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MEDIA STATEMENT

Access to legal aid in family law matters: a key component to achieving women's equality in South Africa

As the country commemorates Women's Month, in honour of the thousands of South African women who in 1956 embarked on a defiance march against the oppressive pass laws, Legal Aid South Africa has reiterated its commitment to protecting and defending the rights of women.

The sacrifices made by the women before and after 1956 helped pave the way for greater social and economic gender equality, but while great strides have been made, gender disparities still exist in all sectors of society.

In carrying forward the legacy left by these courageous women, Legal Aid South Africa has stood firm in its commitment to strengthen the legal status of women through lobbying and influencing legislative policy, so as to ensure they receive equal protection under the legal system. The organisation also continuously explores innovative and integrated approaches to meeting the legal needs of women.

Through its proactive interventions, Legal Aid SA has continued to enhance legal aid services to women, for example, the establishment of the toll-free Legal Aid Advice Line, which focuses on family law matters that mostly affect women. These include, but are not limited to divorce, maintenance, custody, domestic violence, and customary marriages.

Legal Aid South Africa's Impact Litigation Unit also plays an important role in the advancement of the rights of women by taking on cases that have the potential to positively affect the lives of a large number of people – the main objective being to provide legal clarity and certainty in areas of the law that often render women especially vulnerable to human rights violations.

“Access to legal aid in family law matters is a key component to achieving women’s equality in South Africa. Women are usually the most affected groups in civil conflicts such as divorce and land disputes - hence civil legal matters have become a huge priority for Legal Aid SA due to our human rights focus. With the increasing vulnerability of our children and the poor, it became inevitable that Legal Aid SA does something proactively to address these issues,” says Legal Aid SA spokesperson, Mpho Phasha.

Furthermore, its human rights advocacy efforts have seen the organisation partner with NGOs, CBOs, Civil Society Activists, government departments and agencies to strengthen the legal mechanisms to deal with issues affecting women.

Through these partnerships, and as part of its community outreach and public education programme, the organisation is also able to reach hundreds of women across the country, to empower and educate them about their legal rights and responsibilities.

“Through our national Justice Centre network we are able to reach far flung and deeply rural communities, where gender inequality is still very rife,” says Phasha.

Legal Aid SA has also received support from the media at national, regional and local level, in spreading the women’s rights message. “We urge more action from the media in not only highlighting the plight of women, but also empowering them with information on their legal rights,” says Phasha.

Below are some case studies that highlight some areas of the law that affect women in South Africa.

One of the areas of law that affect countless women in our country is customary law. Of particular significance are customary marriages. Customary marriages are regulated by the Recognition of Customary Marriages Act 120 of 1998. In terms of the Act, *customary law* is defined, as “the customs and usages traditionally observed among the indigenous African people of South Africa and which, form part of the culture of these peoples.” Furthermore, *customary marriage* is defined as “a marriage concluded in terms of customary law.”

The Act stipulates the requirements for a valid customary marriage. These include that the prospective spouses must be above the ages of 18 years and must consent to be married to each other in accordance with customary law. Furthermore, the marriage must be negotiated and entered into in terms of customary law, and if the prospective spouses are minors then the parents need to consent to the marriage. If there are no parents then the legal guardian of the minor must consent to the marriage. The marriages also need to be registered at Home Affairs within three months of their conclusion, and once the marriage is registered a Registration Certificate is issued by the officer.

A matter wherein the question of the validity of customary marriages arose is the case of *Modjadji Florah Mayelane v Mphophu Maria Ngwenyama and Another CCT 57/12*. In this matter the Constitutional Court had to decide on the effect that a lack of consent on the part of a first wife had on the validity of subsequent polygamous marriages in terms of Tsonga Custom. The Court in this matter developed Tsonga custom in line with the values of equality and dignity enshrined in the Constitution. They thus ruled that from the date of the judgment that consent from the first wife was now a requirement for the validity of a subsequent customary marriage in terms of Tsonga law.

A further area of law that affects countless women in our country is the law surrounding maintenance. In this regard The Maintenance Act of 1998 enshrines that every child has the right to basic necessities such as food; shelter; clothing; medical and dental care; education; and social services. Parents or relatives maintain children directly when the child lives with them. Parents or relatives maintain children indirectly, when the child lives with someone else, by paying maintenance, or money to support the child and provide for his or her basic needs. The Maintenance Act sets out what the courts can order in terms of maintenance. One can employ a private firm of attorneys in a maintenance matter, but this is sometimes quite costly. A lot of assistance can be given to you by the Maintenance Officers at the Courts as well as by Legal Aid SA.

It is often stated that it is difficult to navigate the maintenance system, and many women have lamented that they are left with a feeling of hopelessness after not being able to secure sufficient maintenance for their children. It is important to ensure that the officials working in the Maintenance Court assist all members of the public in accessing the court system so that the best interests of the child are at all times upheld. Legal Aid SA furthermore has skilled practitioners at the Justice Centres who are able to assist members of the public with maintenance queries, and in addition the Legal Aid Advice Line can also be accessed free of charge.

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