

LEGAL AID BOARD



SOUTH AFRICAN NATIONAL REPORT INTERNATIONAL LEGAL AID GROUP CONFERENCE, 18-20 JUNE 2003, HARVARD UNIVERSITY, BOSTON, USA.

1. INTRODUCTION

The Legal Aid Board (LAB) of South Africa has as its vision “a just South Africa, in which the rights enshrined in our Constitution are respected, protected and defended to ensure justice for all.”

Its mission is to become a leading provider of legal services, ensuring quality access to justice for the poor and vulnerable in an independent manner. This refers to mainly criminal and, to a certain extent civil legal services.¹

Legal aid in South Africa has its origins in the Legal Aid Act No. 22 of 1969. This act establishes the Legal Aid Board, which is state funded. The role of the Legal Aid Board is mandated in the 1996 Constitution of the Republic of South Africa². In addition, various organisations provide legal aid on a not-for-profit basis.

¹ See page 9

² Everyone who is arrested for allegedly committing an offence has the right as per South African Constitution 35.2 (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly and 35.3 (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly.

These include:

- The Legal Resources Centre
The LRC specialises in land reform, labour issues, constitutional cases, environmental issues, housing and the governance of administration. They serve approximately 18 000 clients per annum
- Legal Advice offices
There are 136 advice centers based primarily in under-developed areas offering paralegal services and advice on civil matters. Each advice centre deals with approx 200 matters per month
- University Legal Aid Clinics
There are 10 legal aid clinics attached to SA universities each assisting approx. 1000 clients per month on criminal issues and approx 300 clients per month on civil matters

The context in which the Legal Aid Board supplies legal aid in South Africa can be summarised as follows:

- South Africa has a population of 42 million, with approx 20-28 million citizens living below the poverty datum line³ and an estimated 22% of households reporting hunger.
- The LAB identifies vulnerable groups in South Africa as children, women, the landless, disabled, pensioners and victims of crime.⁴
- The National Prosecuting Authority (NPA) of South Africa finalises an average of 400 000 criminal cases per annum. Of this, the Legal Aid Board is responsible for providing legal aid for 220 000 matters.⁵ The NPA statistics include minor offences and traffic offences, for which legal aid is not provided.

³ Household subsistence levels in SA vary between R1850 and R2071 (US \$ 190 - and US \$ 220) per month.

⁴ The list of vulnerable groups is not exclusive and will not detract from the LAB providing services where required.

⁵ January – December 2002

2. STRATEGIC DIRECTION

The vision of the Legal Aid Board takes into account a number of objectives that broaden its mandate from a narrow view of providing legal assistance in mainly criminal matters to a position that commits to contributing to the efficiency and effectiveness of the justice systems in our country as well as building a just society. Outcomes and objectives of the Legal Aid Board include:

Outcome 1: A South Africa in which all citizens respect and value the rights of others and respect the rule of law and our Constitution.

Objective 1: Promote a culture of human rights and the rule of law

Objective 2: To work with all stakeholders to make the justice system work

Outcome 2: A South African community, especially the poor and vulnerable, which has access to justice that upholds and protects its rights in terms of the Constitution and thus ensures justice for all.

Objective 3: To provide efficient legal services to uphold protect & defend rights

Objective 4: To provide quality legal services to the poor and vulnerable, in response to their needs

Outcome 3: A Legal Aid Board that is independent, sustainable, effective and efficient and which delivers quality legal services.

Objective 5: Financial Sustainability

Objective 6: People and Organisational Development

Objective 7: Effective and transparent functioning of Board of Directors to promote good governance and to provide strategic leadership;

Objective 8: Risk Management

Objective 9: Effective communications with community, clients, stakeholders and employees;

Objective 10: Relationship Management and Legitimacy – to ensure co-operative working relationships.

There are ten strategies which the Legal Aid Board has devised to action our outcomes in the current financial year 2003/2004. Each of these strategies has programmes, which are detailed in our Strategic and Business Plans.

Strategy 1: Rights And Rule Of Law

Strategy 2: Efficient and Effective Legal-Justice System

Strategy 3: Delivery of Legal Services and Client Focus

Strategy 4: Quality Legal Services

Strategy 5: Governance and Accountability

Strategy 6: Financial Strategy

Strategy 7: Human Resources Strategy

Strategy 8: IT Strategy

Strategy 9: LAB Management Strategy

Strategy 10: LAB Organisational Culture

3. LEGAL AID BOARD FUNDING AND BUDGETS

The Legal Aid Board is funded by the national government, with a small percentage of funding for pilot projects comes from donor funding. State funding does not impact on the independence of the Legal Aid Board, which is governed by an independent Board of Directors. The national Minister of Justice appoints the Chairperson of the Legal Aid Board.

The government funding allocations and corresponding Legal Aid Board budgets for the past three years is outlined below:

Legal Aid Board: Funding and Budget

Year	Government Allocation to Legal Aid *	LAB Budget #
2001/2002	R322,103,000 (US\$40,262,875)	R332,103,000 (US\$41,512,875)
2002/2003	R341,827,000 (US\$42,728,375)	R444,556,514 (US\$55,569,564)
2003/04	R357,924,000 (US\$44,740,500)	R490,000,000 (US\$61,250,000)

Notes: *US\$ = approximately R8,00

The LAB budget is higher than the government allocation, it includes unspent funds carried from previous year.

4. LEGAL SERVICES DELIVERY

4.1 Delivery of Legal Services

Until the late 1990's, the main focus of the Legal Aid Board was on criminal cases conducted by private lawyers on contract (a system known as Judicare). While criminal work remains the Legal Aid Board's primary focus, the approach to service delivery has changed to using in-house lawyers in our own Justice Centres. Currently legal services delivery systems include:

- Justice Centres (in-house legal practitioners / public defenders)
- Judicare (private legal practitioners acting on instruction of LAB)
- Co-operation Partners (other NGOs providing legal services with funds provided by the LAB).

The major motivation for the shift to providing services through in-house lawyers was the lower cost of providing legal services in-house compared to judicare. In the past financial year it was estimated that the average cost per finalised matter in Justice Centres was R699 compared to R1,404 through Judicare. Tariffs to be paid to external lawyers, in the Judicare system, are set by the LAB and revised annually. The allocation of legal instructions/briefs to external lawyers is done on a roster basis managed at a local level, linking to the expertise and skills required for each case.

This shift to Justice Centres has meant that the Legal Aid Board has expanded its capacity and number of offices over the past years as indicated in the tables below. The LAB has 1 national office, 4 Regional Offices and several Justice

Centres (local offices). The Legal Aid Board currently (June 2003) employs 585 legal professional staff, which amounts to 63% of the total staff employed by the LAB. The total number of legal professional staff is expected to increase to 1,266 by March 2004. This will make the LAB the largest legal firm and legal employer in South Africa.

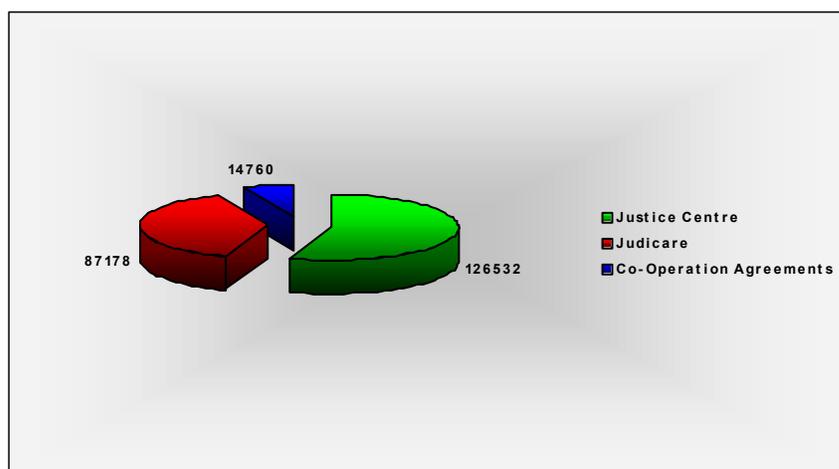
Total Number of Legal Aid Board Justice Centres and Satellite Offices

Total Number of Justice Region	No. of Justice Centres		No. of Satellite Offices	
	Mar-03	Mar-04	Mar-03	Mar-04
Kwa Zulu Natal	10	14	0	6
Eastern Cape / Free State	10	15	0	12
Western / Northern Cape	9	11	0	2
Kopanong	15	19	6	8
Total	44	59	6	28

The current ratio of cases per delivery system is indicated in the table below:

Legal Aid Board : Number of cases by Delivery System (2002/03)

System of delivery	No. of cases 2002/03	% of cases 2002/03
Justice Centres	126,532	55%
Judicare	87,178	38%
Co-operation Partners	14,760	7%
Total	228,470	100%



Over the past two years the split in budget for delivery through these different means of delivery was as follows:

Legal Aid Board: Budget allocations by delivery system

Means of delivery	2002/03	2003/04
Justice Centres	R137million	R300million
Judicare	R150million	R57million
Co-operation Partners	R10million	R8million

The national delivery of legal services is further enhanced by a number of co-operation agreements with service delivery agents working in the same or complementary spheres as the Legal Aid Board (for example, some Legal Aid Clinics, human rights legal institutions and other NGOs). In these agreements the LAB provides funding to partners to deliver services on an agreed basis.

In 2002/03 the number of criminal cases completed by the LAB outweighed civil cases by 91 per cent to 9 per cent. This nevertheless reflects a total of 18 534 civil cases, a substantial amount of which, 17 946, were done through Justice Centres. With the efficiencies brought about by using primarily in-house lawyers, more than 210 000 cases were finalised in 2002/3. This is nearly double the number finalised in 2001/2. Savings of approx. R100 million resulted from the move from Judicare to Justice centres in 2001/2. This has been put to use in expanding the national footprint of the LAB through a network of Justice Centres.

In 2002/3, the Legal Aid Board will keep a significant focus on activities in the civil arena in keeping with its commitment towards human rights issues concerning children, women, the landless and the vulnerable sectors of South African society. The aim of growing this sector will only be quantified as the network of 59 Justice Centres throughout the country becomes operational and demand can be measured. As far as budget allows, a balance of 70 per cent criminal and 30 per cent civil within the short term is a benchmark.

In the last two years, the Legal Aid Board has dedicated special attention to Impact litigation: precedent setting litigation and class actions that positively affect the lives of a large number of poor people through strategic interventions. Examples of this type of litigation include litigation against industrial organisations by communities with regard to health hazards caused by pollution, and a case where a stampede at a soccer stadium led to several deaths.

4.2 Qualifying for legal aid

As mentioned earlier, the Constitution of the Republic of South Africa guarantees legal assistance to detained and accused persons at state expense, “if substantial injustice would otherwise result”. The Constitution also guarantees every child legal assistance in criminal and civil matters “if substantial injustice would otherwise result”. The provision of this legal assistance is defined in the Legal Aid Act, which further provides for fixing conditions subject to which legal aid is rendered. These conditions and rules for the rendering of legal aid have been compiled in a Legal Aid Guide, which is compiled and revised annually by the Legal Aid Board.

The primary (but not exclusive) requirement to qualify for legal aid in South Africa is for a person to be declared indigent, and a means test is used to determine whether a person can afford legal representation. The seriousness of the crime or civil action is also taken into consideration. For civil and criminal matters the following criteria and processes are used to determine whether a person qualifies for legal aid.

In civil matters the process is:

- For the means test a single aid applicant is permitted a calculated income of R850,00 per month (less than US \$ 100) while a married legal aid applicant is permitted a calculated income of R1 700,00 (less than US \$ 200). For each dependant child actually supported by the legal aid applicant will be permitted

a further income of R180.00 (US \$ 20) per month is allowed. If the legal aid applicant exceeds the permitted calculated income in a civil matter legal aid will usually be refused.

- If the applicant qualifies for legal aid in terms of the means test, an assessment of the merit of the case is done in civil matters to further inform the decision of whether legal aid will be provided.
- Finally, if the applicant for civil legal assistance qualifies, in terms of both the means and merit of the case, legal aid will be granted if the LAB has the capacity /resources to handle the matter.

However the CEO does have discretion to authorise legal aid in instances where the legal aid applicant exceeds the permitted calculated income. This discretion is sparingly exercised.

In criminal matters a similar process is followed:

- A means test is completed with the major difference of note is that the income of a spouse is not taken into account in a criminal matter. The permitted calculated income in a criminal matter is R850.00 for the applicant and R180.00 for each dependant child actually supported by the applicant.
- If the legal aid applicant in a criminal matter does not qualify in terms of the means test an assessment is made as to whether or not the legal aid applicant will be able to afford the cost of his/her own legal representation. In this regard factors such as the complexity, severity and anticipated duration for the case faced by the legal aid applicant are taken into account. It is a regular occurrence for legal aid applicants who do not qualify in terms of the Board's means test in criminal matters to nevertheless be granted aid because they are unable to afford the cost of their own legal representation.
- The merit of the case is not taken into account in finalizing legal aid in criminal matters.

