

Foundation for Human Rights 1996 – 2018

*Overcoming the legacy of
apartheid through strengthening
civil society*

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FOUNDATION FOR
HUMAN RIGHTS

List of Acronyms and Abbreviations

ACHPR	African Court on Human and Peoples' Rights
ADF	African Diaspora Forum
ADR	Alternative Dispute Resolution
AIDS	Acquired Immune Deficiency Syndrome
AJPCRP	Access to Justice and Promotion of Constitutional Rights Programme
ANC	African National Congress
AMP	Adonis Musati Project
APF	Anti Privatisation Forum
APRM	African Peer Review Mechanism
ASGiSA	Accelerated Shared Growth Initiative for South Africa
BDFF	Broad Daylight Films Foundation
BLA	Black Lawyers Association
BRAC	Bohlabele Resource and Advice Centre
BRC	Border Rural Committee
CALS	Centre for Applied Legal Studies
CASE	Community Agency for Social Enquiry
CCR	Centre for Conflict Resolution
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CGE	Commission on Gender Equality
CHR	Centre for Human Rights
CLC	Community Law Centre
CM	Community Mapping
CoRMSA	Consortium for Refugees and Migrants in South Africa
CPS	Centre for Policy Studies
CRC	Convention on the Rights of the Child
CSOs	Civil society organisations
CSVR	Centre for the Study of Violence and Reconciliation
DAC	Department of Arts and Culture
DCI	Development Cooperation Ireland
DoJ&CD	Department of Justice and Constitutional Development
DPME	Department of Planning, Monitoring and Evaluation
EA	Earthlife Africa
ECC	End Conscription Campaign
EU	European Union
EUFHR	European Union Human Rights Programme
FHR	Foundation for Human Rights
FSRDA	Free State Rural Development Association
GLN	Gay and Lesbian Network
HIV	Human Immunodeficiency Virus
HRCA	Human Rights Compliance Assessment
HSRC	Human Sciences Research Council
HURISA	Human Rights Institute of South Africa
ICASA	Independent Communications Authority

ICCPR	The International Covenant on Civil and Political Rights
ICERD	International Committee on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IDP	Integrated Development Plans
IEC	Independent Electoral Commission
IJR	Institute for Justice and Reconciliation
IMLU	Independent Medical Legal Unit
Jipsa	Joint Initiative on Priority Skills Acquisition
KCFHR	Karoo Centre for Human Rights
LAB	Legal Aid Board
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
LHR	Lawyers for Human Rights
LPM	Landless People's Movement
LRC	Legal Resources Centre
LRS	Labour Research Service
MIP	Multi-Annual Indicative Programme
MK	uMkhonto weSizwe
MTSF	Medium-Term Strategic Framework
NADEL	National Association of Democratic Lawyers
NAP	National Action Plan
NCBPA	National Community Based Paralegal Association
NCRA	National Consortium on Refugee Affairs
NCRF	National Community Radio Forum
NDA	National Development Agency
NDP	National Development Plan
NIP	National Indicative Programme
NIPILAR	National Institute for Public Interest Law
NLB	National Lotteries Board
NLC	National Land Committee
NPA	National Prosecuting Authority
NPI	National Paralegal Institute
NTT	National Task Team
PAC	Pan Africanist Congress
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PLAAS	Programme for Land and Agrarian Studies
PPASA	Planned Parenthood Association of South Africa
PRAG	Practical Rules Application Guidelines
RDP	Reconstruction and Development Programme
SABC	South African Broadcasting Corporation
SACBC	South African Catholic Bishop's Conference
SACC	South African Council of Churches
SAHA	The South African History Archives
SAHRC	South African Human Rights Commission
SAPOHR	South African Prisoners Organisation for Human Rights
SBS	Sector Budget Support

SCAT	Social Change Assistance Trust
SECC	Soweto Electricity Crisis Committee
SEJA	Socio-Economic Justice for All
SOE	State owned enterprise
SOGI	Sexual Orientation and Gender Identity
SPII	Studies in Poverty and Inequality Institute
SPRA	Schubart Park Residents Association
TAC	Treatment Action Campaign
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front
UKADA	Upper Karoo Advice and Development Agency
UNHCR	United Nations High Commissioner for Refugees
WLTP	Women's Leadership and Training Programme
WFP	Women on Farms Project

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Introduction

The Foundation for Human Rights (FHR) is one of the primary indigenous grant-makers to the Human Rights sector in South Africa. Established in 1996 through a cooperation agreement between the European Union (EU) and the South African government, the FHR receives funds primarily from the EU with contributions from other donors. The Board, which comprises South Africans, independently shapes the goals, strategies and the direction of its programmes and decisions on grants.

The FHR supports civil society organisations (CSOs) and public institutions to promote and facilitate increased awareness, respect, protection and fulfilment of the rights contained in the Constitution.

Vision

An entrenched participatory democracy, symbolised by a vibrant civil society having realised the rights enshrined in the Constitution, having been freed from social injustice, living in a society based on democratic values, social justice and fundamental human rights.

Mission

To address the legacy of Apartheid, assist with building a constitutional democracy and contribute to building strong civil society organisations and public institutions that promote, protect and fulfil human rights by empowering vulnerable groups to access their rights and promoting participatory democracy, thus improving the quality of people's lives and freeing the potential of each person in order to overcome the injustices of the past

Formation of the FHR

On 1 February 1996, former President Nelson Mandela and Professor Joao De Deus Pinheiro, European Union Commissioner, met at the Union Buildings to sign the European Union Human Rights Programme. The programme sought to cement the commitment of both the South African government and the EU to the promotion and protection of human rights and democratic principles. In this agreement, the EU agreed to finance an independent foundation to support civil society organisations. The EU was guided by the EU's Resolution on Human Rights, Democracy and Development on South Africa and South African government policies as set out in the Constitution and the Reconstruction and Development Programme (RDP). Professor Pinheiro commented:

"Mr President, in signing this Agreement today the European Union is reaffirming its deep commitment to providing concrete support for the Reconstruction and Development process in South Africa. In doing so, we are guided by your vision which has fired determination of the people in every corner of this beautiful land and given them confidence. It has lifted up their hearts and raised their hopes for new beginnings.

We share with you this vision and in the message of hope you and the people of South Africa have given to people all around the world.”

The first European Union Foundation for Human Rights (EUFHR) programme was developed after wide-ranging consultations were undertaken by the Danish Centre for Human Rights. It was agreed that the Foundation be independent and that the grants would be offered to CSOs to strengthen their capacity to promote human rights in South Africa. It was a unique and unprecedented arrangement between the EU, the South African government and civil society.

“I have come to think of our involvement in this initiative as a great honour for the European Union. I applaud the Foundation’s achievement in helping South Africans to give meaning and substance to their Constitution, and in upholding the cause of human rights, a cause in theory won but always vulnerable. May the Foundation continue to thrive, as thorn in the flesh and beacon of hope.”

- Former EU Ambassador Michael Lake

Rights-Based Approach

Based on the consultations undertaken, the FHR implemented a human rights-based approach to development which empowers vulnerable and marginalised groups to demand accountability. It emphasises participation, accountability, non-discrimination, empowerment and respect for human rights. The South African constitution states that all human beings are entitled to their rights without discrimination on the grounds of race, colour, sex, ethnicity, age, language, religion, politics, national or social origin, sexual orientation and disability.

Beneficiaries and target groups

Women

Children

Rural and urban poor communities

Farm workers

People affected by HIV and AIDS

Gay, lesbian, bisexual, transgender and intersex communities

Child-headed households

People affected by:

- Violations of their socio-economic rights
- Racism and xenophobia
- Lack of land rights
- Their advanced age

Persons with disabilities

Youth, including youth in prison and in conflict with the law

Background

Transition in South Africa

In 1994, South Africa celebrated its first free, fair and peaceful election. After 350 years of slavery, colonialism and apartheid, the majority of South Africans finally had a voice in the governing of the country. The new government initiated a nation-wide consultation process that led to a new Constitution promulgated through Act 108 of 1996 (initially preceded by the 'interim' Constitution of 1993. Chapter Nine of the Constitution created state institutions to support democracy and protect the rights of vulnerable groups. The Constitutional Court was established to oversee the interpretation of South Africa's human rights-based Constitution and particularly the rights outlined in Chapter Two known as the Bill of Rights. The government embarked on an ambitious programme of dismantling the apartheid legal and policy framework.

During apartheid, civil society organisations played a central role in both mitigating the effects of apartheid's unequal development and mobilising opposition to the apartheid state. In 1966, the United Nations General Assembly declared apartheid a crime against humanity. With rising international condemnation of the apartheid state, European governments and other international donors looked for credible local South African agencies through which to channel the funds.

The EU and its prior structures supported anti-apartheid activities in South Africa dating back to the 1980s. After the 1985 nationwide State of Emergency, EU support from 1986 to 1990 was characterised by a two pronged policy of restrictive and positive measures. The restrictive measures involved banning of investments in South Africa and imports of South African products. The positive measures included providing financial assistance to organisations monitoring human rights abuses, perpetrated principally by the State and to organisations assisting the victims of human rights violations through the Special Programme for Victims of Apartheid.¹¹ Organisations within South Africa that received funding included the South African Council of Churches (SACC) and the South African Catholic Bishop's Conference (SACBC), which formed the Kagiso Trust. The programme included support for the Southern African Development Coordination Conference (SADCC) countries as the apartheid state's military destabilization policies led to widespread destruction and death in Angola, Mozambique, Lesotho, Zambia and Zimbabwe.

The Special Programme for Victims of Apartheid reflected a departure from EC funding which was normally done through bilateral agreements with governments. According to Brother Jude Pieterse of the SACBC and member of the first Board of the FHR, 'earlier in 1985 there were four to five European Ministers who came to South Africa to see what could be done about the situation. While they were here, the South African government of the time bombed the ANC in Lusaka, Zambia and in Gaborone, Botswana. The Ministers went back and had a discussion in parliament and the result of that was to set up the special programme on South Africa.'

In 1990, President Nelson Mandela was released from prison after serving 27 years. By 1993 it was clear that the apartheid system was going to be replaced by democracy. With the prospect of a legitimate government coming to power, the EU programme from the Special Programme for the Victims of Apartheid to the European Programme

or Reconstruction and Development of South Africa in 1993. According to Brother Jude, 'one of the concerns was what would happen to all the organisations promoting human rights and legal aid and so on. What would happen once the EU started funding government rather than these institutions? That was where the Foundation started.'

Following the establishment of the Government of National Unity in 1994, the EU committed itself to cooperation with the new South African government. The EU office also undertook a series of wide-ranging consultations with NGO partners in the human rights field. The purpose of these discussions was to map out the future of EC Cooperation in the sector. The consensus of these discussions was to undertake a study to examine the most appropriate focus and structure for EC involvement in human rights promotion, whilst focussing on the interrelationship between human rights, democracy and development.

A study was commissioned by the Danish Centre for Human Rights. The study found that the Interim Constitution made for generous provision for the protection and promotion of human rights. South Africa's constitution was seen as one of the world's most progressive constitutions in relation to human rights. The rights-based approach commits to empowerment, participation, accountability, non-discrimination, human rights, and attention to vulnerable groups. The Constitution was informed by international human rights treaties, such as the United Nations Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The South African Constitution is one of the few constitutions in the world that includes socio-economic rights as justiciable rights as well as including the right to non-discrimination on the grounds of sexual orientation. Rights are clearly spelled out together with obligations on government to protect them. A number of statutory institutions were formed to promote and protect the extensive rights outlined in the Constitution. These include the South African Human Rights Commission (SAHRC), the Public Protector and the Commission on Gender Equality (CGE).

The consultations found that the mere existence of a human rights friendly constitution did not mean that human rights would automatically be promoted. On the role of government in monitoring human rights, a commentator from the SACBC pointed out, 'this was like asking a goat to take care of the cabbage field.' The EU programme was thus designed to assist the NGO sector to support statutory institutions in fulfilling their mandate in protecting and promoting human rights. The programme was conceived in such a way as to encourage NGOs to monitor the performance of government in the area of human rights.

The issues that were identified in the study included addressing the legacy of the past, projects to contribute to the transformation of the country through capacity-building initiatives, support to Chapter Nine institutions, monitoring the realization of rights among the most vulnerable including prisoners, women and children, farmworkers and the dispossessed, the funding of constitutional litigation cases to expand the application of the Constitution to contemporary human rights challenges in South Africa, funding TRC related work of the Department of Justice and organizing exchanges between stakeholders involved in Truth Commissions in various parts of the world.

'The essential question for the Foundation was how, with the limited resources and personnel available, it could maximise its impact in nourishing a culture of human rights in the country? The debate was often furious with as many opportunities as there were suggestions, from prisoners' rights, to popular theatre, to sponsoring a national football team that would promote the Foundation logo 'Our time- Our Rights'. The possibilities were endless.' - Seán O'Leary, Director, Denis Hurley Peace Institute¹⁸

The programme was informed by the European Council Resolution on Human Rights, Democracy and Development of 28 November 1991 which called for proactive interventions. The policy document recognised that, 'democracy is a gradual and long term process and governments need to build the political, economic and social structures to underpin and sustain a democratic society.'

Civil Society and addressing the legacy of Apartheid

Ultimately, our goal is to develop a system in which human rights, not just for the rich, pervade all levels of our society. These are some of the battles to be fought over the next ten years, exciting battles - Dullah Omar, in 'A Human Rights Activist and Lifetime Contributor to South Africa's Democracy' (2004)

The demise of apartheid is largely attributed to the strength and vigour of civil society interventions. The United Democratic Front (UDF) was a non-racial coalition of about 400 civic, church, students', workers' and other organisations that was formed in 1983 and made a significant impact in coordinating a united response against apartheid, together with other progressive organisations who had historically resisted apartheid from a number of political traditions. Other vibrant organisations included Black consciousness organisations, End Conscription Campaign (ECC), the South African Council of Churches (SACC) and active and militant trade union formations. Legal organisations such as Lawyers for Human Rights (LHR) concentrated on arrest and detention during the state of emergency, acted as lawyers for political activists and investigated disappearances. Civil society organizations were key in lobbying, advocacy, networking, building solidarity, protesting, awareness raising, providing services, offering comfort and a range of other activities usually provided by the state. At the end of apartheid, South Africa had one of the most sophisticated and developed non-profit sectors in the world.

Before 1994, many progressive civil society organisations were in opposition to the state. With the ANC election victory in 1994, civil society, like the rest of the country, entered a phase of transition. Assumptions about the role and ability of the post-apartheid state led to many anti-apartheid formations being absorbed into the state or co-opted by the ANC.

In the immediate post 1994 period, there was an air for optimism. It was assumed that a legitimate government would promptly deliver on election promises of 'a better life for all.' Most people in civil society and social movements believed that the relationship between NGOs and government would be a close and constructive one, which it initially was. Immediately after 1994, government processes were consultative and participatory.

Many people from the civil society sector moved into government positions. The Reconstruction and Development Programme (RDP) that emerged from this time seemed to bring government and civil society together. Oupa Lehulere, from Khanya College commented, 'we took off our jackets and put our shoulders to the ox-wagon of development.'

The development issues needing to be addressed were the legacies of apartheid- a stagnant economy, gross inequalities, illiteracy, racism, abject poverty, homelessness and the emergence of an escalating HIV/AIDS pandemic. In addition, 'Apartheid's institutional framework of oppression also incubated a generalised culture of intolerance, corruption, lack of democratic accountability and racial/class/gender conflict and inequality.'

After 1994, civil society organizations had to redefine their role. With NGOs no longer working in opposition to government, NGOs shifted their focus from advocacy, activism and social mobilization to supporting government in service provision. The redirection of foreign donor funding to the government along with a significant number of civil society leaders departing to government affected South African NGOs negatively. Where there was once unity, there emerged signs of fragmentation, division and competition amongst NGOs, particularly between the bigger, more professional NGOs and the smaller, less formalized CBOs that tend to be survivalist and oppositional in nature.

Along with a reduction in funding, came a crisis of identity with civil society organisations uncertain of how they should relate to the new government. This was intensified with the shift from the short-lived RDP to the adoption of the Growth, Employment and Redistribution Plan (GEAR) in 1996 with many in the NGO sector seeing the corporate sector as replacing civil society as preferred development partners. The FHRSA Mid Term Review noted that GEAR 'reinforced the class inequalities and social unevenness that were the natural inheritance of South Africa's apartheid socio-economic relations.' The 'ox-wagon of development' was proving harder to shift than anticipated and over time, with the slow pace of change, civil society and government regularly clashed over a range of issues.

The political negotiations that took place in the early 1990's led to compromises that allowed the socio-economic human rights framework to remain separate from the institutional framework. There were, 'no concomitant agreements instituted that allowed for apartheid social-economic relations to be fundamentally addressed.'²³ Where this was most evident was in property and land ownership.

In the new dispensation, civil society had to maintain its independence and its role as a watchdog and needed to find a new and constructive approach to human rights issues. Organisations needed to refocus their work to remain relevant to the changing context and had to deal with a more difficult funding environment.

Despite these shifts and challenges, the European Union and South African government saw the valuable role that civil society plays in promoting the principles

of pluralist democracy, transparent and accountable governance, respect for human rights and the rule of law. Organisational vibrancy and socio-political effectiveness of civil society were viewed as central to the implementation of human rights.

Building a Constitutional Culture in South Africa

The key tool informing the work of the EUFHR which was renamed as the Foundation for Human Rights (FHR) in 2001 when it had appointed an independent Board, was the Constitution and how to make the rights enshrined in it a reality for South Africans. Unlike many classic liberal constitutions, South Africa's 1996 Constitution is widely described as a transformative constitution as its primary aim is not to restrain State power but to facilitate a fundamental change in unjust political, economic and social relations. Civil and political rights, such as the right to vote, equality and freedom of association are clearly central to the transformation of society. A major achievement of South Africa's Constitutional Assembly however was that the constitution integrates a full range of socio-economic rights in the Bill of Rights and gives the courts the power to enforce these rights.

The first EU Foundation for Human Rights programme was launched at the dawn of the new South Africa when the country was gearing up to rebuild from a system that was globally recognised as a crime against humanity. The challenges were immense, but in the words of the former Minister of Justice Dullah Omar, were 'exciting battles' on the path to realising the election promises of a 'Better Life for All.'

EU Foundation for Human Rights 1996–2000

The EU Foundation for Human Rights (EUFHR) was established in 1996, two years after South Africa held its first non-racial democratic election. The Danish Centre for Human Rights financing proposal included the requirement that, 'the director must be a citizen of one of the EU member states.'²⁵ Nicolas Marcoux was appointed as the first programme Director of the EUFHR in 1996. The Director was tasked with setting up the office and establishing a board of trustees that would be credible and acceptable to South Africans. To ensure the EUFHR's independence, the EUFHR did not set up its office within EU structures but established a separate office. The French country director set up a Programme Management Unit (PMU). This was followed by a process to nominate credible candidates for the Board. A reputable board was established under the chairpersonship of Ms Dolly Mokgatle.²⁶ New board members were co-opted over time as founding board members left. The Ministry of Justice and the EU had one representative on the board.

The Board

Executive Member

Mr Nicolas Marcoux, Executive Director

Supervisory Board Members

Ms Dolly Mokgathe
Ms Louise Asmal, Chairperson
Judge Siraj Desai, Deputy Chairperson
Judge James Yekiso
Brother Jude Pieterse
Adv. Vusi Pikoli

Observers

Representatives from the EU Delegation
Mr Enver Daniels, Department of Justice representative

Over time, the FHR retained a committed board that demonstrated its strength and independence in taking on often unpopular causes and cases. Having a Board that included South Africans strengthened decision-making around which organisations to support. Board members ensured that credible organisations that had a good track record and were not tainted by apartheid were funded. While many of the board members had been actively involved in the struggle against apartheid, they agreed that the EUFHR not fund politically aligned organisations.

The EUFHR was officially launched in a Catholic Church in KwaNdebele, an underdeveloped rural area. The former Minister of Justice, Dullah Omar, who had been instrumental in the creation of the EUFHR, was one of the speakers at the launch event. The intention was to take the launch to the intended beneficiaries and send a message of where the EUFHR's priorities lay.

At one stage, the Board of Directors of the Foundation held their Board Meeting in Orange Farm, a sprawling semi-rural township of tin shacks south of Johannesburg, in order to see for themselves first-hand one of the advice offices. The experience had a deep effect on the Board Members and brought home to them the need to continue these activities - Seán O'Leary, Director, Denis Hurley Peace Institute

Four areas of the Foundation's work

The first programme identified four key areas where EU support could have a significant impact in promoting and cementing a human rights culture within South Africa's new democratic dispensation. These were Strengthening Public Institutions, Human Rights Education, Legal Services in support of Human Rights and Development of the NGO sector. The EUFHR was not set up as an implementing agency but was responsible for channelling resources to civil society organisations in the human rights sector that were in turn responsible for the implementation of the programme objectives. While the EUFHR's main function was that of a funding conduit, it has since its inception played a nuanced role.

The space in which the Foundation operates, creating bridges and links between civil society and government, is of key importance in the realization of human rights, which require good governance based on transparency, accountability and the rule of law - Lodewijk Briët, Former European Union Ambassador to South Africa

The Danish Centre for Human Rights optimistically noted, 'South Africa has a history of serious human rights violations and the EU Human Rights Programme will reverse this practice and develop a human rights culture.' Four preconditions were identified as impacting on the success of the proposed programme. These were that:

- The Government establishes and provides adequate resources for the operation of the four constitutional bodies and supports in-service training of professional groups on human rights issues
- The government facilitates an enabling environment for NGOs
- The government increases its provision of paralegal training and funding of advice offices
- The government ensures the free flow of information

The structure of the EUFHR was precedent setting. Although the programme would be signed by the Minister of Justice and the European Commission, the government would have no influence in the day-to-day operation of the programme nor be able to control the programmes funding decisions. The programme was the first of its kind and reflected a new and ground-breaking framework for cooperation.

While the EUFHR had as one of its stated objectives to strengthen public institutions, it was not initially possible to fund these institutions directly as they did not fall under the definition of a civil society organisation. The EUFHR supported civil society organisations to work closely with them on a number of projects.

