Shaun de Freitas

The constitutional dynamic of civil society and the role of the churches in South Africa

First submission: August 2004

The concept of "civil society" is an important facet of the relationship between church and state. Civil society, as an acceptable and extremely relevant element in present-day constitutional and political theories, contains characteristics which promote democracy and the freedom of religious expression. The churches in South Africa need to promote their religious interests by means of the insights associated with civil society. It is, in fact, through this generally accepted and dynamic concept, that the churches, without reservation, must be included as effective role-players in the public arena.

Die staatsregtelik-begronde dinamiek van die burgerlike samelewing en die rol van die kerke in Suid-Afrika

Die konsep "burgerlike samelewing" vorm 'n belangrike faset van die verhouding tussen kerk en staat. Die burgerlike samelewing, 'n aanvaarbare en uiters relevante begrip binne hedendaagse staatsregtelike en politieke teorieë, bevat eienskappe ter bevordering van demokrasie en die vryheid van godsdiensbeoefening. Vir die kerke in Suid-Afrika is dit nodig om hul godsdienstige belange te bevorder deur middel van die insigte verbonde aan die burgerlike samelewing. Dit is juis deur hierdie algemeen aanvaarbare en dinamiese konsep dat die kerke, sonder voorbehoud, ingesluit moet word as 'n effektiewe rolspeler binne die openbare sfeer.

Mr S A de Freitas, Dept of Constitutional Law and Philosophy of Law, University of the Free State, P O Box 339, Bloemfontein 9300; E-mail: defreits.rd@mail. uovs.ac.za

Wuthnow (1996: 7) states that the importance of examining the relationship between Christianity and civil society derives from the fact that civil society is widely regarded as a normative good, a desirable dimension of social life that is worth preserving. This is because moral values and a sense of personal integrity and civic responsibility are generally regarded as part of the formula for a good society,

> [...] but legislation is a blunt instrument for shaping people's behavior; thus, we look to families, schools, churches, and community organizations to instill values.

Another important reason for examining the relationship between Christianity and civil society, according to Wuthnow (1996: 7), is that civil society is always positioned between the government and the individual, guarding the sanctity of individual freedoms against government intrusion but also linking individuals with one another so that they can work effectively with the state. In the judgment of *S v Lawrence*; *S v Negal*; *S v Solberg*,[1] reference was made to Section 17 of the Interim Constitution of South Africa, which guarantees that everyone shall have the right to freedom of association, clearly including "the right of religious bodies to function freely as part of civil society".[2] Civil society also finds popular application in secular political debate or theory and it is via this medium that a channel for more effective interaction between church[3] and state is proposed. The potential for effective participation by the Christian churches in public matters (political and legal) via the concept of civil society thus demands further investigation.

1   1997 (4) SA 1176.
2   1997 (4) SA 1224. This is underlined by Constitutional Principle XII in Schedule 4, which required the Constitutional Assembly, in drafting the new Constitution, to ensure that: "Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and *religious associations* [emphasis Judge Sachs], shall, on the basis of non-discrimination and free association, be recognised and protected", 1997 (4) SA 1224. Section 17 of the Interim Constitution is now enshrined in Section 31 of the Constitution of South Africa, Act 108 of 1996.
3   In this context, the "church" refers to the various Christian denominations in South Africa.

The constitutional freedoms that are presently at the disposal of the churches in South Africa need to be fully utilised. This entails not only a more concerted effort by their clerical hierarchies, but also that their local (congregational) levels be exposed to and educated in terms of the role that they can play in the public sphere, via direct engagement in matters of public importance. In this regard, certain urgent matters require the attention and involvement of the church, such as abortion, cloning, genetic engineering, the exposure of explicit material, the teaching of creationism, the strengthening of the family structure, the promotion of the use of contraceptives in the fight against HIV/AIDS (instead of the promotion of moral values in relation to sexual activities), the sanctity of marriage, the alleviation of poverty, religious holidays, gambling, euthanasia, and the use of blasphemous expressions on radio and television as well as in the movies.

However, the mandate of the churches goes beyond addressing these issues. The primary matter in the public sphere requiring attention and participation by the churches is the protection, development and maintenance of the Christian worldview as opposed to the various secular and spiritual worldviews arrayed against it.[4] In other words, the churches need to promote and defend the Christian worldview in their dealings with society at large. Naturalism and its unfortunate offspring, such as moral relativism, multi-culturalism, pragmatism, utopianism and

4   The concept of civil society itself is linked to a clash between worldviews. In this regard, Wuthnow (1996: 5) states that a generation ago, many social scientists subscribed to a version of modernisation theory that viewed the modern, liberal conception of civil society as a natural extension of Christianity, arguing that such principles as liberty and equality, for example, were really biblical values that had simply been extracted from their earlier dependence on Christian theology. However, recent scholarship has become more critical of this view, placing more emphasis on conflict and historical discontinuity and seeing in writers such as Spinoza, Hobbes, and Locke a bitter struggle against Christianity in the name of secular, democratic ideals. Wuthnow (1996: 5-6) adds that, in recognising that the liberal conception of civil society was developed in opposition to Christianity, this recent scholarship also invites more attention to the ongoing conflicts between the two — "If separation of church and state provided the means of keeping religious conflicts at bay, for example, then the lingering question is whether such separation also excludes valuable sources of public opinion on which democratic government itself may depend".

institutional neutrality, need to be countered by a Christian value system and concomitant public policy, and in this regard the churches have an obligatory and responsible role to play, within the bounds of diplomacy and integrity.

Cochrane (1997: 4) provides a fair indication of the somewhat attenuated participation by the churches in South Africa on public matters, stating that extreme poverty, unemployment, heavily skewed income gaps, land reform, xenophobic attitudes to immigrants from other African states, the appalling rate of abuse of women and children, the rising number of street children, the continuing evidence of racism (now merely less overt), and many other issues have slipped off the common agenda of many denominations and Christian commentators. The vital need to educate the general public in the processes, procedures and institutions of democracy, and to increase their capacity to participate, barely features in church deliberations. This is significant, because no other non-governmental body has anything like the coverage of the churches, which reach into virtually every local community in South Africa, no matter how small (Cochrane 1997: 4).

In addition, as Cochrane (1997: 4-5) states, the irony of the process of reconstruction is that the state and its institutions (such as the national assembly) are developing policies which in many respects are in advance of church thought and practice (for example, in relation to gender issues). One reason for this is that secular bodies have taken more seriously than the churches the need to link policy formation processes to its "end-users", that is, those who will be directly affected. The consultative, fundamentally democratic impulses underlying these processes pose substantial challenges to the churches and their underlying ecclesiologies. Beyond the various and more specific issues necessitating the intervention and participation of the churches on behalf of Christians, lies the relevance of concepts such as public policy, public interest and the public good. These concepts are not value-free or ethically neutral. Therefore the churches, as representative of Christian values and ethics, need to pursue public policies, public interests and the public good according to values and ethics with a Christian basis. An aid to the accomplishment of this is the concept of civil society, a concept that is favourably viewed within the total spectrum of contemporary constitutional, legal and political theory.

