

# **CIVIL SOCIETY IN SOUTH AFRICA: OPPORTUNITIES AND CHALLENGES IN THE TRANSITION PROCESS**

**ANALYSED FOR**

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## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>I</b>
HISTORICAL BACKGROUND.....	I
PARTNERSHIPS: OPPORTUNITIES AND CHALLENGES .....	I
METHODOLOGY OF STUDY .....	I
FINDINGS .....	II
CONCLUSIONS AND RECOMMENDATIONS .....	IV
<b>INTRODUCTION .....</b>	<b>1</b>
<b>STATE AND CIVIL SOCIETY: GENERAL REFLECTIONS.....</b>	<b>3</b>
HISTORICAL BACKGROUND .....	3
THE SIZE AND SCOPE OF THE NGO/CBO SECTOR .....	5
ROLE AND IMPACT OF THE SECTOR .....	7
PARTNERSHIPS: OPPORTUNITIES AND CHALLENGES .....	11
TENTATIVE CONCLUSIONS.....	16
<b>METHODOLOGY OF STUDY .....</b>	<b>19</b>
LITERATURE REVIEW .....	19
IN DEPTH INTERVIEWS.....	19
<b>HUMAN RIGHTS OF REFUGEES AND MIGRANTS.....</b>	<b>21</b>
THE HISTORICAL CONTEXT .....	22
THE ROLE OF CSOS IN POLICY DEVELOPMENT .....	22
RESEARCH AND ADVOCACY .....	23
THE ROLE OF CSOS IN SERVICE DELIVERY .....	24
COOPERATION BETWEEN GOVERNMENT AND CSOS .....	25
THE POLICY POSITION OF CSOS .....	25
THE 1997 GREEN PAPER ON INTERNATIONAL MIGRATION.....	28
CIVIL SOCIETY INPUT: POLICY POSITIONS .....	29
THE REFUGEES ACT OF 1998.....	29
IMPLEMENTATION OF THE REFUGEES ACT.....	30
THE IMMIGRATION ACT.....	32
CONCLUSION: RECENT CHALLENGES .....	32
CIVIL SOCIETY AND STATE PERSPECTIVES .....	33
ORGANISATIONAL ACTIVITIES.....	35
CSO-GOVERNMENT RELATIONS .....	40
POLICY FORMULATION .....	47
CONCLUSIONS .....	50
<b>SOCIAL GRANTS .....</b>	<b>52</b>
POVERTY, INEQUALITY AND SOCIAL DEVELOPMENT IN SOUTH AFRICA.....	52
SOCIAL ASSISTANCE.....	54
CIVIL SOCIETY AND STATE PERSPECTIVES .....	63
ORGANISATIONAL STRENGTHS AND WEAKNESSES.....	64
CSO-GOVERNMENT RELATIONS .....	68
POSSIBILITIES FOR IMPROVEMENT .....	73
CONCLUSIONS .....	77
<b>ADULT BASIC EDUCATION.....</b>	<b>79</b>
HISTORICAL BACKGROUND.....	79
POLICY FORMATION.....	82

SOUTH AFRICAN COMMITTEE FOR ADULT BASIC EDUCATION (SACABE).....	84
THE POST-APARTHEID STATE.....	85
CIVIL SOCIETY AND STATE PERSPECTIVES .....	87
ABET AND DEVELOPMENT .....	90
STRENGTHS AND WEAKNESSES OF CSOs AND GOVERNMENT.....	91
CSO-GOVERNMENT RELATIONS .....	93
CHANNELS OF COMMUNICATION.....	94
POLICY FORMULATION .....	95
POLICY IMPLEMENTATION.....	96
POSSIBILITIES FOR IMPROVEMENT.....	97
CONCLUSIONS .....	99
<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>101</b>

## EXECUTIVE SUMMARY

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This report aims to examine the role played by Civil Society Organisations (CSOs) in relation to state structures and policies in the post-1994 period in South Africa, and evaluate the prospects for meaningful partnerships between them in different sectors, with a focus on the specific areas of human rights, social grants and adult education.

### HISTORICAL BACKGROUND

As contemporary South Africa emerged in the twentieth century, an interventionist state sought to structure the interaction between the economy and civil society to serve white interests. Civil society organisations in poor black communities operated on their own to make up for state neglect, frequently in opposition to it and at times in collaboration with benevolent white-dominated NGOs.

The relationship between developmental NGOs and CBOs on the one hand, and the state, its policies and structures on the other, became an area of concern with the transition to democracy in the 1990s. With the political transition of 1994, there were expectations that the diminishing role of the state in the late apartheid period would be reversed, and that the new government would take on further tasks and commitments. While principled commitment to a range of new programmes and policies has been made, not much has changed in practice.

### PARTNERSHIPS: OPPORTUNITIES AND CHALLENGES

The interest in partnerships for delivery is not unique to South Africa. It has been motivated s by various reasons, some of which are outlined below:

- A perception of the limitations of the state as a vehicle for social change due to its unwillingness to be accountable to society
- Recognition of the comparative advantage of NGOs in service delivery at local level
- Serious concerns over the economic inefficiencies of state delivery mechanisms
- NGOs do not represent a recurrent cost for the state, and they frequently manage to raise funds to match state contribution.

### METHODOLOGY OF STUDY

The research was qualitative in nature, and involved the synthesis of previous work and the collection of new data.

Detailed research was conducted in three areas of intervention, each of which highlighted particular aspects of the relationships between state and civil society. In particular, the study has focused on the involvement of CSOs in the following areas:

- Monitoring government performance (with a focus on human rights of refugees and migrants)
- Shaping social policy (with a focus on income grants)
- Service delivery (with a focus on issues of literacy and adult basic education).

Data were collected in a two-stage process. First, a literature review was conducted, focusing on the historical and current relationships between CSOs and the state in the areas of refugee and migrant rights, social grants, and adult basic education. The review outlined achievements, problems, challenges, and debates over potential modes of collaboration between actors based in different institutional frameworks. Following this stage of the research process, a series of in-depth interviews was conducted with members of key CSOs identified in the literature review, as well as with government officials.

## **FINDINGS**

### **Human rights of refugees and migrants**

Human rights CSOs have been active in contesting government policy on refugees and international migration, but they also have a history of independent action and service provision in these areas, where they were not merely reacting to state policy, but conducting their own programmes.

Much of the independent work carried out by CSOs in the areas of refugee affairs and immigration has been in the form of research, lobbying and advocacy. CSOs were central in monitoring the treatment of refugees and undocumented migrants in South Africa, and in publicising the human rights abuses committed by state structures on refugees and migrants.

The most effective channel for civil society in influencing policy direction and implementation has been through litigation.

### *Current perspectives*

We found that members of civil society and state structures shared similar goals at an abstract level, but adopted very different approaches in practice, and as a result their relationship was characterised by mistrust and suspicion. There was a general recognition that regular channels of communication had broken down between CSOs and the Department of Home Affairs, and as a result the intentions of each side are frequently misunderstood by the other side.

While CSOs saw room for improvement in the relationship with the Department of Home Affairs, they insisted on the importance of maintaining an independent approach and being able to criticise the Department for illegal or immoral actions.

For effective cooperation and mutual support there must be an agreement on the concrete policies as well as on the underlying values that drive them. On both these counts such agreement is lacking.

### **Social grants**

Under apartheid a relatively advanced social security system developed for the benefit of whites. To deal with the matter of extending the reach of the system to the rest of the population, the Lund Committee was appointed in 1996. It investigates issues around the extension of child grants, and explored policy options regarding social security for children and families.

Many civil society organisations criticised the proposals made by the Lund Committee, as being ill-conceived and inadequate. They also felt that the proposed benefits were meagre and that the welfare minister should demand the necessary resources from the Department of Finance to implement a decent system of child welfare.

The experience of the Lund Committee was important in clarifying and changing the relationship between the ANC in government and its allies in civil society. The latter felt that the Committee did not sufficiently challenge the fiscal constraints and conservatism of the government's new macro-economic strategy, GEAR.

### *Current Perspectives*

Overall, it is clear that the field of social development is not characterised by the same kind of antagonism between civil society organisations and state structures that is found in the field of human rights and refugees. In the field of social development and welfare, the goals of state departments and CSOs are compatible in the sense that improving the welfare of citizens is an overarching aim of both.

CSOs did, however, express disappointment with the direction which state policy had taken since 1994. The increasingly technocratic and bureaucratic nature of the state was seen as introducing a major disruption in its ability to communicate effectively with CSOs and intended beneficiaries. Further, many CSOs emphasised that their role was to supplement the efforts of the state, not to substitute for them. It was felt that the state possessed resources and mechanisms, which made its intervention in certain situations more appropriate.

## **Adult basic education**

The late 1970s and early 1980s saw the formation of several literacy organisations that considered themselves progressive or radical. They saw the work they were doing as political opposition to the state. There was also a group of larger literacy organisations that adopted a more conservative approach and worked closely with the state.

Since the formation of many literacy NGOs was the result of the unwillingness of the apartheid state to deal with issues of illiteracy, the ushering in of a new government forced NGOs to rethink their position in relation to the state. The post 1994 period was characterised by bilateral agreements between the state and donor organisations, which in effect meant that NGOs operating in the field of adult education and literacy found themselves strapped for cash and many had to close down.

### *Current Perspectives*

The in-depth interviews showed that the relationship between government and CSOs have generally been conciliatory, with both largely sharing the same goals, though in recent times it has become one of disenchantment, in some instances bordering on antagonism.

CSOs felt that they supplemented state efforts by giving critical input into policy development and monitoring various projects. Some CSOs however felt that the state would not give the required attention and that this will only happen if there is pressure from the ground up.

## **CONCLUSIONS AND RECOMMENDATIONS**

The study has yielded the following general conclusions:

- a. In principle, all parties concerned are in favour of partnerships between civil society organisations (CSOs) and government. To make partnerships feasible and successful, a clear definition of the envisaged role of each partner must be established, through negotiations between the parties, rather than through the imposition by one on the others.
- NGOs and CBOs enjoy comparative advantage in service delivery due to their more consultative approach, a focus on community empowerment, and ability to respond more directly and immediately than government to community needs.
- Civil society organisations suffer from relative lack of capacity, and they cannot guarantee continued and sustained interventions.
- The strengths and weaknesses of CSOs, combined with those of the state, make them ideal partners. The best way forward would be to combine the immediate and more egalitarian relationship that CSOs can establish with communities, with the more structured and organised approach that can be provided by government.
- To reach optimal relations of partnership, they need to talk more frequently. The call for regular, formal and informal, channels of communications comes across strongly from all involved.

- While the political accountability for delivery remains with government (at various spheres), the social accountability must be shared with CSOs and donor agencies.
- Finally, all the focus on partnership should not let us forget that there are real differences in values and goals between sectors, and that there is a need for a vigorous, independent and critical voice by civil society organisations.

With respect to the three fields investigated, various modes of actual and potential partnerships present different opportunities and challenges to civil society organisations:

- The largely adversarial relations in the field of human rights and refugee affairs stem from the official policy focus on surveillance and prevention. The opportunities here consist in working together with other non-governmental agencies, which share some of the concerns expressed by CSOs. The challenges consists in shifting the culture of hostility towards migrants, refugees and asylum seekers among state officials and finding some dissident allies within state structures.
- The relations between the state and CSOs in the field of social grants have been characterised by policy differences but also some shared goals. The opportunities here involve the possibility of building on the existing allies within the state and outside its boundaries. The main challenge consists in forming a united front that would put forward a conception of social progress that may include the provision of grants to those who depend on them for sheer survival.
- The adult education field has not seen major policy disputes. Concerns here are mostly about implementation and technical hurdles. Both must built on the opportunity of shared policy foundations, and the challenge is not to let their different institutional locations get in the way of fruitful partnership between them, as has frequently happened in the past.

In order to move beyond principles and embark on a course of action that would improve the relationship between civil society organisations and the state the following measures need to be considered:

- There is a need to create a space for regular exchange of information and views between representatives of civil society and the state. A series of sector-specific forums would seem appropriate here, which may be organised by theme rather than by department. Where feasible, provincial forums may be considered as well.
- For such forums to become meaningful they must have real powers and not be mere talking shops. This means government in particular must have the political will to subject its exercise of power to critical scrutiny by its potential partners, to accept input and abide by the results of consultations.
- International development agencies, representing governmental and non-governmental constituencies, are best positioned to facilitate such an initiative.

- While the involvement of international agencies is crucial in order to set the process in motion, they may be able to take a backseat if it is successful, and is carried forward by local actors.

To strengthen the process, a series of **specific research reports** must be commissioned to gain further evidence of the circumstances and implications of partnerships, to highlight successful and unsuccessful cases, identify their unique features as well as the extent to which their example is applicable elsewhere.

## INTRODUCTION

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The role of non-governmental organisations (NGOs) and community-based organisations (CBOs) in social development is frequently seen within the wider context of civil society, or the voluntary sector or the non-profit sector in South Africa. These terms refer to a large number of associations and networks, which play an important role in community organisation, service provision, and policy and advocacy activities. These organisations exist and operate independently of the state though sometimes in alliance with it.<sup>1</sup>

This report aims to review literature on the role played by such organisations and the prospects for meaningful partnerships between them and government organisations and policies. The main question facing us here is how to reconcile the complex and contradictory roles of social and political players in a society undergoing transformation. This task has been shaped in South Africa by the particular circumstances of apartheid, the struggle against it, developments in its aftermath, and the nature of state and civil society that emerged out of these processes. The historical background is thus important in understanding the challenges and opportunities facing us today.

A clear definition of our object of investigation is important. A starting point would be a general definition of civil society, which regards it as “a sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication”.<sup>2</sup> It is important to note that direct political and economic activities are excluded from this definition. The political role of civil society is related to “the generation of influence through the life of democratic associations and unconstrained discussion in the cultural public sphere”. From this perspective civil society can contribute to policy through the implementation of programmes to supplement (but not replace) the role of the state, and through forms of regulation to prevent the private sector from subordinating the economy to its interests.

This general view should be considered alongside more specific definitions drawn from projects undertaken in South Africa. In 1993 the Development Resources Centre (DRC) defined NGOs as “self-governing, voluntary, non-profit distributing organizations operating, not for commercial purposes but in the public interest, for the promotion of social welfare and development, religion, charity, education and research”. This definition limits its scope to organisations working in the public interest, excluding those that have a more private function or that have no clear social-public agenda. Precisely for this reason, it is may be more useful for the purposes of this review (though it excludes a large number of community-based organisations and activities).

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

A recent comprehensive study of South Africa’s non-profit sector (published in 2002 as part of the Johns Hopkins comparative international non-profit sector study)<sup>3</sup> adopts a broad structural approach that uses five operational criteria to define its scope. Non-profit organisations must be organised, private (but may receive funds from government), self-governing (control their own activities), operate not for profit (profits must be reinvested in the mission of the organisation), and voluntary (must engage volunteers and have non-compulsory contributions and membership). To the organisations included in public interest and benefit definitions presented above, the Johns Hopkins study adds associations that have no clear public agenda, such as co-operatives, stokvels (a group who contribute money to a pool, from which each member benefits in turn), burial societies (groups to which members contribute to assist with burial costs), religious organisations, and local and community-oriented branches of political parties.

And finally, another recent study undertaken in 2001 in the framework of the international Civic civil society study<sup>4</sup> asked NGO members to identify characteristics that they associate with South African civil society. These included among others, being non-profit (operating not for private gain), voluntarism (using voluntary workers), having delivery orientation, being independent (or autonomous of government) and having own constitution, rules, and governance structures.

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

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

## STATE AND CIVIL SOCIETY: GENERAL REFLECTIONS

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### HISTORICAL BACKGROUND

In the colonial era in Africa, many countries inherited extensive civil networks from pre-colonial times, which allowed them to run their social affairs in parallel to the colonial state. Claims made in the post-independence period that indigenous institutions continued to operate unhindered under colonialism, were exaggerated, but these networks retained their vitality. When states on the continent have been retreating from over-ambitious commitments, and are proving incapable of delivering services in many areas, a space has been created for civil society to become more organised and to expand, building on these indigenous foundations.<sup>5</sup>

South Africa presents a somewhat different case, due to the length and intensity of colonial and settler intervention and the consequent undermining of indigenous structures and social networks. As modern South Africa emerged in the twentieth century, an interventionist state sought to structure the interaction between the economy and civil society to serve white interests. In doing that the state worked to mutual benefit with white organisations involved in service delivery (health, social services, and education). In contrast, civil society organisations in poor black communities operated on their own to make up for state neglect, frequently in opposition to it and at times in collaboration with benevolent white NGOs, such as the Black Sash, and churches.

By the early 1980s, the state's capacity to deliver services and maintain order had eroded, as reflected in its decreasing ability to control the influx of people into the urban areas, and gain the consent of the population. A mixture of brutal repression with limited concessions fuelled resistance, and opened the way for expanding the role of new civil society structures, most of which emerged in the course of political struggle. The negotiations that opened in 1990 were an outcome of the realisation by state officials that their capacity to control the political process was limited.

The relationship between developmental NGOs and CBOs on the one hand, and the state, its policies and structures on the other, became an area of concern with the transition to democracy in South Africa. It was not a major issue during the apartheid period, in which progressive forces did not generally challenge the prominence of the state as such. Rather they challenged the specific uses to which state power was put. Civil society consisted of organisations and structures that positioned themselves outside of the apartheid state, and acted to bring about a democratic system of governance and provide services in the absence of state provision. It was the policies of state structures that were a source of concern, not their powers in relation to society.

Political forces opposing the regime were excluded from the state, and had to operate underground or through civil society structures inside the country. They sought to capture state power, and use it to shift policy priorities and serve different interests from those served by the existing state structures. The main political opposition movement, the United Democratic Front (UDF), provided an organisational framework for hundreds of NGOs, CBOs, youth, women, and student organisations, neighbourhood and township associations, religious organisations and unions, all of which were part of civil society. Although the main goal of the movement was to bring down the apartheid regime, many other concerns were raised by affiliate organisations. A range of issues including working conditions, rent, environmental degradation, urban services, AIDS awareness, school curriculum, and so on, were taken up. Specific local conditions and grievances, and issues of sheer survival in many localities throughout the country, fed into a strategy of political mobilisation.

In the absence of legitimate elected structures, civics stepped in to provide some basic services, such as provision of land in informal settlements, policing, and settling disputes through people's courts. Various NGOs attempted to provide services in areas such as literacy, health care, human rights, and welfare, but with little prospect of meeting the huge needs of the population. This happened at the same time that service provision functions were being shed by the state to the private sector and (white) communities, in areas ranging from education to security. This move was part of a global trend towards state disengagement from society, and in South Africa it was motivated by an additional desire to replace illegitimate control mechanisms by less costly and more efficient market mechanisms. Reducing state capacity was also seen as a preventative measure to ensure that the new state would not be able to disrupt the prevailing socio-economic relations.

With the political transition of 1994, there were expectations that the diminishing role of the state would be reversed, and that the new government would take on further tasks and commitments. While principled commitment to a range of new programmes and policies has been made, not much has changed in practice. Budgetary constraints, the legacy of inefficient and corrupt state management, and the growing realisation in state circles that their capacity to intervene in society is inherently limited, have prevented the state from broadening its reach.

The structural limitation of the state is evident in countries like South Africa, which are burdened by the legacy of an obtuse bureaucracy ruling over masses of subjects not regarded as citizens. While South Africa is led by a government that has committed itself to the welfare of its citizens, and the need to overcome the legacy of past misrule, the state is still burdened by the same bureaucratic mentality and organisational culture that prevailed under apartheid.<sup>6</sup> Frequently new officials have assimilated the existing ethos of state departments, and now operate in a similar manner to older officials. Much concern with transformation of the state in the post-1994 period has focused on the need to change policy frameworks and the composition of the public service, by formulating new policies and implementing affirmative action. Little attention has been paid to the need to transform

the ways in which state power is organised and exercised, and its interaction with civil society. To address this issue we need clarity on the size and shape of the actors, particularly civil society.

## **THE SIZE AND SCOPE OF THE NGO/CBO SECTOR**

The recent report on the size and scope of the non-profit sector is the most comprehensive study of NGOs and CBOs in South Africa. The focus of the report is on organisational employment and revenue figures, drawn from a large sample of organisations based in diverse communities; it is less useful with regard to the nature and impact of the activities undertaken in the sector.<sup>7</sup>

The number of organisations in the sector is approximately 100,000, with more than half of them (53%) classified as less formal community-based organisations. A large proportion of these are smaller organisations operating only at a community level. The report asserts that these organisations may make important contributions to poverty alleviation, since they can respond to problems at a community level quickly and efficiently. Only about 11% of the total number of organisations can be strictly identified as NGOs (section 21 companies).<sup>8</sup>

Of the different fields in which organisations operate, the largest ones are social services (22% of the total), culture and recreation (20%), and development and housing (20%), trailing by health (7%), education (6%) and environment (3%). Putting together the sectors involved directly in the delivery of social delivery (education, health, social services, environment, and development and housing) gives us a total of 58,000 organisations throughout the country, of which 32,000 (55%) are informal and voluntary CBOs and about 10,000 (17%) are NGOs.

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

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

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

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

The largest number of employees is to be found in social services (22% of the total of full-time equivalent employees for the sector, including volunteers), development and housing (16%) and culture and recreation (15%). Health (9%), education and environment (5% each) lagged behind.

Overall the majority of employees and of management in the sector are women and black. When we break this down the picture, especially at management level, is further differentiated. Women dominate in education, health, social services, and development and housing, while men dominate in environment. Blacks dominate numerically in management position in all fields except for health and the environment.

The total income of the non-profit sector in South Africa is estimated at R14 billion, of which government provided 5.8 billion (42%), R500 million of which derived from overseas development assistance, channelled through the South African government. Self-generated income derived from fees, sales, and membership dues accounted for 29%, private sector donations accounted for 25% and investment income accounted for the remaining 5%.

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

## **ROLE AND IMPACT OF THE SECTOR**

In this section different perspectives reflecting the diversity of views within the NGO/CBO sector will be presented, followed by a summary of the main points emerging from the discussion. The 2001 Civicus study identified two complementary tasks for civil society in South Africa, that of consolidating an enabling environment for the sector, and that of responding effectively to the challenge of poverty eradication. A related question, raised by workshop participants, is how civil society organisations (including NGOs and CBOs) can engage other forces such as trade unions and business associations, and work towards more effective co-operation with the private sector, donors and government. NGOs agreed that the space available for their operations increased dramatically since 1994 with the new enabling legislation and regulations, but saw a need, particularly among those working in remote and disadvantaged communities, to enhance their capacity in order to influence government policy and to access government support for programme implementation.

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

In a more self-critical vein, workshop participants recognised that civil society organisations need to enhance their public and financial accountability through discipline good governance and transparency. Crucially, they should move away from an entitlement mentality, understanding that: “No one owes us a living!”. In addition organisations must ensure that their programmes become consistent with the values they promote, by encouraging volunteerism and public participation as means of empowering communities.

Given that the impact of civil society organisations on policy and implementation is not clear, they should improve their capacity to measure impact and communicate effectively to others regarding the positive impact they might have on government policy and on the lives of South Africans, with a focus on poverty eradication. They – and government – should develop baseline data, identify appropriate indicators and means of quantifying them, and report on the results widely.

Another report, produced in 2001 by Interfund (a grant-making agency that has regularly monitored the NGO-CBO sector) provides an evaluation of relationships and partnerships between government and the voluntary sector. The report focuses on tensions in the relationship between government and

the voluntary sector, due to policy disagreements and difficulties involving funding and money distributed through the National Development Agency and the National Lottery. In the area of service delivery, co-operation with government remained uneven from sector to sector and across the levels of government involved. The urgency of forging effective delivery partnerships between government and the voluntary sector is underscored by the revelation that many government departments have failed to spend millions of rands destined for the provision of basic services and poverty relief. The main cause of non-delivery was serious capacity constraints.

The Interfund report draws on an earlier study on service delivery partnerships between government and the voluntary sector, produced by the Transitional Development National Trust (TNDT).<sup>9</sup> The study identified several obstacles to partnerships between government and NGOs and CBOs:

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

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

- Legal obstacles should be addressed through consultation and negotiation between parties.
- Both parties need to assess how to improve partnerships. Government needs to outline its development objectives and the basis on which it interacts with civil society organisations. It

must simplify bureaucratic procedures and improve communication between departments. Organisations must strengthen ties with communities they serve and become more professional.

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

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

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

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

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

- A state controlled by a confident, ascendant, black middle class in close alliance with large-scale business interests and certain unionised sectors of the working class. The state is interested in meeting socio-economic needs effectively in order to maintain social stability.

- A well-organised non-profit sector with considerable capacity to deliver: This includes the large, established health and social service organisations that have positioned themselves to service the urban middle and working classes, as well as smaller, less formal and less capacitated community based organisations that aim to serve the needs of the poor.
- A macro-economic model that encourages the state to mobilise financial and human resources in partnership with other sectors (business, donor agencies, NGOs, CBOs, communities).
- An organised corporate sector committed to corporate social responsibility and investment.
- An international donor environment, where many donors prefer again to fund civil society organisations rather than governments as key agents of poverty eradication.

In the Reconstruction and Development Programme (RDP) the state formally committed itself to fostering a wide range of institutions of participatory democracy in partnership with civil society, including trade unions, mass organisations, sectoral movements and CBOs. NGOs are seen to be playing a role capacity building with regard to CBOs and the development process, as well as engaging in service delivery, mobilisation, advocacy, planning, lobbying and financing. This is qualified by the need for NGOs to adopt transparent processes, and operate in a manner that responds to the communities they serve.

