

EMBASSY OF THE
UNITED STATES OF AMERICA

Office of Development Affairs
July 1, 1988

Mr. George S.S. Maluleke
Chairman, Legal Education Trust
Black Lawyers Association
2nd Floor
68 Von Wielligh Street
Johannesburg

Subject: Agreement No. 674-0305-G-SS-8030
Legal Assistance Project 674-0305
BLA Litigation Department

Dear Mr. Maluleke:

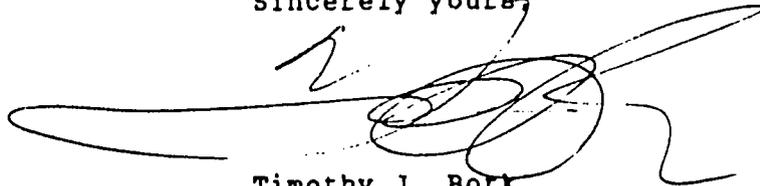
Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the Agency for International Development ("AID") hereby obligates to the Black Lawyers Association Legal Education Trust (the "Trust" or "Recipient"), the sum of \$50,000 to support the operation and expansion of the BLA's human rights Litigation Department, as more fully described in Attachment 2 of this Agreement.

This Agreement is effective and obligation is made as of the date of this letter and shall apply to commitments made by Recipient in furtherance of program objectives during the period beginning with the effective date and ending June 30, 1991.

This Agreement is made on condition that the funds will be administered in accordance with the terms and conditions as set forth in Attachment 1 entitled "Schedule", Attachment 2 entitled "Program Description", and Attachment 3 entitled "Standard Provisions", which have been agreed to by the Trust.

Please sign the original and two (2) copies of this letter to acknowledge your receipt and agreement with the terms of this Agreement, and return the original and one (1) copies to the Office of Development Affairs, U.S. Embassy, Pretoria.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Timothy J. Bork', written over a horizontal line.

Timothy J. Bork
Counsellor for Development Affairs

Attachments

1. Schedule
2. Program Description
- ~~3. Standard Provisions~~

ACKNOWLEDGED:

BY:


George S.S. Maluleke

TITLE: Chairman of the Board of Trustees

DATE: July 1, 1988

FISCAL DATA

Appropriation: 72-1181014

Budget Plan Code: GSSA-88-21674-KG13

RES CNTL NO.: B880085

Com. Doc. No.: 674-0305-G-SS-8030

Project No.: 674-0305

Total Obligated Amount: \$50,000

Funding Source: USAID/South Africa

Drafted:RLA:ESpriggs

Cleared:AsstDir:WStickel

HRO:Polson

PROG:CPascual

Funds Available _____ per _____.

ATTACHMENT 1

SCHEDULE

A. Purpose of Agreement

The purpose of this Agreement is to support the operation and expansion of the BLA's human rights Litigation Department, as more specifically described in Attachment 2 to this Agreement.

B. Period of Agreement

1. The effective date of this Agreement is July 1, 1988. The expiration date of this Agreement is June 30, 1991.
2. Except as AID may otherwise agree in writing, funds obligated thereunder are available for program expenditure for the estimated period July 1, 1988 to June 30, 1989 as shown in the Financial Plan below.

C. Amount of Agreement and Payment

1. The total estimated amount of this Agreement for the period shown in B.1 above is U.S. \$150,000.
2. AID hereby obligates the amount of \$50,000 for purposes of this Agreement during the period set forth in B.2 above and shown in the Financial Plan below. In no event will Recipient's costs exceed the U.S. dollar amount obligated without a written amendment to this Agreement executed in accordance with procedures set forth in Attachment 3 under "Amendment". Additional funds up to the total amount of the Agreement shown in C.1 above may be obligated by AID subject to (1) availability of funds, (2) the mutual agreement of the parties to proceed with the project and (3) the requirements set forth in Attachment 3 under "Revision of Financial Plans".

