# DOCUMENT BUNDLE 2

25 Baker Road
Prestbury
Pietermaritzburg 3201
29 July 2011

The Board of Directors
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

Dear Board Members

BRINK/LASA/LABOUR COURT

I have commenced my action in the Labour Court for an order instating me to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended for appointment in November 2009 by the KwaZulu-Natal regional professional selection panel. Although my statement of claim was mailed to the Board secretary by registered post on Wednesday last week, I see from the post office tracking system that it's yet to be collected from the Braamfontein post office. In the meantime it's available in PDF at www.tig.org.za/LASA username: lasa password: LASA2010.

Last month Justice and Constitutional Development Portfolio Committee chairperson Luwellyn Landers MP provided me with a copy of a 'Confidential … Report … Re: Adv Anthony Brink' drawn by LASA chairperson Judge Mlambo without the knowledge or authority of the Board and sent to the Minister in March and to chairperson Landers in June.

Judge Mlambo's several false allegations in the 'Report' are the subject of my letters on Friday and Monday to Judicial Services Commission chairperson Chief Justice Ngcobo, to Minister Radebe, and to chairperson Landers. All may be read at the above-mentioned internet archive, and Board members would be well advised to do so.

On 24 November 2008 the Board delegated the authority to litigate on behalf of LASA to the CEO and CSE. CEO Vedalankar's conflict of interest obviously

disqualifies her from taking an objective decision in LASA's interest whether to oppose and defend my claim in the Labour Court, because her unlawful abortion of my recruitment behind the scenes and off the record, and her subsequent fabrication of a plainly false alibi to camouflage her reason for doing so – unsupported and contradicted by LASA's own records – lies at the heart of my case.

It therefore falls to the Board to resolve whether to conciliate or to defend my claim. For the reasons indicated in my letters to the Chief Justice, to the Minister, and to the chairperson of the Portfolio Committee, Judge Mlambo will be disqualified from participating in the Board's deliberations, and will necessarily have to recuse himself.

It remains to be seen whether the Board at last resolves to put right what has been done wrong, and prevent LASA suffering any further harm, or whether it votes to defend my claim for my appointment and other relief on the basis of a concocted version of events it well knows to be false, thereby increasing LASA's exposure in special and general damages, and dragging LASA very publicly into the mud when the matter goes to trial. Concerning the financial implications of the latter course, I respectfully call your attention to the joint and several personal liability provisions of the Public Finance Management Act, mentioned in paragraph 273 of my statement of claim.

Yours sincerely

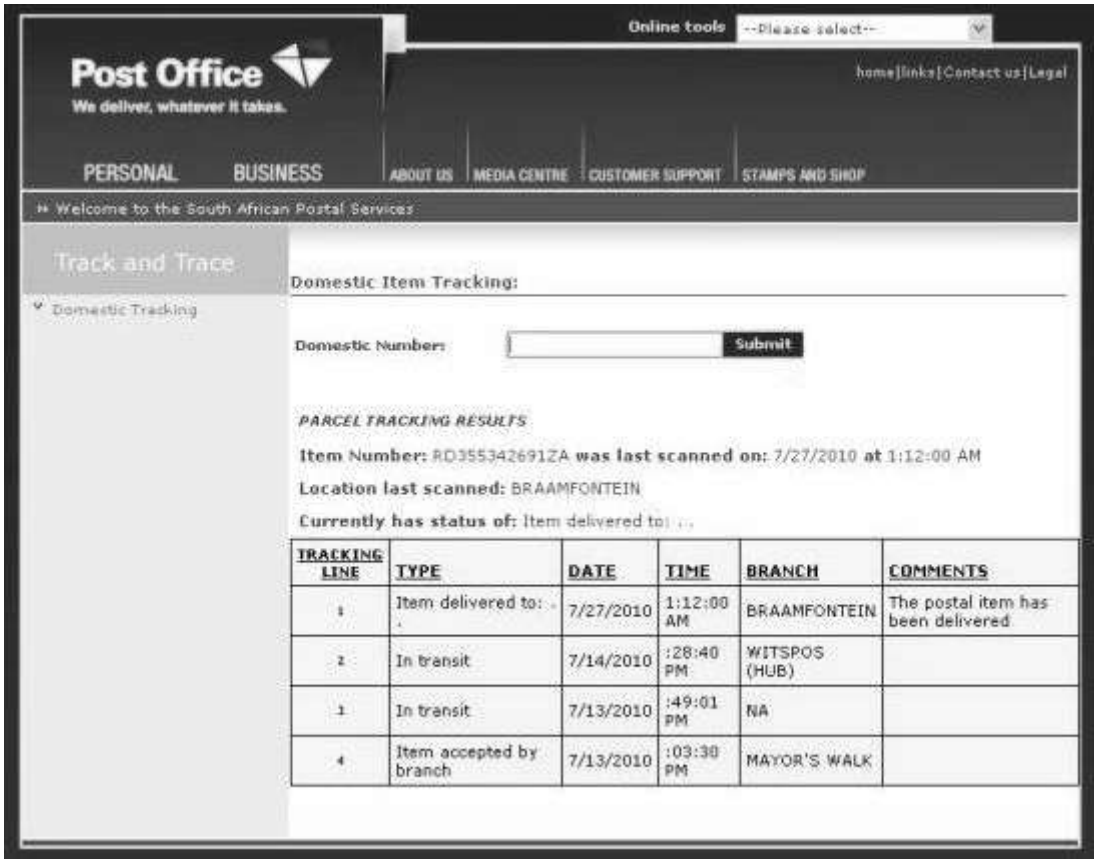
ADV ANTHONY BRINK

Cc: The chairperson of the Portfolio Committee on Justice and Constitutional Development, Luwellyn Landers MP, and all committee members

The chairperson of the Public Service Commission, Dr Ralph Mgijima

The Auditor General, Terence Nombembe

**Date of delivery of Brink's July letter to Vedalankar: 27 July 2010**



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| TRACKING LINE | TYPE | DATE | TIME | BRANCH | COMMENTS |
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| 1 | Item delivered to: . . | 7/27/2010 | 1:12:00 AM | BRAAMFONTEIN | The postal item has been delivered |
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# IMPACT LITIGATION

*"Giving Content To Our Rights"*

Legal Aid South Africa

Your voice. For justice.

Independent and within reach

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**Vision**

A South Africa in which the rights enshrined in the Constitution are protected and defended to ensure peace and justice for all

**Mission**

To be a leading provider of professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner

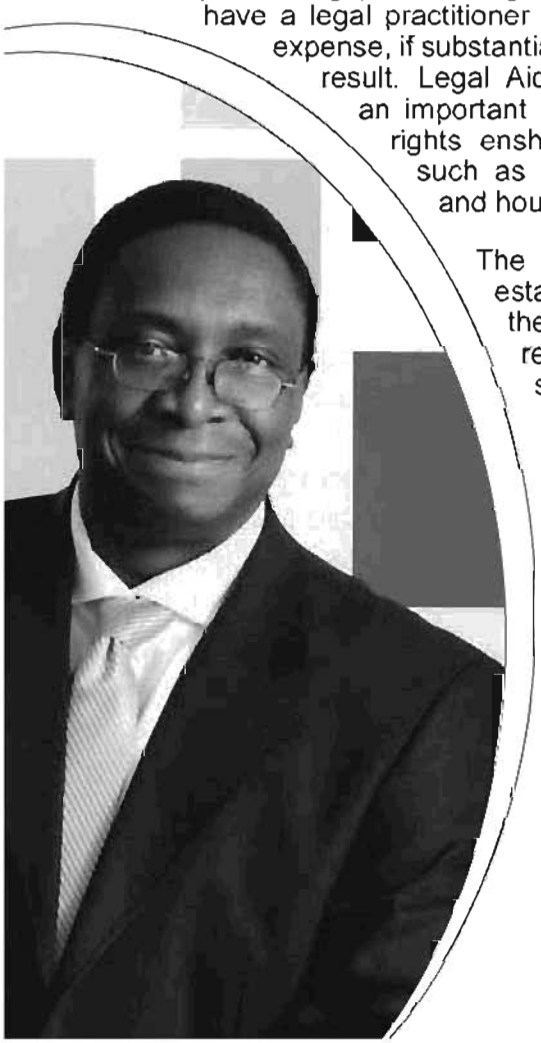
**Values**

Passion for justice
Respect for human dignity (Ubuntu) and diversity
Empowerment
Integrity
Accountability

# Foreword by the Chairperson

**Judge Dunstan Mlambo**

The objective of Legal Aid South Africa is to render legal representation at state expense where substantial injustice would otherwise result, as contemplated in the Constitution of the Republic of South Africa (Act 108 of 1996). This in turn ensures access to justice, which is a fundamental cornerstone of our young democracy. Legal Aid South Africa is mandated with the critical role of preventing substantial injustice from occurring by representing the marginalised and vulnerable. This includes protecting rights enshrined in our Constitution such as children's rights (in civil proceedings) and the right of all detained persons to have a legal practitioner assigned to them at state expense, if substantial injustice would otherwise result. Legal Aid South Africa also plays an important role in safeguarding other rights enshrined in our Constitution, such as protecting socio-economic and housing rights.



The Impact Litigation Unit was established to assist in making the Constitution a living reality for the marginalised segments of our population. It provides the opportunity for Legal Aid South Africa to undertake and fund litigation or other legal work that can truly live up to the Unit's name and have a profound "Impact" on a group or significant segment of a group. The impact of the work undertaken and funded by the Impact Litigation Unit has the potential to have a far greater reach than to one individual client. Rather, the Impact Litigation Unit often litigates matters likely to establish legal precedent, or provide clarity to uncertain areas of the law. In addition, through class actions and strategic litigation, matters undertaken and funded by the Impact Litigation Unit can provide an efficient means of resolving a large number of disputes in a single matter.

I acknowledge the commitment of our government to the rule of law, as well as its commitment to providing resources to make legal representation a reality in terms of our Constitution. This in my view is key to ensuring that society in general continues to have confidence in the laws of the land as their shield against injustice and to resolve their matters. I take pride in the work of Legal Aid South Africa in general and the Impact Litigation Unit in spite of limited budgetary resource constraints. The cases summarised in this booklet highlight the tangible impact Legal Aid South Africa is making, and will no doubt continue to make in the future.

*Yours in ensuring access to justice:*
**Judge Dunstan Mlambo**
**Chairperson: Legal Aid South Africa**
**March 2011**

# Message From the CEO

Vidhu Vedalankar

Legal Aid South Africa is an independent statutory body established by the Legal Aid Act 22 of 1969 as amended. In terms of the Act the purpose of Legal Aid South Africa is to give legal aid to indigent persons within the budget allocated by the state. We also provide legal representation at state expense in terms of its constitutional obligation under section 35 of the Bill of Rights and in particular to have a legal practitioner assigned to an accused person at state expense if substantial injustice would otherwise result.

In addition to our statutory aims, Legal Aid South Africa has identified its own vision, mission and values. Our vision is to contribute to a just South Africa in which the rights enshrined in our Constitution are promoted, respected, defended, protected and fulfilled to ensure justice for all. To realise our aims we strive to be a leading provider of quality legal services, ensuring effective access to justice to the poor and vulnerable in an independent and ethical manner.

Legal Aid South Africa in fulfilling its mandate, primarily delivers legal services to clients through its own salaried lawyers who are located at 64 Justice Centres and 64 satellite offices across the country. Legal Aid South Africa also delivers legal services to clients by contracting with private lawyers and through co-operation agreements with NGOs and University Law Clinics. Legal Aid South Africa has traditionally focused on providing criminal legal defence services, but more recently established civil units and a constitutional Impact Litigation Unit. It is in this latter category that Legal Aid South Africa has established an in-house unit, the Impact Ligation Unit, to take on class actions and precedent setting cases on behalf of vulnerable groups such as women, children and indigent persons/communities.

Legal Aid South Africa introduced an impact services policy in January 2004. From time to time matters arise in which the opportunity exists for Legal Aid South Africa to undertake or fund litigation or other legal work which has the potential to positively affect the lives of a far larger number of indigent persons than the persons to whom legal services are rendered individually. Legal Aid South Africa has identified three (3) broad areas in which it can give content to its impact litigation policy:

I. When the opportunity exists to establish a legal precedent, jurisprudence or clarify aspects of the law that will be followed in

dealing with indigent persons,

**II.** Either by class action or by litigation of a small number of matters calculated to bring about the settlement of a much larger group of disputes, the matters have a potential to resolve a large number of disputes or potential disputes, or

**III.** By the strategic intervention and rendering of non-litigious legal services the potential exists to materially improve the lives of a group or a significant segment of a group.

These legal services could be rendered by salaried legal practitioners employed by Legal Aid South Africa, the Impact Litigation Unit or legal practitioners in private practice or a co-operation partner of Legal Aid South Africa, a law clinic or any combination of the above.

Not many people are aware that the Impact Litigation Unit funded, amongst others, the challenge brought by the Treatment Action Campaign in the Constitutional Court to make treatment available to those suffering from HIV/AIDS at a time when many were still questioning the link between HIV and AIDS. This booklet seeks to create an awareness of Legal Aid South Africa's commitment to give content to the rights as enshrined in our Constitution, thereby making it a living document for all South Africans, especially the indigent and vulnerable.

In the future we hope to share the challenges and achievements of the Impact Litigation Unit in making the Constitution a living reality in the lives of ordinary South Africans through publications of this kind.

**Vidhu Vedalankar**

**CHIEF EXECUTIVE OFFICER: Legal Aid South Africa**

**March 2011**

*"To realise our aims we strive to be a leading provider of quality legal services, ensuring effective access to justice to the poor and vulnerable in an independent and ethical manner."*

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# PUBLIC PROTECTOR COMPLAINTS FORM

FOR OFFICE USE
File number: .....
Date received: .....
Received by: .....

**YOUR DETAILS**

| | |
|---|---|
| **1. Your name** | Adv Anthony Brink |
| **2. If your complaint is about a pension or ID document matter, please provide your ID number.** | N/A |
| **3. Your address and telephone and telephone number(s)** | 25 Baker Road, Prestbury, Pietermaritzburg 3201, KwaZulu-Natal<br>Telephone number (home): 033 344 2420<br>Telephone number (work): As above<br>Fax number: 086 672 0776<br>Cellphone number: 083 779 4174 |
| **4. If this complaint is for someone else, please tell us about them.** | N/A |

| | |
|---|---|
| **5. Their ID numbers, if the complaint is about pension or ID document matter.** | N/A |
| **6. Their address and telephone numbers.** | N/A |
| **7. If this complaint if for an organisation, please tell us the name of the organisation.** | N/A |

**TELL US ABOUT THE COMPLAINT**

| | |
|---|---|
| **8. Is the complaint still happening?** | Yes, this complaint concerns the persistent unlawful refusal of Legal Aid South Africa ('LASA') to comply with its obligations to afford me access to records duly requested under the Promotion of Access to Information Act 2 of 2000. |
| **9. If no, on what date did it happen?** | N/A |
| **10. Where did it happen?** | At LASA's national office in Johannesburg, Gauteng. |
| **11. Which government agency is involved?** | LASA, a statutory public body established by the Legal Aid Act 22 of 1969 |
| **12. Tell us the names of the officials that you contacted to try and solve the problem.** | LASA chairperson Judge Dunstan Mlambo; and South African Human Rights Commission ('SAHRC') PAIA Unit director Chantal Kisoon and other SAHRC officers. |
| **13. Where can they be reached?** | LASA: 29 De Beer Street, Braamfontein, Johannesburg<br>Private Bag X17, Braamfontein 2017<br>011 877 2000<br><br>SAHRC: Forum 3, Braampark Office Park, Braamfontein, Johannesburg<br>Private Bag X2700, Houghton 2041<br>011 877 3600 |
| **14. Have you reported this case to anyone else?** | Yes, to the Minister of Justice and Constitutional Development and to the chairperson and other members of the Parliamentary Portfolio Committee. |

| | |
|---|---|
| **15. Please tell us how you heard about the Public Protector (radio, newspaper, poster, friend?).** | As a practising lawyer I am au fait with our democratic institutions. |
| **16. Use the space provided below and if you need more space, please use a separate piece of paper, that will be provided to you. Please attach copies of relevant correspondence or documents.** | My complaint is particularized below, with reference to the documents I've annexed. |

**Complaint: Brink/LASA: Unlawful refusal by LASA to comply with PAIA**

1. Legal Aid South Africa ('LASA') is unlawfully refusing to comply with its legal obligations under the Promotion of Access to Information Act 2 of 2000 ('PAIA') to afford me access to its records, which I've duly requested and to which I am constitutionally entitled under the Act; and it has given false information in its section 32 report to the South African Human Rights Commission ('the SAHRC') to cover its failure to comply with PAIA and to mislead the National Assembly when the SAHRC makes its annual report to it under section 84.
2. The background to my three records requests in August and December 2010 and March 2011 is briefly as follows.
3. In November 2009 I was interviewed by a professional selection panel for a senior legal post LASA had advertised, and I was selected and recommended for appointment – so I was indirectly and obliquely informed, only after persistent enquiry, nearly six months later on 30 April 2010.
4. On 3 August 2010, after further enquiry and now nearly nine months after my successful interview, LASA NOE Brian Nair alleged to me that LASA had decided to initially freeze the finalization of my appointment and then to finally abort it – no reason given me.

5. Because I'm acutely politically unpopular in certain circles for my active opposition to pharmaceutical interests over the past decade and a half, and because I'm a white male, I surmised that I'd been the subject of covert political or racial discrimination by LASA's national executive management.

6. On 26 August I filed a comprehensive PAIA request for fifty-one specified records, testing the veracity of Nair's claims concerning the abortion of my recruitment.

7. My records request was plainly directed at confirming my suspicion that LASA management had prejudicially acted against me off the record and behind the scenes in contravention of the Employment Equity Act. Well appreciating my purpose, and that her conduct in unfairly discriminating against me on prohibited grounds stood to be exposed by my request, LASA CEO and information officer Vidhu Vedalankar initially ignored it, in flagrant contempt of my constitutional right to information and of her legal obligations under the Act.

8. Pressed at my request by the SAHRC to respond, Vedalankar then rejected my entire request for records on 18 October on the basis of a false statement of law concerning my right to information under PAIA, which she supported with a deceptively false misquotation of a reported judgment. In truth, the judgment held precisely to the contrary of what Vedalankar claimed it did, and squarely supported my entitlement to the records I'd requested and to a section 23 affidavit confirming my suspicion that no records existed whatsoever concerning her decision to abort my recruitment.

9. Vedalankar's intention in deceptively misstating the law was to defraud me into abandoning my lawful claim for records and for a section 23 affidavit concerning non-existent records, and thereby to frustrate my vindication of my constitutional rights to equality, to equal employment opportunity, and not to be unfairly discriminated against on unconstitutional, prohibited grounds.

10. In her October letter refusing my records request in its entirety, Vedalankar now alleged – eleven months after my successful interview – a budgetary explanation for having 'immediately' aborted my recruitment 'In July 2010'.

11. On 30 November I petitioned LASA's chairperson Dunstan Mlambo and the Board of Directors to intervene and to direct Vedalankar to comply with PAIA and to remove the unlawful block on the finalization of my appointment.

12. My second PAIA request filed on 15 December tested the veracity of Vedalankar's allegations to me.

13. On 30 December, without consulting the rest of the Board, Mlambo dismissed my fifty-nine-page petition in a single sentence. He did not address my extraordinarily serious complaint that Vedalankar had unlawfully refused to comply with PAIA and had put up a bogus justification for this, founded on a deceptively false misstatement of the law. (The PDF properties of Mlambo's letter show it was written by Vedalankar on her computer on 15 December while Mlambo was still abroad on a trip to the US.)

14. In her response on 28 January 2011 to my second request for records, Vedalankar did not comply with it, justifying this by claiming falsely that it was a repetition of my first.

15. In her January letter Vedalankar addressed my first PAIA request again. This time – having first ignored it, and then having rejected it with a deceptively false statement of applicable legal principles and case law – Vedalankar considered my August records request item by item, but practically rejected the whole of it again.

16. For her own purposes – and not to comply with my records request: she even rejected my mandatory, non-refundable request fee – Vedalankar annexed twelve records to her January letter (five of which I had already) purporting to 'demonstrate' her allegations in her October letter about why she'd aborted my

recruitment. (In fact the records clearly refuted her allegations and exposed them as a fake cover story concocted to camouflage her unfair discrimination against me.)

17. On 25 February I reported Vedalankar's refusal to comply with PAIA, and the failure of the chairperson and Board to intervene to remedy it, to the Minister of Justice and Constitutional Development and to the Parliamentary Portfolio Committee, by copying them in my third appeal to the Board on the eve of its meeting the next day.

18. Vedalankar reacted on 1 March by appointing Nair as deputy information officer to deal with my outstanding requests for records that she'd unlawfully withheld. (I learned of this in April.)

19. On 3 March I submitted a memorandum to the SAHRC, copied to Vedalankar, recording the history of her persistent, contemptuous refusal to comply with my PAIA requests and reviewing and debunking the various legally spurious pretexts she'd advanced for withholding the records I'd duly applied for. (In the interests of expedition I reduced the number of my first and second requests.)

20. On 9 March I filed a third request, inter alia testing the veracity of Vedalankar's allegations in her January letter.

21. On the same day, 9 March, LASA chairperson Mlambo submitted a 'Confidential … Report … Re: Adv Anthony Brink' to the Minister of Justice and Constitutional Development, in which he falsely claimed, inter alia, 'We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint.' In truth, Vedalankar had repeatedly ignored and unlawfully refused my records requests.

22. 'We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding that many of his requests do not relate to his complaint regarding non appointment.' Mlambo evidently added this false rider to discredit my complaint about Vedalankar's repeated unlawful failure to

comply with my PAIA requests and to dishonestly portray 'many' of them as pointless, irrelevant and a waste of everyone's time.

23. 'Whilst Adv Brink has threatened legal action in his correspondence with us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA.' In truth, nearly all my records requests had been unlawfully refused by Vedalankar and she had persistently failed to put up a section 23 affidavit concerning records that didn't exist.

24. 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated by the Act.' In truth, Vedalankar initially ignored my first request, then rejected it entirely on the strength of a fraudulent statement of applicable law, then failed to deal with my second request and at the same time again refused just about all the records specified in my first request, even rejecting my request fee.

25. 'We copied our responses to the SA Human Rights Commission to confirm our compliance with PAIA.' In truth, Vedalankar's responses confirm that they didn't comply with PAIA. (Even though this is obvious to anyone with a passing familiarity with PAIA, the SAHRC did nothing about it.) Indeed, the fact that 'We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA' (in the result they weren't) gives the lie to Mlambo's allegation to the Minister in March that Vedalankar had complied with PAIA. (I only learned of Mlambo's false allegations to the Minister in March on 29 June when the chairperson of the Portfolio Committee sent me an 'updated' version of Mlambo's secret 'Report' about me.)

26. On 23 March the Portfolio Committee chairperson called on Mlambo to furnish a 'formal response' by him, by the Board, and by Vedalankar to my complaints about Vedalankar's 'refusal to comply with the Promotion of Access to Information Act, amongst other things'.

27. Mlambo initially disregarded the Committee chairperson's request. Three months later on 22 June he responded by furnishing him with an 'updated' version of his 'Report' to the Minister. (Mlambo's many other demonstrably false allegations in his 'Report' lie outside the scope of this complaint, and will be treated when he is cross-examined in the Labour Court.)

28. Notwithstanding Mlambo's false assurance to the Minister on 9 March, 'We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA', Nair responded on 8 April to my memorandum to the SAHRC concerning the unlawfully withheld records specified in my first and second requests, and to my third records request, by again unlawfully refusing me access to the key records I sought and to which I am clearly entitled under PAIA. Nair duly put up section 23 affidavits in respect of non-existent records, although in defensively hedged terms to limit their ambit.

29. The SAHRC thereupon closed its file without stopping to consider whether Nair had complied with PAIA or not.

30. On 28 April I submitted a second memorandum to the SAHRC, in which I reviewed and analysed all of Nair's reasons for LASA's persistent unlawful withholding of records specified in my first and second requests and for rejecting most of my third records request, and I showed his reasons to be legally indefensible under PAIA. My second memorandum supported a formal complaint that month that LASA had violated my fundamental right to information.

31. Although the SAHRC found my complaint 'cogent', it turned down my request to act under its powers in terms of section 83(3)(c) of PAIA to 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act' by noting its agreement or disagreement with my claims to entitlement to the withheld records that I'd identified in my second memorandum; refused to investigate my fundamental right violation complaint; and again closed its file. (The SAHRC's

disgraceful dereliction of its special responsibility under section 83(3)(b) to 'monitor the implementation' of PAIA in this matter will be the subject of a separate complaint to the Public Protector and a report to the Portfolio Committee on Justice and Constitutional Development under the title 'PAIA and the SAHRC: Brink and LASA: A Case Study in Failure'.)

32. On 8 April LASA filed a section 32 report with the SAHRC for inclusion in its annual report to the National Assembly under section 84 of PAIA (as required by section 181(5) of the Constitution).

33. As will be shown below, LASA's section 32 report to the SAHRC is a fraud calculated to deceive and mislead the National Assembly. It pretends and holds out that LASA has duly complied with PAIA in my matter, whereas in truth Vedalankar and Nair have persistently refused to comply with my PAIA requests with the deliberate intention of perverting the true and just determination of my unfair discrimination claim by suppressing material documentary evidence of their unfair discrimination against me and of the lying cover-up that followed.

34. To begin with, the 'Date when request made … 27/9/2010' is casually forged. In truth, my first PAIA request of 26 August 2010 was delivered by registered post four days later on the 30th. This false date entry isn't any innocent error. It was a deliberate misstatement (a) to harmonize with Mlambo's false allegation to the Minister that 'We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated by the Act', and (b) to mask the fact that in contempt of my constitutional right to information Vedalankar initially ignored my August request and only answered it at the SAHRC's urging on 18 October, outside the prescribed 30-day 'timeframe stipulated by the Act' (and then unlawfully refused the whole thing). And contrary to Mlambo's false claim to the Minister, Vedalankar's response on 28 January 2011 to my second PAIA request on 15 December was also outside the 'timeframe stipulated by the Act' (she refused to

deal with it). My complaint isn't about being late, however, it's about non-compliance.

35. LASA's section 32 report makes no mention of my second and third requests on 15 December and 9 March 2011 to test and expose Vedalankar's lies to me about the reason she'd aborted my recruitment off the record and behind the scenes. It makes no mention of Vedalankar's third response in January 2011 to my first PAIA request in August (her first response in September was mute refusal by ignoring it; her second response in October was to expressly refuse the entire request). LASA's section 32 report makes no mention of LASA's fourth response to my records requests via Nair in April 2011, in which most of my records requests were again unlawfully refused.

36. The 'Outcome of the request' on '19/10/2010' [sic: the 18th] is also false: 'Access partially refused'. In truth, in October 2010 Vedalankar expressly refused my August request *entirely*. In January 2011 she practically refused my request again (some records she put up for her own purposes coincidentally met some of my requests). Then in April Nair refused my outstanding records requests yet again. LASA's false section 32 report makes no mention of any of this.

37. Under 'Comments', the section 32 report alleges that 'No decision taken yet on who should be appointed but the decision to freeze the post due to change in business needs-budget.' This logically incoherent version of Vedalankar's false allegation to me; repeated by Mlambo to the Minister and to the Portfolio Committee chairperson; and repeated in the section 32 report to the SAHRC, that a 'decision' was taken 'to freeze the post' for which I was selected and recommended 'due to change in business needs-budget' is comprehensively interrogated and exposed as a lie in my statement of claim in the Labour Court, with reference to the total absence of any supporting records and indeed the records contradicting it. (Vedalankar's transparent camouflage for her true reason for aborting my

SEE AMENDED UPDATED PAGES AT PAGES 725-31 OF THE BUNDLE ADDENDUM

recruitment is anyway wholly out of place in a section 32 report concerning PAIA compliance.)

38. 'The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the exercising of the right he may have in law and further that the request relates to confidential information of third parties.' It's elementary that the obligation of a public body to provide a records requester access to its records is not constrained by the requirement that the request be 'relevant to the exercising of the right he may have in law'. And section 65 has nothing to say about this. It's incredible that after Vedalankar abandoned this legally illiterate, manifestly spurious pretext for concealing records from me, after I had exposed it as such with reference to the operative provisions of the Act and to relevant case law in my November petition to Mlambo and the Board, which Vedalankar said she'd read, the author of the section 32 report (Vedalankar? Nair?) should brazenly persist in asserting this legal junk to the SAHRC, and through the SAHRC to the National Assembly, as a reason for denying me access to the records to which I'm constitutionally and legally entitled.

39. In truth, where 'not relevant' was again raised – in Nair's final response on 8 April 2011 – he alleged that my records requests are 'not relevant' for a different albeit equally fatuous reason: 'The information is refused as it is not relevant because it is after you were informed that we are not proceeding to fill the senior litigator position.' Nair offers this risible excuse for concealing highly material records from me notwithstanding the provisions of section 11(3)(b) of PAIA, which I've repeatedly highlighted: 'A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by … the information officer's belief as to what the requester's reasons are for requesting access.'

40. Vedalankar's and Nair's persistent refusal to afford me access to records, inter alia, to copies of its formal 'regret letters' – *at very different times* – to the other

SEE AMENDED, UPDATED PAGES AT PAGES 725-31 OF THE BUNDLE ADDENDUM

shortlisted Senior Litigator candidates because 'the request relates to confidential information of third parties' is shown up as legally vacant in my first and second memoranda to the SAHRC; yet in its section 32 report LASA misrepresents to the SAHRC, ultimately to deceive the National Assembly, that I sought 'confidential information of third parties' hit by section 65, and this is why it has denied me access to the pivotally material records I've requested.

41. The section 32 report makes no mention of the several other spurious reasons advanced for refusing me access to records to which I'm entitled, all of which are taken to pieces in my first and second memoranda to the SAHRC.

42. In the situation, I hereby lodge a formal complaint with the Public Protector that in contempt of my constitutional rights, and in contempt of their legal obligations under PAIA, Vedalankar and Nair are unlawfully withholding records from me with the intention of concealing documentary evidence needed for the proof of my unfair discrimination claim in the Labour Court, and furthermore that the author of LASA's section 32 report has lied to the SAHRC about it with the intention of deceiving the National Assembly.

43. With the SAHRC having proved useless in my endless appeals for mediation over the last year, I accordingly crave the Public Protector's support and assistance in accessing LASA's records under her 'Mandate' to

> strengthen constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs; resolving administrative disputes or rectifying any act or omission in administrative conduct through mediation, conciliation or negotiation; … [and] resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000, … as mandated by the following legislation: Constitution of the Republic of South Africa Act 108 of 1996; Public

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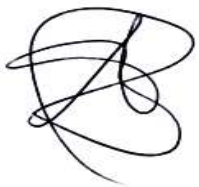
Protector Act 23 of 1994; … [and] Promotion of Access to Information Act 2 of 2000 …

44. In 'resolving the disputes' between LASA and me 'relating to the operation of the Promotion of Access to Information Act of 2000', all the Public Protector's office needs do is (a) note its agreement or disagreement with my legal analysis and debunks of LASA's reasons for withholding the records I've requested in the spaces provided in the annexed memorandum and then (b) forward it to LASA for its response. (I've reframed my second memorandum to the SAHRC for this purpose, substituting the Public Protector as the person/institution assisting me.) It's unlikely that LASA will exhibit the same contempt for the Public Protector as it's displayed towards me, so this simple expedient, inexpensive in time and treasure, should suffice to move LASA to disgorge the records it's unlawfully withholding from me, and will greatly assist me in 'redressing [LASA's] improper and prejudicial conduct, maladministration and abuse of power'.

Dated at Pietermaritzburg this 10th day of August 2011



ADV ANTHONY BRINK

Encl: *Public Protector's comments on records requester Adv Anthony Brink's critical analysis demonstrating the factual and legal irrelevance of the reasons advanced by Brian Nair, deputy information officer of Legal Aid South Africa, for refusing access to certain specified records duly requested under section 11 of the Promotion of Access to Information Act 2 of 2000*

This complaint and all documents to which it refers are available in printable PDF at: www.tig.org.za/LASA username: lasa password: LASA2010

SEE AMENDED, UPDATED PAGES AT PAGES 725-31 OF THE BUNDLE ADDENDUM

**SECTION 1**

**First Memorandum**

**PART 9**

26. Excluding the 'regret letter' to Brink from KwaZulu-Natal Regional Operations Executive Vela Mdaka ('Mdaka') on 23 August 2010 and emailed to Brink by Brijlal by way of an email attachment on the same day, the 'regret letters' sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 – following the decision made not to 'be proceeding with the filling of any of these posts', i.e. 'all vacant Senior Litigator posts' ( – per Nair's letter to Brink).

**Information officer's response on 28 January 2011:**

30. As to your request.. … 26 …: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

**Requester's critical analysis and comment in First Memorandum on 3 March 2011:**

Section 43(1) of the Act doesn't provide that 'confidential correspondence with third parties' (the information officer's homebrewed faux legal phrase) is excluded from access by a records requester. The section provides (in the heading) for the 'Mandatory protection of research information of third party and protection of research information of public body'. … Request B26 manifestly has nothing whatsoever to do with 'research information of third party [or] public body' nor with 'Operations of public bodies'. It is a request for copies of the 'regret letters' allegedly 'sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009'. Copies of these letters are required, and any confidential information (addresses, telephone numbers) may be blacked out. …

**Deputy information officer's response on 8 April 2011:**

I confirm that regret letters were sent to two other applicants for the senior litigator positions. However such information cannot be disclosed to third parties without their consent.

**Requester's further comment:**

The term 'personal information' defined in section 1 of PAIA 'means information about an identifiable individual, including, but not limited to … (f) correspondence sent by the individual that is implicitly or explicitly of private or confidential nature or further correspondence that would reveal the contents of the original correspondence'.

Section 34(1) of PAIA provides that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party'.

Section 34(2) provides: 'A record may not be refused in terms of subsection (1) insofar as it consists of information – (a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned'.

I am not seeking any 'personal information about a third party' or 'about an individual' or 'correspondence sent by' him. I am seeking copies of formal 'regret letters' sent to the other shortlisted applicants interviewed for the vacant Pietermaritzburg and Durban Senior Litigator posts. Four were interviewed, including me. Our names are no secret and appear on KZN Regional Operations Executive Vela Mdaka's Motivation form, signed off by the selection panel in November 2009.

This Motivation form, supplied to me by the information officer on 28 January 2011, well over a year after my successful interview, shows that indeed I was selected and recommended for appointment to the Pietermaritzburg Senior Litigator post for which I had applied (as Bongani Mngadi was chosen for Durban).

Mngadi's information to me on the telephone on 12 November 2010 was that he'd already been notified 'in April/May' 2010 that the Durban post wasn't going to be filled. (In contradistinction, despite my persistent appeals for information, I was deliberately kept waiting in the dark.)

Mngadi told me he never got any 'regret letter' in August 2010, like I did. The deputy information officer appears to confirm this in his reasons for refusing me copies of the other 'regret letters': 'I confirm that regret letters were sent to two other applicants' – not three.

As mentioned, I have the other candidates' names. Their addresses are 'publicly available', as section 34(2)(c) puts it, kept on register by the Law Society. The names and addresses on the 'regret letters' are accordingly not 'personal information about a third party' or 'about an individual'.

Bald 'regret letters' from LASA, such as the one I received, giving no reasons and containing no 'personal information about a third party' or 'about an individual', are manifestly not hit by section 34 of PAIA and are therefore compellable and must be disclosed.

No consent by the addressees is required under section 34(2) of PAIA, and the deputy information officer ignorantly misstates the law in alleging it is.

The deputy information officer's refusal to disclose these records is incompetent and unlawful.

The record is compellable and it must be disclosed.

**Public Protector's comment:**

I agree/I disagree because

**PART 20**

**First Memorandum**

**Record:**

11. Email to Durban Justice Centre attorney Bongani Mngadi (he says 'in April/May') notifying him that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

**Response:**

None.

**Comment:**

According to Mngadi's information to the records requester on 12 November 2010, this record must exist and the records requester requires it.

**Public Protector's comment:**

I agree that PAIA entitles the records requester to access this record. / In my opinion the records requester is not entitled to access this record because

**SECTION 2**

**Third records request on 9 March 2011**

**Record 3.2**

LASA's complete Recruitment protocol if it extends beyond nine pages. (Record V2 annexed to Vedalankar's letter ends abruptly on page 9 and appears to be incomplete. (Bundle, pages 228–34))

**Deputy information officer's response on 8 April 2011:**

The policy deals with Recruitment, Induction, Probation and Relocation. You have been provided with the entire extract of the policy as far as it relates to the recruitment aspect. The remaining part of the policy does not deal with recruitment issues and is therefore irrelevant.

**Requester's comment:**

It makes no intelligent sense for the information officer to claim that only part of a document entitled 'Recruitment' deals with recruitment, and that the section dealing with e.g. 'Induction' is not a recruitment matter.

In terms of section 11(3) of PAIA, an information officer's opinion as to what he thinks the requester's purpose is in requesting a record is irrelevant.

PAIA does not require that a record of a public body be relevant to anything for it to be compellable.

'Relevance' is not a criterion for the discoverability of a public record.

No discretionary or mandatory grounds exist for refusing me the complete 'Recruitment' protocol, only some of which has been provided.

I have requested the complete record and PAIA entitles me to access and read it.

See further the dicta of the Supreme Court of Appeal judgment in the Mittalsteel case quoted in the introduction to my First Memorandum.

The deputy information officer's refusal to grant me access to the complete Recruitment protocol is unlawful.

He is required by PAIA to disclose the complete record.

**Public Protector's comment:**

I agree that PAIA entitles the records requester to access the complete record. / In my opinion the records requester is not entitled to access the complete record because

**Records 3.6–9**

6. The minutes of the Board meeting held on 29 May 2010.

7. The minutes of the Board meeting held on 30 October 2010.

8. The agenda of the Board meeting held on 26 February 2011.

9. The minutes of the Board meeting held on 26 February 2011.

**The deputy information officer's response on 8 April 2011:**

I can confirm that no item relating to you was either on the agenda or tabled at any of the Board meetings. … Your request for information is refused in terms of section 44(1)(a) of the Promotion of Access to Information Act 2 of 2000 as amended.

**Requester's comment:**

The deputy information officer's response reveals his entire lack of understanding of how section 44(1)(a) applies to records requests of this nature.

He appears to think that section 44(1)(a) veils all agendas and minutes of public body Board meetings from access by the public. Certainly he thinks that all he has to do is invoke the sub-section against my request and that is the end of it; he doesn't even need to apply his mind to each record and exercise a discretion whether or not to refuse access to them, much less does he need to provide a full statement of his reasons, sufficient for a court to interrogate their reasonableness and their validity.

The Supreme Court of Appeal recently considered and rejected this approach in The President of the Republic of South Africa and Others v M & G Media Ltd (570/2010) [2010] ZASCA 177; 2011 (2) SA 1 (SCA) (14 December 2010), likening it to that of apartheid officials.

The court noted in paragraph 19 of the judgment that 'The affidavits that have been filed by the appellants are reminiscent of affidavits that were customarily filed in cases of that kind [tried under apartheid legislation, discussed]. In the main they assert conclusions that have been reached by the deponents, with no evidential basis to support them, in the apparent expectation that their conclusions put an end to the matter. That is not how things work under the Act. The Act requires a court to be satisfied that secrecy is justified and that calls for a proper evidential basis to justify the secrecy.'

As the court put it in the following paragraph: 'What the appellants' case amounts to is little more than rote recitation of the relevant sections and bald assertions that the report falls within their terms. That is not the "stark and dramatic contrast" with the past that was referred to by Mahomed DP. Nor does it reflect the "culture of justification" that was referred to by Mureinik and which is imbedded in the Act.'

The apartheid 'past' to which the court referred was (per paragraph 18) 'another time [when] courts were regularly confronted with laws that precluded them from going behind conclusions and opinions formed by public officials'. (In the instant case, the deputy information officer hasn't even got as far as expressing an opinion and conclusion.)

The court noted in paragraph 22: 'Some provisions of the Act make secrecy mandatory and others make it discretionary. The sections with which we are concerned are both discretionary. ... Section 44 allows access to a record to be refused "if the record contains an opinion, advice, report or recommendation obtained or prepared … or an account of a consultation, discussion or deliberation that has occurred … for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law."' (ellipsis in the judgment)

The deputy information officer doesn't even think about whether I'm seeking a record of that nature: he just sees the words 'including, but nor limited to, minutes of a meeting' and reckons that permits him, without more, to bar me from accessing and reading the agendas and minutes of LASA Board's meetings.

It's notable that information officer Vedalankar takes a different view of the matter. On 28 January 2011 she gave me the minutes of the Board meeting of 31 July 2010 as well as the 'Report to Board' on 16 July from herself and her fellow executive managers – concerning a policy proposal and resolution. Unlike the deputy information officer, Vedalankar appreciates that such records are not ipso facto secret, to be concealed from the public under section 44(1)(a).

In Minister for Provincial and Local Government v Unrecognised Traditional Leaders, Limpopo Province (Sekhukhuneland) 2005 (2) SA 110 (SCA), the Supreme Court of Appeal held: 'It is clear that s 44(1)(a) limits the right of access to information and s 36 of the Constitution requires that the scope of such a provision be restricted only to an extent which is reasonable and justifiable. Section 39(2) obliges every court to promote "the spirit, purport and objects of the Bill of Rights" when interpreting any legislation. It must also be borne in mind that the Act was enacted in order to give effect to access to information and promote the values of openness, transparency and accountability which are foundational to the Constitution.'

These values are not exhibited by the deputy information officer in concealing the evidence of the records I require for trial.

And in CCII Systems (Proprietary) Ltd v Fakie NO and Others 2002 JDR 0897 (T) Hartzenburg J held obiter in paragraph 18 of the judgment: 'The applicant argues that if he was de-selected as supplier due to political pressure or some impropriety a comparison between draft reports and the final one may indicate that that is what happened. Conversely if there was no impropriety the very same comparison will prove that. That raises the question what the object of section 44 is. It was submitted that it is not to hamper a public body in its administration and formulation of policy and to guard against the supply of confidential information prematurely. Senior and junior officials must be able to talk freely about the development of policy matters and their interaction at a stage before finalisation should not at that stage be accessible. Opportunistic entrepreneurs should not be allowed to obtain information along this route which gives them an unfair advantage over their rivals. In my view it does not deal with historic situations. The joint report has been finalized and accepted by Parliament. At this stage the draft reports are only of historic importance and cannot obstruct the joint commission in its work. In my view they are no longer protected by the provisions of section 44.'

This is to say, on Hartzenburg J's construction of section 44, the minutes of LASA board meetings held in the past in regard to settled policy matters 'are no longer protected by the provisions of section 44', even if such minutes were hit by section 44 in the first place.

Nair's statement that 'no item relating to you was either on the agenda or tabled at any of the Board meetings' does not count as a legitimate reason for refusal. He did not know my purpose in seeking the records, and his opinion as to what it might be is irrelevant under section 11(3) and is no valid basis to refuse my requests.

Although it's irrelevant to the decision of my request, I record that my purpose in seeking these records is to determine whether at any of the Board meetings whose agenda and minutes I requested, the Board (a) resolved to abolish or freeze posts to resolve funding problems, and (b) even discussed the abolition or freezing of posts to this end.

In other words, besides the Board's resolution to abolish 56 junior practitioner posts, and none other, taken at its meeting on 31 July 2010 on Vedalankar's, Nair's and other executive managers' recommendation, the Board has never discussed, much less resolved to abolish or freeze any other posts, including critical Senior Litigator posts.

I also wish to establish whether the Board discussed funding issues at the meetings in question.

My main discrimination case is founded on Vedalankar's and Nair's gravely unlawful conduct: their violation of my constitutional rights to equality and not to be unfairly discriminated against on prohibited unconstitutional grounds and their breach of the provisions of the Employment Equity Act in this regard. This is to say, their 'substantial contravention of, or failure to comply with, the law' as contemplated by the overriding provisions of section 46 of PAIA under the heading 'Mandatory disclosure in the public interest'.

PAIA entitles me to all these records and the deputy information officer is withholding them unlawfully.

**Public Protector's comment:**

I agree that PAIA entitles the records requester to access these records, absent a statement of reasons supported by evidence that the refusal of access to these

records is reasonably justified under section 44(1)(a). / In my opinion the records requester is not entitled to access these records because

**Record 3.12**

The 'regret letter' sent in 2010 to the candidate selected and recommended for appointment as Senior Litigator, Mthatha, conveying that LASA executive management had resolved not to fill the post; personal information may be blacked out. (Per Nair's letter to Brink on 3 August 2010 read with Vedalankar's letter to Brink on 18 October 2010. (Bundle, page 19; and page 104, paragraph 7.3))

**Deputy information officer's response on 8 April 2011:**

The communication that the position was not going to be filled was conveyed to the relevant candidate by the Regional Operations Executive of the Eastern Cape. The information requested is refused and cannot be provided as it relates to third parties as envisaged in terms of section 34(1) of the Promotion of Access to Information Act 2 of 2000 as amended.

**Requester's comment:**

Section 34(1) of PAIA does not bar the disclosure of a record by reason of the fact merely that it 'relates to third parties'; and the deputy information officer's stated reason for refusing this record is irrelevant and bad in law.

The point is addressed at length in Section 1 above.

I require the record and PAIA entitles me to it.

I mentioned in my request that 'personal information may be blacked out'. This excludes the successful Mthatha applicant's name and professional contact particulars, which I require.

Although section 11(3) of PAIA stipulates that my purpose in seeking any record of a public body is immaterial, I record here that I wish to consult the successful Mthatha applicant with a view to calling him as a possible witness to testify in my impending case in the Labour Court.

I also propose advising him of his rights that Vedalankar and Nair, as CEO and NOE, have violated, and to offer to assist him pro bono to vindicate them.

**Public Protector's comment:**

We agree that PAIA entitles the records requester to access this record with the name and professional contact particulars visible and not blacked out. / In our opinion the records requester is not entitled to access this record/is not entitled to know the name and professional contact particulars of the successful Mthatha candidate because

**Record 3.13**

The instruction issued to Board Secretary Bee-Mari Schoeman not to circulate Brink's 30 November 2010 petition addressed to the Chairperson and the Board of Directors to all Board members and not to put it on the agenda of the next Board meeting for discussion, as Brink had requested, and furthermore not to respond to Brink's correspondence to her. (Bundle, page 198, paragraph 6; and page 207, first paragraph)

**Record 3.14**

All email communications between Judge Mlambo and Vedalankar concerning Brink's petition to Judge Mlambo and the Board of Directors on 30 November 2010.

**Record 3.15**

LASA Chairperson Judge Dunstan Mlambo's 'request..' to the Board of Directors 'to ignore all communications from' Brink. (Per Judge Mlambo's email to Brink on 24 January 2011. (Bundle, page 209))

**Deputy information officer's response on 8 April 2011 regarding requests 3.13–15:**

The information requested is refused as it is not relevant because it is after you were informed that we are not proceeding to fill the Senior Litigator position.

**Requester's comment:**

As mentioned above with reference to section 11(3) of PAIA, an information officer's opinion as to the relevance or otherwise to any fact or issue of a public body's record is itself legally irrelevant.

The deputy information officer's refusal to provide access to the records described in items 3.13–15 above, on the ground that in his opinion these records are 'not relevant', is unlawful.

The records are all discoverable and compellable under PAIA and must be provided.

For easy reference, I quote below from my letter to information officer Vedalankar on 9 March 2011covering my third PAIA request and dealing with the principle applicable to requests 3.14 and 3.15:

> Apropos of the status of the records identified in my new record requests 14 and 15, the Sarah Palin Yahoo email scandal in the US is instructive. In September 2008 the Governor of Alaska and Vice Presidential candidate was found to have been using a private email account to discuss government business. An article in *iTwire* pointed up the issue involved: 'Personal emails are not part of the public record. That's the general state of play when it comes to politics in the good ol' USA. It is why there are official public email accounts which are designed for official business use and which become part of the official public record.' (http://bit.ly/hnyXO8) Your reciprocal communications with Judge Mlambo concerning my letter to him and the Board on 30 November 2010 while he was abroad in the US are public records, and I require them. Likewise the record of Judge Mlambo's request to the Board of Directors to ignore my correspondence to the Board concerning the breakdown of lawful governance at LASA; your and LASA's contraventions of the PFMA; and your failure, citing wholly bogus reasons, to comply with your constitutional obligations under PAIA …

**Public Protector's comment:**

I agree that PAIA entitles the records requester to access all these records. / In my opinion the records requester is not entitled to access these records because

Signed: _____

PUBLIC PROTECTOR

Date:

**ANNEXURE: History and Legal Principles Applicable**

**Introduction to First Memorandum to the SAHRC on 3 March 2011**

On 30 August 2010 a request for access to 51 specified records was submitted to Legal Aid South Africa's information officer, CEO Vidhu Vedalankar, by the records requester Adv Anthony Brink under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act').

LASA is a 'public body' in terms of the 'Definitions' in section 1 of the Act, in that it's an 'institution … performing a public function in terms of any legislation', namely the Legal Aid Act 22 of 1969, and its CEO Vedalankar is its information officer ex officio in terms of the Definitions': '"information officer" … means the chief executive officer … in the case of any other public body' such as LASA.

Section 11(1) of the Act stipulates that 'A requester must be given access to a record of a public body if – (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.'

The request conformed to the procedural requirements of PAIA, in that it comprised a Form A application with an annexure listing the records sought. LASA had not at that stage published a mandatory PAIA manual under section 14 of the Act indicating its request fee and access charges, so the records requester asked what they were in his covering letter and tendered to pay them (no response received).

The information officer responded by ignoring the records request. Only with the intervention of the PAIA Unit of the South African Human Rights Commission ('SAHRC') did LASA undertake to deal with the request, as the Act required.

On 18 October 2010 the information officer refused the records request in its entirety. Numbered paragraph 1 of her letter commenced by alleging the law applicable to the decision of such requests:

> The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18, is as follows:*
>
> > a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for*

> *the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

(There is no paragraph 'b)' and the phrase '*is as follows*' is italicized in the original.)

The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer's own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the 'test to be applied … as laid down by the court … is as follows:'.

In truth, no such 'test to be applied' was 'laid down by the court' in the National Teachers Union case, and the information officer's statement in this regard was both false and deceptive. To the contrary, Pillay J pertinently noted in paragraph 32 of his judgment: 'Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.' (The judgment is online at http://j.mp/dxh3sZ. All shortened internet URLs in this memorandum will henceforth be given simply as 'j.mp [.....]'.)

The information officer thereupon proceeded to apply this false test to the records request. Paragraph 2 commenced: 'In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.'

Citing 'Section 32 of the Constitution' and what she considered to be 'the relevant provisions of the PAIA', the information officer then concluded by refusing the records request on wholly unrelated grounds, namely '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above'.

Of course, this reason given had nothing to do with her bogus 'test' or 'principle' that the records requester would only be entitled to the records requested if 'the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure'.

And nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being 'beyond [the requestor's] personal circumstances'.

The so-called 'principle' by which 'we were guided' bobs up at the very end of the letter refusing the records request, after a lengthy and irrelevant argumentative excursus into the underlying dispute. Final paragraph 8 notes that the request for records is 'declined' for the further reason given that 'it is not relevant to you exercising any right you may have in law' – only it's a 'test', a 'principle' that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.

And as the Supreme Court of Appeal underscored in Mittalsteel SA Ltd v Hlatshwayo [2006] SCA 94 (RSA) (j.mp/bKUmCW):

> The issue before us is … whether the appellant at the relevant time and in creating the requested documents was a "public body" as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s11 of PAIA. The section is headed "Right of access to records of public bodies". Subsection 11(1) provides that a "requester *must* be given access to a record of a public body if" (emphasis added [in the judgment]) (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the respondent's request, and compliance with procedural requirements is not in issue.

As to the first reason stated for not complying with the Act – '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above' – a glance at the list of records sought shows that the records requester wasn't seeking 'information on third parties'. A relatively small part of the request identified records of communications with certain third parties or sworn confirmation, as section 23 of PAIA requires, that such records don't exist, showing that contrary to what had been alleged or suggested, in truth such communications never took place.

To protect their privacy – if privacy really was a genuine consideration – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in Unitas Hospital v Van Wyk [2006] SCA 32 (RSA). (j.mp/cHDY5D)

However, the fact that privacy issues were not a genuine concern, but rather a false covering pretext for not complying with the Act, is revealed by the fact that the information officer provided the records requester with all the names of the third parties concerned in a record she later put up for her own purposes in January 2011.

Since the information officer's provision of the records requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of her letter are perfectly irrelevant.

But even if it were relevant, Section 46 would anyway require access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of … a substantial contravention, or failure to comply with, the law … and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.

Though in terms of section 11(3) of the Act, the intention or premise animating a request for the records of a public body is strictly immaterial to the decision of the request, the then available and now conclusive new evidence to hand supports the case that the disclosure of the records would indeed reveal further documentary 'evidence of … a substantial contravention of, or failure to comply with, the law' – namely the Constitution and the Acts enforcing it, prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, the records requester has 'campaign[ed] for … a cause' and participated in the public policy debates of the day, as expressly 'encouraged' by Section 195(1)(e) in Chapter 10 of the Constitution. And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. Also the Acts and regulations governing the operation and financial management of public bodies.

As for 'the public interest' – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in the case, because they have a fundamental interest in having the certain assurance that they will not be subject to illegal discrimination of any form when applying for employment with a public entity responsible through Parliament to the people of South Africa. It's clearly in the public interest that any breach of constitutional rights by publicly accountable institutions, especially those within the sphere of justice and constitutional development, be exposed. The hard won political gains of justice and human rights

for all citizens of our country, including liberty of opinion and expression, are jeopardized if a major public entity whose very purpose is to secure justice for those citizens can subvert and undermine those principles of justice and human rights without being held accountable.

In sum, the information officer's reasons for refusing the request are idle in law.

Having duly complied 'with all the procedural requirements of the Act' (as the Mittalsteel judgment put it), the records requester was and remains accordingly entitled to the records requested.

On 15 December 2010 the records requester filed a second records request with LASA, and prompted by another letter from the SAHRC the information officer responded, with allowance for Christmas break, on 28 January 2011.

Although the first paragraph of her letter referred to 'your letter of 15 December 2010 in which you request access to information in Legal Aid South Africa's possession in terms of the Promotion of Access to Information Act', the information officer entirely failed to deal with this second records request. Instead she revisited the records requester's first records request in August which she'd already refused in October.

Her reason for neglecting to deal specifically with the second records request in December appears from paragraph 10 of her January letter, in which she claims that the December records request 'repeated' the August 2010 one. This is incorrect, as a cursory comparison of the two Form A annexures in the August and December requests for records reveals.

There is some partial overlap between the two requests in August and December to the extent that NOE Nair's allegations in his 3 August 2010 letter and the information officer's allegations in her 18 October 2010 letter qua CEO have a similar thrust – except that where Nair was vague the information officer qua CEO is specific; and the records request in December was plainly directed at testing the veracity of her specific allegations.

Together with her January letter, the information officer put up twelve records, four of which the records requester already had: a third copy of a letter sent him in August, a copy of which the information officer had already sent him in October; part of the Approval Framework she had also already sent him in October; an email exchange with the records requester and the Human Resources Executive in April; and two documents the records requester had himself generated and sent to

the information officer: a scanned copy of the newspaper advertisement for the Pietermaritzburg Senior Litigator post and a transcription of an oral presentation the information officer made to the Portfolio Committee on Justice and Constitutional Development in October 2010.

The information officer's purpose in providing these records was not to comply with the records requests; it was to support her defensive allegations concerning the core dispute made in her October letter and repeated in her January letter. Concerning each of the twelve records the information officer noted in her 'Aim of the Document' column: 'To demonstrate …' her contentions.

Nonetheless, four of the records provided by the information officer happened more or less to meet some of the requests for records in the August and December lists. Apart from these few records requests coincidentally met to the records requester's satisfaction in this manner, the rest of the unanswered December request is deemed refused by section 27 of the Act.

The net result of the information officer's second go at the August request was the same. Again she refused it, this time on a variety of different grounds – tacitly abandoning her first set of spurious reasons for refusing it. And as just mentioned, she failed to specifically deal with the December records request.

This memorandum will demonstrate that like her October reasons, the information officer's new reasons given in January are equally vacant and indefensible under PAIA, and that the records that she has unlawfully refused are compellable by way of a High Court mandamus.

In the light of the information officer's allegations qua CEO in her October and January letters, and the evidence of the hard documentary information annexed to her January letter contradicting these allegations, the facts concerning the underlying cause of action in this matter have at last become clear, to the extent that it is now plain on the evidence of the available records that the records requester's appointment was unlawfully aborted off the record and behind the scenes and that a false justification was advanced to cover the true reason for it. In the interests of expedition, therefore, a number of records refused by the information officer, though clearly compellable under PAIA, will not be pursued.

In his letter covering his August request the records requester pointed up the information officer's obligations under section 23 of the Act to notify the records requester on affidavit where specified records requested do not exist. Notwithstanding this advice on the operation of the Act, the information officer

failed to comply. A draft affidavit concerning non-existent records is accordingly annexed hereto for the information officer to sign under oath or affirmation, as section 23 requires.

In terms of section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA. Under section 83(3)(c) of the Act, however, 'The Human Rights Commission may … if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'.

The records requester seeks the assistance of the SAHRC's PAIA Unit in (a) impressing on the information officer the extraordinary seriousness of her violation of the records requester's constitutionally guaranteed right to public documentary information, and (b) urging the information officer's compliance with the Act, to avert (i) mandatory interdict proceedings in the South Gauteng High Court (Johannesburg) for an order compelling the information officer's compliance with the Act (draft papers are ready) and (b) being reported under section 84 of the Act as a PAIA delinquent in the SAHRC's next annual report to Parliament. Both events set to bring LASA into grave disrepute.

The judgment in The President of RSA v M & G Media (570/10) [2010] ZASCA 177 delivered recently by the Supreme Court of Appeal points up the enormous gravity and implications of the information officer's apparent contempt for what are rightly described as the 'founding values ... of accountability, responsiveness and openness' in our new constitutional democracy (j.mp/fgVErS):

> [1] Open and transparent government and a free flow of information concerning the affairs of the state is the lifeblood of democracy. That is why the Bill of Rights guarantees to everyone the right of access to 'any information that is held by the state',[1] of which Ngcobo J said the following in Brümmer v Minister for Social Development:[2] 'The importance of this right ... in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information."

Paragraphs 9–11 of the judgment emphasize this:

[9] The Constitution – and consequently the legislation that it has spawned – signals a decided rejection of past odious laws, policies and practices. In Shabalala v Attorney-General of Transvaal[7] Mahomed DP expressed that trenchantly in relation to the Interim Constitution (it applies as much to the present Constitution) when he called it a 'radical and decisive break from that part of the past which is unacceptable'. He went on to say: 'There is a stark and dramatic contrast between the past in which South Africans were trapped and the future on which the Constitution is premised. The past was pervaded by inequality, authoritarianism and repression. The aspiration of the future is based on what is "justifiable in an open and democratic society based on freedom and equality". It is premised on a legal culture of accountability and transparency. The relevant provisions of the Constitution must therefore be interpreted so as to give effect to the purposes sought to be advanced by their enactment'.

[10] Etienne Mureinik[8] captured the essence of the Bill of Rights[9] when he described it as a 'bridge from a culture of authority … to a culture of justification' – what he called 'a culture in which every exercise of power is expected to be justified.' The Bill of Rights, he continued[10] 'is a compendium of values empowering citizens affected by laws or decisions to demand justification. If it is ineffective in requiring governors to account to people governed by their decisions, the remainder of the Constitution is unlikely to be very successful. The point of the Bill of Rights is consequently to spearhead the effort to bring about a culture of justification. That idea offers both a standard against which to evaluate [the Bill of Rights] and a resource with which to resolve the interpretive questions that it raises'.

[11] The 'culture of justification' referred to by Mureinik permeates the Act. No more than a request for information that is held by a public body obliges the information officer to produce it unless he or she can justify withholding it. And if he or she refuses a request then 'adequate reasons for the refusal' must be stated (with a reference to the provisions of the Act that are relied upon to refuse the request).[11] And in court proceedings under s 78(2) proof that a record has been requested and declined is enough to oblige the public body to justify its refusal.[12]

Footnotes:
1. Section 32(1)(a): 'Everyone has the right of access to any information that is held by the state…'.
Section 31(1)(b) confers a right of access to information held by other persons in certain circumstances but that is not relevant for present purposes.
2. 2009 (6) SA 323 (CC) para 62.
7. 1996 (1) SA 725 (CC) para 26.
8. Etienne Mureinik 'A Bridge to Where? Introducing the Interim Bill of Rights' 1994 (10) SALJ 31.
9. Once more with reference to the Interim Constitution.
10. Page 32.
11. Section 25(3)(a).
12. Section 81(3)(a): 'The burden of establishing that…the refusal of a request for access … complies with the provisions of this Act rests on the party claiming that it so applies'.

Two typo fixes:
'the' deleted before 'Hartzenburg J'
'is as follows' restored to the same line following 'ZALC 18'

25 Baker Road
Prestbury
Pietermaritzburg 3201
22 August 2011

Dr Pregaluxmi Govender
Deputy Chairperson and Commissioner for PAIA
South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street
Braamfontein
Johannesburg

Per email: pgovender@sahrc.org.za

Dear Dr Govender

SAHRC's PAIA SECTION 84 REPORT TO THE NATIONAL ASSEMBLY; AND TEN QUESTIONS

On Wednesday the 10th instant I copied you my complaint to the Public Protector concerning LASA's persistent refusal to comply with PAIA and its section 32 report to the SAHRC, which I demonstrated to be false and misleading in multiple respects. For easy reference, both my complaint and the report are accessible online at:
www.tig.org.za/LASA/Public_Protector username: lasa password: LASA2010

Section 84(b)(x) of PAIA requires the SAHRC to 'include in its annual report to the National Assembly referred to in section 181(5) of the Constitution … the number of complaints lodged with the Public Protector in respect of a right conferred or a duty imposed by this Act and the nature and outcome thereof'.

May I have your assurance that 'the nature' of my 'complaint.. lodged with the Public Protector in respect of [my] right' to information violated by LASA in failing to observe its 'duty imposed by this Act' to afford me access to records I've duly requested will be fully, precisely and accurately described in the SAHRC's section 84 report so as to enable the National Assembly to appreciate the *several*

*causes* of my complaint – including my complaint about LASA's false section 32 report?

I suggest this would best be achieved by attaching a copy of my complaint to the Public Protector to your section 84 report – otherwise by quoting it directly, leaving nothing out that would misinform the National Assembly by omission. (Like when a used car salesman omits to mention the crack in the engine block when pointing out the smooth tyres.)

Having regard to our new democratic 'culture of justification' (see The President of RSA v M&G Media quoted at page 10 of my fist memorandum) please advise me:

1. If section 83(3)(c) charges the SAHRC with the responsibility 'to monitor the implementation' of PAIA, and section 83(3)(d) obliges it 'if reasonably possible, on request, [to] assist any person wishing to exercise a right contemplated in this Act', why was it not 'reasonably possible' for your PAIA Unit to read through my two memoranda addressed to it, in which I analysed and exposed the vacancy of LASA's reasons for refusing me access to the records I requested in the light of the applicable provisions of PAIA and relevant case law that I cited?

2. Why was it not 'reasonably possible' for your PAIA Unit to simply annotate its agreements or disagreements with my analyses as I 'request[ed]', and to forward them to LASA for its response?

3. Why was my 'request' that your PAIA Unit 'assist' me to 'exercise a right contemplated in this Act' in this simple manner not 'reasonably possible' for the SAHRC to accede to, and why was it refused?

4. If nothing 'reasonably' prevented your PAIA Unit from taking an hour to consider each of my memoranda examining LASA's reasons for refusing to comply with PAIA, and annotating its agreement or disagreement, why didn't it 'assist' me in this manner under its section 83(3)(d) powers?

5. After your PAIA Unit director Ms Kisoon gave me the early assurance that she'd taken a 'special interest' in the matter, implicitly undertaking to assist me

under the SAHRC's section 83(3)(d) powers, what made her lose interest and decide not to assist me?

6. Why did Ms Kisoon immediately 'clos[e her] file' on receiving LASA deputy information officer Brian Nair's refusal – again – of my outstanding first and second requests in August and December 2010 and his refusal of most of my third request in March 2011, when it's obvious at a glance to any lawyer that his reasons aren't supported by PAIA and that his refusal was accordingly unlawful?

7. Why did Ms Kisoon not reopen her file on receiving my second memorandum, in which I canvassed and refuted all Nair's plainly vacant reasons for refusing my requests, with reference to the plain facts, the provisions of PAIA, and the reported cases on its operation?

8. Why, despite my repeated emphasis in my enquiries and reminders that I was under time pressure to commence action in the Labour Court, did the SAHRC do absolutely nothing for two critical months after receiving my second memorandum in April?

9. Why did the SAHRC only respond to my fundamental rights violation complaint and announce that it was refusing to investigate it, the day after receiving my PAIA request for the SAHRC's own records to establish what steps it had taken to assist me?

10. What prevents the SAHRC's PAIA Unit even at this late stage from assisting me access the records I need, by simply annotating its agreement or disagreement with my claim to entitlement to the refused records in the light of the relevant provisions of PAIA and decided cases I've cited? (As I've pointed out, your chairman's claim that the fundamental right in question, my right to information, is shortly going to trial is completely wrong; a wholly different fundamental right, my right to equality, is going to court, as my enclosed statement of claim bears out.)

As I've mentioned before, I'll be providing the Portfolio Committee on Justice and Constitutional Development with a report of my own: 'The SAHRC and PAIA:

Brink and LASA: A Case Study in Failure'. My report will brief the Committee on (a) LASA's persistent refusal to comply with its constitutional and legal obligations under PAIA, and (b) the SAHRC's remarkable indifference to this; and I imagine the Committee will have several hard questions for the SAHRC along the lines of those listed above when its section 84 report is presented.

It's now evident from the SAHRC's response to my PAIA request for its own records in this case that besides picking up the phone in September 2010 to ask LASA to respond to my first records request in August, the PAIA Unit hasn't lifted a finger to support and assist me – notwithstanding the SAHRC's special obligations under section 83(3)(c) and (d) 'to monitor the implementation' of PAIA, and 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'; Ms Kisoon's assurance to me that she'd taken 'a special interest' in the matter; and the fundamental and critical importance of compliance with PAIA in our democracy inter alia in combating the abuse of power, repeatedly underscored by the courts and by the Portfolio Committee on Justice and Constitutional Development.

Since none of the SAHRC's shameful excuses for not investigating my fundamental right violation complaint bear scrutiny (when I showed them all to be false and untrue in my appeal notice, not one of my grounds of appeal was addressed when my appeal was dismissed), I'm left wondering whether, in the case of politically out-of-favour individuals, the SAHRC considers section 181(2) of the Constitution inapplicable, namely its stipulation that the SAHRC, as one of the 'STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY' mentioned in Chapter 9, 'must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice'.

You really can't imagine the depths of my disillusionment with the SAHRC. My misplaced trust in Ms Kisoon's assurance that she'd taken a 'special interest' in the matter and in the SAHRC's professed concern that PAIA be respected and observed has cost me a tremendous amount of wasted time and energy, with all my approaches to the SAHRC over the last year proving utterly fruitless. Then again, in some circles my dismay may be the cause of jubilation.

I look forward to your replies to my questions and to your assurance that 'the nature' of my 'complaint.. lodged with the Public Protector' will be fully, precisely and accurately reported as section 84(b)(x) requires, with nothing material left out: to repeat, my complaint has several legs.

Given the disgraceful history of the SAHRC's performance in this matter to date, you'll understand that I have zero remaining confidence that it will perform as the Constitution and PAIA require of it without your special urging.

Yours sincerely

ADV ANTHONY BRINK

Encl: Statement of claim.

Cc: The Portfolio Committee on Justice and Constitutional Development, per inclusion in report in preparation: 'The SAHRC and PAIA: Brink and LASA: A Case Study in Failure'

Legal Aid South Africa

Your voice. For justice.

# Delivering client-focussed quality legal aid

*presented by*
*Vidhu Vedalankar –CEO Legal Aid SA*

**ACCESS TO JUSTICE CONFERENCE**
**"Towards delivering accessible quality justice for all"**
9 July 2011

# Legal Aid South Africa in 2011

A Snapshot

| Indicator | | 2010/11 | |
|---|---|---|---|
| **Infrastructure** | National Office | 1 | |
| | Regional Office | 6 | |
| | Justice Centres (local) | 64 | |
| | Satellite Offices (linking to JCs) | 64 | |
| | High Court Units (part of JCs) | 13 | |
| **Staffing** | Budgeted posts | 2,595 | |
| | Number of staff (recruited) | 2,489 | 96% |
| | Number of lawyers | 1,932 | 78% |
| **Finances** | Total Budget | R 1,18 billion | |
| | Government Grant | R 1,14 billion | |
| **Audit Status (2009/10)** | | 9th unqualified audit | |

# Legal Aid delivery –increasing access

Clients form the core of our delivery strategy ensuring increased access to legal aid services – by **linking our points of delivery to clients and communities** and **increasing new forms of contact to link to clients**

We have **increased access to clients** through

- **100% coverage of all criminal courts** in the country
- Our **National Footprint of 64 Justice Centres and 64 Satellite Offices** offering general advice, civil legal services as well as criminal legal services to the public
- Linking to **advice offices** in communities to supplement their legal advice capacity as well as increase access on civil legal aid matters
- Providing **online general legal advice** through our toll-free **Legal Aid Advice Line**
- **Community outreach programmes** like community events and fairplay events at schools
- **Prison visits** to hold advice/information clinics and consultation with clients
- **Partnerships with NGOs and CBOs** to increase access to justice.

# Legal Aid delivery Systems and model

- Legal aid delivery is through a **mixed model delivery system**:
  - Justice Centres (96%) ,
  - Judicare (3%),
  - Co-operation Partners and Agency Agreements (1%)
- Each **Justice Centre** is responsible for the **coverage of all courts** within a defined coverage area. However, where the distances to courts are great, Satellite Offices are established.
  - **Practitioner per court model** - district and regional courts.
    - District Courts -a 100% coverage of all courts for 4 days a week
    - Regional courts -a 100% coverage for 5 days a week.
  - High courts - a **central court roll model**
- **Judicare** – accreditation system and allocation – supplement JC capacity.
- **Co-operation partners** - agreement with an NGO or a university law clinic to close identified gaps in the provision of legal aid
- **Agency agreement model** - to assist clients in criminal matters at remotely located courts that are not covered by our Justice Centres

# Legal Aid delivery Systems and model

- **Civil legal aid services** are available at all 64 **Justice Centres** with dedicated **civil units** at 13 of our Justice Centres linked in civil unit clusters to all Civil Practitioners at the various Justice Centres for improved support and supervision.
- The **Impact Litigation Unit** undertakes or funds Constitutional matters, precedent setting cases and/or class actions on behalf of indigent or vulnerable persons/groups to give content to our Constitution.
- A **general legal advice service** at all Justice Centres and Satellite Offices - providing clients in civil matters with first level legal advice by Paralegals. Clients requiring the services of a civil lawyer are referred to a practitioner in the civil section at the same Justice Centre
- **Legal Aid Advice Line** (Call centre) launched in 2010 for the provision of **general legal advice** in 5 languages by first level agents – paralegals - who provide advice and referral services and second level service for more complex problems provided by a civil legal practitioner.

# Legal Aid delivery – Challenges

- Inadequate **practitioner per court ratio and relief capacity** – constrained by available resources
- **Unequal resourcing** across the justice cluster
- **Limited capacity** to render **civil legal aid** services
- Access to Legal Aid SA services by **clients in rural area**
- Inadequate **consultation facilities** for legal practitioners at courts and prisons
- **Individual legal challenges to the delivery of legal aid** which threaten the coherence of the system to deliver at scale as well threaten the long term sustainability of the system

# Keynote address by President Jacob Zuma on the ocassion of the 3rd Access to Justice Conference, Pretoria

*08 July 2011*

We are gathered to discuss a compelling and very important subject of access to justice. But first and foremost, allow me, on behalf of our government and the people of South Africa, to convey our gratitude to our Chief Justice and the Heads of various Courts for hosting this important conference.

Programme Director Judge Ngoepe,
Honourable Justice Sandile Ngcobo, Chief Justice of the Republic of South Africa;
Minister of Justice and Constitutional Development and other Ministers present here;
Honourable Speaker of the National Assembly;
Honourable Chairperson of the National Council of Provinces;
Members of the judiciary;
Heads of Chapter 9 institutions,
Former Chief Justices,
Members of the legal profession;
Distinguished delegates;

We are gathered to discuss a compelling and very important subject of access to justice.
But first and foremost, allow me, on behalf of our government and the people of South Africa, to convey our gratitude to our Chief Justice and the Heads of various Courts for hosting this important conference.

We also extend a warm welcome to our international guests who have come in numbers to share their views and experiences.

I am also heartened by the presence of the members of the Legislature and Executive branches of our Government in this conference.

This is an affirmation of our constitutional value of cooperative governance, on which our model of separation of powers is premised.

The separation of the three branches of the state form a critical basis of our open and democratic society founded on equality and human dignity.

Esteemed guests;

Access to justice is a fundamental human and democratic right, a central pillar of a free and equal society.

Therefore this conference demands a candid reflection regarding the progress we have made in transforming our society as South Africans.

South Africa stands out as a shining example for many countries which are still grappling with issues of transformation and the consolidation of national unity.

We have made significant strides in striving for access to justice for all our people since 1994. We have abolished many laws which were inconsistent with our constitution.

Our greatest achievement as a new nation in the 1990s was the adoption of a constitution which enshrines human dignity, equality and the advancement of human rights and freedoms.

In addition, the equality clause in the Bill of Rights stresses not only equality before the law, but the right to equal protection and benefit from the law.

In addition we have the Chapter 9 institutions, with the key responsibility of promoting democracy and protecting the rights of citizens even further.

Even before we adopted the final constitution in 1996, the values that we espoused in society proved impeccable.

One of these values is access to justice and human rights by the poor.
There are matters which may sound simple but which seriously hinder access to justice by scores of disadvantaged people.

This conference will look at some of these obstacles and look for solutions.

These hindrances are two-fold. One aspect affects judicial officers as dispensers of justice. Their working conditions may impact on access to justice.

As early as 2003, Chief Justice Ngcobo, then a Judge of the Constitutional Court, outlined some of these obstacles in a paper entitled “Delivery of Justice: Agenda for Change". He said;

“Justice suffers when judges are working under unfavourable conditions; it suffers when the price is too high and the delay too long for the average citizen;”
“And it suffers when some courts have to contend with poor and inadequate support service. Indeed justice suffers when in some courts judges have no chambers to work from and insufficient court rooms for cases to be heard”. (unquote).

The other side of the coin is the difficulties for the recipients of justice, especially the poor. Their situation is more desperate because unlike judicial officers, they are powerless and usually cannot solve the conditions they find themselves in.

One main impediment to access for scores of our people is poverty.

Due to poverty-related lack of education and ignorance, many people do not know the law and cannot exercise their rights. This makes the saying ‘’ignorance of the law is no excuse’’ an anomaly in a developing country.

This tenet excuses the blocking of access to justice for the poor and disadvantaged. Access to justice should therefore also involve, to a great extent, citizen education about the justice system.

People need to know their basic rights, the different courts and other structures they can have recourse to when they have problems.

Poverty also makes it difficult for the poor to enjoy equal benefits of the provisions of the law, when they do not have resources such as paying legal fees. Fortunately, Legal Aid South Africa continues to offer legal representation to the indignant free of charge.

This year more than four hundred and thirty seven million rand has been allocated for the increased capacity of Legal Aid South Africa, in order to enable increased access to justice for the poor.

Access to justice is also hindered by language. Some people lose cases due to incorrect interpretations by interpreters.

For yet others, access to justice is hindered by lack of transport, to reach the courts, which may be far from their places of residence. Government has set aside R2,5 billion to construct more courts to attend to this challenge.

Access to justice also refers to the efficiency of the court system.

Some of the challenges include failure to deliver judgments on time, unreasonable delays in the finalisation of cases, unwarranted and unsubstantiated court orders and poorly considered judgments. All these have devastating effects on the lives of our people and put strain on state resources too.

Another cause of frustration for many is the lack of communication around cases. They travel long distances only to find that they have travelled jsut for a postponement. Almost 80% of awaiting trial detainees transported to courts are for the mere purpose of postponements.

As a result, government is exploring the Audio Visual Remand system. Victims of crime will attend sittings where cases will actually be fruitfully dealt with in court.

Linked to efficiently dealing with postponements, we are pleased that courts are also emphatic about resolving case backlogs.

I know that in the North West, certain judicial officers have embarked on working on Saturdays to reverse case backlogs in our system.
Esteemed participants,

Access to justice must also refer to improving efficiency in our maintenance courts.
As government, we have identified Maintenance and Masters’ services as areas that must receive our utmost attention as these are issues affecting the welfare of our people.

We know too well that implementing an effective maintenance recovery and payment system would reduce dependence on the child support grant as more and more working parents will be compelled to support their children.

We are also putting more efforts to turn around the Master’s offices to improve services relating to the winding up of estates of the deceased, the administration of insolvent estates and payments from the Guardian’s Fund.

Government has also catered for access to justice for children, through the Child Justice Act. The law caters for children to ensure that their participation in litigation and eventually in serving sentences does not compromise their

# Raging against the evil Empire

AIDS ACTION a loose coalition of progressive organizations and individuals recently staged a successful march against pharmaceutical company Merck over its part in the Pharmaceutical Manufacturers Associations Court action against the South African government. Pravasan Pillay, an AIDS ACTION activist, charts the genesis of the March Against Merck.

The recent march (29 March 2001) against pharmaceutical giant Merck was born out of the ashes of the poorly attended Treatment Action Campaign (TAC) march to the United States Embassy in Smith Street, Durban. This was about a month ago. The weather on the day was memorably hot. The two hundred odd people assembled there were sweaty and tired. But mostly they were tired. Marathon speeches by the likes of Kwa-Zulu Natal health minister Dr. Zweli Mkhise and various figures of officialdom had seen to that. Loud praises to absent leaders were sung. Old unrelated armed struggle slogans were chanted.

The anarchists in the sparse crowd were in visible pain. Posters expressing people's anger against the Pharmaceutical Manufacturing Associations (P.M.A) decision to take the Government to court were used to shield eyes from the sun and to sit on. At the beginning of the march they were lofted high above the protestors heads. The politicians on a mandate to inspire had effectively pacified any anger and drained any energy that these committed marchers might have been imbued with.

When the U.S. Embassy representative eventually emerged from his imposing black-windowed air-conditioned building to receive the TAC memorandum he was greeted with marked docility. It was the Yankee's lucky day. A lone cry of: "Down with the U.S.A." was reciprocated with a barely audible murmur. It seemed that most of the marchers just wanted to get the whole affair over with. After the march groups of disillusioned activists milled around outside the Embassy amongst discarded posters and pamphlets trying to work out what went wrong and to graft a way forward. Most felt that this poor showing reflected badly on Durban's level of commitment to the struggle for affordable drug prices for HIV/AIDS patients and that putting on a strong march was especially important given the large shows of support and solidarity taking place in diverse locations like Mumbai, Paris, Sao Paulo, Bangkok, Washington, New York, Dakar, London, Pretoria, Johannesburg, and Cape Town.

A spontaneous decision was taken by mostly University of Durban-Westville staff and students to organize an HIV/AIDS march of their own. Several decisions and conditions were immediately set. Firstly it was decided that a university AIDS advocacy group be formed to deal with the logistics of arranging the march and to formulate and organize future action campaigns. Secondly it was decided that the target of the march should be one of the thirty-nine pharmaceutical companies that had brought the case against the South African Government. The close proximity of Merck to the university made it an ideal candidate. Later this decision to march on Merck was to prove justifiable on more than these simple grounds of accessible locale.

Lastly it was decided that although they obviously sided with the Government in the court action no politicians and more especially no health ministers would be invited to speak at the march. The following week a meeting was called to discuss the formation of the university AIDS advocacy group andpossible dates for the planned march. The e-mail announcing the meeting ended with a quote from the French novelist Victor Hugo. It read: "Nothing is quite so powerful as an idea whose time has come.".

Those who gathered for the meeting collectively represented the three major role-players at the university: the Combined Staff Association (COMSA), the Academic Staff Association (ASA), and the Students' Representative Council (SRC). Old apartheid struggle activists mixed, spoke, and exchanged ideas freely

with younger versions of themselves united by a common hatred of market fundamentalism. Everybody had something to contribute. People had to shout to be heard. The radicals spoke about possible infiltration and occupation of Merck premises. The liberals spoke about the checks and balances of the march funding. The conservatives kept a surprisingly cool head.

But overall all three organizations agreed that the Court action against the Government was morally reprehensible and that quick, strong, and decisive action needed to be taken against those drug companies that put profits before the lives of people. By the end of the meeting the AIDS ACTION advocacy group was formed, a date for the march was set, and the dormant UDW struggle engine began to slowly roar to life again.

The three weeks leading up to the march were hectic for all people involved. Tough academic schedules prevented too many meetings from taking place. A plan was made. Massive cell-phone bills were ran up and large-scale e-debates took place. Family lives were put on hold. The logistics of planning the march also proved to be a daunting task. Permits were needed, routes had to be planned, and students and staff had to be informed and organized. Help was sought. Fazel Khan, a COMSA veteran and legendary mobilizer, stepped forward to show less experienced activists the way it was done. His eccentric methods were unfathomable at first but later it slowly dawned on most the AIDS ACTION activists that they had just received a three-week crash course on how to conduct a revolution.

Respected political scientist, Lubna Nadvi, and Yusuf Vawda, a dedicated TAC activist, bravely volunteered to sift through the miles of energy sapping red tape. Richard Pithouse, Durban's organizing philosopher and leading struggle chronicler, was to ensure that the march received appropriate press coverage. Indeed it was largely through Pithouse's ceaseless publicizing efforts that the march reached the magnitude it eventually did. The charismatic and principled SRC executive member, Bongani Mlambo, put all the available resources of the SRC at the disposal of AIDS ACTION. Exciting new struggle networks and methodologies were being forged as the days leading up to the march unfolded.

It was also becoming increasing apparent that the energy of the march could no longer be contained within the boundaries of the university. The list of progressive individuals that wanted to be part of the march against Merck grew longer every day. They included Fatima Meer, the celebrated human rights activist; Zackie Achmat, the national head of TAC; Trevor Ngwane, the noted Sowetan anti-globalisation activist; Ashwin Desai, the radical activist intellectual; Patrick Bond, South Africa's leading political economist; Promise Mthembu, the regional head of TAC; and Bishop Reuben Phillip. It was also announced that the mercurial Zackie Achmat, who has refused any drug treatment until it is available for all HIV/AIDS patients, would give a talk the day before the march on the way forward in the struggle to win affordable treatment for people living with HIV/AIDS. Some of the organizations that threw their support behind the march included: ActivAID, Mobilising Against Pharmaceuticals, Tekweni Eco-Peace Party, Agenda Feminist Media, and The Workers College. A proper and vibrant civil society movement was rapidly being born.

Getting funding for the printing of posters, t-shirts, and pamphlets as well as for the hiring of the buses was consuming much time and energy but fortunately a few days before the march Lubna Nadvi announced that the money from the university's AIDS fund had come through. It seemed that the final hurdle had been crossed. Or so the AIDS ACTION activists naively thought. On the morning of the 28th, a day before the planned march and the scheduled date of Zackie Achmat's talk at UDW, Merck began their counter-action cum dirty tricks campaign. Fazel Khan made the shocking announcement that the march could possibly be directed at the wrong company. He received this information courtesy of a high-ranking employee at the Merck branch that they had planned to march to. The employee claimed that his company, Merck (Pty) Ltd, had no influence or relation to Merck and Co. Inc, the American company which is party to the PMA Court action against the Government. The activists were devastated.

It was too late to apply for a permit to march to one of the eight other Court action drug companies that had offices in Durban. Panic set in. Company web-pages were pored over and frantic phone-calls were made to ascertain whether the employee's claim had any measure of truth in it. As far as the AIDS ACTION activists could gather he seemed to be telling the truth - Merck (Pty) Ltd was a separate and distinct company from Merck and Co. Inc. Talk of a march cancellation began to slowly circulate.

Eventually sanity set in and it was decided to seek out the advice of leading human rights lawyer, Heinrich Bomke, who was very familiar with the facts of the case. Within ten minutes of phoning him the activists received an e-mail from Bomke clarifying the issue once and for all. It turned out the while the employee was speaking the truth as far as Merck (Pty) Ltd not being a part of Merck and Co. Inc. was concerned he was nevertheless speaking utter nonsense with regard to Merck (Pty) Ltd. not being a part of the PMA Court action against the Government. Merck (Pty) Ltd. were the 13th applicant of the 39 drug companies taking action against the Government, Merck and Co. Inc. were the 38th applicant, and Merck KGAA, a German based company, were the 37th applicant. A jubilant and at the same time angry Khan phoned the Merck employee back and gently queried this slight oversight. The employee, realizing the game was up, even admitted to being in attendance at the first court case. The rules of engagement were now established and the march was still very much on. The mood at the university had grown militant and resolute: Merck (Pty) Ltd., Merck KGAA, or whatever else they called themselves were going down.

Later on in the day a visibly tired Zackie Achmat still managed to give a rousing speech to the more than 350 activists from various different organizations that had gathered in anticipation of the march. A resolution to be handed to Merck the next day was passed by all in attendance. It demanded that Merck withdraw their support for the Pharmaceutical Manufactures Association's legal challenge to the Medicines and Related Substances Control Act of 1997, lower their prices on all essential drugs to affordable levels, allow all poor countries to manufacture generic HIV/AIDS drugs, and demonstrate transparency in their pricing policies. The resolution also stated that AIDS ACTION fully support and commit to TAC in its struggle for full access to treatment for all. The slogan of the march was to be: "People before Profits". Zackie Achmat spent his few remaining minutes of free time after his speech - he was due to conduct an AIDS workshop - speaking individually to students. The next morning brought with it another shock. Initially AIDS ACTION had decided to march on Merck because of its ideal location and the fact that it is one of the most powerful and influential pharmaceutical companies of the 39 applicants but with the morning of the march came a more pressing reason. Merck were now threatening legal action against the Brazilian government over its decision to import the generic drug, Efavirenz, from India.

Merck claim that the Brazilian state-owned pharmaceutical laboratory, Far-Manguinhos, in doing so has violated its patent on the drug known as Stocrin. Brazil is the one developing country that is able to provide life saving AIDS medicines to all its people for free. In other developing countries these medicines cost up to R100 000 per person per year. Brazil has achieved this by manufacturing generic versions of these medicines. It now legally manufactures eight of the twelve drugs used in AIDS treatment cocktails. The generic Efavirenz is used in only a relatively small number of cases yet it consumes more than ten percent of Brazil's $305 million AIDS drug budget. The Brazilian model has given hope to millions of people living with AIDS in the developing world. It is clear that Merck wished to quash this hope. This action has made them the enemy of people all over the world. The symbolism of the march against Merck immediately took on immense proportions.

At around noon protesters began to gather around the university quad. The mood was happy and determined. The diversity of people and organizations was amazing to see. As well as staff, both academic and technical, and students from the University of Durban-Westville there was also a sizable contingent of staff and students from the University of Natal and the Natal Technikon. There was also a strong union,

anarchist, and feminist presence. The weather was sweltering even for Durban. Large banners were being spray-painted all over the quad. Crowds gathered around the painters suggesting slogans and querying the nature of the protest.

One read: "Merck! Hands of Brazil!". The word had spread quickly. The hurriedly painted banner was the first official protest against Merck's threatened Court action against the Brazilian government. Zackie Achmat spoke to students in the quad informing them about the battle for affordable treatment. People stopped and listened carefully. March marshals handed out t-shirts with the "People before Profits" slogan on it but most protesters clamored for the t-shirts with the "HIV Positive" slogan on it. Achmat who was wearing his own TAC "HIV Positive" t-shirt asked the marshals for one of these only to surrender it a few minutes later to a pleading female protestor. He was clearly amazed at the sight. The stigma and alienation of the virus was suddenly giving way to the idea of it being a collective problem that could only be solved by a collective effort by the multitude. At the same time academics and politicians around the country were attending conferences and seminars on the African Renaissance dressed in "traditional" regalia. There obviously existed a conflict between what the theoreticians and what the multitude thought the garb of the renaissance should consist of. Later Achmat suggested that the university print each student and staff member one of the t-shirts. When the buses taking the protestors to the march were eventually filled to the point of over-flowing they numbered five while the number of private vehicles ferrying people to the march numbered just over twenty. The well over 700 people participating in the march against Merck had, given the short period they had to arrange it, exceeded the AIDS ACTION activist's wildest predictions but perhaps what pleased them the most was the diversity and militant mood of the people. Indeed many people commented on the similarities in composition to last years successful 5000 strong TAC Global March For Access To HIV/AIDS Treatment that was held in Durban to coincide with the International AIDS conference.

Those protesters who had decided to take the bus to the march were rewarded with righteous Zulu folk songs, impromptu toyi-toyi demonstrations, manifesto and poetry readings, and brief lessons in anarchism. The highly confined spaces ensured that everybody was sweaty but not a single soul complained or mentioned it. Talk of confronting the evil Empire abounded. One particularly sweat-drenched chap invoked the name of Sub-Commandant Marcos and his band of Zapatistas who were at the very same moment engaged in their own battle against neo-liberalism in the heart of Mexico City. A cry of "Basta! - Enough!" rang through the buses. At the start of Essex Terrace the protesters disembarked from the buses and vehicles and gathered under the watchful eye of the police to begin the long and much anticipated march to Merck. They were joined by children and volunteers from the God's Golden Acre home for AIDS orphans. Since the walk was too long for most of the younger orphans to make on their own they were carried in the arms of protesters.

The protesters, both young and old, then began the long toyi-toyi up the hill to Merck's offices. Their energy-levels, despite the tremendous heat, did-not once falter. A lady along the way had to restraint her large dog from barking and from trying to attack the protesters. She received a roar of approval from a section of the march when she scolded it by telling it: "Don't bark at them boy. They're not the crooks. They're going to get the real crooks.". Employees of Merck gathered on balconies and looked out of windows as the protestors assembled outside of their company premises. There was a strong press presence. The chairs of the march were Richard Pithouse and Bongani Mlambo. The other speakers included Zackie Achmat, Fatima Meer, Patrick Bond, Bishop Reuben Phillip, Trevor Ngwane, Ori Moloi, and Ashwin Desai. Every one of the speakers spoke for a very short time. No praises to the Government were sung. The plain facts of the case were clearly and concisely stated and all the speakers agreed that this was just the beginning and that they wouldn't rest until the struggle for affordable treatment had been won. A fiery Pithouse, invoking Marx's 11th Theses on Feuerbach, drew a distinction between academics and intellectuals. He said that while not all intellectuals were academics most academics were not intellectuals. His emphasis on praxis drew roars of

approval from students and lecturers who knew only too well the follies and vanities of academic life.

Bond recalled marching twenty years ago to the Merck offices in America and expressed happiness that the movement was being resurrected. He introduced the pre-dominantly South African protesters to some of the catchy struggle slogans used by American protesters. By the end of his speech most of the protesters had dropped the familiar chant of "Viva!" for Bond's suggestion of "Hey Ho!". The good-natured refrain continued for the rest of the march and much of the next day. The protesters were proving to be very receptive to new ideas. Bishop Phillip said that the struggle against AIDS was about the preservation of life and that during the apartheid struggle many people sacrificed their lives for justice for all the people. He added that the new struggle was against a disease that was destroying our people. Ashwin Desai was introduced to the protesters to great cheers. Older student protesters recalled Desai's instrumental role in the attempted coup, dubbed "Operation Dislodge", of the University of Durban-Westville's management that took place about six years ago. He is to this day banned from entering UDW property. Desai did-not need a microphone to be heard. He raised the issue of protest marches that were becoming more and more passive. He added that instead of standing outside of evil places we should be burning them down and that instead of handing over memorandums we should be setting them alight. This pronouncement was also meet with militant cheers.

Ludna Nadvi then read out the resolution passed at Zackie Achmat's talk the previous day to Merck MD, Jacob Godwin, before it was handed over to him by one of the AIDS orphans from the God's Golden Acre home. Godwin wished to speak. He was faced with placards and banners saying, "People Before Profits", "America Stop Killing Us", "Affordable Treatment For All, Not Super Profits For A Few", "Globalization Ruins The Poor", and "No Patience With Patents". He said that he would present a memorandum justifying Merck's price structure for AIDS drugs. This was met with loud boo's, curses, and shouts of "shaya". The marchers turned their back on him. On the buses back to the university the mood was jubilant. The march had been a huge success and the seeds of a larger social movement had been sown.

Later on back at the university two sweaty and untidy looking marchers were confronted by an academic looking resplendent in his fine tweed jacket. He wanted to know where they had been. They told him. He replied that they had missed a very important seminar on the importance of civil society. Much laughter had to be suppressed. The next day an article covering the march appeared in one of the morning papers. Merck called up the journalist concerned and threatened him with legal action over inaccuracies in the story. The well-worn Merck (Pty) Ltd. is not Merck and Co. Inc. gambit was being used again. The quick-witted journalist replied that if Merck were so concerned about patents why weren't they worried about another company using their name. The energy generated by the march was rapidly spreading. Victory was in sight.

Pravasan Pillay is a freelance journalist and lectures Political Philosophy at the University of Durban-Westville (South Africa).
Durban, April 2nd, 2001

See also: Drugs companies putting profits before millions of people's lives

[Back to In Defence of Marxism] [Back to Africa] [Back to correspondence]

Legal Aid South Africa

Adv. Anthony Brink

25 Baker Street

Prestbury

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29 De Beer Street
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Johannesburg 2017
Private Box X76
Braamfontein 2017
Tel. 011 877 2000
Fax: 011 877 2222
**www.legal-aid.co.za**

22 August 2011

Dear Adv. Brink

***per email: arbrink@jafrica.com***

**ANTHONY ROBIN BRINK AND LEGAL AID SOUTH AFRICA: CASE D529/11: LABOUR COURT DURBAN.**

1. As you are by now aware, the Legal Aid South Africa ("Legal Aid SA") intends to oppose your Labour Court action against it. Our legal representatives are presently in the process of settling the Legal Aid SA's answer to your claim.

2. During the above preparation, our representatives noted that you refer, in your Statement of Claim, to documents which form part of some record (bundle) prepared and paginated by yourself.

3. Our Durban Justice Centre staff was requested to attend to Court and secure the said record (bundle) from the Court file for our legal

representatives, including counsel, to refer thereto and follow the same pagination as you have.

4. Our staff, I am advised, attended to the Labour Court where they perused the Court file and found, besides the Statement of Claim which we have, that there were no annexures referred to in your footnotes to the Statement of Claim. We however have, in our possession, a bundle of documents commencing from page 1 to 209 which was sent to us during your request for information in terms of PAIA.

5. From the perusal of your Statement of Claim, it appears that there are other documents; or another bundle which commences from page 210 to 510 or thereabout which is not in the Court file and to which you have referred.

6. The purpose of this letter is to request that you avail to Legal Aid SA the said missing bundle (pages) to enable our legal representatives to also follow the same pagination as your Statement of Claim.

7. You are requested to urgently deposit a copy of the remaining bundle at Legal Aid SA's Pietermaritzburg office where a copy shall be made and be dispatched to our Johannesburg office for aforementioned preparation. Alternatively, you can please email same to Mr Solly Sekgota at sollys@legal-aid.co.za and Mr Thembile Mtati at thembilem@legal-aid.co.za.

8. I wish to bring it to your attention that Legal Aid SA intends to file its answer to your claim as soon as is practically possible. Accordingly, we kindly impress upon you to give this matter your urgent attention.

9. Furthermore, it is apparent to both parties that the *dies* to file the Statement of Defense has expired, we request that you agree to an extension to file the above Statement of Defense on or about 9 September 2011. Failing which we will have no choice but to seek the Court's indulgence in this regard.

Thanking for your assistance,

**Thembile Mtati**

**Corporate Services Executive**

**Legal Aid SA**

Cc Ms L Bothma

Registrar of the Court

Labour Court, Durban

4th Floor

480 Smith Street

Durban

Hand Delivered

25 Baker Road
Prestbury
Pietermaritzburg 3201
23 August 2011

Mr Thembile Mtati,
Corporate Services Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

Dear Mr Mtati

BRINK/LASA: LABOUR COURT DURBAN: CASE D529/11

Thanks for your letter of the 22nd instant.

I was surprised by your opening note, 'As you are by now aware, Legal Aid South Africa … intends to oppose your Labour Court action against it', because I hadn't received any notice of this prior to your letter. In fact I was preparing to apply for default judgment. If such notice was sent to me, it's gone astray, so please send it again for my records, preferably by email attachment.

As you correctly note, my statement of claim refers to my paginated document bundle for trial. In accordance with rule 6(1)(e) my 'statement of claim … initiating proceedings … must … be accompanied by a schedule listing the documents that are material and relevant to the claim' – and not the documents themselves. This is why I haven't served my bundle on LASA, or filed a copy with the registrar of the Labour Court yet.

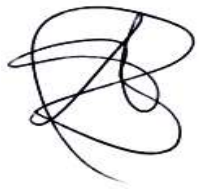
Nonetheless, the complete bundle can be downloaded as a printable PDF at www.tig.org.za/LASA username: lasa password: LASA2010. Your legal representatives shouldn't have any trouble accessing the bundle there and printing a copy. I suggest printing the whole thing, because I recall dropping a couple of non-essential documents some time before I began preparing my statement of claim, and this will have disturbed the page numbering of the possibly stale early version of the bundle you've got.

I haven't prepared bound hardcopy bundles for trial purposes yet, so if downloading the bundle doesn't work, I can drop a PDF copy burned to CD at your Pietermaritzburg office. Please let me know if you need me to do this.

I record that I have no objection to an extension of the time period within which to file LASA's response to my statement of claim, and I consent to the delivery of your response on or about 9 September as mooted. There's certainly a lot to respond to.

Finally, I've fixed some typos and minor errata in my statement of claim, listed in the annexure hereto. I suggest that your legal representatives reprint the statement of claim from the website mentioned above and work from a pristine copy.

Yours sincerely



ADV ANTHONY BRINK

Cc: Mrs L Bothma, Registrar, Labour Court, Durban

**Typo fixes and errata**

Frontispiece, foot of second page: Schröder with a ‘c’

paragraph 17: repetition of introduction of Mlambo as chairperson cut; simply Mlambo

footnote 27:  part in lower case, not Part

paragraph 23: then President Thabo Mbeki, not former

paragraph 23  comma out after enthusiasm

paragraph 26: comma after industry

paragraph 112: dated 12 July, not on

paragraph 112(a): writer/author, not write

paragraph 118: tirade in, not to

paragraph 122 (a) comma to the left of footnote 177

paragraph 185(a) lower case ‘o’ in on

footnote 338: Page 5, paragraph 21, not as below in footnote 339.

para 253: comma out after requests

Legal Aid not AID

Guardian Employees Organisation, not Association

Postal codes moved to same line as city or post office

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between:

**ANTHONY ROBIN BRINK** APPLICANT

And

**LEGAL AID SOUTH AFRICA** RESPONDENT

---

**FILING NOTICE**

---

TO : THE REGISTRAR
LABOUR COURT
DURBAN

AND TO : ADV. AR BRINK
25 BAKER ROAD
PRESTBURY
PIETERMARITZBURG
KWAZULU NATAL
TEL: 033 – 344 2420
CELL: 083 779 4174
FAX: 086 672 0772

S I R S

**KINDLY TAKE NOTICE** that the Respondent herein serves and files its Notice to Oppose evenly herewith.

DATED at DURBAN this 11th day of AUGUST 2011

RESPONDENT'S ATTORNEYS

LEGAL AID BOARD
LEGAL AID HOUSE
29 DE BEER STREET
BRAAMFONTEIN
JOHANNESBURG
2017
TEL: 011- 877 2000
FAX: 011- 877 2222
REF:

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

**CASE NO.** D529/11

In the matter between:

ANTHONY ROBIN BRINK APPLICANT

And

LEGAL AID SOUTH AFRICA RESPONDENT

**NOTICE TO OPPOSE**

**BE PLEASED TO TAKE NOTICE** that the Respondent intends to oppose the above application.

**KINDLY TAKE FURTHER NOTICE THAT** the Respondents appoint the address of their Attorney stated below as the address of service for all documents.

DATED AT DURBAN ON THIS 11 DAY OF AUGUST 2011

**LEGAL AID SOUTH AFRICA**
DEFENDANT'S ATTORNEYS
LEGAL AID HOUSE
29 DE BEER STREET

BRAAMFONTEIN
2017
TEL: (011) 877 2000
FAX: (011) 877 2222
**C/O DURBAN JUSTICE CENTRE**
6401 SUIET 401
4TH FLOOR
SALIBURY HOUSE
330
SMITH STREET
4001
REF: THULANI SITHOLE

TO: **THE REGISTRA OF THE ABOVE HONORABLE COURT**
4TH FLOOR
480 SMITH STREET
DURBAN

AND TO: **ADV. AR BRINK**
25 BAKER ROAD
PRESTBURY
PIETERMARITSBURG
KWAZULU NATAL
TEL: 033 344 2420
CELL: 083 779 4174
FAX 086 672 0772

BY HAND /OR FAX

Received copy hereof on this the day of 2011
Time_____

(SGD)_____
Received

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

CASE NO: D529/11

In the matter between:

**ANTHONY ROBIN BRINK** APPLICANT

And

**LEGAL AID SOUTH AFRICA** RESPONDENT

---

**AFFIDAVIT IN SUPPORT OF PROOF OF SERVICE RULE 4 (2) (b)**

---

I, the undersigned

**THULANI DOMINICA SITHOLE**

do hereby make oath and say that:

I served the Notice to Oppose regarding this matter on the Applicant by way of telefaxing it to number **086 672 0772** on the **11th August 2011** at **12h25.**

I further state that this fax number is indeed the fax number used by the Applicant and that the whole transmission was successfully completed. I confirm that the attached transmission report relates to this transmission.

DEPONENT

I certify that the deponent has acknowledge that he knows and understands the contents of this affidavit that was signed and sworn to at DURBAN before me on this the 11 day of August 2011. The regulations contained in Government Notices No's R 1258 of the 21st July 1972 and R 1648 of the 16th August 1977, as amended, having been complied with.

MDUDUZI KENETH CALVIN DLUDLU
PRACTISING ATTORNEY
COMMISSIONER OF OATH
PERM BUILDING 343 SMITH STREET
204A SECOND FLOOR

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

CAPACITY:

AREA:

# HP LaserJet M1319f MFP

## Fax Confirmation

| Job | Date | Time | Type | Identification | Duration | Pages | Result |
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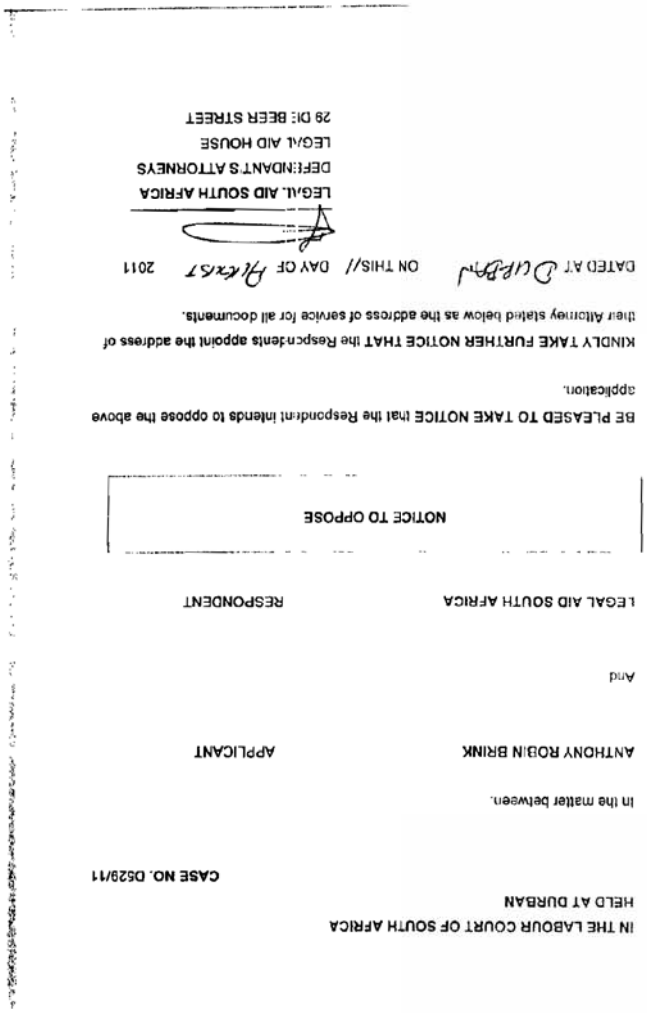
| 11961 | 08/11/2011 | 12:25:59 | Send | 0866720772 | 00:47 | 2 | OK |



IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT DURBAN

CASE NO. D529/11

In the matter between:

| | |
|---|---|
| ANTHONY ROBIN BRINK | APPLICANT |
| And | |
| LEGAL AID SOUTH AFRICA | RESPONDENT |

NOTICE TO OPPOSE

BE PLEASED TO TAKE NOTICE that the Respondent intends to oppose the above application.

KINDLY TAKE FURTHER NOTICE THAT the Respondents appoint the address of their Attorney stated below as the address of service for all documents.

DATED AT DURBAN ON THIS// DAY OF MARCH 2011

LEGAL AID SOUTH AFRICA
DEFENDANT'S ATTORNEYS
LEGAL AID HOUSE
29 DIE BEER STREET

25 Baker Road
Prestbury
Pietermaritzburg 3201
23 August 2011

Mr Thembile Mtati,
Corporate Services Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein
Johannesburg

Dear Mr Mtati

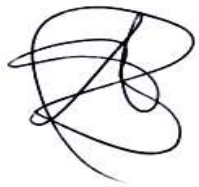
BRINK/LASA: LABOUR COURT DURBAN: CASE D529/11

Thanks for emailing me your notice of intention to oppose and affidavit confirming telefax transmission.

I have faxmail, so I went to my email of the 11th and searched up and down for your fax. It wasn't there.

I discovered the reason when I checked the fax number LASA used – ending in 2 not 6. So that explains it! Anyway, no problem; I have it at last.

All the best



ADV ANTHONY BRINK

Cc: Mrs L Bothma, Registrar, Labour Court, Durban

PMG PARLIAMENTARY MONITORING GROUP

Published on *Parliamentary Monitoring Group | Parliament of South Africa monitored* (http://www.pmg.org.za)



# Department of Justice & Constitutional Development 2009/10 Annual Report; Medium Term Strategic Framework 2010/11 – 2014/15; 2011 Legislative Programme; Criminal Assets Recovery Account and the Guardian's Fund

Created *18 Feb 2011 - 13:12*

Meeting Report Information

**Date of Meeting:** 16 Feb 2011
**Chairperson:** Mr T Mofokeng (ANC, Free State)
**Documents handed out:**

- Department of Justice & Constitutional Development presentation [1]
- Criminal Assets Recovery Account, Department of Justice and Constitutional Development [2]
- Report on the Guardian's Fund, Department of Justice and Constitutional Development [3]
- 2011 Legislative Programme of the Department of Justice & Constitutional Development [4]
- Medium Term Strategic Framework, 2010/11 – 2014/15, Department of Justice and Constitutional Development [5]

**Audio recording of the meeting:**
SC Security: Brieifng by Department of Justice on Annual Report & Financial Statements 2010 [6]

**Summary:**

The Chief Operating Officer and officials of the Department of Justice and Constitutional Development briefed the Committee on the Department's annual report for the 2009/10 financial year. The presentation included the background, mandate, key objectives and programmes of the Department and an overview of the operational highlights and achievements. The major challenge faced by the Department was the financial constraints resulting from the budget cuts imposed.

The Chief Director: Third Party Funds of the Department of Justice and Constitutional Development presented the annual financial statements of the Department. The Department had spent 99.8% of the final budget of R7.5 billion. The Department received a qualified audit report from the Auditor-General, related to Third Party Funds and irregular expenditure resulting from non-compliance with the Preferential Procurement Policy Framework criteria. A detailed action plan to address the audit qualifications and comments was developed. The briefing included an overview of the estimated medium term expenditure for the period 2010/11 to 2012/13.

The Deputy Director-General of the Department of Justice and Constitutional Development presented the briefing on the 2011 legislative programme of the Department. There were currently six Bills before Parliament and the Department would be introducing a further 20 Bills during 2011 for consideration by the Cabinet and the legislature.

The Chief Director: Strategy, Monitoring and Evaluation of the Department of Justice and Constitutional Development presented the medium term strategic framework of the Department for the period 2010/11 to 2014/15. The presentation included a summary of the planning process, legislative mandate, the Minister's priorities, stakeholder factors and core ideology of the Department. An overview of the planned outcomes of the strategic programmes for Programme 1 (Administration), Programme 2 (Court Services) and Programme 3 (State Legal Services) was provided.

The Director: Criminal Assets Recovery Account, Office of the Chief Financial Officer of the Department of Justice and Constitutional Development presented the briefing on the Criminal Assets Recovery Account. The Criminal Assets

Dr De Wee replied that the plans to establish a court in Mamelodi had to be cancelled because of the budget cuts imposed on the Department. The substantial increase in electricity tariffs by ESKOM also had a severe detrimental effect on the budget of the Department. The DOJCD had established courts in rural areas to improve the access to justice.

Mr Matila interrupted Dr De Wee and said that there was no balance between the funds spent on the courts in urban areas (for example Pretoria Central) and the money spent on facilities in the rural areas. The budget for the Mamelodi court had been approved prior to the budget cuts. He asked what the rationale was for the mobile courts in rural areas as people living in those areas were just as much victims of crime.

Dr De Wee replied that courts were provided in rural areas, for example Ashton, Colesberg and Lutzville. Increased migration to the urban centres had resulted in increased pressure in the cities as well, for example the facilities in South Gauteng and the Supreme Court in Bloemfontein were no longer adequate. The lack of funding was a major challenge and the Department was not in a position to provide all the facilities necessary. Projects had to be prioritised and certain programmes had to be cancelled. The DOJCD had reduced the vacancy rate from 13% in 2008/09 to 10% in 2009/10. The current vacancy rate was 9%. The Department had a plan in place to fill the remaining vacant positions. The Director-General had made the improvement in the gender and disabled representation of the Department a priority, despite the challenges experienced.

Adv Du Rand replied that the use of local languages in court proceedings was introduced as a pilot project in 2009. Currently, the local language was used in 31 district courts. The Department was developing a policy in the use of foreign language interpreters, which had become a major issue in South African courts. For example, 60% of the cases heard in the Roodepoort court involved foreign nationals and required interpreters. The experience gained during the 2010 FIFA Soccer World Cup had been useful. Plans to establish the court in Mpumalanga were at an advanced stage. During the first phase, premises were leased for a period of five years and occupancy was expected later in 2011. The plans for the construction of the court had been finalised and the tender process would commence in the near future. Construction was expected to commence in 2012/13. A report would be submitted to the Committee on the alignment of the boundaries of the lower courts with municipal boundaries.

Adv Du Rand agreed that the matter concerning the Grahamstown court could have been handled with more sensitivity. The Minister had visited the court and had held talks with the Chief Justice of the Eastern Cape. He anticipated that the Minister would make an announcement in his budget vote speech. The focus of the Department was to improve access to justice in the rural areas and most of the smaller courts were situated in these areas. He undertook to provide a breakdown of the cases before the Equality Court to the Committee.

Adv Rudman added that the provisions for the rationalisation of the High Court were included in the Superior Courts Bill, which had been approved by the Cabinet and was currently with the State Law Advisers. The matters concerning the Mpumalanga court were dealt with in the Traditional Matters Amendment Bill, submitted to the Cabinet for approval on 16 February 2011.

Adv Basson responded to the questions on the Guardian's Fund. He advised that the previous manual system had been replaced by an electronic system and information was currently immediately available to beneficiaries. The Office of the Master had initiated a public awareness campaign, which focused on improving communication with the beneficiaries of the Fund. The Fund had been targeted by syndicates with the intention to defraud and it was necessary to remain vigilant and detect any future fraudulent activities. The Fund had recruited people to assist with the tracing of beneficiaries and the completion of documents. The Office of the Master worked closely with the Department of Home Affairs to identify and verify the identity of beneficiaries. In Pietermaritzburg, the Fund paid R20 million to R25 million per month to 1,000 beneficiaries. A substantial amount of money flowed through the Guardian's Fund and the Office of the Master was focused on improving efficiency and communication. The action taken to address the qualified audit opinions and disclaimers in previous years had been successful.

Mr Johnson said that the Legal Aid Board had an excellent financial record. The Legal Aid budget would be increased to R1.3 billion. Matters had improved since the compensation paid to personnel had improved and parity with the salaries paid by the DOJCD was introduced. An additional staff budget of R40 million in 2012/13 would allow the appointment of an additional 60 Legal Aid practitioners. He suggested that the Legal Aid Board briefed the Committee on the plans to deploy the additional personnel.

Adv Du Rand added that there were currently 64 Legal Aid justice centres plus 64 satellite offices located throughout the country. Legal Aid services were available at most courts. The National Treasury had made additional funds available to address the backlog in appointments. Legal Aid had received unqualified audit reports for nine consecutive years.

The Chairperson asked if the DOJCD had a strategy in place to fill vacancies for submission to the Planning Department.

Legal Aid
South Africa

www.legal-aid.co.za

**REF: PMBJCPA/B 31/08/2010**

**INTERNAL AND EXTERNAL ADVERTISEMENT**

**PROFESSIONAL ASSISTANT - BACKLOG COURT**

**PIETERMARITZBURG JUSTICE CENTRE**

---

Applications are invited from persons interested to fill in the above-mentioned position. The incumbent will be appointed on a fixed term contract for the period of 1 year.

**KEY OUTPUTS**

- Provide legal representation to the Backlog District Court - Pietermaritzburg
- Training of Candidate Attorneys.
- Perform office administration.
- Maintain accurate statistics.
- Represent women, children and landless people in civil matters.

**COMPETENCIES (SKILLS, KNOWLEDGE & ATTRIBUTES) REQUIRED**

- Admitted attorney or advocate, the latter must have completed pupilage successfully at an institution recognized by Legal Aid SA.
- Legal representation at District and Regional Court Level
- LLB degree or equivalent.
- Proven track record in civil & criminal defense
- Valid driver's license
- Right of appearance in High Court an added advantage
- Interviewing skills
- Excellent verbal and written communication.
- Analytical thinking.
- Team Player
- Self-development orientation

**SALARY ;**

**Depend on years of post admission experience.**

Detailed curriculum vitae highlighting required skills as advertised must be submitted by close of business on the **20 September 2010,** quoting the above reference number to:

| Production : Legal Contract Position | | | | | | | |
|---|---|---|---|---|---|---|---|
| Job Description | N | Salary Level and Scale | Appointment Requirement: Qualification | Appointment Requirement: Experience | Progression Requirement: To | | Progression Requirement: Criteria |
| Legal Contract Position<br><br>Contract Position | | CP-1 | | | | | |
| | 1 | R 208,230.99 | LLB (or equivalent) | Relevant legal experience ranging from just admitted to 10 years | No grade progression opportunity - apply for a higher vacant post | | No Pay Progression opportunity |
| | 2 | R 284,675.25 | | | | | |
| | 3 | R 288,946.58 | | | | | |
| | 4 | R 293,282.85 | | | | | |
| | 5 | R 302,150.23 | | | | | |
| | 6 | R 306,681.33 | | | | | |
| | 7 | R 311,282.38 | | | | | |
| | 8 | R 330,385.95 | | | | | |
| | 9 | R 340,372.37 | | | | | |
| | 10 | R 345,477.98 | | | | | |
| | 11 | R 355,919.00 | | | | | |

Notes: Compliance with the educational qualifications, statutory requirements, competency for the higher post CP-1 Notch 1 = Just Admitted. Thereafter each notch relates to years of experience. These salaries are packaged inclusive of benefits

Positions : Professional Assistant on contract position only -

AMANDA CLARK
HUMAN RESOURCES EXECUTIVE

DATE 23-Oct-09

624

## What do you gain from OSD?

### OBJECTIVES

| | | |
|---|---|---|
| 1. A unique salary structure | 2. Career path opportunities based on competencies, experience and performance | 3. Pay progression & accelerated pay progression |
| 4. Grade progression based on performance | 5. Creation of specialist dispensations | 6. Differentiated salary scales for identified categories |
| 7. Change in pensionable composition of total package – now 70/30 split (70% of the salary is pensionable) | | |

### CATEGORIES AFFECTED BY OSD

| | | |
|---|---|---|
| State Attorney | Family Advocate | State Law Advisor |
| Legal Administration officer | Master | Register |
| Maintenance Officer | | Estate Controller |

### OSD WILL PROVIDE THE FOLLOWING:

| | |
|---|---|
| 1. Unique remuneration structure for legally qualified professionals | 2. 1.5% increments between notches |
| 3. The Specialist production stream is created to assist Departments to recruit and retain specialists in the legal profession who have gained at least 10 years active legal court experience and who are still actively involved in litigation/court work or legislative services. The number of posts will be subject to norms that are to be determined by the Departments. | |

### OTHER BENEFITS OF OSD -

**1. Increased promotion opportunities**

**2. Pay progression:**
- Prescribed qualifying periods & criteria
- Progression – 1.5% annually
- Satisfactory level of performance
- 1st annual cycle – 1 July 2008
- Pay progression – 1 July annually

**3. Accelerated pay progression:**
- 20% employees qualify annually for two (2) notches (good performance)
- 10% employees qualify annually for three (3) notches (excellent performance)
- 1st annual cycle – 1 July 2008
- Annually on 1 July

**4. Improvement in career paths:**
- Improved set of salary grades attached to each post
- Longer career progression opportunities
- Career paths that facilitate progression to other categories

**5. Grade progression:**
- Production streams allow single post to be linked to more than one salary grade
- All appointment / promotion requirements must be met for progression to next higher grade

**6. Accelerated grade progression:**
- Differentiated levels of grade progression based on performance
- Applicable to those who distinguish, in relation to peers
- Faster progress through salary scales

**7. Recognition of relevant experience:**
- Employer will introduce basis for salary recognition on appointment from outside public service
- Agreed basis for salary recognition for serving members
- Recognition of experience not on the personnel record will be based on verified proof
- Verification to be done at Departmental level

**8. Translation measures:**
- Employees must meet the appointment requirements
- Employees must perform the functions of the post
- Employees will translate to appropriate salary scales in posts they currently occupy
- No person will receive a salary (notch or package) that is less than what he/she received prior to implementation of OSD

**9. Translation will be done in two (2) phases:**
- 1st Phase-This phase requires a minimum translation to the appropriate salary scale attached to the posts (and grades in respect of production levels)
- 2nd Phase – Recalculation of relevant experience obtained by a person after obtaining their qualification, who occupies a post on production level, subject to the agreed limits.

