

## **THE BUDGETARY REVIEW AND RECOMMENDATION REPORT OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES, DATED 19 OCTOBER 2017**

The Portfolio Committee on Justice and Correctional Services, having considered the performance 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, with the Democratic Alliance reserving its position, 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) that assess service delivery performance given 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 2016/17 forms part of this process.
- 1.2 The Committee oversees the Department of Justice and Constitutional Development and other institutions that receive their allocation under the Justice and Constitutional Development Vote. These other institutions include the National Prosecuting Authority (NPA), Legal Aid South Africa, and Special Investigating Unit (SIU). The South African Human Rights Commission (SAHRC) and Public Protector South Africa (PPSA), established in Chapter 9 of the Constitution as State Institutions Supporting Constitutional Democracy, also receive their allocation under Programme 5 of the Vote by means of a direct transfer. The Chapter 9 institutions are subject to the Public Finance Management Act, 1999, in terms of which the accounting officer must submit an annual report to Parliament on the activities and annual financial statements of the relevant constitutional institution, as well as the Auditor-General's audit report.
- 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). The Information Regulator is required to submit a report to Parliament on its activities annually and must prepare financial statements for auditing. Towards the end of 2016, the Members of the Regulator were appointed. At present, the Regulator falls under the State Legal Services programme in the Legislative Development and Law Reform subprogramme. Although the Information Regulator is not required to submit a report for 2016/17, the Committee is of the view that it is appropriate to engage with the Regulator on its activities to date, as well as its resource needs for the 2018 MTEF.
- 1.4 The Justice and Constitutional Development Vote has five programmes:
  - The Department of Justice and Constitutional Development is directly responsible for the Administration, Court Services, State Legal Services and National Prosecuting Authority programmes.
  - 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 two of the State Institutions Supporting Democracy – 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.

## **Method**

- 1.5 The Committee met with the Auditor-General on the audit outcomes for the Vote on 3 October 2017. On the same day, the Minister of Justice and Correctional Services addressed the Committee, providing a preview of the 2016/17 annual reports.
- 1.6 The Committee engaged with the Department, NPA, Legal Aid SA, SIU, Information Regulator, SAHRC and PPSA on their respective annual performance and spending for 2016/17. The meetings also addressed service delivery performance and spending to date (until the end of the First Quarter 2017/18), as well as their additional funding needs for the 2018 MTEF.
- 1.7 These briefings took place over a two-week period in October 2016, as follows:
  - Department of Justice and Constitutional Development – 4 October 2017.
  - National Prosecuting Authority – 4 October 2017.
  - Public Protector – 5 October 2017.
  - South African Human Rights Commission – 10 October 2017.
  - Information Regulator – 10 October 2017.
  - Legal Aid South Africa – 11 October 2017.
  - Special Investigating Unit – 11 October 2017.
- 1.8 Copies of all the presentations are available from the committee secretary.

## **Structure of the report**

- 1.9 This Report comprises five parts:
  - Part 1 provides -
    - An overview of the key policy focus areas and developments.
    - An summary of the audit outcomes.
    - An overview of the financial performance for the period under review.
  - Part 2 gives:
    - An overview of the strategic and operational environment that informs the Department's delivery of justice services.
    - A summary of overall performance against MTSF targets.
    - Selected performance and expenditure information for Programme 1: Administration; Programme 2: Court Services; Programme 3: State Legal Services; and Programme 5: Auxiliary and Associated Institutions – Justice Modernisation.
    - An overview of the Department's funding needs for the 2018 MTEF.
    - Selected performance and expenditure information; and funding needs for the 2018 MTEF for Programme 4: National Prosecuting Authority. A section is also included on the Information Regulator.
  - Part 3 contains an overview of the strategic and operational environment that applies to Legal Aid SA and the SIU; selected information relating to performance and spending for the period under review; and the forward funding needs of these institutions.
  - Part 4 contains similar information contained in Part 3 for the SAHRC and PPSA.
  - Part 5 sets out the Committee's observations and sets out the Committee's recommendations.

## **Part 1**

### **2. Overview of key policy focus areas and developments**

- 2.1 Among others, the National Development Plan (NDP) requires that we build safer communities; fight corruption; and strengthen judicial governance and the rule of law.

To give effect to the NDP, Government has developed actions and targets contained in the Medium Term Strategic Framework (MTSF) 2014-2019.

- 2.2 In terms of the MTSF, the following responsibilities are especially relevant:
- Safety (by contributing to an efficient and effective Criminal Justice system; securing cyberspace; and reducing corruption in the public and private sectors).
  - Public Service (by strengthening protection of whistle-blowers and creating an open, responsive and accountable public service through the Promotion of Access to Information Act, 2000).
  - Social protection (by providing certain justice services to the public, such as maintenance services and the administration of the Guardian's Fund).
  - Nation-building and social cohesion (by promoting knowledge of the Constitution and fostering constitutional values, and enabling participation and communication).
- 2.3 Notably, this year marks the MTSF's mid-term: the second half of the MTSF period requires consolidation of initiatives in line with transformation of the justice system within our country for improved access to justice. This includes finalisation of key transformative legislation and implementation of policies that respond to government's programme of action in relation to Outcome 3: 'All people are and feel safe'. There is also a focus on the turnaround of State Legal Services to strengthen the capability of the State to manage litigation.
- 2.4 A revised Traditional Courts Bill is now before the Committee.
- 2.5 The Cybercrimes and Cybersecurity Bill has also been referred to the Committee. The Bill is a MTSF priority, as it contributes towards building safer communities by putting in place measures to effectively deal with cybercrime and address aspects relating to cybersecurity, which adversely affect individuals, businesses and Government alike.
- 2.6 The public was invited to comment on the draft Hate Crimes and Hate Speech Bill. The Department reports that these are still being evaluated before the Bill is introduced to Parliament.
- 2.7 Other important pieces of legislation that are planned for the remainder of the MTSF include the introduction of the Lower Courts Bill, which will bring the management of lower courts in line with the Constitution Seventeenth Amendment Act, as well as the Regulation of Paralegals Bill, which will give recognition to paralegals within community advice centres.
- 2.8 As part of the Renaissance project, the South African Law Reform Commission is to be capacitated to fulfil its task of reviewing apartheid-era legislation. This will be in addition to Project 25, which looks into the constitutionality of all legislation, specifically focussing on compliance with the equality clause.
- 2.9 A complete overhaul of the criminal justice system is planned. The review will 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. The Department has presented a plan to Cabinet on the re-engineering process, which the JCPS Forum of Directors-General will lead.
- 2.10 Implementation of the Legal Practice Act, 2014, is underway. The National Forum on the Legal Profession has published a Code of Conduct, which will apply to all legal practitioners once the Legal Practice Council is established. Proposed amendments to the Act have been introduced that seek to extend the three-year lifespan of the National Forum for it to complete its statutory mandate and to ensure a smooth

transition to the new dispensation. The Legal Practice Council is expected to be in place by the end of 2018/19.

- 2.11 The transformation of State Legal Services is ongoing. The intention is to transform the State Attorney's Offices into the legal firm of choice for the State.
- 2.12 The rationalisation of magisterial districts continues: to date, it has been rolled out in Gauteng, North West, Mpumalanga and Free State. By the end of 2017/18, the project will have been completed in the Free State and the Northern Province. The intention is that the rationalisation process will be completed by the end of 2019/20.
- 2.13 Members of the Information Regulator were appointed from 1 December 2016 and work has begun to make the Regulator operational. The Department is providing the necessary support to the Regulator.

### 3. Audit outcomes for 2016/17

#### 3.1. Overview

- 3.1.1. The Auditor-General reports that the audit outcomes for the Justice portfolio have largely stagnated with certain exceptions: the Department and PPSA's audit outcomes have regressed, while the SIU has improved its outcome to achieve a clean audit opinion.

**Table 1: Summary of audit outcomes for the Justice Portfolio 2014/15 – 2016/17**

	2014/15	2015/2016	2016/17
<b>Justice</b>	Unqualified with emphasis of matter and compliance findings (National Treasury has exempted the Department from accounting for fines and recoveries by the State Attorney until 31 March 2015 (TPF)) and findings (Compliance)	Unqualified with findings (Material misstatements on the financial statements had to be corrected after being submitted for auditing; and compliance, including Supply Chain Management (SCM))	Qualified Failure to account for immoveable capital assets (Emphasis of matter; material misstatements in performance reporting; and compliance)
<b>NPA</b>	Not applicable: Reports as part of the Justice Department		
<b>Legal Aid SA</b>	Unqualified	Unqualified	Unqualified
<b>Third Party Funds</b>	Disclaimer	Qualified	Qualified
<b>Guardian's Fund</b>	Unqualified	Unqualified	Unqualified
<b>President's Fund</b>	Unqualified	Unqualified	Unqualified
<b>SIU</b>	Unqualified with findings (Compliance)	Unqualified with findings (Compliance)	Unqualified
<b>PPSA</b>	Unqualified with findings (Compliance)	Unqualified with findings (Compliance)	Unqualified with findings
<b>SAHRC</b>	Unqualified with findings (Compliance)	Unqualified	Unqualified

#### 3.2. Department of Justice and Constitutional Development

- 3.2.1. The Justice Department's audit outcome for 2016/17 was qualified:
- The qualification related to the failure to report on work in progress for infrastructure.

- The emphasis of matter related to significant uncertainties flowing from the failure to provide for contingent liabilities of R1.7 billion for claims against the Department.
- Other matters included:
  - The quality of the performance information submitted because of material misstatements in performance reporting.
  - There were material misstatements on the Annual Financial Statements that required correction.
  - Effective steps were not taken to prevent irregular expenditure of R170.6 million.
  - Creditors were not paid within the required 30 days.
  - Contracts were awarded to bidders that did not declare whether they were employed by the State or connected to any person that is employed by the State.
  - Disciplinary steps were not taken against certain officials that had incurred/permitted irregular expenditure.
  - Procedures to ensure effective performance monitoring and corrective action were not established.
  - Management failed to review the Financial Statements adequately before they were submitted; 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 credible financial and performance reporting.

