



Your voice. For justice.

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COUNTRY REPORT FOR LEGAL AID SOUTH AFRICA

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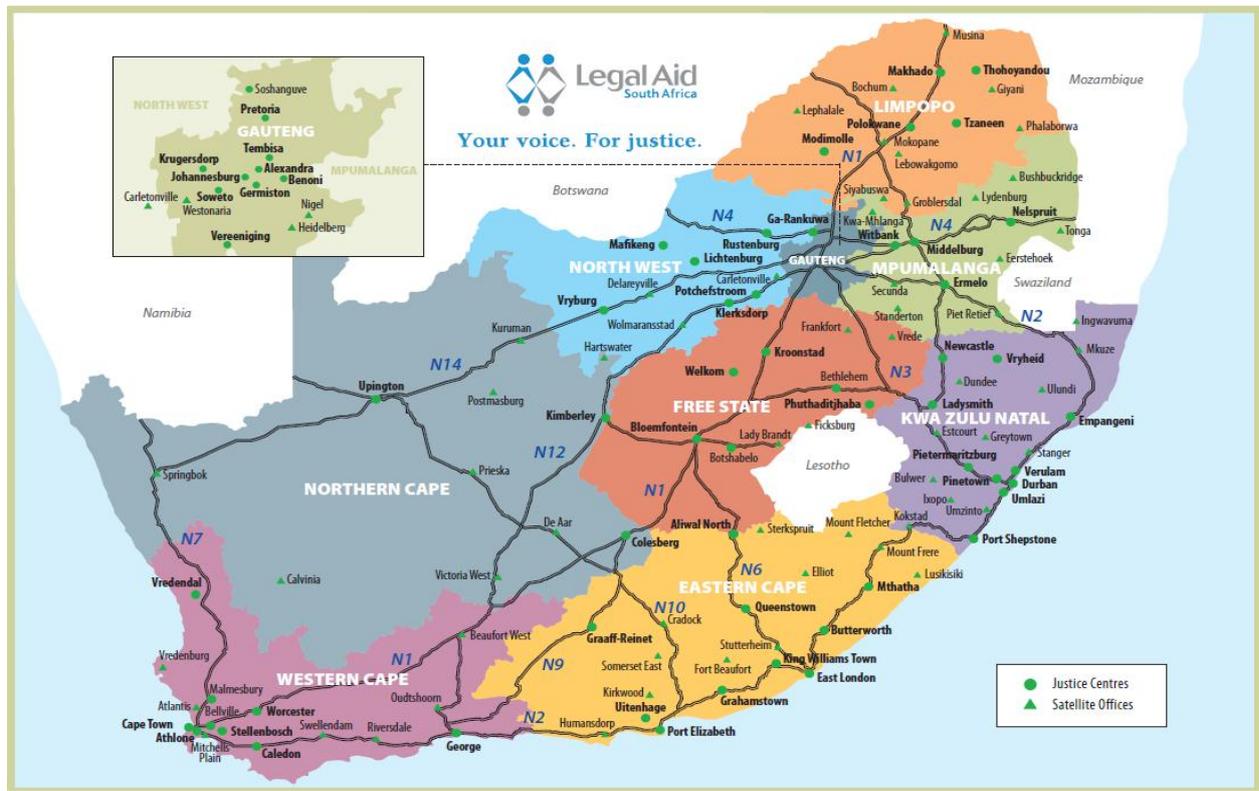
1. INTRODUCTION

Legal Aid South Africa was established in 1970, during the Apartheid era, to meet predominantly civil legal needs of mainly poor whites that formed part of a privileged white minority. The Judicare system was sufficient to cater for this demand. However, with the advent of democracy in 1994, the focus shifted to the provision of defence in criminal cases where substantial injustice would otherwise result. The Judicare system became financially unsustainable as it was misused by certain elements in the profession. This necessitated the restructuring of the delivery systems which were created in order to provide for the needs of our clients. The delivery systems are set out hereunder substantially reduced our dependence on the Judicare system. The Judicare system has been largely replaced by in-house legal representation made up of salaried legal practitioners.

Legal Aid South Africa consists of a number of offices across the country. The country is divided into 6 regions, each of which is headed by a Regional Operations Executive (ROE). Each region has an average of about 10 Justice Centres. These offices employ full-time legal personnel who deliver legal assistance to indigent persons. Each Justice Centre is headed by a Justice Centre Executive (JCE).

Some of the Justice Centres are linked to one or more Satellite Offices. These smaller offices are often in towns some distance away from the Justice Centre and provide many clients with access to Legal Aid South Africa. Justice Centres in locations where the High Court normally sits have High Court Units that specialize in High Court litigation, as their name suggests.

There is currently one National Office, 6 Regional Offices, 64 Justice Centres, 64 Satellite Offices and 13 High Court Units. The map below shows Legal Aid South Africa nationwide:



2. DELIVERY MECHANISMS

Legal Aid South Africa delivers legal aid through four different systems, each of which is described below. These systems enable Legal Aid South Africa to reach as many indigent people in need of legal assistance as possible throughout the country.

2.1 Justice Centres

During the late 1990's, the Board of Legal Aid SA took a decision to move to a Justice Centre Model. The primary reason for this shift from the previous fully Judicare system was economic. In terms of this model, a network of Justice Centres had to be established throughout the country in order to render legal aid. Justice Centres are modelled as law firms employing its own lawyers and support staff. Senior legal managers are employed to manage the operations at each Justice Centre.

In terms of this model, each Justice Centre is responsible for the coverage of all courts within a defined coverage area. However, where the distances to courts are

great, satellite offices are established. These satellite offices operate as branch offices of the Justice Centre and reduce the distances that lawyers must travel to go to court. Lawyers based at these satellite offices are responsible to represent clients at courts within the coverage area of the satellite office.

Justice Centres provide assistance to clients in both criminal and civil matters. However, the bulk of the work currently done at our Justice Centres is criminal matters. A comprehensive court coverage programme ensures that capacity is made available to cover all legal aid instructions in district, regional and high courts. Candidate attorneys are primarily used to represent clients in district courts whilst more experienced qualified practitioners represent clients in regional and high courts.

The capacity to render civil legal aid is however limited and this is one of the primary reasons why civil matters only constitute a small percentage of the matters done by Legal Aid SA annually. A general legal advice services is also provided at all Justice Centres and Satellite Offices. This service is primarily focused on providing clients in civil matters with first level legal advice so that they are aware of the options available to them to resolve their problems. Paralegals are employed at all our offices to render this general advice service.

Table 1: Cases handled only by our Justice Centre

JUSTICE CENTRE CASES				
Year	New Cases	% of all new matters for the year	Finalised Cases	% of all finalised matters for the year
2008/2009	395 088	91%	372 864	93%
2009/2010	387 376	93%	397 788	94%
2010/2011	403 779	96%	387 130	95%

2.2 Judicare

The Judicare model is an outsourcing model. Practitioners in private practice, who have declared their interest in being part of this delivery system, are given instructions by Legal Aid SA to represent clients in their matter. This is done in terms of a contract with the Judicare practitioners, who agree to render the service in accordance to the provisions in our Legal Aid Guide and who also agree to be remunerated in accordance with our approved tariffs. Judicare practitioners are required to report on the progress in their matters on a quarterly basis and to submit their accounts within four months of them finalising the matters.

Extensive use of Judicare was made whilst the Justice Centre model was being established. However, there has been a steady decrease in the use of Judicare over the past few years. This can be attributed primarily to our increased capacity to cover courts with our own in-house lawyers as well as the fact that the costs of matters issued on Judicare is much higher than those done by our in house attorneys. Judicare is therefore issued very conservatively at our Justice Centres and is primarily given out where there is conflict of interest between co-accused in matters.

A number of challenges have been experienced with the Judicare system. This primarily relates to the quality of work rendered by Judicare practitioners, who often seem not to attend to these types of matters with the same care and attention that they would do for their fee paying clients. They have often been accused of causing delays at court and not consulting adequately and timeously with our clients. This delivery system therefore poses increased risks to Legal Aid SA which needs to be carefully managed.

Table 2: Cases issued out on Judicare

JUDICARE CASES				
Year	New Cases	% of all new matters for the year	Finalised Cases	% of all finalised matters for the year
2008/2009	35 723	8%	23 991	6%
2009/2010	24 672	6%	22 011	5%
2010/2011	12 420	3%	15 391	4%

2.3 Co-operation Partners

The co-operation partner model is based on an agreement between Legal Aid SA and a co-operation partner, usually a NGO or a university law clinic, to render legal aid services to qualifying clients. Such partnerships are concluded to close identified gaps in the provision of legal aid by Legal Aid SA. Typically, co-op agreements have been concluded to increase our coverage of civil matters, particularly with regards children’s matters and land matters.

Many of our co-op partners are with University law clinics. These law clinics play an important role in exposing law students to the needs of social justice work while at the same time expanding Legal Aid South Africa’s outreach to clients. Currently, co-op partners account for only 1% of the total number of matters taken on by Legal Aid SA annually.

Table 3: Cases done by Co-Operation Partners

CO-OPERATION PARTNERS CASES				
Year	New Cases	% of all new matters for the year	Finalised Cases	% of all finalised matters for the year
2008/2009	4 111	1%	3 455	1%
2009/2010	3 463	1%	2 921	1%
2010/2011	3 341	1%	2 984	1%

2.4 Agency Agreements

The agency agreement model was only implemented in late 2009. The primary focus of agency agreements was to assist clients in criminal matters at remotely located courts that are not covered by our Justice Centres. Agency contracts are entered into with specific practitioners to attend to criminal matters qualifying for legal aid at specific courts allocated to them. These practitioners are guaranteed a monthly retainer and thereafter, depending on the number of matters that are finalised each month, these practitioners are reimbursed the balance that may be owing to them. The fees per matter finalised is currently set to 75% of the current costs of a Judicare matter for the court type they are responsible for.

Table 4: Cases done by Agency Agreement Partners

AGENCY AGREEMENTS CASES				
Year	New Cases	% of all new matters for the year	Finalised Cases	% of all finalised matters for the year
2008/2009	n/a	n/a	n/a	n/a
2009/2010	638	0.1%	162	0.05%
2010/2011	1 825	0.4%	386	0.1%

2.5 Advice Line

On 1 June 2010, Legal Aid South Africa opened its advice line, offering toll free telephonic legal advice to indigent persons. At the moment this is confined to family matters, rural evictions and children. This advice line seeks to expand access to the legal services provided by Legal Aid South Africa to clients who otherwise would not be able to benefit from Legal Aid South Africa.

The call centre operators include both admitted practitioners as well as paralegals. First level advice is provided by paralegals. Where necessary calls are escalated to a qualified practitioner at the call centre. Service is currently provided to clients in 5 of our official languages. One notable feature of the advice line is the advanced technology that is currently being used to channel and record calls. Reporting and quality management is efficiently supported with the aid of this advanced technology.

3. SERVICES PROVIDED

The mission of Legal Aid South Africa is “to be a leading provider of quality legal services, ensuring effective access to justice to the poor and vulnerable in an independent manner”. Legal Aid South Africa offers legal services at State expense to clients from a wide range of background which includes differentiation along the

lines of race, gender, marital status, whether employed and vulnerable groups including children, women, people with disabilities and people living with HIV/ AIDS.

Legal Aid South Africa soon realized that there is no one size to address all of the above diverse needs of its various clients. It is for this reason that Legal Aid South Africa proactively set in place a whole range of programmes to meet the challenge posed by the diverse demands of its diverse client base.

To begin with Legal Aid South Africa complies with the dictates of the Equity Act in its recruitment policy to consciously reflect the demographics of the country in its staff complements. Legal Aid South Africa underwent a branding exercise in terms of which it positioned itself as an organization made up of attorneys committed to its mission statement which is to provide a quality legal service to all.

Legal Aid South Africa also embarked on an organizational culture programme to create a harmonious work environment in which people could work with one another as a team to increase productivity and respect for, not only themselves, but also their clients. This is reflected in the way in which Legal Aid South Africa's practitioners deal with often illiterate clients in a professional and courteous manner

The Legal Aid Guide has been implemented in order to establish policies relating to the types of services offered by Legal Aid South Africa in order to cater for the diverse needs of clients. It provides for all the services listed below, which have been designed in order to cater for diverse needs.

3.1 Criminal Cases

Given the high levels of unemployment and scarcity of job opportunities, conflict with the law is a consequence for many of the poor and marginalized members of society. Legal Aid South Africa not only provides relief from conflicts with the law, but also creates legitimacy in the justice system and respect for the rule of law. In doing so, we meet the aspirational needs of clients in a fledgling democracy.

Legal Aid South Africa addresses these consequences by providing legal assistance to all indigent accused persons who are charged with offences where substantial injustice may otherwise occur if the accused persons were unrepresented. This assistance is available throughout the criminal process including appeals. In the High Courts and the Regional Courts, legal aid is routinely granted to indigent applicants, whereas it is slightly more restricted in the District Courts which try lesser offences. Legal Aid South Africa represents the vast majority of accused persons appearing in the Regional and High Courts.

Table 5: National Footprint of Legal Aid SA

Year	No of Justice Centres	No of Satellite Offices	No of High Court Units	No of Legal staff posts
2003/2004	58	27	13	1 036
2004/2005	57	33	13	1 145
2005/2006	58	33	13	1 209
2006/2007	58	41	13	1 489
2007/2008	59	49	13	1 673
2008/2009	62	55	13	1 588
2009/2010	64	63	13	1 619
2010/2011	64	64	13	1 735

The criminal defence work consumes a huge slice of the budget allocated to Legal Aid South Africa. Although providing assistance is a temporary fix to the daily problems that the indigent population faces, eventually the greater problem of poverty must be addressed.

3.2 Civil Cases

Legal Aid is granted to indigent applicants in certain types of civil cases where there is merit. However, civil appeals are only accepted in the most exceptional cases. Legal Aid South Africa is currently working to increase access in civil cases.

In practice, most of Legal Aid South Africa’s civil cases relate to matrimonial or family matters, but Legal Aid South Africa also accepts civil cases concerning children, labour matters and land matters, amongst others. One of the consequences of poverty is the breakdown in family relationships and the escalation in domestic violence directed at women and children.

Table 6: Civil cases handled by Legal Aid SA

CIVIL CASES				
Financial Year	New Cases	% of new cases done by Legal Aid SA	Finalised Cases	% of cases finalised by Legal Aid SA
2008/2009	30 309	7%	32 109	8%
2009/2010	29 028	7%	31 654	8%
2010/2011	31 451	8%	25 863	7%

3.3. Protection of Constitutional Rights

In order to protect the constitutional rights of individuals with respect to equality, dignity, housing, fair labour practices, children and land reform; the Constitution called upon Parliament to enact reasonable legislation and other measures such as the *Land Reform Act* and *The Prevention of Illegal Eviction from Unlawful Occupation of Land Act*.

Legal Aid South Africa has provided legal services in each of the above mentioned focus areas to protect and fulfil these rights on behalf of clients in need.

3.3.1 Domestic Violence

South Africa is a patriarchal society in which women often find themselves subjugated to men in religious and customary practices. This is reflected in the high incidence of abusive relationships in the country. Women and children often find

themselves in situations of inequality, which goes against the right of equality and human dignity pursuant to the South African Constitution.

There is a high prevalence of domestic violence in South Africa that calls for an intervention. By providing legal assistance to domestic violence victims, Legal Aid South Africa gives some relief to the problem of domestic violence. In cases of domestic violence, Legal Aid South Africa will provide an initial consultation to advise a possible litigant of his/ her rights, the procedure to be followed, and the chances of success. Legal Aid South Africa will also provide legal representation if the claim or defence has a chance of success and the opposing party is represented by a legal practitioner or is a legal practitioner.

3.3.2 Children

The Constitution requires that all children, like all indigent criminal defenders receive legal aid in criminal cases. Additionally, section 28 of the Constitution especially requires that children are also represented in civil matters.

Accordingly, Legal Aid South Africa has created specialized units specifically to assist children in all civil matters. These children's units are located at identified Justice Centres. Here specialists have been trained to understand the specific needs of children in relation to consultations, as well as leading of evidence in chief and cross examination. In addition guidelines have been developed for these practitioners in dealing with civil matters on behalf of children. These guidelines directs the work of practitioners to either be what we term best interest practitioners, where the children are not capable of providing the practitioner with instructions, or alternatively, to act on the instructions of their child clients, where they are capable of furnishing instructions.

The Child Justice Act is a long-awaited Act that came into effect on 1 April 2010, creating a criminal justice system that specifically deals with children in conflict with the law. Legal Aid South Africa is taking all necessary steps to implement the *Child Justice Act* in order to provide the best quality service for all children in need as quickly as possible. Once again our practitioners have been trained to understand

the specific needs of children in conflict with the law and to act in the best interests of the child at all times. This Child Justice Act has contributed significantly in ensuring that children in conflict with the law is diverted away from the criminal justice system.

Legal Aid South Africa has also intervened on behalf of children in divorce, maintenance and custody proceedings. Recently, a programme has been launched to administer deceased estates in which children are beneficiaries and whose parents are deceased. Increased services are also offered to children in respect of motor vehicle collisions, domestic violence, unaccompanied foreign minors, monetary claims and curatorship applications.

Table 7: Representation of children in civil and criminal matters

CHILDREN'S CASES					Total Matters
Financial Year	New Children's Civil	%	New Children's Criminal	%	
2008/2009	4 692	11%	37 891	89%	45 483
2009/2010	4 485	8%	54 781	92%	59 266
2010/2011	2 529	9%	25 586	91%	28115

3.3.3 Elderly

In an attempt to aid the elderly, Legal Aid South Africa has launched a programme in which it visits places where indigent elderly persons in need of legal assistance may be found, such as old age homes and pension pay points. As most indigent elderly persons may not be aware of the services Legal Aid South Africa provides, these visits publicize the services and, thus, expand access to Legal Aid South Africa. An important service offered to elderly persons is assistance with drafting of a will.

3.3.5 Mental Healthcare

The Mental Health Care Act of 2002 mandates that Legal Aid South Africa must provide legal representation to all indigent mentally ill persons who are otherwise not

assisted in regard to their continued detention at a mental home. Mental Healthcare users also have specific needs and the guidelines developed relating to best interest practitioners/instructed practitioners for children clients also finds application here.

3.3.6 Rural Evictions

The Land Reform (Labour Tenants) Act of 1996 was enacted to provide security of tenure for farm workers who were denied these rights under the Apartheid system. The Act defines a labour tenant as a person who resides or has the right to reside on a farm and uses the land in return for labour provided to the owner or lessee of the farm. Subject to specific appropriation of government funds and merit, Legal Aid South Africa protects the interests of labour tenants. Legal Aid South Africa specifically focuses on cases in which the owner or lessee wishes to dismiss the labour tenants from his/ her employment and, thereby, evict the tenants from the land.

3.3.7 Urban Evictions

There is a huge backlog in housing delivery for the poor and it became necessary to pass legislation to regulate housing delivery.

The Prevention of Illegal Eviction from Unlawful Occupation of Land Act of 1998 (PIE) provides that persons either legally or illegally occupying urban premises can only be evicted if a specific eviction procedure is followed. This eviction procedure requires that the local authority be given notice of the proposed eviction in order to give the authority time to give alternative accommodation to the persons to be evicted. Additionally this notice enables legal representatives to negotiate an extended period of time in which occupiers can remain in the premises. Again, subject to specific appropriation of government funds and merit, Legal Aid South Africa will assist persons being evicted in this manner.

3.3.8 Labour Matters

The Labour Relations Act of 1995 provides that all labour disputes be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA). Because the CCMA does not allow legal representatives to be represented during their hearings, Legal Aid South Africa does not appear in these hearings at the CCMA. However, Legal Aid South Africa does advise persons with pending CCMA matters of their rights and of the procedures to be followed in the hearing. The CCMA's rulings can be reviewed by the Labour or Labour Appeal Courts. Legal Aid South Africa does provide legal representation in these courts.

3.4 Impact Litigation

Legal Aid South Africa introduced an impact litigation department in January 2004. The Impact Litigation Unit (ILU) is a specialized unit with specialized legal representatives. The ILU considers potential cases on a case-by-case basis and, once certain criteria are met, Legal Aid South Africa allocates the necessary funding from a special, separate fund. Impact litigation is particularly important against the backdrop of South Africa's 1994 Constitution, which created class actions in South Africa with respect to violations of rights contained in the bill of rights.

The ILU may take the case itself or fund another institution or NGO to conduct the litigation. The ILU is a unit capable of bringing constitutional matters to court as it has been doing for the past years.

4. BUDGET

Legal Aid South Africa receives an annual budget allocation from the government. Below are the budget allocations for the last three financial years. The financial year ends on 31 March.

Table 8: Legal Aid SA budget

BUDGET ALLOCATIONS RECEIVED FROM GOVERNMENT	
Financial Year	Budget Allocation
2008/2009	R869 511 083
2009/2010	R917 408 000
2010/2011	R1 141 335 871
2011/2012	R1 156 057 000

5. STAFFING

Legal Aid South Africa employs a large number of legal staff.

Table 9: Legal Aid SA Staffing

LEGAL PERSONNEL					
Financial Year	Supervisory Positions	Lawyers in High Court	Lawyers in Magistrates Court	Lawyers in Civil Cases	Total Legal Positions
2008/2009	241	84	1 173	92	1 590
2009/2010	263	81	1 180	101	1 625
2010/2011	276	77	1 247	135	1 735

6. CRIMINAL CASES COVERED

Obviously not all criminal cases can be covered. What is set out below gives an overview of the criteria which an applicant has to meet in order to qualify.

- In the first instance the applicant has to pass the means test. Currently.....
- The case must be of a type covered.
- Merits are not considered.

All the more serious criminal offences are covered particularly in respect of trials in the High Court or Regional Court. In District Court cases it is somewhat more limited, although the JCE always has discretion in this regard.

Currently the Criminal Justice System (CJS) is being reviewed. It is proposed to introduce legislation, protocols and other measures in order to increase the effectiveness of the CJS. In the view of Legal Aid South Africa there are many aspects thereof which are desirable such as pre-trial conferences in all more serious matters. These will lead to the faster finalisation of cases.

However, there are also some aspects which will limit certain freedoms that our clients currently enjoy under the constitution. These include proposals to limit the right to remain silent and trial in absentia.

There is no doubt that the final outcome of the CJS Review will have important implications for Legal Aid South Africa and its clients.

7. CIVIL CASES COVERED

Once again the applicant for legal aid must pass the means test. There must also be merit. Certain types of civil cases are specifically excluded.

Until recently civil cases were heard only in the District Court and High Court. Recently however, legislation has been introduced which will enable divorces and most civil cases to be heard in the Regional Court. These cases previously were heard in the High Court or in the now defunct Family Court. This is to be welcomed as this makes courts more accessible.

8. LEGAL QUALITY

Legal Aid South Africa places great stress on the quality of the services delivered by our practitioners. To this end a number of quality measures have been introduced.

Supervisory staff within Justice Centres closely monitors quality and regularly review the quality of the work delivered by the practitioners under them. Quarterly quality reviews are conducted.

In addition this is monitored also by the Regional Offices. Recently a Legal Quality Assurance Unit has been established within our Internal Audit Department at our National office to provide an independent assessment of the quality of services rendered by our practitioners.

9. CONCLUSION

The legal aid scheme in South Africa is operating effectively. Our policies and procedures have been aligned to ensure that the mandate of the organisation is achieved. In the criminal justice system, legal aid plays a vital role in ensuring that the accused rights to a fair trial is achieve. Legal Aid assists clients in over 400,000 matters in the criminal courts annually and this is indicative of the significant role that we play. Our vigorous quality assurance programme also ensures that the quality of the representation received by our clients is exceptionally good. Our presence in civil matters are however limited although we believe that the demand for this service is very great. A number of proposals have been made to the state for increased funding to enable us to increase our coverage of civil matters to clients.

LEGAL AID SOUTH AFRICA