D. Financial Management

1. General. The Trust shall be responsible for accounting for all funds provided under this Agreement. Reimbursement for expenses incurred shall be in the form of a monthly submission

of invoices, checks, payroll sheets, etc. as further described in Part 2 of this Section. Set forth below in Section E, "Financial Plan", of this Agreement is a budget based upon expected expenditures covered by this Agreement. This budget contains an estimate of monthly expenditure requirements and a request for a 90-day advance. Due to administrative procedures, a sufficient advance of funds will be provided to cover expenses for 3 months of operations. Any interest earnings from funds provided under this Agreement will be returned to USAID.

2. Disbursement Procedures.

a. Payment Method. Local currency disbursements from USAID to the Trust will be made through monthly reimbursement for expenses incurred during the previous month. Each reimbursement request will include (a) a summary sheet, listing in a format compatible with the budget, the purpose and amount of all (individual) expenses incurred with a sub-total for each budget line item and a total; and (b) copies of paid invoices (not proforma invoices), checks, or other documentary evidence showing that funds were expended and the payee received such funds; e.g. an invoice stamped "paid", a cancelled check, a payroll sheet signed by the employee, etc.

b. Advances. It is recognized that an advance of funds is required, as working capital, to carry-out the purposes of this Agreement. Refer to Section D.1 and Annex B to this Schedule which requests such an advance.

(1) As discussed in Paragraph 2a above, monthly (or "recurring") expenses are reimbursed. As such, USAID will reimburse the Recipient for recurring expenses financed from the advance, but non-recurring expenses financed from the advance will not be reimbursed. Rather than reimburse non-recurring expenses, the amount of the advance will be reduced by that amount. Consequently, when the Recipient submits its monthly reimbursement request per paragraph 2.a., it is most important to include those expenses which will be used to reduce the advance balance.

(2) At the end of the Agreement period, any advance balance will be liquidated through submission of paid invoices and/or cash.

(3) Should there be a need to increase the level of the advance, USAID should be notified in writing at least 30 days before the required increase. USAID will advise, in writing, of any approved increase. Likewise, USAID reserves the right to decrease the level of this advance should expenditures fall below projected levels.

E. Illustrative Financial Plan

A. The Illustrative Financial Plan for this Agreement is set forth in Annex A to this Schedule. Figures are in South African Rands, unless otherwise stated. Within the total amounts specified, and without prior AID approval, Recipient may make adjustments between AID-funded line items not exceeding 25 percent of any affected line item, provided that AID is promptly notified of any such adjustments. Any other revisions shall be made in accordance with Standard Provision 4 of this Agreement, located in Attachment 3 and entitled "Revision of Agreement Budget".

B. Level of Assistance

The budget line item totals provided in Annex A have been calculated by taking the amounts required by Recipient in South African Rands and then converting these to U.S. Dollars. While the Rand amounts are included in Annex A for illustrative purposes, the U.S. Dollar totals and not their Rand equivalents, constitute the binding level of USAID assistance.

Due to exchange rate fluctuations, Rands available under individual items financed under this Agreement may exceed levels budgeted for by Recipient, and thus allow other items to be financed as well. In such an event, Recipient will consult with USAID on the priority use of these funds, and arrangements will be made to amend the Agreement to provide for their expenditure. However, should changes in the exchange rate result in fewer Rands being available than budgeted for, Recipient must finance the short fall since the U.S. dollar amount prevails.

F. Reporting and Evaluation

The Recipient shall submit a performance report no less than every three months indicating actual accomplishments financed by the Agreement. The report shall be submitted within 30 days of the end of each three-month period. The outputs of the program, such as the number of cases or other types of activities funded under this Agreement, will be quantified in each report. A brief description of the cases or types of activities funded during the period, including the issues involved, the status of the case or activity, and any potentially broader implications, will also be included. If cases are funded from sources other than this Agreement, the report will indicate the overall proportion of the cost of activities undertaken by Recipient that is attributable to this Agreement. A composite report will be submitted annually within 30 days of the anniversary date of this Agreement.

