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# JUSTICE FOR ALL?

*Law Clinics in South Africa. And in Sweden?*

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Dan Bengtsson

## **Keywords**

*Access to Justice*

*Civil Society*

*Clinical Legal Education, CLE*

*Community Based Organisations, CBOs*

*Justice Centres*

*Legal Aid*

*Non-Governmental Organisations, NGOs*

*Paralegals*

*South Africa*

*University Based Law Clinics*

## **Abstract**

This thesis explores the concept of clinical legal education and access to justice in South Africa through an in-depth study of the Campus Law Clinic of the University of Natal, Durban.

It begins in Chapter 1 with an introduction that outlines why I chose this subject and this institution and goes on to outline the object, purpose and definitions of concepts. Chapter 2 describes the method used to conduct the research. In Chapter 3 I present the background to clinical legal education and access to justice. The chapter begins with a brief overview of the history of clinical legal education and continues with a short description of the two dimensions of clinical legal education. In Chapter 4 I deal with clinical legal education and access to justice in South Africa during the apartheid days and currently. It describes the evolution of state strategies and non-governmental initiatives during this broad time period. I attempt to present a balanced picture reflecting advantages and disadvantages of clinical legal education and ends with a discussion of the role of paralegals and a brief discussion of the advantages and disadvantages of this system. This lays the foundation for Chapter 5 where I engage in an in-depth discussion of the Campus Law Clinic. Here, I examine how and why it was established, how it operated during the apartheid years and how it evolved during the post apartheid period. Thereafter I discuss its current goals and strategies, its role in promoting access to justice and clinical legal education and its impact in these two areas. In Chapter 6 I examine the current initiatives and future plans for clinical legal education and access to justice in South Africa as a whole. Here I look at transformation initiatives that the South African government is currently involved in and also at policy issues related to it. In Chapter 7 I look at the Swedish context. This chapter examines potential effects of clinical legal education and paralegals in Sweden. It begins with a brief background discussion of access to justice and legal education in Sweden and thereafter develops to include highlights of areas where clinical legal education and paralegals could affect the system of access to justice and legal education in Sweden. Finally, in Chapter 8 I present some conclusions where the overriding suggestion is to re-examine and evaluate systems to ensure that they evolve as society changes.

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# **SECTION A**

## ***Introduction***



# 1 Introduction

## 1.1 Background

There are several reasons for my choice of subject. Among other things, a Legal Aid Act came into force, meaning that the state legal aid became subsidiary to private legal expenses insurance.<sup>1</sup> I discussed this with several of my fellow students and most of them were of the same opinion as I – that making this change was fundamentally wrong. Most of us agreed that legal aid is a basic responsibility of the State which should not be handed over to private insurance companies.

During my law studies I have also been involved in different projects that entailed, among other things, giving legal advice. This made me realise that, for many people, the law and the service of lawyers are not as accessible as I previously thought they were and in my view should be. I have also formed the opinion that the Swedish legal education would improve with the addition of more practical skills training where the students get to experience the process of legal work in reality.

In 2000 I took part in a project in Hammarkullen, one of Gothenburg's suburbs, where university students together with immigrants with foreign law degrees gave advice to the residents. For several reasons the outcome of the project was not satisfactory. In this context I attended a meeting at the University of Gothenburg where I met representatives of the Campus Law Clinic at the University of Natal, Durban. I had never before heard of either law clinics or clinical legal education and I became very interested as I realised that this concept could be the solution to the problems we encountered in the project in Hammarkullen. I also saw that this could be a way to enhance access to justice and at the same time improve legal education in Sweden. In short, I realised that we have much to learn from the South African experiences. This made me do some brief research on the subject, after which I decided to study it more deeply in this thesis.

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<sup>1</sup> See section 7.1.1

## 1.2 Object, Purpose and Definitions

### 1.2.1 Object

The overall object of this thesis is to examine, from a social scientific/jurisprudential perspective, how the Campus Law Clinic at the University of Natal, Durban (CLC) operates and what role it plays in relation to what the government in the post-apartheid society of South Africa provides regarding access to justice. Part of the object is also to shed light upon the field of clinical legal education in Sweden, i.e. if there are any activities or projects similar to the CLC in law schools and what the benefits of that is or would be.

CLC has four primary goals:

- *To provide practical legal training to law students to enable them to serve clients in an effective, efficient, ethical, business minded and socially conscious manner*
- *To provide training to law graduates from historically disadvantaged backgrounds to ensure that they are able to manage an effective, efficient, productive, ethical and socially conscious practice once they qualify*
- *To provide legal services to indigent people who cannot afford to pay a private practitioner, thereby increasing access to justice to the poorest of the poor and creating a greater respect for the rule of law*
- *To promote and advocate for the public interest*

In view of these goals and how CLC operates to achieve them, many questions have to be formulated and answered. The following are just some of those needed to be addressed.

*Why is there a need for law clinics and other civil society organisations to take part in improving access to justice in South Africa? What does clinical legal education provide that the traditional teaching methods do not? What impact does clinical legal education have in increasing access to justice and improving legal education in South Africa? Is there a need for clinical legal education and law clinics in Sweden?*

The answers to these and other related questions will enable me to define the role that organisations outside the governmental sphere, such as the CLC, play in the field of access to justice

and legal education in South Africa. They will also lead to a discussion on the relevance and applicability of the South African experiences within the Swedish context.

### **1.2.2 Purpose**

The social structure in South Africa and Sweden is very different as is also the approach to the issue of access to justice. Legal education also differs between the two countries, not only because of necessities brought on by the structural differences but also by deliberate choice. The extensive use of CLE including law clinics to improve both access to justice and legal education in South Africa does not have its comparison in Sweden. Both systems have their flaws, but there must be a reason for CLE to be as internationally widespread as it is. The very commendable goals of CLE are to teach law students practical skills, ethics and values while at the same time improving access to justice. The purpose of this thesis is to describe the what's, how's and why's in this field by studying, in particular, the Campus Law Clinic at the University of Natal, Durban, in order to show that there are other ways to address these issues that could complement the current Swedish system. From my own experiences I know that there is a need for more practical skills training at law schools in Sweden. Also, in access to justice there will always, as society changes, be a need for improvements.

### **1.2.3 Definitions**

#### *Apartheid*

The system of institutionalised racism in South Africa in terms of which legislation defined specific race groups and discriminated against people on that basis. Institutional racism ended with the adoption of the Interim Constitution of South Africa<sup>2</sup> in 1993.

#### *Civil Society*

According to Richard Pithouse, Centre for Civil Society, University of Natal, Durban, there are three main schools of thought about civil society in South Africa:

*“The first sees civil society as a mediating agent between the State and society and as an actor capable of taking over the State’s functions. This school of thought believes that civil soci-*

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<sup>2</sup> Act 200 of 1993

*ety should consist of small, professional NGOs that lobby government and take over government work. In the latter case this is a form of privatisation. This is the view of civil society encouraged by the World Bank, the African National Congress (ANC) and other neo-liberal actors.*

*The second school is less ideological and sees all non-profit organisations of citizens as civil society. This would include everything from motor vehicle owner's clubs to churches. This view has little money behind it but is typical of liberals who are not aligned with the ANC.*

*The third view sees NGOs and other well funded organisations as agents of and lobbyists for the ruling class (whether they are funded by the World Bank, corporate power or the American government) and argues that civil society consists of social movements that are independent of the State and run on a non-professional basis to achieve social change. There is some debate about whether or not reactionary social movements (vigilante organisations, xenophobic movements) should be considered as civil society. But the overriding view is that they are part of civil society and that civil society is a description of a field within society and not a positive affirmation of a movement.”*

In this thesis, I define civil society in a more broad and neutral way simply as non-profit citizen organisations with an interest and ability to complement and monitor the State in the field of social change and improvement.

#### *Clinical Legal Education (CLE)*

While it is difficult to define this concept, it must be noted that in the context of this thesis it is used in its broadest sense to include interactive teaching methodology, skills training and the social justice dimension. It is not used in the narrow sense of apprenticeship training. For a more in depth discussion see Chapter 3.

#### *Community Based Organisations (CBOs)*

For the purpose of this thesis, community based organisations represent membership based institutions that are often physically located within a residential community and whose management and functioning are directed primarily by community members on a voluntary basis. The salaried staff are often directly accountable to a management committee consisting of members of the community within which they are situated.

### *Legal Education*

Legal education in a broad sense could include any legal studies from a single course to very extensive studies in the field. However, in the part of this thesis concerning Swedish circumstances, I use the term in a more narrow sense and limit it to the program for the Swedish law degree, *juris kandidat*.

### *Non-governmental organisations (NGOs)*

In the context of this thesis, I use the term non-governmental organisations to refer broadly to organisations outside of government who perform a public service. I include in this category institutions who might receive a portion of their funding from government, but who operate independent of government, such as university based law clinics and public interest law organisations such as the Lawyers for Human Rights.

I use this definition of the term throughout the whole of this thesis, not only in the South African, but also in the Swedish context.

### *Paralegals*

The official definition of paralegals in the South African context is:

“A person qualified through education, training, or work experience to perform legal, social welfare, or related work, which require a basic knowledge of the law. The person may be community based, employed by a legal practitioner, a law firm, governmental institution, corporation or any other entity, and may be supervised by or work under a legal practitioner in performing the work.”<sup>3</sup>

### *University Based Law Clinics (ULCs)*

These are institutions affiliated or attached to law faculties. In the context of this thesis, I refer primarily to live client clinics that are run by lawyers and law students and that provide direct legal services to real live clients. Students learn through direct interaction with live clients and real case files under the supervision of a salaried lawyer. At the same time, indigent clients receive a free legal service.

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<sup>3</sup> *Position Paper on the Recognition and Regulation of the Practice of Paralegals in South Africa*, the National Paralegal Institute, p. 8

## **2 Method**

I used a multi-faceted approach to this study in that I conducted field research and reviewed literature relevant to the subject. By its nature, this study evolved as the process unfolded as it was difficult to undertake this type of research using structured and inflexible approaches.

### **2.1 Field Research in South Africa**

One of my main activities was the field research conducted in South Africa. This entailed interviews, observations and site visits. In addition, it entailed direct participation in certain activities. Consequently, the observations were not always conducted from the perspective of an outside onlooker, but to some extent included direct participation in activities and interaction with the processes.

#### **2.1.1 Interviews**

The persons selected for interviews were chosen based on a variety of factors including their role in clinical legal education and access to justice initiatives in South Africa in the past and currently. To that end, law professors who pioneered the clinical legal education movement were interviewed and those who are currently working within the sector. In addition, those who formulate policy, such as members of government policy units, and those who implement such policies were chosen. Special attention was paid to ensuring that a cross section of views was obtained from people, including those who might be critical of the clinical legal movement, the paralegal initiatives and the general access to justice initiatives within South Africa. In addition, I, with the help of my supervisor in South Africa, attempted to ensure that people from diverse race and gender backgrounds were interviewed.

#### **2.1.2 Observations**

I observed and participated in activities of the Campus Law Clinic including staff meetings, strategic planning discussions, student seminars and lectures, file supervision sessions, client intake processes, student supervision sessions and staff development processes.

### **2.1.3 Site Visits**

To ensure that I had as complete a picture as possible of the operation of the clinic, I conducted site visits with their staff and students during the outreach program at paralegal advice offices, local hospitals and juvenile detention centres.

## **2.2 Literature**

The literature reviewed included books and journal articles. However, a large portion of the documentation comprised draft policy documents (as this field is an evolving area in South Africa). In addition, I read organisation documents such as annual reports, strategic planning documents, business plans, funding proposals and reports. Where available, I looked at some of the relevant legislation and government policy documents. In respect of the Swedish circumstances, I studied legislation, government documents and reports. The literature on other countries has also been of use in this context since the subject, in many cases, is the concept of clinical legal education and law clinics which is not limited to a specific country.

### **3 Clinical Legal Education (CLE)**

#### ***Background and Context***<sup>4</sup>

In this chapter, I intend to provide a brief overview of clinical legal education where I examine how it evolved in the United States and, to a very limited extent, refer to its application in Australia. This is by no means meant to be an exhaustive account of the history of clinical legal education but is merely a short description of the threads and dimensions attributed to it.

#### **3.1 General Overview**

It appears that clinical legal education emerged in the United States as a combined effort of law teachers and students in their attempt to make legal studies more relevant to the social issues of the time. Initially, in the 1920's and 1930's, it seemed to work toward providing support to the legal aid system. However, in the 1960's students demonstrated an increased desire to help make the law serve the needs of the poor. This consequently provided the incentive for the further development of clinical legal education. In the 1980's and 1990's clinical legal education has been geared toward demystifying the law for students and clients thus moving "clinical programs into the civil rights, consumer rights, environment rights, and poverty rights movements"<sup>5</sup>.

In Australia, where it made its way into the law schools in the late 1970s,<sup>6</sup> clinical legal education comprises the features described in the figure below. This description is fairly general and is relevant not only to the Australian context, but also has a wider application.

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<sup>4</sup> This chapter is primarily based on the article *Clinical Education for this Millennium: The Third Wave* by Martin Barry, Dubin, and Joy in *Clinical Law Review* 2000, p. 5-18

<sup>5</sup> Ibid, p. 13

<sup>6</sup> Osborne, p. 13



**Features of clinical legal education in Australia<sup>7</sup>**

<b>Educational</b>	<b>Provision of Legal Services</b>
Application of doctrine to case-work	Extension of legal services to satisfy unmet legal needs
Foster better people skills – improved facility to communicate with clients	Infusion of technical knowledge to community legal services
Analysis and appreciation of the role of law in society	Enthusiasm and initiative
Inculcate professional ethics	Increased likelihood of pro bono work and voluntary community legal activities
Practice legal research	Exchange of views between practitioners and students
Awareness of the role of fact gathering and analysis in the legal process	Recognition in the community
Appreciation of law reform process	Improving professionalism of lawyers
Awareness of Community Legal Education issues	Increased awareness of poverty law
Students who do not enter the profession exposed to legal processes	Links to academic community

It is evident that there are several dimensions to clinical legal education. For the purpose of this overview, I look only at the social justice dimension and clinical legal education as a teaching methodology.

**3.2 The Social Justice Dimension**

Proponents of the social justice dimension of clinical legal education often refer to the “dual goals of hands-on training in lawyering skills and provision of access to justice for traditionally unrepresented clients”<sup>8</sup> These goals were being pursued jointly not only to provide client representation, but also to teach professional and ethical values to students.

<sup>7</sup> Ibid, p. 12

<sup>8</sup> Martin Barry and others, *Clinical Law Review* 2000, p. 12

Students often learn the techniques and the need to pursue justice and fairness in resolving client problems. At the same time, they learn professional responsibility and competent representation of client interests.

From a jurisprudential perspective, this dimension is seen as one which promotes the idea that law and the study of law is not a neutral activity but is often tinged by politics and political convictions. Hence, a law teacher's political views can result in the law being taught purely from a particular perspective. Clinical law teachers who adopt the social justice dimension often teach students how the law can be used as an instrument for social justice and change.

In addition, it must be noted that few traditional law courses explored social justice issues. Fewer still examined the social responsibility of lawyers to engage in *pro bono* work. However, those who were inclined to this perspective emphasised the importance of *pro bono* work and the lawyer's role in changing the law as opposed to only applying the law as it is.

It should be noted that in the United States there is a wave or movement toward integrating social justice issues into the more traditional law courses thus making it more pervasive.

### **3.3 Clinical Legal Education as Teaching Methodology**

This dimension of clinical legal education is less controversial. It also evolved with time in the United States. Whereas at first there was no unified definition of clinical legal education as a teaching methodology, eventually it became clearer. At first anything done outside a classroom context was considered clinical teaching. However, with time and after clinical teachers began to write about their teaching methodology and developed a vocabulary to describe it, it became clear that the primary goal of clinical teaching methodology is to teach how to learn from experience.

Clinical teachers have been working at "... how to identify and teach the elements of various lawyering skills, how to develop and explain theories of lawyering, how to refine and improve the supervisory process, and how to incorporate experiential learning theory into clinical law teaching"<sup>9</sup>.

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<sup>9</sup> Ibid, p. 16-17

When *the Report of the Committee on the Future of the In-House Clinic* was completed, there was general agreement with its observations. It states that:

“Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problems in role; the students are required to interact with others in attempts to identify and solve the problems; and, perhaps most critically, the student performance is subjected to intensive critical review.”<sup>10</sup>

But it should be mentioned that not all clinical law teachers adhere to both these dimensions. In fact some teachers emphasise the teaching methodology and limit their focus on the social justice dimension, while others emphasise the social justice dimension. It appears that effective clinical programs strive toward achieving a balance between these two dimensions.

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<sup>10</sup> *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Educ. 511 (1992) as quoted in Martin Barry and others, *Clinical Law Review* 2000, p. 17-18

## **SECTION B**

### *South Africa*

## **4 Access to Justice and Legal Education**

### ***Background and Context***

#### **4.1 Access to Justice**

Access to justice in South Africa has meant different things at different points on the time line of South Africa's political life. So too, the concept of the rule of law has been a beacon of hope and also the bane of those who sought freedom from bondage.

Under apartheid, access to justice meant the ability to demonstrate against unjust laws and protest without being beaten up, unlawfully arrested, detained, or even killed by the State. In effect, access to justice meant an attempt to expand the space for activists to work toward the dismantling of the apartheid state through protest, mass action and through the courts.

In the post apartheid period, access to justice is more complex in some ways. The political changes only made slight dents to the essential core of the apartheid machinery which was an intricate system of discrimination in every way possible. It extended from such intensely unjust mechanisms as the design of townships for black people having only one exit and entrance to enable the State to cordon off the areas during unrest, while at the same time planning white residential areas with unlimited routes by which to enter or leave, thus enabling a quick exit if necessary. Such discrepancies extended to every aspect of life – from the standard of education to the availability of basic services such as clean running water. These discrepancies remained and became even more evident once people were able to move around the country freely and see what they have been denied.

##### **4.1.1 The State**

During the first years of the post apartheid period the state funded system of legal aid was still designed to meet the needs of only a few. The system entailed the provision of funding on a case by case basis to an individual lawyer in private practice.<sup>11</sup> The tariff used was not discounted. In fact in civil cases, advocates were able to charge their normal fee less 25% for legal aid. This was often implemented with an initial inflation of the fee and then the applica-

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<sup>11</sup> *Business Plan 2000-2003*, LAB, p. 4

tion of the 25% reduction.<sup>12</sup> Consequently, the Legal Aid Board (LAB/the Board)<sup>13</sup> found itself close to bankruptcy in 1998.<sup>14</sup> This system was initially designed to meet the needs of the white clients and the white attorneys who formed a small portion of society. However, when the system was used to meet the needs of the broader society, its flaws became clearer and the need for transformation became more evident.<sup>15</sup>

As the transition to a democratic state proceeded, the concurrent transformation of all the institutions became necessary to ensure that access to justice was meaningfully pursued. This entailed transformation of the judiciary, the legal profession, the system of legal aid, the courts, the criminal justice system and the administration of justice – the legislation needed to be reviewed to bring them all in line with the new adopted constitution.<sup>16</sup> <sup>17</sup> At the same time, institutions were introduced to prevent abuses of power and ensure greater access to justice such as the Human Rights Commission, the Commission on Gender Equality, the Public Protector and the like.<sup>18</sup> These are institutions created by the constitution to ensure that adequate checks and balances are in place beyond the separation of powers between the legislature, judiciary and executive authority.