The EUFHR funded the Centre for Human Rights (CHR) and the Community Law Centre (CLC) to assist the SAHRC to set up its protocols to monitor socio-economic rights. It supported the CGE in lobbying and advocacy activities around the Communal Land Rights Bill. It funded the IEC to conduct civic education and voter awareness campaigns to improve the participation of women and youth in rural areas. It supported the SA Civil Society Coalition which trained election observers.³² The EUFHR contributed towards the annual human rights awards, which was an event hosted jointly by Chapter Nine institutions in recognition of outstanding contributions made in the promotion and respect of human rights in various sectors. It supported projects to raise awareness on the mandates of Chapter Nine institutions, the SAHRC Human Rights Day celebrations, and projects addressing human rights on farms.

This structure has served the FHR well over the past 20 years as the trilateral arrangements have remained along with the FHR's retention of its independence.

While the EUFHR programme was divided into four areas of work, many of the issues were addressed across these programme areas. The section below is therefore not neatly aligned with the four programme areas of the EUFHR but is mostly narrated through themes and issues that the EUFHR addressed.

Strengthening Public Institutions

Chapter Nine of South Africa's Constitution created a number of institutions to support and enhance democracy. Chapter Nine institutions include the Public Protector, the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission on Gender Equality (CGE), the Auditor General, the Independent Electoral

Commission (IEC) and Independent Communications Authority (ICASA). The independence of these institutions was to be constitutionally guaranteed, with Chapter Nines subject to parliamentary oversight. It was intended that these institutions would be the first port of call for people seeking redress in instances of violations of their rights and abuse of state power. While these institutions have had varied levels of influence, they are seen as important vehicles for human rights protection.

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In the first programme, government, Chapter Nine institutions and civil society partners implemented numerous successful projects, 'at the time of their implementation all these institutions were open to such collaborative initiatives with civil society.' It was a time of policy development and adoption, an optimistic moment that preceded the difficulties that would subsequently be associated with implementation.

Truth and Reconciliation Commission (TRC)

To address apartheid's gross human rights violations, South Africa established the Truth and Reconciliation Commission (TRC). The Promotion of National Unity and Reconciliation Act of 1995 required that the TRC establish as complete a picture as possible of the causes, nature and extent of gross human rights violations committed in the period of the TRC's mandate which was initially determined to be between 1 March 1960 and 10 May 1994. The TRC allowed for amnesty for perpetrators of human rights abuses on individual application, in exchange for full disclosure of the abuse and other conditions. It was intended to allow for ordinary South Africans whose lives were devastated by the brutality of apartheid atrocities to share their stories, to find out what happened to their loved ones and to receive reparations for their losses. The TRC was intended as a mechanism to heal the wounds inflicted by apartheid atrocities.

Memories of the Cradock Four, the Pebco Three, the Motherwell Bomb, Trust Feeds

Massacre, the KZN Midlands War, the Soweto Uprising, Boipatong, Crossroads, farm killings and deaths in exile, to name but a few, have left deep scars on communities – Charles Villa Vicencio, founder of Institute for Justice and Reconciliation

The TRC started its work in the same year that the EUFHR was formed. The EUFHR's engagement with TRC hearings was minimal, but its involvement intensified with a contribution to the TRC final report and support in follow up programmes to civil society organisations that continued to lobby for reparations, compensation and implementation of recommendations that were contained in the TRC final report. The FHR has remained steadfast in its subsequent programmes by supporting ongoing efforts to ensure that the integrity of the TRC mandate is upheld.

Access to land and protecting farmworkers

In many African countries, unemployment and poverty is slightly mitigated through access to land and subsistence farming. In South Africa, however, legislation, passed in 1913 and 1936, resulted in the dispossession of approximately 87% of the land from black South Africans. This Act forbade Africans from buying and owning land outside of the seven percent of the land that was initially reserved for their occupation. The size of land for black African occupation was later increased to 13 percent of the land surface in 1936, a situation that prevailed until the advent of democracy in 1994.

Under apartheid and colonialism, land rights for black people were not only restricted to reserved areas, but the form of land rights which could exist in those areas was circumscribed. There were two forms of land ownership: a system of freehold ownership for white people and a parallel system for black ownership where land was subject to state control or access through chiefs in Bantustan and rural areas. Black land ownership was not guaranteed and was violated through forced removals and apartheid tenure policies.

With the end of apartheid, there was the expectation that unravelling centuries of land dispossession and oppression would be among the priorities of a democratic South Africa. However, during the political negotiation process in the early 1990s existing private property rights became enshrined in the constitution. The land reform programme committed the state to a market-led approach based on a willing-seller-willing-buyer condition. According to Zakes Hlatshwayo, 'the private property clause was one of the few aspects of the constitution that could be clearly forecasted to effectively entrench white minority material power in the post-apartheid order.'

The new government established a Land Claims Court and a Commission on Restitution of Land Rights which was meant to settle land disputes through a speedy process. The Constitution also made provision for the protection of security of tenure for groups that could be arbitrarily dispossessed of land that they were occupying.

Historically farm workers and labour tenants were the groups most vulnerable to dispossession as their security of tenure was linked to their employment. The Extension of Security of Tenure Act No 62 of 1997 aimed to provide security of tenure to millions of

people at risk of arbitrary eviction. While the Act offered some protection, most of the people affected by evictions were not aware of the Act and could not access the legal protection afforded by it.

The EUFHR supported projects addressing land reform and security of tenure. The projects included research, monitoring, lobbying and building capacity at local government level. In the first programme, the EUFHR supported a joint initiative of the National Land Committee (NLC), the Legal Resource Centre (LRC) and the Centre for Applied Legal Studies (CALS) to monitor the eviction of farm workers, provide education to farm workers and provide legal assistance to people being evicted. The initiative was able to obtain precedent setting judgements which benefited tenants more broadly. The EUFHR supported organisations such as the Nkuzi Development Association and the Surplus People's Movement to assist groups with land restitution claims. The Women on Farms project was implemented in the farming region of the Western Cape. The project aimed to educate women farm workers on their labour rights and provided assistance to women who had employment related issues. The project included the production of materials such as pamphlets and booklets. A training video was produced which was based on people's real life experiences.

Promoting Socio-economic rights

Including socio-economic rights in a domestic Constitution was seen as a radical departure from prevailing Constitutional norms. The first programme invested significant resources in projects aimed at the realisation of socio-economic rights. One project was a collaborative effort by the SAHRC, the Community Law Centre (CLC) and the Centre for Human Rights (CHR) to develop the first protocols and methodology that enabled the SAHRC to carry out its monitoring mandate with regard to socio-economic rights.

Addressing socio-economic rights has been an ongoing priority for the FHR as realising these rights has proven to be a significant challenge. The FHR has remained cognisant that its role is around the promotion of socio-economic rights and not to shift into service delivery of such rights. As Naidoo (2010:20) commented, 'there is a sad tendency for the fight against poverty to become fragmented, with organisations becoming absorbed in delivering services on a micro level, and failing to realise that they also need to address the issue on a meso and macro level. This goes further, with a failure to realise that the issue of poverty crosses over directly to the issue of human rights and justice.' The FHR has maintained that its support was not for charity or welfare interventions but for advancing rights.

HIV/AIDS

The transition to democracy occurred at the same time as South Africa experienced a growing HIV/AIDS epidemic. With stigma, denial and limited medical options initially available, the epidemic rapidly reached pandemic proportions. HIV/AIDS disproportionately infected and affected the most vulnerable, mostly women from disadvantaged backgrounds. In 1994, when the EUFHR was being conceptualised there

were an estimated 800,000 to 1,000,000 people estimated to be living with HIV.⁴¹ Projections at the time that the pandemic could balloon to 5 million people living with HIV by the turn of the century were unimaginable and yet by 2017, South Africa had the biggest HIV epidemic in the world, with 7.1 million people living with HIV.

In 1997, the EUFHR funded a joint initiative by the Aids Law Project and Lawyers for Human Rights to publish training materials on HIV/AIDS and the law. The training materials were regarded as the most comprehensive material available on HIV/AIDS and the law. The EUFHR approached HIV/AIDS as a cross-cutting issue and included raising awareness on HIV/AIDS with relevant government departments. The EUFHR supported a precedent setting case in the matter of *Hoffman vs South African Airways* 2000 which addressed discrimination in applying for employment on the grounds of HIV. The court held that the applicant's health status did not pose a risk to passengers and found SAA's refusal to appoint the applicant as a result of HIV was unconstitutional and violated his rights to equality.

Refugees, asylum seekers and xenophobia

With the demise of apartheid, refugees and migrants were increasingly drawn to South Africa. At the time of the first programme, there was no legislative framework in place to deal with status determination processes and refugee applications. Migrants were dealt with under the Alien's Control Act 1973 which prioritised controlling the movement of foreigners into the country and made no provision for those fleeing war or persecution.

The EUFHR funded the National Consortium on Refugee Affairs (NCRA) to work on law reform to develop refugee legislation. The NCRA undertook advocacy and lobbying initiatives to ensure that the Refugees Act complied with South Africa's Constitution and international obligations including the Convention on the Elimination of All forms of Racial Discrimination 1965, the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1966 and the African Charter on Human and People's Rights.⁴³ The project worked towards improved living conditions for migrants and refugees including addressing service provision and socio-economic rights. NCRA partners such as Lawyers for Human Rights provided legal services to refugee communities and supported anti-xenophobia public awareness initiatives. A number of research papers were commissioned. The Botshabelo magazine provided information on refugee and migrant issues and was distributed to refugee forums and the general public. The NCRA worked closely with the SAHRC to monitor the conditions in the Lindela repatriation centre. By the end of the first programme, South Africa had developed a domestic legal framework offering protection to refugees and migrants through the Refugees Act 1998 and the Immigration Act 2002.

Despite this array of legal protection, refugees, asylum seekers and migrants continued to be a vulnerable group in South Africa. Xenophobia has been a consistent feature across the apartheid and post-apartheid divide. Attacks on foreigners first received prominent attention in 1998 when the SAHRC, NCRA and the United Nations High Commissioner for Refugees (UNHCR) convened a consultative conference and

adopted the Braamfontein Statement which emphasised that no one could be deprived of basic human rights including foreign nationals. The conference established the Roll Back Xenophobia Campaign to conduct public awareness and education programmes on the rights of asylum seekers, refugees and migrants in South African with a view to reducing negative perceptions of and hostility towards foreigners.

The 2001 World Conference Against Racism and Xenophobia that was held in South Africa resulted in the Durban Declaration and Programme of Action which further addressed measures required to combat xenophobia. Despite these efforts, South Africans have largely remained at best ambivalent, at worst hostile, towards migrants from the African continent despite African countries offering decades of support to South Africa's liberation struggle.

LGBTI rights

The South African Constitution is one of the few constitutions in the world that specifically outlaws discrimination on the grounds of sexual orientation. The EUFHR supported the National Coalition for Gays and Lesbians to implement a project aimed at increasing awareness on lesbian and gay rights. Through its campaign to 'Recognise our Relationships' the project made submissions on the Medical Aid Schemes Bill, the Child Care Act, the Marriage Act and the Aliens Control Act. The litigation fund supported equal access to benefits for same sex partners through the *Langemaat v The Minister of Safety and Security 1998* and *Satchwell v The President of South Africa (2002)*.

Prisoners' rights

Before 1990, South Africa was notorious for the state of its prisons. The release of political prisoners and the moratorium on the imposition of the death sentence, with the subsequent abolition of the death penalty, allowed for attention to shift to the conditions in prisons. The Correctional Services Act 1998 replaced the Prison's Act of 1959. The new act focused on ensuring that persons in custody were held under humane conditions and that practices and regulations of the department of Correctional Services were in line with the Constitution. Lawyers for Human Rights and the Centre for the Study of Violence and Reconciliation (CSVR) introduced a human rights training programme in prisons. The FHR also supported Lawyers for Human Rights to improve access to legal services to prisoners. The South African Prisoners Organisation for Human Rights (SAPOHR) monitored conditions in prisons and lobbied for improved conditions for prisoners.

One of the first litigation cases that the FHR undertook was on protecting the right of prisoners to vote. The case of *August and Another v the Electoral Commission and Others 1999* imposed an obligation on the IEC to take reasonable steps to enable eligible prisoners to vote. The case was one of the early demonstrations of the FHR's independence and boldness in taking on unpopular issues. According to Francois Dronet, 'what we wanted to see was real independence, neutrality and strategic interventions. I think that this case was about these three things.'

The FHR continued to support prisoners' rights in its subsequent programmes. The FHR supported efforts to address overcrowding, the rights of awaiting trial prisoners and juveniles in detention.

Gender and violence against women

The new Constitution guaranteed the right to equality including prohibiting discrimination on the basis of sex, gender, marital status etc. Constitutional guarantees were incorporated into legislation such as the Domestic Violence Act, the Child Care Act, the Prohibition of Corporal Punishment Act and the Aged Persons Act which seek to protect vulnerable groups such as women and children against violence.

The FHR received many requests from women's organisations to develop training materials. The FHR decided that it would be more useful to develop a comprehensive training guide that addressed various topics that could be used by different organisations working in women's rights. A consortium was created to develop the materials. The Gender and Resource Manual was launched on National Women's Day, 9 August 1999.

The FHR supported the Independent Medical Legal Unit IMLU to develop a training manual on critical forensic medicine and forensic pathology targeting health professionals, legal professionals, justice, the police, security sectors workers and civil society.

Legal Services and Litigation

Community Based Advice Offices

The FHR, from the onset, prioritised the rural poor in its programmes. The FHR's 'flagship' programme was its support to advice offices. Community Based Advice Offices (CBAO) are advice offices located in communities across the country allowing people access to justice in their immediate environment. They provide assistance with various issues such as obtaining identity documents, access to pensions and child grants, employment and domestic issues. They are run by lay-persons who have been trained to provide such assistance.

The Constitution underscored the right to access to justice. The state funded Legal Aid Board (LAB) now referred to as Legal Aid South Africa only had resources to provide legal assistance in criminal matters. Many people required legal assistance with other matters such as discrimination issues, refugee status determination procedures, security of tenure, land reform and, domestic violence.

In the first programme, the FHR supported around 30 CBAOs that assisted people to claim various legal entitlements. At this time there were many new areas of law being

developed which meant that ongoing training of paralegals was required. Many law reform initiatives were pro poor and thus it was essential that paralegals were informed about them and how to access them. In addition to supporting the running costs of CBAOs, the FHR supported the National Community Based Paralegal Association (NCBPA) to develop a human rights training programme that included human rights and the new constitution, land rights, gender rights, refugee law and socio-economic rights. Training included organisational development skills to ensure that advice offices were well managed.

Support to CBAOs was based on the assumption that government would eventually legislate or regulate the paralegal sector and provide funding to paralegals and advice offices. At the establishment of the FHR, the Danish Centre for Human Rights recognised that government needed to provide training and funding to paralegals as a precondition for the success of the CBAO programme. The NCBPA set up the National Paralegal Institute (NPI) in an attempt to move this forward. The NPI drafted a legislative framework to recognise paralegals. It developed an accredited training syllabus. These efforts were to be the start of a protracted process to get legal recognition and regulation of the paralegal profession and CBAOs.

The people who really gained the most from these Advice offices were the people the Advice Offices were set up for, the rural poor... the fact that there were people in the Advice Offices who listened and cared was in itself a source of consolation and support. They were actually able to improve the lives of people - Seán O' Leary, Director, Denis Hurley Peace Institute

Legal service provision and transformation of the legal profession

With the transition from apartheid, the legal system lacked credibility and was not representative of the country's racial or gender demographics. In 1996, the Policy Unit of the Ministry of Justice released the draft Legal Practice Bill which aimed to unify the profession. The FHR was particularly interested in transformation of the legal profession as it would improve access to legal services for the poor. The Bill included an intention to acknowledge paralegals as legal professionals and to regulate and accredit the paralegal profession, as noted above. The FHR supported organisations such as the National Association of Democratic Lawyers (NADEL), Black Lawyers Association (BLA) and the NCBPA to develop submissions on the Bill.

The FHR supported universities and legal service providers to provide legal services. These included the law clinics at Wits University, University of KwaZulu-Natal, Rhodes University, University of Pietermaritzburg, the BLA and the LHR. They provided legal services on issues including access to housing, women's rights, prisoners' rights and refugee rights.

To improve access to legal services, the FHR supported a mobile legal clinic in which legal professionals travelled on a train and when the train stopped at selected train stations, qualified lawyers offered basic legal advice and referrals. The project was a partnership with the National Association of Democratic Lawyers (NADEL), BLA, the

Ministry of Justice and Spoornet. The project was a once-off project that did not develop sustained partnerships with local organisations in the locations in which the train stopped.

Contributing to the legal and policy framework

During the first FHR programme civil society organisations cooperated with government to develop the legislative and policy framework that was required to align the law with the new Constitution. Civil society organisations brought in a wealth of academic and community based experience which influenced decision-making processes.⁴⁷ The FHR supported civil society partners that engaged with projects that influenced the Promotion of Access to Information Act (2000), the Land Reform (Labour Tenants) Act (1996), the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act (1998), the Extension of Security of Tenure Act (1997), the Refugee Act (1998) and the Promotion of Equality and Prevention of Unfair Discrimination Act (2000).⁴⁸

Litigation

With a legal framework grounded in human rights principles, public interest litigation was undertaken as an important mechanism to advance rights, especially socio-economic rights. While a litigation fund had been in existence from the beginning of the programme, it was only from 1998 that the fund started receiving interest. The fund supported litigation that could set a legal precedent, result in legal reform, have a broader societal impact and have a good chance of success. Litigation was an area that the FHR initially engaged in with caution as civil society organisations at that stage sought a cooperative relationship with the state rather than an adversarial one.

The Right to Housing: (The Grootboom case)

Homelessness and inadequate housing are pervasive legacies of apartheid. While the government set out to build low cost houses, millions of South Africans continue to live in backyard shacks, squatter settlements and areas experiencing overcrowding and poor service delivery.

In May 1999, the Oostenberg Municipality evicted around 800 people from a site in its municipal area. During the eviction, structures were demolished and building materials were destroyed. Most of the group who were evicted resettled on a nearby sports field but had no materials to construct shelters and with winter approaching, many were living without any shelter.

In terms of Section 26 of the Constitution, everyone has the right to have access to adequate housing and the State has an obligation to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. Section 28 states that every child has the right to basic nutrition, shelter, basic health care services and social services.

In the *Grootboom and Others v Oostenberg Municipality* 2000 case, the Constitutional Court held that the State had failed to make provision in terms of section 26 of the

Constitution to deal with the crisis that affected the applicants and the state was ordered to implement a programme and provide relief. The judgment included appointing the SAHRC to monitor the State’s compliance.

The Grootboom case illustrated how projects funded by the FHR mutually benefit and reinforce each other. The FHR funded the litigation while other FHR grantees acted for the applicants.

The Grootboom case addressed the right to shelter, the justiciability of socio-economic rights and the courts power to review government policy relating to those rights. The court set out clear guidelines on the role of government in providing access to housing and shelter. The irony of the situation was that Mrs Grootboom passed away before being allocated a house, having waited a long time after the judgement. Despite this significant legal precedent, access to housing remains an unresolved issue for millions of South Africans.

The Right to Freedom of Expression: (The Patricia De Lille case)

In the case of De Lille & other v. the Speaker of the National Assembly 1998, Ms Patricia De Lille, a then parliamentary representative of the Pan Africanist Congress (PAC) made allegations of corruption in relation to the arms deal in Parliament. These statements were regarded as defamatory by some members of Parliament. An ad hoc committee suspended Ms De Lille for 15 days. Ms De Lille instituted legal action in the High Court on the basis that her right to freedom of expression had been censured and that she was not given a fair hearing. The court held that the hearing was substantially and procedurally unfair. The court found that Ms De Lille’s right to freedom of expression and right to just administrative action was infringed.

Funding this case was contentious as the FHR did not fund politically aligned organisations. This case was however seen as transcending a particular political party as it impacted upon the functioning of parliament. Cases like this one affirmed the independence of the FHR and its Board.

The FHR supported some ground-breaking cases including the following:

Case	Description
Hoffman v South African Airways 2000	Right to employment of a person living with HIV. The Constitutional Court held that an applicant could not be denied employment on the basis of HIV status

SWEAT v Mike Secrets and Others 1998	Court upheld that sex worker rights to dignity, privacy, freedom of movement, health and property were infringed.
Langemaat v The Minister of Safety and Security and Others 1998	The case represented an important advance in the legal recognition of same sex relationships
August and Another v the Electoral Commission and Others 1999	Protected the right of prisoners to vote and imposed a positive obligation on the IEC to take reasonable steps to enable eligible prisoners to register and vote
Michael Louw v Golden Arrow 2000	Addressed the issue of the right to equal pay for equal work where Golden Arrow Bus Services was challenged for paying a white staff member a higher salary than a black staff member. The court made no finding on the matter as there was an argument that the jobs were not of equal value.
Prince v. President of the Law Society	Gareth Prince argued against the prohibition of the use of cannabis as a violation of his right to religious freedom on the basis that he was a Rastafarian. The initial case was eventually dismissed by the Constitutional Court in 2002.

Human Rights Education

Baseline Survey 1998

In 1998, the FHR commissioned the Community Agency for Social Enquiry (CASE), an independent applied research agency based in Johannesburg to conduct two national baseline surveys to gauge awareness and perceptions on human rights set out on the Constitution's Bill of Rights. The first report, Monitoring Socio-Economic Rights in South Africa: Public Perceptions was released in June 1998 and the second report, Assessing Knowledge of Human Rights among the general population and Selected Target groups was released in November 1998.

The research found that knowledge of human rights did not necessarily translate into support or respect for those rights. In several areas these were contested including the rights of foreigners, criminal suspects, gay and lesbian rights, the death penalty and rights to access abortion. The research found racial divisions with African, Indian and coloured respondents more supportive of socio-economic rights and white respondents more concerned about crime. African respondents were particularly concerned about unemployment. Both surveys provided a yardstick against which further human rights surveys could be measured.

Human Rights Awareness campaigns

With the adoption of the new Constitution in 1996, the Constituent Assembly launched a massive campaign to raise awareness on the Constitution and the Bill of Rights. It published copies of the Constitution in pocket-book format. The FHR supported a project that contributed to the translation of the Constitutional Assembly's Human Rights Comic into all eleven languages of the country. The comic was launched in 1999 as part of the activities for national Human Rights Day Celebrations in March 1999.

