

The Need for Monitoring and Assessment of Legal Aid Quality in South Africa

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Abstract

Legal aid is needed in South Africa as one mechanism for poor South Africans to realise their legal rights and to use the law as a vehicle for positive social change in a grossly unequal society in which deep poverty is rife. However, simply having a legal aid service provider is insufficient if the quality of such services is not satisfactory. But how can high quality legal services be ensured? This paper considers how different forms of legal aid service provision can be effectively monitored and assessed to ensure that satisfactory standards of legal aid work are delivered. Categories of "legal aid" (broadly construed) which are considered are legal NGOs, including university law clinics, the state's Legal Aid South Africa telephonic advice, and *pro bono* work by private lawyers. Separate research has focussed on the need for much improved coordination between legal service providers to promote co-operation among legal aid services. The next step is to ensure that such coordination leads to quality services and promoting quality control mechanisms which are appropriate and which can be considered best practice. This paper analyses and discusses this next step. If legal aid is not of an adequate standard or quality assurance is not in place, the legal aid is not serving a positive function. The paper considers viable means for vetting the quality of these free legal services in a South African context, including telephonic legal advice in the Covid era. It suggests mechanisms to promote high-level free legal service provision by assessing the quality of such services. Legal aid quality control methods abroad were analysed to serve as an indicator of the options used in this regard in those jurisdictions. The question to be answered is what quality control measures are most apposite in the South African legal aid arena.

Keywords

Legal aid; South Africa; monitoring; assessment; quality; quality measures; *pro bono*.

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1 Introduction

If the provision of legal aid services is of an inadequate standard or measures for quality checking are not in place, then legal aid is not serving a positive function. A high-quality legal aid service network has the potential to act as a conduit for the enjoyment of legal rights and entitlements in pursuit of a better standard of living for all. However, where an indigent person receives legal "assistance" of unsatisfactory quality, the client will not be in an improved position and may even be worse off, especially if the legal aid provider erred in its work. Access to justice is promoted where *inter alia* accessible, effective, sustainable and credible legal aid is provided.¹ At an international law level, the South African state is obliged to ensure the quality of legal aid services offered, particularly free services. South Africa's provision of access to civil legal aid is unequal, and yet bodies that monitor treaties focus on access to criminal justice.²

It could be asked why the focus should be on quality assurance in legal aid as opposed to in the legal profession generally. Two answers are provided. Firstly, private law firms are subject to a client choosing their service provider as opposed to legal aid clients who typically must take whatever service is available to them. Thus, if the quality of private law firms is poor, a client may always choose to move its business to another firm. This is something a legal aid client may very seldom be able to do. There should therefore be no implication drawn that legal aid services are somehow poorer than those provided in private practice and hence worthy of quality checks as opposed to those in the private sphere. The quality control of private law firms is discussed in so far as it relates to their *pro bono* work as this has an obvious link with legal aid. The second reason for the paper's focus is a pragmatic one. Quality control in the private sector is certainly worthy of attention, but is worthy of study on its own. The quality assurance

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¹ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* UN Doc A/RES/67/187 (2012); *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa* ACHPR Doc DOC/OS(XXX)247 (2003).

² See SAHRC 2015 https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/INT_CCPR_ICO_ZAF_20239_E.pdf; Human Rights Committee *Concluding Observations on the Initial Report of South Africa* UN Doc CCPR/C/ZAF/CO/1 (2016).

of the legal aid sphere is a wide enough topic on its own to cover in a single paper.

Separate research has covered the need for a coordinated approach to a multi-faceted provision of legal aid services.³ This paper examines measures for the monitoring and evaluation of the quality of certain free legal services to the indigent in South Africa, as a means of quality assurance.⁴ It will be seen that a coordinated legal service network facilitates means for monitoring and evaluating service quality, but the coordination of services alone is insufficient. This is because means to gauge and ensure the quality of legal aid and the coordination of services are inter-related. Better coordinated and free legal service delivery should have, as central elements, measures to promote, monitor, evaluate and safeguard the quality of legal aid. But such measures actually need to be put in place. The other side of the coin is that a high(er) quality of legal aid service could promote the coordination of legal aid services. A coordinated legal aid system would make it possible to establish existing needs and services already on offer and would promote the quality of such services. This research concentrates on quality monitoring and evaluation and how coordination between different legal aid service providers could facilitate an improved quality of legal aid services and, in certain instances, provide mechanisms for such monitoring.

A key conclusion from research on coordinating legal aid in South Africa is that a symbiotic relationship exists between different elements of legal aid and a coordinated approach among service providers to responding to the relevant challenges.⁵ If it operates well, such symbiosis should improve the quality of the legal aid provided.⁶ However, there must be mechanisms in place for quality assurance. This paper points to what these possible mechanisms could be. Paterson discusses "joined up legal services" which talk to the issues of legal aid service delivery being coordinated and comprehensive.⁷ This is considered to be a key ingredient of a model previously proposed for the South African Metro of eThekweni, and could be extrapolated to the whole country for improved civil legal aid service

³ See Holness 2021 *LDD*.

⁴ The term "monitoring" is used in this article to refer to the process of checking what legal aid provision is in place. "Evaluation" is used to describe a litmus test of the quality of such service provision. While they could be said to be not exactly the same terms, this paper will refer to the terms "assessment" and "evaluation" interchangeably.

⁵ See Holness 2021 *LDD* 18.

⁶ See Holness 2021 *LDD* 18.

⁷ Paterson 2001 <http://216.92.68.58/conference/ilag2001.htm> 3.

delivery.⁸ The comprehensiveness referred to by Patterson includes a key element of legal aid service quality monitoring and evaluation, which is covered in this paper. The above traits of a legal aid system for South Africa would also likely lead to greater efficiency in the services offered. This would logically promote greater output (quantitatively) of an improved and satisfactory standard. This is on the basis that once a coordinated system is in place it will facilitate a vetting of the quality of the service provided via the monitoring and evaluation of the legal assistance provided to the indigent. For example, legal aid elements working together would be able to assess one another.

