

# Country Report

## Namibia



International Legal Aid Group  
Conference  
2025  
Cologne, Germany

## **COUNTRY DETAILS**

Namibia is a geographically large country with a relatively small population which was estimated at around 3.03 million people following the latest census conducted in 2024.

It has a land area of 824,292 square kilometres and a 1500 kilometres coastline on the South Atlantic and shares borders with Angola, Botswana, South Africa and Zambia. The capital city is Windhoek which have a population of 494085 in 2024.

Namibia is classified as an upper-middle-income country by the World Bank but faces significant socioeconomic challenges with high levels of poverty and inequality.

According to the 2021 Multidimensional Poverty Index, 43.3% of the Namibian population are multidimensionally poor. In 2023, Namibia's GDP per capita was 4,168.29.

Namibia has a total number of 1235 admitted legal practitioners. The Law Society of Namibia governs the legal profession and all lawyers in Namibia are regulated by the Legal Practitioners Act 15 of 1995. This number does not include many other professionals with legal qualifications which are employed in various sectors but are not admitted legal practitioners. For example, most lawyers employed by the Directorate of Legal Aid are not admitted legal practitioners and thus not governed by the Law Society. Lawyers working for legal aid does not need to be admitted because the act afford them the right of audience in all the courts in Namibia from the district court to our apex court which is the Supreme Court of Namibia.

## **LEGAL AID ORGANISATION/AUTHORITY**

The primary provider of legal aid to the indigent is the Directorate of Legal Aid.

## **ABOUT THE DIRECTORATE OF LEGAL AID**

The Directorate of Legal Aid in Namibia derives its mandate from the Constitution as well as the Legal Aid Act as amended, and the Regulations made thereunder. It is a department (Directorate) within the Ministry of Justice and all its staff members are civil servants, employed by the State. It is headed by the Director, and its management comprises the Director and Deputy Director. Its operations are governed by the enabling Act and has its head office in the capital Windhoek.

## **MANDATE**

The mandate of the Directorate of Legal Aid is to provide for the granting of legal aid in civil and criminal matters to persons whose means are inadequate to enable them to engage legal practitioners to assist and represent.

The extent of legal aid includes:

1. The assistance by a legal practitioner in the steps preliminary or incidental to any proceedings;
2. Representation in court;
3. Lawyer & client privilege is guaranteed.
4. Foreign nationals are also covered.

## **LEGAL FRAMEWORK**

The Directorate derives its mandate from Article 12 and Article 95 (h) of the Constitution, as well as the Legal Aid Act 29 of 1990 as amended, together with the Regulations made thereunder.

Article 12 (1) (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice

Article 95 (h) specifically provides for a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State.

## **OVERVIEW OF ACT AND REGULATIONS**

To get legal aid in Namibia, an applicant must complete a form which is prescribed by statute, and only the Director or Deputy can grant or refuse legal aid.

All applicants for legal aid must meet the means test which was recently increased from N\$ 3500-00 to N\$ 7000-00. This means that only those who are either unemployed or earn an income less than N\$ 7000-00 is eligible to receive legal aid.

In criminal matters in terms of section 10, legal aid is granted if 'having regard to all the circumstances of the case, it is in the interest of justice that the applicant must be legally represented.'

In civil matters in terms of section 11, legal aid is granted if 'the applicant has reasonable grounds for instituting or defending, or otherwise becoming a party to the proceedings.'

## **PROPOSED AMENDMENTS**

We are in the final stages of passing exciting new amendments to the Legal Aid Act (herein the act). These will be discussed in more detail later in the report. The current legislation only makes provision for the Director to decide upon applications for legal aid without any powers of delegation. There is a need for an amendment to create positions of Deputy Chiefs of legal aid to assist the Director.

Persons whose applications are refused have no avenue to appeal against such refusal other than the cumbersome and expensive court review process. This is an untenable situation given that most applicants are indigent and/or illiterate and cannot afford the high cost of litigation in the High Court. The amendments will thus create an appeal mechanism for those applicants who are aggrieved by the outcome or decision on their application.

Due to a lack of quality assurance measures the amendments seek to introduce some forms of measures to protect our clients and ensure that the legal services rendered are of an expected level.

