

Access to Justice in South Africa

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[*230] It is not intended in this paper to debate the different meanings of justice, such as its social, political or moral meaning, nor to discuss the different theories of justice, or justice as a moral value. This paper is concerned with justice in the legal sense, more particularly, justice in terms of access to the civil and criminal courts. n1 People involved in disputes want to have their cases considered by persons who have knowledge, experience and impartiality and they want access to appropriate tribunals.

The new South African Constitution attempts to provide access to justice by establishing a court system which is staffed by persons who reflect the race and gender composition of the country, and who are not, as in the past, drawn from one group only. The Constitution establishes a general right of access to such courts, n2 as well as a right to legal representation for arrested, detained and accused persons. n3 Mechanisms have been set in place by the government to achieve these aims, but in many instances people will have to rely on non-governmental organisations (NGOs) for assistance.

In this paper it is intended to consider the following aspects of access to justice:

- (a) The appointment of appropriate court personnel;
- (b) Constitutional right of access to the courts;
- (c) State mechanisms to implement access to the courts;
- (d) Non-governmental mechanisms for providing access to the courts.

Before dealing with these it is useful to provide some statistical information concerning the administration of justice in South Africa.

B. Statistical Information

South Africa has a population of approximately 43 million of which probably about 50% live in rural areas. There are almost 10,000 practising lawyers; 13% of them are advocates (barristers) who have right of audience in the higher courts, and the rest are attorneys (solicitors), who have a limited right of audience in the higher courts, and largely practise in the lower courts. Thus in theory there is approximately one lawyer for every 4,300 people in South Africa, although in reality most lawyers practise in the urban [*231] areas and only serve the more affluent community. n4 Very few lawyers practise in the rural areas especially in areas governed by tribal authorities.

In 1993 it was estimated that there were 1,221 practising advocates of whom 133 (11%) were black and 8,368 practising attorneys of whom 1,178 (14%) were black, giving a total of 9,589 practising lawyers in South Africa, of whom 1,311 (14%) were black. n5 As a result of the legacy of apartheid, 85% of the legal profession is white and 15% black. Conversely 85% of the total population is black. Approximately 3,000 graduates are produced by the 21 law schools in the country each year. n6

In 1993 according to the Black Lawyers Association there was only one black judge out of 94 High Court judges. In October 1995 the Department of Justice stated that there were 17 black judges out of a total of 153 permanent judges. n7 The department also stated that out of 1,645 magistrates 575 (35%) were black. In the senior ranks of the magistracy there was a much higher proportion of black magistrates, 101 out of 203 (of whom 8 were women). n8

There is an unacceptably high crime rate in South Africa, which the Government is struggling to control. As a consequence the criminal justice system is over-loaded. During the period 1994-5 over 50,000 criminal cases were recorded in the regional magistrates courts and 2.8 million cases in the district courts. n9 Regional magistrates courts may hear all criminal offences except treason and may sentence a convicted person to a maximum fine of R200,000 or ten years imprisonment. District magistrates courts may sentence convicted persons to a maximum fine of R20,000 or twelve months imprisonment. They may not try cases of murder, treason or rape. In 1993 it was estimated that in the regional courts about 60% of 82,408 accused persons were unrepresented, while in the district courts, where 671,177 criminal trials (other than petty offences) were heard, about 89% of accused persons were unrepresented. n10 In 1992, 150,890 convicted persons were sentenced to periods of imprisonment without legal representation, while the Legal Aid

Board provided defences for 43,228 accused persons. n11 It is likely that more than 100,000 accused persons a year are still being sentenced to [*232] terms of imprisonment each year. During the period 1994-5, 1,739 criminal trials were heard by the higher courts n12 in which probably over 90% of accused persons were represented. n13

The very high crime rate has led to calls for harsher sentences (e.g. return of the death penalty), n14 more secure prisons (e.g. using disused mine-shafts), n15 and State-assisted victim compensation funds. n16

In the civil justice system many ordinary people cannot afford to use the courts because of the expense involved, or because they are ignorant of their rights. Thus in 1993, 998,435 private summonses were issued for debt, of which 505,391 or 50.6% resulted in default judgements. n17

C. Appointment of Appropriate Court Personnel

In contrast to the apartheid era, when the appointment of judges and magistrates was controlled solely by the Executive and Department of Justice, the new Constitution provides for representation on Judicial Service and Magistrates' Commissions by persons other than members of the government.

1. Superior Courts

Under the Constitution, judges appointed to the superior courts are subject to scrutiny by a Judicial Service Commission consisting of the Chief Justice, President of the Constitutional Court, a representative of the Provincial Judge Presidents, a Cabinet Member responsible for Justice, two advocates, two attorneys, one law teacher, six Parliamentarians (three from the opposition parties), four members of the National Council of Provinces and four persons designated by the State President. n18

In the case of the Constitutional Court, apart from the four original appointees and the President of the Court who were appointed by the State President, all subsequent appointments of judges are screened by the Judicial Service Commission, initially under the interim Constitution n19 and now under the final Constitution. n20

The final Constitution specifically provides that the judiciary should reflect the racial and gender composition of South Africa, and that this must be considered when judicial officers are being appointed. n21

[*233] The Constitution also provides for national legislation to be introduced for matters concerning the administration of justice which are dealt with in the Constitution, including:

- (a) training programmes for judicial officers,
- (b) procedures for dealing with complaints against judicial officers, and
- (c) the participation of people other than judicial officers in court decisions. n22

The hearings concerning the screening of potential judges have been held in public and the proceedings have also been open to the press. The result has been far greater transparency in the appointment of the judiciary than existed under the closed and secret system that operated during the apartheid era.

As indicated by the statistics above the number of black and female High Court judges is still very small in proportion to the total number of judges. While Constitutional Court judges must be citizens of South Africa, n23 ordinary High Court judges need not be citizens. n24 This may provide a window of opportunity if there are insufficient black and female South African lawyers qualified to sit on the bench. n25

2. Inferior Courts

The Constitution provides, in general terms, for the magistrate's courts, and "any other court established or recognised by an Act of Parliament which may include any court of a status similar to . . . the magistrate's courts." n26

The interim Constitution mentions the Magistrate's Commission n27 but this has not been included in the final Constitution, which simply refers to "other judicial officers" who are appointed under an Act or Parliament. n28 The latter provision, however, states that the Act of Parliament "must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice." n29

In the past, the magistrate's courts were largely staffed by personnel who had been employed in the Department of Justice as prosecutors, and all appointments were made by the State without interference from outside bodies. However, since the inception of democracy in South Africa a Magistrate's Commission has been established. It has representatives from outside bodies who are involved in the appointment process. There is also a provision [*234] for magistrates to be drawn from outside the ranks of civil servants and attempts are being made to attract qualified lawyers in private practice in order to change the racial and gender composition of the existing magistracy.

Other inferior courts include the Small Claims Courts, n30 the proposed provincial Consumer Affairs courts, n31 and the traditional Chiefs and Headman's Courts. n32 The latter serve large sections of the rural community, who never come into contact with the formal legal system.

