



**JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

**Address by Mr Andries Nel, MP
Deputy Minister of Justice and Constitutional
Development,
Friday, 24 July 2009, Johannesburg, at the
LAUNCH OF THE 2009 LEGAL AID GUIDE**

Judge Mlambo, the Honourable Chair of the Board of the Legal Aid Board (or as it is now known - Legal Aid South Africa),
Members of the Judiciary,
Members of the Board of Legal Aid South Africa,
Representatives of other JCPS Departments,
Distinguished Guests,
Comrades and Friends,
Ladies and Gentlemen

Let me firstly extend an apology on behalf of the Minister of Justice and Constitutional Development who cannot be here today. The Minister has asked me to convey his appreciation to Legal Aid South Africa for the sterling work done by the Board and the organization as a whole and his congratulations on the occasion of the launch of the very useful and necessary Legal Aid Guide 2009.

Secondly I wish to thank you for inviting me to celebrate this occasion with you. I am deeply honoured. Although this is the first official occasion in my capacity as Deputy Minister of Justice and Constitutional Development that I share with the Chairperson of the Legal Aid Board, Justice Dunstan Mlambo, and other members of the Board. I have, however, started to visit Justice Centres and to engage with the many dedicated men and women who staff these centres. I have found these interactions very useful. They have only strengthened my conviction that Legal Aid South Africa is operating as a model institution which many departments, agencies and bodies – both public and private - could learn much from. Your eight consecutive unqualified audit reports, amongst others, is indicative hereof. These interactions have also highlighted the fact

that your excellent work is conducted under conditions and with resources that are not always optimal.

I appreciate the opportunity to be with you on an occasion such as this because it provides an opportunity to engage on one of the most crucial pillars of our democracy – namely access to justice and the role of legal assistance to our people in this regard.

The Government's MTSF recently approved and released demonstrates Government's commitment to the rule of law as guaranteed by our Constitution, and our commitment to fight crime and corruption. Part and parcel of our commitments in this regards is, however, ensuring that poverty should not be a barrier to people being able to access justice. The MTSF also provides a basis of us TOGETHER DOING MORE AND BETTER.

In recent years, we have faced the tremendous challenge of developing and adapting our law to bring it in line with the Constitution which reflects democratic values and a Bill of Rights which prioritises the protection of human rights. The Legal Aid Guide, that was approved by Parliament last year and of which we are celebrating the public launch today, has been developed as part the fulfillment of our legal and Constitutional obligations in assisting indigent and vulnerable groups such as children with legal assistance when required and is aimed at improving the quality of life and protecting the fundamental rights of all the people of South Africa. The challenge for all of us is to now make certain that we truly deliver on the promises of our Constitution!

When I looked at the *Legal Aid Guide* 2009, which sets out in detail the Legal Aid policy and procedures as well as the work of Legal Aid South Africa, **it is clear to me that much effort was put in to ensure that it is written in a plain non-legalistic style and language, with an easy cross-referencing system accompanied by colour codes**, so that not only legal practitioners representing legal aid clients, but also paralegals, unions and NGOs advising people in getting legal aid and, most importantly, persons needing legal representation and assistance, can use it with ease. It is truly an **operational manual for the granting of legal aid**, setting out clearly the legal aid policies and procedures and aspects such as who qualifies in terms of the means test. Thank you for this.

However, the launch of the 2009 Legal Aid Guide today is far more than just the release of a nice document...it clearly demonstrates Legal Aid South Africa's and its Board's determination to improve access to justice and resonates strongly with Government's commitment to make "Justice for All" a reality for all of our people - especially the marginalised and historically disadvantaged. It remains a sad truth that the majority of our people still simply do not have the financial resources to access legal representation. As government we are acutely aware that we serve at the behest of the poor rural and urban masses. We thus need to take very seriously our obligation to ensure that access to justice does not become the sole preserve of those able to hire the services of a lawyer. Failing to provide legal representation, especially in criminal

matters (but also civil matters) would be an unforgivable betrayal of the poor and vulnerable in our country, and would undermine one of the founding principles of our Constitution - that of access to justice.

The fundamental tenet that *"everyone is equal before the law and has the right to equal protection and benefit of the law"* provides the *raison d'être* for the Legal Aid Board. We must - all of us - ensure that the rights guaranteed in our Constitution are translated into practical and measurable outcomes that impact positively upon the lives of especially the poor and vulnerable. The challenges are profound given the plethora of competing needs, but the government's views are clear: service provision to those most in need is an absolute priority.

