

LESSONS FROM SOUTH AFRICA FOR THE DELIVERY OF LEGAL AID IN SMALL AND DEVELOPING COMMONWEALTH COUNTRIES*

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SUMMARY

The South African legal aid scheme experience is a useful model for small and developing countries because it has tried numerous models of delivery and operates on a modest per capita annual expenditure. In most Commonwealth countries judicare, supplemented by pro bono work, is the most common form of delivery of legal aid services. The South African scheme illustrates how a combination of public defenders, including intern public defenders, and judicare can be used to operate justice centres that deliver a full range of legal aid services. It also shows how cooperative agreements between the Legal Aid Board and university law clinics, public interest law firms and paralegals can be used to supplement legal aid services, particularly in civil matters.

1 INTRODUCTION

This paper will deal with how the South African experience regarding innovative ways of delivering legal aid services may be of assistance to the delivery of legal aid in small and developing Commonwealth countries. Although South Africa is a large country with a population of about 45 million, it is a useful model for small and developing countries as it shows what can be done with a modest *per capita* annual expenditure on legal aid.¹

The effectiveness of the legal aid system in any country depends upon a number of factors, including (i) the structure of the legal profession; (ii) the country's international obligations; (iii) constitutional provisions; (iv) the national legal aid structures; (v) the budget available; and (vi) the model of

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¹ See par 6 below.

delivery used. Each of these will be discussed in the light of the South African experience.

2 STRUCTURE OF THE LEGAL PROFESSION

The size and structure of the legal profession will influence the ability of small and developing countries to deliver legal aid services. Such countries often have very small pools of lawyers to draw from for legal aid purposes.² However, this may be supplemented by using law students and law graduates, particularly where the latter are obliged to undertake a period of vocational training with qualified lawyers.

Most Commonwealth countries have inherited variations of the British concepts of solicitors and barristers, although in many instances these branches of the profession have been fused. Several Commonwealth countries have also retained aspects of the apprenticeship system for admission to the legal profession, either as articles or training with a solicitor or as pupillage or reading in chambers with a barrister. For instance, some form of apprenticeship is required in Bangladesh, Cameroon, Canada, Mozambique, Pakistan, Sri Lanka, and pupillage or a period in chambers in Botswana, Kenya, Malaysia, Malta, Papua New Guinea, Singapore and Nauru.³

For example, in South Africa, as in England, lawyers are divided into advocates (barristers) and attorneys (solicitors), of whom about 13% are advocates and about 87% attorneys.⁴ All law graduates have to undertake an internship either as pupil advocates or candidate attorneys⁵ before they can be admitted to practice.⁶ It has been estimated that the 21 university law schools in South Africa produce about 3 000 graduates, of whom about 1 500 go into the practising profession.⁷ The comparatively large number of law schools with legal aid clinics, and the large pool of law graduates

² An extreme example is Kiribati where the British High Commission estimated that in 2003 there were only five lawyers, of whom four were employed as People's Lawyers to provide legal aid to indigent Kiribati citizens (www.britishhighcommission.gov.uk/servlet/ (2004)). In 2003 the Chief Justice of Seychelles mentioned that there were only 32 lawyers in private practice (www.seychelles-online.com.sc/archives/10160903.html (2004)).

³ See generally, the relevant country entries in Hatchard (ed) *Directory of Commonwealth Law Schools: 2003-2004* (2002). See also Jegede "Legal Skills Training in Africa" paper presented at the 23rd Biennial Conference of the International Bar Association New York, United States of America, 19-23 September 1990.

⁴ At the end of the apartheid era 85% of the legal profession were white and 15% black, while 85% of the population was black (McQuoid-Mason "The Delivery of Civil Legal Aid Services in South Africa" 2000 24 *Fordham International Law Journal (Symposium)* S 111).

⁵ Candidate attorneys also have to attend an approved practical training course: s 2 of the Attorneys Act 53 of 1979. Such courses vary from five-month full-time practical training schools to part-time five-week short courses (*Law Society of South Africa Practical Legal Training: Courses 2002* (2002) 1 and 11).

⁶ *Ibid.* In 2003 it was estimated that South Africa had about 15 000 practising attorneys and about 2 500 advocates serving about 45 million people. Of these about 6 000 participated in the legal aid scheme (Trudie Jordaan, Legal Aid Board Administration Officer: presentation to the Lithuanian Legal Aid Parliamentary Working Group during a visit to the Legal Aid Board Head Office, Johannesburg 1 April 2003).

⁷ *Cf Swart Entry Into the Profession: What about Articles?* (1994) 1 (unpublished memorandum for the Law Society of South Africa).

required to undertake apprenticeships with qualified lawyers, enables law students and law graduate interns to play a valuable role in assisting the national legal aid body with the delivery of legal aid services.⁸

In small and developing Commonwealth countries with university law faculties and law schools, or where there are regional universities, (eg, in the Caribbean⁹ or South Pacific),¹⁰ law students and law graduates may similarly provide a useful resource for the provision of legal aid services.¹¹

3 INTERNATIONAL OBLIGATIONS

3.1 The International Covenant on Civil and Political Rights (ICCPR)

Most Commonwealth countries have acceded to the International Covenant on Civil and Political Rights (ICCPR) and have undertaken certain international obligations concerning the provision of free legal aid in criminal cases.

Article 14 of the ICCPR states that everyone charged with a criminal offence has, *inter alia*, the right to:

- (a) a criminal defence in person or with the assistance of a lawyer;
- (b) be informed of the above right where a person does not have the assistance of a lawyer; and
- (c) have a lawyer assigned at State expense “where the interests of justice so require” if the person cannot afford to pay for a lawyer.¹²

State parties must ensure that the procedural guarantees in article 14 are safeguarded and that the relevant legal institutions are established. Some Commonwealth countries have faced censure by the United Nations Human Rights Committee for not complying with this requirement.¹³

⁸ See par 7.4, 7.5 and 7.8 below.

⁹ For instance, the University of the West Indies in Barbados, the University of Guyana, the Cayman Islands Law School, the Eugene Dupuch Law School in the Bahamas, the Norman Manley Law School in Jamaica, and the Hugh Wooding Law School in Trinidad (see generally, Hatchard 122-124).

¹⁰ For instance, the University of the South Pacific Schools of Law in Fiji and Vanuatu, as well as the Australian and New Zealand universities and law schools (see generally, Hatchard 86-101; 176-178; and 211).

¹¹ See par 7.4, 7.5 and 7.8 below.

¹² Article 14.3.d of the International Covenant on Civil and Political Rights (1966).

¹³ See for instance, *Lavende v Trinidad and Tobago*, Communication No 554/1993, Views of the UNHRC, 29 October 1997 [1997] IIHRL 127, which stated that legal aid should be made available throughout death penalty proceedings and for the purposes of an appeal.

3 2 Regional instruments

3 2 1 *European Convention on Human Rights*

Commonwealth countries in Europe, such as the United Kingdom, Malta and Cyprus, are expected to comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the demands of the European Commission and the Council of Europe.

The European Convention has similar provisions to those in the ICCPR that protect the interests of accused persons charged with criminal offences. Article 6 of the Convention states, *inter alia*, that an accused person has "the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".¹⁴

The Council of Europe has made a number of recommendations concerning the provision of legal advice and assistance to poor people in civil, commercial and administrative matters.¹⁵

3 2 2 *American Convention on Human Rights*

The American Convention on Human Rights, the "Pact of San Jose, Costa Rica", provides that accused persons have the right to be presumed innocent and that during criminal proceedings every person is guaranteed, *inter alia*:

"The inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law."¹⁶

This provision applies to member Commonwealth countries on the American continents such as Canada, Belize and Guyana, as well as the Caribbean countries,¹⁷ most of which can be classified as small and developing countries.

¹⁴ Article 6.3.c of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

¹⁵ See for instance, Council of Europe Committee of Ministers Recommendation No R (93) 1 of the Committee of Ministers to Member States on *Effective Access to the Law and to Justice for the Very Poor* (adopted on 8 January 1993 at the meeting of the Ministers' Deputies).

¹⁶ Article 8.2.3 of the American Convention on Human Rights: "Pact of San Jose, Costa Rica" (1969).

¹⁷ Antigua and Barbuda; the Bahamas, Barbados, Dominica, Grenada, Jamaica, St Kitts and Nevis; St Lucia and St Vincent; and the Grenadines.

3 2 3 *African Charter on Human and People's Rights*

The African Charter on Human and People's Rights¹⁸ does not deal squarely with the requirement that people who cannot afford a lawyer be provided with one at State expense "where the interests of justice so require", and simply states:

"Every individual shall have the right to have his cause heard. This comprises ...
(c) the right to defence, including the right to be defended by counsel of his choice".¹⁹

However, although there is no right to counsel at State expense in the African Charter, those countries that have signed and ratified the ICCPR will be bound by the provisions of Article 14 of the ICCPR.²⁰

4 CONSTITUTIONAL PROVISIONS

Constitutional democracies protect the liberty of their citizens by guaranteeing them not only access to impartial and independent courts, but also to legal aid services, particularly in respect of criminal cases and breaches of fundamental rights. These provisions can have a major impact on the criminal justice system.²¹

¹⁸ The African Charter on Human and Peoples Rights (1981), entered into force 26 October 1986.

¹⁹ Article 7(1)(c).

²⁰ See par 3 1 above.

