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TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS	3
INTRODUCTION.....	4
OBJECTIVES	4
DEVELOPMENT OBJECTIVE	4
SHORT TERM OBJECTIVE	4
STRUCTURE	4
THEMATIC AREAS AND ORGANISATIONS	4
ACTIVITIES	5
ACCESS TO JUSTICE.....	5
HUMAN RIGHTS MONITORING.....	9
THE PARTNER ORGANISATIONS.....	10
AULAI-TRUST	10
CENTRE FOR CHILD LAW.....	11
CLRDC	12
LHR	13
LRC	15
NCBPA	17
ULC-D	18
WLC	19
ICJ-S AND ITS ACTIVITIES WITHIN THE PROGRAMME.....	20
MANAGEMENT AND THE ICJ-S SOUTH AFRICA STEERING COMMITTEE	20
THE ICJ-S SECRETARIAT.....	21
ACTIVITIES	21
KNOWLEDGE AND COMPETENCE.....	22
ECONOMIC OVERVIEW.....	23
SPECIFICATION OF THE CONTRIBUTION TO CO-OPERATING ORGANISATIONS AND PROJECT-RELATED COSTS FOR ICJ-S.....	24

ACRONYMS AND ABBREVIATIONS

AFRA	Association for Rural Advancement
AHRAJ	The African Human Rights and Access to Justice Programme
AULAI	Association of University Legal Aid Institutions
BLA	Black Lawyers Association
CCL	Centre for Child Law
CCLD	Centre for Community Law and Development
CLC	Community Law Centre
CLRDC	Community Law and Rural Development Centre
D &V	Douglas & Velcich, Chartered Accountants
ICJ-S	The Swedish Section of the International Commission of Jurists
LAB	Legal Aid Board
LHR	Lawyers for Human Rights
LRC	Legal Resources Centre
NAJCF	National Access to Justice Cluster Forum
NCBPA	National Community Based Paralegal Association
NGO	Non Governmental Organisation
NPI	National Paralegal Institute
RLT	Rural Legal Trust
SAHRC	South Africa Human Rights Commission
SANGOCO	South African NGO Coalition
SAPS	South African Police Service
SARS	South African Revenue Service
SCAT	Social Change Assistance Trust
Sida	Swedish International Development Co-operation Agency
TRAC	Rural Action Committee
ULC	University Law Clinic
ULC-D	Campus Law Clinic, University of Natal in Durban
Umhlaba	Umhlaba Development Services
WLC	Women's Legal Centre
ZAR	South African Rand

INTRODUCTION

In accordance with § 10.1 and 10.3 in the signed frame agreement, Sida ref: 1999-04826, the Swedish Section of the International Commission of Jurists (ICJ-S) hereby submit the report for the year 2003 regarding the South Africa Programme.

The activities of the year will be presented in this report. For an analysis of the Programme, we refer to the three-year final report for 2001-2003.

OBJECTIVES

DEVELOPMENT OBJECTIVE

The development objective of the South Africa Programme is to promote access to justice for under resourced people, mainly in rural and remote areas, in order to enforce their constitutional rights.

SHORT TERM OBJECTIVES

The short-term objectives of the ICJ-S South Africa Programme 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 African state through different NGO activities in order to ensure that the South African State fulfils its constitutional and international obligations.

STRUCTURE

To obtain the objectives of the Programme, which exists in its current form since 1998, ICJ-S supports and co-operate with a number of NGOs and other actors within legal aid in South Africa. The structure and focus areas of the Programme have evolved through the years, in close co-operation with the South African partners. The work is also co-ordinated with the activities of ICJ-Geneva.

The thematic areas and organisations supported in 2003 are accounted for below.

THEMATIC AREAS AND ORGANISATIONS

ACCESS TO JUSTICE

Paralegal organisations: The National Community Based Paralegal Association (NCBPA) and The Community Law and Rural Development Centre (CLRDC).

Law Clinic organisations: The Legal Resources Centre (LRC), The Lawyers for Human Rights (LHR) and The Association of University Legal Aid Institutions (AULAI)

Cluster co-operation: All of the above organisations.

WOMEN'S RIGHTS

Organisation / Project: The Women's Legal Centre (WLC) and The Women's Rights Project of the Legal Resources Centre (LRC)

CHILD RIGHTS

Projects: The Child Defender Advocacy Project, The Campus Law Clinic, University of Natal-Durban (ULC-D)

The CCL organised a conference for partner organisations within the thematic area.

REFUGEE RIGHTS

Project: The Refugee Rights Project of the Lawyers for Human Rights (LHR)

HIV / AIDS

All the above organisations deal with HIV/AIDS related Programmes.

ACTIVITIES

There have been two main areas within the programme in 2003, the area of access to justice and of human rights monitoring. The access to justice area implies the support to paralegals and law clinics for these to provide legal advice, mainly to disadvantaged groups of people in the South African society. The law clinics also litigate, often on referrals from the paralegal advice offices. From year 2000 and onwards, the advice- and referral system has been organised in a formalised structure, called cluster.

The human rights monitoring contains strategic litigation in principal cases to develop human rights in South Africa and the South African Law. Support for litigation has principally been focused on the legal thematic areas of women's- and refugee rights within the programme.

ACCESS TO JUSTICE

The ICJ-S continued to support the development of clusters during 2003. The formalised cluster co-operation aims at creating co-ordinated and effective legal services based on varied combinations of state run justice centres, NGO legal service providers, private legal practitioners and paralegals. The clusters provide legal services to the poor and the intention is that this service will become self-sustainable by attracting financial support from the South African government and the LAB. The intent is further to ensure an outreach of free legal services to the areas of South Africa where there is a severe lack of legal services.

The National Access to Justice Cluster Forum (NAJCF) was created in June 2003 with the AULAI, NCBPA, LHR, LRC and CLRDC as participating organisations. At a NAJCF meeting in November 2003 it was decided that Regional Advice Offices Clusters (later changed name to NCBPA Regional Paralegal Co-ordinating Committees) would be established in five pilot projects. It was concluded that business plans should be created as to demonstrate the costs, activities, objectives and stakeholders in the cluster. The business plans would assist potential funders with an overview of a specific cluster as to attract financial resources to certain parts of the cluster operations. The same is going to be done with the below enumerated Legal Aid Clusters (later changed name into Access to Justice Clusters). It was decided to specifically concentrate the efforts on three human rights clusters (focused on various socio-economic rights) in Eastern Cape, Limpopo and Western Cape. It was considered that many land clusters (focused on land matters) had started to receive funding from other sources, particularly from the Rural Legal Trust, and were therefore not prioritized in the ICJ-S co-operation programme.