The FHR recognised that building a human rights culture was a long term and ongoing project. In its first two years, it funded a number of educational and awareness programmes aimed at creating awareness of the new Constitution. Human rights education activities were integrated into support for public institutions and the provision of legal services. Projects funded by the FHR were implemented to raise awareness on the rights of refugees by the National Consortium on Refugee Affairs (NCRA); on prisoner's rights by the Centre for the Study of Violence and Reconciliation (CSVR), and LHR; on farm worker rights by the NLC; on land redistribution by Nkuzi Development Association; as well as awareness projects on LGBTI rights and women's rights. A gender training manual was developed and launched on National Women's Day, 9 August 1999. The National Network on Violence against Women in collaboration with the Commission on Gender Equality (CGE) implemented various initiatives around the 16 Days of Activism to Combat Violence against Women. The National Children's Rights Committee raised awareness on children's rights. Campaigns on socio economic rights were implemented by the Community Law Centre (CLC) and the Centre for Human Rights. Advice offices implemented education and training programmes on human rights. The FHR supported human rights training for criminal justice officers (CSVR); training on the Security of Tenure Act for lawyers, police officers, magistrates and paralegals (CALS); training journalists on human rights (IAJ); training civil servants on the right to information (FXI) and training forensic workers.

The Rights Africa Campaign

The biggest public awareness and education campaign undertaken by the first programme was the 'Rights Africa' campaign. The campaign was informed by findings from the baseline surveys. This multimillion rand campaign used popular mediums of communication to spread human rights messages. A human rights advice line was created as well as a website to provide information on human rights. It

produced public awareness materials including posters, pamphlets and radio adverts that featured South African celebrities. A music road show with popular acts was held in eight venues to infuse human rights values into popular culture. Celebrities were contracted as human rights ambassadors to assist to publicise the human rights advice line. The project succeeded in raising awareness and providing advice and referrals through the advice line.

African Human Rights Moot Court Competition

In 1996 the African Human Rights Moot Court Competition was in its fifth year. The African Human Rights Moot Court Competition is a mock trial where law students and professors from Africa gather for a week every year in a different part of the continent to participate in a simulated African Human Rights Court case. The moot courts have addressed a range of human rights issues including HIV/AIDS, women's rights, the right to health, corruption and children's socio-economic rights.

The FHR supported the Centre for Human Rights (CHR) based at Pretoria University with a number of competitions: 1998 in Maputo, Mozambique; 1999 in Abidjan, Côte d'Ivoire; 2001 in Pretoria, South Africa. Support continued into subsequent FHR programmes with support offered for the competition held in 2003 in Yaounde, Cameroon; 2004 in Dar Es Salaam, Tanzania; and 2005 in Johannesburg, South Africa.

The African Human Rights Moot Court is the most important African annual get-together on human rights issues in Africa. Thanks to this competition, human rights is now included in the university curricula. Through this competition, a network of African academics, students and practitioners interested in human rights issues has been created - Prof Alpha Oumar Konare, (then) Chairperson, Commission of the AU50

Development of the NGO sector

The FHR found itself working in a context where South African civil society reflected the inequalities of society at large. This translated into a civil society sector where some organisations were well resourced and sophisticated while other community based organisations, although doing excellent work on the ground, were poorly resourced and lacking capacity. The FHR wanted to reach community based organisations, but initially there were few applications from smaller organisations. To address this the staff undertook provincial visits to meet with stakeholders and inform them about the FHR. To address the lack of management skills particularly evident in smaller NGOs and rural advice offices, the FHR supported the development of a comprehensive training programme that included training in project management, fundraising, marketing, financial oversight and monitoring of programme performance.

The end of the first programme

The first programme took place during the 'honeymoon' period of South Africa's transition. It was a time of hope and expectation that was initially guided by the Reconstruction and Development Programme which included the principle of it being a 'people driven process.' In the first decade of democracy, South Africa established

an institutional framework for democracy that included a progressive Constitution, setting up Chapter Nine Institutions, the creation of a representative national assembly and nine provincial legislatures along with an array of legislation to redress apartheid. In 1999 President Nelson Mandela handed the baton of leadership to President Thabo Mbeki, after having only served one term in office although he could easily have won the elections for a second term, a positive sign of good governance.

The FHR evolved alongside the new democratic processes and changes that were taking place in the country at the time. The FHR initially took a more hands off approach to funding but in the second and third year of the first programme it became more proactive and actively encouraged cooperation between projects. While some argued that this was not the role of a funding agency, the FHR viewed its role as a development partner and ensured that the power dynamics of providing resources were mitigated through its approachable style and building relationships with its grantees as well as other stakeholders in the sector. It created platforms for consultation and accountability. The FHR managed to develop good relationships with government partners while simultaneously funding projects that were at times critical of government programmes. The FHR was commended for being a brave, principled and consistent funder.

At the time of the first FHR programme a lot of effort at government level went into reviewing old apartheid legislation and drafting progressive legislation that envisioned far reaching change based on the constitution and informed by human rights values. Implementation of these policies has however been far more complex and the second programme was ushered in with a more pragmatic understanding that overcoming the hurdles to achieve a society based on human rights would require ongoing efforts of civil society partners.

The FHR programme results were linked to the responsiveness of other stakeholders, particularly the government. Some constraints in achieving these included the poor funding to Chapter Nine Institutions which limited their effectiveness; as well as the lack of funding to paralegals and advice offices which saw many operating at survivalist levels. The final evaluation of the first programme suggested, 'a shift in emphasis from policy and research to delivery and implementation, which must include constructive engagement with the state around releasing appropriate resources.'⁵³

An independent evaluation of the first FHR Programme completed in 2000 recommended that the EUFHR play a more prominent role in addressing the legacy of the deep racial divisions that remained in the country. With South Africa preparing to host the World Conference against Racism in 2001, the EUFHR was well placed to more actively engage on this issue.

Sustainability of the FHR was another area of concern at the close of the first programme. A possible source of funding for the FHR was the newly formed, government-funded National Development Agency (NDA). An obstacle to this and

other external sources of funding was identified as linked to the name of the FHR as other potential funding partners could have been reluctant to fund an organisation that is named after another funder. The evaluation of the first programme suggested that the name of the foundation relate to the focus of the organisation and not the source of funding. In 1999 the name was changed from the EU Foundation for Human Rights to the Foundation for Human Rights (FHR).

The final evaluation commended the role played by the first EU appointed Director, Nicolas Marcoux. Similar to the name change, the final evaluation affirmed the need to appoint a South African director.

The evaluation found that the programme was well conceived and structured and had been implemented largely as planned. The programme was implemented by a diverse and competent staff of professionals with a sound background in the work that the FHR supported. The evaluation concluded that, 'it has had a significant impact on the human rights sector in South Africa.' The FHR was commended for supporting creative and innovative projects while retaining a cautious approach to ensure efficiencies and minimising risks or the misuse of funds.

The Second FHR Programme 2003–2007

The second programme took place in a context of economic growth in South Africa. South Africa's GDP exceeded 5% for three consecutive years: 5.3% in 2005, 5.6% in 2006 and 6.4% in 2007. In 2006 the Accelerated Shared Growth Initiative for South Africa (AsgiSA) was launched as the engine for growth and development. The Joint Initiative on Priority Skills Acquisition (Jipsa) was established to address the scarce and critical skills needed to meet AsgiSA's objectives. Economic growth saw South Africa being considered a middle income country.

President Thabo Mbeki worked to balance fiscal discipline along with an increase in social spending to address past inequalities. The government programme focused on four areas- meeting basic needs, building the economy, democratising the state and society, and developing human resources and nation-building. The government implemented programmes addressing housing, education and health care. Massive increases in social welfare spending through grants such as pensions, the child support grant, the foster care grant and the disability grant brought some relief to millions of South Africans living below the poverty line.

South Africa was however living with what former President Mbeki described as 'two economies', a diverse upper economy and an economy that lay beneath, where, 'the poor were trapped, where the people were illiterate, without skills, and had no access to clean water.' The eradication of poverty and inequality created through hundreds of years of oppression, exploitation and uneven development would take time to shift.

South Africa had one of the highest levels of inequality in the world. The Gini coefficient, which measures levels of equality in income distribution, rose from 0.69 in 1996 to 0.77 in 2001. Little had changed by 2015 when the Gini coefficient once again ranked South Africa as one of the most unequal in the world.⁶¹ Unemployment was extremely high with almost a third of the population without work. The UNDP Human Development Index (HDI) placed South Africa at 120 of 177 countries assessed in 2005. The HDI focused on three measurable dimensions of human development, namely, living a long and healthy life, being educated and having a decent standard of living. South Africa was one of the 18 countries in the world to suffer HDI reversals between 1990–2003. As a result of the HIV pandemic, and the South African government's response to it, life expectancy in South Africa in 2003 was estimated at 48.4 years. While the proportion of people living in poverty had decreased from 51.1% in 1995 to 48.5% in 2002, the absolute number in poverty had increased.

The second FHR programme started in the aftermath of the 9/11 attacks in the United States which reshaped global politics. South Africa was affected by the escalating crisis in Zimbabwe, and an increase in service delivery protests as communities were frustrated by a lack of access to basic services.

The second programme was implemented in a changing context with civil society organisations more confident to confront the State and hold it accountable to policy promises or a lack of delivery. The FHR Mid Term Review 2003 found that, 'South Africa has produced a human rights sector that is formally included in the institutional human rights framework but predominantly excluded from having meaningful and sustained effect on the socio-economic rights framework.' This resulted in increased tension between the State and human rights organisations. According to Judge Siraj Desai, FHR board member, 'the problem with doing human rights work is that there is tension between the State and human rights. There has to be. It is a natural tension because human rights activists are trying to extend the boundaries of rights. And that tension has to be managed.'

The Foundation for Human Rights as an indigenous grant maker

The FHR had undergone a number of changes as it transitioned to the new programme. The second programme started with a shift towards South African ownership of the organisation. The FHR had been renamed the Foundation for Human Rights and the EU appointed Director, Nicolas Marcoux had handed over the leadership to a respected and prominent South African human rights activist, Ms Yasmin Sooka in 2001.

The second programme continued to prioritise the most vulnerable and extended its geographic reach to marginalised rural areas where few NGOs and CBOs operated. It continued to collaborate with Chapter Nine Institutions. The second programme brought the FHR into closer collaboration with newly emerging human rights activists and social movements like the Soweto Electricity Crisis Committee (SECC), the Anti-Privatisation Forum (APF) and the Landless People's Movement (LPM) which were

mobilising communities in response to specific socio-economic issues such as access to electricity, access to water and access to land and housing. Lucrecia Seafield, an FHR staff member said, 'It was a stage where people were becoming more insistent on service delivery. The expectations were not met so there was an angrier community out there.'

The FHR is nowadays one of the most important and prestigious grant-making institutions in the field of human rights in South Africa - EU monitoring report, November 2002⁶⁷

The Board

Executive Member

Ms Yasmin Sooka, Executive Director

Supervisory Board Members

Ms Louise Asmal, Chairperson

Judge Siraj Desai, Deputy Chairperson

Mr Jody Collagen, Treasurer

Ms Thoko Mpumlwana

Judge James Yekiso

Advocate Dumisa Ntsebeza S.C

Observers

Dr Jennifer Tangney, EU Delegation

Mr Simon Jiyane, Department of Justice and Constitutional Development

Four areas of the Foundation's work

The second programme identified a more detailed set of focused priorities which were:

- An overall focus on delivery in respect of socio-economic rights
- Empowering ordinary people to access and protect their rights
- Deepening and entrenching democracy
- Facilitating improved capacity, networking and performance of CSOs
- Specific support for issues of economic justice (e.g. land reform, access to water and electricity, privatisation) from a rights-based approach
- Specific focus on food security, finances of the poor, HIV/AIDS, violence against women and children, the rights of refugees and migrants as well as apartheid victim reparations and reconciliation

The second programme did not depart significantly in its areas of work and focused on the following four areas: Human rights education, legal services in support of human rights, capacity building and networking and supporting public institutions.

Introduction of PRAG and its impact on Grant Making

When the FHR first started grant making, it engaged in a proactive grant making process that afforded the board an input in decision-making on grants. In 2003, the EU introduced the Practical Rules Application Guidelines Procedure (PRAG). The discretion that had previously been utilised by the board and project offices was replaced by a scoring system based on a project's ability to write a good proposal and demonstrate strong administrative systems. PRAG removed the board and project officers from the process of project identification. With PRAG, project officers' role was to write the Calls for Proposals and to take up managing the partnership once the independent selection process was completed. The principles of this process were to foster transparency and competition, but given the history of South Africa, these more stringent application processes negatively impacted on the ability of community based organisations to meet the technical requirements. With fierce competition for scarce resources in the country, more stringent grant rules would see the stronger and better resourced organisations being more favourably considered for funding as they were better able to produce quality proposals and marketing material and have more efficient accounting systems.

The FHR approached the EU to simplify the process to allow community based organisations to access funding. The EU agreed to a number of concessions which included an extension to the financing agreement to take into account the time needed to make structural changes and a waiver of the stricter rules for survivalist organisations (including advice offices) as well as for litigation support which needed to respond to urgent requests for funding. The FHR was committed to retain its developmental approach and to ensure that survivalist organisations continued to get their share of resources. A Director's Fund with a limited amount was set up whereby the Director could approve some funding without the need for a call for proposals. A Litigation Fund was established to assist funding public interest litigation and support cases that had the potential to change legislation or policy.

Despite some leeway for smaller organisations some grantees were concerned about the new rules. A grantee commented, 'This is a top-down approach that demands fairly advanced skills that are usually sourced from development experts who design projects on behalf of target groups rather than accompanying the process of people designing their own right-based programmes to address their situations.'

An evaluation on the impact of PRAG commissioned in 2005 found that, 'PRAG has fundamentally changed the way the Foundation works and although it did broaden access to a larger section of organizations, it has limited the flexibility and creativity of the organization to tackle a complex challenge; that of building the capacity of resource poor, rural and grassroots organisations.'

The implementation of PRAG resulted in the programme being suspended for one year to allow for the necessary redesign and adjustments required to implement the 'Calls for Proposals' methodology. The FHR had to set up a Grant Management Unit which managed a new Call for Proposals process. Assessments were done by an independent team of assessors, 'The Board served as an evaluation committee and

became more of a rubber stamp with little power to influence the process.' A computerised Project Tracking System was set up which was used to monitor projects.

The Mott Foundation sees the Foundation as uniquely positioned to play the role of an indigenous grant maker, involved in addressing the challenges the country faces and providing invaluable support to the non-profit sector, helping to secure its sustainability – Dr Russell Ally, former director of the Mott Foundation

In the second programme, the FHR was able to successfully increase its donor base and secured partnerships with Development Cooperation Ireland (DCI), the Charles Stewart Mott Foundation (Mott Foundation), CARE Lesotho and a number of corporate donors. The EU remained the core funder of the FHR's activities.

The second FHR programme

Like the first programme, most of the issues that the second programme addressed had multi-pronged approaches and cut across the four programme areas. The section below is therefore not neatly aligned with the four programme areas of the FHR but is mostly narrated through themes and issues that the FHR addressed. The FHR launched its second programme in June 2004.

Human rights education

The FHR supported many and varied activities to raise awareness on human rights. This result area received extensive funding as the baseline survey undertaken by CASE revealed that a large majority of South Africans, particularly in rural areas, were not aware of their human rights. Education initiatives included multimedia educational programmes and campaigns and the development and conducting of training programmes. FHR projects used workshops extensively as a means to work with groups. The FHR continued to adapt its approach in response to feedback and later in the second programme included utilising community radio for awareness and education programmes among vulnerable urban and rural communities.

Popular education requires an inherently self-reflective, reflexive and non-dogmatic approach. It works to make space for the collective production of knowledge and insight and builds on what emerges from the experiences of those participating.

Access to Socio economic rights

Addressing socio-economic rights remained the most intractable legacy of apartheid and the poverty and inequality that was created through it. While South Africa's Constitution has been heralded as transformative, the application of civil and political rights immediate and with socio-economic rights as being progressively realised and within the State's available resources. The FHR programme recognised the connection between human rights, human development and human dignity.

The second programme saw a shift in the type of activism that was developing in South Africa. During apartheid, activists were engaged in opposition to government

policies and practices. The struggles included political rights, the right to meet and, freedom of expression. With South Africa's evolving democracy, the core issues were socio-economic.

During the second programme, a number of social movements emerged as knowledge of human rights expanded and organisations were formed to respond to the needs of mostly the urban poor and landless. The Anti-Privatisation Forum (APF) was formed in Johannesburg in 2000 to bring together community organisations, trade unionists, student's organisations and political activists. It was an umbrella body that brought together over twenty different community organisations to strengthen the ability of poor communities to organise and demand their socio-economic and political rights. The APF employed anti-apartheid struggle tactics including mass action, educational and research activities, community meetings, door-to-door campaigning; submission of memoranda of demands and policy alternatives, and litigation.

The FHR supported the APF with legal defence costs, rights-based research, and international solidarity with other social movements as well as support for constitutional rights court cases involving access to and affordability of water for poor communities. The FHR provided APF activists with opportunities to engage in critical, public debate and discussion around human and constitutional rights issues.

Social movements were key factors in the human rights sector at this time. Often engaging in protests and popular uprisings, these groupings exposed the living conditions of the poor and disadvantaged, particularly around access to basic services. Members of social movements found themselves under attack by government politicians and security forces with members and activists physically attacked during marches and events, and arrested. Despite these obstacles, social movements such as the Soweto Electricity Crisis Committee (SECC), Landless People's Movement (LPM), the Orange Farm Water Crisis Committee and Abahlali baseMjondolo- Durban shack dwellers movement- saw themselves as contributing to championing and promoting human rights and access to services.

Despite the many issues championed by social movements, some did not survive for long due to internal conflict, limited funding and other factors.

Social movements were affected by the more stringent rules and procedures that PRAG required as many did not have the high levels of organizational capacity and financial stability to meet the new requirements.

Poverty can take many different forms and, as the past struggles of South Africans has so clearly revealed, the first step in moving out of socio-economic poverty and inequality is the willingness and ability to make one's voice heard - FHRSA Mid Term Review, 2003

The high levels of social protest related to service delivery failures reflected the extent to which poor and marginalised South Africans felt that their needs and concerns were not being met. It revealed that other mechanisms to hold government accountable and express discontent were not working.

Community Based Advice Offices

The second programme continued its support to advice offices recognising the central role that they played in the promotion and protection of human rights in rural areas. The FHR funded around 30 advice offices in the second programme. The lack of service friendly attitudes and the lack of awareness of basic rights of frontline staff in government service departments hindered the realisation of rights for beneficiaries. Advice offices played an important role in ensuring that the communities were empowered to access government services.

Advice offices became increasingly active in supporting livelihood strategies within communities such as food gardens and supporting income generating projects. Advice offices campaigned and lobbied for the effective roll out of anti-retroviral treatment as they witnessed the effects of HIV/AIDS at community level. Some advice offices built their capacity and were able to enter into partnerships with government departments or tender for government projects.⁸⁵ Advice offices became entry points into rural communities as they operated at the 'coalface of the struggle for human rights.'

The Black Sash raised awareness on microlending and debt which often trapped poor people into a cycle of poverty. The Black Sash, through its learning from advice offices, contributed to the National Credit Bill to seek protections against unscrupulous lenders. The National Credit Act was passed in 2005 and included provisions to offer better protection from reckless money lenders. In addition to protecting poor people from harmful lending, advice offices played a central role in assisting clients to recover money.

The FHR's final review of its second programme estimated that, 'FHR advice office project has resulted in ZAR43 million being recovered for the clients.... This compared to the total of ZAR26 million granted to advice offices.'⁸⁸ The review found that beneficiaries, 'unanimously praised the advice offices and the work they do... some described advice offices as their 'life-line.'

I was in an advice office and a woman came in and she had a letter. She was complaining about money that she was supposed to receive when her husband died... The letter was actually six weeks old and was telling her that she had to come to the office to collect the money. She didn't understand that because she couldn't read and nobody around her could read. It was such a simple thing, but it made a huge difference to her - Lucrecia Seafield, FHR programme manager

Despite the value that paralegals brought to improving access to justice in rural and less accessible areas, their sustainability continued to be threatened due to the shrinking donor funding. Most advice offices were dependent of the FHR for funding and independent evaluations of the FHR found that it was not feasible to expect them to become self-sustaining considering the context in which they operate.

The FHR set up a Steering Committee of key role players including organisations providing paralegal support and donors. These included the NCBPA, Black Sash,

Community Law and Rural Development Centre (CLRDC), the Karoo Centre for Human Rights (KCFHR), Ithemba la Bantu, Upper Karoo Advice and Development Agency (UKADA), and funders including the Mott Foundation, International Commission of Jurists (ICJ)- Sweden and the Nederlands Instituut voor Zuidelijk Afrika (NIZA).

The long-term strategy was to lobby the state to support and take over the paralegal sector. It was envisaged that the Legal Practices Bill would include paralegals within the formal legal sector and provide formal recognition to paralegals who had completed an accredited South African Qualifications Authority recognised paralegal training course. The Legal Practices Bill initially provided for limited right to appearance for paralegals. The delay in the promulgation of the Legal Practice Bill severely affected the ability of paralegals to enhance their influence and sustainability.

The sector was dealt another blow when the National Community Based Paralegal Association (NCBPA), the most comprehensive national network of paralegals collapsed for various reasons including a lack of funding. More than 200 advice offices that were supported by ICJ-Sweden collapsed. The sector was severely weakened by this funding crisis, with the FHR and a few governmental and non-governmental organisations providing ongoing grants to advice offices.

With the demise of the NCBPA, the National Alliance for the Development of Community Advice Offices (NADCAO) was established. It was initially comprised of FHR, Black Sash, CLRDC, AULAI, KCFHR, UKADA, Ithemba la Bantu and Mott Foundation. NADCAO continued to advocate for the formal recognition of paralegals by the DoJ&CD. NADCAO was given office space by FHR until they were able to function independently.

