

Swedish Support to the Access to Justice in South Africa

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**Department for Democracy
and Social Development**

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Sida Evaluation 04/28

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Abbreviations used in this Report

AULAI	Association of University Legal Aid Clinics
C A S E	Community Agency for Social Enquiry
CBO	Community Based Organisation
CLRDC	Community Law and Rural Development Centre
DoJ	Department of Justice
HRC	Human Rights Commission
ICJ-S	International Commission of Jurists – Sweden
IDAF	International Defence and Aid Fund
LAB	Legal Aid Board
LFA	Logframe Analysis
LHR	Lawyers for Human Rights
LRC	Legal Resources Centre
NADEL	National Association of Democratic Lawyers
NCBPA	National Community Based Paralegal Association
NGO	Non Governmental Organisation
NPI	National Paralegal Institute
PCM	Project Cycle Management
PPP	Public Private Partnership
SAHRC	South African Human Rights Commission
SALDEF	South African Legal Defence Fund
SEK	Swedish Krone
Sida	Swedish International Development Cooperation Agency
ToR	Terms of Reference
UCL	University Law Clinic
WLC	Women's Legal Centre
ZAR	South African Rand

1. Introduction

1.1. Background

Over the past eight years, the Swedish government has, through the Swedish International Development Cooperation Agency (Sida), supported democratic transformation and implementation of human rights and justice issues in South Africa. The support was ‘passed through’ the Swedish chapter of the International Commission of Jurists (ICJ-S) as the funding channel to the South African partners as well as being the implementing agent for the programme in South Africa for Sida. This ‘Access to Justice’ Programme was essentially targeted at civil society entities operating in the main within the legal/human rights and justice sector.

This is the second Review of this Access to Justice Programme¹ in South Africa. It serves as a summative evaluation covering two full funding cycles as well as the prior, start-up, phase encompassing the years 1996–2003. During this period approximately SEK 144 330 000² flowed from Sida to the ICJ-S, to implement the overall Programme and projects within it. Simultaneously the Review serves as a formative evaluation in respect of one more Sida funding cycle which will run from mid 2004 to 2006.

The first Review was done in June 2000, and covered the particularly tricky adaptations of the justice system in the early period of South Africa’s transformation to democracy, including the impact this was having on the paralegal movement.

This second Review, while referring to the full period of Swedish co-operation with the Human Rights and Justice sector in SA, concentrates on the period since the first Review was completed, i.e. from July 2000.

“Sweden has been co-operating with the Swedish section of the international commission of jurists (ICJ-S), since 1996, on the support to South African civil society working within the fields of access to justice and human rights. In principle the support has been based on a two pronged approach; through support directed to human rights organisations working within the legal ambit and impact litigation, and through support directed at the development of the South African paralegal system – primarily through the National Community Based Paralegal Association (NCBPA).

The main objective of the programme is to promote access to justice in South Africa with a particular focus on the poor and previously marginalised, who have difficulties accessing the formal justice system ...

...The present agreement between ICJ-S and Sida runs up until 30 September 2004. The activity period ends 31 December 2003. Due to the delay with this review, the agreement will, however, be prolonged with another six months. One basis for the present agreement has been a review, which was commissioned by Sida in 2000.³”

¹ The Review will use the convention of designating the overall activity of the endeavor a ‘Programme’, while referring to the constituent parts as ‘Projects’. Thus SA partners have projects with the ICJ-S, even though, internally for themselves, they may refer to the activity funded by the Sida/ICJ-S funds as programmes. Confusingly, the phrase “The Human Rights Programme in South Africa 2001–2002” is used in some documentation, but the “Access to Justice Programme” is the label most commonly attached to the overall activities funded by Sida, and this is how this Review will refer to its subject matter.

² This amount, provided by Sida, will differ from amount/s specified elsewhere in the Review. Difference are under 10% of the total amount spent. The differences come from time frames for expenditure not being completely aligned with each other – one includes a ‘lead-in’ phase, for pre planning, while the other does not – and differences in location of expenditure. Some Swedish expenditure is included in the one amount, and not in the other.

³ From the ToR’s of this Review, page 1.

This Review focuses on the Programme as a whole, and not on the project level activity, except where the project activity is core to the achievement of the Programme's main objective⁴. In other words, it focuses on the extent to which:

- the main objective of promoting access to justice, particularly in rural areas and other marginalised communities has been achieved; and
- the extent to which the Programme specific objectives relating to the paralegal movement; human rights monitoring, etc has contributed to achieving the main objective.

The Review does describe some activities of the SA partners, but only in an elementary manner, and only where this adds to an understanding of the Programme and its objectives, as a whole. The Review *was not intended* to assess and evaluate the work of individual partners. Any references to the broader work and functioning of partners is contextual to the impact it has had, or could have on the Sida/ICJ-S Programme.

1.2. Team composition and methodology

The review was carried out, in late 2003 and early 2004, by Stanley Kahn of Ampersand Consulting and Ms Safoora Sadek, Development Consultant, both of Greenside Johannesburg,

An initial briefing session was held with Sida representatives in Pretoria. Individual, face-to-face meetings and interviews were conducted with partners and informants involved in the SA side of the Programme, and based in Johannesburg, Potchefstroom, and Pretoria⁵. Telephone interviews were conducted with partners and informants in South Africa, but who were in cities beyond easy travelling distance from Johannesburg. Sida Stockholm and the ICJ-S were visited in their Stockholm offices in early December 2003. Informants included a small selection of other donor agencies supporting the human rights and justice sector, in particular the paralegal movement. Based on the focus of the review, interviewees were selected on the basis of their overall understanding of the entire Programme. Individual advice offices were not targeted for interviews.

Prior to the interviewing process, relevant documentation was reviewed and information from these informed the interview guidelines that were developed. However, the interview guidelines was primarily based on requirements of the ToR for this Review; i.e. to assess the impacts, achievements and long-term sustainability prospects; and to cover the following parts of the Programme: paralegals, Human Rights Monitoring and HIV/AIDS and ICJ-S. Additional documents provided during the interview process was also reviewed and analysed and where appropriate, information from these are reflected in the report.

In mid-January 2004, the Reviewers met with the same Sida representatives in a progress/de-briefing meeting and as part of normal procedure in such review activities. At this meeting, the broad brush-strokes of the Reviewers findings and recommendations were presented.

A first draft of the Review Report was circulated to interviewees and organisations party to the Review and discussed at a meeting, held at Sida offices in Pretoria. This was attended by some of the people and organisations interviewed, the Reviewers and a broader group of Sida representatives.

⁴ Because the initial project documentation was not clearly framed in terms of a LFA, various levels which would normally consist of 'objectives', 'goals', 'outcomes' and 'activity' were not clearly distinguished one from the other, and not clearly defined. This will be commented on below.

⁵ A full list of individuals interviewed, as well as the interview guideline used, is to be found in Appendix 2 of the Report

This final identified Review Report incorporates comments and submissions made at this meeting as well as written comments and submissions received afterwards.

The Review was commissioned, by Sida in Pretoria, towards the end of November 2003. The timeframe for conducting the review, and the interviews in particular, coincided with the Christmas holiday period in South Africa, which impacted on the availability of people targeted for interviews and resulted in a slow start to the review process. The shift in the dates for completion of the Review, as set out in the original ToR's, is due to this. The new timeframe was discussed and agreed to with Sida.

The Team would like to express its thanks to all those it met with and spoke to for their kind support, invaluable information and comments they provided. These greatly facilitated the work of the Team.

This Review Report reflects the views and analysis of the Team based on their interviews and the documentation review. The recommendations are based on the Team's analysis of the current status of the Programme and the challenges still facing the human rights and justice sector in the country. The recommendations seek to improve on and maximise impact of the next, probably final, cycle of Sida for this Programme. The views, analysis and recommendations may not necessarily correspond to the specific and individual views of the informants, Sida or the ICJ-S.

1.3. Background and context

Sida's support to the human rights and justice sector, firmly located within the Swedish government's overall development co-operation with South Africa, is aimed at facilitating transformation of the country into a democracy, the consolidation of democratic initiatives already underway and the provision of rights and services to the poor towards improving their quality of life.

Sida's support for democratising South Africa predates 1994. During the apartheid era, it supported organs of civil society whose goal was establishing a democratic country. This support, which was primarily in the form of transfer grants, provided Sida with an in-depth understanding of the political, socio-economic and developmental challenges facing South Africa's new democracy. Sida intends, as indicated in its country strategy paper for the period 2004 – 2008⁶ to make a strategic shift from large grant transfers related to core funding, as the main form of support to one that uses relevant Swedish experience, i.e. technical support, and a more sustainable co-financed relationship of mutual benefit between SA and Swedish organisations.

This Programme has already built on Sida's past and proposed future ODA support. By targeting the civil society sector, it has continued existing relationships and built new ones in recognition of civil society's contribution to building democracy. In choosing ICJ-S to serve as a funding 'pass-through' and programme manager, it has combined grant transfers with partnering of like-minded Swedish institution/s and individuals who could, in addition to Programme management, provide technical and professional expertise and knowledge as may be required by SA partners.

The main objective of the Programme appears to have been based on an agreement between Sida, ICJ-S and SA partners on the challenges facing the justice/legal sector at the time the Programme was initiated, and the political context of the day. The contextual issues that informed the main objective of the Programme is described below.

⁶ Sida – Country Strategy for Swedish Development Cooperation with South Africa 2004–2008, Draft for Sida Board Meeting, 24 October 2003

1.4. The Legacy of Apartheid

Apartheid rule in South Africa, pre-1994, was supported by a justice system that fundamentally upheld the foundation of apartheid ideology, namely that of division along racial lines. All the laws of the country at the time, ranging from the Population Registration Act, to the Education Act, to The Land Act and the Mixed Marriages Act were all directed at maintaining the system of apartheid through protecting the privileges of a white minority at the expense of the black population's political, social, economic and human rights. This disparity led to a justice system that was not accessible to the black population and that in fact, presented itself as an enemy of blacks rather than a place that provided legal security, justice and redress. The plethora of apartheid laws denied the majority of South Africa's population the right to own land, the right to education, the right to recreational and sporting amenities, the right to social grants, etc. The impact infiltrated every aspect of life.

It is important to note that prior to 1994, in the mid-eighties, some obvious Apartheid Acts, such as the Mixed Marriages Act were repealed by the apartheid government. However, these repeals and amendments were made within a framework of repealing apartheid not eradicating it. Apartheid was declared a Crime against Humanity by the international community. On this basis, South Africa was subjected to international political, economic and social sanctions, which, combined with the continuous mass resistance internally, seriously affected the government's ability, particularly economically, to sustain the system it had implemented. The reforms focused on the more obvious Apartheid laws, known by the international community, such as the Population Registration Act, but did not fundamentally address the political, social, economic and human rights of the majority of its own citizens. The more insidious laws remained in place, and new laws were introduced to ensure that the reforms would not fundamentally change the status quo. For example, the repeal of the Mixed Marriages Act made it possible for people to marry across the colour line, but the retaining of the Group Areas Act and the legislation that enforced separate education for each racial group still made it impossible for such mixed families to live together.

1.5. A Decade of Democracy

The task facing the democratic government elected in 1994 was thus more than the writing of a Constitution that would reflect a human rights ideology. It required identifying and repealing all apartheid and related security laws, whether it was an Act relating to social services or an Act relating to the issue of detention. It required establishing a completely new legal system and writing new laws that would give effect to the principles of democracy and non-discrimination and the observance of all human rights within the framework of the new Constitution. Given that the impact of apartheid was on every aspect of life, the Department of Justice in particular, had the added task of assisting other government departments put in place the necessary legislation that would meet the transformation objectives of the democratic government. The most daunting challenge in the first five years of democratic governance was sustaining a legal framework and system that allowed for the efficient functioning of the country while at the same time introducing transformation laws and processes.

With the active support and collaboration of other sectors of society, particularly the civil society sector, South Africa can boast significant achievements in respect of its justice and legal system in the past decade. The new Constitution, the establishment of the Constitutional Court, the host of White papers and legislation that speak to principles of democracy and observance of human rights, the restructuring of the Department of Justice's institutional arrangements, the establishment of the Equality Court and Labour Court, social grants and education being accessible to more previously disadvantaged sectors of South Africa's population, the Land Reform Act, the establishment of institutions to support black economic empowerment of all black entrepreneurs, the piloting of Justice Cen-

tre, are just a few examples of the achievements to transforming the country into one that is just, equitable and that meets the needs of, and provides a quality life for all its citizens. Approximately 789 law amendment acts, aimed at dealing with Apartheid legacy and establishing democratic rule of law, have been passed since 1994.

