

https://dspace.org/

The role of donors, if any, in advancing transformation of the Public Interest Law Organizations post-apartheid South Africa

Moloantoa, Kedibone

2020
https://hdl.handle.net/10539/30757

Downloaded from a DSpace repository. https://dspace.org/



The role of donors, if any, in advancing transformation of the Public Interest Law Organizations post-apartheid South Africa.

Faculty of Humanities
Master of Art in Critical Diversity Studies
University of Witwatersrand

by

Nancy Moloantoa

Student Number: 1497943

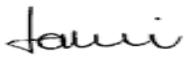
Supervisor: Dr. Haley McEwen

September 2020

This research is submitted to the Faculty of Humanities, University of Witwatersrand, Johannesburg in partial fulfilment of the requirement of the degree of Master of Arts in the field of Diversity Studies.

Declaration

I, the undersigned, declare that this research is my original work. Any ideas in this report that are not my own are acknowledged through proper references and citations. This report is being submitted for a Master of art in the field of Diversity Studies at the University of the Witwatersrand, Johannesburg. No part of this report has been submitted in the past or is being submitted nor will it be submitted in the future for any degree or examination at any other university.



18 September 2020

Student signature **Date**

Acknowledgments

I acknowledge with gratitude the participation of all the research participants in this study to whom this research would not have been possible. Thank you for sharing openly and honestly your lived experiences, expertise, frustrations, hopes, and skepticism in challenging the status quo and towards a more just society for all South Africans.

To Haley McEwen for being patient, thought-provoking, and challenging me to do my best. To my employer and colleagues who have been patient and supported me through this journey.

Abstract

This research explores the role of Private Philanthropy Foundations (referred to here as donors), if any, in advancing race and gender transformation of public interest law organizations (PILOs) post-apartheid South Africa. It is premised on the lack of transformation in the PILOs raised by a cohort of black staff members called the Black Workers Forum. In order to examine the lack of race and gender transformation in the PILOs, the research uses Critical Race Theory, an intersectional lens and Critical Diversity Literacy to unpack how these organizations make sense of themselves as agents of social change. The research analyzes the nature of the relationship between donors and the PILOs that they fund in order to determine how that impacts on the transformation of these organizations. The research also considers how the political climate in South Africa informs donors grantmaking, and whether that climate promotes or impedes race and gender transformation. The research contributes to the emerging need for dialogue and introspection about donors grantmaking processes to go beyond programming support and to co-exist with intra-organizational activities that advance institutional race and gender transformation.

Key terminology: Philanthropy, Public Interest Law Organizations, Social Justice, Decolonization and Transformation.

Table of Contents

Chapter 1: Introduction 1

1.1 Outline of the study 1

1.2 Research purpose and objectives 4

1.3 Research questions 5

1.4 Scope and limitations of the research 6

1.5 Key terminologies 6

1.6 Chapter outline 8

Chapter 2: Literature review 9

2.1 Transformation in South Africa. 10

2.2 Donors 12

2.2.1 The Ford Foundation. 14

2.2.2 The Open Society Foundation- South Africa (OSF-SA) 15

2.2.3 The RAITH Foundation 15

2.3.4 Constitutionalism Fund. 15

2.3 Critical perspectives on philanthropy. 17

2.4 Critical Race Theory. 18

2.5 Critical diversity literacy 21

2.6 Intersectionality: theory and epistemology. 21

2.7 Ignorance contract epistemology 23

Chapter 3: Design and Method 24

3.1 Research methodology 24

3.2 Data sources 25

3.3 Data collection and techniques....26
3.3.1 Semi- structured interviews....26
3.3.2 Participant Observation method....27
3.3.3 Document analysis....28
3.4 Data analysis....29
3.4.1 Critical Diversity Literacy....30
3.4.2 Thematic Analysis....31
3.5 Ethical Considerations....31
Chapter 4: Research data analysis (Findings)....33
4.1 Defining the concept of transformation....34
4.2 Practicing what we preach....39
4.3 Sexual harassment....44
4.4 Diversity, Equity and Inclusion for transformation....48
4.5 New black leaders in the PILOs....52
Chapter 5: Conclusion and recommendation....58
Reference....63
Appendice....71
Appendix A: Participants information sheet....71
Appendix B: Consent form....73
Appendix C: Research questions and Interview schedule for PILOs....74
Appendix D: Research questions and Interview schedule for Donors....75

Chapter 1: Introduction

1.1 Outline of the study

The Private Philanthropy Foundations have played a significant role in South Africa's efforts to build a democratic state pre and post democracy. During the apartheid era, the Private Philanthropy Foundations (to be referred to here as donors) were among numerous benefactors that were instrumental in supporting Civil Society Organizations (CSOs – to be referred to here as grantees) to challenge the apartheid state to bring about democracy.

Throughout the post-apartheid period, donors continued to support CSOs with a new mandate to advance democratic principles and hold government accountable (Habib and Taylor, 1999). Apart from democratic concerns, when the newly elected government was unable to adequately meet the needs of its marginalized constituency, to deliver services, philanthropy provided resources needed to supplement the provision of services on behalf of government (Payton and Moodly, 2008, p.34). All these efforts ensured a prominent position and what Le roux and Femey (2015) see as a crucial role for philanthropy in "in maintaining a healthy democracy and in representing the interest of different groups" through its grantmaking process.

The support and gains of the philanthropic sector's grantees are well documented. Researchers such as Habib & Taylor (1999); McClymont and Golub, (2000) and Stacey & Aksartova (2001), wrote about how the U.S foundations supported South Africa's civil society to usher democracy; Hearn (2002) surfaced how donor funding shaped democracy and influenced the cause of CSOs organizations; Reith (2010) report revealed how donors set the agenda, and conditionalities to giving. Dlamini's (2008) in her report, goes further to interrogate donor and grantees relationships and reveal that, not all grantees are passive recipients of funding and have "managed to sustain good relationship with donors" to maintain their autonomy (p. 32, p.52).

Further documentation included, donor, commissioned reports and books detailing the successful work of donor grantees, for example, McClymont and Golub (2000) provides case studies of the Ford Foundation grantees work in the legal sector; in the book "*Many Road to Justice: the Law - related work of Ford Foundation grantees around the world"*, the Atlantic Philanthropies

published a book to capture its public interest litigation work in South Africa (Budlender, Marcus & Ferreira, 2014) and Raith Foundation, commissioned multiple reports notable for this research was the report “Understanding the Social Justice Sector in South Africa”, which interrogates and outlines the importance of the social justice organizations. In another collaborative donor-funded research, the “Study of Public interest Legal Services in South Africa” (Royston, Clark and Tissington, 2015), the lack of racial transformation in the public interest legal sector emerged. The report, however, did not interrogate the root cause of the identified problem to depth. In its recommendation, the report made a request for donors to support strategies to promote racial and gender transformation.

The literature outlined above supports the lens in which philanthropy and its grantees are seen as important players in the social justice sector, and rightfully so. The main focus to advance democracy has been to build strong and accountable governance institutions, the rule of law, and independent judicial institutions that are transformative, and with the help of philanthropy, CSOs became the advocates and watchdogs of democracy (Habib and Taylor, 1999). However, given the events that took place between 2015 and 2018 in South Africa that exposed a blind spot in the grantees own governance structures and also emerged in the public interest legal sector report. There is a gap in literature that explores the role of philanthropy in maintaining the same democratic principles that it upholds in society within the organizations that they support.

In South Africa, the year 2015 indicated a new era resulting from a nationwide student protest movement against high university fees started under the banner Fees Must Fall. The movement gained prominence globally and continued to 2016. The protests surfaced the issues of race and gender inequalities that persist in South Africa and ultimately called for the higher education system's decolonization. The sentiments inspired by the student's movement created a sense of urgency around the need to have meaningful discourse at the public interest law sector level about donors' role in advancing race and gender transformation of the Public Interest Law Organizations (PILOs) as their grantees. In South Africa, as race and racism continue to define and shape the way of life, including institutional cultures and norms, donors have come under scrutiny as legitimate supporters, advocates, and representatives of social justice. Following the 2015 protests, on August 2016, the Black worker's Forum (BWF) was established to raise and address the lack

of transformation of the Public Interest Law Organizations (PILOs – a component of CSOs) as it relates to the issues of race, racism, gender and power and the impact therefore on black workers. The Forum consists of a post-apartheid generation of predominantly black academics who work for the PILOs. The majority of BWF members were women of African descent. The BWF maintained a need to have meaningful discourse at the public interest law sector level about the lack of transformation and role of donors in advancing the transformation of the Public Interest Law Organizations (PILOs) as their grantee's organizations.

The BWF made demands to the directors of PILOs and the donors of these PILOs (Black Workers Forum, 2016a). The calls by the BWF for transformation of the PILOs were made following numerous years of discussions about the need for transformation, nothing changed, and the sector remained untransformed (Black workers Forum, 2016b). The demands outlined the entrenched challenges and systemic inequalities within the PILOs that can be traced back to oppressive practices and structures of power that were institutionalized during apartheid and colonialism in South Africa, and which continue to shape the sector. The challenges that were delineated in the memorandum of demands included:

- The predominately white leadership in the PILOs that is not representative of the country's demographic,
- The inadequacy of the current leadership in PILOs to address issues that are most prominent for many of the South African black populations such as land redistribution,
- The inherited and discriminatory practices against black workers that are enforced in management systems that do not take into consideration the social context, and the intersection of race, class, gender, ethnicity, sexuality and disability that shape, and are central to the lives of black workers, and
- The complicity of donor agencies that support these organizations and their role in perpetuating discriminatory colonial discourses (Black Workers Forum, 2016a).

The BWF surfaced what Lather (1991, xvii) refers to as "oppositional discourse," a process that seeks to interrogate the dominant power relations within the public law sector, which is necessary in order to go beyond the power relations that foster lack of transformation. In the PILOs, the BWF operated from the margins. According to Hooks (1990), the margins are a space that is perceived as a site of radical possibility, and this is where oppositional discourse of interrogation and

resistance against lack of transformation in the PILOs emerged (p. 149). The oppositional discourse of the BWF was a historical and political moment because it was the first time that the lack of transformation in the sector was surfaced publicly, and the first time that donors were questioned about their role in the transformation of the PILOs as grant-makers.

While donors have traditionally focused on grantmaking practices that support activities of the PILOs to advance social justice in the country, the BWF call attention to the PILOs own internal systems and governance that are discriminatory and untransformed and have not received the necessary attention in the donor grantmaking process. To further elaborate on the lack of transformation in the PILOs, in 2018, sexual harassment allegations and reports were publicized against prominent civil society leaders, several of which were from the PILOs (Mail & Guardian, 2018). The reported cases of sexual harassment further evidenced the internal inequalities that was being reproduced and the abuse of power in the PILOs and donors as supporters of these organizations were critiqued for their reactive and, in some instances, impartial responses to the sexual harassment reported cases (Moetie, 2018).

The establishment of the BWF provides a point of departure and reflection for this research in an attempt to explore and understand whether donors have a role to play in advancing transformation of the PILOs. I interpret this to be that donors do have a role to play. However, there is a need to explore how donors can play that vanguard role from a secondary position. This research will draw on three private philanthropy foundations, namely, the Ford Foundation (FF), Open Society Foundation-South Africa (OSF-SA), and the RAITH Foundation, which are referred to as donors or funders. The focus on these three Foundations is resulting from the history of these donors in South Africa, their vision and mission to promote social justice, and to address inequality and because they are among the prominent donors in South Africa that have provided support to the PILOs. Additionally, rather than focusing broadly on Civil Society Organizations (CSOs), the research will look at PILOs, a sub-group of CSOs, because of their distinguished use of the law and legal service as a primary vehicle for social transformation.

1.2 Research purpose and objectives

According to McClymont and Golub (2000), in South Africa, donors played a pivotal role in supporting PILOs to challenge the apartheid state and to bring about democracy. The success of PILOs and the use of tools and methods of strategic litigation to advance social transformation and democracy with the aid of donors has been well documented and should not be overlooked (Budlender et al., 2014). Given the donor's role in establishing the PILOs, it can be seen that they are positioned to contribute to the national transformation agenda. However, the organizational dynamics within these organizations have arguably been overlooked.

To date, donors continue to provide support to the PILOs despite the lack of transformation raised by the BWF and despite the sexual harassment allegations that were reported in 2018 that further demonstrates the multiples forms of discrimination in the sector. According to Dlamini (2008), there is an assumption that donors are neutral, and the need for them to be separate from the inherent and discriminatory practices in their grantee's organizations enables a ritualistic exclusion of donors from the difficult conversations. There is a lack of research and literature that examines the role of donors in advancing race and gender transformation within Civils Society Organizations in South Africa. The purpose of the research is to explore whether donors reinforce or challenge intra- organizational transformation.

The objectives of this research are:

a. To establish whether donors see themselves as having a role to play in advancing institutional transformation of their grantees at a practical level.
b. To explore emancipatory practices and alternatives that challenge oppressive race and gender narratives within the PILOs.

1.3 Research questions

The question guiding the project is: What is the role of donors, if any, in advancing race and gender transformation in the PILOs in post-apartheid South Africa?

Sub-questions :

Given South Africa's history of colonialism and apartheid, the research addresses the following sub-questions on race and gender transformation of the PILOs:

1. How do donors and PILO leaders define transformation in post-apartheid South Africa?
2. How do donors and PILO leaders think that race and gender transformation should be addressed, if at all, through philanthropy?
3. How do individual donors and PILO leaders perceive their grantee-donor relationships?
4. What are some of the practical ways in which race and gender transformation should be addressed?
5. How do individual life experiences and perceptions of leadership impact on transformation in PILOs?

1.4 Scope and limitations of the research

This research is a mini-thesis. As a result, it is limited because it cannot focus broadly on CSOs that are donor-funded. This limitation has restricted the research to focus on the law-related grantmaking of three donors but, at the same time, distinguishes the role of litigation as a crucial strategy that is needed to achieve social justice. Furthermore, I recognize that in order for PILOs to advance social justice, they use multiple strategies through their various programmes, and likewise, donors, through core or institutional support, fund multiple programmes of the PILOs.

To an extent, the study relies on self-reported data, and as such, it relies on the lived experiences of participants in reporting these data. To the extent possible, data could be verified with other available sources; for example, participants' organisations websites and published newspaper articles.

1.5 Key terminologies

The definitions and description of the key terms used in this research are defined below:

Philanthropy: In the research, the terms' donors' and 'funders' are used synonymously to refer to private philanthropy foundations. The term philanthropy, in its purest form, means to give out of willingly out of goodwill. According to Aina and Moyo (2013), philanthropy can be found in the expression of social and historical context that defines it (p.1). Philanthropy can be felt in the

experiences among social groups, the acts, and forms of which are socially constructed and socially changed. These experiences are informed by how history has shaped the relationships between groups and individuals and consequently, their social positions, access to and opportunities for wealth, as well as material and cultural goods, power, and privilege (Aina and Moyo, 2013).

Public interest law organizations: Public interest law organizations are a component of civil society organizations. They form part of the legal profession -public interest law sector and use the law as a tool for advocacy. The terms' public interest law organizations' and the 'public interest law sector' are used interchangeably.

Social justice: The term social justice has evolved from a narrow focus on the redistribution of wealth to a broader focus on all forms of inequalities. Social justice is intrinsically linked to transformation and is goes beyond accumulation and redistribution of capital (Young, 2011). Thus, in this research, social justice refers to Young's (2011) theory of justice that is liberation from five faces of oppression - marginalization, cultural imperialism, exploitation, violence, and powerlessness Young (P.48-63). Furthermore, according to Freire's (2005), Pedagogy of the Oppressed, social justice should look at the long-term engagement to dismantle old structural systems of oppression and conscientization of society to a system of privilege and oppression.

Decolonization: Delavignette (1977) and Fanon (1966/2001), describes decolonization as a rejection of the white civilization because it is an emancipatory process that seeks to break away from the shackles of the past and re-establishing the power of the previously colonized population. According to Segalo et al. (2015), it is a process of looking within and of undoing oppressive colonial structures from the inside out, and then looking again from the outside-in to self-govern (p. 343).

Transformation: In South - Africa, transformation is a broad and complex concept with multiple meanings depending on the context in which it is used. Thus, transformation has become a floating signifier of social change (Thieve, 2008, pp.209-210). According to Esterhuyse (2003), it is a moral obligation to eliminate past inequalities in order to redress historical disparities. Engdahl and Hauri (2001), describe transformation as a government strategy to bring about a cultural

change through equitable access and opportunities to resources by marginalized members of society. As stated by Schoeman (2010), transformation is a process that enables institutions to adhere to equality and diversity in the workplace. As a process of social change, transformation is intrinsically linked to the Constitution of South Africa. From that perspective, it aims to improve the quality of life for all South Africans, to address racial and gender inequalities to redress past inequalities (Republic of South Africa, 1996). Therefore, in this research, transformation is described as a continuous process that requires an openness of all members of society across races, gender, ethnicity, sexuality to work together. This process of transformation has to take into account the history of the country to address structural inequalities. Thus, it is a radical process that requires dismantling of old institutional structures, practices, and willingness to change.

Race categorization: In this research, race categories are used according to the South African legal terminology set out in the Employment Equity Act 55 of 1998. Therefore, black includes the coloured and Indian populations. According to Biko (1978/ 2004), black as a racial category refers to all persons that were historically and continue to be oppressed because they were not white.