One of the components of the sustainability plan within the programme is thus to attract funding through the business plans. Since the programme is phasing out there is a need of getting national financing (locally, provincially and nationally) and other international funding to the clusters. The cluster co-operation has proven to be a useful way of co-operating and there is a need to find alternative sources to sustain it.

The ICJ-S supported the sustainability plan for the cluster co-operation by using unspent funds from 2002, an amount of 2 500 000 SEK. Partly these funds have been used for the costs of the full time involvement of the Director of AULAI from May 2003. The employment is aimed at promoting cluster co-operation and work for sustainable solutions within the field of access to justice. He is working closely with the National Cluster Co-ordinator, employed by the NCBPA.

The funds were further budgeted for equipping advice offices in cluster to facilitate the cluster co-operation with other entities. One of the impediments for efficient co-operation between the various co-operating entities is the difficulty of getting in contact with the paralegals at the advice offices. Providing the advice offices with computers, fax or telephones would thus remedy the situation and promote an improved communication.

The costs linked to the development of the business plans were also financed through this money during the year. The funds remain with the D&V, an accountant firm, which has already been working with the NCBPA during several years. Access to the funds is possible through the consent of the NAJCF and the ICJ-S consultant in South Africa.

Focus was put on the three pilot cluster projects in the later part of the year. In parallel, the following clusters have been under development. Some of them, enumerated below are operational, others under development. From the last reporting period some clusters have changed names and has led to small variances in relation to the previous denomination.

The operational Access to Justice clusters are the following:

THE KWA-ZULU NATAL LAND LEGAL CLUSTER

This is one of the first cluster established and is well functioning.

- Co-operation project between ULC-D, CLRDC, NCBPA and AFRA. LRC-Durban takes referrals in principle matters. Pietermaritzburg University Law Clinic has lately been incorporated into the cluster. During 2003, the cluster has received funding through Rural Legal Trust and AULAI. The focus is on land related matters and farm workers' rights.
- During 2003 important progress is that negotiations with LAB has led to that an attorney has been placed in the New Castle Justice Centre and thereby, co-operation with LAB has been extended.
- Four CLRDC advice offices involved.

THE NORTH WEST HUMAN RIGHTS CLUSTER

- From being a joint project for the provinces of Mpumalanga and North West, it has been divided into two clusters, one in each province.
- The CCLD at the Potchefstroom University, the University of North West, the LHR, the NCBPA, Community Law Centre at the University of North West and the LAB, are partners.
- 30 advice offices are involved.
- Other stakeholders involved: North West Land Legal Cluster, Commission for Gender Equality, the Human Rights Commission, North West Council of Churches, SA Police services, SANGOCO, North West Human Rights Forum, North West Land Legal Cluster, Widows Forum and Land Claims Commission
- Government Departments involved: Land Affairs, Justice Department, Social Services, Correctional Services, Labour department.
- The cluster operates from the LAB CCLD co-operation agreement premises in Potchefstroom.
- Funding is through the AULAI and the Rural Legal Trust and furniture is provided by LAB.

THE NORTHWEST LAND LEGAL CLUSTER

- The focus is on land related matters and more specifically the rights of farm workers and their families
- Joint venture of the CCLD, University of North West the CLC, the NCBPA, the TRAC-North West and the Department of Land Affairs, North West.
- 3 advice offices are involved.
- Funding through the Rural Legal Trust and furniture is provided through the LAB.

THE MPUMALANGA LAND LEGAL CLUSTER

- Joint venture of the TRAC–Mpumalanga, the CCLD and the NCBPA
- Service providers: the CCLD, the Potchefstroom University, the LAB and the TRAC-Mpumalanga.
- The focus is on land, security of tenure matters, farm worker evictions, rights of farm workers and farm dwellers.
- 19 advice offices are involved.
- The focus is on rights of farm workers and their families.
- The cluster operates from the LAB and the CCLC Co-operation Agreement Premises.
- Funding through the Rural Legal Trust and the AULAI.

THE MPUMALANGA HUMAN RIGHTS CLUSTER

- The focus is on general human and socio-economic rights with emphasis on the homeless, women and children.
- 13 advice offices are involved.
- The co-operation is between the CCLD, the Potchefstroom University and the LAB.
- Other stakeholders are the Mpumalanga Human Rights Forum, the Council of Churches, the SANGOCO, the NCBPA, the Black Lawyers Association, the Public Protector, the House of Traditional Leaders, the TRAC-Mpumalanga, the Independent Complaints Directorate, the Volunteer South Africa, the Commission on Gender Equality, the NCBPA, the Consumer Council and the LHR.
- Position of LAB: is part of the Coordinating Committee and the cluster operates from the LAB CCLD co-operation premises
- Funding through the AULAI.

THE CAPE HUMAN RIGHTS CLUSTER

- One of the first clusters established and was formerly the Western Cape Metropolitan Cluster. Activities interrupted during a period and the co-operation was put into practice again in the end of 2002.
- Focus on homeless, women and children.
- Service providers are at the ULC'S at the University of Western Cape, University of Stellenbosch and the NCBPA.
- Other stakeholders: the LHR, the Black Sash, the WLC and the LRC.
- 14 advice offices involved
- Funding through the AULAI.

THE EASTERN CAPE RURAL LEGAL CLUSTER (QUEENSTOWN RURAL LEGAL CENTRE)

- The cluster was established in the end of year 2002.
- The focus is on the rights of farm workers/farm dwellers as well as rights as to the rural poor, women and children in the Eastern Cape rural areas
- 27 advice offices are involved.
- Co-operation project between the Rhodes University Law Clinic and the LRC
- The NCBPA should be officially incorporated into the cluster. The University Law Clinics of the Fort Hare and Port Elisabeth will also be involved.
- Funding through The Rural Legal Trust and AULAI.