²¹ South Africa is an example of how a democratic constitution can impact strongly on the demand for legal representation in the criminal justice system. It was estimated in 1992 that 150 890 convicted persons were sentenced to periods of imprisonment without legal representation, while the Legal Aid Board provided defences for 38 247 accused persons (Legal Aid Board *Annual Report 1991-1992* (1993) 27). No statistics were published by the Ministry of Justice for the number of recorded cases in the regional and district magistrates courts during the 1996-1997 period but the figures are likely to be similar to the annual average during the past 10 years of over 50 000 regional court cases and over 2 million district court cases. Similarly, there are probably in excess of 600 000 district court criminal trials a year. Very few criminal cases are heard in the high courts. During the period 1996-1997 1 449 criminal trials were heard by the high courts (Department of Justice *Annual Report 1996-1997* (1997)) in which probably over 90% of accused persons were represented. For previous statistics during the apartheid era see McQuoid-Mason *An Outline of Legal Aid in South Africa* (1982) 59-60. In 1993 it was estimated that in the regional courts about 60% of 82 408 accused persons were unrepresented, while in the district courts, where 671 177 criminal trials were heard, about 89% of accused persons were unrepresented (Legal Aid Board *Annual Report 1994-1995* (1996) 28). However, after the advent of democracy in 1994 the number of unrepresented accused fell dramatically due to the influence of the constitutional right to legal representation in criminal matters. Thus during 1996-1997 the Legal Aid Board provided 123 983 criminal defences (Legal Aid Board *Annual Report 1996-1997* (1999) 23), and by 2003 it estimated that it was providing defences in about half the total number of criminal cases in the country (Legal Aid Board *Annual Report 2002-2003* (2004) 7).

4 1 Legal aid in criminal cases

Most Commonwealth countries, including small and developing countries, have provisions guaranteeing a right to counsel in “serious” criminal cases²² or “where the interests of justice so require”.²³ The South African Constitution uses the term “if substantial injustice would otherwise result”, in respect of arrested and detained persons²⁴ as well as accused persons requiring legal representation.²⁵ Furthermore, although it might not be enshrined in a constitution, the criminal procedure codes of most Commonwealth countries, under the influence of English law, allow arrested or detained persons a right to counsel from the moment of their arrest.²⁶

The sections in the South African Constitution referring to the provision of legal aid services to arrested, detained and accused persons “if substantial injustice would otherwise result” provide that such persons have the right “to have a legal practitioner assigned to the accused by the State, and at State expense”.²⁷ The Constitutional Court has interpreted this to mean that an accused is not entitled to be represented by a legal representative of his or her choice at State expense.²⁸ The need for the court to appoint State-funded lawyers for indigent criminal accused, rather than for the latter to choose their own State-funded lawyers, has been raised in at least one small Commonwealth jurisdiction.²⁹

The South African Constitutional Court has stated that the words “where a substantial injustice would otherwise result” should be interpreted to mean that legal aid at State expense in criminal matters should depend upon (a) the complexity of the case in fact and in law; (b) the “personal equipment” of the accused to fend for himself or herself; and (c) the gravity of the case, the nature of the alleged offence, and the possible consequences for the

²² Article 5(2)(a) of the Constitution of Vanuatu provides that “everyone charged with an offence shall have a fair hearing within a reasonable time by an independent and impartial court, and [shall] be afforded a lawyer if it is a serious offence” (cf *Naling v Public Prosecutor* [1980-1994] Van LR 61 (CA)).

²³ Article 12.5(c) of the Constitution of Cyprus states that everyone has the right “to defend himself in person or through a lawyer of his own choosing or if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require”.

²⁴ S 35(2) of the Constitution of South Africa.

²⁵ S 35(3) of the Constitution of South Africa.

²⁶ The New Zealand Legal Services Agency legal aid scheme has ensured that this becomes a reality by establishing a Police Detention Legal Assistance (PDLA) programme that provides designated lawyers who are available day and night for consultations with detained or arrested persons (www.lsa.govt.nz/general/lasr/legalaid_police.htm (2004)).

²⁷ Ss 35(2) and (3) of the Constitution of South Africa.

²⁸ *S v Vermaas, S v Du Plessis* 1995 3 SA 292 (CC). It has been suggested, however, that where possible there is no reason why the State should not attempt to accommodate the choice of the detainee (Du Toit “Criminal Procedure” in Chaskalson, Kentridge, Klaaren, Marcus, Spitz and Woolman (eds) *Constitutional Law of South Africa* (1996) 27-5.).

²⁹ The Chief Justice of the Seychelles has suggested that the Constitution of the Seychelles should be amended to enable the court to appoint lawyers for legal aid clients rather than for them to choose their own lawyers (www.seychelles-online.com.sc/archives/10160903.html (2004)).

accused if convicted.³⁰ This is broader than the yardstick of “serious offence” used in some small Commonwealth jurisdictions.³¹

In most small and developing Commonwealth countries the courts have insisted that legal aid at State expense is at least provided to accused persons who face the death penalty or a life sentence.³² Where this has not been provided the countries concerned have been censured by the United Nations Human Rights Committee.³³

4 2 Legal aid in civil cases

In most democratic constitutions the right to legal representation at the expense of the State in civil cases is not usually spelt out as specifically as it is in respect of criminal cases.

The Constitution of Cyprus, for example, states that in civil matters a person has the right “to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law”.³⁴ However, as a member of the European Council Cyprus is also bound by the European Convention on Human Rights where the European Court of Human Rights has used the “equality of arms” approach to ensure that unrepresented persons in civil cases are able to present their cases “properly and satisfactorily”.³⁵ To this end, in line with the Court’s commitment to “practical and effective” enforcement of rights, it has held that in an adversarial system the State should provide counsel to unrepresented parties in civil cases.³⁶ Such an interpretation would be binding on other Commonwealth countries that are members of the European Union or the Council of Europe.³⁷

Another example is the South African Constitution which provides that “[e]veryone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing in a court or, where appropriate, another independent and impartial forum”.³⁸ This raises the question of whether there is a duty on the State to provide legal aid or

³⁰ These guidelines had been provided by Didcott J in *S v Khanyile* 1988 3 SA 795 (N) 815. Later as a member of the Constitutional Court Didcott J suggested that these criteria could be applied to the constitutional right to counsel in criminal cases: *S v Vermaas*; *S v du Plessis supra*.

³¹ For instance, Vanuatu (*cf Naling v Public Prosecutor supra*).

³² This is provided for in countries such as Belize, Botswana, Swaziland and the East Caribbean countries.

³³ See *Lavende v Trinidad and Tobago*, Communication No 554/1993, Views of the UNHRC, 29 October 1997 [1997] IJHRL 127 which stated that legal aid should be made available throughout death penalty proceedings and for the purposes of an appeal.

³⁴ Article 30.3(d) of the Constitution of Cyprus – if no law regarding civil legal aid had been promulgated civil legal aid litigants would not be entitled to legal representation at State expense (www.coe.int/t/e/Legal_Affairs/Legal_Co-operation/operation_of_justice/Access_to_justice (2004)).

³⁵ *Airey v Ireland* ECHR (1979) Series A, No 32; 2 EHRR 305.

³⁶ *Airey v Ireland* 2 EHRR 314-5; *cf* Harlow “Access to Justice as a Human Right: The European Convention and the European Union” in Alston (ed) *The EU and Human Rights* (1999) 203-4.

³⁷ Such as the United Kingdom and Malta.

³⁸ S 34. In the case of children, however, a special duty is imposed to provide legal aid in civil cases “where substantial injustice would otherwise result” (s 28(1)(h)).

assistance to any person in a civil case who cannot afford it. Unlike in the case of arrested, detained and accused persons,³⁹ there are no specific Constitutional duties imposed on the South African State to provide the services of a legal practitioner to litigants in civil cases. However if the “equality of arms” interpretation is used it could be strongly argued that such a duty should lie on the State.

The above approach could also be applied to Commonwealth countries that include the right to “a fair public hearing in a court” in their constitutions.⁴⁰ Many small developing Commonwealth countries provide for legal aid in civil matters, including Belize,⁴¹ Guyana,⁴² Grenada,⁴³ and Singapore.⁴⁴

5 NATIONAL LEGAL AID STRUCTURES

Legal aid structures in small and developing Commonwealth countries vary from being very rudimentary to highly sophisticated. For instance, relatively few of the small developing countries in the East Caribbean and South Pacific have structured legal aid schemes,⁴⁵ while a small developed country like New Zealand has a well-funded and comprehensive legal aid system.⁴⁶

Legal aid services are provided by a variety of different agencies in small and developing Commonwealth countries: in Malta by the Advocate for Legal Aid situated at the court in Valetta;⁴⁷ in Belize by the Legal Aid Center;⁴⁸ in Grenada by the Legal Aid and Counselling Clinic;⁴⁹ in Guyana by the Georgetown Legal Aid Clinic;⁵⁰ in Jamaica by the Legal Aid Council under the Legal Aid Act;⁵¹ in Trinidad and Tobago by the Legal Aid and Advisory Authority;⁵² in the Seychelles by the courts;⁵³ in Fiji administered by the courts in terms of the Legal Aid Act;⁵⁴ in Kiribati the People’s Lawyer’s Office;⁵⁵ in Singapore by the Legal Aid Bureau for civil cases and the

³⁹ See s 35.

⁴⁰ This provision is commonly found in the constitutions of democratic countries.

⁴¹ Civil legal aid in Belize is provided by the Legal Aid Center (www.belize.gov.bz/library/delivering_justice/p6.html (2004)).

⁴² Civil legal aid in Guyana is provided by the Georgetown Legal Aid Clinic (www.stgc.org/Academic/Law/Law_pg6%2520Aid.htm (2004)).

⁴³ Civil legal aid in Grenada is provided by the Grenada Legal Aid and Counseling Clinic (www.cejamericas.org/reporte/muestra_pais.php (2004)).

