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**Beyond Party Politics:**

**To what extent, if any, are there unexpected democracy  
deepening consequences of one-party dominance in South  
Africa?**

## Table of Contents

Abstract	2
Introduction	3
Chapter 1: South Africa – a one-party dominant democracy?	12
Chapter 2: Civil Society, the Judiciary and the Constitution - How an interest group used the courts to affect government policy	
Part I: The Significance of the Issue	29
Part II: State Action	32
Part III: Citizen Demands	35
Part IVa: Options available to citizens within the party political system	36
Part IVb: Options available to citizens outside the party political system	41
Part V: Assessment	47
Chapter 3: Civil Society and Decentralisation - How individuals and communities are side-stepping the formal political system and the implications of non-state policing for democracy	
Part I: The Significance of the Issue	56
Part II: State Action	58
Part III: Citizen Demands	66
Part IVa: Options available to citizens within the party political system	68
Part IVb: Options available to citizens outside the party political system	72
A: Responsible Citizen Responses	74
B: Autonomous Citizen Responses	80
Part V: Assessment	89
Chapter 4: Civil Society and Lobbying – How a broad range of civil society organisations formed a pro-poor coalition in an attempt to influence policy	
Part I: The Significance of the Issue	101
Part II: State Action	102
Part III: Citizen Demands	108
Part IVa: Options available to citizens within the party political system	110
Part IVb: Options available to citizens outside the party political system	116
Part V: Assessment	124
Conclusion	130
Bibliography	135

## Abstract

The degree of centralisation and monopolisation of power by the African National Congress (ANC) is raising concerns about the long-term prospects for democracy in South Africa. Conventional party politics cannot at present provide the mechanism to check tendencies towards authoritarian domination: loyalty to the ruling party, lack of credible opposition parties and the electoral system itself are all factors contributing to the entrenchment of the status quo. While many analysts predict a slow but steady slide into one-party rule, this paper explores another possibility: whether developments beyond the party political system may provide incentives to elicit accountable and responsive government. Looking at three key issues – HIV/Aids, crime and welfare reform - we assess the extent to which, if any, policy or practice can be affected from outside the party system: by citizens themselves, by non-party elites, and by other democratic institutions such as the judiciary and the constitution. Taking it a step further, we examine whether these developments are democracy deepening, democracy neutral or democracy erosive. Ultimately the picture that emerges is a murky one: in some instances the opportunity for widespread citizen involvement is (curiously) not being taken up; in others, the liberal democratic discourse of rights clashes with majoritarian conceptions of the general will, while in still other instances, the possible merits of benign paternalism conflict with substantive egalitarianism. Nevertheless, based on the evidence it seems that there is in fact the potential to mitigate against the destructiveness of one-party dominance on democracy. Whether this potential can be harnessed to promote more and better democracy in South Africa is up for debate. That it should be harnessed, in the view of the author, is not.

## Introduction

'Political parties created democracy; modern democracy is unthinkable save in terms of parties' (Schattsneider, 1942: 1). The pervasive presence and influence of political parties is possibly the most notable characteristic of contemporary democracies. Regarded as essential to the functioning of mass electoral democracy, a vibrant party system is commonly considered a prerequisite for a polity to be termed democratic. But while political parties are widely accepted as a democratic compromise - a necessary mechanism for representation in contemporary democracies - there appears to be little consideration given to the possibility that parties may also serve to compromise democracy by alienating citizens from government.

In the prolegomenon to this paper it was suggested that the analytic weight attached to the relationship between democracy and political parties requires re-evaluation. It was argued that a problem confronting countries attempting to create or maintain a democratic system is that in giving primacy to political parties, and to a multi-party system, democracy is being undermined. The suggestion was made that there is a dialectic of political parties: a prerequisite of democracy in theoretical terms, political parties may erode democracy in practice. It was recommended that there is a need for a reworked theory of democracy which not only takes into account and recognises the problems with political parties and party systems, but which addresses developments beyond the conventional party political system. The argument was made that multi-party democracy defined in terms of elections is certainly not the only, and possibly not the most desirable conception of democracy in the twenty-first century in general and in the developing world in particular. In essence, the convention of conceiving modern democracy as party democracy was challenged.

This paper extends that challenge. Having questioned the orthodox view of drawing a positive correlation between relating democracy and multi-partyism, this paper examines the tendency of democratic theorists to posit a negative correlation between one-party dominance and democracy. In modern representative democracies, where there is an absence of widespread citizen participation outside of elections, how responsive elites are to citizens is taken to be a key indicator of democracy and of 'rule by the people'. In a multi-party system, the threat of being replaced serves to encourage the party in government to be responsive. It is argued that the stronger the opposition, the greater the threat of replacement, and the lesser the chances of unresponsive, authoritarian domination. It is on the basis of this logic that electoral systems are designed to promote multi-party democracy, and that constitutional checks and balances are put in place to prevent the sustained incumbency of a single, all powerful party.

But if, despite the engineering, multi-party democracy remains hypothetical, and alternation in government becomes unlikely, analysts of democracy have tended to predict a slide towards authoritarianism where democratic institutions are eroded, sometimes to the point that the system degenerates into hegemonic one-party rule.

This paper sets out to examine this prediction in relation to South Africa. Given the existence of a dominant ruling party, ineffective opposition, and an electoral system that entrenches the status quo, prospects for alternation in government in the near future are unlikely. According to conventional theory, this lack of alternation in government suggests that South Africa is moving in an anti-democratic direction. Undertaking an empirical analysis of the current political arena, the applicability of this analysis is considered – and contested. Put differently, this paper is an examination of some of the ways and circumstances in which one-

party dominance can provide a vehicle for deepening democracy rather than destroying it.

It should be noted at this point that there are some exceptions to the broadly negative view of one-party dominance and democracy. Some theorists have pointed out that one party dominance can facilitate (stability in a) democracy by entrenching the legitimacy of democratic institutions, by working to marginalise political extremes, fusing ethnic differences and creating consensus around compromise solutions to national problems (Reddy 2002, Pempel 1990). In other words, it is suggested that processes within a party may be more conducive to a democratic compromise than the competitive procedure of inter-party contestation. Even more notable are the arguments offered by Julius Nyerere and to some extent Jomo Kenyatta, that democracy has in different situations been organised in specific historical forms, and the one-party is one such form, as is the multi-party system (Meyns et al, 1989: 16). Neither of these positions will be examined in this paper. The argument presented here is that if one-party dominance is facilitating the deepening of democracy in South Africa, it is doing so indirectly, unintentionally, and unwittingly. If a deepening of democracy is occurring, it is because citizens, facing the prospect of protracted one-party dominance, are looking for alternative ways to satisfy their needs and express their preferences: alternative mechanisms for realising 'rule by the people'.

It is important to understand that this paper is not attempting to refute the view that one-party dominance is destructive to democracy by drawing on the elitist arguments that only one-party dominance can provide the political stability required for the establishment of preconditions necessary to entrench democracy. Rather, the issue being considered here relates to whether one-party dominance may under certain conditions have unexpectedly constructive consequences, consequences which encourage the development of more and

better democracy: more in the sense that the democratic process involves wider sections of the population more directly; better in the sense that elections and parties become one component of democracy, rather than the sole defining criteria.

This then is the central concern of this paper. To what extent, if any, is the emergence of new or alternative circuits of decision-making as a response to one-party dominance, deepening democracy in South Africa? And given that this may be the case, what are the implications for democrats confronted with the possibility of one-party dominance? Are the destructive effects of one-party dominance better reduced by promoting these alternative mechanisms for affecting decision-making rather than by trying, in vain, to build multi-party democracy through strengthening opposition parties? Ultimately, while the arguments will be confined to the specific area of contemporary South Africa, the intention on a more general level, is to contribute to an issue that challenges all democracies: how to render the instruments of participation appropriate to the specific configurations of power which define the contemporary world. It is hoped that the conclusions drawn in this paper are at best, sufficiently convincing to warrant serious attention, at worst, sufficiently provocative to annoy the complacent.

The paper begins with an examination of the options available to citizens to ensure and promote responsive government in light of the institutional framework and the political dynamics of contemporary South Africa. In essence, Chapter 1 assesses the conventional arguments that democracy in South Africa is threatened by the prospect of protracted one-party dominant rule. Moving away from theory, each of the following three chapters examines a critical issue in contemporary South Africa in an attempt to establish whether there may be unintended, but nevertheless constructive consequences of one-party rule for

democracy. In Chapter 2 we explore the role of the judiciary and the constitution as an alternative mechanism to the party system and the legislature in affecting HIV/Aids policy. Chapter 3 presents an analysis of how citizens are side-stepping the formal political system almost entirely in an effort to cope with increasing crime and inadequate public policing. Chapter 4 examines how a broad range of civil society organisations has come together to form a pro-poor coalition to challenge the government's reticence to introduce a comprehensive social security system. The argument presented is that despite the official opposition's support for the system, because it is so weak in relation to ANC dominance, policy is influenced more effectively from outside the conventional party system. At the same time, the involvement of two members of the ruling 'tripartite alliance' against the third is assessed in terms of the claim that South Africa is a single-party dominant democracy.

The paper concludes with an analysis of the extent to which one-party dominance is democracy erosive, democracy neutral, or democracy deepening in the South African context. Based on the view that conceiving modern democracy as party democracy is limited, some suggestions are made as to the kind of democracy that could and should be developed in and for South Africa. It would be too bold to imply that what is presented is a 'new' model of democracy; rather, the aim is to suggest some adaptations to existing models.

In light of this, a note needs to be made about the various definitions and models of democracy that are considered in this paper. Drawing on the work done in the previous paper in which forms of democracy in ancient Athens, Madisonian republicanism and contemporary models were explored, this paper distinguishes between 'representative' or 'realist' democracy and 'participatory' or 'radical' conceptions of democracy. Liberal representative democracy, with its stress on political leadership, representation and liberty,

traces its genealogy from eighteenth-century America and the Founding Fathers to the mid-to-late-twentieth century conceptions proposed by Joseph Schumpeter (1943), Robert Dahl (1971) and Giovanni Sartori (1987) among others. Schumpeter argued that conceiving democracy as a procedural process in which a government is elected is preferable to any other conception. While he does not appear to suggest that democracy should be limited to such a minimal conception, Adam Przeworski (1999) defends this minimalism on the grounds that it produces substantive outcomes. Sartori too contends that that democracy is the 'by-product of a competitive method of leadership recruitment' (Sartori, 1987: 152). Perhaps the most important contribution to contemporary democratic theory is that made by Dahl in which democracy is conceived of in terms of contestation and participation. Ultimately, for representative democrats, participation is related to elections and parties – casting a vote, forming a party, or standing for election. As Geraint Parry and George Moyser point out, popular input is 'at once all important yet minimal' (Parry & Moyser, 1994: 46): all important in that elections constitute the decisive point in democracy; minimal in that the ordinary citizen is asked to do little more than turn up at the polling station every few years. Indeed, as we shall see, Schumpeter actively discourages citizen intervention between elections, urging the recognition of the division of labour between citizens and their representatives (Schumpeter, 1943: 112). For pluralist or realist democrats, participation, apart from voting, is not taken to be a key indicator of democracy<sup>1</sup> (Parry & Moyser, 1994: 46). The search for indicators of democracy will start with the competition between political leaders. It will not end there because competition is not itself democracy: it produces democracy, democratic legitimacy and democratic accountability.

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<sup>1</sup> There are exceptions to this of course: Larry Diamond (1994) for example, emphasises civil society in his definition of democracy.

Participatory theorists follow the tradition of Athenian direct democracy, and taking up the views of Jean-Jacques Rousseau and G.D.H. Cole, argue that actually existing contemporary democracies do not live up to the ideals of democracy as 'rule by the people' and moreover, serve to discourage such ideals. These proponents of participatory democracy look for changes in the structures of politics to widen citizen involvement since the process of taking part is regarded as integral to democracy and to becoming a democratic citizen (Barber 1984, Pateman 1970). Value is accorded to deliberation, the search for consensus, the educational effects of involvement and the opportunity for the reticent or the less privileged to participate (Elster 1998). The decisive test of a democracy is its capacity to encourage its citizenry to play an active role in its government.

Two important observations can be made from the distinction between representative and participatory democracy. Firstly, 'rule by the people' or citizen participation has come to mean different things to different people. As Parry and Moyser (1994: 46) point out, that one theory or model of democracy should pay special attention to one mode of participation – voting – and virtually none to others is a reminder of the multidimensionality of 'participation'. A second observation stems from the fact that pluralist or representative models of democracy have come to occupy a privileged position in scholarly analysis and popular thought - indeed, 'the definition of democracy in terms of a procedural minimum (competitive elections, universal franchise, the absence of massive fraud and the effective exercise of civil liberties) is generally accepted' (Giliomee & Simkins, 1999: xvii). The result of this is that citizen participation has ceased to be the paramount indicator of democracy. It has been joined by several others – the competitiveness of elites, the representativeness of representation, the control of bureaucracy, the independence of the

judiciary, freedoms of various kinds' (Parry & Moyser, 1994: 45). Participation has been superseded by representation and accountability and democracy as the 'rule of the people' has been attenuated to some rather weaker term which captures the elements associated with modernity – institutionalised popular influence, procedures of accountability (ibid). 'Rule by the people' has thus taken on a procedural form in which elections are the principal mechanism for determining government. Participation is totally excluded in the pluralist or realist conceptions of democracy. It does exist in a diluted form, mediated through professionalised political leaders. Because of this absence of widespread citizen participation, the degree of responsiveness of elites to citizen participation has become an important indicator of democracy. Given that it is their only means of expressing their will (of participating), the ability of citizens to change their government is taken as a central democratic index.

It is from these definitions, and a multitude of similar ones, based on the pluralist assumptions of multi-partyism and alternation in government that claims about a tension between one-party dominance and democracy have arisen. Thomas Pempel suggests that a political system in which there are no prospects for alternation in government raises 'profoundly troubling questions' about the 'trueness' of a nation's democracy (Pempel et al, 1990: 7) while Heribert Adam argues that 'one-party dominance without the prospect of a government rotation in the foreseeable future is said to constitute only a truncated, sham democracy' (Adam, 1999: 261). And it is based on these conceptions of democracy that doubt has been cast on South Africa's democracy. Given that there is no 'definitive' definition or conception of democracy, this paper aims to re-evaluate South Africa's democracy by suggesting an alternative conception of democracy, one that attempts to

address the conflict between conceptions of democracy as popular power – a form of politics in which citizens are actively engaged in self-government and self-regulation – and as an aid to decision-making – a means of conferring authority on those periodically voted into office (Held, 1993: 15). That is, the analysis presented in the following chapters will suggest a conception in which democracy is measured by the degree to which, if any, there is a balance of power between the popular state and the liberal state. Put differently, in order to assess the ‘democraticness’ of South Africa, three criteria, or aspects of democracy are considered: the protection and fulfilment of citizens’ rights, the promotion of citizen participation, and the extent to which the polity is pro-poor. In so doing, the validity of the concerns about South Africa’s democracy will be tested. In order to do this, we begin with an examination of the character of South Africa’s party political system.

## **Chapter 1: South Africa – a one party-dominant democracy?**

Since 1994, South Africa has possessed all the institutions and mechanisms which are normally understood to constitute a fully-fledged democracy, at least in terms of the minimalist conception discussed earlier. These include universal adult suffrage, representative legislatures (national, provincial and local), a multiplicity of political parties, an independent judiciary, an extensive range of constitutionally guaranteed freedoms, many of which are entrenched by a bill of rights, as well as a mix of privately owned and public press and broadcasting industries. There are a number of institutions concerned to protect specific kinds of rights - including a Gender Commission, an Independent Electoral Commission, a Human Rights Commission, a Judicial Service Commission, a Public Protector and an Auditor General. In terms of elections, the 'hallmark' of liberal representative democracy, both national general elections are regarded as having been broadly free and fair, and on this basis, the government is seen to be legitimate.

Despite this, there are concerns about South Africa's democracy. Ironically, the misgivings are related to the results of the 1994 and 1999 elections – not in terms of fraud, but in terms of the substantial majorities secured by the ANC. On both Samuel Huntington's 'two turn over test' and Przeworski's '60 per cent test', election results from 'democratic' South Africa's first two elections preclude us from defining South Africa as democratic. The sizeable majority of the ANC is viewed by many analysts as a dangerous sign for the prospects of democracy given that, as we have seen, party competition and the rotation of parties in power are traditionally regarded as a key test of democracy. The small proportion of uncommitted voters, and the large relative advantage for the governing party is seen to indicate little prospect for electoral change in the near future.

....., there are numerous advantages to voice over exit, with the primary one being that voice provides the potential for firms to stave off bankruptcy through response. As Keith Dowding et al (2000: 471) explain, while exit is a 'fairly crude, binary response [v]oice responses can be more subtle', and can indicate dissatisfaction with greater clarity and ease than can exit. An additional advantage to voice over exit is the fact that, in operational terms, voice is a continuous variable while exit is a dichotomous one: that is, exit can only signal disapproval, whereas voice may be used to articulate a more complex preference structure (ibid). Although the relationship between voice and response (to the status quo ante that is) posited by Hirschman is fairly straightforward (generally, the louder the voice the more likely a firm will respond), the subtlety of voice makes it somewhat manipulable, leading to, at least sometimes, less assured results. Ultimately, while any analysis of exit and voice depends heavily on the relative costs and benefits of the two activities, the emphasis placed on alternation in government and multi-party democracy suggests that in political terms, voice is preferred to exit. Thus where the options for exercising voice are limited, or do not exist, democracy is widely regarded as being emasculated.

Hirschman's analysis is based on the market where consumers, dissatisfied with a product or service, can opt to switch from the producer or service provider to an alternative producer or service provider. That is, the option to switch brands provides consumers with an exit. If there is only one supplier or producer – if the market is a monopoly – consumers may either exit the market entirely by ending consumption or they may not exit at all (and may or may not use voice to signal their dissatisfaction). Anti-monopoly claims are based on the argument that either of these options are unfavourable: consumers should not be forced to 'do

without' and nor should they be forced to consume substandard or dissatisfying products or services. What is important is that while switching to another brand is a form of exit, it is also a form of voice: exit to another brand signals dissatisfaction to the former brand but the fact that the consumer has not exited the market entirely provides the former brand with the opportunity to 'win back' the consumer by improving the product or service provided. In this way, both the consumer and the brand (or producer/supplier) benefits: the former because they can hold the producer/supplier to account and the latter because they can respond to consumers' demands and so stave off bankruptcy.

Applying this argument to politics, it becomes clear why emphasis has been placed on multi-party democracy. In a multi-party democracy, citizens dissatisfied with the governing party's performance are able to signal their dissatisfaction by voting for opposition parties<sup>3</sup>. While merely the threat of being voted out is often sufficient to ensure at least a degree of responsive government, this threat must be credible, and thus requires 'a strong opposition party that can guard against the erosion of the autonomy of democratic institutions and can replace a governing party that has outstayed its welcome' (Giliomee & Simkins, 1999: 337). If, conversely, there is no (viable) opposition party, citizens can exit entirely by leaving the country, or more commonly, partially, by exiting the party system and simply not voting. The latter translates into their having to continue to consume the good with which they are dissatisfied – the party remains in power. The real issue is that these forms of exit do not provide citizens with voice – or at least, not one of which the ruling party need take much heed. And it is to prevent this outcome that pluralist democrats like Schumpeter and Dahl have emphasised the importance of multi-party systems: a multi-party system in which there

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<sup>3</sup> This applies to any party – not just the governing one – but for the purposes of this paper, we will focus on dissatisfaction with the dominant (thus ruling) party.

is at least one viable opposition party is a democratic mechanism in that it provides citizens with a means of exercising voice because they can exit from a particular product (party) without having to exit from consumption completely (the party system or politics itself).

Let us examine this option with reference to South Africa. It is widely accepted that South Africa's opposition parties are weak and have very limited prospects of competing effectively for the support of the overwhelming majority of the electorate. So much so that in late 1998 then President Nelson Mandela abandoned his normally statesmanlike demeanour and called opposition parties in South Africa 'Mickey Mouse' parties. While there are institutional reasons for South Africa's electoral imbalance (for example, South Africa's constitutional framework translates electoral dominance into a preponderance of political power in the executive and legislature), these are insufficient to explain the state of opposition. A common diagnosis of the cause of this democratic malady is that it lies with voters themselves, who, due to their supposedly primordial ties to political parties, are not open to persuasion. This popular explanation of voter behaviour in South Africa is based on Donald Horowitz's (1985) 'census' analogy which has had a powerful influence on many analysts and politicians. On this view, voting is 'ascriptive', determined (or at least largely shaped) by birth or descent, rather than by a conscious consideration of party programmes or incumbent performance (Horowitz, 1985: 321). Elections are 'ethnic censuses' because voters register identity, not choice: they 'choose, in effect, not to choose but to give their vote predictably on an ethnic basis to an ethnically defined party' (ibid). Drawing on this literature, Robert Schrire has recently emphasised that political competition is currently structured around historical (and therefore, he argues, ethnic or racial) affiliations, with no compelling ideological or policy conflicts setting the government against the opposition parties (Schrire,

2001: 135-148). Because of this, he suggests that adversarial opposition may be - and is - perceived as racism and this has a polarising and divisive effect on politics<sup>4</sup>. While some theorists have interpreted this as a cultural bias against adversarial politics (Schrire 2001), it is perhaps unnecessary to resort to particularised theories of dominant party systems or of post-colonial or ethnically divided societies. Indeed, a public opinion survey<sup>5</sup> carried out by Idasa indicates that 'rather than voters hostile to the notion of political pluralism and opposition, what was seen in late 1998 was a significant number of voters (of all races) searching unsuccessfully for an alternative' (Mattes et al, 1999: 4).

The results from *Opinion '99* (and its precursor in 1994) suggest that when South African voters decide which political parties to entrust with their future, they look to real-world events (or at least at those events so perceived) such as the overall direction of the country and the economy, government performance, opposition parties, candidates and key issues. Mattes et al do not dispute the claims that South Africa may indeed face the very real prospect of rigidified party cleavages which will reify the present partisan configuration, and ensure sustained party dominance. But on the basis of their survey results, they conclude that in contrast to the usual interpretations, this prospect is not because the electorate comprises ethnically or racially motivated voters blind to performance of government and political

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<sup>4</sup> Conversely, co-operative politics (the NP's decision to participate in the 1994-6 government of national unity or the IFP's alliance with the ANC to contain violence in KwaZulu-Natal) is for Schrire regarded as necessary to sustain democracy.

<sup>5</sup> *Opinion '99*, an election research consortium of the Institute for Democracy in South Africa (Idasa), the Electoral Institute of South Africa, Markinor, and the South African Broadcasting Corporation.

parties, or their own material interests<sup>6</sup>. Rather, they suggest that in an extremely racially and economically stratified society, 'voters are doing the best they can with what they know (or at least what they think they know) about how political parties and government performance affects their interests' (Mattes et al, 1999: 12). They further argue that if partisan cleavages fail to realign over time, it will be the result of party leaders' failures to grapple with this basic fact, and not the result of voters being too stubborn to change themselves (ibid).

While opinion survey results more accurately reflect voter attitudes than generalised theories, not everyone will be convinced by the arguments Mattes et al present – it seems that the idea of elections in 'divided societies' as racial or ethnic censuses is here to stay. But even if we reject this argument, there are a number of other reasons which help to explain why this manifestation of voice - voting for the opposition - is significantly limited in South Africa<sup>7</sup>.