The Access to Justice clusters under development are the following:

THE FREE STATE HUMAN RIGHTS CLUSTER

- The cluster started in the end of the year 2002.
- The focus is on homeless, women and children
- 6 advice offices are involved
- Co-operation project between University of Free State Law Clinic and the NCBPA.
- Funding through the Rural Legal Trust
- Service providers are: the ULC at University of Free State and the LAB Bloemfontein Justice Centre.

THE FREE STATE LAND LEGAL CLUSTER

- The focus is on land, security of tenure, farm worker evictions, rights of farm workers and farm dwellers
- The ULC at the University of Free State and NCBPA co-operate.
- Funding through the RLT and the AULAI. The LAB provides with offices space, furniture, equipment etc.
- 24 advice offices participate.
- Operates from the LAB/the University of Free State Co-operation agreement premises.
- Other stakeholders are: The Free State Rural Development Association Consultative Forum.

THE LIMPOPO HUMAN RIGHTS CLUSTER

- Focus is on land, farm workers, women and children's rights
- The LAB Justice Centre in Polokwane has signed a cluster agreement with the NCBPA.
- 20 advice offices are part of the cluster
- The LHR, University of Venda Law Clinic and University of the North Law Clinic will be involved
- Funding through AULAI and RLT
- Service providers: ULC university of the North, Venda university, LHR Polokwane, NKUZE rural development centre and there have been discussions to include the LAB Polokwane justice centre.

THE WEST COAST CLUSTER

- The cluster was created in the summer 2002
- Co-operation project between LHR, ULC at University of Cape Town and NCBPA
- Financing through LHR
- Since the cluster has not shown results, LHR and NCBPA have had meetings for solutions to put the cluster on track again. The cluster has been encouraged to co-operate with the Cape Human Rights cluster to facilitate the work.

THE KWAZULU NATAL HUMAN RIGHTS CLUSTER

- Focus on homeless, women and children and HIV/AIDS matters.
- Service providers: ULC's at University of Natal –Durban (UND), University of Durban Westville, University of Natal, Pietermaritzburg and University of Zululand

THE EAST CAPE METRO CLUSTER

- Incorporating Western Region Paralegal Cluster Services
- Focus is on: Homeless, women and children
- Funding through AULAI. Furniture and offices space through LAB
- Service providers: ULC at University of Pretoria (UPE), LAB, Port Elizabeth Justice Centre
- 16 advice offices
- Operates from LAB/UPE co-operation agreement premises

THE GAUTENG HUMAN RIGHTS CLUSTER

- Focus on human rights and socio-economic rights
- Service providers: ULC RAU, University of Pretoria, ULC Wits,
- NCBPA is part of the cluster through the advice offices
- Will partly operate from LAB/Wits co-operation agreement premises

THE GAUTENG LAND LEGAL CLUSTER

- Focus on land, security of tenure matters, farm worker evictions, rights of farm workers and farm dwellers
- Financing from RLT and LAB
- Service providers: Wits ULC, NKUZE Rural Development Centre, private attorney
- Operates from LAB/Wits Co-operation agreement premise

THE VAAL TRIANGLE HUMAN RIGHTS CLUSTER

- Focus on homeless, women and children
- Funding through AULAI,
- Service providers: CCLD
- NCBPA advice offices are part of the co-operation
- Will operate from LAB Vereeniging Justice centre premises

HUMAN RIGHTS MONITORING

Human rights monitoring did get a specific importance in the support through the ICJ-S during the programme period. In 2002, meetings were held in several occasions to discuss and select legal areas for focussing the human rights work. The conclusion of the discussions were that Child rights, Women's rights, Criminal Justice, Refugee Rights and Access to Justice got special attention in the programme. Co-operation was started or continued with new or already existing partner organisations in these areas. The Steering Committee for the programme also changed character because of the new way of concentrating on thematic areas. There has been a very interesting development through strategic litigation within the thematic areas by the ICJ-S partner organisations in 2003. For samples of cases see activities of each organisation below.

THE PARTNER ORGANISATIONS

THE ASSOCIATION OF UNIVERSITY LEGAL AID INSTITUTIONS TRUST (AULAI TRUST)

The AULAI Trust was established in June 1998 by the Association of University Legal Aid Institutions. It represents 21 university based law clinics and was established to promote the provision of free legal services through university based law clinics by using qualified practitioners, candidate attorneys and law students. In 2003, the AULAI Trust and the different University Law Clinics continued to be involved in a number of activities as to legal back up services, cluster activities and human rights monitoring

- The work focuses around the following objectives:
- The promotion of legal aid in South Africa, in particular through the co-ordination and

promotion attached to the universities of South Africa,

- The development of collaborative partnerships with other organisations such as the paralegal movement in South Africa and the transformation of the legal aid system to ensure that it is more responsive to the needs of the rural and marginalised section of the community.
- The transformed legal aid system shall be more inclusive of all NGO role players, such as law clinics and paralegal advice offices, and more accessible to the poor.

Some achievements/ impediments in 2003:

- ❑ 19 Law Clinics have during the year been part of the cluster co-operation and thereby support from ICJ-S.
- ❑ Legal back up services within clusters – the ULC's have during the year been involved in legal back up services comprised by visits to advice offices for assistance to these, attend to referrals from advice offices, present workshops and organising meetings concerning promotion of access to justice through paralegal structures.
- ❑ Types of cases in the clusters are family matters, labour matters, criminal matters, contract and delict, housing and land, wills and estates and general civil litigation
- ❑ Workshops held with various contents depending on the activities of the clusters.
- ❑ Democracy for all and human rights education programmes, advocacy, lobbying and programmes directed towards the communities have been done. This could for example be programmes in schools and communities. Further, there have been radio broadcasting concerning child rights, wills, small claims court, judgement in the Magistrate Courts, appeals and reviews, administration of estates, drafting of contracts, divorce matters and extension for the Security Tenure Act.
- ❑ Active involvement of the Director of AULAI in the structuring of the cluster co-operation, which has led to intensified co-operation with advice offices. Numerous meetings have been held with ULC's and other stakeholders on the initiative of the Director.
- ❑ The creation of the NAJCF, an entity created in order to nationally co-ordinate the cluster activities, was much due to the initiatives of the AULAI Director, together with the NCBPA and the other participating organisations. The AULAI has a co-ordinating role in the NAJCF.