⁴⁴ Civil legal aid in Singapore is provided by the Legal Aid Bureau (www.subcourts.gov.sg/faq_MDC.htm (2004)).

⁴⁵ www.cejamericas.org/reporte/muestra_pais.php (2004).

⁴⁶ Operated by the Legal Services Authority (www.lsa.gov.nz/general/lasr/legal_aid_findout.htm (2004)).

⁴⁷ www.coe.int/t/e/legal-affairs/legal_co-operation/operation_of_justice/access_to_justice (2004).

⁴⁸ www.belize.gov.bz/library/delivering_justice/p6.html (2004).

⁴⁹ www.cejamericas.org/reporte/muestra_pais.php (2004).

⁵⁰ www.stgc.org/Academic/Law/Law_pg6%2520Aid.htm (2004).

⁵¹ Legal Aid Act of 1997 (www.cabinet.gov.jm/docs/CPC03032003.asp (2004)).

⁵² www.caribscap.com/website/legal_aid/default.html (2004).

⁵³ www.seychelles-online.com.sc/archives/10160903.html (2004).

⁵⁴ Ordinance 55 of 1968 (www.itc.gov.fj/lawnet/fiji_act/cap_15.html (2004)).

⁵⁵ www.britishhighcommission.gov.uk/servlet/ (2004).

Criminal Legal Aid Scheme run by the Law Society,⁵⁶ and in Namibia by the Legal Aid Board.⁵⁷

South Africa is a large developing country, but the manner in which its legal aid system operates may be of some interest to small developing countries as it has high levels of unemployment and poverty and has had to work within strict budgetary constraints.⁵⁸ As in most Commonwealth countries, the South African legal aid system began by adopting the *judicare* or referral system,⁵⁹ rather than the salaried lawyer approach.⁶⁰

Most small and developing Commonwealth countries probably provide for legal aid in some or other form in both criminal and civil matters although these are often narrowly prescribed regarding certain categories of cases. For example, in Belize the Legal Aid Centre provides legal aid for family, land, civil and estate matters, but not for murder or in civil cases exceeding \$20 000.⁶¹ In Barbados legal aid is provided for indigent accused who face the death penalty, with a limit of £1 300 on expenses for appeals to the Privy Council on death row matters.⁶²

The South African Legal Aid Board generally provides legal aid “in all cases where the assistance of a legal practitioner is normally required”,⁶³ but has a list of restrictions in criminal⁶⁴ and civil cases.⁶⁵

⁵⁶ www.subcourts.gov.sg/faq_MDC.htm (2004).

⁵⁷ www.irinnews.org/report.asp (2004).

⁵⁸ In 1971 the South African Legal Aid Board was set up “to render or make available legal aid to indigent persons” (s 3 of the Legal Aid Act 22 of 1969). The Legal Aid Board carried out its mandate in terms of the Legal Aid Act by establishing a set of rules that are incorporated in a *Legal Aid Guide* (Legal Aid Board *Legal Aid Guide* 10ed (2002)). The *Guide* provides for the Board’s resolutions to be carried out under the supervision of the Chief Executive Officer who is an officer of the Board. The *Guide* recognises that legal practitioners should be paid for their work and sets a tariff of fees for attorneys and advocates. It also prescribes a “means test” that is adjusted from time to time. The means test has been simplified to allow legal aid for individuals who earn R1 750 (about \$269) a month or less for single or estranged persons or a total of R2 500 (about \$385) for a married couple (Resolution of Legal Aid Board on 29 March 2003). Recently, most of the Board’s legal aid cases have been done in-house by salaried lawyers. In cases where the applicant does not qualify, the legal aid officer must refer the person to another suitable government department or other institution. Under the Act the South African Legal Aid Board has representatives from the bench, the advocates’ profession, the attorneys’ profession, government departments, an independent expert on legal aid, three additional members who can further the aims of the Board, and not more than six additional members appointed by the President of the Republic in consultation with the cabinet (s 20 and s 4(1)(g)). The Board is based in Johannesburg and has justice centres in the main cities.

⁵⁹ See par 7 2 below.

⁶⁰ See par 7 3 below. During its early years most of the Legal Aid Board’s budget was spent on civil matters such as divorces and personal injury claims at the expense of criminal cases. In recent years, however, an ever decreasing amount has been spent on civil matters and the vast majority of expenditure has been earmarked for criminal cases, particularly after the first interim democratic Constitution (s 25 of the Constitution of the Republic of South Africa 200 of 1993) came into effect.

⁶¹ www.belize.gov.bz/library/delivering_justice/p6.html (2004).

⁶² www.caribbeanetnews.com/2004.02/06/legalaid.htm (2004).

⁶³ Legal Aid Board *Legal Aid Guide* (1996) par 1.2.1.

⁶⁴ In criminal cases, the phrase “where a substantial injustice would otherwise result” in terms of the Constitution, has been interpreted to mean: (a) in relation to an accused person that he/she is unable to afford the cost of his/her own legal representation and is likely if convicted to be sentenced, with or without the option of a fine, to a period of imprisonment

6 AVAILABLE BUDGET

There are no guidelines as to the percentage of a country's budget that should be spent on legal aid, nor what the expenditure should be on legal aid *per capita* of the population per annum. The nature of the legal aid scheme that can be set up in any country depends in part upon the budget that is provided by the State. The size of the budget is not only dependent upon the economic wealth of the country but also on the political will of the government. In South Africa the Legal Aid Board was grossly underfunded in its early years, when the apartheid government was not really committed to legal aid. However, during the 1990s, as the country moved towards democracy, funding by the State increased dramatically, particularly after the new democratic dispensation.⁶⁶ There is a special line item allocated by

of three months or more and if granted the option of a fine that he/she will be unable to pay the fine within two weeks of having been sentenced; (b) in relation to a sentenced person that he/she is unable to afford the cost of his/her own legal representation and has been sentenced either with or without the option of a fine, to a period of imprisonment of three months or more and if granted the option of a fine that he/she will be unable to pay the fine within two weeks of having been sentenced; and (c) in relation to a detained person that he/she is unable to afford the cost of consulting with a legal practitioner and reasonably needs to do so in relation to his/her continued detention (Legal Aid Board *Legal Aid Guide* (2002) ch 1 par 1 definitions).

⁶⁵ In civil matters, except in the case of children under 18 years "where a substantial injustice would otherwise result", legal aid is not provided: (a) in debtors courts proceedings; (b) for the administration of an estate or the voluntary surrender of any estate; (c) in actions for damages on the grounds of defamation, breach of promise, infringement of dignity, invasion of privacy, seduction, adultery and inducing someone to desert or stay away from another's spouse; (d) for any action which may be instituted in the Small Claims Court or where the amount of the claim does not exceed the jurisdiction of the Small Claims Court by more than 25%; (e) in a civil appeal unless the Chief Executive Officer is satisfied that there are reasonable prospects of success and (where applicable) recovery; (f) in arbitration, conciliation or any other forms of alternate dispute resolution unless authorised by the CEO or the Board; (g) in matters where, in the opinion of the CEO, there is no substantial and identifiable benefit to the client; (h) in a claim sounding in money or a continuation of such matter, where the legal aid officer must explain to the applicant that the matter can be dealt with by private practitioners on a contingency basis; (i) in any family matter in the high court; (j) in matters excluded by the Board from time to time; (k) in matters where the CEO is of the opinion that the chances of successful enforcement of an order in favour of the appellant are slim; (l) in enquiries in the children's court without the prior approval of the CEO; (m) in domestic violence matters where a salaried lawyer from a justice centre is available; (n) in any matter in which, in the opinion of the CEO, the benefit or the potential benefit to the client does not justify the anticipated costs of the contemplated litigation; and (o) in any inquest save with the prior consent of the CEO (*Legal Aid Guide* ch 3 par 3.1). Persons who are denied civil legal aid in divorce matters may apply to the registrar of the high court for assistance by way of *in forma pauperis* proceedings in terms of rule 40 of the Uniform Rules of Court. When providing legal aid in civil matters the Board must be satisfied that the case has merit and that there is a reasonable prospect of success and recovery. In addition, assistance will be refused if there is good reason to believe that an applicant is wilfully abstaining from entering into employment within his or her capabilities or that he or she has resigned from employment merely to obtain legal aid (*Legal Aid Guide* ch 3 par 8). A legal aid applicant who is refused legal aid by a legal aid officer has a right of appeal to the Chief Executive Officer (CEO). The legal aid officer must inform the applicant of this right. An applicant who wishes to appeal must set out the grounds in writing and submit them to the legal aid officer who must forward them to the CEO (*Legal Aid Guide* ch 4 par 12.1).

