

**Justice and Constitutional Development Portfolio Committee
31 March 2011
Legal Aid South Africa Strategic Plan and budget 2011**

Chairperson: Mr L Landers (ANC)

Documents handed out

Legal Aid presentation: Strategic plans, Annual Performance Plan and budget 2011/12

**Audio recording
(pm)**

Summary

Legal Aid South Africa (LASA) briefed the Committee on its strategic plans, annual performance plans and budget for 2011/12. The strategies were grouped into various categories, and the programmes indicated how the strategies would be implemented. 94% of legal aid was rendered through Justice Centres employing lawyers in-house, which participated in case flow management teams in each region, as well as through 4% Judicare instructions to private practitioners. LASA was attempting to develop a strong and recognised brand. It placed great emphasis on its own financial strength and stability. It would constantly review its business processes to ensure that they remained relevant, had sought external reviews of the Board, and aimed to maintain its unqualified audit status of the past nine years. It was aware that it needed an expanded national footprint, to staff its 128 offices, and the programmes and initiatives to develop the staff were outlined.

The Annual Performance Plan illustrated strong links between objectives and programmes. LASA emphasised that quality of service was central to every programme. It tried to adopt a risk-based approach that sought to match services to staff with specific requirements. LASA had achieved 90% coverage of regional courts, and 80% coverage in district courts. It was trying to improve the practitioner to court ratio. LASA also aimed to increase its uptake of civil matters, by 10%, which was a high target. Its new call centre, handling up to 2 000 calls a day, increased its coverage and profile, and its paralegals also assisted at other advice centres and correctional service centres. It had set targets for completion of matters in the courts. All standard operating procedures in place were reviewed regularly, and great emphasis was placed on relevant and accurate management information and reporting. LASA also tried to give support to developing systems in other countries. The budget was tabled, with a line-item breakdown and comparisons to previous years. The biggest portion of the budget went to salaries and related costs, and direct expenditure was directly related to service delivery. In 2011/12, LASA had an allocation about 4% higher than the previous year, as some costs of 2010/11 were not carried forward. However this would result in negative real-term growth, since Public Service salary agreements and contract escalations were higher than the 4% budget increase. There were insufficient allocations for full implementation of the Child Justice Act. LASA usually managed to spend around 99.5% of its budget, and was expecting to do so in the 2010/11 financial year.

All Members expressed their congratulations both on the achievements and the report. They questioned possible overlaps with the work of other entities, particularly in training, asked whether LASA would be providing services to farm dwellers and proposed that this Committee discuss the issue with the Portfolio Committee on Rural Development and Land Reform. Members felt that the LASA could do more to promote itself, enquired about the vacancy rate, wondered if there was cooperation with the Legal Resources Centre on class action work, and where any recovery of costs in civil matters was reflected in the financial statements. Members noted the recent Supreme Court of Appeal judgment in favour of LASA, on the provision of legal aid to those who did not qualify under the means test, but who could be assisted and asked to contribute to costs. Members sought clarity on the annual salary adjustments and executive management remuneration. They questioned the anomalies in the location of courts and offices, asked whether the means test was the only criterion and called for an explanation of "substantial injustice" provisions. They also asked if LASA accepted all types of work, questioned whether salaries paid to candidate attorneys were now standardised across entities, and asked if LASA had a presence in deep rural areas, how the call centre operated, and its requirements. Members noted the impressive

numbers of cases handled, and also expressed appreciation that each of the 400 000 cases cost the taxpayer about R2 800, or less if the call centre advice was taken into account. Members also discussed how LASA set its targets. Finally, Members expressed their congratulations to Judge Mlambo on his appointment as Judge-President of the Labour Court, and recorded their good wishes to Mr Peter Brits, a long-standing LASA employee, on his move to a new position.

Minutes

Legal Aid South Africa (LASA) Strategic Plan and budget 2011/12

Judge Dunstan Mlambo, Chairperson, Legal Aid South Africa, congratulated Mr Landers on his appointment as Chairperson of this Committee.

