

EMPOWERING CIVIL SOCIETY

In South Africa for a Developmental
Compact



A policy brief prepared by the Mapungubwe
Institute for Strategic Reflection (MISTRA) for
Kagiso Trust.





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TABLE OF CONTENTS

1. Introduction	3
2. Civil society in historical and contemporary perspective	4
2.1 State-civil society relations	5
3. Social dialogue in the South African context	7
3.1 Institutionalised social dialogue: The role of NEDLAC	7
3.2 A fit-for-purpose NEDLAC	8
3.3 Social dialogue beyond NEDLAC	9
4. Contextualising the social compact	11
4.1 The need for a comprehensive social compact	13
4.2 Identifying priorities for a state–civil society social compact	13
5. Strengthening civil society participation in social dialogue	16
6. Building consensus on top priorities for a state–civil society compact	18
6.1 Towards a state-civil society compact: points to ponder	18
6.2 Recommendations	18
7. Reference list	20

1

INTRODUCTION

For the state to retain legitimacy and to maintain stability over the long term, it requires the consent and cooperation of civil society. But what constitutes civil society? In social theory, the concept of civil society is contested. It has been handled by many thinkers from ancient times to contemporary times. The thrust of the debate is whether civil society should be taken: 1) as a realm, sphere or arena in which citizen agency is enacted or exercised; or 2) whether it should be understood as the sum of nongovernmental organisations and/or civil society organisations operating within a country (Fioramonti, 2014; Lang, 2013; Pithouse, 2006).

In 2008, the National Development Agency produced a study on civil society in South Africa and in it developed a set of criteria for identifying and classifying organisations as civil society organisations (CSOs). According to the report, CSOs have the following characteristics: 1) they operate for the public benefit; 2) they have a common purpose, usually (but not exclusively) around service delivery, social watch, advocacy, research or education; 3) they are private (occupying the space outside of the state or market); 4) they are self-governing; and 5) they do not distribute profit. It also noted that '[t]he civil society organisations that dominate the civil space in South Africa are largely focused on either advocacy or service delivery' (2008: 8). This conception can be described as an activity-based definition of civil society as it focuses mostly on what civil society organisations do.

Another important factor in defining civil society organisations is that of their legal status, i.e. whether they are registered non-profit organisations or not. Making this distinction is crucial for civil society support programmes and stakeholder engagement initiatives, as noted in a report, commissioned by Kagiso Trust (KT), on the classification of the Non-Profit Organisation (NPO) sector in South Africa (Kagiso Trust, 2020: 80 and 81):

In the absence of a credible source of information on non-registered NPOs, and given KT's need to identify NPOs that are aligned to its programmes, it is recommended that KT should start the process of identifying the relevant NPOs by using the entire national database. The use of the national register can be justified under the assumption that NPOs that seek out registration are signalling a genuine intent to operate and might be distinct from the 'fly-by-night survivalist' NPOs.

For the purposes of this brief, civil society or the community sector refers to civil society organisations such as non-profit organisations, non-governmental organisations and community-based organisations, most of which are identifiable by their registration status. Civil society also includes other influential groups or movements that operate outside of the state and the market who fit the criteria outlined above but may not be officially and formally registered – meaning they function informally.

Identifying and defining civil society actors is especially important to this discussion of the opportunities for and barriers to civil society participation and contribution to the construction of an effective developmental social compact for South Africa. Civil society or the community sector is among the recognised constituencies in South Africa's institutionalised social dialogue, in the form of the National Economic Development and Labour Council (NEDLAC). It has also been indispensable in the creation of a constitutional democracy and in advocating for the values, ideals and binding commitments of that constitutional order to be made operational through policy and praxis.

This brief explores the opportunities and barriers to constructing a developmental social compact in South Africa, with a keen focus on the role, contribution, participation and capacity of civil society, as well as the challenges to social dialogue and social compacting processes. It briefly assesses the country's institutionalised social dialogue model – NEDLAC – and how it enables and/or stifles meaningful participation and representation of civil society as a key constituency. It contextualises the current deliberations on the need for a new social compact for South Africa and also discusses the state of civil society in relation to opportunities to strengthen the influence and bargaining power of the sector in social compacting.

2

CIVIL SOCIETY IN HISTORICAL AND CONTEMPORARY PERSPECTIVE

The strength of civil society during the struggle against apartheid was its ability to cultivate solidarity and to build consensus around the pressing priorities on the path to defeating the enemy of all progressive, pro-liberation citizens – apartheid. Without civil society actors who were willing to lend their already constrained sphere of agency to give impetus to the political imperative of abolishing apartheid, the political as well as military legs of the struggle might have been paralysed. Defeating the oppressive regime required a social compact between civil society and the government-in-waiting, in the form of political organisations (most of whose leaders and organisations were banned throughout the course of the struggle against apartheid). This social compact was exemplified in the relationship between the African National Congress (ANC) and the United Democratic Front (UDF) – a mass movement of civil society organisations that supported the liberation movement which rose to prominence in the 1980s – and the Mass Democratic Movement (MDM) that replaced the UDF following its banning.

In addition to shaping the course of the struggle against apartheid, South African civil society has been a crucial contributor to the discourse on the construction of a new nation. It has also been central in advocating for policies and governance practices that contribute to the realisation of constitutional ideals and principles in a just, equal and free society.

