CONFRONTATIONAL, COMPLEMENTARY, CO-OPERATIVE OR CO-OPTED?

SOCIAL JUSTICE ORGANISATIONS WORKING WITH THE STATE

PARI Public Affairs Research Institute

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Acknowledgements

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Introduction

Commissioned by the RAITH foundation, the Public Affairs Research Institute (PARI) conducted a study on the working relations between SJOs and state bodies with a view to determining the conditions under which they have been successful in pursuing and deepening social justice and democratic outcomes. Success is defined in a relational manner which considers not only whether outcomes are achieved but also the extent to which processes and social relations between SJOs and the state are improved. The findings and analysis presented in the full report are based on 12 qualitative case studies of particular programmes run by SJOs, which have in some way engaged or worked with the state. The purpose of this executive summary booklet is to summarise the main findings of the full report and to encourage people to engage with the report. The full report is available on the PARI website.

In order to understand the relationship between the state and SJOs it is important to understand the nature of the contemporary state. This executive summary booklet draws out some of the significant trends which are essential to understanding the contemporary South African state, such as decentralisation, outsourcing, and the fusion of the party-state. These all have implications for the strength of democratic institutions and their ability to work with civil society and to pursue and achieve social justice outcomes.

Thinking about the relationship between SJOs and the state is particularly critical in the current context, as this report shows. There is strong evidence to suggest that the independence and autonomy of civil society is being compromised and that SJOs are often not regarded as credible and legitimate partners with government in striving for social justice. It is argued that in such a context there is a need to defend the role of civil society more generally, in a democratic state.

The report develops the 4-C model, through which to analyse SJO-government relations. According to the model, an influential factor in determining the kinds of relations between SJOs and various arms of the state is the extent to which their institutional means and ends align.

The report develops a conceptual lens, known as the 4-C model, through which to analyse SJO-government relations. According to the model, an influential factor in determining the kinds of relations between SJOs and various arms of the state is the extent to which their institutional means and ends align. Based on this, the model broadly characterises relations between SJOs and the state in four ways: cooperative, complementary, co-option, and confrontation. It was found that all of these had the potential to deepen a social justice agenda. The report presents a menu of relationships and through this provides insight to the kinds of relations that may strengthen social justice outcomes. In general terms, the report finds that if a social justice organisation aims to relate to the state in ways that support the state in delivering a largely state-determined social justice agenda then cooperative, complementary, or relations of co-option are most likely to strengthen social justice claims and outcomes. If an SJO wishes to pose a wider challenge or to question the state's social justice agenda it is likely, and may be necessary, that confrontational relations are required.

The report does not attempt to provide a formula through which successful engagements between SJOs and the state can be forged. Nor does it prioritise one kind of relationship over another. It argues instead that all of these relations are necessary to pursue a social justice agenda with and against the state. What the report provides is a means to think about and question the forms of relations that SJOs may and can have with the South African state. It is hoped that the findings presented here and contained within the main report will offer insight and stimulate debate.

The 4 C's of Government-SJO relations

THERE ARE A VARIETY OF APPROACHES TO ANALYSING CIVIL SOCIETY-STATE ENGAGEMENTS AND A REVIEW CAN BE FOUND WITHIN THE FULL REPORT.

The framework used depends upon the question the research is attempting to answer. For the purposes of this report we engaged with a conceptual framework which sought to establish a correlation between the measures of success (outcomes, processes, and social relations) and different modes of engagement between SJOs and state bodies.

The report develops the 4-C model of SJO-state relations, first conceptualised by Adil Najam, which considers the degree of congruence or divergence between institutional means and ends as fundamentally shaping the likelihood of success or failure. The full report critiques and develops the model first presented by Najam. The model we use is presented in Figure 1 and each of the 4-Cs defined in table 1.

Using this model the report traces how these relationships (co-optation, cooperation,

