


# ADVANCING RIGHTS PROTECTIONS, HOLDING THE GROUND, PROTECTING THE SPACE



Summary Report Reflecting on 25 Years of the Open Society Foundations' Philanthropy in South Africa



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OPEN SOCIETY FOUNDATION  
FOR SOUTH AFRICA  
CELEBRATING 25 YEARS 1993 - 2018



A report compiled by OSF-SA  
Drawn from an evaluation report compiled by Allan Moolman and Halima Mahomed

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This report is a summary of an extensive impact assessment conducted by external consultants **Allan Moolman** and **Halima Mahomed**. Their assessment included interviews with former and current Open Society Foundations (OSF) staff and advisors, grantees and donors. Adam Andani, Charlene Nel and Fatima Hassan of the Open Society Foundation for South Africa (OSF-SA) and Jen Smout (independent consultant) provided both oversight and editorial support and also assisted with the summary report.

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Multiple sources of information were also used to compile this report. These sources include interviews, historical records, the archives of UCT and Stellenbosch University (SU), and material from the Frederik van Zyl Slabbert Institute. A further source was the OSF archive, encompassing internal and external reports, the OSF-SA archive, and letters and memoranda shared with us by members of the OSF network.



For 25 things you didn't know about OSF-SA, see our fact sheet, [here](#).







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# ABBREVIATIONS & ACRONYMS

<b>ACC</b>	Amadiba Crisis Committee
<b>AfRO</b>	African Regional Office (of OSF)
<b>AIDC</b>	Alternative Information and Development Centre
<b>AMGF</b>	African Minerals Governance Framework
<b>AMI</b>	Alternative Mining Indaba
<b>AMV</b>	African Mining Vision
<b>ANC</b>	African National Congress
<b>AOSI</b>	Alliance for Open Society International
<b>BJA</b>	Bureau for Justice Assistance
<b>CALS</b>	Centre for Applied Legal Studies (at the University of the Witwatersrand)
<b>CAO</b>	community advice office
<b>CBO</b>	community-based organisation
<b>CER</b>	Centre for Environmental Rights
<b>CJI</b>	Criminal Justice Initiative
<b>CSO</b>	civil society organisation
<b>DBE</b>	Department of Basic Education
<b>DMR</b>	Department of Mineral Resources
<b>ED</b>	Executive Director
<b>EELC</b>	Equal Education Law Centre
<b>EISA</b>	Electoral Institute of South Africa
<b>FXI</b>	Freedom of Expression Institute
<b>IAJ</b>	Institute for Advancement of Journalism
<b>IDASA</b>	Institute for Democratic Alternatives in South Africa
<b>IEA</b>	Information, Expression and Accountability (Programme at OSF-SA)
<b>IEC</b>	Independent Electoral Commission
<b>JER</b>	Justice, Equality and Rights (Programme at OSF-SA)
<b>JIT</b>	Justice in Transition
<b>JUPMET</b>	Joint Universities Public Management Educational Trust
<b>KZNCC</b>	KwaZulu-Natal Christian Council
<b>LGBT</b>	lesbian, gay, bisexual and transgender
<b>LGBTIQ</b>	lesbian, gay, bisexual, transgender, intersex and queer
<b>LGEP</b>	Lesbian and Gay Equality Project
<b>LHR</b>	Lawyers for Human Rights
<b>LRC</b>	Legal Resources Centre
<b>LSE</b>	London School of Economics
<b>MACUA</b>	Mining Affected Communities United in Action
<b>MDIF</b>	Media Development Investment Fund
<b>MESAB</b>	Medical Education for South African Blacks
<b>MMA</b>	Media Monitoring Africa
<b>MST</b>	Maths, Science and Technology Initiative (of OSF-SA)



## ABBREVIATIONS & ACRONYMS *continued*

<b>NCGLE</b>	National Coalition for Gay and Lesbian Equality
<b>NGO</b>	non-governmental organisation
<b>NURCHA</b>	National Urban Reconstruction and Housing Agency
<b>OSF</b>	Open Society Foundations
<b>OSF-SA</b>	Open Society Foundation for South Africa
<b>OSI</b>	Open Society Institute
<b>OSISA</b>	Open Society Initiative for Southern Africa
<b>OSJI</b>	Open Society Justice Initiative
<b>PARI</b>	Public Affairs Research Institute
<b>PHP</b>	Public Health Program (of OSF)
<b>PIL</b>	public interest law
<b>PLWHA</b>	people living with HIV / AIDS
<b>PMG</b>	Parliamentary Monitoring Group
<b>PPLAAF</b>	Platform to Protect Whistle-Blowers in Africa
<b>PSAM</b>	Public Service Accountability Monitor
<b>PWYP-SA</b>	Publish What You Pay South Africa
<b>R2K</b>	Right2Know Campaign
<b>RAU</b>	Research and Advocacy Unit (of OSF-SA)
<b>SA</b>	South Africa
<b>SABC</b>	South African Broadcasting Corporation
<b>SALC</b>	Southern Africa Litigation Centre
<b>SAMIP</b>	South African Media Innovation Program
<b>SAN</b>	Social Auditing Network
<b>SAPS</b>	South African Police Service
<b>SASSA</b>	South African Social Security Agency
<b>SCRIP</b>	State Capacity Research Project
<b>SERI</b>	Socio-Economic Rights Institute
<b>SJC</b>	Social Justice Coalition
<b>SLP</b>	social labour plan
<b>SU</b>	Stellenbosch University
<b>SWEAT</b>	Sex Worker Education and Advocacy Taskforce
<b>TAC</b>	Treatment Action Campaign
<b>TCC</b>	Thuthuzela Care Centre
<b>TRC</b>	Truth and Reconciliation Commission
<b>UCT</b>	University of Cape Town
<b>UK</b>	United Kingdom
<b>USA</b>	United States of America
<b>WAMUA</b>	Women Affected by Mining United in Action





# A NOTE FROM THE EXECUTIVE DIRECTOR *Fatima Hassan*

In 2018, we conducted our first external impact assessment in order to understand and map the critical contributions of the Open Society Foundation for South Africa (OSF-SA) over the last 25 years. This process revealed so many inspiring stories from South African civil society, as well as important milestones and successes. These are all shared in this summary report.

This report consolidates some of the critical contributions of the Open Society Foundations' (OSF)<sup>1</sup> philanthropic investments in South Africa over more than 25 years. It was commissioned as part of our 'Turning 25' commemorative events held in Cape Town in November 2018. The intention was for it to broadly reflect the origins, nature and course of OSF and OSF-SA's work in our country and to highlight important areas where there is concrete evidence of our small but catalytic involvement in, or contribution to, advancing democracy.

Naturally, this process cannot capture the full history and complexity of our work. Over time, there may have been other smaller areas of work that are simply not possible to include in this type of review.

Reflecting on the work of OSF-SA means reflecting on how our grantees have achieved legal, policy and other types of victories, have improved access to justice and rights, have raised the voices of the vulnerable and marginalised, have expanded access to information and expression rights, and have defended the constitutional promise that made South Africa a beacon of hope for so many around the world. For their work, we are eternally grateful, and we look forward to continuing to support it.

For us at OSF-SA, the assessment reaffirmed our unwavering commitment to the values and principles of a democratic and open society. And even with strategy shifts over time, our core values and principles for supporting civil society have not changed.

The assessment provided several critical reflections and opportunities that enabled us not only to learn from our mistakes and oversights, but also introduce fresh ideas and endeavour to deepen our future work in areas such as economic inclusion and gender-based violence. These are crucial challenges in our current socio-economic and political context.

The external and independent assessment undertaken by Allan Moolman and Halima Mahomed was not a simple historical analysis. Instead, it was a deep engagement with our past, in honour of our future.

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1 For the sake of consistency, we use 'OSF' in this report to refer to the global institution and 'OSF-SA' or 'the Foundation' to refer to the national Foundation in South Africa.



## A NOTE FROM THE EXECUTIVE DIRECTOR *continued*

Looking back reminded us of how far we have come, and how important it is to ensure that we continue to protect our democratic gains with eternal vigilance.

I have no doubt that the next 25 years will be as valuable and stimulating as the past has been and that OSF-SA will, through the work of our grantees, continue to make a difference that is beneficial to all in South Africa.



**OSF-SA *timeline***





# INTRODUCTION

By *Allan Moolman* and *Halima Mohamed*

The work that the OSF-SA has undertaken over the past 25 years is as complex as it is varied. Given the incomplete records and the limitations of the data collection process, there are bound to be multiple narratives about OSF-SA's contributions to democracy in South Africa that might not be captured here.

OSF-SA also often engages in several spaces where other donors operate and provide funding. Therefore, determining the success of OSF-SA is no simple task.

At times, OSF-SA has taken the lead on an issue or focus area, but has also, in various instances, supported the work led by other donors. Therefore, in reflecting on the work of OSF-SA over the past 25 years, we need to recognise that many donors have been equally involved in the same areas of work as OSF-SA.

More importantly, philanthropic institutions such as OSF-SA have, with a few exceptions, supported civil society organisations (CSOs) and individuals doing the work of development rather than undertaking it directly. As a result, donors are generally at least one step removed from delivery and any reflection on impact must of necessity recognise a host of contributing factors, of which funding is only one.

Nevertheless, there have been times when OSF-SA's contribution to a favourable social justice outcome is clearly discernible and is sufficiently significant to warrant mention. In these instances, our more detailed assessment reflects this.



# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS

## George Soros and his philosophy of an 'open society'<sup>2</sup>

Born in Hungary in 1930, George Soros survived the Nazi occupation. He left Budapest in 1947 for London, working part-time as a railway porter and as a waiter at a nightclub to support his studies at the London School of Economics (LSE). In 1956, he emigrated to the United States. There, he entered the world of finance and investments, where he was to make his fortune. In 1970, he launched his own hedge fund, Soros Fund Management, and went on to become a successful investor.

George Soros used his fortune to create what is now known as the Open Society Foundations<sup>3</sup> (OSF), a network of Foundations, partners and projects in more than 100 countries. The name and work of the OSF reflect the influence on his thinking of the philosophy of Karl Popper.

In his book, *Open Society and Its Enemies*, Popper argues that

*no philosophy or ideology is the final arbiter of truth, and ... societies can only flourish when they allow for democratic governance, freedom of expression, and respect for individual rights.*

This approach is at the core of OSF's work and its mission.

This was best described by George Soros himself at the inaugural Open Society Lecture held in Johannesburg, South Africa, in 1994 as being

*to help open closed societies, make open societies more viable and foster critical thinking which recognises that nobody has [a] monopoly on the truth.*

In his speech to the European Foundations Conference in 1994, George Soros describes an open society as<sup>4</sup>

*one that is based on the recognition that people act on the basis of imperfect knowledge and nobody is in possession of the ultimate truth ... [This] leads to a respect for the rule of law, to a society which is not dominated by the state, to the existence of democratic government, to a market economy and, above all, to respect for minorities and minority opinions.*

2 Open Society Foundations. (n.d.). 'George Soros.' Available online at: <https://www.opensocietyfoundations.org/people/george-soros> (Accessed: 6 November 2018).

3 Initially called the Open Society Fund, then the Open Society Institute (OSI). The entire network is now collectively referred to as the Open Society Foundations (OSF).

4 Open Society Foundations. (1994). 'The George Soros Foundations Network.' Available online at: <https://www.georgeSoros.com/1994/02/01/the-GeorgeSoros-foundations-network> (Accessed: 25 October 2018).

# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



Implicit in this is the idea that an effective state not only upholds the need for separation of powers, free speech and free elections, but also makes an explicit commitment to the pursuit of truth through a practice of critical reflection. In addition, the information needed to inform such critical reflection should ideally come from within the country through processes of engagement with divergent opinions, experiences and expectation. In creating an open society, civil society is seen as the organised and organising structure by way of which this engagement should be undertaken. Accordingly, civil society remains a central component in this effort.

