

Sustainability and the Delivery of Legal Aid

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In this paper I discuss the **Legal Aid SA sustainability strategy and sustainability vision**, linking approaches to sustainability to the delivery of legal aid and the way in which we can go beyond the delivery of legal aid services to individual clients to increasing access to justice for the poor and vulnerable in a sustainable manner.

What is Sustainability, Why is it important, How is it practiced?

According to the International Institute for Sustainable Development, the most widely used definition of sustainable development is from the *Brundtland Commission's* report *Our Common Future*: “*Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*” The two key concepts contained in this definition, are:

- i. *the concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and*
- ii. *the idea of **limitations** imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.*¹

The idea that is advocated is that we can achieve social, economic and environmental progress within the limits of our earth's natural resources. It is acknowledged that the world's resources are limited and if growth is not managed and sustained we will see an increase in poverty and a decline in the environment. A further point is that individuals, businesses/entities and societies or communities are inter-dependent and that the practices and policy choices of businesses/entities should reflect this inter-dependence as well as promote choices that impact positively or create value beyond the entity to create value for society as a whole. It has been shown that this approach leads to longer term and sustained growth of the entity as well. This means that businesses/entities have to go beyond integrated planning within the realm of the entity itself and to extend this to a holistic and integrated planning approach that extends to and incorporates stakeholders and society as a whole.

Put simply, sustainability is about good business or responsible business practices. It promotes a level of consciousness about how businesses interact with and are dependent on society and therefore leads to businesses looking at how they make a difference or add value. Sustainability presents unique challenges for business and we see many examples of corporates that are positively contributing to society and reducing negative impacts, as they aspire to be good corporate citizens. This has resulted in an increase in the level of awareness and debate around sustainability issues such as poverty, food and water security, climate change. Looking at how

¹ International Institute for Sustainable Development <https://www.iisd.org/sd/>

various businesses are implementing sustainability provides practical examples and ideas for others and strengthens the case for good business practice. By looking at how the work of an entity/business impacts on stakeholders and on society enables one to understand and therefore implement programmes that impact positively on both the entity/business as well as on stakeholders and society. This notion of shared value that benefits the business/entity and society is core to a sustainability approach.

Sustainability and the Delivery of Legal Aid

When we consider the provision of legal aid we inevitably think about access to justice, the needs of the individual clients and poor persons in accessing legal services and sometimes on how this impacts on society as it meets social needs. But is this enough? Surely if we do not have a specific focus on sustainability and identify goals in line with social, economic and environmental factors we are missing an opportunity to expand the value we are creating that will lead to more sustainable futures for our entities as well as for our clients, stakeholders and society.

This is said in light of sustainable development requiring the integration of social, economic and environmental factors in planning, implementation and evaluation. Therefore we need to have a plan for sustainability, implement that plan and be able to evaluate and report on our achievements. Whilst there may not be onerous legislative and reporting requirements for us as legal aid agencies it is important from a good business and governance perspective for us to engage with sustainability in order to have a marked impact acknowledging that our actions impact others i.e. we should do it because it is the right thing to do. A sustainability strategy and plan may begin as a separate process to organisational strategy formulation and planning so that it receives the necessary focus, but should ultimately be mainstreamed so that it is part of organisational strategy and planning. This will make it less onerous for managers and leaders and ensure implementation as part of the implementation of what is seen as the 'core' business or work of the entity.

If we look at legal aid through a sustainability lens, it directs us to think about our relationships with and the impact of our work on our clients and communities, on society, on internal and external stakeholders and about our role in making the justice system more effective and making institutions (in this case legal aid entities) of a democratic state more effective. An effective justice system is also necessary to support a functioning economy and economic growth. Receiving and responding to client and stakeholder inputs and needs, will also channel our delivery responses to be more integrated with other disciplines instead of being solely legal responses to what in fact may be multi-disciplinary problems of clients and communities. Overall this has to result in improving access to justice for a larger number of persons thus creating a more equal and just society.