Even though the vast majority of people who come into contact with the courts are faced with disputes in the inferior courts, as indicated by the statistics, they still do not reflect the race and gender composition of the country.

D. Constitutional Provisions for Access to the Courts

The Constitution not only attempts to ensure that representative and impartial persons sit in the courts, but it also provides a right of access to the courts for the general public, particularly in criminal cases. The following section will deal briefly with the right to access in civil cases and in more detail with the right in criminal cases.

1. Access to Justice in Civil Cases

The Constitution provides that:

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing in a court or, where appropriate, another independent and impartial forum. n33

This section raises the question of whether a duty is imposed on the state to provide legal aid or assistance to any person in a civil case who cannot afford it. The answer is probably no, because in contrast to the case of an arrested, detained or accused person, n34 there are no specific Constitutional duties imposed on the state to provide the services of a legal practitioner to litigants in civil cases. n35

Assuming, however, that a person can obtain the services of a lawyer, the Constitution includes broad provisions for standing, enabling people to act either on their own behalf or on behalf of others in situations where their fundamental Constitutional rights have been infringed or threatened. Thus the Constitution provides that anyone may approach the court who is acting:

- (a) in his or her own interests;
- (b) on behalf of another person who cannot act in his or her own name;
- [*235] (c) as a member of, or in the interest of, a group or a class of persons;
- (d) in the public interest;
- (e) as an association acting in the interests of its members. n36

This provision introduces class actions into South African law for Constitutional violations of the Bill of Rights, and has already been used by ratepayers who have alleged discrimination in the rates imposed upon them. n37 In the ratepayers' case the court went on to say that no unnecessary restrictions should be placed on the application of the Constitutional provisions concerning class actions. n38 This case was decided under the provisions of the interim Constitution, n39 but the wording of the final Constitution is the same. n40

The Constitutional Court also held that it was unconstitutional under the equivalent section of the interim Constitution n41 for the state to try to limit claims against it by imposing very short notice and prescription periods on litigants seeking to enforce their rights and that such provisions were in breach of the right of access to the courts. n42 Previously, however, the apartheid state had recognised the need to provide legal aid in civil matters and had established the Legal Aid Board for this purpose. Indeed, in its early years the Legal Aid Board spent most of its budget on civil matters such as divorces and personal injury claims at the expense of criminal cases. Recently, however, an ever decreasing amount is being spent on civil matters and the vast majority of expenditure is now earmarked for criminal cases. n43

2. Access to Justice in Criminal Cases

Generally, a right to counsel in criminal cases was recognised by the common law in South Africa n44 and confirmed by statute. n45 However, this right was severely curtailed by security legislation during the apartheid era, n46 when arrested and detained persons were denied access to counsel unless they were charged or brought to court. Even then the right to counsel was usually expressed as a right not to be deprived of legal representation rather than a right to demand legal representation. n47 In 1988, however, in *S. v. Radebe*, n48 Goldstone J. held that there was a duty upon judicial officers to inform unrepresented accused of their legal rights and, when necessary, they were entitled to apply to the Legal Aid Board for assistance. The same year, in *S. v. Khanyile*, n49 Didcott J. went further and held that the notion of a "fair [*236] trial" was part of South African law and that in some cases there may be a duty on the state to provide free legal aid to unrepresented accused. Didcott J. said that he would like to have established an unqualified right to counsel in South Africa along the lines of the American decision in *Gideon v. Wainwright*, n50 but because of economic limitations and the lack of person-power to deal with an increased demand for legal services, he reluctantly decided that he would have to be guided by the parameters of an earlier American case, *Betts v. Brady*. n51

Didcott J. excluded petty criminal cases, where it would not be worthwhile engaging a lawyer, and serious capital cases n52 where the Supreme Court ensured that *pro deo* counsel was provided, n53 in deciding flexible guidelines to assist the courts in determining whether or not an accused should be accorded legal representation paid for by the state. He identified three factors to be investigated:

- (a) The complexity of the case in fact and in law;
- (b) The personal "equipment" of an accused to fend for himself or herself; and,
- (c) The gravity of the case, the nature of the offence alleged, and the possible consequences for the accused if convicted. n54

Didcott J's judgement was eventually overruled by the Appeal Court in *S. v. Rudman* n55 which was concerned, *inter alia*, that the courts should not be able to coerce the government into providing legal aid and doubted whether the decision could be feasibly implemented, given the financial and manpower constraints existing in South Africa. n56 The new Constitution now provides detailed protection for arrested, detained and accused persons n57 and in particular it provides for a right to counsel for detained and accused persons. It provides that everyone who is detained, including every sentenced prisoner, has the right:

- (b) to choose, and to consult, with a legal practitioner, and to be informed of this right promptly;
- (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. n58

Likewise, the Constitution provides that every accused has the right to a fair trial, which includes the right:

- [*237] (f) to choose, and be represented, by a legal practitioner, and to be informed of this right;
- (g) to have a legal practitioner assigned to the accused by the State, and at State expense, if substantial injustice would otherwise result, and to be informed of this right. n59

The courts held that the similar provisions of the interim Constitution n60 did not mean that an accused was entitled to be represented by a legal representative of his or her choice at state expense. n61 It was further held that it was reasonable, justifiable and necessary to restrict the accused's right to legal representation under the limitation provisions of the interim Constitution. n62 It has been suggested, however, that, where possible, the State should attempt to accommodate the choice of the detainee. n63

Furthermore, depending on how the courts interpret the phrase "where a substantial injustice would otherwise result", the above provisions are likely to have the effect of overruling the Appellate Division decision in *S. v. Rudman*. Thus, in deciding whether or not a "substantial injustice would otherwise result," the courts could be guided by the test suggested by Didcott J. in *S. v. Khanyile*. n64

The Constitution provides a right of access to the courts, but is the right worth the paper it is written on? What state and non-governmental mechanisms are available to implement these rights?

E. State Mechanisms to Implement Access to the Courts

The main vehicle for the delivery of access to justice for the poor in South Africa is the Legal Aid Board, which operates under the Legal Aid Act, n65 and has been contracted on behalf of the state to deliver the legal services required by the Constitution. Furthermore, some limited state assistance in civil cases is provided under the *in forma pauperis* procedures in the Rules of the Supreme Court, n66 whereby the Registrar of the High Court refers poor people n67 to private practitioners for help. n68 Certain forms of quasi-legal aid also exist under the automatic review procedures for unrepresented accused, n69 and the provisions for compensation orders for victims of crime [*238] in certain criminal cases. n70 It may also be possible for the state to introduce user-friendly court systems and to encourage alternative dispute resolution mechanisms.

1. The Legal Aid Board

(a) Introduction

A national legal aid scheme was introduced in 1969 by the Legal Aid Act. n71 The Act established a Legal Aid Board "to render or make available legal aid to indigent persons." n72 The composition of the Legal Aid Board is determined by the Act, and the Board has representatives from the Bench, the Bar, the attorneys profession, government departments and independent experts on legal aid. The Legal Aid Board has offices in the main cities and relies on assistance from designated legal aid officers employed by the Department of Justice in the magistrates' courts in towns where the Board has no offices.