George Soros has also warned that open societies are vulnerable to attack. Their maintenance requires constant 'vigilance, self-reflection and correction', and advancing this requires that contestation, challenge and debate be sought and fostered. At the inaugural South African Open Society Lecture in 1994 he said:

*Open society, even if it prevails, is bound to be a provisional arrangement which needs to be constantly reaffirmed through testing.*

Today, the Foundations established by George Soros are not only called upon to promote an open society, but also to reflect it in their ways of working. The dual imperatives can be stated thus: (a) the Foundations' role is to create a space for multiple, even contested, perspectives to exist; and (b) inherently, the Foundations are not simply supporters of civil society, but are themselves a *part of civil society*; *their role is to be an active agent of change* in promoting and advancing the freedoms that are critical to the idea of an open society.

IN SOME WAYS, FREEDOM IS LIKE THE AIR PEOPLE STRUGGLE FOR  
WHEN THEY ARE DEPRIVED OF IT, WHEN IT IS THERE, THEY TAKE IT  
FOR GRANTED. BUT, IN ANOTHER WAY, FREEDOM IS VERY DIFFERENT:  
IF YOU DON'T CARE FOR IT AND DON'T PROTECT IT,  
IT TENDS TO DISAPPEAR...

*George Soros, Open Society Lecture, 1994, Carlton Centre, Johannesburg*



## **The institutionalisation of George Soros' philanthropy**

The establishment of the Open Society Fund in 1979 was followed by George Soros' first formal philanthropic act: setting up the Karl Popper Bursary Fund to support black South African university students. He then established the first national OSF Foundation in Hungary in 1984, later establishing OSF Foundations in China and the former Eastern European Bloc countries.

By 1993, with Foundations operating in 22 countries, George Soros set up an overarching structure called the Open Society Institute (OSI) with **Aryeh Neier** as President and opened a national Foundation in South Africa, the first outside the former Eastern European Bloc. Over the next 25 years, Foundations were established across the globe, including three regional Foundations in Africa. Today, the OSF works in over 100 countries across the world.



# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



**US\$32 billion +**

The total amount that George Soros has given to the Open Society Foundations



**140 +**

The number of countries in which the Open Society Foundations work



**R1 billion +**

The amount of funding distributed by the Open Society Foundation for South Africa since 1993



**700 +**

The number of grantees the Open Society Foundation for South Africa has funded since 1993

In 2017, George Soros shifted USD18 billion of his wealth to the Foundations, bringing his lifetime giving to at least USD32 billion.<sup>5</sup>

## The philanthropic journey in South Africa

George Soros' first act of philanthropy was in Cape Town, South Africa. From 1979 up to the early 1980s, he provided financial support for approximately 80 black students to study at the University of Cape Town (UCT) through the Karl Popper Bursaries / Open Society Fund. In this, he was supported by the then Vice Chancellor, Dr Stuart Saunders.

### *The early years (1979–1993)*

- Between 1983 and 1993, George Soros supported the Black Sash Trust.
  - » Funds were made available through the Human Rights Watch Fund for Free Expression, headed at the time by Aryeh Neier (now Emeritus President of OSF). These funds served to support work that challenged the oppressive apartheid-era pass laws in South Africa that precluded black people from entering areas classified as 'whites only'

<sup>5</sup> Open Society Foundations. (n.d.). 'George Soros.' Available online at: <https://www.opensocietyfoundations.org/people/george-soros> (Accessed: 6 November 2018).

# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



- » Support for the Black Sash continued after the end of apartheid through the local Foundation.
- » Most recently, OSF-SA's long-standing support for the Black Sash helped direct public and legal attention to the South African Social Security Agency (SASSA) crisis and the rights of at least 17 million poor people who depend monthly on social grants in South Africa.
- In the 1980s, Herb and Joy Kaiser founded Medical Education for South African Blacks (MESAB).
  - » The Kaisers recognised the need to support the development of a cadre of black medical professionals in order to serve all those who were denied access to quality health care because of their race.
  - » Dr Nthato Motlana, a prominent South African physician, assisted in taking this initiative forward.
  - » At the time, George Soros contributed USD250 000 to MESAB after meeting Dr Motlana. This support continued until 2002.
  - » George Soros was also one of MESAB's largest donors.
  - » By the time MESAB concluded its work in 2007, it had helped to train more than 10 000 black health professionals in South Africa.
- In 1987, Dr Van Zyl Slabbert and Dr Alex Boraine approached George Soros with a request to fund one of several talks between the African National Congress (ANC) and business and political leaders from South Africa.
  - » The ANC at the time was banned in South Africa and many of its leaders were imprisoned or in exile.
  - » Held in Gorée, Senegal, and now known as the 'Dakar Conference', this was a vital set of talks that, among other efforts, contributed to the unbanning of the ANC and other political parties in South Africa, to the release of all political prisoners, and, eventually, to a negotiated political settlement in South Africa.
  - » The first national democratic elections were held in 1994, a mere few months after OSF opened its first Africa office in Cape Town.
  - » Dr Van Zyl Slabbert was the first Chairperson of the OSF-SA Board.
  - » George Soros also provided support for the establishment and, later, running of the Gorée Institute for Democracy, Development and Culture in Senegal, West Africa.
- In the early 1990s, George Soros provided financial support for the training of young black journalists at the then Weekly Mail newspaper, an independent newspaper committed to covering the reality of the apartheid regime.
  - » Now known as the Mail & Guardian, it has continued to receive support from OSF over several years, including a seed grant in 2010 for the establishment of amaBhungane, an investigative journalism unit.
- Dr Alex Boraine was one of OSF-SA's first Board members and worked at the Institute for Democratic Alternatives in South Africa (IDASA).
  - » In the early 1990s, at the suggestion of Aryeh Neier, then President of the OSF, Dr Boraine visited other countries that were involved in post-conflict reconciliation processes.
  - » This support as well as what was learnt from one another were instrumental in developing the idea of a national reconciliation commission through the work of Justice in Transition (JIT), funded by OSF.

# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



- » The JIT subsequently hosted an international conference that culminated in the decision to establish the South African Truth and Reconciliation Commission (TRC).
- » The TRC was set up in 1995 and began formal hearings in April 1996. Archbishop Desmond Tutu led the TRC, with Alex Boraine being appointed as Deputy Commissioner.

## The founding of OSF-SA

In February 1990, following the release of Nelson Mandela, Dr Van Zyl Slabbert received a call from George Soros indicating that he wished to establish a Foundation in South Africa. He also asked Dr Van Zyl Slabbert if he would chair the Foundation.

OSF-SA opened its offices in July 1993, with Prof. Mike Savage as its first Executive Director (ED). For the first three years of its operations, it had a budget of USD15 million.

A Board of 12 members was established with governance and grant-making authority. The first OSF-SA Board was made up of individuals who had deep histories in the fight against apartheid and in the struggle for equality and justice.

In the early days, both locally led priorities and projects suggested by George Soros and Aryeh Neier were the priority areas for interventions.

Although a member of the inaugural OSF-SA Board recalls new work and strategy plans being reviewed by George Soros, the strategic approach was clear.

[T]HE FOUNDATION NETWORK IS NOT ONLY STRIVING TO CREATE AN OPEN SOCIETY BUT IS ITSELF A PROTOTYPE OF AN OPEN SOCIETY. IN EACH COUNTRY, THERE IS A LOCAL BOARD AND A LOCAL EXECUTIVE; THE SCOPE, DIRECTION AND EFFECTIVENESS OF THE FOUNDATION ARE LARGELY DETERMINED BY THE CHARACTER AND THE ABILITIES OF THE PEOPLE INVOLVED.

*George Soros, inaugural Open Society Lecture, 1994, Carlton Centre, Johannesburg*

### OSF-SA Inaugural Board: 1993

Dr Van Zyl Slabbert  
Fikile Bam  
Alex Boraine  
Anthony Heard  
Rhoda Kadalie  
Peter Sullivan  
Khehla Shubane  
Helen Zille  
Mamphela Ramphele  
Leah Geabasche

### OSF-SA Board Chairpersons: 1993–2018

Dr Van Zyl Slabbert  
Brigalia Bam  
Azhar Cachalia  
Nhlanhla Mjoli-Mncube  
Zyda Rylands  
Isaac Shongwe  
Yasmin Carrim



# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



Dr Van Zyl Slabbert, writing in the OSF-SA 1993 *Annual Report*, described the overall task of the Foundation as 'institution building for a South Africa in transition'. It was, he said,

*particularly those institutions and areas related to them that sharpen the self-critical capacity of a country and assist it to be open [to] and reflective [of] a dynamic and changing environment.*

Prof. Mike Savage, also writing in the 1993 *Annual Report*, stated:

*From its launch [the Foundation] has had an immediate sense of purpose: to contribute to the task of building a new and democratic South Africa and to help strengthen and build a vigorous and autonomous civil society.*

This paved the way for the Foundation to:

- Commit to help make the new democracy a reality by supporting the state (directly or via civil society) with regard to several core delivery and operational issues, namely local government capacity, elections, criminal justice reform, and education.
  - » This marked the beginning of long-term support for institutions such as PlanAct, the Bureau for Justice Assistance (BJA) and the Institute for Security Studies, as well as the Department of Education.
- Provide support for civil society institutions to increase: freedom of expression and access to the media; access to legal advice / support; rural community development; youth skills and training; and civic education on voter participation.
  - » Funding relationships with institutions such as the Black Sash, the Transvaal Rural Action Committee, the Freedom of Expression Institute (FXI), IDASA, and the National Community Radio Forum were also established.

In the early years, it was not easy to distinguish the priorities of the local office from those of the New York office of OSF. There was, for example, no fixed set of priorities and the Board retained the flexibility to support work that was not originally defined as a priority. Thus support was also given to the Women's Development Bank, Gun Free South Africa, the Sexual Health Education Project, and the Sex Worker Education and Advocacy Taskforce (SWEAT).

During this time, the government of Nelson Mandela was more receptive to being supported by donor efforts. Through the work of Aryeh Neier, George Soros and Herb Sturz, George Soros gave an undertaking to Nelson Mandela that OSF would co-fund and support the establishment of the National Urban Reconstruction and Housing Agency (NURCHA), a 20-year housing finance project intended to benefit black construction companies and black families.

In 1995, OSF-SA changed its status to a Section 21 company and opened its Newlands office in Cape Town. Not long after, in 1996, it initiated the Maths, Science and Technology (MST) and Community Radio initiatives, and new work together with the BJA commenced. While the MST initiative was a short-term collaborative effort in partnership with the state that ended after three years, the community radio and BJA work continued for ten years and had a significant impact. At the time, OSF-SA also supported work on understanding and deepening democratic participation.

During this period, George Soros began exploring the idea of a much larger set of country Foundations in Southern Africa, under the umbrella of a regional Foundation. Consultations in this regard began in

# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



nine Southern African countries. However, the enormity and expense of such an undertaking seemingly led to a change in thinking and a scaling down of the idea. Nevertheless, the notion of a regional office for Southern Africa was retained. In 1997, the Open Society Initiative for Southern Africa (OSISA) was established as the first African regional Foundation in the OSF network. Dr Van Zyl Slabbert was asked to lead that Foundation and its Board, which led to him leaving the OSF-SA Board.

In the years after the Mandela administration, the working relationship between OSF-SA and the government did not continue as effectively. Furthermore, it was the view of OSF that the Foundation had to maintain a certain distance from the political centres of decision-making and policymaking. It was then that the Foundation also began to support organisations that were critical of the government and its track record on service delivery. By 2000, it became clear to OSF that several members of the OSF-SA Board had individual affiliations to the ruling party that would compromise the ability of the Board as a whole to be critical of the state. By the end of 2000, the Board was replaced with a new Board headed up by Justice Azhar Cachalia. Prof. Mike Savage also stepped down as Director shortly thereafter and joined the Board, and Zohra Dawood was appointed as the second ED of OSF-SA.

As a result of a rapidly changing political context, the programming priorities of OSF-SA also shifted. Community radio work was concluded by 2003, and more funding support was directed towards civil society organisations (CSOs), which, by then, had begun challenging state and private power. The fallout from the Arms Deal and the AIDS denialism of the Mbeki administration were largely responsible for this. This reorientation was a necessity for many donors at the time. In addition, it coincided with the state's attempt to try to consolidate power by stifling different views on major policy decisions.