He noted that the 2011/12 strategic plan of Legal Aid South Africa (LASA) represented the final year of a three-year plan, and that this would be followed by a five-year plan. The strategic plan was reviewed annually. He tabled the objectives, strategy and programmes (see attached document) and explained that the strategies were grouped into specific components, relating to broad overall topics, such as clients, community, stakeholders and shareholders, and financial sustainability. LASA followed the “SMART approach” as demanded by the Auditor-General (AG), and all strategies were achievable and time-bound.

In the area of clients, community, stakeholders and shareholders, LASA sought to provide increased access, and timeous legal services, with special focus on vulnerable groups, and an emphasis on quality. The programmes listed represented the way in which the strategies would be implemented. Legal Aid sought to provide education to clients and communities about the Constitution and legal aid services. The third and fourth strategies focused on the courts, and LASA’s contribution to the Justice, Crime Prevention and Security Cluster (JCPS), by way of trying to assist with improved functioning of the courts, improved co-ordination with stakeholders, advocacy and ensuring independence. Judge Mlambo explained that LASA’s Justice Centres (JC) were linked to case flow management teams that ran in each region, to ensure coordination between stakeholders. LASA sought to maintain timeous accountability to Parliament and the Minister. Programmes under the fifth to seventh strategy were aimed at maintaining a sustainable and financially stable LASA, with good governance, and developing a strong and recognised Legal Aid brand. He emphasised that LASA took financial strength and stability very seriously.

Judge Mlambo then outlined that the next group of strategies looked to business groupings and programmes to ensure that the business scheme of LASA remained effective, efficient, and professional, and that its business processes were sustainable. LASA maintained that the Justice Centres remained the best way to deliver services. LASA would constantly review the business processes to ensure that they remained on track, and relevant to delivery. LASA issued exhaustive Quarterly Reports, which were tabled to the Board and the Minister. It aimed to maintain its unqualified audit status.

The next component group of strategies dealt with internal matters of employees and support systems. LASA needed to have an expanded national footprint that would enable it to deliver, and support others in the delivery of legal services. LASA constantly looked at staffing and business models. It also wished to develop the competencies of the staff, through training programmes. Its attempts to have an enabling environment to deliver legal services meant that it had policies and targets around matters such as hours in court, research hours, and consulting hours for its legal staff. Human management and practices looked at the different needs of different staff groups. LASA aimed to remain an employer of choice, by having a people-centred organisational culture. It would support its staff also by ensuring that its IT platform remained responsive to the needs of employees, and encouraged and paid for its staff to go on courses and do research.

Judge Mlambo summarised that all these strategies were achievable, relevant and allowed LASA to perform correctly.

Ms Vidhu Vedalankar, Chief Executive Officer, LASA, noted that the Annual Performance Plan (APP), also referred to as the Business Plan, expanded on the strategies. While the document she would present was not fully comprehensive, and she did not intend to go into every programme in detail, she would be happy to answer any questions around the key deliverables that were set out here. This document, for the

first time, established the links between the objectives and the programmes. She emphasised that providing quality of service was central to every programme, assured both by constant monitoring and assessment, and by interventions to improve where any deficiencies were highlighted.

Ms Vedalankar explained how the targets were then derived from the outputs. She noted the use of the phrase “risk-based”, saying that this was used to emphasise that one size did not fit all. LASA would look at the support needed by staff – a “high-risk” practitioner, with little experience, would need greater support, including greater intervention by managers. This approach made better use of resources. She explained that lower targets, based on a scorecard, were set for candidate attorneys, in view of the fact that they would serve LASA under shorter-term contracts. The Internal Audit departments would independently assess quality, aiming to review 50% of all practitioners across all justice centres in each year. These reviews would then be compared to management’s independent assessments of quality.

Ms Vedalankar noted that LASA now had a presence at all criminal courts, and had 90% coverage of regional courts, with 80% coverage in district courts, with a practitioner present for 4 days a week. LASA was trying to improve the practitioner to court ratio. It achieved this through mixed delivery: Justice Centres (JC) were delivering 94% of services, while Judicare was delivering around 5%.

She said that LASA wanted to increase its civil matters by 10% from the previous year. She conceded that the targets for civil work had not been achieved in the past, but LASA still preferred to aim for high targets and strive to improve. It had also introduced a call centre, and had increased its marketing to achieve full capacity, up to around 2 000 calls a day. Although not all vacancies in the call centres had been filled initially, and LASA preferred to wait to assess the need, it had now decided to do so. LASA gave advice to the public, largely through paralegals, and hoped to increase this by 10%. Paralegals would also visit advice offices elsewhere and correctional service centres.