There are no provisions which provide the Directorate with powers to investigate the income and assets of applicants where there are doubts, uncertainties, complaints and information received about the income and/or assets of an applicant. The amendments aim to provide the Director with the necessary powers and authority to investigate whenever there is a cause to do so.

The amendments are at an advanced stage because it was already approved by the Cabinet as well as the Cabinet Committee for Legislation. It is expected that the amendments will come into force during this year.

## **CASE MANAGEMENT SYSTEM**

As from November 2022, the Directorate introduced a CMS, which has done away with the traditional physical paperwork, applications are now done online, and the applications are converted to electronic files.

Decisions are now taken on the system and the client's data is captured therein. The CMS introduced an SMS notification system, to better communicate directly with applicants. All they need to provide is a functional cell phone number, it can a relative's number, where applicants are in custody. This has addressed the communication challenges experienced. The SMS services inform clients that

applications are received, the outcome whether approved or refused, contribution to be paid if any, name and details of instructed counsel.

## **ONLINE APPLICATIONS**

During February 2025 the Directorate has launched its online application functionality and prospective applicants may now apply for legal aid online.

## **STAFF STRUCTURE & DECENTRALIZATION**

The Directorate employs 67 legal aid lawyers who are all salaried government workers. The Director, Deputy and all the lawyers are appointed by the Minister of Justice in terms of Sec 3 of the Legal Aid Act. The Directorate of legal Aid has at least two lawyers at every Magistrates Court.

At the major stations where the divisions of the High court are namely, Windhoek and Oshakati. In addition, we make use of private legal practitioners to complement the work being done by the in-house lawyers. We also partner with the UNAM Legal Aid Clinic and we instruct them in civil cases

## **CHALLENGES & PLANS**

The current workload is too much for the Director and her deputy resulting in applications in civil matters pending for months. Further due to the structure we are recently experiencing a high staff turnover as our lawyers are frustrated by lack of promotional opportunities and seek greener pastures somewhere else.

There were also challenges of office space, and the normal logistics of opening a new office such as vehicles, IT equipment. Placement of legal aid lawyers at stations consider the language commonly spoken in that area, and personal choices for duty stations during the recruitment stage.

## **PAYING PROVIDERS OF LEGAL ADVICE AND SERVICES**

Private legal practitioners that are instructed through the judicare system are remunerated in terms of the legal aid tariffs that are provided for in the regulations. The latest regulations on this matter are the Legal Aid Regulations of 2019. There are no contracts entered between the Directorate and lawyers when they receive instructions. Lawyers receive a written instruction which provides that payment will

be made in terms of the regulations. There is also no requirement that lawyers have to perform part of the instruction on a pro bono basis.

In terms of regulation 5, a legal practitioner to whom the Director has allocated a matter is entitled to the appropriate fees set out in Annexure "B" for the services rendered by such practitioner as long as the invoice is accompanied by a detailed report on the status of the legal aid matter being claimed for by such practitioner. Annexure B provide for separate tariffs for criminal and civil matters.

For criminal matters there are separate rates for the High Court, Regional Court, District Court and for appeals. These rates relate to postponements, pleas, all-inclusive first day fees for trials and all-inclusive second and subsequent full day fees for trials. The same rates would apply for bail applications. There is no reservation fees if a case does not proceed on subsequent days for which it was scheduled. There is provision for allowances and incidental expenditure such as daily subsistence allowance and transport allowance if a lawyer travel outside of town to attend to a case.

In relation to civil matters a legal practitioner conducting a case on the instructions of the Director of Legal Aid in the High Court or Supreme Court may claim fees as set out in the High Court Rules or the Supreme Court Rules as the case may be. A legal practitioner conducting a case on the instructions of the Director of Legal Aid in a lower court may claim fees as set out in the Magistrates' Court Rules. Whenever a legal practitioner represents a client in proceedings before a Tribunal they may claim fees equivalent to the fees payable to a legal practitioner conducting a trial in the Magistrates' Court. The rules in both instances provide for fixed daily and hourly rates for various types of matters such as divorces, contract, labour etc.

## **BUDGET AND SPEND**

The entire budget for the Directorate of Legal Aid is funded by the State/Government of the Republic of Namibia. It is not possible to break down the actual expenditure for types of cases such as civil, criminal, children etc. This is because the in-house lawyers deal with all types of cases and receive a monthly salary.