During this time, OSF-SA began to support institutions that were not only involved in advancing human rights, but also undertook public interest litigation. These included Lawyers for Human Rights (LHR) in 2000 and the Legal Resources Centre (LRC) in 2003 (though the LRC was also funded between 1995 and 1998). This period also marked the beginning of OSF-SA's funding of work on accountability, with grants being made to the Open Democracy Advice Centre and the Public Service Accountability Monitor (PSAM).

Some broadening of the work on women's rights also occurred through support for Agenda Feminist Media and Gender Links. In addition, work on children's rights by the Centre for Child Law, the Alliance for Children's Entitlement to Social Security, and the Children's Institute at UCT, among others, was funded.

OSF-SA also undertook work focusing on criminal justice reform and access to justice. Visits by Aryeh Neier in 1997 established the roots of this work, with support being provided for the BJA's work on reforming the criminal justice system. In 1998, to continue the development of this work, OSF-SA established a sub-board of experts. This sub-board included Maya Wiley (former Assistant US Attorney), who visited South Africa to assist in establishing a formal programme, the Criminal Justice Initiative (CJI), which became operational by 2000. In its early work, the CJI focused on social crime prevention at a community level and hosted a series of workshops on local crime prevention, youth at risk, and school-based violence. By 2001, the CJI was established as one of OSF-SA's core priorities, particularly supporting organisations responding to, and addressing supporting against, vulnerable groups.

Between 2000 and 2011, the strategy focused on: innovation in improving services to vulnerable groups and advocacy bodies; supporting community safety; supporting public interest litigation in this

# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



field together with the Women's Legal Centre; and addressing deficiencies in the criminal justice system by making submissions and commissioning research. The CJI also made submissions to Parliament in its own name and hosted several workshops and roundtables on key issues of interest. In addition, the CJI partnered with government on a number of projects that enhanced state capacity to support survivors of violence and to prosecute crimes.

In the mid-2000s, OSF-SA reduced some of the operational components of the CJI and new institutions were born out of this. These institutions include the African Policing Civilian Oversight Forum and the Centre for Justice and Crime Prevention. Work on criminal justice at OSF-SA continued under the CJI until 2011, when the work was mainstreamed across OSF-SA's other programmes.

During this time, the Foundation also began funding independent media units such as the investigative journalism unit, amaBhungane, at the Mail & Guardian. It also sought to deepen work on access to information rights and, among other efforts, commenced seed-funding of the Right2Know Campaign.

## *Transitions in OSF from 2012 onwards*

The next major transition for OSF-SA came about in 2012. Chris Stone was appointed President of OSF, with Aryer Neier as President Emeritus. Chris Stone was tasked with leading the process to formalise structures in OSF in order to give effect to the decision by George Soros that OSF become an enduring one, that is, a Foundation existing beyond his lifetime. This necessitated structural, operational, grant-making, strategy and budget changes. The network began an intense process of change to reconfigure itself in order to prepare for this, including introducing bifurcated budgets as a result of the Foundation also beginning to use funds in the USA.

Alongside this global change, leadership changes at OSF-SA also took place. These changes included the resignation of Zohra Dawood, who had served for 12 years as ED of OSF-SA, as well as the resignation of the OSISA ED and several members of the OSISA Board.

The African Regional Office (**AfRO**) was then established to align all of OSF's Africa-wide work. AfRO then became the regional umbrella body for the four Africa Foundations (OSF-SA, OSISA, the Open Society Initiative for West Africa, and the Open Society Initiative for Eastern Africa). By 2014, a Regional Africa Advisory Council was in place under the leadership of Akwe Amosu, the first AfRO Regional Director.

At OSF-SA, Barbara Hogan was then asked by Chris Stone and Akwe Amosu to act as Interim Director for six months in 2013 while the search for a new ED commenced. At OSISA, Cedric de Beer from the Soros Economic Development Fund was appointed Acting Director for the transition period and was supported by Deprose Muchena as Deputy Director.

Fatima Hassan, formerly a senior lawyer for the AIDS Law Project (now Section27) and the Treatment Action Campaign (TAC), is a well-known social justice activist, especially in the global HIV / AIDS movement. She had previously served on the boards of other donor Foundations, had worked as a research clerk for Justice Catherine O'Regan, and had served as a Ministerial Special Adviser in government (encompassing the health and public enterprises ministries). Her appointment brought a legal and activist background to the South African ED position. This experience later proved invaluable for the Foundation.



# THE ORIGIN OF THE OPEN SOCIETY FOUNDATIONS *continued*



New appointments, including the appointment of new Board members at both Foundations with the support of AfRO, encouraged renewed, and better-aligned, working relationships between the two Foundations in Southern Africa. This was the beginning of greater collaboration across the different Africa units and Foundations. More recently, the North Africa OSF offices have been included in these collaborations.

Owing to the network transition and the changes to more formalised processes and structures, as well as the global reorientation of the day-to-day work and operations of OSF (including budget reprioritisation by the OSF Global Board), this period saw some significant changes for all Foundations and in OSF-SA's work. Over the next five years, these changes included the:

- Consolidation of previous stand-alone programmes;
- Rationalisation of operational projects;
- Restructuring and reprioritisation of funding and budget commitments due to budget rationalisation within OSF; and
- Introduction of high-agency work to be carried out in the name of the Foundation, which was mandated as an approach by OSF.

These shifts came at a time when the political terrain in South Africa was changing. Coupled with this were early reports of deep networks of state corruption that were emerging, and of increasing service delivery challenges.

**By the end of 2013, each Foundation in OSF had undergone a substantial strategy realignment process together with the OSF Global Board, including a budget revision process across the network.**



# TRACKING CRITICAL FUNDING CONTRIBUTIONS

Since 1993, OSF-SA has contributed **over R1 billion to more than 750 different organisations** and projects in South Africa.

According to one OSF-SA grantee, OSF-SA has supported, and truly brought together, different organisations, enabling grantees to partner with others to advance work on such aspects as health care, access to medicines, and intellectual property, and to ‘gain wins in South Africa’.



Please visit the OSF-SA website to view our **Roll of Honour** at <https://25.osf.org.za/800-grantees-roll-of-honour/>



## Defending the right to information and freedom of expression

BUT WHILE THE INFORMATION AGE HAS BROUGHT GREATER CHOICE, MORE FREEDOM, IT HAS ALSO, PARADOXICALLY[,] CREATED THE SEEDS OF POTENTIAL DESTRUCTION OF THOSE VERY FREEDOMS. WITH INFORMATION NOW A COMMODITY, LIKE ANY OTHER, IT BECOMES POSSIBLE TO MANIPULATE AND CONTROL IT.. .

*Open Society Lecture by Dikgang Moseneke, 1997*

When OSF-SA opened its office in 1993, the independent-media space was small but had already started to carve out a niche based on the recognition that the end of apartheid did not automatically mean the beginning of free expression.

*[I]t needs to be said that repealing of some laws and a Constitution enumerating civil and political rights does not automatically lead to an ideal society in which every individual is able to achieve his or her creative potential. Living and being in an open society also means actively promoting and constantly testing the boundaries of the freedom which makes that existence possible ... what is more, freedom of expression is a right which can never be complete. It is constantly expanding and evolving, and one must continually be on guard against its shrinking.<sup>6</sup>*

6 Dikgang Moseneke, Open Society Lecture, 1997.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



In a new democracy, where new power configurations were emerging and citizen participation in democratic processes depended on accessing information, OSF-SA recognised that both freedom of expression and access to information would need to be a cornerstone of its funding support and work.

By 1994, there were renewed efforts to support community media, with such support taking on different forms. Initially, the focus was on building a new, diverse and geographically widespread community radio sector. Later, this was expanded to include mainstream media, digital media and media training.

For the past 25 years, OSF-SA has also partnered with multiple organisations in the media and access to information rights space. This work began with funding for the community radio sector specifically, but also for the Freedom of Expression Institute (FXI) (for oversight work on freedom of speech and expression), the Independent Media Diversity Trust (to promote diversity in the print media, specifically helping small newspapers and training journalists), and Media Monitoring Africa (MMA) (for core costs and work on radio news diversity). All of them became long-standing partners of OSF-SA.<sup>7</sup>

Later, this support was extended to journalism schools, and a media fellowship programme for individual journalists was also introduced.

In addition, OSF-SA recognised the necessity of oversight over regulatory bodies in this space, as well as the importance of access to information for communities wishing to hold state and private power to account. In 1999, OSF-SA began to support the Parliamentary Monitoring Group (PMG),<sup>8</sup> an important portal and service for multiple stakeholders that afford the public free access to parliamentary records and to the minutes of meetings. This support continues to this day.

Over time, protecting the free flow of information and freedom of expression became an increasingly important area of work that was linked to the goal of ensuring accountability and transparency. OSF-SA supported: niche public interest media organisations that promoted platforms for debate, opinion, fact-checking and investigative journalism; organisations promoting access to information, particularly for the benefit of poor and marginalised communities; and organisations promoting the right to freedom of expression. This included groups such as Gender Links, the Centre for Environmental Rights (CER), the Right2Know Campaign (R2K), the Public Affairs Research Institute (PARI), the Alternative Information and Development Centre (AIDC), and Corruption Watch.

Notable contributions included the following:

- In order to expand the community radio sector in South Africa, OSF-SA provided extensive support to over 60 community radio stations in the period from 1994 to 2003 to allow them to expand information access to millions of households across the country.

<sup>7</sup> In 1997, George Soros committed to funding the Institute for Advancement of Journalism to the amount (IAJ) of R5 million over five years – R1 million per year. It appears that this was a direct relationship between OSF-SA and the Institute for specific work, over and above what the OSF-SA office was already providing to the IAJ.

<sup>8</sup> The PMG provides the only publicly accessible record of parliamentary meetings and of questions to, and answers by, government ministers. It is thus a useful means for tracking government commitments.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



- In 2001, OSF-SA, together with OSISA, was instrumental in setting up the Southern African Community Media Funders Forum in order to bring about greater donor collaboration and so contribute to a more coherent, less competitive, community media training environment.
- In 2011, when the South African government introduced the Protection of Information Bill (widely referred to as the 'Secrecy Bill'), OSF-SA, in partnership with the OSJI, initiated and seed-funded R2K (made up of individuals and at least 400 civil society organisations (CSOs) and movements). R2K challenged the Secrecy Bill and is committed to addressing state secrecy and improving communication rights and access to information.
- OSF-SA supported the Mail & Guardian newspaper to fund an in-house, not-for-profit specialised centre for investigative journalism (amaBhungane) in order to further develop investigative journalism work rooted in the public interest. amaBhungane is now a multi-award-winning media unit.
- Owing to a rapidly changing political environment, support for investigative journalism in South Africa has increased over the years, with OSF-SA now supporting at least ten independent media and monitoring units, including grantees that exposed the stories behind a massive email leak in 2017 (#GuptaLeaks) related to what is commonly referred to as 'state capture'.

## **#GuptaLeaks (2017–2018)**

The #GuptaLeaks (a collaborative investigation into state capture) is the product of hundreds of thousands of emails that were first made available to the Daily Maverick / Scorpio by whistle-blowers within Gupta-linked companies. The Daily Maverick / Scorpio approached amaBhungane to assist in analysing the contents of the emails. News24, OpenUp, Finance Uncovered, and other journalist freelancers also assisted in helping to trawl through roughly one terabyte of data. The result was a detailed exposé – through a series of investigative stories highlighting the initial reach of state capture in South Africa – of the Gupta family's influence on the South African state. All stories are available at [www.gupta-leaks.com](http://www.gupta-leaks.com).