The country's civil society is not monolithic, it is in fact diverse and plural with:

- A variety of policy agendas;
- Varying priorities in terms of issues;
- Differing views on what are the most important development and transformation priorities;
- Different postures towards the state (oppositional, activist or supportive); and
- A variety of forms, types and categories.

The acceptance of diversity and plurality is core to the consolidation of democracy. Democracy in action is a market place of ideas, proposals, agendas, policies, opinions and visions for society. Plurality is the natural outgrowth of healthy democracy and fuels the production of alternative options for citizens to choose from. Civil society operating in a democratic regime will not be monolithic but will be plural in nature; representing and promoting a variety of issues, agendas and interests which are oftentimes competing, and are at other times aligned. It is no different in democratic South Africa. It should not be surprising, therefore, that the consensus on development and transformation priorities might be elusive and in flux. And that at different stages in the country's democratic epoch this consensus might have been stronger and at others might have been scuppered by robust contestations of the state's policies and other developments in the country's political, social and economic terrains.

Despite the diversity and plurality of civil society, the sector has been able to converge on a number of campaigns with a particular focus on social justice, service delivery, good governance, anti-corruption, safety and security. This should not be surprising, and comes as a direct response to societal challenges.

A combination of factors have given impetus to civil society organisations focused on promoting accountability, defending the constitution and rooting out corruption, predominantly through advocacy and litigation. These factors include the country's poor economic performance; the decline in growth that followed the 2008 global financial crash; wide-scale rent-seeking and corruption – dubbed state capture – as well as the increasing unresponsiveness and unaccountability of political heads and officials.

The protest culture thrives within this context of a robust constitutional rights framework combined with frustration over the slow pace of the realisation of second-generation rights; a widening gap between the haves and have-nots; weakening state capacity, and unresponsive and unaccountable government. Industrial protests over wages and benefits and job losses as well as community protests over a variety of development and socioeconomic issues have continued with growing intensity.

2.1 State–civil society relations

The apartheid regime functioned as a totalitarian state, closely policing political, economic and social life. Civic space was narrow, and the activities of political organisations were placed under surveillance, sabotaged and curtailed. Despite the prevailing conditions, a large section of civil society lent its voice to the struggle against apartheid and supported the liberation movement, recognising and standing behind the ANC as the 'vanguard of the struggle for national liberation' (MISTRA, 2020: 101). The ANC placed a high estimate on the support of civil society throughout the struggle and proactively supported the formation of civil society organisations and cooperation with them.

Post-apartheid civil society action and activity have included contestation expressed through both widespread protest and litigation. These spring from South Africa's constitutional rights framework which recognises and protects the right to protest as well as the principle of constitutional supremacy, which has replaced parliamentary supremacy. Second-generation rights¹ – specifically the right to have access to adequate housing; healthcare services (including reproductive healthcare); social security and education – have galvanised social movements and the formation of formally registered organisations which advocate for these rights, provide support and represent individuals and communities. The major focus of protestors and civil society on the area of second generation rights is a response to the broader context of a country that is deeply unequal, characterised by income, social, spatial, wealth as well as gender inequalities (Statistics South Africa, 2019; The World Bank, 2018). These inequalities are stubborn and persistent and are deepened by high unemployment (which is largely structural in nature), and resultant poverty and very limited opportunities for social mobility. In the case of each of these rights, the Constitution enjoins the state to take legislative and other reasonable measures, within available resources to achieve the progressive realisation of these rights, that is, to make them available and accessible. The weakening capacity of the state, particularly the local state,² to deliver services efficiently and cost-effectively – whether through a lack of appropriate staff, maladministration, rent-seeking practices or corruption – has also worsened the impact of these inequalities across the country. The effects of the Covid-19 pandemic and lockdowns should thus be considered against this backdrop of a nation already on a trajectory of poor economic performance, deepening inequality and a crisis of high unemployment and poverty, especially amongst the youth.

The ANC and its traditions continue to influence the mobilisation, advocacy and activism forms adopted by civil society organisations and actors in post-apartheid South Africa (Von Holdt & Naidoo, 2018: 3). This is not surprising given that the ANC has been the dominant political force in South Africa for almost three decades of democracy. Moreover, the party and movement have been at the centre of the country's developmental woes due to their undermining of a capable state through maladministration, mismanagement and corruption, the most elaborate of which has been state capture. Civil society has taken different postures at different times towards the government, including include oppositional, activist and supportive postures. This is not a hard and fast categorisation of civil society but simply provides a useful way of viewing and understanding the approaches, attitudes and activities of civil society.

1 See Section 26 to 29 of the South African Constitution.

2 Successive Auditor-General reports on the country's municipalities since 2015 have showed regression on financial management, regulatory and legal compliance as well as irregular spending across the country. Despite there being outstanding municipalities in each financial year, the overall picture remains concerning and bleak.

Oppositional civil society groups are those that are opposed to major economic reforms and attempts at redress in a country where the legacy of institutionalised racism looms large. These organisations and groups question the expansion of the social net, in the form of grants, and are against affirmative action policies such as employment equity, broad-based black economic empowerment, a national minimum wage, and reforms in the land, healthcare and education sectors, including the proposed National Health Insurance (NHI) and changes to language policies in schools and universities. Some examples: Afriforum, Free Market Foundation.

