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Norwegian Centre for Human Rights

The South Africa Programme

Final Report 2005-2009

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Executive Summary

Background

The following is the end of programme report covering 2005-2009 of the South Africa Programme (henceforth the 'Programme') at the Norwegian Centre for Human Rights (NCHR), University of Oslo. Since 1998, the Programme has administered development cooperation between South Africa and Norway concerning the human rights and democracy portfolio, on behalf of the Royal Norwegian Embassy. The purpose of the final report is to achieve a comprehensive analysis of how the programme has achieved, partly achieved or failed to fulfil the goals as outlined in the Programme strategy. The overall goal for the programme has been: 'Increased implementation of socio-economic rights, including increased access to justice in a constitutional democracy'. Based on a successful bid dated 22 November 2004, the Embassy, under the Norwegian Ministry of Foreign Affairs (MFA), requested that the NCHR undertake responsibility for the development, implementation and follow-up of the Programme through 2009. The budget for the period 2005-2009 was NOK 65 million.

Methodology

The report draws on some elements of standard 'programme theory' to unpack and show, as far as possible within various constraints, the relationship between the interventions and results in terms of *outputs*, *outcomes* and *impact*. Furthermore this approach provides a means of identifying why interventions do not always produce the level of outcome desired (see 'challenges'). In the absence of pre-determined baselines, we have used proxy baselines of 1) Implementation of socio-economic rights ('socio-economic rights implementation' baseline) and 2) Instilling democratic norms ('democratic participation' baseline). The key sources used to compile the report include, primarily, documentation integral to administration of the Programme and a final programme report template for partners. A field visit to South Africa in April 2010 enabled face to face interviews with 13 partner organisations to focus on asking what the most significant changes were brought about through Programme support. Some key informants views also supplement methods, including those on the receiving end of partner's litigation activities and others who moved employment from the NGO to state sector. In addition, direct beneficiary views are included. Emphasis is placed upon identifying when these results come together to form notable thematic outcomes rather than mentioning each organisation in turn.

Delegated Aid and Programme Vision

The final funding period (2005-2009) provided an opportunity for the NCHR to be more pro-active and strategic. Since 2005 the overall motivation for the Programme was to identify and utilise South Africa's 'drivers' for democratisation and human rights strengthening. The unique constitution, with provisions for justiciable socio-economic rights, the robustness of the courts and growth of new social movements, provided a highly relevant political opportunity to stimulate engagement with government across a variety of strategic fora. The avenue deemed appropriate by the Programme to achieve this, *socio-economic rights*, can be considered a bridge between material needs and better governance. The mode of support has been characterised by a large degree of delegation to NCHR, as agreed to by the Royal Norwegian Embassy and the development of a Programme strategy to provide better coherence.

Programme methodology

Partners have consistently been encouraged to engage the South African state through a wide variety of methods. These include building research capacity on the specific issue; lobbying and advocacy in fora such as Parliament, meetings with national, provincial, and municipal authorities, building civil society platforms and social campaigns; and working with Chapter 9 institutions,¹ particularly the

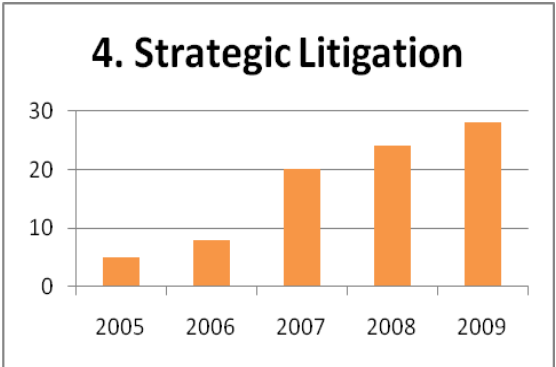
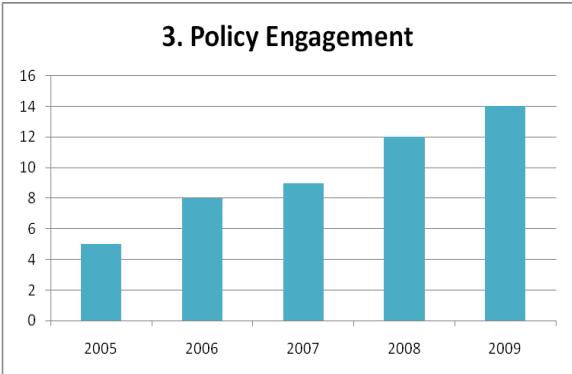
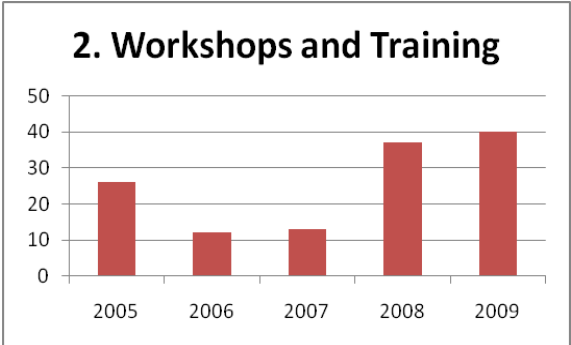
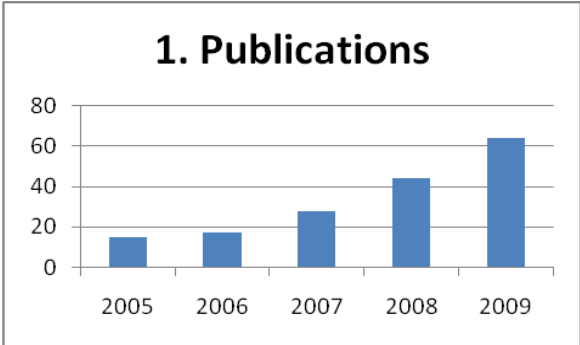
¹ I.e., (a) The Public Protector; (b) The South African Human Rights Commission; (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; (d) The Commission for Gender Equality; (e) The Auditor-General and (f) The Electoral Commission.

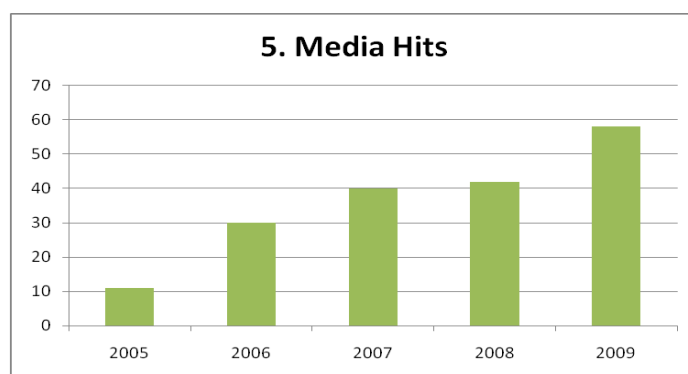
Human Rights Commission. Training activities have been conducted in relation to all these activities, both with civil society and service providers in the public sector. Although strategic litigation constituted only one of a range of strategies supported, it has been one of the distinctive features of the Programme. In the face of ineffective or resistant responses by state and private respondents, particularly when attempting to raise issues of an unpopular nature, many partners have turned to litigation in order to provide leverage in their engagement with government.

Two slight changes took place in Programme approach from January 2008. The first concerned four synergistic projects that emerged after different social movements and NGOs had agreed, partly in collaboration with NCHR, on the need for particular targeted initiatives in the field of housing rights, women’s rights, farm dweller rights and protection of public regulatory space. The second shift involved enhanced engagement at the regional level, which was particularly encouraged by the Norwegian Embassy to ensure that utilisation of South African expertise in the Southern African region would be beneficial. Several activities have been supported by the Programme that has developed links between South African organisations and the region.

Outputs

The outputs of the Programme were reported on by partners each year and are contained in the annual reports. We have quantified *some* of these outputs in order to provide an overview of the key areas in which funds were used for different activities. The tables behind the graphs are shown in Annex 1. Note that service-based litigation has been included under achievements.





Achievements

Notable achievements have been highlighted across all Programme activities. These achievements include direct and indirect benefits at the level of the individual, communities and broader structural changes in some areas of decision-making and policy. Some of these achievements are noted below while more details can be found in the thematic chapters that follow the Introduction to the Report.

Research capacity	<p>The Programme and partners have been critical in laying highly informed foundations for activities. Numerous high quality applied research reports plus media articles and appearances added critical sophisticated weight to interventions in engaging government. Some groundbreaking reports which directly impacted government policy and court cases included:</p> <ul style="list-style-type: none"> • <i>Any Room for the Poor.</i> This report by CALS provided an informed study of the vulnerability of the inner-city poor to the consequences of evictions. The report laid the foundations for the subsequent <i>Olivia Road</i> court case. • <i>Tracking Justice: the rape attrition study.</i> This high profile report by TLAC asked and examined why only one in 20 rapes resulted in a conviction. The Deputy Minister of Justice responded by asking TLAC to draft a rape protocol as part of the Criminal Justice Review Process. • <i>Housing for Victims of Domestic Violence.</i> A CLC research project involved participants from a shelter for abused women, which fed directly into the discussion with government. This resulted in 10% of housing being made available for these special needs categories.
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Beneficiaries	<p>There have been thousands of direct and indirect beneficiaries of Programme support:</p> <ul style="list-style-type: none"> • <i>Legal Advice.</i> Examples: Free legal advice was provided to 3013 women by the WLC; 907 cases were opened through CSA with PLACE for Peoples Living with Aids; and CALS and ICRC provided direct legal advice and litigation support to approximately 1 500 poor applicants (representing many more people) in the last six months of 2009 alone. • <i>Improved direct access to socio-economic rights.</i> Examples: Thousands of households were successfully defended against specific eviction threats and hundreds of domestic and other workers were compensated for unfair work dismissals due to paralegal interventions.
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Large scale achievements	<p>Broader effects for beneficiaries have been achieved through policy reforms and legal challenges, which have implications for huge numbers. The potential impact affects thousands, if not millions in some cases.</p> <ul style="list-style-type: none"> • <i>Communal Land Rights Act (CLRA).</i> Many partners challenged the CLRA, which if implemented would have given considerable powers to unelected chiefs in rural areas potentially impacting land tenure of millions of citizens. After research and mobilisation, litigation led to the Act being declared
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unconstitutional.

- After litigation brought by *Abahlali* with the support of CLP, the *KwaZulu Natal Slums Act* was declared unconstitutional for removing municipal discretion over whether to evict. This victory stopped the planned replication of the legislation in other provinces and represents a successful defence of the pro-poor eviction standards in South African law, particularly for informal settlements.
- One major achievement has been the lobbying, advocacy and submissions and opinions that fed into the new *Sexual Offences Bill* which finally entered into law in December 2007. There were significant changes concerning dealing with rape in particular.

Supporting social activism

The Programme has managed to a certain extent to support new forms of social activism, which has been marginalised by the state in post-apartheid South Africa, in order to build alliances and common platforms. This activism is increasingly overlapping with use of litigation as part of social campaigning. *Abahlali* worked with a programme partner to create a social activist *Platform against Evictions* in order to bring together movements, organisations and groups concerned with urban and rural evictions. And litigation has provided a *site for mobilisation* on different campaigns from communal land tenure through to evictions and water rights campaigns.