- In 2014, OSF-SA, together with Atlantic Philanthropies and the Ford Foundation, set up a special multi-donor, ten-year fund to advance constitutionalism in South Africa. **The Constitutionalism Fund** focuses on providing multi-year core support for organisations in civil society through selection by a local selection panel headed by Justice Yvonne Mokgoro. It also provides successful applicants with additional resources so that they can begin work on organisational transformation. So far, two rounds of grants have been made to 21 organisations.
- Since 2014, OSF-SA, in order to hold all forms of power to account, has supported organisations that aim to uncover injustices committed by the apartheid government and the private sector in South Africa. A fellowship created in 2012 later led to the establishment of Open Secrets, a non-governmental organisation (NGO) dedicated to uncovering apartheid economic crimes (see box below). Moreover, support for groups that are trying to prosecute apartheid-era killings continues.





# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



## The People's Tribunal on Economic Crime



In 2018, **Open Secrets** served as the Secretariat of the People's Tribunal on Economic Crime (Tribunal), which was effectively a citizen response to the state's failure to pursue and uphold justice in relation to corruption and economic crimes under apartheid. The Centre for Applied Legal Studies (CALs), Corruption Watch, the Foundation for Human Rights, Open Secrets, the Public Affairs Research Institute (PARI) and the Right2Know Campaign (R2K) were responsible for coordinating and facilitating all aspects of the work of the Tribunal.

The Tribunal examined 'continuities' between apartheid-era economic crime, the post-apartheid Arms Deal, and current instances of state capture. The hearings, which focused on defence procurement, encompassed public submissions and testimonies.

The panel of five highly respected adjudicators headed by Justice Yakoob noted strong evidence of the state's failure to address the economic crimes and sanctions-busting activities of the apartheid government that led in part to the post-1994 Arms Deal and contemporary forms of state capture.



Find the panel report [here](#).

- In 2017, OSF-SA, in partnership with the Omidyar Network and the Media Development Investment Fund (MDIF), established the **South African Media Innovation Program (SAMIP)**, a five-year, USD4 million programme to encourage both innovation in a digitally disrupted environment and to encourage race and gender transformation among start-ups and new entrant organisations.



- » SAMIP was launched to strengthen and diversify the media space through a focus on innovation and transformation in four core areas: languages, new revenue opportunities, distribution, and the transition to digital technology.
- » It is administered by the MDIF in South Africa, with a local Advisory Panel including at all times one OSF-SA Board member (until 2018, Justice Malala; from 2019, Mandla Langa). By 2018, it had nine participants. Find out more [here](#).



- OSF-SA has also supported the use of film-making and documentary production, as well as community screenings (post-production), to convey important information and different views on critical issues. Even when the South African Broadcasting Corporation (SABC) initially banned the screening of some documentaries, OSF-SA continued to support the screenings across communities in South Africa (*Miners Shot Down* being an example). Recently, OSF-SA has co-funded the production and / or community screening of award-winning documentaries such as **Miners Shot Down**, **Dying for Gold** and **Whispering Truth to Power**.



- Internet connectivity and the high cost of data have increasingly been linked to access to information rights. R2K, supported by OSF-SA, also began a campaign for lower airtime and data costs called Vula 'ma Connexion (Open Our Connections) and made submissions to Parliament. The thrust of R2K's submissions was that high data costs disproportionately affect the poor and that free basic telecommunication is increasingly essential for civic and economic participation.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



## Building an open society through government partnerships

While OSF-SA mainly supports civil society, it has also recognised the role of partnering with government on such issues as social development and advancing democracy and transformation. Notable partnerships with the South African government over the years include the following:

- In 1995, George Soros, with the support of Herb Sturz, Dr Van Zyl Slabbert, Cedric de Beer, Khehla Shubane and others, and through discussions with President Nelson Mandela, established the National Urban Reconstruction and Housing Agency (**NURCHA**).
  - » For 20 years, OSF's support and equity partnership with the South African government addressed the critical housing backlog that emanated from spatial inequalities and the race-based housing policy of the apartheid government.
  - » Between 1995 and 2015, NURCHA financed the construction of at least 350 000 houses in neglected and poor communities.
  - » NURCHA also significantly contributed to the transformation of the housing sector, promoting a new generation of black, female construction company owners.
- OSF, together with the Vera Institute, helped to establish the Bureau for Justice Assistance (BJA).
  - » In 1997, OSF and the Ministry of Justice held discussions on introducing a criminal justice programme in South Africa. The project had its offices in the Ministry of Justice and provided direct and technical support for officials, including South Africa's first set of post-1994 prosecutors and litigators.
  - » In 2000, OSF-SA supported the BJA in assisting government to establish the very first Thuthuzela Care Centre (TCC), which was located in Mannenberg, Cape Town.
    - The TCCs were a world first, providing a specialised 'one-stop' centre supporting survivors of sexual violence in South Africa, including providing them with post-sexual violence medical treatment, psychosocial care and legal support.
    - The TCCs are a critical part of South Africa's response to sexual violence. Their aim is to reduce secondary victimisation and to build a case ready for successful prosecution.
    - Fifty-one TCCs have been established since 2006. The Sexual Offences and Community Affairs Unit of the National Prosecuting Authority now leads the TCC project.
- In partnership with the then Department of Correctional Services and the Department of Justice and Constitutional Development, OSF-SA worked on a range of partnerships. These partnerships were intended to protect the human rights of all survivors of crime and of accused persons, to monitor the implementation of the Correctional Services Act, and to support offender rehabilitation and community reintegration programmes.



## Deepening participatory democracy and social accountability

In the early years of democracy, the work of civil society was largely in line with the government's new democratic project. The emphasis was on building the mechanisms, frameworks and laws that would not only allow a democratic system to flourish, but would also realise socio-economic outcomes positively affecting the lives of South Africa's majority population. OSF-SA did not see any tension between supporting the state's objectives and supporting civil society and an independent media at the same time.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



However, as in most new democracies, a dissonance emerged and alignment was lacking, especially as corruption increased. This included state policymaking that did not involve the communities most affected by such executive decisions. In the private sector, the creation of a super-wealthy economic class had seen vested private interests prioritise profit over social solidarity.

Against this background, OSF-SA's work on accountability began adapting to changing circumstances. There was a renewed focus on promoting good governance at a local level, thereby enabling local government councillors and officials to understand the legal and policy regimes under which they operated. Further, as a way of ensuring accountability, OSF-SA supported efforts to increase access to governance processes by local communities and marginalised groups.

## **The Parliamentary Monitoring Group (PMG)**

The PMG was established in 1995 by the Institute for Democratic Alternatives in South Africa (IDASA), the Black Sash and the Human Rights Committee. It provides verbatim reporting of the proceedings of Parliament and its many parliamentary committees, so that CSOs and others can use these records for monitoring and advocacy purposes. With no official record of the committee meetings publicly available, the PMG records (which are freely available) provide critical information which is used by social justice organisations to advocate and lobby Parliament on legislation and democratic processes, and to conduct civilian oversight of the executive, including law reform.

The PMG set up its website in 1998 and now provides audio and written recordings of committee meetings and copies of any documents tabled. It also provides a range of other vital services. Details of parliamentary programmes and public hearings, Bill tracking, records of ministerial replies to questions, and research on the functioning of Parliament are some of these services. The PMG undertakes the slow and steady, unglamorous work that serves as a vital backbone in making information accessible that can be used to advance social justice issues and hold executive power to account.



OSF-SA began supporting the **PMG** in 1999.

**Some of OSF-SA's critical contributions to the strengthening of democracy, civic engagement, and accountability include the following:**

- Since 1994, OSF-SA grantees have, in different ways, worked to insist on the independence of key institutions such as the Public Protector, the Independent Electoral Commission (IEC), the judiciary and Parliament through various activities, including monitoring judicial and other appointments.
- In 1999, OSF-SA began supporting the PMG, and, from 2000, also supported institutions specifically focusing on accountability. In consequence, grants were made to the South African Institute for Social and Ethical Accountability, the Accountability Institute of South Africa, PARI, the Socio-Economic Rights Institute, the Centre for Applied Legal Studies, Afesis-Corplan, the Public Service Accountability Monitor (PSAM), and others.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



- In 2002, OSF-SA broadened its human rights programme to include work on addressing corruption and supported organisations in advancing reforms to safeguard access to information and to protect whistle-blowers. It also funded work, together with the OSJI, on strengthening police accountability and supported civil society monitoring in prisons.
- From 2014, through OSF-SA support, social auditing was scaled up in multiple communities by relying on the work of the International Budget Partnership and Social Justice Coalition (SJC) and by adapting methodologies developed by organisations and governments in India, Kenya and the Philippines. The South African Social Auditing Network (SAN) was formed in 2015, which OSF-SA seed-funded.
- Since 2015, OSF-SA has supported high-agency work on extractive sector transparency and accountability. In addition, it has assisted community-led organisations in mine-affected communities that are working to uphold land and environmental rights. This assistance also encompasses advocacy campaigns on adequate community consultation.

## **Making voting count**

OSF-SA has promoted voter education and greater electoral participation since 1998. In the early 2000s, it funded specialised, non-partisan, general voter education programmes. This included support for coalitions of NGOs to conduct local government training, for community radio coverage of national and local elections, and for the production of voter education guides and handbooks. In 2000, the IEC supported the work of community radio stations, in partnership with OSF-SA.

During 2004, OSF-SA assisted CSOs in order to allow them to increase community participation in the 2004 elections. This also involved support for farm worker and rural organisations.

In 2011, and again in 2018 / 2019, OSF-SA partnered with the Media Development and Diversity Agency, the Department of Communications and the Independent Communications Authority of South Africa to train community radio journalists across the country to report on the elections.

From 2010 onwards, grants to the Election Monitoring Network, the KwaZulu-Natal Christian Council (KZNCC) and others allowed violence- and intimidation-monitoring work to be undertaken.

OSF-SA has a long-standing funding relationship, going back to the first local government elections, with the Electoral Institute of South Africa (EISA) to provide detailed research and analysis for each election period.

For the 2019 national elections, OSF-SA issued R12 million in grants for multiple projects covering a range of issues. It also partnered with the MMA and the IEC on the issue of digital disinformation.



<https://elections.osf.org.za>



# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



## Realising socio-economic rights and access to justice for all

*People want to claim their fundamental rights [under] the Constitution. [They do not want] a nice little document with a lovely picture on the cover and just text, but something meaningful in [their] lives.*

Since OSF's establishment, a core part of its work has involved marginalised communities – sex workers, refugees, asylum seekers, migrants, precarious workers, and people who identify as lesbian, gay, bisexual, transgender intersex, and queer (LGBTIQ). This is a central feature of the notion of the open society that George Soros envisaged: a society in which everyone has a voice, is heard, and enjoys the benefits and protections afforded by an accountable state.

OSF-SA has supported multiple organisations to advance civil, political and socio-economic rights. Funding approaches have included support for capacity building, research, advocacy, lobbying, legal service provision, and community-based public interest litigation, but always with a focus on the most vulnerable and marginalised in society. Recently, within the public interest legal sector, OSF-SA has also supported attempts to diversify briefing patterns and to support a new generation of young women leaders and change makers.

### **Public interest legal sector**

In the portfolio of grantees, OSF-SA had, by 2018, supported about 13 public interest legal organisations. In 1994, there were only a handful in existence, including a long-standing grantee of OSF-SA, the oldest public interest legal organisation in South Africa – the LRC.

#### **The Legal Resources Centre (LRC)**

The LRC is an independent, client-based, non-profit public interest law clinic. The organisation is based in South Africa, with regional offices in Johannesburg, Cape Town, Durban and Makhanda (formerly Grahamstown) and three satellite offices. It was founded in 1979 by a group of prominent South Africans and works for the development of a fully democratic society based on the principle of substantive equality.

The impact of the LRC's contributions to building our legal jurisprudence and advancing human rights is significant. Some of its achievements over the years include the following:

- The LRC, with others, represented a class of mine workers / families in one of the largest damages cases to be brought against multinational gold mining companies in South Africa, whose mining operations contributed to mine workers silicosis (a severe lung disease). The case was settled through a precedent-setting agreement.
- The LRC's legal work (with other grantees) on overcrowding and damaged infrastructure in certain schools in the Eastern Cape province resulted in improvements at these schools. The LRC has also litigated with other grantees to secure school furniture for thousands of learners. In addition, it has built a relationship with the Department of Basic Education (DBE) to assist with the auditing of school furniture needs.
- The LRC has assisted community advice offices (CAOs) through capacity-building workshops for paralegals working in poor communities.



