



planning, monitoring & evaluation

Department:
Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

INITIAL IMPACT ASSESSMENT TEMPLATE (PHASE 1)

JULY 2016

The Initial Impact Assessment for Legal Aid Regulations

The Initial Impact Assessment aims to ensure that the policy is on the right track by requiring evaluation of alternative approaches. It should help drafters avoid finalising an inappropriate solution because they moved too quickly to select a strategy without adequately analysing the roots of the problem and considering alternative measures. It should facilitate a brainstorm about issues involved in the problem and full range of alternatives to deal with them.

1. The problem/ Theory of Change

1.1. What is the **social or economic problem** that you are trying to solve?

There is a high demand for legal representation from Legal Aid South Africa (Legal Aid SA). This puts pressure on the limited resources of the Legal Aid Board and its ability to provide legal representation as contemplated in the Constitution of the Republic of South Africa.

The regulations prescribe and limit the parameters in terms of which and the types of matters for which a person is able to qualify for legal aid assistance.

1.2 What are the main causes of the problem? That is why the problem arise and why does it persist?

Identified Problem	Main Causes of the Problem	Why the problem arises and why does it persist?
The demand for legal services from Legal Aid SA exceeds the legal services that can be supplied within the available resources.	<ul style="list-style-type: none">High demand for legal services from members of society.	<ul style="list-style-type: none">Legal Aid SA is currently using the Legal Aid Guide which is approved by Parliament but the status thereof is unclear.The members of the public cannot afford the cost of their own legal representation.

Identified Problem	Main Causes of the Problem	Why the problem arises and why does it persist?
		<ul style="list-style-type: none"> An increasing awareness by communities about their Constitutional and other legal rights increases the need for legal services.

1.3 Whose behaviours give rise to the problem, and why does that behaviour arise? Remember that several groups including some in government may contribute to the identified problem. Their behaviour may arise amongst others because the current rules are inappropriate; because they gain economically from the behaviour; or because they are convinced that they are doing the right thing. Identifying behaviours that cause the problem should point to the behaviours that must be changed in order to achieve the desired solution.

Identified Problem	Behaviour giving rise to the identified problem	Groups whose behaviour give rise to the identified problem?	Why does the behaviour arise?
The demand for legal services from Legal Aid SA exceeds the legal services that can be supplied within the available resources.	Persons are highly reliant on Legal Aid SA for legal representation	Legal Aid Applicants	Persons are unable to afford the cost of their own legal representation.
	There is an under-resourcing of Legal Aid SA, despite an increase in court cases, poverty, lack of households' income and etc.	National Treasury	There is no alignment between all role players' budget allocations in the value chain, e.g. when SAPS, the judiciary or the NPA's budget is increased there is no corresponding

Identified Problem	Behaviour giving rise to the identified problem	Groups whose behaviour give rise to the identified problem?	Why does the behaviour arise?
			increase for Legal Aid SA. The reality of current economic conditions.
	Increase in the passing of laws without allowing the necessary resources for legal assistance against such laws. (so-called unfunded mandates).	The State	The legislator does not always engage with Legal Aid SA in evaluating the impact of new legislation on the demand for Legal Aid SA's services.

1.4 Identify the major social and economic groups affected by the problem, and how are they affected. Who benefits and who loses from the current situation?

Identified Problem	Groups (Social/Economic)	How are they affected by the identified problem?	Are they benefitting or losing from the current situation?
The demand for legal services from Legal Aid SA exceeds the legal services that can be supplied within the available resources.	Children	Children are not affected as their right to legal representation in both civil and criminal matters are guaranteed by the Constitution, if they would suffer substantial injustice.	They benefit as their rights are protected by the Constitution and the policy.
	Older persons	They might not be	Whether they benefit or

Identified Problem	Groups (Social/ Economic)	How are they affected by the identified problem?	Are they benefitting or losing from the current situation?
		granted legal aid due to lack of resources.	not is dependent on whether they meet the criteria and whether there are sufficient resources available.
	Women	They might not be granted legal aid due to lack of resources.	Whether they benefit or not is dependent on whether they meet the criteria and whether there are sufficient resources available.
	Awaiting trial prisoners (ATPs)	ATPs are not affected as their right to legal representation in criminal matters are guaranteed by the Constitution, if they would suffer substantial injustice.	They benefit as their rights are protected by the policy.
	Asylum seekers and refugees	They might not be granted legal aid due to lack of resources.	Whether they benefit or not is dependent on whether they meet the criteria and whether there are sufficient resources available.
	Correctional services	Overcrowding in prisons due to high number of ATPs, awaiting trial.	Losing

Identified Problem	Groups (Social/Economic)	How are they affected by the identified problem?	Are they benefitting or losing from the current situation?
	Courts	Delays and blockages (efficiency of the justice system is negatively affected).	Losing
	NGOs and University law clinics	Depletion of resources and diminishing interventions.	They may benefit if they obtain funding to assist Legal Aid SA, provided that resources are available.

