

# LEGAL AID BOARD



## SOUTH AFRICA NATIONAL REPORT LEGAL AID IN SOUTH AFRICA ILAG-IRELAND-2005

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- 1 BACKGROUND TO LEGAL AID IN SA**
  
- 2 LEGAL AID FUNDING IN SA**
  
- 3 LEGAL AID DELIVERY IN SA**
  - 3.1 Delivery systems
  - 3.2 Justice Centres
  - 3.3 Judicare
  - 3.4 Co-operation Partners
  - 3.5 Impact litigation
  
- 4 LEGAL AID – CURRENT PROGRAMMES**
  - 4.1 National Coverage Plan
  - 4.2 Client Focus
  - 4.3 Accessibility Of Legal Aid
  - 4.4 Quality Legal Services
  - 4.5 Managing and measuring performance
  - 4.6 Legal aid IT systems
  
- 5 CHALLENGES – CURRENT AND FUTURE**

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## 1 BACKGROUND TO LEGAL AID IN SOUTH AFRICA

The delivery of legal aid in South Africa (SA) has been discussed in the previous national report presented to the ILAG Conference in Boston, USA in June 2003. That paper discussed the context within which legal aid was provided in SA, the legislative framework for the provision of legal aid, the various service providers of legal aid, as well details of the Legal Aid Board (LAB) of South Africa. The latter included an outline of the Legal Aid Board-SA's strategic direction, funding capacity, delivery systems, delivery record, details on the provision of legal aid as well as the challenges faced. This report is meant to update the previous 2003 report and will therefore focus on the current funding of legal aid in SA, current delivery systems and delivery of legal aid as well as current programmes in legal aid in SA. It concludes by outlining the current

and future challenges facing legal aid in SA.

## 2 LEGAL AID FUNDING IN SOUTH AFRICA

The Legal Aid Board (LAB) receives funding from the government annually in order to fulfill its constitutional mandate. This is determined in advance based on the Medium Term Expenditure Framework allocations to the LAB. Sound financial management has ensured ongoing support by government in the past few years. The budget allocations from government to the Legal Aid Board-SA are detailed in the Table 1 below. State funding does not impact on the independence of the LAB, which is governed by an independent Board of Directors. The allocation of this budget per delivery system is shown in Table 2 below.

**Table 1: Legal Aid Board Funding**

Year	Government Allocation to Legal Aid in SA Rands	Government Allocation to Legal Aid in US \$ (=R6.50)
2005/2006	R440,008,000	US\$ 67,693,538
2006/2007	R464,408,480	US\$ 71,447,458
2007/2008	R494,392,989	US\$ 76,060,460

This funding translates to a per capita spend of R9,8 or US\$1,5 per person on legal aid in South Africa in 2005/06.

**Table 2: Legal aid Spend per delivery system 2005/06**

Delivery System	Unaudited as at 31 March 2005		Budgeted to 31 March 2006	
	Rands	%	Rands	%
Justice Centres	R233million	66%	R334million	70%
Judicare	R63million	18%	R89million	18%
Co-operation Partners	R1,4million	0.4%	R2million	0.4%
Other	R58million	16%	R59million	12%
<b>Total Expenditure</b>	<b>R355million</b>	<b>100%</b>	<b>R485million</b>	<b>100%</b>

### 3 LEGAL AID DELIVERY IN SOUTH AFRICA

#### 3.1 Delivery Systems

The Legal Aid Board (SA) currently handles more than 300,000 legal matters per annum. The Legal Aid Board (SA) has adopted a mixed use system of delivery including

- 84% (services delivered) of delivery of legal aid through in-house salaried

legal practitioners employed by the LAB(SA) in Justice Centres and

- 13% of delivery through outsourcing to private legal practitioners as well as
- 3% of delivery in co-operation with various NGOs and University based legal aid clinics.

This is detailed in Table 3 below. The budget allocation per delivery system is indicated in Table 2 above.

**Table 3: Legal Aid Board (SA) legal serviced delivered 2004/05**

Delivery System	New Matters 2004/05	% New Matters 2004/05
Justice Centres	258,185	84%
Judicare	40,236	13%
Co-operation Partners	8,231	3%
<b>TOTAL</b>	<b>306,654</b>	<b>100%</b>

#### 3.2 Justice Centre Delivery (legal aid delivered by in-house salaried lawyers)

centres and 35 satellite offices as per the Table 4 below.

##### 3.2.1 Infrastructure

The Legal Aid Board has completed its rollout of a national network of Justice Centres which serves the poor communities of South Africa. This currently includes 58 justice

An ongoing programme of the LAB is to determine areas of need where additional offices need to be established in order to better serve our poor communities. This could also include the relocation of some of our justice centres.

**Table 4: Legal Aid Board (SA) Justice Centres per province**

No	Region	No of Justice Centres	% of Justice Centres per province	No of Satellite offices	% of satellite offices per province
1	Gauteng	8	13.7%	5	14.3%
2	Limpopo	5	8.6%	3	8.6%
3	North West	7	12.0%	0	0.0%
4	KwaZulu Natal	10	17.3%	4	11.4%
5	Mpumalanga	4	6.9%	4	11.4%
6	Eastern Cape	10	17.3%	10	28.6%
7	Free State	4	6.9%	2	5.7%
8	Western Cape	7	12.0%	5	14.3%
9	Northern Cape	3	5.1%	2	5.7%
	<b>Total</b>	<b>58</b>	<b>100%</b>	<b>35</b>	<b>100%</b>

### 3.2.2 Staffing

The LAB has a staff budget of 1,932 posts of which 1,605 posts (83%) were filled as at the end of the financial year (March 2004). 1322 of these budgeted posts (80%) are for legal staff. The staffing position

as at the end of March 2004 is indicated in Table 5. The Legal Aid Board (SA) currently employs 1,145 legal practitioners nationally. This includes Candidate Attorneys, admitted attorneys and advocates and Justice Centre Executives.

**Table 5: Legal Aid Board (SA) Staffing per province**

Provinces	Number of Justice Centres	Number of Legal Staff	Number of Non-legal Staff	Number of Total Staff	% Staff
Eastern Cape	10	156	44	200	12%
Free State	4	56	21	77	5%
Gauteng	8	286	55	341	21%
Limpopo	5	74	25	99	6%
North West	6	87	25	112	7%
KwaZulu Natal	10	200	56	256	16%
Mpumulanga	4	53	56	109	7%
Western Cape	7	193	14	207	13%
Northern Cape	3	37	9	46	3%
National Office		3	155	158	10%
<b>Total Staff (Actual)</b>	<b>57</b>	<b>1145</b>	<b>460</b>	<b>1605</b>	<b>100%</b>
<b>Total Staff (Budget )</b>		<b>1446</b>	<b>486</b>	<b>1932</b>	
<b>% Recruited</b>		<b>79%</b>	<b>95%</b>	<b>83%</b>	

### 3.2.3 Legal aid services delivered

84% of new legal aid matters handled by the Legal Aid Board(SA) are handled through its Justice Centres. Table 6 below reflects the delivery statistics for Justice Centres.

The number of pending files at the close of each year poses an ongoing challenge in relation to the finalization of matters timeously to ensure that clients can access justice timeously.

**Table 6: Legal services delivered through Justice Centres**

Legal Matters	FY 2004/05	FY 2003/04
New matters	258,185	236,282
Finalised matters	233,958	186,292
Pending matters end	123,790	98,885

The legal services delivered include both criminal and civil legal aid. 230,680 (89%) of new matters handled by Justice Centres are criminal matters and 27,505 (11%) of civil matters. Matters handled by Judicare and Co-operation Partners also include civil legal matters. This reflects an ongoing higher expenditure on criminal legal aid in SA.