On the part of private legal practitioners, the majority of them receive instructions for different types of cases for which they bill us on a monthly basis. We do not keep statistics on which invoices are for civil cases, criminal cases, children matters etc.

FINANCIAL YEAR	IN-HOUSE LAWYERS AND ADMIN STAFF (salaries & other allowances)	LEGAL FEES FOR PRIVATE LEGAL PRACTITIONERS	TOTAL BUDGET	TOTAL EXPENDITURE
2022/23	31,013,078.81	14,496,328.63	45,640,362.00	45,509,407.44
2023/24	37,162,201.99	34,407,394.12	72,304,000.00	71,569,596.11

**NOTE: Amounts are in Namibian Dollar. USD=N\$18.52/ €=N\$20.17/£=N\$24.35**

## SCOPE, CASELOAD AND ELIGIBILITY

The extent of legal aid covers the assistance by a legal practitioner in the steps preliminary or incidental to any proceedings, representation in court, and lawyer/client privilege is guaranteed. The act places no restrictions on the scope of legal services that may be provided to successful clients.

As stated earlier an applicant must complete a form which is prescribed by statute, and only the Director or Deputy can grant or refuse legal aid.

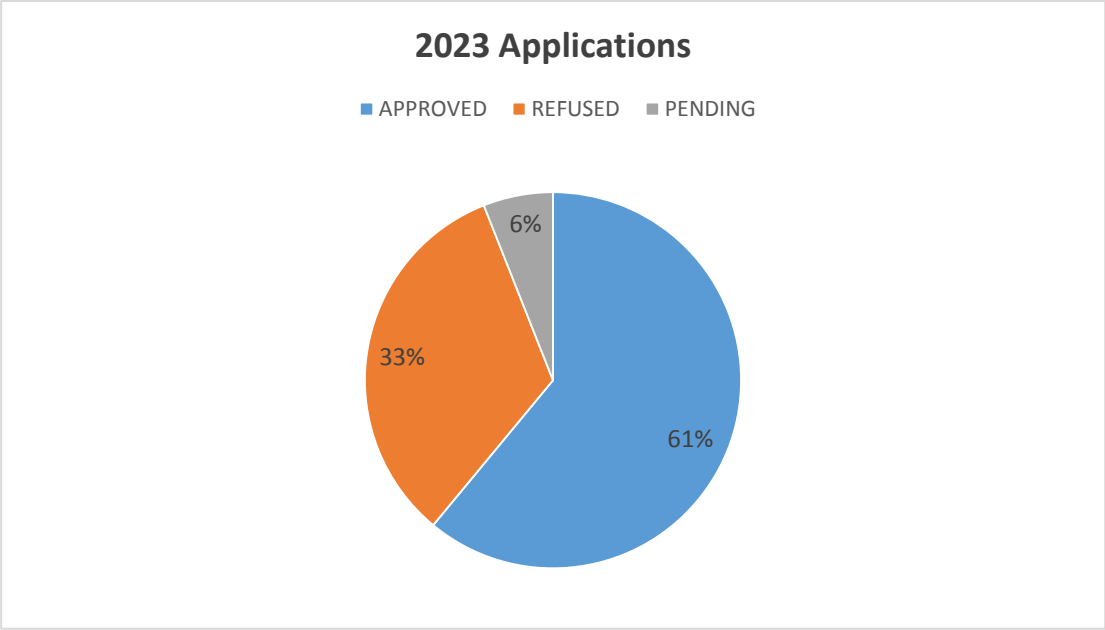
All applicants for legal aid are required to meet the means test which dictates that only those who are either unemployed or earn an income less than N\$ 7000-00 is eligible to receive legal aid.

In criminal matters in terms of section 10, legal aid is granted if 'having regard to all the circumstances of the case, it is in the interest of justice that the applicant must be legally represented.' We generally grant legal aid to applicants who are charged with offences that carries sentences of imprisonment.