⁶⁶ The exponential increase from R66.3 million in 1994-1995 to about four times that amount in subsequent years, is almost solely due to the effect of the Board acting as the agent of

Parliament in the Ministry of Justice budget for legal aid. For the year 2002-2003 Parliament allocated the Board R341,8 million⁶⁷ (about US\$48,8 million) or expenditure of about \$1.09 per head for each member of South Africa's 45 million people.⁶⁸ The total Justice Budget for the year was R4 559,6 million or 1,5% of the total Budget for the country of R303 153,7 million. Thus legal aid accounted for 7,9% of the Justice Budget or 0,12% of the total Budget in 2002-2003.⁶⁹ For the period 2001-2002 the amount allocated was R322 million⁷⁰ and the ratios regarding the percentage of the total Justice Budget and total Budget were probably slightly less than in 2002-2003. In 2003-2004 the amount allocated was R367,8 million,⁷¹ (about US\$61,3 million) or US\$1,36 per head of the population.⁷²

7 MODELS FOR DELIVERY OF LEGAL AID SERVICES

There are a wide variety of delivery models for the delivery of legal aid services available to small and developing Commonwealth countries. Most small countries seem to use the judicare system whereby cases that qualify for state assistance are sent to private practitioners,⁷³ some use a clinic model,⁷⁴ and a few use the services of salaried lawyers.⁷⁵ South Africa has experimented with a number of models of legal aid delivery, some of which have been considered for adoption in small Commonwealth developing countries such as Sierra Leone,⁷⁶ and other small countries in Eastern Europe⁷⁷ and Central Asia.⁷⁸ It is intended to consider the South African

the State in respect of its Constitutional legal aid obligations. For instance, the budget for the period 1995-1996 amounting to R182.4 million, reflected R66.4 million in respect of the conventional legal aid scheme, and R116 million for the provision of legal consultation services and legal representation by the Board in terms of the Constitution (Legal Aid Board *Report on Activities* (1996) A5.). The Board estimated that it had been under-funded by about R425,8 million for 1998-1999 and R428 million for 1999-2000 (Legal Aid Board *Business Plan Covering the Period 2000 to 2003* (1999) 20); 1999-2000 (R224 million) (Legal Aid Board *Annual Report 2001-2002* (2003) 56.); 2000-2001 (R245,5 million); 2001-2002 (R322 million); and 2002-2003 (R341,8 million) (Legal Aid Board *Annual Report 2002-2003* (2004) 50).

⁶⁷ Legal Aid Board *Legal Aid Board Annual Report 2003/2004* (2004) 98.

⁶⁸ Calculated at R7 to the US\$1. This compares with the expenditure on legal aid in other Commonwealth countries, such as the almost \$60.00 per head spent by the United Kingdom, about \$30.00 per head by Canada, and the \$0.02 per head spent by Nigeria on legal aid (calculations by present writer based on expenditure on legal aid in the respective countries).

⁶⁹ Calculations made by the author based on statistics in Government Communication and Information System *South Africa Year Book 2002/2003* (2003) 242.

⁷⁰ Legal Aid Board *The Legal Aid Board Annual Report 2002* (2003) 56.

⁷¹ Legal Aid Board *Legal Aid Board Annual Report 2003/2004* (2004) 98.

⁷² This is calculated at R6 to the US\$1.

⁷³ See par 7 2 below.

⁷⁴ See par 7 8 below.

⁷⁵ See par 7 3 below.

⁷⁶ Sierra Leone has instituted a paralegal programme similar to that run by the Community Law and Rural Development Centre in South Africa (see par 7 9 below).

⁷⁷ Lithuania has been influenced by the South African and Israeli public defender models (see par 7 3 below). Moldova is contemplating replicating the use of paralegals as is done in South Africa (see par 7 9 below).

experience with a view to ascertaining whether any of the models developed there are relevant to small and developing Commonwealth countries.

The following methods of legal aid delivery have been used in South Africa: (i) *pro bono* legal aid work (ii) State-funded *judicare* or referral to private lawyers; (iii) State-funded public defenders; (iv) State-funded interns in rural law firms; (v) State-funded law clinics; (vi) State-funded justice centres; (vii) public interest law firms; (viii) university and law school legal aid clinics; and (ix) clusters of paralegal advice offices.

7.1 *Pro bono* legal aid work

Pro bono legal aid work may be used as a supplement to State-funded legal aid services, but should not be regarded as a substitute. It is axiomatic that legal aid lawyers should be paid for their services, and that in democratic countries the duty to pay for such services rests with the State.⁷⁹ In South Africa, as in the United Kingdom and other countries,⁸⁰ and in many Commonwealth countries, there has been a tradition of lawyers doing some *pro bono* or *pro amico* work.⁸¹ However, this is not always mandatory although the law societies in some developing Commonwealth countries are also making it compulsory for their members.⁸²

In 1962 the South African government attempted to set up a national legal aid scheme based on *pro bono* work by attorneys and advocates. The Department of Justice negotiated with the advocates' and attorneys' profession to provide free legal service to persons referred to them by local legal aid committees set up at every lower court.⁸³ However, the system

⁷⁸ Mongolia has introduced two pilot public defender offices, in part influenced by the South African public defender model (see par 7.3 below). The Kyrgyzstan Parliamentary Working Group on Legal Aid is presently considering which aspects of the South African programme may be of use to it.

⁷⁹ However, in Article 8.2.3 of the American Convention on Human Rights seems to contemplate legal aid services being provided *pro bono* where it refers to "counsel provided by the State, paid or not" (see par 3.2.2 above).

⁸⁰ For instance, at the Association of the Bar of the City of New York Global Forum on Access to Justice Conference, New York, 6-8 April 2000, a British law firm, Allen and Overy's London office claimed to have completed 10 080 *pro bono* hours of work during 1999 amounting to over 2 million pounds worth of work ("Participants in the Role of the Private Bar Roundtable" distributed at Association of the Bar of the City of New York Global Forum on Access to Justice Conference, New York, 6-8 April 2000). In the United States the Legal Services Corporation (LSC) agencies had *pro bono* cases accepted by more than 44 000 attorneys during 1998, and provided the education and structure for 150 000 volunteer private attorneys to serve clients effectively ("Participants in the Role of the Private Bar Roundtable" *op cit*; Johnson Jr "Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies" 2000 *Fordham International Law Journal (Symposium)* S 83). In France more than 400 Paris-based lawyers and civil servants known as the *Droits d'Urgence* provide legal aid and advice at 56 monthly sessions operating in 20 centres ("Participants in the Role of the Private Bar Roundtable" *op cit*; Bedos "Droits d'Urgence: Access of Citizens to Legal Information in France" 2000 *Fordham International Law Journal (Symposium)* S 1).

⁸¹ Cook "A History of Legal Aid in South Africa" in University of Natal *Legal Aid in South Africa* (1974) 28.

⁸² For instance, the Law Society of the Cape of Good Hope in South Africa (Draft rule 21 *Cape Law Society Rules*).

⁸³ Cook 31-32.

never worked because it was not properly advertised, there was too much red tape, and probably also because members of the profession were not paid for their services.⁸⁴

The Belize Legal Aid Centre supplements its services with *pro bono* work.⁸⁵

7 1 1 *Lessons learned*

Pro bono schemes are cheap and, if supported by the legal profession, can encourage public service by legal practitioners. However, *pro bono* clients may not receive the same level of service as paying clients, and many lawyers are reluctant to take on *pro bono* cases. Even if *pro bono* work is mandatory for the profession some lawyers may “buy out” the time they would be required to devote to them, as sometimes happens in the United States.⁸⁶ Experience has shown that the chances of mounting a successful comprehensive legal aid scheme are minimal unless lawyers are properly paid to deliver legal services.

7 2 **State-funded judicare or referral to private lawyers**

It is probably true to say that the most common form of legal aid provided in Commonwealth countries is by referrals to private lawyers. This is the method that has been used since the inception of United Kingdom legal aid scheme and was used for many years in South Africa. Private lawyers who render legal aid services in accordance with the legal aid body's rules are paid for their services at fixed tariffs. In South Africa the introduction of the new Constitution⁸⁷ had a devastating effect on the ability of the Legal Aid Board to continue using the judicare model. The huge increase in the number of criminal defences required meant that the Board became notionally bankrupt and had to revise its strategies concerning the delivery of legal aid services.

In South Africa, during the period from 1971-1972 to 1997-1998, a total of 997 707 legal aid cases were referred to attorneys, of which the vast majority involved criminal matters. Of these 559 238 were referred after 1994-1995 and the advent of the new Constitution. This means that the number of legal aid applications granted during the period 1994-1995 to 1997-1998 constituted 56% of all legal aid applications ever handled by the Board.⁸⁸ The overall increase during the period 1989-1990 to 1998-1999 was 709%.⁸⁹ The exponential growth in the number of judicare cases in respect of criminal matters eventually led to the abandonment of the judicare

⁸⁴ Gross *Legal Aid and Its Management* (1976) 176-177.

⁸⁵ www.belize.gov.bz/library/delivering-justice/p6html (2004).

⁸⁶ See Johnson Jr 2000 *Fordham International Law Journal (Symposium)* S 83.

⁸⁷ S 35.

⁸⁸ Legal Aid Board *Legotla: Overview of the Board and its Activities* (Unpublished) (November 1998) 8.

⁸⁹ *Ibid.*

model as the main method of delivering legal aid services by the Legal Aid Board.⁹⁰ Studies have shown that the judicare model is considerably more expensive than the salaried lawyer scheme.⁹¹ Accordingly the South African Legal Aid Board introduced a pilot public defender programme in 1990⁹² and a pilot Board-funded law clinic scheme in 1994.⁹³

7.2.1 Lessons learned

In South Africa the judicare system worked when the number of cases was comparatively few and the Legal Aid Board had the resources to handle them administratively. However, there must be adequate staffing and administrative structures to support the system; proper accounting systems to deal with claims for fees and disbursements expeditiously; and budget constraints that keep pace with demand. Once a centralized staffing establishment can no longer keep pace with the demands of practitioners for payment within a reasonable period of time the referral system breaks down.⁹⁴ As a result of pilot projects testing the cost of public defenders and law clinic public defender interns the Board decided to opt for a predominantly salaried lawyer model involving justice centres⁹⁵ with judicare being used as a subsidiary method of delivery in areas where there are no justice centres or the latter cannot handle cases for logistical or ethical reasons.⁹⁶

The United Kingdom and South African experience is that if judicare is to be retained as part of the legal aid system it is best to use a fixed contract approach where the annual fees to be paid to participating partners is capped. This has been done with the recent cooperative agreements entered into by the South African Legal Aid Board and public interest law firms and university law clinics.⁹⁷ In small developing Commonwealth

⁹⁰ See par 7.6 below. During the period 1997-1998 private attorneys were paid for completing 105 732 cases of which 87 469 (83%) involved criminal cases and 17% civil matters. The latter involved 14 156 divorce (13%), 3 617 (3.5%) other civil cases and 490 (0.5%) labour cases. The average cost per case finalised by the Legal Aid Board during the same period was R864 (about \$108) a case for ordinary criminal matters, R1 707 (about \$213) for Constitutional criminal matters, and R1 498 (about \$187) a case for civil matters under the judicare system. The average cost of all judicare cases was R1 423 (about \$178) (Legal Aid Board *Legotla: Overview of the Board and its Activities* (Unpublished) (November 1998) 8).