Instil democratic norms and accountability

One of the biggest overall achievements is these various activities have challenged and tested institutional structures. Challenging policy and legislation in strategic sites has particularly helped to animate human rights and make them mean something for the grassroots in South Africa. Justice has been brought both closer to many South Africans and to instil democratic norms (such as participation and meaningful engagement) and the rule of law. Some partners have improved the process dimensions of democracy in innovative and direct ways.

- An *Information Officers' Forum* was created by ODAC with an annual meeting of up to 120 municipal information officers with a cash reward for the officer considered best at enabling access to information.

Challenges

Programme experiences show there can be a fine line in balancing different approaches. For example, litigation sometimes risks becoming too technical and focused on principles often abstract to the pressing needs of the majority. There is also a danger that policy-making can be conflated with law making. There is the overall challenge, therefore, to create better connections between human rights NGOs, grass roots communities and social campaigns. Unfortunately, these dynamics are also reflected in the disproportionate likelihood of sustainability. The closer the project is to the ground, i.e. community or grass roots based, the harder it appears to be to attract funding. Future Norwegian funding may want to consider how assistance can be channelled to explicitly prioritise linking large organisations to sustainable grass roots human rights activities.

Conclusion

The Programme has travelled a considerable distance in fulfilment of its objectives and contributed to the overall goal in strengthening socio-economic rights and access to justice in South Africa. The Programme's outcomes can be regarded as producing an aggregate impact that has contributed to implementing socio-economic rights and in doing so to keep democratic space open. The overall lesson is that socio-economic rights are a powerful force for legitimating everyday human rights and democracy and should not be underestimated. Socio-economic rights have spoken directly to South Africa's key challenges. Seeking an appropriate balance between political and legal means and at the same time delivering direct to beneficiaries is indeed challenging. If the legacy of the South Africa

Programme is that it enabled opportunities for better understanding of what that balance should look like then this is potentially a significant achievement.

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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Abahlali	Abahlali baseMjondolo
CALS	Centre for Applied Legal Studies
CBO	Community Based Organisation
CHR	Centre for Human Rights
CLC	Community Law Centre
CLP	Church Land Programme
COSATU	Confederation of South African Trade Unions
CSA	Centre for the Study of AIDS
ICRC	Inner-City resource Centre
ICTJ	International Centre for Transitional Justice
LHR	Lawyers for Human Rights
LRC	Legal Resources Centre
MFA	Norwegian Ministry of Foreign Affairs
MTR	Mid-term review of Norwegian cooperation with South Africa in the field of human rights: 2007-2009
NCHR	Norwegian Centre for Human Rights
NGO	Non-governmental organisation
Norad	Norwegian Agency for Development Cooperation
ODAC	Open Democracy Advice Centre
PLAAS	Institute for Poverty, Land and Agrarian Studies
Programme	South Africa Programme, Norwegian Centre for Human Rights
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
The Embassy	Royal Norwegian Embassy in Pretoria
TAC	Treatment Action Campaign
TLAC	Tshwaranang Legal Advocacy Centre
WLC	Women's Legal Centre

Introduction

The following is the end of programme report covering 2005-2009 of the South Africa Programme (henceforth the 'Programme') at the Norwegian Centre for Human Rights (NCHR), University of Oslo. The purpose of the final report is to achieve a comprehensive analysis of how the programme has achieved, partly achieved or failed to fulfil the goals.

The overall goal for the programme has been: "to promote respect, protection and fulfilment of human rights in a manner that consolidates democratic development in South Africa through engagement with government". In 2005, shortly after the tender was won by NCHR, it became apparent that the Programme was too broad and possibly too ambitious. A decision was taken by NCHR and the Embassy to sharpen the focus and prioritised an area that became highly relevant -namely, socio-economic rights (see also 'Programme Modality'). The specific objectives of the programme were therefore outlined in the Contract between Embassy and NCHR as follows:

- Scrutinise and engage with government on policy formation and implementation in the area of social and economic rights.
- Encourage implementation of human rights provisions by enabling excluded individuals and groups access to justice.
- Encourage accountability in government decision-making by enabling public participation and access to information.
- Encourage South Africa's active support and promotion of human rights initiatives in international, continental and regional for and networks.
- Maintain and improve competence in Norway on human rights and democracy in South Africa and, where relevant, promote networks and institutional co-operation between South African and Norwegian institutions.

The shifting priorities were communicated to Programme partners, although inevitably the strategic shift did have consequences for directing Programme support.

A strategy was then developed on the basis of the Contract and seven objectives were outlined in some detail. The report is structured according to these objectives and provides analysis on each as well as for the programme as a whole:

- Contribute to the respect, protection and promotion of Socio-Economic Rights
- Contribute to the respect, protection and promotion of the Socio-Economic Right to Land
- Contribute to the respect, protection and promotion of the Socio-Economic Rights to Housing and Water
- Contribute to the respect, protection and promotion of the Socio-Economic Right to Health
- Contribute to greater Access to Justice
- To use South African expertise to contribute to the respect, protection and promotion of socio-economic rights in the region
- Increased competence on Human Rights in South Africa within Norway

The Programme was created in 1998 as a consequence of the Norwegian-South African bi-lateral agreement, administered by the Norwegian Centre for Human Rights (NCHR) and funded through the Norwegian Agency for Development Cooperation (Norad) via the Royal Norwegian Embassy in Pretoria (henceforth the Embassy). The first contract period entered into by NCHR ended in 2000, and after a favourable review of the Programme in May 2001, it was decided to extend the period of co-operation until the end of 2004. In line with new regulations, a competitive tender process was announced by NORAD, whereby Norwegian institutions were invited to present their bids for the

continuation of the Programme in the period 2005-2009. Based on a successful bid dated 22 November 2004, the Embassy, under the Norwegian Ministry of Foreign Affairs (MFA), requested that the NCHR undertake responsibility for the development, implementation and follow-up of the Programme through 2009. The budget for the period 2005-2009 was NOK 65 million.

Methodology: Sources and Reporting Technique

The report draws upon the documentation key to the administration of the Programme - the strategy, annual plans and reports submitted to the Embassy, as well as minutes of meetings with Embassy, and reports from programme partners.ⁱ The latter includes information based on a specific end of programme final report template that the Programme requested partners to complete. It should be noted that what follows is a selection of the highlights of Programme achievements rather than detailing each and every partner.ⁱⁱ The sample reported on, we believe, is representative of the Programme and specific results and notable achievements are highlighted but also the challenges discussed. In order to develop a full picture of both achievements and challenges additional methods were deemed necessary including interviews with partners, and in some instances, direct interaction with beneficiaries. Efforts were made to have a final end of programme interview with all partners except the three that time did not permit and as many beneficiaries as possible (see Annex 2). While the main objective of the report is to document key activities and achievements, efforts have been made to assess the broader impact of Programme activities. Additional key informants –such as government stakeholders themselves sometimes on the receiving end of litigation and advocacy interventions - were also interviewed. The sample of beneficiaries and key informants is limited but nonetheless still augments a broader picture of the relevance, achievements and challenges of the Programme.

On one level, the approach is a straightforward diachronic or ‘before-and-after’ method to identify the most significant changes. However, because the Programme never developed time-specific base-lines or hypotheses for causal effects between interventions and outputs, outcomes and impact, we take two particular methodological steps.

The first is to use two ‘proxy’ baselines which indicate the degree of democratic and economic space for the systemic advancement of human rights, particularly economic and social rights. Thus the overall assessment is to what extent the Programme interventions helped move the

1) *Socio-economic rights implementation* baseline. The first baseline concerns the extent to which socio-economic rights were being implemented. The level of implementation of these rights begins from a partly low base, given the wide gap between law and policy and the improvement in material and psychological conditions of poor and marginalised South Africans. However, in measuring impact for this particular report, we take a systemic approach and look for broader outcomes that may arise from diverse outcomes, e.g. from empowered beneficiaries through to legal interventions. Thus, activities or changes in policy and practice that only benefit a *small* group of beneficiaries are not counted as impact but rather as an output that may lead to broader impact.

2) *Democratic participation* baseline. Programme achievements measured against this second baseline concern the increase in the participatory space for individuals or organised civil society. This may range from individuals developing a greater sense of empowerment and being able to participate more fully in the public sphere to organisations being able to increase their power in specific or overall policy engagement.

However, in assessing causality and attribution, two things need to be borne in mind. The first is the constraints resulting by the political dominance by a single party, the African National Congress. This has restricted some of the more established avenues for political contestation and political pluralism, while opening others, particularly internal party democracy. The final Programme period overlapped with Thabo Mbeki’s second term (2004-2008). It is well documented that on specific issues, such as HIV/AIDS, crime, Zimbabwe, and Black Economic Empowerment (BEE) mainly benefiting a

growing black middle class, that the Mbeki era witnessed increasing centralisation and intolerance to criticism. When aggregated, these and other issues, such as the manipulation of state institutions by Mbeki used against Jacob Zuma, tended to increasingly alienate grass roots participation and produced lower levels of civil society engagement. It also became abundantly clear that getting broad based but politically marginalised issues and basic everyday rights (such as addressing the problems in local service delivery rather than BEE) on to the national development agenda in South Africa has become a terrain of fundamental political contestation.

Second, in assessing causality and attribution, it is obviously difficult to establish from the sources whether there was always a direct causal link between a Programme activity and a successful result or whether an alternative method or partner may have achieved more. Moreover, it has been difficult to assess whether there have been any negative impacts from the programme. Thus, the second step we take is to use some basic elements from 'programme theory'. This helps bring forth two assumed causal pathways: (i) the relations between the interventions (inputs) and their outputs and outcomes and (ii) the relations between the outcomes and the solution of the problems that the intervention seeks to reduce or solve, i.e. impact. In some cases, it is clear that there is a casual impact and the report notes that in others more impact could potentially have been achieved with alternative methods. However, programme theory assists also precisely in identifying challenges and why impacts may or may not be as great as desired. Thus, in each section of the report dealing with different rights (except 'Rights in the Region', and 'Norway-South Africa' where this is of less relevance) we provide a table that shows the relationship between the output, outcome and possible impacts on the two baselines.

It should also be noted that the Embassy has supported the Programme to prepare an edited book, *The Role and Impact of Socio-Economic Rights Strategies 1994-2009*. This publication will analyse in depth a range of case studies on the question of *impact*, including many activities supported by the Programme. This book will be ready for publication in 2011. However, not all Programme partner strategies are included in this book and it also includes strategies by actors supported by other donors. Thus, *this report* provides insight into the *outputs, outcomes and impact* of *all* the Programme partners while the book will help place the Programme support in a broader perspective of non-governmental action in the period.

Programme Relevance to South Africa's Human Rights Situation

The final funding period (2005-2009) provided an opportunity for the NCHR to be more pro-active and strategic. Since 2005 the overall motivation for the Programme was to seek to contextualise it in the realities and most pressing challenges associated with South Africa's transition to a post-apartheid era of democracy. The entry point was premised upon recognising the contradictions of democratic transition common in countries emerging from authoritarian rule. In many countries of the global South, democratisation has failed to live up to expectations that were aroused at initial stages of transition processes. Often reforms have been accompanied by rising levels of insecurity and a decline in material living conditions.

