

# The sad, but true, state of South Africa's legal aid system

*The wheels of justice are painfully slow in some parts because of the ineffective legal aid system, writes Marius Odendaal.*

IN REPLY to B Nair's comments "Committed to quality" (*The Mercury* Forum, February 14), I have the following to say:

I fully agree with the comments by Derrick Mduli of the Justice for Prisoners and Detainees Trust.

I am a regional court magistrate with 19 years service as a magistrate, and 32 years service in total.

I have never met Mduli or Nair, so my comments are totally neutral.

I write of my personal experiences and not as a spokesman for the Department of Justice. I do not wish to attack Nair, but wish to bring the following to his attention:

His comments are probably his management's training objectives for new legal aid attorneys, but that is not the reality in the courts.

I have served for 18 years in KwaZulu-Natal courts and now for one year in the Eastern Cape regional court (Mount Frere, Mbizana, Mount Fletcher, Lusikisiki). The problems Mduli has outlined are encountered by us daily in all courts. I am also not taking the part of any accused person now, but am very concerned that the wheels of justice have ground to a crawl in some parts as a result of the ineffective legal aid system.

Let's take it step by step.

When an accused first appears in the district courts, his or her rights are explained.

He/she can apply for a legal aid attorney.

In the regional court we deal mainly with murder and rape cases.

Those accused are all granted legal aid. The legal aid attorney then assists the accused with bail applications until the case is ready for the regional court.

When the accused first appears in the regional court,

KwaZulu-Natal to finalise part-heard cases, for example Matatiele (570km), only to find the legal aid attorney is not present. The wasted costs must then be borne by the Department of Justice.

More than 80% of the cases in the Eastern Cape regional court have been postponed because of legal aid problems.

In the past, we could finalise 40 to 60 cases a month. Now an average of four is deemed good. Nair will agree with me that that is an extremely low finalisation record.

From January 1 2008, the regional court has been able to impose life imprisonment for murder. For that reason, highly experienced legal aid attorneys are required.

Not in the Eastern Cape! Inexperienced legal aid attorneys are thrown in the deep end.

The magistrate is now expected to see to the accused's rights. But the court may not assist an inexperienced prosecutor. A magistrate or judge is not a litigating party.

We cannot assist any party.

I have drawn up a form to be used in court by legal aid attorneys. I have also written (and passed) the law society exams for attorneys and know what they are supposed to do in court. It is totally at their discretion to use the form or not, but it is intended to ensure the accused gets fair assistance from the legal aid attorney.

I lost four-and-a-half hours a day (Monday, Tuesday, Wednesday) last week because of legal aid problems. All magistrates submit monthly returns to their regional court presidents with reasons for lost hours. Nair may scrutinise those.

I wish to repeat that my reply is merely an attempt to make Nair aware of the true state of our court's problems with legal aid. I will gladly assist him to fix the problems.

Magistrate Marius Odendaal's qualifications are B IURUS (1981), DIPL LEGUM (1996) and B PROC (2000).



NAIR

The case gets postponed, again.

On the next date, the legal aid attorney is there, but we can't start the trial (because the attorney has not consulted the accused).

Case starts at 12.30pm.

On the next date, the legal aid attorney is absent. And so the saga continues until one day the case is finalised.

At times, I still travel to

no legal aid attorney is present.

We then phone the board's offices (in mthatha).

They have no records or file for that case.

Then the process starts all over.

After three months of delays we carry on. The trial date is set with the new legal aid attorney.

On the trial date - no attorney.

We telephone around.