Activist civil society organisations and individuals are working to accelerate the progressive realisation of second-generation rights and to achieve social justice and redress through large-scale socioeconomic reforms. They are deeply concerned about the effects of inequality in all its presentations and are agitating for the full realisation of constitutionally guaranteed rights to equality. These organisations advocate for protection of the rights of vulnerable and marginalised groups and for providing much needed social services to the same. Some examples: Section 27, Equal Education.

Supportive civil society agents have historically been aligned to the governing ANC and participate in the party's policy-making processes. These organisations are generally sympathetic to the ANC's ideological and policy positions and work amongst communities to garner support for these. Some examples: South African National Civic Organisation (SANCO).

Social movements have featured prominently among civil society initiatives and in efforts towards transformation and the construction of a new South Africa. These include movements such as the Landless Peoples Movement, the Anti-Evictions Front and subsequently the Abahlali base Mjondolo (shack dweller) movement, all working for a more equal distribution of land and housing. The student movement, which has been active since before 1994, gained even more prominence in contemporary South Africa during the Fees Must Fall protests from 2015 to 2018 (Kagiso Trust, 2019: 105). The Fees Must Fall student protest moved beyond just advocating for fee-free education, but 'generated critical discourse on the meaning of democracy and the realisation of socioeconomic rights' (MISTRA, 2020: 108). The Defend our Democracy Campaign is also actively involved in the work of democratic renewal and change. However, it is burdened with perceptions of partisanship as the campaign is largely led by ANC veterans.

The rise of these movements, most of which are driven by local struggles, and some of which have gained traction nationally, is indicative of the fraying capacity of ANC-aligned SANCO to channel community discontent (MISTRA, 2020: 108). It is also a product of the growing trust deficit between the government – particularly local state – and communities.

Increasing numbers of civil society groups have focused their advocacy on anticorruption, accountability and promoting transparency, in response to a growing trust deficit and the need to defend South Africa's nascent democracy in the wake of weakening state capacity and a lack of responsiveness or accountability (MISTRA, 2020: 108). The activities – including advocacy, protest and litigation – of different organisations, acting in cooperation rather than formal coalition, contributed to increasing national awareness of state capture and the urgent need to seek accountability for the systematic repurposing of the state for personal gain. However, the efforts have not lead to a sustained and coordinated civil society programmes on anti-corruption and demands for accountability.

Whatever the approaches, postures and activities of civil society in the democratic era – whether advocacy, litigation or protest – ultimately the greatest strength of the community sector is its proximity and access to communities. It also lies in its ability to mobilise communities and connect different groups in the struggle for just outcomes to promote communities' rights to a good quality of living.

3

SOCIAL DIALOGUE IN THE SOUTH AFRICAN CONTEXT

NEDLAC was born out of the political settlement that gave rise to South Africa's first democratic elections in 1994. It was established to give continuity to the intense negotiations and consensus-building that held led to the elections, and to the creation of South Africa's Constitution.

3.1 Institutionalised social dialogue: The role of NEDLAC

The political settlement, in the form of the Constitution, which gave rise to the new South Africa was the founding social compact between the state and societal role-players. As part of that settlement, social dialogue was formalised in the National Economic Development and Labour Council (NEDLAC). The forum became the institutionalised platform to give continuity to consensus building and engagement between social partners to advance the country's transformation. NEDLAC has been instrumental in the negotiation and establishment of the country's labour relations legislative framework, and in securing commitments to development and transformation focusing mostly on job creation and economic revival.

Several summits – on jobs, investment and gender-based violence – have been held under the auspices of NEDLAC, resulting in a number of commitments by social partners towards job creation and investments. NEDLAC was also instrumental in ensuring the adoption of the National Development Plan (Vision 2030) published in 2012, which faced resistance from some quarters, notably labour. Despite these agreements and ongoing social dialogue, the challenges of high unemployment and inequality persist. The economic recovery plan first agreed by business and the government and endorsed by social partners at NEDLAC 'was less of a single plan than a lining up or alignment of the priorities of different sector stakeholders, which confirms again the approach of each to their own' (Kagiso Trust, 2020: 13). This might justify doubts about the effectiveness of NEDLAC to negotiate the kind of social compact necessary to fundamentally transform society.

NEDLAC as a platform of institutionalised social dialogue is commendable for its inclusion of civil society, which is unique to South Africa. However, it is also of concern that some social partners are more equal than others, and that given the diversity of community sector or civil society, and the multiple priorities of civil society actors, the community voice at NEDLAC has not been as influential as that of business, labour or government. Yet, establishing the legitimacy of agreements and policies, and securing broad societal consent for these, is unlikely without the input and cooperation of civil society. Thus, it is necessary to give greater prominence to civil society actors and organisations. Their indispensable historic role in the transition from apartheid to democracy, and their current centrality to the achievement of the country's developmental and transformation goals, should be recognised. Hence the call in this paper for a state-civil society compact for development and transformation. The Framework for a Social Compact for South Africa, a report drafted by MISTRA researchers as input on the development of a social compact, in response to the Presidency's intention to achieve consensus on a new social compact for South

Africa, makes the following recommendation regarding the strengthening of the community sector's participation in and representation at NEDLAC:

Civil society continues to be included (which is a uniquely South African approach), allowing those actors who fall outside organised business and organised labour to exercise their voice. NEDLAC devises ways to provide for the participation of new social movements and elements of civil society not represented in the community constituency (2022: 12).