Legal aid can be broadly construed to include such free legal services as community-based paralegal work,⁹ community service by law graduates (were this system to be introduced),¹⁰ *pro bono* work by private lawyers,¹¹ and various other forms of service provision. Legal Aid South Africa (LASA) largely provides criminal legal aid, with civil legal aid provided by other entities such as law clinics and legal NGOs, and some aid provided by LASA. This paper focusses on the monitoring and assessment of the aid provided by legal NGOs including university law clinics, LASA's telephonic advice, and *pro bono* work by private lawyers. It does not discuss LASA's quality assessment – its telephonic advice helpline excepted – as LASA has greater capacity to do its own quality assessment given its considerable size. Furthermore, other free legal service providers such as community-based paralegals require separate analysis of the quality control of their work. Because of the challenges associated with providing legal aid during the Covid-19 era, where much legal aid is dispensed by telephone in South Africa, the paper also analyses quality control of this aspect.

This paper is structured as follows. First, it introduces the work of legal NGOs, including similar university law clinics' legal services, LASA, and *pro bono* work by legal practitioners in private practice – to clarify the nature of their operations. This is necessary as the function and role of these organisations must be elucidated so that the context for monitoring and assessing their work can be understood later. The paper then considers what monitoring and evaluation mechanisms are in place for these service provider types, once the need for quality assessment has been established. Thereafter, mechanisms being used for the quality control of legal aid

⁸ See Holness *Coordinating Free Legal Services*.

⁹ See Donovan 2012 <https://namati.org/news-stories/paralegals-support-the-justice-system-as-a-whole/>.

¹⁰ See Holness 2020 *PELJ*.

¹¹ See ProBono.Org 2021 <https://probono.org.za/>.

abroad are considered, including the international context. During the analysis of foreign quality control, there is consideration of how such mechanisms may or may not be apposite in a South African context. The link between a coordinated legal aid network and quality vetting will become clearer in a discussion of the concepts of clustering and peer assessment.

2 Categories of free legal service providers that are analysed for quality monitoring and assessment

2.1 Legal NGOs and university law clinics

There are many legal NGOs in South Africa,¹² and they often have a specific subject focus. For example, SECTION27 focusses on ensuring healthcare rights and the right to basic education.¹³

The legal services provided by university law clinics are similar to those provided by legal NGOs. While university law clinics have the dual mandate of clinical legal education and legal service provision,¹⁴ the assessment of their legal services and how their work is monitored and evaluated will be analysed along with those of legal NGOs. This is because most of the legal service provision work of university law clinics is very similar to that of legal NGOs. For example, funding is typically obtained for particular projects or legal services.

2.2 Legal Aid South Africa

According to their website, "Legal Aid South Africa's role is to provide legal aid to those who cannot afford their own legal representation. This includes poor people and vulnerable groups such as women, children and the rural

¹² While there are small differences between non-governmental organisations (NGOs) and non-profit organisations (NPOs), this paper considers them the same in terms of filling the same function.

¹³ "SECTION27 is a public interest law centre that seeks to achieve substantive equality and social justice in South Africa. Guided by the principles of the Constitution, SECTION27 uses law, advocacy, legal literacy, research and community mobilisation to achieve access to healthcare services and basic education. SECTION27 aims to achieve structural change and accountability to ensure the dignity and equality of everyone." SECTION27 date unknown <https://section27.org.za/>.

¹⁴ Listed under the primary objectives of university law clinics by their umbrella body, the South African University Law Clinic Association are: "the provision of free legal services to indigent communities; (and) the practical legal education of senior law students and candidate attorneys". SAULCA date unknown <https://www.saulca.co.za/>.

poor."¹⁵ LASA is only briefly mentioned in this paper – particularly in respect of its telephonic advice.

2.3 Pro bono work by private legal practitioners

This is work done for free by lawyers in private practice as part of their work time and on an ongoing basis.¹⁶

2.4 Telephonic legal advice, especially in the Covid era

Even pre-Covid LASA offered clients legal advice telephonically.¹⁷ Various university law clinics and legal NGOs introduced telephonic client consultations during the Covid-19 pandemic, including ProBono.org¹⁸ and the Rhodes University Law Clinic.¹⁹ A hotline was launched by over ten legal NGOs.²⁰ LASA went so far as to introduce strict Covid measures – no face-to-face consultations – at the height of the pandemic in 2020.²¹ The United Nations Office on Drugs and Crime guidance identified the need for telephonic and other remote access to lawyers in May 2020.²² South Africa did not declare access to legal services an essential service at the outset of the pandemic regulations. This curtailed access to justice for many persons. Similar violations were also suffered in other regions.²³

3 The need for quality assessment

A needs analysis is needed to gauge the quality of a legal aid system. If a legal aid network is not meeting key legal aid needs, then it is failing as a system. Allied with the need to establish what unmet legal aid needs exist, Kádár calls for any legal aid system to comprehensively establish the capacity of legal aid providers to meet the requirements of existing legal aid.²⁴ This is important because one cannot expect legal aid services of a

¹⁵ LASA date unknown <https://legal-aid.co.za/legalaidsa/>.

¹⁶ For a discussion of this, see section 8.3 below.

¹⁷ See LASA date unknown <https://legal-aid.co.za/legalaidsa/>. They have a toll-free legal aid advice line and a WhatsApp "call me back" service.

¹⁸ See ProBono.Org 2021 <https://probono.org.za/>.

¹⁹ See Rhodes University Law Clinic 2017 <https://www.ru.ac.za/lawclinic/legalservices>.

²⁰ See Brickhill 2020 <https://juta.co.za/press-room/2020/05/10/constitutional-implications-covid-19-access-justice-and-functioning-courts-during-lockdown-issue-8/2>.

²¹ LASA 2020 <https://www.lssa.org.za/wp-content/uploads/2020/03/Legal-Aid-SA-guidelines-on-measures-to-deal-with-the-Covid-19-pandemic.pdf> 2.

²² UNODC 2020 https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf 15.

²³ See International Commission of Jurists, Kenyan Section et al 2020 <https://namati.org/wp-content/uploads/2020/11/ACHPR-statement.docx.pdf> 1.

²⁴ Kádár 2007 http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311_

high or satisfactory quality if the service provider is over-burdened or if it is not adequately qualified to work in the type of service requested. Increasing legal service capacity must be considered in terms of the proposals for each legal aid organisation, but also crucially through better coordination between different providers of legal aid.

