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**ANNEX 1**

of the Commission implementing Decision on the Annual Action Programme 2013 in favour of the Republic of South Africa to be financed from the general budget of the European Union

**Action Fiche for Socio-Economic Justice for All (SEJA) Support Programme****1. IDENTIFICATION**

Title/Number	Socio-Economic Justice for All (SEJA) Support Programme CRIS number: 024-552		
Total cost	Total amount of <b>EUR 25 000 000</b> EU budget contribution of which EUR 18 000 000 for budget support EUR 7 000 000 for complementary support		
<b>Budget support</b>			
Aid method / Method of implementation	Direct (centralised) management Sector Reform Contract (SRC)		
Type of aid code	A02 – Sector Budget Support	Markers	BSAR
DAC-code	15130	Sector	Legal and Judicial Development
<b>Complementary support</b>			
Aid method / Method of implementation	Direct (centralised) management Grants – Call for Proposals (EUR 5 000 000) Procurement of services and supplies (EUR 2 000 000)		
DAC-code	15160	Sector	Human rights

**2. RATIONALE AND COUNTRY CONTEXT****2.1. Summary of the action and its objectives**

The proposed SRC aims to support the South African Government's policy on socio-economic justice as set out in its Constitution as well as the Department of Justice and Constitutional Development Strategic Plan 2013-2018, and Strategic Framework on Socio-economic Justice for All (SEJA). In particular, it will support the newly established Constitutional Development Branch to fulfil its mandate to enhance constitutional rights, with a focus on socio-economic rights.

The South African Constitution, in its Bill of Rights, sets out an ambitious framework in which socio-economic rights such as environment, property, housing, health care, food and water, children's rights, and education can be claimed in justice where the State has, in most cases, the obligation to "take reasonable legislative and other measures within its available resources" for the "progressive realisation" of these rights. However, despite progress made, the country context is still typified by high rates of poverty and

inequality and socio-economic rights are still inaccessible to a significant part of the population, especially in rural areas. The programme aims to help meet these goals through a strong partnership between Government and Civil Society Organisations (CSOs) and a mix of modalities, including technical assistance.

## 2.2. Country context

### 2.2.1. Main challenges towards poverty reduction/inclusive and sustainable growth

A thorough analysis of key development issues, including economic and social challenges facing South Africa (SA) has been carried out by the SA National Planning Commission<sup>1</sup> which produced a Diagnostic Overview (July 2011) and a National Development Plan 2030 (August 2012).

The *Diagnostic Overview* (DO) identifies nine major challenges that impact on these key problems: (i) too few South Africans are employed; (ii) poor educational outcomes; (iii) high disease burden; (iv) divided communities; (v) public service performance is uneven; (vi) spatial patterns marginalise the poor; (vii) corruption; (viii) resource intensive economy; and (ix) crumbling infrastructure. The National Development Plan (NDP) includes analysis of other areas not covered in the DO, such as land reform, migration, crime and justice, the role of parliament, and the role of South Africa in the region. The analysis in both the DO and in the NDP, matches the analysis in other documents, notably the New Growth Path (NGP). Out of the nine major challenges, three are identified as critical in the NDP: jobs, education, and state capacity.<sup>2</sup>

In the areas related to governance, the performance of the public sector comes in for criticism. Despite the increase in services "concerns have been raised about the quality" and the "level of variance in service delivery", part of which is ascribed to the "lack of clarity about the powers and functions of local government". One of the main issues around social cohesion is that South Africa remains very much a divided society where the "major dividing line in society is still race". In terms of the realisation of *socio-economic rights*, attempts to improve *education* have faltered - as the DO states, while access has increased "efforts to raise the quality of education for poor children have largely failed". The *health* system is equally problematic, with the DO stating "the rise in total deaths, low life expectancy, and high infant mortality are all evidence of a health system in distress". On *human settlements* the DO remarks, the "spatial legacy of apartheid continues to weigh on the entire country" with the poorest living in remote rural areas, and the urban poor far from places of work.

The *National Development Plan* (NDP) discusses the core challenges of poverty, inequality, and unemployment, where it refers to: 39% of people living on less than ZAR 419<sup>3</sup> per month (official poverty line)<sup>4</sup>; and a "strict" unemployment rate of 25%<sup>5</sup>. Unemployment for the 15-24 age group stands at 50% and young black people account for about two-thirds of the unemployed below the age of 35. Income inequality<sup>6</sup> measured by the Gini coefficient is 0.69. Whilst South Africa is ranked as an upper-middle income country with gross domestic product (GDP)/capita around USD 8,000, the poorest 10% of the population (largely black) earn about 0.6% of national income, and the richest 10% (largely white) earn about 50% of national income. The DO notes that poverty amongst women-headed households is higher than the average and women continue to earn less than men, although educational qualifications are narrowing. The NDP also states that although non-sexism is enshrined in the Constitution, "patriarchal practices still render the participation, citizenship, and voice of women suboptimal".

<sup>1</sup> The National Planning Commission consists of 26 people from government, the private sector, academia and unions.

<sup>2</sup> The DO and the NDP focused on two critical areas – jobs and education; it was following consultation that the NDP added a third critical area, namely, state capacity.

<sup>3</sup> 1 EUR is indicatively 12 ZAR (June 2013).

<sup>4</sup> There are a number of different measures of poverty: the "Development Indicators, 2011" refers to 34.5% of the population living below a poverty line of R422 in 2009 (compared to 50.5% in 1994); whilst the "MDG Country Report, 2010" refers to 5% of the population living on less than \$1 in 2006 (compared to 11.3% in 2000).

<sup>5</sup> This unemployment rate excludes discouraged job seekers. If discouraged job seekers are included the unemployment rate is around 33.5%.

<sup>6</sup> It is worth recalling that the Gini coefficient measures *income* inequality, and not *asset* inequality. Many observers note that whilst income inequality is high and has increased, asset inequality has declined over recent years with increases in access to water (62% in 1994 to 95% in 2011); sanitation (51% in 1994 to 82% in 2011); electricity (60% in 1997 to 76% in 2011); formal housing (68% in 2001 to 77% in 2010).