**Transcript of:**

**(a) question by Justice and Constitutional Portfolio Committee member John Jeffrey MP on impact litigation, answered by LASA Legal Development Executive Patrick Hundermark; and,**
**(b) Chief Executive Officer Vidhu Vedalankar on LASA's budget and its implications for recruitment**

**at the presentation of LASA's annual report 2010/11 to the National Assembly on 11 October 2011**

**(Audio recording online at http://www.pmg.org.za/node/28680)**

**John Jeffrey MP**
**(56 minutes, 10 seconds into the recording)**

I just have a question on the impact litigation. I see there was a booklet in the bag you gave us on impact litigation, and I think it's a good concept, but the booklet refers to a number of cases, I sort of just wanted to find out: was LASA involved in these cases referred to in the booklet, but that's from 6.1 on page 14 of the booklet, I mean in terms of, in what way, was it LASA employees or was it Judicare effectively because I see that the, if I'm understanding it correctly on page 101 of your report, you don't seem to be spending the money allocated to impact litigation, so if you can give clarity on that, thanks Chair.

**Patrick Hundermark, LASA Legal Development Executive**
**(82 minutes, 43 seconds into the recording)**

Thank you Chair, I think in terms of impact litigation, in terms of the matters in which Legal Aid is specifically involved, there are three ways in which we can do impact litigation, firstly, err, and obviously the initial stages were that we would be funding, err, whether it was NGOs or private law firms to be involved in the impact litigation, so firstly it would be a model in terms of where we fund specific cases where they come and motivate for a budget in terms of litigation in certain cases. In other instances we can then, our justice centres or high court units, that's specifically our senior litigators, themselves can do the impact litigation and then the unit itself in terms of that can be involved in the impact litigation. So there are different ways in

which we can render the services, so then in terms of the booklet some of the cases we would have done ourselves, some of it was funded NGOs or private practitioners to render those specific services. In terms of us spending the money the one real problem we have in each case we require a budget so sometimes litigation doesn't always happen as we anticipated and not all, the full budget is not always used in some of the instances, so that's difficult, you've got to try and manage the case and the progression of the case to understand where the funds are allocated to a specific case but we don't overspend on the overall budget that we manage involving it, so we try and do, see if we can, err, if they are not going to spend the whole budget, reallocate it, but we don't always have new and other impact cases to which to allocate it at quite short notice, so that's the problem in terms of the spending of the budget and the money issues and you very often find lawyers are not very good in terms of budgeting so we do find ourselves scrutinising the budgets that come and cutting them significantly because we are not always then able to use the money.

**Vidhu Vedalankar, LASA CEO**
**(68 minutes, 7 seconds into the recording)**

As far as the budget cut is concerned what we did do and I think that you're right it was across all departments but that we what we did do and respect in the 2012 financial year for everything in the operational expenditure which was not contractual we clearly did the only thing, so that in effect is a budget cut, if it's below inflation it's anyway a budget cut but this is clearly one, and so that wasn't adequate. Now we run quite a tight operation as you can see and it's very hard for us and what we will do is so that we don't jeopardise our service delivery we won't cut in [inaudible] all we do is manage our recruitment level so that we don't overspend in terms of what we have, so that is where we, we hold recruitment levels until we can get some additional funds [inaudible] as you can see our recruitment levels are high at 96%, we were intending to increase it to 98% because we are able to recruit but now that we have this we will probably keep it at around 97%, so that is one way just of managing it without, without jeopardising the service delivery, but in terms of our discussions with treasury and the rest of what else we can do, let's start with that because that's one sector with Jerry [inaudible. (She hands over to COO Jerry Makokoane.)]

Legal Aid South Africa

Your voice. For justice.



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# Vacancies at Legal Aid South Africa

Civil PA Children's Unit - VREDENDAL JC

Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the Vredendal Justice Cen

Apply

ASSISTANT SYSTEM ADMINISTRATOR - INFORMATION SYSTEM DEP (NATIONAL OFFICE IN BRAAMFONTEIN)

The above position exists in the Information Systems Department at the National Office of the Legal Aid SA in Braamfontein. The successful candidate w

Apply

PRINCIPAL ATTORNEY - JOHANNESBURG JC

Applications are invited from persons interested to fill in the above-mentioned position, reporting to the Justice Centre Executive. Applicants must b

Apply

JUSTICE CENTRE EXECUTIVE - VEREENIGING JC

The abovementioned positions exist at the Vereeniging Justice Centre. Applications are invited from interested persons to fill these positions. Appl

Apply

PROFESSIONAL ASSISTANT - HIGH COURT UNIT - MAFIKENG JC

Applications are invited from persons interested to fill in the above-mentioned positions. The incumbent will be appointed on a permanent contract. K

Apply

RECEPTIONIST/TYPIST - MODIMOLLE JC

Applications are invited from interested persons to fill the above mentioned position at the Modimolle Justice Centre. KEY OUTPUTS • Office

Apply

PARALEGAL - GRAAF-REINET JC (SOMERSET SO)

Applications are invited from interested persons who meet the minimum requirements, to fill the above-mentioned position. The incumbent will be appoin

Apply

## FEATURED VACANCIES

Civil PA Children's Unit - VREDENDAL J

Applications are invited from interested persons, who m...

ASSISTANT SYSTEM ADMINISTRATO

The above position exists in the Information Systems De...

PRINCIPAL ATTORNEY - JOHANNESB

Applications are invited from persons interested to fil...

JUSTICE CENTRE EXECUTIVE - VEREE

The abovementioned positions exist at the Vereeniging J...

PROFESSIONAL ASSISTANT - HIGH C

Applications are invited from persons interested to fil...

Civil PA Children's Unit - VERULAM JC

Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the Verulam Justice Centr

Apply

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Civil PA Children's Unit - ALEXANDRA JC

Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the Alexandra Justice Cen

Apply

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ADMINISTRATIVE MANAGER - CALEDON JC

Applications are invited from persons interested to fill in the above-mentioned position. KEY OUTPUTS • Maintenance of Justice Centre Manual and

Apply

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IN THE SOUTH GAUTENG HIGH COURT (JOHANNESBURG)

Case No:

In the matter between:

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

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NOTICE OF MOTION

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TAKE NOTICE that the applicant intends applying for an order in the following terms:

1. That the respondent be ordered to make available to the applicant, by no later than twenty court days from the date of this order, copies of the records identified in the annexure hereto marked ‘Annexure to Order’; alternatively, in the event that any such record does not exist, that the respondent’s information officer confirm this to the applicant on affidavit.

2. That in the event that any such record once existed but has since been physically destroyed, or in the case of computer records has been deleted from the respondent’s data storage server, the respondent be ordered to state in the aforesaid affidavit, particulars of such destruction or deletion,

namely the record in question, the date it was destroyed or deleted, and the reason why it was destroyed or deleted.

3. That the respondent be ordered to pay the costs of suit.

TAKE NOTICE FURTHER that the affidavit of ANTHONY ROBIN BRINK and the documents referred to in rule 3(3)(a) annexed hereto will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed ..... as the address at which he will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

(i) Notice of intention to oppose this application must be given within 15 days after receipt hereof and must contain an address within eight kilometres of the court to which the application is brought, where notice and service of documents will be accepted.

(ii) Answering affidavits, if any, must be filed within 15 days after service of the notice of intention to oppose the application.

(iii) In default of your complying with rule 3(5) of the Promotion of Access to Information Rules, the applicant may request the registrar to place the application before the court for an order in terms of section 82(b) of the Act.

(iv) In default of your delivering a notice of intention to oppose, the matter will, without further notice, be placed on the roll for hearing after the

expiry of the period mentioned in paragraph (i) above, on a date fixed by the registrar.

Signed at Johannesburg on this day of March 2011.

_____

Applicant's Attorneys

.....

.....

.....

.....

.....

TO:

Ms Vidhu Vedalankar,

Chief Executive Officer and Information Officer

Legal Aid South Africa

29 De Beer Street

Braamfontein

Johannesburg

AND TO:

The Registrar

South Gauteng High Court

Johannesburg

IN THE SOUTH GAUTENG HIGH COURT (JOHANNESBURG)

Case No:

In the matter between:

ANTHONY ROBIN BRINK Applicant

and

LEGAL AID SOUTH AFRICA Respondent

---

FOUNDING AFFIDAVIT

---

I, Anthony Robin Brink, solemnly affirm:

1. I am an adult male, 52, an advocate of the High Court of South Africa, resident at 25 Baker Road, Prestbury, Pietermaritzburg, KwaZulu-Natal, and I am the applicant herein.

2. The respondent is Legal Aid South Africa (‘LASA’), a statutory body established by the Legal Aid Act 22 of 1969, whose registered office and principle place of business is at 29 De Beer Street, Braamfontein, Johannesburg, Gauteng.

INTRODUCTION

3. This is an application for an order compelling LASA to comply with its obligations under section 11 of the Promotion of Access to Information Act,

Act 2 of 2000 ('PAIA' or 'the Act'), by affording me access to certain of its records that I've requested, alternatively by confirming on affidavit that such records don't exist.

4. This application is preliminary to an extraordinarily important test case in post-apartheid South African constitutional jurisprudence. At its core are our rights in the democratic era to liberty of conscience, thought, belief and opinion; to research and communicate information and ideas; to campaign for a cause – all explicitly guaranteed by the Bill of Rights in Chapter 2 of the Constitution of South Africa, 1996 – and to participate in public policy formulation, as encouraged by section 195(1)(e) in Chapter 10.

5. And our rights to equality and not to be discriminated against for exercising these basic civil liberties. Especially not by a public body whose 'Terms of Reference' on its website declaim: 'The Constitution of South Africa, Act 108 of 1996, provides the overall legal framework from which Legal Aid South Africa derives its mandate. Chapter Two, the Bill of Rights, outlines the right to equality (Section 9) ....'

BACKGROUND

6. Annexed to this affidavit is an indexed and paginated Document Bundle including the two record requests I made to LASA's information officer, CEO Ms Vidhu Vedalankar ('Vedalankar'), with her responses, and the correspondence preceding this application.

7. My cause of action for a mandatory interdict directing LASA to comply with the Act is founded on a simple and narrow set of facts, to be set out presently. The background dispute concerning my fundamental complaint that LASA has illegally discriminated against me in violation of my fundamental constitutional rights is a matter for determination by another

court, following viva voce evidence and cross-examination of all those subpoenaed members of the Management Executive Committee and Board of Directors who've involved themselves and colluded in the matter, to establish their credibility as witnesses, and the veracity or mendacity of their evidence, as the case may be; and it's consequently neither necessary nor relevant in the instant application for LASA to answer and debate the case made out in my correspondence in this regard. This is for another day.

8. The political context in which the illegal discrimination of which I complain has taken place is sketched in a letter I wrote on 12 October 2010 to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa in Cape Town (Bundle, pages 93–99); in the Addendum to my first letter to Vedalankar on 12 July 2010 (Bundle, pages 11–17); in my Personal and Political History (Bundle, pages 88–92); and in my CV (Bundle, pages 75–77 and 80–82).

9. The immediate factual background to this application is recorded in my first letter to Vedalankar on 12 July 2010 and in my successive appeals thereafter to Chief Operations Officer Jerry Makokoane on 1 September, and to Chairperson Judge Dunstan Mlambo and the Board of Directors on 30 November and 24 January 2011. (Bundle, pages 1–9; 21–39; 109–167; and 197–206).

10. In brief, it's common cause that I was shortlisted, interviewed, selected and recommended by a professional selection panel in late 2009 for appointment as Senior Litigator, Pietermaritzburg; and that Vedalankar (with, she claims, another executive manager) thereafter aborted my recruitment (by 'freezing' the post, she says). Vedalankar alleges her reason for doing so was financial. It will be my case at trial that my recruitment was aborted on account of

political (or as a much less likely possibility, racial) prejudice and that it had nothing to do with money, as the available records show quite clearly.

11. It's further common cause that no business record whatsoever exists of Vedalankar's decision/agreement to abort my recruitment, or 'freeze' the post as she puts it, nor of any proposal to do so by the National Operations Officer, nor of any consultation about it with the Human Resources Executive – all required by the particular clause of the 'Approval Framework' that Vedalankar herself claims to apply.

12. My purposes in putting up the correspondence included in the Bundle are various. It will enable this court to make sense of the various records I've identified with reference to written allegations made to me by various management executives – which allegations I wish to test. It contains detailed analyses and debunks of the successive, changing reasons Vedalankar has advanced for refusing my records requests. And it will show the steps I've taken in my persistent but unsuccessful attempts to achieve a resolution with LASA short of recourse to law.

13. I regret that the Bundle is voluminous, and I say this alive to Rule 4(c) of the Promotion of Access to Information Rules requiring an explanation of the relevance of each document on which I rely, but in her correspondence with me Vedalankar has conflated her separate, independent roles as CEO and information officer; and instead of confining herself to dealing with my records requests she has repeatedly entered into a contention of the merits of my underlying illegal discrimination complaint and set out to persuade me that her financial alibi defence to it is true rather than a pack of easily demonstrable lies. My responses have necessarily included not only my critical analyses of her reasons for refusing my records requests with

reference to the facts and the law, but also my examination and refutation of her allegations concerning the reason she aborted my recruitment.

14. As section 11(3) of the Act provides, however, the merits or otherwise of my illegal discrimination complaint and my surmises and purposes animating my requests for records are quite immaterial to my constitutional right of access to them, and are irrelevant to the determination of this application.

APPLICABLE PROVISIONS OF THE ACT

15. Section 11(1) of the Act stipulates that 'A requester must be given access to a record of a public body if – (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.'

16. It's a commonplace that LASA is a 'public body' in terms of the 'Definitions' in section 1 of the Act, in that it's an 'institution … performing a public function in terms of any legislation' namely the Legal Aid Act; that section 11 of the Act governs requests for records made to LASA as a public body; and that Vedalankar, as LASA's Chief Executive Officer, is its information officer in terms of the 'Definitions': '"information officer" … means the chief executive officer … in the case of any other public body' such as LASA.

HISTORY OF PAIA REQUESTS

17. I sent my first request for records to Vedalankar by registered post on 26 August 2010, and it was delivered on the 30th. (Bundle, pages 49–69)

18. My request conformed to the procedural requirements stipulated by section 18 of the Act, inasmuch as it comprised a duly completed and signed Form A document, with a ten-page annexure identifying and listing the 51 records I sought, or confirmation on affidavit that they don't exist. (Bundle, pages 53–69) In my covering letter I asked to be informed of LASA's various charges for handling my request, which, for reasons stated therein and despite my best efforts, I'd been unable to ascertain at the time. (Bundle, pages 49, 50 and 52) Vedalankar didn't revert to me with this information.

19. Vedalankar initially ignored my records request, and I was constrained to engage the offices of the South African Human Rights Commission ('SAHRC') to assist me. Acting under section 83(3)(c) of the Act – 'The Human Rights Commission may … if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act' – the head of the PAIA Unit, attorney Chantal Kisoon, ably negotiated an undertaking to deal with my request. (Bundle, page 113, paragraphs 17–19)

20. On 18 October 2010 Vedalankar refused the whole of my request on the grounds that it 'goes beyond your individual circumstances and extends to information on third parties' and is 'not relevant to any rights you may have in law'. (Bundle, pages 102–103, paragraph 5; and page 108, paragraph 8)

21. On the facts and in law Vedalankar's stated reasons were manifestly spurious; and indeed in her second letter to me in January 2011 (discussed below) she implicitly abandoned them.

22. In terms of section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA. In a bid to avert litigation to enforce my rights, however, I tried prevailing on LASA's Board of Directors to intervene. In a 59-page letter to Chairperson Judge Dunstan Mlambo and the Board of Directors (those

several members whose email addresses I'd been able to find), emailed on 30 November 2010, I reported Vedalankar's refusal to comply with the Act; refuted the false reason she alleged for aborting my recruitment by dint of an extensive interrogation and analysis of the available facts; and appealed for an amicable resolution all round. (Bundle, pages 109–167)

23. Citing reported judgments on the operation of the Act, I demonstrated the vacancy and irrelevance of Vedalankar's given reasons for refusing my records request, and pointed out that she'd justified her refusal with a false statement of applicable law and even a false quotation from a reported judgment purporting to support it (the judge held precisely to the contrary of what Vedalankar alleged he did). (Bundle, pages 114–9, paragraphs 20–43)

24. On 15 December 2010 I emailed Vedalankar a second, supplementary request for records in the prescribed form, specifying 18 records in a test of her allegations in her October letter concerning the reason she alleged for aborting my recruitment. (Bundle, pages 167–180) On the same day I posted her a cheque for R35 to cover the request fee prescribed by section 22(1) of the Act. (LASA's PAIA manual indicating this fee was published on its website subsequent to filing my first records request, and only after I'd raised the irregularity with the SAHRC.)

25. On 30 December 2010, without consulting the Board, and knowing full well (it now emerges) that Vedalankar had lied to me in alleging that the post I'd been recommended for had been 'frozen' in July 2010, Judge Mlambo perfunctorily dismissed my petition in a single line – 'I could find no unfairness or arbitrariness against you as you allege or at all' – without addressing my complaint that Vedalankar had unlawfully denied my right of access to records on utterly spurious grounds. (Bundle, page 186 – his emailed letter is wrongly dated.)

26. In short, in full knowledge of the true facts – 'I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal' – Judge Mlambo accorded himself with Vedalankar's position.

27. Who actually wrote Judge Mlambo's letter is doubtful: according to its PDF properties file, Vedalankar did ('VidhuV'), on 15 December, two weeks before he sent it. (Bundle, page 187) And while he was still over in the US, according to his secretary's information to me on the phone.

28. My petition to Judge Mlambo and the Board having failed, on 10 January 2011 I sought the assistance of the SAHRC once again. (Bundle, pages 192–3) Attorney Moipone Bokaba, who's sharing the SAHRC's management and monitoring of the case with attorney Kisoon, took the matter up for me and wrote to Vedalankar about it. (Bundle, page …)

29. Following a second appeal to Judge Mlambo and the Board on 24 January 2011, in which I again raised Vedalankar's failure to comply with the Act, Judge Mlambo responded a few hours later: 'I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view.' (Bundle, pages 197–208; and 209)

30. Allowing for the year-end office break, Vedalankar responded to my second records request on 28 January 2011. (Bundle, pages 210–224)

31. As in her October letter, Vedalankar again confused her distinct functions as CEO and information officer; and instead of simply addressing and answering my records requests, began by repeating and insisting on her financial 'explanation' for aborting my recruitment that she'd given me in October.

32. To make her case, Vedalankar put up twelve records marked V1–12, which she claimed to sustain her allegations. (Bundle, pages 225–58) Indeed, her intention in furnishing the records she provided was explicitly stated in her entries in a two-column table in her letter, one identifying each record under ‘NATURE OF DOCUMENT’ and the other notifying the ‘AIM OF THE DOCUMENT’, commencing in every case: ‘To demonstrate [etc]’ – all in purported support of her claims. (Bundle, pages 213–6)

33. Five of these records I had already: V1, the Approval Framework was annexed to Vedalankar’s October letter. (Bundle, pages 105–7) V8 is a transcription of an audio recording I’d myself made and attached to my second records request in December. (Bundle, page 184) V9 was the letter KZN Regional Operations Executive Vela Mdaka sent to me in August, and was attached to Vedalankar’s October letter. (Bundle, pages 20 and 108) V11 was the scanned copy I’d myself made of the advertisement for the position for which I’d applied and been selected, and had included in the Bundle. (Bundle, page 45) And V12 is my email exchange with Human Resources Executive Amanda Clark in April 2010. (Bundle, pages 256–8)

34. None of the records furnished by Vedalankar for her purposes were in response to my 63 specified records requests in two lots in August and December respectively.

35. Four of the records Vedalankar produced happened to meet some of my requests sufficiently for my purposes, namely V3–5, and 7.

36. For the rest, Vedalankar refused all my record requests, in some cases by neglecting to address them, in which event section 27 of the Act deems them refused. (Bundle, pages 210–58)

37. Although she'd already refused my August requests in October, Vedalankar decided to have another go at them in January, apparently appreciating from my letter to Judge Mlambo and the Board in November (which she said she'd read) that the reasons she'd given in October were indeed indefensible.

38. Unlike in October when Vedalankar had refused all my requests for a couple of blanket reasons, this time in January she answered and refused each of my August requests individually, and justified her persistent refusal to grant me access to the records I sought with new reasons. Those of my December requests that she dealt with were likewise refused individually for one reason or another.

39. Concerning the many records I'd identified on the basis of claims made to me by LASA executive managers over time, and which I'd suspected weren't supported by any documentary record as they ought to have been had they been true, Vedalankar confirmed my suspicion by suggesting that the decision taken to abort my recruitment, or 'freeze' my post, was 'verbal' and wholly off the record. (Bundle, page 221, paragraph 29)

40. In alleging that her decision to 'freeze' the post for which I was recommended for appointment was taken in accordance with 'the Approval Framework' and the 'authority' which 'derives from' it, Vedalankar implied that (a) her decision duly originated as a proposal by the National Operations Executive; (b) that he duly consulted the Human Resources Executive about it, and (c) that Vedalankar duly agreed with the proposal – all in terms of the said Approval Framework.

41. For which records would certainly exist if the decision to abort my recruitment or 'freeze' my post was legitimately taken – for as Cachalia JA pointed up during the debate in the recent PAIA case of The President of

RSA v M & G Media (570/10) [2010] ZASCA 177: 'Surely', Cachalia told Moerane, 'there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop … In the absence of any paper trail must we just accept that [Chikane and Fowler] are people of standing and they will never mislead, just like [then United States secretary of state] Colin Powell never misled the security council [over Saddam Hussein's possession of weapons of mass destruction].' (ellipses, interpolations, and missing punctuation in the original *Mail & Guardian* report on 26 November 2010) (Bundle, page 161, paragraph 243)

42. In other words, the mere ipse dixit of public servants regarding their alleged administrative actions won't do in court – especially, in my case, considered against a history of telling me lies, and in the light of records recently surfaced that contradict these lies. (Bundle, pages 262–309)

43. Not only has Vedalankar repeatedly contravened the Act in unlawfully refusing my requests and not answering others, she has further failed to comply with the Act in not confirming on affidavit the non-existence of specified records, where applicable, as section 23 requires of her.

44. Vedalankar's negative attitude to my to my constitutional right to access to LASA's records in terms of section 32(1) in the Bill of Rights and to the Act giving effect to this right would seem to be epitomised by her further unlawful return of my mandatory and non-refundable request fee. (Bundle, page 224, paragraph 44)

45. On 17 February 2011 I appealed yet again to the PAIA Unit of the SAHRC to intervene and mediate in Vedalankar's ongoing refusal to comply with the Act. In my letter I performed a close analysis of her January letter with the new reasons it contained for refusing my records requests and I

debunked each and every faux legal excuse she adduced for doing so. (Bundle, pages 262–309)

46. Since Vedalankar had abused the occasion to argue her case as CEO that she'd aborted my recruitment because LASA was tight on funds and that my illegal discrimination complaint against her was 'unfounded; wrong and outright defamatory', also 'baseless and misguided', I comprehensively taxed her claims in this regard too, with reference, inter alia, to the very records she'd put up flatly contradicting them.

47. Since the Board of Directors had shown no interest in my problems, not even in LASA's legal exposure as a consequence of Vedalankar's extraordinarily serious misconduct, I copied my letter to the SAHRC to the next level of oversight, accountability and responsibility: the Minister of Justice and Constitutional Development, the Deputy Minister, and the Parliamentary Portfolio Committee, along with the Board of Directors, the Management Executive Committee, the KwaZulu-Natal regional professional selection panel which had shortlisted, interviewed, chosen and recommended me for appointment to the advertised Pietermaritzburg Senior Litigator post, and to two other interested parties.

48. On […] responded: '[…]' (Bundle, page …)

49. On […] attorney […] of the SAHRC's PAIA Unit reported to me that notwithstanding her endeavours to instruct Vedalankar in the operation of the Act and to obtain her cooperation and compliance with it, she remained obdurate in unlawfully refusing my requests. (Bundle, page …)

50. With submission, I've pursued all possible avenues open to me to achieve Vedalankar's compliance with my requests for records, and I've no alternative remedy but to humbly seek relief from this honourable court.

APPLICATION TO COURT IN TIME

51. It's trite that the 30-day time limit imposed by section 78 (2) of the Act for applications to compel compliance with the Act has been set aside as unconstitutionally short by the Constitutional Court and substituted with a provisional time limit of 180 days. (*Brümmer v Minister of Social Development and Others* (CCT 25/09) [2009] ZACC 21; 2009 (6) SA 323 (CC); 2009 (11) BCLR 1075 (CC) (13 August 2009))

52. I've launched this application within 180 days of Vedalankar's refusal on 18 October 2010 of my first records request and her repeated refusal on different grounds upon reconsideration of it on 28 January 2011 along with her refusal of part of my second request, the rest of it going unanswered and deemed refused under Section 27 of the Act.

PRAYER

53. In the situation, I respectfully claim an order in the terms set out in the notice of motion.

Dated at Pietermaritzburg this day of February 2011.

ANTHONY ROBIN BRINK

## Anthony Brink

**From:** Chantal Kisoon [ckisoon@sahrc.org.za]
**Sent:** 29 July 2011 02:39 PM
**To:** 'Anthony Brink'; Pregs Govender
**Cc:** Kayum Ahmed; Danaline Franzman; Zena Nair; David Malesa; Pandelis Gregoriou
**Subject:** RE: Request for Records/SAHRC

**Categories:** Red Category

Dear Adv Brink

Your email dated 25th July 2011 refers. Our response to questions raised in your email are listed below.

1. What is the reporting period for your annual report to Parliament on compliance with PAIA under section 84?

   The Commission will formally table its annual report together with its report in terms of section 84 of PAIA at the end of August. Oral presentation will follow thereafter on a date to be determined by Parliament.

2. Will you be reporting that LASA has complied with PAIA?

   Our report will reflect that LASA has submitted a report in terms of section 32. The actual report is provided to Parliament together with reports submitted by all 'other' bodies in the annual report as well.

3. Will you be parroting LASA's section 32 statement to Parliament that all my requests were complied with save for those 'not relevant' and relating to 'confidential correspondence with third parties'?

   The Commission will not be addressing the content of LASA's report. In terms of PAIA on a referral to court for non compliance with a request (which has as yet not occurred in the reporting cycle), LASA will be obliged to report the referral to court in its next section 32 report to the Commission). Until a decision by the courts to this effect, LASA has accurately responded to the requirements of section 32.

Please note further that the Commission abides by the decision of its Chairperson to your appeal.

Thank you for your referral to the Commission, we take this opportunity of wishing you success in reaching an equitable resolution of your matter before the Labour Courts.

Yours faithfully
Chantal Kisoon

Access to Information (PAIA)
The South African Human Rights Commission
33 Hoofd Street
Braampark; Forum 3
Braamfontein; Gauteng

**email: ckisoon@sahrc.org.za**
**Website: www.sahrc.org.za**
**Tel: 27 11 877 3627**

**From:** Anthony Brink [mailto:arbrink@iafrica.com]
**Sent:** 25 July 2011 11:45 AM
**To:** Chantal Kisoon; Pregs Govender
**Cc:** Kayum Ahmed; Danaline Franzman; Zena Nair; David Malesa; Pandelis Gregoriou
**Subject:** RE: Request for Records/SAHRC
**Importance:** High

Thank you, Chantal.

The records sent me confirm my worst apprehensions: there's no evidence that anyone in the SAHRC has applied his/her mind to assessing any of LASA's responses to my three PAIA requests, much less engaged with LASA .

Thanks at last for the information that Dr Govender is the Commissioner overseeing PAIA matters.

I'll copy her in when briefing the Portfolio Committee in my report: 'The SAHRC and PAIA: BRINK/LASA: A Case Study in Failure: Indolence, Incompentence, Prejudiced Indifference, or Countermand?'.

I've now been compelled to commence my action in the Labour Court without all the LASA records I need and am entitled to, including critically material records.

My remaining unaswered questions are:

What is the reporting period for your annual report to Parliament on compliance with PAIA under section 84?

Will you be reporting that LASA has complied with PAIA?

Notwithstanding that it clearly hasn't: see my second memorandum annexed.

That is, will you be parroting LASA's section 32 statement to Parliament that all my requests were complied with save for those 'not relevant' and relating to 'confidential correspondence with third parties'?

Both of which purported justifications are idle: the first in law, the second in fact, as shown in my second memorandum to the PAIA Unit in April that the PAIA Unit couldn't find the time to read.

Dr Govender, I'd be grateful if you'd look at my second memorandum detailing the outstanding unlawfully withheld records I need and am entitled to for trial.

It's an easy read.

The introduction to my first memorandum, also attached, will provide you with an overview of the history of LASA's contemptuous attitude to my constitutional right to information in order to conceal material records disconfirming its false claims to me for aborting my appointment to the senior professional post for which I was selected and recommended.

I think you ought to be concerned.

You'll appreciate that the matter is far from 'closed':

1. The SAHRC's conduct in the matter is pleaded in paragraphs 286–92 of my statement of claim (two-page excerpt annexed) and is likely to attract adverse comment by the trial judge in his judgment. (My case is shaping up to be a landmark case in constitutional labour jurisprudence.)

2. For section 84 reporting purposes, the SAHRC still has to determine whether LASA has complied with PAIA or not – and compliance is not demonstrated by a formal show of compliance, even as LASA has persistently unlawfully withheld the crucial records I need.

3. The SAHRC's dismal performance in my matter will be reported to the Portfolio Committee in August, and it will be necessary to answer for it.

On the other hand, the day might be saved by the PAIA Unit simply doing its job, applying its mind to my second memorandum, and noting its agreement or disagreement with my critical analyses of LASA's vacant excuses for concealing the records I require, and conveying its opinion to LASA. As I requested way back in April. So simple. If it isn't too much trouble.

Sincerely

Anthony Brink

---

**From:** Chantal Kisoon [mailto:ckisoon@sahrc.org.za]
**Sent:** 25 July 2011 08:30 AM
**To:** 'Anthony Brink'
**Cc:** Kayum Ahmed; Danaline Franzman; Zena Nair; David Malesa
**Subject:** Request for Records/SAHRC

Dear Adv Brink

Thank you for your request to the South African Human Rights Commission(Commission). Please find attached hereto the following:

- a letter to yourself from the Commission in response to your request for records of the Commission
- the Commission's DIO delegation
- LASA section 32 report
- Records pertaining to the matter between yourself and LASA.

Kind regards
Chantal Kisoon

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - mailto:administrator@sahrc.org.za. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

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25 Baker Road
Prestbury
Pietermaritzburg 3201
22 August 2011

Dr Pregaluxmi Govender
Deputy Chairperson and Commissioner for PAIA
South African Human Rights Commission
Braampark Forum 3
33 Hoofd Street
Braamfontein
Johannesburg

Per email: pgovender@sahrc.org.za

Dear Dr Govender

SAHRC's PAIA SECTION 84 REPORT TO THE NATIONAL ASSEMBLY; AND TEN QUESTIONS

On Wednesday the 10th instant I copied you my complaint to the Public Protector concerning LASA's persistent refusal to comply with PAIA and its section 32 report to the SAHRC, which I demonstrated to be false and misleading in multiple respects. For easy reference, both my complaint and the report are accessible online at:
www.tig.org.za/LASA/Public_Protector username: lasa password: LASA2010

Section 84(b)(x) of PAIA requires the SAHRC to 'include in its annual report to the National Assembly referred to in section 181(5) of the Constitution … the number of complaints lodged with the Public Protector in respect of a right conferred or a duty imposed by this Act and the nature and outcome thereof'.

May I have your assurance that 'the nature' of my 'complaint.. lodged with the Public Protector in respect of [my] right' to information violated by LASA in failing to observe its 'duty imposed by this Act' to afford me access to records I've duly requested will be fully, precisely and accurately described in the SAHRC's section 84 report so as to enable the National Assembly to appreciate the *several*

*causes* of my complaint – including my complaint about LASA's false section 32 report?

I suggest this would best be achieved by attaching a copy of my complaint to the Public Protector to your section 84 report – otherwise by quoting it directly, leaving nothing out that would misinform the National Assembly by omission. (Like when a used car salesman omits to mention the crack in the engine block when pointing out the smooth tyres.)

Having regard to our new democratic 'culture of justification' (see The President of RSA v M&G Media quoted at page 10 of my fist memorandum) please advise me:

1. If section 83(3)(c) charges the SAHRC with the responsibility 'to monitor the implementation' of PAIA, and section 83(3)(d) obliges it 'if reasonably possible, on request, [to] assist any person wishing to exercise a right contemplated in this Act', why was it not 'reasonably possible' for your PAIA Unit to read through my two memoranda addressed to it, in which I analysed and exposed the vacancy of LASA's reasons for refusing me access to the records I requested in the light of the applicable provisions of PAIA and relevant case law that I cited?

2. Why was it not 'reasonably possible' for your PAIA Unit to simply annotate its agreements or disagreements with my analyses as I 'request[ed]', and to forward them to LASA for its response?

3. Why was my 'request' that your PAIA Unit 'assist' me to 'exercise a right contemplated in this Act' in this simple manner not 'reasonably possible' for the SAHRC to accede to, and why was it refused?

4. If nothing 'reasonably' prevented your PAIA Unit from taking an hour to consider each of my memoranda examining LASA's reasons for refusing to comply with PAIA, and annotating its agreement or disagreement, why didn't it 'assist' me in this manner under its section 83(3)(d) powers?

5. After your PAIA Unit director Ms Kisoon gave me the early assurance that she'd taken a 'special interest' in the matter, implicitly undertaking to assist me

under the SAHRC's section 83(3)(d) powers, what made her lose interest and decide not to assist me?

6. Why did Ms Kisoon immediately 'clos[e her] file' on receiving LASA deputy information officer Brian Nair's refusal – again – of my outstanding first and second requests in August and December 2010 and his refusal of most of my third request in March 2011, when it's obvious at a glance to any lawyer that his reasons aren't supported by PAIA and that his refusal was accordingly unlawful?

7. Why did Ms Kisoon not reopen her file on receiving my second memorandum, in which I canvassed and refuted all Nair's plainly vacant reasons for refusing my requests, with reference to the plain facts, the provisions of PAIA, and the reported cases on its operation?

8. Why, despite my repeated emphasis in my enquiries and reminders that I was under time pressure to commence action in the Labour Court, did the SAHRC do absolutely nothing for two critical months after receiving my second memorandum in April?

9. Why did the SAHRC only respond to my fundamental rights violation complaint and announce that it was refusing to investigate it, the day after receiving my PAIA request for the SAHRC's own records to establish what steps it had taken to assist me?

10. What prevents the SAHRC's PAIA Unit even at this late stage from assisting me access the records I need, by simply annotating its agreement or disagreement with my claim to entitlement to the refused records in the light of the relevant provisions of PAIA and decided cases I've cited? (As I've pointed out, your chairman's claim that the fundamental right in question, my right to information, is shortly going to trial is completely wrong; a wholly different fundamental right, my right to equality, is going to court, as my enclosed statement of claim bears out.)

As I've mentioned before, I'll be providing the Portfolio Committee on Justice and Constitutional Development with a report of my own: 'The SAHRC and PAIA:

Brink and LASA: A Case Study in Failure'. My report will brief the Committee on (a) LASA's persistent refusal to comply with its constitutional and legal obligations under PAIA, and (b) the SAHRC's remarkable indifference to this; and I imagine the Committee will have several hard questions for the SAHRC along the lines of those listed above when its section 84 report is presented.

It's now evident from the SAHRC's response to my PAIA request for its own records in this case that besides picking up the phone in September 2010 to ask LASA to respond to my first records request in August, the PAIA Unit hasn't lifted a finger to support and assist me – notwithstanding the SAHRC's special obligations under section 83(3)(c) and (d) 'to monitor the implementation' of PAIA, and 'if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'; Ms Kisoon's assurance to me that she'd taken 'a special interest' in the matter; and the fundamental and critical importance of compliance with PAIA in our democracy inter alia in combating the abuse of power, repeatedly underscored by the courts and by the Portfolio Committee on Justice and Constitutional Development.

Since none of the SAHRC's shameful excuses for not investigating my fundamental right violation complaint bear scrutiny (when I showed them all to be false and untrue in my appeal notice, not one of my grounds of appeal was addressed when my appeal was dismissed), I'm left wondering whether, in the case of politically out-of-favour individuals, the SAHRC considers section 181(2) of the Constitution inapplicable, namely its stipulation that the SAHRC, as one of the 'STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY' mentioned in Chapter 9, 'must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice'.

You really can't imagine the depths of my disillusionment with the SAHRC. My misplaced trust in Ms Kisoon's assurance that she'd taken a 'special interest' in the matter and in the SAHRC's professed concern that PAIA be respected and observed has cost me a tremendous amount of wasted time and energy, with all my approaches to the SAHRC over the last year proving utterly fruitless. Then again, in some circles my dismay may be the cause of jubilation.

I look forward to your replies to my questions and to your assurance that 'the nature' of my 'complaint.. lodged with the Public Protector' will be fully, precisely and accurately reported as section 84(b)(x) requires, with nothing material left out: to repeat, my complaint has several legs.

Given the disgraceful history of the SAHRC's performance in this matter to date, you'll understand that I have zero remaining confidence that it will perform as the Constitution and PAIA require of it without your special urging.

Yours sincerely

ADV ANTHONY BRINK

Encl: Statement of claim.

Cc: The Portfolio Committee on Justice and Constitutional Development, per inclusion in report in preparation: 'The SAHRC and PAIA: Brink and LASA: A Case Study in Failure'

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**Physical Address**
33 Hoofd Street
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**Braamfontein**
2198

**Postal Address**
Private Bag X 2700
**Houghton**
2041

Tel: (011) 877 3600
Fax: 011 403 0625

**21 September 2011**

**Attention: Adv A Brink**

**25 Baker Road**

**Pietermaritzburg**

Dear Adv Brink

**RE: REPORT TO THE NATIONAL ASSEMBLY**

Your letter addressed to the Deputy Chairperson of the Commission dated 22 August 2011 refers. I respond thereto on behalf of the Deputy Chairperson who is unable to respond due to medical reasons.

In response to questions raised in your correspondence please be advised as follows:

- The PAIA legislation in terms of section 83, does indeed permit the Commission the discretion to assist where reasonably possible. In this regard our unit conveyed our resource limitations to you at the outset of your referral to it in an email dated 4 October 2010.
- I am satisfied that the unit undertook despite the limitation on our resources to facilitate the release of records requested and in this regard was able to secure partial release of records. Your response to our efforts is contained in an email of the 4th of October wherein you thanked the Commission for its *"effective and efficient intervention"*.
- I am also satisfied that the Commission's PAIA unit intervened further with regard to outstanding records and was advised that LASA did not have such records. The Commission then requested an affidavit to this effect required in terms of PAIA, which was provided by LASA.
- Further contesting of the matter is required to occur before the courts as LASA is a type B body to which no appeal lies in terms of PAIA.

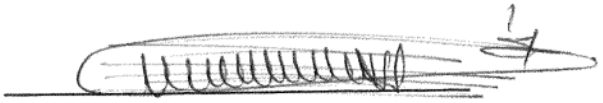
- Our decision to refuse annotating your memoranda is based on the principle of fairness, which has been communicated to you. If the Commission simply annotated the memorandum as you refer to it without providing the information holder the opportunity to contest the statements therein, it would amount to the Commission deciding each of the statements provided without considering of hearing the other side.
- The Commission, as has been previously communicated, does not have the resources to hold the kind of enquiry this would necessitate.
- I am also satisfied that a number of the conclusions and allegations you have rendered against the Commission are without merit.
- The unit has some 179 email correspondence alone in your matter, and extensive pleadings and memoranda which in my view amounts to a considerable use of very limited resources we are required to use monitoring, upholding and promoting the human rights of the poor and vulnerable people in our society.

Your directives regarding the content of our report to Parliament have been noted. In this regard please note the following excerpts from an email to yourself dated 29 July 2011:

*"Our report will reflect that LASA has submitted a report in terms of section 32. The actual report is provided to Parliament together with reports submitted by all 'other' bodies in the annual report as well.*
*The Commission will not be addressing the content of LASA's report. In terms of PAIA on a referral to court for non compliance with a request (which has as yet not occurred in the reporting cycle), LASA will be obliged to report the referral to court in its next section 32 report to the Commission). Until a decision by the courts to this effect, LASA has accurately responded to the requirements of section 32."*

In conclusion therefore I am satisfied that the response of the Commission in all instances of this matter has been satisfactory.

Yours faithfully,



M L Mushwana
**Chairperson**
**South African Human Rights Commission**

| | Number of requests for access received S32(a) | Number of requests for access granted in full S32(b) | Number of requests for access granted in terms of S46 S32(b) | Number of requests for access: (a) refused in full (b) refused partially (c) number of times each provision of the Act was relied on to refuse access in full or partially S32(d) | | | Number of cases in which the periods stipulated in S25(1) were extended in terms of S26(1) S32(e) | Number of internal appeals (a) lodged with the relevant authority | (b) number of cases in which as a result of an internal appeal access was given S2(f) | Number of internal appeals which were lodged on the grounds that a request for access was regarded as having been refused in terms of S27 S32(g) | Number of applications to a court, which were lodged on the grounds that internal appeal was regarded as having been dismissed in terms of Sections 77(7) and 32(h) | Other information |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| South African Revenue Services | 13 | 6 | 0 | 5 | 2 | 7 | 1 | 1 | 0 | 0 | 0 | |
| South African Social Security Agency | 212 | 121 | 85 | 6 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | |
| Insurance Sector Education and Training Authority | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Trans-Caledon Tunnel Authority | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Free State Gambling and Liquor Authority | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| South African National Parks | 2 | 0 | 0 | 2 | 0 | 1 | 1 | 1 | 0 | 1 | 0 | |
| Legal Aid Board | 2 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | The report provided by the Legal Aid Board included names of requesters |
| Joburg City Power | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| CSIR | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| University of the Witwatersrand | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Public Service Commission | 5 | 3 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | |
| Council for Medical Schemes | 18 | 15 | 0 | 2 | 1 | 3 | 1 | 0 | 0 | 0 | 0 | |
| Land Bank and Agriculture Bank of South Africa | 17 | 8 | 0 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| National Nuclear Regulator | 3 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | |
| Chapter 9 Institutions | | | | | | | | | | | | |
| South African Human Rights Commission | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

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Tel number: (011) 877 3751
Fax number: (011) 403 0668
Email: NVKwaza@sahrc.org.za

Our Ref.: GP/2011/0166 **(Please quote reference in all correspondence)**
Your Ref.:

29 June 2011

**MR ANTHONY BRINK**
Per Email: arbrink@iafrica.com

Dear Sir

**RE: YOUR COMPLAINT LODGED WITH THE GAUTENG PROVINCIAL OFFICE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (THE "COMMISSION")**

We refer to the above matter and in particular to your email dated 28 April 2011, together with attachments, the contents of which have been noted.

The Commission has carefully perused all relevant documents that you have provided to it in relation to this matter and confirm as follows:

1. That you have waived your complaint in respect of your third request to Legal Aid South Africa ("LASA") for information, and that you have accordingly accepted LASA's explanation that its late response was attributed to unanticipated technical difficulties.
2. In light of having received the affidavit in terms of section 23 of the *Promotion of Access to Information Act 2 of 200*0 ("PAIA") from LASA, you accordingly withdrew your complaint against the information officer of LASA.
3. That the basis of your amended complaint is premised on your dissatisfaction with the time taken by Ms Vedalankar, information officer and CEO of LASA, to provide the required affidavit in accordance with section 23 of PAIA and your belief that LASA continues to conceal further documents which you require for purposes of proceeding with your matter in the Labour Court (page 3 paragraph 4 re addendum to complaint form).

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

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2041

Tel number: (011) 877 3751
Fax number: (011) 403 0668
Email: NVKwaza@sahrc.org.za

As your complaint specifically relates to the PAIA and in light of the fact that your initial complaint had been lodged with the PAIA unit of the Commission, which unit has been set up to advance the observance of the right to access information enshrined in section 32 of the Constitution, the writer confirms having engaged with the PAIA unit in various in depth consultations regarding the assistance which it provided to you and the role which it has played herein.

We accordingly hereby wish to respond as follows to your complaint:

1. We wish to state from the outset and confirm that the withholding of records or parts thereof, on the part of the information officers of LASA was engaged in extensively by the PAIA unit on your behalf. The PAIA unit has furthermore confirmed that LASA provided some of the records requested as well as an affidavit in terms of PAIA as a result of its facilitation. The affidavit provided by LASA furthermore related to the availability of records which LASA indicated could not be furnished to you.

2. A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer of LASA is made in your memorandum.

3. It is important to note however that a close consideration of the facts and adherence to principles of due process, which would *inter alia* involve obtaining evidence from both parties in this matter, would be required and necessary for the Commission to be in a position to provide a decision herein which it considers fair, objective and justifiable.

4. We note from correspondence that you have provided and based on your engagement with the PAIA unit, that you intend using responses furnished by the Commission (PAIA unit) in respect of the 5 (five) questions posed to the PAIA unit, to further your matter which is currently before or is shortly to be adjudicated upon by the Labour Court.

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

33 Hoofd Street
2nd Floor, Forum 3
Braampark
**Braamfontein**
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**Houghton**
2041

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5. In this regard we wish to advise that if this is indeed correct, this proposed action would be prejudicial and not necessarily in the interest of justice, as our office has not had an opportunity to test your assertions by putting your allegations to LASA for a response. It is also to be emphasized, as you were previously advised by the PAIA unit, that due to a lack of resources, the PAIA unit is not able to conduct a full investigation into the matter in order to satisfy itself to the extent required to provide the opinions as requested. This will therefore undoubtedly unfairly impact on potential proceedings before any court of law or tribunal, which in the Commission's view, would be better placed to assess and test all evidence before pronouncing on the lawfulness of the conduct of the deputy information or information officers.

   Therefore, given the impact of litigation herein, on both yourself and the information holder, the Commission does not deem it appropriate at this stage to enter proceedings which you intend instituting or have instituted by providing said opinions. The Commission may however, and reserves it right to do so at a later stage, enter proceedings as an amicus of the court, if it deems such action necessary and subject to it having adequate resources to do so.

   We confirm that the Commission has on various occasions communicated to you that it is unwilling to initiate or participate in proceedings in this matter for want of resources. The PAIA legislation is cognizant of the need to permit the Commission the discretion to respond to specific matters to the extent that such action is "reasonably possible".

6. It is the Commission's view therefore that on the facts of the matter before it and in terms of the PAIA legislation, specific matters which include partial and complete refusal, dissatisfaction with the quality, type or extent of information provided are to be adjudicated before the courts.

7. It is accordingly the Commission's considered opinion that it has in terms of section 83(3)(c) of PAIA provided you with assistance through the PAIA unit to the full extent of its resource availability.

8. In light of the aforementioned and in terms of Article 4.2 of the Commission's Complaints Handling Procedures, it is our opinion that this matter will more effectively and expeditiously be dealt with through adjudication by a court of law.

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9. In the circumstances we confirm that we are not in a position to further investigate this matter and will accordingly proceed to close our file herein.

Should you however not be satisfied with this decision you **are entitled to note an appeal in writing to the office of the Chairperson** of the South African Human Rights Commission, at the following address, **within forty five (45) days of receipt of this letter**, in which you must state the full reasons why your file should be re-opened:

The Chairperson
Adv ML Mushwana
33 Hoofd Street
4th floor, Forum 3
Braampark
Braamfontein
2198

Or

Private Bag X2700
Houghton
2041
Tel No.: (011) 877 3654 / 3653
Fax No.: (011) 403 0567

We wish you success in taking your matter to the Labour Court.

Yours faithfully

**ZENA NAIR (Mrs)**
**Acting Provincial Manager: Gauteng**

25 Baker Road
Prestbury
Pietermaritzburg 3201
1 July 2011

Your ref: GP/2011/0166

Adv M L Mushwana
Chairperson: South African Human Rights Commission
33 Hoofd Street
2nd Floor, Forum 3
Braampark
Braamfontein

Dear Adv Mushwana

BRINK/LASA: PAIA: NOTICE OF APPEAL

I annex hereto my appeal notice herein for your consideration and I hope favourable determination. This is an extraordinarily important matter, and when my main case is launched in the Labour Court and thus into the public domain – and it's certain to attract considerable public interest for a variety of reasons – it would be excellent if the SAHRC came out shining, and not lumped in the court's judgment with those who've contemptuously trampled on my fundamental rights, lied about it, and been spectacularly caught out lying about it.

I'd be most grateful to if you'd rule on this appeal as soon as you can. As I keep repeating, I'm under heavy time pressure now to file my statement of claim in the Labour Court.

My appeal to you will be referenced in my statement of claim and will form part of my document bundle for the information of the judge.

Yours sincerely

ANTHONY BRINK

Cc: The Public Protector: Adv Thuli Madonsela
Justice and Constitutional Development Portfolio Chairperson Luwellyn Landers MP and senior Committee member John Jeffrey MP
Access to Information Unit, Open Democracy Advice Centre: Director Alison Tilley
Institute for Accountability in Southern Africa: Director Paul Hoffman SC

ADV ANTHONY BRINK AND LEGAL AID SOUTH AFRICA: VIOLATION OF FUNDAMENTAL RIGHT COMPLAINT: LASA'S FAILURE TO COMPLY WITH PAIA: SAHRC'S REFUSAL TO INVESTIGATE AND DETERMINE COMPLAINT (Ref GP/2011/0166)

**NOTICE OF APPEAL**

All documents referred to herein are archived online for easy access at:
www.tig.org.za/LASA/SAHRC username: lasa password: LASA2010

1. On 29 June 2011 Acting Gauteng Provincial Manager Mrs Zena Nair notified me that my formal complaint to the SAHRC of 11 April, as amended and amplified on the 28th, arising from Legal Aid South Africa's refusal to comply with my fundamental right to information in the democratic era guaranteed me by section 32 of the Constitution, 1996, and circumscribed by PAIA, had been dismissed without any investigation or determination by the Commission. She concluded by inviting me to 'note an appeal in writing' to 'the office of the Chairperson', if I wished, stating 'full reasons why [my] file should be re-opened'. These are my reasons.
2. I interpose to note that, as I'll show, Mrs Nair's letter is littered with wrong, inaccurate, misleading, and fallacious statements of fact, all of which misdirections corrupt her reasons for her decision.
3. It's common cause that I have made out a prima facie case that in denying me access to the records enumerated in my Second Memorandum, LASA has violated my fundamental right to information. Indeed, more than a prima facie case, Mrs Nair describes my complaint in this regard as 'cogent' – which the SOED tells us means 'Constraining, impelling, forcible … persuasive, expounded clearly and logically, convincing'. She doesn't take issue with any of my contentions that LASA is

unlawfully withholding duly requested records from me in breach of PAIA and in violation of my fundamental rights. Not one.

4. Having satisfied herself on advice received from the PAIA Unit experts that I've made out a 'cogent' case that my fundamental rights have been violated, it's incumbent on her to investigate and determine my complaint. That's what the SAHRC is there for: 'The SAHRC promotes, protects and monitors human rights in South Africa. It also has a specific responsibility to promote and monitor the implementation of PAIA. … Part of the Commission's mandate is to provide assistance to requesters wishing to exercise their rights.'
5. And in my case I've made it so easy. All the SAHRC has to do is note its agreement (or disagreement) in the spaces I've provided for this purpose in my Second Memorandum below each of my critical analyses of the legal vacancy of the various fatuous pretexts advanced by LASA deputy information officer Brian Nair for withholding the records I've duly requested. Then call on him to respond. Then determine my complaint in the light of his responses considered against the provisions of PAIA. The whole thing would take no more than a couple of hours work maximum. (Your PAIA Unit head Ms Kisoon assured me last year that she'd taken a 'special interest' in the matter.)
6. Mrs Nair's mollifying assurance – apparently to impress other readers – that 'the withholding of records or parts thereof, on the part of the information officers of LASA was engaged in extensively by the PAIA Unit on your behalf' appears to me to be untrue. As far as I can see, other filing all my correspondence, the PAIA Unit has done not much more than (a) secure LASA's agreement to look at my first PAIA request which LASA initially ignored in September last year; and (b) recently read my

Second Memorandum and tell Mrs Nair how 'cogent' it is. When LASA finally responded to my first records request in October, thanks to Ms Kisoon's intervention, it contemptuously refused my entire request for 51 specified records on grounds that can only be described as fraudulent: falsely misstating the law, and grotesquely misquoting a judgement in a reported case, putting words in the judge's mouth that he never spoke, saying precisely the opposite of what he actually said (which supported my claim to records). The PAIA Unit did nothing about this. My first request was then refused a second time in January 2011, again on wholly spurious grounds. My second request was not dealt with at all. The PAIA Unit did nothing. Numerous pleas for mediation on the telephone and in correspondence came to naught. I wrote the PAIA Unit a long letter debunking both the legally idle reasons for refusing my records requests and the other demonstrably false allegations made concerning the core unfair discrimination dispute. The PAIA Unit did nothing. I then prepared my First Memorandum analysing and exposing the legal vacancy of LASA's reasons for refusing to comply with the Act, copying LASA in. LASA responded of its own accord, still unlawfully withholding critically important records needed for the pleading and proof of my case. The PAIA Unit did nothing. In desperation I filed a formal fundamental rights violation complaint in April 2011, and with it my Second Memorandum, again addressing and debunking LASA's bogus pretexts for withholding the records I need. The PAIA Unit did nothing. I was finally forced to file a PAIA request on the SAHRC itself to spur the PAIA Unit to at last carry out its statutory function to assist records requesters like me. The day after I did so, Mrs Nair told me she'd 'close[d] our file'. I see no indication that 'the withholding of records or parts thereof, on the part of the information officers of LASA was

engaged in extensively by the PAIA Unit on your behalf'. On the contrary, the PAIA Unit didn't 'engage' in any substantial sense, and that's why I'm still waiting for critically relevant records needed for my main case. Mrs Nair's sweet-sounding allegation is at odds with the hard reality.

7. It's correct that I've been given a couple of records, but the overwhelming majority have been unlawfully denied me. And at last – six months late – I've finally been given the all-important section 23 affidavit I've long been pressing for, concerning records that don't exist (not which 'could not be furnished to you') and which I'd long suspected didn't exist.
8. It is sheer nonsense for Mrs Nair to allege that 'evidence … from both parties' needs to be 'obtain[ed]' before the SAHRC can determine my complaint on a 'fair, objective and justifiable' basis. This patently disingenuous excuse for not doing her job and investigating and determining my fundamental rights violation complaint is empty waffle. No disputes of fact arise in this matter. There can't be, because LASA hasn't even been asked to respond to my complaints yet, and so hasn't done so. In any event, all my complaints in my second memorandum all go to the *legal irrelevance* of LASA's purported reasons for refusing my records requests. The issues are not factual but purely legal, and all are resoluble on legal contentions alone (on the papers, like in an opposed application in the High Court). In every case of refusal of records the SAHRC merely has to decide: Is LASA's justification supported by PAIA? No additional 'evidence … from both parties' is required to be gathered before this question can be answered. This allegation is false.
9. It is more mindless nonsense for Mrs Nair to claim that 'this proposed action [of gathering evidence from me and LASA] would be prejudicial and not necessarily in

the interest of justice as our office has not had an opportunity to test your assertions by putting your allegations to LASA for a response'. This statement is not just wrong, it's untrue. She had plenty of 'opportunity' to do so in the two full months since I filed my complaint in April, and she's done nothing about it. She can do so now, and better late than never.

10. It is transparently unconvincing for Mrs Nair to cook up her next excuse for summarily closing the file (after months of inaction and only when I sought the embarrassing records showing how little the SAHRC has done to assist me over the last nine months) in pretending that the SAHRC doesn't have the 'the resources' to 'conduct a full investigation ... in order to satisfy itself to the extent required to provide the opinions as requested'. Her dissimulation is disgraceful. The PAIA Unit is manned by PAIA expert attorneys capable of evaluating my legal analysis without even opening a book. Indeed, they've already concluded that my demonstration of the legal irrelevance of LASA's reasons for refusing to comply with PAIA is 'cogent'. I do not accept as the truth that the SAHRC does not have 'the resources' to take the little time necessary to annotate its agreement (or disagreement) with my contentions in my Second Memorandum, ask LASA for its responses, and then determine the validity of my complaint in the light of them. What could be simpler? This excuse is patently untrue and it amounts to a shameful dereliction by Mrs Nair of her professional function.
11. My impending case in the Labour Court mentioned by Mrs Nair arises from a wholly different cause of action and is perfectly irrelevant to my complaint that LASA has violated my right to information. It is consequently ridiculous for Mrs Nair to imply that the court will be 'better placed to assess and test all evidence before pronouncing

on the lawfulness of the conduct of the deputy information or information officers'. The Labour Court in which I'll shortly be launching my unfair discrimination claim has no jurisdiction to try PAIA disputes. This is elementary, and Mrs Nair or those advising her ought to know this. So this further empty excuse is fallacious.

12. Mrs Nair's opinion of what she thinks 'appropriate', right after a slew of transparently false statements on which she bases her view, is entirely irrelevant. On her own showing, I've filed a 'cogent' complaint that one of my most important fundamental rights has been violated – a right so important, so highly valued in our new democracy, that a dedicated statute has been enacted to promote and guard it. My complaint to the SAHRC is accordingly extremely serious. Mrs Nair is paid to deal with it, and not to make a string of hollow excuses for not doing her work – so that instead of 'Transforming society. Securing rights. Restoring dignity', the SAHRC's motto, she is practically washing her hands of LASA's violation of my fundamental rights because it's all too much trouble for her to assist me in 'Securing [my] rights'.
13. Mrs Nair's casual dismissal of my extremely serious complaint, under cover of feeble excuses, would seem to be well explained by SAHRC Commissioner and Deputy Chairperson Dr Pregs Govender, who in February raised the fact that 'the culture of secrecy' is still all the rage in our country: 'It has been difficult to get government departments to understand the culture of openness and transparency. … We came out of a culture of secrecy as a country in 1994 and that culture is a very hard one to break.' Mrs Nair appears not to fully appreciate the importance of our new culture of accountability in the post-apartheid era.
14. I accept that the SAHRC doesn't have the funds to litigate on my behalf. Early on, Ms Kisoon told me the SAHRC accordingly had to resort to 'naming and shaming'

PAIA delinquents. This is why I've repeatedly asked whether LASA has been registered as such. I've never been given an answer. The hope all round would seem to be that I should stop being a bother to everyone, just push off, and forget about LASA's violation of my fundamental rights.

15. Mrs Nair makes the further absurd allegation that my claim to unlawfully withheld records 'will more effectively and expeditiously be dealt with through adjudication by a court of law'. I live in Pietermaritzburg, and for me to bring a very expensive, drawn-out PAIA application in the Johannesburg High Court would hardly be 'more effective and expeditious' than for the SAHRC to simply call on LASA to respond to my Second Memorandum (and to the points made in my rights violation complaint as amended), and then make a determination – all within a couple of days, at no cost to anyone. This is another transparently bogus excuse for shying away from her professional function.

16. Mrs Nair says I 'believe' records have unlawfully been concealed, hinting that I'm a paranoid person. In truth, I present incontestable evidence that records have been concealed from me in contravention of section 90 of PAIA: (a) an email with 'FW' (Forward) in the Subject bar unequivocally signifying a prior exchange on the same subject; (b) an email exchange between LASA's CEO and chairperson, evident from the properties file of a PDF letter he sent me a couple of days after his return from the US, prepared two weeks earlier on the CEO's computer. Obviously there was email traffic between them. No genuine disputes of fact are involved. Concealing records in contravention of PAIA's criminal 'Offences' provisions is an exceedingly grave matter, and it must be investigated and determined. I've just discovered another instance of records concealed from me in flagrant contempt of PAIA: LASA

chairperson Judge Mlambo sent a four-page statement to the Minister of Justice and Constitutional Development in March 2011, very revealingly talking about my discrimination complaint and badmouthing me as he did so. Perhaps he thought that by secretly marking it 'Confidential' he could exempt it from my catch-all PAIA request for all and any records featuring me and the Pietermaritzburg senior Litigator post. He knew that I was seeking outstanding records requested, because he mentioned it in his statement. Yet the statement was withheld and concealed from me. Unbelievable!

17. Mrs Nair refers to my intention to launch an action in the Labour Court (she wishes me good luck with it), and claims this is an additional good reason to close her file on my fundamental rights complaint and not to investigate and determine it. My future intentions in the Labour Court are completely irrelevant. The Constitution and PAIA entitle me to information as a fundamental right. Mrs Nair is satisfied that I've made a 'cogent' case that this right has been violated. Section 11(3) of PAIA is explicit that my purpose in seeking LASA's records as a public body is immaterial, as is the information officer's opinion of what it might be. My intention to sue out of the Labour Court has nothing to do with my right to information – unless the litigation has already commenced. It hasn't. I'm relying on my constitutional right to information, given effect by PAIA, to collect the documentary evidence I need to properly plead and present my case. This is perfectly legitimate, and it is no good reason, no good excuse for Mrs Nair not to investigate and not to determine my complaint that this exceptionally important fundamental right has been violated.
18. Mrs Nair claims that 'a close consideration of the facts and adherence to the principles of due process, which would inter alia involve obtaining evidence from

both parties in this matter, would be necessary for the Commission to be in a position to provide a decision herein which it considers fair, objective and justifiable.' This is more utter nonsense. There are no factual disputes involved requiring the gathering of evidence to determine my complaint. To illustrate: When deputy information officer Nair says, in his opinion, that my records requests are 'irrelevant' it's elementary that he has fallen foul of section 11(3) and that he has not justified his refusal on any ground allowed by PAIA. The record is therefore compellable. When, like an apartheid bureaucrat, he mechanically invokes a section of PAIA to refuse my requests without providing any factual basis for doing so, it is elementary that he has not justified his refusal. And so on – per my analysis of Nair's vacant reasons in my Second Memorandum. All I originally asked of the PAIA Unit was to express a view: did it agree or disagree with my analysis? And to put its opinion to LASA.

19. In conclusion, further illustrating the deplorably careless, slack handling of my complaint, I will now correct Mrs Nair's several misstatements in her introductory opening paragraphs 1–3.

20. Ad paragraph 1: I have not 'waived [my] complaint in respect of my third request for records.' Her claim that I have is completely wrong. What I withdrew was my complaint that LASA had not responded to it. It had arrived by post after the prescribed 30 days for compliance, and after I filed my fundamental rights violation complaint. Other than request item 1 complied with (and items 3 – 5 fell away), all other 11 of the total 15 records that I duly requested were unlawfully refused for clearly insupportable reasons, as I show in my analysis in my Second Memorandum. So I've certainly not 'waived [my] complaint in respect of my third request for records.'

21. Ad paragraph 2: I never 'withdrew [my] complaint against the information officer' for the reason that in March 2011 I finally got the section 23 affidavit I'd been waiting for since September 2010. In fact 'withdrew [my] complaint against the information officer' that she had not made a section 23 affidavit. I persist with my 'complaint against the [deputy] information officer' for unlawfully withholding records from me in breach of his obligations under PAIA.
22. Ad paragraph 3: Mrs Nair fundamentally misstates the position. My amended and further complaint is not 'premised' on my complaint that the information officer failed for many months to provide a section 23 affidavit, nor on my 'belief' that certain records are being concealed. My principal complaint is 'premised' on the information officer's and deputy information officer's unlawful denial of access to specified records to which I am constitutionally entitled under PAIA. Their recalcitrance in complying with PAIA and in surrendering a couple of records eventually produced is a secondary complaint – one nonetheless requiring explanation and adjudication. My 'belief' that in contravention of section 90 they have concealed discoverable records is founded on the clear supporting evidence that I present for this.
23. What LASA did in March 2011 was make – to the inattentive reader – an impressive show of compliance with PAIA while persisting in unlawfully refusing me access to most of the records I need. When Ms Kissoon saw deputy information officer Nair's response to my third records request and to my first and second requests, and his section 23 affidavit, she told me she was 'closing [her] file' without more ado. She didn't even bother reading Nair's responses to satisfy herself that he'd at last complied with PAIA on LASA's behalf, after three disgraceful showings by

Vedalankar (summarised in my PAIA request for SAHRC records) before she passed the buck to Nair when things started getting too hot for her. Had Ms Kisoon read Nair's responses, she would have appreciated the manifest vacancy of his pretexts for denying my constitutional right of access the records I requested and need, all of which specious reasons are interrogated and debunked in my Second Memorandum. Because instead of 'engaging' with Nair about his failure to comply with PAIA, she just 'closed [her] file' and went off for lunch. Months later, and only under the embarrassing pressure of a PAIA request on the SAHRC itself, did Ms Kisoon read my Second Memorandum, and then agree that it's 'cogent'. (I'm gratified she agrees that as an admitted advocate for nearly thirty years, who's made an intensive study of PAIA and all the reported cases treating it, I know what records I'm entitled to.)

24. In the situation, I respectfully appeal to you as Chairperson of the SAHRC to direct Mrs Nair to 'reopen [her] file' and to investigate my fundamental rights violation complaint (a) by annotating her/the PAIA unit's agreement (or disagreement) with my 'cogent' legal critiques and debunks of the reasons advanced by LASA's deputy information officer for refusing to comply with my records requests enumerated in my Second Memorandum; and (b) by putting my Second Memorandum, annotated with the SAHRC's agreement (or disagreement) as aforesaid, to deputy information officer Nair for his response. Then after he has responded, determine whether LASA has indeed violated my fundamental right to information. And if so, advise me of this finding and register it for the purposes of the SAHRC's next annual report to Parliament. Is this really too much to expect of the SAHRC's well-paid specialist legal professionals?

25. There's a fair prospect that if the SAHRC annotates its agreement with me that LASA's given reasons for refusing me access to the records I seek are legally irrelevant, and conveys this to LASA, it may well finally surrender to me the records it is bound under PAIA to do. (LASA wouldn't want to be seen to be offside with the SAHRC.) After it does so, LASA can even be rewarded with the SAHRC's annual 'Golden Key Award' 'to acknowledge' its 'model openness, responsiveness and information sharing' – with its deputy information officer Nair proudly declared 'Deputy Information Officer of the Year' at the '(GKA) ceremony'.

Dated at Pietermaritzburg this 1st day of July 2011

ANTHONY BRINK

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MR. ANTHONY BRINK
**25 BAKER ROAD**
**PRESTBURY**
**PIETERMARITZBURG**
**3201**

**Our Ref.:** **A1/07/2011**
**Provincial Ref.:** **GP/2011/0166**

Date: 11th July 2011

Dear Sir,

**RE: APPEAL TO THE CHAIRPERSON**

The above matter and your letter of appeal dated the 1st day of July but only received by our offices on the 11th day of July 2011 refers.

I can kindly confirm that the Office of the Chairperson of the South African Human Rights Commission (Commission) has received a copy of the abovementioned letter of appeal.

The Chairperson's Office shall now proceed to request a copy of your complaint file from the Provincial Office from which your complaint originates.

Kindly be advised that after receiving a copy of your file from the said Provincial Office, your matter shall be placed in the bundle of matters on appeal that the Chairperson has to adjudicate on. There are numerous matters before the Chairperson on appeal from almost all the nine provinces throughout our country, all of which have to be dealt with on a 'first come, first serve' basis.

When the Chairperson has had an opportunity to properly deal with all the other matters on appeal currently before him, his Office shall then proceed to consider the issues you have raised on appeal and peruse your particular complaint file from the Provincial Office concerned. Thereafter his Office shall conduct research on the issues you have specifically raised and prepare draft findings for his consideration. Once this has all been done the Chairperson shall duly apply his mind to your matter on appeal and adjudicate on it accordingly.

The matters before the Chairperson on appeal currently are plenty in number and a diligent attempt shall be made to expedite these matters by his Office.

Yours faithfully,

**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**
PER: MR. P. GREGORIOU
LEGAL OFFICER TO THE COMMISSIONERS



**Chairperson:** ML Mushwana; **Deputy Chairperson**: P Govender; **Commissioners (Full time):** S Baai, B Malatji, L Mokate;
**Commissioners (Part time):** J Love, D Titus
**Chief Executive Officer**: K Ahmed

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MR ANTHONY BRINK
**PER EMAIL: arbrink@iafrica.com**

**Our Ref.:** **A1/07/2011**
**Provincial Ref.:** **GP/2011/0166**

Date: 18th July 2011

Dear Sir,

**RE: APPEAL TO THE CHAIRPERSON**

The above matter and your letter of appeal received by our offices on or about the 11th day of July 2011 refers.

I kindly confirm receipt of the aforesaid letter and the contents thereof has been noted.

The South African Human Rights Commission (hereinafter referred to as the "Commission") was established to investigate *prima facie* violations of human rights as contained within the Bill of Rights, which is Chapter Two of the Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as the "Constitution").

In terms of Article 4.1 of the Commission's Complaints Handling Procedures:

> *"4.1 The Commission may reject any complaint, which is –*
>
> ...

Transforming society. Securing rights. Restoring dignity.
**Chairperson:** M L Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full-Time):** S Baai, B Malatji, L Mokate;
**Commissioners (Part-Time):** J Love, D Titus;
**Chief Executive Officer:** A K Ahmed

*4.1.3 the subject of a dispute before a court of law, tribunal, any statutory body, any body with internal dispute resolution mechanisms or settled between the parties, or in which there is a judgement on the issues in the complaint or finding of such court of law, tribunal or statutory body ..."*

Moreover in terms of Article 4.2 of the Commission's Complaints Handling Procedures:

*"4.2 If in the opinion of the Head of the Legal Services Programme ... the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, statutory body or institution created by the Constitution or any other piece of legislation it shall ... refer the complainant to such an appropriate body ..."*

On perusing your file in this matter I note that your complaint relates to the alleged protracted delay by the information officer and Chief Executive Officer of Legal Aid South Africa (hereinafter referred to as "LASA"), Ms Vedalankar, to provide you with an affidavit in accordance with section 23 of the Promotion of Access to Information Act, 2 of 2000 (hereinafter referred to as "PAIA") and your averment that LASA continues to conceal further documents which you require for the purposes of proceeding with your matter in the Labour Court.

I note that the Legal Services Programme of the Gauteng Provincial Office of the Commission advised you on or about the 29th day of June 2011 that *inter alia* after assessing your complaint they were of the opinion that your complaint falls outside the jurisdiction of the Commission and in the circumstances your matter would be more effectively and expeditiously be dealt with through the adjudication by a court of law.

The Provincial Office was of the view that there was nothing further it could do in this matter and proceeded to close your file.

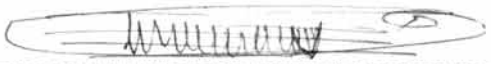
The Constitution and the Human Rights Commission Act, 54 of 1994 provides that the Commission is *inter alia* charged with the duty to investigate complaints of *prima facie* violations of human rights. The manner within which this is dealt with is determined in its Complaints Handling Procedures.

After a thorough analysis and due consideration of your complaint I confirm that the decision of the Provincial Office, to advise you accordingly, was in compliance of the Commission's Complaints Handling Procedures, in that the Commission does not have the mandate to assist you with your request for assistance in pursuing your matter which is currently before or is shortly to be adjudicated upon by the Labour Court.

This is in line with Article 4.1.3 of the Commission's Complaints Handling Procedures, stated above, namely, the "... Commission may reject any complaint, which is ... the subject of a dispute before a court of law".

Accordingly, your appeal is dismissed and this decision is final.

Yours faithfully,



**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**
PER: M L MUSHWANA
CHAIRPERSON

CC HEAD OF PROGRAMME: LEGAL SERVICES
**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

CC PROVINCIAL MANAGER, GAUTENG PROVINCE
**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

Legal Aid South Africa

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2000
Fax: 011-877-2222
www.legal-aid.co.za

8 April 2011

South African Human Rights Commission
PAJA Unit
P/Bag 2700
Houghton
2041
paja@sahrc.org.za

Dear Commissioner

**REPORT IN TERMS OF SECTION 32 OF THE PROMOTION OF ACCESS TO INFROMATION ACT 2 OF 2000: LEGAL AID SOUTH AFRICA**

Please find the report for Legal Aid South Africa in compliance with section 32 of the Promotion of Access to Information Act, 20 of 2000 as amended.

Regards

Solly Sekgota
Corporate Legal Manager
Legal Aid South Africa

Received by.....on this.....day of April 2011

**Your voice. For justice.**

Legal Aid South Africa

LIST OF REQUESTS IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

| Name of requester | Type of request | Outcome of the request | Comments | Date when request made. | Date when the request responded to. | Who responded |
|---|---|---|---|---|---|---|
| Antthony Brink | Request for information relating to the process on the conduct of interviews | Access partially refused | No decision taken yet on who should be appointed but the decision to freeze the post due to change in business needs-budget. The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the excercising of the right he may have in law and further that the request relates to confidential information of third parties. | 27/09/2010 | 19/10/2010 | CEO |
| Leslie Gwele | Request for information relating to the criteria of the bonus system and bonus that the employee would be entitled to. | Access granted | All the information requested was given to the requester. | 9/04/2010 | 12/05/2010 | CEO |

## Anthony Brink

**From:** Chris Rawlins [cfmrawlins@telkomsa.net]
**Sent:** 10 October 2011 10:20 PM
**To:** Anthony Brink
**Subject:** Fw: Letter to Auditor-General

----- Original Message -----
**From:** Debbie Schafer
**To:** 'Chris Rawlins'
**Sent:** Monday, October 10, 2011 10:00 PM
**Subject:** RE: Letter to Auditor-General

Thank you – according to LASA, he was not the only candidate. Do the documents you refer to say otherwise? I am afraid I have such huge volumes to read I just cannot do justice to it all.

Regards

Debbie Schafer MP
Shadow Deputy Minister of Justice and Constitutional Development
Deputy Chairperson: W Cape Metro Region
Registrar: Federal Legal Commission
Democratic Alliance
Member of the Magistrates Commission
Cel: 082 596 8524

---

**From:** Chris Rawlins [mailto:cfmrawlins@telkomsa.net]
**Sent:** 09 October 2011 11:25 PM
**To:** Debbie Schafer
**Subject:** Letter to Auditor-General

23 Norfolk Road,
Berea,
Durban,4001

Debbie Schafer MP.
Shadow Deputy Minister of Justice and CD.
House of Assembly.

Dear Mrs Schafer,

Thank you very much for your email letter of 12 September acknowledging receipt of my letter to the Auditor-General of 1 August which has not yet been acknowledged by his office. I very much appreciate your time in responding as I understand that MPs have a great many commitments.

I would like to correct two misperceptions of your letter. Firstly, all of LASA's paperwork in relation to their defence to Adv.Brink's claim is available at www.tig.org.za/LASA, username lasa, password LASA2010, except the critical records they are concealing by unlawfully refusing to comply with PAIA. Secondly, Brink was the only recommended candidate for the Pietermaritzburg Senior Litigator post. The Durban internal candidate was informed 3 months before Brink that the Durban post was not being filled.

After going to extraordinary lengths to avoid litigation Brink had no alternative other than to seek justice under the constitution in the courts and clearly neither MPs nor ordinary citizens can interfere in court processes.

The issues of corporate governance, internal control, public accountability and executive management bonuses which were the subject of my letter to the AG are separate from the justice and constitutional rights that Brink is now claiming in the courts. As you carry out your representative responsibilities at your Portfolio Committee meeting with LASA on tuesday, I will be thinking a great deal of the extraordinary courage of my late mother in seeking justice and human rights for all citizens from the late 1950s.

Thank you again for your time,

Kind regards,

Christopher Rawlins.

---

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 9.0.914 / Virus Database: 271.1.1/3943 - Release Date: 10/07/11 08:34:00

**Table 4: Number and Reasons for refusal of requests for Information during reporting period in terms of PAIA:**

| No of requests received | No of requests refused | Reason(s) for refusal |
|---|---|---|
| Two | One partly refused | Information related to third parties which are protected in terms of section 34 of the Act, and to operations of a public body which is protected in terms of section 44 of the Act. |

The organisation has partially implemented the combined assurance model to optimise on the assurance coverage obtained from management, internal and external assurance providers. To this end the model presents both management and internal audit's assurance on risk.

Legal Aid South Africa is in the process of formulating appropriate indicators to monitor and measure the value add, delivery and significant Information Technology investments and expenditure by the Board of Directors.

### 2.3.3 Compliance with Global Sustainability Reporting Initiative (GSRI)

Legal Aid SA complies with the Global Sustainability Reporting Initiatives framework which provides comprehensive information to stakeholders on an organisation's economic, social and environmental performance, also referred to as the triple bottom line reporting.

**Table 5: Compliance with Global Sustainability Reporting Initiative**

| Global Reporting Initiatives framework | Number of provisions | Number of exceptions | Provision not applicable to Legal Aid SA | Level of compliance |
|---|---|---|---|---|
| General performance Indicators | 9 | 0 | 1 | 100% |
| Scale of reporting organisations | 33 | 0 | 6 | 100% |
| Economic performance indicators | 13 | 0 | 7 | 100% |
| Environmental performance | 3 | 0 | 27 | 100% |
| Social performance indicators: Labour Relations | 14 | 0 | 1 | 100% |
| Social performance indicators: Human Rights | 14 | 0 | 1 | 100% |
| Social performance indicators: Society | 7 | 0 | 3 | 100% |
| Social performance indicators: Product responsibility | 11 | 0 | 6 | 100% |
| **Overall level of compliance = 100%** | | | | **100%** |

## 7.4 STATEMENT OF FINANCIAL POSITION

as at 31 March 2011

| | Notes | 2011 R | 2010 R |
|---|---|---|---|
| **ASSETS** | | | |
| **Non-current assets** | | 120,854,586 | 102,202,559 |
| Property, plant and equipment | **2** | 115,448,386 | 95,169,871 |
| Finance lease assets | **2.1** | 4,207,367 | 6,694,653 |
| Intangible assets | **3** | 1,198,833 | 338,035 |
| Non-current assets held for sale | **4** | 47,561 | 356,855 |
| **Current assets** | | 285,712,405 | 236,366,598 |
| Trade and other receivables | **5** | 3,516,713 | 3,232,840 |
| Prepayments | **6** | 665,594 | 568,382 |
| Client's trust funds | **7** | 3,926,436 | 2,316,352 |
| Deposits | **8** | 1,010,631 | 1,027,651 |
| Cash and cash equivalents | **9.2** | 276,593,031 | 229,221,373 |
| **Total assets** | | **406,614,552** | **338,926,012** |
| **NET ASSETS AND LIABILITIES** | | | |
| Accumulated surplus | | 194,772,181 | 163,029,853 |
| **Non-Current liabilities** | | | |
| Non-current portion of finance lease | **10** | 421,403 | 3,396,114 |
| Employee benefits | **11** | 1,387,000 | 1,393,000 |
| **Current liabilities** | | 210,053,969 | 171,107,045 |
| Current portion of finance lease | **10** | 3,371,222 | 3,418,945 |
| Provisions | **12** | 143,558,458 | 112,753,901 |
| Trade and other payables | **13** | 63,104,289 | 54,934,199 |
| **Net assets and liabilities** | | **406,614,552** | **338,926,012** |

## 8.2 Employment and vacancies

**Table 12: Employment and vacancies by region**

| Regions | Number of posts | Number of posts filled | Number of permanent posts filled | Vacancy Rate % | *Number of posts filled additional to establishment |
|---|---|---|---|---|---|
| National Office | 200 | 174 | 174 | 13.00% | 0 |
| Western & Northern Cape Region | 461 | 455 | 437 | 5.21% | 18 |
| KwaZulu - Natal Region | 396 | 415 | 387 | 2.27% | 28 |
| Eastern Cape Region | 384 | 387 | 379 | 1.30% | 8 |
| Gauteng Region | 462 | 450 | 439 | 4.98% | 11 |
| Free State & North West Region | 372 | 372 | 362 | 2.69% | 10 |
| Limpopo & Mpumalanga Region | 320 | 322 | 311 | 2.81% | 11 |
| **Total** | **2,595** | **2,575** | **2,489** | **4.08%** | **86** |

* Posts additional to establishment relate to temporary posts aimed at servicing case backlog courts funded by Department of Justice and Constitutional Development

**Table 13: Employment and vacancies per critical occupation**

| Critical occupation | Number of posts | Number of posts filled | Vacancy Rate % | Succession planning candidates in development programme |
|---|---|---|---|---|
| Legal | 64 | 61 | 4.69% | 20 |
| Regional Support | 24 | 23 | 4.17% | 5 |
| Finance | 1 | 1 | 0.00% | 1 |
| Human Resources | 1 | 1 | 0.00% | 1 |
| Internal Audit | 1 | 1 | 0.00% | 1 |
| Information Services | 1 | 1 | 0.00% | |
| Legal Development | 1 | 1 | 0.00% | 1 |
| Corporate Services | 1 | 1 | 0.00% | |
| Communications | 1 | 1 | 0.00% | |
| National Operations | 1 | 1 | 0.00% | |
| Chief Operations | 1 | 1 | 0.00% | |
| Chief Executive | 1 | 1 | 0.00% | |
| **Total** | **98** | **94** | **4.08%** | **29** |

### 8.3 Job evaluation and grading

**Table 14: Job evaluation and grading by salary levels**

| Salary Bands | Number of posts | Number of jobs evaluated | % of posts evaluated by salary bands | Posts upgraded | | Posts downgraded | | New posts | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Number | % of posts Evaluated | Number | % of posts Evaluated | Number | % of posts Evaluated |
| Skilled ( Levels 3-5) | 9 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Highly skilled production (Levels 6-8) | 25 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Highly skilled supervision (Levels 9-12) | 42 | 8 | 19% | 8 | 19% | 0 | 0% | 6 | 100.00% |
| Senior Management Services ( Level 13) | 7 | 2 | 29% | 2 | 29% | 0 | 0% | 0 | 0.00% |
| Senior Management Services ( Level 14) | 6 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Senior Management Services ( Level 15) | 4 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Senior Management Services ( Level 16) | 1 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| **Total** | **94** | **10** | **11%** | 10 | 11% | **0** | 0% | **6** | **100.00%** |

### 8.4 Employment changes

**Table 15: Staff turnover**

| Period | Support staff | Legal staff CAs only | Legal staff\ excluding CAs | Legal staff including CAs | Total excluding CAs | Total including CAs | New engage-ment | Terminations CAs only | Terminations excluding CAs | Total terminations including CAs | Turnover rate excluding CAs | Turnover rate including CAs |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| April | 722 | 618 | 1,134 | 1,752 | 1,856 | 2,474 | 80 | 24 | 12 | 36 | 0.65% | 1.46% |
| May | 728 | 631 | 1,161 | 1,792 | 1,889 | 2,520 | 84 | 25 | 14 | 39 | 0.74% | 1.55% |
| June | 726 | 641 | 1,173 | 1,814 | 1,899 | 2,540 | 56 | 15 | 7 | 22 | 0.37% | 0.87% |
| July | 728 | 648 | 1,180 | 1,828 | 1,908 | 2,556 | 65 | 21 | 19 | 40 | 1.00% | 1.56% |
| August | 726 | 670 | 1,179 | 1,849 | 1,905 | 2,575 | 48 | 25 | 17 | 42 | 0.89% | 1.63% |
| September | 729 | 660 | 1,193 | 1,853 | 1,922 | 2,582 | 44 | 24 | 17 | 41 | 0.88% | 1.59% |
| October | 731 | 652 | 1,200 | 1,852 | 1,931 | 2,583 | 40 | 27 | 12 | 39 | 0.62% | 1.51% |
| November | 736 | 658 | 1,201 | 1,859 | 1,937 | 2,595 | 44 | 17 | 14 | 31 | 0.72% | 1.19% |
| December | 700 | 654 | 1,223 | 1,877 | 1,923 | 2,577 | 18 | 19 | 15 | 34 | 0.78% | 1.32% |
| January | 736 | 650 | 1,194 | 1,844 | 1,930 | 2,580 | 40 | 44 | 12 | 56 | 0.62% | 2.17% |
| February | 736 | 661 | 1,196 | 1,857 | 1,932 | 2,593 | 52 | 29 | 12 | 41 | 0.62% | 1.58% |
| March | 739 | 670 | 1,206 | 1,876 | 1,945 | 2,615 | 76 | 24 | 11 | 35 | 0.57% | 1.34% |
| **Total** | **8,737** | **7,813** | **14,240** | **22,053** | **22,977** | **30,790** | **647** | **294** | **162** | **456** | **8.46%** | **17.77%** |
| **Average (per month)** | **728** | **651** | **1,187** | **1,838** | **1,915** | **2,566** | **54** | **25** | **14** | **38** | **0.71%** | **1.48%** |

**Note:** *CAs are on fixed term contracts and will leave Legal Aid South African at the end of their 12 or 24 months contract*

### 8.6 Recruitment for period

**Table 19: Recruitment (for the period)**

| Gender | Male | | | | Female | | | | Total |
|---|---|---|---|---|---|---|---|---|---|
| Race | African | Coloured | Indian | White | African | Coloured | Indian | White | |
| Occupational Bands | | | | | | | | | |
| Top Management | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Senior Management | 2 | 0 | 0 | 1 | 1 | 0 | 1 | 0 | 5 |
| Professionally qualified & experienced specialist and middle management | 56 | 8 | 4 | 9 | 41 | 12 | 7 | 12 | 149 |
| Skilled technical and academically qualified workers, junior management | 3 | 2 | 0 | 0 | 3 | 0 | 0 | 0 | 8 |
| Semi- skilled and discretionary decision making, administration officers, etc. | 18 | 2 | 1 | 0 | 38 | 9 | 1 | 0 | 69 |
| Candidate Attorneys | 160 | 25 | 7 | 6 | 137 | 56 | 16 | 8 | 415 |
| Unskilled and defined decision making | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Total** | **240** | **37** | **12** | **16** | **220** | **77** | **25** | **20** | **647** |

### 8.7 Terminations by occupational bands

**Table 20: Terminations by occupational levels**

| Gender | Male | | | | Female | | | | Total |
|---|---|---|---|---|---|---|---|---|---|
| Race | African | Coloured | Indian | White | African | Coloured | Indian | White | |
| Occupational Bands | | | | | | | | | |
| Top Management | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Senior Management | 2 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 5 |
| Professionally qualified & experienced specialist and middle management | 40 | 4 | 5 | 5 | 26 | 11 | 5 | 7 | 103 |
| Skilled technical and academically qualified workers, junior management | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 5 |
| Semi- skilled and discretionary decision making, administration officers, etc. | 8 | 2 | | 0 | 28 | 8 | 1 | 2 | 49 |
| Candidate Attorneys | 103 | 23 | 7 | 2 | 88 | 39 | 19 | 13 | 294 |
| Unskilled and defined decision making | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Total** | **156** | **31** | **12** | **8** | **142** | **58** | **26** | **23** | **456** |

## 15. Administrative Expenses

| | 2011 R | 2010 R |
|---|---|---|
| Co-operation Agreements | 6,428,067 | 4,692,258 |
| Impact Litigation | 1,704,232 | 3,175,969 |
| Judicare | 138,487,017 | 101,747,700 |
| Civil Disbursements | 2,502,910 | 2,304,725 |
| | **149,122,225** | **111,920,652** |

### 15.1. Other Expenses

Other expenses is made up of the following material expenses:

| | 2011 R | 2010 R |
|---|---|---|
| Audit Fees | 2,622,514 | 2,388,115 |
| Cleaning Services | 4,347,327 | 3,792,285 |
| Computer Software | 6,525,111 | 5,669,218 |
| Communication | 3,158,241 | 1,941,291 |
| Education and Training | 6,054,010 | 5,598,326 |
| Insurance -Group Life | 11,962,529 | 11,421,803 |
| Insurance Short Term | 6,129,930 | 5,258,981 |
| Library and Publications | 583,754 | 914,881 |
| Municipal Services | 6,508,164 | 5,256,366 |
| Maintenance Building | 1,503,415 | 1,662,475 |
| Maintenance Office Equipment | 1,517,477 | 1,408,258 |
| Office Rental | 29,362,352 | 26,321,676 |
| Postage & Courier | 1,110,972 | 1,109,041 |
| Printing and Stationery | 5,862,437 | 5,827,450 |
| Professional Services | 1,531,967 | 1,136,724 |
| Recruitment | 1,001,272 | 976,008 |
| Security Costs | 1,414,954 | 1,216,385 |
| Subscriptions and Membership fees | 1,440,148 | 1,229,924 |
| Telephone and Faxes | 12,893,614 | 12,445,264 |
| Travel and Subsistence | 6,739,483 | 6,893,201 |
| Vehicle Maintenance | 2,129,924 | 2,054,234 |
| Vehicle Fuel | 6,279,672 | 5,074,032 |
| Wide Area Network | 5,718,745 | 4,590,360 |
| Workshops | 3,439,137 | 3,602,683 |
| Other expenses, not material individually | 24,700,366 | 25,363,409 |
| | **154,537,513** | **143,152,390** |

**Other expenses include change management, IT support, maintenance building, legal fees, document exchange etc.**

## 12. Provisions

| 2011 | Carrying value at beginning of year R | Used during the year R | Unused provisions R | Additional provisions R | Carrying value at end of year R |
|---|---|---|---|---|---|
| Judicare* | 78,430,673 | (78,430,673) | - | 109,146,540 | 109,146,540 |
| Provision for Incentive Payments | 32,585,456 | (30,032,155) | 2,553,301 | 30,563,078 | 33,116,379 |
| Provision for Workmens Compensation | - | - | - | 640,539 | 640,539 |
| Impact Litigation | 639,772 | (639,772) | - | - | - |
| Corporate Litigation | 1,098,000 | (1,098,000) | - | 655,000 | 655,000 |
| | **112,753,901** | **(110,200,600)** | **2,553,301** | **141,005,157** | **143,558,458** |

The Judicare figure used during the year includes used and reversed provisions.

| 2010 | Carrying value at beginning of year R | Used during the year R | Unused provisions R | Additional provisions R | Carrying value at end of year R |
|---|---|---|---|---|---|
| Judicare* | 85,757,570 | (85,757,570) | - | 78,430,673 | 78,430,673 |
| Provision for Incentive Payments | 34,573,054 | (29,856,447) | - | 27,868,849 | 32,585,456 |
| Impact Litigation | 1,408,751 | (1,408,750) | - | 639,771 | 639,772 |
| Corporate Litigation | - | - | - | 1,098,000 | 1,098,000 |
| | **121,739,375** | **(117,022,767)** | **-** | **108,037,294** | **112,753,901** |

* The Judicare figure used during this year includes used and reversed provisions.

## 5.2 EMPLOYMENT AND VACANCIES

**TABLE 7: EMPLOYMENT AND VACANCIES BY REGION**

| Regions | Number of posts | Number of posts filled | Number of permanent posts filled | Vacancy Rate % | *Number of posts filled additional to establishment |
|---|---|---|---|---|---|
| National Office | 175 | 151 | 149 | 14.86% | 2 |
| Eastern Cape | 364 | 357 | 345 | 5.22% | 12 |
| Free State/North West | 363 | 342 | 335 | 7.71% | 7 |
| KwaZulu-Natal | 388 | 400 | 379 | 2.32% | 21 |
| Gauteng | 463 | 451 | 437 | 5.62% | 14 |
| Limpopo/Mpumalanga | 301 | 291 | 281 | 6.64% | 10 |
| Western Cape/Northern Cape | 459 | 459 | 432 | 5.88% | 27 |
| **Total** | **2 513** | **2 451** | **2 358** | **6.17%** | **93** |

*Posts additional to establisment relate to temporary posts aimed at servicing case backlog courts funded by Department of Justice and Constitutional Development

**TABLE 8: EMPLOYMENT AND VACANCIES PER CRITICAL OCCUPATION**

| Critical occupation | Number of posts | Number of posts filled | Vacancy rate % | Succession planning candidates in development programme |
|---|---|---|---|---|
| Legal | 64 | 61 | 4.69% | 10 |
| Regional Support | 24 | 24 | 0.00% | 15 |
| Finance | 1 | 1 | 0.00% | 1 |
| Human Resources | 1 | 1 | 0.00% | 1 |
| Internal Audit | 1 | 1 | 0.00% | 1 |
| Information Services | 1 | 0 | 100.00% | 2 |
| Legal Development | 1 | 1 | 0.00% | 3 |
| Corporate Services | 1 | 0 | 100.00% | 1 |
| Communications | 1 | 1 | 0.00% | 0 |
| National Operations | 1 | 1 | 0.00% | 3 |
| Chief Operations | 1 | 1 | 0.00% | 2 |
| Chief Executive | 1 | 1 | 0.00% | 2 |
| **Total** | **98** | **93** | | **41** |

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**Employment Opportunity**

**Position: Senior Litigator**

**Salary:** R502 725 per annum (Level 13)

**Location:** Various in SA

**Description:**
The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making legal aid available to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres, spread throughout the country.

The above position exists in the National Operations Department at the following Justice Centres:
* Johannesburg (SNR L01)
* Pretoria (SNR L02)
* Pietermaritzburg (SNR L03)
* Durban (SNR L04)
* Port Elizabeth (SNR L05)
* Bloemfontein (SNR L06)
* Cape Town (SNR L07)
* Kimberley (SNR L08)
* Mafikeng (SNR L09)

Reporting to the relevant JCE, the incumbent will render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country and provide specialist support to Justice Centres on these matters.

**Responsibilities:**
* Take responsibility for and expertly/proficiently attend to legal matters in various legal forums/courts requiring expert litigation skills, such as impact litigation and/or warranting the services of a Senior Litigator
* Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex or impact litigation matters
* Provide written legal opinion for the LAB as requested
* Build and manage a caseload as agreed by the ROE that makes optimum usage of the expertise and skills of the senior litigator position
* Assist with in-house legal training sessions as identified/agreed by the ROE or LDE
* Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROE, involving other LAB Practitioner to assist in legal matters and others means.

**Requirements:**
* Admitted Attorney/ Advocate
* B Proc or LLB degree, with right of appearance in the High Court
* An LLM will be an advantage
* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five (5) years' high court experience as well as litigation experience as an Attorney and/or Advocate.

**To Apply:**
* NB: In your application, please indicate the Justice Centre where you need your application to be considered.
* Preference will be given to affirmative action candidates who meet the minimum competency requirements.
* Should you not have heard from us within one month of the closing date, please consider your application unsuccessful.
* A detailed Curriculum Vitae reflecting practical application of the position outputs and the required competencies as advertised, quoting the

reference number, to:

Human Resources
Private Bag X76
Braamfontein
2170

**Attention:** Mr Richard Baloyi
**Fax:** 011 – 877 2222
**Email:** recruit@legal-aid.co.za

**Reference No:** 2007/NO/JC01

**Closing Date:** 9 November 2007

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best 2009/10 EMPLOYERS SOUTH AFRICA
AWARDED BY THE CRF INSTITUTE

Legal Aid South Africa

Your voice. For justice.

# HIGH COURT UNIT: PROFESSIONAL ASSISTANT

## Mthatha Justice Centre (Ref: MTHATHA 04/07)

**Key outputs:** • Provide legal representation to indigent accused persons at High Court Level • Train and supervise Candidate Attorneys • Perform office administration • Represent women, children and landless people in civil matters.

**Competencies (skills, knowledge and attributes) required:** • Admitted Attorney or Advocate (The latter must have completed pupilage successfully at an institution recognised by Legal Aid SA) • Legal representation at High Court Level • Minimum of at least six (6) years' post-qualification experience of which four (4) years must be post-admission experience • LLB degree • Right of appearance in High Court.

**A detailed curriculum vitae reflecting practical application of the position outputs and required competencies as advertised must be submitted by close of business on 30 July 2010, quoting the reference, to Mlindo Mzuku, The Admin Manager, PO Box 536, Mthatha 5099, fax: (047) 531 4144, e-mail: MlindoM@legal-aid.co.za or apply online at www.legal-aid.co.za**

Short-listed candidates will be required to undergo a security check. Should you not hear from us within two (2) months of the closing date, please consider your application unsuccessful.

**LEGAL AID SOUTH AFRICA RESERVES THE RIGHT NOT TO APPOINT.**

*For more vacancies visit www.legal-aid.co.za*

16106

www.ayandambanga.co.za

## TOTAL ESTABLISHMENT AND RECRUITMENT, AND LEGAL STAFF INCREASES FROM MARCH 2009 TO MARCH 2011

| | 2009 Mar | 2009 Sept | 2009 Dec | 2010 Mar | 2010 June | 2010 Sept | 2010 Dec | 2011 Mar | Increase in 2009/10 | Increase in 2010/11 |
|---|---|---|---|---|---|---|---|---|---|---|
| Professional Assistants | 753 | | | 781 | | | | 807 | 3.7% | 3.3% |
| Legal Managers | 240 | | | 252 | | | | 275 | 5.0% | 9.1% |
| Total legal staff excluding CAs and temporary staff | 993 | | | 1033 | | | | 1082 | 4.0% | 4.7% |
| Quarterly legal employment excluding CAs, including temporary[2] | 1085 | 1136 | 1129 | 1147 | 1173 | 1193 | 1223 | 1206 | 5.7% | 5.1% |
| Quarterly increase | | | 0.0% | 1.6% | 2.3% | 1.7% | 2.5% | 0.0% | | |
| Total budgeted staff establishment[1] | 2419[3] | | | 2513 | 2595 | | | 2595 | 3.9% | 3.3% |
| Total number of legal and support staff recruited | 2281 | | | 2352 | 2434 | | | 2489 | 3.1% | 5.8% |
| Total recruitment quarterly increase | | | | | 3.5% | | | | | |

NOTES

1.This table shows the changes in the total budgeted establishment and recruitment, and legal staff increases, as well as the changes in the total quarterly legal staff including temporary from March 2009 to March 2011.

2. Columns 10 and 11 show total permanent legal recruitment increasing by 4.7% in 2010/11 compared to 4% in 2009/10.

3. Row 6 shows a nil increase in total legal staff in the quarter September to December 2009, followed by 1.6% in January to March 2010, 2.3% in April to June 2010, 1.7% in July to September 2010, and 2.5% in October to December 2010.

4. These figures show that far from legal recruitment being 'put on hold', it progressively increased after December 2009, with increases continuing to the end of the year.

5. The total recruitment increase of 3.5% in the April to June 2010 first quarter is greater than the increase of 3.1% for the whole of 2009/10.

6. Columns 10 and 11 show total establishment budgeted posts increasing by 3.3% in the first quarter April to June 2010, almost equal to the 3.7% increase for the whole of 2009/10 – and this is after LASA was 'suddenly confronted' with 'budgetary issues' on 10 March 2010 when it learned that its OSD funding allocation hadn't yet come through as expected at the time.

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1. Annual report 2010/11, table 7, page 48. (Bundle addendum, page 693)
2. Annual report 2009/10, table 10, page 152; and annual report 2010/11, table 15, page 113. (Bundle addendum, pages 694 and 695)
3. First Quarter Report 2010/11, page 23. (Bundle addendum, page 696)

| No | Indicator | Performance - 2010/11 | | | | | Performance prior years | | Variance |
|---|---|---|---|---|---|---|---|---|---|
| | | Annual Target | | Actual | | | 2009/10 | 2008/09 | FY10/11 over FY 09/10 |
| | | Number | % | Number | % | Performance against Target | Number / % | Number / % | Number / % |
| **Employee & organisational capacity** | | | | | | | | | |
| 26 | **Infrastructure** | | | | | | | | |
| 26.1 | Justice Centres (JC) | 64 | | 64 | | No Change | 64 | 62 | - |
| 26.2 | Satellite Offices (SO) | 64 | | 64 | | Achieved | 63 | 55 | 1 |
| | | | | | | | | | |
| 27 | **Legal Staffing (Only JCs)** | | | | | | | | |
| 27.1 | PAs (100% = 853 PAs) | 819 | 96% | 807 | 95% | 1% lower than target | 781 | 753 | 3% |
| 27.2 | CAs (100% = 652 CAs) | 626 | 96% | 638 | 98% | 2% higher than target | 569 | 595 | 12% |
| 27.3 | Legal Managers (100%= 285 posts) | 274 | 96% | 275 | 96% | On target | 252 | 240 | 9% |
| | | | | - | | | | | |
| 28 | **Staffing** | | | | | | | | |
| 28.1 | Establishment (budgeted posts) | | | 2,595 | | | 2,513 | 2,419 | 3% |
| 28.2 | Number of staff (recruited) | | 96% | 2,489 | 96% | On track | 2,352 | 2,281 | 6% |
| 28.3 | Number of Lawyers (incl paralegals) | | | 1,932 | 78% | | 1,619 | 1,588 | 19% |
| | | | | | | | | | |
| 29 | **Employee Relations** | | | | | | | | |
| 29.1 | Grievances | 49 | 2% of total staff | 53 | 2.1% | More grievances than target | 33 | 23 | 47% |
| 29.2 | Disciplinary hearings | 61 | 2.5% of total staff | 10 | 0.4% | On track | 10 | | 0% |
| 29.3 | Disciplinary Matters | 61 | 2.5% of total staff | 121 | 4.9% | More disciplinary matters than target | 189 | 116 | -36% |
| 29.4 | New Labour disputes | 24 | 1% of total staff | 12 | 0.5% | On track | 24 | 27 | -55% |
| | | | | | | | | | |
| 30 | **Staff Training** | | | | | | | | |
| 31.1 | Legal Development (training hours) | hours | | | | | | | |
| 31.1.1 | - legal staff (15 hours per legal Staff) | 18,374 | | 23,902 | 130% | 30% higher than target | 24,976 | 27,375 | -4% |
| 31.1.2 | - JCEs (15 hours per JCE) | 1,024 | | 731 | 71% | 4% lower than target | 1,352 | | |
| 31.2 | National Operations (training hours) | | | | | | | | |
| 31.2.1 | - CA (36 hours per CA) | 20,236 | | 42,611 | 211% | 111% higher than target | 32,189 | | 32% |
| 31.2.2 | - PA (24 hours per PA) | 18,612 | | 25,976 | 140% | 40% higher than target | 38,527 | | -33% |
| | | | | | | | | | |
| 31.3.1 | - Non-legal staff (32 hrs per staff) | 13,792 | | 15,481 | 112% | 12% higher than target | 12,999 | 13,133 | 19% |
| 31.3.2 | - Manager (16 non legal training hrs /manager) | 2,000 | | 5,928 | 296% | 196% higher than target | 4,659 | | 27% |

## 5.3 JOB EVALUATION AND GRADING

**TABLE 9: JOB EVALUATION AND GRADING BY SALARY LEVELS**

| Salary bands | Number of posts | Number of jobs evaluated | % of posts evaluated by salary bands | |
|---|---|---|---|---|
| | | | | |
| Skilled (Levels 3-5) | 9 | 0 | 0% | |
| Highly skilled production (Levels 6-8) | 25 | 2 | 8% | |
| Highly skilled supervision (Levels 9-12) | 42 | 4 | 10% | |
| Senior Management Service (Level 13) | 7 | 0 | 0% | |
| Senior Management Service (Level 14) | 6 | 0 | 0% | |
| Senior Management Service (Level 15) | 4 | 0 | 0% | |
| Senior Management Service (Level 16) | 1 | 0 | 0% | |
| **Total** | **94** | **6** | **6%** | |

## 5.4 EMPLOYMENT CHANGES

**TABLE 10: STAFF TURNOVER**

| Period | Support staff | Legal staff CAs only | Legal staff excluding CAs | Legal staff including CAs | Total excluding CAs | |
|---|---|---|---|---|---|---|
| April | 697 | 639 | 1085 | 1724 | 1782 | |
| May | 696 | 634 | 1093 | 1727 | 1789 | |
| June | 702 | 630 | 1102 | 1732 | 1804 | |
| July | 699 | 611 | 1113 | 1724 | 1812 | |
| August | 705 | 598 | 1120 | 1718 | 1825 | |
| September | 710 | 615 | 1136 | 1751 | 1846 | |
| October | 712 | 603 | 1132 | 1735 | 1844 | |
| November | 713 | 614 | 1133 | 1747 | 1846 | |
| December | 708 | 610 | 1129 | 1739 | 1837 | |
| January | 716 | 596 | 1138 | 1734 | 1854 | |
| February | 716 | 602 | 1140 | 1742 | 1856 | |
| March | 709 | 595 | 1147 | 1742 | 1856 | |
| **Totals** | | | | | | |
| **Average (per month)** | **707** | **612** | **1122** | **1735** | **1829** | |

Note: CAs are on fixed term contracts and will leave Legal Aid South Africa at the end of their 12 or 24 month contracts.

### 8.3 Job evaluation and grading

**Table 14: Job evaluation and grading by salary levels**

| Salary Bands | Number of posts | Number of jobs evaluated | % of posts evaluated by salary bands | Posts upgraded | | Posts downgraded | | New posts | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Number | % of posts Evaluated | Number | % of posts Evaluated | Number | % of posts Evaluated |
| Skilled ( Levels 3-5) | 9 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Highly skilled production (Levels 6-8) | 25 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Highly skilled supervision (Levels 9-12) | 42 | 8 | 19% | 8 | 19% | 0 | 0% | 6 | 100.00% |
| Senior Management Services ( Level 13) | 7 | 2 | 29% | 2 | 29% | 0 | 0% | 0 | 0.00% |
| Senior Management Services ( Level 14) | 6 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Senior Management Services ( Level 15) | 4 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| Senior Management Services ( Level 16) | 1 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0.00% |
| **Total** | **94** | **10** | **11%** | 10 | 11% | **0** | 0% | **6** | **100.00%** |

### 8.4 Employment changes

**Table 15: Staff turnover**

| Period | Support staff | Legal staff CAs only | Legal staff\ excluding CAs | Legal staff including CAs | Total excluding CAs | Total including CAs | New engage-ment | Terminations CAs only | Terminations excluding CAs | Total terminations including CAs | Turnover rate excluding CAs | Turnover rate including CAs |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| April | 722 | 618 | 1,134 | 1,752 | 1,856 | 2,474 | 80 | 24 | 12 | 36 | 0.65% | 1.46% |
| May | 728 | 631 | 1,161 | 1,792 | 1,889 | 2,520 | 84 | 25 | 14 | 39 | 0.74% | 1.55% |
| June | 726 | 641 | 1,173 | 1,814 | 1,899 | 2,540 | 56 | 15 | 7 | 22 | 0.37% | 0.87% |
| July | 728 | 648 | 1,180 | 1,828 | 1,908 | 2,556 | 65 | 21 | 19 | 40 | 1.00% | 1.56% |
| August | 726 | 670 | 1,179 | 1,849 | 1,905 | 2,575 | 48 | 25 | 17 | 42 | 0.89% | 1.63% |
| September | 729 | 660 | 1,193 | 1,853 | 1,922 | 2,582 | 44 | 24 | 17 | 41 | 0.88% | 1.59% |
| October | 731 | 652 | 1,200 | 1,852 | 1,931 | 2,583 | 40 | 27 | 12 | 39 | 0.62% | 1.51% |
| November | 736 | 658 | 1,201 | 1,859 | 1,937 | 2,595 | 44 | 17 | 14 | 31 | 0.72% | 1.19% |
| December | 700 | 654 | 1,223 | 1,877 | 1,923 | 2,577 | 18 | 19 | 15 | 34 | 0.78% | 1.32% |
| January | 736 | 650 | 1,194 | 1,844 | 1,930 | 2,580 | 40 | 44 | 12 | 56 | 0.62% | 2.17% |
| February | 736 | 661 | 1,196 | 1,857 | 1,932 | 2,593 | 52 | 29 | 12 | 41 | 0.62% | 1.58% |
| March | 739 | 670 | 1,206 | 1,876 | 1,945 | 2,615 | 76 | 24 | 11 | 35 | 0.57% | 1.34% |
| **Total** | **8,737** | **7,813** | **14,240** | **22,053** | **22,977** | **30,790** | **647** | **294** | **162** | **456** | **8.46%** | **17.77%** |
| **Average (per month)** | **728** | **651** | **1,187** | **1,838** | **1,915** | **2,566** | **54** | **25** | **14** | **38** | **0.71%** | **1.48%** |

**Note:** *CAs are on fixed term contracts and will leave Legal Aid South African at the end of their 12 or 24 months contract*

# Employee & Organisational Capacity – Infrastructure & Staffing

| INDICATOR | PERFORMANCE - 2010/11 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Annual Target | | Q1 | | YTD | | | | 2009/10 |
| | No. | % | No. | % | No | % | Performance against Target | Heat map | No. / % |
| **Infrastructure** | | | | | | | | | |
| Justice Centres (JC) | 64 | | 64 | | 64 | | On track | | 64 |
| Satellite Offices (SO) | 64 | | 64 | | 64 | | On track | | 63 |
| **Legal Staffing** | | | | | | | | | |
| PAs | 854 | 96% | 798 | | 798 | | 93% | | 781 |
| CAs | 650 | 96% | 618 | | 618 | | 95% | | 569 |
| Legal Supervisory Staff/Managers | 286 | 96% | 263 | | 263 | | 92% | | 252 |
| **Staffing** | | | | | | | | | |
| Establishment (budgeted posts) | | | 2,595 | | 2,595 | | | | 2,513 |
| Number of staff (recruited) | | 96% | 2,434 | 94% | 2,434 | 94% | | | 2,352 |
| Number of Lawyers | | | 1,855 | 76% | 1,855 | 76% | | | 1,619 |

| >100% | >90% | >80% | >70% | >60% | <60% |
|---|---|---|---|---|---|

| Projects | | KPI's | | | Outputs | Performance Against KPI's | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **STRATEGY B2: TO DEVELOP ACCURATE, RELEVANT AND TIMEOUS MANAGEMENT INFORMATION TO INFORM BUSINESS PLANNING AND DECISIONS** | | | | | | | |
| **Programme B2-C4: Accurate and timeous management information** | | | | | | | |
| B2-C4-P1 | Compilation of management Information - electronic systems | Web based reports | Accurate reports. | 10 web reports (incl enhancing existing sites) | Improved reporting from Justice Centres | National Operation's Data Unit has achieved the target of developing/enhancing web pages to improve data gathering from Justice Centres. | |
| B2-C4-P2 | Justice Centre Performance Monitor | Updated Justice Centre Performance Monitor | Accurate reports | Ratings done quarterly | Justice Centre Performance Monitor implemented | Quarterly reports for National Operations are published on our AI system for access by Justice Centres. The Justice Centre Performance Monitor was completed for quarter 3 and quarter 4. | Justice Centre Performance Monitors were not finalised for quarter 1 and quarter 2 due to changes made to the metrics included in the monitor. |
| B2-C4-P3 | Legal Aid SA Corporate Dashboard | Corporate Dashboard | Comprehensive and relevant information in dashboard format | Quarterly | Management Information Dashboard | The BI solution has been rolled out to Regions and Justice Centres. Standard BI reports are also published on a monthly basis for easy access. Corporate Dashboards were completed quarterly and submitted to Board with the quarterly performance reports. | |
| **STRATEGY B3: TO ENSURE SOUND FINANCIAL MANAGEMENT AND SUSTAINABLE BUSINESS PROCESSES** | | | | | | | |
| **Programme B3-C5: Financial Management to maintain unqualified audit status** | | | | | | | |
| B3-C5-P1 | Budgeting and Financial Planning | | | | | | |
| | Annual budgets (corporate /Legal Aid SA, Regional, Departmental and Justice Centre) | Approved budget | Balanced budget | 1 | Consolidated budget within the approved allocation | Budget 2011/12 approved by the Board at its November 2010 meeting. A revised Budget for 2011/12, incorporating the MTEF allocation letter, was approved by the Board at its February 2011 meeting. | |
| | MTEF | Approved MTEF 2009-2012 | Approved MTEF submitted to Department of Justice by 30 September 2010 | 1 | New funds applied for MTEC participation | MTEF 2011/12 - 2013/14 approved by the Board at its July 2010 meeting. Submitted to National Treasury and Department of Justice and Constitutional Development during August 2010. Additional R20 million approved for increase in legal capacity. | |
| B3-C5-P2 | Financial Reporting | Monthly Finance reports | Accurate and timeous | 12 | Monthly Finance MIS | Accurate and timeous Finance Reports are available on monthly basis. Finance MIS submitted to Management Exco every two months and to the Board on quarterly basis. Latest available MIS is as at 31 March 2011. | |

**PART E: FINANCE SUSTAINABILITY (INTERNAL)**

| Projects | | KPI's | | | Outputs | Performance Against KPI's | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **STRATEGY F1: TO MAINTAIN A SUSTAINABLE AND FINANCIALLY STABLE LEGAL AID SA** | | | | | | | |
| **Programme F1-S2: Lobby for new funds to ensure financial stability of Legal Aid SA** | | | | | | | |
| F1-S2-P1 | Lobby National Treasury and Government for funding | Additional MTEF allocation | MTEF application focusing on service delivery. | 1 | MTEF Funding applications | A motivation for the request for additional funding was approved by the Board in July 2010 and submitted to National Treasury and the Department of Justice. New funding amounting to R20 million was approved for increase in legal capacity. | |
| F1-S2-P2 | Investigate additional funding sources to increase delivery - Harness additional donor funds | Donor funding | Donor funding motivation focusing on legal work/human rights matters | 1 generic donor funding motivation/ frame work | Donor Funders schedule with contact details | Potential donor funders were identified with full contact details. The purposes for which this funding could be used was also identified, and a draft donor funding proposal was prepared. | Funding applications were not submitted to donors as those potential donors who fund justice, legal or human rights issues only accept solicited applications. Other donors indicated that they fund specific projects that are not related to the objectives to Legal Aid SA, eg, HIV/Aids related issues. |
| **Programme F1-C1: Ensure sustainable practices** | | | | | | | |
| F1-C1-P1 | Business Continuity | Business Continuity Plan maintenance Schedule | Track and update time frames, major changes, and advise Man/Exco on possible impacts | Updated BCP maintenance schedule | Business Continuity Plan | The revised Business Continuity framework was approved by the Board in February 2011. The Business Continuity Maintenance Schedule was considered and endorsed by the Management Executive Committee in January 2011. | |
| | | Crisis Management Plan | Evaluate business operations | Interventions responded to when necessary | Evaluation report | There were no business or operational crises experienced in the FY 2010/11. The Crisis Management plan was reviewed as part of the Business Continuity plan. | |
| **STRATEGY F2: TO ENSURE GOOD GOVERNANCE** | | | | | | | |
| **Programme F2-C2: Maintain good governance practices** | | | | | | | |
| F2-C2-P1 | Good Governance - Board | Board and Board Committees which function effectively | Efficient Professional | As per Board meeting schedule | Board and Committees convened and held timeously | 1 Board meeting and 4 Board Committee meetings were held in May 2010, July 2010, November 2010 and February 2011 in accordance with the meeting schedule. A Strategic Plan Annual Review 2011-2012 workshop and Board meeting was held on 18 September 2010. | |
| | Effective functioning Board and Committees providing strategic leadership | Functioning Board and Board Committees | Accessible and up to date Board records including minutes | | Efficient and accessible Board record management system | The Board records for Quarter 1, 2, 3 and 4 are filed in hard copy in the Board Secretariat and electronically on the U-drive. | |

| STRATEGY O2: TO DEVELOP APPROPRIATE COMPETENCIES | | | | | | | |
|---|---|---|---|---|---|---|---|
| Projects | | Key Performance Indicator | | | Outputs | Performance against KPIs | Variance in performance against target |
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **Programme O2-C6: Talent Acquisition and retention (Development & Training of Staff)** | | | | | | | |
| O2-C6-P1 | Retaining high performing CAs | Placement of high performing CAs | | | Retention of high performing CAs | The process of internal referral to a central register was launched. | |
| | Sourcing of rare and scarce skills | Targetted resourcing in respect of rare, scarce skills or designated posts | | | Sourcing of rare, scarce skills and filling designated posts | Scarce and rare skills roles were in the process of being identified during Q4. | |
| O2-C6-P2 | Retaining talent | Talent risk profile monitored and mitigated | | | Ensuring staff retention | Retention risk was tested as part of an internal omnibus survey. 80% of the staff surveyed had no intention to leave and the 20% that indicated an intention to leave cited career advancement and better remuneration as dominant reasons. Learning and growth was stated as an overwhelming motivation for remaining at Legal Aid South Africa. The turnover rate (excluding CAs) as at the end of the financial year was 3.41%. | |
| | | Developing a valued employee proposition | | | Engaged Legal Aid SA employees | Retention risk was surveyed. | |
| **Programme O2-C7: Talent Development (Strategy and Leadership)** | | | | | | | |
| O2-C7-P1 | Legal training continuous legal education | Practitioners competencies match their deployment | Assessed skills improved appropriately | All areas | Skills gap determined | The HCU PA skills audit was conducted and the skills gaps were identified. The IDP's will be incorporated into training programmes. | |
| | Competency profile review | Practitioners competencies relevant to position | Appropriate competency profiles | All legal positions | Review and update competency profiles of legal practitioners and paralegals | The competency profiles were reviewed with regional legal managers and no changes were recommended. | |
| | Training curriculum review | Updated legal training curriculum | Curriculum ensures appropriate skills development | One | Training curriculum | Continuous review, update and implementation of the training curriculum was maintained. | |
| | Training programme | Practitioners competencies match their deployment | Assessed skills improved appropriately | All areas | Training programme implementation | Legal training proposals were submitted on a monthly basis to LSTC for consideration and approval. | |
| | Training hours target | | | | 10 hours per legal practitioner including CA's & paralegals | The legal training unit achieved 132,5% of the training target for the financial year. There was a criminal/civil training split of 80%/20%. | |
| O2-C7-P2 | Non-legal training | Improved competencies in respect of non-legal staff | | | Non-Legal training curriculum based on IDPs | The non-legal training curriculum was in place. | |

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# Judge: AA imperative

2009-09-21 21:00

Johannesburg - Affirmative action was a constitutional imperative, Supreme Court of Appeals (SCA) Judge Dustan Mlambo told the Judicial Service Commission on Monday.

**Related Links**

**Hlophe 'shakes hands with whites'**
**Hlophe saga painful - Jafta**

"I am going to nail my colours to the mast," said Mlambo, who is also chairperson of the Legal Aid Board (LAB).

"Affirmative action is a constitutional imperative and it must vigorously pursued."

He used comments made when he was a judge in outlying courts to back up this belief.

**Numbers game**

"The court orderlies used to tell me 'we didn't think our own people could be judges too'."

But, he did not believe in playing "the numbers game" in making the judiciary more relevant to the society it served.

Most of his interview focused on the work of the LAB and how to bolster the budget to provide experienced free legal services to those who could not afford it.

He believed the LAB was doing well with its limited resources.

Earlier, his SCA colleague Mandisa Maya had to defend her age - 45 - after Independent Democrats leader Patricia De Lille asked her if she thought she was too young for one of the four positions on the Constitutional Court.

Maya said she was 35 when she was appointed to the bench, after a "chequered" career.

She began as a clerk making tea, worked for the government during holidays in lieu of a bursary, was offered a job as a prosecutor while working as an interpreter, and studied further overseas before going into private practice and then on to the Bench.

She said Constitutional Court Judge Kate O'Regan was 37 when she was appointed and she had carried herself excellently.

**Power failure during interview**

Maya had to press on with her interview during a power failure which left the microphones dead.

Asked if the judiciary would be "robbing Peter to pay Jack" if she left the SCA, she said that "it is just a product of our time - we encourage transition".

The commission heard that she featured in a United States documentary which showed a woman

LA1

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**A BRINK PROJECTIONS**

| | | | | |
|---|---|---|---|---|
| Jan 2010 to June 2010 | R55275.17 per month x 6 | R 331 651.02 | | |
| | | | | |
| July 2010 to April 2011 | R59421 per month x10 | R 594 210 | | COLI at 7.5% increase of R4145.83 per month,effective from July 2010 |
| | | | | |
| May 2011 to October 2011 | R63462 per month x 6 | R 380 772 | | COLI at 6.8% increase of R4041 per month,Effective from May 2011 |
| | | | | |
| | | | | |
| **Total** | | **R 1 306 633.02** | | |

Amanda Clark
Human Resources Executive
Date: 02 November 2011

Legal Aid South Africa

LA2

# RESOLUTION OF THE BOARD OF LEGAL AID SOUTH AFRICA

## Board agenda item 4.6: Additional Programmes in Budget 2007/08 of the Board meeting held on 24 November 2006:

I, Bee-Mari Schoeman, in my capacity as Board Secretary, hereby confirm that in the meeting held on 24 November 2006, the Board of Legal Aid South Africa considered and approved item 4.6 of the Board agenda as per the extract of the minutes of the Board meeting attached hereto.

Bee-Mari Schoeman
Board Secretary

2011/11/04
Date

## Ad paragraph 2.3

Page 67 is not annexed as claimed. (The page series begins at page 68.)

Please supply it.

# LEGAL AID BOARD

## ADDITIONAL MTEF ALLOCATION FOR FY 07/08 - BUDGET PROPOSALS

| No | Programme description | Kopanong | KZN/MP | EC/FS | WC/NC | Total | Cumulative Totals | % Split all prog. | % Split Avail. funds. | No of new Staff | No of new matters |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Increasing ratio of PAs at Regional Court | R 7,490,000 | R 4,815,000 | R 6,955,000 | R 4,280,000 | R 23,540,000 | R 23,540,000 | 18% | 49% | 88 | 4400 |
| 2 | Strengthening CA capacity at reception courts | R 1,425,000 | R 1,200,000 | R 975,000 | R 750,000 | R 4,350,000 | R 27,890,000 | 3% | 9% | 58 | |
| 3 | Increase number of satellite offices | R 1,640,000 | R 1,640,000 | R 1,640,000 | R 1,640,000 | R 6,560,000 | R 34,450,000 | 5% | 14% | 24 | 1600 |
| 4 | Provision for admin staff at JC to match increase in legal staff | | | | | R 2,550,000 | R 37,000,000 | 2% | 5% | 34 | |
| 5 | Increasing senior litigation capacity | R 1,065,000 | R 1,065,000 | R 1,065,000 | R 1,597,500 | R 4,792,500 | R 41,792,500 | 4% | 10% | 9 | 450 |
| 6 | Group Life provision | | | | | R 1,629,000 | R 43,421,500 | 1% | 3% | | |
| 7 | Funding of new posts, including COO, MSP & Financial posts | | | | | R 1,900,000 | R 46,321,500 | 1% | 4% | | |
| 8 | Provision to fund performance incentive bonus shortfall | | | | | R 2,388,000 | R 47,709,500 | 2% | 5% | | |
| 9 | CA replacement programme at Satellite Offices | R 1,155,000 | R 3,465,000 | R 962,500 | R 3,465,000 | R 9,047,500 | R 56,757,000 | 7% | | 48 | |
| 10 | Establishment of Land Units | R 755,000 | R 1,132,500 | R 1,510,000 | R 1,887,500 | R 5,285,000 | R 62,042,000 | 4% | | 14 | 1400 |
| 11 | Addressing gaps in regional coordination of Justice Centres | R 973,000 | R 973,000 | R 973,000 | R 1,631,000 | R 4,550,000 | R 66,592,000 | 3% | | 9 | |
| 12 | Alignment of Legal Practitioner salaries to Justice Cluster | | | | | R 66,075,000 | R 132,667,000 | 50% | | | |
| | | R 11,620,000 | R 8,720,000 | R 10,635,000 | R 8,267,500 | R 132,667,000 | | 100% | 99% | 213 | 6450 |

Available funding R 46,250,000

# LEGAL AID BOARD

## ADDITIONAL MTEF FY07/08 - JUSTICE CENTRE CONSOLIDATION

(ONLY PROJECT 1, 2 & 7 INCLUDED IN CONSOLIDATION)

| Region | Province | No | Justice Centre | Number of new staff positions | | | | | | Operations Budget | | Capital Budget | Total budget |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Senior Litigators | PAs | CA's | Para-legals | Admin staff | Totals | Staffing costs | Other costs | | |
| Kopanong | Gauteng | 1 | Alexandra | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | 2 | Benoni | 0 | 2 | 2 | | | 4 | R 550,000 | R 95,000 | R 40,000 | R 685,000 |
| | | 3 | Germiston | 0 | 2 | 2 | | | 4 | R 550,000 | R 95,000 | R 40,000 | R 685,000 |
| | | 4 | Johannesburg | 1 | 3 | 2 | | | 6 | R 1,250,000 | R 185,000 | R 50,000 | R 1,485,000 |
| | | 5 | Krugersdorp | 0 | 2 | 1 | | | 3 | R 500,000 | R 80,000 | R 30,000 | R 610,000 |
| | | 6 | Pretoria | 0 | 4 | 2 | | | 6 | R 1,000,000 | R 160,000 | R 60,000 | R 1,220,000 |
| | | 7 | Soweto | 0 | 3 | 1 | | | 4 | R 725,000 | R 112,500 | R 40,000 | R 877,500 |
| | | 8 | Vereeniging | 0 | 3 | 2 | | | 5 | R 775,000 | R 127,500 | R 50,000 | R 952,500 |
| | Limpopo | 9 | Makhadu | 1 | 1 | 0 | | | 2 | R 700,000 | R 90,000 | R 10,000 | R 800,000 |
| | | 10 | Modimolle | 0 | 0 | 0 | | | 0 | R 0 | R 0 | R 0 | R 0 |
| | | 11 | Polokwane | 0 | 2 | 2 | | | 4 | R 550,000 | R 95,000 | R 40,000 | R 685,000 |
| | | 12 | Thohoyandou | 0 | 2 | 1 | | | 3 | R 500,000 | R 80,000 | R 30,000 | R 610,000 |
| | | 13 | Tzaneen | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | NW | 14 | Ga-rankuwa | 0 | 1 | 3 | | | 4 | R 375,000 | R 77,500 | R 40,000 | R 492,500 |
| | | 15 | Rustenburg | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | | Regional Total | 2 | 28 | 19 | 0 | | 49 | R 8,200,000 | R 1,310,000 | R 470,000 | R 9,980,000 |
| KZN/MP | KZN | 1 | Durban | 1 | 3 | 3 | | | 7 | R 1,300,000 | R 200,000 | R 60,000 | R 1,560,000 |
| | | 2 | Empangeni | 0 | 3 | 0 | | | 3 | R 675,000 | R 97,500 | R 30,000 | R 802,500 |
| | | 3 | Ladysmith | 0 | 0 | 0 | | | 0 | R 0 | R 0 | R 0 | R 0 |
| | | 4 | Newcastle | 0 | 0 | 2 | | | 2 | R 100,000 | R 30,000 | R 20,000 | R 150,000 |
| | | 5 | Pietermaritzburg | 0 | 2 | 2 | | | 4 | R 550,000 | R 95,000 | R 40,000 | R 685,000 |
| | | 6 | Pinetown | 0 | 1 | 2 | | | 3 | R 325,000 | R 62,500 | R 30,000 | R 417,500 |
| | | 7 | Port Shepstone | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | 8 | Umlazi | 0 | 1 | 2 | | | 3 | R 325,000 | R 62,500 | R 30,000 | R 417,500 |
| | | 9 | Verulam | 0 | 1 | 2 | | | 3 | R 325,000 | R 62,500 | R 30,000 | R 417,500 |
| | | 10 | Vryheid | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | MP | 11 | Ermelo | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | 12 | Middelburg | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | 13 | Nelspruit | 1 | 2 | 0 | | | 3 | R 925,000 | R 122,500 | R 20,000 | R 1,067,500 |
| | | 14 | Witbank | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | | Regional Total | 2 | 18 | 16 | 0 | | 36 | R 5,800,000 | R 940,000 | R 340,000 | R 7,080,000 |
| EC/FS | EC | 1 | Alfred North | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | 2 | Butterworth | 0 | 2 | 0 | | | 2 | R 450,000 | R 65,000 | R 20,000 | R 535,000 |
| | | 3 | East London | 0 | 2 | 2 | | | 4 | R 550,000 | R 95,000 | R 40,000 | R 685,000 |
| | | 4 | Graaff-Reinet | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | 5 | Grahamstown | 0 | 2 | 1 | | | 3 | R 500,000 | R 80,000 | R 30,000 | R 610,000 |
| | | 6 | King Williams Town | 0 | 2 | 1 | | | 3 | R 500,000 | R 80,000 | R 30,000 | R 610,000 |
| | | 7 | Mthatha | 0 | 3 | 1 | | | 4 | R 725,000 | R 112,500 | R 40,000 | R 877,500 |
| | | 8 | Port Elizabeth | 1 | 3 | 2 | | | 6 | R 1,250,000 | R 185,000 | R 50,000 | R 1,485,000 |
| | | 9 | Queenstown | 0 | 2 | 0 | | | 2 | R 450,000 | R 65,000 | R 20,000 | R 535,000 |
| | | 10 | Uitenhage | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | FS | 11 | Bloemfontein | 1 | 3 | 2 | | | 6 | R 1,250,000 | R 185,000 | R 50,000 | R 1,485,000 |
| | | 12 | Kroonstad | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | 13 | Phuthaditjhaba | 0 | 2 | 1 | | | 3 | R 500,000 | R 80,000 | R 30,000 | R 610,000 |
| | | 14 | Welkom | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | | Regional Total | 2 | 26 | 13 | 0 | | 41 | R 7,450,000 | R 1,155,000 | R 390,000 | R 8,995,000 |
| WC/NC | WC | 1 | Athlone | 0 | 3 | 4 | | | 7 | R 875,000 | R 157,500 | R 70,000 | R 1,102,500 |
| | | 2 | Caledon | 0 | 0 | 0 | | | 0 | R 0 | R 0 | R 0 | R 0 |
| | | 3 | Cape Town | 1 | 3 | 2 | | | 6 | R 1,250,000 | R 185,000 | R 50,000 | R 1,485,000 |
| | | 5 | George | 0 | 2 | 0 | | | 2 | R 450,000 | R 65,000 | R 20,000 | R 535,000 |
| | | 11 | Stellenbosch | 0 | 2 | 0 | | | 2 | R 450,000 | R 65,000 | R 20,000 | R 535,000 |
| | | 13 | Vredendal | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | 15 | Worcester | 0 | 0 | 0 | | | 0 | R 0 | R 0 | R 0 | R 0 |
| | NC | 4 | Colesberg | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | 6 | Kimberley | 1 | 2 | 1 | | | 4 | R 975,000 | R 137,500 | R 30,000 | R 1,142,500 |
| | | 12 | Upington | 0 | 0 | 1 | | | 1 | R 50,000 | R 15,000 | R 10,000 | R 75,000 |
| | NW | 7 | Klerksdorp | 0 | 1 | 1 | | | 2 | R 275,000 | R 47,500 | R 20,000 | R 342,500 |
| | | 8 | Lichtenburg | 0 | 0 | 0 | | | 0 | R 0 | R 0 | R 0 | R 0 |
| | | 9 | Mafikeng | 1 | 0 | 1 | | | 2 | R 525,000 | R 72,500 | R 10,000 | R 607,500 |
| | | 10 | Potchefstroom | 0 | 1 | 0 | | | 1 | R 225,000 | R 32,500 | R 10,000 | R 267,500 |
| | | 14 | Vryburg | 0 | 0 | 0 | | | 0 | R 0 | R 0 | R 0 | R 0 |
| | | | Regional Total | 3 | 18 | 10 | 0 | | 29 | R 5,525,000 | R 842,500 | R 260,000 | R 6,627,500 |
| | | | National Total | 9 | 90 | 58 | 0 | | 155 | R 26,975,000 | R 4,247,500 | R 1,460,000 | R 32,682,500 |

# LEGAL AID BOARD

## STRENGTHENING SENIOR LITIGATION CAPACITY

| Reg | | No | Justice Centre | No of PAs required | Operations Budget | | Capital Budget | Total budget |
|---|---|---|---|---|---|---|---|---|
| | | | | | Staffing costs | Other costs | | |
| Kopanong | Gauteng | 1 | Alexandra | | | | | |
| | | 2 | Benoni | | | | | |
| | | 3 | Germiston | | | | | |
| | | 4 | Johannesburg | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 5 | Krugersdorp | | | | | |
| | | 6 | Pretoria | | | | | |
| | | 7 | Soweto | | | | | |
| | | 8 | Vereeniging | | | | | |
| | Limpopo | 9 | Makhadu | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 10 | Modimolle | | | | | |
| | | 11 | Polokwane | | | | | |
| | | 12 | Thohoyandou | | | | | |
| | | 13 | Tzaneen | | | | | |
| | NW | 14 | Ga-rankuwa | | | | | |
| | | 15 | Rustenburg | | | | | |
| Regional Total | | | | 2 | R 950,000 | R 115,000 | R 0 | R 1,065,000 |
| KZN/MP | KZN | 1 | Durban | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 2 | Empangeni | | | | | |
| | | 3 | Ladysmith | | | | | |
| | | 4 | Newcastle | | | | | |
| | | 5 | Pietermaritzburg | | | | | |
| | | 6 | Pinetown | | | | | |
| | | 7 | Port Shepstone | | | | | |
| | | 8 | Umlazi | | | | | |
| | | 9 | Verulam | | | | | |
| | | 10 | Vryheid | | | | | |
| | MP | 11 | Ermelo | | | | | |
| | | 12 | Middelburg | | | | | |
| | | 13 | Nelspruit | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 14 | Witbank | | | | | |
| Regional Total | | | | 2 | R 950,000 | R 115,000 | R 0 | R 1,065,000 |
| EC/FS | EC | 1 | Alwal North | | | | | |
| | | 2 | Butterworth | | | | | |
| | | 3 | East London | | | | | |
| | | 4 | Graaff-Reinet | | | | | |
| | | 5 | Grahamstown | | | | | |
| | | 6 | King Williams Town | | | | | |
| | | 7 | Mthatha | | | | | |
| | | 8 | Port Elizabeth | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 9 | Queenstown | | | | | |
| | | 10 | Uitenhage | | | | | |
| | FS | 11 | Bloemfontein | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 12 | Kroonstad | | | | | |
| | | 13 | Phuthaditjhaba | | | | | |
| | | 14 | Welkom | | | | | |
| Regional Total | | | | 2 | R 950,000 | R 115,000 | R 0 | R 1,065,000 |
| WC/NC | WC | 1 | Athlone | | | | | |
| | | 2 | Caledon | | | | | |
| | | 3 | Cape Town | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 4 | George | | | | | |
| | | 5 | Stellenbosch | | | | | |
| | | 6 | Vredendal | | | | | |
| | | 7 | Worcester | | | | | |
| | NC | 8 | Colesberg | | | | | |
| | | 9 | Kimberley | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 10 | Upington | | | | | |
| | NW | 11 | Klerksdorp | | | | | |
| | | 12 | Lichtenburg | | | | | |
| | | 13 | Malikeng | 1 | R 475,000 | R 57,500 | | R 532,500 |
| | | 14 | Potchefstroom | | | | | |
| | | 15 | Vryburg | | | | | |
| Regional Total | | | | 3 | R 1,425,000 | R 172,500 | R 0 | R 1,597,500 |
| National Total | | | | 9 | R 4,275,000 | R 517,500 | R 0 | R 4,792,500 |

LA3

Legal Aid South Africa

# RESOLUTIONS OF THE LSTC

**Allocation of Senior Litigator - EC**

I, Nadeen Long, in my capacity as Legal Services Technical Committee Secretary, hereby confirm that in the meeting held on 24 March 2010 the Legal Services Technical Committee resolved to transfer the position of the Senior Litigator, Kimberly Justice Centre to Mthatha Justice Centre.

Nadeen Long
LSTC Secretary

Date

LA3

Legal Aid South Africa

# Minutes of the Legal Services Technical Committee Held on 24th March 2010, 6th Floor, Legal Aid House

## MEMBERS PRESENT:

**Chairperson:**
Brian Nair (NOE)

**Members:**
Jerry Makokoane (COO), Cordelia Robertson (CR), Vincent Mayisela (VNM), Thembile Mtati (TM), Martha Mbhele (Martha), Wilna Lambley (WL), Patrick Hundermark (LDE)

**Board Members:**
No Board member required

**Invited Attendees:**
Bee-Mari Schoeman [Legal Service Delivery] (BS), Rupert Roos [Legal Service Delivery – Data Unit] (RR)

## SECRETARIAT:

Nadeen Long

| 1. | Welcome and Apologies |
|---|---|
| 1.1. | **Welcome:**<br>The meeting was declared open and all present were welcomed. It was noted that there will be no LSTC meeting in June. |
| 1.2. | **Apologies:**<br>Apologies were received from Vela Mdaka (VM), Michael Miller (MM), Upkaar Mungar (UM) and Dick Khubana (DK) who are attending conferences on behalf of Legal Aid South Africa. Jerry Makokoane (COO) was excused to attend to urgent matters. |

| 2. | Minutes | Responsible Person | Due Date |
|---|---|---|---|
| 2.1. | **Minutes of the previous meeting dated 25 February 2010:**<br>The minutes were confirmed and accepted. | | |
| 2.2. | **Matters Arising:**<br>Please refer to the LSTC Decision Sheet.<br>All members are requested to update progress, before the meeting. | | |

## SECTION A – Co-Operation Agreements

| 3. | Co-Operation Agreements: | | |
|---|---|---|---|
| 3.1.1 | **Administration of Estates: Children - Pilot Project Statistics:**<br>The stats were noted. RR was requested to add a YTD column. | RR | Soonest |
| 3.1.2 | **Update on Administration of Estates: Children – Pilot Project:**<br>It was noted that the staffing of the Estate unit was discussed at NOE/ROE Session. It was noted that with the introduction of civil units, it would be possible that additional CAs and civil PAs also participate in estate unit matters. Hence, we must monitor demand at these units in a more holistic level. | | |

| | | | |
|---|---|---|---|
| | The question of funding in respect of the FIFA World Cup Courts was raised. It was noted that they wanted us to spend the money and claim it back. They do not want to pay up front. WL was requested to facilitate a meeting and invite Rebecca (copy Jerry and Brian) to discuss the issue of funding.<br><br>The plan for the World Cup was discussed, including the location of all designated courts. ROEs were requested to ensure that they monitored this issue carefully for their regions.<br><br>It was noted that if a matter remains pending beyond the period the period established for these world cup courts, we may then request these practitioners to take on these matters on a Judicare basis. We must only identify accredited attorneys and they must be experienced practitioners.<br><br>BS to send out this email survey weekly. World Cup email group to be created. | WL<br><br>ROEs<br><br><br><br><br><br>BS | Soonest<br><br>Immediate<br><br><br><br><br><br>Soonest |
| **4.1.5.** | **Judicare – Verify Instruction:**<br>The NOE explained the difficulties that were encountered when JCs did not complete the verify step as part of the Judicare instruction process. ROEs were therefore requested to ensure that they discuss this item at their JCE forums to ensure that this step is timeously done. It was agree that Judicare instructions must be verified within 5 days. (Signed LA2 form must be sent back within 5 days.) These LA2's can be faxed or scanned immediately and the original can be sent by post.<br><br>DK was requested to include in the next Judicare newsletter a reminder to Judicare practitioners to return the signed LA2 forms within 5 working days of receiving same and that non-compliance with this requirement may result in the instruction to them being terminated and reallocated. The LDE was also requested to include this in the Legal Aid Guide.<br><br>ROEs were reminded that regions are not to do any transfers for Judicare (in or out) as this budget will be managed from National Operations Department until the end of this financial year. Further, noting the constraints on the Judicare budget, JCs requiring the use of Judicare must seek authorisation from the NOE's office<br><br>ROEs were requested to do an analysis of Judicare in their regions. The current usage of Judicare is very skewed, it being noted that one JC alone accounts for 15% of the Judicare budget. This issue will need to be more carefully managed going forward. | ROEs<br><br><br><br>DK<br><br><br>LDE<br><br><br><br><br><br>ROEs | Next JCE forum<br><br><br><br>Soonest<br><br><br>Soonest<br><br><br><br><br><br>Soonest |
| **4.1.6.** | **Allocation of Senior Litigator – LP/MP:**<br>The request for a Senior Litigator in the LP/MP region was withdrawn by the ROE for L/Mp, it being noted that the high court is still to be established in the province. | | |
| **4.1.7.** | **Allocation of Senior Litigator – EC:**<br>The request for a Senior Litigator in the EC region was approved. BS was requested to update recruitment reports as well as to facilitate the transfer of the budget. The ROE was requested to immediately commence recruitment for this position to be based at the Mthatha JC. | BS<br><br>TM | Immediate<br><br>Immediate |

| | | | |
|---|---|---|---|
| 10.1.2. | **Legal Training** Programme **2009/2010:**<br>The report was noted. | | |
| 10.1.3. | **Administration** of Estates – **training** material by **Justice College:**<br>The report was noted. | | |
| 10.1.4. | **Child Justice Training Manual:**<br>The report was noted. Because of urgency plan a Saturday training session. | | |
| 10.1.5. | **Child Justice Manual Programme** for Training **at JCs:**<br>The report was noted.<br>ROEs were requested to ensure that their JCEs meet with their legal staff and decide collectively how they will roll out this training without disrupting their courts. Regions were requested to provide details of each JCs training plan for this Child Justice training programme to the training co-ordinator. It was noted that LDD will provide the training materials in order for JCs to conduct these training sessions at their JC, including power point presentation/manuals/trained trainer. A certificate will also be given to all practitioners at JCs who have done this training.<br><br>ROEs were requested to discuss the training programme for each JC with the respective JCEs. There were requested to ensure that the programme covers at least 12 hour training session. It was suggested that JCs should also consider utilising at least one Saturday for this training. All JCs were requested to ensure that by the end of April each practitioner would have been trained on the Child Justice Act. It was noted that the course to train JC trainers will be held on 6/7 April and 8/9 April i.e. two sessions. | JCEs<br><br>ROEs | Soonest<br><br>Soonest |

## SECTION D – FOR COMMENT AND NOTING

| | | | |
|---|---|---|---|
| **11.** | **Legal services delivery – Increasing access** | | |
| 11.1. | **Criminal Courts Coverage** | | |
| 11.1.1. | **Tracking of Prisoner Letters Summary:**<br>The report was noted. | | |
| 11.1.2. | **High Court Review Stats:**<br>The report was noted. | | |
| 11.2. | **Children's Matters** | | |
| 11.2.1. | **Children's Matters – Criminal: AI stats on legal aid in criminal matters:**<br>The report was noted. | | |
| 11.2.2. | **Children's Matters – Civil: AI stats on legal aid in civil matters granted:**<br>The report was noted. RR was requested to look into why estates are not included in children's civil stats. | RR | Next meeting |
| 11.3. | **Appropriate Staffing Levels Maintained** | | |
| 11.3.1. | **% Recruitment Status 28 February 2010:**<br>Report not yet available. | | |
| 11.3.2. | **Recruitment Stats as at end of February 2010:**<br>Report not yet available | | |
| 11.3.3. | **Conversion of PA to SPA – SO FY09/10:**<br>Report not yet available | | |
| 11.4. | **Justice Centre Productivity** | | |
| 11.4.1 | **JC Pending Matter Stats – Internal February 2010:**<br>The report was noted. ROEs were requested to monitor actively, and ensure numbers come down. | ROEs | Soonest |
| 11.5 | **Delivery Infrastructure** | | |

~~LA5~~ LA4 #6

| rs.No. | First name | Last name | Personnel Area | Personnel Subarea | Position | PS group | Lv | Annual salary | July to March 2012 | May to June 2011 | Apr-11 | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 502 | Pieter Willem | Nel | LAB FS & NW Region | Bloemfontein JC | Senior Litigator | LP-10 | 17 | 966 396.00 | R 724 797.00 | R 158 685.50 | R 74 291.00 | | R 957 773.50 |
| | | | | | | | | | | | | | |
| 367 | Herman Ludik | Alberts | LAB Gauteng Region | Pretoria | Senior Litigator | LP-10 | 11 | 883 800.00 | R 662 850.00 | R 145 124.50 | R 67 942.25 | | R 875 916.75 |
| | | | | | | | | | | | | | |
| 930 | Mornay | Calitz | LAB WC & NC Region | Cape Town | Senior Litigator | LP-10 | 7 | 832 704.00 | R 624 528.00 | R 138 733.00 | R 64 013.50 | | R 825 274.50 |
| | | | | | | | | | | | | | |
| 086 | William Anthony | Karam | LAB Gauteng Region | Johannesburg | Senior Litigator | LP-10 | 14 | 924 180.00 | R 693 135.00 | R 151 753.00 | R 71 045.50 | | R 915 933.50 |
| | | | | | | | | | | | | | |
| 287 | Nzame Lamac | Skibi | LAB FS & NW Region | Mafikeng JC | Senior Litigator | LP-10 | 2 | 772 968.00 | R 579 726.00 | R 126 923.50 | R 59 421.00 | | R 766 070.50 |
| | | | | | | | | | | | | | |
| 304 | Elizabeth | Crouse | LAB Eastern Cape Region | Port Elizabeth | Senior Litigator | LP-10 | 7 | 832 704.00 | R 624 528.00 | R 138 733.00 | R 64 013.50 | | R 825 274.50 |
| | Frozen | | | Durban | | | | | | | | | |
| | Frozen | | | Pietermaritzburg | | | | | | | | | |
| | Frozen | | | Kimberley | | | | | | | | | |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | R 5 166 243.25 |

LA5

**From:** Baboo Brijlal
**Sent:** 23 November 2009 10:19 AM
**To:** Vela Mdaka
**Subject:** Senior Litigator Interview Motivation

Hi Vela

Herewith Senior Litigator interview motivation and CVs of all 4 shortlisted candidates for onward transmission to the NOE and HRE for the next round of interviews.

Baboo

"A" LA7

BAS DATE: 14/12/2010
20001 NAT: DEPT
JUSTICE & CONST DEV TIME: 18:47:25
DBBS07BS
PAYMENT STUB PAGE:
000000001

PAYMENT MADE BY : NAT: DEPT JUSTICE & CONST DEV
(BASD28) DISBURSEMENT NO : 000325484
OFFICE : NAT: DEPT JUSTICE & CONST DEV
PAYMENT DATE : 15/12/2010
CONTACT PERSON : HELP DESK
PAYMENT METHOD : CREDIT TRANSFER
CONTACT TEL NO : 0860 800 904 OR 012 309 9001

PAYEE NAME : LEGAL AID BOARD
BANK NAME : FIRSTRAND BANK LIMITED
PAYMENT ADDRESS : PRIVATE BAG X76
BANK BRANCH : BRAAMFONTEIN 054
BRAAMFONTEIN
BRANCH NUMBER : 251905

ACCOUNT TYPE : CURRENT ACCOUNT

ACCOUNT NO : 62224831471
2017
DISBURSEMENT STATUS : PAID

MICR NUMBER : 0

SUPPLIER CONTACT DETAILS : LEGAL AID BOARD TELEPHONE
NUMBER:

| SOURCE DOC TYPE | SOURCE DOCUMENT NUMBER | PURCHASE ORDER NUMBER | PAYMENT NUMBER | PAYMENT DESCRIPTION | AMOUNT |
|---|---|---|---|---|---|
| SUNDRY | LAB/DECEMBER 2010 | NOT APPLIC | 00541218 | LEGAL AID BOARD | R 89453000.00 |

TOTAL : R 89453000.00

**** END OF REPORT

DBBS07BS ****

ZMW

LA6

From: Vidhu Vedalankar
Sent: 29 July 2010 02:33 PM
To: Brian Nair; Amanda Clark
Subject: FW: Complaint against the HRE & an interview process

Hi Brian

Please see attached letter
I am not sure what is happening with these senior litigator appointment but we need to finalise the process and advise the persons interviewed of the outcome.

Please will you look into this and discuss with Mandi and then discuss with me.

Regards

Vidhu Vedalankar
CEO

Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

-----Original Message-----
From: Nondumiso Tsipa
Sent: Tuesday, July 27, 2010 8:04 AM
To: Vidhu Vedalankar
Subject: RE: Complaint against the HRE & an interview process

Hi Vidhu

Please see the attached.

Thanks
Nondumiso

-----Original Message-----
From: Vidhu Vedalankar
Sent: Monday, July 26, 2010 5:05 PM
To: Nondumiso Tsipa
Subject: RE: Complaint against the HRE & an interview process

Thanks Nondumiso

As requested please send me this in pdf format

I can also only read 1 page of the attachment that you sent

Regards

Vidhu Vedalankar
CEO

Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

-----Original Message-----
From: Nondumiso Tsipa
Sent: Monday, July 26, 2010 10:03 AM
To: Vidhu Vedalankar
Subject: Complaint against the HRE & an interview process

Good day Vidhu

Please see the attached letter marked for your attention.

Kind regards
Nondumiso

LA 9

Legal Aid South Africa

PO Box 2489
Pinetown
3600
7th Floor, Charter House
75 Crompton Street
Pinetown 3601
Tel: 031 717-8450
Fax: 031 702-1960
www.legal-aid.co.za

**CONFIDENTIAL**

23 August 2010

Mr Bongani Mngadi
c/o Durban JC
DURBAN
4001

Dear Mr Mngadi

**APPLICATION FOR EMPLOYMENT: SENIOR LITIGATOR [DURBAN & PMBURG] (REF. 2009/06/25)**

Thank you for your application and for attending the interview for the above advertised position.

Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post. We apologise for the delay in informing candidates of the outcome of the interview process.

I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa.

Yours sincerely

***LEGAL AID SOUTH AFRICA***

VELA MDAKA
**REGIONAL OPERATIONS EXECUTIVE**
**KZN REGION**

LA6

# LEGAL AID BOARD

Justice for all

# POLICIES AND PROCEDURES ON RECRUITMENT, INDUCTION, PROBATION AND RELOCATION

a pre-established questionnaire must be used when interviewing the short-listed candidates.

1.4.4 Once the selection committee/panel has completed this process, an appointment of the most suitable candidate will be made. The Administration Manager is then responsible for writing up contracts for approval by the Justice Centre Executive. The Administration Manager must also request and retain on file an acknowledgement of the terms and conditions from the Candidate Attorney. A copy of the signed contract and supporting documents i.e. (qualifications, Identity Documents, CVs etc) must be forwarded to the Human Resources Department in order for the salary to be administered.

1.4.5 All the necessary documentation must be completed by the Candidate Attorney upon commencement of duty and sent to the Human Resources Department immediately.

1.4.6 A trainee programme must be provided for the Candidate Attorney in order to monitor progress and ensure that each aspect of the training is completed correctly. The Justice Centre Executives must sign off after each aspect of training has been successfully completed through a performance management process and kept on the individual's file.

## 1.5 Unsuccessful candidates

1.5.1 Unsuccessful short listed external candidates should, as far as is reasonably practically, be informed of the fact that they were not successful. As part of the selection process, reasons why a particular candidate was not successful should be recorded in case the unsuccessful applicant asks for reasons for rejection. The advert should indicate that applicants who have not received communication within 2 months should consider themselves unsuccessful.

1.5.2 Unsuccessful internal and external shortlisted candidates should be informed in writing before the successful candidate commences his/her duties.

1.5.3 Internal candidates may request reasons as to why they were not successful. In appropriate circumstances, the Human Resources

| No | Indicator | Performance - 2010/11 | | | | | Performance prior years | | Variance |
|---|---|---|---|---|---|---|---|---|---|
| | | Annual Target | | Actual | | | 2009/10 | 2008/09 | FY10/11 over FY 09/10 |
| | | Number | % | Number | % | Performance against Target | Number / % | Number / % | Number / % |
| 12 | Children - Total matters | | | 28,115 | | | 59,266 | 45,268 | -53% |
| 12.1 | Children - new criminal matters | | | 25,586 | | | 54,781 | 39,989 | -53% |
| 12.2 | Children - new civil matters | | | 2,529 | | | 4,485 | 5,279 | -44% |
| | | | | | | | | | |
| | **Pending Matters** | | | | | | | | |
| 13 | Pending Matters - JC | | | 181,756 | | | 164,169 | 158,374 | 11% |
| 13.1.1 | Pending Backlog DC - Total (JC) | | | 111,677 | | | | | |
| 13.1.2 | DC Matters > 6month | | 20% | 17,561 | 16% | 4% higher than target | 13,292 | 15,257 | 32% |
| | | | | | | | | | |
| 13.2.1 | Pending Backlog RC - Total (JC) | | | 39,832 | | | | | |
| 13.2.2 | RC Matters > 9 months | | 25% | 10,875 | 27% | 2% lower than target | 8,436 | 6,063 | 29% |
| | | | | | | | | | |
| 13.3.1 | Pending Backlog HC (JC) | | | 3,770 | | | | | |
| 13.3.2 | HC Matters >12 months | | 30% | 1,515 | 40% | 15% lower than target | 1,044 | 264 | 45% |
| | | | | | | | | | |
| 14 | Automatic Reviews (10% less than previous year) | 7,893 | | 7,094 | | 10% higher than target | 8,770 | 10,597 | -19% |
| | | | | | | | | | |
| | **Impact Services Matters** | | | | | | | 14 | |
| | | | | | | | | | |
| 15 | Impact Services - New Matters | 24 | | 16 | 67% | 33% lower than target | 15 | 9 | 7% |
| | | | | | | | | | |
| 16 | **Legal services delivery - Quality Monitoring** | | | | | | | | |
| 16.1 | CAs - IA(LOAU) File Audit score | | 80% | | 86% | 6% higher than target | 88% | | -1% |
| 16.2 | CAs - IA(LOAU) Court Observation Score | | 80% | | 88% | 8% higher than target | | | |
| 16.3 | PAs - IA(LOAU) File Audit score | | 85% | | 89% | 4% higher than target | 89% | | 0% |
| 16.4 | PAs - IA(LOAU) Court Observation Score | | 85% | | 92% | 7% higher than target | | | |
| 16.5 | HCU PAs - IA(LOAU) File Audit score | | 90% | | 89% | 1% lower than target | 94% | | -5% |
| 16.6 | HCU PAs - IA(LOAU) Court Observation Score | | 90% | | 93% | 3% higher than target | | | |
| | **Financial sustainability** | | | | | | | | |
| 17 | **Budget** | | 1,179,250,681 | | | | 959,646,547 | 903,755,451 | 219,604,134 |
| 17.1 | MTEF Allocation | | 1,141,335,871 | | | | 918,243,959 | 838,120,000 | 223,091,912 |
| 17.2 | Expenditure (% of budget) | 98% | 1,201,798,522 | | 99.2% | On target | 99.50% | 99 40% | -0.3% |
| 17.3 | Payments (%) within 30 days | | | | | | | | |
| 17.4 | Judicare | 100% | | | 99.7% | | 99% | 97% | 0.7% |
| 17.5 | Creditors | 100% | | | 99.6% | | 99.6% | 99% | 0.0% |

## 7.5 STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 31 March 2011

| | Notes | 2011<br>R | 2010<br>R |
|---|---|---|---|
| **Revenue** | **14** | **1,116,355,000** | **917,408,000** |
| Baseline allocation | | 1,001,439,000 | 895,808,000 |
| Case backlog funding | | 25,000,000 | 20,000,000 |
| Child Justice Act | | 10,000,000 | 1,600,000 |
| Children's Act | | 3,000,000 | - |
| FIFA World Cup Courts | | 4,916,000 | - |
| Occupational Specific Dispensation | | 72,000,000 | - |
| **Expenses** | | **(1,105,553,939)** | **(940,598,906)** |
| Personnel | | (767,981,310) | (658,925,782) |
| Administrative | **15** | (149,122,225) | (111,920,652) |
| Other expenses | **15.1** | (154,537,513) | (143,152,390) |
| Depreciation and amortisation | **16** | (33,436,556) | (25,460,167) |
| Finance Costs | **10.1** | (476,335) | (1,139,915) |
| Surplus/(Deficit) from operations | | 10,801,061 | (23,190,906) |
| Other income | **17** | 4,431,043 | 4,295,948 |
| Interest income | **17.1** | 16,510,225 | 17,025,347 |
| **Surplus/(Deficit) for the year** | | **31,742,328** | **(1,869,611)** |

## 7.6 STATEMENT OF CHANGES IN NET ASSETS

for the year ended 31 March 2011

| | Notes | R |
|---|---|---|
| **Balance at 31 March 2009** | | **164,899,464** |
| Net deficit for the year ended 31 March 2010 | | (1,869,611) |
| Balance at 31 March 2010 | | 163,029,853 |
| Net surplus for the year ended 31 March 2011 | | 31,742,328 |
| **Balance at 31 March 2011** | | **194,772,181** |

## 9. NOTES TO CASH FLOW STATEMENT

### 9.1 CASH GENERATED BY OPERATING ACTIVITIES

| | 2010 R | 2009 R |
|---|---|---|
| Net deficit/surplus | (1 869 611) | 21 231 359 |
| | | |
| Non-cash movement | | |
| Depreciation | 25 371 627 | 16 232 845 |
| Amortisation | 88 539 | 205 180 |
| Decrease in provision | (8 985 474) | 1 486 230 |
| Increase in payables | 11 349 436 | (11 752 272) |
| (Gains)/losses on sale of property,plant and equipment | (778 105) | (3 414 223) |
| Increase in provision for doubtful debts | 563 289 | 42 211 |
| Increase in capital assets/tools adjustment | (3 066 585) | 375 075 |
| Decrease in receivables | 218 694 | (757 818) |
| Net cash flows from operating activities | 22 891 810 | 23 648 587 |

9.2

**a) Cash and cash equivalents**

Cash and cash equivalents consist of cash on hand and balances with banks and investments in money market instruments. Cash and cash equivalents included in the cash flow statement comprise the following statement of amounts indicating financial position:

| | 2010 R | 2009 R |
|---|---|---|
| Cash on hand and balances with banks | 229 221 373 | 230 656 030 |
| | 229 221 373 | 230 656 030 |

**b) Property,plant and equipment**

During the period, the economic entity acquired property, plant and equipment with an aggregate of R31 599 120, of which R31 599 120 was acquired by means of capital grants by the national government. Cash payments of R31 599 120 were made to purchase property,plant and equipment.

### 8.10 HIV / AIDS and health promotions programmes

**Table 25: Details of health promotion and HIV/AIDS programmes**

| Question | Yes | No | Details, If yes |
|---|---|---|---|
| Has Legal Aid South Africa designated a member of the SMS to implement the provisions of the HIV /AIDS Strategy of Legal Aid South Africa? If so provide her / his name and position. | √ | | Dayalan Naidoo - Organisation & Employee Development Manager |
| Does Legal Aid South Africa have a dedicated unit or has it designated specific staff members to promote the health and well being of its employees? If so, indicate the number of employees who are involved in this task and the annual budget that is available | √ | | ▪ 6 Regional Human Resources Manager and 1 Human Resources - Manager - Special Projects<br>▪ Budget HIV AIDS - R 200 00.00<br>▪ Budget Employee Assistance Programme - R 200 00.00 |
| Has Legal Aid South Africa introduced Employee Assistance or Health Promotion Programmes for its employees? If so, indicate the key elements / services of the programme. | √ | | ▪ Circle of Vitality - Integrated Health and Wellness Programme<br>▪ Employee Assistance Programme<br>▪ HIV AIDS - Education. Promotion and Management Programme |
| Has Legal Aid South Africa established a committee as contemplated in the Act? If so, please provide the names of the members of the committee and the stakeholder(s) that they represent. | √ | | ▪ Health and Wellness Committee<br>o Amanda Clark HR<br>o Dayalan Naidoo HR<br>o Gudu Mngomezulu HR<br>o Joy Mohlala HR<br>o Roselyne Mphaga<br>o Thabitha Monyela<br>o Anne More<br>o Nhlanhla Msimanga - Union<br>o Joe Khoza<br>o Andrew Montane<br>o Julia Mabusela<br>o Evah Maseko<br>▪ 148 Occupational Health and Safety Committee Members<br>▪ 148 First Aid Members<br>▪ 64 Justice Centre Executives and 6 Regional Operations Executives are assigned safety duties in terms of Section 16 (2) of the Occupational Health and Safety Act NO. 85 of 1993 |
| Has Legal Aid South Africa reviewed its employment policies and practices to ensure that these do not unfairly discriminate against employees on the basis of their HIV status ? If so, list the employment policies / practices reviewed. | √ | | ▪ Study Assistance and Education Policy<br>▪ Training and Development Policy<br>▪ Sexual Harassment, Intimidation and Victimisation in the Workplace<br>▪ Employee Wellness Policy<br>▪ HIV AIDS Policy<br>▪ Health and Safety Guidelines |
| Has Legal Aid South Africa introduced measures to protect HIV positive employees or those so perceived to be HIV from discrimination? If so, list the key elements of this measure | √ | | ▪ Employee Wellness Policy<br>▪ HIV AIDS Policy<br>▪ Employment Equity Policy<br>▪ Grievance and Disciplinary Policy and Procedure |

Table 25: Details of health promotion and HIV/AIDS programmes (continued)

| Question | Yes | No | Details, If yes |
|---|---|---|---|
| Does Legal Aid South Africa, encourage its employee to undergo Voluntary Counselling and Testing ? If so, list the results that you have received. | √ | | ▪ Voluntary Counselling and Testing Programme was conducted, 406 staff members participated in the programme |
| Has Legal Aid South Africa developed measures/indicators to monitor and evaluate the impact of its health promotion programme? If so, list these measures /indicators | √ | | ▪ Peer Educators are trained to facilitate the "Circle of Vitality," an integrated health and wellness programme designed to encourage all employees to participate actively in health and wellness activities, including taking full responsibility of their own health, wellness and safety both at home and at work. |

### 8.11 Labour Relations

Table 26: Types of misconduct addressed at disciplinary hearings

| Type of Misconduct | Number | % of Total |
|---|---|---|
| Gross/Negligence | 26 | 20% |
| Insubordination | 9 | 7% |
| Dereliction - duty | 28 | 21% |
| Misuse pool vehicle/property | 12 | 9% |
| AWOL/P and abuse of sick leave | 29 | 22% |
| Conflict of interest | 1 | 1% |
| Interpersonal | 4 | 3% |
| Failure to follow procedure | 5 | 4% |
| Assault of colleague | 3 | 2% |
| Late coming | 7 | 5% |
| Falsifying documents | 5 | 4% |
| Fraud/theft | 1 | 1% |
| Drunk on duty | 1 | 1% |
| **Total** | **131** | **100.00%** |

deal with it). My complaint isn't about being late, however, it's about substantial non-compliance.

35. In breach of section 32 (d), LASA failed to report 'the number of requests for access refused in full and refused partially': its section 32 report makes no mention of my second and third requests on 15 December 2010 and 9 March 2011 to test and expose Vedalankar's lies to me about the reason she'd aborted my recruitment off the record and behind the scenes. It makes no mention of Vedalankar's third response in January 2011 to my first PAIA request in August (her first response in September was mute refusal by ignoring it; her second response in October was to expressly refuse the entire request, with some of the records put up in January to 'demonstrate' her claims coincidentally more or less meeting some of my requests).

36. In breach of the same section 32 (d), LASA failed to report 'the number of times each provision of this Act was relied on to refuse access in full or partial[ly]'.

37. The 'Outcome of the request' on '19/10/2010' [sic: the 18th] is also false: 'Access partially refused'. In truth, under the deeming provision of section 25 of PAIA, Vedalankar mutely refused my August request entirely in September 2010, upon the expiry of the prescribed 30-calendar-day period to respond. On 18 October 2010 Vedalankar refused my August request again *entirely*, now expressly. And in January 2011 she practically refused my request yet again, even rejecting my request fee.

38. The SAHRC's reporting period for PAIA compliance is 1 April to 31 March. By the close of this period Vedalankar had still not furnished me with a section 23 affidavit concerning non-existent records, despite my reminder in my letter covering my request more than half a year earlier in August 2010 of the legal requirement that she do so, and my complaint to the Board in my November 2010 petition that she'd failed to comply with PAIA in this critical respect. Which petition, she said in her letter to me in January 2011, she'd read.

39. Under 'Comments', the section 32 report alleges that 'No decision taken yet on who should be appointed but the decision to freeze the post due to change in business needs-budget.' This logically incoherent version of Vedalankar's false allegation to me, repeated by Mlambo to the Minister and to the Portfolio Committee chairperson, and repeated in the section 32 report to the SAHRC, that a 'decision' was taken 'to freeze the post' for which I was selected and recommended 'due to change in business needs-budget' is comprehensively interrogated and exposed as a lie in my statement of claim in the Labour Court, with reference to the total absence of any supporting records and indeed the records contradicting it. Vedalankar's transparent camouflage for her true reason for aborting my recruitment is anyway wholly out of place in a section 32 report concerning PAIA compliance.

40. 'The other information was provided except for information which was refused in terms of section 65 on the basis that it was not relevant to the exercising of the right he may have in law and further that the request relates to confidential information of third parties.' This is untrue on manifold scores.

41. It's elementary that the obligation of a public body to provide a records requester access to its records is not constrained by the requirement that the request be 'relevant to the exercising of the right he may have in law'. And section 65 has nothing to say about this.

42. Under the title 'Mandatory protection of certain confidential information of third party', section 65 provides: 'The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.'

43. LASA is not a private body. No agreement with any third party was involved. No breach of confidence was in question. No confidential information of any third party was sought by me.

44. In any event, nowhere in Vedalankar's October or January letters refusing my requests was section 65 ever cited against me. So even the completely irrelevant provision was falsely reported by LASA in its section 32 report.

45. Vedalankar's legally illiterate, manifestly spurious pretext in October 2010 for refusing my entire 51-item records request in August, namely that I allegedly didn't have any right to stand on to justify my request, was knocked down in my November 2010 petition to Mlambo and the Board with reference to the operative provisions of PAIA and to relevant case law. And after reading it, she said in her January 2011 letter (her third response to my August request, counting her first mute refusal), she abandoned it and proceeded to deal with my August request item by item (refusing it, except where it happened to coincide with her own purposes in putting up certain records).

46. Yet after I'd refuted this foolish 'not relevant to any right' pretext and Vedalankar had abandoned it accordingly, the author of the section 32 report revived it and asserted this legal junk to the SAHRC and through the SAHRC to the National Assembly as a reason for denying me access to the records to which I'm constitutionally and legally entitled.

47. Vedalankar's and Nair's persistent refusal to afford me access to records, inter alia, to copies of its formal 'regret letters' – *at very different times* – to the other shortlisted Senior Litigator candidates because 'the request relates to confidential information of third parties' is exposed as factually and legally vacant in my first memorandum to the SAHRC on 3 March 2011; yet in its section 32 report LASA falsely represented to the SAHRC, ultimately to deceive the National Assembly, that I

sought 'confidential information of third parties' hit by section 65, and this is why it has denied me access to the pivotally material records I've requested.

48. For reasons still to be explained, in its annual report on PAIA compliance presented to the National Assembly on 11 October 2011 under section 84 of PAIA and section 181 (5) of the Constitution, the SAHRC chose to omit LASA's mention of section 65 as the single provision it allegedly relied on to allegedly partially refuse my alleged single records request allegedly made in September 2010: there's a zero in the relevant column and no mention of any provision relied upon by LASA at all.

49. The result of the SAHRC's misinformation of the National Assembly is that it's been deceived into believing that LASA never relied on any provision of PAIA in allegedly partially refusing my alleged single request – thus obstructing and stultifying section 84 of PAIA, which is that the National assembly should be informed whenever the state or a public body refuses a request for records and why.

50. Knowing full well that I'd made three records requests, because these were canvassed in my first and second memoranda to the SAHRC, in its report to the National Assembly the SAHRC repeated LASA's false report that I'd made just one request.

51. Indeed, when I brought all the false and deceptive information in LASA's section 32 report to the attention of PAIA Unit director Chantal Kisoon, she responded in as many words that this was not the SAHRC's concern, and that the false information in LASA's section 32 report would simply be reprinted in the SAHRC's annual PAIA report to the National Assembly without question. Kisoon claimed that until such time as a court had ruled LASA's reliance on the various provisions it had cited as unlawful, as far as the SAHRC was concerned LASA has complied 'accurately' with section 32 of PAIA – well knowing it hadn't (the SAHRC agreed with me in July that LASA's withholding of records from me was 'unlawful..') and well knowing that

section 65 cited by LASA was of no relevance to a request for records of a public body whatsoever.

52. In its own annual report to the National Assembly also presented on 11 October 2011, LASA claimed very differently from what it did in its section 32 report concerning its reasons for withholding records from me: 'Information related to third parties which are protected in terms of section 34 of the Act, and to operations of a public body which is protected in terms of section 44 of the Act.' Both of these justifications had been exposed as vacant on the facts and at law in my first and second memoranda to the SAHRC in March and April 2011 – and in July the SAHRC agreed with my 'cogent opinion' concerning 'the unlawfulness of the action of the deputy information officer' Brian Nair in LASA's final refusal in April to permit me access to the records I've requested. Yet LASA persisted including these bogus reasons in its annual report.

53. In the situation, I hereby lodge a formal complaint with the Public Protector that in contempt of my constitutional rights, and in contempt of their legal obligations under PAIA, Vedalankar and Nair are unlawfully withholding records from me with the intention of concealing documentary evidence needed for the proof of my unfair discrimination claim in the Labour Court, and furthermore that the author of LASA's section 32 report has lied to the SAHRC about it on multiple scores with the intention of deceiving the National Assembly.

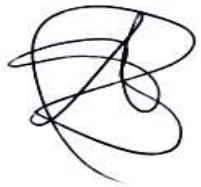
54. With the SAHRC having proved useless in my endless appeals for mediation over the last year, I accordingly crave the Public Protector's support and assistance in accessing LASA's records under her 'Mandate' to

> strengthen constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs; resolving administrative disputes or

> rectifying any act or omission in administrative conduct through mediation, conciliation or negotiation; … [and] resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000, … as mandated by the following legislation: Constitution of the Republic of South Africa Act 108 of 1996; Public Protector Act 23 of 1994; … [and] Promotion of Access to Information Act 2 of 2000 …

55. In 'resolving the disputes' between LASA and me 'relating to the operation of the Promotion of Access to Information Act of 2000', all the Public Protector's office needs do is (a) note its agreement or disagreement with my legal analysis and debunks of LASA's reasons for withholding the records I've requested in the spaces provided in the annexed memorandum, and then (b) forward it to LASA for its response. (I've reframed my second memorandum to the SAHRC for this purpose, substituting the Public Protector as the person/institution assisting me.) It's unlikely that LASA will exhibit the same contempt for the Public Protector as it's displayed towards me, so this simple expedient, inexpensive in time and treasure, should suffice to move LASA to disgorge the records it's unlawfully withholding from me, and will greatly assist me in 'redressing [LASA's] improper and prejudicial conduct, maladministration and abuse of power'.

Dated at Pietermaritzburg this 10th day of August 2011
Updated and amended on 9 November 2011



ADV ANTHONY BRINK

Encl: *Public Protector's comments on records requester Adv Anthony Brink's critical analysis demonstrating the factual and legal irrelevance of the reasons advanced by Brian Nair, deputy information officer of Legal Aid South Africa, for refusing access to certain specified records duly requested under section 11 of the Promotion of Access to Information Act 2 of 2000*
[Pages 568–88 of the bundle addendum]

This complaint, as amended and updated, and all documents to which it refers are available in printable PDF at:
www.tig.org.za/LASA/Public_Protector username: lasa password: LASA2010

**Home Pages**

Legalbrief Today

**Employment Opportunity**

**Position: Senior Litigator**

**Salary:** Negotiable

**Location:** Kimberley, South Africa

**Description:**
The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres spread throughout the country. Applications are invited from persons interested to fill the position of Senior Litigator.

The purpose of the post is to render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country and to provide specialist support to the Justice Centre on these matters.

The above-mentioned position exists at the Kimberley Justice Centre. The successful candidate will report to the relevant JCE and will be appointed on a permanent basis.

**Responsibilities:**
* Take responsibility for and expertly/proficiently attend to legal matters in various legal forums/courts requiring expert litigation skills such as impact litigation and/or warranting the services of a Senior Litigator
* Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as above, and provide support to Justice Centres in specialised, complex or impact litigation
* Provide written legal opinion for the LAB as requested
* Build and manage a caseload as agreed by the ROE, that makes optimum usage of the expertise and skills of the Senior Litigator position
* Assist with in-house legal training sessions as identified/agreed by the ROE or LDE
* Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROF, involving other LAB practitioners, to assist in legal matters and other means.

**Requirements:**
* Admitted Attorney/Advocate
* B Proc or LLR degree, with right of appearance in the High Court
* An LLM degree will be an advantage
* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five years' High Court experience as well as litigation experience as an Attorney and Advocate.

**To Apply:**
* Should you not hear from us within one month from the closing date, please accept that your application was unsuccessful.
* A detailed curriculum vitae reflecting practical application of the position, outputs and required skills as advertised must be submitted, quoting the relevant reference number, to:

**Contact Name:** Lee Swanepoel, Human Resource Department
**Fax:** 021 - 886 8657
**Email:** LyonelleS@legal-aid.co.za



**Reference No:** WCNC 05/05

**Closing Date:** 10 June 2009

best EMPLOYERS 2011/12 SOUTH AFRICA
AWARDED BY THE CRF INSTITUTE

Legal Aid South Africa
Your voice. For justice.

**Legal Aid South Africa has been certified as a Best Employer South Africa 2011.**

**What our research finds:**

## Introduction

Legal Aid South Africa is an independent statutory body established in 1969 with a mandate to provide indigent South Africans with legal representation at state expense, thereby ensuring that every citizen has access to justice.

## Critical Business Facts

- Total Number of Staff Employed (full-time): 2 454
- Annual Turnover in Rands for 2010 (RSA only): N/A
- Industry Sector: Public Sector
- Geographic Areas of Operation: South Africa
- BBBEE Scorecard Rating (official): Exempt, participates in preferential procurement programme

## Scoring from the Research

| | |
|---|---|
| Primary Benefits | ★ ★ ★ ★ ★ |
| Secondary Benefits and Working Conditions | ★ ★ ★ ★ ★ |
| Training and Development | ★ ★ ★ ★ ★ |
| Career Development | ★ ★ ★ ★ ★ |
| Company Culture | ★ ★ ★ ½ ★ |
| Diversity | ★ ★ ★ ★ ★ |

## Reasons for Excellence

- The largest law firm on the African continent
- Company offers a broad scope of career choices
- Employees are at the coalface of the legal profession
- A fast-paced, highly-competitive and professional organisation

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**'We pride ourselves as incubators of visionary leadership as we believe this is critical to our sustainability as a leading provider of professional legal services and defender of human rights.'**

**Vidhu Vedalankar, CEO**

experience. The company also makes use of an internal referrals system, while its expansive network provides a rich source of potential candidates.

Because Legal Aid SA is such a large organisation, it provides employees with virtually unrivalled choice in terms of career opportunities. Operating on both the criminal and civil sides of the law, it provides a platform for employees to advance into legal practice in its high-court units and through positions such as senior litigator. Alternatively, employees may follow the legal manager stream, allowing them to advance into positions such as high-court unit management, justice centre executive or the senior executive level of regional and national operations executive. In addition, there are a variety of opportunities for specialist and technical staff in areas such as legal training and development, legal research and even legal call-centre management.

Training and development is a primary human resources priority because it bridges the skills gap (where it exists) and enhances the skill profile of both the individual employee and the organisation as a whole. The organisation's training and development programmes are aligned to its strategic competencies and capabilities, thereby contributing to the delivery of quality legal services.

'Ultimately, however, employee growth and development in the system lies in their own hands,' explains Human Resources Executive Amanda Clark. 'The career-development programme is structured to empower graduates to take responsibility for their own development.'

Recognising that the organisation is only as strong as its employees, and specifically those in leadership positions, Legal Aid SA places strong emphasis on succession planning. As such, it runs a leadership-development programme through a leading university, as well as providing on-the-job coaching and mentoring.

## Unrivalled experience

Clark describes remuneration packages at Legal Aid SA as 'competitive', which means that they are in line with the public sector's dispensation for legal occupations within the justice cluster, which ensures pay parity among legal professionals in the public sector.

Remuneration for employees in auxiliary roles, the likes of human resources, finance, IT, communications and corporate services, lies in the upper quartile of the public entity market.

Benefits for permanent employees include a medical-aid contribution, employer-sponsored pension fund membership and a housing allowance. Leave benefits include 22 days of annual leave, which increases to 26 days after 10 years' service, and four months' paid maternity leave. Employees participating in the bursary scheme are granted 10 days' exam »

**From:** Du Rand Pieter [mailto:PDuRand@justice.gov.za]
**Sent:** 01 December 2010 08:30 AM
**To:** Anthony Brink
**Cc:** BeeMariS@legal-aid.co.za
**Subject:** RE: A letter to LASA Chairperson Judge Dunstan Mlambo and the Board of Directors

Receipt acknowledged. It will be taken up with Secretary to the Board for further attention.

*Adv Pieter A du Rand*
Chief Director: Court Services
Department of Justice and Constitutional Development
Street Address: West Tower, Room 8.03, Momentum City Walk, 329 Pretorius Street, Pretoria, RSA
Postal Address: P/Bag X 81, Pretoria, 0001, RSA
Tel: 012-315 1219 Fax: 012-315 1888
Email: pdurand@justice.gov.za

---

**From:** Anthony Brink [mailto:arbrink@iafrica.com]
**Sent:** 30 November 2010 09:15 PM
**To:** Du Rand Pieter
**Subject:** A letter to LASA Chairperson Judge Dunstan Mlambo and the Board of Directors
**Importance:** High

Dear Adv du Rand

I attach for your consideration and action a letter to LASA Chairperson Judge Dunstan Mlambo and the Board of Directors in a rather serious matter.

Your sincerely

Adv Anthony Brink

Legal Aid South Africa

Kimberley Justice Centre

43 Sidney Street
Kimberley
8301

P. O. Box 846
Kimberley
8301

Docex 4
Kimberley

Tel: 053 832 2348
Fax: 053 832 2356

www.legal-aid.co.za

**Our reference: NP Maduba**
**Your reference: ROE**

17/11/2009

Brian Nair

National Operations Executive

National Office

**MOTIVATION TO MOVE THE SENIOR LITIGATOR POSITION AT THE KIMBERLEY JUSTICE CENTRE TO ANOTHER REGION**

## Background

Kimberley Justice Centre has a High Court Unit and has a Senior Litigator position allocated in it as well. Since the allocation of the Senior Litigator position to the Kimberley Justice Centre, the position was never filled up. The primary objective to base the Senior Litigator position at the Kimberley Justice Centre was to service all the Justice Centres that are located in the Northern Cape i.e Colesberg, Kimberley and Upington Justice Centres. In all the time since the allocation of this position, there has never been a demand for the services of the Senior Litigator from all the Justice Centres in the area of the Northern Cape, except with two cases which have very recently arisen and which are currently being investigated to establish if there are merits in them.

The Senior Litigator position has never been filled. The position had been advertised 3 times already, both internally and externally and the adverts could not attract candidates who meet the minimum criteria to fill up the position.

It has become necessary to relook at the possibility of transferring the position to a region where it is mostly needed or where there are prospects of the high demand for the position as well as where, there are prospects of attracting candidates who will meet the minimum criteria.

## Current situation

All the 3 Northern Cape Justice Centres fall under the Western Cape/Northern Cape Region. Currently the Region has an appointed Senior Litigator (Advocate Mornay Calitz) based at the Cape Town Justice Centre. Currently,

the two (2) possible cases where the services of a Senior Litigator are required have been referred to the Senior Litigator at Cape Town Justice Centre(in the absence of a Senior Litigator in Kimberley).

**Dealing with the demand**

As mentioned above all the three Northern Cape Justice Centres rely on the Senior Litigator based in Cape Town for assistance in any matters that have the prospect of the need for services of a Senior Litigator.

For any of the cases that may arise from the Northern Cape Justice Centres, the jurisdiction to hear their cases will be the Northern Cape Division and be held at the Kimberley High Court. Kimberley High Court is 156km away from Bloemfontein. Further, to deal with the demand that may arise in the Northern Cape Justice Centres, assistance can be sought as well from the Bloemfontein Justice Centre as this justice centre has an appointed Senior Litigator as well.

To deal with the issues of the Right of Appearance in the Northern Cape Division of both Senior Litigators, from the Free State and the Western Cape, it would be ideal if they were both Advocates as they can appear anywhere is country's courts. However, if one of them is an Attorney (as is the case of Pieter Nel), he will have to enroll himself in the Northern Cape Division to enable him to appear there.

The reallocation of this post has been canvassed with all the Northern Cape Justice Centres concerned and they have no objections to the reallocation of this post to another region.

**Financial implication**

The will be no financial implications that will result from the movement of the position as there will only be a transfer of the budget to be done.

**Recommendation**

It is recommended that the Senior Litigator post allocated to Kimberley Justice Centre be reallocated as per the National Operations Executive's discretion to the any other region that might be require same.

WC/NC Region

**17 November 2009**

Legal Aid South Africa

15 March 2010

159 Cape Road
Mill Park
Port Elizabeth
P O Box 63799
Greenacres
6057
Web www.legal-aid.co.za
e-mail ThembileM@legal-aid.co.za
Tel: (041) 373- 8296
Fax (041)373- 1315

**REPORT TO LSTC**

**SUBJECT: ALLOCATION OF SENIOR LITIGATOR POSITION**

## 1. BACKGROUND

At its meeting of the 25th February 2010, LSTC resolved that interested Regions should compile a written motivation providing reasons why the Senior Litigator position should be allocated to a particular Justice Centre. This position has become available after Kimberly Justice Centre declared it redundant. Two Regions raised an interest for the position being Limpopo/ Mpumalanga and the Eastern Cape. The motivation that follows is that of the Eastern Cape.

## 2. MOTIVATION

### 2.1. History of the Eastern Cape

The Eastern Cape was pre 1994 subdivided into three, namely, the Transkei, Ciskei and the Eastern Cape which fell within the Republic. Transkei and Ciskei were so called independent States. There were different laws governing the three "countries" until in 1994 when they were amalgamated into one. They are all currently referred to as the Eastern Cape.

### 2.2. High Courts' Jurisdiction

There are four High Court seats in the Eastern Cape, namely, Port Elizabeth, Grahamstown, Bhisho and Mthatha. It is only Port Elizabeth that is a local Division and can thus not hear appeals. All the other three still operate independent of each other.

All High Court cases of the former Transkei area including those of Butterworth JC are being heard at Mthatha or Circuit Court coming from Mthatha.

We currently have one Senior Litigator who is stationed at Port Elizabeth. It is a huge challenge for this one person to provide support to the whole Region. Hereunder are distances from the nearest Justice Centres where the other three High Courts are based. The distances are calculated on a one way trip and all from Port Elizabeth where our Senior Litigator is based:

| Name of Justice Centre | Name of High Court | Distance from PE |
|---|---|---|
| Mthatha | Mthatha HC | 652 |
| King Williamstown | Bhisho HC | 264 |
| Grahamstown | EC Provincial Division | 130 |

### 2.3. Benefits at allocating position at Mthatha

Mthatha JC will support the whole Transkei area including Butterworth, Sterkspruit and parts of Queenstown.

It should be mentioned that Transkei still has the Transkei Penal code (equivalent but different to Criminal Procedure Act) together with Transkei Attorneys Act of 1934. These Acts operate parallel to other Acts in the Republic and need to be challenged.

Transkei is very rural in nature and there is still a lot of abuse for citizens under the pretext of African Law. The case of King Dalindyebo wanting to secede the Thembu land from the Republic is a point of reference.

### 3. Recommendation

It is recommended that the vacant position of Senior Litigator be allocated to Mthatha Justice Centre and that it supports the Justice Centres and areas mentioned on paragraph 2.3 above.

**Prepared by:**

**Eastern Cape**

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# PROFESSIONAL ASSISTANT - DISTRICT COURT

## Mthatha (4 Posts) • Butterworth

Applications are invited from persons interested to fill the above-mentioned positions. The incumbents will be appointed on a permanent contract.

**Key outputs:** • Provide legal representation to indigent accused persons primarily at District Court Level • Train and supervise Candidate Attorneys • Perform office administration.

**Competencies (skills, knowledge and attributes) required:** • Admitted Attorney or Advocate (The latter must have completed pupilage successfully at an institution recognised by Legal Aid SA) • Legal representation at District Court Level • Minimum of at least two (2) years' post-qualification experience or upon completion of relevant training period (OSD salary scale levels 3 and 4) • LLB degree or equivalent • Proven track record in criminal defence • Valid driver's licence will be an advantage • Right of appearance in High Court an added advantage • Communication skills • Excellent verbal and written communication • Analytical thinking • Team player • Self-development orientation.

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Detailed curriculum vitae highlighting the required skills as advertised must be submitted by close of business quoting the reference number below:

**Mthatha:** (Ref: EC/GHTJC/03/2010), Mlindo Mzuku via e-mail: MlindoM@legal-aid.co.za, tel: (047) 532 6351

**Butterworth:** (Ref: 24/03/2010PEJC), Nosisa Mapasa via e-mail: NosisaM@legal-aid.co.za, tel: (047) 401 3809
OR apply online at **www.legal-aid.co.za**

**Closing date:** 7 April 2010

Short-listed candidates will be required to undergo a security check. Should you not hear from us within one month of the closing date, please accept that your application was unsuccessful.

**LEGAL AID SA RESERVES THE RIGHT NOT TO MAKE AN APPOINTMENT.**

ayanda mbanga communications 15398

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# PROFESSIONAL ASSISTANT: DISTRICT COURT

**Eastern Cape: Graaff-Reinet JC**
**(Ref. 01/06/2010)**

Applications are invited from persons interested to fill in the above-mentioned position. The incumbent will be appointed on a permanent contract.

**Key outputs:** • Provide legal representation to indigent accused persons, primarily at District Court Level • Train and supervise Candidate Attorneys • Perform office administration.

**Competencies (skills, knowledge and attributes) required:** • Admitted Attorney or Advocate (The latter must have completed pupilage successfully at an institution recognised by Legal Aid SA.) • Legal representation at District Court Level plus right of appearance in High Court an advantage • Minimum of at least two (2) years' post-qualification experience or upon completion of relevant training period • LLB degree or equivalent.

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**A detailed curriculum vitae reflecting practical application of the position outputs and the required competencies as advertised must be submitted by close of business on 25 June 2010, quoting the reference number, to: Raymond Marawu via e-mail: RaymondMar@legal-aid.co.za or fax: (049) 892 6033 or apply online at www.legal-aid.co.za**

Legal Aid SA subscribes and promotes Affirmative Action and Employment Equity. Candidates from the designated groups and people with disabilities are encouraged to apply. Short-listed candidates will be required to undergo a security check.

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# The following positions exist at the Legal Aid SA.

## ASSISTANT SECURITY ASSURANCE OFFICER

**(National Office, Braamfontein)**

**Salary: R192 530.49 per annum (Level 9)**

**Ref. 2010/IS/05**

**Key performance areas:** • Monitor Firewalls, IPS (instruction prevention systems), Antivirus systems, Web and Mail content filtering systems and other security information and event management systems (SIEM) logs, events and alerts • Review and escalate performance and system logs and events of security significance to appropriate system owners and Administrators for Security information and event management • Monitor security events on systems by identifying anomalous behaviour and intrusions and informing the appropriate information owners and Administrators to act in response • Review vulnerability, scan reports, identifying exploits, security patch/service pack level status, fixes, etc. and document findings that needs to be installed by system owners • Monitor security audit and intrusion detection system logs for system and network anomalies; and report findings • Assist in basic installation, modification or replacement of hardware/software components and any basic configuration change(s) that affects security where applicable • Review computer logs and messages to identify and report possible violations of security • Attend to Helpdesk calls logged on the helpdesk system regarding basic security related incidents e.g. blocked e-mails, blocked websites, security violations and general access and authentication for security devices and systems; and escalate to appropriate system owner and Administrators • Assist to provide enforcement of security policies, standards, and procedures to all Legal Aid SA users • Monitor and escalate security violations, attempts to gain un-authorised access, virus infections that may affect the network or other event(s) affecting security • Document and report event(s) • Escalate all issues to higher level associates • Analyse attempted efforts to compromise system security, identify and investigate activities and provide a basic analysis report regarding the results, and escalate all issues to higher level associates.

**Competencies (skills, knowledge and attributes) required:** • A recognised Grade 12 Certificate • Three (3) years Computer qualification obtained at a University/Technikon or other acknowledge tertiary institution • Three (3) years' IT Security experience in an IS Department • Experience in monitoring, analysis and security incident and event response to information security alert events.

## END-USER HELPDESK SUPERVISOR

**(National Office, Braamfontein)**

**Salary: R240 312.08 per annum (Level 10)**

**Ref. 2010/IS/O6**

**Key performance areas:** • Ensure immediate response to end-user enquiries in order to ensure optimal utilisation of Information Systems • Establish a repository and tracking mechanism for all application, system, infrastructure and user problems • Supervise all End-User Support staff • Manage all helpdesk projects according to best practice methodology.

**Competencies (skills, knowledge and attributes) required:** • A recognised Grade 12 Certificate • Three (3) years Computer qualification obtained at a University/Technikon or other acknowledged tertiary institution • Three (3) years' experience in an IS Department of which two (2) years must be in the field of an end-user support • ITIL Foundation Certification an advantage.

## CASH BOOK OFFICER

**(National Office Braamfontein)**

**Salary: R130, 420 .48 per annum (Level 7)**

**Ref: 2010/FIN/05**

**The above position exists in Finance Department.**

**Key outputs:** • Reconcile Bank and all Bank/Cashbook related general ledger account in accordance with Company policies and procedures • Ensure that all Receipts (Cheques and Cash) are captured and posted correctly and accurately • Ensure that Cheques/receipts are deposited timeously and within the specified time period as per policy and procedures.

**Competencies (skills, knowledge and attributes) required:** • Recognised Grade 12 Certificate with Accounting as a subject at higher level • High level of proficiency in using MS Office programmes used in the Legal Aid SA • Two (2) years' applicable experience in a Finance Department.

**A detailed curriculum vitae reflecting practical application of the above-mentioned positions outputs and the required competencies as advertised must be submitted by close of business on 01 June 2010, quoting the reference to: Mr. Pule Katane, Human Resources, Private Bag X76, Braamfontein, 2017, fax to (011) 877-2222 or email: recruit@legal-aid.co.za or apply online at www.legal-aid.co.za**

## HIGH COURT UNIT MANAGER (2 POSTS)

**Justice Centres: Pretoria and Johannesburg**

**Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the following Justice Centres: PTA (1 Post) and JHB (1 post). Applicants must be admitted Attorneys or Advocates. The incumbent will be appointed on a permanent basis.**

**Key outputs:** • Manage the functioning and administration of the High Court Unit • Manage legal aid to the poor in the area of jurisdiction • Supervise and guide High Court Unit Professional Assistants • Manage the allocation of cases to private practitioners (Judicare) in High Court cases • Assist with the preparation and maintenance of the annual budget for the Unit • Ensure sound management of the Unit's finances and other assets • Manage the client database on Ad Infinitum.

**Competencies (skills, knowledge and attributes required:** • A recognised tertiary Legal qualification (LLB or B.Proc.) • Admitted Attorney or an Advocate with right of appearance in the High Court • Ten (10) years' minimum experience in the High Court • Minimum three (3) years' experience in a Management position • A valid Code 08 driver's licence is an advantage • Excellent leadership and people development skills with a track record in training • Experience in budget preparation and management thereof • Advanced computer skills (MS Word, Excel, Outlook, PowerPoint and Ad Infinitum) • Strong communication, problem solving and interpersonal skills • Innovative, creative and analytical thinking skills • Ability to interpret and apply policies.

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity, proven track record in criminal and civil litigation, a motivated, self-driven and mature individual who is a team player.

**Detailed curriculum vitae highlighting required skills as advertised must be submitted by close of business on 1 June 2010, quoting reference numbers below: Pretoria JC, Ref No: GP2010/05/01 send to: Rose Mashaba via e-mail: RoseM@legal-aid.co.za**

**Johannesburg JC, Ref: GP2010/05/02 send to: Nokhanyiso Ngaba; or Human Resources Department, P.O. Box 16237, Lyttleton, 0140, fax: (012) 664 6920, or via e-mail to: Nokhanyison@legal-aid.co.za or apply online at www.legal-aid.co.za**

## CIVIL PROFESSIONAL ASSISTANT

**Bethlehem Justice Centre**

**Ref: BHM04/2010**

Applications are invited from persons interested to fill in the above-mentioned position, reporting to the Principal Attorney-Civil. Applicants must be admitted Attorneys or Advocates.

**Key outputs:** • Provide civil legal aid to the poor in the coverage area of the unit • Handle complex civil matters • Supervise and guide civil candidate Attorneys and paralegals • Assist in providing support and assistance to civil sections of Justice Centres in the designated cluster • Perform office administration.

**Competencies (skills, knowledge and attributes) required:** • Admitted Attorney/Advocate (the latter must have completed pupilage successfully at an institution recognised by Legal Aid SA) • LLB or B Proc degree • At least seven (7) years' post-qualification legal experience, with a minimum of five (5) years' post admission civil experience • Right of appearance in the High Court would be an advantage • Excellent verbal and written communication • Strong analytical ability and excellent communication skills • Team player • Self development orientation • A valid driver's licence is an advantage • Typing skills is highly recommended.

**A detailed curriculum vitae reflecting practical application of the position outputs and required competencies as advertised must be submitted by close of business on 1 June 2010, quoting reference below: Bethlehem Justice Centre, Ntsatsi Motaung via e-mail: NtsatsiM@legal-aid.co.za or fax: (058) 303 6823 or apply online at www.legal-aid.co.za**

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# PROFESSIONAL ASSISTANT - DISTRICT COURT

**Port Elizabeth JC (Ref. 11/08/10PEJC)**

Applications are invited from persons interested to fill the above-mentioned position. The incumbent will be appointed on a permanent contract.

**Key outputs:** • Provide legal representation to indigent accused persons primarily at District Court level • Training and supervision of Candidate Attorneys • Perform office administration.

**Competencies (skills, knowledge and attributes) required:** • Admitted attorney or advocate (the latter must have completed pupilage successfully at an institution recognised by Legal Aid SA) • Legal representation at District Court level plus right of appearance in high court is an advantage • Minimum of at least two (2) years' post-qualification experience or upon completion of relevant training period (OSD salary scale levels 3 and 4) • LLB degree or equivalent.

**Applications, quoting the reference number, must be forwarded for attention: Ms T Spolander to PO Box 3433, North End, Port Elizabeth 6056; fax: (041) 487 3335; e-mail: TracyS@legal-aid.co.za or apply online at www.legal-aid.co.za**

**Closing date:** 27 August 2010

Short-listed candidates will be required to undergo a security check. Should you not hear from us within two (2) months of the closing date, please consider your application unsuccessful.

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# SUPERVISORY PROFESSIONAL ASSISTANT

## Pinetown Justice Centre • (Ref: PTNJCSPA - 13/08/10)

**Key outputs:** • Train, supervise and guide Candidate Attorneys • Co-ordinate legal training at the Justice Centre • Provide individual mentoring and coaching to Professional Assistants and Candidate Attorneys • Assess the quality of the files and work performed by Candidate Attorneys and Professional Assistants on a daily basis • Assist the JCE with quality assessments • Monitor case flow management of Professional Assistants, Candidate Attorneys and Judicare at the Courts • Legal representation in civil and criminal matters.

**Competencies (skills, knowledge and attributes) required:** • A B Proc or LLB • Admitted Attorney or Advocate (the latter must have completed pupilage successfully at an institution recognised by Legal Aid SA) • At least 7 years' post-admission experience or a partner in a private legal firm • A valid Code 08 driver's licence is compulsory • Strong negotiation, training and development skills.

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**Forward your application for the attention of the Admin Manager, Robin Gengan, by fax: (031) 701 5880, e-mail: RobinG@legal-aid.co.za or apply online at www.legal-aid.co.za**

**Closing date:** 7 September 2010.

Short-listed candidates will be required to undergo a security check. Should you not hear from us within two (2) months of the closing date, please consider your application unsuccessful.

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# HIGH COURT UNIT
# PROFESSIONAL ASSISTANT

## King William's Town Justice Centre (Ref. 10/08/01HCU)

**Key outputs:** • Provide legal representation to indigent accused persons at High Court level • Training and supervision of Candidate Attorneys • Perform office administration • Represent women, children and landless people in civil matters.

**Competencies (skills, knowledge and attributes) required:** • Admitted attorney or advocate (the latter must have completed pupilage successfully at an institution recognised by Legal Aid SA) • Legal representation at High Court level • Minimum of at least six (6) years' post-qualification experience, of which four (4) years must be post-admission experience • LLB degree • Right of appearance in the High Court.

**Applications, quoting the reference number, must be forwarded for attention: Geoffrey Mlamlela to PO Box 2323, King William's Town 5600; fax: (043) 642 4885/086 657 8246; e-mail: GeoffreyM@legal-aid.co.za or apply online at www.legal-aid.co.za**

**Closing date:** 3 September 2010

Short-listed candidates will be required to undergo a security check. Should you not hear from us within two (2) months of the closing date, please consider your application unsuccessful.

**Legal Aid SA reserves the right not to appoint.**

16360

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weight:
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Overweight
Standard
Underweight



# Professional Assistant - Legal Aid - Johannesburg

Written By: ZA Newspapers Job Ads 11-17-2011

Categorized in: Clerical And Assistants, Johannesburg

National Office, Braamfontein
Salary: R452 256 - R487203 per annum all-inclusive package (LP7) (Ref. 2011/LDE/04)

Working in the Legal Development Department and reporting to the Senior Impact Litigation Attorney, the successful candidate will conduct litigation on behalf of legalaid clients in impact litigation and will support the Senior Impact Litigation Attorney in managing the Impact Litigation Unit.

**Key outputs:**

• Conduct litigation, specifically in matters that will establish a precedent and that will represent groups or classes of persons
' Assist in the assessment of proposals for funding on matters of the above nature
' Assist to prepare reports for the Legal Services Technical lmpact Services Committee•
Implement the Impact Services Policy of the Legal Aid Board
• Assist to manage the budget of the Impact Litigation Unit
• Assist in preparing reports for Executive Management •
Establish and maintain contact with all stakeholders relevant to the Impact Litigation Unit
Assist in supervising Candidate Attorneys employed in the Impact Litigation Un it
• Assist with marketing work of the unit through liaison with the legal fraternity, NGOs, Government organisations and other relevant stakeholders.

**Competencies (skills, knowledge and attributes) required:**

• A recognised tertiary legal qualification, eg LLB(a higher degree in Law will be a recommendation)
• Admission as a legal practitioner
• Right of appearance in the High Court
5 years' post-admission experience as a legal practitioner and specialisation in Civil Litigation in the High Court

A detailed CurriculumVitae reflecting practical application of the position Outputs and required competencies as advertised and quoting the relevant reference must be submitted by close of business on22November 2011 to Mr Thomas Sedi, Human Resources, Private Bag X76, Braamfontein

## 18. Directors' emoluments

### 18.1 Directors - non-executive

| | | 2011 R | 2010 R |
|---|---|---|---|
| - For services as directors | | | |
| **Name** | **Comments** | | |
| Judge D Mlambo | Judge SCA | - | - |
| Dr D Konar | Beneficial | 29,290 | 29,963 |
| Ms A Mosidi | State Attorney | - | - |
| Prof P Kruger | Beneficial | 18,363 | 37,595 |
| Mr J Maree | Beneficial | 81,031 | 49,452 |
| Ms A Rhoda | Beneficial | 28,862 | - |
| Ad P du Rand | Non-Beneficial | - | - |
| Judge M Makume* | Non-Beneficial | - | 66,880 |
| Ms E Memka (Memka & Ass paid) | Beneficial | 34,104 | 32,175 |
| Ms S Monaledi | Regional Court Magistrate | | - |
| Ms N Mgadza | Beneficial | 94,204 | 65,452 |
| Prof Y Vawda | Beneficial | 73,464 | 38,950 |
| Ms M Naidoo (Black Sash paid) | Non-beneficial | 39,351 | 19,800 |
| Ms T Mhlungu | Beneficial | 41,975 | 57,563 |
| Judge E Molahlehi | Non-Beneficial | - | - |
| Mr M Nxasana (Alternate member) | Beneficial | - | - |
| Adv D Mogagabe (Alternate member) | Beneficial | - | - |
| Mr V Jarana | Beneficial | 10,494 | 24,750 |
| Adv S Kolbe | Beneficial | - | 29,700 |
| Ms E Gandhi | Beneficial | 49,847 | 37,125 |
| Mr M Moabi | Beneficial | 15,738 | 28,815 |
| Ms R Subban | Beneficial | - | - |
| Ms M J Ramagaga | Beneficial | - | - |
| Mr M Notyesi | Beneficial | - | - |
| | | **516,723** | **518,220** |

*Payment prior to appointment as Judge

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# SUMMARY OF REPORT ON GOVERNANCE FOR SOUTH AFRICA – 2009 (King iii)

## KING COMMITTEE ON GOVERNANCE

- A suitably qualified practitioner should be asked to furnish security for the value of the assets of the company.

## COMPOSITION OF THE BOARD

**Principle 1.17:**

**The Board should comprise a balance of executive and non-executive directors, with a majority of non-executive directors**

- A balance of executive and non-executive directors, with a majority of non-executive directors should exist in the Board of Directors.

  The principal of independence should also be considered.

  A minimum of two executive directors should be appointed. This should include the CEO and the Chief Financial Officer / Director.
- Rotation of non-executive directors should be practiced by public companies. This will ensure that one third of the non-executive directors retire each year, by rotation.
- The Board should be entitled to remove the CEO as an executive director, without shareholder approval. This requires a suitable amendment of the Memorandum of Incorporation (currently the Articles of Association).

**Principle 1.18:**

**The Board should be led by an independent non-executive Chairman who should not be the CEO of the company**

- The Chairman of the Board should be reappointed on an annual basis.
- The Chairman of the Board should be an independent non-executive director. His independence should be carefully monitored.
- The Chairman's ability to add value should be taken into account at his annual evaluation.
- The maximum tenure of the Chairman should be decided.
- The Chairman should preside at Board Meetings.
- Directors with potential conflicts of interest should be asked to recuse themselves.
- The core functions of the Chairman are:
  - Setting the ethical tone;
  - Providing overall leadership;
  - Participating in the selection of Board members;
  - Overseeing a formal succession plan for the Board;

- Setting the Board work plan;
- Being a link between the Board and management;
- Maintaining an arms-length relationship;
- Adopting a lead role in removing non performing directors;
- The Chairman should meet with individual directors, at least once in every year;
- Mentoring new directors;
- Ensuring that directors have a knowledge of their duties and responsibilities;
- Ensuring that good relationships are maintained with major shareholders and stakeholders.

❖ The Chairman's responsibility will be focused on social, sustainability and transformation issues.

❖ The Chairman should carefully consider the number of additional chairmanships he can manage.

❖ The Chairman should meet the CEO prior to Board Meetings, to discuss important issues.

❖ Position with additional roles of the Chairman:

- The Chairman of the Board should not be a member of the Audit Committee;
- The Chairman should not chair the Remuneration Committee;
- The Chairman should be a member of the Nominations Committee and may also be its Chairman;
- The Chairman should not chair the Risk Committee, but may be a member of the Risk Committee.

**Principle 1.19:**

**The Board should appoint an effective and ethical Chief Executive Officer**

❖ The CEO's responsibilities include:

- Achieving financial and operating goals and objectives;
- Ensuring that a long term strategy is developed;
- Ensuring that a positive and ethical work climate exists;
- The CEO should be the chief spokesman of the company;
- While the CEO should not be a member of Board Committees, he should attend meetings by invitation;

**Annexure to Form 7.11**

**Part 3.**

**Summarise the facts of the dispute you are referring:**

1. On 12 November 2009 I was interviewed by a duly delegated professional selection panel for the advertised post of Senior Litigator at Legal Aid South Africa's Pietermaritzburg Justice Centre, for which I'd applied and been shortlisted; and following my interview I was selected from among the other applicants and recommended for appointment.
2. On learning of my selection, LASA CEO Vidhu Vedalankar aborted my recruitment off the record and behind the scenes without announcing the fact.
3. My letter to her on 12 July 2010, eight months after my interview, recording inter alia the indications that I'd indeed been selected and recommended; commenting on a shockingly hostile and disingenuous email I'd received from national Human Resources Executive Amanda Clark in response to my enquiries for information five months after my interview; and enquiring when the appointment process might be finalized, was answered by National Operations Executive Brian Nair on 3 August 2010, alleging that it had first been decided to 'put' the post (and others) 'on hold', and that 'I can now confirm that we will not be proceeding with the filling of any of these posts.'
4. On 18 October 2010, in response to a comprehensive request for 51 specified records under the Promotion of Access to Information Act 2 of 2000 ('PAIA') to test Nair's claims, Vedalankar alleged that on account of budgetary pressure, 'It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'
5. On 28 January 2011, pursuant to a second PAIA request, I obtained records demonstrating unequivocally that Vedalankar had lied to me, and that the budgetary justification she'd advanced for aborting my appointment was a false alibi covering her real reason.
6. The records show that indeed 'It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall' and that 'Since early this year, management has had to identify positions' for 'reduction', i.e. abolition in terms of LASA's Approval Framework.
7. Only, the records show that (a) 'early this year', on 13 April 2010, Vedalankar identified vacant junior criminal defence practitioner posts for reduction, not Senior Litigator posts; (b) on 15 July, acting in terms of his powers under the Approval Framework, Nair duly proposed the abolition of 56 such posts, with more if necessary, and possibly some

even lighter 'paralegal and admin posts' as well; (c) Vedalankar and other executive managers collectively agreed with this proposal in their 'Report to Board' dated 16 July 2010; and (d) on 31 July LASA's Board of Directors approved the agreed proposal.

8. In sum, the records show that contrary to Vedalankar's and Nair's false claims to me, in truth it was never contemplated, never proposed, never agreed, and never approved that vacant critical Senior Litigator posts be abolished (or 'frozen').

9. To the contrary, the records show that in their 'Report to Board' LASA's executive managers pertinently noted 'the need to prioritise critical positions' for recruitment – such as vacant critical Senior Litigator posts.

10. I am notorious and extremely unpopular in many circles for my political activism over a decade and a half, involving researching, publishing, public-speaking, awareness-raising and agitating as the founder and leader of a voluntary association the Treatment Information Group concerning the therapeutic worthlessness and extraordinarily harmful toxicity of the so-called anti-retroviral drugs AZT and nevirapine, being plied in the countries of the South; for moving then President Thabo Mbeki to order an enquiry into the safety of AZT in 1999; for actively supporting the government's appeal to the Constitutional Court in 2002 against an order won by a pharmaceutical interest group, the Treatment Action Campaign, compelling it to provide nevirapine to HIV-positive pregnant women and their newly born babies in public hospitals, nearly all African; and generally for opposing pharmaceutical interests in South Africa and contradicting the almost complete propaganda consensus they have established in favour of these drugs.

11. The controversy over AZT and nevirapine has been intensely charged ideologically, morally, emotionally, and politically; and for my public participation in policy questions over their use, I have been repeatedly denounced over the years by their champions in the media in the strongest imaginable negative terms.

12. Vedalankar (other senior LASA officers too) subscribes to the almost universal popular consensus in favour of AZT and nevirapine, and three days before my interview went on record proudly declaiming 'Legal Aid SA's most significant accomplishment' (per the question put) to have been that 'Legal Aid SA funded the constitutional litigation on behalf of the Treatment Action Campaign to get the government to roll out anti-retrovirals to pregnant mothers who are HIV positive to prevent the transmission of the virus from mother-to-child in all state hospitals. This case is arguably one of the most significant impact cases as it has resulted in preventing the loss of life of a large number of babies who would otherwise have contracted HIV Aids.'

13. In short, Vedalankar is a partisan of pharmaceutical interests and believes in and propounds their propaganda – as is her constitutional right on all scores; and she is diametrically and radically opposed to me in my opinions, beliefs, conscience, and the cause for which I campaign, all equally protected by the Bill of Rights in Chapter 2 of the Constitution, 1996.

14. Having regard to the discrediting and collapse of Vedalankar's false explanation to me for blocking my appointment in the light of LASA's records, a conspectus of the known facts weighed with the probabilities supports the conclusion that in truth and in fact Vedalankar unfairly discriminated against me for exercising my constitutional right to freedom of conscience, thought, belief and opinion; my right to freedom of expression, including my freedom to impart information or ideas, to artistic creativity, and to conduct scientific research; my right to campaign for a cause; and my right to equality, including the full and equal enjoyment of all rights and freedoms, and not to be unfairly discriminated against by the State, directly or indirectly, for exercising these constitutional rights and freedoms in the post-apartheid, democratic era.

15. And that in doing so, Vedalankar has contravened section 6(1) in Chapter 2 of the Employment Equity Act 55 of 1998 ('EEA'), which provides under the heading 'Prohibition of Unfair Discrimination': 'No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, […] conscience, belief, political opinion, […].' (my ellipsis of irrelevant grounds)

16. I include 'race' as an outside possible basis for Vedalankar's unfair discrimination against me, because she has cloaked the true reason for her decision to abort my appointment in lies; and until she has been thoroughly cross-examined, and the truth of the matter has been determined on a ventilation and interrogation of all the evidence, other unfair grounds for her discrimination against me besides unlawful political prejudice cannot absolutely be excluded.

17. According to section 1 of the EEA, 'employment policy or practice' 'includes … appointments and the appointment process'; and section 9 provides that 'For the purposes of section 6, 7 and 8, employee includes an applicant for employment.'

18. I have not in this summary canvassed all the available evidence that Vedalankar's allegations to me are false; there's more. And there's even more to be discovered, for with the intention of perverting the true and just determination of my claim, and in contempt of her constitutional and legal obligations under PAIA and of my constitutional and legal right to access to public records, Vedalankar, as LASA information officer ex officio, is determinedly concealing further evidence in the form of incriminating records and is refusing to provide me with a section 23 affidavit as PAIA requires of her concerning specified records which do not, as I suspect, exist. (The PAIA Unit of the South African Human Rights Commission is attempting to mediate.)

19. My detailed Statement of Claim in terms of Rule 6 of the Rules of the Labour Court is substantially complete for launching my case in the Labour Court.

20. All correspondence and other documents in this matter may be viewed online at: www.tig.org.za/LASA username: lasa password: LASA2010.

**Board Committee Membership as at 31 March 2011:**

Table 3

| BOARD EXECUTIVE COMMITTEE | REMUNERATION COMMITTEE | LEGAL SERVICES COMMITTEE | AUDIT & RISK COMMITTEE |
|---|---|---|---|
| Chairperson: | Chairperson: | Chairperson: | Chairperson: |
| Judge D Mlambo | Mr J Maree | Prof Y Vawda | Ms N Mgadza |
| Members: | Members: | Members: | Members: |
| Mr J Maree | Judge E Molahlehi | Ms T Mhlungu | Dr D Konar |
| Ms N Mgadza | Ms A Mosidi | Adv K Pillay | Mr J Maree |
| Ms A Rhoda | Ms N Memka | Adv P du Rand | Co-opted Members: |
| Prof Y Vawda | Mr M Notyesi | Ms M Ramagaga | Ms J Luthuli |
| | Co-opted Member: | Ms M Naidoo | Mr E Moolla |
| | Ms A Rhoda * | Ms E Gandhi | Mr I Ramdas |
| | | Ms R Subban | |

* Appointed as Board Member with effect from 15 September 2010

## 2.3 Compliance Framework

### 2.3.1 General

Legal Aid South Africa complies with the requirements of the Legal Aid Act (Act 22 of 1969, as amended), Public Finance Management Act, Act 1 of 1999 (PFMA) and National Treasury Regulations, which provide guidelines that must be upheld and implemented for the realisation of good governance. The PFMA regulates financial management in all spheres and levels of government to ensure that all revenue, expenditure, assets and liabilities are managed efficiently, effectively and economically.

### 2.3.2 Compliance with King III

Legal Aid South Africa has, in the year under review, endeavoured to apply the principles set out in the King III Report on Corporate Governance, where applicable, and to explain when any principles are not applied. King III sets out the guidelines with regard to, inter alia, compositions, roles and functions of Boards, risk management, internal audit and integrated sustainability reporting.

Legal Aid South Africa applies principle 8.5 of chapter eight (8) of the King III Report, which recommend organisations to consider disclosing in the integrated report, the number and reasons for refusals of requests for information that were lodged with the organisation in terms of the Promotion of Access to information Act (PAIA), 2000.

# 4.1 CORPORATE GOVERNANCE ARRANGEMENTS

## INTRODUCTION

Legal Aid South Africa ensures that its processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner, and to adhere to good corporate governance practices that are continually benchmarked with local and international standards. Processes are underpinned by the principles of openness, integrity and accountability, and an inclusive approach that recognises the importance of all stakeholders with respect to the viability and sustainability of Legal Aid South Africa.

Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres.

Legal Aid South Africa complies with the requirements of the Public Finance Management Act, Act 1 of 1999 (PFMA) and the Legal Aid Act (Act 22 of 1969), as amended. In addition, Legal Aid South Africa has implemented the recommendations of the King Report on Corporate Governance for South Africa 2009 (King III) and the Protocol on Corporate Governance in the Public Sector 2002.

## GOVERNING BODIES

Legal Aid South Africa is governed by a Board of non-executive members commonly referred to as the Board of Directors. The Board of Legal Aid South Africa comprises 18 non-executive directors appointed by the Minister of Justice and Constitutional Development. They are drawn from diverse backgrounds and bring a wide range of knowledge, experience and professional skills to the Board. The term of office of the non-executive directors is three years.

## COMPOSITION OF THE BOARD AS AT 31ST MARCH 2010:

### JUDGE DUNSTAN MLAMBO

B Proc (University of the North)
A Judge of the Supreme Court of Appeal of South Africa, as well as Chairperson of the Board of Directors for Legal Aid South Africa since October 2002. Judge Mlambo's tenure was extended with effect from 01 October 2007 for a further three year term. Judge Mlambo also Chairs the Executive Committee of the Board.

Judge Mlambo was appointed as Judge President of the Labour Court and Labour Appeal Court with effect from 1 June 2010

### MR MOTSAMAI A. MAKUME

B Juris (University of the North)
A practising attorney and member of the Law Society of South Africa. Mr Makume serves as Chairperson of the Legal Services Committee and is also a member of the Executive Committee of the Board.

Mr Makume was appointed Judge of the Supreme Court of South Africa with effect from 26 July 2010

### MR JAN MAREE

B Com LLB (University of the Free State)
A practising attorney and member of the Law Society of South Africa. Mr Maree serves as Chairperson of the Remuneration Committee and is also a member of the Executive Committee of the Board.

### MS NONHLANHLA MGADZA

B Comm (University of Swaziland), MBA
(De Montfort University – UK)
Group Head of Internal Audit, Impala Platinum Holdings Limited. Ms Mgadza serves as Chairperson of the Audit and Risk Committee and is also a member of the Executive Committee of the Board.

Aid South Africa, attraction and retention and the image of the Legal Aid South Africa. An integrated risk management strategy and process is followed. Major risk that could influence the achievement of Legal Aid South Africa's strategic objectives are identified, assessed and prioritised on a regular basis through a risk assessment and accountability framework and control strategies are implemented to manage and monitor these risks. Input to this process is obtained from all levels of management and is consolidated into the top seventeen risks for Legal Aid South Africa.

## INTERNAL CONTROL

The Legal Aid South Africa management and other personnel are responsible for the development and implementation of internal control processes, designed to provide reasonable assurance that set business objectives are achieved in areas which include inter alia:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulation.

The Board acts as a focal point in the establishment of all the categories defined above, in its role as the accounting authority of Legal Aid South Africa. The Boards has set an excellent tone that permeates to all levels of the organisation, influencing the conscience of its people, and creating a solid foundation for all the components of internal control.

The organisation subscribes to an ethical culture and conducts its business with integrity, due care and skill. Through the internal risk management processes, the organisation focuses appropriate levels of attention, managing the risks identified, for better achievement of set business objectives. Accordingly, controls are designed to provide economical means of safeguarding assets and ensuring effective management of working capital and liabilities.

Adequate policies and procedures assist in ensuring that management directives are carried out. A delegation framework facilitates a smooth flow of decision-making throughout the different levels of the organisation. Management and an independent internal audit function closely monitor the implementation of controls to ensure timely identification and resolution of deficiencies.
To this end, the Board and management of Legal Aid South Africa guard the internal control environment with due care and skill, with an acute awareness of its responsibility to the public of South Africa as a whole.

## INTERNAL AUDIT

Legal Aid South Africa considers compliance with applicable laws, regulations, codes and its own ethical standards and internal policies to be an integral part of its business culture. The Internal Audit Department facilitates the management of compliance through the analysis of statutory and regulatory requirements, and monitoring the implementation and execution thereof.

The Internal Audit Department, in line with the PFMA and the King III Report, provides the Audit and Risk Committee and management with assurance that:

- Risk Management processes are in place across the organisation and are both adequate and functioning effectively
- All discrepancies uncovered within the organisation fall within the tolerable error rates set by management
- Measures to safeguard organisational assets are in place and are both adequate and affective
- Processes to ensure adherence to governance processes and all laws and regulations are in place
- Financial and Performance information across the organisation is accurate and complete in all respects

- The quality of legal services delivered by individual practitioners, justice centres and regions complies with the legal quality standards set by the Board
- IT governance processes are both adequate and effective
- All control weaknesses identified are rectified timeously by management.

The external auditors are responsible for independently auditing and reporting on the financial statements and performance information in conformity with South African Auditing Standards.

## FORENSIC INVESTIGATIONS

In terms of the PFMA and the requirements in the King III Report, the Board of Directors is responsible for ensuring that an Integrated Fraud Prevention Plan is implemented in order to minimise the risk and opportunity for crime and irregularities, in particular, fraud.

The Internal Audit Department is mandated to assist Legal Aid South Africa by providing strategic crime prevention, detection and investigative direction and services, which support the strategic intent and business objectives.

## REPORTING TO STAKEHOLDERS

In order to present a balanced and understandable assessment of its position, Legal Aid South Africa is continually striving to ensure that it's reporting and disclosure to stakeholders is relevant, clear and effective.

It places great emphasis on reporting on both financial and non-financial matters, as well as addressing both positive and negative aspects in order to demonstrate the long-term sustainability of the organisation.

Legal Aid South Africa's predetermined objectives, representing both financial and non-financial key performance indicators, and its performance against these indicators, are included in Section 3.

## STAKEHOLDER RELATIONS

In addition to the interests of government as the major funder, Legal Aid South Africa recognises the legitimate interests of clients, employees, consumers, suppliers and beneficiaries, the trade unions and local communities in its affairs. Communication and interaction with stakeholders is ongoing during the year, and addressed through various channels, depending on the different needs of the various stakeholders. High level stakeholder issues are addressed in this annual report.

## EMPLOYEE PARTICIPATION

Participative structures are in place to ensure the ongoing involvement of employees and organised labour in influencing Legal Aid South Africa's policies and procedures. Legal Aid South Africa has a policy of encouraging employee participation in a wide range of issues and various participative structures are designed to achieve good employer-employee relationships.

## BUSINESS CONDUCT

Legal Aid South Africa has an ethics programme which promotes ethical behaviour in the workplace. This is supported by a written business conduct policy dealing with ethics, which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.

best EMPLOYERS 2011/12 SOUTH AFRICA
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# Vacancy

**REF: PMBJC 31/12/11**
**INTERNAL/ EXTERNAL ADVERTISEMENT**
**ADMINISTRATION OFFICER - CIVIL**
**PIETERMARITZBURG JUSTICE CENTRE**

Applications are invited from persons interested to fill in the above-mentioned position **KEY OUTPUTS**: • Provide efficient secretarial support to the civil unit • Co-ordinate and monitor all civil administrative matters • Provide support in the implementation of an effective filing and diary system to ensure that the civil unit will be able to address matters on behalf of clients • Assist with the completion of routine forms and matter activity reports for legal practitioners • Attend to the typing (drafting) of legal documents on instruction of legal practitioners • Handle incoming and outgoing mail in accordance with Legal Aid SA administrative procedure • Maintain the record keeping and filing system of the civil department within the Justice Centre • Maintain a register of documents sent to the Senior Litigator and Impact Litigation department • Distribute reports and other documentation relating to the civil department• Attend to HR administration and Procurement process • Practice sound customer relations.

**COMPETENCIES (SKILLS, KNOWLEDGE AND ATTRIBUTES) REQUIRED**
• A recognized Grade 12 (Std 10) Certificate • A minimum requirement of one year relevant administrative and secretarial experience within a legal environment
• Understanding and Application of Basic Computer Software Packages • Accuracy and Attention to detail • Code 08 drivers license an advantage.

A detailed curriculum vitae reflecting practical application of the position outputs and required skills as advertised must be submitted by close of business on 28 February 2012, quoting the above reference to: **The Admin Manager, Bhamani Maharaj; Pietermaritzburg Justice Centre, Fax 033 342 2576 or e-mail to: BhamaniM@legal-aid.co.za** or apply online at **www.legal-aid.co.za**

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**REF: PMB JC 02/12**
**INTERNAL ADVERTISEMENT**
**OFFICE ASSISTANT**

Applications are invited from interested persons who meet the minimum requirements, to fill the above-mentioned position, reporting to Admin Manager. The incumbent will be appointed on a permanent basis.
**POSITION PURPOSE:** To create a clean physical environment and to render office services as and when required.

**KEY OUTPUTS:** • Serve Legal Practitioners and other Justice Centre staff by providing excellent office support services such as Messenger • Ensure that reports and documentation are timeously sent / delivered to the right people • Maintain an incoming/outgoing fax register as per required format • Incoming mail handled in accordance with Legal Aid SA administrative procedure • All documentation to be correctly/accurately filed
• Switchboard to be manned at all times and proper telephone etiquette to be adhered to at all times • Daily collection and posting of mail • Transporting of Legal Aid SA staff members to courts/regional or national office as per Legal Aid SA relevant transport/ Fleet Management policy/procedures

**COMPETENCIES (SKILLS, KNOWLEDGE AND ATTRIBUTES) REQUIRED**
• A recognized Grade 12 Certificate • A valid Driver's license

**SALARY: R84, 482 per annum (Level 04)**

A detailed curriculum vitae reflecting practical application of the position outputs and the required competencies as advertised must be submitted by close of business on the **23 February 2012**, quoting the reference to: **Bhamani Maharaj, Admin Manager. Fax to (033) 886 8657 or email to BhamaniM@legal-aid.co.za** or apply online at www.legal-aid.co.za

Should you not have heard from us within two month of closing date, please consider your application unsuccessful.



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# Vacancy

## PROFESSIONAL ASSISTANT – HIGH COURT UNIT

**PIETERMARITZBURG JUSTICE CENTRE (incumbent will be based at Port Shepstone Justice Centre and attends to Ramsgate Circuit Court)| Ref: PAHCU10/2011**

**Key outputs:** • Provide legal representation to indigent accused persons primarily at High Court Level • Training and supervision of Candidate Attorneys • Perform office administration • Represent woman, children and landless peopl in civil matter.

**Competencies (skills, knowledge & attributes) required:** • Admitted attorney or advocate (The latter must have completed pupilage successfully at an institution recognized by Legal Aid SA.) • Legal representation at High Court Level • Minimum of at least seven (7) years post qualification experience of which five (5) years must be post admission experience • LLB degree • Proven track record in criminal defence • Valid driver's license will be an advantage • Right of appearance in High Court

A detailed curriculum vitae reflecting practical application of the position outputs and required skills as advertised must be submitted by close of business on the **13 December 2011** quoting the above reference to: **The Admin Manager , Bhamani Maharaj, Pietermaritzburg Justice Centre, Postnet suite 173, Private Bag X9118, Pietermaritzburg, 3200, Fax : (033) 342 2576 or e-mail to: BhamaniM@legal-aid.co.za or apply online at www.legal-aid.co.za**

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# PROFESSIONAL ASSISTANT - REGIONAL COURT
## RUSTENBURG JUSTICE CENTRE
### REF: RTB JC 2011/11/01

**Key Outputs:** * Provide legal representation to indigent accused persons primarily at Regional Court Level * Training and supervision of Candidate Attorneys * Perform office administration.

**Competencies (skills, knowledge & attributes) required:** * Admitted attorney or advocate (The latter must have completed pupilage successfully at an institution recognized by Legal Aid SA.) * Legal representation at Regional Court Level * LLB degree or equivalent * At least seven (7) years post qualification legal experience/five (5) years post admission experience (OSD salary scale levels 5 and 6) * Proven track record in criminal defense * A valid driver's license will be an advantage * Right of appearance in High Court an added advantage.

A detailed curriculum vitae reflecting practical application of the position outputs and required competencies as advertised must be submitted by close of business on the **22 November 2011** quoting the above reference to: **THE ADMIN MANAGER: Rarang Modiba, Rustenburg Justice Centre, P.O. Box 2090, Rustenburg, 0300, Fax 014 565 6821 or e-mail to: RarangM@legal-aid.co.za or apply online at www.legal-aid.co.za**

# BUSINESS APPLICATIONS SOFTWARE MANAGER
### REF: 2011/IT/04

The above position exists in **Information Systems Department** at the National Office of the Legal Aid SA in Braamfontein. Applications are invited from suitably qualified persons interested in filling this position.

**Position Purpose:** To manage the team of IT specialists, in a manner that will ensure efficient and effective systems development and support, E – Learning development and training.

**Key Outputs:** * Manage a team of IT specialists * Manage the conversion of high level requirements into functional specifications * Ensure that the board's standard procedures are followed to effect change to the current supported environment and infrastructure * Handle strategic information systems issues * Contribute to the compilation of the IS business unit plan * Evaluate Information Systems trends * Manage and supervise the progress of all project activities to ensure that the anticipated outcomes/products are attained within specified time frames * Manage information systems facilities and operations * Plan for change and empower staff members to change * Monitoring and reporting, compile and consolidate management reports for own unit * Provide statistical and management reporting * Develop effectiveness in the IS environment * Manage the provision of business solutions.

**Competencies (skills, knowledge & attributes) required:** * Three (3) years recognised tertiary qualification in Information Technology * Five (5) years experience in an IS Department of which a minimum of two (2) years was spent at management level.

# IMPACT LITIGATION PROFESSIONAL ASSISTANT
### REF: 2011/LDE/04

The above position exists in **Legal Development Department** at the National Office of the Legal Aid SA in Braamfontein. The successful candidate will report to the **Senior Impact Litigation Attorney.** Applications are invited from persons interested to fill the above-mentioned position.

**Position Purpose:** To conduct litigation on behalf of legal aid clients in impact litigation and to support the Senior Impact Litigation Attorney in managing the Impact Litigation Unit.

**Key Outputs**: * Conduct litigation specifically in matters which would establish a precedent * Conduct litigation specifically in matters which would represent groups or classes of persons * Assist in assessing proposals for funding on matters of the above nature * Assist to prepare reports for Legal Services Technical Impact Services Committee * Implement the Impact Services Policy of the Legal Aid Board * Assist to manage the budget of the Impact Litigation Unit * Assist in preparing reports for executive management * Establish and maintain contact with all stakeholders relevant to the Impact Litigation Unit * Assist in supervising Candidate Attorneys, employed in the Impact Litigation Unit * Assist in marketing work of unit through liaison with the legal fraternity, NGO's, government organisations and other relevant stakeholders.

**Competencies (skills, knowledge & attributes) required:** * A recognised tertiary legal qualification, e.g. LLB * Admission as a legal practitioner. (A higher degree in law, a recommendation) * Right of Appearance in the High Court * Five (5) years post admission, experienced as a legal practitioner and specialising in Civil Litigation in the High Court

**Salary: R452 256.00 – R487 203.00 All Inclusive package (LP7)**

# LEGAL RESEARCHER
### REF: 2011/LDE/03

The above position exists in **Legal Development Department** at the National Office of the Legal Aid SA in Braamfontein. The successful candidate will report to the **Senior Legal Researcher.** Applications are invited from persons interested to fill the above-mentioned position.

**Position Purpose:** To assist the Senior Legal Researcher in conducting legal and related research insofar as it affects **LEGAL AID SOUTH AFRICA** and its clients across disciplinary boundaries or barriers and report on findings.

**Key Outputs**: * To assist the Senior Legal Researcher in: * Developing and managing the Research Agenda /Programme of LEGAL AID SOUTH AFRICA * Providing legal research in the development of the legal content of the legal services delivery programme of LEGAL AID SOUTH AFRICA * Providing legal research in support of the legal services delivery programme and keeping LEGAL AID SOUTH AFRICA Practitioners informed of recent case law and legislative developments * Conducting Research with a view to lobbying /advocating the interests of LEGAL AID SOUTH AFRICA and /or LEGAL AID SOUTH AFRICA',s clients/potential clients * Defining, conceptualising, planning, initiating, managing and conducting Research Projects on behalf of LEGAL AID SOUTH AFRICA across disciplinary fields and document findings effectively * Managing stakeholder relationships with the legal fraternity, Magistracy, Judiciary, Research Institutions and other relevant stakeholders * Playing an active role in communicating human rights and rule of law to the LEGAL AID SOUTH AFRICA clients * Ensuring that the Legal Research programme contributes to the improvement of the quality and accessibility of legal services rendered to clients by the National Operations Department * Preparing, implementing and monitoring the LEGAL AID SOUTH AFRICA's Business Plan relating to the Legal Research Unit * Compiling, preparing and disseminating all reports and documents relating to the Legal Research Unit as required * Monitoring the ethical and professional standards of LEGAL AID SOUTH AFRICA's legal practitioners.

**Competencies (skills, knowledge & attributes) required:** * A recognised tertiary legal degree qualification. e.g., LLB * At least seven (7) years post qualification legal/legal research/academic experience. * Relevant experience in socio economic research would be an added advantage.

**Salary: R501 933.00 – R706 899.00 All Inclusive package (LP 6)**

A detailed curriculum vitae reflecting practical application of the position outputs and the required competencies as advertised must be submitted by close of business on **22 November 2011,** quoting the reference to: **Mr Thomas Sedi, Human Resources, Private Bag x76,Braamfontein, 2170, fax to (011) 877- 2222 or email recruit@legal-aid.co.za**

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Should you not hear from us within two (2) months of the closing date, please consider your application unsuccessful.

**LEGAL AID SA RESERVES THE RIGHT NOT TO APPOINT**

Your voice. For justice.

# LEGAL AID GUIDE 2012

## 12th EDITION

# Foreword by the Chairperson

*Judge Dunstan Mlambo*

Legal Aid South Africa (Legal Aid SA) is an autonomous statutory body established by the Legal Aid Act 22 of 1969 (as amended). The objective of Legal Aid SA is to render or make available legal representation at state expense where substantial injustice would otherwise result, as contemplated in the Constitution of the Republic of South Africa, 1996 and other legislation. The provision of legal aid is essential as it allows a litigant to access justice and equality of arms, which is essential for the credibility of the justice system. It encompasses access to a fair and equitable state of laws, access to popular education about laws and legal procedure, as well as access to formal courts and if preferred in any particular case, a dispute resolution forum based on restorative justice. This also promotes the rule of law for the most vulnerable in society which in turn affords and ensures access to justice which is a fundamental cornerstone of our democracy.

In terms of section 3A of the Legal Aid Act we are required to set out details of policies and procedures for providing and administering legal aid in a guide called the Legal Aid Guide. The 2012 Legal Aid Guide replaces the 2009 Legal Aid Guide, which was the first guide to be written in plain language. The Board of Legal Aid SA has reviewed the Legal Aid Guide to keep it relevant to the changing circumstances of our people. After due consideration of the amendments approved by the Board, both houses of Parliament have ratified the amended 2012 Legal Aid Guide. Such process could not have been achieved without the dedication of the Legal Aid SA Board, its executives and employees as well as the assistance of the Department of Justice & Constitutional Development and the oversight role by Parliamentary Members.

The guide serves to explain to the South African public how legal aid is granted and managed in a fair and transparent manner as it is not possible to provide legal aid in all instances due to budgetary and resource constraints. It is not possible for Legal Aid SA to fulfil all the legal representation needs of the poor in South Africa and it is against this background that the 2012 Legal Aid Guide should be adhered to by presiding officers, Legal Aid SA employees and our Judicare Practitioners

thereby ensuring that legal aid is provided to as many poor and indigent persons as possible in the most effective, efficient and equitable manner, thereby ensuring the protection of their rights.

The poor and vulnerable can only realise their socio-economic rights and have such rights protected and enforced if there is a sustainable legal aid scheme. This guide sets the foundation for such a sustainable scheme. This then ensures that the rule of law is respected which in turn aids good governance, which is essential for sustainable economic development.

We will strive to ensure that the Legal Aid Guide and our services remain relevant to the needs of all South Africans to ensure that our Constitution becomes a living document for all.

**Judge Dunstan Mlambo**

**Chairperson: Legal Aid South Africa**

**23 February 2012**

## Chapter 2:

# Legal Aid South Africa Vision and Outcomes

✓ In addition to its statutory aims, Legal Aid SA has identified its own vision, mission and values which is detailed in its Strategic Plan 2012–2017.

### 2.1 Vision

A South Africa in which the rights enshrined in the Constitution are realised and upheld and responsibilities are complied with to ensure equality, justice and quality of life for all.

### 2.2 Mission

To be a leader in the provision of accessible, sustainable, ethical, independent and quality legal services to the poor and vulnerable.

### 2.3 Values

I. Passion for Justice
II. Ubuntu
III. Integrity
IV. Accountability
V. Service Excellence
VI. People centred Development

### 2.4 Outcomes

**Outcome 1:** Quality justice for all, focusing on the poor and vulnerable.

**Outcome 2:** Respected, high performance, sustainable, accessible public entity impacting positively on society, the economy and the environment.

**Annexure W**

Your voice. For justice.

# LEGAL SERVICES TECHNICAL COMMITTEE TERMS OF REFERENCE

## 1. Purpose

The Legal Services Technical Committee ("LSTC") is constituted to assist the Chief Executive Officer (CEO) in implementing the Business Plan of the Legal Aid South Africa (Legal Aid SA).

## 2 Membership

2.1. "LSTC" shall consist of the following officials of the Legal Aid South Africa:

2.1.1 Chief Operating Officer (COO)

2.1.2 National Operations Executive (NOE)

2.1.3 Legal Development Executive (LDE)

2.1.4 Regional Operations Executives

2.1.5 Senior Impact Litigation Attorney

2.1.6 National Operation's Principal Attorney

2.1.7 Two Board members nominated by the Board of the Legal Aid SA

2.2. Other officials may be invited to participate in meetings as required;

2.3. "LSTC" shall be chaired by the NOE or a person nominated by the NOE from time to time.

**3. Legal Aid SA Board and Delegated Powers**

**3.1. Matters reserved for Board decision**

The following matters are reserved for decision by the Board, on the basis of any recommendation as may be made from time to time by LSTC or other Committees:

3.1.1. All matters reserved for decision by the Board in the Approval Framework;

3.1.2. All matters which cannot be delegated by the Accounting Authority as per the PFMA, the Legal Aid Act and any other applicable legislation.

**3.2. Matters delegated to the CEO and other Executives**

3.2.1. The CEO has all the responsibilities of the Accounting Officer as provided for in the Public Finance Management Act.

3.2.2. The CEO's authority in managing the Legal Aid SA and the Executive is unrestricted save by the Board, the Legal Aid Act, the Legal Aid Guide and the Public Finance Management Act.

3.2.3. The Board delegates authority to the CEO, the Management Exco, LSTC, other committees and Officials through its Approval Framework.

**4. Powers of Legal Services Technical Committee**

The LSTC shall have all the power delegated to it in terms of the Board's Approval
Framework.

**5. Responsibilities of LSTC**

The LSTC shall have the collective responsibility for:

5.1. managing the legal services delivery programme of the Legal Aid SA so as to build an efficient and effective organization that can deliver independent and quality legal services in keeping with the organisation's constitutional and legal mandate;

5.2. all decisions delegated to it, and requiring approval, in terms of the Approval Framework;

5.3. the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the Legal Aid SA.

5.4. the preparation of effective, workable policies, strategies and plans on legal services delivery for the Legal Aid SA including the Legal Aid Guide.

5.5. maintaining and expanding its national footprint of Justice Centres and Satellite Offices in order to improve its coverage of courts as well as to increase access to justice for clients of the Legal Aid SA.

5.6. developing the competencies of our human resources to render professional legal services, thereby ensuring the achievement of the Legal Aid SA's Vision and Mission.

5.7. ensuring access to the legal profession by including candidate attorneys as part of its staffing model.

5.8. engaging in appropriate research programmes to improve its legal services delivery programme.

5.9. maintaining a mixed model delivery system of Justice Centres, Judicare and Co-Operation Partners, including improving supply chain relationship management, as well as sourcing new co-operation partners.