CENTRE FOR CHILD LAW

The Centre for Child Law in Pretoria started a litigation project in August 2003 and in October the Centre and ICJ-S held a workshop on October 15 in child rights, gathering 50 delegates representing human rights-, paralegal- and child rights organisations, child law academics, attorneys and advocates.

Some achievements/impediments in 2003:

- After starting up the litigation project, the workshop in child rights held in October aimed at:
 - Going through the advancements from within litigation for child rights from 1994 and onwards.
 - Looking at experiences in developing a litigation strategy from parallel sectors
 - Getting an overview of the organisations and agencies working in the area of child rights

The main points of results of that session were that children's litigation in South Africa has so far not been very strategic, that children have often been used as "pawns" by their litigating parents, that equality arguments have tended to dominate over children's right arguments. The conclusion was however that the existing legal instruments could lay a good ground for litigation within child rights. It was also concluded from the experiences of litigation done in other legal areas, that it is necessary to network and co-operate closely with organizations in the same field, which do not necessarily litigate.

COMMUNITY LAW AND RURAL DEVELOPMENT CENTRE (CLRDC)

The CLRDC was established in 1989 in KwaZulu Natal as a rural empowerment organisation. In July it was revealed that the CLRDC was not in control of the financial management of the organisation. The Umhlaba Development Services got the task to be responsible of the management of CLRDC, which went through a forensic audit. It was decided to

maintain 30 CLRDC advice offices and two staff members from the head office. The Umhlaba has since then been in charge for the management of the remaining advice offices and two staff members from the head office.

Some achievements/impediments in 2003:

During the first half-year the CLRDC activities continued in form of workshops, advice given at advice offices, counselling and paralegal training and training to traditional leaders. During the second half year, the following occurred:

- ❑ The Umhlaba Development Services, due to financial problems for the CLRDC, were appointed as caretaker managers of the CLRDC. All staff at the head office was retrenched save for two and the CLRDC assets were sold.
- ❑ Umhlaba carried out a feasibility study for the best way forward for the organisation. It was recommended that the advice offices be reduced from 52 to 30 with two paralegals in each office and that a suitable organisation be sought to manage the remaining advice offices for two years while building capacity for the organisation. Meetings were held with stakeholders to discuss the situation of retrenchment
- ❑ There is a need to capacitate the advice offices as to remain independent and self-sustainable for the future. This led to the conclusion of consolidating and centralizing the paralegal services in some communities, relocation and re-deployment of resources, re-election and renaming offices to comply with the process and staff each office with two paralegals.
- ❑ During the process, the advice offices have continued to give advice in the communities and to participate and network in coalition programmes in the rural communities.
- ❑ Four advice offices, Muden, Nyathikazi, Vryheid and Madadeni offices are still actively involved in the KwaZulu Natal Land Legal Cluster (further participating organisations are AFRA, NCBPA and ULC-D. LRC takes referrals from the cluster.
- ❑ The LAB advice offices and justice centres co-operation project continues in spite of the fact that some of the participating CLRDC offices were closed down in relation to the re-structuring of the offices. The partnership with the LAB Justice centres expects to be further developed with the new centres opening in Pietermaritzburg and Verulam.

THE LAWYERS FOR HUMAN RIGHTS (LHR)

Lawyers for Human Rights was established in 1979 for concerns of the human rights situation in South Africa at the time. During 2003, the LHR had 10 offices in South Africa of which the ICJ-S supported LHR's Law Clinics in Mafikeng, Polokwane and West Coast during 2003. One of the LHR offices was closed down during the year, the Karoo office. During the year, the clinics continued to concentrate their activities around legal advice and litigation for the indigent people in the region, legal back up services for the paralegal advice offices in the region, human rights education and training as well as human rights

monitoring. In 2003, ICJ-S also supported the part of LHR's Refugee Rights Project focusing on detention. The project has established a monitoring mechanism to document and report on the abuse of asylum seekers and undocumented migrants who face the risk of arrest, detention and deportation. The project also provides assistance to detainees who were unlawfully arrested and detained. Through this initiative, LHR aims to develop a sustainable model for the monitoring of detention facilities and deportation procedures in South Africa.

Some achievements/impediments in 2003:

Access to Justice

- ❑ In the beginning of 2003, the new Director of LHR, Mr. Rudolph Jansen was appointed.
- ❑ The new Director has held cluster meetings with the law clinics to set out a common way to go in the first half year. Following these meetings there have been four workshops with the NAJCF.
- ❑ The Law Clinic in Karoo had to be closed down in 2003. The West Coast Law clinic has also reported that it will close down. Reduction of staff has also been done at the National Office. The financial situation is becoming increasingly stringent.
- ❑ During 2003, the LHR has been working hard with introducing administrative improvements, both at the national office and at the regional offices. New auditors for LHR have been engaged, by among other reasons that the new Director noticed that the PAYE had not been transferred to SARS since March 2001. LHR has negotiated with SARS and found a suitable plan for dealing with the matter. The matter has worsened the financial difficulties, and a lot of time and effort has been used during the year to solve the SARS matter.
- ❑ The LHR national office has increased the involvement in litigation, particularly for strategic litigation. Many of the cases have come to litigation through the cluster system, starting at the advice office level. Examples: * a farm worker assault, that is probably not going to be precedent setting. Nevertheless the LHR seeks the involvement in all cases with racial connection. * In a co-operation with the Centre for Child Law, the children in a custody case got legal representation by the LHR to protect their interests in relation to the parents. This will certainly be precedent setting.
- ❑ Workshops held concerning " HIV/AIDS and Employment" and about gender matters concerning maintenance, divorce and women abuse (including the participation of traditional leaders), labour and striking rights for paralegals and farm workers.
- ❑ Proposals in legislation concerning among other areas children's rights.
- ❑ Training: constitutional rights for traditional leaders, training of the police in the ESTA land act
- ❑ Campaigns about people's rights in terms of arrest and legal aid
- ❑ Samples of cases handled at the law clinics: *mistreatment at hospital. *discrimination against homosexuals *asylum assistance and support for permanent residence * police brutality. * unfair farm workers dismissals and evictions * claim for ownership of land
- ❑ Monitoring children's access to childcare, maintenance child support grants
- ❑ Networking with NGOs, in among other fields, within defence of HIV/AIDS victims and attempt to prevent the spreading of the disease

