



31 October 2016

**BRIEFING NOTE ON THE RELATIONSHIP BETWEEN THE FOUNDATION FOR
HUMAN RIGHTS, DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT AND THE EUROPEAN UNION**

TABLE OF CONTENTS

1. INTRODUCTION	1
2. KEY PROGRAMMES	2
3. CONCLUSION	12
4. REFERENCES	13

1. INTRODUCTION

In **1996** President Nelson Rolihlahla Mandela signed an agreement establishing the foundation for human rights, as an independent grant making agency to be known then as the - *European Union Foundation for Human Rights (EU-FHR)*.¹

In **2001**, the Justice Department, with the European Union (EU), agreed that the European Union Foundation for Human Rights would become an independent civil society entity, to be known as the **Foundation for Human Rights (FHR)**. The relationship between the EU, FHR and Justice Department is structured as follows:

- EU provides the funding (in terms of a high-level financing agreement which is concluded with the Republic of South Africa);
- Justice Department functions as the line ministry overseeing the programmes; and
- The FHR is the implementing agency for grant-making.

Governance of the FHR is managed by a Supervisory Board, whose members were initially selected by the Justice Department on the basis of representivity, through an open nomination process involving both civil society and government. (*Refer to Annexure 1 for the current members of the FHR Board*).

DoJ&CD OVERSIGHT

Initially, the Justice Department exercised its oversight responsibility in respect of the FHR by placing an official with *observer status* on the Supervisory Board of the FHR, however, this changed significantly in 2015 under the Socio-Economic Justice for All programme (SEJA)/ AMARIGHTZA programme (which is discussed in greater detail below).

¹DoJ&CD Presentation on the Foundation for Human Rights 23 April 2015



Under the new SEJA/AMARIGHTZA programme, the Justice Minister and the Chairperson of the FHR Board signed a Memorandum of Agreement (MoA), outlining the roles and responsibilities of the DOJ&CD and the FHR.

Key aspects of the MoA include, amongst others:²

- Establishment of a Working Group comprising relevant line function Chief Directorates in the DOJ&CD and chaired by the DDG of the Branch Constitutional Development.
- The Justice Minister to appoint senior officials to serve on the Board of the FHR.
- **The Justice Minister's Representatives on the Board to have equal decision making powers and no longer observer status.**
- Quarterly meetings between the DOJ&CD and the FHR.
- Monthly, quarterly and Bi-Annual Reports submitted to the DOJ&CD by the FHR.

Comment

- The FHR is described as 'an independent civil society entity'. The Committee may wish to know more about how the entity is constituted and funded?
- Subsequent to the initial selection (through a nomination process) by the Justice Department of Members of the Supervisory Board it is unclear how; (i) New members of the Board have been selected (and what criteria are used)?; (ii) How long they serve as Members of the Board?; and (iii) What process is used to replace Members who leave the Board?
- Why was the decision only taken with the introduction of the new SEJA/AMARIGHTZA programme to increase the responsibilities of the Justice Department and strengthen the relationship with the FHR Board? Who are the senior Justice officials who serve on the Board?
- In addition to the Supervisory Board the FHR has an Executive Director - Ms Yasmin Sooka and a Deputy Director - Mr Hanif Vally.³ It is not clear if these Directors are appointed by the Board? According to the FHR website the entity also has 34 staff members (and six interns).⁴

2. KEY PROGRAMMES

Two key programmes funded by the EU through the FHR/Justice Department partnership are discussed as follows:

² DOJ&CD Presentation on the Foundation for Human Rights 23 April 2015

³ FHR Staff (Accessed at <http://www.fhr.org.za/index.php/funding/funding-process/>)

⁴ FHR Staff (Accessed at <http://www.fhr.org.za/index.php/about/staff/>)



2.1 Access to Justice and Promotion of Constitutional Rights Programme (AJPCR) - Strengthening Civil Society Participation

The AJPCR Programme was rolled out from **2009 to 2012**. The programme was conceptualised and approved by the then Minister of Justice and Constitutional Development, Mrs Brigitte Mabandla and launched on 10 December 2008. Within the programme there were three key result areas; **(1) access to justice; (2) awareness of constitutional rights; and (3) promotion of participatory democracy.**

The EU allocated a sum of **25 million Euros** for this programme. This was to be disbursed over a three-year period (2009-2012). Of this amount:⁵

