialised and ethnic violence, violence against internally displaced women, and the trafficking of women and girls as the realities of the lives of women and girl children in Sudan.

3.6.3. Comparing Sudan and South Africa on CSOs' roles

In Sudan, CSOs not supporting the government are marginalised, but since the military takeover the role played by CSOs has changed. Revolutionary civil society movements and groupings have, along with some political parties, mobilised communities and organised mass protests in Khartoum and other cities and states in Sudan to express their views and opinion on and around the rejection of the 21 November 2021 political agreement and made calls for a civilian leadership for the transitional period. Traditional native administrative structures and tribal leaders have not been present in the space occupied by CSOs and protesting communities and political parties and the civic space remained largely occupied by protestors. However, formal, state sponsored CSOs have been reluctant and slow to mobilise towards the engagement and facilitation of dialogue amongst stakeholders. The top challenges faced by CSOs in Sudan include the "restrictive and destabilising environment" in which they operate, "their limited financial viability and access to funding, and limited organisational capacity"; this has prevented CSOs from playing their roles and delivering on their key deliverables (CIVICUS, n.d.). The authoritarian rule of more than 30 years in Sudan has had a devastating negative impact on the development and advancement of CSOs (CIVICUS, n.d.).

Whereas South Africa has allowed the civic space to exist and passed laws that legitimised CSOs, the issue is the extent to which they are able to make an impact with the government cooperating with them and or even supporting CSOs. It is at times required that the CSOs litigate as their inputs or views are ignored. According to Johnson (2002:39), in South Africa, in the post-apartheid era, there was a need to reconcile the history of popular politics and mass mobilisation with the institutions of liberal democracy, and the traditional boundaries between the government and civil society became blurred as leaders, activists and thinkers from CSOs moved into government. Powerful constituencies, such as the trade unions and civic associations, were in a formal alliance with the ANC (ibid.). Many of the strongest institutions in civil society operate in the market place and in realisation of the danger that the people-driven approach may be overwhelmed by a market-driven approach to growth and development, some scholars advocated for the withdrawal of popular movements from the political realm to the private, apolitical realm of civil society, where they would be able "to serve as interests groups or channels for

community interests," states Johnson (2002:40). In view of the dominant liberal ideologies at the time, boundaries were drawn between "the political and the economic spheres, and between political society and civil society" (ibid.). Some scholars, especially Africanist scholars, rejecting the "uncritical absorption of Western perspectives of civil society and its relationship to the state" sought to understand how the anti-colonial struggle and anti-apartheid struggle attempted "to recast the relationship between the state and society and the relationship between ruler and ruled," asserts Johnson (2002:39). It has been argued that liberal perspective proponents failed "to recognise that a vibrant civil society is perfectly compatible with an authoritarian and bureaucratic state" and failed to outline "how the state will be held accountable in the event that the people are once again removed from the public realm" (Johnson, 2002:40).

The lessons drawn from Sudan and South Africa are that anti-corruption laws are not enough if communities are not empowered, and they are not able to participate in holding the government accountable. In conflict, human rights tend to be undermined and CSOs have a role to play in ensuring that the rights of all are respected but this, like in the case of Sudan, is only possible with the assistance of international communities and agencies. Where corruption is rife and it is exposed those who report it run the risk of being harassed or worse, and in Sudan many tend not to report it. Importantly, the lesson to be taken from this is that law reforms, to respond to countries' changing needs, are necessary and critical as a tool to redress and enable CSOs to play their role without fear and effectively so that they are able to serve their constituencies. South Africa, like Sudan, has increased levels of inequality and both countries experience elevated levels of corruption. According to Transparency International's Corruption Perception Index (2016), the data shows that there is strong link between corruption and social exclusion; they are closely related, and both can become a source of social and popular discontent. Moreover, the Corruption Perception Index suggested that social exclusion is a stronger predictor of corruption levels than GDP per capita.

3.7. CONCLUSION

CSOs during the apartheid era in South Africa were effective and critically important, and they led campaigns against the government (Weideman, 2015:2). They succeeded in positioning themselves outside of the state due to its inherently undemocratic and exclusionary character; instead, they focused on effecting changes in the distribution of power in society. Their primary source of concern were the policies and priorities of the state structures (Greenstein, 2003:18). During the PW Botha regime many CSOs emerged and served the disenfranchised and marginalised majority black population (Habib and Taylor, 1999:74). CSOs hostile to the apartheid state were subject to state harassment and banning and those supportive of the government were resourced. In the new democratic government, CSOs collaborated with the government and aid agencies, based on a growing orientation that suggested the promotion of CSOs could offer an alternative model of development and play a key role in the process of democratisation (Mecer, 2002:54). Weideman (2015:14) states that the South African context makes for complex relationships, especially following the transfer of CSOs' human capital to the government, the deployment of ANC cadres to key local CSOs, and the establishment of development committees with the institutionalisation of the government/CSO relationship. CSOs' desire for personal and organisational growth and a good relationship with the government caused reluctance to adopt a critical role and the government's expectations of loyalty and its intolerance of criticism weakened the stance and posture of CSOs (Coe, 2002:4).

It is in this context this chapter concluded that the effectiveness of CSOs in South Africa has diminished and that those seeking to push their interests and champion their views end up having to use litigations. It is also no secret that many CSOs face serious financial and capacity challenges, resulting in a weakening of civil society since 1994.

More recently, large donor agencies have begun to explore social entrepreneurship as an alternative to donor funding (Van der Elst and Volmink, 2017). Moreover, increased staff turnover at CSOs have contributed to the loss of institutional memory (Weideman, 2015:6). Furthermore, insufficient knowledge and the low

level of NGOs' capacity are major obstacles for performing quality work in political accountability (Zharkevich, 2010:38).

Of interest is that CSOs tend to litigate as and when it becomes necessary, especially when their inputs or views are disregarded, even if the government has failed to comply with the legislative prescripts and emerges victorious. Hence, it can be concluded that CSOs can function and exist, despite their shortcomings, and that their influence remains strong, especially as many seek relief from the courts of law.

CHAPTER 4: EVALUATION AND ASSESSMENT

4.1. CSOs AND POLICY INFLUENCE

In academic and practitioner literature alike, several authors have discussed how CSOs can best influence policymaking. Although most authors recognise that a variety of different factors can undermine or enable CSOs' impact on policymaking, some of them give more prominence to external factors, such as the political context (e.g., political culture, legal environment, and corruption), while others give more importance to internal factors such as CSOs' expertise, networks and mobilisation capacity. The policy impact of CSOs is heavily dependent on the political context within which they operate (Grugel, 1999:32). For instance, the political context might lead to different types of engagement or disengagement between CSOs and political actors (Edwards, 2004:17). Academic literature on policy influence specifically stresses the role of linkages between CSOs and decision-making institutions and investigates the importance of policy networks (Marsh, 1998:19; Marsh and Smith, 2000:11), epistemic communities (Hass, 1991:22), and advocacy coalitions (Sabatier and Jenkins-Smith, 1999:25).

Looking at the case of new democracies in the world, such as South Africa, some have suggested that the way in which CSOs try to "capture policymakers" is affected by the formal or informal rules of engagement between government and civil society (Pleines, 2005:9). In a similar vein, Coston (1998:22) has proposed a typology of NGO relationships with government to help classify different modes of influence on policy processes, ranging from NGOs that are alienated from formal policy processes and concentrate on what they can achieve on their own terms, to NGOs that are completely aligned with a government's positions. In terms of internal factors, some observers have focused their attention on issues such as capacity building, competence, expertise and mobilisation capacity as key factors affecting CSOs' influence on policy processes. For some, CSOs' policy influence is based on the specific activities undertaken by them and their niche expertise (Najam, 1999:38). For others, CSOs' legitimacy and competence are crucial factors to explain their influence on policy processes (Brown, 2001:3). Similarly, some have maintained that it is the capacity to generate information, call upon symbols

and powerful actors (Keck and Sikkink, 1998:34), and the moral position vis-à-vis global political powers that increases the policy influence of transnational civil society and its watchdog role. Obviously, CSOs' influence on policy and their strategies also depends on the various stages of the policy-making process. Several authors have emphasised how, for instance, steering the political agenda of government requires approaches and skills that are different from those necessary to provide input in the drafting process of a piece of legislation or to monitor the implementation of a specific law (Pollard and Court, 2005:44).

In considering these different aspects, Pollard and Court (2005:44) present the framework developed by the Research and Policy in Development (RAPID) programme at the Overseas Development Institute. The RAPID framework seeks to condense the various elements highlighted in the debate on CSOs' policy influence and will guide the analysis of the policy-relevant findings in this study. The RAPID framework further aims to improve the use of research and evidence to influence policy processes and views CSOs as significant actors in influencing policy and as important reservoirs of research expertise (Court and Pollard, 2005:21). Not only do some researchers work in NGOs, trade unions and religious groups, but important research also takes place as part of the action of community-based organisations, as they reflect on their own daily practice and find ways to improve their activities. For many CSOs, aiming to influence policy, a critical part of their work is to improve (sometimes, even to just acquire) their research skills and use research-based evidence to influence policy. In examining the relationship between CSOs and policy in South Africa, the RAPID framework can be employed as a useful analytical tool, as it stresses the importance of four factors that deeply affect the way in which CSOs can influence policy through their research activities: political context, links, evidence, and external influences. According to the RAPID framework, political context is a crucial element to take into consideration when it comes to influencing policy. Political contestation, institutional pressures and vested interests influence the ability of CSOs to influence policy, as do the attitudes and incentives among officials, local history, and power relations. The political strategies and power relations are sometimes clearly related to specific institutional processes and, therefore, CSOs can exploit institutional channels to contribute to policymaking. Yet, in most cases, institutional arrangements prove not to be as

crucial as personal contacts to policymakers and other stakeholders. In this regard, it is interesting that the RAPID framework emphasises the importance of links between communities, networks, and intermediaries (e.g., the media) in affecting policy change. Moreover, it is important that CSOs learn to collect evidence and use it to influence public policy. As the RAPID frameworks notes, the way in which this evidence is collected and organised matters when it comes to influencing policy processes. CSOs produce evidence and gain knowledge of social phenomena every day through their activities and experience. Yet, if CSOs do not acquire research skills that allow them to organise evidence in a consistent way, their knowledge might be of little use in influencing the policy processes. CSOs' research capacity can benefit from establishing coalitions among themselves and from networking with other actors in society. As RAPID notes, the way in which CSOs can package their evidence could become particularly important. In this case, solid interaction with the media is likely to boost CSOs' capacity to use their evidence to influence the public agenda and, in turn, impact policy. Finally, the framework emphasises the impact of external forces and donor actions on research/policy interactions (Pollard and Court, 2005:47). In some countries, international processes or donors' programmes can have an enormous influence on the capacity of CSOs to impact political processes and generate research-based evidence to support their activities to affect policy.