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

This approach is reiterated in the National Development Agency Act, whereby the primary objective of the NDA is defined as to contribute towards the eradication of poverty and its causes by granting funds to civil society organisations to carry out projects or programmes aimed at meeting development needs of poor communities; and strengthening the institutional capacity of other civil society organisations involved in direct service provision to poor communities.

To access these resources, NPOs must be willing and able to register legally and deal with complex registration procedures, funding applications, forms, reports, annual audits regular inspections, and record keeping. This environment is more conducive for the operation of large and well-organised NGOs than for small NGOs and CBOs that operate in less formal circumstances and cater to poor and marginalized communities. The latter could possibly benefit from becoming intermediaries between NGOs that receive funds and the communities where the funds are to be spent.

In the framework of current policy, much of service delivery will be provided by local government, through integrated development plans, formulated and implemented through consultation and partnerships with a range of actors including NPOs. Some government agencies have published policy guidelines and operational procedures to govern a complex process of tendering and sub-contracting aimed at drawing businesses and NPOs into the delivery process. This is an opportunity for NPOs to shape the way delivery works and access resources. Over the last few years then, a potential for a public space and policy framework for constructive relations between the state and civil society has emerged. Problems with the implementation of this framework related to the lack of managerial and institutional capacity in the various state agencies in charge of implementation.

### **PARTNERSHIPS: OPPORTUNITIES AND CHALLENGES**

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

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

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

When given statements to which they responded, organisations expressed the most disagreements with the notion that non-profit organisations (NPOs) are as bureaucratic and unresponsive as government, that the public tends to view NPOs with suspicion, and that government tends to view NPOs with suspicion.

Statements that generated high strongest levels of agreement were that:

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

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

On the part of government, the question is the extent to which it shares this perspective and is willing to enter partnerships with NPOs in which government sets the policy agenda and framework and NPOs play a role in delivery and implementation. While the willingness to do that is obvious, the precise mechanisms need to be sorted out. Affecting government response would be the capacity of NPOs to play such a role in specific instances based on their track records. Neither government departments nor NPOs are homogeneous entities and their concrete relationships will be affected by the specific characteristics and contribution of each side to the partnership in each case. We also have to consider that the burden of delivery and dealing with backlogs will increasingly fall on local government, and relations between municipalities and NPOs are likely to be governed by local dynamics rather than flow from a grand design applicable to all localities.

The interest in partnerships for delivery is not unique to South Africa. It has been motivated in many places by various reasons, some of which are outlined below:<sup>10</sup>

- A perception of the limitations of the state as a vehicle for social change due to its unwillingness to be accountable to society. Recent analysis has also questioned the accountability of NGOs, as opposed to elected representatives in government, or membership organisations such as CBOs.
- Recognition of the comparative advantage of NGOs to deliver at local level. A 1998 World Bank evaluation noted that NGO/CBO involvement in development projects contributed to the projects' success, by providing opportunities for poor communities to participate.

- Serious concerns over the economic inefficiencies of state delivery mechanisms have also been expressed by international institutions, especially with regard to bloated bureaucracies of many developing countries and inefficiencies of centralised government control over development.
- NGOs do not represent a recurrent cost for the state, and they frequently manage to raise funds to match state contribution.

Having identified the limitations of state action and the advantages of NGOs, we must realize that the purpose of partnerships is that of combining the strengths that different sectors bring to the task of delivery rather than replacing one sector by another. The state has a direct role to play in service delivery and in creating an enabling environment for the work of other sectors. The nature of the relationship will be collaborative when the state and NGOs share goals and strategies, and they may work together well even if they adopt different strategies as long as their goals – efficient and comprehensive service delivery – are similar, in which case their strategies must be complementary.

In a 2000 study Alan Fowler gives examples of partnerships that may include support by the state to civil society organisations through grants or subsidies, seconding staff from the state to non-state schools or clinics, and paying subsidies to welfare organisations by the Department of Social Development for providing welfare services on behalf of the state. In other instances the state may offer contract to organisations to do work for it: NGOs undertake work on land rights work for the Department of Land Affairs, and health education initiatives on behalf of the Department of Health.

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

- The degree of goal coherence between the state and the NGO: for example the protection of street children, where the shared goal would be return of the children to their families.
- Room for negotiation over contract conditions: such as the methodologies to be used or the processes to be put in place to achieve the goal.
- Direction of influence: who is trying to co-opt whom? NGOs may succeed in co-opting the state into their approaches, such as incorporating participatory elements in project design.

A crucial issue here is concrete advantages and disadvantages NGO bring to such partnerships with the state. Motala and Husy examined case studies to illustrate concretely (and not just theoretically) whether the claims that NGOs are more efficient agents of delivery – as mentioned earlier – are indeed true, due to the NGOs' values, ability to reach marginalized communities and identify their needs, and be flexible in implementing programmes.

Issues of efficiency, they argue, are not restricted to the implementation of projects, but to all levels of the policy cycle, including policy formulation, planning, project implementation, and monitoring

and evaluation. For example, at the policy and planning level, the facilitation of stakeholder participation is a critical area, and one of the comparative advantages the non-profit sector provides. NGOs suffer from limitations as well, in the areas of service delivery and development interventions, which include the following:

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

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

- **Values base driven programmes and methodologies:** the commitment to participatory approaches to development facilitation is reflected in the involvement of stakeholders in decision-making. This has costs – participatory processes require time and money. Pressures can lead to an undermining of values and principles. Power brokering is sometimes an outcome of using traditional methods of facilitating ‘community participation’. The notion of “community” is frequently not clearly defined and broken down to its components.
- **Impact and coverage:** Coverage was uneven in the case studies. Some NGOs are tackling issues at a national level, others operate at a provincial level, while others work at local level. Coverage is constrained by institutional capacity and resources, both human and financial. Interventions are reaching rural and other previously disadvantaged communities, although on a relatively small scale.
- **Co-ordination and integration with other work and stakeholders:** All the NGOs in the case studies demonstrated considerable investment in supporting co-ordination and integration across development interventions. The benefits are evident in the shared responsibility for implementation, the expansion of capacity and the impact on target communities.
- **Continuity and sustainability of interventions:** The case studies reflect a wide range of initiatives aimed at ensuring the sustainability of the intervention beyond the life span of the project. These include building local capacity, enhancing the capacity of relevant authorities and

transferring skills and technologies that can be sustained without the continued use of external resources. Not all of the interventions are sustainable without external funding. If NGOs cannot cover costs, the consequence will be lost capacity.

- **Accountability:** In the case studies it was clear that systems were in place for effective management and financial accountability. The view of NGOs as driven by passion but with no internal efficiency did not prove true.
- **Delivery effectiveness:** the following emerged from the case studies:
  - The sector is using international and other sources of funding which would not necessarily be available to the state.
  - NGOs have the ability to charge lower rates, draw on a pool of existing resources within the organisation, build on existing relationships and networks and thereby add value to a project. This may even go so far as to subsidise the project with other resources.
  - The state end up receiving a subsidy to meet its statutory obligations because the NGO sector is filling key gaps with its own resources. Even where the state makes a contribution, via a subsidy or contract, the value of the input received from NGOs usually exceeds the costs to the state.
  - Relying on tenders and subsidies meant considerable risks for NGOs. Their ability to manage and adapt to the potential risks is key to its success.
- **Flexibility in delivery:** The NGO sector is flexible, enhancing its capacity to respond to needs when they arise. However, the sector is often accused of lacking focus due to the diversity of its approaches and interests. The costs to NGOs themselves include staff burnout, disruption of programmes, and the diversion of resources intended for other work.
- **Employment generation:** The NGOs in the case studies had different capacities to generate employment and it is impossible to generalise about the matter.
- **Volunteer mobilisation:** The sector mobilises volunteers to take part in the work of NGOs, and extend the scope and impact of their projects despite financial constraints. We must realise though, that effective volunteer mobilisation requires training and supervision, which are costly (mostly in terms of staff time but also money – transport, food, etc).

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

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

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

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

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

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

## **TENTATIVE CONCLUSIONS**

Having surveyed the outcomes of recent research processes, which focus on issues of NGOs, CBOs and service delivery, a few conclusions can be drawn and recommendations made in order to

facilitate successful partnerships between these organisations and the state. While there is no magic formula that would guarantee the perfect relations between the different sectors, the following points should be given considerations:

- Partnerships between NGOs, CBOs and government are desirable and are favoured by the parties concerned. To make them feasible and successful a clear understanding of the role of each partner must be established. Such understanding should be reached by negotiations between the parties, rather than through the imposition by one – the state – on the others.
- NGOs and CBOs enjoy comparative advantage in service delivery due to their more consultative approach, a focus on community empowerment, and ability to respond more directly and immediately to community needs than government can.
- NGOs and CBOs suffer from relative lack of capacity, and they cannot guarantee continued and sustained interventions. Their accountability to communities (particularly true for NGOs) is not always assured and their mandate is not always clear. Their dependence on external financial support may compromise their ability to pursue developmental policies according to their values and preferred mode of operation. Without such ability their contribution will be diminished.
- The strengths and weaknesses of the NGOs and CBOs, combined with those of the state, make them ideal partners. The state can guarantee institutional and financial continuity as well administrative and implementing capacity through its own or outsourced personnel. It operates through formal and user-unfriendly procedures that are not conducive to effective delivery.
- The best way forward would be to combine the immediate and more egalitarian relationship that NGOs/CBOs can establish with communities with the more structured and organised approach that can be provided by government. In order to do that, service delivery and development objectives should be planned, implemented and monitored in collaboration between partners, as well as with affected communities (through CBOs, local government and direct representatives).
- The precise arrangement of the partnership should be determined by the particular circumstances of each case. There cannot be a model that is applicable to all cases, but the principle of joint planning can apply across the board.
- While the political accountability for delivery remains with government (at various spheres), the social accountability must be shared with NGOs, CBOs and donor agencies. This is a burden as well as a source of strength that must be used to benefit the target communities.

All of the above conclusions refer to the relations between South African state structures and civil society organisations in general, without examining in detail any particular sector, policy, project or development intervention. We need to refine these conclusions, and to get a better sense of the extent to which they may apply under concrete circumstances. In order to do that, we will examine in the following sections how these conclusions apply differentially to specific sectors, a task which forms the bulk of this report.

To illustrate the challenges facing us in this regard we look now in greater detail at three sectors, each one in turn: social grants, human rights and adult basic education.

## METHODOLOGY OF STUDY

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The research was qualitative in nature, and involved the synthesis of previous work and the collection of new data. In order to gain insight into the perspective of CSOs, and to a lesser extent, state officials, regarding opportunities and challenges in their current relations with each other, detailed research was conducted in three areas of intervention, each of which would highlight particular aspects of the possible relationships between state and civil society. In particular, the study has focused on the involvement of CSOs in the following areas:

- Monitoring government performance (with a focus on the human rights of refugees and migrants);
- Shaping social policy (with a focus on income grants);
- Service delivery (with a focus on issues of literacy and adult basic education);

Data was collected in a two-stage process. Firstly a literature review was conducted, focusing on the historical relationships between CSOs and the state in the areas of refugee and migrant rights, social grants, and adult basic education. Following this stage of the research process, a series of in-depth interviews was conducted with members of key CSOs identified in the literature review as well as with government officials.

### LITERATURE REVIEW

The review was intended to identify historical trends in the relationship between the state and civil society in the three areas of intervention (with an emphasis on post-apartheid relations) and to provide a context for findings on current prospects for partnerships between the two sectors. The documents that were studied included policy briefs, green and white papers, policy critiques, legislation, position papers by different sectors as well as international organisations, project evaluations, impact assessments, conference proceedings, newspaper articles and research reports.

### IN DEPTH INTERVIEWS

After completing the literature review a series of in-depth interviews were conducted with key actors in the field, as identified in the literature review, and included members of CSOs as well as state officials.

A total of 50 in-depth interviews were conducted nationwide. While the study focused was intended to focus on the perspectives of members of CSOs regarding their role and the nature of their partnerships with the state and other sectors in policy formulation, critique and implementation, a small portion of interviews was targeted at state officials, in order to gain some sense of contrast

between the views of CSOs and state officials, and to highlight certain aspects of the views of CSOs. A total of 8 interviews were conducted with state officials, while the remaining 42 interviews were conducted with members of CSOs.

The interview schedule consisted of three sections:

- a section on organisational activities and goals of the organisations visited;
- a section dealing with the relationship between CSOs and state structures, focusing on channels of communication, perceived role of CSOs or state structures *vis-à-vis* each other and conditions necessary for improving the relationship; and
- a section dealing with policy formulation, focusing on the history of state-CSO relations in the formulation of relevant policy documents in their mutual areas of intervention.

## HUMAN RIGHTS OF REFUGEES AND MIGRANTS

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The democratic transition of 1994 marked the beginning of a number of changes in South Africa. The abolition of racial legislation and the beginning of reform of the country's institutions made South Africa a destination for refugees fleeing conflict and persecution in their home countries. A relatively stable and prosperous economy has made South Africa a more attractive destination for immigrants seeking employment and trading opportunities.

These developments have given rise to public debates regarding new waves of immigration, the challenges and opportunities they present, and the possible policy and popular responses to them. While human rights NGOs and refugee organisations initially made considerable input into these debates, their views and concerns were increasingly marginalized from the policy-making processes initiated by government. The meagre involvement of civil society organisations (CSOs) in formulating immigration policy has meant that legislation and regulations issued by the Department of Home Affairs (DHA) have been subject to legal challenge from human rights organisations, and much of the interaction between state structures and CSOs has taken the form of legal contestation.

The single most important challenge in realising the rights of undocumented migrants and refugees in South Africa today is xenophobia, both popular and official. Xenophobia can be defined as fear or hatred of foreigners, and is frequently fed by stereotypes that identify foreigners as responsible for domestic social and economic problems. It is manifested not only in informal settings, but has also been observed in institutionalised settings, where government officials are reported to show discriminatory behaviour towards non-nationals, and ignore their rights.<sup>11</sup> These include the right to freedom of movement and residence within the borders of South Africa, the right to work, the right to basic education, and the right to health care.

In this section we focus on the relationships between government and CSOs active in the areas of human rights, immigration and refugee protection. A refugee is understood to be a person who, out of a well-founded fear of individual persecution, or as a result of generalised human rights violations or armed conflict in the country of origin, is forced to flee that country. An asylum seeker refers to a person whose claim for asylum is still pending with the relevant authorities, which seek to ascertain whether the fear of persecution is well-founded.<sup>12</sup> An undocumented migrant refers to an individual who has entered the country without official authorization.

## THE HISTORICAL CONTEXT

The current South African government has to deal with the legacy of late-apartheid policies, and in particular that of the Aliens Control Act of 1991 (ACA). Policy on entry and residence, including temporary migration, immigration and, until recently, refugee status determination, had fallen under the ACA. Only in 1998 was separate legislation drafted for the recognition of refugees, and only in 2000 that legislation came into operation.

The immigration policy of the apartheid state rested upon four pillars: racist policy and legislation, the exploitation of migrant labour from neighbouring countries, tough enforcement legislation, and the repudiation of international refugee conventions:<sup>13</sup>

- Successive governments would use racial criteria to select who could enter the country. While the apartheid regime was willing to accept and integrate white refugees from Mozambique, it made no such attempt to integrate the later influx of African refugees from that country, though they were allowed to settle in the Gazankulu homeland.
- The migrant labour system ensured access to cheap labour for the mining and agricultural sectors of the South African economy, while denying labourers residence rights in the country.
- Border patrol and the treatment of unauthorised migrants were carried out without due process. ‘Illegal aliens’ could be subjected to long periods of detention without judicial review.
- The apartheid government refused to recognise the United Nations Conventions relating to the Status of Refugees of 1951 (UN Convention) and the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 (OAU Convention). Any refugee who entered the country was treated as an illegal alien.<sup>14</sup>

Despite the changing circumstances occasioned by the democratic transition of 1994, the ANC-led government seemed reluctant to abolish the ACA, in the context of increasing levels of xenophobia in the country.

## THE ROLE OF CSOS IN POLICY DEVELOPMENT

Human rights CSOs have been active in contesting government policy on refugees and international migration, but they also have a history of independent action and service provision in these areas, where they were not merely reacting to state policy, but conducting their own policy.

CSOs involved in refugee affairs and migration policy come from diverse backgrounds. They are heterogeneous in the expertise they have acquired, their organisational structure, and their goals. Some are local, while others are international. Some have legal expertise, while others specialize in service provision. Some CSOs have acted against the interest of migrants and refugees. The Illegal Foreigners Action Group and the African Chamber of Hawkers and Independent Businessmen are

notable in this regard. Refugees have often been the targets of public campaigns against 'illegal foreigners' by communities fearful of competition for scarce resources.<sup>15</sup> There has never been a unified response to the issues on the part of civil society, and we need to break down the responses of various organisations by the type of intervention they have called for.

## **RESEARCH AND ADVOCACY**

Much of the independent work carried out by CSOs in the areas of refugee affairs and immigration has been in the form of research, lobbying and advocacy, gaining pace after 1996 with the rise in refugee arrivals in South Africa: in May 1995, the United Nations High Commissioner for Refugees (UNHCR) tallied 3,644 refugee applications. In June 1996, the DHA and the UNHCR counted 13,332 applications, and 15,543 in 1997.<sup>16</sup>

One of the leading advocacy groups in the issue of refugee affairs, and to a lesser extent migration, Lawyers for Human Rights (LHR) began taking an active interest in refugee affairs in 1996, when local church groups, who were sheltering a large group of refugees and asylum seekers, approached them for legal advice. This led to the formation of the Refugee Rights Project within LHR in 1997 – a project of research, advocacy, education and representation of refugees and undocumented migrants – and also triggered a range of national attempts to organise the voices of CSOs with a focus on refugee affairs.<sup>17</sup>

Soon after the approach by the churches, LHR became instrumental in the formation of the Refugee Rights Consortium, an informal association of CSOs, which lobbied for changes in the treatment of foreigners and refugees. The Consortium gave rise to the National Consortium of Refugee Affairs (NCRA), established in 1997 and run by LHR until 1999. The NCRA became the umbrella organisation for the regional initiatives (Refugee Forums) to organise CSOs dealing with refugee affairs in Cape Town, Durban, Gauteng and Port Elizabeth.

Also in 1996, LHR along with the University of Witwatersrand Rural Facility's Refugee Research Programme, organised a workshop to discuss critical issues of concern. The Asylum and Naturalisation: Concerns Regarding Policies and Practices Workshop was attended by representatives from a number of South African CSOs, UNHCR, Human Rights Watch, and the Departments of Home Affairs, Correctional Services and Safety and Security.

Another active participant in the refugee and immigration debates in South Africa was the Southern African Migration Project (SAMP). It too, like the Refugee Rights Project, was only formed after 1994. It was founded to support new immigration initiatives and policies in the southern African region. It hoped to do that by providing accurate and reliable information on which governments

and organizations could base their immigration policies. Its four main components are applied migration research, policy advice and monitoring, education and training, and public education.<sup>18</sup>

CSOs were central in monitoring the treatment of refugees and undocumented migrants in South Africa, and in publicising the human rights abuses inflicted by Home Affairs officials, the South African Police Services, and officials at the privately owned detention centre for undocumented migrants, the Lindela Detention Centre. In February 1998 the South African Human Rights Commission (SAHRC), a constitutional body charged with monitoring government performance, formed a partnership with the Centre for Applied Legal Studies and the Law Clinic of the University of Witwatersrand, and LHR, to conduct research into the abuses of undocumented migrants reported by Human Rights Watch. The final report confirmed a number of abusive practices against undocumented migrants during the arrest and detention processes.

The report found that the ACA (amended in 1995) was used as a tool for exercising unfettered and arbitrary power over nationals and foreigners alike, usually based upon their appearance. It further documented instances of arbitrary arrest, unlawful detention, extended periods of detention without judicial review (a practice that was struck down by the 1995 amendment to the ACA), bribery and corruption among officials in the Lindela detention facility, and abuse, intimidation and degradation of prisoners.

CSOs would subsequently take the lead in combating xenophobia in South Africa, beginning on October 15 1998, when the SAHRC held a consultative workshop on racism and xenophobia. It was co-ordinated through the NCRA. A second workshop later that year formed the basis of a national plan of action to combat xenophobia in South Africa.

## **THE ROLE OF CSOS IN SERVICE DELIVERY**

The lobbying of some CSOs is often based on their experiences working with refugees and immigrants and their provision of essential services. In many instances these efforts call on government to recognise and support processes of service delivery that are already in operation.

The NCRA is currently made up of representatives from the refugee communities and service providers, and comprises a cross-section of CSOs concerned with refugee issues in South Africa. The range of services provided by CSOs include legal advice, intervention, assistance with pre-interview information, appeals and review, limited emergency accommodation to the most vulnerable, limited provision of food parcels, assistance with loans to start and sustain small businesses, assistance with payment of school fees for children and limited assistance for health services, trauma counselling as well as pre-interviews for durable solutions on behalf of the

UNHCR.<sup>19</sup> The NCRA carries out its activities without government funding, largely through grants from international donor organisations and the UNHCR.<sup>20</sup>

The Jesuit Refugee Services (JRS) is one of the implementing agencies for the UNHCR and receives financial assistance from them to address the needs of refugees and asylum seekers. They help new arrivals in the country to apply for their asylum-seeking permits so that they can be legally in the country, and they help send the children of refugees and asylum seekers to crèches, primary and secondary schools, as well as offering vocational training opportunities to them.

The Cape Town Refugee Forum (CTRF) provides health assistance to asylum seekers and refugees, and also receives financial assistance from the UNHCR. The Careers Research and Information Centre is one of the UNHCR's implementing agencies. It is primarily concerned with promoting the involvement of adult members of the asylum seeker and refugee community in various educational activities. The Red Cross, Catholic Welfare and Development and other organizations have provided front-end assistance to refugees and asylum seekers.<sup>21</sup> The Black Sash has helped people to apply for ID books, and to access various government services.

## **COOPERATION BETWEEN GOVERNMENT AND CSOS**

In 1999, the DHA and CSOs cooperated closely in the regularisation of about 220,000 Mozambican refugees. This entailed granting refugees living in the former homeland of Gazankulu formal refugee status, enabling them to be naturalised as South African citizens, and thus putting an end to years of abuse and neglect of the undocumented refugees.

The CSOs involved in the final outreach programme included the South African Council of Churches (SACC), the National Paralegal Association (NORTRAPA), the Institute for Democracy in South Africa (Idasa), and the Refugee Research Programme of the University of the Witwatersrand. The SACC had a long history of contact with the Mozambican refugee communities, while the need for an amnesty specifically targeting the former Mozambican refugees had been highlighted by the work of the Refugee Research Programme for many years.<sup>22</sup> The task force of South African and Mozambican governmental and non-governmental organisations and DHA officials was set up by the Association of European Parliamentarians for Africa. The regularisation of the refugees required the participation of the DHA, but implementation and design of the project relied heavily on the expertise and experience of the CSO partners.

## **THE POLICY POSITION OF CSOS**

Most CSOs working with refugees and undocumented migrants, in line with the SAHRC, believe that they should enjoy certain basic human rights, in accordance with international law. This implies the right to liberty and security (protecting them from arbitrary arrest and detention), the right to be

treated with humanity and respect, the right to equality before the courts, the right to be recognised as a person before the law, and the right to be protected from against arbitrary deportation.<sup>23</sup>

But it is in their responses to government policy papers that the policy positions of CSOs in the field of refugee affairs and migration can most clearly be inferred.

**Table 1: Summary of CSO and government interaction on refugee policy and legislation**

<b>Legislation and policy developments</b>	<b>Content of legislation and policy statements</b>	<b>Cooperation between state and civil society</b>
1991 Aliens Control Act	Governs all aspects of immigration to South Africa, including refugees. The Minister of Home Affairs is granted powers to determine who may enter the country.	No cooperation with human rights groups or refugee groups. The Act was the target of vocal criticism by various CSOs during the mid-1990s.
1995 Aliens Control Amendment Act	Ministerial discretion limited by subjecting it to judicial review and limiting detention period of migrants.	
1997 Draft Green Paper on International Migration	Recommends liberal policy with a focus on legalizing existing patterns. Advocates human rights based approach to matters of migration. Calls for refugee legislation based on UN and OAU Conventions.	Extensive consultation with international CSOs and academic institutions. Mostly favourable commentary from human rights organisations and refugee forums, except on temporary protection and the repatriation of refugees.
1998 Refugees Act	Provides for the establishment of administrative bodies for the determination of refugee status of asylum seekers. Administrative bodies are created under DHA, which retains powers of appointment for administrative structures.	Collaboration with local CSOs in the drafting of the Bill. CSOs submit extensive commentary on various drafts of the Act, and, with some reservations, approve of the final outcome.
1999 White Paper on International Immigration (called the White Paper)	Emphasis on border control and exclusion of migrants. Calls for communities and service providers to identify undocumented migrants.	Little consultation with CSOs in the drafting of the Paper. Task team dominated by senior Home Affairs officials.
2002 The Immigration Act	Embodies approach of White Paper and retains key features of the ACA.	No input by human rights groups and refugee forums. Debates in Parliament.