### **3.2.4 Legal aid policy**

All policy and procedures governing the delivery of legal aid services are incorporated into a Legal Aid Guide which is updated annually.

### **3.3 Judicare**

In the 2003/04 financial year, 46,613 instructions were allocated to judicare practitioners, ie 15.5% of the total number of new matters of all the LAB delivery systems. In 2004/05, 40,238 (13%) new instructions were issued to judicare. This reflects the shift away from using judicare. However, judicare will remain an important part of the delivery system and it is expected that at least 10% by volume will be issued to judicare on an annual basis.

The Legal Aid Board (SA) has introduced a new system to accredit all judicare lawyers. This Accreditation System will require all legal practitioners/service providers to apply to Legal Aid Board if they wish to receive legal instructions. They will have to be accredited before being allocated instructions and to be accredited they will have to meet various criteria. Work will be allocated on the basis of skills and expertise in accordance with a Black Economic Empowerment component which will give preference to previously disadvantaged groups. Judicare fees will be linked to the experience of legal practitioner. This Accreditation System will be managed electronically and is interfaced with a new financial and legal administration integrated software package that has been introduced by the Legal Aid Board (SA). The implementation of the new Accreditation System has begun and will be finalised in this year.

### **3.4 Co-operation Agreements**

The LAB presently funds 6 co-operation partners. For the financial year 2004/05 co-operation partners handled 8,231 new matters, and have finalized 7,048 matters during this period. This reflects a decrease in matters handled by co-operation partners over the last financial period (2003/04), which was 17,244 new matters, primarily because a number of co-operation agreements were not renewed during this year because of the ability to service those areas by Justice Centres.

### **3.5 Impact Litigation**

In the last few years, the LAB has dedicated special attention to precedent setting litigation and class actions that positively affect the lives of a large number of poor people through strategic interventions. LAB Impact Litigation cases include litigation against industrial organisations by communities with regard to health hazards caused by pollution and government agencies whose actions impact on a large numbers of people. In the 2004/05 financial year the Legal Aid Board handled 26 impact matters costing approximately R3million. Of these 11 were finalised in this period. A few of these matters were argued in the highest courts of the country, the Supreme Court of Appeal of SA and the Constitutional Court of SA.

## **4. LEGAL AID FOCUS AREAS**

### **National Coverage Plan**

In the past year the Legal Aid Board (SA) has finalised a National Coverage Plan which links its current resource distribution to that of the other justice cluster service providers nationally. The plan also links the Legal Aid Board distribution of resources to community demographic and socio-economic indicators, hence enabling a review of the gaps in service delivery as well as the equitability of service provision.

## Client Focus

The client focus has resulted in an expansion and improvement of linkages to clients to better understand client need and to receive client feedback on services received by them. New measures introduced in this period include:

- Addressing gaps in legal aid services offered to clients by previous exclusion of policy;
- Initiating client feedback survey forms at all Justice Centres for clients to provide feedback on administration (front-desk) and legal services received; feedback received has been positive;
- Introduced complaint boxes at every Justice Centre for clients to submit written complaints about problems experienced by them in receiving legal aid services;
- Interaction with provincial and local stakeholders to receive feedback on client needs and services received by them;
- Training of all front-desk staff at Justice Centres in client relationship management, and
- The development of a client services charter which will detail the services that clients can expect from the Legal Aid Board.

## Accessibility Of Legal Aid

Various measures were introduced to improve accessibility of legal aid services. These include:

- Automatic Review Matters
  - A programme was initiated to identify the reasons for the high number of matters sent from the lower courts to the high courts on automatic review
  - Changes in policy were effected to reduce the number of automatic reviews and the number of unrepresented accused.
- Awaiting trial prisoner (ATP) programme
  - The Legal Aid Board has a presence in all prisons. All Justice Centres have regular scheduled

prison visits (monthly or 2/month) to inform the prison population in general about their rights and consult with awaiting trial prisoners.

- A special project was implemented to focus on ATPs who were in custody for greater than a year. The aim of the project was to identify all ATP's who have been awaiting trial for a period longer than 12 months and to introduce measures to fast track those cases.
- Justice Centre Executives were requested to give special attention to children awaiting trial. Dedicated professional assistants are made available in areas where the children awaiting trial numbers are high and where specific Juvenile courts have been implemented.
- Advice Office Project link
  - This project links 8 of our Justice Centres to 40 advice offices around the Justice Centres (JC). Advice Offices operate at a community level and provide a link to communities which are not directly serviced by JCs. The co-operation between JCs and Advice Offices entails referrals, legal advice and training.
- Link to Police Stations
  - A pilot project testing the link between JCs and Police Stations has been initiated. This is meant to address the gap in providing assistance to criminal accused at the point of arrest. The project is focused on having legal practitioners on standby after office hours so that they can be called out to police stations to provide legal assistance and advice as required. This project will be expanded in the new year.

## Quality Legal Services

With the completion of the shift to JCs and the national roll-out of infrastructure the Legal Aid Board (SA) is now able to give greater attention to the quality of legal

services provided. It has initiated various interventions to improve quality as well as to monitor quality of its legal services. The interventions intended to improve quality of legal services include:

- The provision of dedicated supervisory capacity for quality management at justice centres and in courts
- Individual quality measures which have to be signed-off by each legal professional for each file; These measures are monitored by the principle attorneys and/or Justice Centres Executives in each office as well as cross-checked by the regional office principle attorneys;
- Increasing the consultation and preparation time for each matter by legal practitioners;
- The introduction of a focused training programme for candidate attorneys to ensure compliance with admission requirements of the profession. This is monitored by monthly review of checklists.
- Increased training opportunities for all legal professionals.

The interventions to monitor the quality of legal services include:

- Individual quality reviews and targets which are independently verified by regional offices;
- Peer reviews between legal professionals utilised for development purposes;
- Formalised relationships with local JC legal justice stakeholders, resulting in increased feedback on JC delivery and quality of service, thus allowing for appropriate interventions;
- Implementation of a national judicial officer survey to obtain independent feedback on the quality of our service from magistrates and judges;
- The implementation of our client satisfaction surveys for all clients of the Legal Aid Board;
- The introduction of an independent review of services (to be implemented).

## Managing and measuring Justice Centre performance

The Introduction of a Justice Centre performance monitor enables the Legal Aid Board (SA) to better monitor the overall performance of each of its justice centre on a quarterly basis. The JC Performance Measures includes an assessment of each JC's performance against pre-determined targets in the areas of legal services delivery, financial management, governance and human resource management. The Monitor is weighted in favour of the delivery of legal services so as to not distort assessment of delivery on the core function of the JC. The JC Performance Monitor enables management to timeously identify areas of under-performance so that appropriate interventions can be taken.

## 4.6 Legal Aid and Information Technology

The Ad Infinitum computer software system went live on 5 April 2004. It is an integrated finance and legal administration software package. It enables control, assessment and monitoring critical to the delivery mechanisms with the electronic capture of all data in each legal matter/file. Ad Infinitum will increase the effectiveness and cost efficiency of legal service delivery, allowing for real-time, on-line applications for legal aid. It will provide business intelligence critical to running the business.

A number of problems were experienced in the transition to the system. These problems have now been for the most part resolved and the system is now stable. Enhancements to the system are being implemented to ensure that the Legal Aid Board obtains the best possible value from its investment.

The Ad Infinitum System is also being extended to interface with a module on the accreditation system for judicare practitioners as well as a module on Human Resources Payroll and administration.

## 5. LAB CHALLENGES

### 5.1 Increasing client accessibility

i. Prison link – there is an increasing need for LAB to have dedicated capacity at each of its Justice Centres to consult with clients at prisons and enable them to access legal representation.

ii. SAPS link – There is increasing pressure for the LAB to have practitioners available to meet with detained persons at prisons. There is a pilot currently underway to test how this can work. However, the challenge is to find the capacity to roll this out to all police stations.

iii. Accessing rural communities – The location of Justice Centres and satellite offices is related to criminal court coverage. However, access to JCs by many rural communities is difficult. Hence, there is an increasing need to be able to meet clients at rural areas, possibly by partnering with community advice offices.

#### iv. Minor Offences increased coverage

LAB currently assists only those criminal accused who are facing a potential jail term of greater than 3months. The impact of this is that first time minor offenders, without the means to afford legal representation, end up with jail terms, which has a major impact on their lives and future. If the qualification requirement of a prison term of greater than three months is revised to provide assistance to minor offenders with any potential jail term so that they can have a fair hearing and where possible be diverted from the prison system. The exclusions on some matters eg traffic offences will remain. This is only possible with increased resources.

### 5.2 Sustainability of legal services delivery

The demand for legal services is currently not matched to capacity,

resulting in the LAB taking on more matters than it can effectively handle. Hence, the number of matters pending is growing at an unsustainable rate and will impact on the Legal Aid Board's ability to deliver effectively in the next few years.

### 5.3 Quality of legal services

Despite the many interventions made to improve quality, the inability of LAB practitioners to adequately consult and prepare for their matters is a huge stumbling block to them delivering a quality service. Hence, there is a need to increase the ratio of practitioners per court (similar to that provided for the National Prosecuting Authority) so that Legal Aid Board practitioners can adequately consult with clients and prepare for their cases. Quality has to be addressed on an ongoing basis to ensure that clients receive the best defence in their trials.

### 5.4 Recruitment and retention of legal staff

The recruitment of legal professionals at especially the more rural justice centres is low. The need for providing some incentive to attract legal staff to these areas has to be considered. The Legal Aid Board also finds that it loses staff to other justice cluster stakeholders, particularly the NPA, because they offer better salaries for certain categories of staff.

### 5.6 Supporting the paralegal sector

The paralegal sector is increasingly facing funding problems with many offices being forced to close. They however provide a valuable service in especially rural areas. Increasingly the LAB is being looked at to provide this sector with support to ensure their

sustainability. However, the LAB does not have the financial capacity to support this sector.

5.7 Civil legal aid

The Legal Aid Board draws its mandate from the Constitution and the Legal Aid Act. This has resulted in the Legal Aid Board being involved in both criminal and civil legal aid matters. It has done so by having a greater focus (88%) on criminal legal assistance and a parallel limited focus (12%) on civil legal assistance. The Legal Aid Board(SA) believes this has been a responsible response to a growing demand for civil legal assistance. This has been a matter of debate between the Parliamentary Committee, the Department, the Ministry and the Legal Aid Board.

It is also the interpretation of stakeholders in the justice sector, government, NGO and community stakeholders that the Legal Aid Board should provide assistance in civil legal matters and the limited civil capacity has been the main reason for criticism and anger directed at the Legal Aid Board by these stakeholders. The Legal Aid Board has continued to motivate the need for its continued and increasing involvement in civil legal aid. The Legal Aid Board is

also of the view that an agency focused wholly on the defence of criminal accused cannot and does not enjoy the credibility and legitimacy of the community it serves. It has to be seen to be involved in the protection of general rights as envisaged in the Constitution thus building an understanding of rights and rule of law. This acceptance of the Legal Aid Board is critical to its reputation and impacts directly on its ability to deliver independent quality legal services. The Legal Aid Board also has to provide varied training to all its Candidate Attorneys which includes civil legal training or it will be in violation of the requirements of the legal profession. Since about 50% of the Legal Aid Board lawyers are CAs, any problems with this will affect the ability of the Legal Aid Board to continue rendering legal services.

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