In the past decade, the country has adopted and observed a wide range of international protocols, conventions, guidelines, etc., thus confirming its commitment to building its justice and legal system that would be on par with international requirements, norms and standards. The permanent presence of SA delegates and representatives at the United Nations, its leading role in the development, review and amendments of such existing international doctrines, is a clear indication of the country's ability and commitment to maintaining the highest legal standards. For example, a SA representative not only serves on, but chairs, an ad-hoc UN Committee drafting a proposed Convention on the Equalisation of Opportunities for People with Disabilities.

Despite the country's patriarchal history with its concomitant norms, values and standards practiced by society, some progress has been made regarding the adoption of laws that value and respect women's rights as equal citizens, and which deal with issues related to violence against women and children. The foregrounding of these issues from a government perspective has greatly contributed to the increased public awareness of gender equality.

1.5.1. The Role of Civil Society Organisations

Civil society organisations, sometimes working in concert with government as equal partners and sometimes working as watchdogs, through implementing projects and writing policy as well advocating and lobbying for changes, have made an indispensable contribution to the transformation achieved thus far. Civil society organisations comprise both non-governmental organisations (NGO's) and community based organisations (CBO's). During the Apartheid era, the work of these organisations involved the actual provision of services not provided by government, as well as advocating and lobbying for changes to apartheid laws and the establishment of a democracy. This work was done directly in communities and with their representatives. The issues dealt with included social, economic and human rights abuses. The cause of these abuses was clearly the political system of apartheid which meant that inevitably the work of these organisations included a political dimension. This in turn led to a closer working relationship between these organisations and the mass-based political movements that represented community's needs and views. The ultimate broader goal of all these organisations was the demise of the apartheid government, and the establishing of a democratic government, thus making them active proponents of the anti-apartheid struggle.

The onset of democratic governance in 1994 led to considerable changes in the role of civil society organisations. Some of these changes were institutional in nature, but nevertheless central to the operational and strategic issues of the organisation. A significant proportion of the leaders of these organisations became political representatives. On the one hand, this provided a platform for an unprecedented level of contact with political representatives and institutions that proved to be beneficial for government, while on the other it left the organisations devoid of leadership that could provide continuity, historical insight and experience. The factual reality of a democratically elected government that understood its role in providing for the needs of all its citizens, and was willing to commit to this, necessitated a review of the service oriented role previously played by civil society organisations. The shifting of donor-funding from civil society organisations for those activities that would naturally be a government's responsibility, led to closure of some these organisations and required others to review their purpose and core functions towards ensuring that they were not implementing activities that would allow government to relinquish or negate its responsibilities. Civil society organisations in South Africa, based on their historical role, are highly politicised. However, they are by no stretch of the imagination

homogenous, particularly in terms of the political ideology they would espouse through their work. The loss of staff and changing roles created opportunities for a change of leadership and functions that were not always in agreement with the ideology of the elected government. The combination of these issues inevitably led to some tensions and debates regarding the role of civil society organisations within a democracy and the relationship it should have with government and other sectors of society. The formal resolution to these tensions is an understanding and commitment between government and all sectors of society to establish private-public partnerships (PPPs) on those issue where they agree on the goal and purpose and where pooling their resources and skills will have greater impact. These in-principle agreements allows for healthier and less competitive working relationships, that safeguard the independence of each sector, allowing sectors to ‘agree to disagree’.

Within this framework, the role of civil society organisations in transformation and consolidating political democracy has included actively engaging in policy formulation and legislation writing processes, implementation of government initiated projects through which new policies and legislation can be tested, testing the applicability and appropriateness of legislation with democratic intent through impact litigation cases, lobbying for hidden discriminatory laws to be repealed, lobbying and advocating for further intensified provision of services, etc.

Civil Society organisations whose core functions are primarily legal in nature and content, have, using a variety of strategies and tactics, worked with government in developing the legal framework required to consolidate and ensure democratic governance of the country, based on the principles of justice and equality for all its citizens. This is an ongoing process.

1.5.2.Future Challenges

In an attempt to provide integrated and co-ordinated services, government established what is commonly called ‘cluster committees’. In essence these committees comprise Ministries and Departments whose role and responsibilities are inter-linked and inter-dependent. The purpose of these committees is to identify such issues in their work and develop integrated and co-ordinated strategies for addressing them. The strategies may include collective and individual actions and processes. Cluster committee processes and decisions do not override or replace individual Ministry and Departmental responsibility for their core functions. They serve a strategic purpose meant to guide implementation in an integrated and co-ordinated manner and to actively work towards removing bottlenecks.

Justice issues, from a legal perspective, are the responsibility of the Justice, Crime Prevention and Security Cluster Committee. In a Ten Year Review Report, conducted and produced by government ministries and departments involved in this cluster committee, some of the challenges regarding justice and safety and security issues were identified. These challenges include addressing the ongoing shortage of skilled and experienced black lawyers, the re-orientation of training and outlook in law schools and judiciary, focussing on needs of children with disabilities, addressing the causes, and not just the impacts, of crime, improving co-ordination and co-operation between government departments across clusters and spheres of government and developing strategies and processes aimed at preventing the crime of rape.

The Reviewers are of the opinion that the next cycle of support, to the extent possible and viable, should make a contribution to meeting these challenges. We believe that the proposed Programme design begins to align objectives and activities to these challenges, e.g. the activities related to the training of paralegals.

2. Executive Summary

This Review Report, commissioned by Sida, Pretoria, analyses the Sida/ICJ-S “Access to Justice and Human Rights” Programme and makes recommendations towards increasing existing impact, facilitating sustainability of partners and projects initiated through the Programme and to enhance alignment of the Programme to justice and human rights challenges facing South Africa as a whole.

The Report focuses on the Programme as a whole and not on project level activity, except where project activity is core to the achievement of the main and specific objectives.

The analysis and recommendations therefore focus on the main objective of the promoting access to justice, particularly in rural areas and other marginalized communities, and the extent to which this has been achieved. It also analyses and makes recommendations on the specific objectives relating to the paralegal movement; human rights monitoring, etc and the extent to which these have been achieved and contributed to the main objective.

2.1. Overall Comments

The Programme as a whole has had some impact in relation to its main and specific objectives. However, as detailed in the Report, these are very broad in nature and in some instances appear to be incidental rather than a direct result of focused Programme activity and support. The achievements are more on a level of sustenance of activities, i.e. continuing, enhancing and deepening of these rather than on a level of “breaking new ground”. This in and of itself is not a weakness, as sustaining activities and organizations are equally important to new initiatives.

Some of the contextual, process and Programme management factors that have contributed to this scenario; namely:

- the lack of continual systematic measuring of achievements and the lack of a Programme management methodology, such as the LFA or PCM, which would allow for such systematic and objective monitoring and evaluation of activities and impact;
- insufficient alignment between the development objectives of the Programme and those of its partners;
- insufficient baseline information and contextual understanding to inform the formulation of objectives and activities;
- annual grant transfers leading to annual project plans not allowing for longer-term development projects and impacts;
- organization politics and varying priorities amongst partner organizations;
- tension and lack of transparent and open communication between SA partners themselves;
- tension and lack of open and candid relationship between ICJ-S and SA partners.

2.2. Overall Recommendations

The specific recommendations detailed in this Report, are proposals from the Review Team. They are not meant to be prescriptive but to serve as a basis for streamlining and adjusting the Programme towards addressing weaknesses identified.

The recommendations are based on the following approach and key principles:

- The Programme is aligned to the Sida's country strategy for the period 2003–2008, to SA's ODA guidelines and approach, and to the challenges facing the justice and human rights sector;
- The opportunities the Programme and its activities can provide for co-operation and co-ordination with other donors working within this sector;
- Building on, and sustaining achievements of the Programme thus far; and
- Facilitating the future sustainability of partners and Programme activities.

Based on this framework, and an analysis of the weaknesses identified, the recommendations, in the main, relate to the need for the main and specific objectives to reflect tangible outputs and impact, clarity on the target group, piloting of initiatives, establishment of objectively verifiable project management systems and processes, clearer definition of roles and responsibilities, greater alignment between Programme spend and Programme recipients and activities.

2.3. The ICJ-S, its organisation and its *modus operandi*

The ICJ-S has signed short term – one year – contracts with SA partner organisations, sometimes resulting in quite sharp changes of direction from contract to contract. This has resulted in what SA partners have characterised as 'stop-go' project activity leading to uncertainty. This, in the Review Teams judgment, is a product of the lack of structure and precision in the processes and methodology adopted by the ICJ-S, and allowed by Sida, which has been detrimental to the achievement of the primary Programme objectives.

In Stockholm ICJ-S volunteers and office staff have roles and responsibilities relative to each other that could do with redefinition. In this connection the Review recommends:

- The role of the SA consultant needs to be redefined, and needs to have additional authority devolved, so that the job carries more operational management responsibility;
- The role of the ICJ-S Programme Manager needs to be reviewed, to take increased responsibilities that have fallen to that role, since the Programme began, into account. There should be a divorce of the roles of Programme direction and Programme management. ICJ-S volunteers should undertake the tasks related to direction and policy making, leaving management and operational level activity and work to paid staff;
- Contracts should be signed for the full remainder period of the Sida/ICJ-S grant, minus a few months for wrap-up reporting by the ICJ-S. A mid-term review and independent evaluations for work supported in the ICJ-S and within the SA partners must form part of these contracts;
- The annual conference should be retained, but the purpose redefined.

2.4. The South African partners and their sustainability at Programme end.

In cases where the Sida/ICJ-S financial assistance has, over the years of project life, made up a small portion of the budget of particular organisations, the Review Team believe the chances of sustainability after the termination of the programme, for that particular organisation, is good. In some cases the ICJ-S contract make up three or five percent of the total budget of the organisation, in other cases even less. These organisations are thought not to be in danger. They have broad based funding sources and sophisticated systems tailored to launching wide-ranging funding appeals. Although the organisa-

tions will not be equally affected, because there is a range of financial strength across these bodies, the Review Team would put LHR, LRC and WLC, and to a lesser degree AULAI, into this 'safer' category. In respect of these organisations, and the NCBPA to the degree that it is involved in these matters, the Review Team recommends:

- A sum be set aside from the Sida/ICJ-S funds, which can be drawn on by any of the SA partners, to support impact litigation;
 - This activity be closely monitored and annually reappraised to decide enhancing the funds or terminating the activity completely, if it is deemed not necessary;
- With respect to clustering, no Sida/ICJ-S funds be spent on any new umbrella organisation coordinating clusters without a thorough outside evaluation of the value of such new organisations.

Where the ICJ-S contribution provides a larger proportion of the organisations funding the Review Team is less optimistic about the sustainability of the organisation in question. The Review Team believes that a greater than 10 – 15% reliance on any one funder for the activities of an organisation heightens the risk for that organisation. This is especially so after some years of support from the single funder. This category consists of the NCBPA. The concern for a highly exposed organisation is the continual process of growing, when budgets permit it, and contracting when the budgets shrink. There is organisational instability, and a desperation which comes from a hand-to-mouth existence⁷.

The proposed final Sida funding cycle, from mid 2004 to 2006 should take account of this and realistic negotiations with the 'at risk' partners should be entered into as early as possible.

2.5. The continued strategic involvement of Sida and the ICJ-S in this sector

The Review Team takes seriously the stated aim of Sida to withdraw funding from the sector at the end of the 2006 funding cycle. That leaves just 2½ years of project activity.

The Review Team believes that with elections in April 2004, and the certainty that a new Minister of Justice will be appointed, the original objective of recognition for the paralegal movement ensuring increased access to justice for the rural poor cannot be met. The chance of recognition of paralegals taking place in the last 30 months of the Programme period is very remote indeed, especially given the lack of progress, under the best conditions possible, over the past 5½ years. If the objective of access to justice for the rural poor is to be pursued it will have to be de-linked from the recognition of paralegals, and another vehicle found to achieve the recognition objective. Strategically the linkage with the NCBPA and paralegals will have to be re-evaluated to see if this linkage can make any contribution to the achievement of what has, up to now, been the prime objective of the Programme.

The Review Team is of the opinion that support to the parts of the DoJ and the LAB where strategy and action plans to increase access to justice for the poor, inside the DoJ and the LAB, is where results will be achieved. The positive experience which flowed from a technical assistant being placed inside the LAB should be analysed with an attempt to recreate the conditions which led to these positive outcomes. Attempting to bring about results which will emerge from within the DoJ or the LAB, by working outside of them, seem to the Review Team to be the least effective method.

Working within the government or quasi-government organs will bring challenges that have not been confronted before in this project. These challenges will have to met head-on, rather than attempting to work through surrogates outside.

⁷ The NCBPA will be dealt with separately in 2.6. below.

