

## **LEGAL AID REPORT**

### **SECTION 1- ABOUT BOTSWANA**

#### **COUNTRY DETAILS**

- Botswana is a land-locked country dominated in geographical terms by the Kalahari Desert - a sand-filled basin averaging 1,100 meters above sea level. Botswana is bordered by Zambia and Zimbabwe to the northeast, Namibia to the north and west, and South Africa to the south and southeast. In the northern part of Botswana, four countries (Zambia, Botswana, Zimbabwe, and Namibia) meet at a single point mid-stream of the Zambezi River. The country lies between longitudes 20°E and 30°E degrees east of Greenwich Meridian and between the latitudes 18°S and 27°S approximately south of the Equator. The country is situated in the Southern African region and about two-thirds of Botswana lies within the Tropics; it is bisected by the Tropic of Capricorn.

#### **COUNTRY SIZE**

- Botswana covers an area of 581,730km<sup>2</sup> square kilometres.

#### **POPULATION**

- 2, 292, 000 as per the last census (2011).

#### **Capital City**

- Gaborone

#### **GROSS DOMESTIC PRODUCT**

- According to a Statistics Botswana Report 2020, the nominal Gross Domestic Product (GDP) for the first quarter of 2020 was P50, 726.8 million compared to P49, 488.5 million registered during the previous quarter. This represents a quarterly increase of 2.5 percent in nominal terms between the two periods. During the quarter under review, Trade, Hotels & Restaurants remained the major contributor to GDP by 19.5 percent, followed by Mining & Quarrying, General Government and Finance &

Business services at 15.5, 14.9 and 14.8 percent respectively. The contribution of other sectors was below 7.0 percent with Water & Electricity being the lowest at 0.8 percent. Real Gross Domestic Product for the first quarter of 2020 increased by 2.6 percent. The increase was attributed to the significant growth in real value added of Water & Electricity, Finance & Business Services and Trade, Hotels & Restaurants industries by 13.4, 6.2 and 4.4 percent respectively.

### **ECONOMIC OVERVIEW**

- Botswana has historically enjoyed strong and stable growth since independence, with sizable fiscal buffers and prudent policies playing a key role in shielding the economy. More recently, however, the limitations of Botswana's diamond-led development model have become more apparent: growth is slower, inequality remains high and job creation is limited. At the same time, increased diamond market volatility—including growing competition from synthetic diamonds, reduced Southern African Customs Union transfers and fiscal expansion have resulted in eroded fiscal buffers.
- Botswana's economy faces an unprecedented challenge due to the COVID-19 (coronavirus) pandemic, only a year after weakening global demand for diamonds and severe droughts led to a slowdown in growth to 3 percent in 2019 (from 4.5% in 2018). The economy is expected to contract by at least 9.1% in 2020 as COVID-19's impact on global demand, travel restrictions and social distancing measures constrain output in key production and export sectors, including the diamond industry and tourism. Both external and fiscal pressures will become accentuated in 2020, with the overall deficit set to double (from 4% of GDP last year). Nevertheless, debt levels are set to likely remain below prudence levels.
- Developments in the global diamond industry will have a telling impact on the short-term recovery given Botswana's dependence on the commodity. Whilst a mild recovery is expected for 2021, the economic impact of COVID-19 is likely to be deep and long-lasting. The authorities' ability to advance on key reforms laid out in its 2020-2023 Economic Recovery and Transformation Plan will thus play a key role in

creating conditions for broad-based growth and thus improving Botswana's economic performance.

### **POVERTY RATE**

- In 2015, poverty rate for Botswana was 14.5 %. Poverty rate of Botswana fell gradually from 40.9 % in 1985 to 14.5 % in 2015.

### **PRACTISING LAWYERS IN BOTSWANA**

- There are about six hundred private practicing attorneys as of May 2023 and about two hundred employed by government and different parastatals.

## **SECTION 2- ABOUT LEGAL AID BOTSWANA**

### **Brief Introduction**

- Legal Aid Botswana is a corporate body, established by an Act of Parliament, the Legal Aid Act No: 18 of 2013. Following the successful piloting of the legal aid services project in Botswana from September 2011, the Government decided to establish it as a permanent independent public entity.
- Legal Aid Botswana obtains its mandate from the Legal Aid Act Chapter 16:02 as read with the Legal Aid Regulations S.I 11,2015 and the Legal Aid Botswana Guide of 2015. The mandate and objects of Legal Aid Botswana are succinctly captured in the Legal Aid Act CAP 16:02 at the Preamble and other provisions: An Act to provide for the establishment of Legal Aid Botswana for purpose of providing access to justice by indigent persons in Botswana'.
- The preamble is complimented by Section 4 and Section 5 (j) of the Act: Section 4 'The objectives of Legal Aid Botswana are to provide legal advice, legal representation and public education on legal matters to indigent persons.' Section 5 (j) '...Legal Aid Botswana shall conduct public awareness programmes to promote

public understanding of the objectives, role and activities of Legal Aid Botswana and the public's legal rights'.

- **Other legislation impacting on delivery of legal aid:** The following laws generally give content to the requirement for the state to provide legal assistance to indigent persons.
- **FAMILY LAW** ( Adoption of Children Act [Cap 28:01], Children's Act [Cap 28:04] Affiliation Proceedings Act [Cap 28:02 Customary law Act [Cap 16:01], Customary Court Act [Cap 04:05], Births and Deaths Registration Act [Cap 30:01], Succession (Rights of the Surviving Spouse and Inheritance Family Provisions) [Cap 31:03], Penal code [Cap 08:01], Constitution of Botswana [Cap 00:01], Immigration Act [Cap 25:02], Matrimonial causes Act [29:06], Marriage Act [29:01].
- **LAND:** Tribal Land Act [ Cap 32:02] ) State Land Act 1966 [Cap 32:01],Acquisition Act [Cap 53:02], Tribal Territories Act [Cap 32:03], Land Control Act [32:11];
- **LABOUR:** Employment Act [Cap 47:01], Trade Dispute Act [Cap 48:02}, Industrial Court Rules,Children's Act [Cap 28:04], Immigration Act [Cap 25:02];
- **CONTRACTS** (Companies Act [Cap 42:01], Prescription Act [Cap 13:01];
- **DAMAGES:** Rules of the High Court [Cap 04:02], Rules of the Magistrates' Courts [Cap 04:04]State Proceedings (Civil Actions by or Against government or Public Officers) Act [Cap 10:01], d) Local Authority (Proceedings) Act [Cap 10:04]

**Legal Aid Botswana provides legal services to indigent Batswana, on a wide variety of civil matters Including:**

- Family Law (divorce, maintenance, custody and domestic violence);
- Industrial/labour law matters;

- Land- including proceedings before the Land Boards and Land Tribunal;
- Contract-Instituting and defending claims relating to contractual payments and contractual performance/delivery;
- Delictual/damages claims, for example, for personal injury or damages to property;
- Wills and Estates- both the drawing of wills and the administration of estates.
- Legal Aid Botswana does also take on a number of criminal appeals that prove to have prospects of success, and also criminal trials for offences committed by juvenile or minors.

**At present, Legal Aid Botswana currently does not provide the following services:**

- Criminal trials unless the person is a juvenile or an appeal matters;
- Money claims covered by Small Claims Court
- Customary Court representation
- Defamation, infringement of privacy, breach of promise to marry, adultery, seduction.
- Preliminary industrial mediation at Labour office.

**Organisational Structure of Legal Aid Botswana**

- The Legal Aid Board (the Board) was established under Section 6 of the Legal Act. It was officially launched in May 2015 with the primary objective of directing the affairs and operations of Legal Aid Botswana at a strategic level.
- In accordance with the Act, the mandate of the Board is to supervise and guide the financial and administrative management of the LAB. The Board does this through formulation of policies and guidelines as well as its strategic intent.

- In terms of Section 14(2) of the Act the Board and all committees sit quarterly as well as hold meetings where a matter required such special attention.
- The Board achieves this mandate through four sub committees, being the Legal Services Committee, HR & PR Committee, Finance and IT Committee and the Audit and Risk Committee. The mandate is executed in the following manner;
  - **Legal Services Committee**- maintains oversight of the core mandate of LSB, being legal advice, legal representation and public education services. Further it ensures that LAB remains lawful, sustainable and responsive to the needs of indigent citizens of Botswana and other qualifying applicants. It also ensures accountability and continuous improvement of services offered to its clients and fostering maintenance of productive relationships with the relevant stakeholders.
  - **HR & PR Committee**- Ensuring that LAB has adequate and effective HR and PR functions, policies and strategies that meet statutory and regulatory requirements. It deals with matters including staff relations and development, equality and diversity and health and safety.
    - The implementation and review of policies such as general conditions of the structure and as position profiles.
    - Overseeing implementation of the Organisational structure and the subsequent restructuring of the structure as well as position profiles.
    - Management of the LAB as well as the review of the recruitment and selection procedures to ensure compliance with the best practices.
    - Reviewing strategies and programs for public education as well as review policies guidelines and programs for branding and visibility.

- **Finance and IT Committee**-ensures optimal use and other resources through the implementation and monitoring compliance with international financial standards as well as its own financial management systems and internal control structures.
  - Overseeing the effective and efficient planning, investment and operation and strategy of technology and information systems that support different LAB functions.
- **Audit and Risk Committee**- the mandate of the committee widely includes an oversight of corporate governance and management of risk.
  - Overseeing stakeholder reporting as well as internal audit to ensure financial reporting according to international financial reporting standards.
  - Managing the continued review of internal financial controls.

### **Who Qualifies?**

- Only citizens of Botswana, permanent residents and recognised refugees, who cannot afford a lawyer, qualify for legal aid. However, their case must have reasonable chance of winning and they cannot refuse a reasonable settlement.
- One needs to go to one of the Legal Aid Botswana offices. A means test is conducted for each applicant for Legal Aid Botswana to verify that one cannot afford a lawyer and would thus be accorded legal aid.
- The Chief Executive Officer has the discretion to grant legal aid to persons who are otherwise excluded by the cited requirements.

### **Who offers the legal services?**

- Legal services are provided by legal aid Paralegal personnel, in house attorneys, and private attorneys under the judicature program.

- The Legal Services Department has forty seven(47) professional and technical personnel.
- Of the above, only thirty-four are Attorneys who are responsible for providing legal services from five service centres across Botswana, in Gaborone, Francistown, Kasane, Maun and Kasane.
- **LAB VISION**; Equal Access To Justice, **LAB MISSION**; Taking Quality Legal Services to the Poor Through Education, Advice and Representation, **LAB CORE VALUES** Passion for Justice, Innovation, Accountability & Good Governance, Service Excellence, Empathy.

### **Operational Performance Analysis 2021- 2022**

- According to the legal Aid Report for 2021- 2022 the organisation's overall performance rating on the delivery of the strategic plan was 79.51% against a target of 85%. A good portion of this strong performance comprised the delivery of the organisation's core mandate of legal representation, legal advice, and public awareness as well as public education of the indigent on basic legal rights and obligations.
- Against a target of 903, 395 people, the organisation was able to reach over 1, 909, 744 people in respect of public awareness and legal education endeavours. Over 1675 new cases were registered and 1003 completed, with 68% of these completed matters being in favour of LAB clients against a target of 85%. Another 1400 people were given legal advice. By no small measure the focus was also on people and in embedding a performance management culture. The average performance rating for the year was therefore 92.4% against a target of 90%, which resulted in a performance reward small cash payment.



- An area of special focus was resourcing of the organization as best as we could in the face of diminishing Government funding. Through budget management, implementation of cost saving measures and guarding against wastage, the organisation was able to do with the level of budget of P45, 723, 030, the budget for the P44, 723,030 (2% less than prior year budget). By the end of the reporting year, the organisation had achieved a budget utilisation of 99% against a strategic target of 98%.

### **Operational Performance Analysis 2020- 2021**

- According to the Legal Aid Report for 2020- 2021, In the financial year 2020/21, a total number of clients who visited LAB Centres nationwide was 2,844 (two thousand Eight hundred and forty-four) representing an 18% decline compared to the financial year 2019/2020. This was attributable to business and movement disruptions associated with the Covid-19 pandemic. Legal advice was rendered to 1,300 (one thousand three hundred) clients this year with various socio-eco-legal issues, primarily in civil law with specific reference to family law.
- A total number of 1,544 (one thousand five hundred and forty-four) cases were registered nationwide. While the total case load for the financial year was 2,703 (two thousand seven hundred and three) as 1,249 (one thousand two hundred and forty-nine) cases were brought forward from preceding years. The case load from preceding years constituted 46% of the total case load. The total number of completed cases is 924 (nine hundred and twenty-four) representing a 30% completion rate against the total case load. This low performance is because of Covid-19 effect on service delivery.
- These cases involve family issues (divorce, domestic violence, custody, change of name, maintenance, deserted wives, and children) remained high in numbers representing 54% of the total registered matters. Gender based violence became a focus for the organisation this year to ensure adequate

response to issues in collaboration with stakeholders who deal with similar cases. This was because of the notable spike in reported cases.

- Complimentary to the normal litigation processes above, in a bid to mitigate the slowed down court services as impacted by Covid-19, as well as to minimise dispute resolution time, the organisation employed alternative dispute resolution (ADR) mechanisms or methods to bring resolution or closure of cases registered outside the court processes. To this end, 485 cases out of the completed 924 cases above, were settled using these methods.
- National Development Plan 11 article 8.126 as espoused by the LAB Corporate Strategy 2019-2024, speaks to the gradual expansion of Legal Aid Botswana to areas where its target group, the indigent, are mostly likely to reside. LAB therefore delivered the Palapye Centre development project during the reporting period, which commenced operations on the 1st April, 2021. This new Centre was allocated a development budget of BWP 9 million by the Government of the Republic of Botswana. This is indicative of the Government's continued resolve to ensure equal access to justice by Batswana. LAB embarked upon a publicity campaign to ensure awareness of this new Centre and immediate access of our services by the people of the vast Central District, where the Centre is located. This development brought the number of our service Centres countrywide to six, adding to the existing five, being: Gaborone, Francistown, Maun, Kasane, and Tsabong.

## **HOW THE SCOURGE OF COVID 19 IMPACTED SERVICE DELIVERY OF THE LEGAL AID IN 2020**

- The year was characterised by both the Administration of Justice and LAB having to adapt to working under the continued shadow of Covid-19. Among other

interventions, this took the form of adopting the concept of working from home, in shifts, to ensure business continuity while minimising the risk of infection of our staff and clients. A client appointment booking system was also activated to decrease and manage client traffic at the offices.

- This required that LAB lean on information technology to reach o clients and make sure that staff seamlessly work from home as well as at the office. Only four of LAB employees were infected and recovered during the year under review and LAB did not lose any lives to Covid-19.
- Nonetheless, Covid-19 rendered sloth to processes toward LAB client assistance and the Administration of Justice, adversely affecting legal services delivery as will be evidenced by the subdued numbers of the intake of new matters as well as the finalisation of matters.

#### **COMPARATIVE ANALYSIS**

<b>YEAR</b>	<b>NUMBER FINALISED</b>	<b>NUMBER FINALISED USING ADR</b>	<b>TARGET</b>	<b>ACTUAL</b>
2020/2021	924	485	50 %	51 %
2021/22	1003	281	50 %	28 %

#### **Budget and Spending**

- Legal Aid is directly financed by the Government through its subvention. The subvention is used for employee costs, lease expenses and other operating expenses. The legal Aid is audited annually and presents its financials in a legal report that is published annually.

#### **Public legal Education**

- Legal Aid is legislatively mandated to provide public education on legal rights and corresponding obligations as well as ensuring public awareness on the awareness on the role, objectives and activities of the organisation. It does this

through this its legal education and publicity program and strategy. It is estimated that for the year 2019/2020 over 112 729 people were directly reached through Kgotla meetings, Facebook, and other for. Approximately 600 000 and 700 000 people heard about Legal Aid on Duma FM( Private radio) and Botswana television respectively.

### **Alternative Sources of Legal Services**

- Outsourced Legal services involves legal representation of legal aid clients by attorneys in the private practice as facilitated through a partnership between Legal Aid and the Law society of Botswana. As at 31 March 2020, a total of one thousand four hundred and thirty( 1430) cases were outsourced. Only fifteen (15) matters were finalised in the same period. Matters have been outsourced to several law firms through the law society's assistance. In the reporting period, forty three (43) private practitioners received instructions to represent legal aid Clients.

### **Holistic Legal Services and Quality Assurance**

- Corporate Services Department plans, lead, direct, control and consolidate the implementation of effective and efficient operational support services including finance, Human Resources, and Facilities & administration to support Legal Aid's mandate and enhance sustainability and maximise customer satisfaction

### **How does Legal Aid achieve Target 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all**

- It provides rigorous campaigns and lectures on the promotion of rule of law across the country at national level