Access to land and security of tenure

In terms of the 1913 and 1936 land legislation, the previous colonial and apartheid regimes allocated 87% of land to white people whilst they only made up approximately 15% of the population. After South Africa became a democracy in 1994, the Governments' land reform programme aimed to transfer 30% of agricultural land in the former white farming areas to black South Africans in the first 10 years i.e. by 2014. Into the FHR's second programme, a mere 4-6% of land has been restored.

The second programme saw heightened dissatisfaction at the slow pace of land reform.⁹² The Landless People's Movement (LPM) was formed in 2001 bringing together organisations and activists frustrated by the slow pace of land reform. A gathering of 3 500 landless people converged at the United Nation's World Conference Against Racism in July 2001 and again at the World Summit on Sustainable Development in 2002 with its campaign slogan of 'Land! Food! Jobs!'

Conditions for farm dwellers continued to deteriorate despite legal protections. A survey in 2005 found that almost 1 million people had been evicted from farms since 1994. More people had lost access to land through evictions than had gained access

to land through land reform. According to Zakes Hlatwayo, former NLC Director, 'Scenes of whole families evicted from the land of their ancestors to some dusty roadside were commonplace.'

The FHR funded the NLC's Farm Dweller Programme which mobilised farm workers to access their rights through the Labour Tenants Act of 1995 and Extension of Security of Tenure Act (ESTA) of 1997. The project worked to ensure security of tenure of farm dwellers through providing informing, monitoring and defending against evictions, and mediating settlements on farms. The FHR supported the SAHRC inquiry into human rights of farms. The project allowed the SAHRC to monitor violations on farms and make recommendations to stakeholders.

In 2003, the FHR supported a comprehensive review of the country's land and agrarian policies undertaken by the Programme for Land and Agrarian Studies (PLAAS). The review found that obstacles to land reform included the slow restitution process, inadequate land and livelihood policies, and the limited amount of funds available for land restitution. The government's reluctance to expropriate land and its reliance on the 'willing buyer, willing seller' principle was compromising the process of redress and redistribution. The thorny issue of land reform was further complicated by land expropriation in Zimbabwe which increased calls for protection of private property rights in South Africa.

The Border Rural Committee (BRC) implemented a campaign known as 'Vulamasango Singene' in 2002. The campaign advocated for justice for communities unfairly excluded from the restitution programme, specifically those dispossessed by 'betterment' in the former homelands of Ciskei and Transkei. After a long struggle, in 2014, the President signed the Restitution of Land Rights Amendment Bill into law, allowing a five-year period during which further claims could be lodged. Betterment claims were included. This was a significant victory for Vulamasango Singene and for BRC.

The passing of the Communal Land Rights Act 2004 raised concerns that traditional leaders would undermine communities and individual land rights. The FHR supported research, advocacy and lobbying initiatives related to the Communal Land Right Bill from a gender, culture and legal perspective.

In 2005, a historic land summit was held in Johannesburg. Far reaching resolutions were adopted including the need to expropriate land where necessary and a rejection of the willing-buyer, willing-seller principle, 'The national land summit held in July this year provided an important forum for government to engage in dialogue with both landowners and the landless over the current impasse characterising the land reform programme.' The summit called for a moratorium on the eviction of farm dwellers.

While the Land summit was initially proposed by the NLC and the LPM, contestation within the NLC led to its demise as a network and limited its influence at the summit. Despite calls for more radical solutions to land reform at the summit, change remained slow.

Free State Rural Development Association (FSRDA)

The FSRDA intervened in the case of Mr M. who had been an occupier on a farm in Fouriesburg since 1968. Mr M. was given an eviction notice with one day to leave to the farm. As a long term occupier, he qualified for protection under the Extension of Security of Tenure Act. The FSRDA negotiated with the farm owners on behalf of Mr M. and were able to come to a settlement that saw Mr M. being offered alternative land.

Southern Cape Land Trust

My name is CC, 47 years old and a farm worker, married with children. I know the Land Trust very well. It has been our voice here in the farm for tenure and labour issues. This year, the farmer who happens to be my employer, wanted to evict my 18-year-old son from his farm. Traditionally, when your children turn 18 years, they must stop school to work on the farm with you otherwise they get evicted. I reported my case to Southern Cape Land Trust and they mediated a dispute between myself and the farmer to stop the eviction. The matter was resolved and my son was not evicted.

Despite the slow progress in redressing land dispossession, the FHR programmes improved access to land rights and security of tenure for millions of South Africans. Farm worker eviction complaints decreased and the enforcement of the law on farms improved.

The FHR remained committed to address the impasse between policy makers and the land and agrarian sector. The FHR continued to support interventions in the hope that the stalemate could be addressed and land redistribution could progress.

HIV/AIDS

In the second programme, government neglect and denialism in response to HIV took its toll. By 2004 it was estimated that 300 000 people had died with up to 1 000 new infections occurring daily. Life expectancy at birth was estimated at 48.4 years in 2003. The government vacillated in its response and entertained various unscientific theories and responses to HIV at the expense of providing lifesaving anti-retroviral drugs.

To respond to the unfolding HIV crisis, a new organisation emerged, called the Treatment Action Campaign (TAC), demanding the provision of treatment and advocating for the rights of people living with HIV and AIDS. The TAC used multiple strategies including court challenges, public awareness and education campaigns, petitions, a highly effective communications strategy, direct action and grassroots mobilisation. The TAC developed networks with local and international organisations to ensure maximum publicity and impact of its campaigns.

After immense pressure from civil society organisations and legal action in the Constitutional Court supported by the FHR, the TAC managed to secure the provision of anti-retroviral medication to reduce mother-to-child transmission of HIV. The case showed that social and economic rights could be legally enforced. It

reinforced the notion of public accountability of government and that policies needed to conform to the Constitution. The TAC strategy highlighted how grassroots mobilisation could effectively influence policy and implementation.

ARVs have changed things. A year or so ago, we would have 20 funerals a week, but now they are down to eight or nine – Brother Jude Pieterse, 2006

While the subsequent dramatic roll-out of treatment is noteworthy, the years of neglect that preceded a medically sound approach to HIV had a devastating impact of families with many children orphaned as a result along with the financial implications of medical care and the loss of income from losing a breadwinner. Civil society organisations played a central role in mitigating the impact of HIV and AIDS in South African communities.

Gender Equality and gender based violence

South Africa ratified a number of international and regional instruments, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the SADC Addendum on the Prevention and Eradication of Violence against Women and Children and actively participated in the Beijing Platform for Action.

Despite extensive legislation opposing discrimination, black women in particular experienced higher rates of unemployment, low income, assumed burdens of care in particular linked to the fallout from the HIV/AIDS pandemic, and experienced high levels of domestic violence.

The FHR, with funding from Development Cooperation Ireland (DCI), embarked on a range of projects to address this including commissioning two major applied research projects in 2003. The first explored the vulnerability of women to gender-based violence and the second explored the weaknesses in the women's' NGO sector with a view to identifying areas needing strengthening. As a part of this project, the CSVR compiled a directory of services addressing gender based violence that was launched in March 2004. NADEL carried out research on legislation and policy frameworks. The research highlighted the plight of poor rural women, many of whom live in squalid housing conditions, without access to water and vulnerable to violence from their partners. The reports found that many women experienced secondary abuse and rights violations by abusive and incompetent service providers such as the police, health and welfare workers. The research process provided a unique opportunity for role players in the sector to work together cooperatively and develop evidence upon which to influence policy and planning.

Rape Crisis

Rape Crisis Cape Town, funded by FHR, provided counselling and conducted advocacy campaigns. The organisation reached around 40 survivors seeking counselling every month. The survivors were guided through a healing process and some participated in

a 'Speak Out Project' where they would share their experiences publicly to raise awareness. Rape Crisis engaged with the criminal justice system to enhance understanding and empathy for victims of sexual violence. As a result of its efforts, police stations established trauma rooms and trained service providers to be more supportive.

Tumelong Mission People Against Abuse, also an FHR grantee from the- Odi-Moretele district of Gauteng, reports:

A 10-year old girl was sexually abused by a male perpetrator. Her mother took her to the police station, where project counsellors were contacted to assist. The counsellor explained the process, assisted with the completion of forms and stayed with the family during the hospital process. Thereafter, the child received individual counselling, followed by group therapy. When the court dates came, the child underwent a court preparation programme. The counsellor transported her family to the court and stayed to provide emotional support. The child initially struggled to testify and often cried. Further counselling and assistance helped the child to cope and the perpetrator was convicted. After conviction, the mother expressed gratitude to the counsellor, explaining that the successful case was a result of her support and assistance.

Planned Parenthood Association of South Africa (PPASA)

PPASA worked in the field of sexual and reproductive health. The organisation originally provided family planning services but later broadened its focus area to include working with men and young people. It's "Men as Partners" project was funded by the FHR. The project included conducting workshops with men and women on issues of gender equality, reproductive health, domestic violence and sexual violence. The organisation noted behavioural and attitudinal shifts among those who participated in the project.

16 Days of Activism for No Violence Against Women

The FHR partnered with government in the 16 Days of Activism for No Violence Against Women and Children from 2002. This annual UN-endorsed Campaign was designed to highlight issues relating to gender-based violence and promote proactive strategies to eradicate it. The Sixteen Days of Activism runs from 25 November, International Day of No Violence Against Women, to 10 December, Human Rights Day.

The campaign was initially led by the NGO sector, but over time government became more actively involved and the campaign became firmly embedded in the national calendar. While South Africa had participated in the 16 Days campaign for a number of years, by 2006 it extended the campaign to "365 days of action to end gender violence." The campaign brought together a cross section of organisations, led by the National Prosecuting Authority (NPA) which vowed to 'make the Constitution work for women.' The 365 day initiative grew out of the persistent questions about the effectiveness of yearly campaigns that raise awareness but with little indication of violence abating.

Over the years, participation, national outreach and support to the campaign increased. The campaign reached across the country with events such as photography exhibitions, Equality Act Training, a review of legislation impacting on women, Men's Indaba's and roundtable discussions on topics such as addressing HIV/AIDS, rape, domestic violence and maintenance issues. The FHR has been an important contributor to the campaign and played a role in disbursing corporate donations given to the campaign.

Refugees and xenophobia

The second programme saw continued support to the NCRA, LHR, the Acornhoek Advice Centre and the Forced Migration Studies Programme. The projects ranged from research, monitoring, lobbying, providing legal advice and building capacity within the sector.

With political and economic conditions worsening in Zimbabwe, many Zimbabweans fled to South Africa. The FHR supported programmes to assist Zimbabwean refugees to access the asylum system. Projects also monitored the conditions of detainees at the Lindela Repatriation Centre.

Despite ongoing support to civil society organisation working with refugees, endemic problems continued including the lack of access for asylum seekers to under-resourced Refugee Reception offices not able to service the number of applicants. The process took an inordinate length of time and the process was affected by rampant corruption which affected the credibility of asylum. Unaccompanied minors were affected by a lack of policy including the inability to access foster care grants for refugee and migrant children. FHR supported organisations that undertook protracted litigation and lobbying to protect the right to work and study for refugees and asylum seekers. This was particularly urgent as refugees and asylum seekers were excluded from government social assistance and struggled to access basic services such as education, health care, social welfare, affordable housing and banking services.¹¹⁴ Organisations promoting refugee rights undertook significant litigation cases against the state over allegations of administrative injustices and xenophobic attitudes within the DHA.¹¹⁵ Exclusion and rightlessness increased refugees' and migrants' vulnerability to crime and exploitation by employers and landlords and prevented their access to the justice system and other forms of recourse. In a culture of impunity, venting frustration and rage against migrants took place without consequences and in some cases with material benefits of criminal opportunism and looting.

TRC continued

The FHR supported initiatives aimed at addressing impunity for the perpetration of gross human rights violations. The FHR supported the codicil to the final report of the TRC in the second programme. It supported the South African History Archives (SAHA), an independent human rights archive dedicated to documenting, supporting and

promoting greater awareness of past and contemporary struggles for justice in South Africa, to archive and make documentation on the TRC accessible. Programmes following up on the work of the TRC included supporting victims of political violence, supporting research and investigating disappearances, exhumations, memorialisation and contributing to ensuring victims of apartheid received reparations.

The TRC recommended individual and communal reparations in order to acknowledge victims' losses and contribute to the restoration of their human dignity. In 2003 the government responded to these recommendations by reducing the TRC proposal on monetary reparations to a once-off payment of R30 000 to each victim named by the TRC, while committing itself to the implementation of communal and structural reparations. This response was regarded as inadequate by most victims' groups, with the demand for further forms of reparations continuing.

The Khulumani Support Group

The Khulumani Support Group was founded in 1998 to facilitate the involvement of victims participating in the TRC through information sharing and assisting victims with submission statements to the TRC. Once the TRC was concluded Khulumani, with support from the FHR, worked to develop a victim-centred set of reparations proposals. The slow response by government led to many who testified at the TRC feeling betrayed.

The FHR has focused on the impact of impunity to confront the impression that the TRC was more perpetrator friendly than victim-friendly. The FHR in partnership with the International Centre for Transitional Justice hosted a conference titled 'Domestic Prosecutions and Transitional Justice' in May 2005. The conference looked at experiences and strategies, both at domestic and international levels, to ensure that perpetrators of human rights violations are held accountable and effectively prosecuted. The conference discussed the complex compromises often reached to ensure stability in the transition to a new government. Many countries represented at the Conference spoke of how blanket amnesty laws allowed perpetrators to escape accountability for atrocities committed.¹¹⁷ In South Africa there had been expectations that prosecutions would be pursued for those who had either failed to apply for amnesty or whose applications had been rejected. This did not occur.

The FHR supported the Institute for Justice and Reconciliation (IJR) to launch its Reconciliation Barometer in 2003, a monitoring and public information activity that was augmented by the Institute's annual Transformation Audit. The Reconciliation Barometer surveyed attitudes nationwide and provided a systematic analysis of the attitudes of South Africans to national reconciliation. Correspondingly, the Transformation Audit measured the nature and extent of material and structural transformation. The IJR's community healing programme emerged from these studies to address the social legacy of apartheid.

The FHR, in partnership with the Desmond Tutu Peace Centre and the IJR convened a conference in 2006 titled A National Priority? TRC Recommendations and the Need for Redress. The conference marked ten years since the TRC completed its work and handed over its final report to then President Nelson Mandela. The Reparation and

Rehabilitation Committee of the TRC had made significant recommendations. There were expectations that the process started through the TRC would be continued by civil society, government and others in South Africa. A book was produced based on inputs from the conference titled, 'Truth and Reconciliation in South Africa: 10 Years On.'

Zimbabwe

During the second programme, political tensions within Zimbabwe escalated. Human rights organisations spoke of a culture of torture and intimidation for those opposed to the regime of then President Robert Mugabe, 'the period from 2000-2006 has been marked by forcible land invasions, persecution of the opposition MDC and a high degree of violence during the elections in 2000, 2002 and 2005.' Abuses continued in 2005 when the government destroyed the homes and businesses of economically deprived Zimbabweans in a campaign called Operation Murambatsvina (Operation Restore Order) which left over 700 000 people homeless. The country was in the grip of a spiralling economic crisis with millions of Zimbabweans fleeing the country in search of economic opportunities.

The Zimbabwean Human Rights NGO Forum and Themba Lesizwe organised a symposium in August 2003 to address concerns about the state of human rights in Zimbabwe. Leaders from Zimbabwean civil society organisations, South African civil society organisations and some international experts attended the symposium. The conference organisers had struggled to get support for the conference and appreciated the political courage that the FHR exhibited by supporting what was then seen as a contentious event. An outcome of the symposium was that the Crisis in Zimbabwe Coalition decided to open an office in South Africa. The FHR provided a grant for the Crisis Coalition to produce materials on the impact of Operation Murambatsvina. The FHR continued to support Zimbabwean human rights activists into the next programme.

Support to this issue highlighted the need for a coherent regional human rights network that would strategically and practically link South African and Southern African CSOs across national boundaries. The FHR was seen as well positioned to play a role in forming such a network but this did not result in the creation of a formal networking structure.

Legal services

The legal services result area supported projects that worked to transform the law, judiciary, legal profession and state institutions. This was an issue that the FHR remained committed to since its inception. It sought to remove inequalities in these sectors and render them more accessible to the previously disadvantaged. It addressed issues of impunity by violators of human rights and sought to influence the establishment of an effective African Human Rights Court. The FHR supported the training of black female lawyers in constitutional litigation and the training of articled clerks from previously disadvantaged groups in human rights law. It participated in a committee tasked with developing a National Action Plan for Restorative Justice.

Despite these interventions in the judiciary, the FHR found that, ‘the pace of appointing presiding officers who are Black, who are women and who are disabled, is pathetically slow... transformation is certainly not in its last mile nor is it in its home run.’

Litigation

The FHR continued to support precedent setting litigation cases as part of the legal services results area. While litigation was used as last resort with court cases compelling government to comply to what should be a part of its mandate. Some notable cases are included in the table below.

Case	Description
Treatment Action Campaign v Minister of Health	Rights of access to health care services for women living with HIV and their children. As a result of the case, lifesaving anti-retrovirals were rolled out to women and children with HIV/AIDS.
Carmichelle v Minister of Safety and Security 2000	States obligation to prevent gender-based discrimination and protect the dignity, freedom and security of women
Satchwell v The President and Another 2002	The case affirmed the rights of same sex partnerships to equal benefits
Bhe and Others v Khayelitsha Magistrate and Others 2005	Right to Inheritance. Women in customary marriages and children born out of wedlock could inherit from a deceased partner or father

The legal victories affirmed the applicability of constitutional rights but the lack of meaningful follow up action on the part of the state lessened the potential effectiveness of litigation as a tool to expand human rights. The FHR Mid Term Review report 2003 noted that this weakness stemmed from, ‘an overtly narrow, legalistic and constitutionally bound understanding of advancing human rights.’ Court decisions

were not always communicated widely to CSOs particularly advice offices to monitor implementation at local level and to bring similar rights abuses to the fore. Legal victories have been more likely to be implemented when combined with mobilisation, follow up and monitoring by NGOs, CBOs and social movements.

In 2004 the FHR and SAHRC hosted a conference titled 'Celebrating a Decade of Democracy- In Pursuit of Justice.' The conference explored the role of public interest litigation in social transformation in South Africa. It reflected on the extent to which the judiciary had been transformed and found that the legal culture was still characterised by 'rigid formality' and a lack of representation based on race and gender. Poor people faced many obstacles to access to justice including language barriers, an intimidating court culture and lack of access to legal representation. The conference called for social context training for staff working in the judiciary.

Despite limitations in implementing court decisions, court cases set precedents that became part of jurisprudence on human rights in the country. To address concerns around judgements not being enforced, some courts developed structural interdicts to ensure enforcement. Litigation has proven to be an effective and at times faster method in developing, realising and giving effect to rights than lobbying and advocacy. Cases such as the TAC case benefitted up to six million people living with HIV and millions of people have improved access to land and protection from evictions as a result of FHR funded cases.

African Court on Human and Peoples' Rights (ACHPR)

The African Court on Human and Peoples' Rights was supposed to be established in July 2004. Bureaucratic delays and policy changes within the African Union delayed the establishment of the court. The FHR initiated a network of civil society organisations to lobby and advocate for the establishment of the African Court on Human and Peoples' Rights. The network, called the South Africa Network on the African Court (SANAC) comprised of some of the key human rights NGOs in South Africa, including Lawyers for Human Rights (LHR), NADEL, Legal Resources Centre (LRC), the Centre for Conflict Resolution (CCR) and others. The Foundation co-hosted a Conference on an Effective African Court on Human and Peoples' Rights in Nairobi, Kenya in 2005 which developed the Nairobi Declaration calling for the establishment of the ACHPR.

The African Union has taken great strides on the economic and political front. But if this is not backed up by a human rights culture, the future is not secure for the majority of Africans who remain economically and socially marginalised. With many serious human rights situations afflicting the continent, from political persecution and conflict to economic exploitation, it is imperative that the African Human Rights Court be set up without further delay – Ms Yasmin Sooka, Director of the FHR

Business and Human Rights

Within the UN system, business and human rights related interventions had taken place predominantly at the UN Human Rights Council (which replaced the UN Commission on Human Rights in 2006). In 2003 the UN Sub-Commission for the

Promotion and Protection of Human Rights approved the Norms on the Human Rights Responsibilities of Transnational Corporations and other Business enterprises, which were rejected by the Commission on Human Rights.

In 2005 the UN Commission on Human Rights appointed Harvard University political scientist John Ruggie as a special representative on business and human rights. With international interest on the issue of business and human rights, the FHR convened a conference on Business Accountability and Human Rights in 2007 to encourage dialogue between civil society and business on the issue of human rights in the corporate sector. The conference was well attended by local and international delegates and experts on issue. Presenters included Ms Mary Robinson, Professor Kader Asmal, Prof Sampie Terreblanche and Judge Mervin King.

The conference noted that the corporate sector benefited from apartheid and yet there was no formal acknowledgement of this at the TRC. In the past business was seen as operating in the private domain and government in the public. The relevance of human rights to business has become increasingly established in light of significant corporate violations resulting in environmental and social damage. In South Africa businesses are increasingly held to account through its strong NGO sector, academic institutions, the media, litigation, the SAHRC and government.

The role of the private sector in corruption was discussed at the conference. Private sector partnerships with government can lead to kickbacks, bribery and favouritism in deals that enrich a few. Corruption diverts resources from the poor and brings the legitimacy of the State into question. The conference recognised the need for upholding international standards and enforcement mechanisms, including codes of conduct, legislation and protection for whistle blowers, to hold business accountable for its human rights conduct.

The conference recognised that corruption was widespread in South Africa but noted that the State had the capacity and institutions in place to keep the country, 'on the right track.' This was noted despite existing allegations of corruption linked to the arms deal which was signed in 1999. The arms deal highlighted the damage that the confluence of money and politics could inflict. Civil society organisations such as IDASA were concerned that, 'in a country as unequal as South Africa, the impact of the buying of influence through secret political donations is even greater, as the voices of the poor, already marginalised, are "drowned out" by those who are able to donate big money and secure undue influence on policy.' The way that the arms deal was addressed influenced subsequent corruption related investigations.

The ANC itself raised concern in its 2005 'Organisational Report' by Kgalema Motlanthe on, 'the preoccupation on the part of public representatives with securing access to and control over public resources.' Mbeki raised similar challenges when he said, 'We have seen people attracted to join the ANC as a bee to a honey pot. They come with the view that they will use access to power for personal benefit.'