- (a) The local delegation of the EU was responsible for disbursing 5 million Euros directly to Civil Society Organisations (CSO's) for capacity building, lobbying and advocacy activities. **Six grants were awarded to the following organisations:**⁶ Community Law Centre for the initiative: *Pursuing the Potential within the Power of the People*;⁷ Tshwaranang Legal Advocacy Centre to end Violence against Women for the initiative: *Promoting Access to Justice for Rape Survivors*; Oxfam, Great Britain for the initiative: *Strengthening Access to Justice and Constitutional Rights for non-Nationals in South Africa*;⁸ Black Sash Trust for the initiative: *Community Monitoring and Advocacy Project (C-MAP)*;⁹ the Association for Rural Advancement (AFRA) for the initiative: *Establishment of a Land Rights Legal Unit*; and Khulisa Services for the initiative: *Justice and Restoration Programme (JARP)*.¹⁰
- (b) The balance of **20 million Euros** was allocated by the FHR to **fund 584 projects** under the three key result areas. The FHR sought project proposals from eligible civil-society organisations for funding and provided grants and grant-management support to approved projects. Community-based organisations that used a rights-based approach to development with a focus on vulnerable and marginalised groups were favoured for funding.¹¹

⁵ Action Fiche for the Republic of South Africa

⁶ AFRA has established a Land Rights Legal Unit in rural KwaZulu-Natal, to provide comprehensive legal advice and assistance services to rural communities and dwellers.

⁷ The Community Law Centre's aim with this project is to advance accountability in the realisation of constitutional rights through CSO and parliamentary dialogue on international human rights obligations.

⁸ Oxfam, in collaboration with Adventist Development and Relief (ADRA) South Africa, Consortium for Refugees and Migrants in South Africa (CoRMSA), and African Centre for Migration and Society (ACMS), intends to increase accountability and improve governance among government and civil society institutions, which are responding to and seeking to prevent xenophobic violence. This will be achieved through collecting and processing information to enable early warning and to monitor access to justice systems for victims.

⁹ The C-MAP, undertaken in partnership with Social Change Assistance Trust, aims to encourage a practice of monitoring government service delivery by community-based civil society organisations in townships and rural areas. The information obtained by this monitoring will be used to inform advocacy actions and dialogue with government.

¹⁰ The JARP initiative seeks to improve access to justice for rural and urban communities by addressing the harm caused by the crime to both the victims and the offenders. This is addressed through the provision of victim and offender empowerment services, including mediation, victim support services, providing reparation to offenders, attending to offenders' cases and performing community service.

¹¹ Action Fiche for the Republic of South Africa



It has been reported that the key achievements of the AJPCR Programme included:¹²

- Reaching an audience of nine million persons through popular education programmes on constitutional rights;
- Raising awareness of rights among 360,000 farm workers and farm dwellers and increasing their access to justice;
- Supporting the diversion of 10,000 persons from prison;
- Ensuring that 5400 CSO members benefited from capacity building programmes.
- Supporting more than 176 Community-based Advice Offices (CAOS);
- Ensuring that more than 100,000 migrants were provided with legal support services; and
- 1,300 CSO were able to engage in formal policy dialogues with the State.

Under the AJPCR programme, the FHR 2009-2012 reportedly provided support to 176 Community Advice Offices through direct funding and capacity building.¹³

In addition, the AJPCR programme, provided funding for more than 200 workshops for the human rights sector which covered issues such as migration, hate crimes, combating racism and xenophobia, gender based violence, disability and discrimination and exclusion.

Comment

- In April 2015 the Justice Department reported to the Portfolio Committee that the Human Sciences Research Council (HSRC) had been appointed by the FHR to conduct a final evaluation of the AJPCR programme to assess: ***'the design, implementation and the results of the programme in order to determine its relevance, efficiency, effectiveness and impact in the context of its stated aims.'***¹⁴ The cost of the evaluation was R1 million which was provided by the FHR.¹⁵ This report was to have been completed within three months.¹⁶ The final evaluation report has apparently been presented to the Department.¹⁷ What were the successes/challenges identified and lessons learned? How have these been incorporated into the rollout of the SEJA/AMARIGHTZA programme?

2.2 Rollout of the Socio Economic Justice for All programme (SEJA)/AMARIGHTZA Programme.

In May 2012, the local Delegation of the European Union, proposed to the Justice Department and National Treasury, that a new programme dealing with the promotion, protection and

¹² Action Fiche for the Republic of South Africa

¹³ AMARIGHTZA Socio Economic Justice for All (SEJA) 2015 - 2017 2016 GUIDELINES Call for Grant Proposals (Accessed at http://www.fhr.org.za/files/1014/5579/2405/Call_Guidelines_Advice_Offices_25th_March2016F.pdf)

¹⁴ DoJ&CD Presentation to the Portfolio Committee on Justice and Correctional services on the Foundation for Human Rights 23 April 2015

¹⁵ DoJ&CD 2015/16 Annual Report p120

¹⁶ DoJ&CD Presentation to the Portfolio Committee on Justice and Correctional services on the Foundation for Human Rights 23 April 2015

¹⁷ DoJ&CD 2015/16 Annual Report p120



fulfilment of constitutional rights issues be funded under Sector Budget Support through the Justice Department.¹⁸

On **10 December 2014**, with funding from the EU, the Justice Department in partnership with the FHR, launched a new three year programme known as '**Socio-Economic Justice for All (SEJA)**' or the '**AMARIGHTZA**' programme.¹⁹ The purpose of the AMARIGHTZA/SEJA programme is to support the South African Government's policy on socio-economic justice as set out in the Constitution, as well as the Justice Departments Strategic Plan 2013-2018.²⁰ The objectives of the programme are also aligned with the commitment contained in the National Development Plan to build an active informed citizenry.

A financial agreement (or Sector Reform Contract) was concluded between the EU and South Africa. (A copy of the Action Fiche for the Socio- Economic Justice for All Support programme has been forwarded with this document to provide some background for the Committee).

Comment

- According to the Justice Departments 2015/16 Annual Report the period of commitment for EU funding to the SEJA/AMARIGHTZA Project is until November 2018.²¹
- The Justice Department reports that quarterly working group meetings are held with the EU and FHR to report and discuss on progress with the rollout of the program.²² Quarterly meetings are also held with National Treasury, the Justice department and the EU to assess progress in the implementation of SEJA.²³
- It is reported that SEJA will also assist government departments in respect of the following: fulfilling their constitutional obligations by developing and disseminating baseline information on the delivery of socio-economic rights; determining the minimum core of each right and what progressive realisation would mean; and determining whether policy gaps exist.²⁴

The **Justice Departments Constitutional Development Branch** is tasked with providing co-ordination, integration, supervision, mobilisation and support towards the implementation of the AMARIGHTZA/SEJA objectives and key result areas.²⁵

The budget for the AMARIGHTZA/SEJA programme is **25 million Euros**.²⁶ Of this amount, 18 million Euros will be used for *budget support*, 7 million Euros for *complementary support*

¹⁸ Deputy Minister J Jeffery: Fifth AGM of Supervisory Board of Foundation for Human Rights 15 Nov 2014 (Accessed at <http://www.gov.za/keynote-address-deputy-minister-justice-and-constitutional-development-hon-jh-jeffery-mp-5th-annual>)

¹⁹ The launch of the SEJA policy was the culmination of three years of consultation with all stakeholders.

²⁰ In 2012 the Department established a Constitutional Development subprogramme to enhance its Constitutional mandate.

²¹ DoJ&CD 2015/16 Annual Report p122

²² DoJ&CD 2015/16 Annual Report p123

²³ Action Fiche for the Republic of South Africa

²⁴ Action Fiche for the Republic of South Africa

²⁵ Action Fiche for the Republic of South Africa

²⁶ DoJ&CD 2015/16 Annual Report p122



(of which 1.7 million Euros will be used for *technical support* to the Justice Departments Constitutional Services Branch) and 5 million Euros to be used for *direct support* to CSOs.²⁷

The Sector Reform Contract contains the following *high-level conditions* for the disbursement of the EU funds:

- (1) General conditions:
 - (i) Satisfactory progress in the implementation of the DOJ&CD Strategic Framework for SEJA and continued credibility and relevance of that or any successor strategy;
 - (ii) Implementation of a credible stability oriented macroeconomic policy;
 - (iii) Satisfactory progress in the implementation of the programme to improve public finance;
 - (iv) Satisfactory progress with regard to the public availability of accessible, timely, comprehensive, and sound budgetary information.
- (2) A Specific condition, namely, the *integration* of the SEJA Strategic Framework into the Justice Department Annual Performance Plans covering the programme implementation period.

The expected results (Key Result Areas–KRA's) contained in the Sector Reform Contract (SRC), are as follows:²⁸

- **KRA 1:** Improved awareness of constitutional rights with an emphasis on socio-economic rights and on vulnerable and marginalised groups;
- **KRA 2:** Enhanced participatory democracy through public policy dialogue on constitutional rights;
- **KRA 3:** Improved and sustained collaboration between Government, Chapter Nine Institutions, Civil society and other stakeholders in terms of justice service delivery and socioeconomic rights (including support for Community Advice Offices (CAO's));
- **KRA 4:** Increased research on socio-economic rights and jurisprudence;
- **KRA 5:** Improved sector coordination and policy design on Constitutional development; and
- **KRA 6:** Strengthened capacity, engagement and participation of Civil Society Organizations (CSOs) in the realisation of constitutional rights.

Projects funded through this programme should focus on facilitating the realisation of socio-economic rights for vulnerable and marginalised groups, the strengthening of civil society organisations and building sector coordination in the social justice sector.²⁹

²⁷ Action Fiche for the Republic of South Africa

²⁸ Action Fiche for the Republic of South Africa

²⁹ Advice Offices: Call for Proposals (Accessed at <http://www.fhr.org.za/index.php/funding/calls-proposals/advice-offices-call-proposals/>)



According to the FHR priority will be given to projects that address the concerns of the most vulnerable groups in society (as defined by the South African Human Rights Commission). This category of persons includes:

- Women in vulnerable situations exposed to violence and abuse including domestic violence
- Children in vulnerable situations exposed to violence and abuse including domestic violence as well as child-headed households
- Rural and Urban poor communities
- Farm Workers and Farm Dwellers
- People affected by HIV/AIDS
- People affected by
 - Violations of their socio-economic rights
 - Race and xenophobia
 - Lack of land rights
 - Their advanced age
- Persons with disabilities
- Youth, including youth in prisons

Funding will be directed towards:

- CSOs based in, or working closely with communities in rural and peri-urban areas.
- Community Advice Offices (CAO's).

For example, the FHR has issued the following call for proposals for funding for CAO's:³⁰

Foundation for Human Rights
Advice Offices: Call for Proposals
Call Number: SEJA/RA 3.1.3/SO2
Closing Date: 2016-03-25

This Call is targeted at supporting **community based advice offices (CAOs)** that facilitate the rights of vulnerable and marginalised groups utilising a rights based approach by funding a total of **100 Advice Offices** linked to communities over the duration of the programme.

The FHR will focus on funding those community-based advice offices which provide the following services:

- Advice and paralegal services to marginalised and vulnerable groups on violations they experience including socio-economic rights.

³⁰ AMARIGHTZA Socio Economic Justice for All (SEJA) 2015 - 2017 2016 GUIDELINES Call for Grant Proposals (Accessed at http://www.fhr.org.za/files/1014/5579/2405/Call_Guidelines_Advice_Offices_25th_March2016F.pdf)



2.3 Justice Department Reporting on the SEJA Project

As required by the Sector Reform Contract the Department has incorporated reporting on SEJA into its strategic plans, specifically under Programme 3: State Legal Services (Constitutional Development subprogramme) through *Strategic Objective 16: Promotion of Broad Based Knowledge and support for values of equality, human dignity and fundamental human rights*.³⁶ This Strategic Objective has five performance indicators and performance was measured as follows in 2015/16:

Indicator	Target 2015/16	Actual Performance
% of people with awareness of the Constitution	54%	46%
No of activities conducted to improve awareness of constitutional rights	9	9
No of activities to improve sector co-ordination and socio economic rights	4	4
No of activities to improve capacity and engagement of CSO's in constitutional rights	4	4
Number of municipalities that participated in NAP dialogues.	70	77

The Department reports that during 2015/16 site based surveys were conducted in three provinces Gauteng, North West and Mpumalanga (reaching 4200 people) to measure awareness of the Constitution and human rights.³⁷ The survey found that only 46% of people were aware of the existence of either the Constitution or Bill of Rights and less than 10% had read these documents or had either of these documents read to them.³⁸

The Department also reports on the SEJA programme in respect of **three** key result areas. (This would appear to reflect the work done by the FHR but this may need to be clarified by the Department):³⁹

- (i) Improved awareness of constitutional rights to enhance participatory democracy:

Indicator	Target 2015/16	Actual Performance 2015/16
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³⁶ DoJ&CD 2015/16 Annual Report p87

³⁷ DoJ&CD 2015/16 Annual Report p87

³⁸ DoJ&CD 2015/16 Annual Report p87

³⁹ DoJ&CD 2015/16 Annual Report p87-89



No of people reached by programmes to raise awareness and knowledge of the Constitution	5 million	5.9 million
Grants awarded to CSO's to promote awareness and socioeconomic rights amongst vulnerable groups	120 grants	121 grants
Policy forums and engagements between civil society and government	12 forums and engagements	13 forums and engagements
Public policy dialogues on human rights issues	20	22
Research programmes on implementation of socio-economic rights	2 programmes	3 programmes

(ii) Improved collaboration, sector co-ordination and policy design with respect to the delivery of justice services:

Indicator	Target 2015/16	Actual Performance 2015/16
Grants awarded to CSO's in the human rights sector	65 grants	65 grants
Technical support for programmes within the branch Constitutional Development	2 technical support initiatives	3 technical support initiatives

(iii) Improved capacity and engagement of Civil Society in constitutional rights:

Indicator	Target 2015/16	Actual Performance 2015/16
Design and implement programmes to promote sustainability of CSO's in the human rights sector	2 programmes	2 programmes
Design and implement capacity building interventions to build and strengthen active citizenry	3 programmes designed 6 programmes designed and implementation plan	3 programmes designed 6 programmes designed and implementation plan

Comment

- Although it was reported that under the AJPCR programme nine million persons had been reached through popular education programmes on constitutional rights and in 2015/16 5.9 million people had been reached by SEJA programmes to raise awareness and knowledge of the Constitution. The fact that the site based surveys conducted in three provinces Gauteng, North West and Mpumalanga (reaching 4200 people) found that only 46% of people were aware of the existence of either the



Constitution or Bill of Rights and less than 10% had read these documents or had either of them read to them is a serious concern twenty one years into democracy.

- What is meant by the indicator 'Technical support for programmes within the branch Constitutional Development'?
- According to the Departments presentation provided to the Committee in April 2015 under the new SEJA programme the DOJ&CD and FHR have contracted with 'a consortium of universities' to conduct a series of strategic engagements on race, transformation and power in the current financial year 2015/16.⁴⁰

3. CONCLUSION

One of the challenges with the FHR/Justice AJPCR and SEJA/AMARIGHTZA programmes is understanding/measuring the actual long term impact of these multi-year programmes. The Justice Department reports for instance that the SEJA programme is based on a rights based approach to the long term eradication of poverty.⁴¹

It is interesting to note that the Human Sciences Research Council conducted research in 2014 into the issue of public funding of Community Advice Offices (CAO's).⁴² The research found that the CAO's played an important role in providing free basic legal and human rights information to poor communities across urban areas, rural villages, urban townships and informal settlements. The findings of the study included a proposal that serious consideration should be given to public funding of CAO's in the form of an annual funding amount (of R200 000 for 'core costs' to 236 CAO's) and this should be accompanied by oversight by an appropriate agency such as the Foundation for Human Rights.⁴³

Comment

The Committee may be interested in obtaining more information on:

- Examples/Case studies of grants awarded to Community Advice Offices/Civil Society Organisations and specific projects identified to receive funding in respect of the Socio-Economic Justice for All (SEJA) Programme.
- What follow-up evaluations are conducted to determine if; (a) the funding has been used for the purpose for which it was granted; and (b) has achieved the aims of the project as initially outlined to the FHR? Do the CSO's and/or CAO's provide any evaluation of the support provided by the FHR?

⁴⁰ DoJ&CD Presentation to the Portfolio Committee on Justice and Correctional Services on the Foundation for Human Rights (dated 23 April 2015)

⁴¹ DoJ&CD 2015/16 Annual Report p87

⁴² Y Davids, MD Dipholo, N Majozi and L Verwey, HSRC Policy Brief Community Advice Offices Making a Case for Public Funding (dated September 2015)

⁴³ Ibid



- Whether the FHR and the Justice Department believe that enough has been done to implement programmes to promote the sustainability of CSO's and CAO's in the human rights sector?
- What will be the status of the FHR should the EU funding end? Does the FHR channel funding from other donor agencies/countries?
- Whether the Justice Departments Constitutional Development subprogramme is adequately capacitated to ensure co-ordination, integration, supervision, mobilisation and support towards the attainment of the SEJA objectives and key result areas?

4. REFERENCES

Action Fiche for the Republic of South Africa

AMARIGHTZA Socio Economic Justice for All (SEJA) 2015 - 2017 2016 GUIDELINES Call for Grant Proposals (Accessed at http://www.fhr.org.za/files/1014/5579/2405/Call_Guidelines_Advice_Offices_25th_March2016F.pdf)

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