One argument offered is that opposition parties remain small, simply because they are small. That is, regardless of how positively they might be viewed, they are unable to secure people's votes simply because it is believed they are too small to launch a serious challenge for

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<sup>6</sup> Mattes et al do not dismiss the role of race, class and ethnicity, but argue that these factors, and the interactions among them, shape how voters perceive performance and campaigns, rather than determine how and for whom they vote. They argue that voters of different races appear to attach different emphases and priorities to the same common criteria when situating themselves vis-à-vis the governing party.

political power. This logic seems to lie at the heart of the initial formation of the Democratic Alliance: by putting together three small parties (the New National Party, the Democratic Party and the Federal Alliance) to create a larger one it was hoped that more voters would be attracted to the larger party.

But opposition parties are not rejected simply because they are weak – at least not by the majority of black voters surveyed by Mattes et al (1998). Rather, it was broadly felt that opposition parties had not done a good job as political parties, in that they were untrustworthy, lacking in credibility, and not inclusive. From their surveys, Mattes et al suggest that opposition party policies need to be crafted around the key national problems identified by dissatisfied voters. Opposition politicians need to convey to voters that their party is proposing an alternative policy that is in their interest, rather than simply opposing government policy for the sake of opposition<sup>8</sup>. In the event of voter dissatisfaction with the ruling party, this will enable voters to make a decision as to which opposition party they should support, if any.

Ultimately, if we accept the conception of democracy as alternation in government, the existence of credible opposition parties which offer voters legitimate alternatives is required. But opposition parties seem unable to fulfil their side of the democratic bargain. As a result, if and when voters become dissatisfied with the government, exercising voice by voting for the opposition is not a viable option. Without this possibility of voice, citizens may become

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<sup>7</sup> To avoid confusion, voting for opposition parties is here referred to as a voice option even though it is in fact an exit option. This is so as to distinguish between exiting from the party system and exiting from the ruling party – the former regarded as having negative consequences for democracy, the latter positive ones.

<sup>8</sup> Supporting this claim is the fact that in the 1999 national election, the party which gained the most – the DP – was the one which had the clearest and most systematically developed range of programmatic alternatives.

dissatisfied with the democratic regime itself and opt to exit entirely. This is the threat perceived to exist in one-party dominant regimes in general, and in South Africa in particular.

Let us examine another form of voice: voting for independent candidates. This option is to some extent more 'extreme' in that it signals a desire to exit the conventional party system (even if not democratic politics itself). But because it is a signal, rather than the exit itself, the exercise of this option on Hirschman's account would still have the benefits of voice in that it provides the state with the opportunity to respond to citizens' demands. Examining the 2000 local government elections Thabo Mohlala claims that 'more and more voters seem to be shunning party politics, showing confidence in independent candidates who are seen to be accessible, trustworthy and more committed than party candidates' (*Mail & Guardian* 24 May 2002). While this may well be the case, the South African electoral system does not however promote this option to any great extent – independent candidates cannot do well in PR systems with large districts. Thus this feature applies only to local government elections and even then there is little evidence to suggest that independent candidates will become a feature of South African politics<sup>9</sup>.

So what are citizens to do when their prospects for the exercise of voice are limited? On Hirschman's market-based model, when voice fails, consumers either exit (to another

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<sup>9</sup> This is not to say that it does not exist at all: a recent example is that an independent candidate in Dobsonville, ward 47, succeeded in a highly contested poll that saw eight parties vying for votes. He garnered 46,6 per cent of votes to the ANC's 40,2 per cent and third place Azapo's 5,7 per cent. The candidate, Moswang Lekgetho ascribes his victory to his consistency in raising the plight and concerns of the poor: firstly the two high court victories his civic organisation scored against Eskom over electricity cut-offs and the subsequent concession extracted from Eskom to 'handle cases of the aged, disabled and unemployed with sympathy and compassion' and secondly the announcement by Minister of Public Enterprises Jeff Radebe (that the aged will get a 100 per cent reduction of their electricity debts and the disabled and unemployed a 50 per cent reduction) which Lekgetho says is a result of his sustained engagement with the ministry (*Mail & Guardian* 24 May 2002).

producer or supplier) or exit the market completely (and do without) or remain loyal to the product despite the decline. If consumers exit entirely, the market may collapse altogether. More likely consequences are that individual firms either become bankrupt (if consumers exit too quickly or all at once and they have no time to respond) or they achieve (or retain) a monopoly (if consumers remain loyal). While neither alternative is desirable in a marketplace, these outcomes may have even more serious repercussions in the sphere of democratic politics.

Let us examine these effects. Exit can take two forms: 'complete' exit in the form of leaving the country (through emigration) or 'partial' exit in the form of exiting from the political system (not voting) but remaining in the country. There is significant evidence to indicate that South Africa experiences both kinds of exit: the 'brain drain' over the last decade has resulted in a serious skills crisis in South Africa and while the wave of emigration seems to have slowed in recent years, there are still considerable numbers of South Africans packing for Perth and leaving for London<sup>10</sup>. But even more serious, at least in terms of the repercussions for democracy, is the 'partial' exit of not participating in the democratic process – that is, not voting. Survey results indicate that this option is on the increase: according to the South African Independent Electoral Commission (IEC) data released in April 2002, nearly a quarter of South Africans would not switch their allegiance if they became disenchanted with their favoured party – they would simply not vote. In terms of

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<sup>10</sup> The official figure for the number of South Africans who emigrated between 1990 and 1999 is 67 000. This underestimates the actual numbers of people who have left the country permanently and have not gone through the official emigration channels. It is reported that there are 50 000 South Africans in Toronto, 300 000 in the greater London area and over 250 000 in Australia. One fifth of white South Africans are reported to be 'seriously considering leaving' and 20 per cent have family members who have already left (FutureFact 2000, [www.dispatch.co.za/unilever\\_mindset](http://www.dispatch.co.za/unilever_mindset)).

actual participation, according to a Helen Suzman Foundation post-election poll, three and a half million fewer votes were cast in 1999 than in 1994 – a dramatic figure given that the population of voting age has risen by approximately five years in the period (Johnson, 1999: 1). Using the voting age population statistic, the 68 per cent turnout is somewhat disappointing given the very high level of participation in 1994 which was around 85, 5 per cent. Results from *Opinion '99* and a 2002 Markinor survey suggest that the decrease in participation is in fact related to an increase in political dissatisfaction among South Africans: nearly 46 per cent of those who did not vote in 1999 either believed that their vote would not make a difference or simply lacked interest in the elections (*Mail & Guardian* 12 April 2002). Waning political participation – partial exit – marks the gradual erosion of confidence in electoral politics. For democrats, the concern is that it is but a small step from this state to an erosion of confidence in democracy itself. The legitimacy of the government in a democracy is severely undermined when that government is elected by a minority of the citizenry.

Exit taken to the extreme can lead to many consequences - the 'bankruptcy' in political terms of individual parties, the undermining of the party system, and even the erosion of democracy itself. But perhaps more concerning, if only because it is more prevalent, is the possible outcome of loyalty - that of monopoly, or in political terms, one-party dominance.

Loyalty can produce a one-party dominant system in a number of ways. Firstly, the governing party may exploit the benefits of incumbency. In essence, it is argued that because a party in government can use the state's resources to reshape society in its own image, to reward its adherents and to deny such rewards to its opponents, it has the potential to make semi-permanent minorities out of certain portions of its citizenry and to prevent futile and

weak opposition from checking majority arbitrariness effectively. Alternatively there is the concern that voters may be uncritical or undemanding, especially if the governing party is a nationalist movement which broadly represents a racial majority in a society that has a history of racial conflict and racial oppression, and if it represents the formerly oppressed group most closely. The 'generosity' of its supporters leaves the party leadership significant scope for misbehaviour (Lodge, 1999: 68). In addition citizens may 'flock to the dominant party to get patronage or because of sheer bandwagoning' (Schrire, 2001: 25). If this is valid, then in terms of the EVL framework, loyalty levies an incredibly high tax on exit and voice: as long as there is a (perceived) benefit, loyalty not only diminishes exit, but certainly helps diminish voice (or at least helps lower the volume to barely audible levels since the chances for equitable patronage in other parties are so slim). In this way, the concern for democrats is that because loyalty can dissuade citizens from exercising voice, it may be democracy erosive.

Interestingly, Hirschman argues the opposite: he claims that loyalty in fact activates voice. According to his arguments, the significant loyalty of ANC supporters should raise the probability of citizens pushing for change within the ANC. Let us examine the extent to which, if any, this is the case.

Despite the tendencies of some ANC ideologues, in general, ANC leaders profess to believe, and perhaps really do believe, that the ANC's own internal traditions and procedures strengthen democratic practices and indeed, the organisation does seem to have broadly humanist and democratic traditions, with the exception of some anti-democratic elements. The party does not officially recognise factions and as Reddy (2002) points out, it seems to endorse Sartori's normative distinction where the party is viewed as performing a collective

good in contrast to factions that serve the self-interested ends of a few individuals (Sartori 1987). Yet it is also not a unitary, homogeneous organisation. The historical product of different ideological traditions, institutional organisations, past alliances, charismatic leaders, and supporters from diverse backgrounds, the ANC is a self-proclaimed 'broad church', the structure of which is formalised in the tripartite alliance of the ANC, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). In the 1990s it brought together four different traditions - the experience of exile, the internally based civil resistance, the global anti-apartheid movement, and the pre-1960 leadership jailed on Robben Island – none of which was homogeneous in itself. Openly endorsing this diversity, the ANC's membership policy reflects a broad, open-ended conception of itself and allows for 'dual membership' provided that the basic principles and rules of the organisation are accepted by the members.

Since the tripartite alliance has achieved near two-thirds majorities in both national elections, it is argued that even a recently touted 'coalition of hope' between four opposition parties - the Inkatha Freedom Party, the Democratic Alliance, the United Democratic Movement, and the Pan Africanist Congress – could hope to muster only a third of the vote in the 2004 parliamentary elections (and with the ANC/NNP coalition, possibly even less than a third). For this reason, observers see a split in the ruling alliance and the desertion of its followers *en masse* as necessary conditions for the emergence of an alternative government. While the possibility of a left-wing breakaway cannot be discounted, the ANC remains the only credible vehicle for the SACP's long-range historical ambitions, and provides organised labour's only reliable access to power, the latter preferring influence and co-operation rather than opposition and exclusion (Lodge, 1999: 71). Despite very recent rumblings of discontent

amongst SACP leaders, leading to the restructuring of senior positions, the SACP has reiterated its commitment to the alliance (*Mail & Guardian* 12 July 2002). Similarly, as is discussed in Chapter 4 of this paper, although COSATU is a primary challenger of the government's reticence to introduce a basic income grant, it too has dismissed claims of a threat to the alliance (*Mail & Guardian* 24 May 2002). Whether or not the 'united front' presented (by the close at least) at the 2002 year-end ANC conference was purely for show remains to be seen: at this point a split in the ANC is not a serious prospect in the foreseeable future internal battles notwithstanding. Nevertheless, recent Markinor surveys have pointed to a steady slide in support for the ANC government and its leader, President Thabo Mbeki, since the 1999 election. Paid-up membership is also down, from 300 000 in mid-2000 to 90 000 in 2002 (*Mail & Guardian* 12 April 2002).

Loyalty in Hirschman's framework has a positive effect in that it is supposed to raise the possibility of voice being exercised. Because consumers – or party supporters in political terms – feel that their loyalty is valued, (and consequently, that their opinions matter), Hirschman argues that they are more likely to make their preferences and or dissatisfaction known since they believe that the firm (or party) will be responsive to these. The constitution of the ANC does make provision for members to express their views and in this way can support its claim to have internally democratic traditions. According to section 5.1:

'A member of the ANC shall have the right to:

- a) Take a full and active part in the discussion, formulation and implementation of the policy of the ANC.
- b) Receive and impart information on all aspects of ANC policy and activities.
- c) Offer constructive criticism of any member, official, policy programme or

activity of the ANC within its structures.

- d) Take part in elections and be elected or appointed to any committee, structure, commission or delegation of the ANC.
- e) Submit proposals or statements to the branch, province, region or NEC [National Executive Committee], provided such proposals or statements are submitted through the appropriate structures'<sup>11</sup>.

But along with these rights, membership to the ANC involves some concomitant duties. Two of these are especially significant in terms of understanding why supporters of the party may not exercise voice, or at least not to the extent posited by Hirschman:

'A member of the ANC shall:

- e) Combat propaganda detrimental to the interests of the ANC and defend the aims, policy and programme of the ANC.
- g) Observe discipline, behave honestly and carry out loyally decisions of the majority and decisions of higher bodies'<sup>12</sup>.

To the extent, then, that loyalty is conceptualised as non-voice, it becomes clearer why empirically, the effects hypothesised by Hirschman are less evident. Another contributing factor (also not considered by Hirschman) is that exercising voice requires a degree of confidence, not just in terms of procuring a response, but in the 'voicers' themselves: taking on any organisation or its representatives is no small feat and it may be that the low levels of education and affluence among the majority of ANC supporters affects confidence levels which in turn affects willingness to exercise voice. Given the nature and reputation of the

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<sup>11</sup> [www.anc.org.za/policy/constitution](http://www.anc.org.za/policy/constitution).

<sup>12</sup> Ibid.

organisation itself, even aside from it being the incumbent party, there is widespread reticence (even among non-members) to be seen to be critical of it. In later chapters, specifically Chapter 4, we will examine further the extent to which the ANC makes provision for intra-party lobbying, in terms of both rank and file members and elite actors.

Empirically then, what we find is that there is little voice from ANC voters (almost no criticism directed at the government and virtually none at all at the ANC itself) and there is little or no exit from the ANC to other parties (overall support for opposition parties is constant rather than growing). Increasing voter apathy is however more concerning because it signals an exit from the party system, and thus (on pluralist conceptions) democratic politics itself. In terms of ANC elites, the divisions in the tripartite alliance do indicate the presence of voice – especially over the left – but as was mentioned above, the *modus operandi* seems to be to play down the extent of the dissent, to the public at least. Where we do see significant voice is from the group least loyal to the ANC (the Democratic Alliance, or official opposition, and its members). This suggests that disloyalty promotes voice far more than loyalty does, a possibility which does not appear to be considered by Hirschman, or his critics for that matter.

Applying the EVL framework to South Africa, we see that the real or perceived lack of alternatives to the ANC, and hence the high cost of voice and of exit, is significantly explained by the concept of loyalty. In addition, patronage on the one hand and the strict party discipline reinforced by a party-list proportional system permitting easy ‘redeployment’ of ‘disloyal’ members on the other may explain non-exit in the senior echelons of the party’s membership<sup>13</sup>. It is however less clear why there is non-voice. That is, given the size of the

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<sup>13</sup> The recent (December 2002) ANC congress provided evidence of this occurrence: a number of ‘ultra-left’ members of the alliance found their positions on the party’s list had slipped in relation to the previous year’s.

ANC's current majority, it is puzzling to many why ANC loyalists do not use their voices as Hirschman posits or why the ANC is still reluctant to allow its members in the legislatures to develop their full potential in representing the people and securing open, transparent and participatory democracy. One possibility may be that loyalty to the ANC is defined as, or at least conveyed by, non-voice in addition to non-exit and this would certainly lend credibility to Hirschman's framework.

Given the above, this paper sets out to examine the extent to which, if any, South African citizens, faced with a government that is not delivering in many respects, and that is not incentivised by the electoral system or by opposition parties to deliver, are exploring alternative options of voice by moving beyond the conventional party political system. In so doing, as opposed to democracy being emasculated, it may be the case that it is in fact being deepened.

## **Chapter 2: Civil Society, the Judiciary and the Constitution – how an interest group used the courts to affect government policy.**

### **Part I: The Significance of the Issue**

In October 2001, the Department of Health conducted a survey across all nine of South Africa's provinces with the aim of making nationally representative estimates of HIV prevalence in South Africa<sup>14</sup>. The study was an anonymous, unlinked cross-sectional survey of pregnant women who attend antenatal clinics in the public health sector of South Africa<sup>15</sup>. 16,743 pregnant women and 421 clinics participated in the survey. Based on the 16,730 blood samples that were tested, it is estimated that nationally 24,8 per cent of pregnant women were infected with HIV by the end of 2001<sup>16</sup>. Extrapolating from the survey data, the Department of Health estimated that 2,65 million women and 2,09 million men between the ages of 15 to 49 were living with HIV and 83 581 babies had become infected with HIV through mother-to-child-transmission (MTCT) as of October 2001<sup>17</sup>. According to more recent findings, from South Africa's first ever nationally representative survey of HIV

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<sup>14</sup> [www.doh.org.za](http://www.doh.org.za)

<sup>15</sup> An antenatal survey is an internationally recommended surveillance tool to estimate HIV in populations. Whilst it has inherent limitations it is still considered the most useful tool to assess HIV prevalence in areas of high HIV prevalence. Pregnant women are sexually active, constitute an easily identifiable, accessible and stable population, and are more likely than other groups to be representative of the general population. In addition, pregnant women attend health care facilities where blood is drawn as part of routine medical services.

<sup>16</sup> *National HIV and Syphilis Sero-prevalence Survey of Women Attending Public Antenatal Clinics in South Africa – 2001* (Summary Report) available at [www.doh.org.za](http://www.doh.org.za)

<sup>17</sup> These national estimates need to be interpreted with caution as there are inherent limitations in the methodology used – making projections from antenatal survey results.

prevalence, 11,4 per cent of the country's population of two years and older are living with HIV/Aids. Some 12,8 per cent of women and 9,5 per cent of men tested HIV-positive<sup>18</sup>.

Until 1998 South Africa had one of the fastest growing pandemics in the world. Both surveys confirm the trend seen since 1998 that this is no longer the case. But while the rapid growth of the pandemic may be slowing down, this does not diminish the magnitude of the crisis<sup>19</sup>: South Africa has the highest number of HIV infections worldwide<sup>20</sup>.

Given the space available, any discussion of the significance of HIV/Aids in South Africa is necessarily superficial and incomplete. In his address at the Aids Conference in Barcelona in 2002, Nelson Mandela described the epidemic as 'a war against humanity'. What he did not add was that South Africa is the front line. According to NMG-Levy's annual report on labour relations and employee benefits, released in April 2002, Aids will drive down the life expectancy of a South African woman from 54 in 1999 to 43 in 2005 and 37 in 2010 while men, with a life expectancy of 57 in 1998, will live to 38<sup>21</sup>. What was once seen as primarily a human resources issue, because Aids affects the most productive members of the population (those in their 20s, 30s and 40s), it is now being acknowledged as the single most important strategic issue facing South Africa with the report predicting that close to 30 per cent of South Africa's work force will be HIV

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<sup>18</sup> The *Nelson Mandela/HSRC Study on HIV/Aids* was released in December 2002 and is based on a representative sample of 9 963 people drawn from households across the country, 8 428 of whom consented to be tested for HIV and submitted saliva specimens. The full document can be found at [www.hsrc.ac.za/research/npa/SAHA](http://www.hsrc.ac.za/research/npa/SAHA).

<sup>19</sup> The stabilisation of the epidemic is supportive by the prevalence rates in females under 20 – [www.unaids.org](http://www.unaids.org).

<sup>20</sup> [www.unaids.org/hivaidsinfo/statistics](http://www.unaids.org/hivaidsinfo/statistics).

<sup>21</sup> [www.doh.gov.za/nmg-levy02](http://www.doh.gov.za/nmg-levy02).

positive in 2005 and that South Africa's economically active population will be 35 per cent lower in 2015, than it would have been if South Africans had remained Aids free<sup>22</sup>. The particular vulnerability of children is clearly evident in South Africa – not only in terms of their heightened risk of infection, but in terms of their losing one or both parents to the disease. At the end of 2001, 660 000 of the 14 million 'Aids orphans' world-wide were South African<sup>23</sup>.

The socio-economic effects of HIV/Aids cannot be overestimated. It is little wonder then that current awareness campaigns are claiming that while 25 per cent of South Africans are infected with HIV/Aids, 100 per cent of South Africans are affected by it. As a result, the political significance of the issue extends far beyond it being a 'health crisis'. At issue are the constitutional rights of citizens – access to adequate health care, welfare benefits and so on. In a constitutional democracy, the extent to which a government fulfils its obligations to its citizens by protecting and upholding these rights is a – if not the – key measure of how democratic that government is: the institutionalisation of the responsibility of the executive to other, especially representative, institutions or directly to the electorate, and the ideology of the separation of powers and of mutual checks and balances among them constitute the fullest institutional manifestation of the idea of accountability. While democracy makes space for citizens, dissatisfied with government performance, to signal their disapproval either through exit or voice, constitutional democracies expand the EVL options open to citizens in that citizens dissatisfied with the government's performance are able to signal their disapproval by invoking the constitution and turning to the constitutional court. This case study examines how, when the procedures and mechanisms of liberal representative 'party' democracy –

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<sup>22</sup> [www.doh.gov.za/nmg-levy02](http://www.doh.gov.za/nmg-levy02).

<sup>23</sup> [www.unaids.org/factsheet/south\\_africa](http://www.unaids.org/factsheet/south_africa)

primarily the 'credible threat' of alternation in government - failed to hold representatives to account, the procedures and mechanisms of constitutional democracy were used to effect changes in the exercise of public power. Turning to the constitution and the judiciary, and becoming active participants in the public arena, citizens succeeded in affecting policy using alternative channels from those of the party system and the legislature.

## Part II: State Action

On 17 April 2002, the South African Cabinet released a statement detailing its policy on HIV/Aids. The statement was seven pages long, and contained many significant and laudable decisions. But there was one line in particular which was met with unparalleled relief by South Africans, and throughout the world: 'In conducting this campaign, government's starting point is based on the premise that HIV causes Aids'<sup>24</sup>. It is almost inconceivable that the government's acceptance that HIV causes Aids – a fact accepted the world over - represents such a dramatic turning point. But in the context of what has been called the government's 'twilight zone of a national health policy' (*Mail & Guardian* 5 July 2002), the importance of this announcement cannot be underestimated.

A decade ago, South Africa had the same prevalence rates of HIV/Aids as Thailand. Today, Thailand is at 2,5 per cent while South Africa is at 25 per cent (*Sunday Times* 14 July 2002). It is felt, both locally and internationally, that the South African government's policy of denial and refusal to take action is largely responsible for this state of affairs.

This case study will not attempt to provide a detailed account of the government's policy on HIV/Aids. Firstly, it is beyond the scope of the paper, the focus of this case study being the

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<sup>24</sup> [www.gov.za/speeches/cabinetAids02.htm](http://www.gov.za/speeches/cabinetAids02.htm).

successful use of the judicial system by a civil society movement to force the government to implement 'without delay' a comprehensive programme for the prevention of mother-to-child-transmission (MTCT) of HIV. Secondly, the differences between the national government's policy and various provincial governments' (often unstated) policies make the provision of such an account very complicated<sup>25</sup>. Finally, the reality is that the more controversial aspects of the government's position are widely known, having long been the centre of attention in media discussions, conferences and forums on HIV/Aids<sup>26</sup>.

In terms of its policy on MTCT of HIV, and the use of anti-retroviral drugs to prevent transmission, the government set up 18 'pilot' sites at public hospitals and clinics around the country. At these sites, pregnant women are tested for HIV, counselled on the options open to them to reduce the risk of MTCT of HIV (including the use of nevirapine) and with their consent and where it is deemed by doctors to be appropriate, nevirapine is administered. The government has claimed that when these trials have provided satisfactory results on the efficacy and implementation of nevirapine, it will consider extending the availability and use of the drug to other public hospitals and clinics. This is where the criticism is directed: it is argued that the process could be speeded up in that the medical, scientific and many of the implementation issues have already been answered. The claim is made that the delay is political, based on the executive's 'queasiness' about anti-retroviral drugs (*Mail & Guardian*

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<sup>25</sup> It should be noted that in South Africa, a provincial legislature may adopt a constitution for its province if two-thirds of its members agree and as long as the provincial constitution corresponds with the national constitution as confirmed by the Constitutional Court. According to the constitution, provinces may have legislative and executive powers concurrently with the national sphere over, among other things, health services and policy.