As a pioneer of civil society representation, enhancing the tri-partite model of social dialoguing that is used across the world, NEDLAC should seek to improve upon the strides it has made by making sure that representation of the sector is not token but meaningful.

3.2 A fit-for-purpose NEDLAC

Since the early 2000s, following the honeymoon period of the democratic transition, NEDLAC has faced a rigidity in stakeholder approaches to social dialogue, including frozen mandates and the juniorisation of representation, which signal a lack of commitment to social dialogue. This has developed in the wake of fierce policy contestations within society, among and between the ANC and opposition, as well as between the ANC and civil society (particularly social movements), and within NEDLAC itself. As a result, NEDLAC has lost its ability to be agile and to arrive at a consensus in a reasonable time, thus 'leading constituencies to seek alternative means of representation and engagement also subverts the role of NEDLAC in the dialogue processes' (MISTRA, 2019: 44). This could be on account of NEDLAC being approached as a collective bargaining forum (Webster, 2019) thus stifling knowledge-sharing, negotiation and consensus building, which are defining features of social dialogue. The view that NEDLAC is no more than an advisory body that can be bypassed in the consideration of social and economic policy and regulations has become a major challenge. The forum is competing with the other options available to social partners to negotiate and influence policy, including summits by government departments (MISTRA, 2019: 44).

The nature of representation at NEDLAC has also come under scrutiny, especially the effective representation of civil society and what civil society participation should look like. This question is particularly pertinent given the reality of youth and women as a demographic majority and the reality of inequality within and between the rural and urban areas, as well as the millions who form the rank of the unemployed (MISTRA, 2019: 42).

In the context of strongly entrenched structural unemployment and growing informality and casualisation of jobs, trade unions must contend with falling membership numbers. The strike on the platinum belt in 2012 which resulted in the Marikana massacre and the rise of AMCU (Association of Mineworkers and Construction Union) also raised questions about the effectiveness of existing and long-standing trade unions in representing the needs and demands of workers and working-class people. The recent years of the transition to democracy have highlighted the contested and plural nature of the labour movement in the country. Trade unions and federations are, of course, not homogenous in how they represent their members' interests. However, it is notable that the differences, particularly within and between trade unions under the banner of COSATU, and across the labour landscape, have become more pronounced. Much of the contestation since the beginning of the 21st century has been over the efficacy of COSATU, especially its proximity to the governing party. This debate led NUMSA (National Union of Metal Workers of South Africa) to officially announce withdrawal of its support for the ANC in the lead up to the 2014 general elections. The stalemate ultimately led to the expulsion of NUMSA from COSATU in November 2014, giving impetus to the creation of the South African Federation of Trade Unions (SAFTU). This organisation has positioned itself as a radical alternative to COSATU unencumbered by political allegiances which SAFTU sees as stifling the labour movement's goal of promoting worker interests.

The fallout in COSATU is a microcosm of the general discontent over the failures of successive ANC administrations to build a strong, development-oriented state. Such a state would be characterised by ethical leadership, a qualified, disciplined and professional bureaucracy, and a government that has the political will and skill to implement pro-poor, pro-development policies that would lead to an inclusive society and economy. Revelations of entrenched rent-seeking practices, the use of state resources to oil patronage networks resulting in tenderpreneurship and pervasive maladministration and corruption have fomented growing disillusionment with the slow pace of societal

transformation. The triple challenges of poverty, unemployment and inequality, all which have their root in the country's colonial and apartheid past, continue with little sign of abating largely because of the weaknesses and failures under democratic governments. Closer attention also needs to be paid to corporate governance and the actions of big business and executives. Financial and social inequality skews power relations in favour of the economic and political elite who collude to serve narrow interests, depriving deserving small and medium businesses as well as black entrepreneurs of opportunities to get government contracts.

A MISTRA report titled 'Towards a NEDLAC Fit for Purpose' identifies crucial problems with NEDLAC: 'shortcomings – such as representativity, legitimacy, location, mandate, capacity, trust, communication and outreach' (2020: 21).

These dynamics within NEDLAC make it more difficult to strengthen civil society participation and voice in social dialogue. The most impeding of these dynamics is the narrowing down of NEDLAC's mandate, from one to build consensus on policies for development and societal transformation, to function more as a bargaining council. Treating NEDLAC as a bargaining chamber amplifies the power differentials among the social partners.

To its credit, NEDLAC has made important contributions to developing the country's transformation and development policy framework, as well as to social compacting processes.

3.3 Social dialogue beyond NEDLAC

Beyond NEDLAC, South Africa has attempted to broaden the scope of social dialogue towards constructing social compacts. Notably, the National Development Plan or Vision 2030 and the Department of Sports, Arts and Culture (DSAC) National Social Compact for Social Cohesion document, were products of national consultative processes – social dialogues – resulting in national social compacts. Presidential summits, on jobs and investment, as well as the summit on gender-based violence which produced a national plan of action and strategy, are also examples of social dialogue that culminated in issue-based social compacts. However, these processes have had limited success in galvanising societal stakeholders towards a consensus on political, economic and societal reconstruction and transformation. The Gibs-Indlulamithi Social Compacting Initiative reflected on the shortcomings of these previous social compacting processes (Oosthuizen and Runji, 2021: 20):

Given the prevailing context of fragility and persisting conflict in South African society, these social dialogue processes and resulting social compacts have been gravely ineffective. There are several reasons for this:

- a) While the processes have taken account of national societal realities, they have lacked the nuance to respond to local realities and in this way have represented a top-down approach to social compacting that has failed to include and engage with dynamics at the grassroots level;
- b) By their design, the dialogue processes have not been broadly representative and inclusive of the plurality and diversity of stakeholders, interests and priorities in society;
- c) The dialogue processes have considered themselves as catchall dialogues and have been poor at fostering multi-stakeholder buy-in and cross-sectoral collaboration at different levels – national, provincial and community;
- d) The processes have been focused on identifying, defining and analysing problems and challenges whilst failing to provide a clear roadmap for the implementation of the plans and strategies to resolve them; and
- e) The processes have prioritised the search for consensus above the need to surface conflict, variance and dissent as part of managing and mitigating risks to social compacting.

Any pursuit of social compacting as a means to reach a consensus on addressing the country's pressing social and economic challenges needs to overcome these shortcomings.

The current administration under President Cyril Ramaphosa has singled out social compacting as crucial to achieving development and transformation goals which have yet to be fully realised in the 28 years of democracy. In his State of the Nation address in February 2022, President Cyril Ramaphosa announced an ambitious target of finalising a comprehensive social compact in 100 days. He affirmed that this social compact has to be inclusive: 'To

be effective, this social compact needs to include every South African and every part of our society. No one must be left behind'. This could be seen as an acknowledgement that previous social compacting processes have not been sufficiently inclusive, or could have been strengthened by being more broadly inclusive. It provides an important entry point to the argument for broadening civil society participation to create a comprehensive social compact to rebuild the economy and transform society. The Framework for Social Compacting that was released at the end of the 100 day confirms this deficiency, and identifies inclusion as a priority for building a new vision and consensus for a social compact (Framework for Social Compacting, 2022: 6):

The MISTRA framework for social compacting further asserts:

We have the responsibility to place our economy on an inclusive growth trajectory and to leave no one behind. In taking up this challenge we will build on the foundation of the 2020 Economic Reconstruction and Recovery Plan (ERRP), which remains our common programme to rebuild the economy. Experience in rolling out the ERRP should serve as a basis to address gaps, speed up implementation and boldly confront the difficult issues. The proposed social compact will seek to shift the needle on inclusive economic growth by embracing the following:

- accelerated implementation of structural reforms and other growth-enhancing measures to support high rates of economic growth and job-creation;
- a bold expansion of public support for employment and social protection that will reach the majority of unemployed people and leave no one behind; and
- a new set of interventions aimed at supporting firms of all sizes, with a special focus on informal, survivalist and micro-enterprise activity, in order to grow entrepreneurship and economic inclusion.

What is required is a portfolio of interventions that collectively achieve scale, in order to attain the high levels of growth and social inclusion outlined in the National Development Plan (NDP). This should be underpinned by a clear implementation plan (Framework for Social Compacting, 2022: 6).

4

CONTEXTUALISING THE SOCIAL COMPACT

A social compact in essence is a contract or agreement between social partners or societal role-players, with the government taking the lead; it outlines the roles, rights and responsibilities of each party. The idea of a social compact is derived from social contract theory, which is a body of work dating back to the 17th and 18th century that sought to delineate the proper relationship between rulers and the ruled. It was concerned with establishing the parameters of legitimate authority of the state in relation to the attainment of citizen consent to be under political authority (Hickey, 2011: 8; McCandless, 2018: 4). The social contract is preoccupied with the rise of the modern state which, according to Engels, emerged to manage class conflict and maintain social and political order (Engels, 2012: 2). The concept of the social contract remains salient, despite its roots in the idea of the Westphalian state model. The state itself as an organising and coordinating institution for managing socio-economic and political arrangements has yet to be replaced, notwithstanding globalisation (Moon, 2017: 1). Also, given the persisting context of group conflict owing to political, social and economic plurality in contemporary societies, there is a place for the social contract in that ‘we need basic agreements about how we can peaceably live together’ (McCandless, 2018: 4).

The United Nations Development Programme (UNDP) defines the social contract as processes that take place within a political community which give rise to an agreement, a framework of rights and duties, where the legitimacy of the social contract (UNDP, 2016: 9):

... may be gauged by the extent to which it creates and maintains an equilibrium between society’s expectations and obligations and those of state authorities and institutions, all amidst a context of constant flux.

The OECD’s definition of a social contract is also instructive, describing the social contract as emerging from an interaction between four factors which have the effect of either enforcing or eroding the legitimacy of the agreement (OECD, 2008: 17):

a) expectations that a given society has of a given state; b) state capacity to provide services, including security, and to secure revenue from its population and territory to provide these services (in part a function of economic resources); and c) élite will to direct state resources and capacity to fulfil social expectations. It is crucially mediated by d) the existence of political processes through which the bargain between state and society is struck, reinforced and institutionalised.

A social compact not only sets the tone for state–citizen relations but also for citizen-to-citizen relations. It contributes to shaping the behaviour of non-state entities and non-governmental actors within society, creating ‘norms and expectations around how individuals interact with each other (politically, morally and economically)’ and where there is broad buy-in for the social compact it leads to ‘high levels of trust, reducing the chances of being exploited by others, increasing investments in long-run activities (stimulating growth) and reducing the chances of conflict’ (Addison et al, 2008: 93). Where a social compact is weak or fails to amass sufficient buy-in, there is an increased likelihood of exploitation, growing levels of uncertainty and thus reluctance to invest for the future as well as increased levels of violence (Addison et al, 2008: 94).