Legal Aid SA Sustainability Strategy and Sustainability Vision²

Legal Aid South Africa's strategic plan development involves environmental scanning, extensive stakeholder dialogue and formulation of a vision, mission and

² Legal Aid South Africa Sustainability Strategic Plan 2015-2020

values linking to outcomes, objectives and strategies. This planning process highlights important strategic issues that will shape the future of our organisation and sustainability is one of the issues which was highlighted during our Strategic Plan 2015-2020 development.

Informed by the Legal Aid SA Strategic Plan 2015-202, the organisation has developed a sustainability strategy. The process of developing our Sustainability Strategy 2015-2020 provided us with an opportunity to refocus our approach to sustainability to achieve more defined and focused social, economic and to a lesser extent, environmental goals.

So with a firm commitment to building a sustainable organisation, with a capacity for continuance, we looked at the process of embedding sustainability into the business practice to promote sustainable growth through economic, social and environmental value creation. Our mandate tasks us with providing a more equitable society through increasing access to justice, which we view as key to social value creation.

Unlike the corporate sector, we are not bound by regulatory requirements or compliance issues but we do want to be a sustainable entity which is progressive and is guided by best practice in implementing sustainability. We want to be a well-run entity that thinks about the future relevance of our organisation. We want to deliver value for our stakeholders (clients, employees, people affected by our organisation, NGOs, CBOs and partners in the justice cluster) and shareholder (government that provides our funding) which translates into contributing to the improvement of living standards for the communities with whom we work and for our employees, using resources responsibly and treating people fairly. A sustainable business makes both good business and societal sense.³

Therefore, Legal Aid SA has developed a sustainability strategy that is about:

a. The sustainability impact of the organisation

The impact of the organisation's work on the economy, society and the environment in the short, medium and long term.

b. Sustainability of the organisation itself

Improving the maturity level of the organisation so that it operates at optimal levels and can continue to be a going concern in delivery terms as well as financial terms.

Legal Aid SA's Vision 2030 is *A South Africa in which the rights and responsibilities enshrined in the Constitution are realised to ensure equality, justice and a better life for all.*

The Legal Aid Sustainability Strategy develops this Vision further to a broader **SUSTAINABILITY VISION** bringing in the social and societal as well as stakeholder elements, as follows

To make the Constitution a living document for the poor and vulnerable, be a partner to communities and stakeholders and, be a preferred employer of legal professionals

³ Behind the Green Veil Reflections on Sustainability Edited by Claire Thwaites & Cara Boucher in association with the Gordon Institute of Business Science (2013)

thus increasing access to justice, widening the social safety net of communities, building trust in the rule of law and building viable institutions (courts and public entity) of a democratic state.

to positively impact the current and future quality of life of clients and communities.

The Legal Aid SA Sustainability Vision incorporates the following aspirational elements:

- i. to promote a human rights approach to access to justice*
- ii. to be an accepted part of the community's safety net enabling poor and vulnerable persons to access justice which positively improves the quality of their life in the short and long term*
- iii. to contribute to an efficient and effective justice system which builds trust in the rule of law and confidence in the effective functioning of a public institution (that is, courts) of a democratic state*
- iv. to partner with communities and stakeholders to inform the delivery of legal aid services and increase access to justice*
- v. to be the best and preferred employer of legal professionals*
- vi. to develop a segment of a clean, accountable, efficient and effective government/state.*

The following Sustainability Goals and Focus Areas together with the related strategic intent were identified. The sustainability goals are the specific goals or objectives that the organisation sets that define the end state of the actions of the organisation. The focus areas indicate how the entity will achieve the sustainability goals by using the resources available optimally.