<sup>26</sup> So notorious is the (recently abandoned) stance, in particular, of President Thabo Mbeki, it was even the subject of ridicule in a popular American television series, *The West Wing*. Screened on ETV in June 2001, President Mbeki's 'lunatic' views were said to be 'killing his people'.

22 March 2002). This argument is made all the more credible by the fact that some of the provinces have started to go their own way on this issue. The Western Cape government started rolling out its nevirapine programme in 2001, and said it intended to provide access to the drug at all its public health facilities (even before the outcome of the court challenge). ANC-controlled Gauteng, which has been more discreet about its often-praised HIV/Aids programmes, has also pro-actively extended access to nevirapine far beyond the two pilot sites located in the province. And during court hearings the KwaZulu Natal government pulled out of the defence, saying it intended to provide universal nevirapine. On the other hand, Mpumelanga MEC for Health has not only dismissed doctors<sup>27</sup> who administer the drug in public hospitals but has also issued eviction papers to organisations which facilitate the use of nevirapine<sup>28</sup>.

The government's policy on preventing MTCT of HIV was condemned for unnecessarily delaying the administration of a scientifically tested and approved drug which could save lives, in places where there was proven capacity and need. It was argued that this delay was a violation of both political and socio-economic rights: the former in that the executive was seen to be 'interfering' with the constitutional role of parliament to make policy, and the latter in that the quality of life and access to health care provisions in the constitution were being violated. It was on this basis that the judicial challenge was mounted.

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<sup>27</sup> Dr Thys von Mollendorff was axed as superintendent of Nelspruit's Rob Ferreira hospital on charges of gross misconduct and is currently fighting his appeal on the grounds that he was complying with the Hippocratic Oath to act in the best interests of his patients ([www.tac.org.za/media/vonmoll](http://www.tac.org.za/media/vonmoll)). The MEC is being sued for contempt of court for not complying with the Constitutional Court judgement.

<sup>28</sup> The Greater Nelspruit Rape Intervention Project (GRIP) – Mpumelanga's anti-rape organisation working out of some provincial hospitals – succeeded in defeating two eviction orders but were presented with a third even after the government announced its roll-out plans in April.

### Part III: Citizen Demands

The significance of the HIV/Aids issue is that it seems to signal a turning point in relations between government and civil society. The early days of democratic government showed some quiescence in the realm of civil society: so relieved finally to have a democratically elected government, citizens were willing to overlook the government's compromises, mistakes and inefficiencies. And although, as the government became more confident, it became less open and less responsive to the views of those outside it, citizens seemed not to notice – or chose not to complain. The dispute over the prevention of MTCT of HIV is the first occasion since 1994 that civil society has mounted a direct challenge to the government on a major policy question – and not just any policy, but one adopted under the direct and active leadership of the president. Using the courts, and building a strong alliance with key pillars of civil society – trade unions, churches and the media – the Treatment Action Campaign (TAC) held the government to the ideals and values entrenched in and protected by the constitution.

While the significance of the above should not be belittled, it is important to keep an important consideration in mind: the specificity of the issue. The constitution is not amenable to use on any issue – citizens cannot use the court process to obtain better schooling, safer streets or even more job opportunities. Health care and housing issues have come before the courts since 1994 and prior to the MTCT case and have achieved varying degrees of success<sup>29</sup>. Moreover, it can be argued that the precedents from the cases –

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<sup>29</sup> For example, *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169) was a successful challenge mounted against the government's provision of housing ([www.communitylawcentre.org.za/localgov/bulletin2001/2001\\_1\\_grootboom.php](http://www.communitylawcentre.org.za/localgov/bulletin2001/2001_1_grootboom.php)).

specifically the justiciability of the Section 26 and 27 (socio-economic) rights – certainly aided the TAC challenge.

Having said that, it seems unquestionable that the TAC case has affected citizens' attitudes towards HIV/Aids and thus perhaps to the government. According to Idasa and the Afrobarometer findings, Aids has now taken over as the fourth most important problem at 26 per cent, up from 13 per cent in Aug 2000 and less than 10 per cent prior to that<sup>30</sup>. Furthermore, when given a list of possibilities, South Africans are now much more likely to emphasise the realisation of socio-economic outcomes as crucial to democracy than procedural components such as regular elections or multi-party competition<sup>31</sup>. Thus while it is not the case that health issues in general and HIV/Aids in particular galvanises voters, these survey findings indicate that action and delivery in these areas are becoming increasingly important to citizens.

#### Part IVa: Options available to citizens within the party political system

The goal of representative politics and the conventional party political system is to provide citizens with a means of exercising voice to signal their demands to the government and to provide governments with the opportunity to respond. In so doing, in theory at least, complete exit (from the party system itself that is) is prevented and democracy and the democratic state's legitimacy remain intact. In a party democracy, citizens have several options available to them if and when they wish to signal their dissatisfaction with the ruling

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<sup>30</sup> Since 1994, Idasa and Afrobarometer surveys have asked South Africans: 'What are the most important problems facing this country that the government ought to address?' In September-October 2002, more than a quarter of all respondents and 31 per cent of black respondents - listed HIV/Aids as one of their three answers ([www.idasa.org.za/z\\_print.php?art\\_id=982](http://www.idasa.org.za/z_print.php?art_id=982)).

<sup>31</sup> Ibid.

party<sup>32</sup>. They may lobby for a change within the ruling party by utilising voice (at party conferences and so on) or they may choose to exit (from the party not the party system) by voting for or supporting an opposition party<sup>33</sup>. In the former case, according to Hirschman, loyalty to the ruling party activates voice. In the latter, lack of loyalty to the ruling party but loyalty to the state and to democracy activates exit (and because it is exit from the party rather than the party system, it is also in fact a voice option). What is interesting in the South African situation is that loyalty to the ANC actually seems to atrophy voice, while the lack of credible opposition (and thus a functioning party democracy) makes exit (from the party system entirely) seem a more likely outcome than voice. And it is this that is of concern to analysts.

In terms of intra-ANC lobbying, despite certain federal features, the South African state is essentially unitary, with almost no revenue raising or legislative capacity delegated to the provinces. Parliament is a bloated and largely reactive policy-influencing legislature based on the Westminster model, but with strict party discipline reinforced by a party-list proportional system (Murray & Nijzink 2002). As Christina Murray and Lia Nijzink point out, the larger the majority of the governing party, the more room to manoeuvre its members should have. They should in theory, be able to raise concerns around the implementation of the government's programme and to engage in parliamentary proceedings in an atmosphere of somewhat relaxed party discipline. It is puzzling therefore why, given the size of its current majority, the ANC is still reluctant to allow its members in the legislatures to develop

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<sup>32</sup> Again, we are limiting the discussion to dissatisfaction with the ruling party (rather than parties in general) since this is ultimately what is important.

<sup>33</sup> This is one of the features of the US mid-term elections – the minority party tends to do better in these elections as a result of citizens wanting to keep the majority party on its toes by reminding it of the threat of replacement.

their full potential in representing the people and securing open, transparent and participatory democracy. That is, the tendency of the ANC to insist on towing the party line even within parliament means that the voice option of lobbying within the party is severely restricted<sup>34</sup>.

As we shall see in Chapter 4, the only actor with real significance in terms of intra-ANC lobbying is COSATU. Despite the pressure it put on its alliance with the ANC and on leading members, COSATU has stayed faithful to its relationship with TAC, attempting to influence the government's HIV/Aids policy from within. Though less overt, the SACP also appeared to support TAC and SACP Secretary Blade Nzimande acknowledged that his relationship with the ANC had soured over the Aids issue. Responding to the government's 2002 policy shift, Nzimande said he was pleased that the Cabinet was 'ignoring the political idiosyncrasies of the likes of Mokaba and dissidents' (*Sunday Times* 21 April 2002). This somewhat tepid stance indicates the extent to which the scope for intra-alliance lobbying is restricted, no doubt due to the unequal balance of power between the three members.

There is little doubt that the April shift in government policy on HIV/Aids was largely a proactive implementation of the inevitable ruling of the Constitutional Court. But while COSATU has refuted claims that its support for TAC was threatening the tripartite alliance (*Mail & Guardian* 19 July 2002), it is not inconceivable that the change in approach was encouraged by fears in the cabinet and ANC circles that there was a build-up of 'mass mobilisation and hysteria' against the 'uncaring' government (*ibid*).

Although prone to the occasional bout of paranoia, President Mbeki was not overestimating the degree to which the Aids furore was fomenting hostility and criticism in the country and

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<sup>34</sup> It is thus even more significant that Gauteng – an ANC controlled province – broke ranks with the national government on MTCT. The only other provinces to do so were IFP and DA controlled.

creating a gulf between the government and citizens. The manner in which the government conceded defeat and surrendered to public opinion indicates quite clearly just how significant a challenge had been posed. Jettisoning its position on HIV/Aids, the government used the occasion to turn its acrimonious relationship with its supporters, its alliance members, and civil society in general into a 'partnership' in the fight against the disease: 'Government calls on all South Africans to join hands in a campaign of hope: to mobilise our strength as a nation and as individuals to ensure that we are able to manage, reduce, and in the long run, defeat this epidemic. We have it in our power to achieve this objective. What is critical is that we should work together as a united force to achieve the best interests of our society'<sup>35</sup>. Perhaps it is wishful thinking to suggest that Mbeki may have in fact understood that the HIV/Aids issue was one of the few areas in which loyalty could not atrophy voice and because of which there was a real possibility of exit.

The extent to which the government's about turn on policy was influenced by lobbying from within is difficult to gauge. It is clear that even if it did have an effect, this form of voice had limited success given the time it took for the policy shift to occur. Even more limited was the attempt to exercise voice through opposition party politics. The commentary given in Chapter 1 serves to explain why voting for the opposition is not a viable voice option, and in the HIV/Aids issue in particular, some have claimed that the adversarial stance taken by the DA has done more harm than good<sup>36</sup>. These analyses are perhaps a little uncharitable – in

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<sup>35</sup> [www.gov.za/speeches/cabinetAids02](http://www.gov.za/speeches/cabinetAids02).

<sup>36</sup> The possibility was raised in the press, by TAC itself and by many South Africans that the DA's interest in HIV/Aids was purely politically motivated and that its concern was insincere given that its constituents could afford to pay for treatment – and anti-retrovirals – privately ([www.tac.org.za/faq](http://www.tac.org.za/faq)).

both informal lobbying and the formal court process, the success of the DA's HIV policy in the Western Cape provided sound arguments against the government's policy.

The limited success of voice in lobbying for change both within the ruling party and within party politics itself begs the question of whether and to what extent exit (to another party or from the system entirely) was a possibility. Unfortunately, this is not possible to assess - had 2001/2002 been an election year it is likely that the HIV/Aids issue would have been a central one: while survey results carry all kinds of cautions, it is revealing that the 2002 Afrobarometer found that ANC support is lowest in the three provinces that have had the most competitive party systems since 1994: Gauteng (33 per cent), Western Cape (32 per cent) and KwaZulu Natal (21 per cent)<sup>37</sup>. And confirming the trend of decreasing participation, the Afrobarometer results indicate a sharp increase in the number of voters who either declare to pollsters that they 'would not vote' if an election were held tomorrow, or who simply refuse to reveal any preferences. What may be of particular concern to pluralist democrats - but perhaps offering support for the argument suggested in this paper - is the fact that when combined, these responses are especially high in the provinces which have had the most competitive party systems: KwaZulu Natal (58 per cent), Gauteng (44 per cent), Western Cape (45 per cent) and Eastern Cape (35 percent)<sup>38</sup>. Almost one third of voters in the Western Cape (32 per cent) and more than a quarter in KwaZulu Natal (27 per cent) maintain that they would not vote<sup>39</sup>.

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<sup>37</sup> [www.idasa.org.za/z\\_print.php?art\\_id=987](http://www.idasa.org.za/z_print.php?art_id=987).

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

#### Part IVb – Options available to citizens outside the party political system

Given the limits of the exercise of voice within the ANC – either because of the nature of the ANC or because of the nature of its supporters and their loyalty – and within opposition party politics, the conventional party system appeared to provide no means to affect HIV/Aids policy in South Africa. In situations like these, the possibility of complete exit is significant and this can have seriously damaging effects on democracy. But in South Africa, the use of an alternative form of voice – one beyond the party political system – provided an alternative to exit.

The importance of South Africa's constitution is that it is a powerful tool which can be used to ensure that the government gives proper attention to some of the fundamental needs of the poor, the vulnerable and the marginalised. In a constitutional democracy, the government is not only restrained from certain actions by the constitution, it is also obliged to make provision for the fulfilment of socio-economic rights entrenched in the constitution. The TAC case is an example of how a constitutional democracy expands the EVL options – particularly the option of voice – open to citizens. By turning to the judiciary, citizens could help - or indeed force - the government to fulfil its obligations as set out by and in the constitution. Where the EVL options provided by party political representative politics were inadequate, in the sense of revealing the limits of popular government, citizens were able to hold the government to account by alternative mechanisms. Because citizens could exercise voice (albeit outside of conventional party politics) to achieve their aims (altering the government's policy and practices), exit in any great degree was prevented - citizens did not need to exit (from party politics itself). This is the epitome of the democratic way.

'The poorest of the poor are dying, only the rich have access to treatment. My fight is

essentially about this' (*Mail & Guardian* 12 July 2002). These are the words of Aids activist and HIV-positive South African Zackie Achmat who took a controversial stance that he would not take ARV drugs until the government set up pilot ARV programmes at community clinics in all of South African's nine provinces. He made his position known on 10 December 1998, International Human Rights Day, at the launch of TAC which he had conceived as a campaigning arm of the National Association of People Living With HIV/Aids (PLWHA). TAC soon outgrew its parent organisation and worked to build mass membership and alliances with unions, employers, religious bodies, women, youth, and gay and lesbian organisations and the Aids Consortium (a grouping of NGOs)<sup>40</sup>. It has strong links with the Aids Law Project (ALP) at the University of the Witwatersrand and TAC's co-leader Mark Heywood now heads the ALP which provides much of the organisation's legal firepower.

While many people tend to associate TAC with its role in targeting the government to fulfil its HIV/Aids obligations, this was not in fact the original (or at least sole) purpose for which the organisation was formed. At inception, TAC's primary objective was 'to campaign for greater access to treatment for all South Africans and prevent and eliminate new HIV infections, by raising public awareness and understanding about issues surrounding the availability, affordability and use of HIV treatments'<sup>41</sup>. One of the first ways in which TAC aimed to do this was to target pharmaceutical companies to lower the costs of HIV/Aids medications. On 9 July 2002, TAC (together with HealthGap) organised a 'Global March for Treatment Access' in Durban and on the success of this, just six months after its creation, TAC was invited to help in the negotiations between the government and Pfizer which led to

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<sup>40</sup> [www.tac.org.za/newsletter/ns000908.txt](http://www.tac.org.za/newsletter/ns000908.txt).

<sup>41</sup> [www.tac.org.za/about](http://www.tac.org.za/about).

Pfizer's offer to donate fluconazole (a high quality generic medicine used in the treatment of HIV/Aids) to needy South Africans<sup>42</sup>. As a 'friend of the court' on the side of the government in the case against the pharmaceutical industry in 2001, TAC helped to secure a massive drop in ARV prices. By highlighting the inequities in how intellectual property rights are applied, TAC has managed to induce a degree of discomfort among the pharmaceutical companies - some of the world's most powerful multinationals - far greater relative to its size.

TAC's successes have been numerous and diverse and although the focus of this paper is limited to its role in forcing the government to implement a comprehensive programme to prevent MTCT, some of TAC's other achievements should be mentioned.

Regarded by its members as the backbone of the organisation's work<sup>43</sup>, TAC has held hundreds of treatment literacy workshops, lectures, and educational sessions throughout the country. It has bought and distributed almost 30 000 capsules of generic fluconazole and, after threatening legal action, ensured that CD4 tests remain in Somerset Hospital. TAC also imported generic ARVs (with the help of Médecins Sans Frontières) to set up a pilot MTCT project in Khayelitsha in 1999 - a project which preceded the implementation of the government's national MTCT programme and in which 75 per cent of women attending antenatal clinics decided to participate.

In September 2001, concerned with the attempts of (some members of) the government to downplay the impact of the HIV/Aids pandemic and to obscure and suppress the facts about

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<sup>42</sup> The donations of fluconazole were never received by patients because despite a false statement by Pfizer announcing it, no agreement was ever reached.

<sup>43</sup> Nathan Geffen, treasurer of TAC, email correspondence 19 July 2002.

Aids, representatives of TAC, the Anglican Church, the Southern African Catholic Bishops Conference and COSATU agreed to work together with representatives of civil society in the South African National Aids Council (SANAC) to guide and challenge the country's national leaders to take more positive action on Aids. This 'effective alliance of civil society' called on the government 'to declare that the Aids epidemic constitutes a National Emergency; to take into account the extent and impact of Aids in all its policies and public statements, providing the moral and political leadership our country so desperately needs; to increase the health budget and ensure cheaper anti-retrovirals; and to expand prevention and educational campaigns'<sup>44</sup>.

These calls were ignored, as were the letter campaigns, requests for meetings, rallies, marches and petitions<sup>45</sup> prompting TAC to institute legal proceedings against the Minister of Health in October 2001. The aim was to challenge the government's refusal to implement a comprehensive programme to provide medicines 'that are safe and affordable and which can reduce the risk of transmission of HIV/Aids between mother and child'<sup>46</sup>. TAC sought an order from the Pretoria High Court which would compel the government to fulfil its constitutional obligations of providing access to effective, affordable and life-saving healthcare services. TAC claimed that the government's refusal to provide ARV drugs to prevent MTCT was a violation of the rights of South Africans as set out in the bill of rights, protected by the constitution<sup>47</sup>.

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<sup>44</sup> [www.tac.org.za/newsletter/ns20\\_09\\_2001.txt](http://www.tac.org.za/newsletter/ns20_09_2001.txt).

<sup>45</sup> [www.tac.org.za/Documents/MTCTCourtCase/ConCourt/MOHVsTAC.txt](http://www.tac.org.za/Documents/MTCTCourtCase/ConCourt/MOHVsTAC.txt).

<sup>46</sup> [www.tac.org.za/newsletter/ns21\\_11\\_2001.txt](http://www.tac.org.za/newsletter/ns21_11_2001.txt).

<sup>47</sup> Ibid.

A month before the hearings were due to start, TAC gave the Minister of Health an opportunity to settle the case by 1) allowing doctors in the public sector to prescribe and dispense nevirapine on the request of a pregnant woman with HIV/Aids and with due regard to protocols that MECs agree for this interim measure and 2) submitting a plan within two months to the Human Rights Commission and the Public Protector that phases in a national MTCT programme over the next 18 months<sup>48</sup>. In an open letter to Minister Tshabalala-Msimang and all MECs for Health, TAC representatives Sipho Mthathi, Haroon Saloojee and Cati Vawda appealed to the government to 'give people hope', explaining that 'legal proceedings were our last resort - they give people who have lost faith in the government a legitimate and legal avenue to defend their constitutional rights to healthcare access, life, dignity and equality.'<sup>49</sup> TAC offered to work with the government to do 'the right thing' but urged the Minister that if she chose to go to court, to do so without further delay<sup>50</sup>.

The hearings in the dispute between TAC and the Minister of Health took place on 26 and 27 November 2001. On 14 December 2001 Judge Chris Botha of the Pretoria High Court ruled that the government had a duty to provide nevirapine to HIV-positive pregnant women giving birth in state institutions, where it was medically indicated and where there was capacity to do so. He ruled against the government's system of providing the medication only at certain 'pilot sites', and ordered the Department of Health to present an outline of how it planned to extend provision of the medication to its birthing facilities countrywide.

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<sup>48</sup> [www.tac.org.za/newsletter/ns18\\_10\\_2001.txt](http://www.tac.org.za/newsletter/ns18_10_2001.txt).

<sup>49</sup> Ibid.

<sup>50</sup> The government had already asked for and been granted an extension of two weeks to file its court papers.

Having not implemented the court order, the state asked Judge Botha on 1 March 2002 for a certificate to appeal to the Constitutional Court. Leave to appeal usually suspends the original order and so, in response to the state's application, TAC went to court for a compulsion order, which would force the government to obey the original judgement pending the constitutional appeal.

On 11 March 2002 Judge Botha granted the certificate allowing his original judgement to be considered by the Constitutional Court, but also ordered that a crucial section of his original judgement be implemented pending the appeal. The state's response was to give notice that it would also appeal against this 'execution' judgement and on 22 March 2002 Judge Botha heard leave to appeal on this question.

Three days later, the judge again ruled that his original order was to be implemented. In its opposition to this ruling the state indicated that it would continue appealing in this way, each time it was told to obey the 'execution order'. The state then filed another urgent appeal with the Constitutional Court – this time against the judge's decision that, pending the first appeal due in May, sections of the original judgement be implemented.

On 3 April 2002, the question of whether the state could appeal against the ruling that it 'execute' Judge Botha's ruling was heard in the Constitutional Court. The judges clearly understood the significance of the issues before them, coming out of recess to hear the appeal and giving a ruling (dismissing the appeal) the very next day – together constituting unprecedented behaviour by the court.

On 2, 3, and 6 May 2002 the case was heard in the Constitutional Court. Two months later, on 5 July 2002, the constitutional court judges made their groundbreaking ruling. They

declared that in terms of Sections 27(1) and (2) of the constitution, the government was required to devise and implement within its available resources a comprehensive and co-ordinated programme to realise progressively the rights of pregnant women and their newborn children to have access to health services to combat MTCT of HIV<sup>51</sup>.

In terms of the judgement, the government was ordered to remove 'without delay' the restrictions that prevent nevirapine from being made available to reduce the risk of MTCT of HIV at public hospitals and clinics that are not research and training sites. The government was to permit and facilitate the use of nevirapine and to make it available for this purpose at hospitals and clinics when in the judgement of the attending medical practitioner acting in consultation with the medical superintendent of the facility concerned this is medically indicated<sup>52</sup>.

#### Part V: Assessment

In societies more developed than South Africa's, a government's dramatic policy reversal would be considerable news. Yet there are occasions in such societies, where governments capitulate to public opinion and pressure. In one-party dominant regimes, because it is a rarity for the government to bow to public pressure, the turnaround on HIV/Aids was somewhat seismic.

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<sup>51</sup> [www.tac.org.za/Documents/MTCTCourtCase/ConCourtMOHVsTAC.txt](http://www.tac.org.za/Documents/MTCTCourtCase/ConCourtMOHVsTAC.txt).

<sup>52</sup> They ruled that the policy for reducing the risk of MTCT as formulated and implemented by government fell short of compliance in that doctors at public hospitals and clinics other than the research and training sites were not enabled to prescribe nevirapine even where it was medically indicated and adequate facilities existed for the testing and counselling of the pregnant women concerned and because the policy also failed to make provision for counsellors at hospitals and clinics other than at research and training sites to be trained in counselling for the use of nevirapine.

Whether or not one agrees with some of the literature that South Africa is a de facto one party dominant democracy, one would find it difficult to dispute that the South African government has, at least to some extent, become accustomed to shrugging off criticism and alternative opinion. In this respect, this case study has attempted to show that the judicial challenge to government mounted by TAC represents a major step in the maturing of South Africa's democracy. It has revealed that civil society, while appearing to have gone into disarray when the apartheid enemy died, can still be a powerful force and that faced with executive attempts to undermine it, the judiciary can and will maintain its independence and integrity. Finally, the TAC case is an example of how the constitution can provide citizens with an effective means of exercising voice: in so doing, the option of exit can be averted and the democratic state can remain intact.