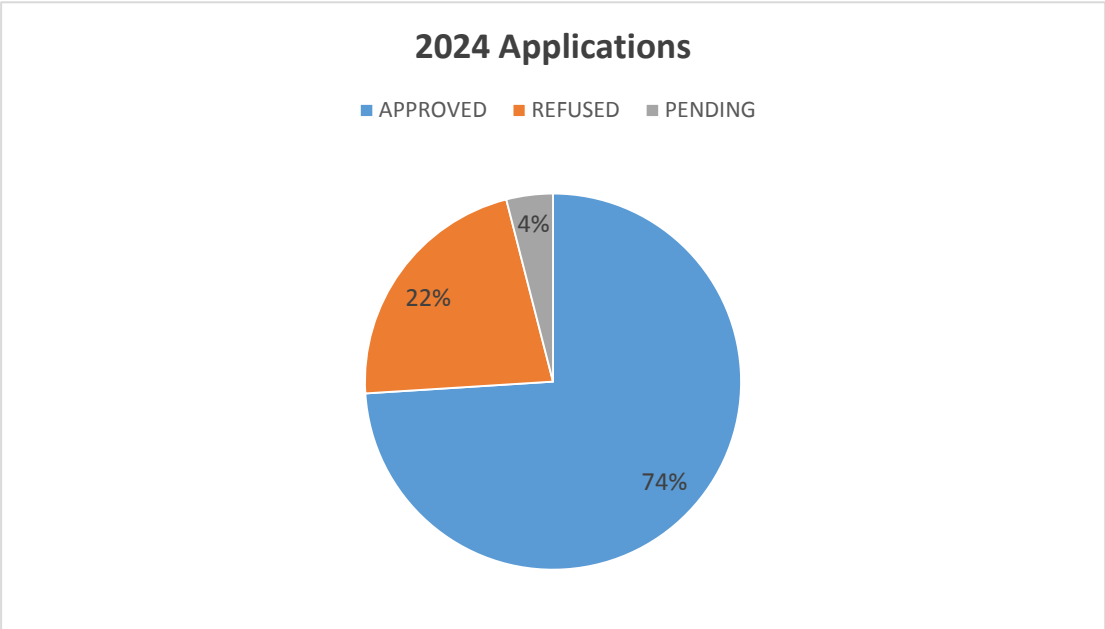
In civil matters in terms of section 11, legal aid is granted if 'the applicant has reasonable grounds for instituting or defending, or otherwise becoming a party to the proceedings.'

The act provides that the Director may request for a contribution from successful applicants, whereas the regulations have introduced a mandatory contribution of N\$ 350-00. Senior citizens/pensioners (persons older than 60 years) and minors are exempted from paying contributions. Applicants who cannot afford to pay may apply to the Director in writing to waive their contribution for legal aid. They would ordinarily be required to provide reasonable grounds why they cannot afford to pay.

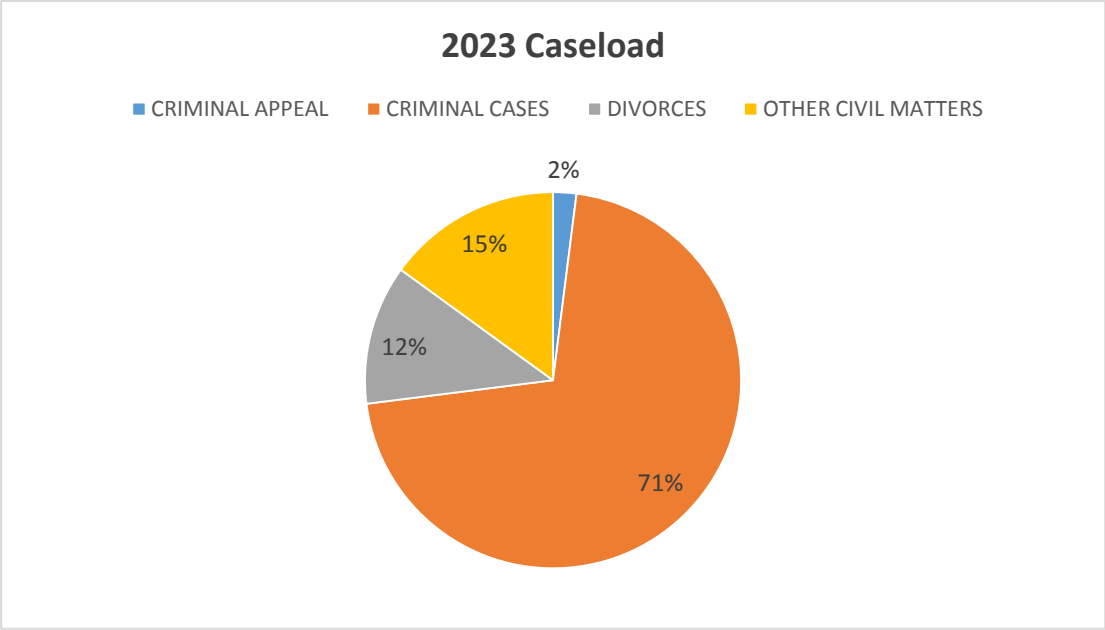
The act provides that the State and by extension the Directorate of Legal Aid may not be awarded a cost order against it in favour of a successful party to any litigation. However, the same protection is not afforded to the legally aided clients. The courts are generally very reluctant to award costs against legal aid clients. Costs are only awarded in exceptional cases as a punitive measure where our clients pursued very frivolous matters.