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G. Special Provisions

1. The Recipient agrees to institute the recommendations to upgrade its financial systems specified in the financial review conducted by USAID dated October 13, 1987. The Recipient agrees to allow USAID to conduct a follow-up review of its financial management systems for accounting and record keeping if so requested by USAID.
2. Whenever possible Recipient will consider supporting cases having a greater likely public impact, all other things being equal.
3. Professional fees and charges, paid under this Grant may not exceed the maximum rates allowed by the South African Council of Churches.
4. In order to extend available funds to as many cases as possible Recipient will make best efforts to hold costs and hourly charges to a minimum. In this regard, Recipient, whenever possible and appropriate, will encourage sub-recipients and clients to obtain assistance from their own or other sources, such as State Legal Aid. In addition, Recipient will endeavour, whenever possible and appropriate, to utilize junior counsel and to negotiate as reasonable a fee as possible in each case.
5. It is agreed that resources made available under this Agreement will be available to all eligible beneficiaries regardless of political persuasion or race.

H. Title to Property

Title to all property purchased under this Agreement shall vest in the Recipient.

I. Authorized Geographic Code

United States and Republic of South Africa.

J. Local Cost Financing with U.S. Dollars

The amount of U.S. dollars authorized to be used for local cost financing is the entire amount obligated under this Agreement.

K. Other Implementation Guidelines

None.

ANNEX A
ILLUSTRATIVE BUDGET

	88/89		89/90		90/91		TOTAL	
	US\$	SAR	US\$	SAR	US\$	SAR	US\$	SAR
1. Salaries ^{A/}	21,800	48,000	24,600	54,000	27,300	60,000	73,700	162,000
2. Disbursements ^{B/}	<u>28,200</u>	<u>62,000</u>	<u>25,400</u>	<u>56,000</u>	<u>22,706</u>	<u>50,000</u>	<u>76,306</u>	<u>168,000</u>
TOTALS	50,000	110,000	50,000	110,000	50,000	110,000	150,000	330,000

Notes: ^{A/} Salary of incumbent Litigation Officer.

^{B/} Includes counsel and correspondents' fees and expenses; witness fees and expenses; court fees and other costs directly linked to litigation.

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ANNEX B
ADVANCE REQUEST

	1988/89	
	US\$	SAR
1. Salaries	5,460	12,000
2. Disbursements	<u>7,040</u>	<u>15,500</u>
TOTAL	12,500	27,500

ATTACHMENT 2
PROGRAM DESCRIPTION

THE HUMAN RIGHTS LITIGATION PROJECT OF THE
BLACK LAWYERS ASSOCIATION
LEGAL EDUCATION CENTRE

INTRODUCTION

By its very nature, the South African legal system entails not only laws discriminating between the different races but also those of an oppressive nature. The oppressed group are, as it is well-known, the Black majority.

To enable it to secure its policy as described above the South African government has, through its supreme parliamentary powers, drawn a myriad of complex laws. These laws not only discriminate or oppress the majority but also curtail their movements and activities in the name of so-called security of the State or maintenance of the public order. These laws continue to exist and are re-drawn, added to or amended from time to time to deal with certain situations in the country that pose a threat to the status quo.

Recently it has become more difficult for citizens of the Republic to exercise basic human freedoms since laws exist that bar or curb certain activities, to the extent that it is not clear which activities engaged in by people would be regarded as legal and which would be regarded illegal.

For this reason it has become more important for lawyers not only to be able to defend those who are criminally prosecuted for transgression of these complex laws but to be able to argue for interpretation of those laws in favour of basic human rights.

It is also becoming more and more essential for lawyers, especially black lawyers to recognise their role and to deal with cases that turn ordinary citizens into victims of the apartheid system/

THE LITIGATION PROJECT

Against this background, the Legal Education Centre of the Black Lawyers Association has, in addition to its various educational projects a litigation project, through which the Centre responds to the needs of a community constantly plagued by laws curbing or questioning its activities.

It is common cause that the Centre was initially not established for this purpose, but through the increase of the need, not only to increase the numbers of black lawyers or to enhance their skills in dealing with cases, but to render its services through its qualified lawyers directly to the community, the Centre could not afford to sit by and avoid the problem. The cases accepted and dealt with by the Centre increase steadily all the time.

There are other centres which deal with cases on the same basis as the Legal Education Centre, namely, the Legal Resources Centre and the Centre for Applied Legal Studies through their law firm. All three of these organisations have in common the object of promotion of human rights through litigation and defence. Despite the existence of the other two centres, the need to increase the public interest case network increased as the volume of work continued to swell.