## THE 1997 GREEN PAPER ON INTERNATIONAL MIGRATION

Extensive commentary and critical input from human rights organisations had accompanied the release of various draft policy documents since 1996. It was in the context of increasing public criticism at the retention of the ACA, amended though it was in 1995, that a draft green paper team was convened by the Ministry of Home Affairs to draw up the principles of a new policy. The team drew on the resources of various groups and activists in civil society specialising in migration and refugee affairs. SAMP coordinated the research for the Green Paper and prepared the draft. A representative of the Centre for Refugee Studies at the University of Toronto acted as consultant on refugee issues, while the research for the paper was funded by the Canadian International Development Agency. Idasa provided logistical support, and helped organise public hearings, while a representative from Idasa, together with an advocate read and remarked upon the final version.<sup>24</sup>

The result of the extensive collaboration of local and international CSOs in drafting the Green Paper was a set of liberal policy proposals. An Idasa project coordinator expressed optimism with the process and the outcome, shared with other organisations, saying that, “the participation of civil society from the beginning of the policy-making process provides a 'well-balanced forum' of the sort which is more likely to propose well-considered, appropriate policy”.<sup>25</sup>

Generally, the paper expresses the view that government action should be restrained so as not to violate the rights of undocumented migrants.<sup>26</sup> It recommends an approach to migration that does not attempt to curb migration, but rather regulate it in the interests of growth, development and nation building. The Green Paper calls for a legal distinction between migrants and immigrants on the one hand, and refugees on the other. While the former enter the country primarily for economic reasons, the latter are seen as persons fleeing persecution, thus obliging the destination country to render aid. The Green Paper recommends separate legislation for refugees.

The welcome expressed by local CSOs working on refugee issue was not matched by the DHA, whose officials stalled progress on legislative reform.<sup>27</sup> It is difficult to ascertain the reasons for the silence of the DHA upon the publication of the Green Paper. Certainly the suggestions of the Green Paper would have implications for the future administration of the Department. Among the most radical proposals contained in the Green Paper were the shedding of those functions of the Department unrelated to immigration and citizenship, the creation of an independent Immigration Board to review Departmental performance and decision-making, and the creation of an asylum determination procedure independent of the DHA.<sup>28</sup>

## **CIVIL SOCIETY INPUT: POLICY POSITIONS**

While human rights organisations and refugee forums welcomed the recommendations pertaining to status determination, they were less enthusiastic with the Green Paper's emphasis on *temporary* protection. The concept first appeared in the OAU Convention, and provided for the temporary residence of a mass influx of refugees fleeing large-scale conflict or natural disaster.<sup>29</sup> The Green Paper recommends that temporary measures should be taken to prepare refugees for a successful return when conditions allow that, and suggests that refugee status may be legitimately withdrawn, and mandated repatriation pursued, when it is deemed by the receiving state that the risk giving rise to refugee status has come to an end.<sup>30</sup>

Drawing on an international debate on temporary protection, a number of local CSOs were able, through the Gauteng Refugee Forum and LHR, to formulate counter proposals for dealing with a mass influx of refugees. They endorsed an approach that focused more on the integration of refugees, whether individual or group-based, into the receiving country. They further stressed the importance of voluntary repatriation while rejecting the principle of mandated return of refugees. At that stage, though, the debate on temporary protection was largely academic, as the Green Paper did not receive official DHA support.<sup>31</sup>

## **THE REFUGEES ACT OF 1998**

The Draft Refugees White Paper and the Draft Refugees Bill followed the publication of the Green Paper. Debates regarding the issue of temporary protection were ignored, with the Bill focusing on fitting the administrative details of an asylum determination process with the administrative functions of the DHA. Nevertheless, the finalisation of the Bill and its passing as an Act was a fairly inclusive process, and LHR would later say that it had resulted in an Act which is “relatively progressive”.<sup>32</sup>

The Refugees White Paper Task Team consisted of five representatives from CSOs, the UNHCR and human rights institutions, and three representatives of the DHA. The draft Refugee Bill received extensive commentary from 13 separate organisations and government departments. The second draft Bill, revised by the State Law Advisors, also received comment from CSOs. The Parliamentary Portfolio Committee on Home Affairs held public hearings on the draft Refugee Bill, and incorporated many of the concerns raised by CSOs.

Despite these opportunities to influence the shaping of the Refugees Act, the welcome expressed by several human rights and refugee organisations was mingled with uneasiness and suspicion. From the White Paper through to the final Act, the legislation increasingly moved away from certain key points in the Green Paper, despite the protestations of human rights organisations. There was concern that provisions in the Refugees Bill pertaining to the asylum determination procedure paid

lip service to the recommendation of the Green Paper that the procedure be independent of political processes. Instead, successive versions of the Bill maintained that the body responsible for the determination of asylum be located within the DHA, and that it be comprised of its officials.

The resulting Act provides for the creation of Refugee Reception Offices run by DHA officials. The Act provides for the creation of a Standing Committee, which must be independent, though most of its members are to be appointed by the Minister of Home Affairs. The Standing Committee would determine and implement the procedures for granting asylum, and review the decisions of the Refugee Status Determination Officers.

While the independence of the status determination body remains questionable, the Act does provide for reviews and appeals of decisions reached on status determination, though the Appeal Board is also to be nominated by the Minister and the administrative work of the Appeals Board and the Standing Committee is to be carried out by officers of the DHA. The asylum seeker only has access to an independent hearing in a court of law when appealing the finding of the Appeals Board.

As the first piece of legislation dealing specifically with refugees and following, in broad terms, the guidelines laid by the UNHCR, the Act was hailed as progressive. In the details of its content and the mode of its implementation, however, it drew extensive criticism from CSOs. Nothing is mentioned in the Act about liaising with other departments in formulating coherent refugee policy, and nothing is said about the potential role of CSOs in implementing refugee policy.

## **IMPLEMENTATION OF THE REFUGEES ACT**

While CSOs were praising the Act for instituting formal procedures for the recognition of refugees, Home Affairs officials were formulating restrictive interpretations of the Act. In November of 1999 Michael Tshlamalang, at that time Director of Residence and presiding over the sub-directorates of refugees affairs, temporary residence and permanent residence, told refugees attending Africa Refugee Day celebrations in Johannesburg that the Refugees Act would temper South Africa's liberal interpretation of its international obligations. He went on to specify that the Act would justify the rejection of asylum applications from asylum seekers who passed 'safe countries' en route to South Africa. The comments drew sharp criticism from the SAHRC and LHR.<sup>33</sup>

The drafting of the implementing regulations of the Refugees Act took almost two years to complete, during which time refugee affairs continued to be dealt with in terms of the ACA. The organisations that had participated in the drafting of the Act did had no opportunity to participate in the drafting of the regulations, resulting in widespread dissatisfaction with them once they came into force. In particular, the regulations were criticised for increasing the difficulties in processing asylum applications and restricting the interpretation of refugee status provided for in the Act. The most controversial provision that of prohibiting work and study for the first 180 days of the

application.<sup>34</sup> This provision was listed by the Jesuti Refugee Service as a major constraint in a presentation to the Department of Social Development,<sup>35</sup> and served as a rallying cry for various CSOs and refugee communities during Africa Refugee Day on 20 June 2000.<sup>36</sup>

In the interpretation of the Act and its implementation, CSOs found litigation the most frequently used channel of interaction with the DHA, and a series of cases against the Minister followed upon the heels of the implementing regulations. In November 2002 the Cape High Court found the regulations prohibiting asylum seekers from working or studying pending the outcome of the determination procedure unlawful. In a recent case the Cape High Court ruled against the Minister of Home Affairs in a case regarding a Burundian Refugee, whose application for refugee had been persistently ignored. The Court found that the appointment of the Standing Committee was both unlawful and unconstitutional, as it consisted entirely of salaried, full-time employees of the DHA, and thus could not be said to be 'independent'. The findings of the case has major implications for the DHA, as it could be inferred from the ruling that all decisions reached by the Standing Committee since its inception are invalid.<sup>37</sup>

Antagonistic relations between CSOs and the DHA acquired renewed momentum in 2002 with a spate of legal action and critical research being directed against the Department. In October 2002 *The Sunday Independent* reported that the SAHRC, the Human Rights Committee, the Black Sash, LHR, the Wits Law Clinic and the Legal Resources Centre were calling for urgent investigations into abuses by the DHA. The alleged abuses included corruption extending to senior levels of the Department, the whipping and beating of asylum seekers at the Refugee Reception Centres, the passing of policies restricting the capacity of asylum seekers to register, the unconstitutional prohibition of work and study rights for asylum seekers, and discrimination against Zimbabwean asylum seekers. The Wits law clinic obtained in that year a ruling against the DHA allowing a Zimbabwean refugee the right to apply for asylum.<sup>38</sup>

Many human rights organisations and monitors of the asylum-determination procedure believe that the DHA's hostile approach reflects an exaggerated concern that asylum seekers are in fact economic migrants, seeking to abuse the system in order to gain permanent residence. The prohibitive measures embodied in the implementing regulations of the Refugees Act are aimed thus to discourage 'economic migrants', even to the detriment of *bona fide* refugees.<sup>39</sup>

Tensions between the Department and CSOs flared in early 2001, when a draft Refugees Amendment Bill was proposed. It provided for the establishment of Refugee Reception Centres where asylum seekers would be required to stay while their applications for asylum were being processed. It also provides for more restrictive interpretative mechanisms for the granting of refugee status, one of which is the policy of refusing admission to asylum applicants who passed through a 'safe third country'. The principle was successfully challenged by LHR in May 2001.<sup>40</sup>

## THE IMMIGRATION ACT

Unlike the Green Paper, the White Paper on International Migration (the White Paper) relied on very little input from representatives of CSOs working in the areas of human rights, immigration, and refugee affairs, and was dominated by Home Affairs officials. The White Paper persistently uses xenophobic terminology, referring to ‘illegal aliens’ and ‘undesireable persons’; it views the Constitution not as a guiding framework, but as a constraint on the actions of government; it states that the formulating Task Team could not see the relevance of the democratic transition for migration policy, at the same time acknowledging that the ACA is potentially appropriate for the new South Africa; it seeks ways to limit the rights of ‘Aliens’; it propagates popular perceptions that ‘illegal aliens’ compete with ‘our citizens’ for scarce resources, corrupt state officials and participate in criminal activities; and, above all, it seeks ways in which to “effectively deter and prevent people from illegally immigrating into South Africa” by encouraging “voluntary repatriation of illegal aliens because they no longer find South Africa attractive.”<sup>41</sup>

CSOs expressed concern that the emphasis of the white paper on ‘community participation’ in the detection and deportation of undocumented migrants, as well its terminology would contribute to increasing levels of xenophobia: a phenomenon that does not readily distinguish between the legal categories of migrants, immigrants, and refugees.<sup>42</sup> LHR, in its submission to the Parliamentary Home Affairs Committee on the White Paper, urged the government to consider the responses to the White Paper. It further argued for broader consultation with CSOs and human rights institutions in the drafting of legislation and in the implementation of migration policy.<sup>43</sup>

Although the Immigration Bill was open to comment from civil society for two years, very few substantive changes had been made to it.<sup>44</sup> Although it became the subject of political controversy, this had much more to do with ANC versus IFP turf battles, and questions of labour quotas, rather with the human rights implications of the Bill. The warnings of CSOs regarding the Immigration Bill have been realised in a recent case against the Minister of Home Affairs in the Cape High Court, where the legality of the regulation-making process for the Immigration Act has been successfully challenged (it was found that the Minister failed to hold public consultations in the drafting of the regulations).<sup>45</sup>

## CONCLUSION: RECENT CHALLENGES

This section has delineated a brief history of the relationship between CSOs and government in refugee affairs since the democratic transition. While interspersed with moments of fairly close co-operation, the relationship between the two has been less open in formulation and implementation of refugee policy. Not only have CSOs been frustrated in their attempts to influence policy, but they have also failed to have their independent work in service provision for undocumented migrants and refugees recognised and supported by a coherent refugee policy from government.

The most effective channel for civil society in influencing policy direction and implementation has been through litigation. This is not necessarily an indication of failure on the part of human rights organisations. While discussion and dialogue may be the preferred modes for interaction between these two sectors, the past trends have established a solid foundation in refugee and immigration jurisprudence that may help to guide future legislation.

However, litigation has proved limited in addressing the problems presented by the ongoing neglect of refugees. Moreover, litigation has not helped to formulate extensive health and welfare policies for refugees. This is reflected in the SAHRC's 4<sup>th</sup> *Economic and Social Rights Report 2000/2002*. It reports that refugees and asylum seekers are consistently overlooked by government departments in their design of policy, and are effectively excluded from housing, health, food, social security, education, environment and water programmes.<sup>46</sup>

While the important role that CSOs play as 'critical watchdogs' should not be underplayed, only a handful of organisations specializing in Refugee Affairs have the expertise to pursue litigation. Other community and faith-based organizations, specialising in counselling and service-provision, have a wide range of resources that have not been effectively utilised by the government. Until government has formulated a coherent human rights oriented vision for refugees and undocumented migrants, litigation, will continue to dominate the field of refugee affairs.

## **CIVIL SOCIETY AND STATE PERSPECTIVES**

After reviewing the history of interactions between state and civil society organisations, this section presents an analysis of a series of interviews conducted with officials, and members of organisations, involved in policy formulation and implementation regarding refugees, asylum seekers and, to a lesser extent, migrants.

Most of the government respondents were regional and national officials in the Refugee Section of the Department of Home Affairs. Officials in the Department of Social Development working in the field of migration were also interviewed. In addition, we interviewed members of the wide range of organisations working in the field of international migration, refugee affairs, and human rights. These included local CSOs as well as a few intergovernmental organisations such as the United Nations High Commissioner for Refugees (UNHCR), the Organisation for International Migration (IOM) and Amnesty International.

The local CSOs can be broadly categorised into two types of organisations: the humanitarian ones focusing on service provision, counselling and material assistance, and the human rights oriented organisations, specialising in advocacy, research, and litigation.

We have concluded in the previous sections that the relations between state structures and civil society organisations have largely been antagonistic, characterised by extensive litigation on the part of CSOs against the policies and actions of the Department of Home Affairs. The interviews were intended to determine the accuracy of this conclusion, focus on the reasons for this state of affairs and, determining whether there were areas in which this relationship could be improved.

Briefly, we have found that members of both sectors shared similar goals at an abstract level, but adopted very different approaches in practice, and as a result their relationship was characterised by mistrust and suspicion.

Members of CSOs said that the activities of their organisations were intended to supplement the state, but they recognised regular channels of communication had broken down between CSOs and the Department of Home Affairs, and as a result each side's intentions are frequently misunderstood by the other side. While they saw room for improvement in the relationship with the Department of Home Affairs, they insisted on the importance of maintaining an independent approach and criticising the Department for illegal or immoral actions. This translated into an expectation that the mode of operation of the Department must change for any improvement in relations between them. Members of the Department, on the other hand, and particularly those at the higher levels of management, felt that CSOs had to tone down their attack to allow relations to improve.

Despite the general antagonistic relationship, there were many instances of mutual respect and cooperation between members of CSOs and the Department of Home Affairs. These involved mostly informal, day-to-day relations at the implementation level of policy. This view was shared by members of CSOs and some low-level officials working at the Refugee Reception Offices.

Many CSO respondents viewed these informal relationships as more useful to their functioning than formal relationships with higher levels of administration, which might threaten their independence. It is perhaps with the recognition of this fact that an improvement in the general regard with which members of the Department and CSOs hold each other can begin.

The following section focuses on the organisational goals and activities of state departments and CSOs, and whether there is any inherent discrepancy or contradiction in the approaches of these two sectors. The discussion will then move onto the actual relations between CSOs and state departments, including channels of communication between them, perceptions regarding the supplementary or contradictory efforts of CSOs and government departments vis-à-vis the other, and the respective views of members of each sector regarding how relations between the two could be improved. Finally, we focus on the policy initiatives undertaken by structures within the two sectors of civil society and the state, and on views regarding the responses of the State and CSOs to various policy initiatives.

## ORGANISATIONAL ACTIVITIES

### CSO differentiation in the field of refugee affairs

Respondents from some CSOs, as well as from the UNHCR, recognised an inherent differentiation within CSOs working on refugee issues. Generally CSOs were divided into fairly large and well resourced lobbying and advocacy groups, some of which specialise in research and litigation; and humanitarian-oriented CSOs, focusing on service delivery and the provision of basic amenities. One respondent of the UNHCR said:

*That is a very distinct difference that South African civil society offers as compared to most other countries in the world*

The lobbying and advocacy organisations were regarded as more active and vigorous than the latter category of organisations. The Regional Deputy Director of the UNHCR said that South African civil society has a “very well developed and articulate NGO community when it comes to educating and fighting for human rights in the country”. He added that many of these NGOs have a very forceful, and sometimes confrontational tradition, and consequently the UNHCR tries to maintain strong partnerships with them, sometimes trying to “put the brakes on their very confrontational approach”.

On the other hand, it was felt that the humanitarian, service oriented organisations remained underdeveloped and under resourced, and that they are focused on a “charity-oriented approach” when they should be pursuing a more effective “strategic approach”.

### Organisational goals and contribution to development

While CSOs tended to express their organisational goals within an overarching framework of government and civil society joint action, in the field of refugee affairs and human rights, very few government respondents conceived the goals of their departments as extending beyond departmental outlines or as encompassing relationships with organisations in civil society.

A number of CSO respondents expressed the goals of their organisation as supplementing the proper work of government, either through the provision of services that the government ought to, but does not render, or through the monitoring of government actions and ensuring that they comply with constitutional obligations. Members of the JRS, for example, emphasised that their work in the provision of basic services to refugees was necessitated by the absence of social provision and integrative mechanisms for destitute refugees, the provision of which was the responsibility of government. Several other organizations made equal access to government services their primary goal.

A number of individuals from the intergovernmental organizations viewed civil society as almost a complementary organ of the state. The Director of the UNHCR for Southern Africa, for example, said that:

*Civil society needs to organise in order to feed the government with ideas and views from the grassroots. Civil society brings vitality and reality into the picture. At the same time, civil society will have to supplement resources that are not available from the government.*

The specialised goals of monitoring civil society organisations were also framed in terms of the government's constitutional obligations, and of supporting government efforts to fulfil them.

Government officials tended to describe their contributions to development and organisational goals as functional descriptions of the day-to-day activities of the Department. This was especially so with the Department of Home Affairs. One official of the Refugee Section of the Department of Home Affairs, for instance, said:

*The mandate of the section is legalistic, and is confined to status determination and doing case work, as well as issuing appropriate documents to refugees and asylum seekers.*

Government officials thus tended to express departmental goals in terms of duty, obligation, and prescribed modes of operation. Co-operation with CSOs did not feature strongly as a part of departmental goals.

Respondents from the National Department of Home Affairs and the Gauteng regional office of Home Affairs, said that the main task, or function, of the Refugee Affairs section is to determine the status of refugees, and the provision of various documents to refugees and asylum seekers, as well as repatriating illegal immigrants.

Some government officials seemed to take a more proactive stance on the matter, expressing their goals in terms of relationships within civil society and humanitarian assistance. These respondents were, for the most part, officials within the Department of Social Development.

### **Respective strengths of CSOs and government**

Members of both CSOs and government departments tended to view the strengths of their organisations as their ability to formulate partnerships with other organisations. There were, however, notable differences in how respondents from the different sectors conceived this strength.

For CSOs, the ability to formulate partnerships tended to apply to a wide range of organisations, CSOs, and intergovernmental organisations. Members of CSOs also saw their organisational independence and organisational capacity as sources of strength.

Members of government departments, on the other hand, tended to have a more restricted view of partnerships. They view partnerships with intergovernmental organisations in particular as a source of strength, but without putting much emphasis on internal resources and partnerships with CSOs as possible sources of strength.

The ability to formulate partnerships with a wide range of institutions was considered a source of strength by a number of respondents. These partnerships ranged from linkages with academic institutions, linkages with other organisations working in the field, and linkages with constituencies.

Each type of partnership conferred different types of advantages on the organisation maintaining it. Linkages with academic institutions and with constituencies, for example, was valued for the air of legitimacy and objectivity which it imparted to the views of individual organisations, while linkages with other CSOs enabled the sharing of vital information regarding court cases, government decisions, and policy formulation.

Members of CSOs tended to place great value on the ability to remain independent and to express their own views on government policy. Financial dependence on grant funding was offset by moral and legal independence of views and opinions. As one respondent said

*Being independently grant funded enables the organisation to conduct independent research, and the research of the organisation continues to be seen as being independent.*

Many CSOs identified their human resources and work ethic as their main source of strength. In this instance, some CSOs were referring particularly to the nature of their work, which would typically attract highly committed and passionate staff. One respondent from the Coordinating Body for Refugee Communities, for example, said that the organisation's main strength lay in the fact that all of its full time staff, with the exception of the secretary, were volunteers.

While government officials also saw the ability to formulate partnerships with other organisations as a source of strength, these other organisations tended always to be large, well-resourced intergovernmental organisations such as the UNHCR. One official at the Department of Home Affairs said:

*The Refugee Section will approach the UNHCR whenever it is faced with problems which it cannot resolve on its own.*

This partnership proved vital in the backlog project of 2000, where the UNHCR funded and supported the processing of 22,000 pending applications for asylum.

Regarding the strengths of government departments in general, one government official said that government departments have enormous strength and capacity provided there is close collaboration between various structures within those departments. Limitations consequently arise when state departments do not communicate with other structures as well as they ought to.

### **Respective weaknesses of CSOs and government departments**

There were some similarities in the weaknesses and obstacles of CSOs and government departments. Typically, these would pertain to a shortage of resources or a shortage of skilled personnel. There were also some differences in focus between CSOs and government departments when it came to assessing the source of the respective weaknesses. While members of CSOs tended to identify the weaknesses of their organisation and CSOs generally as lying with organisational shortcomings, government officials pointed to difficult and constraining environmental factors as the source of their weakness, though there were notable exceptions.

Members of the CSOs focusing on human rights and advocacy tended to identify their main weakness as having poor links with the communities that they seek to represent. One CSO member, for example, said:

*A weakness of the law clinic is that it doesn't link with its target community, and there isn't a structured way of interacting with its target community of refugees.*

The Regional Director of the UNHCR concurred in the view that linkages between CSOs and refugees and asylum seekers were relatively weak, saying that sometimes the UNHCR does not realise the full potential of grassroots linkages from its NGO partners.

The reliance on donor funding, while praised by some organisations as the guarantor of their survival and the independence of their position, was viewed by others as imposing some limitations. For example, reliance on donor funding from the UNHCR has constrained the activities of the Refugee Unit of the Wits Law Clinic. One member of the Wits Law Clinic said:

*The UNHCR does not really want the Refugee Unit to litigate. The refugee unit is able to litigate, and in fact negotiated for that job description. The preference of the UNHCR is not to litigate, however, and it prefers to resolve things on a government to government basis.*

The obstacles encountered by CSOs working in the field of human rights and refugees tended mostly to originate in government, though other factors, some of which reflect the state of organised civil society in the field, were also mentioned.

The main obstacle originating in government mentioned by CSOs was lack of responsiveness on the part of the Department of Home Affairs. The JRS, for example, said that government officials in the Department tend to be cooperative and friendly only as a means to “get everybody off his back as quickly as possible”, while essentially denying access to the JRS. One respondent of the Southern African Migration Project (SAMP) said that the organisation regularly encounters obstacles in its dealings with Departments of Home Affairs in southern African countries. This is because these are typically very busy and highly politicised departments. These departments also tend to be very sensitive in terms of security.

Government officials tended to express the same type of weaknesses as those identified by members of CSOs. The type of weakness identified by government officials tended to be differentiated according to the level and location of the official being interviewed. While low-level officials emphasized internal departmental weaknesses, high-level officials focused on external conditions.

One official at the lower levels of the Department of Home Affairs pointed out a number of weaknesses within the Department. They included lack of communication between policy formulators and officials at the level of implementation, a poor ethos among managers within the Department, and a lack of proper procedural and structural guidelines within the Refugee Section of the Department. The official went on to say:

*The Department has not paid close attention to the needs and concerns raised by the Refugee office*

The same official said that the defensive attitude taken by the Department in relation to CSOs has damaged the credibility of the Department and impeded progress in the handling of asylum applications. He also felt that this attitude has resulted in the loss of money in court cases, which may well have gone towards establishing well-equipped, well-staffed, and efficient Refugee Reception Offices.

Officials at higher levels of administration and policy formulation pointed out that the Department of Home Affairs was unprepared to deal with the relatively recent phenomenon of increased migrant flows. One official added that the Refugee Section is chronically understaffed at all levels, national and regional, and is faced with a growing number of asylum applications.

But another obstacle to the work of the Department of Home Affairs was mentioned in the national office, one that had not been mentioned elsewhere: this was the abuse of the system by foreign nationals. In the words of one official:

*One of the major obstacles encountered is the abuse of the systems for identification by foreign nationals*

## **CSO-GOVERNMENT RELATIONS**

Most members of CSOs said that the work of their organisations, as part of a broader civil society, is intended to supplement the work of the government. None said that their work was intended to hinder state efforts, though some said that in some instances this might be seen to be the case.

With respect to government departments, whether the efforts of CSOs were seen as supplementary or contradictory depended to some extent on the Department involved. While officials in the Department of Social Development expressed the close connection between the Department and CSOs in fulfilling departmental activities, officials in the Department of Home Affairs, while pointing out instances of CSO support for the Department, also felt they were being hindered by the approach of CSOs.

The supplementary actions of CSOs can be grouped into three broad and interrelated categories of action: formulating government policy, implementing policy, and monitoring it.