Refugee rights

- ❑ Continued activities within the frame of the project in Pretoria, Johannesburg, Durban and Port Elizabeth for giving advice, representation of minors, assistance with appeals and reviews of asylum applications, challenging wrongful arrests, deportations and referrals.
- ❑ Continued monitoring of the detention system at the Lindela Repatriation Centre, except between May-June when DHA, the government's main refugee agency, claimed there was a need of a special agreement with the SAHRC allowing the monitoring by LHR. This was arranged and the monitoring could continue. The problems dealt with at the centre are that arrests of immigrants, mostly done by SAPS, unlawful detention of people with permits, detention of minors and elderly as well as South Africans, prolonged detention, unlawful deportations, deaths in detention, detention of women with children and expectant mothers, the non-evaluation of detained immigrants with mental illness, assaults on detainees by the SAPS officials, fights amongst the detainees and crime suspects detained in the centre.
- ❑ Monitoring has also been done at airports and at prisons and police stations, which has been planned to increase in the coming years.
- ❑ Litigation: The Immigration Act, concerning arrest and detention of foreigners, was declared unconstitutional through the project. The judgment confirms and protects the constitutional rights of foreign nationals. This March decision was a success for the LHR detention programme.
- ❑ Publications:
 - Biannual newsletter, Botshabelo, which targets decision makers and highlights the experiences of refugees in South Africa
 - Research report on basic education for Refugee Children
- ❑ Lobbying, meetings and training:
 - Presentations of "Xenophobia and other abuses faced by migrants in Johannesburg" for the Police and on "Migrant experiences in South Africa" in 14 Southern African countries
 - Workshop with 25 refugees from a variety of countries to discuss the issue of refugee rights
 - Child Care Act – which has been recognised of having protection gaps with regard to ensuring the protection and well-being of children
 - HIV/AIDS awareness workshop held for the LHR staff
 - Media: two television broadcasting, which focussed on immigration and refugee issues. Press releases of court decisions and important milestones on detention issues have been issued.
 - Meeting with the opposition party representatives from Zimbabwe to discuss ways of dealing with the migrants from Zimbabwe. The DHA seems to repeatedly refuse Zimbabwean asylum seekers to apply for asylum.

THE LEGAL RESOURCES CENTRE (LRC)

The LRC is a public interest law organisation in South Africa and has a team of legal practitioners that includes lawyers, paralegals and candidate attorneys in five regional offices. The offices serve the poor and vulnerable on a daily basis and litigate cases from advice offices. The LRC also conduct impact litigation.

In 2003, ICJ-Sweden continued to support the LRC's Access to Justice Project within which the LRC supplies legal services and training to paralegals and community workers in rural advice offices. All the

LRC's regional offices (Johannesburg, Pretoria, Durban, Cape Town and Grahamstown) participate in the project.

Further, support was given to the LRC national Women's Rights Project. The project focuses on six important thematic areas over a three-year period. The project uses litigation, education, training and publications to achieve its objectives.

Some achievements/impediments in 2003:

Access to Justice

- ❑ 46 visits to advice offices countrywide the first half year and 53 visits during the second half year of 2003 for legal support to the paralegals. The visits resulted in 121 matters dealt with the first half year and 110 the second.
- ❑ Through the front desk duty system in all regional offices, 4 917 clients were attended to the first half year and 4 181 clients the second half year. Some of these cases were dealt with internally and others transferred to other LRC projects and legal service providers.
- ❑ Workshops held for and by paralegals. * The Johannesburg office organised a week-long workshop on new legislation about consumer rights. Fifteen paralegals from Free State, Gauteng and North West provinces attended. * Workshops in Johannesburg for the Black Sash where 35 trainees attended. * Rhodes Legal Aid Clinic hosted a workshop about legislation concerning social welfare and environmental justice but the attendance of paralegals was disappointing due to the funding situation. *Lotavha Advice center conducted two workshops about the Social Assistance Act and poverty alleviation community development projects. It was attended mostly by women for the communities they serve.
- ❑ Examples of cases dealt with – * *JPK* - Burundian asylum seeker who died on his way to hospital after being arrested by the police for not being in possession of a passport. No department is willing to be responsible for the demise. An inquest has been started and the LRC is holding a watching brief.
**MRS K* – The client's son was murdered in a prison. The LRC has issued a summons on the basis that insufficient protection is given to minors in prison. * *MR R* - The client's wife died after a caesarean section and according to the client, the management of the hospital was negligent. The LRC represents the client by ensuring that the appropriate action is taken. * *MRS T* – Attempt was made to evict a customary law union widow from the marital home by her father-in-law.
- ❑ The HIV/AIDS policy is under development and the activities related to the area will be strengthened.
- ❑ The KwaZulu Natal Land Legal Cluster is still very active in spite of the CLRDC-related problems (see above). For example the following results have been achieved: *Legal Services meetings, extended to contain not only legal issues but also advocacy and training. * Appointment of an advocacy officer and training officer, *involvement in the amendment of the KwaZulu Natal Cemeteries Act. * 22 ESTA and labour tenant cases giving one example of cases with high impact. This case concerns impoundment of cattle. The unconstitutionality of the KwaZulu Natal Pound Ordinance 32 of 1947 has been tried in court, which found 10 sections of the Ordinance unconstitutional. The matter has been referred to the Constitutional Court for confirmation. *identification of possible test areas for litigation.

Women's Rights

- ❑ The six areas for the next three year period will continue to be: maintenance for women and their children, the legal status of women in religious and common law unions, violence against women, equality in the workplace, women and land, women and African customary law.
- ❑ Samples of cases within the areas of focus:

Maintenance: * Ruth Mngadi – in this case it was found that the Provident Fund Industry is not exempted from the principle: “the best interests of the child in any matter affecting children” and that all levels of society bear the responsibility to ensure that the intentions of any legislation requires co-operation and good governance to bring meaningful change into the lives of South Africans. *Mvemve/Mali – this case confirmed the previous case by demonstrating that the Maintenance Act has not been amended to reflect the decision in the Mngadi-case.

Women in Religious and Common Law Unions: *Suchitra Sing, married by Hindu customary law, has claimed recognition of her marriage and division of the estate after the divorce when she was also evicted from their marital home.

Violence against women: * Le Fevre/South African Health Professionals Council – the client claimed that her doctor sexually assaulted her many years ago. The matter deals with important issues, e.g. the long time lapse between the incident and lodging complaint as well as the social standing of the perpetrator.