1.6 Chapter outline

This research report is organized as follows:
Chapter One gave an introduction to the rationale behind the research.

Chapter Two: Literature review provides more background and context of the research. The chapter provides a brief historical context of transformation in South Africa, discusses the involvement of donors in the process of South Africa's transformation, and provides a critical perspective of the role of donors in transformation in South Africa. The Critical Race Theory framework is then reviewed as a framework for the research as well as consideration for undertaking Critical Diversity Literacy (CDL). To conclude the section, intersectionality and ignorance contract epistemologies are outlined as approaches that inform the research.

*Chapter Three***:** *Methodology* outlines the qualitative and critical nature of the research and the methods that were used to guide the study. The first section describes how the research participants

were identified and asked to participate in the research, the challenges encountered in the process, and the demographic profile of the participants. The second section, the data collection technique, discusses how semi-structured interviews, observation, and document analysis methods were used to collect data in line with the project's aims and objectives. The third section delves into data analyses and describes how Critical Diversity Literacy (CDL) was used as a method of data analysis in conjunction with thematic analysis to give meaning in the data collected and also to structure the data into themes. The chapter ends with a section that provides the researchers' ethical considerations and positionality within the study.

Chapter Four: This chapter focuses on the analysis of the research participants' interviews. Through CDL, the chapter provides an analysis of participants' perceptions of race and gender transformation within PILOs. The identified themes in the chapter are *Transformation*; *Sexual harassment*; *Practicing what we preach;* the focus on *Diversity Equity and Inclusion within PILOs*; and *New Black leaders in the PILOs* – in terms of the challenges of new leaders.

Chapter Five: In the last chapter of the study, the research project is concluded by bringing together the objectives and analysis provided throughout the study and offer recommendations for further engagement and action to address transformation in PILOs.

Chapter 2: Literature review

This chapter outlines some of the relevant literature that provides a historical and contextual rationale for the process of transformation in South Africa and the theoretical framework guiding the research study. The following section briefly discusses the transformation process in South Africa to provide an approach to understanding the discourse of transformation. This chapter also briefly describes the role of donors in the democratization of South Africa and the role that they continue to play as foundations that support social justice. To conclude the chapter, a rationale for using the Critical Race Theory framework and Critical Diversity Literacy (CDL), intersectionality, and the theory of the research's ignorance contract is provided

2.1 Transformation in South Africa.

Since the dawn of a new democracy in 1994 and the adoption of the new democratic Constitution in 1996, South Africa has been grappling with the issue of transformation to address past inequalities. The new democratic state established a democratic constitution that came to be known and viewed as one of the most progressive and transformative constitutions in the world (Klare, 1998). Transformative constitutionalism, which is a new way of working that was created by the new democratic state and espouses non-racialism and egalitarian ideals, became central to South Africa's constitutional project of transforming society (Langa, 2006). The former Chief Justice, Chaskalson further emphasized the centrality of transformative constitutionalism by stating that the commitment of South Africa's transformation process is central to the implementation and realization of the transformative constitutionalism (*Soobramoney v Minister of Health*, 1998). Thus, the power to transform the country was placed in the implementation and realization of the Constitution.

Post-apartheid, the newly elected government has made numerous attempts to transform the country. For example, the Department of Justice and Constitutional Development (2007, 2012) addressed transformation of the judicial system, including race and gender configuration, and the role of the judiciary in transforming the state and society. The government has also focused on transformation for inclusive growth and, as such, established a National Development Plan (NDP) to address socio-economic issues, including improved quality of education, skills development, spatial fragmentation, private sector partnerships, and participation (National Development Plan, 2011). In order to redress past inequalities at the workplace, the government also instituted national policies, legislations, and frameworks including Black Economic Empowerment (BEE) Act 53 of 2003 and the Employment Equity Act of 1999, the Labour Relations Act of 1995, Skills Development Levies Act of 1999, and the Preferential Procurement Policy Framework Action of 2000.

Arguably, despite the progress that has been made and continues to be made post-apartheid at the political, economic and social level to transform the country, the majority of South Africans continue to experience inequalities based on race, class, gender, and ability not only in the workplace but in other spheres of life. Jagwanth and Murray (2002) accentuate the associated collectivities of race and gender that make black women face additional barriers and discrimination compared to men. According to the 19th Commission for Employment Equity Annual Report

(2019) commissioned by the Department of Labor transformation, gender representation has remained low in the workplace. The annual report also reveals that the white population group benefits more from skills development in the workplace as a result of preferential treatment in comparison to the black population and that there has been an increase in the number of reports of discriminatory related violations to the Employment Equity Act in relation to compliance (Commission for Employment Equity, 2019, p. iv). Furthermore, the 19th Commission for Employment annual report (2019) identified unfair discrimination as a barrier to transformation with a particular focus on equal pay for work of equal value and sexual harassment (p. 10). Because of the history of colonialism and apartheid, inequality in South Africa correlates with race. Therefore, the history of the country has been shaped by segregation, oppression, and institutional discrimination. While the National Treasury's budget review of 2017 recognizes that "growth without transformation would only reinforce the inequitable patterns on wealth inherited from the past," there is a deficit in recognizing structurally embedded norms and behaviour that govern society and continue to reproduce inequalities in the workplace.

According to Steyn (2007), in South Africa efforts to diversify the workplace "have to be linked to social justice" because the "powerful white minority that has monopolized all economic and workplace activity other than menial labor has been tasked to change the workplace to be more representative of the population as a whole" (p. 15). To further elaborate on this point, Grant (2007, pp.15-16) asserts that the white minority population still has power, and they act as gatekeepers to restrict equal access in the workplace by using discourse that seems to be transformative but only stands to maintain their power. The process of transformation involves an ideological process that goes beyond the provision of services and infrastructure, transformation of the judicial system, leadership, and the implementation of the Constitution. When it comes to the transformative Constitution, Albertyn & Goldblatt (1998) describes it as a guiding process towards a better future and a process that requires:

> "a complete reconstruction of the state and society, including redistribution of power and resources along egalitarian lines … eradication of systemic forms of domination and material disadvantage based on race, gender, class, and other grounds of inequality…coupled with access to the development of opportunities that allow the disadvantaged majority population to realize their full human positive social relation".

On the above basis, transformation is a broad and continuous process that has no end, and it demands the emancipation of vulnerable and disadvantaged peoples who continue to suffer discrimination through different measures, including and beyond affirmative action (Pieterse, 2005), and within and across all institutions including those institutions such as the PILOs that purport to advance social justice. Accordingly, the process of transformation requires "reconciliation and forgiveness [principles that] are beyond the powers of the law" and are structurally embedded (Langa, 2006, p. 358).

2.2 Donors

This section, while it is written from a South African perspective, also draws from relevant international literature that conceptualizes donors broadly in the development and social justice space.

According to Stacey & Aksartova, (2001), in South Africa, private philanthropy foundations were among multiple donors that contributed to the country's political transition from apartheid to democracy through grantmaking support to CSOs (p. 373-374). Stacey and Aksartova (2001), note that South Africa was granted more money by U.S. foundations than any other foreign country between 1988 and 1996 (2001, p. 375). During the period between 1988 and 1996, there were multiple shifts within South Africa's funding landscape. Stacey and Aksartova (2001) further report that from 1980 to 1990, CSOs enjoyed an abundance of funding to challenge the apartheid government. Habib & Taylor, (1999), described the relationship between government and CSOs as antagonistic and adversarial because CSOs were challenging government's practices, discourses and institutions that were violent towards non-whites and the government was hostile to being challenged by counter-hegemonic practices and thus wanted to maintain the status quo (p. 75). McClymont and Golub (2000); and Habib & Taylor (1999) further argued that during that time, the PILOs run by predominantly white elites who were aligned against the apartheid struggle grew in numbers.

Between 1990 and 1994, leading up to the transition from apartheid to a democratic state, McClymont and Golub (2000) affirm that there was a shift of funding stream from CSOs to support the preparation of incoming democratic government (pp. 33-34). The shift in funding occurred

more prominently among Western agencies, including the European Union and USAID to allow the newly elected government to assume its role and responsibility for reconstruction, development and to provide service delivery to its black constituency (Stacey and Aksartova, 2001, p. 390; Habib & Taylor, 1999, p. 76). Furthermore, McClymont and Golub (2000), stated, after the transition to democracy, PILOs' mandate shifted to focus on informing and shaping the Constitution that came into effect in 1997 (pp. 33-34).

From 1994 –1996, new relations between donors, the SA government, and CSOs were fostered under the new democratic leadership. Firstly, government relations with CSOs shifted from being resistant to collaborative (Habib and Taylor, 1999, p. 75). Secondly, donors' grantmaking practices became more flexible, which, according to McClymont and Golub (2000, p. 35), allowed them to provide "broader in-country support for constitutional studies…to support independent analysis, to strengthen a public interest sector, to focus on policy formulation, to hold the newly elected government accountable to implement and consolidate the democratic practices as opposed to challenging an unjust system". At the time, it was necessary to focus on policy formulation and to consolidate the newly adopted democratic practices that strengthened the socio-economic growth of the country. Based on Stacey and Aksartova (2001, p. 377-378), the focus on the consolidation of the newly adopted democratic practices was necessary "to ensure active citizenry in decision making by those outsides of power" (Stacey and Aksartova, 2001, pp. 377-378).

The different periods above between 1988 - 1996 reflect the importance of the role of donors and donor support that enabled CSOs to play a crucial role in the transition of South Africa from a racial oppressive state to a democratic state. The impact of PILO-led litigation and their association with other CSOs groups that sought to advance social justice did not go unnoticed and allowed them to gain prominence among donors. Hence, donors continued to provide funds to CSOs post-apartheid to date. Between 1988 – 1996, donors transformed their grantmaking practice to better suit the political context in which they operated, thus shifting their support to CSOs to challenge the apartheid government to support CSOs to advance democratic practices of the newly elected democratic state.

The following section further discusses the grantmaking processes of the three identified donors for this research based on their continuous support to PILOs in South Africa, namely the Ford Foundation (FF), Open Society Foundation-South Africa (OSF-SA) and the RAITH Foundation. These three donors are also considered in the public interest law sector as the three most significant donors of the PILOs in South Africa.

2.2.1 The Ford Foundation.

The Ford Foundation's operations in South Africa dates back to the 1970s. McClymont and Golub (2000) reported that in 1973 the Ford Foundation funded a conference on legal aid in South Africa that contributed to the growth of law clinics and culminated in the establishment of the public interest law sector in South Africa (p.23). The Foundation also helped to establish the Centre for Applied Legal Studies (CALS) based at the University of Witwatersrand in 1978 that was founded by Professor John Dugard and the Legal Resources Centre (LRC) in 1979, founded by Arthur Chaskalson and Geoff Budlender (McClaymont and Golub, 2000). Although it is not clear whether the Foundation also helped establish Lawyers for Human Rights (LHR), the Foundation did provide support to LHR in its early stages. LHR was founded by Brian Currin and a national council that included Jules Browde, Arthur Chaskalson, John Dugard, and George Bizos (McClaymont and Golub, 2002, p.23). These three PILOs are the oldest among all other PILOs in South Africa. They were established in the context of apartheid to challenge the apartheid state and have transformed post-apartheid to advance a democratic state (Brickhill, 2018).

In 1977, the Foundation supported the Black Lawyers Association Legal Education Centre (BLA), a public interest entity that facilitated programs to provide professional training for black lawyers and litigated in the public interest (Moseneke, 2016, p. 216). In comparison to the LRC, CALS, and LHR, the BLA's operations functioned under harsher circumstances because of the social exclusion imposed by the apartheid government on black lawyers. However, they still wanted to distinguish themselves as benefactors of LRC activities and to become their own liberators (Moseneke, 2016, p. 215). The BLA sought to strengthen black lawyer's education, to increase black admissions to the profession, and, most importantly, promote lawyering that embodied the principles of black consciousness. The latter refers to the cognitive and affective awareness that black people have through their lived experiences of their oppression by the white ruling class, and the struggle to liberate themselves from "psychological and physical oppression" by rejecting

the white ruling class ideology (Biko, 2004, p.110-111). Post - apartheid, the political and civic space began to open up, and with the subsequent adoption of a new Constitution, the Ford Foundation expanded its grantmaking support to new emerging PILOs that focused on broad socio-economic rights, urban land and housing, and education and women's rights.

2.2.2 The Open Society Foundation- South Africa (OSF-SA)

George Soros, the founder of Open Society Foundations (OSF), began his philanthropy career in 1979 by providing scholarships for black students at the University of Cape Town (Open Society Foundation, 2020). Between 1983 and 1993, Soros supported the Black Sash Trust in their work to challenge the apartheid state (Open Society Foundation, 2020). According to Smout, Andani and Hassan (2019), soon after the foundation opened its office in South Africa in 1994, it distanced itself from the political centers and began to support organizations that critiqued government on issues around service delivery (p. 16). The foundation expanded its portfolio from human rights organizations to include public interest litigation and work on accountability. In 2000 it resumed its relationship with LRC having funded it before in 1995 and 1998.

2.2.3 The RAITH Foundation

Unlike the Ford Foundation and OSF- SA, the RAITH Foundation is not a U.S based Foundation, but a private South African institution that has been in operation since 2001 (RAITH Foundation, 2020). RAITH's long term goal is to ensure that the South African Constitution is respected, protected, promoted, and fulfilled in order to address inequalities (Ibid). In 2015, RAITH and the Ford Foundation funded a report and research conducted by their grantee organization - the Socio-Economic Rights Institute of South Africa (SERI) to explore the nature of the public interest law in South Africa (Royston, Clark and Tissington, 2015). The report indicated the need to strengthen coordination and collaboration across multiple stakeholders, the recognition of the importance of paralegals and community-based organizations as partners, and the need to increase the capacity of the interest legal service sector to address racial transformation utilizing staff development through training and to ensure staff retention (Royston, Clark & Tissington, 2015).

2.3.4 Constitutionalism Fund.

In 2014, OSF-SA, Ford Foundation, and Atlantic Philanthropies established a ten-year fund called the Constitutionalism Fund (CF) to advance constitutionalism in South Africa (Smout et al. 2019,

p. 21). According to the CF's website, the main objectives of the Fund are to advance transformation, constitutionalism, and sustainability. These objectives and the mission of the Fund is centred on the South African Constitution as a source of social change (Constitutionalism Fund, 2020). These three objectives of the Fund focus not only on the external work of their grantee's organisations but also on the internal transformation. The CF recognised the need to address institutional power dynamics to tackle discriminatory practices on the basis of race, gender, sexual orientation, disability, and citizenship. The Fund realises the need to invest in the development of young black people to take on leadership positions. Furthermore, it also seeks to address barriers that thwart the advancement of young black men and women in the legal sector and "the environment of misogyny that pervade the legal practice" (Constitutionalism Fund, 2020). Thus, the CF has made it their concern to focus on the internal organisational transformation of their grantee organisations and the connection between how internal transformation impacts on grantee's external work. According to Kazi and Karodia (2013), organisational transformation means a radical shift in institutional value systems, institutional structures that influence member behaviour and culture change in order to be able to serve its constituencies better (pp.47-48). In this way, the CF opened up a new way of grantmaking that focuses on the intra-organizational structure of its grantees with a particular focus on race and gender transformation and the organisation's external work but the extent to which it has advanced the drive for transformation is not yet evident and will require further research to assess the impact, if any.

The official opening of offices in post-apartheid South Africa by these foundations signifies a level of trust in the political environment that enabled foreign and local donors to operate in the country. The three foundations have diverse grantmaking portfolios. However, law-related grantmaking features prominently in their support, as illustrated above. Additionally, the PILOs listed on the Public Interest Law sector website[1] are funded by all three foundations and the Constitutionalism Fund. Among the donors presented, RAITH supports the majority of the PILOs and OSF-SA the least (Raith 14, 34%; CF 11, 27%; FF 11, 27% and OSF-SA 4,10%). Consequently, the CF, in its initial stages over three years, supported twelve organisations, ten of which were PILOs also supported by Ford, OSF-SA, and the RAITH foundation. The LRC, LHR, and CALS have received

[1] the Public Interest Legal Services in South Africa https://www.pils.org.za/about/

funding from the Ford Foundation since their inception. One may argue that the pattern of grantmaking to PILOs can be attributed to the political context of the country that made it easy for white-led PILOs to operate and thrive under the apartheid system compared to the black-led organisations because of the restrictions that were placed on black people during that time. Another argument can be made that litigation is an essential strategy to advance social justice and constitutionalism in South Africa within the paradigm of the donor organisations, or according to Shivji, on the one hand, the sector is run by white elite grantees in the urban centres and on the other hand, the sector is funded by elite donors whose interest is to advance their agenda instead of adequately responding to the needs of their constituencies (2007). Given the issues raised by the BWF, and in view of the current political climate, there has not been a radical shift in the donor's grantmaking to advance social justice within grantee organisations. Donors have continued to fund the same white-led organizations, and to focus on services provided to external beneficiaries without looking internally at institutional systems and structures that the BWF named as discriminatory. I argue that the BWF has provided a moment in history for donors to rethink their grantmaking practices to be reflective of the current political context with a race and gender lens. While this context continues to be shaped by inequalities of past oppressions, there is a rise in the new wave of social justice leadership that comes with new counter-hegemonic practices that challenge the old structures. Thus, the contribution of this research is to open up dialogue about the role of donors in response to emerging call for transformation within the PILOs and to investigate the challenges and opportunities for transformation.