5.10. approving impact litigation cases which could set precedents or have an impact on a large number of people

5.11. to position the Legal Aid SA as an important stakeholder within the legal justice system being an independent provider of quality legal services.

6. **Meetings of LSTC**

6.1. Meetings of the LSTC will be held monthly unless the committee decides otherwise.

6.2. The quorum for decisions of LSTC shall be a majority of members, who shall vote on the matter for decision in person.

6.3 The meeting agenda will be split into different sections with Board members only being required to attend Section A of the meeting that will deal with Impact Litigation matters and Co-operation Agreement items.

7. **Proceedings of LSTC**

7.1. The LSTC will have due regard for the principles of governance and codes of best practice.

7.2. The LSTC will be accountable to m/exco and will report to M/exco monthly on all decisions taken by it.

7.3 Any decision taken by LSTC that is of a policy nature and impacts on the Business Plan must be referred to m/exco for approval.

7.4 All appeals against decisions made by LSTC with regards impact litigation or cooperation matters must be referred to the CEO.

7.4. Except under exceptional circumstances, at least 48 hours' notice will be given of a meeting of LSTC . Such notice will, where possible, include the agenda and any supporting papers.

7.5. A person assigned to undertake this task by the NOE will record minutes of LSTC meetings.

# LEGAL AID BOARD

Justice for all

# CODE OF ETHICS AND CONDUCT

****CHANGES MADE TO THE POLICIES & PROCEDURES IN BOLD & ITALICS *****

| Initiated By: | Approved By: | Date Approved: | Version Number: |
|---|---|---|---|
| Human Resources Dept. | Board | 29 November 2008 | Version 3 |

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## 1. Introduction

### 1.1 Policy

The LEGAL AID BOARD and all its divisions (collectively referred to in this document as "LEGAL AID BOARD") are committed to a policy of fair dealing and integrity in the conduct of their business. This commitment, which is actively endorsed by the Board of Directors of the LEGAL AID BOARD, is based on a fundamental belief that business should be conducted honestly, fairly and legally. The LEGAL AID BOARD expects all employees to share its commitment to high moral, ethical and legal standards.

### 1.2 *Applicability and* Understanding the Code

This document outlines the LEGAL AID BOARD 's Code of Ethics, which applies equally to all employees, ***Board Members,*** and other representatives of LEGAL AID BOARD ***including Judicare Practitioners.*** The term employees has been used in the broadest sense and includes: all staff with whom a service contract exists, including management, non-management, directors, contractors, consultants and temporary staff. The code is designed to inform employees of policies in various areas. Please study the code carefully so that you understand the LEGAL AID BOARD 's expectations and your obligations.

Compliance with the code by all employees is mandatory. If employees become aware of, or suspect a contravention of the code, they must promptly and confidentially advise their line manager, the Human Resources ~~***Manager***~~ ***Executive*** or Internal Audit ***Executive***. The matter will be investigated and dealt with according to the LEGAL AID BOARD's Disciplinary Code of Conduct.

If employees are in doubt about the application of the code, they should discuss the matter with their line manager, the Human Resources Manager, or the Internal Audit Department.

## 2. Purpose and Scope

2.1 The purpose of this Code of Conduct ("this Code), together with all annexures attached hereto ("this Code") is to promote and enforce ethical business practices and standards within the LEGAL AID BOARD.

2.2 The Code applies to all employees of the LEGAL AID BOARD.

2.3 This Code represents the highest ethical standards applicable in the environment in which the Legal Aid Board operates and strongly emphasises integrity and objectivity on the part of all employees, all managers and Executives.

2.4 The LEGAL AID BOARD may from time to time at its sole discretion, amend or change this Code, and these amendments will be communicated to all employees.

2.5 The LEGAL AID BOARD will also record and maintain this Code on the computer network so that the provisions of this Code are easily accessible to all employees.

2.6 Employees will at all times try to further the interests of the LEGAL AID BOARD as broadly expressed in the LEGAL AID BOARD's mission statement.

## 3. LEGAL AID BOARD Mission Statement

To be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner.

## 4. Disclosure of Information

4.1 The interests of the LEGAL AID BOARD will at all times be protected in the divulging of information, other than published information, and more particularly as follows:

4.2 No information, legal or otherwise, regarding any clients of the LEGAL AID BOARD will be divulged to outsiders, without the prior written authority of the client.

4.3 No employee will divulge any information regarding the business or matters concerning the business of the LEGAL AID BOARD, without the prior written consent of the Chief Executive Officer.

4.4 Any publication, e.g. letters to the press, articles in journals or magazines, text books or an academic thesis, written by an employee which directly or indirectly relates to the business of the LEGAL AID BOARD, shall be

5.4.1 obtain prior approval for, and to report on, their personal investment activity and the investment activity of those persons with whom they have a close relationship; and

5.4.2 refrain from dealing in the shares of entities that LEGAL AID BOARD deals with during certain restricted periods

### 5.5 Remuneration

No employee may receive commissions or other remuneration related to the sale of any product or service of the LEGAL AID BOARD, except as specifically provided under an individual's terms of employment or as specifically agreed with management.

Employees may not receive any money or anything of value (other than LEGAL AID BOARD 's regular remuneration or other incentives), either directly or indirectly, for negotiating, procuring, recommending or aiding in any transaction made on behalf of the LEGAL AID BOARD, nor have any direct or indirect financial interest in such a transaction.

## 6. Disciplinary Procedures

6.1 A failure to comply with the provisions of this Code may be subject to disciplinary action by the LEGAL AID BOARD in terms of the LEGAL AID BOARD's disciplinary code and procedure.

6.2 Failures to comply with the provisions of this Code may constitute dismissible disciplinary offences, in which case a disciplinary hearing will be held in terms of the LEGAL AID BOARD's disciplinary code and procedure.

## 7. Compliance with governing laws and regulations and codes of conduct

7.1 The LEGAL AID BOARD subscribes to all governing laws and regulations relating to the legal profession.

7.2 Employees will at all times adhere to the applicable codes of conduct or rules for ethical behaviour applicable to the particular industry, or profession. Employees must comply with all applicable laws and regulations which relate to their activities for and on behalf of LEGAL AID BOARD. LEGAL AID BOARD will not condone any violation of the law or unethical business dealing by any employee, including any payment for, or other participation in an illegal act, such as bribery.

7.3 Employees must ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws and regulations governing the operations of LEGAL AID BOARD.

7.4 The provisions of, *inter alia*, the following Acts, as amended from time to time, of the Republic of South Africa, are also applicable:

7.4.1 the Income Tax Act, 1962 (Act No. 58 of 1962);

7.4.2 the Legal Aid Act, 1969 (Act No. 22 of 1969)

7.4.3 the Attorneys Act, 1979 (Act No. 53 of 1979)

7.4.4 the Basic Conditions of Employment Act, 1997 (Act No. 3 of 1983);

7.4.5 the Labour Relations Act, 1995 (Act No. 66 of 1995);

7.4.6 the Skills Development Act, 1998 (Act No. 97of 1998); and

7.4.7 the Employment Equity Act, 1998 (Act No. 55 of 1998); and

7.4.8 the Public Service Act, 1994; and

7.4.9 The Constitution of South Africa; and

7.4.10 the Health and Safety Act, 1993; and

7.4.11 the Criminal and Civil Procedures Act; and

7.4.12 the Compensation for Occupational Injuries and Diseases Act, 1993; and

7.4.13 the Unemployment Insurance Act, 1998; and

7.4.14 any other applicable Act that will be made available on the LAB intranet.

7.5 Employees will maintain knowledge of and comply with all applicable laws, rules and regulations of any government, government agency or any other regulatory organisation, as well as of this Code, governing his/her professional, financial or business activities.

7.6 Employees will not knowingly participate in, or assist in any acts in violation of any applicable law, rule or regulation of any government, government agency or any other regulatory organisation, governing his professional, financial or business activities or any act violating this Code.

7.7 An employee in any supervisory or managerial position will exercise reasonable supervision over those employees subject to his control, to prevent any violation by such persons of applicable statutes, regulations or this Code.

7.8 An employee will not commit a criminal act that upon conviction reflects adversely on his/her honesty, trustworthiness or fitness as a lawyer/professional or engage in any conduct during or after working hours involving dishonesty, fraud, deceit or misrepresentation.

7.9 An employee who has to appear in a court of law either on his/her own behalf or as a representative of the LEGAL AID BOARD will disclose such proposed appearance to the Chief Executive Officer or his/her nominee.

## 8. Employment Equity

LEGAL AID BOARD supports employment equity in the work place which seeks to identify, develop and reward each employee who demonstrates the qualities of individual initiative, enterprise, hard work and loyalty in their job.

All employees have the right to work in an environment which is free from any form of discrimination, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility. An employee should report any cases of actual or suspected discrimination to their line manager or the Human Resources ~~Manager~~ ***Executive***.

Employees with illness or disabilities may continue to work, provided that they are able to continue to perform satisfactorily the essential duties of their jobs and do not present a safety or health hazard to themselves or others.

## 9. Environmental Responsibility

### 9.1 Health and Safety

The LEGAL AID BOARD is committed to taking every reasonable precaution to ensure a safe work environment for all employees.

Employees who become aware of circumstances relating to LEGAL AID BOARD's operations or activities which pose a real or potential health or

safety risk should report the matter to their line manager and the Human Resources Manager.

### 9.2 Environmental Management

The LEGAL AID BOARD is committed to developing operating policies to address the environmental impact of its business activities by integrating pollution control, waste management and rehabilitation activities into operating procedures. Employees should give appropriate and timely attention to environmental issues.

## 10. Political Support

The LEGAL AID BOARD accepts the personal participation of its employees in the political process and respects their right to absolute privacy with regard to personal political activity. The LEGAL AID BOARD will not attempt to influence any such activity provided there is no disruption to workplace activities and it does not contribute to industrial unrest.

The LEGAL AID BOARD's funds, goods or services, however, may not be used as contributions to political parties or their candidates, and LEGAL AID BOARD facilities must not be made available to candidates or campaigns, unless specifically authorised

## 11. LEGAL AID BOARD'S Fund and Property

The LEGAL AID BOARD has developed a number of internal controls to safeguard its assets and imposes strict standards to prevent fraud and dishonesty. It is every employee's responsibility to implement, maintain and enhance the effectiveness of the control environment in which they operate. All employees who have access to the LEGAL AID BOARD's funds in any form must at all times follow prescribed procedures for recording, handling and protecting such funds. Operating areas may implement policies and procedures relating to the safeguarding of the LEGAL AID BOARD property, including computer software.

Employees must at all times ensure that the LEGAL AID BOARD's funds and property are used only for legitimate LEGAL AID BOARD business purposes. Where an employee requires LEGAL AID BOARD funds to be spent, it is the employee's responsibility to use good judgment on LEGAL AID BOARD's behalf and to ensure that appropriate value and authorisation is received for such expenditure.

If employees become aware of any evidence that LEGAL AID BOARD funds or property may have been used in a fraudulent or improper manner they should immediately and confidentially advise LEGAL AID BOARD as set out in the contravention of the code section of this document.

## 12. LEGAL AID BOARD's Records

Accurate and reliable records of many kinds are necessary to meet the LEGAL AID BOARD's legal and financial obligations and to manage the affairs of the LEGAL AID BOARD.

The LEGAL AID BOARD's books and records should reflect all business transactions in an accurate and timely manner. Undisclosed or unrecorded revenues, expenses, assets or liabilities are not permissible, and the employees responsible for accounting and record-keeping functions are expected to be diligent in enforcing proper practices.

## 13. Dealing with outside persons and organisations

### 13.1 Prompt Communications

LEGAL AID BOARD strives to achieve complete, accurate and timely communications with all parties with whom it conducts business, as well as government authorities and the public. In addition, prompt and effective internal communication is encouraged.

A prompt, courteous and accurate response should be made to all reasonable requests for information and other client communications. Any complaints should be dealt with in accordance with internal procedures established by various operating areas of the LEGAL AID BOARD and applicable laws.

### 13.2 Media Relations

In addition to everyday communications with outside persons and organisations, the LEGAL AID BOARD will, on occasion, be asked to express its views to the media on certain issues.

When communicating publicly on matters that involve the LEGAL AID BOARD business, employees must not presume to speak for the LEGAL AID BOARD on any matter, unless they are certain that the views they express are those of the LEGAL AID BOARD and it is the LEGAL AID BOARD's desire that such views be publicly disseminated. Employees approached by the media should immediately contact the department or

individual responsible for corporate communications. Communication with the media shall be done in compliance with the Legal Aid Board Approval Framework and the Legal Aid Board's Communications Protocol.

An employee, when dealing with anyone outside the LEGAL AID BOARD, including public officials, must take care not to compromise the integrity or damage the reputation of any outside individual, business, or government body, or that of LEGAL AID BOARD.

As a general rule, the LEGAL AID BOARD 's position on public policy or industry issues will be dealt with by senior management of LEGAL AID BOARD and existing policies in this regard must be adhered to. The text of the articles for publication, public speeches and addresses about LEGAL AID BOARD and its business should be reviewed in advance with the individual responsible for public relations.

Employees should separate their personal roles from the LEGAL AID BOARD's position when communicating on matters not involving LEGAL AID BOARD business. They should be especially careful to ensure that they are not identified with the LEGAL AID BOARD when pursuing personal or political activities, unless this identification has been specifically authorised in advance by the LEGAL AID BOARD.

## 14. Privacy and confidentiality

In the regular course of business, the LEGAL AID BOARD accumulates a considerable amount of information. The following principles are to be observed:

### 14.1 Obtaining and Safeguarding Information

Information necessary for LEGAL AID BOARD's business should be reliable, accurate and its confidentiality maintained. When personal information is needed, wherever possible, it should be obtained directly from the person concerned. Only reputable and reliable sources should be used to supplement this information.

Information should only be retained as long as it is needed or as required by law, and it is every employee's responsibility to ensure that such information is physically secured and protected.

All employees of the Legal Aid Board are required to provide a written undertaking of confidentiality.

### 14.2 Access to Information

Any information with respect to any product, plan or business transaction of the LEGAL AID BOARD, or personal information regarding employees, including their salaries, must be kept strictly confidential and must not be disclosed or used for improper purposes by any employee unless and until proper authorisation for such disclosure has been obtained. Once authorisation has been obtained, all information required by stakeholders either on request or due to statutory requirements must be accurately disclosed. In addition, operating areas may implement policies and procedures to prevent improper transmission within the LEGAL AID BOARD of material non-public information.

## 15. Obligations of employees

15.1 All employees must perform their duties diligently, effectively and efficiently, and in particular:

15.1.1 support and assist the LEGAL AID BOARD to fulfill its commercial and ethical obligations and objectives as set out in this Code;

15.1.2 avoid any waste of resources, including time;

15.1.3 be committed to improve productivity, achieve the maximum quality standards, reduce ineffectiveness, and avoid unreasonable disruption of activities at work;

15.1.4 commit to honouring their agreed terms and conditions of employment;

15.1.5 act honestly and in good faith at all times and report any harmful activity they observe in the workplace;

15.1.6 recognise fellow employees rights to freedom of association and not intimidate fellow employees;

15.1.7 pay due regard to environmental, public health and safety conditions in and around the workplace; and

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Legal Services
FAQs
Careers
Candidate Attorney Online Application
Judicare Practitioner website
Board Member login
Legal Aid South Africa Procurement

# Vacancies at Legal Aid South Africa

## Apply for position: ADVOCATE IMPACT LITIGATOR - LEGAL DEVELOPMENT DEPT (NATIONAL OFFICE IN BRAAMFONTEIN)

The above position exists in the Legal Development Department at the National Office of the Legal Aid SA in Braamfontein. Applications are invited from persons interested to fill the above-mentioned position. POSITION PURPOSE To Provide Expect legal advice and representation in Impact Matters KEY OUTPUTS • Provide Legal Consultation Service. • Provide Legal Advice to Legal Team • Represent Clients at appropriate forums • Scrutinise legal documentation • Drafted contracts / legal documents / pleadings • Conduct Legal Aid Administration • Developed Competence of Legal Staff • Controlled Quality of Legal Assistant • Maintained internal & external communications & relationships. COMPETENCIES (SKILLS, KNOWLEDGE AND ATTRIBUTES) REQUIRED o A recognised tertiary legal qualification, e.g. LLB o Admitted as an Advocate o Minimum of 12 years post qualification experience, specialising in Constitutional and public interest matters, of which a minimum of 10 years in High Court as well as a proven track record of legal research capabilities. Salary: R761, 541 – R1155, 435 All Inclusive package (LP10) A detailed curriculum vitae reflecting practical application of the position outputs and the required competencies as advertised must be submitted by close of business on 30 March 2012, quoting the reference to: Ms Debra Langa, Human Resources, Private Bag x76,Braamfontein, 2170, fax to (011) 877- 2222 or email recruit@legal-aid.co.za Should you not have heard from us within 2 months of closing date, please consider your application unsuccessful. LEGAL AID SA RESERVES THE RIGHT NOT TO APPOINT

**Personal information**

| | |
|---|---|
| **Name:** | * |
| **Nationality:** | * |
| **Race:** | * |
| **ID number:** | * |
| **Languages:** | * |
| **Tel:** | * |
| **Cell:** | * |
| **Email:** | * |
| **Physical Address:** | |
| | * |
| **Postal Address:** | |
| | * |

**Secondary Education**

| | |
|---|---|
| **School:** | |

# White male appointment 'broke policy'

August 8 2008 at 02:17pm

By High Court Writer

The Legal Aid Board (LAB) has been asked to investigate the appointment in July of a white man as the manager of its High Court Unit in Cape Town.

LAB advocates and attorneys lodged a grievance with the regional office about the appointment of city advocate, Mornay Calitz, as the High Court Unit manager, saying that the appointment was not in line with the board's affirmative action policy.

They have asked the board to re-advertise the position.

The LAB members also say that managerial and other senior positions at the board in the Western Cape were also not consistent with employment equity.

The members said they were concerned about current vacancies for a senior litigator and trainer and have requested that an acting manager be appointed in Cape Town in the interim.

After two unsuccessful attempts to resolve the issue, the grievance was referred to the board's national office. If it is still not resolved, the matter will be referred to the CCMA.

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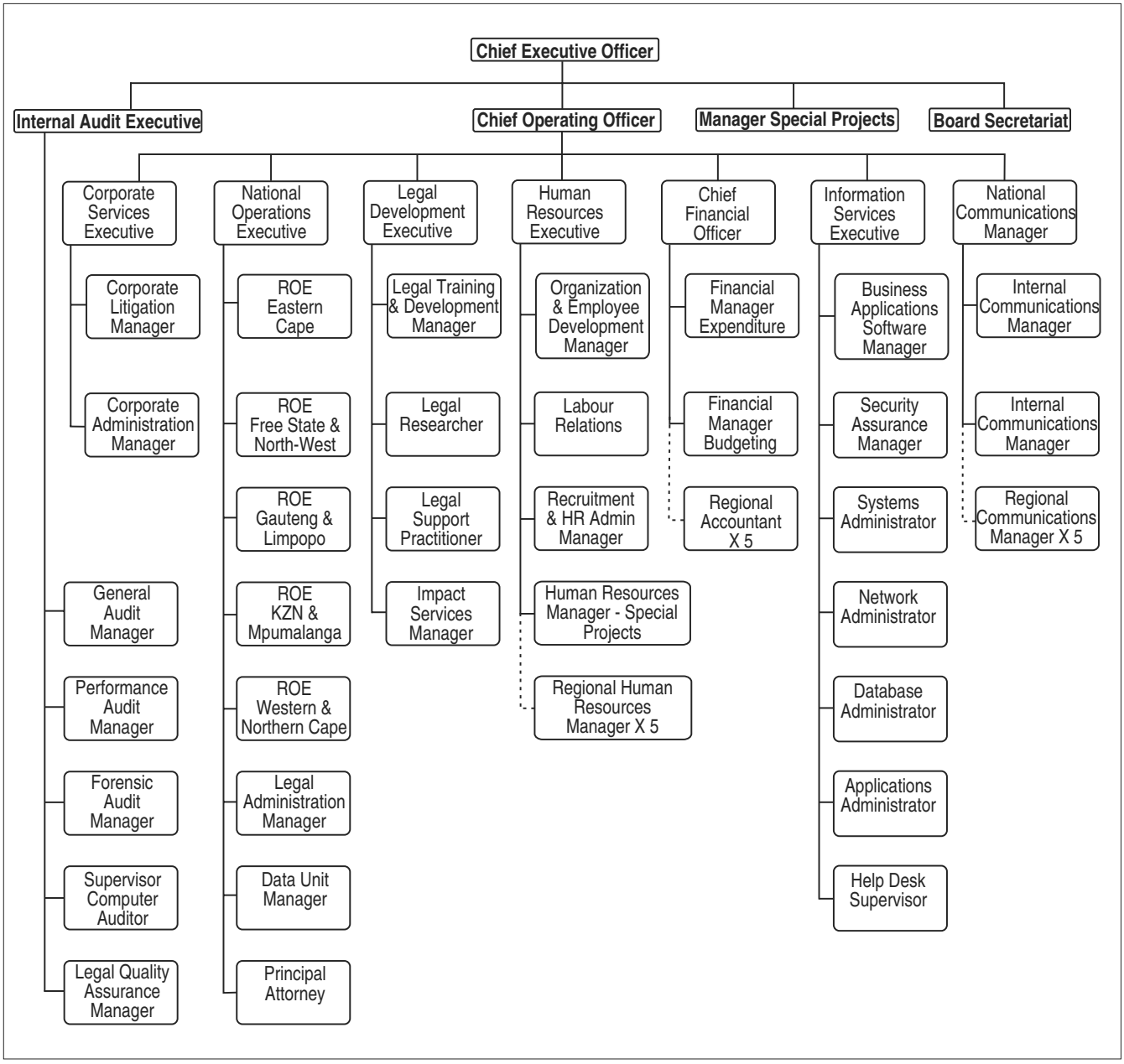
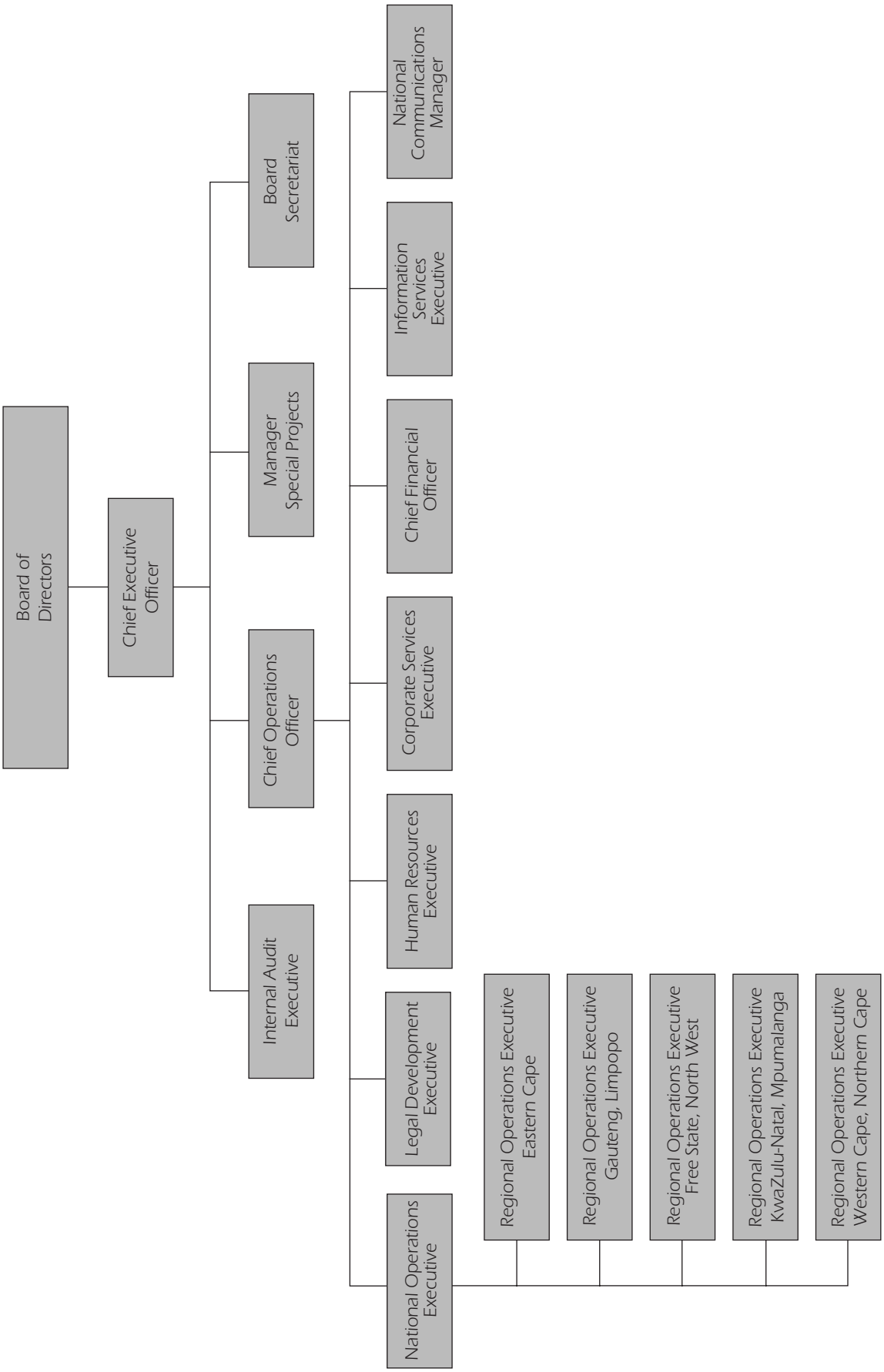
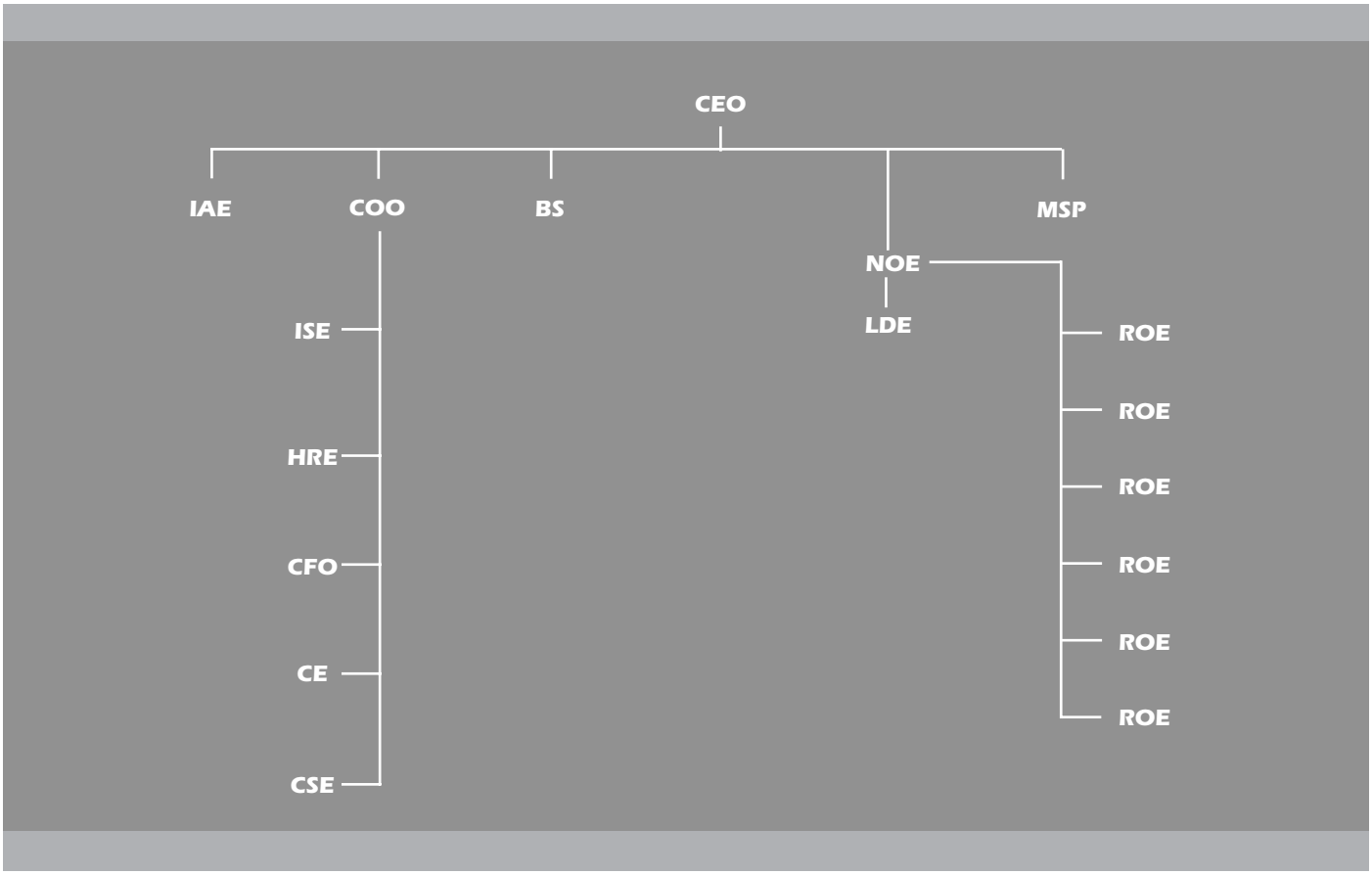
## 1.4.1 ORGANISATIONAL CHART: LAB NATIONAL STRUCTURE AND OFFICE



# Legal Aid Board Structure



## LEGAL AID SOUTH AFRICA ORGANISATIONAL STRUCTURE




Executive appointments and resignations during the reporting period:

Mr Mpho Phasha was appointed Communications Executive and Ms Martha Mbhele was appointed Regional Operations Executive for the Limpopo and Mpumalanga Region, both with effect from 01 April 2009. The Information Systems Executive, Mr Obert Masango resigned and left the service of Legal Aid South Africa with effect from 01 November 2009. Mr Peter Brits resigned as Corporate Services Executive with effect from 01 January 2010.

## EXECUTIVE TEAM

### MS VIDHU VEDALANKAR (CEO)

BSc, (University of Durban) – Westville, MTRP [Masters in Town and Regional Planning], (University of Natal)
Chief Executive Officer responsible for overall strategic direction of Legal Aid South Africa so as to realise the vision and fulfill the mission.

### MR JERRY MAKOKOANE (COO)

B Com Economics (UNISA), Diploma Data Processing and Systems Analysis (University of Zululand)
Chief Operations Officer responsible for operations within Legal Aid South Africa.

**MEDIA RELEASE**

**13 June 2007**

## LEGAL AID BOARD APPOINTS THE NEW CHIEF OPERATIONS OFFICER

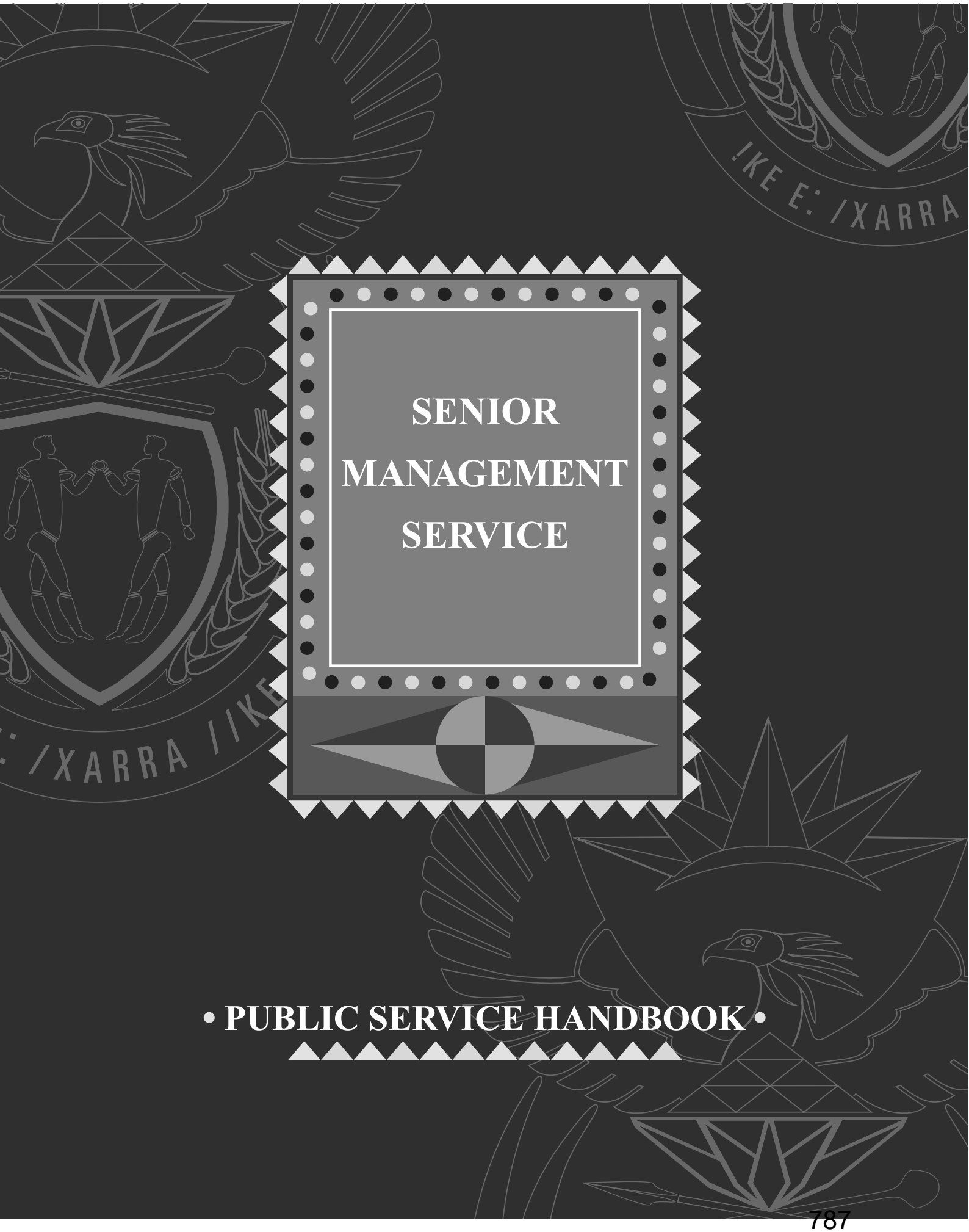
The Legal Aid Board's newly appointed Chief Operations Officer, Jerry Makokoane, indicated that during his tenure, he will place special emphasis on strengthening legal services delivery supporting the Board's national footprint programme which extends to rural areas and townships, developing the capacity for Legal Aid through the organisations' in house attorneys and sustaining an established financial discipline throughout the organisation. Makokoane, who started at the beginning of April 2007, comes from the national Department of Transport where he held a number of executive positions over the past eight years.

Makokoane said that the Legal Aid Board has a very important role in upholding the pillars of our Constitution and the Bill of Rights. "I am honoured to join the Legal Aid Board in this time of our democracy, forming part of a capable team led by Ms Vidhu Vedalankar, which is strengthening our justice system with the LAB as an independent public defender for the indigents'.

"The position of COO was created to address the increasing burden on the Chief Executive Officer. The role of the COO is to support the CEO to lead the organisation", said Judge Dunstan Mlambo, the Chairperson of the Legal Aid Board.

Legal Aid Board CEO, Vidhu Vedalankar in welcoming the new COO Mr Makokoane to her Executive team stated that she looked forward to him assuming responsibility for the operations of the Legal Aid Board. The COO will guide the team of executives in the effective and efficient execution of their responsibilities.

For more information contact: Mpho Phasha
National Communications Manager
Tel (011) 877-2000 / 082-603-4607
Email: MphoP@legal-aid.co.za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SENIOR
MANAGEMENT
SERVICE
• PUBLIC SERVICE HANDBOOK •

# CHAPTER 2

# RECRUITMENT AND SELECTION

## 1. INTRODUCTION

1.1 The purpose of this chapter is to encourage good practice in the recruitment and selection of members of the SMS, thereby assisting departments in appointing high quality candidates. This chapter is advisory in nature and must be read in conjunction with "A toolkit on recruitment and selection" issued by the Public Service Commission.

1.2 Compulsory elements of the recruitment and selection process are set out in the Act, the PSR and other laws of general application. Where necessary cross-references will be made to these statutory provisions.

1.3 A diagram reflecting the recruitment and selection cycle, is attached as Annexure A of this chapter.

## 2. MANDATORY AND REGULATORY FRAMEWORK

2.1 The legal framework for recruitment and selection is provided by the Constitution of the Republic of South Africa, 1996, the Labour Relations Act, 1995, the Employment Equity Act, 1998 and the Public Service Act, read in conjunction with the PSR.

2.2 In a nutshell the Constitution (Chapter 10) requires that good human resource practices be cultivated with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

2.3 The Act takes these principles one step further by requiring in section 11 that "all the persons who qualify for the appointment, transfer or promotion shall be considered". Furthermore the evaluation of persons shall be based on "training, skills, competence, knowledge and the need to redress the imbalances of the past…", i.e. objective criteria.

2.4 The PSR includes a number of key principles on which recruitment and selection must be based. Some of these have general application while others focus on the SMS in particular. These include the principles of open competition and fair selection processes.

2.5 The Employment Equity Act stipulates that all designated employers shall submit employment equity plans, which shall include targets for employment of people from the designated groups. The Labour Relations Act outlaws discrimination in the work place and sets out measures for the protection and promotion of people who were previously disadvantaged.

## 3. ESTABLISHING THE NEED FOR RECRUITMENT

3.1 It must be determined if a “real” need exists for the position to be filled before a process of recruitment is initiated. Consideration should first be given to the deployment or absorption of existing members. Should it be impossible to fill the vacancy through such a process, the recruitment process can be initiated.

3.2 The PSR states cleary that human resource planning should precede any recruitment action. This includes forecasting the department’s needs with respect to members. The job must be evaluated, unless it has not been evaluated before.

3.3 It is also necessary to ensure that the position is budgeted for.

## 4. JOB PROFILE

4.1 The job must be properly analysed before advertising it to ensure that recruitment attempts are non-discriminatory and that they take place in accordance with the inherent requirements of the job. In other words there must be a clear understanding of the nature of the post to be filled.

4.2 The job profile describes the job in terms of the task requirements of the position and the requirements of the person filling the position. Development of the job profile will be informed by the results of job evaluation and job analysis.

4.3 Typically the job profile will include:

(1) A description of the role in terms of the task requirements and the responsibilities
(2) The competencies the person will need to demonstrate in the successful performance of the job
(3) Educational requirements
(4) Level of expertise required
(5) Reporting relationships
(6) Salary level

4.4 The job analysis will determine which competencies are the most important for the particular job. It will also identify the proficiency level which the person will need to demonstrate in relation to the identified competencies.

## 5. RECRUITMENT AGENCIES

5.1 An important consideration is whether to utilise recruitment agencies in recruiting staff. If a recruitment agency is used, consider the extent to which such use will contribute to the validity and efficiency of the whole process. Depending on the extent to which such an agency is involved, the cost to be incurred might also be an important consideration.

5.2 Because of financial constraints, it is advisable to utilise recruitment agencies only for the most senior posts. Should a department decide to utilise an agency it should ensure that the principles discussed in this chapter are adhered to. Also bear in mind that the normal tender procedures apply when utilising the services of these agencies.

## 6. RECRUITMENT

### 6.1 Introduction

(1) Recruitment is an activity that generally takes place in response to an existing post becoming vacant or a new post being created.

Recruitment is -

(a) one of the most important ways in which the Public Service meets its human resource capacity requirements;
(b) the primary instrument for achieving employment equity by opening up the Public Service to all sections of society; and
(c) an important tool to be utilised by departments in order to ensure that the skills needed to meet their operational needs, are acquired.
(d) An important tool on which other Human Resource processes is based.

### 6.2 Formulating recruitment policy

(1) The recruitment policy should -

(a) set targets for achieving specified employment equity objectives, race, gender and disability balance, as well as obtain the skills necessary to meet the department's operational needs;
(b) spell out the objectives of the recruitment process;
(c) enable departments to attract those applicants who have the training, skills, competence and knowledge relevant to the requirements of the post; and
(d) include a clear specification of all the human resource needs of the department and be free from any bias and any form of discrimination.

### 6.3 Principles governing a recruitment programme

(1) The HoD, who is responsible for the administration and management of his/her department, is also responsible for the recruitment programmes of the department. There are, however, basic principles which have to be adhered to in developing and formulating such a programme. These are the following:

(a) Recruitment should be targeted for maximum accessibility. It should be aimed at reaching, as far as practically and financially possible, the broadest possible

pool of available human resources within a specific target group.

(b) The image of the Public Service in general and the department in particular must be promoted in order to foster applicants' interest in the Public Service as an employer.

(c) All recruitment actions should be undertaken with a view to seek from the relevant target group, the ideal applicant with the necessary training, skills, competence, potential and knowledge relevant to the requirements of the post concerned.

(d) Recruitment strategies must be underpinned by the principle of employment equity.

(e) Recruitment strategies must ensure the acquisition and retention of human resources with appropriate competencies.

## 6.4 Methods of recruitment

(1) A variety of methods can be utilised, depending on the need and situation of a particular department. The method of recruitment used, should be in line with the department's/administration's recruitment strategy and must not discriminate against prospective candidates. In accordance with the PSR any vacant post of senior manager (level 13 or higher) shall be advertised nation-wide. Advertising will be discussed in section 7. Although not conclusive, the following recruitment methods can also be utilised in conjunction with advertising:

(a) Posting

This method could be used to reach communities, which cannot normally be reached through the more conventional recruitment methods.
A department could liase at local level with both official and private entities for the display of posters at places that are accessible, known to and frequented by the community.
Posters should be compiled in the languages used in the relevant community.

(b) Radio advertising

This is another form of recruitment, which can typically be utilised to reach rural communities.
If used in conjunction with posting, it can serve the purpose of announcing the places where advertisements are posted.

(c) Study aid

For purposes of recruitment, study aid is normally granted in those fields where difficulty is experienced to recruit suitably qualified candidates.

Such candidates enter into a written agreement with the relevant department/administration for employment upon successfully concluding their studies.
Study aid schemes must be advertised as widely as possible in order to give all potential candidates a reasonable opportunity to submit their applications for the bursaries.
The screening system used for the selection of candidates must be fair and justifiable.

(d) Skills search (head-hunting)

This individually based method of recruitment can be used to seek and identify suitable candidates for positions where there is difficulty in recruiting suitably qualified candidates as well as candidates from historically disadvantaged groups.
This method should be used only in conjunction with the normal advertising of vacancies, i.e. an earmarked candidate should be requested to apply for the advertised position, whereafter the normal processes will apply.
In cases where no suitable candidate could be recommended after the final interview, further head-hunting can be undertaken. Such an earmarked candidate must be assessed by the same interview committee and against the same criteria used during the other interviews.

(e) Referrals

Employees/members can be asked to communicate information about vacancies to acquaintances.
This method should, as in the case of head-hunting, only be applied in conjunction with advertising.

(f) Recruitment agencies

Recruitment agencies may be used to act as intermediaries between the employer and prospective members.
An EA may utilise an appropriate agency to identify candidates for posts, as long as the advertising and selection procedures comply with public service selection principles.

# 7. ADVERTISING OF POSTS

## 7.1 General

(1) The advertising of vacant posts underpins human resource provisioning in the SMS. As already mentioned, departments must ensure that vacant posts are advertised to reach, as efficiently and effectively as possible, the entire pool of potential applicants, especially persons who are historically disadvantaged. When a department wants to advertise a vacancy, it is important to thoroughly consider the medium to be used. Any vacant post of a senior manager must be advertised nation-wide. The following options can also be utilised in collaboration with the nation-wide advertisement:

(a) Advertising within a defined area.
(b) Advertising of posts internally within the whole Public Service by means of the Public Service Vacancy Circular issued by the DPSA. The MPSA may issue directives regarding the manner in which vacancies must be advertised within the Public Service.
(c) Advertising of posts internally within the Public Service as a whole and/or in selected departments/provincial administrations and sectors by means of their own circulars, if they possess the means to undertake the advertising themselves.
(d) Advertising of posts by means of posting.

(2) Despite the above-mentioned, a department may fill a vacant post without advertising the post if the -

(a) department can fill the post from the ranks of supernumerary members of equal grading;
(b) department can absorb into the post an employee/member who was appointed under an affirmative action programme, if he or she meets the requirements of the post;
(c) department plans to fill the post as part of a programme of laterally rotating or transferring members to enhance organisational effectiveness and skills;
(d) post is filled in terms of section 3B of the Act (deployment of HoDs); and
(e) post is upgraded and the incumbent employee/member complies with the stipulations in regulation V C.6 of chapter 1 of the PSR.

## 7.2 Guidelines for the compilation of advertisements

(1) An advertisement should not favour or prejudice any prospective candidate who has the necessary training, skills, competence and/or knowledge. Advertisements should therefore be supportive of and in compliance with the *Constitution, the Labour*

*Relations Act,* the *Act* and the PSR. Qualifications should not be defined primarily or solely in terms of educational attainment, but should include skills, relevant experience and other criteria. Where educational requirements are considered to be essential, these must be set at the minimum level.

(2) An advertisement should be fully compatible with the valid post and job specifications and should specify the inherent competencies of the job, the job title and core functions. Do not put into an advertisement any requirements and/or skills that are not directly related to the applicant's ability to perform that specific job.

(3) The methods of advertising must attract the widest possible number of people within the target groups in the most cost-effective manner.

(4) Departments should consider using the relevant job title or domestic rank in advertisements in order to attract applicants with the ability to perform that specific job.

(5) Advertising should encourage competition between internal and external applicants to promote labour mobility and cross-fertilisation of energy and experience.

(6) Advertisements must in no way discriminate either directly (race, gender, etc) or indirectly (inordinate qualifications/experience requirements) against any potential candidate, or discourage him/her from presenting his/her candidature.

(7) The requirements for additional health and security checks must be clearly stated in the advertisements.

(8) Job requirements should not be formulated so as to unfairly exclude candidates who may possess the necessary ability or potential.

(9) Where the advertising of a post within and outside the Public Service is undertaken simultaneously, care must be taken that the contents of both advertisements in respect of the post description and skills stated therein, are the same. It must also be ensured that the date of placement and the closing date for applications are approximately the same for inside and outside advertisements.

(10) Closing dates of applications for advertisements outside the Public Service should preferably not be less than four weeks after the date of placement so as to allow applicants from remote areas a fair opportunity to apply.

(11) With regards to the language(s) to be used in advertisements, the essential principle is that the language(s) used must not have the effect of excluding potential candidates who would be capable of

performing the duties of the relevant post. The language and style of the advertisement must be clear and simple in order to enhance employment equity.

## 7.3 Contents of advertisement

(1) An advertisement for a post should specify the following:

(a) Job title.
(b) Place to be stationed.
(c) Core functions to be performed by the incumbent
(d) All-inclusive package payable.
(e) Contact person to whom enquiries can be addressed.
(f) Closing date.
(g) If the appointment is for a specific term, this should be clearly stated (e.g. in the case of a HoD).
(h) That the successful candidate will be required to enter into an employment contract and a performance agreement.
(i) That all shortlisted candidates will be subject to security vetting
(j) The candidate will have to disclose her/his financial interests

(2) An example of an advertisement appears at Annexure B of this chapter.

## 7.4 Methods of application

(1) The employer's aim is to get as close a match as possible between the specified competencies and the ideal candidate. In order to identify a suitable candidate, sufficient information is needed to be able to make a judgement. It is thus important to obtain the information by way of a well-constructed application form and *Curriculum Vitae*.

(2) A standard application form holds certain advantages. All applicants are required to provide the same information, making comparisons much easier. Applicants also have to respond to the employer's questions rather than setting their own agenda.

**Note should be taken that form Z83 (application form) has been redesigned (available on government website), while form Z27 (health questionnaire) is no longer in use. Departments are encouraged to replace their old stock of the Z83 forms as soon as possible.**

# 8. SELECTION

## 8.1 Introduction

(1) The selection process commences after the closing date of the advertisement and is concluded when a recommendation is made regarding the most suitable applicant.

(2) Selection should be undertaken in a justifiable, equitable and fair manner in compliance with the provisions of sections 10, 11 and 12 of the *Act* and the PSR.

## 8.2 Selection principles

(1) Merit

(a) Selection on merit is fundamental to ensure that the Public Service recruits and promotes people of the highest calibre. It ensures that the person selected is the best applicant best suited on the basis of:

Skills
Experience
Abilities
Personal attributes
Competencies
The need to achieve a representative and diverse workforce

(2) Job related selection criteria

(a) The criteria should relate only to the inherent requirements of the job, taking account of:

Competencies acquired through past experience
Training received
Learning potential

(b) Educational qualifications should not be the sole determinant of suitability.

(3) Fairness

(a) The process should not discriminate against any applicant on the grounds of:

Race
Colour
Belief
Sexual orientation
Disability
Age
Any other arbitrary criteria
Culture
Marital status
Gender
Pregnancy
Domestic circumstances
Religion

(4) Equity

(a) All candidates should be measured against the same objective criteria with due regard to the need for diversity and representativeness.
(b) Criteria should be in writing and be available to the selection committee prior to the selection process.
(c) All applicants for a particular post must be assessed by the same selection panel.
(d) All applicants should be assessed against the same selection criteria.

(5) Transparency

To be able to demonstrate that the process was fair and transparent, easily accessible written records of the following should be kept:
criteria used in selecting interviewees;
criteria used in selecting the most suitable candidate; and
evaluation of individual candidates

## 8.3 Screening

(1) After the closing date, the application documents should be screened to determine whether applicants comply with the basic criteria laid down in the advertisement. When in doubt, additional information should be requested. The thoroughness with which this phase is conducted determines the success of the selection activities to follow. During this phase candidates who do not comply with the minimum advertised requirements may be eliminated with noting of reasons, resulting in a preliminary selection pool.

(2) During this phase legends may be used to denote the advertised criteria such as:

A = Lack of specific knowledge, competencies or high level skills;
B = Lack of identified managerial skills;
C = Lack of proven high level communication skills; and
D = Non-compliance with regard to educational qualifications.

## 8.4 Preliminary selection pool and shortlisting

(1) The next step entails the shortlisting of candidates using the preliminary selection pool.

(2) The shortlist of candidates who are to be put through a further selection process, is then compiled. A rating scale may be used to identify the most suitable candidates based on the advertised criteria.

(3) Elimination of candidates must be done in a justifiable manner and be documented so that the reasons for elimination are available when the filling of the post is finally considered. This can be done by careful consideration of the information provided by the applicant, in order to ascertain whether the candidate meets the job requirements.

(4) Shortlisting must only be concluded on the basis of information provided in the application form and in the *curriculum vitae*. Any information from other sources should be discounted as it may unfairly benefit or disadvantage an applicant in relation to the others.

8.5 Selection Committee

(1) The role of a selection committee is to -

(a) establish the suitability of a candidate who complies with the job requirements;
(b) determine the relative suitability of the various candidates as objectively as possible;
(c) render justifiable and valid advice to the final decision maker; and
(d) formulate and record the reasons for specific recommendations.

(2) A selection committee should include persons who are well versed with the job content as well as persons who are competent in applying selection techniques. Members of selection committees should be known for their impartiality and objectivity.

(3) A selection committee may include a person of stature from outside the Public Service if this will add value to the selection process.

(4) The interviewing of candidates and deliberations of selection committees as well as their recommendations and documentation are confidential and should not be divulged other than in the execution of official duties or to authorised persons.

(5) An EA (or his/her delegate) shall appoint a selection committee to make recommendations on appointments. A selection committee shall consist of at least three members who are managers of a grading equal to or higher than the grading of the post to be filled or suitable persons from outside the Public Service. However -

(a) the chairperson of a selection committee should be a manager of a grading higher than the post to be filled; and
(b) in the event that the manager of the component within which the vacant post is located, is graded lower than the

vacant post, such a manager may be a member of the selection committee.

(6) Notwithstanding the above a selection committee constituted for the appointment of an HoD shall include, in the case of -

(a) a head of a national department, at least three Ministers; and
(b) a head of a provincial administration or provincial department, at least three members of the Executive Council of the relevant province.

(7) In accordance with a Cabinet decision a selection committee for the appointment of a Deputy Director-General in a national department must include a member of the Executive (Minister or Deputy Minister).

(8) A selection committee shall, where possible, include adequate representation of historically designated groups.

(9) Employees/managers of a grading which is lower than the grading of the post to be filled may provide secretarial or advisory services during the selection process, but shall not form part of the selection committee.

8.6 Interviewing

(1) The next stage in the selection process is the interview. During the interview, the selection committee is granted an opportunity to probe into the applicant's background, experience and interests. This is a step where face to face communication takes place, and where impressions are formed of the personality, values and attitudes of the applicant.

(2) Interviews should directly assess the competencies possessed by the applicant. The interview can take one of three forms:

(a) A structured interview: The selection committee utilises a predetermined questionnaire to obtain certain information. The questions can be asked in a specific order.

(b) A semi-structured interview: The most important guiding questions are determined in advance. This provides flexibility to add questions depending on the situation and to probe deeper depending on the answers provided.

(c) An unstructured interview: In this case, the members of the selection committee are free to generate questions during the course of the interview. This type of interview is normally not suitable for selection purposes because of the danger of asking irrelevant questions or being inconsistent in interviewing different candidates.

(3) Additional guidelines on interviews:

(a) The interview must be conducted at a suitable venue that will ensure privacy.
(b) Plan the interview and formulate its objectives and the questions to be asked.
(c) Thoroughly study the relevant job descriptions before the interview.
(d) Study the information that appears on the candidate's application form and CV.
(e) Ensure that the interview is objective and unbiased.
(f) Put the applicant at ease.
(g) Encourage the applicant to participate by asking pertinent questions and listening attentively.

## 8.7 Recommendation on the most suitable candidate

(1) After the last interview, the committee must reach consensus on the most suitable candidate for the post. The final decision must be supported by as wide a range of evidence as possible.

(2) It must be remembered that the selection committee must make a recommendation on the suitability of a candidate after considering the following:

(a) Information based on valid methods, criteria or instruments for selection that are free from any bias or discrimination.
(b) The training, skills, competence and knowledge necessary to meet the inherent requirements of the post.
(c) The need of the department for developing human resources.
(d) The representativeness of the component where the post is located.
(e) The department's affirmative action programme.

(3) Before making its final recommendation the selection committee should ensure that the information provided by the nominated candidate has been verified. This typically includes information pertaining to her/his educational qualifications, citizenship and experience. The final decision-maker should be advised accordingly.

(4) Depending on the nature of the position, it might also be necessary to subject the candidate to a security clearance.

(5) A selection committee shall record the reasons for its decision/recommendation with reference to the criteria mentioned above. In the case of an HoD and a Deputy Director-General at national level, the appointment of the successful candidate should only be approved after consultation with the MPSA (who is responsible for obtaining Cabinet's concurrence).

**Note: For more detailed guidance on the appointment of HoDs and members on the level of Deputy Director-General, please refer to Chapter 8 (Annexure B) on the employment of Heads of Departments.**

(6) Where an EA does not accept a recommendation of a selection committee, he/she has to record the reasons for such decision in writing.

8.8 **Employment contract and disclosure of financial interests**

(1) Please note that a member of the SMS can either be appointed on a permanent basis or on contract, depending on the nature of the post. In both cases the individual must enter into an employment contract. Such an employment contract must be based on one of the two contracts attached to the PSR.

(2) Members of the SMS are also required to disclose their financial interests. The procedures that have to be followed and the form to be utilised, are prescribed in the PSR.

**Note: Vetting – Before a SMS member is appointed, her/his track record and educational qualification should be checked. The checks are done to confirm the correctness of the claims of the candidate in her/his application form and CV. Also refer to chapter 8 on the employment of HoDs for the current procedure to be followed with regard to security vetting when identifying possible appointment to a vacant post of Deputy Director-General or equivalent and Director-General/ Head of Department.**

# CHAPTER 6

## ETHICS AND CONDUCT

### 1. INTRODUCTION

1.1 The purpose of this chapter is to contribute to the development of high ethical standards in the Senior Management Service. It should not be viewed as a set of rules. Rather it serves to illustrate the values and principles that should underpin a manager's behaviour in the work environment. As such, this Chapter is advisory in nature except insofar as reference is made to specific statutory provisions that are binding on public servants generally or members of the Senior Management Service specifically. Managers should familiarize themselves with the provisions as failure to do so might have legal implications for Government.

1.2 It is important to note that there are rules and guidelines that govern some aspects of senior managers' behaviour, but in some situations senior managers must apply general principles and values based on the nature of public service work. An awareness and understanding of how the application of the rules, guidelines, principles and values come together is essential if senior managers are to make ethical judgements and defensible decisions.

1.3 Protocols on conduct and ethics cannot cover every possible situation. If a senior manager is unsure of the appropriate action to take in a particular situation, she/he must discuss the matter with her/his colleagues and supervisors. She/he should also obtain as much information as possible on the topic.

1.4 Through this chapter, the DPSA hopes to contribute to a situation where senior managers take responsibility for their own behaviour and lead such behaviour and practices in their work environment. This chapter will hopefully also give meaning to the competency "Honesty and Integrity" that has been taken up in the SMS Competency Framework.

### 2. MANDATORY AND REGULATORY FRAMEWORK

2.1 All public service activities are governed to a greater or lesser degree by legislation. The following provisions specifically regulate the conduct of senior managers:

(1) Section 195(1)(a) of the Constitution, 1996, requires that a high standard of professional ethics must be promoted and maintained in public administration generally.

(2) Section 41(1)(d)(ii) of the *Public Service Act,* 1994, allows the Minister to make regulations on the management of conduct of officials.

(3) The Code of Conduct in Chapter 2 of the Regulations gives practical expression to the Constitution and the Public Service Act, 1994.

(4) The Financial Disclosure of members of the SMS in Chapter 3 of the Regulations prescribes that all managers must disclose their financial interests.

(5) Part VII/B of Chapter 4 of the Regulations further addresses the promotion of ethical conduct in that it allows the Minister for the Public Service and Administration to issue directives to promote ethical conduct amongst members of the SMS.

2.2 This Chapter will thus supplement the Code of Conduct (Chapter 2 of Regulations) and the Financial Disclosure Framework (Chapter 3 of Regulations) in that it highlights the key principles that should underpin the conduct of a senior public servant.

## 3. VALUES AND PRINCIPLES

3.1 The terms values, ethics and conduct are often used interchangeably and uncertain language is one of the barriers to establish a widely understood framework for ethics.

3.2 For purposes of uniformity, the following definitions will apply in this chapter:

(1) ethics – what ought to be the ideals of what is just, good and proper;

(2) values – the commonly held beliefs that guide judgement about what is good and proper, and from which ethical principles derive;

(3) code of conduct – the rules that translate ideals and values into everyday practice; and

(4) conduct – the actual behaviour and actions of senior managers

3.3 Certain values and principles such as integrity and impartiality have always been part of the ethical standard of the Public Service and will remain fundamental to it. The weight placed on values will change and new values will emerge. The notion of changing values does not suggest that there will not be a consistent set of values for public servants/senior managers. Certain values have become more important in recent years, the most obvious being accountability, responsiveness and improved service delivery (Batho Pele). Values reinforce each other and provide the base for a stronger ethical culture.

3.4 Rules also play a role in safe-guarding ethical standards as it will govern aspects of senior managers' behaviour. Hence rules have a key role in guiding one's conduct and where there are laws and rules, they must be observed.

3.5 Less formal sets of rules can augment matters covered by legislation and be an important pointer to correct behaviour in a wide range of circumstances. As mentioned above, the Office of the Public Service Commission (OPSC) has issued a manual to explain the contents of the Code of Conduct. This manual serves as a practical guide to the code in specific kinds of situations.

3.6 The rest of this chapter highlights the key values and principles that should guide members of the Senior Management Service in their interaction with their superiors, peers, subordinates, and members of the public.

## 4. RESPONSIVENESS AND IMPARTIALITY

4.1 The public service exists to provide advice to, and give effect to the policies of the government of the day. Elected governments, whatever their political make-up, are entitled to expect loyalty and dedication from senior managers.

4.2 Departments have to make their decisions and implement policies and programmes in an environment of rapid change. Therefore, the main responsibilities of senior managers are to:

(1) carry out decisions and implement programmes promptly, conscientiously and effectively, and
(2) provide advice which represents the facts accurately, is impartial and maintain a high standard of professional integrity.

4.3 Decisions must be made (and be seen to be made) impartially. By requiring reasonable and procedurally fair administrative action, section 33 of the Constitution obliges senior managers to

take decisions which are free from any actual or apparent bias or prejudice. The Promotion of Administrative Justice Act, 3 of 2000 also promotes responsiveness.

4.4 In both policy development and program implementation, senior managers need to exercise judgement as to which facts are most relevant, which policy options are most appropriate and which considerations in delegated decision-making are most important. Senior managers should ensure that executing authorities are aware of the values which underpin the policy-advice they have given.

4.5 Senior managers must have the ability to interpret the priorities and goals of government. An essential quality is to render free and frank advice, and to draw attention to any unforeseen implications or unintended consequences.

4.6 Senior managers are responsible for reporting criminal offences that are committed, or if they suspect that such offences could have been committed. They are further expected to be supportive of staff who make or intend to make protected disclosures.

## 5. ACCOUNTABILITY

5.1 Accountability is fundamental to good governance and is one of the essential elements of ethical administration. The perceptions of the public on the state of governance and administration are to a large extent determined by whether the government and administration are seen to account for its actions.

5.2 A description of the responsibilities of accounting officers and senior managers is to be found in Parts 2 and 3 of Chapter 5 of the *Public Finance Management Act*, 1999 (PFMA).

5.3 Important points relating to accountability are:

(1) adherence to the rule of law is of paramount importance.

(2) the Head of a Department is the accounting officer for a department and may in writing delegate any of the powers (section 44 of the PFMA) entrusted or delegated to her/him to a senior manager in that department or instruct any senior manager to perform any of the duties assigned to the accounting officer in terms of the PFMA.

(3) senior managers provide services on behalf of government to all manner of client groups and individuals in a great variety of circumstances and in so doing -

(a) they must adhere to the law and to the policies of government and not pursue their own interests;

(b) they are accountable for the quality of their dealings; and

(c) they are required to deal equitably, justly and responsively with all individuals/groups.

5.4 In terms of the PFMA National Treasury may make regulations or issue instructions to promote sound financial administration. In general the regulations and instructions are aimed at the effective, efficient, economical and transparent use of resources.

5.5 Section 81 of the PFMA clearly indicates that senior managers to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that senior manager willfully or negligently fails to exercise that power or perform that duty.

5.6 Senior managers are further required to be frank, open and cooperative with other bodies established under legislation such as the Public Service Commission, Portfolio Committees and the Auditor-General.

## 6. LEADERSHIP

6.1 It is of utmost importance that a culture of ethical behaviour is manifested in the senior management and that they exhibit the highest ethical standards in carrying out their duties.

6.2 Senior managers must provide leadership in the area of ethics and “walk the talk”. They should give firm support to staff who raise problems of an ethical nature and ensure an openness on what constitutes correct conduct.

6.3 To fulfil this duty senior managers must have a thorough understanding of the Code of Conduct and the ethical standards and values that should shape the ethical culture of their units.

6.4 Senior managers should treat all people with whom they interact fairly, with courtesy and sensitivity. They must take pride in any advice or service they provide.

6.5 It is also essential for the proper functioning of departments that senior managers retain the trust and confidence of their Executing Authority and their colleagues in the manner in which they handle their official responsibilities and accountability.

6.6 Senior managers must lead by example and encourage their staff members to exercise similar qualities of personal and professional behaviour. They should also avoid unnecessary delays in making decisions or taking action.

## 7. COMMUNICATION

7.1 Effective communication is vital in planning, organising and carrying out the activities of government.

7.2 How the senior manager communicates is often as important as what she/he communicates. While words are important, gestures and body signals, often unconsciously exhibited, serve to either reinforce or contradict messages you want to send.

7.3 It is important to note that public servants may only communicate with the media if they are permitted to do so in terms of departmental policy (see Regulation H.4 of Chapter 2 of the Public Service Regulations, 2001). An employee may also not release information to the public if she/he does not have the necessary authority – see Regulation E of Part 11 of Chapter 1 of the Regulations.

7.4 Under certain circumstances it is not appropriate for senior managers to make public comment. Senior managers, in their private capacity as members of the community, have the right to make public comment and enter into public debate issues. When making comment a senior manager must not take improper advantage of official information and may not act in a way that will constitute a breach of C.5.4 of Chapter 2 of the Regulations (disclose official information for personal gain), or act in a way that gives rise to a conflict of interest. Equally a manager may not in her or his official capacity publicly criticise Government policy.

7.5 Senior managers are expected, where possible, to try to resolve complaints internally, without resorting to public comment or criticism.

7.6 Senior managers who make public comments in their private capacity, must make it clear that they act in their personal capacity.

## 8. MANAGEMENT OF MISCONDUCT

8.1 An ethical culture cannot develop in an environment where there are no effective mechanisms for the detection, investigation and institution of misconduct.

8.2 Prompt and decisive disciplinary action should be seen as a means of reinforcing high standards. There must be a will to use such mechanisms and such actions can demonstrate to staff and the community that government is committed to eliminating unethical conduct – see chapter 7 of the SMS Handbook. Action in this regard can demonstrate to staff and the public that departments/government are committed to eliminating unethical conduct.

8.3 Senior managers must report any unethical behaviour or wrongdoing by any other official (Refer to C4.10 of Chapter 3 of the Regulations). This may include behaviour that they believe violates any law, rule or regulation, constitutes mismanagement, or is a danger to public health or safety. Such reporting is called “whistle blowing”. The Protected Disclosure Act, 2000 provides procedures in terms of which any senior manager may disclose information relating to an alleged offence or a malpractice in the workplace by her/his employer, colleagues or other officials. The Act further provides for the protection of a person, who made a disclosure in accordance with the procedures provided for by the Act, against any reprisals as a result of such disclosure.

8.4 Senior managers may also complain to the Public Protector Provincial Public Protector, the Public Service Commission or the Auditor General where they believe that a department has acted wrongly in its decision-making or actions.

## 9. CONFIDENTIALITY OF OFFICIAL INFORMATION

9.1 A fundamental rule on the use of official information is that senior managers must not disclose any official information to any persons unless they are acting:

(1) in the course of their official duty;
(2) with the express authority of the their department; or
(3) for other lawful purposes

9.2 This restriction on the use of official information derives from C4.12 and C5.4 of Chapter 2 of the Regulations.

9.3 Senior managers should not misuse information gained in their official capacity in seeking to take advantage for personal reasons. They should further take care to maintain the integrity and security of official documents/information for which they are responsible. Every attempt should be made to avoid leaks.

9.4 Official information or documents acquired in the course of employment should only be disclosed when required to do so by law, in court, or when proper authority has been given. In such cases a senior manager's disclosure should be limited to factual information and should not express any personal opinion.

9.5 It is also important for Senior Managers to act and advise with honesty and integrity in all aspects of official duties. If a senior manager believes an aspect of policy or administration may have unforeseen consequences or otherwise requires review, it should be brought to the attention of the Head of Department or to the Executing Authority.

## 10. FINANCIAL AND OTHER PRIVATE INTERESTS (DISCLOSURE)

10.1 Chapter 3 of the Regulations prescribes that all senior managers must disclose their financial interests on an annual basis. Financial interests may take the form of shares, directorships or property which have the potential of conflict with official duties. Part D of the Regulations further describes the kinds of interests to be disclosed.

10.2 C4.5 and C4.6 of Chapter 2 of the Regulations place the onus on senior managers to alert their departments to any actual or potential conflict of interest, financial or otherwise. Hence they must disclose situations where their private interests may conflict with their official duties and take steps to avoid such conflict.

10.3 Senior managers should disclose all their registrable interests according to the prescribed form and procedures. Should circumstances change drastically after an initial disclosure has been made, and new or additional facts become material, the senior manager should disclose the further information.

10.4 Senior managers should not allow themselves to be improperly influenced by personal relationships. They should recuse themselves from any decision when there might be a conflict between their personal relationships/interests and the public interest.

10.5 A senior manager should perform the duties of her/his office impartially, uninfluenced by fear or favour.

10.6 A senior manager should not use information obtained in the course of official duties to gain direct or indirect advantage for her/himself or for any other person. (refer to 9.3 *supra*)

10.7 Senior managers must not solicit or accept any bribe or other improper inducement. Only in exceptional circumstances should gifts be accepted (where the gift is offered as part of a formal exchange of gifts).

10.8 Senior managers may accept unsolicited gifts or moderate acts of hospitality. Accepting such gifts or benefits is essentially a matter of judgement for the individual concerned. In such instance they must be satisfied that their position will not in any way be compromised by acceptance.

10.9 In terms of the Financial Disclosure Regulations (Regulation E(f) of Chapter 3) senior managers are required to disclose details with regard to gifts and hospitably with a value in excess of R350. They must further disclose any material advantage that they received from any source e.g. any discount prices or rates that are not available to the general public.

## 11. POLITICAL PARTICIPATION

11.1 Senior managers should be aware of the potential for conflict of interest and must not take part in any political activity when on duty or on official premises. They must further not attend in their official capacity outside conferences or functions convened by or under the aegis of a party political organisation.

11.2 The use of a public office or public resources for political activities is not acceptable and is contrary to Regulation C3.7 of Chapter 2 where it is clearly stated that senior managers must refrain from party political activities in the workplace.

11.3 Senior managers should not in their official capacity, participate in the political process. Similarly, they should not place their peers/subordinates in a position of conflict by inviting their participation in political events.

11.4 Senior managers should also be aware of the following statutory measures that regulate the participation of public servants in party political activities.

11.5 A public servant may not become a member of the National Assembly or any provincial legislative in terms of section 47 and 106 of the Constitution. This implies that should she/he be elected to one of these bodies, she/he is deemed to have resigned from the

public service with effect from the date on which her/his election is officially announced.

11.6 The same disqualification does not apply to municipal councils. Section 21(1) of the Municipal Structures Act, 1998, determines that every citizen who may vote for a municipal council is entitled to stand as a candidate in a municipal election and if elected, to be a councillor, except certain categories of persons mentioned in section 158(1)(a), (c), (d) or (e) of the Constitution. (Note: The aforementioned subsections do not apply to Public Service Act employees).

11.7 But despite the above "concession", senior managers must note that an employee must place the whole of his/her time at the disposal of the State (section 30 of the Public Service Act, 1994). Employees may not perform remunerative work (for instance in the capacity as municipal councillors) outside their employment in the Public Service without the permission of the relevant Executing Authority or his/her delegate.

11.8 Section 36 of the Public Service Act, 1994 provides that a public servant may be a member and serve on the management of a lawful political party or may attend a public political meeting, but may not preside or speak at such a meeting. A public servant may also not draw up or publish any writing or deliver a public speech to promote or prejudice the interests of any political party.

11.9 The Code of Conduct (Chapter 2 of the Public Service Regulations, 2001), requires of employees to avoid conflicts of interest and not to abuse their positions in the Public Service to promote or prejudice any political party or interest group. (See parts B2, C2.7, C3.7, C4.5, C4.6, C5.4 and C5.5).

11.10 In summary:

(1) Section 158(1)(b) of the Constitution disqualifies public servants from becoming members of municipal councils if such disqualification is prescribed by national legislation. National legislation prescribes no specific prohibition in this regard, hence it follows that senior managers are not *per se* excluded from serving on municipal councils.

(2) It should nevertheless be borne in mind that councillors will be remunerated and serve in either full-time or part-time capacities on municipal councils. Departments have therefore, in terms of the measures and principles enshrined in section 30 of the Public Service Act, 1994 and the Code of Conduct, a duty to carefully consider the position of senior

managers in this regard. Should a conflict arise between the duties and responsibilities of a senior manager and her/his activities as a councillor, departments are entitled to review their position and require her/him to either withdraw as a councillor or to resign from service.

(3) Section 36 of the Public Service Act, 1994 contains certain provisions that limit the activities of senior managers and they must therefore ensure that they adhere to these.

11.11 Should a senior manager be elected to a municipal council, she/he should be required to inform designated persons of such election, the nature of their duties and responsibilities as a councillor, whether she/he will be required to perform such duties during official hours and details of her/his remuneration.

11.12 Should a senior manager be elected to a position as a full-time councillor, she/he will have to resign from the Public Service. As regards those who wish to take up part-time positions, they must ensure that they undertake their duties as a councillor as far as possible outside official hours of work. Specific approval has to be granted that the senior manager can retain her/his remuneration, as required by section 30 of the Public Service Act, 1994.

11.13 If a senior manager has to perform duties as a councillor during her/his official hours of work, they should apply for/take vacation leave on a basis of 1 day for every 8 hours of absence.

11.14 The position of members of the SANDF, SAPS, Correctional Services, state educational institutions, SASS and NIA must be managed in accordance with the applicable legislation that regulate their conditions of service.

## 12. OUTSIDE EMPLOYMENT

12.1 As mentioned above, section 30 of the Public Service Act, 1994, stipulates that public servants must place the whole of their time at the disposal of the State. They must not perform remunerative work outside their employment in the Public Service without permission of the relevant executing authority or her/his delegate. The Code of Conduct also stipulates that a public servant does not, without approval, undertake remunerative work outside her/his official duties or use office equipment for such work.

12.2 In considering requests to engage in outside employment, departments should establish whether the outside employment

would interfere with the proper performance of senior managers' duties and whether it would give rise to a conflict of interest.

12.3 Any outside/secondary work or unpaid activity should not place the senior manager in a conflict with her/his official duties, and must not adversely affect the efficiency or performance of the senior manager. Such work must be performed entirely after normal working hours.

12.4 Chapter 4 of the Regulations (disclosure framework) further requires of senior managers to disclose remunerated work outside the public service. By completing the prescribed form, the senior manager is not exempted from the statutory requirements of obtaining approval for performing remunerative work outside the public service.

12.5 Equipment like computers and fax machines at work is provided for official use only. Permission has to be obtained before such equipment can be used for private purposes.

12.6 Senior managers should not seek to engage in outside employment if that employment would place them in a conflict with their official duties or is likely to affect their efficiency in the performance of their official duties.

12.7 When applying for permission to engage in outside employment, senior managers should provide the following information:

(1) details of the proposed outside employment including the proposed hours of employment.

(2) whether the employment will adversely affect her/his efficiency and effectiveness in the performance of official duties; and

(3) whether it is likely to cause (or be perceived to cause) any conflicts or difficulties in relation to departmental requirements.

## 13. LABOUR RELATIONS

13.1 In performing their duties, senior managers must ensure equity in employment processes and manage staff fairly. They must further ensure that the workplace is free from discrimination and harassment. They should avoid acting in a way that is or could be seen to be unreasonable or could be construed as unlawful discrimination.

13.2 Senior managers must be attuned to detect unhappiness amongst staff. They should deal with complaints and grievances in a prompt and fair manner. They should ensure that the time frames prescribed by the grievance procedure are adhered to.

13.3 It is the responsibility of senior managers to ensure that the conduct of staff does not undermine service delivery of a department. Misconduct must therefore be dealt with and not be overlooked or swept under the carpet.

13.4 In dealing with the misconduct of staff, the senior manager must act promptly, fairly and consistently and according to the prevailing disciplinary procedure.

13.5 Senior managers must defend their department in labour disputes of staff members. This entails that the necessary assistance, be it legal or otherwise, be obtained to present a proper case on behalf of the department in arbitration or court. It also means that the senior manager should attempt to resolve the dispute before it reaches the arbitration or court stage. It is advisable that a supervisor do not represent a fellow employee unless she/he is a trade union representative.

13.6 Senior managers must strictly apply the principle of “no work, no pay” in instances where staff members participate in industrial or protest action. Failure to do so can seriously compromise the employer in negotiations.

13.7 Senior managers involved in negotiations with trade unions must ensure that they have the necessary mandates before entering into an agreement. In instances where the matter has financial implications, it must also be ensured that the necessary funds are available.

13.8 Although it is expected of senior managers involved in dealing with trade unions to promote and defend the views of the employer, they should do so in a manner that does not disrupt or undermine the relationship with the trade unions.

## 14. INTELLECTUAL PROPERTY

14.1 Government or a department retains the copyright of work produced by a senior manager during her/his employment. Refer to sections 5 and 21 of the Copyright Act 98 of 1978.

## 15. ACCESS TO INFORMATION AND ADMINISTRATIVE JUSTICE

15.1 One of the general aims of both the Promotion of Access to Information Act 2 of 2000 and the Promotion of Administrative Justice Act 3 of 2000 is to promote efficient, accountable, open and transparent administration.

15.2 The Promotion of Access to Information Act seeks to give effect to the constitutional right of access to any information held by the State. Requests for access to public records are dealt with by the respective information officers of the relevant public bodies that hold the records. In the public service the head of department is the information officer, and he or she may appoint deputy information officers. However, it should be noted that, for purposes of the Act, the Director-General of a provincial administration is regarded as the information officer of ALL departments in the province.

15.3 The information officer must—

(1) ensure that the request for a record complies with the prescribed procedures;
(2) inform third parties to whom the information relates;
(3) determine whether any of the exemptions for non-disclosure applies; and
(4) thereupon refuse or grant the request.

15.4 A copy of the Act and the Regulations made under that Act can be found at www.gov.za/gazette/acts/2000/a2-00.pdf and www.doj.gov.za/reg/r223.pdf.

15.5 The **Promotion of Administrative Justice Act** aims to give effect to the constitutional rights of just administrative action. The Act—

(1) sets out the rules and guidelines that administrators must follow when making decisions;
(2) requires administrators to give reasons for their decisions;
(3) requires administrators to inform people about their rights to review or appeal and to request reasons; and
(4) gives members of the public the right to challenge decisions of administrators in court.

15.6 A copy of the Act can be found at www.gov.za/gazette/acts/2000/a3-00.pdf.

## 16. CONCLUSION

16.1 This chapter is advisory in nature and may be altered from time to time to take account of changing circumstances. If a senior manager is in doubt about the appropriate course of action to be adopted in any circumstances, the matter should be discussed with her/his supervisors in the department, the Head of Department, the Executing Authority, and/or the Office of the Public Service Commission.

More like this
- NPA 2005 Overview & Strategy 2020; National Prosecuting Service; Directorate of Special Operations; Asset Forfeiture Unit: brief
- National Prosecuting Authority: Activity Reports 2007/8
- Advocate Vusi Pikoli's submission
- Legal Aid Board and Public Protector Report 2007/08
- Department of Justice Budget Briefing

# National Prosecuting Authority, Legal Aid Board Annual Report briefings

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Security & Constitutional Development

**Date of Meeting:** 30 May 2007
**Minutes:**
SELECT COMMITTEE ON SAFETY AND SECURITY

**SAFETY AND SECURITY SELECT COMMITTEE**
**30 May 2007**
**NATIONAL PROSECUTING AUTHORITY, LEGAL AID BOARD ANNUAL REPORT BRIEFINGS**

**Chairperson:** Kgoshi L Mokoena (ANC, Limpopo)

**Document handed out:**
**National Prosecuting Authority Presentation CEO Report**
**Seizing Criminal Assets to Fight Crime**
**Directorate of Special Operations presentation**
**Priority Crimes Litigation Unit Report Period 2006 - 2007**
**National Prosecuting Services (NPS) Report presentation**
**Legal Aid Board Annual Report 2005/06 and 2006/07 presentation**
**Legal Aid Board Strategic Overview 2006 – 2009**

**SUMMARY**

The National Prosecuting Authority (NPA) and its individual units, whose work was detailed in the briefing, reported an overall good performance for the year. It had received an unqualified audit report. Details were given on the type of work being undertaken and the case loads and other statistics. Challenges included the high vacancy rate, which had an adverse effect on the caseload. The discrepancy in magistrates' and prosecutors' salaries was exacerbating the problem since prosecutors would apply for magisterial posts. The allegations of leaks of information to the media had been investigated, and measures had been taken. Although the NPA accepted criticism where it was due, and in fact actively engaged with stakeholders to try to improve matters, there was a problem where some high-ranking officials seemed determined to undermine the integrity of the NPA. Members raised numerous questions, some of which would have to be answered in writing. Particular issues included the problems with forensic investigations, training, cases dragging on for over two years, the apparent drop in the intelligence capacity in the NPA, the shortage of prosecutors, children under 18 being detained while awaiting trial, the salary gap, the case management system, lack of skills in new university graduates, the need for NPA to undertake specified training, relationships between prosecutors and investigating officers, backlogs, alleged publicity in arrests by the Scorpions and lack of response from that unit. Further questions were asked on smuggling syndicates across the continent, vetting of employees, forfeiture of the proceeds of crime, and the spending on high profile cases.

The Legal Aid Board noted that its mandate required it to examine the whole justice sector, growth of police investigating numbers, expansion of courts, and poverty levels, all of which affected its work. The key challenge was to deliver quality service and promote the constitutional right to justice, as well as being accessible. It employed more than 1400 lawyers, and had to find ways to capacitate them, determine their competencies and compensate them. It also must develop its own institutional capacity. It had had unqualified reports for five years and had well-operational systems for processing payments, salaries, producing information and giving timely and effective services. Although about half its staff component were candidate attorneys there were excellent supervisory ratios, the lawyers were trained and experienced and there was coverage in all courts. The Board also experienced problems in having their lawyers move to magisterial positions. A challenge was that the Legal Aid Guide had not been updated since 2002. The total budget of R5674 million was inadequate. Questions by Members included the numbers of referrals, numbers of finalised cases, appointment of senior litigators, how the Board was coping with the Equity Act, ways in which the case backlogs could be eased, remuneration issues, overworked staff,
and cases being withdrawn only at late stages.

**MINUTES**
***Introductory remarks***
The Chairperson informed the Committee that the National Prosecuting Authority were informed of the invitation to brief the Committee only on Monday, and in view of the shortage of time would be happy to allow written answers to any questions or the scheduling of another meeting.

**National Prosecuting Authority (NPA) Briefing**
[redacted]

**Legal Aid Board Annual Reports 2005/06 and 2006/07 Presented by Judge Dunstan Mlambo**
Judge Dunstan Mlambo, Chairperson, Legal Aid Board, stated that the mandate of the Legal Aid Board (LAB) was derived from the Constitution and the Legal Aid Act. When the LAB crafted its three-year 2006 to 2009 strategic plan it had conducted a broad overview of the situation in South Africa. It looked at the context of the entire Justice sector, internal factors within the LAB which included the growth in police number and activities, expansion in the Department of Justice in terms of more courts, requiring more LAB employees and the poverty levels in South Africa. Poverty affected LAB as it catered for all those who could not afford legal representation. It also looked at prison overcrowding and the shrinking amount of legal non-government organisations. Pre-1994 the legal NGO's played an integral role, but post 1994 their funding was cut and their cases were referred to the LAB.

There were three main elements to the strategy plan. The key challenge was to deliver quality service and promote the constitutional right to justice, as well as being accessible. There were 58 justice centres, both

urban and rural, and satellite stations were also set up, and a high court unit. It was believed that there should be timely representation and people should not have to languish in jail for a long period before being provided with legal representation

The LAB was to develop and maintain its human capital to support the delivery of quality legal services. It employed in excess of 1400 lawyers . It had to find ways to capacitate them, thus had to determine what competencies were required from the lawyers, and, more importantly, t how appropriately the lawyers were being compensated.

The LAB had to develop and maintain the institutional capacity to support the delivery of quality legal service. The LAB had had unqualified audit reports for the last five years. It had managed to maintain efficient processes, payment of salaries, produce accurate reliable service, and produce relevant and timeous information. Furthermore, since LAB believed that provision of service was a key element, the Board had introduced various interventions to improve the quality of the service. These included supervisory capacity, where senior lawyers with no case loads would supervise the junior lawyers with their case loads, enhanced training and development programmes which supported the legal staff, supervisory staff and the management components of justice centres. LAB ensured that there were improved resources in terms of internet libraries for access by legal staff. It had a supervisory capacity in the justice centre to monitor these services. Under the regional executive's guidance LAB also conducted quarterly quality audit reviews, which confirmed the good service being rendered by its lawyers, along with positive feedback to this effect from the presiding officers, who commented in particular that the LAB lawyers were always on time and had respect for the court.

Judge Mlambo reported that the candidate attorneys made up 45% of the total component of the LAB staff. The ratio of candidate attorneys to senior supervisors was 4 to1. The LAB was aware of the constant criticism that they employed inexperienced lawyers to do the work, but this was not justified as the admission requirement for LAB was eight years experience. There was also a perception that the LAB lawyers colluded with prosecutors and magistrates. LAB undertook the bulk of criminal defence in the country, and could assure the Committee that there was no collusion, and that although their lawyers, like those in private practice, could advise the client they had to accept final instructions from the client.

The Chairperson indicated that many of the challenges faced were sectorial, in terms of the migration of lawyers to magistrate's offices. There were also major problems in not having proper alignment. The Legal Aid Guide was to be brought to Parliament to be ratified each year and updated, as stipulated by the Constitution. Unfortunately the last time it was ratified was 2002. The LAB could not function properly without an updated Legal Aid Guide.

Ms Vidhu Vedalankar, Chief Executive Officer, Legal Aid Board took over the presentation, noting that LAB had now achieved coverage of all legal courts, but that the ratio of practitioners to courts was only at one per court. In 2006 there was a total of 358 000 assisted matters, which was a 5% increase. The major focus was on the client and ensuring that the Board could respond to client needs. It had managed to increase recruitment levels.

The LAB was accused of undue delays, and therefore had moved to increasing the number of practitioners for first appearances. In terms of government grants the institution sat outside of government, and had to be seen as a separate entity. The total budget was R574million, which was one third of what the NPA received, and was not adequate.

***Discussion***

Mr Le Roux commented that in the Eastern Cape, particularly the Port Elizabeth and Uitenhage areas, the LAB was doing a fantastic job

Dr van Heerden asked if the LAB appointed senior litigators.

Mr Worth asked how many people were referred to other areas when approaching the LAB.

Mr Worth queried whether it was correct that the finalised cases were the same for both the 2005 and 2006 years. .

Mr Moseki noted that during his oversight duties he was approached with a complaint on service delivery to the effect that LAB lawyers were inexperienced, and asked how LAB responded to such a statement.

Mr Moseki wanted the LAB to specify what the challenges were.

Mr Moseki wanted to know how the organisation dealt with the challenges represented by the Equity Act.

Mr Mzizi wanted clarification on the issue of lawyers being seen as apprentice lawyers, and he stated that LAB had to find a balance to ease the case backlog.

Mr Mzizi wanted the issue of remuneration resolved quickly, and enquired as to how quickly they could address the issue.

Mr Mzizi stated that there was not often sufficient time for plea-bargaining.

Mr Shiceka also insisted that LAB needed to push the issue of salaries. There was a perception being created that the best lawyers would leave government and that the private sector was better.

Mr Shiceka was of the opinion the LAB must be involved in a campaign of changing the perception of their profession and said that it was necessary to obtain a view independent from the government.

Mr Shiceka said that officials were overworked and this caused a lapse in concentration, which then caused delays and administrative errors.

Mr Shiceka encouraged a spirit of visiting of prisons and cells, so that staff could get used to the environment and familiarising themselves with the conditions. Several people were not aware of the conditions in jails.

Judge Mlambo noted the conditions at prisons such as Chatsworth and Westville and noted that he would check them again.

Kgoshi Mokoena commented that the over-bookings and withdrawals were becoming out of hand, and had to be seen to.

Mr Worth assumed that the LAB focused on criminal and not civil cases. He wanted to know long the withdrawn cases took to go through the system before they were removed and if they could not be negotiated on at a much earlier stage.

Judge Mlambo commented that LAB would often not cause the withdrawal of cases, but this was an important and pertinent point that needed to be highlighted in the presentation.

Judge Mlambo said that unfortunately the perceptions of prisoners were often skewed against the LAB, as if an accused was convicted he maintained that the lawyer had acted badly. Therefore it was necessary to be somewhat cautious in accepting perceptions at face value. However, he valued and respected the view of the Committee.

Judge Mlambo said that the location of courts in rural areas were an unfortunate consequence of apartheid. LAB had to be close to the courts and they had had to relocate justice centres.

Mr Mzizi concluded that the LAB was achieving well and needed to continue doing its best.

The meeting was adjourned

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Excerpt (section 7):

**Report of the Portfolio Committee on Justice and Constitutional Development on Budget Vote 23: Justice and Constitutional Development, dated 4 May 2010**

The Portfolio Committee on Justice and Constitutional Development, having considered the Budget Vote 23: Justice and Constitutional Development, recommends that the budget be approved. The Democratic Alliance abstained.

The Committee reports further as follows:

…

7. **Committee's Response**

…

7.3. More generally on the matter of strategic plans, the Committee was especially impressed by LASA's strategic plan and with its effective business methodology. The Committee has asked that LASA makes its expertise available to others in the Justice Vote to build strategic planning capacity.

7.4. The Department has acknowledged that a high vacancy rate remains a challenge. This is an ongoing problem, of which the Committee is well aware. It has several times previously expressed its concern about the negative consequences that vacancies can have for the delivery of justice services. Also, the Committee believes that although the use of savings from vacant posts to fund other projects (such as the implementation of the OSD) may be understandable, the practice is potentially risky as it may discourage the filling of posts. While the Committee welcomes the Department's aim to reduce the number of vacant posts from the present 14% to 5% in the next two years, it believes that this is a formidable task. It seems to the Committee that the Department is struggling to fill its vacancies. The Department reported in its 2008/09 Annual Report that its vacancy rate was at 13.6%. The Department's aim to reduce this to 5% in the next two years indicates that there has been no progress in the meantime. The Committee recommends that all critical posts be filled as soon as possible, especially given the fact that the Department has the budget for the posts. It intends to continue to monitor progress closely.

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**What our research finds:**

## Introduction

Legal Aid South Africa is an independent statutory body established in 1969 with a mandate to provide indigent South Africans with legal representation at state expense, thereby ensuring that every citizen has access to justice.

## Critical Business Facts

- Total Number of Staff Employed (full-time): 2 454
- Annual Turnover in Rands for 2010 (RSA only): N/A
- Industry Sector: Public Sector
- Geographic Areas of Operation: South Africa
- BBBEE Scorecard Rating (official): Exempt, participates in preferential procurement programme

## Scoring from the Research

| | |
|---|---|
| Primary Benefits | ★ ★ ★ ★ ★ |
| Secondary Benefits and Working Conditions | ★ ★ ★ ★ ★ |
| Training and Development | ★ ★ ★ ★ ★ |
| Career Development | ★ ★ ★ ★ ★ |
| Company Culture | ★ ★ ★ ½ ★ |
| Diversity | ★ ★ ★ ★ ★ |

## Reasons for Excellence

- The largest law firm on the African continent
- Company offers a broad scope of career choices
- Employees are at the coalface of the legal profession
- A fast-paced, highly-competitive and professional organisation

**'We pride ourselves as incubators of visionary leadership as we believe this is critical to our sustainability as a leading provider of professional legal services and defender of human rights.'**

**Vidhu Vedalankar, CEO**

experience. The company also makes use of an internal referrals system, while its expansive network provides a rich source of potential candidates.

Because Legal Aid SA is such a large organisation, it provides employees with virtually unrivalled choice in terms of career opportunities. Operating on both the criminal and civil sides of the law, it provides a platform for employees to advance into legal practice in its high-court units and through positions such as senior litigator. Alternatively, employees may follow the legal manager stream, allowing them to advance into positions such as high-court unit management, justice centre executive or the senior executive level of regional and national operations executive. In addition, there are a variety of opportunities for specialist and technical staff in areas such as legal training and development, legal research and even legal call-centre management.

Training and development is a primary human resources priority because it bridges the skills gap (where it exists) and enhances the skill profile of both the individual employee and the organisation as a whole. The organisation's training and development programmes are aligned to its strategic competencies and capabilities, thereby contributing to the delivery of quality legal services.

'Ultimately, however, employee growth and development in the system lies in their own hands,' explains Human Resources Executive Amanda Clark. 'The career-development programme is structured to empower graduates to take responsibility for their own development.'

Recognising that the organisation is only as strong as its employees, and specifically those in leadership positions, Legal Aid SA places strong emphasis on succession planning. As such, it runs a leadership-development programme through a leading university, as well as providing on-the-job coaching and mentoring.

## Unrivalled experience

Clark describes remuneration packages at Legal Aid SA as 'competitive', which means that they are in line with the public sector's dispensation for legal occupations within the justice cluster, which ensures pay parity among legal professionals in the public sector.

Remuneration for employees in auxiliary roles, the likes of human resources, finance, IT, communications and corporate services, lies in the upper quartile of the public entity market.

Benefits for permanent employees include a medical-aid contribution, employer-sponsored pension fund membership and a housing allowance. Leave benefits include 22 days of annual leave, which increases to 26 days after 10 years' service, and four months' paid maternity leave. Employees participating in the bursary scheme are granted 10 days' exam »

Starts at 15 minutes 26 seconds

Thank you Mr Chairman. First of all perhaps I should just say thank you for allowing us to present today and to appear in front of this committee, we appreciate it very much. My focus will be on the relationship between the audit committee, financial issues relating to the Legal Aid South Africa, specifically our role as the audit committee in compliance with the-the- King 3 and other related statutes like the Public Finance Management Act, as well as the Treasury regulations that we are expected to comply with. Financial management at the Legal Aid South Africa is taken very seriously. That can be summed up by just saying that we guard our internal control, risk management and governance jealously in as far as the operation of the organisation. This is underpinned by a very strong corporate governance ethos that permeates through the organisation, as well as, if you look at the evidence that you see in our financials, year on year for the past nine terms that we have gone through, we have had an unqualified report. We have had about five years of no matters of emphasis in our reporting. We basically believe that when it comes to risk management, corporate governance and control in the organisation we try and do our best. As an organisation also we understand the relationship or the different relationships between the different sub committees of the Board, and we believe that we complement each other in as far as making sure that the Legal Aid South Africa operates as a complete and strong and forceful organisation. In as far as the corporate governance structures that have been established, we believe that they are all working towards the same goal, that is servicing the community of South Africa. And as a Board we also understand the responsibilities that we-we- carry in as far as governance, risk management and control. The audit committee reports to the Board on a quarterly basis without fail. And in that reporting we make sure that we bring to the Board a complete set of financials, that have been checked and checked and checked again. And we make sure that in as far as risk management and control, that is something that is embedded within the activities of the organisation on a day to day basis that leads up to the quarterly reporting. The-the-main thing that we always stress is consistency in our operation. Lastly Mr Chairman I'd like to just say that the strong culture of compliance which is-which underpins the excellence and the governance that permeates throughout the organisation, which rests on a solid foundation of ethics within the organisation, has really helped the Legal Aid South Africa, and has made the Legal Aid South Africa that- um- that we see today to stand up strong not only within South Africa but also internationally. And with that Mr Chairman thank you for the opportunity.

Ends 19 minutes 40 seconds.

Legal Aid South Africa

Your voice. For justice.

5 March 2012

**FOR IMMEDIATE RELEASE**

**Child support & maintenance issues to be tackled head on at Legal Aid SA hosted Colloquium**

Child support and maintenance are at present some of the most contentious areas of family law, with regulation governing them always a subject of debate.

Critics cite the apparent lack of priority given to the legal enforcement of women's and children's rights under the Maintenance Law Act.

As part of on-going efforts to help children that are most disadvantaged by the systemic challenges of the current child support and maintenance regime, the issue of child maintenance will be put under the spotlight during a Child Support and Maintenance Colloquium to be hosted by Legal Aid South Africa's Impact Litigation Unit.

To be held at the organisation's Braamfontein head office in Johannesburg on Tuesday 6 March, 2012, the meeting will bring together key stakeholders and decision makers in the justice system, to discuss the challenges and evident loopholes in child support legislation.

Participants include representatives from NGO's, academics, government actors, claimants, etc. who will discuss and contribute to an open forum and strategy workshop, on issues relating to child support and maintenance.

"Through the colloquium, the Impact Litigation Unit hopes to initiate a multipronged strategy to confront and address challenges in child support and maintenance, highlighting the dynamic methods that the legal community and civil society can employ in protecting the rights of women and children," says Legal development Executive, Patrick Hundermark.

He adds: “Our vision as an organisation is for the implementation of a child-centred justice strategy that ensures the best interests of the child in all legal matters.”

To drive home the gravity of the issue, the day will commence with personal accounts by two Johannesburg mothers who have been unable to access child support and maintenance, and the detrimental impact this has had on their livelihoods, particularly the lives of their children.

The first-hand accounts by the women will highlight to the stakeholders in the justice system, the grim reality of the situation, as experienced by women and children.

-Ends-

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**Notes to editors:**

- Participants in the colloquium include representatives from the Department of Justice, the Market Street Maintenance Court, Tshwaranang Legal Advocacy Centre, the South African Law Reform Commission and the Centre for Child Law, the Women’s Legal Centre and the Legal Resources Centre.
- This is the second Colloquium focusing on children, to be hosted by Legal Aid SA. The first was held in 2009 and focused on Child Law.
- 
- With children being a key area of focus for Legal Aid South Africa, the organisation has established dedicated children’s units in some of its justice centres. These units focus exclusively on providing representation to children in both criminal and civil matters. Based in these units are specialist child law practitioners who have had advanced training and research background in child law. In very complex matters, our Senior Litigators provide support and advice to practitioners that need it.

Baboo Brijlal (2) "G38"

**From:** Bertus Appel
**Sent:** 02 October 2009 04:30 PM
**To:** Baboo Brijlal
**Cc:** Vela Mdaka
**Subject:** FW: Application for Advertised Post: Senior Litigator, Pietermaritzburg Justice Centre, Ref: 2009/06/25/kzn
**Attachments:** Brink CV.pdf

**Importance:** High

Hi Baboo,

I think we may have found our Senior Litigator. I attach hereto a CV and covering e-mail as received from Anthony Brink. I have known Anthony for many years as he was most helpful in High Court Civil matters when I was just appointed in Pietermaritzburg and I can vouch for his ability, willingness to help us and his passion for justice for all.

Bertus

**From:** Anthony Brink [mailto:arbrink@iafrica.com]
**Sent:** Friday, October 02, 2009 3:30 PM
Bertus Appel
**Subject:** Application for Advertised Post: Senior Litigator, Pietermaritzburg Justice Centre, Ref: 2009/06/25/kzn
**Importance:** High

Dear Bertus

I forward herewith my CV in support of my application for the post of Senior Litigator, Legal Aid Board, Pietermaritzburg Justice Centre, Ref 2009/06/25/kzn.

Yours sincerely

Anthony Brink

Age: 50

S/L

W/M

"G12"

**Solly Sekgota**

| | |
|---|---|
| **From:** | Baboo Brijlal |
| **Sent:** | Monday, August 23, 2010 2:35 PM |
| **To:** | lit2@uyslaw.co.za |
| **Subject:** | Senior Litigator Interviews |
| **Attachments:** | 20100823140422412.tif |

Dear Mr Van Wyk

Please find attached letter iro the Senior Litigator position interview.

Thanks

Baboo Brijlal

Legal Aid South Africa

PO Box 2489
Pinetown
3600
7th Floor, Charter House
75 Crompton Street
Pinetown 3601
Tel: 031 717-8450
Fax: 031 702-1960
www.legal-aid.co.za

CONFIDENTIAL

23 August 2010

Mr J Van Wyk
53 Hlobane Street
VRYHEID
3100

Dear Mr Van Wyk

APPLICATION FOR EMPLOYMENT: SENIOR LITIGATOR [DURBAN & PMBURG] (REF. 2009/06/25)

Thank you for your application and for attending the interview for the above advertised position.

Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post. We apologise for the delay in informing candidates of the outcome of the interview process.

I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa.

Yours sincerely

*LEGAL AID SOUTH AFRICA*

VELA MDAKA
REGIONAL OPERATIONS EXECUTIVE
KZN REGION

"G13"

**Solly Sekgota**

| | |
|---|---|
| **From:** | Baboo Brijlal |
| **Sent:** | Monday, August 23, 2010 2:31 PM |
| **To:** | Sidwell Mngadi |
| **Cc:** | Kishore Mehta |
| **Subject:** | Senior Litigator Interviews |
| **Attachments:** | 20100823140359698.tif |

Dear Mr Mngadi

Please find attached letter iro the Senior Litigator position interview.

Thanks

Baboo

Legal Aid South Africa

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CONFIDENTIAL

23 August 2010

Mr Bongani Mngadi
c/o Durban JC
DURBAN
4001

Dear Mr Mngadi

APPLICATION FOR EMPLOYMENT: SENIOR LITIGATOR [DURBAN & PMBURG] (REF. 2009/06/25)

Thank you for your application and for attending the interview for the above advertised position.

Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post. We apologise for the delay in informing candidates of the outcome of the interview process.

I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa.

Yours sincerely

*LEGAL AID SOUTH AFRICA*

VELA MDAKA
REGIONAL OPERATIONS EXECUTIVE
KZN REGION

# [HEALTHGAP] ITPC RE: The Lancet Article

**Mark Harrington** markhar at gmail.com
*Thu Dec 4 22:24:52 EST 2008*


- Previous message: [HEALTHGAP] Fwd: URGENT: SUPPORT NEEDED FOR SW DETAINED & TESTED in MACEDONIA
- Next message: [HEALTHGAP] Press Release for TODAY's Demo in Burlington, VT
- **Messages sorted by:** [ date ] [ thread ] [ subject ] [ author ]


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Hi Mark, Gregg, David, and everyone else!

I think there is an unarguable (or at least very difficult to argue) median point here which is that the more HIV testing and treatment is scaled up in a responsible and respectful and programmatically manageable way, the greater the possible related and derivative benefits to HIV prevention are likely to occur due to reduction of population viral load and ultimately that this is likely to have benefits in reducing incidence and prevalence. The Granich et al. paper certainly does not say that we should abandon efforts to scale up other effective prevention tools (I will not list them here), but it does suggest that continued scale-up of ART will have spillover benefits on the size and spread of the epidemic. It is noteworthy that some countries such as Brazil and Taiwan have made claims that their universal access policies have already blunted HIV transmission, but so far as I am aware there is not a strong evidence base for this.

Another issue I think is worth mentioning here is that this approach - significantly designed with input from Stop TB Department experts such as Chris Dye and Brian Williams - has its analogies with the DOTS for TB approach. In its heydey in the 1990s DOTS was presented as a panacea (panacaea?) for TB control, such that achievement of 70% case detection of sputum-smear positive TB cases and 85% cure of those cases thus detected (neglecting the 40-60% of TB cases which are smear negative or extrapulmonary, and allowing a delinquent cure rate when 95% cure rates are possible with HRZE/first line TB treatment in drug sensitive disease) would allegedly result in 6-7% declines in incidence after a period of some years of implementation. Data from countries which have scaled up the DOTS approach are mixed about whether in fact achievement of these targets does in fact reduce TB incidence; it seems to be going down in some places such as Peru and not as much in others such as Vietnam. Importantly, HIV prevalence, which has an overwhelming impact on TB incidence, varies between such countries. Other complaints about the DOTS approach included its allegedly coercive nature, the omission of other strategies such as treatment of latent TB infection (LTBI) with 6-9 months of isoniazid (INH) or shorter-course two drug combinations (various), and also the fact that it over-simplified a complex and still out of control TB epidemic which was and is the largest killer of people from a single pathogen despite being both preventable and curable. HIV in contrast is not curable and unlike DOTS would require a life-long treatment course rather than one of 6 to 8 or (in the past or with M/XDR-TB) a 12-24 month one. Many countries are challenged providing the diagnostics and follow-up for six months of curative TB therapy in drug-sensitive disease; these countries are facing a much greater challenge in initiating lifelong HIV treatment for now approximately 10% of the 33 million HIV infected citizens of the world. The challenge posed by the Granich, et al., model, is to assess whether it is possible to scale up HIV testing and treatment another ten-fold (remember that the world has just succeeded in scaling up HIV testing and treatment by 30-fold, from 100,000 on treatment in resource limited settings in 2002 to three million at the end of 2007), in a short enough period of time to result in sustained and effective (which means switching at failure however defined) treatment for those currently infected in time to actually reduce transmission significantly enough over that short course of time as to actually turn around the dynamics of the epidemic, up to now unstoppable.

So in my opinion the steps ahead include trying to think through how to do this in ways which would incorporate the concerns about coercion, cost, resistance, sustainability, changing personal behavior (for taking drugs consistently over a lifetime requires behavior changes even greater than adopting a condom from time to time), etc., etc., and thinking of different ways both to test and to adapt the model to the real world, rather than to engage in a polarizing (polarising) debate about public health vs human rights which in my view diminishes both and eschews the possibility of any kind of synergy in exchange for a retrograde antagonism.

cheers,

- Mark

On Thu, Dec 4, 2008 at 9:15 PM, Mark Heywood <heywoodm at alp.org.za> wrote:

> *Dear Gregg, David and everybody else!*
>
>
>
> *I have re-read the article carefully to try to see if I was too hasty in my*
> *judgment of it. There is much in both of your responses that I agree with:*
>
>
>
> *"The human rights concerns raised in the response are not specific to the*
> *recent Lancet article, they are the same concerns we have always raised. We*
> *raise them not only out of concern for human rights, but out of concern for*
> *the public health. Without such protections and without the services that*

> *people need to make HIV testing relevant, testing is useless if not harmful.*
> *Without human rights protections, HIV interventions don't work." - David*
>
> *"If the evidence is showing that ARV treatment is an effective prevention*
> *tool, then we have a responsibility to figure out how we are going to*
> *incorporate this into our thinking." - David*
>
> *"More of the same is not what we need."- Gregg*
>
> *"It's time for human rights activists to chart out new territory." - Gregg*
>
> *"We're locked into approaches that simply don't work*
> *because they don't really address what puts people at risk of HIV,*
> *puts them in the path of epidemics. Handing out condoms and needles,*
> *providing "counseling" or telling them to "love life" without*
> *addressing these structural factors is like handing someone a paddle*
> *on a sinking ship." - Gregg*
>
>
>
> *But these are points of general relevance, rather than specific defenses of*
> *the article. In fact you seem to have very few real defenses of the content*
> *of the article itself.*
>
> *Unfortunately, I think there is a real risk of falling into a trap here.*
> *There is a desperation that we all feel about the fact that as Gregg says*
> *"HIV prevention is in crisis". We are all worried about the sustainability*
> *and the ability to continue to scale up treatment in a very different*
> *political era ahead. We have long established that treatment and prevention*
> *'are two sides of the same coin' against those who want to argue that*
> *treatment scale up has been to the detriment of prevention.*
>
> *Although we reject those who counterpoise treatment and prevention,*
> *activists can and must show that effective HIV prevention is possible (by*
> *fighting to overcome the structural/human rights barriers), in the same way*
> *that we did with access to treatment in developing countries. However, in*
> *this challenging context, I think you are seeing in the de Cock et al*
> *article, what you wanted to see, *not what you need to see*, and the*
> *primary reason why you welcome it is because it rescues us from the attacks*
> *on treatment, and 'AIDS exceptionalism' by saying from a high-office that*
> *"treatment is prevention" and that treatment is good old public health.*
>
> *But then, de Cock etc would have done better to write an article stating*
> *that treatment has preventative benefits and that this is good reason for*
> *maintaining the pressure and resources for scale up of HIV treatment in*
> *developing countries such as South Africa. They could, for example, have*
> *modelled the number of new infections that might be prevented with improved*
> *ART treatment, and showed how - for example - this could contribute to South*
> *Africa's objective of 50% reduction of new HIV infections by 2011. They*
> *could have used this to reinforce the need for other prevention strategies*
> *which have not failed because they are inherently doomed to failure *(and*
> *we must not suggest this) but because they have not been given the resources*
> *or political commitment that they need, and because people continue to fear*
> *the consequences of an HIV test. It is not acceptable for those who are*
> *empowered with HIV and who have come to terms with HIV infection over many*
> *years, to impose HIV testing on others' who are disempowered and still*
> *fearful because we think it's in their best interests, even if we cannot*
> *guarantee them access to treatment or protection from human rights*
> *violations. We have to address their fears by demanding investment in*
> *dignified health systems and protection from harmful social and legal*
> *effects of their health status being known.*
>
> *HIV prevention must take place in the real world, and the real world is*
> *influenced by poverty-determined life choices, gender based violence, fears*
> *of discrimination and stigma. It's amazing to me that de Cock et al ignore*
> *this world *completely* (they don't even acknowledge it as an assumption)*
> *and it is not, as Gregg suggests "simply not [the article's] purpose." *It*
> *is central to the feasibility of the hypothesis.**
>
> *A mathematical model that takes no account of the real factors that inhibit*
> *testing and treatment, is only a mathematical model at the end of the day.*
> *It's wishful thinking, not science. In this regard too, I find the reference*
> *to Malawi unconvincing. The model needs 90% of people to be on treatment and*
> *adherent to eliminate the epidemic (get incidence down to 1/1000). To see if*
> *90% is attainable the authors look at Malawi. In Malawi, 35% of people*
> *clinically in need of treatment (not of all infected people) are receiving*
> *it. The question is, what about the others? Modelling based on what happened*
> *to those on treatment, while ignoring those who are not, seems unconvincing.*
> *So is an assumption that in scaling up you will necessarily get the same*
> *rates of drop-out, treatment failure, death etc.*
>
> *As I said, I re-read the article, but find it is so theoretical, so*
> *hypothetical, based on so many *huge* assumptions about areas where we*
> *lack hard knowledge and raises so many risks (cost, labour, drug resistance*
> *& adverse events, secure access to rapid test kits & drugs, high level of*
> *adherence, monitoring, risk of false positives on a large scale, quality*
> *assurance, unknown behavioural implications, attention to sexual partners)*
> *on pp7-8) as to be useless and frankly absurd.*
>
> *Look, for example, at the assumptions that are packed into just this one*
> *sentence:*
>

> *"Better data are needed for the acceptability and uptake of universal voluntary HIV testing, the infectiousness of people receiving ART, adherence, behaviour change after starting ART, and the rates of emergence of resistance."*
>
> *Despite this, however, the authors say that "a trial of our theoretical strategy is technically feasible." I think such a trial, if I understand what the authors are saying, would be unethical. But that is another debate.*
>
> *In this respect, I think some of David's analogies are a bit far-fetched and unfair. This is a theoretical model with massive assumptions, not a proven vaccine, not medicines of proven benefit (even if only just proven!)*
>
> *You agree that 'human rights have been of concern to us since DAY ONE' and nothing has changed in that regard. But things have changed. Human rights are recognized but they are as much under attack as treatment. Witness the slew of new draconian laws on HIV, the talk of mandatory testing of pregnant women in Lesotho, attacks on IDUs in China and many countries in the former Soviet Union, the undeclared civil war of many men on many women in countries like mine, and so on and so on. I fear that implicit in your argument is a turn away from a human rights strategy, not an asking why it is not being scaled up, monitored, budgetted for, or why despite all of us crowing about human rights 'till the cows come home' there is very little practical implementation of human rights strategies.*
>
> *The article, very dangerously, again juxtaposes the public health approach with a human rights-based one at a time when we need to be ever vigilant - a united front moving towards universal access, and moving fast, but getting there in a way that's based on protecting people, not forcing them. Vulnerable groups are still vulnerable, some people with HIV may be on the inside, but most are not, and nowhere in the world are sex workers, prisoners, IDUs etc properly consulted on or assisted to own HIV prevention, while laws, policies, and practices continue to create huge barriers to prevention (and treatment).*
>
> *It is significant that in the more skeptical of the two comments, Garnett and Baggeley state:*
>
> *"at its worst the strategy will involve over testing, over treatment, side-effects, resistance, and potentially reduced autonomy of the individual in their choices of care. … It is easy to see how enforced testing and treatment for the good of society would follow from such an argument. Partial success would lead to infection becoming concentrated in those with a high risk, with an increased danger of stigma and coercion."*
>
> *Universal access to HIV testing, counselling and treatment is a policy we can all get behind. But I actually do fear that the drum Kevin is banging in this article is simply a recasting of the old argument for universal (mandatory) HIV testing, with very little consideration of the negative outcomes we know too well.*
>
> *A truly comprehensive AIDS response is not going to ignore those negative outcomes - discrimination, violence, dispossession, rejection - as simply "sad stories outside the purview of health systems".*
>
> *An example of theory becoming policy and practice: the 2002 De Cock article (that you referred to, where we were blamed for preventing a social justice approach to the HIV epidemic) preceded the WHO/UNAIDS policy on Provider Initiated HIV Testing and Counselling (PITC), of which Kevin was a leading advocate. Personally I support *the routine offer and recommending* of HIV testing in all health settings (and we are pushing for such a policy in SA). However, we have evidence - as we warned - that this policy is now being abused and that the protections and monitoring are not in place, even though they too form part of the PITC guidance, and need to be scaled up.*
>
> *I hope this helps clarify my concerns on the article, which I know are shared by many of my colleagues. Let's be clear: we are all for universal access and realizing the benefits of treatment and prevention for individuals and communities. This is fundamentally about human rights. We have in fact got this far in campaigning for access to treatment because people demanded their right to treatment and in many places demonstrated and litigated against governments and pharmaceutical companies successfully to attain it. We would be nowhere on treatment without human rights. And we have to do the hard work to make sure that treatment will continue to be provided and taken up - in the amount necessary - not because Kevin et al thinks it might eliminate HIV but because people have a right to it, as well as a right to prevention. To paraphrase Gregg, you can't get anywhere without addressing the structural factors. That's what realizing human rights is about. Let us not get seduced by the illusion of mathematical models.*
>
>

> With respect
>
>
>
>
> *Mark Heywood*
>
> *(in Hong Kong on my way to China where only 35% of people are on
> treatment; there are no second line regimens; injecting drug users are
> locked up for up to six years by law and often not provided with access to
> treatment or prevention; and sex workers are subject to harassment, forced
> HIV testing etc - what would it take for the model to work here?)*
>
>
>
>
>  ------------------------------
>
> *From:* Jim Yong Kim [mailto:kimj at harvard.edu]
> *Sent:* 04 December 2008 01:02 PM
> *To:* Joseph Amon; Mark Heywood; David Barr; Gregg Gonsalves
> *Cc:* Victor Ramathasele; M Sithole; S Shezi; Denise Hunt; Jonathan
> Berger; Adila Hassim; Nonkosi Khumalo; Rev D Lambrechts; Chris Collins; Paul
> E. Farmer - Aol; Michaela Clayton; Dr N Dinat; P Tsukulu Motshoshi; J
> Bodibe; S Dlamini; C Vawda; HEALTHGAP; Frayne Mathys; Khosi Kutana; Hosi
> Ngove; R Gobind; Joanne Csete; Aditi Sharma; Anand Grover; Belinda
> Beresford; Fatima Hassan; Nathan Geffen; Paula Akugizibwe;
> siphomthathi at gmail.com; Anso Thom; Rexton Bila; Sebei Masha; Grace
> Mazibuko; Tshepo Molapo; Tshego Mononyane; Sesupo Makakole-Nene; Shaidah
> Asmal; Brian O'Connell; Robert Carr; Diederik Lohman; Rebecca Schleifer;
> Sofia Gruskin; O Shisana; Childline; Carlas de Rogo; Brian Nair; Ms Vidhu
> Vedalanker; Janet Love; M Malete; Dr N Mqhayi; Ingmtambo at mrc.ac.za; R
> Jewkes; Silungile Mtambo; Edwin Cameron; F Randera; simonzwi at mweb.co.za;
> vawdafam at mweb.co.za; N Nxesi; H Schneider; Lennox Mekuto; Dr A Coovadia; W
> Newvoudt; wnewhoudt at parliament.gov.za; Zackie Achmat; Odette Gelenhuys; Dr
> Helen Rees; Brad Mears; M Letlape; V Brennan; Eddie Makue; Jody Kollappen;
> Jody Kollapen; Julian Botha; Kgosi Letlape; M Mulibana; H Bogopane; Ralf
> Jurgens; activist at tac.org.za; Gavin Silber; Johanna Ncala;
> leslie at tac.org.za; Nathan Geffen; rebecca at tac.org.za; Vuyiseka Dubula; B
> Phato; E Bennett; O Dlamini; M Nkosi; Mr Rakauone; Anneke Meerkotter; Dr M
> Tom; Obed Qulo; Susan Timberlake; Daniel Tarantola; Menaka Jayahody; Maria
> Mabotja; Moray Hawthorn; T Boya; vmotlogeloa at yahoo.com;
> Internationaltreatmentpreparedness
> *Subject:* RE: ITPC On The Lancet Article
>
>
>
> Joe, please that's a newspaper account.  The point is that we've always,
> always talked about scaled up testing in the context of universal access to
> treatment, prevention and of course, counseling.  That Lesotho has fallen
> short in your view may be easy for you to point out but we've worked hard to
> make universal access a reality there and will continue to do so.  Indeed I
> think the new Lancet study simply points to where we now hope we can take
> the global AIDS response.  If the strategy in the Lancet article proves to
> be workable, what will be required to actually implement it is universal
> access to primary health care that can do testing, treatment, prevention,
> counseling and actually follow patients over the course of their lives.
> We've wanted to do build those kinds of systems since the declaration of
> "health for all" in 1978 but not until the AIDS response have we had even a
> glimmer of hope of getting there.  If we lose focus on HIV, I fear that we
> will lose that glimmer of hope once again.
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>
> Jim
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> Jim Yong Kim, M.D., Ph.D.
>
> Division of Global Health Equity
>
> Brigham and Women's Hospital
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>
> *From:* Joseph Amon [mailto:amonj at hrw.org]
> *Sent:* Wednesday, December 03, 2008 12:44 PM
> *To:* Mark Heywood; David Barr; Gregg Gonsalves; Jim Yong Kim; Jim Yong
> Kim

> *Cc:* Victor Ramathasele; M Sithole; S Shezi; Denise Hunt; Jonathan
> Berger; Adila Hassim; Nonkosi Khumalo; Rev D Lambrechts; Chris Collins; Paul
> E. Farmer - Aol; Michaela Clayton; Dr N Dinat; P Tsukulu Motshoshi; J
> Bodibe; S Dlamini; C Vawda; HEALTHGAP; Frayne Mathys; Khosi Kutana; Hosi
> Ngove; R Gobind; Joanne Csete; Aditi Sharma; Anand Grover; Belinda
> Beresford; Fatima Hassan; Nathan Geffen; Paula Akugizibwe;
> siphomthathi at gmail.com; Anso Thom; Rexton Bila; Sebei Masha; Grace
> Mazibuko; Tshepo Molapo; Tshego Mononyane; Sesupo Makakole-Nene; Shaidah
> Asmal; Brian O'Connell; Robert Carr; Diederik Lohman; Rebecca Schleifer;
> Sofia Gruskin; O Shisana; Childline; Carlas de Rogo; Brian Nair; Ms Vidhu
> Vedalanker; Janet Love; M Malete; Dr N Mqhayi; Ingmtambo at mrc.ac.za; R
> Jewkes; Silungile Mtambo; Edwin Cameron; F Randera; simonzwi at mweb.co.za;
> vawdafam at mweb.co.za; N Nxesi; H Schneider; Lennox Mekuto; Dr A Coovadia; W
> Newvoudt; wnewhoudt at parliament.gov.za; Zackie Achmat; Odette Gelenhuys; Dr
> Helen Rees; Brad Mears; M Letlape; V Brennan; Eddie Makue; Jody Kollappen;
> Jody Kollapen; Julian Botha; Kgosi Letlape; M Mulibana; H Bogopane; Ralf
> Jurgens; activist at tac.org.za; Gavin Silber; Johanna Ncala;
> leslie at tac.org.za; Nathan Geffen; rebecca at tac.org.za; Vuyiseka Dubula; B
> Phato; E Bennett; O Dlamini; M Nkosi; Mr Rakauone; Anneke Meerkotter; Dr M
> Tom; Obed Qulo; Susan Timberlake; Daniel Tarantola; Menaka Jayahody; Maria
> Mabotja; Moray Hawthorn; T Boya; vmotlogeloa at yahoo.com;
> Internationaltreatmentpreparedness
> *Subject:* RE: ITPC On The Lancet Article
>
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>
> Hi Jim,
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>
> Sorry for not acknowledging you as the former WHO HIV director - not an
> intentional slight, just a quick email. My reference to your remarks were
> taken from The Times of London (11/28/2005):
>
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>
> "This will be a major step forward. If we have 80 or 90 per cent uptake of
> testing, which we believe we can, it will be a hugely effective way of
> reducing the rise in HIV infection. It could have as important an impact as
> a moderately effective vaccine."
> http://www.timesonline.co.uk/tol/news/world/article597384.ece
>
> I asked you at the time where the evidence might be for this assessment and
> as I recall your response was that you were simply certain that this was the
> case. I am not sure what you can possibly cite to suggest that HRW has
> criticized universal access to treatment; this is hardly the case.
>
> I applaud, of course, your work and that of MSF and the Ministry of Health
> of Lesotho for expanding access to testing and treatment. Our report,
> http://www.hrw.org/en/reports/2008/11/18/testing-challenge , acknowledges
> these efforts and the incredible commitment of lay counselors who worked
> hard - despite not receiving the support or pay envisioned - to educate
> people about HIV and bring testing to remote parts of the country. In the
> executive summary we say:
>
> *To be sure, many of the KYS counselors we interviewed were deeply
> committed to the concept of bringing HIV education and testing into
> communities. Many told us of hours-long walks to remote villages to speak to
> villagers about HIV and AIDS. Others explained to us how they went beyond
> the call of duty to accommodate the concerns of their clients by inviting
> them to their own homes to test or returning to their homes repeatedly to
> counsel clients testing positive. We also encountered nurses at local
> healthcare centers who had invested considerable time and energy-on top of
> their already grueling schedules-in training and supervising KYS counselors,
> and offering people who tested not just referrals but integrated HIV-related
> health services.*
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> Best,
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> Joe
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> *From:* Jim Yong Kim [mailto:kimj at harvard.edu]
> *Sent:* Wednesday, December 03, 2008 12:05 PM
> *To:* Joseph Amon; Mark Heywood; David Barr; Gregg Gonsalves
> *Cc:* Victor Ramathasele; M Sithole; S Shezi; Denise Hunt; Jonathan
> Berger; Adila Hassim; Nonkosi Khumalo; Rev D Lambrechts; Chris Collins;
> Michaela Clayton; Dr N Dinat; P Tsukulu Motshoshi; J Bodibe; S Dlamini; C
> Vawda; HEALTHGAP; Frayne Mathys; Khosi Kutana; Hosi Ngove; R Gobind; Joanne
> Csete; Aditi Sharma; Anand Grover; Belinda Beresford; Fatima Hassan; Nathan
> Geffen; Paula Akugizibwe; siphomthathi at gmail.com; Anso Thom; Rexton Bila;
> Sebei Masha; Grace Mazibuko; Tshepo Molapo; Tshego Mononyane; Sesupo
> Makakole-Nene; Shaidah Asmal; Brian O'Connell; Robert Carr; Diederik Lohman;
> Rebecca Schleifer; Sofia Gruskin; O Shisana; Childline; Carlas de Rogo;
> Brian Nair; Ms Vidhu Vedalanker; Janet Love; M Malete; Dr N Mqhayi;
> Ingmtambo at mrc.ac.za; R Jewkes; Silungile Mtambo; Edwin Cameron; F Randera;
> simonzwi at mweb.co.za; vawdafam at mweb.co.za; N Nxesi; H Schneider; Lennox

> Mekuto; Dr A Coovadia; W Newvoudt; wnewhoudt at parliament.gov.za; Zackie
> Achmat; Odette Gelenhuys; Dr Helen Rees; Brad Mears; M Letlape; V Brennan;
> Eddie Makue; Jody Kollappen; Jody Kollapen; Julian Botha; Kgosi Letlape; M
> Mulibana; H Bogopane; Ralf Jurgens; activist at tac.org.za; Gavin Silber;
> Johanna Ncala; leslie at tac.org.za; Nathan Geffen; rebecca at tac.org.za;
> Vuyiseka Dubula; B Phato; E Bennett; O Dlamini; M Nkosi; Mr Rakauone; Anneke
> Meerkotter; Dr M Tom; Obed Qulo; Susan Timberlake; Daniel Tarantola; Menaka
> Jayahody; Maria Mabotja; Moray Hawthorn; T Boya; vmotlogeloa at yahoo.com;
> Internationaltreatmentpreparedness; Paul E. Farmer - Aol
> *Subject:* RE: ITPC On The Lancet Article
>
>
>
> Hi Everyone,
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>
> As the "he who cannot be named" former WHO director, just wanted to provide
> all of my esteemed colleagues with a few updates.  First, Joe's
> characterization of what I said and did must have been based on secondary
> sources because I don't remember him being in the room when we had the
> actual conversations with ministry officials.  The suggestions about scaling
> up testing were always talked about in the context of a concomitant scale-up
> in access to treatment.  Also, please remember that this was part of the
> 3by5 movement, which, if memory serves, HRW also criticized.  It stings a
> bit to be called irresponsible but please know that after I left WHO, my
> group made a significant commitment to help scale up treatment in Lesotho so
> that more widespread testing could be done in the context of increased
> access to care, treatment and support.  To date, we've set up primary care
> programs that offer HIV treatment in 6 mountain villages that had no access
> before (we can only get to these places on old single engine planes or by
> driving more than 8 hours from the capital), done 18,000 tests, have close
> to 3000 people on treatment, diagnosed more than 1000 cases of TB and
> treated them, provided food support to more than 2000 families and have also
> built a state of the art facility for the treatment of MDR-TB/HIV
> co-infection that is the only one of its kind in a poor community in
> sub-Saharan Africa.  We've also recruited back to Lesotho, 5 Basotho
> physicians which increased by 50% the number of native Sesotho speakers
> working in the public sector.
>
>
>
> As always, I'm grateful for Joe and HRW's constant vigilance around
> protecting human rights.  In our group, we do our best to support the health
> and human rights movement by helping the people of Lesotho and elsewhere
> actually access their rights.
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>
> Warmly,
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>
> Jim
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> Jim Yong Kim, M.D., Ph.D.
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> Division of Social Medicine and Health Inequalities
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>
> *From:* Joseph Amon [mailto:amonj at hrw.org]
> *Sent:* Tuesday, December 02, 2008 7:57 PM
> *To:* Mark Heywood; David Barr; Gregg Gonsalves
> *Cc:* Victor Ramathasele; M Sithole; S Shezi; Denise Hunt; Jonathan
> Berger; Adila Hassim; Nonkosi Khumalo; Rev D Lambrechts; Chris Collins;
> Michaela Clayton; Dr N Dinat; P Tsukulu Motshoshi; J Bodibe; S Dlamini; C
> Vawda; HEALTHGAP; Frayne Mathys; Khosi Kutana; Hosi Ngove; R Gobind; Joanne
> Csete; Aditi Sharma; Anand Grover; Belinda Beresford; Fatima Hassan; Nathan
> Geffen; Paula Akugizibwe; siphomthathi at gmail.com; Anso Thom; Rexton Bila;
> Sebei Masha; Grace Mazibuko; Tshepo Molapo; Tshego Mononyane; Sesupo
> Makakole-Nene; Shaidah Asmal; Brian O'Connell; Robert Carr; Diederik Lohman;
> Rebecca Schleifer; Sofia Gruskin; O Shisana; Childline; Carlas de Rogo;
> Brian Nair; Ms Vidhu Vedalanker; Janet Love; M Malete; Dr N Mqhayi;
> Ingmtambo at mrc.ac.za; R Jewkes; Silungile Mtambo; Edwin Cameron; F Randera;
> simonzwi at mweb.co.za; vawdafam at mweb.co.za; N Nxesi; H Schneider; Lennox
> Mekuto; Dr A Coovadia; W Newvoudt; wnewhoudt at parliament.gov.za; Jim Yong
> Kim; Zackie Achmat; Odette Gelenhuys; Dr Helen Rees; Brad Mears; M Letlape;

> V Brennan; Eddie Makue; Jody Kollappen; Jody Kollapen; Julian Botha; Kgosi
> Letlape; M Mulibana; H Bogopane; Ralf Jurgens; activist at tac.org.za; Gavin
> Silber; Johanna Ncala; leslie at tac.org.za; Nathan Geffen;
> rebecca at tac.org.za; Vuyiseka Dubula; B Phato; E Bennett; O Dlamini; M
> Nkosi; Mr Rakauone; Anneke Meerkotter; Dr M Tom; Obed Qulo; Susan
> Timberlake; Daniel Tarantola; Menaka Jayahody; Maria Mabotja; Moray
> Hawthorn; T Boya; vmotlogeloa at yahoo.com;
> Internationaltreatmentpreparedness
> *Subject:* RE: ITPC On The Lancet Article
>
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>
> David,
>
> A few quick points:
>
> 1) a mathematical model is not 'evidence' - it is the application of
> existing knowledge marinated with a number of as-yet unquestioned
> assumptions (e.g., according to the presentation Kevin gave us in Geneva,
> people living with HIV infect someone else every 1.25 years and have 4
> concurrent sexual partners, for starters. These assumptions in the model are
> not based upon demographic data but upon fitting the model to the epidemic
> curve in South Africa).
>
> 2) the previous head of the WHO made a similar untested and unproven
> argument - that testing everyone over the age of 12 in Lesotho would be "as
> effective as a moderately effective vaccine". He could have similarly built
> a model to make this claim seem more credible. But, alas (really) it did not
> prove true. There are dangers to making irresponsible claims. In Lesotho the
> Minister of Health said in Mexico that they were proceeding with mandatory
> testing of pregnant women. The head of the NAC said that it was important to
> "challenge conventional wisdom" about confidentiality and consent in testing
> (particularly for women who are used to having these decisions made by men).
>
> 3) my objection with the article is not with promoting the idea of
> treatment as effective in a comprehensive prevention approach, it is the
> unexamined endorsement of annual universal testing. If the article had
> modeled early initiation of treatment and then posed the question, 'how do
> we get there?' we would be having a much more productive discussion about
> how to expand health facility based testing, stand alone VCT, social
> mobilization, anti-stigma and education campaigns, and outreach based
> testing models to ensure that people have access to voluntary testing AND
> are assured of early treatment. It is emblematic of WHO's approach that
> these were not highlighted, it is not incidental and not a by-product of
> word limitations in a journal article.
>
> Finally, I'm happy to have this debate and discussion, but it's a bit
> absurd to suggest that anyone is advocating for the status quo. We are all
> working for, and have been working for, change (yes we can!).
>
> Joe
>
>
> -----Original Message-----
> From: David  Barr [mailto:d.barr at earthlink.net <d.barr at earthlink.net>]
> Sent: Tue 12/2/2008 9:34 AM
> To: 'Gregg Gonsalves'; 'Mark Heywood'
> Cc: activist at tac.org.za; 'Anso Thom'; 'Belinda Beresford'; 'B Phato';
> 'Brad Mears'; 'Brian O'Connell'; 'C Vawda'; 'Carlas de Rogo'; 'Childline';
> 'Denise Hunt'; 'Dr A Coovadia'; 'Dr Helen Rees'; 'Dr M Tom'; 'Dr N Dinat';
> 'Dr N Mqhayi'; 'E Bennett'; 'Eddie Makue'; 'F Randera'; 'Frayne Mathys';
> 'Grace Mazibuko'; 'H Bogopane'; 'H Schneider'; 'Hosi Ngove';
> Ingmtambo at mrc.ac.za; 'J Bodibe'; 'Jody Kollappen'; 'Johanna Ncala'; 'Kgosi
> Letlape'; 'Khosi Kutana'; 'M Letlape'; 'M Malete'; 'M Mulibana'; 'M Nkosi';
> 'M Sithole'; 'Maria Mabotja'; 'Menaka Jayahody'; 'Mr Rakauone'; 'Ms Vidhu
> Vedalanker'; 'N Nxesi'; 'O Dlamini'; 'O Shisana'; 'P Tsukulu Motshoshi'; 'R
> Gobind'; 'R Jewkes'; 'Rev D Lambrechts'; 'Rexton Bila'; 'S Dlamini'; 'S
> Shezi'; 'Sebei Masha'; 'Sesupo Makakole-Nene'; 'Shaidah Asmal'; 'Silungile
> Mtambo'; simonzwi at mweb.co.za; siphomthathi at gmail.com; 'T Boya'; 'Tshego
> Mononyane'; 'Tshepo Molapo'; 'V Brennan'; vawdafam at mweb.co.za; 'Victor
> Ramathasele'; vmotlogeloa at yahoo.com; 'Vuyiseka Dubula'; 'W Newvoudt';
> wnewhoudt at parliament.gov.za; 'Adila Hassim'; 'Anneke Meerkotter'; 'Brian
> Nair'; 'Janet Love'; 'Jody Kollapen'; 'Jonathan Berger'; 'Julian Botha';
> 'Lennox Mekuto'; 'Moray Hawthorn'; 'Nonkosi Khumalo'; 'Obed Qulo'; 'Odette
> Gelenhuys'; 'Zackie Achmat'; Joseph Amon; 'Susan Timberlake'; 'Michaela
> Clayton'; 'Paula Akugizibwe'; 'Ralf Jurgens'; 'Robert Carr'; 'Nathan
> Geffen'; rebecca at tac.org.za; Diederik Lohman; Rebecca Schleifer; 'Joanne
> Csete'; 'Anand Grover'; 'Sofia Gruskin'; 'Jim Kim'; 'Edwin Cameron'; 'Daniel
> Tarantola'; 'Nathan Geffen'; 'Chris Collins'; 'Aditi Sharma'; 'Fatima
> Hassan'; 'Internationaltreatmentpreparedness'; 'HEALTHGAP'; 'Gavin Silber';
> leslie at tac.org.za
> Subject: RE: ITPC On The Lancet Article
>
> I strongly support everything that Gregg says here. And I will add a bit
> more.
>
>
>
> I agree with Gregg that the purpose of the article is not to answer all the
> questions regarding how this could and should be done. It lays out the bare
> bones of an approach and clearly states that more research and discussion is
> necessary to move forward.  The response from the human rights experts

> advising UNAIDS goes further in raising questions that must be answered to
> make this approach feasible. There are many additional questions that need
> to be asked and answered. But, I strongly agree with Gregg that the status
> quo is unacceptable and that current approaches to universal access to
> prevention and treatment are insufficient and would be insufficient even if
> scaled up with greater resources.
>
>
>
> One thing I disagree with Gregg about is that we have been having this same
> debate since 2002. We have been having it since 1985 when the HIV test first
> licensed. The human rights concerns raised in the response are not specific
> to the recent Lancet article, they are the same concerns we have always
> raised. We raise them not only out of concern for human rights, but out of
> concern for the public health. Without such protections and without the
> services that people need to make HIV testing relevant, testing is useless
> if not harmful. Without human rights protections, HIV interventions don't
> work. This has been the argument from Day One and nothing has changed in
> this regard. But, something HAS changed and its potential is extremely
> significant and it is pretty much disregarded in the response from the human
> rights advocates, whom I deeply respect.
>
>
>
> What makes the Lancet article so important to me is not the mathematical
> model or the more aggressive approaches to testing and treatment upon which
> the model is built. What is key here is that for the first time, an agency
> with significant public health credibility has determined that ARV treatment
> has a substantial impact on HIV transmissibility. We can criticize WHO till
> the cows come home (like shooting ducks in a barrel), but they are the
> leading public health agency in the world. While the concept of ARV
> treatment as prevention is not new, the Lancet article takes this from
> hypothesis toward practice. The idea of treating HIV with multiple drugs
> was not new in 1995. The approval of protease inhibitors in that year,
> changed the discussion. That is (or may be) what is happening here.
>
>
>
> So when WHO or the US NIH puts out a statement for the very first time that
> says the evidence is showing that ARV treatment is probably the most
> significant HIV prevention intervention known, we - as advocates
> representing the needs of people living with and at risk for HIV disease -
> need to acknowledge this, step back and determine how this new piece of news
> influences our policies and approaches. The advocates' response piece says,
> "programs to scale up HIV testing and treatment must be based on evidence".
> Yet, they ignore the new evidence upon with the Lancet article is written.
> If we had a new vaccine that was proven effective, would these advocates say
> we should not use it because we are concerned about misuse? We were faced
> with all sorts of challenges regarding potential human rights abuses and
> discrimination in 1995 when HAART was approved. I don't recall advocates
> saying that we should not consider using these new drugs because of these
> challenges. If the evidence is showing that ARV treatment is an effective
> prevention tool, then we have a responsibility to figure out how we are
> going to incorporate this into our thinking. I am in no way saying that we
> retreat from our fight against human rights abuse and HIV stigma and
> discrimination. That fight has only just gotten more important than ever.
>
>
>
> Nor am I saying that we understand if and how ARV treatment can be an
> effective prevention tool. The Lancet article makes clear that more
> research is needed in this regard. So, let's put that research agenda
> together and fast. We certainly need to look at the potential prevention
> impact against the potential negative consequences of early treatment -
> toxicities, resistance, etc.
>
>
>
> And as the advocates' response so clearly lays out, we need to determine
> how testing, prevention and treatment services can be provided in ways that
> both protect people and best meet their needs so that they can engage in
> health services for what we hope is a very long time. But this component is
> not new - it is what we've always done or tried to do. I think the
> underlying point of the Lancet article is that the stakes just got higher
> and that's good news.
>
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>
> I realize I am going out on a limb here. Perhaps I am just trying to stir
> debate as well. But I have to say that I am excited by this article.
> Despite all the need for caution, I am a bit surprised that the HIV
> community can read an article that describes new tools in a way toward both
> universal treatment access AND effective prevention without taking just a
> moment to be pleased. Now everyone can yell at me.
>
>
>
> From: internationaltreatmentpreparedness at yahoogroups.com [
> mailto:internationaltreatmentpreparedness at yahoogroups.com<internationaltreatmentpreparedness at yahoogroups.com>
> On Behalf Of Gregg Gonsalves
> Sent: Tuesday, December 02, 2008 7:52 AM
> To: Mark Heywood

> Cc: activist at tac.org.za; Anso Thom; Belinda Beresford; B Phato; Brad
> Mears; Brian O'Connell; C Vawda; Carlas de Rogo; Childline; Denise Hunt; Dr
> A Coovadia; Dr Helen Rees; Dr M Tom; Dr N Dinat; Dr N Mqhayi; E Bennett;
> Eddie Makue; F Randera; Frayne Mathys; Grace Mazibuko; H Bogopane; H
> Schneider; Hosi Ngove; Ingmtambo at mrc.ac.za; J Bodibe; Jody Kollappen;
> Johanna Ncala; Kgosi Letlape; Khosi Kutana; M Letlape; M Malete; M Mulibana;
> M Nkosi; M Sithole; Maria Mabotja; Menaka Jayahody; Mr Rakauone; Ms Vidhu
> Vedalanker; N Nxesi; O Dlamini; O Shisana; P Tsukulu Motshoshi; R Gobind; R
> Jewkes; Rev D Lambrechts; Rexton Bila; S Dlamini; S Shezi; Sebei Masha;
> Sesupo Makakole-Nene; Shaidah Asmal; Silungile Mtambo; simonzwi at mweb.co.za;
> siphomthathi at gmail.com; T Boya; Tshego Mononyane; Tshepo Molapo; V
> Brennan; vawdafam at mweb.co.za; Victor Ramathasele; vmotlogeloa at yahoo.com;
> Vuyiseka Dubula; W Newvoudt; wnewhoudt at parliament.gov.za; Adila Hassim;
> Anneke Meerkotter; Brian Nair; Janet Love; Jody Kollapen; Jonathan Berger;
> Julian Botha; Lennox Mekuto; Moray Hawthorn; Nonkosi Khumalo; Obed Qulo;
> Odette Gelenhuys; Zackie Achmat; Joseph Amon; Susan Timberlake; Michaela
> Clayton; Paula Akugizibwe; Ralf Jurgens; Robert Carr; Nathan Geffen; David
> Barr; rebecca at tac.org.za; Diederik Lohman; Rebecca Schleifer; Joanne
> Csete; Anand Grover; Sofia Gruskin; Jim Kim; Edwin Cameron; Daniel
> Tarantola; Nathan Geffen; Chris Collins; Aditi Sharma; Fatima Hassan;
> Internationaltreatmentpreparedness; HEALTHGAP; Gavin Silber;
> leslie at tac.org.za
> Subject: ITPC On The Lancet Article
>
>
>
> Dear Mark et al-
> Thanks for sending your note around about your response to the Lancet
> article.
> We're all friends and colleagues and I respect everyone who endorsed
> the piece, but I find it strangely unconvincing.
> I know as well as all of you the real issues about discrimination and
> stigma for people with HIV and those at risk. I would never try to
> minimize what people with AIDS, women, sex workers, gay men, drug
> users, poor people face in their families, in their communities, in
> the health sector, by their governments in this regard.
> However, I think while the Lancet piece may not sufficiently discuss
> stigma and discrimination, it simply was not its purpose: it was
> trying to lay out a case for ART provision as an important potential
> HIV intervention.
> The Lancet piece has lots of flaws. We can agree on that. For
> instance as someone who works on the biomedical issues around
> treatment as well as human rights, we still have no idea whether
> immediate treatment is a feasible or even clinically wise approach to
> care-we'll need clinical trials to assess this.
> But I think the Lancet piece tried to take us into new territory and I
> forgive it flaws.
> What I am concerned about in your response is that it feels like a
> defense of the status quo: what do I mean by that?
> Well, this sentence is the most worrying:" [the model] might divert
> attention from already-proven approaches to addressing HIV that take
> into account the widespread stigma, discrimination, and human rights
> violations that impede access to HIV services."
> HIV prevention is in crisis.
> We know some prevention interventions work on an individual basis or
> even on a population level (in the case of needle exchange), but
> preventing HIV overall has turned out to be an elusive goal if you
> look at UNAIDS figures from year to year. We don't need more of the
> same "already-proven approaches" in HIV prevention. The field needs a
> wake up call and activism that spurs it to take on new ideas, new
> thinking, new research. The idea that you promote that people do have
> "an array of choices by which to protect themselves from infection or
> by which to avoid the onward transmission of HIV" implies that what
> we've got in our toolbox is sufficient to stop the spread of HIV.
> More of the same is not what we need.
> I think that we are locked in a debate that is backwards looking and
> frankly is a defensive response to Kevin De Cock's 2002 Lancet
> article, Shadow on the continent: public health and HIV/AIDS in Africa
> in the 21st century, in which de Cock makes a case for routine
> testing, and unnecessarily pits human rights concerns against early
> diagnosis. This debate has de Cock on one side saying stigma doesn't
> matter, drop some of the protections in testing protocols to get more
> people tested and many of us on the other side saying stigma matters,
> we need to protect against discrimination and expand current voluntary
> testing and counseling.
> What is wrong with this debate is that it is eternal-we've been having
> it since 2002 and the field is locked up in this dance. The response
> to de Cock's new Lancet article feels like Act 2 of the same
> performance.
> It's time for human rights activists to chart out new territory.
> Despite the new health minister in South Africa, who has been
> long-awaited and so necessary, the fight for access to AIDS treatment
> is in peril. More and more public health experts are coming out of
> the closet to say how AIDS treatment has destroyed health systems or
> pulled funding away from other key health and development priorities,
> or how it is fiscally unsustainable. In this world-wide recession,
> there are real threats that funding will dry up for treatment, for
> AIDS, for health for the poor. HIV prevention as I mentioned above is
> in worse shape. Even if we dealt with some of the ideological
> barriers to condom and needle promotion for instance, we still would
> be in trouble. We're locked into approaches that simply don't work
> because they don't really address what puts people at risk of HIV,

> puts them in the path of epidemics. Handing out condoms and needles,
> providing "counseling" or telling them to "love life" without
> addressing these structural factors is like handing someone a paddle
> on a sinking ship. And as far as testing is concerned-most people
> around the world don't know their status, simply saying "more VCT,
> please" is not an answer anymore and the future doesn't have to be
> locked up in mandatory testing or coercive, rights-abusing approaches
> as the alternative. We have to figure out how to get more people
> tested and into services and their rights protected and what we're
> doing now isn't working fast enough.
> With these external threats and crises within the field we have to
> work together to move forward in a new way and it's no easy task.
> In any case, I think the de Cock article has started a debate and I
> think that was the real goal of the paper for all its weaknesses.
> We need to talk frankly among ourselves about the future more often
> and not get bogged down in our usual talking points.
> For that, I am grateful they went ahead and published the piece.
>
> --
> Gregg Gonsalves
> 100 York Street, 10-D
> New Haven, Connecticut 06511
> Email: gregg.gonsalves at gmail.com <mailto:gregg.gonsalves%40gmail.com<gregg.gonsalves%40gmail.com>>
> or gregg.gonsalves at yale.edu <mailto:gregg.gonsalves%40yale.edu<gregg.gonsalves%40yale.edu>
> >
> Mobile: 1-203-606-9149
>
>  __._,_.___  Messages in this topic
> <http://groups.yahoo.com/group/internationaltreatmentpreparedness/message/16116;_ylc=X3oDMTM2MXVkNXI0BF9TAzk3MzU5NzE0BGdycElkAzk3Mjc
> 10)  Reply (via web post)
> <http://groups.yahoo.com/group/internationaltreatmentpreparedness/post;_ylc=X3oDMTJxMm1wbHRkBF9TAzk3MzU5NzE0BGdycElkAzk3MjcyMjEEZ3Jw
> a new topic
> <http://groups.yahoo.com/group/internationaltreatmentpreparedness/post;_ylc=X3oDMTJlazljMDI5BF9TAzk3MzU5NzE0BGdycElkAzk3MjcyMjEEZ3Jw
>  Messages<http://groups.yahoo.com/group/internationaltreatmentpreparedness/messages;_ylc=X3oDMTJlYm9lNmhuBF9TAzk3MzU5NzE0BGdycElkAzk
> Files<http://groups.yahoo.com/group/internationaltreatmentpreparedness/files;_ylc=X3oDMTJmZDd2a2U0BF9TAzk3MzU5NzE0BGdycElkAzk3MjcyM
> Photos<http://groups.yahoo.com/group/internationaltreatmentpreparedness/photos;_ylc=X3oDMTJlb2FnZDVrBF9TAzk3MzU5NzE0BGdycElkAzk3Mjcy
> Links<http://groups.yahoo.com/group/internationaltreatmentpreparedness/links;_ylc=X3oDMTJmZ2M4OTlqBF9TAzk3MzU5NzE0BGdycElkAzk3MjcyM
> Database<http://groups.yahoo.com/group/internationaltreatmentpreparedness/database;_ylc=X3oDMTJjdTdlam4wBF9TAzk3MzU5NzE0BGdycElkAzk
> Polls<http://groups.yahoo.com/group/internationaltreatmentpreparedness/polls;_ylc=X3oDMTJmODZkZ3M3BF9TAzk3MzU5NzE0BGdycElkAzk3MjcyM
> Members<http://groups.yahoo.com/group/internationaltreatmentpreparedness/members;_ylc=X3oDMTJlbXVzNHBvBF9TAzk3MzU5NzE0BGdycElkAzk3M
> Calendar<http://groups.yahoo.com/group/internationaltreatmentpreparedness/calendar;_ylc=X3oDMTJkM2xqcDF2BF9TAzk3MzU5NzE0BGdycElkAzk
>  MARKETPLACE
>  -------------------------------
> From kitchen basics to easy recipes - join the Group from Kraft Foods
> <http://us.ard.yahoo.com/SIG=13upesvp1/M=493064.12016295.13271503.10835568/D=grphealth/S=1705061590:MKP1/Y=YAHOO/EXP=1228450955/L=/
>   [image: Yahoo! Groups]<http://groups.yahoo.com/;_ylc=X3oDMTJkZml0YWJvBF9TAzk3NDc2NTkwBGdycElkAzk3MjcyMjEEZ3Jwc3BJZAMxNzA1MDYxNTkwB
> Change settings via the Web<http://groups.yahoo.com/group/internationaltreatmentpreparedness/join;_ylc=X3oDMTJmOXBqZHZ2BF9TAzk3NDc2M
> Change settings via email: Switch delivery to Daily Digest<internationaltreatmentpreparedness-digest at yahoogroups.com?subject=Emai
> format to Traditional<internationaltreatmentpreparedness-traditional at yahoogroups.com?subject=Change+Delivery+Format:+Traditional>
>  Visit Your Group
> <http://groups.yahoo.com/group/internationaltreatmentpreparedness;_ylc=X3oDMTJkYzBycnZ1BF9TAzk3NDc2NTkwBGdycElkAzk3MjcyMjEEZ3Jwc3BJ
> Groups Terms of Use <http://docs.yahoo.com/info/terms/> | Unsubscribe
> <internationaltreatmentpreparedness-unsubscribe at yahoogroups.com?subject=>
>    Recent Activity
>
>
>  Visit Your Group
> <http://groups.yahoo.com/group/internationaltreatmentpreparedness;_ylc=X3oDMTJlaDBkM3NuBF9TAzk3MzU5NzE0BGdycElkAzk3MjcyMjEEZ3Jwc3BJ
>  Meditation and
>
> Lovingkindness<http://us.ard.yahoo.com/SIG=13r0n8v05/M=493064.12016231.12582634.9706571/D=grphealth/S=1705061590:NC/Y=YAHOO/EXP=1228
>
> A Yahoo! Group
>
> to share and learn.
>  Yahoo! Health
>
> Asthma Triggers<http://us.ard.yahoo.com/SIG=13rv3fc3f/M=493064.12016303.12582636.9706571/D=grphealth/S=1705061590:NC/Y=YAHOO/EXP=122
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> How you can
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> identify them.
>  Need traffic?
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> Drive customers<http://us.ard.yahoo.com/SIG=13rjdic61/M=493064.12016308.12445700.8674578/D=grphealth/S=1705061590:NC/Y=YAHOO/EXP=122
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> on Yahoo!
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Mark Harrington
Executive Director
Treatment Action Group
611 Broadway, Ste. 308
New York, NY 10012 USA

1.212.253.7922 - tel.
1.212.253.7923 - fax
markhar at gmail.com
---------- next part ----------
An HTML attachment was scrubbed...
URL: http://critpath.org/pipermail/healthgap_critpath.org/attachments/20081204/8542bbaa/attachment-0001.html

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- Previous message: [HEALTHGAP] Fwd: URGENT: SUPPORT NEEDED FOR SW DETAINED & TESTED in MACEDONIA
- Next message: [HEALTHGAP] Press Release for TODAY's Demo in Burlington, VT
- **Messages sorted by:** [ date ] [ thread ] [ subject ] [ author ]


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More information about the HEALTHGAP mailing list

Campaigns

The US Global AIDS Plan

Health Care Workers

The Global Fund

Access to Medicine

Solidarity Work

Global ACCESS

**Click here to join Health GAP on**

facebook

About Health GAP

Click the link below to skip to section:

What is Health GAP?
What does Health GAP do?
Why was Health GAP formed?
Who formed Health GAP?

**What is Health GAP (Global Access Project)?**

We are an organization of U.S.-based AIDS and human rights activists, people living with HIV/AIDS, public health experts, fair trade advocates and concerned individuals who campaign against policies of neglect and avarice that deny treatment to millions and fuel the spread of HIV. We are dedicated to eliminating barriers to global access to affordable life-sustaining medicines for people living with HIV/AIDS as key to a comprehensive strategy to confront and ultimately stop the AIDS pandemic. We believe that the human right to life and to health must prevail over the pharmaceutical industry's excessive profits and expanding patent rights.

**What does Health GAP do?**

We campaign for drug access and the resources necessary to sustain access for people with HIV/AIDS across the globe. We work with allies in the global South and in the G-8 countries to formulate policies that promote access, mobilize grassroots support for those policies, and confront governmental policy makers, the pharmaceutical industry and international agencies when their policies or practices block access.

Sustained access cannot result from industry-controlled charity programs. Multiple strategies are needed to lower drug prices to affordable levels. These strategies include generic production, voluntary and compulsory licensing and parallel importing. A system of global bulk procurement at lowest world prices is crucial if people living with HIV in the poorest countries are to have access to treatment. We reject efforts by industry or governments to deny or restrict the right of countries to exercise these and other strategies to protect the health of their people.

**Primarily Health GAP:**

- **Advocates for funding of AIDS treatment programs and the Global Fund to Fight AIDS, TB, and Malaria** : This fund, first called for by U.N. Secretary General Kofi Annan, holds the promise of funding AIDS treatment programs in developing countries if adequately funded and operated on a policy which prioritizes filling the gaps. Much more needs to be done in order to address the historical and deadly neglect of multilateral and bilateral assistance in caring for those already infected with HIV. Since the beginning of the epidemic and, still to this day, a single U.S. government donated dollar has yet to be spent on antiretroviral treatment in Sub-Saharan Africa.
- **Reforms US and world trade policies**: Health GAP has led a successful campaign to change U.S. trade policies that punished African countries that attempted to produce or import affordable generic AIDS drugs. In addition to targeting threatened use of trade sanctions, Health GAP has campaigned against the international intellectual property regime (the WTO TRIPS Agreement) and national patent laws that have restricted access to high quality affordable medicines. However, the US government continues to prioritize pharmaceutical profits and oppose generic competition through its influence over the WTO, United Nations institutions, as well as through bilateral trade agreements with poor countries: including the Chile Trade Agreement, Central America Free Trade Agreement (CAFTA), and Free Trade of the Americas (FTAA). The World Trade Organization, while recently reaffirming the primacy of public health over profits of pharmaceuticals, in its Doha Declaration, still needs

Why Health GAP?

The HIV/AIDS epidemic is a global catastrophe that kills millions each year and undermines the social fabric and economies of scores of countries.

The treatments that prolong life and relieve suffering are not available to the vast majority of those infected with HIV. Health GAP believes access to life-sustaining medication is a human right for all, not just those living in wealthy countries.

We believe that increasing treatment access will bring hope and help sustain the health of those infected and will promote health infrastructure, improve HIV prevention efforts and strengthen provisions for care and support.

to acknowledge and protect the rights of countries to manufacture and export generic versions of patented drugs into developing countries with limited production or market capacity whether they have patents or not.

- **Challenges Multinational Corporations to provide HIV/AIDS treatment to workers**: While Health GAP believes the onus of protecting public health is upon the public sector, the private sector has much to bear on the continued spread and neglect of HIV among communities in which they operate in developing countries. Corporations, such as Coca-Cola and the huge mining concern, Anglo-America, continue to flout the most fundamental need among HIV positive workers in the developing world: the urgent need for access to affordable, life-extending HIV treatment and care. Working with international and domestic allies Health GAP challenges multinational corporations to fulfil an obligation to implement comprehensive HIV/AIDS workplace policies that include a provision for AIDS treatment for workers and their dependents.
- **Fights for debt cancellation**: Foreign debt handicaps the ability of the most affected countries to confront the AIDS epidemic. We work with global allies to win full cancellation of debt owed the IMF and World Bank by poor countries, using the resources of those financial institutions. We oppose structural adjustment programs and similar requirements that weaken public health systems, obstruct treatment access, and accelerate the spread of HIV.
- **Pressures drug companies**: The pharmaceutical industry maintains its extraordinary profits in rich countries, and sabotages poor countries' efforts to produce or import affordable generic drugs--although drug companies generate little-to-no profit in poor countries. We expose and actively oppose these efforts and will build support for poor countries' right and responsibility to care for their people.
- **Provides Training on Issues and Tactics** to hundreds of people throughout the world, in order to actively build the progressive global AIDS movement through our Global ACCESS project.

**Why was Health GAP formed?**

Nearly 40 million people worldwide are infected with HIV and 16,000 new infections occur every day. Developing countries bear more than 90 percent of the global burden of HIV/AIDS. Sub-Saharan Africa alone is home to 28 million infected people. HIV is exacerbating growing economic, governance and public health crises simultaneously fueled by the combined effects of socio-economic, cultural and gender inequalities, the impact on public infrastructures of structural adjustment programs (SAPS), and intensified corporate globalization in the post-colonial period. After two decades of the AIDS epidemic in Africa, HIV and other communicable diseases such as TB and malaria are leading causes of early death on the continent. Countries are now facing not only immediate daunting challenges of caring for huge numbers of people affected by HIV/AIDS, but long-term catastrophic economic development impacts on labor forces, educational systems, communities and families. Elsewhere in the developing world, the unchecked expansion of the AIDS epidemic could lead to similar catastrophic public health crises.

During much of the first two decades of the AIDS crisis, the dominant public health strategy for addressing the epidemic globally was almost exclusively focused on HIV prevention. But by the mid-nineties, at least in wealthy countries of Europe and North America, a paradigm shift began to occur. Antiretroviral drugs (ARVs) for HIV and associated opportunistic infections (OIs) had become standard treatment for HIV in Western Europe and North America. We began to witness dramatic decreases in rates of death and illness among PLWHAs in these countries. Confirmation that medical interventions could substantially reduce cases of mother-to-child transmission of HIV had been established. The public health prevention benefits of linking voluntary testing with care and treatment for infected persons had been clearly established. In essence, HIV prevention and provision of treatment and care for infected people began to enter strategic public health policy discussions as inevitably linked components of a comprehensive plan to end the AIDS epidemic.

But in the global South, no such shift occurred, despite the efforts of people with AIDS and treatment activists there to expand access to medicines. Instead, the AIDS epidemic continued its devastation in parts of Africa, Latin America and the Caribbean, and Asia. People with AIDS continued to suffer and die with no access to medicines and with grossly inadequate health care. Glaring global inequities in HIV disease burden were scarcely addressed in mainstream global AIDS policy discussions - neither by governments of wealthy donor nations nor by the multilateral institutions that they had created to lead the economic, political and public health development in the post-colonial global South. Rather, treatment delivery for the vast majority of the global population of people with AIDS was essentially dismissed as prohibitively expensive and logistically impossible. HIV prevention continued to be viewed as the only possible solution

to the AIDS epidemic in the developing world. Serious efforts to challenge the incongruity of approaches to the epidemic in the global North and South were not advanced, and dominant public health responses to the escalating global AIDS crisis were notable primarily for their inertia.

By the summer of 1998, when the 12th International AIDS Conference convened in Geneva, people with AIDS from developing countries and allies from both the North and the South had found this inertia intolerable, and unjust. It had become immoral and unconvincing to talk about HIV prevention as the only solution to the global AIDS crisis when 40+ million people were already infected Ð most of who were in resource-poor countries where their illness and premature deaths were reversing decades of development and robbing those countries of any future development. Only treatment and care could intervene in that situation.

In Geneva, where conference participants gathered under the slogan "Bridging the Gap", access to treatment and care was addressed neither systematically nor comprehensively. Scientists and clinicians from the wealthy nations were barely present at sessions where AIDS in poor and developing countries were thematic, and plenary session debates were devoid of reference to expanding treatment access or even how the global pandemic could be slowed in light of new treatments. At the same time, the pharmaceutical industry, which to a considerable extent has underwritten these global gatherings for the past decade, again spent millions of dollars to entertain and influence doctors and researchers. The conference ended with no proposals on how to "bridge the gap" between the North and South.

People with AIDS who were being denied access to treatments and care, and their activist allies from around the world, faced with such inertia, realized that only social mobilization would spark an urgently needed shift in the global response to AIDS. It had, after all, been social activism which catalyzed advances in science, medicine and health care delivery which led to the introduction of treatments and care for people with AIDS in the North. A decade of sustained social and political pressure by people with AIDS on drug companies, public health institutions, and governmental agencies delivered ARVs and other effective medicines to infected people in Western Europe and North America. The science and medical interventions now existed, but it would take a worldwide social movement for challenging political and economic barriers to ensure that to equitable global access to treatment and care would become a reality.

The formation of Health GAP in early 1999 was the U.S.-based activist response to the international call for global social action.

**Who formed Health GAP?**

Health GAP was formed in early 1999 by Dr. Alan Berkman, a veteran civil rights activist and clinician in New York City, who brought together fair trade lawyers and economists, progressive clinicians, such as Dr. David Hoos, human rights activists, international health and development advocates, and direct action-oriented AIDS activists such as Eric Sawyer, Paul Davis, Asia Russell and Sharonann Lynch, willing to confront U.S. government trade policies and the drug lobby. Individuals from groups and institutions including the Columbia Mailman School of Public Health, ACT UP New York, ACT UP Philadelphia, Doctors without Borders, The Consumer Project on Technology, Essential Action, AIDS Treatment News, Mobilization Against AIDS International, the International Gay and Lesbian Human Rights Commission, Search for a Cure, and others interested in forging a U.S.-based action-oriented strategy toward reducing barriers to equitable global access to treatment and care were initial founders of Health GAP. Together, and in dialogue with activists from the South, this group forged the basis of a new synergistic strategy toward the global epidemic rooted in ideals of the human right to life and health, and committed to social mobilization as key to confronting the epidemic. Health GAP's specific contribution to the global treatment access movement were identified as:

- educating others and building a broad-based social mobilization effort in the U.S. to challenge obstructionist U.S. policies of the U.S. government in particular,
- exposing U.S. government supported international trade policies at the multilateral level which were impeding access and advocating for policy alternatives,
- providing support for South-based activist campaigns and actions focused on their own government policies and practices, as well as the policies and practices of multinationals operating in their countries, and
- engaging with international treatment access activists in coordinated actions, activities and campaigns directed toward obstructionist multilateral policies, the pharmaceutical industry, or multinational corporations.

Dr. Alan Berkman, Health GAP founder and 2009 Global Health

Dr. Alan Berkman, Health GAP founder and 2009 Global Health Justice Award winner passed away on June 5th, 2009. Dr. Berkman was a long-time civil rights and AIDS activist. There will be a public memorial scheduled soon.

His family has created the Dr. Alan Berkman fund in his honor. To donate, click on the icon to the left and write "Alan Berkman Fund" in the memo. Or mail a check to Health GAP (Alan Berkman Fund in memo line), 429 West 127th Street, 2nd Floor, NY NY 10027.

Click here to read the press statement about Dr. Berkman's passing.

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Google Search

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212
info@healthgap.org

# Adjusted Estimates of National Expenditure

# 2010

**National Treasury**

**Republic of South Africa**

October 2010

# Vote 23

# Justice and Constitutional Development

## Adjusted budget summary

| | 2010/11 | | | |
|---|---|---|---|---|
| R thousand | Main appropriation | Adjusted appropriation | Decrease | Increase |
| Amount to be appropriated | 10 250 483 | 10 787 345 | – | 536 862 |
| *of which:* | | | | |
| Current payments | 8 137 191 | 8 479 407 | – | 342 216 |
| Transfers and subsidies | 1 485 637 | 1 623 828 | – | 138 191 |
| Payments for capital assets | 627 655 | 683 650 | – | 55 995 |
| Payments for financial assets | – | 460 | – | 460 |
| Direct charge against the National Revenue Fund | 1 929 870 | 1 929 870 | – | – |
| Executive authority | Minister of Justice and Constitutional Development | | | |
| Accounting officer | Director-General of Justice and Constitutional Development | | | |
| Website address | www.doj.gov.za | | | |

## Aim

*The aim of the Department of Justice and Constitutional Development is to uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost effective administration of justice in the interests of a safer and more secure South Africa.*

## Mid-year performance status

| Indicator | Programme | Outcome | Annual performance | | |
|---|---|---|---|---|---|
| As published in the 2010 ENE | Programme linked to the indicator | Outcome the indicator is linked to (if relevant) | Projected for 2010/11 as published in the 2010 ENE | Achieved in the first five months of 2010/11 (April to August)[1] | Changed estimate for 2010/11 |
| Outstanding court roll at end of each financial year | Court Services | All people in South Africa are and feel safe | 232 243 | 209 650 | – |
| Number of cases finalised[2]: | National Prosecuting Authority | All people in South Africa are and feel safe | | | |
| – including alternative dispute resolution mechanisms | | | 412 313 | 195 413 | 482 491 |
| – excluding alternative dispute resolution mechanisms | | | 324 030 | 141 921 | 357 928 |
| Conviction rate: | National Prosecuting Authority | All people in South Africa are and feel safe | | | |
| – high courts | | | 87% | 88% | – |
| – regional courts | | | 74% | 73% | – |
| – district courts | | | 87% | 91% | – |
| – sexual offences courts | | | 66% | 68% | – |
| – specialised commercial crime unit | | | 94% | 91% | – |
| Asset forfeiture unit: | National Prosecuting Authority | All people in South Africa are and feel safe | | | |
| – number of new completed forfeiture cases | | | 300 | 136 | – |
| – number of new freezing orders | | | 310 | 175 | – |
| – value of new freezing orders | | | R400m | R374m | R450m |
| – success rate | | | 86% | 96% | 90% |

*1. Six months data only available after publication of AENE, this data are for five months.*

*2. The indicator "Number of new cases finalised" has been corrected to "Number of cases finalised", because it is not only new cases that are being finalised within the reporting period, but all cases on the court roll.*

The estimates for the number of cases finalised, the value of new freezing orders (asset forfeiture unit) and the success rate (asset forfeiture unit) have been revised to align with targets set in the National Prosecuting Authority's 2010–15 strategic plan.

Programme 5: Auxiliary and Associated Services

| Subprogramme | 2010/11 | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Adjustments appropriation | | | | | |
| R thousand | Main appropriation | Roll-overs | Unforeseeable/ unavoidable | Virements and shifts | Other adjustments | Total adjustments appropriation | Adjusted appropriation |
| Office for the Control of Interception and Monitoring of Communication | 603 | – | – | (5) | 12 | 7 | 610 |
| South African Human Rights Commission | 73 474 | – | – | – | 894 | 894 | 74 368 |
| Special Investigating Unit | 165 802 | – | – | 2 129 | 3 158 | 5 287 | 171 089 |
| Legal Aid South Africa | 991 895 | – | 96 000 | 24 200 | 10 544 | 130 744 | 1 122 639 |
| Office of the Public Protector | 112 816 | – | – | – | 1 266 | 1 266 | 114 082 |
| Justice Modernisation | 379 197 | – | – | – | – | – | 379 197 |
| President's Fund | 1 | – | – | – | – | – | 1 |
| Represented Political Parties Fund | 98 095 | – | – | – | – | – | 98 095 |
| Total | 1 821 883 | – | 96 000 | 26 324 | 15 874 | 138 198 | 1 960 081 |
| Economic classification | | | | | | | |
| Current payments | 359 932 | – | – | (5) | 12 | 7 | 359 939 |
| Compensation of employees | 508 | – | – | – | 12 | 12 | 520 |
| Goods and services | 359 424 | – | – | (5) | – | (5) | 359 419 |
| Transfers and subsidies | 1 442 083 | – | 96 000 | 26 329 | 15 862 | 138 191 | 1 580 274 |
| Departmental agencies and accounts | 1 442 083 | – | 96 000 | 26 329 | 15 862 | 138 191 | 1 580 274 |
| Payments for capital assets | 19 868 | – | – | – | – | – | 19 868 |
| Machinery and equipment | 19 868 | – | – | – | – | – | 19 868 |
| Total | 1 821 883 | – | 96 000 | 26 324 | 15 874 | 138 198 | 1 960 081 |

# Details of adjustments to Estimates of National Expenditure 2010

## Unforeseeable and unavoidable expenditure – R341.9 million

Programme 2: Court Services

An additional R26 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals.

Programme 3: State Legal Services

An additional R21.9 million is allocated for the presidential project: United in Diversity.

Programme 4: National Prosecuting Authority

An additional R198 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals.

Programme 5: Auxiliary and Associated Services

An additional R96 million is allocated for phase 2 of the occupation specific dispensation for legally qualified professionals at Legal Aid South Africa.

national treasury

Department:
National Treasury
**REPUBLIC OF SOUTH AFRICA**

# Medium Term Budget Policy Statement

## 2010

Speech

**Pravin Gordhan**

**Minister of Finance**

27 October 2010

I am pleased to be able to table a comprehensive *Adjusted Estimates of National Expenditure* to accompany the *Adjustments Appropriation Bill* and – for the first time – a *Division of Revenue Amendment Bill,* for the consideration of the House. I cannot deal with all the adjustments in detail, but let me highlight the main points.

In total, the adjusted expenditure level is R2.5 billion lower than the February budget estimate, which included an unallocated contingency reserve of R6 billion. Contributing to this decrease is a lower provision for state debt costs due to the current strength of the rand and the decrease in interest rates, and savings declared by departments amounting to almost R2 billion.

The main additional allocations in the Adjustments Appropriation are as follows:

1. R1.8 billion in roll-overs arising from commitments related to unspent balances in 2009/10;
2. R6.2 billion to cover higher remuneration costs;
3. R396 million for various self-funding department-specific activities;
4. R2.2 billion in unforeseeable and unavoidable expenditure adjustments recommended by the Treasury Committee this year, including
    a) R769 million to cover property rates due to municipalities on behalf of provinces, funded through the *devolution of property rate funds grant,*
    b) R320 million for occupation-specific dispensation salary adjustments in the Department of Justice and Constitutional Development, the National Prosecuting Authority and Legal Aid South Africa,

CONSTITUTIONAL COURT OF SOUTH AFRICA
Case CCT 8/02

MINISTER OF HEALTH - First Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, EASTERN CAPE - Second Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, FREE STATE - Third Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, GAUTENG - Fourth Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, KWAZULU-NATAL - Fifth Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, MPUMALANGA - Sixth Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, NORTHERN CAPE - Seventh Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, NORTHERN PROVINCE – Eighth Appellant
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH, NORTH WEST - Ninth Appellant

versus

TREATMENT ACTION CAMPAIGN - First Respondent
DR HAROON SALOOJEE - Second Respondent
CHILDREN'S RIGHTS CENTRE - Third Respondent

Together with
INSTITUTE FOR DEMOCRACY IN SOUTH AFRICA - First Amicus Curiae
COMMUNITY LAW CENTRE - Second Amicus Curiae
COTLANDS BABY SANCTUARY - Third Amicus Curiae

Heard on: 2, 3 and 6 May 2002
Decided on: 5 July 2002

JUDGMENT

[1] The HIV/AIDS pandemic in South Africa has been described as “an incomprehensible calamity” and “the most important challenge facing South Africa since the birth of our new democracy” and government’s fight against “this scourge” as “a top priority”. It “has claimed millions of lives, inflicting pain and grief, causing fear and uncertainty, and threatening the economy”. These are not the words of alarmists but are taken from a Department of Health publication in 2000 and a ministerial foreword to an earlier departmental publication. […]

[20] […] Many of these disputes gave rise to a regrettable degree of animosity and disparagement, culminating in unsubstantiated and gratuitous allegations of untruthfulness being levelled at one of the attorneys on an insignificant side-issue. In our country the issue of HIV/AIDS has for some time been fraught with an unusual degree of political, ideological and emotional contention. This is perhaps unavoidable, having regard to the magnitude of the catastrophe we confront. Nevertheless it is regrettable that some of this contention and emotion has spilt over into this case. Not only does it bedevil future relations between government and non-governmental agencies that will perforce have to join in combating the common enemy, but it could also have rendered the resolution of this case more difficult.

*Republic of South Africa*

**IN THE HIGH COURT OF SOUTH AFRICA**
**(Cape of Good Hope Provincial Division)**

**Case No: 2807/05**

In the matter between

| | |
|---|---|
| **TREATMENT ACTION CAMPAIGN** | Applicant |
| and | |
| **MATTHIAS RATH** | First Respondent |
| **DR RATH HEALTH FOUNDATIONS** | Second Respondent |
| **TRADITIONAL HEALERS ORGANISATION** | Third Respondent |

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***JUDGMENT DELIVERED on 3 March 2006***

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**DESAI J:**

The relief sought herein essentially requires the balancing of freedom of expression and other competing constitutionally guaranteed interests. The application relates to the boisterous and, at times, unseemly debate with regard to the efficacy or otherwise of anti-retroviral treatment for those

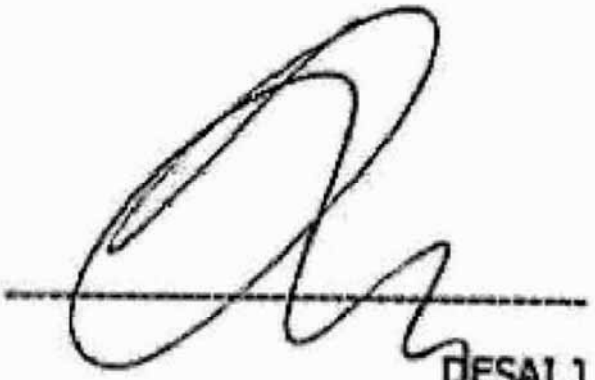
suffering from HIV/AIDS. In the light of the scale of the pandemic and its frighteningly severe consequences, this discord is unsettling. Though the arguments for and against anti-retroviral treatment have been set out in some detail on the papers, it is unnecessary for the purposes of this application to make any decision in regard thereto. This Court is, in any event, hardly competent to do so. It is an issue best left for consensus amongst suitably qualified medical scientists.

The applicant in these proceedings is the TREATMENT ACTION CAMPAIGN ("TAC"). The TAC is a company incorporated in terms of section 21 of the Companies Act and its principal objectives include campaigning for access to affordable treatment for all people with HIV/AIDS and supporting campaigns for the prevention and elimination of all new HIV infections. It endeavours to advance its objectives by means of litigation, lobbying, advocacy and other forms of social mobilisation, especially against any perceived barriers that limit access to treatment for HIV/AIDS in the private and public sector. The organisation has several thousand individual members and it seems that a range of community organisations are associated with it. The TAC and its national chairperson, Mr **ABDURRAZAK "ZACKIE" ACHMAT ("ACHMAT")**, have won national and international acclaim for their work. This is apparent from the many diverse awards received by them.

The first and second respondents are DR **MATTHIAS RATH**, a physician, and his Foundation. The precise legal status of the Foundation is unclear. It appears that they support the use of natural and traditional medicine as the basis of primary health care. The attack upon the TAC by them briefly

1.4 The applicant targets poor communities as a market for the drug industry in order to promote the interests of pharmaceutical companies.

2. The costs of this application are to stand over for determination by the court hearing the aforementioned action.



DESAI J

I agree.

LOUW J

I agree.

MOOSA J

# Top 12 Aids Dissidents

**A DEMOCRATIC ALLIANCE PUBLIC HEALTH WARNING**

**SOUTH AFRICA'S TOP 12 AIDS DISSIDENTS**

**Executive summary**

Almost 1000 South Africans a day continue to die from Aids, and one of the principal reasons for this is the ongoing and bizarrely powerful influence of Aids dissidents on government policy. South Africa has become a safe haven for Aids denialists, and the Aids denialist capital of the world.

Were it not for the influence of dissidents, South Africa would long ago have been able to take the steps that countries like Brazil and Thailand have taken to stop new Aids infections; provide appropriate education; and offer meaningful treatment to those already infected.

It is time for South Africans to unite to put an end to the denialists' sway over the national debate.

**DOCUMENTS TO DOWNLOAD**

- Top12AIDSDissidents_document.pdf (138 kb)

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The DA's objective in compiling this list is to make it clear why these individuals are so dangerous, and raise public awareness about who they are and what they stand for. These individuals hide behind the excuse of promoting scientific debate in order to promote views that are false and dangerous. South Africa cannot let this continue any longer.

The DA calls on the media, the public, and professional organizations to, for example, wherever possible exclude these individuals from positions of authority; deny their dissident views publicity; and take vigorous steps to pursue official action in respect of any infringements of the law.

The top twelve are as follows:

1. Anthony Brink (convener and national chairman of the Treatment Information Group and spokesman for the Dr Rath Health Foundation)
2. Anita Allen (Secretary of the Forum for Debating Aids in South Africa)
3. Thabo Mbeki (President of the Republic of South Africa)
4. Manto Tshabalala-Msimang (South African Minister of Health)
5. Matthias Rath (Director of the Dr Rath Health foundation)
6. Dr David Rasnick (Senior researcher: Dr Rath Health Foundation)
7. Roberto Giraldo (Technologist in the Laboratories of Clinical Immunology and Molecular Diagnosis; New York City)
8. Dr Sam Mhlongo (Head: Department of Family Medicine, University of Limpopo Medunsa Campus)
9. Essop Pahad (Minister in the Presidency)
10. Sibongile Manana (ANC MP and former MEC for Health in Mpumalanga)
11. Christine Qunta (Lawyer and legal representative of the Dr Rath Health Foundation)
12. Ronald Suresh Roberts (Presidential speechwriter and biographer)

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of Nelson Mandela
The Life and Times of Nelson Mandela
The Nelson Mandela Centre of Memory contributes to a just society by providing an integrated public information resource on his life and times
Dialogue for Justice
The Nelson Mandela Centre of Memory contributes to a just society by convening dialogue around critical social issues
Make every day a Mandela Day
The Nelson Mandela Centre of Memory contributes to a just society by keeping alive the legacy of Nelson Mandela

# South Africa'S Top Twelve Aids Dissidents

**A DEMOCRATIC ALLIANCE PUBLIC HEALTH WARNING!**

**THE LIST:**

**1. Anthony Brink**

**2. Anita Allen**

**3. President Thabo Mbeki**

**4. Dr Manto Tshabalala-Msimang**

**5. Dr Matthias Rath**

**6. Dr David Rasnick**

**7. Dr Roberto Giraldo**

**8. Prof. Sam Mhlongo**

**9. Minister Essop Pahad**

**10. Sibongile Manana MP**

**11. Christine Qunta**

**12. Ronald Suresh Roberts**

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note
Chapter 15/[] 33, 34, 35 & 36/ extended note
Chapter 16/[] 3/ extended note
Chapter 16/[] 4/ extended note
Chapter 20/[] 17/ extended note
Chapter 20/[] 51/ extended note
Chapter 20/[] 52/ extended note
Chapter 20/[] 55/ extended note
Chapter 20/[] 56/ extended note
Chapter 22/[] 7/ extended note
Chapter 22/[] 13/ extended note
Chapter 22/[] 16/ extended note
Chapter 22/[] 17/ extended note
Chapter 22/[] 36/ extended note
Chapter 22/[] 42/ extended note
Chapter 22/[] 44/ extended note
Chapter 22/[] 45/ extended

**A DEMOCRATIC ALLIANCE PUBLIC HEALTH WARNING!**

**RANKING: No. 1**

**NAME:**

Anthony Brink

**CURRENT POSITION:**

Former practicing advocate and Convener and National Chairman of the **Treatment Information Group (TIG)** and spokesman for **The Dr Rath Health Foundation**. Author of the (online) book "Debating AZT".

**HISTORY:**

**Anthony Brink** and **Anita Allen** (No. 2) are the leading lights in the Aids dissident cause in South Africa. As a result of their intensive lobbying of **President Thabo Mbeki,** they are together responsible for the long delay in the adoption of a rational aids policy in South Africa.

According to **Allister Sparks**: "**Mbeki** himself confirmed that the first person to draw his attention to these dissident websites was a lawyer and part-time jazz musician named **Anthony Brink**, then practising in the provincial city of Pietermaritzburg...**Brink** came upon the writings of the Aids dissidents in 1996, and after much surfing and reading became convinced they were right and that the drug AZT was dangerously toxic. 'A medicine from hell' he called it in an article in a Johannesburg newspaper in March 1999. This prompted a response defending the drug from **Desmond Martin**, president of the **Southern African HIV/Aids Clinicians' society**. After more exchanges, **Brink** contacted **Mbeki** and sent him copies of the debate between himself and Martin. **'That was the first time I became aware of this alternative viewpoint,' Mbeki** told me.**"** [Allister Sparks, Beyond the Miracle: Inside the New South Africa (Jonathan Ball: Cape Town, 2003) pg. 286]

The **TIG** website opens with the following statement: "On 28 October 1999, after reading an early draft of High Court advocate Anthony Brink's book, **Debating AZT: Mbeki and the Aids drug controversy**, then subtitled **Questions of safety and utility**, South African **President Thabo Mbeki** ordered an enquiry into the safety of the Aids drug AZT."

The **Treatment Information Group** describes itself as "a public interest initiative to promote research-based debate of antiretroviral drug policy, alternative non-toxic treatment approaches to AIDS, and HIV testing issues in South Africa."

The TIG website states: "The **TIG** has entered into a strategic alliance with the **Dr. Rath Health Foundation Africa** to achieve this".

**Brink** often uses public platforms to defend and promote the **Rath Foundation** and the dissident position on HIV/Aids.

**KEY QUOTES:**

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REPRODUCTIVE HEALTH



# 'Legitimate Rape'? Todd Akin and Other Politicians Who Confused Science

View All

*Missouri Rep. Todd Akin bungled science when he claimed that women who are raped are naturally protected from pregnancy. But he's not the first politician to have a shaky relationship with scientific fact*

## Thabo Mbeki and AIDS Denialism

By ALICE PARK | @aliceparkny | August 20, 2012 | 63

GETTY IMAGES

In the late 1980s, as the world struggled to get a handle on the modern-day scourge that was AIDS, a virologist at University of California, Berkeley, published a paper positing that everything researchers had learned about the epidemic was wrong.

The Berkeley scientist, Peter Duesberg, said that despite evidence to the contrary, HIV, the virus that had been identified as the common thread among those affected with AIDS, was not responsible for the disease. His theory was that AIDS was caused by long-term use of recreational drugs or antiretroviral medications. Even after drugs designed to cripple the virus were successfully developed and found to be effective in controlling infection, Duesberg maintained his AIDS denialism. By virtue of the Internet, he picked up supporters internationally, including leaders of hard-hit countries such as South Africa.

Citing Duesberg's views, South Africa's president Thabo Mbeki instituted policies starting in the early 2000s denying citizens life-saving anti-HIV drugs. Even as the country's government confirmed that 1 in 10 South Africans was HIV-positive, Mbeki adhered to long-since discredited claims that the virus was not the cause of AIDS.

TIME's Tony Karon reported at the time:

> Distinguishing AIDS in Africa as a primarily heterosexual phenomenon that is destined to slash average life expectancy in his region to 47, Mbeki insisted that "as Africans we have to deal with this uniquely African catastrophe" and that simply accepting Western conventional wisdom on AIDS would be "absurd and illogical."

During Mbeki's rule, South Africa's health minister urged patients to avoid drug therapies from the West and to rely instead on unsupported remedies including garlic and beetroot to help treat AIDS. Such policies may have cost 365,000 South African lives, according to a study by Harvard researchers.

**Related Topics:** *AIDS, aids denialism, HIV, mbeki, peter duesberg*

Urmilla Bhoola **LRC Oral History Project** **4th July 2008**

Int This is an interview for the LRC Oral History Project with Urmilla Bhoola and it's the 4th July (2008)…Urmilla, thank you very much for agreeing to be part of the LRC Oral History Project. I wonder whether we could start the interview by talking about your early childhood memories, growing up in South Africa; …the sense of where your sense of social justice and injustice developed, and also looking at the trajectory. So, what were some of the formative influences in terms of the trajectory that led you into the legal profession, as such?

UB Ok. Thanks Roxsana, I'm just really honoured to be part of this process and really, really pleased that this kind of project is being undertaken, because it's a fundamental part of our history. And I think, just to say something here about the LRC, I think the LRC has played an extremely critical role and it's an often-unacknowledged role. And, you know, people like Felicia particularly, you know, just played a remarkable role in instilling in a young lawyer like me at that time, a sense of justice and a sense of how, also a realistic sense, of how lawyers can work to achieve justice, because, you know, there was almost…almost a sense of helplessness around things, particularly when I was at university. But, to start from the beginning, I think my interest in going to the LRC, I mean, as…growing up as a child, I grew up in a typical Indian township in Benoni, so, I didn't follow in the footsteps of Charlize Theron and ended up in Hollywood, unfortunately, (laughter) made a lot less money, but I think I've lived a more moral and sane life. But, I…my political exposure developed with the Benoni Students Movement because they provided tuition when we were in Matric, and we sorely needed it because of, sort of, just, you know, gaps in a number of our teaching subjects. And through exposure to people in the Benoni Student's Movement like Azhar Cachalia, who is now a judge, and, you know, people like Prakash Diar who represented the Sharpeville Six, I developed a sense of the injustice that prevailed around apartheid. Because we were quite insulated, growing up in that little community, and although we had contact with African people from across the railway line, we lived quite close to the railway line, there was always, you know, it was…I didn't really have the big picture, and I didn't understand where it all fitted in and why there were policies like this. We never went on family holidays as kids, so it's not like we were thrown out of resorts or anything, so, it was only really in my Matric year that I started developing a very fervent need to want to do something about the injustice. And as long as I'd known myself, I always wanted to be a lawyer...

Int Really?

UB ...and my dad says I spoke about it from the time I was five years old, and coming from a family where my dad was a teacher and my mom was unemployed, I was the oldest of four kids, I never, ever thought that dream would materialise. And, I mean, I was the first person from my entire extended family of hundreds of cousins to go to university and one of two people from my school in that year, to start at Wits in 1980, the other one was Rabia Hassim. So, getting a bursary from Wits and going to Wits was an incredible, incredible thing, it was an incredible opportunity for me. And I was

Int Ok. Fair enough. I'm also wondering earlier in the interview you mentioned the idea of how in a post apartheid context, there's actually, strangely enough now, a lack of regard for the rule of law, even with the Constitution and you mentioned two cases in particular, and I'm wondering what your concerns are for the future of South Africa in terms of rule of law issues, and also the future of Public Interest Law within that context?

UB Ya. I think that there will always be a role for Public Interest Law, and there will always be...and it's an even bigger role now, because we are really...we are really challenging our own government, it's a government we put in place, but it hasn't delivered on everything we believed in, and everything it promised, and it's acted to undermine human rights in many instances. I mean if you look at the example of people who still die in prison, police brutality, that still exists, and now, you know, the xenophobic violence, how that was dealt with and, you know, it...I just...you know, we...I think there's even a greater need for a Public Interest institution, because it is the public interest that's been undermined, the rights of ordinary citizens. And whereas, under apartheid, there was always a political organisation to act in...to enforce the rights of citizens, now, there isn't one. There are small advocacy groups, you know, there are groups like...there are little coalitions, there may be the rights organisations like the Aids Law Project dealing with issues around human rights and AIDS, and ensuring that, you know, the recent SANDF case that there's no discrimination based on HIV or HIV or AIDS. I think that there are...there's such a, you know, there isn't a mass political organisation, there are just disjointed organisations doing things that are important in their own area of activity. So, there isn't an ANC that is the, kind of, you know…well, look, there is an ANC, it's completely in a shambles, and in a sense that the rights of the down-trodden and the oppressed still have to be safeguarded, so, Public Interest Law still has a role to play and a bigger law, I mean, a bigger role. Because we're not only challenging laws, we're challenging things like the administrative bureaucracies, corruption, that's rampant, and you're challenging a government that has almost...that has turned a blind eye to criminal conduct on the part of ministers, like Manto Tshabalala, you know, whose statements continue to undermine the struggle to win the Aids pandemic. So, you're dealing with so many other issues, and not all of them can be dealt with through a legal process, they involve a whole range of extra legal issues, but they impact on the way in which you conduct your legal process. I mean, you know, I also think that there's...that there are people who are just completely disillusioned by the ANC, and what's happened, and the prospect of a Zuma government, but I don't think it's for us to become disillusioned and say: oh well, you know, crime and the ANC and corruption, and, you know, the only solution is to leave the country, because it's not a solution. You know, we're born here, we've grown up here, a lot of us have given our lives to the struggle, and now the struggle takes on a different form. And for me it involves linking with the Mother Theresa Home and going to volunteer there, on a Monday and bath, you know, twelve little babies who are HIV positive or going to the Kingdom Life Centre in Scottsville once a month, where there are forty-five homeless kids, either been abandoned by their parents, who've been taken in by Sylvia Mogoba, who kind of tries to run it, has not got an approval to be a proper...from Social Welfare, to be a proper centre, so she gets no government funding. So it's doing those kinds of things where I think again it's trying to impact

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**Personal information**

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2017
Tel: 011-877-2000
Fax: 011-877-2222
**www.legal-aid.co.za**

11 April 2012

C/o Chantel Kisson

The South African Human Rights Commission

Email paia@sahrc.org.za

**SUBMISSION OF THE REPORT ON REQUEST FOR ACCESS TO RECORDS OF LEGAL AID SOUTH AFRICA IN TERMS OF SECTION 18(1) OF THE PROMOTION OF ACESS TO INFORMATION ACT 2 OF 2000**

Dear Chantel

Please find the report in respect of all requests submitted during the financial year 2011/12.

I hope you find this in order

Regards

Mr Thembile Mtati

Corporate Services Executive

Legal Aid South Africa

Tel: 011 877 2003

**List of matters in which information was requested in terms of Promotion Access to Information Act 2 of 2000**

| Name of requester | Type of request | Outcome of the request | Comments | Date when request made. | Date when the request responded to. | Regional Office | Justice Centre | Who responded |
|---|---|---|---|---|---|---|---|---|
| Leston Sampson | Request for information in terms of section 18(1) relating to the refusal to grant legal aid assistance, which included amongst others, the merit report, correspondence between Regional Operations Executive and the Justice Centre Executive relating appeal process for legal aid application as well as record of telephone calls. | The information requested were granted to the requester. | No further enquiry was made by the requester. | 22/06/2011 | 28/06/2011 | Western Cape and Northern Cape | Athlone | Mark Gaffley-Justice Centre Executive |

11/4/2012

ADV. BRINK

HE IS AN ADVOCATE, HE APPLIED TO LASA (LEGAL AID) FOR SNE ADVISORY POSITION 2 WERE AVAILABLE. HE WAS SHORTLISTE W/ 4 OTHER CANDIDATES. ONE CANDIDATE GOT 1 DURBAN POST, AND SOMEHOW HE WAS OF 1 IMPRESSION HE HAD GOTTEN 1 PIETERMERITZBURG POST. 1 2 OTHER CANDIDATES RECIEVED REGRET LETTERS. ADV BRINK RECIEVED A LETTER NOT EXPLAINING WHY HE WAS REJECTED.

- HE REQ REJECTION LETTERS SENT 2 OTHER CANDIDATES
- RECRUITMENT POLICY DOCUMENT.
- HE HAS A CASE AT LABOUR CT AGAINST LASA FOR UNFAIR DISCRIMINATION.
- 10 - VEDANANDAR - DIO - NAIR
- ADV. BRINK TOOK PROVINCIAL OFFICE TO INTERNAL APPEAL FOR LOOSING HIS FILE ON 1 VIEW THAT IT FELL OUTSIDE 1 SCOPE OF 1 COMMISSION.

REPORT TO BOARD

**SENIOR LITIGATORS**
**REPORTING RELATIONSHIPS AND JOB CLARIFICATION**

**26TH November 2011**

---

## 1. Background

The senior litigator position was introduced into our organizational structure during the 2009/10 financial year. The key objectives for creating this position were:

- to have an internal group of practitioners who could handle very complex matters
- toprovide a second career stream within the organization to focus on legal technical skills.
- to establish legal expertise to handle matters in specialist courts and higher courts such as the SCA and CC.
- to strengthen legal leadership within the organization and develop role models for other legal practitioners.

Nine senior litigator posts were created to cater for the 9 provinces. However, because there were no high court divisions in Mpumalanga and Limpopo, a second senior litigator post was allocated to Gauteng and KZN, with a view to increasing the number of positions to include posts for Mpumalanga and Limpopo at a later stage. The criteria set for the appointment of a senior litigator was set at a level to ensure that only very senior and experience practitioners were eligible.

A two stage interview process was implemented in order to identify candidates for appointment. Six senior litigators were filled during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.

## 2. Reporting relationships

In anticipation of the fact that most of the work allocated to senior litigators would emanate from the high court units where they were based, it was therefore decided that senior litigators should report to the high court unit managers. Whilst this reporting relationship has worked satisfactorily, there has been some concern that this reporting relationship was not appropriate because three of the senior litigations were now reporting to high court managers who previously reported to them when they were high court unit managers. Whilst under normal circumstances such a situation should not pose a problem, there has nevertheless been a concern that the low participation of some senior litigators in SCA cases could arise from the fact that they may be in a position to dictate to their high court unit managers on how cases are allocated in the unit.

It has therefore been agreed that from the beginning of the third quarter of this financial year, all senior litigators will directly report to their ROE. ROEs will therefore be more responsible

for the type of matters undertaken by their senior litigators. Senior litigators will nevertheless be permitted to operate from the Justice Centre where they are currently situated. However, should their relocation to the regional office improve the performance of their function, then this will also be permitted.

3. Type of matters to be handled by senior litigators

It was agreed with senior litigators that the following type of matters should ideally be handled by themselves:

- Matters which are regarded as very complex received at HCUs and JCs in the region.
- Matters identified by CCMC as impact litigation matters;
- Matters that are to be heard by a full bench of the HC, the SCA and the CC.
- Matters to be heard at specialist courts such as the commercial crimes court
- High profile matters which could negatively affect our reputation if not handled properly

A very small percentage of their time could also be spent to prepare opinions, assisting other practitioners with the preparations of their heads of arguments as well as training of staff.

An analysis has been done to determine our current coverage of criminal trial matters at both the SCA, as well as full bench appeals done at each HC division with appeal jurisdiction. During the first three terms this year, 49 criminal appeals were done of which 22 (45%) was done by Legal Aid SA. With regards full bench appeals, 206 full bench appeals were done of which 146 (71%) were done by Legal Aid SA. (Refer to Annexure A and B for details)

4. Quality reviews of senior litigators

Noting that our senior litigators constitute some of our most senior and experienced lawyers in our organization, it is felt that the current system of evaluating their performance, firstly by their high court unit managers and thereafter by our legal quality assurance unit may not be appropriate. It has therefore been agreed that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct these reviews.

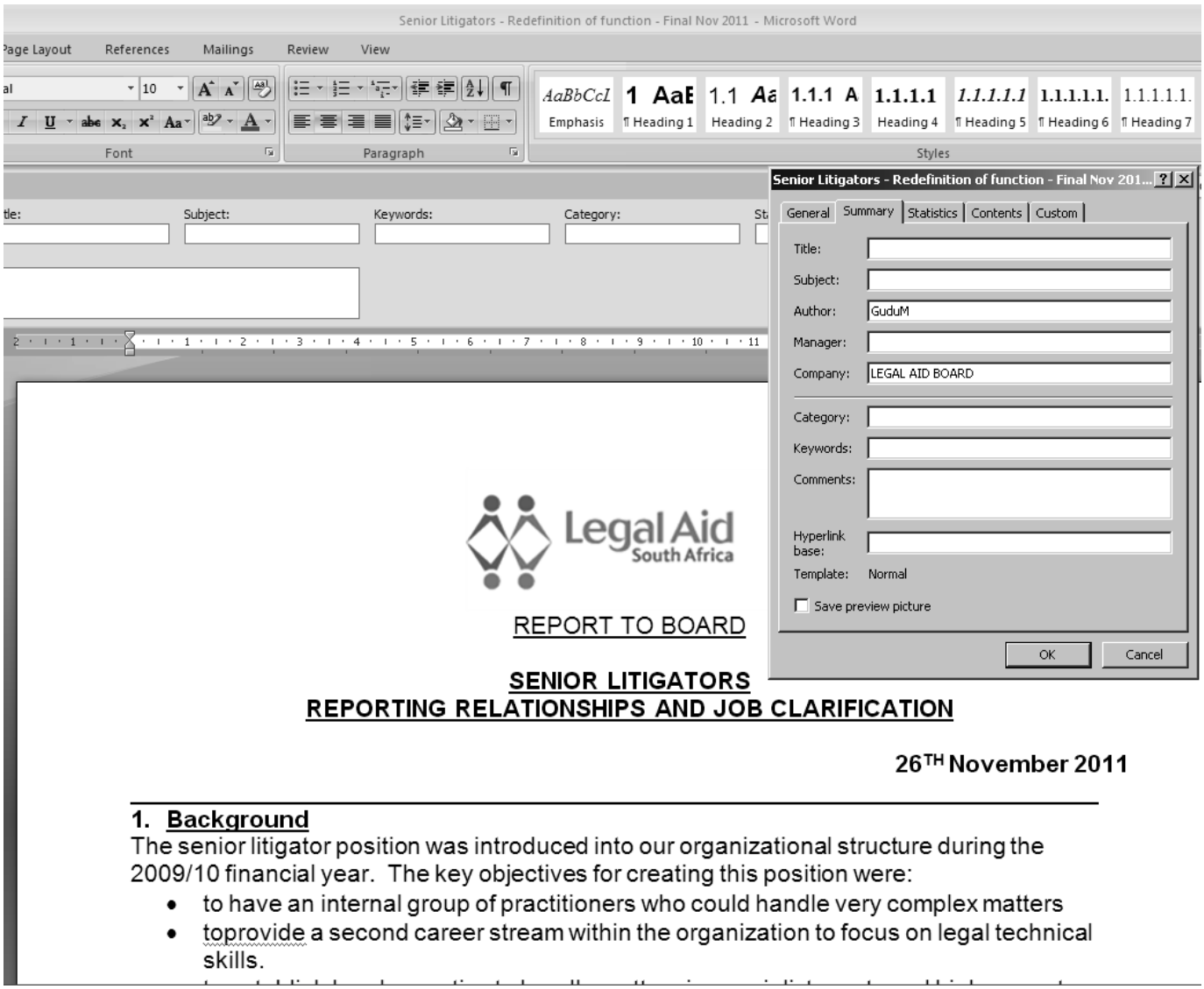
The terms of reference for these review panels will include:

- an examination of the type of cases handled to determine if it complies with our requirements;
- an examination of the level of preparedness for their cases
- a review of the appropriateness of the legal strategy adopted in their cases
- a determination of whether the most appropriate outcome of the case was achieved.

The review panel will be established during the third quarter of this financial year. All senior litigators will be reviewed by this panel before the end of this financial year.

Submitted for information.

National Operations Department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REPORT TO BOARD
SENIOR LITIGATORS
REPORTING RELATIONSHIPS AND JOB CLARIFICATION
26TH November 2011
1. Background
The senior litigator position was introduced into our organizational structure during the 2009/10 financial year. The key objectives for creating this position were:
to have an internal group of practitioners who could handle very complex matters
toprovide a second career stream within the organization to focus on legal technical skills.

## Anthony Brink

**From:** Thembile Mtati [ThembileM@legal-aid.co.za]
**Sent:** 13 August 2012 09:25 AM
**To:** Anthony Brink
**Cc:** lobothma@justice.gov.za; Solly Sekgota
**Attachments:** Letter to Brink challenging application 13 Aug 2012.pdf

Dear Mr. Brink

Annexed herewith is a letter raising some concerns arising from your correspondence with my colleague Mr Sekgota.

*Regards,*

***Thembile Mtati***
*Corporate Service Executive*
*Tel: 011 877 2078*
*Fax: 011 877 2222*
*www.legal-aid.co.za*

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Thank You.

### Mr Patrick Hundermark - Legal Development Executive (LDE)

B Com, LLB (University of Port Elizabeth), Practising Attorney North Gauteng High Court.
Legal Development Executive, responsible for the improvement of quality and range of legal services offered to Legal Aid South Africa's legal aid applicants, impact services, legal training and pilot projects.

### Mr Mpho Phasha - Communications Executive (CE)

National Diploma: Public Relations Management (Tshwane University of Technology), MAP (Wits Business School) Communications Executive, responsible for creating awareness about Legal Aid South Africa services and educating the public regarding accessing such services, as well as building strategic relations with relevant stakeholders.

### Mr Thembile Mtati - Coporate Services Executive (CSE)

B Proc (University of Fort Hare)
Corporate Services Executive, responsible for corporate services including corporate legal services.

### Ms Amanda Clark - Human Resource Executive (HRE)

National Diploma: Housing and Development Management (Technikon SA), B.Tech: Business Management (Technikon Natal), MBA (University of Wales))
Human Resources Executive, responsible for the Human Resources department and ensuring that the HR processes and systems are aligned to the Legal Aid South Africa strategy.

### Mr Andile Mbatyoti - Information Services Executive (ISE)

B.Com Honours (University of Western Cape) MBL (Unisa) Information Services Executive, responsible for the Information Technology infrastructure and the provision of support to all users within Legal Aid South Africa.

The following Regional Operations Executives are responsible for ensuring the efficient, effective and economic delivery of legal services as contemplated by the Constitution within their area of jurisdiction:

### Mr Hope Bambiso - Regional Operation Executive (ROE)

B Proc LLB (University of Fort Hare) LLM (UNISA)
Region: Eastern Cape

### Ms Martha Mbhele - Regional Operations Executive (ROE)

B Proc (University of the North)
Region: Free State and North West

### Ms Wilna Lambley - Regional Operations Executive (ROE)

B Juris, (UNISA)
Region: Gauteng

### Mr Vela Mdaka - Regional Operations Executive (ROE)

B Proc LLB (University of Zululand)
Region: KwaZulu-Natal

### Ms Cordelia Robertson - Regional Operations Executive (ROE)

B.Comm, BProc (UNISA), LLM (UWC)
Region: Western Cape and Northern Cape.

### Ms Zanele Msweli - Regional Operations Executive (ROE)

LLB (University of KwaZulu – Natal)
Region: Limpopo and Mpumalanga

### Executive appointments and resignations during the reporting period:

Mr Thembile Mtati, former Regional Operations Executive for the Eastern Cape, was appointed Corporate Services Executive with effect from 01 July 2010. Mr Andile Mbatyoti was appointed Information Systems Executive with effect from 01 April 2010. Ms Zanele Msweli was appointed Regional Operations Executive for the Limpopo and Mpumalanga Region with effect from 01 May 2010. Ms Martha Mbhele, the previous Regional Operations Executive of Limpopo and Mpumalanga, relocated to the Free State and North West Region as the Regional Operations Executive with effect from 01 May 2010. Mr Hope Bambiso was appointed Regional Operations Executive for the Eastern Cape Region with effect 01 August 2010.

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# Business Plan 2011/12

## Legal Aid South Africa

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# BUSINESS PLAN PLAN 2011 - 2012

(SMART Compliant)

(31 March 2011 - based on Strategic Plan 9 March 2011)

*Notes:*

*1. With effect from 2011/12 the SMART compliant corporate plan, including the priority/key programmes of Legal Aid SA, is called the Annual Performance Plan (APP).*

*2. Performance will be reported on quarterly in terms of the programmes and KPIs of the APP to the Board and to the Executive Authority.*

*3. The programmes and KPIs in the APP forms the reporting basis for the Annual Performance Report, which is published in the Annual Report.*

*4. Key to the row colours in this document :*

| | |
|---|---|
| | *Indicates rows in the expanded APP* |
| | *Indicates rows in the APP* |

| | |
|---|---|
| S | Specific |
| M | Measurable |
| A | Achievable |
| R | Relevant |
| T | Time-bound |

Legal Aid South Africa

| Projects | KPIs/ Outcomes | | | Outputs | Proof of Delivery | Time-frames | | | | Budget | Responsible Exec |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Measures | Targets | | | | Q1 | Q2 | Q3 | Q4 | | |
| | | Quality | Quantity | | | | | | | | |
| IT network maintained | Maintain stable IT hardware, and software platform (IS DEPT) | The "system" (servers, network, databases, and software) must NOT be unavailable to any Legal Aid SA site at any time continuously for more than 48 hours | Meet performance and availability delivery %s as per SLAs with user management | System utilisation reports UPS and Generator test logs | System utilisation reports UPS and Generator test logs | * | * | * | * | | ISE |
| Creditors paid including Judicare | Creditors payments, including Judicare instructions, (Finance Dept) | Correct procedure followed correct and authorised payment made Processed within 7 days of receipt | All authorised Judicare instructions and creditors payments | Judicare accounts and other creditors accounts processed within 7 days of invoice received from user department | PPU statistics | * | * | * | * | | CFO |
| Fixed Asset management | Management of all fixed assets | Legal Aid SA asset register up to date | Finance Department reconcile Legal Aid SA assets register | Monthly reconciliation of Legal Aid SA assets | Up to date Assets register | * | * | * | * | | CFO |
| Staffing plans | Organisational development (HR Dept) | Staffing plans up to date & according to approved structures | Programmes covering: Labour relations, people development, HR policy reviewed, job evaluation and grading followed through | Approved and up to date staffing plans | Approved and up to date staffing plans | * | * | * | * | | HRE |
| People Development | Training programmes | People development | i. Management programme ii. A programme for non-legal training and HRD programmes drafted | i. Each manager's programme for the year identified and set for the year ii. From a basket of approved courses, all Legal Aid SA staff prioritised in line with their IDPs | Management and non-legal training statistics | * | * | * | * | | HRE |
| Corporate Litigation | Corporate Litigation (Corporate Service Dept) | Settlements negotiated and actions instituted that are in the best interests of the Legal Aid SA | As and when required | Actions instituted and defended without judgment | Monthly Corporate litigation report covering commitments and provisions | * | * | * | * | | CSE |

Legal Aid South Africa

| Projects | | KPIs | | | Outputs | Proof of Delivery | Time-frames | | | | Budget | Respon-sible Exec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | Q1 | Q2 | Q3 | Q4 | | |
| | | | Quality | Quantity | | | | | | | | |
| P26-5 | Leadership Development | Develop the Legal Aid SA Leadership Pipeline | Maintain Legal Aid SA Leadership Pipeline | Ongoing | Management and Leadership Competencies Developed across pipeline | Focussed management and leadership training appropriate to the level of management | * | * | | | | HRE |
| P26-6 | Management of training | Training addresses the competency gaps of Legal Aid SA Employees | Assessed skills improved appropriately | All Training interventions | Conduct a needs analysis amongst practitioners regarding their training and development needs and include their proposals in the training | Legal Training Plan | * | | | | | LDE |
| P26-7 | Accreditation of training providers | Training Providers comply with SETA requirements | As per the unit standards | All training service providers | Source and maintain relationships with accredited training service providers in order to obtain formal recognition | Training Provider Expert Locator | * | | | | | LDE |
| P26-8 | Skills Development Compliance | Improved skills level of work force | Relevant and responsive ATP | 1 | Submission of revised annual training plan | ATP and ATR prepared and finalised to be submitted to Seta on time | | * | | | | HRE |
| P26-9 | Employment Equity | Targets as per Justice Centre, Regional Offices and Departments at National Office, to be defined in the performance contract, met and adhered to | Reflect demographics | As per the five-year plan | Diverse workforce in line with annual targets to achieve EE goals | 5 Year EE Plan implemented and monitored | * | * | * | * | | HRE |
| P26-10 | Talent acquisition & retention | Effective and efficient recruitment processes | Efficient recruitment processes | No longstanding vacancies | Effective and efficient recruitment processes | Monthly reports | * | * | * | * | | HRE |
| P26-11 | Retaining Talent | Talent risk profile monitored and mitigated | Retention risk monitored | Annual omnibus survey conducted | Ensuring staff retention | i. High risk employees identified<br>ii.Retention interviews conducted<br>iii. Mitigation measures implemented | * | * | * | * | | HRE |

| Projects | | KPIs | | | Outputs | Proof of Delivery | Time-frames | | | | Budget | Responsible Exec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | Q1 | Q2 | Q3 | Q4 | | |
| | | | Quality | Quantity | | | | | | | | |
| **Objective 17: Enabling environment to deliver quality legal services** | | | | | | | | | | | | |
| **Objective 18: People-centred human resource management – Legal Aid SA an employer of choice** | | | | | | | | | | | | |
| **STRATEGY XIII: TO IMPLEMENT PEOPLE-CENTRED HUMAN RESOURCE MANAGEMENT - LEGAL AID SA AN EMPLOYER OF CHOICE** | | | | | | | | | | | **R 34 119 510** | |
| **Programme P27: People-centred human resource management & practices** | | | | | | | | | | | **R 34 119 510** | |
| P27-1 | Performance Management | Performance Contracts aligned to business plan and performance reward as per policy | Aligned to Business Plan | Annual | Performance Contracts developed from Business Plan<br><br>Performance contracts signed off | Project Plan<br><br>Performance Contract sign-off reconcile | * | | | | R 34 119 510 | HRE |
| | | Performance Contracts aligned to business plan and performance reward as per policy | Aligned to Business Plan | Annual | Performance Contracts developed from Business Plan<br><br>Performance contracts signed off | Project Plan | * | | | | | HRE |
| | | Relevant non-financial benefit package available | | | Formalise a non-financial staff benefit package | Formalised non-financial benefit package | | | | * | | HRE |
| P27-2 | Employee Wellness | Improved employee wellness | Responsive to staff needs | EAP implemented within budget | Implementation of Employee Wellness/ Assistance Programme | Report on implementation of EAP programme | * | * | * | * | | HRE |
| P27-3 | Achiever awards | Achievers recognised | Employee recognition system implemented | Monthly applaud award, 1 midyear award and 1 annual award | Employee recognition system implemented | Monthly applaud awards | * | * | * | * | | HRE/CE |
| P27-4 | Succession Planning | Sustainability at points of rapid change | Succession candidates capacitated | As per programme | Implement a succession planning project | Succession planning programme implemented | * | * | * | | | HRE |
| P27-5 | Career pathing | Legal Aid SA Legal Career Path Maintained and widely understood | Employees aware of career growth paths | 2 activities per annum | Legal Aid SA Legal Career Path Maintained and widely understood | Legal career path in place<br><br>Employees aware of career path options | * | | * | | | HRE |
| P27-6 | HIV Aids Management | Improved Awareness / Quality of life | Safe environment for disclosure | Access to all staff | Sustainable programmes developed | HIV Aid Programme linked to EWP implemented | * | * | * | * | | HRE |

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# Budget 2011/12

## Legal Aid South Africa

Legal Aid South Africa

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# BUDGET 2011/12


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| Gauteng Region Consolidated - Budget 2011/12 | Annexure D |
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| Balanced Score Card – Budget 2011/12 | Annexure H |



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Website: www.legal-aid.co.za


1 April 2011

Legal Aid South Africa

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# BUDGET 2011/12

# EXECUTIVE SUMMARY

**1 April 2011**

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## 1. BACKGROUND

The Board approved Legal Aid South Africa's 2011/12 Budget at its 26 November 2010 meeting. The budget was prepared on various assumptions due to the fact that the MTEF allocation letters were not yet issued by National Treasury. The MTEF Allocation letters: 2011/12 – 2013/14 were subsequently issued by National Treasury on 3 December 2010.

Subsequent to the Allocation Letter being issued, Management sent an allocation letter executive summary to the Board, detailing the funds allocated for 2011/2012 Budget.

This budget has now incorporated the allocation of funds as per National Treasury letter dated 3 December 2010.

The following considerations were made when preparing the 2011/12 Budget:

1.1 Legal Aid South Africa Strategic Plan 2009/12.

1.2 The year on year increase of the National Treasury allocation including additional funding over the MTEF period.

1.3 Future financial sustainability of the organisation.

1.4 The proportion of direct service delivery costs to administration support costs.

1.5 The Capital Asset Replacement Programme.

## 2. KEY ASSUMPTIONS MADE WHEN PREPARING THE BUDGET

2.1 As per National Treasury guidelines, the budget was prepared under the assumption that inflation increase is 6,4% for the budget period under review with salary increases budgeted at 6%. The CPI was 3.7% as at end of July 2010.

2.2 In 2010/11 salaries for regional and justice centres were budgeted at 97%. This recruitment rate was increased to 100% in the 2011/12 financial year.

2.3 The standard unit costs were applied on the following line items.

a) Disbursements
b) Education and training
c) Printing and stationery
d) Public Relations
e) Staff refreshments
f) Subscriptions and membership fees
g) Telephone and faxes
h) Tools and equipment
i) Vehicle licences
j) Workshops

2.4 In instances where contracts are in place, the budget was based on our contractual obligations. We have contractual obligations on the following line items:

a) Audit fees – (Dependent on external audit strategic plan)
b) Cleaning materials and services
c) Computer disaster recovery
d) Computer software licences – (Dependent on foreign currency exchange rate)
e) Document exchange
f) Insurance – Group Life - (Dependent on the wage settlement agreements)
g) Insurance – Short term- (Budget dependent on the annual premium reviews)
h) IT Support
i) Office rental and operating costs
j) Postage and courier
k) Rental office equipment
l) Security costs
m) Storage costs
n) Vehicle tracking
o) Wide area network

2.5 Other operating budget items were increased by 6%.

## 4. ANALYSIS OF BUDGET

The analysis below relates to 2011/12 Budget – National Consolidation attached as Annexure A.

| EXPENDITURE ITEM | 2010/2011 BUDGET | 2011/2012 BUDGET | INCREASE/ DECREASE | % CHANGE |
|---|---|---|---|---|
| | | | | |
| **Total salaries and related costs** | **835,887,752** | **867,887,364** | **31,999,613** | **4%** |
| Salaries and related costs | *753,343,752* | *833,268,364* | *79,924,613* | *11%* |
| OSD funding Phase 1 & 2 / Increase in legal capacity | *72,000,000* | *20,000,000* | *-52,000,000* | *-72%* |
| COLI | *10,544,000* | *14,619,000* | *4,075,000* | *39%* |
| **Other direct expenditure** | **115,777,741** | **110,397,229** | **-5,380,512** | **-5%** |
| Recurring direct expenditure | *103,861,741* | *110,397,229* | *6,535,488* | *6%* |
| *Once off direct expenditure* | *11,916,000* | - | *-11,916,000* | *-100%* |
| **Operating budget** | **165,068,257** | **195,825,608** | **30,757,351** | **19%** |
| *Non contractual expenditure* | *66,188,847* | *70,811,089* | *4,622,242* | *7%* |
| *Contractual expenditure* | *78,464,600* | *88,534,571* | *10,069,971* | *13%* |
| *Depreciation* | *20,414,810* | *36,479,948* | *16,065,138* | *79%* |
| **Total Capital budget** | **37,516,932** | **17,741,747** | **-19,775,185** | **-53%** |
| *Capital budget* | 19,536,061 | 17,741,747 | *-1,794,314* | -9% |
| *Rollover funds capital budget* | 17,980,871 | - | -17,980,871 | -100% |
| | | | | |
| **Total excluding Case Backlog** | **1,154,250,681** | **1,191,851,948** | **37,601,267** | **3.3%** |
| | | | | |
| **Case backlog** | **25,000,000** | **30,000,000** | **5,000,000** | **20%** |
| | | | | |
| **Total Including Case Backlog** | **1,179,250,681** | **1,221,851,948** | **42,601,267** | **4%** |

Major variances are explained below

| COMMENTS | VARIANCE |
|---|---|
| 4.1 Salaries and related costs increased by 4% when compared to the previous financial year. This is due to the R42 million once off backlog funding for OSD Phase 2, which has been included in the 2010/11 budget. The recruitment level was also increased from 97% in 2010/11 financial year to 100% in 2011/12. Salaries for 2011/12 include the cost of living increment (COLI) of 6% and the performance progression increase (PPI) at an average of 1.5%. | 31,999,613 |
| | |

## 3. SALIENT FIGURES OF THE BUDGET

Budget allocations for the years 2008-2014 are tabled below.

| YEAR | LEGAL AID SOUTH AFRICA REVISED BASELINE | NEW FUNDING | BASELINE ADJUSTMENT | LEGAL AID SOUTH AFRICA MTEF PER ALLOCATION LETTER | ONCE OFF /CHILD ACT & CHILD JUSTICE ACT | ROLL OVER FUNDING | OCCUPATIONAL SPECIFIC DISPENSATION (OSD) | COST OF LIVING INCREASE (COLI) | SUBTOTAL BEFORE CASE BACKLOG MTEF LETTER | % CHANGE - GRANT | CASE BACKLOG | LEGAL AID SOUTH AFRICA REVISED MTEF |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2008/09 | 605,312,000 | 55,000,000 | | 660,312,000 | | 31,431,083 | Note 1 144,604,000 | 8,604,000 | 844,951,083 | 22.8% | 24,600,000 | **869,551,083** |
| 2009/10 | 718,547,000 | 60,000,000 | | 778,547,000 | 1,600,000 | | Note 2 106,000,000 | 11,261,000 | 897,408,000 | 8.7% | 20,000,000 | **917,408,000** |
| 2010/11 | 937,309,000 | 40,000,000 | | 977,309,000 | 24,916,000 | 17,980,871 | Note 3 72,000,000 | 24,130,000 | 1,116,335,871 | 10.7% | 25,000,000 | **1,141,335,871** |
| 2011/12 | 1,081,438,000 | Note 4 20,000,000 | | 1,081,438,000 | 13,715,000 | | 30,000,000 | 14,619,000 | 1,139,772,000 | 8.6% | 30,000,000 | **1,169,772,000** |
| 2012/13 | 1,197,069,000 | Note 5 20,000,000 | Note 6 (34,308,000) | 1,182,761,000 | 14,401,000 | | 5,000,000 | 15,555,000 | 1,217,717,000 | 6.4% | 32,000,000 | **1,249,717,000** |
| 2013/14 | 1,248,963,000 | 10,000,000 | | 1,258,963,000 | 15,121,000 | | 5,000,000 | 16,275,000 | 1,295,359,000 | 6.8% | 34,000,000 | **1,329,359,000** |
| **TOTAL** | **5,768,638,000** | **205,000,000** | **-34,308,000** | **5,939,330,000** | **69,753,000** | **49,411,954** | **362,604,000** | **90,444,000** | **6,511,542,954** | | **165,600,000** | **6,677,142,954** |

**Notes**

1. This figure relates to OSD Phase I funding - R44.6 million for 2007/08 back pay and R100 million for 2008/09.
2. The amount relates to OSD Phase I carry through costs.
3. The amount relates to OSD Phase II back pay of R42 million from 2007/08 to 2009/10 financial years and R30 million for the current financial year, i.e. 2010/11.
4. The amount relates to new funding allocated for increase in legal capacity as per allocation letter for 2010/11 - 2012/13 MTEF.
5. The amount relates to new funding allocated for increase in legal capacity as per allocation letter for 2011/12 - 2013/14 MTEF.
6. The budget cut of R34.3 million for financial 2012/13 is as per 2010 allocation letter.
7. In 2008/9 the grant increased by 22.8% due to the first time allocation of R100 million for OSD Phase I.
8. In 2010/11 the grant increased by 10.7% due to the first time allocation of R30 million allocation for OSD Phase II.

3.1 The Budget allocation of R1,169,772,000 for **2011/12** includes:

| | |
|---|---|
| R1,081,438,000 | Revised Baseline funding |
| R30,000, 000 | OSD Phase II funding |
| R14,619,000 | Cost of living adjustment |
| R30,000,000 | Case backlog funding to be allocated from DoJ's budget |
| R 13,715,000 | Implementation of new legislation i.e. Child Act & Child Justice Act |

884

**TUESDAY, 7 JUNE 2011**

———

***PROCEEDINGS OF THE EXTENDED PUBLIC COMMITTEE – GOOD HOPE CHAMBER***

———

Members of Extended Public Committee met in the Good Hope Chamber at 10:05.

The House Chairperson Mr C T Frolick, as Chairperson, took the Chair and requested members to observe a moment of silence for prayers or meditation.

**APPROPRIATION BILL**

Debate on Vote No 24 – Justice and Constitutional Development:

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: Chairperson, hon members, Chief Justice and members of the judiciary, heads of constitutional institutions, distinguished guests, comrades, friends, ladies and gentlemen, it is an honour and a privilege to be afforded this opportunity to present to you the budget of the Department of Justice and Constitutional Development for the coming year.

years of generalised larceny as the cost of the revolution. It happened, historically.

This has been a bloodless revolution, but we need to turn a new page, otherwise we are going to have a parallel system of power fuelled by corruption, akin to what there is in Russia, which will undermine the democratic system of power which we try to uphold within Parliament. This is an issue that I will be carrying forward in further debates. Thank you, Mr Chairman. I see my time has expired. [Time expired.]

Nom J B SIBANYONI: Sihlalo, ngisikima nokuthokoza, bengiyalotjhisa kuNgqongqotjhe wezoBulungiswa nokuThuthukiswa komThethosisekelo, uMhlonitjhwa uJeff Radebe, kunye nomndenakhe, ngilotjhise kuSekela lakhe uMhlonitjhwa u-Andries Nel, godu namajaji akhona njenganje, namajaji wakade, begodu nakiwo woke amaLunga ahloniphekileko wePalamende akhona namhlanjesi. (*Translation of isiNdebele paragraph follows.)*

[Mr J B SIBANYONI: Chairperson, I stand to thank and greet the Minister of Justice and Constitutional Development, hon Jeff Radebe, his family, with greetings to his Deputy hon Andries Nel, and all judges present here, retired judges, and all hon Members of Parliament present today.]

Minister, we thank you so much. I understood you as you were speaking, even when you said the programme will not be used to postpone the cases only, but as time goes by there will be prosecution of cases through a satellite linked-up of a person sitting in the cells where he is kept. So we thank you.]

With regard to Legal Aid SA, Lasa, led by the honourable Mr Justice Dunstan Mlambo, the report of the Portfolio Committee on Justice and Constitutional Development indicates that, during its presentation, Legal Aid SA indicated that it received additional funds to improve its practitioner-per-court ratio, accommodate occupational-specific dispensation, OSD, funding and increase its civil work. Additional amounts of R44,6 million, R90,8 million and R106,3 million have been allocated to Legal Aid SA to increase capacity, improve conditions of service and implement phase 2 of the OSD for legally qualified professionals.

The Justice and Constitutional Development portfolio committee, as in previous years, has been impressed by Lasa's presentation of its strategic and annual performance plan.

Umsebenzi wenu eniwenzako muhle, Jaji Mlambo, begodu uyakarisa. [Judge Mlambo, the work you are doing is commendable and impressive.]

Lasa should be proactive in seeking out opportunities to promote what it does. The report states that the committee is encouraged by the strong emphasis that emerged on the quality of services that Legal Aid SA provides. The ANC supports Lasa's goal of expanding its civil work and impact litigation, despite the financial constraints that it faces in this regard. Therefore, the ANC supports Lasa's aim to reach the rural poor.

I will be very brief on the matter of the Small Claims Courts. We commend the hon Andries Nel for championing the establishment of Small Claims Courts throughout South Africa. Thank you very much. [Applause.]

The extension of the civil jurisdiction of regional courts has been a resounding success. It is opening up access to justice for the rural poor.

I want to end by reflecting on the concept of freedom of expression versus the sub judice or *pendente lite* principle. The question is: Does the media respect the sub judice or *pendente lite* rule? *The Sunday Independent* newspaper of 29 May 2011 carried a front-page story with its heading in bold and huge letters. It said: "Hlophe must go: Ramphele". The question is ...

Service Commission Amendment Act, the Child Justice Act and the Children's Act of 2005.

Consultations on the Muslim Marriages Bill is also ongoing, and we do hope that the consultations will recognise Muslim marriages, the absence of which gives rise to countless instances of hardship, particularly in the case of women and children who find themselves in distressing situations when these marriages fail and are terminated.

Hon members, allow me to provide you with the budget allocation relative to the programmes and commitments that have been made. A total budget of R13,5 billion has been allocated to the department for the 2011-12 financial year. Of this budget allocation, R4,3 billion is allocated to court services, R2,6 billion for the National Prosecuting Authority and R1,6 billion for public entities and Chapter 9 institutions.

The 2011 budget also sets out additional allocations of R477 million for this financial year, R1,2 million for 2012-13, and R1,4 million for 2013-14: for increasing regional capacity, R490 million for building new courts, R175 million for implementing legislation concerning vulnerable groups, R210 million for renewing our information and communications technology infrastructure, R45 million for the United in

Diversity presidential initiative, R938,4 million for improving conditions of service and implementing the second phase of the occupation-specific dispensation for legally qualified professionals, R240 million for increasing the department's baseline for accommodation charges, R437,5 million for appointing more judges and magistrates, including secretarial support, and R405 million for adding capacity for Legal Aid SA, the Special Investigating Unit, the SA Human Rights Commission and the Office of the Public Protector. Over the next three years, the department will spend R2, 5 billion constructing new courts, and so on.

Before I conclude, allow me to convey my gratitude to Chief Justice Ngcobo for his profound leadership. We also congratulate him on the extension of his tenure as Chief Justice for a further five years. Allow me also to thank my Deputy, Mr Nel, the justice, crime prevention and security cluster, the Director-General, Ms Sindane, and the whole management team, heads and chairpersons of statutory bodies, heads of courts and members of the judiciary as a whole, and the entire staff of the justice family.

Lastly and most importantly, I would like to thank my wife, Bridgette, who is here today, and my family who are always at my side throughout the many challenges that I face in the execution of my responsibilities. Thank you. [Applause.]

working now. So that when there are talks, it will be known what he has done.]

In conclusion, hon Chair, I would like to say that I also looked at an article written by the author Mr Moya in the *City Press* of 5 June 2011, which says, "Hlophe deserves fair treatment". The ANC supports the Budget Vote. [Time expired.] [Applause.]

The DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: Hon Chairperson, hon Minister, hon members, heads of court and other members of the judiciary, heads of constitutional institutions, distinguished guests, comrades and friends, ladies and gentlemen, 27 years ago, in 1984, the people of South Africa marked the first anniversary of the United Democratic Front, UDF. On this occasion, one of its co-presidents said:

> Sons and daughters, to me today I'm a great big mother, for today our multiracial baby is born. For today our baby that will rule this South Africa in future is born. The multiracial baby, the United Democratic Front, which is uniting the people to speak with one voice, which is uniting the people with the truth, which is uniting the people to say no to the Koornhof laws, which is uniting the people to

households, people affected by violations of human rights, the aged, persons with disabilities, the youth including children in prisons, and foreign nationals in need of assistance. We thank the European Union for their support and partnership in this vitally important programme.

Legal Aid SA has been very effective in utilising a budget of more than R1 billion to execute the constitutional imperative of providing legal aid to indigent accused persons and vulnerable litigants. Legal Aid SA now provides legal aid services at all our criminal courts through a national network of 64 justice centres and 64 satellite offices staffed by 1 600 salaried in-house legal representatives and by access to over 4 500 accredited lawyers.

During the 2010-11 financial year, Legal Aid SA provided legal services in 421 365 matters, comprising assistance in 389 914 criminal matters and 31 451 civil legal matters. Through these legal services, 25 586 children were assisted in criminal matters and 2 529 children in civil matters.

The Legal Aid Advice Line was launched in November 2010, facilitating telephonic access to primary legal assistance by persons from across the country and especially from rural areas. Since then, the Legal Aid Advice Line has assisted over 13 926 callers. We thank the Judge President of the Labour

Mr S N SWART: Chairperson, the ACDP shares in expressing our condolences to the family and friends on the passing of Ma Albertina Sisulu. Our prayers are with you at this time.

Chairperson, hon Minister, court performance lies at the heart of this department. The committee has, for some years, expressed its dissatisfaction at ongoing poor court performance despite many initiatives. We are, however, pleased that the Chief Justice has now taken on the responsibility of monitoring performance in all the courts and we look forward to an improvement in this area.

We also support the three prioritised projects, namely to achieve a no-audit qualification by 2012-2013, a service turnaround in maintenance services, and a turnaround in the Master's branch. These are crucial areas in terms of service delivery and financial accountability.

One of the shining stars is clearly Legal Aid SA, whose presentation greatly impressed many members. It shows that a state organ can be turned around and effectively run consistently over a period of years, and serves as an inspiration to other organs and departments that service delivery can be effectively provided. Well done, Judge Mlambo and your team! [Applause.]

**Portfolio Committee on Justice and Constitutional Development**
**9 October 2012**
**Legal Aid South Africa 2011/12 Annual report**

**Chairperson:** Mr L Landers (ANC)

**Documents Handed Out:**
Pres Release on Legal Aid South Africa (LASA) 2011/12 Annual Report
Power point presentation on the Annual Report
Legal Aid South Africa 2011/12 Annual Report

**Summary**
Legal Aid South Africa reported that it had successfully completed the third year of its 2009-2012 Strategic Plan period and was able to achieve most of the strategic shift it had set to achieve in that period. In 2011/12 it provided access to legal aid to indigent clients – handling 682 962 legal and legal advice matters. It increased civil legal aid by 48% due to increased civil practitioner capacity. Legal quality remained a focus and a priority and generally legal practitioners met their quality targets. Strong financial management and governance were reflected in the 11th unqualified audit and 7th year of no matters of emphasis. The non-compliance with tax clearance certificates in judicare matters was being attended to. A people-development focus continued as confirmed by the successful accreditation for the third year as a Best Employer.

The Committee members congratulated Legal Aid South Africa on its accomplishments. Members asked about the use of agencies where there were already Legal Aid Centres present. There was also an exchange about the exact numbers of employees versus the number of budgeted posts and how Legal Aid managed their expenditure for its number of employees. Questions also included requests for detail on the Children's Act and the allegation published about the Boeremag. There was a suggestion that because of Legal Aid's large footprint in the country, its offices be used as a gateway for people to reach other agencies such as Chapter 9 organisations.

**Minutes**
The Chairperson said he had been informed that the Chairperson of the Board would not be able to attend the meeting but that was fine as he was sure that Legal Aid SA had brought qualified people.

**Presentation by Legal Aid South Africa (LASA)**
Mr Jan Maree, Non-Executive Director and Committee Member, LASA, introduced the report with a short overview. This was the second integrated report that reported on financial and non-financial performance against the Strategic Plan 2009-12 as well as the Annual Performance Plan 2011-12. The integrated report reported on social, economic and environmental considerations that had a bearing on the future of the organisation, the environment within which they operated and the communities they served. It included reports on an overview of the organisation as well as issues and trends impacting on it, sustainability, corporate social investment and stakeholder engagement. LASA reported on its compliance with Global Sustainability Reporting Initiatives (GSRI). The Integrated Report included a statement from the governing board acknowledging its responsibility for ensuring the integrity of the report. 2011-12 completed the three-year period of the LASA Strategic Plan 2009-12. The presentation also reported on progress against the recommendations of Budgetary Review Recommendation Report (BRRR) of the Justice Portfolio Committee dated 26 October 2011.

LASA operated within a strong governance framework which included an effective and functioning governing board and audit committee, compliance with the Legal Aid Act, Public Finance Management Act and National Treasury regulations, 100% implementation of all recommendations of the King III Report on Corporate Governance, compliance with the Promotion of Access to Information Act (PAIA), and an effective and independent internal audit department. The Legal Aid Act was in the process of being redrafted and a new Legal Aid Bill was expected to be tabled before Parliament in 2012.

Ms Vidhu Vedalankar, CEO: LASA, went through the statistics that Legal Aid had produced over the year. Legal Aid now had 2 470 people working in 64 Justice Centres and Satellite Offices and 13 high court and civil units. They had covered 428 653 criminal and civil cases. 95% of these matters were handled by the Justice Centres while the remaining 5% was handled via Judicare, coops or agency agreements. There was also a 50% drop in children cases handled by Legal Aid.

Regarding non-legal functions delivery, Matrix Management had been further consolidated. Functional management committees continued to assist in monitoring performance of support staff at both Justice Centre level and regional office level. The matrix function had been fully embedded resulting in effective

**Challenges**
▪ Capacity at regional and district courts was insufficient to adequately meet the demand as well as provide a limited relief capacity to deal with staff absence.
▪ High turnaround times at Regional Court and High Court led to increased backlogs at court.
▪ There was also insufficient civil capacity to meet increased demand for civil legal aid services.
▪ There were high numbers of awaiting trial detainees in custody for excess periods.
▪ There was non-compliance on tax clearance certificates in judicare matters as noted by Auditor General. ▪ The IT challenge: problems with K2 patching, finalisation of K2 upgrade, finalisation of switch to sharepoint platform which all impacted on speed and stability of the IT system.
▪ Dependence on candidate attorneys to render services at district courts negatively impacts on perception and sometimes service delivery

Ms Vedalankar concluded by reminding Members that LASA had provided access to legal aid for indigent clients with 682 962 legal and legal advice matters – which was a notable achievement – as was the increase in civil legal aid by 48% due to increased civil practitioner capacity.

***Discussion***
Mr J Jeffrey (ANC) said that he was extremely pleased with Legal Aid but it was the Committee's job to make sure they did oversight. He was curious about a Promotion of Access to Information Act (PAIA) report that was released that stated the South African Human Rights Commission was unhappy with LASA and their cooperation in terms of PAIA. He also noticed that the slide on Child Justice was the exact same slide from their presentation. That did not seem to make sense neither did their allocation of funds for Child Justice. They created 23 district and six regional posts in both 2011 and 2012 and that did not seem possible.

Mr Jeffrey said that the Committee had asked for quarterly reports from Legal Aid not just annual ones. He asked why there was not a cooperation agency agreement and asked how much it cost. The use of agency agreements was also questioned. On a more particular note, he said that Legal Aid could not say technically that they were compliant with the Legal Aid Act because according to the Act, an updated version must be published annually which had not occurred.

The Chairperson told the delegation that they would arrange for Legal Aid to view the PAIA report.

Ms D Schafer (DA) congratulated LASA on their annual achievements. She had a question about the tax sheets that the legal providers were not giving to Legal Aid. She asked if the huge lack of them was because of a lack of oversight. Also, did the trust deposits create a problem for LASA?

Mr J Sibanyoni (ANC) asked specifically about agency agreements. He was curious as to why there were agency agreements in areas where there was already a LASA office. The time limit that came with these agency agreements was also brought into question. He was curious to know about some of the success stories with the agency agreements.

Ms C Pilane-Majake (ANC) asked about LASA's internal audit and how many people on the audit committee were external from LASA. She also congratulated LASA on their report.

Ms M Smuts (DA) congratulated LASA on a sensational report. She was curious what LASA thought about the news article on Sunday about the Boeremag which she believed that LASA had represented. She explained that there was a sensational story that reported that legal information between the members of the Boeremag and their legal team had been intercepted by the police and turned over to the prosecution. She was also curious about what role LASA could play in the unclogging of the legal system particularly the issue with accused being detained, trial times, and missing trial transcripts.

Mr Jeffrey interjected saying that this happened often with awaiting trialists who should not even be there because their crime was not even punishable by prison time.

*Response*
Ms Vedalankar told the Committee that they had provided quarterly reports and had sent them to the Committee.

Mr Jeffrey interrupted, asking whether anyone in the Committee had received the reports which none of them had or could recollect.

Ms Vedalankar apologised and said that the reports would be sent. She went on to say that the Children's Act expenditures were basically the same because that was how much it cost to keep to the employees on

for the financial year with a slight increase for property costs.

Mr Jeffrey said that the wording was wrong and wanted the CEO to be clear that new positions had not been created but merely maintained. He said that they merely “cut and pasted” from last year’s report which created wrong information.

Ms Vedalankar said they had not cut and pasted but they merely had worded the information wrongly.

Mr Jeffrey said that he did not agree with that.

Ms Vedalankar said they would agree to disagree and that she knew that the Committee did not like cutting and pasting.

The Chairperson said that he wanted to know about the PAIA report.

Ms Vedalankar said that she was very unhappy with the PAIA report because it was untrue. Legally one could not use PAIA when one was in court and there was going to be an official judgement about this. In terms of the audit reports, she explained that one of the members of the audit committee had resigned so currently there were five members on the audit committee, of which three were external members.

Ms Pilane-Majake thanked the CEO for the clarification but said that the report seemed to show only what was desirable.

Mr Jeffrey said that he wanted LASA’s statistics on children because those of the South African Police Service seemed to be off. He again asked the question about the successfulness of service agencies.

Ms Vedalankar said that they did not have the statistics on children in the report but that they wanted to do more in terms of domestic violence. In terms of the alignment of services, she said that just because a town was in a province, it did not mean that the closest office was in the same province and that there were no provincial boundaries. She also agreed that the lost records of trials especially in Gauteng was an issue. She then handed over to her colleague.

Adv Wilna Lambley, Regional Operations Executive, explained the issue of proximity. There had been reshuffling of offices and agency agreements. There was constant oversight and discussion about which offices should serve which communities. In terms of the lost transcripts, most of these had occurred in Gauteng. It was due to a turnover in terms of the people who managed the transcripts. As of now, most of the transcripts had been found but there were still 40 to 50 missing.

She went onto say that the Boeremag practitioners were only briefed by Legal Aid but they would be looking into reports that an alleged witness had come forward with this information. This however would probably not create any appeals different from the law’s regular appeals process The Judge would have to make a decision about this and what the law said.

Ms Vedalankar said that 25% of their legal providers had applied for tax sheets while 25% had said that they would not provide LASA with any of them.

The Chairperson asked if these legal providers would be used by LASA if they failed to produce tax clearance certificates.

Ms Vedalankar said, yes, they would be terminated if they were in the middle of any trial proceedings.

Mr Maree added that a tax clearance certificate had never been required for a legal provider.

Mr Jeffrey asked about the discrepancy between staff and number of posts in terms of their expenditure in their budget for each. He also asked if Legal Aid had been in touch with Chapter 9 organisations and if Legal Aid could accept complaints on behalf of a Chapter 9 organisation if such organisation did not have an office in the area. Legal Aid’s footprint throughout the country could make this cost effective and he asked if Legal Aid would be open to the idea.

Mr Jeffrey asked why land cases were up so dramatically this year or last year and their status in relationship with rural development, and also why had Duty Care gone up. He also inquired about the costs of cooperation agreements and the status of the criminal justice review.