The concept of civil society is highly complex and open to various interpretations. Bratton (Harbeson *et al* 1994: 52) says that due regard must be paid to the view of civil society as one of the few social and political concepts that have travelled far and changed significantly in meaning, and Azarya (Harbeson *et al* 1994: 87) concurs that the concept of civil society carries a heavy load of meanings and connotations. White (Hassim & Gouws 1998: 54), highlighting the ambiguities of the term, points out that

> [...] though there is now a 'paradigm' of thought and a terrain of discussion […] the term [civil society] means different things to different people and often degenerates into a muddled political slogan.

Gerwel (Graham & Meyer 2001: 21) comments that lectures on civil society by the exponents of the concept are often unclear as to their own definitions. Luers (Graham & Meyer 2001: 42) says that civil society is, by definition, highly diverse and practically indefinable to any true degree of specificity. Naidoo (Graham & Meyer 2001: 47-8) refers to civil society as being an amorphous concept embracing as broad a range of opinions and tendencies as the term "citizen". Adding fuel to this terminological frustration, non-governmental organisations (NGOs) are not in agreement either on which entities form part of civil society.[5] However, the terminological inexactitude should not become an excuse for abandoning the attempt to gain a clearer understanding of the concept. It is widely accepted that the churches form part of civil society, and this insight gives them the constitutional dynamics normally associated with the concept of civil society. Wuthnow (1996: 8) states that the scholarly literature continues to debate the meaning of civil society,

5   For example, the Workers' Education Programme states that "civil society includes trade unions, NGOs (non-governmental organisations), CBOs (community-based organisations), business, and people who are socially excluded or left out of mainstream economic society"; the People's Agricultural Development movement that it consists of "structures: civics, trade unions, CBOs, NGOs, clubs, churches, youth organisations"; that the Environmental Justice Networking Forum comprises "everyone including political organisations, but not the private and public sectors, parastatals and business, everything between the public and private spheres", and the National Union of Mineworkers that it "excludes government, parties and business, and includes non-profit, voluntary and non-formal political organisations" (CASE 1998: 47-8).

but by any definition, voluntary associations form an important part of it "and churches, along with other religious organizations, are thus an inescapable feature of civil society". This further implies that the church must come to realise its potential as part of the political dynamic in South Africa (and in fact, in the world). This article thus addresses and emphasises one facet, among many, that may assist in reviving the active role that the churches once played in matters of state.[6]

1. The concept of civil society

The working definition of civil society drawn up by the Co-operative for Research and Education and the Institute for Democracy in South Africa states that:

> Civil society is the sphere of organizations and/or associations of organizations located between the family, the state, the government of the day, and the prevailing economic system, in which people with common interests associate voluntarily. Among these organisations, they may have common, competing, or conflicting values and interests (Civicus Index on Civil Society 2001: 4).

The Civicus Index Project defines civil society as:

> The sphere of institutions, organizations, networks and individuals (and their values) located between the confines of the family, the state and the market, which is bound by a set of shared civic rules, and in which people associate voluntarily to advance common interests (Civicus Index on Civil Society 2001: 3).

Civil society is thus a sector of society populated by voluntary associations (intermediary bodies, social movements, interest groups, political parties, ideological groupings, and the media) which pursue both their own particular interests, including the assertion of their identities, and their own versions of the general interest. They are, therefore, engaged in permanent debate (Hall 1995: 98-9).

---

6   The author takes cognisance of the fact that the issue at hand is rather contentious. The whole debate concerning the relationship between church and state is not only old, but also diverse. Even within Christian circles of academe and denominations, there are contrasting views related to this theme. This, however, does not nullify the investigation of a matter as important and relevant as the role of the churches in the contemporary political and constitutional debate.

Civil society ranges from groups based on religion and ethnicity to more fluid voluntary associations organised in terms of ideology, professionalism and social activities or in pursuit of money, status, interest, or power. These groups range from circles of friends to single-purpose political advocacy groups. Civil society also includes communities such as formally organised religious settlements involving primary socialisation, strong attachments, and a common history and expectations. In this way, cultural institutions of all kinds, from the deep, constitutive practices of a cultural group with a common language and history, to the wildly eclectic popular culture of self-help groups (Post & Rosenblum 2002: 3), are protected.[7] Civil society is where opinions are expressed and refined, where views are exchanged and agreements made, where a sense of common purpose and consensus are forged. It lies apart from the realms of the market and the government, and it poses a different ethic. The market is governed by the logic of economic self-interest, while the government is the domain of laws with all their coercive authority (Wuthnow 1996: 31). Consequently, it is clear that the churches form part of civil society. In South Africa this is especially true, given the preponderance of the proclaimed subscription to Christianity.[8] In fact, Christianity continues to spread rapidly across Africa, and churches on the continent constitute the largest voluntary associations, with increasing political power (Phiri 2001: 142).

7   It is interesting to note that civil society has re-emerged in South Africa after 1996 with growing confidence. SANGOCO (established in August 1995, with a mission "to promote civil society by uniting and strengthening the NGO sector to enable it to influence development policy and advocate programmes that meet the needs of the poor in the best possible way, at the least cost") has contributed much (CASE 1998: 37). Contributions by the religious sectors have also assisted in giving meaning to the importance of civil society in South Africa. In this regard, the South African Council of Churches (SACC), the establishment of the Ecumenical Service for Socio-Economic Transformation (ESSET) as well as the South African Catholic Bishops' Conference (SACBC) have re-emerged as important actors in civil society (CASE 1998: 37).

8   According to the statistics presented by Census 2001 there are approximately thirty-five million self-proclaimed Christians in South Africa, from a spectrum of about thirty denominations. Those exceeding the one million mark in membership are the Dutch Reformed, Roman Catholic, Anglican, Methodist, Lutheran, and Zionist churches. The author is aware that self-proclaimed Christianity does not necessarily imply minds and lives loyal to the Scriptures. However, it would

It is also important to take note of certain essential conceptual additions to the definition of civil society — its associational or linkage aspect. The understanding of civil society must not result in an emphasis solely on individual organisations, but also on the linkages between them. Given civil society's associational nature, not only the linkages between individual organisations (interests) themselves, but also those between individual (private) organisations and government should be emphasised. This associational understanding of civil society presupposes an active civil society and thus the expectation that members of civil society themselves can make a difference to the conditions under which a developmental philosophy is implemented (Hyden 1996: 93). In this regard civil society should entail the theme of co-operation and sharing among its organisations as well as with government. Competition and self-centredness must be excluded, and the sharing of resources, working together, networking and the sharing of technical and professional support must be championed. Civil society must be viewed as an inherently pluralistic realm, distinct from, yet interacting with government and the processes of production, and consisting of numerous associations and organised around specific interests. These are communally organised, independent, voluntary, autonomous, and able to form links with other interest groups. They do not in any way seek to set themselves up as an alternative to the government (Liebenberg 1997: 41).