Conventional arguments suggest that the government's 'hegemony' is hampering, if not destroying, prospects for long-term democracy in South Africa (Giliomee & Simkins, Adam, Butler). Where most scholars argue that such hegemony creates a passive citizenry, this case study has attempted to provide a different analysis, raising the possibility that the dominance of the ruling party may have prompted citizens to explore new or alternative channels for tackling public issues. What remains to be evaluated is whether and to what extent these alternatives are democratic at least in terms of the three criteria set out in the opening chapter of this paper – rights, participation, and pro-poor.

Integral to the concept of rights and of constitutional democracy itself is the recognition that the popular state must be subject to review. As a form of rule, constitutional democracy takes its cues from the framers of the America's constitution. Distrustful of the 'tyranny of the majority', the Founding Fathers, particularly influenced by Madison, advocated

republicanism over pure democracy, arguing that popular majorities should be constitutionally restrained:

‘What is government itself but the greatest of all reflections on human nature?

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself’ (Federalist 51).

This articulation is the recognition that there is a need for order and government in all societies, that the persons who exercise the powers of government should be authorised to do so by those whom they govern, but that these governors, being fallible human beings and therefore prone to folly, corruption, and the hunger for power, should also be subject to legal limits. Constitutionalism, as the presence of restraints, is thought to provide a more effective guarantee of good government than do traditional democratic measures such as periodic elections alone, simply because as Carpenter (1994: 167) points out, ‘prevention is better than cure’. Whether they draw on Aristotle or Madison, Rousseau or Rawls, de Toqueville or Dahl, modern constitutionalists argue that a constitution is the ultimate tool for ensuring accountability and protecting the vulnerable against executive autocracy because the government to be instituted may govern only according to its terms and subject to its limitations, among these being that individuals retain certain rights even against the people’s representatives in government (Henkin, 1991: 6).

This model of limited government, although predominant in modern democracies, is not without its critics. Because modern constitutional democratic regimes developed historically

in close relation to the liberal conceptions of the individual and of freedom, detractors of the principle tend to equate it with extreme libertarianism, and an ideological semi-sanctification of a free-market economy (Eisenstadt, 1999: 7). The (over-)emphasis on rights perceived by these critics is said to be emasculating democracy in that it can, and indeed in the US does, result in privileging lawyers and the courts over legislators in decisions regarding social policy. That is, elected representatives of the people become less significant agents of policy-making than unelected members of the legal fraternity. This in turn raises questions about equality in that not all citizens are empowered to access the courts - or at least, are not all equally empowered. On this account, a constitutional democracy is potentially very elitist: if not an oligarchy, then at the minimum, 'democracy for the few' (Parenti 1980).

Much of the 'sympathy' for TAC's use of the judiciary to hold the executive and legislative to account is due to the specific nature of the issue: it really was a question of life and death for South African citizens. Arguing why the state should not have to obey the High Court's order, counsel for the state Marumo Moerane said that the 'problem is that the court orders us to do something we think is wrong' (*Sunday Times* 7 April 2002). The response of Judge Richard Goldstone - 'that is what court orders always do' - encapsulates what Jonathan Berger, ALP researcher, calls the 'unpalatable truth' (*Mail & Guardian* 5 April 2002) that the government and the ANC were forced to confront: the court put it beyond any dispute that the state is constitutionally obliged to respect, protect, promote and fulfil the social and economic rights in the constitution, putting to rest the arguments that these so-called rights are really aspirations, not legal rights<sup>53</sup>. The government's reliance on the doctrine of 'separation of

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<sup>53</sup> The TAC judgement makes it clear that the state bears the obligations to provide children with the right to shelter, to basic health services and nutrition and to social services whenever the family, who has the primary obligation, is unable to fulfil them. Although this issue was addressed in an earlier case, the ambiguous wording of the Grootboom judgement put this issue into question.

powers' to keep the matter beyond the courts was shown to be fundamentally misconceived and the exercise of public power was held accountable to the constitution by the judiciary.

But the fact that a small pressure group – and TAC is not a mass movement - could ultimately force the government to change its policies does raise some serious issues about the clash between the liberal state and the popular state. Based on TAC's success, there is little to prevent a pressure group from taking the government to court for allowing abortion for example, or for outlawing capital punishment. While the use of the constitution and the courts is a powerful tool for holding elected representatives to account, because the ability to use the courts is not equal, not all rights are similarly protected and thus the liberal state can overpower the popular state and thus undermine democracy as popular government. What complicates the issue even further is that one cannot even make the claim that the stance taken by TAC reflected the general will: to the extent that at least some of the public were persuaded by Mbeki's denialism and the Aids dissidence, TAC's claim that it was protecting the rights of citizens may have been an overstatement at best, completely untrue at worst<sup>54</sup>. As much as we recognise the benefits to citizens resulting from its victory, we cannot completely ignore that in terms of rights, TAC's actions are closer to benign paternalism than to the articulation of some 'general will', and its leaders closer to 'aristocrats' (in Aristotelian language) than democrats.

This leads us to the conception of democracy as citizen participation. Making a case for the extension of the sphere of democratic participation, Carole Pateman has argued, drawing upon central notions in Rousseau and Mill among others, that participatory democracy fosters human development, enhances a sense of political efficacy, reduces a sense of estrangement

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<sup>54</sup> To some extent, this is a straw man argument: the ruling by the court does not force anyone to take ARV's against their will but simply provides citizens with the opportunity to receive treatment if they choose to.

from power centres, nurtures a concern for collective problems and contributes to the formation of an active and knowledgeable citizenry capable of taking a more acute interest in governmental affairs, and thus in the affairs that affect them (Pateman, 1970: 46). According to Pateman, 'a positive correlation between apathy and low feelings of political efficacy and low socio-economic status [typically found in most liberal democracies] can be broken by making democracy count in people's everyday life' (ibid). That is, by extending the sphere of democratic control to those key institutions in which most people live out their lives.

While supporting the participatory process because it paves the way for political equality to be made effective in decision-making assemblies, Pateman recognises that participation needs to be learned. In this regard she is taking up Mill's argument that because the will of 'the people' is ultimately the will of the majority, and because it is entirely possible for the majority to oppress the minority, two conditions necessary to democracy are a participatory society and the equality of industry. She claims that it is through the latter's (supposed) abolition of the distinction between 'managers and men' that one can 'learn' democracy, and more importantly, learn to participate in democratic practices (Pateman, 1970: 108).

To what extent does TAC achieve the ideal Pateman is driving at? TAC has a team of 14 full-time staff and claims to have a membership base of several thousand<sup>55</sup>, and yet there are no formal positions in the organisation. This attempt to eliminate power struggles and concern for upward mobility could be seen as abolishing the distinction between managers and men for which Pateman argues. Furthermore, in terms of the members, Judge Edwin

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<sup>55</sup> Because 'membership' of TAC does not entail paying fees or 'carrying cards', it is difficult to ascertain the extent to which this claim is valid. If membership is defined as volunteers, participants at protests, and or donors, then this figure of 'several thousand' may be plausible.

Cameron, a TAC supporter, likens TAC to the End Conscription Campaign<sup>56</sup>, another body that managed to unite people from (possibly, if only up to a point) disparate ideologies and backgrounds by focusing on the single issue of ending compulsory military service (and which interestingly also concentrated on a legal challenge). Many of the people working for the organisation are 'old lefties', veterans of the struggle. They are people who learned well the skills of mass mobilisation, how to feed and profit from the media and how to use the law to its utmost and they want to pass on these skills. On Judge Cameron's reading then, TAC members may be able to 'learn' democracy through participation as equals. While its appeal across society is no doubt a contributing factor to its success, to some extent at least TAC fosters a sense of responsibility among citizens: 'TAC has touched a chord in society, with ordinary people who usually don't get involved. They know they have to do something'<sup>57</sup>.

But does TAC in fact provide a mechanism for popular participation or is it conversely, an elite-led, albeit benevolent, organisation? To what extent do citizens desire such a mechanism – do they in fact want to be involved? Again, it is a question difficult to answer. But the seventh and last round of the Southern African Democracy Barometer (2002) which measures attitudes towards democracy, markets and civil society in the region may shed a little light. According to these findings, co-ordinated by Idasa, South Africans have an

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<sup>56</sup> By 1985, conscription for all white South African men not registered in tertiary education full time had increased from one to two years, with an additional two years of reserve service in camps. Religious grounds were the only formally accepted basis for conscientious objection, and, if granted, earned the applicant six years of alternative service in a government institution. Launched in 1983 the End Conscription Campaign quickly gained a reputation for its exciting artwork and for a cultural liveliness and spirit. It was not long before the frequent and severe harassment of ECC activists began, with activists being detained in at least one case for more than a year, their houses fire bombed, phones tapped and brake fuel drained from their cars. Despite its activities being curtailed by the 1986 State of Emergency, the ECC was officially banned in August 1988.

<sup>57</sup> Interview with Mark Heywood, 21 April 2002.

extremely active record of protest participation with 24 per cent of South Africans saying they have taken part in a demonstration or protest march<sup>58</sup>. Certainly, the rallies and marches of TAC seem to be well attended (in comparison with attendance at many party rallies) but given that the survey findings indicate a generally low level of political (non-protest) participation among South Africans (second lowest in the region<sup>59</sup>), this is to be expected. Ultimately, in terms of the extent to which TAC provides for popular participation, it seems more appropriate to say that the organisation provides an opportunity for popular participation. An opportunity, which, while slowly being taken up by some parts of the citizenry, has not (yet) amounted to TAC becoming a mass movement.

Finally, let us assess the extent to which the HIV/Aids issue is democratic in terms of the criterion of pro-poor. The fact that ARV treatment is available in South Africa to those who can afford it (as opposed to it being banned outright) is obviously iniquitous and thus the very nature of TAC's cause – increasing access to medication for those who cannot afford it – means that the issue was pro-poor. But if we consider that it is the poor, far more than the rich<sup>60</sup>, who rely on the government (in this case for healthcare), and that (multi-) party democracy is premised on the view that political parties control the government (by the threat of replacement), we should recognise that on this account, the poor depend on political parties to do their jobs. Where it was evident that opposition parties were unable to keep up their side of the democratic deal (for the reasons discussed in Chapter 1), TAC was able to

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<sup>58</sup> The fact that South Africa's rate of participation is the highest in the region along with Zimbabwe may be cause more for concern than praise. Full results of the findings at [www.idasa.org.za/z\\_print?id=747](http://www.idasa.org.za/z_print?id=747).

<sup>59</sup> Ibid.

<sup>60</sup> That is, the rich have an exit option available to them because they can afford not to rely on the state: this is at the heart of claims justifying the minimal state.

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provide a vehicle with which to hold the government to account. Political party, and because the party system itself is at least partially composed of parties provide a check on the government, TAC pursued an agenda of holding the government – through the courts. In this respect, the organisation’s cause itself, TAC can be seen to be democratic – at least. Its institutional challenge, even more than the substantive challenge, signalled a victory for the most vulnerable members of

Ultimately, if the functioning of a democracy is measured by the extent to which citizens choose voice and partial exit (the former referring to intra-party lobbying, the latter to supporting the opposition) over exit (from the party system), it seems that TAC has contributed to South Africa’s democracy. Given the absence of voice options within the ANC or partial exit (and thus voice) options within opposition politics, citizens were provided with an alternative means of exercising voice that may have staved off complete exit (in the longer term at least). In this respect, it seems we can cautiously make a case that there may well be unexpected democracy deepening consequences of one-party dominance in South Africa.

### **Chapter 3: Civil Society and Decentralisation – how individuals and communities are side-stepping the formal political system and the implications of non-state policing for democracy.**

[Note: while a criminal justice system comprises three components – policing and crime control, the courts, and correctional services – this study is confined to the area of policing. In South Africa, provision has been made for citizen participation in the second component through the use of lay assessors in magistrates courts. Though nominally in operation since 1991, in practice it fairly uneven (Seekings 1999).]

#### **Part I: The Significance of the Issue**

In the last decade of the twentieth century, spending on the South African criminal justice system as a proportion of the national budget more than doubled from less than 5 per cent to almost 10 per cent (Schönteich, 1999: 3). Over the same period the number of reported crimes increased by between 50 per cent and 100 per cent (ibid). Against this background, it is not surprising that South Africa's transition seems to have been accompanied by declining perceptions of safety.

South Africans do feel unsafe: according to the Afrobarometer findings (2002), crime ranks second on the list of 'the country's most pressing problems'. While public emphasis on crime has fallen from an average of 60 per cent (from 1997 to 2000) to 35 per cent (2002), it still remains a fundamental issue since it began to rise from 6 per cent in 1994 (Mattes et al 2002). And if South Africans feel unsafe it is because they are unsafe. That is, public perception of crime is not dramatically over-inflated in terms of actual criminal activity. The *Victims of Crime Survey* commissioned by the (then) Minister of Safety and Security Sidney

Mufamadi and carried out in 1997 revealed that in that year, 21 per cent of all households had experienced one (household) crime and 15 per cent of individuals aged 16 or more had experienced one (individual) crime<sup>61</sup>. In terms of actual numbers, this translates to approximately 3,8 million South Africans.

Figures from a 1999 HSRC national opinion survey show even higher levels regarding public perception with 47 per cent of all South Africans 'feeling unsafe'<sup>62</sup>. While the percentage of people feeling safe in October 1999 has risen by about 5 per cent since October 1997 (when the *Victims of Crime Survey* was carried out), at 43 per cent it is significantly lower than the 1994 level (both the 74 per cent measured in the euphoric April 1994 period and the 57 per cent measured in October 1994)<sup>63</sup>.

While the government has begun to take notice of the extent of the problem (the increase in spending, the commissioning of surveys), in light of the significant numbers of South Africans who are affected by crime, it is not surprising that only 23 per cent of citizens believe it is making any inroads in crime reduction<sup>64</sup>. This case study examines some of the possible underlying reasons for the inversely proportional – and somewhat counterintuitive – relationship between government spending and criminal activity, and the responses of South Africans to the government's apparent failure to combat crime: with needs that are beyond

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<sup>61</sup> Household crimes are crimes committed against a household and individual crimes are those committed against an individual. The survey used the international UNCRI definitions.

<sup>62</sup> [www.kas.org.za/Publications/SeminarReports/Crimeandpolicingintransitionalsocieties/louw](http://www.kas.org.za/Publications/SeminarReports/Crimeandpolicingintransitionalsocieties/louw).

<sup>63</sup> Ibid.

<sup>64</sup> Afrobarometer 2002 ([www.idasa.org/za/z\\_print.php?art\\_id=982](http://www.idasa.org/za/z_print.php?art_id=982)).

the state's capacity to fulfil, South Africans are making alternative arrangements for their security.

## Part II: State Action

Are the police unable to do their job properly because crime levels are so high or are crime levels so high because the police are unable to do their job properly? Establishing the causal relationship is not easy. It is compounded by the difficulty of determining exactly when crime began its ascent to its current levels given unreliable police statistics (prior to 1994) coupled with the government's year-long moratorium on releasing crime statistics to the public (2000-2001). Rather than attempting to posit causality, in this study we will look at reasons for the high crime and the inadequacy of state policing as inter-related.

According to Schönteich, during the first four years after South Africa's political transition in 1994, overall crime levels almost stabilised, albeit at very high levels, (especially violent crime), with recorded crime increasing at an average of 1 per cent per year. From then on, crime levels escalated, increasing by almost 5 per cent between 1997-98, 7 per cent between 1998-99, and 7,6 per cent between 1999-2000<sup>65</sup>.

Available police data indicates an even higher rate of escalation, with the overall recorded crime having increased by 15 per cent between 1994 and 1999<sup>66</sup>. During this time the country's population increased by 11 per cent<sup>67</sup>. But several 'serious' crimes increased at a faster rate than the average between 1994 and 1999 such as rape (21 per cent), serious assault

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<sup>65</sup> [www.iss.co.za](http://www.iss.co.za).

<sup>66</sup> [www.saps.org.za/8\\_crimeinfo/200112/prov/rsa](http://www.saps.org.za/8_crimeinfo/200112/prov/rsa).

<sup>67</sup> [www.iss.co.za](http://www.iss.co.za).

(22 per cent), housebreaking (25 per cent) and common robbery or robbery without a weapon (121 per cent). Crime statistics for 2001 indicate that recorded crime increased by 2 per cent during the first nine months of 2001 when compared to the same period in 2000. Comparing the 1999 and 2001 figures for rape, serious assault and housebreaking and common robbery or robbery without a weapon, it seems that there has been a slowing down in the rate of increase of recorded crime, the average rate of increase being just under 1 per cent<sup>68</sup>.

There are a number of reasons for the increases in crime, one of which is the largely accepted explanation that crime tends to increase during periods of political transition (Louw 1999, Schönreich 2000, Shaw 1997). South Africa's experience is consistent with the democratic transitions in many Latin American and Eastern Europe countries and closer to home, in Namibia, where a significant increase in crime was also experienced just before and after independence<sup>69</sup>.

The essence of the arguments relating increases in crime to political transitions is that as change and democratisation processes proceed, society and its instruments of social control (both formal and informal) are reshaped (Shaw, 1997: 1). During these periods of instability, routine policing activities are diverted towards controlling violence, with the result that opportunities for crime open up. The social bonds holding society together are loosened, making crime more likely – in South Africa, the collapse of apartheid meant the collapse of a single, consolidated enemy or target. Shaw argues that with this weakening of state repression, focus was diverted to intra-community conflict – a credible explanation, at least in the cases of parts of Gauteng and KwaZulu Natal. In addition, political violence during the

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<sup>68</sup> [www.saps.org.za/8\\_crimeinfo/200112/prov/rsa](http://www.saps.org.za/8_crimeinfo/200112/prov/rsa).

<sup>69</sup> [www.iss.co.za](http://www.iss.co.za).

transition weakened social control, producing marginalised groups reliant on the conflict for a livelihood.

In addition to its transition, South Africa's particular history is often given as a reason for the high crime. 'Culture of violence' theories suggest that the effects of apartheid coupled with years of political violence have produced a destructive culture which manifests itself in what the *Nedcor Project on Crime, Violence and Investment* (1996) terms 'murderous intolerance'. The responsibility for this 'culture of violence' has been laid at the door of both the apartheid state and the liberation movements, the former for obvious reasons, the latter for urging a people's war which bred a culture of violent lawlessness and a distrust of authority (Kane-Berman 1993, Shaw 1997).

Exacerbating the effects of this 'culture of violence' is the fact that South Africa is a heavily armed society. According to the police's Central Firearms Registry, more than three million South Africans are in the legal possession of some 4,2 million firearms – of which just over half are handguns. Moreover, it is estimated that a similar number of illegal firearms are circulating throughout South Africa<sup>70</sup>. While this 'gun culture' may be in part a response to high levels of crime, there is little doubt that the long history of armed conflict means that many South Africans are familiar with firearms and are willing to use them.

Another significant reason why transitions and high crime go hand in hand is that transitions almost always require a restructuring of the criminal justice system and laws. This is particularly

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<sup>70</sup> The porous borders between South Africa and Mozambique allow arms smugglers to bring large quantities of firearms into the country. Because of an oversupply of these weapons and the impoverished state of Mozambique, these guns sell cheaply – R50 for an AK47 – making them easily accessible (Schönteich 2000).

relevant in South Africa with the result that many criminal justice functions have been operationally weakened.

On the one hand, there are a number of new and inexperienced recruits, and on the other, experienced personnel trained in the policing methods of the old authoritarian order are unsure how to function effectively in a new legal framework based on the rule of law and a constitutionally entrenched bill of rights.

In comparison with other countries, the ratio of the police to the public in South Africa is better than many countries with similar levels of development (South Korea, Turkey), close to that of countries with similar violent crime problems (Colombia) but somewhat lower when compared with the US or UK<sup>71</sup>. The government has come under continual pressure to increase the size of the police force and the increase in expenditure mentioned above indicates that there has been a positive response to this pressure. But insufficient personnel is only one of numerous reasons why the SAPS appears to be losing in the fight against crime.

The SAPS has undergone significant and radical transformation since 1994. The personnel of the police can be divided into three basic branches: uniformed, detectives, and support services. According to data from the Ministry of Safety and Security, in 2001 there were 121 912 police members in South Africa, of whom 79 652 were uniformed, 21 912 were detectives, and 20 463 were civilians, who serve in supporting roles<sup>72</sup>. Because of the use of police officers in administrative functions (in 1997, 25 000, or 25 per cent of police officers were deployed in an administrative capacity), the visible presence of police is stretched so

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<sup>71</sup> [www.saps.org.za](http://www.saps.org.za).

<sup>72</sup> Ibid.

thinly that it fails to act as a significant deterrent. As such, the role of the police shifts from preventing crime, to reacting to crimes after they have occurred and been reported.

Absolute numbers are not very helpful in analysing the efficacy of public policing - the size of the SAPS should be considered in relation to its workload. About 100 000 operational police faced approximately 2,5 million crimes in 2000<sup>73</sup>. That translates to 25 crimes per member for the year or one every two weeks. Clearly, not every uniformed member is dealing directly with crime, and looking at the ratio of detectives to crime (115 per year, or one every other workday) may suggest a more realistic workload. According to police data for 2000, South African detectives referred about a quarter of the cases that they handled to court or about 28 cases apiece for the year<sup>74</sup>. This equates to around one case every nine working days and roughly correlates to the *Nedcor Project on Crime, Violence and Investment* (1996) figure that 23 per cent of offenders are caught by the police (Schönteich, 1999: 16). The Ministry for Safety and Security acknowledges that this is a low level of productivity, but claims that it is comparable to the achievements of detective in the UK. The difference is that in South Africa only 5 to 8 per cent of crimes committed result in conviction (Schönteich, 1999: 16), suggesting that while 25 per cent of cases may make it to court, the quality of the investigation (coupled with the quality of the legal representation) is insufficient to secure conviction.

As the above suggests, incompetence is a second reason for the SAPS's failings. The SAPS is hamstrung by personnel who are badly trained and poorly educated. Roughly a quarter of the police service's members are 'functionally' illiterate and have difficulty filling in a form,

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<sup>73</sup> [www.saps.org.za](http://www.saps.org.za).

<sup>74</sup> Ibid.

or taking a written statement from a crime victim (*Financial Mail* 11 April 1997). There are 4 800 police officers without a 'general education' (below standard 7 qualification) and 43 000 officers (a third of the force) have a standard 8 qualification or lower (*Hansard* NA:Q, 22 June 1998). More than 45 000 SAPS members do not have a driver's licence. This means that one in three police officers cannot drive to a crime scene or patrol a street in a vehicle without breaking the law themselves and quite possibly endangering other road users. In 1997, of the 37 000 police vehicles, 31 per cent or 11 700 were involved in accidents (*Hansard* NCOP:Q, 2 June 1998), a major contributor to the fact that during that year 3 000 vehicles were out of commission on any particular day (Schönteich, 1999: 25).

Poor screening and inadequate pay may be responsible for the fact that between April 1994 and December 1997, members of the SAPS 'lost' 4 874 state-issued firearms. Of these, 103 were 'lost in a bathroom or toilet', and a further 259 were 'lost from the members possession whilst visiting discos, shebeens or whilst being intoxicated' (*Hansard* NCOP:Q, 31 March 1998). It is apparently not uncommon for these 'lost' police weapons to be sold on the street (Schönteich, 1999: 41).

As the number of 'lost' fire-arms suggests, corruption is another reason why the SAPS is struggling to combat crime. There is little disagreement that corruption is engendered by monopolies, especially state monopolies<sup>75</sup>. There is strong evidence to suggest that corruption is rife in the state-controlled criminal justice system (Schönteich, 1999: 40). The number of police officers under investigation for alleged corruption rose from 56 in 1994 to 89 in 1995 and to 1 067 in 1996 (*Hansard* NA:Q, 5 November 1996). In December 1997 and

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<sup>75</sup> In August 1998 the Heath special investigating unit investigated government corruption involving R7 billion with some 90 000 cases of fraud, corruption and maladministration at different levels of government having been reported to the commission (*Business Day* 28 August 1998).