Most of the respondents said that their organisations supplemented state efforts in policy formation, either through research and advocacy or through written submissions to portfolio committees. Even critical input was not seen by organisations as hindering state efforts, as was expressed by one respondent:

*The criticism is not intended to hinder government, but rather to point out to government the contradictions and possible weaknesses in its policy.*

A few organisations were able to mention instances of supplementing or aiding in the implementation of government policy when it was not possible for the government to do this itself. The backlog project was a notable example of this kind of assistance, when the NCRA, together with the UNHCR, assisted the Department of Home Affairs in reducing the extensive backlog of asylum application that had been building up since 1994.

Some members of CSOs gave examples of implementation support by playing an intermediary role between refugees and local government departments, getting involved in service provision and

raising awareness. These organisations play a role in informing government officials about the plight of refugees, and supplement government service provision, through paralegal advice offices, which educate the community on how to access government services.

It is in the monitoring of government policy that the activities of CSOs are most likely to be viewed as hindering government activities, though most of the organisations which play this role said that the monitoring of government policy was intended to supplement the “best of state efforts”, rather than contradict them. In many of these interviews, respondents admitted a contradictory tendency within the state regarding the rights of refugees. This is apparent in the answer given by one respondent:

*We are approaching as supplementing state efforts if you wanted to say that there was a state effort to address refugees.... If you think that refugees are part of a broader problem of migrant flows that should be kept out, then I suppose we are hindering state efforts.*

These organisations were seen by their members as supplementing what was seen as the overriding purpose of the state with respect to the protection and enforcement of refugee rights, often expressed as the government’s constitutional obligations, as one respondent said:

*CALS helps the government realise its constitutional obligations and how best to realise them. This sometimes requires the CALS to be confrontational, though it never starts off that way.*

While some organisations saw their monitoring activities as essentially supplementary of state efforts, many felt that these activities were sometimes misinterpreted by state structures, which were regarded as overly sensitive to criticism.

Government support for CSOs projects, on the other hand, was described by respondents as minimal, and restricted to the office support entailed in the day-to-day functioning of Departments. Consequently, government support was described as issuing from the lower levels of the state administration.

While officials at the Department of Social Development tended to view the efforts of CSOs in the field of refugee affairs and migration as an essential part of the Department’s functioning, officials at the Department of Home affairs were more reserved regarding the necessity of CSOs, even to the extent of saying that sometimes CSOs hindered the work of the Department.

CSOs were seen as a vital part of the overall functioning of the Department of Social Development. As one official at the department said:

*Inter-country social services needs the support of the NGOs, and we cannot do without them.*

The official went on to say that the South African government has always been unable to render all social services by itself, and has had to rely a lot on NGOs and private practitioners to supplement their activities.

With respect to the Department of Home Affairs, while specific instances of CSO activity were viewed as supplementary to officials in the Department, this type of support was not viewed as integral to the functioning of the Department, as was the case with Social Development.

Instances of CSO activity supplementing the efforts of the Department of Home Affairs were seen rather as occasional, and case-specific. Thus was the backlog project mentioned by one Home Affairs official, who added that such support was contingent upon the contributions of the UNHCR to the project.

Other officials pointed out the importance and value of the awareness-raising function, or advocacy of CSOs, to the work of the Department of Home Affairs. In this regard, one official said that the Department relied upon the expertise of CSOs to introduce new developments in the field of migration to the Department, such as child and human trafficking, which the Department of Home Affairs knew little about. Home Affairs officials were also aware of instances in which the activities of CSOs hindered the work of the Department, pointing out to various positions and tendencies within CSOs which, in their view, contributed to a deterioration in the working relationships established between the two sectors in the backlog project.

One official at the Department of Home Affairs expressed concern that the CSO community entertained inaccurate perceptions of the Department of Home Affairs:

*NGOs assumed that people in the Refugee Section were not doing their work. When the NGOs learned at the meeting of November 2002 that the system for issuing IDs to refugees had collapsed, and that the Refugee Section was processing IDs manually, that is when they first came to appreciate the difficulties faced by the Refugee Section*

In the view of some officials within the Department of Home Affairs the constant litigation and threats of litigation from CSOs impedes progress. Litigation itself was viewed as a time and resource consuming exercise, which prevented the Department from pursuing more useful activities.

### **The goals of CSOs and government**

Both CSOs and government officials tended to say that there were fundamental or intrinsic discrepancies in the goals of CSOs and state departments. These differences were conceived as

arising out of the different locations and organisational functioning of individual organisations and state structures. For some respondents, the differences in goals meant that the functions of CSOs and state departments were in fact complementary. For these respondents, and for others in both the CSO sector and the state, this meant that the broader goals of CSOs and state departments may be the same, but the more specific objectives of individual structures and organisations would be coloured by local concerns and individual interests. In the words of one government official:

*The overall goals of the department and CSOs are similar, but there is a difference in approach*

For a number of CSO respondents, the difficulty in saying that the goals of their organisations were similar to those of the state arose from the recognition that the state is a large and complex organisation, which often exhibits contradictory tendencies. In this situation, respondents tended to locate an overarching goal for the state in terms of its legal obligations as signed in international conventions and the Constitution. One respondent, for example, said:

*These are human rights goals and aspirations that have been signed on to by the State, and that the Legal Aid Clinic is holding the State up to these commitments. At an abstract level the goals of the State do not much differ from those of the Legal Aid Clinic.*

But most organisations admit that in practice, their goals seem to diverge from those of government. The legal organisations, which may share the same abstract goals with government, recognise this also as a means through which to litigate against government departments when they perceive them as acting contrary to these goals, or as holding irreconcilably different goals.

This practical difference is even perceived by members of the UNHCR, one of whom said that there is definitely a very big difference in the approach of the state and that of civil society, and that the organisations that focus on human rights issues, legal aid and counselling have a tradition of confronting the government, and a lot of their work is just court cases, or litigation.

Respondents elaborated on the difference in approach between CSOs and the State, often saying that while state departments were governed by the political concerns of immigration control, the CSOs were animated by human rights. As one respondent said:

*The main goal of government is to gain voters, and if it is seen by the public as being too accommodating to refugees, the government, or the party in government, may lose votes.*

There was the perception among the respondents that the primary focus for the Department of Home Affairs was immigration control and security, and that this was in direct contradiction with the humanitarian approach of the CSOs.

Government officials also recognised a difference of approach, or emphasis between the work of CSOs and the work of state departments. From their point of view this entailed a degree of mistrust on the part of CSOs. One official gave an example dating from 2000, when the Department of Home Affairs proposed to set up Refugee Reception Centres. The official explained that whereas the Refugee Section perceived the Refugee Reception Centres as locations where clothing, shelter, food and medication could be provided to indigent refugees, CSOs perceived the proposed centres primarily as an attempt by the Department to detain refugees and asylum seekers. The Home Affairs official deduced from this that while the Refugee Section and the NGOs have the same goals, they look at things differently.

### **Channels of communication**

Both members of CSOs working in the field of refugee affairs, and government officials, particularly those working at the Department of Home Affairs, acknowledged a failure of formal and regular channels of communication between the two spheres. Informal and *ad hoc* discussions with government officials at the lower levels of administration were regarded by members of CSOs as more frequent, and more useful to their day-to-day functioning.

Most CSOs reported a failure of formal methods of communication, except for litigation, which was identified as a last resort when other channels had broken down. One respondent from the National Consortium of Refugee Affairs, reported two potential causes for the failure of formal meetings. The first was that representatives of the Department of Home Affairs felt always under attack by representatives of CSOs. The second was that the representatives of the Department did not have the authority to take up suggestions in a constructive manner, or speak on behalf of the Department. This led to scenarios in which the same issues were continuously discussed at every meeting, without any progress being made.

The abandonment of this formal structure of communication had advantages for CSOs, as it allowed them freedom to discuss issues of common interest and strategy during the quarterly meetings. Respondents from individual CSOs shared the feeling that informal meetings with the Department of Home Affairs served their interests better than formal meetings. As one respondent said:

*Informal channels of communication better facilitate the exchange of information than formal channels...informal means are the best way of informing government about services needed by the target communities.*

Informal means are usually facilitated by a close informal network between the CSO members and government officials at lower levels of administration. For most of the organisations interviewed, these types of relationships are formed in the course of their day-to-day operations, and have become so much part of life that even litigation did not harm them. One respondent of the NCRA,

for example, reported that the consortium has maintained very good working relationships with the lower level officers within the Department of Home Affairs despite a cooling of relations with managers of the head office.

Government officials within the Department of Home Affairs concurred with the view that maintaining formal and regular channels of communication with CSOs had been a failure. This was not the case for the Department of Social Development, however.

According to an official at the Department of Social Development, formal communication is usually held by the upper echelons of the Department, while discussions at the lower levels tend to be informal, and to focus on specific cases on an *ad hoc* basis. In the Western Cape's Department of Social Services and Poverty Alleviation, a three-tiered structure is being set up to facilitate conversation between the Department and CSOs at different levels within the province. Besides this, regular meetings are held with various forums and umbrella bodies of CSOs working in a range of different fields.

### **Possibilities for improvement**

Respondents from both CSOs and state departments felt that the relationship between organisations working in human rights and refugee affairs and the Department of Home Affairs had worsened in recent years. Respondents from each sector tended to feel that an improvement could be brought about by changes in the other.

Most CSO respondents said that there was room for improvement in the relationship between their respective organisations and various state structures, though several added that, to some extent, an oppositional relationship was not unusual or undesirable in future relations with the state.

For the most part, respondents spoke of changes necessary in the approach and the functioning of the Department of Home Affairs. While some acknowledged that the seeming lack of cooperation on the part of the Department could be attributed to the fact that the Department is overloaded with work and is under-resourced, others perceived a distinct mistrust on the part of the Department of Home Affairs, when compared with other Departments. One respondent, for example, said:

*It is only with the Department of Home Affairs that there is suspicion and lack of trust*

One member of the UNHCR agreed, saying:

*I've seen on many occasions that government is unduly hesitant or unduly foresees many problems in discussing things openly with civil society. That is why they would keep them at bay, rather than involve them in policy discussions, and letting them make their contribution.*

Many respondents felt that the situation of mutual suspicion may be improved by a clear definition of the roles and expectations of state and civil society in the area of refugee affairs. But while most CSOs expressed a desire for improvement in relations with the Department of Home Affairs, some were explicit in their desire to remain independent of the state, and consequently free to critique its policies. Some respondents said that, to a certain degree, it was inevitable that their role be seen as antagonistic to that of the government. One respondent said:

*There will always be a necessary contradiction in the relationship between the law clinic and the state, in that the clinic litigates, and by definition that is almost always against the state*

It was also recognised, however, that litigation need not preclude other means of communication. This was something testified to by respondents who maintained that litigation had not injured their day-to-day relations with low-level officials of the Department of Home Affairs. What is needed in addition to this, in the view of one respondent from the UNHCR, is to maintain formal means of dialogue alongside occasional instances of litigation:

*Sometimes there are situations in which confrontation and litigation are a very good way of making progress. But sometimes we also think that dialogue, and continuing to discuss things may just get the issue further.*

He added that in a democratic society it is important to have an open, transparent, and mutually supportive communication between government and civil society.

Most officials at the Department of Home Affairs recognised that the relationship between the Refugee Section and CSOs had worsened in the past few years, though there were some instances in which this was not the case.

One official of the Cape Town Refugee Office said that there was a challenging yet consultative and working relationship between Cape Town Refugee Office and local CSOs. The official went on to say that not only have other branches of the Refugee Office failed to emulate this relationship, they have also criticised the Cape Town Refugee Office for “sabotaging the Department”.

Government officials at other offices, who felt that the constant litigation filed against the Department by CSOs was a major obstacle in improved relations between the two sectors, said that that an improved relationship would require some constraints to be placed on CSOs.

Officials at the Department of Home Affairs said that they did see a role for CSOs in helping the Department to meet its goals. This role was seen primarily as that of a partner during crisis situations or specific projects, such as the backlog project of 2000, or possible situations of mass influx of refugees.

The close connections that CSOs were perceived to have with various communities was viewed as a valuable resource in advising government. Conversely, CSOs were expected to use these links to educate their constituencies about the problems faced by the Department, and ways in which they could contribute to a better functioning of the Refugee Section.

## **POLICY FORMULATION**

### **Main policy initiatives**

The main policy initiatives identified by state officials in the field of refugee affairs and human rights were policy documents and pieces of legislation. For officials in the Department of Home Affairs, these included the Green Paper on International Migration, the White Paper on International Migration, and the Refugees Act. In all of these policy initiatives, officials recognised the assistance of CSOs.

While most CSO respondents conceived the major policy developments in similar terms, some also mentioned policy initiatives initiated by CSOs. They acknowledged that the socio-economic organisations working in the field were still underdeveloped, and consequently were not able to carry out large-scale policy initiatives without the support of government. The human rights-focused organisations specialising in advocacy and rights protection, on the other hand, were seen as well developed and resourced, and capable of carrying out policy initiatives, though this may be limited to reaction and response to policy developments originating in the state.

In this light even litigation was viewed as a significant policy development originating within civil society. Progress within government policy was attributed to pressure brought to bear on the Department through litigious action, which in itself often led to the amendment of policy, such as the repeal of the regulations prohibiting asylum seekers from working and studying.

Involvement of CSOs in policy initiatives could be categorised into two types: Involvement in the formulation of macro-level policy, and involvement in the implementation of policy at the local level. The most appropriate example of macro-level policy involvement would be the formal submission of recommendations to Parliament during the formulation of national policy or legislation. Not many of the respondents said that their organisation engaged in this type of activity. Responses were mixed as to the effectiveness of this mode of policy engagement, with one respondent of the NCRA saying that submissions to parliament were effective with the Refugee Act of 1998, but essentially ineffective with the Immigration Act of 2002.

While advocacy efforts often engage with macro-level policy developments, they sometimes proceed through informal local channels, and thus tie in closely with micro-level engagement.

Advocacy was often described as educating leading officials in the Department of Home Affairs. It was also described as the education of officials at various government departments regarding the provisions and entitlements granted to refugees and asylum seekers by the Refugees Act 1998. This was viewed as contributing to the implementation of policy.

Litigation may begin with localised complaints, but the complaints are often directed at macro-level policy, and lead to macro-level amendments in policy and jurisprudence.

Micro-level policy involvement on the part of CSOs involves the day-to-day work of making use of the existing policy framework to help refugees. In doing this type of work, not only do individual organisations establish informal channels of communication with government officials, as we have seen, but they also form networks and partnerships with other CSOs who may place greater emphasis on advocacy work and litigation. One respondent, for example, said:

*The JRS works closely with the Lawyers for Human Rights and the Wits Law Clinic. Progress is made on an incremental basis.*

Many respondents were aware that such links might indirectly bring about changes in broader policy frameworks.

While the Refugee Section of the Department is responsible for policy formulation and for implementation of asylum to refugees, there appears to be little co-ordination between the policy formulators at Head Office, and those implementing policy at the regional branches.

One officer at the Cape Town Refugee Office said that the head office had failed to provide the regional offices with a procedure manual that would impose uniformity and coherence in the administration of refugee affairs. He said:

*The present administration of refugee affairs should be guided by laws and regulation, and not through individual discretion, as was the case in the past.*

### **Responses to policy interventions**

Respondents from CSOs tended to feel that while other CSOs generally responded positively to their policy initiatives, governmental responses were muted. There were, however, notable exceptions to this trend. Government officials said that their departments were generally welcoming of civil society initiatives, though in many cases, responses were in fact constrained, and government's welcome of CSO initiatives was expressed as a procedural requirement, rather than as a spontaneous and proactive welcome.

Not only was it felt that CSOs working in the field of refugee affairs welcomed the policy initiatives of other CSOs, but many respondents said that their organisations would regularly form strategic alliances with other CSOs in the field in order to further their policy initiatives.

CSOs seemed to form alliances based on the strategic strength of the two types of organisations working in the field of human rights and refugee affairs. The humanitarian service providers tended to form alliances with the more specialised type of CSO working in human rights and litigation, and conversely, specialised CSOs would look to service providers for their intimate knowledge of the experiences of refugees, asylum seekers and migrants.

The prevailing mood of respondents regarding the response of government to the policy initiatives of their organisations was one of uncertainty. In some instances, government responses to the initiatives of some organisations seemed positive, usually when the organisations involved had some prior experience of working with government. Such instances included government-CSO collaboration on the Amnesty project of 1996 for Mozambican Refugees, the backlog project of 2000, and the Refugee Act of 1998. But in general terms, respondents were unsure of the response of government towards their policy initiatives, which seemed at one moment positive, at another negative, and often, indifferent. As one respondent said:

*In a way there is a fine line between welcoming and indifference. You are not being consciously opposed but they're indifferent and you may think they're welcoming.*

This view appeared to be confirmed by one commentator from the UNHCR:

*I've been in the country two years now. I have not seen many situations in which those comments (and this also applies to ourselves) have led to major changes in legislation, or proposed legislation. Sometimes we have the feeling that we just go through the motions of when the possibility to comment to civil society on things that government does, but things do really change that much*

At other times respondents perceived something more than indifference on the part of government, something approaching resistance and opposition to the policy initiatives of the individual organisations, as well as rejection of their offers to assist, particularly on the part of Home Affairs.

For the most part, government officials testified to a welcoming response towards the initiatives of civil society. One government official in the Department of Social Development said:

*NGOs have different focus areas, and will form pressure groups to try to influence policy in favour of their constituencies. This is healthy, as it ensures that government takes into account the welfare of the voiceless.*

While officials in the Department of Home Affairs were also welcoming of the policy initiatives of CSOs, especially those of the service providing, humanitarian CSOs, they also tended to express the Department's reaction as one that is obliged through law and policy, rather than a spontaneous welcome of the inputs of CSOs. One official, for example, said:

*The Refugee Section is bound by procedure to admit public comments for legislation and policy formation.*

Officials at the Department of Home Affairs appeared to conceive the policy interventions of CSOs primarily in terms of material assistance, and consequently identified the activities of the humanitarian, service-oriented CSOs as the major policy interventions of CSOs in the field of refugee affairs and human rights.

Policy initiatives undertaken by the human rights oriented advocacy and lobbying groups were not readily recognised by officials in the Department of Home Affairs, and only partially recognised by officials at the Department of Social Development.

## **CONCLUSIONS**

Strains in relations and channels of communication are evident not only between CSOs and state departments, but also within these sectors. Several CSO respondents, especially within the human rights oriented CSOs specialising in advocacy and litigation, admitted their main weakness lay in the relatively poor contact with their constituencies, which was seen to undermine the legitimacy of their advocacy work.

The Department of Home Affairs seemed to suffer from a lack of internal coherence, stemming from a lack of communication between managers of the Refugee Section and those implementing the policy at the Refugee Reception offices. This is especially unfortunate when it is considered that it is with these low-level officials that most CSOs seem to maintain regular though informal contact.

While the past failure of formal channels of communication between CSOs and higher levels of the Department of Home Affairs should not preclude further attempts to establish effective forums for representatives from these two spheres, attention should also be focused on strengthening the relations and channels of communication within the Department of Home Affairs. Greater

recognition of the work of those low-level officials working with CSOs on a daily basis may bring about a greater appreciation for CSOs in the overall operation of the Department of Home Affairs.

Beyond these somewhat technical considerations looms a larger substantive question. For effective cooperation and mutual support there must be an agreement on the concrete policies as well as on underlying values that drive these. On both these counts such agreement is lacking. While clear channels of communications are needed, as are institutionalised mechanisms of making input and engaging government in debate, the solution cannot consist in these only. When CSOs and government department (especially Home Affairs) are driven by radically different concerns and policy goals, a thorough public exchange regarding these issues is needed.

The nature of the problem becomes clear when we consider the repeated assertion by senior Home Affairs officials that CSOs with their litigation efforts hinder government's ability to implement its policy. Since many CSOs and activists regard crucial aspects of policy to be violating human rights and to conflict with the government's constitutional obligations and international commitments, 'hindering' the policy is precisely what is called for in their view. It reflects fundamental disagreements that cannot be resolved through effective communication but only through vigorous public debate and contestation.

If this is the case, then talking about CSOS acting to supplement government services may be a bit misleading. To the extent that government departments provide essential services (food aid, medical aid, shelter and so on), CSOs can indeed help with these or provide the services directly where they are not offered at all by the authorities. However, in other respects some CSOs feel the need to fight government because it aims to undermine people's welfare rather than providing for it. It is not a question of 'supplementing' or 'making up for' deficient service, but rather opposing government's efforts to violate human rights by abusing refugees and asylum seekers, detaining them unlawfully, deporting them without due process and so on. In many cases these practices are aberrations by individuals operating without official sanction, but at times they reflect over-zealousness inspired by the hostile attitude of government.

The use of abusive terms such as 'illegal aliens'; the discourse of influx of dangerous elements that must be stopped and prevented from abusing the system and posing a threat to security; the call on communities and service providers to identify these foreigners and help the authorities deal with them – all of these stem from a frame of mind that is diametrically opposed to the human rights orientation of many CSOs. These contradictory impulses cannot be reconciled though technical means. While cooperation on the ground is possible and desirable, for it to become sustainable the policy issues and overall orientation must be sorted out and agreement reached on principles.

## SOCIAL GRANTS

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The White Paper on Social Welfare outlines a vision of a welfare system that facilitates the development of human capacity and self-reliance within a caring and enabling socio-economic environment. The official mission of the Department for Social Development (previously known as the Department of Social Welfare) is to serve and build a self-reliant nation in partnership with all stakeholders through an integrated, equitable, sustainable, accessible, people-centred and developmental approach. This vision emphasises the development of human capacity and self-reliance rather than the provision of grants.

In this section it will be argued that the relationship between government and civil society organisations since 1994 has been complex, co-operative as well as confrontational at various points in time.

Social security in South Africa has three main elements:

- Private savings: individuals save for unexpected contingencies and for their retirement
- Social insurance: contributions by employers and employees to a pension or provident fund and unemployment insurance. This benefits only people who have formal employment
- Social assistance: non-contributory and often income-tested benefits provided by the state to groups of people. These would include people with disabilities, the elderly and parents and children who are unable to support themselves.

### **POVERTY, INEQUALITY AND SOCIAL DEVELOPMENT IN SOUTH AFRICA**

The high levels of poverty and inequality in South Africa make social assistance crucial. South African society is characterised by extreme poverty existing alongside great wealth. The poorest 40% of households earn less than 6% of the country's total income while the richest 10% earn more than half of the national income. More than a third (35%) of households, representing 18 million people or 45% of the population, live in poverty.<sup>47</sup> Poverty in South Africa is racially based, has a gender dimension and is spatially distributed. Rural areas are worse off, with most women and children there having limited access to safe drinking water, adequate sanitation, electricity and fuel.

According to Statistics South Africa 2002 data, poverty levels and inequality have increased since the fall of apartheid. Household income has dropped between 1995 and 2000, in line with the decline in jobs in the formal sector and the rise in unemployment.<sup>48</sup> The shift away from labour intensive industries exacerbates the problem of unemployment. Many of the employed earn low

wages, have minimal benefits and are without job security, and have to support large families, frequently including three or even four generations, thus making the problem of poverty worse.

The 1997 White Paper for Social Welfare maintains that, “Every South African should have a minimum income, sufficient to meet basic subsistence needs, and should not have to live below the minimum acceptable standards. The social security system will also work intersectorally to alleviate poverty”.<sup>49</sup> The extent of poverty and inequality in South Africa six years after tabling the White Paper is still very high, especially disturbing given government’s commitment to poverty alleviation and reduction of inequality.

The concept of universal access to social security is enshrined in the Bill of Rights, which is part of the 1996 Constitution. Section 27(1)(c) of the Constitution gives ‘everyone’ the right to have access to social security, including, if they are unable to support themselves and their dependents, “appropriate social assistance.” Section 27(2) of the same document goes further and claims that the state “must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right”.<sup>50</sup> It is clear from this that it is the responsibility of the state to ensure minimum condition of social security. The Department of Social Development is expected to play a major role in these efforts.

The tasks facing the Department, and government more broadly, must be seen against the background of inadequate provision of social security dating back to the beginning of the 20<sup>th</sup> century. Both the Children’s Protection Act of 1913 and the Old Age Pensions Act of 1928 excluded Africans. The Unemployment Benefit Act of 1937 excluded all black agricultural, domestic and mining workers. Social pension legislation was developed primarily to protect poor whites. The exclusion of Africans was based on the rationale that they had access to kinship ties and customs to provide the necessary support.<sup>51</sup>

In the 1940s Old Age Pensions and Disability Grants were extended to all race groups, though inequalities persisted and whites continued to receive 2 to 5 times the amounts allocated to members of other groups.<sup>52</sup> However, with the rise of apartheid in 1948 the limited steps taken towards greater protection of poor people of all races were reversed. Under apartheid the gap between white and African means-tested old age pensions widened, though social benefits were extended to Africans to some extent. It was only in the 1970s that a move by government to reduce the inequality of welfare provisioning was taken. The gap between white and African pensions began decreasing from 1975 and African welfare benefits as a percentage of the total welfare budget increased. However social development service provision was still racially discriminatory. For example, the Foster Parent Grants for coloured, Indian and white children continued until the age of 18, while African children only benefited from it until the age of 16 years. These grants were only made available to children whose mothers were in paid employment, thus reducing the number of eligible black mothers.