What was envisaged in terms of a proposed model for better coordinated legal aid in South Africa and concomitant services of improved quality is that an unmet legal needs analysis be considered alongside a capacity analysis and the ultimate assessment of the services.²⁵ This is in order that quality assurance in an improved model for legal aid in South Africa incorporates changes to the existing provision of legal aid. This would be to meet the unmet needs in existing capacity, or by being able to increase capacity. This relates to the call made for a more multi-faceted approach to legal aid which requires the legal aid providers to adapt their service provision to meet the changing needs of clients, so as to expand the scope of their services and promote an improved standard of work.²⁶ Here the response by legal aid providers is notable, in accordance with government rules, and relating to pressing legal needs during the Covid-19 era.

During the hard (Covid) lockdown legal services were not initially considered an essential service. This meant that there was no legal service provision for a period. Furthermore, a needs analysis in relation to domestic violence and gender-based violence was belatedly indicated. Therefore those services were prioritised by government, as were legal services in relation to evictions. Government even issued regulations in relation to evictions. The reactionary approach to Covid-19 indicates that the legal sector was wholly unprepared for what this would mean for the provision of legal services to the indigent. This is especially so, given that physical access to premises and a telephone line for inquiries are crucial, considering the prevalence of inequitable access to data. The quality-of-service provision is probably a second priority when clients cannot access lawyers. Remote services such as telephone or social media platforms, WhatsApp, or virtual platforms such as Zoom, Skype and Teams are also inaccessible to many indigent persons. Such difficulty in accessing remote platforms is exacerbated by network coverage problems, unaffordable data, and constrained access to relevant technology.

²⁵ See Holness *Coordinating Free Legal Services* 299.

²⁶ See Holness 2021 *LDD* 8.

4 The status quo in respect of service quality monitoring and assessment in South Africa

The service provision records and other reports of eThekweni's civil legal aid providers almost uniformly show inadequate (or no) quality assurance mechanisms to safeguard the interests of their vulnerable clients.²⁷ The research shows that minimal and often no qualitative analysis of legal NGOs was taking place at that point, although quantitative assessment was typically in place.²⁸ For example, the University of KwaZulu-Natal Law Clinic had independent qualitative assessment of civil legal aid provision in place, but such assessment was totally lacking for the Lawyers for Human Rights, ProBono.Org, the Black Sash, and the Durban Bar's *pro bono* work. LASA's Durban Justice Centre Civil Unit and the Community Law and Rural Development Centre (when it existed) had qualitative assessment mechanisms in place, but these lacked the necessary independence and overt impartiality. Finally, the Legal Resources Centre had qualitative assessment mechanisms applicable to certain projects only.²⁹ While research would need to be undertaken nation-wide, given the situation in eThekweni it can be assumed that legal NGOs operate along similar lines in different offices and that the norm in South Africa is a lack of qualitative research in legal aid service provision. The monitoring and evaluation of legal services provided by legal NGOs (and possibly by some university law clinics) could be established by donors or by independent third parties paid by donors. However, such a process would be donor-driven and therefore might be skewed towards meeting the objectives of a particular project funded by a particular donor. Thus, the process would not be independent and impartial and would assess only part of the work that an organisation does.

No current requirement is placed on legal aid providers to obtain continuous education or skills training as a measure to promote the quality of services rendered.³⁰ Furthermore, there is no administrative remedy available if a person receives legal aid services and the legal aid provider is unprepared or unqualified or if the services are otherwise of poor quality. The formal accreditation scheme in place for legal aid providers through recognition by the Legal Practice Council of that provider, is limited to its status as a free provider of legal aid to the indigent and similar requirements. Therefore,

²⁷ See Holness *Coordinating Free Legal Services* 70-149.

²⁸ See Holness *Coordinating Free Legal Services* 89.

²⁹ See Holness *Coordinating Free Legal Services* 147.

³⁰ See Holness 2017 https://globalaccessstojustice.com/files/national_reports/national-report-south-africa.pdf 29.

such accreditation "is not dependent on showing quantitative output of work or the quality of assistance provided".³¹ Maphumulo suggested that professional negligence claims could increase as a result of private attorneys' unpreparedness for remote working and their inability to access clients or court services when the Covid pandemic began.³² Areas of potential negligence would include an inability to take proper instructions timeously, and accessing sources of law in order to follow client instructions or serve pleadings. All of these may have resulted in an inability to institute proceedings in some instances. The prescription of matters may also have arisen as a direct consequence of these failures. Whether and how these eventualities affected legal aid providers is unknown.

While it is necessary and valuable to establish what the main legal needs of indigent clientele are and whether legal aid organisations are providing services aimed at meeting these needs, this does not go far enough. It is then imperative to ensure that the legal services provided are of a requisitely good standard. To do this, legal aid providers need to have in place appropriate quality assurance measures and mechanisms. Already in 2005 Paterson, who has considerable practical experience in legal aid quality review in the Scottish legal system and in other countries, noted that:

One of the most striking developments in the international arena of legal services in the past decade relates to the quality of work done by legal aid lawyers and how this has become a topic of central concern.³³

Seventeen years later South Africa would appear to have quite some catching up to do in this regard.

5 Specific NGOs and quality assurance

5.1 Legal NGOs

As indicated above, it is most common in South Africa's legal aid sphere that quantitative assessment is done but not qualitative assessment.³⁴ In other words, such monitoring and assessment was verifying the number of clients consulted and the number of matters resolved – as opposed to the quality of the work produced.

³¹ Holness 2017 https://globalaccesstojustice.com/files/national_reports/national-report-south-africa.pdf 29.

³² Maphumulo 2020 Without Prejudice 35.

³³ Paterson 2005 http://internationallegalaidgroup.org/images/publications/killarney2005/conferencepapers/Alan_Paterson_-_Peer_Review_in_Scotland.pdf 1.

³⁴ See Holness *Coordinating Free Legal Services* 89 and 147.

5.2 Legal Aid South Africa

LASA has what it terms quality assessment, but this is done in-house by the LASA employees themselves.³⁵ As noted later, a call is made in this article for assessment of legal aid work to be done from outside the service provider, so that it can be seen to be objective.