The Legal Aid Board was given complete discretion as to how it would offer legal assistance to indigent persons. It decided initially to adopt a referral (judicare) system, whereby applicants are referred to private attorneys, rather than a salaried lawyer approach.

The Legal Aid Board has established a set of working rules which are incorporated in the *Legal Aid Guide*. n73 The *Guide* provides for the Legal Aid Board's resolutions to be carried out under the supervision of the Director of Legal Aid, who is an officer of the Board. The *Guide* recognises that legal practitioners should be remunerated for their work, and a tariff of fees has been introduced for both attorneys and advocates. Generally, legal aid officers attempt to assist applicants who qualify, but if they cannot, they refer them to a legal practitioner who may be chosen by the applicant. If the applicant does not qualify, the legal aid officer must refer him or her to another suitable government department or other institution. n74

(b) Financial Constraints

There is no definition of an "indigent person" in the Act, but the Legal Aid Board has laid down a "means test" which has been revised from time to time. The ceiling at present is R600 a month for single or estranged persons, R1,200 for married couples, plus R180 for each child. For example, a family of six, with a husband, a wife, and four children would be entitled to earn a [*239] monthly income of up to R1,920 n75 - R1,200 + R720 (4 x R180). The Director of the Legal Aid Board may, however, in exceptional cases, grant legal aid to a person who falls outside the "means test". n76

(c) Exclusions

In general, the Guide provides that legal aid should be "rendered in all cases where the assistance of a legal practitioner is normally required." The *Guide*, however, excludes assistance for legal aid in certain categories of criminal n77 and civil cases, n78 even though a person may satisfy the "means test."

In civil matters the Board must always be satisfied that there is merit in the case and that there is a reasonable prospect of success and recovery. Furthermore, if there is good reason to believe that an applicant is wilfully abstaining from entering into employment within his or her capabilities or that he or she has resigned from employment merely to obtain legal aid, assistance will be refused. n79

(d) Applications

Unlike the English system where legal aid applicants may make application for limited advice and assistance directly to solicitors who participate in the legal aid scheme, in South Africa applicants have to approach the legal [*240] aid officers directly. The legal aid officers will screen them to see that they satisfy the means test, and are not excluded in terms of the *Legal Aid Guide*. If they qualify for legal aid they will be referred to a practising attorney, (or in the Johannesburg area, if they require a criminal defence, to the public defender's office) or a Legal Aid Board law clinic. n80

(e) Refusals

A legal aid applicant has the right of appeal to the Director of the Legal Aid Board against a refusal of legal aid by a legal aid officer. The legal aid officer is obliged to inform the applicant of his or her rights. The grounds of the appeal must be submitted to the legal aid officer in writing and the latter must forward these to the Director. An applicant has a right of appeal to the Chairman of the Board against a refusal, termination or suspension of legal aid by the Director. n81

(f) Methods of Legal Representation

There are three main methods of delivering legal aid services used by the Legal Aid Board: (i) referrals to private practitioners; (ii) public defenders; and (iii) law clinics.

(i) Referrals to Private Practitioners

During the past 25 years the Legal Aid Board has operated mainly by using the judicare system, which, as has been mentioned, involves the referral of successful legal aid applicants to lawyers in private practice, who render the necessary legal services in accordance with the Legal Aid Board's rules and are paid for their services at fixed tariffs. During this period a total of 635,107 legal aid applicants have been referred to attorneys, of which 435,324 have been granted since 1990-1. This means that the number of legal aid applications granted during the last 5 years has increased by nearly 305%, and that 68% of all legal aid applications ever handled by the Board have been made in the last 5 years. n82

In 1995-6, 108,285 cases were referred to private attorneys of which 85,606 (77%) involved criminal matters, 12,021 divorce (11%), 10,704 (10%) other civil matters and 1,954 (2%) labour matters. n83 In recent years there has been a marked increase in the number of successful criminal legal aid applicants from 11,667 in 1989-90 to 38,247 in 1991-2, n84 to 83,606 in 1996-7. n85 The increase in the demand for legal aid in criminal cases can be attributed to a variety of factors, including the decisions in *Radebe* and *Khanyile*, n86 which resulted in the district and regional

magistrates courts [*241] informing undefended accused that they may qualify for legal aid representation through the Legal Aid Board, n87 and, since 1994, the effect of the new Constitution.

The average cost per case finalised by the Legal Aid Board during 1995-6 was R902 for criminal matters and R1,050 for civil matters under the judicare system. The average cost of all judicare cases was R976. n88

(ii) Public Defenders

In 1990, after widespread discussion with a variety of lawyer associations, the Legal Aid Board persuaded the Minister of Justice to investigate the feasibility of a public defender system in South Africa and to appropriate R2.5 million for this purpose. This enabled the Board to employ legally qualified persons to represent indigent accused. Initially the pilot project was approved for two years. n89 Estimates that public defenders would be able to deal with approximately 200 criminal cases a year n90 have proved to be correct.

By November 1992 more than 2,200 cases had been dealt with by the ten public defenders, with a 57% success rate on not-guilty pleas, and a 90% success rate for bail applications. The average cost per case during 1992 compared very favourably with the costs allowed to private practitioners by the Legal Aid Board. n91

During the 1993-4 period the office provided legal representation for 2,808 accused persons. n92 The pilot project has been deemed a success by the Legal Aid Board and will be expanded in the near future as a permanent component of the Board's work.

(iii) Law Clinics

In 1993 the Attorneys Act n93 was amended to allow prospective attorneys with the necessary legal qualifications to obtain practical experience other than in an attorney's office under articles of clerkship by undertaking a period of community service. n94 Community service may be done at law clinics accredited by provincial law societies, including clinics under the auspices of the Legal Aid Board. The clinics are required to employ a principal (an attorney with sufficient practical experience) to supervise law graduates in the community service programme.

The Legal Aid Board began with a pilot project of 5 university law clinics in 1994, and since then has allocated up to R430,000 per clinic to 22 university law clinics and two others to enable them to employ a supervising attorney and up to ten community service law clerks each. The Board has calculated that the average cost of the 24,513 criminal and 12,997 civil cases [*242] handled by the law clinics during the period 1 July 1994 to 31 December 1996 was R433, n95 which is less than half of the average cost of R976 per case charged under the judicare system. n96

The community service programme provides extended legal services at a moderate cost to needy members of the public, and at the same time develops fields of expertise, practical experience and career opportunities for aspiring lawyers.