2.6. The NCBPA

The Review Team is singling out the NCBPA because of its core importance to the attainment of Programme goals over the life of the Programme, and the risk which the reviewers see attaching to the organisation. The observation of the reviewers relative to recognition of paralegals, and a Legal Practitioners Bill will be dealt with fully below. In this summary the reviewers recommend:

- That support to the NCBPA and the idea of paralegal recognition be delinked;
- A clearer distinction between paralegals and Advice Offices supported by the NCBPA be drawn, granting paralegals *NOT* working in NCBPA supported facilities greater acknowledgment;
- The conflicting roles of NCBPA a membership organisation and NCBPA a funding channel be tackled and resolved;
- That support for the Organisational Development work being done within the NCBPA be included in the following grant period.

2.7. Concluding Remarks

The Review exposed the reality that the broad achievements of the Programme have been masked by some problems related to programme management, organisational politics involved with partners, objective contextual changes and some personality differences. The situation is certainly not irreparable and, steps can be taken to ensure that the final cycle of funding yields more achievements and reduces tensions and clarifies perceptions.

Issues that should be dealt with but which do not directly relate to the Programme Objectives are:

- The perception that the Programme is donor driven. This was mentioned by all partners and outside observers. If not dealt with, it could impact on Sida's reputation, which has always been a positive one, and its relationships with partners and other donors;
- The fact that the Programme is referred to and is known as an ICJ-S Programme and not as a Sida supported one. Critical comments on the programme management approach are thus levelled at ICJ-S and not at Sida. However, it does suggest and imply that Sida is not sufficiently monitoring and fully taking responsibility for the Programme;
- The tension and lack of transparent and open communication between SA partners themselves regarding this Programme. Comments about other partners and individuals were often made in interviews preceded by "...this is confidential..." Whilst this is a common occurrence in multiple-partner Programmes, the extent to which it prevails in this particular Programme, approaches disquieting levels;
- The obvious tension and lack of open and candid relationship between ICJ-S and its partners. As with the previous point, comments regarding this relationship were more often than not preceded with "this is confidential..." or "please do not attribute this to me...". It is widely accepted practice in such reviews that interviews are confidential and statements are not attributable. However, the views expressed indicated a fear of retaliation and repercussion and went beyond the 'normal'.

The Review team believes that an acknowledgement of these issues, coupled with concrete measures to address them, as well as taking on board of the other recommendations presented below, will contribute greatly to the positive impact of the Programme.

We once again, thank everyone concerned for the contributions, openness and honesty in interviews with us. Their ongoing commitment to a successful Programme is undisputed and we wish everyone involved in the Programme every success.

3. The Programme, the Partners and the Issues

Interviews were held with partners organisations of the Sida/ICJ-S support, other donor agencies and Sida in South Africa, and with Sida and the ICJ-S in Stockholm. While each interview will not be reported in full, each organisation met with will be dealt with in turn, and the main issues raised by them will be touched on. Although the ToR for this review did not require any financial review and evaluation, the Reviewers are of the opinion that a brief review of the finances will serve to contextualise the roles and scale of the support to the various partners.

3.1. The 2001 and 2002 Budgets

The 2001 and 2002⁸ budgets allocated funding to the SA partners in the amounts shown below⁹:

Table 1

Budgets 2001 and 2002 - Contributions to SA Partners				
(in SEK)				
Partner Organisation	2001	% of SA Spend	2002	% of SA Spend
AULAI	1,633,000	8.5%	1,466,000	10.0%
CLRDC	797,000	4.2%	836,500	5.7%
LHR	3,003,000	15.7%	2,546,600	17.4%
LRC	1,600,000	8.3%	1,785,000	12.2%
NADEL	188,000	1.0%	80,000	0.5%
NCPBA	10,880,892	56.7%	7,028,860	47.9%
ULC-Durban	328,000	1.7%	380,000	2.6%
WLC	751,000	3.9%	550,000	3.7%
Total	19,180,892	100.0%	14,672,960	100.0%

The table shows an overall decrease in the SA spend of the budget, directly on the SA partners, of the order of 23.5%. It is important to note here that the decrease does not reflect inactivity on the part of partners, but is generally a reflection of the gradual reduction of Sida's financial allocations for this Programme, a reduction which in the main has been informed by Sida's proposed Country Strategy for Swedish Development Cooperation with South Africa 2004–2008. The strengthening of the ZAR relative to the SEK is another factor that further reduces the ZAR amounts available to the SA partners.

The table does not reflect expenditure related to programme management, ICJ-S staff salaries, administration, travel or annual conferences. These additional expenditure incurred both in Sweden and in South Africa forms part of the overall package of support provided by Sida to this Programme. The Conferences and travel expenditure, in particular support one of the Programme's aim of "...the creation and development of strong links between Swedish and South African civil society, working with Human Rights and legal services."¹⁰

Although documentation reflecting the main objective and focus areas of the Programme do not indicate or emphasise the paralegal movement as a primary focus, the actual disbursement of the grants suggests otherwise. The figures in *Table 1* show that almost 50% of the overall grant available for SA

⁸ 2003 figures reflecting actual expenditure were not available at the time of writing

⁹ There were some smaller grantees/partners who appeared in either the 2001 or the 2002 Budget, but not in both. In either case the amount comprised less than 1% of the 'South African spend' for the particular year. They were omitted, and totals computed without using them.

¹⁰ From the ToR's of the Review

partners has been allocated to a single partner, the NCBPA. A clear Programme rationale, if one does exist, which explains disproportionate allocation of grants, remains elusive to the verbal and written information and knowledge provided to the Reviewers. Support to the paralegal movement itself is but one of four stated objectives of the Programme. Admittedly, it is listed as the first objective, but the understanding of the Team is that, in the absence of a clear LFA statement, the objectives are not listed in any order of priority but as equally important objectives to achieve.

The Review Team is aware of and understands that support to the paralegal movement was initiated by the then Minister of Justice, Minister Dullah Omar, and that his approach to Sida was based on the historical relationship referred to in other sections of this report. Whether this verbal ‘gentleman’s agreement’ is the basis of the rationale or not, the Team believes it is important that there is greater visible alignment between the budget and the specific objectives and core/focus activities of the Programme in the next funding cycle. We further recommend that, should Sida require any detailed analysis of financial expenditure on issues such as operational versus Programme costs, it should initiate a specific financial review to do this. This recommendation is not a primary or key recommendation, nor is it intended to cast any aspersions on the financial management of the Programme to date. It is based on the fact that some donor agency’s review and evaluation processes include simultaneous or separate financial reviews as part of its monitoring tool.

3.2. The Objectives of the Programme

In 1998 a Conference¹¹ held in Kempton Park set the stage for the Sida/ICJ-S Human Rights and Justice Programme.¹²

As it presently stands, in terms of the agreement between Sida and the ICJ-S, the Programme’s overall development objective is stated in the following terms:

“The development objective of the South Africa Programme is that under resourced people, mainly in rural and remote areas, have Access to Justice in order to enforce their constitutional rights.”

This overall objective is refined in the short-term objectives which the Programme sets out to achieve. These are:

“a sustainable paralegal structure and system giving legal advice to poor people in the rural and remote areas of South Africa where there are no legal services,

to maintain and increase free legal advice to poor people through NGO law clinics, University law clinics and LAB Justice Centres,

a structured co-operation between the paralegal organisations and legal actors such as Justice Centres, NGO law clinics, University law clinics and others within the legal profession,

an effective and increased human rights monitoring of the South Africa State through different NGO activities in order to ensure that the South African State fulfils its constitutional and international obligations.”¹³

¹¹ The National Legal Aid Forum, Kempton Park, January 1998.

¹² For a full outline of the sequence of events see Appendix 2 of the C A S E Report “Access to Justice in South Africa: Legal Aid Transformation and the Paralegal Movement”, June 2000.

¹³ From the Sida/ICJ-S agreements as reported in the ICJ-S 2002 Report on Programme Activities.

With these objectives agreed between Sida and itself, the ICJ-S entered into contractual relationships with a range of South African partners and grantees. The partners who are still involved in relationships with the ICJ-S will be discussed, individually, in the next section of the Report. It is the understanding of the Review Team that these objectives have been retained for the duration of the Programme to date. Activities related to objectives have changed over the years.

As can be seen by reference to *Table 1* and the *Objectives* above, the Programme had, and still sees the sustenance of the paralegal movement as its prime concern. This appears to be based on a view that the paralegal movement could/should be the primary vehicle for bringing about the extension of legal services to the rural and poor population of the country. How realistic this view is, will be canvassed in the following section of this Report.

The ICJ-S has had relationships with a number of SA partners since the inception of the Programme, some of which endure and some which do not. The relationships with the NCBPA and AULAI are probably the most significant, certainly in financial and influence terms, so these will be dealt with more fully than the relationships with the other organisations.

3.3. The Partners – Swedish and South African

3.3.1. ICJ-S

The ICJ was founded in the late 1940's and established in the early 1950's as a general response to the increasing excesses of the Cold War. Its focus was, and is, the Rule of Law as a principle. National Sections were established in subscribing countries to organise support for the causes which flowed from this. In Sweden this was supported by the Government, and with reference to the SA context, a strong anti-apartheid culture emerged in the general population, as well as amongst the Human Rights community comprising professionals and activists. This found concrete expression in general Scandinavian, and specific Swedish, support to the International Defence and Aid Fund (IDAF) and the South African Legal Defence Fund (SALDEF).

When, after the 1994 democratic elections had been held, and transformation of the South African Department of Justice (DoJ) the judiciary and judicial system became a possibility, it was natural for the SA Government to approach Sida for assistance. Sida in turn, approached the ICJ in Sweden (ICJ-S) to act as their agents. The ICJ-S was in a position to provide professional 'jurist' and legal skills and experience, as well as the administrative infrastructure, to manage Sida's substantial financial contributions to the human rights and justice sector in South Africa.

The South African Human Rights and Justice Programme was amongst early ICJ-S/Sida co-operative ventures, although the ICJ-S had operated in a number of other developing countries before. Certainly since the SA Programme, it has obtained further Sida funding to operate in Kenya, Paraguay, Palestine, Uganda and the states which have emerged from the defunct Soviet Union.

3.3.2. Sida

Sida's presence in the South African Swedish Embassy is an independent one, in the sense that the funds allocated to Sida South Africa are available for distribution from Pretoria. However, Sida Pretoria refers back to Stockholm on all matters pertaining to new agreements and engagements. Decisions are made in conjunction with counterparts in Stockholm. Initially in the case of the Sida/ICJ-S grant, the staff at the Embassy was small, and the project a large one, with a considerable administrative component. Also the ICJ-S is headquartered in Stockholm. For all these reasons the South African funds were referred back to Sida Sweden – its Good Governance Section – for contracting. The Sida/ICJ-S contract was thus concluded with the Stockholm office of Sida, and not the South African one.

Although in the age of electronic communications, advanced information technology and the global village this should not present any special challenges, it does add an extra layer to the administrative arrangements for the Programme, with day-to-day interfacing with the SA partners, to the degree this is necessary¹⁴, being handled by the Pretoria staff, while the contract, formally, belongs to the Stockholm office.

In interviewing Sida Sweden, the issue of South Africa being a ‘middle income’ country emerged, with the implication that direct donor support, in the form of grant transfers, is ‘inappropriate’ in the context of the Swedish government’s, and thereby Sida’s, strategic approach to development co-operation in such countries. Notwithstanding, Sida’s development relationship with South Africa remains cognisant of the emotional and development ties between Sweden and South Africa, based on the history of the anti-apartheid period. The new country strategy paper for South Africa indicates that fresh and different forms of co-operation will be contemplated, with direct cash grant donations being replaced by alternative forms. In future this will include more work, aligned with the country strategy, focussing, as it recommends, on sustainable co-financed institutional co-operation, featuring the twinning of organisations, as well as more commercial and contractual relationships. This is more in keeping with Sida’s approach to other middle income countries around the globe.

The Objectives for the South African Human Rights and Justice Programme are set out below. To achieve these objectives, Sida has spent the amounts set out in Table 2 below.

Table 2

Period (Years)	Amount (SEK)
1995/96	4 000 000.00
1997	10 000 000.00
1998	27 500 000.00
1999/2001	55 830 000.00
2001/2004	61 000 000.00
Total	158 330 000.00

3.3.3.The SA Partners – Background

Actual Programme support, and thereby the relationship between ICJ-S and South African partners started in 1996. As already described, the Programme was developed on the basis of a request made by the then Minister of Justice to the Swedish Government to support activities and issues which would ultimately lead to the restructuring of what had been a race based and biased judicial system.

One of the manifestations of the old apartheid system was that the court system served the narrow needs of the minority white community, with especially the rural poor having very limited access to the court system to resolve disputes. This limited access was reflected in the absence of court buildings in rural areas, as well as few representatives of the legal profession in previously black geographical areas, leading to the populations in those areas having limited ability to access their constitutional rights.