Then there is the understanding that the boundary between government and civil society functions to place civil society and government in a productive tension. This boundary defines the pluralism and particularism of civil society in opposition to the inclusive and overarching norms of government. If the boundary between the two is pushed

be unwise to ignore this major indication of at least interest in Christianity. The position was no different in the period shortly preceding Census 2001. In this regard Farlam (1998: 317-319) states that South Africa is an overwhelmingly Christian nation "with over three-quarters of South Africans calling themselves Christians, and with no other religion commanding the support of more than two percent of the population". Phiri (2001: 101) states that by the 1960s, Christianity had become a pervasive influence in South African society, and that in contemporary South Africa at least seventy percent of the country's forty million people are Christian, mostly Protestant.

too far in the direction of government, then civil society could wither away. If the boundary is pushed too far in the direction of civil society, government could collapse into anarchic disorder. Yet civil society requires government to survive, and government, at least democratic government, draws deeply on the strengths of civil society (Post & Rosenblum 2002: 10-1). In this regard it is important to note that one of the barriers preventing a possible onslaught by civil society on the jurisdictional area of government is the principle that civil society may never assume that it is above the law. A society lacks in civility if some members believe themselves to be above the law (Hyden 1996: 103). Conversely, government in a constitutional state is prevented from posing a serious threat to civil society on the grounds of the obligation to uphold fundamental freedoms and democracy.

Wherever the distinction between civil society and government is marked, however, there must always be a boundary between them, because each is defined in opposition to the other. It is also true that government fails if it embodies merely particularist values, and therefore, if civil society is not independent, government cannot protect basic rights or well-being. The associations of civil society mirror, reinforce, and actively create social inequalities of all kinds, with the accompanying enmity and rivalry. Government must be able to intervene to set boundaries, to enforce the basic requirements of peace, order, civil equality, and so forth (Post & Rosenblum 2002: 11). The analytical distinction between civil society and government has functional implications. Civil society cannot persist if government does not actively intervene to maintain civil order and personal legal rights. But civil society also requires government to abstain from interventions that undermine pluralism. Associations must be free of any intervention that would undermine their singular purposes and activities, inhibit self-definition, limit expression, or threaten their viability. To the extent that these limits are transgressed, civil society is endangered (Post & Rosenblum 2002: 12). Frentzel-Zagorska understands civil society as "a structure of the self-organization of society, located outside, though not disconnected from, the institutional framework of the state" (Bryant 1995: 144). Civil society and government are complementary constructions. Civil society cannot exist without government, and democratic governments cannot exist without civil society (Post & Rosenblum

2002: 23). Civil society can be described both as developing in partnership with government and as substituting for the failings of government (Post & Rosenblum 2002: 1).

These insights require special consideration in the relationship between church and state. In the context of the aforementioned, the church in South Africa, as part of the concept of civil society, is given an elevated status. Civil society has dynamic qualities which are essential to a democratic society. Taking into consideration the strong representation of Christianity in South Africa, the churches in this country certainly form one of the most well-represented forums of civil society. This should encourage them to play an effective role in the shaping of public policy and public interest in a democratic and constitutional South Africa, where the concept of civil society is ardently supported. The dynamics of civil society and its relevance for the churches against the background of a constitutional South Africa deserves further investigation.

2. The constitutional value of civil society in South Africa

2.1 Democracy

Civil society plays an important role in the development of an effective democracy in South Africa, enhancing an essential value protected by the Constitution of South Africa. The concept entails the understanding that it contains the power of the state through public scrutiny; stimulates political participation by citizens; develops democratic norms such as tolerance and compromise; creates ways of articulating, aggregating and representing interests, especially at the local level; questions and reforms existing democratic institutions and procedures, and disseminates information (Hyden 1996: 92-3). In this context, civil society first helps to mobilise resources in ways that the state alone is unable to do. This leads to developmental benefits from the freedoms that civil society provides because people can take initiatives they would not otherwise take. Secondly, civil society socialises individuals in a democratic direction: it looks at the power structure from the bottom up and as a result tends to instil a participatory philosophy in which checks on the abuse of power feature prominently. Therefore, a vibrant civil society

is a necessary condition for democracy (Hyden 1996: 97). Post & Rosenblum (2002: 17) rightly point out that civil society is vital to the efforts of a democratic government to achieve consensus by building structures of "interpenetration" between government and interest groups for making and implementing public policy.

Also inherent in civil society is the fact that it makes great demands on all citizens (Hall 1995: 146). This entails a culture of active participation related to the general interests of individuals, groups and institutions, whether at the national or the international level. The many organisations which characterise the base level of civil society provide the most abundant and effective mechanisms for direct participation by citizens, which is virtually synonymous with participatory democracy. It is at this level that the ideal of direct democracy is most feasible (Hall 1995: 268). Meyer (2001: 1) rightfully states that it is extremely difficult to consolidate a new democracy without a healthy civil society. Civil society operates as the intermediary between the basic units of a society — families and individuals — and the state, as represented by the government. As such it can be a powerful channel for people to participate in and comment upon. Its great strength is its autonomy: it becomes simply what the individuals involved want it to become. Civil society also provides useful checks and balances on government action, ensuring accountability and transparency. Meyer (2001: 1) adds that, ideally, the relationship between government and civil society will be mutually energising: not only can civil society engender democratisation, but in return the democratic structures of government facilitate and encourage lively participation by civil society. In fact, democracy presupposes a civil society — a recognition by the state that individuals, informal groups and formal institutions should be free to pursue their own interests and ideals independent of the state in most spheres of life (Hall 1995: 148). In this regard, and concerning the South African situation, the government must not only take cognisance of the important role that the churches have to play in helping to sustain democracy, but must also pay attention to the interests and values represented by the churches, as this is in itself part and parcel of democracy.

The basic premise was that the state is a rational instrument for controlling and promoting change. By the 1980s, however, confidence in the state's ability to be such a powerful instrument had been replaced

by disillusionment. From both leftist and rightist perspectives, the state was viewed as an instrument of exploitation, pre-empting popular or individual initiative. As the pendulum has swung in the opposite direction, analysts now maintain that developmental wisdom is lodged not in government bureaucracies but in local communities and institutions. "Indigenous knowledge" and "popular participation" are examples of concepts that have become increasingly prominent in the debate (Hyden 1996: 92). This calls for a bottom-up approach, obligating the churches to play an active part in the establishment of their interests and not always to expect government to fulfil them.

The relationship between political parties and the churches also supports the constructive role that the churches can play in the development of democracy. Fine's identification of the area where the neglect of state and state-centred democracy becomes clear is that of the political party. The underlying assumption of much of the South African literature is that political parties have failed to broaden democracy; that they all too easily evolve into oligarchic bureaucracies pursuing votes and, when in power, govern from above (Glazer 1997: 20). By contrast, civil associations are esteemed as dynamic grassroots organs — an assessment, according to Glazer, not altogether without truth, since social movements can mobilise grassroots networks of supporters around clearly defined issues of principle, whereas parties often appeal to unconvinced or peripheral supporters by making trade-offs over the heads of party activists (Glazer 1997: 20). However, the political party still plays certain roles which civil associations can not, for example, the aggregation of diverse demands into coherent programmes of government (Glazer 1997: 20). The view that the political party itself in fact forms part of civil society is central to a vibrant and effective democracy. The political party thus need not always be synonymous with a failure to broaden democracy because of its evolvement into an oligarchic bureaucracy.