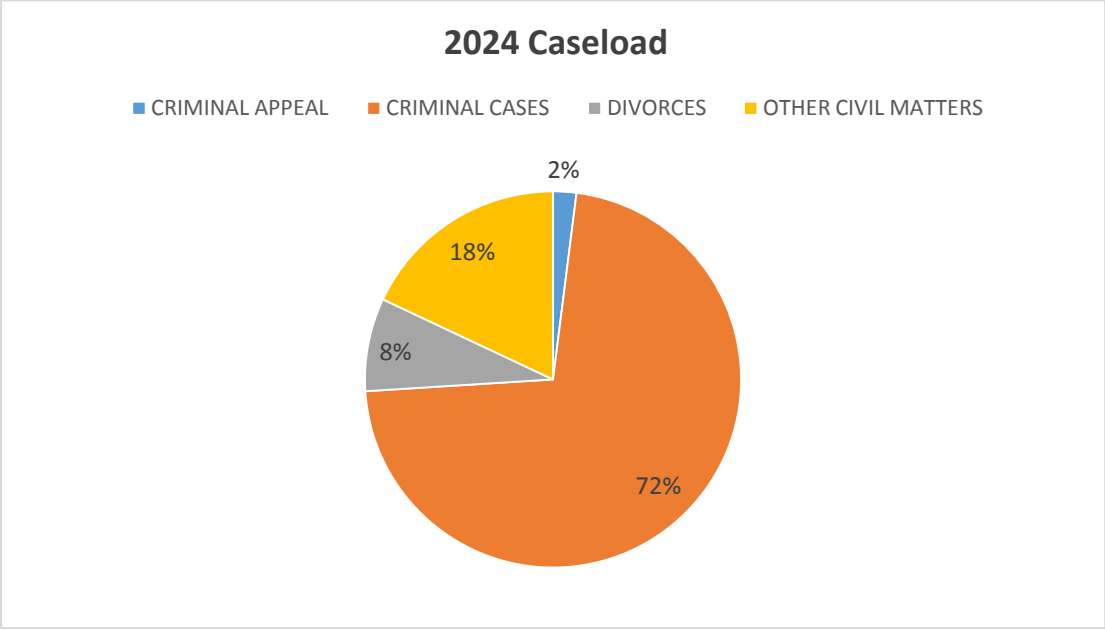
YEAR	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	APPLICATIONS REFUSED	APPLICATIONS PENDING
2023	9971	6098	3251	622
2024	9251	5988	2733	530







YEAR	CRIMINAL APPEAL	CRIMINAL CASES	DIVORCES	OTHER CIVIL MATTERS
2023	207	7097	1161	1502
2024	171	6663	725	1692



## **QUALITY ASSURANCE**

### **i) Legal Qualifications**

The first step in ensuring quality legal representation for the poor and indigent accused is to ensure that the legal representatives that we instruct possess suitable qualifications.

In Namibia we instruct our own lawyers which we refer to as in-house lawyers (defined as legal aid counsel in the Act), as well as private legal practitioners.

In terms of section 3(2)(a) of the Legal Aid Act 29 of 1990, as amended, the Minister may only appoint either the Director or legal aid counsel, if he or she possesses a qualification in law, whether obtained within or outside Namibia.

The appropriate qualification in law referred to is a bachelor's in law, which we commonly refer to as an LLB degree.