2.3 Critical perspectives on philanthropy.

The previous sections outlined the important role of donors to advance social justice for its grantee organisations' beneficiaries but not for its grantee organisations. Morvaridi (2015) argues that the process of grantmaking itself and the intent of giving is also mired with contradictions because philanthropy is a system that operates from a position of power and privilege (P.3). Furthermore, Morvaridi (2015) expands on this notion by stating that philanthropy operates in a contradictory manner because it can either be exclusionary and oppressive while at the same time it can be transformative. These contradictions correlate with Cunningham's argument (2016) that philanthropy exists because capital belongs to a small number of people and that "new philanthropy is the price that now needs to be paid to justify neoliberalism." Hearn (2000, p. 815)

and Manji & O Coill (2002) share similar critique that donors are increasingly focused on strengthening the institutions and culture of liberal and neo-liberal views which represent majoritarian tendencies that are not representative of marginalised and disenfranchised minority groups. Further to this, Morvaridi (2015) argues that donors have their own agenda that informs their strategies that adversely informs the social field, which then influences their grantmaking criteria, practice and partners they select to fund (p.4). Additionally, according to Anheier (2014), the philanthropic sector is self-governing; therefore, it operates outside the confines of the states, and CSOs perform its activities that philanthropy chooses to support. Arguably, this way of working is not conducive to addressing the structural challenges of inequality and can be seen to retard the process of real transformation. Edwards (2015), argued that if philanthropists really sought to advance social justice "they would support radical restructure of philanthropy from above and the system of funding to one based on democracy and grassroots activity" (p.6). Edward's argument insinuates that philanthropy is risk averse. Therefore, according to the critiques mentioned above, philanthropy foundations have contradictions with the potential to advance or impede social justice. Their predetermined strategies are insulated from the effects of their critiques that impacts on their intended beneficiaries and this is because "the history of philanthropy has often been written in celebratory mode" (Edwards, 2015). Like many other institutions, foundations also need to embark on a process of transforming themselves to better advance social justice. Further to this, philanthropy does not operate in isolation and relies on its grantees to implement its vision. Shivji's previous observation on the composition of the leadership in sector come to play and it will be further explored below through Critical Race Theory.

2.4 Critical Race Theory.

The theoretical framework guiding the research project is Critical Race Theory (CRT) that emerged from a broader field of critical theory. This theory provides a framework to diagnose and theorize about the existential and experiential racial and gender transformation in the PILOs.

While CRT traces its roots back to critical theory, according to Harris (2001) there is a distinction between critical theorizing about race and racism and the American legal scholarship that emerged because of lack of critique to address the race-based systematic critique of legal reasoning and legal institutions. Thus, CRT was established as an intellectual movement that sought to challenge

the legal culture that was discriminatory to black people. Therefore, Tyson (2006, p. 368), describes CRT as an approach to civil rights because it began as a critique of constitutional law in the United States of America (USA) and it has since spread to other disciplines in the social sciences. Although CRT was developed in the United States, it can be argued that it has relevance in South Africa because of the construction of whiteness globally.

CRT recognizes race as a common social construct that is entrenched in societies, including its institutions. Thus, race and racism operate in relation to power, history, and context (Delgado and Stefancic, 2001). According to critical race theorists, the construction of race and racial power and culture is discriminatory to black people and advantageous to white people (Delgado and Stefancic, 2001; Tyson, 2006). The main concern within CRT theorists is the extent to which whiteness is maintained despite the rule of law and the constitutional guarantees of equal rights and equal protection of the laws, providing material and symbolic privilege to whites.

Critical race theorists reject liberalism as a means to challenge the dominant ideologies and discourses of race, racism and power. Liberal discourse defines racism as a rational problem. Liberalism is of the view that because all human beings have rights and free will, including the right to access housing, education and finding a job, this means that racism does no longer exist (Peck,1994, p. 94; Gallagher, 2003, p. 4). Liberalism focuses on fairness, the result of which is expected to lead to a fair society (Peck, 1994, p. 108). According to Delgado and Stefancic (2001), liberalism holds colour-blindness views of equality that reproduces rather than reduces racism. Furthermore, Gallagher (2003, p. 3), argues that the colour-blindness perspective states that "in an environment where institutional racism and discrimination have been replaced by equal opportunity, one's qualifications, nor one's colour or ethnicity, [gender] should be the mechanisms by which upward mobility is achieved." The colourblind narrative does not ignore race, but it ignores the structural factors of inequality and historical perspectives that remain dominant and oppressive to black people, and it is entrenched in the law (Delgado and Stefancic, 2001, p. 22). Critical theorists outline the limitation of liberal laws, stating that procedurally the law supports equal rights but substantively is unable to deliver on those rights (Delgado and Stefancic, 2001, p. 23). Carr (1997) further elaborates that colourblind ideology is a racist ideology founded in the classic liberal belief of laissez-faire (p.108). Therefore, critical theorists reject liberalism and

neutrality because they are seen as misconceptions that serve the self-interest of the powerful (Harris, 2012) and advocate rather for colour-conscious efforts in order to transform (Delgado and Stefancic, 2001, p. 22).

Matsuda (1991) defines CRT as a process to "eliminate racism as part of a larger goal of eliminating all forms of subordination based on gender, class, sexual orientation, class, language and national origin" (p. 1331). Thus, CRT is used in the research to understand institutional hierarchies, racial history of South Africa, its constitutional law in relation to lack of race and gender transformation of the PILOs. In CRT, race and racism are central in defining and explaining individual experiences in relation to power. Race and racism are located from a broad perspective of history, socio-economic and political context, the conscious and unconscious state, group and self-interest, (Delgado and Stefancic, 2001, p. 3). The positioning of the relationship among race, racism and power is appropriate as a tool to understand the historical and current process of transformation in South Africa, and the calls from the black worker's forum for race and gender transformation of the PILOs.

CRT also has elements of activism, and in order to make changes, it considers individual experiences in relation to how society operates (Bell, 1990; Tyson, 2006, p. 369), making it suited for this research as it draws on participants lived experiences. Therefore, CRT is valuable in understanding the everyday experience of research participants, and to examine their perceptions about race to explore how racism thrives and is maintained in the PILOs. It provides theorizations of how maintenance of whiteness influences institutional culture, governance, it dictates which elements of democracy are given prominence and how they are advanced. For example, as outlined in the introduction - the inadequacy of the white leadership in PILOs to address issues that are most prominent for many of the South African black populations such as land redistribution. Additionally, with the view that race and racism continue to shape cultures, an analysis of cultural aspects of institutional systems and structures that the BWF outlined as discriminatory at PILOs will be evaluated through the lens of CRT.

2.5 Critical diversity literacy

Steyn (2015) describes Critical Diversity Literacy (CDL) as a "reading concept" that allows us to read the social reality and to be cognizant and able to respond to the prevalent structures of oppression. She also theorizes CDL as "an enabled mode of existence, congruent with the requirements of the emerging social imaginary of the twenty-first century" (Steyn, 2015, p.380).

The conceptualization of CDL is informed by Paulo Freire's concept of conscientização as a learning process that is empowering and thus able to challenge structures of oppression for transformative change. This process of conscientização takes place initially at a psychological level concerned with the emancipation of the mind and the self (Freire, 2005). Once the mind is freed from the shackles of oppression, then the individual embarks on the process of action to challenge the structures of oppression towards social transformation and freedom (Freire, 2005, 72).

According to Steyn (2015), in order to change the current status quo of continued oppression in societies, new ways of thinking is required that is congruent with the emerging and persistent challenges. Therefore, the new way of thinking cannot be apolitical, ahistorical, and it has to take into consideration human realities as multi-layers and multi-dimensional (Steyn, 2015).

The criteria for CDL enables one to read the practices of hegemonic identities, to understand how systems of privilege are constructed, maintained and reproduced (Steyn, 2010). According to Steyn's criteria, race and racism remain current social problems and assert that social identities are learned and affirmed through social practices (Steyn, 2010). Therefore, CDL provides a vocabulary to engage in critical dialogue and to analyze different and multiple forms of oppression, to have the ability to read and translate coded hegemonic practices and to engage in issues of transformation (Steyn, 2010).

2.6 Intersectionality: theory and epistemology.

The term intersectionality was first used in 1989 by American civil rights advocate and leading scholar of critical race theory, Kimberlé Williams Crenshaw. Intersectionality is a feminist theory that emerged from black feminism, and it is a crucial element of CRT, which rejects the idea that race and gender are not two mutually exclusive identities (Crenshaw, 1989, p. 139).

Intersectionality focuses on how race, gender, class, sexual orientation, ability and nationality intersect with one another to produce subjective ways of knowing and being (Crenshaw, 1991).

Intersectionality is a methodology for research and can be a catalyst for a social justice action. Intersectionality is derived from the premise that people live multiple, layered identities resulting from social relations, history and the operation of structures of power (Crenshaw, 1991, p.1244). According to Bowleg (2008, p. 319), people belong to multiple communities at the same time and can simultaneously experience oppression and privilege. Bowleg (2008), further states that the foundation of intersectionality research assumes that multiple factors combine to define an individual experience. Intersectionality is, therefore, the study of interwoven social identities and related systems of oppression, domination, or discrimination such as race, gender and social class (black poor woman/ white rich man). Accordingly, multiple forms of identities form the basis of oppression (Delgado, 1997, p.6).

As a theory, intersectionality provides a framework and analysis for this study because it offers an intersectional lens that looks at how subjects who occupy multiple identities (race, class, gender) experience an intersecting pattern of racism and sexism within institutions (Crenshaw, 2001, p. 1243). Collins (2014) warns that to view life in a single axis enables systems of dominant power to operate in society and within institutions because it does not consider the intersectionality of multiple identities which is necessary to counter dominant discourse. Intersectionality will be used in the research to analyze situated knowledge which emerges out of multiple identities, positions and factors of the research participants.

According to Denzin & Lincoln (2006), intersectionality is a necessary framework to interrogate how systems of power operate, how knowledge is produced and reproduced by looking at who is disadvantaged, marginalized, silenced, disempowered. Intersectionality as an epistemological tool, it can be used to undercover coded hegemonies. Further to this, May (2015) argues:

Intersectionality approaches privilege and oppression as concurrent and relational, and it attends to within groups differences and inequalities, not just between-group power asymmetries (p.4).

Thus, the intersectionality approach provides a framework and analysis for this research that seeks to uncover how systems of power operate and how they are maintained to subordinate black women in comparison to black men and white women.

2.7 Ignorance contract epistemology

Mills (1997) developed the notion of the Racial Contract, which stipulates an "epistemology of ignorance" that observes that whites will generally be unable to understand the world they have created (p.18). According to Mills (1997), epistemology of ignorance is unawareness that is grounded in white racial privilege that results from routine analytical omission of race, racism and black lived experiences in the processes that inform and generate knowledge (p.3). As a result, white ideology and discourse takes precedence and therefore constructs a liberal worldview that is "racelessness, an equal status and a common history in which all have shared with white privilege being conceptually erased" (Mills, 2007, p. 23). He further elaborates that ignorance is a failure resulting from the ability to ask certain questions and take for granted the inequalities that have been created and institutionalized because of racial privilege (Mills, 1997, 73-74). According to Leonardo (2002), white privilege is maintained by divorcing racial history from the present and choosing to only focus on "how things are and not how they go to be that way" (p. 40).

According to Steyn (2012), the system of racial apartheid succeeded because of the "active and passive" participation of white people - participating in the discourse of racial segregation. Therefore, according to Smithson (2008), ignorance is part of human interactions and institutions that is "a pervasive and fundamental influence in human cognition, emotion, action, social relations and culture (p. 159). The implication of racial construction and the generation of a white population that is ignorant have effects on transformation in South Africa. Steyn (2012) argues that ignorance contract is "a function of and functional in racialized societies" and it serves to uphold unequal power relations. Alcolff (2007) articulates that oppressed people may also have made use of ignorance contracts for their benefit (p. 44). According to Steyn (2012), in South Africa, dominant ignorance became internalized and thus formed part of the norm for black South African (p. 18). The internalized process of ignorance ultimately maintains the status quo of the oppressed and a form of intersubjectivity of the oppressed.

Chapter 3: Design and Method

The previous chapter provided a theoretical framework which informs and guides how the study has been designed and implemented. It explored the historical context of transformation in South Africa and the role of donors pre and post-apartheid era. The research has been designed within a qualitative and critical diversity literacy model which find meaning and power in discourse. The research draws on Critical Race Theory because it uses race and racism as lens to view how power is manifested and maintained. The theory is supported and strengthened further by CDL analysis that also concerns itself with the identification and critique of power, and how it hinders transformation of the public interest law organizations. An intersectional approach is applied to understand further the impacts of the lack of transformation concerning multiple positionalities.

Data collection involved semi-structured interviews and observation of the PILOs, donors in their environment and document analysis of texts produced by donors. The latter was afforded to me by my positionality as an employee of a donor organization, which enabled me to participate in meetings and attend conferences and activities of both donors and grantees organizations.

3.1 Research methodology

Qualitative research is applied to pursue the research objective. Qualitative research is broad in scope and encompasses multiple forms of theory, epistemology and methods (Denzin & Lincoln, 2011). According to Atkinson (2017), qualitative research "helps to gain insight into the processes involved in co-constructions of meaning, lived experiences, cultural rituals, and oppressive practices" (p. 65). Thus, qualitative research is instrumental in discovering meaning as it is perceived by research participants in order to make sense of it (Creswell and Poth, 2018, p. 7). Because qualitative research is broad, it also seeks to explore, describe and explain the research participants experiences, interactions within the social context and environment they live in to be able to begin to answer some of the research questions (Creswell, 2009, p. 4)

Since this study is interested in finding out the role of donors to transform race and gender transformation of the PILOs, the qualitative process of discovery is vital to understand the meaning that donors and grantees ascribe to transformation (Creswell and Poth, 2018, p. 8). Furthermore, an interpretive approach to qualitative research seeks to understand how social experiences are created and given meaning (Denzin and Lincoln, 2011, p. 8). On the premise of Denzin and

Lincoln, this study will also look at the social context of the donor-grantee relations and how power operates to begin to explore alternative ways of grantmaking.

Dowling (2006), defines the role of reflexivity in various and diverse qualitative methodologies as important, and describes it as a concept that refers to a level of consciousness. By a level of consciousness, it can be interpreted that the researcher must have self-awareness as part of the social world that is being studied, the positionality of the researcher and its impact on the research, and the ability to self-critique. The researcher has to be cognizant of the relationship with the research participants and to the research topic (Dowling, 2006, p. 8). Therefore, reflexivity is also a method of data collection and analysis (Streubert Speziale and Carpenter, 2007, p.13). According to Koch and Harrington (1998), reflexivity is about a thorough examination of the political and social constructions that informs the research process in order to be able to critique the research. Reflexivity enables reflection on how the researcher identifies with the research participants, and thus, the researcher must be aware of their bias, values and beliefs. Reflexivity acknowledges the role of the researcher in the research process not only as an instrument of data collection but also as part of the social world that is being studied, as described by Koch and Harrington (1998), meaning there is no value neutrality in research. The reflexive practice involves ongoing processes of critical self-reflection.

3.2 Data sources

Ten key research participants were identified and selected through my work networks because of their diverse roles, identities and positions in the social justice public interest law sector. A 'Participant Information Letter' (Appendix A) was circulated to identified potential participants. The letter was accompanied by a consent form (Appendix B). The Participant Information Letter requested the participation of the selected individuals and provided an overview of the research project, issues of consent, anonymity, my positionality, my contact details and that of my supervisor, my ethical considerations and my clearance number from the Human Research Ethics Committee (Non-Medical) at the University of the Witwatersrand, Johannesburg. The letter was circulated via an email that I sent to the identified potential participants, and I also made telephonic follow-ups to arrange interviews. Overall, I received a positive response with only a few of the individuals whom I approached declining my request. Once the participants agreed to participate

in the study, interview meetings were scheduled and commenced in November and ended in February.

The participants that were identified and invited to participate in the study were PILO Directors and co-Directors; and Directors in donor institutions and consultants in the social justice sector. Ten individuals were interviewed in total. Nine participants identified as black Africans and one as white, based on the South African legislative race classification. The racial composition of the research participants was informed by availability, also noting that the research interviews were undertaken after the resignation of a number of white directors in the PILOs. Two participants identified as males and eight as females. The gender composition of participants is a representation of the successors of the previous white directors. Beyond their race and gender, the participants also identified as mothers and fathers, between the ages of 60 and 30. Some were part of the anti-apartheid struggle, members of the Black Workers Forum, mediators of the BWF and PILOs leaders, lawyers, University professors, and consultants in the social justice sectors. The categorization of participants' race, class and gender only scratch the surface of who they are. However, it is crucial to categorize them in relation to their racial and gendered positionalities in order to locate their perceptions and meanings concerning their lived experiences as actors in the PILOs and the social justice sector. The experiences and knowledge shared by the research participants was interpreted in relation to dynamics of power and how they understand themselves in this context.

3.3 Data collection and techniques

Three methods of qualitative data collection were used to understand the role of donor organizations in relation to transformation: semi-structured interviews, observation and document review.