The sustainability goals and the strategic intent of each goal are:

Sustainability Goal 1: Improved access to justice impacting on current and future quality of life of clients

Strategic intent (of Goal 1): (social & economic)

access to justice widens the safety net of poor and vulnerable persons
outcomes of justiciable matters impacts on quality of life and economic
conditions of clients developing a segment of an effective and efficient
government/state able to deliver public goods (legal aid services)

Sustainability Goal 2: Improved effectiveness & confidence in the justice system

Strategic intent (of Goal 2): (social & economic)

building the public institutions (i.e. justice system including courts) of a
democratic society efficient and effective justice system impacts positively on
the functioning of the economic systems at local and national level engaging
stakeholders for their inputs to inform services offered to increase access to
justice and improving functioning of the justice system

Sustainability Goal 3: Good governance practice and a strong governance reputation

Strategic intent (of Goal 3): (governance)

developing a segment of a clean and accountable government/ state effectively utilising public funds

Sustainability Goal 4: Improved maturity level of the organisation

Strategic intent (of Goal 4): (business performance)

developing a segment of an efficient and effective government/ state transparent and accountable use of public funds improves probability/ support for continued funding

Sustainability Goal 5: Best employer of legal professionals (& related management & support staff)

Strategic intent (of Goal 5): (social)

employer of choice

Sustainability Goal 6: Reduced carbon footprint (of organisation)

Strategic intent (of Goal 6): (environment)

reduce global carbon footprint

To give effect to these goals Legal Aid SA has identified **six sustainability focus areas** or strategic areas:

- I. Access to Justice
- II. Justice System
- III. Good Governance
- IV. Maturity Levels
- V. Employer of Choice
- VI. Carbon Footprint

Linked to this we have identified sustainability programmes/actions and targets, as well as responsible governance structures and the reporting tool which will be used to report on the sustainability goals. In order to be accountable and to provide stakeholders with an overview of the sustainability performance a report detailing the performance against the six sustainability goals will be provided in the Legal Aid SA Integrated Annual Report.

Key to our sustainability strategy is that we have integrated sustainability into our core business, so it is aligned to existing strategic business initiatives. This means that progress on our sustainability goals is necessary to our sustained success. Sustainability is embedded into our business practice and is not seen as an add-on but has specific goals, is tracked and reported on separately. We are therefore able to measure and evaluate how we are making a difference/positive contribution to society and adding value.

The value adds of our sustainability strategy are evident from the sustainability vision as detailed above and because our sustainability approach is focused on the 6 sustainability goals, which are aimed at economic, social and environmental value creation. We also recognise that sustainability from a social perspective is where we can have the most impact. Looking at legal aid through a sustainability lens is a

societal imperative as we strive to increase access to justice to improve the wellbeing of our communities. Sustainability also takes our focus to vital issues of governance and business sustainability. There are definite dividends, for example, adherence to good governance, zero tolerance policy on fraud and corruption, employee wellness and community engagement.

HOLISTIC ISSUE MANAGEMENT FOR SUSTAINABILITY



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Sustainability Performance Reporting

The success of any strategy lies in the success of its execution. We therefore measure the effective implementation of our Sustainability Strategy and Plan by assessing our performance against our Sustainability Goals and Focus Areas. As an example of how a sustainability approach could go beyond the delivery of legal aid services to individual clients to a more holistic and integrated impact on society we include a section of our Sustainability Performance Report which reports on performance against our first Sustainability Goal.

In our performance report we report on improving access to justice by focussing on the number of clients assisted and the extent to which courts are covered. For the 2014/15 financial year we report that we assisted clients in 448,195 new legal matters and in 321,241 new legal advice matters and we covered all criminal courts in the country at between 87% and 96%. In our sustainability performance report we go beyond individual clients assisted to focus on the broader sectoral and societal aspects as well, as outlined below.