<http://resources.lrc.org.za/>

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



Since then, as a result of a progressive Constitution and the potential of the law at times to change the lives of the most marginalised, a number of new organisations focusing on research, legal advocacy, and litigation of specialised matters have emerged. This has been largely due to the entrance of a new generation of lawyers who are committed to social justice work (e.g. Section27 (formerly the AIDS Law Project), the Equal Education Law Centre (EELC), the Socio-Economic Rights Institute (SERI), Ndifuna Ukwazi, and the Southern African Litigation Centre). At most times, they work in close partnership with a social movement or community organisation.

OSF-SA's grantees have consistently been at the forefront of some of the most important public interest litigation and constitutional challenges in South Africa, for the benefit of the most marginalised communities. This support for the sector has been crucial to advancing human rights in the country.

Grantees have also been of crucial importance in ensuring due process and in bringing in community voices and experiences (with legal arguments) at several state commissions of inquiry over the years, including the:

- Marikana Commission of Inquiry into Matters of public, National And International Concern arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province (Farlam);<sup>9</sup>
- Khayelitsha Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations between the Community and the Police in Khayelitsha (O'Regan);<sup>10</sup>
- Commission of Inquiry into Allegations of Fraud, Corruption, Impropropriety or Irregularity in the Strategic Defence Procurement Package (Seriti);<sup>11</sup> and
- Judicial Commission of Inquiry into Allegations of State Capture (Zondo).<sup>12</sup>

## Critical public interest legal victories

A major shift took place in 1994 with the enactment of a supreme Constitution and a Bill of Rights, as well as the creation of the Constitutional Court. The interim Constitution of 1993, and the final Constitution, created a new, accessible and progressive legal order for strategic and public interest litigation. When the final Constitution came into force, public interest law (PIL) organisations and civil society were able to approach the courts, and, through strategic litigation and progressive lawyering, provide practical and substantive content to the South African Constitution.

Central to OSF-SA's strategy in the last 25 years is the recognition that the preconditions for an open society are an independent judiciary, a vibrant civil society and an independent media. Our support for civil society to pursue strategic litigation as a component of broader advocacy is central to OSF-SA's work.

*continued...*

9 See <http://www.justice.gov.za/comm-mrk/index.html>.

10 See <https://www.khayelitshacommission.org.za/>.

11 See <http://www.justice.gov.za/comm-sdpp/index.html>.

12 See <https://www.sastatecapture.org.za/>.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



## Critical public interest legal victories **continued**

Major court victories:

**Advancing LGBT rights:** In 1994, the National Coalition for Gay and Lesbian Equality (NCGLE), an umbrella body that included among its members more than 70 organisations and associations, was founded to represent lesbian, gay, bisexual and transgender (LGBT) people in South Africa. Later, litigation was undertaken by gay and lesbian individuals as well as by successor organisations to the NCGLE, the Lesbian and Gay Equality Project (LGEP). From 1994 to 2007, no fewer than seven separate matters on gay and lesbian rights, ranging from adoption to same-sex marriage, were adjudicated by the Constitutional Court. Significantly, every case resulted in victory for those seeking to enforce gay and lesbian rights, and all seven judgments were also unanimous, on the merits.

**The right to housing:** *Government of the Republic of South Africa and Others v Grootboom and Others* (Grootboom) set out the obligations of the South African government to fulfil the right to adequate housing as guaranteed in the South African Constitution. It also set an international precedent for other governments on the delivery of socio-economic rights. Central to this case was the amicus intervention of the Community Law Centre, represented by the LRC.

**The right to health:** *Minister of Health and Others v Treatment Action Campaign and Others* (TAC) was a seminal case that provides a rich jurisprudence on protection of the right to health in South Africa, particularly in the context of access to HIV / AIDS treatment. This case also underscores that, when civil society combines social mobilisation with litigation as part of a series of broader strategies, social change can be achieved.

**International law compliance:** In *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* saw the Southern African Litigation Centre (SALC) successfully challenge South Africa's failure to adhere to its obligations under the Rome Statute on the International Criminal Court.

**The rights of refugees and migrants:** In *Lawyers for Human Rights v Minister of Home Affairs and Others*, the Constitutional Court found that the detention provisions in immigration legislation were unconstitutional in that they did not permit detained individuals to make representations. In *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others*, the Constitutional Court found that legislation that discriminates on the basis of refugee status is unconstitutional. In *Minister of Home Affairs and Others v Watchenuka and Others*, the Supreme Court of Appeal found that a general prohibition denying asylum seekers the right to work or study pending the determination of their applications violates their rights. In addition, the LRC has successfully challenged the closure of the Cape Town Refugee Reception Office.

**The right to protest:** In the *Social Justice Coalition* case, the Constitutional Court ruled that failure to give notice of a protest should not be a criminal offence. The court accordingly found certain provisions of the apartheid-era Regulation of Gatherings Act to be unconstitutional.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



## *Critical contributions with respect to the deepening of rights and access to justice for marginalised communities*

### *Snapshots*

#### *LGBTIQ rights*

OSF-SA has, over the years, provided support for, and continues to support, organisations promoting human rights, especially the rights of LGBTIQ persons, women, sex workers, migrants, refugees and asylum seekers, and children living in South Africa:

- OSF-SA, with the support of the OSF Public Health Program (PHP), has, since 1999, supported the Sex Worker Education and Advocacy Task Force's (SWEAT) campaign for the decriminalisation of sex work. This support has resulted in the establishment of the country's first national sex worker movement, SISONKE and Asijiki, a collaborative campaign that involves multiple CSOs working to decriminalise sex work.
- OSF-SA support for LGBTIQ organisations began in 2005 with the funding of OUT-LGBT Wellbeing. From 2012 / 2013, funding was provided for the Gay and Lesbian Network and Triangle Project. Owing to an environment of increasing violence directed at people who are lesbian and gay, OSF-SA has supported mobilisation around anti-hate crime advocacy and legal reform. It has also supported the Hate Crimes Working Group (HCWG). In 2018, due to the efforts of the HCWG,, the *Prevention and Combating of Hate Crime and Hate Speech* Bill was tabled in Parliament for approval. OSF-SA has also supported the prioritisation of LGBTIQ rights in other programmatic work, including in the migrant / refugee and community advice sector portfolios.

#### *Migrant and refugee rights*

- Since 2014, OSF-SA has deepened support for migrants and refugee rights, and has funded the Consortium for Refugees and Migrants in South Africa, the Forced Migration Studies Programme (now the African Centre for Migration Studies), and the Refugee Children Project based at Sonke Gender Justice. Other partners in this area of work include ProBono.org, Nelson Mandela University Refugee Rights Centre, People Against Suffering Oppression and Poverty, and Lawyers for Human Rights (LHR).
- Subsequent to the horrific pogroms directed at mainly black foreign nationals in South Africa in 2008, a resurgence of violent mass attacks took place in KwaZulu-Natal in 2015. After consultation with the sector, OSF-SA supported a series of interventions by faith-based organisations and CSOs in Durban. This was in response to the growing crisis of xenophobia in South Africa, which later led to the launch of, inter alia, <http://www.xenowatch.ac.za/>, a portal that tracks attacks on migrant and refugee communities across South Africa.
- In 2015, in line with *United Nations Sustainable Development Goal 16*, which recognises access to justice as a component of national development, OSF engaged in new work to expand political and legal empowerment in multiple jurisdictions, including South Africa. The Legal Empowerment Shared Framework for OSF included South Africa and enabled OSF-SA to commit staff and resources in order to focus on institutionalising basic legal services (community justice services), as well as on state recognition and funding of such services. Special emphasis was placed on the CAOs' sustainability and support, and on increasing legal services for marginalised groups, including for sex workers, LGBTIQ persons, refugees, migrants, casual (farm) workers.





# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



## ***Advancing rights protections and expanding expression, association and information work***

Over the past few years, there has been a global backlash against the right to expression and the right to protest of all marginalised, poor and neglected communities. This has been coupled with the growing criminalisation of ordinary forms of protest and assembly linked to the service delivery demands of communities.

As a result, OSF-SA has also increased its support for grantees to scale up their work in this area. Accordingly, it has seed-funded and initiated a national coalition that provides free advice and legal support for persons arrested as a result of protest action. This coalition campaigns for the reform of South Africa's assembly laws (Right2Protest Project) (prior to the Fees Must Fall protests in South Africa). Support for the SJC, R2K and others also allowed grantees to seek legal relief against provisions that make protesting without notice illegal and criminal in South Africa. As a result, these provisions were overturned in 2018 by the Constitutional Court. Other notable interventions include the following:

- In 1998, OSF-SA, in partnership with Soul City, produced a 13-part TV drama (called *Soul City*) set in a township / community clinic as a means of educating people about health issues and services. This project, probably one of the earliest examples of 'edutainment' in South Africa, was supported by a radio drama called *Healing Hearts* and a print publication that was distributed via national daily newspapers as an insert. The initiative focused on maternal and child health issues.
- In 2002, OSF-SA supported the production of *Siyanqoba! Beat It!*, a TV series produced with people living with HIV / AIDS (PLWHA). The series focused on the medical and psychosocial treatment and care of PLWHA, on broadening access to medicines, and on the legal and social issues affecting PLWHA.
- OSF-SA has also funded organisations providing important public forums for discussion and debate. By 2007, when health rights became a key part of the strategy of the Foundation, OSF-SA, together with the Africa Governance, Monitoring and Advocacy Project on public participation in governance, released several reports on accessing health rights. These included reports on service delivery in the health and education sectors and on the state's obligations under the Constitution. It was also recommended that the Batho Pele Principles,<sup>13</sup> which lay down specific standards for service delivery in all spheres of government, be followed.
- Since 2006, OSF-SA has funded Broad Daylight Films (now Black Stripe Media). This support included funding for the Big Debate television series. The Big Debate is a South African television debate series with a focus on pertinent, contemporary political topics. It is conducted in a 'town hall debate' style. Funding for the Big Debate has been ongoing since 2009.
- OSF-SA has also historically supported public interest litigation partners that seek to use the law creatively to promote access to legal services and to expand rights protection for, among others, marginalised groups such as sex workers, asylum seekers, refugees and prisoners.

<sup>13</sup> The Batho Pele Principles are eight national principles relating to public service, including consultation, service standards, access, courtesy, information, openness and transparency, redress, and value for money. For more details, see: <http://localgovernmentaction.org.dedi6.cpt3.host-h.net/content/batho-pele-principles>.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



- Since the establishment of the Foundation in 1993 and up to 2013, OSF-SA had a media programme with a focus ranging from community media to media monitoring and promoting freedom of expression. In 2011, the Media Programme also supported award-winning content development for the community media sector. This programme then shifted to the Information, Expression and Accountability (IEA) programme after 2014.
- Grantees in the IEA programme included Uhuru Productions (for *Miners Shot Down*), Broad Daylight Films (for the *Big Debate*), Code for South Africa (making coding more accessible to ordinary citizens), the Market Theatre Foundation (for the Market Photo Workshop), and R2K (Secrecy Bill).
- In 2013 amaBhungane was set up. amaBhungane is a multi-award-winning media unit. Support for investigative journalism in South Africa has increased over the years, with OSF-SA now supporting at least ten independent media and monitoring units.
- In 2014, OSF-SA also provided funding for two experimental, free Wi-Fi zones at the Gugulethu and Khayelitsha taxi ranks through Project Isizwe, thereby endorsing a national campaign for the roll-out of free broadband. R2K has also initiated a campaign for lower airtime and data costs called Vula 'ma Connexion (Open Our Connections). It has made submissions to Parliament in this regard, arguing that high data costs disproportionately affect the poor and that free basic telecommunication is increasingly essential for civic and economic participation.

## ***Advancing health and education rights as levers for broad socio-economic rights advancement and social change***

Historically, support for organisations that seek to strengthen civil society's capacity to hold the state accountable for providing basic services has always been part of OSF-SA's strategy. At times, there has been a greater focus on certain rights, such as health and education, as levers for the recognition and protection of other socio-economic rights.