Once the principle of moving towards a more equitable social security system was accepted in the late 1970s, the state was faced with a huge fiscal challenge. According to Van der Berg financial constraints made it difficult to increase black benefits to white levels, and de-racialisation was best accomplished where resistance to reducing white benefit levels was weak. Social pensions and grants was one such area since there were small numbers of elderly or disabled poor whites who qualified under the means test, and they were regarded as politically marginal.<sup>53</sup> During that period the equalisation of the disability grants and old age pensions between the different race groups was achieved largely by eroding the real value of grants paid to white recipients.

Under apartheid a relatively advanced social security system developed, benefiting whites in particular. Given that most whites had access to secure employment, the bulk of their social needs were addressed through social insurance (such as unemployment insurance). As apartheid became more diluted, moves were made to extend these benefits to the entire population. According to the Lund Committee South Africa found itself with a social security system that was fairly comprehensive compared to most other developing countries as the initial set-up aimed at protecting the white population was gradually extended to other groups.

Part of the election manifesto of the African National Congress (ANC) was the adoption of the Reconstruction and Development Programme (RDP). The RDP saw social development as an integral part of economic growth. The main principles of the RDP and the inclusion of socio-economic rights in the Bill of Rights put the state under a constitutional duty to realise certain rights, including the right to social security.<sup>54</sup> Although the government subsequently adopted the Growth, Employment and Redistribution (GEAR) macro-economic framework, it continued to insist that development as outlined in the RDP was a priority. However, government's commitment to reducing state involvement in service provision, and its emphasis on partnership with the private sector, were seen by many commentators as a problem that might inhibit its ability to reach its social and developmental goals and realise the socio-economic rights included in the Bill of Rights.

## **SOCIAL ASSISTANCE**

Social assistance in South Africa is seen by most stakeholders as an important mechanism for the alleviation of poverty and the redistribution of income. The largest proportion of the Social Development budget is allocated to social assistance. Old Age Pensions, the Disability Grants and child and family benefits make up the bulk of the social security budget. As mentioned earlier the types and levels of grants were determined on racial lines but since 1994 parity has been achieved in relation to old age pensions and disability grants, though child and family grants were not equalised immediately.

## **The State Maintenance Grant (SMG)**

In the post 1994 period the child maintenance benefits involved two types of grants – a parent allowance and a child allowance. These grants were generally paid to single parents (mothers) and children younger than 18, in instances where there was no other form of support. The grant was paid for a maximum of two children, in accordance with a means test based on the applicant's income and assets.<sup>55</sup>

Access to this grant was racially differentiated, with very few African children and their parents receiving it, despite the fact that since 1992 there was no legally sanctioned discrimination. Lack of knowledge about the SMG and administrative barriers were the main causes of the low take up rate of this grant. According to Matisonn and Seekings the new government could not continue with the existing system, which provided for racially skewed coverage, while extending it to all races was seen as too costly. To deal with the matter the Lund Committee was appointed in 1996, to investigate issues around the extension of child grants, and explore policy options regarding social security for children and families. The Committee was also tasked with investigating the private maintenance system and exploring other options for anti-poverty, economic empowerment and capacity building strategies.

The Lund Committee was instructed to work within the financial limitations set by the welfare budget, as government's commitment to GEAR meant that social spending would remain static as a proportion of overall government expenditure. It was expected at the time that the overall budget would decrease, and that the de-racialisation of social development would take place through reallocations within the existing budget rather than through its expansion.<sup>56</sup> However according to the Intergovernmental Fiscal Review this has not been the case, and the allocation to social development saw an increase from 19.4% of the budget in 1999/00 to 21.6% in 2002/3.<sup>57</sup>

At the outset the Committee members were well aware that they were tasked with curbing social expenditure targeting particular groups, though it ended only exploring alternative grants but also making a strong case for the continuation of grants.<sup>58</sup> The Lund Committee reported that a new strategy was required to replace the State Maintenance Grant. Since a large proportion of needy people were excluded from the SMG, and it was not financially feasible to reach a point of equity, it was necessary to review the grant.

The following is a summary of the recommendations made by the Committee:

- The private maintenance system should be reformed to promote parental financial responsibility of children. However, the Committee recognised that this source would not provide for many cases where parents did not have sufficient means, because of unemployment or lower earnings, to cover the costs of the child, as well as cases where the father was unknown or absent.

- A flat rate child support benefit should be introduced.
- The grant should be paid to the primary care giver (PCG) according to a means test.
- It should be payable from birth to an age to be decided bearing cost containment in mind.
- The level of the grant would be derived from an ‘objective’ source, namely the Household Subsistence Level for food and clothing for children; (the idea was to link payment level to inflation, but the amount was not increased for the first four years).
- A child had to be registered and undergo certain health related activities like immunisations; (was dropped, because would have disadvantaged those with poor access to health services).
- The money will be paid into a bank account on a quarterly basis and used by the PCG; (not instituted, because of difficulties with access for poor people, and with such small amounts).
- The SMG should be phased out over a period of five years (changed to three).
- Welfare should attempt to divert women who lost the parent part of the SMG to other training opportunities. There should be close co-operation by other departments to give these people special consideration when offering training and employment.
- The Care Dependency Grant should remain in place.
- The Foster Care Grant should also remain in place.
- The Departments of Welfare should develop a strong strategic position on HIV/AIDS.
- Practical links should be forged between professional welfare staff and social security staff to divert people to other opportunities that could increase their independence.
- The Welfare sector should get involved in the development of appropriate reproductive health services and life skills education in schools.
- There should be bold changes in the social work curricula and research should be encouraged.<sup>59</sup>

The Committee felt that the new proposal would have high social and economic costs and have negative consequences for many. Older women who were receiving the parent contribution of the SMG would find it hard to find other sources of income. Many young people would have to work for the upkeep of their families. There would be increased pressure on the already over stressed Old Age Pension to support households. The Committee’s recommendations were accepted by Cabinet with minor adjustments and accepted by Parliament in 1977.

There was widespread criticism from various sectors of society to the proposals made by the Lund Committee. Organisations such as the Congress of South African Trade Unions (COSATU), the Southern African Catholics Bishops’ Conference (SACBC), the South African Council of Churches (SACC), the Institute for Democracy in South Africa (IDASA), the South African NGO Coalition (SANGOCO), the Black Sash, the Commission for Gender Equality and Human Rights

Commission felt that the child benefit reforms were ill-conceived and inadequate. They also felt that the benefits were meagre and that the welfare minister should demand the necessary resources from the Department of Finance to implement a decent system of child welfare.<sup>60</sup>

Matisonn and Seekings point out that the “experience of reforming the child support system was important in clarifying and changing the relationship between the ANC in government and its allies in civil society”.<sup>61</sup> They felt that the Lund Committee did not sufficiently challenge the fiscal constraints and conservatism of the government’s new macro-economic strategy, GEAR. Many were of the opinion that the cut backs made on the child support system were a manifestation of the route government would take within the framework of its GEAR strategy. Many civil society organisations voiced dissatisfaction with government’s disregard of their opinion in adopting the recommendations of the Lund Committee. There also seemed to be some resentment that the development of the RDP, which was the outcome of close collaboration between the state and civil society organisations, was replaced by GEAR without any discussion. Strong criticism was voiced by civil society organisations about both the recommendations of the Lund Committee and the process or the lack of consultation.

### **The Child Support Grant (CSG)**

In April 1998 the CSG was introduced at a level of R100 per month for each child under the age of seven years. This was slightly higher than the recommendation of the Lund Commission but substantially lower than the SMG. The grant was paid to the primary care giver of the child on condition that the caregiver passed the means test, the necessary documents were available and proof of immunisation was provided. In addition the caregiver should show willingness to participate in an income generating activity and there was an effort made to secure maintenance from the parent/s of the child if this was applicable

The means test was based on household income but this later changed to couple income, or individual income if spouse was not around. It filtered out applicants who:

- Lived in a formal urban area and whose household income was higher than R800 per month; and
- Lived in an informal urban settlement or rural area and whose monthly household income exceeded R1100.<sup>62</sup>

According to the Lund Committee the overall principle underlying the child support grant was that the responsibility for the child lies initially with the family and if necessary the maintenance court. Failing this the state will intervene.

The Portfolio Committee on Welfare met in April 1997 to discuss the recommendations of the Lund Committee. At this hearing input from other stakeholders was included. The main concerns focused on the grant itself – the short period in terms of age covered by the grant and the small amount paid

out, the administrative capacity of the Department of Social Development to deliver and some of the requirements for eligibility.

The State Maintenance Grant which the Child Support Grant was seen to replace by some, covered children up to the age of 18 years. The Child Support Grant only covered the child up to the seventh birthday. The rationale behind was that at seven the child would be at school and have access to poverty alleviation measures such as the school feeding schemes. A number of organisations pointed out that the feeding schemes did not exist at all schools, and that attendance at school brought about additional expenses. These organisations argued that the age limit be increased to accommodate these types of problems.

In addition, according to the recommendations of the Lund Committee the PCG would be given an opportunity to participate in a poverty alleviation programme. The rationale for recommending that applicants make themselves available to participate in income-generating projects was to ensure that beneficiaries sustain their income after the grant ceased. Organisations expressed unhappiness with this, stating that these projects did not exist everywhere, particularly in rural areas. The success of these projects and its impact on developmental social welfare will be discussed later in this document.

Civil society organisations were of the opinion that a R100 was too little to make any impact on alleviating poverty. They felt that the 12.1% of the total national budget allocated to Social Development in 1997/98 was far too little and indicated incorrect priorities by the state. They argued that education, health and housing were placed above welfare, indicating that poverty alleviation was not a priority. They argued that implementing the proposals of the Lund Committee would amount to the redistribution of poverty rather than the redistribution of wealth.<sup>63</sup>

Civil society organisations were also wary about the payout system, which initially proposed that the grants be deposited into the primary care givers accounts on a quarterly basis. These organisations felt that this would disadvantage many primary care givers, especially those living in rural areas where gaining access to banking facilities would mean having to travel long distances. Further, payment on a quarterly basis was not practical since most beneficiaries are desperate and budget on a monthly cycle.

One of the requirements for eligibility for the grant was that the child was immunised. Although some of the organisations were supportive of the immunisation requirement, saying that it would force the Department of Social Development and Department of Health to work together, a number of organisations felt this would create problems for applicants. This was particularly problematic for applicants living in rural areas where access to health facilities is tenuous. Liebenberg argued that making conditions for gaining access to institutions, in this case primary health care clinics or state

hospitals, would create barriers to the benefit, especially in the case of vulnerable children coming from areas where access to these facilities is problematic.<sup>64</sup>

Some of the rules governing the eligibility of the grant were changed once it was discovered that very few applicants accessed it. The means test was changed and calculated on the basis of the income of the primary care giver only, rather than the income of the household. In addition, the requirements concerning immunisation and job creation projects were scrapped. These changes improved the take up rate but did not deal with all the criticisms levelled against the CSG.

### **The White Paper for Social Welfare**

The White Paper for Social Welfare makes a policy shift from a rehabilitative and institutional approach to developmental social welfare, which seeks to reduce the number of South Africans that are reliant on social security and to provide them with other development opportunities to support themselves. The White Paper states that the domains of social security are poverty prevention, poverty alleviation, social compensation and income distribution. In addition to developing a family support system, other social assistance measures included old age pensions and disability grants, War Veterans Grants, Care Dependency Grants, etc. The recommendations of the Lund Commission covered the family support system and this included the phasing out of the SMG, the phasing in of the CSG, the continuation of the Foster Care Grant and the Care Dependency Grant.

### **Old Age pensions**

According to the White Paper there is a fairly good coverage of old age pensions with approximately 80% of those who are eligible receiving it. In addition, the White Paper states that the old age pension makes a positive impact on poor households. The money from this grant is in most cases used for the entire family, which generally consists of three generations living in the same household. In 1993, 7.7 million people lived in households that received this grant and the impact on poverty was particularly positive in black households, where a pensioner's income helped five other people living in the same household. The old age pension was also seen as being well targeted for rural areas.<sup>65</sup>

### **Disability grants**

Disability grants are the second most important form of social assistance. Disability grants are provided to the disabled from the age of 18 up to the age of retirement, and are subject to medical eligibility criteria. Historically these grants were the most unequally distributed across the different provinces, and were not equally accessed due to apartheid and the discretion involved in determining eligibility. According to Van den Berg the take up rate of this grant was extremely high among coloured and Indian people, indicating perhaps abuse of the system during the apartheid era where the different administration systems applied eligibility rules differently. At the same time, African applicants, especially those living in rural areas and the former TBVC states, were largely

excluded,<sup>66</sup> and were the hardest hit by the re-registration process. Although the number of recipients of other grants has increased over the past few years, the number of people receiving a disability grant has decreased.<sup>67</sup>

### **Concerns with the White Paper**

High unemployment rates, gross inequalities and levels of poverty make it necessary to have a social security net. Although South Africa, when compared to other developing countries particularly in Africa, has a relatively well-developed social security system that plays an important role in poverty alleviation, there are gaps in the system that exclude certain categories of the poor. The main grants in South Africa are old age pensions, the disability grants and the child support grants. However, these grants are based on the assumption that large categories of people (women between the ages of 7 and 60 years and men between the age of 7 and 65 years) will be able to care for themselves. This assumption ignores the high levels of unemployment in the country and the need to deal with the legacy of under-development and neglect under apartheid.

In line with the principles of developmental social welfare, the White Paper calls for promoting strategies that will lead to a reduced dependence on social assistance and an increase in self reliance among the poor and vulnerable. According to COSATU these are desirable long-term goals, but should not come at the expense of other priorities, including the need to equalise, extend and improve the provision of social security to the historically disadvantaged.

According to Matisonn and Seekings, although the White Paper contained much rhetoric that was in line with the RDP goals, it did not include proposals on how these ambitions were to be achieved. There were also concerns that the Lund Committee proposals were not in line with the aims and ambitions outlined in the White Paper. There seemed to a general feeling among many NGOs that the White Paper for Social Welfare did little to make up for the effects of GEAR and the Lund Committee report. COSATU felt that the government did not go far enough in addressing poverty and expressed concern that a comprehensive welfare system, that looked at the introduction of a general means tested social assistance scheme, was not contemplated by government.

COSATU also raised concern with the sustainability of the social security system. According to the White Paper, “the social security system will be restructured to achieve structural efficiency between public and private benefits”. For COSATU the fact that the White Paper does not develop this point further represents a serious weakness. Concerns were also raised about suggestions in the White Paper that the burden of social assistance could be taken from the state by increasing private social insurance levels, since the beneficiaries of the two systems are different, and most social assistance beneficiaries are not covered by social insurance. COSATU called for an investigation on how social insurance and social assistance could best be integrated to achieve an effective and widest possible social security net.<sup>68</sup> Against the background of reduction welfare benefits in many

countries COSATU argued that “it is important that, without condoning the rolling-back of the welfare systems in many countries, we clearly distinguish South Africa’s experience of institutionalise inequality and skewed distribution of wealth and incomes as the basis for our country’s need to develop its own appropriate and effective welfare and social security system.”

In response to the White Paper civil society organisations convened a Speak Out on Poverty campaign in 1998. The campaign was organised by SANGOCO, the SA Human Rights Commission, and the Commission on Gender Equality. In the same year the government convened a Presidential Jobs Summit that looked at unemployment issues. Poverty was a direct result of unemployment and this exposed a fundamental gap in the social security system that was put in place after 1994. At the summit, civil society organisations called for more labour market protection and an expanded welfare system. Business, on the other hand, pushed for a more flexible labour market. It was at this conference that COSATU tabled the idea of the universal grant.<sup>69</sup>

At the end of the summit, labour, business, government and civil society organisations committed themselves: “To implementing a comprehensive social security system, aimed especially at those living in poverty and the unemployed. A basic income grant may be considered as part of such a system. The process to reach agreement on the elements of such a system should begin with an investigation.”<sup>70</sup>

The pressure from unions and other civil society organisations prompted government to appoint an inter-departmental task team to examine welfare reform. The full report of the task team was not made public but according to the Taylor Committee Report the task team identified crucial gaps in the provision of social security. These included the following:

- The Unemployment Insurance Fund covered less than 40% of the workforce and less than 6% of the unemployed.
- Private old age pensions were problematic.
- Disability provisions were not comprehensive and there were overlaps between Compensation for Occupational Injuries and Diseases Act the Road Accident Fund, the Department of Social Development and the private sector.
- Healthcare provision did not cater sufficiently for many financially vulnerable people.
- No child benefits were available for children older than 7 years.
- Many South Africans remained vulnerable to poverty with limited means of advancement.<sup>71</sup>

The outcome of the interdepartmental task team was the appointment of a Committee of Inquiry into a Comprehensive System of Social Security for South Africa (the Taylor Committee). The Committee was given the job of recommending reforms taking into account both the long-term goals and immediate affordability. The broad terms of reference group included the following:

- To provide options on ultimate objectives and targets for the social security system.
- To provide options for immediate practical implementation.
- To consider the viability and implications of the various options.
- Assess the national pensions system.
- Evaluate social assistance grants, their funding mechanisms and efficient functioning.
- Examine social insurance schemes.
- Examine the current unemployment insurance system.
- Examine the public and private sector health funding.<sup>72</sup>

The Taylor Committee formed a number of sub-committees, consulted widely among international experts and academics, requested submissions and commissioned research. After some delays the Committee submitted its report to government in March 2002.

The report mentioned that although the old age pensions were generally successful, the take-up rate of the CSG was disappointing. The Committee felt that the age limit of the CSG should be raised. According to the Committee, even a 100% take-up rate of all current social security schemes, would still leave still over half the population living below the poverty line. The Committee proposed the introduction of a Basic Income Grant (BIG), set at a R100 per person per month, introduced in phased manner, saying that it will reduce poverty by 74%. This compared with the current schemes, which reduce poverty by 23% (37% with full take-up). The Committee recommended that the first phase should cover children while the second phase, starting in 2005, should extend cover to adults. The Committee also recommended an expansion of the public works programmes.

Responses to the recommendations of the Taylor Committee were mixed. The Minister of Social Development acknowledged that the idea of a basic income grant was positive, and asserted that financing the BIG would be less of a problem than administering it. The Department of Finance was less supportive and said that BIG was unaffordable. According to Matisonn and Seekings, the “biggest obstacle to the implementation of a BIG, the treasury’s opposition to the grant on the basis of cost implications to the fiscus has been accused of being a ‘mask’ for its ideological positions on developmental priorities”.<sup>73</sup>

Civil society organisations played an important role in driving forward the idea of a BIG. As the Taylor Committee was conducting its investigation, civil society organisations including the churches, trade unions and particularly COSATU, and SANGOCO, formed a BIG Coalition. Many of these organisations, although having a strong link with the ANC, were sceptical about the government’s ability to deliver its promised reconstruction and development within the context of GEAR. These organisations provided economic, social and human rights arguments to support the

concept of BIG. In addition to the support for BIG coming from civil society organisations, political organisations both to the left and right of the ANC were also supportive of the idea. To the left the South African Communist Party argued strongly for a BIG that would provide many with their basic needs. The DA on the other side of the political spectrum also voiced its support for the BIG.

## **CIVIL SOCIETY AND STATE PERSPECTIVES**

Respondents from CSOs outlined their goals as those of monitoring government activity in the field of social development, lobbying government to embark on certain policy directions, educating government officials and CSO constituencies about access to government services, and cooperating with the state in the implementation of policy.

Respondents who said that their organisations were initially formed to supplement state efforts made it clear that this referred to a phase in state policy, which has now passed. One respondent said:

*Initially we were formed, within the context of the RDP, but since there was a shift in a state policy, this organization also had to shift and began to engage with the government*

In particular, many respondents expressed disappointment with the direction which state policy had undergone since 1994. Several respondents said that the main goal of the organisation was lobbying government, and studying the effect of government policies in the field of social development. Research tended to focus on socio-economic issues and on the effect of government policies. The research done by some organisations is directed at pursuing political ends different from those of the government, and in particular, the government's macro-economic policy. For one respondent, this made CSOs clearly distinct from government, though closely related:

*We view our role as being above government in terms of monitoring and proposing policy and seeing what is happening within parliament, and various state departments*

The monitoring of government action may entail the formation of relationships between individual CSOs and like-minded organisations, as well as mobilisation of concerned communities and constituents. The Basic Income Grant and other issues of social security seem to unite a wide variety of organisations and individuals in strategic alliances. One respondent said:

*It's such a wide variety of organizations that are involved...I mean that was what drew me in so much is the passion and the variety of people that are involved.*

One respondent said that grassroots mobilisation was one of the major achievements in raising the public awareness about the BIG and lobbying government to implement it. These activities include organising regional discussions, signing petitions, and educating people about the campaign.

Generally CSOs identified with a human rights based approach, subscribing to the broad goal of creating a just and equitable society. Members of organisations representing specific constituencies expressed their goals as working towards the realisation of the human rights of vulnerable and marginalised communities. Other organisations said that their goals were to help the state fulfil its obligations to realise the rights of its marginalised citizens.

Broader, substantive goals were emphasised, in contrast to the goals expressed by one government official, which focused instead on effective and efficient service delivery and administration of social assistance programmes.

CSO members saw their organisational goals and activities as directly contributing to development. In particular, three broad areas of intervention were emphasised: training programmes directed at the public and state officials alike, service delivery focusing on the alleviation of poverty, and monitoring government performance to ensure that it takes into account the interests of marginalised constituencies.

One government official said that government is not only rendering services, but also screening people holistically. She added that the Department of Social Development remains open to other sources of development, and focuses on looking at services and activities beyond mere handouts that can contribute to development.

## **ORGANISATIONAL STRENGTHS AND WEAKNESSES**

Most respondents felt that the strength of their organisations lay in their independence, their close connection with their constituents, and their relationships with other CSOs and individuals working in the field of social development. Organisational independence and a track record were regarded as important components of establishing an organisation's credibility. As one respondent said:

*We have a long history and tradition and are recognised as an organisation with a name and no self-interest.*

Public credibility was viewed as important in gaining support and cooperation from CSOs and individuals working in the field of social development. One respondent said:

*I think we are seen as a source of credible information on the needs and rights of children and the problem of children.*

Just as important in ensuring the credibility of an organisation is the quality of its work and its effective operation. While not all organisations mentioned these as strengths, one respondent mentioned this as a vital strength:

*The strengths are that we have been able, given our limited budget, to do a considerable amount of work in these areas, because of the focused way that we have undertaken and implemented the mandate.*

There were also endemic weaknesses of CSOs in general with respect to organisational capacities. One of the weaknesses included a high turn over rate among CSOs. One respondent said:

*Now the state is telling us we lost more than 50% of our social work staff to the state last year.*

A number of organisations complained of having limited resources for the large amount of work that they had to do. One respondent said:

*We have picked up a huge volume of responsibilities that in fact belong with the state.*

Some respondents felt that the scale of the social problems in South Africa is too large for CSOs to handle alone. Some respondents felt that the public and state expectations of CSOs were very high, and did not take into account the severe capacity restraints under which most CSOs function. One respondent said:

*Essentially our organisation has a fundamental weakness in terms of trying to deliver where it has no resources to deliver and it knows it has no resources to deliver*

Respondents felt that this weakness was evident in the civil society sector as a whole, and not, therefore, limited to their organisation alone.

Further strengths that seem specific to CSOs have to do with the connection of individual organisations with local communities and other constituencies. For some organisations, this was important for recruiting volunteers, something identified as a strength by a number of respondents. This also entails certain problems, in that it is difficult to hold volunteers accountable for the work that they do.

The ability to mobilise communities was viewed by some respondents as an essential component of successful lobbying and as empowering of these constituents.

The ability to communicate and coordinate efforts with other CSOs and individuals working in the field of social development was viewed as a strength by a number of respondents. The wide variety of organisations and range of concerns they deal with was seen as entailing both advantages and disadvantages. Some of the advantages included the fact that individual organisations are easily able to recruit staff, access research, and disseminate experiences through existing networks.

### **Strengths and weaknesses of civil society in general**

For most respondents, the strength of civil society lay in its independence from government, its flexible and creative approach to development, and its close connection with communities. The advantage of an independent civil society, in the view of one respondent, lay in the fact that this allows individual CSOs to take nuanced and specific positions. She added:

*CSOs are able to take positions that are more nuanced, and push for these positions because they are right and not because of other motives.*

The notion of an ethic specific to civil society was held by other respondents. Generally, the ethic was conceived as a ‘human rights based approach’, and was regarded as the basis from which CSOs are able to engage critically with the state. The fact that this approach is able to draw on the Constitution was viewed as an added strength for CSOs in their engagement with the state, because the state itself is committed by the Constitution. In the words of one respondent:

*We find that lack of water is a constitutional right issue...and we find that cutting of electricity is a constitutional right issue. We find that evicting us because we fail to pay rent is an issue of human rights*

Flexibility was seen as a situation in which CSOs, motivated by local concerns, are able to adapt much more quickly to changing needs and environment. Flexibility was also seen as allowing a greater creativity in the responses of civil society organisations to general problems. CSOs were viewed as unencumbered by the bureaucratic processes that slow down the state so much, and as being driven by a ‘spirit’ of advocacy and human rights.

For one respondent the strength of civil society lay in its potential to mobilise grassroots support, while its weakness lay in its failure to do so in practice.

With respect to government weaknesses, there was a sense among some respondents that the main weaknesses of state departments working in the field of social development derived from a lack of capacity and a knowledge gap within the state. One respondent, for instance, said that the leadership within government changed too much, resulting in a loss of organisational memory and expertise.