In the twenty or twenty-five years prior to 1994, as resistance to the old regime built up, and it weakened its hold, there was the development of a network of Advice Offices or Advice Centres, staffed, in part, by paralegals. These Advice Offices, some of them community-based and others outsider volunteer based, formed part of the civil society organisations of the time. Many were based in rural areas and they worked to provide support and advise to community members seeking social, economic or

¹⁴ The ICJ-S South African Coordinator manages all the ICJ-S/South African partner contacts.

human rights redress. They thus also performed the function of promoting and extending a human rights culture, albeit under adverse conditions. The paralegals were frequently community activists, who while not being recognised as legally competent or certificated to formally represent their ‘clients’ in the courts, were nevertheless experienced and assisted in fighting for the limited human rights that were available at the time, continually pushing the boundaries of the few rights that were actionable. This was done in co-operation with qualified legal practitioners who had rights of representation in the court system as it then was. Minister Dullah Omar, in his discussions and request to the Swedish Government and Sida, made specific reference for the need to support these advice offices and to build on their past work and existing direct relationships and access to communities. Support to the paralegal movement thus became one of the objectives and focal areas of the Programme.

3.3.4. The National Community Based Paralegals Association (NCBPA):

The NCBPA has been a partner of the ICJ-S since 1998. The partnership came about in terms of the oft quoted, but unwritten, ‘undertaking’ when Sida was ‘invited’ to support the paralegal movement pending the purported ‘integrating of the paralegal movement’ into the more formal system of judicial provision by the South African Government. The means by which this was to have happened was not defined at the time, and at the time of writing has still not come about. It is probably correct now to talk of this undertaking in terms of myth and legend, and the Review Team feels it is time to discontinue with this reference since it detracts from the reality of the situation as found on the ground, affecting the sector.

There are many facets to the NCBPA’s relationship with the Programme and the ICJ-S in particular. These include aspects internal and peculiar to the NCBPA itself, as well some external ones, relating to institutions and organisations beyond the direct influence of the NCBPA and/or the ICJ-S. The analysis takes into account at least the following issues:

3.4.4.1. Financial and budgetary: Over the last two years the NCBPA has received 57% (2001) and 48% (2002) of the South African partner budgets. In years prior to these the proportion has probably been greater, but the way in which the budgets were drawn make it difficult to establish the precise proportion of the total budget received by them in those years.

3.4.4.2. Recognition of paralegals: The paralegal practitioners have sought recognition within the formal legal service sphere for some years now, which recognition has eluded them to date.

3.4.4.3. Role of the NCBPA: The NCBPA has two simultaneous and possibly contradictory roles in the paralegal movement, the implications of which are worth unpacking and exploring:

- It is a *membership organisation*, with the duties and obligations which attach to such a concern toward its members;
- It is simultaneously a *funding pass-through organisation* for ICJ-S funds to the network of Advice Offices in the NCBPA group.

In the view of the Reviewers these are tasks which make the role of the single organisation carrying them out contradictory and, without the wisdom of Job, almost impossible to reconcile.

3.4.4.4. Functions of paralegals in Advice Offices: Many of the functions of the paralegals in Advice Offices border on the professional competency and skills of other helping professions¹⁵.

3.3.4.5. Capacity of the NCBPA to carry out its various mandates: There has been a question over the capacity of the NCBPA for some time. Issues which show themselves requiring scrutiny are:

¹⁵ Social workers, teachers and/or possibly health professionals.

- The flexible set of relationships between core and peripheral elements which it has established, viz. the NPI¹⁶, has been questionable for some time;
- The insistence by the ICJ-S that an additional layer of financial management be in place in the NCBPA, relative to the other grantees, must also be seen as a question mark over the capacity of the organisation.

In the minds of the Reviewers, the issues above, hang a number of question marks over the head of the NCBPA and its activities, in relation to the Access to Justice Programme. In the minds of the Reviewers there are questions raised concerning a discernable desperation within the organisation, which is hard *not* to notice, and which does not augur well for its future. These issues raise serious questions of focus for the organisation which, quite frankly, lead to opportunistic behaviour by the NCBPA in an attempt to remain viable. Sida and the ICJ-S should take very serious account of this when deciding the nature of the relationships that should be maintained with it.

3.3.5. Association of University Legal Aid Clinics (AULAI):

AULAI is the national network representing the university law clinic movement, looking after the legal clinicians on the ground. University law clinics provide training for students in the non-academic practicalities attendant on their theoretical training, under the supervision of experienced lawyers who have worked in the profession. In addition the ULC's provide the Universities with opportunities for extending their community outreach offerings to the areas within which the particular University operates. AULAI provides the national voice to this movement. In support of AULAI between 8 and 10% of the South African spend of the Sida/ICJ-S budget has been devoted to its over the past two years.

In 1998 the membership of AULAI established the AULAI Trust to receive donor monies on behalf of its members. The only object of the Trust is to fund these constituent ULC's, as well providing opportunities for the constituent clinics to discuss matters of mutual interest and concern. It does this by funding workshops and meetings. AULAI itself, (*not the Trust*), is funded solely by the membership fees of the affiliates, and does not receive income from the AULAI Trust. ULC's benefit from the significant infrastructure which their parent bodies, the Law Faculties, and at a layer above that, the Universities themselves, provide. This includes significant intellectual and professional assistance of experienced and broad based professional staff, and the physical infrastructure of offices, telephones, accounting systems and financial reporting mechanisms, and so forth, which other ICJ-S partners need to pay for or purchase. The costs of these support structures must be reckoned into the substantial hidden subvention which these organisation enjoy, by virtue of their location.

AULAI itself, and its constituents, have agreed to contribute to the 'cluster' model by providing support to the paralegals in the areas adjacent to where they operate. This provides, without a massive investment, a very widespread network of skill for paralegals to draw on. There are currently 14 ULC's involved in clusters, in six of the nine Provinces of the country, providing legal back-up and serving on the management committees of the clusters they are involved in.

AULAI believes that clusters are a cost effective manner of extending legal services into underserved areas, and is piloting enhanced relationships with the LAB in some of its Justice Centres. In the discussion with AULAI they seemed to indicate that they had ideas of establishing a new national co-ordinating body to take the idea of clusters, as they are currently defined and operating, forward. Recommendations in this regard will be found in the appropriate section of this Report.

¹⁶ At times this has been portrayed as an independent organisation, while at other times it is portrayed as a constituent part of the NCBPA itself.

3.3.6. The Legal Resources Centre (LRC):

In 2001 the LRC received 8.3% of the South African spent funds of the Sida/ICJ-S totalling SEK 1.6 million, while in 2002 it received 12.2%, totalling SEK 1.785 million. This was in support of Human Rights monitoring functions, with a special focus on Women's Rights matters, and legal back-up services to other SA partners, especially in respect of clustering activities.

These funds are small portions of the overall LRC budget, and the Review Team sensed no real problems with the LRC/ICJ-S relationships with respect to this funding or the work of the LRC using these funds.

3.3.7. Lawyers for Human Rights (LHR):

In 2001 the LHR received 15.7% of the South African spent funds from the Sida/ICJ-S totalling SEK 3.00 million, while in 2002 it received 17.4%, totalling SEK 2.55 million. According to contracts the Review Team had sight of, this was in support of Human Rights monitoring functions, and clusters in the new legal aid system.

In this partnership between LHR and the ICJ-S the Review Team sensed no real problems with either the relationships or the work of the LHR in using these funds.

3.3.8. Women's Legal Centre (WLC):

In 2001 the WLC received 3.9% of the South African spent funds from the Sida/ICJ-S totalling SEK 75 million, while in 2002 it received 3.7%, totalling SEK 55 million. According to the 2003 contract, the WLC had no obligations placed on it i.r.o. clusters. The funding was provided to generally support the work of the WLC.

Sida/ICJ-S had been the initial funder of the WLC, but the WLC has broadened its funding base considerably, and Sida/ICJ-S funding now provided just a small proportion of its support.

3.4. Key Findings And Recommendations

3.4.1. Introduction

The Programme has been implemented in a process orientated manner. It is an approach that is desirable and preferred within a development and a transforming context, on the basis that its inherent strengths and weaknesses are acknowledged – both at the onset of Programme design and during Programme implementation.

However, if not managed properly, the approach can have serious long lasting negative impacts, such as inadvertently exacerbating weaknesses, contributing to or even leading to tensions between participating partners, confusion regarding ownership of the Programme, and dominating ideas and views, even if held only by a minority grouping of people, shaping the form and outcomes of the project.

Some of the strengths of this approach are that it:

- Recognises that in a developing and transforming context, external and objective factors, as well as internal subjective factors can impact on a Programme to an extent that it necessitate a re-alignment of Programme activities to include such changes;
- Allows for a more flexible, dynamic, creative Programme design and implementation framework that can support operational changes while in the main, retaining the Programme's overall and specific objectives;

- Provides the space and opportunities for development partners and other role-players of stakeholders to contribute to the overall Programme design and its objectives which in turn results in an increased sense of ownership, by recipient partners in particular.

Some of the weaknesses are:

- Some contextual issues, outside of the ambit and scope of the Programme can be drawn into the Programme and detract it from its own overall and specific objectives;
- Strong personalities with idiosyncratic views are provided with opportunities and platforms to espouse their views which tend to overwhelm and dominate more reticent partners;
- Changes in context and new demands can serve as ‘viable’ excuses for lack of performance and delivery;
- It creates the opportunity and environment for a shifting of the goal posts that can be rationalised and argued as underlying thread of a process oriented development approach.

This Review has identified a number of strengths but many weaknesses in the implementation approach adopted and these will be reflected in appropriate places in this section.

The findings and recommendations are organised on two levels: The first is in terms of Programme objectives while the second is on the focal issues required by the ToR.

3.4.2.Overall Achievements of the Programme

The achievements listed below are broad in nature and serves as a brief summary of overall achievements. They will be elaborated in the findings that they specifically relate to, i.e. level one or two, as mentioned above.

As a whole, the Programme has contributed, directly and indirectly, to the following:

- Increased and ongoing recognition of the role of paralegals and of advice offices, by government as well as other sectors of society;
- The paralegal movement and other partners being able to contribute to the development of an enabling policy environment, e.g. some partners were actively involved in the development of Justice Vision 2000;
- Strengthening of working relationships between government and civil society organisations, especially partner organizations;
- Development and sustaining of advice offices and paralegal movement in a period in which they are still finalising their roles;
- Continued provision of some services in very neglected rural areas;
- Opportunities and ability to initiate and be engaged in impact litigation matters;
- Facilitated networking amongst civil society organizations, through the clustering approach;
- Maintaining and sustaining a network of advice offices;
- Through supporting AULAI, extending university legal services into communities;
- By supporting the wide range of organisations who have made up the South African partners, has provided a hierarchy of service providers which have enabled cases to be referred from deep rural

areas through to the highest courts in the land, and in this way giving concrete expression to the notion of “Access to Justice”.

3.4.3. Main/Development Objective

“The development objective of the South Africa Programme is that under resourced people, mainly in rural and remote areas, have Access to Justice in order to enforce their constitutional rights.”

The Reviewers are of the opinion that this objective cannot be assessed in the absence of an acknowledgement that at the time the Programme started, there were no baseline statistics which quantified the level of access in these areas. Thus there was, and unfortunately still is, no quantifiable indicator to map progress and possible increase, regarding access.

Based on a bland ‘face-value’ reading of the objective, it can be argued that the intention was not to increase levels of access but to sustain what existed. If this is the case, it pre-supposes that these communities do have access and that such access is sufficient and qualitative in nature. Given the history of South Africa such a supposition would be incorrect.

It is unquestioned that Sida’s support facilitated its partners being able to continue their work in communities, and with target groups with whom they had already established relationships. In this sense, the objective been achieved. The Programme has facilitated continued provision of some services, opportunities and ability to engage in impact litigation initiatives and through supporting AULAI, extending university legal services into communities. Statistical information, past and present, on the work of SA partners that would indicate visible extension or increase in the geographic or target group spread of their work is not available. This is in the nature of professional legal work, where cases do not always present themselves in the sequence or at the pace the practitioners would wish. The nature of their work, and the fact that most projects of most partners have more than one source of funding adds to the difficulty in quantifying Sida’s particular contribution to an overall project and its outcomes. The exception to this is the NCBPA, which in addition to project funding, also received core funding. Sida, until recently, had been its sole funder. The lack of quantifiable indicators and baseline information rendered it difficult for the Team to identify specific and detailed achievements.

If the intention of the objective was to increase access and improve quality, it is difficult to determine achievements for the reasons already outlined.

The objective does not indicate which sector of society will be receiving the support, but in practice all recipients have been organisations in the civil society sector. There is no obvious basis or rationale for this targeting. Very limited, comparatively negligible, support was provided, at some stage in the Programme, to the Government sector in the form of technical assistance to LAB. There was the appointment of an additional staff member for a period of two years. The Review Team understands that this intervention was a positive one, and bore fruit.

There have been significant developments regarding access to justice for marginalised and rural communities since the inception of this Programme. Government, through the LAB, has established the first of a network of Justice Centres. Assuming the positive implementation, roll-out and evaluation of these, and drawing on best practice from the pilot projects, it intends to establish these Justice Centres throughout the country. Reportedly, the pilot centres have already established close working relationships with Advice Offices, paralegals and other non-governmental and CBO’s in executing their tasks. A key criticism of the Justice Centres, and the LAB in general, is that it still focuses entirely on criminal and does not give civil matters the attention they deserve. In the South African context, again emerging as a legacy of apartheid, justice issues experienced at a community level are more often than not ‘civil’

in nature. It is this reality that also defines justice in South Africa as broader than its legal/litigation ramifications. Despite the criticisms relating to the focus of the Justice Centre initiative it must be recognised as critical because it, firstly, demonstrates the S.A. government's commitment and will to expand the base of access to justice, and secondly, it provides the opportunity for all role players, working within this arena of provision of services, to build stronger co-operative relationships.

The Review Team recommends that the next cycle of support incorporates the following issues, to the extent possible:

- The intention of the main and development objectives be clarified and reflected in the way it is phrased.
- Regardless of whether the intention is to continue or to increase access to justice, it has become apparent that some baseline statistical information is crucial to measure impact and progress. Such baseline information would be a valuable resource, not only in terms of Sida's support, but in the long term as a measure of consolidation of democracy and provision of rights and services. It is information that can be used, not only by the legal sector, but by all government departments and civil society organisations dealing with broader justice issues. Consideration should therefore be given to the next cycle supporting the development of such baseline information as a resource tool as one tangible and sustainable outcome.
- The target group/recipients of the support must be clearly identified and stated in terms of the sector. If the intention is to facilitate or enhance access to justice through strengthening civil society organisations, then this must be stated upfront.
- Developments within the country, including relationships between different sectors of society, has led to a widely accepted view that the country's development goals will not be achieved without all sectors of society working together. This must be factored into the next cycle of support. Consideration should be given to re-introducing some support to the government sector as well. The experience of the Programme with the technical assistance to the LAB, which reportedly provided positive results, should serve as a model for the support.
- The broader definition of 'justice' in the South African context be recognised and clarified. This will allow for support for project activities that may not strictly or narrowly have a *legal* angle or outcome, but that nevertheless contributes to accessing of justice or provision of rights.

3.4.4. Specific Objective 1 and the Paralegal Movement

“a sustainable paralegal structure and system giving legal advice to poor people in the rural and remote areas of South Africa where there are no legal services”

This objective was translated into providing support for the NCBPA and a network of advice offices, thus this section combines an assessment of the objective as well as the status quo of the paralegal legal movement as required in the ToR.

The support yielded some broad achievements, namely, increased recognition of the role of paralegals and of advice offices by government as well as other sectors of society, the paralegal movement being able to contribute to the development of an enabling policy environment, e.g. the development of Justice Vision 2000, strengthening of working relationships between government and the paralegal movement, development and sustaining of advice offices and paralegal movement in a period in which they are still finalising their roles, maintaining and sustaining a network of advice offices, the development of a paralegal training course.

As explained with the main objective, there was and is no baseline information available against which this objective can be measured. NCBPA does have a database of cases and types of cases dealt with by its member advice offices. However, this information has not yet been analysed into a readily available form that indicates the weighting of legal services versus other social related services, or whether they are operating in areas that do not have other legal service providers. It is important to remember that NCBPA is a membership based organisation of advice offices. The NCBPA does not itself provide actual services in communities, and not all advice offices in the country are members of the NCBPA. It is also important to remember that legal services are but one, and usually a minor, aspect of the work of advice offices.

The support provided by Sida has contributed to the establishment and sustaining of NCBPA's national office and 9 provincial offices. Through the NCBPA, i.e. using it as a funding pass-through, Sida has supported between 50 and 100 advice offices. This number currently stands at 45. The reduction is directly attributable to the recently introduced requirement that advice offices seeking support from this Programme must be part of a 'cluster', as well as the scaling down of Sida/ICJ-S funding in anticipation of the winding down of the Programme in 2006. The notion of 'clusters' is addressed in following sections of this Report.

The phrasing of the objective and its translation into actual support, assumes that the paralegal movement and advice offices are synonymous. This assumption has led to a confusion of roles and diverted Programme support to a narrow focus on the legal aspects of work carried out by advice offices which may be comparatively minor in relation to its other services, such as obtaining of a child welfare grant or an old aged pension, which, while having legal facets, cannot by any stretch of the imagination be defined as being only the province of lawyers or paralegals. It is an assumption that also does not acknowledge the existence of, and important work done by paralegals not located within advice offices, or those not within the NCBPA network. For example, the LRC employs such paralegals in their offices. The inordinate focus and energy of the Programme on formal legal recognition of the paralegals through the Legal Practitioners Bill appears to have been based on this assumption. Ongoing disagreements and professional and power struggles within the legal fraternity in the country has contributed to a delay in the passing of this Bill. The forthcoming elections, the possible appointment of a new Minister of Justice and reviewing of government's priorities will further delay adoption of this bill to beyond the timeframe of the next cycle of this Programme.

A positive spin-off from this focus has been the development and accreditation of a capacity building and training Programme for paralegals. The Programme is aimed at professionalizing the skills of paralegals, in the event that they are eventually recognised as part of the professional legal fraternity. At the same time it serves to improve the quality of services provided by these paralegals, regardless of their professional status and ensures its sustainability. For these reasons, it is important that this initiative be harnessed in the next cycle of support.

The conflation of the paralegal movement and advice offices is further reflected in NCBPA acting as a funding 'pass-through' for some advice offices. NCBPA originated in response to a need for a paralegal movement. At the time of its establishment, its mandate was to advocate on issues pertinent to paralegals and its members. Its role as a funding 'pass-through' was introduced through this Programme support, and not as an organic, internal, needs-driven, process. As detailed in this report, the NCBPA has experienced a whole range of challenges that have negatively impacted on its success, and that threaten the future sustainability of the organisation. There is an urgent need for the role of the NCBPA to be reviewed against its original intent, the functions it has performed since its establishment, the current and future role of paralegals, and the needs of its members. This reality has to be taken into account in the next funding cycle.

The Review Team recommends that the next cycle of support incorporates the following issues:

- The adoption of the Legal Practitioners Bill should not be included in focus activity definition or used as a measure of impact and success;
- The Programme makes a distinction between the paralegal movement and Advice Offices. This will help to focus the next cycle of support more appropriately;
- The Paralegal Capacity Building and Training Initiative be strengthened;
- NCBPA be supported in its review and re-alignment as well as its organisational development processes, so that its members define its role and functions;
- The role of the paralegals, in organisations *other* than the NCBPA be recognised, and they be accommodated, or at least not be disadvantaged, in future Programme design in some way.

3.4.5.Objective 2

“to maintain and increase free legal advice to poor people through NGO law clinics, University law clinics and LAB Justice Centres”

As stated with the other objectives, the provision of services through partners such as the LHR, LRC, WLC and the Law Clinics has been maintained. Other broad achievements relate to partners being able to contribute to the development of an enabling policy environment, a strengthening of working relationships between government and partner organizations, and opportunities and ability to engage in impact litigation initiatives.

Again, as stated in the preceding sections, there was, and is no baseline data against which an assessment can be made regarding an increase in the number of people serviced. Despite the frequent reference to LAB Justice Centres, for some years now, no direct financial, but some technical, support has flowed from this Programme to the LAB for its Justice Centres. Indeed the LAB has not always fully spent its own budget. Over the past few years, activities supported as part of this objective, has included impact litigation. Whilst impact litigation is an activity that human rights and legal NGOs are engaged in, and there have been some successful cases resulting from this activity – it is still not a primary or core function of these NGOs. A possible reason for this is that the country’s democratic constitutional, policy and legislative framework has not yet been sufficiently implemented to test impact on a regular and sustained basis. A second contributing factor is the culture of these NGOs, which is driven firstly by providing a service to, and assisting base on their commitment to development and human rights, rather than whether it will result in a court case or not. A third contributing factor is that, on certain issues, community traditions and culture favour other forms of resolution, for example mediation and negotiation, and that legal recourse is opted for as a last resort. Thus, there is no indication or guarantee that there will be impact litigation cases at the level or frequency desired over the next funding cycle. This is a factor that must be considered in determining focus areas and activities. Obviously support provided to cases that are already in process must be continued even though resolution of such cases within the funding timeframe cannot be guaranteed.

The Review Team recommends that the next cycle of support incorporates the following issues:

- The support to human rights and legal NGO partners includes the development of exit and sustainability strategies and plans for their projects primarily supported through this Programme;
- Support be continued for any impact litigation cases/work currently in process and that a dedicated fund for such support be contemplated, this fund to be accessed by any of the SA partner organisations on an ‘as-needed’ basis;

- That this dedicated fund be assessed at Programme mid-term to see if the set-aside fund is being utilised for the purpose for which it is being established and to evaluate if the fund should be discontinued or added to;
- The intention of supporting LAB's Justice Centres be considered, the method and mode of this support be sharpened and defined. If a viable approach can be developed, this be supported by appropriate Programme resources.

3.4.5.1. Objective 3

“a structured co-operation between the paralegal organisations and legal actors such as Justice Centres, NGO law clinics, University law clinics and others within the legal profession”

This objective refers directly to the relationship between paralegal organisations with other role players both in government and the civil society sector. Clinically, it suggests a one-way relationship: Paralegal organisation to other role players. It does not explicitly suggest a mutually beneficial and equal relationship. Like in the case of other objectives, the phrasing of this objective conflates advice offices and paralegals as one entity. The problems related to this have already been elaborated on.

Mutually beneficial and equal co-operative relationships have, since time immemorial, been one of the strongest features of civil society organisations in this country. Civil society organisations, either community based or sector based non-governmental organisations – especially those working against apartheid – recognised that the core functions, needs and aims were interrelated and could not be achieved without each other. The commitment to this form of relationship was vocalised in slogans such as “Unity is strength”, “United we stand, Divided we Fall”, etc. In the 1980's, the commonly known United Democratic Front (UDF) was formed. This was a national network of mass-based membership organisations, religious institutions, service oriented NGOs, sporting institutions, etc – each with their own identity and core functions but all working together on common issues. Thus the notion of networking and co-operation is a tried, tested and accepted principle in relationships between organisations and sectors.

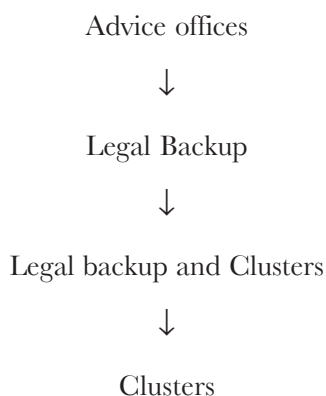
Achievements linked to this objective have not yet been consolidated, mainly because project activity in this regard started in earnest in the more recent past of the entire Programme. Broader achievements that can begin to be attributed to this objective are the strengthening of working relationships between government and partner organizations, facilitation of additional networking amongst civil society organizations and sustaining a network of advice offices.

Two to three years ago, a notion of ‘clustering’ was introduced into the Programme. When unpacked, the notion appears to be no different from the form of networking that has already been in existence between organisations and especially Programme partners. For example, LRC, LHR, WLC has always cooperatively worked with each other, and with the community structures such as advice offices in the communities they service. Advice offices, in turn, have always worked cooperatively with such partners by referring cases to them and seeking their advice and support for matters that have a legal slant but may not require legal intervention. In addition, formal sector based networks and organisations are already in existence e.g. the National Land Committee (NLC) is a national network of civil society organisations working with land, farming, rural development and other related issues. The South African National NGO Coalition (Sangoco) is another example of a formal and structured network organisation comprising all civil society organisations regardless of their sector focus. Some of the partner organisations in this Programme already belong to some of these networks.

It would appear that in formulating this objective, the historical and existing contextual issues were not adequately taken into account, and the objective assumes the need for a new and additional formalising and structuring of relationships. The validity of this assumption is questionable. The term cluster is used very broadly. In some instances it relates to co-operation around sector issues, in others it is used geographically and yet in other instances it is used to describe a single particular issue involving many role players. This diverse definition of clusters and clustering has led to confusion, and created an opportunity for subjectively driven definitions and implementation of what is essentially a sound principal.

3.4.6.Clusters and clustering:

The Reviewers did not meet with or observe ‘clusters’ on the ground, as they were not the focus of the evaluation. For the purpose of this Review they are an instrument and a device used to achieve the purpose of the Programme. Prior to the “Access to Justice” Programme there was co-operation between various actors in the sector brought about by the forces of logic which cause actors to work together to maximise their efficacy. In that sense co-operation between partners has changed over time, as the now defined ‘clusters’ became elements of Programme design and accomplishment. The cluster have also evolved in the structures and the functions they undertake, related to the topics and areas they cover. This evolution was described to the Review Team as having taken the following course:



At first, during the early phases of the Programme, support was given to the paralegal sector to sustain the Advice Offices that were found in many parts of the country, and which were part of the NCBPA network. This was primarily in order to keep the paralegals located in the advice offices in place, pending their awaited formal absorption into a state supported system. As it became clear that there was slippage in the achievement of the goal of absorption, a new rationale for their support, and a new framework for this support had to be developed.

Linking these Advice Offices and their paralegals with other legal NGO’s and actors in the field was the next step, with legal backup being offered to the paralegals by other Sida funded partners of the Programme. This legal backup support brought about two results: First, it made available to the specialists legal practitioners, whose tentacles might not always extend into the communities as well as those of the paralegals did, the cases found by the paralegals on the ground. Secondly, it brought the specialist legal skills of these more urban NGO’s to the rural communities which had real legal needs, but not as easy an access to those who would represent them in the highest courts in the land, where the paralegals who found the cases could not appear. This was, and is, a real accomplishment of the Access to Justice Programme, and its importance cannot be overstated.

Following the formalisation of this legal backup phase a more formal institutionalisation of the arrangement took place, with the designation ‘cluster’ given to the networked collectivity. Sida/ICJ-S funding became available to these activities. They became more formally coupled to the ULC’s, spread

as they are throughout the country, as well as the other partners supported by the Sida funding, extending access to justice more widely and deeply.

The current arrangement involves geographic and segmental clusters. Some are related to regionality, and others to topic or subject matter. What binds them together in the Sida/ICJ-S “Access to Justice” Programme is the fact of funding. Funding to the non-NCBPA South African partners is given on the basis of their availability and willingness to be linked in clusters with other partners. The NCBPA does not ‘pass-through’ funding to any Advice Office that is not clustered. Thus participation in clustering has become the yardstick by which Sida/ICJ-S funding is accessed.

Clustering certainly provides for tidy Programme design, from an administrative point of view. It locates the Advice Office network, who, in the provision of service, are at the less sophisticated end of the legal spectrum, at the same time as it gives more sophisticated practitioners of the law, access to cases they would not otherwise come across. This relationship should be preserved, but in the view of the Review Team, should not be prescriptive, in the sense of allowing access to the Sida/ICJ-S funding only if such relationships are sustained.

It was Abraham Lincoln who said *“You cannot strengthen the weak by weakening the strong”*. Strong organisations are not necessarily strengthened further by linking them with weak ones. Their own strengths must be noted, recognised and supported precisely because they are strengths. Similarly, weaker organisations are not necessarily strengthened by association with stronger ones. Their weaknesses must be known, analysed and specifically addressed, with the aim of organisation building. The Review Team feels this should be borne in mind when surveying the spectrum of strengths and weaknesses found within the South African partners of the Programme. A ‘one-size-fits-all’ approach should not be adopted, as this is the danger of using the cluster model in a simplistic way.

This situation is exacerbated by the decision that was taken to focus all or the bulk of Programme support into clustering activity, so for example, advice offices that are not part of clusters no longer receive financial support from the Programme. It is a decision that has excluded support to advice offices and other possible partners not involved in clusters. It is a decision that imposes co-operative working relationships – a fundamental contradiction to sound organisational development processes which are usually driven by need and organic growth. The danger of this imposition is a lack of clarity on whether organisations are part of cluster because they recognise a need for it or because it creates the opportunity for financial support. Despite this, clustering activities and structures have been initiated and are at varying levels of development. Some individual organisations involved in these describe the opportunity as useful in terms of sharing experiences. Since these are still at developmental stages, it is difficult to measure successful impact and value add, that would otherwise not occur.

Regardless of the origins of clustering and the debates surrounding it the reality is that some initiatives are underway and these must be taken into account in the next funding cycle.

NCBPA and AULAI have been the two key recipients of support for cluster activity. The NCBPA, for regional (i.e. geographic) clustering of Advice Offices only, and AULAI for sector/issue clustering. Both organisations have already initiated cluster formations. In the case of NCBPA they refer to three regional clusters. Based on information in documents and that gained in interviews, it appears that plans envisaged are for these clusters to become somewhat ‘independent’ organisational structures, with their own staffing component and infrastructure. The Team cautions against developments in this direction.

AULAI in particular has established a sound working relationship with the LAB in relation to its Justice Centre but also other work of the LAB. AULAI has begun engaging LAB on its focus on criminal ver-

sus civil matters, and AULAI's member law clinics work closely with pilot Justice Centres. This must be harnessed in the next cycle of support.

The Review Team recommends that the next cycle of support incorporates the following issues:

- The notion of clustering must be clearly defined, and proper guidelines relating to the definition be developed;
- The distinction between advice offices and paralegals must be clarified;
- The decision to only support advice offices working within clusters must be reviewed, the review of which must be informed by the two points above;
- NCBPA's three regional clusters initiatives be supported as pilot projects with the view of replication based on best practice;
- Three AULAI sector cluster initiatives be supported as pilot projects with the view of replication based on best practice;
- Evaluations of these cluster arrangements should be commissioned from outside independent assessors to evaluate if these new models of clusters deliver outputs in keeping with clearly defined Programme objectives;
- Any new organisation(s) mooted to organise and co-ordinate emerging clusters should NOT be funded from the ICJ-S/Sida purse before a thorough cost/benefit analysis has been undertaken by outsider evaluators appointed by Sida.

3.4.6.1. Objective 4

“an effective and increased human rights monitoring of the South Africa state through different NGO activities in order to ensure that the South African state fulfils its constitutional and international obligations.”

Project monitoring is done by existing partners through their daily work, and this aspect of their work is supported by Programme funds. This function is an activity also supported by a number of foreign co-operation agencies and partners. The results of this monitoring is usually reflected in, and informs the content of, the organisations advocacy and public awareness and communication campaigns, while awareness of issues to be dealt with often comes from the networks that feed cases into the SA partner case-loads.

Again, it would appear that certain contextual issues were not adequately considered in the formulation of this objective. Some of these are:

- The core function of partner organisations is legal support, advice and services not human rights monitoring, *per se*;
- There are long-standing, reputable well established organisations in the civil society sector such as the Human Rights Committee (HRC) that play this role as a core function;
- Government has established an independent South African Human Rights Commission (SAHRC). One of the core functions of the SAHRC is monitoring the provision of human rights and providing redress for any abuse or disregard for these rights. It has been established by Parliament and reports annually to Parliament and thereby the public on its activities. The SAHRC has financial resources, a well established infrastructure and several community outreach projects which contribute towards fulfilling this core function. It has a close working relationship with civil society organi-

sations and has established a formal human rights forum with these organisations that meets a minimum of four times a year. In addition it has embarked on joint human rights campaigns with civil society organisations such as the Treatment Action Campaign (TAC) on the issue of HIV/AIDS and the provision of anti-retroviral drugs to infected people.

Partner organisations have established, strong, relationships with the abovementioned human rights monitoring institutions, and they recognise the core functions of these organisations.

The Review Team recommends that the issue of human rights *monitoring* is not included as a specific objective and project activity in the next cycle of funding. The *consequences* of the monitoring, which does form part of the core business, should be included, but the definition of *monitoring* is very broad. The addition of human rights monitoring as a specific project activity within this Programme may have the unfortunate result of diverting partners resources and energies away from their core function and expertise, while being a duplication of work already being done by other organisations and institutions.

3.4.6.2. HIV/AIDS

In terms of this Programme no tangible work has been done on this very important issue, nor is there any specific objective, project activities or financial allocations related to this. In line with Sida's general ODA strategy and the inclusion of HIV/AIDS as a cross-cutting issue, but a primary area of support in all of its Programme, it is important that this Programme visibly includes HIV/AIDS in its objectives and Programme activities.

The Review team recommends that the following issues be considered for the next cycle of support:

- HIV/AIDS be addressed on two levels as part of this Programme, namely its impact on human resource capacity in the sector, and the relevance of existing policy and legislative frameworks that recognise rights and state responsibility regarding legal redress for both infected and affected people;
- An existing partner, such as AULAI, which is well placed in terms of research capacity and resources, be supported to conduct research on this issue and develop recommendations for implementation

3.4.6.3. SA/Swedish Partnership

The intention of building South African/Swedish partnerships is not stated as a specific objective. One of the reasons for Sida choosing ICJ-S as its Programme agent was to increase and bring to the fore the building of such partnerships of like-minded professionals and role-players operating within the human rights and justice sector. The partnership has taken the form first, of linking individual Swedish lawyers to specific SA partners, and more recently to replacing this approach with a sector based linking. Activities have been almost entirely in the form of individual or group exchange visits to each country. There are few tangible achievements resulting from these visits. Swedish and South African partners describe it as having been useful and interesting. The SA partners have indicated that given the different levels of political, social, economic and legal development of Sweden and South Africa their experiences have been informative, but unfortunately cannot be implemented at this stage of transition and development in South Africa. Under these circumstances it is difficult to quickly give concrete effect to the lessons learned. As mentioned above, this review did not require a financial review, so no cost benefit analysis of this activity is provided.

The Review Team recommends that the following issues be considered in the next funding cycle:

- If Sida commissions a financial review as recommended previously in this Report, a cost/benefit analysis of this particular activity be part of this overall review. Such a review will serve the additional purpose of guiding Sida broadly on applying this approach in this and other ODA programmes;
- In the absence of a full financial review, a smaller but more focused cost/benefit analysis be commissioned in the short term, as a precondition to this activity being retained in the Programme;
- Other creative forms of building partnerships be considered and guidelines developed for these. Other case studies can be drawn on for this such as the SA/Canadian initiative which has developed a well-functioning, low cost internet and email network of legal practitioners in both countries that can provide almost immediate information and support to each other. An additional spin-off of such an approach will be the opportunity for further donor co-ordination.

3.4.7.ICJ-S and Programme Management:

As already mentioned, Sida's choice of ICJ-S as the Programme manager was based on two key reasons. As a well established organisation ICJ-S had the infrastructure, systems and processes to manage the substantial funding which formed part and parcel of this Programme. As an organisation of professionals from the legal fraternity, it could provide technical and professional advice to partner organisations in SA thereby building and strengthening SA/Swedish partnerships. The assessment of ICJ-S addresses both aspects of their Programme Management role.

3.4.7.1. Professional/Technical Advice and Support

An assessment of the impact of the SA/Swedish partnership intention has already been noted above. This section therefore only comments on the approach and management aspects as adopted by ICJ-S.

The mode of operation in the South Africa Programme had been to allocate a Swedish jurist volunteer to 'partner' with one of the South African organisations and the relationship was reflected in the form of a contract. It is important to note that the word 'volunteer' is used slightly differently in the Swedish context, when compared to the South African one. The Swedish ICJ-S 'volunteers' are paid an amount to offset some of the loss of income they suffer by being absent from their practices or places of work in Sweden, when they devote time to the project in Sweden, or while visiting South Africa. The Review Team was assured this amount was far below the rate which Swedish jurists would earn in their professional capacities, in Sweden¹⁷. However, in South Africa, 'volunteers' of any sort to any organisation are not paid for their services. If the SA organisation to which a volunteer is attached can afford to, it sometimes covers travel costs and a small food allowance for the volunteer. This scenario is the exception rather than the norm. This difference has not yet shown any visible signs of tensions in this Programme. However the Review Team wishes to flag this as an issue for Sida's and ICJ-S attention – only because such disparities have caused discomfort in other ODA supported programmes in general, i.e. not specific to Sida as a donor. It raises questions related to the equality of partnerships and the rationale for different treatment of some partners, etc.

There does not appear to have been any clear objective criteria and guidelines for matching of partners, besides 'interest' in a particular area or sector. The allocation of Swedish 'volunteers' to SA partners could be seen as arbitrary rather than based on a particular need or gap within the organisation that the 'volunteer' would be best placed to support. There also does not appear to be any clearly defined activity programmes with measurable outcomes for each of these 'volunteers', or indeed for this aspect of the Programme as a whole. The basis on which visits to South Africa was decided, i.e. was it based on a request and need expressed by the SA partners or by ICJ-S or by the 'volunteer', the pur-

¹⁷ The names of the jurists and the SA organisations with whom they are partnered is to be found in Appendix 2.

pose and duration of such visits, the benefit to each partner are all issues that remain unclear. Probably due to this approach, there are no identifiable ‘achievements’ that can be attributed to this element of the Programme. Nor is it possible to make any observations on the extent to which this element has contributed to the main and specific objectives of this Programme.

This ‘partnering’ approach is now being modified, and the Swedish volunteers are liaising with groups of projects around a common theme or sector, rather than with single partner organisations. This new approach is being instituted at the time of this review being conducted. Again, it would appear that the issues raised in respect to the earlier approach has not yet been addressed: Criteria and guidelines for matching partners, specific objectives and outcomes for the partnership activities or a programme for partnership activities, which is directly linked to the overall objectives of the Programme. These issues should be addressed as a matter of urgency for the next cycle of funding. The final decision must be based on an objective needs-based and cost-based analysis. If continued, the sustainability of this element at the end of the Programme has to be addressed, for example, what resources are there for continued exchange visits in the absence of Programme funding.