FIGURE 01: 4-C MODEL OF SJO-STATE RELATIONS
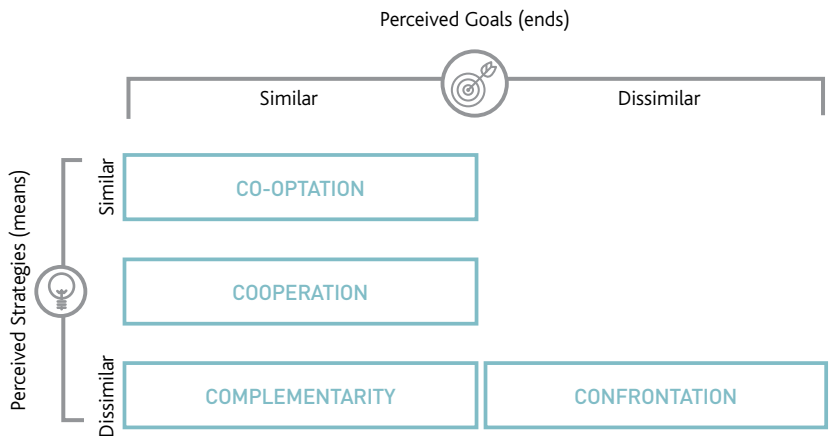
TABLE 01: 4-CS DEFINITIONS

Relationship	Description
Co-optation	Where both actors share similar goals and strategies
Cooperation	Where there is mostly agreement between goals and strategies
Complementary	Where there is some agreement between both actors on goals and strategies
Confrontation	Where there is little or no agreement between actors on goals

complementarity, and confrontation) differ and change through time, identifying key moments or turning points that prove to be influential in changing the nature of the relationship and exploring which ones are more conducive to advancing a social justice agenda. The report does not offer a magic formula but a framework for thinking about the forms of relations that SJOs may and can have with the South African state and what this may mean for a social justice agenda. But this framework needs to be situated within an analysis of the contemporary South African state.

The state of the State 2016

THE STATE IS NOT AN ABSTRACT ENTITY AND IN ORDER TO ANALYSE WHAT MAKES FOR SUCCESSFUL AND UNSUCCESSFUL WORKING RELATIONS BETWEEN SJOS AND THE STATE IT IS VITAL THAT THE ANALYSIS IS PLACED WITHIN ITS INSTITUTIONAL AND POLITICAL CONTEXT.

T he report offers an analysis of the uneven nature of the South African state and some of the attendant features such as decentralisation, outsourcing, capacity issues, and the fusion of the state and party.

Key features of the South African state

Decentralisation

One of the major features of the post-apartheid state has been the formation of an intergovernmental system and the concept of cooperative governance of the spheres of national, provincial, and local government. Under this system, subnational administration and decision-making is significantly decentralised to provincial and local government, but subject to national government's policy and fiscal mandates and oversight. Inheriting the legacy of apartheid's spatial and racial inequalities and differentiated, fragmented administrations, the net effect of decentralisation has been to create a variegated state. Departments and administrations at various levels operate under contrasting constraints, seemingly in isolation from one another and each with its own political economy. This has created a state which is highly uneven in its performance. This unevenness creates particular challenges for civil society engagement.

R 1.5tr

It is estimated that in the next three years, across all spheres of government, procurement of goods, services, and works in South Africa will amount to R 1.5 trillion (National Treasury 2016).

Outsourcing

A critical feature of the post-apartheid state has been the increase in the contracting-out of government services to third-party providers. When critical components of state functions are outsourced, such as the payment of social grants, it fundamentally alters the nature of that service provision, citizens are no longer right-bearing individuals but clients to be serviced. This has significant implications for a social justice agenda. **It is estimated that in the next three years, across all spheres of government, procurement of goods, services, and works in South Africa will amount to R 1.5 trillion**

(National Treasury 2016). The procurement of goods, services, and works by the state has three significant impacts on government and governance in South Africa. One, service delivery is decreasingly directly performed and managed by government and increasingly undertaken by private companies. Two, this has increasingly changed the role of public servants from administrators to managers of contracts and thus reduces their technical skills. Three, procurement is highly decentralised and fragmented making it more difficult to coordinate and monitor procurement activities across departments. Furthermore, the multiple, decentralised sites of procurement of goods and services are susceptible to mismanagement and exploitation for personal or political ends.

Fusion of the party-state

The fusion of the party-state and the way in which the internal politics of the governing party are imposed onto government has significant implications for the strength and sustainability of democratic institutions. Recent national-level examples of this include the contestations within National Treasury and the South African Revenue Service (SARS). At local level, the impact of party politics on government is particularly acute, with frequent reshuffles and new appointments that often destabilise the functioning of departments. This is particularly so where political deployments have questionable or inappropriate credentials for their portfolios and is often compounded by structural capacity constraints which can compromise the services provided by government.

R25b

The recent budget aims to cut R25 billion in expenditure.

At the same time, however, some provincial departments are returning significant amounts of their budget unspent. At the end of the 2015/16 financial year, Gauteng returned 18% about R908 million of its Human Settlements Grant (Flanagan 2016).