(g) Cost of Legal Aid Scheme

Since its establishment the Legal Aid Board has been funded almost exclusively with public funds from Parliament. The funds allocated to the Board annually have increased markedly during the last five years:

1991-2	R35.2 million
1992-3	R56.4 million
1993-4	R62.1 million
1994-5	R66.3 million
1995-6	R182 million n97

The increase from R66.3 million in 1994-5 to R182 million in 1995-6 is due almost entirely to the Board's role as the agent of the State in respect of its Constitutional legal aid obligations. The budget for that period reflected R66.4 million in respect of the conventional legal aid scheme, and R116 million for the provision of legal consultation services and legal representation by the Board under the Constitution. n98

Despite these substantial increases, the Board does not have sufficient funds to provide legal aid to everybody who requires it in South Africa. In the foreseeable future additional funding will have to be obtained in order to provide legal assistance for human rights cases under the new Constitution, to expand the public defender system, and to establish advice offices for the millions of South Africans who cannot afford the services of a lawyer.

The state alone will not be able to shoulder the burden and other sources of income will have to be found in order to provide a meaningful service to the large number of indigent citizens in South Africa. At one stage the Board was investigating the feasibility of introducing a telephone advice service by subscription which, at a fee of about R10 or R15 a month, would enable subscribers to obtain free legal advice and access to lawyers for a free consultation. It was estimated that such a scheme could raise up to R350 million a year for the Legal Aid Board, if the scheme was run under

its auspices. This would relieve Parliament from the burden of having to provide funding for legal aid services and would be sufficient to meet the legal aid needs of the country. The scheme, however, is still being investigated, as existing [*243] legislation does not empower the Legal Aid Board to raise funds in this manner. In 1994-5 the Board received about R3.2 million from legal costs ceded to it by successful litigants n99 under the Legal Aid Act. n100

(i) Impact of the New Constitution

Section 35(3)(g) of the Constitution requires legal representation to be provided in criminal trials at the expense of the state "where substantial injustice would otherwise result." This is likely to have a major impact on the demands of the services of the Legal Aid Board. It is estimated that if only 20% of unrepresented accused, amongst the approximately 684,000 accused in the lower courts, qualify for legal representation, the state would have to provide representation for at least 136,840 accused. In 1992 it was estimated that if the judicare system was used it would cost the Board nearly R92 million in legal costs. Because only a relatively small percentage of the 10,000 legal practitioners in private practice do criminal defence work, it would probably not be possible to provide legal representation for nearly 137,000 accused annually by way of the judicare scheme, and an extended public defender system would have to be considered. It is estimated that a public defender scheme that could provide defenses for approximately 144,000 accused a year would cost about R67 million. n101

As has been mentioned, s.35(2)(c) of the Constitution provides that detained and arrested persons are entitled to consult with a legal practitioner, paid for by the state where "substantial injustice would otherwise result." It is calculated that there are approximately 1,000 police stations in South Africa, and that almost 1.6 million people are detained annually. About 400,000 accused persons pass through the prisons each year. Therefore, approximately 2 million people a year will have the right to consult with a lawyer. If only 50% of them were entitled to services of lawyers provided by the State, on average 2,739 consultations per day would have to be arranged and paid for by the state. n102

The Legal Aid Board proposes introducing a 24-hour telephone service at its Head Office, which can be used by persons detained or arrested who wish to obtain advice. The telephone number would be displayed conspicuously at all police stations and prisons, and the authorities would have to allow detained or arrested persons access to the toll-free number. Such persons would be entitled to consult with a Board employed practitioner over the telephone or could arrange that a practitioner consult with them in prison or the place where they are being detained. In the latter case the practitioner would receive a telephonic instruction from a member of the Board's staff to consult with the detainee. The practitioner's fees and travel expenses would be paid by the Board on behalf of the State. n103

Assuming that on average 2,700 detainees a day use this service and that [*244] 1,350 will insist on being visited by a practitioner provided by the state, and that the average cost per consultation will be about R60, at least R34.9 million would have to be provided for the service. n104 It might also be possible under this scheme for a legal practitioner to be briefed to advise large groups of detainees held at particular places of their rights, and for public defenders and legal aid clinic employees to provide or supplement these services. n105

2. User Friendly Court Systems

Apart from providing legal aid in the adversarial context, it may be possible to change the structures of certain courts, or to create other courts or forums which are more user-friendly and do not require legal representation for litigants. Examples of these would be village and community courts, small claims courts and alternate dispute resolution mechanisms.

(i) Village and Community Courts

Village and community courts usually operate in rural environments and involve members of the community in the court process. In Zimbabwe and Mozambique village and community courts have been used, while in South Africa "peoples' courts" were used during the liberation struggle. n106 although sometimes these degenerated into kangaroo courts. In South Africa and other countries in Africa there have been traditional headman's and chief's courts, involving community participation in the presentation of evidence. Most of these court structures do not allow for legal representation and rely on community members to produce evidence and to assist the court in determining an appropriate sentence or compensation for the victims of a wrong-doing. In South Africa the chief's and headman's courts lost their legitimacy during the apartheid years, and although they continue to play a useful role in rural communities, it may be necessary to take steps to legitimise them. The new Constitution poses a challenge to the traditional authorities, because although indigenous legal systems are recognised, n107 they will have to operate under the new Constitution and its human rights provisions. n108

(ii) Small Claims Courts

In South Africa the small claims courts were set up in 1985 and presently have jurisdiction in civil matters of up to R3,000. Small claims courts can hear most civil matters except those involving divorce, interpretation of wills, determination of insanity, defamation, malicious prosecution, wrongful imprisonment, seduction and breach of promise to marry. The small claims court may not hear cases which the small claims commissioner thinks involve difficult questions of law and should be heard by magistrates court. [*245] The small claims court commissioners are appointed by the Minister of Justice and are practising advocates, attorneys or academics who are not paid to preside. The courts sit in the evening. Very few legal documents are needed and lawyers are not permitted to appear. The commissioners run the courts on an inquisitorial basis, asking all the questions. Actions in the small claims court may only be brought by natural persons. Actions begin, with a letter of demand followed by a simple summons requesting the parties to appear in court on a particular day. There is no appeal from the small claims court's judgement although the commissioner may be taken on review. During 1994-5, 25,746 trials were heard in the small claims courts. n109

3. Alternate Dispute Resolution Mechanisms

Negotiation, mediation and arbitration are becoming widely used in South Africa as alternative methods of resolving disputes. n110 Similar methods are used in rural areas and have their roots in indigenous family law procedures. Training in mediation and arbitration techniques is provided by IMSSA (the Independent Mediation Services of South Africa), CDRT (the Community Dispute Resolution Trust) and ACCORD (the African Centre for Constructive Resolution of Disputes). IMSSA deals mainly with labour disputes, CDRT with training community-based organisations and leaders in dispute resolution and ACCORD with training political leaders, nationally and internationally on the African continent.

F. Non-Governmental Mechanisms for Delivering Access to Justice

One of the rare benefits of the oppressive apartheid system was the development in South Africa of a vibrant NGO community, which included several organisations engaged in public interest lawyering. The most successful of these have been the Legal Resources Centre, the Centre for Applied Legal Studies at the University of the Witwatersrand, Lawyers for Human Rights, university law clinics, community law centres and advice offices. Other organisations such as the Centre for Socio-Legal Studies and the Community Law Centre at the University of Natal, Durban, and the Legal Education Action Project at the University of Cape Town, have been involved in developing resource materials for para-legals as well as providing human rights education.

