**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 427**

**DATE OF QUESTION: 25 FEBRUARY 2022**

**DATE OF SUBMISSION: 11 MARCH 2022**

**Prof C T Msimang (IFP) to ask the Minister of Justice and Correctional Services:**

1. In view of media reports on his address at the Constitutional Rights Conference in Cape Town in February 2022, during which he stated that the mandate of Legal Aid South Africa (LASA) will be expanded to assist victims of evictions, what steps have been taken by his department to extend the statutory scope of LASA;
2. Whether there has been any investigation by his department on the additional capacity that may be required by LASA to fulfil the additional services; if not, why not; if so, what are the relevant details?

**NW492E**

**REPLY:**

1. In view of media reports on his address at the Constitutional Rights Conference in Cape Town in February 2022, during which he stated that the mandate of Legal Aid South Africa (LASA) will be expanded to assist victims of evictions, what steps have been taken by his department to extend the statutory scope of LASA;
2. **Legal Framework**

In accordance with the Legal Aid SA’s mandate and the objects as provided in the Legal Aid South Africa Act, 39 of 2014:

* 1. Regulation 17 determines as follows in respect of the granting of legal aid in terms of the Restitution of Land Rights Act:

*“17. (1) Legal Aid South Africa may grant legal aid for cases under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) if the Land Claims Commissioner—*

1. *makes funds available to Legal Aid South Africa to fund the matter;*

*or*

*(b) is the opposing party to the litigation or possible litigation.*

*(2) Legal aid may not be granted for the claim lodgement and investigation under the Restitution of Land Rights Act, 1994.”*

1.2. Regulation 18 provides for legal aid for persons affected by the Land Reform Act, the Extension of Security of Tenure Act, and the Prevention of Illegal Occupation and Eviction from Land Act and reads as follows:

*“18. (1) Legal aid may be granted to persons affected by the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) and the Prevention of Illegal Occupation and Eviction from Land Act, 1998 (Act No. 19 of 1998): Provided that the granting of legal aid in terms of this regulation is subject to the making available of funds by the relevant government department.”*

1. **Steps taken**-
   1. In December 2019, the Inter-Ministerial Committee on Land Reform resolved to:

* Establish the Land Court to deal with all land related matters and that Legal Aid SA should be mandated and funded to provided legal representation to persons who are not able to afford their own legal representation; and
* Recommended the transfer of the Land Rights Management Facility (LRMF) from the Department of Agriculture, Land Reform and Rural Development (DALRRD) to Legal Aid SA.
  1. The Land Court Bill was introduced into Parliament on 01 May 2021, and confirmed the intended transfer of the legal representation function to Legal Aid SA at a Ministerial press briefing of 01 March 2021.
  2. A Committee consisting of the Department of Justice and Constitutional Development (DoJ&CD), Department of Agriculture, Land Reform and Rural Development as well as Legal Aid SA was set up in February 2020 to implement the transfer of the Land Rights Management Facility to Legal Aid SA including compliance with the requirements of the PFMA for the transfer of the function.
  3. A Task Team constituted by Legal Aid SA, Land Rights Facility Management of the Department of Agriculture, Land Reform and Rural Development as well as the NS Attorneys started the co-management of the Land Rights Management Facility from July 2021 to ensure a smooth transfer of the functions to Legal Aid SA on 01 January 2022. During this process, an assessment of the land matters handled by LRMF was conducted and this informed the organizational capacity/structure and funding which will be required by Legal Aid SA to deliver the additional mandate.
  4. There are three (3) specific areas where Legal Aid SA is required to take over the function from the LRMF to provide legal services to litigants: Land Restitution, Labour Tenants and ESTA Evictions. Therefore, Legal Aid SA has a mandate to assist farm occupiers, labour tenants and the restitution claimants.
     1. Firstly, Legal Aid SA will instruct private lawyers to oppose evictions and to challenge any constructive evictions;
     2. Second, Legal Aid SA will challenge the constitutionality of any sections in the Extension of Section of Tenure Act 62 of 1997, the Land Reform (Labour Tenants) Act 3 of 1996 and Restitution of Land Rights Act 22 of 1994 that are not in line with the constitution.
     3. Third, Legal Aid SA will work in collaboration with other Departments (such as the Department of Agriculture, Land Reform and Rural Development, Department of Co-operative Governance and Traditional Affairs and Department of Human Settlements) to assist the victims of evictions, labour tenants or land claimants.
  5. Legal Aid SA took over the management of the legal representation component of the Land Rights Management Facility from 01 January 2022.
  6. The Intergovernmental Task team chaired by the DoJ&CD facilitated the transfer of the LRMF and transitional arrangements in accordance with the Department of Public Service and Administration Transfer of Functions and National Treasury Regulations. The Minister of Agriculture Rural Development and Land Reform submitted a motivation to the Minister of Public Service. Administration, with the support of the Minister of Justice and Correctional Services motivating for the transfer of the LRMF Function with the necessary Budget. The Minister of Public Service Administration in February 2022 approved the transfer to the function and submitted same to the Minister of Finance for the implementation of the Budget Transfer. National Treasury is currently in the process of implementing the transfer of the Budget to the baseline budget of Legal Aid SA for 2022/23.