Women and Land: *Communal Land Rights Bill – during the development of the Bill it has been discovered that it even authorises the discrimination against women. Comments have been done concerning the position of women in the Bill.

Women and African Customary Law: *Charlotte Shibi – the client instituted an action for damages against the Minister of Justice for damages arising from the appointment of her cousin as the administrator and sole heir of the estate of her late brother, according to the customary law. The question is whether the succession rules of customary law should be interpreted so that the client is recognized as the sole heir.

NATIONAL COMMUNITY BASED PARALEGAL ASSOCIATION (NCBPA)

NCBPA, which was established in 1996, is an umbrella organisation for 450 advice offices, located all over the country. The Association's responsibility is to uphold and develop the advice offices in order to provide legal advice to the poor. Another important task is influencing governmental bodies to improve paralegal conditions and to develop national training schemes for paralegals. During 2003, ICJ-S has given

support to 75 of the paralegal offices, and 45 in the later part of the year.

Except from the local offices, ICJ-S has supported nine provincial offices and the national office as well as promoted the cluster co-operation, nine provincial cluster co-ordinators and one national cluster co-ordinator.

Some achievements/impediments in 2003:

The ICJ-S support was directed towards the following components:

- ❑ Identification of 45 offices to be part of the cluster co-operation. These are located in Limpopo, North West, Eastern Cape, KwaZulu Natal and Western Cape.
- ❑ Advice provided through and workshops held by advice offices.
- ❑ The provincial co-ordination of the advice offices and of the cluster co-operation through staff at the provincial offices.
- ❑ The focal areas for the activities of the advice offices are the following: land, HIV/AIDS, labour, socio-economic rights, housing and consumer matters.
- ❑ Cluster co-ordination was strengthened by setting up a forum, called National Access to Justice Cluster Forum (NAJCF), common for the participating organisations, to decide about the process.
- ❑ Concerning lobbying, the NCBPA has during the year participated in the framework for paralegal qualification and training, and in discussions and lobbying around amendments to the Legal Practice Bill to identify paralegals as an important role player.
- ❑ Fund raising activities as to find new sustainable resources for advice offices locally, provincially or nationally.
- ❑ The NCBPA has in the cluster co-operation regionalised the provinces in order to form Advice Office clusters (later called NCBPA Regional Paralegal Co-ordinating Committees), which in consultation with communities through their traditional leaders, identify key problems facing communities in particular geographical areas. In the process, business plans are developed with the assistance of a consultant, Thuli Mhlungu, from the University of Natal. The NCBPA has identified three regions to be shown to various funders and government departments. These three regions are the Advice Office Regional Clusters in Transkei, West Coast in the Western Cape province and the Capricorn Advice Office Cluster in Limpopo. As they develop their focal areas, they will enter into cooperative agreements with different legal service providers, such as the AULAI, LHR, LAB justice centres and other legal service providers in their respective regions.
- ❑ The national cluster co-ordinator was replaced with a new co-ordinator who a lot of experience from the NCBPA, training of paralegals, advice office co-ordination and the legal sector in total.
- ❑ New funders have appeared for support to the NCBPA to among other things support the transformation process of the organisation and the funding of the 30 advice offices that the ICJ-S, because of the situation of down scaling, will not be able to assist in the coming period.

THE CAMPUS LAW CLINIC, UNIVERSITY OF NATAL IN DURBAN (ULC-D) - THE CHILD DEFENDER ADVOCACY PROJECT

The Campus Law Clinic - University of Natal-Durban has as its primary activities to provide free legal services to indigent people and training to law students and law graduates. Further, the law clinic conducts research and advocacy projects. The Clinic is a member of the KwaZulu Natal Land Legal Cluster.

In 2001, the Clinic started *The Child Defender Advocacy Project* with funding from the ICJ-Sweden. The objective of the project is to monitor the protection, maintenance and the enforcement of the rights of children. To obtain this, the project is active within the following areas:

- Test case litigation and litigation,
- Reform of the current legislation,
- Making the government allocate sufficient financial and human resources to protect and enforce the rights of children at risk with the law,
- Make employees of relevant state departments sensitive to needs of children

Some achievements/impediments in 2003:

- ❑ The Project Manager of the Child Defender Advocacy Project tendered his resignation at end of June 2003 and he was replaced in the second half year.
- ❑ Continuation of providing direct legal representation to children both in their criminal and civil litigation matters. The confidence of children has been gained during this period.
- ❑ Impact litigation: The planned impact litigation cases will be about creating an impact on the issue of use of force during arrest as well as further issues of inhumane prison conditions.
- ❑ Continuation to conduct outreach at Youth detention centres. This component of the project indicates an impact on the children awaiting trial. This is measured by the increase in the number of criminal representation and also in civil matters for children.
- ❑ Referrals have come from other NGO's operating within the province and prosecutors actively seek the support of the ULC-D in prosecuting child sex offenders.
- ❑ A staff forum has been created allowing staff members to air their problems in a safe environment.
- ❑ Monitoring the progress of the Child Justice Bill to reform the current legislation. There is an inter-sectoral document aimed directly at protecting the rights of children. This document is aimed at bringing together all stakeholders involved in children's rights to work together and to ultimately have this document tabled before Parliament and passed as legislation.
- ❑ Monitoring of departmental budget allocations in terms of child justice
- ❑ Make employees of state departments sensitive to needs of children
- ❑ The exploration of how issues of HIV/AIDS can be mainstreamed into each of the projects, started during this period.
- ❑ In June, the ULC-D was informed that from year 2004 and onwards, they should apply for the project directly to the AULAI.

THE WOMEN'S LEGAL CENTRE (WLC)

The WLC was established in order to assist women to claim their rights. The organisation assists women who are socially and economically disadvantaged, particularly black women, with public interest and constitutional litigation, which enforces women's rights and advances the struggle for equality.

With regard to both litigation and law reform the WLC focuses on a number of priority areas, which

include women's access to housing and land, women's access to health care services, violence against women, religious and customary laws, and unfair discrimination.

In 2003, ICJ-S continued to support the work of the WLC, involving public interest litigation, constitutional litigation, amicus curiae briefs, advocacy, and the creation of a network of women lawyers.