Some respondents felt that while there was management expertise within the state, there was a general lack of understanding about welfare and the welfare sector. One respondent added:

*There also seems to be problems between the national and provincial levels. It seems that the priorities of these two tiers of government are different.*

The main weaknesses identified by CSOs can be divided those endemic to the organisations themselves and those related to the environment in which they operate. Weaknesses endemic to the organisations included high staff turnover, lack of skilled staff and the reactive mode of operation adopted by many organisations. Financial problems were also mentioned as a weakness. One respondent said the short-term financing approach of the organisation presented obstacles:

*It's an obstacle because it keeps you on a shorter cycle of information production*

Other respondents admitted that their financial systems were poorly organised and unreliable. As one respondent said

*We know how much we are asking for and it is actually a very complicated task to even figure out what we should, I mean we know what we do pay in the end.*

Calculating the expenditure of this particular organisation has proven difficult and time-consuming.

Among the weaknesses related to the environment mentioned by respondents, obstacles originating in the state received much attention. These had partly to do with inefficiencies and bureaucratic maladministration, and partly with what was seen as counterproductive policy.

For a number of respondents, having easy and user-friendly access to state structures was regarded as essential to their work. They thus regard state bureaucratic inefficiencies as a major obstacle. As one respondent said:

*Other obstacles faced...are the limited capacity and ineffective administration and sometimes non-functioning bureaucracy of the state.*

Other respondents were more explicit:

*The government doesn't have a framework for conversation with civil society.*

Another respondent said:

*There are is a whole bureaucratic process involved that prevents things from moving forward*

One respondent gave the lack of communication between the middle management of the civil service and the political leadership as an example of the bureaucratic inefficiency of some state departments.

There was a sense amongst some respondents that the state's lack of responsiveness and inaccessibility was due to more than mere bureaucratic inefficiency, but also reflected the attitudes of state officials regarding civil society:

*In other words they don't take us seriously as civil society*

For other respondents, there was the perception that the state was deliberately attempting to control the activities of CSOs so as to make them 'collaborators' in their own policies.

Some respondents identified obstacles to the functioning of their organisations in the condition of civil society in general in the sector of social development. In particular, they found that it was difficult to collaborate with other CSOs in the sector, many of which lacked organisational capacity. Many CBOs experience high illiteracy levels, said one respondent, and generally there was a lack of financial mechanisms to regulate civil society intervention in the field of social development.

Other problems that were mentioned included a high degree of competition for scarce resources, duplication of services by CSOs, and lack of accurate record keeping with respect to membership of individual CSOs.

## **CSO-GOVERNMENT RELATIONS**

While a number of respondents said that the role of their organisation was to supplement state efforts in the area of welfare, many of them expressed caution about the extent to which CSOs should help the government. In particular, a number of respondents expressed concern that CSOs were not only supplementing state efforts but also doing the work of the state, much to the cost of their own efficient functioning.

For those respondents satisfied with the supplementary role played by their organisations vis-à-vis the state, this entailed assisting the state in formulating policy, as well as playing a role in informing the public about the policy and in implementing it.

With respect to assisting the state in formulating policy, many organisations mentioned that their work was to identify gaps and shortcomings in government policy. Beyond that, their work entailed

monitoring the implementation of government policy to ensure that it is carried out equitable and effectively. Policy recommendations were said to emerge from the work done by CSOs. While respondents expressed the wish to maintain cooperative relationships with the state, they also wished to remain independent of it and consequently free to criticise its policies. In this instance, respondents wished to maintain a distinction between their organisation and the state. As one respondent said:

*It is very important to understand that we are not government and that we have an oversight role. So we have to keep our distance.*

Many respondents emphasised that the role of CSOs was to supplement the efforts of the state, not to substitute for them. This was mentioned in particular regard to statutory work. One respondent said that the statutory work that welfare organisations had to do was disproportional to their abilities and specialities, and that an over reliance on welfare organisations was a bad use of the resources of welfare organisations. For one respondent this over reliance on welfare organisations was similar to the approach of the previous government:

*We are taking on a lot of work that doesn't logically belong with the civil society organisations. Certainly because we are traditionally taking it on. I think it's a handover from the old government which was very reluctant to take on social service issues at government level.*

The respondent added:

*I think it's long overdue that we sit down and look at what tasks really belongs with civil society, what tasks really belong with government*

Another respondent said:

*We aren't there to do government's job. What we are there for is to ensure that government is doing its job.*

It was felt that the state possessed resources and mechanisms, which made its intervention in certain situations more appropriate. In particular, the state is held accountable to various other structures and has resources to make a number of interventions. While respondents did not object to the idea of government outsourcing some of its work to CSOs, they felt that a number of CSOs were already doing that without being adequately compensated by the state.

Very few respondents said that the work of their organisations directly *hindered* the state, though many said that their organisations did *challenge* some of the policies and functioning of the state.

The difference was recognised by respondents, and, apparently, by state officials, as was evident in the comments of one of the respondents:

*We took the state to court two years ago on the backpay issue since the 1998 amendment was unconstitutional...only when it went to court did government listen and it was then settled. In fact [we were] praised by the Minister for taking this particular issue on board.*

Challenging the state was seen as a function essential to organisations wishing to voice the views of their constituents, and while organisations did not want to be seen as hindering the state, they made it clear that they were duty-bound to challenge policies that harmed the interests of those constituents. As one respondent said:

*Really we don't want to say we must be seen as hindering the state policies but we challenge those policies that are not favouring the people*

Again, the constitutional framework was viewed as the basis on which CSOs could engage with the state and challenge its policies. Many respondents said that it was the role of their organisations to advocate for the interests of their constituents, and to contest policy positions with the state. This did not necessarily entail hindering the state in their view.

### **Government support for CSO initiatives**

CSOs identified limited extent of government support. These included support through funding, the exchange of information, and making use of state resources. In many instances respondents were uncertain about the position of the state in relation to their work, and reported contradictory and complex reactions from the state.

For some respondents, a modicum of government support was necessary for the organisation to carry out its work. This applied particularly to work dealing with broadening access of marginalised groups to government services. For other respondents, government funding was an important, though diminishing example of government support for their work. As one respondent said:

*Government does fund us but nowhere near sufficiently for what government expects us to do.*

Financial support for the social welfare sector has been a long-standing trend in government, but many respondents felt that the government has failed to update its funding schemes for the new type of work that is expected from CSOs.

A number of respondents were uncertain as to the response of the state to the initiatives of their organisations, and reported that state structures were heterogeneous in their responses, with some

elements within the state supporting their initiatives and other elements rejecting them. Many state officials seemed indifferent to the work of CSOs and others had mixed feelings, caught between private preferences and public obligations. After an encounter with an official, one respondent said:

*You could see that he was sympathetic that he had to walk this path. You can see the tension between knowing what's right and having to put down the line.*

### **Compatibility of government and CSO goals**

Several respondents expressed uncertainty regarding compatibility between the aims and values of organisations and structures within the two sectors. In particular, there was a sense in the responses that CSOs and state structures did not have a very clear sense of their goals in the area of social welfare and development. This was partially due to the confusion engendered by the introduction of a discourse of social development, as opposed to social welfare, and its relations to broader macro-economic discourses of fiscal austerity and international markets. Such explanations are evident in the answer of one respondent, who said:

*I think having Social Development, the idea introduced, and at the same time a very conservative and liberal GEAR was absolutely fatal.*

Another respondent said:

*I think the problem isn't so much about goals being divergent, but rather everyone speaking in circles. They don't know what they are talking about.*

Respondents felt that CSOs and state structures had a poor understanding of the roles and responsibilities of the various stakeholders in the field of social development. One respondent said:

*I think there is huge gap in terms of what the NGOs perceived as needed to happen from government's side and what government perceives is going to happen from the NGOs' side*

Other respondents felt that the lack of clarity about goals was more obvious on the part of the state than it was for CSOs. In these instances, respondents felt that there were internal inconsistencies and contradictions in the goals of the state, and between state goals and actions. Many respondents felt that these contradictions were reflective of a changing nature of the ANC, from a liberation movement driven by popular needs, to a ruling party, concerned with protecting vested interests. One respondent said:

*They are not the liberation movement that they were in the 1980s and early 1990s when they first came to South Africa*

Some respondents felt that there were a variety of elements within the state, and that some elements of the liberation movement were still active within the state, though intermingled with more conservative forces. One respondent felt that the government has been transformed from a consultative structure to a technocratic one. It was felt by some respondents that the state was guided by a pragmatic approach, which was in contrast to the more idealistic approach of CSOs.

Other differences in approach included the perception that government was motivated by populist goals, and winning elections (in this case the state was identified with the ruling party), as opposed to being motivated by a genuine commitment to poverty alleviation. For some respondents, the goals of the state and CSOs were generally the same, but the difference lay in the chosen means for achieving those goals. Respondents who expressed this view tended to derive from it a monitoring role for CSOs, dedicated to identifying gaps in government policy and implementation.

From the perspective of government officials, the difference in means was sometimes manifested in the fact that CSOs are not always interested in the fiscal constraints and management issues experienced by specific state structures, and therefore did not understand the environment in which government had to operate.

### **Channels of Communication**

Very few respondents recognised undisturbed channels of communication with state structures. For the most part, these channels were the formal and relatively well-established forums through which CSOs usually interact with the state: namely parliamentary portfolio committees, submission of written reports, and meetings with state officials. Most respondents regarded these means as only partially effective.

For many respondents, there were occasional obstacles to regular channels of communication. For one respondent, there was no clear explanation for these obstacles: when once it was relatively easy to get in contact with relevant state officials, now it has become difficult to arrange meetings. Another respondent said that meetings with state officials have become more rare since the organisation for which he works participated in a series of marches against state policies.

Respondents said that establishing channels of communication with low-level officials within a particular state structure, such as the Gauteng Department of Social Development, proved easier and occurred more frequently than meetings with officials higher up the hierarchy of the state bureaucracy. One respondent said:

*I think for some reasons in general we have a good working relationship with staff on the ground, at a level where we are going to have contact with each other.*

One respondent equated this with the fact that a large number of the low-level officials began their careers in social welfare as workers for CSOs. One respondent said:

*If you go and visit the Department of Social Services here in Gauteng, there are people who used to be our staff there.*

Only respondents from parastatal organisations claimed they had ready access to state officials at the higher levels of the state hierarchy. Other respondents said that they maintained only indirect channels of communication with the state. These referred mostly to the maintenance of training programmes by various CSOs, through which they may be brought into contact with local government officials.

From the perspective of one state official, the Department of Social Development attempts to ensure regular and formal channels of communication with state structures. The only obstacle to better communication between the department and CSOs, said this official, was the fact that some state departments remained understaffed, and consequently did not have the resources to maintain regular communication with all CSOs.

### **Role of state in helping CSOs**

One respondent expressed the view that there was a role for the state in helping CSOs meet their goals. This role was expressed largely as supportive and indirect, and should not infringe upon the work and activities of the CSO. The role was conceived as providing a policy framework, which identifies partners, provides funding, and within which CSOs can conduct their work.

One government official saw a potential supportive role for CSOs deriving from their close connection to communities. In particular, she conceived CSOs as acting as so many additional points through which people can access government grants and through which information regarding the criteria needed to claim such grants can be disseminated. She added that CSOs can play a role in identifying areas and regions where intervention is needed, or where people are lacking documentation.

### **POSSIBILITIES FOR IMPROVEMENT**

Several respondents described the current relationship between their organisations and the state as multifaceted and complex. Respondents offered a number of reasons for the current state of the relationship, from a proliferation of different political positions and opinions within the state, to a shifting of state position regarding the role of civil society in providing social welfare. One respondent said:

*I think that government is at the moment rethinking the way it uses civil society ...[government] is not using the available networks and avenues that are in place.*

The complexity of the relationship between the state and CSOs was seen by one respondent to emerge from the fact that both structures were undergoing transformation and restructuring, and that both sectors, but particularly the state, had failed to keep track of the changes that have taken place. Respondents felt that the post-1994 period has been characterised by a relationship that shifts between being adversarial to being co-operative. Government was perceived as being not as open as it was just after 1994. For many respondents, the complexity of their relations with the state has to do with the heterogeneous nature of the state itself, only certain elements of which are viewed to be supportive of the work of CSOs. This is evident in the answer of one respondent:

*I think Skweyeya and his group are very 'pro' the basic income grant and the ones that have to cough up are the ones that aren't, they are scared of angering business.*

The increasingly technocratic and bureaucratic nature of the state was seen as introducing a major disruption in its ability to communicate effectively with CSOs. One respondent felt that the state was increasingly viewing CSOs as an irritant in their deliberations, and that there was a perception within the state that CSOs are 'anti-government'. This has led to a situation in which the state has become less welcoming of the input of CSOs. In the words of one respondent:

*CSOs feel that when they try to approach government the door is often not open.*

Beyond the general state of relations, there were specific aspects to the field of social welfare and development. Unlike the contractual relationships that exist between a state department and the service provider to whom that department outsources the work, most CSOs in the field of social development receive government subsidies, the amount of which is determined at the discretion of the department. This does not necessarily reflect the amount of work done by a CSO or the costs it incurs in doing the work. One respondent said of this system:

*It's a type of a relationship that doesn't exist in any other sector of government and is a very counter-productive and self-defeating type of system. Because what basically then happens is that government does not actually budget what the services cost to deliver. They budget on the basis of what is being paid out over the year, which is grossly inadequate.*

In this view, the consequence has been that the Department of Social Development has come to rely very heavily on CSOs, without knowing or caring about the costs incurred by them, and without paying them adequately for the work that they perform. This has resulted in a strained relationship between CSOs and the Department of Social Development. Any improvement in the relationship

between the Department and CSOs must be premised on a thorough auditing of CSOs undertaking work for the Department, which are dependent on state subsidies for their survival. This would entail delineating the roles and responsibilities of CSOs, and determining the budget accordingly.

The exploitative nature of the relationship is exacerbated by the nature of the people who pursue careers in social welfare and development. The same respondent added:

*It's only in the social services that the state can get away with that because it's been done for so many years. And also because social service organisations like to be nice and they like to work in partnership and they like to have co-operative relationships.*

The fact that several CSOs are also dependent on state funding has, in the view of this respondent, provided added incentive for CSOs to pursue positive relations with the state. But if CSOs are dependent on the state for funding, the state is also heavily dependent on CSOs to provide welfare. So much so, said one respondent, that when, in the Eastern Cape and Kwazulu-Natal, CSOs were on the verge of closing down due to lack of funding, the local government, aware of the services that they provided, increased their subsidies.

While it was generally acknowledged that there was much to be done to improve the relations between the state and CSOs, a number of respondents expressed reservations about establishing too close relations with the state. In the words of one respondent:

*Even at best when the government is responsive and might even call us to a meeting or something, we become very cautious that we don't eat dinner with power today and find that tomorrow we have to speak to power but we are so full we can't.*

This sentiment, for some respondents, reflected the disillusionment of seeing former colleagues proposing views antithetical to what was seen as the values of CSOs. Other respondents emphasised that a recognition of the different roles and functions of CSOs and state structures, a respect for the autonomy of CSOs, and a respect for the work that they perform were essential prerequisites for improved relations between the state and CSOs.

### **Policy Initiatives**

The policy initiatives mentioned by respondents were quite diverse, ranging from trade to HIV/AIDS, to gambling and poverty eradication. The activities undertaken by the CSOs with respect to these issues ranged from participating in the formulation of legislation to advocacy. Protest was also seen as an important policy initiative.

Some respondents seemed to feel that social development policy initiatives were characterised by contestation during their inception, and contradictions thereafter, and popular mobilisation was

essential to initiate them and keep them going. CSOs were given an impetus by popular protest and in turn served to give direction to it.

The contestation that engenders policy initiatives was not seen simply as pitting civil society against the state. Even within the state, contestation regarding policy was seen to exist. This was so especially with respect to the Basic Income Grant, of which one respondent said:

*The tide had already seemed to be turning in terms of GEAR at that stage, against broadening social security. Then they seemed to be going the other way in terms of getting the debate going.*

The predominant view amongst civil society respondents regarding the response of the state to the policy initiatives of civil society was that that response was confused and contradictory. One response echoes the general sentiment of a number of the respondents:

*The state's response is a very strange mixture: on the one hand they invited us to participate and they seem to welcome our participation. They use a lot of our time and a lot of our resources in those processes. And then they tend to ignore huge amounts of what we were saying*

A number of reasons were offered for this contradictory response. One respondent said that there was a difference within the state between those who are mandated to reach out to CSOs and those who ultimately make policy decisions. Another related reason given by a different respondent was that the state lacked the political framework within which to receive and engage with civil society input into the policy process. This comment referred not so much to the absence of consultative structures as it did to the government's apparent lack of interest in using them.

Some respondents felt that the state had an agenda, which it would put through regardless of the outcomes of discussions with CSOs, which were held to confer legitimacy on a pre-determined policy direction. In the words of one respondent:

*If we are not going to be listened to, if there is really no intent, if the state has a pre-ordained agenda, it will be more honest to simply go through the pre-ordained agenda than to conduct a semblance of consultation and then ignore what this consultation produces.*

Another explanation for the mixed state response to CSO policy initiatives was the uncertainty that prevailed over the concept of developmental social welfare. It was felt that the concept has been poorly defined, and consequently was used to circumscribe the efforts of CSOs. In the words of one respondent:

*If you complain about your subsidy being inadequate to the work, it can happen that the government says "yes but you are not developmental enough, your organisation is not yet been*

*transformed”, without looking at what transformation would actually mean in the case of that particular organisation.*

## CONCLUSIONS

Overall, it is clear that the field of social development is not characterised by the antagonism between civil society organisations and state structures that is found in the field of human rights and refugees. This for a number of reasons, related to divergent state policies, the nature of popular constituencies and the degree of goal compatibility between the sectors.

In the field of social development and welfare, the goals of state departments and CSOs are compatible in the sense that improving the welfare of citizens is an overarching aim of both. While state departments have different priorities – with considerations of *affordability* serving to differentiate between them – the *desirability* of welfare and development is not contested within the state, nor is it a bone of contention between it and CSOs. In the field of refugees and human rights, the *desirability* of providing services to refugees and undocumented migrants is frequently disputed by state departments (particularly Home Affairs and Safety and Security) and affordability is rarely the main question in dispute.

Why is this the case? The provision of social development and welfare is to a large extent the *raison d’être* of the ANC-led government. Disputes over means and priorities abound, but the ends are widely shared and consequently there is no clash between values and goals in this field. This is facilitated by the fact that the actual and potential beneficiaries are South African citizens, some of whose entitlements are grounded in the Constitution and whose voices count (as voters). Providing services to refugees and migrants is a more murky terrain, especially when the task is allocated to a department, such as Home Affairs, whose historical role was that of control and prevention rather than serving people. To use Mahmood Mamdani’s by-now classical distinction, the ethos of state departments dealing with grants is guided by the need to serve *citizens* (even if this is done in an excessively bureaucratic and inefficient manner), while the ethos of those dealing with immigration is guided by the need to establish rule over *subjects*. That these subjects lack a voice (as voters) and are limited in their ability to protest for fear of being deported, reinforces the insensitive and authoritarian state response.

Since CSOs in both fields are oriented primarily towards service provision, from a perspective that focuses on human and socio-economic rights, they are bound to clash much more with state structures that violate these principles than with those that do not. This does not mean that the relations are always smooth and free of problem. Frequently there are disagreements that lead to conflicts and clashes (resulting in some cases in litigation), but the underlying goal compatibility makes these clashes less contentious and violent than in other fields. Much of the debate has to do

with the technical means adopted to serve the same ends, and issues such as payment and credit for work, but these are more easily resolved in a pragmatic manner than principled disputes over competing policy goals and visions.

## ADULT BASIC EDUCATION

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Officially the Department of Education has defined ABET as follows:

*“Adult basic education and training is the general conceptual foundation towards lifelong learning and development, comprising of knowledge, skills and attitudes required for social, economic and political participation and transformation applicable to a range of contexts. ABET is flexible, developmental and targeted at the specific need of particular audiences and, ideally, provides access to nationally recognised qualifications.”<sup>74</sup>*

According to the policy document on Adult Basic Education and Training the term ABET

*“Subsumes both literacy and post-literacy as it seeks to connect literacy with basic (general) adult education on the one hand and with training for income generation on the other hand”.<sup>75</sup>*

ABET is a uniquely South African term. The addition of the T for training was contested for a time, mainly by literacy activists who feared the acceptance of ABET would compromise the quest for critical consciousness which was an important characteristic of alternative adult literacy work.<sup>76</sup> The proponents of the ABET concept argued that a curriculum that offered some formal knowledge of the world and at the same time provided an understanding of issues related to the workplace would in essence lead to transformation and empowerment. They further argued that the integration of training and education would provide skills for employment, income generation and productivity.

### HISTORICAL BACKGROUND

Adult education in South Africa, with a focus on African language literacy dates back to the 1920s. However only after World War II adult education took on more impetus and was characterised by voluntary provision. Many initiatives were administered by non-governmental organisations from the religious sector, university students and the Communist Party. These night schools received very little financial assistance from the state’s Education Department and some of these schools rejected state funding, claiming that it would compromise their independence.

When the National Party came into power and introduced the Bantu Education Act in 1953, many night schools were closed down. Policies like the Group Areas Act, which segregated people into separate racial residential areas, effectively reduced the number of learners in the night schools. The remaining schools were eventually closed down as they were operating in white areas. The closure of the schools had little to do with financial affordability, but rather were a result of government’s

fears that the schools had strong links with organisations that were opposed to government's apartheid policies. It has also been argued that the state saw the high levels of illiteracy among blacks as a positive benefit since it further reduced the possibility of competition from the black labour force.<sup>77</sup> During that period the state clearly marginalised adult education.

After the 1976 Soweto uprising the state was forced to revisit its position towards the provision of adult education. This was motivated by the unrest, which was related particularly to education and the stagnating economy. Prior to the 1970s the high levels of illiteracy among African adults did not pose serious political, economic or social problems for the state. However, after 1976 and the resulting decline in economic growth, the state had no option but to review its position. The Wiehahn and Riekert Commissions of Inquiry that were set up in 1977 to look at labour and influx control legislation acknowledged skills shortage as an obstacle to economic growth and identified literacy as a prerequisite thereof.<sup>78</sup>

Although the state made the necessary administrative decisions to re-open night schools, it was reluctant to legislate on the issue. The night schools were opened under the authority of the Department of Education and Training (DET). These schools offered to adults the same curriculum as that of the formal school system. The system had the advantage of using the infrastructure of the formal education system and was able to certify learners that came through the system. However it had to contend with a curriculum that was not relevant for adults and was taught by teachers who were not trained to teach adults. The night schools were seen as providing literacy and a second chance formal education up to matric level.

Despite these efforts, by 1990 it was estimated that adult illiteracy was at 50%, possibly a conservative estimate. The black labour force was still predominately unskilled and uneducated in spite of the need for a better-trained and more skilled labour force. According to Baaitjies it was ironic that even "with the high illiteracy rate in the 1970s the government failed to launch a literacy campaign as a prerequisite to rapid economic growth".<sup>79</sup>

## **NGOs**

The state's reluctance to establish a legislative framework for literacy left the area open for oppositional work directed either towards philanthropic support or organised initiatives for social change.<sup>80</sup> Many progressive organisations saw this as an opportunity to work for changing the status quo. The late 1970s and early 1980s saw the formation of several literacy organisations like Learn and Teach in Johannesburg and USWE (Use Speak and Write English) in Cape Town. These organisations adopted and modified a Freirian method of teaching and considered themselves progressive or radical. They saw the work they were doing as political opposition to the state. There was also a group of larger literacy organisations that adopted a more conservative approach and worked closely with the state.

As donor funding in the 1980s increased, activity in the literacy field was given a boost. However in spite of this the impact made by the progressive literacy organisations was minimal due to the fragmentation in the field. The formation of the National Literacy Co-operation (NLC) was seen as a way to deal with this problem. The NLC was formed in 1985 and became an umbrella body for literacy organisations to work together, share experiences and to keep adult literacy on the agenda of the trade unions and liberation movements.<sup>81</sup> The NLC affiliates generally followed a Charterist tradition. In 1992 the South African Association for Literacy and Adult Education (SAALAE) was formed. This alliance was orientated more towards the Black Consciousness Movement and was affiliated with the international African Association for Literacy and Adult Education (AALAE).<sup>82</sup>

Both these networks played more of a co-ordinating role and as a group had little impact on policy development. The NGO sector was still fragmented and this placed considerable constraints on its ability to influence policy. The NGO sector was not homogenous in terms of interest and strategy. Most NGOs were donor funded and often found themselves in competition with each other and it was difficult to talk about and identify an NGO agenda. However there were individual NGOs that participated and had an impact on policy work.<sup>83</sup>

In 1993 NGOs made some attempt at working together and reaching a consensus over a future ABE system. This was done through the establishment of the South African Committee for Adult Basic Education (SACABE), which included a number of civil society organisations in addition to NGOs. The group aimed at putting ABE on the national agenda. However this organisation did not have much of an impact and soon became defunct.<sup>84</sup> After 1994 some donor funding that had gone to NGOs was diverted to the state. The state in turn was expected to disburse this funding to projects or for provision that was outsourced. This process took a long time and resulted in many NGOs closing down due to lack of funding.