During the post apartheid period, and more particularly during the period post 1998, the state legal aid system underwent intensive transformation. It began to move away from the expensive judicare system to a system based on salaried lawyers. At first this was implemented through co-operation agreements with university based law clinics (ULCs), but eventually independent Legal Aid Clinics were established in all the main centres of the country. These clinics provided legal services to indigent people in criminal and some civil cases, mainly divorce cases. During 2001, a further transformation took place towards a system of justice centres. Legal aid clinics were converted to justice centres.<sup>19</sup> During this period the State was providing legal services in primarily criminal defences. However, a gap existed in other areas

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<sup>12</sup> *Legal Aid Guide 1998*, section 5.14 and Annexures F.1 and F.2

<sup>13</sup> See section 4.1.2

<sup>14</sup> *Business Plan 2000-2003*, LAB, p. 9

<sup>15</sup> *Ibid*

<sup>16</sup> *Justice Vision 2000*, p. 1

<sup>17</sup> For more information see South African Law Commission Project 101 and Project 25

<sup>18</sup> Chapter 9 of the Republic of South Africa Constitution Act 108 of 1996 and Govender, p. 572-573 and 593

<sup>19</sup> It is the vision of the Legal Aid Board that justice centres will ultimately be the “one stop shop” where indigent people could obtain assistance. They are to ultimately be multidisciplinary in nature and provide a multiplicity of services, from simple advice about administrative procedures such as pension claims to in-depth legal services such as impact litigation on socio-economic rights for example. *Business Plan 2000-2003*, LAB, p. 24, read with *A proposed alternative model for the provision of legal aid in South Africa*, p. 162-163

of the law such as land, housing, gender, children and monetary claims for damages. In addition, the services provided by the State were largely found in the urban areas. The rural areas were consequently either wholly without access to any services or to a limited degree at best.

All this “while the Constitution provides that everyone is equal before the law and that everyone has the right to equal protection under the law. The Constitution, apart from acknowledging individual rights, also provides for the establishment of the requisite institutions to support their realisation. This implies that mechanisms must be put in place to ensure the greatest possible access to the law and its institutions, to legal services and to full information about the nature and content of the rights involved. In this regard, legal aid can play a substantial role in promoting empowerment by advancing social, economic and political rights through the law in such a way that the plight of the poor and historically disadvantaged groups is meaningfully addressed. While legal representation in criminal cases will always be a major focus for legal aid services, legal aid must also be used to promote social and political change.”<sup>20</sup>

*The Department of Justice defined its mission relating to access to justice as follows in its policy statement*<sup>21</sup>:

**“Access to justice**

Here we will focus on creating a justice system that is simple, fair and inexpensive. At the same time, it should be effective, efficient and responsive to the different needs of different communities in South Africa. We will focus on five main areas.

1. We will give all people, especially marginalized groups, greater access to legal advice and legal representation and will ensure that there is consumer protection for people who use legal services.
2. We will review the procedures and languages used in the courts. We will:
  - Review court documents and all public communications so that we can improve people’s access to justice and their participation
  - Take special care to see to the needs of marginalized groups

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<sup>20</sup> Draft White Paper – Department of Justice, p. 1-2

<sup>21</sup> *Justice Vision 2000*

3. We will improve people's access to alternative ways of solving disputes. We will integrate informal ways of solving disputes into both the criminal justice and civil justice systems, and also the administration of estates.
4. We will increase the protection of vulnerable groups and facilitate access to social justice in all areas of the law. We will emphasise the reform of:
  - Family law
  - The law of succession
  - Property law (including that under customary law and religious laws)
  - The laws relating to how people can be protected from violence
5. We will actively implement the provisions of the Constitution, especially the provisions that relate to dignity, equality and administrative justice. At the same time we will change, or remove, all laws that are not consistent with the values of the Constitution.”

#### **4.1.2 Legislation**

The South African Constitution<sup>22</sup> creates a positive right to legal representation for any arrested, detained (including sentenced prisoners) and accused person at state expense if he/she cannot afford to pay a lawyer.<sup>23</sup> In addition, children who have a right to legal representation at state expense in civil proceedings, “if substantial injustice would otherwise result...”<sup>24</sup> It has also influenced legal representation in civil cases and provides standing for class actions in cases of violations of the Bill of Rights of the above constitution.

The Legal Aid Act<sup>25</sup>, which is currently under review, states that: “the objects of the board shall be to render or make available legal aid to indigent persons and to provide legal representation at state expense as contemplated in the Constitution...”<sup>26</sup> The Legal Aid Board is the primary state funded implementing agency in the field of access to justice. However, it

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<sup>22</sup> Act 108 of 1996

<sup>23</sup> Ibid, sections 35 (2) (c) and 35 (3) (g)

<sup>24</sup> Ibid, section 28 (1) (h)

<sup>25</sup> Act 22 of 1969

<sup>26</sup> Act 22 of 1969, section 3



has not acted with this motive all of the time as was seen in the discussion above. Judge Navsa, the chairperson of the Legal Aid Board stated: “The organisation had lost sight of its ideals and was floundering in a disorganised state, caught in a bureaucratic morass. While we began to pick up the pieces, we had to respond to a range of issues that tested our right to exist. Most of the issues were bound up with our Constitutional imperative to provide representation in criminal cases.”<sup>27</sup> As a result of the ineffective and inefficient functioning of the entire system of legal aid, the State hosted a national legal aid forum in 1998 with the intention of transforming the system. The Board underwent a complete transformation, from the structures governing it to those that implement at community level. Judge Navsa noted that: “In a developing country there are, understandably, many demands on the public purse. Housing, health and education are areas of priority. Legal aid is often seen as a luxury. But the right of access to court is fundamental to democracy. Even in wealthy countries, there is more demand for legal assistance than can be met from state coffers. In a country where poverty abounds and where the disparities in society are stark, we need to harness all available energy, goodwill and creativity to meet the need for legal assistance for poor people. We must stretch the legal aid rand.”<sup>28</sup> This is also reflected by the Board’s motto: “*Justice for all*”.

In addition, the obligations created under the constitution have been interpreted by the Land Claims Court in a significant judgement.<sup>29</sup> A public interest non-governmental organisation initiated this case to apply pressure on government to allocate additional resources for legal aid in respect of indigent people in land related matters in rural areas. Intervention of civil society and the courts proved extremely useful in this case, as the Legal Aid Board was unable to argue for any more resources. In addition, as stated above by Navsa, the State prioritised its constitutional obligation first.

Civil society intervention in this case meant that the interests of those that fall within the gap, but are also in need of assistance, are ultimately also taken care of by the State. A more in-depth discussion on the role of civil society and non-governmental organisations follows.

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<sup>27</sup> *Annual Report 1997-1998/1998-1999/1999-2000*, Legal Aid Board, p. 2

<sup>28</sup> *Ibid*, p. 2-3

<sup>29</sup> LCC 10/01, 6 July 2001. For more information see [www.law.wits.ac.za](http://www.law.wits.ac.za)

### 4.1.3 Civil Society and Non-Governmental Organisations

During the apartheid regime, non-governmental organisations (NGOs) such as the Legal Resources Centre (LRC)<sup>30</sup> were inundated with cases where they attempted to use the law and consequently the courts to expand and protect the legal space, to challenge unjust activities such as detention without trial, unlawful arrest, assault and detention, illegal evictions and mass forced removals of people simply because of the colour of their skin thus displacing families and communities. It “used legal advocacy to exploit contradictions in the apartheid legal system. Although it was clearly not possible to use the law to attack the foundations of the system of institutionalised discrimination and oppression, it was possible to use legal strategies in support of mass movements to further the cause of dismantling apartheid”.<sup>31</sup>

Other organisations such as the National Association of Democratic Lawyers (NADEL)<sup>32</sup>, Lawyers for Human Rights (LHR)<sup>33</sup> and the Black Lawyers Association (BLA)<sup>34</sup> embarked on campaigns against for example the death penalty<sup>35</sup>. They also encouraged and organised legal representation for activists who were charged with treason and held during the several states of emergency declared.<sup>36</sup>

During this time (in the 1970s) ULCs also emerged. In some areas, like Durban for instance, it grew out of the combined passion of law teachers committed to ensuring that the law is seen as an instrument of social change and that faculties and students are actively engaged in such activities. The Campus Law Clinic (CLC)<sup>37</sup> in Durban was at that time run out of the offices of the then young law teacher, now Professor David J. McQuoid-Mason. The idea was to supplement and complement the work of the Legal Resources Centre and to provide the law students with a learning experience that would be unparalleled. Their main activity was statement taking. This was an important task as the LRC often represented large groups of

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<sup>30</sup> See section 4.1.3.1

<sup>31</sup> Manning, *The Role of Legal Services Organizations in Attacking Poverty*, p. 14

<sup>32</sup> NADEL is a membership based non-governmental organisation whose mission is to uphold the rule of law and promote access to justice for all South Africans regardless of race or gender. Interview with V. Saldhana.

<sup>33</sup> “Since 1994 NADEL has played a dynamic role in advocating the human rights dispensation in the Bill of Rights and participating in the transformation of the legal system and institutions.” *ICJ-S Report 14 to SIDA*, p. 70

<sup>34</sup> See section 4.1.3.2

<sup>35</sup> The Black Lawyers Association is an independent non-governmental organisation of lawyers from historically disadvantaged backgrounds. It strives to promote the interests of its members and in so doing promote access to justice for South Africans from historically disadvantaged backgrounds.

<sup>36</sup> Interview with V. Saldhana

<sup>37</sup> *The State v Ramgobin and others*, 1985 (3) SA 587 N, 1986 (1) 68 N and 1986 (4) 117 N

<sup>38</sup> See Chapter 5

trade union members or activists of various sorts whose individual statements would be necessary.<sup>38</sup> The LRC did not have sufficient person power to do this on their own so, in collaboration with the CLC, students under supervision took down the statements.

Within this period collaboration among non-governmental organisations was essential for the effective execution of strategies. No organisation could work on its own. Civil society was in a very dynamic phase and constantly engaged in searching for weak areas in the system in order to break it open and eventually dismantle the apartheid structure.

Civil society needed to and continues to redefine its role within the emerging democratic state. Having been instrumental in the struggle against apartheid, often in partnership with the liberation movement, it was in the times of change now charged with the task of defining a role for itself in a new context. Many former partners in the struggle against the unjust State were now part of the new state machinery.

Very soon though, it was clear that non-governmental organisations and a strong civil society were a part of the reason for the type of transition enjoyed in South Africa. Consequently, most leading non-governmental organisation were quickly able to define their role in the new era as being both monitors of state and aides in the implementation of transformation strategies designed to redress wrongs of the past.

#### **4.1.3.1 The Legal Resources Centre (LRC)**

There are many specialist non-governmental organisations in South Africa that focus on particular issues such as domestic violence, gender, land, housing, and children among others. The Legal Resources Centre is the pioneer within this field. It was established in 1979.

Its mission statement currently states that it “is an independent, client based, non-profit public interest law centre, which uses law as an instrument of justice. It works for the development of a fully democratic society based on principles of substantive equality, by providing legal services for the vulnerable and marginalized, including the poor, homeless and landless

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<sup>38</sup> Interview with D. J. McQuoid-Mason

people and communities of South Africa who suffer discrimination by reason of race, class, gender, disability, or because of social, economic or historical circumstances.

Inspired by our history, the Constitution and international human rights standards, the LRC, both for itself and in its work, is committed to:

- Ensuring that the principles, rights and responsibilities enshrined in our national Constitution are respected, promoted, and fulfilled
- Building respect for the rule of law and constitutional democracy;
- Enabling the vulnerable and marginalized to assert and develop their rights;
- Promoting gender and racial equality and opposing all forms of unfair discrimination;
- Contributing to the development of a human rights jurisprudence;
- Contributing to the social and economic transformation of society.

To achieve its aims, the Legal Resources Centre seeks creative solutions by using a range of strategies, including impact litigation, participation in partnerships and development processes, education and networking within and outside South Africa.”<sup>39</sup>

It has 110 lawyers and paralegals in five cities and has an access to justice program funded by the International Commission of Jurists, Swedish Section, (ICJ-S) in terms of which it works with a network of 80 community advice centres across South Africa.<sup>40</sup>

#### **4.1.3.2 Lawyers for Human Rights (LHR)**

Lawyers for Human Rights was established in 1979. It is a non-governmental, non-profit organisation whose vision is to be a leading and effective human rights and constitutional watch dog and advocate, an international force in the development and delivery of human rights with primary focus on Africa and a primary contributor to clear strategic policy on the delivery of socio-economic rights to the disadvantaged.

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<sup>39</sup> *Annual Report 1999-2000*, Legal Resources Centre, p. 1

<sup>40</sup> *A proposed alternative model for the provision of legal aid in South Africa*, p. 151

It has eight offices from which it runs a paralegal training and law clinic project among others. It offers certified course for paralegals through the universities of Rhodes and Stellenbosch. Its law clinics operate from six locations.<sup>41</sup>

#### **4.1.3.3 Association of University Based Legal Aid Institutions (AULAI)**

The Association of University Legal Aid Institutions represents 20 university based law clinics and was established some twenty years ago. Its main goal is to promote the provision of free legal services to indigent people and to promote the training of law students and graduates in the skills and values required to practice law. It has become the organisation that promotes clinical legal education in South Africa.

University legal aid institutions operate in all parts of the country in both rural and urban areas. They provide services to large numbers of people who otherwise would not have received help. Their ability to reach people in rural and urban areas is increased by the fact that they are located in virtually all the provinces of the country.<sup>42</sup> In addition, almost all of them have formal relationships with the paralegal advice offices that are located in the rural areas. Through the system of “back-up legal services”, clinic staff and students travel to advice offices and work with paralegals in providing advice and representation of the rural poor.<sup>43</sup>

#### **4.1.3.4 National Community Based Paralegal Association (NCBPA)**

The National Community Based Paralegal Association was established in 1996. It is a national network of provincial paralegal associations which in turn is comprised of community based advice offices and paralegals. Its mandate is to promote, develop and coordinate the work of the affiliated advice offices in order to ultimately work toward increasing access to justice in South Africa. In addition, the “NCBPA promotes and advances human rights, including the socio-economic rights of the poor and provides assistance to the poor to access development resources and entitlements”.<sup>44</sup>

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<sup>41</sup> Ibid

<sup>42</sup> See Attachment 1

<sup>43</sup> *A proposed alternative model for the provision of legal aid in South Africa*, p. 150

<sup>44</sup> *Half Yearly Narrative and Financial Report for Period January 1999-June 1999*, National Community Based Paralegal Association, p. 1

Among its broad national objectives are the:

- Development of uniform standards and certified training of paralegals to enhance their service delivery and professional competence
- Demystification and simplification of the law, particularly the constitution and bill of rights through public education, to ensure that communities understand their rights and the democratic processes related to them
- Adoption of a code of conduct and ethics to ensure that paralegals are bound by provisions that require a minimum level of professional service

The individual community based paralegal engages in the following activities:

- Counselling
- Advice and referral
- Demystification and simplification of the law
- Negotiations and mediations
- Accessing social services like grants and other entitlements for the poor
- Case work on non-litigious civil matters
- Research
- Facilitation on community development initiatives
- Advocacy and lobbying
- Representation in conciliation boards
- Dispute resolution
- Human rights education<sup>45</sup>

There are approximately 250 advice offices with about 750 paralegals in South Africa. Of these, some 150 are affiliated to the NCBPA. The advice offices are located in each province and mostly in places that are otherwise inaccessible to the legal aid system. They work with the organisations described above such as the LRC, LHR and AULAI clinics who provide back-up legal services to them in cases that need the services of a lawyer.

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<sup>45</sup> Ibid, p. 1-2

## **4.2 Legal Education**

The South African legal qualification for law is currently under review. A national Standards Generating Body was established to, among other things, generate one national degree in law. Currently, however, each university offers a four-year undergraduate LLB<sup>46</sup> degree as the basic legal qualification.

In addition to this degree, graduates who wish to practice law as attorneys are required to serve a period of internship (article of clerkship) under a practising attorney or provide community service at a law clinic for a period of two years. If the graduate is able to attend a full time practical legal training course offered by the Practical Legal Training School, they need only serve one and a half years. Thereafter they are required to write an exam for admission into the profession.

If the graduate chooses to practice as an advocate, he/she will be required to serve a period of six months of pupillage, which is full time and unpaid.

The learning outcome of the qualification differs from institution to institution and the course structure, which courses are compulsory and those that may be chosen, differ as well.

### **4.2.1 Clinical Legal Education**

Legal education in South Africa is characterised by a complex set of socio-political and economic factors. Like in many other countries, legal education has been designed and implemented in a manner that maintains the status quo. Consequently, legal education did not traditionally challenge unjust laws, but merely sought to teach what the law is and how to apply it. In some instances, and more specifically in courses that focused on various aspects of legal philosophy some attention was given to what the law ought to be.

In addition, the racial structure of the society was not reflected in the legal profession due to the system of institutional racism. Consequently, the legal profession was largely dominated by white males even though the majority of South Africa's population comprises of black

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<sup>46</sup> Bachelor of Laws

people.<sup>47</sup> “The separate university systems for Africans, Indians and so-called ‘colourds’, or people of mixed racial origins, were designed to perpetuate the system of black service to whites, to limit black intellectual and professional achievement and to forcibly maintain apartheid legal and political structures.”<sup>48</sup> Black students who were able to overcome the impediments of inferior school education and facilities and a language barrier where they were required to study complex legal principles in their second language were still unable to ultimately qualify as lawyers as they were unable to find employment as candidate attorneys or pupils at the bar.

One of the main recommendations for undoing this imbalance was the further development of clinical legal education programs at law schools. Thus providing training and possibly employment of black students and graduates.<sup>49</sup> “The possibilities for this expansion occurred with the 1991 amendments to the Attorneys Act<sup>50</sup>, which now permit article of clerkships to be served with legal aid clinics and public interest law organizations as ‘community service’. A critical key to access to the legal profession therefore is now found squarely within the legal aid clinics attached to university law faculties.”<sup>51</sup>

The method of teaching was also predominantly the Socratic method or the case review method. South African’s describe the dominant system of teaching as “chalk and talk” where the teacher provides a lecture and students listen and record what he/she says. This methodology has been criticised by many across the globe as a methodology that does not fully take into account the different learning methods and theories that have developed over the years. In contrast, the corner stone of clinical legal education is learning by doing.<sup>52</sup>

Like in other countries, clinical legal education emerged in South Africa largely as a response to services needs in the community. Consequently, most universities incorporated a community service component in its mission since legal advice activities fulfilled this goal.

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<sup>47</sup> 85% of the legal profession is white and only 15% are black. “The twenty-one law schools in South Africa annually produce about 3000 graduates, all of who have to do an internship either as pupil advocates or candidate attorneys before they can be admitted to practice.” McQuoid-Mason, *Fordham International Law Journal* 2000, p. 111-112

<sup>48</sup> Gilbert, *Report to Ford Foundation*, November 1993, p. 1

<sup>49</sup> *Ibid*, p. 2

<sup>50</sup> Act 53 of 1979

<sup>51</sup> Gilbert, p. 2

<sup>52</sup> For a more in-depth discussion on these ideas in another context see Pincus, *Legal Education in a Service Setting*



However, a large number were also initiated by the student need for greater skills components to their work and their need to “give back” to the poor communities.

In July 1973 only two universities, Cape Town and Witwatersrand had legal aid clinics. The clinic at the University of Cape Town was a student run organisation while the Witwatersrand clinic was incorporated into the Practical Legal Studies course. July 1973, however, proved to be a turning point for the development of law clinics in South Africa when the Ford Foundation<sup>53</sup> sponsored an International Legal Aid Conference at the University of Natal in Durban. The Conference focused on both the delivery of legal aid services and the role of law clinics in the provision of such services.<sup>54</sup>

Most South African universities were represented at the Conference and soon thereafter a number of clinics were opened largely at the instance of law students. Thus a clinic was started at the University of Natal (Durban) in 1973, the universities of Natal (Pietermaritzburg) and Port Elizabeth in 1974, the universities of Stellenbosch and Western Cape in 1975, the universities of Durban Westville and Zululand in 1978 and at Rhodes University in 1979. The Transvaal universities (apart from the University of Witwatersrand) tended to wait until the 1980's when clinics were established at the universities of Pretoria and the North in 1980, the University of South Africa and Rand Afrikaans University in 1981 and at the University of Bophuthatswana in 1983. The universities of Potchefstroom and the Orange Free State also established clinics in the 1980's.<sup>55</sup>

#### **4.2.1.1 Advantages and Disadvantages**

While this thesis sets out to explore the positive effects of clinical legal education and some of its potential effects in Sweden, it is also necessary to present a balanced perspective. It is therefore necessary to consider the advantages and disadvantages of the system from a legal education and service or access to justice perspective.

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<sup>53</sup> The Ford Foundation is an international donor organisation whose main goal is to strengthen democratic values, reduce poverty and injustice, promote international co-operation and advance human achievement. It has provided funding to public interest law organisations within the US, Africa, Asia, Latin America and the Eastern Europe for many years. It laid the foundation for the clinical movement in both the US and South Africa. For more information see their website at [www.fordfound.org](http://www.fordfound.org)

<sup>54</sup> McQuoid-Mason, *Natal University law and Society Review* 1986, p. 189

<sup>55</sup> *Ibid*

What follows is, primarily, the words and analysis of Professor David McQuoid-Mason, the pioneer of clinical legal education in South Africa. He has written extensively on the subject and his analysis is presented in a manner that cannot be summarised, interpreted or in any other way adjusted without doing a major injustice to it. He suggests that:

“The proponents of clinical education claim that it has a variety of advantages:

- it takes the student out of the classroom after a long period of ‘theoretical’ study ;
- it develops the student as a ‘whole’ person by exposing him to ‘real life’ frustrations ;
- it requires the student to exercise judgement by distinguishing truth from falsity;
- it enables the student to see that the law as practised does not operate in clearly defined compartments;
- it teaches professional responsibility and develops legal skills;
- it makes a student aware of the practical implications of the legal process and encourages his social consciousness;
- and it improves the quality of teaching by exposing teachers to ‘greater student-initiated speculation, criticism and thought’;

The critics of the concept mention that:

- clinics handling heavy caseloads only allow for superficial analysis by students;
- the nature of clinical work is repetitive, uninteresting and mundane;
- law clinics cannot substantially assist in providing legal services to the community;
- it is not the function of the universities to teach practical skills;
- and that clinical programmes are expensive because of the low staff-student ratio.”<sup>56</sup>

From an academic perspective, he suggests that teachers also benefit from this methodology in that the “cross-fertilisation” between the research and understanding of the law and its day to day practice provide an interesting blend for a teacher both as scientist/researcher and as teacher. It is also suggested that the profession is more likely to receive enlightened practitioners with a well developed social conscience as opposed to a purely money minded

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<sup>56</sup> McQuoid-Mason, *An Outline of Legal Aid in South Africa*, p. 204-205

individual. Law schools and faculties also get an opportunity to “give back” to the communities that in one respect or another contribute toward it.<sup>57</sup>

From the perspective of access to justice, the Legal Aid Board have recorded the following advantages and disadvantages about law clinics in the role of increasing access to justice.

They have listed the following major advantages:

- A decrease in the average cost per case
- The provision of law graduates with greater access to the profession, specifically from the black community
- The provision of services in both civil and criminal cases

In their experience, the following disadvantages have been noted:

- Due to inadequate professional and senior staff, and large numbers of very junior staff, the senior attorney spent a larger amount of time on supervision as opposed to representation
- Candidate attorneys are not permitted to appear in certain courts and consequently, the capacity of the clinic to provide services in certain types of cases was limited
- Some institutions prioritise practical training in a manner that the other goals of legal service provision, for instance, are compromised. This then limits the extent to which clinics assist in increasing access to justice.<sup>58</sup>

It is evident from the above critique that while there are in fact disadvantages to clinical legal education, the advantages outweigh the disadvantages both in quality and quantity.

### **4.3 Paralegals**

A very brief description of paralegals is provided earlier. In this section the role of paralegals in increasing access to justice is discussed in greater detail with some reference to an international perspective as well.

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<sup>57</sup> Ibid, p. 206 and 209

<sup>58</sup> *Board's Position Paper*, presented to the Legal Aid Forum, 15-17 January 1998, Legal Aid p. 16-19

In South Africa a paralegal is defined as:

“A person qualified through education, training, or work experience to perform legal, social welfare, or related work, which require a basic knowledge of the law. The person may be community based, employed by a legal practitioner, a law firm, governmental institution, corporation or any other entity, and may be supervised by or work under a legal practitioner in performing the work.”<sup>59</sup>

Stephen Golub describes paralegals as persons with specialised training who provide legal assistance to disadvantaged groups and who often are themselves members of those groups. They draw on their experiences within the communities and their basic non-legal training to educate and help the communities they come from to access basic services and resolve disputes. They often attempt to resolve disputes through alternative forms of dispute resolution although in certain instances they may assist in litigation.<sup>60</sup>

It was evident in South Africa that the community based paralegal component is an essential core in the system of access to justice. The traditional legal aid system was, and continues to be unable to reach poor people in rural areas, despite the good intentions of some lawyers and institutions. As was stated above, during the apartheid days such good intention was not present. Consequently, a movement of community based paralegals developed in South Africa.

Of particular note is the Community Law and Rural Development Centre<sup>61</sup> based in Durban. It was established in 1989 and operates in the deep rural areas of KwaZulu Natal and the Eastern Cape.

Its primary goals are to empower rural communities to:

- Participate in a changing South Africa by increasing individual accountability, skills, self-reliance and confidence
- Educate rural communities about democracy, voting, and civil society

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<sup>59</sup> *Position Paper on the Recognition and Regulation of the Practice of Paralegals in South Africa*, the National Paralegal Institute, November 1999, p. 8

<sup>60</sup> Golub, *Nonlawyers as Legal Resources for Their Communities*, p. 297

<sup>61</sup> The CLRDC is a non-governmental organisation that works with paralegals in KwaZulu Natal to support and sustain a human rights culture.

- To strengthen the rule of law in South Africa

On the one hand it works toward achieving these goals by responding to requests from communities who have established committees to provide training for paralegals and on the other by initiating the establishment of such committees by proactively targeting areas and communities in need of such services.<sup>62</sup> It has developed a fairly intensive training program over the years which is now in the form of an accredited diploma offered from the Faculty of Law at the University of Natal, Durban.<sup>63</sup>

The Community Law and Rural Development Centre provides advice and training to approximately 1 000 000 people. By the end of 1996 it had handled 6 500 cases for rural residents, facilitated numerous community legal education workshops, monitored administrative functions such as the welfare departments pension system to measure accountability and provided widespread voter education. In fact prior to and during the first democratic elections in South Africa it was one of two organisations that were able to offer voter education in the rural areas of Northern KwaZulu Natal.<sup>64</sup>

Paralegal advice offices complement the conventional lawyer based legal aid service schemes. Further, if access to justice is viewed from a holistic perspective, paralegals are the “first port of call” and therefore most clients make their first contact with the legal system through paralegals. This stage is often the most critical as it is usually at this time that screening of cases takes place and clients and communities are advised about the options available to them. Often a client’s attitude towards the legal system is formulated at this stage. Therefore, paralegals play a crucial role in making justice accessible to ordinary South Africans. In this respect, most non-governmental organisations have recognized this and jointly advocated for the incorporation of paralegals into the legal aid system. More recently, the Board acknowledged the importance of the paralegal component in its work and has demonstrated this by allocating funds and creating posts for this function.<sup>65</sup>

An impediment to the full incorporation of the paralegals into the legal aid system and the structured system of access to justice has been the nature of the qualifications and rules governing the ethical conduct of paralegals. Great disparities have been noted in the levels of

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<sup>62</sup> McQuoid-Mason, *Fordham International Law Journal* 2000, p. 134-135

<sup>63</sup> See Attachment 2

<sup>64</sup> McQuoid-Mason, *Fordham International Law Journal*, volume 2000, p. 134-135

<sup>65</sup> *Director’s Access to Justice Report*, LAB Board Meeting 16 March 2002, Legal Aid Board, p. 12

qualifications and competence of paralegals. Mechanisms to hold paralegals liable for unethical conduct and also a uniform code of conduct for paralegals has not been formulated. Consequently, the Legal Aid Board has been reluctant to incorporate paralegals as a full and also independent entity within the legal aid system. Instead, paralegals who work in close partnership with legal aid clinics and other qualified attorneys or are employed within such institutions are more easily integrated into the legal aid system.

### **4.3.1 Advantages and Disadvantages**

During the process of transformation, an analysis of the strengths and weaknesses of the paralegals in the system of access to justice was conducted.<sup>66</sup> What follows is a brief summary of the key points raised.

The primary strengths or advantages were that:

- Most advice offices were located close to where the poor communities lived often in otherwise inaccessible places where no other similar service is available
- They covered all nine provinces
- They have credibility within the community and consequently have the trust and respect of the local people
- They have a long track record of services and many individuals have a cumulative experience in excess of 10 years
- Their services are at no cost to the client and are often inexpensive to fund as the infrastructure and salary both amount to a relatively small amount of money
- The overarching strength is their commitment and willingness to participate meaningfully within the system

At the same time a few weaknesses or disadvantages have also been noted, namely:

- Although there are some accredited training courses available to paralegals, there is no standardised curricula and accreditation procedure

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<sup>66</sup> *A proposed alternative model for the provision of legal aid in South Africa*, p. 148-150

- Paralegals are almost wholly dependant on donor funding. This means that they operate in an atmosphere of uncertainty and consequently their work sometimes suffers
- They currently work outside the established profession and are hence limited in the level of intervention and assistance that they can provide. Currently, it is limited to advice, representation at certain tribunals and alternate dispute resolution forums.
- They do not carry professional indemnity insurance and consequently clients do not have any protection from negligence and misconduct
- Their relationships with professional legal services providers were informal and hence at times presented problems in referral systems
- The level of skill, competence and professionalism varies greatly from one paralegal to another

It is evident from the above analysis that the primary advantage of paralegals is that people receive advice and services from those who are intimately connected to their communities and whom they trust. This is a core component of access to justice in its broadest sense as trust and respect of the justice system is often dependant on trust of the individuals who work the system.

## **5 The Campus Law Clinic (CLC)**

*University of Natal, Durban*

### **5.1 Background**

The Campus Law Clinic was established in August 1973. It has undergone several changes during the 29 years of its existence. The most obvious is its evolution from a voluntary organisation operating from the offices of a law teacher to one with 17 full time staff.

The changes within the organisation ran parallel to those in the social and political system within the country. It is significant to note that the institution appears to have assessed the needs and priorities of students and clients from time to time and transformed itself to meet these new demands, to the extent that it was able to.

During my study of the clinic it became evident that this transformation took place both at the level of its impact in access to justice issues and at the level of legal education. In addition its management and organisational structure has also changed with time. This section will focus on the operations of the clinic during the apartheid years and during the post apartheid period with greater emphasis on its goals and strategies and a limited discussion about its management, administration and organisational structure.

#### **5.1.1 The Apartheid Years**

In the beginning, the clinic operated from the offices of a full time law teacher. After some time it secured offices in the students' union building. During this time, the full time law teacher supervised students in addition to his normal teaching load. Volunteer attorneys supervised students off campus at a church hall. At the time, students were providing basic advice and taking statements from clients. They were not able to handle cases from its beginning through to its conclusion in court at that stage. Therefore the services were limited during this period. However, the impact on access to justice was still extensive since the work was often organised in collaboration with the local non-governmental organisations that needed the enthusiasm of the students. Organisations such as the LRC often worked with the



CLC in cases where the CLC was required to obtain statements from individual clients where whole communities or classes of people were being represented.

From the legal education perspective, the extent of informal legal aid seminars the students so far had received had reached a level that motivated for a structured course in 1978. Consequently, an optional legal aid course was introduced. This course is offered in addition to professional training which is also a skills based course. The legal aid course covered areas such as wrongful dismissal, unemployment insurance, workmen's compensation, debt collection, consumer problems, credit agreements, divorce, motor collisions, administration of deceased estates, wills and bail applications. While the professional training course dealt with ethics and legal profession, methods of addressing the court, preparation of briefs, unopposed matrimonial actions, preparing and arguing appeals, opinion work, advice on evidence, cross examination and the arguing of a moot.<sup>67</sup>

During the late 1980's the CLC began to receive funding from the Ford Foundation and the Attorneys Fidelity Fund<sup>68</sup>. Both these funders were interested in the practical legal training of law students. The Ford Foundation was also interested in promoting clinical legal education in South Africa. It had supported the clinical movement in the US and noted the important role that the institution played in developing skills and values among law students and in increasing access to legal services.

Consequently, with the employment of full time staff the clinic was able to fill the gap created by the state legal aid system. As stated above, at this stage the state system was unable to meet the needs of those who needed them. At that stage most of the legal aid work was handled on a case by case basis by private attorneys. It is significant to note that in terms of a Legal Aid Board analysis, 4 534 legal aid applications were granted in 1972/1973 to 24 082 in 1988/1989. In 1994/1995 this figure rose to 85 231 and in 1998/1999 to 213 829.<sup>69</sup> This substantial increase has been attributed to the changes in the political climate in South Africa and to the guarantees provided by the new constitution as discussed above.

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<sup>67</sup> McQuoid-Mason, *Natal University Law and Society Review* 1986, p. 191-192

<sup>68</sup> AFF is an organisation that manages and administers the interest on attorney's trust accounts and provides recourse to clients who lost funds because of wrongdoings by attorneys. It also supports the clinical movement in South Africa in keeping with its broader goal of promoting ethical conduct among lawyers and training of law students in such ethics and values.

<sup>69</sup> See Attachment 3

During the 1980's, though, the CLC supplemented the work of the state legal aid system by representing the indigent individual client who needed help to, for example, obtain a divorce, social security benefits or prosecute cases of police brutality and also by assisting clients in simple legal proceedings. Although the clinic did provide some criminal defence service, the larger portion of the work it did was general civil work.

The legal aid course became more structured during this period. Students were divided into firms and were taught both in the classroom and supervised in their work with the live clients. They interviewed clients at the clinic and off campus at venues that were more accessible to clients.

### **5.1.2 The Post-Apartheid Period**

When the political climate changed in 1994 to a constitutional democracy and the institutions of state were being transformed, civil society, including ULCs and specifically the CLC in Durban, began an intensive process of transformation. The goal of the transformation process was to ensure that its programs, projects and management were all geared towards the broader imperatives for social change. It also addressed strategic issues such as the relevance, need and desirability of the services provided the impact those services had or could have and the sustainability of its projects and programs. In addition, the goals included management and quality issues such as the effectiveness and efficiency of projects and programs and the financial viability of the organisation.

In order to achieve these goals, the clinic's management undertook a period of internal evaluation, reflection and analysis and a process of external consultations and discussions and assessment of the conditions and needs of the beneficiaries to the program, i.e. the students and indigent communities. This was part of a complete strategic planning process intended to ensure that the institution met the current challenges relating to access to justice, legal services, access to the profession and the learning outcomes anticipated for the law students.<sup>70</sup>

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<sup>70</sup> A. Ramgobin, *Proposal for the Restructuring of the Campus Law Clinic*, p. 1 and A. Ramgobin, *Social and Economic Justice Alternatives: A pilot project on Law and Development*, p. 1-3

The internal evaluation resulted in the conclusion that while the clinic was teaching large numbers of students and while the teaching methodology and approach was experiential, the training lacked the depth and intensity that could be achieved if the numbers were reduced and the teaching program were intensified. Furthermore, while large numbers of clients were being served, the clinic's impact was limited as the service was of a general nature thus rendering the process of analysis of trends and root causes an extremely difficult and almost impossible task. The reflection and analysis also revealed the opportunities inherent in the clinic structure and functioning to meet the challenges.<sup>71</sup>

The external consultations led to a deeper insight into the role of legal services and consequently of lawyers in social change. It became evident that effective legal representation conducted in conjunction with other initiatives could ensure greater success in attempts to ensure change in the quality of life of the poor and vulnerable. ULCs were of particular relevance in this field as the debates about the role of lawyers in social change and the idea of developing such thinking among law students who are on the verge of beginning their careers were critical. Addressing these philosophical and jurisprudential questions among law students and lawyers results in a deeper understanding of both the value and the limitations of the law, the rule of law and the role of the lawyer in the process of social change.<sup>72</sup>

This process exposed the need for specialist services in certain areas such as domestic violence, police brutality and access to land and housing. The organisations consulted expressed dire need for services in these areas for the individual client and the group or community client. The type of services needed were for the individual and/or group whose case might not make a substantial impact, but needs the services of a public interest lawyer who is skilled in that area and who understands the particular dynamics that are important in that field of work. This meant that the organisations that existed at that time who were providing specialist legal services would not accept such cases as they prioritised impact litigation.<sup>73</sup> It also meant that there was a huge gap in the public interest law field that could be filled by the clinic.

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<sup>71</sup> Interview with A. Ramgobin

<sup>72</sup> Ibid

<sup>73</sup> McQuoid-Mason, *Fordham International Law Journal* 2000, p. 127-129

The question also arose as to whether or not this process or movement from generalised legal services to specialised legal services might enhance or impair the learning experience for students. The clinic was conscious of the fact that one of its primary goals was to train law students in the skills and values required to practice law in an ethical, professional and developmental manner. This goal is linked to the overall goal of increasing access to justice as it increases the number of competent, ethical and professional lawyers who are sensitised to the issues of the poor. This naturally leads to a greater likelihood of quality legal representation for the poor and vulnerable components of society.

This was an important debate that demonstrated the tension within ULCs in general and the CLC in Durban in particular between the goal of providing training to law students and services to clients. This tension was addressed by examining the consequences of specialisation in detail and also by looking at how specialisation has worked in other countries. The process demonstrated that specialisation in fact improves the learning experience of students in that they are able to learn the skills, apply them in one field and then are able to use those skills in other areas when called upon to do so. However, in general practice circumstance, the skills they learn are limited. An example of this is that general practice programs often limit the skills to those required for basic litigation. In specialised programs, though, students are able to learn the skills required for impact litigation, legislative and media advocacy and other forms of advocacy designed to address root causes of problems. The skills learned through these mechanisms equip the student to better represent clients in any circumstance of private practice or public interest law.

In the end the clinic concluded that specialisation offered a better service to the clients and students. Consequently the program of the CLC in Durban was restructured.

## **5.2 The Campus Law Clinic Today**

### **5.2.1 Goals**

The goals of most clinical programs "...are to supplement and complement other indigent legal services; to improve legal education by providing practical skills and experience; to

encourage students to pursue public interest law careers, thereby enlarging and strengthening the public interest bar; and to increase the number and skills of black legal professionals.”<sup>74</sup>

More specifically, the CLC in Durban has four primary goals, as do most clinical programs. These goals have changed and evolved over time and will probably continue to do so, but the goals stated in the latest business plan of the CLC are:

- To provide practical legal training to law students to enable them to serve clients in an effective, efficient, ethical, business minded and socially conscious manner
- To provide training to law graduates from historically disadvantaged backgrounds to ensure that they are able to manage an effective, efficient, productive, ethical and socially conscious practice once they qualify
- To provide legal services to indigent people who cannot afford to pay a private practitioner, thereby increasing access to justice to the poorest of the poor and creating a greater respect for the rule of law
- To promote and advocate for the public interest

## **5.2.2 Strategies and Functioning**

### **5.2.2.1 Access to Justice**

The CLC operates in three specialised units covering the following areas:

- *The Development Law Unit* which addresses cases involving access to land and housing and small and micro enterprise issues.
- *The Gender and Children’s Rights Unit* which addresses cases involving domestic violence, maintenance, customary law marriages and sexual offences against women and children.
- *The Administrative and Juvenile Justice Unit* which addresses cases involving children in detention, awaiting trial, facing criminal charges and children who have been abused by the police and correctional services. In addition this unit focuses on abuse of power by other state departments such as the public health authorities, police services and correctional service. This unit also co-ordinates a project on access to justice for people living with HIV/AIDS.

