

The Southern African Legal Information Institute at Crossroads

Paula Rainha^o

The Southern African Legal Information Institute

Abstract. This paper discusses the recent financial crisis endured by the Southern African Legal Information Institute (SAFLII) and some of the changes and measures being implemented to address organizational and operational challenges and ensure a productive and thriving time ahead for the institute and for the free access to law initiatives in Southern Africa.

Keywords: Southern African Legal Information Institute, South Africa, Southern Africa, Change Management, Financial Crisis, Funding Crisis, Sustainability, Free Access to Law

1. The Southern African Legal Information Institute (SAFLII)

1.1. SAFLII AND THE CONSTITUTIONAL COURT TRUST

The Southern African Legal Information Institute (SAFLII) started in 2003 as an academic initiative between Wits Law School (Wits) and the Australasian Legal Information Institute (AustLII).

In 2006 SAFLII was taken under the wing of the Constitutional Court Trust who also provided its first and current official premises at the South African Constitutional Court, certainly one of the most symbolic and inspirational buildings in the world.

Embracing SAFLII seemed to be a perfect fit for the Constitutional Court Trust to pursue its mission, as stated in the Trust Deed:

"...to promote democracy, constitutionalism and judicial independence particularly in the Republic of South Africa and the African region by enhancing and furthering the non-judicial activities of the Constitutional Court of South Africa and other Courts in the region..."¹

SAFLII has remained a Constitutional Court project until this day and we believe this gives the institute a rather *sui generis* standing, as most LII's are under the *aegis* of a governmental, professional or academic organization. The only other LII we know of with a similar incorporation would be the British and Irish Legal Information Institute (BaiLII), which is however a Charitable Trust on its own and not exactly one of several projects of a Trust.

This particular standing allows SAFLII the honour of sharing a powerful mission with the Constitutional Court and its judges and to benefit from the restless work conducted by the Court and all its teams in the development of

¹ The Constitutional Court Trust deed is publicly available at: <http://bit.ly/jZnb5b> and <http://bit.ly/m9Bq4j>.

the rule of law and social justice in South Africa and in the wider Southern African region.

Having such prestigious sponsors has been of immense importance in SAFLII's own reputation although this link with the Constitutional Court and the other projects of the Trust has unfortunately not always been fully acknowledged.

Along the years SAFLII has also received the support of the Southern African Chief Justices Forum, which was set up to promote judicial independence, human rights, the rule of law, democracy and very specifically the publication of judgments from Southern African superior courts on the internet. This high level support has been somewhat fruitful in achieving more fluid and productive collaborations with the Judiciary of some Eastern and Southern African countries but it has not yet been developed to its full potential.

1.2. SAFLII'S FUNDING

From inception SAFLII has been exclusively and generously funded by foreign donors, such as Carnegie Mellon, Ford Foundation, Freedom House, Open Society Initiative, OSISA and USAid, both for operational costs and specific projects.

The Trust has thus far refused to accept grants from South African organizations or individuals. This has been seen as a limitation to the expansion of SAFLII's work, namely in South Africa, due to the growing foreign donor focus on less developed countries. As a result, the Trust is currently analysing potential changes to its funding policies.

1.3. SAFLII AT THE TIME OF THE 2009 LVI CONFERENCE

When the Free Access to Law members last convened in November 2009 for the Law Via the Internet Conference in Durban², SAFLII's was headquartered in independent rented premises in Braamfontein, Johannesburg and the team was composed of eight full-time professionals³.

SAFLII's collection contained different types of materials from Southern Africa, covering most member countries to the Southern African Development Community (SADC)⁴.

² For the full conference program and papers see www.lawviatheinternet.org.

³ Director (1); Head of Legal Informatics (1); Head of IT (1); Regional Content Coordinator (1); Content Specialist (2.5); Software Developer (1); Web Developer (1).

⁴ SAFLII's collection contains materials from Angola, Botswana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Seychelles, Tanzania, Uganda, Zambia and Zimbabwe. The only country missing from the collection is the Democratic Republic of Congo.