At present, the litigation department of the Centre is manned by a Litigation Officer. Cases are dealt with within the existing structure of the Centre and its administration. Cases are also presently funded from the existing funds of the Centre or from the Legal Defence Fund. Both situations are, as cases grow, simply not ideal for the following reasons:

- a) the Centre's funds are very limited not only in respect of specific projects for which they are earmarked but in quantity as well.

It is common cause that litigation is capable of consuming a large volume of costs and public interest litigation is no exception to this general rule. In fact in this present climate it is very essential;

- b) the Legal Defence Fund was established primarily for the purpose of providing financial assistance to lawyers involved in political cases and to encourage more black lawyers to undertake these cases. It is therefore not ideal for the Litigation Officer employed by the Centre to apply for funding from a fund run by the Centre. In fact this exercise is often perceived to be self-dealing. Moreover, the Legal Defence Fund has itself very limited funds and can presently not cope with the demands placed on it by increasing applications for financial support;
- c) lastly, as it was initially not envisaged that the Centre would be involved in active litigation, the project has no independent funding and the cases are by their very nature, capable of drying out the Centre's funds unless funding is obtained as a matter of urgency.

Further, it is not intended that the Centre undertake work that could be performed by law firms of a fee-earning nature. The Centre will assist primarily persons not able to afford legal fees and matters of a human rights nature, which generally do not generate much income for private law firms. The Centre will apply for funds from sources that are available not only at the Centre and in South Africa but outside the country as well. It is envisaged that the Litigation Department be a self-contained and self-sufficient project to the same extent as the other projects existing alongside it.

CASE SELECTION AND CRITERIA

As appears from above the Centre concentrates on cases of a public interest and human rights nature. These include:

- 3.1 political imprisonments and detentions;
- 3.2 squatting and trespass;
- 3.3 housing and evictions;
- 3.4 police assaults resulting into injury or death;
- 3.5 inquests into deaths arising out of actions of the South African/Homeland Police or the South African Defence Force;
- 3.6 Forced removals;
- 3.7 denationalization;
- 3.8 Restrictions on freedom of expression and association, including banning of material, persons and bodies;
- 3.9 labour, namely unfair dismissals;
- 3.11 various other cases that are not mentioned but that constantly require the assistance of the Centre and that are judged on the basis of available human rights criteria.

THE LAW CLINICS

The Centre itself runs, a law clinic through a Co-ordinator in Alexandra Township. Part of the task of the Litigation Officer is to supervise such law clinic and render assistance to the para-legal co-ordinator wherever possible. Cases that cannot sufficiently be dealt with through the resources available at the Clinic are referred to the Litigation Department.

Increasingly, law clinics and advice centres independent of the Legal Education Centre refer cases to the Centre for legal advice and tackling in Court. It is in this role that the Litigation Department also fulfills its object of reaching out to the community as most advice centres would be situated in areas in which they are readily accessible to the community. The Litigation Department therefore, fulfills the role of a referral centre for the advice centres in this way.

NEED FOR MORE ATTORNEYS

It goes without saying that as the Litigation Officers tasks continue to increase due to the escalating number of cases, assistance to the department is inevitable. It is the Centre's desire to tackle cases effectively by not taking more cases than it can handle. It is however not always possible to turn cases away on the basis of a lack of resources to handle such cases. To assist more people - the Department usually draws assistance from other members of staff, namely the Project Officer (Legal Defence Fund) and the Director, where possible.

It is envisaged that in future the Litigation Department should have more than one attorneys handling cases for more effective service to the community and more thorough execution of duties. This would be possible once the Centre becomes self-sufficient.

At present, the Centre's funds are limited. It has therefore not been possible to get assistance for the Department. Of immediate need, is the assistance by a "fellow", a pre-articles law graduate. This will fulfill various objects:

- 5.1 Relieve the Litigation Officer of wide variety of duties than can be handled at a junior level;
- 5.2 the training of a prospective articled clerk whose placement would be the responsibility of the Centre. This is true because part of the Centre's projects is to increase the number of black lawyers and to assist graduates in obtaining articles of clerkship. The Centre would definitely-fulfill a valuable role in training some of the graduates to the extent of its abilities, thereby preparing them for the practical training as articled clerks.