### 2.2.2. *Fundamental values*

SA has a strong framework for adherence to the fundamental values of democracy, human rights, and the rule of law. It has also ratified all the main international human rights conventions.<sup>7</sup>

With respect to *democracy*, peaceful periodic democratic elections are held in respect of national laws and international standards. Constitutional/democratic institutions function well and checks and balances are in place. A strong civil society and media significantly contribute to pluralism, oversight and accountability.

With respect to the *rule of law*, the SA Constitution includes the three branches of the State (Government, Legislature and Judiciary), in accordance with the separation of powers. The South African Judiciary carries out its Constitutional mandate impartially, and its independence vis-à-vis Government is ensured by the Office of the Chief Justice, whose supervision powers have been recently strengthened.

With respect to *human rights*, they are enshrined in the Constitution and the Bill of Rights. Particular features stand out in terms of SA's approach to human rights. First, section 7.2 of the Constitution requires the State to "respect, protect, promote and fulfil the rights in the Bill of Rights". Second, the Bill of Rights establishes a number of socio-economic rights in the areas of environment, property (section 25), housing, health care, food, water, and social security, children, and education (section 29). The State has the obligation, in most cases, to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. Third, these socio-economic rights can be claimed in justice: citizens are empowered to bring authorities to court if their rights are not realised in accordance with the terms of the Constitution.<sup>8</sup> Non-judicial actions vis-à-vis the State can also be undertaken as illustrated by an action initiated in 2012 and led by a South African civil society organisation (CSO) on minimum norms and standards for school infrastructure.<sup>9</sup>

## 2.3. *Eligibility for budget support*

### 2.3.1. *Public policy*

In looking at public policy it is useful to distinguish between the national policy, and the Departmental policy and strategy that give effect to the national policy.

At the *national level*, the Constitution, and the recently approved NDP provide the overall institutional and legal framework aimed at promoting socio-economic rights in the medium-long term. This commitment has been further strengthened and integrated into the Government's Outcomes approach, where twelve Outcomes and Delivery Agreements were signed by all key Ministers.<sup>10</sup> Furthermore, the South African

<sup>7</sup> In particular, South Africa has ratified the International Covenant on Civil and Political Rights (1998); the International Convention on the Elimination of All Forms of Racial Discrimination (1998); the Convention on the Elimination of All Forms of Discrimination against Women (1995); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1998); the Convention on the Rights of the Child (1993); and the Rome Statute of the International Criminal Court (1998). It has also signed the African Charter on Human and Peoples' Rights (1996), and the African Charter on the Rights and Welfare of the Child (1997). SA has not signed the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; nor the Convention for the Protection of All Persons from Enforced Disappearance. The ratification of the Covenant on Economic, Social and Cultural Rights has been approved by Cabinet and awaits final approval by Parliament. A full list of the international obligations to which South Africa has signed up is contained in the document prepared for the UN Human Rights Council: A/HRC/WG.6/13/ZAF/2.

<sup>8</sup> For example, the Constitutional Court recognised in a 2002 judgement (*Minister of Health and Others v Treatment Action Campaign and Others*) the constitutional right of all HIV positive pregnant women to have access to health care services in order to prevent mother-to-child transmission of HIV (PMTCT). By April 2003, the Department of Health included PMTCT programs in their budgets. By April 2004, the public health system began to roll out treatment to people with AIDS. In 2012, 10 years after this decision, it is estimated that 327,000 children have not contracted HIV as a result of having access to PMTCT treatment.

<sup>9</sup> In 2012, a CSO (*Equal Education*) launched a campaign to oblige the Basic Education Minister to promote regulations that would set minimum standards for school infrastructure. The campaign was based on the following: over 90% of schools do not have functional libraries and over 3,500 have no electricity.

<sup>10</sup> The Outcomes approach was adopted by government as a planning tool to track progress in the delivery of government programmes. Twelve Outcomes were agreed by the Cabinet in 2010: (1) Basic Education; (2) Health; (3) Safety; (4) Employment; (5) Skills; (6) Economic Infrastructure; (7) Rural Development; (8) Integrated Human Settlement; (9) Local Government; (10) Environment; (11) National and International Relations; (12) Public Service.



Government recognising that enhanced and effective inter-departmental coordination is essential to make human rights a reality has established an interdepartmental coordination mechanism involving three critical clusters<sup>11</sup> of Government: (i) the Social Sector Cluster; (ii) the Justice, Crime prevention and Security Cluster (JCPS); and (iii) the International Cooperation, Trade and Security Cluster. Each cluster is committed to placing socio-economic justice issues as standing items on the agenda and work programmes of their meetings.

At the *Departmental level*, the Department of Justice and Constitutional Development (DoJ&CD), as custodian of the SA Constitution, is the lead actor tasked to ensure improved and effective coordination in the realisation of constitutional rights. The DoJ&CD mandate is twofold: first, it aims at achieving an effective and efficient administration of justice; second, it seeks to uphold the Constitution through the implementation of legislation and programmes that promote the advancement of constitutionalism and the rule of law in a sustainable manner. In order to fulfil its mandate, the DoJ&CD has formulated a sector policy that is consistent with Section 7(2) of the Constitution and is "layered" in a series of strategic documents. These documents are:

(i) *The Strategic Plan 2013-2018*. It lists DoJ&CD's policy priorities and programme interventions over a five year period. It affirms the Department commitment in advancing and promoting constitutional development, the rule of law, and a culture of human rights. The Department vision and mission is structured in five *Strategic Goals* (SG): SG1: enhanced organisational performance on all aspects of administration; SG2: facilitate the resolution of criminal, civil, and family law disputes by providing accessible, efficient and quality administrative support to the courts; SG3: effective and cost-efficient provision of state legal services; SG4: effective coordination of the Justice Crime Prevention and Security (JCPS) Cluster in the delivery of Outcome 3 (all people in South Africa are and feel safe); and SG5: promotion of the Constitution and its values. These five Strategic Goals are supported by five *Programmes* (P): P1: Administration; P2: Court services; P3: State Legal Services; P4: National Prosecuting Authority; and P5: Auxiliary services and associated services. Each of these programmes has a number of *Strategic Objectives*, giving a total of 18 strategic objectives.