The capacity of the State and institutions to keep the country 'on the right track' would be severely tested in the FHR's third programme as allegations of pervasive corruption dominated the national agenda.

Promoting a culture of openness and transparency- submission to the Khampepe Commission of Enquiry

In 2005 the FHR made a submission to the Khampepe Commission of Enquiry which was set up to determine the constitutionality of the location of the Directorate of Special Operations, also known as the Scorpions. The Scorpions was set up within the NPA to deal with corruption in private and government sectors and had proven to be exceptionally successful. The FHR, represented by George Bizos, was the only civil society organisation invited by Judge Sisi Khampepe to make a submission on the dismantling of the Scorpions police unit and its absorption into the South African Police Service (SAPS). The FHR submission influenced the process and resulted in open hearings contributing to a culture of openness and transparency.

Capacity Building and Networking

The FHR contributed to organisational and institutional capacity building of civil society organisations through support for good governance, strategic management, financial management, networking, sharing of information and resources. Support was directed at contributing to a better-coordinated sector, increased interaction at regional level and increased participation by regional human rights organisation. Many CBO and survivalist project partners indicated that without the FHR's capacity support, they would never have been able to access funds and engage in efficient and accountable project management.

The FHR prioritised transformation of the legal system and the judiciary through supporting projects that trained magistrates, trained attorneys on refugee law, assisted black women lawyers to participate in international conferences and trained men and women law graduates from disadvantaged backgrounds as articled clerks.

The FHR supported organisations to engage in international platforms such as the World Conference Against Racism in 2001 and the World Social Forum that took place in Brazil in 2005.

The FHR undertook a more interventionist and facilitative role in key civil society networks. These included issues relating to land, HIV/AIDS, gender equality, violence against women and children, access to justice, the transformation of the judiciary and addressing socio-economic rights.¹³² Despite support for networks, the impact of networks was curtailed through fragmentation and the inability to create sustained and unified networks and coalitions. Many networks experienced polarisation based on a range of factors including class, political differences, racial tensions, capacity gaps and a lack of funding and resources. The South African NGO Coalition (SANGOCO) failed to establish a human rights desk, the National Land Committee

disbanded, the Urban Sector Network collapsed as did the Rural Development Sector. The National Community Based Paralegal Association (NCBPA) collapsed. SANGOCO came close to collapsing. The FHR experienced requests to address cases of organisational and network crises as it was seen as well placed to play a mediating role in trying to address the disintegration of national networks in the sectors in which it worked.

Supporting Public Institutions

Support to public institutions in the second programme was largely provided to the SAHRC and the TRC. Support included contributing to SAHRC's Human Rights and Democracy Awards, Human Rights Day celebrations, human rights abuses on farms, support to the codicil to the final report of the TRC and the SAHRC socio-economic rights report.

In the first programme, NGOs had collaborated with the SAHRC and made a meaningful contribution to the protocols to monitor socio-economic rights. This was not continued with the subsequent reporting on socio-economic rights which saw a, 'disconcerting dwindling of spaces for civil society involvement in the process.' Information received from government departments was no longer accessible to the public.

By the second programme, the high expectations of some Chapter Nine Institutions were moderated. Public institutions had been negatively affected as the state had failed to provide sufficient resources for them to carry out their mandates effectively. It had been hoped that these institutions would be at the forefront of holding government accountable to the rights enshrined in the Bill of Rights. Francois Dronet expressed some of these concerns, 'the fears we had about the lack of clarity of mandate and the lack of teeth... well that has been realised.' Subsequent FHR supported surveys affirmed that knowledge of Chapter Nines remained low and those seeking redress for rights violations tend to access the state through the police service rather than through Chapter Nine Institutions.

Funding public institutions created a dilemma for the FHR as there were questions on whether the FHR should fund state funded institutions. The FHR 2003 Mid Term Review found that there was merit to the FHR offering strategic support where it could expand debate in the human rights environment. Despite these challenges, public institutions and the SAHRC were seen as important players in supporting and strengthening constitutional democracy.

The programme is providing human rights services that according to the Constitution and legal framework should be under the responsibility of the South African Government ...without the programme the level of human rights education services, human rights awareness, and human rights advocacy in the country would be significantly lower - EU monitoring report, 2006

The end of the second FHR programme

The second programme concluded under the continued guidance of its Director Yasmin Sooka. Yasmin Sooka was widely commended for providing sound leadership. At the end of the second programme, Board member, Judge Siraj Desai described Yasmin Sooka as, 'one of the most significant South African women today and we should be proud to have her as the Director of the Foundation. She's a passionate human rights advocate, but more than that she has an unblemished role both in the struggle and in the contemporary world arena for advancing human rights.'¹⁴⁰ The 2003 Mid Term Review affirmed that, 'her strategic insight and political stature have contributed greatly to the success of the Foundation.'

The Board remained a pillar of the organisation and offered a combination of vision, commitment and stability. It maintained a good working relationship with both the European Union and the Department of Justice. The FHR maintained leadership and programmatic stability that allowed for wise and informed decision-making. This was essential in the context of resource scarcity for CSOs and an increasingly complex social, political and economic environment.

The FHR programme managed to keep human rights on the radar and supported research that made an impact on macro-economic and developmental debates. The majority of its beneficiaries were rural women and thus it had succeeded in reaching its target group. The FHR programme achieved a major impact and it was considered a courageous grant-maker that understood the South Africa political and socio-economic context. The FHR had maintained integrity in its programmes. Independent evaluations called for it to continue with its work into the future.

The success of this model has been largely built on its ability to maintain independence from undue political influence from the Government of South Africa and the EU itself. In this, it has maintained the integrity of its programmes through sometimes supporting controversial and politically unpalatable activities and projects which have not endeared it to certain levels of political power. This has proved to be an important element of their impact on the environment and has earned them the respect of many stakeholders. Important lessons can be learnt from the FHR's ability to manage independence in a manner that maintains integrity and the respect of all stakeholders – Foundation for Human Rights Midterm review 2003

While the impact of the FHR during its second programme was well documented, the FHR continued to experience its own sustainability challenges as it remained dependent on external donors, and particularly on its key donor, the EU. Expectations of government support through the National Development Agency (NDA) and National Lotteries Board (NLB) did not come to fruition.

The second programme came to an end as the EU and South African government were working on a new Common Country Strategy Paper (2007-2013), a cooperation framework programme which sought to contribute to reducing poverty and inequality with a focus on employment social cohesion and governance. The agreement was called the National Indicative Programme (NIP) 2007-2013. The new programme focused on economic growth, improving basic services to the poor and the promotion of good governance. Human rights were less of a priority in the NIP.

The Foundation has added value by being a facilitator of national dialogue processes between different players and a creator of space for civil society. The Foundation is able to influence policy and practices of government and other agencies. The Foundation occupies a unique position in the country in that it is able to reach civil society in a facilitative role on the one hand and it is able to engage government and constitutional structures on issues of human rights on the other. - FHR Final Evaluation 2007

Access to Justice and Promotion of Constitutional Rights Programme (AJPCR) 2009-2014

The FHR's Access to Justice and Promotion of Constitutional Rights Programme (AJPCR) programme started at a time of unprecedented global turmoil as protesters took to the streets in what was dubbed the 'Arab Spring'. There were riots in London, students protested in Chile and the 'Occupy Wall Street' movement saw protests spread across the United States of America. The protests mirrored some of the underlying frustrations expressed by South African communities: high unemployment; inadequate skills development and education for young people; rising cost of food, resentment against corruption, and a rise in income and wealth inequality.

South Africa's development continued to be uneven. Progress had been made in some areas:

Access to education had increased; ten million people had been accommodated in formal housing; primary healthcare had been expanded and access to electricity and water was significantly expanded. The South African economy grew between 1995 and 2010 after two decades of stagnation.

While government had managed to extend social welfare grants to reach between 11-12 million people, up from between 3-4 million in 1994, unemployment continued unabated and was estimated at approximately 40%. The pace of land reform remained slow and human rights violations continued to affect black farm dwellers living on mostly white owned farms. By 2007 one in five people in South Africa was estimated to be living with HIV. While poverty was somewhat mitigated through social grants, inequality had increased in the post-apartheid period. The African Peer Review Mechanism 2006 report noted that the country exhibited highly uneven levels of rights awareness and that access to justice for poor and marginalised communities remained a challenge.

The domestic economy was negatively affected by the 2008 global economic crisis which impacted on trade, investment and employment. The first and second economies described by former President Thabo Mbeki remained with persistently high levels of poverty for a middle-income economy. Government efforts to address the debilitating and chronically high level of unemployment were eroded with the global economic crisis.

These factors, combined with rolling electricity black outs, rising consumer prices and world leading crime rates combined fuel the unprecedented national rage meted out at African migrants in 2008 and the escalation of violent protests. South Africa experienced a nation-wide outbreak of xenophobic violence directed at African nationals. The attacks brought the harsh conditions of people living in South Africa's informal settlements into sharp focus. The image of South Africa as intolerant, divided and violent was at odds with the view of South Africa as having had a 'miracle' transition resulting in the 'rainbow' nation. There were 5 813 protests (as defined under the Regulation of Gatherings Act 205 of 1993) recorded by the SA Police Service in 2004-05, and subsequently, an average of 8,000 per annum.

2008 was the final year of Thabo Mbeki's election mandate. The ANC Conference in Polokwane in December 2007 saw President Jacob Zuma ascend to the helm of the ANC after a bitter succession battle. It was a time of two centres of power with Jacob Zuma elected as leader of the ANC, despite a cloud of corruption allegations hanging over him, and President Thabo Mbeki biding his time until his 'recall' in August 2008. Nyar writes, 'South Africans looking to national leadership for a sense of security about the direction of the country, appeared to be confronted with a bleak scenario of an uncertain, leaderless, drifting future.'

The Jacob Zuma presidency continued to be plagued with allegations of corruption leading to the perception that the unstated objective for many in government was that of personal enrichment rather than public benefit. Outspoken Public Protector Thuli Madonsela spoke of the 'cancer of corruption' and referred to it as a 'crime against the poor.' Africa's revolution, according to well-known academic and author Njabulo Ndebele, 'may itself have become corrupted by the attractions of instant wealth,' reflecting 'a potentially catastrophic collapse in the once cohesive understanding of the post-apartheid project as embodied in our constitution.' The needs of the poor were side-lined in the jostle for power and privilege.

In the midst of all this, on the 16 August 2012, the police opened fire on a crowd of striking mineworkers at Marikana, in the North West Province. The police killed 34 mineworkers and left 78 seriously injured in what became known as the Marikana massacre.¹⁵⁵ The strike was for a wage increase and to address the poor living and working conditions of miners and their families in Marikana. The escalating violence reflected a fatal breakdown in communication between the mine workers, mining unions and mine owners. It was the most lethal use of force by South African security forces against civilians since the demise of apartheid

As government's credibility was undermined through mounting evidence of widespread corruption, poor service delivery and unpopular legislation such as the secrecy bill, there were indications of a growing public voice coming from civil society organisations and role players in the judiciary and Chapter Nine Institutions working to uphold the rule of law.¹⁵⁷ The xenophobic violence resulted in the largest and most significant mobilisation of civil society since the advent of democracy in 1994. It affirmed the continued influence of civil society despite indications that civil society had weakened in the post-apartheid period.

Board members in the third programme:

Louise Asmal, Chairperson
Judge Siraj Desai, Deputy Chairperson
Commissioner Thoko Mpumlwana, Board member
Judge Jody Kollapen, Treasurer
Adv Dumisa Ntsebeza SC, Board member
Judge James Yekiso, Board member
Professor Errol Holland, Board member
Shirley Mabusela, Board member
Zibusiso Kganyago, Board member

The FHR, DoJ&CD and Sector Budget Support

The EU Delegation to South Africa in collaboration with the National Treasury agreed to a governance package for the 2007–2013 funding period under a country Strategy Paper titled Cooperation between the European Union and South Africa: Joint Country Strategy Paper 2007–2013. This package developed into the Multi-Annual Indicative Programme (MIP) 2007–2013. The MIP stated that, ‘the EC (European Commission) considers governance critical to the pursuit of development.’ The strategy document prioritised poverty alleviation and sustainable development. The EU programme prioritised good governance which it defined as, ‘a multi-dimensional concept encompassing democracy, human rights, participation and the rule of law. The State is expected to ensure that human rights and democratic principles are respected, promoted and protected. Good governance is regarded as both a necessary precondition and a consequence of democratic consolidation.

South African government policy was articulated in the Medium-Term Strategic Framework (MTSF) and National Development Plan (NDP): Vision 2030. The objectives of the AJPCR programme were to support the DoJ&CD policy as outlined in its MTSF of 2006–2009 and MTSF 2010–2012 in particular the two strategic goals of access to justice and transforming justice, state and society.

The DoJ&CD concluded an agreement with the FHR to implement the AJPCR programme in March 2009. The EU allocated 25 million Euros for the programme which was to be disbursed over a three-year period. It was extended by an additional year and ended in 2014. While the EU continued to fund the programme, in the AJPCR programme, funds were allocated through Sector Budget Support (SBS) through the DoJ&CD.

In 2010, DoJ&CD developed a policy framework titled ‘Enhancing Civil Society Participation and Good Governance’ that encouraged government and civil society partnerships to promote access to justice and constitutional development. The EU and South African government recognised the importance of an intermediary to maintain the independence of civil society in respect to funding. The independence of the grant-making organisation was essential as some of the activities that were undertaken by CSOs were critical or challenging of government:

Only an independent grant-making organisation could be able to provide such support to CSOs without any restrictions or preferences that would possibly apply to a government agency that might be required to respond to the demands of the ruling party. Most importantly, advocacy and lobbying can only be carried out by non-governmental agencies, and unbiased support for organisations involved in these activities is only possible if the support grants are made by an independent agency.

The DoJ&CD's policy framework for engagement with CSOs was used to guide its partnership with the FHR. A working group was established as part of the Financing Agreement to monitor progress of the AJPCR programme that included representatives from the EU, the DoJ&CD, National Treasury and the FHR. Quarterly meetings were held with representatives from these institutions where the FHR submitted progress reports. The working group ensured alignment between the strategic objectives of government and the FHR. The work of the FHR amplified the work of government.

The DoJ&CD largely focused on provision of court services with the FHR implementing programmes that contributed to realising the objectives in the CSO policy framework and improving access to justice. The FHR's programme was based on the pluralistic governance paradigm which acknowledges that mature democracies are characterised by a multitude of independent actors that provide checks and balances. The purpose of the AJPCR programme was to promote partnerships between government and civil society working in the justice and human rights sector, and importantly to strengthen civil society and enhance good governance. The FHR worked to ensure that the Constitution continued to be South Africa's guiding framework.

The FHR continued to provide a model where an external funder provided funding that was utilized independently and yet remained part government support. According to former DoJ&CD Deputy Director General, Simon Jiyane, 'there is a perception in Africa that when you get western funding that there is an agenda to control your policies and that they want to run your government. This can be perpetuated when donors work outside of government. Through the FHR we created a model of external funding that is part and parcel of government. We would have liked this model to be implemented in other African countries... The FHR integrated government thinking but also established a framework for CSOs to have a say and participate in how government is run and services are delivered.'

The FHR Board remained as the governance and oversight structure and participated in strategic planning workshops, programmes and events, in addition to participating in the bimonthly meetings.

AJPCR programme's three result areas

The third programme was titled Access to Justice and Promotion of Constitutional Rights Programme (AJPCR). The programme had three result areas: (1) Improved Access to Justice, (2) Promoting Constitutional Rights, and (3) Strengthening Participatory Democracy.

The AJPCR programme continued to support projects that were based in rural and disadvantaged areas to the benefit of vulnerable and marginalised groups.¹⁶⁵

The third programme sought to support CSOs to better showcase the results of their activities. The FHR supported research and innovative monitoring and evaluation strategies that included storytelling, mapping, case studies, setting up knowledge management systems and communications strategies to promote organisational learning and share best practices. This section includes some of the stories that were captured in this new approach.

Base Line Survey

The FHR conducted a survey to assess the levels of awareness of rights in the country and knowledge of where to seek assistance and enforce them. The FHR commissioned the survey in 2010 and it was completed in 2011. The survey reached close to 4 000 respondents from different sectors including farming communities, rural poor, urban poor, LGBTI communities and migrants. The respondents experienced high levels of unemployment (almost 50%) and low levels of education.

The survey found that only 46% of South Africans had heard of the Constitution or Bill of Rights and a mere 10% had read the Constitution or had it read to them.¹⁶⁶ Rural respondents were less aware of the Constitution and Bill of Rights.¹⁶⁷ The survey found that education, socio-economic status and access to information were the main factors influencing awareness of human rights. The survey found low levels of awareness on Chapter Nine institutions and low levels of awareness on basic human rights legislation such as Promotion of Access to Information Act (PAIA) (10%), Promotion of Administrative Justice Act (PAJA) (10%) and Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) (14%).

The baseline survey revealed that the South African Police Service was a source of assistance to those whose rights had been violated. People with lower levels of knowledge on their rights were more likely to do nothing if their rights were violated which highlighted the impact of human rights education. The baseline survey revealed a general conservatism on some rights such as the death penalty, media censorship and sexual orientation which were disconnected from the rights in the Constitution. The baseline survey revealed, alarmingly, that two-thirds of those polled, who were aware of their rights and had experienced rights violations, believed that no help would be forthcoming and made no attempt to address these violations. The survey found a general under-awareness of constitutional rights and an under-utilisation of human rights organisations, policies, legislation and mechanisms.

The findings from the baseline survey were used to inform the FHR's AJPCR programme and its subsequent SEJA programme. The survey highlighted the importance of CBAOs in poorer, mostly rural communities. The FHR's Small Grants facility was used to expand rights-awareness activities including rights-oriented events and days of action to address the low, and in some cases, declining levels of awareness. The survey found that radio was a crucial source of rights information. The FHR revisited its approach to rights education to include more public and community radio interventions. Campaigns included the production of posters and banners as

well as non-traditional methods of learning such as music, poetry, theatre, film festivals, television programming and visual arts. It shifted its approach to capacity building to include building critical analysis skills and to equip CSOs to better understand and respond to problems they were faced with.

Addressing Racism

Despite a range of laws, policies, and gains made in building a non-racial society and addressing the racism that underpinned apartheid, the legacy of racism remained. Eradicating racism would require a long-term commitment and investment by all role players to address the patterns of access to wealth, political power and social influence wielded by those who benefitted from apartheid.¹⁷⁰

South Africa hosted a national conference on racism in Sandton in 2000 under the theme, 'Combatting Racism: A Nation in Dialogue'. The conference developed the South African Millennium Statement on Racism and Programme of Action. The conference was held in the run up to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance that was held in 2001 in Durban. At the World Conference, the Durban Declaration and Programme of Action were adopted.

Based on the outcomes of the Durban Declaration, South Africa was obliged to develop and implement a National Plan of Action (NAP) on Racism. The plan was to provide a framework and mechanism to address racism, xenophobia and other forms of discrimination. In 2008, the DoJ&CD began developing the NAP. This was followed by a protracted (over a decade long) process of developing its National Action Plan.

The AJPCR programme was actively involved with other partners working to develop and finalise the NAP. The FHR and SAHRC co-chaired the NAP Steering Committee which included representatives from government and civil society. In 2009, the Steering Committee finalised a draft version of the NAP that was approved by all clusters in government and by Cabinet in 2012.¹⁷¹

Hate Crimes Policy Framework

Similar to the NAP, the development of Hate Crimes legislation has been a protracted process. Calls for hate crimes legislation were initially motivated to respond to horrific attacks against LGBTI people. These calls were extended in light of ongoing xenophobic violence and disturbing incidents of racism.

In October 2016, the government published the Prevention and Combating of Hate Crimes and Hate Speech Bill. The first draft was released for comment and the DoJ&CD received over 75 000 submissions from institutions and individuals. The Bill was revised and on 14 March 2018 a second version was approved by Cabinet. Concerns were raised about the potential for legislating against hate speech and whether this could encroach on freedom of expression.

Once made law, the Hate Crimes Bill would allow judges to consider prejudice, bias or intolerance (on the basis of race, religion, culture, gender identity or sexual orientation, among others) in a crime as an aggravating factor in the sentencing of perpetrators. Activists argue that while it is already illegal to assault, murder and rape, the consequences for crimes motivated by hate need to be more severe than ordinary crimes. This is because hate crimes are 'message crimes' that harm entire communities, making a group of people feel unsafe. The Bill also commits the authorities to collect and report details about hate incidents for the effective monitoring, analysis of trends and interventions and to provide data on hate crimes.

The 2008 xenophobic violence highlighted the need for hate crimes legislation as a key obstacle to tracking xenophobia related cases as there is no crime labelled as xenophobia. Finalising the NAP and hate crimes legislation were identified as key interventions needed to recognise xenophobia as a crime and enable the relevant departments to track the trends and prevalence of xenophobia-related attacks.¹⁷³ This would similarly apply to violations against other groupings that were intended as 'message crimes.'

The FHR hosted two Hate Crimes Policy Framework workshops in partnership with the Law Society of South Africa, the Black Lawyers Association and the National Association of Democratic Lawyers in 2013. The FHR supported a review on Hate Crimes Legislation in Africa, Asia and Latin America to contribute to the policy framework on combating hate crime. The FHR's legal department did research into criminalising racism, hate speech, xenophobia and related intolerances. The FHR commissioned a team of advocates to consider the draft policy framework on hate crimes from a constitutional perspective and to raise issues that could impact on future draft legislation relating to the criminalisation of hate speech and hate conduct.

The Hate Crimes Working Group brought organisations together to advocate for hate crimes legislation. The Hate Crimes Working Group includes representatives from LGBTI+ groups, refugee organisations, faith based organisations and organisations addressing gender equality and gender based violence.