5.2.1 Telephonic legal advice

There is no evidence of quality control mechanisms for the telephonic legal advice offered by LASA or university law clinics, especially under Covid.³⁶

5.3 Pro bono work in South Africa (by lawyers in private practice)

Separate research has discussed *pro bono* work (now to be under the *Legal Practice Act 28* of 2014 [the LPA] section 29) as one necessary element of a multi-faceted and coordinated South African legal aid system – especially in civil matters.³⁷

Even pending section 29(1)(b) of the LPA becoming operational, there already existed rules for each of the provincial law societies (for attorneys) and bar councils (for advocates), for the mandatory provision by legal practitioners of a certain number of *pro bono* hours per year. There is not yet any change in terms of the necessary regulations under the LPA pertaining to the *pro bono* work of legal practitioners generally. The overriding and very serious problem for both attorneys and advocates was not so much a lack of adequate *pro bono* obligations in the erstwhile rules, but rather an absence of mechanisms to gauge whether or not the requirements were being met.³⁸ This was allied with a total failure to sanction practitioners who were not meeting their *pro bono* obligations and, crucially for this paper, not ensuring the adequate quality of the *pro bono* work done.

As stated already, the introduction of mechanisms to adequately safeguard the quality of legal aid provided is an important aspect of any model for legal aid provision – as is ensuring the existence of legal aid services in the first place. This is pivotal, otherwise the provision of free legal services to the

³⁵ See LASA 2017 http://www.internationallegalaidgroup.org/images/miscdocs/SA_Country_report_-April_2017.pdf.

³⁶ South African University Law Clinic Association 2021 *Workshop*.

³⁷ Holness 2021 *LDD* 10.

³⁸ See Holness 2013 *PELJ*.

indigent becomes an empty "numbers game". Thus, the legal aid services provided to the indigent must both deal with their most pressing legal needs and be of at least a satisfactory standard. The question that remains is what form such assessment should take. Dealing with challenges such as whether it would be affordable to undertake such quality assessment must also be considered. Legal aid quality assurance would have budgetary implications, but according to Schakenraad "[i]mproving quality costs a lot of money; not improving quality costs a fortune".³⁹ What this quote stresses is that costs will come with quality assurance, but a failure to introduce quality assurance will likely have dire consequences in so far as ensuring the adequacy of the legal aid provided.

6 Establishing what must be monitored and identifying existing needs

As to what form and measures of quality assessment would be appropriate for the provision of legal aid in South Africa, it is useful to consider the experiences of quality assessment in other jurisdictions and their likely applicability in this country.

6.1 Who should do the assessment?

A useful starting point when it comes to considering adequate forms of legal aid quality assessment is accepting the need for the assessment to be undertaken by suitable persons. Suitability is from the perspective of assessors being sufficiently knowledgeable and established in the legal aid field and independent of those being assessed.⁴⁰ There is a need for independent and otherwise appropriately qualified assessors to undertake impartial assessments for the sake of credibility and the necessary appearance of impartiality and fairness in the assessment process. From the perspective of quality assessment, it is suggested that appropriate assessors would come from the ranks of sufficiently experienced legal aid practitioners in organisations separate from the one being assessed. There has been a call for the establishment of a representative body made up of members from all the legal aid providers in the country and other interested stakeholders – created to properly coordinate the legal aid efforts.⁴¹ An assessment subcommittee of such a South African legal aid association

³⁹ Schakenraad 2009 http://216.92.68.58/conf_2009/papers/Guido%20Schakenraad%20Conference%20Paper.pdf 1.

⁴⁰ See Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 1.

⁴¹ Holness 2021 *LDD* 7.

would be well placed to facilitate or perform such quality assessments. It would be incumbent on assessors who consider that they have too close a relationship with the legal aid organisation or particular staff member of the organisation being evaluated to recuse themselves from that particular assessment.

6.2 Means of quality assurance of case files

This paper does not detail the pros and cons of different quality assurance measures and systems. Such detailed analysis has already been undertaken by others. For example, in weighing up the advantages and disadvantages of various means of quality assurance on the work of legal aid service providers, Paterson and Sherr concluded that: "it is understandable that the majority of peer review programmes rely principally on *case file review* against agreed criteria".⁴² A very limited analysis from a few other jurisdictions is provided below on this topic. However, this research focusses on stressing that the proper implementation of appropriate means of quality assurance, whatever form that may take, is non-negotiable. This must be the case if legal aid clients are not to be sold short in the quality of the legal services provided to them.

The creation of a quality assessment mechanism of South African legal aid would have to start from the ground up. In this context it would be logical to adopt the "peer review" mechanism implied in the previous paragraph and found by Paterson's extensive research to be main way in which legal aid quality assurance assessments have been effectively conducted around the world.⁴³ It is likely to be most viable and cost-effective for the peer reviewers to follow analogous peer review programmes which rely primarily on reviewing case files against established criteria.⁴⁴ In that assessors would have to take time out of their own work schedules to conduct quality assessments at particular legal aid providers, it would be viable for only a set proportion of case files be assessed. However, some objective means

⁴² Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=393112> (own emphasis added).

⁴³ See Paterson 2005 http://internationallegalaidgroup.org/images/publications/killarney2005/conferencepapers/Alan_Paterson__Peer_Review_in_Scotland.pdf 1. Similarly, Paterson and Sherr note that "Peer review has established itself as a success story in a range of jurisdictions across the globe"; "... it has demonstrated its value as the *gold standard* in relation to quality assessment and assurance"; Paterson and Sherr 2019 http://internationallegalaidgroup.org/images/miscdocs/Conference_Papers/Peer_Review_and_Cultural_Change.3docx_28APAS29.pdf 19.

⁴⁴ See Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=393112>.

of determining the files for assessment would have to be adopted. For instance, the sample of files for assessment must provide a good range of the type of cases conducted. Also, the organisation or individual being assessed should not be able to hand-pick which files would form part of the sample. The self-evident logic behind this submission is to prevent a skewed assessment where the sample of files for review is specifically those the assessed party wants to be considered because the party put most of its efforts into those matters and neglected others.