(ii) *The Annual Performance Plan 2013-2014*. An Annual Performance Plan (APP) operationalises the Strategic Plan. It sets out targets, indicators and budgets for programme activities. Both the actions and the objectives are time-bound (annual and quarterly targets). The APP is prepared in line with the new National Treasury requirements and indicates how the Departmental Strategic Plan is implemented during the Medium-term Expenditure Framework (MTEF).

(iii) *The Strategic Framework on Socio-Economic Justice for All (SEJA)*. The DoJ&CD established in 2012 a Constitutional Development Branch to enhance its Constitutional mandate. SEJA is the strategic framework in which this new Branch will operate to fulfil its mandate to enhance constitutional rights (including socio-economic rights), and development of programmes in support of social justice and participatory democracy. SEJA, which consists of specific objectives, key results areas and measurable indicators, is consistent with the SG5 of the 2013-2018 Strategic Plan. The Constitutional Development Branch ensures co-ordination, integration, supervision, mobilisation and support towards the attainment of the SEJA objectives and key result areas. SEJA is designed to be implemented under P3 - State Legal Services, which covers Strategic Objectives 17 and 18 of the DoJ&CD's Strategic Plan<sup>12</sup>. SEJA is a relatively new strategic framework, designed after the releases of Strategic Plan and the APP 2013-2014 and should be fully integrated into the APP 2014-2015 and the next reviewed Strategic Plan.

SEJA is both credible and relevant as a national policy as it seeks to support socio-economic rights delivery which is integral to the recommendations of the NDP tackling poverty, inequality and unemployment. The NDP has been endorsed by the President's 2013 State of the

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<sup>11</sup> Clusters were established to foster an integrated approach to governance that is aimed at improving Government planning, decision making and service delivery. The main objective is to ensure proper coordination of all Government policies at national and provincial level.

<sup>12</sup> Strategic Objective 17: promote constitutional development and strengthen participatory democracy to ensure respect for fundamental human rights; and Strategic Objective 18: Administration of the implementation of the Promotion of Access to Information Act (PAIA) of 2000

Nation address as the main public policy promoting access to social justice for all where "all will have water, electricity, sanitation, jobs, housing, public transport, adequate nutrition, education, social protection, quality healthcare, recreation and a clean environment".

SEJA will assist government departments in fulfilling their constitutional obligations by developing and disseminating baseline information on the delivery of socio-economic rights to date; assisting government departments to determine the minimum core of each right as well as determining what progressive realisation would mean taking account of current constitutional jurisprudence; and assisting government departments to determine whether existing policy and legislation adequately reflects constitutional and international treaty obligations and whether policy gaps exist. SEJA seeks to enhance socio-economic rights delivery which is integral to the goals of the NDP to tackle poverty and inequality. SEJA is also intended to promote policy coherence and coordination across government departments as well as various other stakeholders promoting social justice. SEJA will, through various programmes, target vulnerable and marginalised communities increasing their awareness of socio-economic rights in order to enable them to better access these rights. This aligns with a key thrust of the NDP to build an active informed citizenry.

SEJA will be implemented by the Constitutional Development branch in the Department. The establishment of this new branch is a recognition of the importance of the Constitution as the most important institutional instrument for social justice and the transformation of South African society, and the role played by the DoJ&CD as the custodian of constitutional development and human rights in the South African Government. SEJA will also focus on the future sustainability of the CSO sector. SEJA therefore builds on the lessons of earlier programmes supported by the European Union .

Based on the assessment above it can be confirmed that there is a credible and relevant sector strategy that supports the objectives of poverty reduction, sustainable and inclusive growth, and democratic governance.

### **2.3.2. Macroeconomic policy**

South Africa is an upper-middle income country with a current economic and social situation that has been shaped by apartheid and that remains skewed along racial and income lines.

*With regard to its economic performance*, South Africa has recently experienced sluggish growth rates, of around 2% to 3% compared to earlier years which averaged of 5.2% between 2004 and 2008. Forecasts are at 2.7 % and 3.2% for 2013 and 2014 respectively. Unemployment remains high (around 25%, not including discouraged job seekers). At current levels, these rates of growth are insufficient to significantly address South Africa's triple challenge of unemployment, poverty and inequality. Inflation reached 5.7% in December 2012, mainly driven by food and fuel prices which have pushed up headline inflation.<sup>13</sup> Over the medium term inflation is forecast to remain near the upper end of the target range 3%-6%. The fiscal deficit which was 5.2% in 2012-13 is forecast to fall in coming years to 4.6% in 2013-14 and 3.9% in 2014-15. Over the medium term, and in light of the weak economic growth, government aims to reduce the fiscal deficit to 3.1% by 2015/16 although it is marginally larger than earlier projections in line with the need to further support the economy. The current account deficit widened from 3.4 % in 2011 to an estimated of 6.1% in 2012 as a result of slowing global demand and a deterioration of the terms of trade. Debt<sup>14</sup> (domestic and foreign) levels rose to 36.3% of GDP in 2012/13 from 33.3% of GDP in 2011/12 and are expected to rise to 40.3% by 2015-16. Domestic revenue mobilisation stands at around 28% of GDP, and is expected to remain broadly at this level in coming years.

*With regard to macroeconomic policies*, they remain anchored around three principles: (i) counter-cyclical; (ii) debt sustainability; and (iii) intergenerational fairness. These policies, combined with inflation targeting (3-6%) and a flexible exchange rate, guide South Africa's approach to macroeconomic management. Against this background, macroeconomic policies have provided, and still provide, a framework for domestic and external stability. Past fiscal prudence has provided space for counter-cyclical policies in recent years.

<sup>13</sup> Excluding interest costs and mortgage.