3.3.1 Semi- structured interviews

According to Atkinson (2017), semi-structured interviews are less formal, and thus are more conversational than structured interviews (p.76). Constantino (cited in Given 2008) states that semi-structured interviews are characterized by “an open exchange of ideas and meanings” (p. 212). Semi-structured interview method of collecting data is valuable in “exploring the

construction and negotiating meaning in a natural setting" (Cohen, Manion, and Morison, 2007, p. 29). And, according to Thompson (2017) it allows research participants to speak in their voices, to express their thoughts and feelings, and to engage in a reciprocal dialogue with the researcher guided by a list of interactive and open-ended questions that address the overall research question and objectives.

Ten research participants were interviewed, seven were Directors of the PILOs that are donor-funded and three consisted of a director, snr program officer and consultant from the Private Philanthropy Organizations that fund the PILOs. The only commonality amongst these participants is that they work in the social justice sector, apart from that they are not homogenous and have multiple identities. A set of interview questions were drafted to guide the individual face-to-face semi - structured interviews. The interviews were audio-recorded and immediately saved with a password protection to a computer. Each interview lasted for a maximum of one hour.

Research participants chose the location where interviews took place thus ensuring familiarity and a safe environment to participate freely. At the beginning of each interview, I began by going through the letter of request to ensure that participants understood the nature and rationale of the research and their participation in it. I allowed them to pose any questions they had before signing the consent form. The consent form included an agreement for the audio recording of the interview and anonymity in all writing and publications coming from the research. I explained that I was not able to guarantee full anonymity because the research participants organizations - the public interest law organizations and Foundations are publicly known. However, I indicated that I would do my best to conceal their identities. The majority of the participants asked to read the research report once it was made available because they felt this was valuable research that they could use as a point of dialogue in the sector.

3.3.2 Participant Observation method

Observation is another method of data collection where knowledge of the research is gathered through making observations. Hammersley and Atkinson (1995), rationalized that social research is a form of participant observation because researchers are part of the social world that they study. The method of observation is used for multiple reasons including to answer exploratory questions

where little is known of the subject being studied in order to help explain the behaviour or phenomena in a natural setting, to understand the meaning in a given context, and to interrogate the contradictions that may arise in the actions of being and doing (Atkinson and Hammersley, 1994) - for example, when the PILOs are known to advance transformation, but they themselves are not transformed. Therefore, observation as a method of data collection is useful when combined with other qualitative data collection techniques to evaluate the fidelity of an intervention across settings and to identify when there is no longer change or progress to be achieved.

Therefore, I engaged in participant observation that was used unobtrusively by observing the PILOs and donors at the annual public interest law gathering since 2017 to examine the donor-grantee relations in order to understand its nature, what constitutes it and maintains these relationships. On the other hand, as an employee at one of the foundations, I was also able to observe donors in their natural setting to understand how they operate and what influences their decision making and how they come to perceive their context and make decisions based on their contextual frame of reference. During the process of the research, it was difficult to maintain a professional distance and not to take the side of either the donor or the PILOs to allow for adequate observation and to actively be self- reflexive in order to remain congruent to the process.

3.3.3 Document analysis

Document analysis is a qualitative research analytical method that is often blended with other methods (Denzin, 1970, p. 291). Eisner (1991) refers to the blended approach as a means of triangulation – a combination of interviews, observation and document analysis that forms reliable evidence (p.110). According to Bowen (2009), triangulation is helpful for "convergence and corroboration" of the literature (p. 28). Document analysis draws data on various forms of documents such as organizations report, newspaper articles, memoranda, meeting agenda and programmes that may be used for systemic evaluation (Bowen, 2009, pp. 28-32).

The document selection process is an important element in document analysis because the identified documents through varied methods have to be relevant to the research (Bowen, 2009, p. 30). Corbin and Strauss (2008) argue that researchers should demonstrate the ability and capability to distinguish appropriate and relevant data from inappropriate and irrelevant data. Additionally,

according to Yin (1994), researchers must be conscious of a biased selection of data (p.80). Firstly, the process of document analysis involves finding, selecting, approaching and synthesizing data (Labuschagne, 2003). Secondly, the process is followed by putting together credible data that will be studied in order to extract meaning and understanding to build empirical knowledge (Corbin and Strauss, 2008). Document analysis is valuable because it may include data on the context in which research participants operate, (Bowen, 2009, p.32) it may provide historical insights that are not known in the research sphere, data collected may indicate further areas of exploration that needs to be observed or further researched and contribute to building knowledge (Goldstein and Reiboldt, 2004, p. 246). In this research, document analysis is instrumental in enhancing observation methods, interviews, and literature review. For the purpose of this research, document analysis will be used to review documents and reports produced by donors and PILOs that is not available in academic literature but is necessary to expand the research study. Document analysis will not be used as an additive to observation method and semi-structured interview methods but rather in combination with the two methods of data collection to provide a more holistic approach.

3.4 Data analysis

As outlined in chapter two, this study is grounded in Critical Race Theory (CRT) that focuses on the effects of race and racism while also paying attention to how hegemonic identities influence and shape institutional systems of oppression. This research takes on a critical framework which seeks to not only understand the dominant structures of oppression but to advocate for change. Therefore, analysis of power, apartheid and colonial domination are central to the identification of alternative discourse and functioning of institutions.

Data analysis is one of the complex and important stages of qualitative research (Thorne, 2002) and the role of the research is equally important because the researcher becomes the instrument for analysis, making decisions about what information is relevant, important and how it is structured. This section outlines the Critical Diversity Literacy (CDL) in conjunction with thematic analysis as methods of data analysis for this study.

3.4.1 Critical Diversity Literacy

The framework of Critical Diversity Literacy (CDL) was used to analyze and interpret the research data. The application of CDL is complimentary to CRT because it aims to identify and explore dominant structures of oppression and transformative.

CDL concerns itself with the identification and interrogation of power by instilling critical literacy skills that were necessary for me to be able to examine historical and current social realities and to understand, critique and challenge power relations in the context of the research. As a method of analysis, CDL allows for critical analysis of the prevailing social relation between PILOs leaders and donors. At the same time, CDL recognizes the unequal symbolic and material values of different social location. Thus, it allows for interrogation of PILOs leaders and donors as autonomous individuals that operate within dominant structures and where possibilities for transformation are being opened up or closed down for black workers (Steyn, 2015, p. 381-382).

CDL has helped me to gain an understanding around the power structures that operate in relation to transformation and to elicit ways to confront oppressive patriarchal practices, guiding me on how to engage with the data that I collected. I followed the ten CDL criteria, outlined below, as a guide to identifying the power relations of donor engagement with the process of transformation in post-apartheid South Africa (Steyn, 2015, p. 379-381):

1. To go beyond eliciting information and data but to understand the role of power in constructing differences that make a difference.
2. To recognize the unequal symbolic and material values of different social locations of PILOs leaders and donors. This includes acknowledging hegemonic positionalities and concomitant identities, such as whiteness, masculinity, middle-classness, etc. and how these dominant orders position those in non-hegemonic spaces (black workers).
3. To use analytical skills gained during this course to unpack how systems of oppression from both donors and PILOs leaders intersect, interlock, co-construct and constitute each other, and how they are reproduced, resisted and reframed to prohibit transformation.
4. To define and emphasize oppressive systems such as racism as current social problems and (not only) a historical legacy.

5. To show that social identities are learned and are not an outcome of social practice.
6. The possession of a diversity grammar and a vocabulary that facilitates a discussion of privilege and oppression.
7. The ability to "translate" (see-through) and interpret coded hegemonic practices.
8. An analysis of the ways that diversity hierarchies and institutionalized oppressions are inflected through specific social contexts and material arrangements.
9. An understanding of the role of emotions [particularly between PILOs leaders and donors], including our own emotional investment, in all the above.
10. An engagement with issues of the transformation of these oppressive systems towards deepening social justice at all levels of social organization.

3.4.2 Thematic Analysis.

Thematic analysis is one of the qualitative methods of analysis that is often used but not frequently acknowledged and recognized as a method of analysis. Braun & Clarke, (2006) argue that thematic analysis should be a foundational method because it is crucial to explore themes that emerged during data collection and to identify patterns in the research in a systematic order (p.4). According to Braun & Clarke (2006) thematic analysis makes it possible to identify, analyze, organize, describe, interpret and report experiences, the reality of research participants and their perceptions (p. 9). Thematic analysis provides for consistency and cohesion of data by ensuring that knowledge that is produced is applicable and supports what the research lay claim to (Halloway and Todres, 2003).

Thematic analysis was used to organize and structure the research data systematically into themes, to delve deeper into the meaning of texts, to explore themes that emerged, and to identify patterns that underlie and connect the themes (Attrid-Stirling cited in Nowell et al., 2017).

3.5 Ethical Considerations

During the research process, I adhered to the university's ethical protocol that guided my conduct. All research participants agreed voluntarily and consented to contribute to the research through being interviewed. In order to protect the research participants identities, pseudonyms were used

instead of the participant's real names. The names of the participant's organizations were omitted and referred to broadly as PILOs organizations or donor organization instead.

As an employee at the Ford Foundation, before I undertook the research, I made sure that I was not in violation of the Ford Foundation policy since I had identified Directors of the foundations' grantee organizations as the research participants. Therefore, I consulted with my employer and informed them about my research topic and identified participants, and it was concluded that there was no conflict of interest since the research is undertaken in my own personal capacity and considering the research participants understood that this was not a Ford Foundation project. The emphasis on the purpose of the research is elaborated in the participant's information letter (Appendix A) and participants consent forms (Appendix B) that the participants signed.

Again, as an employee at the Ford Foundation, I assumed two dual positions as an insider and outsider in my research, and these positions were favourable and disadvantageous in the research. I considered the position favourable because I had access to research participants and an overview of what was happening internally within the foundations, and to some extent within the PILOs, and between donor and grantee organizations. My position at the Ford Foundation has also provided me with insights into donor-grantee relationships that have been foundational to the conceptualization of this research project.

As the research process revealed, there were two ways in which my position was disadvantageous to the research. For the two potential participants who declined my request, they expressed that it was unfitting to engage in the study out of fear of marginalization in their relationship with the Ford Foundation. While participants had a right to say no without fear of reprisal by the Ford Foundation, this kind of response was indicative of the characteristics of the donor-grantee relationship as not open and constituted by power. Following Nussbaums's view (2001), that "emotions do moral work" I take it to mean that emotions are relevant in my research. Therefore, my positionality as an employee at the Ford Foundation and my identity as a black middle-class woman has led me to conduct this research. Furthermore, I resonate with the calls made by the BWF, and in my own right, I work to advance social justice in my professional and academic capacities.

Chapter 4: Research data analysis (Findings)

This chapter explores whether donors have a role to play, if at all in advancing race and gender transformation within the PILOs. To answer the research question, I utilized the ten criteria of CDL to identify hegemonic identities, to understand how they are constructed, maintained and reproduced within the PILOs (Steyn, 2015, p.387). CDL was also used to explore how donors negotiate, resist and remain complicit within the dominant and unequal power dynamics in the public interest law sector. Thematic analysis was utilized to dissect, explore and integrate data in order to organize it into meaningful themes. The research questions (Appendix C & D) also informed the construction of themes.

This research was motivated by the lack of race and gender transformation in the PILOs and as mentioned earlier, to address the questions raised by the BWF about the role of donors in the transformation process. I felt that the majority of the participants shared their experiences openly with me and that they were able to express themselves despite my situatedness as an employee of the Ford Foundation. During this process, I listened and observed as participants express different emotions of hope, scepticism, distrust, anxiety, anger, frustration, disbelief of unjust and discriminatory practices in the social justice sector.

During the interviews, I allowed participants to make sense of how and why there was a lack of racial and gender transformation in the PILOs in order to get to the objective of the research questions about the role of donors. Thus, the participants provided insight into how transformation was being hampered by sharing their experiences working in these organizations. As a result, the recurring themes and concepts which emerged from the interviews were: *Transformation* - in terms of the meaning and understanding of the concept and its implications from the participant's perspectives; *Sexual harassment* – which resurfaced and elaborated on the need for a gender-focus within transformation; *practising what we preach* – which raised issues about the internal challenges within the PILOs, *Diversity Equity and Inclusions* as a process to transform the PILOs, *New Black leaders in the PILOs* – in terms of the challenges of new leaders.

4.1 Defining the concept of transformation

The concept and process of transformation emerged as an organizing and central theme in the study. As described earlier in the literature review, transformation is a broad concept with multiple definitions and reiterations of its meaning. In light of the call of the BWF in 2016, the concept of transformation was used to raise the challenges related to issues of race and gender as markers of discrimination in the PILOs. Until 2018, the majority of the leaders in the PILOs as indicated in their websites were white males. The organisational cultures of the PILOs under the white leadership were largely characterized by domination of masculinity, sexism, heterosexuality, able-bodiedness, and middle-classness as seen in the numerous reported sexual harassment cases (Mail & Guardian, 2018), in the Public Interest Legal Services in South Africa report (Royston, Clark and Tissington ,2015) and the calls by the BWF (2016).

The characteristics and composition of the PILOs can be traced back to the emergence of these organisations. The literature review has followed a historical process that outlined the white leadership of the PILOs. As stated before, the argument can be made that it was challenging to support black-led PILOs under the apartheid government because of the hostile environment that black people experienced. Therefore, at this political juncture in post-apartheid South Africa, one can also argue that the context has changed and there is a need for organizations to be representative of and be led by the majority of the population. Following the challenges raised by the black workers within these organisations, transformation has come to be known in the PILOs as a process that requires accountability, continuous and rigorous implementation of laws and policies while simultaneously recognizing and addressing hegemonic identities that impede transformation within their structures and systems.

Definitions of ‘transformation’ shared by participants reflected the various interpretations of what ‘transformation’ means in the context of the public interest law sector. The research participants shared the meaning of transformation broadly as it related to the country and what it meant internally for PILOs as follows:

Tebogo, a black female Director at one of the PILOs defined transformation:

> Addressing past racial, sexism gender financial resulting from past and existing law to ensure that everyone has better and more equitable opportunities in comparison to the past and dealing with consequences of that past (Tebogo).

Tracey, another female Director at one of the PILOs articulated:

> Transformation within the public interest law sector, it means having people in the sector who again reflect the demographic of South Africa, and that means primarily young black people. So, it is race, it is age and also gender, and there has to be (Tracey).

Tebogo and Tracey's definitions of transformation illustrate the shared understanding by other participants, particularly as it relates to race and gender. The emphasis on the need for race and gender transformation is not new, but what is still missing is the process of dismantling structures that continue to perpetuate racial and gender inequality. The definition of transformation as described by Tebogo provides an understanding of historical legacies that have led us to where we are. According to Steyn (2015, p. 384), this understanding presents an opportunity to put in place practices to redress past inequalities. It is a process that begins from naming and understanding the challenge and acting to address it.

Other participants, while they shared a similar understanding of transformation as described by Tebogo and Tracey, argued that the concept of transformation has lost its meaning and has become a buzzword. Simon, a black heterosexual man who is a Director at one of the PILOs, argued:

> Transformation is inclusion, diversity, assimilation-ultimately. Transformation is not only limited; it is assimilation. Therefore, it is violence.

Simon's critique of transformation can be traced back to South Africa's history, laws, political institutions that have been conditioned to institutionalize racial hierarchies and to maintain and perpetuate those hierarchies. However, on the basis of the description of transformation provided in the study, that transformation is a continuous process that has sought to deconstruct or destroy the ideological foundations, social categories, and institutional power of race. The aim of transformation is not to assimilate but to restructure power relations across races to make race potentially relevant for social change. I argue that transformation as a process has the potential to be radical and to deconstruct dominant structures of oppression. To further elaborate, I refer to Davis's (2010), argument that South Africa's project of transformation has not been met because of the untransformed or traditionalist culture. Thus, the argument is not against the need for transformation but the failure resulting from laws and policies to foresee transformation.

Additionally, Modiri's (2017) argument and that of CRT provides further emphasis to the failure of transformation noting that, the whiteness of the South African legal institutions as well as its epistemological and conceptual resources that emanate from the global north and the literature that inform the core source of legal theorizing in South Africa does not recognize issues of race in law and fails to challenge the racial status quo (p. 6-7). Therefore, CRT's racial lens is critical in driving the legal framework and its implementation. Consequently, the process of transformation is informed by white liberal ideologies that shape the modern world (Mills, 2009). Furthermore, the concept of transformation is interlaced with constitutionalism. The interconnectedness of the concept of transformation and constitutionalism is an important project however its achievement to redress past inequalities is limited by what Sibande (2011) describes as transformative constitutionalism's "embedded traditionalism and conservatism that is characteristic of the South African legal culture" (p. 487- 488). The limitation of transformative Constitution was one of the critiques illustrated by the research participants. Different aspects of the law, its practice and limitations to transform society were highlighted as inadequate. Research participants provided examples to demonstrate the disconnect between the law and the lived experiences of black people in South Africa.

Tebogo shared:

> Black people living in poverty then get further punished by that system from not having an easily verifiable address which impacts on how quickly or at all can one get bail. The criminal justice system is still very skewed towards the benefits of those who (a). can afford the legal services; (b) very white male-dominated. The labour law or current policies within the companies do not allow you to have free legal representation (Tebogo).

Another example was provided by Noma - a black female Director at one of the PILOs who articulated that:

> People got arrested in protests and would never then go and seek legal assistance -because of access".

These examples indicate the limitation in the implementation of the law resulting from lack of access to equal justice and legal education for black people in the margins who seek justice. Apart from the limitation to access justice and legal education, there is also an inadequate legal culture that Klare (1998) describes as inherently conservative. By conservative, he means that the legal interpretation of the law is rigid and does not meet the needs of the marginalized members of

society. This notion of inadequacy was described by Sam, who identifies as an African woman and is a Director at one of the PILOs:

> I don't think the law system that is colonial and does not take into account our own cultures at the cost of us can be transformative.

Sam affirms the arguments made by Sibande and Davis, illustrating the dissonance between the formulation and interpretation of the law and how it is experienced by black people. In support of Sam's argument Sibande (2011) stated that "it is transformative constitutionalism's ostensible weddedness to the liberal democratic constitutionalism that makes it ill-suited for achieving the social, economic and political vision it proclaims" (p. 486.). The limitation of transformational constitutionalism is demonstrated by the extent to which it is experienced as inaccessible among marginalized black constituencies and therefore not adequately transformative. Another research participant, Noma, expressed views that are circulating in the sector about the importance of the Constitution:

> On the other extreme people just think the constitution is a piece of paper that we can talk about, maybe you can engage in it once you are inside the court, but it doesn't affect the air, it does not affect what happens in private relationships daily (Noma).

Noma's comment elaborates on Sibande's argument about the ineffective nature of the law to address social transformation and to change relations of power in everyday life. As critical race theorists have argued, liberal approaches to the understanding of democracy cannot grasp and make sense of black people's lived experiences and suffering. Furthermore, the political and epistemological significance of identity, of "who we are and from where we speak" as described by Moya (2011, p.79) is imperative for not only the kind of legal knowledge that is produced but also how it is interpreted, implemented and inform narratives that are mainstreamed as value-free, objective and neutral. Simon, problematized white ideological constructions of transformative constitutionalism:

> In the context where all leaders were all white, in the context where only five advocates who were fighting the constitutional court for social justice were white males, in the context where the academic, seventy per cent of people who are writing about social justice, human rights and constitutionalism are white, the understanding [of transformative constitutionalism] became very narrow (Simon).

Simon shows how the maintenance of white heterosexual representation of the judicial system influences knowledge production and the legitimacy of white ideology that informs how

constitutionalism is implemented. Simon also exposes that there has been inadequate racial representation within the social justice sector which has resulted in limited capacities of the constitutional courts to respond to the needs of the historically marginalized black population and to problematize and disrupt the dominant structures of oppression entrenched by apartheid. This is seen in the composition of the judicial system similarly to the previous leaders of the PILOs that were predominantly white male. Moreover, transformation and representation are often conflated in the broader transformation context and process. On the one hand, race and gender representation are necessary as part of the process towards transformation, to redress past inequalities and to ensure institutions are representative of the country's demographics. Yet, issues of representation have also been contested as nothing more than reverse discrimination that weakens the judiciary system and other institutions. In this instance it is necessary to recognize which groups stand to benefit from representation and which groups stand to lose. When considering representation what is required is a critical consciousness that recognizes the need to disrupt the continuation and reproduction of colonial-apartheid power relations and practices that structure societies and institutions inequitably. Representation of the judiciary was indicated by the research participants as one crucial element of the ecosystem that needs to change as transformation of the judiciary is a constitutional imperative to be reflective of South Africa's diversity. The need to transform the judiciary outlines how the law speaks to orders of knowledge, in terms of how the South African law affirms and perpetuates relations of power, in that it produces white people as constructors of policy and black people as its passive consumers. Thus, it can be argued that demographic representation of the judiciary is deemed necessary to address the knowledge production that continues to be shaped by dominant white discourses in order to ameliorate conditions of oppression and inequality resulting from the dominance of white epistemologies within South African legal frameworks. From the above, I purport that having a transformed judiciary has the potential to set precedence to which other institutions in particular, law-related institutions to follow including the PILOs.

It is worth noting that donors did not form part of the transformation conversation. However, given their previous historic role in South Africa, it remains to be seen whether donors will be willing to take a radical stance to support work that seeks to dismantle structural inequalities rather than address the causal factors as Morvaridi (2015) previously alluded.

4.2 Practicing what we preach

Following the discussion around the definition and concept of transformation, the participants were able to recognize and articulate the broader challenges of transformation in the country and began to reflect these challenges within their organisations. As outlined in the introductory section, the challenges experienced externally in the political, economic and social context is reflected within the PILOs. For examples, in 2016 the Rhodes University reference list of sexual offenders was released on social media; in 2018, allegations of sexual harassment cases began to surface in the social justice sector notably the Equal Education case, Legal Resources Centre sexual harassment and again in 2018 the Total Shut Down movement was established to protest against gender based violence. This is but one example on how the discriminatory external environment is reflected internally within the PILOs and its intersection with race and gender.

The current challenges of transformation in the PILOs relates to South Africa's history of colonialism and apartheid, as outlined in the literature review. Colonialism and apartheid established intellectual positions, practices, systems and structures that exploit the black majority and sustain the wealth of the elite white minority (Nkomo, 2011, p.367). Steyn (2007) asserts that it is precisely because of the apartheid systems that the workplace has been skewed along the axes of race and gender (p.14). Up until the formation of the BWF in 2016, the PILOs leaders remained predominantly white. One of the research participants from the PILOs, Tracey, a black female Director who has been working in different PILOs and the sector broadly for nearly a decade affirmed the prevalence of unequal racial representation in the sector:

> Historically, in all the social justice organizations you had white leadership, historically that was white male leadership, and white attorneys, and African administrative staff.

Tracey's experience in the sector reveals a hierarchical racial system with white people in positions of responsibility and prestige and black staff in lower positions that has not transformed. As a new generation of black lawyers and other black academics emerge, black staff have risen into managerial positions. However, as raised by the BWF, black staff continue to be marginalized in the workplace. Post-apartheid the restructuring of systems across all institutions was enforced to redress past inequalities and that included demographic shifts. However, the institutionalization of legislations and frameworks to redress past inequality in the workplace including the affirmative action, Black Economic Empowerment (BEE), Employment Equity Act of 1999, the Labour

Relations Act of 1995, did not transform the fundamental structural problems in the PILOs, neither did it remove the pervasive racial prejudices and only led to hiring token black staff to address unequal racial representation in the organization. Lebo, a black woman who is a director of one of the PILOs connects the interpretation of transformation through a critical lens that indicates the limitations that have emerged within representation-focused interpretations of transformation:

> There has been a tendency to have a thin or narrow understanding of transformation in relation to representation and not really interrogating what change ought to happen from across the organization throughout

Sam further advocates for representation, but also points out that the process of transformation needs to go beyond representation:

> Representation is necessary. It's like one foot in the door, and there is still work that needs to be done [around] cultures.

Lebo and Sam expressed the importance of racial representation but argue that it has to be accompanied by a critical race and gender perspective of the historical and political context that has informed institutional discrimination and hierarchies of oppression. Lebo and Sam's views also align with the call of the BWF as outlined in their proposal, which called for decent job opportunities, staff development opportunities, equal work for equal pay, transparent policies on salary scales, salaries that consider the realities of 'black tax' and the socio-economic background of black workers (especially women) and an environment free of sexual harassment and all forms of unfair discrimination. Tebogo, who was also part of the BWF, re-emphasized the aim of the black workers beyond race and gender transformation:

> We are not talking about transformation from a demographic leadership level, we had a list of demands essentially that also spoke about how you make a work environment safe for women. Safety not only in the physical sense but safety in the sense of not being sexually harassed. It is important that everyone feel that they are welcome in the workplace…so we can practice what we preach.

Tebogo describes a working environment that is conducive to staff's wellbeing, that is non-discriminatory and safe for women. She talks about the creation of an environment that enables black staff members to perform to the best of their abilities. Most importantly, she contends that PILOs, as social justice organizations that uses the law and other strategies to promote social transformation should have internal practices and values that are consistent with their external

work and objectives. For further emphasis on the contradictory nature of the work done by the PILOs and their internal practices, Tebogo critically observed the discrepancies in the sector:

> We are often taking governments and corporations to court for discriminatory practices and policies but yet we felt like back at home [PILOs] we are doing the very same thing that we are taking government and corporations to court for.

Overall, Tebogo's reflections point to the ongoing forms of exclusion and discrimination that black workers experience based on race and gender. While the marginalization and discrimination of black workers within the PILOs is part of a more significant problem that the country continues to have, it remains a blind spot in institutional governance of the PILOs. The following extracts from the interviews illustrate the lack of transformation governance in the PILOs.

Tracey from one of the PILOs while working in the Public Sector has observed that:

> The sector has been left to police itself and boards have stayed out of it because; boards have largely been comprised of friends of management.

Yvonne, a black woman from one of the donor organizations who has been working in the sector for over a decade also observed:

> In the sector, you can recruit your own board member, and generally as a leader you recruit people you know...that can appear quite harmless actually, but it is very dangerous...it is a type of cronyism in fact.

Wendy, a black female director in one of the PILOs who has been working in the sector for a number of years in different PILOs further emphasized the lack of governance in the sector, stating:

> There has been a number of years where the sector has been a law unto itself and has gone completely unchecked when it comes to its limitations and the things that do go wrong within the sector (Wendy).

Each of the statements above demonstrates how the PILOs operate without accountability and transparency broadly, but particularly in relation to transformation. Both Tracey and Yvonne point to the relationship between leaders in the organization and their board of trustees that consequently uphold poor governance and preserve social networks that are inclusive only between PILOs Directors and their boards, thus hindering the implementation of diversity in the workplace. This way of working also outlines how individuals from the same groups find it necessary to conform to filial piety. This conformity is out of fear of exclusion, rejection by other groups, and to maintain the group's status. To further harness the white Director social capital, the intent of donor support

to grantees was perceived as ambiguous by the research participants resulting from the close relationships that donors had with white Directors in the PILOs dating back to the when these organizations were established as outlined in the literature review. Reflecting on her observation while working in the sector, Tracey shared her perception of donors' criteria for funding,

> Donors are often not just investing in an organization but also investing in the people. In the past often it has been a cozy relation with white leadership within these organizations. There is friendship between donors and leadership within these organizations, and that is the reality, and that is the truth that I think should be reflected on within the donor community.

The personal relationships between donors and grantees, as highlighted above by Tracey, gives the impression of having been valuable to PILOs that were white-led as it enabled them to receive funding. However, these relationships also have the potential to create bias particularly in the South African context where race is a marker for racial discrimination and given that previous PILOs Directors were able to receive uninterrupted funding compared to the current black leaders. The latter do not have the same social capital as their predecessors. Of course, one can argue that donors change their strategies all the time and current shifts in strategic focus happened to occur at the same time that white leaders were stepping down. So, what does responsible grantmaking look like for donors to ensure support to the new incoming leaders? The other concern in the sector came about when donors were not able to support the BWF, an establishment that was seen as revolutionary in advancing racial and gender transformation in the sector. The lack of support by donors made individuals in the sector sceptical of the commitment of donors to transformation, especially after their response was prompted not by the BWF's call but publicized sexual harassment cases. These concerns were illustrated by research participants as follows:

> Following 2016, there was only one donor representative to report on what has been done in relation to BWF…that is so indicative of you know how committed seemingly they [donors] were (Tebogo).

Wendy provided her perception that further emphasized the donor-grantee relations:

> Of course, donors were complicit in the lack of transformation, no one asked. No one asked, year in, year out, donors would fund organizations that remained absolutely the same, and not for lack of knowledge

Tebogo and Wendy outline the relationship between donors and the previous white Director that fostered discriminatory work culture. The silence of donors, as outlined by Wendy, is interpreted as being complicit in maintaining white Directors power and perpetuating discrimination practices to maintain that power. Additionally, as mentioned briefly in the literature review, the three donors established a Constitutionalism Fund intending to advance constitutionalism, transformation and sustainability in South Africa. The initial grantees of the fund consisted of twelve predetermined organizations, the majority of which were PILOs. The support to these organizations was seen in the sector as privileging the same white-led organizations that have been receiving funding from the same donors. The below extracts from research participants illustrate this dynamic:

Peter a male director and donor liaison reflected:

> It meant we were reinforcing inequality, we were actually favoring and supporting the big organizations that were mostly run by whites and we were almost denying social movements, community-based organizations.

Alice a black female from a donor's organization:

> I was a critique of the Constitutionalism Fund in the way it was designed. This [Constitutionalism Fund] seemed to again privilege big white led organizations and I was a critic of that.

Peter and Alice's perceptions point to the privileging of white-led organizations to the detriment of black-led community organizations that operate at the grassroots level where inequality is rife. Thus, donor approaches to funding continue to suffer from a fundamental paradox of whom they fund based on their agenda and writing their strategies on how change happens without community participation. Therefore, this takes away power and agency from the grantee organizations but also supports the individuals in organizations that donors have a rapport with and have historically supported. Anna, another female donor Director in responding to the donor processes, stated:

> In as much as there is cronyism in the public interest law sector, it equally exists among donors because, donors equally have based a lot of their funding on trust and also funding people who look like you, who talks like you, who have the same views as you and of course that is also dangerous , and that contributes to that whole kind of ecosystem where there is no accountability.

Anna acknowledges donor practices that are based on shared social locations, identity, emotional attachment, ethical and political values that are exclusionary and biased. Meaning, only a few PILOs are legible to receiving donor funding while other potential grantees that are outside of the

scope of the social location of the donors are disadvantaged despite the important work that they do. It also outlines the practice of donors that operates from a position of power and privilege and how their internal process and structures perpetuate inequality. Furthermore, donors' internal structures and processes are seen as restrictive to grantee organisations language, programming, priorities, determining who gets funded. As a result, many organisations do not meet these criteria based on the size of the organisation or the tax classification system rather than on the basis of their ability to do the work. For those organisations that manage to receive funding, further restrictions are placed on their actual work. One of the research participants from the PILOs shared his concerns around this issue:

> The word decolonize must not feature in your program. You are not allowed to lobby your own politicians that you appointed. You are not allowed to use words like land, no one is talking about land. Spatial justice is fine because it is about fighting for people to stay in a building in the city, fighting for people not to be evicted from shacks but not land. So, to answer your question what is the role of donors? I am suspicious because donors are not transformed themselves, they are not radical themselves, they are using white money. (Simon).

Simon's insight provides a glimpse of donor-grantee relations that are informed by donors' strategies that influence PILOs work. According to Simon, donor's choice of language based on their internal compliance systems is restrictive and limiting to social justice work and outlining how donors want to remain apolitical while operating in a political space. Seemingly, their strategies address the symptoms of inequality rather than the root cause. Edward (2008) cautioned that if donors were serious about social justice, they would support progressive structures of philanthropy from above and grantmaking practices that are informed by the needs of grantees organizations beneficiaries. Therefore, donors need to re-think whom they fund, how they fund and the impact their funding has on the lived experiences of people.

4.3 Sexual harassment

Sexual harassment is one of the primary manifestations of gender inequality in the workplace that has been practised and maintained for decades across sectors. According to Farley (1978), sexual harassment is at the core of gendered discrimination in the workforce and is a primary tool that is used to maintain and perpetuate the subordination of women and the use or show of male power. The PILOs were not spared from the sexual harassment allegations as sexual harassment emerged

as one other form of discrimination manifested in these social justice organizations. As stated in the introduction, in 2018, sexual harassment allegations and reports were made public against prominent civil society leaders, several which were from the public interest law organizations (Mail & Guardian, 2018). Gender inequality took place despite having national sexual harassment policies in place, for instance, Section 6 (3) of the Employment Equity Act, 55 of 1998 – that provides guidelines against unfair discriminatory practices or policies and further states that harassment of an employee is a form of unfair discrimination and is prohibited on grounds such as gender or any other arbitrary ground.

The MeToo movement against sexual harassment was instrumental in providing impetus for women to speak up about sexual harassment around the world. In the context of the PILOs, the MeToo movement further reinforced the need that was identified by the BWF for gender, as well as racial, transformation of the PILOs. According to Moeti (2018), sexual harassment allegations in the PILOs also prompted donors to respond to the claims being made against their grantees. Following Harvey's assessment (cited in Morvaridi 2016) that donors have symbolic power that affords them status and recognition, and this status is enhanced by media through which they generate prestige, reputation and recognition (p.4). Participant reflections about sexual harassment in the PILOs that emerged in this study indicated a perception that donor responses to sexual harassment allegations were mainly concerned with recovering their reputations, as participants indicated that donors had been previously aware of sexual harassment in the sector but had left the issues unaddressed. These sentiments about the donor's response were shared among the research participants as follows:

> Post these sexual harassment incidents becoming public, I do get the sense of a sudden responsiveness from the donors which does not make sense, sexual harassment has been happening in our sector for a while but I think now is much more open and donors are associated with these organizations they want to at least convince themselves or I don't know whom, and because there are more people pointing fingers at the donors, and more people writing, talking publicly about donors it seems that they want to be more responsive now (Tebogo).

> [In response to sexual harassment cases] all of a sudden, they [donors] say we want to know about your transformation plans, and they are worried, they are only worried about what is hot at the time (Noma).

Tebogo and Noma's statements begin to centre donors more directly in the conversation about race and gender transformation within the PILOs. The statements also resurface donor practices in relation to their grantees and their social location with regard to their power in the sector. The sudden response, as stated by the participants, recognizes the reactive response of donors to the context they operate. Underlying these statements is a particular expectation of donors to be more conscious and proactive to what is happening within the PILOs. Donor awareness of sexual harassment in the sector also emerged within interviews. The following extracts from interviews illustrate the sentiments, perceptions, and reactions within donor organizations to sexual harassment in the sector:

Alice a participant from one of the donor institutions who has been working in the donor's space for a less than a decade:

> I think a lot of funders were taken by surprise. I am surprised we were surprised...The extent of it was really heartbreaking. [with] bullying, I wasn't surprised because I mean you could sense these tendencies sometime when you interact with people.

Anna, also from one of donor's institutions who has been in the space for over a decade:

> Those sexual harassment cases should never have been a surprise … Donors we kind of said okay, it is not perfect but okay, but actually that was a very big mistake because we knew long before these sexual harassment cases emerged that there was governance and oversight weakness, we didn't act.

As shown above, participants based at donor organizations acknowledged an awareness amongst donors that sexual harassment was occurring in the PILO sector. Theoretically informed by the discourse of ignorance contract that is "the tacit agreement to entertain ignorance which lies in the heart of a society structured in racial hierarchy" (Steyn, 2015, p. 8). Sexual harassment could not have been sustained for so long without the active or passive cooperation of donors continuing to fund the PILOs and praising their work to the detriment of women experiencing sexual harassment in these organizations. Anna, in particular outlines how donors have focused on the "good" programmatic work of the PILOs to the detriment of the of intra-organizational culture that is discriminatory to black female workers. By giving precedence to the PILOs work that the same survivors of sexual harassment execute reproduced power and feeds into organizational silence that is perceived by Steyn as a technique of control (2012, p. 10). Survivors of sexual harassment are further invisibilized; they fear ostracism and exclusion and carry with them the burden of knowing that they may damage their reputation, the reputation of the institutions and that of the

perpetrator. One of the research participants from the PILOs described her observation on how sexual harassment impacted survivors having worked in the sector for over five years:

> In the past a lot of people who worked at the organization years ago, lawyers, senior attorneys and advocates…who experienced sexual harassment, and other kinds of bullying behavior…felt that, I am just going to leave because I am not going to be the one to kind of bring down the institution. This is how a culture of abuse is allowed to kind of take root in these organizations (Tracey).

Tracey's observations further illustrate the discrimination of women based on their gender and how it is reinforced through structural power. Tracey also shows donors vested interest in their own objectives and reputations that operates in a risk-averse culture. Furthermore, it is indicated that donors maintain cultures of silence around sexual harassment by not saying anything. As Feenan states, such forms of "ignorance may be actively constituted or reproduced as an aspect of power" (cited in Steyn, 2015, p.10) or it can be an act of knowing and not wanting to know (cited in Steyn, 2015, p. 10). The Ignorance contract as described Steyn "is not simply a lack of absence to be filled with still to be acquired knowledge" (2015, p9), but it is "a pervasive and fundamental influence in human cognition, action, social relation and culture" (Smithson cited in Steyn, 2015, p.10). Lastly, ignorance and ambiguity can be manufactured, maintained, and disseminated (Proctor cited in Steyn, 2008, p. 10). Donor participants demonstrated strategic ignorance through ambiguity and fragility reflected in ignoring what not to know. They also demonstrate a culture of organizational silence that takes place in the donor and grantee organizations. A culture that is ingrained in organizations' systems and practices that do not listen to the voices of survivors of sexual harassment. Donor participants also demonstrate that there are still deeply entrenched sexist practices in the sector that undermine women and in turn are used to question women's capabilities that result in power remaining in the hands of men, rendering women as incompetent and erasing their contributions. What also comes up is the unique experience of women against forms of discrimination and heightened vulnerability compared to men. There are widely shared gendered norms that reinforce stereotypes about the role of women in society and regulate workforce participation. The PILOs emerge as sites of violence for women, in which women face constraints and limitations in relation to their aspirations. As female participants working in PILO's explained:

> The social justice space was a very empowering space for me but also a space where I knew as a black woman that I had to do more. Just to be a woman in this space was difficult because of sexual harassment (Sam).

> Transformation is not preferable in certain contexts because there is a black woman supposedly coming in to lead a particular entity, patriarchy then, and wanting to keep the status quo converge and frustrates black women which is challenging and gendered (Wendy).

> There are always additional hurdles when you are a black person, a black woman, a young black woman (Tracey).

Sam, Wendy and Tracey demonstrate the gendered nature of transformation in the PILOs, reflecting on the intersectional factors of race, age and gender in the sector. The participants point out how they experience belonging and not belonging in the PILOs as a result of their multiple identities. Diversely, the intersectionality of these research participants also provides what May (2015) refers to as a form of resistance because it challenges the dominant order that socially constructed women in subordinate positions. While the sector continues to be male-dominated and to marginalize black women, there is a sight of contention that is evidenced by the black women who have risen to Director positions succeeding white male Directors. A transition that Wendy described as not preferable in a particular context.

In the wake of the sexual harassment cases, donors began to reflect on their internal process and put systems in place to respond to the allegations. According to Moetie (2018), donors called for grantees to strengthen their policies and procedures as a response mechanism to sexual harassment. Thus, indicating that before the sexual harassment cases, PILOs were operating without proper systems in place, and this was one of the requests made by the BWF two years before these allegations. Again, this is indicative of whose voice has more currency in the sector concerning donors.

4.4 Diversity, Equity and Inclusion for transformation

As previously mentioned, the commitment of the PILOs was instrumental in the political transformation of South Africa from apartheid to a democratic state through the application of the law. The PILOs contributions pre and post-apartheid remain significant and should not be underestimated. Some of the well-known achievements led by the PILOs include the development of the *locus classicus* jurisprudence on civil, social and economic rights such as the ending of the death penalty (*Makwanyane 1995)*, access to treatment for people living with HIV/AIDS (*TAC*

2002), access to health care (*Soobramoney 1997*), right to housing (*Grootboom 2001*), (Budlender, Marcus SC, & Ferreira, 2014).

While the PILOs continue their essential work, they struggle with their internal transformation. Racial inequality at PILOs is taking place at an individual level, cultural level and structural level. Therefore, drawing from Kincheloe (cited in Ferber, 2012) the call for transformation by the BWF cannot be understood outside of how historically privileged groups work to maintain the status quo (p. 69). These dominant social structures are maintained through forms of privilege blindness, which is described by Ferber (2012) as a new form of racism because it denies the reality of race and racial inequality, ascribing the sustained inequalities to differences in the oppressed groups.

The South African constitution prohibits discrimination based on race, culture, gender, language and sexual orientation; it aims to transform the country through the undoing of power relationships that have historically structured South African society. The process of transformation requires engagement in the process towards substantive equality, to afford those who are disadvantaged and marginalized in society equal opportunities without prejudices (Ntlama, 2014). More often than not, active engagement towards substantive equality is skewed towards one group, and the work of transformation is done by those who suffer from oppression and discrimination. According to McIntosh (cited in Johnson, 1997, p. 26), the privileged white members of the society who already have an unearned advantage are unwilling or afraid to give it up. If they give up their privilege, this will ensure unearned entitlements for everyone, such as feeling safe at work, working in an environment that one feels they belong and are valued for their contribution. To give up that advantage and work towards equality would affect whites, and their race and gender privilege (McIntosh cited in Johnson, 1997, p. 26). Although McIntosh speaks from, and of, the American context, one can argue that such trends are also surfacing in South Africa. Participants indicated that the PILOs are spaces that marginalize black workers and privileges and maintain whiteness by sharing the below examples:

Peter, a black male consultant recounted an instance:

> A female black candidate attorney was not allocated legal cases at work because she did not have a driver's license.

While Tebogo, who is based at the PILOs hold that:

> Black workers felt that their white counterparts were being paid more and that there wasn't just space to develop. For example, why briefs were only given to the same number of white people.

Wendy, who is also based at the PILO, referred to a culture of white supremacy within PILOs:

> A culture of toxicity that came with an affection towards whiteness that completely disregard black workers within the sector." Wendy elaborated, providing the example that "in most instances, you do not have policies on how to brief a case - you just brief a case at a braai with your white bru (friends) at the exclusion of black staff.

Donors and PILOs research participants demonstrate how white coworkers draw on and use their networks of social capital outside of the work environment to advance themselves. Moreover, how whiteness becomes a currency and is maintained as a standard which black workers must adhere to and are judged using different criteria. Crucially, participants also demonstrate the psychological impacts of marginalization on their overall wellbeing leading to feelings of being devalued and unwelcome. Wendy articulated feeling of not belonging, explaining the culture in the PILOs:

> [the culture] has been very suspicious of black workers and their capabilities even though they [can] do the work.

Wendy relates emotions of not being wanted, despite her capabilities, thus demonstrating the emotional effects of racial and gender discrimination. It is not through a lack of capability of black workers that they are marginalized but as a protective mechanism for whiteness to maintain a privileged position.

As indicated by the participants quoted above, a transformative process to address structural inequalities within the sector is urgently needed. In the process of the interviews, research participants began to reimagine alternative ways of working. For instance, Tebogo from the PILO argued:

> Diversity is important. We are stronger, and far more effective if we are a diverse organization and a diverse board. It is important that everyone feel that they are welcome in a workplace, and that their opinion matters, and that they can be themselves in an organization. Granted the sector has done great work…but there are some shortfalls if we are not to be transformed. If you are not in that position you are blindsided by your own privilege.

According to Tebogo, diversity is a valuable alternative to reimagine transformation in the sector in a manner that is inclusive of all staff members. Tebogo positions diversity and inclusions as a mechanism that have the potential to not only transform the PILOs but to also strengthen their work by bringing together diverse perspectives to challenge inequalities.

Tracey, another PILOs Director provided a thoughtful process on what needs to be to achieve diversity:

> If we say we can't have a sitting in the constitutional court of all white advocates, and if we are struggling to get black advocates with the experience then we have to also look at the other end to say what is going wrong.

Tebogo and Tracey's views illustrate an eagerness to work in a racially diverse environment, one that is inclusive and explores alternatives to develop skills of black Candidate Attorneys (CA) to become advocates. Diversity, Equity, and Inclusion (DEI) of the sector are necessary to challenge the dominant order and the slow pace of transformation. Drawing from Steyn's caution (cited in Grant 2007) affirmative action programmes and Black Economic Empowerment Act and other legislative frameworks and policies are often not enough, and they tend to reduce diversity efforts to tick box exercises that do not lead to transformation (P. 16). In South Africa, racism remains systemic because of the legacies of colonialism and apartheid, meaning that DEI requires a strong focus on social justice for it to work (Steyn cited in Grant, 2007, p. 16). Thus, diversity is not just about numbers and hiring black tokens and inclusion for the sake of inclusion. It has to redress past inequalities through action. The process of diversity means embarking on a continuous honest and courageous conversation about race and institutional racism within these organisations and fostering a culture that remains engaged with the transformation process. Staying engaged requires all participants, black and white, to participate in these uncomfortable discussions without imposing white fragility that ignores the marginality of black people and without blame while remaining respectful (Singleton and Hays, 2008). Furthermore, adhering to the principles of DEI will ultimately impact on the PILOs work not only internally given the realities of racial and gender discrimination and sexual harassment but also externally to remain relevant for its constituency. Tracey furthers this by stating:

> The organization had to transform from being anti-apartheid to protecting the Bill of rights and the constitution. Transformation now is looking at do we need to transform the way we work, the way we look at the law, the way we litigate. 2020 is different from 1994,

> looking back we see big wins at the court, but we do not see the impact of those wins on people's lives. What impact are we having on the profession as a whole.

The process of racial and gender transformation as articulated by Tracey is not only for the benefit of black workers in the PILOs but also for social justice more broadly. It is about promoting work that does not silence, distort, and erase black people and their experiences (Solorzano and Yosso, 2002, p. 25), but which positions historically marginalised groups at the centre of historical, political and social processes in order to counter forms of dominance. Most importantly, it is about going beyond the constitutional court to advance transformation. The participants argued that while winning the big and significant legal court cases is crucial to advance democracy, these cases have not had the desired impact on the lives of the marginalised communities it is intended to transform. The objectives that these cases pursued are perceived as narrow by many participants, as these court victories are informed by liberalism and have not dismantled structures of apartheid-colonialism in society.

4.5 New black leaders in the PILOs

In 2018, most of the white Directors transitioned out of their positions in the PILOs. The transitions resulted from multiple factors, including the call by the BWF, the sexual harassment allegation, and the progressive nature of other PILOs in terms of their governance and succession policies. Black leaders, mostly women, succeeded the white leaders. As the newly appointed black leaders began to embark on their journey, they brought with them new ideas of how and where they want to take the PILOs with regards to transformation. As one PILO participant Simon, cautioned:

> Are we going to continue keeping these organizations alive [as they are] or are we going to fundamentally transform them?

Thus, outlining the concern amongst new black Directors about the difficulty in gaining legitimacy as leaders and about following in the footsteps of a white leader. The new black Directors are faced with a mammoth task of having to establish a new organizational culture that is transformative, that takes an intersectional approach to race, gender, class, sexuality and ability and is not discriminatory. There is a clear recognition of what is at stake and the difficult work that lies ahead. The black leaders are coming into a sector preceded by lingering toxic masculinity, sexism, patriarchy and racism, and there is a need to rebuild the sector. Furthermore, at the same time,

donors shift in their priorities and funding structures are threatening the sustainability of the PILOs. Some of the concerns outlined by the new Directors who participated in the study included:

Noma, female Director:

> My biggest issue is about authority and the fact that I am a woman. That is a concern against staff who are also black and some of them are also women because they come and have been raised with the fact that if it is a white man, all will be well. I guess it is also true that white men have the privilege in any environment. [for example] when a donor was speaking about how we must build relationships with donors, a white director did not have to [worry about that]. It was simply enough for him to come in and be like, this is what we are doing, this is what we need your [donor] money to do. I probably won't have the same benefit and I know I need to find ways to make up for that new leader.

Noma raises the issue of differential treatment based on race and gender – indicating how black women in leadership positions are undermined by their staff who share the same race and (or) gender identity. Noma outlines multiple challenges that black women face in their leadership positions that may result in imposter syndrome – a feeling of inadequacy that causes an individual to questions their credibility, ability, and belonging as leaders. Another equally important issues outlined by Noma is how black people are conditioned to value and trust whiteness and whiteness ideologies over their own values, beliefs and knowledge. Noma's concerns are reflective of the majority of the new black Directors that were interviewed who expressed concern around their own capabilities as black men and women leaders in the sector. They also expressed an awareness of the social capital that white leaders have in the donor space that they feel they, and other black leaders, do not yet have. These are among other multiple responsibilities of managing the organisations and staff, managing donors and other stakeholders and individual professional development. One of the prominent concerns raised was around fundraising, and the need to establish other funding networks in order to ensure the continued operation of the organisation. The markers of race and gender identities were raised as having a significant impact on their work and in raising funds, thus alluding that donors fund white organisations. The social constructions of whiteness as the norm and ideal has rendered black people's capabilities, especially black women, as incompetent. As Nkomo (2011), has emphasised, the portrayal of black leadership is fraught with assumptions of deficiency and incapacity, which undermines black people's competency skills and reproduces the dominant order (p.372).

Despite these challenges raised by the research participants, the black leaders both old and new have started to collaborate and to partner with each other to reimagine a sector that is transformative and reflective of the demographic which it serves. The BWF has provided impetus in putting systems in place to ensure accountability. For instance, Wendy, a new black leader who was also part of the BWF, explains:

> We went out and wrote to each and every public law organization to say these are the policies we want to see…your transformational, your succession plan, your council briefing policies, your staff development policies, organizational culture development and these questions were being asked directly to leadership of institutions including donors.

Wendy demonstrates the shift that is beginning to emerge in the sector by first putting relevant policies that previously did not exist and engaging with donors. New leaders are determined to continue to foster collaboration and partnership at the sector level and externally with other stakeholders, and there is a concern that because the shifts in funding have the potential to create competition, some of the leaders may be co-opted by a competitive system they hope to avoid in their struggle against it. However, the participants see this as an opportunity to collaborate, partner, and come up with new innovative ways of working with donors' support.

While donors were critiqued for not responding adequately and timeously to sexual harassment allegations, they have initiated other support mechanism to support the PILOs and the new black leaders. As outlined in the literature review, Ford Foundation and OSF- SA established a collaborative fund, the Constitutionalism Fund, that seeks to address transformation and sustainability of the social justice sector and to promote constitutionalism. The Constitutionalism fund focused on the external work of the organization and internal operations, organizational culture and the well-being of staff. The Fund looked at how internal challenges impact on the work of the organizations. Although, the support from the Constitutionalism Fund was well received by the majority of the research participants in the PILOs, the paradox of how the Constitutionalism Fund was conceptualized by the same donors that fund the same organization as it does raises multiple questions such as, is this the best way for donors to fund?; why donors themselves are not able to do what the Fund is doing, Why did donors need an intermediary to address constitutionalism as a separate thematic area from their work on inequality? What are the donor limitations in doing this work themselves? What is the value add in establishing two parallel

processes? Moreover, as previously captured by donor participants and PILOs participants, the Fund was seen as privileging the same elite white PILOs organizations

While donors were critiqued for not responding adequately and timeously to sexual harassment allegations, they have initiated other support mechanisms to support the PILOs and the new black leaders. As outlined in the literature review, Ford Foundation and OSF- SA established a collaborative fund, the Constitutionalism Fund, that seeks to address transformation and sustainability of the social justice sector and to promote constitutionalism. The Constitutionalism fund focused on the external work of the organization and internal operations, organizational culture, and staff's well-being. The Fund looked at how internal challenges impact on the work of the organizations. Although the Constitutionalism Fund support was lauded by most of the research participants in the PILOs, the paradox of how the Constitutionalism Fund was conceptualized by the same donors that fund the same organization as it does raises multiple questions such as, is this the best way for donors to fund?; why donors themselves are not able to do what the Fund is doing. Why did donors need an intermediary to address constitutionalism as a separate thematic area from their work on inequality? What are the donor limitations in doing this work themselves? What is the value add in establishing two parallel processes? Moreover, as previously captured by donor participants and PILOs participants, the Fund was seen as privileging the same elite white PILOs organizations. In addition to the establishment of the Constitutionalism Fund, donor participants shared other initiatives they have put in place to respond to the needs of the sector as captured below:

> We put governance workshops in place. Our contract is full of you must declare, you must report…we have whole risk mitigating section in our monitoring visit that we never used to have….it sounds like it is about self-centeredness and that we only care about the risk to us, to our money, but that's because that is the only way we can intervene (Anna).

> When people are submitting proposals there is a section that asks about the organization's efforts, what it looks like first of all in terms of DEI. What its efforts are if there is a sense that is still a need to transform and we keep track of it (Alice).

Anna and Alice shared some of the activities and systems that donors have put in place to monitor transformation in the sector. While these indicate a level of commitment from donors, it is yet to be determined whether these endeavours have the power to surface and address core dominant institutional cultures that remain prevalent in the PILOs and whether these initiatives are radical

enough to advance transformation. The PILOs leaders interviewed were not sure of the implications of these instituted processes by donors indicating the lack of understanding of donors' processes, procedures and the level of transparency in which donors operate. This was affirmed by one of the PILOs research participants, Tracey:

> The donor application now ask for demographic breakdown of the organization so that is something that has been in place for a while now, how they [donors] weigh it, that is also a question that you can ask donors.

Tracey acknowledged her lack of knowledge and understanding of how donors use information gathered from PILOs to make decisions. Thus, implying that donors are not transparent in their engagement with their grantee organizations on how they operate and the purpose of their data collection and how it is used. On the other hand, it also shows how PILOs directors respond to donor requests without question. This shows how donor power is enacted passively – it is known, and it is active whether openly expressed or not, and grantees are cautious to vocalize critiques of donor power. The sector is willing and recognizes that change will only come from them, and donors can only support that process as allies. These points challenge donors to use their power to advance radical transformation. Simon, a Black male Director, shares his view on donors' efforts to address transformation:

> So, they are not into transformation, they are interested in a black face who will fit into a white organization. What do we mean by white organization? I mean organizations that historically their focus is social justice understood as transformation, understood as fighting black government [instead of strengthening it].

Simon's critique outlines his scepticism as a black male Director preceding a white Director in a historically white-led institution and simultaneously questions the donor's way of working that reinforce rather than challenge the dominant structures that remain oppressive in PILOs. Meaning, donor's way of working undermines the structural changes that need to transform and to reflect the African epistemological ideas. Donor process and structures are seemingly silencing discourse of the organizations that do not align to donor ways of support. What donors say is contradictory to what they do and how they do it. It can be argued that donors' values are performative and mask their practices that are not transformative.

Furthermore, Tracey and Simon outline a lack of communication between donors and PILOs leaders that creates a complicated relationship. Donors have the power of financial capital that gives them social capital to influence outcomes of PILOs. PILOs have the power to use the law to

advance social justice. So how do these two worlds merge? According to Fricker (2007), power exists even while it is not realized in action and at any given time, one party controls the actions of structural operation of power to preserve a particular social order. PILOs participants perceived the PILOs as having no power in relation to donors stating that they exist at the behest of donors, and they struggle to maintain reciprocal and mutually beneficial partnerships. As one PILOs participant, Noma argued:

> Donors are the reason why the sector exists…literally if donors don't support the sector, the sector would not exist and so, they yield so much power.

Noma further emphasized and showed how donor power is realized even when it is not active, thus indicating there is a need for donors to help support and facilitate transformation of the PILOs. On the other hand, donor participant argued:

> Because donors also get push back from grantees; they want autonomy. The only power you really have actually is not fund (Anna).

Anna raises awareness of that grantee organization have the power to challenge donors and further highlights the communication gaps in grantee-donor relations that Tracey and Simon alluded to previously.

This section highlighted the challenges of black Directors to transform the PILOs that still operate under inherent institutional structures that are discriminatory. The sections outline the need for donors to support incoming black Directors in the PILOs that are central to drive transformation in the sector. At the same time, it points to some of the challenges such as donor practices that are not understood but adhered to by PILOs in order to receive funding, the lack of communication that led to complex grantee-donor relations that are detrimental to the transformation process. Moreover, the recognition that the PILOs and donors have the power to transform the sector, but it requires conversations that seek a mutual solution and fosters understanding between donors and grantees. The PILOs Directors are willing and recognizes that change will only come from them, and donors can only support that process as allies. These points challenge donors to use their power to advance transformation. Donors can use their power to continue advancing social justice in a new way, in a way that fundamentally alters structural inequalities. In order for donors to do that they need to support and sustain black leadership that is transformative and not just as a tick box exercise of diversity, and to connect directly with communities.

Chapter 5: Conclusion and recommendation

The research study findings indicate that donors are vital to advance race and gender transformation within the PILOs. It emerged that donors have a role to play because they have the social capital to influence behaviour and to set the agenda. Indeed, it is not enough to identify that donors have a role to play because it is illustrated in the study that firstly, they have to confront their power that currently serves to undermine their ability to support the work and process of transformation.

Secondly, the study reveals challenges in grantee-donor relations resulting from a lack of effective communication that has led to a lack of trust. Current Directors of the PILOs who are mainly black and the majority of which are women are in the process of establishing a new way of working not only across the sector but with donors. This new way of working will require a new term of engagement that is different from engagement with previous white directors. The new PILOs Directors are determined to make a change, and that means considering participatory grantmaking by donors that will enable grantee organisations to engage in designing donors' strategies and understanding the modus operandi of donors. However, both parties have to be willing to enter into a reciprocal and mutually beneficial relationship that is based on transparency and accountability, and to cede power. The lack of trust comes from two notions held by the majority of the participants from the PILOs and donors side is that donors' institutions themselves are not transformed, so, how can they begin to understand transformation, and that donors hold liberal views that are not transformative; hence they assume the unconscious bias towards transformation. Therefore, similarly, to the PILOs, donors themselves have to embark on restructuring their organisations to respond better to the context in which they operate. Specifically, understanding how race and racism impact the operations of an organisation to enable them to respond pro-actively and appropriately.

Secondly, the study reveals challenges in grantee-donor relations resulting from a lack of effective communication that has led to a lack of trust. Current Directors of the PILOs are mainly black, and the majority are women and are establishing a new way of working not only across the sector but with donors. This new way of working will require a new term of engagement that is different from engagement with previous white directors. The new PILOs Directors are determined to make a change, and that means considering participatory and collaborative grantmaking by donors that

will enable grantee organisations to engage in designing donors' strategies and understanding the modus operandi of donors. However, both parties have to be willing to enter into a reciprocal and mutually beneficial relationship based on transparency and accountability; it means donors have to cede power. The lack of trust comes from two notions held by most participants from the PILOs and donors' side because donors' institutions are not transformed and that donors hold liberal views that are not transformative; hence, they assume the unconscious bias towards transformation. Therefore, similarly to the PILOs, donors themselves have to embark on restructuring their organisations to respond better to the context in which they operate. Specifically, understanding how race and racism impact an organisation's operations enable them to respond pro-actively and appropriately.

Thirdly, challenges in donor support are linked to interconnected factors, including their institutional structures and processes of grantmaking, their risk-averse nature, resistance to structural change.

In this research thesis, I sought to explore whether donors have a role to play to advance race and gender transformation of the PILOs – grantees that they support, and that objective was achieved, indicating that indeed donors do have a role to play. However, that role is secondary because the PILOs have the power and autonomy to be the primary lead and take ownership of their organisations systems and processes, but they need donors' support. The process of donors to be able to support racial and gender transformation requires of them to introspect on their internal structures and challenges that have the potential to delay transformation. Donors have to be more rigorous in their engagement with grantees, be transparent about whom they fund and why, and be accountable to the sector and its grantees. Donors are tasked with a mission to start engaging more on their grantee organisation's internal structures and operations to build more influential institutions without imposing their power.

I demonstrated that the PILOs under the white leadership had been romanticised publicly by donors and society as drivers of social change discounting black lawyers' invisible work in the organisation. This veneration was made possible by the unquestioning support of donors. Indirectly, the research analysis was able to bring out the importance of how strong institutions

better produce service to those who need it the most and that transformation issues are political. Moreover, the fact that women, particularly young women, are increasingly claiming and occupying leadership positions, means that there needs to be a shift in an organisational culture that supports these leaders and ensures intergenerational cohesion that is neither paternalistic nor ageist. Board of trustees of PILOs, their composition, and governance came up as contributing factors to the lack of transformation. However, the Board of Trustee issue was not further assessed in the study because of the limitations that remain in further work. In closing, the study offers recommendations to reform grantmaking to support race and gender transformation within the PILOs. The recommendations were drawn from the interviews with participants and the researcher's analysis.

In order to support the process of race and gender transformation within the PILOs, donors must focus on the range of actions needed to respond directly to race and gender discriminations that affect transformation processes. According to research participants, this means providing institutional rather than core support that goes beyond financial resources, promoting greater transparency and accountability, and identifying new ways of engagement.

- *Policies: It is essential to have policies in place*, but these policies have to be accompanied by a consistent implementation and an environment where staff feels safe to use these policies (i.e., in case of sexual harassment). Staff needs to be part of developing these policies and (or) orientated on these policies to ensure they take ownership. It is the role of donors and the boards of these organisations to ensure that their grantees have adequate policies that protect staff and its implementation and continuously review and report on these processes.

- *Fund the work of transformation:* The current directors have inherited a sector that came with its own culture inherent from colonial and apartheid-era, and in order to dismantle that culture, financial support and patience is needed from donors. The PILOs need to recalibrate and develop a plan that the donors need to buy into and have faith in and understand they need to move with their privilege. Funding transformation can mean supporting staff training, developing black staff (i.e., for lawyers providing support for pupilage), and listening to what grantee organisations need and support those needs rather

than imposing donor agendas. At the same time, grantees should also recognise the advantage of knowledge networks that donors can use to their advantage. Thus, the key is a consultation process that is free of power and bias.

- *Encourage partnerships and collaboration:* Grantee – donors' partnership should be harnessed by strengthening communication. Communication can be fostered through a facilitated series of dialogue around race and gender between grantees and donors. Donors should increase their level of transparency to enable grantees to understand better donors' positions and the limitation imposed by them due to their internal processes. Likewise, donors' internal processes have to be challenged for them to practice what they preach. Furthermore, donors should also support a collaborative culture and a consultative culture within the sector because they have power; this should be done in consultation with the grantees or support grantees to facilitate their processes without donor interference.
- *Asking the right questions and building trust:* Donors should take the lead to facilitate and encourage open dialogues. They should not be afraid to ask the right questions, the same way they would if there was financial mismanagement, they should get comfortable asking questions about institutional racism and sexism in the workplace without wielding their power. Having these difficult conversations is one way to support transformation and change something deeply entrenched for years through racism and all the isms, and provide an opportunity for donors to be held accountable by being asked the same questions concerning their institutions.
- *Monitoring visits:* Donors to spend more time talking to the rest of the staff members in the organisations to create rapport beyond the director to understand the overall culture of the organisation better and initiate and dedicate time to having difficult conversations.
- *Support a cadre of young black leaders* and their development in the sector as part of their grantmaking, focusing on women.
- *Strengthening accountability and governance:* Initiate and support relevant research that will strengthen work on transformation. For example, support black-led research that investigates accountability in terms of the structures of the PILOs - the structures that hide power and decision making.
- *Strengthening* n*etworks and social capital: through s*upporting black leaders to build networks and social capital by introducing them to other donors; for progressive donors to

influence the philanthropy sector to provide multi-year general support grants to organisations and to advocate for race and gender equity lens in grantmaking.

Overall, the research provides a point of departure for donors and grantees to reflect and engage in a process that seeks to transform the PILOs to serve communities better. Through focusing on the historical trajectory of the PILOs in South Africa, we can see how external political factors have cultivated discriminatory organisational structures that contradict transformation imperatives. The report findings require further research about the relationship between institutional and societal transformation processes. In particular, the findings and analysis presented in this research invite further engagement with the issue of organisational culture and representation within civil society organisations such as PILOs that are instrumental within efforts to advance social justice in South Africa. Furthermore, the reports also indicate that there is much work to be done to centre race and gender transformation in donors' grantmaking process that focuses on grantee organisations internal transformation as the BWF raised it. To advance race and gender transformation, donors have to support black-led organizations and dismantle old racial institutional structures.

Reference

Aina, T. A., & Moyo, B. (2013). *Giving to Help, Helping to Give: The Context and Politics of Africa*

Albertyn, D. and Goldblatt, B. (1998). *Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality.* SAJHR 14 (2), pp.248-276.

Albiston, C. (2018). *Democracy, Civil Society, and the Public Interest Law*. Berkley Law, 187-211.

Alcolff, L.M. (2007). Epistemologies of ignorance: three types. In Sullivan and N. Tuana, eds. *Race and epistemologies of ignorance*. (pp. 39-58). Albany, NY: State University of New York Press.

Anheier, H.K. (2004) Non-profit organizations. New York, Oxon: Routledge.

Atkinson, J. D. (2017). *Journey into Social Activism: Qualitative Approaches*. Fordham University, 65-98.

Atkinson, P., & Hammersley, M. (1994). Ethnography and participant observation. In Denzin, N.K, & Lincoln. Y.S. (Eds.), *Handbook of qualitative* research (p. 248–261). Sage Publications, Inc.

Bailie, C. (2017). *The RARE Leadership Model, Jacob Zuma*: Thoughts on the Virtues of Leadership. Politeia, 36 (1). 1 - 23

Bell. D. (1990). Racial Realism- after we are gone: Prudent speculation on America in a post-racial epoch. In R. Delgado (Ed), *Critical race theory: The cutting edge*, (pp. 2 – 7), Philadelphia, PA: Temple University Press.

Berg, B. (2009). Qualitative Research Methods for the Social Science. (pp. 101 – 157). Boston: Allyn & Bacon.

Biko, S. (2004). I write what I like: a selection of his writings. Johannesburg: Picador Africa. (Original work 1978).

Black Workers Forum. (2016a). Black Workers Forum Memorandum of Demands. Johannesburg. Bertha Foundation. (31 March 2016).

Black Workers Forum. (2016b). Transformation of the Public Interest Law Sector. Public Interest Law Gathering: Johannesburg. (29 - 31 August 2016).

Bowleg, L. (2008). When Black+ lesbian+ woman≠ Black lesbian woman: The methodological challenges of qualitative and quantitative intersectionality research. *Sex roles,* 59 (5-6), pp. 312-325.

Braun, V. and Clarke, V. (2006) Using thematic analysis in psychology. Qualitative Research in Psychology, 3 (2). pp. 1-41.

Brickhill, J. (2018). *Public Interest Litigation in South Africa*. 36-43

Budlender, S., Marcus, G., and Ferreira, N. (2014). *Public interest litigation and social change in South Africa: Strategies, tactics and lessons*. The Atlantic Philanthropy (October 2014).

Cancian. F. (1992). *Methodologies That Challenge Inequality*. 6 (4), 623- 642.

Carr. L. (1997). Color-blind racism. Thousand Oaks: SAGE Publications. Inc.

Cohen, L. Manion, L., & Morison, K. (2007). *Research Methods in Education*. 6th ed. London: Routledge.

Collins, P.H. (1986). *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*. University of Cincinnati. 33 (6), S14 – S32.

Collins, P.H. (1998). *The tie that binds: Race, gender and US violence*. Ethnic and Racial Studies, 21 (5), 917-938.

Collins, P.H. (2014). *Black feminist thought: Knowledge, consciousness and the politics of empowerment* (10th ed.). New York: Routledge. (Original work 1990).

Constitutionalism Fund. (2020). http://www.constitutionalismfund.co.za/Overview#what-are-the-constitutionalism-funds-objectives5

Corbin, J. & Strauss, A. (2008). Basics of qualitative research: Techniques and procedures for developing grounded theory (3rd ed.). Thousand Oaks, CA: Sage.

Crenshaw, K. (1989). *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. University of Chicago Legal Forum, pp.138-176.

Crenshaw, K. (1993). Beyond Racism and Misogyny, in M. Matsuda, C. Lawrence and K. Crenshaw (eds). *Words that Wound*. Boulder, CO: Westview Press.

Crenshaw, K. (2001). *Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of color,* paper presented at the World Conference Against Racism.

Cunningham, H. (1991). *Children of the poor: representation of childhood since the seventeenth century,* Oxford: Blackwell.