1. Public Interest Law Firms

(a) Legal Resources Centre

The first Legal Resources Centre (LRC) was established in Johannesburg in 1979. Centres are now located in Johannesburg, Cape Town, Port Elizabeth, Grahamstown, Durban and Pretoria. n111 The LRC gives practical help to individuals and communities who would not otherwise be able to obtain professional advice or to enforce their legal rights. In the eighteen years of its existence the country's first non-profit law centre has assisted millions of [*246] disadvantaged South Africans either as individuals or as groups or communities who share a common problem. In addition the LRC has worked with numerous advice centres that are staffed by para-legals. n112

Prior to the 1994 elections the LRC relied primarily on litigation and the threat of litigation to assert the rights of thousands of disadvantaged South Africans in several areas of the law. The LRC has reassessed its position in post-apartheid South Africa and is now focusing more on constitutional litigation, developmental work and law reform. As a result the major thrust of its work is now concerned with constitutional issues; land, housing and development; environmental issues; and gender issues. n113

An important part of the LRC programme is the training of para-legals and lawyers. It also provides a fellowship programme, primarily to bring more black lawyers into the profession, and employs 12 to 15 young law graduates each year.

The LRC charges no fees and receives no state funds, it is financed by the Legal Resources Trust which receives money from overseas and local organisations.

(b) Centre for Applied Legal Studies

The Centre for Applied Legal Studies was established at the University of the Witwatersrand in 1979 and has developed expertise in resource materials in the field of labour law, the administration of justice and constitutional law. It is essentially a research and documentation centre, but many of its lawyers are practitioners who have played an important role in public interest lawyering in South Africa.

It organises an annual Judges Conference and co-hosts (with the Centre for Socio-Legal Studies), n114 the annual Labour Law Conference. It publishes the *South African Journal of Human Rights* and its staff have been responsible for

writing seminal texts on the South African Constitution. It has also produced a popular television programme on constitutional issues entitled "Future Imperfect" and assisted the Constitutional Assembly with another programme called "Constitutional Talk," which is intended to popularise constitutional issues.

(c) Lawyers for Human Rights

Lawyers for Human Rights (LHR) was established in 1979 following a human rights conference held in Cape Town. Initially it was simply a network of private practising lawyers. Subsequently, in 1987 a national office was established in Pretoria and a network of regional offices put in place.

The national office used to have a strong litigation section and regional offices relied on private lawyers to take cases *pro bono* in the different regions. With the establishment of democratic government in South Africa and the state becoming increasingly involved in the provision of legal aid services, the litigation role of the national office has been phased out. Some [*247] regional offices have closed down and others continue to rely on *pro bono* services from members in the different regions.

LHR has a number of other vibrant projects including a human rights education programme to popularise human rights, which has been involved in the publication of two books, *Human Rights for All* (1992) and (with the Centre for Socio-Legal Studies), *Democracy for All* (1994). The programme works closely with the Street Law Programme/Democracy for All programme n115 in popularising the new Constitution and making people aware of their legal rights. LHR has narrowed the focus of its programme to issues such as juvenile justice (which provides legal advice and assistance for unrepresented juveniles), gender and abuse against women, human rights education and the training of para-legals, particularly in rural areas.

(d) University Law Clinics

Most of the 22 universities in South Africa operate campus law clinics independent of the Legal Aid Board's clinics, n116 and employ directors who are practising attorneys or advocates. Where the director is an attorney, the law clinic may seek accreditation by the local law society, and if granted, candidate attorneys may be employed and trained at these institutions with a view to admission. Most funding for law clinics is provided by outside donors and the Attorneys Fidelity Fund subsidises accredited clinics by providing funds to enable them to employ a practitioner (attorney or advocate) to oversee the clinic. n117

Law clinics provide free legal services to the needy who must comply with a means test, which is less stringent than that applied by the Legal Aid Board. Representation of persons takes place in the lower and superior courts (if the clinic employs an advocate) in both criminal and civil matters. Student practice rules were drafted in 1985 but have not yet been approved by the Ministry of Justice. The new Government has undertaken to introduce legislation providing for such rules in the near future. Law clinics provide training and practical skills for senior law students and at the same time a valuable service for indigent members of the community. Some law clinic work is incorporated into optional or compulsory clinical law programmes at universities. Not all litigation may be dealt with in clinics, as some activities (e.g. motor vehicle insurance claims) are restricted by law to legal practitioners. n118

Funding for law clinics is a critical issue and a factor limiting the capacity of clinics to train candidate attorneys and provide satisfactory legal services. The independent university law clinics play a valuable role in supplementing the work of the Legal Aid Board and it has been suggested that they should receive some funding from the Board for their services.

[*248] 2. Law Related Education and Advice Offices

A variety of organisations are involved in law-related education and advice offices. Many of these provide access to justice by educating the public concerning their legal rights, as well as training para-legals to give advice. Some bodies (e.g. the Black Sash) concentrate on urban areas, while others (e.g. Community Law Centre, Durban and Lawyers for Human Rights) focus on rural areas. Services are provided at a variety of levels, varying from simple advice offices in the townships, which act as conduits referring clients elsewhere, to those providing full legal aid services such as the Legal Aid Bureau in Johannesburg. n119

Staff at advice offices are generally paid employees, but often the remuneration is very low and in some cases staff work for nothing. Training of paralegal staff varies from formal training offered by Lawyers for Human Rights, and the Community Law Centre in Durban, leading to a diploma course, to mainly practical experience which is obtained "on the job." Some of the more sophisticated advice offices are linked to organisations such as the Legal Resources Centre, Lawyers for Human Rights and the Community Law Centre, Durban, while others rely on free services provided by private legal practitioners. Most advice offices offer mainly legal advice, which very often resolves the problem. Many of them have built up expertise in particular areas, e.g. pensions, unemployment insurance and unfair dismissals. When

the advice office cannot solve the problem, the party concerned is usually directed to the Legal Aid Board's offices or to a sympathetic law firm.

The writer has been associated with two programmes attached to the University of Natal, the Centre for Socio-Legal Studies and the Community Law Centre.

(a) Centre for Socio-Legal Studies

The Centre for Socio-Legal Studies was established at the University of Natal, Durban in 1987, and was initially designed to provide training for trade unions in labour law and alternate dispute resolution, and to anchor the Street Law programme. More recently it has focussed on Street Law and democracy education.

Street Law is a preventative legal education programme which provides students with an understanding of how the legal system works, and how it may be utilized to safeguard the interests of people "on the street." n120 The programme has been conducted in hundreds of high schools throughout South Africa and involves training law students and guidance teachers from the schools to use a Street Law student text for the pupils and a teacher's manual for teachers. Guidance teachers and law students participating in the programme are trained to use the student's text and the teacher's manual in a classroom situation. n121

[*249] The Street Law books deal with a wide variety of subjects, including a general introduction to South African law and the legal system, n122 criminal law and juvenile justice, n123 consumer law, n124 family law, n125 and housing and welfare law. n126 The books use student-centred teaching techniques and involve students in role-playing, opinion polls, critical thinking and mock trials. The programme together with its offshoot, Democracy for All, runs at 16 universities in South Africa. Democracy for All is run nationally from the centre and is linked to the book entitled *Democracy for All*, n127 which is intended to provide human rights and democracy education for school children and community organisations throughout South Africa. The Centre is involved in on-going discussions with education officials concerning the inclusion of Street Law and Democracy for All in the new school curricula.