<sup>14</sup> Net loan debt.



However, there are *potential sources of instability and elements of vulnerability*. On the domestic side, some of these include: (i) the reduction of fiscal space which may increase the tension between sustainability and counter-cyclical; (ii) effectively implementing a series of microeconomic measures aimed to enhance the economy competitiveness (infrastructure development, in particular increasing power supply, and reducing regulatory barriers to do business); (iii) increasing private-sector investment remains critical given its contribution to the economy; (iv) maintaining the cap on real wages increase will have to be monitored; (v) implementing product and labour market reforms; (vi) shifting spending from current expenditure towards capital expenditure. On the external side, some of the challenges are: (i) the impact of the euro zone crisis on South Africa (a 1% fall in EU growth is estimated to have a 0.6% to 0.75% reduction in South African growth); (ii) the rand volatility; (iii) any further downgrading by rating agencies and (iv) the widening of the current account deficit and its funding.

With regards to its relation with the International Monetary Fund (IMF), South Africa is on the standard 12-months Article IV consultation cycle. The last report is based on the 2012 Budget Review. Discussions focused on growth prospects, policy mix, labour and product reforms, financial stability and external vulnerability. Views were exchanged on policies fostering macroeconomic and financial stability. On balance, South Africa is assessed to have had adequate fiscal and monetary policies, allowing absorption of shocks as well as the appropriate policy mix considering the continued risks in advanced economies.

Based on the assessment above, it can be confirmed that there is a credible stability-oriented macroeconomic policy.

#### **2.3.3. Public financial management (PFM)**

The Government of SA's approach to PFM reform has matured from an initial focus on national government towards the provincial and local government spheres. Good scores have been achieved on the 2012 Open Budget Index (OBI) and 2008 Public Expenditure and Financial Accountability (PEFA). National government has established a well-functioning legal and regulatory framework to strengthen and improve the transparency, comprehensiveness and credibility of the budget, debt management and external scrutiny and oversight, based on the Public Financial Management Act (PFMA) and, in the area of local government, the Municipal Financial Management Act (MFMA). One of the main weaknesses in the system has been *procurement*, and to address this problem, reduce corruption and promote value-for-money, the government has recently established a Chief Procurement Office. This office is expected to ensure greater transparency, arms-length competitive tendering processes and provide greater certainty to industry about procurement pipelines. Work regarding the roll-out of the *Integrated Financial Management System* is ongoing. The *Financial Capability Maturity Model* has been applied now for three years and is used at national and provincial level to monitor PFM capacities and identify weaknesses. Results show improvement, with the aim that all departments reach a "control level" of maturity (level 3). The *Auditor-General* (AG) has introduced audit of performance information as a first response to the new outcomes approach in service delivery. The AG has implemented an extensive consultation process on the annual audit findings, and mechanisms are implemented to improve follow-up. However, root causes for bad audit findings remain changes in leadership and skills especially in decentralised government. This is partly the focus of the on-going *PFM Capacity Building Strategy*, aimed at creating the necessary capacities and compliance in government, roll-out of new innovations, and the monitoring and evaluation of improvements. With vacancy rates consistently high, gaps in capacity will continue to be strengthened through a combination of own resources and innovative approaches using development assistance. The prospects for successful implementation of the strategy are considered favourable as the country has a good track record in the area of PFM reform.

Based on the assessment above, it can be confirmed that there is a credible and relevant programme and strategy to improve public financial management.

#### **2.3.4. Budget transparency and oversight of the budget**

South Africa achieved a score of 90 in the 2012 Open Budget Index, second after New Zealand, and remains one of the top performers in this survey. This score indicates that the government provides the public with extensive information on the budget and financial activities during the course of the budget year. All budgetary documents are prepared and published in a timely manner and are consistently of high



quality. Some of the recommendations made during the survey concentrated on expanding the information in the Pre-Budget Proposal and Citizens Budget to include information on budget processes, macroeconomic assumptions and information on financial and non-financial assets. Public participation during budget and audit preparations was highlighted as an area to improve, as is the follow-up mechanism on audit findings. The EU Delegation could be involved in these areas through dialogue and information exchanges.

It can be confirmed that the government has published the executive's budget proposal within the past and current budget cycle (entry point).

#### **2.4. Lessons learnt**

The European Union has been engaged with South African authorities in the justice sector since the end of the apartheid regime.<sup>15</sup> Since then, the EU has provided continuous assistance to Government or Government-related institutions in the justice sector as well as to CSOs. The support to the Foundation for Human Rights (FHR), initially the European Foundation for Human Rights, paved the way for the Access to Justice and Promotion of Constitutional Rights Programme (AJPCRP), launched in partnership with the DoJ&CD in 2008.

The AJPCRP has significantly contributed to improve access to justice in rural areas of the country, offer restorative justice mechanisms for vulnerable and marginalised groups, as well as increase awareness and knowledge of constitutional rights. CSOs have been strengthened through public participatory dialogue and grants mechanisms. As a result, the Access to Justice Programme played a critical role in strengthening the interaction between DoJ&CD and CSOs, including the FHR, and supported the role played by grass-roots organisations in the promotion and realisation of human rights for the most vulnerable and marginalised groups, through among others the Community Advice Offices.

The AJPCRP has funded 584 projects under the three programmatic areas: access to justice, awareness of constitutional rights and promotion of participatory democracy. The key achievements of this programme include 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; and ensuring that 5,400 CSO members benefited from capacity building programmes. The programme has also supported more than 100 Community-based Advice Offices (CAOs); ensured that more than 100,000 migrants were provided with legal support services; and more than 1,300 CSOs were able to engage in formal policy dialogues with the State. Under the programme, more than 200 workshops were held for the human rights sector which include migration, hate crimes, combating racism and xenophobia, gender based violence, disability and discrimination and exclusion.