Private lawyers we instruct should be a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995).

In terms of the legal practitioners act in order to be admitted as a legal practitioner a person must hold a legal qualification (LLB degree) and undergone practical legal training at the Justice Training Centre and must have written the Legal Practitioner's Qualification Examination (LPQE).

Therefore, no instruction to represent our clients will be given unless these minimum qualifications are met.

### **ii) Issuing of instructions**

In our efforts to ensure quality representation we try as far as possible to instruct lawyers which we believe are both competent and capable to handle a particular case.

In relation to our in-house lawyers there is a system of graduation (not promotion because the two concepts are different) which we have implemented and religiously follow. What this means is that once we appoint an entry level/junior lawyer we only issue minor and non-complex cases to such lawyer. As the lawyer gain experience and enhance his skills do we issue more serious and complex cases.

For example, for the first two to three years such lawyer will only appear in the Lower Courts dealing with relatively minor offences such as Fraud, Theft, Housebreaking and Stock Theft. Once we feel the lawyer is ready, we will than issue instructions for more seriously cases like Murder and Rape which are dealt with in the High Courts.

In our office we have lawyers who have gained tremendous skills and experience, these individuals are feared defence lawyers, and we assign them to the more complex cases.

Whereas we could manage the situation with our in-house lawyers we could not control the lawyers that law firms instruct once we issue them with an instruction. After we issue an instruction to a law firm which we know have experienced lawyers, they would task inexperienced lawyer, sometimes even a candidate lawyer to a serious case in the superior courts.

We managed to put a halt to this practice via the Magistrates Commission and the Law Society of Namibia. Law firms are now required to assign legal aid cases only to lawyers who are experienced.

In so far as civil cases are concerned, our civil unit is still fairly new and our lawyers are lacking some competencies'. Because of this shortcoming we instruct all our complex civil cases to experienced private lawyers. In this instance we also ensure that the private lawyers are know specialist in the relevant field.

Our in-house lawyers for the civil unit mostly deal with divorce cases, evictions, protection orders and damage claims not involving huge amounts of money.

### **iii) Legislative Safeguards**

The current legal aid framework does not have specific provisions to ensure quality assurance. However as indicated above the amendments to the act have new provisions on quality assurance. The new provisions in the Legal Aid Amendment Bill are verbatim the following:

*(4) To qualify to be appointed as a legal practitioner for purposes of allocation of legal aid instruction in terms of section 6 a practitioner must comply with the following –*

*(a) He or she has practiced as a practitioner for a period of at least two years;*

*(b) He or she has not been or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged;*

*(c) He or she was not found Guilty by the Disciplinary Committee of the Law Society/Ministry of Justice of any misconduct, charge or offence which in the opinion of the Director renders such practitioner unfit to represent legal aid clients.*

*(d) He or she has not been convicted inside or outside Namibia of a criminal offence which, has an element of dishonesty.*

*(e) He or she has behaved in a manner which, in the opinion of the Director, is of a dishonourable nature.*

*(f) He or she has been certified either inside or outside Namibia to be a person of an unsound mind or a person with a mentally disability or intellectually handicapped in terms of the mental health laws of Namibia or a foreign country, and the certification remains in force.*

## **PUBLIC LEGAL EDUCATION**

Public education about the Directorate of Legal Aid is done at Ministerial level on the one hand and also as part of joint efforts with other key stakeholders. Firstly, various departments of the Ministry of Justice, such as the Master of the High Court, Legal Services (which includes maintenance courts), Attorney-General's office, Public Prosecutions, Legislative Drafting, and Law Reform, embark upon public education initiatives countrywide. Each department have a mandate to offer public awareness as part of its strategic objectives. Usually, the various departments would collaborate and have sessions together. The public would be informed in advance of about the dates and venue and each department would have representatives. They offer advice about our mandate, as well as the key functions and duties of legal aid. They also hand out material such as our Customer Service Charter to members of the public. In addition, public education is also offered from time to time via radio and television.

The joint efforts include countrywide visits to all the magistrate's courts together with officials from the Office of the Judiciary, Magistrates Commission, Namibian Police, Correctional Services, Prosecutor-General etc. The public is engaged at the various magistrate's court whereby each department inform the public about their work and future engagements. The members of the public have the platform to ask questions and to raise any queries and complaints they have about the various services including legal aid.