4.2. THE ROLE OF CSOs IN ACTIVELY PROMOTING CIVIL SOCIETY PARTICIPATION IN PUBLIC POLICY IN SOUTH AFRICA

South Africa has a vibrant culture of civil society activism and civic engagement (Connolly, 2017), and the ability of CSOs to influence the public policy-making process is an issue that has profound implications for the future of the country's democracy (Thuynsma, 2012:258). CSOs are well-positioned to increase public participation in the policymaking process by deepening democracy. Deepening democracy occurs when CSOs and the government bring communities into the policymaking process, which strengthens the reach of democracy so that more ordinary citizens, particularly marginalised groups, can participate in it (Buccus and Hicks, 2008:13). CSOs sit in a unique space between the government and ordinary citizens, and, if managed properly and effectively, they are in an advantageous

position to influence policies and ensure that they are effective. However, their advocacy techniques have not always been successful, especially in ensuring that ordinary citizens and marginalised groups have a voice in the policy influencing and policymaking processes (Connolly, 2017:21). Therefore, it is important to evaluate these techniques to uncover what strategies are the most effective at strengthening public policies so that more organisations can employ them and hopefully increase their policy advocacy.

In South Africa, the state of participatory democracy, whereby citizens can have meaningful input into policy making by means other than voting for representative is underdeveloped. Thuynsma (2012:258) argues that the tendency and ability of the government to make decisions without direct input from civil society represents a flaw in South African democracy.

Since the inception of democracy in 1994, South Africa has exhibited a democracy deficit. A democracy deficit occurs when established democratic institutions fail to effectively integrate ordinary citizens into the decision-making and policymaking processes. When a democracy deficit exists, the state is less accountable to its citizens and less representative of its people (Buccus and Hicks, 2008:38). Regardless of this deficit, Buccus and Hicks (2008:38) assert their belief that "ordinary people have the right to participate in the decision-making processes that affect their lives, and that informed policymaking leads to better policy that is more responsive to communities' needs". CSOs have the potential to play a significant role in influencing the policymaking process, but these organisations are typically run by elites with access to materials and resources, and, therefore, they often exclude ordinary citizens and marginalised groups from the policymaking process just as much as the government (Buccus and Hicks, 2008). The question of who participates and what biases exist in the participation process are increasingly significant for policy making. The level of participation determines the potential impact of any CSO. Dalton's (2017:61) insights on the participation gap, which explicates how participation is "unequally meaningful for different social groups" in democracies is of relevance here. This, it could be argued, results in different public policy outcomes that impact the lived conditions of ordinary citizens in ways that do not necessarily add value for the marginalised, even in the most sophisticated

democracies. In Africa, poverty and numerous social distinctions exacerbate the participation gap (Dalton, 2017:61). Mano and Milton (2020:11) therefore argue for a more nuanced approach to collaboration within and across CSOs, which could be more resourced, more empowered and more emboldened to exercise their right to participate in deliberative policymaking in South Africa. For CSOs to better participate in an attempt to influence the policymaking process, they need to first question how they represent marginalised groups and implement mechanisms to better represent them (Buccus and Hicks, 2008). While the state bears the constitutional obligation to enable citizen participation, and has crafted some spaces to this end, these spaces are often limited, and not designed or facilitated in a way that marginalised groups can influence policy. They typically are only for sharing information or raising concerns, rather than for lobbying or substantially influencing policies (Buccus and Hicks, 2008:40). State departments and institutions typically do not provide marginalised groups with the information and resources that they need to influence policy. Therefore, they are often unable to obtain information and reflect on proposed policies or get the representation that they are guaranteed in the Constitution. Although South Africa has legislative provisions for participatory mechanisms and have many such provisions in place, this is not enabling civil society in local communities to participate meaningfully. Policymakers often acknowledge the limitations of these mechanisms, and civil society experience leaves us in no doubt that these are inadequate, inaccessible, and disempowering, and that new approaches to community participation in development planning and policymaking are required (Buccus and Hicks, 2008:11).

Magongo (2016:4) acknowledges that the civil society sector is fragmented and needs a rebuild internally and externally for it to present a coherent approach towards development. The current CSO structures in South Africa are non-existent, except for the very few who may see themselves occupying the void created by the fragmentation and disenfranchisement of the sector. The danger with this is that the few CSOs that are vocal, may present themselves as representing the interest and ideologies of the entire sector. On 1 September 2017 at the civil society strategy workshop hosted by African Monitor in partnership with the UNDP, Jimmy Gotyana from SANGOCO highlighted the importance of civil society coming together and sharing ideas and thoughts, giving a background of the South African

landscape before and after CSOs decided to form a coalition on the Millennium Development Goals. He further pointed out that the shadow report produced by civil society created spaces for engagement between the government and CSOs during the MDG era. If CSOs remain coalition-less, their ability to drive change in and for their affected constituents will be greatly diminished (Mano and Milton, 2020:28). Coalitions formed by policy actors to advocate for a common policy position have become an important means of political engagement (Weible and Ingold, 2018:32). Actors form coalitions to push for policy change, to defend material interests, or to uphold an existing social order. It is often crucial for a policy actor to be a member of coalition to achieve success in the policy process. Mano and Milton (2020:11) add that such a civic role can be achieved via robust civic alliances and trans-disciplinary networks. Civic society coalitions are formed when various CSOs including “NGOs, people’s movements, CBOs, activists, unions, plus researchers, lawyers and journalists” come together to shape policy, engage in policy negotiations, and ensure that policy is implemented (Barnes et al., 2016:162). This, in their view, creates a broad alliance which has an unusual blend of talent and skills to drive public participation in policy. In many Southern African societies, it is such broad-based CSOs that can help increase citizen activism towards democratic change (Mano and Milton, 2020).

In South Africa, some CSOs have lobbied and advocated the state to address some fundamental developmental policies and actions. In the early 2000s, TAC challenged the state to make ARVs available in the country for people living with HIV. Thuynsma (2012:261) argues that TAC’s ability to operate well in coalition with other organisations and movements bolstered the campaign. TAC was seen as a hybrid organisation because, in one instance it is a social movement with a formal membership base, and in another instance, it is a partner in a coalition and part of a broader mass movement. Section 21, another CSO, took the state to the task to deal with access to textbooks in schools. These cited examples are a typical reaction of some CSOs on how they made their voices heard by the state. However, there are tens of thousands of CSOs across the country that are operating in dire conditions with no outlet to challenge the state. The sector needs leadership that can galvanise the sector to advocate and lobby for the interests of the sector.

There are fundamentals that need to be put in place and supported by the state to reignite the abilities and capabilities of the CSO sector to becoming partners in development. The sector needs to re-organise itself. This may be a tall order, given the fragmentation and inequalities that exist in the sector. However, there are a number of CSOs that are working hard to achieve their expectations. The only requirement needed is for state entities such as the NDA and the National Lotteries Commission to create a platform for the sector to rescue itself from the current situation. This requires a mind shift from these state agencies (Magongo, 2016:5).

There are various strategies that South African CSOs could use to ensure the representation and participation of affected groups in their policy advocacy initiatives. These strategies could include CSOs hosting training sessions for ordinary citizens to learn how to participate in policy monitoring or creating publicity campaigns for people to learn more about different policies (Buccus and Hicks, 2008). As Buccus and Hicks (2009:224) state, “CSOs should exert the necessary pressure to create an environment for political will to champion public participation, through awareness-raising and a variety of advocacy interventions”. In addition, CSOs can work to create a more inclusive policy-influencing environment by establishing links between the state and civil society at provincial and local levels because it is easier for ordinary people to participate in local government (Buccus and Hicks, 2008:24). To influence South African policy and ensure that they respond to the needs of all affected stakeholders, CSOs need to dedicate themselves to bring marginalised groups into their activities more effectively.

4.3. STATE-CSOs ENGAGEMENT

The dialogue between state institutions and CSOs can occur in different ways, from official meetings in specifically designed venues to informal (and often illegal) exchanges of information and favours. This section discusses the different forms of state-civil society engagement in democratic countries and distinguishes between formalised institutional dialogue and informal links between CSOs and policymakers. As will become clear from the analysis, both formal and informal

avenues are available to CSOs in South Africa, but informal mechanisms play a predominant role.

4.3.1. Institutional dialogue

The most institutionalised type of dialogue between civil society and government occurs through the so-called 'tripartite' institutions. Based on the model of corporatist structures in modern democracies, tripartite institutions are forums where government representatives, business and trade unions come together to discuss, advise policymakers, and possibly strike deals on socio-economic policies, salaries, and workers' rights (Schmitter and Lehmbruch, 1979:28; Reutter, 1996:15). In several democratic countries, most of the institutionalised dialogue between CSOs and the state occurs via the tripartite negotiating table and mainly involves trade unions and business associations. Nevertheless, these forums are advisory in nature and rarely allow for significant CSO influence on policymaking. In some countries, the dialogue between CSOs and the state is not as institutionalised. The state may choose if and when to involve CSOs in decision-making and often grants some organisations a special status vis-à-vis others. Likewise, the state may also interact with social partners such as business associations and trade unions, but does so on an ad hoc basis and, in most cases, some CSOs are excluded from participating in consultative forums.

In some cases, advisory and consultative bodies might serve as smokescreens for governments that are not genuinely interested in the contribution of CSOs to policy-making processes. By establishing forums that do not provide any real decision-making power, governments might succeed in pleasing foreign donors (whose funding is often subject to the establishment of partnership schemes between government and CSOs) and other international actors (primarily the EU), without really allowing for a constructive role for CSOs in decision-making (Ost, 2000:17; Reutter, 1996:3). As indicated in Chapter 3, the major reason for CSOs' hesitation to engage governments on delicate matters is their desire to obtain public funding. This often prevents them from taking a critical stance towards public authorities and forces them to focus on securing some kind of financial cooperation with state

institutions, even when this might curtail their capacity to hold authorities to account. Financial dependence on the state further challenges CSOs' policy influence, since in most cases the state is the major source of financial resources for CSOs. In brief, this analysis shows that institutionalised forums for state-civil society engagement do not necessarily provide CSOs with concrete opportunities to influence public policy. In this respect, donors and other actors concerned with strengthening civil society's policy influence should bear in mind that the existence of institutional arrangements does not equate to CSOs' effective policy influence. As the RAPID framework points out, the political context is a factor that contributes to strengthening (or weakening) CSOs' policy influence.

4.3.2. Informal links

According to Bunce (1999:31), informal contacts play a prominent role and provide CSOs with more concrete avenues to impact on public policy than institutionalised channels. Personal contacts with public servants or politicians are key resources for CSOs to attract the attention of public authorities on specific issues, irrespective of whether venues for institutional dialogue exist. In part, this can be seen because of the limited influence that CSOs exert through formal channels, as discussed in the previous section. Nevertheless, it also is a legacy of the Communist era, when personal contacts played a key role in securing access to political and economic benefits for groups or individuals (Bunce, 1999:30). Clientelistic relationships are usually developed with the aim of gaining access to government funding or tenders and, at times, take the form of full-blown corruption. Owing to this blurred overlap between formal and informal strategies, in which informal (and illegal) activities can help conduct formal interactions, most citizens seem to have developed a general suspicion of all types of interaction between CSOs and public authorities. As revealed in the case of Poland, most citizens hardly distinguish between legal and illegal strategies and, owing to prevailing informal mechanisms, they end up perceiving legal methods, such as lobbying, as a form of corruption. When this is associated with widespread mistrust, it becomes clear that CSOs could be easily dragged into a vicious circle. By aiming to play a role in the political arena and influence policy outputs, they adopt strategies that might further weaken their public

image and the already frail confidence citizens have in them. In turn, a publicly discredited CSO community would have a hard time justifying to governments why CSOs should be seen as valuable contributors to democratic policy-making. Moreover, such a pervasive system of informal contacts provides little incentive for CSOs to acquire specific expertise. Since their involvement in decision-making processes is seldom due to their knowledge and research capacity on specific issues, most CSOs pay little attention to acquiring the technical skills necessary to grasp political and economic issues and, in doing so, might perpetuate their subordinate role vis-à-vis government and remain on the receiving end of policy-making processes.