The Centre is also responsible for co-hosting (with the Centre for Applied Legal Studies), the Annual South African Labour Law Conference for 400 lawyers, labour officials and management representatives and publishes the annual *South African Human Rights Yearbook*.

(b) Community Law Centre, Durban

The Community Law Centre (CLC) in Durban was established in 1989 and presently serves a population of about 1 million rural South Africans living in KwaZulu Natal and the Eastern Cape. The CLC was established to encourage rural communities, through education, to: (a) participate in a changing South Africa by increasing individual accountability, skills, self-reliance and confidence; (b) educate rural communities about democracy, voting and civil society; and (c) to strengthen the rule of law in rural South Africa. It has worked on developing a self-sustaining programme of legal education and training which it believes will be a model in rural development. CLC teaches rural communities how to raise and administer funds and tries to develop a broad based understanding of the role and application of law in South Africa. It hopes to assist rural communities with skills development, thereby increasing their sense of self-reliance, confidence and responsibility, better enabling them to participate in the changing South Africa. It seeks to develop an awareness that, although law is an important tool for self-reliance, it is not the only tool. CLC promotes the attainment and maintenance of democracy through the development of a rights-based [*250] culture in which all levels of government are expected to honour their obligations and be accountable to their citizens.

The CLC operates in 15 target rural communities, which are governed by customary law and ruled by tribal authorities. The latter consist of tribal chiefs, tribal administrators and unpaid tribal councillors. There is no formal training for tribal authorities, who are expected to administer increasingly complex affairs in their communities and to deal with conflicts between "Western law" and customary practices. This conflict is likely to increase under the new Constitution. n128

At present CLC responds to requests from communities which have established para-legal committees to provide training for para-legal advisers. CLC uses a two-year training programme, during which selected para-legals from rural communities are trained to operate para-legal advice offices. At the end of a two-year period, paralegals are issued a diploma from the Faculty of Law, University of Natal, Durban. n129 Since its inception CLC has handled approximately 6,500 cases for rural residents, provided numerous community legal education workshops, monitored Government administrative functions to measure accountability, and provided wide-spread voter education in the KwaZulu Natal region. n130

3. Funding of Public Interest Law Firms

With the establishment of democracy and the Government of National Unity in South Africa, many NGOs and public interest law firms are finding their funding under threat. Donors prefer to deal directly with governments rather than with large numbers of NGOs. In the case of public interest lawyering, many donors believe that with a democratic government the onus of providing legal services falls on the state and should come out of the Legal Aid Board's budget. Accordingly, it is likely that, apart from organisations like the Legal Resources Centre, those NGOs which have an incidental litigation arm will find that funding for such projects will be limited, and that more money will be made available for education and development training in human rights. Not all public interest lawyering involves litigation, and thus, NGOs with creative public interest law programmes, particularly those involved in empowering the community, are likely to attract support. As has been mentioned, however, there is a move to persuade the Legal Aid Board to fund the independent university law clinics and the para-legal advice offices which provide services that are complementary to the work of the Board.

4. Impact of New Constitution

The impact of the new Constitution is likely to be that NGOs involved in public interest litigation will change their emphasis from general public interest litigation to constitutional litigation. The Legal Resources Centre [*251] has set up a separate constitutional litigation unit, and many of the larger commercial law firms are doing likewise. Universities have also mounted special Constitutional Litigation Certificate courses for practitioners in order to prepare them for practice under a justiciable bill of rights.

A major challenge to public interest educators is to re-educate the existing judicial and administrative services of government, including the police, prisons and security forces so that they understand the significance of working under a democratic constitution and the need to foster a human rights culture in South Africa. Thus NGOs are working with government departments such as the Departments of Justice and Safety and Security to provide training courses in human rights and the new Constitution.

G. Conclusions

In light of the above, the following conclusions can be drawn:

1. The new South African Constitution attempts to provide access to legal justice by ensuring that the courts reflect the racial and gender composition of the country, but there is still a very long way to go before this is achieved.
2. The Constitution provides a general right of access to the courts, and specific rights to ensuring access to legal representation in criminal cases.
3. The main state mechanism for providing access to justice is the Legal Aid Board, and it is unlikely that with its existing budget it will be able to serve the needs of all who qualify for assistance.
4. The Legal Aid Board has taken the initiative and sought to provide legal aid services for the poor by developing creative methods, such as introducing public defenders, using new law graduates in law clinics and arranging a telephone call-in service for arrested and detained persons.
5. The impact of the new Constitution is such that the Legal Aid Board will continue to require a massive injection of funding, if the State is going to meet its obligations to provide legal representation "where the interests of justice" require it.
6. South Africa has a small but vibrant public interest lawyering tradition which developed during the hard school of apartheid.
7. Some public interest law firms have survived the transition to a democratic government, but others that have carried out litigation along with other functions such as education, are finding that resources for human rights litigation are limited, as donors increasingly expect such activities to be taken over by the government and the Legal Aid Board.

FOOTNOTES:

n1 In this paper it is also not intended to deal with administrative justice and the bodies set up under the *Constitution of the Republic of South Africa Act 108 of 1996* [hereinafter *Constitution*], such as the Public Protector, the Human Rights Commission and the Commission for Gender Equality (s. 181 (1)), as well as other organs like the Truth and Reconciliation Commission.

n2 *Ibid.* at s. 34.

n3 *Ibid.* at s. 35.

n4 Cf D.J. McQuoid-Mason "Problems Associated with the Legal Representation of Africans in the Urban Areas of South Africa" [1984] *Acta Juridica* 1981.

n5 *Report of the Commission of Inquiry into the Granting of Certain Powers to Legal Practitioners (Milne Commission)*, (South Africa: Government Printer, 1995). In the same year there were 1088 female attorneys (13%), while by 1995 the number had increased to 1442 out of 9841 (15%) L. Gordon, *Memorandum on Ethnicity and Gender in the Legal Profession* (1996) at 1.

n6 N. Swart, *Entry into the Profession: What about Articles?* (Memorandum for Association of Law Societies of South Africa, 1994).

n7 Gordon, *supra* note 5. The list of judges reflected in the 1996 law reports shows that there were 197 permanent judges, of whom 168 were white and 19 black. Of the 25 acting judges 6 were black. For a listing of judges see [1996] 4 S.A. V-X.

n8 *Ibid.* Of the 1,645 magistrates 275 (16.7%) were women - 192 white and 83 black.