### **3.3. Third Party Funds (TPF)**

- 3.3.1. In 2015/16, the Auditor-General issued a qualified audit opinion for the TPF after years of disclaimers. The qualification was attributed to the following root causes: Inadequate financial reporting systems and proper record-keeping processes and reconciliations to support and enable preparation of complete and accurate financial statements.
- 3.3.2. As expected, in 2016/17, the TPF continues to achieve a qualified audit opinion although there has been significant progress - the Auditor-General reports that there were no material findings on the reported financial information for 2016/17.
- 3.3.3. The Department reports that it has focused on clearing the historical balances by launching and completing a ring-fencing exercise; and implementing the new MOJAPAY accounting system with the aim of rolling it out to all courts by the end of 2019.

## **4. Financial performance: Vote 21 - Justice and Constitutional Development 2016/17 and First Quarter 2017/18**

### **4.1. Appropriation 2016/17 and 2017/18**

- 4.1.1. In 2016/17, the final allocation to the Vote was R18.05 billion, as follows: programmes were allocated R16.04 billion and a further R2 billion was allocated for magistrates' salaries.

- 4.1.2. Following the adjustment's process in October 2016, the allocation was reduced by R39 million:
- An amount of R9 million was transferred to the Office of the Chief Justice (OCJ) to pay for Microsoft licences because of the transfer of functions from the Justice Department to the OCJ.
  - A further amount of R30 million was shifted to the OCJ from Magistrates' salaries, where vacancies had led to underspending, to pay for judges' leave gratuities.

**Table 2: Vote 21 - Justice and Constitutional Development for the 2017 MTEF per programme**

Programme (R '000 000)	Budget 2017 MTEF			
	2016/17	2017/18	2018/19	2019/20
Administration	2 130.9	2 129.3	2 187.2	2 321.0
Court Services	6 061.6	6 276.8	6 635.7	7 076.9
State Legal Services	1 126.5	1 221.2	1 285.7	1 379.1
National Prosecuting Authority	3 557.5	3 684.3	3 836.8	4 116.3
Auxiliary and Associated Services	3 164.2	3 475.2	3 698.1	3 905.2
<b>TOTAL</b>	<b>16 040.7</b>	<b>16 786.8</b>	<b>17 643.7</b>	<b>18 798.6</b>

- 4.1.3. In 2017/18, the overall allocation to the Vote increases to R18.9 billion (compared with R18 billion for 2016/17), including magistrates' salaries. In 2017/18, the total for programmes (excluding the direct charge for magistrates' salaries) is R16.8 billion. Over the medium term, the allocation will increase to R21.2 billion in 2019/20.

#### 4.2. Programme spending 2016/17

- 4.2.1. Expenditure in the Administration programme was R1.96 billion or 99.3% of the programme budget of R1.97 billion, with underspending in the amount of R1.7 million. The underspending is because of delays in finalising the refurbishment of office buildings that affected the delivery of related office furniture and a less-than-anticipated transfer to SASSETA. The programme achieved 79% of its targets.
- 4.2.2. The Court Services programme spent R6.3 billion or 100% of its budget. The programme achieved 95% of its targets.
- 4.2.3. State Legal Services spent R3.5 billion or 100% of its budget. The programme achieved 78% of its targets.
- 4.2.4. In the Auxiliary and Associated Services, expenditure in respect of the Justice Modernisation subprogramme was R826.4 million. The subprogramme achieved 100% of its targets.

#### 4.3. Spending for the First Quarter 2017/18

- 4.3.1. Programme spending for the First Quarter 2017/18 was as follows:
- Lower than planned spending occurred mainly in Administration at 18%, State Legal Services at 22% and Auxiliary and Associated Services: Justice Modernisation at 15%.
  - Slight underspending can be observed under the Court Services programme at 24%.

- Slightly higher spending can be observed in the NPA programme at 25.7%.

## Part 2

### 5. Overview of the Department of Justice and Constitutional Development's strategic and operational environment

- 5.1. From 2015/16, the Department has fully aligned its priorities 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).
- 5.2. In line with the MTSF, in 2016/17, the Department had the following strategic outcome-orientated goals:
- An efficient, effective and development-orientated administration (aligned to Outcome 12: an efficient, effective and development-orientated Public Service).
  - Improved administrative support to the justice system enabling efficient resolution of cases (criminal, civil and family law) (aligned to Outcome 3: all people in South Africa are and feel safe, and Outcome 13: an inclusive and responsive social protection system).
  - Provision of quality legal services that strengthens the capacity of the State (aligned to Outcome 12: an efficient, effective and development-orientated Public Service).
  - Promote constitutionalism and social justice to contribute to social cohesion (Outcome 14: nation-building and social cohesion).
  - Improved prosecution services (aligned to Outcome 3: all people in South Africa are and feel safe).
- 5.3. In 2017/18, the Department developed four transformational themes and, revised its strategic outcome-orientated goals. Subsequently, the Department has revised its strategic objectives to align these with its identified transformative themes and goals.
- 5.3.1. The following transformational themes were identified:
- The transformation of the legal profession and mechanism for access to justice for all.
  - The transformation of State Legal Services.
  - The transformation of the criminal justice system and restoring public confidence.
  - Entity oversight and institutional arrangements.
- 5.3.2. The Department's revised strategic goals are 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.
- 5.4. In 2017/18, the allocation for the programmes that the Department administers (excluding the NPA but including the Justice Modernisation sub-programme under Auxiliary and Associated Services) is R10.5 billion, compared to R10.2 billion in 2016/17. The bulk of spending remains directed towards Court Services, which is the Department's main service delivery programme. The NPA receives the next largest allocation.

- 5.5. The Department's spending focus for 2017/18 and continuing over the medium term will be on:
- Improving access to the courts by building new courts.
  - Adapting courts in line with the sexual offences model.
  - Protecting vulnerable groups by rolling out the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances; and conducting provincial dialogues, among others, to improve constitutional awareness.
  - Transforming state legal services.
  - Deepening the protection of the right to privacy through the establishment of the Information Regulator.
- 5.6. The building of new courts remains a core element in the Department's efforts to improve access to justice. The Department's projected infrastructure budget for 2017/18 is R769.3 million, compared to R721.1 million in 2016/17. The 2017/18 infrastructure budget reflects a Cabinet-approved budget cut of R186 million. The Department also has accruals of R449 million in respect of invoices that were received in 2016/17 from the Department of Public Works and the Independent Development Trust.
- 5.7. The Mpumalanga High Court at Nelspruit is to be completed in 2017/18 so that finally every province has its own High Court. Magistrates' courts prioritised for completion over the MTSF are Port Elizabeth, Cape Town (Justitia building), Mamelodi, Port Shepstone, Plettenberg Bay, Dimbiza, Johannesburg (Booyens Magistrates Court), Chatsworth and Bityi. While the Department places great emphasis on its infrastructure programme, in 2017/18, it will experience a shortfall of R731 million on projects already in execution (this includes the accruals). Planned projects for the outer years have not been confirmed. In addition, there is no budget for planned maintenance by the Department of Public Works.

## 6. Overview of performance against MTSF targets

- 6.1. The Department reports the following progress towards achieving the MTSF targets:
- Sub-outcome 1: Reduction in contact crime. There is a 2% increase in the conviction rate for sexual offences and a 2% increase in the conviction rate for trio crimes.
  - Sub-outcome 2: An efficient and effective criminal justice system. The number of cases finalised with verdict increased by 10% from 310 850 to 341 360. The number of cases finalised with ADRM reduced by 2% from 166 952 to 164 016. Implementation of the CJS 7-Point Plan continued and the Plan has been incorporated into the Cabinet-approved ICJS Strategy.
  - Sub-outcome 4: Secure Cyberspace. The conviction rate for cybercrimes increased from 96% in 2015/16 to 97% in 2016/17. The Cybercrime and Cybersecurity Bill was introduced to Parliament in 2017.
  - Sub-outcome 5: Ensure domestic stability. There is a decrease in the conviction rate in violent protests and industrial action prosecuted.
  - Sub-outcome 7: Reduce corruption the public and private sector. The number of persons convicted of corruption where the amounts involved were R5 million or more increased from 24 in 2015/16 to 29 in 2016/17. Freezing orders and recoveries in matters involving corruption where the amounts were R5 million or more were obtained to the value of R627.3 million and R122.7 million respectively. The number of government officials convicted of corruption increased from 206 in 2015/16 to 224 in 2016/17.

## 7. Programme performance



- 7.1. 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).
- 7.2. Overall, the Department achieved 85% of its 105 planned targets for 2016/17 (compared with 70% in 2015/16 and 85% in 2014/15). In addition, the Department reports that, overall, it achieved 68% of its planned targets for the First Quarter of 2017/18.
- 7.3. **Programme 1 - Administration**
- 7.3.1. The Administration programme is responsible for the Department's management and for the development of policies and strategies for the efficient administration of justice.
- 7.3.2. The Administration programme was allocated R2.1 billion in 2016/17 and spent 99.3% of its budget. In 2017/18, the allocation to the programme remains at R2.1 billion, which is a real percentage decrease of -6% from 2016/17. For 2017/18, the spending focus is largely on personnel, audit fees, operating leases, property payments and travel and subsistence.
- 7.3.3. Programme performance for 2016/17: Met or exceeded targets for 11 of 14 or 79% of planned targets (compared with 69% in 2015/16 and 90% in 2014/15) and spent 99.3% of its budget.
- 7.3.4. Programme performance for the First Quarter 2017/18: Exceeded the target for 1 of 1 or 100% of planned targets, and spent 18% of its budget (R381 million/R2.1 billion). The underspending is attributed to a disputed invoice relating to accommodation charges.

**Table 3: Administration - Selected targets and performance**

PERFORMANCE INDICATORS	TARGETS		
	2014/15	2015/16	2016/17
Percentage audit findings addressed to resolve internal and external audit findings	<b>NOT ACHIEVED</b> 86% achieved against a target of 88%	<b>NOT ACHIEVED</b> 81% against a target of 90%	<b>NOT ACHIEVED</b> 77% against a target of 90% The target was not met due to capacity constraints
% of forensic investigations finalised	<b>EXCEEDED</b> 86% against a target of 70%; 180/210 cases received finalised	<b>NOT ACHIEVED</b> 91% against a target of 92%	<b>NOT ACHIEVED</b> 90% against a target of 93%

- 7.4. **Programme 2 - Court Services**
- 7.4.1. 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.