# Annual Performance Report 2011-12

Briefing of

Portfolio Committee on Justice & Constitutional Development

9 October 2012

# Report on completion of Strategic Plan 2009-2012

| | 2009-12 SP period legal services delivery shift planned | 2009-12 SP period legal services delivery shift achieved |
|---|---|---|
| 3 | Improve specialist capacity to serve vulnerable groups | •Specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts, children's matters, all in place;<br>•Impact Litigation Unit fully functional and assessing and taking on new matters affecting vulnerable groups<br>•senior litigators employed and working on complex matters and matters in higher courts<br>•practitioners trained in specialist matters and continuous training also continues<br>•Expert panels established to support our legal practitioners in specialist matters; |
| 4 | Independent quality assurance implemented and functional | •Independent legal quality assurance unit fully functional and expanding to cover all quality assessment of aspects of legal services delivery including paralegals, judicare practitioners and agency agreements<br>•Quality targets are being met by legal practitioners -both JC management quality assessment and independent legal quality assurance unit assessment |
| 5 | Consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services | •Launched our new corporate identity and 'Legal Aid SA' brand which has been positively received<br>•Brand awareness has increased each year - overall increase of 19% over 3 years to 56% awareness of Legal Aid SA in lower LSM groups<br>•Brand awareness in lower LSM Groups: FY 2009/10 ( 43%), FY 2010/11 ( 49%) and 2011/12 ( 56%) |
| 6 | To implement programmes and projects from the CJS Review | •Criminal Justice System review, protocols, legislative proposals and other interventions to improve case flow and the efficiency of the criminal justice system were monitored and implemented as they were rolled out. |

Print this page

# Police affirmative action case could go to highest court

Nov 2, 2012 | Franny Rabkin

## Judge rules that South African Police Service's discrimination against Capt Renate Barnard was 'clearly justifiable' in the circumstances of the case

AN AFFIRMATIVE action judgment by the Labour Appeal Court on Friday looks set to head for the Constitutional Court after trade union Solidarity said it had diluted white South Africans' rights to equality.

If the case is heard by the Constitutional Court, it would be the first time the affirmative action provisions of the Employment Equity Act came before the highest court.

In his judgment, Dunstan Mlambo, judge president of the labour courts and Labour Appeal Court, said the South African Police Service's discrimination against Capt Renate Barnard was "clearly justifiable" in the circumstances of this case.

Capt Barnard was twice overlooked for a superintendent post at salary level nine in the SAPS, despite getting the highest score in both rounds of interviews and being recommended as first choice by the interview panel.

The post was, in terms of the SAPS's employment equity plan, one of a number supposed to be made available to black candidates, to achieve more equitable race representativeness at that level of seniority.

Capt Barnard won her case at the high court. Acting Judge Paul Pretorius found that employment equity plans needed to be both rational and fair. When considering whether a plan was fair, the human dignity of the person who was being discriminated against had to be considered, he said.

But Judge Mlambo said the lower court's reasoning meant that employment equity measures "must yield" to an individual's right to equality and dignity.

Looking at the constitution's equality provisions — which specifically mandate affirmative action measures — the judge said affirmative action was not an exception to equality but was integral to its real, substantive achievement.

An employment equity plan was therefore "a constitutionally mandated tool" in the hands of employers to ensure equitable employment practices and representativeness.

Referring to the SAPS's employment equity plan, Judge Mlambo said: "Rigid or not, these numerical targets represent a rational programme aimed at achieving the required demographic (representativeness)."

He said the Employment Equity Act was conceived in recognition of the need to address the adverse effects of apartheid-based discriminatory practices.

The fact that whites were overrepresented at salary level nine in the SAPS was "a stark reminder of our past and indeed the present, and yet another wake-up call to decisively break from these practices", the judge said.

However, Solidarity, which litigated on behalf of Capt Barnard, said the judgment could not be acceptable in a constitutional democracy.

Dirk Hermann, deputy general secretary of the trade union, said: "We don't believe the constitution sanctions this kind of racism."

He said since the matter was deeply intertwined with constitutional matters, Solidarity hoped to appeal directly to the Constitutional Court.

899

With Sapa

9/7/2012 8:58:41 AM

## AG blasts Legal Aid Board

Legal Aid South Africa has come under fire from the Auditor-General, Terence Nombembe, for giving contracts to companies whose taxes are under question.

In an annual report submitted to Parliament this week, the auditor-general came down hard on Legal Aid South Africa, formerly the Legal Aid Board, for its manner of conducting business.

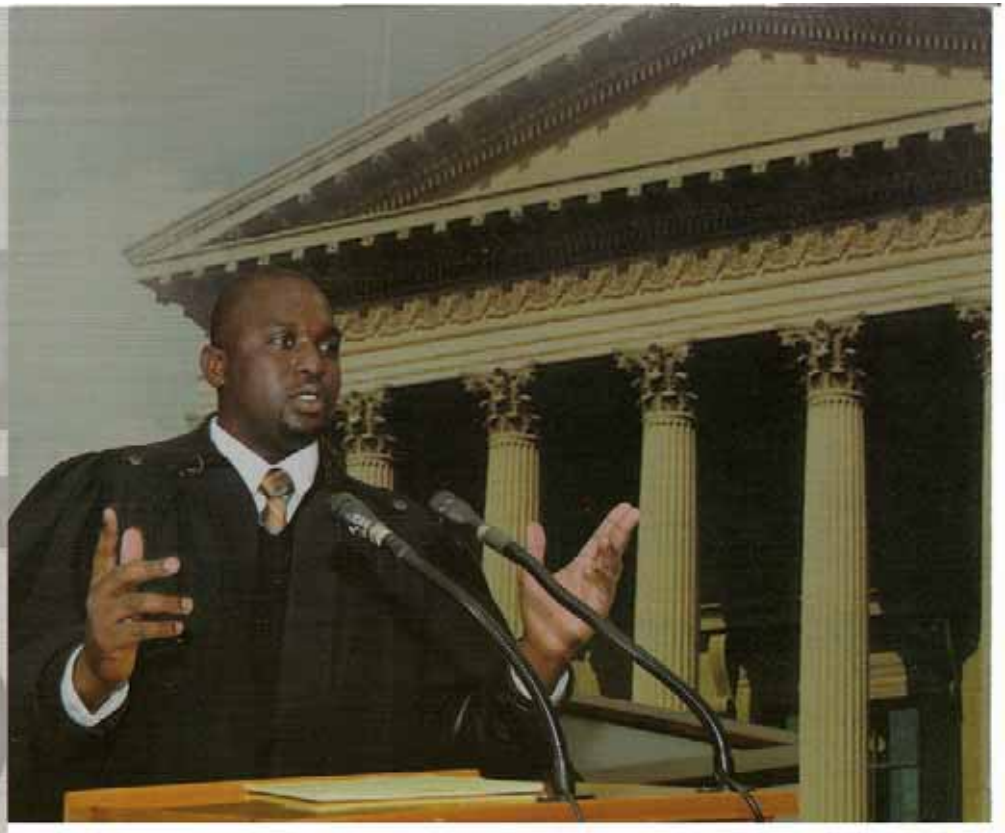
Nombembe said that the body should have done better than giving away businesses to companies that have not cleared their tax matters with the South African Revenue Service.

He said Legal Aid South Africa should have been able to get its facts right.

“Contracts and quotations were awarded to suppliers whose tax matters had not been declared by the South African Revenue Services to be in order as required by Treasury regulations and the Preferential Procurement Regulations,” Nombembe said.

*siyabongam@thenewage.co.za*

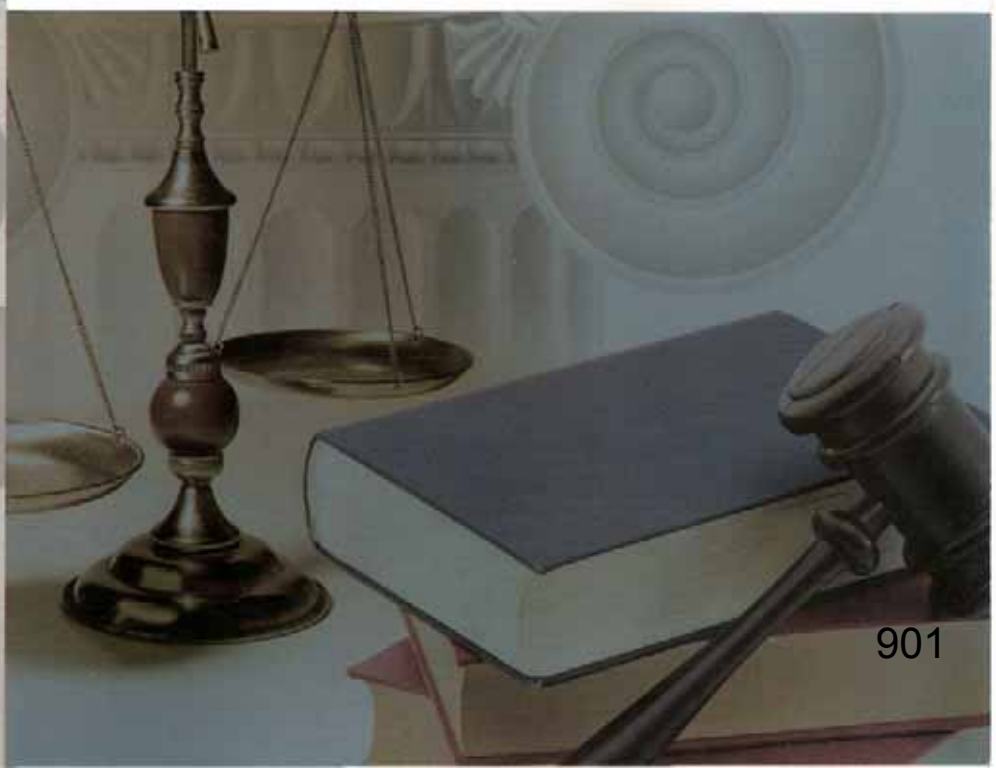
2011-2012



# Annual Report

Legal Aid South Africa

Your voice. For justice.



We continued to cover all courts but because of budget constraints were not able to increase practitioner per court ratios. No increased capacity in criminal courts has meant a marginal increase of 2% in new criminal matters over the past year. Our Impact Litigation Unit is now fully functional and it assessed and took on 23 new matters affecting vulnerable groups. Our specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters is in place and practitioners are continuously trained in handling these specialist matters. Senior Litigators employed are working on complex matters and matters in higher courts.

We continued our various quality improvement programmes, including training and development, monitoring and supervision, case dicussion, expert legal advice support, legal research and legal

the high profile matter of S v H
by our Cape Town Justice C
validity of the use of Drag
drunken driving cases. The
upheld our argument and r
not reliable in its present for
bringing certainty to our lega
successfully in S v Baartma
that the Minimum Sentence
years as a minimum sente
was not applicable in Fire
since a maximum sentence
those matters in terms of thi

Our lawyers appeared in
caught the imagination o
In what is now widely kn
murder case, our Pretoria H

## 2.3 Compliance Framework

### 2.3.1 General

Legal Aid South Africa complies with the requirements of the Legal Aid Act (Act 22 of 1969, as amended), Public Finance Management Act, Act 1 of 1999 (PFMA) and National Treasury Regulations, which provides guidelines that must be upheld and implemented for the realisation of good governance. The Public Finance Management Act regulates financial management in all spheres and levels of government to ensure that all revenue, expenditure, assets and liabilities are managed efficiently, effectively and economically.

### 2.3.2 Compliance with King III

Legal Aid South Africa has, in the year under review, endeavoured to apply the principles set out in the King III Report on Corporate Governance, where applicable, and to explain when any principles are not applied. King III sets out the guidelines with regard to, inter alia, compositions, roles and functions of Boards, risk management, internal audit and integrated sustainability reporting.

Legal Aid South Africa applies principle 8.5 of chapter eight (8) of the King III Report, which recommends organisations to consider disclosing in the integrated report, the number and reasons for refusals of requests for information that were lodged with the organisation in terms of the Promotion of Access to Information Act (PAIA), 2000.

During the 2011-2012 financial year the organisation received one request in terms of the Promotion of Access to Information Act, 2000 and the information was provided.

Table 4: Number of Reasons for refusal of requests for Information

| No. of requests received | No. of requests refused | Reason(s) for refusal |
|---|---|---|
| One | None | Not Applicable |

The organisation has partially implemented the combined assurance model to optimise on the assurance coverage obtained from management, internal and external assurance providers. To this end the model provides both management and internal audit's assurance on risk.

Legal Aid South Africa is in the process of formulating appropriate indicators to monitor and measure the value delivery and significant Information Technology investments and expenditure by the Board of Directors.

## For the year ended 31 March 2012

| | Notes | March 2012 R | Ma 2 |
|---|---|---|---|
| **Revenue** | | **1 159 411 701** | **1 137 296 2** |
| **Non-exchange transaction** | | | |
| Grant | 14 | 1 137 545 000 | 1 116 355 0 |
| **Exchange transactions** | | **21 866 701** | **20 941 2** |
| Interest income | 15 | 18 130 371 | 16 510 2 |
| Other income | 15.1 | 3 736 330 | 4 431 0 |
| **Expenses** | | **(1 129 532 657)** | **(1 105 553 9** |
| Personnel | | (844 348 325) | (767 981 3 |
| Administrative | 16 | (78 993 544) | (149 122 2 |
| Other expenses | 16,1 | (175 506 089) | (154 537 5 |
| Depreciation and amortisation | 17 | (30 316 461) | (33 436 5 |
| Finance Costs | 10.1 | (368 239) | (476 3 |
| **Surplus from operations** | | **29 879 044** | **31 742 3** |

904

| | March 2012 R | March 2011 R |
|---|---|---|
| **17.2 Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial position** | | |
| Net surplus/deficit per the statement of financial performance | 29 879 044 | 31 742 329 |
| Adjusted for: | | |
| Fair value adjustment | 472 931 | (77 626) |
| Impairments/recognised/reversed | 5 890 316 | (1 819 952) |
| Surplus on the proceeds of assets | 3 578 283 | 2 788 663 |
| Decrease in provisions | (11 594 993) | (30 804 557) |
| Increase/decrease in provisions | - | - |
| Commitments | 4 618 099 | 2 580 195 |
| Other adjustments | (24 236 746) | 2 964 060 |
| Depreciation | (6 177 420) | - |
| **Net surplus per approved budget** | **2 429 513** | **7 373 114** |

**18 Directors' emoluments**

**18.1 Directors - non-executive**

- For services as directors

| Name | Comments | | |
|---|---|---|---|
| Judge President D Mlambo | Judge President Labour Courts | - | - |
| Ms A Mosidi | State Attorney | - | - |
| Dr D Konar | Beneficial | 20 882 | 29 290 |
| Prof P Kruger - Term expired 15 September 2010 | Beneficial | - | 18 363 |
| Mr J Maree | Beneficial | 124 657 | 81 031 |
| Ms A Rhoda | Beneficial | 77 112 | 28 862 |
| Judge M Makume* – Resigned 29 May 2010 | Beneficial | - | - |
| Ms N Memka (Memka & Ass paid) | Beneficial | 52 326 | 34 104 |
| Ms S Monaledi - Term expired 31 August 2010 | Regional Court Magistrate | - | - |
| Ms N Mgadza | Beneficial | 98 897 | 94 204 |
| Prof Y Vawda | Beneficial | 137 700 | 73 464 |
| Ms M Naidoo (Black Sash paid) | Non-beneficial | 33 048 | 39 351 |
| Ms T Mhlungu | Beneficial | 66 096 | 41 975 |
| Judge E Molahlehi* | Non-Beneficial | - | - |
| Adv P Du Rand | Non-Beneficial | - | - |
| Mr M Nxasana (Alternate member) | Beneficial | - | - |
| Adv D Mogagabe (Alternate member) | Beneficial | - | - |
| Mr V Jarana - Resigned 12 October 2010 | Beneficial | - | 10 494 |
| Ms MJ Ramagaga | Beneficial | 33 048 | - |
| Mr M Notyesi | Beneficial | 41 310 | - |
| Adv S Kolbe | Beneficial | - | - |
| Adv K Pillay | Beneficial | 46 818 | - |
| Ms R Subban | Beneficial | - | - |
| Ms E Gandhi | Beneficial | 41 310 | 49 847 |
| Mr M Moabi – Resigned 31 August 2010 | Beneficial | - | 15 738 |
| | | **773 204** | **516 723** |

*Payment prior to appointment as Judge

## 3.2 Employment and vacancies by region

Table 12: Employment and vacancies by region

| Regions | Number of Posts | Number of Posts Filled | Number of Permanent Posts Filled | Vacancy Rate % | *Number of posts filled additional to establishment |
|---|---|---|---|---|---|
| National Office | 205 | 181 | 181 | 11,71% | 0 |
| Western/Northern Cape Region | 478 | 471 | 455 | 4,81% | 16 |
| KwaZulu-Natal Region | 409 | 412 | 392 | 4,16% | 20 |
| Eastern Cape Region | 398 | 406 | 395 | 0,75% | 11 |
| Gauteng Region | 468 | 468 | 455 | 2,78% | 13 |
| Free State/North West Region | 386 | 380 | 373 | 3,37% | 7 |
| Limpopo/Mpumalanga Region | 333 | 318 | 309 | 7,21% | 9 |
| **Total** | **2 677** | **2 636** | **2 560** | **4,37%** | **76** |

* Posts additional to the establishment relate to temporary posts aimed at servicing case backlog courts funded by the Department of Justice and Constitutional Development

*Table 13: Employment and vacancies per critical occupation*

| Critical Occupation | Number of Posts | Number of Posts Filled | Vacancy Rate % | Succession planning candidates in development programme |
|---|---|---|---|---|
| Legal | 229 | 200 | 12,66% | 24 |
| Finance | 5 | 5 | 0,00% | 4 |
| Human Resources | 1 | 1 | 0,00% | |
| Internal Audit | 3 | 2 | 33,33% | |
| Legal Development | 3 | 3 | 0,00% | 1 |
| Corporate Services | 3 | 3 | 0,00% | |
| *Information Services* | *8* | *8* | *0,00%* | |
| Communication | 2 | 2 | 0,00% | |
| National Operations | 1 | 1 | 0,00% | 1 |
| Chief Operations | 1 | 1 | 0,00% | |
| Chief Executive | 1 | 1 | 0,00% | |
| **Total** | **257** | **227** | **11,67%** | **30** |

Ms Vedalankar said that she could not comment on helping with Chapter 9 organisations because she would have to discuss it with her staff first. In terms of the discrepancy with the posts and employees, it was very clear in the report. They had allocated a certain amount of funds but they knew that those positions could not be filled so they adjusted the budget.

Mr Jeffrey said that the expenditure could not be 99% with the figures that they had.

Ms Vedalankar said she would send the information to the Committee.

Mr Jeffrey then asked for clarification on the IT budget.

Ms Vedalankar said that they had not been given the proper budget for IT and thus Legal Aid had suffered because of it.

Mr Jeffrey said that the Committee would get in touch with the Treasury and find out why the IT budget for LASA had not been fulfilled.

The Chairperson adjourned the meeting.

**NORTH WEST HIGH COURT, MAFIKENG**

**CASE NO.: 3/10**

In the matter between:

**WINSTON BHEKI MOKONE** **Appellant**

and

**NATIONAL DIRECTOR OF PUBLIC PROSECUTION** **Respondent**

**FULL BENCH**

**CIVIL APPEAL**

**HENDRICKS J, KGOELE J, GUTTA J**

| | | |
|---|---|---|
| **DATE OF HEARING** | : | **05 November 2010** |
| **DATE OF JUDGMENT** | : | **04 March 2011** |
| **COUNSEL FOR APPELLANT** | : | **Advocate Skibi** |
| **COUNSEL FOR RESPONDENT** | : | **Advocate Oosthuizen** |

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**JUDGMENT**

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condone the failure to adhere to the time limits where a forfeiture notice application had been issued and served on the respondent on the day after the preservation order had lapsed, remarked as follows in paragraph **[10] – [11] at p 437 (i) – 438 (d):**

> "Held, that the stringent and peremptory provisions of POCA ought not to be liberally interpreted, especially in instances of non-compliance therewith. Although forfeiture order were extremely useful weapons in the fight against organised crime, a balance had to be struck between the individual's constitutional rights and the obligation to eliminate crime. A statute that made serious inroads into the right of an individual was to be construed in a manner that limited such inroads as far as possible. Accordingly, and following binding authority, it followed that service of the application – not merely its issuance – was necessary in order to make it pending. Thus, the forfeiture application had been brought a day after the preservation order had lapsed and, in terms of s 48 of POCA, the applicant was not entitled to bring the application. (Paragraphs [10] at 436h – 437g.).

[15] I find these remarks to be apposite to the matter before us. Taking into consideration the provisions of section 40 and 48 of POCA, I am of the view that the submissions made by Mr Oosthuizen are well made and have a substantial bearing on the outcome of this appeal. Of significance is the fact that Mr Skibi on behalf of the applicant conceded to these submissions and is also of the view that the matter can be disposed off solely on this ground.

[16] I fully agree with Mr Oosthuizen's submission that at the time when the provisional preservation order was confirmed, and when the forfeiture application was made and subsequently granted, the provisional order was no longer in force, it had already lapsed / expired. The order of the court *a quo* is therefore ***void abinitio*.** The proceedings in the court *a quo* cannot on this point stand, let alone the merits.

[17] In as far as costs are concerned, I am of the view that it will be fair and just that each party should pay its own costs. The reason being that , although the applicant is successful in his appeal, it was through the professionalism and honesty of the respondent's counsel that the irregularity was discovered and not on any of the grounds upon which the appellant based his appeal.

[18] In the result the following order is made:-

18.1 The forfeiture order granted by this court on the 29th January 2004 is hereby set aside

20.2 Each party to pay its own costs.

_____

**A.M. KGOELE**

**JUDGE OF THE HIGH COURT**

I agree

_____

**R.D. HENDRICKS**

**JUDGE OF THE HIGH COURT**

I agree

_____

**N.GUTTA**

**JUDGE OF THE HIGH COURT**

Attorneys for the appellant : Legal Aid South Africa
Mafikeng Justice Centre
MMABATHO

Print this page (#)

# Cop murder accused 'suffers from asphyxia'

Oct 17, 2011 | Boitumelo Tshehle

**THE bail application by one of the men suspected of murdering a police sergeant at Itsoseng in Lichtenburg, North West, two months ago was on Friday postponed by the Itsoseng Magistrate's Court.**

Magistrate Andrea van Rooyen postponed the bail application by Benny Koloane to tomorrow, when police are expected to testify.

Koloane, 20, Amos Haman, 20, and Pitso Mmatlhi, 19, are facing charges of murder and robbery with aggravating circumstances after the brutal stabbing of Sergeant Keneilwe Seleke outside his home.

Advocate Nzame Skibi of Mafikeng Justice Centre pleaded on behalf of Koloane for the court to give him bail. He said Koloane should be given bail because he was a first offender and also because he was suffering from a disease called asphyxia.

He said Koloane's brain did not get enough oxygen when he was born, that he also failed to cry at birth and that he was a slow learner and could not be detained with inmates who possess normal senses.

He said the place where Koloane was detained was not conducive for a person of his mental capacity.

Skibi also said Koloane was attending a special school at the time of his arrest and needed to prepare for his final examination.

"The continued detention of my client will disrupt his education. He is young and has a clean record," Skibi said.

~ o O o ~

Legal Aid South Africa

Your voice. For justice.

Adv. Anthony Brink

25 Baker Street

Prestbury

Pietermaritzburg

Kwazulu -Natal

National Office
29 De Beer Street
Braamfontein
2017
Tel: 011-877-2000
Fax: 011-877-2222
**www.legal-aid.co.za**

7 December 2012

per email: abrink@iafrica.com

Dear Adv. Brink

**RE: SHORTENING OUR PRE-TRIAL CONFERENCE AT THE LABOUR COURT BRINK/LEGAL AID SA: LC D529/11**

Your letter dated 19 October 2012 and which was filed in court on the 24 October 2012 refers.

We wish to place it on record that Legal Aid of South Africa subscribes to the rules of the Labour Court, and in particular would like to assist the Court in curtailing the issues to be decided by the Court as contemplated in rule 6(4) of that Court on the 25 January 2013. However, and after perusal of your above document, Legal Aid of South Africa notes that you continue to make conclusions that are not supported by material facts, repeating issues already ventilated in the pleadings and introducing new issues.

The directive on how and what should be contained in the pre-trial minutes is the issue to be decided at the hearing of 25 January 2013 and therefore we do not intend to burden the court with further documents. It is on that basis that we suggest and propose that we allow the Court or Judge an opportunity to determine, if needs be, what issues need to be before Court. We are of the view that we have both tried and we are at a point where we cannot agree.



best EMPLOYERS 2010/11 SOUTH AFRICA AWARDED BY THE CRF INSTITUTE

Yours Faithfully

Thembile Mtati

Corporate Services Executive

Legal Aid South Africa

CC Ms Bothma

Registrar of the Labour Court

Durban Division

Per email: lobothma@justice.gov.za

**Workshop Report: PAIA**

Date of Event: 06.10.2011

Venue: Braampark, Forum III, Braamfontien

Body Trained: Legal Aid South Africa

Contact Person: Ricardo

Number of Participants: 20

Materials Distributed: Handbooks, PAIA legislation and Frontline Training Manual and ODAC information packs

**INTRODUCTION**

The Commission and the Open Democracy Advice Centre (ODAC) co-hosted training for personnel of Legal Aid South Africa (LASA). The Rationale for the training rested on the critical services provided by the board to vulnerable groups in society and to ensure that personnel of the board had an awareness of the legislation to increase their resource base, the quality of service and advise provided to their stakeholders. It is has also been deemed important on the basis of the Commission's monitoring of LASA institutional compliance with PAIA and the need to ensure that clients who are wishing to litigate on the basis of PAIA are responded to on the same basis as other applicants with recognised rights.

A number of personnel were identified for training, including personnel ranging from the head of the legal department, internal audit, national operations, call centre as well as corporate services.

LASA has experienced an increased number of requests over the past financial year. The status and contestation with some of these requests prompted the need for training to its key personnel.

LASA falls under the type "B" category of public bodies in terms of PAIA. LASA has this year complied with mandatory compliance obligations satisfactorily and has compiled its section 14 manual. It has also submitted its section 32 report in terms of PAIA for the first time this year.

In delivering the presentation the Commission made use of a power point presentation as well as case studies and interactive engagement with participants. These presentations were supported with the distribution of frontline training manuals, PAIA legislation and PAIA handbooks as a resource to the delegates for onward use.

Most participants had no prior knowledge of PAIA, although these personnel had been with their respective organization for a period in excess of three years. In this regard it should also be noted that LASA has ad hoc PAIA functionaries in their legal department. Participants agreed during discussions that this was not ideal since PAIA application was time consuming and compliance required dedicated personnel. The lack of application based knowledge; general awareness and organisational design were identified as key reasons why LASA would have challenges complying with PAIA. Other formal compliance obligations were noted in terms of DIO delegations, Section 15 automatic records lists and the provision of DIO information to the DG of GCIS in terms of section 16.

The frontline training manual was welcomed as a tool for ongoing awareness raising of frontline officials. Similarly the recommendations for induction processes of new on-boarding personnel were welcomed as a means of ensuring continued awareness of PAIA for all personnel.

Interpretation and application of definition sections of PAIA were discussed with participants through actual case examples.

All participants were appreciative of this discussion due to their own experiences in particular instances and due to the fact that they had previously been misapplying the provisions of PAIA. In certain instances, this has led to inconsistent application in the organisation. The misinterpretation and misapplication was identified as being high risk to LASA on the basis of the sensitive information and reports it generates for its clients.

The presentation provided a detailed contextual background of the legislation, emphasizing the need to break the culture of secrecy which shrouds the public service in general. Commencing

with the status of PAIA as a fundamental right, its status was reiterated and emphasized at different points of the training.

Once the primacy of the legislation was addressed, key provisions and definitions were provided and these were contextualized in hypothetical cases for application. These included defining what constituted a record, type of public body, personal requests and types of fees. Key rules of PAIA application were also shared in the course of the presentation to ensure that the PAIA principles were easily identifiable and made easy to apply.

The result of the training session apart from increased awareness of personnel included an increased appreciation by participants that a review of the organizational response to PAIA was necessary to improve compliance and efficacy.

**PRESENTATION AND DISCUSSION**

The Commission's needs assessment revealed a number of areas of critical need for training. Key amongst these was the following:

- PAIA objectives and its connection to records management and delivery
- Overall mechanics of the request procedure
- Responses to requests and technical application of process
- Centralizing of certain obligations e.g. the collection and auditing of request fees
- Scope of the legislation
- Exemption provisions particularly with regard to investigative reports
- Status of preliminary findings
- Transfer provisions and
- Confidentiality of reports

The session provided an in depth view of the global move toward the adoption of access to information laws in the context of accountability, the responsibility of public bodies as repositories of information, transparency and public participation to align to this move. The latter was stressed as a fundamental cornerstone of sound democracies. Through discussion of

hypothetical examples participants were able to contextualize the objectives of the legislation in their professional and personal lives. These applications were brought to bear largely on examples involving the sharing of information with employees of LASA.

Further contextualisation occurred through the location of PAIA within the bill of rights and the need for organisations to be constitutionally compliant. The primacy of the legislation and constitutional status was also discussed with participants, together with a basic information cycle to reinforce the obligation to comply with the legislation and incorporate it in the range of rights for which legal aid is offered. In this regard participants expressed difficulties in having to provide information within the stipulated timelines since most requests required information which included third party information and requests for reports of other public bodies. Similarly the addition of PAIA functions to the legal department was also identified as a challenge.

The discussion also provided the opportunity to consider the risks in litigation for unjustified refusals of information, negative imaging and drop in confidence associated with law suits of this nature.

The presentation was phased into three brief interactive sessions, each ending with a discussion session, where implementers raised issues for further clarity within the context of particular cases they had been engaging with. Most were of the view that the need for consistent records management policies and PAIA protocols were necessary, together with the need to have dedicated DIOs.

A number of other interesting challenges were noted with regard to timeframes and duties of DIO's. Key amongst these challenges was the ability to interpret and apply PAIA with confidence based on thorough knowledge. Organisational design to facilitate PAIA delivery was also raised and discussed. Participants indicated that personnel through-out the department could not identify with confidence the identity of their DIO's, nor could they agree on the identity of the IO.

The need to change levels of awareness internally was accepted and these issues were flagged on an agenda for the core PAIA personnel to respond to. Emphasis was also placed on the role of staff to be trained and briefed on PAIA more intensively since these personnel will be the

interface between high volumes of requesters and LASA. The frontline training manual was provided to the participants to assist further in this regard.

The training session was concluded with a review of current legislation before Parliament and its impact on records being held and processed by the institutions.

**The following two key forms of compliance were stressed:**

i. S32 PAIA Report

The mandatory obligation for all government organizations to compile a report in terms of section 32 of PAIA was discussed. LASA compliance history was flagged with participants and most responded to the reporting of LASA as non compliant to Parliament with concern.

ii. S14 PAIA Manual

The objectives and purpose of the section 14 manual was discussed. It was explained that it was mandatory for LASA to create a S14 PAIA manual. LASA had complied with this requirement but it was stressed that it should be maintained in at least three of the official languages and that it should be constantly updated to increase its relevance and accessibility. It was stressed that the development of a S14 manual is easy but was dependant on proper records management and therefore LASA had to ensure that their records management system was fully functional.

**OTHER TRAINING MECHANISMS**

The PAIA DVD was used as a tool to place PAIA in context for delegates. Most participants were a little overwhelmed by the requirements of the legislation and welcomed the contextualization and illustration of the purposes and objectives of PAIA through the two case examples in the DVD. They were able to identify the provisions in the formal context to identify and relate to access decisions impacting on practical delivery.

**Hypothetical Case Study**

2 case studies were presented to participants for group work after the presentations. These case studies extended the process of information assimilation and application. Most participants demonstrated through guidance and facilitation a grasp of the key concepts and basic response needs to the issues raised in the hypotheticals.

**RECOMMENDATIONS**

A critical feature of the training was that the participants comprised various departments of LASA. Although no dedicated DIO exists within the Department with an exclusive focus on PAIA, personnel from the Legal Department were able to gain value from the training. They have as a result undertaken to review decisions which may not have had justification in terms of PAIA and to create guidelines within the organization to ensure misapplication does not recur. The initial training intervention by the Commission and ODAC has yielded some gains as non traditional PAIA personnel were included to increase organisation wide awareness. The diversity of participants was therefore an excellent point of commencement and will contribute to internal promotion of PAIA across departments within LASA. It was strongly recommended by consensus of the participants that a PAIA protocol be developed and implemented.

The session has also created a heightened awareness by personnel of the need for ongoing training and engagement with the Commission to reach optimal implementation if it is to be a point of reference to other public bodies. Similarly, LASA has identified the need to have a clear budget dedicated to PAIA compliance and implementation which will allow internal interventions like training and the provision of increased accessibility of information to be addressed.

Emerging from the session is the urgent and critical need for the sector to create a structure to facilitate integrated responses to PAIA. Such a structure could at minimum consist of representatives from the legal and records management structures in each department to ensure that the processes within each department are PAIA aligned and to further enhance the process of implementation and compliance. Widespread training at regional offices was also

flagged as a need by participants. This recommendation is one which both ODAC and the Commission regard as critical for organisational wide awareness of PAIA at LASA and for fulfilment of the PAIA mandate.

Open Democracy Advice Centre

## Legal Aid South Africa (LASA): PAIA Training
## 06 October 2011: SAHRC Training Centre
## Attendance Register

| NAME & SURNAME | EMAIL ADDRESS | DEPARTMENT | SIGNATURE |
|---|---|---|---|
| 1.Carelse Christopher | christopherc@legal-aid.co.za | INTERNAL AUDIT (LQAU) | |
| 2. Khumalo Bafana | BafanaK@legal-aid.co.za | Internal Audit (LQAU) | |
| 3.Labe Tilly | tillyl@legal-aid.co.za | National operations | |
| 4.Lefopane Hezekiel | Hezekiel@legal-aid.co.za | NATIONAL OPERATIONS Call Centre | |

human rights commission

Open Democracy Advice Centre

| | EMAIL | DEPARTMENT | SIGNATURE |
|---|---|---|---|
| 5.Mazizi Mangaliso | MangalisoM@legal-aid.co.za | National operations | |
| 6.Mtati Thembile | | | |
| 7.Nkgapele Magate | MagateN@legal-aid.co.za | Corporate Services | |
| 8.Nthebe Andries | AndriesN@legal-Aid.co.za | National Ops. | |
| 9.Phetoe Kenosi | KenosiP@legal-aid.co.za | INTERNAL AUDIT (LEGAL) | |
| 10.Pillay Varian | ON LEAVE | | |
| 11.Prinsloo Nico | nicop@legal-aid.co.za | CALL CENTRE | |
| 12.Risiba Sipho | sipho@legal-aid.co.za | Corporate Inno. | |
| 13.Sekgota Solly | SollyS@legal-aid.co.za | Corporate Servs | |

human rights commission

Open Democracy Advice Centre

| | E-MAIL | DEPARTMENT | SIGNATURE |
|---|---|---|---|
| 14.Sihadi Ntuweleni | Ntuweleni s@legal-advice | National Operations | |
| 15.Tauatswala Bawinile | BawinileTi@legal-aid.co.za | NATIONAL OPERATIONS | |
| 16.Tito Franky | FrankyT@legal-aid.co.z | NATIONAL OPERATIONS | |
| 17.Van Rooyen Sonia | SoniaV@legal-aid.co.za. | LEGAL QUALITY ASSURANCE UNIT. | |
| 18 F. van Rensburg | svanRensburg@sahrc.org.za | SAHRC | |
| 19. S.D Malesa | dmalesa@sahrc.org.za | SAHRC: PAIA | |
| 20. F. Mooca | fmooca@sahrc.org.za | SAHRC: PAIA UNIT | |
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# THE PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)

# ANNUAL REPORT 2011/12

The protection aspect requires the Commission to assist members of the public to assert their right to access information through the request mechanisms outlined in PAIA, and to act on behalf of a requester where necessary, using powers conferred upon the Commission by PAIA and the Human Rights Act 54 of 1994[1]. Assistance provided by the Commission includes lodging request for information on behalf of requesters. This comes in the form of consultations, advisory meetings with requesters and where necessary, assisting requesters to obtain access to the information requested. An example of this is the ongoing advisory role that the Commission is playing in a prolonged matter between a Complainant and Legal Aid South Africa (LASA). The requester had previously sought assistance from the Commission to obtain information he had requested from LASA relating to a job application. A number of related records were released in part and others refused. The requester was however not satisfied with LASA's general response to his request and brought the inaccuracy of LASA's section 32 report to the Commission's attention particularly with regard to some of his requests that had not been reported on. The requester has since proceeded to Court to litigate this matter against LASA. The Commission continues to monitor the developments in this matter.

Assistance extends to DIOs and private sector actors as well. DIOs are often assisted in applying and interpreting PAIA, providing legal opinions and responding to general enquiries on PAIA.

Private sector assistance is primarily based on the compliance requirement in section 51 of PAIA. This reporting period saw an influx in private sector enquiries due to the moratorium that was set to expire in December 2011.

Monitoring and assessment of requests for assistance enables the Commission to identify trends in the use of PAIA and the extent to which PAIA is used.

[1] Section 9 of the Human Rights Commission's Act 54 of 1994

| | | |
|---|---|---|
| | 2003/2004 | 4 |
| | 2004/2005 | 6 |
| | 2005/2006 | 8 |
| | 2006/2007 | 11 |
| | 2007/2008 | 48 |
| | 2008/2009 | 33 |
| | 2009/2010 | 25 |
| | 2010/2011 | 20 |
| | 2011/2012 | 69 |

*Challenges*

The challenges across all tiers of government remain unchanged. Resource constraints (human and capital), lack of awareness and buy-in are common challenges in the public sector.

Compliance monitoring carried out during the course of this reporting period consistently reveal a disregard for PAIA. This is evident in the fact that public institutions do not take initiatives to carry out their duties in terms of PAIA. While resource constraints remain a challenge, research conducted by the Commission in previous years identified the Limpopo Department of Health and Social Development as a department that initiated compliance and PAIA implemenation in the absence of resources. By incorporating PAIA into the strategic objectives of the department and creating systems within the department to implement PAIA, the department was rated as an institution that demonstrated best practice.

The example cited above is evidence of the ability to implementPAIA despite resource constraints. Proper and efficient implementation of PAIA can be achieved if there is a will to make the change.

However, on the other side of the coin are institutions that still find section 32 reporting difficult despite training. The Commission has discovered that public institutions do not accurately report on section 32. A case in point here is the report from Legal Aid South Africa (LASA) where a complainant brought to the attention of the Commission a number of requests made to LASA which were not reported in LASA's 2010/11 section 32 report despite the fact that the requests were made in that financial year. The complainant was advised by the Commission that LASA's 2011/12 report would be monitored to assess the accuracy of their statistical reporting. The Commission engaged with LASA and remains concerned about the accuracy of section 32 reporting by LASA, a problem which is also likely to exist with other public institutions. In the light of the case above, the Commission recommends that a review of section 32 reporting is undertaken. Such review should consider an expansion of section 32 reporting obligations to include substantive reporting, disaggregation of request type, an extension of the Commission's powers to penalize non-compliance and inaccurate reporting as well as a duty on heads of public bodies to include section 32 reports in their reports to Parliament, over and above the reports submitted by the Commission. Also, public bodies should bear the costs incurred by the Commission in

instances it chooses to audit the veracity of reports submitted to it by the public body in question. In sum the commission recommends:

- the provisions of section 32 be expanded to substantive reporting;
- the Commission be provided with resources, alternatively, that if public bodies were to be audited, they should provide the resources for the audit of reports and files to be conducted;
- that the Commission be given the powers to penalize inaccurate reporting and non-compliance with the provisions of section 32 in terms of enabling provisions on enforcement in PAIA;

It is clear that despite training, a great deal of confusion remains about section 32 reporting. For example, in the context of the case above,

- officials are not clear whether requests for different but related documents submitted on one form constitutes a single request;
- officials are not certain on how to capture requests submitted at the end of March and they respond in the new year;
- officials are not certain about when discovery rules of court will apply in a matter being litigated and when PAIA can be used.

Since the first complaint on LASA, the SAHRC has trained LASA officials on PAIA. The Commission intends auditing LASA fully in the course of the 2012/13 financial year.

*Trends*

Trends on usage of PAIA are established through the analysis of the data provided in the section 32 report. Below is a detailed anaylis of requester trends for the period 2011/2012.

A total of 24 857 requests were lodged with national government departments. The bulk of these requests were submitted to the South African Police Services, the Department of Justice and Constitutional Development and the Department of Home Affairs.

The Department of Home Affairs received a total of 139 requests. An interesting point to note is that the department was reported as non compliant in the previous reporting period. Having complied with its reporting obligations in 2011/2012, the number of requests reflected in its report is high and warrants a cause for concern with the manner in which the department is processing and tracking requests.

Requests received in the provincial departments have increased when compared to previous statistics. For this reporting period, requests in provinces totaled 11 972. The province with the highest number of requests is KZN, its department of health alone processed 9809 requests. This level of activity indicates an increase in awarenes and development of systems in public bodies to capture statistics correctly.

Local governments have also in this reporting period shown increased activity, with the Western Cape municalities processing a total of 375 requests.

| OTHER BODIES | Number of request for access received s32(a) | Number of request for access granted in full s32(b) | Number of requests granted despite there being a ground of refusal but granted in the public interest | Number of requests for access:(a) refusal in full (b) refused partially (c) number of times each provision of the act was relied on to refuse access in full or partially S32(d) | | | Number of cases in which the period stipulated in s25(1) were extended in terms of s26 (1) S32(e) | Number of internal appeals (a) lodged with the relevant authority | (b) number of cases in which as a result of an internal appeal access was given s32(f) | Number of internal appeals which were lodged on the ground that a request for access was regarded has having been refused in terms of s27 section 32 (g) | Number of applications to a court which were lodged on the ground that internal appeal was regarded as having been dismissed in terms of section 77 (7) s32 (h) | Other information |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **OTHER BODIES** | | | | A | B | C | | | | | | |
| **Accounting Standards Board** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **South African Reserve Bank** | 1 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | |
| **Agri SETA** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Airports Company SA** | 03 | 0 | 0 | 02 | 0 | 02 | 0 | 0 | 0 | 0 | 0 | They use in house counsel to implement PAIA |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Amafa/Heritage KZN** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Auditor General SA** | 01 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | The one request received was transferred |
| **Eskom** | 52 | 21 | 0 | 09 | 10 | 0 | 15 | 4 | 03 | 0 | 0 | 5 requests pending |
| **Free State Gambling Board** | 01 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Gauteng Gambling Board** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Independent Quality Assurance Agency** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Industrial Development Corporation** | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Ithala Development Finance Corporation Ltd** | 01 | 01 | - | - | - | - | - | - | - | - | - | Late report |
| **KZN Growth Fund Trust** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Land Bank** | 01 | 01 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Late Report |
| **Legal Aid South Africa** | 01 | 01 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| **Magistrates Commission** | 05 | 03 | 0 | 0 | 02 | 0 | 01 | 0 | 0 | 0 | 0 | |
| **MerSETA** | 04 | 03 | 0 | 01 | 0 | 01 | 0 | 0 | 0 | 0 | 0 | |
| **Mining Qualifications Authority** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |

25 Baker Road
Prestbury
Pietermaritzburg
18 July 2012

Mr Avie Naidoo
Internal Audit Executive
Legal Aid South Africa
29 De Beer Street
Braamfontein

Dear Mr Naidoo

BRINK/LASA: COMPLAINTS TO PUBLIC SERVICE COMMISSION AND PUBLIC PROTECTOR

1. LASA's current annual report notes that you're 'responsible for the assessment and evaluation of risk and controls within Legal Aid South Africa including compliance with the … Public Finance Management Act …, Labour Legislation, … the [Promotion of Access to] Information Act ['PAIA'] and the applicable governance … stipulations.'

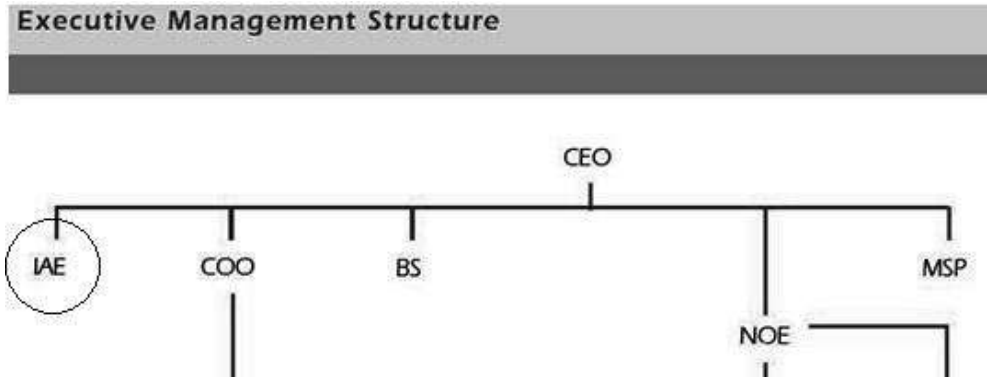
2. That is, you're engaged by LASA to assess and evaluate any information you might receive:

(a) that LASA is exposed to avoidable risk of substantial financial loss and harm to its reputation for outstanding corporate governance; and if satisfied upon investigation that it is indeed so exposed, to act to limit or avert it;

(b) that controls at LASA have broken down; and if satisfied upon investigation that they have indeed broken down, to take action to restore them; and,

(c) that LASA management executives have violated the Constitution, the above-mentioned statutes enacted to give effect to it, and 'applicable governance … stipulations' such as the Department of Public Service and Administration's Senior Management Services Handbook ('SMS Handbook') and Code of Conduct for the Public Service, and the LASA Board's Approval Framework, Code of Ethics and Conduct, and Policies and Procedures on Recruitment, Induction, Probation and Relocation; and if satisfied upon investigation that these have indeed been contravened, to take whatever remedial action possible.

3. Indeed, the executive management structure plotted at page 6 of the annual report (excerpt below; my emphasis) shows that as Internal Audit Executive you're on an independent top-level rung of your own, the better to discharge this oversight and supervision responsibility to LASA as a public entity.




4. I enclose two dossiers. The first contains three sworn complaints to the Public Service Commission ('PSC') filed last month and the Director General's acknowledgement and confirmation that they have been referred for investigation.

5. My complaints to the PSC detail multiple failures by LASA management executives to comply with, and their breaches of, (a) the Constitution, (b) statutes enacted to give effect to it, (c) LASA's internal governing and regulatory instruments, and (d) the above-mentioned Public Service prescripts.

6. As indicated therein, further complaints are in preparation detailing violations of LASA's Code of Ethics and Conduct and the Department of Public Service and Administration's Code of Conduct for the Public Service, specifically (I'm quoting from the latter): 'An employee … honours the Constitution and abides thereby in the execution of his or her daily tasks … strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties … does not unfairly discriminate against any member of the public on account of race … political persuasion, conscience, belief … does not abuse his or her position in the Public Service to promote or prejudice the interest of any … interest group … respects and protects every person's dignity and his or her rights as contained in the Constitution; and … recognises the public's right of access to information, excluding information that is specifically protected by law.'

7. The second dossier contains my complaint in August last year to the Public Protector, amended and amplified in November, concerning (a) LASA's persistent unlawful failure to comply with section 11 (1) of PAIA, in violation of my fundamental right to access information, by withholding and concealing records I need for the protection and

enforcement of my fundamental right to equality and equal employment opportunity, and (b) its false annual reporting to the South African Human Rights Commission ('SAHRC') under section 32 of PAIA to cover this deliberate failure to comply with the Act, for the deception and misinformation of the National Assembly in turn via the SAHRC's annual report under section 84 on public body compliance with PAIA as required by section 181 (5) of the Constitution. The Gauteng Provincial Office has referred my complaint for investigation by the National Office.

8. Included with my complaint to the Public Protector is my subsequently filed update, reporting inter alia how in an attempt to defeat the ends of justice LASA Corporate Services Executive Thembile Mtati is now denying the existence of a pivotally relevant record destructive of the false defence he's set up to my pending claim in the Durban Labour Court for my instatement to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended by a professional selection panel in November 2009 – a document that he and deputy information officer Brian Nair have both previously admitted exists. At odds with the probabilities, Mtati has also denied the existence of other crucial documents and is likewise endeavouring to suppress them to the same corrupt end.

9. Understandably reluctant to make sworn discovery (the penalty for perjury is imprisonment and strike-off), Mtati is resisting confirming his allegations that these documents don't exist under oath. I've been constrained to bring an interlocutory application to compel him to make sworn discovery, and the application is set down for hearing in a few weeks time on 29 August.

10. LASA's Code of Ethics and Conduct (Version 3) provides in section 1.2 that any contravention or suspected contravention of the code must be 'promptly and confidentially' reported – ultimately to you as 'Internal Audit Executive'. I regret not approaching you earlier; until recently I'd overlooked your prescribed responsibility and its direct bearing on my case.

11. Section 7.1: 'The LEGAL AID BOARD subscribes to all governing laws and regulations relating to the legal profession.' This naturally includes an absolute prohibition against the dishonest manufacture of false defences by LASA attorneys and their presentation in deliberately false pleading in judicial proceedings to misdirect a trial judge with the intention of defeating the ends of justice and perverting the true and just determination of a claim against LASA, and naturally also the crime of perjury: making false allegations under oath in an affidavit with the same dishonest intention.

12. Section 7.3: ‘Employees must ensure that their conduct cannot be interpreted as being in any way in contravention of applicable laws and regulations governing the operations of LEGAL AID BOARD.’ On 29 November 2008 the Board amended the Code to make it applicable to ‘Board Members’ too. Chairperson Mlambo’s, Vedalankar’s, Nair’s, Clark’s, and Mtati’s multiple ‘contravention[s] of applicable laws and regulations governing the operations of LEGAL AID BOARD’ are detailed in my enclosed first three complaints and will be elaborated in further complaints to follow.

13. Section 7.4: ‘The provisions of, inter alia, the following Acts … are also applicable: … the Attorneys Act … the Labour Relations Act … the Employment Equity Act … the Public Service Act … the Constitution of South Africa … any other applicable Act.’ PAIA is included among the ‘other Act[s]’ alluded to; section 4.2.9 of the Code of Conduct for the Public Service stipulates: ‘An employee recognises the public’s right of access to information, excluding information that is specifically protected by law.’ As the PSC’s Explanatory Manual on the Code of Conduct for the Public Service puts it, ‘the provisions [of ‘The Constitution’ given effect by PAIA] also intend to enable citizens to protect certain of their basic rights as provided for in the Bill of Rights.’ Such as the ‘basic rights’ to equality and equal employment opportunity ‘provided for in the Bill of Rights’ and not to be unfairly discriminated against in contempt of these rights.

14. Section 7.5: ‘Employees will maintain knowledge of and comply with all applicable law, rules and regulations of any government, government agency or any other regulatory organisation, governing his professional, financial or business activities.’ You will appreciate from my complaints that this prescription has been breached on multiple scores.

15. Section 7.6: ‘Employees will not knowingly participate in, or assist in any acts or violation of any applicable law, rule or regulation of any government, government agency or any other regulatory organisation, governing his professional, financial or business activities or in any act violating this Code.’ As the Explanatory Manual on the Code of Conduct for the Public Service spells out (it’s cited below), this includes looking the other way when these violations are reported and cursorily dismissing and brushing off such reports, at the same time pretending to have ‘reviewed’ them – such as Chairperson Mlambo has already done, to be detailed in my next complaint.

16. Section 15.1.1: ‘All employees must perform their duties diligently, effectively and efficiently, and in particular … report any harmful activities they observe in the workplace’. Or such ‘harmful activities’ reported to them.

17. Section 1.1 of Chapter 6 of the SMS Handbook requires that 'Managers should familiarize themselves with ['specific statutory provisions that are binding on public servants generally or members of the Senior Management Services specifically'] as failure to do so might have legal implications for Government.' Substantial financial implications and harm to LASA's public reputation too.

18. In addressing the ills I've brought to your attention, I must alert you to some serious complications.

19. First off, it won't do to refer these matters to CSE Mtati and simply defer to him and follow his advice as to your proper response, even though Judge Mlambo introduced him to the Portfolio Committee on 8 May 2012 as 'our corporate executive, he's the man who looks at our legal health in terms of those who want to sue us, he protects us.'

20. This would be an abdication and dereliction of your prescribed function, but moreover Mtati's misconduct is directly impeached in my complaints and this disqualifies him from advising you reliably as to the correct disposal of this matter in LASA's interest as opposed to his. He's already in very hot water as the architect, it seems, of LASA's false budgetary defence to my claim:

21. From their identical (a) turns of phrase, (b) grammatical mistakes, (c) deliberately false allegations of fact, (d) appeals to authority to daunt and deceive me me, (e) false and malicious charges against me in pursuit of a consistent aggressive-defensive strategy to discredit me before my case is tried, (f) threats to intimidate me into abandoning my fundamental rights, and (g) his general fingerprint mendacity and tactical gaucherie, it appears that Mtati ('he protects us') ghost-wrote CEO Vedalankar's letters to me of October 2010 and January 2011; Nair's final response in April 2011 to my first, second and third PAIA requests; and chairperson Mlambo's 'Confidential … Report … Re: Adv Anthony Brink' submitted to the Minister of Justice and Constitutional Development in March 2011 and in updated form to the chairperson of the Portfolio Committee in June 2011 to pervert separate Ministerial and Parliamentary enquiries I'd initiated concerning Vedalankar's persistent unlawful refusal to comply with PAIA and unlawful abortion of my appointment. (The lies in this 'Report' will be addressed in my next complaint.)

22. In short, Mtati's prodigiously dishonest conduct in this matter, going so far even as to write lies for Judge Mlambo to tell the Minister and the chairperson of the Portfolio Committee to deceive and mislead them and pervert their enquiries, will be the focus both of forthcoming complaints to the PSC and other legal authorities, and at the trial of my

claim, when he, Vedalankar, Nair, Clark, and Mlambo JP, inter alia, are subpoenaed for cross- examination on oath.

23. The second major complication is that Board chairperson Mlambo has (a) (at minimum) turned a deliberate blind eye to my fundamental rights complaints detailed above, and in full knowledge of the true facts has misled the Minister and the chairperson of the Portfolio Committee in his secret false report to discredit them, and (b) contrived to keep my complaints away from consideration by the rest of the Board, thereby preventing the Board from exercising its oversight function to ensure that LASA business is conducted lawfully.

24. The PSC's Explanatory Manual on the Code of Conduct for the Public Service prescribes in section 3.2: 'Section 195 (1) (a) of the Constitution requires that "a high standard of professional ethics must be promoted and maintained" in public administration generally. Section 20 (t) of the Public Service Act, 1994, charges all employees appointed in terms of the said Act with the responsibility to comply with the prescribed Code of Conduct. As this forms the main basis on which **pro-active**, **corrective** and even disciplinary action rests, the employer must do everything possible to ensure that the contents of the Code of Conduct are known to all employees.' (emphasis added)

25. Section 4.4.10 prescribes: 'An employee in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.' The 'appropriate authorities' for you to report to are the Board and the Minister as LASA's executive authority. Evidently acting on instructions, Board Secretary Bee-Mari Schoeman has also failed to bring these exceptionally serious matters to Board attention at my request. I imagine she'll be more amenable to do so upon instructions to do so issued directly by you. The Minister has already been misinformed in Judge Mlambo in his secret 'Report', and he needs to be disabused of the lies he's been told and apprised of the true facts.

26. The Explanatory Manual explains: 'Corruption refers to widespread moral deterioration …' – such as telling lies to an applicant for an advertised post for which he was duly selected to put him off pursuing his appointment, and telling lies to the Minister and to Parliament to cover the true reason his appointment was aborted, off the record and ultra vires having regard to the Legal Services Technical Committee's Terms of Reference.

27. 'Example 3' of such corruption is: 'An employee is not involved in corrupt practices, but is aware of colleagues who are. If the employee keeps quiet and does not report the malpractice, he or she is evading collective responsibility for the integrity of the public

service. In such a case, he or she becomes an accessory to corruption.' This clear example of how an employee 'becomes an accessory to corruption' by 'keep[ing] quiet and … not report[ing] the malpractice' doesn't require further comment.

28. In view of (a) your prescribed responsibility to protect LASA's interests and integrity as a public entity, (b) LASA's Code of Ethics and Conduct, (c) the Department of Public Service and Administration's Code of Conduct for the Public Service and its SMS Handbook's chapter on 'Ethics and Conduct', and (d) the PSC's Explanatory Manual on the Code of Conduct for the Public Service, cited above, I must assume that to date you've been unaware of the extraordinarily serious matters canvassed in my dossiers.

29. A matter for determination at trial – and this will emerge through cross-examination – will be how many and which of LASA's management executives and Board members are complicit in the violation of my fundamental rights: that is, how thick the plot is. There are obviously going to be considerable personal and professional consequences for those who've violated my fundamental rights and then lied about it to cover this, and for those who've been informed about this unconstitutional, illegal, and unethical conduct and done nothing to remedy it, in contravention of the Code of Conduct for the Public Service.

30. In light of the information reported to you in my complaints, I call on you to exercise your prescribed oversight and supervision function and responsibility to LASA, as set out above, and to take action to avert the hazards to which LASA is currently exposed.

31. Section 13.5 of the 'Ethics and Conduct' chapter of the SMS Handbook requires that 'Senior managers must defend their department in labour disputes of staff members. [The Employment Equity Act defines job applicants as employees for the purposes of the Act.] This entails that the necessary assistance, be it legal or otherwise, be obtained to present a proper case on behalf of the department in arbitration or court. **It also means that the senior manager should attempt to resolve the dispute before it reaches the arbitration or court stage**. …' (emphasis added) You'll appreciate that the budgetary cover-story to camouflage the true reason for the abortion of my appointment has melted. There's no bona fide defence to my claim for my appointment to the senior professional post for which I was duly selected, and other relief, and the matter is readily resoluble 'before it reaches the … court stage'.

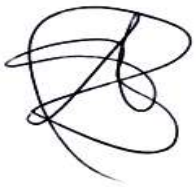
32. I annex a letter from the Auditor General on 30 March 2012, in response to a letter I caused my accountant to write, confirming that 'The issues pertaining to internal controls will be considered as part of the audit and in the case of material findings, these will be reported in accordance with our normal reporting requirements.' It is hoped that you will

take pro-active, corrective action to repair what has gone very badly wrong before the Auditor General, Public Service Commission, Public Protector, and the Labour Court are put to doing so.

33. Further copies of my enclosed complaints can be downloaded in PDF for printing from the following secure online archives (username: lasa ; password: LASA2010):
www.tig.org.za/LASA/PSC and
www.tig.org.za/LASA/Public_Protector

34. I look forward to hearing of your intentions. Your response will perforce determine the ambit of my subpoena list.

Yours sincerely



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Encl:
Complaints 1–3 to the Public Service Commission and acknowledgement
Complaint to the Public Protector and update
Letter from the Auditor General, 12 March 2012

AUDITOR-GENERAL
SOUTH AFRICA

Mr. C Rawlins
23 Norfolk Road
Berea
Durban
4001

30 March 2012

Dear Mr. Rawlins

**RE: Internal Controls of Legal Aid South Africa**

With reference to your email of 23 March 2012 that was sent to the chairperson of the Portfolio Committee on Justice and Constitutional Development and various other parties, I confirm that your additional concerns should also rather be addressed to the Public Protector.

The issues pertaining to internal controls will be considered as part of the audit and in the case of material findings, these will be reported in accordance with our normal reporting requirements.

Yours sincerely

Paul Serote
Corporate Executive

Enquiries: Rachel Maswanganye
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25 Baker Road
Prestbury
Pietermaritzburg 3201
21 May 2012

Ms Nonhlanhla Mgadza,
Chairperson, Audit and Risk Committee
Legal Aid South Africa
c/o Implats (Group head: Internal audit)
2 Fricker Road
Illovo 2196
Gauteng

Dear Ms Mgadza

LASA: SUBSTANTIAL UNAUTHORIZED FRUITLESS AND WASTEFUL EXPENDITURE

As you might be aware from prior correspondence with the LASA Board, I've an action pending in the Labour Court for an order instating me to the Pietermaritzburg Senior Litigator post for which I was duly selected and recommended by a professional selection panel in November 2009, for damages, and for other relief.

LASA's Approval Framework prescribes that the defence of any action of between R500 000 and R5 million must be jointly approved by CSE Thembile Mtati and CEO Vidhu Vedalankar. (Relevant filets from the Approval Framework are annexed marked 'A'.)

Specifically, section 10.2.3 (b) requires Vedalankar's 'Final approval' to Mtati's decision, with whom it 'Originates', to put up a 'defence' to any such claim. And it requires that the Board 'Must be informed (after)' such a joint resolution.

My damages claim substantially exceeds R500 000, and any decision to defend my action is accordingly governed by section 10.2.3 (b).

Notwithstanding this, Mtati has purported to defend my claim without obtaining Vedalankar's written approval.

When at the pre-trial conference in October last year I called for a copy of his and Vedalankar's joint resolution to defend my claim, Mtati's response (a couple of weeks later) was that 'the Corporate Services Executive and the Chief Executive Officer are authorized, in general terms, to institute and defend actions and applications against the Respondent in

terms of paragraph 10.3.1 of its Approval Framework. And that authority suffices for present purposes.'[1]

First, Mtati invoked the wrong section: 'paragraph 10.3.1' applies to any case that 'proceeds to the Supreme Court of Appeal or the Constitutional Court'; and my case is in the Labour Court. Second, he and Vedalankar are obviously required to apply their minds and decide whether or not to defend every such major claim individually. And third, major decisions by public bodies are not taken with the nod or the shake of a head. Accountability under the Public Finance Management Act 1 of 1999 ('PFMA') requires that operational decisions with substantial financial implications be in writing – for as Supreme Court of Appeal Judge Azhar Cachalia put it bluntly in November 2010 during the debate of the Presidency's appeal against the *Mail & Guardian*'s PAIA interdict:

> 'Government does not operate like a glorified spaza shop … Surely, there's a letter of appointment, there's a note, there's a minute. … In the absence of any paper trail must we just accept that [officials in the President's office] are people of standing and they will never mislead, just like [then US Secretary of State] Colin Powell never misled the Security Council [over Iraq's alleged possession of 'Weapons of Mass Destruction']?'

When again I called for 'Vedalankar's and Mtati's resolution on LASA's behalf to defend Brink's claim'[2] in my list of discovery documents for trial, Mtati referred me to the enabling instrument, not any resolution taken under it: 'Applicant is referred to the Approval Framework which is already in his possession.'[3]

It's clear therefore that there's no resolution to defend my claim, and consequently LASA isn't before court. (Just as there's no 'note', no 'minute', no 'paper trail', no record whatsoever to support Vedalankar's allegation to me that in July 2010 she and NOE Brian Nair took a 'verbal'[4] decision (as in a 'glorified spaza shop') to abort three substantially completed Senior Litigator recruitments and to freeze a third of LASA's critical Senior Litigator posts at seats of the High Courts, established with Board approval by the Legal Services Technical Committee ('LSTC') at the special instance of Parliament in 2007. About which (alleged) major operational decision there was 'no need'[5] to inform the Board, Nair says, and 'The Board was therefore not informed of the decision'[6] – unlike his and the management executive committee's decision to temporarily freeze the filling of some *non*-

[1] Mtati's reply to Brink's pre-trial issues, 18 November 2011, paragraph 3.1.
[2] Interlocutory application, Brink's founding affidavit, annexure 'H', item 84.
[3] Mtati's answering affidavit, annexure 'TM16, item G84.
[4] Vedalankar's letter to Brink, 28 January 2011, paragraph 29.
[5] Nair's final response on to Brink's August and December 2010 PAIA applications, 8 April 2011, paragraph 36.
[6] Ibid.

*critical* practitioner posts serving the lower courts, since reversed. And notwithstanding the requirement of section 7.3 of the LSTC Terms of Reference, 'Any decision taken by LSTC that is of a policy nature and impacts on the Business Plan must be referred to m/exco for approval', there's no record that the management executive committee ever approved Vedalankar's and Nair's alleged decision to abort LASA's substantially completed Senior Litigator recruitments and freeze a third of its critical Senior Litigator posts.)

And since there's no record that Vedalankar has given her 'Final approval' – and very wisely not, considering the personal liability provisions of the PFMA – it seems certain in light of this that there's no record that the Board has ever been informed that my claim is being defended either. (Just as, Nair says, there was 'no need' to inform the Board of his and Vedalankar's alleged decision to abort three substantially complete critical Senior Litigator recruitments and freeze the posts – 'immediately'[7] (per Vedalankar) 'in July 2010 after the Board meeting'[8] on the 31st (per Mtati), which is to say just minutes or hours after it ended.

Not only has the defence of my claim not been authorized, and the Board not informed of the decision to oppose me at considerable expense to LASA in mounting legal costs and mounting civil damages, but Mtati is taking LASA to trial without any defence at all:

As you'll see from the enclosed 'Core Facts' memorandum (annexure 'B'), the false budgetary justification advanced to me (delayed transfer of OSD funding in 2010 threatening a deficit (true) – to meet which *the filling of* some *non-critical lower court practitioner posts were temporarily frozen, with Board approval, all fully documented*) completely evaporated with payment of LASA's OSD allocation on 15 December 2010, resulting in a total surplus for 2010/11 of R31.7 million. Despite which Vedalankar and Nair still refuse to finalize my appointment.

In contravention of the PFMA, Mtati has already incurred substantial unauthorized 'fruitless and wasteful expenditure' in briefing senior and junior counsel in the case and binding LASA to pay their fabulous fees, without Vedalankar's joint written authority required by the Approval Framework.

When in February I brought this serious financial irregularity to CFO Rebecca Hlabatau's attention, can you believe I was answered with a demand issued on her behalf from Corporate Legal Manager Solly Sekgota never to communicate with her again, and menaced with a legal threat if I did?

[7] Vedalankar's letter to Brink, 18 October 2010, paragraph 6.7.
[8] Mtati's answer to Brink's pre-trial conference agenda, 25 October 2011, paragraph 33.2.

Hence this appeal to you as chairperson of the LASA Board's Audit and Risk Committee to perform your obligations prescribed by section 51 of the PFMA and to exercise your fiduciary duty to LASA as a public entity by taking steps to protect LASA from further unnecessary losses. (See also the grim provisions of section 83 read with section 86.)

The next LASA Board meeting is imminent, and the matter really can be very easily resolved.

I thank you for your time and attention, and look forward to hearing from you.

Yours sincerely

ADV ANTHONY BRINK
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083 779 4174

Encl:

Approval Framework, excerpts – annexure 'A'

'Core Facts' memorandum – annexure 'B'

# LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

CHANGES INDICATED IN RED FONT
THE COLUMN ON THE EXTREME RIGHT INDICATES CHANGES IN ROWS IN THIS VERSION

**Key to Levels**

| | |
|---|---|
| A | Final approval |
| B | Must agree |
| C | Must be consulted (before) |
| D. | Must be informed (after) |
| E | Originates |

**Key**

| | | |
|---|---|---|
| CEO | = | Chief Executive Officer |
| COO | = | Chief Operations Officer |
| NOE | = | National Operations Executive |
| CFO | = | Chief Financial Officer |
| EXEC | = | The executive responsible for the line function in question (Exec includes ROE and Board Secretary but excludes JCE) |

| | RESPONSIBILITY SUBJECT | NOTES | Board (29 & 30) | Man/ Exco | CEO | COO/ NOE (31) | CFO | EXEC | OTHER | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

| | RESPONSIBILITY SUBJECT | NOTES | Board (29 & 30) | Man/ Exco | CEO | COO/ NOE (31) | CFO | EXEC | OTHER | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| 10.3.2 | Litigation on behalf of the LAB itself where the matter: | 23 | | | | | | | | |
| | (a) involves the prosecution or defence of a claim for an amount in excess of R5million | | A<br>B/Exco | | C | | | E/CSE | | |
| | (b) involves the prosecution or defence of a claim for ≤R5million | | D | | A | | | E/CSE | | |
| | (c) involves the prosecution or defence of a claim for between ≤R500.000 | | | | | A | | E/CSE | | |

BRINK/LASA: D529/11

CORE FACTS ON WHICH THE APPLICANT RELIES TO SUPPORT THE INFERENCE THAT THE RESPONDENT UNFAIRLY DISCRIMINATED AGAINST HIM IN ABORTING HIS RECRUITMENT

1. In October 2010, eleven months after the applicant was selected and recommended for the Pietermaritzburg Senior Litigator post, and following his persistent agitation for the finalization of his appointment, CEO Vedalankar alleged to him that upon NOE Nair's motivation she'd aborted his recruitment for budgetary reasons: 'Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.'

2. Vedalankar repeated this explanation to the applicant in January 2011, now specifying 'the failure of DoJ to advance funding in terms of OSD 2nd phase as promised' as the cause of the respondent's 'financial difficulties' with the result that 'Senior Litigator posts were identified for possible freezing' among others 'to budget for the shortfall'.

3. Vedalankar's budgetary justification for aborting the applicant's recruitment is wholly unsupported and is directly contradicted and refuted by the respondent's records.

4. These show that in truth 'Senior Litigator posts were' never 'identified for possible freezing' and that they were not 'frozen' 'to budget for the shortfall'.

5. In her letter to the Director General on 18 March 2010, Vedalankar records that a week earlier on 10 March the respondent had just learned that contrary to assurances received, its OSD funding allocation from the Department of Justice and Constitutional Development hadn't been included in its baseline budget.

6. This was three-and-a-half months after the applicant was recommended following his interview in November 2009, in which time, long before the respondent was 'suddenly confronted' by 'budgetary issues' (per the response to the statement of claim), Nair did nothing to finalize the applicant's recruitment after receiving the Motivation recommending him: he didn't sign his acceptance of the recommendation of the applicant on the form and he didn't pass it on to HRE Clark, who was responsible for the next step in finalizing the applicant's appointment.

7. Nair's inaction concerning the applicant's recruitment for three-and-a-half-months cannot be related to the respondent's 'sudden..' discovery in March that its OSD funding allocation hadn't been included in its baseline budget for the year, and on the respondent's pleaded version it remains unexplained.

8. The delayed transfer of the respondent's OSD funding allocation was in any event no impediment to its recruitment of Senior Litigators: on 24 March 2010, two weeks after 'budgetary issues … suddenly confronted the Respondent', the Legal Services Technical

Committee chaired by Nair resolved to transfer the Kimberly Senior Litigator budget to Mthatha and to immediately begin recruiting a Senior Litigator for the latter post. It was advertised in April, and in June interviews were conducted and an applicant selected and recommended for it.

9. Nor did the OSD funding delay make any difference to the respondent's general staff recruitment drive. To the contrary, in the period April to June 2010 recruitment of new staff spiked:

10. The total recruitment increase of 3.5% in the April to June first quarter 2010/11 alone was greater than the increase of 3.1% for the whole of 2009/10.

11. Not only was the respondent recruiting masses of new staff to its vacant posts in the period April to June 2010 – 84 new staff including 77 lawyers employed – it was also creating 84 new posts.

12. Whereas there'd been a nil increase in legal staff recruitment in the quarter September to December 2009 followed by a 1.6% increase in January to March 2010, legal staff recruitment increased by 2.3% in April to June 2010, by a further 1.7% in July to September, and by a yet further 2.5% in October to December.

13. Between April and June 2010, total establishment budgeted posts increased by 3.3%, almost equal to the 3.7% increase for the whole of 2009/10.

14. Compared to 4% in 2009/10, total permanent legal recruitment increased by 4.7% in 2010/11.

15. Meanwhile, as the respondent was vigorously recruiting new staff, the professional selection panel's Motivation in November 2009 recommending the applicant for the Pietermaritzburg Senior Litigator post lay unsigned by Nair in the bottom drawer.

16. By mid-year the respondent's OSD allocation still hadn't been transferred, so on 15 July 2010 Nair motivated to COO Makokoane, Vedalankar, Clark and CFO Hlabatau for the reduction of 56 Junior Practitioner posts, more such posts if needs be, and possibly some even lighter paralegal and administration posts, to reduce operating costs so as to mitigate the anticipated deficit.

17. Nair's motivation in July that these non-critical posts be cut was consistent with Vedalankar's identification of the same posts in her second letter to the DG in April.

18. Contrary to Vedalankar's false claim to the applicant in October 2010, repeated to him in January 2011, critical Senior Litigator posts were never identified for possible freezing. Nair did not motivate for the freezing of critical Senior Litigator positions. He did not propose aborting the appointment of critical senior professional staff such as Senior Litigators.

19. Makokoane and his fellow management executives (Vedalankar included) accepted Nair's proposal to reduce the respondent's non-critical Junior Practitioner staff establishment to

save operating costs, and the next day, on 16 July, they mooted this in their 'Report to Board' on a temporary basis 'for the remaining of the 2010/11 budget period' for Board approval.

20. Rather than reducing district and regional court public defender coverage to lower than 80% and 90% – the possibility raised by Nair to achieve further savings on operating expenditure if necessary – the 'Report to Board' proposed that unspent budget savings be utilized to make up the difference between the anticipated R23.8 m. shortfall and the R16 m. cost-saving achieved by cutting 56 Junior Practitioner posts as Nair had proposed.

21. And far from proposing the reduction or freezing of critical positions such as Senior Litigator posts for which suitable candidates had been selected and recommended, Makokoane, Vedalankar, Nair and the management executive recorded among the 'measures … proposed … to mitigate the probable deficit' that 'The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions.'

22. Top 'Level 13 … Senior Professional staff' positions such as Senior Litigator posts at seats of the High Court are critical positions.

23. At its meeting on 31 July 2010 the Board resolved to approve 'the mitigating measures' 'recommended' by Makokoane, Vedalankar, Nair et al., namely to temporarily reduce public defender coverage of the lower criminal courts as proposed, and to make up the difference from unspent budget.

24. On 15 December 2010, well within the financial year, the respondent received its OSD funding allocation and consequently restored its Junior Practitioner staff establishment to its original full complement.

25. All this is fully documented: the 'sudden..' discovery in March 2010 of the unexpected delay in the transfer of OSD funding; the non-critical posts identified in April for possible reduction to mitigate the threatened deficit, motivated in July, proposed to the Board, and approved by the Board in the same month; the eventual transfer of the respondent's OSD funding allocation in December; and the consequent restoration of the respondent's Junior Practitioner staff establishment, temporarily cut in July 'for the remaining of the 2010/11 budget period' only.

26. The temporary financial uncertainty faced by the respondent during the year and its temporary reduction of 56 non-critical Junior Practitioner posts to meet it didn't even get a mention in the respondent's annual report for 2010/11. To the contrary, it explicitly reported that 'There were no business or operational crises experienced in the FY 2010/11.'

27. Even on Vedalankar's manifestly untruthful version that 'In July 2010' she 'immediately' froze the critical Pietermaritzburg Senior Litigator post (and two others) for budgetary reasons arising from the delayed transfer of OSD funding – diametrically contradicting her and other management executives' 'Recommendation' to the Board of very different cost-cutting measures, and their announced intention 'to prioritise' the 'filling of … critical

positions' such as Senior Litigator posts – her false budgetary reason adduced to the applicant evaporated with payment of the OSD allocation on 15 December 2010.

28. In order to maintain her dishonest pretence that budgetary constraints prevented the applicant's appointment, and continuing to deal with him in bad faith, Vedalankar concealed this payment from him in her letter of 28 January 2011 six weeks later, alleging: 'Obviously by November [sic: September] 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2010'; 'Legal Aid has always had financial difficulties as a result of failure by DoJ to advance funding in terms of OSD 2nd phase as promised; and the consequences of such failure on Legal SA mandate'; 'even in Parliament, I mentioned challenges that may face Legal Aid SA should OSD funding not be fixed; that if funding does not come through "we would have to freeze posts"'; and that there was 'an impending shortfall in Legal Aid SA's budget'.

29. In his response to the statement of claim, CSE Mtati invented a new fake budgetary justification to cover the respondent's unwillingness to finalize the applicant's appointment: 'even after the OSD funding was resolved it was still not feasible to fill the Senior Litigator posts. The Respondent had to relook at its critical vacant positions and fill them in the best possible and feasible manner.'

30. This false allegation is not supported by the minutes of any meeting of the Legal Services Technical Committee since 15 December 2010 (when the OSD funding allocation was paid). The nine single-spaced pages of the minutes of the 24 March 2010 meeting, for instance, show that the committee's discussions and decisions are comprehensively recorded. None of these minutes support this false new allegation.

31. This false new budgetary explanation is contradicted by the respondent's financial records: according to the respondent's annual report for the 2010/11 financial year ending on 31 March 2011, the respondent spent 99.2% of its budget, leaving a R10.8 million surplus from operations (as against an operating deficit the previous year of R23.1 m., or R1.8 m. total deficit after interest added). Added to interest and other income (such as from the sale of assets), the respondent's total surplus for the year was R31.7 m., raising the respondent's accumulated surplus to R194 m. Total salaries (salary increases plus new recruitment) rose year on year by 16.5% from R658 m. to R768 m. Three Senior Litigator salaries amount to about R2 m. – 0.26% of the respondent's salary expenditure in 2010/11. And since Mngadi stood to be internally promoted one notch or level up to the Durban Senior Litigator post and Skibi internally transferred from the equivalent Mahikeng post to the Mthatha one, finalization of the applicant's and these other appointments would have cost the respondent a little over a third of this, i.e., well below R1 m., a picayune ~0.1% of the respondent's salary expenditure in 2010/11.

32. Indeed, the respondent contradicts this 'still not feasible' false pleading, unsupported by the records and contradicted by the accounts, and confirms it's untrue in its answer to the applicant's pre-trial conference agenda: 'The funding was released to the Respondent after it had taken its decision to terminate the recruitment of Senior Litigator posts. This decision has never been revisited.'

33. In her dishonest bid to set up a financial cover story for aborting the applicant's recruitment immediately on learning of his selection and recommendation in 2009, Vedalankar's suggestion to the applicant that she cancelled Mngadi's promotion and Skibi's transfer respectively to the Durban and Mthatha Senior Litigator posts 'In July 2010' is inconsistent with the facts and with any budgetary consideration.

34. Following the applicant's repeated calls on Clark in April 2010 for information about the upshot of his interview five months earlier, the complication posed by Mngadi's simultaneous selection for the Durban Senior Litigator post was disposed of by notifying him 'in April/May' 2010 (his words) that the recruitment wasn't proceeding. That is, the decision not to proceed with Mngadi's promotion (off the record) was taken about three months before Vedalankar falsely alleged she did. Having already been put off 'in April/May', to get him out of the way, Mngadi accordingly never received any 'regret letter' in August 2010 like the applicant and the two unsuccessful shortlisted and interviewed candidates did.

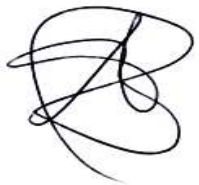
35. The decision, also taken off the record, to cancel Mahikeng Senior Litigator Nzame Skibi's transfer to the newly created Mthatha Senior Litigator post, shortly after he'd been selected and recommended for it in June 2010, plainly had nothing to do with cost-cutting, because his transfer between equivalent posts had zero salary cost implications.

36. The cancellation of Skibi's internal transfer in August, like Mgadi's internal promotion 'in April/May', was contrived to support the false cover story advanced to the applicant that all the respondent's three vacant Senior Litigator posts were equally hit by the need to reduce operating costs.

37. The applicant is an acutely unpopular political dissident for his role in igniting the most inflamed, polarized policy controversy in the democratic era, in which Vedalankar and the respondent have taken and promoted a line opposing his. He is also white.

38. With the exposure and collapse of Vedalankar's bogus budgetary justification for aborting the applicant's recruitment, and the complete evaporation anyway of this false budgetary defence on 15 December 2010, the irresistible inference arises that Vedalankar asserted her false budget story to the applicant to camouflage her unfair discrimination against him on prohibited grounds – with which unfair discrimination the respondent persists in refusing to finalize his appointment to the top-level senior professional post for which he was duly recommended by the professional selection panel that interviewed and selected him.

Dated at Pietermaritzburg, this 30th day of November 2011.
Paragraphs 19, 23, 25, 27 and 28 amplified, and new 31 added, 5 January 2012.



ANTHONY BRINK
APPLICANT

Legal Aid South Africa

Mr. Anthony Brink
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3201

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Tel: 011 877 2000
Fax: 011 877 2222
www.legal-aid.co.za

29 May 2012

**per e-mail**: *arbrink@iafrica.com*

Dear Mr. Brink

**LASA: SUBSTANTIAL UNAUTHORIZED FRUITLESS AND WASTEFUL EXPENDITURE**

Thank you for your email dated 21st May 2012 and the attached letter entitled "Fruitless and wasteful expenditure".

In your letter you refer to the fact that you have a matter pending at the Labour Court. Please be informed that as Chair of the Audit Committee of Legal Aid SA, I take matters relating to the above subject very seriously and would under normal circumstances request an investigation into your allegation. However, taking into account the fact that you have a case against Legal Aid SA pending with the Labour Court, I, with due respect request that we give way to the courts to finalise the case at hand before we can start dealing with other matters.

Kindly note that the email used to send your letter is my work email and therefore cannot be used for Legal Aid SA matters and thus no future communiqué will flow through this email address.

I am sure I will be informed through board correspondence as regards the progress and outcome of your case.

Yours faithfully

Nonhlanhla Mgadza
Chairperson: Audit Committee
Legal Aid South Africa

PUBLIC PROTECTOR
MOSIRELETSI WA BATHO ● MOSIRELETSI WA BATHO
MUSIRHELELI WA VANHU ● MUTSIRELEDZI WA VHATHU
OPENBARE BESKERMER ● UMKHUSELI WABANTU ● UMVIKELI WABANTU

NATIONAL OFFICE
PRIVATE BAG X677 PRETORIA 0001● HILLCREST OFFICE PARK, 175 LUNNON ROAD, PRETORIA
TEL: (012) 366 7000● Fax: (012) 366 3473

# PUBLIC PROTECTOR COMPLAINTS FORM

FOR OFFICE USE
File number: .....
Date received: .....
Received by: .....

## YOUR DETAILS

| | |
|---|---|
| **1. Your name** | Adv Anthony Brink |
| **2. If your complaint is about a pension or ID document matter, please provide your ID number.** | N/A |
| **3. Your address and telephone and telephone number(s)** | 25 Baker Road, Prestbury, Pietermaritzburg 3201, KwaZulu-Natal<br>Telephone number (home): 033 344 2420<br>Telephone number (work): As above<br>Fax number: 086 672 0776<br>Cellphone number: 083 779 4174 |
| **4. If this complaint is for someone else, please tell us about them.** | N/A |

| | |
|---|---|
| **5. Their ID numbers, if the complaint is about pension or ID document matter.** | N/A |
| **6. Their address and telephone numbers.** | N/A |
| **7. If this complaint if for an organisation, please tell us the name of the organisation.** | N/A |

**TELL US ABOUT THE COMPLAINT**

| | |
|---|---|
| **8. Is the complaint still happening?** | Yes. |
| **9. If no, on what date did it happen?** | N/A |
| **10. Where did it happen?** | At LASA's national office in Johannesburg, Gauteng. |
| **11. Which government agency is involved?** | LASA, a statutory public body established by the Legal Aid Act 22 of 1969. |
| **12. Tell us the names of the officials that you contacted to try and solve the problem.** | South African Human Rights Commission ('SAHRC') deputy information officer Fola Seleke. |
| **13. Where can they be reached?** | SAHRC: Forum 3, Braampark Office Park, Braamfontein, Johannesburg<br>Private Bag X2700, Houghton 2041<br>011 877 3600 |
| **14. Have you reported this case to anyone else?** | No. |
| **15. Please tell us how you heard about the Public Protector (radio, newspaper, poster, friend?).** | As a practising lawyer I am au fait with our democratic institutions. |
| **16. Use the space provided below and if you need more space, please use a separate piece of paper, that will be provided to you. Please attach copies of relevant correspondence or documents.** | See below. |

**False reporting under section 32 of PAIA by Legal Aid South Africa for 2011/12 for the second year running**

1. LASA's PAIA section 32 report to the South African Human Rights Commission for 2011/12 reveals that it has again failed to comply with PAIA for the second year in a row. A copy of the report is annexed marked 'A'.

2. (My still pending first complaint in August 2011, amended and amplified in November 2011, concerns LASA's illegal withholding of records and false reporting for the preceding 2010/11 reporting cycle: see complaint file 7/2 – 44378/11.)

3. I delivered my third request for LASA records under section of 11 (1) of PAIA on 9 March 2011. The records I requested were listed in the annexure to a duly completed PAIA Form A request form. The list is annexed marked 'B'.

4. My PAIA request was thus lodged within the 2010/11 reporting cycle closing on 31 March 2011.

5. LASA timeously answered my PAIA request on 8 April 2011 within the prescribed time-frame. A copy of LASA's response is annexed marked 'C'.

6. LASA's response was given after the close of the 2010/11 reporting cycle ending 31 March, so it was reportable under section 32 of PAIA in the following 2011/12 reporting cycle.

7. Section 32 requires that

> 'the information officer of each public body must annually submit to the Human Rights Commission a report stating in relation to the public body – …

(d) The number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partial[ly];'

8. Completely silent about its response to my third request (just as it was silent about the fact of my third request in its previous section 32 report), LASA has failed to report to the SAHRC that in responding on 8 April 2011 to my third request for records, it refused:

(a) three records relying on section 44 (1) of PAIA;

(b) one record relying on section 34 (1); and,

(c) three records on the basis that 'The information requested is refused as it is not relevant'.

9. (Sections 34 (1) and 44 (1) of PAIA did not apply to the records I'd requested, and 'relevan[ce]' is not a lawful criterion for refusing public body records. Indeed, LASA implicitly abandoned its reliance on these bogus grounds; this is detailed in my update to the Public Protector dated 16 May 2012 in complaint 7/2 – 44378/11.)

10. The National Assembly is particularly concerned with the free flow of official information in the democratic era for the protection and enforcement of fundamental rights, and it consequently requires the SAHRC inform it of any reason(s) advanced by a public body for blocking it.

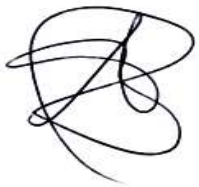
11. Hence the detailed reporting provisions of PAIA section 32 for public bodies, and the similar provisions of section 84 requiring the SAHRC to convey section 32 report information to the National Assembly in its annual report under section 181 (5) of the Constitution.

12. In contempt of its constitutional and statutory obligation under section 32 (d) to declare to the SAHRC for the information of the National Assembly –

‘The number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partial[ly]’

– LASA has concealed from the SAHRC and from the National Assembly its illegal refusal to surrender duly requested records.

Dated at Pietermaritzburg this 4th day of September 2012.



ADV ANTHONY BRINK

This complaint and all documents to which it refers are available in printable PDF at:
www.tig.org.za/LASA/Public_Protector username: lasa password: LASA2010

**SECOND COMPLAINT TO THE PUBLIC PROTECTOR**

**INDEX TO ANNEXURES**

‘A’ is at pages 866–7;

‘B’ is at 351–2;

‘C’ is at 363–5.

**From:** Vidhu Vedalankar [mailto:VidhuV@legal-aid.co.za]
**Sent:** 28 January 2011 02:25 PM
**To:** Anthony Brink
**Cc:** Justice Dunstan Mlambo; ckisoon@sahrc.org.za
**Subject:** PAIA: Brink - supplementary request for records

Dear Mr Brink

Please see attached a response to your letter.

Regards

Vidhu Vedalankar

CEO

**www.legal-aid.co.za**

## Anthony Brink

**From:** Chris Rawlins [cfmrawlins@telkomsa.net]
**Sent:** 10 November 2012 08:40 AM
**To:** Anthony Brink
**Subject:** Fw: Maree

**Categories:** Red Category

----- Original Message -----
**From:** arbrink@iafrica.com
**To:** cfmrawlins@telkomsa.net
**Sent:** Sunday, December 12, 2010 12:21 PM
**Subject:** Maree

Receipt of your letter is acknowledged.
JJ MAREE

----- Original Message -----
From: JAN
To: 'Jan Maree'
Sent: Friday, December 10, 2010 2:58 PM
Subject: FW: Legal Aid South Africa

_____
From: arbrink@iafrica.com [mailto:arbrink@iafrica.com]
Sent: 09 December 2010 03:58 PM
To: jan@schoemanmaree.co.za
Subject: Legal Aid South Africa

Dear Mr Maree

I have written to Judge Mlambo and the Board of Directors of Legal Aid South Africa in an extraordinarily serious matter.

I'm emailing away from home and am having trouble with attaching files to email, so I'd be obliged if you would download the letter and its annexure from the following secure private website:

www.tig.org.za/LASA
username: lasa
password: LASA2010

Yours sincerely

Adv Anthony Brink

**Portfolio Committee on Justice and Constitutional Development**
**12 October 2010**
**Legal Aid South Africa on their Annual and Quarterly Reports**

**Acting Chairperson:** Mr J Jeffery (ANC)

**Documents Handed Out:**
Legal Aid South Africa (LASA) presentation on Annual Report 2009/2010
LASA First Quarter Report: April to June 2010

**Relevant Document:**
Legal Aid South Africa (LASA) Annual Report 2009/2010

**Summary**
The Committee on Justice and Constitutional development welcomed Legal Aid South Africa as they presented their annual report for the financial year 2009/2010 as well as the 1st quarterly report for April to June 2010/2011. In a nutshell Legal Aid South Africa had managed to achieve its targets and would now focus on finding new ways of increasing access to justice. On the support services front, the objective was to increase financial maturity. Six new justice centres had been built around the country as well as 27 satellite offices. The client call centre would be opened in two weeks time and Legal Aid South Africa was the first legal aid entity in the world to instill quality assurance structures to ensure that the quality of the services provided by its lawyers was monitored. Risk management and financial control were closely guarded and there was a strong corporate governance ethos. Only 29 000 new civil matters had been handled, this reflected that LASA was still struggling with the load where civil matters were concerned. Of all the matters undertaken by justice centres, in-house practitioners handled 93%, 6% were by Judicare lawyers and 1% were through co-operation with other partners. The general advice provided by paralegals figure for this financial year was 211 874. The number of automatic reviews had decreased to 8 770. A challenge that remained for Legal Aid South Africa was that there was a gap in terms of African females in senior management positions.

The non-current assets, which were less than 12 months old, amounted to R102 559 414. The current assets were R236 366 598. Revenue was R917 408 000; the main source of revenue was the government grant. The main source of expenditure was salaries, which consumed 70% of the budget. 99.5 % of the budget had been spent for the 2009/10 financial year and once again Legal Aid South Africa had received an unqualified audit report.

For the first quarter of the 2010/2011 (April to June) financial year Legal Aid South Africa was on track where New Legal Delivery Matters was concerned. Practitioners were performing well within target range and challenges were being resolved. The government

grant had increased by 21% and had been used to cover the various areas of operations, which included the reduction of case backlogs.

The Committee wanted more insight into the relationship between Legal Aid South Africa and private practitioners. There were also queries regarding the area of operation of the justice centres. The Committee wanted to know about the experience levels of Legal Aid South Africa practitioners as well as their ability to compete with lawyers from the private practice, this tied in with the query on the salary levels of practitioners. There were issues regarding the financial statement that the Committee raised. it was a concern that there was no mention of what the targets set were; especially where the challenges had been set out in the presentation for the annual report. The Committee requested feedback on the *Porrit* and *Boeremag* cases. The Committee suggested that media services available in Parliament such as Parliament Live should be used by Legal Aid South Africa. The entire Committee commended Legal Aid South Africa for its excellent work and congratulated them on an excellent Auditor General Report.

**Minutes**

**Opening Remarks**

Judge Dunstan Mlambo, Chairperson of Legal Aid South Africa (LASA) referred to slide 3 of the annual report presentation and said that overall, LASA had managed to achieve its strategic shift for the period leading up to 2012. The next strategic phase would be to try and find new ways of increasing access to justice. On the support services front, the objective was to increase the financial maturity of LASA. The risk-based management of the performance of lawyers at LASA would be perfected further. The Information Technology platform would be enhanced as well as the availability of the business intelligence facet. Six new justice centres had been built around the country as well as 27 satellite offices. The client call centre would be opened in two weeks time by the Minister of Justice and Constitutional Development. LASA was also the first legal aid entity in the world to instill quality assurance structures and thus ensuring that the quality of the services provided by its lawyers was monitored. LASA would like to embrace a more value centred approach.

Ms Noni Mgadza, Chairperson of the Audit Committee for the board of LASA elaborated on the audit focus of LASA. Risk management and financial control were closely guarded at LASA and there was a strong corporate governance ethos. The result of this was that in the past nine years LASA had received an unqualified report, in five of those there were no matters of emphasis. The various sub-committees of the board worked together to ensure that LASA functioned competently. The established corporate governance structures all worked towards servicing the various communities of South Africa.

**Presentation: Annual Report 2009/2010**

Ms Vidhu Vedelankar, Chief Executive Officer (CEO) of LASA addressed the Committee and saying that management had strived to turn the organisation around in order to

increase access to justice. The justice centres operated in all the criminal courts within the Republic. For the 2009/10 period there was a slight decrease in the number of new matters handled. 29 000 New civil matters had been handled, this reflected that LASA was still struggling with the load where civil matters were concerned. This was listed under the challenges that would be undertaken by the organisation. The call centre would assist in this regard as first level advice would be provided especially to those communities where LASA was not present. LASA's justice centres undertook 93% of all new matters, 6% were by Judicare lawyers and 1% were done through co-operation with other partners. There were 59 266 new matters that involved children. General advice was provided by paralegals and the figure for this financial year was 211 874. The number of automatic reviews had decreased to 8 770 as LASA had been working hard on reducing this. The quality of practitioners was tracked at justice centre levels. In order to increase awareness on its services, LASA had done branding in prison and police cells. Branding was also done in courts as well as at public lectures. Concerning the Business Processes Performance, LASA was aiming to improve the Matrix management and Risk Based Management, which were both successfully implemented.

The Business Intelligence model allowed management to have oversight over what was going on in the organisation at any time. It also allowed practitioners to know what their caseload was. Recruitment stood at 94% and the staff turnover rate – excluding Candidate Attorney's (CA) - was 9.6%. Lawyers constituted 69% of staff. There was a gap in terms of African females in senior management positions.

**Presentation: Annual Financial Statements & Auditor General's Report**

Ms Rebecca Hlabatau, Chief Financial Officer (CFO) of LASA informed the Committee that the non-current assets, which were less than 12 months old, amounted to R102 559 414. The current assets were R236 366 598. Revenue was R917 408 000, it should be noted that the main source of revenue was the government grant. The main source of expenditure was salaries, which consumed 70% of the budget. 99.5 % of the budget had been spent for the 2009/10 financial year. This had been the trend for the past six years as there was efficient management of all fixed assets and vehicle management. There were also functional and efficient supply chain management committees. 99.6% of trade creditors were paid within 30 days of the invoice date and 99% of judicare accounts were paid within 30 days of receipt of invoice. The 2009/10 financial year was the 9$^{th}$ year in succession that LASA had received an unqualified audit report and this was the 5$^{th}$ year in succession that there were no matters of emphasis.

The Chairperson commented that there was a lot of data in the quarterly report, in future the focus should only be a highlight of the trends and issues.

**Presentation: Quarter 1 Report April to June 2010**

Mr Brian Nair, National Operations Executive presented to the Committee that LASA was on track where New Legal Delivery Matters was concerned. Finalised matters were slightly lower but still within target range. Civil matters were extremely lower than criminal matters

as a result of the resource constraints. There was a good trend for quality monitoring and the practitioners were performing well within target range. There was still some work to be done concerning the branding for community outreach purposes. LASA was on track with addressing most of the challenges it faced.

Mr Jerry Makokoane, Chief Operations Officer for LASA continued with the presentation. The funding for case backlogs from the government assisted in the reduction of cases. The government grant had increased by 21% and had been used to cover the various areas of operations. 19% of the funding went to salaries. Direct expenditure increased by 70% due to the 2010 FIFA World Cup funding as well as funding for new legislation. 25 % of the budget had already been spent; this was in line with the trend of LASA's spending. Business continuity was being monitored in order to ensure that operations in LASA were being monitored.

***Discussion***

Mr J Sibanyoni (ANC) asked what kind of relationship existed between LASA and private practitioners. Did the private legal sector consider LASA as a rival competitor and was it easy for LASA to be able to obtain private practitioners for judicare? Taking into consideration the fact that LASA was freely available to the public, would a newly admitted attorney be able to successfully set up his or her own practice? The civil work that LASA was now undertaking was commendable. Were there LASA centres that provided services across two provinces or were they provincially bound?

Judge Mlambo replied that LASA did not have any problems with judicare. LASA had an accreditation system for private practitioners; from there instructions were issued to the various lawyers on the accreditation list. LASA was now accepted in the legal fraternity however there were still many lawyers in private practice that bad mouthed LASA. These lawyers did this for the simple reason that they did not have access to the work done by LASA. The justice centres were court based in terms of their coverage and they were not provincially bound.

Mr Nair replied that the relationship between LASA and private practitioners was not adversarial. More and more clients were asking for assistance from LASA. LASA provided assistance for clients who could not afford legal services; these were not the type of clients that comprised the market for private lawyers

Ms D Schaefer (DA) commented that she was concerned that the annual report was not made available to members on Friday. Were the salaries of LASA practitioners competitive when compared to the private sector? What were the experience levels of LASA practitioners and were they able to compete with private lawyers? Was LASA concerned about not providing services to persons other then indigenes that also could not afford legal services? On page 123 of the annual report LASA had an excess of R21 million rand access in the past financial year yet this year there was a deficit of R1.8 million, is there an explanation for this? On page 146 there were bad debts written off in 2009/10 to the tune

of R563 000 as opposed to R42 000 during the financial year before that, why was this the case?

Judge Mlambo replied that the best way to ascertain the quality of the work done by LASA practitioners rested with the judicial officers in front of whom LASA practitioners stood. One would find judicial officers in very remote areas traveling to LASA launches to commend me on the work done by LASA. There were many judges who would say that they did not want judicare in their courts because they were not committed and preferred LASA practitioners. LASA practitioners were monitored and if they had a higher number of guilty pleas they would be reined in. The group referred to that did not qualify for legal aid but also could not afford legal services would benefit a lot from the private legal profession increasing their *pro bono work*. Those who failed the means test could also appeal.

Mr Nair replied that LASA had no problems with regards to recruiting lawyers and the salary levels were an indication of this. LASA practitioners served in different types of courts, therefore there were different types of experience levels required. LASA would definitely expand from where it was right now.

Ms Hlabatau referred to the questions relating to finance and said that the reason for the deficit figure was because the income statement took into consideration depreciation. The deficit was not a reflection that LASA overspent on its budget during the past financial year. The bad debts written off related to old debts stretching back to 2000. The bad debts were written off after a considerable amount of time had been spent trying to recover the debts in terms of Treasury regulations. It came to a point where the costs of recovering these debts were now exceeding the benefits that would be derived in recovering them.

Mr M Gungubele (ANC) echoed the praise from Mr Sibanyoni on the excellent work done by LASA. Where the presentation focused on the challenges, it was a concern that there was no mention of what the targets set were. It would be useful if the challenges were articulated in a manner where the set targets were included so one could judge according to figures provided.

The Chairperson commented that there should be more information on the Co-operation agreements that LASA was entering in with other organisations. Could there be commentary on the *Porrit* case that just concluded and its impact on LASA. What was LASA trying to do in order to improve the figures for civil matters?

Judge Mlambo replied that the impact of the *Porrit* case would not affect the judicare instructions. The decision in the case would mean that courts would no longer force LASA to provide legal aid for non-qualifying persons. Cases like the *Porrit* one were going to be a threat and would have consumed a huge part of the budget.

Mr Nair said that last year the board had decided to review the civil matters strategy, which included looking at access and the quality of services for civil matters. Civil matters were

expected to grow, as there was now added capacity.

Advocate Peter Du Randt Chief Director for Court Services in the Department of Justice and Constitutional Development (DOJ & CD) also replied that some of the Co-operation agreements included an agreement with the National Prosecuting Authority (NPA). The agreements were to enhance coordination in how cases were dealt with and also for the reduction of cases on the court register. LASA practitioners were now also available as adjudicators in small claims court cases. This was also contributory towards the work being done where civil matters were concerned.

Ms C Silkstone, Content Advisor for the Committee asked why new matters had decreased.

Mr Nair said that the figures have generally decreased because the cases that should not be on the court roll were not. The Child Justice Act also meant that more and more cases involving children were being diverted

Mr Gungubele asked what mechanisms were in place for quality control purposes and how were the standards measured to determine consistency in the performance of practitioners.

Ms Vedelanker added that quality would remain on the agenda as a challenge because of the professional work done by LASA. The standard of LASA was improving; the target for Candidate Attorneys (CA's) was lower because they were fresh from university. The quality assessment now consisted of both file and court monitoring. This was not so successful in judicare because it was much harder to track matters.

Judge Mlambo added that the budget for judicare had been reduced. It should be noted by the Committee that whenever they read about LASA lawyers behaving inappropriately it was usually Judicare lawyers. This was why Judicial Officers always preferred LASA lawyers to Judicare.

Mr Sibanyoni asked for feedback on the *Boeremag* case.

The Chairperson suggested that LASA should make use of the media services available in Parliament such as Parliament Live especially when they come to present the quarterly reports. Were there amendments to the Legal Aid Guide that had to come before Parliament? LASA should report on the progress of the Child Justice Act in the next quarter. Were there any cases where LASA was suing the state especially Home Affairs? Had there been any forms of engagement with the Minister of Home Affairs so that court proceedings against the state can be avoided where Home Affairs was concerned. Another issue of concern was pensions, had LASA looked at engaging with the pensions ombudsmen to ensure that any queries from its clients were looked at? The work by LASA was once again commendable. It was important that Members also assisted in the quality

maintenance of LASA by conducting surprise visits to their offices.

Judge Mlambo replied that just under R27 million had been spent on the trial. The courts forced LASA to fund the *Boeremag* case the way it was being funded now despite the best efforts of LASA. The accused were 23 and all were represented by the state. It was difficult to handle more civil matters because the funding constraints. It was not clear if there were dedicated LASA units that dealt with pensions but they definitely dealt with estate matters.

Ms Vedelanker added that the Legal Aid guide was tabled before the Minister of Justice who would in turn table it before Parliament. There were not too many amendments.

Mr Nair replied that there were no statistics available for where LASA was suing the state on behalf of clients but one could not rule out the possibility that there would be such cases. The bulk of the matters involving Home Affairs and pensions would be handled at the advice stage where a paralegal would refer the client to the relevant person or body. The problems had not reached the stage where practitioners were involved.

The Chairperson asked if both Houses had to approve them.

Ms Vedelanker replied in the affirmative.

The Chairperson thanked LASA and once again congratulated them on their excellent work.

The meeting was adjourned.

**The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010**.

The Portfolio Committee on Justice and Constitutional Development, having considered the performance of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, South African Human Rights Commission and Public Protector, reports as follows:

## 1. Introduction

1.1. The Committee oversees the activities of the Department of Justice and Constitutional Development and various other institutions, all of which receive their allocation under the Justice and Constitutional Development Vote. These include the National Prosecuting Authority (NPA); Legal Aid South Africa (LASA); South African Human Rights Commission (SAHRC) and Public Protector (PP).

1.2. Each year, as part of its oversight function, the Committee considers the annual reports of the Department of Justice and Constitutional Development and other institutions that it oversees. The recently promulgated Money Bills Procedures and Related Matters Amendment Act, (Act 9 of 2009), sets out the process allowing Parliament to make recommendations to the Minister of Finance to amend the budget of a national Department. As part of this process, Portfolio Committees must compile Budgetary Review and Recommendation Reports (BRRR) in October of each year, containing recommendations relating to funding allocations for the departments and other institutions that account to them. The BRRR are also a source document for the Standing Committee on Finance when it makes recommendations to the National Assembly on the Medium-Term Budget Policy Statement (MTBPS). The annual review and analysis of performance (entailing both financial and non-financial performance indicators) forms part of this process.

1.3. This is the first year that the Committee is undertaking the BRRR process. The Committee believes its engagement with the Justice Department, NPA, LASA, SAHRC and PP was robust and, given the time constraints and the quality of the information provided, its evaluation of the information presented fair. The Committee is of the view that continuous engagement with the Department and institutions on their performance is critical, and has already committed to meeting with the Department and other institutions it oversees quarterly. It intends to refine this quarterly reporting process by developing tools that will strengthen its oversight capacity.

1.4. The Committee was briefed on the annual performance for 2009/10 of the Department of Justice and Constitutional Development, NPA, LASA, SAHRC and PP. The briefings took place from 12 – 15 October 2010. Copies of the presentations are available from the committee secretary, Mr V Ramaano. The Committee has already considered and reported on the respective strategic plans and budget proposals of the Justice Department, NPA, LASA, SAHRC and PP for 2010/11 and, as mentioned above, has reviewed their performance for the first quarter of 2010/11.

1.5. This Report comprises four parts:

- Part 1 provides background information relating to the core functions of the Department, NPA, LASA, SAHRC and PP. It also gives an overview of the allocation to the Justice and Constitutional Development Vote for the 2009/10 and 2010/11 financial years.
- Part 2 provides an overview of the Department's strategic goals and measurable objectives; gives selected performance information, as reported to the Committee for each programme for 2009/10, and briefly gives an overview of key issues raised by the Auditor-General relating to the Department's financial statements for 2009/10.
- Part 3 contains the Committee's observations and recommendations.
- Part 4 is a summation of the Committee's recommendations relating to requests for additional funding for 2011/12.

While this is likely to impact on the criminal justice system, it can be expected that the civil justice system will also experience additional pressure, as it must handle an increased caseload caused by more bank repossessions, insolvencies, liquidations, etc. This is a concern, as the performance of courts dealing with civil matters has not received much attention to date. Also, the Master's Office, which has received attention in terms of parliamentary oversight, continues to experience ongoing operational problems. The Magistrate's Court Act is also in need of an overhaul.

Key developments include an increase in the jurisdictional amounts applicable to magistrates' courts, as well as the expansion of the jurisdiction of regional court magistrates to deal with civil and divorce matters).

**The Committee recommends that –**

- The Department report specifically on the implementation of the Jurisdiction of Regional Courts Amendment Act, 2008, and on the Civil Justice Review, in its 2nd Quarter Report.

7. **National Prosecuting Authority (NPA)**

The Committee notes that the NPA received a qualified audit opinion, and was told that the NPA expects a qualification in 2010/11 and possibly beyond. The Auditor-General's Report mentioned leadership as a problem: 'Management philosophy and operating style does not in all instances promote effective control over reporting. This is evidenced by the fact that significant external audit findings from previous years have not been addressed and SCOPA resolutions have not been substantially implemented at the time of issuing this report' (NPA Annual Report 2009/10, p 77). The Committee was concerned that the NPA did not report on 'turnaround strategies' or audit action plans. It is aware that there are challenges to leading/administering from afar, and notes that, for this reason, the NPA's CFO and CEO now form part of the Department's EXCO, which meets twice a month. Still, the Committee is greatly concerned at what could be construed as complacency.

**The Committee requests that –**

- The NPA brief it on its plan of action, containing specific measures and timeframes, to address the matters addressed by the Auditor-General, as well as on its failure to address existing audit results from past years and SCOPA resolutions.

8. **Legal Aid South Africa (LASA)**

The Committee congratulates LASA on having received an unqualified audit for the past 9 years, with no matters of emphasis for the past 5 years. LASA impressed the Committee greatly with its strategic vision and planning, management of resources and considerable achievements.

**The Committee recommends that –**

- OSD funding is included in baseline to prevent LASA from having to freeze posts.
- LASA is provided with additional funds to increase its civil work.
- LASA provide more information in the 2nd Quarter report 2010/11 on:
  - How implementation of the Child Justice Act has affected it, and any other observations it may wish to make on this.
  - The co-operation and agency agreements concluded.

9. **South African Human Rights Commission**

The Committee congratulates the Commission on receiving an unqualified audit opinion for 2009/10. It acknowledges that capacity constraints are a challenge for the Commission, and that budget plays a significant role in this regard. The Committee commends the Commission on its efforts to save costs. It is also pleased to hear that the Commission will be publishing its Socio-Economic Report soon.

The Commission was asked to consider ways in which Parliament could provide greater support to it, specifically in paying attention to and taking up the matters contained in its reports. The Commission

felt that Parliament should give further consideration to the contents of the report of the *Ad Hoc Committee on Chapter 9 and Associated Institutions*. This sets out the many challenges that the Commission faces relating to capacity, skills, and expertise, as well as its ability to expand its reach. The report also makes a number of recommendations.

The Committee's attention was also drawn to the contents of the Commission's Report on Access to Information contained within the Annual Report. It notes that the widespread failure of national and provincial government departments and municipalities to submit these reports is persistent, and is sympathetic to the Commission's frustration. It intends to explore how the Committee can assist the Commission.

The Commission also raised the issue of commissioners' integrity being attacked, especially where the matter being dealt with was controversial.

The Committee, however, felt that the Commission should do more when submitting a report to Parliament. An accompanying letter could provide guidance as to what needs to be done to ensure that the Commission's work is brought to the attention of the right committee or body within Parliament. The new Office on Institutions Supporting Democracy and Related Institutions created in the Deputy Speaker's office to assist the constitutional and related institutions should also be able to assist in this regard.

**The Committee recommends that –**

- The Commission should brief it on its Report on Access to Information separately.
- Consideration is given to identifying ways to generally increase support for the Commissions work.
- The Committee engages with the Office on Institutions Supporting Democracy and Related Institutions in the Deputy-Speaker's Office to clarify its role in supporting these institutions.
- The Commission is generally under-funded. The Committee supports the need for additional resources to be allocated to it to be able to deliver on its mandate.

10. **Public Protector (PP)**

The Committee congratulates the Public Protector on its unqualified audit opinion, although it notes matters of emphasis.

The Committee was told that the PP needs more investigators, as the caseload is too great. The resource challenge has been exacerbated by the strategic commitment to enhance the thoroughness of investigations, while improving turnaround time, in the pursuit of prompt remedial action for deserving cases. While the Public Protector has made efforts to address the problem through smart deployment of resources, it reports the need for additional human resources.

The PP's constitutional mandate specifically requires that it is accessible, but that funding constraints are a challenge. On the matter of opening more offices, the PP informed the Committee that people prefer to bring their cases in person. This is compounded by high illiteracy rates and a strong oral tradition. However, it is exploring options in this regard.

The PP reported that its mandate has grown, encompassing legislation, such as the Executive Members Ethics Act, which has placed additional demands on its limited resources.

**The Committee recommends that –**

- The PP is more qualitative and analytical when reporting cases. For example, cases relating to specific legislation should be reflected as such.
- The Committee is informed when the Justice Department or another institution within the Justice fold has not responded or is not compliant, so that it can take the matter up with the relevant institution.
- The PP provides its action plan to address the Auditor-General's matters of emphasis in the performance report for the 2nd Quarter 2010/11.

**Part 4**

## 11. Summary of Recommendations Relating to Additional Funding Needs for 2011/12

11.1. The Committee recommends that the Department of Justice and Constitutional Development receive additional funds for:

11.1.1. Accommodation, specifically to build a High Court in Mpumalanga at Nelspruit, and to address related court infrastructure issues, such as maintenance. (The Department reports that it needs R224 million for new court infrastructure and additional accommodation.)
11.1.2. Improved security for courts and justice offices. (The Department reports that it needs additional funding in the amount of R319 million for this.)
11.1.3. Information Communication Technology. (The Department has requested R150 million for Information Communication Technology (ICT) to replace obsolete equipment and to accommodate the expansion of its network.)

11.2. The Committee recommends that the LASA receives additional funds to:

11.2.1. Improve its practitioner-per-court ratio.
11.2.2. Accommodate OSD funding, and that this item is accommodated in the baseline allocation.
11.2.3. Allow LASA to increase its civil work.

11.3. The Committee generally supports that additional funding is allocated to the SAHRC and PP to support the mandate of these constitutional institutions.

Report to be considered.

# The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development, dated 26 October 2011

The Portfolio Committee on Justice and Constitutional Development, having considered the performance and additional budget requests for the medium term period of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, South African Human Rights Commission and Public Protector, reports as follows:

## 1. Introduction

1.1. The Committee oversees the activities of the Department of Justice and Constitutional Development and other institutions, which all receive their allocation under the Justice and Constitutional Development Vote. These other institutions include the National Prosecuting Authority (NPA); Legal Aid South Africa (LASA); Special Investigating Unit (SIU); South African Human Rights Commission (SAHRC) and Public Protector (PP).

1.2. Each year, as part of its oversight function, the Committee considers and reports on the annual reports of the Department of Justice and Constitutional Development and the other institutions referred to it.

1.3. In addition, the Money Bills Procedures and Related Matters Amendment Act, (Act 9 of 2009), sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department. As part of this process, portfolio committees must compile Budgetary Review and Recommendation Reports (BRRR) in October of each year, containing recommendations relating to funding allocations for departments and other institutions that account to them. The BRRR are also source documents for the Standing Committee on Finance when it makes recommendations to the House on the Medium-Term Budget Policy Statement (MTBPS). The annual review and analysis of performance (entailing both financial and non-financial performance indicators) also forms part of this process.

1.4. This is the second year that the Committee is undertaking the BRRR process. The Committee believes that its engagement with the Justice Department, NPA, LASA, SIU, SAHRC and PP has been robust. However, it is not enough to engage on performance annually. For this reason, in the past year, the Committee has met quarterly with the Department to establish how well it is performing against planned expenditure. The Committee has also met regularly with the other institutions on their respective performance and related spending.

1.5. The Committee was briefed on the annual performance for 2010/11 of the Department of Justice and Constitutional Development, NPA, LASA, SIU and SAHRC. The briefings took place from 11 – 14 October 2011. The meeting with the Public Protector was cancelled when she did not appear at the scheduled meeting on 14 October 2011. The meeting was rescheduled to 25 October 2011. The Committee also met with the Auditor-General on the audit outcomes on 18 October 2011. Copies of the presentations are available from the committee secretary. The Committee has already considered and reported on the respective strategic plans and budget proposals of the Justice Department, NPA, LASA, SIU, SAHRC and PP for 2011/12. As mentioned in paragraph 1.4., the Committee has also reviewed the Department's performance for the first quarter of 2011/12.

1.6. The National Director of Public Prosecutions was unable to be present at the NPA's meeting with the Committee on 12 October 2011, tendering his apology at a late stage. Although the Committee is grateful for the presence of the Director General: Justice and Constitutional Development (in her capacity as accounting officer) and NPA officials to answer questions, the Committee is of the view that this is last time it will meet with the NPA on its annual performance without the NDPP being present. The Committee seriously considered cancelling the meeting but did not as this would have resulted in wasteful expenditure.

(SITA).

- R44.6 million was 'saved' when the public-private partnership for Third Party Funds was suspended (on1 April 2010).
- In addition, R4.48 million was not paid to the Safety and Security Sector Education and Training Authority, as the Department had not been invoiced.

2.2.6. 2010 *Budgetary Review and Recommendation Report.* The Committee had made certain funding recommendations in its 2010 Budgetary Review and Recommendation Report. The following amounts were subsequently allocated for:

- Accommodation, specifically to build a high court in Mpumalanga at Nelspruit and to address related infrastructure issues, such as maintenance of buildings. The additional amounts allocated are R240 million and R250 million in 2012/14 and 2013/14 respectively.
- Information Communication Technology, specifically to replace obsolete equipment and to expand its network. Additional amounts of R100 million in 2012/13 and R110 million in 2013/14 are allocated for this.
- LASA also received additional funds to improve its practitioner-per-court ratio, to accommodate OSD funding and to increase ability to undertake civil work. Additional amounts of R44.6 million, R90.8 million and R106.3 million were allocated for increased capacity, for improved conditions of service and the implementation of Phase 2 of the OSD for legally qualified professionals.
- The PP and the SAHRC received additional funds to support their mandate: The PP was allocated additional amounts of R18.3 million, R24.1 million and R27.8 million for increased investigative capacity, improved conditions of service and municipal and accommodation charges. The SAHRC was allocated R6.2 million and R13 million for increased legal capacity, improved conditions of service and municipal and accommodation charges.

2.2.7. *Budget allocation for 2011/12:* The Justice and Constitutional Development Vote received R13.5 billion for 2011/12. If the direct charges for judges and magistrates salaries are excluded, the Department received R11.4 billion. The allocation to programmes, overall, grows in real terms by only 0.96% compared to 2010/11. (It is only the Administration, Court Services and Auxiliary and Associated Services programmes that see real growth). An amount of R245 million is added to the baseline for 2011/12: Additional amounts are for the Presidential Initiative (R30 million); OSD Phase 2 – for the NPA and Department (R45 million and R 5 million respectively). The baseline was reduced, however, by R114 million and R33.2 million as a consequence of the cancellation of the Third Party Fund Public-Private Partnership and further savings effected by Cabinet, respectively.

2.2.8. *Spending for the 1st Quarter 2011/12:* Overall the Department reported that it had spent R3.08 billion or 25% of the total available budget (excluding the Direct Charges) at the end of July 2010. Capital spending, however, is at 39.9% as payments for buildings and other fixed structures became due earlier than expected.