Over time, this has included the following:

- OSF provided its first grant to Medical Education for South African Blacks (MESAB) in order to enable it to provide bursaries for health care professionals training. MESAB also included a mentorship component and provided primary health care bursaries for university and technikon students. OSF-SA funded MESAB between 1996 and 2002.
- Although funding to address HIV / AIDS started late into South Africa's struggle for health equality, support for the TAC, the Rural Health Advocacy Project, Section27, the PSAM, Health-eNews, and others is long-standing. These organisations have been central to the roll-out of antiretroviral medicines in South Africa, monitoring stockouts, advocacy for health reform, the recognition of community health workers, promoting access to sexual and reproductive health, and monitoring vacancies within public health facilities.
- Given provincial disparities in service provisioning, OSF-SA has supported grantees, such as the Eastern Cape Health Crisis Coalition, to build strong monitoring networks across provinces. OSF has also supported civil society's efforts to revise the intellectual property framework, particularly focusing on access to life-saving medicines in South Africa. This is part of a long-term global campaign on the part of OSF and its partners to make essential and life-saving medicines more accessible to the poor.

# TRACKING CRITICAL FUNDING CONTRIBUTIONS *continued*



- In 1995, OSF-SA supported the Joint Universities Public Management Educational Trust (JUPMET), a structured network of colleges for public management.
  - » JUPMET's mission was to ensure a sustainable resource base for the six universities, provide the capacity required for the education and training of public managers to meet the needs of the public service at all levels of government, and promote the development of new academic and professional frameworks for public and development management training and practice.
  - » The aim of OSF-SA's support for JUPMET was to establish a geographically balanced network of university institutions, contribute to the development and improvement of the content and process of public policy formation, and to deliver management education and training programmes for developmental organisations in civil society.
  - » JUPMET was established in September 1995 and included three formerly advantaged and three formerly disadvantaged universities.<sup>14</sup>
- In 1998, the OSF-SA Education Initiative focused its efforts on supporting the development and promotion of equitable, effective and efficient schooling in South Africa, as well as on systematic and sustainable ways to support policy implementation at different levels of schooling in the Eastern Cape and Northern Cape Provinces.
  - » OSF-SA partnered with the Department of Education to improve outcomes for mathematics and science education, focusing on schools in the Northern Cape Province and the Eastern Cape.
  - » In 1997, OSF-SA partnered with the Northern Cape Province Department of Education and with NGOs on the Kgatelopele Project in the Northern Cape Province to fund winter schools. This partnership trained school managers and school governing bodies across the province, and developed strategies and pilot programmes on technology in education.
  - » By 2000, support for the Phakama (Lift Yourself Up) Project translated into a focus on districts and not individual schools. This was coupled with teacher development programmes.
- Between 1997 and 1999, the OSF Maths Learning and Teaching Initiative (MLTI) drew together leading curriculum and material developers to create a think tank aimed at producing integrated teaching programmes, classroom materials and learning assessments.
- The Education Initiative was concluded in 2004, and, for several years, the Foundation did not focus on education rights. In 2014, with shift in strategy, OSF-SA began working with the OSF Education Support Program to deepen its education work in South Africa and to begin to fund organisations and projects such as Equal Education, the Equal Education Law Centre, Section27, and the Centre for Child Law (at the University of Pretoria).
  - » With this strategy iteration, funding was not for direct service provision, professional training programmes or curriculum development. Rather, it focused on holding both the state and private sector accountable for the disparities in education resourcing and outcomes

<sup>14</sup> These were the University of the Western Cape, the University of Fort Hare, the University of Durban-Westville (now part of the University of KwaZulu-Natal), the University of Pretoria, Stellenbosch University and the University of the Witwatersrand.



# WORKING IN THE NAME OF OSF-SA

Since its inception, OSF-SA has both supported civil society to undertake work and has initiated work in its own name, most notably around education in the early 1990s.

In 2014, this high-agency work from within OSF-SA saw a consolidated and scaled-up effort in the area of social auditing designed to enhance citizen engagement in service delivery monitoring. OSF-SA supported the establishment of a coalition focusing on advocacy around state accountability and access to basic services, and a focus on private sector transparency and accountability in the extractive sector. There was also expanded support for work that emphasised inclusive participation by mine-affected communities in policy-formulation processes, as well as for interventions directing attention to rebuilding state institutions and restoring trust between communities and the state.

OSF-SA introduced high-agency concepts / initiatives through the Research and Advocacy Unit (RAU) in 2014. These are designed internally and focus on areas of work where a high-agency approach is required to build or enhance the field by also bringing in new partners or by seed-funding organisations (e.g. the Social Auditing Network (SAN)). OSF-SA is a seed donor of the SAN, which brings together organisations across the country who are using social audits so that communities can participate in local service delivery decisions affecting them. More recently, OSF-SA extended its support for using social audits to encompass mine-affected communities (Mine Affected Communities United in Action (MACUA) and ActionAid South Africa).

Employing a high-agency approach has been successful in building a larger group of partners working on a similar issue and in developing an even more resilient civil society in South Africa. Over the years, OSF-SA has implemented its high-agency concepts / initiatives using research, advocacy, strategic litigation, and capacity-building tools.

## High Agency work

In 2014 the RAU was formally established, with a focus on commissioning and funding research on unfunded or underfunded thematic issues. For work within the RAU, OSF-SA uses its own agency and expertise to develop specific interventions around transparency, accountability and good governance to deliver on specific strategic priorities.

At the time of its establishment, the RAU introduced two concepts and initiatives, namely Social Auditing and Extractive Sector Transparency and Accountability, to complement OSF-SA's field support work.



In 2014, OSF-SA published the first edition of *In Good Company? Conversations around Transparency and Accountability in South Africa's Extractive Sector*. The publication included grantees' reflections as well as articles by experts in the field of natural resource governance. Since then, issues around the implementation and impact of social and labour plans, and transparency and revenue-sharing agreements in the mining industry, among others, have been covered.



# WORKING IN THE NAME OF OSF-SA *continued*



OSF-SA has also supported and mobilised cross-sector coalitions to engage in advocacy initiatives and targeted campaigning, including work related to the Marikana Commission of Inquiry. Through OSF-SA's support, our grantees have worked on, and participated in, policy reform processes, on the Minerals and Petroleum Resources Development Act and the Mining Charter.

In 2016, following the release of *The State of Capture Report by the Public Protector*, the issue of elites capturing the state became clearer. In response, OSF-SA initiated high-agency work on state capture through our research and advocacy partners.

OSF-SA funded the State Capacity Research Project (SCRIP) to enable it to commence research on the extent of state capture in South Africa. This work was followed by #GuptaLeaks led by grantees amaBhungane and the Daily Maverick among others, supported by the IEA programme. Additional work is currently underway on the extent to which state-owned enterprises have been captured by vested interests through RAU.

The scaling up of social auditing work was shifted to fieldwork (or day-to-day grant making) in 2018, and aspects of the former in 2019. In addition, since 2017, OSF-SA has worked on state capacity and institution building. From 2019, OSF-SA will commence working on two areas, namely:

- Promoting genuine and inclusive economic advancement for the economically excluded; and
- Addressing violence against women and children.

These interventions remain vital in one of the most unequal countries in the world and given the context of extremely high levels of gender-based violence. Understanding these challenges and working to address them affects the ability of the majority of South Africans to enjoy their constitutional rights.

## **State capacity and state capture – building a resilient state**

In late 2016, the issue of vested private interests subverting democratic state interests in South Africa was highlighted following the release of the *The State of Capture*.

By May 2017, after the dismissal of then Finance Minister Nhlanhla Nene, OSF-SA worked with several academics and grantees to support the work and research of investigative journalists. This culminated in the release of the report entitled, *Betrayal of the Promise: How South Africa was Stolen* – a report which connected for the first time, and in a general way, the various elements and individuals that sought to deliberately subvert the state's authority and power, and indicated how this process had unfolded in state institutions. The report relied on significant amounts of information previously collated by many other organisations (including those funded by OSF-SA) and by investigative journalists, among them amaBhungane. The report, together with a South African Council of Churches report, entitled, *Unburdening Panel*, as well as the memorial services for the late apartheid-struggle veteran and activist, Ahmed Kathrada, catapulted the issue of state capture into the national spotlight. This was followed in the months after by the release of #GuptaLeaks and the exposés that relied on it (250 000 emails).

# WORKING IN THE NAME OF OSF-SA *continued*



OSF-SA interventions on this issue encompassed the following:

- OSF-SA co-funded the research that underpinned *Betrayal of the Promise* and helped to seed-fund the SCRP, a multi-university collaboration among different academic institutions which also relies on an expert advisory group made up of younger and older researchers. As with all recent research based or academic projects that OSF-SA funds, OSF-SA also encouraged the SCRP to include younger researchers of colour to enable skills transfer.
  - » OSF-SA's involvement was due to one of the researchers directly approaching it for support and funding. In turn, OSF-SA facilitated support for the project by other donors.
  - » At the time, OSF-SA had also just begun funding the LRC and the Public Affairs Research Institute (PARI) to set up a Legal Defence Solidarity Fund. This Fund was intended to benefit public servants who believed that they were being unfairly dismissed by those holding executive power who were associated with the project of capture. Administered by the LRC and its trustees, the Fund provided different forms of legal support for those who, ironically, faced prosecution for speaking out against corruption.
- This led to other research projects being commissioned, mainly case studies on state-owned enterprises where corruption through board appointments, senior management appointments and procurement contracts was evident but required documenting. This research has also since been relied upon by various parliamentary and presidential inquiries into state capture in South Africa – which serves as an important lesson on the need for record keeping.
- In addition, OSF-SA's increased support for, and continued investment in, independent investigative media units, including amaBhungane and the Daily Maverick's Scorpio, was critical at the time. Both units were part of the team that worked on several #GuptaLeaks exposés that led to drastic changes in South Africa's political environment, and for which they won several awards.<sup>15</sup>

## ***Responding to the social grants crisis***

### **The Black Sash**

The Black Sash is one of South Africa's oldest civil society organisations working toward the promotion and realisation of socio-economic rights. Born in 1955 out of outrage over an artificial enlargement of the apartheid Senate that enabled entrenched clauses of the 1910 Constitution to be amended, the Black Sash has fought tirelessly against injustice and inequality in South Africa for nearly six decades.

In the early 1980s, George Soros supported the Black Sash through a grant administered by the Human Rights Watch Fund for Free Expression. Between 1983 and 1993, the Black Sash received funding for *Sash Magazine* and to support its community advice offices. These investments underpinned a range of work at the Black Sash during the anti-apartheid struggle.

Over the past four years, the Black Sash's work to identify, outline and support those affected by the social grants crisis has been vital.



<sup>15</sup> OSF-SA seed-funded the NFP arm of the Daily Maverick with its first grant in 2015.

# WORKING IN THE NAME OF OSF-SA *continued*



- In 2014, supported by OSF-SA and others, the Black Sash, together with the Association of Community-Based Advice Offices and others, which had been alerted by community complaints to paralegals, investigated the practice of what was reported as widespread and potentially illegal deductions directly from social grant beneficiaries' payments without their consent. The innovative 'Hands Off Our Grants' Campaign culminated in a Constitutional Court order in 2017 preventing companies from making deductions from bank accounts held by social grant beneficiaries, and a 2018 order finding that the then Minister Bathabile Dlamini had lied under oath and should be held personally liable for costs.
  - » The work on the South African Social Security Agency (SASSA) crisis uncovered another piece of gross exploitation of grant recipients and unconstitutional contracts by NET1, whose company, Cash Paymaster Services (CPS), was the service provider appointed by SASSA to manage the social grants process.
  - » A set of court challenges to the SASSA-NET1 tender, resulted in the invalidation of the corrupt contracts and the appointment of a new service provider to administer these grants.
  - » Given that, in 2017, SASSA provided grants totalling in excess of R150 billion for the year for over 17 million people directly,<sup>16</sup> the repercussions of this work are critical to the well-being of poor people across the country.
- OSF-SA has also begun expanding its work on supporting the state to rebuild democratic institutions. More recently, OSF-SA has invested in providing legal and non-legal support for whistle-blowers via, inter alia, the newly established Platform to Protect Whistle-Blowers in Africa (PPLAAF)<sup>17</sup>. OSF-SA has also invested in monitoring judicial appointments via the Judges Matter Campaign at the University of Cape Town's (UCT) Democratic Governance and Rights Unit.