Informal strategies, based on personal contacts and network positions (Burt, 1992: 12), are particularly widespread and commonly adopted by CSOs in post-Communist countries. Interestingly, even in cases of cooperation and lobbying, the Civil Society Index indicates that CSOs are not regularly involved with government based on their expertise on specific issues, but rather because of personal liaisons with public officials or policymakers. Irrespective of the rules of engagement and the strategies adopted by CSOs, their influence on public policy remains limited, though not absent, as a number of cases demonstrate. This is partly a consequence of uncooperative attitudes on the part of government but is also due to a lack of resources and expertise on the part of CSOs that have not yet acquired appropriate skills to influence policymaking and monitor policy processes. In this respect, the evidence collected through this study suggests that foreign donors and other institutions aiming to strengthen civil society's policy role should focus more specifically on strengthening the advocacy and research capacity of CSOs, with a view to assisting them in acquiring the skills necessary to influence decision making at the national and local levels. The research capacity and learning through networks and coalitions can turn out to be extremely important for CSOs' influence on policymaking and the overall strengthening of the civic sector.

4.4. STRENGTHENING CSOs

Among other cognitive undertakings, research provides social actors with frameworks and approaches to interpret social phenomena and act upon these interpretations to affect change. In this sense, research can influence policy in a variety of ways (Weiss, 1977:10). The link between research and policy can be viewed as a linear process, whereby a set of findings is shifted from a technical to a political context, and then exerts some impact on policymakers' decisions. However, the link between research and policy can seldom be described as such a simple and linear process. Even when research-based findings do not have a direct impact on policy, the production of research may still exert an indirect effect, for example through introducing new terms and ideas, thereby shaping the policy discourse.

Applied participatory research, such as the Civil Society Index and National Development Agency reports, as opposed to strictly academic research, is also concerned with generating policy outcomes. The CSI understands 'policy' in a broad sense, which does not restrict the concept to government policy, but takes into account that organisations, institutions and companies also have policies. To exert direct or indirect impact on policy, the NDA, the Department of Social Development and international research bodies should identify aspects of civil society that can be changed and generate information and knowledge relevant to action-oriented goals. In this regard, the CSI project aims to spread knowledge regarding the state of civil society, to trigger action by a variety of stakeholders, but primarily by local stakeholders. It is necessary to enable dialogue between different groups and individuals, and ultimately lead to a reflection process that transcends the narrower interests of specific sectors of civil society. In turn, this can facilitate a new kind of interaction among CSOs and other important players, especially government and the private sector. Participation is the key word for understanding the research-policy link. By taking the lead in the CSI research phase, local actors learn by doing, acquire important skills and empower themselves. Moreover, through training local stakeholders in the assessment process, it aims to provide CSOs with a broader understanding of their role in society and with research-based evidence. This research-based evidence can help CSOs acquire those skills that

might help strengthen the sector. The contribution to domestic political change is further enhanced through dialogue, building local capacity, and strengthening local action for civil society development. For society, dissemination of findings can contribute to ongoing public debate about the role of civic participation and to the identification of reform priorities.

4.5. CONCLUSION

The analysis and assessment of the factors at play on and around whether the influence of CSOs is diminishing in the present new democratic framework post-apartheid suggests that there are a plethora of laws and policy directives providing for the organising, establishment, registration, protection, compliance and functioning of CSOs in South Africa that enables legitimacy, recognition, and increased activism of and for CSOs. The changes in legislation on various matters is ongoing and from time to time the Parliament or provincial legislatures pass laws and/or effect amendments to existing legislation and changes to laws. South Africa also has legislative policy provisions relating to NPOs that are read in conjunction with other pieces of the law that determine the compliance criteria for CSOs, which at times makes compliance an exhaustive process and difficult. Guidance and information sharing could help create awareness and enable effective participation and compliance by CSOs. The Constitution provides for the protection of the rights, as defined in the Bill of the Rights, which many CSOs seek to serve and/or enhance their protection and enjoyment by many, including those who have been left at the fringes of the mainstream economy.

The Constitution and a multiplicity of laws meant to help fight corruption or laws passed in respond to the provisions of the Constitution have put many structures in place as agencies meant to fight corruption. The laws have also sought to facilitate openness and transparency, equity, fairness, and administrative justice in the public service, including the provisions of Chapter 10 of the Constitution that provides for an ethical public service, and principles and processes for decision making in public institutions. According to Andrews et al (1988:35), “Ethics refers to the standard which guides the behaviour and actions of personnel in public

institutions, and which may be referred to as moral laws". Moreover, any modernisation of methods and procedures, as well as technological progress, are useless if personnel who must apply the methods do not aspire to high moral standards. The absence or insufficiency or even collapse of ethical and moral leadership in the public sector and irregular and unethical decision-making in public institutions threaten the good work on and around anti-corruption and enables and aids massive corruption.

CSOs have been exposed to some elements of corruption in many ways, including when they are co-opted to form part of schemes looting the resources of the state, or when they are sought to defend or remain silent on errors (acts or omissions) made in bad faith by state officials, or when they open up to manipulation by politicians and serve the political interests of particular political parties. Those acts cloud the excellent work being done by CSOs. Moreover, corruption within the rank and file of CSOs, poor financial reports, and a lack of financial skills negatively impact access to funding. But CSOs cannot exist only to serve the agenda of donors or the state without responding effectively to their mission of serving the downtrodden and marginalised.

The government's posture and attitude towards CSOs disrupt their working relations and creates disputes, even on simple issues that need consensus and responsiveness/redress to the indication of errors, especially in the application of the law or how they apply the law, which end up in the courts. In the ongoing legal battles between the government and CSOs, even when the courts rule in favour of CSOs, the rulings are appealed against and challenged, if not ignored, or their implementation is delayed. This negatively affects the resources of CSOs, which are used for litigation purposes, and their ability to respond swiftly to the needs and challenges of the people.

Moreover, it can be said that the civic space has shrunk considerably. The reduction in the numbers of employees of CSOs, the unequal pay of CSO workers, the resignation of skilled and experienced workers, the poaching of experts, the murder of activists, the closing down of some CSOs, and reduced funding suggest that the civic space is shrinking and with that, its influence; hence, only those who are able to litigate rise in prominence.

Moreover, the increase in corrupt activities, the collapse of public services, and the increase in the murder of whistle-blowers may suggest that the beneficiaries of corruption are not disengaging and increasingly are becoming more dangerous and sophisticated. This calls for more activism and an increased role by CSOs, but at the same time we realise how their influence is being hamstrung (deliberately at times) to render them useless and irrelevant.

CHAPTER 5: FINDINGS AND RECOMMENDATIONS

5.1. INTRODUCTION

The topic of this research related to assessing and evaluating the influence of CSOs in the new government framework of a democratic South Africa; this also constituted the aim of the study. This study investigated the rationale behind or the factors contributing to the diminished influence of CSOs in the new governance framework in the democratic society and sought to provide clarity on what happened to compound the causes of the reduced influence. CSOs should be able to exercise their influence without necessarily being assisted by the courts. Moreover, the purpose was to examine the new dominant features, such as the use of litigation processes, as used by CSOs to continue to exercise influence in the new governance of a democratic South Africa and the extent to which such processes were able to assist CSOs exercise influence in the new governance framework. The study also investigated/established what compounded the challenges faced by CSOs in relation to the influence they should exercise in the new governance framework in democratic South Africa. This study further sought to evaluate the reasons/causes for CSOs' diminished influence, and the relationship of the conduct of the new democratic government to CSOs' diminished influence and/or interests.

Moreover, the study enabled an explanation and description of the most effective tools or mechanisms through which the influence by CSOs could be exercised in the context of the new governance framework of democratic South Africa. The NDP (2012:401) acknowledges that "South Africa suffers from high levels of corruption that undermine the rule of law and hinder the state's ability to effect development and socio-economic transformation". The maladministration and corruption in the South African public sector have been extensively exposed and made known to the authorities and law enforcement agencies. "Although the country is harmed by corruption, the costs fall most heavily on the poor as it holds negative impact on the quality and accessibility of public services" (ibid.). The NDP (2012:401) states that to defeat "the twin challenges of corruption and lack of accountability" in South

African society demands “a resilient system consisting of political will, sound institutions, a solid legal foundation and an active citizenry”, who are fairly and sufficiently empowered to be able to hold public officials accountable.

There is also growing concern that CSOs are more accountable to their funders than to those they serve. Because they are largely dependent on funding, their projects are crafted in line with donor preferences instead of in line with those they represent. Moreover, numerous NGOs face serious financial challenges with many already closing or scaling back their activities. This even though the country faces increasing developmental challenges in certain areas including health, education, and poverty alleviation.

Whereas the influence of CSOs has reduced in the new governance framework, there is a standard activist formula for social justice change with some of the key court cases that have recently had effect and impacted the body politic. In democratic South Africa, CSOs’ influence has diminished in the new governance framework to the point that they are seen as relying on the courts to help them realise their goals or to have their views on various matters of their interest finding expression in policy and programme decisions. We increasingly see CSOs taking the government to court with a significant impact on our political, social, and economic landscape. This is good for governance and democracy. Evans (2011) states, “Their influence in the new governance framework in democratic South Africa seems to be undermined by the multiplicity of factors including being suspected of standing counter-pose to the work of the democratic government”.

The research questions were the following:

(1) Does South Africa have any legal provisions that empower and legitimise the role of CSOs in exposing or revealing any information on corruption in government?
(2) Are CSOs aware of the role of government’s anti-corruption work and bodies and is the information available and accessible?
(3) Are CSOs actively promoting civil society’s participation and building coalitions with key stakeholders in order to influence the public policy debate?

Hence, the objective of the study was to identify possible impediments to the effective and positive influence or contribution of CSOs to the new government framework in democratic South Africa. The study investigated whether the role of CSOs had diminished in the new governance framework in democratic South Africa, and the factors involved, and how CSOs' role is made effectual in the face of all the challenges that undermine their presence and space today.

In addition, the study sought to describe CSOs' experiences in South Africa. The study further investigated the role and the nature of CSOs and what they stand for in a democratic society. CSOs are understood to occupy the space between the state, the market and the family; they are known to be voluntary in nature; they consist of structures that form a space for social cohesion and solidarity; they are known to hold government accountable; and they influence government policies for the benefit of society.

The study also examined the available mechanisms enabling CSOs to play an effective role in the government. The use of constitutional legislative prescripts and/or the involvement of courts emerged as critical means to help CSOs to achieve their goals or to add positive impetus to their work. The courts can provide immediate relief when it is sought; they can even force the state to comply with, cooperate and meet the needs of the constituencies being represented by CSOs. Some CSOs used campaigns and the lobbying of influential personalities and/or persons with authority, and opportunities for the politics of opposition and/or influencing electoral politics' outcomes in certain circumstances. At the centre of the study was examining the methods and approaches in use by CSOs and exploring which means were most effective under the given circumstances at a particular time.