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<sup>74</sup> Golub, *Battling Apartheid, Building a New South Africa*, p. 38

This approach of the CLC in Durban has been described as “a significant exception to the rule of individually oriented and broad spectrum client work... Like the others, it trains students regarding general legal skills. But based on consultations with CBOs<sup>75</sup>, Ramgobin<sup>76</sup> has set up three units for the bulk of the clinic’s work.”<sup>77</sup>

In reviewing the other legal services available in the province in which this clinic is situated, it is evident that it does “supplement and complement other indigent legal services”<sup>78</sup>, as the state run Justice Centres and legal aid operations in Durban provide legal representation in mainly criminal cases, divorce and maintenance. They do not cover the areas that the CLC focuses on.

#### **5.2.2.2 Clinical Legal Education**

The legal education component of the clinic is run in the classroom, in the clinic itself and in the community. Firstly, in the classroom a detailed curriculum<sup>79</sup> is carried out which aims to:

- Develop lawyering skills, both litigation and non-litigation, that are necessary in the practice of law.
- Increase awareness of the problems facing low income communities and develop skills and strategies to meet these challenges.
- Develop reflective and self critiquing skills that will enable continued growth as a public interest lawyer.<sup>80</sup>

These aims are achieved through the modules designed to teach the basic lawyering skills of interviewing, counselling, fact investigation, case analysis and planning, negotiation, legal drafting, litigation and advocacy. Each of these skills is taught in the classroom through simulations and problem solving in small group work. Thereafter, the skill is explored further

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<sup>75</sup> Community Based Organisations are non-government membership based organisations that are governed and led by local community members who are interested in a particular issue, for example domestic violence support services, paralegal advice services and social pensions. They are often, although not exclusively, run on a voluntary basis. Interviews with B. Khumalo and E. Saldhana

<sup>76</sup> A. Ramgobin, Director of the Campus Law Clinic, University of Natal, Durban

<sup>77</sup> Golub, *Battling Apartheid, Building a New South Africa*, p. 38-39

<sup>78</sup> *Ibid*, p. 38

<sup>79</sup> See Attachment 4

<sup>80</sup> *Clinical Law Course Syllabus 2001, CLC*

in the specialised units. Once this process is completed in the classroom, students practice the skill with “live clients” in the clinic, under the supervision of an attorney. In other words, they interview and counsel clients and work on real case files.

The teaching in the clinic takes the form of small groups of four or five students in case review sessions where the supervisor guides students in the representation of clients. The students present their understanding of the case and its issues and then present their thinking about what should be done to assist the client. The supervisor and the other students then comment and discuss the appropriate strategy. Students then take their case files and perform the necessary drafting or take the next appropriate step.

In addition to these basic skills, the course is structured in a way where students begin by understanding the social, economic and political context within which they work. The clinic explores methods such as site visits, socio-political discourse and discussion and problem solving to achieve this goal. The last modules are designed to equip the students to become better public interest advocates. They are taught such skills as media advocacy and legislative advocacy. In these courses students are encouraged to think about other strategies that might be used to further the interest of the client and the public at large. They are also encouraged to identify gaps in the law and consider not only what the law is, but also what it ought to be.

“In one small business dispute, it successfully used the implicit threat of negative publicity as an alternative to litigation and as a way to generate pressure on its clients’ corporate landlord. Ramgobin views this as teaching ‘law students to think in a developmental way’. Instead of as a straight jacketed lawyer. This case to a regular lawyer is an eviction case. But it really is a case of economic power and the responsibility of administrative agency.”<sup>81</sup>

The last semester of the course is spent on a public interest advocacy project. These projects are identified by the clinic staff after an assessment is made regarding cases and issues where the root cause of problems need to be addressed more fully. They are designed to encourage students to explore their role as lawyers in the process of social change and in promoting social justice.<sup>82</sup> Students are first taught how to analyse what the root cause of such problems

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<sup>81</sup> Golub, *Battling Apartheid, Building a New South Africa*, p. 39

<sup>82</sup> Martin Barry and others, *Clinical Law Review* 2000, p. 13, reflect that “In building upon the earlier clinical programs, clinical faculty during the second wave expanded clinics to demystify law for students and to represent client communities with claims that thrust the clinical programs into civil rights, consumer rights, environmental rights, and poverty rights movements. ... While clinical teachers were working with law students

are and then to develop a strategy to address them. Students then implement this strategy at different levels depending on the project. Students have researched and made recommendations on the juvenile justice system, the micro lending system, land restitution problems and other important areas. Through these projects the clinic tries to expand the thinking of law students to encompass their role as public interest advocates and not only private lawyers.

### **5.2.3 Impact**

#### **5.2.3.1 Access to Justice**

The community outreach component of the clinic is a significant factor as it is situated in an area which is generally inaccessible to the indigent community. The clinic has formal agreements with paralegal advice offices in the townships and rural areas of KwaZulu Natal. In terms of these agreements it operates a circuit with students and supervisors who travel up to 100 km on Saturday mornings to an advice office where they meet clients and take instructions.

#### **5.2.3.2 Clinical Legal Education**

The program has a dual purpose of increasing access to legal services to the rural poor and to expose law students to the realities of poverty and economic and social disparities that exist in South Africa.<sup>83</sup> Golub suggests that “the University of Natal approach (nevertheless) appears promising precisely because it widens the notions of what constitutes a legal career. Its community outreach can put students much more in touch with broader social realities than does traditional legal aid. It exposes them to the world of NGOs, CBOs and development work. And it opens an array of strategies for those inclined to practice public interest law.”<sup>84</sup>

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to use the law as an instrument for social justice and change, proponents of Critical Legal Studies were using the classroom to demystify the law and to teach students that ‘political conviction plays an important role in adjudication and that the shape of the law at any time reflects ideology and power as well as what is wrongly called ‘logic’. (The last part is quoted by the authors from Ronald Dworkin, *Law’s Empire*, 1986, p. 271-272.)

<sup>83</sup> Ibid, p. 14: An example of a similar effort is the David A. Clarke School of Law in the District of Columbia (DCSL). It “is explicitly dedicated to public service and graphically demonstrates this commitment by requiring all entering law students to take a two week course Law and Justice seminar prior to the beginning of their first semester. ... The course introduces students to DCSL’s Community Service Program, which requires forty hours of community service by each student ...”

<sup>84</sup> Golub, *Battling Apartheid, Building a New South Africa*, p. 39-40



Although the apartheid system has been dismantled, the legal profession still remains largely dominated by white males as does the public interest law field. To address this imbalance, the law clinic employs and trains black law graduates in the skills and values required to practice law. It also exposes them to the wider public interest field and attempts to secure employment for them once their period of training ends.

The clinic teaches at least half the final year law students. They receive full credit for the course, which is run over two semesters. However, the time spent and the credits allocated are disproportionate. Students spend almost double the time on clinical work as they should if they were to follow the credit system strictly. This has posed a problem to the clinic staff who, however, due to internal constraints, are unable to normalise the situation.

#### **5.2.4 Organisational Structure**

The clinic is run exclusively on external funds, with the university providing free accommodation for its staff. The clinic has secured substantial funding and has expanded each year since 1996. All its funding is obtained from international donors and the private profession<sup>85</sup>. The private profession contributes towards all university law clinics in South Africa by providing funding for the salary of the director at each institution.

The clinic is staffed with the director who is a qualified practising advocate, three recently qualified attorneys, five candidate attorneys who are law graduates, one administrative assistant and one part time financial consultant. In addition it uses the services of members of the private bar from time to time, at a reduced tariff. It also has a management committee consisting of the Dean and three other members of the law faculty. It is affiliated to the law faculty but is not an integrated component of the university structure although it uses the administrative and financial systems of the university.

The fact that the clinic is not a core component of the law faculty is both an advantage and a disadvantage. It facilitates a flexible management style and structure that enables it to be innovative. However, the staff does not enjoy the benefits of university employment which leads to insecurity and human resource management challenges.

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<sup>85</sup> I e the Attorneys Fidelity Fund

## **6 CLE, Paralegals and Access to Justice**

### ***Currently and in the Future***

In this, the final section on South Africa, I will present a brief overview of the current state initiatives, policy and plans and civil society initiatives in the field of clinical legal education, access to justice and matters regarding the role and function of paralegals.

### **6.1 Clinical Legal Education**

Firstly, regarding the current status and prevalence of clinical legal education, it must be noted that of the 21 universities in South Africa, 20 have active clinical legal education programs with live client clinics. While they vary in size and in the type of services and the quality of education offered, they each offer credit bearing courses to students.

The status of skills and values teaching in the law curriculum has, on the whole, been promoted to the centre of the law schools priorities. When the South African legal education system changed from a five year post graduate LLB program to a four year undergraduate program, the law teachers undertook to ensure that the degree was structured in such a manner as to incorporate skills in the whole degree. So, for example, at the University of Natal, Durban, skills are taught in each of the four years, from the introductory first year course to the final year clinical course. Research, legal writing, computer literacy and the practical skills related to entering the legal profession are taught.<sup>86</sup> However, as described above, the live client clinic learning experience is limited to the final year. Discussions are still continuing, though, to incorporate clinical methodology in the other skills courses and across other traditionally academic courses, for example, property law.

Closely related to the status of the clinical legal education is the status of the directors and staff of clinical programs. In this regard, clinical teaching staff has historically been excluded from the main stream of the law faculty. This trend has recently been reversed in South Africa, in that almost all directors of clinical programs are now full members of the law faculties. Those interviewed have suggested that while this movement does go some way toward addressing the insecurity and staff turnover in clinics, it does not go far enough as the

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<sup>86</sup> Interview with D. J. McQuoid-Mason

other staff members also need that kind of security to enable them to perform at optimal levels. This remains a challenge in the South African legal education system as budgetary constraints are often cited as the reason for this situation. Meanwhile, most clinics are still dependant on donor funding for a large part of their operations, including some of the teaching components.<sup>87</sup>

Turning from the recognition of clinical legal education to the second issue, the actual components of clinic programs, it seems that most clinic programs now have the following components:

- Live client work
- Class room simulations, role plays, groups discussions and problem solving work
- Small group supervision sessions
- Community outreach in the form of back-up legal services with paralegal advice offices
- Project related work in specialist areas of the law, for example gender, land, housing etc
- Specialist areas of law (this is less pervasive among clinics and is currently limited to approximately 12 clinics)

The CLC is currently enhancing its program to include training of students and graduates in impact litigation. The staff has noticed that almost all the public interest lawyers in the NGO sector are white males. In order to change this situation, it has decided to develop a specialist focus to train and support black public interest litigators and advocates. A further development and anticipated trend is a movement toward multidisciplinary clinics. It is anticipated that in the future more clinics will comprise teams of people from different disciplines to ensure that issues are tackled from a range of perspectives. For example, a focus on domestic violence will have lawyers, social workers, psychologists, paralegals and community workers working together in one team<sup>88</sup>. It is evident that the CLC is continuing to evolve.

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<sup>87</sup> Interviews with S. Meyer, A. Ramgobin, K. Fester, T. Mhlungu and M. Osman-Hyder

Finally, to look at the national legal education system, South Africa is now in the process of developing a national legal qualification through the Standards Generating Body. This statutory body is given the task of generating one national qualification for law where minimum standards are stipulated that all law schools will have to comply with. Both the clinical movement and the paralegal movement is represented on this body. They both indicate that it appears that through the process of defining the learning outcomes, goals and minimum standards the principles and goals of clinical legal education are likely to become incorporated as core components within the new qualification.<sup>89</sup>

## 6.2 Paralegals

In the past paralegals operated from outside the system. They were viewed as activists and community workers, not as legal practitioners. Currently, however, it has become clearer to those who were interviewed and who actively co-operate with the paralegals that they are a core component of the system of access to justice. As stated above, almost all the ULCs co-operate with the advice offices because they (the ULCs) are most often situated in urban areas, far away from the poor people and paralegals are closer. Also, because paralegals are often members of the community they serve, ULCs realised that they would not be able to be effective unless they co-operated with paralegals.

In addition, LRC and LHR have also been working in structured relationships with paralegals for some time now.

Currently, in most geographical areas of South Africa, a prearranged circuit of visits are conducted as part of the back-up legal services agreement between ULCs, LRC and LHR on the one hand and paralegals on the other. In terms of this agreement, qualified attorneys travel to paralegal advice offices and give advice, take instructions and provide other legal services to clients and paralegals.<sup>90</sup> This type of arrangement has recently extended to the LAB, for example the Kimberly Justice Centre. B. Viljoen, the director of this justice centre has stated in an undated report that the “paralegals have become an integral and vital part of some of the Justice Centres. For those Centres this is true to an extent that they can barely function

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<sup>88</sup> Interview with A. Ramgobin

<sup>89</sup> Interview with A. Ramgobin

<sup>90</sup> Interviews with G. Budlender, S. Meyer, K. Fester and A. Ramgobin

properly without the involvement of their paralegals.”<sup>91</sup> In view of the fact that this component is important to consider in addressing comparative issues in Sweden, I believe it is necessary to record a substantial portion of the report mentioned above to demonstrate the role, function and impact of paralegals in access to justice.

“The first task of the paralegal is to screen the public attending the Centre’s offices in order to identify the type of problem a particular person has. This is done through consultation. They must establish whether or not the person has a true legal problem. People come to our offices with their problems regardless, often simply because we are there and they just don’t know where else to go. Many of these problems are, although legitimate, not necessarily always legal in nature. These are mostly welfare related. These people are often referred by the paralegals to the relevant government departments or other organisations equipped to deal with that particular type of problem. Over time, most paralegals build up a whole network of contacts for these type of references.

In the case of real legal problems, the paralegal will always first attempt to find a solution without involving a lawyer or the courts. This is mostly done over the telephone and usually more consumer related. Only if the problem cannot be solved this way, will the paralegal refer the person to one of the professional staff members at the Centre. This is done by filling out an application for legal aid on behalf of the particular person. At the same time the paralegal is also expected to administer the prescribed means test. All this saves a lot of time and energy and it leaves the professional staff free to concern themselves with actual legal work; a factor which makes the Justice Centre more effective and productive than many private practices.

Besides the duties as described above, the paralegals are also involved in organising and presenting workshops or meetings at which people are informed of their basic rights. These are usually conducted in the community at schools, churches and other gatherings.

From this it should be clear that paralegals had already become an important link in the complete chain of service delivery for the legal profession. However, what must be stressed, is the fact that all paralegals should be properly trained and informed of new developments in

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<sup>91</sup> Viljoen, *The Role of Paralegals at the Justice Centres*, report presented to the Legal Aid Board, p. 1

all the different fields they are likely to encounter. This can be done in a number of ways and they should be allowed and encouraged to attend any such training opportunities.”<sup>92</sup>

To pick up on the last point made by Viljoen, I noted that while some organisations like the CLRDC<sup>93</sup> have in-depth training programs for their paralegals, some of those that the CLC co-operated with were not as well trained. The CLC staff agrees with the assessment that the disparities in competence and training affect the efficiency of the back-up legal services project. In this context the interviewed persons also pointed out that, as with the national law degree, the Standards Generating Body is generating two national qualifications for paralegals, i.e. a national certificate and a national diploma. This process is currently underway and it is expected that the qualifications will be generated by June 2002.<sup>94</sup> It is expected that this process will also make it possible for paralegals, if they so choose, to be credited for their qualification and experience if they want to pursue a legal degree.

This process is also linked to the process of transformation of the legal profession. As stated above, the South African legal system is comprised of attorneys and advocates. The government has initiated a process in terms of which a single profession of legal practitioners is being created. Professor Loots stated that the ”final meeting..., in November 1999, was entirely devoted to legal practice and at that meeting consensus was reached that a legal and paralegal practice should be regulated by way of a single Act which establishes a single statutory regulating authority.”<sup>95</sup> It was further agreed that the new legislation should also aim at ensuring the ”recognition, regulation and empowerment” of paralegal work.<sup>96</sup> This process is still underway.<sup>97</sup>

While these developments are taking place, the LAB have recently decided to create a post for community outreach and paralegal co-operation.<sup>98</sup>

From the above it is clear that paralegals today are considered as a core component of the justice system in South Africa and it seems they will become even more important elements in the future.

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<sup>92</sup> Ibid, p. 1-2

<sup>93</sup> See section 4.3

<sup>94</sup> Interviews with B. Khumalo, A. Ramgobin, T. Mhlungu and M. Osman-Hyder

<sup>95</sup> Loots, *Proposed framework for the recognition of paralegal qualifications in terms of the Legal Practice Bill*, page 1

<sup>96</sup> Ibid, p. 3

<sup>97</sup> Interview with C. Loots

### 6.3 Access to Justice

As previously stated, the LAB is currently the body responsible for ensuring access to justice and implementing those provisions of the South African constitution which require the State to ensure access to legal services. It was also noted that the LAB has been unable to fulfil its mandate on its own and therefore needed the help of civil society organisations. However, the LAB currently has moved a long way from the past described above to a situation where it is using various different strategies to increase access to justice.

Firstly, it has established a network of justice centres. These, as mentioned above, are currently providing legal services in criminal cases, divorce, child maintenance and to children at risk with the law (a term used in South Africa to refer to juvenile offenders). However, they plan on enhancing the services to include representation in land related matters, women, children, and people living with HIV/AIDS. The LAB identified the above mentioned groups as their target beneficiaries.<sup>99</sup>

Meanwhile, until it has the capacity to provide these services, the LAB has decided to adopt a further strategy of co-operation agreements with NGOs. It views this as a pillar in its implementation plan as it, through these partnerships, will be able to penetrate areas of law and geographical areas that it needs to be in but does not have the capacity to do yet.<sup>100</sup> Consequently, it has entered into agreements with ULCs and LHR currently to provide services in most of the areas of law described above and in outer lying geographical areas.<sup>101</sup>

In addition, the LAB noted the importance of being able to support class action and test case litigation to ensure that precedents are set where the constitution is used by the poor as opposed to the rich. While it has noted this, it also recognised its limited capacity in this field as well. Consequently, it set aside money for an impact litigation fund for NGOs who specialise in these areas, such as the LRC and others, to apply for and use these funds to engage in constitutional and impact litigation on behalf of the poorest of the poor.<sup>102</sup>

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<sup>98</sup> *Director's Access to Justice Report*, LAB, p. 12

<sup>99</sup> *A proposed alternative model for the provision of legal aid in South Africa*, p. 162-163

<sup>100</sup> Interview with M. Navsa

<sup>101</sup> Interview with M. Navsa

<sup>102</sup> Interview with M. Navsa

While the State, through the LAB, initiated and implemented the above programs, civil society organisations are also supplementing and complementing state programs. As stated above, they are needed to help the LAB where it does not have the capacity. But they have gone a step further and identified areas of law that the LAB have not prioritised; areas that they see as important for the socio-economic improvement of South Africa, for example the micro enterprise focus of the CLC and LRC's focus on socio-economic rights and LHR's focus on refugee rights.

These initiatives demonstrate that there will always be certain areas that are not state priorities but remain gaps that need to be filled. These gaps are often best filled by NGOs and other civil society organisations.

