

Briefing to

Portfolio Committee: Correctional Services

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Legal Aid Board Representation of children

presented by

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Overview of Presentation

- LAB Vision, Mission and Values
- LAB Mandate
- Lab Capacity
- Qualification for Legal Aid
- LAB focus on Children
- Improving Access – representation of children
- Monitoring of Children Awaiting Trial in Custody
- LAB Defence Strategy
- Stakeholder Networking
- Statistics
- Challenges

Legal Aid Board Vision & Mission

VISION

A just South Africa in which the rights enshrined in our Constitution are promoted, respected, defended, protected and fulfilled to ensure justice for all.

MISSION

To be a leading provider of quality legal services ensuring effective access to justice for the poor and vulnerable, in an independent manner.

VALUES

Dedication and Commitment
Service Excellence and Professionalism
Respect for human dignity
Integrity
Efficiency and Effectiveness
Accountability
Empowerment

LAB Mandate

The Constitution of RSA

- ▶ Section 35(2) “Everyone who is detained, including every sentenced prisoner, has the right –
 - (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; ...
 - (a) ...
- ▶ Section 35(3) “Every accused person has a right to a fair trial, which includes the right –
 - (a) ...
 - (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; ...
- ▶ Section 28(1) “Every child has the right,
 - (a) ...
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; ...”

Legal Aid Act (Act 22 of 1969)

Section 3 “The objects of the board shall be to render or make available legal aid to indigent persons and to provide legal representation at state expense as contemplated in the Constitution, ...”

Other legislation also provides for legal assistance at state expense

Justice Centres per province : 2007/08

REGIONAL OFFICES	PROVINCE	JUSTICE CENTRES	SATELLITE OFFICES	HIGH COURT UNITS
KwaZulu Natal/ Mpumulanga	KwaZulu Natal	10	6	2
	Mpumulanga	4	7	0
Eastern Cape/ Free State	Eastern Cape	10	10	4
	Free State	4	3	1
Western Cape/Northern Cape	Western Cape	7	9	1
	Northern Cape	3	3	1
	North West	5	2	1
Kopanong	Gauteng	9	4	2
	Limpopo	5	5	1
	North West	2	0	0
TOTAL SOUTH AFRICA		59	49	13

8 new Satellite Offices & 1 Justice Centre opened between in FY 2007/08

Staff per province : 2007/08

Province	#JCs	# Legal	# Non-Legal	# Total	%
Eastern Cape	10	269	66	335	15%
Free State	4	110	27	137	6%
Gauteng	9	350	78	428	19%
Limpopo	5	108	25	133	6%
North West	7	131	36	167	8%
KwaZulu Natal	10	287	69	356	16%
Mpumulanga	4	99	20	119	5%
Western Cape	7	253	63	316	14%
Northern Cape	3	53	14	67	3%
National Office		3	136	139	6%
Total Staff - Actual	59	1663	534	2197	100%
Total Staff - Budget		1789 (76%)	572 (24%)	2361	
% Recruited		93%	93%		
2006/07					
Total Staff - Actual	58	1489	464	1953	
Total Staff - Budget		1622	513	2135	
% Recruited		92%	90%		

Qualification for legal Aid Children

- The Legal Aid Board offers Legal aid assistance to all children in conflict with the law.
- Our normal limitations for the provision of Legal Aid to adults, including:
 - Means test
 - Case typedo not apply to children.

Legal Aid Board – Focus on Children

- ▶ The LAB recognizes that children represent the most vulnerable of all groups, and that special attention needs to be paid to the rights of children, particularly children who are in conflict with the law and those who are in custody.
- ▶ The LAB has established children's units at Justice Centres linked to established/proposed One Stop Child Justice Centres. These units are staffed by attorneys that specialise in the representation of children in civil and criminal matters.
- ▶ Our practitioner per court model also enables us to ensure that we are able to represent children at any of the courts where they appear.