Regarding the question of whether political parties should be considered part of civil society, Mouzelis (1995: 226) states that there are theorists on either side of the question (as well as those who distinguish between the state, civil society and political society and locate the parties in the category of political society). Although there may be differing views on this, it is proposed that political parties, particularly

in democratic parliamentary contexts, will be considered the major organisational means for articulating civil society's interests with the state. Churches can participate actively in collaboration with political parties that represent their values, morals and even religious systems. This insight forms part of the nucleus of the dynamics of civil society, in that the structures of civil society involve mutual co-operation and sharing with each other as well as with other relevant structures.[9] Consequently, civil society (which is an acceptable secular concept) qualifies the Christian political party, in close partnership with the churches, to take part in societal and political leadership. The secular acceptance of the relevance of the concept of civil society, a concept which includes the Christian political party as well as the churches, allows for active participation by the institutions mentioned for the manifestation of an effective democracy and consequent constitutionalism. Limiting the active role of the churches in politics (via the relationship between the churches and the political party) would in effect result in a contradiction within the secular understanding of democracy.

Civil society also occupies an integral position in the development of social capital, which plays an important role in any democratic dispensation. This concept refers to the normative values and beliefs that citizens share in their everyday activities; what Tocqueville referred to as "habits of the heart and mind". These habits provide reasons and design criteria for all sorts of rules. Hyden states that it would be hard to imagine that constitutional arrangements, laws and regulations would work without being embedded in, and reflecting, the particular values and norms upheld by the groups and communities which make up a given society. In this context, Hyden (1996: 92) states that civil society should be viewed as the forum in which these habits of the heart and

9   An example in the South African context is the African Christian Democratic Party (ACDP). The ACDP Commitment states: "The ACDP acknowledges God as the Sovereign Creator of the universe, who has entrusted to humanity the right and responsibility to rule over the affairs of the world. The ACDP believes in a constitutional state that promotes Christian moral values and as such rejects the concept of South Africa as a secular state. We are committed to raising a new generation of God-fearing leaders of integrity, dedicated to serving the nation." Should such a political commitment not interest the churches in South Africa, and require their support?

mind are nurtured and developed. It is thus clear that civil society, as a forum for the representation and activity of particular values and norms, is enriched via the churches. The role that civil society plays in the development and maintenance of a vibrant democracy is therefore an important one and the churches in South Africa, as representative of a significant section of the population, have an integral part to play in this.

2.2 The legislature and local government

The law as a prescriptive medium in a constitutional state acts as to embody and protect fundamental values. It is expected to reflect the ideological and thus the moral values of the society over which it has jurisdiction. The role of the churches in the shaping of such law, as well as their participation in the critical debate concerning such law, is of fundamental relevance. The provision for effective public participation in the legislative processes in South Africa strongly supports the relevance of civil society. Houston (2001: 56) states that public participation in the legislative process is essential for long-term democratic stability. Public participation promotes legitimacy as well as public support for legislation and government policies, thereby ensuring democratic stability. In this regard, civil society, and therefore the churches, has an important role to play via mechanisms such as lobbying, petitions and public hearings. Houston (2001: 56) emphasises that lobbying is used by organised groups in civil society to present well-reasoned arguments to targeted decision-makers. In fact, sections 59 and 72 of the South African Constitution charge the National Assembly and the Council of Provinces respectively with the responsibility for facilitating public participation in the national legislative process, and the national legislature has even established the Public Participation and Information Section for this purpose. Section 118 of the Constitution also enjoins provincial legislatures to facilitate public involvement in the legislative processes (Houston 2001: 57).

This is an open invitation to the churches to become more involved in the legislative processes. However, it is important to note that if they are to have any real impact on the decision-making processes of the government, some knowledge of where and how such decisions are made is important, as is an understanding of the mandate and responsibilities granted by the Constitution to each sphere of government. The

churches need to disseminate this knowledge at the congregational level, in order to do this the clergy need to be properly educated regarding the decision-making processes. Unfortunately, the theory differs from the practical situation. At present a number of common problems face South African legislatures as they seek to draw the public into their work. The links between public participation processes and avenues and shared responsibilities lead to confusion, while most legislatures still have to clarify the aims of their programmes. The weaknesses in the links between the public and the legislatures are reflected by worrying trends in the way that people perceive legislatures (Murray & Nijzink 2002: 129). However, even in this regard the churches can play an active role.

Local government, understood as a second or third level of government deliberately created to give its members a sense of involvement in the political processes that control their lives, also involves civil society and the consequent relevance of the churches. Upon investigation into participation and representation in local government, the importance of civil society in its development becomes clear. In addition, local government, viewed as decentralised political decision-making and management, is the level of democracy that is closest to the people (and the churches) and allows the local populace to participate actively in affairs which affect them directly. Consequently, democracy is experienced and practised more directly and immediately at the local than at any other level. But is local government *per se* enough? In this regard, civil society is required to assist in the direct citizen participation in decision-making which is imperative for local democratic governance. Nel (2000: 66) states that in order to give effect to "people-centred" development, local authorities need to foster and maintain ongoing relationships with the organs of civil society. In fact it is the responsibility of civil society to remind government of its obligation to assist in establishing and maintaining these ongoing relationships. Nel (2000: 66) adds that the advantage of such relationships is that NGOs often understand the problems and needs of local communities and can suggest more flexible and innovative ways of meeting their needs. The same can be said of the churches, especially in view of Cochrane's (1997: 12) comment that the churches comprise the one sector of civil society that reaches into virtually every historically disempowered community in South Africa. The churches, like many NGOs, also understand the

problems and needs of local communities. Therefore, there is a continuous integration between local government and civil society; the development of the one presupposes the presence of the other. De Visser (2002: 41), in the context of an institutional framework for developmental local government, refers to sections 152 (1) (a) and (e) of the Constitution of South Africa,[10] stating that both of these sections are informed by the establishment of a democratic dispensation for local government, resting on the concepts of representation, accountability and people-centred governance. According to De Visser (2002: 41), the involvement of communities and community organisations in local government, and local governments' responsibility to encourage and facilitate such involvement, form part of this democracy. Therefore the churches, as part of civil society and as representative of group interests, should make active use of these structures.

The increasing importance of local government and empowerment at a local level also serves to emphasise the necessity for civil society. The White Paper on Local Government (RSA 1998: 33) emphasises the importance of integrated development planning, stating that municipalities face immense challenges in developing sustainable settlements. To meet these challenges, municipalities will need to understand the various dynamics operating within their area, develop a concrete vision for the area, and formulate strategies for realising and financing that vision in partnership with other stakeholders. Building local democracy is a central role of local government, and municipalities should develop strategies and mechanisms to engage continuously with citizens, business and community groups. In this context, civil society (including the churches) has an important role to play in meeting the challenge of improving the quality of life of local communities. Conversely, local government needs the support of civil society (and the churches) in order to understand the various dynamics operating within its area. The White Paper on Local Government (RSA 1998: 98) also refers to the importance of partnerships with community-based organisations and non-governmental organisations (including the churches).

---

10   Which deals with the objects of local government: to provide democratic and
     accountable government for local communities, and to encourage the involvement
     of communities and community organisations in the matters of local government.

Civil society's supportive role in local government also finds new meaning in the context of the concept of community government. In this regard, Stewart (1995: 253) states that if one abandons the assumption that the primary role of local authorities is to act as agencies for the administration of a series of separate services, then a new basis for the future of local government can be explored. Stewart (1995: 253) adds that because "local government" is associated with this assumption, the phrase "community government" can be used to identify a new role. From this emanates the insight that the local authority seeks to provide services not to the public, but for the public and with the public. In this regard, the barriers that surround the local authority have to be challenged, and the responsive local authority looks outward to the community it serves rather than looking inward to the organisation. This implies that the local authority should not merely function via traditional departments, but from decentralised offices with, among others, community groups (Stewart 1995: 254). Therefore, this "new" association of local government with "community government" implies a closer relationship between local government and civil society. The active role that civil society can play in the context of local government is qualified by the attractive characteristics of local government. Local authorities are built on a scale in which change can come relatively easily. They can also be closer, both geographically and organisationally, to their citizens, as well as to local institutions such as the churches, which can thus more readily be involved in the choices (and expression of grievances) necessary for change (Stewart 1995: 257).

2.3 The judiciary

The role of organised civil society in constitutional litigation is inviting to the churches in South Africa. Although participation by churches regarding constitutional litigation has been rather poor, due regard needs to be paid to the existing potential for such participation. Regarding standing,[11] the South African Constitution[12] provides two

11 "Standing" concerns whether someone who approaches a court is a competent person to present the matter to the court for adjudication.

12 These two mechanisms form part of Section 38 of the South African Constitution which states: "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened,

unique mechanisms which civil society (as representative of group interests) can use to take a constitutional matter to Court. Firstly, this can be done by way of acting as a member of a group or class of persons affected by a specific case (class action litigation). Secondly, persons acting in the public interest can also approach the courts regarding a constitutional matter. De Bruin (2003: 134) states that class actions and litigation in the public interest received emphasis in South Africa during the early seventies.[13] This emphasis formed part of a worldwide movement to ensure optimal access to the judiciary. Class action is in fact a method to obtain a power base for litigation, where the emphasis is also on litigation with regard to the rights of groups (De Bruin 2003: 134).[14] Therefore, the churches need to take note of these channels and

and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are — (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and (e) an association acting in the interest of its members". It is important to note that this only applies in cases where an infringement of or a threat to a right in the Bill of Rights is alleged. This implies that the section will not apply when a provision in the Constitution that is external to the Bill of Rights is violated or threatened. This gives civil society (and therefore the churches) good standing regarding the provision of protection via the Bill of Rights. Section 38 does not apply when the Bill of Rights is indirectly invoked in terms of section 39 (2) of the Constitution, that is, to support an argument for the development of the common law or the interpretation of a statute so that it conforms to the Constitution (De Waal *et al* 2001: 82-3).

13 For a distinction between class actions and litigation in the public interest, see De Bruin (2001: 62-3). According to De Bruin (2001: 63) actions in the public interest involve legal action that "aims to defend important social values and entities", while class actions "specifically claim legal aid to the advantage of members of a group".

14 Unfortunately, there is to date no statute that serves as a guideline for class actions or actions in the public interest. All that is currently available are three related documents, namely: "The recognition of a class action in the South African law" (Assignment 57, Project 88); "The recognition of class actions and public interest actions in South African law" (Report, August 1988), and the Bill on Actions in the Public Interest and Class Actions (Republic of South Africa, 1998). For more on this see De Bruin 2003.

become involved in matters pertaining to group interests and the public interest. Another means of access to the court, more specifically the Constitutional Court, is found in the Constitutional Court Rules, which permit a person with an interest in a matter before the Constitutional Court and who is not a party in the matter to be admitted as an *amicus curiae* (De Waal *et al* 2001: 119). An *amicus curiae* assists the court by providing information or argument (usually by means of written submissions but also via oral submissions) concerning questions relating to law or fact. The *amicus* has no direct interest in the outcome of the case brought before the court. However, the *amicus* can have an interest in the case at hand (or can be a source of expertise on the matter relevant to the case being addressed), and can enter the proceedings either voluntarily or be requested by the court to urge a particular position.[15] This allows organised civil society (and therefore the churches) to intervene in a case and present arguments before the court (Jagwanth 2003: 15).[16] According to Jagwanth (2003: 16), public interest liti-

15 See *Hoffmann v South African Airways* 2000 (11) BCLR 1235 (CC). More specifically, the procedures for admission to the court are the following: First, the prospective *amicus* may seek written permission from all the parties in the matter and on terms and conditions agreed by all parties. Once permission has been obtained the prospective *amicus* will be admitted by the Court, subject to any specific directions made by the President. The second manner for obtaining admission is where permission has not been sought or obtained from the other parties. In such cases a direct application can be made to the President of the Constitutional Court for admission. Allowance is also made by Uniform Rule 16A for an *amicus curiae* to be admitted to proceedings before the High Court (De Waal *et al* 2001: 119-20).

16 Some of the South African Constitutional cases that reflect the application of this principle, either via intervention in, or initiation of litigation proceedings, are: *S v Makwanyane* 1995 (6) BCLR 665 (CC) — the Society for the Abolition of the Death Penalty; *Christian Lawyers Association of South Africa v Minister of Health* 1998 (11) BCLR 1434 — Christian Lawyers Association; *Christian Education of South Africa v Minister of Education* 1998 (12) BCLR 1449 (CC) — Christian Education of South Africa; *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1998 (12) BCLR 1517 (CC); *National Coalition of Gay and Lesbian Equality v Minister of Home Affairs* 2000 (1) BCLR 39 (CC) — National Coalition for Gay and Lesbian Equality; *Christian Education of South Africa v Minister of Education* 2000 (10) BCLR 1051 (CC) — Christian Education of South Africa; *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC)

gation strategies and intervention in courts by organised civil society
has resulted in tremendous victories for disadvantaged groups in other
parts of the world — most notably in India and Canada. In addition,
both the Supreme Court of Appeal and the High Court of South Africa
have jurisdiction to hear constitutional matters and therefore these courts
can also be approached by civil society (including the churches).[17]

The important role that civil society can play via the South African
judiciary is reflected in *Treatment Action Campaign v the Minister of Health
and others*.[18] The Constitutional Court's judgement in this case may
be a turning point in relations between government and civil society.
Budlender (2002: 17) reports that in the early days of democratic go-
vernment, civil society was relatively quiescent, as a result of finally
having a government chosen by the people. Many leaders adopted po-
licies for which civil society organisations had campaigned. Unfortu-
nately, according to Budlender, the new government made certain com-
promises, created programmes it did not implement effectively, and
made mistakes. As the government gradually became more confident,
it became less open and responsive to the views of others. The dispute
over the prevention of mother-to-child transmission of HIV is the
first matter since 1994 in which civil society has succeeded in a direct
challenge to the government on a major policy question (Budlender
2002: 17). According to Budlender (2002: 17), the Treatment Action
Campaign built a strong alliance with key pillars of civil society —
the trade unions, the churches and the media — thus creating a genuine
social movement and showing how the Constitution, which represents

> — Community Law Centre; *Hoffmann v South African Airways* 2000 (11) BCLR
> 1211 (CC) — AIDS Law Project; *Moseneke v Master of the High Court* 2001 (2)
> BCLR 103 (CC) — Women's Legal Centre; *Mohamed v President of the Republic
> of South Africa* 2001 (7) BCLR 685 (CC) — Society for the Abolition of the Death
> Penalty; *Treatment Action Campaign v Minister of Health* (case no 21182/2001, as
> yet unreported) — Treatment Action Campaign.

17 Taking into consideration section 167 (4) of the Constitution regarding matters
   in which the Constitutional Court has exclusive jurisdiction. More specifically,
   regarding the jurisdiction of the Supreme Court of Appeal and the High Court
   (in constitutional matters), see sections 168 and 169 (respectively) of the South
   African Constitution. Obviously, church participation in the courts on non-
   constitutional matters must also be taken into account.

18 Case no 21182/2001, as yet unreported.

the best ideals and values of South Africa, can be a powerful tool for holding government to these ideals and values.

Another example of the important role that civil society can play in the South African judiciary (and one in which Christian interest is more directly involved) is *Christian Lawyers Association of South Africa v Minister of Health*.[19] This case dealt with the Choice on Termination of Pregnancy Act 92 of 1996, which permits abortion on request by a woman during the first 12 weeks of pregnancy; for medical or social reasons in the 13th to 20th week of pregnancy; and after the 20th week, to save the life of the woman or to prevent the "foetus" being born malformed or injured. This Act was challenged on the basis that the word "everyone", used in the right-to-life clause in the Constitution of South Africa[20] includes the "foetus" and therefore does not permit the "termination" of the "foetus". The High Court rejected the challenge on the basis that the word "everyone" excludes a "foetus". Irrespective of the outcome, this case exhibits the potential of an institution, such as the Christian Lawyers Association of South Africa, to become involved in the judicial process and to argue via constitutional structures for the application of ethical norms.[21] The churches can learn much from this, as they need to become directly involved in such issues of moral and religious importance. The extent to which the churches were in-volved in this opposition to the practice of abortion does not hold too much promise. In issues such as abortion, the gravity of Christian be-liefs means that Christians are morally obliged to proceed in public as though their moral beliefs are true, and others should live by them. It

---

19   1998 (11) BCLR 1434 (T).

20   Section 11 of the Constitution of South Africa states: "Everyone has the right to life".

21   The CLA (Christian Lawyers Association of South Africa) recently brought an action related to section 5 (3) of the Choice on Termination of Pregnancy Act of 1996 to the Pretoria High Court. The CLA says that this sub-section is in-consistent with the Constitution and therefore cannot stand. The CLA submits that the best interests of an adolescent girl who suddenly finds herself pregnant require that she obtain the best counselling available from parents, guardians, friends and professionals. For more details, see the CLA's website at <http://www.cla.org.za/index.php?id=24>. Unfortunately, the Court found that a woman's constitutional right to terminate her pregnancy extends to girls under the age of 18. Where are the churches in all of this?

is not merely a matter of preference to say that pregnant women should not have abortions. If Christians regard the moral content of their religion as true, then actions such as abortion are a serious public affront to God, which is no small matter. Moral integrity demands that we do not say to one another in the church "abortion is an abomination to God", and yet vote in such a way as to permit these actions because we don't want to impose our morality on others. In the words of Peoples (2003: 60-1):

> Inasmuch as legislation makes moral assumptions, morality will be imposed on all if any laws exist. The question is not whether such an imposition will be made, it is what morality will be legislated? If we believe that God's moral standards are right, and if we believe that we can, to some extent at least, know what these standards are, then there is no apparent reason why Christians should not proceed on this basis and seek to see Christian values enshrined in law.

It is via the concept of civil society that these Christian values can be enshrined in the law and consequently respected in the public domain.

The role of the churches in the constitutional activity of South Africa must also be understood against the background of the relationship between religion (also to be understood as a representative concept of the churches) and public activity. In this regard, the South African judiciary's approach requires attention. In *Christian Education South Africa v Minister of Education*,[22] the role of religion in a democratic society received some positive attention. In its judgment, the court (in the person of Judge Sachs), stated that religion is not always merely a matter of private individual conscience or communal sectarian practice, adding:

> Certain religious sects do turn their back on the world, but many major religions regard it as part of their spiritual vocation to be active in the broader society. Not only do they proselytise through the media and in the public square; religious bodies play a large part in public life, through schools, hospitals and poverty relief. They command ethical behaviour from their members and bear witness to the exercise of power by State and private agencies; they promote music, art and theatre; they provide halls for community activities, and conduct a great variety of social activities for their members and the general public. They are part of the fabric of public life, and constitute active elements of the diverse and pluralistic nation contemplated by the Constitution.[23]

22   2000 (10) BCLR 1051.
23   2000 (10) BCLR 1068.

In *Prince v President of the Law Society of the Cape of Good Hope and Others*[24] the Constitutional Court (again in the person of Judge Sachs) stated:

> One cannot imagine in South Africa today any legislative authority passing or sustaining laws which suppressed central beliefs and practices of Christianity, Islam, Hinduism and Judaism. These are well-organised religions, capable of mounting strong lobbies and in a position materially to affect the outcome of elections.[25]

Therefore, the Constitutional Court of South Africa accepts the fact that the churches play an important role in public life. In fact, the Constitutional Court acknowledges that a threat to the freedom of any one of the mainstream religious groups would be seen as a threat to the freedom of all.[26] Judge Sachs also stated that it is sometimes difficult to separate religious and secular activities, adding that:

> While certain aspects may clearly be said to belong to the citizen's Caesar and others to the believer's God, there is a vast area of overlap and interpenetration between the two[27]

and

> [t]he answer cannot be found by seeking to categorise all practices as religious, and hence governed by factors relied upon by the appellant, or secular, and therefore controlled by the factors advanced by the respondent.[28]

---

24 2002 (3) BCLR 231.
25 2002 (3) BCLR 289.
26 2002 (3) BCLR 289. In the Court's comparison between the Rastafarian religion and the mainstream religious groups in South Africa, the Court made it clear that a distinctly odd practice such as that exhibited by the Rastafarian religion would more likely express itself as a commonality of opposition than as a concentration of support from the mainstream religions that have well-established confessions (2002 (3) BCLR 289). In fact, the Court went so far as to say: "Indeed, the Rastafari might receive more tolerance from non-believers to whom all religions are equally strange, than from members of well-established confessions, who might have difficulty in taking the Rastafari belief system seriously as a religion at all (2002 (3) BCLR 289). This is subtly indicative of the Constitutional Court's respect for the mainstream religions of South Africa.
27 *Christian Education of South Africa v Minister of Education*, 1068.
28 *Christian Education of South Africa v Minister of Education*, 1068-1069.

Although the concept of religion in itself may be problematic,[29] and there is little probability of agreement on this "vast area of overlap", cognisance must be taken of the Constitutional Court's recognition of the integral role that religion plays in the public sphere. By implication, therefore, the churches should be recognised as important participants in public matters.

3. Conclusion

Although the history of the role played by the churches in public matters in South Africa may be rather depressing and contentious,[30] post-1994 South Africa has enjoyed a constitutional dispensation in which all the churches can participate actively in order to promote the values and interests which they represent. Although they have indeed contributed and participated, there is room for improvement. The concept of civil society provides a theoretical leverage for, on the one hand, active participation by the churches in the public sphere, and on the other, serious governmental consideration of the values and interests repre-

29 In other words, the definition and understanding of the concept "religion" is open to numerous variations and diverse debate. Although much can be said regarding this issue, a brief comment will suffice for the purposes of this investigation. "Religion" often refers to the traditional religions such as Christianity and Islam, where worship of an external god is practised (and where specific structures are established and exclusively reserved for worship, such as church buildings). On the other hand, "religion" can be understood as referring to any type of presuppositional view of reality, which not only includes the religions mentioned, but also secular religious movements such as atheism, and the New Age movement. The proposal by Van der Schyff (2002: 291) that "flexibility [...] must not be overstretched, as has been the case in American jurisprudence, where Ethical Culture and Secular Humanism have been recognized as religions", is an example of the view that only the more Deistic and traditional religions are to be understood as religions, not secular beliefs such as humanism. This is not necessarily correct and requires further substantiation. For additional examples of the various interpretations of "religion" see Van der Schyff 2002.

30 This is said with due regard to the important role played by the "English-speaking churches", as represented by, for example, the South African Council of Churches (SACC) and the South African Catholic Bishops' Conference (SACBC) in the establishment of human rights in South Africa. In this regard, see Draper (1997: 50-2), as well as Phiri (2001: 119-26).

sented by the churches. To deny this understanding would be to oppose the very values that the Constitution itself supports and protects.

Civil society, an accepted concept within contemporary constitutional theory, needs to be taken note of (and seriously and effectively applied) by the churches in South Africa. The South African political and legal domain accommodates, to a certain extent, the effective development of church interests via this concept. Accompanying this insight is the concept of religion and the free exercise thereof.[31] Although the concept of civil society provides much assistance for public participation by the churches, it cannot be dealt with separately from those principles supporting constitutionalism — inherent in the application of civil society is the application of the values that are inherent in any constitutional state; an insight which forms the nucleus of this investigation. In fact, the concept of civil society can be an additional yet inseparable value attached to the already existing values underlying South African society, namely democracy, freedom, the rule of law, and human dignity. There is therefore an indissoluble connection between civil society, the churches, constitutionality, and the freedom of religion. In fact, the concept of civil society strengthens the bond between the churches, constitutionality and freedom of religion while giving added clarity and depth to constitutionalism.

Although mention has been made of the positive constitutional aids towards the furthering of church or religious interests, there are also negative aspects pertaining to the status of religion in South Africa and the rest of the world. Contemporary support for the separation between church and state, coupled with the view that the state is a neutral structure, causes some frustration. Defining religion within the secular legal sphere is complex.[32] There is also the view that religion is to be separated from the other sciences (including politics and jurisprudence), with the dominant worldviews in this regard belonging to secularism.[33]

31 Section 15 (1) of the Constitution of South Africa states: "Everyone has the right to freedom of conscience, religion, thought, belief and opinion".

32 Cf Freedman 2000: 99-100, n 3.

33 However, the impact of religion and its connections to civil society needs to be taken seriously. Religious organisations have developed the leadership, the communications technology, and the financial base with which to perpetuate themselves in the foreseeable future. Their fortunes may wax and wane, depending on

In addition, the jurisprudential insights on the courts' application of the positivist approach is rather worrying. Is morality to be included in decisions by the judiciary, or not?[34] Another negative factor is that there might be inter-denominational conflict and disparity regarding certain doctrinal and moral issues.[35] Then there is also the issue of the churches' exercise of their participatory potential in the public sphere. In other words, what formula should be used to get the churches into an effective mode of operation in which they apply their potential as part of a dynamic constitutional structure? What must be done in order to have the churches put into practice their theoretical insights relating to the concept of civil society? Another disturbing factor is that the role of the churches in Africa is uncertain. In this regard Phiri (2001: 137) states:

> The ending of state repression and the activation of civil society appears to have made political involvement by churches redundant. In South Africa, for instance, some have wondered whether the churches will be 'confined to being ignored and a peripheral force'. This fear is strengthened by the departure of many church leaders from the

the political and economic climates of particular societies, but they are unlikely to recede willingly from articulating their claims. In the African context, the churches have contributed much to politics and the development of a democratic culture. In this regard see Phiri (2001: 119-26 and 133-6). Also see Wuthnow (1996: 3-5) for a synopsis of the important role of religion (the churches) in many other parts of the world.

34   In the South African context this is especially true regarding issues closely related to religious interests, such as abortion. In this regard, the judgment of *Christian Lawyers Association of South Africa v Minister of Health* 1998 (4) SA 1113, clearly supports the positivist approach. In this regard, Judge McGreath stated: "Regarding the question whether the term 'everyone' or 'every person' as used in the Constitution of South Africa applies to the unborn child from [the] moment of conception does not depend on medical or scientific evidence as to when the life of a human being commences and the subsequent development of the foetus up to [the] date of birth. Nor is it the function of this Court to decide the issue on religious or philosophical grounds." Compare this view with the judgment of Judge H R Rabie in the Appellate case of *S v Williams* 1986 (4) SA 1188 A, where it was mentioned that religion and public opinion are not necessarily excluded from the determination of when life ceases.

35   On the other hand there is surely much common ground in this regard. Therefore, the potential threat of a clash of interests or values not be a source of despair regarding the churches' potential to present their case.

SACC. Frank Chikane, for example, left his leadership position in the SACC in 1994, claiming the victory over apartheid was a 'mission accomplished'. The result is that the SACC is 'no longer as publicly prominent as it was during the struggle'.