January 1998, the SAPS's internal anti-corruption unit brought 490 cases of police corruption to court and was investigating another 2 000 cases (*Business Day* 21 January 1998). *Policing to Protect Human Rights*, an Amnesty International report on the policing methods of Southern African Development Community (SADC) countries released in July 2002, found that the SAPS was frequently cited for bribery and corruption (*Mail & Guardian* 12 July 2002).

The abuse of power is not uncommon in the SAPS, and this may be related to the 'old order' style of policing. In the period 1 April 1997 to 30 April 1998, 232 people died in police custody. While 29 died of natural causes and 72 apparently committed suicide, the rest died as a result of injuries sustained while in custody or prior to custody, or from unknown causes where police negligence cannot be ruled out (*Hansard* NCOP:Q, 18 August 1998). Between April and September 1997, there were 55 complaints of police torture (*Business Day* 31 October 1997). The Amnesty International report indicates that abuse is still prevalent five years on, as 'consistent accounts from survivors of torture by members of the Brixton Serious and Violent Crimes Investigation Unit indicate that interrogators have used a toilet at the unit's headquarters where victims have been tied up, naked and hooded, and subjected to electric shock torture' (*Mail & Guardian* 12 July 2002)<sup>76</sup>.

In 1996 alone, 15 325 members of the police were charged with crimes ranging from murder and armed robbery to reckless driving (*Hansard* NA:Q, 17 June 1997). In 1997 there were 17 526 complaints against the police and 9 035 criminal charges (*Cape Argus* 1 April 1998).

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<sup>76</sup> The report cites the case of Thabani Ndlodlo, wrongfully detained for a staggering 446 days and unlawfully assaulted by police, who shot him in the legs after attempting to extract a bribe from him and refers to Zakhele Mabhida who was fatally shot by Durban police in April 2001, after he had handed himself over, unarmed, to the police several hours earlier in connection with a murder investigation (*Mail & Guardian* 12 July 2002).

Members of the police are twice as likely to be charged with murder (122 for every 100 000 police officers) than members of the public (61 per 100 000) and the number of police officers convicted of committing crimes ranges from 1 686 in 1994, to 1 839 in 1996 with 1997 seeing some 38 police officers convicted for murder, 41 for attempted murder, and 16 for armed robbery (Schönteich, 1999: 41).

While much of the violation and abuse by the police may have been hidden or unreported prior to 1994, the transparency in the current administration means that these abuses are less likely to be swept under the carpet. The above data seems to imply that existing procedures appear to be quite efficient at holding the police to account – at least in terms of gross corruption, if not in terms of general competence. Indeed, the Minister for Safety and Security has frequently been sued by individuals claiming to have been wrongfully arrested, assaulted or abused by the police and in 1996 alone there were 6 437 civil claims against the Minister with a total value of R409 million (Schönteich, 1999: 41). When members of the public police are found to have violated citizens' rights, the state pays the court-ordered damages. While these compensation payments put pressure on the already over-stretched budget, it seems they are not significant enough to warrant more effort on the part of the state to reduce the violations.

The SAPS has in fact instituted a 'friendlier' approach to law enforcement, but given the findings of the Amnesty International report, this policy seems to have achieved only limited success. It has certainly done little to improve the SAPS's very poor image among the public. This negative public perception is the final reason examined in this study explaining why the SAPS is unable to combat crime.

In many countries, but especially in South Africa, the public questions the ability of the

police to protect them from crime. Given its long history of abuse and corruption, members of the police have never been held in high esteem by South Africans. This was one of the primary reasons why transformation of the force was placed so high up on the transition agenda. But instead of an improvement in the public's perception of the SAPS, there has been an increasing loss of faith in the police since 1994 as the HSRC and Afrobarometer survey data cited at the beginning of this case study indicates.

To a large extent, the poor public perception of the police is justified – it mirrors the SAPS's poor performance. But with the highest global rates for police members being killed in action<sup>77</sup>, and the disproportionately low pay, dissatisfaction among SAPS members has further eroded the low levels of service and even lower levels of morale. Between August 1996 and August 1997, there were 21 strikes by employees of the Department of Correctional Services, one as long as 29 days, another lasting 17 days. During a 12-month period in 1996/7, there were 62 work stoppages in the SAPS. In 1996 alone, some 1,3 million days were lost due to absenteeism (in addition to vacation and special leave taken in that year), with some areas of the Cape Peninsula having an absentee rate of 77 per cent (*Hansard NCOP:Q*, 19 August & 18 September 1997). A high level of absenteeism not only results in diminished levels of service, but more importantly, is an indicator of the high degree of unhappiness among SAPS members.

### Part III: Citizens demands

The imbalance between the increasing demand for an effective criminal justice system and the state's (diminishing) ability to provide the necessary resources is one of the most serious

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<sup>77</sup> 200 police officers are killed per year according to the Amnesty International report (*Mail & Guardian* 12 July 2002).

problems in contemporary South Africa. In a United Nations survey of public satisfaction with the police across a range of developing countries, South Africa featured last in Africa, with only 27 per cent of respondents believing that the police were doing a good job (Shaw, 2002: 89). The UN survey is not alone in its findings: the 1999 HSRC survey (cited above) indicates a sharp increase between 1994-1997 in the number of South Africans who believe the government has little or no control over the crime: from 44 to 63 per cent<sup>78</sup>. The survey revealed that that 30 per cent of respondents thought that giving information to the police would make no difference to their ability to catch criminals, while 57 per cent said they would feel unsafe giving evidence to the police<sup>79</sup>. Some 28 per cent of those surveyed felt that most or almost all police officers are corrupt or in collusion with criminals<sup>80</sup>. Institute for Security Studies survey results released in 1998 showed only 34 per cent of respondents 'trust the police always or most times', while only 43 per cent believed that 'the police are interested in what happens to you' (Schönteich, 1999: 15).

South Africans are frequently and consistently voicing their concerns about the 'crime situation' in the country. In terms of it having an effect on (complete) exit – the Mindset Survey conducted by the Unilever Institute of Strategic Marketing in December 1999 reveals that crime is the number one reason given by South Africans who have emigrated (since 1994) or who are considering emigration<sup>81</sup>. What is important to consider for the purposes of this paper is the fact that crime is a significant issue for voters: evidence from a public

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<sup>78</sup> [www.kas.org.za/Publications/SeminarReports/Crimeandpolicingintransitionalsocieties/louw](http://www.kas.org.za/Publications/SeminarReports/Crimeandpolicingintransitionalsocieties/louw).

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> [www.dispatch.co.za/1998/12/12](http://www.dispatch.co.za/1998/12/12).

opinion survey poll carried out by the HSRC in March 1999 shows that together with job creation, crime prevention emerged as the top ten-year priorities of South Africans. While two in five South Africans (41 per cent) said that they wanted the government to prioritise the creation of new employment during the next ten years, one third (32 per cent) wanted the primary focus of government to be the fight against crime<sup>82</sup>. It is therefore not surprising that crime was a primary feature of all the (major) parties' campaigns in the 1999 national elections<sup>83</sup>. There was a difference between potential voters of specific political parties in terms of whether crime featured above or below job creation in their priorities. While almost half of ANC and IFP supporters (48 per cent and 45 per cent respectively) listed job creation over crime prevention (26 per cent and 28 per cent respectively), supporters of the ACDP, DP, FF, NNP and UDM overwhelmingly prioritised crime prevention (46, 67, 56, 40 and 52 per cent respectively). In theory – that is, in a properly functioning multi-party system - this would suggest that opposition parties with viable and credible strategies for fighting crime stood to gain significantly in electoral terms. Let us assess this further.

#### Part IVa: Options available to citizens within the party political system

As was pointed out in earlier chapters, modern representative democracy is premised on the idea that the party system provides citizens with a means of exercising voice and thus signalling their preferences to the government. This in turn provides the government with an

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<sup>82</sup> Interestingly, the proportions that prioritised the jobs and crime issues changed during the first three months of 1999 - a similar HSRC survey conducted in December 1998 revealed that crime prevention was the top priority for 41 per cent of the population, while job creation was ranked the highest priority by 32 per cent ([www.hsrc.ac.za/media/1999/5/19990505B](http://www.hsrc.ac.za/media/1999/5/19990505B)).

<sup>83</sup> It is also likely to be a site on which the 2004 election is fought: the DA has just launched its election campaign, with the basic income grant, crime and the importance of a viable opposition as its three platforms.

opportunity to respond and on the basis of the response, citizens decide whether to return that party to power or to vote for an alternative party. To this end, the level of activism - in terms of exercising voice - in a polity is an indication of the extent or health of the democracy. One can argue that it is dissatisfaction rather than satisfaction that is likely to lead people to contact representatives, protest, or pursue other avenues of interest satisfaction. The relationship in a functioning party democracy is thus directly proportional – voice increases as dissatisfaction increases – until a level of satisfaction is achieved in which case the graph flattens out (but there is the latent potential of voice activity should the level of satisfaction decrease). The concern in one-party dominant regimes however is that the relationship between the exercise of voice and level of dissatisfaction may be inversely proportional: if outcomes are pre-determined with performance having no bearing (due to ascriptive voting, the lack of viable opposition and so on), citizens will have no incentive to exercise voice and will either remain loyal to the ruling party, or may exit altogether (from politics, or from the country) instead of exiting to an opposition party (by which they exercise a form of voice).

So what is the level of activism in South Africa? Interestingly, while South Africans are so significantly affected by crime – even more so than by HIV/Aids – there has been a decrease in voice activity with regards to crime in the last two years<sup>84</sup>. This may say less about citizens' satisfaction with the government's policy and more about their belief in the capacity of the political system to respond to felt needs. The lowering of voice levels may also be related to the moratorium on crime statistics imposed by the former Minister of Safety and Security – without information, lobbying, both intra-party and inter-party, is hampered.

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<sup>84</sup> Afrobarometer findings in August 2000 indicate that crime was the second most cited problem at 60 per cent but by September 2002, while still the second priority, this figure had dropped to 35 per cent ([www.idasa.org.za/z\\_print.php?art\\_id=983](http://www.idasa.org.za/z_print.php?art_id=983)).

Alternatively, given the extent of the problem it may be a case that the cost of action outweighs the benefit.

In terms of intra-party lobbying, and at the elite level, what goes on behind the closed doors of government itself is obviously difficult to ascertain. To some extent it seems that bureaucrats and ANC politicians not directly involved in the criminal justice service are hesitant to get involved – given that it is an issue which produces more problems than solutions<sup>85</sup>. Within the tripartite alliance, again, that crime is a problem is articulated (at both the policy and national conferences in 2002 for example), but how to deal with it is not. In addition, given that most ANC supporters prioritise employment over crime (at least in 1999), and given that it is regarding this issue that the ANC and COSATU most frequently come to blows<sup>86</sup>, it may simply be a case of fighting (what are perceived to be) the more important battles first.

In Chapter 1 opposing arguments regarding the South African electorate were set out. On the one hand, following Horowitz, there are those who say that even if opposition parties offered voters (and specifically ANC supporters) exactly what they claim to want (job creation, crime reduction and so on), this would make little difference – the vast majority of these voters would continue to support the ANC. On the other hand, according to their public opinion survey findings, Mattes et al, have suggested that South African citizens are more discerning than the Horowitz framework allows when it comes to casting their votes (although they do accept that racial or ethnic differences affect preferences and attitudes as to what ought to be

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<sup>85</sup> An ad hoc review of attendance at parliamentary meetings between April and June 2002 indicates that while many issues are regarded as being intersectoral, matters pertaining to the SAPS are somewhat isolated.

<sup>86</sup> With COSATU clashing with the ANC over labour reform.

done and how). On the latter interpretation, it would seem that crime is an issue on which voters would look to affect policy and practice through lobbying opposition parties especially considering that supporters of those parties (with the exception of the IFP) prioritise crime above all else – suggesting that the parties themselves accord primacy to this issue. In other words, if and because the policies of these parties (or those articulated during campaigning) focus on crime, citizens unhappy with the government's performance regarding crime, have a clear alternative and can cast their votes accordingly.

In fact, such voter circumspection is not convincing. On one level, actual credible strategies for dealing with crime are rarely articulated either during campaigns or on party web-sites and in their offices<sup>87</sup>. That is, even if citizens were amenable to voting for opposition parties, little is being offered to persuade them in terms of these parties' ability to deliver on crime reduction. But a more realistic analysis is that it is not policy in fact that provides an obstacle to electoral gains for opposition parties but a lack of common identity – in one form or another (the deterministic view of Horowitz et al, or the weaker notion proposed by Mattes et al). The March 1999 HSRC opinion poll found that 4 per cent of adult South Africans claimed that they were planning not to vote in the national election that year. What is interesting is that these people were nevertheless prepared to state their opinions on government priorities. While 37 per cent of the abstainers (or those claiming they would abstain) ranked job creation as the number one priority, crime prevention was a very close

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<sup>87</sup> As Thuynsma (2002) points out, party manifestos were exceedingly difficult to obtain during both the 1999 national and 2000 local government elections. And while the DA purports to be 'getting tough on crime', a visit to [www.da.org.za](http://www.da.org.za) does not shed any light on how it proposes to do so (although increased police presence in the Western Cape did indicate limited success). Similarly findings at [www.natweb.co.za](http://www.natweb.co.za) indicate the vagueness of the NNP's approach: 'of central importance is the development of a national consensus around the combating of crime that is pragmatic and focused on crime prevention...'

second at 35 per cent. Not only does this suggest that they may be politically closer to the ANC or IFP than the other parties but that dissatisfaction with the government does not translate into electoral gains for opposition parties<sup>88</sup>. In terms of the DA, this may be compounded by the fact that its primary constituency comprises wealthier citizens who can afford to deal with crime on a personal level and therefore do not rely on the government to meet their security needs<sup>89</sup>.

Ultimately, to the extent that crime may be interpreted more as a story of state failure than of individual party failure, options for intra-party and inter-party lobbying are limited. Nevertheless, because the party political system appears to offer little or no electoral incentive to affect the government's policy and practice, citizens have begun to explore options beyond conventional party politics for fulfilling their security needs.

#### Part IVb: Options available to citizens outside the party political system

It is not only in South Africa that there is evidence that the traditional approach to fighting crime, where the criminal justice system is a state monopoly, is obsolete. Many developed (and developing) countries are characterised by active forms of non-state participation in crime-fighting and the criminal justice system<sup>90</sup> - both commercial or private sector enterprises and non-profit (often community-based) ventures. But both private sector and

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<sup>88</sup> [www.hsrc.ac.za/media/1999/5/19990505B](http://www.hsrc.ac.za/media/1999/5/19990505B).

<sup>89</sup> That is, not only are 'they' different from 'us' but 'their' needs differ from 'ours'. And invariably, if preferences are not shared, one trumps the other – conceivably 'theirs' over 'ours'.

<sup>90</sup> While a criminal justice system comprises three components – policing and crime control, the courts, and correctional service – this study will be confined to the issue of policing and crime control.

non-profit security initiatives in South Africa are far more advanced than in many developed and developing countries. These initiatives imply a new division of labour between the state and civil society – a shift from the formal institutions of public decision-making and accountability to the more informal structures of individual and community participation. In society, on both a commercial and non-profit basis.

Although a significant amount has been written on the subject of non-state security, there is little consensus in terms of the terminology used. Schärf and Nina (2001) refer to ‘non-state ordering’, Baker (2002) suggests ‘non-state policing’, and Carrier (2001) employs the term ‘community policing’. Louw (2001) and Schönteich (1999, 2000, 2002) use ‘private policing’ and ‘private security industry’ somewhat interchangeably but this is problematic because while the latter necessarily encompasses commercial activity, the former may include voluntary community efforts and instances where private initiatives work with the public police. And although ‘gated communities’ suggests a more specific type of private security, Webster (2001) utilises the concept in such a way that it encompasses a broad range of private security services.

Johnson (1991) provides a useful tool for understanding the non-public or private response to policing using the categories ‘responsible citizen responses’, ‘autonomous citizen responses’ and the ‘registered private security industry’. While the latter is self-explanatory, we need to clarify the meaning of the first two terms. Broadly speaking, ‘responsible citizen responses’ encompass acts that are approved by the state police and may even be taken in conjunction and collaboration with them (but are ‘private’ in the sense that they are individual-or-community-driven non-profit initiatives). ‘Autonomous citizen responses’ refer to actions

cent. By comparison, crime in neighbouring Mowbray rose by 20 per cent over the same period (Schönteich, 1999: 29). It is difficult to know whether this increase is a result of general increases in crime or because localised policing 'displaces' criminal activity to less well organised or affluent neighbouring areas. This will be examined in more detail in Part V of this case study, where we analyse the implications of private policing initiatives for democracy.

In 1996 and 1997 Cape Town's business community, Metrorail, and the city council funded a 'rent-a-cop' scheme in which 140 police reservists were employed to patrol parts of the city. The scheme was credited with reducing crime in the city centre by 40 per cent over the 1996 Christmas period and by 30 per cent on commuter trains (*Cape Times* 25 July 1997).

In Centurion near Pretoria, residents and businesspeople formed a section 21 company, the Centurion Community Protection Company, to combat crime through visible policing. The activities of the company are co-ordinated with those of the local community policing forum, the city council of Centurion, and the police station commanders in the area. Between November 1996 and July 1998, the company's security personnel employed did some 50 000 hours of service and made 2 738 arrests (Schönteich, 1999: 31).

At the end of 1996 farmers and forestry companies teamed up and hired two private security companies to combat crime in rural KwaZulu Natal (*Business Day* 20 November 1996). The security companies protect forestry operations, sugar cane plantations and livestock farms, as well as farmers and their employees in the Midlands area. Unlike the police, these firms are able to provide 24-hour security and protection.

A venture started in mid-1996 in Johannesburg's Senderwood is indicative of how security

firms are moving into areas formerly reserved for the public police: sending their men out on the beat to patrol the streets and public areas. Working at the behest of the communities of two different streets in the suburb, a private security firm set up a street surveillance team consisting of a manned vehicle unit and a foot patrol. This provision of round-the-clock surveillance has helped deter criminals from operating in the area (*The Star* 12 June 1996).

The Victoria and Albert Waterfront shopping and entertainment complex in Cape Town is policed almost exclusively by private security guards. The complex which had 20 million visitors in 1997, spends just under R7 million a year employing almost 200 security staff. This figure excludes security guards employed by the individual stores and restaurants themselves. Some 50 security guards are on patrol at any time, covering an area of about four square kilometres which compares favourably to the 60 police officers who patrol the Cape Town city centre, comprising an area of about six square kilometres. The Waterfront has about 12 reported shoplifts a month. Two people have been murdered since the opening of the complex in 1990 and the last reported rape was in 1994<sup>91</sup>. Crime levels at the Waterfront are significantly lower than those of the three parliamentary villages – home to MPs and their families when Parliament is in session. Each village is surrounded by a high security wall and is under 24-hour guard by members of the SAPS's National Protection Service, who have control over who enters and leaves the villages. The total number of visitors is not more than a few thousand per annum. During 1997, 11 incidents of theft, 29 of housebreaking and three assaults were reported at the villages. During the first quarter of 1998 16 house-breakings and a rape occurred (Schönnteich, 1999: 30).

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<sup>91</sup> These figures exclude the bombing of Planet Hollywood and the car bombing outside the Victoria Wharf in 1998/99.

A more extreme form of 'responsible citizen response', but one that is fast becoming a defining characteristic of urban landscapes, is the 'gated community'. With the support of at least two thirds of the affected individuals, residents apply to the municipality to 'purchase' sections of the roads leading into their suburbs. Access control points (usually consisting of a guard house with booms controlling vehicle and pedestrian access into and out of the suburb) are erected across the purchased section of the road. The area is surrounded by a perimeter fence or wall and any non-resident has to register at the access point and is checked on exiting the area.

Glenhazel, Bakersfield, Gallo Manor and Fourway Gardens were among the first suburbs in the greater Johannesburg area to establish gated communities. But more and more are appearing. Between December 1999 and February 2000, Johannesburg processed 35 applications for what amounted to 360 road closures. In the same period, Germiston received 23 applications, Bethlehem 10 applications, Krugersdorp 4 and Potchefstroom 3 (Shaw, 2002: 95). The positive effect such road closures have had on crime locally has led to the expansion of the 'gated community' phenomenon to relatively small towns and cities: despite having populations of less than 100 000, Port Shepstone and Stellenbosch have had 10 and 2 applications respectively (Shaw, 2002: 95).

The gated community is not unique to South Africa. But unlike its global counterparts which have developed in response to citizens wanting to secure a variety of civic services, the gated community in South Africa has arisen as a means of providing security in the face of dysfunctional public police and compounded by urban fiscal stringency<sup>92</sup>. Gated

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<sup>92</sup> In this regard it is interesting that the nature of the phenomenon in South Africa closely resembles the concept of a gated community articulated a hundred years ago by Howard in his *Garden Cities of Tomorrow* (1902): his radical proposal was inspired by the failure of state governance to create efficient and liveable cities.

communities are at the centre of the debate regarding the implications of non-state (and specifically private sector) policing for democracy. For this reason, they will be discussed in more detail further on in this case study.

As the above examples indicate, 'responsible citizen responses', are diverse. In some cases, non-state policing relies on the services of police reservists. Increasingly less common are organisations where community members themselves form a neighbourhood watch. In the majority of cases, individuals, communities and corporations engage the services of the registered private sector security industry to satisfy their security needs. To understand the full extent of the reliance on and utilisation of this industry, let us look at some statistical indicators of its growth.

The exponential growth in the industry is reflected in the estimation that its value increased from R141 million in 1978 to R5,9 billion in 1997, to R11 billion in 1999 (Schönteich, 1999: 21). The industry's turnover is fast approaching the police's annual national budget: if the vehicle security industry and in-house security, worth in the region of R2 billion and R1 billion respectively, are included, the registered private security industry in South Africa generated over R14 billion in 2001 while the 2000/2001 national budget for the SAPS was R15,5 billion<sup>93</sup>.

Another indicator of the growth of the industry is the increase in the number of training institutions accredited with SIRA - the Security Industry Regulatory Authority - previously the Security Officers Board (SOB). SIRA is an independent body set up to control the industry in the public interest through a system of self-regulation, working closely with the government, statutory bodies and members. In 1993, a year after the SOB became

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<sup>93</sup> [www.iss.co.za/Pubs/CrimeIndex/00Vol4No3/Guarding](http://www.iss.co.za/Pubs/CrimeIndex/00Vol4No3/Guarding).

operational, the board recognised 17 training centres in South Africa. By 1995, this figure stood at 160, rising to 492 in 1998 (Schönteich, 1999: 22).

The number of registered active security officers registered has also increased: from 115 000 to 166 000 (or 44 per cent) between September 1997 and March 2000 and in May 2002, there were 203 342 active officers registered with SIRA (ibid). These active security officers are employed by some 5 600 security businesses, of which 2 960 are guarding, 690 armed response and 530 cash-in-transit businesses (*Carte Blanche* 2 June 2002). In 1998 there were also 188 000 inactive security officers, and an estimated 200 000 in-house security officers – security personnel who exclusively guard the premises or property of their employer (Schönteich, 1999: 23). A further 50 000 people are employed in the alarms systems sector of the industry, 40 000 in general services, 30 000 in electronic services and 20 000 in response services (ibid). In total, the broad private security industry employs in the region of 470 000 people.