## **ALTERNATIVE SOURCES TO LEGAL AID SERVICES**

There are several institutions that aim to provide free legal aid to indigent persons in Namibia.

### **Legal Assistance Centre**

We have the Legal Assistance Centre who renders assistance to litigants free of charge in Constitutional matters, cases involving Human rights violations and cases of public interest. The Centre rely on donors and sponsors for its funding. In recent years the LAC has drastically reduced the number of cases due to a lack of funding.

## **Legal Aid Clinic**

There is also the University of Namibia's Legal Aid clinic which renders a variety of legal services, including legal advice and representation in court free of charge. They are based in the capital city of Windhoek and their clients are mostly in and around the Windhoek area. Their clients include unemployed persons, persons with a low income, students, pensioners, etc. The legal aid clinic relies mostly on private legal practitioners rendering their services as part of their social responsibility. The university's Legal Aid Clinic provides practical legal education to future legal practitioners. Students work with and help the legal practitioner with work on client files. They sit in on consultations, draft documents (including pleadings), do research, attend/observe court appearances, etc. They are currently only assisting clients in very limited civil matters such as matrimonial cases (undefended divorce cases). They also assist in criminal matters but only for minor offences in the lower courts. They do represent clients in both the lower courts and the High Courts. Activities at the Legal Aid Clinic are relatively small in broader perspective because they handle less than 50 cases per year.

## **Others**

In labour matters workers may be represented by officials from their trade unions during arbitration, mediation and reconciliation proceedings. However representatives from the unions does not have right of audience should the aggrieved person/worker want to appeal the outcome of an arbitration hearing to the Labour Court. We also have several legal insurance companies that offer legal services to their clients who make monthly premium contributions. Lastly, as far as we are aware we do not have the use of Internet tools such as Rechtswizer, Rocket lawyer etc. in our jurisdiction.

## **UN SDG STANDARD 16.3**

The Directorate of Legal Aid have taken very important steps in the last decade to promote the Rule of Law and Ensure Equal Access to Justice.

## **Decentralization**

In the past we only employed a handful of lawyers which were less than ten (10) which were all based in Windhoek. Since around 2012 the Directorate decentralized to all the regions in Namibia and we now have at least two lawyers at every Magistrates Court. Naturally at the larger courts we have more than two lawyers.

The Directorate on average employ approximately 70 lawyers and we also make use of private legal practitioners.

Before 2018 all in-house lawyers only handled criminal cases, and all the civil cases were outsourced to private legal practitioners.

This limited the type of civil cases we handled because of the high costs of legal fees. Some cases involving smaller claims, evictions, motor vehicle accidents, institution of divorces etc. were seldom approved.

In 2018 the Directorate launched its Civil Unit with branches in Windhoek and Oshakati where the two divisions of the High Court of Namibia are based. The full staff complement of the civil unit is seven lawyers in Windhoek and three in Oshakati.

### **Use of Information Technology to improve access to legal aid**

During November 2022 the Directorate introduced a Case Management System which has done away with the old system of hardcopy files.

Hardcopy files presented challenges as they could get lost or would prove to be very difficult to trace particularly when there are enquiries from courts.

The CMS allowed for the applications to be converted to electronic files and enquiries are handled more effectively and efficiently. At the touch of a few buttons one can assess the status of an application in no time.

Decisions are taken on the system and the client's data is captured therein. The CMS also introduced an SMS notification system which allows direct communication with clients.

SMS informs clients about the outcome of their applications. Name and details of the instructed lawyer when application is successful.

This has effectively removed the challenges faced with clients in rural areas which needed to rely on the postal service and travel to towns where they applied to learn of the outcome of their applications.

The CMS allows for public viewing and any person can check on the status of any pending application provided you have certain information such as the legal aid reference number, court case number etc.

### **Increase of income threshold**

In many countries eligibility requirements that individuals need to meet to qualify for legal aid are creating insurmountable barriers to access legal aid. Namibia like many other countries use the means test to determine who qualify for legal aid.

Due to the ever-increasing costs of legal fees the income threshold is a major impediment for indigent persons to have access to justice.

To enable access to legal aid to a wider group of the population the income threshold was increased twice in the last five years through amendments to the Regulations.