The final evaluation of the CSO Component of the AJPCRP confirmed the complementarity with the Sector Budget Support (SBS) component, as well as with other EU and other donor funded programmes around participation, governance, democracy and human rights. In addition, the evaluation confirmed the valuable contribution of the CSO Component, which provided an innovative financing model for CSOs working in the justice sector. The continuation of an independent source of funding to CSOs in the sector, to collaborate with, and challenge Government where necessary, particularly in such a contested area as access to Constitutionally guaranteed socio-economic rights in South Africa, was recommended. Continued funding for activities such as lobbying, advocacy, networking, debate, discussion, dialogue, litigation, research and capacity building, is critically needed. This approach supports the EU engagement with CSOs, articulated in the "Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations" Communication<sup>16</sup>.

Recommendations from the final evaluation for consideration in the Socio-Economic Rights CSO Component include: (i) ongoing capacity building, of CSOs internally, in relation to their activities, and vis-à-vis partnerships and networks is required; (ii) the establishment of networks and partnerships

<sup>15</sup> The first EC Special Programme in support of victims of apartheid was launched in 1986.

<sup>16</sup> COM(2012)492 final



between stronger and weaker organisations is critical to enhance the impact of actions and build the capacity of the CSOs and the sector; (iii) projects which combine a variety of actions including research, advocacy, dialogue, capacity building, litigation, awareness raising and monitoring, are more successful and have greater impact; (iv) the quality of the interventions can be enhanced through various mechanisms such as improved communication strategies, the application of research, and consistent networking and dialogue, both with other CSOs and with the Executive and Legislature; (v) the duration of projects should exceed the AJPCRP grant period of 24-30 months; (v) sustainability of projects and organisations should be addressed throughout the project, as well as monitoring and evaluation mechanisms.

## **2.5. Complementary actions**

In the 2007-2013 Multi-annual Indicative Programme the EU has played a key role in supporting SA good governance programmes. Other main donors involved in the sector have been the German Cooperation (GIZ), USA Cooperation (USAID), and Switzerland.<sup>17</sup>

New donor funding to the DoJ&CD is expected to come on stream in the 2013-14 financial year. DoJ&CD will benefit under the *German International Cooperation* (GIZ) "Governance Support programme, GSP 2010: Strengthening Local Governance and Public Sector Reform Programme" (EUR 29 million for 2014-18). The aim of this programme is to support South Africa's efforts to build effectively coordinated institutions at and across all spheres of government and will also strengthen interaction between the public sector, civil society and the private sector and ensure improved access to justice. *USAID* has in the past worked on Gender-based violence (GBV) including the establishment of the Thuthuzela Care Centres for victims of rape and they are currently working with the DoJ&CD on preparing a programme in the areas of GBV and Lesbian, Gay, Bisexual, Transsexual and Intersexed (LGBTI) for an amount still to be decided. The Government of the Swiss Confederation is supporting the National Action Plan to Re-engineer the Small Claims Courts in South Africa for an amount of ZAR 10 million.

The EU has supported human rights also through country allocations under the EIDHR since 2010. In the 2010 – 2013 period, EUR 1 200 000 has been allocated to South Africa, to support CSOs under Objective 2 of the EIDHR Strategy. Grants have focussed on the promotion of democracy, prevention of gender-based violence, addressing the rights of women and children, and supporting the right to education. Projects under the EIDHR Country-Based Support Scheme (CBSS) often interact with the bilateral governance programmes and add value to the CSO engagements with the legislative sector and with Government departments such as the DoJ&CD.

These programmes are complementary actions to the proposed SRC since they all directly or indirectly aim to address the general objective of poverty reduction and to consolidate and improve democratic and economic governance.

## **2.6. Risk management framework**

Across the five risk dimensions considered - political, macroeconomic, developmental, PFM, and corruption and fraud - risks have generally been assessed as low to moderate.

With regard to the *political* dimension, since the post-apartheid period South Africa's institutional set-up has been dominated by continuous emphasis on reconciliation, plurality and progressive realisation of constitutional rights. Elections have always been democratic and peaceful, aligned to international standards and principles, although one party dominates in elections, this is balanced by a strong civil society and media that significantly contribute to pluralism, oversight and accountability. On the *macroeconomic* front, South Africa has implemented adequate counter-cyclical fiscal and monetary policies cushioning the economy against shocks and helping smooth economic cycles. With respect to *developmental* risks, the Justice Strategic Plan 2013-2018 and the SEJA Strategic Framework indicate clear and measurable strategic objectives, with institutional arrangements conducive to appropriate implementation. Risks associated with *public finance management*, as well as *corruption and fraud*, are considered to be moderate. Weaknesses in supply chain management procedures can result in a favourable

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<sup>17</sup> Overview of programmes in support of the DoJ&CD can be found in the Strategic Plan 2013-2018, para 4.3.1.



environment for corruption and conflicts of interest – an issue that has now drawn the attention of the National Treasury.

Mitigation measures include continuous support to CSOs, including through independent sources of funding (thematic budget lines), the provision of technical assistance (TA) funds within this programme, close monitoring of performance, and enhanced dialogue on human rights and justice with South African authorities.

### **3. DETAILED DESCRIPTION OF THE BUDGET SUPPORT CONTRACT**

#### **3.1. Objectives**

General objective: To assist the Government of South Africa in eradicating poverty, promoting sustainable and inclusive growth, and consolidating and improving democratic and economic governance.

Specific objectives: To support the DoJ&CD, especially through its Constitutional Development Branch, to fulfil its mandate, with a particular focus on the enhancement of socio-economic rights.