SAFLII had also by then assisted in the setting-up of MalawiLII in Malawi, MozLII in Mozambique, SwaziLII in Swaziland and ULII in Uganda and was still providing training and technical support to some of these teams.

The Law Via the Internet conference was a success and closed 2009 in style whilst SAFLII's presentation laid out the institute's plans for the future ahead:

“SAFLII's focus through the coming years will be to continue to *provide quality free access to primary and secondary legal material from its member countries, either centrally or through a federated approach*. In execution of our commitment to building local capacities for publication of legal information and spreading the ideas of free access to law in the Region, we shall continue to *devolve our structures to either establishing national LIIs or maximizing local control over the local content published on SAFLII*. In doing so, we will continue to *engage the public, institutions and partners with matters of policy and standards* to enable the future sustainable free flow of African legal information.” (Badeva-Bright, 2009, emphasis added)

2. SAFLII'S *Annus Terribilis*

Sadly, a lot was about to change in the beginning of 2010 when SAFLII was hit by a severe financial crisis that had been worryingly looming in the horizon.

Faced with the risk of unsustainable debt of the project the Constitutional Court Trust was called to make some very painful decisions and between Q1 and Q2/2010 SAFLII saw the departure of its four senior members of staff, with the remaining four operational team members returning to the institute's original premises at the Constitutional Court.

Needless to say that SAFLII went through the most difficult period in its short history and that this was a near-death experience.

Fortunately the institute managed to survive this crisis with the support of the Trust and through the dedication of the remaining team of three content specialists and two IT staff, who worked through personal and professional adversity to keep the content flowing and the website up-to-date.

Unfortunately there were no additional funds to hire senior staff that year therefore SAFLII went through Q3/2010 and Q4/2010 with no formal management. SAFLII's operations were necessarily reduced to a minimum as the Trust and team did its best to fulfill its fiduciary duties towards its donors and users.

3. SAFLII's *Annus Mirabilis*?

The 2010 crisis and its aftermath were powerful calls for change but there was no in-house staff that could lead SAFLII to a more positive and productive space.

There had been no succession plans in place and the remaining members of staff had too narrow job descriptions to take-up a management position. This meant that the change initiatives that needed to be introduced if the institute wanted to survive and thrive would be driven by a Project Director new to SAFLII.

In early 2011 SAFLII saw the approval of two grants by Carnegie Mellon Foundation and OSI. In addition, Freedom House/USAid also approved a smaller grant for content collection projects in Swaziland and Zambia.

With the confirmation of the grants the Trust could then hire a SAFLII Project Director for a period of one year but only on a part-time basis. The option for a part-time Project Director was partly circumstantial and partly funding related. Despite the generous funding, SAFLII preferred to take a conservative approach and get the best candidate for the job, initially on a part-time basis. The Project Director would then work with the Constitutional Court Trust Coordinator in identifying the project needs, also in terms of extra work time and extra staff.

The first weeks in the job were painstakingly difficult and slow, as the new team needed to find their way around and pour through computer files, shared drives and make sense of archives and archival gaps. The remaining SAFLII team was very helpful but could not always help, especially beyond what they came to know through their own limited duties and responsibilities.

One of the lessons learned during this period is that one should not underestimate the time it will take for new staff members to actually start being productive, namely in the absence of a handover and proper files, guides, manuals and training.

This may seem obvious but we would like to stress this aspect because in South Africa, organizations such as the Constitutional Court and SAFLII have the duty to provide opportunities for the advancement of inexperienced professionals from previously disadvantaged groups. This means that there is an even higher duty than usual to train people on the job and to create materials and set procedures that facilitate the learning and integration of newcomers who, due to skills shortage, may not have the experience or skills to easily start a job from scratch.

Although this stems from South Africa's very particular history, we believe the same is also true for other countries in the region that are also faced with the same skills shortage problems.

In any case, despite the normal difficulties of starting a new job, we managed to start dealing with all outstanding reporting duties and to put sound financial controls in place, in order to guarantee that SAFLII will never again be in the same trouble as before.