The private security industry is thus one of the country's largest private employers and is significantly larger than the public police. The ratio of private security personnel to uniformed police officers is approximately 4,1 to 1 with security guards (both contract and in-house) outnumbering uniformed police officers by 3,1 to 1 (ibid). And it is not only in terms of staffing that the security industry exceeds the public police. In 1997 the guarding sector of the security industry had access to 35 000 vehicles. The alarm and response sectors had just under 25 000. The industry as a whole has access to over 80 000 vehicles (ibid). In comparison, the SAPS has a total fleet of 37 000, of which, as mentioned in section II, 3 000 vehicles are out of commission on any particular day because of breakdowns.

While increasing numbers of people are turning to private sector initiatives for their security

that occur not only independently of the state police but often without their co-operation or approval. For the purposes of this section, the categorical distinction between 'responsible citizen responses' and the 'registered private security industry' will be collapsed and the two will be examined together since most 'responsible citizen responses' in South Africa involve the use of the registered private security industry. In the final section of this case study, the two categories will be assessed separately since they have different outcomes in terms of the extent to which, if at all, they may be considered democratic.

#### A: Responsible Citizen Responses

In 1997 residents of Kloof near Durban hired a private security company to patrol their suburb on a 24-hour basis and a privately funded security office was opened in the suburb. Residents are able to report any suspicious activities in the area to the office, which relays the information to patrolling security guards. The project is endorsed by the SAPS and the manager for the project says patrols will go beyond surveillance to 'actively investigate cases as much as we can to ensure the criminals are caught' (*Highway Mail* 29 August 1997).

In September 1997, residents of Cape Town's Observatory formed a non-profit company Obswatch which controls the operation and funding of a security control room for the suburb. The funding is derived from almost 1 000 residences and businesses who pay R50 and R100 a month respectively. The company employs 17 guards and at any one time four guards – who are in radio contact with the control room – patrol the area on bicycles. The guards are police reservists who carry handcuffs and concealed firearms. While the guards do not have full powers of arrest, they can make citizens' arrests. Compared to February 1997, crime figures had dropped 60 per cent by February 1998. Housebreaking had decreased by 88 per cent, robbery by 67 per cent, theft by 57 per cent and burglaries from businesses by 58 per











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Rashaad Staggie, in 1996, catapulted PAGAD on to the national scene and as the WCACF had predicted, PAGAD began to resort to lawlessness to eradicate and eliminate all drug dealers and gangsters (Kinnes, 2000: 37).

The euphoria of public support for PAGAD's activities soon died down as the media, the police and the government realised that they were dealing with a vigilante group that was strongly influenced by hardline extremism and would stop at nothing to achieve its aims. Even among its own ranks, some members felt that PAGAD had been hijacked by fundamentalists with an Islamic agenda. People who made such accusations were expelled from the organisation in the aftermath of a leadership purge in 1998. By 1998, the vigilantes had executed some 30 gang leaders and drug dealers. The attacks then shifted to police officers and businesses. Using an assortment of weapons, including pipe bombs, hand grenades and automatic weapons, police stations have been attacked to procure weapons. Resorting to extortion to fund its operations, PAGAD labelled any businessmen who refused to provide money 'cohorts' of drug dealers and either assassinated them or attacked their businesses using remote-controlled bombs and other sophisticated devices. Most of the charges brought by the police against vigilantes collapsed in the same way that charges had earlier collapsed against leaders of the Hard Livings (Kinnes, 2000: 41). In the last two years however, the police have made inroads into the organisation's leadership, resulting in a significant reduction in PAGAD's activities.

#### Part V: Assessment

As the previous section has attempted to show, non-state policing (be it private sector security, non-profit community-based ventures or vigilantism) 'is ubiquitous to the point that

few challenge its legitimacy, even if they criticise some of its practices' (Baker, 2002: 46)<sup>99</sup>.

But while the general public may not challenge the legitimacy of some or all of these initiatives, the phenomenon of non-state policing, with the exception of non-profit, community-based forms of it, has drawn criticism from scholars, policy makers and politicians the world over. The conventional argument levelled at private sector responses to security is that they are undemocratic or anti-democratic – quite clearly it is only the wealthier members of society who can afford to pay for personal security and thus it further entrenches inequality. In terms of autonomous responses, the critiques centre around the fact that these popular forms of justice (if and when they are indeed popular) infringe on the rights of citizens. In this section we attempt to assess if an alternative analysis is possible: whether and to what extent any, some or all forms of non-state policing may be compatible with democracy. This is not to dispute the view that if South Africa were less crime-ridden, and if the SAPS was more able and better equipped to respond to crime, prospects for long-term democracy would be healthier – indeed, such a claim cannot be disputed. The point that this analysis attempts to make is that if these forms of policing do not impinge on citizens' rights, and or encourage direct citizen participation and or are pro-poor, they may have democracy deepening consequences.

The emergence of non-state responses to policing is a global phenomenon but as Shaw points out, the historical factors of racial, economic and social segregation make South Africa's situation quite unique (Shaw, 2002: 102). While the phenomenon arose (at least in part) as a result of the decline of apartheid, Baker (2002) is not alone in his view that many of the responses have served to entrench or re-establish certain features of apartheid, and thus

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<sup>99</sup> This may be less true of autonomous citizen responses, especially vigilante groups, which have lost a lot of popular support in the last few years (as explained above).

undermine democracy. To begin with, there are concerns that the discourse in the ‘new apartheid’ of these initiatives - ‘undesirable elements’ who must be ‘eliminated’ - is promoting an under-class of ‘subjects’. This is not only reminiscent of the past, but detractors of non-state policing argue that it undermines the notion of political equality. On this reading, not even the (generally regarded as innocuous) community-driven (responsible) forms of non-state policing can be deemed legitimate.

But if non-state policing must conform to standards of political equality, then so too must public policing. The previous Minister for Safety and Security Steve Tshwete adopted a policy of ‘no mercy’, and in some cases, as the media pointed out, Tshwete’s methods verged on the unconstitutional (Shaw, 2002: 86). The point is not that because state policing borders on lawlessness, it is appropriate or justifiable for non-state policing to follow suit. The point is that non-state policing is no less (although in this case it may be no more) democratic than public policing if democracy is being measured by the notion of political equality – the rights of citizens not to be discriminated against (Baker’s ‘underclass’) and to be treated in accordance with constitutional principles (innocent until proven guilty, right to stand trial and so on)<sup>100</sup>.

Staying with the issue of political equality, another argument against private sector security initiatives is that entrenches a divide between those able to hire personal protection and those who cannot. Such responses, in the context of South Africa’s history, where race and class are so closely linked, are seen as a privilege of the white minority (and wealthy black minority). It is argued that this erodes a fundamental norm of democratic societies – that

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<sup>100</sup> Because ‘kangaroo courts’ are not recognised in the constitution, vigilante activities are not unlikely to fit with the definition of democracy proposed here. Some may argue that there is some form of ‘due process’ occurring but this is a tenuous argument at best..

‘policing should be uniformly available to all, its powers exercised through universally applicable laws’ (Shaw, 2001: 224). Again, it is the liberal (representative) notion of equality that is at issue – participatory democrats are quite comfortable that democracy does not require absolute equality (provided, as Pateman argues that economic inequality does not result in political inequality). But proponents of private sector security argue that economic inequality is being confused with political inequality in that non-state policing does not prevent ‘policing [being] uniformly available to all’. It supplements the uniformly available albeit inadequate public policing. While this appears reasonable, if we extend these same arguments to other spheres such as healthcare and education, we may find ourselves in an unenviable position: for example, having to defend the fact that wealthier citizens have access to ARV’s which the state cannot afford to provide in public hospitals.

Tied in to pluralist liberal democrats’ emphases on rights is the notion of accountability. While corruption and abuse in the SAPS is a serious problem, improved transparency in government means that citizens are (more) able to hold the police to account. What is interesting is that non-state forms of policing which involve the registered private security industry, may by their very nature as market-based initiatives, be even more easily held to account. Because they work in a competitive environment, security companies are constrained by self-interest and this generates higher levels of performance and lower levels of corruption. Members of the SAPS service can be abusive, unhelpful and inefficient but because people often have no choice but to deal with the police, such low levels of service are tolerated. In contrast, the competitive nature of the private security market obliges security officers, who do not enjoy the secure position of police officers, to do their jobs properly (as

the firms themselves will go out of business if they do not offer a competent service<sup>101</sup>). On the original application of Hirschman's EVL framework – to the market – we see that because the state has a monopoly on policing, there is no need or incentive for it to respond to consumers' demands and thus voice is ineffective (and in fact, there is no real exit option other than emigration). Non-state policing is by contrast, market-based and thus citizens can use the both voice and exit options to signal and satisfy their preferences (by switching to other firms, by selling shares and so on). This was highlighted in Carte Blanche's feature (June 2002) on the private security industry: while private security firms are subject to market disciplines and civil litigation, legislation and custom effectively give public police an immunity from punishment for the violation of citizens' rights that private security personnel do not have. Since individual private companies cannot command the resources that the state can, there is a greater incentive to 'behave appropriately' and this translates into an additional mechanism of accountability<sup>102</sup>, more importantly, one that extends to all citizens, and not just those who contract the services of the industry. The competitive market system in this

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<sup>101</sup> The flip-side of the above (the lack of job security in the private security industry when compared with the SAPS) poses another possible problem in terms of whether the industry is democratic or not. This relates to the rights of the registered security officers themselves, who may be subjected to unfair treatment by their employers who rely on profit. These 'abuses' could include insufficient compensation, a failure to provide benefits, and their being sent into situations for which they lack adequate training and or resources. It is argued that the lack of regulation in the industry means that employees have little or no recourse (whereas the SAPS are unionised). While the formalising of SIRA has reduced the potential for this type of problem to occur, poor practices within these organisations do not (necessarily) render the system of private policing undemocratic, at least not on Dahl's conception (as he opposed the Iron Law of Oligarchy).

<sup>102</sup> Of course the system is not flawless and in the past two years 38 guards have been deregistered for theft while a further 604 guards were deregistered for lying about their criminal records. Nevertheless, in comparison to levels of crime within the SAPS ranks, these incidences are negligible.

way encourages accountability – both to the stakeholders or members, but citizens in general (because it is a strictly regulated industry), far more so than the public police.

This may be true and for libertarians or proponents of a minimal state it may be enough. But such a procedural account of democracy is perhaps unsatisfying. One way to view private sector responses in more substantive terms is that because wealthier citizens are able to purchase security services, they are less reliant on state policing and because pressure on the state police is reduced, poorer citizens may receive better service. In technical terms, these forms of non-state policing may well be a Pareto-relevant policy option. But while we should not dismiss this possibility, at present there is little evidence to suggest that this is the case.

Much of the criticism levelled at non-private policing in general is actually an attack on a particular form of private policing – the ‘gated community’ – and given the nature of South Africa’s past, this is not altogether surprising. But while these privately managed and physically enclosed spaces may bear a similarity to the (racial) barriers of the past, this does not mean they are necessarily undemocratic. Gated communities represent private individuals voting with their feet, directly expressing their preferences and addressing their needs. In this context, some argue that they should be viewed as ‘participatory mechanisms for more creative community engineering and urban service and infrastructure supply’ (Webster, 2001: 5). Leaving the monetary issue aside (that which is required to ‘purchase’ sections of road on which to set up the access gate) since essentially this raises the kinds of concerns discussed with regard to private sector security in general, gated communities at least in the sense that they are a collective response, may well be democratic, on a participatory model of democracy. They may in fact decrease social isolation within communities as the ‘joint sense of responsibility and a sense of cross-subsidy from the better

off residents may even enhance community integration rather than fragment it' (Webster, 2001: 18).

Residential gated communities are not the only way in which the distinction between private and public is being blurred. The last three decades have seen a world-wide increase in privately owned property to which the public has right of access and use – industrial parks, leisure complexes, shopping centres, and academic and training institutions to mention a few. These institutions generally rely on non-state policing (in the form of the private security industry) – not only because they have unique security needs that are too costly for a public police service to provide, but because it would be inequitable for taxpayers to have to subsidise the needs of private banks or factories or other institutions. On this reading, non-state policing is not only not undemocratic, but an absence of it would in fact be undemocratic on at least one of the three criteria being used in this paper: it could hardly be considered pro-poor.

Turning our focus specifically to 'autonomous citizen responses', it is clear that the attempt to provide an 'alternative' analysis (one that is more favourable in terms of having democracy deepening consequences) is much more difficult. By definition, 'autonomous citizen responses' function outside the parameters of the law. But it may be incorrect to conflate their being illiberal with their being undemocratic: as we have seen, defenders of vigilante justice do not subscribe to liberal, rights-based democratic conceptions, but to a majoritarian, 'popular will' type model. The claim is that while these forms of restorative justice may sit uncomfortably with liberal representative democrats, in that they may be the genuine expression of the people's will, they are 'democratic', exposing as they may, the 'warts and all' aspects of popular justice (although Pateman in particular would probably argue that this



emphasises the need to educate the people for democracy<sup>103</sup>).

There are at least two critical issues here: firstly that of 'the people' and secondly that of their 'will'. Democracy – on any conception - requires there be some provision for or evidence of equally weighted citizen participation. Vigilante groups are usually comprised of a handful of individuals who wield power, and even PAGAD and Mopogo (and their supporters) are nowhere near big enough to be considered mass movements. While the individuals involved may claim they are acting for the community, this is closer to oligarchy (or in Aristotle's terminology 'aristocracy') than to democracy. This relates to the second issue, that of vigilante justice being an expression of the people's 'will'. Beginning with Rousseau and continuing ever since, this notion has raised all kinds of problems. Even if we can define 'a people' (which it seems we cannot), do the individuals comprising the 'people' have a common will? Certainly alleged perpetrators of crimes have a different will from their victims and it is likely that those not directly involved in the crime will have a third 'will'. In addition, we may find that someone's will alters: particularly in the case of victims, the immediate response may be significantly different once the heat of the moment has passed, or it may in fact become less tempered as time goes by (especially if there are long-term effects). While the emergence of autonomous responses exposes the limits of the liberal state (and thus suggests that there is a case to be made for a popular – direct democracy - state), it is not convincing that this form of non-state policing really does provide for citizen participation and where it does, it tends to be characterised by ad hoc and or corporal

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<sup>103</sup> It is interesting that Mopogo's president refers to 'curing them [criminals] of their bad ways' by beating them. This opens the debate as to whether the Western tradition of imprisoning and rehabilitating criminals is relevant in an African context.

punishment, which we would surely not want to see as constituting ‘democracy on the ground’.

In terms of the pro-poor criterion of democracy, it is fairly self-evident how the various forms of non-state policing can be judged. Obviously, commercial initiatives are limited to those who can afford them and while they may enhance security for others (either because crime is reduced in the whole area or because the burden on the state police is reduced), this is not significant enough for these forms to be considered pro-poor. In addition, in cases where criminal activity, as a result of these initiatives, is displaced to other (less affluent) areas, these forms may be actively and significantly anti-poor. Community-based non-commercial ventures are more likely to be pro-poor but to the extent they rely on citizens being available to carry out their policing duties, it may be problematic in communities primarily consisting of the elderly, the sick and or children. The issue of displacing crime is also a consideration. In that it seeks to provide a form of restorative justice for those who cannot afford to pursue the regular judicial process, vigilante activity is also pro-poor (at least where it does not rely on extensive remuneration by community members) if we consider the victims of crime. If we consider the alleged perpetrators, who are largely among the ‘poor’, given that vigilantism strips them of certain rights (to due process for example), it is less clear how and if this form of non-state policing is pro-poor.

In terms of the EVL framework, it can be seen that on the issue of crime, to some extent there has been an atrophy of voice. While this is largely related to the fact that the cost may outweigh the benefit given the scope of the problem, at least partly responsible for the lack of voice is the party political system: there is little electoral incentive for opposition parties (because policy does not seem to sway voters’ choices significantly) and thus the ruling party

is not encouraged to perform better because there is no real threat of replacement. Built into the analysis of voters' attitudes is the consideration that loyalty to the incumbent government has also contributed to the atrophy of voice within the conventional party political system. To this end, it seems to be the case that citizens have elected to exit representative politics in order to satisfy their preferences: in a sphere in which government for the people is proving inadequate, government by the people is taking its place. The degree to which non-state policing is more efficient than public policing has not been at issue as it is irrelevant to this case study. The analysis has been limited to whether or not any, some, or all of these forms of policing is democratic, or may have democracy-deepening consequences.

In so doing, the analysis attempted to challenge the conventional assumptions about policing and newly established democracies. Shaw (2001) and Chazan (1993) are among the many theorists who have argued that democratic transitions are threatened when the new state fails to secure a monopoly on the instruments of coercion. One of the reasons for this is that non-state policing is said to undermine the legitimacy of the public police by creating the perception that the latter is unnecessary. Baker too seems to be persuaded by these arguments, claiming that seeing the state police as irrelevant is one step away from seeing the state itself as irrelevant (Baker, 2002: 51).

These arguments contain more than a little validity. But at the same time, it is also recognised that failure to address the high levels of crime in the country may threaten the long-term prospects for democracy. In this sense, given the limited and diminishing capacity of the SAPS, the analysis raised the possibility that some forms of non-state policing may be necessary not only to combat crime, but to secure democracy in the sense of providing citizens with an alternative means of meeting their needs from the party system and

thus preventing exit from politics itself. Whether this is a satisfactory justification for (certain forms of) non-state policing is up for debate. While prospects for democratic consolidation are made more difficult by high crime and an inadequate public police force, there may in fact be other responses – better responses – than non-state policing. Increasing resources for the SAPS, improving education levels, creating employment opportunities, are but a few possibilities. The aim of this case study has not been to offer normative judgements as to whether there should be more or less non-state policing. Instead, it has examined whether any of the response to the failure of the SAPS may be consistent with democracy, and may even have unexpected democracy strengthening consequences.

An examination which, it has to be said, ultimately offers mixed results. On one side of the ideological debate, the side that privileges efficiency and individual satisfaction, private sector policing, community initiatives, gated communities and perhaps even certain ‘autonomous’ responses are to varying degrees, democratic. On the other side of the spectrum, with the exception of community-driven initiatives, all forms of non-state policing can be seen to undermine democracy by exacerbating social cleavages, entrenching inequality and threatening the state’s legitimacy. If the ‘democraticness’ of something is measured in terms of whether it is pro-poor, while this leaves us open to judge community-based initiatives as democratic, it also puts us in a precarious position when it comes to vigilante activity: given that most citizens cannot afford to use the courts, kangaroo courts and the like may provide their only form of (restorative) justice. Ultimately, democracy is at its most fundamental level, about equality. Because autonomous responses do not make provision for or evidence of equally weighted citizen participation and given that the market is not in practice considered to be democratic, there are significant impediments to judging non-state

forms of policing, with exception of 'responsible' responses that do not rely on private sector security, as democratic. In the sense that it may prevent or stave off complete exit (from politics) by citizens faced with limited voice options in terms of the party political system, however, non-state policing may have democracy deepening consequences.

University of Cape Town

## **Chapter 4: Civil Society and Lobbying - how a broad range of civil society organisations formed a pro-poor coalition in an attempt to influence policy**

### **Part I: The Significance of the Issue**

The post-apartheid state inherited a welfare system that was exceptional (in the South), but it also inherited considerable poverty and inequality. While some adjustments to the welfare have been made since 1994, current social security grants are unable to break the poverty cycle effectively for three primary reasons. Firstly, only specific groups such as children under the age of seven, the elderly and the disabled are targeted for relief. That means that of the 22 million South Africans living in the bottom two quintiles, 13,8 million do not qualify for any form of social assistance. Secondly, targeted beneficiaries are not reached because of administration inefficiency either through incompetence or through corruption. Finally, the current system is ill equipped to cope with the HIV/Aids pandemic. The group most affected by HIV/Aids – working age adults – is also the least protected in terms of access to social assistance. With high unemployment and a contributory unemployment assistance system, those who have never worked are largely unsupported: the disability grants being insufficient given the administrative obstacles to obtaining them. Those who give up work as a result of HIV/Aids (either because they are ill or to care for sick relatives) are plunged even further into poverty, frequently having to share their assistance with those household members who have no income or state benefits.

The relationship between unemployment and poverty is obvious: the two are strongly associated, supported by the findings of the Afrobarometer 2000 in which shortages of basic goods and services experienced among different population groups in South Africa were examined. The percentage of black South Africans who responded ‘sometimes’ or ‘often’

with reference to the previous year is significant: shortages were experienced by 7 per cent in terms of shelter, 33 per cent in terms of potable water, 37 per cent in terms of both medical treatment and fuel for heat and cooking and 43 per cent in terms of food to feed immediate family members<sup>104</sup>. What is revealing is that 59 per cent of these respondents had experienced shortages in a cash income during the same period<sup>105</sup>. This finding draws attention to the limited impact of unemployment benefits in keeping the unemployed out of poverty. As a result, personal and community degradation as a result of extreme poverty in rural and peri-urban areas runs deep: South Africans are living – and dying - without money, without help and without hope.

## Part II – State action

Recognising this, and invoking the discourse of the 1940s, in the 1994 elections the ANC campaigned under the slogan ‘A Better Life For All’<sup>106</sup>, with an election manifesto (its Reconstruction and Development Programme) promising (among much else) ‘basic welfare rights’ including ‘the right to basic needs such as shelter, food, health care, work opportunities, income security and all those aspects that promote the physical, social and emotional well-being of all people in our country, with special provision made for those who are unable to provide for themselves because of specific problems’ (ANC, 1994: 52). Social and economic rights were explicitly recognised in the final constitution adopted in 1996. Under the bill of rights (Chapter 2 of the constitution), citizens have the right of access to

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<sup>104</sup> [www.idasa.org.za/pdf/932.pdf](http://www.idasa.org.za/pdf/932.pdf).

<sup>105</sup> Ibid.

<sup>106</sup> The slogan was another item borrowed from the 1940s: the United Party campaigned under this slogan in the 1943 general election.

adequate housing, health care, education and social security. The last of these entails the right to 'appropriate social assistance' for citizens who 'are unable to support themselves or their dependents', subject only to the availability of resources. To date, the only welfare cases to have come before the constitutional court have concerned the implementation of existing schemes, and the court is yet to consider a case challenging the overall boundaries of public welfare provision. The implications of the bill of rights for welfare reform remain uncertain, but the constitution clearly provides symbolic support for proponents of extending public welfare provision.

It is against this backdrop that the government committed in February 1997 to the provision of a comprehensive national social security system. According to the White Paper for Social Welfare released by the Department of Welfare (now the Department of Social Development) in May 1997, a transformed social security system should be built on two pillars. On one level, it requires 'comprehensive social assistance to those without other means of support, such as a general means-tested social assistance scheme'. On a second, there is a need for 'the restructuring of social insurance, including the retirement industry, unemployment insurance and health insurance' (White Paper, 1997: 7, 26). The ultimate goal, in the words of the White Paper, is:

'...universal access to an integrated and sustainable social security system.

Every South African should have a minimum income, sufficient to meet basic subsistence needs, and should not have to live below minimum acceptable standards. The social security system will also work intersectorally to alleviate poverty' (ibid).

The failure of the current social security system to respond adequately to the significant

unemployment problem, and the government's recognition of this failure, in essence, opened the door to proposals for a guaranteed minimum income or basic income grant (BIG). At the 'Presidential Jobs Summit' held in October 1998, COSATU tabled the idea of a BIG, summarising the benefits of it as follows:

'The proposed basic grant has the advantage of giving all households a small but secure minimum income, improving their stability and economic potential. Because it is a flat sum, it is highly progressive. Moreover, it favours large households - which tend to be poorer - as they pool income, and increases the incomes especially of women and children.'<sup>107</sup>

COSATU proposed a universal (non means-tested) grant of R100 per month to be paid to all South Africans, including children, who were not recipients of another social grant. The tax system would be used to retrieve the grant from middle income earners (a 'claw-back'), and a progressive 'solidarity tax' would be imposed on higher income earners. Thus although the grant would be paid universally, it would in fact be targeted at the poor and be redistributive in effect. At the close of the Jobs Summit, participants (representing labour, government, business and community) committed 'to implementing a comprehensive social security system, aimed especially at those living in poverty and the unemployed. A basic income

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<sup>107</sup> COSATU proposed the basic income grant as one component of a set of measures to ensure an adequate 'social wage.' Another key component is the provision of free basic services which aim to ensure that every South African, irrespective of income or wealth, should have 'access to minimum services essential for survival.' These services include water, housing, transport and electricity as well as health care, education and safety and security.

grant may be considered as part of such a system. The process to reach agreement on the elements of such a system should begin with an investigation'<sup>108</sup>.