- 7.4.2. The Court Services programme is allocated R6.3 billion for 2017/18, compared with R6.1 billion in 2016/17 (for the Lower Courts, Family Advocate, Magistrates Commission, Government Motor Transport, Facilities Management and Administration of Lower Courts sub-programmes). This programme shows a real decrease of -2.6% from 2016/17. The spending focus for 2017/18 is largely on court infrastructure; implementation of legislation; medical services for psychiatric observation; and security services for courts.
- 7.4.3. In 2016/17, the Programme had five strategic objectives: Improved finalisation of criminal cases in support of Outcome 3 (backlog courts); improved court-based services to achieve client satisfaction within vulnerable groups; increased protection of children and promotion of family cohesion through mediation; increased access to justice to historically marginalised communities (facilities and infrastructure); and improved levels of compliance with quasi-judicial services.
- 7.4.4. In 2017/18, these strategic objectives were revised: five objectives were amended, and a new objective has been added: 'Transformation of the judicial system aligned to the Constitution'. In addition, a number of Key Performance Indicators (KPIs) were removed, including 'Percentage of convictions recorded electronically on the National Register for Sexual Offenders (NSRO)'. A number of new KPIs were introduced:
- An integrated criminal justice strategy finalised by target date.
  - Percentage of indicators on CJS Business Plan achieved.
  - Number of criminal case backlog courts converted to permanent courts.
  - Percentage of child justice preliminary inquiries finalised within 90 days after first appearance.
  - Number of new court building completed.
  - Percentage of annexed civil cases mediated.
  - Number of courts providing court-annexed mediation.
  - Number of transformational policies developed.
  - Policy that forms the basis of the lower courts bill finalised.
  - Policy on the design of the judicial court administration model finalised.
  - Policy for the overhaul of the South African legal system developed.
- 7.4.5. Programme performance for 2016/17: Met or exceeded 95% of 19 planned targets (compared with 76% in 2015/16 and 92% in 2014/15), and spent 100% of its budget.
- 7.4.6. Programme performance for First Quarter 2017/18: Met or exceeded 5 of 9 or 56% of planned targets, and spent 24% of its budget (R1.124 billion/ R6. 277 billion). The marginal underspending for the programme as a whole is attributed to delays in processing IDT and DPW payments due to the late submission of invoices.

**Table 4: Court Services – Selected performance 2016/17**

<b>Strategic Objective 5: <i>Improved finalization of criminal cases in support of Outcome 3: All people in South Africa are and feel safe</i></b>
<b>Objective indicator 5: Number of criminal cases on the backlog roll</b> The number of backlog criminal cases in lower courts was reduced to 30 925 against a target of 31 942. (Note that it is not helpful to compare performance for 2014/15 and 2015/16 with that of 2016/17, as in 2015/16 there was a change to the method of identifying backlog cases.)
<b>Strategic Objective 6: <i>Improved court-based services to achieve client satisfaction within vulnerable groups</i></b>
<b>Objective indicator 6: Percentage of complainants satisfied with court based services</b> A completed survey revealed that there is an overall increase in court-based services for victims of sexual offences accessing designated sexual offences courts (from 48% in 2015/16 to 69% in 2016/17).

<b>Strategic Objective 8: Increased access to justice to historically marginalised communities (facilities and infrastructure)</b>
<b>Objective indicator 8: Percentage of clients perceiving an increase in access to justice services</b> The baseline survey conducted in the Limpopo and Mpumalanga regions where courts were rationalised revealed that respondents appreciated the rationalisation initiative, as it brought services closer to where they stay.
<b>Strategic Objective 9: improved levels of compliance with quasi-judicial standards of service</b>
<b>Objective indicator 9: Number of cases dealt with according to quasi-judicial standards</b> A baseline study was completed on compliance by clerks of court in respect of default judgments and unopposed taxations: Of 65 465 cases, 55 784 or 97% of requests for default judgements were dealt with by the clerks of court within 14 days (in district courts); and 9 812 of 9681 or 99% of taxation matters were processed within 14 days of being set down.

## 8. Programme 3 - State Legal Services

- 8.1. 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.
- 8.2. The State Legal Services programme was allocated R1.1 billion in 2016/17 and spent 100% of its budget for the State Law Advisers, Litigation and Legal Services, Legislative Development and Law Reform, Master of the High Court and Constitutional Development subprogrammes. The programme is allocated R1.2 billion in 2017/18, showing an increase in real terms of 2% from 2016/17. In 2017/18, the spending focus is largely on employees' compensation, legal costs and claims against the State. Further, funding has been set aside to establish the Information Regulator (R25 million in 2017/18; R27 million in 2018/19; and R28 million in 2019/20). In the First Quarter of 2017/18, State Legal Services spent 22% of its budget.
- 8.3. In 2016/17, the Programme had eight strategic objectives: Increased efficiency in the provision of Master's services to all beneficiaries; improved management of litigation on behalf of the State to reduce litigation costs and transform the legal profession; enhanced reintegration of petty offenders into the socio-economic environment; provision of quality legal advisory services; fulfilment of international obligations by the Department; development of legislative instruments that withstand constitutional challenge; promotion of broad-based knowledge about and support for values of equality, human dignity and fundamental human rights; and implementation of the Truth and Reconciliation Commission's (TRC) recommendations, as approved by Parliament.
- 8.4. The strategic objectives for this programme were revised in 2017/18: a new objective was added: 'A transformed legal profession', while the following two strategic objectives were removed:
- Enhanced re-integration of petty offenders into the socio-economic environment.
  - Implementation of the Truth and Reconciliation Commission (TRC) recommendations, as approved by Parliament.
- 8.5. A number of KPIs were removed:
- Number of offenders whose convictions were cleared.
  - Percentage of expungements completed within six months.

- Number of community rehabilitation projects implemented in line with TRC recommendations.
  - Number of needs analysis completed in TRC-listed communities.
- 8.6. Programme performance for 2016/17: Met or exceeded target in 78% of planned targets (compared with 77% in 2015/16) and spent 100% of its R1.1 billion budget.
- 8.7. For the First Quarter 2017/18, 19 of 26 or 76% of its planned targets were met, while 22% of the budget was spent.

**Table 5: State Legal Services – Selected Performance 2016/17**

<b>Strategic Objective 10: <i>Increased efficiency in the provision of Master’s services to all beneficiaries</i></b>
<b>Objective Indicator 10: Increased efficiency in the provision of masters’ services to all beneficiaries</b> A total of 302 684 cases were handled by the Master of the High Court against a target of 279 673 (New indicator).
<b>Strategic Objective 11: <i>Improved management of litigation on behalf of the State to reduce litigation costs and transform the legal profession</i></b>
<b>Objective Indicator 11: Percentage reduction in litigation costs against the State</b> A completed baseline report on litigation costs incurred by the State established the amount to be R1.6 billion for 2016/17.
<b>Strategic Objective 12: <i>Enhance reintegration of petty offenders into socio-economic environment (expungements)</i></b>
<b>Objective indicator 12: Number of offenders whose convictions were cleared to facilitate reintegration</b> The target was not achieved.
<b>Strategic Objective 14: <i>Fulfilment of international obligations by the Department</i></b>
<b>Objective indicator 14: Percentage compliance with international obligations</b> Baseline information report reveals compliance with 80% of obligations.
<b>Strategic Objective 16: <i>Promotion of broad-based knowledge about and support for values of equality, human dignity and fundamental human rights</i></b>
<b>Objective Indicator 16: Percentage people with awareness of the Constitution</b> The planned target of 59% was not achieved but a survey established that 51% of people interviewed were aware of the Constitution compared with 45% in 2015/16.

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

- 9.1. 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.
- 9.2. The final allocation to Justice Modernisation for 2016/17 was R826.35 million and all but R3 million of this was spent. However, the allocation for 2016/17 was cut at the outset by R114.2 million and was also affected by a virement of R26 million.
- 9.3. For both 2016/17 and 2017/18, 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'. In 2016/17, the subprogramme met all its planned targets:

**Table 6: Auxiliary and Associated Services Programme - Justice Modernisation subprogramme – Selected performance 2016/17**

INDICATOR	2016/17
Percentage of ICMS criminal modernisation completed	<b>ACHIEVED</b> 60% against a target of 60%
Number of KPI data uploaded to the IJS data warehouse	<b>ACHIEVED</b> 18 against a planned target of 18
Percentage completion of IJS hub and data warehouse platform enhancement	<b>ACHIEVED</b> 60% of planned target of 60%
Number of cases postponed via the Audio Visual Remand (AVR) system	<b>EXCEEDED</b> 13 443 against a target of 12 000

#### 9.4. Overview First Quarter 2017/18

9.4.1. In 2017/18, an amount of R900.1 million is allocated to this subprogramme compared with R853.7 million in 2016/17. This is a decrease of -0.7% in real terms. The budget for the CJS/IJS project is reduced by R20 million in 2017/18 for the Commission of Inquiry into Higher Education and Training.

9.4.2. There are two new Key Performance Indicators: 'Number of government departments and entities exchanging information electronically'; and 'Total number of IJS department applications that form part of the integrated lab test'. However, the following KPIs were removed: 'Percentage completion of the Integrated Case Management System (ICMS) for Criminal Enhancement' and 'Number of criminal cases postponed via audio visual remand system'.

9.4.3. For the First Quarter 2017/18, the subprogramme achieved all of its 3 planned targets, while 15% of the allocated budget was spent.

#### 10. Reported funding challenges

10.1. The Department reports the following spending pressures for the following items:

10.1.1. The Compensation of Employees' budget is capped at 2015/2016 levels with no growth. Taking into account adjustments, the salaries budget has been cut by R429 million and R671 million in 2016/17 and 2017/18, respectively. A committee was established in February 2017 to review posts: of the 1 700 vacancies, the committee considered 636 or 37% to be critical. These will now be filled.

10.1.2. The Infrastructure budget has been cut because of past underspending. In October 2016, the allocation for infrastructure was adjusted downwards from R911.1 million to R721.1 million to fund other priorities within the Vote. However, actual expenditure at year-end was R1.02 billion. The Department now faces a shortfall on its infrastructure budget with an allocation of R769.3 million for 2017/18. The Department of Public Works requested R890 million from the Department for infrastructure in 2017/18 but the Department was only able to provisionally allocate R451.3 million for projects under construction. The Department also has accruals from 2016/17. As a result, it was only able to confirm active projects for this year, while the rest are deferred. The Department projects a shortfall of R620 million for projects under construction and if it were to proceed with all projects, it would require R1.7 billion.