### **The Private Sector**

Commerce and industry, especially the mines started work in literacy in the 1950s. Many of these programmes were run by mission-type literacy programmes. By the 1970s management started taking these literacy programmes more seriously and contracted commercial training organisations to focus on English second language literacy.<sup>85</sup>

The 1980s saw heightened pressure on the private sector to improve their labour practices. In addition the end of colour-bar legislation in 1979, and the growth of trade unions, put pressure on the private sector to take action about the high illiteracy rates. The changing nature of production also required a skilled workforce and this required increased levels of education among workers.<sup>86</sup> The private sector's response to these changing economic circumstances was to provide functional literacy programmes, supposed to yield immediate economic returns.<sup>87</sup>

## **POLICY FORMATION**

Prior to 1990 there was virtually no policy relating to adult education. However with the prospect of a democratic government coming into power the development of policy was given priority among the major stakeholders. These stakeholders included various NGOs, the private sector, organised labour, and political organisations like the ANC, working mostly through the National Education Policy Investigation (NEPI) and the Centre for Education Policy Development (CEPD). Common to most stakeholders was the assumption that the state would play a leading role in provision of ABE.

Policy formulation among the various stakeholders took place simultaneously. The National Government's Educational Renewal Strategy (ERS) was developed at the same time as the NEPI research and the work done by the NTB/HSRC. The Congress of South African Trade Unions (COSATU) at that time was also in the process of formulating its own policy.

### **The Education Renewal strategy (ERS)**

The National Party government's first attempt at formulating an ABE policy was contained in its Education Renewal Strategy (ERS). In this document adult education was defined narrowly as being job specific vocational training. It was not seen as having a role to play in redressing the inequalities of the past; policy was concerned with the economic impact of the high levels of illiteracy. The state saw ABE only in terms of vocational training and distance education and viewed the problems related to ABE as requiring technical solutions. The ERS document argued that for a better system of accreditation and certification there should be links between the formal and non-formal system of education. This document highlighted the government's lack of concern of ABE and proposed that no state funding should be given for ABE. It also did not regard ABE as its primary responsibility but mentioned that the state would play some role. The final ERS Document was released in 1992, dealing only marginally with ABE.<sup>88</sup>

### **COSATU policy**

COSATU proposed the integration of education and training and argued that this would enable workers to think critically and solve problems within a broader context of general knowledge. This process of education and training would be on going and be regarded as life-long learning. According to COSATU workers would not be able to upgrade their skills without basic education; skills upgrading was crucial for economic growth. COSATU proposed that the integration of education and training would take place through a system of national standards and certification located within a national system of qualifications. ABE would be located within a state structure, and the state would be required to finance the system with the help of business. The state and business would be required to provide the facilities for classes, paid time off for learners, assist in materials development and pay teachers. They suggested that this be facilitated through an education and training fund.

COSATU saw a partnership between the state, business and unions as crucial to the success of this initiative. COSATU supported the active involvement of civil society in the development and implementation of policy. It proposed that NGOs involved in literacy should become part of a broader forum of civil society organisations. It was not made clear however how such a forum should be constituted or how literacy organisations would participate in such a forum.<sup>89</sup>

### **The National Education Policy Investigation (NEPI)**

The National Education Co-ordinating Committee (NECC) initiated a National Education Policy Investigation (NEPI) in 1991. The NEPI report on ABE was published in 1992, strongly influenced by policy proposals made by NGOs, the ANC and COSATU. The NEPI reports provided broad policy options but contained no recommendations or implementation plans. These options were proposed for political organisations to consider and implement.

Option A of the NEPI proposal viewed ABE as developmental, playing an important role in the restructuring of the economy, redistribution and political democratisation. This option called for the state to play a major role and saw ABE located within a state structure. It focused on developing new institutions for large scale ABE provision. This option also highlighted the need for democratic participation but agreed that there was a lack of clarity about the role of civil society.

Option B saw the state's bureaucracy as being too cumbersome and located ABE provision outside of the state. However the state would take on the responsibility to legislate for ABE, and would provide maximum support and minimum interference. This option concerned itself more with the implementation of sound educational principles and questioned the state's ability to be flexible and innovative enough to provide effective administration of adult literacy and basic education. In this scenario civil society organisations would play an important role.

The third option put forward by NEPI was based largely on the system that was then in place. This option was seen as promoting the idea of a second chance at formal education and matric, and was based on the extension of the state system that was in place. With this option the state was seen as playing a co-ordinating role and ABE would be linked to the formal system. In this option provision would not be dependent on the participation of civil society, as ABE provision would be linked to the formal school system.<sup>90</sup>

### **The ANC/CEPD process**

The ANC's policy framework of 1994 was largely influenced by COSATU. The ANC argued that literacy was a precondition for full democratisation and felt that mass provision of ABE should be a national priority. It proposed that all adults have a right to basic education to a level equivalent to the end of free compulsory education. At the end of that stage learners would receive a General Education Certificate (GEC). They saw the ABE and the formal system as being articulated within a

national qualification and certification structure that would allow learners vertical and horizontal movement. The ANC proposed a modular system based on outcomes, which would consist of a core including languages, numeracy, social studies, development studies and science and technology.<sup>91</sup>

The ANC policy encouraged the participation of other stakeholders such as business, organised labour, various education institutions as well as NGOs. The Centre for Education Policy Development (CEPD), which was set up by the ANC in 1993, took some of the policy proposals developed by the ANC and produced an Implementation Plan for Adult Basic Education and Training. According to Aitchison, this plan represented the reduced expectations common to many ANC implementation plans as well the dominance of formal education. Unlike previous proposals which influenced it, The CEPD plan was specific about what needed to be done, and provided details of how these actions would be implemented.<sup>92</sup>

### **SOUTH AFRICAN COMMITTEE FOR ADULT BASIC EDUCATION (SACABE)**

In the period just prior to the elections (late 1993) an ABE consensus building conference was held. The conference had wide representation and aimed to take ABE forward into the post-apartheid era in a coordinated manner. The conference regarded ABE as a human right and the responsibility of the new democratic government. It stated that ABE is a prerequisite for effective and critical participation in the new democracy. There was a clear link between ABE and development with issues of redistribution, equity, redress and democracy highlighted.

Representatives from the conference argued that legislation was necessary to ensure that ABE is recognised as a right. Similar to the ANC position, the conference proposed that an ABE system be integrated within the National Department of Education and be reproduced at regional and local levels. It suggested that a statutory ABE Council be established to represent employers, unions, tertiary institutions and civil society organisations including NGOs. The state should work in close consultation with the Council and remain responsible for financing, provision and implementation of ABE. The Council would be responsible for the disbursement of funds to other role players such as NGOs, tertiary institutions and so on. This group went further than most other proposals by suggesting that other government departments play a role and that it was important to ensure that ABE does not get marginalised within the Department of Education.

Another initiative by the National Training Board gave rise to the National Training Strategy Initiative (NTSI), which similarly to other policy efforts linked education and training in a broader context and proposed a connection between formal and non-formal education. It recognised that partnerships were important in this process and argued that although regional and local authorities were responsible for delivery, this should be done in partnership with employers, unions, NGOs and higher education institutions.

## THE POST-APARTHEID STATE

On entering the post-apartheid period, the consensus among stakeholders was that education must be integrated with training. Many literacy NGOs were not completely satisfied with this integration and saw it as a threat to their autonomy. Some NGOs were also critical of the competency-based curriculum and had doubts about the state's capacity to run an effective system. In addition, concerns were raised about a centralised state system of adult education, which would not be able to meet the varied needs of adult learners.

However, the new government highlighted the importance of ABET in the reconstruction and development of the country, and ABET became a presidential lead project as part of the Reconstruction and Development Programme (RDP). Tackling the problems of illiteracy was seen as an integral part of the RDP and many literacy activists were happy with this commitment by the government. Despite rhetoric, developments in the field were slow. A National Consultative Conference was held in 1995 and highlighted the need for a national framework within which province could implement their plans, cooperation between provinces and government departments to ensure a coherent national ABET programme.<sup>93</sup> Subsequently an adult basic education and training framework guidelines were released by the Minister of Education in September 1995.

Despite this progress, and the appointment of senior officials responsible for ABET at the national Department of Education, the period was characterised by unsuccessful attempts to initiate nationally co-ordinated programmes and campaigns. Examples of these are the National Literacy Cooperation's (NLC) Thousand Learner Units and the Ithuteng Campaign.<sup>94</sup> The Directorate of Adult Education was weak, understaffed and had a very small budget. Literacy was proclaimed a lead project of the RDP but received no funding and was expected to raise its own funds from donor agencies.

At provincial level very few provinces were able to set up ABET Councils or stakeholder forums. Although some money was made available for ABET for provinces this was often erratic and remained a small proportion of the overall education budget. Government did not envisage that ABET provision would require substantial funding, as it was expected that ABET would make use of existing infrastructure and, where possible, distance education would be an important option. It could be argued that this attitude of government highlights a lack of commitment to ABET.

Following the 1995 White Paper on Education and Training, the ABET Interim Guidelines adopted the idea of a National Qualifications Framework. This implied the acceptance of national standards and certification, articulation and integration. In essence the guidelines adopted the National Training Board's (NTB) proposals. Like the NTB the Interim Guidelines adopted the competency based modular system.

Although the Interim Guidelines recognised ABET as a means for national reconstruction and development, the guidelines not unsurprisingly focused on practical issues. This document also proposed that the primary responsibility for ABET lies with the state but employers, unions, and civil society organisations would also be expected to play an important role in implementation. Like its predecessor the guidelines were not specific about the financing of ABET.

In 1996 the Multi Year Implementation Plan was initiated. This was a cross-sectoral effort to operationalise ABET policy. The plan was published in 1997 but its implementation was limited. While government was moving more towards formalising ABET through developing standards, assessment of learners, the formation of the NQF and the South African Qualifications Authority (SAQA), it did not provide funds to support these moves. The Skills Development Act of 1998 was set up to provide resources for skills training and basic education for people employed in the formal sector. Employers in the different sectors were required to contribute a skills levy, to be used by Sector Education and Training Authorities (SETAs) to sponsor skills training for employees. The SETAs were also mandated to support projects increasing the skills of marginalized groups like the unemployed and those involved in the informal sector, though efforts in these areas were minimal.

### **Adult Basic Education and Training Act**

The Adult Basic Education and Training Act (2000) deals mostly with the legislative framework for the establishment of ABET centres at community level. It provides for the funding of adult basic education from funds appropriated for that purpose from the Provincial Legislature on a fair, equitable and transparent basis. It also institutionalises the relationship that should exist between the Minister and the Stakeholders Forum, called the National Advisory Board for Adult Basic Education and Training (NABABET). It stipulates that in the formation of standards and quality assurance, the Minister must consider the advice given by NABABET, thus opening a room for civil society organisations to make input.

Throughout the various policy documents and legislation released by the Department of Education, openness to cooperation with civil society organisations in most aspects of realising ABET is evident. In spite of this, the relationship between the state and civil society organisations, especially literacy NGOs, has not been unproblematic. In many instances important stakeholders outside the state have been sidelined by department officials.

### **The role of NGOs**

Since the formation of many literacy NGOs was the result of the unwillingness of the apartheid state to deal with issues of illiteracy, the ushering in of a new government forced NGOs to rethink their position in relation to the state. The post 1994 period was characterised by bilateral agreements between the state and donor organisations which in effect meant that NGOs operating in the field of

adult education and literacy found themselves strapped for cash and many had to close down. Of the 200 NGOs and CBOs that were involved in literacy prior to 1994 only 38 remained in 1999.<sup>95</sup>

NGOs found that “both nationally and from an international donor perspective they no longer exercised the persuasive power they once exercised in the literacy and other fields. The balance between civil society and government has shifted and the debacles in the NGO management that have been exposed over the last few years have also dented the image of NGOs”.<sup>96</sup>

There seemed to be some renewed hope after the 1999 elections with Minister Asmal announcing that fighting adult illiteracy as one of his priority focus areas. Following the appointment of Minister Asmal the South African National Literacy Agency (SANLI) was set up to ‘break the back of illiteracy’ in five years. The agency was initially located outside the National Department of Education and many literacy activists saw that as a positive step. Soon thereafter, however, the Department of Education took over this initiative and sidelined the board elected by the Minister. French asserts that the “setting up of SANLI was filled with confusion, reflecting poorly hidden conflicts on the subject within the national Department of Education”.<sup>97</sup> Consultation regarding this project was minimal and none of the practitioners with years of experiences were included in the process. SANLI’s call for the participation of volunteers, at some level undercut the professionalisation that to date has been characteristic of the ABET sector.

By the end of 2001 SANLI became a new directorate in the Department of Education and by 2002 it opened a number of provincial offices and claimed to reach large numbers of learners, though how many remains unclear.<sup>98</sup> The position of NGOs and other civil society organisations in this and other developments is uncertain and much work remains to be done.

## **CIVIL SOCIETY AND STATE PERSPECTIVES**

The preceding review has shown that the relationship between government and CSOs have generally been conciliatory, with both largely sharing the same goals, though it has become one of disenchantment, in some instances bordering on antagonism. In part this reflects a natural gap between lofty visions and mundane policies, but in part it also reflects the declining emphasis on ABET in the framework of overall education policy. The daily needs of the formal education system have proved overwhelming, taking up most of the system’s organisational capacity and funding resources.

We have conducted interviews in order to get a deeper perspective on this relationship, targeting members of both sectors. Interviews were conducted with representatives from various CSOs, state officials and academics from the adult education field. The CSOs represented a number of organisations that were involved in the delivery of adult basic education and training, policy formulation, monitoring and evaluation of ABET programmes. Most of the government officials

interviewed were based at the National Department of Education and in some of the provinces. For some of these officials ABET was just one of many areas in which they were involved. Academics were mainly drawn from university adult education departments.

### **Organisational goals and contribution to development**

CSOs within this sector have different goals. Some focus primarily on the delivery of adult basic education in the form of literacy and providing some formal education. Others concentrate largely on the monitoring of various programmes and ensuring that the state upholds its commitment to the provision of adult basic education, while many are involved in policy input to a greater or lesser degree. Most CSOs share the overarching developmental framework for their operation.

There was an overwhelming expectation among most of the CSOs involved in adult basic education that in the post 1994 period the state would play a major role in service provision. Many believed that the state would launch a literacy campaign and that CSOs would play an important role in it. Most of the CSOs interviewed expressed disappointment that this did not happen. One of the representatives from a CSO had the following to say:

*Our goal was to redress the imbalances of the past because most of our adults didn't get the chance to go to school because of the systems that were in place. It was now time with the new dispensation to put things right.*

Although for many of the CSOs interviewed roles have changed over the past decade due to funding difficulties, their goals seemed to have remained the same. CSOs now find themselves in a position of having to compete with other providers, mainly coming from the corporate sector, for government tenders. The small number of CSOs that have managed to sustain themselves after the decline in donor funding found that they had to change and adapt to the new environment. There was a strong move towards the professionalisation of the field and providers were required to operate within this framework.

CSOs whose primary focus was service delivery expressed a feeling of being let down by the post-1994 government. Many did not receive any subsidies from the state before 1994, and felt that the new government would provide resources for their operations. This did not happen.

*I would say that unlike some other ABET NGOs that liked oppression, we never had any relationship with the apartheid state. We never got subsidies from the apartheid government. And there was a hope that the new government would take over running our new centres because I heard that the new government would take over with running of everything in this country, I would assume that the same applies to literacy. That never happened.*

Organisations involved in delivery felt that they are now expected to compete with providers with little track record, often having to compromise on issues of quality and innovation. Organisations that performed a monitoring role generally did that within a context of socio-economic rights, of which adult education is an integral part. However, representatives from these organisations felt that the de-mainstreaming of adult education has left it a marginal field and is not an area that government has prioritised.

One of the reasons for adult education becoming marginalized is the range of competing interests and ultimately budgetary constraints. Many of these organisations do not view adult education as unimportant but feel that there are other interests that take precedent.

*You see it's a matter of competing interest in the commission, which is also tied to our budgetary constraints, and in terms what is it that we can legitimately achieve in a given financial year.*

### **Government Goals**

Government's role in ABET has revolved around the development of strategic plans and the development of policy regarding funding strategies and standards. Government departments have also claimed to be involved in the refinement of the curriculum framework, unit standards and assessment and exams for adult learners. The reviewing of the multi-year implementation plan in order to develop a vibrant ABET system has also been stated as one of the areas of priorities.

Representatives from government have said that the key thrust during the period between 1995 and 1998 was policy development, followed by implementation in the latter part of this period. Input into policy continues and deals primarily with gaps in the policy. An example of the policy gap was the absence of legislation on the registration of private centres.

In addition, in the period after the ABET Act of 2000 there was a need for further regulation, focusing on the establishment of national boards, putting in place standards for funding centres and so on. Although policy work continues, the focus of government from 1999 on is implementation, which has been affected by the funding crisis in some of the provinces.

### **Goal discrepancies between CSOs and government**

Generally speaking, government and CSO representatives said that their goals tended to be the same. The tension usually arose over the means used to realise the goals. According to a representative from government the stated goals of government departments and CSOs are similar. The disagreement tends to be focused on processes and mechanisms that are used to achieve these goals. This representative went on further to say that many of the underlying tensions between government and CSOs are related to the need for CSOs to survive.

*I think people also tend to do whatever they can to survive which might include criticising and undermining the similar goals, so there might be instances where we agree on goals but in actual fact we contradict each other. Overall I think that the thrust of government around poverty alleviation is shared by a lot of civil society organisations so the goals are similar.*

Most representatives from CSOs said that there were no major discrepancies between their goals and the goals of the state. Contradictions between the two lie mainly in the means that the two sectors employ to realise those goals. For example, while both CSOs and government share a desire to reduce illiteracy in South Africa, they will differ in the mode of implementing their programmes. For some the adoption of the GEAR macro economic policy had a direct link to the small budget allocated to adult basic education.

*Prior to '94 we were part of the struggle, we all had a common goal that we were fighting towards. A lot of the literacy movements were considered as subversive because they had democratic, liberal and revolutionary approaches. Now with the advent of our new democracy, there was great hope, there was policy being developed and having education as a human right, and at last we were going to get our place in the sun. So we moved to a state of hope. And then with the hope that the new policies, we did a lot of planning, but when it came to the implementation it never seemed to come around, and then the disillusionment started seeping in. And that disillusionment over the last two to three years has now become anger. And that anger is leading to practices that are anti-government, if not anti-government we are going at it on our own. So now the new struggle is on for the voice to be heard of the most disempowered people of the country. So we have gone a complete circle.*

## **ABET AND DEVELOPMENT**

There are varying views among representatives of civil society organisations about the relationship between adult education and development. For some representatives, empowerment in the sense of liberation should be the focus of adult education. This approach would focus on informing people of their rights and on being active participants in society. For other representatives a narrow focus on developing technical skills has taken priority. The move to a structured and formalised system of adult education has led to a neglect of broader developmental concerns. Many providers have had to change their focus and concentrate on teaching the necessary technical skills so that learners can get the certification. One representative had the following to say:

*It is really strange that in this society, this very democratic open society, literacy is not linked to social issues that are pertinent to the poor. It seems to be catering for people who already have some advantage in a way, however minor that advantage is. Unemployed people, starving people, poverty stricken people, would need to know how to apply for a child support grant.*

Other representatives from CSOs felt that their contribution to policy input and the training of educators is inextricably linked to development. In many instances their critical interaction with policy is seen as an integral part of linking development to adult education. Being at the forefront of the development of the Skills Development Act and participating in research around the recognition of prior learning is also seen as a vital contribution to development. Other representatives tend to see the relationship between development and adult education more broadly, recognising the close relationship between education, the economy and employment.

Government representatives tended to see the relationship between development and adult education more narrowly. For them development was linked to providing technical skills such as brick making, working the land, and so on. There were some representatives that recognised that it was often difficult to integrate skills development with teaching of basic literacy, and felt that these problems were posing a challenge to many of the learnership programmes within the various SETAs as well.

Some government representatives argued that the need for technical skills was more urgent, but at the same time recognised that learners needed to have some form of basic education and meeting both these needs was a challenge facing the department.

## **STRENGTHS AND WEAKNESSES OF CSOs AND GOVERNMENT**

CSOs' and government's views of strengths and weaknesses seem to contradict each other. CSOs tend to see government policies as having weakened their sector, while government officials view their relationship with CSOs as a source of strength.

One of the respondents felt that although it was useful to talk about civil society organisations as a collective, it was important to recognise that there are major differences within this sector. The high level of commitment and a continuing sense of social activism found in the CSO sector were considered a major strength. The strength of CSOs further lies in their capacity to contribute to development. This capacity is linked to the existing knowledge about the plight of people seeking further education and the will to use this knowledge.

Some CSOs felt that their ability to have survived indicates an inherent strength, which may be related to the high levels of commitment among individual members. Their ability to be innovative and creative is also seen as a strength. However, in order to survive many have had to compromise. Some CSO representatives felt that despite their financial difficulties they have managed to maintain a high level of standards and deliver quality adult education.

Being independent of vested interests, unlike the private sector and the state, is an additional source of strength for CSOs. However the withdrawal of donor funding and the increasing reliance of CSOs on government tenders and contracts from the private sector could jeopardise this independence. The flip side of this is that the pressure CSOs have felt has forced them to be more cost effective and develop a professionalism that is comparable to commercial entities. CSOs have found themselves venturing into new areas. This highlights the ability of CSOs to adapt, which in itself is a source of strength.

Prior to 1994 the links with various university departments in service provision and research facilitated good partnerships. Although not always actively pursued, this has resulted in a wealth of experience and expertise in many areas, such as policy development and analysis, curriculum development, the training of educators for various settings, and so on. Many of these CSOs have also developed a good understanding of local, regional and national contexts, and have managed to maintain links to grassroots organisations and thus deliver services more effectively.

Representatives from government departments felt that one of their main strengths was the transparency and their accessibility to the general public. An official from the Gauteng Department of Education said:

*People can really approach you and you can go to a public hearing as an individual; and you can say whatever you want to say if you have got an opinion on it.*

Government's extensive networks, both within the various government departments and outside of government gave officials access to a large audience. This gave them the ability to roll out information as quickly as possible.

Entrenching ABET as part of the overall system and ensuring that it is recognised across all government departments was seen as a strength. This had a lot to do with the advocacy within the education department.

A representative from a government department also saw the commitment to strong partnerships with civil society organisations, especially in the policy development area, as an important strength. This representative felt that this partnership would result in having to spend less time on marketing and pursuing people to become involved in the implementation of policies, since they were involved in the policy development process.

When it come to weaknesses, disunity and the absence of a common front within the civil society sector were considered as major weaknesses. A number of respondents felt that the NLC, despite all

its problems, managed to mobilise the sector and provide a united and independent front albeit in a limited way and over a short period of time.

*If you see adult education as a social movement, then you need mobilisation in the field, and the NLC was successful at mobilising. I am not saying that it did wonders, that it was exceptional, but it mobilised people and organisations and you sort of felt you knew that building, the people in that building in downtown Johannesburg.*

The funding crisis that literacy organisations faced in the post-1994 period resulted in competition with each other and with their umbrella body, the NLC. Many organisations were forced to close down. This complete dependency on donor funding was mentioned as another weakness. There was a strong feeling among CSO representatives that a united front would have placed them in a position of strength from which they would have been able to critically engage government and still secure work from it. One representative even went as far as to say that the closure of the NLC affected the sector in a very negative way and perhaps contributed to the de-motivation and lack of unity within the sector.

Some representatives felt that even though CSOs were weak, this was not inherent to the sector but was rather the result of government attempts to weaken it, because of the critical role that they played. Around the time of the transition, government and civil society organisations shared the same ideology, but, because of the type of decisions government took, this was no longer the case. Government has cut the lifeline to CSOs through its agreements with international donor agencies. The failure to mobilise resources was also seen as a weakness by most CSOs. Many organisations closed down and those left have been forced to become commercial service providers. With the bilateral agreements between the state and international donor organisations, the government has become a significant gatekeeper to the funds on which many NGOs depend. The constant search for resources is seen as a major weakness, for which government is seen as directly responsible.

Government representatives were less forthcoming in discussing their weaknesses. The lack of resources to implement policies was quoted as a major weakness. The failure to integrate adult education and skills development was further seen as a weakness. One of the representatives felt that there was a need to improve the relationship between government and CSOs within the sector, in this way implying that this relationship was weak.

## **CSO-GOVERNMENT RELATIONS**

All representatives from CSOs said that their work often involved supplementing and at times contradicting the effort of government departments, but that this was always done in order to improve efforts within this field. In some instances CSOs provided services when government

failed to do so. Some CSO representatives felt that government did not always view their input as being supplementary. Government officials, although agreeing that CSOs complemented their work, felt that in some instances the type of relationship with CSOs depended on the individuals involved.

CSOs felt that they supplemented state efforts by giving critical input into policy development and monitoring various projects. Many representatives felt that their input did not hinder or contradict government in any way. Even within the framework of monitoring government's role, they meant it to be constructive and non-confrontational. In instances where CSOs were critical of government the intention was never to undermine government. In fact some representatives of CSOs felt that government should appreciate and try to view it as constructive criticism.

Some representatives from CSOs felt that despite efforts to be constructively critical, government did not often view their input in this spirit. This created tension between CSOs and government. One representative went as far as saying that a closer relationship between CSOs and various state organs was not possible. He added that although there have been discussions about improving the relationship between these two sectors, there is too little trust on either side for such a relationship to work.