2.3. *Reported spending pressures:* Over the medium term, the Department reports the following spending pressures:

- The Department has identified investment in information technology as a key enabler. However, budget cuts have affected the IT maintenance plan with the following consequences: Ageing servers and other infrastructure; out-of-warranty servers that are a high operational risk; an inadequate business continuity plan; and a slow network that impacts negatively on turn-around in service delivery.
- There have been incidents of serious crime against staff members and the public (such as intimidation, murder, theft of state assets, theft of dockets and court records, escapes and robberies with aggravating circumstances.) To curb the costs of increasing security at service delivery points, the Department is exploring the possibility of using the South African National Defence Force to secure service delivery points.
- The Department has a major challenge in addressing the historical imbalances of the court infrastructure: prior to 1994, most court services were not situated in townships or in rural areas. When the Department decided to increase its services to previously excluded areas; facilities were unsuitable, requiring major refurbishment. Unfortunately, addressing the problem is complicated by the: Escalation of infrastructure

| | | 2010/11 (R million) | 2011/12 (R million) |
|---|---|---|---|
| South African Human Rights Commision | Unqualified | 73.5 | 89.1 |
| Public Protector | Unqualified | 112.8 | 143.4 |
| Legal Aid South Africa | Unqualified | 991.9 | 1 145.1 |
| Special Investigating Unit | Unqualified | 165.8 | 331.1 |

7.2. *Legal Aid South Africa*

7.2.1. Selected achievements, as reported, for each institution for 2010/11 include:

- Provided services at all criminal courts in the country through a national footprint of 64 Justice Centres and 64 Satellite Offices.
- Delivered quality legal services in 421 365 new legal matters (there were 419 149 new matters in 2009/10.
- A total of 405 891 legal matters were finalised in 2010/11, compared to 416 149 in 2009/10 (both criminal and civil matters).
- Provided legal assistance in 31 451 civil legal matters, compared to 29 028 in 2009/10. A total of 257 619 clients received general legal advice, compared to 211 874 in 2009/10.
- Assisted 28 115 children in 2010/1, compared to 59 266 children in 2009/10. There has been a decrease in the number of children awaiting trial in detention for more than a month.
- All categories of practitioners exceeded their quality assurance targets.
- The number of matters taken on automatic review (this occurs when accused are unrepresented in the lower courts) reduced from 30 306 in 2002/03 to 7 094 in 2010/11 (8 770 in 2009/10).
- Launched a Client Call Centre (in November 2010).
- Project to assist children beneficiaries in estate matters with the Master's Office rolled out to all provinces.
- Implemented five agency agreements to serve rural courts.
- Exceeded its legal and non-legal training targets.
- Established civil units at 13 Justice Centres.
- Ensured a recruitment level of 96%, compared to 94% in 2009/10.
- Successfully implemented the OSD.
- Successfully continued with the implementation of the Leadership Development Programme for the second year.
- Wide area network of IT further enhanced by the rollout of the Virtual Private network platform.
- Spent 99.2% of the allocated budget (99.5% spent in 2009/10).
- Received an unqualified audit opinion for the past 10 years, with no matters of emphasis for the past five years.
- Has been accredited as a 'Best Employer' for the second year.
- The LASA Board is appraised by an external evaluator as being in the top quartile of similar institutions assessed and would rank as among the best of public sector assessed.

7.2.2. Key challenges arising during 2010/11:

- The practitioner-per-court ratio remains a challenge (in the district courts, there is one practitioner-per-court but courts are only covered for four out of five days per week (83% coverage); in the regional courts, most courts are covered all 5 days of the week (96% coverage); and in the High Courts, coverage is as per the court roll). Ideally, there would be additional capacity to increase coverage to 100% in the district courts, 110% in the regional courts and 125% in the high courts, as well as greater relief capacity, for both improved case flow and to reduce the high caseloads of many practitioners.
- Expanding access, especially in rural areas, remains a challenge, although LASA has concluded agency agreements to increase access in remote rural areas. LASA has requested funding for the conversion of six existing satellite offices to full justice centres, establish one new justice centre and four new satellite offices to increase the national footprint.
- Although capacity to render civil legal aid services has increased, this service remains limited.

*8.19. Masters' services*

The Committee is pleased at the appointment (finally) of a Chief Master of the High Court. It looks forward to receiving regular updates at the quarterly meetings from the Chief Master of initiatives to to ensure that delivery Masters' services is increasingly more efficient and effective. The Committee is also interested that there is to be a revised policy for the appointment of liquidators and would like to be kept updated on this.

*8.20. Traditional Courts Bill*

The Committee requested that the Traditional Courts Bill be introduced in the National Council of Provinces. This has not happened yet as a result of procedural diffciulties. In the meantime, the Committee has learnt that traditional leaders require letters of conferment to allow them to adjudicate matters but that recently these have not been issued. The Committee requests the Minister to look into this urgently.

9. **National Prosecuting Authority**

9.1. The Committee congratulates the Director-General: Justice and Constitutional Development for the excellent effort to 'turnaround' the audit outcome.

9.2. The Committee is reminded that the Thuthuzela Care Centres are largely donor-funded; as are the NPA staff there (there are now 27 TCCs, compared to 20 in 2009/10). Given the priority on combating violent crime, especially sexual violence against women and children, the Committee fails to understand how the establishment of more TCC's can form an integral part of the justice sector's strategy, when this is an unfunded mandate. The Committee strongly supports the NPA's request for additional funding of R75.3 million for the rollout of more TCC's and the institutionalisation of donor-funded positions, as well as an additional R12 million of the MTEF for training on sexual offences, child justice, domestic violence, human trafficking and maintenance legislation.

10. **Legal Aid South Africa**

10.1. The Committee congratulates LASA on receiving an unqualified audit for the past 10 years, with no matters of emphasis for the past-six years. Once again, LASA impressed the Committee greatly with its strategic vision and planning, management of resources and considerable achievements.

10.2. The Committee supports the need for more practitioners to increase coverage in all courts. Recently, the Committee conducted oversight of courts in the Free State, where it was made clear that insufficient capacity (including relief capacity) has a considerable adverse effect on case-flow, contributing to backlogs and, generally, to delays in the criminal justice system.

10.3. The Committee also supports LASA's goal of expanding expand its civil work and impact litigation, despite the financial constraints that it faces in this regard.

10.4. LASA has been extremely innovative in expanding its reach. It has launched a call centre with toll-free number, which provides free legal advice to everyone, regardless of means. The Committee welcomes this, and would like to be kept informed of the impact that the call centre is having, as well as any challenges that the LASA may experience, if any.

10.5. The Committee notes the sharp decrease (about 50%) in the number of children being assisted. As research has not been done into why this is the case, the Committee is unable to comment on the significance of the trend. However, it would be interested in establishing why the decline and whether this is a positive development. It intends to closely monitor all data relating to child justice and, in the new year, will call a meeting with all role-players to evaluate the second year of the Child Justice Act being implemented.

10.6. The Committee supports the LASA's aim to reach to the rural poor. In addition, LASA has entered into agency agreements to service remote courts and co-operation agreements that will expand its national footprint. The Committee is interested in how effective these are and would like to be informed of developments at quarterly meetings.

10.7. The Committee welcomes LASA's agreement to look into expanding its services to provide support in maintenance disputes.

10.8. The Committee wishes to thank Judge Mlambo, whose term of office is due to expire shortly, for his outstanding contribution to the provision of legal aid services. With Judge Mlambo as Chairperson of the Board, LASA has become a centre of excellence. The Committee is extremely grateful and his presence will be sorely missed.

10.9. The Committee therefore recommends that -

- LASA is provided an additional R133 million and R54.7 million in the MTEF period to improve its practitioner capacity and to continue to increase its civil work, respectively.
- LASA is allocated an additional R37.5 million over the MTEF period to expand its national footprint, making its services more accessible.
- LASA receives an additional R7.5 million over the MTEF period for the upgrade of its IT servers.
- LASA continue to provide information quarterly on:
  - How implementation of the Child Justice Act has affected it, and any other observations it may wish to make on this.
  - The co-operation and agency agreements concluded and their impact on improving access to services.

11. **Special Investigating Unit**

11.1. The Committee commends the SIU for the exceptional work it is doing in tackling fraud and corruption within government.

11.2. The Committee congratulates the SIU on its unqualified audit.

11.3. The Committee is concerned at the levels of fraud and corruption in government departments and other bodies, suggested by the SIU's workload. It agrees with the SIU that it is encouraging that the government has accepted that corruption is a problem. The fact that targets were set for the JCPS cluster reveal determination to root out this problem.

11.4. The Committee is pleased to see the capacity expansion and the range of multi-disciplinary skills at the SIU. However, the Committee is concerned that a large number of employees are employed on a contract-basis.

11.5. The Committee understands that the Justice Department is bringing legislation to amend the SIU's enabling legislation to address any challenges when it pursues civil litigation to make recoveries. It intends to follow up with the Department precisely when the amending legislation will be tabled.

11.6. The Committee learnt that the SIU is unable to enter into new co-operation agreements, as the Special Investigating Unit Act is silent on this issue. Amending legislation has been drafted but, at present, the SIU cannot enter into new co-operation agreements: This has led to loss of revenue - it was expecting to invoice an additional R90 million in 2011/12. The National Treasury has agreed to support the SIU providing R97 million additional funding for 2011/12 to compensate for the loss of revenue and to allow the SIU to take on additional work. The SIU, however, has requested that its baseline is increased by R150 million in the MTEF period to reduce reliance on funding from co-operation agreements and to allow it to increase capacity (200 new positions over the MTEF).

11.7. The Committee supports the SIU's request for additional to increase its baseline allocation for the

# The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development, dated 30 October 2012

The Portfolio Committee on Justice and Constitutional Development, having considered the performance and requests for additional allocations for the medium term period of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, Special Investigating Unit, South African Human Rights Commission and Public Protector, reports as follows:

## 1. Introduction

1.1. The Committee oversees the activities of the Department of Justice and Constitutional Development and a number of other institutions, all of which receive their allocation under the Justice and Constitutional Development Vote. These other institutions, which are either statutorily or constitutionally independent, include the National Prosecuting Authority (NPA); Legal Aid South Africa; Special Investigating Unit (SIU); South African Human Rights Commission (SAHRC) and Public Protector (PP).

1.2. Briefly, the core functions of the Department, NPA, LASA, SIU, SAHRC and PP are as follows:

- Department of Justice and Constitutional Development: The Department's core function relates to the management of the criminal and civil justice systems. It is also responsible for several activities that are not necessarily related to the management of criminal and civil justice system, for example, the provision of legal services to government, the management of funding for political parties and the reparations policy flowing from the Truth and Reconciliation Commission (TRC) process.
- National Prosecuting Authority (NPA): The NPA institutes criminal proceedings on behalf of the State.
- Legal Aid South Africa provides independent legal representation to the poor and vulnerable at State expense. Although the main thrust of its work is to provide legal representation to criminal accused, more recently LASA has begun to expand its services to provide representation in civil matters.
- Special Investigating Unit (SIU): The SIU recovers and prevents financial losses to the state that is due to acts of corruption, fraud and maladministration; and can assist departments with systemic improvements that will improve service delivery. The SIU has civil litigation powers to correct any wrongdoing it uncovers in its investigations. Investigations are authorised by Presidential proclamation.
- South African Human Rights Commission (SAHRC): The Commission's mandate is extremely broad, encompassing almost every aspect of civil, political, economic and political rights. It must promote respect for human rights; promote the protection, development and attainment of human rights; and monitor how well human rights are observed. The Constitution also provides that each year the Commission must require relevant organs of state to provide it with information on measures taken towards the realisation of the socio-economic rights contained in the Constitution. The Commission has specific obligations in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 and the Promotion of Access to Information Act 2 of 2000.
- Public Protector: The Office of the Public Protector (OPP) was established to ensure government's accountability and to provide remedies for maladministration and abuse of authority. The Public Protector is empowered to investigate, report on, and suggest remedial action for a wide range of wrongdoings in the public administration.

1.3. Each year, as part of its oversight function, the Committee considers and reports on the Department of Justice and Constitutional Development's annual report, as well as those of the other institutions referred to it.

1.4. The Money Bills Procedures and Related Matters Amendment Act (Act 9 of 2009) sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department. In October of each year, portfolio committees must compile Budgetary Review and Recommendation Reports (BRRR) that assess service delivery performance given available resources; evaluate the effective and efficient use and forward allocation of resources; and make recommendations on forward funding allocations. The BRRR are also source documents for the Standing Committee on

Finance when it makes recommendations to the House on the Medium-Term Budget Policy Statement (MTBPS). The annual review and analysis of performance forms part of this process.

1.5. This is the third year that the Committee is undertaking the BRRR process. The Committee engaged with the Justice Department, NPA, Legal Aid South Africa, SIU, SAHRC and PP and believes that the discussions were robust during which it was briefed on the annual performance and spending for 2011/12. The meetings also addressed additional funding needs for 2013 and over the medium term.

1.6. The briefings took place over a two-week period from 9 – 19 October 2012. The Committee also met with the Auditor-General on the audit outcomes on 16 October 2012. Copies of the presentations are available from the committee secretary.

1.7. The Committee remains firmly of the view, which it has expressed in previous reports that it is not enough to engage on performance annually: monitoring needs to be an ongoing process. However, this year the Committee's legislative workload precluded it from meeting as regularly as it had intended with the Department and other institutions to ascertain their performance against predetermined objectives, as well as related expenditure. The Committee has already considered and reported in detail on the respective strategic plans and budget proposals of the Justice Department, NPA, Legal Aid South Africa, SIU, SAHRC and PP for 2012/13. During both that process and that of the BRRR 2011, the Committee made extensive reporting requests on specific issues which it had identified as requiring further monitoring. The Department and other institutions have provided substantive responses, which form part of this report. In addition, expenditure for the Vote has been monitored.

1.8. This Report comprises five parts:

- Part 1 provides:
  - An overview of the allocation to the Justice and Constitutional Development Vote for the 2010/11 2011/12, 2012/13, 2013/14 and 2014/15 financial years.
  - A discussion of expenditure patterns for 2011/12 and the 1st quarter 2012/13.
  - An overview of the reported additional financial needs for the MTEF.
  - A summary of key issues raised by the Auditor-General relating to the audit outcome for the Department's financial statements, as well as those of the relevant institutions, for 2011/12.
- Part 2 gives an overview of the Department's strategic and operational environment.
- Part 3 gives selected performance information, as reported to the Committee for each programme for 2011/12.
- Part 4 contains the Committee's observations and recommendations.
- Part 5 contains a summary of the Committee's requests for additional information and its recommendations relating to the requests for additional funding for the medium term expenditure period.

## Part 1

## 2. Justice and Constitutional Development Vote 2011/12: Budget allocation and expenditure

2.1. In 2011/12, the main appropriation for the Justice and Constitutional Development Vote was R11.4 billion, which excluded a direct charge against the National Revenue Fund of R2.1 billion for judges' and magistrates' salaries. During the adjustment period, an additional allocation of R168.2 million increased the appropriation for the Vote's programmes to R11.6 billion. (In 2010/11, the final appropriation to the Vote was 12.6 million).

2.2. The Vote has five programmes:

2.2.1. The Department of Justice and Constitutional Development administers three of the Vote's five programmes: Administration; Court Services; and State Legal Services. (Together these three programmes were allocated R6.8 billion for 2011/12, which was just less than 58% of the allocation to programmes).



2.2.2. Programme 4: National Prosecuting Authority received an adjusted appropriation of R2.7 billion

- Lack of accommodation and other resources in lower courts as a result of budget constraints faced by the JCPS cluster.
- The prosecutorial vacancy remains high although it has dropped to 11.4%.

7.5. **Programme 5 Auxiliary and Related Services**

7.5.1. This programme includes Legal Aid South Africa, the Special Investigating Unit, the South African Human Rights Commission and Public Protector.

7.5.2. ***Legal Aid South Africa***

7.5.2.1. Selected achievements, as reported, include:

- Successfully completing the third and final year of its 2009-2012 Strategic Plan period and achieving most of the strategic shifts it had set to achieve in that period.
- Providing access to legal aid to indigent clients, with 682 962 legal and legal advice matters handled.
- Increasing civil legal aid matters handled by 48% due to increased civil practitioner capacity.
- Strong financial management and governance were reflected in the eleventh unqualified audit and seventh year with no matters of emphasis. The non-compliance on tax clearance certificates in Judicare matters is being attended to.
- A peoples-development focus continued as confirmed by Legal Aid South Africa's successful accreditation for the third year as a Best Employer.
- A total of 99, 8% of the budget was spent as planned, with no under-expenditure. This has been the expenditure trend for the past seven years.

7.5.2.2. Key challenges arising during 2011/12:

- Non-compliance on tax clearance certificates in Judicare matters listed in the Auditor General's Report.
- Dependence on Candidate Attorneys to render services at district courts negatively impacts on perception of the quality of services rendered and sometimes on service delivery.
- Insufficient civil capacity to meet increasing demand for civil legal aid services.

7.5.3. ***Special Investigating Unit***

7.5.3.1. The SIU funding model provided for its baseline grant from National Treasury. In addition to the grants from National Treasury, the service-level agreements that SIU entered into with state institutions that required investigation made provision for SIU to charge for the services rendered, thus raising additional revenue. A legal opinion was obtained in 2011 to the effect that the SIU Act did not specifically empower such a model and that the SIU as a creature of statute could not continue with that model. The Unit was able to invoice on a limited basis between September 2011 and June 2012. This challenge has since been overcome by amendments to the Act, which are now enacted.

7.5.3.2. The SIU received an unqualified audit opinion. However, there were matters of emphasis relating to the restatement of corresponding figures and the manner in which the SIU operations were funded.

7.5.3.3. The SIU incurred irregular expenditure as a result of performing functions that were outside its mandate, such as providing training services to GEMS.

7.5.3.4. The SIU exceeded targets in respect of:

7.5.3.5. Evidence prepared: This includes civil litigation (acknowledgement of debt); criminal action; disicplinary action; and other remedial action. Actual achievement was 17 073 against a target of 10 000.

7.5.3.6. Cash (and assets) recovered: Actual achievement was R224 million out of a target of R30 million (this target was substantially exceeded due to seizure of farms in the land affairs investigation).

the number of criminal cases finalised is an area of concern. The NPA reports that on the issue of premature enrolment of investigations, there are policies in place but these are not being followed. The Committee does not understand why this is and requests that the NPA provide it, in writing, by 30 January 2013, with more information on the policies and the challenges that it is facing with their use. The Committee does agree that the NPA can play an important role in earlier stages before matters are enrolled and notes that, in the past, it has done so, working effectively as part of project teams with SAPS.

9.8. The NPA has requested that it receive additional funds (R100 million over the medium term) for the institutionalisation of donor-funded positions within the Thuthuzela Care Centres (TCCs). The Committee notes that the National Treasury's response to its previous recommendation regarding funding of TCC's was favourable (although only R10 million was allocated), as well as its suggestion that existing vacancies within the NPA could be used to absorb the donor-funded positions. Although as the NPA has no vacancies, having done away with unfunded posts, and cannot afford to employ additional capacity from its existing compensation of employees' budget, this argument no longer seems applicable. Given the priority on combating violent crime, especially sexual violence against women and children, the Committee strongly supports the NPA's request for additional funding for the institutionalisation of donor-funded positions.

## 10. **Legal Aid South Africa**

10.1. The Committee congratulates Legal Aid South Africa on receiving an unqualified audit for the past 10 years, with no matters of emphasis for the past seven years. Once again, LASA impressed the Committee greatly with its strategic vision and planning, management of resources and considerable achievements. It notes, however, that Auditor-General had raised the issue of non-compliance with prescripts and regulations, specifically that the Legal Aid South Africa had made use of some Judicare practitioners, who did not have tax clearance certificates but that this had not affected Legal Aid South Africa's audit outcome. The Committee is satisfied that Legal Aid South Africa has taken steps to address the problem as soon as it was brought to its attention: Judicare practitioners, without tax clearances certificate, are no longer eligible to be briefed.

10.2. The proposed budget cuts will reduce Legal Aid South Africa's baseline allocation by R84.5 million over the medium term. Although a key stakeholder in the criminal justice system, Legal Aid South Africa's budget is considerably smaller than that of the NPA and feels budget cuts disproportionately. Further, the majority of its allocation is committed to salaries, which leaves it with very little room to cut costs without reducing posts. Legal Aid South Africa reports that it is able to absorb the R13 million reduction of its 2013/14 budget without it having any impact on court coverage in the next financial year but that – worryingly - there is no provision for additional capacity for new courts. Further, from 2014/15 onwards, the budget cuts will directly impact on court coverage (court coverage will be reduced by 23 posts in 2014/15 and 60 posts in 2015/16). In addition, the Judicare budget will be reduced by 6% for both 2014/15 and 2015/16. The current coverage of courts is already inadequate and the reductions will exacerbate this. The Committee is extremely concerned about the impact of the reductions on the efficiency and effectiveness of the criminal justice system as a whole.

10.3. The Committee supports the need for more practitioners to increase coverage in all courts. It strongly feels that insufficient capacity (including relief capacity) has a considerable adverse effect on case-flow, contributing to backlogs and, generally, to delays in the criminal justice system. The Committee, therefore, supports the additional funding request to increase practitioner capacity at courts at district and regional court level and at the High Court Units by R70.4 million, R81.6 million and R36.5 million respectively over the medium term.

10.4. Further, it is alarmed that Legal Aid South Africa will be unable to provide additional capacity. Preliminary figures presented estimate that Legal Aid South Africa will need R12.7 million to provide legal aid support

at the newly established Palm Ridge, Tsakane and Kagiso Magistrates Courts. This does not appear to take into account the costs of these additional posts going forward, nor does it into account new courts being planned for other provinces or civil regional courts. The Committee supports Legal Aid South Africa in its request that in future any court expansion programmes factor in a budget allocation for legal aid capacity to service those courts if they are to be functional.

10.5. The Committee continues to support Legal Aid South Africa's goal of expanding expand its civil work and impact litigation, despite the financial constraints that it faces in this regard. It supports its request for additional funding for increased capacity of R60 million over the medium term.

10.6. The Committee also notes that Legal Aid South Africa did not get an additional R7.5 million that the Committee recommended for its IT needs in 2012/13. It is disappointed at National Treasury's response: The Committee feels that Legal Aid South Africa uses its IT resources extremely effectively and should be supported in this.

11. **Special Investigating Unit**

11.1. The Committee congratulates the SIU on its unqualified audit. However, there is some deterioration in the audit outcome, as the Auditor-General reported two matters of emphasis, whereas in previous years there were none.

11.2. The Committee understands that the legislation to amend the SIU's enabling legislation to address the challenges with its funding model was enacted in October 2012. The Committee is told that the SIU is still experiencing some difficulties with its revenue flows, despite having received additional funding to tide it over until the necessary legislation was in place. The SIU expects that it will take some time for the situation to be rectified and is engaging with National Treasury on this.

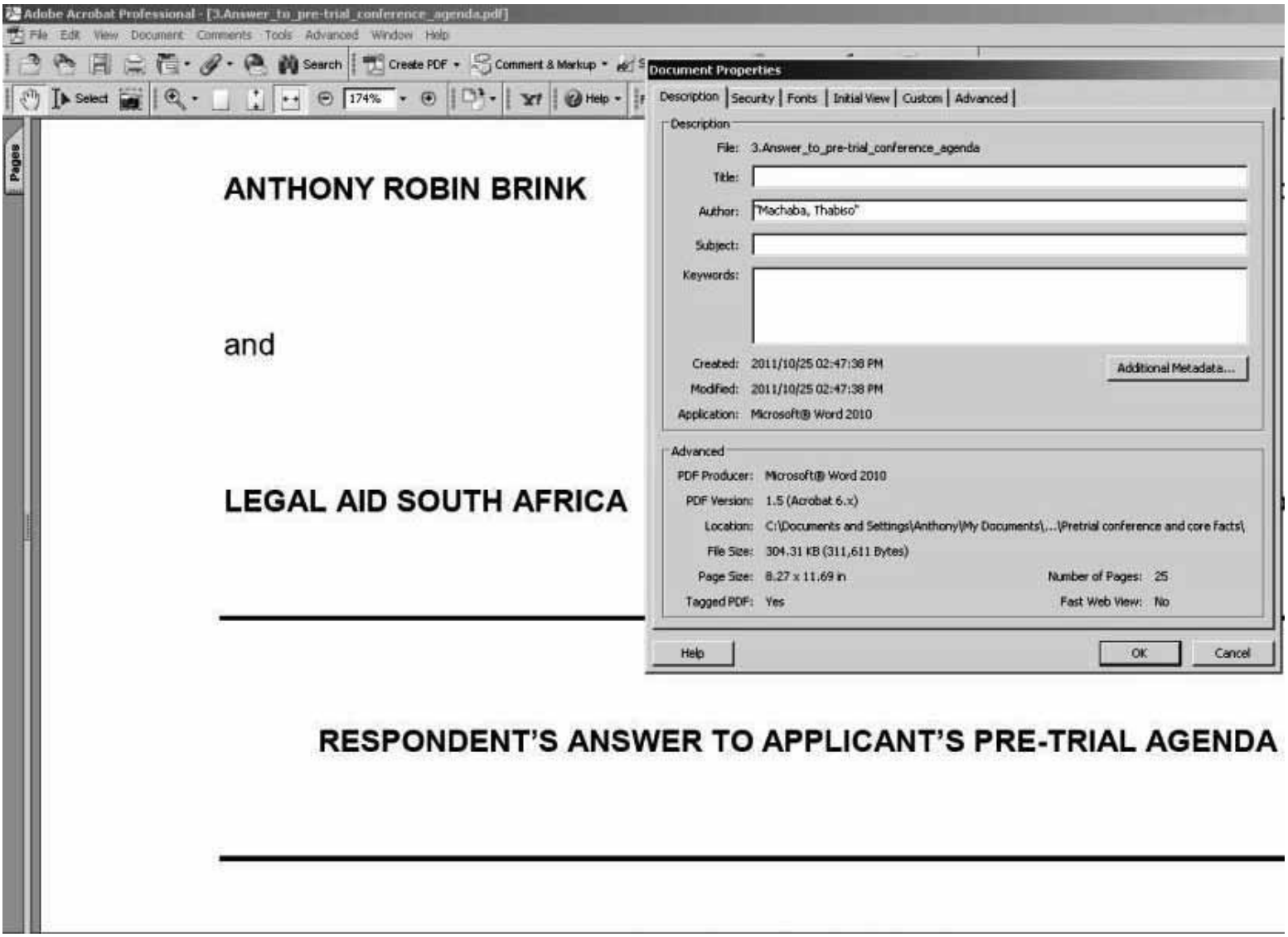
11.3. The Committee notes that the position of the Head of the SIU remains vacant and is presently being filled in an acting capacity. It urges that the appointment is made speedily.

11.4. The SIU reported that it had to terminate the services of more than 100 consultants providing specialised forensic skills. In addition, the filling of permanent positions to grow internal capacity was put on hold until the necessary statutory amendments were enacted. The Committee understands the SIU's reluctance to take on permanent staff if it cannot cover salaries from the government grant. However, given the importance of SIU's contribution to fighting corruption, the Committee believes that it will need to address capacity (whether permanent or contractual) in the near future. The Committee also notes that there have been several resignations of experienced/senior staff members and urges that these positions are filled. The Committee requests that the SIU addresses it on its establishment, including vacancies, at its next meeting in February or March 2013.

12. **South African Human Rights Commission**

12.1. The Committee congratulates the Commission on receiving an unqualified audit opinion with no emphasis of matter for 2011/12 for the third year in a row.

12.2. The Commission's performance has improved, although the Committee queried whether the Commission had reached 89% of its performance targets (a significant increase from 52%) as claimed. However, it accepts the explanation that the Commission provided to clarify its concern and welcomes the Auditor General's assurance (sought by the Commission) that the matter raised by the Committee would not have any material impact on his opinion. The Committee does note small inconsistencies in the legal statistics presented, which it feels detract from the quality of the report. The Committee requests that the Commission ensure that, in future, all statistics are carefully checked for consistency and accuracy before the report is tabled.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Page Size: 8.27 x 11.69 in
Number of Pages: 25
Tagged PDF: Yes
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30 JANUARY 2009

# Leadership led transformation but major future challenges loom

by Tessa Murray, case writer for Wits Business School

**Through three phases of leadership the Legal Aid Board transformed itself from an all but defunct organisation in the late 1990s into one that has substantially increased access to justice for the poor and received unqualified audits for seven consecutive years. The challenge now for the organisation's board is to identify the right approach to take it through the next phase.**

In 1998-99 the Legal Aid Board faced closure because of a contingent liability of more than R600m for legal services delivered by private practitioners to the organisation's clients. Since then, through three phases of transformation and under two board chairmen and three CEOs, the board has turned itself around. It has received unqualified audit reports from the office of the auditor-general since 2002 and has represented accused in about 400000 matters a year.

The organisation is now ready for its next challenges: improving employee morale, expanding access to justice for all and working with stakeholders to instil confidence in SA's legal system. The challenge facing the board is to identify the right approach to take the organisation to the next phase.

Acknowledging that their core asset is their people, one of Vedalankar's first tasks in 2003 was to change the status of professional staff from contractors to full-time employees. However, in attracting and retaining professional staff to develop a career in public defending, the Legal Aid Board has to compete not only against the private sector but also the other divisions in the justice cluster. Salary structures varied within the justice cluster, and legal practitioners therefore moved between its various components in pursuit of better remuneration. Equity in remuneration across the justice cluster has only recently been resolved.

To encourage public defending as a career choice the Legal Aid Board has created senior litigator positions that will allow lawyers to progress in their careers as litigators and not to have to follow the historical path to higher remuneration and status of moving into management.

Vedalankar sees performance management as critical. Performance contracts are drawn up annually and linked to the business and strategic plan. In addition, individual bonuses are modified by JC, regional and organisational performance. An example is the audit status. "If we get a qualified audit, everyone will suffer. Everyone has to pitch in to make sure that it does not happen," Vedalankar says.

**Challenges for the Future**

The Legal Aid Board still faces a number of challenges. Firstly, the organisation has not only transformed the way it conducts its business but has also introduced new people and perspectives during its rapid growth. The change has had an impact on employee morale and a recent culture survey revealed that the soft issues have yet to be resolved.

Secondly, while the constitution is clear on provision of civil legal aid for children, discussion revolves around whether there is a constitutional right to civil legal aid for other citizens.

In 2006 the government made R10m available that the organisation ring-fenced for civil work and, with between 40000 and 50000 civil matters a year, the Legal Aid Board is the largest provider of civil legal services to the poor in the country.

Mlambo believes that the Legal Aid Board has finally persuaded the politicians that the organisation should not be restrained in providing civil legal aid. Consequently, the organisation has developed a civil legal-aid strategy and is in the process of determining the cost implications for the government.

Another challenge is obtaining sufficient funding to accomplish justice for all. Mlambo says that if citizens are to have confidence in the fairness of the criminal justice system, sufficient funding must be provided to defend the accused.

PTA 4

Legal Aid South Africa

Your voice. For justice.

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2017
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Fax: 011-877-2222
**www.legal-aid.co.za**

The Registrar

Labour Court of SA (Durban)

1st Floor, Liberty House

269 Anton Lembede Street

Durban

23 January 2013

Dear Registrar

**Anthony Robin Brink and Legal Aid SA: Case number D529/11**

I refer to the above matter and various correspondences between your office, Mr. Brink and our Mr. Mtati, the Corporate Service Executive of Legal Aid South Africa.

The purpose of this letter is to clarify the Court on the issue relating authority of Mr. Mtati on whether or not he obtained permission to defend the claim by Mr. Brink against Legal Aid SA.

Our Approval Framework, version 23 approved by the Board on 27 February 2010 which I am told, forms part of the record is of relevance in clarifying the role of Mr. Mtati.

Without repeating the whole provision, I confirm that clause 10.3 provides authority to the Corporate Service Executive to institute and defend a case lodged against Legal Aid SA.

To the extent that his authority is placed in issue, I further confirm that I gave him such authority.



Your voice. For justice.

best employers 2010/11

985

Yours faithfully

V. V. Vedalankar

Vidhu Vedalankar

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN

Case No: D529/11

In the matter between

**ANTHONY ROBIN BRINK** Applicant

and

**LEGAL AID SOUTH AFRICA** Respondent

---

**DISCOVERY OF DOCUMENTS IN TERMS OF RULE 35(3) OF THE RULES OF COURT IN RE THE PRE-TRIAL MINUTES OF 25 JANUARY 2013**

---

I, the undersigned,

**THEMBILE VUYO MTATI**

do hereby state under oath that:

1. I am an adult practicing attorney employed as a Corporate Service Executive by the Respondent and I am duly authorised to depose to this affidavit.

2. The facts stated herein are within my personal knowledge, unless stated otherwise, and are to the best of my belief both true and correct.

3. In compliance with paragraph 4 of the parties' Pre-trial minutes held at Durban on 25 January 2013 and following the Applicant's Proposed Pre-Trial Agenda dated 25 January 2013, I wish to submit as follows:

STH

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3.1 That I have in my possession or under my control the documents requested by the applicant, which I herewith discover and furnish to the Applicant as required by him in his proposed pre-trial agenda, set out in **Part 1** of the attached schedule.

3.2 That I do not have and never had in my possession documents set out in **Part 2** of the attached schedule.

3.3 That in **Part 3,** I object to provide/discover all the identified records in terms of Uniform Rule of High Court 35(2) (b) on the basis that same are irrelevant to the Applicant's case.

3.4 That in **Part 4,** I further object to commenting or answering all paragraphs identified therein containing questions, interrogatories, remarks, observations, queries, or requests for further particularity, and/or requests for information.

**DEPONENT**

**THUS SWORN AND SIGNED BEFORE ME AT BRAAMFONTEIN ON THIS THE 11TH DAY OF MARCH 2013. THE DEPONDENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION, AND THAT HE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH AND WHICH HE CONSIDERS TO BE BINDING ON HIS CONSCIENCE.**

**COMMISSIONER OF OATH**

**FULL NAMES** : SIMON THUNGWANI
**DESIGNATION** : LT COLONEL
**ADDRESS** : 16 EMPIRE ROAD, PARKTOWN

SUID-AFRIKAANSE POLISIEDIENS
PROVINSIALE KOMMISSARIS
PROVINCIAL COMMISSIONER
GAUTENG
11 MAR 2013
GAUTENG
LEGAL SERVICES
PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

PART 1

| Document Number | Paragraph | |
|---|---|---|
| 1 | 22 | A clear original PDF Approval Framework is attached, **DOC1** |
| 3 | 23 | (i)The first page from which LA4 is excerpted is attached, including the full record showing the dates. All reports of Board are reports of the Chief Executive Officer irrespective of the originator. **DOC 3** |
| 9 | 26 | The covering email of Mdaka to Brian is attached, **DOC 9** |
| 35 | 29(a) | The motivation is attached, **DOC 35(a)** |
| 38 | 31 | No written minute by selection panel but the document attached shows the note made by Brijlal noting the reply to the applicant's answer to the Justice Centre of his choice, **DOC 38** |
| **Other new documents required** | | |
| 43 | | Notification of the Board that Brink's claim for instatement to the post is defended, See an extract minutes of 26 November 2011 item **9.5.1** attached as **DOC 43** |
| 46 | | Extract minutes of the Board on 26 November 2011 under **9.4.6** is attached **DOC 46** |

PART 2

| Document Number | Paragraph | |
|---|---|---|
| 3(vi) | 23 | No such written record exists. |
| 5 | 24 | No posts were cut and therefore no such records exist. |
| 6 | 25 | No such records exist and even if such records existed, they would be in possession of third party, namely Department of Justice. |
| 11 | 27 | The instructions were done telephonically, and therefore no written record exists |
| 12 | 28 | No such record exists |
| 35(b) | 29 | No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg. |
| 35(c) | 29 | No such record exists. The documents were in the Respondent's possession and have been lost in transit between Mthatha and Johannesburg. |

| | | |
|---|---|---|
| **36** | **30** | No such record exists |
| **39** | **32** | No such record exists |
| **41** | **33** | No such record exists |
| **42** | **34(a)** | No such record exists |
| **42** | **34(b)** | No such record exists |
| **43** | **35(a)** | No such record exists |
| **43** | **35(b)** | No such record exists |
| **58** | **37** | No such record exists |
| **59** | **38** | No such record exists |
| **60** | **39** | No such record exists |
| **61** | **40** | No such record exists. If they exists they would be in possession of third party, namely the Minister and/or the Department of Justice |
| **62** | **41** | No such written record exists |
| **Other new documents required** | | |
| **44** | | No such written record exists |
| **47** | | No such written record exists |
| **48-50** | | No such record exists. The panel has not been constituted and terms of reference are still under consideration. |
| | | |

**PART 3**

| ***Document Required*** |
|---|
| **36** |
| **53 to 57** |
| |

**PART 4**

| **53 to 57** |
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| |
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| |

DOC 3

# LEGAL AID BOARD

Justice for all

## REPORT TO THE BOARD

November 2006

## ADDITIONAL MTEF FUNDING – BUDGET PROPOSALS

### 1 Introduction

On an annual basis, the Legal Aid Board submits motivations to National Treasury via the Department of Justice for additional funding for the Medium Term Expenditure Framework (MTEF) period. These motivations are essentially to increase the capacity of the LAB to deliver legal services, as well as to address gaps in its current service delivery programme.

The following additional MTEF funds, over and above the baseline, have been allocated to the LAB for each of the following financial periods:

| Allocations | FY 06/07 R,000 | FY 07/08 R,000 | FY 08/09 R,000 | FY 09/10 R,000 |
|---|---|---|---|---|
| 2005 MTEF | R15,000 | R5,000 | | |
| 2006 MTEF | R20,000 | R25,000 | 25,000 | |
| 2007 MTEF* | | R20,000 | R20,000 | R40,000 |
| **TOTAL** | **R35,000** | **R50,000** | **R45,000** | **R40,000** |

* 2007 allocation letter not yet received

As per the above table, the LAB has R50m additional funds available in the new financial year to fund its activities. However, noting that the cost of living (COL) adjustment of 5% for the baseline for the new financial year did not include the R35m additional funding received for the last financial year, provision of R1.75m was made to cater for COL costs for projects funded during the 06/07 period. Hence, the amount available for additional projects for the new year is R48,250m.

The 2006 MTEF allocation letter made a sum of R5m available in FY 07/08 for the representation of children. However, noting that we have rolled out children's units/PAs to 20 JCs this financial year, most of whom are still struggling to increase demand at these units, it was considered prudent not to increase Justice Centre capacity for children's representation more than what is currently provided, and to rather increase our use of judicare for the representation of children.

### 2. Proposals for Additional funding

2.1 Increasing ratio of PAs for Regional Court

In terms of our court coverage plan, as well as the demands from the courts, most of our practitioners are expected to be in court every day of the week. This requirement to be at court every day of the week impacts very negatively on the quality of our representation of clients, especially with regards adequate consultation and preparation for cases. Court time is also sometimes disrupted because of the need for our lawyers to consult with clients.

In terms of our motivations to National Treasury, it was proposed that our staff ratio per court is amended from 1 PA per regional court and 1 CA per 2 district courts to 1.25 PAs per regional court and 1 CA per 1 district court. However, due to limited funding, this proposal targets only our representation at regional courts and aims to achieve a ratio of 1.25 PAs per regional court.

2.2 Strengthening capacity at Reception Courts

Reception courts have been established at most court seats with multiple court rooms. These courts act as channelisation courts where all new matters are processed and then distributed to the other court rooms to be heard. Hence, it is critical that we have a good presence at these courts to ensure that all accused who make their first appearance are able to apply for legal aid immediately. Where possible, we will also try to represent clients at their first appearance. This will ensure that more clients have access to justice and will contribute greatly to reducing the levels of unrepresented accused. In terms of this proposal, it is suggested to staff all reception courts with 2 CAs on a full time basis, especially noting the large number of clients that are processed daily at these courts.

2.3 Increase the number of satellite offices/Justice Centres.

An ongoing strategy of the LAB is to increase access to its services. The establishment of satellite offices has been found to greatly improve our delivery to more outlying courts as well as provide an access point to communities. We are currently reviewing our national coverage footprint and we expect to identify gaps where our services could be better served by opening new satellite offices/Justice centres. Provision has been made to open a further 8 satellite offices in this budget.

2.4 Provision for admin staff at Justice Centres to match the increase in legal staff

Many of our Justice Centres have complained about their limited admin capacity to support the delivery of legal services. The LAB recently contracted National Productivity Institute (NPI) to conduct an independent study into the admin capacity needs of small, medium and large justice centres. This study was conducted by doing workload assessments of all admin positions at a sample of justice centres. Arising out of this study an admin staffing model for Justice Centres was developed. This proposal provides for admin staffing positions to match the new legal posts created on a ratio of 1 admin post for every 5 legal posts created, as per the staffing model.

2.5 Group Life Provision

During the September 2006 Board meeting, the Board approved a sum of R1,629m to be taken from the unallocated MTEF funding to pay for the shortfall in the group life as a result of the increased participation levels of staff as well as some enhanced benefits chosen.

2.6 Funding for new posts

During the September 2006 Board meeting, the Board approved a sum of R1,9m to be taken from the unallocated MTEF funding to pay for new staff positions created, including the COO post, the Manager Special Projects as well as new finance posts.

2.7 Increasing Senior Litigation capacity

The LAB often has cases of a highly complex nature. However, we do not have professional staff that are senior enough to take on such matters. It is proposed that we build up such capacity at each province linked to a high court unit. Such senior litigators would be able to

undertake the more complex work as well as support and mentor our other High Court unit staff. This programme will also provide content to our dual career path option whereby technical specialists do not have to switch to management jobs in order to earn more in our organisation.

2.8 Provision to fund Performance Incentive Bonus shortfall

During the last financial year, 141 new posts were funded from additional MTEF funding. However, whilst provision was made for their salary budget as well as certain operational and capital costs, no provision was unfortunately made for their incentive bonus costs. This has therefore resulted in a shortfall in the budget for this expense. Provision is now being made to fund this shortfall. It must also be noted that incentive bonus costs will henceforth be included in all new posts proposed.

2.9 CA Replacement programme at Satellite offices

Many of our district courts linked to our satellite offices are served by candidate attorneys. This has created problems with supervision of these candidates, especially with their principal attorneys being located at the justice centre. It is proposed that these CAs be replaced with PAs, which will result in reduced supervision needs and better quality of service.

2.10 Establishment of Land Units

The need for dedicated capacity at identified justice centres to deal specifically with land related matters has been identified. Currently, most of the land legal work for the LAB is handled by our co-operation partners. However, there is still need for more capacity in order to meet this increasing demand in land related matters.

2.11 Addressing gaps in the regional co-ordination of Justice Centres

We are currently in the process of reviewing the our National Coverage Footprint with regards our delivery points across the country. Currently, out four regional offices currently co-ordinate the justice centres located at all nine provinces in the country although they are currently only located in four provinces. Regional office staff therefore have to travel to provinces in addition to their base province in order to provide a support and monitoring function. Whilst this has proved adequate for the support functions of a justice centre such as monitoring finance, HR and administration, the monitoring and support of the legal programme requires additional engagement and interaction. This review of our National Coverage Footprint will point the way forward with regards how to better support our Justice Centres by regional offices. However, the costing for this proposal is based on creating new provincial principal attorney positions. These new positions will be based in the five provinces where there are no regional offices. They will operate from a justice centre within the province and will be assisted by an additional supervisory attorney. The review of the National Coverage Footprint may however alter this proposal.

2.12. Provision for the alignment of salaries of legal staff within the Justice cluster

The DPSA is currently coordinating a task team to make recommendations for the alignment of salaries within the public service. This is in terms of a decision taken at a cabinet legotla in January 2006. The Legal Aid Board has been advocating for such an alignment for some time, especially noting the fact that we are continuously losing staff to other justice cluster stakeholders, especially the NPA. The costing for this exercise is based on aligning our salaries to the salaries currently paid to legal staff within the Department of Justice.

3. Summary of projects

The following is the summary of the projects proposed for consideration by the Board:

| No | Programme description | Total | Cumulative Totals | % Split | No of new Staff | No of new matters | |
|---|---|---|---|---|---|---|---|
| 1 | Increasing ratio of PAs at Regional Court | R 23,540,000 | R 23,540,000 | 18% | 88 | 4400 | Funding available |
| 2 | Strengthening CA capacity at reception courts | R 4,350,000 | R 27,890,000 | 3% | 58 | | |
| 3 | Increase number of satellite offices | R 6,560,000 | R 34,450,000 | 5% | 24 | 1600 | |
| 4 | Provision for admin staff at JC to match increase in legal staff | R 2,550,000 | R 37,000,000 | 2% | 34 | | |
| 5 | Group Life provision | R 1,629,000 | R 38,629,000 | 1% | | | |
| 6 | Funding of new posts, including COO, MSP & Financial posts | R 1,900,000 | R 40,529,000 | 1% | | | |
| 7 | Increasing senior litigation capacity | R 4,792,500 | R 45,321,500 | 4% | 9 | 450 | |
| 8 | Provision to fund Performance Incentive Bonus shortfall | R 2,388,000 | R 47,709,500 | 2% | | | |
| 9 | CA replacement programme at Satellite Offices | R 9,047,500 | R 56,757,000 | 7% | 48 | | Funds unavailable |
| 10 | Establishment of Land Units | R 5,285,000 | R 62,042,000 | 4% | 14 | 1400 | |
| 11 | Addressing gaps in regional coordination of Justice Centres | R 4,550,000 | R 66,592,000 | 3% | 9 | | |
| 12 | Alignment of Legal Practitioner salaries to Justice Cluster | R 66,075,000 | R132,667,000 | 50% | | | |
| | | R 132,279,000 | | 100% | 213 | 6450 | |

LEGAL AID BOARD

**Solly Sekgota**

**From:** Vela Mdaka
**Sent:** Friday, March 08, 2013 3:32 PM
**To:** Solly Sekgota
**Subject:** FW: Senior Litigator Interview Motivation

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**From:** Vela Mdaka
**Sent:** 26 November 2009 01:41 PM
**To:** Brian Nair
**Subject:** FW: Senior Litigator Interview Motivation

Hi Brian

Please receive the results of our interview for the senior litigators for our region. We have also attached the CVs for your consideration.

Thanks

Vela Mdaka
Regional Operations Executive KZN Region.

Legal Aid South Africa

best EMPLOYERS 2009/10 SOUTH AFRICA

**TO:** **HUMAN RESOURCES EXECUTIVE**

**FROM:** **Thenjiwe Magazi**

**DATE:** **24 May 2010**

**FILLING OF THE ADVERTISED POSITION OF SENIOR LITIGATOR IN THE EASTERN CAPE REGION, (UMTHATHA JUSTICE CENTRE)**

## 1. PURPOSE

The purpose of this recruitment process is to fill the vacancy of the Senior Litigator Position in Mthatha Justice Centre in the Eastern Cape region, taking into consideration the Employment Equity status of the region.

## 2. BACKGROUND

2.1 The above-mentioned position was advertised internally and externally and 11 applicants were received and 5 applicants were short listed and were considered for the interviews as they met the minimum requirements of the position. One (1) candidate did not show up for the session.

2.2 The incumbent must be able to show the following:

- Admitted as an Attorney/Advocate
- B Proc or LLB degree with right of Appearance in the High Court
- At Least 10 years post qualification, litigation experience (both criminal and civil) of which 5 years must be high court experience.

The following dimensions were considered when assessing the candidates, experience in trials, court procedure, ability to lead and delegate, ability to take decisions, knowledge and application of the law, culture fit and demonstrated by practical experience, communication ability and administrative ability.

Five (5) candidates were interviewed by the panel which consisted of the following members from Eastern Cape Region.

| | | |
|---|---|---|
| Thembile Mtati | - | Regional Operations Executive |
| Thenjiwe Magazi | - | HRM |
| Lynette Franklin | - | Justice Centre Executive |

3. **THE INTERVIEWS PROCEEDED AS FOLLOWS:**

The selection panel conducted the interviews by using the standard interview questionnaires. The score was out of 55.

The results are shown in the table below

| NAME OF CANDIDATE | TVM | LF | TLM | Percentage |
|---|---|---|---|---|
| Nzame Skibi | 41 | 32.5 | 40 | 68 |
| | | | | |
| | | | | |
| | | | | |

4. **THE RESPONSES ARE AS FOLLOWS:**

**4.1 Nzame Skibi:**

Nzame posses an LLB and B Juris Degree, he was admitted as an advocate in 1999. He has been in the legal field for 11 years and is currently employed as a Senior Litigator in Mafikeng JC. He is familiar with the requirements of the job and managed to articulately apply his mind when responding to questions posed to him as he occasionally substantiated his responses with relevant examples. He has appeared in the SCA on a number of occasions. He is recommended for this position.

[redacted]

[redacted]

4.4 [redacted]

## 5 RECOMMENDATION

Nzame Skibi came across as a strongest candidate as compared to others in terms of the knowledge, experience and the understanding of what the job entails. He has the advantage as he is currently occupying the same position. He has the most court experience as compared to other candidates and has appeared at the SCA on a numerous occasions. His appointment will also personally benefit him as he will be closer to his family in Bizana. He is recommended for this position.

---

Thembile Mtati – Regional Operations Executive

---

Thenjiwe Magazi- Regional HRM

---

Lynette Franklin – Justice Centre Executive

| NAME | RECOMMENDATION ACCEPTED | NOT ACCEPTED | DATE |
|---|---|---|---|
| **NOE : Brian Nair** | | | |
| **HRE: Amanda Clark** | | | |

PARLIAMENTARY MONITORING GROUP

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# Delays impacting on Remand Detention population: by the Justice, Crime Prevention and Security Cluster & Legal Aid SA

Correctional Services [1]

Meeting Report Information

**Date of Meeting:** 2 Nov 2010
**Chairperson:** Mr V Smith (ANC)
**Documents handed out:**
Justice Crime Prevention and Security (JCPS) Cluster Departments briefing on delays [2]
Legal Aid South Africa briefing on delays [3]
**Audio recording of the meeting:**
PC Correct: Briefing by Departments of Correctional Services, Justice & Police on impact of delays in investigations [4]

**Summary:**

The Justice, Crime Prevention and Security Cluster briefing identified challenges that led to delays impacting on the position of Remand Detainees. Challenges included a shortage of detectives to speed up investigations, a shortage of judicial officers and inadequate capacity of Legal Aid South Africa. Interventions included the appointment and training of more detectives; improved court outputs; establishment of a Legal Aid Protocol, and the re-establishment of the Family Violence, Child Protection and Sexual Offences (FCS) units. Bail unaffordability and non-application of the two-stage bail process were noted as challenges. Eleven facilities would be upgraded to accommodate Remand Detainees. The JCPS Cluster had to balance the safety of South Africans against the rights of Remand Detainees.

The Legal Aid South Africa briefing emphasised the complexity of delays. The accused were often absent and missing documents contributed to the problem, as did the absence of court officials. There was a shortage of court staff. Legal Aid SA had set targets that were able to be monitored. It was committed to applying two-stage bail protocols, and to help accused appeal when cases were lost. There were quality monitoring mechanisms; peer reviewing and legal training for practitioners. Legal Aid SA was making every effort to be visible in prisons.

In discussion, Members asked if sentencing delays of up to five years, would be calculated into one's sentence. There was concern about the juniorisation of detectives. An IFP member asked what consequences there were for magistrates who neglected their duties. The Portfolio Committee seriously interrogated the shortage of skilled and experienced detectives, and the perceived inability to train enough new detectives. The Chairperson was critical of the fact that the JCPS briefing stated that 2153 detectives were being trained, when in fact the number for the current year was only 800. There was agreement among members that judges and prosecuting attorneys had to visit correctional facilities to see what was happening on the ground. The state of IT systems across the JCPS Cluster received considerable attention. A question was asked if the re-activated FCS units would draw on the specialised experience of previously employed officers. There were questions and remarks based on Portfolio Committee oversight, about the unavailability of investigating officers while on leave, and the possibility that court officials might be on the payroll of druglords. Abuse of police powers received attention. There were questions about the new Bill dealing with fingerprints. The affordability of bail and the postponement of cases by private lawayers caused concern. A member suggested that a guarantee by an employer be considered as an alternative to bail. Members asked about the success of Legal Aid SA, and how it was dealing with the public perception that it was embedded in government. Corruption across the JCPS Cluster caused concern, and there were questions about vetting and about SAPS reluctance to consider alternatives to arrest. Delays with the upgrading of facilities for Remand Detainees came in for criticism. The meeting was attended by the Police Portfolio Committee Chairperson and one of its members.

**Minutes:**

**Briefing by the Justice Crime Prevention and Security (JCPS) Cluster Departments**
Mr Pieter Du Rand, Deputy Director General: Court Services, Department of Justice and Constitutional Development, noted challenges that led to delays in investigations and court proceedings, regarding Remand Detainees. Challenges included the equipping and staffing of SAPS forensic services; the shortage of detectives to conclude investigations; the backlog in detective training and experience levels; the shortage of judicial officers and lack of adequate capacity of the Legal Aid South Africa; overbooking by private attorneys and cooperation by witnesses.

Mr Du Rand looked at factors that influenced the length of detention. Interventions addressing the Remand Detainee population included the appointment of more detectives and improved training and skilling, and improved court output through the new Case Flow Management Guidelines and Legal Aid Protocol. The Family Violence, Child Protection and Sexual Offences Unit (FCS) had been re-introduced to ensure speedy investigation of such cases. The Division, Detective Services, had been formed to conduct inspections to ensure the quality of investigations.

Mr Du Rand discussed the impact of unaffordable bail on the awaiting trial population. Challenges included the non-application of the two-stage bail process by presiding officers.

Mr Du Rand told the Portfolio Committee that 11 facilities would be upgraded and refurbished to accommodate Remand Detainees. The National

Mr Max noted that it had become easy for black people to progress through the police ranks. The question was how to motivate people to do their best, to resist corruption and to develop skills. He suggested that five year contracts for police managers should be considered. He was of the opinion that permanent appointments made people lazy.

Mr Ndlovu asked how the absence of court staff should be interpreted by people who had travelled to court.

Mr Du Rand replied that staff absences was sometimes unavoidable, as when people became ill. It did not mean that one could go free. It was inconvenient, seeing that witnesses were there. There had to be co-ordination between role players. The court roll had to be updated to avoid disruption. Cases were sometimes postponed because dockets could not be found. That did not mean that the accused could go free. Dockets could be scanned and recreated, and the same applied to misplaced charge sheets. There was the challenge of court records corrupted by the system. Delays were caused when the accused failed to appear in court. A warrant of arrest could be issued, but that caused delay. Community participation in crime prevention was important. Role players like the Community Safety Forum had to be brought in. He conceded that there could be truth in the allegation that druglords owned courts. There was a commitment to resist corruption across the JCPS cluster. Monitoring systems would be put in place. Vetting was part of the anti-corruption drive. Court norms were a challenge. The judiciary was independent, and directed cases. The Chief Justice had been asked to help deal with standards and norms. In the Western Cape, if a court sat for less than three hours per day, it had to be explained.

Mr Bradley Smith added that if a magistrate were on someone's payroll, it would become clear from the way he handled cases. Police could act against magistrates suspected of corruption.

Mr Hundermark responded that it was unethical for a lawyer not to arrive at a sitting. It could be reported to the Law Society. All practitioners were members of the Law Society. Delays often occurred when there were multiple accused, which made a case complex. Postponement rightly had to be reviewed by magistrates. Presiding officers had to take control of their courts and court records. Concerning unaffordable bail, he said that alternatives like reporting to the police station, could be looked at. The court ultimately decided about bail.

The Chairperson remarked that public perceptions of Legal Aid SA were important. It was perceived as being embedded in government. He asked how it was marketed as an entity that could render fair assistance.

Mr Hundermark replied that all practitioners were members of law societies. If service rendered was inferior, or people were being forced to plead guilty or if there was collusion with the state, they could be struck from the roll. He conceded that there were still remnants of the perception that one had to plead guilty. He said that practitioners could start by making their services known in their communities. Clients had to know their options. Plea bargaining could not be forced.

Mr Bradley Smith added that witnesses who had been unnecessarily called, had to receive an apology and have circumstances explained to them. Concerning crime prevention, he said that the JCPS cluster worked with Social Development. Cases were sometimes sent back as not court ready. Prosecutors had ideas of their own. There had to be screening protocols and supervision. Dockets reflected the particulars of a case, police could put more work into that. The investigating officer could well be more experienced than the prosecutor.

The Chairperson asked about the accusation that police were reluctant to consider alternatives to arrest.

Mr Moonoo answered that guidelines for arrest were not always adhered to. Persons arrested for drunken driving only appeared in court 60 days after arrest, when the results of tests were available. People were held in custody after arrest if it was decided that there was a risk of further crimes.

Ms Nyanda asked about the implications of the Pretoria Court that had burned down.

Mr Du Rand replied that the disaster had been investigated. There were still unscathed records. Damage had been to the old section that dealt with civil and district matters. The new section, that housed regional courts and dealt with serious crimes, had not been damaged.

The Chairperson concluded that the JCPS cluster was a challenging one. Some wanted the police to make more arrests, others wanted fewer. Some wanted stricter sentences, others sought alternatives to sentencing. He said that the Police needed interventions to secure data integrity in the DCS.

The meeting was adjourned.

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**Links:**
[1] http://www.pmg.org.za/minutes/4
[2] http://d2zmx6mlqh7g3a.cloudfront.net/cdn/farfuture/IdUNDlJR6zugdX9CgQm4jqclhawf6MRxcqRfGD5QTFI/mtime:1289210304/files/docs/101103jcps.ppt
[3] http://d2zmx6mlqh7g3a.cloudfront.net/cdn/farfuture/yPi-v3_SeGeKxQYnV3L6QyV03x6xCJTwhXrrb4jbFXk/mtime:1289210420/files/docs/101103legalaid.ppt
[4] http://www.pmg.org.za/node/24128

Compiled by the Government Communication and Information System
Date: 13 Oct 2010
Title: Legal Aid SA leads the way
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Pretoria - Legal Aid South Africa has become a symbol of hope to developing countries because of its increasing ability to improve access to justice for the poor.

This is according to the chairperson of Legal Aid South Africa, Judge Dunstan Mlambo, who was briefing Parliament on his organisation's 2009/10 annual report on Wednesday.

He presented an overview of Legal Aid South Africa's performance and its ninth consecutive unqualified audit report to the Parliamentary Committee on Justice and Constitutional Development.

Mlambo said the organisation was sharing the lessons it had learnt on how to improve access to justice with other developing countries.

The organisation was also on track to achieve its objectives for the period under review by completing the expansion of its national footprint.

This included the establishment of six new Justice Centres and 27 satellite offices in the past three years, as well as the launch of a client call centre in June 2010.

Mlambo told the committee that one of the challenges Legal Aid South Africa faced was its limited response to civil matters because of financial constraints.

CEO of Legal Aid South Africa, Vidhu Vedalankar, said key programmes had been implemented and delivery increased during the year.

The organisation had delivered legal services in 416 149 new matters, with about seven percent of these being civil legal aid matters. "We also provided an advice service to 211 874 clients," she said.

Vedalankar singled out strong governance and financial management as the organisation's major strengths.

"Our ninth consecutive unqualified audit report from the Auditor-General, together with the fifth year of no matters of emphasis, is testimony to this," she added. - BuaNews



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Legal Aid South Africa

Suite173
Postnet X9118
Pietermaritzburg
3201
20 Otto Street
Pietermaritzburg, 3201
Tel: 033 394- 2190
Fax: 033 342-2576
www.legal-aid.co.za

**REF: PMBJCPA/B 31/08/2010**

**INTERNAL AND EXTERNAL ADVERTISEMENT**

**PROFESSIONAL ASSISTANT - BACKLOG COURT**

**PIETERMARITZBURG JUSTICE CENTRE**

---

Applications are invited from persons interested to fill in the above-mentioned position. The incumbent will be appointed on a fixed term contract for the period of 1 year.

**KEY OUTPUTS**

- Provide legal representation to the Backlog District Court - Pietermaritzburg
- Training of Candidate Attorneys.
- Perform office administration.
- Maintain accurate statistics.
- Represent women, children and landless people in civil matters.

**COMPETENCIES (SKILLS, KNOWLEDGE & ATTRIBUTES) REQUIRED**

- Admitted attorney or advocate, the latter must have completed pupilage successfully at an institution recognized by Legal Aid SA.
- Legal representation at District and Regional Court Level
- LLB degree or equivalent.
- Proven track record in civil & criminal defense
- Valid driver's license
- Right of appearance in High Court an added advantage
- Interviewing skills
- Excellent verbal and written communication.
- Analytical thinking.
- Team Player
- Self-development orientation

**SALARY ;**

**Depend on years of post admission experience.**

Detailed curriculum vitae highlighting required skills as advertised must be submitted by close of business on the **15 September 2010,** quoting the above reference number to:

**The Admin Manager, Bhamani Maharaj, Pietermaritzburg JC, Fax: (033) 342 2576 email: BhamaniM@legal-aid.co.za**

Preference will be given in terms of our affirmative action approach, to suitable candidates who meet the minimum requirements.

Short listed candidates will be required to undergo a security check. Should you not hear from us within one month of the closing date, please accept that your application was unsuccessful.

**LEGAL AID SA RESERVES THE RIGHT NOT TO APPOINT**

# Legal Aid bosses get big bonuses

August 15 2008 at 01:05pm

By Ella Smook

Legal Aid lawyers who this week applied for a certificate to launch strike action to protest against the failure to upgrade employees' salaries, are facing another blow with news that their senior executives will on Friday pocket "exorbitant bonuses".

Documents in the Cape Argus' possession show that

senior Legal Aid Board managers will be paid performance bonuses of up to 30 percent, while non-management staff "including the lawyers" can expect bonuses equalling just 8 percent of their salary packages.

The issue of the bonuses is a burning one within the organisation, and if the dispute blows up there are predictions of serious disruption to the country's courts.

"Legal Aid Board employees will argue that the justice system is failing them and their indigent clients.

"Should an indigent client be afforded an indigent lawyer?" was the question posed by the South African Parastatal Tertiary Union, which represents the Legal Aid lawyers.

A well-placed source alleged that about R2-million in bonuses would be paid to the top 12 Legal Aid Board executives, with almost R300 000 going to the chief executive.

Executive bonuses far exceed the total annual packages of lower-ranked staff.

Vidhu Vedalankar, the Board's chief executive, said in response to questions about the size of the bonuses being paid to senior management that the bonuses were structured on a sliding scale based on the level of responsibility attached to a position and the nature of the employment contract. This, he said, was in line with the practice in most organisations.

But the union countered that as a public-funded institution which does not make a profit, the Legal Aid Board cannot be compared with private sector businesses.

Furthermore, it said, the managers were "already being paid exceptionally well for their skills, hence the exorbitant bonus is unnecessary".

The union charged that the "unfair bonus system" was "decided by executives to enrich themselves", while non managerial salaries and human resources were "poorly budgeted for and managed".

Extreme unhappiness over the bonuses was expressed by several sources who said "junior staff (were) put in harm's way and working 12-hour days", while senior staff claim "irregular and exceptionally high bonuses" on top of their "already exorbitant salaries".

The issue of management remuneration was questioned by ANC MP Pierre-Jeanne Gerber at a Scopa hearing in October last year.

Minutes of that meeting record that "Mr Gerber noticed that the executive management remuneration amounted to R6,1-million and bonuses paid amounted to R2,1-million, which was almost 30 percent. He asked why the figure was so high".

Chairman of the board, Judge Dunstan Mlambo, responded then that the executives of the Legal Aid Board were all prepared to go the extra mile, and that was why the board took a decision to pitch their bonuses at 30 percent.

Vedalankar said this week that the incentive-based performance management system was introduced as a means to incentivise performance.

The provision of quality legal services to an ever-increasing number of clients - a total 400 000 new matters every year - as well as the reception of unqualified audit reports seven years in a row, bore testimony to the success of the system, he said.

ella.smook@inl.co.za

More like this

- Department of Justice & Constitutional Development Strategic Plan and Budget 2011
- Justice and Constitutional Development
- Justice & Constitutional Development
- Department of Justice Strategic Plan and Budget 2007/08
- Domestic Violence Act implementation: Department of Justice briefing

# Department of Justice & Constitutional Development 2009/10 Annual Report; Medium Term Strategic Framework 2010/11 – 2014/15; 2011 Legislative Programme; Criminal Assets Recovery Account and the Guardian's Fund

» Printer-friendly version

NCOP Security and Constitutional Development

**Date of Meeting:** 15 Feb 2011
**Chairperson:** Mr T Mofokeng (ANC, Free State)
**Documents handed out:**
Department of Justice & Constitutional Development presentation
Criminal Assets Recovery Account, Department of Justice and Constitutional Development
Report on the Guardian's Fund, Department of Justice and Constitutional Development
2011 Legislative Programme of the Department of Justice & Constitutional Development
Medium Term Strategic Framework, 2010/11 – 2014/15, Department of Justice and Constitutional Development
**Audio recording of the meeting:**
SC Security: Briefng by Department of Justice on Annual Report & Financial Statements 2010

**Summary:**

[...]

**Minutes:**

**Department of Justice and Constitutional Development 2009/10 Annual Report**

[...]

Mr Johan Johnson, Chief Director: Third Party Funds, DOJCD, presented the financial report for the 2009/10 fiscal year.

[...]

***Discussion***

[...]

Mr Johnson said that the Legal Aid Board had an excellent financial record. The Legal Aid budget would be increased to R1.3 billion. Matters had improved since the compensation paid to personnel had improved and parity with the salaries paid by the DOJCD was introduced. An additional staff budget of R40 million in 2012/13 would allow the appointment of an additional 60 Legal Aid practitioners. He suggested that the Legal Aid Board briefed the Committee on the plans to deploy the additional personnel.

Adv Du Rand added that there were currently 64 Legal Aid justice centres plus 64 satellite offices located throughout the country. Legal Aid services were available at most courts. The National Treasury had made additional funds available to address the backlog in appointments. Legal Aid had received unqualified audit reports for nine consecutive years.

[...]

The meeting was adjourned.

# REPORT OF THE DIRECTORS
## FOR THE PERIOD ENDED 31 MARCH 2010

The directors present their report for the year ended 31 March 2010. This report forms part of the audited financial statements.

### 1. INCORPORATION

Legal Aid South Africa was incorporated on 26 March 1969 in terms of Legal Aid Act (No. 22 of 1969).

### 2. BUSINESS AND OPERATIONS

Legal Aid South Africa's business and operations and the results thereof are clearly reflected in the attached annual financial statements. No material fact or circumstance has occurred between the accounting date and the date of this report. Legal Aid South Africa carries on the business of providing legal services to indigent residents of South Africa utilising State funding. There was no major change in the nature of the business.

### 3. FINANCIAL RESULTS

The results and the state of affairs of Legal Aid South Africa are set out in the attached annual financial statements and do not, in our opinion, require further comments. The financial position of the organisation, which is set out in the Statement of Financial Position, shows it has no borrowings. Legal Aid South Africa's deficit on ordinary activities for the year amounted to R1,869,611 (2009 surplus: R21,231,359).

### 4. PROPERTY, PLANT AND EQUIPMENT

There have been no major changes in the property, plant and equipment during the period or any changes in the policy relating to their use.

### 5. DIRECTORS

The directors of Legal Aid South Africa, all of whom are South African, during the accounting period and up to the date of this report were as follows:

Judge D Mlambo – Chairperson
Dr D Konar
Ms A Mosidi
Prof P Kruger – Term expired 31 January 2010
Mr J Maree
Adv P Du Rand
Mr M Makume
Ms N Memka
Ms T Mhlungu
Ms S Monaledi
Judge E Molahlehi
Mr V Jarana
Ms N Mgadza
Prof Y Vawda
Ms M Naidoo
Adv S Kolbe – Term expired 31 January 2010
Ms E Gandhi – Term expired 31 January 2010
Mr M Moabi

### 6. SUBSEQUENT EVENTS

No material fact or circumstance has occurred since the balance sheet date to the date of this report.

### 7. 2010 SOCCER WORLD CUP EXPENDITURE

One of Legal Aid South Africa's organisational culture programmes was to embrace and celebrate the 2010 FIFA Soccer World Cup. The organisation incurred expenditure of R42,750.00 to purchase 3000 FIFA lapel pins for staff as part of the Organisational Culture Programme.

**Johannesburg**
**31 July 2010**

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 17/00

JACQUES CHARL HOFFMANN Appellant

versus

SOUTH AFRICAN AIRWAYS Respondent

Heard on : 18 August 2000

Decided on : 28 September 2000

---

JUDGMENT

---

NGCOBO J:

*Introduction*

[1] This appeal concerns the constitutionality of South African Airways' (SAA) practice of refusing to employ as cabin attendants people who are living with the Human Immunodeficiency Virus (HIV). Two questions fall to be answered: first, is such a practice inconsistent with any provision of the Bill of Rights; and second, if so, what is the appropriate relief in this case?

[2] Mr Hoffmann, the appellant, is living with HIV. He was refused employment as a cabin attendant by SAA because of his HIV positive status. He unsuccessfully challenged the constitutionality of the refusal to employ him in the Witwatersrand High Court (the High Court) on various constitutional

[35] The need to promote the health and safety of passengers and crew is important. So is the fact that if SAA is not perceived to be promoting the health and safety of its passengers and crew this may undermine the public perception of it. Yet the devastating effects of HIV infection and the widespread lack of knowledge about it have produced a deep anxiety and considerable hysteria. Fear and ignorance can never justify the denial to all people who are HIV positive of the fundamental right to be judged on their merits. Our treatment of people who are HIV positive must be based on reasoned and medically sound judgments. They must be protected against prejudice and stereotyping. We must combat erroneous, but nevertheless prevalent, perceptions about HIV. The fact that some people who are HIV positive may, under certain circumstances, be unsuitable for employment as cabin attendants does not justify a blanket exclusion from the position of cabin attendant of all people who are HIV positive.

[36] The constitutional right of the appellant not to be unfairly discriminated against cannot be determined by ill-informed public perception of persons with HIV. Nor can it be dictated by the policies of other airlines not subject to our Constitution.

[37] Prejudice can never justify unfair discrimination. This country has recently emerged from institutionalised prejudice. Our law reports are replete with cases in which prejudice was taken into

## EXECUTIVE SUMMARY

Strategic planning is key to Legal Aid South Africa's operations and has become a strong pillar of its success. The Strategic Plan sets a clear Vision and Mission as well as Outcomes and Strategies that the organisation aims to achieve. The Strategies outline how it will use its resources optimally to achieve its vision and outcomes. The preparation of this Strategic Plan also complies with National Treasury Regulations, to submit a five-year Strategic Plan. Taking into account the environment (external and internal) in which the organisation operates and having gone through a process of consultation with internal and external stakeholders, the Legal Aid SA Strategic Plan 2012-2017 was developed.

The Legal Aid SA VISION is "*A South Africa in which the rights enshrined in the Constitution are realised and upheld and responsibilities are complied with to ensure equality, justice and quality of life for all.*"

The MISSION is "*To be a leader in the provision of accessible, sustainable, ethical, independent and quality legal services to the poor and vulnerable.*"

The VALUES that Legal Aid SA subscribes to are *i) Passion for Justice, ii) Ubuntu, iii) Integrity, iv) Accountability, v) Service Excellence and vi) People Centred Development.*

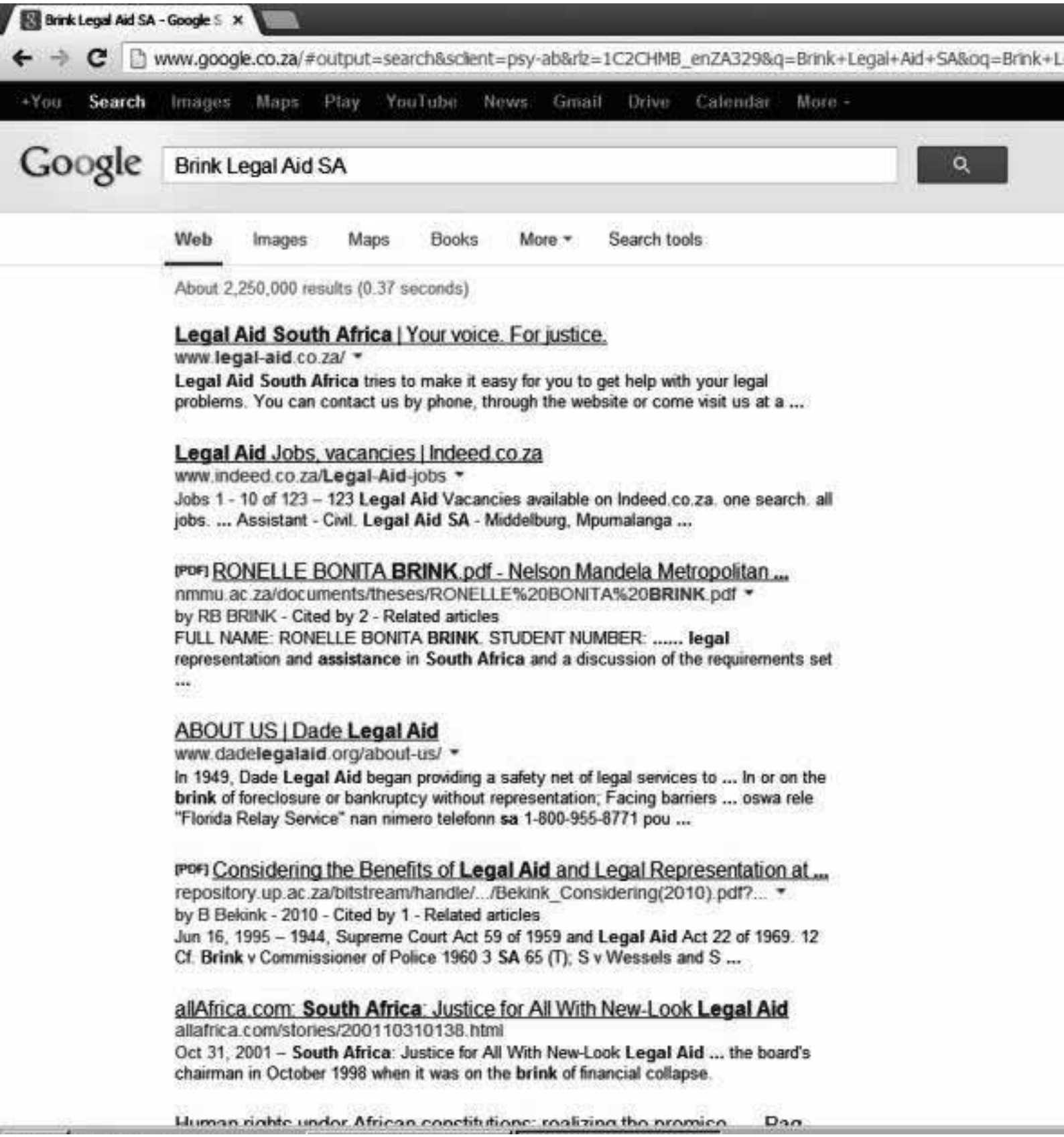
Over the five year strategic planning period, 2012–2017, Legal Aid SA strives to make the following strategic shift to achieve- *Sustainable high performance and excellence in all segments of the organisation over the next decade, positively touching the lives of many more South Africans thus ensuring JUSTICE FOR ALL.*

In the 2012-2017 period the organisation anticipates managing the following **strategic risks**:

I. *Challenges to the Rule of Law.*
II. *Capacity to meet community demand for civil legal aid – lack of funding for civil legal aid.*
III. *Quality of legal services offered by Legal Aid SA (including judicare quality).*
IV. *Legal Aid SA reputation risk.*
V. *Lack of confidence in the justice system. Inefficiencies of the justice system negatively impact on image and credibility of all entities within the justice system. Lack of complementary facilities to enhance access to justice.*
VI. *Government's ability to maintain baseline level of funding.*
VII. *Sustainable performance and sustainable practice.*
VIII. *Attraction and retention of expertise and specialist skills.*
IX. *IT Governance and IT platform and capacity responsiveness to business need.*
X. *Deepening client-focused, values-based organisational culture.*

The following **Strategies** will be implemented to achieve the outcomes and objectives:

1) *Delivering client-focused legal aid, including to vulnerable groups, in criminal matters;*
2) *Delivering client-focused legal aid, including to vulnerable groups, in civil matters;*
3) *Delivering client-focused primary legal advice services;*
4) *Delivering client-focused Impact legal aid services;*
5) *Developing new and alternative methods of increasing access to justice;*
6) *Contributing to the effective functioning of the justice and legal sector;*
7) *Implementing community education/outreach programmes;*
8) *Forging stakeholder partnerships to jointly increase access to justice;*
9) *Accounting to the Department of Justice and Constitutional Development and Parliament on delivery of mandate, governance and sustainability;*
10) *Increasing financial sustainability;*
11) *Increasing sustainable (non-financial) performance;*
12) *Maintaining and enhancing good governance;*
13) *Strengthening and growing a sustainable recognised brand;*
14) *Maintaining a mixed-model legal aid delivery system;*
15) *Building organisational models/ structures to optimise performance and delivery of legal/support services;*
16) *Maintaining strong financial management and Supply Chain Management;*
17) *Maintaining a regulatory framework incorporating best practices;*
18) *Developing and enhancing accurate and reliable Management Information Systems;*
19) *Expanding and capacitating the national footprint to increase points of access to legal aid services and new forms of access, especially in rural areas;*
20) *Developing and expanding the legal quality and expertise for each segment of the national footprint;*
21) *Developing talent and improving competencies to serve business needs and integrating competencies into related programmes;*
22) *Leveraging institutional knowledge to remain smart and effective as well as to support other developing legal aid agencies;*
23) *Strengthening and stimulating the development of a people centred values-based culture;*
24) *Developing and implementing an Employee Value Proposition able to recruit and retain the best talent and culture fit;*
25) *Developing values-based and authentic leadership to ensure sustained high performance in order to deliver on our mandate;*
26) *Building an integrated, stable and reliable IT platform serving clients' needs and internal business needs.*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Legal Aid South Africa tries to make it easy for you to get help with your legal problems. You can contact us by phone, through the website or come visit us at a ...
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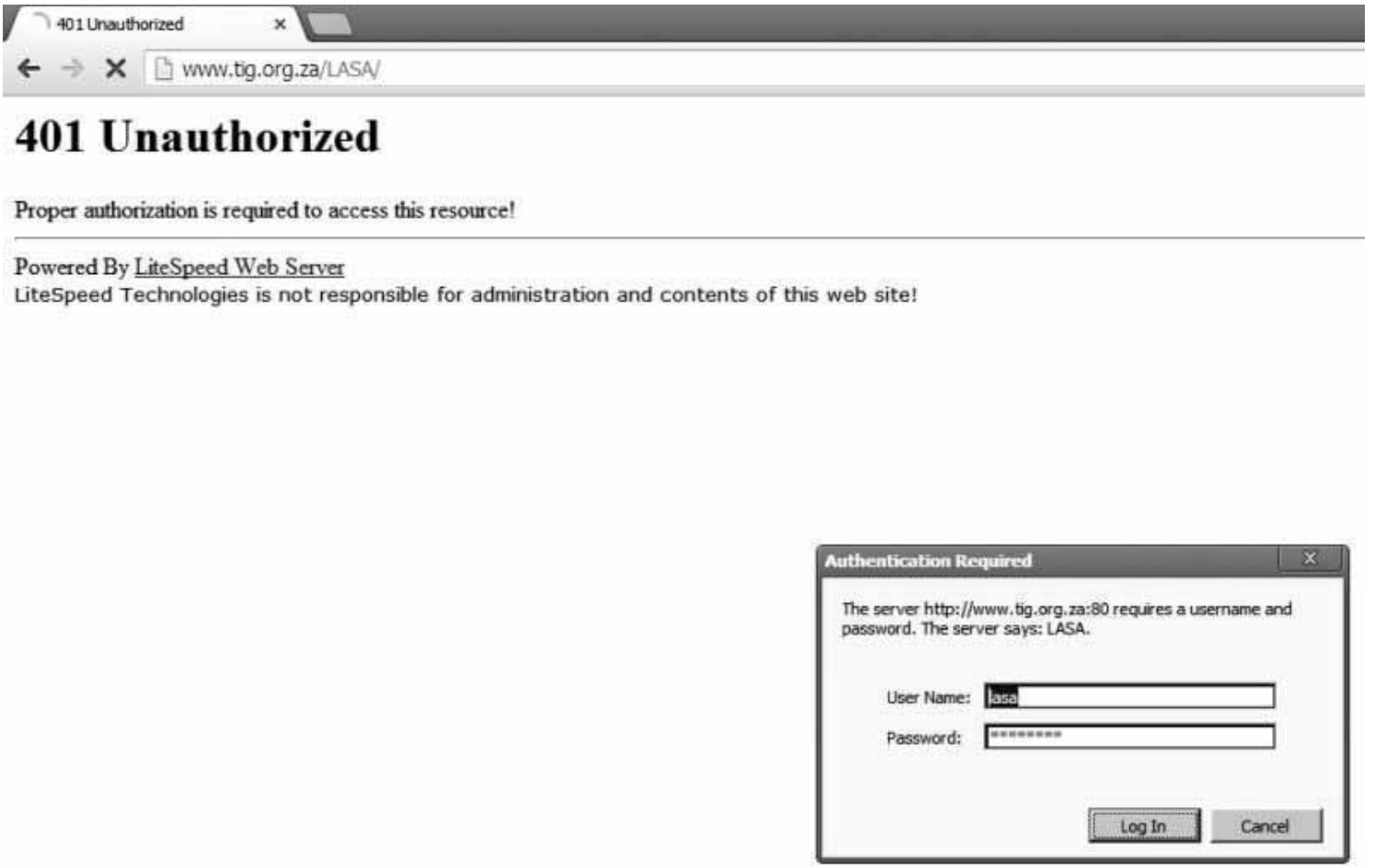
nmmu.ac.za/documents/theses/RONELLE%20BONITA%20BRINK.pdf
by RB BRINK - Cited by 2 - Related articles
FULL NAME: RONELLE BONITA BRINK. STUDENT NUMBER: ..... legal representation and assistance in South Africa and a discussion of the requirements set ...
ABOUT US | Dade Legal Aid
www.dadelegalaid.org/about-us/
In 1949, Dade Legal Aid began providing a safety net of legal services to ... In or on the brink of foreclosure or bankruptcy without representation; Facing barriers ... oswa rele "Florida Relay Service" nan nimero telefonn sa 1-800-955-8771 pou ...
[PDF] Considering the Benefits of Legal Aid and Legal Representation at ...
repository.up.ac.za/bitstream/handle/.../Bekink_Considering(2010).pdf?...
by B Bekink - 2010 - Cited by 1 - Related articles
Jun 16, 1995 – 1944, Supreme Court Act 59 of 1959 and Legal Aid Act 22 of 1969. 12 Cf. Brink v Commissioner of Police 1960 3 SA 65 (T); S v Wessels and S ...
allAfrica.com: South Africa: Justice for All With New-Look Legal Aid
allafrica.com/stories/200110310138.html
Oct 31, 2001 – South Africa: Justice for All With New-Look Legal Aid ... the board's chairman in October 1998 when it was on the brink of financial collapse.


401 Unauthorized
www.tig.org.za/LASA/
401 Unauthorized
Proper authorization is required to access this resource!
Powered By LiteSpeed Web Server
LiteSpeed Technologies is not responsible for administration and contents of this web site!
Authentication Required
The server http://www.tig.org.za:80 requires a username and password. The server says: LASA.
User Name:
lasa
Password:
Log In
Cancel

**REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**Re: Adv Anthony Brink**

1. Background

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individual and organisations, including to the Chairperson and Board of Directors of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

2. Adv Brink's discontent with non-appointment to Senior Litigator Position

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA.

3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10,relating to executives remuneration, contains incorrect column totals for basic salaries, total bonuses and incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010…".

The executive's remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts on

this matter of his alleged non appointment. We are however comfortable that we would be able to show to a court of law that our decisions taken on this matter made good business sense and was in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

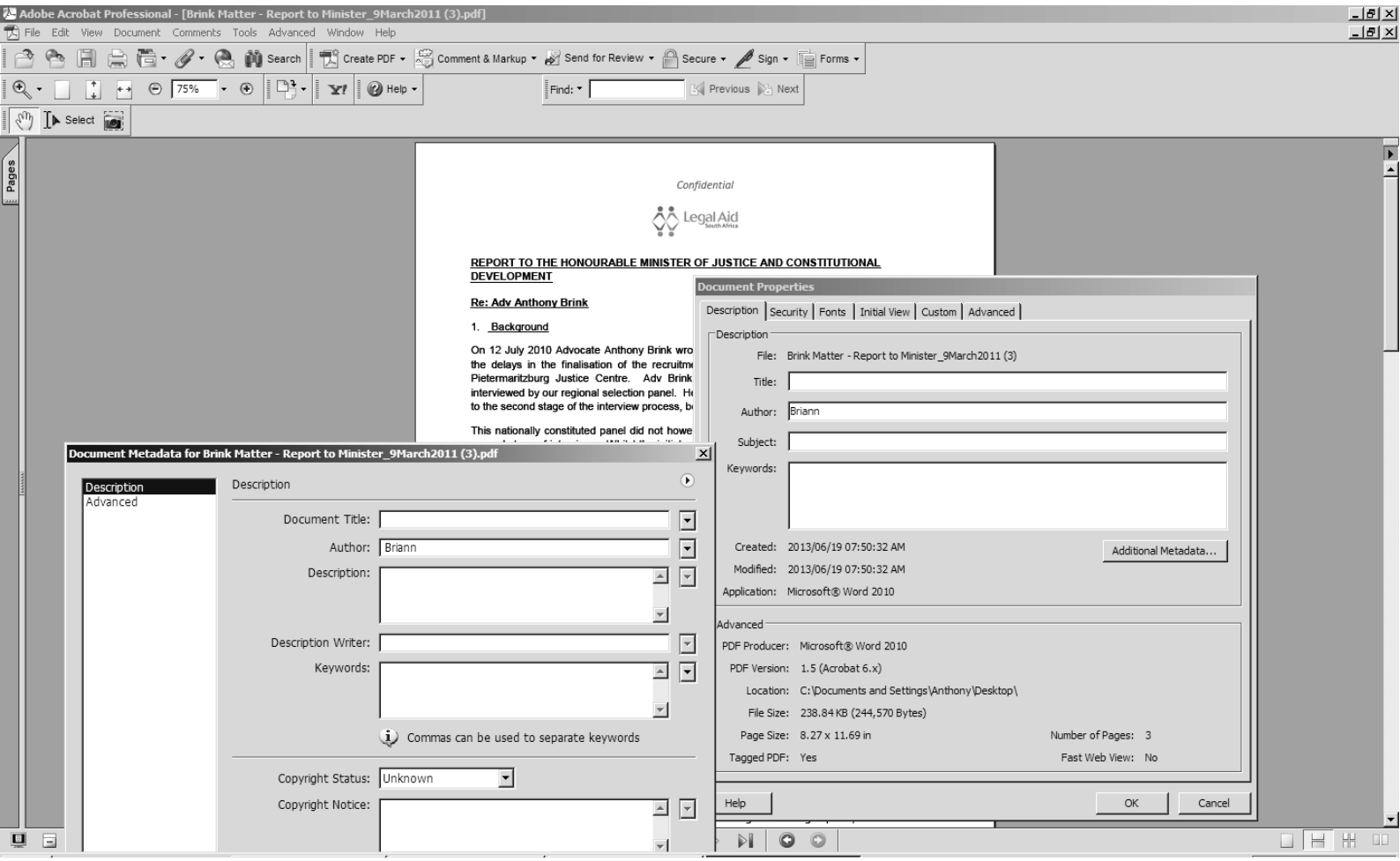
This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Brink re contravention of the PFMA and provides the necessary reassurance that in fact the PFMA has not been contravened.

*Judge D Mlambo*

*Chairperson*

*Legal Aid SA*

9 March 2011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Legal Aid South Africa
REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
Re: Adv Anthony Brink
1. Background
On 12 July 2010 Advocate Anthony Brink wro
the delays in the finalisation of the recruitm
Pietermaritzburg Justice Centre. Adv Brink
interviewed by our regional selection panel. H
to the second stage of the interview process, b
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File Size: 238.84 KB (244,570 Bytes)
Page Size: 8.27 x 11.69 in
Number of Pages: 3
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**Transcript of LASA chairperson Mlambo JP's introduction of LASA Corporate Services Executive Thembile Mtati to the Portfolio Committee on Justice and Constitutional Development on 8 May 2012 at LASA's presentation of its Strategic and Annual Performance Plans and Budget**

(Audio recording online at http://www.pmg.org.za/node/35164)

Judge Mlambo
(10 minutes into the recording)

'Next to him is Mr Thembile Mtati, he's our corporate executive, he looks after our legal health in terms of those who want to sue us, he protects us.'

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT DURBAN CASE NO.: **D529/11**

In the matter between:

**ANTHONY ROBIN BRINK** Applicant

and

**LEGAL AID SOUTH AFRICA** Respondent

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**MINUTE OF THE RESUMED PRE-TRIAL CONFERENCE HELD AT COURT ON 7 JUNE 2013 BEFORE JUDGE LE GRANGE**

---

FOR APPLICANT: Advocate C.P. Hunt S.C.
Attorney M.C. Wilkinson

FOR RESPONDENT: Attorney S. Sekgota
Attorney T. Mtati

**INTRODUCTION**

At the request of the parties, the matter stood down so that they could attempt to settle the issues which had been enrolled to be dealt with at a court-supervised conference. In the event, the parties were able to reach agreement on how the issues raised in applicant's Agenda (filed on 6 June 2013) should be dealt with and an appropriate order sought and granted by His Lordship, directing that this Minute, and the Respondent's further Discovery Affidavit, be filed by 14 June 2013.

**MATTERS DEALT WITH**

The parties traversed the contentious aspects of Respondent's discovery to date, as identified at pages 3 to 15 of the above-mentioned Agenda, and the following was

recorded in respect of each of the items raised on those pages by Applicant:

1. **Document 1, paragraph 22, page 9 of Applicant's Agenda for the pre-trial conference held in January 2013:** Respondent agreed to furnish the desired approval framework in electronic PDF format.

2. **Document 3, paragraph 23, page 10 of Applicant's January Agenda:** Respondent clarified that the document in question comprised an extract from "Syspro", which having been explained, Applicant accepted the discovery in this respect as adequate.

3. **Document 9, paragraph 26, page 11 of the Applicant's January Agenda:** This has been supplied.

4. **Document 35, paragraph 29(a), page 13 of Applicant's January Agenda:** Respondent recorded that the version discovered in Part 1 of the Schedule to its Discovery Affidavit of 11 March 2013 is the only version of that document in existence. Applicant on that basis accepted that discovery in this respect was complete.

5. **Document 38, paragraph 31, page 14 of Applicant's January Agenda:** This request fell away in light of an alternative document supplied by Respondent.

6. **Paragraph 43 (document 43), page 19 of Applicant's January Agenda:** The Respondent recorded that the aspects of this document which were

redacted out of the version supplied in its discovery, relate to irrelevant material and on that basis Applicant accepted this as sufficient discovery of the said document.

7. **Paragraph 46 (document 46), page 20 of Applicant's January Agenda:** The same applied in respect of this document.

8. **Paragraph 25 of Part 2 to the Schedule to Respondent's 11 March 2013 Discovery Affidavit (ad document 6, page 11, Applicant's January Agenda):**

8.1 As regards the "confidential report regarding Applicant" written by Mlambo J.P. and submitted to Minister Radebe on 9 March 2011, Respondent recorded that it believes that this has already been supplied, but if not, it will be furnished in PDF form.

8.2 The remaining documentation specified in this paragraph is not within the possession or control of Respondent and Applicant accepts that this is a sufficient response.

9. **Paragraph 29 of Part 2 of the Schedule to Respondent's Discovery Affidavit of 11 March 2013 (ad document 35(b), page 13, Applicant's January Agenda):** Respondent recorded that the document in question, if it still exists, cannot be located.

10. **Paragraph 29 of Part 2 to the Schedule to Respondent's Discovery**

**Affidavit of 11 March 2013 (ad document 35(c), page 13, Applicant's January Agenda):** Respondent recorded the following: Mr. Skibi was definitely orally informed that Respondent had decided not to fill the Mthatha Senior Litigator post, and that his recommendation for the second round of interviews for the appointment to that position, would not occur. Whilst this may well have been recorded in writing, no such writing can be located by Respondent. Applicant accepts this response as sufficient for discovery purposes.

11. **Paragraph 32 of Part 2 of the Schedule to Respondent's Discovery Affidavit of 11 March 2013 (ad document 39, page 14, Applicant's January Agenda):** Respondent recorded that it was accepted by Respondent that Applicant was the candidate recommended for the second round of interviews to the Pietermaritzburg senior litigator position. In light of this recordal, the demand for discovery in this respect fell away.

12. **Paragraph 36 of Part 3 of the Schedule to Respondent's Discovery Affidavit of 11 March 2013 (ad documents 53 to 57, pages 15 to 16, Applicant's January Agenda):**

12.1 Regarding items 53 and 54, Respondent accepted that these were discoverable materials. Respondent undertook to check its records and to discover whatever it had of such documents, or state unequivocally that it did not have them.

12.2 Regarding documents 55 and 57, Respondent recorded that no such

records exist.

12.3 As regards item 56, Applicant withdrew the request for discovery.

13. **Paragraphs 52, 53 and 54, page 22, Applicant's January Agenda:** Respondent undertook to reconsider its initial response in respect of these items and revert by way of its further Discovery Affidavit.

14. **Paragraph 55, page 23, Applicant's January Agenda:** Respondent recorded that there is no such document under its control or in its possession.

15. **Paragraph 58, page 24, Applicant's January Agenda:** Respondent recorded that the advertisement was not placed in the press, but only on Respondent's website. The request thus falls away.

16. **Paragraph 59, page 24, Applicant's January Agenda:** Respondent recorded that senior litigator posts bear the designation "LP10", and are not level 13 posts. The Applicant accepted the explanation of the Respondent and this request falls away.

17. **Paragraph 60, page 24, Applicant's January Agenda:** This request was withdrawn by Applicant.

18. **Other documents required:** The request for other documents recorded at pages 14 to 15 of Applicant's present Agenda, falls away.

**DURATION**

The conference, including court time, lasted from 10h00 until 13h30.

DATED AT PIETERMARITZBURG ON THIS DAY OF JUNE 2013

.....
Applicant's Attorney
M.C. WILKINSON & CO.

DATED AT Braamfontein THIS 18th DAY OF JUNE 2013

.....
Respondent's Attorney

TO: THE REGISTRAR
Labour Court
Durban

**IN THE LABOUR COURT OF SOUTH AFRICA**

**HELD AT DURBAN**

Case No: D529/11

In the matter between:

ANTHONY ROBIN BRINK APPLICANT

and

LEGAL AID SOUTH AFRICA RESPONDENT

---

**DISCOVERY OF DOCUMENTS IN TERMS OF THE COURT ORDER OF JUDGE LE GRANGE DATED 7 JUNE 2013 AND IN ACCORDANCE WITH RULE 35(3) OF UNIFORM RULES**

---

I, the undersigned,

**THEMBILE VUYO MTATI**

do hereby sate under oath that:

1. That I am an adult practicing attorney employed as a Corporate Service Executive by the Respondent and I am duly authorised to depose to this affidavit;
2. The facts stated herein are within my personal knowledge and are to the best of my belief true and correct;
3. I have in my possession or under my control the documents requested by the Applicant, which I discover and furnish as required by the Applicant as agreed in the pre- trial meeting dated 7 June 2013, and more specifically set out in Part 1 of the attached schedule;

1023

4. I declare under oath that after thorough search and consultations with the responsible officials of the Respondent, I could not find the documents requested by the Applicant as set out in Part 2 of the attached schedule;

4. I further confirm that the Applicant had accepted and agreed to the explanations and the reply given to all other documents set out in the pre -trial agenda of 7 June 2013 as fully set out in the pre- trial minutes of the same date.

**DEPONENT**

**THUS SWORN AND SIGNED BEFORE ME AT BRAAMFONTEIN ON THIS THE 24 DAY OF JUNE 2013. THE DEPONDENT HAVING ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION, HE HAS NO OBJECTION IN TAKING THE PRESCRIBED OATH AND HE CONSIDERS IT TO BE BINDING ON HIS CONSCIENCE.**

**COMMISSIONER OF OATH**

**FULL NAMES** :
**DESIGNATION** :
**ADDRESS** :

Mabhoko Mathole Attorneys
Commissioner of Oaths
Ex Officio
Mansion House, 132 Market Street
Cell: 082 660 5982 Fax: 086 690 3648
Email: mabhoko@webmail.co.za

**PART 1**

| | |
|---|---|
| A clear original PDF Approval Framework | Sent to Applicant by Email |
| Document 53 and 54 relating to Recruitments stats | **Attached as "JUNE_TVM1"** |
| Confidential report regarding the Applicant dated 9 March 2011 | Attached as **"JUNE_TVM2".** It was also sent by email |

**PART TWO**

| | |
|---|---|
| The LSTC resolution or other committee resolution in 2009 to increase the qualifying criteria originally set in 2007 for the Pietermaritzburg and Durban Senior Litigator posts- but not for the Kimberly post also re-advertised in 2009 or for the Mthatha post subsequently advertised in April 2010, for which two posts the increased qualifying criteria were applied and required. | Not available |
| The instruction issued by the management executive or other officer to increase the qualifying criteria for the Kwazulu-Natal Senior Litigator posts(only) advertised in 2009 | Not available |
| The LSTC resolution or other committee resolution or management executive instruction, after the advertisement of the Kwazulu-Natal Senior Litigator posts in 2009, to set the qualifying criteria for the subsequently advertised Mthatha post(in April2010) back at the original level set in 2007 when the initial(nine) newly created Senior Litigator posts were first advertised | Not available |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 30 November 2009
## (Excluding frozen positions)

| Region/Office | Filled | Vacant | Budget | % |
|---|---|---|---|---|
| EC | 346 | 8 | 354 | 98% |
| FSNW | 333 | 24 | 357 | 93% |
| GP | 442 | 9 | 451 | 98% |
| KZNMP | 375 | 15 | 390 | 96% |
| LPMP | 274 | 19 | 293 | 94% |
| WCNC | 434 | 27 | 461 | 94% |
| National Office | 153 | 21 | 174 | 88% |
| | 2,357 | 123 | 2,480 | 95% |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 30 November 2009 (Excluding frozen positions)

| Category | Position | EC | | | | FSNW | | | | GP | | | | KZN | | | | LPMP | | | | WCNC | | | | Grand Total | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % |
| Service Delivery | CA | 75 | | 75 | 100% | 79 | 1 | 80 | 99% | 131 | | 131 | 100% | 113 | 4 | 117 | 97% | 65 | 3 | 68 | 96% | 118 | 3 | 121 | 98% | 481 | 8 | 492 | 98% |
| | HCU Manager | 4 | | 4 | 100% | 2 | | 2 | 100% | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | 12 | 1 | 13 | 92% |
| | JCE | 9 | | 9 | 100% | 10 | 3 | 13 | 77% | 7 | 1 | 8 | 88% | 8 | | 8 | 100% | 8 | 1 | 9 | 89% | 9 | 1 | 10 | 90% | 51 | 6 | 57 | 89% |
| | JCE 2 | 1 | | 1 | 100% | | | | #DIV/0! | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | | | | #DIV/0! | 2 | | 2 | 100% | 6 | 1 | 7 | 86% |
| | PA - Children Civil | 5 | | 5 | 100% | 2 | 1 | 3 | 67% | 5 | | 5 | 100% | 4 | | 4 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | 20 | 1 | 21 | 95% |
| | PA - Children Criminal | 4 | | 4 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | 1 | 2 | 3 | 33% | 5 | | 5 | 100% | 16 | 2 | 18 | 89% |
| | PA - Civil | 12 | 1 | 13 | 92% | 13 | | 13 | 100% | 13 | | 13 | 100% | 10 | | 10 | 100% | 9 | | 9 | 100% | 14 | 1 | 15 | 93% | 71 | 2 | 73 | 97% |
| | PA - Commercial Crime | 1 | | 1 | 100% | 1 | | 1 | 100% | 4 | 1 | 5 | 80% | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 8 | 1 | 9 | 89% |
| | PA - Estates Children | | | | #DIV/0! | 1 | | 1 | 100% | | | | #DIV/0! | | | | #DIV/0! | | | | #DIV/0! | | | | #DIV/0! | 1 | 0 | 1 | 100% |
| | PA - HCU | 17 | 2 | 19 | 89% | 9 | 2 | 11 | 82% | 19 | 1 | 20 | 95% | 10 | 1 | 11 | 91% | 8 | | 8 | 100% | 14 | 2 | 16 | 88% | 77 | 8 | 86 | 91% |
| | PA - HCU Civil | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | PA - Justice Centre | 91 | 2 | 93 | 98% | 86 | 7 | 93 | 92% | 114 | 2 | 116 | 98% | 94 | 4 | 98 | 96% | 72 | 4 | 76 | 95% | 118 | 9 | 127 | 93% | 475 | 28 | 503 | 94% |
| | PA - Labour | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 4 | 0 | 4 | 100% |
| | Paralegal | 24 | | 24 | 100% | 23 | 1 | 24 | 96% | 27 | | 27 | 100% | 21 | 1 | 22 | 95% | 24 | 2 | 26 | 92% | 25 | 3 | 28 | 89% | 144 | 7 | 151 | 95% |
| | Paralegal - ATP | 2 | 1 | 3 | 67% | 1 | | 1 | 100% | 3 | | 3 | 100% | 2 | | 2 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | 11 | 1 | 12 | 92% |
| | Paralegal - HCU | 3 | | 3 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 8 | 0 | 8 | 100% |
| | Principal Attorney | 5 | | 5 | 100% | 2 | | 2 | 100% | 7 | 1 | 8 | 88% | 5 | | 5 | 100% | | 1 | 1 | 0% | 7 | | 7 | 100% | 26 | 2 | 28 | 93% |
| | Senior Litigator | 1 | | 1 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | | 2 | 2 | 0% | | | | #DIV/0! | 1 | 1 | 2 | 50% | 6 | 3 | 9 | 67% |
| | SPA | 14 | 1 | 15 | 93% | 17 | 3 | 20 | 85% | 21 | | 21 | 100% | 18 | | 18 | 100% | 14 | 1 | 15 | 93% | 17 | 1 | 18 | 94% | 101 | 6 | 107 | 94% |
| | SPA - HCU | | | | #DIV/0! | 1 | | 1 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | | | | #DIV/0! | 1 | | 1 | 100% | 4 | 0 | 4 | 100% |
| | SPA - SO | 9 | | 9 | 100% | 6 | | 6 | 100% | 4 | | 4 | 100% | 10 | 1 | 11 | 91% | 14 | 3 | 17 | 82% | 14 | 2 | 16 | 88% | 57 | 6 | 63 | 90% |
| | Service Delivery Total | 279 | 7 | 286 | 98% | 260 | 18 | 278 | 94% | 366 | 7 | 373 | 98% | 300 | 15 | 315 | 95% | 220 | 17 | 237 | 93% | 365 | 25 | 390 | 94% | 1790 | 89 | 1879 | 95% |
| Support | Admin Manager | 10 | | 10 | 100% | 13 | | 13 | 100% | 10 | | 10 | 100% | 9 | 1 | 10 | 90% | 9 | | 9 | 100% | 11 | 1 | 12 | 92% | 62 | 2 | 64 | 97% |
| | Admin Officer | 28 | | 28 | 100% | 28 | 2 | 30 | 93% | 31 | | 31 | 100% | 27 | 1 | 28 | 96% | 17 | 1 | 18 | 94% | 35 | 1 | 36 | 97% | 166 | 5 | 171 | 97% |
| | Executive PA | 1 | | 1 | 100% | | 1 | 1 | 0% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 5 | 1 | 6 | 83% |
| | HRM | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Office Assistant | 2 | | 2 | 100% | 8 | 1 | 9 | 89% | 9 | | 9 | 100% | 12 | | 12 | 100% | 11 | | 11 | 100% | 11 | | 11 | 100% | 53 | 1 | 54 | 98% |
| | Reception/Typist | 11 | 1 | 12 | 92% | 10 | 2 | 12 | 83% | 9 | | 9 | 100% | 10 | | 10 | 100% | 9 | | 9 | 100% | 10 | 1 | 11 | 91% | 49 | 4 | 53 | 92% |
| | Regional Accountant/Admin | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 5 | 0 | 5 | 100% |
| | Regional Communications Manager | 1 | | 1 | 100% | 1 | | 1 | 100% | | 1 | 1 | 0% | 1 | | 1 | 100% | | 1 | 1 | 0% | 1 | | 1 | 100% | 4 | 2 | 6 | 67% |
| | Regional Legal Manager | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Regional SPA | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | RDE | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Secretary | 9 | | 9 | 100% | 8 | | 8 | 100% | 12 | | 12 | 100% | 4 | | 4 | 100% | 2 | | 2 | 100% | 5 | 1 | 6 | 83% | 40 | 1 | 41 | 98% |
| | Support Total | 67 | 1 | 68 | 99% | 73 | 6 | 79 | 92% | 77 | 1 | 78 | 99% | 69 | 2 | 71 | 97% | 54 | 2 | 56 | 96% | 78 | 4 | 82 | 95% | 418 | 16 | 434 | 96% |
| | Grand Total | 346 | 8 | 354 | 98% | 333 | 24 | 357 | 93% | 443 | 8 | 451 | 98% | 369 | 17 | 386 | 96% | 274 | 19 | 293 | 94% | 443 | 29 | 472 | 94% | 2208 | 105 | 2313 | 95% |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - KZN REGION - 30 November 2009 (Excluding frozen positions)

| Category | Position | Durban | | Durban Total | Empangeni | | Empangeni Total | Kwazulu Natal | | Kwazulu Natal Total | Ladysmith | | Ladysmith Total | Newcastle | | Newcastle Total | Pietermaritzburg | | Pietermaritzburg Total | Pinetown | | Pinetown Total | Port Shepstone | | Port Shepstone Total | Umlazi | | Umlazi Total | Verulam | | Verulam Total | Vryheid | | Vryheid Total | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | | | | |
| Service Delivery | CA | 17 | 2 | 19 | 11 | | 11 | | | | 6 | | 6 | 9 | | 9 | 15 | | 15 | 15 | | 15 | 6 | 1 | 7 | 11 | | 11 | 15 | 1 | 16 | 8 | | 8 | | | | |
| | HCU Manager | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | |
| | JCE | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | |
| | JCE 2 | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | |
| | PA - Children Civil | 1 | | 1 | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | 1 | | 1 | | | | | | | | | |
| | PA - Children Criminal | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | |
| | PA - Civil | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | |
| | PA - Commercial Crime | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | PA - HCU | 4 | 1 | 5 | | | | | | | | | | | | | 6 | | 6 | | | | | | | | | | | | | | | | | |
| | PA - Justice Centre | 19 | | 19 | 13 | 2 | 15 | | | | 4 | | 4 | 5 | | 5 | 12 | | 12 | 6 | | 6 | 12 | | 12 | 10 | 2 | 12 | 8 | | 8 | 5 | | 5 | | | | |
| | PA - Labour | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Paralegal | 2 | | 2 | 3 | | 3 | | | | 2 | | 2 | 2 | | 2 | 3 | | 3 | 1 | | 1 | 2 | 1 | 3 | 2 | | 2 | 2 | | 2 | 2 | | 2 | | | | |
| | Principal Attorney | 2 | | 2 | 1 | | 1 | | | | | | | | | | 2 | | 2 | | | | | | | | | | | | | | | | | |
| | Senior Litigator | | 1 | 1 | | | | | | | | | | | | | | 1 | 1 | | | | | | | | | | | | | | | | | |
| | SPA | 3 | | 3 | 2 | | 2 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | 2 | | 2 | 1 | | 1 | 2 | | 2 | 2 | | 2 | 2 | | 2 | | | | |
| | SPA - SO | | | | 2 | | 2 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | | | | 2 | | 2 | | 1 | 1 | 1 | | 1 | 1 | | 1 | | | | |
| | Paralegal - ATP | | | | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | |
| | PA - HCU Civil | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | |
| | Paralegal - HCU | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Service Delivery Total | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | % Recruited | | | 95% | | | 95% | | | 100% | | | 100% | | | 100% | | | 95% | | | 100% | | | 95% | | | 95% | | | 95% | | | 100% | | | 96% | |
| Support | Admin Manager | 1 | | 1 | | 1 | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | |
| | Admin Officer | 6 | 1 | 7 | 2 | | 2 | 3 | | 3 | 1 | | 1 | 1 | | 1 | 3 | | 3 | 3 | | 3 | 1 | | 1 | 3 | | 3 | 3 | | 3 | 1 | | 1 | | | | |
| | Executive PA | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | HRM | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Office Assistant | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 3 | | 3 | 1 | | 1 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | |
| | Reception/Typist | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | |
| | Regional Communications | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | ROE | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Secretary | 2 | | 2 | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | |
| | Regional SPA | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Regional Legal Manager | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Regional Accountant/Admin | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Support Total | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | % Recruited | | | 91% | | | 85% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 97% | |
| | Grand Total | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | % Recruited | | | 91% | | | 90% | | | 100% | | | 100% | | | 100% | | | 96% | | | 100% | | | 96% | | | 96% | | | 96% | | | 100% | | | 96% | |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 31 March 2010
## (Excluding frozen positions)

| Region/Office | Filled | Vacant | Budget | % |
|---|---|---|---|---|
| EC | 344 | 15 | 359 | 96% |
| FSNW | 335 | 21 | 356 | 94% |
| GP | 437 | 14 | 451 | 97% |
| KZNMP | 376 | 12 | 388 | 97% |
| LPMP | 281 | 15 | 296 | 95% |
| WCNC | 433 | 21 | 454 | 95% |
| National Office | 146 | 29 | 175 | 83% |
| | 2352 | 127 | 2479 | 95% |

1630

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 31 March 2010 (Excluding frozen positions)

| Category | Position | EC | | | | FSNW | | | | GP | | | | KZN | | | | LPMP | | | | WCNC | | | | Grand Total | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % |
| Service Delivery | CA | 75 | 4 | 79 | 95% | 76 | 4 | 80 | 95% | 128 | 3 | 131 | 98% | 114 | 1 | 115 | 99% | 64 | 2 | 66 | 97% | 112 | 5 | 117 | 96% | 569 | 19 | 588 | 97% |
| | HCU Manager | 4 | | 4 | 100% | 1 | 1 | 2 | 50% | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | 11 | 2 | 13 | 85% |
| | JCE | 9 | | 9 | 100% | 12 | 1 | 13 | 92% | 8 | | 8 | 100% | 8 | | 8 | 100% | 9 | | 9 | 100% | 9 | 1 | 10 | 90% | 56 | 2 | 67 | 96% |
| | JCE 2 | 1 | | 1 | 100% | | | | #DIV/0! | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | | | | #DIV/0! | 2 | | 2 | 100% | 6 | 1 | 7 | 86% |
| | PA - Children Civil | 3 | 2 | 5 | 60% | 3 | | 3 | 100% | 5 | | 5 | 100% | 4 | | 4 | 100% | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | 18 | 3 | 21 | 86% |
| | PA - Children Criminal | 3 | 1 | 4 | 75% | 2 | | 2 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | 1 | | 1 | 100% | 5 | | 5 | 100% | 15 | 1 | 16 | 94% |
| | PA - Civil | 13 | | 13 | 100% | 12 | 1 | 13 | 92% | 13 | | 13 | 100% | 10 | | 10 | 100% | 9 | | 9 | 100% | 15 | | 15 | 100% | 72 | 1 | 73 | 99% |
| | PA - Commercial Crime | 1 | | 1 | 100% | 1 | | 1 | 100% | 5 | | 5 | 100% | 1 | | 1 | 100% | | | | #DIV/0! | | 1 | 1 | 0% | 8 | 1 | 9 | 89% |
| | PA - Estates Children | | | | #DIV/0! | 1 | | 1 | 100% | | | | #DIV/0! | | | | #DIV/0! | | | | #DIV/0! | | | | #DIV/0! | 1 | 0 | 1 | 100% |
| | PA - HCU | 19 | | 19 | 100% | 11 | | 11 | 100% | 19 | 1 | 20 | 95% | 10 | 1 | 11 | 91% | 7 | 1 | 8 | 88% | 15 | 1 | 16 | 94% | 81 | 4 | 85 | 95% |
| | PA - HCU Civil | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | PA - Justice Centre | 89 | 5 | 94 | 95% | 85 | 7 | 92 | 92% | 109 | 7 | 116 | 94% | 96 | 2 | 98 | 98% | 76 | 7 | 83 | 92% | 121 | 5 | 126 | 96% | 476 | 26 | 502 | 95% |
| | PA - Labour | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 4 | 0 | 4 | 100% |
| | Paralegal | 24 | | 24 | 100% | 24 | | 24 | 100% | 27 | | 27 | 100% | 21 | 1 | 22 | 95% | 26 | | 26 | 100% | 27 | 2 | 29 | 93% | 149 | 3 | 152 | 98% |
| | Paralegal - ATP | 3 | | 3 | 100% | 1 | | 1 | 100% | 3 | | 3 | 100% | 2 | | 2 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | 12 | 0 | 12 | 100% |
| | Paralegal - HCU | 3 | | 3 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 8 | 0 | 8 | 100% |
| | Principal Attorney | 5 | | 5 | 100% | 2 | | 2 | 100% | 7 | 1 | 8 | 88% | 5 | | 5 | 100% | 1 | | 1 | 100% | 7 | | 7 | 100% | 27 | 1 | 28 | 96% |
| | Senior Litigator | 1 | | 1 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | | 2 | 2 | 0% | | | | #DIV/0! | 1 | 1 | 2 | 50% | 6 | 3 | 9 | 67% |
| | SPA | 14 | 1 | 15 | 93% | 19 | 1 | 20 | 95% | 21 | | 21 | 100% | 17 | 1 | 18 | 94% | 15 | | 15 | 100% | 17 | 1 | 18 | 94% | 103 | 4 | 107 | 96% |
| | SPA - HCU | | | | #DIV/0! | 1 | | 1 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | | | | #DIV/0! | 1 | | 1 | 100% | 4 | 0 | 4 | 100% |
| | SPA - SO | 8 | 1 | 9 | 89% | 6 | | 6 | 100% | 4 | | 4 | 100% | 11 | | 11 | 100% | 13 | 4 | 17 | 76% | 14 | 2 | 16 | 88% | 56 | 7 | 63 | 89% |
| | Service Delivery Total | 277 | 14 | 291 | 95% | 282 | 15 | 297 | 95% | 368 | 16 | 384 | 96% | 308 | 8 | 317 | 97% | 226 | 15 | 240 | 94% | 356 | 19 | 375 | 95% | 1707 | 90 | 1797 | 95% |
| Support | Admin Manager | 10 | | 10 | 100% | 13 | | 13 | 100% | 10 | | 10 | 100% | 9 | 1 | 10 | 90% | 9 | | 9 | 100% | 10 | 2 | 12 | 83% | 61 | 3 | 64 | 95% |
| | Admin Officer | 29 | | 29 | 100% | 29 | 1 | 30 | 97% | 31 | | 31 | 100% | 27 | 2 | 29 | 93% | 18 | | 18 | 100% | 35 | | 35 | 100% | 169 | 3 | 172 | 98% |
| | Executive PA | 1 | | 1 | 100% | | 1 | 1 | 0% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 5 | 1 | 6 | 83% |
| | HRM | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Office Assistant | 2 | | 2 | 100% | 8 | 1 | 9 | 89% | 9 | | 9 | 100% | 12 | | 12 | 100% | 11 | | 11 | 100% | 11 | | 11 | 100% | 53 | 1 | 54 | 98% |
| | Reception/Typist | 10 | 1 | 11 | 91% | 9 | 3 | 12 | 75% | 9 | | 9 | 100% | 10 | | 10 | 100% | 9 | | 9 | 100% | 11 | | 11 | 100% | 58 | 4 | 62 | 94% |
| | Regional Accountant/Admin | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Regional Communications Manager | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Regional Legal Manager | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | | 1 | 1 | 0% | 5 | 1 | 6 | 83% |
| | Regional SPA | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | RQE | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Secretary | 9 | | 9 | 100% | 8 | | 8 | 100% | 12 | | 12 | 100% | 2 | 1 | 3 | 67% | 2 | | 2 | 100% | 5 | 1 | 6 | 83% | 38 | 2 | 40 | 95% |
| | Support Total | 67 | 1 | 68 | 99% | 73 | 6 | 79 | 92% | 76 | 0 | 76 | 100% | 67 | 4 | 71 | 94% | 56 | 0 | 56 | 100% | 78 | 4 | 82 | 95% | 419 | 15 | 434 | 97% |
| | Grand Total | 344 | 15 | 359 | 96% | 355 | 21 | 376 | 94% | 437 | 16 | 461 | 97% | 375 | 12 | 388 | 97% | 281 | 15 | 296 | 95% | 434 | 23 | 466 | 93% | 2126 | 105 | 2231 | 95% |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - KZN REGION - 31 March 2010 (Excluding frozen positions)

| Category | Position | Durban | | | Durban Total | | | Empangeni | | | Empangeni Total | | | Kwazulu Natal | | | Kwazulu Natal Total | | | Ladysmith | | | Ladysmith Total | | | Newcastle | | | Newcastle Total | | | Pietermaritzburg | | | Pietermaritzburg Total | | | Pinetown | | | Pinetown Total | | | Port Shepstone | | | Port Shepstone Total | | | Umlazi | | | Umlazi Total | | | Verulam | | | Verulam Total | | | Vryheid | | | Vryheid Total | | | | | |
|---|---|---

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - EC REGION - 31 March 2010 (Excluding frozen positions)

| Category | Position | Aliwal North | | Aliwal North Total | Butterworth | | Butterworth Total | East London | | East London Total | Eastern Cape | | Eastern Cape Total | Graaff-Reinet | | Graaff-Reinet Total | Grahamstown | | Grahamstown Total | King Williams Town | | King Williams Town Total | Mthatha | | Mthatha Total | Port Elizabeth | | Port Elizabeth Total | Queenstown | | Queenstown Total | Uitenhage | | Uitenhage Total | Grand Total | | | Recruitment Rate |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | |
| Service Delivery | CA | 2 | | 2 | 6 | | 6 | 9 | | 9 | | | | 1 | | 1 | 7 | | 7 | 6 | | 6 | 12 | 4 | 16 | 21 | | 21 | 4 | | 4 | 7 | | 7 | 76 | 4 | 80 | 95% |
| | HCU Manager | | | | | | | | | | | | | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | | | | 4 | 0 | 4 | 100% |
| | JCE | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 9 | 0 | 9 | 100% |
| | JCE 2 | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | PA - Children Civil | | | | | | | 1 | | 1 | | | | | | | | 1 | 1 | | | | | 1 | 1 | 1 | | 1 | | | | 1 | | 1 | 3 | 1 | 4 | 75% |
| | PA - Children Criminal | | | | | | | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | 1 | 1 | 2 | | | | | | | 5 | 2 | 7 | 71% |
| | PA - Civil | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 2 | | 2 | 3 | | 3 | 1 | | 1 | 1 | | 1 | 12 | 0 | 12 | 100% |
| | PA - Commercial Crime | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | PA - HCU | | | | | | | | | | | | | | | | 4 | | 4 | 4 | | 4 | 6 | | 6 | 5 | | 5 | | | | | | | 19 | 0 | 19 | 100% |
| | PA - HCU Civil | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | PA - Justice Centre | 4 | | 4 | 7 | 1 | 8 | 10 | | 10 | | | | 6 | | 6 | 7 | | 7 | 10 | | 10 | 12 | 3 | 15 | 15 | | 15 | 13 | 1 | 14 | 5 | | 5 | 89 | 5 | 94 | 95% |
| | PA - Labour | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | Paralegal | 2 | | 2 | 1 | | 1 | 2 | | 2 | | | | 3 | | 3 | 2 | | 2 | 2 | | 2 | 5 | | 5 | 3 | | 3 | 2 | | 2 | 2 | | 2 | 24 | 0 | 24 | 100% |
| | Paralegal - ATP | | | | | | | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | 1 | | 1 | | | | | | | 3 | 0 | 3 | 100% |
| | Paralegal - HCU | | | | | | | | | | | | | | | | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | | | | | | | 3 | 0 | 3 | 100% |
| | Principal Attorney | | | | | | | | | | | | | | | | 1 | | 1 | | | | 2 | | 2 | 2 | | 2 | | | | | | | 5 | 0 | 5 | 100% |
| | Senior Litigator | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | SPA | 1 | | 1 | 1 | | 1 | 2 | | 2 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | 1 | 1 | 2 | 3 | | 3 | 1 | | 1 | 1 | | 1 | 14 | 1 | 15 | 93% |
| | SPA - SO | 1 | | 1 | | | | | | | | | | 2 | | 2 | 1 | | 1 | | | | 3 | | 3 | 1 | | 1 | | 1 | 1 | | | | 8 | 1 | 9 | 89% |
| | Service Delivery Total | 9 | 0 | 10 | 17 | 1 | 18 | 28 | 0 | 29 | 0 | 0 | 0 | 15 | 0 | 15 | 28 | 1 | 29 | 28 | 0 | 28 | 41 | 8 | 49 | 52 | 0 | 53 | 22 | 2 | 24 | 19 | 0 | 19 | 277 | 13 | 290 | |
| | % Recruited | | | 100% | | | 94% | | | 100% | | | #DIV/0! | | | 100% | | | 97% | | | 100% | | | 84% | | | 98% | | | 92% | | | 100% | | | 95% |
| Support | Admin Manager | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 10 | 0 | 10 | 100% |
| | Admin Officer | 1 | | 1 | | | | 2 | | 2 | 3 | | 3 | 1 | | 1 | 4 | | 4 | 3 | | 3 | 4 | | 4 | 7 | | 7 | 3 | | 3 | 1 | | 1 | 29 | 0 | 29 | 100% |
| | Executive PA | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | HRM | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Office Assistant | | | | 1 | | 1 | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | Reception/Typist | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | | 1 | 1 | 1 | | 1 | 1 | | 1 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 10 | 1 | 11 | 91% |
| | Regional Accountant/Admin | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional Communications Manager | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional Legal Manager | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional SPA | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | ROE | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Secretary | | | | 1 | | 1 | 1 | | 1 | | | | | | | | | | 1 | | 1 | 2 | | 2 | 3 | | 3 | | | | 1 | | 1 | 9 | 0 | 9 | 100% |
| | Support Total | 3 | 0 | 3 | 4 | 0 | 4 | 5 | 0 | 6 | 10 | 0 | 10 | 3 | 0 | 3 | 5 | 1 | 6 | 5 | 0 | 6 | 8 | 0 | 8 | 13 | 0 | 13 | 5 | 0 | 5 | 4 | 0 | 4 | 67 | 1 | 68 | |
| | % Recruited | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 83% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 99% |
| | Grand Total | 12 | 0 | 13 | 21 | 1 | 22 | 33 | 0 | 35 | 10 | 0 | 10 | 18 | 0 | 18 | 33 | 2 | 35 | 33 | 0 | 34 | 49 | 8 | 57 | 65 | 0 | 66 | 27 | 2 | 29 | 23 | 0 | 23 | 344 | 14 | 358 | |
| | % Recruited | | | 100% | | | 95% | | | 100% | | | 100% | | | 100% | | | 94% | | | 100% | | | 86% | | | 99% | | | 93% | | | 100% | | | 96% |

Your voice. For justice.

# LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK

**CHANGES INDICATED IN RED FONT .**
**THE COLUMN ON THE EXTREME RIGHT INDICATES CHANGES IN ROWS IN THIS VERSION**

**Key to Levels**

| | |
|---|---|
| A: | Final approval |
| B: | Must agree |
| C: | Must be consulted (before) |
| D: | Must be informed (after) |
| E: | Originates |

**Key to Other**

| | |
|---|---|
| AC | Audit Committee |
| RC | Remuneration Committee |
| LSC | Legal Services Committee |
| LSTC | Legal Services Technical Committee |
| Board | Board of Directors (refer Note 29 & 30) |
| B/Exco | Board Executive Committee |
| Man/Exco | Management Executive Committee |
| BAC | Bid Adjudication Committee |

**Key**

| | | |
|---|---|---|
| CEO | = | Chief Executive Officer |
| COO | = | Chief Operations Officer |
| NOE | = | National Operations Executive |
| CFO | = | Chief Financial Officer |
| EXEC | = | The executive responsible for the line function in question (Exec includes ROE and Board Secretary but excludes JCE) |
| CSE | = | Corporate Services Executive |
| ROE | = | Regional Operations Executives |
| HRE | = | Human Resources Executive |
| LDE | = | Legal Development Executive |
| ISE | = | Information Systems Executive |
| CE | = | Communications Executive |
| BS | = | Board Secretary |
| CLM | = | Corporate Legal Manager |
| ISM | = | Impact Services Manager |
| JCE | = | Justice Centre Executive |

**In the event of any conflict between this approval framework and any other Legal Aid South Africa policy the Approval Framework will prevail.**

| | RESPONSIBILITY SUBJECT | NOTES | Board (29 & 30) | Man/ Exco | CEO | COO/ NOE (31) | CFO | EXEC | OTHER | Changes 27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| **1** | **STRATEGY AND PLANNING** | | | | | | | | | |
| 1.1 | Strategic Plan | | A | C | E | | | | C/ All Committees | |
| 1.2 | Business Plan | | C | A | B | E | | | C/All Committees | |
| | | | | | | | | | | |
| **2** | **BUDGET** | | | | | | | | | |
| 2.1 | **Within Treasury allocation and approved surplus** | 1 | A | C | C | C | E | C | C/ All Committees | |
| | | | | | | | | | | |
| 2.2 | **Deficit Budget** | 2 | B | C | C | C | E | | A/ National Treasury | |
| | | | | | | | | | | |
| 2.3 | **Reallocation of budget - Operational Expenditure & Capital Expenditure (only within operational or capital) (Except Contingency)** | | | | | | | | | |
| 2.3.1 | Reallocation of budget between line items within a cost centre subject to an aggregate of 8% of cost centre | | | | | C (excl JCE) | D | E<br>A | E (JCE) | |
| 2.3.2 | Reallocation of budget <R200,000 across cost centres subject to an aggregate of 1% of the total budget | | | | | B | A | E<br>C | | |
| 2.3.3 | Reallocation of budget <R350,000 across cost centres subject to an aggregate of 4% of the total budget | | | | | A | C | E<br>C | | |
| 2.3.4 | Reallocation of budget between cost centres subject to a maximum of 8% of total budget | | | | A | B | C | E<br>C | | |
| 2.3.5 | Reallocation of budget in excess of 8% between cost centres | | A | | B | C | C | C | | |

| | RESPONSIBILITY<br>SUBJECT | NOTES | Board<br>(29 & 30) | Man/<br>Exco | CEO | COO/<br>NOE (31) | CFO | EXEC | OTHER | Changes<br>27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| 2.4 | Transfers between operational expenditure and capital expenditure or vice versa | | | | | | | | | |
| 2.4.1 | **Transfers ≤R500,000** | | | | | A | C | E | | |
| 2.4.2 | Transfers ≤R1,000,000 | | | | A | C | C | E | | |
| 2.4.3 | **Transfers > R1,000,000** | | A | | **C** | | D | E | | |
| | | | | | | | | | | |
| **3** | **EXPENDITURE** | | | | | | | | | |
| 3.1 | **Expenditure (Operating & Capital) including salaries, wages, allowances** | 24 | | | | | | | | |
| 3.1.1 | Expenditure within budget <R50,000 | 3 | | | | | | A/E | | |
| 3.1.2 | Expenditure within budget R50,000 – R250,000 | | | | | | | A/E | | |
| 3.1.3 | Expenditure within budget R250,000 - R500,000 | 13 & 16 | | | | A | | E | C/AC | |
| 3.1.4 | Expenditure within budget >R500,000 | 13 & 16 | | | A | | | E | B/BAC<br>C/AC | |
| 3.1.5 | Tenders > R10million | 13 & 16 | A | | **D** | **D** | | E | **B/**BAC<br>C/AC | |
| | | | | | | | | | | |
| 3.2 | **Write off and disposal of assets – depreciated value** | | | | | | | | | |
| 3.2.1 | ≤R1million | | | | | | | | authority as per 3.1 | |
| 3.2.2 | >R1million | | A | | B | C | | E | | |
| | | | | | | | | | | |
| 3.3 | **Write off of bad debts in any one year** | | | | | | | | | |
| 3.3.1 | < R50,000 | | D | | | | B | A/E | | |
| 3.3.2 | R50,000 – R200,000 | | D | | C | A | C | E | | |
| 3.3.3 | ≤R1million | | | | A | C | C | E | | |
| 3.3.4 | >R1million | | A | C | | C | E | C | C/AC | |
| | | | | | | | | | | |
| **4** | **ACCOUNTING AND REPORTING** | | | | | | | | | |
| 4.1 | Establishment of policy | | A | C | C | C | C | | B/AC | |
| 4.2 | Deviation in application of policy | | A | C | C | C | C | | B/AC | |
| 4.3 | Statutory Accounts | | A | C | C | C | C | | B/AC | |
| 4.4 | Annual Report | | A | C | C | C | C | | B/AC | |
| 4.5 | Valuation of properties and portfolio | | A | C | C | C | C | | B/AC | |
| | | | | | | | | | | |
| **5** | **INTERNAL CONTROLS** | | | | | | | | | |
| | | | | | | | | | | |
| 5.1 | **Establishment of controls and changes thereto** | | | | | | | | | |
| 5.1.1 | Approval framework | | A | C | B | | | E(CSE) | | |
| 5.1.2 | Procedure manual | | | C | | A | | C/E | | |
| 5.1.3 | Corporate Governance, including Code of Ethics | | A | C | | C | | E (BS) | | |
| | | | | | | | | | | |
| 5.2 | **Internal auditors** | 14 | | | | | | | | |
| 5.2.1 | terms of reference (3 year Rolling Plan) | | A | | C | | | E (IA) | B/AC | |
| 5.2.2 | appointment/dismissal of external consultants | | | C | A | | C | E (IA) | C/AC | |
| | | | | | | | | | | |
| **6** | **BANKING** | | | | | | | | | |
| | | | | | | | | | | |
| 6.1 | Setting of overall policy on banking relationships and spread of banking services | | A | C | C | C | E | | | |
| 6.2 | Change of main bankers | | A | C | C | C | E | D | C/AC/B/BAC | |
| 6.3 | Approval of signing procedures and signatures “A” and “B” signatories | | D | C | A | C | E | | | |
| 6.4 | Periodic negotiation and acceptance of banking facilities | | D | C | A | C | E | | | |

| | RESPONSIBILITY<br>SUBJECT | NOTES | Board<br>(29 & 30) | Man/<br>Exco | CEO | COO/<br>NOE (31) | CFO | EXEC | OTHER | Changes<br>27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| **7** | **AUDITORS** | | | | | | | | | |
| | | | | | | | | | | |
| 7.1 | Appointment and dismissal at LAB of agent of AG | 4 | D | D | D | | | | D/AC | |
| 7.2 | Reports (non-routine audits) | | D | | E | | | | D/AC | |
| 7.3 | Non-auditing consultancy fees | 18 | D | | B | | A | E | A/BAC | |
| 7.4 | Auditing fees | | A | C | B | C | C | | D/AC | |
| 7.5 | Interim and Final Audit Plans | | A | C | B | C | C | | C/AC | |
| | | | | | | | | | | |
| **8** | **HR MATTERS** | 5 | | | | | | | | |
| | | | | | | | | | | |
| 8.1 | **Personnel Structure** | | | | | | | | | |
| 8.1.1 | Approval and periodic revision of grading policy | | A | C | C | C | | E(HRE) | C/RC | |
| 8.1.2 | (a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16) | | A | | B | C | | E<br>C (HRE) | C/RC | |
| | (b) Levels (11-13) & OSD - CM -1 ; OSD - LP - 9 & 10 and MR - 5 | | | | A | B | | E<br>C (HRE) | | |
| 8.1.3 | Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8 | | | | B | A | | E<br>C (HRE) | | |
| | | | | | | | | | | |
| 8.2 | **Appointments** | 17 & 21 | | | | | | | | |
| 8.2.1 | **(a)** CEO (Level 16) | | A/E | | | | | | C/RC | |
| | **(b) COO or NOE (Level 15.5)** | | **A** | | **B/E** | | | | **C/RC** | |
| | | | | | | | | | | |
| 8.2.2 | (a) Executive (other than the CEO, COO & NOE), | | C<br>B/Exco | | A/E | B/E | | | D/RC | **X** |
| | (b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5) | | | | **B** | **B** | | E<br>A | D/RC<br>HRE (17) | |
| | (c) OSD - SU - 1 & 2 and OSD - LP-8 | | | | | **B** | | A/E<br>**(ROE)** | HRE (17) | |
| | (d) Other permanent staff (below level 11 and OSD - LP - 1 to 7) | | | | | | | A<br>**incl JCE** | | |
| | | | | | | | | | | |
| 8.2.3 | Temporary staff - including OSD-CP-1 | | | | | | | | | |
| | **(a)** Up to 3 months (maternity leave 4 months) | | | | | | | A | C (HRE - to facilitate SAP) | |
| | **(b)** More than 3 months | | | | | A | | E | C (HRE - to facilitate SAP) | |
| | | | | | | | | | | |
| 8.3 | **Remuneration: Fixed Packages** | | | | | | | | | |
| 8.3.1 | Annual review and adjustments | | A | C | | | | E (HRE) | C/RC | |
| 8.3.2 | Interim adjustments (Professional, management and administrations) | | A | C | | | | E (HRE) | | |
| 8.3.3 | Annual Performance Bonus All staff including modifiers | | A | | | | | E | C/RC | |
| | | | | | | | | | | |
| 8.4 | **Changes to conditions of employment** | | | | | | | | | |
| 8.4.1 | Changes to general terms and conditions of employment | | A | **C** | B | B | | **E**(HRE) | D/RC | |
| 8.4.2 | Changes to the conditions of employment restricted to an office or a department of the national office | | | | | A **(COO)** | | B(HRE) | | |
| 8.4.3 | Changes to the conditions of employment restricted to a single employee | | | | | | | A(HRE) | | |
| | | | | | | | | | | |

| | RESPONSIBILITY SUBJECT | NOTES | Board (29 & 30) | Man/ Exco | CEO | COO/ NOE (31) | CFO | EXEC | OTHER | Changes 27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| 8.5 | **Code of Ethics** | | | | | | | | | |
| 8.5.1 | Policy | | A | C | C | C | | E (HRE) | C/CR | |
| | | | | | | | | | | |
| 8.6 | **Disciplinary Proceedings** | | | | | | | | | |
| 8.6.1 | Appointment of a Chairperson, Investigating Officer and Prosecuting Officer including Chairperson to hear an appeal | | | | | | | | | |
| | (i) in matter involving CEO | | **A** | | | | | | | **X** |
| | (ii) in matter involving COO, NOE | | **A** | | **B/E** | | | | | **X** |
| | (iii) in matter involving all other staff | | | | A | A | | E | | **X** |
| | | | | | | | | | | |
| 8.6.2 | Any suspensions or dismissals whether part of a disciplinary enquiry or otherwise | | | | | | | | | **X** |
| | (i) in matter involving CEO | | **A** | | | | | | | **X** |
| | (ii) in matter involving COO, NOE | 33 | **A** | | **B/E** | | | | | **X** |
| | (c) Executives (other than the CEO, COO, NOE) | 33 | C B/Exco | | A/E | B/E | | | | **X** |
| | (iii) in matter involving all other staff | | | | A | A | | E | D/(CEO, COO, NOE & HRE) | **X** |
| | | | | | | | | | | |
| 8.6.3 | **Discipline** | | | | | | | | | **X** |
| | **(a)** CEO (Level 16) | | A/E | | | | | | C/RC | **X** |
| | **(b) COO or NOE (Level 15.5)** | 32 & 33 | **A** | | **B/E** | | | | **C/RC** | **X** |
| | (c) Executives (other than the CEO, COO, NOE) | 32 & 33 | C B/Exco | | A/E | B/E | | | | **X** |
| | (d) Senior Management and Senior Professional staff (levels 11-13, OSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5) | 32 | | | **A** | **A** | | B/E | D/HRE | **X** |
| | (e) OSD - SU - 1 & 2 and OSD - LP-8 | 32 | | | | **B** | | A/E **(ROE & JCE)** | D/HRE | **X** |
| | (f) Other permanent staff (below level 11 and OSD - LP - 1 to 7) | 32 | | | | | | A **incl JCE** | C/ROE D/HRE | **X** |
| | | | | | | | | | | |
| **8.7** | **Incapacity Leave** | | | | | | | | | |
| 8.7.1 | Maximum 30 days in any one sick leave cycle | | | | | | | **E A(HRE)** | | |
| **8.7.2** | **For > 30 days but < 1 year in any one leave cycle** | | | | | **A (COO)** | | **E (HRE)** | | |
| **8.7.3** | **For > 1 year in any one leave cycle** | | | | **A** | | | **E (HRE)** | | |
| | | | | | | | | | | |
| **9** | **PUBLIC RELATIONS** | | | | | | | | | |
| 9.1 | All press releases and presentations | 10 | | | A | | | E (**CE**) | | |
| 9.2 | Advertising content | | | | | A | | E (**CE**) | | |
| 9.3 | Annual report | | A | C | B | | | E (All Execs) | | |
| | | | | | | | | | | |
| **10** | **OPERATIONS** | | | | | | | | | |
| 10.1 | **Appointment /dismissal of** | | | | | | | | | |
| 10.1.1 | Board Member(s) | 6 | A | C | C | | | | | |
| | | | | | | | | | | |
| 10.2 | **Member's Fees** | | | | | | | | | |
| 10.2.1 | Board | 7 | B | | | | E | E (BS) | A/Minister | |
| 10.2.2 | Board Committee Members | | A | | | | E | E (BS) | B/AC, B/RC, B/LSC | |
| | | | | | | | | | | |
| 10.3 | **Litigation on behalf of the LAB & Board Resolution** | 15 | | | | | | | | |
| 10.3.1 | Where a matter, on behalf of the LAB, proceeds to the Supreme Court of Appeal or the Constitutional Court | | **D** | | **A** | | | E/CSE | | |

| | RESPONSIBILITY<br>SUBJECT | NOTES | Board<br>(29 & 30) | Man/<br>Exco | CEO | COO/<br>NOE (31) | CFO | EXEC | OTHER | Changes<br>27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| 10.3.2 | Litigation on behalf of the LAB itself where the matter: | 23 | | | | | | | | |
| | **(a)** Involves the prosecution or defence of a claim for an amount in excess of R**5**million | | A<br>B/Exco | | C | | | E/CSE | | |
| | **(b)** Involves the prosecution or defence of a claim for ≤R5million | | D | | A | | | E/CSE | | |
| | **(c)** Involves the prosecution or defence of a claim for between ≤R500,000 | | | | | A | | E/CSE | | |
| | **(d)** Involves the prosecution or defence of a claim for ≤R250,000 | | | | | | | A **(CSE)** | | |
| | **(e)** Involves the prosecution or defence of a claim for less than R50,000 | | | | | | | | A(CLM) | |
| | | | | | | | | | | |
| 10.3.3 | Any settlement in respect of the Capital Sum at a value more or less than the initial claim shall be approved by the same authority that approved the litigation | | | | | | | | | |
| | | | | | | | | | | |
| 10.4 | **Insurance** | | | | | | | | | |
| 10.4.1 | Directors and Officers Liability | 8 | A | C | | C | | E | | |
| 10.4.2 | Periodic review | | | | | | | | | |
| 10.4.2.1 | Professional negligence | 8 | D | A | | C | | E | | |
| 10.4.2.2 | Other | 8 | D | A | | C | | E | | |
| 10.4.3 | Implementation of new insurance programme | 8 | | | | | | E | as per expenditure authority level | |
| | | | | | | | | | | |
| 10.5.1 | **Contracts** | 24<br>26<br>27<br>28 | | | | | | | authority as per 3.1 | |
| | | | | | | | | | | |
| 10.5.2 | Where the payments in terms of the proposed contract (other than a property lease) will extend beyond the MTEF | | A | | | E | | | | |
| | | | | | | | | | | |
| 10.6 | **Travel, Accommodation and Subsistence** | | | | | | | | | |
| 10.6.1 | Travel, accommodation and subsistence arrangements/claims, for official travel by an employee, member or invitee of the Board within South Africa at the cost of the LAB | 3<br>19 | | | | | | A | | |
| 10.6.2 | Travel, accommodation and subsistence/claims for official travel by an employee, member or invitee of the Board external to South Africa whether at the cost of the Legal Aid Board or otherwise | 20 | A<br>B/Exco | | | | | | | |
| | | | | | | | | | | |
| **11** | **LEGAL AND ADMINISTRATIVE MATTERS** | | | | | | | | | |
| 11.1 | All documentation pertaining to transactions, correspondence and agreements influencing the sale or development of land, including the landlord's consent and approval of licence applications or servitudes over immoveable property | 9 | A | | C | | E/B | CSE/E | | |

| | RESPONSIBILITY SUBJECT | NOTES | Board (29 & 30) | Man/ Exco | CEO | COO/ NOE (31) | CFO | EXEC | OTHER | Changes 27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| 11.2 | **Destruction of Documents** | | | | | | | | | |
| 11.2.1 | Destruction of documents converted to electronic images | | | | | | | A(JCE) | | |
| 11.2.2 | Destruction of Documents not converted to electronic images (not to take place until 7 years after last payment/3 years after last action if no payment) | | | | | | | A/EXEC | A/CFO (for all financial records) | |
| 11.2.3 | Transfer of records to National Archives (board agendas, board minutes and annual reports) | | | | | A | | E/Board Secretary | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| **12** | **OTHER** | | | | | | | | | |
| 12.1 | Any member of Management Exco may delegate their authority, be it in terms of this approval framework or their authority to sign contracts, to any other employee if the Executive will be absent from work or out of the country | | | | A<br><br>A | | | E | | |
| 12.2 | The CEO may further delegate any authority delegated to her | | | | A | | | | | |

**General Note**

**Failure to comply with the provisions of this approval framework may lead to:**

- Disciplinary proceedings. In the event of very serious transgressions dismissal may result.
- Consequences in terms of the Public Finance Management Act and the regulations thereunder, including both criminal and civil liability.
- Personal liability in the event of the non compliance resulting in the LAB suffering damages.

**NOTES:**

| | | |
|---|---|---|
| 1 | See section 53(1) of the Public Finance Management Act No. 29 of 1999. | |
| 2 | See section 53(3) of the PFMA | |
| 3 | May be delegated to manager by the CEO and the EXEC jointly. May be delegated below R20 000 by the EXEC. Justice Centre Executives, the Special Projects Manager, the Board Secretary, and all Finance Managers reporting directly to the CFO are delegated to approve expenditure up to R50 000 except in respect of capital expenditure. Further delegations must be in writing. Any delegation may be terminated either by written withdrawal or by cessation of employment. For purposes of this document a "Manager" is a person reporting directly to a member of Man/Exco and responsible for the management of staff or resources. | |
| 4 | Auditor General approval required in addition. Should take place every five years. Initiated by A - G. | |
| 5 | Subject to Section 8 of the Legal Aid Act No. 22 of 1969. | |
| 6 | See also Section 4 of the Legal Aid Act No. 22 of 1969. | |
| 7 | In conjunction with the Minister of the Public Service and Administration. | |
| 8 | Except that additions to the schedule of an existing policy or renewal of an existing policy, provided within budget, may be notified after the event. | |
| 9 | See also Section 3 of the Legal Aid Act No. 22 of 1969. | |
| 10 | The CEO may delegate the approval of press releases and presentations including media interviews not related to changes of policy to any Executive. | |
| 11 | All amounts set out in the approval framework are inclusive of VAT. Approval limits relate to the expenditure which may be authorised in any one financial year. | |
| 12 | EXEC includes Regional Operations Executive, and the Board Secretary but excludes Justice Centre Executives. | |
| 13 | All expenditure >R500 000 is to be made in terms of the Supply Chain Management Policy by tender. If a Tender approved by the Bid Adjudication Committee is not the lowest in terms of price, the decision of the Bid Adjudication Committee must be ratified by the Management Executive Committee. If the party selected by the Bid Adjudication Committee is the party offering the lowest price the CEO or COO (in accordance with the Approval Framework) may conclude the contract after approval by the Bid Adjudication Committee without prior approval by the MAN/EXCO. Payments for all expenditure approved by the Board to be authorised by the CEO. | |
| 14 | The CEO is entitled to require the Internal Audit Department to initiate audits and/or investigations but is not entitled to terminate or curtail audits and/or investigations once approved by the Board, the Board Executive Committee or the Audit Committee. | |
| 15 | Notwithstanding anything contained in this paragraph 10.3 the CEO, LDE or CSE are authorised to do whatsoever may be necessary to protect the Board and/or a client's rights, prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco. All litigation on behalf of the LAB is to be conducted under the control of the Corporate Services Department. | |
| 16 | Applicable only to audit matters where the Audit Committee is to be consulted in advance by report to the Audit Committee. | |
| | | |
| | | |

| | RESPONSIBILITY<br>SUBJECT | NOTES | Board<br>(29 & 30) | Man/<br>Exco | CEO | COO/<br>NOE (31) | CFO | EXEC | OTHER | Changes<br>27-Feb-10 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| 17 | It is the responsibility of the **line function Executive** to ensure that such is provided for in the budget and MTEF **and that a vacancy exists in respect of the post concerned. The HRE to confirm budget and vacancy and EE statistics with regard to JC/region/dept.** | | | | | | | | | |
| 18 | This relates to the performance of non-auditing consultancy work by any firm which is either the agent of the Auditor-General in respect of the external audit or an internal audit service provider. | | | | | | | | | |
| 19 | No employee may approve his/her own travel, subsistence and/or accommodation. No subordinate may approve an employee's travel, subsistence and/or accommodation. The CEO may expend funds on her/his travel, subsistence and/or accommodation within the budget allocated to the CEO in the annual budget approved by the Board. | | | | | | | | | |
| 20 | When Board Exco are not available international travel, accommodation and subsistence may be approved by the chairperson and the CEO jointly subject to such being tabled at the next Board Exco meeting. | | | | | | | | | |
| 21 | All appointments are to be in accordance with the standard letter(s) of appointment to be found on the U Drive. | | | | | | | | | |
| 22 | Where the disposal of assets or the write off of bad debts is originated by the CFO he/she must act in conjunction with the CEO. | | | | | | | | | |
| 23 | In respect of Impact Services, amounts not greater than R500 000 for any one matter in any one financial year are committed by decision of the Legal Services Technical Committee and require the agreement of the CEO. The CEO, NOE and LDE may jointly commit to expenditure up to R50 000 in any one matter. | | | | | | | | | |
| 24 | Certain agents (e.g. insurance brokers) receive an income from commission. It is necessary to ensure such commissions are disclosed. In considering whether you have authority to approve a contract you must consider:<br>▪ The amount to be paid by the LAB in any one financial year<br>▪ The amount to be received by the agent as commission in any one financial year | | | | | | | | | |
| 25 | To approve a contract you must be permitted to approve the greater of the payments to be made by the LAB or the commission to be earned. | | | | | | | | | |
| 26 | Contracts <R50 000.00 per annum can be signed by Justice Centre Executive without vetting by the Corporate Legal Section. All other contracts >R50 000.00 per annum to be vetted by the Corporate Legal Unit before sign off | | | | | | | | | |
| 27 | The contracts of the Impact Litigation Unit are to be prepared/be vetted by the Impact Litigation Uit and signed as per the Approval Framework. | | | | | | | | | |
| 28 | Where the payments in terms of the proposed contract are over not more than 36 months and fall within the budget in respect of current financial year and/or the MTEF. An exception is made in respect of leases of immovable property where a maximum duration of 60 months is permitted and only the first 36 months fall within the budget in respect of current financial year and/or the MTEF. Where a contract continues over more than one financial year and where the payments vary during the duration of the contract, the aggregate expenditure in the financial year in which payments are highest will determine the authority level required for approval. | | | | | | | | | |
| 29 | All authority as per this column is reserved for the Board, unless otherwise specified as delegated to Board Exco,<br>It is further noted that as per Clause 3.1 of the approved Board Exco Charter - "The Exco is conferred with all the powers conferred upon the Board by the Legal Aid Act No. 22 of 1969 that may be delegated and the Exco shall be responsible for:<br>• ...<br>• ...<br>• decisions on any matter requiring decision by the Board between Board meetings:" | | | | | | | | | |
| 30 | On 24 November 2007 the Board adopted the following Resolution:<br>"Having noted the provisions of section 56 of the Public Finance Management Act, 1999, in its capacity as accounting authority in terms of section 49 of the Act, the Board hereby delegates to the Chief Executive Officer of the Legal Aid Board all of the powers entrusted or delegated to the accounting authority in terms of the Act including the Treasury Regulations under the Act, without limitations or conditions and with the power of substitution.<br>In doing so the Board notes that it is not divested of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.<br>The Board furthermore notes that it may confirm, vary or revoke any decision taken by the Chief Executive Officer as a result of this delegation, subject to any rights that may have become vested as a consequence of the decision." | | | | | | | | | |
| 31 | Delegation to the COO and NOE shall be in accordance with the functions each is responsible for ie all delegated authority to the COO will be for those functions and executives reporting to him/her and all delegated authority to the NOE shall be for those functions and executives reporting to him/her; It is noted that this delegation is not interchangeable ie The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE and vice versa. | | | | | | | | | |
| 32 | Matters of discipline in this regard exclude, verbal and written warnings. | | | | | | | | | X |
| 33 | In matters, which in the view of the CEO, need urgent and immediate action and wherein any delay in actioning the disciplinary proceedings will compromise the interests of Legal Aid South Africa, the CEO may act after consulting with the chairperson of the Board. The matter to be reported to the Board Exco by email as well at its next meeting. An example will be, and without limitation, suspension of an executive due to an allegation of fraud. | | | | | | | | | X |

**ANNEXURE A**

On 24 November 2006 the Board adopted a resolution delegating the authority to litigate on behalf of the Legal Aid Board to the Chief Executive Officer and the Corporate Services Executive. Although that resolution is no longer duplicated in this Approval Framework it remains in force.

**PAIA request fee rejected**

**Cheque returned unpresented – together with the registered envelope enclosing it, and the labelled envelope inside it.**

**For Personal Attention**

Ms Vidhu Vedalankar
CEO and Information Officer
Legal Aid South Africa
Private Bag X76
Braamfontein 2017

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Legal Aid South Africa

Your voice. For justice.

**MINUTES OF THE BOARD MEETING HELD AT 10h00 ON SATURDAY, 26 NOVEMBER 2011 AT LEGAL AID HOUSE 29 DE BEER STREET, BRAAMFONTEIN, JOHANNESBURG**

**BOARD MEMBERS:**

| | |
|---|---|
| Judge D Mlambo | (Chairperson) |
| Judge E Molahlehi | (Deputy Chairperson) |
| Adv P du Rand | |
| Ms E Gandhi | |
| Dr L Konar | |
| Mr J Maree | |
| Ms M Memka | |
| Ms N Mgadza | |
| Ms T Mhlungu | |
| Ms A Mosidi | |
| Ms M Naidoo | |
| Mr M Notyesi | |
| Adv K Pillay | |
| Ms M Ramagaga | |
| Ms A Rhoda | |
| Ms R Subban | |
| Prof Y Vawda | |

**EXECUTIVES:**

| | |
|---|---|
| Ms V Vedalankar | (CEO) |
| Mr J Makokoane | (COO) |
| Mr B Nair | (NOE) |
| Ms R Hlabatau | (CFO) |
| Mr P Hundermark | (LDE) |

**SECRETARIAT:**

| | |
|---|---|
| Ms B Schoeman | (BS) |
| Ms Kedigetse Tladi | |

| | | | |
|---|---|---|---|
| 9.4.6 | **Senior Litigator – Reporting relationship and Job clarification** | | |
| | The Board noted the report on Senior Litigators Reporting Relationships and Job Clarification. | | |

| | | | |
|---|---|---|---|
| 9.5.1 | Labour Matters in external dispute resolution forums: Report for Quarter 2 2011/12 (Remco) (Confidential) | | |
| | The Board noted the Labour Matters report for Quarter 2: 2011/12. | BS | Next Meeting |

LEGAL AID SA - LABOUR MATTERS REFERRED TO COURTS / CCMA

PERIOD: Q 2 - 2011/12 FINANCIAL YEAR Date of current report: 07.10. 2011

| NAME | NATURE OF DISPUTE | DATE INITIATED; WHO'S THE APPLICANT | STATUS OF DISPUTE | DATE FINALISED | REPRESENTATION | MANDATE REQUIRED/ GIVEN | COMMENTS (including any time lags etc |
|---|---|---|---|---|---|---|---|
| CONSTITUTIONAL COURT | | | | | | | |
| None | | | | | | | |
| LABOUR APPEAL COURT | | | | | | | |
| None | | | | | | | |
| HIGH COURT | | | | | | | |
| LABOUR COURT | | | | | | | |
| BRINK A | Unfair discrimination- The Applicant applied for a Senior Litigator position at Pietermaritzburg JC. The position for which he had applied was frozen owing to management decisions in relation to cost cutting measures. He therefore claimed that it was aborted because Legal Aid SA did not subscribe to political views he held and therefore undesirable | Initiated by the Applicant on 28/07/2011 | Statement of claim received on 28/07/2011 and was replied to by Legal Aid SA on 09/09/2011. A Pre-trial agenda have been exchanged and a pre-trial conference was held on 26/10/2011. The applicant and the respondent committed to providing each other with further documents in order to finalise the Pre-trial Conference minute. | Pending | Advocate Mashaba Z. Advocate Mandlenga SC are representing Legal Aid SA. CSE, Corporate Legal Manager, Camargue and the LRM are overseeing the matter. The CEO, COO, HRE & COO are kept posted on developments. | To defend the matter. | The Applicant has made allegations about the Board Chairperson and the CEO |

**Date of Meeting:**
**5 Aug 2009**
**Chairperson:**
**Mr N Ramatlodi (ANC)**
**Documents handed out:**

Legal Aid Briefing
Audio recording of the meeting:
Legal Aid Board: Strategic Plan & Budget 2009/10 briefing
Summary:

The Legal Aid Board briefed the Committee on its mandates and the establishment of Legal Aid South Africa, as also some of the historical challenges faced by the legal aid system in South Africa. It was noted that there were now 62 Justice Centres. The budget for 2009 was about R900 million. For the past four years the Board had achieved an unqualified audit. The service delivery of the Board was highlighted, and it was noted that most of its work was in the criminal law field; it intended to increase its reach in civil matters. Its practitioners were of high quality and there were now increased numbers of attorneys in-house. Challenges to the delivery of legal aid were noted. The Committee was happy to note that the issue of outstanding fees to practitioners had been rectified, but requested further information on this issue. Members also asked for an update on the farm dwellers' matters, and enquired about the ways in which the Board was involved in land restitution and prevention of illegal eviction cases, whether it handled these on a case-by-case basis, its relationship with the Department of Land Affairs (as it was then called) and the results of the tender by that department. The Committee was concerned that the footprint of the Legal Aid Board in rural areas needed to be improved, especially in areas such as the Northern Cape where the distances were so large, and enquired what was being done in regard to increasing visibility, and whether the offices of traditional leaders were being used. Members asked the difference between Justice Centres and satellite offices, the amounts being spent on judicare, whether the means test had any room for discretion, how many cases were handled under the judicare system, and the cost. Members also asked for further information and updates on the Boeremag case. They noted that the Legal Aid Board needed also to promote itself as a suitable training ground for articles and that perhaps more information on it should be dealt with at the law schools, and the relationship with Community Development Service workers and non-government organisations was also examined.

Minutes:

**Legal Aid Board: Strategic Plan and budget 2009/10 briefing**
Judge Dunstan Mlambo, Chairperson, Legal Aid Board, gave some introductory remarks that focused on the mandate of the Legal Aid Board (LAB or the Board), the legislative framework and the historical challenges faced by the legal aid system in South Africa. He also pointed out that increased staffing had occurred and noted with pride that in 2000 there had been only 8 offices, but that in 2009 there were now 62 Justice Centers. He highlighted to the Committee that the budget for this financial year was just slightly above R900million. He also highlighted that for the past four years the LAB had an unqualified audit, which it considered to be an outstanding achievement.

Ms Vidhu Vedalankar, CEO, Legal Aid South Africa, gave a presentation on service delivery and noted that there was a need to increase the numbers of civil cases. She highlighted that the practitioner quality scores were high, and that the Board had furthermore increased the number of qualified attorneys on the staff. She then focused on finance and sustainability (see attached document) and listed the challenges to the delivery of legal aid (see attached document).

***Discussion***
Mr J Jeffery (ANC) congratulated the Board for an impressive presentation. He highlighted that the Board should be congratulated for the work it had done, saying that a comparison between where the Board was and what it used to be, and its achievements to date showed "an impressive and dramatic" improvement. He added that prevailing perceptions of the Legal Aid Board such as the notion that it took too long to finalise matters because practitioners never arrived for the cases were anecdotal. He would therefore suggest that what the Committee needed to do, as part of its oversight duties, was to make unannounced visits in provinces to really assess the workings of the system. In addition the Committee also needed to visit courts, as this would allow Members to meet the actual role players.

Judge Mlambo replied that the Board would very much welcome these visits because they would enable the Committee to gain an insight into the running of the Legal Aid Board. He added that he would be more than happy to have more Members come to the justice centers unannounced and check how the Board was treated.

Mr Jeffery asked the Board to explain the difference between a Justice Center and a satellite office.

Mr Brian Nair, National Operations Executive, Legal Aid South Africa, replied that the Board's primary delivery system was through the Justice Centres. However, because one Justice Centre covered more than 200 square meters, practitioners had to travel long distances to reach the courts, and this was neither efficient nor effective. Therefore, a satellite office was a branch office of the Justice Centre, equipped with practitioners and assistants. These offices allowed the Legal Aid Board to perform its duties more efficiently and effectively and cover more area, and resultantly increase its footprint.

Mr Jeffery asked if the Board had looked into the option of making visits to remote areas on a weekly or fortnightly basis, in an effort to increase the accessibility of the Board. He made this suggestion in relation to areas like the Northern Cape since he argued that such constituencies were very vast with many remote areas that may not have a satellite office or a Justice Centre. These remote areas also tended to house poor people who needed the services of the Legal Aid Board.

Mr Jeffery asked for an update on the farm dwellers' issue, and on the issue of the outstanding fees to practitioners.

Mr Patrick Hundermark, Legal Development Executive, Legal Aid South Africa, replied that in relation to farm dwellers he wanted to clarify that the Board had two programmes running, and land restitution was being handled by the Ministry of Rural Development and Land Reform. The Legal Aid Board had tried to set up a cooperation agreement between the Ministry and itself, but this did not work out and the Department decided to go with its own scheme. The Board had invited tenders for eviction cases, and the tender was won by a private law firm. However, the Board had concerns over the sustainability of such a system.

Mr J Sibanyoni (ANC) agreed with Mr Jeffery, and added that the issue of the outstanding fees had not only, in the past, led only to the near-collapse of the Legal Aid Board, but had in fact led to the collapse of sole practitioners who were waiting for the payment of the fees. This was an important matter, and he was happy to know that the issue had been turned around.

Mr S Holomisa (ANC) commented that he too was glad to hear that the problem of non-payment of legal practitioners' fees had been resolved. He requested that the Committee be given more information on this collaboration with lawyers, as he used to hear a lot of complaints over this issue.

Mr Sibanyoni asked for the amount the Board had paid in relation to Judicare. He wanted to make a comparison as to how much it would cost to have a legal practitioner take a matter on a legal aid basis, and was furthermore wanting to analyse whether the payments were so small that they might discourage legal practitioners from taking up legal aid matters.

Judge Mlambo replied that he was not exactly sure of the number of cases but in respect of the matters that were dealt with on the judicare basis, which were less than 50 000 in number, this had cost around R89 million.

Mr Sibanyoni asked if the Board was working on improving the public perceptions about itself. He noted that past experience had shown that if an unrepresented accused was asked if he wanted to have the services of a Legal Aid lawyer, he would often refuse, because they assumed that since the State was prosecuting, a State Legal Aid lawyer would not give them fair representation. They had also held the opinion that such lawyers did shoddy work, and would thus prefer to proceed to trial without legal representation.

Mr Hundermark replied that the Legal Aid Board was engaging with the Justice College, who trained the interpreters. He pointed out that the interpreters normally interpreted what a competent authority

asked them to convey to the accused about his or her constitutional rights, and both magistrates and interpreters were being trained how to read out and inform the accused persons of their rights and explain the position properly. In addition the Board's regional representative would go to the Justice College with the sole purpose of giving interpretation training.

Judge Mlambo added that the bad public perceptions were a legacy of the judicare system, and the practitioners who still consulted with clients only in the courts, shortly before the trial, would invariably be judicare practitioners who had no time for consultations. He was happy to highlight to the Committee that judges and magistrates preferred to deal with Legal Aid's in-house practitioners as opposed to judicare attorneys.

Mr Sibanyoni highlighted that when the Committee had visited Pollsmoor one of the key issues raised was that Legal Aid Board practitioners never bothered to consult with their clients whilst they were being held in prison, and in most cases consulted with their clients for the first time in court.

Ms Cordelia Robertson, Regional Operations Executive, Legal Aid South Africa, replied that the Board was experiencing some very special challenges with Pollsmoor prison. In most cases the Board was not allowed to see its clients, or, if the legal practitioners did make arrangements to meet with their clients, they would often be told, at the time arranged for the consultation, that the clients could not be found. This had been the situation two weeks ago, when she had made arrangements to consult with a client in Pollsmoor. After waiting for two hours, without the client being found, she had had to leave without consulting with the client. In addition, Pollsmoor prison did not allow consultation after 14:00 on any day, so the Board had to visit as early as possible. These challenges were being dealt with, and the Legal Aid Board had called a meeting with the Area Commissioner to discuss that issue.

Mr Nair agreed that there were a lot of cases where the Board was accused of not consulting with the clients prior to the court date. However, the Board was very particular on what it required of its practitioners, and as a whole had met the consultation requirements. Those clients who were only consulted on the actual court date were the exception, but this was claimed to be the norm. He pointed that whenever consultation occurred on the date of trial, there would be good reason for this. Some cases might be because of Ms Robertson's point that the prison claimed that the client could not be located. In other cases the clients were out on bail, and they failed to come to the Legal Aid offices, perhaps due to shortage of funds to pay for transport. The Legal Aid practitioners could do nothing about such situations other than be forced to consult in court, which was embarrassing. However, the Board, in order to ensure that this was kept to a minimum, would require its practitioners to make a note as to the reason why consultation took place only on the day of the trial, in cases where this did happen.

Mr Sibanyoni asked for an update on the *Boeremag* case, whether it was nearly finalised, and how much had been spent on the case.

Mr Nair replied that the Board was expecting the matter to be finalised in the next financial year, since the State had closed its case, the defence was now in progress, and more than half of the case had been dealt with. The case had already cost in excess of R20 million.

Mr Holomisa asked if the Board had interventions when it came to legislation that obliged the Board to be involved, but where it might later discover that the Department of Justice and Constitutional Development (DOJ) had not made financial provisions for the Board, resulting in unfunded mandates. He further asked if the Board monitored the passage of the legislation so that when it came to funding it could hold the Department responsible for funding.

Mr Hundermark replied that the Board did monitor how legislation was likely to impact on the Board and its potential client base, and one of the issues looked at was the costing of the implementation of the legislation. As a result the Board had made various presentations to the Committee regarding legislation that was likely to have an impact. Another problem was that the issue of impact was invariably linked to statistics, and most of the statistics were not one hundred percent accurate, so that the Board was relying on dubious or incomplete statistics. He thought that the issue was really how the money was being allocated and divided.

Mr Holomisa asked what measures the Board had put in place to increase the accessibility of the

## STRATEGY B2: TO DEVELOP ACCURATE, RELEVANT AND TIMEOUS MANAGEMENT INFORMATION TO INFORM BUSINESS PLANNING AND DECISIONS

| Projects | | Key Performance Indicator | | | Outputs | Performance against KPIs | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| B2-C4-P3 | Management information reports accessible to managers at all levels to inform management decisions | | | | BI reports readily available to all applicable users | Key information from National Operations Department was published monthly on AI and was accessible by all staff . | |
| B2-C4-P4 | JC Performance Monitor (JCPM) | Updated JC Performance Monitor | | Ratings done quarterly | JC Performance Monitor implemented that rates the performance of JCs for key functional areas | The JC Performance Monitor was compiled quarterly. The performance monitor scores were included in the Corporate Dashboard. | The JC Performance Monitor Key Performance Areas were reviewed and as a result the JCPM was not available for Q1 and Q2. The JCPM was subsequently finalised and made available in Q3 and Q4. |
| B2-C4-P5 | Legal Aid South Africa Corporate Dashboard | Ability of the system to meet the business need | Compre-hensive and relevant infor-mation | 4 | Management Information Dashboard | The corporate dashboard was revised to align to the Balanced Scorecard format of the Business Plan. | |

## STRATEGY B3: TO ENSURE SOUND FINANCIAL MANAGEMENT AND SUSTAINABLE BUSINESS PRACTICES

| Projects | | Key Performance Indicator | | | Outputs | Performance against KPIs | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **Programme B3-C5: Financial Management to maintain unqualified audit status** | | | | | | | |
| B3-C5-P1 | Budgeting and Financial Planning; Annual Budgets | Approved budget | Balanced budget | 1 | Consolidated budget within the approved allocation | MTEF and annual budget for 2010/11 financial year was reviewed as a result of new National Treasury directives responding to the recession The Budget for 2010/11 was approved by the Board on 27 February 2010. | |
| | Annual budgets (corporate / Legal Aid SA, Regional, Departmental and JC) | Approved budget | Balanced budget | 1 | Consolidated budget within the approved allocation | The Budget 2010/11 was approved by the Board on 27 February 2010. | |
| | MTEF | Approved MTEF 2009-2012 | Approved MTEF submitted to Department of Justice by 31 July 2009 | | New funds applied for MTEC participation | The MTEF was approved by the Board at its July 2009 meeting and submitted to the DoJ. | DoJ made submissions to MTEC but no new funds were approved for 2010/11. |
| B3-C5-P2 | Financial Reporting | Monthly Finance reports | Accurate and timeous | 12 | Monthly Finance MIS | The monthly MIS was available on the system and was presented to the Management Executive Committee. | |
| | Managing expenditure | Expenditure trends | | Expenditure controlled within 99,5% and no over expenditure before transfers | Expenditure controlled with the parameters of 12 months expenditure plan including budget transfers | Expenditure was monitored on a monthly basis. As at 31 March 2010, 99.5% of the budget was spent. | |

## PART C : EMPLOYEE AND ORGANISATIONAL CAPACITY (INTERNAL)

| Projects | | KPI's | | | Outputs | Performance Against KPI's | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **STRATEGY O1: TO EXPAND THE NATIONAL FOOTPRINT - INCREASE CAPACITY TO SUPPORT THE DELIVERY OF LEGAL SERVICES** | | | | | | | |
| **Programme O1-S5: National Footprint Expansion** | | | | | | | |
| O1-S5-P1 | National Footprint | National Footprint of Legal Aid SA extended | | 1 | Extension of the National Footprint considered | A decision was made not to apply for additional funding to expand our national footprint noting the current economic situation in our country. Therefore, no new offices were planned for this financial year. One new Satellite Office in Mpumalanga, Siyabuswa Satellite Office, which was planned for the last financial year, was opened during this year. | |
| **Programme O1-S6: Review legal staffing/business models (x-ref with B1-S3-P1)** | | | | | | | |
| O1-S6-P1 | Review Staffing for delivery | | | | | | |
| | Children's units | Specialist civil children's practitioners recruited at civil units. | | All Justice Centres with civil units | Specialist civil children's practitioners provided for all civil units. | Specialist children's civil practitioners have been allocated to all civil units. However, PAs specialising in children's criminal matters have been largely absorbed into our court coverage programme because the DoJ & CD one stop Child Justice Centre project has not materialised | |
| O1-S6-P2 | Review Staffing in support of delivery | Support staff capacity reviewed to ensure optimum support for delivery. | | 1 review report | Review the administration staff capacity at Justice Centres and ROs to ensure optimum fit with support needs | A review of the administration capacity at Justice Centres was done. | |
| **Programme O1-S7: Increased people capacity to deliver** | | | | | | | |
| O1-S7-P1 | Recruitment and retention of competent staff for legal services delivery | Increased recruitment levels | | > 96% recruitment levels at all Justice Centres | Recruitment levels of Justice Centre staff monitored | Our recruitment level at the end of quarter 4 was 96%. | Recruitment was held back during a large part of the year due to uncertainty with regards OSD funding. |
| **Programme O1-S8: Increased support capacity to deliver** | | | | | | | |
| O1-S8-P1 | Recruitment and retention of competent staff in support of delivery | Ensure adequate support staff for civil legal services. | | All Justice Centres | Administration capacity provided to support civil units/sections | During quarter 3 of FY 2009/10, Board approved the deployment of 20% of administration staff per Justice Centre to directly support legal work. These support staff will be based in the civil units/civil sections. The process of identifying and deploying these staff to civil units/sections is complete in all but two Justice Centres. Dedicated administration capacity is now available to support civil units/sections at our Justice Centres. | Insufficient support posts currently exist at the 2 JCs to allocate to civil sections. Funding to address this gap is currently being identified. |
| O1-S8-P2 | Improved infrastructure for delivery | Delivery infrastructure improved/ extended | | All Justice Centres and Satellite Offices maintained to required standards | Existing Justice Centres and Satellite Offices efficiently maintained and managed. | A Justice Centre and Satellite Office check list for monitoring maintenance programmes was implemented. Areas that need attention are being addressed with the respective landlords. Occupational safety measures are being monitored | |

## Employee and Organisational Capacity

| Projects | | KPIs/Outcomes | | | Outputs | Performance against KPI's | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **Objective 15: Expanded national footprint - Increased capacity to deliver and support the delivery of legal services** | | | | | | | |
| STRATEGY XI: TO EXPAND THE NATIONAL FOOTPRINT - INCREASE CAPACITY TO DELIVER AND SUPPORT THE DELIVERY OF LEGAL SERVICES | | | | | | | |
| **Programme P22: National Footprint Expansion** | | | | | | | |
| P22-1 | National footprint | National footprint of Legal Aid South Africa reviewed | | National footprint report reviewed | National footprint reviewed and needs identified | The Legal Aid South Africa national footprint currently comprises 64 Justice Centres, 64 Satellite Offices, 13 High Court Units (HCUs) and 13 Civil Units.<br>As part of the strategic planning process, a detailed review of our national footprint was conducted during this financial year. Motivation for additional MTEF funding to increase our national footprint in line with the recommendations from our research report was made. No additional funding was received. | |
| **Programme P23: Review legal staffing/business models** | | | | | | | |
| P23-1 | Review Staffing for delivery | All specialist court practitioners meet minimum requirements | | Recruitment reports | Improved recruitment for specialist court coverage | There are 9 commercial crimes PA posts and 4 labour court PA posts currently on our establishment. Recruitment levels for both these specialist category of posts were at 100% as at the end of the financial year. | |
| **Programme P24: Increased people capacity to deliver** | | | | | | | |
| P24-1 | Recruitment and retention of competent staff for legal services delivery | Increased recruitment levels | Recruitment levels adequate to enable service delivery | > 96% recruitment levels at all JCs or based on budget allocated approved | Recruitment levels of legal staff continuously monitored and managed | There were 2 092 legal posts (including paralegals) on our establishment at year end. The recruitment level at the end of this financial year was 96%, which is in line with the target set for the year. | |
| **Programme P25: Increased support capacity to deliver** | | | | | | | |
| P25-1 | Recruitment and retention of competent staff in support of delivery | Ensure adequate support staff to sustain the delivery of legal services | Administration support sufficient to support legal service delivery | 96% recruitment levels or as per budget allocation approved | Recruitment levels for support staff continuously monitored and managed | Recruitment levels of support staff was 95%. This is 1% below the target for the financial year. | Recruitment for some positions were put on hold owing to uncertainty with regard to funding for the backlog courts project. |

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Aid South Africa. Typically, co-operation agreements have been concluded to increase our coverage of civil matters, particularly with regards children's matters and land matters.

The agency agreement model was implemented in late 2009. The primary focus of agency agreements was to assist clients in criminal matters at remotely located courts that are not covered by our Justice Centres. Agency contracts are entered into with specific private practitioners to attend to criminal matters qualifying for legal aid at specific courts allocated to them. These practitioners are guaranteed a monthly retainer and thereafter, depending on the number of matters that are finalised each month, these practitioners are reimbursed the balance that may be owing to them.

Legal Aid South Africa established a call centre in 2010 for the provision of general legal advice. The primary objective of establishing a call centre was to increase access for clients in civil matters to general legal advice services, especially noting that many clients from rural areas are not able to access Legal Aid South Africa offices for assistance. The call centre has two categories of call agents. The first level agents are paralegals who provide advice and referral services. However, should a client's problem be more complex, this will be escalated to a second level call agent. These second level call agents are experienced civil lawyers. A management team is also available to assist clients and call centre agents with the rendering of advice. All calls are recorded which facilitates effective quality management as well as handling of any client complaints.

A general legal advice service is also provided at all Justice Centres and Satellite Offices. This service is primarily focused on providing clients in civil matters with first level legal advice so that they are aware of the options available to them to resolve their problems. Paralegals are employed at all our offices to render this general advice service. Where clients are identified as requiring the services of a civil lawyer, they are then referred to a practitioner in the civil section at the same Justice Centre.

## 2.2 Corporate Governance

### 2.2.1 Introduction

Legal Aid South Africa is committed to the implementation of sound corporate governance practices across the organisation, which are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner. Processes are underpinned by the principles of openness, integrity and accountability and an inclusive approach that recognises the importance of all stakeholders with respect to the viability and sustainability of Legal Aid South Africa.

### 2.2.2 Governance Structures

Legal Aid South Africa is governed by a Board of skilled non-executive members commonly referred to as the Board of Directors. The Board acts as the focal point for, and custodian of, corporate governance. As such the Board manages its relationship with management and stakeholders along sound corporate governance principles. The Board of Legal Aid South Africa comprises 18 non-executive directors appointed in terms of the Legal Aid Act. They are drawn from diverse backgrounds and bring a wide range of knowledge, experience and professional skills to the Board. The term of office of the non-executive directors is three years. Since the composition of the Board is determined by the Legal Aid Act, this function is dependent on the Minister of Justice and Constitutional Development, and Parliament for any changes. Parliament is in the process of amending the Legal Aid Act and this is expected to impact on the composition of the Board.

### 2.2.3 The Role and Function of the Board of Directors

The Board is the Accounting Authority of Legal Aid South Africa in terms of the Public Finance Management Act, 1 of 1999 (as amended).

It is responsible for providing strategic direction and leadership, ensuring good corporate governance and ethics, determining policy, agreeing on performance criteria and delegating the detailed planning and implementation of policy to the Management Executive Committee. The Board of Directors meets at least quarterly and monitors management's compliance with policy and its achievements against objectives. A structured approach is followed for delegation, reporting and accountability, which includes reliance on various Board Committees. The Chairperson guides and monitors the input and contribution of the directors.

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to clients who therefore received legal aid services. This situation has been addressed with a change to our judicare accreditation policy which requires practitioners to submit tax clearance certificates to be accredited to be part of our judicare data base to receive judicare instructions. The condonement of the National Treasury for the non-compliance will also be attended to in the near future. Our comprehensive risk management also ensured that our managers were able to anticipate and mitigate risks and potential fraud resulting in only one minor fraud matter involving R2000 being reported in this period. The increasing number of civil matters resulted in an increase in the quantum of funds in our Trust Account holding clients' monies. The related challenge of unaccounted for deposits is being addressed to ensure that all funds are accounted for and directed to the right clients.

Our IT Platform was enhanced and upgraded with K2-workflow software upgrade and a switch to a SharePoint platform. However this caused challenges to stability and speed of the IT platform in the year. This has subsequently been addressed. A few delays in payments and data capture were also addressed within the financial year. Our increased user volumes and transactions and dependence on our IT platform for our business needs require a further expansion of our VPN bandwidth capacity in the new financial year. Our electronic links to clients using our websites was delayed due to the IT challenges mentioned above.

The 2011-2012 year marked the completion of our three-year Strategic Plan period 2009-2012. In this year we prepared a new Strategic Plan 2012-2017 for the next five-year period. Details of the process and content of this Strategic Plan are provided in this Annual Report. To a large extent we were able to make the strategic shift that we mapped for the 2009-12 Strategic Plan (SP) period as indicated below.

We aimed in the 2009-2012 period to explore and implement new ways of increasing access to justice within resource constraints. In the SP period we completed the expansion of the National Footprint (6 new JCs and 27 Satellite Offices), launched our Client Call Centre – the Legal Aid Advice Line in November 2010 and implemented a new delivery model using Agency Agreements with Legal Firms to improve coverage of courts in rural areas. No staffing increase in criminal courts, due to budget constraints, resulted in only a marginal increase of 1-2% in new criminal matters over this SP period. We were able to expand civil legal aid capacity and establish civil units to improve coverage of civil matters which resulted in a 60% increase in the number of persons assisted in civil legal matters in the SP period [FY 2009/10 (29,024), FY 2010/11 (31,451) and 2011/12 (46,528)].

Our aim to increase the practitioner per court ratio and thus improve caseload management and quality was partially successful. Although we continued to cover all courts, because of budget constraints we were not able to increase practitioner per court ratios. Our court coverage ratio increased marginally per court type as follows: District Courts FY 2009/10 (80%), FY 2010/11 (83%) and 2011/12 (89%) and Regional Courts FY 2009/10 (94%), FY 2010/11 (96%) and 2011/12 (97.5%).

Improving specialist capacity to serve vulnerable groups was achieved with the specialist capacity to cover commercial crimes courts, labour courts, sexual offences courts and children's matters all in place. Our Impact Litigation Unit became fully functional and is assessing and taking on new matters affecting vulnerable groups. We employed Senior Litigators who are working on complex matters and matters in higher courts. Our practitioners have been trained in specialist matters and continuing training is also implemented. Expert panels were established to support our legal practitioners in specialist matters.

An independent legal quality assurance unit was also implemented and became fully functional in the SP period. This quality assurance is expanding to cover quality assessments of all aspects of legal services delivery including paralegals, judicare practitioners and agency agreements. Quality targets are being met by legal practitioners as assessed by both JC management quality assessments as well as independent legal quality assurance unit assessments.

Our aim to consolidate the Legal Aid brand thus increasing public awareness of independent quality legal aid services was realised by the launch of our new corporate identity and 'Legal Aid South Africa' brand in this period. Brand awareness has increased each year FY 2009/10 (43%), FY 2010/11 (49%) and 2011/12 ( 56%) with an overall increase of 19% over 3 years to 56% awareness of Legal Aid South Africa amongst lower LSM groups.

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## 1.3 Scope and boundary of the report

The Annual Report 2011/2012 presents the performance report of Legal Aid South Africa for the financial year 1 April 2011 to 31 March 2012. The report integrates the organisation's financial and non-financial information, applying best practice when reporting to stakeholders.

Section 2 of the report presents an overview of the organisation, business model and governance structures for the Legal Aid South Africa, including the governance of sustainability and compliance framework.

Section 3 deals with the operating context of the organisation, report on sustainability, stakeholder engagement, and Legal Aid South Africa's risk management strategy and plan. Sustainability elements have been compiled in line with the guidelines of the Global Reporting Initiative (GRI). GRI reporting principles for defining report content, quality and boundary setting have been used as guidelines.

Section 4 presents the strategic objectives and planning cycle.

Section 5 presents the views of the leadership of the organisation, including reports from the Chairperson of the Board of Directors and the Chief Executive Officer.

Section 6 presents the report of the performance of Legal Aid South Africa as measured against the stated objectives and targets for the financial year.

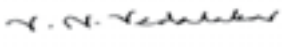
Section 7 presents the Annual Financial Statements of the entity prefaced by the reports of the Audit and Risk Committee and the Auditor-General as well as the report of Directors. The Annual Financial Statements were prepared according to the Statements of Generally Accepted Accounting Practice, the Public Finance Management Act, Treasury Regulations and recommendations of King III.

Sections 8 and 9 present information on human resources and contact details of all the offices of Legal Aid South Africa.

## 1.4 Statement from Governing Board acknowledging its responsibility for ensuring the integrity of the report

The Board of Directors (Board) acknowledges its responsibility to ensure the integrity of the integrated report. The Board has accordingly applied its mind to the integrated report and in the opinion of the Board the integrated report addresses all material issues, and presents fairly the integrated performance of the organisation and its impacts. The integrated report has been prepared in line with best practice pursuant to the recommendations of the King III Code (principle 9.1).

The Annual Report was approved by the Board of directors on 28 July 2012 and signed on their behalf by:



**Vidhu Vedalankar**
Chief Executive Officer
Legal Aid South Africa

**Judge President Dunstan Mlambo**
Chairperson
Legal Aid South Africa

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Our work is not without challenges and one area of big concern is in securing appropriate funding for civil legal aid. This presents a serious gap and we have intensified our efforts at securing increased funding to influence our civil workload in the right direction. We have also had fruitful discussions with our regulatory authority in this regard, the Minister of Justice and Constitutional Development.

Related to the challenges experienced in providing legal aid in civil cases, is the issue of pro bono work by the legal fraternity/organised legal profession. It is my view that the organised legal profession has not developed and implemented a sustainable action plan to provide pro bono services to the many deserving people who desperately need these services. We need to come together as role players in the justice system and look at workable solutions. We should also as key role players focus on a constitutional rights awareness and training programme for our communities as this is neglected.

We have continued to receive the support of government especially the Minister of Justice and Constitutional Development as alluded to earlier and for this we are thankful. The Deputy Minister of Justice and Constitutional Development has also been supportive and participated in our function where we launched the 2009 Legal Aid Guide. He also, accompanied by the Director-General of the Department of Justice and Constitutional Development, attended part of one of our Board meetings to assure the Board of the support of the Ministry and to acknowledge the Board, Senior Management and Staff for the excellent work done by Legal Aid South Africa.

It also gives me pleasure to report that the Board of Directors of Legal Aid South Africa fulfilled its obligations as the accounting authority of the organisation. I therefore take this opportunity to acknowledge my fellow board members for their good work, commitment and support during the past financial year. Thank you to the Chairpersons of the Board Committees and to the Committee members for ensuring that the Committees function effectively and support the Board in its work.

Our oversight role is made easier by the continued commitment displayed by the CEO and her executive management team. I pay a special acknowledgement and tribute to all the lawyers and para-legals in the employ of Legal Aid South Africa. They are the people who are at the forefront of our work. I am aware of some of the challenges they encounter on a daily basis and yet they remain focused on the job at hand. I salute them for their unquestionable commitment and dedication to access to justice in our country.

It is befitting in my view to single out one of our dedicated lawyers, Ms Noluthando Geca, who was involved in a motor vehicle collision on her way to court and sadly passed on. This is one incident that has had a sobering effect on me as Chairperson in particular about the plight of our lawyers in the course of their work. I will continue in my efforts to ensure that they work in an enabling environment at all times.

**Judge Dunstan Mlambo**
**Chairperson:**
**Legal Aid South Africa**
**19 August 2010**

## PART F: FINANCE & SUSTAINABILITY

### STRATEGY F1: TO MAINTAIN A SUSTAINABLE AND FINANCIALLY STABLE LEGAL AID SOUTH AFRICA

| Projects | | Key Performance Indicator | | | Outputs | Performance against KPIs | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **Programme F1-S2: Lobby for new funds to ensure financial stability of Legal Aid South Africa** | | | | | | | |
| F1-S2-P1 | Lobby National Treasury and Government for funding | Additional MTEF allocation | Focus on government priorities linked to Legal Aid South Africa strategic shifts | 1 | MTEF Funding applications | The Occupational Specific Dispensation (OSD) phase 1 shortfall of R23million in the 2009/10 financial year was received from the DoJ. The MTEF funding proposal was submitted to government. Additional funds were allocated for 2011/12. | Additional funding applications to donor funders was constrained by the economic recession. |
| | | Request for additional allocation informed by government priorities | Relevant and persuasive | | Business case to National Treasury | The MTEF funding proposal was considered by the Board on 25 July 2009. Additional funds were allocated for 2011/12. | |
| F1-S2-P2 | Investigate additional funding sources to increase delivery - harness additional donor funds | Donor funding | Focus on legal work and human rights matters | 4 | Donor funders schedule with contact details | The Donor funding project was reviewed. An application for funding for the Client Call Centre and an application for funding to the AFF was in progress as at year end. A funding application was submitted to SASSETA. | Inadequate skills and resources in lobbying for donor funding. |
| | | Donor funding applications | Meet funders requirements | | Donor Funding applications | A proposal for additional funding was prepared and submitted. Additional funding was allocated by NT for 2012/13. Budget shortfall on OSD salaries over the MTEF period remains. | |
| F1-S2-P3 | Special project funding for call centre project | | | | Donor funding applications | The call centre was budgeted for as part of the Legal Aid South Africa Budget for the 2009/2010 financial year. | |
| | | | | | | A funding request was submitted to SASSETA for the allocation of Discretionary Grants to Legal Aid SA for specific training projects. Funding of about R2 million has been allocated to Legal Aid SA but the grants agreement must still be finalised and signed. | |
| F1-S2-P4 | Investigate client contributions for legal services | Clients contributing to Legal Aid | Relevant and persuasive | One Report | Model on partially subsidised Legal Aid South Africa services | A proposal was developed, however amendments are required to link this to Regional and High Court criminal cases. | |
| | Investigate partially funded legal services | | | | Option 2: Model for 'not so poor' | The model for the not so poor was discussed with the professions although the establishment of the proposed task team did not materialise. | |
| | Recovery of cost orders | Cost orders recovered | | All cost orders | Option 3: Cost orders to be used to augment funding | The 2009 LAG makes provision for the recovery of cost orders in favour of Legal Aid South Africa clients. Where possible costs were recovered and allocated to the Sundry Income account.. | |

## STRATEGY C3: TO CONTRIBUTE TO BUILDING AN EFFICIENT AND EFFECTIVE JUSTICE SYSTEM & JCPS CLUSTER AND TO IMPLEMENT THE ACTIONS EMANATING FROM THE CJS REVIEW

| Projects | | KPIs | | | Outputs | Performance against KPIs | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| | | | | | Repositioning of Legal Aid SA in JS (independence and autonomy) | The independence of Legal Aid SA will be reinforced when redrafting the Legal Aid Act. | |
| | | | | | | Importance of Legal Aid SA being independent of state and being seen to be independent of state stressed at Legal Aid Act task team meeting while arguing for the amendments to the first draft advocated by the Board. | |

## STRATEGY C4: TO TIMEOUSLY ACCOUNT TO PARLIAMENT AND THE EXECUTIVE AUTHORITY SO THAT THEY ARE WELL INFORMED OF LEGAL AID SOUTH AFRICA STRATEGY AND PROGRAMMES

| Projects | | KPIs | | | Outputs | Performance against KPIs | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **Programme C4-S1: Ensure accountability to Executive Authority and Parliament** | | | | | | | |
| C4-S1-P1 | Interaction with Minister and DoJ | | Timeous & Accurate | As required | Reporting and accountability to Executive Authority and statutory compliance | A Minister's extended Exco meeting was held during Q1 and Legal Aid South Africa submitted the required information and attended the meeting. The Deputy Minister of Justice and Constitutional Development was a guest speaker at the Legal Aid Guide 2009 Launch and attended the July Board meeting to meet Board members. | |
| C4-S1-P2 | Reporting and accountability to shareholder/ executive authority | Accountability to the Executive Authority | | 4 | Quarterly report submitted to DoJ | The Quarterly reports in respect on each quarter of 2009/10 was prepared and submitted to the DG of the DoJ. | |
| C4-S1-P3 | Annual Report | | | 1 | Compliance Register; Annual Report to Executive Authority & Parliament & National Treasury | The Annual Report 2008/09 was submitted to the Executive Authority, Parliament and National Treasury. | |
| C4-S1-P4 | Interaction with Parliamentary Committees | Parliamentary briefings, presentations prepared | Accurate professional presentations | As requested | Reporting & briefing of Parliamentary Committees | A presentation was made during Q2 to the new portfolio committee on Justice and Constitutional Development. | |
| | | | | | Visitation of to interact with realities of our operations | Visits to were conducted by the CEO and members of the Management Executive Committee during the year. | |
| C4-S1-P5 | Internal Audit oversight of accountability to Executive Authority | Assess accountability to Executive Authority and Statutory Compliance | Reporting i.t.o PFMA and Statutory Compliance Schedule | 4 Reports | Reporting and accountability to Executive Authority and statutory compliance | PFMA compliance reports were submitted quarterly to the DoJ. | |

## STRATEGY O3: TO IMPLEMENT PEOPLE-CENTRED HUMAN RESOURCE MANAGEMENT - LEGAL AID SOUTH AFRICA AN EMPLOYER OF CHOICE

| Projects | | Key Performance Indicator | | | Outputs | Performance against KPIs | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| | | | | | Formal engagement with unions | In the period reported on, Legal Aid South Africa experienced 36 grievances. Disputes included claims of unfair labour practice, unilateral changes to the terms and conditions of employment, unfair dismissals relating to misconduct, disclosure of information, and unfair discrimination. | Training of managers on labour relations needs to be supplemented with further skills such as interpersonal and relationship management skills. Compentency assessment programme is planned for implementation in 2010//11. |
| | | | | | Formal engagement with unions | Management held formal, periodic meetings with the recognised labour union, SAPTU, discussing matters of common interest affecting employees. | |
| O3-C9-P7 | Diversity embraced | Diversity embraced | | As per scorecard | Diversity embraced | In keeping with the diversity score card, diversity was celebrated in an activity as part of the Organisational Culture Programme (OCP). | |
| O3-C9-P8 | Gender mainstreaming | Gender mainstreaming embraced | | As per policy | Gender mainstreaming embraced | The Gender perception survey was completed in Q2. Focus groups were held in Q4. These groups indicated that whilst there is no need for a specific gender policy, further emphasis must be placed on gender at the recruitment stage in the context of employment equity. In addition, management in general needs to be sensitised on gender mainstreaming. This will be dealt as part of the new EE Plan 2010-2015. | |
| **Programme O3-C10: Internal Communications** | | | | | | | |
| O3-C10-P1 | Internal communica-tions | | Relevant and accurate | Annually | Internal communications strategy | The internal communications strategy was revised to be in line with the new corporate identity, OCP and brand ambassador programmes. | |
| | Achiever Awards | Acknowledge-ment of achievers | Enhance performance | Half yearly & annual event | Achiever Awards event | The National Achiever Awards event was held in December 2009 and was incorporated in the National Leadership Summit. The report and pictures were placed on AI. | |
| | Internal staff survey | | Informative and relevant | Annually | Internal communications survey | A brand perception survey including nternal communications programmes was conducted. The findings were discussed at the Leadership Summit. An internal omnibus survey was conducted in Q4. | |

## 3.2 REPORT ON PERFORMANCE

### 3.2.1 STRATEGIC PLANNING CYCLE

The Board of Legal Aid South Africa approved the Legal Aid South Africa Strategic Plan 2009-2012 in September 2008. To implement this strategic plan and to realise the vision and mission of Legal Aid South Africa, annual Business Plans are developed and executed. This Strategic Plan is reviewed annually to assess changes in the external and internal environment in which Legal Aid South Africa operates. The changes in the external and internal context are taken into account in the development of each year's business plan in order to ensure that Legal Aid South Africa remains relevant and responsive.

The Vision of Legal Aid South Africa is "A South Africa in which the rights enshrined in The Constitution are protected and defended to ensure peace and justice for all."

And the Mission is "To be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner."

This is to be achieved through the following outcomes and strategies:

#### OUTCOMES

**Outcome 1**: An effective and efficient justice sector as is realisable within Legal Aid South Africa's mandate.

**Outcome 2:** Justice for all focusing on the poor and vulnerable ensuring that the Constitution is a living document for all the people in SA.

**Outcome 3:** A sustainable, efficient and independent organisation fulfilling its mandate.

**Outcome 4:** Citizens and communities committed to and living by the values of our Constitution.

#### STRATEGIES 2009 – 2012

**Client and Community, Stakeholder and Shareholder**

i. To deliver client focused and quality legal services
ii. To educate/inform communities about the constitution and legal-aid services
iii. To contribute to building an efficient and effective justice system and JCPS cluster and to implement the actions emanating from the CJS review
iv. To timeously account to parliament and the executive authority so that they are well informed of Legal Aid South Africa strategy and programmes

**Finance and Sustainability**

v. To maintain a sustainable and financially stable Legal Aid South Africa
vi. To ensure good governance
vii. To develop a strong and recognised Legal Aid South Africa brand(nationally and internationally)

**Business Processes (Internal)**

viii. To review business processes (delivery & support services) and ensure that they are efficient, effective, economical, client-centred, professional and independent
ix. To develop accurate, relevant and timeous management information to inform business planning and decisions
x. To ensure sound financial management and sustainable business practices

## PART E: FINANCE SUSTAINABILITY (INTERNAL)

| Projects | | KPI's | | | Outputs | Performance Against KPI's | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **STRATEGY F1: TO MAINTAIN A SUSTAINABLE AND FINANCIALLY STABLE LEGAL AID SA** | | | | | | | |
| **Programme F1-S2: Lobby for new funds to ensure financial stability of Legal Aid SA** | | | | | | | |
| F1-S2-P1 | Lobby National Treasury and Government for funding | Additional MTEF allocation | MTEF application focusing on service delivery. | 1 | MTEF Funding applications | A motivation for the request for additional funding was approved by the Board in July 2010 and submitted to National Treasury and the Department of Justice. New funding amounting to R20 million was approved for increase in legal capacity. | |
| F1-S2-P2 | Investigate additional funding sources to increase delivery - Harness additional donor funds | Donor funding | Donor funding motivation focusing on legal work/human rights matters | 1 generic donor funding motivation/ frame work | Donor Funders schedule with contact details | Potential donor funders were identified with full contact details. The purposes for which this funding could be used was also identified, and a draft donor funding proposal was prepared. | Funding applications were not submitted to donors as those potential donors who fund justice, legal or human rights issues only accept solicited applications. Other donors indicated that they fund specific projects that are not related to the objectives to Legal Aid SA, eg, HIV/Aids related issues. |
| **Programme F1-C1: Ensure sustainable practices** | | | | | | | |
| F1-C1-P1 | Business Continuity | Business Continuity Plan maintenance Schedule | Track and update time frames,major changes, and advise Man/Exco on possible impacts | Updated BCP maintenance schedule | Business Continuity Plan | The revised Business Continuity framework was approved by the Board in February 2011. The Business Continuity Maintenance Schedule was considered and endorsed by the Management Executive Committee in January 2011. | |
| | | Crisis Management Plan | Evaluate business operations | Interventions responded to when necessary | Evaluation report | There were no business or operational crises experienced in the FY 2010/11. The Crisis Management plan was reviewed as part of the Business Continuity plan. | |
| **STRATEGY F2: TO ENSURE GOOD GOVERNANCE** | | | | | | | |
| **Programme F2-C2: Maintain good governance practices** | | | | | | | |
| F2-C2-P1 | Good Governance - Board | Board and Board Committees which function effectively | Efficient Professional | As per Board meeting schedule | Board and Committees convened and held timeously | 1 Board meeting and 4 Board Committee meetings were held in May 2010, July 2010, November 2010 and February 2011 in accordance with the meeting schedule. A Strategic Plan Annual Review 2011-2012 workshop and Board meeting was held on 18 September 2010. | |
| | Effective functioning Board and Committees providing strategic leadership | Functioning Board and Board Committees | Accessible and up to date Board records including minutes | | Efficient and accessible Board record management system | The Board records for Quarter 1, 2, 3 and 4 are filed in hard copy in the Board Secretariat and electronically on the U-drive. | |

## 6.3 Detailed Annual Performance Report 2011/2012

A detailed report on performance against the approved 2011/12 Business Plan follows:

### Table 8: Annual Performance Report

### Client and Community, Stakeholder and Shareholder

| Projects | | KPIs/Outcomes | | | Outputs | Performance against KPI's | Variance in performance against target |
|---|---|---|---|---|---|---|---|
| | | Measures | Targets | | | | |
| | | | Quality | Quantity | | | |
| **Objective I: Clients and community with increased access to independent legal services (civil and criminal)** | | | | | | | |
| **STRATEGY I: TO DELIVER CLIENT-FOCUSED AND QUALITY LEGAL SERVICES** | | | | | | | |
| **Programme P1: To deliver quality legal services** | | | | | | | |
| P1-1 | Legal Training and Development | Training programmes for legal practitioners and paralegals | | CAs - 36 hrs; PAs - 24 hrs; {Subject to Support requirements Assessment} | Legal Training targets achieved | Training was arranged by Justice Centres, Regional Offices and the Legal Development Department. The training target for CAs, PAs and HCU-PAs was exceeded. | |
| P1-2 | Quality assessment and monitoring | Provision and maintenance of quality legal services to clients | Quality target CAs ≥ 80%; PAs ≥ 85%; HCU PAs ≥ 90%; JC legal managers ≥ 90% | CAs: All Q-ly; PA - Support needs profile: H: Quarterly; M: Bi-annually; L: Annually | Practitioner legal quality assessed (File and Court Observations) | All regions achieved their quality targets for CAs, PAs, HCU PAs, civil practitioners and legal management staff. The average quality assessment performed by the Legal Quality Assurance Unit results were as follows:<br><br>CAs: File reviews was 86% and court observations was 89%. This was 6% and 9% higher than the targets for the respective categories of assessment. PAs: File reviews was 90% and court observations was 93%. This was 5% and 8% higher than the targets for the respective categories of assessment. HCU PAs: File reviews was 93% and court observations was 95%. This was 3% and 5% higher than the targets for the respective categories of assessment.<br><br>Civil practitioners: File reviews was 89% and court observations was 95%. This was 4% and 10% higher than the targets for the respective categories of assessment.<br><br>Legal management staff: File reviews was 91% and court observations was 94%. This was 1% and 4% higher than the targets for the respective categories of assessment. | |

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**Transcript of Judge Dunstan Mlambo's introduction of his Legal Aid South Africa team to the Portfolio Committee of the Department of Justice and Constitutional Development on Monday 11 October 2010**

http//:www.pmg.org.za/node/23447

2 minutes 40 seconds into audio recording

In terms of the team that has come with me to this presentation, I'll start with the man sitting in front here, our technical guru for the day for us is Mr Cobus Esterhuizen. He's the justice centre executive for our Cape Town Justice Centre. And then on my right here is Ms Vidhu Vedalankar, the Chief Executive Officer of LASA. On my left I've got Ms Noni Mgadza, she is head of Internal Audit for Impala Platinum but she's (question from a committee member) Noni Mgadza, Mgadza ja, she's head of Internal Audit for Impala Platinum but she's also chairperson of the Audit Committee of the Board of LASA. And then I've got Judge Edwin Molahleli, he's a judge in the Labour Court as well as the deputy chairman of Remco, that is a board committee that looks at human capital for LASA ( interjecting question from committee member). I sit in judgment over his judgment (prolonged laughter from Judge Mlambo). Then next to Judge Molahleli I've got Jerry Makokoane, he's the Chief of Operations Officer of LASA. And next to Mr Makokoane I've got Ms Rebecca Hlabatau, she's the Chief Financial Officer of LASA. And then next to Rebecca I've got Mr Brian Nair, he is the National Operations Executive of LASA. And then behind us, the big man sitting there, that's Mr Thembile Mtati, I think it's also his first time to come to this committee, he was our ROE in the Eastern Cape but he's now, um, heading our Corporate Legal Services section at national office, what do you call that section Vidhu, (our Corporate Services), Corporate Services ja. And then I've got Mr Pieter du Rand, he's chief director, Department of Justice but also the Director-General's representative on the Board of LASA. And then I'm missing one other member, ah there, the two members sitting at the back there, starting with Cordelia on the left, she's Ms Cordelia Robertson, she's the ROE of the Western Cape and Northern Cape and then next to her we've got Mr Elroy MacHelm, he is the Justice Centre Executive for our Malmesbury Justice Centre. I think that concludes the team that has come with me.

Ends 5 minutes 55 seconds into audio recording

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- PC Justice: Implementation Plan & Costing of Prevention & Combating of Trafficking in Persons Bill
- PC Justice: Briefing by Department & National Prosecuting Authority on their Annual Reports

# PC Justice: Briefing by Legal aid South Africa on their Annual Report

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Justice and Constitutional Development

**Date of Recording:** 11 Oct 2010

**Length:** 144:28 minutes (16.53 MB)
**Format:** MP3 Mono 11kHz 16Kbps (CBR)

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 30 June 2010
## (Excluding frozen positions)

| Region/Office | Filled | Vacant | Budget | % |
|---|---|---|---|---|
| EC | 360 | 22 | 382 | 94% |
| FSNW | 348 | 20 | 368 | 95% |
| GP | 438 | 25 | 463 | 95% |
| KZNMP | 386 | 15 | 401 | 96% |
| LPMP | 297 | 19 | 316 | 94% |
| WCNC | 441 | 24 | 465 | 95% |
| National Office | 167 | 33 | 200 | 84% |
| | 2,437 | 158 | 2,595 | 94% |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 30 June 2010 (Excluding frozen positions)

| Category | Position | EC | | | | FSNW | | | | GP | | | | KZN | | | | LPMP | | | | WCNC | | | | Grand Total | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % |
| Service Delivery | CA | 88 | 3 | 91 | 97% | 83 | 4 | 87 | 95% | 132 | 5 | 137 | 96% | 116 | 3 | 119 | 97% | 67 | 1 | 68 | 99% | 113 | 5 | 118 | 96% | 599 | 21 | 620 | 97% |
| | CA - Civil | 3 | 2 | 5 | 60% | 4 | 1 | 5 | 80% | 5 | | 5 | 100% | 5 | | 5 | 100% | | 4 | 4 | 0% | 2 | 4 | 6 | 33% | 19 | 11 | 30 | 63% |
| | HCU Manager | 4 | | 4 | 100% | 1 | 1 | 2 | 50% | | 2 | 2 | 0% | 2 | | 2 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | 10 | 3 | 13 | 77% |
| | JCE | 8 | 1 | 9 | 89% | 12 | 1 | 13 | 92% | 7 | 1 | 8 | 88% | 7 | 1 | 8 | 88% | 9 | | 9 | 100% | 9 | 1 | 10 | 90% | 52 | 5 | 57 | 91% |
| | JCE 2 | 1 | | 1 | 100% | | | | #DIV/0! | 2 | | 2 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | 2 | | 2 | 100% | 7 | 0 | 7 | 100% |
| | PA - Children Civil | 4 | 1 | 5 | 80% | 3 | | 3 | 100% | 5 | | 5 | 100% | 4 | | 4 | 100% | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | 19 | 2 | 21 | 90% |
| | PA - Children Criminal | 3 | 1 | 4 | 75% | 2 | | 2 | 100% | 2 | | 2 | 100% | 2 | | 2 | 100% | | 1 | 1 | 0% | 5 | | 5 | 100% | 14 | 2 | 16 | 88% |
| | PA - Civil | 13 | | 13 | 100% | 13 | 2 | 15 | 87% | 14 | | 14 | 100% | 11 | | 11 | 100% | 9 | 2 | 11 | 82% | 15 | | 15 | 100% | 75 | 4 | 79 | 95% |
| | PA - Commercial Crime | 1 | | 1 | 100% | 1 | | 1 | 100% | 5 | | 5 | 100% | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 9 | 0 | 9 | 100% |
| | PA - DC | | 2 | 2 | 0% | 1 | | 1 | 100% | 1 | 2 | 3 | 33% | 1 | 1 | 2 | 50% | 9 | 1 | 10 | 90% | | | | #DIV/0! | 12 | 6 | 18 | 67% |
| | PA - Estates Children | | | | #DIV/0! | 1 | | 1 | 100% | | | | #DIV/0! | | | | #DIV/0! | | | | #DIV/0! | | | | #DIV/0! | 1 | 0 | 1 | 100% |
| | PA - HCU | 17 | 1 | 18 | 94% | 11 | | 11 | 100% | 19 | 1 | 20 | 95% | 9 | 2 | 11 | 82% | 8 | | 8 | 100% | 15 | 1 | 16 | 94% | 79 | 5 | 84 | 94% |
| | PA - HCU Civil | 2 | 1 | 3 | 67% | 1 | | 1 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 7 | 1 | 8 | 88% |
| | PA - JC | 91 | 3 | 94 | 97% | 83 | 9 | 92 | 90% | 105 | 8 | 113 | 93% | 95 | 3 | 98 | 97% | 79 | 3 | 82 | 96% | 120 | 6 | 126 | 95% | 573 | 32 | 605 | 95% |
| | PA - Labour | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 1 | | 1 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 4 | 0 | 4 | 100% |
| | Paralegal | 24 | | 24 | 100% | 23 | | 23 | 100% | 25 | 2 | 27 | 93% | 22 | 1 | 23 | 96% | 26 | | 26 | 100% | 28 | 1 | 29 | 97% | 148 | 4 | 152 | 97% |
| | Paralegal - ATP | 3 | | 3 | 100% | 1 | | 1 | 100% | 3 | | 3 | 100% | 2 | | 2 | 100% | 1 | | 1 | 100% | 2 | | 2 | 100% | 12 | 0 | 12 | 100% |
| | Paralegal - HCU | 2 | 1 | 3 | 67% | 2 | | 2 | 100% | | | | #DIV/0! | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 7 | 1 | 8 | 88% |
| | Principal Attorney | 4 | | 4 | 100% | 2 | | 2 | 100% | 6 | | 6 | 100% | 3 | | 3 | 100% | 1 | | 1 | 100% | 6 | 1 | 7 | 86% | 22 | 1 | 23 | 96% |
| | Principal Attorney - Civil | 1 | | 1 | 100% | 1 | 1 | 2 | 50% | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | | 2 | 2 | 0% | | 2 | 2 | 0% | 5 | 6 | 11 | 45% |
| | Senior Litigator | 1 | 1 | 2 | 50% | 2 | | 2 | 100% | 2 | | 2 | 100% | | 2 | 2 | 0% | | | | #DIV/0! | 1 | | 1 | 100% | 6 | 3 | 9 | 67% |
| | SPA | 14 | 1 | 15 | 93% | 19 | 1 | 20 | 95% | 20 | 1 | 21 | 95% | 18 | | 18 | 100% | 15 | | 15 | 100% | 19 | | 19 | 100% | 105 | 3 | 108 | 97% |
| | SPA - HCU | | | | #DIV/0! | 1 | | 1 | 100% | 2 | | 2 | 100% | | | | #DIV/0! | | | | #DIV/0! | 1 | | 1 | 100% | 4 | 0 | 4 | 100% |
| | SPA - SO | 8 | 1 | 9 | 89% | 6 | | 6 | 100% | 4 | | 4 | 100% | 11 | | 11 | 100% | 14 | 3 | 17 | 82% | 14 | 1 | 15 | 93% | 57 | 5 | 62 | 92% |
| Service Delivery Total | | 293 | 19 | 312 | 94% | 273 | 20 | 293 | 93% | 362 | 23 | 385 | 94% | 317 | 13 | 330 | 96% | 241 | 18 | 259 | 93% | 360 | 22 | 382 | 94% | 1846 | 115 | 1961 | 94% |
| Support | Admin Manager | 10 | | 10 | 100% | 13 | | 13 | 100% | 10 | | 10 | 100% | 10 | | 10 | 100% | 9 | | 9 | 100% | 11 | 1 | 12 | 92% | 63 | 1 | 64 | 98% |
| | Admin Officer | 28 | 1 | 29 | 97% | 25 | | 25 | 100% | 28 | 1 | 29 | 97% | 27 | 1 | 28 | 96% | 15 | | 15 | 100% | 32 | | 32 | 100% | 155 | 3 | 158 | 98% |
| | Admin Officer - Civil | 2 | 1 | 3 | 67% | 14 | | 14 | 100% | 4 | | 4 | 100% | | | | #DIV/0! | 5 | | 5 | 100% | 7 | 1 | 8 | 88% | 32 | 2 | 34 | 94% |
| | Executive PA | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | HRM | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Office Assistant | 2 | 1 | 3 | 67% | 8 | | 8 | 100% | 8 | 1 | 9 | 89% | 12 | | 12 | 100% | 11 | | 11 | 100% | 11 | | 11 | 100% | 52 | 2 | 54 | 96% |
| | Reception/Typist | 11 | | 11 | 100% | 7 | | 7 | 100% | 8 | | 8 | 100% | 10 | | 10 | 100% | 9 | 1 | 10 | 90% | 9 | | 9 | 100% | 54 | 1 | 55 | 98% |
| | Regional Accountant/Admin | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Regional Communications Manager | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Regional Legal Manager | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Regional SPA | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | SE | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 1 | | 1 | 100% | 6 | 0 | 6 | 100% |
| | Secretary | 7 | | 7 | 100% | 1 | | 1 | 100% | 11 | | 11 | 100% | 3 | 1 | 4 | 75% | | | | #DIV/0! | 4 | | 4 | 100% | 26 | 1 | 27 | 96% |
| Support Total | | 67 | 3 | 70 | 96% | 75 | 0 | 75 | 100% | 76 | 2 | 78 | 97% | 69 | 2 | 71 | 97% | 56 | 1 | 57 | 98% | 81 | 2 | 83 | 98% | 424 | 10 | 434 | 98% |
| Grand Total | | 360 | 22 | 382 | 94% | 348 | 20 | 368 | 95% | 438 | 25 | 463 | 95% | 386 | 15 | 401 | 96% | 297 | 19 | 316 | 94% | 441 | 24 | 465 | 95% | 2270 | 125 | 2395 | 95% |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - EC REGION - 30 June 2010 (Excluding frozen positions)

| Category | Position | Aliwal North | | Aliwal North Total | Butterworth | | Butterworth Total | East London | | East London Total | Eastern Cape | | Eastern Cape Total | Graaff-Reinet | | Graaff-Reinet Total | Grahamstown | | Grahamstown Total | King Williams Town | | King Williams Town Total | Mthatha | | Mthatha Total | Port Elizabeth | | Port Elizabeth Total | Queenstown | | Queenstown Total | Uitenhage | | Uitenhage Total | Grand Total | | | Per Budgeted Position |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | % Filled |
| Service Delivery | CA | 2 | | 2 | 10 | | 10 | 10 | | 10 | | | | 1 | | 1 | 7 | | 7 | 7 | | 7 | 19 | 1 | 20 | 19 | 2 | 21 | 6 | | 6 | 7 | | 7 | 88 | 3 | 91 | 97% |
| | CA - Civil | | | | | | | | | | | | | | | | | | | | | | 2 | | 2 | 1 | 2 | 3 | | | | | | | 3 | 2 | 5 | 60% |
| | HCU Manager | | | | | | | | | | | | | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | | | | 4 | 0 | 4 | 100% |
| | JCE | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | | 1 | 1 | | | | 1 | | 1 | 1 | | 1 | 8 | 1 | 9 | 89% |
| | JCE 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | 1 | 0 | 1 | 100% |
| | PA - Children Civil | | | | | | | 1 | | 1 | | | | | | | 1 | | 1 | | | | | 1 | 1 | 1 | | 1 | | | | 1 | | 1 | 4 | 1 | 5 | 80% |
| | PA - Children Criminal | | | | | | | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | 1 | 1 | 2 | | | | | | | 3 | 1 | 4 | 75% |
| | PA - Civil | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 2 | | 2 | 3 | | 3 | 1 | | 1 | 1 | | 1 | 13 | 0 | 13 | 100% |
| | PA - Commercial Crime | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | PA - DC | | | | | | | | | | | | | | | | | | | | | | | 2 | 2 | | | | | | | | | | 0 | 2 | 2 | 0% |
| | PA - HCU | | | | | | | | | | | | | | | | 4 | | 4 | 3 | 1 | 4 | 6 | | 6 | 4 | | 4 | | | | | | | 17 | 1 | 18 | 94% |
| | PA - HCU Civil | | | | | | | | | | | | | | | | 1 | | 1 | | | | | 1 | 1 | 1 | | 1 | | | | | | | 2 | 1 | 3 | 67% |
| | PA - JC | 4 | | 4 | 8 | | 8 | 10 | | 10 | | | | 6 | | 6 | 7 | | 7 | 10 | | 10 | 12 | 3 | 15 | 15 | | 15 | 14 | | 14 | 5 | | 5 | 91 | 3 | 94 | 97% |
| | PA - Labour | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | Paralegal | 2 | | 2 | 1 | | 1 | 2 | | 2 | | | | 3 | | 3 | 2 | | 2 | 2 | | 2 | 5 | | 5 | 3 | | 3 | 2 | | 2 | 2 | | 2 | 24 | 0 | 24 | 100% |
| | Paralegal - ATP | | | | | | | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | 1 | | 1 | | | | | | | 3 | 0 | 3 | 100% |
| | Paralegal - HCU | | | | | | | | | | | | | | | | 1 | | 1 | | 1 | 1 | | | | 1 | | 1 | | | | | | | 2 | 1 | 3 | 67% |
| | Principal Attorney | | | | | | | | | | | | | | | | 1 | | 1 | | | | 2 | | 2 | 1 | | 1 | | | | | | | 4 | 0 | 4 | 100% |
| | Principal Attorney - Civil | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 1 | 0 | 1 | 100% |
| | Senior Litigator | | | | | | | | | | | | | | | | | | | | | | | 1 | 1 | 1 | | 1 | | | | | | | 1 | 1 | 2 | 50% |
| | SPA | 1 | | 1 | 1 | | 1 | 2 | | 2 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | 1 | 1 | 2 | 3 | | 3 | 1 | | 1 | 1 | | 1 | 14 | 1 | 15 | 93% |
| | SPA - SO | 1 | | 1 | | | | | | | | | | 2 | | 2 | 1 | | 1 | | | | 3 | | 3 | 1 | | 1 | | 1 | 1 | | | | 8 | 1 | 9 | 89% |
| Service Delivery Total | | 12 | 0 | 12 | 22 | 0 | 22 | 29 | 0 | 29 | 0 | 0 | 0 | 15 | 0 | 15 | 29 | 0 | 29 | 27 | 2 | 29 | 55 | 11 | 66 | 61 | 5 | 66 | 25 | 1 | 26 | 18 | 0 | 18 | 293 | 19 | 312 | |
| % Recruited | | | | 100% | | | 100% | | | 100% | | | #DIV/0! | | | 100% | | | 100% | | | 93% | | | 83% | | | 92% | | | 96% | | | 100% | | | 94% | |
| Support | Admin Manager | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 10 | 0 | 10 | 100% |
| | Admin Officer | 1 | | 1 | | | | 2 | | 2 | 2 | 1 | 3 | 1 | | 1 | 4 | | 4 | 3 | | 3 | 4 | | 4 | 7 | | 7 | 3 | | 3 | 1 | | 1 | 28 | 1 | 29 | 97% |
| | Admin Officer - Civil | | | | | | | 1 | | 1 | | | | | | | | | | | | | | 1 | 1 | 1 | | 1 | | | | | | | 2 | 1 | 3 | 67% |
| | Executive PA | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | HRM | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Office Assistant | | | | 1 | | 1 | 1 | | 1 | | | | | | | | | | | | | | 1 | 1 | | | | | | | | | 2 | 1 | 3 | 67% |
| | Reception/Typist | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 11 | 0 | 11 | 100% |
| | Regional Accountant/Admin | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional Communications Manager | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional Legal Manager | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional SPA | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | ROE | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Secretary | | | | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | 2 | | 2 | 2 | | 2 | | | | 1 | | 1 | 7 | 0 | 7 | 100% |
| Support Total | | 3 | 0 | 3 | 4 | 0 | 4 | 6 | 0 | 6 | 9 | 1 | 10 | 3 | 0 | 3 | 6 | 0 | 6 | 6 | 0 | 6 | 8 | 2 | 10 | 13 | 0 | 13 | 5 | 0 | 5 | 4 | 0 | 4 | 67 | 3 | 70 | |
| % Recruited | | | | 100% | | | 100% | | | 100% | | | 90% | | | 100% | | | 100% | | | 100% | | | 80% | | | 100% | | | 100% | | | 100% | | | 96% | |
| Grand Total | | 15 | 0 | 15 | 26 | 0 | 26 | 35 | 0 | 35 | 9 | 1 | 10 | 18 | 0 | 18 | 35 | 0 | 35 | 33 | 2 | 35 | 63 | 13 | 76 | 74 | 5 | 79 | 30 | 1 | 31 | 22 | 0 | 22 | 360 | 22 | 382 | |
| % Recruited | | | | 100% | | | 100% | | | 100% | | | 90% | | | 100% | | | 100% | | | 94% | | | 83% | | | 94% | | | 97% | | | 100% | | | 94% | |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - KZN REGION - 30 June 2010 (Excluding frozen positions)

| Category | Position | Durban | | Durban Total | Empangeni | | Empangeni Total | Kwazulu Natal | | Kwazulu Natal Total | Ladysmith | | Ladysmith Total | Newcastle | | Newcastle Total | Pietermaritzburg | | Pietermaritzburg Total | Pinetown | | Pinetown Total | Port Shepstone | | Port Shepstone Total | Umlazi | | Umlazi Total | Verulam | | Verulam Total | Vryheid | | Vryheid Total | | | Grand Total | Per Budgeted Position |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | % Filled |
| Service Delivery | CA | 17 | 1 | 18 | 13 | | 13 | | | | 5 | 1 | 6 | 12 | | 12 | 15 | | 15 | 15 | | 15 | 7 | | 7 | 11 | | 11 | 13 | 1 | 14 | 8 | | 8 | 116 | 3 | 119 | 97% |
| | CA - Civil | 2 | | 2 | | | | | | | | | | | | | 3 | | 3 | | | | | | | | | | | | | | | 5 | 0 | 5 | 100% |
| | HCU Manager | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | JCE | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | | 1 | 1 | 1 | | 1 | 1 | 1 | 7 | 1 | 8 | 88% |
| | JCE 2 | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | PA - Children Civil | 1 | | 1 | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | 1 | | 1 | | | | | | | 4 | 0 | 4 | 100% |
| | PA - Children Criminal | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | PA - Civil | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 11 | 0 | 11 | 100% |
| | PA - Commercial Crime | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | PA - DC | | | | | | | | | | | | | | | | | | | | | | | 1 | 1 | | | | | | | 1 | | 1 | 1 | 1 | 2 | 50% |
| | PA - HCU | 3 | 2 | 5 | | | | | | | | | | | | | 6 | | 6 | | | | | | | | | | | | | | | 9 | 2 | 11 | 82% |
| | PA - HCU Civil | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | PA - JC | 18 | 1 | 19 | 14 | | 14 | | | | 4 | | 4 | 5 | | 5 | 11 | 1 | 12 | 6 | | 6 | 12 | 1 | 13 | 12 | | 12 | 8 | | 8 | 5 | | 5 | 95 | 3 | 98 | 97% |
| | PA - Labour | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Paralegal | 2 | | 2 | 3 | | 3 | | | | 2 | | 2 | 2 | | 2 | 3 | 1 | 4 | 1 | | 1 | 3 | | 3 | 2 | | 2 | 2 | | 2 | 2 | | 2 | 22 | 1 | 23 | 96% |
| | Paralegal - ATP | | | | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | Paralegal - HCU | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Principal Attorney | 1 | | 1 | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 3 | 0 | 3 | 100% |
| | Principal Attorney - Civil | 1 | | 1 | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | Senior Litigator | | 1 | 1 | | | | | | | | | | | | | | 1 | 1 | | | | | | | | | | | | | | | 0 | 2 | 2 | 0% |
| | SPA | 3 | | 3 | 2 | | 2 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | 2 | | 2 | 1 | | 1 | 2 | | 2 | 2 | | 2 | 2 | | 2 | 18 | 0 | 18 | 100% |
| | SPA - SO | | | | 2 | | 2 | | | | 1 | | 1 | 1 | | 1 | 2 | | 2 | | | | 2 | | 2 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 11 | 0 | 11 | 100% |
| | Service Delivery Total | 56 | 5 | 61 | 39 | 0 | 39 | 0 | 0 | 0 | 15 | 1 | 16 | 23 | 0 | 23 | 52 | 3 | 55 | 26 | 0 | 26 | 27 | 2 | 29 | 30 | 1 | 31 | 28 | 1 | 29 | 21 | 0 | 21 | 317 | 13 | 330 | |
| | % Recruited | | | 92% | | | 100% | | | #DIV/0! | | | 94% | | | 100% | | | 95% | | | 100% | | | 93% | | | 97% | | | 97% | | | 100% | | | 96% | |
| Support | Admin Manager | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 10 | 0 | 10 | 100% |
| | Admin Officer | 7 | | 7 | 2 | | 2 | 2 | 1 | 3 | 1 | | 1 | 1 | | 1 | 3 | | 3 | 3 | | 3 | 1 | | 1 | 3 | | 3 | 3 | | 3 | 1 | | 1 | 27 | 1 | 28 | 96% |
| | Executive PA | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | HRM | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Office Assistant | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 3 | | 3 | 1 | | 1 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 12 | 0 | 12 | 100% |
| | Reception/Typist | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 10 | 0 | 10 | 100% |
| | Regional Accountant/Admin | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional Communications | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional Legal Manager | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Regional SPA | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | ROE | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Secretary | 1 | 1 | 2 | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | 3 | 1 | 4 | 75% |
| | Support Total | 10 | 1 | 11 | 6 | 0 | 6 | 9 | 1 | 10 | 4 | 0 | 4 | 4 | 0 | 4 | 9 | 0 | 9 | 6 | 0 | 6 | 5 | 0 | 5 | 6 | 0 | 6 | 6 | 0 | 6 | 4 | 0 | 4 | 69 | 2 | 71 | |
| | % Recruited | | | 91% | | | 100% | | | 90% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 97% | |
| | Grand Total | 66 | 6 | 72 | 45 | 0 | 45 | 9 | 1 | 10 | 19 | 1 | 20 | 27 | 0 | 27 | 61 | 3 | 64 | 32 | 0 | 32 | 32 | 2 | 34 | 36 | 1 | 37 | 34 | 1 | 35 | 25 | 0 | 25 | 386 | 15 | 401 | |
| | % Recruited | | | 92% | | | 100% | | | 90% | | | 95% | | | 100% | | | 95% | | | 100% | | | 94% | | | 97% | | | 97% | | | 100% | | | 96% | |

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - WCNC REGION - 30 June 2010 (Excluding frozen positions)

| Category | Position | Athlone | | Athlone Total | Bellville | | Bellville Total | Caledon | | Caledon Total | Cape Town | | Cape Town Total | Colesberg | | Colesberg Total | George | | George Total | Kimberley | | Kimberley Total | Malmesbury | | Malmesbury Total | Stellenbosch | | Stellenbosch Total | Upington | | Upington Total | Vredendal | | Vredendal Total | Western Cape & Northern Cape | | Western Cape & Northern Cape Total | Worcester | | Worcester Total | | | Grand Total | Per Budgeted Position |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | Filled | Vacant | Budget | % Filled |
| Service Delivery | CA | 27 | | 27 | 16 | | 16 | 4 | | 4 | 11 | | 11 | | | | 5 | | 5 | 10 | 4 | 14 | 4 | | 4 | 17 | | 17 | 8 | | 8 | 4 | | 4 | | | | 7 | 1 | 8 | 113 | 5 | 118 | 96% |
| | CA - Civil | | | | | | | | | | | 2 | 2 | | | | | | | 2 | | 2 | | | | | 2 | 2 | | | | | | | | | | | | | 2 | 4 | 6 | 33% |
| | HCU Manager | | | | | | | | | | 1 | | 1 | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | JCE | | | | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | | 1 | 1 | 9 | 1 | 10 | 90% |
| | JCE 2 | 1 | | 1 | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | PA - Children Civil | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | 2 | 0 | 2 | 100% |
| | PA - Children Criminal | 1 | | 1 | | | | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | | | | | | | | | | 1 | | 1 | | | | | | | 5 | 0 | 5 | 100% |
| | PA - Civil | 2 | | 2 | 1 | | 1 | 1 | | 1 | 3 | | 3 | 1 | | 1 | 2 | | 2 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | | | 1 | | 1 | 15 | 0 | 15 | 100% |
| | PA - Commercial Crime | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | PA - HCU | | | | | | | | | | 12 | | 12 | | | | | | | 3 | 1 | 4 | | | | | | | | | | | | | | | | | | | 15 | 1 | 16 | 94% |
| | PA - HCU Civil | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | PA - JC | 19 | | 19 | 11 | 1 | 12 | 5 | | 5 | 8 | 1 | 9 | 8 | | 8 | 23 | | 23 | 12 | 1 | 13 | 6 | | 6 | 9 | | 9 | 7 | 2 | 9 | 6 | 1 | 7 | | | | 6 | | 6 | 120 | 6 | 126 | 95% |
| | PA - Labour | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Paralegal | 3 | | 3 | 1 | | 1 | 2 | | 2 | 2 | | 2 | 3 | | 3 | 4 | | 4 | 2 | | 2 | 2 | 1 | 3 | 1 | | 1 | 4 | | 4 | 3 | | 3 | | | | 1 | | 1 | 28 | 1 | 29 | 97% |
| | Paralegal - ATP | 1 | | 1 | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | 2 | 0 | 2 | 100% |
| | Paralegal - HCU | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | Principal Attorney | 2 | | 2 | | | | | | | 2 | | 2 | | | | | 1 | 1 | 1 | | 1 | | | | 1 | | 1 | | | | | | | | | | | | 6 | 1 | 7 | 86% |
| | Principal Attorney - Civil | | | | | | | | | | | | | | | | | | | | 1 | 1 | | | | | 1 | 1 | | | | | | | | | | | | 0 | 2 | 2 | 0% |
| | Senior Litigator | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | SPA | 3 | | 3 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 2 | | 2 | 1 | | 1 | 1 | | 1 | 2 | | 2 | 2 | | 2 | 1 | | 1 | | | | 2 | | 2 | 19 | 0 | 19 | 100% |
| | SPA - HCU | | | | | | | | | | 1 | | 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | 0 | 1 | 100% |
| | SPA - SO | 1 | | 1 | | | | 1 | | 1 | | | | 2 | | 2 | 3 | | 3 | | 1 | 1 | 2 | | 2 | | | | 3 | | 3 | 2 | | 2 | | | | | | | 14 | 1 | 15 | 93% |
| Service Delivery Total | | 60 | 0 | 60 | 33 | 1 | 34 | 15 | 0 | 15 | 48 | 3 | 51 | 16 | 0 | 16 | 41 | 1 | 42 | 36 | 8 | 44 | 16 | 1 | 17 | 32 | 3 | 35 | 26 | 2 | 28 | 20 | 1 | 21 | 0 | 0 | 0 | 17 | 2 | 19 | 360 | 22 | 382 | |
| % Recruited | | | | 100% | | | 97% | | | 100% | | | 94% | | | 100% | | | 98% | | | 82% | | | 94% | | | 91% | | | 93% | | | 95% | | | #DIV/0! | | | 89% | | | 94% | |
| Support | Admin Manager | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | 1 | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 11 | 1 | 12 | 92% |
| | Admin Officer | 7 | | 7 | 2 | | 2 | 1 | | 1 | 5 | | 5 | 1 | | 1 | 3 | | 3 | 3 | | 3 | 1 | | 1 | 3 | | 3 | 1 | | 1 | 1 | | 1 | 3 | | 3 | 1 | | 1 | 32 | 0 | 32 | 100% |
| | Admin Officer - Civil | 2 | | 2 | | 1 | 1 | | | | 2 | | 2 | | | | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | | | | | | | | | 7 | 1 | 8 | 88% |
| | Executive PA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | HRM | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | Office Assistant | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | 11 | 0 | 11 | 100% |
| | Reception/Typist | | | | | | | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | 1 | | 1 | | | | 1 | | 1 | | | | 1 | | 1 | 9 | 0 | 9 | 100% |
| | Regional Accountant/Admin | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | Regional Communications Manager | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | Regional Legal Manager | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | Regional SPA | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | RCM | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 1 | | 1 | | | | 1 | 0 | 1 | 100% |
| | Secretary | | | | 1 | | 1 | | | | 1 | | 1 | | | | 1 | | 1 | 1 | | 1 | | | | | | | | | | | | | | | | | | 4 | 0 | 4 | 100% |
| Support Total | | 11 | 0 | 11 | 5 | 1 | 6 | 4 | 0 | 4 | 11 | 0 | 11 | 3 | 1 | 4 | 7 | 0 | 7 | 8 | 0 | 8 | 3 | 0 | 3 | 7 | 0 | 7 | 4 | 0 | 4 | 4 | 0 | 4 | 10 | 0 | 10 | 4 | 0 | 4 | 81 | 2 | 83 | |
| % Recruited | | | | 100% | | | 83% | | | 100% | | | 100% | | | 75% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 100% | | | 98% | |
| Grand Total | | 71 | 0 | 71 | 38 | 2 | 40 | 19 | 0 | 19 | 59 | 3 | 62 | 19 | 1 | 20 | 48 | 1 | 49 | 44 | 8 | 52 | 19 | 1 | 20 | 39 | 3 | 42 | 30 | 2 | 32 | 24 | 1 | 25 | 10 | 0 | 10 | 21 | 2 | 23 | 441 | 24 | 465 | |
| % Recruited | | | | 100% | | | 95% | | | 100% | | | 95% | | | 95% | | | 98% | | | 85% | | | 95% | | | 93% | | | 94% | | | 96% | | | 100% | | | 91% | | | 95% | |

# Legal Aid South Africa

## Recruitment Stats - National Summary - December 2010

| | | Eastern Cape | | | | Free State & North West | | | | Gauteng | | | | Kwazulu Natal | | | | Limpopo & Mpumalanga | | | | Western Cape & Northern Cape | | | | Grand Total | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % | Filled | Vacant | Budget | % |
| Service Delivery | CA | 89 | 2 | 91 | 98 % | 87 | 1 | 88 | 99 % | 131 | 6 | 137 | 96 % | 113 | 6 | 119 | 95 % | 66 | 3 | 69 | 96 % | 116 | 2 | 118 | 98 % | 602 | 20 | 622 | 97 % |
| | CA - Civil | 5 | | 5 | 100 % | 5 | | 5 | 100 % | 4 | 1 | 5 | 80 % | 5 | | 5 | 100 % | 3 | 1 | 4 | 75 % | 5 | 1 | 6 | 83 % | 27 | 3 | 30 | 90 % |
| | HCU Manager | 4 | | 4 | 100 % | 1 | 1 | 2 | 50 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 1 | | 1 | 100 % | 2 | | 2 | 100 % | 12 | 1 | 13 | 92 % |
| | JCE | 8 | 1 | 9 | 89 % | 13 | | 13 | 100 % | 8 | | 8 | 100 % | 8 | | 8 | 100 % | 9 | | 9 | 100 % | 10 | | 10 | 100 % | 56 | 1 | 57 | 98 % |
| | JCE 2 | 1 | | 1 | 100 % | | | 0 | - | 2 | | 2 | 100 % | 2 | | 2 | 100 % | | | 0 | - | 2 | | 2 | 100 % | 7 | 0 | 7 | 100 % |
| | PA - Children Civil | 5 | | 5 | 100 % | 2 | 1 | 3 | 67 % | 4 | 1 | 5 | 80 % | 4 | | 4 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 19 | 2 | 21 | 90 % |
| | PA - Children Criminal | 3 | | 3 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | | | 0 | - | 4 | 1 | 5 | 80 % | 13 | 1 | 14 | 93 % |
| | PA - Civil | 13 | | 13 | 100 % | 14 | 1 | 15 | 93 % | 14 | | 14 | 100 % | 10 | 1 | 11 | 91 % | 8 | 3 | 11 | 73 % | 14 | 2 | 16 | 88 % | 73 | 7 | 80 | 91 % |
| | PA - Commercial Crime | 1 | | 1 | 100 % | 1 | | 1 | 100 % | 5 | | 5 | 100 % | 1 | | 1 | 100 % | | | 0 | - | 1 | | 1 | 100 % | 9 | 0 | 9 | 100 % |
| | PA - DC | 4 | | 4 | 100 % | 5 | | 5 | 100 % | 3 | | 3 | 100 % | 3 | | 3 | 100 % | 12 | 1 | 13 | 92 % | | | 0 | - | 27 | 1 | 28 | 96 % |
| | PA - Estates Children | | | 0 | - | 1 | | 1 | 100 % | | | 0 | - | | | 0 | - | | | 0 | - | | | 0 | - | 1 | 0 | 1 | 100 % |
| | PA - HCU | 18 | | 18 | 100 % | 11 | | 11 | 100 % | 18 | 2 | 20 | 90 % | 9 | 2 | 11 | 82 % | 7 | 1 | 8 | 88 % | 14 | 2 | 16 | 88 % | 77 | 7 | 84 | 92 % |
| | PA - HCU Civil | 3 | | 3 | 100 % | 1 | | 1 | 100 % | 1 | | 1 | 100 % | 2 | | 2 | 100 % | | | 0 | - | 1 | | 1 | 100 % | 8 | 0 | 8 | 100 % |
| | PA - Justice Centre | 92 | 1 | 93 | 99 % | 84 | 3 | 87 | 97 % | 104 | 9 | 113 | 92 % | 91 | 6 | 97 | 94 % | 75 | 5 | 80 | 94 % | 120 | 5 | 125 | 96 % | 566 | 29 | 595 | 95 % |
| | PA - Labour | 1 | | 1 | 100 % | | | 0 | - | 1 | | 1 | 100 % | 1 | | 1 | 100 % | | | 0 | - | 1 | | 1 | 100 % | 4 | 0 | 4 | 100 % |
| | Paralegal | 23 | 1 | 24 | 96 % | 23 | | 23 | 100 % | 23 | 3 | 26 | 88 % | 21 | 1 | 22 | 95 % | 26 | | 26 | 100 % | 29 | | 29 | 100 % | 145 | 5 | 150 | 97 % |
| | Paralegal - ATP | 3 | | 3 | 100 % | 1 | | 1 | 100 % | 3 | | 3 | 100 % | 2 | | 2 | 100 % | 0 | 1 | 1 | 0 % | 2 | | 2 | 100 % | 11 | 1 | 12 | 92 % |
| | Paralegal - HCU | 3 | | 3 | 100 % | 2 | | 2 | 100 % | | | 0 | - | 1 | 1 | 2 | 50 % | 1 | | 1 | 100 % | 1 | | 1 | 100 % | 8 | 1 | 9 | 89 % |
| | Principal Attorney | 4 | | 4 | 100 % | 2 | | 2 | 100 % | 6 | | 6 | 100 % | 3 | | 3 | 100 % | 1 | | 1 | 100 % | 5 | 1 | 6 | 83 % | 21 | 1 | 22 | 95 % |
| | Principal Attorney - Civil | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 3 | | 3 | 100 % | 13 | 0 | 13 | 100 % |
| | Senior Litigator | 1 | | 1 | 100 % | 2 | | 2 | 100 % | 2 | | 2 | 100 % | 0 | 2 | 2 | 0 % | | | 0 | - | 1 | 1 | 2 | 50 % | 6 | 3 | 9 | 67 % |
| | SPA | 14 | | 14 | 100 % | 18 | 2 | 20 | 90 % | 20 | 1 | 21 | 95 % | 13 | 5 | 18 | 72 % | 15 | | 15 | 100 % | 19 | | 19 | 100 % | 99 | 8 | 107 | 93 % |
| | SPA HCU | | | 0 | - | 1 | | 1 | 100 % | 1 | 1 | 2 | 50 % | | | 0 | - | | | 0 | - | 1 | | 1 | 100 % | 3 | 1 | 4 | 75 % |
| | SPA SO | 9 | | 9 | 100 % | 6 | | 6 | 100 % | 3 | 1 | 4 | 75 % | 11 | | 11 | 100 % | 15 | 2 | 17 | 88 % | 15 | | 15 | 100 % | 59 | 3 | 62 | 95 % |
| | Service Delivery Total | 306 | 5 | 311 | 98 % | 284 | 9 | 293 | 97 % | 359 | 25 | 384 | 93 % | 306 | 24 | 330 | 93 % | 243 | 17 | 260 | 93 % | 368 | 15 | 383 | 96 % | 1866 | 95 | 1961 | 95 % |

**FW: BRINK / LEGAL AID SA**

Mike Wilkinson [mc@wilkinson.co.za]

You forwarded this message on 2013/07/05 04:33 PM.
This message was sent with High importance.

Sent: Fri 2013/07/05 03:47 PM
To: 'Anthony Brink'

Message | Copy of A Brink Projection Jan 2010 to June 2013.pdf (191 KB) | Recruitment For All Regions Dec 2010.pdf (35 KB) | Recruitment as at 30 June 2010 with frozen removedx.pdf (99 KB)

**From:** Matimba Hlungwane [mailto:MatimbaH@legal-aid.co.za]
**Sent:** 05 July 2013 02:35 PM
**To:** mc@wilkinson.co.za
**Cc:** Solly Sekgota; Thembile Mtati; makganes@vodamail.co.za
**Subject:** BRINK / LEGAL AID SA
**Importance:** High

**MC WILKINSON & COMPANY**

Per Email:

Dear Sirs

**RE: BRINK / LEGAL AID SA**

The above matter and your letter of the 28th June 2013 refer.

# LEGAL AID SOUTH AFRICA

## RECRUITMENT STATS - NATIONAL SUMMARY - 30 June 2010
(Excluding frozen positions)

| Region/Office | Filled |
|---|---|
| EC | 360 |
| FSNW | 348 |
| GP | 438 |
| KZNMP | 386 |
| LPMP | 297 |
| WCNC | 441 |
| National Office | 167 |
| | 2,437 |