#### 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. However, 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 2016/17. The NPA is engaging with the Minister to resolve its accountability mechanism (i.e. should it remain a programme within the Vote or have its own Vote).
- 11.3. Overall, the Auditor-General expressed an unqualified audit opinion on Programme 4: NPA. There was only one material finding relating to performance information reporting: there were material differences between AFU's National Case Register and the information contained in the Annual Report. The Case Register was reviewed and the adjustments were made on the Annual Report. Audit action plans are in place to prevent repeat findings.
- 11.4. In 2016/17, the NPA was allocated R3.55 billion (compared with R3.37 billion in 2015/16), and spent 100% of its budget.
- 11.5. In 2017/18, the NPA programme is allocated R3.7 billion, which is a decrease in real terms of -2.7% from 2016/17. In the First Quarter 2017/18, the NPA spent R997 million or 25.7% of its budget. While most subprogrammes are on track, having spent approximately 25% of their budgets, the Office for Witness Protection has spent almost 30% of its allocation.

**Table 7: NPA Allocation and spending (with comparison for 2015/16)**

	2015/2016		2016/2017		2017/18
R'000					
Sub-programme	Final appropriation	Actual expenditure	Final appropriation	Actual expenditure	Appropriation
<b>NPS</b>	2 326 444	2 326 444	2 776 585	2 776 585	2 897 010
<b>NSPS</b>	299 038	299 038	-	-	-
<b>AFU</b>	133 138	133 138	133 011	133 011	131 909
<b>OWP</b>	183 689	183 689	183 521	183 521	175 683
<b>Support</b>	423 037	423 037	461 759	461 759	479 709
<b>Total</b>	3 374 346	3 374 346	3 554 576	3 554 576	3 684 311

- 11.6. The NPA remains committed to the strategic direction it embarked on some years ago. This is informed by the NDP, the MTSF and the refined JCPS delivery agreement. The NPA has identified the following MTSF 2014-2019 priority areas as relevant: reduced levels of contact crime; strengthening the Criminal Justice System; securing cyberspace; ensuring domestic stability; and reducing corruption.

- 11.7. The NPA's strategic outcome-orientated goal is an improved prosecution service by rendering a prosecution service that is effective.
- 11.8. The NPA has three strategic objectives, each specifically linked to a sub-programme:
- Increased successful prosecutions (NPS): To increase the conviction rate in the lower courts and high courts.
  - Ensure that profit is removed from crime (AFU): To increase the number of completed forfeiture cases and increase the value of freezing orders.
  - Ensure that threatened witnesses are successfully protected (OWP): To ensure that no witnesses or related persons are harmed, threatened or killed while on the witness protection programme.
- 11.9. The NPA achieved 88% of its planned targets for 2016/17. Performance relating to the following key MTSF targets is as follows:

**Table 8: NPA - Summary of performance for MTSF indicators for 2016/17**

<b>INDICATOR</b>	<b>2014/15 ACHIEVEMENT</b>	<b>2015/16 ACHIEVEMENT</b>	<b>2016/17 ACHIEVEMENT</b>
<b>Number of criminal cases finalised with verdict</b>	<b>NOT ACHIEVED</b> 319 149 against a target of 324 276	<b>NOT ACHIEVED</b> 310 850 against a target of 319 149	<b>ACHIEVED</b> 344 360 against a target of 330 794
<b>Number of criminal cases finalised with ADRM</b>	<b>EXCEEDED</b> 184 314 against a target of 149 204	<b>EXCEEDED</b> 166 952 against a target of 152 188	<b>ACHIEVED</b> 164 016 against a target of 155 232
<b>Conviction rate for sexual offences</b>	<b>EXCEEDED</b> 69% against a target of 67%	<b>EXCEEDED</b> 70% against a target of 68% (Actual achievement: 4 978)	<b>EXCEEDED</b> 71% against a target of 69% [reported at TCCs] (Actual achievement: 4 780)
<b>Conviction rate for trio crimes</b>	<b>NOT ACHIEVED</b> 82% against a target of 85%	<b>NOT ACHIEVED</b> 82% against a target of 85%	<b>NOT ACHIEVED</b> 83.5% (1 552) against a target of 85%
<b>Conviction rate for cybercrime</b>	<b>EXCEEDED</b> 95% (232) against a target of 74%	<b>EXCEEDED</b> 96% against a target of 74%	<b>EXCEEDED</b> 97% (289) against a target of 74%
<b>Number of persons convicted of corruption where the amount involved is more than R5 million</b>		<b>Actual achievement: 25</b>	<b>EXCEEDED</b> 29 against a planned target of 25
<b>No. of officials convicted of corruption or related offences</b>		<b>Actual achievement: 206</b>	<b>EXCEEDED</b> 224 against a target of 90

- 11.10. At subprogramme level, the NPS achieved 11 of 14 or 78% of its targets; and both the AFU and OWP met all of their targets..
- 11.11. Key achievements for 2016/17 include:
- A high conviction rate was maintained at all courts as a measure of quality prosecutions. The overall conviction rate was at 94%: 91% at High Courts; 80% at Regional Courts; and 96% at District Courts.

- An improved conviction rate for sexual offences at the Thuthuzela Care Centres of 71%.
- The AFU exceeded all its targets.
- No witnesses were harmed or threatened while on the witness protection programme.

#### 11.12. Overview of performance and spending for First Quarter 2017/18

11.12.1. While the strategic direction remains the same, the following two KPIs were consolidated: 'The number of cases finalised with verdict'; and 'The number of cases finalised through ADRM'. In addition, while a number of targets were not increased due to optimal performance (conviction rates for the High Courts, Regional Courts, Organise Crime, Trio Crimes and Complex Commercial Crime), the target for the number of operational Thuthuzela Care Centres (TCCs) established has been reduced from 60 to 55 for the MTEF because of funding constraints.

11.12.2. The spending focus for the programme remains on finalising cases. Consequently, the National Prosecutions Services sub-programme will continue to receive the largest share of the budget over the medium term. Other priority areas are increasing the annual intake of aspirant prosecutors; increasing the number of operational TCCs; and increasing the number of persons convicted of corruption for amounts higher than R5 million.

11.13. Key challenges going forward include:

- The NPA's performance is dependent on stakeholders, especially the police and the judiciary. As successful prosecution depends on investigations and evidence presented by the police, ensuring that trial-ready cases proceed timeously remains a challenge. Despite interventions to improve case-flow management, too few cases are placed on the court roll (Court utilisation remained on a downward trend, with court hours declining in 2016/17 from an average of 03:16 to 03:13). The norms and standards issued by the Chief Justice have not yet led to an increase in court hours and the increased finalisation of court cases.
- Funding challenges has meant that the number of operational TCCs will remain at 55 and will not increase to 60 in 2017/18, as planned.
- The budget allocated for witness protection is inadequate given the demand for its services.
- The NPA's compensation of employees' budget stands at 85% of its overall budget, with only 15% going towards operational costs. Although the NPA spent 100% of its compensation of employees' budget in 2016/17, a virement of R24.2 million from its goods and services budget prevented overspending of R32.5 million on this item. During 2016/17, 157 officials resigned. A further 55 resigned during the First Quarter of this financial year (Notably, the NPA reports that at 31 March 2017, it had a total of 3 168 prosecutors, which is 404 fewer than at 31 March 2016). With a moratorium on filling posts, the NPA had a vacancy rate of 15% at the end of 2016/17. The NPA has projected that it will experience a shortfall in its compensation of employees' budget of R 71 million for 2017/18; R199.6 million in 2018/19; and R222.4 million in 2019/20.
- Vacancies impact on staff morale and separation of functions, with increased absenteeism due to work pressure and an increased cost to the State in employee wellness services. In addition, the limited availability of prosecutors is likely to cause an increase in court backlogs and undermine court performance. There is also greater risk for witnesses, as protection services are reduced.
- The NPA has had to suspend its Aspirant Prosecutor Programme on hold due to funding constraints. The programme creates a gateway for prosecutions as a career and contributes to youth development. For the NPA to re-establish the programme, it requires R27.2 million in 2017/18, R29.2 million in 2018/19, and R31.4 million in 2019/20, for 156 Aspirant prosecutors for each of the years. In



order that the NPA can absorb these Aspirant Prosecutors in the outer years the NPA requires R38.6 and R41.4 million for 2018/19 and 2019/20 respectively.

- With the establishment of the High Courts in Polokwane and in Mpumalanga, the NPA will need to fill 53 more posts. Although the NPA has embarked on a rationalisation process to address capacity at these courts, there is still a shortage of staff at these courts. The NPA projects that requires R35.8 million, R38.4 million and R41.2 million for 2017/18, 2018/19 and 2019/20, respectively.

**Table 9: NPA Additional funding needs 2017 MTEF**

Item	2017/18 (R'000)	2018/19	2019/2020	Total
Shortfall on compensation of salaries budget	71 181	199 577	222 372	492 083
Aspirant Prosecutors (156 for 3 years)	27 239	29 227	31 361	87 827
Retention of Aspirants	0	38 568	41 383	79 951
DPPs: Polokwane and Mpumalanga	35 815	38 429	41 235	115 479
<b>SUB-TOTAL</b>	<b>133 188</b>	<b>305 802</b>	<b>336 351</b>	<b>775 341</b>
Other critical posts (253 posts)	147 215	157 962	169 493	474 670
Presidential appointments (incl. DPPs Northern Cape and Mpumalanga; Special Directors: Office of the NDPP, NPS, AFU, PCLU)	10 433	11 195	12 012	33 639
<b>SUB-TOTAL</b>	<b>157 648</b>	<b>169 156</b>	<b>181 505</b>	<b>508 309</b>
<b>TOTAL</b>	<b>290 836</b>	<b>474 958</b>	<b>517 856</b>	<b>1 283 650</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. Only when the Regulator has reached a stage of operational readiness will the remaining provisions come into force.

