

INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND

NATIONAL REPORT: SOUTH AFRICA

LEGAL AID BOARD – SOUTH AFRICA

1. Overview

The Legal Aid Board of South Africa is an independent *statutory body* governed by a Board of non-executive members. The Board provide legal representation at State expense, as set out in the Constitution of the Republic of South Africa.

Since South Africa has moved from a primarily outsourced method of instructing private practitioners through the judicare system, to delivering legal aid by our salaried in-house lawyers placed at more than 62 Justice Centres countrywide¹, the result of this shift is that more than 85% of our legal aid service is provided by in-house staff. The remaining share of the service is done by private lawyers through our judicare system and co-operation agreements.

We have a total budget of about SA R652million (US \$77.5million), 2007/08 allocated to the Board. Cost for Judicare services (private lawyers) for the 2007/08 year, which is for about 9.5% of the service, was about SA R83,4million (US \$9.9 million)² whiles Cooperative agreements cost were SA R4.7 million (US \$0.55million), being 1% of the overall legal aid service.

In the main, the Legal Aid Board currently provide and administer legal aid in criminal matters, and to a lesser extend covering civil matters .Table 1 below outline the split in our delivery system.

¹ The South African Institute of Race Relations survey:2008 estimated S. African population at 48.7 million by mid-2008.

² The average exchange rate for 2008 is US \$1 / SA R8.41

**New legal matters per delivery system:
Civil/Criminal 2007/08**

New Matters per delivery system- criminal and civil split: March 2007 to April 2008				
	Criminal	Civil	Total	%
Justice Centre New Matters (in-house lawyers)	321,830	32,577	354,407	89.5%
Judicare(Private Lawyers) New matters	33,949	3,637	37,586	9.5%
Co-operation Partner New matters	1,536	2,541	4,075	1.0%
TOTAL	357,313	38,755	396,068	100.0%
%	90%	10%		

Table 1

Our paralegals, who are part of the in-house, front-line staff, provide general advice services to clients at our Justice Centres. Justice Centres also forge networks with NGO advice offices within their coverage area.

2. Criminal matters

2.1. Legal Aid Guide: Our system allow the granting of legal aid on specific common law offences such as Abduction, Arson, Assault (including common assault), Bribery, Fraud and housebreaking. Legal Aid may also be granted in criminal cases dealing with Stock theft, dealing in drugs, and Unlawful possession of or unlicensed dealing in firearms or ammunition.

Legal aid is not necessarily available for criminal defamation, public indecency and contempt of court. Justice Centres have a general discretion to grant legal aid in these cases where resources permit and where the Head of the Justice Centre is convinced that the accused will experience substantial injustice if not legally represented.

Specific statutory offences: Legal aid may be granted when the accused is charged with one of the listed *statutory offences* related to: Administration of justice, Animal and nature conservation, Children, Corruption, Persons with mental disabilities and Counterfeiting currency.

In determining if an applicant will suffer substantial injustice for legal aid charged with an offence which is excluded from the legal aid scheme, our Heads of Justice Centers, consider the totality of the following factors:

- a. The inherent simplicity or complexity of the case in law and in fact, including the imposition of an appropriate sentence;
- b. The accused's general ability to fend for himself/herself, and
- c. The gravity of the case which depends on the nature of the charge against the accused and the possible consequences to him/her of a conviction.

2.2. **The Review of the Criminal Justice System:** The South African government has decided to review the current criminal justice system. The intended outcome of the review are, amongst others,

- a. Introduction of new processes that will ensure that courts are focused on trials, rather than administrative actions, resulting in a reduction of case cycle time and the number of hearings per case.
- b. The screening of cases, by a newly created Screening Mechanism consisting of the prosecuting authority and detective branch to ensure that only prima facie cases and trial ready cases, and cases requiring incarceration pending finalization of the investigation, are CERTIFIED and introduced into court.
- c. An Integrated criminal justice system (SAPS, Prosecution, and the Courts) which will facilitate smooth case flow management.

The process of the review of the criminal justice system is currently subjected to public participation through parliament and community engagements. Once this process is completed, a legislative framework or protocol will be established, assisting in a new coordinating and management structure for the Criminal Justice System at national, provincial and local level including

functionaries in the justice, criminal, protection and security cluster (e.g. Police, prosecution, the courts, correctional (prison) services and the Legal Aid Board)

The Legal Aid Board is looking forward to an improved criminal justice system which will provide a swift, equitable and fair justice in addressing criminal matters. We also hope that the review will improve to alleviate overcrowding in South African correctional facilities/ prisons, thus assisting in creating favorable conditions for awaiting trial detainees, as well as granting a better environment for rehabilitation of detainees.

3. Civil matters

- 3.1. Scope covered in Civil matters: Children matters and Individuals who meet our means test are either advised or represented in estates (children), rights to occupation of land or property in cases of evictions, labour matters, equality issues or general civil litigation. Whereas there is demand for service in civil matters two key issues which constrain delivery are Civil judicare tariffs as well as in-house capacity for specialised and experienced practitioners. Private lawyers regard our civil judicare tariffs as inadequate. The financial allocations, from government, to cover civil matters dictates the case load which can be carried by Legal Aid Board.

Notwithstanding the constraint stated, the Legal Aid Board has gradually, over the past two years, increased its in-house capacity establishing targeted children, land as well as labour units. For the 2007/08, out of our total legal delivery system, we were able to provide for 10% for civil matters. We are intending to grow this service for the next three years to a target of 15%.

- 3.2. The Civil Justice jurisdiction bill: South Africa is currently finalizing a new bill which, which seeks to transform Regional Courts by enabling them to have a wider civil jurisdiction. The Bill once introduced will grant civil jurisdiction to the Regional Courts, which currently had criminal jurisdiction with one or two minor exceptions, to enable such courts to relieve the backlog in the High Courts, as well as to regularise the position of the divorce courts, which would now be established at the seat of the Regional Courts. This step will result in increasing access to justice for many people, particularly those who would otherwise

have had to travel long distances to the nearest seat of the High Court in matters such as divorce and customary marriages.

Regional Courts, staffed by 327 magistrates, sit at all seats of the District courts and certain detached and branch courts. Because of their wider geographic distribution, more people could receive services in their own areas of location than if they had to continue taking civil and divorce matters to the High Court. This would further improve accessibility, and would make it cheaper for litigants, who would now only have to employ attorneys in their own area, rather than having to use local attorneys as well as correspondents at the seat of the High Court. The provisions of the bill in designating civil jurisdictions to regional courts will be a phased in over time, and as such starting from mid-2009 going forward, the courts ,prosecution and the Legal Aid Board will have to work together in re-aligning resources to lower courts.

4. Legal quality management programme

Our in-house staff structure for legal practitioners provide for supervisory attorneys who manages quality assurance programmes of our lawyers. The Justice Centres continue to monitor performance of our lawyers in court, as well as their interactions with clients. Our quality assurance measures include quality reviews (self assessment, peer, and Justice Centre level assessment), client satisfaction surveys, as well as surveys amongst judicial officers-who provide feedback on quality of representation by our lawyers. We have lately established a legal quality audit unit at national level in supplementing already set measures.
