

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.

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.