Austerity

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

The legitimacy of civil society under threat

THE NATIONAL DEVELOPMENT PLAN MAKES A NUMBER OF REFERENCES TO THE IMPORTANCE OF CIVIL SOCIETY AND SJOS FOR FORGING A DEVELOPMENTAL/DEMOCRATIC STATE.

The environment for civil society in South Africa is generally regarded as 'enabling' however and our analysis draws attention to a number of concerning trends, including restrictions on freedom of assembly and public attacks on civil society actors.

Campaigners from Right2Know have consistently drawn attention to the way in which the right to protest is frequently undermined. Furthermore, the policing of protest has come under scrutiny, particularly after the death of Andries Tatane and in the wake of the Marikana massacre. In addition, the Right2Know campaign has highlighted the increasing use of surveillance on community activists and most recently, an apartheid-era style raid on the Helen Suzman Foundation, all of which contribute to an environment which is increasingly hostile to civil society, its autonomy, and independence.

Furthermore, the ANC in particular, has seemingly become increasingly hostile to actors that openly confront or oppose the ruling party's mandates, policies, or practices. Most recently the Minister of State Security claimed 'some NGOs have made it their pre-occupation to destabilise the government'. However, it should be noted that this is not a trend confined to the ANC. In 2015, the Mayor of the DA-run City of Cape Town, Patricia de Lille, openly attacked two influential civil society organisations, the Social Justice Coalition and Ndifuna Ukwazi – labelling their research as 'lies' and suggesting that they are driven by a foreign-donor agenda (February 2015).

These trends are obviously of deep concern and considerably impact the day-to-day relations between various arms of the state and SJOs. One of the key findings of the report was the differing ways in which the state views civil society, particularly the experiences SJOs have in being seen as 'legitimate' actors by the state. The findings were varied and the full report provides further discussion. In summary, our analysis highlighted that different government departments and the differing spheres of government: national, provincial, and local, have different attitudes and experiences in working with CSOs. However, whether or not SJOs are considered legitimate, useful, and their input or support willingly accepted would set the hard limits to the kinds of relations that can be forged with the state to deepen social justice outcomes. In general, the report found that when SJOs take on 'useful' or 'gap-filling' roles for government they are more readily accepted than when there is an attempt to question or shift the broader social justice and democratic agenda which was often delegitimised as being 'political'.

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

(GOVERNMENT RESPONDENT 12).

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We have the same goals, the same objective. We all have the same interests in ensuring that we eradicate fraud and corruption in the housing sector... We have to collaborate.

(GOVERNMENT RESPONDENT 6).

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

(GOVERNMENT RESPONDENT 11).

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4 Cs of Social Justice Organisation-Government Relations

ALL OF THE SJOS ANALYSED FOR THIS REPORT HAD MULTIPLE AND COMPLEX RELATIONS WITH THE STATE WHICH HAVE CHANGED OVER TIME.

T he full report provides an examination of the different and changing relationships each of the organisations have had with the state over time. The following provides a summary of four of the case studies that highlight some of the salient features of each of the relationships analysed for this report. We urge people to consult the full report for a more detailed analysis of each of the case studies.

4 Cs CASE STUDIES

Cooperation	Complementary	Co-optation	Confrontation
BLACK SASH	CHILDREN'S INSTITUTE	NICRO	EQUAL EDUCATION
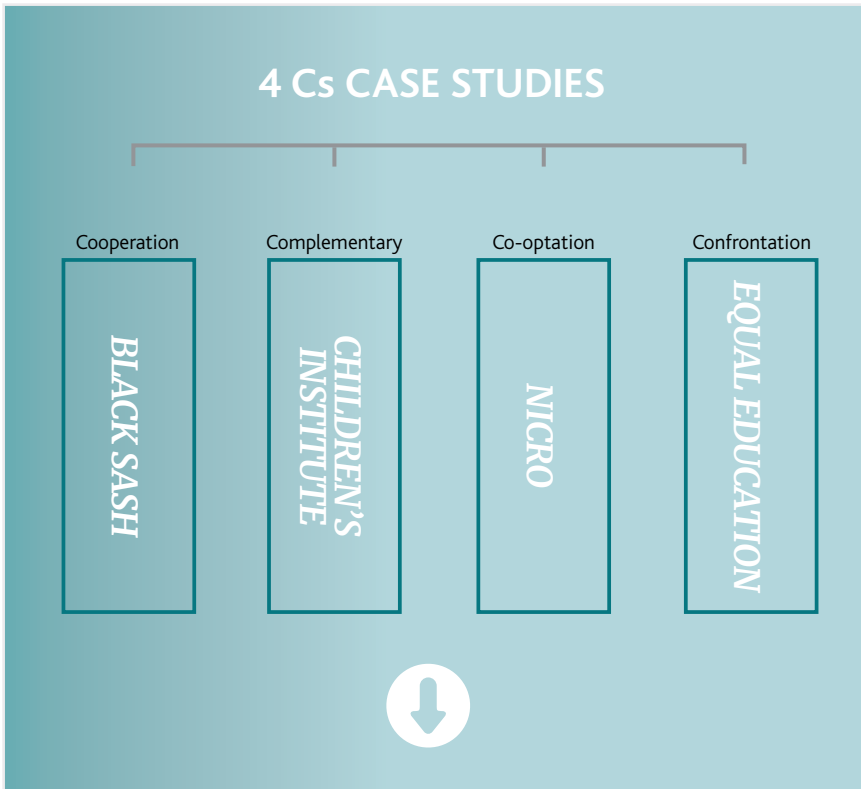
The full report provides an examination of the different and changing relationships each of the organisations have had with the state over time. The table below provides a summary of the main relationship and key lesson drawn from each of the case studies. The following provides a summary of four of the case studies that highlight some of the salient features of each of the relationships analysed for this report. We urge people to consult the full report for a more detailed analysis of each of the case studies.