Some achievements/impediments in 2003:

❑ Litigation – samples of cases

Customary law and inheritance – * **BHE/Magistrate Khayeslitsha** - Cape High Court declared that women and girls can inherit under African Customary Law and that the Rule of Primogeniture is unfairly discriminatory, by striking down the unconstitutional provisions of the Black Administration Act and Intestate Succession Act.

Recognition of Customary Marriages Act – *The WLC affirmed to the Ministers of Home Affairs and Justice that they intended to litigate two cases in which there was refusal of registration of the clients' customary marriages. As a result, the WLC developed new regulations together with the Home Affairs and the Department of Justice to remedy the failure to register marriages.

Muslim Personal Law – ***Daniels** – Successful judgement in the Cape High Court where the court created new jurisprudence as to include Muslim spouses in the legislation concerning inheritance and maintenance for spouses upon the death of their spouse.

Discrimination - ***Williams** – discrimination based on sexual orientation against the Minister of Home Affairs for failing to consider an application by a lesbian woman for a position as a film examiner and focusing inappropriately on her sexual orientation. The case was settled in favour of the client.

Violence against women – *The WLC has represented a number of women in the South African Police Force who have been sexually harassed or raped by senior police officers and are in the process of developing a strategy to deal with this issue. * The WLC litigated a sexual harassment claim under the Employment Equity Act on behalf of a client where the Court ordered the employer to pay damages for vicarious liability for failing to take steps to deal with the client's complaints of sexual harassment.

Besides the subjects above, the WLC has also successfully litigated within the area of *Reproductive rights*, *Maintenance* and *Domestic partnerships* during the year.

- ❑ **Advocacy** – *a two day conference on “Advancing Women's Rights in South Africa “ was held for networking and advocacy, a workshop was held in the North West Province of the recognition of Customary Marriages Act. This workshop is part of the commitment to working with rural organisations and focus on informing about constitutional rights. *arrangement for lawyers to volunteer their time in order to draft wills as to assist people in avoiding the consequences for the Rules of Customary Law of Succession.
- ❑ **Submissions** – submission to the South African Law Commission on domestic partnerships and Muslim Personal Law marriages to fulfil the constitutional obligations, * advocacy on women's access to housing subsidies to ensure their entitlement to land, *submissions on the Sexual Offences Bill * submissions on the Communal Land Rights Bill, the Traditional Leadership Framework Bill, the Social Assistance Act and on compulsory testing of sexual offenders.
- ❑ **Training** – *lectures to attorneys on domestic violence and sexual harassment, * training to the CCMA commissioners on the handling of sexual harassment cases, *hosting of an intern from Zimbabwe as the first Africa intern at the WLC.
- ❑ **Client queries** – 1131 duty queries have been done. Most of these concern domestic violence. Maintenance issues and divorces are quite frequent as well.

ICJ-S AND ITS ACTIVITIES WITHIN THE PROGRAMME

MANAGEMENT AND THE ICJ-S SOUTH AFRICA STEERING COMMITTEE

A Programme Manager directs the programme, which is supported by the Steering Committee, comprised by eleven Swedish lawyers in 2003. The committee members supervise and follow-up the work of the South African organisations, as well as assists in the development of the programme.

During the year, the composition of the South Africa Steering Committee changed. The ICJ-S Steering committee for AHRAJ, a co-operation programme between the ICJ-S and ICJ-K, was in the end of the year 2003 merged with the Steering Committee of the South Africa Programme. New members have been nominated to the Steering Committee and thematic groups were created in order to work in the thematic areas of Access to Justice, Child rights, Criminal justice, Health rights, Labour rights, Refugee rights and Women's rights. One meeting was held with the new group composition during 2003.

During the main part of the year 2003 and before the reorganisation of the Steering Committee, the composition of the committee was the following:

Programme Manager:	Stellan Gärde	Lawyer at the LO-TCO Trade Union Legal Bureau. Labour, criminal, compensation and public law. Council in the European Court of Justice, Project Manager for ICJ-S Projects in Africa 1992 – Deputy Chair of the Board of ICJ-S 1992 – and Acting Chair 1999 – 2000.
Responsible for the co-operation with:		
CLRDC	Birgitta Lind	Advocate; labour rights, discrimination matters Former member of the Board of the ICJ-S 1992 – 2002.
LHR	Louise Bjurwill	Former member in the ICJ-S Middle East Steering Committee Advocate; criminal law, social matters, asylum matters, international law Deputy Chair of the Lawyers Without Frontiers, formerly employed at the UNHCR
LRC	Åsa Hill	Lawyer; LLM in Environmental law and Management
LRC	Tor Nitzelius	Lawyer; labour rights
NCBPA	Åsa Malmros	Advocate; criminal matters, legal representative for the plaintiff, mostly women and children, family law, asylum law, refugee rights.
NCBPA	Henrik Sundgren	Lawyer; Programme Officer at the Migration Board
WLC	Berenike Alfvén	Advocate; family law, criminal law and refugee law. Former member of the ICJ-S Middle East Steering Committee
Resource person	Thérèse Björk	Lawyer; Legal and Programme Officer at the Swedish NGO Foundation for Human Rights, former employed at the Secretariat of ICJ-S
Resource person	Urban T:son Nyström	District Court Judge in Gothenburg

THE ICJ-S SECRETARIAT

The ICJ-S Secretariat supports and assists in the execution of the programme by producing the basis for decisions and meetings and by handling the contacts with the South African organisations and other role players. The contacts between Sweden and South Africa have also been backed-up by a South African consultant and one assistant. In July 2003 it was decided that the consultant will be the contact point with the South African organisations and her role as a consultant is also strengthened.

Staff at the Secretariat working with the South Africa Programme:

Helena Bergh de Medeiros	Programme Officer (on sabbatical leave from August 2003)
Ewa Nyberg	Financial Manager
Ylwa Renström	Programme Officer

Consultants in South Africa :

Kate Savage	Attorney (on an hourly basis)
Mikateko Molope	Lawyer (full-time from July 2003 until December 31, 2003)

ACTIVITIES

Visits within the programme during 2003

February and April 2003

In February and in April 2003, Stellan Gärde did two separate visits to South Africa for updating the situation within the Programme. The main part and the aim for the visits were structuring of the cluster co-operation between the NCBPA and the AULAI, which have the managerial responsibility in the cluster programme. Meetings were also held with other organisations because of administrative problems within the elaboration of applications and reports. The applications from the organisations for the support 2004-2006 were also discussed.