## Platform to Protect Whistle-Blowers in Africa (PPLAAF)

**PPLAAF**, an Africa-wide legal centre, was incorporated in early 2017. The OSF is a seed funder for the PPLAAF's work in Africa, with OSF-SA supporting the local work.

Services include:

- Legal defence, as well as structuring how cases should be taken forward;
- Strategic litigation in the public interest;
- Providing media units with investigative content (while protecting whistle-blowers);
- Providing electronic, individual, and family protection and security support; and
- Policy and research work to build up advocacy campaigns.

*continued...*

<sup>16</sup> And many more indirectly, given that, often, because of high rates of inequality and unemployment, social grants are the sole means of household income.

<sup>17</sup> In the text box below, we make reference to the Commission of Inquiry into the Public Investment Corporation. For more information see: <http://www.justice.gov.za/commissions/pic/>.

# WORKING IN THE NAME OF OSF-SA *continued*



PPLAAF note that, without OSF-SA's constant support, its Africa-wide and, specifically, South African work would not have been possible financially, strategically or otherwise. It also indicates that it was possible to share information with, among others, the Commission of Inquiry into Allegations of State Capture and the Commission of Inquiry into the Public Investment Corporation because of information, testimonies and other work funded and supported by OSF-SA, including whistle-blower legal support and protection provision. This support also resulted in litigation on assets siphoned off outside South Africa.

## Promoting private sector accountability

The 2012 strike for a living wage at Lonmin plc at Marikana in the North West and the resultant killing of protestors remain a blemish on the record of the police and government of post-apartheid South Africa. Now referred to as the 'Marikana Massacre', the killings took place on 16 August 2012 and involved the most lethal use of force by the South African Police Service (SAPS) against civilians in the years after 1994, and probably since the student uprisings of 1976.

Investigative journalists, public interest law centres, charitable organisations, documentary filmmakers and many others responded. They documented the violations, supplied emergency relief and aid to victims and members of the communities surrounding the area, provided legal representation for workers and the families of those killed, and participated in the Commission of Inquiry into Matters of Public, National and International Concern arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province. The Commission, which sat between 2012 and 2014, was established to investigate the conduct of the police, Lonmin plc and others.<sup>18</sup> Civil society organisations (CSOs) and others continue to be involved in supporting workers and families with ongoing damages claims and in calling for accountability. OSF-SA supported grantees involved in this work in various ways:

- OSF-SA, together with other donors, supported the Socio-Economic Rights Institute (SERI) and LRC to represent the families of the victims; CALS, with special support from OSF-SA, was able to secure local and international expert testimony on policing matters at the Commission; a special grant was issued to the Institute of Development and Labour Law at UCT to research labour relations in Marikana prior to the massacre; and the Society, Work and Development Institute at the University of the Witwatersrand, with partial support from OSF-SA and others, hosted a series of public dialogues around mining and labour relations. OSF-SA also played a role in enabling a set of responses from civil society to the Commission Report, especially in relation to the damages claims of families and workers against Lonmin plc.
- Exposing the truth behind Marikana was a collaborative effort by many civil society actors and by a committed group of philanthropic institutions. Marikana and the state's response, as well as the Fees Must Fall movement in 2015, had important consequences for subsequent OSF-SA programming.

<sup>18</sup> The Marikana Commission of Inquiry commenced on 1 October 2012, and it held its final sitting on 14 November 2014. It submitted its report to then President Zuma on 31 March 2015.

# WORKING IN THE NAME OF OSF-SA *continued*



- » The abuse of public order policing, coupled with corporate negligence, exploitation by mining companies, and avoidance of official responsibility by the SAPS Commissioner and officials as well as the broader state, promoted a much more urgent internal discussion on private accountability, particularly in (but not limited to) the extractive industry. Flowing from this was a decision to focus more on the financial transparency and disclosure of South African companies.
  - » By 2014, promoting and encouraging transparency and accountability in the extractive sector became one of two focus areas of OSF-SA's then newly established RAU. The reason underlying this was that mining operations in South Africa have had a significant impact on the region, on workers and their families, on health and education systems, and on the free movement of thousands of people'.<sup>19</sup>
- Since 2014, OSF-SA has also supported and mobilised cross-sectoral constituencies to engage in advocacy initiatives and targeted campaigning directed at extractive sector policy reform processes.
  - OSF-SA has, since 2010, supported the Centre for Environmental Rights (CER), which was established in 2009. The CER has consistently worked on issues related to environmental degradation and mining companies' responsibilities. It has also worked closely with communities affected by current or planned mining operations.
  - Alongside this, OSF-SA's day-to-day grant-making programmes also supported several grantees over a ten-year period to hold the gold mining industry accountable for ill health occasioned by mining operations and practices during the apartheid era, and since then. The now-famous class action lawsuit of mine workers, and families of deceased mine workers, against gold mining companies for damages resulting from miners contracting silicosis and tuberculosis, was brought with several groups including our grantees. Finally, in May 2018, seven mining companies agreed to settle (for R5 billion).
  - Recently, OSF-SA also began to support new mining-affected community movements that have emerged, including MACUA, Women Affected by Mining United in Action (WAMUA) and the Amadiba Crisis Committee (ACC). The LRC, CER and Alternative Information and Development Centre (AIDC) have been working with the ACC to oppose the development of a titanium mine by an Australian mining company in Amadiba, Eastern Cape. This culminated in the 'Right To Say No' Campaign. In October 2018, in a separate, but related, case on the rights of communities affected by mining, the Constitutional Court ruled that people and communities directly affected by mining must first provide prior and informed consent for any mining plans that may affect their land and tenure / access rights.
  - OSF-SA has also seed-funded new digital and innovative tools to foster transparency in the mining sector through:
    - » Partnering with Oxpeckers Investigative Environmental Journalism Unit to develop the #MineAlert app, a web app that facilitates collective information on a range of mining licences and related orders, as well as other public information, through Publish What You Pay South Africa (PWYP-SA) (see more in the **box on page 39**).

<sup>19</sup> Open Society Foundation for South Africa. (2016). Annual Report 2015. Available at: <https://www.osf.org.za/annual-reports/>.



# WORKING IN THE NAME OF OSF-SA *continued*



- » Providing seed funding for the establishment of PWYP-SA, which aims to ensure mandatory disclosure of financial and non-financial information across the extractives value chain. Launched in 2016, the coalition brings together 18 members from CSOs, community groups, faith-based organisations, and educational and research institutions. Together, their goals include full disclosure by 2020 of information on socio-economic and environmental implications of proposed mining projects. They provide support for policy engagement and research, and for training journalists, activists and researchers in illicit financial flows and resource governance.
- » Supporting the **Alternative Mining Indaba** (AMI) from 2014 onwards. The AMI is an international platform for CSOs, interfaith groups, academics, mining-affected communities, development practitioners, and the media formed in 2010 with the intention of providing mining-affected communities with a platform to share their experiences.
- » Supporting partners working in the mining sector, such as Oxfam South Africa and ActionAid South Africa, to spearhead research on SLPs. This entails capacity building for mine-affected communities and activists to enable them to understand the SLP framework better.
- » Expanding social audits to mine-affected communities to encourage community participation in monitoring the delivery of, and compliance with, SLP commitments by mining companies, and, where necessary, enforcing accountability. This process has allowed mine-affected communities to understand, measure, verify, report and, ultimately, contribute to improving economic development in their local communities, thereby ensuring that communities derive benefit from mining operations.



## #MineAlert – technology for justice

In 2015, OSF-SA partnered with **Oxpeckers** to develop #MineAlert, an online and mobile app for mapping mining plans and making available related licences to the public. The platform enhances work on transparency in the extractive sector by publishing documents that can be used to demand state and private sector accountability. It further enables communities, specifically mine-affected communities, to participate in decisions about mining operations. #MineAlert is the first app of its kind in South Africa and puts information in the hands of the most vulnerable people affected by mining activities. It is now being rolled out in the region.



As a result of significant policy flux in South Africa over the last five years in this sector, as well as in the government's mining and minerals department / portfolio and at Cabinet level, OSF-SA has also had to support time-sensitive spaces to enable grantees to support proper engagement by mine-affected communities and their representatives. Moreover, it has had to build alliances, strengthen advocacy, and collectively seek solutions – especially with regard to the Mining Charter process. This process is being driven by government, but is being resisted in part by the mining industry, which argues that certain provisions of the latest version of the Mining Charter that are aimed at redistributing the country's mineral wealth will deter new investment.

- OSF-SA has supported meetings, consultations and advocacy opportunities on platforms such as the annual AMI, the South African AMI and a civil society workshop. This occurred contemporaneously with the Department of Mineral Resources (DMR) Minister's Mining Summit in July 2018. The aim of such platforms was to develop a consensus-driven mandate from mine-affected communities in response to the Mining Charter.

# WORKING IN THE NAME OF OSF-SA *continued*



- In partnership with the Open Society Initiative for Southern Africa (OSISA), OSF-SA supported sub-regional consultations on extractive industry and human rights violations, as well as work on the African Mining Vision (AMV). This included a project to popularise the AMV and build capacity within identified mine-affected communities regarding the AMV and its domestication using the African Minerals Governance Framework (AMGF).

## **Mining Affected Communities in United Action (MACUA)**

Following a dialogue in 2012 that brought together representatives from mining communities across eight provinces in South Africa, a coordinating committee was elected to begin the process of uniting communities in a broad movement. The aim of this movement is to present the voice of communities who have not been consulted on the process of allocating mining licences, the development of communities, and the distribution of mining income. These are the communities that bear the brunt of the health and environmental degradation and impact of mining. A new expanded coordinating committee was elected in March 2014.

In 2016, MACUA and WAMUA adopted 'The People's Mining Charter'. MACUA, WAMUA and the Mining and Environmental Justice Community Network of South Africa, supported by the LRC, initiated a legal challenge against the validity of the official Mining Charter. The latest version of the Mining Charter (September 2018) is still under review by stakeholders.



# A REFLECTION ON SOME CRITICAL CHALLENGES TO CIVIL SOCIETY

South African civil society, specifically the formal advocacy sector, faces several challenges. For the most part, these are not new. It is, however, important to recognise and acknowledge these challenges, as they may have an impact on progress towards a more just and open society.

Despite being one of the most diverse and proactive civil society sectors on the continent, the social justice sector within South African civil society is at times fragmented. This cuts across multiple levels. There is a view that limited resources, siloed donor programming, and the pressure / desire to stand out above the rest have contributed to very disruptive, and at times even unhealthy, competition. Collaboration does occur on an ad-hoc basis around a theme, crisis or campaign. The sector could therefore benefit from more joint planning to collectively address certain rights and developmental challenges. Spaces that are less of an 'echo chamber' could encourage idea contestation with a view to building diverse and intersectional ways of working.

Another element of this is the, at times, limited connections between the formal urban-based civil society sector and the broader spectrum of less formal community-based organisations (CBOs) and informal collectives and movements. Mechanisms and structures that connect and ground them more substantively, as well as ways to enable the voices of the constituencies they represent to more directly influence the strategies, issues and decisions they adopt, could be useful.

There are also deeper questions that require more probing of power relations, agenda setting and representation that are prevalent across the spectrum of civil society, including in the relationship between donors and grantees.

There is also the need for public interest legal work to be more connected to movements and other forms of community organising and activism in order to ensure that legal gains are translated into implementable programmes and that local accountability is maintained.

As social-movement activity becomes more visible and urgent, CSOs are being called on to re-examine the role that they can play and to reconsider how this aligns with, and supports, the informal sites of activism that are emerging. Consequently, CSOs will need to think and plan much more strategically regarding what it means to be part of a broader coalition of institutions and movements demanding social change – and the same applies to the donor community's relationship with these emergent movements.