There is consensus among scholars that *interventions concerning democracy and human rights* promotion can only succeed where there are significant forces pulling toward democratisation in the countries targeted for support. An overarching challenge for external interventions is how well different donors are able to identify and utilise these internal 'drivers' for democratisation within a society. An important and objective consideration is under which conditions and stages of democratic consolidation different types of interventions, such as support for elections, political parties, support for parliaments, media, support for judicial and legal development, litigation, courts, access to justice, support for women's political participation, civil society, social movements etc., prove to be most effective. These considerations inevitably involve assessing which actors are the most appropriate for ensuring implementation.

The context of South Africa's own transition should be the most relevant guide in determining human rights strengthening interventions. Severe economic inequalities, reflecting racially skewed material deprivation, have and continue to pose a threat to civil and political freedoms and even long-term democratic stability. Other predominant characteristics are the relatively strong electoral system, but

weak and racialised political opposition. There is also a Parliament weak in oversight functions in relation to the Executive,ⁱⁱⁱ but a very robust judiciary system. In addition, there is a vibrant civil society undergoing its own transformations, especially with the mushrooming of new social movements.

At the same time there existed a strong impetus in South Africa for socio-economic and political transformation within the provisions of a constitutional democracy. The 1996 Constitution, for example, has extensive civil and political freedoms and provision for the justiciable socio-economic rights of access to food and water, land, social security, adequate housing, health care services and basic education. Recognising the constraints and possibilities of linkages within and across different political, socio-economic and legal arenas, has been a fundamental consideration in adapting human rights practice to South Africa's political realities. The Programme's vision therefore recognised the equal importance of civil and political and socio-economic rights but identified socio-economic rights as particularly significant drivers in strengthening South Africa's transition.

A strategic decision was made to focus mainly upon the considerable endeavours in recent years to find innovative ways and means of translating these constitutionally enshrined socio-economic rights into meaningful policy change and implementation.^{iv} The unique constitution, provisions for justiciable socio-economic rights, and robustness of the courts has provided a highly relevant political opportunity to stimulate engagement with government across a variety of strategic fora. The understanding of engagement has always been to seek to use a combination of methods entailing at times cooperation between state and civil society and also more assertive tactics when government is less willing to cooperate. A rights-based approach is ultimately concerned with accountability of the duty bearer, namely, the state. Such an approach recognises that states and more accurately, factions within them, are sometimes not willing to listen and work with popular-based issues and that 'partnership' is not always benign.

Programme Modality

When read against Norway's declared commitment to contribute to substantive democratisation in interventions of democratic governance to 'deliver to the poor', and the Guidelines for Norwegian-South African development cooperation 2005-2009, the Programme's approach of focusing on socio-economic rights (including access to justice for these rights) in the context of democratic consolidation has been highly relevant. Under the main areas of cooperation for the Guidelines, for example, point (i) *Democracy/Human Rights/Peace and Security*, it is stated: "There is still a need for individuals and organizations that are able to promote respect for political pluralism and a democratic culture, as well as promoting government accountability and the strengthening of pro-poor participation and policies". The Programme recognised that an important and feasible way to achieve this vision was through support to socio-economic rights, which can be considered a bridge between material needs and better governance. While socio-economic rights have not been prominent as such in Norwegian development cooperation, there is an increasing adoption of a human rights based approaches to development.

These Guidelines also place importance on cooperation between Southern and Northern partners and thus prioritise 'Cooperation in areas where collaboration could result in long term, self sustaining relationships' a priority. The use of institutional co-operation between Norwegian and Southern partners is widespread in Norwegian aid as a result of this philosophy. However, in the South African context, achieving this goal is not necessarily straightforward. Given the high level of skills, competence and institutional capacity (such as strong and robust courts), especially concerning human rights, South Africa was an atypical African aid recipient. Furthermore, socio-economic rights are extremely topical and relevant for development and democracy in South Africa but possibly much less so for Norwegian institutions and, over time, for Norwegian foreign policy objectives. In fact, some of the socio-economic rights strategies in South Africa are strongly influencing the discourse and strategy of civil society actors and adjudicators in Northern countries. After discussions with the Embassy, the contract between MFA and NCHR in 2005 qualified the objective concerning cooperation in terms of '*where relevant, [to] promote networks and institutional cooperation between South African and Norwegian institutions*' (emphasis added). However, an examination of the minutes of meetings between the Embassy and NCHR shows that from 2006 in particular, and with a change of staff at the Embassy, the issue of developing a 'Norges axis'- linking Norwegian and South African

organisations, became highly desired by the Embassy. The extent to which the Programme was able to respond to this new imperative is taken up under the section on ‘Norway-South Africa’.

The issue of relevance and priority setting is therefore intimately linked to the overall modality of the Programme. On the one hand, the Programme was given by NORAD/MFA to NCHR with specific reasons in mind: to decrease the Embassy’s administrative workload and provide analytical and research competence. But with the inception of a Programme strategy from 2005, especially the sharpened focus in 2006, and, indeed, with agreement on this, further delegation of responsibility to NCHR took place.^v The issue of whether this resulted in a focus that would have been different absent delegation is taken up briefly in the conclusion.

This is of course not to deny that the delegation of responsibility and relative autonomy for the Programme to NCHR has had challenges and consequences for both the Embassy and the Programme. The substantive issue, rather, begs consideration of the *pros* and *cons* of delegation. One *con* might be that the Programme became less relevant to the Embassy. This risk could be exacerbated if communications between the NCHR and the Embassy were not regular. Moreover, the Embassy may lack the necessary information or partners to carry forward its human rights agenda directly with the Government. Alternatively one *pro* is that the delegation allowed the Programme the flexibility to focus on supporting interventions that address the specific political context. Getting popular issues and interests on the political agenda is perhaps *the* fundamental challenge for development and human rights cooperation in the global South.^{vi} In South Africa itself, such bottom-up issues are most graphically demonstrated each year with thousands of protests concerning service delivery.^{vii} South Africa currently has the highest rate of protests in the world, in the order of 11,000 a year. It is argued that many of the activities undertaken by the Programme on behalf of marginalised, and often criminalised groups of poor people, especially those at risk of eviction, woman and people living with AIDS were innovative responses that resulted from having the programme placed at NCHR.

However, the Programme was deemed by the Mid Term Review (MTR) in 2009 to be less relevant to the objectives since it was actually not focussed enough on grassroots groups and effects for particular beneficiaries. This critique has been responded to elsewhere.^{viii} In the current context, it is important to note that it actually ignores the historical development of the Programme as well as its systemic objectives. Over a decade, the Programme increasingly focused on particular rights and selected and added organisations that work closely with grassroots groups with the aim of achieving relevant, sustained and systemic impact.

The following chapters address each of the major themes stated in the strategy (as above). Both the achievements and challenges in terms of Programme methods, such as *research, advocacy, training, litigation and other forms of engagement* are discussed. There will be a final discussion of the Programme methodology and its appropriateness in the final chapter. Over the years, particularly 2005-2009, the Programme has greatly improved systems for assessing proposals, annual human rights reporting and financial and reporting requirements of partners. In particular assessment of partner applications for support became more rigorous over time, shared jointly by both Programme director and Programme researcher in this reporting period and guided by having a Programme strategy. In the initial phase of the final Programme period, there was an open competition for support publicised on NCHR’s web site. However, while intrinsically more open in process, the clear majority of applications was of less relevance and fell outside of core areas of support. It was deemed more constructive to identify potential partners, prompted by Programme staff, the Embassy, and sometimes other partners, to invite specific organisations to submit an application.

The NCHR acknowledges, however, the requests over the years by the Embassy to produce a result-based reporting system and the Programme’s inability, for various reasons, such as the turn over in staff, to meet this. This has clearly been a challenging area for the NCHR in compiling its reports and has made the task of reporting results more difficult. The issue is also a particular challenge to partners. This predicament, however, is also recognised as a more general problem for human rights and general governance programming whose focus tends to be building a *process* intended to secure rights implementation incrementally over a long time span. Such a rights-based process is not necessarily easily discernable through results based reporting and more immediate impact, which is common in traditional development programming. NCHR, amongst others, has perhaps not given

adequate attention to such a system of reporting. At the same time, not having indicators or, results-based reporting does not preclude that results have been achieved.

Particular emphasis in the report will be placed upon identifying when these results come together towards notable thematic outcomes rather than mentioning each organisation in turn. Each chapter will highlight results in terms of: the research base providing a platform for action (*knowledge-practice nexus*); beneficiaries and key achievements; modes of engagement; and instilling democratic norms and accountability. Implementation of socio-economic rights and democratic participation therefore constitute impact because these reflect changes in government policies, laws and, or especially practices (such as ‘meaningful engagement’).

Land

Context

Equitable and secure access to land has been a particularly challenging issue for post-apartheid South Africa. Since 1994, an alarmingly high rate of evictions from farm land has been an area of neglect. The extension of security of tenure for farm dwellers is therefore one critical dimension. Another area, given that over half of the population lives in rural areas, concerns controversial proposed legislation introduced around the time of the final phase of the Programme. And rural agrarian reform has hardly moved forward in terms of reaching the 2014 goal of putting 30 per cent of commercial farm land in the hands of historically disadvantaged South Africans. Due to the relatively low visibility of public debate on these issues and the lack of political organisation of rural dwellers, the Programme has made several strategic interventions.

Highlights

Programme partners have used field based research and associated capacity building that has consistently fed into land sector debates and policies and which provides a solid and highly informed platform to pursue lobbying, advocacy and litigation. Partners have combined exemplary academic output with accessible policy briefs and scores of critical popular media articles to generate knowledge on land reform, tenure and evictions, and issues of land governance in rural areas.

Communal Land Rights Act (CLRA). Many partner activities involved a challenge to the CLRA from 2003 and the response represents a key achievement for the Programme. If implemented, this Bill would have given considerable powers to unelected chiefs in rural areas potentially impacting land tenure of millions of citizens. Core support to PLAAS enabled a research report to contextualise the role of customary law that fed into contestation of the land reform model and shaped legal thinking.^{ix} This platform enabled other partners to assert the rights of rural dwellers. With financial support from NCHR, LRC contested the Act through litigation and was able to show that the Act was unconstitutional. The case was won and an end was put to this particular legislation.

Beneficiaries. What is important to bear in mind, but often less quantifiable in terms of human rights impact, is the broader impact on beneficiaries. The CLRA, for example, would have negatively affected millions of people. In addition, access to justice was enabled, for example, by direct support to 89 supporters from four directly affected communities to attend the Constitutional Court hearing and which the government department did not oppose. The confidence with which many of these women spoke after the case, according to LRC, is testimony to the benefits of the process involving direct beneficiaries and imparting legal discourse and practice, deepening access to justice.

The **Traditional Courts Bill (TCB)** followed a similar processes to the CLRA. LRC facilitated representatives to give presentations directly to Parliament through briefings and information shared with MPs, and formal meetings with Parliamentary committees, such as the Justice Portfolio Committee. In 2008, following submissions, the Bill was shelved pending public consultation. Of particular importance is that the TCB process is now adjudged to require provincial hearings, again rooting democratic practice and accountability. Partners have shown that they can and will engage, whenever possible, with appropriate departments, although it is not always easy. LRC engaged directly with the Deputy Minister of Justice, for example.