Cunningham, H. (2016). Philanthropy and its critics: a history. In Morvaridi B. (Ed.), *New Philanthropy and Social Justice: Debating the Conceptual and Policy Discourse* (pp.17-32). Bristol, UK; Chicago, IL, USA: Bristol University Press.

Davis, D. (2010). *Transformation: The Constitutional Promise and Reality*. South African Journal on Human Rights, 26 (1), 85 -101.

Delavignette, R. (1977). *Robert Delavingnette on the French colonial Empire*; Selected writings. William, B. Cohen. (ed.) Chicago: University of Chicago Press.

Delgado, R. (1997). *Images of Words that Wound: Critical Race Theory, Racial Stereotyping, and Teacher Education*. Teacher Education Quarterly. 24 (3), 5-19.

Delgado, R. & Stefancic. J. (2001). *Critical Race Theory: An Introduction*. New York; London: New York University Press.

Denzin, N. K. (1970). The research act: A theoretical introduction to sociological methods. New York: Aldine.

Denzin, N.K., & Lincoln, Y.S. (2011). *The SAGE Handbook of Qualitative Research* (4th ed.). Thousand Oaks, CA: SAGE Publication Inc.

Dlamini. D. (2008). *The Role of and Effectiveness of Development Aid as perceived by NGOs in Kwazulu-Natal*. Faculty of Humanities, Development and Social Sciences, University of KwaZulu-Natal. 1-76.

Dowling, M. (2006). *Approaches to reflexivity in qualitative research*. Nurse Researcher, 13 (3), 7-21.

Edwards, M. (2015). From love to money: Can philanthropy ever foster social transformation? In Morvaridi B. (Ed.), *New philanthropy and social justice: Debating the conceptual and policy discourse* (pp. 33-46). Bristol, UK; Chicago, IL, USA: Bristol University Press.

Edwards, M. 2008. *Small Change: Why Business Won't Save the World*. San Franciscos: Berrett-Koehler.

Eisner, E. W. (1991). The enlightened eye: Qualitative inquiry and the enhancement of educational practice. Toronto: Collier Macmillan Canada.

Engdahl, C. and Hauki, H. 2001. Black Economic Empowerment: an introduction for non-South African business. Master's thesis. Gothenburg University, Sweden.

Esterhuyse, W.P. 2003. The challenge of transformation: breaking the barriers. *South African Journal of Business Management,* vol. 3, no. 42. pp. 1-8.

Fanon, F. (2001). *The Wretched of the Earth*. London: Penguin. (Original work 1963).

Farlay, L. (1078). *Sexual Shakedown: The Sexual Harassment of Women on the Job*. University of Michigan.

Freire, P. (2005). Pedagogy of the oppressed. 30th anniversary edition. New York: Continuum.

Fricker, M. (2007). Introduction. "*Testimonial Injustice", in Epistemic Injustice*: *Power and the ethics of knowing*. New York: Oxford University Press, 9-17.

Given, L. (2008). *The SAGE encyclopedia of qualitative research methods*. Thousand Oaks, CA: SAGE publications, Inc.

Goldstein, A. E., & Reiboldt, W. (2004). The Multiple Roles of Low Income, Minority Women in the Family and Community: A Qualitative Investigation. *The Qualitative Report, 9*(2), 241-265. Retrieved from https://nsuworks.nova.edu/tqr/vol9/iss2/4

Govender, J. (2016). *Social Justice in South Africa*. Civita, Porte Alegra, 16 (2), 237-258.

Grant. T. (2007*). Transformation Challenges in the South African Workplace:* A conversation with Melisa Steyn of iNCUDISA. 70 (1), 93-98.

Habib, A. & Taylor, R. (1999). *South Africa - Anti- Apartheid NGOs in Transition. International Journal of Voluntary and Nonprofit Organizations*. Springer, 10 (1), 73-82.

Hall, S. (1992). *The West and the Rest: Discourse and Power*, Chapter 6. In Hall, & Gieben Bram, Formation of Modernity (pp. 276-320). Polity Press and Open University, Cambridge.

Harris, A. (2001). Foreword. In Delgado, R. & Stefancic, J. (Authoris), *Critical Race Theory: An Introduction*. xvii- xxi. New York; London: New York University Press.

Hearn, J. (2002). *Aiding Democracy? Donors and civil society in South Africa*. Third World Quarterly, 21 (5), 815-830.

Hesse- Biber, S.N, & Leavy, P. (2006). The craft of qualitative research: A holistic approach. In T*he practice of qualitative research* (pp. 3-44). Thousand Oaks: SAGE Publications.

Holloway, I., & Todres, L. (2003). The status of method: flexibility, consistency and coherence. Qualitative Research, 3(3), 345-357.

Jagwanth, S., & Murray, C. (2002). *Ten Years of Transformation: How has Gender Equity in South Africa Fared?* Canadian Journal of Women and Law, 14, 255- 299.

Karl, K. (1998). *Legal Culture and transformative constitutionalism*. South African Journal on Human Rights 14(1), 146-150.

Koch, T. & Harrington, A. (1998). *Reconceptualizing Rigour: the case of reflexivity*. Journal for Advancing Nursing, 24 (4), 882-890.

Kurt, A., Ephraim, N. & Peter, K. (2011). *Diversity management in South Africa: Inclusion, Identity, Intention, Power and Expectation*. African Journal of Business Management. 6 (4), 1749-1759.

Labuschagne, A. (2003). Qualitative research: Airy fairy or fundamental? The Qualitative Report, 8(1), Article 7. Retrieved 5 January 2009, from http://www.nova.edu/ssss/QR/QR8-1/labuschagne.html.

Langa, P. (2006). *Transformative Constitutionalism*. Stellenbosch Law Review. 17, 351- 360.

Lather, P. (1991). *Getting Smart: Feminist Research & Pedagogy with/in the postmodern*. Editor intro & preface, 1-17.

Le Roux K; Feeney, M.K. (2015). Non- profit Orgnizations and Civil Society in the United States: New York, Oxon: Routledge.

Leavy, P., & McHugh, M. (2014). Feminist Qualitative Research: Towards Transformation of Science and Society. In *the Handbook of Qualitative Research*. Oxford University Press.

Mafunisa, M. (2004). *The role of civil society in promoting good governance in the Republic of South Africa.* International Review of Administrative Sciences, 70 (3), 489- 496.

Manji, F. (1998). The Depoliticization of Poverty. In Deborah Eade (ed.), *Development and Rights*. Oxford: Oxford University Press, 12-34.

Manji, F., & O Coil, C. (2002). *The Missionary Position: NGOs and Development in Africa*. Oxford Journals, 78 (3), 567-583.

Matsuda, M. (1991). *Voices of America: Accent, antidiscrimination law, and jurisprudence for the last reconstruction.* Yale Law Journal, 100, 1329-1407.

Matsuda, M., Lawrence, C., Delgado, R., & Crenshaw, k. (1993). *Words that wound*. Critical race theory, assaultive speech, and the first amendment. Boulder, CO: Westview.

Matthews, S. (2017). *NGOs and Social Justice in South Africa and Beyond.* University of KwaZulu- Natal Press. 1-17.

McClymont, M., & Golub, S. (2000). *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World*. Unites States of America: Library of Congress cataloguing-in- Publication Data.

Mills. C.W. (1997). *The Racial Contract.* New York: Cornell University Press. Selected Chapters.

Mills. C.W. (2007). *White Ignorance*. In S. Sullivan & N. Tuana, (Eds.), Race and epistemologies of ignorance (pp.11-38) Albany, NY: State University of New York Press.

Mills. C.W. (2015). *Global White Ignorance*. In M. Gross & L. McGoey, (Eds.). Routledge. International Handbook of Ignorance Studies, 217-227.

Ministry of Justice. (1997). *Justice vision 2000*: Five -year National Strategy for transforming the Administration of Justice and State Legal Affairs. Republic of South Africa: Department of Justice.

Morvaridi, B. (2015). *New Philanthropy and Social Justice: Debating the Conceptual and Policy Discourse*. Bristol, UK; Chicago, IL, USA: Bristol University Press.

NDP (National Development Plan). (2011). National Development Plan 2030: Our Future – make it work. South African Government [online]. Available at https://www.gov.za/sites/default/files/Executive%20Summary-NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf [Accessed 12 January 2020].

Nkomo, S. (2011). *A postcolonial and anti-colonial reading of "African" Leadership and management in organizations studies: tensions, contradictions and possibilities*, 18 (3), 365-386.

Nussbaum, B. (2001). *Upheavals of thought: The intelligence of emotions*. Cambridge, UK: Cambridge University Press.

Payton, R.L., & Moody, M.P. (2008). Understanding Philanthropy: Its Meaning and Mission. Bloomington: Indiana University Press.

Peck, J. (1994). *Talk about racism*: Framing popular Discourse of race on Oprah Winfrey. Cultural Critique, 27, 89-126.

Philanthropy. United Kingdom: Amalio Publishing and Trust Africa.

Pieterse, M. (2005). *What do we mean when we talk about transformative constitutionalism*? Sabinet Online, 20 (1), 155-166.

Raith Foundation. (2020). WWW. Raith.org.za

Reith, S. (2010). *Money, power and donor- NGO partnerships*. Taylor & Francis, Ltd (on behalf of Oxfam GB) 20 (3), 446 – 455.

Republic of South Africa. 1996. The Constitution of the RSA, Act 108 of 1996 as amended. Government Printing Works, Pretoria.

Roston, L., Clark, M., and Tissington, K. (2015). *Public Interest Legal Services in South Africa*: Project Report. Socio-Economic Rights Institute of South Africa (November 2015).

Scarborough, C. (1989). *Conceptualizing Black Women's Employment Experiences.* The Yale Journal, 98 (7), 1457 – 1478.

Schoeman, N. 2010. The drivers and restraining factors for achieving employment equity at management level in gold mining companies. MBA thesis, Gordon Institute of Business Science, Johannesburg.

Segalo, P., Manoff, E. & Fine, M. (2015). *Working with Embroideries and Counter – Maps: Engaging Memory and Imagination within Decolonizing Frameworks*. Journal of Social and Political Psychology, 3 (1), 342-364.

Selby, K. and Sutherland, M. 2006. 'Space creation': a strategy for achieving employment equity at senior management level. *South African Journal of Labour Relations*, vol. 30, no. 2. pp. 42-65

Sibande, S. (2011). *Not Purpose- Made! Transformative Constitutionalism, Post-Independence and the Struggle to Eradicate Poverty*. University of Witwatersrand: School of Law, 482 – 500.

Shivji, I.G. (2007). *Silences in NGO discourse: The role and future of NGOs in Africa.*

Smithson. M.J. (2008). Social theories of ignorance. In R.N. Proctor and L. Schininger (Eds.). *Agnotology: the making and unmaking of ignorance*. Stanford University Press, 209-229.

Soobramoney v Minister of Health, Kwazulu-Natal 1998 1 SA 765 (CC)

Sorj, B. (2005). *Civil Society North -South Relations: NGOs and Dependency*. National Council for Scientific and Technological Development, Brazil, 1- 42.

Stacey, S., & Aksartova, S. (2001). *The Foundation of Democracy:* US Foundation Support for Civil Society in South Africa, 1988- 1996. Springer, 12 (4), 373 – 397.

Steyn, M. (2007). In Grant T, *Transformation Challenges in the South African Workplace: A Conversation with Melissa Steyn of iNCUDISA*. Business Communication Quarterly, 70 (1), 93-98.

Steyn, M. (2010). *Critical Diversity Literacy: Diversity awareness in twelve South African organizations*. Innovative issues and Approaches in Social Science, 3(3), 50 -81

Steyn, M. (2015). *Critical Diversity Literacy: Essential for the twenty-first century*. In S. Vertovec (Ed.), Routledge International Handbook of Diversity Studies (pp. 379 – 389). New York: Routledge.

The Department of Justice and Constitutional Development. (2012). *Discussion document on the transformation of the judicial system and the role of the judiciary in the developmental South African State*. Republic of South Africa: (February 2012)

The Department of Labour. (2018-2019). *19TH Commission for Employment Equity*. Annual Report. Republic of South Africa: Pretoria.

Thiven, R. (2008). Transformation. In N Shepherd and S. L Robins. *New South African Keywords*. Pp 209 – 223.

Tyson, L. (2006). *Critical Theory Today*: A Used Friendly Guide

Yin, R. K. (1994). Case study research: Design and methods (2nd ed.). Thousand Oaks, CA: Sage.

Young, I.M (2000). Five faces of oppression. In Adams, W. Blumendeld, C. Casterieda and H. Hachman (Eds.), *Readings for diversity and social justice*. New York: Routledge.

Young, I.M. 2011 [1990]. Justice and the politics of difference: Princeton, NJ: Princeton University Press. Selected chapters.

Yuval- Davis, N. (2006). *Intersectionality and Feminist Politics*. European Journal of Women's Studies. 13 (3), 193- 209.

Appendice

Appendix A: Participants information sheet

Dear participant.

My name is **Nancy Moloantoa**, I am a master's student in the School of Social Science, **Centre for Diversity Studies at the University of Witwatersrand** in Johannesburg and I am also a Program Associate at the **Ford Foundation**.

I am writing to you as a student who is undertaking an academic research project. The Black Workers Forum at the Public Interest Law Gathering in 2016 inspired my research. I am investigating the racial and gender transformation of the Public Interest Law Organizations (PILO) that are donor funded. This research project aims to explore the challenges and possibilities to foster racial and gender transformation in these organizations. The title of my research is "*The role of donors, if any, in advancing transformation of the PILOs post-apartheid South Africa".*

I want to highlight and emphasize that this research is for degree purpose and is not in any way affiliated with the Ford Foundation. My employer has permitted me to conduct this research, and I have ethics approval from the University of Witwatersrand. I take full responsibility to conduct the research ethically. I also want to take ownership of my identity as a black woman working in the Social Justice Sector at the Ford Foundation and my bias in advocating for race and gender transformation to ensure that institutions are representative of the population they serve. I acknowledge that my positionality at the Foundation poses limitations to the research that may include you not wishing to participate in the study and that my positionality has also privileged me to have access to this issue and to you as a participant.

I want to invite you to take part in a single interview because I believe that your participation will contribute towards shaping how the sector thinks about transformation; to explore the challenges and opportunities. Furthermore, the research has the potential to influence positively on how donors see their role in advancing racial and gender transformation in the social justice sector by providing an opportunity for critical thought.

The interview will involve answering research questions and will take around 60 minutes. With your permission, I would also like to record the interview using a digital device (Phone and / recording).

Your participation in this research will be voluntary; therefore, you will not receive any direct financial or material benefit from participating in this research, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any questions if you do not want to. The interview will be confidential and anonymous as I will not include your name or any identifying

information. However, since I will refer to your workplace and position, this may allow for personal identification but not of your interview.

The information you provide will be held securely and not disclose to anyone else. I will be using pseudonym (false name) to represent your participation in my final research report. If you experience any distress or discomfort at any point int his process, we will stop the interview or resume another time.

If you have any questions during or after the interview, feel free to contact me on the details listed below. This study will be written up as a research report which will be available online through the university library website. If you wish to receive a summary of this report, I will be happy to send it to you. If you have any concerns or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (Non- Medical), telephone +27 (0)11 717 1408, email Shaun.Schoeman@wits.ac.za

I have secured ethics approval, and the ethics protocol number is **DIV191025.** I am under the supervision of Dr Haley Mc Ewen, and she is available at Haley.McEwen@wits.ac.za.

Regards.

Researcher

_____

Nancy Moloantoa
nancy.moloantoa@gmail.com
+27 (0) 73 4937065

Appendix B: Consent form

Title of project: The role of donors, if any, in advancing transformation post-apartheid South Africa

Name of researcher: Nancy Moloantoa

1, _____agree to participate in this research project. The researcher has been explained to me and I understand what my participation will involve. By signing this consent form, I agree to the following:

I agree that my participation will remain anonymous.

I agree that the researcher may use anonymous quotes in his/her research report.

I agree that the interview may be audio recorded and store on a password-protected computer.

I agree that the information I provide may be used anonymously by other researchers following this project.

_____.

Signature.

_____.

Name of participant:

_____.

Date:

Appendix C: Research questions and Interview schedule for PILOs

1. Biographical information
    - Name and surname
    - Organization and position
    - Duration in position
    - Race and gender
2. About the organization
3. About transformation
    - What is your understanding of the term transformation in the South African context?
    - In reference to your organization's work, what are the opportunities in addressing racial and gender transformation.
    - What are the challenges
4. Donor and grantee relationship

    4.1 Grantees
    - What has been your experience working with donors?
    - What is the role of donors, if any, in advancing transformation with the public interest law organization?
5. Is there anything I might not have mentioned that you think I should consider?

Appendix D: Research questions and Interview schedule for Donors

1. Biographical information
    a. Name and surname
    b. Organization and position
    c. Duration in position
    d. Race and gender
2. Tell me briefly about your organization, its mission and vision.
3. About transformation
    a. What is your understanding of the term transformation in the South African context?
    b. In reference to your organization's work, what are the opportunities in addressing race and gender transformation.
    c. What are the challenges in addressing race and gender transformation?
4. Donor and grantee relationship
    a. Tell me about your relationship with your PILO grantees. How do you engage with one another?
    b. As a donor who are you accountable to?
    c. What is your perception of the BWF?
    d. How has your organization responded to the call of the BFW?
5. Is there anything I might not have mentioned that you think I should consider?