Among practitioners, however, there are some that have mixed feelings about this. Their view is that the State should not only have the responsibility for these areas but also the control, and not hand it out to civil society organisations.<sup>103</sup>

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<sup>103</sup> Interview with M. Boyd



## **SECTION C**

### *Sweden*

## 7 The Potential Effects of CLE and Paralegals

This section is not intended to be a complete account of Swedish context and conditions. What I set out to do is to show *some* of the effects that CLE, law clinics and, to some extent, the start of a paralegal education could have in Sweden.

### 7.1 General Overview

#### 7.1.1 Legal Aid

Where South Africa has a legal aid system that, to secure access to justice, relies on the involvement of NGOs and civil society organisations<sup>104</sup>, Sweden has a system where the State has the ultimate responsibility.

The rules governing public defence counsel in criminal cases<sup>105</sup> states that a suspect, in most cases, has a right to defence counsel at the public expense and could also get compensation for other costs originating from the case. If he is under arrest or if the crime he is accused of could render no less than six months imprisonment, a public defence counsel is always appointed. In other cases this is dependant upon circumstances such as, for example, the suspect's need of a defence counsel in relation to the criminal investigation or if there are other special reasons.

In civil cases, the State's responsibility does not mean that it always bears the costs for legal aid. Since the most recent Act<sup>106</sup> in the field came into force, the state legal aid is subsidiary to private legal expenses insurance. Such insurance is usually included in home insurance, which the majority of Swedish citizens possesses. Only in circumstances where the applicant does not have legal expenses insurance or an income above the stipulated level is he entitled to state legal aid. However, this is on condition that he ought not to have had such an insurance, which he is presumed to have according to the act, in which case he must have weighty reasons to be entitled to it. One important reason for introducing the new Legal Aid Act and thereby making the state legal aid subsidiary to private legal expenses insurance was

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<sup>104</sup> Act 108 of 1996, sections 35 (2) (c), 35 (3) (g) and 28 (1) (h); Act 22 of 1969, section 3 and the Land Claims Court Case, LCC 10/01, 6 July 2001

<sup>105</sup> SFS 1942:740

<sup>106</sup> SFS 1996:1619

that it was considered to be too expensive.<sup>107</sup> However, doing this meant that the target group was diminished since, as previously stated, most Swedish citizens possess such insurance. Regardless of whether or not legal aid is provided by the State or an insurance company, the person receiving it will have to pay a part of the costs.

In South Africa, the state legal aid system has moved from one based mainly on *judicare* to a salaried model. As stated above, it was found that the *judicare* system was too expensive and the need for legal aid too great. Further, it was found that the *judicare* system was open to a great deal of abuse. In Sweden, however, the movement has been the other way around. Previously, the Swedish system was partly based on salaried lawyers but is now entirely a *judicare* system.

### 7.1.2 Legal Education

Where South Africa does not yet have a national degree, Sweden's national basic legal degree is the *juris kandidat*, which equals an LLM degree.<sup>108</sup> The legal qualification comprises of 180 credits which amount to four and a half years of studies. 130 of these credits are assigned to compulsory courses while the remaining 50 are divided between courses chosen by the students themselves and a thesis of 10 or 20 credits.

The compulsory courses are governed by a national learning outcome<sup>109</sup> which is to guarantee the national standard of the legal qualification. Apart from that, the courses differ from institution to institution.

An expressed goal of the learning outcome of Swedish legal education today is that the student should acquire knowledge and skills in specified fields to be eligible for employment as a judge or work as an *advokat*<sup>110</sup>. However, to work in these positions requires more than a law degree. In addition, a graduate who wishes to pursue a career in court firstly has to work as a court clerk for a period of two years. This is not an option open to all graduates, though,

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<sup>107</sup> SOU 1995:81, p. 12 and Prop. 1996/97:9, p. 82

<sup>108</sup> Master of Laws

<sup>109</sup> SFS 1993:100, Annexure 2

<sup>110</sup> Member of the Swedish Bar Association – an opportunity to become one, however, is not ordinarily open to people employed by the State.

but only to those with the best grades, about 35% of the graduates.<sup>111</sup> To become an *advokat* requires at least five years of practical legal experience after the law degree.

## **7.2 Discussion**

### **7.2.1 Background and Context**

The meaning of access to justice in Sweden during the late 20<sup>th</sup> century has, as opposed to the development in South Africa, generally been the same. In comparison, Sweden has a long history of governance based on democratic values and principles. Accordingly, there is also a tradition that everyone is equal before the law. This does not mean that there have not been any problems in the past. What it does mean, though, is that the average citizen has learnt to trust the authorities to a large extent. With the evolution of the welfare state and the improvement in the standard of living people also got more used to handing over control to the State in matters previously belonging to the private sphere. To accomplish a good and just administration of these matters the State established various departments and institutions that deal with different areas of responsibility. With time this has become a very complex system.

The fact that the system is based on the State's, in many matters, sole responsibility to meet the needs of its citizens excludes, or at least marginalizes, involvement in access to justice from NGOs and other civil society organisations. So long as the State fully manages to fulfil these undertakings, this is not a problem. However, there will always be situations that could be overlooked, are not possible to foresee or in some way do not fit in to the system.

The general level of education within the Swedish population is very high in comparison to the population in South Africa, where there are substantial differences in this respect. Poverty, which in South Africa could be described as a question about starving whereas in Sweden the definition rather would be about material standards, is also a much bigger problem. Also, unlike in South Africa, the Swedish population consists of people with mainly similar cultural background – the fact that South Africa has eleven official languages while in Sweden one language has been predominant for a long period of time might illustrate these differences. However, the Swedish society is rapidly changing from being homogeneous to heterogeneous,

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<sup>111</sup> Högskoleverkets (the National Agency for Higher Education) rapportserie 2000:1 R

mainly because of immigration and thus the number of people with different cultural background is growing.<sup>112</sup> At the same time, South Africa is moving the other way. From being a very heterogeneous society it is slowly moving towards homogeneity. Not so much in the aspect of cultural background, though, as in terms of equality in the political, economic and social spheres. Consequently, my view is not that the two countries are moving in opposite directions on the exact same path. Unfortunately, however, the paths do seem similar in some ways.

For example, in the political sphere, South Africa is moving from power in the hands of a few to power in the hands of many; from a system of institutional exclusion of the poor on the basis of race, cultural background and social status to a system of inclusion regardless of these factors. It is not my view that Sweden is going in the opposite direction to all of this. However, even if it is not exactly institutional exclusion, the Swedish society is, as I see it, in fact in many ways excluding people, on the basis of their background, from sharing the power. This situation is not something that is desired by the State, but so long as it is not resolved, the risk of the problem becoming permanent is ever growing.

When it comes to the economic sphere, South Africa is moving from a system where the economic stratification was firstly based on race, and secondly was characterised by extreme gaps between rich and poor to a system where there is an emerging black middle class and, more recently, a small white working class. This is firstly a class issue in Sweden, but since the unemployment figures are higher among immigrants,<sup>113</sup> many people from this group are affected by it in a grave way.

The social sphere is also an area where South Africa is, as stated above, moving from heterogeneity towards homogeneity. From education, health and welfare systems that were structured along racial lines, the country is changing them into systems that take care of the needs of all citizens regardless of race. On this issue I would say that the Swedish systems still operate from the principle that all citizens should be treated equally. The problem here is rather that going from heterogeneity towards homogeneity in the Swedish context means that

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<sup>112</sup> The number of persons that immigrate to Sweden is increasing. In 1998 and 1999 the number of immigrants was approximately 46 000 each year. In 2000 the number was more than 55 000. *Rapport Integration 2001*, Integrationsverket, p. 27

<sup>113</sup> In 2000, 13% of people living in Sweden but born abroad was unemployed. At the same time, 3% of people living in and born in Sweden was unemployed. *Ibid*, p. 84

there is a growing part of the population which is not used to the way in which the systems works. These citizens are therefore unable to access the services that are in fact available to all of them regardless of their cultural background. For instance, people who have come to Sweden as refugees do, in many cases, not entirely understand the systems because of the fact that they cannot speak the language well enough. A serious problem is also that many of the refugees have bad experiences from dealing with, or being dealt with by, the authorities in their native countries and because of that do not trust the Swedish authorities. In other cases, though, the distrust is a result of immigrants' experiences from dealing with the Swedish authorities and how they have been treated by them.

### **7.2.2 Access to justice**

The lack of knowledge about the system as mentioned above, could also impact on access to justice, particularly for some of the first-generation immigrants from countries with different types of systems. Since they have not grown up in Sweden, they have not acquired the general knowledge about the society that native Swedes are taught in school. While South Africa is viewed as a constitutional democracy where the courts, among other institutions, are an extremely important component in the maintenance of their democracy, in Sweden this is so to a lesser degree. A great deal of emphasis is placed on other institutions created by government to deal with disputes. This is not to say that the court system in Sweden is irrelevant, but rather to note that reliance is placed on knowledge of how these systems work to enable people to obtain assistance when necessary. This is therefore particularly difficult for refugees and other people who have limited knowledge about the systems.

To most Swedish people the amount they have to pay for legal aid is reasonable in relation to their economic situation. However, in some circumstances, and for some people, this can be an obstacle that makes them choose not to take the matter further. Paradoxically, people from economically weak groups are those who the legal aid system should protect the most. Even disregarding economical issues it is reasonable to assume that it, as is the case in Norway<sup>114</sup>, for many people is a big step to ask for assistance in a legal matter or, even more so, to bring a matter to court. As stated above<sup>115</sup>, in South Africa the LAB is trying to counteract this by supporting class action. The Swedish government has also acknowledged the problem and

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<sup>114</sup> *Retts Hjelp 2001*, study on legal aid, University of Oslo, p. 119

has, since class action is not a legal option today, introduced a bill<sup>116</sup> in parliament about a Class Action Act to facilitate the process of bringing matters to court.

Another issue is the availability of the services provided by the authorities. These are mostly found in the central parts of the urban areas. Although a large part of the population is concentrated in cities, many people, and particularly immigrants, live in the suburbs and not in the city centres. Since many of the immigrant groups tend to stay in their own community, i.e. the suburb where they live, this is another obstacle that has to be overcome. The importance of an active approach in order to do this is concluded by Ståle Eskeland and Just Finne in their study "Retts Hjelp 1971". As described by Mathiesen they found that it is often not enough to just inform people in writing, but in many cases it calls for more active methods of reaching out.<sup>117</sup> One could argue that this is not a Swedish study and also an old one, but I am inclined to believe that these specific findings are valid in Sweden today.

The obvious way to reach out to these groups is to bring the services to the suburbs or to other areas where it is needed instead of the other way around, which is how it is mostly done today. This more active method could be carried out in different ways. One way is to establish multidisciplinary centres in the way the Justice Centres<sup>118</sup> in South Africa are intended to function, another is to use community based paralegals and yet another is to create ULCs with outreach programs. To me, a combination of the three is preferable. That would mean that the State would still have the responsibility but at the same time also be able to take advantage of the knowledge of people from within the groups themselves.

The involvement of the State is an important factor since it is a basic responsibility of the State to ensure access to justice. However, this does not mean that the people in the area at hand should not be involved in or be able to influence the decisions. It is important that all the parties concerned take part in both the management and the decision making to ensure the legitimacy in the community. Exclusion would mean much less impact since people would feel less inclined to trust and visit such a centre. The feeling of alienation that lingers among immigrants can only be addressed by inclusion.

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<sup>115</sup> See section 6.3

<sup>116</sup> Prop. 2001/02:107

<sup>117</sup> Mathiesen, *Rätten i samhället*, p. 39-41

<sup>118</sup> See section 4.1.1

When talking about paralegals in this context, I subscribe to Stephen Golub's description of paralegals<sup>119</sup> as being persons with specialised training who provide legal assistance to disadvantaged groups and who often are themselves members of those groups. The fact that they are members of the group is important since it both facilitates trust and enables people to see them as role models/good examples – they show that it is possible to get inside the system and for the system to work for them.

By involving ULCs in this work, the law students, and possibly students from other disciplines, would gain important knowledge and skills and become aware of problems they might not encounter otherwise. It would also increase the opportunities for creating networks across the borders of ethnicity. Working together, meeting people in unfamiliar situations and creating networks and thereby developing a greater understanding will have a positive effect on access to justice in a broad sense. It will help to build confidence and respect in all groups, both for people with different cultural backgrounds and also for the system. Apart from this, ULCs can also promote a better understanding and implementation of rules and laws.

The positive effects of the process depend, in my view, to a large extent on the involvement of the communities at hand. Since one of the problems is lack of trust this will require a non-governmental, organised structure. Consequently, there is a need for an element of civil society organisations and NGOs.

What I have discussed above is, obviously, not dependant on the establishment of some form of justice centres. The advantages of paralegal work and ULCs will still be the same. However, I think the impact on access to justice will be greater with a foundation such as justice centres to work from. Also, involving NGOs and civil society organisations into this process will render it more legitimate than if it is managed solely by institutions “from above” that are not as deeply rooted in the group or community where the operation takes place.

### **7.2.3 Legal Education**

While in the past it was true that most newly graduated students went on to work in courts or at law firms, nowadays there is a much broader labour market for legal practitioners. Not only

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<sup>119</sup> Golub, *Nonlawyers as Legal Resources for Their Communities*, p. 297



does this mean that the formal learning outcome does not fully correspond with what the students need to learn, but also that law schools, to meet the demands of these changed needs, are required to teach outside the stipulations. To me it is clear that the learning outcome, and thereby the educational contents, should be adapted to the actual needs of both students and labour market and also with what can be foreseen about changes and needs in the future.

As a matter of course, a part of this adaptation ought to be the incorporation of practice into legal education, just as is the case in several other university programs such as, for example, programs for psychologists and engineers. Currently, practice in any form is not a required part of legal education, although there are elements of short-term voluntary practice (arranged by the students themselves) at some law schools. Other than by simulation, which is not an adequate substitute for experiencing situations in real life, there is no structured way for students to learn practical skills. Consequently, they also never get to meet real live-clients. This is one of the benefits of CLE – the students learn practical skills, are confronted with reality and thereby get better prepared for their future in the legal profession.

One thing to bear in mind, though, is that a field experience must meet several criteria to be truly educational. It requires "...the opportunity (1) to perform a wide variety of legal tasks, (2) with sufficient time for introspection about what one is doing, and why, (3) coupled with ample guidance, and (4) objective evaluation by an experienced lawyer".<sup>120</sup> Although this might seem an obvious approach it entails high costs since the ratio of students to supervisors must be much smaller than in ordinary class room teaching. However, as many law teachers in South Africa agree, if it is possible to find the means to implement this method of teaching into the law program, looking at the results, it is worth it.<sup>121</sup>

In terms of establishing and operating a university based law clinic, my view is that it would be a better way to co-operate with external partners to do this than for the university to take it on single-handed. To involve civil society organisations and NGOs in this kind of work would, as discussed above, entail several advantages. If co-operation also includes state departments and law firms, the costs would be shared and thus not be as high for the university. At the same time the students would get access to knowledge from practitioners. What could present a problem, though, is that by sharing the costs, the control of the ULC

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<sup>120</sup> Johnson Jr., *Education versus Service: Three Variations on the Theme*, p. 415

<sup>121</sup> Interviews with K. Govender and R. Palmer

would also have to be shared. This is a circumstance that members of law faculties in South Africa are not always content with.<sup>122</sup>

Another dimension of such a field experience is that by meeting people from groups that are underrepresented as students at the universities and working and interacting with paralegals from the community, both the law students themselves and also the paralegals will act as role models and good examples. In the long run, this is of help in the process of changing the composition of the university student collective to be more representative of the structure of the population.

Paralegal education in itself is also a way of promoting this change. It could be an option for immigrants with a foreign law degree. Today, such a degree does not count for anything when applying to a Swedish law school, which means that to be able to work as lawyers in Sweden, they have to go through the whole law program. A shorter paralegal education where they can have use for their practical skills would enable them to work in their chosen field. It would also present an opportunity for people that are interested and/or engaged in community work, but for various reasons do not want to become lawyers, to develop and improve skills and knowledge in this field. Thus making them better equipped to help the citizens of their communities.

As previously described, both access to justice and legal education can benefit from clinical legal education and its methods. Despite its widespread international use, it has neither been incorporated nor tried out in any structured way in legal education at Swedish law schools. Although the South African society and its history are very different from the Swedish, some of the experiences point toward a situation where benefits would, in some fields, be achievable through the use of CLE in Sweden. As Richard J. Wilson puts it: “Regardless of the underlying legal or political system, preparation for the practice of law should include both theoretical and practical training. One must not only be able to ‘think like a lawyer’ but be able to act like one.”<sup>123</sup>

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<sup>122</sup> Interviews with M. Cowling and I. Konyin

<sup>123</sup> Wilson, *Clinical Legal Education as a Means to Improve Access to Justice in Developing and Newly Democratic Countries*, p. 24

## **SECTION D**

### ***Conclusions***

## **8 Conclusions**

There are several conclusions that one may be able to draw from the above studies. What follows are those that I believe are most relevant, especially as they relate to how conclusions drawn about the South African experience might be related to the Swedish context.

Firstly, the study conducted demonstrates the importance of institutions, both state and non-governmental, to be structured and operate in a way that meets current needs and circumstances. In South Africa, what was most clear is the way in which strategies evolved with time as the country changed politically. This appears to be the most significant issue for Sweden as its character is changing, not necessarily in the same way, but nevertheless changing. This brief study indicates that there are at least a few gaps in the systems of legal education and access to justice that need to be filled to ensure that they are meeting current needs effectively. Hence it can be concluded that while South Africa is an emerging democracy and Sweden is an established democracy, these countries have a lot to learn from each other and could enhance the broad development of social justice and legal education.

Secondly, that even though both countries have democratically elected governments, they are unable to operate in isolation from civil society and non-governmental organisations. This inability might be due to lack of adequate resources and skills (as is often the case in South Africa), or due to the fact that the people who are intended to benefit from government programs might need to be represented and have their needs articulated independently. This latter circumstance is common to both South Africa and Sweden and demonstrates the importance of civil society generally, and particularly in the field of access to justice, to on the one hand complement government and at times, on the other hand, monitor government.

Finally, the study demonstrates clearly that despite the fact that one context is that of a developing country context (as is the case of South Africa) and the other a well established and relatively wealthy developed country, that much can be learned from each other to enhance the quality of life of citizens.