Rights of Refugees, Asylum seekers and Migrants

Because of the scale and intensity of the 2008 xenophobic attacks, the AJPCR programme included promoting and protecting the rights of refugees, asylum seekers and undocumented migrants as an explicit vulnerable group in its programme. The AJPCR programme recognised that in addition to the extreme xenophobic violence that had engulfed the country in 2008, that refugees, asylum seekers and migrants continued to be excluded from accessing services such as health care and education. They were often subjected to unlawful arrests, detention and deportation along with exploitation and extortion by the police.¹⁷⁶ Challenges experienced by migrant communities included corruption in the Department of Home Affairs, xenophobic attacks and people's lack of awareness of their rights.¹⁷⁷ The Consortium for Refugees

and Migrants in South Africa (CoRMSA) reported that after the 2008 attacks that one person a week, on average, was killed in xenophobic violence.¹⁷⁸ Similar to the mass attacks in 2008, few perpetrators have been prosecuted.

The AJPCR programme supported organisations that promoted awareness of constitutional rights among refugees, asylum seekers and migrants through workshops, seminars and community networking events and the production of newsletters and booklets. Public dialogues were held in all nine provinces on xenophobia.

The CSOs supported by the FHR assisted refugees and asylum seekers with access to documentation, referrals to other service providers, access to basic services such as housing, education and health care, psychosocial support and translation services. The AJPCR programme provided legal support services to more than 100 000 refugees, asylum seekers and migrants.

The AJPCR programme provided funding to civil society organisations to provide, advocacy, research and raise awareness. The FHR supported the African Centre for Migration and Society based at the University of the Witwatersrand to conduct research on migration. A research project in 2012 produced a report, *Breaking the Law, Breaking the Bank: The Cost of Home Affairs' Illegal Detention Practices*. The report examined legal challenges to immigration detentions brought between 2009 and 2010. These cases revealed that the DHA routinely violated its constitutional duties and its legislative obligations under both the Refugees and Immigration Acts.¹⁷⁹

The FHR funded Lawyers for Human Rights (LHR) to conduct research on the prevalence of corruption in the asylum system in South Africa. The LHR launched prosecutions against DHA officials who used pepper spray and sjamboks on crowds. While corruption continued at the DHA, the report raised awareness on the issue and led to Corruption Watch taking on a follow-up study on corruption in the asylum system that added additional advocacy to the issue.¹⁸⁰

African Diaspora Forum

The African Diaspora Forum (ADF) was established in Johannesburg in 2008 in response to the xenophobic attacks in South Africa. The ADF facilitates relationships between Africans living in South Africa. The ADF engages at a local level with community policing forums and street committees. It challenges xenophobic statements and policies. In May 2011, it hosted a music concert and soccer tournament. The event was titled 'Many Faces, One Africa.' It brought together people from 21 African countries.¹⁸¹

The Adonis Musati Project (AMP)

The Adonis Musati Project (AMP) was formed in 2007 in Cape Town. It was named after a young Zimbabwean who died of starvation on the streets of Cape Town while waiting for his asylum papers. AMP assists asylum seekers and refugees with a range of services including counselling, advice and referrals, and food and material

assistance. AMP educates asylum seekers and refugees about their rights and helps them to access basic services such as education, health, legal services and accommodation.

When Home Affairs stopped serving newcomers at the Cape Town Refugee Reception Office, we were told that we had to go back to Musina to renew our papers. We don't have money to travel so far. The Adonis Musati Project gave us information and told us that we do not need to travel back to Musina to renew our papers. Instead we should go to the UCT Law Clinic and get help from that organisation which can help us to get our papers renewed. -Asylum seeker

In 2013, the FHR commissioned an evaluation of the FHR's Refugee Programme that was conducted between 2009-2012. Grantees found documentation and legal services to be the most valued support services offered. The FHR decision in 2011 to fund small organisations working with refugees was a positive step and allowed for migrant-run organisations to access funding.

Research projects that reflected on the violence of 2008 noted that without a radical and committed, multi-pronged and multi-stakeholder response that the likelihood of attacks recurring was highly likely.¹⁸³ Despite FHR's efforts to promote the rights of refugees, asylum seekers and migrants, the predictions came true and 2015 saw another wave of widespread violence against foreign nationals.

TRC continued

By the third FHR programme, the business of South Africa's TRC remained unfinished. The FHR assisted victim support groups, the Office of the National Director of Prosecutions and human rights groups to deal with ongoing prosecutions, the question of full disclosure as well as continued efforts to support exhumations, disappearances and memorialisation.

The TRC's findings and documentation were supposed to be made available to South Africans. The South African History Archives (SAHA), which was supported by the FHR to archive and make documentation on the TRC accessible, had to go to court to access TRC records. The withholding of information about past atrocities contradicts the process of truth, recovery and transparency that underpinned the TRC.

The TRC collected large amounts of valuable information about the violation of human rights and the workings of the apartheid security establishment under apartheid. Since 2001, the South African History Archive (SAHA) has used South Africa's freedom of information legislation, the Promotion of Access to Information Act, to test the extent to which the official TRC archive is actually accessible to the South African public. SAHA secured several favourable settlements, forcing government department to provide TRC records they had previously refused to disclose, but several barriers to accessing key TRC records remain - From The Battle Against Forgetting: Human Rights and the Unfinished Business of the TRC, SAHA December 2010¹⁸⁴

Promoting the Equality Act and Equality Courts

Despite progress made in restructuring and transforming the country, systemic inequalities and unfair discrimination remained entrenched in social structures, practices and attitudes.

The Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA) is intended to prohibit unfair discrimination. The FHR supported programmes that promoted the Equality Act and use of Equality Courts created to uphold the Act. While equality courts are located within magistrates' courts and High Courts countrywide, they remained underutilised as the public were unaware of their existence.

The AJPCR programme supported the establishment of 382 new Equality Courts in 2012 (up from 220 in 2007) and the development of a national programme to promote the courts. The FHR supported the development of a resource book for equality courts and a number of guides about the Equality Act. The FHR worked with the National Community Radio Forum (NCRF) to develop radio programmes on the Equality Act. The programmes were aired nationally, in several languages, reaching around 2.7 million listeners. Despite extensive popular education programmes to make communities aware of their rights under PEPUDA, research found that communities were still not accessing the various courts established.

Advancing Gender Equality

The FHR continued to support efforts to advance gender equality. In March 2013, the FHR organised a three-day Gender and Law Training workshop. The workshop built the capacity of CGE education officers and civil society. The workshops addressed issues of domestic violence, the rights of LGBTI+ persons, and sexual and reproductive health rights.

Women's Leadership and Training Programme

The Women's Leadership and Training Programme (WLTP) works in rural communities in KwaZulu-Natal. It builds capacity among rural and urban girls and young women. In 2012, the FHR supported WLTP to engage its local municipality on democracy and climate change issues.

'Participants realised the importance of having a space together as women. [Many] had never understood the dominance of men as a deep-seated patriarchal issue that women need to challenge. Some found patriarchy difficult. They didn't understand how to change the situation without being disrespectful to their parents. Many of the girls who attended the workshops got a taste of making their voices heard by taking part in two campaigns organised by WLTP against 'Ukuthwala' (abduction) and 'Umhayizo' (bewitching of girls) in Centocow and Hlokozi in August, Women's Month' – WLTP facilitator¹⁸⁸

Small Grants Project

The Small Grants Project (SGP) provided small grants of up to R120000 to CSOs working with grassroots communities. The SGP sought to create human rights awareness at community level and assisted organisations working with the most vulnerable to find

their voice. The project strengthened dialogue between government and civil society. It sought to build awareness among civil servants who may not be aware of the values, rights and responsibilities enshrined in the Constitution. The project supported events for Africa Day, Youth Day, Human Rights Day and the 16 Days of Activism against Violence against Women and Children.

The SGP used storytelling as a way to measure impact. Stories were captured to document the changes that the project had catalysed in the lives of participants and communities. This approach offered deeper insight into the lives of marginalised people living in remote communities and allowed for beneficiary voices to be heard.¹⁸⁹

CREATE

CBR Education and Training for Empowerment (CREATE) worked in the UMgungundlovu district in KwaZulu-Natal. It worked in rural and township areas training on disability and rehabilitation for child and youth care workers; training on HIV and sexuality for children and youth with disabilities and offering life skills training for youth with disabilities in preparation for employment. It advocates for the implementation of the UN Convention of the Rights of Persons with Disabilities.

CREATE trained people with disabilities in photojournalism. Participants took photographs that illustrated articles from the UN Convention on the Rights of Person with Disabilities. The photographs were part of a public awareness exhibition. The course built skills and confidence of the participants.

ProGroup Foundation (PGF) worked in the Greater Tzaneen Area. It was established in 2007 and worked to promote human rights and designed sustainable programmes for gender-based violence victims. In 2011 it ran an essay writing competition targeting children between the ages of 12-18. The topic was on abuse or how child abuse had affected them.¹⁹⁰

Access to land and housing

Access to land and housing remained a contentious issue into FHR's third programme. While government had made progress in the construction of low-cost housing, into the third FHR programme, apartheid geographies remained largely intact with little progress in land restitution. Despite a rise in home ownership, the legacy of apartheid spatial planning has had an enduring impact on poverty.

2013 marked the centenary of South Africa's notorious Native Land Act of 1913 which reserved 87% of the most arable land for white ownership. One hundred years later, only 6% of the land had been restored to black ownership. Under the Socio-Economic Rights in South Africa (SERSA) project funded by the Flanders government, FHR supported organisations which commemorated 100 years of the Land Act.

The FHR supported a number of initiatives advocating for the right to housing including a CALS project that supported communities who were vulnerable to evictions in inner city Johannesburg. A digital video clip on housings rights and evictions was developed and made available on YouTube.

The Schubart Park Residents Association

The Schubart Park Residents Association (SPRA) is a community based organisation that fought against evictions in the City of Tshwane. Schubart Park consisted of three high-rise flat buildings owned by the City of Tshwane that had 3 000 residents living in them. After an ongoing contest against the City of Tshwane, the residents were evicted in September 2011. SPRA appealed the eviction and Lawyers for Human Rights provided legal services in support of their case. The Constitutional Court ruled in favour of SPRA. This was an important ruling on the right to alternative accommodation. The positive ruling was the result of years of sustained organizing, mobilizing and advocacy by the SPRA.

The poor have the right to live in the city and to have their dignity respected and not to be brutally evicted as happened to us all in 2011. That is the power of the Constitutional Court ruling of August 2012. We stand united and struggle on – Mashao Chauke, SPRA organizer

Boland Area Human Rights Awareness Project

The project was implemented in response to a farm worker strike in the De Doorns area in 2012–2013. Farm workers issues included their lack of access to the civil and criminal justice system and services, and ongoing farm evictions. A popular education programme including workshops, youth camps, legal advice, door-to-door campaigns, roadshows, information sessions, advocacy and monitoring ensured that the programme reached an estimated 650 000 beneficiaries.

Community Based Advice Offices

Support to advice offices continued in the AJPCR programme.¹⁹⁵ Advice offices played multiple roles including contributing to alternative dispute resolution and restorative justice mechanisms along with enforcing compliance with legal orders such as maintenance orders. Advice offices continued to address a range of problems including violence against women, challenges around inheritances and wills, dealing with conflict and labour issues on farms, how to care for the disabled and how to organize against a mining company. While advice offices play an important role in addressing complex socio-economic needs, an evaluation of advice offices found that advice offices, 'perform the vital job of translating laws and realizing Constitutional obligations in far-removed locations, they also occupy a very important space of respite and solace for community members in need.'

Greater Molweni Community Resource Centre

The Greater Molweni Community Resource Centre (GMCRC) works in Kwadedangendale in Gauteng. GMCRC provides free paralegal services to poor people, provides human rights education, HIV/AIDS counselling and education and networking, lobbying and advocacy on behalf of the community it serves.

In 2011, Anna L. participated in a workshop for women and girls hosted by GMCRC. 'My husband was shot in 1993 and my three kids were very small... I don't know how to explain what happened in the workshop. I found that I was able to talk about my husband's shooting for the first time without crying. Something happened. It was a healing.... After that I was free. There were other women in the group who talked and experienced the same kind of healing. I still don't know what it was that happened. They also said it was the most important day of their lives. It has made such a difference to my life. I was so heavy and now I am light.'

The AJPCR programme saw advice offices engaging with state institutions at local level to participate in and influence municipalities' Integrated Development Plans (IDPs) and budgets, particularly with regard to basic services such as housing, water, education health care, electricity and food security.

To strengthen capacity of advice offices, the FHR committed to investing in human, financial and other resources. The FHR offered multi-year funding for a period of three years which enabled advice offices to focus on implementing programmes without the ongoing day-to-day pressures of addressing sustainability. FHR support included capacity building, mentoring and skills development. The FHR supported over 100 community-based advice offices.

The Legal Practice Act was finally passed in 2014. The Act did not recognize paralegals into the legal fraternity but indicated that the DoJ&CD must within a two-year period initiate a process for the formal recognition of paralegals.¹⁹⁹ The FHR hosted a workshop in February 2014 to discuss the exclusion of paralegals. The issue remained an FHR priority into its next programme.

Bohlabele Resource and Advice Centre

Bohlabele Resource and Advice Centre (BRAC) was founded in 2000 and worked in the rural area of Bushbuckridge, Mpumalanga. It addressed the high rates of illiteracy, lack of access to justice, information and basic services, and violations of human rights. Core services provided were access to justice, social welfare and other related services; paralegal services, human rights activities (especially related to the abuse of women and children), and life skills. BRAC promotes cooperation and networking among civil society structures.

Florence Hadebe was a home-based care worker who came to BRAC seeking support for a child-headed family. Some of the family did not have birth certificates and none of them had identification documents. They were therefore unable to receive food parcels and the foster care grant. Social workers had been unable to assist them.

BRAC assisted Florence to access the necessary documents from the Department of Home Affairs and successfully apply for a foster care grant from the Department of Social Development.

Building participatory democracy

Participatory democracy is people's participation in the political, development, planning and implementation initiatives of a nation. South Africa has various mechanisms for participatory democracy including holding regular elections, ward committees, imbizos, parliamentary portfolio committees, chapter nine institutions, NEDLAC and other processes. The right to protest is also a channel of public participation.²⁰¹

Despite these mechanisms, South Africa saw an increase in mass action by communities demanding service delivery. Civil society organisations expressed frustration at the pace of service delivery while government was increasingly defensive. The government's National Planning Commission, in its Diagnostic Overview 2011 that informed the National Development Plan, conceded that relationships across sectors and between citizens and the government needed to be repaired, 'this plan that we present to the President and the country today is principally about relationships; relationships that people have with their country, relationships that we have with one another and the relationship that as citizens of South Africa we have with the state. At the moment these relationships are broken'

The FHR started a programme of public dialogue led by the Human Sciences Research Council (HSRC), the Centre for Policy Studies (CPS) and the Centre for Conflict Resolution (CCR) to address some of these issues at national level.²⁰³ The Public Dialogue project explored issues related to the New Partnership for Africa's Development (NEPAD) and other regional issues. The FHR convened provincial and national forums and facilitated public policy dialogues to strengthen participation in national and provincial legislatures. The FHR was concerned that, 'the inadequate presence of the voices of the vulnerable in these processes, rob the nation of critical inputs to help deepen and sustain a democratic culture based on the values enshrined in the Constitution.' The plural nature of society inevitably leads to criticism and disagreement, which the FHR saw as key ingredients to healthy engagement required for a vibrant democracy. According to Judge Siraj Desai, FHR Board member, 'It's a question of giving people a chance to vent their anger within constitutional mechanisms. Government sometimes thinks that civil society organising is in opposition but it is more about giving voice.'

In a context of eroding relationships, the government passed the South African Protection of State Information Bill in 2011 commonly referred to as the Secrecy Bill. The Secrecy Bill, was a highly controversial piece of proposed legislation which aimed to regulate the classification, protection and dissemination of state information. It was to replace the Protection of State Information Act, 1982. While critics of the bill agreed on the need to replace the 1982 Act, they argued that a number of provisions in the bill undermined the right to access information and the rights of whistle blowers and journalists.

Civil society rejected the bill through lobbying and protest action led by Right2Know, in partnership with COSATU and other organisations. Pierre De Vos, a South African constitutional law expert wrote, 'the strong reaction of civil society to the Bill speaks as much to concern about the provisions of the Bill as it does to the conduct of the ruling party and state institutions that continue to squander the trust and goodwill of its citizenry.'

The AJPCR programme support in this area continued to demonstrate its ability to be a conduit of funds through government and to simultaneously retain its own programme.

The Foundation for Human Rights has contributed courageously to strengthening the human rights climate in post-apartheid South Africa and entrenching a culture of democratic accountability in the country through its strategic interventions on behalf of often marginalised communities. It has not shied away from tackling potentially controversial issues of land reform and government accountability and is increasingly helping to promote dialogue and critical public policy debates on the most urgent governance issues of the day. The Foundation has thus played an indispensable role in helping to consolidate a young democracy. - Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town

Earthlife Africa (EA) is an environmental organisation working to protect the country's natural resources. In 2011 and 2012 the FHR supported EA to establish a consortium of organisations including youth, religious groups, women, environmental organisations and communities to address the issue of climate change. The Civil Society Committee engaged with government before and during the COP17 international climate conference that was held in December 2011. The project culminated in a Global Day of Action when thousands of people marched at the COP17 event.

Raising Awareness of Rights

The Big Debate

The Baseline survey recommended that the FHR utilise popular forms of media to promote dialogue and public awareness of human rights issues. From 2012, the FHR supported Broad Daylight Films Foundation (BDFF) to produce and air The Big Debate, a series of 10 current affairs debates on key human rights issues. The FHR funded six episodes and others were funded by the Open Society Foundation and the British Broadcasting Corporation. The six episodes covered issues including access to health care, land reform, education, racism and the economy, women's rights and safety and security. The debates included participants from government and civil society organisation. Live television audiences were able to ask questions and the radio debates brought in calls from listeners across the country. The debates reached millions of South Africans. According to the BDFF producer Ben Cashdan, 'the show has extended the boundaries of what it is possible to achieve in the mass media in South Africa... the Big Debate has the potential to have a significant impact on the political culture of our country by increasing transparency, accountability and public dialogue.'

National Moot Court Competition

The FHR continued to support the African Moot Court on Human Rights. In 2011, the CHR, in partnership with the DoJ&CD, the Department of Basic Education, the SAHRC, and the Universities of Venda, Western Cape and Cape Town hosted an annual National Moot Court competition aimed at creating greater awareness of the Constitution among high school learners. Grade 10 and Grade 11 high school learners from public and private, urban and rural schools across the country explored a fictional case involving a constitutional issue by submitting two essays setting out opposing sides of the case. The competition helps to create awareness on the bill and of rights and human rights, which are currently not integrated into the curriculum.

The National Schools Moot Court Competition (NSMCC / Competition) is an annual schools moot court competition which began in 2011. It is a joint initiative of the University of Pretoria, the Foundation for Human Rights, the Department of Justice and Correctional Services and the Department of Basic Education (DBE), amongst others. Learners from all secondary schools in the country are encouraged to participate in the Competition which involves two stages – an essay writing elimination round and various oral rounds culminating in a final round argued before a panel of adjudicators at the Constitutional Court.

The aim of the NSMCC is to create greater awareness and understanding among schools and communities about the Constitution as well as the rights and values that it embodies. In addition, the Competition aims to provide young people with exposure to the legal system and profession, and encourage them to consider pursuing a career in law. Each year the moot problem is one which involves learners faced with a fictional scenario in a school environment implicating various Bill of Rights issues. It also provides them with an important opportunity to develop new skills.

Learners from all schools in the country are invited to participate in the South African Schools Moot Court Competition, first by submitting essays, after which the ten strongest teams in the province are selected to oral provincial hearings. The four teams with the highest scores are then invited to the national rounds, first in Pretoria and then in Johannesburg, in the Constitutional Court.

The Department of Basic Education has introduced the Moot problem as the topic for the compulsory essay that all learners have to write as part of the English subject, as this would ensure a much wider participation. This will expand the reach of the Competition to every secondary school in the future.

The best arguments from each province were selected and teams of two were invited to orally argue their case in front of a panel of judges and legal experts. Finalists were chosen to present their case in the Constitutional Court. The FHR funded the winning team to attend the International Moot Court competition. The South African team won the international competition in the 2016 and made it through to the final round in The Hague in 2018. The SAHRC took over the running of the Moot Court from the CHR from 2018.

We got to know how the Constitution works and the kinds of careers that the law holds. I learnt that all persons are equal before the law, young or old. Although I did not understand the Constitution at first but after the competition, I got to know it. I also gained persuasive and communications skills - Camilla Ndlovu, DZJ Mtebule Junior Secondary, Nkowankowa, Limpopo Province

Promoting Restorative Justice

The slow pace of economic transformation has been coupled by soaring rates of crime in South Africa. Crime and illegality have a greater impact on the lives of the poor as it is more difficult to obtain redress.

The AJPCR programme included initiatives to address the consequences of crime and access to justice for victims of crime. Restorative justice programmes are based on the belief that parties to a conflict should be actively involved in resolving it. It provides the community with an opportunity to participate in resolving conflict and addressing its consequences. Restorative justice programmes reduce the burden on the criminal justice system by diverting cases out of the system and providing a range of constructive sanctions. Restorative justice emphasises relationship-building, reconciliation and agreed outcomes between the victim and offender.

The FHR supported diversion programmes and alternative dispute resolution in the AJPCR programme. A reference group was established to advise on the implementation of the programme. The reference group was instrumental in finalising a national policy framework on restorative justice. The programme included documenting diversion practices, developing a training manual on Alternative Dispute Resolution (ADR) and Restorative Justice and hosting a National Conference on Restorative Justice. A workshop was held with traditional leaders on diversion and restorative justice.²¹⁴ The programme supported the diversion of 10 000 people from prison (against a target of 7 600).

Capacity Building

The AJPCR programme continued with capacity building support to CSOs. An area of emphasis in the third programme was to build capacity for monitoring and evaluation that would support CSOs to learn from past experiences, improve management planning and enhance reports and communication with donors. The FHR supported research, development and implementation of sector appropriate M&E strategies and knowledge management systems. This included best practices and innovative approaches to M&E including story-telling and the use of electronic communication platforms.

The FHR implemented the Building Stronger Organisations Pilot Project in Limpopo and KwaZulu-Natal. The pilot projects assisted consortiums of CSO's to identify their capacity building needs and to construct their own interventions. The project included a series of workshops addressing issues such as problem analysis and strategy development, developing a project plan, computer and camera skills and women's leadership training. An independent evaluation recommended that the model tested

in Limpopo and KwaZulu-Natal be replicated. The process led to collaboration among participating organisations, 'in the beginning we saw the pilot project as a capacity development intervention but our understanding developed as the process went on and we saw that it was also about building a strong social movement.'