Historically and across different contexts, including Europe, South America, East Asia and Africa, social compacts have been about making societies more inclusive by improving social conditions, expanding economic and political participation of different groups and achieving a more equitable distribution of resources both in the public and private sectors. From the labour movement to the women's movement, to the anti-colonial movement, the civil rights movement and various other social movements advocating for a variety of human, social and economic rights, there has been agitation to make states more inclined to working for the welfare and protection of the broader population and to ensure that the government and its institutions function in the public interest (MISTRA, 2019: 25–35; Addison et al, 2008: 94–98).

Given ongoing and increasing socio-economic pressures and political instability, more attention has been given to the utility of the social compact in crisis situations and fragility. The UNDP report of 2016, mentioned above, discusses the release of an earlier report in 2012, in which it underscored the value of the social contract in the provision of governance and development support across the UN system. The report advocated for making the restoration of and support for the social contract a central pillar, leading to greater coherence of governance and peacebuilding interventions and programmes in fragile settings (UNDP, 2016: 7). The report also highlighted three factors that are crucial to restoring the social contract in 'fragile and conflict affected contexts' (UNDP, 2016: 7):

- a) Promoting responsive public institutions at both national and local levels;
- b) Supporting inclusive politics, based on transparent and predictable mechanisms that include and engage individuals or social groupings commonly marginalized or wholly excluded from political life;
- c) Fostering resilient societies, chiefly by promoting robust state–society and society–society relations'

Fragility is defined as a setting 'lacking effective political processes that can bring state capacities and social expectations into equilibrium. In lexicons of policy, fragility refers to badly disordered political arrangements and weak state legitimacy'. This can be characterised by governments being unable to deliver services and being unable to collect taxes. In addition, in circumstances of external and domestic shocks, conflicts arise because of a trust deficit and an inability of the state to maintain order and a monopoly on violence, which is also a symptom of a broken social contract (UNDP, 2016: 11).

McCandless (2018), in her work on re-establishing the contextual relevance of the social contract fragile settings, notes that social compact processes need to be underpinned by several guiding principles. Firstly, lasting peace should be the goal. Secondly, political settlements should be inclusive of the broader political community and not just elites. Thirdly, the state and government institutions should be responsive and deliver services to the expectations of citizens; this includes managing competing interests, adjudicating moral obligations and the distribution of resources. Fourthly, establishing social cohesion. From this analysis, McCandless (2018) then presents three drivers for constructing resilient social compacts: 1) inclusive political settlements which include processes for peace-making, transitional justice processes, development planning and the construction of a civic value system and culture, 2) state and government institutions that play a role in delivering services effectively and fairly, and in assessing the processes followed in the delivery of such services, and 3) building social cohesion, which is about improving trust and respect within society among individuals and groups, and constructing a national identity to forge a sense of belonging, and to promote greater participation and representation (McCandless, 2018: 50–53). A fourth driver could be said to be 'the contribution of the private sector to the socioeconomic development of society. Transforming the political economy to produce greater equality of opportunity and distribution of wealth, as well as to promote inclusion, is crucial' (MISTRA, 2019: 22).

A social compact requires any processes entailed in achieving it to be inclusive if the compact is intended to shape relations between the state and citizens. Inclusion is equally important if the compact is thought of as a binding societal agreement which necessitates buy-in from consenting parties to establish legitimacy. Those who are excluded from the process and resulting agreement might argue that they have not consented and thus are not bound by the social compact. And, as the UNDP (2016: 10) puts it, 'For a social contract to be valid and robust, it must emerge from a political community whose membership is inclusive. Consent to a state's authority includes all under its jurisdiction; benefits from state protection and services are accessible to all.'

4.1 The need for a comprehensive social compact

After 28 years of democracy, South Africa remains the most unequal country in the world, characterised by income, social, spatial, wealth and gender inequalities (Statistics South Africa, 2019; The World Bank, 2018). These inequalities are stubborn and persistent and have been deepened by high unemployment, which is largely structural in nature (Institute for Futures Research, 2019: 40) and which limits opportunities for social mobility, keeping people locked in generational cycles of poverty. Poverty remains a challenge, with a quarter of the population living below the food poverty line (Stats SA: 2015).

Richard Wilkinson and Kate Pickett, in their book *The Spirit Level: Why Equality is Better for Everyone*, provide a comprehensive review of research on countries. Their work provides comparisons of developed countries to uncover the effects and costs of inequality, and to show the strong correlation between violence and inequality (Wilkinson and Pickett, 2010: 135):

A large body of evidence shows a clear relationship between greater inequality and higher homicide rates. As early as 1993, criminologists Hsieh and Pugh wrote a review which included thirty-five analyses of income inequality and violent crime. All but one found a positive link between the two – as inequality increased so did violent crime. Homicides and assaults were more closely associated with income inequality and robbery and rape less so. We have found the same relationships when looking at more recently published studies. Homicides are more common in the more unequal areas in cities ranging from Manhattan to Rio de Janeiro, and in the more unequal American states and cities and Canadian provinces.