## **Sources and Literature**

### **Printed (published)**

#### ***Legal Works***

*South Africa:*

*Legal Aid Guide 1998*, Legal Aid Board

*Sweden:*

SOU 1995:81, *Ny rättshjälpslag och andra bestämmelser om rättsligt bistånd*

Prop. 1996/97:9, *Ny rättshjälpslag*

Prop. 2001/02:107, *Lag om grupprättegång*

#### ***Acts***

*South Africa:*

Act 22 of 1969, *The Legal Aid Act*, as amended by Legal Aid Amendment Act 20 of 1996

Act 53 of 1979, *The Attorneys Act*, as amended by Act 115 of 1993

Act 200 of 1993, *The Interim Constitution of South Africa*

Act 108 of 1996, *The Constitution of the Republic of South Africa*

*Sweden:*

SFS 1942:740, *Code of Judicial Procedure (Rättegångsbalken)*

SFS 1996:1619, *Legal Aid Act (Rättshjälpslagen)*

SFS 1993:100, *Högskoleförordningen*

### **Cases**

1985 (3) SA 587 N – *The State v Ramgobin and others*

1986 (1) 68 N – *The State v Ramgobin and others*

1986 (4) 117 N – *The State v Ramgobin and others*

LCC 10/01, 6 July 2001 – *Nkuzi Development Association v the Government of the Republic of South Africa and another*

### **Organisational Documents**

*Annual Report, 1 September 1997-31 December 1998*, Community Law and Rural Development Centre 1999

*Annual Report 1997-1998/1998-1999/1999-2000*, Legal Aid Board 2001

*Annual Report 1999-2000*, Legal Resources Centre 2001

### **Books**

Golub, S., *Battling Apartheid, Building a New South Africa*, in *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World*, McClymont, M. and Golub, S. (ed.), The Ford Foundation 2000

Golub, S., *Nonlawyers as Legal Resources for Their Communities*, in *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World*, McClymont, M. and Golub, S. (ed.), The Ford Foundation 2000

Govender, K., *The South African Human Rights Commission*, in *The Post Apartheid Constitutions: Perspectives on South Africa's Basic Law*, Andrews, P. and Ellmann, S. (ed.), Ohio University Press and Witwatersrand University Press 2001

Mathiesen, T., *Rätten i samhället*, Bokförlaget Korpen 1991

McQuoid-Mason, D. J., *An Outline of Legal Aid in South Africa*, Butterworths & Co (SA) 1982

### ***Journals and Articles***

Johnson Jr., E., *Education versus Service: Three Variations on the Theme*, in *Clinical Legal Education for the Law Student, Working Papers Prepared for CLEPR National Conference, Buck Hill Falls, Pennsylvania, 6-9 June, 1973*, Meilen Press Inc 1973

Martin Barry, M., Dubin, J. C. and Joy, P. A., *Clinical Education for this Millennium: The Third Wave*, (reprint from) *Clinical Law Review*, Volume 7 Number 1, 2000, p. 1-75

McQuoid-Mason, D. J., *The Organisation, Administration and Funding of Legal Aid Clinics in South Africa*, *Natal University Law and Society Review*, Volume 1 No 2, 1986, p. 189-198

McQuoid-Mason, D. J., *The Delivery of Civil Legal Aid Services in South Africa*, *Fordham International Law Journal*, Volume 24, 2000, p. 111-142

Osborne, M., *Clinical Legal Education in Australian Law Schools: Ready, Set...Is CLE about to leave the starting blocks (again)?*, *Clinical Legal Education (CLEA) Newsletter*, Nos. 3-4, Volume V, April 1997, pages 11-14

Pincus, W., *Legal Education in a Service Setting*, in *Clinical Legal Education for the Law Student, Working Papers Prepared for CLEPR National Conference, Buck Hill Falls, Pennsylvania, 6-9 June, 1973*, Meilen Press Inc 1973

### ***Other Documents***

Högskoleverkets (the National Agency for Higher Education) rapportserie 2000:1 R, *Rätt jurist utbildning? Utvärdering av juristutbildningar*, Högskoleverket 2000

*Rapport Integration 2001*, Integrationsverket (Swedish Integration Board) 2001

### **Printed (unpublished)**

#### ***Policy Documents***

*A proposed alternative model for the provision of legal aid in South Africa*, a draft discussion document prepared by representatives of AULAI, ICJ-S, LAB, LHR, LRC and NCBPA for Focus Group Workshop 11-12 September 1999, Pretoria

*Board's Position Paper*, presented to the Legal Aid Forum, 15-17 January 1998, Legal Aid Board

*Business Plan (Second Draft) 2000-2003*, Legal Aid Board

Draft White Paper – Department of Justice, *Transformation of Provision of Legal Aid Services in South Africa: Challenges and Solutions*, 26 May 1999

*Justice Vision 2000, A draft strategic plan for the transformation and rationalisation of the Administration of Justice*, Planning Unit, Department of Justice

(An executive summary can be found at: [www.doj.gov.za/policy/justice2000.htm](http://www.doj.gov.za/policy/justice2000.htm))

Loots, C., *Proposed framework for the recognition of paralegal qualifications in terms of the Legal Practice Bill*, paper presented to the National Paralegal Institute's Stakeholders Consultative Conference on Paralegal Qualifications, 16 January 2002

*Position Paper on the Recognition and Regulation of the Practice of Paralegals in South Africa*, the National Paralegal Institute, November 1999

South African Law Commission Project 101: *The Application of the Bill of Rights to the Criminal Law, Criminal Procedure and Sentencing*

(The report can be found at: [wwwserver.law.wits.ac.za/salc/report/report.html](http://wwwserver.law.wits.ac.za/salc/report/report.html))

South African Law Commission Project 25: Statute Law: *The Establishment of a Permanently Simplified Coherent and Generally Accessible Statute Book*

(For more information see [www.law.wits.ac.za/salc/salc.html](http://www.law.wits.ac.za/salc/salc.html))

### ***Organisational Documents***

*AULAI Working Document*, prepared for a workshop in Pretoria, June 2001

*Clinical Law Course Syllabus 2001*, Campus Law Clinic, University of Natal, Durban

*Director's Access to Justice Report*, LAB Board Meeting 16 March 2002, Legal Aid Board

Gilbert, S., *Report to Ford Foundation*, November 1993

*Half Yearly Narrative and Financial Report for Period January 1999-June 1999*, National Community Based Paralegal Association



Ramgobin, A., *Proposal for the Restructuring of the Campus Law Clinic* (undated)

Ramgobin, A., *Social and Economic Justice Alternatives: A pilot project on Law and Development* (undated)

*Report 14 to SIDA*, International Commission of Jurists, Swedish Section

Viljoen, B., Kimberley Justice Centre, *The Role of Paralegals at the Justice Centres*, report presented to the Legal Aid Board (undated)

### ***Articles***

Manning, D., *The Role of Legal Services Organizations in Attacking Poverty*, a paper submitted to the World Development Report 2000/1

Wilson, R. J., *Clinical Legal Education as a Means to Improve Access to Justice in Developing and Newly Democratic Countries*, a paper presented at the Human Rights Seminar of the Human Rights Institute, International Bar Association, Berlin, Germany, 17 October 1996

### ***Other Documents***

*Retts Hjelp 2001*, an as yet unpublished study on legal aid, University of Oslo  
(Please note that the page reference for the draft that I have had access to might not correspond with the later published document.)

### **Interviews**

Boyd, Mike, Operations Manager at the Attorneys Fidelity Fund, 6 June 2001

Budlender, Geoff, Director of the Litigation Unit at the Legal Resources Centre, 11 June 2001

Cowling, Michael, Professor of Law and Dean of the Faculty of Law at the University of Natal, Pietermaritzburg, 15 May 2001

Fester, Kimla, Acting Director of the Legal Aid Clinic at the University of Western Cape, 7 June 2001

Govender, Karthy, Professor of Law at the University of Natal, Durban, 10 May 2001

Khumalo, Bongani, CEO at the Community Law and Rural Development Centre, 15 May 2001

Konyn, Isabel, Professor of Law and Head of the Law School at the University of Natal, Durban, 16 May 2001

Loots, Cheryl, Professor of Law at the University of the Witwatersrand and Member of the Justice Department Policy Unit, 14 June 2001

McQuoid-Mason, David J., Professor of Law at the University of Natal, Durban, 26 April and 14 May 2001

Meyer, Schalk, Director of the Centre for Community Law and Development at Potchefstroom University, 13 June 2001

Mhlungu, Thuli, Supervising Attorney of the Development Law Unit at the Campus Law Clinic at the University of Natal, Durban, 8 May 2001

Navsa, Mohammed, Judge of the Supreme Court of Appeals of South Africa and Chairperson of the Legal Aid Board of South Africa, 14 June 2001

Osman-Hyder, Munirah, Supervising Attorney of the Administrative and Juvenile Justice Unit at the Campus Law Clinic at the University of Natal, Durban, 7 May 2001

Palmer, Robin, Professor of Law at the University of Natal, Durban, 21 May 2001

Ramgobin, Asha, Director of the Campus Law Clinic at the University of Natal, Durban, 26 April, 21 May and 19 June 2001

Saldanha, Eugene, Director of the Non-Profit Partnership, 14 June 2001

Saldanha, Vincent, Director of the Legal Resources Centre, Cape Town, and National General-Secretary of the National Association of Democratic Lawyers, 8 June 2001

*E-mail:*

Pithouse, Richard, Centre for Civil Society, University of Natal, Durban, 9 April 2002

## **Internet**

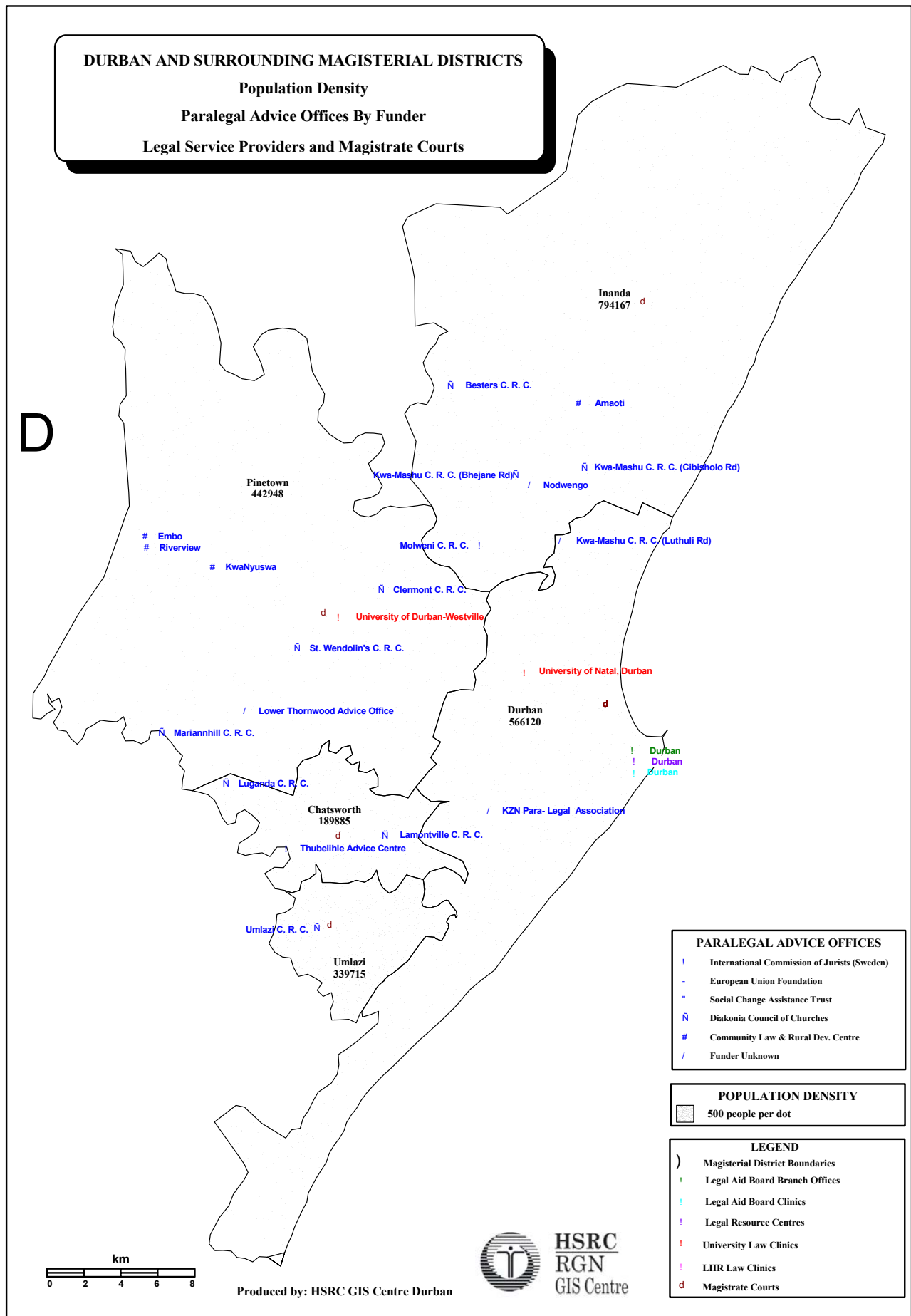
[www.doj.gov.za](http://www.doj.gov.za) Department of Justice and Constitutional Development, South Africa

[www.fordfound.org](http://www.fordfound.org) Ford Foundation, USA (Headquarters)

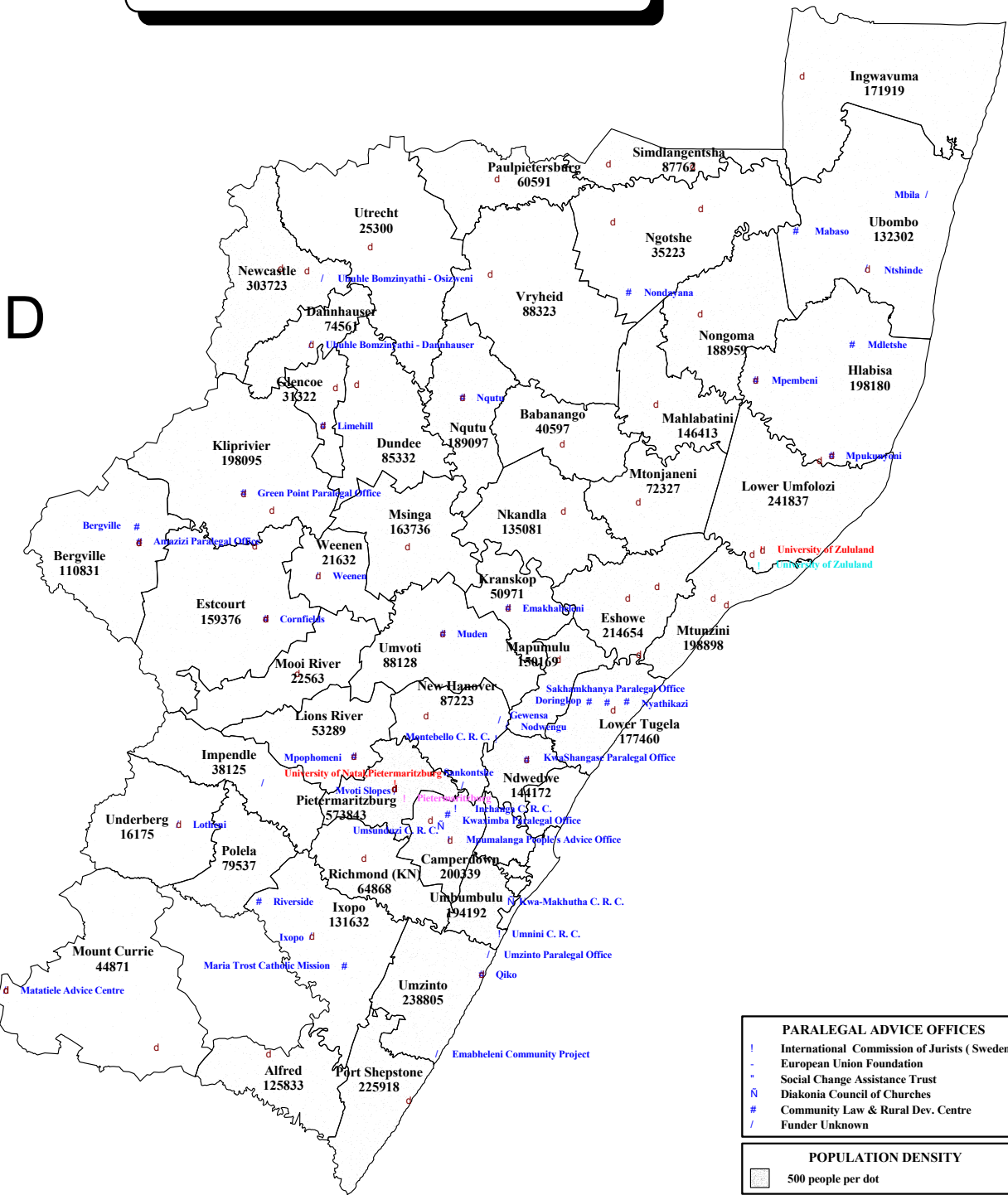
[www.law.wits.ac.za](http://www.law.wits.ac.za) Wits Law School, South Africa

# Attachment 1

Maps of South Africa – Paralegal Advice Offices, LAB Branch Offices, LAB Clinics, Legal Resource Centres, Law Clinics and Magistrate Courts (*Prepared by Human Sciences Research Council, Durban, September 1999*)



**KWAZULU NATAL**  
**Population Density**  
**Paralegal Advice Offices By Funder**  
**Legal Service Providers and Magistrate Courts**

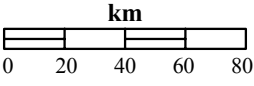


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PARALEGAL ADVICE OFFICES	
!	International Commission of Jurists (Sweden)
-	European Union Foundation
+	Social Change Assistance Trust
⌘	Diakonia Council of Churches
#	Community Law & Rural Dev. Centre
/	Funder Unknown

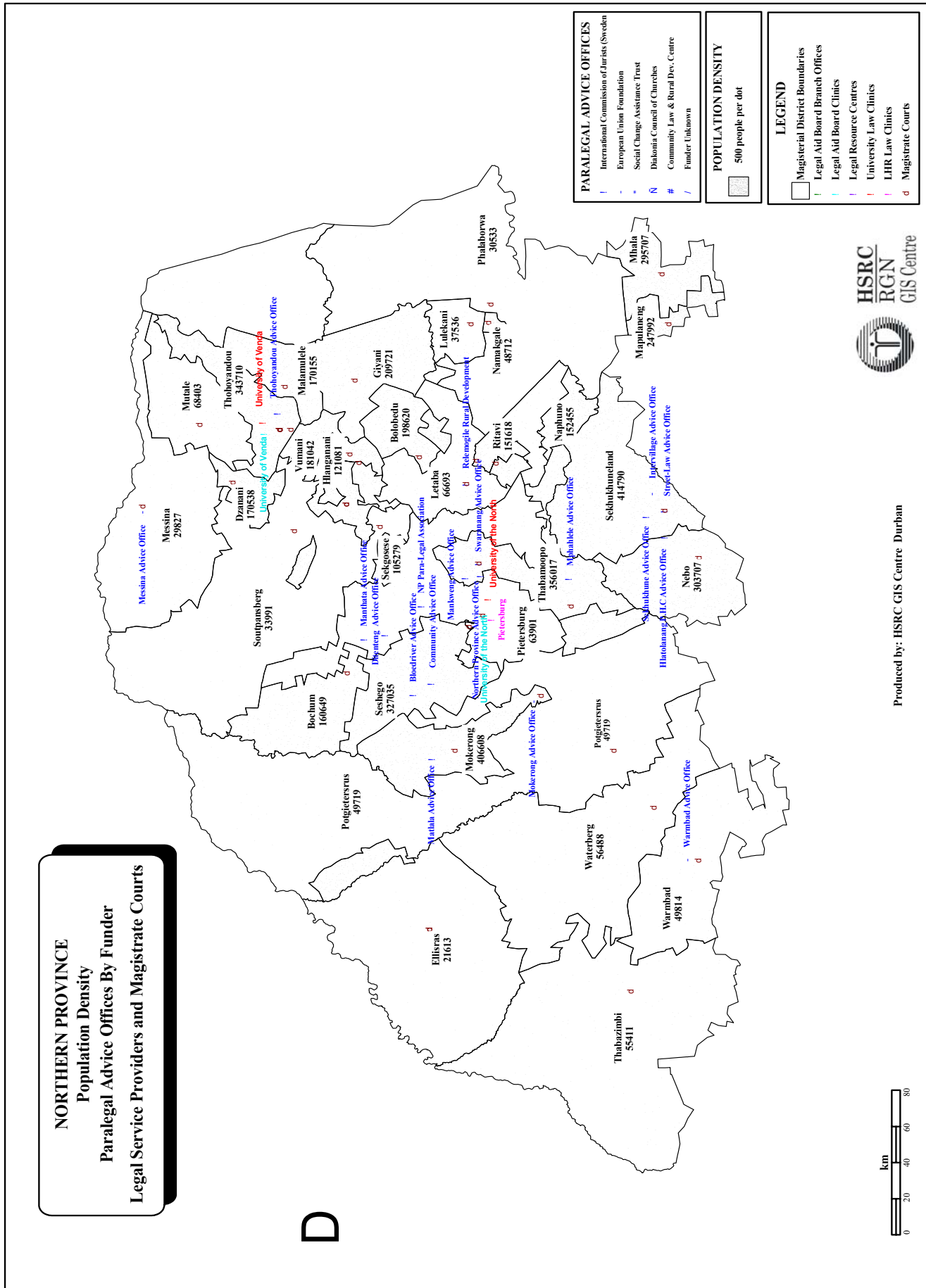
POPULATION DENSITY	
□	500 people per dot