The FHR supported the Labour Research Service (LRS) Gender at Work project to strengthen writing and organisational analysis skills of women leaders and gender activists. Eight organisations participated including CSOs working with farm workers, on HIV/AIDS issues, trade union members and others in five provinces. The project produced a book called *Transforming Power- A Knotted Rope*.

The project held up to open our minds. By this we mean that as women we saw the need for vision and put into practice what we were teaching others to do. The project provided space for reflection and critical thinking... we are proud that we are known and that we are a great help in the community... our future is bright and promising. We started as dust but we have emerged as sparkling diamonds. – from *Transforming Power- A Knotted Rope*

Capacity building projects had a positive impact on those who participated. An evaluation of the capacity building support found that:

Almost all participating organisations and individuals warmly embraced and greatly valued the opportunity to be a part of the capacity building projects... The involvement of many individual participants in the various capacity building activities provided them with greater confidence, enhanced self-esteem and a deeper sense of empathy- i.e. the means to not only be better advocates/lobbyists/activists etc.- but better human beings.

Realising Socio-Economic Rights

In the AJPCR programme, the FHR supported a review of and research on access to socio-economic rights. In 2013, the FHR commissioned a number of papers on socio-economic rights. The papers looked at issues including the realisation of the right to water, sanitation, housing and shelter, education, food sovereignty and land. An additional set of papers was commissioned on social security, environment, disability and child rights.

Civil Society Survey

In 2012, the FHR undertook a survey of the sustainability of the Social Justice CSO sector to examine the size and scope of work of the sector, to track changes in funding and employment and to identify responses of CSOs to the changing funding environment. The survey found that while organisations worked across the country, funds continued to be biased towards better-resourced urban-based CSOs. The survey found that there had been a significant decline in funding to CSOs.

Loss of Litigation programme and its impact

The FHR continued to lobby for funds for strategic litigation including the need for funds to litigate economic crimes. With the AJPCR programme a part of sector budget support through the DoJ&CD, litigation was seen as expensive and contentious.

The end of the AJPCR programme

The AJPCR programme took place at a time when institutions were under threat of State capture or interference. The FHR managed to retain its independence and unblemished record in its management of funds. This was largely attributed to its board and director which provided a safety net that secured the FHR's resources from being misused or misdirected. The PRAG regulations also played a role in ensuring that the funds were systematically managed, although a downside to the tight regulation of funds was that it has limited the FHR's ability to nimbly respond to crises that emerged during this period.

The rigidity of the programme was apparent in relation to the FHR's inability to respond to the Marikana massacre. The FHR received requests by organisations working in the community to deal with the rights of mineworkers, but these needs could not be accommodated by the FHR as the programme design did not allow for the flexibility to take up cases or projects that were not part of its original funding application process.

The FHR continued to play a bridging role between government and civil society, bringing people together, building partnerships and contributing to challenging unequal power relationships:

The EU asserts that the FHR developed credible and effective systems to operate as a grantor and engage with civil society for service delivery in priority policy areas, as well as strengthening the capacities and leadership of civil society organisations and sensitizing citizens about their constitutional rights and increasing opportunities for public dialogue.

Despite the achievements of the AJPCR programme, the final evaluation of the programme concluded that, 'many of the beneficiaries continue to face persistent difficulties in terms of poverty, marginalisation, access to justice and other social ills which highlight the continued need for funding to further solidify the impact of the AJPCR programme.

Socio-Economic Justice for All (SEJA) Programme 'Amarightza' 2015-2018

The Socio-Economic Justice for All (SEJA) programme was developed as a response to the persistent and stubborn poverty and inequality in South Africa. 20 years after the demise of apartheid South Africa's unemployment rate was at a staggering 27.7%. On the expanded definition of unemployment, 41% of black Africans were unemployed in 2016. Unemployment was particularly severe among black African youth aged 15 to 34, with a 53% unemployment rate. 76% of South Africans faced imminent threat of falling below the poverty line. South Africa's Statistician-General, Pali Lehohla noted that, 'Since the transition, South Africa has not made much progress in addressing the vast social chasms emerging from our history.'²³⁰ More than half of the country's 55 million people were living in poverty, an increase from 53.2% to 55.5% between 2006 and 2015. Around a quarter of the population fell below the food poverty line in 2015.

SEJA took place in the context of a stagnant economy. From previous growth rates of 5%, growth had slipped to 0.6% in 2017 and 1.2% in 2018. These growth rates were far below the targets set to meet the objectives outlined in the NDP which aimed to eliminate poverty and reduce inequality by 2030.

A 2018 World Bank report, *Overcoming Poverty and Inequality in South Africa* noted that, 'South Africa is not only the most unequal country in the world but inequality has increased since the end of apartheid.' Racial separation imposed under colonialism and apartheid through land dispossession, forced removals, and legal segregation had resulted in a largely unchanged spatial legacy, 'A dual economy in which a formal and informal economy exists side-by-side and creates vastly distinct experiences of citizenship, marks our reality.' Advantage in South Africa continued to be largely inherited.

The SEJA programme took place at a time when South African institutions were under threat. 'State capture'- the term used to describe the way in which the South African government had been manipulated by or in cahoots with private interests - came to dominate the public discourse around governance. While many South African institutions had been weakened under the Zuma regime, the courts and the Public Protector continued to play a meaningful role in defending the Constitution. The former Public Protector, Adv Thuli Madonsela undertook two investigations. One investigated allegations of impropriety in relation to security upgrades at the former President Jacob Zuma's private Nkandla residence and the other investigated State capture. The State capture report assessed allegations that private individuals were engaged in the, 'systemic capture and repurposing of the presidency, state owned enterprises (SOE's) and other organs of state, particularly those responsible for law enforcement and state security.'

Discussions in Parliament often degenerated into confrontation as opposition parties, particularly the Economic Freedom Fighters (EFF), called on Jacob Zuma to 'pay back the money' that was used to upgrade his private residence. These issues raised the question of lawfare and the extent to which the courts were being used to settle issues that should be subject to discussion, negotiation and mediation. The FHR continued its work to uphold the sanctity of the Constitution. According to Judge Siraj Desai, FHR

Board member, 'Despite the general contempt for the regime there was not a rejection of the constitution and that is what we tried to do. We survived. Through this period the notion of the constitutional State was kept alive even though it was brazenly overridden by elements in government.'

Corruption and maladministration had a profound impact on realising socio-economic rights, According to Adv Thuli Madonsela, 'without maladministration and corruption, there would be money for basic minimum education infrastructure in schools and other constitutional promises. For every public rand dishonestly and unlawfully siphoned into private pockets, as alleged for example in State capture, there is less available for the inclusive development agenda that improves the quality of life for all.' Interventions seeking to address inequality could not ignore this reality.

In 2015 there were nation-wide student protests highlighting the plight of students who could not afford the high costs of tertiary education. Students secured a zero percent fee increase after weeks of protests and demonstrations. A commission was established to look into university funding. The moratorium on fee adjustments was not matched by an equivalent increase in government support to universities which placed universities in a difficult financial position. The student protests once again revealed that spaces for negotiation and mediation had failed.

The 2016 local government elections saw a decline in support for the ruling party. Power in some metros shifted resulting in the formation of coalitions. There were violent outbreaks during the elections and reports suggested that political assassinations were rising in the country as contenders battled to be included on party lists or became threats when they denounced corruption.

Our conversations must be underscored by the realisation that there are real, human lives beneath data and academic terminology. The people most affected by the scourge of inequality must be kept in mind, as we seek to 'normalise freedom' and create a country that can truly claim freedom, justice and equality as its reality. – Kgalema Motlanthe

Continued EU support to the FHR

The EU approved the SEJA programme in December 2013. The then Minister of Finance Pravin Gordhan signed the financing agreement before the 2014 national elections, but there was a delay after the elections as new officials were brought on board. The programme was launched on 10 December 2014 (International Human Rights Day) – at the Constitutional Court in Johannesburg.

2015 saw the beginning of the implementation of the new programme titled Socio-economic Justice for all (SEJA), also known by its popular name of 'AmarightZA'. AmarightZA was based on the understanding of enabling a capable state through the participation of civil society.

The programme recognised the important role played by the FHR as an honest broker and interlocutor between government and civil society on human rights issues of national importance.

The SEJA programme had the following results areas:

- 1.Improve awareness of constitutional rights, with an emphasis on socio-economic rights and on vulnerable and marginalised groups
- 2.Enhance participatory democracy through public policy dialogue on Constitutional Rights
- 3.Improve and sustain collaboration between government, chapter 9 institutions, civil society and other stakeholders in terms of justice service delivery and socio-economic rights (including support for Community Advice Offices)
- 4.Increase research on socio-economic rights and jurisprudence
- 5.Improve sector coordination and policy design on Constitutional development
- 6.Strengthen the capacity, engagement and participation of civil society organisations in the realisation of Constitutional rights.

The SEJA programme included provision for technical assistance to the DoJ&CD directly and for support for areas of work identified by the DoJ&CD.

The SEJA programme continued to prioritise vulnerable groups including women, children, rural and urban poor communities, farm workers and farm dwellers, people affected by HIV/AIDS, LGBTI communities, persons including youth, aged, migrants, persons with disabilities affected by violations of their socio-economic rights, race and xenophobia and lack of land rights. AmarightZA recognised the indivisible, interrelated, interdependent and intersectional nature of human rights.

Board members:

Ms Thoko Mpumlwana, Chairperson
Judge Siraj Desai, Deputy Chairperson
Judge Jody Kollapen, Treasurer
Ms Louise Asmal
Adv Dumisa Ntsebeza
Judge James Yekiso
Professor Errol Holland
Ms Shirley Mabusela
Ms Zibusiso Kganyago
Mr Zukile Nomvete
Mr Allan William Taylor

Baseline Survey

A Baseline Survey was conducted in 2016. A working group was established with representatives from Stats SA, SAHRC, Department of Arts and Culture (DAC), Department of Planning, Monitoring and Evaluation (DPME), FHR and DoJ&CD to oversee the project.

It was the largest survey of its kind in South Africa with 24 897 respondents. The survey focused on three broad themes: knowledge of human rights, attitudes to human rights and access to human rights.

Democracy Challenged: South Africa's largest attitudinal survey on the Constitution was published in March 2018. The survey found some improvements in human rights awareness with 51.1% of respondents indicating that they were aware of the Constitution. This was an improvement from the previous survey conducted under the AJPCR programme which found that 46% of respondent were aware of the Constitution. It found that less than half of South African women had heard of the Constitution. 40% of the respondents were satisfied with the state of human rights with the right to equality viewed as the least respected right in the country.

The results of the Baseline survey provided the FHR and the DoJ&CD with essential data to improve planning and strengthening of its programmes and to assist with awareness of human rights and the constitution.

Socio-economic rights - the International Covenant on Economic, Social and Cultural Rights

SEJA's focus was on addressing socio-economic rights. This was strengthened when South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2015. The FHR hosted a capacity building workshop in partnership with the DoJ&CD, SAHRC and the Department of International Relations to develop a framework for an implementation plan for the ICESCR.

The FHR worked in collaboration with the Studies in Poverty and Inequality Institute (SPII) to develop a toolkit to guide departments on their contributions for the ICESCR report. The FHR mapped the articles in the convention with the outcomes of the National Development Plan to identify lead departments. The FHR, DoJ&CD and the SAHRC convened a workshop to brief civil society organisations on the ICESCR reporting process and government's efforts to comply with its reporting obligations. The workshop discussed key issues such as the right of civil society to submit shadow reports.

In April 2017, South Africa submitted its first initial report to the UN Committee on Economic, Social and Cultural Rights (UN-CESCR). The government report was followed by shadow reports filed by civil society and Chapter 9 Institutions, including SAHRC and the Coalition Campaign, a network of CSOs that had, since 2009, advocated for the ratification of the Covenant.

The UN-CESCR published observations on South Africa's ICESCR report on 12 October 2018. The UN-CESCR commended South Africa for the progressive Constitution, a solid legal framework and continued efforts aimed at ensuring that socio-economic rights are equally enjoyed by all South Africans. The observation raised concern over the alarming levels of inequality, unemployment, insufficient safeguards protecting minorities as well as high incidents of food insecurity and malnutrition.

Socio-Economic Rights in South Africa (SERSA)

The SERSA project, funded by the Flanders Government, provided support for projects addressing land reform, small-scale agriculture, climate change and job creation in the Free State, Limpopo and KwaZulu-Natal provinces. This project addressed the issue of food security by promoting the production of organic agriculture.²⁴⁹

Biowatch

Biowatch was established in 1999 as an environmental justice NGO in KwaZulu-Natal. It worked with small-holder farmers, CSOs and government to ensure that people had control over their food, agricultural processes and resources, and other natural resources, within a bio-diverse, agroecological and sustainable system. Biowatch was funded by the FHR in 2013 to conduct training with small scale farmers and community members on permaculture gardening. In 2014, the FHR further funded Biowatch to conduct additional training to small scale farmers on agroecology.

One of the major successes of the project was that initially families established food gardens to provide food for themselves, but over time they generated a surplus which they were able to sell and bring income into their homes.

“Because I love farming, I love this project, the money is in the soil – we can’t depend on government to give us jobs. We want to be the first women to succeed in farming in our community so, no matter how hard it gets we will soldier on until we see our dream come true,” – member of the Sunduza Co-operative.

The FHR convened a national Food Summit in 2016 as part of the SERSA programme. A report on food sovereignty gardens was drafted based on research undertaken by the FHR in the Northern Cape, Eastern Cape, Gauteng and Western Cape.²⁵⁰

The SERSA programme reflected a shift in the FHR to highlight self-reliance. According to Ms Thoko Mpumlwana, FHR Board Chairperson, ‘the days of promises and hand outs are not taking us where we need to be. Human dignity includes the ability to feed ourselves and build our own homes.’²⁵¹ The FHR implemented an asset-based community development model, a bottom up approach to working with communities that focuses on their strengths and potential rather than their deficits.

Access to land

The FHR continued to play a critical role in the advancement of land rights. The SEJA programme included capacity building of civil society organisations on the land claims process; policy dialogues and support for activities organized by sector partners.

In June 2017, the FHR, in partnership with the Nelson Mandela University and the University of Limpopo held a symposium on land, heritage and human rights at the University of Limpopo in Polokwane which was attended by 60 participants. The aim of the symposium was to bring together landowners, land claimants, land claim lawyers,

the land claims Commission and relevant government departments to examine bureaucratic constraints slowing down land redistribution and restitution. The symposium explored policy and legislative options to break the impasse. Judge Albie Sachs was the keynote speaker. He emphasized that the Constitution included ample room for land reform and rejected the idea that the Constitution be changed to speed up the land reform process. The symposium provided clarity around expropriation of land without compensation and that this was not possible under section 25 of the Constitution but that it did allow for expropriation of land with just and equitable compensation, even below the market value. A 10-point plan was drafted to influence government on the issue.

In July 2017, the FHR supported the DoJ&CD to train community-based advice offices on the land claims process to enable them to assist land claimants to lodge claims and to follow up on outstanding claims. The training focused on the historical context of land restitution, the legal framework of land claims, the land claims process, the role of the Commission on Restitution of Land Rights, the role of the Land Claims court and mediation skills for dispute resolution within the land claims context.

Community Based Advice Offices

The SEJA programme continues to support community advice offices. The FHR continued its efforts to address the sustainability of the sector and hosted a symposium with NADCAO and ACAOSA to discuss mechanisms for the government, the private sector and donors to partner with community advice offices.

The FHR completed a survey of 103 community-based advice offices across all nine provinces. The survey highlighted the high staff turnover in advice offices. The survey confirmed that advice offices were located at the coalface of the struggles of the poor and marginalized, particularly around socio-economic rights. Advice offices were trusted as the staff come from the community and could communicate in local languages. Paralegals offered free legal advice and support on a vast array of issues including labour issues, housing matters and social welfare disputes. Advice Offices, similar to other human rights sectors, had increasingly integrated responses that promoted self-reliance and social enterprise. This included stokvels, income generating projects and promoting home food gardens. The survey included stories of change and impact and showcased the value of the work done at community level.

Orange Farm Advice Centre

The Orange Farm Advice Centre focuses on both the promotion of human rights and works to equip people with income generation and self-sustaining strategies. The Centre recognised that there are few initiatives to make people aware of their rights or provide legal advice. The organisation simultaneously encourages people to address issues affecting them, 'unemployment is a burning issue.' People living in Orange Farm have been affected by retrenchments and the ongoing lack of work opportunities. The organisation, 'shifts people from depending on the government and the private sector... There is no time to wait for somebody to come and change your life.' While the projects that it runs help to put food on the table, they also instill hope as people feel that they can respond to their own issues and take care of themselves.

The FHR produced a Directory which mapped where advice offices were located and the kind of services they provided. The FHR intended on mapping all advice offices in the country, but the fluidity of the sector made this a challenge as advice offices often close due to a lack of resources. During the SEJA programme, funding continued to be a major challenge with many community advice offices closing down, others that remained open were operating in survival mode.

The FHR continued its support and training to advice offices and supported Commissioner of Oaths training for paralegals. This was important in rural areas where there are very few commissioners of oaths. Paralegals who completed the training were issued with certificates.

In March 2018, NADCAO and Association of Community Advice Offices of South Africa (ACAOSA) announced that the two organizations would merge into a single entity called the Centre for the Advancement of Community Advice Offices (CAOSA). In June 2019 CAOSA held its first Annual General Meeting, where the representatives for provincial and national councils were elected.

The FHR continued to advocate for the recognition of paralegals with the DoJ&CD. In 2018, the FHR was requested by DoJ&CD to assist with reinvigorating the recognition process and with the development of a discussion document on the future of the community-based advice office sector in South Africa. The discussion document addressed three key issues: the regulation and governance of the CAO sector; the recognition of community-based paralegals who work at CAOs; and an appropriate and sustainable funding model for CAOs.

The FHR, the DoJ&CD and CAOSA organised national and provincial workshops on the discussion document 2019. The workshops were intended to facilitate and fast-track the future legislative process by reaching consensus on a number of potentially contentious areas. The inputs from the workshops and discussion document formed the basis of a policy paper that would set out the state's proposal for the future regulation of the CAO sector.

Rights of Refugees, Asylum seekers and Migrants: addressing xenophobia

After the unparalleled violence and displacement that took place in 2008, the SAHRC, HSRC, the International Organisation on Migration (IOM), the Forced Migration Studies Programme (FMSP), Atlantic Philanthropies and other institutions undertook research studies to better understand the nature and causes of the attacks and to develop recommendations towards preventing future attacks and improving responses should such attacks recur. Despite ongoing sporadic attacks against migrants after 2008, recommendations generated from these research projects had not received much traction. The issue of xenophobia was left simmering on the back-burner until it resurfaced on a mass scale, as researchers had predicted that it would, in 2015.²⁵⁸

The FHR had long recognised that addressing xenophobia required a committed, multi-pronged and multi-stakeholder response. Prior to the 2015 attacks, the FHR commissioned research to assess whether the recommendations generated from the 2008 research projects had been implemented and the impact that this had had on

subsequent responses to xenophobia. During the research process, in April 2015, another mass-scale outbreak of xenophobic violence occurred which triggered government departments to revisit the recommendations that, until then, had largely not been implemented.

The 2015 FHR research found that finalising the NAP and hate crimes legislation were two key interventions that would contribute to creating a legal definition, recognising xenophobia as a crime and enabling the relevant departments to track the prevalence of xenophobia-related crimes.²⁵⁹ The FHR convened a policy platform for migrants from across South Africa to comment on the draft Hate Crimes, Hate Speech Bill in January 2017.

The FHR continued to address the issue of xenophobia with a sense of urgency and convened monthly meetings at its offices to engage with organisations addressing xenophobia and refugee, asylum seeker and migrant rights. The meetings created a platform to exchange ideas on best practices and plan and coordinate activities.²⁶¹ The FHR supported ongoing community dialogues; education programmes to reach migrants and refugees; created spaces for refugees and migrants to engage in policy processes; piloted dialogues on xenophobia and related intolerances at schools; and created access and linkages between migrant and refugee communities and senior government officials, the police and chapter nine institutions.

“I think this workshop made me understand what xenophobia really is all about. It made me realise that it can come to an end if only people can be educated about it. I will share what I have learnt here with other young people. The programme has helped me to know how to stand against xenophobia.” – Learner who participated in the pilot schools programme

Addressing Racism

The FHR continued to assist the DoJ&CD to draft the National Action Plan to Combat Racism, Racial discrimination, Xenophobia and Other Related Intolerances (NAP) through co-chairing the NAP Steering Committee with the SAHRC. Cabinet finally approved the NAP for public consultation in 2016. The FHR and the DoJ&CD conducted a series of awareness raising workshops on the NAP across the country, in addition to the DoJ&CD publishing a call for comments and submissions on the draft. In April 2019 the DoJ&CD with a support from FHR, officially launched the NAP in Johannesburg.

In August 2016, South Africa appeared before the International Committee on the Elimination of Racial Discrimination (ICERD). Its 30 recommendations included concern over inadequate funding to the SAHRC and questioned why recommendations made by the TRC had not been implemented. The committee encouraged South Africa to prosecute apartheid-era crimes in order to avoid impunity and to adequately address reparations. The committee recommended that the state conduct educational campaigns on access to judicial remedies for racial discrimination and to raise awareness on the purpose and function of equality courts.

TRC and Countering Impunity

The FHR never tired of its commitment to address justice and impunity from the apartheid era. The Promotion of National Unity and Reconciliation Act of 1995 provided that if amnesty had been denied or not applied for or granted by the TRC, that the law should follow its course with perpetrators responsible for violations being prosecuted.

The FHR support in previous programmes included applications to compel the state to produce prosecutorial guidelines, the prevention of the use of presidential pardons for political crimes and compelling the State to indict in cases that were not satisfactorily addressed through the TRC.

The FHR, in partnership with lawyers, investigators and human rights activists – including representatives of the Legal Resources Centre (LRC), Khulumani Support Group and private law firms supported ongoing investigations and pursued justice in eight apartheid-era crimes where activists died under suspicious circumstances while in detention.