In April 2019 the Legal Aid Regulations of 2019 increased the income threshold from N\$ 1200-00 to N\$ 3500-00 (USD 197 & Euro 184). This represented an increase of 233%.

More recently in July 2024 the Legal Aid Regulations of 2024 further increased the income threshold from N\$ 3500-00 to N\$ 7000-00 (USD 393 & Euro 368). This represents an increase of 200%.

Obviously, the increase of the threshold comes with massive financial implications. The increased financial costs are fully covered by the State by increasing the budget for the Directorate of Legal Aid.

## **Amendments to Legal Aid Act**

In September 2024, Cabinet approved amendments to the Legal Aid Act, Act 29 of 1990. The most significant of the amendments are the following:

1. To provide for standards legal practitioners must comply with when representing legal aid clients. Currently, there are very few safeguards to protect legal aid clients against incompetent or negligent lawyers. The aim of this amendment is to ensure some form of Quality Assurance from lawyers instructed to represent legal aid clients.
2. The establishment of an Appeal Committee. The act does not provide for an appeal procedure against a decision to refuse an application for legal aid. Applicants whose requests are denied have no effective means to appeal, relying solely on a costly and complex court review process. This situation is particularly challenging for indigent and illiterate applicants who cannot afford high litigation costs.
3. The amendments also create the positions of Deputy Directors to assist the Director in deciding applications for legal aid. Aim to improve the turnaround time for applications and reduce the backlog. Further to facilitate the decentralization of functions to regional offices, closer to clients.
4. Facilitate the appointment of investigators with the power to investigate the financial means of applicants for legal aid. Providing false information in the application form is a criminal offence in terms of the act. We rely solely on the information provided in the application form. In cases where we receive information that a particular applicant is not indigent, we have no power and capacity to investigate the allegations.

## CONCLUSION

Namibia embarked on a very exciting project in 2024 by hosting the SADC Regional Workshop on Enhancing Equal Access to legal aid in the criminal justice system held in Windhoek, Namibia, September 2024.

Workshop was co-hosted by the United Nations Office on Drugs and Crime (UNODC) together with the Ministry of Justice in Namibia.

It was attended by sixteen-member states from the Southern African Development Commission (SADC) as well as various experts from around the globe.

Participants included legal aid providers both national authorities as well as from civil society, representatives of governments including Ministries of Justice, judiciary and academia.

The workshop provided a platform for participants to engage in discussions and strategies on improving legal aid services, comprehensive experience exchange and sharing of challenges and best practices including projects at national level on overcoming the challenges.

The major part of the topics discussed focused on legal aid for beneficiaries in vulnerable situations who have specific rights and needs in the criminal justice system such as suspects, detainees, and victims.

One of the main challenges may be to receive support from the government, therefore we must make out a strong case on the need and benefits of having a formal network to exchange experiences.

### **The delegates proposed practical and achievable solutions to the key challenges, namely:**

- (a) Strengthen the legal aid systems (legal frameworks and institutions, legal aid policies, enhance collaboration and coordination, adequate and sustainable funding, effective criminal legal aid services),
- (b) Community outreach and respect for diversity and inclusion (decentralization of services and safeguarding rights persons with specific needs such as disabled persons),
- (c) Awareness raising and rights education (including on legal system, human rights education and right to legal aid),
- (d) Capacity building and skill development, and
- (e) Data collection, analysis and quality assurance.
- (f) Create a regional training manual for legal aid providers that would include practical litigation techniques and conceptions on how to effectively represent rights of groups with specific needs.



The organizers strongly encouraged participating nations to create an integrated regional network of legal aid providers which will continually share their experiences and best practices to learn from each other and strengthen access to legal aid in Southern Africa. This network will form a platform for mutual support and collaboration among legal aid providers and institutions in the region.

To date not much work was done on the creation of the SADC regional network but we are hopeful that the various legal aid providers would soon start with implementation.

It is incumbent upon the member nations themselves to start the process and they may consider entering into an agreement based on their international legal obligations.



**SADC REGIONAL WORKSHOP 2024**



**DIRECTORATE OF LEGAL AID STAFF MEMBERS ATTENDING LEGAL AID  
ANNUAL CONFERENCE 2023**