#### **3.2. Expected results**

The expected results (Key Result Areas) of the Sector Reform Contract (SRC), which are based on the DoJ&CD Strategic Framework on Socio-Economic Justice, are as follows:

**KRA1:** Improved awareness of constitutional rights with an emphasis on socio-economic rights and on vulnerable and marginalised groups;<sup>18</sup>

**KRA2:** Enhanced participatory democracy through public policy dialogue on constitutional rights;

**KRA3:** Improved and sustained collaboration between Government, Chapter Nine Institutions<sup>19</sup> (please explain), Civil society and other stakeholders in terms of justice service delivery and socio-economic rights (including support for Community Advice Offices);

**KRA4:** Increased research on socio-economic rights and jurisprudence;

**KRA5:** Improved sector coordination and policy design on Constitutional development;<sup>20</sup> and

**KRA6:** Strengthened capacity, engagement and participation of CSOs in the realisation of constitutional rights.

#### **3.3. Rationale for the amounts allocated for budget support**

The total amount allocated by the EU to the Governance sector under the CSP/MIP is EUR 70 million of which 36% is to be delivered under the present SRC. The rationale for this amount is based on the following elements:

- Financing needs of the partner country: consultations held at DoJ&CD and National Treasury level have confirmed that the amount to be allocated is consistent with: (i) the need to operationalise the DoJ&CD SEJA Strategic Framework; (ii) the realisation of key results areas within the indicated timeframe; and (iii) time required to absorb the SEJA in the DoJ&CD Annual Performance Plan and to establish a long-term sustainable funding mechanism for CSOs.
- Commitment of SA Government: (i) to allocate national budget resources (including EU budget support) in line with development strategy and objectives and to follow standard national budget procedures; and (ii) to support the DoJ&CD policy with sustainability measures to be built into the MTEF process.

<sup>18</sup> Vulnerable and Marginalised groups have been defined by the South African Human Rights Commission as: (i) women; (ii) children; (iii) rural and urban poor communities; (iv) farm workers; (v) people affected by HIV/AIDS; (vi) gay, lesbian, and transgender communities; (vii) children headed households; (viii) people affected by violations of their socio-economic rights, race and xenophobia, lack of land rights, their advanced age; (ix) persons with disabilities; (x) youth including youth in prison.

<sup>19</sup> Chapter Nine Institutions refer to institutions referred to in Chapter 9 of the Constitution

<sup>20</sup> Taking notably into account Departments that are members of the Social and Justice Clusters: Basic Education, Health, Labour, Social Development, Home Affairs, as well as Chapter 9 Institutions.



- Track record and absorption capacity: (i) the DoJ&CD has had a very good track record with the implementation of the AJPCRP with performance exceeding targets; (ii) the smooth implementation in the past of the complementary support to civil society justifies an allocation of a similar amount.

Budget support to South Africa from the European Union represents around 0.1% of national revenue. For this programme it will represent less than 0.01% of national revenue. It amounts to about 2.3% of the DoJ&CD's budget for 2013-14. Budget support of these amounts, however, has been shown to be highly effective in supporting innovative and catalytic approaches by the Government, in line with their "value added" approach to the use of Overseas Development Aid (ODA).

### **3.4. Main activities**

The main activities to implement the budget support package are policy dialogue, financial transfer, performance assessment, reporting and capacity development (technical assistance).

#### **3.4.1. Component 1: Budget Support**

The main activities will be linked to the achievement of the objectives and expected results of this programme, the verification of conditions and the payment of budget support. Supporting activities will include a series of dialogues around the implementation of SEJA through a number of fora within the framework of the South Africa-EU "Strategic Framework" under the Mogôbagôba Dialogue<sup>21</sup> process. These fora include, but are not limited to:

- The annual EU-SA Summit, Joint Cooperation Council, and associated preparatory meetings;
- The South Africa-EU Annual Consultations and associated preparatory meetings;
- The EU-South Africa Structured Dialogue Forum on Human Rights;<sup>22</sup>
- Quarterly meetings of the National Treasury, DoJ&CD, and EU prepared on the basis of quarterly and annual reports produced by the DoJ&CD with the aim of assessing progress made in the implementation of SEJA, the verification of the budget support payment criteria, and the implementation of complementary support;
- Biennial Strategic Forum with Development Partners and the DoJ&CD;
- Ad-hoc technical meetings on issues relevant to the achievement of the objectives and expected results of this programme;
- Dialogue with civil society organisations.

#### **3.4.2. Component 2: Complementary support**

Complementary support will have two components:

- *Component 2.1:* Grants to Civil Society Organisations (CSOs) on socio-economic rights;
- *Component 2.2:* Technical assistance to (i) the DoJ&CD and, if requested by the DoJ&CD, other relevant Government Departments and Chapter 9 Institutions; and (ii) support to Civil Society Organisations

With respect to *grants to Civil Society Organisations on socio-economic rights*, see section 4.4.1 below for further details on proposed objectives, results, and activities.

With respect to *technical assistance to the DoJ&CD, and, if requested by the DoJ&CD, other relevant Government Departments and Chapter 9 Institutions*, the following are the indicative key activities foreseen: (i) development of a sector coordination strategy to build complementarity and linkages between all players involved in the realisation of constitutional rights; (ii) development of systems to assist in the formulation and evaluation of reports prepared by relevant Departments and to be submitted to international, regional and national bodies; (iii) support for the implementation of the National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance; (iv) support for the Constitutional Development Branch with research, production, publication and dissemination of articles and on constitutional development. Within two months of the start of the SRC, the DoJ&CD, National Treasury and the EU will develop a framework for technical assistance.

<sup>21</sup> South Africa-European Union Strategic Partnership Joint Action Plan, May 2007; and the Trade, Development, and Cooperation Agreement, December 1999.

<sup>22</sup> Council Conclusions on the establishment of a Human Rights Dialogue with South Africa, 19 November 2012.



With respect to *technical assistance to support Civil Society Organisations*, the following are the indicative key activities foreseen: (i) support on EU grants managements, rules and procedures; (ii) institutional support, inter alia internal governance; management, including financial management; and the development of sustainability plans; (iii) capacity building on inter alia monitoring & evaluation; advocacy, and research for advocacy; lobbying; networking; CSO coordination mechanisms; effective use of information and communication technologies. Activities such as training, workshops, seminars and conferences are foreseen in this area.