ORGANISATION	PROGRAMME	PRIMARY RELATION TO THE STATE	KEY LESSONS
Afesis-corplan	Local government ward key performance indicators	Complementary	The difficulties of operating in the politically contested environment of local government.
Black Sash	Hands off our grants campaign	Cooperative	The importance of research for advocacy and creating long-term relations with the state.
Centre for Environmental Rights	Mining	Confrontational	How relations differ with different spheres of the state.
The Children's Institute	Extended child grant	Complementary	The possibilities and constraints of complementary relations for social justice.
CHoiCE Trust	HIV-AIDs testing and education	Co-optation	That co-optive relations do not necessarily lead to the loss of independence by a SJO and can lead to improved social justice outcomes.
Corruption Watch	Corruption in public housing	Complementary	When the state and an SJO share similar means and end to achieving a social justice outcome they are more likely to recognise each other as partners.

ORGANISATION	PROGRAMME	PRIMARY RELATION TO THE STATE	KEY LESSONS
Equal Education	Norms and standards in school infrastructure	Confrontational	The role of individuals in hampering social justice and the importance of litigation.
Legal Resources Centre	Land reform and restitution	Confrontational	How lack of political will hampers social justice.
National Institute for Crime Prevention and the Reintegration of Offenders	Social crime prevention programme	Co-optation	Reliance on state funding can constrain the autonomy of SJOs.
Social Economic Rights Institute	Right to housing, evictions and alternative accommodation jurisprudence	Complimentary	A history of conformational relations with the state does not necessarily foreclose other forms of working relationships.
Social Justice Coalition	Janitorial social audit	Confrontational	Research is crucial for both advocacy and mobilisation in pursuit of social justice.
Treatment Action Campaign	Stop the Free State health crisis	Confrontational	In a highly politicised environment with lack of engagement from Provincial Government, confrontational relations realistically become the only way to engage the state for improved social justice outcomes.

Cooperation

A cooperative relationship is one in which there is a high level of agreement between the goals and the strategies used to pursue those goals, between the state and an SJO. A cooperative relationship also implies some degree of equality in the power relations between the state and SJOs. Cooperative relations were found to be contingent on a number of factors. One, the SJO has to be seen as legitimate actor. Often this relied upon relations forged from pre-existing networks. Two, when successful this tended to be the result of high-level support from government. Equally such relations could be frustrated by other arms of the state or lower levels of the same department. Lack of political will could also undermine a cooperative relationship. The case of the Black Sash's 'Hands off our Grants' campaign provides one example of a cooperative relationship with government.

Black Sash – 'Hands off our grants'

2011   2012   2013   2014   Present

ATTEMPTS AT COOPERATION — START OF RELATION

START OF COOPERATION — TURNING POINT

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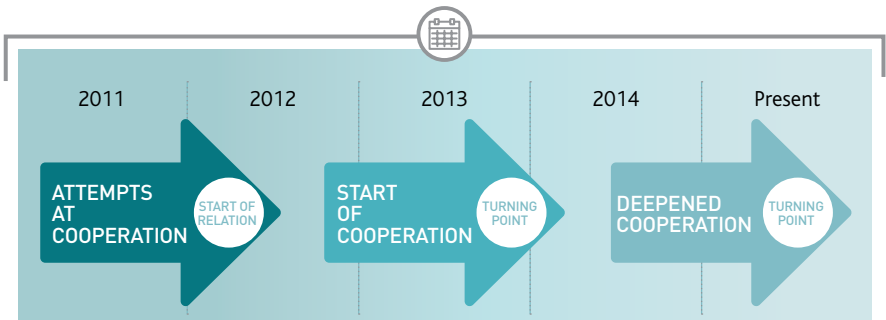
it brings the reality home a lot faster. In government we look from the top at the numbers... 16 million grant recipients, 500,000 affected, 100,000 severely affected... the ratios and the numbers look small but suddenly you have 5 living, real case studies in front of you and that abuse clearly becomes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

JUL 2011 – APR 2012

PERIOD OF ATTEMPTING TO ELICIT COOPERATIVE ENGAGEMENT FROM THE STATE

The Black Sash begins to uncover evidence of irregular, unauthorised, and undocumented third party debit deductions from the bank accounts of social grants beneficiaries. The Black Sash's history and standing as an SJO allows it to start a process of engagement with government.

APR 2012 – FEB 2014

BUILDING COOPERATIVE RELATIONS WITHIN CIVIL SOCIETY, GATHERING EVIDENCE, AND ENGAGING THE STATE

The official 'Stop SASSA-CPS Debits Campaign' is launched in October 2013 in partnership with other SJOs. During this same period the Black Sash begins collecting evidence on the impact of deductions on grant recipients and continues to engage with government.

JAN 2014 – ONWARDS

COOPERATIVE WORKING RELATIONS ESTABLISHED

In February 2014 where the Black Sash and other SJOs make a presentation to the Minister of Social Development outlining the impact of deductions on grant recipients. This leads to the establishment of a Ministerial Task Team (MTT), including government and civil society. The recommendations in the final report are accepted by the Minister. Furthermore, the ongoing work of the MTT has led to the Black Sash continuing to play an important role in defending the rights of grant recipients.

LESSONS FOR SOCIAL JUSTICE

- This campaign is an example of a particularly successful cooperative relationship but it took 2 ½ years of engagement before substantive progress was made through the establishment of the Ministerial Task Team.

- The evidenced gathered by the Black Sash strengthened their case.

- External events, like the Constitutional Court case that ruled the tender process invalid, strengthen the Black Sash's position.

- Through a memorandum of understanding the Black Sash was able to work closely with government but retain its independence.

Complementary

A complementary relationship is one in which there is some degree of agreement between government and an SJO on the goals and strategies needed for a social justice outcome. Like cooperative relations, they were found to be most often successful when based on pre-existing networks and when they received high-level support from government. Equally, such relations could be frustrated by a lack of political will. From our research it was found that complementary relations were likely to exist when there was support from government at lower levels but resistance at the top. Although characterised by some degree of agreement between an SJO and government, a complementary relationship suggests that the SJO wants to change a perspective, mind-set, or process on a particular issue. This is likely to meet with some resistance. The Children's Institute's campaign for an extended child grant is an example of this.

Children's Institute – Campaign for an extended child grant

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

COMPLEMENTARY RELATIONS AROUND RESEARCH BUT LIMITED IMPACT — START OF RELATION

FURTHER COMPLEMENTARY ENGAGEMENT — TURNING POINT
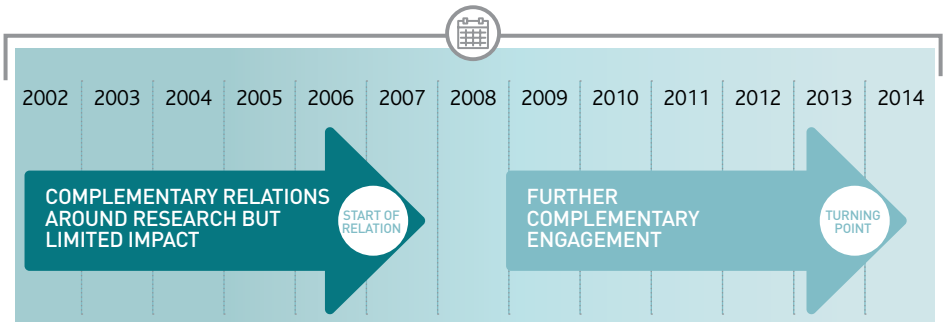
2002 – 2011

COMPLEMENTARY RELATIONS AROUND RESEARCH BUT LIMITED IMPACT

For many years, a range of SJOs highlighted the inability of the foster care grant system to adequately address the needs of orphans who are cared for by relatives. The establishment and entry of the Children's Institute into this campaign is crucial as it begins to compile research into the problem. This research included accessing the Social Pensions System (SOCPEN) – the government's system for grant administration. This provided a comprehensive evidence base for the campaign that did not previously exist.

2011 – 2013

HIGH COURT RULING AND FURTHER COMPLEMENTARY ENGAGEMENT

After years of engagement around the issue, the Centre for Child Law embarks on litigation against the Department of Social Development (DSD). The North Gauteng Court orders the DSD to design a comprehensive legal solution to the foster care crisis. As a result of this ruling, the Children's Institute and the Community Agency for Social Enquiry (CASE) are commissioned to produce a report recommending reform. The years spent by the Children's Institute researching the issue means that they are in an ideal position to carry out this work following the court order.

2012 – 2015

A SLOW AND PARTIAL VICTORY

Following the report, the DSD announces their intention to introduce a kinship grant. This may appear to be a victory but the process continues to move slowly. The Children's Institute and others step up a public campaign to build pressure. Finally, in November 2015 the 'extended' child social grant is approved by cabinet but in a form that is 'significantly watered down' from the drafts contained in the 2013 document.

LESSONS FOR SOCIAL JUSTICE

- While the Children's Institute has been able to work with various arms of government in a constructive way over a period of many years, it has had little influence on key decision-makers.

- Only when litigation was undertaken by the Centre for Child Law did genuine engagement to implement a solution begin.

- While the campaign has successfully seen the extended child grant being approved by cabinet, it falls short of what the Children's Institute and others have campaigned for.

Co-optation

On the surface it may appear that a co-opted relationship with the state would be antithetical to the pursuit of social justice. However, another way to look at it is to understand a co-opted relationship as an attempt to influence government from the inside. A co-opted relationship with the state suggests that both parties agree on strategies in pursuit of the same goal. Therefore, in comparison to other relations discussed in this report SJOs who engage in these kinds of relations view the state's conception of social justice as broadly correct and their role as supporting the state to achieve it. Arguably such relations focus less on influencing the outcomes of social justice and more on the processes and social relations with the state required to achieve it. A co-opted relation is a less common form of relationship between SJOs and the state. More commonly, these kinds of relations are witnessed and documented within organisations that take on some kind of service provision for government. The report examines two cases of co-optation. In one case, co-optation was willingly chosen while in the other the external factors forced the organisation into such a relationship. A summary of one of the case studies is provided here.

National Institute for Crime Prevention and the Reintegration of Offenders (NICRO): Social Crime Prevention

1980s	1990s	2007	2011	Present
CONFRONTATION & COMPLEMENTARY RELATIONS	TURNING POINT	COOPERATION	TURNING POINT	CO-OPTATION	TURNING POINT
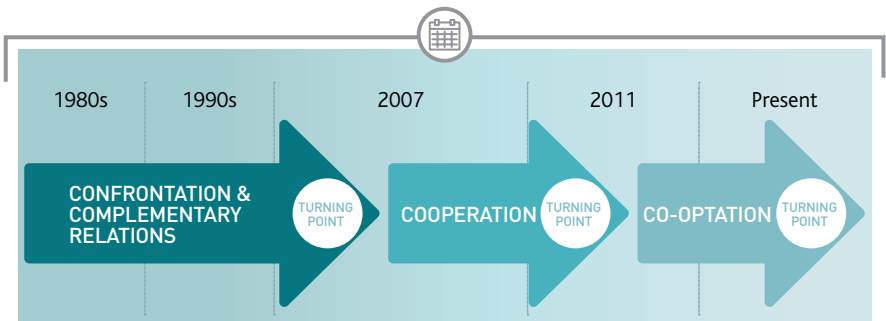
1980s – 1990s

CHANGING SOUTH AFRICA'S CRIMINAL JUSTICE SYSTEM

NICRO spearheads non-custodial sentencing in South Africa in the 1980s by pioneering community service orders in Cape Town. This provides offenders with an alternative to imprisonment through community service. Non-custodial sentencing becomes a cornerstone of NICRO's work. Over the course of the 1990s the organisation researches, develops, and implements policies and programmes for diversion across South Africa. In the early 1990s and 2000s, NICRO works closely with the Department of Justice in developing diversion programmes – prior to their being legislated.

2000 – 2007

DRIVING SOCIAL CRIME PREVENTION AMID DWINDLING FOREIGN FUNDING

Through its research and programme development, NICRO continues to push for systematic reform to criminal justice. It also provides crucial social crime prevention services across the country. However, the 2000s see a notable reduction in foreign funding, with funding for criminal justice reform funnelled to the state. Increasingly, NICRO begins to rely more on state funds.

2007 – 2011

A CHANGE IN LEGISLATION AND POLICY, THE STATE TAKES OVER

Social Crime Prevention becomes part of government policy with NICRO playing a significant role in informing policy and its programmes.

2012 TO PRESENT

2012 TO PRESENT: CO-OPTED POLICIES, FUNDING CHALLENGES AND A LACK OF AUTONOMY

While many of the policies and programmes designed by NICRO have been implemented by government, they are often not implemented effectively, which has a detrimental impact on offenders. However, NICRO has become reliant on government funding and this has constrained its ability to be critical and innovative 'they fund us in a way that ties our hands'. Wielding limited power in engaging with government, increasingly a service provider, and financially dependent on government - NICRO worries about the impact that this is having on successful social crime prevention.

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

The problem is also acknowledged by government.

For me, it's not a real...let me carefully choose my words...it's not a real equal partnership. I would say because of funding. Because the NGO is so dependent on government, so they would, sort of... do as government asks them...Isn't it? (Respondent from Provincial Department of Social Development)
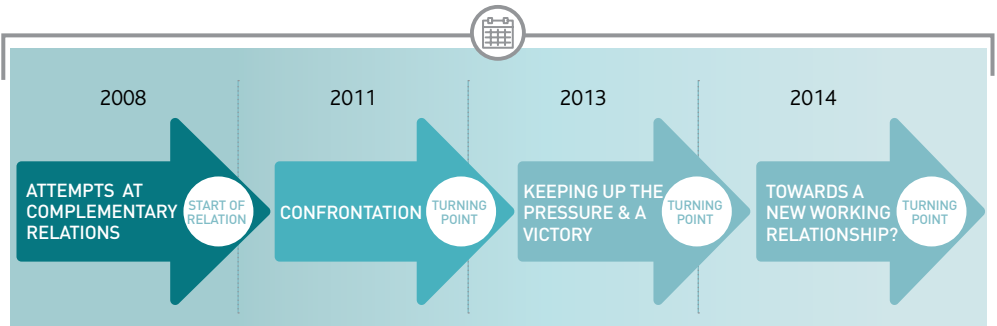
LESSONS FOR SOCIAL JUSTICE

- NICRO's programmes have become mainstreamed, furthering important reforms to the criminal justice system.

- This was achieved through a close working relationship with government.

- When an organisation becomes dependent on state funding there are real risks for the independence and autonomy of an organisation which may compromise its social justice agenda.

Confrontation

A confrontational relationship with the state is likely when there is a fundamental disagreement, or perception of disagreement, on what a social justice outcome would be or how it could be achieved. SJOs use different forms of protest or collective action, utilise formal avenues within the state to air grievances, appeal to higher state authorities, or, as a last resort, undertake litigation. The media emerges as an important third actor in instances of confrontation, with newspaper reports often fuelling antagonism. In many instances, confrontation is worsened by a breakdown of communication and a lack of will by government to engage openly. While confrontational relations run the risk of entrenching hostilities or suspicions that the state may have about working with SJOs, it has also been found that there is a tendency for such relations to result in better outcomes that have the potential to make far reaching impact on social justice.

Equal Education – School infrastructure

2008	2011	2013	2014
ATTEMPTS AT COMPLEMENTARY RELATIONS — START OF RELATION	CONFRONTATION — TURNING POINT	KEEPING UP THE PRESSURE & A VICTORY — TURNING POINT	TOWARDS A NEW WORKING RELATIONSHIP? — TURNING POINT

2008 – 2010

IDENTIFYING THE PROBLEM AND BEGINNING TO ENGAGE COMPLEMENTARY RELATIONS WITH THE STATE

Equal Education (EE) have two years of written engagements with the Minister of Basic Education on ensuring that Norms and Standards (N&S) for school infrastructure are adopted into law.

2011

MOBILISATION AND CONFRONTATION WITH THE STATE

After more than two years of waiting for the N&S to be promulgated, EE begins to mobilise around the issue.

2011 – 2013

ESCALATING CONFRONTATION AND THE USE OF LITIGATION

Following mobilisation efforts, Equal Education embarks on legal action, filing a High Court case against the Minister, the 9 provincial MECs, and the Minister of Finance in February 2012. By November 2012 the case is settled with the Minister agreeing to binding minimum N&S for school infrastructure. A timeframe is set in terms of which the N&S must be published for public comment by 13 January 2013 and promulgated by 15 May 2013.

2013

KEEPING UP THE PRESSURE AND A VICTORY

On 9 January 2013 draft N&S are published but the draft falls short of expectations. EE continue their mobilisation efforts but also participate in the public hearings and make written submissions on the draft N&S. Following the public hearings, the Minister writes to EE requesting a 6-month extension for the promulgation of the N&S in light of public comment received. This is rejected by the EE membership who offer a 1-month extension. The Minister rejects the extension and publicly attacks EE describing them as 'a group of white adults organising black African children with half-truths'.

EE then obtains an order-by-consent from the Bisho High Court creating a new binding timeframe. The draft N&S must be published for public comment no later than 12 September 2013 and must be promulgated by 30 November 2013.

2013 – PRESENT

TOWARDS A NEW WORKING RELATIONSHIP?

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

LESSONS FOR SOCIAL JUSTICE

- When the state appears reticent to implement changes, confrontational relations may be the only way forward.

- However, the history of these relations may cause difficulties for EE in monitoring the implementation of the N&S.

- Litigation (or the threat of litigation) can be an effective tool in spurring action by government on social justice issues when relations are confrontational.

Conclusion

THIS REVIEW OF SJO-STATE RELATIONS IS UNABLE TO PROVIDE A 'ONE SIZE FITS ALL' APPROACH TO ACHIEVING SUCCESSFUL RELATIONS AND OUTCOMES FOR DEEPENING A SOCIAL JUSTICE AGENDA. RATHER, WHAT WE PRESENT IS A MEANS TO THINK ABOUT, AND QUESTION, THE FORMS OF RELATIONS THAT SJOS HAVE AND CAN HAVE WITH THE SOUTH AFRICAN STATE IN THE CURRENT CONTEXT, AND IN TURN, THE SUCCESS OF THESE RELATIONS IN FORGING A PROGRESSIVE SOCIAL JUSTICE AGENDA.

The state is a complex entity and this report draws attention to the unevenness of the South African state and how this unevenness creates particular challenges for civil society engagement. All of the relationships analysed - cooperative, complementary, co-option, and confrontation – had the potential to support positive outcomes for deepening a social justice agenda. What influenced the relative success or failure of such engagements was dependent upon both the individual political and institutional contexts of particular arms of the state as well as the degree of congruence between the perceived institutional ends. Cooperation, complementary and co-optation were found to be most often successful in improving relations and processes. However, these relations depended fundamentally upon there being more or less some agreement on the state's conception of what was required to achieve a social justice outcome. If there was disagreement about this, confrontational relations were often the only avenue through which SJOs could have the necessary impact to shift the social justice agenda.

Overall, the report highlights that strategic litigation was found to be one of the most effective methods for producing social justice outcomes. Litigation is often widely perceived as only building adversarial relations with the state, and it does indeed carry that risk, but our findings discussed in the report proved that it was a complex yet useful tool.

Litigation offered the opportunity to unblock certain pathways to parts of the state that prevented action on important social justice issues, compelling action on strategically placed government spheres or departments. However, litigation is as much about what happens outside the court room as within it. Under the best conditions, litigation should provide a platform to build alliances for social justice across society and even, as evidence from the case study documents, within particular arms of the state. Furthermore, social justice campaigns embarking on litigation need to focus energy not only on winning in court but on thinking about what comes next. Court victories can only ensure social justice outcomes if they are implemented. It is therefore important for SJOs to consider how they may monitor and evaluate the implementation of programmes following court action, especially

as implementation is likely to occur in a context of increased hostility from the state departments in question.

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

The case studies demonstrate SJOs have built working relations with the state often under difficult circumstances. The report found multiple cases in which a lack of political will or interference can result in the failure or stalling of working relations between SJOs and the state. While there is evidence to demonstrate that government department that have a long history of engaging with SJOs are likely to continue to do so, the general environment appears to be moving in a direction which is seemingly increasingly hostile to civil society.

The ability of SJOs to forge relations with the state rests on the extent to which SJOs are seen as a 'legitimate' actor by the state and how the state views civil society. The report highlights a context in which the extent to which civil society is seen as an important and necessary part of democratic governance is under threat. One of the challenging tasks that faces South African civil society today is staking its claim to being legitimate, useful, and a necessary contributor to the state and social justice outcomes. Whether it is critical or supportive, a vibrant, autonomous, and independent civil society is essential to any democracy.

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