It was noted that some of the targets around cases had not been reached because they were linked to pro bono agreements and arrangements with the law societies and General Council of the Bar (GCB). LASA measured the turn around time of cases, and this linked to the case backlog project. LASA aimed to complete matters within six months in the District Court, nine months in the Regional Courts and twelve months in the High Court.

Ms Vedalankar said she did not wish to present all the slides exhaustively, but moved to slide 16, which dealt with how LASA worked in the Criminal Justice System (CJS) and its review. This would include screening of matters before they were put on the roll, case flow meetings at national level, and tabling of the Legal Aid Guide and annual reports to Parliament.

Ms Vedalankar said that although LASA could not determine the amounts it received, it would report and account fully for what it had received, and justify continued funding. LASA constantly sought to improve in its own handling of finances to ensure sustainability. Plans and measures were in place to ensure good governance. To ensure good functioning of the Board, an external evaluation was being done, and the resulting report would help the Board to improve its own governance. Brand management would ensure that services were provided, and that trust and relationships were built to improve its local and international status.

She highlighted the business processes in slide 23. LASA would ensure that standard operating procedures were in place, were reviewed regularly and were reported upon. Relevant and accurate management information and sound financial management would improve on its work, and enable good reporting to Parliament and the Minister. Ms Vedalankar explained that the “national footprint” related to the infrastructure of LASA. Shortly before the global recession, LASA had completed a three-year expansion process. There were currently 128 sites through which it reached clients, and expansion of services was also achieved through the call centre.

LASA sought to increase the capacity of its legal practitioners by giving them support through training, but also expected them to take responsibility for self- training through on-line self-learning models. Other programmes were also offered, covering aspects such as and self-learning models would be made

available on-line. LASA had other programmes such as organisational culture and wellness programmes, and tried to achieve standardised delivery. IT support was an important aspect.

LASA, as well as offering legal aid in South Africa, also tried to give support to developing systems in other countries, and was frequently visited by other jurisdictions wanting to study its models.

Ms Rebecca Hlabatau, Chief Financial Officer, LASA, tabled various slides on the budget. The first showed comparisons of new funding, case backlogs (funding from previous years), and total government grants, between 2010 and 2013. She noted that the amounts shown included allocations for Occupation Specific Dispensation (OSD) adjustments. She noted that about 94% of LASA's work was done through its in house legal practitioners, so the bulk of its budget (around 72%) went to salaries and related costs. 70% of its staff were lawyers. Direct expenditure was directly related to service delivery, including Judicare.

She then tabled slides showing the link between the strategies and budgets and components of the strategy. About R833 million was allocated to the strategies aimed at client, community, stakeholders and shareholders. She noted that the contribution to building a system was directly related to the backlog, and this had an allocation of R30 million. She noted that some programmes drew their resources from more than one programme – for instance, accounting to Parliament would be reflected under salaries, printing, travelling and other costs. She said that developing a strong LASA included the building of the brand and marketing, and R9.7 million was allocated to this. About R2.5 million was related to the business processes, including ensuring sound financial management and sustainable business processes. She noted that compensation of support staff related to those not directly involved in delivery of legal services, so this would include administrative and IT staff, for instance. R156.9 million was allocated to “additional” programmes that supported the running of LASA, and this included matters such as depreciation, office rental, travel and other costs.

Ms Hlabatau tabled a comparison of line-item budgets for 2010/11 and 2011/12, which showed a 4% increase, which had included the backlog for OSD funding, not carried forward to the 2011/12 year. Direct expenditure decreased by 16%, because the allocations for 2010/11 included once-off funding, such as World Cup funding, and implementation of the Child Justice Act. The reasons for the variances were shown.

Ms Hlabatau then described the challenges relating to funding. The government grants increase was about 6%, but annual salary adjustments were higher. Contract escalation, such as office rental, security and cleaning costs, amounted to about 12% increase, which again was higher than the macro-increase. This resulted in negative real-term growth. There was inadequate funding to implement the Child Justice Act.