### **3.5. Donor coordination**

The DoJ&CD is in the lead for both donor coordination and coordination with CSOs. Donor coordination is ensured by the DoJ&CD Donor Coordination Directorate within the Chief Operations Office Branch. Biennial Strategic Fora with Development Partners and the DoJ&CD are organised, providing an opportunity for mutual accountability through an examination of past experience and future plans. The last Donor Conference held in February 2012 confirmed that the continued structural transformation of the judicial system will utilise the bulk of the budget allocated by National Treasury to DoJ&CD and that further donor support will be needed in the short-medium term. A 2013 Donor Conference is planned to take place in the second semester of the year.

In terms of coordination with CSOs, the DoJ&CD's has a policy framework for building partnerships between Government and Civil Society in the area of justice and constitutional development. Its partnership with the Foundation for Human Rights (FHR) is aimed at better coordinating access to the most remote communities in the country and to build partnerships with civil society. The Department is committed to the improvement of collaboration with and between CSOs on human rights issues with a view to enhancing participatory democracy and a better understanding of constitutional rights.

### **3.6. Stakeholders**

The proposed SRC involves a significant number of stakeholders. At Government level, the DoJ&CD will be the main direct beneficiary. Other government indirect beneficiaries include key line Departments such as Basic Education; Social Development; Health; Home Affairs; Women, Children and People with Disabilities as well as Chapter 9 Institutions, Parliament and other spheres of Government. Outside Government the main direct beneficiaries will be CSOs active in the area of socio-economic rights. The final beneficiaries will be vulnerable and marginalised groups<sup>23</sup> within South Africa.

### **3.7. Conclusion on the balance between risks (2.6.) and expected benefits/results (3.2.)**

The proposed SRC supports an innovative sector policy on socio-economic justice. Its six key result areas can contribute to increased awareness, coordination, and building the capacity of people to access socio-economic rights. Although further consultations to enhance inter-sectoral coordination are required with a broader range of stakeholders, the SRC finds one of its added values in promoting synergies and coherence with other Departments policies, and forms of partnership with CSOs. Furthermore, the DoJ&CD has a proven track record in working in the framework of already functioning mechanisms (Clusters, DoJ&CD policy framework to enhance Civil Society participation) whose aim is to strengthen cooperation between different stakeholders. Also, the support would allow the DoJ&CD to more vigorously follow through on some of its human rights and constitutional obligations, especially those related to socio-economic rights and service delivery. It is difficult to conceive how non-intervention would have any positive impact. Overall, therefore, the benefits in terms of improved socio-economic outcomes, associated with a strengthened Civil Society, clearly outweigh the risks.

## **4. IMPLEMENTATION ISSUES**

### **4.1. Financing agreement**

In order to implement this action, it is foreseen to conclude a Financing Agreement with the partner country, the Republic of South Africa, referred to in Article 184(2)(b) of the Financial Regulation.

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<sup>23</sup> See footnote No17 for the definition of vulnerable and marginalised groups in South Africa



#### 4.2. Indicative operational implementation period

The indicative operational implementation period of this action, during which the activities described in sections 3.4 and 4.4 will be carried out, is 60 months, subject to modifications to be agreed by the responsible authorising officer in the relevant agreements.

#### 4.3. Criteria and indicative schedule of disbursement of budget support (Component 1)

*General conditions* for disbursement of all tranches are as follows: (i) satisfactory progress in the implementation of the DoJ&CD Strategic Framework for Socio-Economic Justice for All 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.

*A Specific condition* for disbursement of the fixed tranches is the integration of the SEJA Strategic Framework into the DoJ&CD Annual Performance Plans covering the programme implementation period.

The indicative schedule of budget support disbursements is summarised in the table below (all figures in EUR millions) based on the South African fiscal year (April to March).

**Table 1: Indicative timetable of disbursements of budget support (€m)**

SA Fiscal Year	Fiscal Year 2014/15				Fiscal Year 2015/16				Fiscal Year 2016/17				Fiscal Year 2017/18				Fiscal Year 2018/19				Total
Type of tranche	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Fixed tranche		5			3				2				2								12
Variable tranche									2				2				2				6
Total		5			3				4				4				2				18

#### 4.4. Details on complementary support (Component 2)

##### 4.4.1. *Component 2.1:* grants to Civil Society Organisations on socio-economic rights (direct centralised management)

##### (a) *Objectives of the grants, fields of intervention, priorities of the year and expected results*

The objective of grants to CSOs is to support the enhancement of socio-economic rights. An expected result will be the strengthened capacity, engagement and participation of CSOs in the realisation of constitutional rights (corresponding to Key Result Areas (KRA) 1,2,3,4 and 6). This result is expected to contribute to the other KRA (see section 3.2)

Fields of intervention will include, but not be limited to: (i) capacity building; (ii) lobbying; (iii) advocacy/awareness-raising/campaigns; (iv) networking initiatives/establishing or strengthening networks; (v) debate/discussion/dialogue; (vi) litigation to promote constitutional rights; (vii) research actions; and (viii) preparation and implementation of this component, including assessors.



*(b) Eligibility conditions*

To be eligible for a grant, the applicant must

- (i) be a legal person **and**
- (ii) be non-profit-making **and**
- (iii) be a specific type of organisations such as: non-governmental organisations, citizens' groups, organisations representing economic and social interests, community organisations, advocacy organisations, women's and youth organisations, research and scientific organisations, education institutions, independent foundations, and international (inter-governmental) organisations as defined by Article 43 of the Implementing Rules to the EC Financial Regulation. However, in case of a multi-beneficiary grant, an International Organisation, a public sector operator, or a local authority cannot be the applicant **and**
- (iv) be registered in **South Africa and**
- (v) be directly responsible for the preparation and management of the action with the co-applicant(s) and affiliated entity(ies), not acting as an intermediary **and**
- (vi) be able to demonstrate to have regularly carried out activities in the field covered by this Call **and**
- (vii) be active in South Africa.

*(c) Essential selection and award criteria*

The essential selection criteria are financial and operational capacity of the applicant. The essential award criteria are relevance of the proposed action to the objectives of the call; design, effectiveness, feasibility, sustainability and cost-effectiveness of the action.