n9 During the period 1 July 1994-30 June 1995 54,416 criminal cases were recorded in the regional magistrates courts and 2 80 100 cases in the district courts (*Department of Justice Report* (1994-5) (Afrikaans version) at 130). There were also 2.8 million admissions of guilt recorded (*ibid.*).

n10 Legal Aid Board *Annual Report* 1994-5 (1996) at 28.

n11 *Ibid.*

n12 Department of Justice, *Annual Report* 1994-5 (1996) at 127.

n13 *Cf* McQuoid-Mason, *An Outline of Legal Aid* (1982) at 59-60.

n14 A large proportion of the submissions of the public concerning the new Constitution concerned the reimposition of the death penalty -- 66% of the further 250,000 submissions on the published draft.

n15 The Commissioner of Corrective Services called for the use of abandoned mine-shafts to imprison high security risk prisoners, but his call has been criticised by human rights lawyers and the Human Rights Commission (*cf Daily News* 4 March 1997).

n16 The opposition Democratic Party proposes introducing a Private Bill on State-aided victim compensation for the victims of violent crimes.

n17 Department of Statistics, *South African Statistics* (1994) at par 15.2.

n18 Constitution, *supra* note 1 at s. 178(1).

n19 Constitution of the Republic of South Africa, at Act 200 of 1993, s.105 [hereinafter *Interim Constitution*].

n20 *Supra* note 1 at s. 178.

n21 *Ibid.* at s. 174(2).

n22 *Ibid.* at s. 180.

n23 *Ibid.* at s. 174 (1).

n24 *Ibid.* at s. 174 (2). This section states that any appropriately qualified man or woman who is a fit and proper person may be appointed as a judicial officer. There is no provision that the person must be legally qualified, but all appointments to date have involved persons with legal qualifications. A departure from previous practice, however, has been the appointment of attorneys, academics and advocates who have not taken Silk.

n25 Many neighbouring Southern African states use ex-patriot judges, including South African judges and senior practitioners, especially as Appeal Court judges.

n26 *Supra* note 1 at s. 166 (e).

n27 *Supra* note 19 at s. 109.

n28 *Supra* note 1 at s. 174 (7).

n29 *Ibid.* A similar provision specifically mentioning magistrates was included in s. 109 of the *Interim Constitution*. (See *supra* note 19 at s. 109).

n30 *Small Claims Courts Act 61 of 1984*.

n31 Cf *Consumer Affairs (Unfair Business Practices) Act of 1996* (Gauteng).

n32 *Supra* note 1 at s. 211. The *Constitution* recognises the institution, status and role of traditional leadership (s211(1)), and traditional authorities that observe a system of customary law may function subject to any applicable legislation and customs (s211(2)).

n33 *Supra* note 1 at s. 34.

n34 *Ibid.* at s. 35.

n35 See below.

n36 *Supra* note 1 at s. 38.

n37 *Beukes v. Krugersdorp Transitional Local Council*, [1996] 3 S.A. 476.

n38 *Ibid.*

n39 *Supra* note 19 at s. 7(4)(b)(iv).

n40 *Supra* note 1 at s. 38.

n41 *Supra* note 19 at s. 22.

n42 *Mohlomi v. Minister of Defence*, [1997] 1 S.A. 124.

n43 See below.

n44 *S. v. Heyman*, [1966] 4 S.A. 589 at 604.

n45 Cf *Criminal Procedure Act 51 of 1977*, s. 73 and s. 166 [hereinafter *Criminal Procedure Act*].

n46 For instance, the *Internal Security Act 74 of 1982*, s. 29.

n47 See generally D.J. McQuoid-Mason "Legal Representation and the Courts" in (1990) *S. Afr. Hum. Rts. & Lab. L. Y.B.* 190-1.

n48 [1988] 1 S.A. 191 at 196 [hereinafter *Radebe*].

n49 [1988] 3 S.A. 795 [hereinafter *Khanyile*].

n50 (1963), 372 U.S. 335.

n51 (1949), 316 U.S. 455.

n52 The Constitutional Court abolished the death penalty in *S. v. Makwanyane*, [1995] 3 S.A. 391.

n53 *R. v. Mati*, [1960] 1 S.A. 304 at 306.

n54 *Khanyile*, *supra* note 49 at 815.

n55 [1992] 1 S.A. 343.

n56 Cf McQuoid-Mason, "Rudman and the Right to Counsel: Is it Feasible to Implement *Khanyile*?" (1992) 8 *SAJHR* 96.

n57 *Supra* note 1 at s. 35.

n58 *Ibid.* at s. 35 (2) (b) and (c).

n59 *Ibid.* at s. 35 (3) (f) and (g).

n60 *Supra* note 19 at s. 25 (3) and by extension s. 25 (1) (c).

n61 *S. v. Lombard* (1994), 2 SACR 104.

n62 *Supra* note 19 at s. 33 (1).

n63 E. du Toit, "Criminal Procedure" in M. Chaskalson, et al., eds., *Constitutional Law of South Africa* (1996) at 27-5.

n64 As a rule of thumb the Legal Aid Board interprets the fact that an unrepresented accused person may face a term of imprisonment as a situation "where a substantial injustice would otherwise arise".

n65 Act 22 of 1969.

n66 Rule 40 of the *Uniform Rules of Court*.

n67 People with assets of less than R10,000.

n68 During 1994-5, 1,725 *in forma pauperis* cases were heard (Department of Justice, *Annual Report for Period 1 July 1994 to 30 June 1995* (1996) (Afrikaans version) 127).

n69 Under ss 302-303 of the *Criminal Procedure Act*, *supra* note 45 any sentence imposed upon an unrepresented accused by a magistrate is subject to automatic review by a judge of the provincial division having jurisdiction, where the accused is sentenced to imprisonment exceeding 3 months or a fine exceeding R2,500 by a magistrate of less than 7 years standing, and 6 months for a fine exceeding R5,000 by a magistrate of more than 7 years standing. During the 1994-5, 43,496 automatic reviews were considered by High Court judges (Department of Justice *Annual Report 1994-5* (1996) 127). These reviews have been taking place on a regular basis even though a positive right to counsel has been recognized since 1988, and in the Constitution since the beginning of 1994.

n70 In terms of s 300 (1) of the *Criminal Procedure Act*, *supra* note 45 the victim of an offence involving damage to, or loss of, property (including money), or the prosecutor acting on the instructions of such a victim, may apply to court for a compensation order against the accused person if he or she is convicted. Provision is also made for payment to be made from any money taken from a convicted person on his or her arrest (s300(4)).

n71 *Act 22 of 1969* [hereinafter Legal Aid Act].

n72 *Ibid.* at s. 3. See generally McQuoid-Mason, *supra* note 13 at 27.

n73 Legal Aid Board, *Legal Aid Guide* (1996) [hereinafter *Guide*].

n74 *Ibid.*

n75 Legal Aid Board, *Annual Report 1991/1992* (1993) at 13 [hereinafter *Annual Report*].

n76 *Guide* at par 2.5.