6.3 Means of quality assurance beyond case files

A weakness of over-reliance on case file review as the chief means of quality assessment of civil legal aid organisations is that such assessment omits the work done for clients which does not involve the opening of a case file. Several legal aid providers in South Africa have been shown to have assisted many clients in this way.⁴⁵

When it comes to clients who are assisted purely by way of an initial consultation and advice being provided to them, an alternative means of quality assurance would be required. A possibility in this regard would be for assessors to request such "advice given clients" to complete a standard-form questionnaire. This could indicate their degree of satisfaction with the assistance and advice they received. These questionnaires would then all have to be considered by an objective assessor in terms of coming to an inclusive determination of the client evaluations of "only advice given" matters received for a particular service provider. Similarly, the community rights awareness training work of a legal aid organisation, which is an important part of the work of several legal aid providers such as the Black Sash mentioned above – is not assessed in reviewing case files. Again, a separate form of quality assessment would be necessary to gauge the quality and impact of such training. The type of student and peer evaluations of the teaching by academics in a university context could be appropriately adapted to assessing and evaluating the community rights awareness training conducted by legal aid providers. Conducting a form of self-assessment could be a useful tool for reflecting on one's own work, and that might promote an improved quality of work. Such self-assessment is supported at length by Ogilvy whose guidelines to law clinics (in the American context) identify the quantity and quality of legal representation

⁴⁵ See Black Sash date unknown <http://www.blacksash.org.za/>.

by law clinics as a key feature that requires monitoring and evaluation.⁴⁶ Ogilvy explains:

Typically, more important measures of effectiveness in terms of client service in clinical programs are whether clients are served in a timely manner, and with dignity and sensitivity, and whether the outcomes achieved for clients are consistent with high-quality representation.

Programs may evaluate whether clients are treated with dignity and sensitivity by asking clients for their perceptions of the program's representation of them upon closure of their cases. Other sources of information of this measure can be surveys of judges, hearing officers, judicial and agency staff, and others who have the opportunity to observe the program's faculty and student attorneys interacting with program clients.

Measuring whether outcomes obtained for clients are consistent with high-quality representation may be more problematic. Quality of representation outcomes may be expressed in terms of substantive outcomes typical for each type of case or representation and tied to high benchmarks for success set by the clinic for its representation.

6.4 Quality criteria

In terms of the criteria against which the quality of legal aid services in South Africa should be assessed, there is a need for objective and established assessment criteria. All members of the yet to be established legal aid association envisaged in this paper should be party to the creation of the assessment criteria chosen and the measures for fulfilling those criteria would be benchmarked. Adopting a consultative process in deciding on the criteria and levels of performance is more likely to result in greater credibility in the eyes of the affected lawyers regarding the ultimate quality assurance assessment reached. Also, the same quality assessment standards would apply to all the organisations. For the assessors to make an informed evaluation there should be sufficient criteria for a range of all the core competencies to be gauged.⁴⁷ For example, it would be insufficient if only correspondence sent out to other organisations was assessed. Other aspects such as the adequacy of consultation notes made with clients or adequate file organisation and the diarising of matters are equally important.

There need to be levels of performance in the assessment of legal aid as being desirable in allowing a more detailed appraisal rather than merely deciding between whether work done is adequate or not.⁴⁸ Having levels of

⁴⁶ Ogilvy 2014 TM Cooley *Journal of Practical & Clinical Law* 127.

⁴⁷ See Holness *Coordinating Free Legal Services* 302.

⁴⁸ For example, one could have a scale of say four, five or six "grades" going in a spectrum from "totally inadequate" up to "excellent", with categories between these such as "inadequate", "adequate" and "good".

performance would be an incentive for legal aid practitioners to go the extra mile in terms of the acknowledgement of the superior quality of their work. For the same reasons it is suggested that such a grading of performance, as well as the formative assessment techniques, be applied to the quality appraisals to be introduced.

6.5 Mechanisms abroad and their application to South Africa

South Africa is not alone in lacking any comprehensive or overriding form of quality assurance of legal aid.⁴⁹ The United Nations has noted that: "Quality is a constant issue in emerging legal aid systems".⁵⁰ Quality assurance measures and mechanisms on and of the work of legal aid service providers could conceivably take various forms which might all be effective in certain ways and less so in others. There is also much which may be learnt from the quality assurance techniques and approaches which have been successfully (or unsuccessfully) developed and implemented in certain other countries. For example, a peer review system under the Quality Assurance Committee of the Law Society was introduced in Scotland for "all civil legal aid and advice and assistance practitioners" there.⁵¹ Paterson notes that while various measures and meanings of "quality" and "quality assurance" in this context have come to the fore, the principal way of performing quality tests in legal aid is using such "peer review" mechanisms.⁵²

In terms of how comparative examples may be constructively used, the Netherlands showed how it was able to successfully adapt the Scottish legal aid peer review system using Dutch criteria to assess their own legal aid files.⁵³ Similarly, while South Africa could learn some valuable lessons from the legal assessment criteria adopted elsewhere, it would need to ensure that these are appropriate in the South African context. Likewise, techniques from elsewhere would need to be a proper fit for this country. Otherwise, they would need to be suitably adapted or should simply not be followed. Such necessary adaptation would allow for the socio-economic context in which South Africa's legal aid system operates, allied with key legal aid

⁴⁹ Reference to Myanmar's lack of quality assurance mechanisms is identified in Aung and Kamiko 2019 https://ritsumei.repo.nii.ac.jp/?action=repository_action_common_download&item_id=5285&item_no=1&attribute_id=22&file_no=1.

⁵⁰ See UNDP 2013 https://www.academia.edu/24661038/Quality_of_Legal_Aid_and_New_UN_Principles_and_Guidelines_on_Access_to_Legal_Aid 19.

⁵¹ Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 9.

⁵² See Paterson 2005 http://internationallegalaidgroup.org/images/publications/killarney2005/conferencepapers/Alan_Paterson_-_Peer_Review_in_Scotland.pdf 1.

⁵³ See Schakenraad 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 3.

deliverables to be identified by stakeholders, to be appropriately reflected in the legal aid quality assurance system adopted by the collective.

Paterson and Sherr's research into peer review and quality assurance of legal aid provision notes that the assessment of quality assurance must be conducted by suitable persons. In this regard, they stress that those who do the assessment must be both "independent" as well as sufficiently knowledgeable and established in the field.⁵⁴ The need for quality assessors who are truly independent from those they are assessing is vital for two reasons. First, independent assessors should provide impartial assessment which is likely to be considered more credible. Secondly, such an assessment would have to have the overt and necessary appearance of impartiality and fairness, including to the public.

Over and above the appointment of appropriate persons to act *qua* quality assurance assessors, Paterson and Sherr conclude that there must be "a set of criteria and levels of performance agreed with the professional community" against which the performance of practitioners may be duly, fairly and appropriately tested.⁵⁵ This statement needs to be broken down and commented upon.