1.5 Which of the five top priorities of the State- that is Social Cohesion, Security, Economic Growth, Economic Inclusion (Job Creation and Equality) and a Sustainable Environment is/ are negatively affected by the identified problem?

National Priority	How is the priority negatively affected by the identified problem?
1. Social Cohesion	<ul style="list-style-type: none"> • Poor citizens who cannot afford legal representation are affected and perceive the justice system as biased to people who can afford legal representation. • Lack of public confidence in an effective justice system could impact on the rule of law. • The Constitution and the Bill of Rights protect the rights of accused persons and vulnerable groups. The protection must be in an equitable manner and ensure an equality of arms when they engage with the justice system.
2. Security (Safety, Financial, Food, Energy and etc.)	<ul style="list-style-type: none"> • Social conflict may result in affected members of the society taking law into their own hands due to a

National Priority	How is the priority negatively affected by the identified problem?
	<p>perceived ineffective justice system or their inability to access legal services.</p> <ul style="list-style-type: none"> • Affected members unable to retain/ recoup their assets and/ or protect and enforce their legal rights. • Lack of respect for the rule of law will undermine our constitutional democracy.
3. Economic Growth	<ul style="list-style-type: none"> • A lack of respect for the rule of law will undermine our Constitutional democracy and that will in turn negatively impact on the SA economy. • Diminished investor confidence if the justice system is perceived to be ineffective or inaccessible.
4. Economic Inclusion (Job Creation and Equality)	<ul style="list-style-type: none"> • Loss of assets that can be a catalyst for job creation in disadvantaged communities, e.g. stock theft etc. • Reputational risks for individuals who are a capable workforce and cannot afford legal representation for their cases. • Affluent persons could exclude poor persons who cannot afford legal services from participating meaningfully in the economy.
5. Environmental Sustainability	Not applicable

2. Options

2.1. List at least three options for addressing the identified problem, including (a) your preferred proposal, and (b) an option that does not involve new or changed regulation (baseline or existing option)

- a) Preferred option: Regulations in terms of section 23(1) of the Legal Aid SA Act, 2014 (Act No. 39 of 2014).
- b) Existing option: Continued use of the existing Legal Aid Guide.

2.2. What social groups would gain and which would lose most from the each of the three or above options? Consider specifically the implications for the households earning under R 7000 a month; micro and small business; black people, youth and women; and rural development.

Option	Main Beneficiaries	Main Cost bearers
a) Regulations in terms of section 23 (1) of the Legal Aid SA Act, 2014.	<ul style="list-style-type: none"> • Accused, arrested, sentenced, detained persons; • Children; and • any natural person, including women, people from rural areas, refugees, asylum seekers, people with disabilities, and older persons, who meet the relevant requirements. 	<ul style="list-style-type: none"> • Legal Aid South Africa
b) Existing Legal Aid Guide	<ul style="list-style-type: none"> • Accused, arrested, sentenced, detained persons; • Children; and • any natural person, including women, people from rural 	Legal Aid South Africa

Option	Main Beneficiaries	Main Cost bearers
	<p>areas, refugees, asylum seekers, people with disabilities, and pensioners, who meet the relevant requirements.</p>	

2.3. For each option, describe the possible implementation costs, compliance costs and the desired outcomes, listing who would bear the costs or, in case of the outcomes, enjoy the benefits.

Option	Implementation costs	Compliance costs	Desired Outcomes (Benefits)
<p>a) Regulations in terms of section 23(1) of the Legal Aid SA Act, 2014</p>	<p>Full or partial payment for legal representation of eligible applicants, whether in terms of salaries for employees of Legal Aid SA or fees payable to private practitioners or to other experts.</p>	<p>A legal aid recipient might have to render a contribution in a criminal matter if he or she exceeds the means test and is provided with legal aid despite exceeding the means test.</p>	<ul style="list-style-type: none"> • Eligible legal aid applicants receive legal representation. • A transparent, equitable and sustainable legal aid system will be provided for. • The regulations will clarify the uncertain status of the Guide.

Option	Implementation costs	Compliance costs	Desired Outcomes (Benefits)
b) Existing Legal Aid Guide	Full or partial payment for legal representation of eligible applicants, whether in terms of salaries for employees of Legal Aid SA or fees payable to private practitioners or to other experts.	A legal aid recipient might have to render a contribution in a criminal matter if he or she exceeds the means test and is provided with legal aid despite exceeding the means test.	There will be no benefit as the status of the existing Legal Aid Guide will remain uncertain if not replaced by regulations.

2.4. Based on the above table on costs and benefits, describe how different options would contribute to or detract from the national priorities. Remember this is a think-tool, so explore the issues freely.