- 12.4. Since the Members of the Information Regulator only took office on 1 December 2016, it has:
- Developed a website in December 2016 and updated it with the Regulator's logo in February 2017.
  - Adopted a 2017-2020 Strategic Plan and Annual Plan 2017/18. An annual report was drafted that covers the last four months of the 2016/17.
  - Commissioned the Department to develop a logo and corporate identity.
  - Established corporate governance committees in line with its powers and functions, except for the enforcement committee, which will be chaired by either a Judge or magistrate.
  - Engaged with various stakeholders to discuss areas of mutual interest; provided training on POPIA to a number of bodies; and interacted with and hosted a number of international stakeholders.
  - Engaged in litigation, having been cited as a Respondent in the Constitutional Court case of Black Sash Trust v Minister of Social Development and Others. The Regulator provided an explanatory affidavit that clarified that personal information of grant beneficiaries belongs to them and could never vest in a third party.
  - Received approximately 150 complaints, although it is not yet operational. Many of these are about direct marketing through unsolicited electronic communications.
  - Published draft Regulations for public comment in September 2017.
  - Made a submission to the Committee on the Cybercrime and Cybersecurity Bill, 2017.
- 12.5. In terms of POPIA, the Regulator is given the power to determine its own administration in consultation with the Minister of Finance. It is in discussion with the Public Service Commission about the finalisation of its organogram. At present, the Regulator has four staff members seconded from the Department of Justice and Constitutional Development.
- 12.6. The Regulator occupies temporary offices at the Department's SALU Building but has engaged the Department of Public Works to assist it with procuring accommodation.
- 12.7. The Regulator was allocated R10 million for 2016/17, of which R1.7 million was spent. R25 million is allocated for 2017/18 and R27.3 million in 2019/20. These funds were far less than requested: the Department asked for R50.2 million in 2017/18 and R53 million in 2019/20 for the establishment of the Regulator.
- 12.8. 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.
  - Possible underspending for 2017/18, which could negatively affect the budget allocation for 2018/19 onwards.

### **Part 3**

#### **Programme 5: Auxiliary and Associated Services**

This programme includes Legal Aid South Africa, the Special Investigating Unit (SIU), the South African Human Rights Commission (SAHRC) and Public Protector South Africa (PPSA).

### 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 Act 39 of 2014; and other legislation requiring the government to provide legal assistance to the indigent. Its main objective is to make available legal representation to indigent persons at State expense, ensuring the right of all citizens to access to justice. Notably, the Legal Aid 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. The new Legal Aid Regulations and Manual were finalised and are approved.

13.2. The overall strategic shift in the 2015-2020 period focuses on increased organisational maturity, and sustainable high performance and excellence 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. The 2016/17 financial year was the second year in which the Strategic Plan 2015- 2020 is being implemented.

13.3. Legal Aid SA's strategic objectives are as follows:

- 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.
- 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 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.

### 13.4. Human resources

Legal Aid SA has a staff establishment of 2 751 with a turnover rate of 5.54% (excluding candidate attorneys). The recruitment rate was at 96.1% (slightly higher than in 2015/16 at 95.4%). Legal staff, including paralegals, account for 79.5% of the establishment. Delivery occurs nationwide through 64 Justice Centres and 64 satellite offices. In addition, Legal Aid South Africa has 1 176 accredited Judicare

partners; ten co-operation partners and five agency agreements with private law firms. Notably, Legal Aid SA received top employer accreditation for the eighth consecutive year and is industry winner of the public sector segment for the second year.

### 13.5. Audit outcome

Legal Aid SA received its sixteenth consecutive unqualified audit opinion in 2016/17; and the twelfth consecutive year in which no matters of emphasis were reported (clean audit). For the first time, there were no findings in the management report, which indicates exceptional performance.

### 13.6. Financial performance

13.6.1. Legal Aid SA receives its funding as a transfer from the Justice and Constitutional Development Vote. The entity is allocated R1.8 billion in 2017/18, compared to R1.7 billion in 2016/17. Although the grant allocation was not reduced for 2017/18, a budget shortfall of R45 million exists as a result of the compensation of employees' budget not being fully funded. Over the MTEF, Legal Aid SA anticipates that it will have a budget shortfall of R202 million. Although this will be managed by capping the salaries' budget and implementing cost-cutting efficiency measures, it may be necessary to cut posts. This would have a negative impact on the delivery of legal aid services.

13.6.2. More than 70% of Legal Aid SA's budget is allocated to the delivery of legal services, which is its core business. The rest of the budget is allocated to programmes that support the delivery of services.

**Table 10: Legal Aid SA Budget allocation per programme**

<b>Programme (R'000 000)</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
Legal Aid Services	1 323.7	1 425.8	1517.2	1 602.2
Administration	320.5	310.7	3075	323.6
Special projects	47.3	50.4	52.9	55.8
<b>TOTAL</b>	<b>1 691.4</b>	<b>1 786.9</b>	<b>1 877.6</b>	<b>1 981.6</b>

13.6.3. Legal Aid SA spent 99% of its budget in 2016/17, despite baseline reductions during the 2015 MTEF process as follows: R62 million in 2015/16 and R92.7 million in the 2016/17. Legal Aid SA was able to absorb these from its cash reserves so that service delivery was not affected and was able to achieve 93% of its targets.

13.6.4. Although Legal Aid SA's did not experience a budget reduction in 2017/18, it anticipates a shortfall of R45 million in 2017/18.

13.6.5. There was irregular expenditure of R2.1 million relating mainly to landlords, who were not tax-compliant, and non-compliance with the Supply Chain Management Policy.

### 13.7. Service delivery performance 2016/17

- 13.7.1. In 2016/17, Legal Aid SA provided increased legal advice and legal assistance in 767 656 matters (compared with 749 619 matters in 2015/16). This included 444 962 new legal matters (compared with 441 056 in 2015/16). A breakdown of these new matters is as follows: There were 385 972 new criminal matters (87%); and 58 990 new civil matters (13%). 445 625 matters were finalised during 2016/17, representing a clearance rate of one.
- 13.7.2. Legal Aid SA increased its provision of advice in 2016/17 from 308 563 matters in 2015/16 to 322 694 matters; and undertook 13 new impact litigation matters (compared with 14 in 2015/16) with a 93% success rate.
- 13.7.3. Legal Aid SA reduced its coverage at District Courts by 1% to 87% but maintained coverage in the Regional Courts at 97%. This was achieved by better aligning staff with demand in the District Courts and maintaining high staffing levels in the Regional Courts. Representation was provided in all matters that required legal aid in the High Courts. Some relief capacity is available but is limited.
- 13.7.4. Legal Aid SA increased the assistance provided in civil matters by 1% from 52 364 to 58 990 new civil legal matters. Representation given to vulnerable groups, including children (16%), women (7.5%), mental health users (from 6 to 50) and the elderly (26%), increased. In addition, representation was provided in land/eviction matters (11%).
- 13.7.5. Children were provided with assistance in 18 025 matters, of which 11 378 or 63% were children in conflict with the law and 6 647 or 37% were assisted in civil matters. Assistance to children in civil matters has increased by 16 % when compared to 2015/16. Of these, 4 109 cases related to estate matters.
- 13.7.6. Justice Centres and satellite offices provided advice in 253 681 matters (compared with 242 045 matters in 2015/16) and provided advice to 27 236 remand detainees (compared to 30 574 in 2015/16). The Call Centre provided advice in 41 777 matters (compared to 35 944 in 2015/16). Paralegals provided advice in 27 236 matters.
- 13.7.7. Legal Aid SA reports that at the end of 2016/17 it had a stable and reliable WAN VPN connected to all sites and available at 96.9% of these. IT hardware capacity is aligned to Legal Aid SA's business needs was available to 99.6% of sites. In addition, IT software and applications that are fully integrated were available at 99% of sites. A tender was awarded for the development of the Electronic Legal Aid Administration System (eLAA2016) and six modules were developed by the end of 2016/17. Further, the Disaster Recovery Rehearsal turnover-time has improved significantly and recovery was successful at the first attempt. A number of new applications were developed.

### 13.8. The following key challenges are reported

- Legal Aid SA is unable to continue its newly introduced 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.
- A small percentage (1%) of practitioners did not meet the quality standard. 28% of Judicare practitioners failed to meet Legal Aid SA's quality standards.
- Pending legal matters in the Regional Courts exceeded targets for turnaround times.

- There are still delays in appeal matters because of court records being unavailable.
- There has been no significant decrease in the number of remand detainees awaiting trial for extended periods despite tracking mechanisms in place.
- There is growing demand for civil legal services, with a significantly increased intake of new civil matters. However, finalisation rates has slowed as the intake exceeds capacity.
- Fiscal constraints threaten service delivery. Legal Aid SA anticipates a budget shortfall of R45 million in 2017/18; R59 million in 2018/19; and R83 million in 2019/20 as a result of cost of living increases that exceed the macro-increase allocated. The shortfall will be managed through efficiency measures and a cap on the compensation of employees' budget. This will affect staffing and recruitment levels. Although no posts will be cut in 2017/18, going forward there is likely to be an impact on service delivery.

#### 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, which 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. **Human Resources**

The SIU had a staff complement of 532 at 31 March 2017 (compared with 532 at the end of March 2016 and 546 in March 2015). There is a significant increase in the overall vacancy rate from 4% in 2015/16 to 15% in 2016/17. Of particular concern is the vacancy rate at senior management level, which has increased from 23% in 2015/16 to 30%. However, a number of key appointments were made during 2016/17: Head of Stakeholder Management; Chief Financial Officer; Projects Director; and four senior forensic investigators. The rise in vacancies is attributed to a moratorium on the filling of posts while the organisational review was finalised. The SIU reports that it is now in a position to start filling vacancies.

#### 14.3. **Audit outcome**

The SIU's audit outcome for 2016/17 has improved from an unqualified audit opinion with findings to a clean audit opinion.

#### 14.4. **Financial performance**

14.4.1. The SIU's funding model provides for a baseline grant from National Treasury. In addition to this grant, the SIU charges state institutions for its services, thus raising additional revenue.

14.4.2. In 2016/17, the SIU had a total income of R518.8 million (compared with a R494.7 million in 2015/16); actual expenditure was R497.1 million with a surplus of R40

million. Comparing performance with expenditure, the SIU achieved 80% of its targets for 2016/17, while spending 93% of its budget.

**Table 11: SIU Overview of budget and expenditure**

<b>SIU BUDGET</b>	<b>2015/16</b>	<b>2016/17</b>
<b>TREASURY ALLOCATION</b>	R304.4 million	R316.7 million
<b>CARA FUNDING</b>	R4.1 million	R426 739
<b>CHARGES FOR SERVICES RENDERED</b>	R2174.0million	R181 million
<b>OTHER</b>	R12.06 million	R19.9 million
<b>TOTAL</b>	<b>R 494.7million</b>	<b>R518.8 million</b>
<b>ACTUAL EXPENDITURE</b>	R444.8 million	R479.1 million
<b>SURPLUS</b>	R50 million	R39.6 million

14.4.3. The SIU's projected total revenue for 2017/18 is R562.4 million. Of this, R346.2 million is from the baseline grant (compared with R316.7 million in 2016/17) and R200.9 million from project income (compared with R174 million in 2016/17). A further R15 million is from other income. There is a real increase of 2.8% in the baseline grant (compared to a real decrease of 3.9% in 2016/17). This is accompanied by a significant real increase in expected project income of 14.2%. However, project income is dependent on the number of active proclamations in a given year.

14.4.4. The SIU reports irregular expenditure of R1.8 million, compared with R2.5 million for 2015/16 and R5.5 million in 2014/15.

14.4.5. An amount of R506 in fruitless and wasteful expenditure was incurred, decreasing from R8 780 in 2015/16. The SIU's contingent liabilities have increased from R8.4 million in 2015/16 to R32.1 million in 2016/17, of which the bulk relates to labour disputes.

14.4.6. In addition, in 2016/17, the SIU was owed R418 million by state institutions for services rendered but wrote off R288.5 million. It has embarked on an intensive exercise to recover outstanding debts and by the end of March 2017 had recovered R138 million,

#### 14.5. Performance

14.5.1. 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.

14.5.2. The SIU has three strategic objectives: quality forensic investigations; facilitate or initiate appropriate remedial action; and co-operate effectively with other role players. The SIU has shifted its focus to procurement matters. This means investigating fewer but more complex cases. In addition, the SIU participates in various multi-agency interventions.

**Table 12: SIU performance for selected targets and indicators 2016/17**

<b>STRATEGIC OBJECTIVE</b>	<b>INDICATOR</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>
<b>Quality forensic</b>	No. of	-	-	<b>EXCEEDED</b>

STRATEGIC OBJECTIVE	INDICATOR	2014/15	2015/16	2016/17
investigations	investigations closed out (NEW)			1 186 against a target of 800
	No. of reports submitted to the Presidency (NEW)	-	-	<b>EXCEEDED</b> 6 against a target of 5
Facilitate or initiate appropriate remedial action	Potential value of cash/assets recoverable	<b>EXCEEDED</b> R844 million against a target of R200 million	<b>NOT ACHIEVED</b> R73 million against a target of R220 million	<b>NOT ACHIEVED</b> R126 million against a target of R240 million
	Actual value of cash assets recovered	<b>EXCEEDED</b> R145 million against a target of R100 million	<b>NOT ACHIEVED</b> R52 million against a target of R120 million	<b>NOT ACHIEVED</b> R45.5 million against a target of R140 million
	The value of potential loss prevented	-	-	<b>EXCEEDED</b> R106.5 million against a target of R18 million.
Co-operate effectively with other role players	Number of referrals made to the NPA	<b>EXCEEDED</b> 171 referrals to the NPA against a target of 50	<b>EXCEEDED</b> 307 referrals against a target of 45	<b>EXCEEDED</b> 108 against a target of 60
	Number of SIU member(s) participating in Joint Operation(s) or seconded to assist State Institutions	-	<b>Baseline established</b>	<b>EXCEEDED</b> 54 against a target of 30 (NOTE that this indicator is removed in 2017/18)

- 14.6. The following operational challenges were identified and remedial measures were put in place:
- The process to set up the Special Tribunal is receiving attention.
  - There has been difficulty in recovering monies owed to the SIU from state institutions for its services. The SIU has declared its funding model flawed in this regard and is exploring possible legislative amendments to its enabling legislation to remedy this.
  - The current legislative framework does not provide for a pre-proclamation phase to investigations, which are often required to develop new opportunities. Draft amendments to the enabling legislation have been prepared.

#### Part 4

#### 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.
- 15.2. As from 3 January 2017, seven new commissioners were appointed to the SAHRC. Of these, five are appointed full-time and two in a part-time capacity.
- 15.3. **Human resources**  
The Commission reports that 163 posts (of 188) were filled in 2016/17 with a vacancy rate 14% (compared with 169 filled posts (of 185) with a vacancy rate of 9% in 2015/16).
- 15.4. **Audit opinion**  
The SAHRC has retained a clean audit for the second consecutive year. The issues that the Auditor General raised relating to IT governance are being addressed: an IT Governance Framework and Plan has been approved and is being implemented in 2017/18. In addition, the ICT Steering Committee has been set up.
- 15.5. **Financial performance**
- 15.5.1. The Commission was allocated R153 million for 2016/17 and spent R158.2 million (102%). The SAHRC reports an operating deficit of R3.2 million for 2016/17 but this was countered by an accumulated surplus of R11.4 million. The Commission achieved 84% of its targets for 2016/17.
- 15.5.2. The SAHRC did not record any irregular expenditure but fruitless and wasteful expenditure rose to R59 000 in 2016/17.
- 15.5.3. The allocation increases from R153.5 million in 2016/17 to R173.4 million in 2017/18. In real terms, the budget increases by 6.3%. Notably, in 2016/17, the Commission was allocated additional funds (R11.5 million in 2017/18 and R12.2 million in 2018/19) for its advocacy work, in particular for its work relating to xenophobia.

**Table 13: SAHRC Budget allocation**

Programme	Budget (R'000 000)		Real % change 2017/18
	2016/17	2017/18	
Administration	54.1	67.7	17.6
Promotion and protection of human rights	89.6	98.4	3.4
Research and monitoring and evaluation.	10.5	8.0	-28.2
<b>Total</b>	<b>153.5</b>	<b>173.4</b>	<b>6.3</b>

15.6. **Performance**

- 15.6.1. Overall, the SAHRC's performance has improved over the past five years from meeting 52% of its targets in 2009/10 to 84% in 2016/17.
- 15.6.2. Performance in 2016/17 is measured through five strategic objectives, namely:
- Promote compliance with international and regional obligations: This strategic objective focuses on the Commissioners' participation in international and regional activities. Performance under this objective was 100%, with all targets achieved.

- Advance the realisation of human rights: In order to achieve this objective, the Commission engages with stakeholders, hosts public hearings and handles complaints. The Commission achieved 100% of targets for this objective.
- Enhance and deepen the understanding of human rights and promote a human rights culture. The Commission achieved all four targets for this strategic objective.
- Use and project a broader constitutional and legislative mandate: The Commission seeks to advance the right to equality and right to access to information under this strategic objective and reports that it achieved 100% of its targets.
- Improve the effectiveness and efficiency of the Commission to support delivery on the mandate: The Commission achieved 50% of its targets. Areas of non-performance related to:
  - The resolution of audit findings: 70% were resolved against a target of 100% because of inadequate capacity.
  - Compliance with institutional policies: There was 90% compliance against a target of 100%. Non-performance is attributed to some elements of the corporate charter not being automated but this is in the process of being corrected.
  - Implementation of the capacity development plan: 61% was achieved against a target of 85% because of budget constraints.

#### 15.6.3. Key achievements for 2016/17 include:

- Maintaining a third consecutive unqualified audit opinion.
- Embarking on litigation with rulings in its favour dealing with the provision of school textbooks and emoluments attachment orders.
- Commemorating 20 years of the SAHRC, with a focus on racism.
- Participating in international and regional human rights mechanisms to promote state accountability for due obligations.
- Conducting two national investigative hearings relating to the situation of indigenous peoples and unfair discrimination in the workplace.
- Finalising 98% of cases against a target of 85%.
- Producing annual research outputs reflecting on the state of human rights in the country (including economic and social rights, equality and access to information reports).

#### 15.6.4. Over the medium term, the Commission intends to focus on the following:

- Engaging with relevant government departments and other stakeholders on economic and social rights, as well as producing policy briefs to address identified policy gaps.
- Improving the effectiveness of the complaints' handling process.
- Seeking to promote awareness of the human rights provisions found in the Bill of Rights.
- Improving the application of protective legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.
- Extending the use of alternative dispute resolution mechanisms to speed up the resolution of complaints.
- Making greater use of strategic litigation.
- Continuing to work closely with other Chapter 9 institutions.
- Intensifying advocacy and communication activities.
- Strengthening its research capability.
- Ensuring increased implementation of the SAHRC's recommendations.

### 15.7. **Additional funding needs**

15.7.1. The Commission reports unfunded mandates relating to the monitoring of court orders and pending unforeseen strategic litigation. It requires R42.3 million in addition to its allocation for 2017/18 for this purpose.

15.7.2. Further, the Commission has identified a number of desirable but unfunded projects for which additional funding is needed.

**Table 14: SAHRC Additional funding requests 2018/19**

Description	2018/19
Detention monitoring, court orders, and OPCAT: monitoring capacity, reporting, enforcement, national standards, training recommendations	R 6 552 375
Health crisis: hearing and litigation	R2 500 000
Older persons, persons with disabilities, and international obligations: monitoring capacity, reporting, enforcement, reforms	R3 610 000
Systems IT: complaints, short message service, reporting, information management	R1 200 000
Public perception survey	R600 000
Monitoring and evaluation project (2 years)	R2 000 000
<b>Total</b>	<b>R16 462 375</b>

## 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 2016/17, at year-end, the PPSA had 343 employees (of 402 approved posts) with a vacancy rate of 14% (59 vacancies) compared to 10.9% in 2015/16. The most significant vacancy rate was at senior management level at 26% (nine posts vacant), followed by the skilled level at 17% (21 posts vacant). During 2016/17, there were 69 appointments while 24 employees resigned. Certain key positions were filled, including Chief Executive Officer and Senior Manager: Strategic Support.

### 16.3. Audit outcome

16.3.1. Although the PPSA achieved an unqualified audit opinion with findings in 2016/17, its audit outcome has regressed:

- Material uncertainty relating to going concern: The PPSA incurred an accumulated deficit of R24.3 million at the end of 2016/2017 and, as of that date, the constitutional institution's current liabilities exceeded its total assets by R28 649 967, which makes it technically insolvent. The Auditor General expressed concern regarding the ability of the PPSA to continue to operate in the future.
- Emphasis of matter:
  - Irregular expenditure of R4.24 million incurred in previous years is still under investigation. In addition, irregular expenditure of R6.39 million incurred in previous years was not investigated.

- Restatement of corresponding figures (financial statements had to be restated due to an error.) Although an action plan was developed to address external audit findings, the plan was not adhered to.
- Performance management: There were material misstatements that were subsequently corrected in respect of performance information for the Investigations and Outreach programmes.
- Expenditure management: The Auditor General found that effective steps were not taken to prevent irregular expenditure of R22.9 million.
- Payments of invoices within 30 days: The Auditor General found that some contractual obligations and monies owed were not settled within 30 days.
- Procurement and contract management: Some of the goods and services with a transaction value below R500 000 were procured without obtaining the required price quotations.
- The Annual Financial Statements were not prepared in accordance with the prescribed financial reporting framework (PFMA) and material misstatements had to be corrected.
- Internal Control: Non-compliance with legislation could have been prevented if Management had properly reviewed compliance. Both the misstatements found in the financial statements and performance report could have been prevented if there had been proper supervision and review.
- Leadership: Although an action plan was developed to address external audit findings, Management did not monitor implementation of the plan adequately (despite being continually warned that internal audit action plans were not being implemented in the manner they should have been).

#### 16.4. Financial performance

16.4.1. The Public Protector received an allocation of R262.6 million for 2016/17 compared with a total budget of R255 million in 2015/16. In October 2016, an additional allocation of R1.5 million was shifted to the PPSA from the Department's State Legal Service programme, bringing the adjusted allocation to R264.1 million. Inclusive of other revenue, the PPSA had a budget of R274.8 million for 2016/17. However, actual expenditure for 2016/17 was R293.5 million, exceeding the allocation by R18.6 million. In comparison, in 2015/16, the PPSA spent R237.2 million and achieved an operational surplus of R17.8 million. Despite overspending its budget (106%), the PPSA's overall performance in 2016/17 declined compared to the previous financial year.

16.4.2. Additional funding was allocated in 2016/17 for 2017/18 of R21 million and of R22 million for 2018/19.

16.4.3. At the end of 2013/14, the PPSA had an accumulated deficit of R25.9 million and current liabilities exceeded total assets. In response, the PPSA implemented various austerity measures and by the end of 2015/16 the PPSA had reduced the accumulated deficit from R18.3 million to R5.72 million. An operating surplus in 2015/16 of R12.6 million assisted in this regard. However, the deficit has burgeoned in 2016/17 and is now R24.3 million. The PPSA reports that, together with strategic reprioritisations to reduce cost pressures, it will continue with its austerity measures to minimise expenditure and avoid a deficit in the 2017/18 financial year.

16.4.4. During the 2016/17 financial year, the PPSA recorded irregular and fruitless and wasteful expenditure: The amounts of irregular expenditure have increased from R5.5 million in 2015/16 to R22.9 million in 2016/17, while fruitless and wasteful expenditure increased from R2 000 in 2015/16 to R1.3 million in 2016/17.

16.4.5. For the 2016/17 financial year, the PPSA reports that spending on compensation of employees was R202.5 million against projected expenditure of R191.1 million, with overspending of R11.4 million.

16.4.6. In 2017/18, the Public Protector receives R301.8 million compared with R263.3 million in 2016/17 (a real increase of 7.8 %). Additional funds of R21 million in 2017/18 and R22.6 million in 2018/19 were allocated in the 2016/17 Budget. The additional funds are to support government's focus on fighting corruption by assisting with its investigative capacity and for increased capacity in key positions.

**Table 15: PPSA Budget Allocation**

Programme	Budget (R'000 000)			
	2016/17	2017/18	2018/19	2019/20
Administration	113.5	113.9	-	-
Investigations	174.7	173.8	-	-
Stakeholder engagement	5.3	14.1	-	-
<b>Total</b>	<b>293.5</b>	<b>301.8</b>	<b>319.3</b>	<b>337.2</b>

## 16.5. Performance

16.5.1. There is a decrease in the overall performance for 2016/17, which is attributed to inadequate funding. In addition, the arrival of the new Public Protector in October 2016, led to certain key decisions that affected the achievement of some targets.

**Table 16: PPSA selected indicators and targets**

PERFORMANCE TARGETS	2013/14	2014/15	2015/16	2016/17
Number of planned targets during the financial year	63	54	21	45
Number of targets achieved	37	28	13	24
Number of target not achieved	26	26	8	21
Percentage level of performance	59%	52%	62%	53%

16.5.2. In 2016/17, the PPSA reports its case management was as follows:

**Table 17: PPSA caseload management**

CASE LOAD	2013/14	2014/15	2015/16	2016/17	2017/18
Cases carried over	13 622	9 594	5 331	4 254	5 255
New cases	26 195	15 618	11 372	9 563	-
Finalized cases	24 642	20 231	12 735	10 787	-
Cases referred	3 072	2 740	1 159	929	-

16.5.3. In 2016/17, Administration achieved only 50% of its planned targets, spending R111.4 million against an allocated budget of R106 million. Performance for this programme was measured against 20 indicators linked to the following strategic objectives: operational efficiencies; transform human resources to align internal competencies with business needs; transform information communications technology to support business needs optimally; financial sustainability; strategic review of insourcing versus outsourcing of key facilities/infrastructure; exemplary conduct and all staff capacitated.

16.5.4. The Investigations programme achieved two or 22% of its nine planned targets for 2016/17. Performance is linked to the following four strategic objectives: speedy resolution of every matter; adherence to defined turnaround times in investigations; operational efficiencies; and implementation of remedial action. The programme had a budget of R161.8 million in 2016/17, and spent R173.2 million, overspending by R11.4 million.

16.5.5. The Stakeholder Management programme achieved 12 or 75% of 16 performance targets in 2016/17. The programme had a budget of R7.88 million and spent R5.21 million, resulting in under-expenditure of R2.67 million. The performance indicators for this programme were increased from three to sixteen in 2016/17, linked to the following strategic objectives: ease of access to services to all persons and communities; awareness; promote good governance; ethical leadership; and influence government and Parliament to amend the Public Protector's enabling legislation.

16.5.6. In 2017/18, the PPSA embarked on a restructuring process that will align its operations with the new vision, which prioritises 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.

#### 16.6. Additional funding needs 2018 MTEF

16.6.1. For many years, PPSA has indicated that the institution requires more funds: In 2014, the PPSA a budget of more than R300 million and, in 2015, indicated that R200 million was needed in addition to its baseline to fund the organisational structure. For 2017, the PPSA has indicated that an amount of R1 billion is required over the medium term to keep the institution afloat. During the BRR hearings, the PPSA provided a detailed request for additional funding for the 2018 MTEF of R884.9 million, as follows:

Item	2018/19	2019/20	2020/21	MTEF Total
	R'000 000			
<b>Organisational structure</b>	238.6	247.0	260.8	746.5
<b>Realignment of personnel salaries</b>	8.0	8.5	9.1	25.6
<b>Case management system (support and maintenance)</b>	8.5	9.0	9.5	26.9
<b>Litigation</b>	6.0	6.0	6.0	18.0
<b>Security t</b>	12.8	3.3	3.6	19.6
<b>Video conferencing facilities</b>	2.5	2.5	2.5	7.5
<b>Integrated telephone system and call centre</b>	3.0	3.0	3.0	9.0
<b>Experts</b>	10.0	10.6	11.1	31.7
<b>TOTAL</b>	<b>289.5</b>	<b>289.9</b>	<b>305.5</b>	<b>884.9</b>

## Part 5

### 17. Committee's observations

The Committee makes the following observations:

- 17.1. **BRRR process:** Once again, the Committee expresses its concern regarding the timeframes associated with the BRRR process. 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 that include the evaluation of the audited annual performance reports, which in terms of the PFMA must only be tabled before 31 September of each year, requires a great deal more time than is permitted in order to comply with 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. In addition, the timeframes severely limit any opportunity for interaction with the public on its assessment of the relevant sector. The Committee understands that there is a process underway led by the Standing Committee on Finance to review the provisions of the Money Bills Procedures Amendment and Related Matters Act to enhance the BRRR process and will communicate its views to that Committee as well.

### Department of Justice and Constitutional Development

- 17.2. **Budget reductions.** The Department drew the Committee's attention to a projected shortfall in its compensation of employees and capital works' budgets. The delivery of justice services is labour intensive. Although the Department has put measures in place to mitigate the impact of the budget reductions, the Committee repeats its view that, as the Department, the NPA and Legal Aid SA are all engaged with the provision of essential services, additional funds should be made available to avoid cutting posts thereby compromising service delivery levels. The Committee believes that there comes a point at which it is inevitable that the lack of resources will so adversely affect the performance of an institution that it is unable to continue to carry out its mandated task – in this instance, the delivery of justice services. Furthermore, as capacity is reduced, internal controls begin to break down and the risk of inefficiencies and irregularities increase, creating an environment that becomes conducive to fraud and corruption. The increased amount of irregular and fruitless and wasteful expenditure for 2016/17 is perhaps already indicative that this is happening.

### 17.3. Transformation towards access to justice

- 17.3.1. **Renaissance project.** The Committee notes the Department's plans to advance a transformative agenda to bring about substantive changes to our legal system. The Department is pioneering a Renaissance project to review all sources of our law to ensure consistency with the Constitution. This is in addition to the South African Law Reform Commission's Project 25 that looks primarily at the compliance of all legislation with section 9 (the right to equality) of the Constitution. The Department has begun the process of identifying critical branches and areas of current South African law, which still largely bear the hallmarks of our colonial past and apartheid legacy, for fundamental reform in line with the Constitution. A Terms of Reference

for the Renaissance Project and a comprehensive management framework was to have been developed by the end of September 2017. Although the Department had intended to approach the South African Law Reform Commission to carry out the Renaissance project, it has not yet done so. The reason being that that Parliament is already engaged in a project to repeal apartheid-era legislation and a database has been compiled. The involvement of the South African Law Reform Commission will be determined once there is clarity from Parliament on how it intends to take its process forward. In the meantime, the Department is considering the repeal of pre-1994 statutes that fall within its mandate. The Committee notes further that the work will require additional researchers and legal drafters as the task is extensive.

The Committee requests that the Department provide it with a comprehensive written report on the progress of this project by 30 November 2017 and to continue to keep the Committee updated about progress as part of the Department's quarterly reporting process. In addition, the Committee will arrange a dedicated briefing on this item at the appropriate time.