First, while this requirement should be self-evident, it is vital that the quality assurance measures and mechanisms to gauge the work of legal aid service providers are based upon established criteria (as opposed to a "gut feel" type of appraisal). These criteria must be in place well in advance of the assessment process and should be made known to the lawyers being assessed. The criteria should be the same for all those being assessed and ought to be objectively ascertainable. For the assessors to be able to draw an informed conclusion on the work they are assessing, it is necessary for there both to be sufficient criteria for a range of competencies to be gauged⁵⁶ and related thereto for these criteria to cover the core competencies sought.

Secondly, the existence of levels of performance is desirable as this would allow a more detailed appraisal than merely deciding between whether work

⁵⁴ Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 1. These authors may be said to imply the requirements of those doing this assessment being sufficiently knowledgeable and established under the more general term of being "experienced". Being knowledgeable and established in the field would imply that the assessor has worked for some time and is well respected in the legal aid sphere.

⁵⁵ Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 1.

⁵⁶ Paterson and Sherr 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 1.

done is adequate or not. Having levels of performance would also provide an incentive for those legal aid practitioners who excel to have this excellence acknowledged through a high "grading". Such excellence would have to be evident from their assessed work. There is a need "to establish where on this continuum a particular [legal aid] service provision could be said to fall?"⁵⁷

Finally, to induce legal aid practitioners to be cooperative and supportive of the quality assurance process (as opposed to perhaps seeing it as time-wasting bureaucracy), Paterson and Sherr suggest that the criteria and levels of performance are reached through a process of negotiation with the legal professionals. Adopting such a consultative process when deciding on the criteria and levels of performance is far more likely to persuade affected lawyers that the quality assurance assessment "result" is credible.

The experience in the Netherlands highlights the value of considering the successful legal aid quality assurance techniques and lessons of other countries, while also ensuring their adaptation to local needs and contexts. It is a feather in the cap of the legal aid quality assurance system of Scotland that the Netherlands has chosen to follow the Scottish approach very closely in their own initiatives. In this regard it has been reported that:

With the support of the [Dutch] Legal Aid Board ... [the] Viadicte Foundation introduced a pilot peer review programme employing the peer review system used with legal aid solicitors in Scotland. Nine reviewers were trained by Professor Alan Paterson of Strathclyde University ... using Dutch criteria which were tested on Dutch files.⁵⁸

A crucial element of the Dutch experience above is that while they have borrowed extensively from Scotland's legal aid quality assurance system, they introduced their own criteria and yardsticks against which the quality of their own legal aid services was considered. South Africa should take heed of this when considering best practices abroad.

There is regrettably limited research on legal aid quality assessment in Africa, partly because needs analyses (baselines) are still being drafted to identify where legal aid accessibility can be improved.⁵⁹ On that score,

⁵⁷ Paterson and Sherr 2019 http://internationallegalaidgroup.org/images/miscdocs/Conference_Papers/Peer_Review_and_Cultural_Change.3docx_28APAS29.pdf 2.

⁵⁸ Schakenraad 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311> 3.

⁵⁹ See Revolutionary Government of Zanzibar 2020 https://utumishismz.go.tz/docs/qKRpj727B7_LEGAL_AID_BASELINE_ASSESSMENT_REPORT_2020.pdf 34. This identified the need for monitoring and evaluation to take place to ensure ethical and accountable representation; and see HiiL 2017 https://www.hiil.org/wp-content/uploads/2018/07/hiil-report_Kenya-JNS-web.pdf.

however, other African countries are ahead of South Africa. The development of quality indicators adapted to our African context, however, is still nascent.

7 Monitoring and evaluation challenges

Despite this paper's call for legal aid quality assessment in South Africa, this should not be interpreted as denying the challenges of implementing such a quality assurance system or the many different guises that such a vetting process could viably take. Perhaps the biggest challenge is that peer review processes are costly to introduce and run.⁶⁰ But the fact that legal aid faces challenges of limited funding is a widespread phenomenon. Barendrecht and van den Biggelaar note that many countries struggle to maintain an affordable and sustainable legal aid system. Such challenges would also apply to the monitoring and assessment of legal aid quality. But these authors show how the adaptation in the Netherlands of an "interactive consultation process" between legal aid suppliers and users was able to develop proposals for successfully increasing access to justice whilst limiting the costs of providing the services.⁶¹

It is therefore argued that existing funding limitations should not be seen as an insurmountable obstacle to widening the scope of legal aid provision and improving its quality through the adoption of a coordinated and well-planned approach. Furthermore, funding proposals should make provision, as a specific line item, for the cost of monitoring and evaluation. At the same time careful planning is called for, particularly at the level of a proposed legal aid association, on how most effectively to utilise what monies are available. It is clear that part of an adequate legal aid service is properly assessing the standards and adequacy of the services provided.

Another challenge is that the work of university law clinics, legal NGOs and private law firms is different, not just in type, but also in terms of how they approach it. Accordingly, criteria developed for monitoring and evaluation would have to be cognisant of this difference.

Various aspects and examples of a multi-faceted approach to the provision of free legal services for the indigent have been provided by the

⁶⁰ See Paterson 2005 http://internationallegalaidgroup.org/images/publications/killarney2005/conferencepapers/Alan_Paterson_-_Peer_Review_in_Scotland.pdf 11.

⁶¹ Barendrecht and van den Biggelaar 2009 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1387716 2.

International Legal Aid Group (ILAG).⁶² The paragraphs which follow will draw significantly from the experiences and inputs of ILAG members and delegates to its biennial conferences.

8 Proposals for means of legal aid quality assurance

8.1 Coordination of service providers

As noted above, a key part of separate research into the coordination of legal aid services in South Africa called for the establishment of a legal aid association.⁶³ The association would be responsible for safeguarding the quality of civil legal services provided. This would align with what the United Nations has said as to ensuring the quality of legal services via "Establishing structural and organizational measures to facilitate delivery of quality services".⁶⁴

The above submission calls for broad representivity within the association to include input from each legal aid provider, representatives of the legal aid clients themselves and other stakeholders. Such an association, operating properly, should provide the legal aid system with the requisite flexibility called for above and an appropriate net for peer evaluation of service provision. Such flexibility should facilitate the necessary adaptation of legal aid providers and their services to meet ever-changing client needs and then ensure that what is being provided is of sufficient quality.