It is of paramount importance for businesses and nonprofits alike to be extremely cautious about budgeting and forecasting, spending money and documenting all expenses. We would also stress the importance of reporting, which is one of the most essential areas of a business and the one that is more often dreaded by staff and middle management alike. Needless to say that after an all-encompassing crisis an organization really needs to go out of its way to reconstitute donor confidence, especially in what relates to financial management and reporting. We have found reporting a very positive and useful exercise and have been working particularly hard in improving the quality and timeliness of our reports to donors.

While we are still working on financial controls, we have also started establishing HR policies and a simple performance management program.

This said, the first few months revealed that these were not the only areas that needed to be addressed.

SAFLII could not simply rest on the fact that it had managed to secure foreign donor funding for a few years and needed to seriously consider the big sustainability question, which has been posed countless times by virtually all nonprofits including, of course, all FAL members (for example, Greenleaf, 2008; Mokbanov, 2008 and 2009; and Lemyre, 2008 and 2009).

We therefore have been asking ourselves “Is it actually sustainable to rely on (foreign) donor funding?” and by asking this question we realized that the crucial matter of funding is inseparable from questioning SAFLII’s own existence and purpose.

It is safe to say that with the crisis SAFLII had reached a point where there was a lot of dispersion and very little focus - its mission was not clear, its running culture posed a lot of operational challenges and the motivation of the team had been obviously affected.

SAFLII had lived since inception with a vision that was communicated in its brochures as:

“SAFLII aims at becoming one of the largest regional sources of legal materials on the internet.”

However, this mission was now being questioned externally and internally due to the creation of AfricanLII by the previous SAFLII management team in the end of 2009.

AfricanLII had filled-in the leadership void in the FAL Movement in Africa and had announced its mission to assist in the establishment and support of national legal information institutes across the continent, starting by the Southern African region where there was already content made available by SAFLII, a fairly wide network of contacts and some national legal information institutes in operation.

In the end of 2009 SAFLII participated with other national LII's in AfricanLII's launch workshop and in a dedicated meeting where it was clarified that the new organization would focus in establishing and supporting the independent operation of national LII's in the region.

From the part of the Trust there were serious concerns about the articulation between a continental, a regional and several national LII's. These concerns were eventually addressed in an active and positive way with the hiring of SAFLII's Project Director who is also expected to foster the cooperation between the institute and all its peers at national, regional, continental and international level.

In any case, at the end of 2009 SAFLII did not have an official manager and any decision about its mission was beyond the powers of the remaining team.

We have been asked in our paper review to tell this story 'warts and all' but we are happy to say that everything has thus far been almost porcelain smooth. We understand the curiosity and that some kind of turf war may have been expected.

This may have been a natural reaction if the same had happened in other countries, other organizations but fortunately, thus far, we have managed to avoid adding another conflict to those that already plague the region.

The main take-away from this period is that the operational team lack of engagement worryingly revealed that SAFLII's vision and mission had not been deeply embedded across the entire team.

4. Change Initiative – The Early Stages

Most works on the topic of "change management" take an empirical approach to find the common elements to successful change initiatives. There are a few factors that are usually pointed as essential:

- Clear vision
- Crisis/Sense of Urgency
- Capable and motivated team leader
- Capable and motivated team
- SMART goals⁵
- Communication

⁵ SMART stands for Specific, Measurable, Achievable, Realistic and Time based.

It is however always mentioned that each organizational change process is unique, highly uncontrolled – hence the need for management - and that successful outcomes are, more often than not, rare and serendipitous.

We thus approach our transition task with extreme caution and respect, knowing that the statistics are against us and that most change initiatives fail outright or do not bring about the desired result.

As mentioned before we felt that change initiatives needed to be introduced so that SAFLII would not fall again into financial trouble. However, we also believe that this is a good moment to introduce a few additional initiatives to address fundamental changes in circumstances or in the environment in which SAFLII operates.

SAFLII has a lot to learn, especially from the LII's that have been operating successfully for more than 15 years, sailing through astounding economic, legal, political and technological changes.