Vulnerable groups. In other areas, partners have also been very active in efforts to support a more nationally focused mobilisation on farm-worker evictions. Presentations on ‘Tenure Security for Farm Dwellers’ have been held for Department of Land Affairs (2007, PLAAS). PLAAS and partners also organised in 2008 a national workshop on this theme and supported activities to respond to the plight of rural dwellers facing insecurity. Litigation (LRC, LHR) has undoubtedly enlarged the space for engagement with policy and legislation, sometimes with research (PLAAS) feeding in directly (see next Chapter in particular concerning evictions).

Other Engagement. PLAAS and LRC have directly involved themselves in hearings of other Portfolio Committees. PLAAS had direct input into Agriculture and Land Affairs and the debate on Land Affairs Budget Vote, and have responded to requests from local and provincial officials for briefings on issues. Another example that the Director General of Land Affairs specifically requested PLAAS to contribute a report which informed the Review of the White paper on South African Land Policy and a meeting with Policy Directorate, Department of Land Affairs, regarding the latter. This demonstrates the ability of critically informed research to influence new policy thinking concerning the shift from land to more holistic *agrarian* reform in South Africa.

Instilling Democratic Norms. Over all, there has been an entire process involved in contesting law and policy like this. In engaging on the CLRA and TCB partners have contributed to deepening democratic practice in South Africa. In particular policy making was deemed unconstitutional because public participation was deemed grossly insufficient. This has important implications for strengthening long term democratic norms such as the requirement to have parliamentary hearings on prospective legislation. Accountability has been achieved. In addition, workshop events have also provided fora for discussion amongst academics and policy makers and implementers and especially the active participation of the target group themselves.

Interventions	→	Output	→	Outcome	→	Impact: Implementation of Socio-Economic Rights and Democratic Norms	Challenges
e.g. core support to PLAAS, including research on the CLRA	→	Research findings on customary law	→	Used in legal argumentation	→	Research-policy making nexus, public debate	Need for better grass roots linkages
e.g. Support to LRC to develop court case on CLRA	→	Court Case	→	CLRA ruled unconstitutional	→	Policy making now requires public participation and parliamentary hearings on prospective legislation.	Defensive use of rights, non-legal roots of problems
e.g. Target groups, Landless, rural, woman etc	→	Workshops, Participation in court cases	→	Millions no longer negatively affected by CLRA (nor TCB) bill; direct beneficiaries participation and capacity built,	→	Increased participation and space for engaging policy	Evictions continue, no subsidies etc

Challenges

For the issue of security of tenure, litigation has often been of a defensive nature rather than pro-active in terms. For example, of the Department of Land Affairs has yet to be challenged in court for its failure to provide development subsidies to farm workers despite the legislative requirement. Some partners reflected upon the unsatisfactory nature whereby regulating evictions is not any solution to the underlying causes. Legal challenges do, however, provide a defensive rearguard against the worst excesses of evictions and which at times can be part of a broader social and political process (as with CLRA). Such action is also necessary in view of property owners and the state finding increasingly sophisticated alternative means of evicting.

Arguably, there is still much scope for greater linkage with grass roots coalitions, although, such alliances have been nurtured in terms of the CLRA and TCB challenges. Since 2007 it does appear that there has been an increased legal approach, especially through LRC and LHR, and the implications of which can be regarded as both complementary to other partner approaches, particularly when other channels have been closed, but also posing some overall dilemmas (see Conclusion chapter).

Housing and Water

Context

Despite the increasing construction of housing in the post-apartheid era, at the current pace this is not sufficient to accommodate South Africans on the scale required. The issue of informal settlements, which have mushroomed, as well as housing needs of residents in inner-city areas undergoing regeneration, has resulted in thousands of evictions since 1994. Often, these evictions were arbitrary, did not have provision for any alternative arrangement other than removal of residents. Insecurity in housing was also reflected in insecurity over basic services, such as access to water.

Highlights

Research. Solid foundations for advocacy were laid through rigorous research outputs and made accessible through numerous newspaper and TV reports. One research report, *Any room for the poor*, was particularly influential: the study by CALS and COHRE on inhabitants of the inner-city most vulnerable to poor housing rights and prone to threat of eviction by the City of Johannesburg (the ‘City’) and private landlords provided a human face to these vulnerable communities and the consequences of evictions for their livelihoods. This report and others like it^x provided an important context for launching litigation and monitoring outcomes. The *Any Room* report informed the *Olivia Road* court case, won by CALS in 2006 and subsequently and unsuccessfully contested by the City all the way to the Constitutional Court (CC).

Engagement. Partners sit on various fora to engage government, but litigation has provided an important political space for civil society to engage government in a number of hostile local and provincial settings. CALS represented the shack dwellers movement, Abahlali, who worked with another Programme partner, the CLP to create a social activist platform against evictions. The major objective has been to bring together movements, organisations and groups concerned with urban and rural evictions.^{xi} Outcomes involve networking, awareness and practical collaboration that would not have been enabled otherwise, to popularise the message that a shack is actually someone’s home. The leader of Abahlali, a direct beneficiary, said support for a platform has been immensely important to build unity and solidarity.

Beneficiaries.

- The immediate outcome of *Olivia Road* was that 400 beneficiaries were not arbitrarily evicted and thus avoided being thrown out on to the streets.
- CALS and LRC helped defend the residents of the Joe Slovo settlement. While the case was officially lost at the Constitutional Court, the requirements for the eviction order were difficult to meet and a strong community together with a change in provincial government helped ensure that 20,000 people were not evicted before the World Cup as planned. 4000 others were direct beneficiaries in not having electricity and water supply cut-off.
- The *Mazibuko* case was lost but resulted in a policy change whereby the minimum amount of free water was increased to the direct benefit of thousands of households in Johannesburg.
- The knock-on effect through legal precedent, especially of the CC decision in the *Abahlali* matter, as well as the *Joseph* case, which affects hundreds of thousands of residents in informal settlements.
- Litigation provided a direct outcome for social activism in terms of mobilising close to 400 people to attend the CC hearing on the Slums Act to turn it into a ‘collective case’.
- Urban Poor assistance. CALS has taken a range of cases represents urban residents people earning below R3 500 per month to secure a specific legal/policy point in the public interest. They have also actively promoted direct assistance to communities to assert their rights. In collaboration with the Inner-City Resource Centre (ICRC) direct

Instilling democratic norms. Following the *Abahlali* judgment, one outcome is that the KwaZulu Natal Slums Act legislation will not be replicated in other provinces. The Constitutional Court again reemphasised the importance and necessity of the norm of ‘meaningful engagement’ when it comes to evictions and a bottom-up approach to informal settlement development including taking into consideration upgrading possibilities first. The direct impacts have been to prevent more and more evictions, which build on previous cases like *Olivia Road*.

City practices have also changed regarding the hiring of consultants required to engage with buildings in question and the City must also file reports concerning alternative accommodation. The cases combined to deepen democratic norms by encouraging three particular norms: (1) the state must pursue ‘meaningful engagement’, as mentioned, together with; (2) establishing the norm of providing alternative accommodation; (3) the right to freedom of expression (social protest and political action) to hold government accountable to communities that otherwise are being marginalised.

legal advice and litigation support was provided to approximately 1 500 poor applicants (representing many more people) has been made in the past six months of 2009 alone. CALS provided office facilities for ICRC, who interfaced with communities to provide workshops, and to clean-up buildings and organise committee members for each building in question. Other organisations do not prioritise listening and incorporating tenants views as much as CALS according to ICRC. Reciprocally, ICRC has provided social activism, most directly in the form of marches (as in the photograph above) and members wearing red ICRC t-shirts packing out court cases.

- Defending social activists. Leaders of *Abahlali* were provided ‘safe housing’ and also legal assistance, funded by NCHR. Without this support, leaders and their movement attacked at instigation of local ANC, would have been put at immense risk according another partners, CLP.

Interventions	→	Output	→	Outcome	→	Impact: Implementation of Socio- Economic Rights and Democratic Norms	Challenges
e.g. core support to CALS, including research	→	Research findings on evictions in inner-city Jo-burg, 'Any Room' research report	→	Used in legal argumentation	→	Research-policy making nexus, public debate	Need for better, sustainable grass roots linkages, especially in rural areas
e.g. Support to CALS to develop court cases on evictions	→	Several Court Cases e.g. Olivia road	→	Evictions ruled unconstitutional	→	Evictions requires 'meaningful engagement', public participation and plans for 'alternative accommodation'.	Quality of alternative accommodation, And whether legal impact felt on policy making arena, Authorities using other tactics to evict
Target groups, e.g. Inner City Resource Centre; Joe Slovo settlement, Abahlali social movement	→	Workshops, briefings, participation in court cases, thousands given legal advice, Given legal assistance, safe housing	→	Thousands no longer evicted, direct beneficiaries' participation and capacity built, thousands not had electricity and water cut off. Abahlali members released from prison etc	→	Increased participation and space for engaging policy Space for social activism defended Fear of eviction decreased	Evictions continue, still limited lower income housing, problem of sustainability etc.



Members of the Inner City Resource Centre at a protest march to hand over a memorandum to the MEC for Housing in Johannesburg (CALs Annual report, 2009).

Challenges

The issue of alternative accommodation, whilst appearing a victory, was deemed by the ICRC to be less than satisfactory. For ICRC, litigation is a useful process that can assist in identifying housing that could be converted into social housing but the overall struggle remains for a policy addressing social housing provision comprehensively. ‘Alternative’ accommodation remains temporary and limited, and doesn’t address, for example, provision for families.

Mounting evidence suggests that the local state is unwilling or unable to address fully the needs of the urban poor. In terms of social activism, the brutality of the attacks on the Kennedy road settlement indicates that social formations urgently need supporting in relationship to an antagonistic state that does not like to be told it is failing the poor and excluded.

It also appears that the City is turning to different tactics in evicting. For example, health and safety is less likely to be invoked than now placing onus upon the owner’s responsibility themselves. Over all, once litigation begins, a more antagonistic relationship has tended to characterise relations between the City and CALS which appear difficult to alter. There is also the fundamental issue of sustainability for both ICRC, and also grass roots organisations, like Abahlali, struggling to meet legal and housing costs (see also Conclusion).

Health

Context

Since 1994, despite some impressive improvements in health care delivery and policy, the devastating impact of HIV/AIDS is reflected in decreases in average life expectancy and a rise in mortality reflects. In addition, there are many areas of human rights violations associated with the disease. Not least, the stigma associated with HIV/AIDS has acted as a fundamental driver of violations and obstacle to treating, caring and preventing the disease. The Programme's main intervention in this sector concerned CSA's Hammanskraal project. At the time of intervention, there appeared to be extremely high levels of stigma, fear and low take-up of anti-retroviral treatment and widespread rights violations. There was also no redress available for victims of HIV related abuses other than for criminal cases.

Highlights

Engagement.