Priority	Option 1: Legal Aid Regulations in terms of section 23(1) of the Legal Aid SA Act, 2014 (Act 39 of 2014)	Option 2: Existing Legal Aid Guide
1. Social Cohesion	<ul style="list-style-type: none"> • Ensure fair and equitable access to the justice system by all who meet the relevant criteria. • The making available of legal services serves as a safety net to communities in accessing or protecting their rights. 	Ensure fair and equitable access to the justice system by all who meet the relevant criteria.

Priority	Option 1: Legal Aid Regulations in terms of section 23(1) of the Legal Aid SA Act, 2014 (Act 39 of 2014)	Option 2: Existing Legal Aid Guide
	<ul style="list-style-type: none"> • Timely provision of legal services was shown to prevent escalating consequent problems. 	
2. Security (Safety, Financial, Food, Energy and etc.)	Not providing legal aid will increase the cost to all role players in the justice system as trials will be lengthier and the stay in correctional facilities longer.	Not providing legal aid will increase the cost to all role players in the justice system as trials will be lengthier and the stay in correctional facilities longer.
3. Economic Growth	<ul style="list-style-type: none"> • Investor confidence will be enhanced if the rule of law is upheld and access to justice is fair, equitable and ensured. • Legal aid policy will be certain as it will be provided for by secondary legislation. 	<ul style="list-style-type: none"> • Investor confidence will be enhanced if the rule of law is upheld and access to justice is fair, equitable and ensured. • The continued use of the Guide will create doubt on the legal standing of the policy.
4. Economic Inclusion (Job Creation and Equality)	<ul style="list-style-type: none"> • Equality of arms in civil and criminal matters will be protected as required by the Constitution. • A person's right to be equal before the law will 	<ul style="list-style-type: none"> • Equality of arms in civil and criminal matters will be protected as required by the Constitution. • A person's right to be

Priority	Option 1: Legal Aid Regulations in terms of section 23(1) of the Legal Aid SA Act, 2014 (Act 39 of 2014)	Option 2: Existing Legal Aid Guide
	be protected irrespective of their economic standing.	equal before the law will be protected irrespective of their economic standing.
5. Environmental Sustainability	Not applicable	Not applicable

2.5. Describe the potential risks that could threaten implementation of each option and indicate what can be done to mitigate the identified risks.

Option	Potential Risks	Mitigation Measures	Comments
a) Regulations	<ul style="list-style-type: none"> • Reductions of funding allocations. • Increase in salaries of employees of Legal Aid SA beyond National Treasury Macro Increases. 	<ul style="list-style-type: none"> • Amendments to the regulations to align the offered services to the available resources. • Implementation of efficiency enhancement matters to reduce costs. 	
b) Guide	Presiding officers will not consider themselves bound by the provisions of the Guide thereby increasing the risk of Legal Aid SA being	Implement regulations as required by the Legal Aid South Africa Act, 2014, which consequently makes the policy legally binding on all.	

Option	Potential Risks	Mitigation Measures	Comments
	<p>ordered to provide aid contrary to the policy.</p> <p>Courts will become involved in polycentric issues.</p>		

At this point, if you think the analysis points to a more useful or stimulating set of options, revise the SEIAS. You may find that you would like to combine some of the options, or that the process of discussion around the options has generated ideas that are better than your original ideas. Ideally, the three options considered should all be good ideas-that provides the best test for the final strategy adopted.

3. Summary

3.1. Based on your analysis, as reflected in the discussion of the three options above, summarise which option seems more desirable and explain?

Option (a) (regulations) is more desirable for the following reasons:

- It will promote social cohesion as it will ensure that applicants that comply with the requirements can be provided with legal aid. Since regulations have the force of law, it is expected that the level of scrutiny applied to applications for legal aid will be intensified and funds will ultimately be utilised more prudently. Since the limited resources will be utilised more prudently, it is expected that a larger number of qualifying applicants will benefit from legal aid.
- A person's right to be equal before the law will be protected irrespective of their economic standing. The perception that the law is only for the rich will slowly be eroded as more people will be in a position to defend their legal rights in court and not be excluded merely on the basis of lack of financial resources.

3.2. What specific measures can you propose to minimise the implementation and the compliance costs of your preferred option, to maximise the benefits?

- Proper strategic and business planning, to ensure efficient, effective and economical implementation will minimise cost.

3.3. What are the main risks associated with your preferred option, and how can they best be managed?

- Reductions in funding allocations. This is best managed by more prudent stewardship of funds.
- Increase in salaries beyond National Treasury Macro Increases. This will be managed on advice from the DPISA due to the potential labour relations impact.

3.4. What additional research should you do to improve your understanding of the costs and benefits of the option adopted?

- Legal Aid SA has 15 years of unqualified audits and 11 years of no-emphasis matter. This achievement has been underscored by ongoing research to ensure the implementation of the most cost effective rendering of cost effective legal service.

For the purpose of building SEIAS body of knowledge please complete the following:

Name of Official/s	Mrs W Louw
Designation	State Law Adviser
Unit	Legislative Development
Contact Details	012 406 4766
Email address	WiLouw@justice.gov.za