It has been suggested in the past that changes to SAFLII's particular formal structure should be the first thing to happen, thus allowing the institute to obtain other forms of funding and consequentially expand its operations and solve part of its problems.

While we do recognize the advantages and importance of a good funding mix, we do not believe that it is wise to start addressing SAFLII's current problems by implementing drastic changes in its formal structure and organization. We believe that there is room for change and improvement within SAFLII's current structure and organization, which will only be modified at a basic level and where strictly necessary.

4.1. REINSTATEMENT OF SAFLII'S VISION

As part of our change exercise we have felt the need to reinstate SAFLII's vision, and rephrase it as follows:

“To be the largest free online source of curated legal materials from Southern Africa”

4.1.1. Southern African Focus

The Trust reaffirmed that SAFLII should remain in existence and keep its Southern African focus due to our important role in the region. Despite SAFLII's troubles the number of unique visitors has grown from 720,126 (2009) to 867,789 (2010) and the number of hits in our website from 14,394,633 (2009) to 18,166,472 (2010). Only in the four first months of 2011 we received 300,187 unique visitors and 8,230,291 hits.

We believe that the establishment of national LII's needed indeed a more coordinated and dedicated approach than what SAFLII was able to offer in the previous years, let alone at present with such a small team. SAFLII therefore welcomes and supports AfricanLII's work in this area and is fully available to work on national projects should there be a need for our collaboration.

SAFLII will keep on collecting and publishing materials from Southern Africa through its own means and through collaborations with AfricanLII and national LIIs and looks forward to participating in mutually enriching data exchanges. Many of the nascent LIIs have started off with content originally gathered by SAFLII and are now working on updating its own collections and websites autonomously.

This collaboration is even more positive as AfricanLII's guarantees that despite differences in technical platforms, all data produced by the different national LII's will be fully accessible and usable by the WorldLII family of platforms, in which SAFLII is currently included.

With the establishment of national institutes out of its primary scope, SAFLII will devote a larger part of its time to South Africa but still assist in the success of these newborn national projects in the region, namely through:

- Linking and returning search results in order to foster usage on national LIIs websites

SAFLII has started establishing direct links and returning search results to national LIIs, provided that collections are being updated and websites are up. This is currently the case of MalawiLII and ULII but will also soon be the case of MozLII and SwaziLII. We trust that this measure will greatly help nascent LII's to initially leverage on the usage originated at a more established project like SAFLII to get much needed traffic.

- Content and Technical Collaboration

Under its Freedom House/UsAid grant SAFLII is currently working with AfricanLII and SwaziLII in a content collection and uploading project. It has been agreed that both SAFLII content and technical teams will be trained by AfricanLII on the platform in use at SwaziLII so that they can assist the local team once they conclude their content audit and scanning of materials.

- Federated Search

Cross-jurisdictional searching is already available on SAFLII but AfricanLII is developing a federated search system, with the collaboration of Cornell and Lexum, which will allow searching across different platforms. It has been also agreed with AfricanLII that SAFLII will participate in this initiative and contribute to the technical advancement of free access to law in Africa.

4.1.2 Curated Legal Information

The only new element we have added to our mission is that SAFLII's objective is to offer selected and relevant legal information but also add value to our collections through automated and manual means.

Curation is probably one of this year's buzzwords in the information business, we have heard of it and subscribe to it, although we are taking it in the simplest of its meanings, i.e. to add value to our collections and improve its presentation, especially in qualitative terms.

Again, this is a huge task, less visible and thus typically underfunded. Nonetheless, we hope to be able to spend some time in content audits and in redefining collaborations, processes, standards, structures, workflows, layouts and quality control.

4.2. CAPABLE AND MOTIVATED TEAM LEADER AND TEAM

We like to believe that the Trust has managed to hire capable and motivated team leaders to work together with Trustees and the team in accomplishing SAFLII's mission.

Although the team leaders had only incipient experience in the area of Free Access to Law this has so far been an advantage, as it allowed a more managerial approach and some distance and impartiality in addressing SAFLII's particular challenges. The fact that SAFLII was only able to hire the Project Director in a part-time position is not the ideal arrangement, but SAFLII expects to address this matter in due time.