To analyse the relationship between CSOs and the government in democratic South Africa, the study clearly described the interaction between CSOs and the government. The literature suggests that the role of CSOs has changed from being on the opposing side of government to being advocates of government policies. CSOs can fulfil government mandates and responsibilities, and the government has a commitment to support CSOs by providing funding and direction through

policy. Thus, it was important to examine the strong and effective role played by CSOs in government. CSOs have a challenging task to remain relevant and committed to the course in the ever-changing political, social, and economic climate of a developing South Africa. Constitutionally, CSOs have the right to exist, represent, interact, oppose, and participate without any impediments or manipulation by those in power or those whose decisions and actions are challenged in a public space.

5.2. OVERVIEW

It was the focus of this research to determine or ascertain if within the new democratic dispensation framework, CSOs are able to exercise some form of influence in pursuit of their work. Various findings were made flowing from the analysis of the available data. The study also focussed on the enabling legislative provisions at the disposal of CSOs, making them not only legitimate but also protecting them. The study further assessed the South African government's efforts in fighting corruption and the existing anti-corruption establishments put in place to fight the scourge of corruption, which could cooperate with CSOs whose interests are linked to observing and respecting the rule of the law, complying to constitutional legislative policy imperatives, and championing for redress when non-compliance occurs, or corruption is committed. Moreover, the study investigated the degree to which the influence of CSOs is exercised, but also in what it finds expression and the impact it holds. It also sought to identify, exclude, and explain the impediments contributing towards the diminishing influence and effective functioning of CSOs. Whereas the legislation in place is generally regarded as progressive and enabling, the challenges in implementation and the commitment of law enforcement agencies shaped the concerns with regard to the effectiveness and relevancy of the laws in the fight against corruption, especially when corruption appears to be rapidly growing and left unchallenged with no consequences for wrongdoing or irregularities bordering on corruption and fraud. Agreeing that the laws are in place to provide for the processes through which CSOs are registered, regulated and legitimised, the role played by the Directorate responsible for this is a matter of concern, as it is not centralised, there are delays in serving CSOs, and it is not always responsive to CSOs.

The state establishments and/or bodies meant to fight corruption through detection, investigation, prosecution and securing convictions also cry foul about insufficient budgets or funding by the government for the successful execution of the legislative mandates, especially if they are evaded and/or challenged. Funding and funders play an important role in the sustainability and functioning of CSOs, which have witnessed either a reduction in funding, especially from international donations, as they are channelled through government departments and agencies for preferred policy direction, including funds made available by the government that forces CSOs to best serve the policy mandate of either funders in general or government departments, which appropriate funds in pursuit of their policy responsibilities. The facilitation of participation of the public in various government activities, including its arm of the legislative sector for the purpose of law-making driven by CSOs through the mobilisation of the masses and for their empowerment and empowerment of CSOs, appears to be weak or insufficient. The provisions of Sections 59 and 72 of the Constitution (1996) enable public participation in decision making and largely placed this responsibility of facilitation of public participation on the legislative sector. In so doing, public involvement may take various forms, including public hearings, petitions, representations, call for written submissions, and oral submissions, targeted at certain sectors of the society.

Moreover, it has not happened that the state has given citizens the right to decide on a matter through direct democracy in the form of a referendum, even where the law exists in the form of the Referendum Act of 1983 (amended by the Referendum Amendment Act No. 97 of 1992), nor promulgated legislation aligned to the provisions of Chapter 5, Section 84 of the Constitution, which provides for the powers of the President as he/she can call for a referendum or facilitate pure democracy or direct democracy, such as initiatives, recall and/or a referendum. This is despite sensitive issues like same-sex marriages, the legitimisation of sex work, land expropriation without compensation (Amendments of Chapter 25 of the Constitution), and the Electoral Amendment Bill, which needed direct democracy as no sufficient mandates were given by the electorate to the electorate's representatives. This is notwithstanding submissions and protests by CSOs that such sensitive issues are resolved only by, or at the level of, public representatives in the Parliament. Direct democracy is a means through which the electorate decide

on policy initiatives, without elected representatives as the body deciding on behalf of and/or for the people as proxies. Thus, it is the responding view that the influence of CSOs is diminishing in the new democratic dispensation, forcing many CSOs to rely on the courts to ensure that their views find expression in the work of the government. This is one element that affirms the rights of CSOs and demonstrates how the law empowers CSOs, even to have their concerns resolved in the highest court of the country.

The critical focus of Chapter 1 of the research was on the motivation for the study; further it outlined the problem statement and indicated the research questions, the research design, the target population, the proposed methodologies, the purpose of the research, and the objectives thereof. Chapter 2 addressed the theoretical framework and the conceptualisation of terms, including explaining participatory democracy, which was identified and explained as an appropriate theory for this study. The meaning of the concepts 'Civil Society Organisations' and 'Civil Society' was provided and the concepts of governance and the government framework were defined. Chapter 3's focus was on CSOs in South Africa and their role and influence in governance. In this chapter, an attempt was also made to clearly define the role of CSOs in South Africa's new government framework. The extent to which CSOs influence policy, government proceedings, and democracy was explained with the focus from different political timelines in South Africa and Sudan. Chapter 4 provided for the assessment and evaluation of how the theoretical framework and the conceptualisation of terms helped to enable the research and evaluated the critical research objectives, and the questions and aim of the research. It further provided for an interpretation of the work done and articulated the generated understanding and/or view. This chapter, Chapter 5, intends to articulate the findings and to make recommendations on possible solutions.

5.3. FINDINGS

5.3.1. South Africa has an enabling legislative environment for the existence of CSOs, without limits and restrictions, but with fewer results and impact

Since the dawn of democracy, South Africa experienced a safe and an enabling legislative environment for all, and it does not limit or restrict the work of CSOs. The

transition to democracy delegitimised the segregation of organisations (Mhone and Edigheji, 2003:260). The Constitution of the Republic of South Africa, Act 108 of 1996 (as amended) is the supreme law of South Africa. The current constitution was adopted in 1996 and came into effect on 4 February 1997. The Constitution includes protection for fundamental human rights that are relevant to the CSO sector. Specifically, the Constitution protects the “right to freedom of association” (Clause 18) and “freedom of expression” (Clause 16). The NPO Act 71 of 1997 provides an enabling environment for CSOs’ formations and functions as legal structures and it creates a regulatory framework for the operations of such structures (NDA, 2013:43). The Non-Profit Act repealed the Fund-Raising Act 107 of 1978, which was abused by the apartheid government to control the fundraising activities of CSOs and often to close them down.

South Africa has experienced growth in registered CSOs, including Corruption Watch (which forms part of Transparency International) (founded in 2012), Freedom Under Law (founded on 23 January 2009), the Helen Suzman Foundation (founded in 1993), the Freedom of Expression Institute (established in 1994) and Black Sash (founded in 1955). Regarding the NPO Act 71 of 1997, CSOs are expected to comply with the requirements of Sections 16 to 23 of the Act. The main requirements are to submit annual reports and inform the NPO Directorate of any changes within an NPO, including documentation (Sections 16 and 17) and finances (Section 17) (Department of Social Development, n.d.).

According to the Parliamentary Standing Committee on Social Development there were 228 822 Non-Profit Organisations registered in South Africa, of which 58.44% were non-compliant with the NPO Act in 2020 (Parliamentary Monitoring Group, n.d.). The Minister of Social Development, Lindiwe Zulu, warned non-compliant CSOs to comply, as it might affect their funding prospects in future or result in deregistration. Non-compliance is a critical concern as it is not known whether CSOs are not comfortable in reporting on their organisational matters to the government, especially those not funded by the Department of Social Development, or whether it is the indication of non-active/non-operational CSOs.

Significant progress has been made by South Africa in its effort to create an enabling environment for CSOs to flourish, as sought by or as mandated by the

NPO Act of 1997, and the country has succeeded in the areas of promulgation of legislation, policy determinations, and policy direction. Nevertheless, challenges remain on and around capacity for the purpose of implementation. A study conducted by Ngudu and Motala (2019:45) established that South Africa has the most progressive and celebrated legal and policy framework globally, but it has challenges regarding the capacity to implement, enact and translate the legislative framework into beneficiary practices. The Directorate for Non-Profit Organisations is regarded as ineffective and dysfunctional, not responsive, and it does not assist with respect to its role relating to the registration and support of these organisations. This is become a bone of contention for the organisations which seek to utilise the services of the Directorate for Non-Profit Organisations, which wait for long periods to get their registrations processed; the prolonged delays disrupt their functions and their legitimacy, negatively affect their ability to operate legally, mobilise and secure resources, and to arrange working relationships or enter into working relationships and/or partnerships. The inefficiencies relating to the bureaucracy and the capacities of the Directorate require a concerted effort to be redressed. Whereas work on and around the creation of awareness about its work has been acknowledged, especially on registrations and compliance, the services of the Directorate are deemed insufficient to ensure ongoing support, swift registrations and re-registrations, and care of the organisations involved. The potential exists to improve on the work of the Directorate and increase information sharing, education, communication, and campaigns to empower and enable communities and organisations to play their meaningful role in the civil society space. It is critical to note that legal and regulatory regimes, which remain unchanged and lag behind the unfolding and presenting developments in the civil society space, can disenable organisations or delay the progressive advancement of gains. It also disenables the organisations “wherever they leave scope for their politicised and selective interpretation, and the exercise of discretion by political leaders and public officials” (CIVICUS, 2017: 18).

In all fairness one can arrive at the conclusion that there is an enabling legislative policy framework for the effective functioning of CSOs in the post-apartheid new democratic era in South Africa in view of the legislation, the culture and the political enablers, despite the challenges facing CSOs. The environment is enabling for

CSOs as it protects and promotes the exercise of the freedom of association, which is the cornerstone of an effective civil society as it allows people to come together to improve their lives, communities, and the world at large. It enables citizen participation and advocacy, including working collectively towards open and responsive governance. An enabling legal and policy environment for CSOs not only safeguards the freedom of association afforded to all individuals, but it also promotes CSOs' ability to maximise their impact. According to the 2000 report by Auditing SA on the importance of legislation, legislation determines amongst others the rights and responsibilities of individuals and authorities to whom the legislation applies. After the demise of the apartheid in South Africa in 1994, laws designed to oppress and control CSOs were repealed and replaced with laws designed to facilitate a thriving civil society sector, rooted in self-regulation. The South African government adopted laws regulating civil society, which are widely considered as "good" laws: laws designed to encourage and facilitate a thriving civil society sector. To a great extent, CSOs in democratic South Africa were afforded an opportunity and space to operate independently, freely, and without any form of intimidation.

The NPO Act 71 of 1997 enables CSOs to establish themselves as legal structures and regulates the way in which such legal structures operate. NPOs have reported that the NPO Directorate is "not timeously responsive", often loses documents, and delays are encountered in obtaining responses from designated officials. It was also reported that there are inconsistent responses between officials at the provincial level and the national level. NPOs further reported that there was limited contact with the NPO Directorate after receiving an NPO Certificate. Moreover, when an NPO registration application was rejected, no suggestions are made to remedy the declined application. In addition, the functions of the NPO Directorate are centralised at the national office (as they remain not decentralised) and the provincial offices do not play much of a role in facilitating the services of the NPO Directorate to CSOs. Furthermore, the duplication of roles of registered cooperatives (NDA, 2013:43) and the double dipping of funding due to a lack of coordination for those who offer the same services, as well as associated litigation or generic legal costs present pressing challenges for CSOs. CSOs are at times forced to use the courts for relief or the facilitation of access to information for the

purpose of transparency when authorities' discretion fails the good intent of the promotion of access to information.