She noted that over the last seven years, LASA had spent around 99% of its budget, and the as-yet-unaudited figures for the financial year ended 31 March 2011 indicated that it would spend about 99.6%. LASA had nine years of unqualified audit reports, with unqualified reports with no matters of emphasis for the past five years. All the AG's recommendations were implemented within the agreed timeframes.

Discussion

Mr Jeffrey commented LASA on yet another comprehensive and impressive report, noting that its reporting on quality control was most encouraging. He asked if the Committee's Budgetary Review and Recommendation Report (BRRR) had been sent to LASA.

Ms Vedalankar said that she had only just received it.

Mr Jeffrey appealed to the Chairperson that the Committee should, in future, ensure that this was set out to all entities. He noted that the Committee should be emphasising the quarterly reports as well. He said that the BRRR had made some recommendations in relation to OSD funding, additional funding for civil work and clarity on Child Justice Act implementation, but this could not be addressed in this meeting.

Mr Jeffrey wondered if there were potential overlaps with the work of other entities. The South African Human rights Commission (SAHRC) and the Department of Justice and Constitutional Development (DOJ) were already running education campaigns on the Constitution, and LASA indicated it was doing something similar. He urged that any public awareness on this issue should be coordinated. He also noted LASA's work in advice offices, but noted that the DOJ had received money from the European Union (EU) to set up advice offices through civil society structures, and asked if there were links.

Ms Vedalankar clarified that LASA was not setting up separate advice offices but was linking into existing offices, by sending paralegals and legal practitioners to provide extra legal capacity. A coordinating body of advice officers might be linking with DOJ on the EU funding. Educating the public about the Constitution was not really the responsibility of LASA, and it would not run direct campaigns but built an understanding of those rights as it marketed its own services. LASA was considering how best to cooperate with the SAHRC and others on specific programmes; although it did not have the capacity to run its own strategy, it would support others where it could.

Mr Jeffrey asked if there had been any developments on the provision of legal services to farm dwellers, noting that a private firm had been asked by the Department of Rural Development and Land Reform (DRDLR) to set up a roster of private practitioners to handle this a while ago, after some concerns about LASA's ability and quality of services.

Judge Mlambo said that he was not aware of any further developments. LASA had not been approached again, after the appointment of attorneys Cheadle Thompson, and he was not aware how many farm dwellers they had reached. Land claims seemed to be receiving less media attention.

Ms Vedalankar added that LASA had read a report that this contractual arrangement was now coming to an end, and had written formally to the Director General of the DRDLR to investigate cooperation with LASA. There had been no suggestion made to the LASA that the DRDLR's decision was based on perceived lack of quality. LASA believed that it could achieve more, for less, than private firms, and would welcome support from this Committee in engaging with the Minister.

Mr Jeffrey suggested that it might be useful to discuss this with the Portfolio Committee on Rural Development and Land Reform. He could not recall exactly where the comments about quality had emanated, but perhaps it would be useful for LASA to consider employing more specialist people at a central level to advise and train practitioners. The State was obliged to provide legal support on a number of issues around land rights and evictions. He did not think that this issue needed to be included in the Committee Report, but that discussions should be held.

Mr Jeffrey noted the references to the brand and publishing, said it was unfortunate that no journalists were present, and commented that perhaps LASA should have its own media officers or promote itself more.

Judge Mlambo responded that LASA had invited all media houses to the launch of Legal Aid Live, and LASA was receiving some attention in law report programmes, radio initiatives and other matters. However, he took the point.

Mr Jeffrey enquired about the vacancy rate, generally, and at professional assistant level.

Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts being filled, although it had then held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.

Mr Jerry Makokoane, Chief Operations Officer: LASA, added that the vacancy rate for professional staff was about 5.5%, for support staff it was 4% and there were no vacancies at executive level.

Mr S Swart (ACDP) noted that LASA had a high standard. He thought that the “impact legislation” in civil work was commendable. He noted, however, that the Legal Resources Centre (LRC) undertook similar class-action work, and he asked if LASA had discussed this with LRC, particularly as LASA had said that the number of applications received determined whether it could do the work.