*(d) Maximum rate of co-financing*

The maximum possible rate of co-financing for grants under this call is 80% of the eligible costs of the action. The rate may be higher if the auto-financing capacity of the targeted beneficiaries is weak.

The maximum possible rate of co-financing may be up to 100 % in accordance with Articles 192 of the Financial Regulation and 109 of the Financial Regulation of the 10th EDF if full funding is essential for the action to be carried out. The essentiality of full funding will be justified by the responsible authorising officer in the award decision, in respect of the principles of equal treatment and sound financial management.

*(e) Indicative trimester to launch the call*

Second trimester of 2014.

*(f) Exception to the non-retroactivity of costs*

Not applicable.

**4.4.2. Component 2.2: Technical Assistance procurement** (direct centralised management)

**Table 2: Indicative Technical Assistance procurement**

Component	Type (services)	Indicative number of contracts	Indicative trimester for launch of the procedure
(i) Technical assistance to the DoJ&CD, and, if requested by the DoJ&CD, other relevant Government Departments and Chapter 9 Institutions	Services	5-10	Throughout the implementation period
(ii) Technical assistance to Civil Society Organisations	Services	5-10	Throughout the implementation period



#### 4.5. Scope of geographical eligibility for procurement

Subject to the following, the geographical eligibility in terms of place of establishment for participating in procurement procedures and in terms of origin of supplies and materials purchased as established in the basic act shall apply. (Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (DCI), modified by Regulation (EU) No 1339/2011 of 13 December 2011 and Regulation (EU) No 1341/2011 of 13 December 2011)

The responsible authorising officer may extend the geographical eligibility in accordance with Article 31(8) of the basic act on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of this action impossible or exceedingly difficult.

#### 4.6. Indicative budget

The total Programme cost is estimated at EUR 25 000 000, of which the full amount shall be financed from the general budget of the European Union.

**Table 3: Indicative Budget**

Module	Amount (EUR)	Third party contribution (indicative, where known)
4.3. Budget Support [Sector Reform Contract]	18 000 000	N.A.
4.4.1. Grants to CSOs on socio-economic rights	5 000 000	20%
4.4.2. Technical Assistance	1 775 000	N.A.
4.8. Evaluation and Audit	200 000	N.A.
4.9. Communication and Visibility	25 000	N.A.
Total	25 000 000	N.A.

#### 4.7. Performance monitoring

For the Government as a whole, performance monitoring takes place on an annual cycle based around the fiscal year (FY) running from April to March. The mechanisms for carrying out monitoring and performance are included in the work of all Departments, the National Treasury, Statistics South Africa, and the Auditor General, with this work overseen by the Department of Performance Monitoring and Evaluation (DPME) established in the Presidency.<sup>24</sup> The DoJ&CD is fully aligned to those requirements, through the publication of its Annual Performance Plan (APP) in April each year, followed by its Annual Report, published indicatively in August/September each year.

Based on this overall mechanism, performance monitoring for this programme, with the exception of the first payment, is expected to take place on an annual cycle consisting of four main steps: (i) the APP published in April of each year, including the SEJA objectives and indicators; (ii) the Annual Report published in August/September of each year, including the Auditor General's report and the SEJA outcomes for the previous fiscal year; (iii) the formal request for disbursement from the DoJ&CD via the National Treasury (NAO) in November of each year; and (iv) the payment based on evaluation of performance with payment planned for April (Q1) of each year. For the assessment of the general

<sup>24</sup> In 2008 two new departments were created in the Presidency. One was the National Planning Commission (NPC) (which has been responsible for the DO and the NDP); and the other was the Department of Performance Monitoring and Evaluation (DPME).



condition regarding satisfactory progress in the sector policy, assessments in year N will as far as possible be based on the performance in year N-1 for disbursement in year N+1. The exception to this annual cycle will be the first payment which is foreseen to take place, following the signature of the Financing Agreement, in Q2 of FY 2014/15.

#### **4.8. Evaluation and Audit**

No audit is foreseen for the SRC. For the complementary support (grants and technical assistance), the EU will contract evaluation and audits if deemed appropriate and applicable to the nature of the contract. The SRC is subject to a mid-term and final evaluation funded, contracted and managed by the DoJ&CD.

#### **4.9. Communication and Visibility**

Communication and visibility activities will aim to (i) harness key events such as the SA-EU annual Summit, policy dialogue on human rights, Joint Cooperation Council (JCC), annual consultations, signing ceremonies, tranche release decisions, joint sector reviews and visits to supported areas for media coverage and press releases; (ii) support consultations with non-state actors, donors, and parliament; and (iii) popularise the information on the SRC in the country.

Public awareness activities (media coverage, press releases) will primarily target SA citizens and institutions, but also the donor community as far as transparent communication is concerned. The audience in Europe will be served through the information provided to specific EU initiatives. Information on the SRC and Call for Proposals will be disseminated through regular updates on the EU websites.



### Socio-Economic Rights in the South African Constitution

The South African Constitution contains a Bill of Rights (Chapter 2 of the Constitution) which sets out a number of socio-economic rights. The Constitution frequently make reference to the manner in which the rights are to be met, noting in particular that the state "must take reasonable legislative and other measures"; "within available resources"; for the "progressive realisation" of each of the rights. However the formulation of these phrases differs slightly from one area to the other. The table below summarises these constitutional provisions.

**Table: Summary of Constitutional provisions on socio-economic rights**

Clause	Area	"The state must take reasonable and other legislative measures..."	"...within its available resources..."	"...to achieve the progressive realisation of this/these rights"	The state must consider all reasonable educational alternatives... taking into account (a) equity; (b) practicality; and (c) the need to redress the results of past racially discriminatory laws and practices
24	Environment*	✓			
25	Property	✓	✓		
26	Housing	✓	✓	✓	
27	Health, food, water and social security	✓	✓	✓	
28	Children**				
29	Education				✓

Notes:

(\*) In the area of environment the phrase "The state must" is absent from the constitutional clauses.

(\*\*) There are no Constitutional provisions that might limit children's rights