n77 Thus in criminal cases no legal aid is rendered where: (i) *pro deo* defence is available, unless the services of an attorney cannot be dispensed with; (ii) an admission of guilt has been determined or can be compounded; (iii) the commission of the offence is admitted and the accused's defence or excuse is so simple that it can be advanced by the accused without assistance; (iv) a traffic offence, or any other offence involving the use of a car, (other than culpable homicide), is committed; (v) the applicant wishes to institute a private prosecution; (vi) in cases where the Director is not satisfied that a criminal appeal has a reasonable prospect of success; (vii) in certain matters excluded by the Board from time to time (at present, white collar crime, commercial fraud, and dealing with drugs or habit producing substances); (viii) where a person is charged for the third or subsequent time on the same or similar charge; and (ix) save with the consent of the Director, where an accused is charged for failing to pay maintenance under the Maintenance Act of 23 of 1963 (*Guide* at para 3.1).

n78 In civil matters legal aid will not be rendered: (i) in debtors courts proceedings; (ii) for the administration an estate or the voluntary surrender of any estate; (iii) in actions for damages on the grounds of defamation, breach of promise, infringement of dignity, invasion of privacy, seduction, adultery and inducing someone to desert or stay away from another's spouse; (iv) in a claim for maintenance and which can be determined by a maintenance court without the assistance of a legal practitioner; (v) in undeserving divorce matters; (vi) for any action which may be instituted in the Small Claims Court or where the amount of the claim does not exceed the jurisdiction of the Small Claims Court by more than 25%; (vii) in a civil appeal unless the Director is satisfied that there are reasonable prospects of the appeal succeeding; (viii) in arbitration, conciliation or any other forms of alternate dispute resolution; (ix) in matters where there is not substantial and identifiable benefit to the client; (x) in matters excluded by the Board from time to time; (xi) in matters where enforcement of an order in favour of the applicant will yield little benefit; (xii) in enquiries in the Childrens Court without the prior approval of the Director; and (xiii) for an application to obtain an interdict in respect of the prevention of family violence or harassment as a result of domestic or family disputes, since an interdict in these matters can be obtained without the assistance of a legal practitioner (*Guide* at para 3.1). Applicants who are denied assistance in divorce matters may apply to the Registrar of the Supreme Court for help by way of *in forma pauperis* proceedings (see above).

n79 *Guide* at 3.5.1.

n80 See below.

n81 *Guide* at para 4.12.2.

n82 Legal Aid Board, *Report of Activities during 1995-6 Financial Year* (1996) at A1 [hereinafter *Report of Activities 1995-6*].

n83 Legal Aid Board *Report of Activities* (1996) at A2 [hereinafter *Report of Activities* (1996)]. In criminal cases 94% of the persons assisted were black, in divorce cases 79%, in other civil cases 87% and in labour matters 92% (*ibid*).

n84 Annual Report, *supra* note 75 at 12.

n85 *Report of Activities* (1996), *supra* note 83 at A2.

n86 *Cf S. v. Mabaso*, [1990] 3 S.A. 185.

n87 Annual Report, *supra* note 75 at 12.

n88 Report on Activities 1995/6, *supra* note 82 at A1.

n89 Annual Report, *supra* note 75 at 32-3.

n90 D.J. McQuoid-Mason, "Public Defenders and Alternative Service" (1991) 4 *SACJ* 267 at 270.

n91 Business Day, 2 November 1992.

n92 Legal Aid Board, *Annual Report 1994/95* (1996) at 32.

n93 *Act 53 of 1979*.

n94 *Act 115 of 1993*.

n95 Legal Aid Report, *Monthly Report* (4 February 1997). This includes the costs for clinics which have only just been established. Ultimately the cost per case will be much less as the more established clinics cost about R350 per case (*ibid*).

n96 See above.

n97 *Report on Activities*, *supra* note 85 at A1.

n98 *Report on Activities*, (1996), *supra* note 83 at A5.

n99 Legal Board, *Annual Report 1994-5* (1995) at 35.

n100 *Legal Aid Act*, *supra* note 71 at s. 8A.

n101 *Ibid*.

n102 Legal Aid Board, *Memorandum for the Minister of Justice* at 24.

n103 *Ibid*.

n104 Legal Aid Board, *Memorandum for the Minister of Justice*.

n105 *Ibid*.

n106 Recently there has been a resurgence of such courts as communities become frustrated with the inefficiency of the criminal justice system.

n107 *Constitution*, *supra* note 1 at s. 211.

n108 *Ibid*. at s. 39(2): "When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

n109 Department of Justice, *Annual Report 1994-5* (1996) (Afrikaans version) at 131.

n110 See generally P. Pretorius (ed.), *Dispute Resolution* (1993).

n111 Legal Resources Centre, *Annual Report for Year ended 31 March 1995* (1996) at 25.

n112 Legal Resources Centre, *Annual Report* (1996) at 9.

n113 Legal Resources Centre, *Annual Report* (1996) at 7-9.

n114 See below.

n115 See below.

n116 D.J. McQuoid-Mason "The Role of Legal Aid Clinics in Assisting Victims of Crime" in W.J. Shurink, et al., eds., *Victimisation: Nature and Trends* (1992) 559 n 1.

n117 D.J. McQuoid-Mason "The Organisation, Administration and Funding of Legal Aid Clinics in South Africa" (1986) 1 *NULSR* 189 at 193.

n118 Cf D.J. McQuoid-Mason "Legal Aid Clinics as a Social Service" in D.J. McQuoid-Mason (ed) *Legal Aid and Law Clinics in South Africa* (1985) 64.

n119 In 1996 the Legal Aid Bureau experienced financial difficulties and the Legal Board agreed to provide substantial funding for it.

n120 D.J. McQuoid-Mason "Reducing Violence in South Africa through Street Law Education of Citizens" in G. F. Kirchoff, E. Kozovski & H. J. Schneider (eds) *International Debates of Victimology* (1994) 347 at 348.

n121 *Ibid.*

n122 D. McQuoid-Mason *Street Law: Practical Law for South African Students: Book 1 Introduction to South African Law and the Legal System* (1987), together with a *Teacher's Manual*.

n123 D. McQuoid-Mason *Street Law: Practical Law for South African Students: Book 2 Criminal Law and Juvenile Justice* (1987), together with a *Teacher's Manual*.

n124 D. McQuoid-Mason *Street Law: Practical Law for South African Students: Book 3 Consumer Law* (1988), together with a *Teacher's Manual*.

n125 D. McQuoid-Mason *Street Law: Practical Law for South African Students: Book 4 Family Law* (1990), together with a *Teacher's Manual*.

n126 D. McQuoid-Mason *Street Law: Practical Law for South African Students: Book 5 Welfare and Housing Law*, together with a *Teacher's Manual*.

n127 D. McQuoid-Mason, et al., *Democracy for All: Education Towards a Democratic Culture* (1994) together with an *Instructor's Manual*.

n128 See above.

n129 The only other para-legal university certificate course is run at Rhodes University for Lawyers for Human Rights.

n130 See generally Community Law Centre, *Annual Report* (1992/3) at 2-5.