

## Public Interest Legal Services and the Legal Profession

A key finding of the research is that a tougher regulatory approach to fees is required. Many respondents in the sector support the idea of a fees guideline but most are opposed to a cap on fees.

Another key conclusion concerns expanding sector capacity to train and retain legal practitioners. Constraints to training and retaining staff include perceptions about public interest law centres at the bar, the requirement that NGOs have to pay costly door membership at some of the individual bars for in-house advocates and constraints to training advocates at public interest law centres.

Many respondents spoke about the lack of racial transformation in the public interest legal services sector.

Finally, the study identifies the Legal Practices Act as a meaningful opportunity for strategic reform of the legal profession.



Public interest legal services organisations, however, are unique in providing services free of charge, with no real expectation of monetary benefit from any of the cases they take. Almost by definition, they represent the vulnerable and the excluded, because inability to afford legal representation is itself a hallmark of social exclusion.

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- » In order to increase access to public interest legal services donors should develop a **flexible fees guideline** in consultation with grantees in the medium term.
- » To increase capacity in the public interest legal services sector, and to address racial transformation, public interest legal services organisations should develop **human resource strategies** (where they have not already done so) for training and retaining staff. These strategies could address training and developing the advocacy skills of attorneys in the sector, the employment of in-house counsel on a full-time or mixed model basis and pupillage bursaries and sabbaticals. These strategies should also address the promotion of racial and gender transformation in briefing patterns. Donors should encourage the development of such strategies and support their implementation in the medium term.
- » In order to address the problem of access to legal services in the context of capacity shortfalls, donors should also consider establishing a **special litigation fund** in the short to medium term for urgent or unforeseen issues that arise in the sector. The fund should be supplementary to existing funding arrangements.
- » In order to address reform in the legal profession, donors and grantees should advocate together to law societies and the bars on the Legal Practices Act. A further issue for a **shared advocacy agenda** in the medium term is the perception of public interest law centres at the bars. Here, the advocacy issues are to enable public interest law centres to train advocates, to reduce or waive bar and group membership fees for advocates in public interest law centres and to counter perceptions that hinder public interest law centres being sites for long term careers.

## Study of Public Interest Legal Services in South Africa

Key findings  
and summary  
recommendations

Commissioned by the RAITH Foundation and the Ford Foundation, and undertaken by the Socio-Economic Rights Institute of South Africa (SERI), the study investigated these questions:

- » What is the nature of the public interest legal services sector in South Africa?
- » In what context does it operate?
- » How can its value and impact best be characterised and measured?
- » How, and to what ends, do members of the sector co-ordinate their activities and collaborate with each other?
- » What role do public interest legal services play in expanding access to justice? What obstacles do they face in doing so?

## Value and impact in the Public Interest Legal Services Sector

The objective of the value and impact component of the research was to contribute to a better understanding of the value of strategic legal services in the current South African context. Our key finding concerns the way the sector characterises value

and impact: issues rather than cases; a wide range of methods including but not limited to litigation; and diverse sites of impact. This led us to conclude with a multi-dimensional approach to the value and impact of the work being done in the sector.

### THE MULTIDIMENSIONAL APPROACH

#### ISSUE

Public interest legal organisations are working on a very broad range of *issues*. These include: basic services | corruption | education and schools | children's rights | environmental justice (including mining, climate change, pollution) | gender (including gender-based violence, discrimination, sexual violence, LGBTQ) | health care (including public health systems, HIV/AIDS) | housing and land | public accountability | access to information and open governance | refugee and migrant rights | rural justice (traditional leaders, land) | policing and the criminal justice system | security of farm workers | social security.



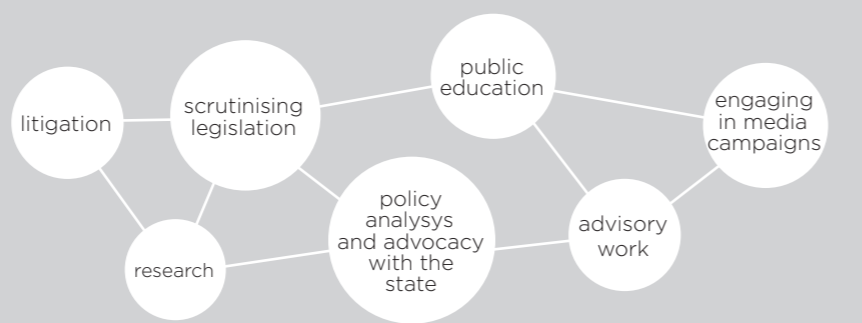
#### SITES OF IMPACT

Rather than emphasising a consistent theory of social change, our respondents discussed a large number of what we refer to as *sites of impact*:

- » **Obtaining a positive outcome for particular individuals and groups:** actual concrete change to the lives of clients, individuals and communities.
- » **Changes to law and policy:** changes in policy that have occurred as a result of an intervention.
- » **Institutional changes:** a shift in values and attitudes of government or the way that institutions work or organize themselves.
- » **Symbolic and discursive changes:** how an issue is understood and discussed, in the public domain.
- » **Expanding democratic space:** access to spaces of democratic participation and the impact on active citizenry and social mobilisation.
- » **Strengthening the public interest law sector:** the ways in which interventions enhance the way sector works, strengthen organisations and create new alliances or networks.

#### METHODS

Public interest legal services organisations use a range of *methods* to address these issues. Understanding the value of legal services means understanding how all of these methods work together. This is only possible if one focuses on issues rather than cases.



The approach was well received in the sector consultation workshops: some people commented that it reflected the manner in which they approach their work already; others found it organisationally useful for internal dialogue and strategising about the work. The approach was seen as a useful framework for not only assessing value and impact of interventions already made but also for up-front planning.

To assess value, measure impact and strategically plan interventions donors and PILS organisations should, where they are not already doing so, make use of and further develop the **multidimensional approach to value and impact** proposed in the study.

## Coordination and Collaboration in the Public Interest Legal Services Sector

The study found that a wide range of collaboration already exists, especially among litigating NGOs. Our respondents stressed that effective coordination and collaboration has to be voluntary and organic. Donors have an important role to play in creating and fostering spaces in which public interest law organisations can come together to discuss matters of mutual concern. However, donors should not adopt an acontextual approach to coordination and collaboration, or attempt to force it where it is not warranted by the context.

A significant critique emerged in the research about the relationships of law centres to others in the sector, especially community based organisations and academic researchers. More needs to be done to improve coordination and collaboration with community based organisations and relationships with academic researchers.

Community based advice organisations tend to be overlooked and under-funded. A multi-dimensional approach reinforces the need for a broad definition of public interest legal services organisations and should encourage donors to take the under-funded community based advice organisations more into account.

To strengthen coordination and collaboration and to deepen partnerships within the sector and in relation to civil society there are several interlinked proposals.

- » The first is that donors should, in the short to medium term, undertake a **sector mapping exercise** in consultation with grantees in order to identify and locate the full range of public interest legal services organisations in South Africa in relation to each other.
- » Another is to increase focus on and support to **community based advice organisations** with a view to enhancing their role in a 'pipeline' of public interest legal services in the medium to long term.
- » A final proposal is that NGOs should grow and **develop existing coordination and collaboration initiatives** and donors should recognise those that already exist.