Defining the government's attitude on welfare is complicated – the government is far from monolithic in its position. In January 2000 Minister of Social Development Zola Skweyiya suggested that the price tag attached to a new grant might be R7 billion - about 40 per cent of the then R17 billion paid out annually to welfare recipients (*Mail & Guardian* 21 January 2000). He clearly had in mind a scheme that would be efficiently targeted on the poor, stating in November 2001 that a 'basic income grant system is one of the excellent ideas we might consider introducing during the 2002 budget term'<sup>109</sup>. But while the Minister may support the BIG in theory, given his department's (in)ability to deliver on the current system, he acknowledges that financing a BIG may be less of an obstacle than administering it<sup>110</sup>. In addition, the profound paradigm shift away from a traditional 'hand-out' approach to welfare to promoting self-sufficiency and sustainable development, reflected in the Social Development's Ten-Point Plan (2000)<sup>111</sup> suggests mixed views within the department itself.

The Department of Finance has a much more negative take on the BIG, arguing that it would be both unaffordable and ineffective with Finance Minister Trevor Manuel claiming that he has 'failed to come away with any reassurance that giving R100 a month to every one of South Africa's 46 million people would be financially sustainable or would reach the right

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<sup>108</sup> [www.cosatu.org.za/press](http://www.cosatu.org.za/press).

<sup>109</sup> [www.dispatch.co.za/2001/11/06/southafrica/GBASIC](http://www.dispatch.co.za/2001/11/06/southafrica/GBASIC).

<sup>110</sup> *Ibid.*

<sup>111</sup> For example, the Plan refers to the development of a comprehensive social security system which 'must reduce dependency on non-contributory cash payments and give consideration to food security' ([www.gov.org.za/soc/dev/tenpointplan](http://www.gov.org.za/soc/dev/tenpointplan)).

people' (*Business Report* 22 February 2002). Without doubt the biggest obstacle to the implementation of a BIG, the Department clearly sees itself as defending fiscal responsibility (that is, austerity or conservatism) against 'economic populism' that would deter foreign investors and erode economic growth.

The Department of Health too seems to be caught between the proverbial rock and a hard place: with poverty and HIV/Aids placing ever increasing pressure on the Department of Health's resources, any strategy that can reduce poverty (and thus the burden of free health provision) must surely be embraced. Arguing that a critical yardstick of whether policies really promote the interests of the poor is how well the risks to good health are managed, the Health Minister implicitly acquiesced with proponents of the BIG who believe that it is the system most effective against the HIV/Aids pandemic<sup>112</sup>. At the same time, it is important to understand that outright support for the BIG from the Department of Health is precluded. On an official level, the strict party discipline of the ANC ensures that the government presents a united front, even if the department itself wanted to adopt an alternative position. On a personal level, there is a history of consummate support between the Minister of Health and the President<sup>113</sup>.

The Department of Labour's stance on the issue is similarly complicated. Unemployment is the biggest contributor to the significant poverty in the country but because of the institutional and political power of the trade union movement, substantial reform of the labour market in order to promote employment is not possible. The scale of unemployment

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<sup>112</sup> See for example, the Ministers comments in the National Assembly, June 2002 ([www.org.za/doh/mediaroom/index](http://www.org.za/doh/mediaroom/index)).

<sup>113</sup> For example, the curious official policy on HIV/Aids has been exacerbated by the Department of Health's support for President Mbeki's dissident views on Aids.

and the administrative difficulties involved in radically expanding targeted employment means that public works programmes cannot be the only means of plugging the welfare gap. Nevertheless, BIG support in this department is at best, tempered<sup>114</sup>.

Because the issue of social security is an intersectoral one, the positions of a number of government departments affect the extent to which, if any, calls for a BIG will be successful. And because of the mixed messages emanating from these departments, it is difficult to categorise them as supporters or detractors of BIG proposals. Indeed, even the Department of Defence has been drawn into the fray as both the official opposition and a number of civil society organisations have countered government's claims that the BIG is unaffordable with calls to cancel the controversial multi-billion Rand arms deal. Perhaps the most telling government response to date came from government spokesman Joel Netshitenzhe in July 2002. Netshitenzhe said that the Cabinet, which had just discussed the Taylor Report, was moving toward a rather different 'philosophy' in that only the disabled or sick should receive 'hand-outs', whilst able-bodied adults should 'enjoy the opportunity, the dignity and the rewards of work' (*Sunday Times* 28 July 2002).

Ultimately, in taking a position on the BIG, government departments find themselves having to perform precarious balancing acts – internal demands against international pressures, moral considerations against practical constraints, state responsibilities against party allegiances<sup>115</sup>. And it is against this backdrop that an inter-departmental task team was appointed to examine welfare reform. While the task team's report appears not to have been

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<sup>114</sup> [www.labour.gov.za/docs/policy/jobsframework1](http://www.labour.gov.za/docs/policy/jobsframework1).

<sup>115</sup> Even the Presidency is not insulated from this knife-edge: as a chief architect of Nepad and the current president of the African Union, President Mbeki has been criticised for expecting the developed world to come to the aid of the continent when he refuses to come to the aid of the country.

made public, on the basis that it had ‘identified crucial gaps and structural flaws in the current social security system’<sup>116</sup>, the government announced, in March 2000, the appointment of a public Committee of Inquiry into a Comprehensive System of Social Security for South Africa to be chaired by Vivienne Taylor<sup>117</sup>.

### Part III – Citizen demands

The August 2000 findings of the Afrobarometer indicated that 11 per cent of South Africans mentioned poverty and or destitution as one of the country’s most important problems<sup>118</sup>. In the September-October 2002 Afrobarometer survey, this figure had risen to 28 per cent with poverty now emerging as the third most often cited issue after ‘jobs’ or ‘job creation’ and ‘crime’, respectively first and second in both 2000 and 2002<sup>119</sup>. More telling however, in terms of this case study is that although poverty has risen in the public agenda, so too has job creation (from 76 per cent in 2000 to 84 per cent in 2002) yet welfare reform remains too insignificant (cited by less than 10 per cent of the public) to feature in the Afrobarometer ‘key findings’<sup>120</sup>.

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<sup>116</sup> Statement by Dr. Zola Skweyiya, Minister for Welfare, Population and Development, on the Appointment of a Ministerial Committee of Inquiry into Social Security (31 March 2000).

<sup>117</sup> A professor in the University of Cape Town’s Department of Social Development and special advisor to the Social Development Minister, Vivienne Taylor was a former exile with good connections to the ANC. She had been a strong critic of the child benefit reforms in 1997. Because she was out of the country for the very final stages of report-writing, the chair was taken over by Mike Masutha.

<sup>118</sup> [www.idasa.org.za/z\\_print?id=747](http://www.idasa.org.za/z_print?id=747).

<sup>119</sup> [www.idasa.org.za/z\\_print?id=983](http://www.idasa.org.za/z_print?id=983).

<sup>120</sup> Ibid.

In less open-ended surveys, South Africans do seem to approve of the concept of welfare reform – according to a study carried out in 2000 in Khayelitsha and Mitchell’s Plain (Cape Town), between 75 and 94 per cent of respondents agreed (including agreed strongly) to statements implying that the government should spend more on old-age pensions, a BIG, healthcare, and education (Seekings, 2002: 9). But while these responses may suggest that there is national consensus that increased spending is what is required to eradicate poverty, when questions relating spending to increased taxation are asked, respondents appear less enamoured with the idea: when asked whether old-age pensions should be increased ‘even if it means people like you have to pay higher taxes’, the proportion of respondents who agreed strongly more than halved from 60 per cent to 27 per cent and the proportion who disagreed or disagreed strongly rose exponentially from 3 per cent to 29 per cent (ibid). Enthusiasm for increased spending is thus clearly tempered by the prospects of increased taxation. This may be a partial explanation for why, according to the Afrobarometer results, South Africans seem to prefer jobs to hand-outs.

Of course South Africans clearly desire a solution to the widespread poverty: the issue is whether they are politically active in terms of articulating this desire and lobbying for a solution. If we consider that South Africa is second only to Brazil in terms of unequal distribution of wealth, it is somewhat surprising that there seems to be such inactivity around this issue. The explanation may be found from the 2000 Afrobarometer data. In a comparison of personal economic conditions (‘would you say they are worse, the same, or better than others?’) while 49 per cent of respondents claimed they were worse off, 33 per cent said they were the same as others<sup>121</sup>. This suggests that comparisons are drawn between members of immediate or at least similar communities rather than vis-à-vis (historically

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<sup>121</sup> [www.idasa.org.za/pdf/932.pdf](http://www.idasa.org.za/pdf/932.pdf).

privileged) whites (or members of the emerging black middle class). And if we consider that interpersonal evaluation (or relative deprivation) is a 'key determinant of political behaviour' (Gurr, 1970: 94), it may be clearer as to why there is so little voice activity on this issue.

#### Part IVa – Options available to citizens within the party political system

In a functioning party political democratic system, the goal is for citizens to have and to use voice options in order to signal their demands to the government (given that loyalty and exit may have negative repercussions for democracy). Voice may take the form of lobbying for a change within the ruling party or of switching to support an opposition party<sup>122</sup>. Let us examine these two options, beginning with intra-party lobbying.

The significance of welfare reform was emphasised in April 2000 when the third partner in the governing alliance lent its support to a BIG. In its address to the 10<sup>th</sup> National Union of Mineworkers (NUM) Congress, the SACP argued that 'we need to seriously consider the question of a basic income grant for unemployed people. A basic income grant will boost local economies and help our people to provide for their basic needs'<sup>123</sup>. How genuine the SACP's support for a BIG is is difficult to gauge: was the party reticent to voice its support from the ANC (when there was already dissent among the two parties) or is the articulation of its approval purely superficial, an attempt to show solidarity? Either way, the role of the SACP is fairly insignificant given the influence it appears to have in the alliance.

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<sup>122</sup> While voting for the opposition is a form of exit in that it is an exit from the ruling party, it is, as we have already established, only partial exit in that the citizen is not exiting from the party system – and politics – itself. It can thus be seen as a form of voice in that it provides citizens with an opportunity to signal dissatisfaction with the ruling party while remaining in the party political system.

<sup>123</sup> [www.sacp.org.za/docs/speeches/2000/add0427](http://www.sacp.org.za/docs/speeches/2000/add0427).

More influential in the alliance is COSATU. South Africa's trade unions (and union-linked intellectuals) have played the leading role in calls for a BIG. This unusual stance on the part of a relatively privileged section of society (with trade unions having very few members in the poorest half of the population) may be driven in part by altruism, but it also has a rational base in self-interest: trade union members stand to gain financially from the socialisation of welfare<sup>124</sup>. A second reason why unions have a real interest in welfare reform is their need for a defence against the criticism that high wages are bad for job creation and hence protect poverty and inequality.

It seems clear that the appointment of the Taylor Committee was in no small measure an attempt to placate COSATU and paper over cracks in the alliance. But while COSATU appears to be the only actor with significant power in terms of intra-ANC lobbying, given their delicate relationship within the alliance, loyalty may in fact levy too high a tax on the exercise of voice. On some issues COSATU can be expected to fight strongly; privatisation and labour market policies are the most obvious examples, given the vested interests of public sector workers for the formal and all current formal sector workers for the latter. The BIG appears less important to the unions than do these issues. And if the government proceeds with its plans to expand public works programmes as an alternative to a BIG, then it is likely to head off strong opposition from COSATU and significantly diminish the volume and scope of its voice.

A discussion of internal lobbying should not however, be limited to elite activity, especially in light of section 5.1a of the ANC constitution (quoted in Chapter 1) that 'a member of the ANC shall have the right to take a full and active part in the discussion, formulation and

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<sup>124</sup> This is largely because of the persistence of a private welfare system in South Africa, in the form of remittances (Baskin 1996, Natrass & Seekings 2001).

implementation of the policy of the ANC<sup>125</sup>. That is, we need to assess the validity of ANC claims that the party's internal traditions and procedures strengthen democratic practices.

Certainly, on a structural or institutional level, this appears to be true: at the ANC's 51<sup>st</sup> National Congress held in December 2002, 3 400 voting delegates attended. What is significant is the fact that 90 per cent of these voting delegates came from ward-based branches, suggesting in theory at least that they had the mandate of 'the people'<sup>126</sup>, that popular power was indeed represented. But if we consider Steven Lukes' three dimensional conception of power, the extent to which popular power was represented may require re-evaluation: BIG was conspicuously absent from the agenda. At the 2002 Policy Conference too, the very limited attention focused on a BIG suggests that at least in terms of agenda setting, some decisions remain beyond the reach of even more senior members and this of course affects lobbying for those issues. The prospects for lobbying for change within the ANC will be examined further in part IV of this case study because to some extent, this is the strategy taken by the BIG Coalition. For now, let us examine the option of voice in terms of lobbying for the BIG through opposition party politics.

The DA first discussed a BIG privately in late 1999, and publicly in February 2000. A year later, formal proposals for a basic income grant were released in the Democratic Party's Budget Proposals for 2000/01. Supporting the Copenhagen Declaration (1995), the DA emphasises the need to create an enabling environment for poverty eradication and to promote full employment, social integration and gender equality. In its policy documents on

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<sup>125</sup> ANC Constitution 1997 ([www.anc.org.za/documents/constitution\\_97](http://www.anc.org.za/documents/constitution_97)).

<sup>126</sup> Because South Africa does not have formal constituencies, 'wards' have been set up with party (or independent) 'councillors' assigned to specific wards.

social development, the DA argues that ‘welfare must always be the last resort...[but] that in South Africa, where the burden of poverty is so great, social services are the only lifeline for many and the consequences of an inefficient system extend very far into the fabric of society’<sup>127</sup>.

The DA draws almost all of its support from the more privileged white, coloured and Indian sections of the population, that is, sections of society that would shoulder a large share of the tax cost. But the DA's support for a pro-poor policy is not altogether surprising considering the role of its predecessor (the Democratic Party, and before that the Progressive Federal Party) as a champion of human rights throughout apartheid.

The DA argues that unemployment, ‘undoubtedly South Africa’s most serious economic problem’<sup>128</sup> lies at the root of the high crime rate, high level of poverty, skewed distribution of income and increasing social problems. While it believes that ‘private enterprise is the key to job creation [requiring] massive deregulation of the labour market as an economic priority’<sup>129</sup>, it does accept that social security offers the ‘most direct poverty reduction strategy’<sup>130</sup>. In terms of social security, the DA supports a comprehensive system in which there are social old age pensions, disability grants, care dependency and foster care grants.

But in the context of high unemployment and jobless growth, even after taking care of the needs of the sick, disabled and elderly, and children without support structures, there are many who fall outside the poverty net. It is for this reason that the DA, in February 2001,

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<sup>127</sup> [www.da.org.za/SA/Site/Eng/policies/Docs/Social](http://www.da.org.za/SA/Site/Eng/policies/Docs/Social).

<sup>128</sup> [www.da.org.za/SA/Site/Eng/policies/Docs/Labour](http://www.da.org.za/SA/Site/Eng/policies/Docs/Labour).

<sup>129</sup> Ibid.

proposed to pay a 'basic subsistence grant' of R110 per month to every person with an annual income of R7 000 or less. According to this proposal, the income tax system would be used to make it uneconomic for people who do not qualify to apply, and a maximum amount of R400 per month would be payable to any one family. The cost would be financed through an increase of 1 per cent in VAT, with a limit on the total amount available for paying this grant set at 0,75 per cent of the total amount of additional VAT collected. A six-month period would be used for applicants to register and for the government to gain an indication of how many people would be on the scheme, so that a monthly amount could be determined.

The DA proposal stresses the importance that this grant, essentially 'survival assistance', be administered as cheaply as possible and that it does not become a deterrent to obtaining employment<sup>131</sup>. At the same time as it proposes a BIG, the DA also supports an expanded public works programme 'based on the assumption that the market economy is the best vehicle for delivery'<sup>132</sup>. It proposes the outsourcing of maintenance, private sector partnerships in managing public works, the decentralisation of most functions and obligations

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<sup>130</sup> [www.da.org.za/SA/Site/Eng/policies/Docs/Social](http://www.da.org.za/SA/Site/Eng/policies/Docs/Social).

<sup>131</sup> A critical problem in South Africa, according to the DA, is that the current systems are complicated and inefficient, both in terms of recipients' access to grants, and in terms of the state's ability to administer them. It proposes that claim forms should be simplified, that increases in the amount for most grants should take the form of food vouchers, payments should be staggered, the use of swipe-cards should be investigated, and conditions at paypoints require improvement. It also stresses the need for a campaign to make people aware of the benefits of a bank account, in conjunction with a system of incentives for the opening of bank accounts, must be implemented. Most importantly, the DA believes that it is essential to establish partnerships between the government, civil society and the private sector resulting in an integrated, intersectoral approach to social development and poverty eradication ([www.da.org.za/DA/Site/Eng/Policies/Docs/Social](http://www.da.org.za/DA/Site/Eng/Policies/Docs/Social)).

<sup>132</sup> [www.da.org.za/DA/Site/Eng/Policies/Docs/Pub-Works](http://www.da.org.za/DA/Site/Eng/Policies/Docs/Pub-Works).

of the Department of Public Works to the provinces and the institution of ‘proper control mechanisms to monitor consultants and tender procedures’<sup>133</sup>.

That the DA supports a BIG when its constituency would be the bearers of the burden rather than the benefits, is at first glance counter-intuitive. But the party has publicly committed to extending its support base into the black, poor majority, launching itself as ‘the core of an alternate government in South Africa’ and promoting itself as ‘the Party for the People’, ironically the platform of the ANC in the 1994 elections. To this end, it tends to characterise the government’s reticence to consider a BIG as an indication that the ANC elite is no longer interested in the majority of South Africans<sup>134</sup>. Nevertheless, questions have been raised as to the sincerity of the DA’s support for a BIG, with commentators suggesting that it is simply another example of the party’s adversarial approach to the government, characterised by dubious point-scoring rather than genuine concern. Lending credibility to these suspicions are comments from the DA that ‘the overarching problem in terms of practical delivery for a BIG is a generally inefficient administration’ and that ‘this sort of institutional collapse needs urgent and immediate attention and simply cannot be used as an excuse to delay or resist the introduction of a BIG’<sup>135</sup>. Thus despite the DA being a potential political ally of the BIG Coalition, the Coalition is unwilling to utilise the party as a mechanism for lobbying against the government. Given the weakness of the DA, both in parliament and in terms of popular support (as discussed in Chapter 1), this is hardly a wise strategic move (or for that matter a

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<sup>133</sup> Ibid.

<sup>134</sup> [www.da.org.za/DA/Site/Eng/Speeches/Leon/YouthDay02.htm](http://www.da.org.za/DA/Site/Eng/Speeches/Leon/YouthDay02.htm)

<sup>135</sup> Ibid.

viable voice option) for citizens wanting to lobby for a BIG<sup>136</sup>. For example, immediately after the DA unleashed its own version of the BIG campaign COSATU (smarting from Mbeki's accusations that it was consorting with enemy), launched a counter-attack on the DA's version warning that it could be the 'kiss-of-death' for the initiative (*Weekend Argus* 11 January 2003). It is in this context that options for pursuing a BIG are being explored outside the party political system.

#### Part IVb – Options available to citizens outside the party political system

Given the nature of the ANC, the precarious position of COSATU and the very limited effectiveness of the DA, the conventional party system appears not to provide a vehicle to drive the BIG issue forward. Recognising this, a number of organisations that support a BIG decided to appeal directly to the Taylor Committee in an effort to affect the government's welfare policy. As time drew near for the Taylor Report to be submitted, 12 organisations, spearheaded by COSATU, SACC and SANGOCO, formed the BIG Coalition<sup>137</sup>.

Described as the 'newest cat to cause a fluttering in the pigeon coop' (*Business Report* 9 July 2001), the BIG Coalition signalled the entry of the BIG debate into the public arena and consciousness. Marking the official launch on 2 July 2001, a 'Declaration of Support for

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<sup>136</sup> At the time of writing, the DA had just launched its campaign for the 2004 national elections: the BIG being one of its 'three issues' on which the party platform will be based. It remains to be seen how significant an effect the BIG issue will have.

<sup>137</sup> The members include: Alliance for Children's Entitlement to Social Security (ACCESS), Black Sash, Child Health Policy Institute, Congress of South African Trade Unions (Cosatu), Development Resources Centre, Ecumenical Service for Socio-Economic Transformation (ESSET), Gender Advocacy Programme, Community Law Centre UWC (Socio-Economic Rights Project), Southern African Catholic Bishops' Conference, South African Council of Churches (SACC), South African National NGO Coalition (SANGOCO), Treatment Action Campaign (TAC).

BIG' signed by the member organisations was presented to the Taylor Committee. The document stated that the 'introduction of a R100 monthly Basic Income Grant would nearly triple the average per capita transfer to poor households, thereby closing the poverty gap by more than 80 per cent'<sup>138</sup>. Offering human rights, economic and social arguments in support, the BIG Coalition argued for a BIG to be founded on the following principles:

- **Universal Coverage:** It should be available to everyone, from cradle to grave, and should not be subject to a means test.
- **Relationship to existing grants:** It should expand the social security net. No individual should receive less in social and assistance grants than before the introduction of the Basic Income Grant.
- **Amount:** The grant should be no less than R100 per person per month on introduction and should be inflation indexed.
- **Delivery Mechanisms:** Payments should be facilitated through public institutions. Using community Post Banks would have the additional benefit of enhancing community access to much-needed banking services.
- **Financing:** A substantial portion of the cost of the grant should be recovered progressively through the tax system. This would demonstrate solidarity by all South Africans in efforts to eliminate poverty. The remaining cost should be borne by the fiscus. A range of new measures should be introduced to increase revenue so that the additional cost can be accommodated without squeezing out other social expenditure.

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<sup>138</sup> [www.cosatu.org.za/pipermail/press/2001-July/000073](http://www.cosatu.org.za/pipermail/press/2001-July/000073).

A BIG would have ‘major social and economic benefits in five core areas including deep, targeted poverty alleviation; an enhanced response to the HIV/AIDS pandemic; making a contribution to reparations and reconciliation; being a stimulus to increased consumer spending, job creation, investment, and economic growth; and improving efficiency of social investment’<sup>139</sup>.

Soon after the launch, a number of additional organisations publicly endorsed the BIG Coalition<sup>140</sup> and a series of mobilisation workshops and presentations was embarked upon. The BIG Coalition also planned to host a national conference at which the recommendations of the Taylor Committee would be examined. But at the time of the Conference, in November 2001, the report, already five months delayed, had not been submitted to government. The BIG Coalition was however buoyed by comments from the Social Development Ministry that ‘it is important for us to go through all the proposals made by non-governmental organisations, civil society organisations, trade unions and the general public on how best to eradicate poverty’<sup>141</sup>.

As the time for the 2002 Budget drew near, debate over a BIG began to play itself out in the press. Opinions were divided: the Taylor Committee’s report had been submitted to the government although not yet made public and speculation was that many members of the Committee were supportive of a BIG. On the other hand, some argued that the timing was

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<sup>139</sup> Op cit.