⁹¹ See par 7.3 below.

⁹² Legal Aid Board *Annual Report 1991/1992* 32-3.

⁹³ See par 7.5 below.

⁹⁴ McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 121. New computer systems were installed at the Legal Aid Board head office, but on a daily basis the incoming new accounts exceeded the number of old accounts that the staff were physically able to process. This resulted in long delays in payment sometimes stretching into years, and loss of confidence in the system by practitioners who were no longer prepared to accept legal aid work. In some instances lawyers sued the Board for outstanding fees. The need to build up a huge contingency fund to cover amounts owing by the Board for matters that had not been completed compounded the problem and was criticized by the Auditor-General. In order to effect savings the Board capped fees for criminal cases and this alienated the legal profession.

⁹⁵ See par 7.6 below.

⁹⁶ McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 121-S 122.

⁹⁷ See par 7.7 and 7.8 below.

countries judicare is likely to remain the preferred way of delivering legal aid services particularly in the small towns and villages, but there may be scope to try a salaried lawyer approach in the larger towns.⁹⁸

7 3 State-funded public defenders

There are probably very few public defender programmes in developing Commonwealth countries outside of South Africa.⁹⁹ There may, however, be other forms of salaried lawyers, such as a salaried person seconded from the Director of Public Prosecution's office to staff the Legal Aid Centre in Belize,¹⁰⁰ and lawyers employed at the People's Lawyer's Office in Kiribati.¹⁰¹

In South Africa in 1990, after widespread discussions with a variety of lawyer associations, the Legal Aid Board persuaded the Minister of Justice to authorise a State-funded public defender system and to appropriate R2.5 million (about \$625 000 at the time) for this purpose. This enabled the Board to employ legally qualified persons to represent indigent accused. Initially a pilot State-funded public defender office in Johannesburg was approved for two years.¹⁰² Estimates that each public defender would be able to deal with approximately 200 district court criminal cases a year proved to be correct.¹⁰³

During an extension of the public defender pilot project in 1995 it was estimated that the average cost of a judicare criminal case was R822 (about \$103), the average cost of a public defender criminal case R555 (about \$69),¹⁰⁴ and the average cost of a State-funded law clinic cases even less.¹⁰⁵ The pilot public defender project was considered a success by the Legal Aid Board and a permanent public defender office was established.¹⁰⁶ Since then public defenders, together with law intern public defenders, have been included in the Board's justice centres¹⁰⁷ as an integral component of its

⁹⁸ For instance, in Lithuania and Mongolia, both of which have small populations, public defender offices operate in the main cities.

⁹⁹ Public defender offices have been used in Australia, but the proposed introduction of such offices in the United Kingdom and Canada has proven to be controversial.

¹⁰⁰ www.belize.gov.bz/library/delivering_justice/p6.html (2004).

¹⁰¹ www.britishhighcommission.gov.uk/servlet (2004).

¹⁰² Legal Aid Board *Annual Report 1991/1992* 32-3.

¹⁰³ McQuoid-Mason "Public Defenders and Alternative Service" 1991 *SACJ* 267 270. By November 1992 more than 2 200 cases had been dealt with by the ten public defenders in Johannesburg, with a 57% success rate on not-guilty pleas, and a 90% success rate for bail applications. The average cost per case during 1992 compared very favourably with the costs allowed to private practitioners by the Legal Aid Board (*Business Day* 2 November 1992). During 1993-1994 the office provided legal representation for 2 808 accused persons, while during 1995-1996 it represented 3 794 (Legal Aid Board *Annual Report 1995/1996* (1997) 27).

¹⁰⁴ Legal Aid Board *Annual Report 1995/1996* (1997) 27

¹⁰⁵ See par 7 5 below.

¹⁰⁶ In 1996-1997 the public defender offices in Johannesburg and Soweto employed 31 staff members who approved 3 515 applications for legal aid and finalised 3 386 court cases. The offices handled 23 appeals and withdrew from 1 069 cases (Legal Aid Board *Annual Report 1996/1997* (1999) 23).

¹⁰⁷ See par 7 6 below.

work. In 2003-2004 public defenders and intern public defenders employed in the Legal Aid Board's justice centres handled 78% of all cases and judicare only 16%.¹⁰⁸ During the same period the average cost of a judicare case was R2 152 and for justice centre cases, R1 090.¹⁰⁹

7 3 1 Lessons learned

Public defender models are considerably cheaper than the judicare system,¹¹⁰ and countries that rely almost exclusively on the judicare model, and are limited by budget constraints, should seriously consider introducing partial public defender schemes in areas where the courts process substantial numbers of criminal cases. A fully fledged network of public defender offices is likely to be too expensive for small and developing countries, but the South African experience has shown that justice centres that combine public defenders with intern public defenders can be established for a modest *per capita* expenditure on legal aid by the State.¹¹¹ In small Commonwealth countries justice centres incorporating public defenders and/or intern public defenders could probably be established in the larger cities and towns and supplemented by judicare in the other areas.

7 4 State-funded legal aid interns in rural law firms

Partnerships between the national legal aid scheme and private law firms are a useful way of extending legal aid in rural areas. This model has been piloted in South Africa and may be of interest to small Commonwealth developing countries with rural populations. During 1995 the South African Legal Aid Board in partnership with Lawyers for Human Rights, established a pilot project in which private attorneys in selected rural towns were given funding by the Board to employ candidate attorney interns to do legal aid work. The participating law firms were assisted with the payment of the salary of the candidate attorneys. Lawyers for Human Rights identified suitable attorneys and monitored the progress of the project. The candidate attorneys handled at least 10 new legal aid matters a month for the Board and performed community service one day a week.¹¹² The project proved highly successful. Not only did it expand legal aid services in rural areas, but it also enabled formerly disadvantaged persons to be employed in the legal profession in the areas where they lived.¹¹³

¹⁰⁸ Legal Aid Board *Annual Report 2003/2004* 19.

¹⁰⁹ Legal Aid Board *Annual Report 2003/2004* 20.

¹¹⁰ It has been suggested that this may not be the case in the United Kingdom and Canada but this seems to be against the trend in other countries.

¹¹¹ Assuming that expenditure *per capita* of just over \$1 per annum can be regarded as modest.

¹¹² During 1996-1997 two projects involving eight candidate attorneys were in operation (Legal Aid Board *Annual Report 1996/1997* (1999) 21). The work of the legal aid interns mainly involves criminal cases, but they also undertake civil cases such as divorce. For instance, during 1997-1998 the interns in four rural law firms completed 400 criminal cases and 73 civil cases. (Calculations by the present writer based on statistics in Legal Aid Board *Legotla: Statistics on the Work done by way of Salaried Staff Models* (unpublished) (November 1998) 6-7).

¹¹³ Legal Aid Board *Annual Report 1995/1996* (1996) 24.

7 4 1 *Lessons learned*

The legal aid internship scheme involving partnerships between the State-funded legal aid body and private practitioners to employ young lawyers is very cost-effective. It is much cheaper to supplement the salaries of candidate attorneys in rural law firms than to establish branch offices of the national legal aid scheme in areas where there is a limited demand for legal aid services.¹¹⁴ Recent law graduates who are required to serve an apprenticeship with qualified lawyers can provide a valuable adjunct to legal aid services in small and developing Commonwealth countries with rural populations.

7 5 **State-funded law clinics**

Law graduates and candidate attorneys in small and developing Commonwealth countries that require university law graduates to undertake a period of apprenticeship or vocational training¹¹⁵ provide a valuable resource to assist with State-funded legal aid schemes. In South Africa State-funded law clinics were established employing law graduate interns as public defenders in the district criminal courts. The clinics have proved to be an efficient and cost-effective method delivering services for the Legal Aid Board.¹¹⁶ They also provide practical training and access to the legal profession for aspiring young lawyers. There may be scope for similar programmes in other Commonwealth countries.¹¹⁷

In 1993 the Attorneys Act¹¹⁸ in South Africa was amended to allow candidate attorneys with the necessary legal qualifications to obtain practical experience by undertaking community service rather than serving articles in an attorney's office.¹¹⁹ Community service may be done at law clinics

¹¹⁴ Legal Aid Board *Annual Report 1996/1997* (1999) 21

¹¹⁵ For instance, countries such as Botswana, Malta, Papua New Guinea, Singapore and Nauru.

¹¹⁶ The Board calculated that the average cost of the 24 513 criminal and 12 997 civil cases handled by the law clinics during the pilot period 1 July 1994 to 31 December 1996 was R433 (about \$108). This included the costs for clinics that had only just been established. Ultimately the cost per case was estimated at much less for the established clinics – about R350 or about \$87,50 per case (Legal Aid Report *Monthly Report* (4 February 1997)). This was less than half of the average cost of R976 (about \$244) per case charged under the judicare system during the same period, and was also cheaper than the pure public defender model. During the period 1997-1998 twenty law clinics completed 33 951 cases of which 20 042 (59%) were criminal, and 13 909 (41%) civil. (Calculations by present writer based on statistics in Legal Aid Board *Legotla: Delivery of Legal Aid by way of Salaried Staff Models, Public Defenders, Attorneys and Candidate Attorneys as at 30 October 1998* (unpublished) (November 1998) 1-5). This figure compared favourably with the 18 263 civil cases done under the judicare scheme for the same period at probably twice the cost (Legal Aid Board *Legotla: Overview of the Board and its Activities* (Unpublished) (November 1998) 8.).