8.2 Clustering

A method of encouraging more coordinated work between different legal aid providers is the establishment of "clusters" of legal aid service providers. The concept of legal aid "clusters" has been the subject of scholarly interest. A cluster involves different legal aid service providers working together for mutual benefit. For example, a university law clinic could have a cluster arrangement with various paralegal offices⁶⁵ outside of the geographical

⁶² ILAG is a "network of legal aid specialists" from countries throughout the world. "Its mission is to improve evidence-based policy-making in the field of poverty legal services through discussion and dialogue relating to international developments in policy and research." ILAG date unknown http://ilagnet.org/index.php/en/201309-24-22-36-34.html?highlight=WyJwYXRlcnNvbiJd_

⁶³ See Holness 2021 *LDD* 9.

⁶⁴ UNODC 2019 https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf_

⁶⁵ Holness highlights the significant role that community-based paralegals can and do play in promoting access to justice. But what he also stresses is the need for oversight over their work as they are not admitted legal practitioners and have

area where that law clinic operates.⁶⁶ An example of such a clustering arrangement between a law clinic and surrounding paralegal advice offices is the University of the North West's paralegal project which is being run from their Mahikeng offices.⁶⁷

A clustering relationship lends itself well to monitoring and evaluating the work done by individual organisations in the cluster, as they have direct and regular contact with one another as part of their clustering arrangement. The establishment of a cluster including two or more organisations would likely be to their mutual benefit. This is due to establishing best practice between them and providing a logical mechanism for the one to provide quality assurance over the other. In addition to the overall coordination provided by an overarching legal aid association, such legal aid clusters would add an additional layer of cooperation and coordination between civil legal aid providers with aligned service goals. What makes clustering so significant to this research is that members of a cluster would be well placed to peer review the quality of the work of other members of the cluster.

8.3 Pro bono work by legal practitioners in private practice

It has been questioned whether the South African legal profession (in private practice) has shown serious commitment to improving access to justice for all through the provision of *pro bono* service by its members.⁶⁸ It would arguably be preferable to have no stated *pro bono* requirements at the legal professional controlling body level rather than the empty promises which the *pro bono* "rules" would seem to amount to at present. It is in this context that a similar lack of policing and enforcement of *pro bono* prerequisites, including the monitoring and assessment of the quality of the service provided, are specifically and carefully guarded against regarding the *pro bono* requirements for admitted legal practitioners. These requirements are to be brought in under section 29(1)(b) of the LPA. In essence, then, the rules or regulations need to ensure compliance with a set number of *pro bono* hours required of legal practitioners annually. However, measures also need to be in place to monitor and evaluate the quality of such work so that there is not just a mechanical approach to performing one's *pro bono* obligations.

varying forms of qualifications and training. Holness 2013 *Journal of Juridical Science*.

⁶⁶ Donovan 2012 <https://namati.org/news-stories/paralegals-support-the-justice-system-as-a-whole/>.

⁶⁷ NWU Faculty of Law date unknown <https://law.nwu.ac.za/Community-Law-Centre>.

⁶⁸ Holness 2013 *PELJ*.

The assessment of recorded *pro bono* work needs to have quantitative elements in confirming that the recorded work rightly qualifies as *pro bono* work and that the reported number of hours is accurate. Furthermore, the assessment must be qualitative in providing measures to ensure that the work performed is of a satisfactory standard. Just because the work done is free does not mean that it should be of lower quality than that produced for paying clients. Finally, adequately punitive sanctions need to be imposed on lawyers who fail to meet their *pro bono* obligations – both quantitatively and qualitatively.

McKeown writes that being part of a *pro bono* project may improve a lawyer's reputation or that of their firm:

It provides the opportunity for lawyers to work on interesting issues they might not deal with in their routine work and opens doors to areas of paid work outside of their usual business. It can also be a great opportunity for young lawyers to develop their skills.⁶⁹

This last point is made as performing *pro bono* work need not merely be an altruistic endeavour by the legal service provider but may concurrently have a range of practical benefits for the lawyer concerned. Therefore, legal practitioners should not fear the monitoring of their *pro bono* services. Satisfactorily performing *pro bono* work will have the aforementioned desirable consequence.

As to the possible cost of evaluating *pro bono* work done by lawyers in private practice, part of hourly output requirements could come from peer review. Probono.Org has introduced annual awards for meritorious work in the *pro bono* sphere.⁷⁰ However, while it is good to recognise individual *pro bono* contributions, this does not provide continuous monitoring of *pro bono* services rendered or assessed beyond those shortlisted for awards.

8.4 Telephonic legal advice quality control

It is suggested that on the face of it the service of legal aid is clearly widened by telephonic legal advice. It is understandable that many of the legal NGOs and university law clinics introduced telephonic consultations during the

⁶⁹ McKeown 2011 <http://rightsni.org/2011/11/pro-bono-lawyers-provide-access-to-justice-across-europe/> 1.

⁷⁰ ProBono.Org date unknown <https://probono.org.za/>.

Covid-19 pandemic to avoid or limit face-to-face consultations.⁷¹ Even before Covid, LASA had in place a telephonic legal advice call centre.⁷²

But there must be quality controls of the telephonic advice given. It could be problematic if the wrong advice or information were to be dispensed. In the case of LASA, their telephone help lines are staffed by paralegals, making the need for oversight and evaluation even more crucial.⁷³ There are challenges and potential problems, however, when consulting with clients over the telephone – especially a prospective client's initial consultation. Such problems include the fact that legal aid should be dispensed to indigent individuals, and yet those able to afford a private lawyer may use up valuable resources in the form of legal aid by using the latter's telephonic advice desks. Also, it could be that the person dispensing legal advice telephonically has not been given the whole story by the prospective client (for example without having access to relevant documentation), thus making the likelihood of dispensing erroneous or incomplete advice more likely. As to reducing the likelihood of erroneous telephonic advice:

- Those giving advice telephonically would need to be appropriately supervised. For example, if a question cannot be answered it could be escalated to someone with more experience.
- Linked with close supervision is proper training of those providing telephonic assistance.⁷⁴
- Telephone calls should be recorded and subsequently listened to in order to ensure that the information supplied was correct.