The multiple challenges brought about by donor practices should also be flagged in order to avoid a concentration of funding for institutions that are well known and 'have a profile'. If donors constantly shift priorities and expect quick gains and wins, there will be no time to consolidate, to defend and to extend critical gains.

The world has changed significantly in the past five years and is headed, many believe, in the wrong direction in terms of social relations, politics and economy. This negative swing has come at a time when globally 'progressive' civil society was 'on watch' and confident that positive change was on the

# A REFLECTION ON SOME CRITICAL CHALLENGES TO CIVIL SOCIETY *continued*



horizon. Thus, civil society (and philanthropy) must reconsider, and make significant changes to, the way it operates. This introspection can lead to important changes in donor practices and the practices of partners.

While these challenges are long-standing, two are urgent:

1. Transformation and sustainability of the human rights sector; and
2. Sexual harassment.

## **Transformation and sustainability of the human rights sector**

For many years, there has been increasing concern about the slow pace of leadership transformation. There is a strong sentiment among many young black leaders that power within civil society continues to be concentrated along both racial and gender lines.

Some donors have long been raising these issues, often in a 'hands-off' exploratory way. Others, including OSF-SA, have gone slightly further, making specific support available. For example, encouraging and developing new leadership and management capacity through targeted training, and mentoring and skills transfer for second-tier leadership. They have also created opportunities for international exposure of young leaders, and have provided organisational support in order to explore institution-building and sustainability options. While these efforts have certainly resulted in some changes in several organisations, with an increased number of dynamic, young black leaders in the field, transformation at leadership levels of social justice organisations is equally needed.

In addition, South African society broadly has still not determined how to manage the issue of racial and gender transformation. This is a complex area to navigate, but it must be prioritised.

The issue of financial sustainability, while much less controversial, has also continued to concern the sector. 'Financial sustainability' is a term often used to describe the process of diversifying a donor base. But asset building, reserve development, and other innovative options that could enable longevity of programming to allow for long-term planning horizons, should be included.

Most social justice organisations find themselves under constant financial strain, balancing doing the work that needs to be done with constant efforts to mobilise resources to support short-term work. In a space where social justice funding could be reducing and shifting to other priorities, consideration must be given to how to sustain civil society for the next decade and more.

# A REFLECTION ON SOME CRITICAL CHALLENGES TO CIVIL SOCIETY *continued*



## **The Constitutionalism Fund**

The seeds of the Constitutionalism Fund lie in the winding down of Atlantic Philanthropies (Atlantic) in 2014. Atlantic played an important role in supporting core human rights institutions in South Africa and, as part of its exit plan, wanted to ensure that there was some continuation of its funding for the purpose of promoting and advancing constitutionalism. In 2016, the Constitutionalism Fund was launched as a USD25 million collaboration between Atlantic, OFS and the Ford Foundation. Planned as a limited-term fund, the Constitutionalism Fund has a

*mandate to support the efforts of civil society organisations to promote and advance constitutionalism in South Africa, with a specific focus on racial and gender transformation, such that key organisations in the field reflect the national demographic, and on sustainability of such institutions and the field more broadly.*

The Constitutionalism Fund has an independent selection panel of three eminent South Africans, supported by a coordination and administration team. It does not have a legal persona in South Africa and is operated through the Alliance for Open Society International (AOSI). Its decision-making is totally separate from the decision- and grant-making processes of the Ford Foundation Southern Africa and OSF-SA.

In its first three-year grant-making round, the Constitutionalism Fund supported 12 South African CSOs, all of which play a vital role in advancing social justice (previous grantees of Atlantic). Its second grant-making round has just been concluded.

The value of the Constitutionalism Fund is that its three-year grant cycle allows for a longer-term institutional commitment for core support that is not tied to project funding. It was envisaged that such an approach would, among other things, enable better planning and provide some measure of institutional stability. It would also provide space for flexible and responsive programming, and, importantly, allow time and space for institutions to think carefully about the issue of transformation and sustainability and put in place plans to begin dealing with these. Several grantees have welcomed the value of the core, long-term support, believing it has enabled them to do things differently; and some have viewed the space for strategic thinking and planning regarding a sustainable transformation process as positive.

Over and above the Constitutionalism Fund, donors have been convening to try to better understand the issues and to develop collective and considered responses. This is a difficult space to navigate, but one that requires donors to continue to grapple with and be much more mindful about.

## **Sexual harassment within civil society organisations**

2017 and 2018 saw an increasing number of public reports on sexual violence and harassment in some of the country's most prominent CSOs. These revelations, connected to a global movement, 'Speaking Out', led to a widespread demand for the issue to be addressed meaningfully.

Sexual harassment is not something new. Many interviewees said that, whilst in some cases, victims were too afraid or felt powerless to speak out, in other cases they were deliberately ignored or silenced. Reports of cover-ups, of victims having to continue working with the perpetrators, or of resignations





# A REFLECTION ON SOME CRITICAL CHALLENGES TO CIVIL SOCIETY *continued*



because perpetrators were not held to account, are increasingly surfacing, reports in part emboldened by the global #MeToo Movement. Significantly, governing structures of CSOs are now stepping up and leading the response in order to hold perpetrators to account.

In a country like South Africa, where levels of gender-based violence are alarmingly high, where patriarchal attitudes still prevail, and where unequal gender dynamics play out in everyday life, this has been a real 'crisis moment'. The social justice sector, tasked with protecting and defending rights to equality and justice, is not set apart from the society in which it operates. It is itself a microcosm of the attitudes, values and norms present in South Africa as a whole. This crisis has brought with it critical introspection regarding the ways in which power plays out in civil society institutions, with demands being made for institutional transparency, honesty, and radical transformation in policies and culture.

The crisis has also called into question the role of donors, as people are hesitant to report sexual harassment for fear of tarnishing the image of their institutions and thus jeopardising their funding.

The crisis has also brought about many individual, institutional and collective responses from the civil society sector in support of victims and survivors. There have been increased written reflections interrogating what has led to this and what needs to be done, and there have been collective discussions led by women in the sector taking a stand and demanding institutional changes. One example is that of the Feminist Collective, a group of feminist activists which held a series of meetings to mobilise a response and take forward a survivor-centred feminist approach to ending sexual harassment in the sector.



In 2018, in a **public letter**, young female lawyers in the sector stated:

*We would like to shed light on the insidious forms of sexual harassment in our sector and the impossible position that women, particularly black women, find themselves in as a result. We call on our sector to interrogate the 'beyond reproach' disposition and to disabuse themselves of the notion that our sector is somehow immune to sexual harassment, racism and other abuses of power. It is these unchecked exercises of power, in the form of white privilege and patriarchy, that result in the toxic environment being unearthed... .*

Individual donors have responded to the crisis in various ways, such as engaging one-on-one with affected institutions or calling for policies on sexual harassment, including in grant contracts.

Dealing with an issue as deeply rooted as sexual harassment will require significant long-term investment by both CSOs and donors. The revelations emerging are just the start of a process; intensive work will need to be done on changing institutional cultures and practices to prevent the abuse of power in workplaces.

For more on OSF-SA's response, see the **text box** that follows.

# A REFLECTION ON SOME CRITICAL CHALLENGES TO CIVIL SOCIETY *continued*



## **OSF-SA's response to the sexual harassment crisis in the social justice sector in 2018**

OSF-SA has publicly stated its policy of zero tolerance of any form of harassment or sexual misconduct by grantees and / or their staff / boards / suppliers.

In May 2018, following several media reports on sexual harassment in the sector, OSF-SA requested all grantees to provide information on:

1. The existence and accessibility of policies and processes that safeguard employees from sexual harassment and which enable reporting without the fear of threat or retaliation, and with anonymity;
2. The existence of mechanisms to report and expose sexual and other misconduct by those in power;
3. The existence of policies that mandate the reporting of sexual harassment incidents to the board / governing structure; and
4. What donors can do to assist CSOs to ensure they are able to address sexual harassment in a manner that appreciates the inherent gendered power dynamics within organisations and in broader society.

The responses indicated that:

1. Many institutions were developing new policies or improving existing policies through consultative processes;
2. Several organisations required support with training and the development of generic templates;
3. Grantees with more experience have offered to support the sector in developing robust processes, ethical standards and codes; and
4. Some organisations were proposing sector-wide measures.

In 2019, OSF-SA will support the development of appropriate policies and procedures, as well as ethical and legal guidelines, through a sector-wide workshop that will include training by policy experts.

In addition, OSF-SA has also provided short-term organisational and other forms of dedicated support to grantees requiring special assistance with handling current complaints.



# OPPORTUNITIES TO CONSIDER GOING FORWARD

The nature of this review – spanning the time frame that it does and encompassing the range of partnerships and interventions that OSF-SA has been involved in – does not lend itself to easy conclusions. In fact, one consistent theme that the reviewers have had to contend with is *contradiction*. The size and scale of the programmes, the large number of grantee relationships that OSF-SA has had over the years, and the number of staff it has employed directly and indirectly, have meant that individuals have only been able to reflect an experience of the organisation over a specific time frame. There is no single narrative describing OSF-SA. It has been many things to many people. To some extent, the organisation has at various points been shaped by the issues of the day, the interests of staff and the Board and OSF, and by resourcing and external relationships; despite this, it has quite successfully remained focused on its goals.

That is not to say that OSF-SA has always addressed all the issues that it needed to. This section of the review attempts to describe what some interviewees considered as missed opportunities: things that OSF-SA might have done that would have improved the impact of its work. Again, this is not a comprehensive list, but merely one on which OSF-SA can rely for the future.

## ***Voter education, systems, and processes of democracy***

Significant early successes in supporting electoral reform, local government, and democracy education and monitoring have not translated into the institutions and systems necessary to ensure the continuity and efficacy of the gains. Should OSF-SA and other donors have continued to invest in efforts to ensure continuous participation in democratic processes, perhaps some of the accountability challenges that the country faces may not have occurred or may have been identified and addressed at earlier stages. The imperative that these examples provide is to critically assess exit decisions in order to check for threats that could erode historical programming gains.

## ***Support for the women's rights sector***

Shifts in funding priorities can affect entire sectors. OSF-SA's planned high-agency work on gender-based violence from 2019 onwards is a positive step, but extensive engagement on how to support the movement-building work on women's rights broadly is needed.

## ***Sustaining the community radio sector***

A strong, vibrant and independent community radio sector is largely due to the efforts of OSF-SA from 1994 onwards. While the changes in the media landscape after the programme exited from that space are difficult to quantify, particularly in relation to the changes in advertising practices, some consideration of sustaining this important resource is necessary.

## ***Focusing on land***

Government has never adequately addressed the land reform issues that have been an integral part of every South African person's experience. In recent years, OSF-SA has begun working on supporting groups looking at traditional systems of land ownership, worker tenure on farms, and land rights more generally, including the land dispossession of rural women. This could be elevated.

# OPPORTUNITIES TO CONSIDER GOING FORWARD *continued*



## ***State incapacity: Strengthening the elements that work***

OSF-SA could consider working, in a new partnership, with the pockets of excellence that exist in government departments with a view to expanding rights protections. It has been doing so with officials in the Justice Ministry, and more recently in Health and Communications. This could lend itself to greater collaboration with the Executive in order to support the important work of grantees.

## ***Perceptions of support for an urban-only grantee cohort***

To a large extent, the funding partnerships that OSF-SA has entered into have largely been with urban-based organisations, many of which do work in other and rural parts of the country. While these organisations do have some connection to peri-urban and rural communities through their networks, and a significant proportion of their work is done in support of rural communities, these relationships could be expanded and deepened. There are few direct partnerships with rural-based organisations; and, while urbanisation is a feature of a 'modernising' South Africa, significant numbers of people still live in, or commute cyclically from, rural areas. The challenges of living in rural communities are acute and often require differently nuanced interventions.

## ***Increasing vulnerability and social security***

There is a view that the work on social security needs to be more proactive, that is, should explore more intensively what a more widespread system of social security could mean as a critical leverage point for the most vulnerable in society.



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