This requires us to focus not only on structural and procedural adjustments, but also to take cognisance of the human factor that inevitably plays a crucial role in the administration and dispensation of justice. All role-players within the justice system must become sensitive to the changed context and varying nuances of our diverse democracy. We must become attuned to the spirit and ethic of our Constitution. No one is exempt - judges, magistrates, state advocates, prosecutors, legal aid representatives and private practitioners and all the other role-players that participate in the justice machinery must become alive to the constitutional and democratic environment in which we find ourselves. We must all work diligently towards making our justice system accessible, people-centred and people-driven. It is therefore heartening to see the participation of Legal Aid South Africa in the JCPS cluster activities - from a national level right down to provincial and local level where Justice Centres participate in all local justice cluster efficiency meetings, including local case flow management meetings.

The ongoing transformation of the justice system continues to be one of our Department's greatest challenges because the changing Constitutional and Legislative landscape has necessitated a complete paradigm shift in the way that Justice is administered and dispensed. We all have to work very closely together in this regard. However, as we all know in the past, (especially the late 1990s/ early 2000s) relations between the Legal Aid Board and our Department and even Parliament were characterised by some distance and suspicion. At that point when I was involved from Parliament's side with the Justice Portfolio Committee, the "Judicare" model that was then the main stream delivery model for legal aid, had proven itself entirely unsustainable and access to justice was all but absent from the LAB agenda. There was little recognition by either side that we were actually on the same team. If the truth must be told the Legal Aid Board of old wielded its statutory independence to veil a culture of maladministration that became the source of severe alienation and bitter disaffection. Of course this has dramatically changed and I am delighted to reflect that there is currently a very close and very good relationship between the Department and Legal Aid South Africa.

The Legal Aid Board is established as an independent body in terms of the Legal Aid Act, 1969 to ensure the separation between the prosecuting arm of government and the defence of those requiring state funded legal assistance. In terms of the Legal Aid Act and the Public Finance Management Act (Act 1 of 1999), the **Legal Aid Board is**

accountable to the Minister of Justice as its executive authority, as well as to Parliament. This accountability relates to overall strategy and policy matters as well as finances. The process and involvement of the Executive Authority in approving the 2009 Legal Aid Guide is underpinned by this relationship.

But I would be amiss if I do not also recognize that the turnaround of the LAB/ Legal Aid South Africa into a user-oriented service institution of excellence that exemplifies the principle of Batho Pele.

In the early 2000s, the Legal Aid Board, the body created by the South African Constitution to provide legal support to those in need, was on the verge of bankruptcy and faced a contingent liability of between R600-million and R1-billion. Handicapped by mismanagement, it faced a real threat of being closed down by Parliament. A quick and decisive action plan was needed. The Legal Aid Board had to be realigned to meet its democratic mandate of giving civil and criminal legal assistance to people living in poverty, especially women, children, rural people, landless people and people living with HIV/Aids. With support from the Cabinet at that time, a strong interim management team was pulled together under the chairmanship of Judge Mohamed Navsa.....and as we know this has led to the vast changes and transformation since then under the Boards of Directors and CEOs since then to sound corporate governance practices including the management of risk, conformance and sustainability. And as we also know most of the work is now done by the LAB's own lawyers in the various justice Centres instead of through the judicare model.

It was good to see in the minutes of Parliament's Portfolio Committees for 2008, that the Parliamentary Justice Portfolio Committee and Select Committees recognized the transformation achieved and praised the performance of the LAB. They have also made reference to the successful moving away from an almost exclusive allocation of legal aid resources to persons accused in criminal cases, to a more equitable system of legal assistance that also meets the civil law requirements of marginalised and disadvantaged communities. We fully endorse these efforts by the LAB to address the wrongs endemic to our fractured and damaged society - especially in respect of violations against children, women, the elderly, the farm worker. However, obviously we have to look at a progressive realization of our goals in this regard in view of the limited financial resources to our disposal.

However, just on that point – Government and the DOJCD has recognized the growing needs for legal assistance and the budget allocated to the LAB/ Legal Aid South Africa has grown exponentially over the years. For example in 2005 the budget allocated was R453m; currently that budget is more than R835,5m.

Justice is a very serious issue which requires serious consideration by all stakeholders. To this end, our Department is committed to continually improve the way in which courts and the legal system are functioning in order to promote true justice for all. To the public we therefore again commit ourselves to improved service delivery. In the process we will also continue to consult with civil society and to promote and strengthen

partnerships between state departments and organisations in civil society. Your assistance in this mammoth task will be appreciated.

In addition to the new Legal Aid Guide 2009 we are celebrating today, it is noteworthy that we have also embarked on a rewrite of the Legal Aid Act (which comes from 1969) to bring it in line with the Constitution and the current demands and needs of our society.

I wish you all strength and courage in the work that you do. Stand firm in the knowledge that you will be providing succour to the poor and vulnerable and gain strength from the recognition that you are an instrument for making real the rights to which our whole community is entitled.

I thank you.