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Accountability and social activism: A new strategy for achieving socio-economic rights in a democratic South Africa¹

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In facing a parliament, the bureaucracy, out of a sure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups. The so-called right of parliamentary investigation is one of the means by which parliament seeks such knowledge. Bureaucracy naturally welcomes a poorly informed and hence powerless parliament – at least in so far as ignorance somehow agrees with the bureaucracy's interests².

Introduction: the current strategic impasse

It is almost a decade since the advent of democracy in South Africa. And this provides progressive civil society with an opportunity to reflect openly and honestly on the successes and failures in realising socio-economic rights. We should readily acknowledge the dividends of democracy for South Africa since 1994. We have seen the provision of electricity, water and houses to citizens across the country who previously were deprived of these services and facilities. The critical questions that need to be addressed, however, are: Do South Africa's new democratic institutions deliver public services in a manner that meets citizens' socio-economic rights? And, are socio-economic rights being met in a way that represents the most efficient and effective use of available public resources?

It would appear that over the past nine years civil society organisations (CSOs) and social activists in South Africa have missed many opportunities to ensure improvements in the delivery of socio-economic rights. These missed opportunities can be attributed to three strategic failures:

1. a partial understanding of the nature of South Africa's new Constitutional democracy;

¹ The author would like to thank Dr Ivor Sarakinsky for his comments and suggestions on this paper. A draft of this paper was originally presented at the Conference On Social Activism and Socio-Economic Rights: Deepening Democracy in South Africa, 11-13 August 2003, Gordon's Bay organised by Idasa.

² Max Weber, Bureaucracy, (originally in *Wirtschaft und Gesellschaft*, 1922) in HH Gerth and C. Wright Mills, 1970, *From Max Weber, Essays in Sociology*, London: Routledge.

2. the decision by certain organisations and social activists to work outside of the Constitution and the democratic structures of the new state as a means for achieving socio-economic rights, and;
3. the failure by many social activists and civil society leaders to engage critically with the Executive and public officials on their performance in meeting their Constitutional obligations.

The common thread running through all of the above strategic failures is the absence of a coherent concept of accountability. This is of concern as the concept of accountability underpins progressive civil society's theoretical and practical strategies.

In order to extricate itself from this impasse, progressive civil society needs to embrace a new brand of social activism informed by a new philosophy of 'direct' and 'active' accountability. In terms of this philosophy, CSOs and social activists should strive to hold elected politicians and public officials directly accountable, for the performance of their duties and responsibilities, in an active and sustained manner. Accountability should be viewed as an ongoing obligation rather than an interpersonal favour or an electoral formality. The emphasis within this proposed approach is on building institutions and social relationships of accountability. These institutions and relationships should cut across conventional divisions between state structures (including Parliament and its committees) and social actors (including disorganised community groups, as well as organised social movements and NGOs).

This approach should not be confused with the more passive and indirect philosophy of accountability that underpins traditional liberal democracies. In terms of the traditional liberal view, the onus is on political representatives (elected at 5-year intervals) to ensure their own accountability and to exercise oversight of the executive and government performance. The onus, within the liberal view, lies squarely on the structures of the state and its supporting institutions - rather than civil society and communities - to determine and advocate for citizens' needs and interests.

Starting points: global versus domestic accountability

The primary focus of this proposed activist strategy is the creation of sustainable relationships of political and economic accountability within South Africa. This inevitably means prioritising the transformation of local and national (rather than global) political and socio-economic relations. The development of this new form of social activism would focus on the effective use of local resources. Inspired by a spirit of what could be termed 'constitutional fundamentalism', civil society advocacy organisations would then stand to make a significant impact on the delivery of socio-economic, as well as civil, rights in South Africa. The adoption of this domestically-focused strategy would also set the basis for the incremental development of a more equitable international order.

The fundamental premise of this argument is that accountability and socio-economic equity need first to be established at a local and state level, before civil society advocacy organisations can realistically expect to influence inequalities and the lack of accountability within the international political and economic order.

In light of recent African Union and NEPAD commitments, the starting point for creating a more equitable socio-economic order on the African Continent, would be the establishment of effective Constitutional states. Each state should have an active citizenry, capable of holding their political and bureaucratic leaders accountable for

the consequences of their decisions and actions. Contemporary activist strategies in South Africa tend to prioritise the achievement of global equality in the distribution of resources³. This has been at the expense of ensuring the effective management and utilisation of domestic public resources. These strategies are fundamentally mistaken.

In their single-minded quest to achieve an equitable and democratic global order many 'anti-globalisation' activists have neglected to ensure the establishment of local democratic institutions and relationships of accountability. Some of the African Continent's most despotic leaders have taken succour from the argument that it is the global economic order, rather than their own corrupt and self-serving policies, that has brought their countries to ruin and their citizens to starvation⁴.

South Africa: Social activism in the post-apartheid context

Under South Africa's apartheid regime non-governmental organisations (NGOs), CSOs and trade union activists defined themselves, and their organisational activities, in terms of their opposition to the state. The apartheid state represented authoritarianism and the denial of human rights, whilst progressive civil society stood for democracy, equality and the achievement of basic rights. After the adoption of the new Constitution in 1996, however, the new democratic state committed itself to uphold democratic values and to defend human rights. It also committed itself to the progressive realization of socio-economic rights (such as health, housing, social welfare and access to water)⁵.

As a result of this changed political and social context, many progressive CSOs were uncertain about the kind of relationship they should pursue with the new democratic state. A considerable number of ex-civil society activists soon occupied influential

³ This is despite the acknowledgement by the prominent anti-globalisation activist, Trevor Ngwane, (secretary of the Anti-Privatisation Forum (APF)) that a solitary focus on the issue of globalisation can "get translated into into an excuse for avoiding the fight with your own national bourgeoisie", and his recognition that: "We have to build where we are". The point is that his primary strategic objective remains the elimination of neo-liberal policies - such as privatisation – which "reflect the demands of global capital". In other words the global takes primacy over the local, and capitalism assumes priority over state accountability. As Ngwane concludes "We cannot finally win this immediate struggle unless we win that greater one". See Trevor Ngwane, "Sparks in the township", *New Left Review* No.22, July-August 2003.

⁴ Rosalyn Nyman, ex-CEO of Transparency South Africa, has suggested that the policies of the international finance institutions are responsible for the poor quality of decision-making by developing country governments such as South Africa. During the 2002 World Social Forum she asserted that the World Bank and IMF's structural adjustment programmes 'encourage unethical government spending such as the purchase of arms at the expense of social expenditure on health, social welfare, housing and sanitation'. She cited South Africa's recent arms procurement deal, and refusal to provide medication to prevent the mother-to-child transmission of HIV/AIDS, as examples of this influence. (See Report on World Social Forum, Puerto Allegro, Brazil, 3-4 February 2002, p.2). Her views were shared by an unnamed National Land Committee (NLC) representative from South Africa at this forum. The NLC representative argued as follows 'External forces are benefiting from corruption in Africa. We need to fight this devil. They claim Mugabe is corrupt. This is not true as he is claiming back the land that belongs to black people. Local capitalists are linked to foreign capitalists ... Corruption is not just related to the individual but the system. Structural Adjustment Programmes encourage corruption' (ibid.).

See also Trevor Ngwane, "Should African Social Movements be part of the New Partnership for Africa's Development (NEPAD)?", World Social Forum, Puerto Allegro, Brazil, 2 February 2002.

⁵ See Chapter 2, Constitution of the Republic of South Africa, 1996, Act 108 of 1996.

positions within the new democratic state. They were elected to serve on provincial Legislatures and within the country's new Parliament. Many were appointed to the Executive committees of national and provincial governments. In response to resistance from pro-apartheid bureaucrats who were opposed to the transformation process, many more activists were strategically 'deployed' by the ruling party, the African National Congress, to senior positions within the new public service⁶.

Many issue-based organizations working in the fields of health, welfare and housing, lobbied government vociferously during the apartheid era. After 1994, they were confronted by the new government's inherited human resource limitations and skills shortages. Government, now receptive to the need to improve service delivery, sought to address its problems by involving civil society in the process of delivery. Many organizations chose to enter into paid contracts with government and became directly involved in the provision of public services⁷. This clearly limited their capacity for critical engagement with government.

In the early days of South Africa's democracy, many of those social activists who remained outside of government argued that it was only fair to give the new state, and some of its more inexperienced office-bearers, the opportunity to 'find their feet'. It was argued that, given the continued influence of the apartheid legacy, it was inappropriate for social activists to publicly criticize their ex-colleagues in government⁸.

As a result many social activists and progressive CSOs came to prioritise their personal links with members of the ruling party, as the most effective means of influencing policy and legislative decisions. After all, the ruling party was overwhelmingly comprised of ex-social and political activists. After 1994, a new approach to advocacy and engagement with government became observed within the practice of many CSOs. This approach - premised on the withholding of public criticism - was popularly referred to as "being strategic". Even civil society advocacy organisations that were committed to building effective institutions of parliamentary oversight, sought to achieve their objectives by way of personalised influence.

⁶ See ANC National General Council, *Mid-Term Report and Review*, 11-15 July 2000, particularly Section 2 on "Cadre development and deployment", <http://www.anc.org.za/ancdocs/ngcouncils/docs2000/report.html>.

⁷ According to research conducted on the sector in 1999, organisations working in key areas of socio-economic delivery obtained over half of their income from government. Non-profit organisations (NPOs) working in the Health sector obtained 68.5% (or R1 705m out of a total income of R2 486m) from government grants and contracts; NPOs in the Social Services sector obtained 56.5% (or R2 113m out of a total income of R3 738m) from government grants and contracts; NPOs in the Development and Housing sector obtained 42.2% (or R1 177m out of an income of R2 787m) from government grants and contracts. See Swilling and Russell, 2002, *The Size and Scope of the Non-profit Sector in South Africa*, Durban: CCS.

⁸ For an extreme example of this approach, see David Makura, National Executive Committee Member of the ANC Youth League, "The MDM, Civil Society and Social Transformation: The challenges of building a popular movement for transformation", *Umrabulo* No 7, 1999. Makura launches a broadside attack on CSOs which have traditionally taken a stance that "is hyper-critical of the state". He suggests that there is no need for independent CSOs, such as the once powerful South African National Civics Organisation (SANCO), given that the state is now an organ of "people's power": "From the onset, we should have never allowed a dichotomy between political and civic matters. If the ANC branch is to become an organ of people's power, it cannot leave housing, water, sanitation, roads, education, health, local economic development to a SANCO branch".

Members of parliamentary committees would be approached to act as “champions” for the introduction of new legislation, or for the amendment of existing legislation.

In the period between 1996 and 2000, what started out as an instance of informal “post-struggle etiquette” became progressively more crystalised into a political culture of withholding criticism of senior government officials and ruling party politicians⁹. In effect, by 1999 “being strategic” had become a strategic end in itself for progressive civil society in South Africa. The resulting political emphasis on *personalized networking* between social activists and government officials served to undermine the development of social relationships of accountability between the state and civil society. It also stunted the development of effective parliamentary accountability and oversight institutions within the state. Some reasons for these outcomes are as follows:

1. Social activists failed to develop a clear understanding of their own situational logics outside of government, their resources and independent capacity for action;
2. Social activists failed to develop a clear understanding of the situational logics, powers, duties and constitutional responsibilities of their ex-colleagues in government; and
3. Social activists outside of government, and elected parliamentarians, failed to:
 - a) Develop a clear understanding of the separation of powers between the Executive and the Legislative arms of government; and
 - b) Comprehend the oversight role of the Legislature.

Those politicians, particularly within the ruling party (comprising two-thirds of Parliament), who were tempted to break out of this culture of non-criticism were (and continue to be) confronted by two vital situational constraints:

1. the risk of not being voted back onto the party list at the next election; and
2. the risk of losing their source of income¹⁰.

The net result of the past eight years’ worth of pursuing political strategies based on *personalized networking*, has been low levels of critical engagement of government Ministers and members of the Executive, by the oversight structures of the new state (at national and provincial level). In addition, there has also been a low level of critical

⁹ Gugile Nkwinti, the current (ANC) MEC for Housing in the Eastern Cape, and ex-Speaker of the provincial Legislature, points to the perception held by some members of the ANC that in reality criticism is not taken kindly to by its leadership. “As a policy, the ANC allows for criticism. But its leadership tends to be defensive when responding to criticism; even what appears to be fair criticism. ...One is afraid to criticise for fear of being labelled as belonging to this or the other group, probably bent on destroying a leader or the organisation itself”. See “A commentary on ‘Through the Eye of a Needle’ and the disbandment of constitutional structures”, *Umrabulo* 13, December 2001. Krista Johnson provides a compelling explanation of the centralising tendency within the current ANC government, and the consistencies between this trend and the Leninist and vanguardist political philosophy adopted by the ANC leadership (including President Thabo Mbeki) whilst in exile. See “The state and civil society in contemporary South Africa: Redefining the rules of the game” in Sean Jacobs and Richard Calland (Eds), 2002, *Thabo Mbeki’s World*, Pietermaritzburg: University of Natal Press.

¹⁰ With current remuneration packages ranging from R350 000 for ordinary members of parliament, R750 000 for members of the Executive and R790 000 for heads of public service departments, government jobs have become viewed as one of the fastest forms achieving social mobility for many ex-activists (see www.psam.org.za homepage and click “Did you know”).

engagement of the structures of the state (including parliament, constitutional oversight bodies, the Executive and the public service) by social activists and progressive civil society¹¹.

Has there been a consolidation of democracy in South Africa?

It is important to acknowledge a number of achievements since 1994, about which South Africans should feel exceedingly proud. The most significant of these has almost certainly been the consolidation of one of the most advanced constitutional frameworks in the world. The 1996 South African Constitution not only commits members of government to the principles of transparency and accountability and effective public service delivery, it also commits government to the progressive realisation of socio-economic rights in line with available public resources. This framework consists of comprehensive and enabling legislation that lends flesh to the basic Constitutional commitments to a broad range of political rights. These include: the right to access information, to be given reasons for administrative decisions, to be protected from victimisation as an employee reporting misconduct, and to obtain ongoing reports on the effective management of public resources and the accountable conduct of officials and politicians.

Nonetheless, since 1999 there has been a visible decrease in internal political debate within civil society and within the ANC/SACP/COSATU tripartite alliance¹². At the same time, there has been a dual strengthening of centralised control over the state, by an expanded President's office, and over the ANC by the party's executive committee¹³. A climate of caution has emerged on the part of political analysts, and an ethos of sycophancy is fast becoming entrenched within parts of the ruling party and within many organs of state¹⁴. This climate has seen party loyalists toeing the line – of withholding criticism of human rights abuses in favour of 'quiet diplomacy' - on Zimbabwe. It has also led to party loyalists failing to object to corruption, maladministration and the selective enrichment of a few well-placed individuals during the course of large-scale government procurement deals - such as the 1999 arms deal. Sadly, this has also resulted in many party loyalists uncritically adopting the State President's seemingly dissident views on HIV/AIDS.

The interpretation of the significance of these developments, by social activists and civil society leaders, has been uneven and contradictory. Civil society advocacy organisations have swung between the poles of:

- Suggesting that civil society has “transcended its watchdog role over government policy” and

¹¹ For instance, no civil society marches have been held to protest the failure of executive interference within parliament's investigation of South Africa's multi-billion rand arms deal. Similarly, no pickets of members of parliament's Health portfolio committee have been held to protest their failure to hold the Health department accountable for its ineffectual HIV/AIDS programmes.

¹² See Dale McKinley, “Democracy, power and Patronage: Debate and Opposition within the ANC and the Tripartite Alliance since 1994” in *Opposition in South Africa's New Democracy*, Seminar Report, 2001, No 2. Konrad Adenauer Stiftung.

¹³ See Krista Johnson, *ibid.* and Dale McKinley, *ibid.*

¹⁴ For a critical engagement with this ethos within the ANC see P.S.Liholo, “The principles of internal party democracy of the ANC”, *Umrabulo* No.18, June 2003.

- Asserting a more critical (and presumably more adversarial) role for civil society in securing socio-economic rights – particularly given the weak state of Parliamentary oversight in the country¹⁵.

One of the central tensions to have emerged recently within progressive civil society in South Africa has been the question of using the Constitution for securing socio-economic rights. Many advocacy organisations have asserted that the Constitutional framework provides a sufficient basis for realising these rights. By contrast, certain social activists have argued that “mass struggle” is the only means for challenging socio-economic inequalities. They have argued that localised communities - such as Soweto electricity defaulters, or Chatsworth residents evicted from council properties - should mobilize outside of constitutional and democratic institutions, because these do not address the fundamental issue of capitalist property relations. The Constitution and the institutions of democracy (such as Parliament and its oversight bodies) are viewed as serving to preserve and protect, rather than to transform, existing economic inequalities in South Africa¹⁶.

Some members of the pro-Constitution camp, on the other hand, assert that what we need to do is temper our criticism of government in order to give democratic institutions more time to do their work. Influential proponents of this view have argued that civil society requires a more nuanced and ‘sophisticated’ understanding of our new political reality. They have suggested that it may be necessary to withhold criticism of the state, and of senior ruling party political figures, in order to be able to exert an influence on state policy. In effect, this approach amounts to the *personalised networking* strategy discussed above. The contemporary terrain in which civil society operates, according to certain policy analysts, is like a chessboard. Civil society actors need to be “realistic” and play their moves very carefully¹⁷. Above all else, they need to be careful not to alienate their newfound state allies.

A second, and related, tension that has emerged within civil society is the issue of how social activists should engage with government. Should it be on the above basis of collaboration and partnership? Or, is a more adversarial relationship inevitable?

¹⁵ Idasa has recently managed to convey confused and contradictory signals in this regard. It's Parliamentary Monitoring and Information Service (PIMS) sent out a workshop invitation, to discuss civil society input to the NEPAD process, on 12 June 2003. It suggested that, given the ‘consolidation of democracy’ in South Africa, civil society has now transcended its watchdog role over government policy. By contrast, the invitation to Idasa’s conference on *Social activism and socio-economic rights* starts from the opposite premise. It states that: “... particularly in a dominant party democracy such as South Africa’s, Parliament often finds it difficult to hold the executive to account as effectively as it should with regard to the implementation of policy and socio-economic rights”. The first view indicates a transcendence of civil society’s watchdog role, whereas the second view implies the need to strengthen this role.

¹⁶ See Ashwin Desai, 2002, *We are the poors: Community Struggles in post-apartheid South Africa*, Monthly Review Press, New York. See also Anti-Privatisation Forum (APF) “Mass Struggle is the only road, Final statement on World Summit on Sustainable Development”, 4 September 2002, www.apf.org.za.

¹⁷ Richard Calland, the current Executive Director of the Open Democracy Advice Centre (ODAC) and the ex-programme manager of PIMs within Idasa, has variously argued that civil society needs to balance its idealism with a sense of “realism”. This “realism” consists of “an acceptance of what is possible for government”. Thus, partnerships with government should be informed by this sense of realism. (Verbal input to CRVR/SAHA conference on “Information for Justice: Using Access Legislation to promote Human Rights”, 10 July 2003).

What has been significant about both sides of the above debates, is the marked lack of rigour when addressing the issue of civil society partnerships with government.

Partnerships with government

There has been very little debate around the nature of civil society partnerships with government since 1996. This is primarily because of the strategic emphasis on *personalised networking* with individuals in government. It is also partially the result of social activists' failure to adequately comprehend the potential of South Africa's Constitutional democracy. When the issue of partnering or engaging with government has been addressed, there has been no discussion of which of the two spheres of government – the Legislature or the Executive - civil society could most effectively engage with¹⁸.

In any democratic state, members of government are obliged to make themselves accountable to the public. The constitutional separation of powers between the two spheres of government (the Executive and the Legislature) provides the basis for a relationship of oversight, of the activities of government ministers, by ordinary parliamentarians. Executive members (national cabinet ministers or provincial MECs) have the power to control public resources, issue instructions to public officials and implement government policies. Members of parliament (and provincial Legislatures), on the other hand, are tasked with the responsibility of overseeing the effectiveness of this implementation process. For this reason, civil society activists and members of parliament have a mutual interest in attempting to hold Executive members and public servants accountable for their conduct and performance.

Arguably, from a civil society point of view, the need to enter into a partnership with government relates to the need to enter into a relationship - of mutual cooperation and information sharing - with the Legislature and its oversight committees. A partnership with the Executive would effectively mean the involvement of civil society in taking responsibility for the process of policy implementation. This translates into CSOs being absorbed into a process where they are incapable of taking any fundamental decisions involving policy priorities or the allocation of public resources. This is despite being involved in the delivery of public services. They end up with a limited capacity to criticise failures and weaknesses in the process, primarily because they share joint responsibility with government for these service failures.

Many CSOs which opt for this strategic approach, may become dependent on government departments for their basic sources of income, which further limits their capacity to engage in criticism¹⁹.

However, by carefully guarding their independence from government departments and the Executive, CSOs can play a vital role in promoting accountability. By helping

¹⁸ Amongst political analysts there has been wide recognition of the separation of powers between the Executive and the Legislature, as well as the recognition of the importance of civil society's role in promoting democracy. Unfortunately, these two issues have not been linked to each other. See Paul Graham, *In the Balance: Debating the state of democracy in South Africa*, Paul Graham and Alice Coetzee (eds), 2002. Also see Richard Calland, "State Ethics and Executive Accountability", in *Pulse: Passages in Democracy building*, Wilmot James and Moira Levy (eds), 1998. Also see Adam Habib and Rupert Taylor, "Political Alliances and Parliamentary Opposition in Post-Apartheid South Africa" in *Opposition in South Africa's New Democracy*, Seminar Report, 2001, No 2. Konrad Adenauer Stiftung.

¹⁹ This may be the case despite the fact that CSOs themselves believe that their critical judgement has not been impaired. See Swilling and Russell, 2002, *The Size and Scope of the Non-profit Sector in South Africa*.

to monitor the Executive's performance - in managing the strategic direction of government departments and their delivery of services - CSOs can help the Legislature to take the necessary steps to ensure that government policies are implemented²⁰.

The need for a principled engagement with government

What the above argument translates into is a call for civil society to engage actively, and directly, with government on the basis of the principle of accountability²¹. Advocacy organisations need to propagate the view that democratic accountability is an obligation, by elected political leaders and government officials, to answer to ordinary citizens for the performance of their duties and responsibilities. It is not a favour bestowed on ordinary citizens by those in public office.

It follows then that it is in civil society's interest to ensure the implementation of effective Legislature oversight of government. The more effectively Legislatures can get government departments to report on matters relating to their policy priorities, plans, expenditure and delivery of services, the more informed civil society will be when it comes to making its own judgments about government's performance. It is important to note, however, that if effective parliamentary oversight institutions are to be established, this will require civil society to defend the principle of accountability in the face of indifference and incompetence by oversight institutions themselves.

Contrary to the view that there has been a consolidation of democracy in South Africa, it is critical to recognise that the state of development of our oversight institutions is weak and fragile. Institutions such as the Public Protector, the Auditor-General, the portfolio committees of national parliament and the standing committees of provincial Legislatures are under constant pressure from an encroaching state Executive²².

²⁰ Ebrahim Harvey, an independent political analyst, asserts that the scope for influencing the budget by Parliament is too limited to be successful. The point should be made, however, that because civil society has not successfully engaged with Legislatures on the issues of budget allocations, policy priorities and social expenditure over the past eight-years period, does not mean that engagement is futile. Arguably, it is the manner of this engagement – via *personalised networking* – and not the principle of parliamentary engagement in itself, which is problematic. See “Popular control over decision makers”, in *In the Balance: Debating the state of democracy in South Africa*, Paul Graham and Alice Coetzee (eds), 2002, Cape Town: Idasa.

²¹ This view is opposed to the more fatalistic, and elitist view, which asserts that government will not take civil society seriously in the absence of a viable opposition party. According to Habib and Taylor, “As long as government is guaranteed that citizens will not vote for any opposition party, they have no incentive to take citizens' interests into account. Should they fear that citizens would vote for an opposition party, they are more likely to deal with this electoral challenge by enhancing delivery and at least attempting to satisfy the interests of the majority”. See “Political alliances and parliamentary opposition in post-apartheid South Africa”, *ibid*.

²² South Africa's arms deal investigation provides a good example of executive interference in the work of Parliament's Standing Committee on Public Accounts (SCOPA) and executive encroachment on the independence of the Auditor-General's office. Gavin Woods, who resigned as chairperson of SCOPA in 2002 has drawn attention to the fact that instructions were issued preventing the staff of the Auditor-General's office from communicating with SCOPA members during the investigation. He also pointed to the fact that the Joint Investigating Team (JIT – consisting of the Directorate of Public Prosecutions, the Auditor-General, and the Public Protector) had secretly given a draft of its report to the Executive prior to releasing the final report to parliament. When this information was leaked to the public the Auditor-General fought a protracted legal battle to contest an access to information request in

An important pre-requisite for a healthy democracy is an active and an informed civil society, which is vigilant in its defence of parliamentary and constitutional oversight institutions. Yet, ironically, in South Africa civil society itself is ill informed about what democracy is. Many civil society advocacy organisations have failed to comprehend the separation between the two pillars of government: the Executive and the Legislature. Many more, who have recognised this separation have failed to recognise its strategic significance for their own advocacy work. This critical differentiation needs to be continually reinforced. Arguably, civil society should keep an arm's length distance between itself and the state Executive.

Civil society needs to develop a clearer sense of its structural position, its powers and its potential for action relative to the state. It also needs to develop a much clearer understanding of the principle of accountability that underpins its relationship to the state. To transform this principle from an abstract concept into a living relationship, civil society needs to make a conscious effort to implement this principle in practice. In a transitional and developing society such as South Africa, it is a mistake to assume that the mere existence of democratic oversight bodies (whether parliamentary committees or constitutional public protection bodies such as the Auditor-General or Public Protector) amounts to their effective functioning.

It is a basic premise of contemporary social and political theory that social structures, including such institutions as Parliament and its oversight committees, are both *activity* - and *concept*-dependent²³. People make up these institutions by their sustained social activities, which result in regular patterns of behaviour. By the same token, people are motivated to act on the basis of a variety of concepts, values and norms. People are empowered, not merely constrained, to act on the basis of concepts such as democracy, values such the freedom to choose public representatives, and the norms such as participating in state elections every five years. For social institutions to work effectively, the broad sets of principles and values that they rest on need to become translated into the behavioural norms of the individuals that make them up. In other words, officials and parliamentarians need to habituate these norms and values.

In the case of parliamentary oversight committees, the key concepts that need to be entrenched (within these institutions) are those of transparency and accountability. Committee members need to have a thorough understanding of what these concepts mean and how they should be implemented in practice. This means that committee members need to do more than merely arrive at committee meetings (the minimal basis on which these institutions could be said to exist). They need to be adequately informed of the terms of reference of their oversight work and their own responsibilities.

The starting point for oversight committee members holding government ministers and officials to account, is a thorough knowledge of the responsibilities of these ministers and officials in the running of government departments. Secondly, they need to know what resources are available to these departments. They then need to

a bid to prevent the original draft of the report from being made public. See unpublished paper on "Executive accountability and the South African Arms Deal" presented at the 11th International Anti-Corruption Conference, Korea, 27 May 2003.

²³ See Roy Bhaskar, 1989, *The Possibility of Naturalism*, (2nd ed) Harvester: Brighton; 1989, *Reclaiming Reality*, Verso: London; Margaret Archer, 1996, *Culture and Agency*, (2nd ed), Cambridge: Cambridge University Press; 1995, *Realist social theory: the morphogenetic approach*, Cambridge: Cambridge University Press.

make the effort to compare the performance of the department with its stated policy objectives, and evaluate its service delivery output against the resources at its disposal. Finally, members of oversight committees need to have the political will to call the political and administrative heads, and senior management of government departments to account during the course of committee meetings. Only on this basis can we talk about effective and institutionalised parliamentary oversight.

It follows that advocacy organisations need to promote the principles of transparency and accountability in their strongest form. If these concepts are watered down as a result of misplaced notions of “sophistication”, “nuance” or “political realism”, this will effectively prevent the popularisation of these concepts and inhibit their entrenchment and institutionalisation. This is particularly the case in transitional societies with young and fragile democratic institutions. Moreover, influencing decisions through personal contacts may inadvertently encourage corruption, in as much as it encourages behind the scenes deal-making. Albeit for a good cause, the technique has the unintended consequence of undermining transparency, accountability and democracy as non-elected personalities have an inordinate say in the shaping of policy²⁴.

Ultimately, the standards set by advocacy organisations shape the public’s expectations for the accountability of elected politicians and public officials. Watered down standards will inevitably result in the public settling for compromised levels of performance and service delivery.

Similarly, if social activists and political analysts interpret accountability as an interpersonal favour (or reduce it to a character trait of politicians and government officials), the most that will emerge from their engagement with government is a set of interpersonal relationships between political elites. The net result of this approach will be a set of individual relationships between elite analysts and political party or state elites, as opposed to the development of effective democratic oversight institutions.

Whilst the approach proposed here does not rule out the lobbying of individual government officials or parliamentary committee members, it does stress the limits of such lobbying for the purposes of building social relationships of accountability and for reproducing effective oversight institutions. Finding parliamentarians or officials to “champion” legislative amendments, or to influence the formulation of policies, may have a short-term impact on the advocacy initiative at hand. However, it will not lead to the reproduction of effective oversight institutions. The influence that activists or advocacy organisations are able to exert via such “champions”, is limited to the political vagaries of their term of service or positioning within committees.

Clearly, the strategic objective, from a civil society point of view, is to establish effective parliamentary committees and oversight institutions that outlast the individuals that constitute them at any given time.

The right to accountability and socio-economic rights

Geoff Budlender, the head of the Legal Resource Centre’s Constitutional Law unit, argues in compelling terms for social activists and progressive CSOs to embrace the Constitution as a charter for social transformation and for the delivery of socio-

²⁴ I am indebted to Ivor Sarakinsky for emphasising this point.

economic rights in South Africa²⁵. He argues that the Constitution provides a mechanism for engaging in a rights-based programme of social transformation and social activism. Budlender has set out four basic conditions for the realisation of these rights:

1. people need to be educated as to what their rights are
2. people need to be enabled to assert their rights
3. organisations and social movements are required to mobilise people around their rights
4. people require access to the Courts when their rights are not realised²⁶

In order to give effect to their socio-economic rights, however, it is necessary to add one additional condition to this list:

5. people need access to information to make judgements about how effectively their rights are being met and when these rights are being breached.

This fifth right relates to the right of ordinary citizens to hold those in positions of power to account. It is in essence the right of accountability. Access to information on the performance of government departments, and the accountability of politicians and public officials, is a vital pre-condition for the realisation of basic human rights (including socio-economic rights). Such information is also vital to the entrenchment of an open and participatory democracy.

Ordinary citizens need to be made aware of the responsibilities of officials and their rights to good public services. They must also be made aware of what resources government departments have at their disposal and what they plan to do with them. On this basis they will be able to give effect to their basic human rights, including their right to access public services (such as health, welfare, education and housing).

Correspondingly, if public officials and politicians behave in an unaccountable and corrupt fashion - or if there is maladministration or the mismanagement of public resources - then ordinary citizens will be deprived of their rights to access public services.

It is critical for progressive CSOs and social activists to become actively engaged in the process of building institutions and relationships of accountability in contemporary South Africa. It has been a profound mistake, on the part of many policy analysts and social activists, to treat accountability as either a personal virtue or as an individual favour (from politicians and officials) rather than a constitutional obligation.

Arguably, the starting point for building effective institutions of accountability is the active and sustained engagement of Parliamentary oversight committees by social activist and CSOs. As with other elected political representatives in the Executive, members of the Legislature owe an obligation of responsibility to citizens to account for their performance on an ongoing basis. Consequently, the premise for engaging with the Legislature and its oversight committees, is to also hold them accountable for their performance in holding the Executive to account.

²⁵ See "A Paper Dog With Real Teeth: The TAC case has proved that the Constitution is a powerful people's tool", Mail & Guardian (Johannesburg) - July 12, 2002.

²⁶ "Contemporary Models of Social Activism" input at Idasa Conference on *Social Activism and Socio-Economic Rights: Deepening Democracy In South Africa*, 11 August 2003, Gordon's Bay.

It is important to note, however, that the only basis on which social activists and CSOs will be able to engage with the Executive and the Legislature, is if they have detailed and accurate information about the management of resources and the delivery of services by government departments. Similarly, the only basis on which social relationships of accountability between the state and civil society (whether in the shape of formal organisations, social movements or localised communities) can exist is if social actors have access to this same information. This points to the vital role, played by civil society monitoring institutions, in the collection and dissemination of information on the performance of government officials and political leaders and on the delivery of services.

The PSAM's monitoring of accountability and service delivery in the Eastern Cape

The Public Service Accountability Monitor (PSAM) was established in 2000 to promote accountability and efficiency in the management of public resources, in line with the above strategic vision. The PSAM has set out to realise this vision through three main projects:

- **Case Monitoring:** tracking reported cases of public sector misconduct, maladministration and corruption, as well as the corrective action by departmental heads.
- **Performance Monitoring:** examining the budget allocations of government departments, their strategic plans, problems experienced in the implementation of these plans, and whether the services delivered by these departments meet people's socio-economic rights and provide value for money.
- **Civic Empowerment:** providing other CSOs with information about the responsibilities of public officials and about appropriate mechanisms for voicing complaints about poor public services. It also involves limited monitoring of infrastructure projects and service delivery at welfare paypoints and health facilities.

All of this information is available on our website and key findings are also published in a provincial newspaper, the **Daily Dispatch**, under a column called the *Accountability Monitor*.

The general findings of these projects can be summarised as follows:

- less than 4 percent (3.8 percent) of the Eastern Cape provincial budget has been properly accounted for in the six financial years between 1996 and 2002 (see Did you Know on the PSAM's website <http://www.psam.org.za/>).

An analysis of the financial audits for all Eastern Cape government departments shows that the Auditor-General has issued audit disclaimers for a staggering amount of R99.7 billion, out of a total budget allocation of R104.5 billion (or 96.2 percent of the budget), during this period. An audit disclaimer is issued when a large number of transactions are not included in the department's financial statements, and so little supporting documentation can be produced to justify the department's expenditure, that no audit could be conducted in the first place. Audit disclaimers are an indication of a serious lack of financial control measures and effective financial management

within a department. They do not indicate that the amounts, which have not been properly accounted for, have been misappropriated or stolen. However, because no documents have been produced to verify how these funds were used, it is not possible to demonstrate that significant amounts of these funds have not been misappropriated or stolen.

Recently there has been evidence of improvement in the ability of the Eastern Cape government to account for the province's budget. In the 2001/2002 financial year, the province managed to account for 17.7 percent of its budget. The proportion of the provincial budget that it failed to account for properly, decreased from 96.2 percent to 82.3 percent.

- Not a single resolution, passed by the Standing Committee on Public Accounts (SCOPA) in the Eastern Cape Legislature, has been responded to by the Eastern Cape Executive since 1996

This illustrates the abject failure of the provincial Legislature to call the Executive and departmental bureaucracies to account for the generalised state of weak financial management and consequent failed service delivery within the province. It is worth noting that in the past six-year period, not a single Head of department, Chief Financial Officer or Finance Director in the Eastern Cape has been subjected to disciplinary action for their failure to account properly to oversight bodies such as the Auditor-General and to SCOPA.

- Of 401 reported cases of misconduct on the PSAM's database (which includes 160 corruption cases and 180 maladministration cases) only 21 (or 5 Percent) have reportedly been met with a satisfactory resolution.

We deem a satisfactory resolution to consist of the effective implementation of internal disciplinary, criminal and recovery proceedings. With respect to the reported amounts involved in these cases, the PSAM's database shows that of a total reported amount of over R6.9 billion is unaccounted for²⁷. To date only R264 million (or 4 percent) has reportedly been recovered or subsequently accounted for²⁸. Under these circumstances it should not be surprising that there is a lack of public confidence in the provincial government²⁹.

These figures show that the Eastern Cape government faces serious problems and challenges in managing public resources effectively. They also demonstrate the failure by government managers to ensure that officials conduct themselves in an accountable fashion and in ways that serve the public interest instead of their own private interests. This state of weak management, poor leadership and a lack of

²⁷ This includes money that has reportedly been stolen, lost, wasted, used for unauthorised purposes or that has been inadequately accounted for.

²⁸ These figures were correct as of 13 August 2003. For a current update on these figures please visit www.psam.org.za

²⁹ The perception in the minds of many officials and members of the public is that corruption and maladministration are rife in the Eastern Cape provincial administration. 63 percent of ordinary citizens surveyed by IDASA in 2000, and 23 percent of Eastern Cape government officials surveyed by the PSAM in 2001, said that they thought "most" or "all" government officials in the province were involved in corruption. See Robert Mattes, Yul Derk Davies and Cherrel Africa, 2000, *Views of Democracy in South Africa and the Region: Trends and Comparison*. Afrobarometer Working Papers, Paper 8. Cape Town: Afrobarometer; Colm Allan, Robert Mattes and Unathi Millie, 2002, *Government corruption seen from the inside: A survey of public officials perceptions of corruption in the Eastern cape*. PSAM Research Series No 1, Grahamstown: PSAM.

financial controls has a direct influence on government's ability to deliver basic social services such as health. Unless civil society makes a concerted effort to monitor and address these issues, the Eastern Cape's most vulnerable citizens will continue to be denied their most basic socio-economic rights.

New strategies for securing socio-economic rights in the Eastern Cape

I would like to share some thoughts with you on new emerging strategies for securing socio-economic rights that are currently being explored in the Eastern Cape. I should caution that these strategies are not yet fully formulated, but I would argue that they nonetheless point us in the direction of what is possible if we prioritise the principle of accountability in our relations with government.

The PSAM is currently involved in two strategic interventions with civil society partner organisations in the arena of socio-economic rights in the Eastern Cape. The first involves an attempt to improve the delivery of social grants in the province and the second is an effort to improve the delivery of health services, particularly to those living with HIV.

After the Eastern Cape Department of Social Development outsourced the payment of pensions and social grants to two private companies in late 2002, the provision of grants was thrown into disarray. A number of pensioners died in long queues waiting for grants. In response to this situation, the PSAM (working together with the Black Sash) used the Access to Information Act to obtain copies of the Service Level Agreements entered into by the provincial government and these two companies. This has enabled us to provide copies of these contracts (and information on service standards and facilities at pay-points in the Eastern Cape) to a number of CSOs and to the South African Human Rights Commission (SAHRC) in the province.

It became evident (during our interactions at this time) that citizens and CSOs in the province lacked the necessary information to ensure access to their socio-economic rights. In response, we facilitated the establishment of a human rights working group consisting of advocacy and paralegal organisations. We have jointly produced a booklet (called *Know Your Rights*) setting out a range of service standards to be met by government departments, the responsibilities of public officials and mechanisms for reporting complaints about failed public services. This booklet was produced with the Black Sash, the SAHRC and the TAC. The intention is to distribute it at various pay-points and public health facilities over the next few months. The booklet contains a faxable complaints form, which will enable citizens to report their complaints to a host of CSOs and Chapter nine oversight bodies (such as the Public Protector and the SAHRC).

Together with the Black Sash, we are currently planning to conduct on-site monitoring of facilities, and compliance with service standards, at a random selection of pay-points across the province. We are also currently making plans to assist the TAC to monitor the distribution of anti-retroviral drugs at a selection of health facilities across the province. The findings of these on-site monitoring exercises will be published in our newspaper column, the Accountability Monitor.

The second intervention to ensure accountability in the management of public resources and accountable service delivery, consists of an effort to monitor the implementation of HIV/AIDS programmes in the Eastern Cape. The PSAM has previously assisted the TAC by providing it with a supporting affidavit in its Transvaal High Court application in November 2001. This application set out to have anti-retroviral drugs provided at state health facilities for the prevention of mother-to-child

transmission of HIV/AIDS (PMTCT) purposes. The PSAM argued that the Eastern Cape Department of Health's contention that it could not afford to implement a general PMTCT programme in the province, could not be sustained. We were able to show that the department had not spent R33 million earmarked for AIDS programmes and that it had been spending R10.9 million a year on the salaries of 240 officials who had past retirement age. One was 86 years old. In this way we played a small role in contributing toward the successful judgment, obtained in favour of TAC, to distribute anti-retrovirals and to embark on a PMTCT treatment programme.

Although the State appealed this judgement to the Constitutional Court, in July 2002 the Court upheld the order to extend the counselling of pregnant mothers, and the introduction of nevirapine for PMTCT use, to all public health facilities in South Africa. Through the monitoring of budget allocation and expenditure (in our Performance Monitoring project), however, we were able to establish in March 2003 that of a total of R197 million allocated for HIV/Aids programmes in the Eastern Cape between 2000 and 2003, only R41.8 million could be accounted for.

In April 2003 the PSAM requested details of this spending, as well as the current operational plans for HIV/AIDS, from the Eastern Cape department of Health in terms of the Access to Information Act. On 25 July 2003 we filed papers in the Grahamstown High Court, to compel the Eastern Cape MEC for Health and the Head of Department to produce a range of financial reports and the operational plan for their HIV/AIDS programme. This litigation is ongoing.

Conclusion: In defence of the principle of accountability

Over the past ten years, we have witnessed a generalised failure - on the part of civil society leadership as well as the Legislature and the Executive - to prioritise the principle of accountability. We have also witnessed the failure of progressive civil society to promote the Constitution to the masses of South African people as a viable mechanism for achieving their socio-economic rights.

The leadership of progressive civil society needs to develop a new vision and brand of social activism based on the principle of "Constitutional fundamentalism" and the philosophy of active and ongoing accountability. South Africa has one of the most progressive Constitutions in the world. It does not simply set out safeguards for individual rights but guarantees the progressive realisation of fundamental socio-economic rights. It is also a charter for social transformation and the delivery of socio-economic rights. If it has not been interpreted in this manner, within broader society, up until now, then civil society leaders have only themselves to blame for this.

The Constitution guarantees the accountability of the Executive and public officials, not only to the elected members of the Legislature and its oversight committees, but also to members of the general public.

The watered down concept of accountability utilised by members of the Executive, public officials, many policy analysts and prominent social activists alike, is not reflective of the intent or the spirit of the Constitution. In particular, the resistance of members of the Executive to answer publicly for the performance of their duties and responsibilities will only lead to a long-term deterioration in the relationship between government and ordinary citizens. By refusing to be subject to the principle of accountability and by withholding information on government's use of public resources, the Executive creates the impression that it does not care. This attitude of

non-accountability could reinforce the conspiratorial beliefs of those social activists who see the Constitution as the means to entrenching capitalist property relations and neo-liberal economic interests.

In summary, if the objective of civil society is to establish effective political oversight institutions, which serve to entrench the accountability of the Executive and government officials, then the following two strategic priorities need to be adopted:

1. Social activists and civil society advocacy organisations need to propagate the principle of accountability in its strongest, most literal and purest form; and,
2. Social activists and civil society advocacy organisations should seek to engage with oversight institutions per se, (as opposed to individuals within these institutions).

What this means is that every time a government department, or an oversight body, fails to uphold the key principles of transparency and accountability, or fails to meet its oversight functions effectively, then social activists and advocacy groups should make this public. The point of this engagement should be to publicly uphold the principles of transparency and accountability, and to educate the broader public as to the standards it should expect from government. This engagement should also serve to inform the public and reaffirm to members of oversight bodies the vital role of statutory oversight bodies in South Africa's constitutional democracy. This public educational function is a core feature of democratic advocacy work.

Unless ordinary citizens are aware of government standards of conduct and service delivery, they will not be able to establish ongoing social relationships of accountability with it. Outside of the establishment of such relationships, and effective institutions of accountability, there can be no talk of the consolidation of democracy in South Africa.