South Africa being the most unequal country in the world also grapples with high crime rates and high incidents of violent crime, including murder and assault, as well as sexual and gender-based violence. Recently released crime statistics for the period January to March 2022 show an increase of 22% in the country's murder rate; attempted murder was up by 25%; assault and sexual offences were both up by 15% compared to the same period in the previous financial year. These are the worst figures over the same time period for the last five years (BusinessTech, 2022).

It is against this backdrop that evidence of wide and largescale, systematic and sophisticated schemes of fraud and corruption were released by the Commission on State Capture in a voluminous five-part report.

The Covid-19 pandemic and the socioeconomic shocks that accompanied responses to curbing the spread of the virus amplified these already existing disparities. The responses to the pandemic put pressure on livelihoods, limited economic activity and resulted in the loss of jobs which are the issues that the Economic Reconstruction and Recovery Plan (ERRP), spear-headed by President Ramaphosa, seeks to address. As McCandless notes, the crisis brought about by the pandemic has amplified fragilities in the country's post-apartheid political settlement 'which, over two and a half decades, has not sufficiently addressed structural legacies to achieve anticipated inclusive outcomes', as envisioned by the President's call for a comprehensive social compact (2021: 15).

4.2 Identifying priorities for a state–civil society social compact

Civil society actors and organisations are well positioned to inform and develop a list of pressing priorities for development. The Kagiso Trust, between 18 August and 7 September 2020, conducted a Covid-19 Community Resilience Survey among organisations and small groups over email and social media, with a total of 519 respondents (38 organisations and 191 individuals and small groups). The Covid-19 pandemic has only exacerbated already existing and stubborn challenges. One of the outputs of this survey research is a list of priorities identified by those in the organisations surveyed. This list does not depart from challenges previously identified as requiring urgent attention but emphasises the importance of addressing these issues to combat the causes and effects of poverty, inequality and unemployment. This list of priorities could inform pillars of a comprehensive state-civil society social compact (Kagiso Trust, 2020: 11–21):

- Jobs, poverty, livelihoods with a focus on combating unemployment and alternative strategies for economic revitalisation emphasising the second economy, community production and manufacturing and production shaped by a concern for environmental sustainability;
- Social security focused on achieving a national social protection floor but emphasising the implementation of a Basic Income Grant;
- Access to data and connectivity highlighting the inhibiting costs of data;
- Addressing the gender-based violence pandemic noting how women and girls have been disproportionately impacted by social ills, violence, the poor state of healthcare, poor education outcomes and how the Covid-19 pandemic has exacerbated the situation and deepened the inequality, poverty, unemployment and general deprivation of women and girls;
- Addressing the trust deficit between the state and citizens by addressing lack of accountability, poor service delivery and corruption;
- Combatting corruption with a focus on the negative economic impact of state corruption and lack of accountability and also highlighting the how corruption is not only ravaging the government and private sectors but also civil society; and
- Youth issues concerned particularly with youth unemployment and improving the economic and social prospects of young people.

This list is comprehensive and contains crucial issues; however, the length of the list and the variety of concerns might be a barrier to establishing consensus or coalescing civil society around a specific programme or objective. That said, the length of the list is also indicative of the diversity and plurality of civil society in a country characterised by disparities which necessitate advocacy for the variety of issues affecting different communities and interest groups on the spectrum of inequality. The Framework for Social Compacting outlines key commitments by social partners. The community sector commitments are as follows (The Framework for Social Compacting (2022: 20)):

1. Community campaign of solidarity to identify and assist most vulnerable families and individuals including campaign against drug and substance abuse and assistance to access state support services;
2. Participation in structures and activities to support police and other agencies, among others to protect infrastructure against theft, vandalism and illegal connections;
3. Commitment to pay for services used beyond free basic allocations and work with SALGA to assess, clarify and simplify such allocations across all municipalities;
4. Mass education to expose and report acts of corruption and undertake mass campaign for rule of law and accountability;
5. Mobilising resources and engaging in humanitarian activities of social solidarity in neighbourhoods;
6. Monitoring commitments of both the state and business (e.g., education, health services and financial inclusion) and campaign for consistent implementation of these commitments and obligations;
7. Supporting initiatives to improve living conditions including co-operation on implementation of re-blocking of informal settlements, assist in preventing illegal land occupation and settlements below flood-line localities;
8. Gender education and encouraging culture of reporting violence and abuse of the most vulnerable, especially women and children;
9. Developmental activities including active participation in Ward Committees, CPFs and IDP development; and
10. Promoting rights of people living in communal areas and forging partnerships with traditional leaders.

There are clear overlaps in the priorities identified in Kagiso Trust's Covid-19 Community Resilience Survey and the community sector commitments in the Framework for Social Compact for South Africa, which demonstrates synergies and consensus within civil society – the differences being in emphasis on the role and contribution of various actors. There is a need therefore to continue efforts towards aggregating the voice of civil society and to enable inclusive representation of the sector in social dialogue and social compacting processes.

5

STRENGTHENING CIVIL SOCIETY PARTICIPATION IN SOCIAL DIALOGUE

For civil society's voice to be influential requires effective coordination. Coordination entails establishing formal relationships to work together towards achieving a particular end. It is not just loose cooperation but requires a commitment, time and resources from civil society organisations (CSOs) working in coordination who can pool their diverse skills and resources, can build credibility for their arguments, and contribute to the improvement of socioeconomic conditions through influencing policy reform and actions. Critically, CSO coordination is a seed for consensus building and coalitions towards change. Coordination best practice includes (Kagiso Trust 2019: 102 and 103):

- The ability to rally and mobilise people;
- Effective communication to engage with and influence government decision-making;
- Common values and purpose;
- Participating civil society organisations and actors must derive value from their ongoing contribution to working with others; and
- Coordination structures should be responsive, adaptable and flexible to changing circumstances within their coalitions and the external environment.