LEGEND	
)	Magisterial District Boundaries
!	Legal Aid Board Branch Offices
!	Legal Aid Board Clinics
!	Legal Resource Centres
!	University Law Clinics
!	LHR Law Clinics
d	Magistrate Courts



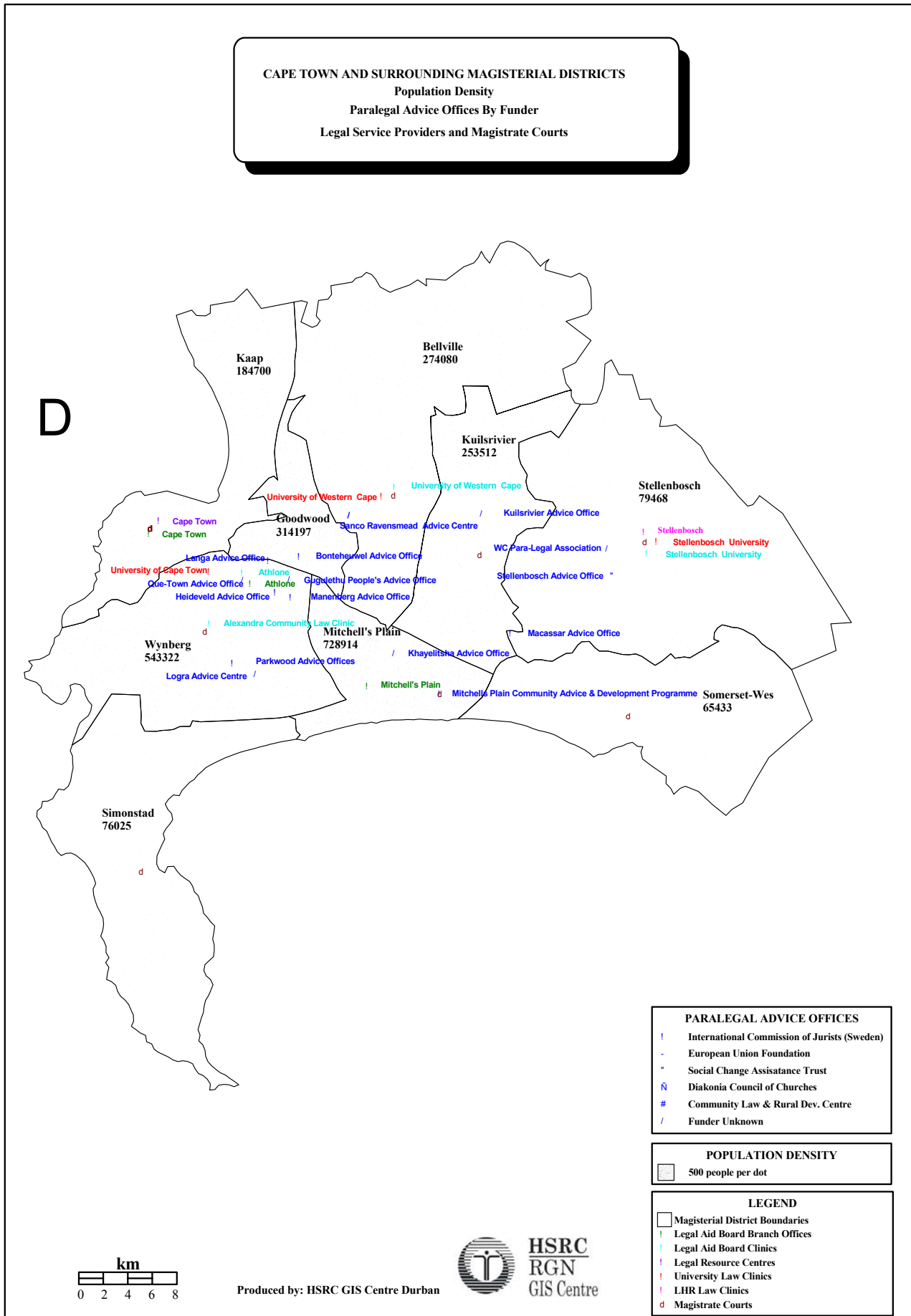
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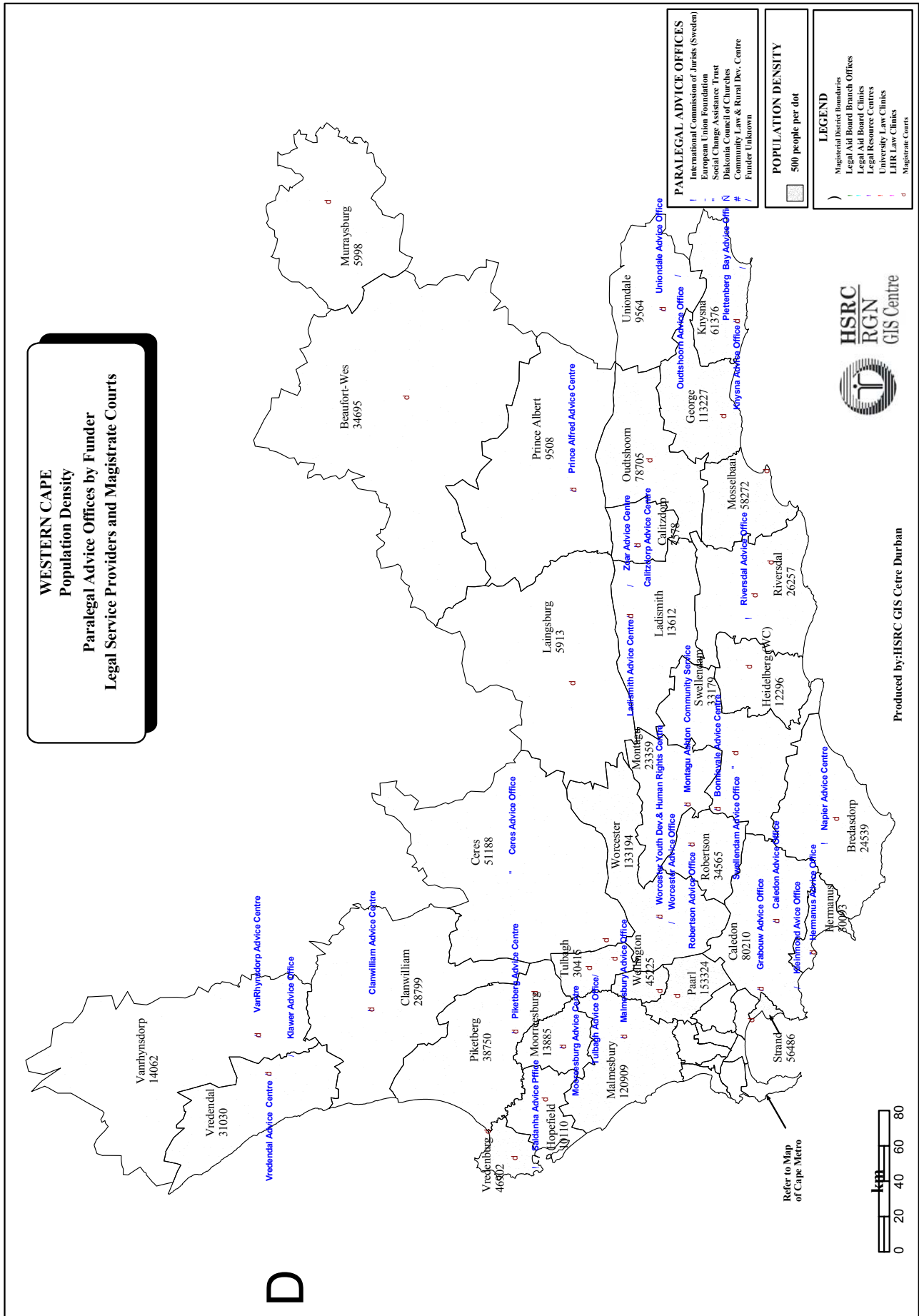




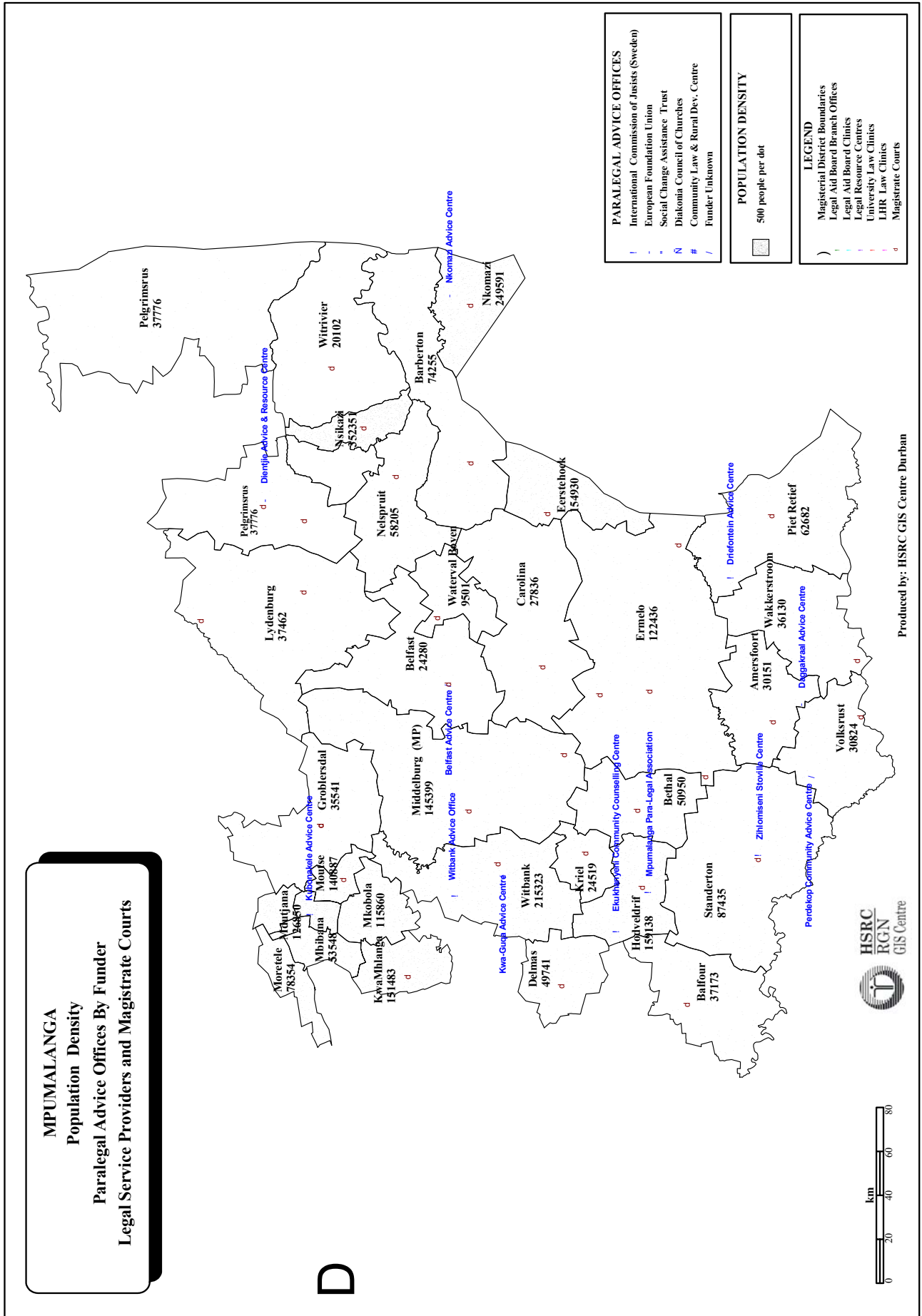










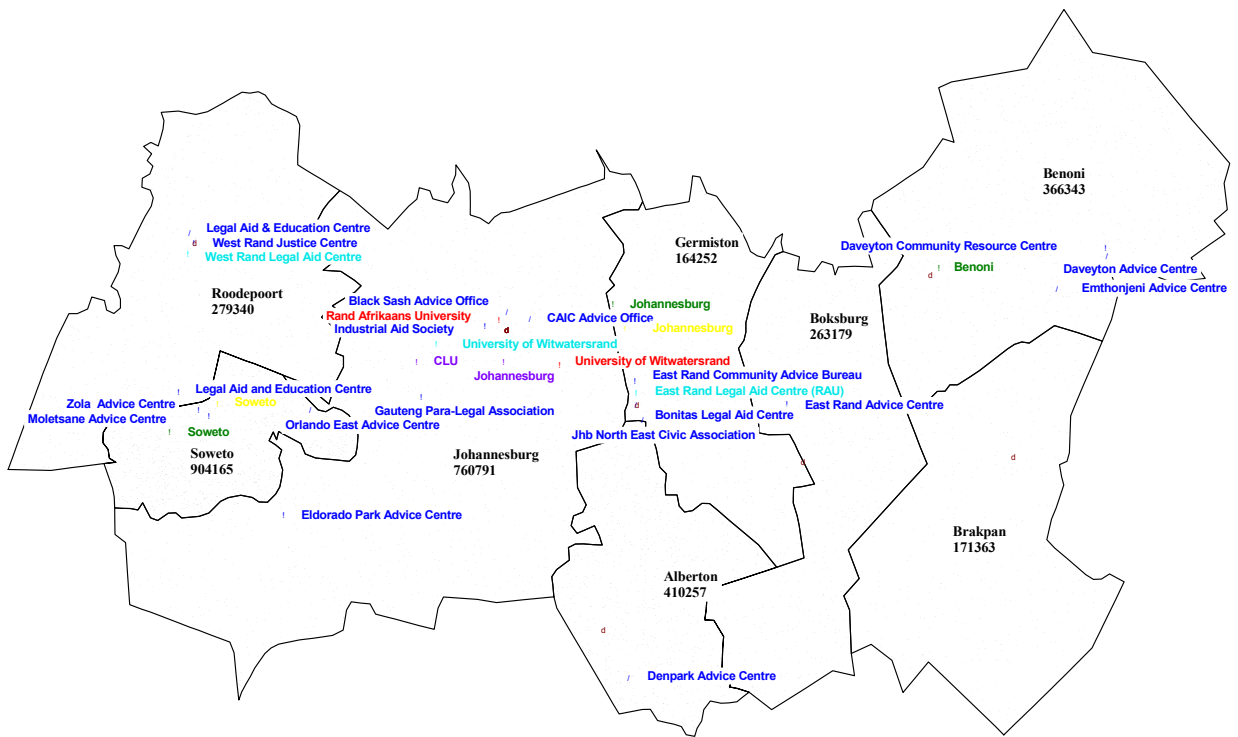


**GAUTENG METRO AND SURROUNDING MAGISTERIAL DISTRICTS**

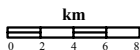
**Population Density**

**Paralegal Advice Offices By Funder**

**Legal Service Providers and Magistrate Courts**



D



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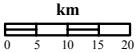
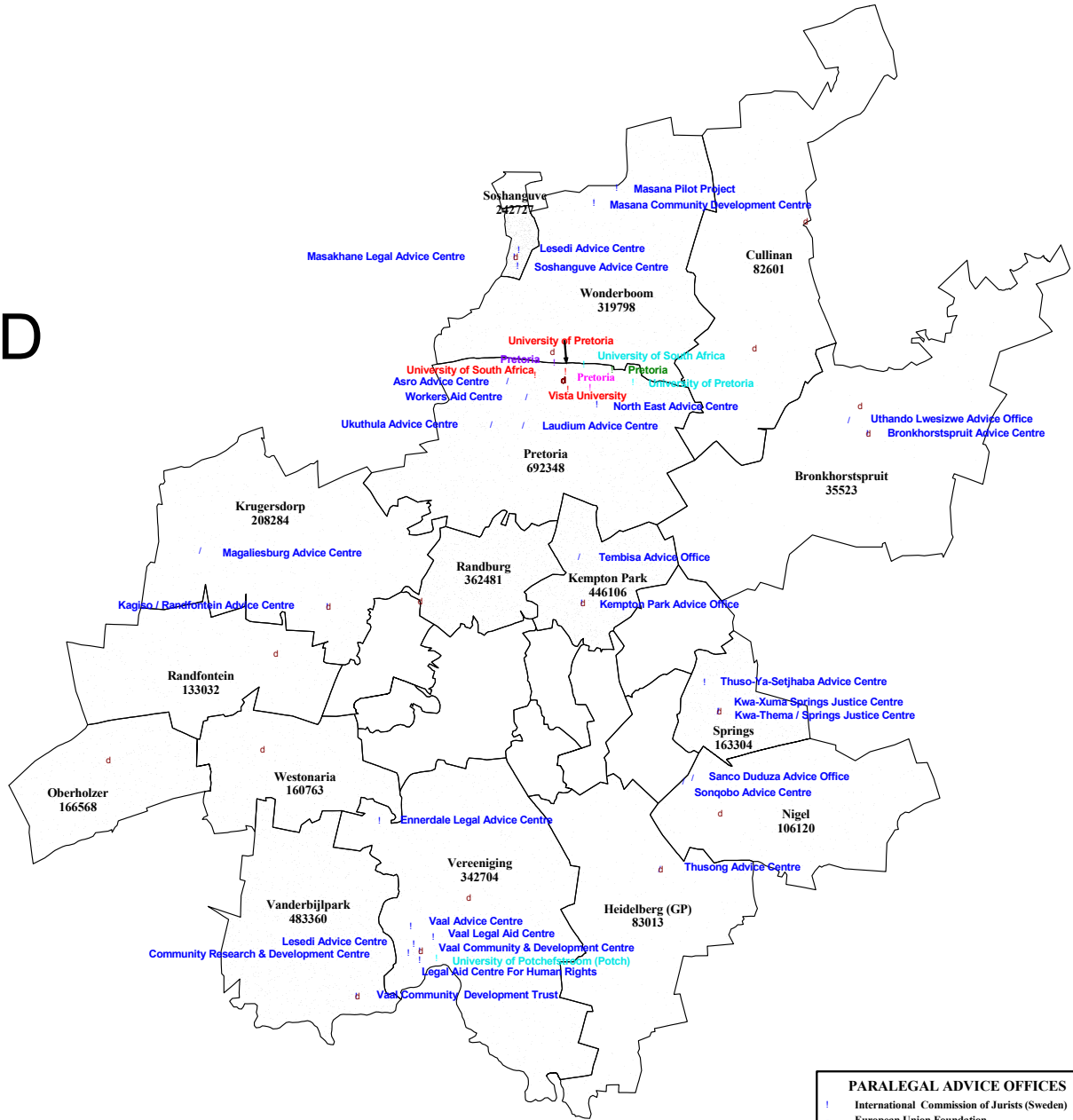
PARALEGAL ADVICE OFFICES	
!	International Commission of Jurists (Sweden)
-	European Union Foundation
*	Diakonia Council of Churches
R	Social Change Assistance Trust
#	Community Law & Rural Dev. Centre
/	Funder Unknown