One of them was student activist, Matthews Mabelane, who fearing for his life, wrote a message to his family while he was in detention at John Vorster Square in 1977. On February 16, 1977 newspapers reported that he had jumped out of the 10th floor of the John Vorster Square building, now the Johannesburg Central Police Station.

The FHR supported the reopening of the Ahmed Timol inquest. A 1972 inquest found that Ahmed Timol had committed suicide in 1971 and that no one was responsible for his death. A new hearing took place in June 2017 in the Gauteng High Court. Judge Billy Mothle, in a judgement handed down in October 2017, found that Ahmed Timol did not commit suicide as was claimed in the inquest, but that he was pushed out of the window of the 10th floor or from the roof of the former John Vorster Square Police Station. The ruling overturned the 1972 inquest. Judge Mothle recommended that three former security policemen who gave evidence face charges for committing perjury and that one of the security policemen be charged as an accessory after the fact to murder.²⁶⁴

Nokuthula Simelane was a 25-year-old University of Swaziland graduate when she disappeared in Johannesburg in 1983 while on a mission for uMkhonto weSizwe (MK) the armed wing of the ANC. She was allegedly abducted and tortured by the Security Branch of the former South African Police. She was never seen again.

The FHR supported Nokuthula Simelane's family's quest for justice in a case against former Soweto Security branch police officials Willem Coetzee, Anton Pretorius, Frederick Mong and Msebenzi Radebe for their alleged role in Simelane's murder. The former police officials asked the police to pay for their legal costs as they were working on behalf of the apartheid state at the time. The court ruled that their legal fees be paid for by the police and the three were indicted for her murder. ²⁶⁵ In August 2019 the North Gauteng High Court granted a presumption of death order. The presumption of death was required to prosecute those responsible for her death. Her family are still to locate her remains so that she can be buried with dignity.

The progress in these cases gave hope to the families of victims who died during detention at the hands of the notorious security Branch, that they too could find justice and closure on a painful chapter in their lives. The families of Kakadi Nicodemus Kgoathe, an activists who died in custody in February 1969, with the police claiming that he died from injuries sustained when he slipped in the shower; Neil Aggett, a doctor and trade union organiser who died in detention in February 1982, with the police claiming that he committed suicide; Ashley Kriel, an activist who was shot and killed in July 1987; and Dr Hoosen Haffejee, a dentist who was alleged to have committed suicide in August 1977 despite medical evidence of torture; have approached the FHR, LRC and partner organisation in search of the truth, justice and closure.

As a result of these efforts, the National Prosecuting Authority (NPA) re-opened the Neil Aggett inquest and agreed to address the Matthews Mabelane and Dr Haffejee cases. Investigators have begun looking through inquest records, post-mortem reports, and photographs. The FHR is preparing an implementation plan and is costing each case. Other families who lost loved ones are considering re-opening the cases.²⁶⁸ The FHR hopes that these cases will pave the way for prosecutions of apartheid-era perpetrators at more senior levels.

Funding for these matters is a constraint. The FHR was precluded from funding trial fees from SEJA funds but received some funding from the Open Society Fund and is seeking additional funding to pursue these cases.²⁷⁰ The FHR engaged in discussions with the DoJ&CD to find a sustainable solution for the more than 300 unresolved TRC cases.

Youth rights

The FHR intensified its focus on youth development and the rights of young people. This included engaging with the National Youth Development Agency to hold it accountable to its deliverables and the contents of the national youth policy. The FHR supported the Youth Rights and Innovation programme in 2016 which supported the NDPs goals of active citizenry. The FHR ran a capacity building project in Thembelihle, a community that has experienced ongoing instability and poor governance. The area has been engulfed by protests which the state responded to with force. The area has been affected by corrosion of trust between the community and the state. The Thembelihle Crisis Committee (TCC), an affiliate of the Right2Know campaign, worked with youth in the area to build capacity for more meaningful engagement and participation in governance systems.

The FHR hosted a National Youth Rights Education and Innovation workshop in September 2016 in Kliptown Johannesburg with youth from seven provinces in South Africa. The workshop built leadership capacity in youth working in various sectors including environmental issues, reproductive health and gender-based violence. The workshop raised awareness on youth policies and institutions including the African

Youth Charter, the National Youth Policy and the National Youth Commission. The workshop addresses issues affecting young people including unemployment, drug and substance abuse, violence and gender based violence. Youth workshops continued in 2017 to equip marginalised youth to participate in policy making processes.

The FHR sought to identify gaps in public policy that disadvantage youth such as difficulties in accessing housing. The FHR encouraged self-reliance among youth which included learning exchanges with youth from other countries to learn self-reliance strategies such as growing food, forming stokvels and developing income generating strategies. The programme included identifying the potential of solidarity economies and ensuring that money circulates within communities.

LGBTI rights

South Africa has the only Constitution that includes sexual orientation as a ground for unfair discrimination. Having achieved this significant victory, activists focused on developing a litigation strategy to make this right meaningful for the LGBTI+ community. This resulted in a series of successful court challenges, most notably a 2002 judgement requiring that same sex couples be afforded the same rights as heterosexual couples under South Africa's marriage laws which led to the Civil Union Act in 2006. It was a positive and important piece of legislation as it introduced a legal regime that recognized and regulated domestic partnerships. Despite these gains, LGBTI communities continued to experience discrimination and hate crimes.

Triangle Project

The Triangle Project was established in 1996 in Cape Town working on HIV/AIDS and LGBTI+ rights issues. It offers a wide range of services including health, public education and training, and research and advocacy. In 2011, the FHR supported the Triangle project to address violence perpetrated against LGBTI+ people and to assist with the establishment of a task team to address violence and hate crimes against LGBTI+ people.

In February 2006, 19-year-old Zoliswa Nkonyana, a lesbian woman, was stoned and stabbed to death close to her home in Khayelitsha by nine young men. Six years and over 50 court postponements later, four of the accused were convicted of murder with the sentence explicitly naming discrimination based on sexual orientation as an aggravating factor. This was an important precedent as it introduced discrimination on the grounds of sexual orientation into the criminal justice system. The Triangle Project provided consistent support to Zoliswa's family, friends and LGBTI+ community activists. It undertook a participatory research project of the case. An estimated 30 lesbians had been attacked and murdered in the country in the 15 years prior.²⁷²

In 2011 the DoJ&CD established a National Task Team (NTT) consisting of LGBTI+ organisations, Chapter 9 Institutions and government departments to deal with hate crimes against the LGBTI+ community. The FHR supported provincial consultations that were held to set up the NTT. A National LGBTI+ Programme was launched at the Women's Gaol in Constitutional Hill in June 2014 by the previous Minister of Justice and Constitutional Development, Mr Jeff Radebe.

The FHR played the role of secretariat for civil society participation in the NTT working group meetings, where national strategies for the promotion and protection of LGBTI+ rights were discussed and implemented, in partnership with the DoJ&CD. The NTT meets four times a year.²⁷³ The FHR also supported the establishment of provincial task teams (PTT).

The NTT has demonstrated government support for LGBTI+ rights and has provided a platform to address issues like secondary victimisation that can occur at the hands of police officials, the court process or other service providers meant to assist with addressing rights violations. The FHR, through the NTT, challenged the 'gay panic' defence, a legal strategy which asks the justice system to find that a victim's sexual orientation or gender identity was to blame for the defendant's violent reaction. This defence has compromised access to justice for victims of homophobic violence. The FHR has provided emergency funding to respond to cases and issues that have emerged.

The FHR created a case reporting template for the National LGBTI+ Rapid Response Task Team and conducted a nation-wide review of the effectiveness of the NTT, PTTs, Rapid Response Task Team and the National Intervention Strategy. In 2017, the FHR experienced a funding shortfall that affected its ability to support CSO participation in NTT and PTT meetings. Organisations working in the LGBTI+ sector have struggled to access adequate funding sources. Some events were suspended as a result.

The FHR supported events to commemorate the International Day against Homophobia and Transphobia (IDAHOT), a day that celebrates the declaration in 1999 by the World Health Organisation that homosexuality was no longer classified as an illness. The 2015 IDAHOT events held in the Free State province highlighted issues affecting LGBTI+ youth with a focus on transgender youth. This was in response to a number of cases where transgender youth were killed, experienced humiliating discrimination or committed suicide.

The FHR partnered with Iranti, Intersex South Africa (ISSA) and the DoJ&CD to host a national dialogue on intersex rights in December 2017. The dialogue addressed issues facing the intersex community, particularly the rights of intersex infants and children.²⁷⁶ The gathering addressed issues of intersex genital mutilation, infanticide, medical procedures and standards of living.²⁷⁷

The FHR commissioned a gap analysis review of laws and policies relating to the right to equality for trans and intersex communities. The paper focused on the legal recognition and legal protection of trans and intersex people.

South Africa is one of the few countries in the world that has a national structure for the implementation of LGBTI+ rights. While South Africa has a legal framework to protect the rights of LGBTI+, ongoing interventions are needed to make these a reality. It provides a best practice model that could be shared with the region.

Gay and Lesbian Network

The Gay and Lesbian Network (GLN) responds to the psycho-social needs of the LGBTI+ community. The GLN was established in response to a needs survey of the LGBTI+ community in Pietermaritzburg, KwaZulu-Natal. Its three programmes are safe spaces, health and the creation of an enabling environment for the community. The GLN tackles hate crimes and created a Pietermaritzburg-based Hate Crime Task Team. It comprises representatives from NGO's and government departments and works closely with the National Hate Crimes Task Team.

Sipho D, a GLN counsellors and facilitator, was attacked by six or seven men because of his sexual orientation, 'We had a workshop for homosexual and heterosexual people in the community and these guys attended. We are now talking to each other. The workshops have really helped a lot... I think they felt ashamed and they apologised and I accepted their apology.'

At an international level, the South African government had committed to support the appointment of an independent expert on Sexual Orientation and Gender Identity (SOGI) by the United Nations Human Rights Council (UNHRC). The expert's role would be to report annually to the UNHRC and General Assembly on best practices to minimise discrimination on the grounds of sexual orientation and gender identity. The South African delegation to the UN, contrary to expectations, abstained on the vote. The SOGI resolution was passed despite no African country voting in favour of it. The FHR urged the South African government to support resolutions at international and regional level that are in alignment with the country's Constitution which it eventually did when Ambassador to the UN, Jerry Matjila broke ranks with the African group and affirmed South Africa's constitutional obligations.

The FHR supported an African Regional Seminar on issues impacting on the LGBTI+ community in March 2016. The seminar provided an opportunity for NGOs, government officials, human rights institutions and religious organisations to engage on issues affecting LGBTI+ people in Africa and to deliberate on how to end violence that is often experienced by LGBTI+ people.

Gender Equality and Resolution 1325

The Executive Director of the FHR, Yasmin Sooka, was appointed by UN Women as an expert on the Global Study of Resolution 1325. The resolution promotes women's participation and gender equality as key elements to long term security. A Global Review was completed in 2015 and submitted to the UN Security Council. Ms Sooka participated in the launch of the Global Review in South Africa. The FHR conducted provincial workshops on the Global Review and Resolution 1325 and developed a National Action Plan on women, peace and security, in support of the resolution. The provincial consultations included women's organisations and government stakeholders such as the Department of Women's Affairs, the Ministry of Defence and the Department of International Relations and Cooperation (DIRCO).

The FHR supported the production of radio programmes for women's month in 2017 with a focus on women, peace and security linked to the UN Resolution 1325. The programmes were aired on community radio stations and reached over 800 000 people. The FHR participated in a discussion on Resolution 1325 in Uganda which raised the issue of women living under plural legal systems. This remains an issue in South Africa where traditional authorities can limit women's access to land, inheritance or be supportive of lowering the marriage age.

The FHR supported Youth Without Borders to host a series of monthly dialogues on gender based violence with young people.²⁸⁰ The FHR undertook a mapping exercise in communities in August 2017. The mapping sessions included identifying hotspots for violence which included homes, schools, churches, drug houses, taverns and taxi ranks. Advice offices ran campaigns during women's month on issues relating to violence against women and children.

In 2015, the Women's Legal Centre (WLC), supported by the FHR, brought a court application against the South African government for failing to pass legislation that would recognise Muslim marriage. The lack of legal recognition often left women without access to property, money or resources in the event of a divorce. The application was opposed by representatives of the Association of Muslim Women of South Africa and the United Ulama Council of South Africa. The FHR supported an advocacy campaign to mobilise support of Muslim women and provide information on their rights.²⁸¹ The WLC was successful in its application to have Muslim marriages recognised.

The FHR partnered with the DoJ&CD to host a workshop on sexual offenses in October 2017. The workshop focused on how the criminal justice system responds to the reporting and prosecution of sexual offenses and to identify inefficiencies in the criminal justice system.

In November 2018 the FHR funded a Presidential Gender Summit. This was a follow up to the campaigns from August 2018 which called for a #TotalShutdown to get the government to take the issue of gender-based violence seriously. The #TotalShutdown movement developed a set of 24 demands that included the need to finance gender related programmes.

Business and Human Rights

The FHR continued with its work to address business and human rights, connecting with international developments.

In 2005 the UN Commission on Human Rights appointed a special representative, John Ruggie, on business and human rights. In 2008 he proposed the UN Guiding Principles on Business and Human Rights (UN Guiding Principles, also known as the Ruggie Principles), a set of principles based on the pillars of respect, protect and remedy. In 2014, Ecuador and South Africa tabled a draft resolution at the Human Rights Council

to establish an open-ended intergovernmental working group (OEIGWG) with a mandate to develop a legally binding instrument to regulate transnational corporations and other business enterprises.²⁸² This led to the development of the Zero Draft which serves as a basis for further negotiations on an international treaty that is meant to establish a binding international framework to ensure that transnational corporations are held to account for committing serious violations of human rights.

During the SEJA programme, the FHR raised awareness of the UN Ruggie Principles and Guidelines at a consultative conference attended by DIRCO, CSOs, trade unions and the Chamber of Mines.²⁸³ In November 2017, the FHR launched the Human Rights Compliance Assessment (HRCA) at a workshop attended by stakeholders including CSO's, trade unions, Chapter 9 institutions and the mines. In 2019, the FHR commissioned Prof David Bilchitz, from the University of Johannesburg, to provide an analysis of the Zero Draft.

Human rights violations by the corporate sector can be perpetrated in many forms. In South Africa, there is growing evidence of extensive acts of corruption perpetrated by government and private sector actors, including transnational corporations. From inappropriately awarded tenders and irregular government appointments to, 'massive looting by private sector companies like KPMG, McKinsey, SAP and others who were acting in collusion with individuals who enjoyed close relations with ANC leaders and government ministers.'²⁸⁴ The scale of corruption is still surfacing as evidence is brought to various commissions investigating it. These include the state capture commission chaired by Deputy Chief Justice Raymond Zondo; the SARS commission on governance irregularities, chaired by retired Judge Robert Nugent; the Public Investment Corporation investigation led by former Supreme Court of Appeal, Judge Lex Mpati; and the NPA commission led by former Constitutional Court Judge Yvonne Mokgoro.

International solidarity

The FHR supported the International Federation for Human Rights (FIDH) Conference in August 2016. 400 Human rights defenders from across the globe attended the conference which focused on issues including the rise in terrorism, increasing religious conflicts, mass displacements and internal conflicts giving rise to human rights violations and the rise in economic inequality.

The FHR hosted a meeting of civil society organisations to discuss South Africa's Universal Periodic Review to the UN Human Rights Council in 2017. Issues raised by the council included South Africa's response to the rights of migrants and affirming the role of human rights defenders.

Raising awareness on rights

In 2016, the FHR participated in a National Colloquium on Constitutional Awareness and Human Rights with the DoJ&CD, Know Your Constitution Campaign (KYC) and the

SAHRC. The colloquium resulted in an Action Plan on Constitutional and Human Rights Education in 2016. The FHR was responsible for the Big Debate, engaging the DBE to develop a programme on sexual violence and teenage pregnancy; the National School's Moot Competition; celebrations for the 20th anniversary of the constitution; collation of various surveys that had been conducted on human rights; training paralegals and completing the Baseline survey to gauge constitutional and human rights awareness.

The Big Debate continued into the SEJA programme with its next series aired from 25 November 2017 to 5 March 2018. Topics covered included mine workers and industrial action filmed in Marikana; farmworkers and the campaign for a living wage filmed in De Doorns; problems faced by LGBTI communities in rural areas filmed in Limpopo and addressing inequality through taxation and redistribution filmed in Alexandra Township and Sandton. In 2016, an episode of the Big Debate focused on 20 years of the Constitution. In the SEJA programme the Big Debate was moved from eNCA to SABC as SABC is free and has a wider viewership.

The AmarightZA Human Rights Special TV show which aired on Human Rights Day, 21 March 2015 was hosted by Masechaba Lekalake and addressed issues like sexuality, xenophobia, the right to food and work and how these intersect with human rights. The shows reached an audience of over 7 million people. The messages were shared on Facebook and Twitter. The FHR increased its social media presence during the SEJA programme.

Community Mapping and Active citizenry programme

The FHR and the DoJ&CD developed a Community Mapping (CM) Programme. It was informed by the NDP 2030 approach to promote active citizenry for inclusive development in South Africa. This included CBOs mapping community human rights needs and issues using participatory action research tools. From 2015–2017, 11 organisations were selected from various provinces in South Africa to participate in the mapping process. The organisations worked on a range of issues including the rights of farm workers and labour rights, right to adequate housing, access to water and sanitation, the rights of people with disabilities, child rights and the right to education.

The mapping exercise found that citizens felt excluded from key socio-economic decisions impacting their lives. Resource allocation at local government level was politicized resulting in a lack of trust between citizens and government. Creating spaces for engagement led to better collaboration and a decrease in violent protests.

The SEJA programme continued to create spaces for engagement. The FHR hosted dialogues that addressed issues including race relations, xenophobia, democracy, good governance and the constitution, the effectiveness of chapter nine institutions, the rights of the aged and people with disabilities, gender equality, gender transformation in the legal sector, the recognition of paralegals in the legal sector, business and human rights and the rights of transgender and intersex people.

In 2016, the FHR in partnership with the DoJ&CD hosted a national consultation on the draft country report on the International Covenant on Economic, Social and Cultural Rights. The FHR hosted a dialogue on the implementation of South Africa's withdrawal from the Rome Statute of the International Criminal Court in November 2016.

To address the ongoing student protests the FHR engaged in discussions with the Steve Biko Foundation and the Nelson Mandela Foundation to run a series of dialogues on the student crisis including the use of private security on campuses.

CSO sustainability

The FHR remained concerned about the sustainability of the CSO sector, particularly the ability of smaller organisations and community based organisations to obtain funding. With South Africa being considered as a middle income country, many funders had either moved from funding within South Africa or signalled their intention to move away from the country.

The FHR commissioned a comprehensive audit of the funding for CSOs in the social justice and human rights sector. It carried out a number of studies to develop a sustainability index to be used by government to create a conducive environment for civil society to continue with its work. The study included a review of the tax regime policy which favours private philanthropy. It included an updated survey on CSO's currently undertaking human rights activities.

The FHR also sought to better understand CSO concerns that the space for civil society and its role in influencing policy and legislation was shrinking. The FHR carried out a survey to examine the environment in South Africa for civil society. The survey assessed the following issues: legal environment, organisational capacity, financial viability, advocacy, service provision, infrastructure and public perception.

The FHR developed a discussion document titled 'On the Strategic Engagement Between Social Justice and Human Rights Organizations and the Government in South Africa.' The discussion paper aimed at initiating engagement on the formalization of a relationship between the government and social justice and human rights organizations.

Conclusion

While South Africa has come a long way from the dark days of apartheid, the transition to democracy has been far more complex than was expected in 1994 when there was confidence that the election slogans of a 'Better Life for All' would lead to real and rapid material change and the miracle of the 'Rainbow Nation' would seamlessly navigate the country out of its reprehensible racist past.

Despite significant gains in the past two decades, there remain significant obstacles to making rights real for the majority of South Africans:

We contend with mass racialised impoverishment, systemic criminal, political and state violence, a deeply corrupt state that has become a mechanism for accumulation and domination by a predatory class in and around the ruling party rather than an instrument of democratic rule, an economy in rapid decline and marked by serious corporate corruption, a public sphere largely devoid of the institutions that could enable rational and inclusive discussion, and a ruling party so bitterly divided between two factions of oligarchic authority that it cannot have a lucid discussion, let alone find a path out of the crisis.

These complex dynamics have left ordinary people with a sense of alienation from the political system. In South Africa this alienation, materially experienced through gross and relenting inequality, has been expressed through widespread and ongoing violence, social unrest, xenophobia, crime and gender based violence.

In this fraught atmosphere of declining trust, a breakdown of relationships in the public sphere and growing manipulation of social media, the FHR has worked tirelessly to restore engagement and public dialogue. Through its funding of community based advice organisations, the FHR has highlighted the experiences of the majority and particularly vulnerable groups. It has facilitated wider and more inclusive participation and held those in power accountable. It has instilled hope and a sense of agency and self-reliance in communities experiencing despair. In the context of polarisation, the FHR has been one of the few players able to play the role of interlocutor, mediator and translator, facilitated by its support from the DoJ&CD. The FHR contributed to and supported movements and organisations that have worked to build popular power from the ground up and while there have been notable successes, it has been a tumultuous and demanding journey. According to Judge Siraj Desai, a long standing FHR Board member, 'We didn't realise the enormity of the task.'

The FHR's SEJA programme built on the foundations of its work over time. When the FHR first started, it prioritised legislation and policy development, worked to transform institutions including the justice system and utilized protections enshrined in the constitution and new legal framework to advance human rights. The SEJA programme saw the FHR foregrounding socio-economic rights including working to make socio-economic rights tangible outside of the government system. The FHR funded community based programmes based in impoverished urban and rural settings that emphasized self-reliance. This new trajectory speaks to the lack of confidence in government's ability to provide services, build local communities and make the rights in the constitution a reality. This shift to local organizing and empowerment will likely grow as South Africans realise that relying on government alone to address economic deprivation and to improve future prospects is unlikely without significant pressure and action from below.

Within this context of complexity and conflict, the work of the FHR remains as important today as it was when it was first established in 1996.