1. Whether there has been any investigation by his department on the additional capacity that may be required by LASA to fulfil the additional services; if not, why not; if so, what are the relevant details?

Investigation on additional capacity and staffing:

1. During the co-management process as indicated in paragraph 2.4 above, the investigation as to the additional capacity was assessed based on the current case load and the outcome of the investigations informed the structure below.
2. The staffing structure currently consists of the Legal Executive: Land Rights Management, 4 Senior Legal Practitioners and Administrative Staff – 1 Personal Assistant, 1 Administrative Officer (Account Capture), 1 Taxation/Verification Officer, 1 Finance Officer and 2 temporary Administrative Officers to assist with capturing R172M in commitments.
3. The Legal Executive: Land Rights Management is responsible for overseeing and monitoring the performance of the Land Rights Management Unit.
4. It is vital to mention at this stage that Legal Aid SA will implement this project in two phases. The first phase as mentioned above, is interim, and the second phase is permanent.
5. Going forward the legal services delivery model for land rights matters will be implemented as follows, and therefore additional capacity will be required
6. Legal Aid SA plans to employ its own staff in each province to undertake land rights matters, as opposed to the judicare system currently used. This will assist in reducing the contingent liability substantially as well as the ongoing costs of outsourcing these matters to practitioners in private practice. It will also assist in ensuring that quality legal services are provided to farm occupiers, labour tenants and land claimants. The legal practitioners from Legal Aid SA will be trained and equipped with the necessary skills and resources. The Legal Aid SA quality assurance programme will be applied in land rights matters.
7. The Provinces, as currently serviced by Legal Aid SA, will be divided into regions. The number of regions to be established and legal practitioners to be allocated to each region is determined by considering the number of active cases inherited by Legal Aid SA from the LRMF, as well as an anticipated increase in the numbers of land claims matters to be referred to the Land Claims Court as indicated by the Chief Land Claims Commissioner.
8. The following table summarises the proposed permanent structure and the staff of the Legal Aid SA Land Rights Management Unit.

| **Item No.** | **Province** | **No. of Regions** | **Staffing Per Region** |
| --- | --- | --- | --- |
|  | Kwa-Zulu Natal | 4 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Junior Practitioner * One (1) Paralegal |
|  | Mpumalanga | 4 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Junior Practitioner * One (1) Paralegal |
|  | Western Cape | 4 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Junior Practitioner * One (1) Paralegal |
|  | Gauteng | 3 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Paralegal |
|  | Eastern Cape | 3 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Paralegal |
|  | Free State | 3 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Paralegal |
|  | Limpopo | 3 | * One (1) Senior Attorney * One (1) Junior Attorney * One (1) Paralegal |
|  | North West | 3 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Paralegal |
|  | Northern Cape | 2 | * One (1) Supervisory Legal Practitioner * One (1) Senior Legal Practitioner * One (1) Paralegal |

**END**