Research- a partner report investigated human rights abuses of People living with HIV/AIDS, whose findings highlighted how rights are not much use if people do not have an awareness or means to claim them.^{xiii} This provided the basis to establish an office to provide practical legal assistance in the target communities and this work further impacted research and policy at a national level

Networking between organisations and at community level has established important relationships. Outcomes of this include facilitating referrals to the Department of Labour together with which joint outreach work and training. Reciprocally, the HIV/AIDS clinic at the local hospital referred cases concerning testing issues to the PLACE. A local AIDS service organisation committee is facilitated by the PLACE who also works closely with the local AIDS council. CSA also scales up such local knowledge to fora at a higher scale, such as CSA participation in the National Working Group on Stigma, as well as CSA representation on the South African National AIDS Council. Advocacy has been an important method (as described above in the context of the local advocacy group).

Instilling democratic norms. The fact that many people present at the PLACE, despite the fact that the billboard has a red ribbon clearly associating the project to HIV, may indicate that stigma associated with the disease is indeed waning and rights-based tolerance increasing. Volunteers of the

Beneficiaries. Outcomes include selecting and training community members as paralegals during 2005 and 'graduating' paralegals in January 2006 (see photo below). Legal assistance, advice and referrals on various matters of most pressing concern, namely, social assistance and workplace related.

- Outcomes of such support are numerous: 907 cases have been opened since the PLACE started its paralegal service. 476 cases have been referred out to other organisations such as the department of Labour, Social Services, Home Affairs, the Law Clinic, etc. Clients have received compensation or payments (such as unemployment funds) that would not have been facilitated if not for NCHR funding. Sometimes all that was been required was for PLACE to make an enquiry.
- Numerous community outreach workshops and initiatives raised awareness on HIV/AIDS and human rights at community level. These initiatives benefited more people than the individualised cases. These beneficiaries can demonstrate its application to problems encountering PLWAs in the area.^{xiii} PLACE had also been involved in advocacy for treatment centres to be established in more peripheral areas and was deemed particularly valuable in providing support and information to more rural areas that would have been neglected otherwise.
- The establishment of the Hammanskraal Advocacy Team (HAT) in March 2007, a group of people living with and affected by HIV. HAT members have been able to intervene in a number of ways e.g. in encouraging people to keep taking ARVs just by sitting, explaining and supporting. One HAT member interviewed said they had skills to intervene and interface with

Project openly living with HIV lead by example in the communities where they conduct outreach and advocacy work. Although attribution is often problematic to ascertain, the engagement of PLACE activities (from radio based information, door to door visits of volunteers, case load, referrals and training) appears to be correlated with changing attitudes in the community. One indicator is the rapid increase in enrolments at the local hospital for medication. A PLWA/ HAT volunteer stated that “Lots of people are coming forward to Jubilee [the local hospital] and no longer waiting for the 11th hour [until very sick]. Whereas it was only 20 a day now over a 100 a day are enrolling”.

the hospital and related services. Beneficiaries explained how merely by a member of HAT accompanying a PLWA to the clinic can resolve problems with health care provider (such as wrong medication or problems with receptionists gossiping).

A community driven model was also evident to some extent in the work of another partner, COMACARE, who work with victims of head injuries (those in coma in particular). Some of the outcomes include lessening incidents of ad hoc abuse of coma patients at a major teaching hospital by care staff, training of these issues and also ensuring quicker access to disability grants and relieving economic burden on families (waiting time cut to below one year after interventions made).



Community members (some of whom are also living with HIV/AIDS) who successfully 'graduated' as paralegals due to NCHR support

Challenges

There is a distinctive local style of dealing with conflicts in the community the PLACE serves. People appear to prefer to approach the PLACE for mediation rather than, for instance, the Equality courts. The outcomes of the court cases, according to CSA and PLACE itself are deemed very satisfactory by clients, but require more systematic analysis. A big emphasis has been placed upon building partnerships and mediation with institutional structures rather than confrontational tactics (such as those associated with the Treatment Action Campaign). This still raises the issue of the extent to which the community actually challenges authority, which is integral to rights-based accountability. Given that the project has been rooted in a community driven process all these characteristics serve to reflect the embeddedness of the project in the community and therefore of locally appropriate adaptation of the rights-based approach.^{xiv} Sustainability is a fundamental issue, however (see Conclusion).

The community knows their rights now. Whereas before there was discrimination now people listen to training, Project volunteer

Interventions	→	Output	→	Outcome	→	Impact: Implementation of Socio-Economic Rights and Democratic Norms	Challenges
e.g. CSA, including research	→	Research findings on human rights abuses related to stigma	→	Used to engage with community and proposed creation of legal centre	→	Research-policy making nexus, public debate	Problems of sustaining CSA project in Hammanskraal
e.g. Support to raising awareness	→	Hundreds of workshops	→	Some demonstrable use of knowledge (see footnote above concerning COSATU shop steward)	→	Changing attitudes regarding stigma, greater openness. Increase in number of treatment	Stigma persists, even amongst those conducting training
e.g. creation of 'The Place'	→	Over 900 para-legal cases opened	→	Hundreds of cases resulted in successful outcome, financial settlement or referral to appropriate authorities	→	Increased networking with institutions referrals, functioning institutions and better	Less certain institutional impact in certain areas e.g police; Clients prefer to settle rather than legal confrontation; Impact of cases needs greater follow up
e.g. creation of Hammanskraal Advocacy Team	→	Door to door visits, Engaging with medical staff	→	Families treating HIV+ members less harshly Some patient – medical staff problems resolved by intervention	→	Contributed to openness, new treatment centres,	Some advocacy members still reflect self-stigma

Access to Justice

Context

Impressive strengthening of the rule of law in the post-apartheid era, is qualified by the high levels of exclusion from legal services encountered by marginalised groups. People living with HIV/AIDS, those threatened by evictions, women, and some social activists, have all been vulnerable to violation of rights.

Highlights

Knowledge-practice nexus. Research has led to a deepened understanding of the criminal justice system. Some partners regard NCHR funding as critical in terms of developing research and policy work which then provides the pillar for informing other activities. For example, *Tracking Justice: the rape attrition study* by TLAC provided the basis for engagement with public debate and government on why only one in 20 rapes resulted in a conviction. One measurement of the relevancy of the report was the request made of the Deputy Minister of Justice to TLAC to draft a rape protocol based on study results as part of the Criminal Justice Review Process. Other achievements include getting rape by policemen being recognised and added to policy.

Engagement. One major achievement has been the lobbying, advocacy and submissions and opinions that fed into the new Sexual Offences Bill which finally entered into law in December 2007. There were significant changes concerning dealing with rape in particular. TLAC coordinated the civil society engagement but several Programme partners commented that when civil society speaks with one voice changes can be achieved regarding legal reform.

TLAC on numerous occasions has been invited to engage with government. This included the rape protocol (see above), drafting aspects of the National Policy Framework of the Sexual Offences Act and assisting Gauteng provincial government to develop its own rape strategy. Partners made numerous presentations to hearings of Parliamentary Portfolio Committees. A typical outcome, for example, is when the Chairperson of the Committee in question

Beneficiaries

- Free legal advice was provided to 3013 women by WLC. Legal advice also provided by TLAC, with majority of clients women, and over 900 cases were opened through CSA for PLWAs (see Chapter on Health).
- Implementation of the Child Witness (court preparation) Project in six regional sexual offences courts providing services to an annual average of over 2000 children and parents respectively (RAPCAN).
- Rape Crisis has been involved in over 3000 court cases, and over 100 pre-trial consultation cases, and also trains police and volunteers at some police stations.
- Another outcome concerns waiting time on average for rape victims in terms of police handling- from 6-8 hours to 3 and fewer complaints.
- Thousands of Muslim women in polygynous marriages can now inherit (*Gabie Hassam* case, WLC).
- The state is being held accountable for its failure to provide for intermediaries where children are testifying as survivors of sexual offences (*Phaswane* judgement, with WLC representing People Opposing Women Abuse). The Constitutional Court handed down a supervisory interdict that orders the state to report on whether existing witness protection procedures in sexual offences cases were being adequately implemented.
- The *Marie Stopes* case, settled by WLC, means that provincial clinics providing termination of pregnancy services would not close as a result.
- *Gumede case*: The Constitutional Court declared the provisions of the recognition of the Customary Marriages Act unconstitutional on the basis of discrimination on the grounds of gender. These provisions had excluded

takes a firmer stance in Parliament on the prioritisation of relevant budget votes by denying support to other budget votes as a way of applying pressure for an allocation to be made in favour of the gender portfolio.

Engagement (cont.)

Rape Crisis has trained nearly 1000 criminal justice officials since 2005 while a review of the restructuring of the Family Violence, Child Abuse and Sexual Offences Units by the South African Police Service attributed directly to the research and subsequent advocacy conducted by RAPCAN.

Several partners often cooperate together in a range of fora, e.g., the National Working Group on Sexual Offences.

women married at customary law prior to the Act from the protection given to those married after the act and those in civil marriages. The LRC launched the application and the WLC acted as *amicus*.

Beneficiaries (cont.)

- Improving integrated rape care-related services in a rural hospital. Quality of care indicators (such as access to post-exposure prophylaxis, and pregnancy tests) show a dramatic improvement in services provided to rape victims. This is illustrative of the kind of constructive partnership that can be forged between government services and NGOs (TLAC).

Instil Democratic Norms

Partners have worked strategically across a range of fora and achievements include (i) a requirement for parliamentary oversight on the implementation of the sexual offences legislation (ii) new policy directives and national instructions for government agencies in relation to their investigation of sexual offence matters (iii) an obligation on government to invest in prevention programmes through the Children's Act and (iv) a significant shift in the approach towards children accused of committing offences through the Child Justice Act, including provisions which promote early intervention and treatment within the context of a restorative justice approach. A related outcome concerns the National Prosecuting Authority accepting that court preparation is an essential part of government service delivery.

These types of nuanced engagement reflect that NGOs discern between 'bad' policy and what represents a failure of implementation (exemplified by TLAC hospital based project to improve service delivery implementation).

Challenges

If the Parliamentary Committees are weak then there is no guarantee of impact. Furthermore, political changes means that relationships cultivated with both parliament and also members of government ebb and flow. The issue of implementation remains a core challenge. Changing practices of state is very difficult to achieve but some partners commented that a blend of hands on familiarity with operationalisation of service sectors is required alongside knowing the political and legal terrain.

Making policy more salient to ordinary South Africans was considered critical, especially in terms of monitoring specific sectors like hospitals or courts. A good monitoring and evaluation system is vital in this regard. One positive trend was that in terms of sustainability there has been a reversal of dependence upon foreign donors towards national donors from corporate sector and also the national lottery (e.g. Rape Crisis).