5.3.2. The South African law empowers and legitimises CSOs to expose or reveal information on corruption in the government even if there are challenges on and around the implementation and exercise of oversight on compliance to the legislative framework

The study finds that there is no law in South Africa that prevents CSOs from exposing or revealing information on government corruption; however, there is a tendency by government official and politicians to disregard the rule of law with the deliberate intention to cover up activities of corruption or the prosecution thereof. South Africa's Constitution provides a special place for civil society to play an oversight role over democratic institutions, to monitor human rights, and to give citizens, especially the poor, vulnerable and excluded, the tools to know and asserts their rights. Although CSOs have the freedom and the right to report corruption, there is growing concern about the ever-increasing cases of corruption in the public sector.

According to Gumede (2021:2), South Africa's public accountability ecosystem is broken. Effective accountability requires a sound accountability system that involves legal reporting frameworks, including effective internal government controls, processes and institutions, democratic oversight institutions, non-state oversight institutions such as the media, civil society, ordinary citizens, and finally, consequences for wrongdoing. Gumede (2021: 2) further states that the media, CSOs, and whistle-blowers have consistently pointed out corruption, mismanagement, and poor public services, as empowered by legislation. However, such efforts have been dismissed and this indicates that the judiciary has often become the last resort for ordinary citizens to hold elected and public officials accountable when politicians and government leaders fail to heed other watchdogs' calls for accountability. This also suggests that the enabling environment is legally good on paper but remains a serious challenge in practice.

The successful prosecution of corrupt activities requires that certain conditions are in place, such as appropriate laws against which to prosecute; the independence

of investigation and prosecution agencies from political interference; sufficient funding and specialist capacity to investigate; an institutional architecture that supports the sharing of information and cooperation between relevant agencies; and measures that incentivise whistleblowing (RSA, 2016:2). In addition, this work is supported by an active civil society that mobilises against abuses of authority, a free media, and good access to government and other public information. There are identified gaps in the legislation; nonetheless, they require (or are receiving) attention. There are concerns about the legal protection of whistle-blowers, which have been raised in a number of contexts. In 2012, the NDP stated that the Protected Disclosures Act, 2000 (Act No. 26 of 2000) “has several weaknesses”. The scope of protection in the law is too narrow. It is limited to “occupational detriment”, which needlessly restricts the application of the Act to whistle-blowers in a formal permanent employment relationship. It excludes all persons in other commercial relationships with the relevant organisation. In addition, the range of bodies to which a protected disclosure may be made is limited to the Auditor-General and the Public Protector. Further engagement and discussion around the legal requirements to ensure adequate protected disclosures in all contexts and around the protection of whistle-blowers, as well as processes to improve and incentivise such reporting, will be required. An extensive awareness-raising campaign around the implications of these pieces of legislation once promulgated will be required to support the promotion of reporting of corrupt activities or practices.

The Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000) (PAIA) has not been effectively implemented by many departments, as noted in the NDP. The NDP has recommended that a dedicated body is tasked with supporting improved access to government information for the public, as envisioned under PAIA (NPC, 2012: 8). Compliance with PAIA requirements also scored low in the Department of Planning, Monitoring and Evaluation’s (DPME) Management (RSA, 2016: 5). PAIA enables CSOs to investigate reports of corruption within the country and to hold both public and private bodies accountable for their actions or lack thereof. Corruption Watch reports that between 2014 and 2015, 12 PAIA requests were made to government institutions and departments, including SASSA, the NDSD, the City of Tshwane Metro, the Department of Mineral Resources, the Department

responsible for land reform and rural development, National Lotteries, the National Department of Health, the Gauteng Department of Education, the Victor Khanye Local Municipality, Legal Aid SA, and Jozini Local Municipality. The requested information included lease agreements, documentation in respect of funding NGOs, tender contracts, forensic audits, audit reports and procurement contracts. All requests were refused, except for the Jozini Local Municipality. Moreover, the state of record keeping in several government departments and municipalities is poor, which affects departments' capacity to support PAIA. The PAIA Civil Society Network noted in 2014 that the private sector has not been as responsive as it should be to requests for information under PAIA (RSA, 2016). A report by the Network in 2014 stated that less than half of all requests submitted to the private sector had been responded to within the statutory time frames (Kennedy, 2015: 54).

5.3.3. Funding is a challenge and a threat to the existence, effectiveness, and sustainability of CSOs in South Africa

There is a plethora of funding resources available to CSOs in South Africa (Magongo, 2016:101). However, since 1994, a proliferation of CSOs has led to additional organisations embarking on rate-race and competing for ever-dwindling funds from international and local development agencies. In addition, South African 3entitlement and the accompanying pseudo sense of financial security have caused many CSOs to fail to sustain operations and services over a prolonged period. Ngudu and Motala (2019:56) state that private and corporate funding has dwindled over time and it has been reduced, and many CSOs resorted to or have sought more funding from the government to remain in business, which necessitated some competition to access government funding among many CSOs. There are different views on what causes the insufficient funding of CSOs, some attributing such a challenge to weakness on the part of CSOs resulting from how they operate and function, which makes them less attractive for donors. Weideman (2012:13) argues in favour of key requirements for adaptive behaviour, increased resilience, sustainability, and more capacity, which is sorely lacking in the sector. CSOs that pay allegiance to the marginalised masses and choose to serve contrary to the posture of the government and/or adopt an oppositional or counter-pose

posture or adversarial role to the means, policies and services (or acts and/or omissions) of the government (i.e. advocacy CSOs) are likely not to get any assistance, services and funds from the government and have to depend on and/or rely on foreign funding and donations from private companies or the business sector. The Helen Suzman Foundation, Corruption Watch, the Freedom of Expression Institute, Black Sash and Freedom Under Law are known to be oppositional or adversarial; hence, they require substantial capital to operate or hold the government accountable through litigation and they rely heavily on private donors, including international funding.

The roles of CSOs in South Africa are diverse and essential. According to Camay and Gordon (1997), CSOs play diverse roles, such as relief; welfare; service provision; technical innovation; traditional community based; co-operatives; religious or faith based; professional associations; labour unions; human rights promotion; civic/democracy education; community development; advocacy; economic interest associations; ratepayers' associations; and networks.

The specific roles of CSOs and their relationship with the government seem to be a determining factor in acquiring funds. This includes CSOs that provide humanitarian assistance to victims of famine and other natural disasters, as well as wars and other conflicts (e.g. the Red Cross, Green Crescent, Gift of the Givers); CSOs that provide basic services such as health, education and housing; CSOs created to provide training and technical assistance to other CSOs or community organisations; CSOs formed to monitor abuses of human rights or concentrate on public education with regard to civic rights and responsibilities; and CSOs promoting the development of their community through service provision (Magongo, 2016:99). The Department of Social Development's 2015, 2016, 2017, 2018, 2019, 2020, and 2021 Annual Reports indicated that it had made transfer payments to CSOs that complemented and supported government work. The National Lottery Commission targets and funds non-profit entities working for the public good, which include the charity sector; arts and culture; the national heritage sector; and the sport and recreation sector (National Lottery Commission, n.d.), while the NDA supports NPOs and co-operatives that contribute towards poverty eradication in their communities. The StatsSA Report covering the period from

2010 to 2014 states that financial assistance in the form of “government subsidies” made up 44.3% of all Non-Profit Institutions’ (NPIs) income in South Africa. It was further reported that NPIs focusing on the area of “social service provision” benefited the most, with them receiving the “highest subsidies from government at 46.1%”/, the education field received 16.8%, and health sector oriented NPIs 14.1%. The cost driver for the expenditure of NPIs was the salaries of their workers, estimated at 83.8% (StatsSA, 2017). The Corporate Social Investment expenditure for or on CSOs was reported to be R6.9 billion in 2012, and biggest stake of the share received by education sector CSOs at R2.96 billion, and social development at R1.055 billion and health at R800 million. “It can be surmised that tax deductions for funding education is the main incentive in the scale of funding for that sector,” according to the NDA (2016). The National Lotteries Commission contributed R10.9 billion to CSOs between 2000 and 2011, while the NDA contributed R1 billion between 2000 and 2001 (ibid.). The NDA study (2016) also identified “High Net Worth Individuals” as a rapidly growing “source of income” for CSOs. The data on this rapidly growing source of income for CSOs is outdated and incomplete but estimates, according to the Report, is that about 75% of such individuals contributed to CSOs, with an unclear scale of how much such individuals contributed (ibid.).

The operational work of the CSOs under study is sustained by private and foreign funding from charities, international foundations that focus on social development, NGOs, advocacy groups and private sector companies operating in a variety of industries. Significant donations also come from a number of law firms, auditing firms, media groups, development agencies, and individuals. Corruption Watch receives funding and donations from Anglo-American Group Foundation; Anglo Gold Ashanti; ABSA; Standard Bank; Open Society Foundation SA; Transparency International; Elma Foundation; GIZ; the Claude Leon Foundation; the Ford Foundation; the Google Impact Challenge; the Millennium Trust; the Oppenheimer Memorial Trust; Krish; and the Antony Ball Foundation (Corruption Watch, n.d.). The Helen Suzman Foundation enjoys financial support and donations from “the Friedrich Naumann Foundation; HSBC; The Open Society; the Donald Gordon Foundation; the Oppenheimer Memorial Trust; the Percy Fox Foundation; the Joan St Leger Lindbergh Charitable Trust; the Wendy Appelbaum Foundation; Mary

Slack and Daughters Foundation; Pan African Capital Holding; Krish; Lord Renwick; the Gabriel Foundation, and the Millennium Trust" (Helen Suzman Foundation, n.d.). The Black Sash's financial support and contribution comes from Brot; the Charles Steward Mott Foundation; the Claude Leon Foundation; Community Chest; the Constitutionalism Fund; ELMA 10; the Millennium Trust; Old Mutual; Open Society Foundation for South Africa; The Davids and Elaine Potter Foundation; the R.B. Hagart Trust; the Frank Robb Charitable Trust; and the London School of Business (Black Sash, n.d.). These organisations have made their audited financial statements available to the public for transparency. However, the Freedom of Expression Institute and Freedom Under Law did not reveal information on their funders on their websites but indicated their reliance on private funding and donations.

According to Mhone and Edigheji (2003:265), donors wield enormous power over the political and economic development and direction of recipient CSOs and countries. They also regularly change their funding priorities, and, in many instances, these decisions are made by wealthy and influential board members in boardrooms in a foreign country. Donors can decide which CSOs are to live, and which are to die, and in the process, consciously and unconsciously, transplant their own values and world view on the recipients of aid. Given CSOs' general dependency on external funding, donors tend to have undue influence on the shape of civil society in a country. For instance, by supporting big professionalised CSOs, with the capacity to meet complicated funding requirements and to ably deliver services, donors make a value-laden choice in favour of the section of civil society to the direct detriment of others (Mhone and Edigheji, 2003:265). Therefore, there is no doubt that many CSOs in South Africa, for the sake of survival, tailor their funding proposals to the known priority areas of particular funders. Compromises and trade-offs thus become the order of the day and development becomes unavoidably donor driven.