The unequal power relationship between the state and CSOs is another factor that has been affecting the relationship between them. An improved relationship between the state and civil society in this field should maintain and preserve the ethos of critical engagement. The only problem is that government does not like to be criticised, and wants to crush dissent. The only way this relationship can work is if government is able to take the criticism more constructively, just as civil society should offer criticism in this spirit.

Government representatives felt in most instances that an effective partnership existed between their departments and CSOs, recognising a mutual need for collaboration. In general there was a sense among government representatives that CSOs complemented the work of the state. Having said that, some government representatives felt that in terms of delivery there was tension between various government departments and CSOs, due to local conditions.

## **CHANNELS OF COMMUNICATION**

Many CSO representatives said that the existing level of communication depended the specific government department involved. In many instances CSOs found that the relationship with provincial departments tended to be more open. One CSO representative said that there was no relationship between his organisation and the national department. This was primarily because his organisation was seen as being too critical and he suspected that his organisation was not liked very much in the National Department of Education.

Government officials' responses seem to confirm the opinions of CSO representatives. Officials at the provincial level tended to think that communication with CSOs was not problematic and that there was interaction as when required. In some instances structures were set up to facilitate communication between provincial departments and CSOs. However a representative from the National Department of Education felt that there was a need to improve their relationship and communication with various stakeholders, in particular CSOs.

## **POLICY FORMULATION**

CSOs and government departments worked on a number of policy initiatives. Even though having interacted with government on many policy initiatives, many CSO representatives felt that their input did not amount to much. Government officials, on the other hand, felt that interaction with CSOs on policy development was and continues to play an important role within the department.

The enthusiasm with which CSOs participated in policy formation matched the disillusionment with which they now view the process and the outcome. CSOs still speak fondly of the fervour and passion with which they participated in and contributed to the policy formation process. This for them was a way of ensuring that their constituencies were not forgotten and would be taken care of by the new government.

*Everyone sat on all those bloody things, day long workshops and nobody got paid. That was in 1996.*

There were also some representatives who felt that their input was not taken seriously. Some felt that they realised too late that participating in the process of policy formulation was no guarantee that their input would be taken seriously. Some felt that most of the documents they produced were sitting on shelves without ever being used.

However there were some representatives who felt government was genuinely interested in their input, but they qualified that by saying that this was not the case all the time and that it also depended on who was in charge of the process on the side of government. Another representative felt that it was their very critical approach to policy development that alienated government.

Government representatives were much more positive about the input of CSOs in the policy formulation process. Consultation with CSOs has been widespread, they said. This was particularly the case around issues related to curriculum development, setting standards, developing frameworks within which to deliver and implement and more recently developing norms and standards around funding issues. One of the officials said that the role of CSOs was to give input in the form of advice and to share experiences that would help inform the departments policy decisions.

Further, there was a feeling that CSOs and the public at large were included in the formulation of policy. In the case of the public, opportunities were given for comments on and interaction with policies before they were legislated. There was no doubt that the policy development process was consultative and that the response of CSOs to the department's policy initiatives has been good. According to government officials CSOs have always been interested in helping the department.

Officials have also mentioned that a number of conferences were held where stakeholders from all sectors were invited to participate. In fact a number of processes were put in place to determine on what basis different stakeholders would be invited to participate. Some of these included regulations for the establishment of boards and regulations that spell out the various sectors that would need to be involved. These would include unions, youth organisations as well as adult education organisations including those involved in teaching and those involved in training of educators.

## **POLICY IMPLEMENTATION**

Government officials and CSO representatives felt that the implementation of policy was not always ideal. Not surprisingly members of CSOs were more critical about the slow pace at which policies were being implemented. Most representatives from CSOs felt that government was not implementing policy in the field of adult education due to lack of resources and possibly lack of political will.

There were also some representatives that felt that government was not doing enough to make people aware of their rights. This was particularly the case with regard to adult education, exemption of school fees and religious policies. One of the representatives from a CSO had the following to say:

*In actual fact, quite another problem is that people do not even know what the state entitles them to. While on the other hand, the state itself is quite happy for not informing the people of their own rights that they are entitled to, simply because the state knows very well that it will save the limited resources it claims it has at its disposal.*

Another issue raised by CSO representatives was the need for them as a sector to ensure that the state is held accountable for implementation of its own policies and, wherever possible, to assist the state in doing that. This reluctance on the part of the state has resulted in CSOs starting to consider taking legal action, based on government renegeing on its constitutional obligation to provide adult basic education. In fact some CSO representatives claimed to have been approached by government officials to do that in order to convince the state to deliver on its promises. This has further proved to CSOs that litigation may be the type of push that is required to get the state moving.

Some government officials agreed that implementation has been slow. However, in relation to CSOs they claimed that there were mechanisms in place to ensure that CSOs were involved in the process. The mechanism referred to in this instance is the tender process which government has been encouraging CSOs to take part in. Government officials also felt that CSOs should play an important role in highlighting problems in the implementation of policy and should work with government to ensure that this does take place.

## **POSSIBILITIES FOR IMPROVEMENT**

For CSOs a good relationship with government should be based on mutual respect as well as respect for the autonomy of civil society. Government should appreciate the constraint and limitations within which CSOs have to operate, not be defensive about criticism, and try to understand that the criticism is meant to be constructive and a way of enhancing transformation.

CSOs also offered more practical suggestions such as the need for government to redress ABET and adopt a more interventionist approach. Government should provide more resources and implement a long-term approach to ABET.

It was also pointed out that there was a need to strengthen CSOs to enable this sector to yield better results.

*The other thing that needs to be in place from my point of view is the strengthening of civil society organisations. I think some of ABET civil society organisations are currently weak and I think part of the problems around not being listened to relates also to issues of power. It seems the stronger you are the better you're listened to...when one looks at ABET sector broadly there is a need for just more organization, more strengthening, more consolidation.*

There were however, some CSOs that felt that the state would not give the required attention and that this will only happen if there is pressure from the ground up. Some CSO representatives felt that the methods used by organisations such as the Educational Rights Project and the use of its links to the various social movements and global campaigns for education would be some of the obvious routes to go.

*It is not seen as a major priority, it is probably not going to threaten the number of votes they get. They have a whole lot of priorities on which the public is much more vocal, such as health, security and employment. How often do you hear about the illiterate on the news, how often do you hear about the 15 million people who have very little or no schooling? And how many people that can't hold a pen. They are just lumped together as part of the poverty problem and the unemployment problem. ABET is not sexy. These are the very victims of apartheid. And because they are victims of*

*apartheid they are voiceless, disempowered and unorganised. We have been thinking, we are in the process of formulating a strategy whereby we can take the government to the constitutional court for failing to implement a basic human right and to raise the profile of ABET and to get it more central in public debate.*

A number of CSOs are considering litigation to be their only option. There is an argument that the right to education is entrenched in the Constitution and that this right applies to children *and* adults. This right, it is argued, is similar to other socio-economic rights such as the right to housing and so on. In addition there is the notion that the failure to provide adequate adult education impinges on the rights of children who would be dependant on their parents to provide additional support outside of school. Within this context both adult basic education as well as compulsory education for children is important, as one of the CSO representatives pointed out:

*In other words, one could say that outcome based education (OBE) is being undermined by the fact that parents themselves are not literate. We therefore, try to create a proper link to these two education programmes. We are trying to not say choose primary education or rather schooling at the expense of ABET.*

This problem is compounded by the failure in the public education system. CSO representatives also expressed fear that the failure of the public education system would perpetuate the cycle of illiteracy. One of the representatives explain it in the following way:

*When the public education system does not deliver quality, we end up having problems of illiteracy. In that wa, it becomes an important issue. So our aim has been to build a national coalition to challenge the authorities to deliver on their promises... But I do not think they are strong enough at this stage, to take on the state in a way that TAC may have done. Because there are different traditions that must still be welded into it. The issues are not a strong result as the life-and-death issues of HIV/AIDS.*

According to a government representative, the main role of CSOs should be advisory. There is the possibility that government's policies may not always take into account the context within which policies have to be implemented, and CSOs with their strong link to communities would be in a position to advise government. Also by participating in the policy process CSOs' experience and background will enable them to provide valuable input. A good example of how this can work is the revision of the multi year implementation plan. The ability of CSOs to critically engage with the department and especially with the political heads has been instrumental in the decision to revise the multi year implementation plan. One of the official explained the role of CSOs in the following way:

*Stakeholders are critical in terms of their contributions and participation...as independent organisations they still have space to constructively criticise government and engage more with our political masters, with whom they have much more access than us within the bureaucracy.*

Government officials felt that when CSOs and government work together, any dissatisfaction with the process or the outcome should be discussed between the negotiating partners. This process should be allowed to run its course and government officials and CSOs should attempt to exhaust all avenues to come to an acceptable solution to any crisis before involving outside players like perhaps the media.

*“I’m saying that if we are engaging with each other in processes, we allow processes to be completed. When you are not satisfied with those processes you raise those issues with us. However, if we are not in agreement then you go whether to the media or anywhere else. But you do not go to the media whilst we are still negotiating or discussing as that could give an impression that it is obvious that we are not going to reach an agreement and that could just create a problem about relationship in processes and structures.*

## **CONCLUSIONS**

Not all the views of CSOs and government officials working in the sector are represented in this study. However, important issues have been raised and provide valuable insight about the relationship between CSOs and government in the field of adult education.

There was a strong feeling among representatives from both sectors that their goals were in essence the same, but that problems generally arose around implementation issues. CSO representatives have expressed however a sense of disillusionment at the lack of any real movement on the part of government in the field.

According to CSO representatives, their critical input has sometimes been viewed by government as being destructive, thus alienating government from them. Government representatives claimed though that they valued the input of CSOs, which contributed useful experience and background.

Although CSOs have listed a number of strengths, many representatives felt that government policies have weakened their sector. Government on the other hand felt that one of their key strengths has been their relationship with CSOs. Both government and CSO representative generally felt that their efforts supplemented the work of government but that the unequal relationship between the two sectors has played a negative role.

In terms of policy formulation CSOs generally felt that their efforts did not amount to much, whereas government officials claimed the opposite. However both CSO representatives and government officials agreed that the implementation of policy has been problematic.

A number of CSO representatives felt that there was a need to get government to start taking adult education seriously. Many felt that the only way to do that was to look at the possibility of litigation, indicating a more confrontational relationship between CSOs and government.

## CONCLUSIONS AND RECOMMENDATIONS

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This project has examined the relationship between the state and civil society organisations in South Africa, with an emphasis on partnerships between the two parties in the areas of policy formulation, implementation, and service delivery. It aimed to allow us to learn from the experiences of civil society organisations in the three areas chosen for the analysis, to extend the lessons to other organisations, and to identify strategic areas in which partnerships with state structures can be feasible and productive. We have focused on the following areas: monitoring government performance (with a focus on issues of human rights), shaping of social policy (with a focus on issues of income grants), and service delivery (with focus on issues of literacy and adult basic education).

By choosing the areas of human rights, income grants and adult education – to illustrate service delivery, policy formulation and monitoring of policy – we have sought to address various modes of cooperation and opposition, and gain an understanding of the concrete patterns of interaction, partnership and confrontation, the challenges and opportunities that both parties face in establishing relations of cooperation.

A literature review and examination of recent relevant research projects has yielded the following general conclusions, on the basis of which several recommendations can be drawn in order to facilitate successful partnerships between civil society organisations and the state:

1. In principle, all parties concerned are in favour of partnerships between civil society organisations (CSOs) and government. The precise meaning of the term ‘partnership’ is open to different interpretations, however. While state officials tend to use it to call on CSOs to help implement government policies and provide services, CSOs tend to use it to advocate a greater role for themselves in policy formulation and decision-making, rather than merely in providing technical assistance to the state. To make partnerships feasible and successful, a clear definition of the envisaged role of each partner must be established, through negotiations between the parties, rather than through the imposition by one – the state – on the others. The model of partnerships chosen should reflect the specific features, needs and concerns of each field, rather than provide a universal model valid for all circumstances. It should be possible to focus on the determination of policy in one area, on service delivery in another, and so on.

A great deal of resentment was expressed by CSOs in various fields, regarding the assumption made by some state officials that policy formulation must be left to government, thus restricting CSOs to playing a subordinate role in service delivery. This was especially the case in fields –

such as adult education – that historically have been driven by CSOs, which provided much of the original vision and play a major role in the formulation of early policy proposals (through the NEPI and the ANC education policy processes).

Being relegated to the role of providing technical assistance, to make up for lack of capacity by government, is seen by many CSOs as unsatisfactory. Especially in the social welfare and adult education fields (and possibly in other areas involving service provision), CSOs see this division of labour as an opportunistic attempt by government to extricate itself from the mundane but essential tasks of delivery, while retaining control over the policy. This might result in disconnecting policy from realities on the ground, and exposing CSOs to popular anger for the failures of policy in which they played no part.

At the same time, when CSOs play a role (sometimes a major role as in the adult education field) in service delivery, this means they manage to generate funds, enhance their chances to survive and make an impact on the field, make a contribution to shared social goals, and build up their capacity to act as critical voices and make input into further policy processes.

In reaching a balanced assessment of their partnerships with the state, CSOs must realise that the grand policy formulation phase of the early transition years (mid to late 1990s), which was characterised initially by passionate intensity and lofty visions, has passed and is unlikely to be resurrected in the same form. This is not to say that policy cannot or should not change and address new concerns, as well as old concerns in new ways. The focus today in most areas, however, is indeed on delivery, and that is what communities largely expect. Nostalgically invoking the days of ‘the struggle’, and the transition days that seemed to offer unlimited prospects for re-shaping South African society, may be fun, but not very practical. It cannot be a basis on which government and international agencies form partnerships with CSOs.

We can differentiate this overall conclusion, though, by the field of concern. With human rights for example, there are fundamental policy differences between CSOs and elements within the state (particularly the Home Affairs and Safety and Security departments). CSOs can strive to form partnerships with other elements within the state (such as service delivery departments with more positive attitude towards the needs of refugees and asylum seekers), and with the Constitutional Court and the SA Human Rights Commission. Policy is still a site of struggle and CSOs can play a role in its further formulation. That this role may be seen as adversarial should not hinder them from exercising their influence and putting pressure on the state to live up to its constitutional and international obligations.

In a similar manner, but in a less adversarial vein, partnership in the field of social grants can include further attempts on the part of CSOs, together with elements within the Department of

Social Development and outside of government (such as the unions), to push for a more expansive definition of social entitlements policy, with a focus on the Basic Income Grants. In the adult education field, the need seems to be less for policy (as a set of visions and goals) and more for giving concrete shape to such goals in the form of programmes, budgetary allocations, personnel commitment, and so on. In all these fields partnerships may acquire somewhat different shape depending on the nature of alignment within and outside the state, and the tasks facing public policy interventions. This presents CSOs both with opportunities (they do not stand alone facing a monolithic state, and may can form alliances with some elements within it against others) and challenges (how to approach state officials and structures in a differentiated manner that would take advantage of their internal differences rather than allow them to consolidate a united front against ‘threats’ to their power from civil society).

2. NGOs and CBOs enjoy comparative advantage in service delivery due to their more consultative approach, a focus on community empowerment, and ability to respond more directly and immediately than government to community needs. This should be seen as more than a technical advantage. While the overall formal policy guidelines in most areas are not likely to change much, as government feels it has just won in April 2004 a popular mandate for its approach, there is a big room for constantly refining the precise policy goals, adjusting modes of delivery to local circumstances, increasing the quality and quantity of popular participation, and introducing a more customised touch that would allow local needs and concerns to drive policy forward.

This notion of advantage applies particularly to organisations working directly with indigent and marginalized communities on issues of, self-organisation, skill development, training, women’s empowerment, and so on. It is less applicable to organisations that focus on delivery of grants and formal services or lobbying and advocacy. In this sense, it is easier to talk of the advantages of CSOs in the adult education and social development fields, in which they work for similar but not identical goals to the state, than about those in the human rights field who frequently seek different goals from those of state structures and officials. We may regard this advantage as an opportunity that must be built on and used to enhance delivery and to convince donor and development agencies that it worth their while to invest in the work of these organisations. The challenge is to retain this advantage and not to let the consultative and participatory approach hamper delivery. We may agree that it is better to have slower but deeper delivery, if it gives communities the time and space to make a meaningful input into the delivery process (its aims, priorities, pace). Still, the criticism voiced at times by government officials, which argues that focusing too much on consultation slows down the pace of delivery, must be addressed.

3. Civil society organisations suffer from relative lack of capacity, and they cannot guarantee continued and sustained interventions. This is related to limited financial and human resources;

high staff turnover; lack of long-term security, which prevents long-term planning; dependence on the whims of state and donor agencies, who may shift their policy and funding priorities thus putting pressure on CSOs to re-adjust their focus and approach; and limited pool of skill, partly as a result of loss of many experienced personnel to the private and state sectors after 1994, and partly as a result of the demand for more professional services, which increased the level of skill required for successful performance.

Another difficulty is related to the impression that the accountability of CSOs – particularly NGOs – to communities is not always assured, and that the mandate they carry is not clear. Unlike government, they do not have the political power that comes from electoral support; unlike donor agencies they do not have the financial power that comes from control over resources; unlike communities and community-based organisations they do not have the moral power that comes from representing people on the ground directly. Although frequently they serve as a crucial nodal point between all three forces above, and are essential to partnerships between them, in a sense they have the least ability to stand on their own.

The dependence of CSOs on external financial support may thus compromise their ability to pursue developmental policies according to their values and preferred mode of operation. Without such ability their contribution will be diminished. Keeping this in mind, we need to deal with issues of funding directly. Donor agencies can play a role in developing a more transparent formula for allocating funds to fields and sectors, and making it clear what can be expected from the state in this regard. It is crucial that both state and civil society organisations regard funding not as a god-given right, but as an allocation in exchange for specific tasks and services with precise aims. A tripartite forum bringing together donor agencies, state structures and CSOs would be able to deal with these issues on a case-by-case basis and develop agreed upon criteria for allocation of budgets and monitoring of expenditure.

4. The strengths and weaknesses of CSOs, combined with those of the state, make them ideal partners. The state can guarantee institutional and financial continuity as well administrative and implementing capacity through its own or outsourced personnel. It operates through formal and user-unfriendly procedures that are not conducive to effective delivery. CSOs can contribute more ‘friendly’ capacity that is in tune with local needs and adjusted to specific conditions. To reach optimal relations of partnership, they need to talk more frequently. The call for regular, formal and informal, channels of communications comes across strongly from all involved.
5. The best way forward would be to combine the immediate and more egalitarian relationship that CSOs can establish with communities, with the more structured and organised approach that can be provided by government. In order to do that, service delivery and development objectives

should be planned, implemented and monitored in collaboration between partners, as well as with affected communities (through CBOs, local government and direct representatives).

6. While the political accountability for delivery remains with government (at various spheres), the social accountability must be shared with CSOs and donor agencies. This is a burden as well as a source of strength that must be used to benefit the target communities.
7. Finally, all the focus on partnership should not let us forget that there are real differences in values and goals between sectors, and that there is a need for a vigorous, independent and critical voice by civil society organisations. In areas such as human rights and protecting refugees from abuse by officials (Home Affairs, and Safety and Security) the focus should be on providing a critical input on government performance, and not mechanically on forming partnerships with it. There is a danger that in the quest for partnerships the position of civil society organisations as a critical conscience – possibly working together with dissident elements from within the state – would be lost. We must ensure this does not happen.

Specifically, the three fields investigated here demonstrate various modes of actual and potential partnerships, which present different opportunities and challenges to civil society organisations.

- The largely adversarial relations in the field of human rights and refugee affairs stem from the official policy focus on surveillance and prevention. This has led organisations that put human rights at the centre of their policy and advocacy efforts naturally to adopt an oppositional stance. The *opportunities* here consist in working together with other non-governmental agencies (SA Human Rights Commission, the Constitutional Court, UNHCR), which share some of the concerns expressed by CSOs. The *challenges* consists in shifting the culture of hostility towards migrants, refugees and asylum seekers among state officials and, possibly, finding some dissident allies within state structures.
- The relations between the state and CSOs in the field of social grants have been characterised by policy differences but also some shared goals. The *opportunities* here involve the possibility of building on the existing allies within the state (many officials in the Social Development department are sympathetic to the needs of indigent and marginalized families and communities) and outside its boundaries (unions, churches, donor agencies). The main *challenge* consists in forming a united front – politically as well as intellectually – that would put forward a conception of social progress that may include the provision of grants to those who depend on them for sheer survival, but would look at them in a wider context of redressing social injustices.
- The adult education field is the easiest of all three, because it has not seen major policy disputes. Concerns here are mostly about implementation and technical hurdles, which do not reflect fundamental disagreements between state and civil society organisations. Both must

built on the *opportunity* of shared policy foundations, and the *challenge* is not to let their different institutional locations and petty rivalries get in the way of fruitful partnership between them, as has frequently happened in the past.

What can be done then in concrete terms? In order to move beyond principles, embark on a course of action that would improve the relationship between civil society organisations and the state, and enhance the prospects of partnerships between them, the following need to be considered:

- There is a need to create a space for **regular exchange of information and views**, and for consultations regarding policy and implementation, between representatives of civil society and the state. An overall forum would have too many issues to deal with, and thus become an impractical way of moving the discussion forward. **A series of sector-specific forums** would work better, and may be organised by theme rather than by department. For example, a forum for dealing with refugees may include representatives of state and civil society organisations, as well as local and international donor agencies, working in the areas of human rights, justice and security. A forum on social development would include representatives working in the areas of welfare, public works, children rights, and so on. Where feasible (in cases such as adult education, where delivery is the responsibility of the provinces), **provincial forums** may be considered as well.
- For such forums to become meaningful they must have **real powers** and not be mere talking shops. This means government in particular must have the political will to subject its exercise of power to critical scrutiny by its potential partners, to accept input and abide by the results of consultations. Civil society organisations may facilitate the adoption of this course of action by government by highlighting the benefits of partnerships for all parties involved. Donor and international development agencies may play a role by **insisting on a meaningful participatory and consultative process** as a precondition for project approval, and for support of a moral or financial nature.
- This would not happen without someone taking the initiative, preferably from outside of the state-civil society nexus, to ensure that the initiative is not seen as an attempt by one party to gain power at the expense of the other. International development agencies, representing governmental and non-governmental constituencies, are best positioned to facilitate such an initiative. It could be led by USAID, UNDP, SIDA, Ford Foundation and Mott Foundation, all of whom have shown interest in promoting good governance, building civil society and encouraging partnerships with state structures. A call issued by alliance of this nature would have great impact. It could include a broad **programmatic statement** regarding the importance of partnerships, and an invitation to a **national workshop** in which various civil society and state officials would be present, and in which the values, goals, and modalities of possible partnerships would be discussed. The precise language used in the statement and the logistics of the initiative would be **canvassed** beforehand with various activists and state officials to ensure wide acceptability of the idea and initiative.

- These agencies may wish to extend this initiative by organising **a series of sector and province-specific workshops**. Of course, the logistics of this would be complicated and the costs much higher. However, once the national workshop is underway, various state and civil society organisations are likely to join the initiative and take on some of the organising tasks and costs. While the involvement of international agencies is crucial in order to set the process in motion, they may be able to take a backseat if it is successful, and is carried forward by local actors.
- To strengthen the process, a series of **specific research reports** must be commissioned to gain further evidence of the circumstances and implications of partnerships, to highlight successful and unsuccessful cases, identify their unique features as well as the extent to which their example is applicable elsewhere, learn the lessons and point to areas in need of further investigation and attention.

## ENDNOTES

- <sup>1</sup> The terms civil society organisations, NGOs/CBOs, and non-profit organisations (NPOs) are frequently used interchangeably in this report.
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- <sup>3</sup> *The Size and Scope of the Non-Profit Sector in South Africa*, School for Public and Development Management, University of the Witwatersrand, 2002.
- <sup>4</sup> *Two Commas and a Full Stop*, Cooperative on Research and Education (CORE), 2001. The study relied primarily on workshops at which participants from NGOs and CBOs reflected on their own experience as civil society activists.
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- <sup>7</sup> This section draws on *The Size and Scope of the Non-Profit Sector in South Africa*. Figures are based on projections from a sample, and are valid for 1999, and therefore should be regarded as being estimates only rather than definitive.
- <sup>8</sup> Of course, not all NGOs are Section 21 companies and not all Section 21 companies are NGOs, but for our purposes here we can safely regard the two categories as covering essentially the same ground.
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- <sup>18</sup> <http://www.queensu.ca/samp/Introduction.html>
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- <sup>26</sup> The Department of Home Affairs (1997), *Draft Green Paper on International Migration*, p. 11
- <sup>27</sup> Human Rights Watch (1998), *South Africa Report 1998*
- <sup>28</sup> The Department of Home Affairs (1997), *Draft Green Paper on International Migration*, pp 17-18
- <sup>29</sup> Rutinwa, B. (2002), *Temporary Protection and its Expressions Under the 'Reformulation of Refugee Law' Model*
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- <sup>31</sup> *Mail and Guardian* 27 December 1997
- <sup>32</sup> Van Garderen, J. and Jaichand, V. (2001) “Preface” in *Perspectives on Refugee Protection in South Africa*
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- <sup>42</sup> *Comments on the White Paper on International Migration*, (1999) LHR.

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- <sup>45</sup> Eisenberg and Associates vs the Minister of Home Affairs, the President of the Republic of South Africa, the Speaker of the National Assembly, the Chairperson of the National Council of Provinces and the Deputy President of the Republic of South Africa, Case Number 1301/03
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