Interventions	→	Output	→	Outcome	→	Impact: Implementation of Socio- Economic Rights and Democratic Norms	Challenges
e.g. TLC, research <i>Tracking Justice: the rape attrition study</i>	→	Research findings related to rape	→	Deputy Minister of Justice requested TLAC to draft a rape protocol	→	Research-policy making nexus, public debate and engagement	Implementation of protocol, Changing practices very challenging
e.g. lobbying on Sexual Offences Bill	→	TLAC leading civil society networking, Lobbying, submissions etc	→	Legal reform, new Bill (2007)	→	Requirement for parliamentary oversight, New policy directives,	Problem if parliamentary committees weak, Problem of implementation of policy
e.g. WLC and LRC court cases		e.g. customary marriages	→	Declared unconstitutional on grounds of gender discrimination	→	Women no longer excluded	Problem of implementation
e.g. WLC free legal advice		Over 3010 beneficiaries	→	financial settlements	→	Rights obligations protected and promoted	More thorough assessment on quality of justice
e.g. RAPCAN child witness protection		Over 2000 children and parents annually	→	Higher rate of convictions	→	Rights obligations protected and promoted	More thorough assessment on quality of justice of interventions

Rights in the Region

Highlights

Regional knowledge on Land and tenure issues

The first seminar event drew together 45 delegates from eight Southern African countries.^{xv} A second seminar, entitled ‘Decentralizing Land, Dispossessing Women?: Recovering Gender Voices and Experiences of Decentralised Land Reform in Africa’ was held from 4-7 May 2009 in Maputo, Mozambique and brought together fifty participants from NGOs, CBOs, research institutions across southern and east Africa.^{xvi}

Additionally, a one day field trip to three different local land bodies enabled participants to directly interact with grassroots level land issues and the merits and demerits of decentralisation and its impacts on women. The fieldtrip was practical and participants were able to reflect on the discussions that preceded the field visit.

Regional Training. The University of Pretoria Centre for Human Rights (CHR) has hosted the Good governance course on Socio-Economic Rights from 2005 and the course on Development and Human Rights in December 2008. The courses created a basis for the promotion of socio-economic rights at all levels in the African region and promoted the mainstreaming of human rights in the development process. This project aims to create a network of key official representatives of both public and private sector to foster a culture of human rights, good governance and respect for the rule of law across Africa. In addition, the CHR’s Moot Court Competition is an additional unique project that provides aspiring young African lawyers the opportunity to formulate and present legal arguments on human rights issues.

Transitional Justice. ICTJ had a number of key regional outputs:

- A Handbook, that could be adapted by various partners in their country context, which focused on the historical evolution of transitional justice on different comparative experiences;
- An agreement to build the capacity of the Angolan Ministry of Family and Women; Promotion of a network of Mozambican women’s organisations, on collating documentation on the role and experiences of women in the country’s 27 year conflict;
- A handbook on veterans’ status and entitlements to inform veterans of their rights increased public awareness of the issue, influenced government policy and led to the Launch of the Namibian Transitional Justice Coalition.

Optional protocol to the International Covenant on Economic, Social and Cultural Rights. CLC played an active role in the drafting of the historic treaty at both the UN and African levels, including making submissions as the draft text. The project’s participation was facilitated through its membership in the International NGO Coalition for an OP-ICESCR. The project’s working relationship with the South African Department of International Relations and Cooperation as well as other local and global organisations was also strengthened through this process. Outcomes include a campaign aimed at getting the government to ratify the ICESCR^{xvii} and success with Parliament, through submission from campaign representatives, questioning the government on its delay in ratifying the treaty.

Human rights strengthening on HIV/AIDS within the region. From 2007 CSA purposefully integrated working with organisations such as the Regional Programme of the United Nations High Commissioner for Refugees, Human Rights Commissions in Southern and East Africa, Physicians for Human Rights and other regional organisations to share and learn from experiences.

Submissions on the *Draft Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights*. WLC's regional and international work included submissions addressing the African conference of sex workers, training Zimbabwean law students, and providing input into the process of drafting a shadow report in response to the South African government's report to the CEDAW committee

Africa Commission. At the regional level, CLC participated in the sessions of the African Commission on Human and Peoples' Rights, including making statements at the sessions on key human rights issues of concern. CLC's observer status with the Commission, granted in 2005, enables it to participate directly as an organisation in the sessions of the Commission. CLC's active participation at this level has culminated into a formal collaborative partnership with the African Commission.

Special Rapporteur on the human right to housing visit to South Africa. Several partners (LRC, CALS, CLC) facilitated the visit and introduced the UN Special Rapporteur to several communities in South Africa, and used as an opportunity to generate publicity, with press release statements and newspaper articles.

Challenges

Many of the partner activities, a number following signal from the Embassy via NCHR, have been of an exploratory nature. Although not particularly well strategised, activities have contributed to encouraging links between South Africa and the region. Overall, regional co-operation has been limited to seminar activities and/or delayed in many instances, and specific outcomes are difficult to identify. Unfortunately, in terms of national human rights institutes and HIV/AIDS, for example, the emphasis upon ownership by the institute in question requires that they take charge of hiring process. While appearing ad hoc, this was perhaps a caution that was merited by South Africa's dominant role in the sub-continent and concerns by surrounding countries that can accompany this.

Norway-South Africa

Competence on Human Rights in South Africa within Norway and Norwegian competence in South Africa

Highlights

Permanent Partnerships. Noragric at the University of Ås has had a permanent research partnership with PLAAS with support from the Programme. PLAAS have consistently requested that funding be given to Noragric due to the high quality South African and comparative-relevant research they have provided on land rights, evictions and water rights in rural and communal land areas. These partnerships, which provide concrete and long-term value for both parties represent an ideal in Norwegian-South African cooperation but they are costly, in terms of funding the Norwegian partner, rely on respective partners finding each other's work of relevance.

Project Partnerships. The Programme has facilitated a number of Norwegian-South African partnerships on particular projects. This has particularly occurred through engagements by the NCHR researchers. Examples include:

- Cooperating on a country-wide survey of access to water and sanitation services which led to engagement with the Ministry after the media release.
- Providing strategic and legal advice and creating media attention on international investment litigation against South Africa, which led to an international precedent on the rights of intervening civil society organisations.
- Providing research and strategic support for the development of a number of projects discussed above in the areas of health and housing rights.

Shorter engagements have also been supported by the Programme such as the visit by the Norwegian Children's Ombudsperson to visit the South African Human Rights Commission.

Working with the Embassy. NCHR and the Embassy cooperated in a number of different ways: e.g.

- A number of joint seminars were held with the Embassy and partners on current topics in human rights in South Africa.
- NCHR and the partners also prepared a concept note for the Embassy on areas where the Embassy could take up particular initiatives or concerns with the South Africa government.
- NCHR prepared background note for the Embassy preparation of Norway's questions for South Africa under the UN Human Rights Council and collaboration on the protection of human rights defenders in South Africa.

Awareness and networking in Norway. The Programme made some attempts to ensure that South African partners and issues were visible in Norway. South African partners regularly visited the NCHR, NORAGRIC and other Norwegian institutions under a guest researcher programme and a stipend was awarded each year to a Masters student at a Norwegian higher education institution researching on South Africa. The Programme also supported partners and others to speak at events organised by other Norwegian institutions and helped facilitate contact between some researchers in Norway and contact points in South Africa. Such networking in Norway could have been more systematic and a South Africa-Norway research network has now been established and is being jointly facilitated by NCHR, Høgskolen in Oslo, the Department of Anthropology (UiO) and NUPI.



Challenges

One of the weaknesses in the Programme has been the ability of the NCHR to work in a sustained manner with the Embassy to ensure that the knowledge and networks generated by the Programme could be pursued by the Embassy in its engagement with the South African Government. This weakness could be explained by staff turnover at both institutions and the increased importance of such engagement after the election of the red-green Government in Norway. Some steps were taken to redress this as indicated above. The second challenge, as discussed in the Introduction, has been finding a significant number of Norwegian human rights partners that could be relevant and affordable for Programme partners in South Africa.

Socio-Economic Rights and Access to Information

Context

Despite constitutionally enshrined socio-economic rights in specific sectors, these bundles of rights often require cross-cutting measures, especially those enabling so-called empowerment rights that include access to (research and other) materials, and also information.

Highlights

Research. Achievements include the *Economic, Social Rights Review*, whose circulation of 2500 issues per annum is testament to its reach. The *Socio-Economic Rights Manual* by CLC has also been a landmark in producing highly accessible practical advice and guidelines to claim socio-economic rights by NGOs, CBOs and with copies requested by government officials.^{xviii}

ODAC produced an important ground breaking study concerning government civil servants handling of information requests.

Research conducted by both organisations fed directly into a number of outcomes discussed here.

Beneficiaries

- One CLC research project involved participants from a shelter for abused women, which fed directly into the discussion with government. This resulted in 10% of housing being made available for these special needs categories.
- The redevelopment of a hostel in Diepsloot had stalled and a community protest was planned. ODAC intervened and explained the Promotion of Access to information Act and this defused the protest and encouraged engagement with local municipality. Quite often lack of information is the cause of the protests rather than service delivery itself, according to ODAC.
- ODAC has also recently been working with new partners such as COSATU who now seek to utilise the right to information provision of the Constitution.

Engagement

- The ‘Hostels to Homes’ project in Gugulethu had been suspended since 2005 due to conflicts within community over participation. The CLC made a submission to the City of Cape Town and the project was resumed.
- An important collective outcome of both CLC and others involvement with the Alliance for Children’s Entitlement to Social Security has been success in demands to extend the Child Support Grant from age 7 up to 14, now to be further extended gradually to 17 years.
- ODAC helped to create an Information Officers’ Forum, an annual meeting of up to 120 information officers from municipalities, with the incentive of a cash reward for the officer considered best at enabling access to information. One outcome has been a link between participants at the event and better success rates when requests for information have been made.

Instil Democratic Norms.

These interventions have held government to account concerning its socio-economic rights obligations and extended this in alliance with other partners across a range of fora such as Parliament and direct submissions to South Africa’s Peer review Mechanism process. Several cases and requests for information and protection of whistleblowers have resulted in outcomes such as cases that have changed the law and litigating on PAI, people who have kept their job after disclosing information (ODAC). Sometimes, just the threat of litigation has precipitated a positive response from the local government in question in providing information. Amici interventions have altered government practice on evictions, with regards to the need for alternative accommodation and ‘meaningful engagement’ for example (CLC). Other indicators of the impact of these interventions can be seen in the comments of, for example, Justice Sachs, who suggests occasions when such interventions have had the impact of swinging cases.^{xix}

Interventions	→	Output	→	Outcome	→	Impact: Implementation of Socio- Economic Rights and Democratic Norms	Challenges
e.g. CLC's Socio-economic rights manual	→	Easily accessible information and guidelines on socio-economic rights	→		→	Research-policy making nexus, public debate and engagement	No follow up on how use materials
ODAC study on information requests	→	Report Showing gaps	→	Basis for targeting intervention e.g. Information Officers Forum (see below)	→	Research-policy making nexus, public debate and engagement	Unevenness of implementation, correlated to whether urban or rural and political party in question, refusal rates still high.
e.g. ODAC's Information Forum	→	Annual event of up to 120 civil service information officers	→	Link between attendees and better success when making requests for information	→	Rights obligations protected and promoted	
e.g. ODAC	→	Court cases on PAI	→	People keeping jobs although disclosed information on whistle blowing	→	Rights obligations protected and promoted	
e.g. CLC	→	Numerous roles as Amicus	→	Has influenced outcome of cases (see Albie Sachs reference)		Rights obligations protected and promoted	
							Some courts cases rationale not always made clear beyond principles
							Implementation and also other avenues under utilised e.g. Parliament

Challenges

Sometimes the specific rationale for taking a case by ODAC has not always been made clear. At the very least track record of engagement necessary (i.e. before litigation) would appear critical. Some of the ODAC cases in particular appear to be concerned with principles in a trade off with practicalities-

factual disputes, time span, and lack of implementation, sometimes with drastic implications concerning costs. One over all issue is that the refusal rate for providing information is still at around 64% (where it was initially) and also that in the last two years the need for litigation has increased. Another issue concerns ODAC's poor reporting and limited capacity for tracking of results. CLC also indicates that despite some areas of positive collaboration with the state authorities, over all, government and civil society engagement appears increasingly difficult, yet which they also highlight as vital for implementation. CLC also considers the terrain of Parliament to have been underexplored.