Whereas funding has been reported to be available from both the government and the private sector, including from historical funders, even this funding is diminishing; thus, the government is seen as a critical source for funding, as funding generally remains either insufficient or interests driven. It is also for this reason that funds are

made available to serve a particular policy mandate and it is obvious that where the work of a CSO seems to stand counter-pose to the policy agenda of funders, including the government, it unlikely to be provided. Corruption affects and/or occurs both in government and the private sector and no sector can fund its opponents or a CSO not aligned to its interests and policy posture. A feeling of entitlement, and the accompanying false sense of financial security it brings, has seen many CSOs fail in sustaining themselves in the long term (NDA, 2013:25). The NDA (2013:13) reported that funding challenges negatively impacted CSOs' sustainability and development across the nine provinces of South Africa. This was partly born from a dependence on external sources of funding, while there was a decline in donor funding and limited South African government funding. Funding challenges are further exacerbated by the lack of cohesion in funding approaches and strategies within the civil society sector. Various NDA reports have indicated that the CSO sector has been complaining about the lack of financial support, particularly from the government. As Sibanda (2009: 22) puts it, when looking at government funding the sector is visibly lacking access to financial support and, to an extent, general support as well as public contributions. The sector is also seen to be lacking contact with relevant and potential funding sources, and these CSOs also operate in spaces without sufficient office space, equipment, and supplies. In addition, some CSOs cannot retain staff because of low salaries and benefits, resulting in the high turnover of skilled staff.

5.3.4. CSOs' influence and the civic space is closing or shrinking in democratic South Africa

According to Mhone and Edigheji (2003:263), the configuration and evolution of the civic space is determined by the political socio-economic milieu within which it is located. The post-apartheid era was meant to have been civil society's "wonder years" – the period in which it was to have flourished and thrived. However, the relationship with the state was not entirely positive. In fact, for a short period during the RDP, the relationship between the state and civil society became acrimonious. After that, there was a kind of selective return on the part of the state to some CSOs, sometimes for advice on policy matters, but more often for assistance in implementing selected projects and programmes. CSOs later started to tender for

government contracts to deliver various services, thereby moving into the difficult terrain of trade-offs, choices and compromises. A study conducted by Kagiso Trust, as researched by Ngudu and Motala in 2019, concluded its findings relating to dimensions of an enabling environment, specifically noting the dimension of “free from state interference”, suggesting that its expression existed more in principle than in reality or practice. Moreover, the increasing levels of criticism by government officials and political leaders directed at the CSO sector, particularly when they play an oversight or watchdog role, remain a grave issue. Mano and Milton (2020:28) assert that to create, support and maintain space for civil society requires that states and their agencies do not allow the abuse of laws, and criminalise, stigmatise, restrict, or hinder the work of CSOs. Mendelson (2015:3) suggests that “the closing space of CSOs correlates with the weak links between CSOs, local populations, and heavy reliance on external sources of funders”. Any organisation that depends on a narrow number of donors and does not have a broad base of citizen support risks losing touch with the people it is trying to serve. The dependence syndrome on foreign funding undermines the independence and internal decision-making capacity of CSOs and contributes to further weakening of any social bases CSOs may have and makes them not accountable to the communities they serve, or any other domestic constituencies, but to their funders, who often are in foreign countries. South African CSOs funded by so-called Western organisations or privately are branded agents of regime change, wanting to remove the freedoms achieved through the liberation struggle.

According to Mawarire (2018:6), there is no country in the SADC region that has an open civic space. Furthermore, the CIVICUS Monitor, a tool measuring the civic space globally, shows that the civic space in South Africa is narrowed, but it was further downgraded to “obstructed” in 2021. A “narrowed” civic space means that while the state allows individuals and CSOs to exercise their rights to freedom of association, peaceful assembly and expression, violations of these rights also take place. People are allowed to protest and form associations; however, these may be impeded by occasional harassment. “Obstructed” means the civic space is heavily contested by power holders. Those in power can impose a combination of legal and practical constraints on the full enjoyment of fundamental rights. According to the leader of CIVICUS’s #standAsMyWitnesscampaign, the

downgrading of South Africa is due to the excessive force against protesters, escalating harassment, arbitrary detention, and the killing of Human Rights Defenders. The use of excessive and lethal force was seen when the police killed Mthokozisi Ntumba, a bystander, as they dispersed protest action by students from Wits University. Other examples included the excessive force against environmental defenders from mining communities who held anti-mining protests. Additionally, whistle-blowers and trade union leaders risk being targeted for assassination and there have been several killings, such as Babita Deokaran and Malibongwe Mdazo. There is also the case of Jeff Wicks, a journalist who faced surveillance from the authorities by having his phone bugged with a tracking device in a bid to establish his sources, and the raid of the Helen Suzman Foundation offices in 2016.

5.3.5. CSOs are aware of the role of the government's anti-corruption work and bodies, and they are accessible for CSOs to report on corruption

South Africa is experiencing a significant rise in corruption, particularly in the public sector. The country has several institutions mandated to investigate and prosecute corruption. The most prominent of them are the Hawks, the Public Protector, and the SIU. Within South Africa, these efforts emanate from the provisions provided in Section 181 of Chapter 9 of the Constitution (1996), which requires that institutions supporting constitutional democracy should be strengthened. This, considering the argument by the United Nations Office on Drugs and Crime (2014), seeks to protect the fundamentals of democracy, meaning that agencies charged with an anti-corruption mandate, or at least one of the key agencies, should be strengthened, through legislation, resourcing, and/or budgetary support. This means that the intensification of anti-corruption efforts in South Africa and throughout the world cannot be successful unless its anti-corruption agencies are independent from political influence.

There have been voices, especially from civil society, who have seriously questioned the independence or the lack thereof of key corruption-fighting agencies, including the Hawks, the SIU, the Public Protector, and the National Prosecuting Authority. It is understood that such independence can only be guaranteed by the political will of the state, devoid of political interference, which in

most cases is the major contributor to lower levels of independence within anti-corruption agencies (Chetty and Pillay, 2017: 32). Anti-corruption efforts are more likely to be successful if they approach corruption as a systemic problem rather than a problem of individuals. A rights-based approach to corruption calls for a comprehensive strategy to promote effective institutions, appropriate laws, good governance, and the participation of all concerned stakeholders (United Nations, 2013:43). The adoption of legal frameworks or anti-corruption commissions is essential but may not be effective without a strong and engaged civil society and a culture of integrity in state institutions. Likewise, civil activism against corruption can only thrive in the presence of a strong legal framework and an open political system. To further anti-corruption efforts, the characteristics of effective anti-corruption institutions need to be identified. In this regard, the role of the judiciary, ombudsmen, and national human rights institutions in addressing corruption and the potential for their cooperation with national and international anti-corruption agencies should be considered. An engaged civil society and media that value and demand accountability and transparency are also vital to addressing corruption. Whistle-blowers, human rights defenders, democracy activists, and anti-corruption advocates must be protected under law. Lessons can be learnt from the experience of the human rights movements in raising civil society's awareness of the adverse consequences of corruption, and in building alliances with state institutions and the private sector in support of anti-corruption efforts. Civil society, the private sector and social media can play a determining role in affecting institutional reform to strengthen transparency and accountability.

RSA (2016: 7) states that several issues have impacted negatively on the functioning of law enforcement and prosecuting bodies; these issues have undermined public trust in the capacity and independence of the agencies tasked with fighting corruption in South Africa and reduced the country's ability and credibility to combat corruption. The media, international assessments and CSOs have noted the following: a steady drop in the numbers of cases investigated and prosecuted by the DPCI; court rulings on and significant other indications of instability of leadership in the DPCI and the NPA; contentious decisions on the instituting of prosecution such as the recent court ruling that the NPA pursued malicious prosecution; suspicious burglaries at offices of CSOs pursuing litigation

regarding the appointment of the DPCI head; and the suspected inappropriate use of state intelligence capacity. On the issue of independence, civil society, academics and other researchers, and the National Planning Commission have raised concerns about executive interference by senior politicians in the cases selected for investigation and prosecution by the DPCI and the NPA. Since the disbanding of the Directorate of Special Operations, there have been concerns raised by civil society about the independence of its successor, the DPCI.

In general, there has been progressive anti-corruption legislation passed not only determining and devolving establishments/institutions as agencies to fight corruption but also to empower and enable individuals and importantly CSOs' role in fighting corruption. But it is also about the extent to which the progressive laws can find expression and/or the established anti-corruption agencies are effectively functional, and whether they are also affected by corruption in their ranks. Masiloane and Dintwe (2014:180) state that despite the existence of policy frameworks pertinent to fraud and corruption in South Africa's public sector, the statistics, and reports of corrupt activities in the government remain epidemic. The enhancement of legislation such as the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), and the Public Finance Management Act, 1999 (Act 1 of 1999), augured well for the fight against corruption after the advent of democracy. However, few positive results have been recorded thus far in the democratic dispensation. Masiloane and Dintwe (2014:180) further argue that due to what appears to be legislative deficiency and the inadequacy of investigation agencies, such as the Hawks, the Public Protector and other oversight bodies, corruption continues to emasculate public accountability leading to the continuous subversion of public interests for personal gain (Kekae, 2017:83).

5.3.6. CSOs experience challenges and are unable to actively promote civil society participation and build coalitions with key stakeholders in order to influence the public policy debate

Subsequent to the post-democratic order, many CSOs have acted together through collaborations, as well as in partnership forms, forming alliances among themselves, acting to agitate for and to bring about "policy change" in selected matters, which are shaped by the important issues of various communities and

populations for which they act on their behalf and at the behest of their interests (Ngudu and Motala, 2019: 47). Various mechanisms for engagements with authorities and the legislative sector have been pursued by CSOs for the purpose of advocacy, including using the courts to seek redress or relief. Their use of the courts and the court system have yielded desired and significant results, especially when the ruling favoured them, including when the courts suggested that their advocated policy directives were correct and consistent with the Constitution of the country and that their rights were protected by the Constitution.

Many methods have been pursued to help CSOs to serve the interests of their clients. The use of information sharing, education, communication as a means to mobilise communities, using traditional and social media, engaging the services of Chapter 9 Institutions Supporting Democracy (ISDs), and efforts to empower communities through building the capacity of disadvantaged communities have become crucial to CSOs enabling them to advocate for the rights of affected communities and populations; and also to champion or agitate for policy shift or change; and eventually make an impact on the lives of those they represent and impact positively on social policy. In 2021, Mashudu Masutlha of Corruption Watch released an article that was published in *Business Day* exposing corruption in the mining sector that robbed mining communities of their benefits and deprived them of development. Corruption Watch also made a submission to the Parliament towards the Firearms Control Amendment Bill of 2020. In 2021, Freedom Under-Law publicly opposed the Electoral Commission's Constitutional Court application to allow a departure from the constitutionally set time limit for the country's local government elections that were scheduled for 27 October 2021. Jointly, in 2016, Freedom Under-Law and the Helen Suzman Foundation launched a court application that aimed to have General Berning Ntlemeza prevented from exercising any of his powers as the National Head of the Hawks, pending the outcome of a review of the Police Minister Nkosinathi Nhleko's decision to appoint Ntlemeza to this position. In 2014, the Helen Suzman Foundation went to court to ask for the right to appeal a judgement refusing it access to full Judicial Service Commission's deliberations over the selection of judges.

What has enjoyed great recognition in South Africa and worldwide has been the role played by CSOs in forging partnerships and alliances with other CSO platforms and communities in pursuit of their programmes, including education and advocacy for the purpose of policy change on specific matters, as mentioned in the comprehensive report titled 'Enhancing Civil Society Participation in the South African Development Agenda' (NDA, 2016:5), and 'Civil society participation in the Open Government Partnership' by Corrigan and Gruzd (2018: 21). On 1 September 2017, African Monitor in partnership with the UNDP hosted a Civil Society Strategy Workshop, with the aim to facilitate a dialogue between key CSO networks in South Africa to build a strong CSO constituency for the SDGs' implementation. The expected outcome of the consultation was to have clear agreement among civil society networks on operational modalities and strategic priorities for the CSO Working Group on the SDGs. The participants were asked to reflect on some of their experiences and perspective around engaging with local communities and broader civil society on the SDGs. Jimmy Gotyana from SANGOCO highlighted the importance of civil society coming together and sharing ideas and thoughts, giving a background of the South African landscape before and after CSOs decided to form a coalition on the MDGS. He pointed out that the shadow report produced by civil society created spaces for engagement between the government and CSOs during the MDG era. Eric Ntshiqela of NANGOSA highlighted the plight of CBOs, particularly the fact that they are largely excluded from processes such as the SDGs despite the fact that they should be deeply involved.

In 1995, SANGOCO was formed as a means and mechanisms for the coordination of different CSOs in South Africa. It became a critical means necessary to unite and create a single platform for engagements with the government and to address the crisis facing CSOs, such as the withdrawal of donor funding and funding challenges. SANGOCO became an umbrella body for CSOs and established provincial structures in all provinces. At the initial stages of its establishment, it had a membership of almost 4000 CSOs. It was resource intensive as it operations demanded frequent forums to share and disseminate information and renew mandates on various issues. In the early 2000s SANGOCO began to experience problems affecting its leadership and personnel, with its workers resigning because of the leadership challenges and management-related issues. Media reports

suggested that the board could not address all the registered concerns, which led to the shrinking and collapse of this critical structure of coordination. Many of its CSOs were aggrieved with how it was functioning. The gap arising from its organisation related challenges were left unaddressed with a negative impact on its "effectiveness, unity of purpose and impact of the sector" (*Mail & Guardian*, 17 March 2003; NGO Pulse, 2018). The efforts initiated by SANGOCO in 2018 were aimed at "reunification of the NGO sector"; "this involved SANGOCO structures and a number of national networks, although it would however appear that not much progress has been made as the sector remains fragmented" (Ngudu and Motala, 2019: 48).

In 2011, South Africa was a founding member of the Open Government Partnership (OGP). The government saw its decision to join as essentially an extension of its domestic values informed by the government's constitutional commitment to advance good governance locally and internationally and the imperative to share South Africa's experiences gained over the past years establishing and consolidating democratic principles (Corrigan and Gruzd, 2018:7). Civil society saw OGP as an opportunity to create awareness of issues and to create capacity to address them among CSOs. The Independent Review Mechanism noted that the government attempted to involve civil society through SANGOCO, but it did not represent all CSOs. The consultations around the implementation of the National Implementation Plan appeared to have had a reach, using the government's network of Community Development Workers (CDWs) and through larger gatherings or imbizos. These consultations tended to rely on interactions with leadership figures in the South Africa National Civics Organisation, an affiliate of the ruling party. In May 2016, while South Africa hosted the OGP Regional Summit, a group of CSOs wrote to the Deputy Minister of Public Service and Administration to protest its failings, including the notable absence of a multi-stakeholder forum. It said government attempts at inclusion had been "ad hoc", tentative, and not sufficiently inclusive to reach a broad range of civil society and the public. This undermined the principle of partnership, the notion of accountability, and the realisation of the OGP in South Africa. The Independent Review Mechanism described this as a deficient, tokenistic consultation process, where civil society involvement was not seriously sought. Beyond these multi-stakeholder initiatives,

while great emphasis has been placed on consultation and in the workings of South Africa's provincial legislatures, this has in practice been widely criticised as cosmetic rather than substantial and for seeking to manipulate particular outcomes by validating pre-existing conclusions. Ordinary people are unfamiliar with consultation procedure and misunderstand what is possible when they interact with officials. This echoes South Africa's Africa Peer Review Mechanism (APRM) experience between 2004 and 2007. The South African government attempted to exercise control over the process and to manage civil society involvement very carefully. While civil society protests led to an enhancement of their role in South Africa's APRM process, the level of society inclusion did not improve much. Zanele Twala, then the SANGOCO participant on the National Governing Council (NGC) of APRM explained, "The NGC was very much government-led, from how data was collected, decisions around the way to systematically present it, the writing and editing, civil society representatives were not systematically involved, and when problems were raised around the process, we had a very little influence". Evidence suggested that there were concerns about the "ability of CSOs to effectively engage with stakeholders especially on and around the policy, policy development" and appreciation of the elements which contribute positively or negatively on engagements with the interest of "policy development". The existing literature provides a key rationale for the "unevenness of engagement" because of issues of capabilities or insufficiencies of capabilities within and amongst CSOs relating to technical and leadership skills. The example made herein is about a case study of "CSOs engagement in medicine pricing" arguing that whereas issues of capacity is the concern in this matter, it is about the "level of power" able to be exercised by the CSOs, which fundamentally affects the participation of the CSOs as they do not necessarily engage with other stakeholders on level ground and an "equal footing" (Buckland-Merrett et al., 2017: 19). Of importance is that the study noted that the level and impact of influence on decision-making processes did not increase with the increased efforts to strengthen CSOs' technical capabilities. A conclusion by the study is that the engagement with stakeholders is clouded by the imbalances of power and that more thorough mechanisms and means for accountability are required to help increase the equality and legitimacy of decision making in the participating organisational structures.

Buccus and Hicks (2008: 19) suggest that the predominant view is critical, with the policy-making process being seen as “elite driven”, functioning largely to the exclusion and demobilisation of the public. Part of the problem is seen as deriving from a view that those who drafted the post-apartheid Constitution conceptualised South Africa as in income terms a middle-class society, populated by those with time and space to engage in the public domain. Attempts to facilitate community input are largely superficial, and do not tap into the real power-base where decisions are made. Most processes present pre-determined positions and programmes for limited feedback or information sharing only or create only limited opportunities for communities to raise concerns, and therefore in fact, make little substantive difference to policy decisions. Amongst those largely middle-class elements who populate the civil society sector there is an increasing perception of being side-lined and marginalised, excluded and disempowered. This is occasioned by such factors as not receiving feedback on inputs made in processes, not seeing recommendations being taken up or of having had any noticeable impact from having participated and made inputs. There is a sense that often the civil society sector is co-opted into participating in a process with a pre-determined outcome and of being excluded from an inner circle enjoying privileged access to decision makers. The study revealed a widespread concern at government’s tendency to call for community input only in the advanced stages of policy formulation, largely done in an attempt to acquire political buy-in and implementation, rather than at the outset when problems and solutions were being developed. The use of primarily print media in government communication and information dissemination was also considered to exclude certain groups and communities. These experiences and reflections from civil society stakeholders suggest that although there is legislative provision for participatory mechanisms, and many such provisions are in place, this does not enable civil society to participate meaningfully. The existing mechanisms are inadequate, inaccessible, and disempowering, and innovative approaches to participatory policy making are required.

Agreeing that CSOs are key role players and frontline champions of the interests of the neglected and downtrodden and agents of change, as well as opponents of corruption, their recognition in government leadership circles is a matter for

concern. Their relationship as partners of the government or as influencers of policy making and/or champions for the implementation of government policies is also a matter of concern in many ways. Civil society should be an avenue for articulating the concerns and issues of a diverse population. In rhetoric, South African politicians and government officials acknowledge the plurality of civil society, yet there is an expectation of a "single homogenous set of relations between the state and civil society" (Habib 2003:239). In an ANC (1998) discussion paper titled 'The State, Property Relations and Social Transformation' it is asserted that ideally, a developmental state and civil society should co-exist in a broad partnership of nation-building, reconstruction, and development. While it is agreed that civil society need not be in opposition to the state, what is paramount and should not be negotiable is that it maintains its autonomy vis-à-vis the state. With South Africa's promotion of partnerships between the state and civil society, in which the state sets the policy and determines the objectives, civil society is reduced to a mere implementer of state policy. The lines of separation thus become indistinct and blurred. The development of more formal and regulated relations between civil society and the state may subvert the character of civil society and compromise its role in enhancing democracy, especially if the operating space for adversarial relationships between the state and civil society is not recognised (De Jager, 2006:72).

It could be assumed that CSOs are all, and at all material times, able to influence participation of the public and participatory democracy in South Africa. The issue is to which extent CSOs are able to facilitate the participation of the public in the law-making processes if the courts can rule that even Parliament, and not only the government, fail the public participation requirements. Moreover, the government is able to pass laws with no or minimal involvement or participation by CSOs. In 2019, the Constitutional Court extended its ruling against the Speaker of the Parliament in favour of the applicant/s, Land Access Movement of South Africa (LAMOSA) and others (CCT40/15ALAMOSA) when the court ruled against the processing of any land claims lodged between 1 July 2014 and 28 July 2016 (interdicted claims) pursuant to the now repealed Restitution of Land Rights Amendment Act given that the initial ruling noted a lack of participation of the general population in efforts to amend the legislation. The application was

challenging the constitutionality of the now repealed law on basis that the Parliament failed to satisfy its constitutional obligation to facilitate public participation in the promulgation of the repealed amendment act (Constitutional Court, n.d.). It is for this reason that litigation becomes the only option when the court are used to challenge policy decisions and choices and even the laws of the government, especially when the voices of CSOs did not find expression despite their correctness/relevancy/responsiveness and/or the importance of their inputs.

South Africa has a vibrant culture of civil society activism and civic engagement (Connolly, 2017: 37), and the ability of CSOs to influence the public policy-making process is an issue that has profound implications for the future of South Africa's democracy (Thuynsma, 2012:258). In South Africa, CSOs are well-positioned to increase public participation in the policymaking process by deepening democracy. 'Deepening democracy' occurs when CSOs and the government bring communities into the policymaking process, which strengthens the reach of democracy so that more ordinary citizens, particularly marginalised groups, can participate in it (Buccus and Hicks, 2008:13). Thuynsma (2012:258) argues that the tendency and ability of the government to make decisions without direct input from civil society represents a flaw in South Africa's democracy. Since the inception of democracy in 1994, South Africa has exhibited a democracy deficit. According to Mkandawire (2005: 12), it is about to which extent the laws promulgated through public participation empower the public to use such laws for their benefit and even how their participation empowers the public.

The question of who participates and what biases exist in the participation process are increasingly significant for policy making. The level of participation determines the potential impact of any CSO. Dalton's (2017:61) insights on the participation gap, which explicates how participation is "unequally meaningful for different social groups" in democracies is of relevance here. This, it could be argued, results in different public policy outcomes that impact the lived conditions of ordinary citizens in ways that do not necessarily add value for the marginalised in even the most sophisticated democracies. The recent process for the amendment of the Electoral Act in honouring a Constitutional Court ruling proved how the law can simply fail to respond to the general and/or popular demands or interests or concerns of the

public as changes approved by the Parliament made independent candidates requirements harsher than for political parties, defeating the purpose for which the changes were sought by the applicants, which caused an uproar among CSOs.

5.4. RECOMMENDATIONS

5.4.1. Recommendation/s on the finding that South Africa has an enabling legislative environment for the existence of CSOs, without limits and restrictions, but with less positive results and impact:

5.4.1.1. To increase the capacities and inefficiencies of the NPO Directorate to fully serve its purpose and impact positively on the activities of NPOs; and to decentralise its responsibilities, duties, powers, and mandates to the provincial offices to provide relevancy to the role of the provincial offices as they are closer to communities. This would help improve the turnaround times or schedules for the administration of the services of the NPO Directorate and help redress the inefficiencies of bureaucracy.

5.4.1.2. To provide structured support and voluntary guidance to NPOs to help them to comply and/or to facilitate easy processes for compliance with an established norms and standards framework of requirements for compliance as an enabling and supportive environment to assist NPOs to comply with the applicable regulations and requirements.

5.4.2. Recommendation/s on the finding that the South African law empowers and legitimises CSOs to expose or reveal information on corruption in the government, even if there are challenges on and around implementation and the exercise of oversight on compliance to the legislative framework:

5.4.2.1. To review the PAIA No. 2 of 2000 to provide for a dedicated statutory body to enforce compliance to and exercise of oversight on compliance with this legislation by public and private institutions. But also, to make it obligatory on the part of the managers and the leaders of public institutions to enable access to

information and to establish timelines for full disclosure and cooperation with applicants to access information held by the state.

5.4.2.2. To review the Protected Disclosure Act of 2000 with the intent to increase the security of whistle-blowers and to broaden its scope to provide for any party or person or entity to make a protected disclosure, not only to ISDs, but also to all law enforcement agencies, and to senior private and government plus related statutory and regulatory bodies. The law should provide for increased and well calculated coordination of the care and protection of whistle-blowers, including providing incentives for their role, and where possible, for relocation of their families and/or aftercare of their dependants should they lose their lives; and make whistleblowing attractive through the protection of whistle-blowers.

5.4.2.3. Guidelines and/or a government notice should be issued to outline the processes of accountability, which should include not only horizontal oversight between the government and the legislature, and the judiciary and the legislature or the government, but to provide for vertical accountability through which voters are aware that by virtue of voting they are holding public representatives accountable, and also diagonal accountability where the media and pressure groups or concerned groups are respected, responded to, and honoured as a means and a platform through which public representatives are held accountable.

5.4.2.4. Legislation should be passed to protect the Members of Parliament and the Members of the Provincial Legislatures who hold the Executive members accountable, and to exercise oversight on the government against prejudices, occupational harm, and bullying by party bosses.

5.4.3. Recommendation/s for the finding on funding, which is a challenge and a threat to the existence, effectiveness, and sustainability of CSOs in South Africa:

5.4.3.1. CSOs need increased engagement with funders, and it is equally important that both the government and the funding sector (CSI, local foundations, and international donors) review their engagement with CSOs. This calls for increased

dialogue between the government and CSOs so that the role of CSOs is not seen as a threat by the government. There is a need to build trusting relationships and to focus on areas where there is an openness to experiment.

5.4.3.2. A stronger and sustainable funding framework is needed for CSOs to successfully fulfil their roles. To provide greater financial sustainability in the long term, CSOs need to be encouraged to diversify their funding base and work towards a mixed model of income generation.

5.4.4. Recommendation/s for the finding on CSOs' influence and the civic space, which is closing or shrinking in a democratic South Africa:

5.4.4.1. The South African government must enable and safeguard the enjoyment of the civic space for all its people. The authorities need to create an environment where levels of fear are low so that citizens can demonstrate in public places without restrictions in law and practice. The state further needs to ensure that as a rule the police protect protesters and that in law and practice the state adheres to constitutional provisions and international law and standards. This should be complemented by public awareness on the need not to destroy public property, nor disrupt law and order.

5.4.4.2. There should be protection of and increased funding for the independent public institutions that have a mandate to combat corruption. Of critical importance is protecting the independence of the judiciary, to allow the existing legal framework supporting the fight against corruption to be used effectively by civil society and the private sector. Efforts should also be made to bring to the fore those institutions that have a key role to play, but have not been visible, such as the Parliamentary Budget Oversight (PBO) Committee and all the ISDs, with their laws being amended to provide for their effective role in ensuring the implementation of consequences management.

5.4.4.3. CSOs should learn how to publicise their activities through the media and on the internet or applicable social media platforms for the purpose of

popularisation of their work and activism, which would help them occupy an increased civic space. Publicising activities enhances visibility, projects, implementation accountability, and further promotes public trust. They should also develop programmes that will assist them with implementing community-based programmes, which transform communities with the purpose of enhancing quality and sustainable livelihoods for families and individuals living in poor areas and those who have been left at the fringes of the mainstream economy.

5.4.5. Recommendation/s for the finding that CSOs are aware of the role of government's anti-corruption work and bodies and that they are accessible for CSOs to report corruption:

5.4.5.1. Embark on or roll out on Information, Education and Communications Programmes or campaigns on and around and/or publish the National Anti-Corruption Strategy to make clear the government's strategy to reduce corruption and raise awareness among CSOs working on corruption in South Africa and popularise the policy posture of the government.

5.4.5.2. Establish a dedicated focused public and private sector anti-corruption commission, which regularly and randomly or routinely reviews major and minor procurement decisions to identify, exclude and redress corruption activities, but also to continuously review strategies and programmes to fight corruption.

5..4.6. Recommendation/s for the findings on CSOs experiencing challenges and the fact that they are unable to actively promote civil society participation and build coalitions with key stakeholders to influence the public policy debate:

5.4.6.1. CSOs are to build strong and effective alliances both nationally and globally, and collaborate, cooperate and share experiences to improve the effectiveness of their roles and activities.

5.4.6.2. CSOs are to employ progressive mechanisms and methodologies, as well as the usage of the most advanced technological means, and increase their technical capacities for improved functions and operations.

5.4.6..3. CSOs are to exert the necessary pressure to ensure the full compliance of the work of the legislatures for tailor-made public participation during law-making processes.

5.4.6.5. CSOs are to actively mobilise their constituencies, share information and educate them for their empowerment for the purpose of meaningful participation in the processes of decision-making.

5.4.6.5. Concerted coordinated efforts by CSOs are necessary, especially within and beyond the sectors of interests, to help share resources and avoid double dipping and/or for the effective utilisation of the resources at their disposal.

5.5. CONTRIBUTION/S

This research contributes to the body of knowledge on the possible factors that explain the rationale behind the diminished influence of CSOs – even in an era when CSOs' role is appreciated and especially at a time when South Africa is experiencing an increase in the number of CSOs being registered.

The study further contributes an understanding of various mechanisms of oversight, including horizontal, vertical, and diagonal oversight, on public representatives. Moreover, it made comparisons of different countries on the role of CSOs and the effectiveness of the war against corruption. Various legislation was identified and excluded, as they required review to provide relevancy to them. Additionally, the need for the development of a legislative framework was identified, including a need to protect the public representatives who hold government officials, who may be their political party bosses, accountable.

The challenges and weaknesses of the NPO Directorate were discussed as an impediment to the effectiveness and efficiency of CSOs. In addition, the need for the decentralisation of the duties of the centralised NPO Directorate to the level of the provinces to provide relevancy to the work of the provinces on and around

NPOs, whose business plans they process and who they fund, was highlighted. The study further indicated that all CSOs do not operate free from the influence of the government, given how they complement the role of the government (and for which they are funded). But, more importantly it showed how CSOs were targeted, harassed, excluded from funding and marginalised, and in extreme cases, CSOs' staff members were assassinated when they strongly opposed the government or investors' postures or programmes, especially in the mining sector.

Lastly, the need for CSOs to not disengage from their constituencies and lose linkages with local communities was articulated as critical for their relevancy. But also, that communities should be empowered to play a meaningful role voluntarily and by virtue of having realised how they are affected through Information, Education, Communications and Campaigns.

5.6. ACHIEVEMENT OF THE OBJECTIVES OF THE STUDY

The main aim of this study was to identify impediments to the effective and positive influence or contribution of CSOs in the new government framework in democratic South Africa. The study succeeded in examining whether the role of CSOs has diminished in the new governance framework in democratic South Africa and identified the key factors contributing towards their diminished role. It also dealt with how CSOs' role could be made more effective in the face of the challenges that undermined their effectiveness, despite their strong presence.

Among the study's objectives was to identify CSOs' experiences in South Africa; this was well articulated within the research, which also investigated the role and nature of CSOs and what they stand for in a democratic society. The study further examined the available mechanisms enabling CSOs to play an effective role in government. This included the use of constitutional legislative prescripts and approaching the courts, actively litigating to seek the courts to enforce rights and redress for the purpose of compliance and redress of the irregularities committed, especially by the government. Moreover, the study indicated how the courts were used successfully to provide the desired relief on various matters in which the courts ruled in favour of the CSOs that litigated. Political parties were also used, especially opposition political parties, to seek redress at various levels, including in

the legislatures. Central to this study objective was the methods and approaches used as a means, which were either helpful or most effective, under the given circumstances at a particular time.

The analysis in this study further explored and exposed the relationship between CSOs and the government in democratic South Africa. This study demonstrated how even CSOs end up bidding for government tenders and becoming, in other instances, service providers for and on behalf of the government; and how CSOs have been funded to help provide services and goods in complementing the work of the government. All CSOs do not stand counter-pose to the policies of the government, as many are funded by the government to help fulfil its mandates and responsibilities.

Additionally, the study examined the effectiveness and strengths of CSOs and explored how they have a challenging task to remain relevant and committed to the course in the ever-changing political, social, and economic climate of a developing South Africa. It was further confirmed that in the context of the Constitution, CSOs have the right to exist, represent, interact, oppose, and participate without any impediments or manipulation by those in power or those whose decisions and actions are challenged in the public space. Finally, it was established that although the CSO environment is enabling, there are impediments, including issues of funding and the influence of funders on the policy direction of CSOs.

5.7. CONCLUSION/S

Given the extensive work on and around this study, it can be stated that the pre-determined objectives of this study were achieved to the extent that they sought to serve the aim/s of the study. Limitations related to the extent to which data were available and processed for the purpose of this study, as data/information remained central to the successful persuasion of this study.

Whereas this study focussed on the influence of CSOs in the new democratic framework, further studies should be conducted on and around many issues relating to this study. It is herein concluded that further research is required, particularly to explore what the role of CSOs is in the processes or circumstances

in which there is an element of, or in the possibility of ‘governance without government’, or when it is necessary to have ‘governance beyond government’. Another critical element which requires further research is the role of CSOs in electoral politics, as it appears as if any CSOs are descending on the political floor and are becoming embroiled in politics.

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