Judge Mlambo said that there were discussions with the LRC. LASA funded some of this work through Judicare, and also had taken over one of the LRC’s senior lawyers.

Mr Swart asked where any possible recovery of costs in civil actions was reflected.

Ms Hlabatau noted that this appeared under “other income” on page 143 of the report. R28 000 was recovered in the last year.

Judge Mlambo informed the Committee that LASA had recently won a Supreme Court of Appeal matter in which it had appealed against a lower court ruling that it must give legal aid to those who did not necessarily meet the means test. The Supreme Court of Appeal had ruled that a person who did not qualify for the means test, but who could not fund his or her full costs for a protracted case, could be assisted but asked to contribute. LASA was looking at amending the provisions of the Legal Aid Guide, and was sensitising judicial officers to this point, asking that they order contributions where appropriate. LASA had always believed that it was unsustainable to require LASA to fund everything, and this ruling would assist it in stretching its budget further.

Mr Swart noted the financial constraints, but asked why annual salary adjustments were higher than increases in the overall allocation.

Ms Vedalankar said this was because the Public Sector Bargaining Council’s agreed settlement was higher.

Mr Swart questioned the Executive Management remuneration. Whilst he was aware of the need to retain highly skilled people, he called for explanation of what appeared in the “other” column, which cumulatively amounted to a fairly large percentage of the expenses.

Ms Hlabatau explained that Senior Management Staff could choose how to structure their salary, and that “other” would include matters such as the amounts allocated to, for instance, a thirteenth cheque, medical aid, pension, cash allowances or retirement. The total, including the “other” was informed by the Public Service salary levels.

Mr J Sibanyoni (ANC) congratulated Judge Mlambo on his appointment as Judge-President of the Labour Court, and expressed his gratitude that through Judge Mlambo’s interventions, many of the past problems with the former Legal Aid Board and late payments had been overcome. However, he asked that some delays in payments to practitioners in December 2010 should be investigated. He was pleased that LASA was now taking civil work.

Mr Sibanyoni said that there was still a problem with the former cross-border boundaries, as some LASA offices were based in places that were difficult for communities to access, since they may have to drive about 60 kilometres to the relevant office although another centre was geographically closer. This was particularly a problem in Witbank.

Judge Mlambo agreed that there were some anomalies. For instance, although King Williams Town was closest to the Bisho High Court, people preferred to institute action in the Grahamstown High Court, whilst a person committing a criminal offence in East London might be tried in Port Elizabeth, not Bisho. This was a hangover from the apartheid days, and it had cost implications for LASA. The Witbank issue had been discussed and hopefully should be resolved.

Mr Brian Nair, National Operations Director, LASA, added that 95% of Justice Centres did cover courts in that province, except where the court in another province might be closer. LASA tried to ensure that,

particularly in civil work, clients would not have to travel, especially for consultations. Justice Centres worked in clusters, so a client could visit the closest office and be advised by phone or by visiting practitioners. The DOJ was implementing rationalisation of courts, which should deal with the problems outlined by Judge Mlambo, and ensure that process was served at the court closest to the community.

Mr Sibanyoni noted that legal aid could be offered where failure to do so might result in “substantial injustice”, and asked if this implied that the means test was not the only qualifier, or if the nature of the case was also taken into account. He said that if LASA was to grant assistance on a wide scale, irrespective of means, this could result in legal practitioners being deprived of their client base.

Mr Mlambo said that the LASA Board had not changed its approach to applying the means test, other than instances that Mr Nair could outline.

Mr Nair added that LASA would apply the means test to Regional and High Court matters. LASA did not grant assistance for certain cases in the District Courts, as listed in the Legal Aid Guide, including traffic offences. The Justice Centre could, however, give legal assistance in cases where the local head office believed that substantial injustices would occur otherwise – for instance, where a particular court was handing down inappropriate sentences to those who were unrepresented. He reiterated that a person who did not qualify under the means test, but who also did not have the financial resources to run a long trial, could be asked to contribute some costs, on a monthly basis, to LASA for its help. The Board was considering introducing a contributions policy to deal with this in a more standardised way.

Mr Sibanyoni asked if candidate attorneys employed by the National Prosecuting Authority (NPA) were better paid than those articulated to LASA.