¹¹⁷ For instance, it has been suggested that Nigerian law graduates in the National Youth Service Corps programme could be seconded to the Legal Aid Council to assist as public defenders (McQuoid-Mason "Legal Aid in Nigeria: Using National Youth Service Corps Public Defenders to Expand the Services of the Legal Aid Council" 2003 *Journal of African Law* 107-116).

¹¹⁸ 53 of 1979.

¹¹⁹ S 2 of the Attorneys Amendment Act 115 of 1993.

accredited by provincial law societies, including clinics funded by the Legal Aid Board. The clinics are required to employ a principal, (an attorney with sufficient practical experience), to supervise law graduates in the community service programme. The candidate attorneys appear in the district courts and the principals in the regional and high courts. Interns who have been articled for more than a year may also appear in the regional courts. Candidate attorney interns may be employed to do community service at a maximum ratio of ten interns to one supervising attorney.¹²⁰

In 1994 a pilot project involving partnerships with five university law clinics was set up by the Legal Aid Board. The project was expanded to 22 university and other law clinics and the Board allocated up to R430 000 (\$107 000) per clinic to enable them to employ a supervising attorney and up to ten community service interns each.¹²¹ Most of the State-funded law clinics have since been removed from the universities and incorporated into the justice centres.¹²²

¹²⁰ Legal Aid Board *Annual Report 1996/1997* (1999) 20. The maximum ratio of articled clerks to supervising attorneys in private law firms is three clerks to one attorney (Attorneys Act 53 of 1979 s 3(3)). The then Chief Justice, Arthur Chaskalson, suggested that compulsory community service for law graduates could help solve the problem of delivery of legal aid to poor sections of the community, particularly in respect of criminal cases (Chaskalson "Legal Interns Could Solve Legal Aid Problems" 1997 *De Rebus* 782. The present writer had previously made a similar suggestion as an alternative to national service when conscription still applied in the country: McQuoid-Mason "Public Defenders and Alternative Service" 1991 *SACJ* 267). The suggestion was greeted with some hostility in an editorial in the official journal of the attorneys' profession, which warned that representation by interns and paralegals "could be of such inferior quality that, in the worst cases, it would not satisfy the constitutional right to representation" (Editorial "Legal Aid Again: The Profession Should Not be Sidelined" 1998 *De Rebus* 5). It went on to say: "The legal aid system should not be used as an avenue to allow disadvantaged students to have access to the profession: that is not its purpose". The question of whether South African law graduates should be required to undertake compulsory community service, (as is the case for all university graduates in Nigeria), was raised at the 1998 National Legal Aid Forum. The concept was discussed by a working commission on internship and training at the National Legal Aid Forum in 1998 which recommended that: (a) community service should be introduced to improve the administration of justice, primarily to provide legal aid services; (b) the question of whether it should be compulsory (like medical internships) or voluntary should be further investigated; (c) community service should be primarily in the form of work in law clinics, public defender's offices and public interest law firms; (d) community service should be for not less than one year after graduation; (e) an independent body should be set up to control the enrolment and training of community service interns; (g) community service interns should receive proper training before providing services to the public; (h) the question of whether community service should replace all other forms of internship should be investigated; and (i) a pilot project on a voluntary basis should be introduced (McQuoid-Mason "National Legal Aid Forum, Kempton Park, 15-17 January 1998: Working Commission Recommendations" 1999 *SACJ* 48 54-57). Since then the Ministry of Justice has been re-examining the entry requirements for the legal profession, including the issue of community service (cf Department of Justice Legal Policy Unit *Transformation of the Legal Profession* (Issue Paper, First Draft) (unpublished) (1999) 8). A proposed Legal Practitioners Bill is still being considered by the Ministry of Justice.

¹²¹ Where the nature of the work demanded it some clinics employed eight interns and two qualified professional assistants instead of ten interns so that the professional assistants could appear in the regional (senior) magistrate's courts (Legal Aid Board *Annual Report 1996/1997* (1999) 20).

¹²² See par 7 6 below.

In some legal aid agencies in small and developing Commonwealth countries, for instance, the Grenada Legal Aid and Counselling Clinic,¹²³ the State contributes towards the funding of law clinics to provide legal aid services.

7 5 1 *Lessons learned*

The State-funded law intern public defender programme in South Africa provides extended legal services at a moderate cost to needy members of the public, and develops expertise, practical experience and career opportunities for aspiring young lawyers. It is also a useful model for ensuring the gainful employment of young law graduates who are required to render community service to their country. Provided the interns are properly trained and supervised, their standard of service in the lower courts can match those of qualified attorneys, or privately employed candidate attorneys, because of their specialised knowledge in the conducting of criminal cases.

7 6 **State-funded justice centres**

The most effective legal aid services models for consumers are those that provide them with a “one stop shop” instead of being sent from pillar to post to obtain assistance. Some small and developing Commonwealth countries have established structures that include some aspects of a “one stop shop”, such as the Legal Aid Centre in Belize,¹²⁴ the Georgetown Legal Aid Clinic in Guyana,¹²⁵ the Legal Aid and Counselling Clinic in Grenada¹²⁶ and the “Multi-door Court” in Singapore.¹²⁷ However, none of their services are as comprehensive as those provided by the South African “justice centres”.

In South Africa justice centres are similar to legal aid specialist law firms that have developed elsewhere,¹²⁸ except that they are fully State-funded and staffed by salaried lawyers and administrative staff in the employ of the Legal Aid Board. The centres bring together under one roof legal aid officers, public defenders, law clinic intern public defenders, professional assistants, supervising attorneys, paralegals, administrative assistants and administrative clerks. Public defenders deal with criminal cases in the regional courts and high courts.¹²⁹ Law clinic interns do both civil and criminal work in the district courts.¹³⁰ Professional assistants appear in the regional courts. Supervising attorneys appear in the high courts and the

¹²³ www.cejamericas.org/reporte/muestra_pais.php (2004).

¹²⁴ www.belize.gov.bz/library/delivering_justice/p6.html (2004).

¹²⁵ www.stgc.org/Academic/Law/Law_pg6%2520Aid.htm (2004).

¹²⁶ www.cejamericas.org/reporte/muestra_pais.php (2004).

¹²⁷ www.subcourts.gov.sg/faq_MDC.htm (2004).

¹²⁸ See generally Eleventh Annual Philip D Reed Memorial Issue Symposium “Partnerships Across Borders: A Global Forum on Access to Justice: April 6-8 2000” 2000 *Fordham International Law Journal (Symposium)*.

¹²⁹ Regional courts can impose fines of up to R300 000 (about \$46 000) and imprisonment of up to 25 years (Magistrates’ Courts Act 32 of 1944).

¹³⁰ District courts can impose fines of up to R100 000 (about \$15 333) and imprisonment of up to 3 years (Magistrates’ Courts Act 32 of 1944).

regional courts. Paralegals assist with the initial screening of clients. Administrative assistants and clerks provide the necessary administrative back up, and private lawyers are only used if the justice centre cannot handle a case.¹³¹

The justice centres provide a full range of legal and paralegal services to indigent clients. They work well in the larger cities and towns, but not in the rural areas where there is insufficient work to justify their expense. In such circumstances, another model, such as cooperative agreements between the Legal Aid Board and rural law firms,¹³² public interest law firms¹³³ the independent law clinics¹³⁴ and paralegal advice offices¹³⁵ may be more feasible. The Legal Aid Board has 58 justice centres that also service 27 satellite offices and 13 high court units.¹³⁶ As has been mentioned the cost of cases handled by the justice centres is less than half that of cases handled by judicare.¹³⁷

7 6 1 Lessons learned

The South African experience is that justice centres are not as cheap to run as public defender and intern public defender law clinics that have very low overheads because they focus primarily on criminal work. However, they are still significantly cheaper than the judicare system once the initial start up costs have been spent.¹³⁸

7 7 Public interest law firms

Public interest law firms can play a valuable role in the delivery of civil legal aid services to indigent people.¹³⁹ They exist in many developing Commonwealth and other countries in the Americas,¹⁴⁰ Asia¹⁴¹ and Africa.¹⁴² In the Americas, the Georgetown Legal Aid Clinic in Guyana is essentially a

¹³¹ See McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 126.

¹³² See par 7 4 above.

¹³³ See par 7 7 below.

¹³⁴ See par 7 8 below.

¹³⁵ See par 7 9 below.

¹³⁶ Legal Aid Board *Annual Report 2003/2004* 17.

¹³⁷ See par 7 3 above.

¹³⁸ See McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 126- S 127. For instance, the South African Legal Aid Board has calculated that during 2002 after establishing 26 justice centres it was able to save R114,6 million (about \$15 million) or about a third of its budget compared with the cost of judicare Legal Aid Board *Annual Report 2002* (2003) 10.

¹³⁹ See generally the National Association for the Advancement of Colored People and the Legal Defense Fund *Public Interest Law Around the World* (1992).

¹⁴⁰ See Fruhling "From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America" in Ford Foundation *Many Roads to Justice* (2000) 55.

¹⁴¹ See, eg, Golub "From the Village to the University: Legal Activism in Bangladesh" in Ford Foundation *Many Roads to Justice* (2000) 127; and Golub "Participatory Justice in the Phillipines" in Ford Foundation *Many Roads to Justice* (2000) 197.