This said, leadership is entirely different from management and often organizations are micromanaged but not led. We strongly believe that leadership is greatly about candidness, earnestness and surrounding an organization with fruitful collaborations, which could not be more appropriate than in our collaborative age. SAFLII will therefore work in strengthening its collaborations and partnerships with other members of the FAL Movement but also with other stakeholders.

In what comes to the team, it is common knowledge that there is often an inverse proportionality between a team's expertise and its size. SAFLII is a small team but unfortunately we have insufficient high-level technical expertise and skills to work at a small but highly productive scale. Therefore, the team needs to gain expertise directly or through hiring and partnerships.

After an all time low of motivation, the team is now in a frankly better space and the Trust Coordinator has started developing a performance management program that will address the team's needs in terms of soft and formal skills.

While we are planning further recruitments in the medium-term, we have for now asked our original founders AustLII's for technical assistance and we are happy that they have so kindly agreed to support us in this initial phase.

5. SMART Goals

When we started the job we realized that assessing SAFLII's standing and operations in detail would be resource consuming. We had to accept that by embarking on a proper diagnosis we would have little time initially for devising a formal business plan and (also) implementing it.

The whole transition process at SAFLII is bound to be complex and lengthy therefore, for planning purposes we will work in phases and will set milestones and short term wins to avoid slipping back into complacency.

Like all nonprofits that are fully reliant on donor funding we feel that our work has followed too often funding rhythms, i.e. we have bursts of activity when funding is received and reporting deadlines approach. This is something that should be address by diversifying funding types and sources but also through the implementation of milestones between funding related standing obligations.

Within the bigger picture we have therefore set ten goals, from which we will probably prioritize five after a drill down and putting them in SMART terms. Here are a few examples:

- Implement collaborations and partnerships
- Implement South Gauteng High Court scanning and advocacy project
- Publish South African legislation
- Improve quality and usability of data at source in South Africa
- Revise SAFLII's funding model

All in all, what we are presenting today is a very particular account of SAFLII's recent past and an incomplete narrative of a lot of work in progress.

We trust that we will be here again in 2012 in front of our partners, peers, critics and supporters to talk in detail about the goals we successfully implemented within the year.

Acknowledgements

SAFLII would not have been in this conference today without the support of Freedom House/US Aid. We also thank the Board of Trustees of the Constitutional Court for their vision and continued endorsement. A final special thanks to Kevin Daly and to Karen Shear and Sheryl Luthuli of the Constitutional Court for their generous and too often unnoticed contributions to the SAFLII project.

References

- Badeva-Bright, Mariya (2009), *SAFLII*, available at: www.lawviateinternet.org (accessed on 30 April 2011).
- Greenleaf, Graham (2008), *AustLII's Business Models: Constraints and Opportunities in Funding Free Access to Law*, in Peruginelli, G. and Ragona, M. (Eds.), "Law via the Internet Free Access, Quality of Information, Effectiveness of Rights", European Press Academic Publishing, Florence, pp 423-436.
- Lemyre, Pierre-Paul (2008), *The Evolving Ecology of the Legal Information Market*, in Peruginelli, G. and Ragona, M. (Eds.), "Law via the Internet Free Access, Quality of Information, Effectiveness of Rights", European Press Academic Publishing, Florence, pp 437-454.
- Lemyre, Pierre-Paul (2009), *The Life Cycle of Free Access to Law Initiatives – some context for international donors*, to be made available at: www.lawviateinternet.org (accessed on 30 April 2011).
- Mokanov, Ivan (2008), *After 15 Years, is Free Access to Law Here to Stay?*, in Peruginelli, G. and Ragona, M. (Eds.), "Law via the Internet Free Access, Quality of Information, Effectiveness of Rights", European Press Academic Publishing, Florence, pp 465-476.
- Mokanov, Ivan (2009), *Organizational and Governance models for LIIs* to be made available at: www.lawviateinternet.org (accessed on 30 April 2011).