The UDF presents an impressive case study for civil society coordination in pre-democratic South Africa:

The UDF forged links not only between different organisations, but between diverse communities. The ability to exploit both legal and illegal opportunities to raise the costs of maintaining the existing system was as important a tool for rebellion as ANC-led guerrilla activity or violent confrontations with the security forces (MISTRA, 2020: 71).

Some prominent examples of past and current effective attempts at civil society coordination in South Africa include various CSO coalitions: the Right2Know campaign, focused on promoting government transparency, access to information and protection of media freedom; Imali Yethu which works with the National Treasury to make the budget more accessible to the public and the Treatment Action Campaign (TAC). This organisation engages in monitoring, advocacy, and campaigning within the healthcare system to ensure that all public healthcare users can access quality and dignified healthcare. TAC successfully compelled the government to adopt and implement a nationwide, broad-scale treatment policy for people living with HIV, including the provision of free condoms, ARVs and medicines to prevent the transmission of the virus from mother to child (Kagiso Trust, 2019: 104). Nevertheless, the above examples do not demonstrate coordination on a broad scale but on very specific issues, which signifies a trend of civil society specialisation (MISTRA, 2020: 107).

The South African Non-Governmental Organisations Coalition (SANGOCO) is a notable attempt at creating a national coordinating structure for the NPO sector in the country. The coalition was created in response to diminishing donor support and funding following the transition to democracy, as well as the need to coordinate civil society engagement with the government. While the structure began with chapters in all provinces and a membership of 4000 organisations in 1995, it disintegrated in the early 2000s owing to administrative challenge. As yet, it has failed to regroup and no one, overarching, unifying CSO coordination structure has arisen to replace it (Kagiso Trust, 2019: 104 and 105).

6

BUILDING CONSENSUS ON TOP PRIORITIES FOR A STATE-CIVIL SOCIETY COMPACT

6.1 Towards a state–civil society compact: points to ponder

- There is a tendency towards specialisation of civil society organisations and actors that perhaps accounts for a lack of a coherent vision and definition of development and transformation in the South African context. This diversity and plurality, while a natural outgrowth of democracy in the context of deep inequality, can inhibit much-needed coordination on a developmental agenda for the country.
- The civil society sector is not immune to the prevailing context of society-wide inequalities which are reproduced in the sector. And so civil society in the country has to grapple with the contradiction of striving and working for social justice and the attainment of an equal society while inequalities within and among the sector continue to threaten coherence and coordination. The Covid-19 pandemic and the economic shock caused by successive lockdowns has only exacerbated these disparities.
- While the Constitution of South Africa (1996) and National Development Plan (NDP) of 2012, should be the central galvanising vision for society, they have not become rallying points for the country's social partners in any substantive way.
- The list of priorities and the list of ten community sector commitments discussed above (section 4.2) are interlinked, and they speak to the multidimensional nature of the impediments to the country's development and transformation. Therefore, it would be important to exploit possibilities to synthesise these ideas to produce a singular objective, with a few key drivers through which to arrive at a unity of purpose and alignment of actions. There needs to be further exploration and investigation of the ways in which civil society can work together to influence the country's policy agenda towards a comprehensive programme of interventions.

6.2 Recommendations

- Improve civil society coordination: given the diversity of civil society, and the multiplicity of interests represented by the varying tiers of civil society, organisations at the community level, both regionally and nationally, should give attention to providing a representation model or mechanism that is more inclusive, and can aggregate civil society's voice. It may be useful to revisit the experience of SANGOCO (as highlighted in Section 4.2) and to deliberate on recreating a representative structure for civil society, with membership across municipalities and provinces.
- Strengthen representation of the community sector at NEDLAC: it is important to explore ways of strengthening both representation of the community sector and the influence of its voice in this forum. One way of doing so would be to imitate the approach adopted by labour and business at NEDLAC, namely having federations to represent sector interests. This could facilitate effective civil society advocacy at the Council.
- Alternatively, the informal nature of CSO representation at NEDLAC could be retained, but with concerted efforts to include social movements and those groupings that are issue-specific, and also those active in the informal sector.

- Consolidate priority areas for a comprehensive social compact: As noted in section 4.2, identifying and consolidating key priorities is crucial for civil society coordination and advocacy in social dialogue and during social compacting. It is necessary to explore the possibility of using the list of priorities highlighted in Kagiso Trust's research and the 10-point list contained in the Framework for a Social Compact to create a cluster of priority areas. These could perhaps be grouped under thematic or operational categories, for example 1) inclusive economy; 2) social security; 3) safety and security and combatting gender-based violence; 4) energy and climate sustainability; 5) anti-corruption and promoting accountability; and 6) promoting active and conscientious citizenship. The aim is to ensure alignment with the Social Compact Framework, while identifying major themes that can be elaborated upon.

These recommendations should be considered for the agenda of a forthcoming summit on civil society, sponsored and organised by Kagiso Trust for the last quarter of 2022.

7

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