June/July 2003

Stellan Gärde, Urban T:son Nyström, Henrik Sundgren, Helena Bergh de Medeiros, Ylwa Renström and Ewa Nyberg went to South Africa for meetings, particularly for a two days cluster conference in Durban with representatives from AULAI, LHR, LRC, NCBPA, LAB, Bram Naidoo (Swedish Embassy) and Kate Savage. There were also meetings with the partner organisations, LAB, other international donors and the Swedish Embassy. There was also a two days workshop with the NCBPA and their Board, the NEC, to thoroughly discuss the present situation of the organisation in total and the future reorganisation as well as the relation to ICJ-S. The overall aim of the visit was to work elaborate the ICJ-S application 2004-2006 together with the partner organisations.

October 2003

A delegation from South Africa with representatives from AULAI (Mr. Schalk Meyer and Ms. Asha Ramgobin), LRC (Ms. Pinky Madlala), LHR (Mr. Rudolph Jansen), NCBPA (Mr. Martin Monyela and Mr. Achmat Semaar), LAB (Mr. Dennis Mathibe, Ms. Cordelia Robertson, Brian Nair and Peter Brits) and Ms. Mikateko Molope visited Stockholm and Sundsvall. In order to get and exchange information about the Legal Aid System in Sweden and South Africa, the delegation meet with the Swedish Law Society, the Ministry of Justice and the Swedish Legal Aid Authority. A separate meeting with the Swedish Minister of Justice, Thomas Bodström, was also organised. Meetings were held with Sida as to present the cluster system in South Africa and to inform the ICJ-S members S about the present situation within the Programme from the aspects of each of the organisations.

October/November 2003

Stellan Gärde, Ylwa Renström and Ewa Nyberg went to South Africa for meetings with organisational representatives, auditors and financial entities related to the partner organisations as a yearly management routine. There was also a two days cluster conference in Johannesburg with representatives from AULAI, LHR, NCBPA and Mikateko Molope. The aim of the conference was to draw up the guidelines for the coming period.

KNOWLEDGE AND COMPETENCE

The impact of the involvement of free time based lawyers, in the management and in the Steering Committee, is an important component of the programme. In the execution of the programme, it is also very clear that a skilled Secretariat is needed. The investment in the programme by the lawyers, with their different legal backgrounds, experiences and skills, in combination with a well-functioning Secretariat, creates an added value.

The Programme has decreased from 27 million SEK in 2000 to 14 million SEK in 2003. When decreasing the support, there is a risk of frictions in the relation between the funder and the recipient organisations. This situation will oblige the ICJ-S to be very clear about the available support and future changes. It is also very important that the partner organisations have a clear understanding of the criteria for the support so that the most important parts of their activities will have enough resources.

An evaluation team from South Africa, headed by Mr. Stan Khan, started their evaluation work on the initiative by Sida, in December 2003. There were firstly interviews with the South African organisations and later on with the programme manager, steering committee members and staff involved in the South Africa Programme during the period from 2001 and onwards. The report will be finalised in the beginning of 2004.

ECONOMIC OVERVIEW

Statement per 31 December 2003

	Budget 2003	Rev budget 2003	Outcome
<i>Income</i>			
Allocation from Sida	14 000 000	14 000 000	13 700 000 ¹
Unspent funds from 2002 ²		4 199 673	4 199 673
Total income:	14 000 000	18 196 673	17 899 673
<i>Project-related costs</i>			
Project related costs in South Africa	12 149 037	16 238 710	-15 664 531
Project related costs, ICJ-Sweden	695 000	805 000	-463 595
Total, project-related costs	12 844 037	17 043 710	- 16 128 125
Administration surcharge 9%	1 155 963	1 155 963	-1 155 963
Unspent funds 2003			615 584³

¹ Available Sida funds for 2003, 14 million SEK – ICJ-S have requested 13,7 million SEK

² The total balance of unspent funds can be divided into two parts;

1. Around 3,1 million SEK due fluctuations in currency rate
2. Around 1 million unspent funds due to changes in project plans

In October 2002, Sida admitted ICJ-S to use 2,5 million of the 3,1 million above, for the Sustainability Project

³ Refund to Sida

SPECIFICATION OF THE CONTRIBUTION TO CO-OPERATING ORGANISATIONS AND PROJECT RELATED COSTS FOR ICJ-S

Project related cost in SA

	Budget 2003 SEK	Rev budget 2003 SEK	Outcome
AULAI	900 000	1 608 000	1 739 240
CLRDC	565 000	775 000	775 000
LHR	1 700 000	1 750 000	1 842 314
LRC	2 000 000	1 650 000	1 650 000
NADEL ⁴	100 000	0	6 374
ULC-Durban	600 000	380 000	380 000
WLC	600 000	600 000	630 000
NCBPA	5 234 125	5 216 000	5 496 145
Consultancy cost ⁵	175 000	125 000	200 314
Seminars	50 000	0	0
Swedish input	25 000	400 000	113 352
Yearly advisory conference in SA ⁶	45 000	140 000	13 012
Capacity building	154 912	200 000	30 227
International co-operation		200 000	
Sustainability project		2 193 389	2 801 301
Contingency		1 001 321	
	12 149 037	16 238 710	15 664 531

Project related cost, ICJ-S

	Budget 2003 SEK	Rev budget 2003 SEK	Outcome
Co-operation ⁷	405 000	455 000	269 023
Loss of income ⁸	270 000	350 000	194 572
Contingency	20 000	0	
	695 000	805 000	463 595

⁴ Refund interest income from NADEL

⁵ Kate Savage on hourly rate (ZAR 275 per hour)

⁶ No advisory conference during 2003. The costs booked 2003 are meeting costs in South Africa with our partner organisations.

⁷ Travel costs for programme manager, steering committee members and staff (including air ticket, per diem and accommodations costs)

2003	
Person	Trip
.	1.

⁸ Steering committee members receive compensation for loss of income for work done in South Africa max 30 000 SEK per year (including social benefits, tax wage and VAT). Programme manager Stellan Gärde, compensates per working day in South Africa (4 500 SEK/day including VAT). For 2003= 35 days

2003	
Programme Manager	157 500
Steering committee members	37 072
Total	194 572