¹⁴² See Golub "Battling Apartheid, Building a New South Africa" in Ford Foundation *Many Roads to Justice* (2000) 19.

form of public interest law firm rather than a law clinic in the traditional sense. It focuses on legal aid cases and employs a managing attorney, legal practitioners and supporting staff, and is partly funded by contributions by private persons and organisations.¹⁴³ In Africa, the Ditshwanelo Centre in Botswana¹⁴⁴ and the Legal Assistance Centre in Namibia¹⁴⁵ have played a very valuable role in providing access to justice in their respective countries.

The best example of a private specialist law firm in South Africa is the Legal Resources Centre (LRC), the first of which was established in Johannesburg in 1979.¹⁴⁶ In the 21 years of its existence the LRC has assisted millions of disadvantaged South Africans either as individuals or as groups or communities who share a common problem. During the apartheid era it used litigation and the threat of litigation to assert the rights of thousands of disadvantaged South African in several areas of the law. In addition the LRC has worked with numerous advice centres staffed by paralegals.¹⁴⁷ Since the 1994 elections the LRC has reassessed its position and is now focussing on constitutional rights and land, housing and development.¹⁴⁸ The LRC charges no fees and receives no State funds, it is financed by the Legal Resources Trust which receives money from overseas and local donors. Recently the LRC, together with the Association of University Legal Aid Institutions,¹⁴⁹ has taken the lead in encouraging the Legal Aid Board to enter into cooperative agreements with independently funded organizations to extend legal services to previously marginalised parts of the country.¹⁵⁰

7 7 1 *Lessons learned*

Public interest law bodies provide a valuable adjunct to legal aid services for the poor and marginalised. Successful public interest law firms have highly professional staff and usually receive strong foreign and local donor-based financial support. They also receive support from leading lawyers in their countries as well as the judiciary and enjoy a high national and international

¹⁴³ www.stgc.org/Academic/Law/Law_pg6%2520Aid.htm (2004).

¹⁴⁴ www.ditshwanelo.org.bw (2004).

¹⁴⁵ www.economist.com.na/2003/4jul/07-04-09.htm (2004).

¹⁴⁶ At present there are six centres that are located in Johannesburg, Cape Town, Port Elizabeth, Grahamstown, Durban and Pretoria (Legal Resources Centre *Annual Report* (1996) 25).

¹⁴⁷ Legal Resources Centre *Annual Report* (1996) 9.

¹⁴⁸ The constitutional rights programme deals with access to justice, gender equality, children's rights, the enforcement of socio-economic rights such as health care, education, housing and water, and a constitutional reform programme. The land, housing and development programme includes rural and urban restitution and redistribution of land, urban and rural land tenure security, housing, land law reform and urban and rural land development (Legal Resources Centre *Annual Report* (1998) 4; cf McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 128). An important part of the LRC programme is the training of paralegals and lawyers from disadvantaged communities. It employs 12 to 15 young law graduates each year and trains interns from elsewhere in Africa and the developing world (Legal Resources Centre *Annual Report* (1998) 7).

¹⁴⁹ See par 7 8 below.

¹⁵⁰ See generally McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 127- S 128.

reputation. Strong public interest law bodies survive because they creatively respond to the changing dynamics of their societies.

7 8 University and law school legal aid clinics

University and law school legal aid clinics can be found throughout the Commonwealth¹⁵¹ in Africa,¹⁵² the Americas,¹⁵³ Asia,¹⁵⁴ the Caribbean,¹⁵⁵ Europe¹⁵⁶ and the South Pacific.¹⁵⁷ Legal aid clinics supply free legal advice to indigent persons. They are usually, but not exclusively, based at universities and enable law students to give advice and assistance under the supervision of qualified legal practitioners. Most law clinic models either require law students to work in a university law clinic or assign the students to an outside partnership organisation where they can provide legal services under supervision.¹⁵⁸

The concept of independently funded university legal aid clinics developed in the United States in the late 1960s when the Council on Legal Education for Professional Responsibility (CLEPR) was established with financial support from the Ford Foundation.¹⁵⁹ Law clinics have existed in Commonwealth countries such as Canada, the United Kingdom and South Africa since the early 1970s.¹⁶⁰

¹⁵¹ For a general description of how the law clinic concept has spread throughout the world, see McCutcheon "University Legal Aid Clinics: A Growing International Presence with Manifold Benefits" in Ford Foundation *Many Roads to Justice* (2000) 267.

¹⁵² For instance, in South Africa, Zimbabwe, Botswana, Namibia, Lesotho, Mocambique, Kenya, Sierra Leone and Nigeria.

¹⁵³ For instance, in Canada and Guyana.

¹⁵⁴ For instance, in India, Nepal and Bangladesh. In India law clinics have been creatively used by involving them in the *lok adalats* or "people's courts" where the law students assist with the functioning of such courts during week-ends or public holidays. The *lok adalats* try to settle disputes sent to them by the courts for resolution by negotiation, arbitration or conciliation. The law students do all the preparatory work of interviewing the parties in order to obtain a negotiated settlement, but if this does not work the parties attend the *lok adalat* presided over by a panel consisting of a district court judge or magistrate, a lawyer and a social worker. The proceedings are conducted informally and the parties, (and their lawyers if they are represented), appear before the panel in an attempt to reach a solution (Aggarwal *Handbook on Lok Adalat in India* (1991) 1. In some states the *lok adalats* are organized by the state Legal Aid Boards, while in others they are coordinated by paralegal organizations or even the courts (Aggarwal 3-7).

¹⁵⁵ For instance, in Jamaica, Trinidad and Tobago, Guyana and the Bahamas.

¹⁵⁶ For instance, the United Kingdom.

¹⁵⁷ For instance, Australia and Vanuatu.

¹⁵⁸ McQuoid-Mason "The Organisation, Administration and Funding of Legal Aid Clinics in South Africa" 1986 *NULSR* 189 193.

¹⁵⁹ Pincus "Legal Clinics in the Law Schools" in University of Natal *Legal Aid in South Africa* (1974) 123.

¹⁶⁰ The first legal aid clinic in South Africa was established by law students at the University of Cape Town in 1972 (McQuoid-Mason (1982) 139-140). The first law faculty staff-initiated law clinics were established at the Universities of the Witwatersrand and Natal (Durban) in August 1973 (McQuoid-Mason (1982) 148 153). The Ford Foundation funded a legal aid conference in South Africa in 1973 which was the catalyst for the law clinic movement in the region. As mentioned above at the time of the conference only clinics in the country were at the Universities of Cape Town and the Witwatersrand, but within two years five others had been established (McQuoid-Mason (1982) 139).

Most of the 21 universities in South Africa operate campus law clinics independent of the State-funded law clinics,¹⁶¹ and employ directors who are practising attorneys or advocates. Where the director is a practising advocate or attorney, the law clinic may seek accreditation from the local law society, and if granted, candidate attorneys may be employed and trained at these institutions with a view to admission. Funding for law clinics is provided by outside donors. The Attorneys Fidelity Fund¹⁶² subsidises accredited legal aid clinics by providing funds to enable them to employ a practitioner (attorney or advocate) to control the clinic.¹⁶³ More recently the Association of University Legal Aid Institutions (AULAI) has set up the AULAI Trust with an endowment from the Ford Foundation to strengthen the funding of the clinics.¹⁶⁴

In South Africa law clinics provide free legal services to the needy and use the Legal Aid Board's means test as a flexible guideline. Clinic staff may represent clients in the lower and high courts in both criminal and civil matters.¹⁶⁵ Law students may not represent clients in court.¹⁶⁶ As previously mentioned¹⁶⁷ approximately 3 000 law graduates are produced annually by South African law schools. If each final year law student were only to do 10

¹⁶¹ McQuoid-Mason "The Role of Legal Aid Clinics in Assisting Victims of Crime" in Schurink, Snyman, Krugel and Slabbert (eds) *Victimisation: Nature and Trends* (1992) 559 fn 1.

¹⁶² The Attorneys Fidelity Fund is a fund that has accumulated out of the interest paid on monies held in attorneys' trust accounts. It is used to compensate members of the public who have suffered loss as result of fraud by practising attorneys, but also makes money available for legal education.

¹⁶³ McQuoid-Mason 1986 *NULSR* 193.

¹⁶⁴ Golub "Battling Apartheid, Building a New South Africa" in Ford Foundation *Many Roads to Justice* 38.

¹⁶⁵ Since 1994 the South African legal aid clinics have continued to deal with poverty law problems, some of which such as housing, the quality of police services and social security have continued as a result of non-delivery by the new government (s 236(2) of the Constitution of the Republic of South Africa Act 200 of 1993). Several clinics have begun to focus more on constitutional issues. At the University of Natal, Durban, for instance, the law clinic specializes in problems concerning women and children, administrative justice, land restitution and HIV/AIDS. The majority of clinics still engage in general practice. Fewer restrictions are being imposed by the law societies and candidate attorneys may do their mandatory internships as community service in accredited law clinics. As has been previously mentioned s 2(1A)(b) of the Attorneys Act 53 of 1979 was amended by s 2 of Act 115 of 1993 to allow aspiring attorneys to "perform community service approved by the society concerned" – provided that the person who engages them is practising the profession of attorney, *inter alia*, "in the full-time employment of a law clinic, and if the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic" (s 3(1)(f)).