Conclusions and Lessons Learnt

Fulfilling objectives

Based on the findings reviewed, the Programme has travelled a considerable distance in fulfilment of its objectives and contributed to the overall goal in strengthening socio-economic rights and access to justice in South Africa. It has been shown that Programme partners have made valuable contributions—both directly to beneficiaries and, as particularly appropriate to a rights-based approach, attempted to instil a collection of democratic and socio-economic rights norms into state and society. The Programme's outputs, and especially outcomes, can be regarded as producing an aggregate impact that has contributed to implement socio-economic rights and in doing so keep democratic space open.

These achievements must be seen in the wider context of South Africa as a newly emerging democracy. Indeed, some political analysts interpret the ANC revolt against former President Mbeki and turn to the populism of Jacob Zuma as precisely due to the former's subordination of the machinery of state institutions and neglect of both the substantive and participatory concerns of local communities and civil society.^{xx} Most recently, the need to defend the constitutional project has been powerfully stated by Kadar Asmal, former Minister of Education who fears “our constitutional order being chiselled away to the point at which we risk losing sight of the founding principles and practices of our democracy”.^{xxi} The awareness of the need to challenge the closure of formal political space and defend the constitutional order has thus been an important factor in guiding Programme support.

Programme Methodology

Partners have consistently used several linked methods encouraged by the Programme. Research often provided an important platform for identifying training needs, advocacy approaches across different fora (local authorities, Parliament, government departments etc) and, when necessary, litigation. These different but related approaches add up to producing engagement with government across a number of fronts. Many partners engaged through Chapter 9 institutions, Parliament or with national, provincial, and municipal authorities. But in the face of ineffectiveness of many of these structures, particularly in attempting to raise issues of an unpopular nature, litigation played a vital strategic role in providing leverage to engage with government. Even in strictly legal approaches litigation can galvanise a process of participation of civil society and government transparency.^{xxii} In addition, litigation has been shown to have direct outcomes to beneficiaries in poor and vulnerable communities. There are also broader benefits to consolidation of democratic norms.

These observations are underscored by the comments of a former City of Johannesburg employee, who had been directly involved in defending the City in litigation brought by Programme partners. According to him, despite all the time and resources consumed and a period of antagonistic conflict, the litigation process was a useful reminder to the City that its decision making cannot be arbitrary and must instead be reasoned. Decision-making in policy, it was stated, is often inchoate and ad hoc. Given this, forcing government to retrace why particular decisions were taken was deemed to be a very useful process. Although policy development is an ongoing process of evolution, the cases often act as catalysts that speed up policy making particularly when policy is a ‘fuzzy’ area or especially where clear human rights violations have taken place. City authorities, like others, have been compelled to defend and change their practices.

Such considerations have been entirely necessary in the defence of South Africa's democracy, especially given the relatively short time span of the post-apartheid era. The fact remains that the most dramatic changes in government policy making have taken place when a social campaign has been

created surrounding the issue at hand (e.g. TAC and AIDS treatment).^{xxiii} When a synergistic relationship is created that combines litigation and social activism, then a powerful rights-based force is unleashed.^{xxiv} The Programme has contributed to particular instances of this dynamic, which the report has documented. In particular legal contestation of the Slums Act case and support to an anti-evictions social activist platform combined powerfully to create a focus to unite and express the voice of ordinary poor people. S’bu Zikode, leader of the Abahlali movement, also captured the power created when litigation becomes genuine *social* litigation and cited instances when this is achieved. Zikode believed one such dramatic instance was provided in the extent to which the political challenge that emerged from Abahlali in alliance with other movements was dealt with in a brutal attack directed at them by the state. Another beneficiary, an inner-city grass roots activist supported by the Programme, described these necessary synergistic linkages as follows:

Litigation can’t go alone without struggle, struggle assists a lot. San Jose (i.e. the Olivia Road case) threatened because we were there as a social movement. It was a beautiful case- these two things came together. The minute you lose the struggle you lose the cases- when we fill courts, in red t-shirts, banners, this added pressure. When sitting in court judges hear the noise of people outside who are the ones suffering...

Post-2007 shifts

Two slight changes took place in Programme approach after 2007. Most of the funding had already been committed by that stage. But where newer partners were chosen one of the criteria was that they would combine both litigation and social activism when possible, to create a synergistic ‘social litigation’. The other shift concerned more engagement at the regional level. It has been encouraged by the Norwegian Embassy over the years that utilisation of South African expertise in the region would be beneficial. This approach however has tended to emphasise the creation of regional institutional linkages, often treated cautiously by South African partners and something requiring long term support. The report has documented some of the main regional activities and attempts to respond to building regional connections but recognises that a more strategic approach could have been used to guide activities. Some efforts were made but perhaps not fully developed by NCHR. At the same time, there was not always a clear direction from the Embassy as there was no specific Norwegian regional human rights policy for Southern Africa. The regional support therefore appears to recreate the overall problems associated with developing institutional cooperation and remains somewhat ad hoc in the Programme.^{xxv}

Challenges

Litigation. Programme experiences show there can be a fine line in balancing different approaches. Most notably, litigation can risk becoming too technical, and focused on principles in contrast to clients who may prefer to settle and do not have the enthusiasm for litigation that NGOs may have. It is also often a long term process which does not easily fit donor programme cycles. In the case of support to Lawyers for Human Rights (LHR), unfortunately a litigation process has started but NCHR funding will stop before any resolution is available to clients. Furthermore, more generally, cases may also be won but without any guarantee of direct benefits.

Connecting grass roots and human rights NGOs. An associated challenge is the scope and nature of connections between human rights NGOs and grass roots communities. Again, drawing attention to this point should not preclude evidence that smaller civil society organisations, CBOs and NGOs, have approached many of the bigger partners on the Programme for assistance. Indeed, the report documents several areas of interface between grassroots and Programme partners, and which have delivered direct benefits to communities. Even when not part of a community based struggle, human rights organisations can nonetheless provide critical input into holding government accountable. But there still remains a risk that NGOs’ relationships and degree of embeddedness with the grass roots is underdeveloped, if not ‘shallow’.^{xxvi} This may serve to politically de-legitimise NGOs in the long run, and discredit them as not being sufficiently grounded. Given the discourse on human rights in South Africa is one characterised predominantly as top-down, liberal and an urban-based project, there is also an element of a core and periphery type dynamic being replicated. This is unfortunately evident in the Programme, for all sorts of reasons that cannot be gone into here. With some exceptions (e.g. LRC

and TLAC), the Programme partners have struggled to work with rural communities. But a related consequence is recognised here in that human rights funding has been unevenly skewed towards quite well established urban based organisations.

Hitting policy-making? One overall challenge is that partners were not always able to easily identify direct policy implications of litigation. This may point to a necessary but not sufficiently fulfilled engagement. The limited synergy of human rights with policy making probably reflects the nature of human rights interventions and the arenas they tend to focus upon. Some respondents, who have worked both in the human rights and now in government sector, commented that human rights work can often remain self-reverential and fail to extend to arenas beyond legal processes. Policy making, whilst intimately related to it is not the same as law making. Although there is often a fine line between different components of human rights work, most partners have tended to occupy the more defensive ground surrounding protection and promotion, rather than outright fulfilment of human rights. But perhaps this line also reminds us that human rights are about sets of values, often political in nature, which should not always be fought for in the legal sphere alone. The Programme has understood this, as have the most strategic partners. The majority of partners who engage with litigation do however recognise that although it is necessary litigation is not sufficient. This is why the multi-layered strategies have been promoted by the Programme. The Programme believes the methodology deployed has been appropriate to achieve objectives. However, it is also recognised that there are different levels of policy making beyond drafting legislation and parliamentary processes that could have been more explicitly identified and challenged.

Sustainability

Many of the specific projects clearly rely on Norwegian funding but many are also well equipped to find alternative funders. One emerging trend seems to be the growth of domestic funding sources – whether national lottery or philanthropic institutes and corporate social responsibility. This is an extremely welcome trend but far from proving an answer to overseas funding at the present time. It is particularly of concern that some of the more service oriented projects might have been mainstreamed with government sector but this has been disappointing to date. As it is, some of the projects are under direct threat of closure. Unfortunately, the closer the project is to the ground, i.e. community or grass roots based, the harder it appears to be to attract funding. The issue of sustainability is therefore itself disproportionate and also manifests in the broader challenge highlighted above, namely, concerning a core and periphery in human rights funding in South Africa. How donor assistance can be better channelled into the grassroots human rights activities remains an ongoing challenge for consideration. Conversely, University sector outreach into communities appears to be under threat by spending reductions, with closures of satellite campuses, for example. This might therefore be a strategic consideration of any future Norwegian support whether human rights or research focused as a way to link outer-lying marginalised communities to South Africa's 'core'.

Final thoughts

The Programme has been an exciting experiment in realising a pioneering area of human rights, namely socio-economic rights. It has also been innovative in terms of devolving responsibility for human rights from the Norwegian government to a University based institution. The report has demonstrated the added value of doing so, not least that the Programme covered themes and methods and therefore partners that might have been somewhat more difficult to support generally or with added expertise if the Embassy had had sole responsibility. At the same time, it possibly lessened the space for the Embassy to be directly involved as a partner in the area. Indeed, it is reasonable to suggest though there were areas where partners work might have been lifted to higher level of engagement. But the fact is that Programme partners, nonetheless, have found their own channels to cajole and cooperate in equal measure. Not least, literally hundreds of newspaper articles, radio and TV interviews by partners have been skilfully used to lift their activities to a national level of visibility and engagement.