3.4.7.2. Programme/Grant Management

Contracts are negotiated and concluded with individual SA partners annually, with a currency of 12 months. ICJ-S convenes a joint ICJ-S and SA partners conference at the beginning of each year. These conferences set the focus areas of Programme activity for the year. Contracts with the individual organisations are then signed after negotiations with ICJ-S.

Over the life of the project, and especially since the 2000 CASE Review, the office staff component of the ICJ-S in Stockholm has been strengthened. This has allowed for a clearer division of labour between the ‘professional’ ICJ-S members and their input to the Programme, versus that of the administrative/management staff of the Stockholm office. The administrative staff are responsible for executing the Programme within the guidelines of the contracts and under the professional direction of the jurists. The office staff component currently comprises of a Programme Manager, a Project Officer and an Office Administration and Financial Manager. On the SA side, ICJ-S has contracted a consultant to serve as a local ICJ-S co-ordinator and representative and whose main responsibility is day-to-day liaison with the grantee partners.

The table below¹⁸ reflects the ICJ-S structure and the roles and responsibilities of each structure/person.

Table 3

The ICJ-S Board	Decides about the policies and programs within the organisation. The Board approves all the applications and reports to Sida at least twice a year. The Auditors make a yearly review of the ICJ-S as an organisation, the program and its administration and presents this once a year to the Board.
The Program Manager	Is responsible towards the Board and report regularly to the Board about the African program that incorporates the South Africa Program. The Programme Manager has an overall responsibility for the program and the development of the overall objectives and activities. The Programme manager will once a year meet with the partner organisations, together with the SA Consultant and representatives from the secretariat to discuss the overall implementation for the last period and the coming periods. During the agreement periods the program Manager has a direct role in the different organisations activities only in important matters such as breach of agreement, important lack of performance and when deviations occur from what has been agreed.

¹⁸ This table was provided by the ICJ-S following presentation of the first draft of the Review Report to interested parties in the meeting of 11th February in Pretoria. It is included here with minimal editing.

The Consultant and one assistant in South Africa	Is responsible to the Program Manager for the preparations of applications and reporting on the developments during program implementation. All daily direct contacts with partner organisations in South Africa shall go through the Consultant and all the messages should be sent to her and she will see to that the secretariat will be informed and if necessary the Program Manager. The Consultant represents ICJ-S in South Africa during the program periods. Since last year the Consultant has been delegated to approve new budgets under the Sustainability project – a joint project between AULAI and NCBPA.
The Steering Committee	It constitutes an advisory committee and has a control function on the Program Manager. In November 2003 the structure was changed from each lawyer being responsible of the co-operation with a partner organisation in South Africa from focusing on the legal aspects in the program in Thematic Groups.
Staff	The Program Officer and the Financial Manager are members of the Steering Committee and are part of all the decisions. They are part of all the proposals to decision and are responsible for the administration. All the messages should be sent to the secretariat at first and the secretariat informs the relevant people.

A perfunctory view of the management approach points towards the fact that it is primarily process driven. As explained at the beginning of this section, this approach has both strengths and weaknesses. Interviewees, particularly on the South Africa side, expressed reservations of the approach which can be summed up as:

- Quite a lot of Programme activity was driven by the exigencies of the moment, rather than the overall plans and objectives of the project;
- One year contracts made for ‘stop-go’ Programme activity, with quite radical changes of direction possible, and sometimes implemented;
- The annual review, done at Conference, and during the negotiations between ICJ-S and the individual SA partner, set the stage for quite a short bursts of activity, the product of which did not always connect well with the overall objectives of the project and which, because the activity cycles were short, could not always achieve the large amounts of work required;
- The objectives of the overall Programme were/are set out, but there seems to be a part of the process missing, where the objectives are translated into measurable activities, with regular reviews of the results, and remedial actions following on such reviews;
- The approach creates the space for personalities and individual views to drive the Programme, rather than the set objectives;
- Project activity of partners organisations are more often than not of a longer term nature and compressing them into annual contracts reduces the type of activities that can be engaged in and the impact of them;
- Annual project activities also provided the space for diminished responsibility and accountability for implementation, since the focus areas could easily be changed the following year, while the short timeframes for implementation could be offered as a viable reason for lack of delivery.

In a nutshell, it became apparent to the Review Team that no systematic, verifiable project management system, such as the LFA¹⁹ or Project Cycle Management (PCM) was established and used to effect in the implementation of this Programme. The *logframe process* in particular, which the Review Team

¹⁹ The style of the LFA is used quite extensively in the application phase of the relationship between ICJ-S and Sida – when ICJ-S is applying to Sida for its funds – but in the subsequent stages it seems to diminish in importance, and it is not used as a time-linked, objective, achievement monitoring tool.

understands is the norm for Sida projects, seems to be honoured more in the breach with respect to this project, than in strict application. Some ICJ-S members and SA partners did undergo LFA training in South Africa. However, this method does not appear to have been applied systematically, subsequent to the initial training. Neither of the Reviewers carries the LFA as a sacred belief, but both believe that it has some value as a methodology for guiding and integrating the various levels of project activity.

Very severe criticisms were raised about ICJ-S in respect of management style, dominance, unilateral decision-making, interference in operational matters of partners and setting the agenda. The last criticism in particular was expressed in the context of ICJ-S being simultaneously a funder and NGO. Interviewees pointed out the challenge of the dual roles which came about with the ICJ-S being a dispassionate funder of SA partners on the one hand, and an international NGO with ideals held close to its heart, coupled to a certain way of operationalising these concerns on the other. This point was made using phrases like "...and then there's the Swedish agenda..." It was a comment about the style of partnership, where it seemed that a grant and contract carried an obligation beyond that written into the contract document. Some SA partners felt this burden almost made the grant not worth having. This especially applied to grantees where the amount of the Sida/ICJ-S grant made up only a small proportion of their operating budget. Other grantees also voiced a criticism, but stopped short of saying the funding wasn't worth the relationship.

Concerns were also raised about the lack of real decision-making power and authority of the ICJ-S' consultant/representative. The role, as currently implemented, was described as a post-office one, rather than one that adds value and makes a qualitative difference to the Programme. Such powers, they believed, would provide a much more immediate, direct and timeous form of programme management support and justify the appointment of such a person. In the absence of enhanced decision making and authority for her, the expenses related to this appointment can hardly be justified.

The Review Team is of the opinion that accusations and counter accusations, justification and argument against it, defensive responses and counter-responses on this particular issue is not going to take the Programme forward. Nor will it bode well for future healthy working relationships. Suffice to say that the criticisms of ICJ-S were wide-spread and unanimous. The challenge this poses to Sida and ICJ-S at this critical stage of the Programme is to rise above a natural 'knee-jerk' response to this situation, and as a matter of urgency establish systems and process that address the criticisms and contribute to a depersonalising of programme management.

3.4.7.3. The Review Team thus recommends the following steps:

In line with other recommendations:

- The overall and specific objective of the Programme be clarified;
- This must then be translated into a LFA or PCM framework with very clear, tangible and measurable outcomes, and this be applied, *first*, from the top organisation – i.e. from within the ICJ-S – rather than from the bottom, i.e. the SA partners. At present it is required by contracts that grantee/partners report according to the LFA method. The linkage between the partner Reports and the ICJ-S objectives cannot rely on a methodology which does not run through the entire structure of the project;
- Decision-making powers and authority of the SA consultant/representative be expanded and powers be formally 'devolved' in terms of contractual obligations. Such powers should shift the role of the SA representative of the ICJ-S from that of a co-ordinator to one that carries more operational management responsibility, including negotiating and signing contracts with the SA partners and monitoring and accounting for implementation of activities and adherence to the contracts;

- The role of the ICJ-S Programme Manager be reviewed to take into account the overall Africa Programme responsibilities. Thus the role should be defined as overall management of the Stockholm office and its staff, and providing advice and support to the SA consultant in their managerial responsibilities;
- This should lead to a split between the *Direction* and the *Management* of the Programme, with Swedish jurist volunteers taking responsibility for the policy making and direction setting role of the Programme, while staff take responsibility for the management of operational level activity and the work involved;
- Contracts be signed for the remainder of the funding cycle and not on an annual basis;
- Mid-term reviews and independent evaluations of each project be build into project plans and form part of the financial support provided. This must be reflected in the contracts with each partner organisation;
- The annual conferences be sustained, but the purpose be shifted to one that allows for sharing of experiences and a basic review rather than the current purpose of determining focal areas for the next phase of short-term project activity.

Appendix 1

Terms of Reference for the Review

Terms of reference for the second review of the Swedish support to the access to justice project

1 Background

Sweden has been co-operating with the Swedish section of the international commission of jurists (ICJ-S), since 1996, on the support to South African civil society working within the fields of access to justice and human rights. In principle the support has been based on a two pronged approach. It has been through support directed at human rights organisations working within the legal ambit and impact litigation, and through support directed at the development of the South African paralegal system – primarily through the National Community Based Paralegal Association (NCBPA).

The main objective of the Programme is to promote access to justice in South Africa with a particular focus on the poor and previously marginalised, who have difficulties accessing the formal justice system.

One of the fundamental components of the Programme is the creation and development of strong links between Swedish and South African civil society, working with Human Rights and legal services. This angle was chosen as it was felt that there is substantial added value to the Programme if members of legal associations within civil society cooperate and serve as partners. Furthermore ICJ S was deemed to possess in-depth knowledge of the legal systems, and to have the capacity to meaningfully contribute to the development objectives of the South African partners.

The present agreement between ICJ-S and Sida runs up until 30 September 2004. The activity period ends 31 December 2003. Due to the delay with this review, the agreement will, however, be prolonged with another six months. One basis for the present agreement has been a review, which was commissioned by Sida in 2000.

The long term overall objectives of the Cooperation, relevant to this project, are support to human rights in South Africa, and, where rights are violated, support to the development of free legal remedial services available to all. The more immediate objectives are to support the promotion of human rights to free legal services provided through law clinics, law associations and paralegal services.

Currently some eight human rights organisations and law clinics are supported through the ICJ-S Programme. From a high of 140 the Programme now supports approximately 73 advice offices throughout South Africa. This support is channelled through the NCBPA. Support is also made available to both the national and provincial offices of the NCBPA.

From the projects inception, a prerequisite for the Swedish bridging support to the NCBPA and the advice offices has been that funding in the medium to long term will be resolved through other sources than Sida. In principle the assumption was that they would be integrated into the legal aid system and thereby be funded within budget framework of the Legal Aid Board (LAB) or the Medium Term Expenditure Framework (MTEF) of the Department of Justice. However, this has not yet taken place.

All the organisations working with the ICJ-S support the promotion of access to justice through education and/or by facilitating the work of paralegals and/or by providing legal backup services to the paralegals, in conjunction with their other core functions. This cluster process is at present being reviewed.

2 Purpose and Scope of the Review

The overall purpose of this review is threefold:

- to assess the impacts and achievements of the current Programme,
- to assess the long-term sustainability prospects of the process and of the stakeholders involved within the Programme,
- to make recommendations on the basis of findings, on the continued strategic involvement by Sida and the ICJ within this sector.

Sweden will not be in a position to continue financially supporting this sector as of 2006.

Much of the emphasis should therefore be placed on the sustainability of the various structures and mechanisms that provide access to justice in South Africa, i.a. through this Programme.

The need for such a review at this time is primarily motivated by the fact that significant events have taken place within the justice system since the Programme started, and that the funding mechanisms in South Africa have been delayed. These factors may impact on the volume and design of Swedish support for a coming period of three years.

The findings and recommendations of this review may also contribute to the ongoing dialogue between Sweden and South Africa on the issues of justice and human rights.

3 The Assignment (issues to be covered in the review)

The review of the Sida/ICJ-S support to the Access to Justice Programme shall in essence be a situation assessment, with the primary emphasis being on both the impacts and the long term prospects for the stakeholders within the Programme and within the ambit of the South African government.

The review shall cover both parts of the Access to Justice Programme. The focus should therefore be on both the Paralegal sector in South Africa and the various organisations and organs involved in impact litigation.

3.1 Paralegals

With respect to the paralegals, the underlying assumptions made in this Terms of Reference are;

- that there are various manners in which a holistic all-embracing justice system can be created, designed and/or established,
- and that it is clearly the long term strategic vision of the Department of Justice to design and set up such a system²⁰

Thus the review should assess

- whether and how the paralegal sector and the advice offices fit into the long term vision and design of the justice system and what the constraints may be. Does the government perceive that the contribution of paralegals is an essential component of the legal aid system?
- the ongoing processes, the stakeholders involved in the transformation of the legal aid system, and whether and when the paralegals will become part of the formal section of the legal aid system.