Although these problematic issues somewhat limit the role of Christian interests in the public sphere, the concept of civil society, in conjunction with constitutionality and democratic values, nevertheless provides a ready basis for use. In conclusion, it is important for the churches, in their exercise and application of Christian interests in the public sphere, to be aware of the risk of being regarded by secular institutions, including government, as mere instruments for the achievement of common interests, such as the alleviation of poverty. In other words, the churches need to emphasise their ultimate mission which is, simply put, the glorification of God and adherence to his Word. They also need to demand the necessary respect from the secular sphere. Phiri (2001: 132) rightly states that the churches must resist being made irrelevant by the political parties and other movements that have mushroomed in Africa, and must focus their resources on teaching and challenging the members and leaders of these organisations to integrate Christ's law into their political practice. In several public appearances and activities of the churches, too little is exhibited regarding the expression of loyalty to God. Any pressure on the churches to deny or sacrifice this exposure and loyalty within the public sphere needs to be diplomatically yet ardently opposed. In fact, it would constitute a gross violation of the rights protected by the Constitution if this were to be denied by government.[36] It would also be a violation of the

36 In this regard Rev Molefe Tsele (SACC General Secretary) in a breakfast briefing to the Diakonia Council of Churches (Durban, 30 October 2001) stated: "One of the sad things we see today is how those in power, the ruling party in particular, tend to instrumentalise the Church. The Church is generally seen as a nuisance that must be appeased by hand-outs. I often get hot under the collar when I see Church leaders treating political leaders like African royalty, sometimes even interrupting a worship service because the Premier or a Cabinet minister has arrived [...] The Church is seen as a power that comes in handy when they want to address the masses to propagate their party manifesto. Otherwise, they have no use for us. Some have simply no respect for the Church — possibly for good reasons, given that we often fail to take ourselves seriously, not merely as an opposing power, but as people with a particular mission. One Cabinet

rights and status attached to the universally accepted understanding of civil society. The churches' theology includes a public theology dealing with politics, culture, economics, ecology, ethics and education. This public theology participates in the public life of society and interferes critically and prophetically because it views public affairs as part of God's domain. It is via the concept of civil society that the church can zealously guard its independence and hold all spheres of society accountable for fulfilling the functions ordained to them by God.

Minister is known to joke about churches in ANC circles, holding the view they have nothing to offer. The well-known attack on churches by Kader Asmal […] will not be forgotten easily by many Christians […] We need to mention of course that Minister Asmal later tendered an apology for his unfortunate remarks" (Tsele 2001: 2).

Bibliography

BRATTON M

1994. Civil society and political transitions in Africa. Harbeson *et al* (eds) 1994: 51-81.

BRYANT C G A

1995. Civic nation, civil society, civil religion. Hall 1995: 136-57.

BUDLENDER G

2002. A paper dog with real teeth. *Mail & Guardian* 12-18 July: 17.

CIVICUS INDEX ON CIVIL SOCIETY

2001. Two commas and a full stop. South Africa Country Report. Co-operative for Research and Education (CORE) and the Institute for Democracy in South Africa (IDASA). Johannesburg, South African NGO Coalition (SANGOCO), October.

COCHRANE J R

1997. Theological reflection on public policy. *Journal of Theology for Southern Africa* 97 (March): 1-15.

COMMUNITY AGENCY FOR SOCIAL ENQUIRY (CASE)

1998. Civil society and the state in South Africa: past legacies, present realities, and future prospects (full report), August 1998, 1-64. <http://www.case.org.za/htm/civilsaf.htm>.

DE BRUIN J H

2001. Groepsgedinge met spesifieke verwysing na ondernemingsregtelike toepassings. Ongepubl Ll.M-verhandeling. Bloemfontein: Universiteit van die Vrystaat.

2003. Groepsgedingvoering — die voorstel van die Suid-Afrikaanse Regskommissie vir die sertifisering van 'n groepsgeding. *Journal for Juridical Science* 28(1): 133-53.

DE VISSER J

2002. *The institutional framework for the development of local government: making good on the promise of development*. Konrad-Adenauer-Stiftung Seminar Report, Constitution and Law IV: Colloquium on Local Government Law, 2002, No 14.

DE WAAL J, I CURRIE & G ERASMUS (eds)

2001. *The Bill of Rights handbook*. 4th ed. Lansdowne: Juta.

DRAPER J

1997. Church-state conflict in the Book of Acts. *Journal of Theology for Southern Africa* 97: 39-52.

FARLAM P

1998. The ambit of the right to freedom of religion: a comment on *S v Solberg*. *South African Journal of Human Rights* 14: 298-326.

FREEDMAN W

2000. The right to religious liberty, the right to religious equality, and section 15(1) of the South African Constitution. *Stellenbosch Law Review* 2000(1): 99-114.

GERNTHOLTZ L

2004. Age and the right to choose. *Mail & Guardian* 4-10 June: 33.

GLAZER D
   1997. South Africa and the limits of civil society. *Journal of South African Studies* 23(1): 5-25.

GRAHAM P & R MEYER (eds)
   2001. *In conversation*. The Civil Society Conference, Civil Society Initiative, Johannesburg: IDASA.

HALL J A (ed)
   1995. *Civil society. Theory, history, comparison*. Cambridge: Polity Press.

HARBESON J W, D ROTHCHILD & N CHAZAN (eds)
   1994. *Civil society and the state in Africa*. Boulder: Rienner.

HASSIM S & A GOUWS
   1998. Redefining the public space: women's organisations, gender consciousness and civil society in South Africa. *Politikon* 25(2): 53-76.

HOUSTON G
   2001. *Public participation in provincial legislative processes in South Africa*. Konrad-Adenauer-Stiftung Seminar Report, Provincial Government in South Africa, 2001, No 7.

HYDEN G
   1996. The challenge of analysing and building civil society. *Africa Insight* 26(2): 92-106.

JAGWANTH S
   2003. Management of social transformations. Discussion Paper 65, Democracy, Civil Society and the South African Constitution: Some Challenges. Paris: UNESCO.

LIEBENBERG I
   1997. Consolidation of democracy in Africa: inhibitors on civil society. *African Security Review* 6(4): 41-48.

MEYER R
   2001. Die rol van die kerk binne die burgerlike gemeenskap [an overview of a lecture delivered by Roelf Meyer]. Kerk en Staat Konferensie, Stellenbosch, 24 Oktober.

MOUZELIS N
   1995. Modernity, late development and civil society. Hall (ed) 1995: 224-9.

MURRAY C & L NIJZINK
   2002. Building representative democracy. South Africa's legislatures and the constitution. Cape Town: Parliamentary Support Programme.

NEL H
   2000. Engaging the community in the conception of development projects in the local government sphere. *Politeia* 19(2): 48-68.

OXHORN P
   1995. From controlled inclusion to coerced marginalisation: the struggle for civil society in Latin America. Hall (ed) 1995: 250-77.

PEOPLES G
   2003. The role of biblical law in contemporary government: theonomy in evangelical dialogue. Unpubl MTh thesis. Otago: University of Otago.

Perez-Diaz V
>The possibility of civil society: traditions, character and challenges. Hall (ed) 1995: 80-109.

Phiri I
>2001. *Proclaiming political pluralism. Churches and political transitions in Africa*. Cape Town: Praeger Publishers.

Post R C & N L Rosenblum (eds)
>2002. *Civil society and government*. Princetown: Princetown University Press.

Republic of South Africa (RSA)
>1998. White Paper on Local Government. Pretoria: Ministry for Provincial Affairs and Constitutional Development.

Stewart J
>1995. A future for local authorities as community government. Stewart & Stoker (eds) 1995: 249-67.

Stewart J & G Stoker (eds)
>1995. *Local government in the 1990s*. Basingstoke, Hampshire: Macmillan.

Tsele M
>2001. *The church must once again become a 'nuisance' to the nation*. Durban: Diakonia Council of Churches.

Van der Schyff G
>2002. The legal definition of religion and its application. *The South African Journal* 119(2): 288-94.

Wuthnow R
>1996. *Christianity and civil society. The contemporary debate*. Valley Forge, Pennsylvania: Trinity Press International.