Goal 1: Improved access to justice impacting on current and future quality of life of clients

Focus area 1 – Access to Justice

⁴ The Trialogue Annual Sustainability Review 2014

Sub-focus areas:

- i.* access of legal services and advice
- ii.* Quality of legal services and advice
- iii.* community outreach & education

A number of interventions were in place to ensure access of legal services and legal advice, including:

- Court coverage is aligned to demand
- The practitioner per court model which was implemented ensured that all criminal courts were covered and therefore the likelihood of clients being unrepresented is minimal
- Legal representation was available in all civil matters that are covered by the Legal Aid Guide (LAG) and where both the clients and their matters meet the qualifying criteria as set in the LAG
- A programme was in place to ensure that all children are represented
- Legal assistance was available to all clients in specialist courts, including child justice courts, sexual offences courts and commercial crimes courts. Legal representation was also provided in specialist matters to vulnerable clients such as asylum seekers and mental healthcare patients
- Through linkages with advice offices, legal aid clinics and the Masters Office clients were able to link to civil legal aid services at contact points other than our justice centres and satellite offices, thus increasing clients' physical access to our services
- The paralegal community outreach programme ensured that legal advice services were accessible to communities and particularly rural communities
- Clients, especially those in rural areas or who have limited mobility were able to access telephonic legal advice through the Legal Aid Advice Line
- A self-help website with 11 modules allowed access to justice where legal aid is not available to clients due to their matters been excluded from legal aid assistance or where they do not meet the necessary criteria for legal aid assistance
- Impact litigation matters ensure that the outcomes impact more broadly than just on the specific clients assisted and the careful selection of matters to be funded as impact matters has resulted in successful outcomes whereby the strategic intent of the litigation has been achieved and thereby ensuring that clients constitutional rights are enforced or protected and legal precedents impacting widely on our clients rights have been achieved.
- Leave to Appeal matters were monitored
- Clients constitutional right to liberty was protected by ensuring that bail applications were considered
- All remand detainees as well as children awaiting trial in custody were monitored
- Awaiting trial prisoners paralegal programme was implemented
- Stakeholders were made aware of legal aid and encouraged to refer potential clients

To ensure quality legal services is rendered and competent practitioners are able to render quality legal services to clients, the following are in place:

- Legal quality reviews were conducted and confirmed that over 97% of our practitioners are rendering services in compliance with our quality requirements, which includes an assessment on the outcomes achieved by practitioners in the cases reviewed
- All quality review instruments were reviewed
- All legal support programmes, including CA court readiness and pre admission programmes have been implemented and monitored
- Legal training has been conducted with all categories of practitioners
- Legal research, resulting in, amongst others, research reports, legal newsletters and case discussions was undertaken to support quality legal services delivery, policy development and to protect clients rights
- Legal support interventions including online research, legal newsletters and research reports, legal discussion forums and a non-legal expert database were available.

Community outreach and education to increase awareness of The Constitution and Bill of Rights resulted in:

- 1 050 outreach events were held at community level and at key government service delivery points
- Improved brand awareness through word of mouth from 9% in 2013/14 to 31% in 2014/15. This was as a result of community events and meetings held in local Implementation of the advertising and marketing plan was 90% achieved. The National Omnibus Survey results showed an increased awareness of the Legal Aid SA brand by 9% but results shows that traditional media is ineffective in the rural areas surveyed. There is a need to focus on community radio, community newspapers and brand packaging advertising.
- 100% completion of branding at key points such as prison cells, police cells and courts. Increased brand awareness by 7%, from 8% in 2013/14 to 15% in 2014/15.

Conclusion

Implementing sustainability is key for legal aid agencies to make a positive difference to society as we create and improve awareness around human rights issues.

As legal aid agencies we need to embrace the journey of sustainability and setting sustainability goals and then delivering on them. This will demonstrate our commitment to improving the lives of people and positively transform communities. The challenge is to put sustainability at the core of our business, strategy, operations. Sustainability strategies must align with our business strategies in order to become a core business value but they must also make us question our business strategies and models from the perspective of a changing world which requires us to learn and innovate. Sustainability must be understood as a process of creating value through building relationships and resources for the long-term benefit of the entity/business and its stakeholders.