²⁰ Department of Justice and Constitutional Development's mission statement – "The Road to Effective Justice"* Interviewed in Stockholm+ Interviewed by telephone

Furthermore the readiness and commitment of government/Legal Aid Board to the inclusion of the paralegals within their structures should be assessed. Do paralegals perceive that they are adequately involved and consulted within the transformation process? The concerns expressed by LAB regarding the monitoring and accountability of the advice offices and paralegals should be taken into consideration here. The roles and responsibilities of the various stakeholders involved within the transformation of the legal system/paralegal process in South Africa should be identified. It is important to address the possible tensions between the state organs and those within civil society, particularly in relation to the role of each within the legal aid system. The process of enacting the Legal Practice Bill with particular reference to the implementation constraints, and the proposed alterations within the Legal Aid Act that may affect the paralegal advice offices and the paralegals themselves, should be considered.

- the development, impact and replicability of cluster initiatives, in terms of both services provided and a working methodology. This includes the effectiveness of the paralegals in providing access to justice.
- the future sustainability prospects and funding possibilities of the various entities within the Programme, in particular the paralegal advice offices, the NCBPA, and the viability of the cluster pilot projects. This includes, but is not restricted to, current and future possibilities of other funding within the legal aid system

3.2 Human Rights monitoring and HIV/AIDS

The review should assess

- the impacts and effectiveness of the support to Human Rights Monitoring and impact litigation.
- areas of gender and family violence within both the advice offices and the impact litigation parts of the Programme.
- both how the Programme has worked with the HIV/AIDS pandemic, and how the pandemic has affected the work of the Programme, with particular emphasis on the advice offices.
- the knowledge and attitude of the advice offices in respect to Human Rights violations, labour relations and confidentiality concerning HIV/AIDS

3.3 ICJ-S

The review should assess

- the added value and impact of ICJ-S on the developments within the sector.

4 Methodology, Review Team and Time Schedule

The review is to concentrate on the period January 2001 to June 2003. However, the entire duration of the project, from its inception in 1998 to June 2003 should be taken into consideration in light of the findings and recommendations of the review which was commissioned by Sida to cover the period up to 2000.

The review will be conducted by a team consisting of two South African consultants to be appointed by Sida.

Both consultants shall jointly carry out the part of the review covering the work in South Africa, but may divide the tasks in-between themselves. As for the part covering ICJ-S in Sweden, this shall be undertaken by the lead consultant only.

The consultants shall,

- Study the project proposals, agreements, the review commissioned by Sida in 2000, semi-annual reports, the national cluster report and other related documents.
- Undertake interviews with concerned stakeholders in South Africa as well as with ICJ-S staff and resource persons that have been involved in the Programme.

5 Reporting

The consultants shall make a brief presentation of the preliminary main findings to the Embassy in Pretoria before leaving South Africa. The draft report in English shall be submitted to Sida/DESA and the Embassy electronically and in two hardcopies to each no later than January 17th, 2004.

The final report shall be submitted to Sida/DESA, and the Embassy within two weeks of the receipt of Sida's comments. The report must be presented in a way that enables publication without further editing. Subject to decision by Sida, the report may be published in the series *Sida Evaluations*.

Appendix 2

List of individuals met and interviewed in the course of the Review

Alfvén, Berenike* – ICJ-S lawyer responsible for the WLC co-operation, Stockholm

Beukeboom, Marcel – Royal Dutch Embassy, Pretoria

Gärde, Stellan* – ICJ-S Programme Manager, South Africa Programme, Stockholm

Hill, Åsa* – ICJ-S lawyer responsible for the LRC co-operation, Stockholm

Jansen, Rudolph – LHR, Pretoria

Lind, Birgitta* – ICJ-S lawyer responsible for the CLRDC co-operation, Stockholm

Ljung, Anne – Sida/Swedish Embassy, Pretoria

Mbelu, Moira – Projects officer, Mott Foundation, Johannesburg

Meyer, Schalk – President, AULAI and Project Manager AULAI Trust, Potchefstroom

Mohanyele, Martin – Executive Director, NCBPA, Johannesburg

Naidoo, Bram – Sida/Swedish Embassy, Pretoria

Nyberg, Ewa* – Financial Manager, ICJ-S, Stockholm

Nyström, T:son** – ICJ-S Deputy Programme Manager until the first half year 2003, Stockholm

O’Sullivan, Michelle+ – Director, WLC, Cape Town

Ramgobin, Asha+ – previously AULAI, Durban

Renström, Ylwa* – ICJ-S Programme Officer for the South Africa Programme, Stockholm

Savage, Kate – ICJ-S Programme Co-Coordinator in South Africa, Johannesburg

Ström, Sten* – Programme Officer, Sida, Stockholm

Sundgren, Henrik* – ICJ-S lawyer responsible for the co-operation with NCBPA, Stockholm

Thuynsma, Peter – LRC, Johannesburg

* Interviewed in Stockholm

+ Interviewed by telephone

Appendix 3

List of documents consulted

- Community Agency for Social Enquiry (CASE) – *Access to Justice in South Africa: Legal Aid Transformation and the Paralegal Movement*, Researched for Sida by Birgitta Berggren and Piers Pigou, June 2000.
- Embassy of Sweden, Pretoria – *General Conditions for Grants to South African Organisations from Sida's Development Co-Operation Appropriations*, October 1999 and March 2001
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and the Legal Resources Centre 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and the Lawyers for Human Rights 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and the Women's Legal Centre 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and the National Community Based Paralegal Association 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and The Centre for Community Law and Development Potchefstroom University 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and The Campus Law Clinic – University of Natal 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and Association of University Legal Aid Institutions 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Agreement regarding co-operation between the Swedish Section of the International Commission of Jurists and The Association of University Legal Aid Institutions Trust 2003*, August 2003
- International Committee of Jurists, Swedish Section – *Application for the Human Rights Programme in South Africa 2001–2002*, Application to Sida, dated 24th October 2000
- International Committee of Jurists, Swedish Section – *Report, South Africa Programme for the first Half Year 2002*, November 2002.
- International Committee of Jurists, Swedish Section – *Report, South Africa Programme for The Year 2002*, November 2002.
- Sida – *Country Strategy for Swedish Development Cooperation with South Africa 2004–2008*, Draft For Sida Board Meeting, 24 October 2003
- Sida Stockholm – *Frame Agreement between Sida and ICJ-S*, March 2001

Appendix 4

Proposed Programme Design for 2004–2006

The ToR for this Review did not require specific recommendations relating to a new Programme Design for the final funding cycle. However, the Team, based on its analysis, and through the review process, its in-depth knowledge of the achievements, weaknesses and challenges facing the Programme proposed the following Programme design which it believes will address these issues.

Sida's country strategy for the period 2004–2008 proposes an approach to ODA in South Africa that will, amongst other things shift from large grant transfers as the main vehicle of support to one that uses relevant Swedish technical experience, and provide support that will improve local governance and enhance service delivery. It further states that all ODA will be geared towards poverty reduction objectives, millennium development goals, economic growth and consolidation of a young democracy.

The proposed Programme design for the Justice Sector speaks specifically to these elements within Sida's country strategy document. The Justice sector is widely supported by a number of other donors, both international and local, which also provides the opportunity for Sida to transform its "current development cooperation into broader cooperation based on mutuality and joint financing" as reflected in the country strategy document. The proposed design not only speaks to the strategy Sida is/has adopted in South Africa but contributes to building on the achievements of the previous support, under this Programme, to the sector and ensure that the phasing out of grant transfers in particular does not negatively impact on the future sustainability of partners and the Programme.

Goal/Purpose

The goal/purpose of the Programme is to facilitate and enhance the provision of rights to poor communities, particularly in rural areas.

The goal/purpose takes into account the following key contextual factors:

- Poor communities, particularly in rural areas, do not yet have adequate access to justice and therefore a provision of their rights as contained in The Constitution
- Such communities experience objective obstacles e.g. infrastructure and technology; and subjective issues e.g. different languages and cultural issues that require focused attention and prioritization to overcome
- Access to justice, particularly in rural areas remains a political and strategic priority
- The policy and legislative framework and environment for providing access to justice, developed by government in partnership with civil society organizations, needs to be translated into actual delivery of services

Overall Objective

The overall objective is to strengthen the capacity of identified civil society organizations to promote and provide Access to Justice to previously disadvantaged communities in South Africa, particularly those in rural areas.

The overall objective takes into account the following key contextual factors:

- Programme support to date has been targeted at civil society organizations

- Partners have initiated projects that are already in process and need to be supported to a point of sustainable continuation
- Other access to justice projects (outside of this Programme support) are already in existence and the next cycle of support should enhance and facilitate the implementation thereof, rather than resulting in a duplication of efforts
- In instances where government has not initiated service delivery or where their projects are not reaching all communities, civil society organizations have played and continue to play the role of service providers
- Civil society organisations, in the current political context, inevitably play the role of testing the appropriateness and relevance of government policy and legislation through their day-to-day work in communities
- Based on practical experience, civil society organizations continue to advocate and lobby both for improvements in policy and legislation as well as service delivery
- Each sector of society has defined but inter-linked roles to play in achieving particular goals and objectives.

Access to justice in the South African context, and used by all Programme partners, is broader than legal and litigious issues. It encompasses all the rights contained in the country's constitution.

Specific Objectives

Like the overall objective, the specific objectives are aimed at building on the achievements of the Programme thus far; ensuring the projects that are currently being implemented continue in a sustainable manner, making provision for longer term sustainability of such projects and re-aligning of the Programme to meet current challenges in consolidating South Africa's young democracy.

Support the strengthening of the paralegal movement; through the NCBPA, in the following specific areas:

- Professional capacity building and training of paralegals (result/rationale = pool of trained semi-professionals, generic skills that can be used anywhere in the country, widen net of people receiving professional services and improve the quality of services provided by paralegals)
- Organizational development processes with the intention of confirming the role and functions of the NCPBPA, as envisaged by its membership; and ensuring that its capacity, systems, processes and projects are aligned to meetings its role and function. (result/rationale = some donor co-ordination with RNE; stronger NCBPA and therefore voice/advocate on paralegal issues)
- Piloting of three regional networking or cluster initiatives of advice offices (result/rationale = identification and consolidation of common problems experienced; opportunity for advice offices to share resources, skills, experience and knowledge; develop best practice networking models)
- Core-funding for the national office and 9 provincial offices on the understanding that the core funding donor base will be diversified by the end of the Programme
- Provision of legal services and litigious representations (including impact litigation of disadvantaged communities)
- Emphasis on human rights, gender, children and other such discriminatory issues; through partners such as the WLC, LHR, LRC, University Law Clinics, AULAI's and Nadel

- Identification and development of legal provisions that can meet the needs of a country in transition and the consolidation of a young democracy that allows for a retention of a legal framework while providing for transitional arrangements

Supporting the community outreach work of University Law Clinics, through AULAI; in the following specific areas:

- Development of a consistent and regular ‘pool’ of law students available to provide legal services to communities;
- Piloting of 3 issue related clusters as a model of networking processes and systems;
- Conducting research and develop recommendations, in partnership with a small select group of Swedish technical support, on the impact of HIV/AIDS on the legal sector on two levels
 - o the human resource capacity of the sector; and
 - o the appropriateness of the current and proposed legal/justice framework for provision of rights for people infected and affected by HIV/AIDS

Each of these specific objectives will be achieved through a set of main and sub-activities relevant to each objective and which will form the basis of a business/work plan for Programme activities.

Expected Outcomes/Results

Paralegal Movement:

- NCBPA’s role, functions, structure, processes and systems are aligned and meets the needs of its membership
- XXX²¹ number of additional paralegal trained and working in a semi-professional capacity either in civil society organizations or in government initiatives such as the Justice Centres
- 3 regional networking initiatives of advice offices established and best practice in terms of structure, systems and processes developed and available for replication in other areas
- identification of at least one common issue per regional network/cluster and the development of a project plan to deal with it
- Legal services and litigious representations, including impact litigation
- Increase in the number of community cases supported by partner organizations, with positive outcomes, that draw on both country and international legal expertise and knowledge
- Recommendations on legal provisions that can meet the needs of a country in transition and the consolidation of a young democracy that can be used within the country and by other developing countries and emerging democracies.

AULAI

- Pool of law students of approximately number of students per university
- 3 issue-related networking/cluster initiatives of advice offices established and best practice in terms of structure, systems and processes developed and available for replication in other areas

²¹ Numbers have not been specified, and should be decided in discussion with role-players.

- Recommendations on the impact of HIV/AIDS on the legal sector in respect of the human resource capacity of the sector; and the appropriateness of the current and proposed legal/justice framework for provision of rights for people infected and affected by HIV/AIDS.

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