8.5 Objectives of a needs analysis

Currie highlights the need for any legal aid model to comprehensively establish what pressing, unmet legal aid needs of the indigent are not being catered for by the existing legal aid system.⁷⁵ This would be done by considering the number and nature of requests for legal aid compared with those assisted by legal aid providers. Empirical research is necessary to

⁷¹ SAULCA'S intraweb notes those university law clinics that have adopted telephonic initial consultations with clients. Among those listed are the clinics at five universities (Free State, Limpopo, Venda, Pretoria and Walter Sisulu). The intraweb is password-protected. Statistics available from the author.

⁷² LASA date unknown <https://legal-aid.co.za/legalaidsa/>.

⁷³ Holness *Coordinating Free Legal Services* 302.

⁷⁴ See the earlier comment as to community-based paralegals requiring appropriate supervision.

⁷⁵ Currie 2001 <http://216.92.68.58/conference/ilag2001.htm> 1.

establish the full extent of the need for legal aid in South Africa. Such baseline research is called for because additional prospective clients may not have requested legal assistance because of either being unaware of their legal rights or of the existence of a legal aid provider to assist them or being unable to access the services. Establishing whether the main legal aid needs of an area are being met can be said to be connected to quality assessment, given that if the needs are not being met it cannot be said to be a satisfactory legal aid system.

Allied with the need to establish what unmet legal aid needs exist, Kádár calls for any legal aid system to comprehensively establish the capacity of legal aid providers to meet existing legal aid needs.⁷⁶

There is scope for future research into client satisfaction evaluations in relation to the quality of the legal aid services provided. This is needed as:

There is no obvious evidence of the client community participating in governance of or setting priorities for legal aid, nor is there available information or statistical data evaluating the public's perception of the legal aid institution. Clearly having client input on both of these aspects would be advantageous to the legal aid on offer.⁷⁷

Disciplinary procedures are used in South Africa to act against legal practitioners who are unethical or commit misconduct. However, those processes address worst case scenarios and do not check on the quality of the day-to-day provision of legal aid. They are therefore ineffective proxies for quality assurance. Complaints are "reactive", which means that proactive measures to mitigate problems are not likely to be used. Its individual focus means that monitoring a wider scope of the legal practitioners' work to determine systemic challenges is unlikely to occur.⁷⁸ Furthermore, non-legal practitioner staff used by legal aid providers, such as paralegals, are not regulated. This affects accountability and would leave the complainant without a remedy. The quality assurance of their work falls outside the scope of this study.

Importantly, determining whether legal aid services meet the needs of particular groups such as women, children, persons with disabilities, refugees, and the LGBTIQ+, requires exposition in future research to

⁷⁶ Kádár 2007 <http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311>.

⁷⁷ Holness 2017 https://globalaccesstojustice.com/files/national_reports/national-report-south-africa.pdf 26.

⁷⁸ Council of Europe 2016 <https://rm.coe.int/16806ff4a8> 65.

ensure that monitoring and evaluation methods are appropriately contextualised.⁷⁹

9 Conclusion

A more multi-faceted approach to legal aid in South Africa is needed, which requires the legal aid providers to adapt their service provision to meet the changing needs of clients. Such a multi-faceted approach would lack real value if there are weaknesses in service provision in the sense of the provision of legal aid which is of inadequate quality. This research has stressed that legal aid organisations in South Africa lack adequate quality assessment of the services they provide.

As to adequate forms of legal aid quality assessment, there is a need for the assessment to be undertaken by suitable persons from the perspective of assessors being sufficiently knowledgeable, established in the field and independent of those being assessed. There is value in impartial assessment for the sake of credibility and the necessary appearance of impartiality and fairness in the assessment process. Establishing an assessment sub-committee of a legal aid association to facilitate this was noted above.

In terms of the criteria against which the quality of legal aid services in South Africa should be assessed, this paper has stressed the need for objective and established criteria. All members of a potential legal aid association should be party to the creation of the assessment criteria chosen and the measures for fulfilling those criteria should be benchmarked. For the assessors to be able to make an informed assessment requires there to be sufficient criteria for a range of all the core competencies to be gauged.

This research repeatedly acknowledges the challenges of providing a comprehensive and high-quality legal aid system for South Africa and the limitation of the funds available to do this. It is beyond the scope of this paper to consider state budgeting issues, but it can be noted that increased state budgeting for the provision of legal aid and other sources of funding for this would improve the scope of the legal aid services provided and the viability of their being adequately assessed.⁸⁰

⁷⁹ See for example UNDP 2014 <https://www.undp.org/sites/g/files/zskgke326/files/publications/Legal%20Aid%20Service%20Provision%20-%20A%20Guide%20on%20Programming%20in%20Africa.pdf>.

⁸⁰ For example, the Legal Practitioners Fidelity Fund currently funds or subsidises worthy legal educational and legal aid projects. It does this through annual grants

The negative impact of the Covid-19 pandemic on access to legal aid will be felt over time. In turn, the quality of the services rendered during this time requires careful monitoring and evaluation, particularly in areas such as telephonic legal assistance. While service providers can account for the clients they assist, accounting for those that have not been able to access legal aid when it was needed is a more difficult task. Baseline research identifying and analysing citizens' legal aid needs is vital, now more than ever. Such data would allow service providers to carefully calibrate their services and monitor and evaluate those services rendered, in order to closely attend to prospective clients' needs.

Bhabha believes that there is a need to institutionalise access to justice.⁸¹ This paper has just such a goal in mind for South Africa. A full legal needs analysis will have to be undertaken. The extent to which those needs are being met and by whom will be best established by adopting a coordinated approach to the delivery of legal aid which, critically, includes the monitoring and evaluation of the quality of the services provided. This model, if implemented, should institutionalise access to justice, providing for a high-quality civil legal aid scheme that works optimally and covers the key civil legal aid needs through a multi-faceted yet coordinated approach in which the quality of the services provided is a central component.

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⁸¹ Bhabha 2007-2008 *Queen's LJ* 139.

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List of Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ILAG	International Legal Aid Group
LASA	Legal Aid South Africa
LDD	Law, Democracy and Development
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual and Questioning
LPA	Legal Practice Act
NGO	non-governmental organisation
NPO	non-profit organisation
NWU	North-West University
PELJ	Potchefstroom Electronic Law Journal
Queen's LJ	Queen's Law Journal
SAHRC	South African Human Rights Commission
SAULCA	South African University Law Clinic Association
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime