

*Wednesday, 30 October 2019]*

No 91 – 2019] FIRST SESSION, SIXTH PARLIAMENT

**PARLIAMENT  
OF THE  
REPUBLIC OF SOUTH AFRICA**

**ANNOUNCEMENTS, TABLINGS AND COMMITTEE  
REPORTS**

WEDNESDAY, 30 OCTOBER 2019

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**ANNOUNCEMENTS**

## **National Assembly and National Council of Provinces**

### **The Speaker and the Chairperson**

#### **1. Classification of Bills by Joint Tagging Mechanism (JTM)**

- (1) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 75 Bill:
  - (a) **Judicial Matters Amendment Bill** [B 13 – 2019] (National Assembly – sec 75).
- (2) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 76 Bill:
  - (a) **Independent Electricity Management Operator Bill** [B 14 – 2019] (National Assembly – sec 76).

#### **2. Membership of Committees**

- (1) Mr JJ Maake was appointed as chairperson of the Joint Standing Committee on Intelligence on 30 October 2019, in terms of section 2 of the Intelligence Services Oversight Act, 1994 (Act No 40 of 1994).
- (2) The following members were appointed to the Joint Standing Committee on Intelligence on 30 October 2019, in terms of section 2 of the Intelligence Services Oversight Act, 1994 (Act No 40 of 1994):

Bebee, Lindiwe Christabola (ANC)  
 Dlakude, Dorries Eunice (ANC)  
 Dikgale, Masefako Clarah (ANC)  
 Hermans, Nombulelo Lilian (ANC)  
 Magwanishe, Gratitude (ANC)  
 Mmoielang, Mosemanegape Kenneth (ANC)  
 Mofokeng, Jacqueline Motlagomang (ANC)  
 Ncitha, Zukiswa Veronica (ANC)  
 Kohler, Dianne (DA)  
 Gondwe, Mimmy Martha Dr (DA)  
 Labuschagne, Cathlene (DA)  
 Ndlozi, Mbuyiseni Quintin Dr (EFF)

## **National Assembly**

### **The Speaker**

#### **1. Introduction of Bills**

- (1) **The Minister of Finance**

- (a) **Division of Revenue Amendment Bill** [B 15 – 2019] (National Assembly – proposed sec 76) [Explanatory summary of Bill and prior notice of its introduction published in *Government Gazette* No 42785 of 22 October 2019.]
- (b) **Adjustments Appropriation Bill** [B 16 – 2019] (National Assembly – proposed sec 77).

Introduction and referral to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160.

In terms of Joint Rule 154 written views on the classification of the Bills may be submitted to the JTM. The Bills may only be classified after the expiry of at least three parliamentary working days since introduction.

- (c) **Rates and Monetary Amounts and Amendment of Revenue Laws Bill** [B 17 – 2019] (National Assembly – proposed sec 77).
- (d) **Taxation Laws Amendment Bill** [B 18 – 2019] (National Assembly – proposed sec 77).
- (e) **Tax Administration Laws Amendment Bill** [B 19 – 2019] (National Assembly – proposed sec 75) [Explanatory summary of Bill and prior notice of its introduction published in *Government Gazette* No 42800 of 28 October 2019.]

Introduction and referral to the **Standing Committee on Finance** of the National Assembly, as well as referral to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160.

In terms of Joint Rule 154 written views on the classification of the Bills may be submitted to the JTM. The Bills may only be classified after the expiry of at least three parliamentary working days since introduction.

## National Council of Provinces

### The Chairperson

#### 1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Select Committee on Appropriations** for consideration and report in accordance with its mandate as set out in section 6 of the Money Bills and Related Matters Act, 2009 (No 9 of 2009):
  - (a) Medium-Term Budget Policy Statement, 2019.
- (2) The following paper is referred to the **Select Committee on Finance** for consideration and report in accordance with its mandate as set out in section 6 and 12 of the same Act:

- (a) The Revised Fiscal Framework and Revenue Proposals, 2019.
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## TABLINGS

### National Assembly and National Council of Provinces

#### 1. The Minister of Finance

- (a) *Adjustments Appropriation Bill, 2019 [B 16 – 2019].*
- (b) *Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2019 – [B 17 – 2019].*
- (c) *Division of Revenue Amendment Bill, 2019 – [B 15 – 2019].*
- (d) *Taxation Laws Amendment Bill, 2019 – [B 18 – 2019].*
- (e) *Tax Administration Laws Amendment Bill, 2019 – [B 19 – 2019].*
- (f) *Medium Term Budget Policy Statement, 2019 – [RP 358 – 2019].*
- (g) *Adjusted Estimates of National Expenditure, 2019 – [RP 359 – 2019].*

#### 2. The Minister in The Presidency

- (a) 2019 National Conventional Arms Control Committee (NCACC) second quarterly report for April – June 2019, tabled in terms of section 23 of National Arms Control Act, 2002 (Act No. 41 of 2002).
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## COMMITTEE REPORTS

### National Assembly

## **1. The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 29 October 2019**

The Portfolio Committee on Justice and Correctional Services, having considered the performance, spending and requests for additional allocations for the medium term period of the Department of Justice and Constitutional Development, National Prosecuting Authority, Information Regulator, Legal Aid South Africa, Special Investigating Unit, South African Human Rights Commission and Public Protector, reports as follows:

### **1. Introduction**

1.1 The Money Bills Procedure Amendment and Related Matters Act 9 of 2009 requires portfolio committees to compile Budgetary Review and Recommendation Reports (BRRR). Portfolio Committees may make recommendations on the future allocation of resources, having assessed service delivery performance; evaluated the effective and efficient use of the resources allocated and considered the planned forward allocation of resources. These BRRR are also source documents for the Standing Committee on Appropriations when it makes recommendations to the House on the Medium-Term Budget Policy Statement (MTBPS). The annual review of expenditure and performance for 2018/19 forms part of this process.

1.2 The Committee oversees the Department of Justice and Constitutional Development (the Department) and other entities and institutions that receive their allocation under the Justice and Constitutional Development Vote. These include the National Prosecuting Authority (NPA), Legal Aid South Africa and Special Investigating Unit (SIU). The Vote also contains the allocation in the form of a direct transfer to the South African Human Rights Commission (SAHRC) and Public Protector South Africa (PPSA), both established in

Chapter 9 of the Constitution as State Institutions Supporting Constitutional Democracy.

1.3 Section 39 of the Protection of Personal Information Act, 2013, (POPIA) establishes the Information Regulator as an independent juristic person that is accountable to the National Assembly. The Information Regulator has responsibilities in terms of both POPIA and the Promotion of Access to Information Act, 2000 (PAIA). Towards the end of 2016, the Members of the Regulator were appointed. At present, until fully operational, funding for the Regulator remains under Programme 3: State Legal Services. However, the Information Regulator prepared and presented its Annual Report for 2018/19.

1.4 The Vote has five programmes:

- The Department of Justice and Constitutional Development is directly responsible for the Administration, Court Services and State Legal Services.
- The NPA appears as a Programme under the Vote. (Although the NPA's prosecutorial independence is constitutionally guaranteed, the National Prosecuting Authority Act, 1998, provides for the Director General: Justice and Constitutional Development to be its accounting officer.)
- Programme 5 contains allocations to various auxiliary and associated services, including transfer payments to Legal Aid South Africa and the Special Investigating Unit (SIU), as well as to the South African Human Rights Commission (SAHRC) and the Public Protector South Africa (PPSA).
- Programme 5 also includes the Justice Modernisation sub-programme, which is responsible for the design and implementation of IT infrastructure for the integration of business processes within the criminal justice system, involving Justice Crime Prevention and Security (JCPS) Cluster departments.

## 2. **Method**

- 2.1. The Committee met with the Auditor-General on the audit outcomes for the Vote on 8 October 2019.
- 2.2. On 16 October 2019, the Minister of Justice and Correctional Services, Mr. R Lamola, addressed the Committee, providing a political perspective on the Department's performance for 2018/19 and, also, highlighted key priorities going forward.
- 2.3. The Committee engaged with the Department, NPA, Legal Aid SA, SIU, Information Regulator, SAHRC and PPSA on their respective annual performance and spending for 2018/19 and the First Quarter 2019/20, as well as any funding needs/concerns for the 2020 MTEF. These briefings took place over a two-week period in October 2019, as follows:
  - South African Human Rights Commission – 8 October 2019.
  - Information Regulator – 10 October 2019.
  - Legal Aid South Africa – 10 October 2019.
  - National Prosecuting Authority – 15 October 2019.
  - Special Investigating Unit – 15 October 2019.
  - Department of Justice and Constitutional Development – 16 October 2018.
  - Public Protector – 18 October 2019.
- 2.4. Copies of all the presentations are available from the committee secretariat.

## **Part 1**

### **3. Overview of key policy and operational developments**

- 3.1. As the 5th Administration neared the end of the five-year term, the focus for 2018/19 was largely on the consolidation of policies and legislation and the effective implementation of programmes aimed at responding to Government's Programme of Action.

- 3.2. The delivery of services, however, has taken place within a context of fiscal austerity. Furthermore, the economic and revenue outlook has weakened since the MTBPS in October 2018 and there are increased funding pressures from the state owned enterprises, which has led to announcements of further budget reductions. As there are no additional resources available, any further allocations to a programme must be funded by reductions in funding for another programme, either within the department's budget, or from another department's budget.
- 3.3. Managing the public service wage bill is regarded as key. Departments, therefore, are expected to operate within their compensation of employees' expenditure ceilings by containing costs and improving efficiency through the undertaking of appropriate operational changes. Although headcounts have declined sufficiently to absorb the wage increases, over the medium-term government has indicated that it will take active measures to reduce the number of employees further. It is acknowledged that departments, which are labour intensive, run the risk of breaching their compensation of employees' ceilings.
- 3.4. A key commitment by government that directly affects the sector in the period under review has been to intensify the fight against corruption and to stabilise and restore the credibility of institutions, such as the NPA. There have been a number of interventions in this regard:
- Advocate Shamila Batohi was appointed as the new National Director of Public Prosecutions with effect from 1 February 2019.
  - The urgent establishment by way of proclamation in the Office of the National Director of Public Prosecutions (NDPP), of an investigating directorate to deal with serious corruption and associated offences by focusing on the evidence emerging from the Commission of Inquiry into State Capture and other commissions. Advocate Hermione Cronje has been appointed to head the Investigating Directorate with effect from 15 May 2019.



- The establishment of the Special Tribunal that will allow for the expedited recovery through civil processes of monies lost to the State through corruption and other illicit flows.

3.5. A further commitment by Government is to halve violent crime in ten years and to work towards ending gender-based violence. Regarding gender-based violence, the implementation at departmental level of the resolutions taken at the Presidential Summit and Declaration against Gender-based Violence and Femicide (November 2018) was highlighted.

3.6. To achieve its objective of delivering justice to all, the Department has placed considerable focus on the transformation of the justice system in its entirety and of the legal profession as well. Priorities over the Fifth administration, therefore, included:

- Finalising a policy to address the constitutional imperative of a single, integrated judicial system by migrating the administration of the Lower Courts to the Office of the Chief Justice.
- Finalising a policy relating to judicial governance and court administration.
- The systematic development of a new body of law steeped in constitutional values as part of the ‘Renaissance Project’.
- Overhauling the Magistrate’s Courts Act, 1944, as part of the Department’s broader transformation agenda.
- Developing a policy and legislative framework for community courts and for the best use of community advice offices, as mechanisms that will enhance access to justice.
- Continuing to establish dedicated sexual offences courts that meet the blueprint approved in 2013 for these courts.
- Continuing the process of aligning court jurisdictional boundaries with that of the applicable municipal and provincial boundaries to increase access to justice.
- Continuing to build, upgrade and maintain the court infrastructure to enhance access to justice for all.

- 3.7. The National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) was approved by Cabinet in February 2019.
- 3.8. A complete overhaul of the criminal justice system is planned to address challenges that relate to the slow pace of modernization of court processes through the Integrated Justice System (IJS) programme and the lack of effective co-ordination across Justice Crime Prevention and Security (JCPS) Cluster departments.
- 3.9. There is also a focus on the transformation of State Legal Services to strengthen the capability of the State to manage litigation and to address organisational challenges in the State Attorney environment.
- 3.10. Implementation of the Legal Practice Act, 2014, is well underway: the new regulatory body, the Legal Practice Council was established in October 2018.

#### **4. Budgetary Review and Recommendation Report (BRRR) October 2018 and Minister of Finance's response**

- 4.1. In last year's Budgetary Review and Recommendation Report (October 2018), the then Committee expressed grave concern about the consequences of the R2 billion baseline reductions over the medium term. There is a "thin line between a so-called lean organisation where available resources – both human and financial – are used carefully and well and an organisation that is starved of means that it can no longer perform its mandated task". The Committee was especially concerned that the reduced staff establishment could undermine the work needed to create a transformed and responsive justice system.
- 4.2. The Report recommended that additional funding be allocated to:

- The NPA for the shortfall in its compensation of employees' budget; to fill vacancies; to create capacity in new courts; and to resume the aspirant prosecutor programme.
- Legal Aid South Africa to prevent it from having to cut posts and to ensure that it can maintain its civil work.

4.3. The Minister of Finance's response regarding the recommendation for additional funding to the NPA was that "due to the constrained fiscal outlook, the scope to provide additional funding is limited. Departments, entities and constitutional institutions are required to reprioritise funds within their existing baselines to fund any emerging priorities. Should the fiscal outlook improve, future recommendations for additional funding may be considered" (National Treasury, Budget Review, p104). However, in his Budget Speech, the Minister of Finance made assurances that National Treasury and the Justice Department would work to support the establishment of a new Investigating Directorate at the NPA.

4.4. In the case of Legal Aid SA, provision was made for the allocation of an additional R300 million over the MTEF to retain its public defenders. Of this, R104.5 million is reprioritised funding from the Justice Department.

## 5. **Audit outcomes for 2018/19**

5.1. The Auditor-General reports the following audit outcomes for the Justice Portfolio for 2018/19:

- The Department received a qualified audit opinion with findings for the third consecutive year.
- The CARA Fund, Guardian's Fund, President's Fund, Legal Aid SA, SIU and Third Party Fund all achieved clean audit opinions.
- The PPSA and SAHRC received an unqualified audit opinion with findings.

**Table 1: Summary of audit outcomes for the Vote: 2014/15 – 2018/19**

	2014/15	2015/2016	2016/17	2017/18	2018/19
<b>Justice</b>	Unqualified with findings	Unqualified with findings	Qualified with findings	Qualified with findings	Qualified with findings
<b>NPA</b>	Not applicable: Reports as part of the Justice Department				
<b>Legal Aid SA</b>	Unqualified	Unqualified	Unqualified	Unqualified	Unqualified
<b>Third Party Funds/ Justice Administered Fund</b>	Disclaimer	Qualified	Qualified	Unqualified	Unqualified
<b>Guardian's Fund</b>	Unqualified	Unqualified	Unqualified	Unqualified	Unqualified
<b>President's Fund</b>	Unqualified	Unqualified	Unqualified	Unqualified	Unqualified
<b>SIU</b>	Unqualified with findings	Unqualified with findings	Unqualified	Unqualified	Unqualified
<b>PPSA</b>	Unqualified with findings	Unqualified with findings	Unqualified with findings	Unqualified with findings	Unqualified with findings
<b>SAHRC</b>	Unqualified with findings	Unqualified	Unqualified	Unqualified with findings	Unqualified with findings

## 5.2. Audit outcome - Department of Justice and Constitutional Development

5.2.1. The Department received a qualified audit opinion for 2018/19 with the following findings:

- Contingent liabilities stated at R2.235 billion. The Auditor-General found that the Department did not have adequate internal controls to estimate the likely settlement amounts for claims against the State
- Movable tangible capital assets. The Auditor-General found that the Department did not have adequate internal controls to ensure effective maintenance of the asset register.

5.2.2. On the quality of the reported performance information, the Auditor-General made the following material findings:

- Sufficient appropriate audit evidence could not be provided in some instances, while in others the supporting evidence provided did not agree with the reported achievements. As the Auditor-General was unable to confirm the reason for the variances by alternative means, it was not possible to determine whether any adjustments were necessary to the reported achievements of various indicators under Court Services and State Legal Services (The following indicators under Courts Services are affected: number of criminal cases on the backlog roll in lower courts; percentage of child justice preliminary inquiries finalised within 90 days after first appearance; percentage of criminal cases postponed due to unavailability of court administration staff; percentage of maintenance matters finalised within 90 day of service. In the State Legal Services programme, the following indicators were identified: number of enrolled matters presented in the High Court by the State Attorney; and percentage of litigation cases settled).

5.2.3. On compliance with legislation, the Auditor-General reported as follows:

- Uncorrected material misstatements resulted in the financial statements receiving a qualified opinion.
- Effective steps were not taken to prevent irregular expenditure. In addition, the value stated in the Annual Financial Statements was not complete. The majority of the irregular expenditure relates to non-compliance with supply chain management legislation.

- Effective steps were not taken to prevent fruitless and wasteful expenditure.
- Contracts were extended or modified without approval of a properly delegated official.
- Some goods and services with a value of more than R500 000 were procured without inviting competitive bids and deviations were approved although it was practical to invite bids.
- Some goods and services with a contract value of less than R500 000 were procured without obtaining the required price quotations.
- In some instances, persons in service of the department failed to disclose that close family members, partners or associates had a private or business interest in contracts awarded by the department.
- The Accounting Officer did not effectively oversee financial and performance reporting and compliance, as well as related internal controls.
- Management did not adequately monitor the implementation of action plans to address internal control deficiencies; there were insufficient monitoring controls in place to ensure compliance with legislation; and proper record management systems and internal processes were not in place to ensure timely, credible financial and performance reporting.
- Management did not design and implement formal controls over IT systems to ensure the reliability of the systems and the availability, accuracy and protection of information.

5.2.4. The Department recorded increases in both irregular expenditure and fruitless and wasteful expenditure in 2018/19:

- Irregular expenditure increased to R1.1 billion in 2018/19, of which R771 million relates to 2017/18 and R592.2. million in 2018/19.
- Fruitless and wasteful expenditure of R1.25 million was identified in 2018/19.

## 6. **Vote expenditure 2018/19**

- 6.1. In 2018/19, the Vote was allocated R19.2 billion, as follows: programmes were allocated R17.04 billion and a further R2.2 billion was allocated for magistrates' salaries. Following the Adjustment process in October 2018, the allocation was adjusted upwards by R409.4 million to R19.8 billion for the work of the judicial commissions of inquiry.

**Table 2: Vote 21 - Justice and Constitutional Development – Projected vs Actual Expenditure 2018/19**

Programme (R 'million)	Projected vs Actual Expenditure 2018/19 (R'000)			
	Final Appropriation	Actual expenditure	Percentage Actual Expenditure	(Under)/ Over Spending
Administration	2 592 671	2 428 798	93.7%	163 873
Court Services	6 374 048	6 320 062	99.2%	53 986
State Legal Services	1 269 400	1 210 819	95.4%	58 581
National Prosecuting Authority	3 799 676	3 799 395	100%	281
Auxiliary and Associated Services	3 423 034	3 423 033	100%	1
<b>TOTAL</b>	<b>17 458 829</b>	<b>17 182 107</b>	<b>98.4%</b>	<b>276 722</b>
Magistrates' Salaries	2 215 538	2 047 385	92.4	168 153
<b>TOTAL</b>	<b>19 674 367</b>	<b>19 265.0</b>	<b>97.7%</b>	<b>444 875</b>

- 6.2. Spending under the Vote for 2018/19 was as follows:

- An amount of R19.2 billion or 97.7% of the final allocation of R19.7 billion was spent, with an amount of R444.9 million going unspent: A total of

R276.7 million went unspent under programmes, while R168 million was unspent under the statutory appropriation for magistrate's salaries.

6.3. Spending at programme level was as follows:

- Administration - An amount of R2.4 billion or 93.7% of the final appropriation of R2.6 billion was spent. The underspending is attributed mainly to delays in submission of claims and invoices relating to the Commissions of Inquiry into State Capture and the Commission of Inquiry into SARS, as well as late payment of the refund from the Office of the Chief Justice, which reduced expenditure for leases.
- Court Services – An amount of R6.3 billion or 99.2% of the final appropriation of R R6.4 billion was spent. The underspending is attributed to delays in filling vacancies.
- State Legal Services - an amount of R 1.2 billion or 95.4% of the final appropriation of R1.3 billion was spent. The underspending is attributed to delays in filling vacancies.
- NPA – an amount of R3.8 million or 100% of the final appropriation was spent.
- Auxiliary and Associated Services: Justice Modernisation subprogramme – an amount of R759.6 million or 100% of the final appropriation of the same amount was spent.

## 7. **Expenditure First Quarter 2019/20**

7.1. In 2019/20, the Vote is allocated R21.1 billion, of which R18.7 billion goes to programmes and R2.4 billion is a direct transfer for Magistrate's salaries.

7.2. A total of R4.5 billion or 87.9% of the projected budget of R4.8 billion for the First Quarter was spent (including the NPA and Magistrates' salaries). The under-expenditure of R304 million was because of outstanding invoices for municipal services and leases; and the Department of Public Works committing less expenditure on court infrastructure projects.



**Part 2:**  
**Department of Justice and Constitutional Development**

**8. Overview of the Department of Justice and Constitutional Development's strategic and operational environment**

8.1. The Department priorities are aligned with the NDP to address, in particular, chapters 12 (Building safer communities) and 14 (Promoting accountability and fighting corruption). The Department also has a role to play in implementing chapters 11 (Social protection), 13 (Building a capable state) and 15 (Transforming society and uniting the country).

8.2. From a policy perspective, the Department has identified the following transformational themes:

- The transformation of State Legal Services.
- The transformation of the legal profession for access to justice for all.
- The transformation of the criminal justice system and restoring public confidence.
- Entity oversight and institutional arrangements.

8.3. The Department's strategic goals remain as follows:

- Optimisation of the use of people, processes and technology to ensure service delivery and good governance requirements.
- People-centred justice services that are accessible, reliable and efficient.
- Corporatised, cost effective and integrated quality legal services to protect the interest of the State proactively.
- Promotion of constitutionalism, human rights and commitment to international legal relations.

8.4. Key reported areas of achievement for 2018/19 included:

- The alignment of the Western Cape's provincial and magisterial districts was completed to enable easier access to justice services.

- A total of 15 dedicated sexual offence courts were re-established in line with the Sexual Offences Court Model. This brings the total number of sexual offence courts to 90 at the end of March 2019.
- A further three Small Claims Courts were established to bring the total number of Small Claims Courts to 415. Also, the monetary jurisdiction of these Courts was increased from R15 000 to R20 000 from 1 April 2019.
- In the Master's Office, the number of Magistrate's Courts implementing the 'Paperless Estates Administration System' (PEAS) increased from 237 in 2017/18 to 278 in 2018/19. The system makes it possible for small(er) estates to be processed at the nearest magistrate's court as opposed to at one of only 15 offices of the Master of the High Court.
- A total of 48 Magistrates' Courts were linked to 23 correctional centres and 17 272 criminal cases were remanded using the Audio-Visual Remand Technology (AVRT), increasing the use of AVRT by 44%.
- Court Recording Technology (CRT) was implemented at 2 145 fixed courtrooms and 47 mobile recorders for periodical courts were implemented.
- The Third Party management system solution – MojaPay - was implemented in eight provinces and 15 offices of the State Attorney. In these provinces, the turnaround time to pay maintenance beneficiaries improved to two working days for 93% of the beneficiaries paid.

#### 8.5. Key reported challenges for 2018/19 included:

- Ongoing budget cuts has meant that the Department has needed to relook at priorities and channel funds to the most pressing of areas.
- Not all vacant posts could be filled and the filling of posts has been largely directed to service points, with an emphasis on the Judiciary, Prosecution and other court-based officials.
- Branches, such as the Office of the Chief State Law Advisor, had difficulties filling LP10 posts because of the ongoing moratorium on the filling of these posts.

- A number of internal investigations were undertaken within the Department in response to affidavits filed at the State Capture Commission, resulting in a more challenging working environment in a number of units.
- The Department has a high vacancy rate at top management level: five of ten top management posts were either vacant or filled in an acting capacity.
- The Department continues to provide administrative support to the Judicial Commission of Inquiry into Allegations of State Capture and the Commission of Inquiry into Allegations of Impropriety regarding the Public Investment Corporation, despite its limited resources.

## 9. **Programme performance and spending 2018/19**

9.1. The Department directly administers three of the Vote's programmes: Administration; Court Services, which is the Department's core programme and consumes the majority of the Department's budget; and State Legal Services. Under Auxiliary and Associated Services, the Justice Modernisation sub-programme funds the JCPS Cluster projects relating to the Integrated Justice System (IJS).

9.2. Overall, in 2018/19, the Department achieved 73% of planned targets, compared with 74% and 85% of planned targets in 2017/18 and 2016/17, respectively.

### 9.3. **Programme 1 - Administration**

9.3.1. The Administration programme is responsible for the Department's management and for the development of policies and strategies for the efficient administration of justice.

9.3.2. The Administration programme was allocated R2.1 billion in 2018/19. After the Adjustment process, the allocation increased to R2.5 billion. A virement of

R90.2 million brought the final appropriation to R12.6 billion, with R163.9 million unspent.

9.3.3. In 2018/19, the Programme met or exceeded targets for 43% of the planned targets (compared with 66% of the planned targets for 2017/18) and spent 93.7% of its budget.

**Table 3: Administration – Selected performance 2018/19**

<b>Indicators</b>	<b>2017/18</b>	<b>2018/19</b>
Unqualified audit opinion achieved	NOT ACHIEVED	NOT ACHIEVED
Number of audit projects completed by internal Audit	ACHIEVED (282 against a target of 282)	ACHIEVED (284 against a target of 284)
Percentage of significant findings resolved on key specific issues (NEW INDICATOR)	EXCEEDED (78% against a target of 60%)	NOT ACHIEVED (50% against a target of 100% or 18 of 36 audit findings were addressed.)

#### 9.4. Programme 2 - Court Services

9.4.1. The Court Services programme facilitates the resolution of criminal, civil and family law disputes by providing accessible, efficient and quality administrative support to the courts; and manages court facilities.

9.4.2. The Court Services programme was allocated R6.44 billion for 2018/19 (for the Lower Courts, Family Advocate, Magistrates Commission, Government Motor Transport, Facilities Management and Administration of Lower Courts sub-programmes) with a final appropriation of R6.37 billion. Actual expenditure for 2018/19 was R6.43 billion (or 99.2%) of the appropriation, with an amount of R54 million unspent.

9.4.3. In 2018/19, the Programme met or exceeded 75% of planned targets (compared with 54% in 2017/18), and spent 99.2% of its budget.

**Table 4: Court Services - Selected performance 2018/19**

<b>Indicators</b>	<b>2017/18</b>	<b>2018/19</b>
Number of criminal cases on the backlog roll in Lower Courts.	NOT ACHIEVED  (33 732 against a target of 30 344)	NOT ACHIEVED  (43 862 against a target of 43 500)
Percentage of child justice preliminary inquiries finalised within 90 Days after first appearance	EXCEEDED  (96% against a target of 60%)	EXCEEDED  (96% against a target of 60%)
Percentage of maintenance matters finalised within 90 days after proper service of process	EXCEEDED  (96% against a target of 55%)	EXCEEDED  (82% against a target of 70%)
Number of courtrooms adapted in line with sexual offences model	ACHIEVED  (17 against a target of 17)	EXCEEDED  (15 against a target of 14)
Number of Closed Circuit Television (CCTV) Systems in Regional Courts upgraded in line with minimum standards to Sexual Offences Court Model	-	NOT ACHIEVED  (12 against a target of 45)
Number of new court buildings completed	NOT ACHIEVED  (0 against a target of 2)	NOT ACHIEVED  (2 against a target of 3)

<b>Indicators</b>	<b>2017/18</b>	<b>2018/19</b>
	(Neither the Mpumalanga High Court nor the Port Shepstone Magistrates court were completed as planned.)	(Mpumalanga High Court was not completed as anticipated due to pending completion of the primary access road.)
Percentage of annexed civil cases mediated	NOT ACHIEVED (0 against 50%)	NOT ACHIEVED (0 against 60%)
No. of courts providing court- annexed mediation	EXCEEDED (42 against a target of 30)	EXCEEDED (80 against a target of 32)

### 9.5. Programme 3 - State Legal Services

9.5.1. This Programme provides legal and legislative services to government; supervises the administration of deceased and insolvent estates; registers trusts and manages the Guardian's Fund; and prepares and promotes legislation. In addition, the Programme facilitates constitutional development and undertakes research in support of this.

9.5.2. The State Legal Services programme was allocated R1.26 billion in 2018/19, (compared with R1.23 billion in 2017/18) and spent R1.21 billion or 95.4% of that amount (compared with 94.5% in 2017/18).

8.5.1. In 2018/19, the programme met or exceeded targets in 86% of the planned targets (compared with 75% in 2017/18) and spent 95.4% of the budget.

**Table 5: State legal Services - Selected performance 2018/19**

<b>Indicators</b>	<b>2017/18</b>	<b>2018/19</b>
Jurisdiction of Masters' service points increased	-	NOT ACHIEVED (Paperless Estates Administration System PEAS rolled out to 27 service points against a target of 30)
Number of Previously Disadvantaged Individuals (PDI) advocates briefed	-	ACHIEVED (1467 against a target of 1200)
Percentage value of briefs distributed to PDIs	EXCEEDED 82% against a target of 80%) (R719 million was paid to PDI counsel of a total amount of R877 million)	EXCEEDED (83% against a target of 80%) (R775 million was paid to PDI counsel of a total amount of R930.6 million)
Percentage of briefs allocated of female counsel	NOT ACHIEVED (38% against a target of 40%)	ACHIEVED (41% against a target of 40%)
Number of enrolled High Court matters represented in court by the State Attorney	EXCEEDED (467 against a target of 60)	EXCEEDED (821 against a target of 80)
Percentage reduction of litigation costs against the State	NOT ACHIEVED (12% increase against a target of 5% reduction)	NOT ACHIEVED (1% increase against a target of 5% reduction)
Percentage reduction in capital amount claimed in medical negligence,	.	ACHIEVED (98% against a target of 60%)

<b>Indicators</b>	<b>2017/18</b>	<b>2018/19</b>
unlawful arrest and detention claims		
Number of policies submitted to Cabinet for endorsement	-	NOT ACHIEVED (0 against a target of 4)
Number of sustained and visible anti-Xenophobia campaigns	ACHIEVED (6 against a target of 6)	ACHIEVED (6 against a target of 6)
Number of community projects launched in line with the TRC recommendations	-	NOT ACHIEVED (0 against a target of 5)

**9.6. Programme 5: Auxiliary and Associated Services Programme - Justice Modernisation subprogramme**

9.6.1. Programme 5 contains the Justice Modernisation subprogramme which has funds for the implementation of IT infrastructure for the Department and also includes the earmarked funds for IJS integration across the Cluster.

9.6.2. The final allocation to Justice Modernisation for 2018/19 was R759.6 million (compared with R810.6 million in 2017/18), of which 100% was spent. However, the subprogramme was allocated R976 million for 2018/19 and was then adjusted to R983 million. A virement was affected from the subprogramme of R223.6 million, bringing the final appropriation to R759.6 million.

9.6.3. The Justice Modernisation sub-programme has the strategic objective: 'Functional integrated criminal justice system (CJS) to monitor the performance of the criminal justice system established'. There were no changes to the planned targets in 2017/18.



9.6.4. The subprogramme met all its targets:

**Table 6: Justice Modernisation –Performance 2018/19**

<b>Indicators</b>	<b>2017/18</b>	<b>2018/19</b>
Number of KPIs on the integrated Criminal Justice systems	ACHIEVED (22 against a target of 22)	ACHIEVED (26 against a target of 26)
Number of government departments and entities exchanging information electronically	ACHIEVED (7 against a target of 7)	ACHIEVED (8 against a target of 8)
Total number of IJS departments applications that form part of integrated test lab process	ACHIEVED (3 against a target of 3)	ACHIEVED (6 against a target of 6)

## 10. Overview of First Quarter 2019/20 performance and spending

10.1. Overall, in the First Quarter of 2019/20, the Department achieved 33 of 54 or 61% of planned targets (excluding the NPA) and 50 of 82 or 61% of planned targets if the NPA is included.

10.2. At programme level, in the First Quarter of 2019/20, spending and performance was as follows:

10.2.1. Administration spent a total of R462.3 million of the projected budget of R479.4 million. The underspending of R35.1 million was due to lower than anticipated expenditure on goods and services as a result of delays in processing of invoices for municipal services and leases. In respect of performance, the Administration programme achieved one of four or 25% of the planned targets.

10.2.2. The Court Services programme spent R1.46 billion. When compared with the projected budget of R1.58 billion for the quarter, an amount of R122.7 million went unspent. The reason for the underspending was that the Department of Public Works committed less expenditure than anticipated on court infrastructure projects. The Department reports that it has appointed contractors on short term maintenance ventures to address health and safety concerns at courts that do not meet the standard so that the funds are spent appropriately. In terms of performance, the Court Services programme achieved 8 of 15 or 53% of the planned targets.

10.2.3. State Legal Services spent R289 million. When compared with the projected budget of R327.9 million for the quarter, an amount of R38.4 million remained unspent. The reason for the underspending was lower than anticipated spending on compensation of employees and goods and services as a result of vacancies at the State Attorneys' offices and less than anticipated spending on legal costs.

10.2.4. Under the Auxiliary and Associated Services: Justice Modernisation subprogramme an amount of R805.9 million was spent. All planned targets for the Quarter were met.

## **11. National Prosecuting Authority (NPA)**

11.1. In line with its constitutional mandate, the NPA provides a co-ordinated prosecuting service to ensure that justice is delivered to the victims of crime through general and specialised prosecutions, protects certain witnesses and removes the profit from crime.

11.2. The NPA is a programme within the Justice and Constitutional Development Vote and the Director-General: Justice and Constitutional Development is its accounting officer. In the past, National Treasury provided an exemption that allowed the NPA to prepare its own annual financial statements separate from

those of the Department until legislation regularising the practice was enacted but the exemption expired on 31 March 2014. Consequently, from 2014/15, the Department also reports on the NPA. However, in terms of the National Prosecuting Authority Act, 1998, the National Director of Public Prosecutions (NDPP) has submitted an annual report on operations for 2018/19.

- 11.3. The NPA was allocated R3.8 billion for 2018/19, compared with R3.7 billion in 2017/18 and spent 100% of the final budget. An amount of R150 million was shifted from the Department of Justice to prevent overspending on compensation of employees of R77 million and goods and services of R73 million.
- 11.4. The NPA has aligned its strategic objectives with the NDP, which speaks to 'building safer communities', as well as to Outcome 3 of the MTSF. The following MTSF priority areas are relevant: reduced levels of contact crime; strengthening the Criminal Justice System; securing cyberspace; ensuring domestic stability; and reducing corruption.
- 11.5. The NPA's strategic outcome-orientated goal is an improved prosecution service by rendering a prosecution service that is effective.
- 11.6. The NPA has three strategic objectives, each specifically linked to a sub-programme:
  - Increased successful prosecution (NPS).
  - Ensure that profit is removed from crime (AFU).
  - Ensure that vulnerable and intimidated witnesses and related persons are successfully protected (OWP).
- 11.7. Strategic and operational developments. There have been a number of developments that have impacted on the NPA's strategic and operational environment:

- In August 2018, the Constitutional Court confirmed two declarations of constitutional invalidity by the North Gauteng High Court, which found former President Zuma's actions in terminating Mr M Nxasana's appointment as NDPP and the subsequent appointment of Mr S Abrahams to the position to be constitutionally invalid. Section 12 (4) and (6) of the National Prosecuting Authority Act, 1998, were declared constitutionally invalid and Parliament was given 18 months to amend the Act. In February 2019, Adv Shamila Batohi was appointed NDPP, filling the vacancy that had arisen flowing from the Court judgement.
- A key Government commitment in the period under review has been to intensify the fight against corruption with a focus on the swift investigation, prosecution and recovery of stolen public money, especially where evidence of criminal activity has emerged from the various commissions of inquiry. An investigating directorate has been established in the Office of the NDPP to deal with serious corruption and associated offences.
- A further key Government commitment has been to work to end gender-based violence.

11.8. Overall, in 2018/19, the NPA achieved 18 or 67% planned targets and collected baseline data for one new indicator. Performance relating to the following key MTSF targets was as follows:

**Table 7: NPA - Summary of performance for MTSF indicators**

<b>Indicator</b>	<b>2017/18</b>	<b>2018/19</b>
Conviction rate for sexual offences	EXCEEDED 72.7% against a target of 69% (Actual achievement: 5 004)	EXCEEDED 74.4% against a target of 70% (Actual achievement: 4 716)
Conviction rate for trio crimes	NOT ACHIEVED 82.9% against a target of 85%	NOT ACHIEVED 82.2% against a target of 82.9%

Indicator	2017/18	2018/19
Conviction rates for violent protects and industrial action	68.8%	NOT ACHIEVED 68.8% against a target of 74% (Actual achievement 95 convictions)
Conviction rate for cybercrime	EXCEEDED 98.5% against a target of 74%	EXCEEDED 99.1% against a target of 95% (Actual achievement 440 convictions)
Number of persons convicted of corruption where the amount involved is more than R5 million	EXCEEDED 37 against a target of 33	NOT ACHIEVED 17 against a target of 30
No. of officials convicted of corruption or related offences	EXCEEDED 213 against a target of 210	NOT ACHIEVED 210 against a target of 230

11.9. At subprogramme level, the AFU met 5 of 7 (or 71%) of its targets. The OWP met its single target. The NPA spent all of its allocation.

11.10. **Personnel.** The NPA has an establishment of 5 550 posts, of which 4 408 were filled at the end of 2018/19 with a vacancy rate of 21%. The vacancy rate for prosecutors was 18% and for legal administration support, including AFU investigators, was 32%. Since the beginning of the 2019/20 financial year, a further 73 officials have left the NPA.

11.11. Key challenges going forward include:

- Budgetary constraints place severe strain on the NPA's ability to function optimally and deliver services.
- The NPA's compensation of employees' budget stands at 89% of its overall budget, with only 11% going towards operational costs.

- The moratorium on the filling of posts since 2015/16 has affected staff morale negatively.
- There are limited opportunities for professional development and training.

11.12. The NPA has submitted the following MTEF budget request:

**Table 8: NPA Additional funding needs 2020 MTEF**

Item	2020/21	2021/22	2022/23	Total
	(R'000)			
Shortfall on compensation of salaries budget (less 73 officials)	(3 554)	11 844	(76 715)	<b>(68 425)</b>
Aspirant Prosecutors	25 793	66 530	112 062	<b>204 385</b>
158 critical NPA posts	91 478	96 967	96 967	<b>285 412</b>
Investigating Directorate	115 276	126 601	135 463	<b>377 341</b>
AFU and SCCU capacity	94 793	101 429	108 529	<b>304 751</b>
Safety, security and witness protection	37 450	40 072	42 877	<b>120 399</b>
Operational budget shortfall	78 693	90 180	111 176	<b>280 049</b>
Replacement of 4000 laptops	30 000	0	35 000	<b>65 000</b>
<b>Total</b>	<b>356 212</b>	<b>358 282</b>	<b>433 046</b>	<b>1 149 540</b>

## 12. Information Regulator

12.1. The Protection of Personal Information Act, 2013, (POPIA) regulates the processing of personal information by providing a framework that sets out the minimum standards that responsible parties must comply with when processing personal information. The Act applies to public and private bodies, including juristic persons, and aims to achieve a balance between the free-flow of information and the right to privacy. The Information Regulator

is established in terms of section 39 of POPIA and has a wide range of powers and functions regarding promoting and enforcing the right to privacy.

- 12.2. POPIA also transfers certain key responsibilities concerning the Promotion of Access to Information Act, 2000, (PAIA) to the Information Regulator. These include the handling of complaints, conducting investigations, and making assessments about compliance by public and private bodies.
- 12.3. At present, only those parts of the Act relating to the establishment of the Regulator are operational. Once the Regulator has reached a stage of operational readiness, the remaining provisions will come into force.
- 12.4. In terms of POPIA, the Regulator is given the power to determine its own administration in consultation with the Minister of Finance. The Regulator has an approved structure of 430 posts and plans to appoint 41 staff members in 2020/21.
- 12.5. The Regulator has sub-leased accommodation from the SAHRC from 1 January 2019.
- 12.6. The Regulator has entered into a memorandum of understanding with the SAHRC regarding the transfer of PAIA functions and a joint committee is to develop an action plan to ensure a seamless transfer of these functions to the Regulator.
- 12.7. The Regulator has encountered the following challenges:
  - The slow pace of its establishment, which has affected the commencement of the remaining sections of POPIA.
  - Delays in the finalisation of the organisational structure.
  - Limited capacity and a growing workload/demand for services.

**Part 3**  
**Auxiliary and Associated Services**

**13. Legal Aid South Africa**

- 13.1. Legal Aid SA is an autonomous statutory body that derives its mandate from the Constitution, 1996; the Legal Aid South Africa Act 39 of 2014; and other legislation requiring the government to provide legal assistance to the indigent. Its main objective is to make legal representation available to indigent persons at State expense, ensuring the right of all citizens to access to justice. Notably, the Legal Aid South Africa Act, 2014, provides that Legal Aid SA must render or make available legal aid and legal advice; provide legal representation at state expense; and provide education and information concerning legal rights and obligations, as envisaged in the Constitution.
- 13.2. The overall strategic shift in the 2015-2020 period focuses on increased organisational maturity and sustainable high performance in all segments of the organisation over the next decade, positively touching the lives of many more South Africans to ensure the outcome of quality justice for all.
- 13.3. In 2018/19, Legal Aid SA continued to fulfill the requirements of the fourth year of the Strategic Plan 2015 - 2020, with delivery on more than 90% of the targets set in the Business Plan 2018 - 19.
- 13.4. Notably the 2018/19 financial year was the final year of the Board's term. The Board reports that it prepared a handover report for the incoming Board, which assumed its duties on 1 March 2019.
- 13.5. Legal Aid SA's has the following outcomes and objectives for 2015-2020:
- 13.5.1. Quality justice for all, focussing on the poor and vulnerable, thus contributing to building safer communities:



- Empowered clients and communities making informed choices about their legal rights and responsibilities.
- All poor and vulnerable persons able to access quality public-funded legal services to protect or defend their rights.
- An accessible, effective, fair, independent and efficient justice system serving all in South Africa, contributing to building safer communities.
- Delivering on the constitutional and statutory shareholder mandate in an independent, accountable and sustainable manner.

13.5.2. Respected, accessible, high performing and sustainable public entity impacting positively on society, the economy and the environment:

- An organisation embedding sustainable practices in every segment of the organisation, to positively impact on society, the economy and the environment.
- Embedding good governance, high ethical standards and integrity, high performance and accountability.
- Revised Legal Aid South Africa Act and its subsidiary legislation enacted and implemented.
- An effective and efficient, economic and environmentally responsive supply chain management system supporting client services delivery and internal business processes.
- An appropriately resourced national footprint reaching the poor and vulnerable persons requiring legal assistance.
- An expanded and capacitated/resourced national footprint reaching the poor and vulnerable persons requiring legal assistance.
- Competent, dedicated, motivated and empowered employees capacitated to deliver the constitutional mandate and organisational strategies.
- A modern and appropriate, integrated, secure and cost-effective IT Platform supporting the provision of client services and linkages and enabling internal business needs.

13.6. **Human resources**

13.6.1. At 31 March 2019, Legal Aid SA had a staff establishment of 2 761, of which total recruited staff was 2 557 (By way of comparison, on 1 March 2018, Legal Aid SA had 2761 budgeted posts, of which staff were recruited to 2 627 posts.). Legal staff, including paralegals, account for 79.1% of the establishment.

13.6.2. Delivery occurs nationwide through 64 Local Offices and 64 satellite offices. In addition, Legal Aid SA has 1 274 accredited Judicare partners; ten co-operation partners and six agency agreements with private law firms. This ensured a mixed model delivery system in which 96% of all new matters were handled by the Local Offices; 3% by Judicare practitioners and Agency Agreements; and 1% by co-operation partners.

13.6.3. Notably, Legal Aid SA received top employer accreditation for the ninth consecutive year.

13.7. **Audit outcome.** Legal Aid SA received its eighteenth consecutive unqualified audit opinion in 2018/19 and this is the thirteenth consecutive year in which it obtained a clean audit opinion.

### 13.8. **Expenditure 2018/19**

13.8.1. Legal Aid SA had a budget of R1.9 billion for 2018/19. Of this, Legal Aid SA spent R1.86 billion (or 98%). The entity is allocated R1.98 billion in 2019/20.

### 13.9. **Service delivery performance**

13.9.1. In 2018/19, Legal Aid SA provided legal advice and legal assistance in 724 253 matters (compared with 731 856 and 767 656 matters in 2017/18 and 2016/17, respectively). This included 416 203 new legal matters (compared with 426 617 and 444 962 new legal matters in 2017/18 and 2016/17, respectively).

A breakdown of these new matters is as follows: There were 362 213 new criminal matters (87%); and 53 990 new civil matters (13%). A total of 410 396 matters were finalised in 2018/19, representing a clearance rate of 0.99% (compared with 0.98% and 1% in 2016/17 in 2017/18 and 2016/17, respectively).

13.9.2. In 2018/19, Legal Aid SA provided advice in 308 050 matters to clients at all Legal Aid SA offices, the Legal Aid Advice line and to remand detainees and sentenced inmates (compared to 305 329 matters in 2017/18). It undertook 30 new impact litigation matters with a 89.4% success rate for the 19 matters finalised (seven matters were finalised without an outcome). (In 2017/18, Legal Aid SA took on 25 new impact litigation matters with a 79% success rate).

13.9.3. As a result of funding constraints, Legal Aid SA reduced its coverage at District Courts to 84% in 2018/19 (compared to 85% and 87% in 2017/18 and 2016/17, respectively). Coverage in the Regional Courts was reduced to 94% from 95% and 97% in 2017/18 and 2016/17, respectively). Representation was provided in all matters that required legal aid in the High Courts. There is no relief capacity available.

13.9.4. In 2018/19, a total of 53 990 new civil matters were taken on, which is 2.6% less than in 2017/18. Representation given to vulnerable groups was provided as follows: children (18%), women (58%), mental health users (0.2%) and the elderly (15.7%), In addition, representation was provided in land/eviction matters (11.8%).

13.9.5. Children were provided with assistance in 16 173 matters, of which 59% were children in conflict with the law and 41% were assisted in civil matters (55% of these matters related to estates). Assistance to children in civil matters decreased 6 % when compared to 2017/18.

13.9.6. In 2018/19, the stability of the IT platform was maintained with system availability at 99%.

13.10. The following key challenges were reported:

- Legal Aid SA has discontinued its court relief programme at criminal courts because of funding cuts. Notably, the absence of a relief component is also a concern of Legal Aid SA's stakeholders, particularly those within the criminal justice system.
- Fiscal constraints threaten service delivery.

#### 13.11. Funding needs 2020 MTEF

13.11.1. The total projected baseline cut and shortfall is therefore R451.6 million over the MTEF period, as follows:

**Table 8: Proposed baseline reductions**

<b>Description</b>	<b>2020/21 (R'000)</b>	<b>2021/22 (R'000)</b>	<b>2022/23 (R'000)</b>
Grant Allocation	2 066 096	2 179 215	2 299 072
Proposed baseline reduction %	-5%	-6%	-7%
Proposed baseline reduction	(103 304.8)	(130 752.9)	(160 935.04)
Projected budget shortfall	(6 227 381)	(26 262 630)	(24 067 475)
<b>TOTAL REDUCTION OF BUDGET PROJECTED</b>	<b>(109 532.2)</b>	<b>(157 015.5)</b>	<b>(185 002.5)</b>

- The proposed budget cuts will impact on posts, matters and court coverage as follows:

**Table 9: Projected impact of budget reductions on posts, matters and court coverage 2020 MTEF**

Description	Number of posts impacted				Number of matters impacted			
	2020/2 1	2021/2 2	2022/2 3	Total	2020/2 1	2021/2 2	2022/2 3	Total
Criminal production - DC	61	40	24	125	16 775	11 000	6,600	34 375
Criminal Production – RC	23	15	9	47	3,450	2,250	1,350	7 050
Criminal Production - HC	19	12	7	38	950	600	350	1 900
Criminal Management	8	5	3	16	600	375	225	1 200
Civil Production	18	12	7	37	4 500	3 000	1 750	9 250
Paralegals	5	3	2	10	<b>17 075</b>	<b>11,194</b>	<b>6 598</b>	<b>34 867</b>
Support	33	22	13	68				
<b>Total</b>	<b>167</b>	<b>110</b>	<b>65</b>	<b>342</b>	<b>26,275</b>	<b>17,225</b>	<b>10,275</b>	<b>53,775</b>
Court coverage - DC					-5.6%	-3.7%	-2.2%	- 11.5%
Court coverage - RC					-4.6%	-2.9%	-1.8%	- 9.3%

<b>Description</b>	<b>Number of posts impacted</b>				<b>Number of matters impacted</b>			
	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>Total</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>Total</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>al</b>	<b>1</b>	<b>2</b>	<b>3</b>	
	The numbers in bold linked to paralegals are the impact to the number of advice matters. Total is 34,866 matters							

#### 14. **Special Investigating Unit (SIU)**

14.1. The legislative mandate of the Special Investigating Unit (SIU) is derived from the Special Investigating Unit and Special Tribunals Act 74 of 1996 (as amended). The SIU's principal function is to investigate serious malpractices, maladministration and corruption in connection with the administration of state institutions, state assets and public money, as well as any conduct, which may seriously harm the interests of the public. Matters are referred to the SIU through Presidential proclamations that set out the scope of the investigation. The SIU also:

- Institutes and conducts civil proceedings in any court of law or special tribunal, in its own name or on behalf of state institutions.
- Brings potential disciplinary matters to the attention of state institutions.
- Provides for the secondment of SIU officials to improve departmental systems.

#### 14.2. **Situational update**

The following had consequences for the SIU's work in 2018/19 and 2019/20:

- The Presidency has demonstrated its support for the SIU's work by requiring that affected state institutions give feedback to the President on the steps taken to implement the recommendations contained in SIU's

report. If there has been no action, the affected state institution is required to give reasons for the failure to act.

- As part of the Anti-Corruption Task Team (ACTT), the SIU has conducted fraud and corruption assessments of sectors of the economy identified as corruption prone in order to improve controls. These include the construction, health, education, information technology and local government sectors, as well as state-owned enterprises.
- An anti-corruption forum for the health sector was launched by the President on 1 October 2019. Stakeholders, including the SIU, signed terms of reference outlining the mutual support and co-operation they will give in fighting fraud and corruption in the healthcare sector. As a result, a number of proclamations have already been signed off by the President mandating the SIU to investigate fraud and corruption in state institutions in the health sector.
- In February 2019, the President announced that the establishment of the Special Tribunal was to be fast tracked to speed up the recovery of money lost to the State through irregular and corrupt practices. The Tribunal has been operational from 1 October 2019. Judge Makhanya is appointed to chair the Tribunal and additional members include Judges Pillay, Eksteen, Mothle, Modiba, Siwendu, van Zyl, and Desai. The seat of the Tribunal is the Booysen's Magistrate's Court in Johannesburg but it can schedule hearings at any High or Magistrates' Court. The Regulations have been gazetted and it was reported that the Rules will be gazetted soon (a date of 18 November 2019 was announced). The SIU has reported that the value of the civil cases ready for adjudication is R14.7 billion.

#### 14.3. **Key activities for 2018/19**

- A total of 24 proclamations were issued in 2018/19.
- A total of 20 final reports in respect of completed investigations were submitted to the President.
- Investigations were conducted at 14 national departments, 17 provincial departments, 17 municipalities and three state owned enterprises.

- There has been an intense focus on civil litigations matters, including 17 matters involving the Department of Public Works, two involving the Department of Correctional Services and eight involving the SABC.
- A total of 331 referrals were made to the NPA and 335 referrals were made for disciplinary action.

#### 14.4. **Human Resources**

14.4.1. In 2017/18, the SIU embarked on an organisational renewal project - 'Project Siyakha'. The project continued in 2018/19 with the following key deliverables being approved: the (new) organisational structure; a new value chain; and job profiles and job grades.

14.4.2. At the end of 2018/19, the SIU had a staff complement of 532 of 603 approved post, of which 513 (97%) were permanent and 19 (3%) were fixed term. The overall vacancy rate was 12% (compared with 515 of 629 approved posts and an overall vacancy rate of 18% in 2017/18). Of particular concern is the vacancy rate at top and senior management level, which was at 88% and 37% respectively.

14.4.3. At the end of 2018/19, Africans were under-represented at 61% of the SIU's total workforce. A total of 261 women were employed at the SIU, of which 24 women (7% of the total workplace) were employed at senior and top management level. The majority of women at the SIU were at skilled technical or below, employed predominantly in administrative positions. This is in contrast to men, who are employed in higher numbers at professional qualified and above (management). No persons with disabilities were/are employed at the SIU.

#### 14.5. **Audit outcome**



14.5.1. The SIU maintained a clean audit outcome in 2018/19 (its third consecutive clean audit). However, the Auditor-General noted that the collection of debt is concerning with R493 million outstanding for services rendered to departments, entities and municipalities at 31 March 2019; and there were material misstatements in the performance report submitted for auditing which were subsequently corrected.

14.5.2. The SIU reports irregular expenditure of R2.1 million as a result of two employees being paid on an unapproved scale (compared with R1.5 million for 2017/18). There was no fruitless and wasteful expenditure. The SIU's contingent liabilities decreased to R484 000 from R7.9 million in 2017/18.

#### 14.6. **Financial performance**

14.6.1. The SIU's funding model provides for a baseline grant from National Treasury. In addition, the SIU charges state institutions for its services, thus raising additional revenue. The recovery of debts from state institutions for services is proving to be a challenge and requires legislative amendments (On average, the SIU has only been able to recover about 25% of the outstanding debt over the past seven years. The debt has grown in the past seven years from R34 million to R493 million at the end of 2018/19). A key challenge is the risk of conflict of interest as the SIU presents its invoice to senior officials at the affected institution, who may be implicated. Also, in most cases, the state institution has not budgeted for the cost of the investigation.

14.6.2. In 2018/19, the SIU received R648 million (compared with R657.8 million in 2017/18) made up of the grant allocation of R357 million and revenue from payments for services of R255 million. An amount of R178 164 was made available to the SIU from CARA funds and R35.8 million was from other monies received (for example, interest). The SIU was affected by baseline reductions of R9.2 million in 2018/19; R15.8 million in 2019/20; and R16.6 million in 2020/21.

14.6.3. Actual expenditure in 2018/19, was R619.8 million or 95.6% of total revenue, with a surplus of R28.2 million.

14.6.4. The main area of under-expenditure was on compensation of employees: R399 million of the adjusted budget of R451 million for this item was spent. The reason for the difference is that the SIU was undergoing an organisational review process, in which it was developing a new organisational structure. The SIU intends to fill the structure over the MTEF period so that budgeting and expenditure is in line.

14.7. The SIU's projected total revenue for 2019/20 is R718 million, compared with R661.7 million in 2018/19. Despite baseline reductions, the SIU's budget increases in real terms by 3.2% from 2018/19. A significant portion of the budget (R565.9 million or 79%) is for salaries (The SIU projects to increase its headcount in 2019/20 from 531 to 673 employees).

#### 14.8. **Performance**

14.8.1. The SIU's planning is aligned to Outcome 3 (South Africans are and feel safe) and Outcome 12 (Efficient, effective and development oriented state). The Unit's focus is on contributing significantly to the reduction of corruption and the perception of corruption. These outcomes are linked to the vision set out in the National Development Plan (NDP) that highlights the importance of building a resilient anti-corruption system.

14.8.2. The 2018/19 Annual Performance Plan (APP) introduced a new programme – 'Market data analytics and prevention' in addition to the 'Administration' and 'Investigations and Legal Counsel' programmes with significant changes to the strategic objectives and performance indicators.

14.8.3. The SIU achieved 17 of 29 or 59% of its targets for 2018/19: Administration achieved six of 12 or 50% of planned targets; Investigations and Legal Counsel achieved nine of ten or 90% of planned targets; and Market Data Analytics and Prevention achieved two of six or 33% of planned targets.

14.8.4. Comparing performance with expenditure, the SIU achieved 59% of its targets for 2018/19, spending 95.6% of total revenue.

**Table 10: SIU performance for targets and indicators relating to core business 2016/17 – 2018/19**

INDICATOR	2016/17	2017/18	2018/19
The percentage of allegations that were electronically tracked according to predetermined standards	-	-	98% (baseline)
The percentage of centrally registered allegations received that are assessed in accordance with predetermined standards	-	-	100% (baseline)
No. of investigations closed out	EXCEEDED 1 186 against a target of 800	EXCEEDED 1 556 against a target of 1000	EXCEEDED 3 430 against a target of 1 200
No. of reports submitted to the Presidency	EXCEEDED 6 against a target of 5	EXCEEDED 15 against a target of 8	EXCEEDED 20 against a target of 12
Actual value of cash assets recovered	NOT ACHIEVED	NOT ACHIEVED	EXCEEDED

INDICATOR	2016/17	2017/18	2018/19
	R45.5 million against a target of R140 million	R34 million against a target of R120 million.	R137 million against a target of R120 million
The value of potential loss prevented	EXCEEDED R106.5 million against a target of R18 million.	EXCEEDED R407 million against a target of R21 million.	EXCEEDED R53.4 million against a target of R24 million
Value of contracts/administrative decisions set aside or deemed invalid	EXCEEDED R4 billion against a target of R600 million.	EXCEEDED R797 million against a target of R660 million.	EXCEEDED R999 million against a target of R730 million
Value of matters in respect of which evidence was referred for the institution or defence of civil proceedings	EXCEEDED R3.8 billion against a target of R1.2 billion.	EXCEEDED R2.7 billion against a target of R1.3 billion.	EXCEEDED R7.9 billion against a target of R1.4 billion
Number of referrals made to the NPA	EXCEEDED 108 against a target of 60.	EXCEEDED 148 against a target of 75.	EXCEEDED 331 against a target of 75
Number of referrals made for disciplinary action	EXCEEDED 137 against a target of 75	EXCEEDED 319 against a target of 75	EXCEEDED 335 against a target of 100

#### 14.9. Planning 2019/20

14.9.1. The 2019/20 Annual Performance Plan (APP) outlines specific activities for the SIU to take a more proactive role and ensure greater preventative measures to address maladministration, malpractice and corruption. The following strategic inventions are planned to support this focus:

- Define the SIU value chain.
- Accelerate the conversion of allegations to proclamations.
- Establish capacity for corruption, maladministration and malpractice prevention through public education, data analytics, and scenario analysis.
- Monitor and evaluate the impact of the SIU's objectives.
- Standardise the manner in which cases are scoped.
- Improve the quality and turnaround time of investigations.
- Expand on the monitoring and evaluation of case management, including central case registration system.
- Ensure the long term financial stability of the SIU.
- Create and publish sector data intelligence.
- Create advisory capacity to prevent the reoccurrence of maladministration, malpractice and corruption.
- Amend the SIU Act.
- Improve governance.

## 15. **South African Human Rights Commission (SAHRC)**

15.1. The SAHRC's mandate is extremely broad, encompassing the promotion, protection and monitoring of human rights in South Africa. The Commission derives its mandate from the Constitution and South African Human Rights Act, 2014. The Commission also has specific obligations in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, and Promotion of Access to Information Act, 2000.

15.2. In recognition of South Africa's core challenges – high levels of poverty, inequality, unemployment and violence – all areas of the SAHRC's work attempt to contribute to addressing each of these challenges. The identified strategic focus for the period under review included: children and migration; civil and political rights; disability and social security; education; equality

and social cohesion; health care; land, environment and the right to food; and water, sanitation and housing. Its interventions include complaints handling, strategic impact litigation, investigative hearings, public outreach, monitoring recommendations and research.

### 15.3. **Operational developments 2018/19**

15.3.1. The Commission received more than 10 000 complaints and enquiries in 2018/19, finalising more than 80% of these. The key human rights concerns concern the right to equality; section 27 (health care, food, water and social security); just administrative action; human dignity and labour relations.

15.3.2. The Commission reports that it compiled a State of Human Rights Report, which highlights that:

- Some progress has been made in the progressive realisation of the right of access to health care.
- The right to basic education continues to be violated by the skewed distribution of resources.
- Vulnerable groups continue to not enjoy the benefits and protection of the law on an equal basis.
- Unfair discrimination on the basis of race, gender, sexual orientation and disability persists.
- Hate speech continues to undermine social cohesion in the context of legal uncertainty.

15.3.3. The Optional Protocol to the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was ratified at the end of March 2019. The OPCAT obliges State parties to establish national preventative mechanisms to monitor places of prevention of liberty through regular visits. The Commission is the co-ordinating body for the NPM in South Africa, in accordance with Article 17 of the OPCAT. The Commission received R1.68 million in 2019/20 from the Justice Department for this work.

15.3.4. The Promotion of Access to Information Act Annual Report for 2018/19 was tabled and referred to the Committee for consideration and report on 4 October 2019. The Report highlights ongoing, systemic non-compliance with PAIA at all levels of government.

15.4. **Human resources.** The Commission reports that, in 2018/19, 173 posts were filled (of 198) 2017/18, 186 posts were filled (of 198) with a vacancy rate of 12%. (Compared with 186 of 198 posts filled with a vacancy rate of 6% in 2017/18.) At Senior Management level, the vacancy rate is 21% (from 10% in 2017/18). In terms of occupation, vacancies at research is 31% and there is a 17% vacancy rate for advocacy and communications.

#### **15.5. Audit outcome**

15.5.1. The SAHRC received an unqualified audit opinion with findings.

- Only some material misstatement in the annual performance report that were identified were corrected.
- Some goods/services above R500 000 were procured without price quotations.
- Effective and appropriate steps were not taken to prevent irregular expenditure amounting to R2.2 million (largely as a result of a deviation from competitive bidding with approval).
- Management did not adequately review and monitor compliance with the legislation and prepare regular, accurate and complete performance reports supported by reliable evidence.

15.5.2. There was no fruitless and wasteful expenditure reported for 2018/19.

#### **15.6. Expenditure 2018/19**

15.6.1. The SAHRC was allocated R178.8 million for 2018/19 but finds its capacity to deliver is constrained by a (relatively) small budget (compared to the mandate), which is now exacerbated by budget reductions.

15.6.2. In 2018/19, the Commission sublet office space to the Information Regulator to the amount of R855 552.

15.6.3. Expenditure in 2018/19 was R165.4 million (91%) with an amount of R15.7 million unspent. The underspending is attributed to the freezing of (approximately 12) posts as they became vacant throughout the year, as part of planned cost containment measures. The decrease in general expenses, such as printing and stationary costs, IT enhancements and audit fees) is due to cost containment measures to reduce administration costs.

## **15.7. Performance 2018/19**

15.7.1. The SAHRC's performance has steadily declined since 2014/15 when it achieved 92% of its planned targets. In 2018/19, the Commission achieved 22 of 30 or 73% of planned targets.

15.7.2. The Commission reports on its performance in respect of four strategic objectives and performance indicators and targets are aligned to these objectives.

- Strategic objective 1: Improve the effectiveness and efficiency of the Commission to support delivery on the mandate – a total of 7 or 56% of 12 targets were achieved.
- Strategic objective 2: Deepen the understanding of human rights to entrench a human rights culture – all targets were met.
- Strategic objective 3: Take steps to secure appropriate redress where human rights have been violated – A total of 15% of 4 targets were achieved.



- Strategic objective 4: Conduct research to monitor and assess and report on the observance of human rights – a total of six or 86% of eight targets were achieved.

**Table 11: SAHRC – Selected performance per strategic objective 2017/18 - 2018/19**

PERFORMANCE INDICATOR	PERFORMANCE	
	2017/18	2018/19
<b>Strategic Objective 1: Improve the effectiveness and efficiency of the Commission to support delivery on the mandate</b>		
Percentage implementation of the risk management plans	100%	95% (Target 100%)
100% resolution of audit findings	91%	81% (Target 100%)
<b>Strategic Objective 2: Deepen the understanding of human rights to entrench a human rights culture</b>		
778 outreach and key stakeholder engagements	-	EXCEEDED 1 132
403 media and communication activities	-	EXCEEDED 3 847
100% implementation of the annual Know Your Constitution campaign	-	ACHIEVED 100%
<b>Strategic Objective 3: Take steps to secure appropriate redress where human rights have been violated</b>		
Finalisation of complaints and enquiries	NOT ACHIEVED	EXCEEDED 8 491 against a target of 8 229
No. of strategic impact matters	-	EXCEEDED 4 against a target of 2

PERFORMANCE INDICATOR	PERFORMANCE	
	2017/18	2018/19
Completion of previous hearing reports	-	NOT ACHIEVED 3 reports against a target of 5
<b>Strategic Objective 4: Conduct research to monitor and assess and report on the observance of human rights</b>		
Completion of state of human rights in South Africa report	1	ACHIEVED Report completed
Completion of SAHRC section 184(3) economic and social rights briefs	-	ACHIEVED 3 research briefs completed
Host 4 seminars	-	NT ACHIEVED 3 seminars held
Percentage submissions of NHRI reports to supranational bodies	ACHIEVED	ACHIEVED 100%/14 submissions
Monitoring the implementation of report recommendations	-	ACHIEVED 1 report completed

15.7.3. Key reported achievements for 2018/19 include:

- The top five ‘human rights’ complaints lodged with the Commission in remain unchanged from the previous financial year namely: equality (particularly racism); health care, food, water and social security; human dignity; labour relations; and just administrative action.
- A total of 8 491 of 10 448 complaints and enquires received were finalised.
- A total of 72 cases were instituted in the Equality Courts.
- Research briefs were completed on the following: Land, gender and socio-economic rights; Equitable access to land; Structural violence and exclusion: Interrogating the issue of urban land occupation in South Africa; and

Sustainable Development Goals and the role of National Human Rights Institutions.

- Three investigative hearings reports were completed: the status of mental healthcare in South Africa; the lack of safety and security measures in schools for children with disabilities; and land.

## **15.8. Budget 2019/20**

15.8.1. The Commission has a total budget of R189.7 million for 2019/20. A significant portion (69% or R130.9m) of the budget is allocated to cover personnel costs, reduced from 72% last year. A total of R45.6 million or 24% of the budget for 2019/20 is allocated to Corporate Support Committed Costs and only 7% or R13.2m of the budget is allocated to the Commission's core operations. The greatest part of the allocation for operation/corporate costs is already committed, including accommodation and municipal charges; supply chain; IT related costs; human resource related costs and auditing fees.

## **16. Public Protector South Africa (PPSA)**

16.1. The Public Protector is an independent constitutional institution whose mandate, broadly, is to support and strengthen constitutional democracy by investigating maladministration or improper conduct in state affairs or the public administration in any sphere of government and to take appropriate remedial action. The Constitution also states that the Public Protector must be accessible to all persons and communities.

16.2. **Human resources.** In 2018/19, at year end, the PPSA had 346 employees of 365 approved posts with a 5.2% vacancy rate (19 vacancies) (in comparison with 2017/18, when at year-end the PPSA had 361 employees of 389 approved posts with a vacancy rate of 7% (28 vacancies)). The PPSA did not report its turnover rate.

### 16.3. **Audit outcome**

16.3.1. The PPSA achieved an unqualified audit opinion with findings in 2018/19 (as in 2017/18):

- Performance management: There were no material findings on the usefulness and reliability of the performance information but attention was drawn to the achievement of planned targets and the explanations provided.
- Payments of invoices within 30 days: The Auditor General found that some contractual obligations and monies owed were not settled within 30 days. Internal controls to ensure that all payments were made to suppliers within 30 days were only effectively monitored from the last quarter of the financial year, which resulted in some payments not made in 30 days in the preceding three quarters of the year.
- The Annual Financial Statements were not prepared in accordance with the prescribed financial reporting framework (PFMA) and material misstatements had to be corrected.

### 16.4. **Financial performance**

16.4.1. In 2018/19, the Public Protector received a revised budget of R341.7 million. Total actual expenditure was R322.5 million with under-spending of R19.3 million. (Underspending occurred mostly under the Administration programme, which spent R129.4 million of the revised budget of R147.3 million for the programme. The surplus under Administration was R17 million. However, as the PPSA had an accumulated deficit of R22.8 million at the end of 2017/18, the surplus reduced the deficit at the end of 2018/19 to R3.5 million.

### 16.5. **Performance 2018/19**

16.5.1. In 2017/18, the PPSA embarked on a restructuring process to align its operations with the new vision, which prioritised the following over the medium term:

- Broadening access by taking services to the doorstep of communities located at the grassroots in the margins of society.
- Interacting with communities in their own languages for effective communication.
- Reaching people with traditional leaders and councils.
- Taking stock of all the Memoranda of Understanding between the Public Protector and other key stakeholders such as government departments.
- Becoming a stronghold for the poor and marginalised.
- Empowering the people of South Africa to be able to enforce their rights before approaching the Public Protector.
- Encouraging organs of state to establish their own effective complaints resolution units or sector specific ombudsman institutions such as Health, Tax and Military Ombudsman.

16.5.2. The PPSA made substantial changes in the 2017/18 APP, removing 31 performance targets but in 2018/19 increased the number of targets to 18. There has been an improvement in reported performance from 50% of planned targets in 2017/18 to 72% of planned targets in 2018/19

**Table 12: PPSA overview of performance selected indicators and targets 2015/16 – 2018/19**

<b>PERFORMANCE TARGETS</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
<b>Number of planned targets during the financial year</b>	21	45	14	18
<b>Number of targets achieved</b>	13	24	7	13

<b>PERFORMANCE TARGETS</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
<b>Number of target not achieved</b>	8	21	7	5
<b>Percentage level of performance</b>	62%	53%	50%	72%

16.5.3. In 2018/19, the PPSA reports its case management was as follows:

**Table 12: PPSA caseload management 2015/16 – 2018/19**

<b>CASE LOAD</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
<b>Cases carried over</b>	5 331	4 254	5 255	4 390	4 006
<b>Total received</b>	11 372	9 563	11 943	8 717	-
<b>Finalized cases</b>	12 735	10 787	13 572	9 912	-
<b>Cases referred</b>	1 159	929	1 746	1 100	-

16.5.4. In 2018/19, Administration achieved three (or 75%) of four planned targets, spending R129.5 million against the allocated budget of R132.9 million.

16.5.5. The Investigations programme achieved three or 50% of the six planned targets for 2018/19. Performance is linked to the following four strategic objectives: investigate and finalise reports promptly; promote a culture of good governance; and implementation of remedial action. The programme had a budget of R181.8 million in 2018/19, and spent R180.9 million, overspending by R876 000.

16.5.6. The Stakeholder Management programme achieved seven or 87.5% of eight performance targets in 2018/19. The programme had a budget of R12.7 million and spent R12.1 million, resulting in under-expenditure of R599 000.

#### 16.6. Budget 2019/20

16.6.1. In 2019/20, the PP is allocated R322.6 million, compared to R311 million in 2018/19. Following a baseline cut in the 2018 Budget of R36.2 million over the MTEF, the 2019 Budget includes further cuts over the medium term. A total of 80% or R257.1 million is for compensation of employees, while the goods and services budget is R62.5 million.

16.6.2. For some time now, the Public Protector has indicated that the institution is underfunded. The main areas of need are as follows:

**Table 13: Public Protector - Additional Funding Requested 2019 MTEF**

<b>Description</b>	<b>2019/20 R'000</b>	<b>2020/21 R'000</b>	<b>2021/22 R'000</b>	<b>Total R'000</b>
<b>Funding of critical positions</b>	15 613	16 564	17 573	49 750
<b>Professional fees (experts and specialists)</b>	13 110	13 896	14 730	41 736
<b>Security</b>	6 127	6 464	6 819	19 410
<b>Total</b>	<b>34 850</b>	<b>36 924</b>	<b>39 123</b>	<b>110 898</b>

16.7. During 2019/20 Budget hearings, the Public Protector identified the following strategic challenges and interventions:

**Table 14: Public Protector SA – Strategic challenges and interventions**

Challenges	Interventions
Insufficient funding for 2019/20 financial year	Value Proposition (Budget Bid) was formulated and presented to National Treasury
Capacity shortages (few investigators, diverse skills such as forensic, actuarial, engineering, quantity surveying, etc. are lacking)	Outsourcing/MOU's and SLA's with other state institutions to leverage on synergies and innovations such as assisting organs of State to establish internal complaints handling mechanisms.
Security (lack of security measures in provincial and regional offices)	Leverage state resources by attempting to secure office accommodation (specifically DoJ) in order to utilise the same physical security services

#### Part 4:

#### Committee Observations

#### 17. Committee's observations

The Committee makes the following observations:

- 17.1. ***BRRR process***: The Committee is not satisfied that the timeframes associated with the BRRR process truly permit it to engage meaningfully with the task at hand. Although committees consider performance and spending on a quarterly basis in-year, this information is unaudited. The process of compiling Budgetary Review and Recommendation reports, which includes the evaluation of the audited annual performance reports that in terms of the PFMA must only be tabled by 31 September of each year, requires a great deal more time than is allocated in terms of the Money Bills Amendment Procedure and Related Matters Act. The situation is especially difficult for



committees, such as this, that oversee more than one department, in addition to associated entities and institutions.

The limited time available also severely limits any opportunity for interaction with the public on its assessment of the relevant sector. Such engagement is very important for a Committee to gauge impact, among others.

The Committee understands that in the Fifth Parliament there was a parliamentary process underway to review the provisions of the Money Bills Procedures Amendment and Related Matters Act to address these and other challenges relating to the BRRR process and urges that this process be revived.

## *17.2. Budget reductions*

- 17.2.1. The Committee is acutely aware of the constrained fiscal environment, which, among others, requires departments to operate within their compensation of employees' expenditure ceilings by containing costs and improving efficiency through the undertaking of appropriate operational changes. Further, the annual salary adjustments must also be made within the compensation of employees' expenditure ceilings. Although headcounts have decreased through a combination of natural attrition and the freezing of vacant posts, this directive has placed labour intensive departments under a great deal of pressure.

The general lack of funds is exacerbated by emerging priorities such as a renewed fight against corruption and the drive to eradicate gender-based violence, which both require the allocation of significant resources that must be found within the resources that are already available.

The delivery of justice services is very labour intensive: warm bodies are needed, for example, to argue on behalf of the State in criminal matters; to

defend accused to ensure their right to a fair trial; to interview witnesses; to issue default judgements in undefended civil matters; to assist the public navigate the complexities of legal processes; and so on. Of course, a great deal can be done to work smarter by, for example, introducing measures to promote the modernisation and digitisation of court processes and ensuring that human capital is allocated more efficiently.

However, it is a fine line that must be trodden as a too lean staff establishment slow matters down, undermining the work that must be put into creating a transformed and responsive justice system. The Committee cannot help but wonder whether the reduced performance and poor audit outcomes that it has observed in some instances cannot be attributed in some part to vacancies, especially at senior management level and for critical occupations such as supply chain management and finance.

Staff reductions can also increase the workload of officials unacceptably, creating high levels of stress, low staff morale, an increased demand for employee wellness services, and loss of key staff to other positions in government or to the private sector.

Although the Department has assured the Committee that it will prioritise the filling of identified critical posts and sharing of support services wherever possible so that service delivery is not affected, the Committee remains concerned and asks that it provide a detailed written report on its revised structure; the progress of the court utilisation project; and plans to fill senior management and critical posts with timeframes by 22 November 2019.

- 17.2.2. Legal Aid SA, which is managed with distinction on a relatively modest budget to achieve impressive results year-after-year, can no longer absorb the budget shortfall/cuts through further efficiencies and costs containment measures. The only recourse going forward is to reduce the staff establishment and retrenchments are a real possibility. The projected reduction

in the number of its legal practitioners is substantial and will significantly impact on service delivery, resulting in an increase in pending matters and case backlogs in criminal courts, a reduction in the number of clients assisted in civil matters and advice matters and the further effect of compromising the quality of legal services. All of this compromises the constitutional obligations to make State funded legal services available if substantial injustice would otherwise result.

The Committee, therefore, does not support the implementation of planned budget reductions in the case of Legal Aid SA, which with the budget shortfall, will amount to R451.5 million over the 2020 MTEF.

- 17.2.3. Historically, the Chapter 9 institutions have been underfunded. In some instances, their constitutional and/or statutory mandates are for all intents and purposes unfunded. (The SAHRC, for example, has never received funding for its responsibilities with regard to the Promotion of Access to Information Act (PAIA), 2000). This has had adverse consequences for their structure and operations and, arguably, restricted their impact.

These institutions feel budget cuts/reductions especially severely. In the case of the SAHRC the application of baseline cuts in 2020/21 will remove R10 million from its allocation and will require staff retrenchments. The budget reduction also threatens the Moot Court competition, which is an initiative to raise awareness of human rights aimed at Grade 10 and 11 students at all public schools in the country.

The Committee notes as well that the PPSA has asked for funding for critical posts, professional fees for subject matter specialists and security.

Any decision to apply the budget cuts to the baseline allocation of a Chapter 9 institutions should carefully consider their unique contribution towards strengthening our constitutional democracy, as well as the duty placed on

other state institutions to assist these institutions. The Committee, therefore, does not support the application of baseline reductions in the case of the SAHRC and PPSA.

The matter of an appropriate funding model for the Chapter 9 institutions was mooted more than a decade ago when the *ad hoc* Committee on the Review of Chapter 9 and Associated Institutions (2007) recommended that the budgets for the constitutional institutions supporting democracy be contained in a separate programme in Parliament's Budget Vote.

Furthermore, the Committee wishes to draw attention to the resolution of the National Assembly in Fourth Parliament affirming this recommendation and urges the 6<sup>th</sup> Parliament to consider undertaking a fresh review of the Chapter 9 institutions, in which consideration of an appropriate funding model is included.

#### 17.3. ***Audit outcome: Department of Justice and Constitutional Development***

The Committee is dismayed that the Department received a qualified audit outcome for the third consecutive year. The Committee notes the findings and the explanations provided.

The Committee acknowledges the role that vacancies in senior management and in the supply chain management and finance may have played in certain unfavourable audit outcomes. The Department placed a moratorium on filling posts some time ago while an exercise to identify critical posts was undertaken but it is unclear whether this process has been finalised. The Committee is of the view that these posts must be filled as a matter of urgency.

The Committee is told that the Department must continue to use the Justice Yellow Pages system, which is a legacy system. However, it is unable to replace the system until the Integrated Financial Management System is in

place (National Treasury has placed a moratorium on the acquisition of new systems in the meantime). This will constrain its ability to address the findings relating to asset management.

The Committee also notes that the Auditor General pointed to the failure of the Accounting Officer to effectively oversee and financial and performance reporting and compliance, as well as related internal controls. In addition, Management's failure to adequately monitor the implementation of action plans to address internal control deficiencies; implement proper record keeping in support of financial and performance reporting; adequately review and monitor compliance with legislation; and design and implement formal controls over IT systems to ensure their reliability and the availability, accuracy and security of information was highlighted as a factor in the poor audit outcome.

17.3.1. The Committee, therefore, specifically requests that:

- The Director-General provide the Committee with details of the formal commitments made to address the audit findings by 22 November 2019.
- The Department report on the its audit action plan as part of the initial report due on 22 November 2019, and continue to update the Committee on progress as part of the quarterly reporting process.
- Management confirms that in-year financial and performance reports have been adequately reviewed at the appropriate times.
- At the appropriate time, the Director-General, Chief Financial Officer and Audit Committee all confirm that the annual financial statements have been reviewed prior to submission for auditing.

17.4. ***Irregular expenditure and wasteful and fruitless expenditure.*** The Committee is concerned at the sharp increase in irregular expenditure (now at R1.4 billion) and in fruitless and wasteful expenditure. Although corruption may not be a factor in the occurrence of the irregular expenditure, it does indicate a lack of control in the environment which in itself exposes the

Department to deliberate wrongdoing. The Committee notes that much of the irregular expenditure is under investigation by the Department or external investigators. The Committee requests that the Department provide a written report by 22 November 2019 on the underlying causes of the irregular expenditure; the steps that it is taking to prevent re-occurrences; the status of investigations into unconfirmed amounts; and the status of disciplinary action taken against the officials responsible for such expenditure, including efforts to reclaim these amounts; and to continue to do so quarterly.

**17.5. *Policy on the design of the judicial governance and court administration model and Policy on Lower Court Reform***

The Committee was informed that the Policy on Judicial Governance was submitted to Cabinet in March 2019. The Committee notes that during the Budget hearings in July 2019, the Department indicated that it is now ready to present the model. The Committee notes further that this was a matter on which the Minister has expressed the desire to consult with the Chief Justice, after he had approached Cabinet, on the short to medium term policy proposals and agree to the framework for the implementation where there is consensus. The Department also reports that it will be important to set realistic timeframes on the long term policy choices that will require legislation to implement.

The Committee notes that the finalisation of the Policy on Lower Courts Reform forms part of the Department's annual plan for 2019/20.

As both policies are key to the transformation of the justice system, the Committee is understandably keen that they receive attention. In the meantime, the Committee requests that the Department continue to report on progress, as part of the quarterly reporting process.

- 17.6. ***Integrated Criminal Justice Strategy (ICJS)***. The Strategy is intended to provide a mechanism to address the “silo” approach of the relevant departments and entities to strengthen co-ordination and co-operation among them. The ICJS is to incorporate the modernisation of the criminal justice system and will address concerns raised at community level that include the implementation of the bail system and the lack of support for victims of crime.

The target date for the finalisation of the Strategy was 31 March 2018 but was revised to 28 February 2019 (for submission to Cabinet). The Committee was informed that a framework had been developed and was presented to the Directors-General of the JCPS Cluster. The next step was the development of an implementation plan, which was supposed to be finalised and submitted to Cabinet by the end of September 2019.

The Committee requests that the Department continue to report on progress as part of the quarterly reporting process.

- 17.7. ***Integration of IT systems (IJS)***. The ultimate goal of the IJS is to ensure the seamless integration and consolidation of critical information between the entities that form part of the JCPS Cluster. The Committee acknowledges that there is considerable progress, details of which are contained in the recent progress report on the Integrated Justice System (IJS) programme, dated 27 August 2019. For now, the Committee requests that the Department continue to report on this item as part of the quarterly reporting process and will arrange a dedicated briefing on this item as soon as its programme permits.

- 17.8. ***Expanded court infrastructure for improved access to justice.***

The building of new courts remains a core element of the Department’s efforts to improve access to justice. However, given the current financial constraints, it is important that infrastructure budgets are managed well and deliver value.

Typically, courts take far longer to build than projected and, in the process, costs escalate hugely. Contractors go out of business requiring the appointment of a fresh contractor, which causes further delays and is costly. Problems (some of which should have been foreseen) emerge to delay project completion even further.

The new High Court in Mpumalanga at Mbombela is at long last operational and will be opened in November 2019. However, as was the case for the Limpopo High Court, building has been subject to extensive delays and the associated costs have risen to R1.2 billion. The Committee is informed that an amount of R233.1 million is under investigation by the SIU in relation to the Limpopo High Court relating to the failure to pay contractors in a timely manner which incurred additional costs (with the IDT).

The Committee notes that the other courts that are to be completed this year are the Port Shepstone Magistrates Court and the Bitiyi Magistrates Court. The Department has included a new indicator relating to the upgrading and extension of courts, targeting six courts in 2019/20 (the Evander magistrates Court, the Vulamehlo Magistrates Court, Umbumbulu Magistrates Courts, the Chatsworth Magistrates Court, the Palace of Justice and the burnt out court in Pretoria). Over the medium term, it is projected that additional court infrastructure will cost R1.5 billion.

The Committee notes the Department's progress report on its infrastructure projects dated 30 August 2019 and will schedule a dedicated briefing involving all roleplayers on all aspects of the infrastructure programme, including planned maintenance, as soon as its programme permits. For now, the Committee requests that the Department continue to report on this item as part of the quarterly reporting process.

*17.9. Transformation of State Legal Services.* The Committee has previously noted the reports of disarray and corruption in the Office of the State



Attorney, as well as the fragmented approach to the management of State Legal Services. Re-engineering the manner in which State Legal Services are delivered across government and addressing organisational challenges is a key departmental initiative.

The Committee notes the progress report on its initiatives to transform State Legal Services, which provides details of its plans to address the procurement of state legal services. There is a process to develop a permanent procurement system. Specifications have been developed and are in the consultation phase. The expectation is that the process will be finalised by the end of the financial year with implementation in 2020/21. In the meantime, National Treasury has provided permission to deviate when procuring legal services. There is a process underway as well to develop the legal skills set of state attorneys. Nonetheless there is a shortage of capacity and the present budget constraints may impact on the filling of vacant posts, which will require more outsourcing of work.

The Committee will arrange a dedicated meeting in order to deepen its understanding of the operations of this Office countrywide, as well as the Department's plans to transform State Legal Services as a whole, as soon as the programme permits.

- 17.10. *A transformed legal profession and briefing patterns.* The Committee believes that a great deal more needs to be done to support black legal practitioners, especially black women, wishing to make law their career. The Committee notes the Department's initiatives to ensure that its briefing patterns support previously disadvantaged individuals. Nevertheless, the impact of this does not seem to be felt by practitioners who complain that they lack work to sustain viable practices. The Committee is of a view that there is a need to ask why this is so and intends arranging a stakeholder engagement to explore this in the near future.

- 17.11. ***Court annexed mediation.*** The Committee requests a report on the progress regarding the court annexed mediation project by 29 November 2019.
- 17.12. ***Sexual offences matters.*** The Committee welcomes the news that the Regulations for sexual offences courts are at an advanced stage with plans to gazette them in January 2020.

Although the NPA reports an increase in the conviction rate for sexual offences, the number of sexual offence cases in our courts that reach verdict is very low. The Department has reported on the many challenges that have been identified, of which the biggest contributing factor is the current vacancy rate, specifically of experienced prosecutors and case managers at SOCA. The shortage of legal aid defenders due to vacancies is yet another factor in the delay and postponement of cases.

The Department reports the establishment of 17 more dedicated sexual offence court rooms in 2018/19 but there are resource challenges that prevent the rollout of these courts at a greater pace. The Committee is informed that the funding of further sexual offences courts and the Thuthuzela Care Centres (TCCs) will come from CARA funds, as there is no dedicated budget. However, the CARA funds do not pay for the human capital which is desperately required for these courts to perform optimally.

Budget constraints have also led to a moratorium on the appointment of further intermediaries, who play a critical role in providing support to witnesses, especially child witnesses.

A lack of budget has also affected the achievement of the target in respect of the number of CCTV systems in 2018/19. The unreliability of essential court equipment, such as CCTVs, specifically where it is required for child witnesses has also been identified as contributing to court postponements.

The Committee notes that the Department has tabled its 2018/19 Report on the Implementation on the Criminal Law Sexual Offences and Related Matters Act and believes that discussion of its contents will provide an opportunity for focused engagement on this issue. The Committee will arrange a dedicated briefing on the Report involving key roleplayers as soon as its programme permits.

- 17.13. **Master's Office.** The Committee was informed of some of the challenges found at the Master's Offices in Cape Town, Johannesburg and Pretoria, and requests a full report from the Department by 22 November 2019. The Committee will also arrange a dedicated briefing as soon as its programme permits.
- 17.14. **Insolvency Policy.** The Committee welcomes the intention to have an Insolvency Policy in place by the end of the financial year.

## **18. National Prosecuting Authority**

- 18.1. **Strengthening the independence of the NPA.** Before 2014, National Treasury provided the NPA with an exemption that allowed it to prepare its own annual financial statements (AFS) separate from the Justice department. The exemption was given, pending the enactment of legislation that would clarify the NPA's status was enacted. At the beginning of the Fifth Parliament, the situation changed in that the NPA is reported as a programme in the Justice Vote and no longer prepares separate annual financial statements. The NDPP, however, continues to table a separate annual report on its activities in terms of the NPA Act, 1998. The new NDPP, however, has indicated that it is not satisfactory for the NPA to have the DG: Justice and Constitutional Development as its accounting officer, a view that the Department appears to support. As stated in its Budget Report, July 2019, the Committee supports an independent prosecuting authority but will need to

engage further on this matter to obtain a fuller understanding of the practicalities involved.

- 18.2. ***Budget shortfall.*** The Committee is of the view that insufficient weight is being given to the essential nature of prosecutorial services. At the end of 2018/19, the vacancy rate at the NPA was 21%. Since then, 73 managers have left the NPA. “Savings” from these vacancies as well as additional AENE funds of R102 million will be used to fill posts in the Investigating Directorate, AFU, SCCU and Witness Protection.

It is not acceptable to continue to lose managers, prosecutors and legal administrative and investigative staff at the NPA at the rate that is happening at present. The lack of capacity increases the workload on remaining staff intolerably, which creates a host of further problems. There are high expectations of the NPA but with high vacancy rates, low staff morale and limited professional development and training these expectations are unreasonable. The Committee, therefore, the NPA’s budget request for additional funds be made available to address the shortfall on the NPA’s salaries budget so that it can fill vacancies, continue the Aspirant Prosecutors Programme, fill 158 critical posts, for the Investigating Directorate, AFU and SCCU capacity, for witness protection and to address the operational budget shortfall. A breakdown of the NPA’s funding needs in this regard are set out earlier in this report.

- 18.3. ***Measuring performance.*** The Committee agrees that although conviction rates are a measure of performance, they do not measure impact. The Committee looks forward to the new planning cycle where the introduction of impact measures will be addressed.
- 18.4. ***Ethics and Accountability Mechanism.*** The Committee welcomes the NPA’s intention to introduce an Ethics and Accountability mechanism as provided for in section 22 of the National Prosecuting Authority Act, 1998.

- 18.5. ***Gender-based Violence.*** The Committee notes the need for specialist prosecutors to prosecute sexual offences cases and for revitalised TCCs. The Committee also notes that there are high vacancies at the TCCS, in particular for site co-ordinators, victim assistance officers and case managers. The Committee understands that an amount of R1.1 billion is to be reprioritised within government to address gender-based violence. The Committee requests a report on the breakdown of funds that are to be made available to the NPA for this priority.

## **19. Information Regulator**

- 19.1. In the Committee's view, the establishment of the Information Regulator is a priority. Unless the Regulator is adequately capacitated for it to be able to fulfil its functions, the remaining provisions of POPIA will not be declared operational. In this regard, the Committee is frustrated at the slow pace at which capacitation is taking place, given how important it is for South Africa to have a legislative framework that protects personal data. Worldwide, data protection legislation is seen as a key component in securing information so that it does not fall into the wrong hands. The Committee also notes the significant cost of data breaches. The Committee, therefore, is at pains to emphasise that the need to operationalise the Information Regulator is urgent. The Committee also requests that the Ministry continue to provide all the necessary support to assist the Information Regulator in its efforts to get up and running.
- 19.2. The Regulator informed the Committee that it will have a credible budget in the 2020 MTEF. It has also been given approval for a staff establishment of 430 posts and the "go ahead" to appoint 41 staff member in 2020/21, which is a welcome development.

- 19.3. The Committee notes too that the Regulator is sharing accommodation with the South African Human Rights Commission as an interim measure.

20. **Legal Aid South Africa**

- 20.1. **Audit outcome.** The Committee congratulates Legal Aid SA on receiving an unqualified audit for the past 18 years, with no matters of emphasis for the past fourteen years.
- 20.2. **Awards.** In addition, Legal Aid SA was awarded Top Employer accreditation for the tenth consecutive year. Without fail Legal Aid SA impresses with its clear strategic vision and planning, management of resources and considerable achievements.
- 20.3. **Client satisfaction.** The Committee also notes that a Stats SA survey found that 89% of clients were satisfied with the assistance it received from Legal Aid SA.
- 20.4. **Budget.** Legal Aid SA has been able to manage the budget shortfall and baseline reductions so far (with some help from the Department) through reduced court coverage and a lower recruitment rate than in past years. However, if it must implement the intended budget reductions of 5%, 6% and 7% over the medium term, it will need to retrench. This will have a significant impact on the availability of legal aid services, particularly in the District Courts where coverage will drop to 79% and in the Regional Courts to 85%. As it is, the Committee is aware that the high demand for legal aid services poses an enormous challenge to Legal Aid SA's practitioners, especially as practitioner coverage at many courts is insufficient and relief capacity inadequate. The Committee asks at what stage the lack of funds becomes a constitutional matter. The Committee, therefore, does not support baseline reduction in the case of Legal Aid SA, as a further reduction of its staff

capacity will have very serious consequences for the criminal justice system as whole. Legal Aid SA's funding needs for the 2020 MTEF are set out previously in this report.

- 20.5. **Civil work.** Legal Aid SA's budget goes largely towards funding legal representation of accused in criminal matters, as there is a constitutional obligation on the State to assist accused persons without legal representation. The Committee remains concerned at the extent to which criminal matters are prioritised over civil matters. The Committee appreciates the many efforts that Legal Aid SA has taken to stretch its capacity to undertake civil work to the very limits – now at about 13% of its caseload consists of civil matters. The Committee notes that there is now the risk that Legal Aid SA will no longer be able to maintain its current caseload in respect of civil matters, let alone significantly expand its civil work. The Committee, however, feels very strongly that funding should at least support the continued provision of legal assistance in civil matters.

## 21. **Special Investigating Unit**

- 21.1. **Audit outcome.** The Committee congratulates the SIU on obtaining an unqualified audit opinion with no findings for the third consecutive year.
- 21.2. **Legislative amendments.** The Committee understands that the SIU intends to bring legislative amendments to its enabling legislation that will provide it with a clear legislative mandate to address its funding model; undertake pre-proclamation investigations; and monitor and enforce remedial measures. In addition, legislative amendments are required so that the SIU can provide the services/undertake the functions envisaged by the organisational review. For example, the SIU is not mandated at present to perform a market data analytics function.

- 21.3. ***Debt recovery.*** The Committee notes the ongoing difficulty that the SIU has recovering monies owed to it by state institutions for its services (The amount owed by state institutions now stands at a little less than R500 million) and that this poses a significant risk to the Unit going forward. The SIU has engaged Treasury on this matter. As a result, the need for legislative amendments is being explored.
- 21.4. ***Memoranda of understanding and referral of matters to the SIU.*** The Committee notes the announcement of a co-operation agreement between the SIU and the Financial Intelligence Centre in June 2018. The MOU with the NPA is being reviewed to address certain fundamental legal issues that arise when matters are referred.
- 21.5. ***Special Tribunal.*** The SIU has the power to conduct civil litigation in its own name or in the name of the affected state institution but heavy court rolls often result in its civil litigation work being delayed. The Committee welcomes the announcement that the Special Tribunal, which will allow for matters to be heard expeditiously, is finally operational. The value of cases ready for adjudication and recovery is reportedly R14.7 billion.
- 21.6. ***SIU investigations.*** The Committee notes that the SIU has been mandated to investigate allegations relating to the affairs of the Office of the State Attorney as amended on 12 July 2019, as well as maladministration and/or irregular expenditure, improper or unlawful conduct in connection with the affairs of the Department or the IDT in connection with the construction of various courts and the acquisition of land for the Mpumalanga High Court and payments made in respect thereof. As both concern the Department of Justice and Constitutional Development, the Committee appreciates the update that the SIU gave in respect of progress so far.
- 21.7. ***Equity targets.*** The Committee notes that the SIU poor performance with regard to equity targets, especially with respect to the women employees in



the professional qualified category and persons with disabilities. The SIU also acknowledged that its working environment does not adequately support persons with disabilities. The Committee welcomes the SIU's undertaking to address this issue and will monitor progress going forward.

## **22. South African Human Rights Commission (SAHRC)**

- 22.1. *Audit outcome.* The Committee notes that the SAHRC's audit outcome is slightly improved, in that there are no matters of emphasis. The SAHRC is urged to ensure that it puts in place the necessary controls to ensure that the identified weaknesses are addressed.
- 22.2. *Budget.* The Committee does not support the proposed budget reductions in the case of the SAHRC or the PPSA. Specifically, regarding the SAHRC, a cut next year will reduce the baseline by R10 million, which the Commission will have difficulty absorbing. As a result, the Commission will need to cut its staff establishment further and will no longer be able to host the Moot Court competition.
- 22.3. *Non-responsiveness of state institutions.* The Committee notes the SAHRC difficulties in obtaining responses from departments and other state institutions.

The Committee is also dismayed that many of the issues raised at the Commission's public hearings are not new and were addressed in previous reports but the recommendations never implemented. The Committee, therefore, welcomes the Commission's commitment to monitor and ensure implementation of its recommendations going forward.

The Committee will raise the need for a mechanism to assist Chapter 9 institutions where state institutions are unresponsive to requests for

information and/or ignore the recommendations made in their reports through the Forum convened by the Speaker's Office.

- 22.4. ***PAIA Annual Report.*** The Commission has tabled the Promotion of Access to Information Act, 2000, Annual Report 2018/19, which is referred for consideration and report. The Committee is very concerned about the systemic non-compliance with PAIA at multiple levels of government, which the Report highlights. However, the Committee will engage with the Commission on the Report as soon as the programme permits.
- 22.5. ***National Preventative Mechanism.*** The Committee notes that the Commission has been appointed to co-ordinate the National Preventative Mechanism established in terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Commission has received a small budget from the Justice Department for 2019/20. The Committee hopes, however, that the Commission will receive additional funding for this new mandate as part of its allocation going forward.
- 22.6. ***Moot Court Competition.*** The Committee is pleased that the Commission is to host the Schools Moot Court Competition as a flagship intervention in its efforts to promote public awareness of the Constitution and the Bill of Rights. This specific intervention is intended to promote rights awareness in schools and participation is now mandatory for all public schools. However, the competition is now at risk as a result of a lack of funds as a result of the proposed budget reductions.
- 22.7. ***Promotion mandate.*** The Committee is concerned that there is a need to promote greater public awareness of human rights and of the work that the Commission does in this regard. However, the Commission is constrained by its lack of funds and human capacity, especially with respect to its advocacy mandate. The Committee notes that the Commission does piggyback on the

PPSA's outreach activities, as it has more resources, and makes use of community radio, as well. The Commission is also looking at more targeted outreach activities for greater effectiveness.

- 22.8. ***Insourcing of legal services.*** The Committee commends the Commission on the insourcing of legal services now that its offices have been accredited with law clinic status.

## **23. Public Protector South Africa**

- 23.1. ***Audit Outcome.*** The Committee notes that the PPSA received an unqualified audit opinion with findings but there has been some positive movement: the number of non-compliance matters is reduced from seven to two; performance reporting has improved; and the quality of the annual financial statements has improved despite some material misstatements that needed correcting. The PPSA's financial health has also improved as it no longer has a deficit (the Department of Justice allocated R16 million to the PPSA). There is almost no irregular expenditure or fruitless and wasteful expenditure.
- 23.2. ***Decline in number of new cases and backlogs.*** Although the PPSA reports achieving 72% of its targets, there has been a decrease in the number of new cases that it is receiving despite the number of stakeholder engagements. The Committee does not understand why this is so but will monitor this trend going forward. The Committee also asks that the PPSA provide a breakdown of its backlog cases, including the number of these cases, when the complaint was lodged and the nature of the complaint.
- 23.3. ***Budget.*** The Committee notes that the PPSA continues to maintain that the current budget is inadequate. The Committee does not support the budget reductions in the case of the SAHRC and PPSA and has also expressed its view that the funding model applicable to the Chapter 9 institutions requires

a complete overhaul. As part of that process, there should be an exercise to establish the true funding needs of these institutions. The PPSA's funding needs are recorded elsewhere in this report.

- 23.4. ***Security.*** The Committee is concerned that only one of the PPSA's offices has security. Given the nature of the work that the PPSA undertakes, the matter of security is one that cannot be ignored and should be adequately funded.
- 23.5. ***Lack of co-operation from state institutions.*** The Committee will raise the need for a mechanism to assist Chapter 9 institutions where state institutions fail to co-operate or respond to findings at the next meeting of the Forum convened by the Speaker's Office.
- 23.6. ***Quality Assurance mechanism.*** The Committee notes the Deputy Public Protector's advice that a quality assurance mechanism be reinstated at the PPSA. The Committee appreciates the Public Protector's concern to stay within budget but many of the matters that the Public Protector investigates are of a highly sensitive nature with very serious consequences for those concerned. For this reason, every effort should be taken to ensure a water tight report. Furthermore, the chances of being successfully taken on review would be considerably reduced.

## 24. Reporting requests

<b><i>Reporting request</i></b>	<b>Action required</b>	<b>Associated timeframe</b>
<b><i>Audit outcome: Department of Justice and Constitutional Development Formal commitments and implementation of audit action plans.</i></b>	Written report	22 November 2019 Quarterly

<i>[See paragraph 15.3.1.]</i>		
<i>Irregular expenditure: Department of Justice and Constitutional Development</i>	Written report	22 November 2019 Quarterly
<i>[See paragraph 15.4]</i>		
<i>Policy on judicial governance and court administration model and Policy on Lower Court Reform</i>	Progress report	Quarterly
<i>[See paragraph 15.5]</i>		
<i>Integrated Criminal Justice Strategy</i>	Progress report	Quarterly
<i>[See paragraph. 15.6]</i>		
<i>Integration of IT systems (IJS)</i>	Briefing	As soon as the programme permits
<i>[See paragraph 15.7]</i>		
<i>Court infrastructure and maintenance</i>	Joint briefing (also planned maintenance)	As soon as the programme permits
<i>[See paragraph 15.8]</i>		
<i>State Legal Services</i>	Briefing	As soon as the programme permits
<i>[See paragraph 15.9] ]</i>		
<i>Transformed legal profession and briefings patterns</i>	Stakeholder engagement	As the programme permits
<i>[See paragraph 15.10]</i>		
<i>Court annexed mediation</i>	Written report	22 November 2019
<i>[See paragraph 15.11]</i>		

<p><i>Sexual offences</i></p> <p><i>Briefing on Report on Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act and measures to address Gender-Based Violence</i></p> <p><i>[See paragraph 15.12]</i></p>	Joint meeting	As soon as the programme permits
<p><i>Master's Office</i></p> <p><i>[See paragraph 15.13]</i></p>	Written report	22 November 2019
<i>NPA</i>		
<p><i>Gender-based Violence - breakdown of funds allocated for this purpose</i></p> <p><i>[See paragraph 16.6]</i></p>	Written report	22 November 2019
<i>Public Protector SA</i>		
<p><i>Case backlogs</i></p> <p><i>[See paragraph 21.3]</i></p>	Written report	22 November 2019

## 25. Recommendations

- 25.1. The Committee recommends that Parliament consider undertaking a review of the timeframes associated with the compilation of Budgetary Review and Recommendation Reports as required by the Money Bills Procedure Amendment and Related Matters Act 9 of 2009.
- 25.2. The Committee makes the following recommendations relating to additional funding:

- 25.2.1. The National Prosecuting Authority be provided with additional funding to address any shortfall on its compensation of employees' budget; to fill critical vacancies; to create capacity at the AFU, SCCU and in Witness Protection, as well as for it to continue with the Aspirant Prosecutors programme.
- 25.2.2. Legal Aid South Africa receive additional funding to prevent it from having to cut posts with adverse consequences for service delivery and to ensure so that it is able to maintain its civil work despite the current fiscal environment. Legal Aid SA's funding needs are detailed elsewhere in the report.
- 25.2.3. The proposed budget reductions are not applied in the case of the SAHRC to prevent a further loss of staff and also that it is funded for its coordinating role in respect of the National Preventative Mechanism, which is established in terms of the Optional Protocol to the Convention Against Torture against and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 25.2.4. Similarly, that the proposed budget reductions are not applied in the case of the PPSA and that additional funds are allocated to the PPSA to fill vacancies, employ professional services and for security as set out elsewhere in the report.

## **26. Appreciation**

- 26.1.1. The Committee thanks the Minister and Deputy Minister, the Director General and all officials who appeared before the Committee for their co-operation.
- 26.1.2. The Committee thanks the National Director of Public Prosecutions and all officials who appeared before the Committee for their co-operation in this process.

26.1.3. The Committee also wishes to thank the Public Protector and Deputy Public Protector; the Chairperson and Commissioners of the South African Human Rights Commission; the Chairperson and Board of Legal Aid South Africa; and the newly appointed Head of the Special Investigating Unit, as well as all respective staff members that appeared before the Committee for their co-operation.

26.1.4. Finally, the Committee wishes to thank the Auditor-General and his representatives for their assistance in this process.

**Report to be considered**



## **2. The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 29 October 2019**

The Portfolio Committee on Justice and Correctional Services, having considered the performance and requests for additional allocations for the medium term period of the Office of the Chief Justice and Judicial Administration, reports as follows:

### **1. Introduction**

- 1.1. The Money Bills Procedure Amendment and Related Matters Act 9 of 2009 sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department.
- 1.2. In October of each year, portfolio committees must compile Budgetary Review and Recommendation Reports (BRRR) that assess service delivery performance of departments, entities and institutions given their respective available resources; evaluate the effective and efficient use and forward allocation of resources; and may make recommendations on the future allocation of resources. The annual review of expenditure and performance for the previous financial year (2018/2019) also forms part of this process.
- 1.3. The Office of the Chief Justice and Judicial Administration (OCJ) was established in 2010 primarily to support the Chief Justice in the execution of his/her administrative and judicial powers and duties as Head of the Judiciary and Head of the Constitutional Court. The transfer of administrative functions and identified staff attached to the Superior Courts from the Justice Department of Justice and Constitutional Development to the OCJ commenced on 1 October 2014.
- 1.4. On 1 April 2015, the Office of Chief Justice (OCJ) became a fully-fledged Department with its own Vote – Vote 22: Office of the Chief Justice and Judicial Administration. The administration for the Superior Courts, Judicial Services Commission (JSC) and South African Judicial Education Institute (SAJEI) were transferred to the OCJ, together with the budget and personnel, from the Department of Justice and Constitutional Development. The funds for judges' salaries were also transferred to the new Vote.

## 2. **Process followed**

- 2.1. On 10 October 2019, the Committee engaged with the Office of the Chief Justice on its annual performance and expenditure for 2018/19 and on its funding needs for the 2020 MTEF. The Committee had already met with the OCJ on its performance and spending for the First Quarter of 2019/20 on 11 September 2019. The outcomes of that meeting are reflected in this report.
- 2.2. Before meeting with the OCJ, the Committee was briefed by the Auditor-General on 8 October 2019 on the audit outcomes for the Vote.
- 2.3. Copies of all the presentations are available from the committee secretariat.

## 3. **Strategic overview**

- 3.1. Strengthening judicial governance and the rule of law is considered vital to further the transformative promise of our Constitution. The NDP recommends a judiciary-led independent court administration. To strengthen judicial governance, the NDP also identifies the need for a strategy to improve the quality of judges through appointments and the scaling up of judicial training.
- 3.2. The intention when establishing the OCJ as a national department within the public service was that this would be the first phase towards an independent judiciary-led court administration system to realise fully the Judiciary's institutional independence in line with the Constitution, 1996.
- 3.3. The Constitution Seventeenth Amendment Act, 2013, affirms the Chief Justice as head of the Judiciary responsible for establishing and monitoring the norms and standards for the exercise of judicial functions of all courts. The Superior Courts Act, 2013, establishes a legislative framework for the Chief Justice to exercise his/her judicial leadership supported by the OCJ and provides for the delegation of certain functions flowing from the Act to the OCJ.

- 3.4. In terms of the Superior Courts Act, 2013, the Minister of Justice and Correctional Services is the Executive Authority (EA) and the Secretary General (SG) it's administrative head. The Secretary-General engages and consults with the Chief Justice and other Heads of Courts in respect of the administrative functioning of the Superior Courts, while the Chief Justice controls the judicial functions of the Superior and Lower courts.
- 3.5. The Department of Justice and Constitutional Development continues to support the administration of the Lower/Magistrate's courts. Further, until the legislative framework for the Magistrates' Courts is overhauled to transform these courts in line with the Superior Courts Act, 2013, certain shared services (for example, tools of trade and security services) are provided by the Department of Justice and Constitutional Development.
- 3.6. Overall, there has been little change in the legislative and policy environment since the OCJ became a fully-fledged department on 1 April 2015. However, a notable development has been the announcement by the Judiciary that it would account to the public annually. So far, the Judiciary has presented annual reports for 2017/18 and 2018/19.
- 3.7. The OCJ contributes to the National Development Plan's (NDP) call for strengthened judicial governance and the rule of law, and also to ensuring an efficient and effective criminal justice system in support of Outcome 3 of the Medium Term Strategic Framework 2014-2019 (MTSF) – 'All people in South Africa are and feel safe'. In addition, the OCJ contributes to creating a capable state by:
- Accelerating reforms to implement a judiciary-led court administration.
  - Ensuring an efficient court system.
  - Reducing court administration inefficiencies.
  - Ensuring judicial accountability.
  - Providing training to the judiciary through SAJEI.
- 3.8. The OCJ has aligned its plans to the NDP and the MTSF, as follows:
- Administration is linked to Outcome 12 of the MTSF: An efficient and effective development-orientated public service.
  - Both the Superior Court Services and Judicial Education and Research programmes are linked to Chapter 14 of the NDP: Strengthening judicial governance and the rule of law.

- 3.9. The OCJ has the following broad strategic outcome-orientated goals.
- Capacitating the Office of the Chief Justice by securing adequate human resources for it to carry out its mandate effectively.
  - Providing administrative support to the Chief Justice in fulfilling his/her functions as Head of the Judiciary.
  - Rendering effective and efficient administration and technical support to the Superior Courts.

#### 4. **Audit outcome**

**Table 1: Progression of audit outcome 2015/16 -2018/19**

2015/2016		2016/17		2017/18		2018/19	
Unqualified findings	with	Unqualified findings	with	Unqualified with no material findings	with no	Unqualified with no material findings	with no material findings

- 4.1. Since 2015/16, the OCJ has received an unqualified audit opinion. In 2017/18, however, the OCJ was able to improve on the outcome to achieve a clean audit opinion and, in 2018/19, has maintained this outcome.

#### 5. **Human resources**

- 5.1. In 2018/19, actual spending on compensation of employees, including the Direct Charge for Judges salaries, accounted for R 1.62 billion with an amount of R24.8 million unspent.
- 5.2. At programme level, spending on compensation in 2018/19 was R675.7 million (the final appropriation was R704.4 million). Underspending in the amount of R27.7 million occurred as a result of the delay in the approval of the macro-organisational structure, as well as the non-appointment of officials to the Mpumalanga High Court.

- 5.3. At the end of 2018/19, the number of filled posts at the OCJ was 1 947 (the number of approved posts is 2 099).
- 5.4. The overall vacancy rate has grown from 4.6% in 2017/18 to 7.2% in 2018/19. However, this is still below the 10% target set by DPSA for the year.
- 5.5. At SMS level, 37 of 41 posts are filled at the end of the 2018/19 financial year with a vacancy rate at that level of 9.8%.

## 6. Expenditure 2018/19

**Table 2: Comparison of planned vs actual expenditure 2017/18-2018/19**

Programme	Expenditure					
	2018/19			2017/18		
	Planned	Actual	Variance	Planned	Actual	Variance
	R'million					
<b>Administration</b>	223.8	222.1	1.7	177.4	167.7	9.7
<b>Superior Court Services</b>	824.8	801.5	23.2	760.3	748.2	12.1
<b>Judicial Education and Support</b>	71.2	68.4	2.8	81.64	81.62	19
<b>Sub-total</b>	1 119.7	1 092.0	27.7	1 019.3	997.5	21.8
<b>Judges' salaries</b>	1 022.1	1 022.2	(98)	966.1	998.4	(32.3)
<b>Total</b>	<b>2 141.8</b>	<b>2 114.2</b>	<b>27.6</b>	<b>1 985.4</b>	<b>1 995.9</b>	<b>(10.5)</b>

6.1.1. The OCJ was allocated R2.14 billion in 2018/19, compared with R1.99 billion for 2017/18. These amounts include a direct transfer for judges' salaries.

6.1.2. In 2018/19, the OCJ reported the following spending priorities:

- The operationalization of the Superior Courts Act is prioritised over the medium term. Additional amounts went to the Judicial Support and Court Administration programme for additional capacity in the Judge Presidents' offices to co-ordinate judicial functions and to ensure that judicial norms and standards are implemented, monitored and reported on.

- The OCJ also received additional funding of R2 million in 2018/19 to facilitate the appointment and training of judicial officers.

6.1.3. The total allocation to programmes in 2018/19 was R1.1 billion, compared with R1.0 billion in 2017/18. A breakdown of the allocation to programmes in 2018/19 is as follows:

- Administration - The allocation increased from R177.4 million in 2017/18 to R223.8 million in 2018/19. The spending focus for this programme was on capacitating the OCJ by reducing the vacancy rate and by implementing the ICT Master Systems Plan to ensure effective support to the Judiciary and the courts.
- Superior Court Services – The allocation increased from R760.3 million in 2017/18 to R824.8 million in 2018/19. The spending focus in 2018/19 remained that of improving the court system through effective and efficient case-flow management.
- Judicial Education and Support Services – The allocation decreased from R81.6 million in 2017/18 to R71.2 million in 2018/19. The spending focus for 2018/19 was on capacitating the South African Judicial Education Institute in support of the NDP and on ensuring that the Institute delivered on its mandate.

6.1.4. In 2018/19, the OCJ spent R2.1 billion or 98.7% of the final allocation. Total underspending for the Vote was R27.6 million.

6.1.5. At programme level, in 2018/19, the OCJ spent R1.09 billion or 98.5% of the final appropriation of R1.11 billion. Underspending at programme level was R27.7 million (compared with R21.8 million in 2017/18). Specifically:

- Administration spent R222.1 million of a final allocation of R223.8 million. There was R1.7 million in underspending, which related largely to the non-filling of vacancies.
- Superior Courts Services spent R801.5 million of a final allocation of R824.8 million. There was underspending of R23.2 million, which again related largely to the non-filling of vacancies.
- Judicial Education and Research spent R68.4 million of a final allocation of R71.2 million, with R2.8 million unspent.
- Under the Direct Charge, R1022.2 million (103.3%) was spent against the final allocation of R922.1 million. The overspending on the statutory allocation was R98 000, which was

related to the 4% increase for Judges' salaries. However, overspending on the statutory fund does not amount to unauthorized expenditure.

## 7. Expenditure 2019 MTEF

7.1. The OCJ is allocated an annual budget of R2.3 billion in 2019/20, compared with R2.1 billion for 2018/19 and R2.0 billion in 2017/18 (adjusted appropriation). The budget is expected to increase to R2.46 billion in 2020/21 and R2.6 billion in 2021/22.

**Table 3: Budget allocation for the Office of the Chief Justice per programme**

Programme	Final Appropriation 2018/19	MTEF		
		2019/20	2020/21	2021/22
	R 'million	R 'million	R 'million	R 'million
Administration	201 380	214 611	227 852	237 517
Superior Court Services	845 252	900 110	965 784	1 029 837
Judicial Education and Support	73 115	82 971	88 234	91 776
<b>Subtotal</b>	1 119 747	1 197 692	1 282 870	1 359 130
<b>Direct Charge:</b> Judges' Salaries	1 022 091	1 098 546	1 180 937	1 257 698
<b>Total</b>	2 141 838	2 296 238	2 462 807	2 616 828

7.2. **Spending priorities 2019 MTEF.** The OCJ reports the following spending priorities for 2019/20:

7.2.1. As the High Court in Mpumalanga is expected to become fully operational in 2019/20, funding for the court is expected to increase from R28.1 million in 2019/20 to R33.4 million in 2021/22 in the *Superior Court Services* programme. Similarly, allocations for the operations of the Polokwane High Court, which opened in 2016/17, are expected to increase by 13.6%, from R27.2 million in 2019/20 to R30.9 million in 2021/22.

- 7.2.2. The number of personnel is expected to increase from 2 601 in 2018/19 to 2 611 in 2021/22 with the operationalisation of the Mpumalanga High Court. Spending on compensation of employees, therefore, will increase from R1.6 billion in 2018/19 to R2 billion in 2021/22.
- 7.2.3. Over the medium term, the South African Judicial Education Institute (SAJEI) plans to provide 246 judicial education courses on case-flow management and constitutional imperatives. Other planned courses include courses on record keeping and general issues in pleadings, debt collections and debt reviews related to the National Credit Act (2005), criminal court skills, child justice skills, new legislation on domestic violence and spousal and child maintenance, immigration and other topics. Expenditure in the South African Judicial Education Institute subprogramme is expected to increase from R51.4 million in 2018/19 to R53.8 million in 2021/22.
- 7.2.4. The OCJ plans to modernise and digitise its systems and processes to respond to the growing need for court services and to stay abreast of technological developments. The implementation of an electronic filing system for the Superior Courts by 2020/21 is intended to increase efficiency. The project forms part of the Integrated Justice System (IJS) programme, led by the Department of Justice and Constitutional Development, in the JCPS Cluster. An amount of R14.3 million is allocated over the medium term for the system in the Administration programme.
- 7.2.5. The judicial norms and standards were developed and gazetted in February 2014. The OCJ supports the Chief Justice in monitoring and reporting on compliance with the norms and standards, while the Judiciary reports on court performance. These activities are carried out in the Superior Court Services programme. Due to the labour-intensive nature of the work in this programme, the majority of this expenditure is on compensation of employees.
- 7.2.6. The OCJ plans to further improve the quality of its performance information by implementing an automated system to monitor court performance, which, in addition to the electronic filing system for Superior Courts, is expected to simplify the monitoring and evaluation of norms and standards.
- 7.3. **Expenditure 1<sup>st</sup> Quarter 2019/20**



7.3.1. In the 1<sup>st</sup> Quarter of 2019/20, the OCJ spent R479.8 million against projected spending of R503.3 million. Underspending for the Quarter was R23.4 million.

7.3.2. At programme level, underspending is observed in all three programmes. Notably, the Administration programme spent R5.8 million (13.9%) and Superior Court Services R14.4 million (7.5%) less than was projected for the Quarter.

7.3.3. The explanation for the reported deviations are as follows:

- Under Administration, the underspending relates to non-payment of the invoices for contracted ICT services. The March 2019 invoice was disputed and the invoices for April and May 2019 were only received late in June. Payment, however, will be reflected in the 2<sup>nd</sup> Quarter expenditure report.
- Under Superior Court Services, the underspending relates to outstanding g-Fleet invoices for leased Judges' vehicle. The delay is due to g-Fleet changing its billing system from Standard Bank to ABSA Bank. The billing system is reportedly now operational and the spending will reflect in the 2<sup>nd</sup> Quarter expenditure report.
- Under Judicial Education and Support, underspending of R286 000 relates to non-filling of funded vacancies,

## 8. Performance

**Table 4: Overall achievement of planned targets 2015/16 – 2018/19 and 1<sup>st</sup> Quarter 2019/20**

No. of Targets	2015/16	2016/17	2017/18	2018/19	1 <sup>st</sup> Quarter 2019/20
<b>Achieved</b>	26	17	19	18	10
<b>Not achieved</b>	9	3	0	20	4
<b>Total</b>	<b>35</b>	<b>20</b>	<b>19</b>	<b>20</b>	<b>14</b>
<b>Percentage achieved</b>	<b>74.2%</b>	<b>85%</b>	<b>100%</b>	<b>90%</b>	<b>71%</b>

8.1. Overall, the OCJ has steadily improved its performance against planned targets from 74% in 2015/16 to 100% in 2017/18. In 2018/19, however, overall performance declined to 90% as the OCJ missed two planned targets under the Administration programme.

8.2. The OCJ reports the following key achievements for 2018/19:

- A clean audit outcome for 2018/19.
- A vacancy rate of 7.2%, which is below the 10% target set by DPSA.
- The OCJ supported the Chief Justice in the planning phase for the execution of his constitutional responsibilities in the establishment of the Sixth Parliament.
- The Combined Assurance Framework was reviewed in consultation with the Audit Risk Committee.
- A total of 142 skills-enhancing judicial education courses were conducted for Judicial Officers and aspiring Judicial Officers, against a target of 78.

### 8.3. Comparing performance with spending 2018/19

**Table 5: Programme performance and spending 2018/19**

<b>Programme</b>	<b>Performance</b>	<b>Expenditure</b>
<b>Administration</b>	80% (8/10)	99.7%
<b>Superior Court Services</b>	100% (6/6)	97.2%
<b>Judicial Education and Support</b>	100% (4/4)	96.1%
<b>Overall</b>	<b>90%</b>	<b>97.5%</b>

8.3.1. In 2018/19, at programme level, the OCJ met 90% of its planned targets, while spending 97.5% of its final budget.

## 9. Programme performance 2018/19 and first Quarter 2019/20

### 9.1. Programme 1: Administration

9.1.1. The purpose of this programme is to provide strategic leadership, management and support services to the Department. The programme consists of the following sub-programmes:

- The Management subprogramme provides administrative, planning, monitoring, evaluation, performance reporting and risk management functions necessary to ensure effective functioning of the Department.

- The Corporate Services subprogramme provides integrated Human Resources Management (HRM), Information and Communication Technology (ICT) and security management support services to the Department.
- The Finance Administration subprogramme provides overall financial, asset and supply chain management services to the Judiciary and the Department.
- The Internal Audit subprogramme provides overall internal audit and risk management services to the Department and the Superior Courts.
- The Office Accommodation subprogramme provides for acquisition of office accommodation for the Department.

9.1.2. The Administration programme met 8 of the 10 planned targets in 2018/19.

**Table 6: Administration: Selected performance 2018/19**

<b>Performance Indicator</b>	<b>Performance 2017/18</b>	<b>Performance 2018/19</b>
Percentage of funded vacant posts on PERSAL	4.6% (87 of 1898) (Baseline)	NOT ACHIEVED 7.2% (152 of 2099) (Target: 10%)
Annual Performance Plan (APP) tabled within prescribed timelines	OCJ APP compliant	NOT ACHIEVED OCJ APP compliant with prescripts but not tabled in Parliament within timeframes

9.1.3. In the 1<sup>st</sup> Quarter of 2019/20, the OCJ reports that it met 5 of 6 or 83% of planned targets for the programme. Under the Internal Audit subprogramme, 86% of internal audit projects were completed in line with the approved Annual Audit plan. The reason provided for the variance is that Internal Audit audited a new area in Core Business (Taxation). The execution of the audit has taken longer than planned due to the specialized nature of the function. Corrective steps have been put in place to fast track the audit to ensure that the Audit Annual Plan can be fully completed.

## 9.2. Programme 2: Superior Court Services

9.2.1. This programme provides judicial support and court administration services to the Superior Courts. The programme consists of the following sub-programmes:

- The Administration of Superior Courts subprogramme provides administrative and technical support to the Superior Courts, monitors the overall performance of the Superior Courts, and enhances judicial stakeholder relations.
- The Constitutional Court subprogramme funds the activities and operations of the Constitutional Court.
- The Supreme Court of Appeal subprogramme funds the activities and operations of the Supreme Court of Appeal.
- The High Courts' subprogramme funds the activities and operations of the various high court divisions.
- The Specialized Courts subprogramme funds the activities and operations of the labour, land, electoral and competition courts.

9.2.2. The programme achieved all of the six planned targets for 2018/19:

**Table 7: Superior Court Services: Selected performance 2018/19**

<b>Performance indicators</b>	<b>Performance 2017/18</b>	<b>Performance 2018/19</b>
Percentage achievement of quasi-judicial targets (Objective indicator)	92% (82 579 of 89 935 (Baseline))	EXCEEDED 97% (98 122 of 101 342) against a target of 90%
Number of monitoring reports on Court Integrity Project produced	ACHIEVED 5 against a target of 5	ACHIEVED 4 against a target of 4
Percentage of default judgements finalised by Registrars	EXCEEDED 89% against a target of 80% (48 508/54 563 default judgements)	ACHIEVED 96% (52 508 of 54 872) against a target of 90%
Percentage of taxations of legal costs finalised each year	96% (33 961 of 35 261)	EXCEEDED 98% (45 535 of 46 389) against a target of 90%

Percentage of warrants of release delivered within a day of the release granted	EXCEEDED 98% (109 of 111)	ACHIEVED 98% (79 of 81) against a target of 98%
Number of case management workshops	EXCEEDED 8 against a target of 4	ACHIEVED 2 against a target of 2

9.2.3. In the 1<sup>st</sup> Quarter of 2019/20, the OCJ reports that it met 2 of 5 or 40% of planned targets for the programme. Under the Administration of Superior Courts subprogramme, 96% of quasi-judicial targets were achieved, 95% of default judgements and 98% of taxations of legal costs were finalized against a target of 100%. The reasons provided for the underperformance was that a number of applications were queried by Registrars.

### 9.3. Programme 3: Judicial Education and Support

9.3.1. Judicial Education and Support provides education programmes to Judicial Officers, including policy development and research services for the optimal administration of justice.

9.3.2. The programme has the following sub-programmes:

- The South African Judicial Education Institute subprogramme funds the activities of the SAJEI to provide training for Judicial Officers.
- The Judicial Policy, Research and Support subprogramme funds the provision of advisory opinions on policy development and regulatory services to the Judiciary and the Department.
- The Judicial Service Commission subprogramme provides secretariat and administrative support services to the Judicial Service Commission to perform its constitutional and legislative mandates effectively.

9.3.3. The programme met all of the four planned targets for 2018/19.

**Table 8: Judicial Education – Selected performance 2018/19**

Performance indicators	Performance 2017/18	Performance 2018/19
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No. of judicial education courses conducted per year	ACHIEVED 91 (Baseline)	EXCEEDED 142 against a target of 78
No. of research monographs on judicial education produced per year	-	ACHIEVED 2 against a target of 2 (Baseline)
% of legal advisory opinions on policy development and regulatory services provided (Revised 2016/17: within 15 days of receipt)	EXCEEDED 100% or 8/8 against a target of 85%	ACHIEVED 100% or 7/7 against a target of 100%
No. of reports on judicial appointments and complaints produced	ACHIEVED 3 against a target of 3	ACHIEVED 3 against a target of 3

9.3.4. In the 1<sup>st</sup> Quarter of 2019/20, the OCJ reports that it met 1 of 1 or 100% of planned targets for the programme.

## 10. Committee's observations

The Committee makes the following observations:

### 10.1. *Information regarding court performance for more effective oversight of the court administration*

The Committee has already expressed its unhappiness about how difficult it is for it to properly gauge how well the justice system is working, as much of the information related to court performance is located within the Judiciary. The Committee notes that, in the absence of any legislative guidance, the Judiciary has taken the initiative to 'account directly to the nation, as is the case with jurisdictions like Kenya, Singapore and many other comparable and progressive constitutional democracies'. The South African Judiciary Annual Report 2018/19, which the Chief Justice presented to the Nation provides extremely valuable insight into developments within the Judiciary and, among others, contains some statistics relating to the Superior Courts.

Nonetheless, there are gaps – while the Judiciary has begun to collect data regarding the performance of the magistrates’ courts – for some years now, very little information to do with cases in the lower courts has been available. As these courts hear the majority of the cases, the lack of information regarding their functioning is concerning.

The Committee feels that the court administration and performance functions are so closely related that it is impossible for it to consider the one without the other. It repeats its view that in order to exercise oversight towards ensuring that the correct intervention occurs at an administrative level, the Committee requires an understanding of the systemic challenges that undermine delivery of justice services in our courts.

The Committee is aware that the solution lies partly in the finalisation of the long overdue court administration model and is concerned at the lack of progress in finalising this policy.

- 10.2. ***Progress towards a single judiciary and transfer of functions to the OCJ.*** The Committee understands that a Lower Courts Bill is at a very advanced stage and asks that it be finalised as a matter of priority.
- 10.3. ***Court modernisation.*** The Committee supports the various initiatives to modernise our courts. In order to keep abreast of the demand, there is urgent need for more capacity. However, in an environment where resources are extremely limited, systems must be made more efficient by way of modernisation and digitisation. The Committee notes that the e-filing project, which forms part of the ICT Master Systems Plan, could not be piloted in 2018/19. The State Information and Technology Agency (SITA), who is the appointed service provider, has since provided the Department with a revised project plan. The Committee understands that, as part of the e-filing project, caselines are being piloted at the High Courts in Gauteng and will engage with the OCJ in order to arrange a visit to see the pilot for itself as soon as its programme permits.
- 10.4. ***Security.*** The Committee is concerned about reports of inadequate security at courts. The Committee understands that this is a shared function with the Department of Justice and Constitutional Development and, therefore, requests that the OCJ engage with the Department of Justice and Constitutional Development to provide a full report relating to the provision of security at courts, including details of the funding for this, by 29 November 2019.

- 10.5. ***Audit outcome.*** The Committee acknowledges the OCJ's good work in maintaining a clean audit outcome for the second consecutive year.
- 10.6. ***Judicial Services Commission report.*** The Committee looks forward to the tabling of the Judicial Services Commission's report of its activities for 2018/19 in the near future.
- 10.7. ***Judicial Wellness programme.*** The Committee notes the Judiciary's concern about the lack of wellness support offered to judicial officers, many of whom suffer extreme stress as a result of their presiding over traumatising cases. The Committee agrees with the Judiciary that this is a work-related challenge and, therefore, requires an institutional response in the form of a judicial wellness or stress management programme. The Committee notes that the Judiciary is developing a programme or system to address this, which will be implemented under the auspices of the Judiciary or OCJ, funding permitting.
- 10.8. ***Gender-based Violence.*** The Committee agrees with the Judiciary that addressing cases of gender-based violence requires an integrated approach from all key stakeholders.

## 11. **Appreciation**

- 11.1. The Committee wishes to thank the Secretary-General and the staff of the OCJ for their assistance in this process.

## **Report to be considered**



### **3. Report of the Portfolio Committee on Police on the Firearms Amnesty declaration dated 30 October 2019.**

The Portfolio Committee on Police, having considered the notice from the Speaker of the National Assembly, that was referred to it on 28 August 2019 (ATC No. 51 - 2019) for a declaration of a firearm amnesty in terms of section 139(2)(a) of the Firearms Control Act, 2000 (Act No. 60 of 2000), reports as follows:

The Committee met on 11 September 2019 to consider the request for the amnesty and found that there were technical problems with the presentation of the South African Police Service (SAPS) as well as the required documentation. The Committee resolved to request the SAPS to correct the defects. The Committee resumed on 23 October 2019 to scrutinise the further documentation. All the necessary documents were made available to the Committee Members and based thereon, the Committee approved the Minister's request for an amnesty period. The Committee amended the proposed amnesty period from 1 October 2019 to 31 March 2020 to 01 December 2019 to 31 May 2020.

The Committee also requested the Minister of Police to consider declaring a separate process for the renewal of expired licences that should run concurrently to the amnesty period.

**Report to be considered.**