Judge Mlambo said that OSD had been introduced to correct the situation, which was now equalised. Those who left LASA for NPA generally left for higher positions.

Mr Nair added that candidate attorneys, who were of course on contract for the duration of their articles, might move to the NPA to accept a position as an intern prosecutor, hoping that they would then be appointed permanently.

Ms S Shope-Sithole (ANC) also congratulated Judge Mlambo on his appointment and his impressive approach to financial issues. She asked if LASA had an office in Bushbuckridge.

Judge Mlambo replied that there was indeed a satellite office there, and that expansion outwards from Bushbuckridge probably justified establishment of a Justice Centre being established, but financial constraints were preventing this at the moment.

Ms Shope-Sithole asked that reports in terms of the Public Finance Management Act should be sent through regularly from LASA.

Judge Mlambo said that the reports were sent to the Minister, but that LASA would in future also send them to the Committee.

Ms D Schafer (DA) asked for an explanation of the percentage targets for quality of practitioners.

Ms Vedalankar said that LASA had standard instruments, or scorecards, to measure quality, such as court and file work, and these varied for the different categories of staff. These could be made available. There was substantial work done in preparing these and linking them to outputs.

Ms Schafer asked if anyone could phone LASA advice offices, or whether there was a means test for this.

Mr Nair noted that originally the toll-free number had played a recorded message stating that the advice was limited to people earning less than a certain amount, but it was found that asking people to choose an option to confirm this, and access an agent, was not practical. Currently, anyone could phone in for

advice, irrespective of their means, but would need to pass the means test in order to take the matters further through a Justice Centre.

Dr M Oriani-Ambrosini (IFP) asked how many clients had been served during 2010/11.

Mr Nair said the case figures were expected to be around 400 000 at the end of the financial year, compared to about 416 000 in the previous year, and should increase over the following years.

The Chairperson asked if the breakdown between civil and criminal matters was available.

Mr Nair said that at the end of the third quarter of 2010/11, 93% criminal and 7% civil matters were handled.

Dr Oriani-Ambrosini said that the figure of 400 000 cases was quite impressive, and noted that this meant about R2 800 was expended on each case. He congratulated LASA on its achievement.

Judge Mlambo added that the figure of R2 800 per case would drop if the legal advice was also factored in. This illustrated LASA's contention that the Justice Centre model was the best for South Africa.

Mr Jeffrey asked how civil matters were logged.

Mr Nair explained that they would be logged when the client was assessed as qualifying for legal aid and the file was opened. Most civil matters did not proceed through the full trial process, as most were resolved through mediation or negotiation.

Dr Oriani-Ambrosini noted that the performance of NPA was assessed by conviction rates, and asked how LASA was assessed.

The Chairperson pointed out that the National Director of Public Prosecutions had stressed that some people were prepared to use their positions to "stretch out" legal proceedings, knowing full well that LASA was limited in how far it could take matters.

Mr Jeffery said that the NPA could set targets for convictions, because this body decided what cases to prosecute. LASA was faced with a responsibility, but had no choice whether to take on the case.

Judge Mlambo said that the number of convictions or acquittals was not a true measure of effectiveness. He pointed out that those who had the resources would not approach LASA, but LASA was constitutionally obliged to deal with even cases that were unlikely to succeed. LASA was proud of its intervention and pointed out that it achieved acquittals, withdrawals or reduced sentences, in about 25% of the matters.

Judge Mlambo thanked Members for their guidance and comment, and hoped that Legal Aid would continue to be relevant to South African society. He agreed that there was much still to be done in reaching the rural poor, but LASA had realised, from comments made by traditional leaders, that it must also establish satellite offices in far-flung areas. LASA maintained its commitment to rendering legal aid services.

Judge Mlambo noted that he had asked to be released from his Chairmanship of the LASA. He also noted that a long-serving employee, Mr Peter Brits, would be leaving LASA, and would be sorely missed.

The Chairperson congratulated Judge Mlambo on his appointment at the Labour Court, and LASA on its excellent performance. The Committee would miss Judge Mlambo if he were no longer to chair the LASA Board. He also asked that the Committee's best wishes be conveyed to Mr Brits for his new endeavours.

The meeting was adjourned.