Location of Children's Units

Province	JusticeCentre	Total
Eastern Cape	East London	1
	Mthatha	1
	Port Elizabeth	2
Free State	Bloemfontein	1
Gauteng	Johannesburg	1
	Pretoria	1
KwaZulu Natal	Durban	1
	Pietermaritzburg	1
Limpopo	Polokwane	1
Mpumalanga	Ermelo	1
	Nelspruit	1
North West	Klerksdorp	1
Northern Cape	Kimberley	1
Western Cape	Athlone	1
	Cape Town	1
	George	1
	Vredendal	1
Grand Total		18

Legal Representation for Children

Improving Access

- ▶ We have increased our staffing capacity at reception courts to two practitioners so that there is always one person available to link with accused, including children, that are scheduled to appear at these courts. In this way, we are able to ensure representation for such accused, even before their first appearance at courts.
- ▶ Our practitioner per court model ensures that they are able to identify children who appear at their court rooms unrepresented. All our practitioners are specifically instructed to link with such unrepresented children to explain the benefits of being legally represented and to offer them legal aid.
- ▶ Our Justice Centres continuously monitor correctional centres within their coverage area to identify unrepresented children awaiting trial so that we can attend to their legal needs. This will include ensuring the earliest end to their incarceration. Additional paralegal capacity has been provided in this financial year to our Justice Centres that link with the 20% of prisons that house in excess of 80% of awaiting trial detainees.

Monitoring Children Awaiting Trial in Custody

- ▶ All of our Justice Centres are required to monitor children awaiting trial in correctional centres/places of safety linked to their Justice Centres. This includes visiting and interviewing children and offering them legal representation.
- ▶ Stats of all children held in custody are obtained from DCS/DSD on a regular basis and these are used by our Justice Centres as a tracking mechanism to ensure that all children are covered.
- ▶ We also work closely with the Independent Prison Visitors (IPVs) from the Judicial Inspectorate of Prisons to facilitate access to children in custody and who are in need of legal representation.
- ▶ The Justice Centres also conduct their own regular visits to identified prisons to monitor all accused, especially children, who are awaiting trial.
- ▶ We have implemented a special web based monitoring tool where we track all children awaiting trial at all our Justice Centres. This web tool enables us to monitor children at an individual level, such that we identify the reasons for the delays in the finalisation of matters as well as interventions that our Justice Centres take to speed up these matters.

LAB Representation of Children Defence Strategy

- ▶ In all cases involving children our practitioners are required to immediately make representations for the child to be diverted from the Criminal Justice System.
- ▶ In appropriate cases, representations are made to the court for the charges against children to be withdrawn.
- ▶ Where the child is arrested for a minor offence, all efforts are made to use restorative justice options to resolve the matter, including mediation, compensation and social counseling.
- ▶ Where matters are likely to proceed to trial, practitioners are required to ensure that these accused children are released into the custody of their parents or guardians.

LAB Representation of Children Defence Strategy (Cont.)

- ▶ Practitioners are also required to ensure thorough preparations for all matters proceeding on trial. All our practitioners are closely monitored by supervisory staff at Justice Centers. This includes holding case discussion forums where supervisors assess legal strategy for cases that practitioners have on their diary during that day/week.
- ▶ Where children are found guilty of an offence by the court, our practitioners are required to, as best as possible, argue against a non custodial sentence.
- ▶ Where courts find children guilty of offences, our practitioners are required to consider the option of noting an appeal and if necessary, a petition to a higher court.

Training and Development of LAB Staff for Children's Matters

- ▶ Practitioners recruited for children's units have undergone intensive training in all facets of children's matters .
- ▶ The LAB training and development programme also ensures that all practitioners attending to criminal courts are sufficiently skilled in trial advocacy with a specific focus on children's matters.
- ▶ Practitioner's involved in children's matters can also access our sharepoint technology on our intranet where they can interact with fellow LAB practitioners to obtain advice and support in their matters.
- ▶ The LAB has also entered into an agreement with the Centre for Child Law (CCL) based at the University of Pretoria in terms of which the CCL provides training for LAB practitioners as well as publishes an electronic newsletter to keep our staff updated on all issues relating to child law. They also provide personalised on-line support to any of our practitioners on children related cases that they need support on.