¹⁶⁶ Although student practice rules were drafted in 1985 to enable final year law students attached to law clinics to appear in criminal cases for indigent accused in the district courts these were never implemented. The Student Practice Rules for South Africa were based on the American Bar Association Model Rules for Student Practice (Council for Legal Education and Professional Responsibility *State Rules Permitting the Student Practice of Law: Comparisons and Comments* 2ed (1973) 43) and submitted to the Association of Law Societies of South Africa in April 1985 for onward transmission to the then Minister of Justice. Although the rules were approved by all branches of the practising profession and the law schools they appear to have been blocked by bureaucrats in the Department of Justice (McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 129 fn 82).

¹⁶⁷ See par 2 above.

cases a year, mainly during the summer and winter vacations, this could provide criminal defences for 30 000 criminal accused.¹⁶⁸

University legal aid clinics can play a valuable role in supplementing the work of the national legal aid bodies. For instance, in South Africa the Legal Aid Board has entered into cooperation agreements with university legal aid clinics in order to compensate them for providing back-up legal services to clusters of paralegal advice offices.¹⁶⁹

More than 25 years ago the role that law clinics can play in developing countries in Africa was described as follows:

“The well-supervised use of law students will significantly ease the limitations under which most of the legal aid programmes in Africa now have to work; it is only through student programmes that there is any possibility in the near future for legal services becoming widely available to the poor”.¹⁷⁰

For instance, for years the University of Botswana Legal Aid Clinic has been one of the few agencies in that country providing legal aid services to indigent people requiring lawyers. Students employed in legal aid clinics can play a valuable role in assisting small and developing Commonwealth countries to provide legal aid services.

7 8 1 *Lessons learned*

Law clinics can play a useful role in assisting legal aid litigants to compel the governments to deliver in terms of their constitutional obligations, including the right to counsel. The funding of law clinics tends to be uncertain as they usually rely on donor funding. However, if a holistic approach is adopted in respect of legal aid services, partnership agreements can be entered into between the national legal aid structures and the university law clinics. Not only will this improve the spread of legal aid services in a country but additional funding from the State will also help to make the law clinics more financially viable.

7 9 **Paralegal advice offices**

Paralegal advice offices exist in many developed and developing Commonwealth countries. In some cases paralegals are paid professionals, while in others they are unpaid volunteers.¹⁷¹ Some work closely with

¹⁶⁸ Minister of Justice and Department of Justice *Enhancing Access to Justice through Legal Aid: Position Paper for National Legal Aid Forum* (unpublished) (15-17 January 1998) 25.

¹⁶⁹ See par 7 9 below.

¹⁷⁰ Reyntjens “Africa South of the Sahara” in Zemans (ed) *Perspectives on Legal Aid* (1979) 36. The statement is still true today. The value of using properly supervised law students to deliver legal services has also been recognized as fulfilling the requirement of a constitutional right to counsel by the United States Supreme Court which stated: “Law students can be looked at to make a significant contribution, qualitatively and quantitatively, to the representation of the poor in many areas”: *Argersinger v Hamlyn* S Ct 2006 (1979). See generally McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 131.

¹⁷¹ See generally, Golub “Non-lawyers as Legal Resources for their Communities” in Ford Foundation *Many Roads to Justice* 297 301-306.

lawyers while others act completely independently. In most cases they interface directly at grass-roots level with the communities they serve. As a result they provide a valuable link between their communities and the providers of legal aid services. A useful variation of the traditional paralegal advice office for small and developing Commonwealth countries is the Singapore “Multi-door Courthouse” where a State-funded centre at the courts provides a “one stop” service centre for administrative and educational services but not legal advice.¹⁷²

In South Africa a variety of organisations are involved in paralegal advice work. Many of these organisations also provide access to justice by educating the public concerning their legal rights, as well as training paralegals to give advice.¹⁷³ Some bodies concentrate in urban areas, while others focus on rural areas.¹⁷⁴ Services are provided at a variety of levels ranging from advice only to providing full legal aid services. Organisations such as the Community Law and Rural Development Centre (CLRDC) have helped rural communities to establish paralegal committees to select certain community residents for training as paralegal advisers and educators.¹⁷⁵ In

¹⁷² www.subcourts.gov.sg/faq-MDC.htm (2004).

¹⁷³ Training of paralegal staff varies from, formal training offered by Lawyers for Human Rights, and the Community Law and Rural Development Centre in Durban, leading to diploma courses, to mainly practical experience which is obtained “on the job”. Some of the more sophisticated advice offices are linked to organisations such as the Legal Resources Centre, Lawyers for Human Rights and the Community Law and Rural Development Centre, Durban, while others rely on free services provided by legal practitioners in private practice. Most advice offices offer mainly legal advice which very often resolves the problem. Many of them have built up expertise in particular areas eg pensions, unemployment insurance, unfair dismissals, etc. Where the advice office cannot solve the problem the party concerned is usually directed to the Legal Aid Board’s offices or to a sympathetic law firm. Paralegals are also being included in the Board’s new justice centres and cooperative agreements. A National Paralegal Institute (NPLI) has been set up to assist the more than 350 paralegal advice offices in the country with training and fund-raising. It is also investigating paralegal accreditation certification procedures. The NPLI works closely with the Association of University Legal Aid Institutions (AULAI) by providing clusters of advice offices that are supported by the law clinics at the different universities (see generally, McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 131-S133).

¹⁷⁴ Paralegal advice offices are particularly useful in rural areas. A good example of a rural paralegal advice office was the Community Law and Rural Development Centre (CLRDC) in Durban was established at the University of Natal in 1989 to set up a network of rural paralegal advice offices and to do law-related education. It served a rural population of about one million living in the provinces of KwaZulu-Natal and the Eastern Cape and promoted the attainment and maintenance of democracy through development of a rights-based culture in which all levels of government were expected to honour their obligations and be accountable to their citizens (see McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 134). At one stage the CLRDC supervised 56 rural paralegal advice offices in communities that were governed by customary law and ruled by tribal authorities who had no formal training and were expected to administer communities and issues of traditional customary law in a manner that may conflict with “Western law” and the new Constitution (Community Law and Rural Development Centre *Annual Report for the Financial Year 1 January to 31 December 2000* (2001) 10).

¹⁷⁵ The paralegals underwent two full-time two month programmes on law-related topics, including customary law and human rights, after which they did one year practical training in their communities under the supervision of the CLRDC staff (Community Law and Rural Development Centre *Annual Report for the Financial Year 1 January to 31 December 2000* (2001) 10). At the end of the course the successful candidates were issued with a diploma by the Faculty of Law, University of Natal, Durban. Other paralegal university certificate courses are run at Rhodes University, Johannesburg University and Potchefstroom

the past the CLRDC has managed clusters of paralegal advice offices that were provided with legal support by the university law clinics in partnership with the Legal Aid Board.

A variation of the South African CLRDC programme has been established for rural areas in Sierra Leone and may prove to be a useful model for small and developing Commonwealth countries with comparatively large rural populations.¹⁷⁶

7 9 1 *Lessons learned*

Paralegal advice offices can be used to complement conventional lawyer-based legal aid service schemes. They are often located where communities make their first contact with the law and can play a valuable role in screening initial legal complaints and referring potential litigants to lawyer-based services. Paralegals should be paid for their services and properly trained. To achieve this paralegal offices should be adequately funded. This can be done in part by integrating them into the national legal aid scheme.¹⁷⁷

8 CONCLUSION

The following conclusions can be drawn concerning the delivery of legal aid services by small and developing Commonwealth countries in the light of the South African experience:

- (a) The most appropriate methods of delivering legal aid services in any country are likely to be influenced by the structure of the legal profession, the country's international obligations, the country's constitutional provisions, the national legal aid structures, and the country's financial resources (and political will).
- (b) In many countries the *judicare* approach, supplemented by *pro bono* work, is used to deliver legal aid services. However, in the larger cities and towns where a significant number of State-funded criminal defences are required it may be more cost-effective to employ salaried lawyers as public defenders.
- (c) A holistic approach using a combination of methods involving both *judicare* and salaried lawyers is probably the most effective way of

University. The CLRDC also provided continuing legal education for paralegals who had already completed the programme. Apart from giving advice the paralegals were required to conduct law-related workshops in their communities. In 2000 paralegals conducted 2 160 such workshops (Community Law and Rural Development Centre *Annual Report 2000 24*).

¹⁷⁶ James-Allen "Accessing Justice in Rural Sierra Leone – A Civil Society Response" February 2004 *Justice Initiatives* 57-59.

¹⁷⁷ See McQuoid-Mason 2000 24 *Fordham International Law Journal (Symposium)* S 135-S136. The South African Legal Aid Board has recognized the important role played by paralegals by incorporating cluster arrangements involving advice offices and university law clinics into its cooperation agreements with the law clinics. Donor funding may be available for such initiatives. The South African initiatives began with funding by the International Commission of Jurists (Swedish Section) for clinics that undertook to support clusters of advice offices through the Association of University Legal Aid Institutions Trust (AULAI Trust).

delivering legal aid services. Ideally countries should try to provide legal aid litigants with a “one stop shop” but this may not always be feasible.

- (d) Comparatively sophisticated legal aid systems, with a modest *per capita* expenditure on legal aid by the State, can be developed using variations of the public defender office such as employing law graduates in State-funded law clinics and rural law firms.
- (e) Given the shortage of legal aid lawyers and financial resources in developing countries law students should be seen as a potentially valuable and inexpensive resource available to assist national legal aid schemes.
- (f) Where it is feasible, national legal aid bodies should enter into cooperation agreements with university law clinics and independent providers of legal services, such as non-governmental public interest law firms.
- (g) National legal aid structures should work closely with paralegal advice offices as they are often the first point of contact for people who need legal advice.
- (h) Where appropriate national legal aid bodies should enter into cooperation agreements with university law clinics, non-governmental public interest law firms, and private law firms to provide support for paralegal offices.