

MPs fear Legal Aid services will be affected by Marikana judgment

WYNDHAM HARTLEY
Parliamentary Editor

CAPE TOWN — MPs fear that last week's court judgment compelling the state to provide legal services for the miners arrested and wounded at Marikana could place the provision of legal services to indigent South Africans at risk as Legal Aid SA does not have the money.

Legal Aid SA is one of the government's major success stories, with a string of clean audit reports. The organisation is one of the few state institutions that regularly gets a clean bill of health from the auditor-general and it also regularly spends 99% of its budget providing legal services to indigent South Africans.

MPs on the justice committee yesterday expressed concern about the high court ruling that the state, through Legal Aid SA, should pay the legal costs of the Marikana miners and the families of those who died.

The decision drew jubilation on Tuesday at the Farlam commission of inquiry into the Marikana massacre, where Association of Mineworkers and Construction Union president Joseph Mathunjwa said the judgment represented a "win for the workers".

Legal Aid SA chairman Judge Dunstan Mlambo told the committee that the board was still studying the judgment and he preferred not to express an opinion until there was collective agreement on the way ahead.

Justice committee chairman Luwellyn Landers said that in the light of the judgment, there was sympathy in the committee for finding additional resources for Legal Aid SA.

Judge Mlambo said the organisation was already involved in the Farlam commission by providing legal assistance to the families of both the miners and the police who died.

Legal Aid SA CEO Vidhu Vedalankar said the services provided so far had cost R2m. If the wounded and arrested miners were added to the families of the dead, it would cost R17m up to the end of the

financial year in March.

"We don't have it and we will have to cut back on other services unless there is extra funding from the government," Ms Vedalankar said.

There was spontaneous applause from the MPs on the committee when chief financial officer Rebecca Hlabatau reported that the 2012-13 financial year was the 12th year in succession that Legal Aid SA had obtained an unqualified audit report, and the eighth in a row that the auditor-general had not emphasised any matters or even raised matters as being potentially problematic.

Ms Hlabatau said Legal Aid SA had spent 98.7% of its budget in the year under review and there had been efficient supply chain management.

Unlike many government entities, Legal Aid SA paid 99% of its creditors within 30 days of invoice date, as specified by the National Treasury.

Introducing the briefing, Judge Mlambo said Legal Aid SA had provided legal assistance to indigent South Africans in 736,697 legal matters.

hartleyw@bdfm.co.za

MARIKANA COPS IN AID FIX

Lucas Ledwaba

LAWYERS representing police officers injured and killed during last year's wildcat strike at Marikana have resubmitted an application for funding to Legal Aid SA.

This comes in the wake of the North Gauteng High Court ruling earlier this week that Legal Aid SA must pay the legal fees of lawyers representing victims of last year's tragedy and victims' families at the Marikana Commission of Inquiry.

Last month, Legal Aid SA turned down an application for funding brought on behalf of Lieutenant Shitumo Simon Baloyi and Pertunia Lepaaku.

The organisation said it was not mandated or funded to provide legal representation for witnesses appearing before commissions of inquiry.

Baloyi was injured during a confrontation with mineworkers at Marikana on August 13 last year.

His two colleagues, warrant officers Sello Lepaaku and Tsietsi Hendrik Moneene, were killed during the incident. Pertunia is Lepaaku's widow. Baloyi and Lepaaku's legal fees were paid for by the Police, Prisons and Civil Rights Union (Popercu) when the commission commenced in October last year.

Popercu withdrew from the commission at the end of May, leaving both without any legal representation.

The union's spokeswoman Theto Mahlakoana said their funds were exhausted as they had allocated money to the process with the understanding that it would last only four months.

She said the South African Police Service was engaged on the issue of legal representation and agreed to cover both

Police lawyers reapply for more funding

Baloyi and Lepaaku's widow.

In August Baloyi brought an urgent high court application in a bid to force the SAPS to pay for a lawyer of his choice.

Baloyi submitted in court papers that the SAPS top brass had informed him he was a "risky and conflicted witness".

He said as a consequence he was never consulted by the SAPS legal team and left out of the list of witnesses. The application was dismissed.

Sowetan understands that one of Baloyi's reasons for seeking his own lawyer is that his version of events contradicts that of the police.

Lawyers for the victims have argued that the

firing of teargas sparked the violent confrontation which led to the deaths of three miners and two police officers.

Baloyi's lawyer Mpho Mofomme said he had written to Legal Aid SA to reconsider funding their participation at the commission.

Legal Aid SA CEO Vidhu Vedalankar said, although they would abide by the court ruling, it should be understood that their brief is to provide legal aid assistance to the indigent and vulnerable. – ledwabal@sowetan.co.za

Legal Aid needs R17m

LEGAL Aid South Africa will need R17-million to honour this week's court judgment ordering it to provide legal representation for the miners injured and arrested at Marikana, it told MPs yesterday.

"The new total of our exposure in Marikana is R17-million if we take into account the judgment," Legal Aid SA CEO Vidhu Vedalankar told Parliament's portfolio committee on justice.

Vedalankar said Legal Aid SA had spent R2-million so far representing the families of the miners who died last year when police opened fire on striking workers at a hill near the platinum mine.

The required amount of R17-million would cover the extended representation until the end of the current financial year, she said.

Vedalankar said the organisation would have to scale back on its support to others who needed legal representation because it did not have the additional funding for Marikana in its R1.4-billion budget.

"We don't have that money, so we will have to cut back on some other items."

The entity was briefing the committee on its annual report. – *Sapa*

Ruling 'not a precedent'

Legal Aid will have to pay Marikana legal fees but judge says the judgment is not binding

DUDU DUBE

LEGAL Aid SA may have been forced to pay the fees of victims' lawyers at the Marikana Commission of Inquiry but that does not mean future commissions can expect the same, as the judgment is not binding.

by the police. The charges were provisionally withdrawn but the outcome of the commission will determine whether they are reinstated or not.

Advocate Dali Mpofu had been representing the miners since the beginning of the commission's proceedings in Octo-

ber last year but three months ago, the miners went to court to demand that he be paid by Legal Aid instead of from their own pockets.

Legal Aid has confirmed it will adhere to the court order and provide funding for the legal representation of the

injured and arrested miners in the commission, but complained that it was beyond its budget.

"This decision will affect the sustainability of the organisation in providing access to justice in criminal and civil legal aid matters for the poor

and vulnerable, unless special funding is forthcoming," Vedalankar said.

"The available funding will be compromised, meaning fewer poor people will receive legal aid in criminal and civil matters."

dudud@thenewage.co.za

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Legal Aid was ordered to pay legal fees of mine workers injured and arrested

The judgment delivered by Judge Tati Makgoka of the North Gauteng High Court was declared “not reportable”.

“I am not dealing here with a law of general application and in any event it being common cause now that the Legal Aid Act does not prohibit the provision of funding in commission proceedings,” the judge said.

Legal Aid was ordered to pay legal fees of about 300 mineworkers who were injured and arrested after being shot by police while on strike in August last year.

Addressing the justice portfolio committee in Parliament yesterday, Legal Aid CEO Vidhu Vedalankar said they would need about R17m to cover the Marikana Commission costs.

The miners were charged with the murder of 34 of their colleagues who were shot dead

Feast of Sacrifice



HOLY FEAST: A small flock of sheep in Lenasia before they are slaughtered as part of the Eid-ul Adha which is celebrated by Muslims to honour the willingness of the prophet Ibrahim to sacrifice his young first-born son, Ismail, as an act of submission to God's command before Allah intervened to provide him with a lamb to sacrifice instead. PICTURE: IHSANHAFFEJEE