Stakeholder Networking

- ▶ The Legal Aid Board recognises the importance of working together with all other stakeholders that are involved in children related matters in the interest of forming a common understanding and developing common strategies for dealing efficiently with children's matters.
- ▶ We therefore participate actively in all intersectorial committees that have been established on child justice including the Intersectorial Committee on Child Justice as well as the Children Awaiting Trial Committee set up by the ISCCJ.
- ▶ Our Justice Centres are also required to participate in all structures at a local level to facilitate matters involving children.
- ▶ Our Justice Centres are also on continuous standby to accept any referrals of cases involving children from any stakeholder.

Total new legal matters per delivery system 2006/07 & 2007/08

	2006/07		2007/08		% Var
Delivery System	Number of new matters	%	Number of new matters	%	No of new matters
Justice Centre	314,084	87,5%	354,407	89,5%	12,84%
Judicare Matters	39,331	11,0%	37,586	9,5%	-4,4%
Co-operation Partners	5,468	1,5%	4,075	1,0%	-24,4%
Total	358,883	100%	396,068	100%	10,4%

Legal Aid granted to Children in Criminal Matters FY 2007/08

Prov	Granted - Internal	Granted - Judicare	Grand Total
KwaZulu Natal	8,387	240	8,627
Western Cape	8,619	504	9,123
Northern Cape	1,834	351	2,185
Eastern Cape	8,238	629	8,867
Limpopo	1,319	126	1,445
Free State	1,410	243	1,653
Gauteng	4,898	359	5,257
North West	3,213	270	3,483
Mpumalanga	1,328	119	1,447
Grand Total	39,246	2,841	42,087

Legal Aid granted to Children in Criminal Matters FY 2007/08

Top Ten Charges

Charge	% of Total
Housebreaking with intent to.../attempted housebreaking with intent to...	19%
Theft/attempted theft	17%
Assault with intent to do grievous bodily harm	13%
Robbery/attempted robbery	13%
Rape/attempted rape/Intercourse with minor	11%
Murder/attempted murder	6%
Armed Robbery	3%
Assault common	3%
Malicious injury to property	3%
Possession of drugs	2%

Challenges – Representation of children

- ▶ The delays in the roll out of one stop child justice centres has negatively impacted on the efficient functioning of our children's units which were set up specifically to link with these centres.
- ▶ Our current ratio of practitioners per court, especially at District Court, results in some courts not having practitioners available for all days during the week. Thus, children appearing in such courts may not receive immediate legal representation.
- ▶ Our surveys indicate that some children are reluctant to apply for legal representation as they may be interpreted as an admission of guilt.
- ▶ The lack of dedicated criminal courts for children's matters means that there is no single point within a magisterial district where our practitioners can access these children.

Challenges – Representation of children

- ▶ There is no early notification system to warn us as soon as children are taken into custody. This means that we cannot intervene at police station level to assist these children.
- ▶ The general lack of facilities for children in conflict with the law means that in some areas, the children are held in facilities that are too far away from our Justice centres, thereby making access difficult.
- ▶ The lack of child friendly facilities, such as separate holding areas and special consultation rooms, makes working with child accused difficult.
- ▶ There may be cases where the most appropriate sentence for an offender, is referral to a reform school. However, the lack of reform schools means that our practitioners cannot even argue for this sentence option.

Challenges

- Delay in the roll-out of One stop Child Justice centres.
- Our ratio of practitioners who service the district courts is still below one practitioner per court. This means that there are still courts where we may not have a presence on a full time basis.
- Some children and their parents/guardians are still reluctant to apply for legal representation as they may equate this to admission of guilt.
- The lack of dedicated criminal courts for children's matters means that there is no single point within a district where our practitioners can access these children.
- There is no early notification system to warn us as soon as children are taken into custody. This means that we cannot intervene at police station level to assist these children.
- The general lack of facilities for children in conflict with the law means that in some areas, the children are held in areas that are too far away from our Justice centres, thereby making access difficult.
- There may be cases where the most appropriate sentence for an offender, is referral to a reform school. The lack of reform schools however means that our practitioners cannot even argue for this form of sentence.

Thank You