POPULATION DENSITY	
■	500 people per dot

LEGEND	
□	Magisterial District Boundaries
!	Legal Aid Board Branch Offices
!	Legal Aid Board Clinics
!	Legal Resource Centres
!	University Law Clinics
!	LHR Law Clinics
!	Public Defenders Offices
d	Magistrate Courts

**GAUTENG**  
**Population Density**  
**Paralegal Advice Offices By Funder**  
**Legal Service Providers and Magistrate Courts**

D



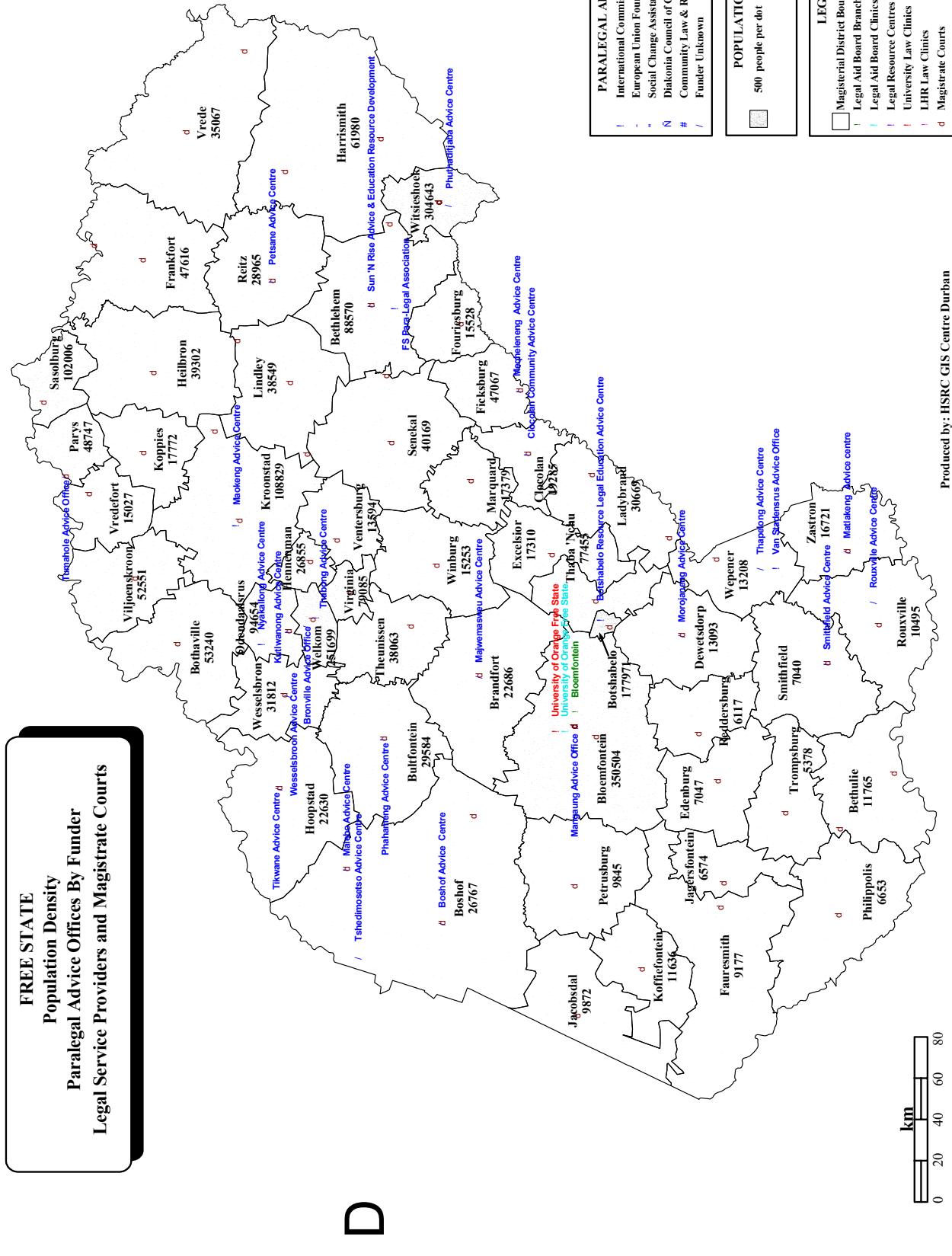
Produced by: HSRC GIS Centre Durban



PARALEGAL ADVICE OFFICES	
	International Commission of Jurists (Sweden)
-	European Union Foundation
-	Social Change Assistance Trust
N	Diakonia Council of Churches
#	Community Law & Rural Dev. Centre
/	Funder Unknown

POPULATION DENSITY	
□	500 people per dot

LEGEND	
□	Magisterial District Boundaries
	Legal Aid Board Branch Offices
	Legal Aid Board Clinics
	Legal Resource Centres
	University Law Clinics
	LHR Law Clinics
d	Magistrate Courts



**FREE STATE**  
**Population Density**  
**Paralegal Advice Offices By Funder**  
**Legal Service Providers and Magistrate Courts**

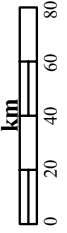
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- PARALEGAL ADVICE OFFICES**
- | International Commission of Jurists (Sweden)
  - European Union Foundation
  - o Social Change Assistances Trust
  - o Diakonia Council of Churches
  - # Community Law & Rural Dev. Centre
  - / Funder Unknown

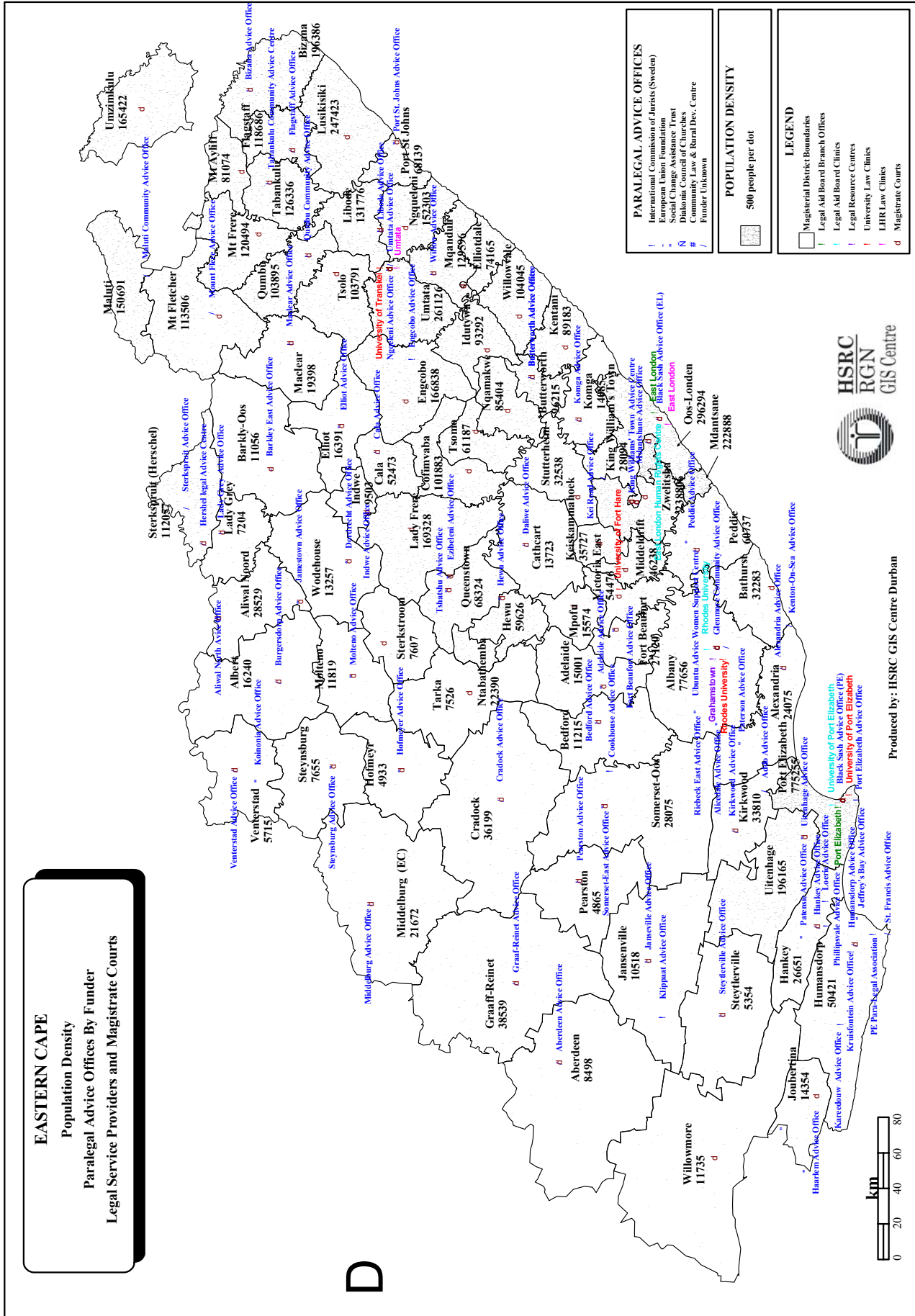
**POPULATION DENSITY**

500 people per dot

- LEGEND**
- Magisterial District Boundaries
  - Legal Aid Board Branch Offices
  - Legal Aid Board Clinics
  - Legal Resource Centres
  - University Law Clinics
  - LHR Law Clinics
  - Magistrate Courts



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**EASTERN CAPE**  
 Population Density  
 Paralegal Advice Offices By Funder  
 Legal Service Providers and Magistrate Courts

**PARALEGAL ADVICE OFFICES**  
 International Commission of Jurists (Sweden)  
 European Union Foundation  
 Social Change Assistance Trust  
 Dikoma Council of Churches  
 Community Law & Rural Dev. Centre  
 Funder Unabawot

**POPULATION DENSITY**  
 500 people per dot

**LEGEND**  
 Magisterial District Boundaries  
 Legal Aid Board Branch Offices  
 Legal Aid Board Clinics  
 Legal Resource Centres  
 University Law Clinics  
 LHR Law Clinics  
 Magistrate Courts



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## **Attachment 2**

Curriculum of Paralegal Diploma at the University of Natal, Durban (*From CLRDC's Annual Report 1997/1998*)

**Community Law and Rural Development Centre and Faculty of Law, University of Natal (Durban)**  
**Diploma in Paralegal Studies**

**Course contents:**

**First semester**

1. Role of Paralegals and Paralegal Code of Conduct
2. Office Administration (continuous)
3. Interviews and Statement Taking
4. Petty Cash Administration
5. Introduction to South African Law
6. Affidavits
7. Prescription
8. Social Welfare (pensions)
9. Occupational Injuries and Diseases
10. General Principles of Criminal Law
11. Criminal Procedure
12. Law of Property
13. Administrative
14. Law of Contract
15. Introduction to Corporate Structures
16. Impounding of Stock
17. General Principles of Delict
18. Law of Persons
19. Library Skills
20. Typing (continuous)
21. Social Components
22. Practical English (continuous)

**First Semester – Core Subjects**

1. Introduction to South African Law
2. Social Welfare
3. Occupational Injuries and Diseases
4. General Principles of Criminal Law
5. Criminal Procedure
6. Law of Contract
7. General Principles of Delict
8. Law of Persons

**Course contents:**

**Second semester**

1. Basic Bookkeeping
2. Office Administration (continuous)
3. Typing (continuous)

4. Tax Laws
5. Constitutional Law
6. Unemployment Insurance Law
7. Human Rights
8. Civil Procedure
9. Road Accidents Fund
10. How to Run a Workshop
11. Introduction to Fundraising
12. Labour Law
13. Law of Succession
14. Credit Agreements
15. Local Government
16. Law of Insurance
17. Land Reform
18. Law of Neighbours
19. Democracy and Good Governance
20. Gender and Children's Rights
21. Social Components (continuous)
22. Practical English (continuous)
23. Conflict Resolution ADR

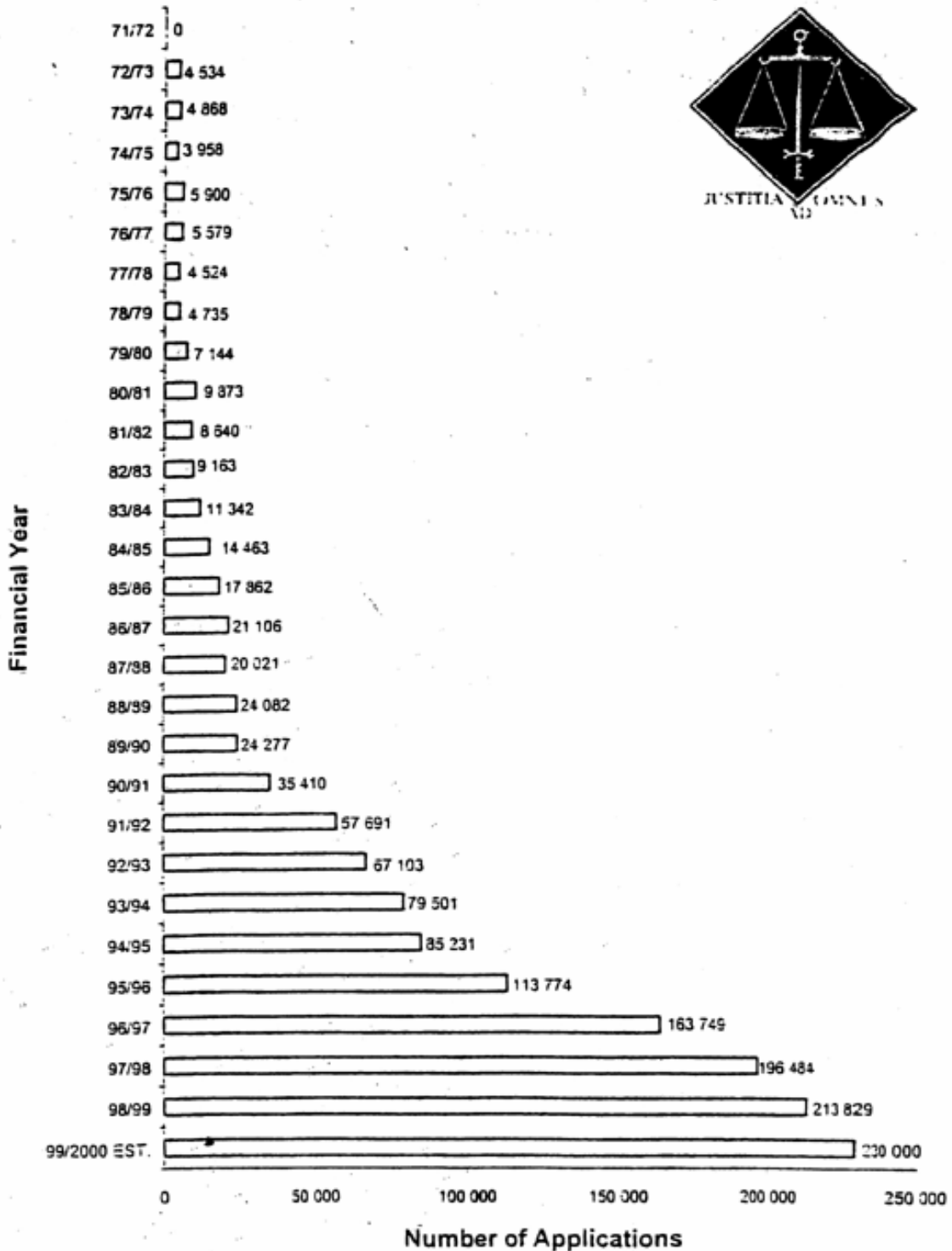
**Second Semester –  
Core Subjects**

1. Civil Procedure
2. Road Accidents fund
3. Labour Law
4. Unemployment Insurance Law
5. Law of Succession
6. Credit Agreements
7. Constitutional Law
8. Human Rights
9. Democracy and Good Governance
10. Conflict Resolution – ADR

## **Attachment 3**

Legal Aid Applications Granted During the Period 1971/1972 to 1999/2000 *(From the Draft Discussion Document: A Proposed Alternative for the Provision of Legal Aid in South Africa Prepared for Focus Group Work shop 11-12 September 1999 at Pretoria)*

### LEGAL AID APPLICATIONS GRANTED DURING THE PERIOD 1971/72 TO 1999/2000



## **Attachment 4**

Blue Print of Curriculum for Clinical Legal Education (*AULAI Working Document, Pretoria, June 2001*)

**BLUE PRINT OF CURRICULUM FOR CLINICAL LEGAL EDUCATION**

**INDEX**

1. PRACTICE MANAGEMENT
2. ETHICS
3. LEGAL WRITING
4. COMMUNICATION SKILLS
5. RESEARCH
6. PROBLEM SOLVING
7. CASE PREPARATION
8. TRIAL ADVOCACY
9. ADR
10. SOCIAL JUSTICE
11. SUBSTANTIVE LAW

## **PRACTICE MANAGEMENT**

1. Principles of management (in brief)
2. File management
3. Staff management
4. Asset management
5. Financial management
6. Business management
7. Case management (including numeracy skills)

## **ETHICS**

1. Law Society Rules and Attorney's Act
2. Common Law
3. Specifics
  - publicity
  - confidentiality
  - conduct towards clients, other practitioners, court officials
  - conduct in Court
4. Conflict : Personal ethics vs norms of society, and recognized legal ethics
5. Responsibility to clients and community, court, profession

### **LEGAL WRITING**

1. Drafting and typing of letters
2. Drafting and typing of pleadings
3. Contracts
4. Heads of Argument
5. Opinions
6. Affidavits

### **COMMUNICATION SKILLS**

1. Interviewing
  - listening skills
  - Preparation for interview
  - setting of interview
  - questioning skills (content and delivery)
  - Identify problem and possible solutions
  - summarizing and feed back to client
  - statement taking
  - overcoming blockages - e.g. language
  - dealing with conflict situations
  - time management of interview
  - statement taking
2. Telephone skills
  - preparation (purpose of call?)
  - without prejudice discussions
  - telephone etiquette
  - time management
3. Giving of legal advise



### **RESEARCH**

1. Sources used in research
2. Use of various sources
3. Computer literacy

### **PROBLEM SOLVING**

1. Identifying problem through effective communication, including factual investigation;
2. Identifying causes of problem, approaching problem solving in holistic way;
3. Assessing capacity of clinic to effectively deal with problem, identifying referral organizations;
4. Research skills;
5. Identifying appropriate remedies, which would deal with problem and causes;
6. Formulating effective strategy to deal with problem;
7. Effectively implementing strategy

### **CASE PREPARATION**

1. Commence at close of pleadings
2. Reviewing merits
3. Obtaining instructions and advising client on risks and costs implications
4. Identifying legal issues
5. Identifying factual issues in DBP
6. Evidence gathering

7. Pre-trial conferences
8. Preparing witnesses and evidence
9. Preparing for trial
10. Numeric issues and skills

#### **TRIAL ADVOCACY**

1. Developing strategy
2. Time keeping and planning
3. Court manners (customs, etiquette, dress)
4. Communication with client during trial
5. Opening address
6. Leading
7. Cross-exam
8. Re-examination
9. Closing argument

#### **ADR**

1. Mediation
2. Negotiating skills
3. Arbitration
4. Conciliation (LRA)
5. Round tables

#### **SOCIAL JUSTICE**

1. Must be taught in context of clinic's activities;
2. Substantive law relating to legal representation, socio-economic lights, etc;
3. Contextualise role of clinic in framework of other legal institutions;

4. Sensitize students to social context within which individual cases arise;
5. Sensitize students to the role of law as a tool to ensure social justice;
6. Scope of legal reform
7. Possibilities and practicalities of impact litigation

#### **SUBSTANTIVE LAW**

1. Locus standi
2. Jurisdiction
3. Cause of action
4. Legal remedies
5. Relevant substantive law
6. Relevant procedural law