That said, another consequence of the Programme's strategic focus may have been to distance the Programme from Norwegian bilateral and diplomatic priorities. Were the partner strategies supported significantly different from modalities, most notably those that characterise Norwegian development

co-operation? It is difficult to speculate what would have happened in the absence of the delegated model. One would need to look at Norwegian support in other countries and what the Embassy did before the Programme commenced and possibly how it will act after the Programme's end. However, the focus on socio-economic rights in such a sustained and diverse manner is distinctive to a certain degree and it may be arguable that it allowed the Programme to connect with disadvantaged groups and more popular forms of political representation and engage with the State.^{xxvii}

The fact remains that the strategic relevance of socio-economic rights for communities across South Africa is something that should be highlighted and maintained rather than reverting back to traditional civil and political rights in the years to come. Indeed, the overall relevance of socio-economic rights as a force for legitimating human rights and democracy *per se* should not be underestimated. Socio-economic rights have spoken directly to South Africa's key challenges. That some influential actors indicate an erosion of constitutional values foregrounds the extremely important holding action of Programme partners. Hopefully, in years to come, when Parliament and other mechanisms, such as the South African Human Rights Commission, may demonstrate greater robustness, there may be scope for less defensive use of rights. The latter have been entirely necessary in South Africa's stage of democratic transition but are by no means sufficient. Sometimes human rights organisations do need reminding that legal approaches should never substitute political processes (often grassroots in nature) and certainly better linkages should be made between the two spheres. Striking an appropriate balance, however, is challenging but can also create a positive tension between democracy and human rights. If the legacy of the South Africa Programme is that it enabled opportunities for better understanding of what that balance should look like then this is something we can remain extremely proud.

Annex 1 Outputs

Table 1. Publications^{xxviii}

Research Reports, Books and Book Chapters, Peer Reviewed Journal Articles, and Policy Briefs

Year	Quantity
2009	64
2008	44
2007	28
2006	17
2005	15

Table 2. Workshops, Training Sessions and Conferences

Year	Quantity
2009	40
2008	37
2007	13
2006	12
2005	26

Table 3. Submissions on policy development and law reform and ongoing interaction with government stakeholders

Year	Quantity
2009	14
2008	12
2007	8
2006	9
2005	5

Table 4. Strategic Litigation Cases and Amici Curia

Year	Quantity
2009	28
2008	20
2007	24
2006	8
2005	5

Table 5. Radio/TV Interviews, Newspaper and Magazine Articles

Year	Quantity
2009	58
2008	40
2007	42
2006	30
2005	11

Annex 2 Interviews and Personal Communications

May 2010

Interviews (unless stated as 'meeting')

Cape Town/Stellenbosch

Cheweni, L.,

Director, Socio-Economic Rights Project, Community Law Centre, University of Western Cape

Cousins, Ben,

The Institute for Poverty, Land and Agrarian Studies, University of Western Cape.

Dey, Kathleen,

Director, Rape Crisis

Magardie, Sheldon,

Lawyers for Human Rights

Tilley, Alison,

Open Democracy Advice Centre, Cape Town

Williams, Jennifer.,

Director, Women's Law Centre

Johannesburg

Gotz, Graeme,

former employee, Strategic Policy Unit, City of Johannesburg, and lecturer University of Witswatersrand

Khoza, Sibonile,

Policy Department, Western Province Government

Keightley, R.,

Director, Centre for Applied Legal Studies.

Sibanda, Shereza,

Inner-City Resource Centre, Johannesburg

Vetten, Lisa,

Tshwaranag Legal Advocacy Centre

Pietermaritzburg

Philpott, Graeme,

Director, Church Land Programme

Pretoria and Hammanskraal

Meeting with: Mai-Elin Stener and Ingrid Skjølaas

Minister Counsellor, and First Secretary, Royal Norwegian Embassy

Chingore, Nyasha,

Tswelopele Project manager, Centre for the Study of AIDS, University of Pretoria.

Viljoen, Frans,

Director, Centre for Human Rights, University of Pretoria

The PLACE, Hammanskraal CSA Satellite Campus

10 beneficiaries, including members of advocacy group, and local key informants in CSA network

Personal Communication

Dugard, J.,

Director, Socio-Economic Rights Institute

Heywood, M.,

Director of Section 27 (previously called AIDS Law Project).

Zikode, S'bu,

President, Abahlali baseMjondolo

Solly Shirinda, former Office Manager, Tswelopele project, currently Gauteng Provincial Department of Social Development.

Wilson, Stuart,

Director of Litigation, Socio-Economic Rights Institute

Annex 3 References

Bezerra, R. and Delport, E./ScanTeam (2009) 'Mid-Term Review of the Norwegian Cooperation with South Africa in the Field of Human Rights: 2007-2009'.

'Beware The Bully state, *The Times*, 13th April 2010

Contract between The Norwegian Ministry of Foreign Affairs and the University of Oslo by Norwegian Centre for Human Rights regarding the administration of support to the strengthening of Human Rights in South Africa ("the Programme") (2005).

Feinstein, A. (2007) *After the Party: Corruption, the ANC and South Africa's uncertain future* (Jonathan Ball publishers).

Friedman, S., and McKaiser, E. (undated) 'Civil Society and the post-Polokwane South African State' (Heinrich Boll Stiftung).

Heywood, M.(2005) 'Shaping, Making and Breaking the law in the Campaign for a National HIV/AIDS Treatment Plan', in Jones and Stokke (eds.)

Letter of Intent between governments of the Republic of South Africa and Norway

Guidelines for Norwegian–South African development cooperation 2005-2009.

Jones, P. and Stokke, K. (2005) *Democratising Development: The Politics of Socio-Economic Rights in South Africa* (Martinus Nijhoff:Leiden).

Langford, M, et al (forthcoming) *Symbols or Substance*.

Mangu, X. (2009) *The Democratic Moment: South Africa's Prospects under Jacob Zuma* (Jacana Media: Auckland Park).

Sachs, A. (2007) Concluding comments on the panel discussion, *ESR Review*, 8, 1, May.

South Africa Programme (2005,2006,2007,2008) Annual Reports

South Africa Programme (2005,2006,2007,2008,2009) Annual Plans

South Africa Programme (2005, 2006, 2007, 2008, 2009) Annual (and bi-annual) Human rights reports

South Africa Programme (2005, 2006, 2007, 2008, 2009) Partner reports

South Africa Programme (2010) Partner's final report

South Africa Programme (2005, 2006, 2007, 2008, 2009) Minutes of Annual and other meeting meetings with Royal Norwegian Embassy, Pretoria.

South Africa Programme (2005) Strategy Paper 2005-2009, dated, 01/08/2005

South Africa Programme (2006) Strategy for the South Africa Programme for 2007- 2009, dated, September 7th.

South Africa Programme (2010) Terms of reference: Consultancy/secondment: Final report on the NCHR human rights programme in South Africa funded by the Ministry of Foreign Affairs through the Norwegian embassy in South Africa 2005 – 2009.

Tornquist, O. (2009) 'The Problem is representation!', in Stokke, K., Tornquist, O., and Webster, N., *Rethinking Popular Representation* (Macmillan: New York).

Annex 4 End Notes

* Former Senior Researcher, South Africa Programme.

ⁱ As set out in the *Terms of Reference for the Final Report*, date... and also following a meeting with the Embassy on 12th April, 2010, and minutes with Embassy 5th May 2009.

ⁱⁱ For a detailed description of partners 2005-2009, see MTR, ScanTeam evaluation.

ⁱⁱⁱ See Feinstein (2007).

^{iv} Furthermore, such a change in focus was also pragmatic in terms of a Programme, as mentioned, of this size and capacity, to give strategic vision, coherence and identity. Another consideration was that it would minimise some of the dilemmas associated with the Embassy's use and selection of partners, which the Programme has not always deemed compatible with long term co-operation, nor, relevance (see 'modalities' section).

^v The minutes from 2006, for example, state that the 'Embassy clarified that NCHR now holds independent responsibility for the selection of partners and projects relevant to fulfil the NCHR's commitments under the contract as detailed in Article 4 and in the program strategy.'

^{vi} Tornquist (2009).

^{vii} 'Service delivery' is at best a shorthand description of grass roots dissatisfaction with the developmental path South Africa has taken, a composite of frustration over lack of accountability, poor services and perceptions of corruption. See Human Rights Reports from Programme to Embassy, 2005-2009.

^{viii} See response of the Centre to the MTR, May 2009.

^{ix} See for example chapter on CLRA process in Jones and Stokke (2005).

^x See for example, 'Water Services Fault Lines: An Assessment of South Africa's Water and Sanitation Provision across 15 Municipalities', a joint publication between CALS and NCHR researcher Malcolm Langford.

^{xi} The platform evolved from the Poor People's Alliance, and has 5 affiliated structures: Landless People's Movement, Gauteng; The Rural Network, KwaZulu-Natal; Abahlali baseMjondolo, KwaZulu-natal, and Western Cape.

^{xii} The report, 'Stigma and Human rights- the Tswelopele Project', CSA, University of Pretoria, with NCHR researcher Peris Jones, also used in creating South Africa's National Stigma Strategy, see http://www.justice.gov.za/vg/hiv/docs/2007_NATIONAL-STIGMA-STRATEGY_FrameworkSectorPlans.pdf.

^{xiii} Interview with beneficiaries, Hammanskraal, April, 2010. Following CSA training to COSATU shop stewards, for example, one member was able to use the knowledge given to challenge an employer who had been pressuring an employee to disclose their HIV status. The COSATU representative, capacitated by the training, was able to contest the employer and demonstrate why this had been wrong in relation to violation of confidentiality.

^{xiv} Indeed, the failure to find cases to litigate or even take to the Equality court, may not be a failure at all but rather reflects local perceptions and use of human rights and the law.

^{xv} In addition, PLAAS cooperated with LandNet to facilitate a separate meeting of that regional network on the day prior to the workshop.

^{xvi} The participants were representative of Botswana, Zambia, Malawi, Namibia, Lesotho, Madagascar, Swaziland, South Africa, Mozambique, Angola, Tanzania, Zimbabwe, Kenya, Uganda and Rwanda. Partners and experts from the international community (including Italy, UK and Ottawa-Canada) also attended the workshop.

^{xvii} Led by CLC and Black Sash, National Welfare Social Service and Development Forum and People's Health Movement in South Africa, and South African Human Rights Commission.

^{xviii} The CLC project conducted research on the obligations of local government in relation to socio-economic rights. One of the outputs of this research was the lay publication, *Realising socio-economic rights in the South African Constitution: The obligations of local government – A guide for municipalities*. This publication has been distributed widely to municipalities and other relevant institutions. In response to receiving the guide on socio-economic rights obligations of local government, a government official (Bongiwe Kunene, Head: Office of the Deputy President) wrote 'It is indeed very pleasing to know that there are institutions that are keen on working hand in hand with government to improve service delivery to our communities by the local government'.

^{xix} See ESR Review, May, 2007.

^{xx} See, for example, Mangu (2009).

^{xxi} 'Beware The Bully state, *The Times*, 13th April 2010.

^{xxii} e.g. LRC and the Granati case.

^{xxiii} See Mark Heywood's chapter, in Jones and Stokke (eds.)

^{xxiv} Personal communication, Mark Heywood, Director, Section 27 (previously AIDS Law Project).

^{xxv} In contrast to other countries (such as more developed regional policy approach of Dfid, Sweden, Ireland, and the Netherlands, for example) this is an area that should be considered a lost opportunity for Norway to expand. Greater emphasis might have been placed upon engagement with regional economic commissions such as SADC, which could have provided an alternative entry point for Norway to engage South Africa

^{xxvi} See Friedman and McKaiser (not dated).

^{xxviii} The quantitative are based solely reported results in NCHR Annual Reports from CALS, CHR, CLC, CLP, ComaCare, CSA, DGRU, ICTJ, LHR, LRC, ODAC, PLAAS, RAPCAN, RAPE CRISIS, TLAC and WLC.