<sup>140</sup> These included Aids Consortium, Age-in-Action, Anglican Diocese of Johannesburg, Co-operative for Research and Education, Diakonia Council of Churches, South Africa New Economic Foundation (SANE), Young Christian Workers National Secretariat.

<sup>141</sup> [www.dispatch.co.za/2001/11/06/southafrica/GBASIC](http://www.dispatch.co.za/2001/11/06/southafrica/GBASIC).

not right since South Africa lacked the infrastructure and systems in place to implement it<sup>142</sup>. On 20 February 2002, the day of the budget announcement, the BIG Coalition organised a march in support of their proposal: 'The march is aimed at drawing public attention to the need for a budget more responsive to the needs of the poorest people in the country, and in particular for a decisive intervention to address the plight of approximately 22 million South Africans living in abject poverty'<sup>143</sup>. And while detractors claimed that the introduction of a poverty grant would be very bad for the economy<sup>144</sup>, three thousand supporters gathered outside Parliament, eagerly anticipating the budget speech. A speech in which it was clear that there was to be no allocation for a BIG.

For the next two months, heated debate raged in the public arena - from 'Manuel has wisely given the flawed BIG a very wide berth' (*Sunday Tribune* 24 February 2002) to 'Basic income grant smacks of populist alchemy' (*Business Report* 30 April 2002) to 'BIG ladder out of poverty' (*Business Report* 26 February 2002). At the same time, calls for the release of the Taylor Committee's Report gathered volume and frequency and the BIG Coalition members initiated a letter-writing campaign to the President's office in this regard.

On 16 May 2002 the long-awaited report was made public. The Taylor Committee confirmed the request in the alternative People's Budget (drawn up by the BIG Coalition) for a basic income grant of R100 a month to every citizen, and recommended that it be distributed without a means test: 'Analysis indicates that the Basic Income Grant has the potential, more than any other possible social protection intervention, to reduce poverty and

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<sup>142</sup> Abri Meiring, Old Mutual business environment manager, *Business Report* 20 February 2002.

<sup>143</sup> BIG Coalition statement ([www.sabcnews.com/politics/parliament/0,1009,28471,00](http://www.sabcnews.com/politics/parliament/0,1009,28471,00)).

<sup>144</sup> PLJ economist Dawie Roodt, *Business Report* 20 February 2002.

promote human development and sustainable livelihoods'<sup>145</sup>. The responses to the report from the government on the one hand, and the BIG Coalition on the other, were diametrically opposed. Manuel called the grant 'economic populism' (*Business Report* 19 May 2002) while the Coalition argued that 'the national debate on social security should no longer be focused on whether we implement a basic income grant, but rather how we do so'<sup>146</sup>.

Despite having failed to convince the government to introduce a BIG in both 2001 and 2002, the BIG Coalition has chosen not to adopt an adversarial approach to government on the issue. Care was taken to express gratitude to the President for releasing the Committee's report and the Coalition made several submissions to the Department of Social Development regarding the Taylor Report. At the same time, plans for a new petition requesting the introduction of a BIG in the 2003 budget were drawn up. In some ways, as a response to comments at the time of the 2002 budget announcement, the BIG Coalition's focus has shifted from persuading parties that a BIG could help alleviate poverty, to convincing the government and other detractors that the BIG is feasible administratively. More significantly perhaps, is the recognition by the BIG Coalition that in terms of strategic planning, there is a 'next level' to be decided upon. A national strategy meeting was held in July 2002 at which plans were made to appoint a national co-ordinator. This marks an important development in the BIG Coalition in terms of it being able to expand the capacity of its campaign, raise the media profile of the campaign and increase public mobilisation.

How then do the proponents of BIG plan to advance the cause? At its launch, the BIG Coalition mapped out a plan of action which included 'an intensive process of discussion and

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<sup>145</sup> Taylor Committee Report ([www.polity.org/govdocs/](http://www.polity.org/govdocs/)).

<sup>146</sup> Douglas Tilton, SACC parliamentary liaison and BIG Coalition member ([www.allafrica.com/stories/200205170143](http://www.allafrica.com/stories/200205170143)).

consultation with a broad range of stakeholders and institutions, inside and outside government'<sup>147</sup>. A year from its inception, it had made submissions to the Taylor Committee, the Department of Social Development, the Social Services Select Committee, the Portfolio Committee on Social Development, and three major Provincial Legislatures<sup>148</sup>. The Coalition has also begun engaging with the media, on both community radio stations and the independent television channel e-tv. It has intensified its collaboration with experts from the social and economic sectors and frequently publishes research findings in the press, on its member organisations' web-sites and in its recently launched *Masitye* newsletter. A number of additional organisations have either joined the Coalition or publicly endorsed its work<sup>149</sup>.

The Coalition has in recent months refined both its platform document and its strategy. In terms of what is required for this case study, discussion will be limited to the latter<sup>150</sup>. In real terms, the Coalition is comprised of a number of NGOs rather than mass-based movements – with the exception of COSATU. As such, it can be interpreted as collectivity of (benign) elites rather than a groundswell of popular support. Given the kinds of criticism that can be

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<sup>147</sup> [www.cosatu.org.za/big](http://www.cosatu.org.za/big).

<sup>148</sup> Western Cape, Gauteng, KwaZulu Natal.

<sup>149</sup> These included Aids Consortium, Age-in-Action, Anglican Diocese of Johannesburg, Co-operative for Research and Education, Diakonia Council of Churches, South Africa New Economic Foundation (SANE), Young Christian Workers National Secretariat.

<sup>150</sup> The Coalition's latest platform proposes a phased approach to the BIG: the first phase prioritising access to the grant for children under the age of eighteen with the extension to all South Africans forming the second phase. It has also agreed that a sliding scale may be considered given that needs and resources differ according to whether households are sick-or elderly-or-child-headed. It has recommended that the computerised system of grant payments proposed by the Department of Social Development (involving the HANIS National Identification System, the Automated Fingerprints System and Population Registration) could be extended to serve the purpose of administering the BIG.

levelled at such an organisation (especially from a governing party with a 65 per cent support base), the Coalition is looking to raise the media profile of the BIG and is embarking on a programme of 'mass mobilisation'. Adopting a green ribbon as the identifying symbol of the BIG, the campaign is beginning to gather momentum at a grassroots level with presentations and workshops being held in townships and rural areas and more marches like the 2002 budget day one, being planned. In terms of this, the 'human chain' linking Sandton to Alexandra during the World Summit on Sustainable Development in 2002 raised awareness levels of the BIG.

As we have seen, the BIG issue is complex when examined in terms of the party system. But taking the issue outside the conventional party system has not provided immunity from complications. Ironically, the BIG Coalition has experienced similar kinds of problems as has the government, in terms of conflicts of interest between the platform of the Coalition on the one hand and the perspectives and positions of individual members on the other. COSATU presents the most obvious case in point and it remains to be seen whether the strength of COSATU's position with the ANC becomes a weakness for the Coalition – the desirability of protecting its leverage in government may take precedence over the need for the Coalition to adopt a more confrontational approach.

COSATU is in a particularly delicate position but other members of the Coalition are also in push-me-pull-me situations. For example, the Alliance for Children's Entitlement to Social Security (ACCESS) has expressed concern that introducing a BIG will negatively affect the Child Support Grant, both in terms of extending the grant to children over the age of seven and in the actual amount paid to recipients. Similarly, TAC has articulated fears that the government may try to use the BIG as an excuse not to fulfil other obligations, specifically

the provision of anti-retrovirals for which TAC has fought a long and difficult battle. At present, these potential conflicts are being kept at bay, with the Coalition attempting to accommodate the individual members' positions. Thus while the Gender Advocacy Programme (GAP) as a member of the BIG Coalition is represented in the Coalition's submissions to government, GAP has in its own capacity made submissions to the government concerning the gender imbalances that contribute to poverty in the country<sup>151</sup>.

Tensions between Coalition member organisations have also developed, relating to how the Coalition has been conceived. There is the perception that the Coalition is elitist – not only in terms of it not being a mass movement, but even in terms of the NGOs themselves: since much of the Coalition's work is conducted via email, less affluent organisations are sometimes excluded, and are finding it difficult to dedicate already overburdened staff and resources to promoting the BIG<sup>152</sup>. SANGOCO suggests that while some members of the Coalition are carrying out an 'intellectual' campaign in boardrooms and on computers, other members, specifically SANGOCO, are being left to do the 'real work' of 'educating and mobilising the masses'<sup>153</sup>.

In some respects, the BIG Coalition and TAC have much in common in that both organisations attempted to affect government policy and practice from outside the party political system. But whereas TAC's challenge explored the liberal democratic institution of the courts and the Constitution, the BIG Coalition seems to be in the process of adopting an alternative strategy: building mass support. That is, while the organisation started out as an

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<sup>151</sup> *Gap Talk*, Special Edition, 2002.

<sup>152</sup> Interview with Patrick Solomon, SANGOCO, Cape Town, 13 July 2002.

<sup>153</sup> *Ibid.*

elite-driven lobby group (and indeed, is still very much just that), in aiming to establish itself as a mass movement, it is attempting to provide citizens with a means of signalling their preferences to the government where party politics has failed to do so.

#### Part V - Assessment

That a BIG made it on to the agenda in South Africa is an achievement in itself. But the BIG Coalition's strategy – attempting to convince the government that the BIG was the government's idea all along – is unlikely to dent the apparent hostility of the Department of Finance. Some shift in the balance of power within government, between departments, would appear to be necessary for the government as a whole to shift its position. Unless and until the issue of welfare reform really does become a significant issue on the public agenda, COSATU appears to be the only player with power, and on the BIG issue it may be the case that, in contrast to Hirschman's claim, loyalty, and the benefits accrued from it, may atrophy voice.

In states where the threat of one-party dominance is imminent, or is realised, the conventional response is to try to promote multi-party democracy by strengthening alternative parties. That is, the party political system is expected to provide voice<sup>154</sup> options for citizens so as to prevent exit (and thus the delegitimisation of democratic politics). In South Africa, where loyalty to the ruling party and the lack of viable alternative parties limits the exercise of voice, analysts fear that (complete) exit will be chosen. The significance of the BIG issue is that it provides the opportunity for the exercise of voice in another form: turning to political

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<sup>154</sup> At the risk of re-iteration, voting for opposition parties, while signalling an exit from the ruling party, is interpreted as a voice option in that it indicates dissatisfaction with the ruling party but is not an exit from party politics itself.

arrangements and power structures short-circuit the party system. More accurately, it currently provides elites with the opportunity to exercise voice beyond the party system and has the potential to provide citizens in general with a vehicle for affecting the government's policy and practice (if – and it is a considerable if – the Coalition becomes a mass movement). In so doing, citizens' interests can be served outside the conventional party system but without destroying the party system.

Thus far all that has been established is that an opportunity exists for citizens to exercise voice beyond the party political system in order to satisfy their preferences given that these preferences stand little chance of being satisfied from within the system. In terms of whether the current (elite-led) campaign can be judged democratic, only a very limited sense has this been shown to be democracy deepening – it provides a voice option which may help to prevent exit (from the party system altogether). More important to assess is whether the form of voice being explored is democratic according to the three criteria set out in this paper: rights, participation, and the extent to which it is pro-poor.

Putting in place a constitution that entrenches socio-economic rights has been likened to Peter sober, for his own protection, placing constraints on the future actions of Peter drunk (Elster, 1995: 30). Sean Archer suggests that the South African constitution may be more aptly characterised as 'Peter drunk on democratic euphoria binding Peter sober to a series of later economic commitments highly problematic to realise' (Archer, 2002: 37). He argues that the state may not be able to live up to its constitutional commitments – or at least, may not be able to afford what is ultimately the 'high-risk gambit' of a BIG.

This is certainly a serious consideration. But it is not the issue in question. What concerns this analysis is whether the attempt to lobby for a BIG outside the conventional party system

is serving to promote the fulfilment of citizens' rights as set out in the constitution. And it seems that we can make a plausible case that it is. Because the conventional party system, for the reasons set out in Chapter 1, is unable to provide citizens with an effective means of exercising voice in order to promote and secure their rights, the BIG Coalition's attempt to lobby for change can be seen to as an attempt to have these rights taken seriously.

While the liberal conception of democracy generally considers rights in terms of negative liberty - freedom from interference, from coercion and so on – the fact that the Constitutional Court has ruled in favour of the justiciability of the Section 27 rights (in both the TAC case and the Grootboom case) suggests that in South Africa, there is real support for the protection and promotion of positive rights. But positive rights – like positive freedom – are only meaningful or valuable if there is a capacity for them to be realised. How valuable is the right of all citizens to lobby the government (in this case to provide welfare reform) if these citizens do not have the capacity to do so? On this reading, the political altruism of the BIG Coalition can be seen as an attempt to have this right of all citizens realised and as such, fulfils the liberal democratic criterion. On the other hand, we should not ignore that the Coalition, like TAC, is aristocratic (in the Aristotelian sense) rather than democratic in nature - at least at present. And certainly, in the unlikely event of welfare reform coming to dominate government policy at the cost of targeted employment (or job creation in general), given that employment is considered (nearly three times) more of a priority than poverty alleviation, it could be argued that the BIG would not have popular support. While this is somewhat unrealistic, it does serve to highlight the caution which should be attached to an assessment of the issue as promoting and protecting citizens' rights.

What then, of satisfying a participatory conception of democracy? It should be remembered

that a significant part of the Coalition's work is devoted to educating people about a BIG, and to encouraging South Africans to lobby the government themselves (through petitions, marches, letter-writing campaigns and so on). The Coalition has failed in the sense that the marches, letters and petitions have not produced a shift in the government's position. And it has also had only very limited success in terms of generating public interest and involvement: certainly nowhere near significant enough to describe it as popular participation. Participatory democrats value popular rule as a means of encouraging public participation on issues best understood through open, deliberative processes. They defend popular rule as the most justifiable form of political power because it is the most consistent with respecting the autonomy of persons, that is, their capacity for self-government. Drawing on Jurgen Habermas' theory of communicative action, it can be argued that participation is necessary not only to ensure 'true' democratic practices, but also, that such action is the very essence of human interaction (Habermas, 1987: 336). In a similar vein, Charles Taylor advocates a type of deliberative democracy, based on the notion that to be authentic, that is, to fulfil one's potential as a person, one must engage with other beings in conversation, in order to understand and compromise in the political sphere. Where such involvement in the political sphere – conceived of in terms of representative party politics - is limited, the extension of these debates into the sphere of civil society can be seen to be democracy enhancing on the criterion of promoting participation. Where professional politicians appear unable to represent their constituents' interests, the BIG Coalition is attempting to provide an alternative means of lobbying for the satisfaction of citizens' interests. Thus while it has not as yet achieved the status of a mass movement (and may never do so), in that it attempts to make provision for genuine citizen participation in decision-making, the BIG Coalition may

(in the long run) have democracy deepening effects on a participatory conception.

Finally, let us assess the extent to which the BIG issue is democratic in terms of the criterion of pro-poor. As is the case with TAC discussed in Chapter 2, the very nature of the issue – lobbying for welfare reform – means that it is pro-poor. Whether or not the Coalition will succeed in keeping a BIG on the agenda remains to be seen. But even if a BIG is not introduced in South Africa, if the pressure exerted by the Coalition results in any form of welfare reform, it can be argued that it will have achieved a victory for the most vulnerable members of society. Countering the argument that the Coalition is paternalistic in that it is not a mass movement, but a group of elites lobbying on behalf of (but with no formal mandate) citizens, it should be acknowledged that political equality is meaningful only when it is accompanied by the capacity to assert that equality. But not only is such benign paternalism somewhat atypical, as the arguments above suggest, it may have negative effects for the majority (if spending and taxation increase and job opportunities do not). On the other hand, while there is as yet no mass mobilisation around the issue of welfare reform, the increased concern regarding poverty (as indicated by the Afrobarometer findings) suggests that South Africans regard this as a pressing problem. The desire for, and commitment (at least rhetorically) to the alleviation of poverty and mitigation of inequality suggests that there is potential at least for a BIG (or at least some pro-poor initiative) to take hold of the South African public. Certainly, if the ‘litmus test of any society is the manner in which it cares for its most vulnerable members’<sup>155</sup>, lobbying for a BIG can be seen as an attempt to pass this test.

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<sup>155</sup> BIG Coalition press statement (*SundayIndependent* 16 May 2002).

Given the unlikelihood of achieving success within traditional party politics, it may well be that citizens attempt to influence the government from outside the party system. If this proves to be the case, the BIG Coalition may be able to take the credit for providing citizens with an additional voice option. Ultimately, if the functioning of a democracy is measured by the extent to which citizens are provided with a means of exercising voice to signal their demands, the fact that in the absence of voice options within the ANC or within opposition politics, citizens have the opportunity to explore an alternative means of exercising voice suggests the possibility that there may be unexpected, but democracy deepening consequences of one-party dominance in South Africa.

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## Conclusion

The original – and primary – intention of this paper was to offer a more positive analysis of South Africa's democratic prospects; a foil if you will to the conventional arguments provided by local and international doom-mongers and detractors. And at the outset of the research, such an analysis seemed reasonable: in contrast to the usual outcomes of one-party dominance – apathy on the part of citizens, unresponsiveness on the part of government – developments in South Africa suggested an active citizenry, a respect for and utilisation of, liberal democratic practices, and a government capitulating (albeit with resistance) to citizens' demands.

Having peeled back the onion-like layers of the politics of contemporary South Africa however, it seems that so optimistic a conclusion cannot be drawn – at least, not without attaching a significant degree of caution to it. It is true – and striking – about South Africa that there are circuits of decision-making operating outside the party system and that these circuits are having more effect on government policy than do the inter-party debates – certainly in the areas of welfare reform and HIV/Aids as discussed in this paper. What is less clear is the extent to which these alternative mechanisms of decision-making are democratic in terms of the criteria proposed in this paper.

If democracy rests on the presence of countervailing power able to check tendencies towards authoritarian domination, and if (according to the dominant pluralist assumption) the best counter is the existence of a strong opposition party, it is little wonder why concerns have arisen regarding prospects for democracy in South Africa. Having explored the commonly cited contributing factors to ANC dominance – the electoral system, the nature of opposition parties, and the attitudes and behaviour of the electorate – this paper concurred with the

traditional view that short-term prospects for alternation in government – for the party system to provide that check – are extremely limited. Where the analysis diverges from conventional arguments is in its suggestion that the countervailing power can come from beyond the party system – from the realm of civil society.

In terms of this, the picture emerging from the three case studies discussed in this paper is less clear than was anticipated when the research began. TAC and the BIG Coalition offer the opportunity for citizen involvement, and while HIV/Aids and poverty are becoming more important issues on the public agenda, these organisations have not become mass movements in that citizens do not know about, and certainly do not necessarily share, the aims of the two organisations. In the case of the BIG Coalition, at least partly, job creation is prioritised over welfare reform as a mechanism to beat poverty. For TAC, while liberal and pro-poor in its intentions, the battle against denialism dissident views is still to be won and such benign paternalism is a long way away from substantive egalitarianism that is the essence of democracy. On the issue of crime, while there seems to be widespread citizen participation in one form or another, the nature of this participation is not always and immediately democratic – at least not according to liberal democratic values of individuals' rights – and the reliance on the market raises concerns about the less affluent, poorer majority.

Nevertheless, it seems that there is evidence to suggest that there is, at minimum, the potential for genuine citizen participation in decision-making and policy debate; the potential for a deeper and wider form of democracy than is currently acknowledged. TAC certainly, and the BIG Coalition implicitly, are indicators that non-party activity can affect policy and that public consciousness can be raised outside of party politics. Community-based and private sector responses to crime suggest that when citizens are sufficiently affected, they are

willing and able to act, even if it entails personal cost and or effort. And while 'autonomous' citizen responses to crime are generally undemocratic in practice, the degree to which citizens seem to want to be directly involved suggests that the existing provision for lay participation in the administration of justice (such as lay assessors in the lower courts) can and should be extended. The benefits of this extend beyond citizens' desire for a more visible criminal justice system: it has profound implications for democracy in that it takes on a (more) substantive form than the procedural conceptions limiting citizen involvement to holding governments to account.

In terms of the EVL framework employed in this paper, South African party politics seems to provide very limited voice options for citizens. Whether it is because ethnic and racial identity rather than policy is the determining factor in voters' choices or because such identities shape perceptions and affect voters' expectations in this (weaker) sense, loyalty to the incumbent party is a significant feature of politics. To some extent a consequence of this, but certainly not completely responsible for it, is the fact that opposition parties do not provide the (partial) exit and thus voice option required of them: if voters do not see opposition parties as plausible alternatives, they cannot use them to signal dissatisfaction to the ruling party. The electoral system itself does not seem to provide the incentives necessary to ensure responsive government – while proportional representation has several benefits, it tends to fragment the opposition and does not provide clear alternatives for voters. The ruling party is not therefore constrained or held accountable by even a latent threat of replacement. Examining the voice options within the ruling party itself, it is not only loyalty (to the ruling party) and the lack of exit options (to other parties) that seems to have atrophied voice. The nature of the members of the alliance means that support for welfare reform may

conflict directly with 'personal' agendas: COSATU preferring targeted employment and lower taxes, and the Department of Finance emphasising fiscal austerity. In terms of HIV/Aids, the dissident stance of the executive and various other high profile members not only constrains bureaucrats and politicians in terms of policy programmes, but has filtered down into mass society, and the existence of a culture of denialism is still evident. Crime is an area where some voice has been audible, but to the extent that this is seen as a failure of the state rather than a failure of the ruling party, the effects of this voice are limited.

It is in the context of the above that TAC, the BIG Coalition, and non-state policing may be seen to have democracy deepening consequences. If the functioning of a democracy requires voice options for citizens so that exit (from politics altogether) is prevented, in the absence of these options within representative politics, they are being provided, at least to some extent, beyond the party political system. TAC and the BIG Coalition provide the opportunity for voice: in TAC's case, voice has been exercised to great effect through the courts and the constitution and has succeeded in altering government policy and practice with regard to providing treatment to prevent MTCT of HIV/Aids. It is still too early to assess the effect of the BIG Coalition in securing welfare reform but in that it has managed to keep the issue of the agenda in the face of significant resistance, some degree of success seems possible. In both cases, the fact that citizens have the opportunity to express their demands to the government means that exit may be curtailed. Similarly, the emergence and growth of non-state policing provides a mechanism for citizens to fulfil their security needs, at least partially. In that they are able to supplement the inadequate state policing, they may be less likely to reject the government outright and thus exit from politics altogether. That is, in reducing the state's monopoly on the criminal justice system, when the state fails to 'produce

the goods', citizens have alternative options available to them. In all three cases, if developments beyond the party system can provide options for citizens which prevent, or at least limit, the exercise of exit, they can be seen to have democracy deepening consequences.

Given that revitalising opposition is a long-term solution for which the pre-conditions do not exist at present (and may not exist for the foreseeable future), it makes sense to consider alternative – or at least additional – means of promoting democracy other than the current low return focus on the party system. What the South African scenario seems to imply is that if citizens are encouraged to see that their participation can make a substantive difference, they can provide the countervailing power to check the government until such time as this can be provided by conventional party politics.

In light of this, this paper has asserted that a higher return is to be had through the extension of citizen participation to beyond the party system. Through the examination of the issues of HIV/Aids, crime, and welfare reform, it has been shown that the potential for this extension exists – an unexpected positive consequence of one-party dominance, it is already occurring, albeit to a limited degree. Whether or not it is enough to mitigate against the destructiveness of one-party dominance is as yet unclear. Focusing less on multi-partyism and more on civil society's role in deepening democracy may be a high-risk option – certainly in the eyes of traditional pluralist democrats. The aim of this paper has been to suggest that it may however yield the higher returns.

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