The Board previously provided legal aid on an agency basis for the Commission for the Restitution for Land Rights and the Truth and Reconciliation Commission

(established in terms of the promotion of National Unity & Reconciliation Act No.35 of 1995). Similar means tests were employed in respect of legal aid applicants seeking legal aid proceedings in terms of the Restitution of Land Rights Act and the Promotion of National Unity & Reconciliation Act.

In short, legal aid is awarded where affordability is a problem and where a high probability of the ends of justice not being served exists.

5. 2003 AND BEYOND

5.1 Judicare

The Legal Aid Board acknowledges a permanent, if significantly reduced, role for Judicare linked to:

- cases where specialist skills are needed;
- cases where conflicts of interest exist between accused in a trial requiring separate legal representation;
- maintaining a mixture of delivery systems to prevent being totally dependant on any one system.

Allocation of Judicare has to be done through application to the Legal Aid Board. To ensure quality is matched by integrity an Accreditation System for all legal practitioners who might be contracted by the LAB is currently being rolled out. All legal practitioners wishing to be service providers to the LAB will have to apply and be accredited before being allocated legal instructions. To be accredited, practitioners will have to meet various criteria. This Accreditation System is expected to be operation by the end of this financial year.

The LAB had reduced the legal fees payable to Judicare lawyers drastically, a few years ago, in response to a financial crisis. This financial crisis was

effectively managed and is no longer a problem. In this context of greater financial stability, the legal fees payable to practitioners is also being reviewed to introduce a system of graded tariffs linked to experience of legal practitioners. This will enable the LAB to appoint lawyers with more experience and thus improve the quality of legal services provided through the Judicare system.

5.2 Ad Infinitum: Legal Aid bridges the digital divide

The LAB is introducing a new financial and administration software package to assist it in the management of national network of offices. Controls, assessment and monitoring critical to the delivery mechanisms of the Legal Aid Board will be further enhanced by the introduction of the electronic management system Ad Infinitum over the next 12 months. Ad Infinitum is a comprehensive network-based management system that will also increase the effectiveness and cost efficiency of legal service delivery, allowing amongst other things for real-time, on-line applications for legal aid.

5.3 Research And Development

The South African Legal Aid Board is a dynamic service delivery mechanism that is committed to thought leadership, a culture of innovation and best operational practice. In this, the Legal Aid Board constantly tests its delivery mechanisms in line with new possibilities and current trends.

Currently, the Legal Aid Board is running the following pilot projects:

- **Legal Internship Programme**

The LAB has placed 40 legal interns in 4 Justice Centres in order to test whether service delivery can be enhanced by creating a new category of voluntary interns that assist primarily with legal research and legal advice and that do not have court appearance rights. The programme is funded by the French Government

and was launched last year.

- Advice Centre Project

The Legal Aid Board is testing the efficacy of partnering with (paralegal) Advice Centre offices in South Africa to increase its national footprint through a paralegal referral programme in underdeveloped areas. The cost of the project, funded by the Mott Foundation, is in the region of R2 million and will be evaluated and adjusted where necessary after the first year of operation.

- Plea Bargaining Project

The Legal Aid Board is working with the Bureau for Justice on a Plea Bargaining Programme aimed at increasing case-flow management in the South African Courts. The Open Society Foundation in conjunction with the Vera Institute funds the project for Justice. Four cases have been successfully plea-bargained and the impact of these on the South African legal system is being evaluated.

6. MOVING FORWARD : CHALLENGES

In 2003/4 the primary challenge facing the Legal Aid Board is to consolidate the change that has been effected in recent years and entrench adequate systems, policies and procedures that will institutionalise the effective delivery of legal assistance in the country. In addition, the measure of the Legal Aid Board's performance rests on the roll-out of its justice centres and satellite offices as well as its ability to meet the operational challenges linked to opening new offices and implementing new means of service delivery.

It is believed that the approach of running pilot projects allows the Legal Aid Board to test the strengths and weaknesses of various service delivery mechanisms before taking them on board across the entire organisation.

In its quest to achieve social justice the Legal Aid board in SA is mindful of its limited budget given the immense need for legal assistance that is required to help to improve the lives of the poor and vulnerable. Given the constant demands on state funds, operational efficiencies and quality of performance are integral to improving our service base.

Vidhu Vedalankar

CEO: Legal Aid Board – South Africa

12 June 2003.