**17.3.2. Use of language in court proceedings.** The Committee notes the Judiciary's view that English is to be the language of record in our courts but that nothing prevents those who appear in our courts from using or prevents legal practitioners from cross-examining witnesses in their own language. The reasons advanced are to do with efficiency and the smooth running of the court system. The Committee remains committed to an approach that allows people to participate in court proceedings in the language that they understand best. The Committee believes that the issue of the use of language in official processes remains a fundamental barrier to access to justice and must be addressed holistically. For example, the practice of police officers taking statements in English despite not being proficient in that language not only affects the quality of the statements but increases the chance that it does not accurately reflect what was communicated. Furthermore, the quality of interpretation services in the courts are often less than ideal and are potentially prejudicial to the accused.

The Committee will certainly raise the issue once more with the Judiciary when it next meets with it.

However, the Committee notes that the Department was to finalise a Use of Official Languages in Court Proceedings Policy by the end of 2017/18. It requests that the Department clarify in writing whether it intends to continue to develop this Policy by 30 November 2017 and, if so, requests a comprehensive written report by the same date containing details of this project, with projected timeframes. The Committee also asks that the Department clarify whether it intends to re-establish pilot courts in this regard by the same date.

**17.3.3. Inclusion of an indigenous African language in the LLB curriculum.** The Committee repeats its view that the ability to speak an indigenous African language should be a compulsory requirement for those wishing to practice law in South Africa. The Committee, therefore, requests that the Ministry continue to engage with its counterpart in Higher Education on the inclusion of indigenous African languages as a compulsory subject in the LLB curriculum. In this regard, the Committee draws attention to the example of the University of KwaZulu-Natal which has made IsiZulu a compulsory subject in its LLB curriculum. The Committee, therefore requests that the Department provide it with a comprehensive written report on such discussions by 30 November 2017 and to continue to keep it updated of progress as part of the Department's quarterly reporting process.

The Committee will also engage with the National Forum when it meets with it at the beginning of November this year about requiring those entering the profession to be



proficient in at least one indigenous African language as part of the process of transforming both the profession and the justice system as a whole.

**17.3.4. Regulation of the paralegal sector and provision of funding for sustainability.**

The Committee is frustrated about the seeming stagnation in resolving the status of the paralegal sector, despite the early promise of the Department's initiatives. Paralegals and community advice centres play a major role in promoting access to justice, especially for those who would not otherwise be able to afford legal services. The Committee is of view that statutory recognition of the paralegal sector is urgent and the requisite legislation should be finalised before the end of this Parliament. The Committee, therefore, urges the Department to prioritise the finalisation and introduction of a bill to Parliament by no later than the beginning of the new financial year.

The Committee acknowledges the Department's efforts, in conjunction with the Foundation for Human Rights, to address the issue of funding community-based advice offices to ensure their sustainability by creating a 'basket fund' to ensure the sustainability of these offices. The issue of sustainability is being discussed with donor organisations and National Treasury to find a lasting solution. The Committee requests that the Department provide a comprehensive written report on progress by 30 November 2017 and to continue to keep it updated as part of the Department's quarterly reporting process.

**17.3.5. Report on the Assessment of the Decisions of the Constitutional Court and Supreme Court of Appeal.**

The Committee does not understand why the final report on the assessment, which was to be submitted to Cabinet earlier this year, has not yet been made public. The Report is also to inform the Policy on the design of the judicial and court administration model, which is due to be submitted to Cabinet by the end of 2017/18. With the end of the year fast-approaching, the Committee fears that it is possible that another year may pass without the Report being released. As an aside, the Committee is perplexed that the Report has been shared with local government and other departments but that Parliament has not been given a similar opportunity to engage with the Report. The Committee sincerely hopes that the delays will not impact on the finalisation of the Policy on the Design of the Judicial and Court Administration Model. The Committee, therefore, urges that the Ministry to expedite the release of the report as a matter of priority, preferably before the end of the year.

**17.3.6. Policy on the design of the judicial governance and court administration model.**

The Committee notes that an Inter-Ministerial Committee (IMC), chaired by Deputy President Ramaphosa, has been appointed to make recommendations to Cabinet on an appropriate Judicial Governance and Court Administration Framework. The Deputy President has already met with the Chief Justice to obtain his views on this. In addition, a technical task team has been established, chaired by the Deputy General: Justice and Constitutional Development to assist the IMC's work. The Committee welcomes the target date of 28 February 2018 for Policy's submission to Cabinet, as it is increasingly frustrated at the the lack of progress in resolving this matter: a judiciary-led court administration model was mooted several years ago and the Judiciary has already undertaken extensive research and made proposals in this regard. The Committee is, therefore, keen that a solution is found as soon as possible. In the meantime, the Committee requests that the Department provide it with a comprehensive written report on progress by 30 November 2017, in particular, the work of the technical task team, and continue to report on this item as part of the quarterly reporting process.

**17.3.7. Land reform.**

The Committee repeats its concern at the slow pace with which land claims are settled. Apartheid dispossessed people of land and resources leading to

poverty and inequality. In the Committee's view, the process of dealing with land claims is falling short, creating the risk of land occupations and violent protests as people become frustrated. The Committee notes that the Ministry's intention to engage with its counterpart in Rural Development and Land Reform regarding the feasibility of transferring the budget to provide legal assistance to land claimants to Legal Aid South Africa. The Committee strongly supports that Legal Aid South Africa undertake this work. However, without the transfer of these funds, Legal Aid South Africa is not in a position to take on these matters.

Further, it recently came to the Committee's attention that the legislation to amend the Land Restitution Act, which would have seen land restitution fast-tracked, also contained provisions that would allow for the permanent appointment of judges to the Land Claims Court. As the legislation was successfully challenged, there is no mechanism at present that will allow the permanent appointments of judges to the court. The Committee is of the view that there is urgent need for legislation that will allow for the permanent appointment of justices to the Land Claims Court and requests that the Ministry engages with its counterpart in Rural Development and Land Reform to address the problem expeditiously. Further, the Committee is of the view more capacity is needed in that court and requests that the Ministry look into this as well.

The Committee requests that the Ministry urgently engage with the Ministry of Rural Development and Land Reform and National Treasury to discuss the feasibility of transferring funds for legal advice to and litigation by land claimants to Legal Aid South Africa.

- 17.4. **Integrated Criminal Justice Strategy (ICJS).** The Committee continues to be interested in the proposed project to overhaul of the criminal justice system. Cabinet has approved a broad framework for the Integrated Criminal Justice Strategy (ICJS). The Strategy provides 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 CJS 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.

Although, the Committee remains unclear about how the proposed overhaul will differ from the Criminal Justice System Review/Revamp and the related 7-point plan, it will also arrange a joint briefing of the relevant portfolio committees on the ICJS, as soon as the programme permits.

In the meantime, the Committee requests that the Department provide it with a comprehensive written report on the project by 8 November 2017 in preparation for its meeting with the IJS Board and to continue to keep the Committee updated about progress as part of the Department's quarterly reporting process.

- 17.4.1. **Integration of IT systems (IJS).** The ultimate goal of the IJS was to ensure seamless integration and consolidation of critical information between the entities that form part of the JCPS Cluster. The Committee notes that the Auditor-General selected the IJS as a key value add project. There are eight departments representing key components of the IJS value chain, while the Department of Justice and Constitutional Development is responsible for project management. Successful integration of interdepartmental information exchange is highly dependent on establishing business applications across all departments. The Committee notes progress, in particular, with respect to the two of three integration priorities: Case Management Integration and Business Intelligence Integration. The third integration capability - Person Management Integration - is more challenging as the systems of all departments must have the necessary capabilities. The Committee has often

expressed its frustration at the slow pace of progress of the IJS, given how long the project has been in existence and the considerable resources that have been allocated to it over the years. The Committee notes that the IJS Board has requested an opportunity to address a joint briefing of the Portfolio Committees on Justice and Correctional Services, Police, Home Affairs and Social Development on the progress made by IJS. The Committee views this as a priority and will arrange for this before the end of this year. The Committee also requests that the Department provide a comprehensive report of progress made prior to the proposed meeting and in addition continue to report on this item as part of the quarterly reporting process.

## 17.5. **Audit outcome**

17.5.1. The Committee is dismayed at the regression of the Department's audit opinion. In its 2015 BRRR, the Committee noted the Auditor-General's observation that repeat findings may eventually place the audit outcome at risk and regrets that Management did not double up on its efforts to prevent an unfavourable outcome. The Committee agrees with the Auditor-General that Management must ensure that there are consequences for poor performance and transgressions, as these are key to improving the audit outcome. Further, Management should have clear processes and delegations in place to ensure timeous response to findings. Adequate action plans must be implemented within strict timeframes, and the implementation of action plans should be reviewed at least quarterly by the Audit Committee. Internal Audit should assess if implementation has achieved the required outcome. 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 30 November 2017.
- The Department report on the implementation of the audit action plans as part of the initial report due on 30 November 2017, and continue to keep the Committee updated as part of the quarterly reporting.
- 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, with a particular focus on compliance with legislation and supply chain management.

17.5.2. **Late payment to suppliers.** The Committee requests that the Department provide an initial report on creditors who have not yet been paid within the prescribed period by 30 November 2017, the amounts involved, and the reasons for late payment. The Committee requests that the Department continue to include a report on this item as part of the quarterly reporting process.

17.5.3. **Irregular expenditure.** The Committee is concerned at the increase in irregular expenditure from R13.7 million in 2015/16 to R29.4 million in 2016/17, although this may increase as an amount of R102 million is still under investigation. The Auditor-General's reports that disciplinary action was not taken against officials who incurred irregular expenditure. The Committee is not satisfied by the Department's explanation for incurring the irregular expenditure and the failure to practice consequence management. The Committee agrees with the Auditor-General that Management must ensure that there are consequences for those who transgress.

The Committee requests that the Department provide a written report by 30 November 2017 on the steps that it is taking to prevent the occurrence of irregular expenditure; the status of investigations into unconfirmed amounts; and the status of disciplinary action taken against the official responsible for such expenditure, including efforts to reclaim these amounts; and to continue to do so quarterly.

17.5.4. **Fruitless and wasteful expenditure: mobile units.** The Committee notes that the Department incurred fruitless and wasteful expenditure relating to mobile units purchased and not utilised, although the Auditor-General conceded that this did not mean that they would not be used in future. Nevertheless, the Committee is concerned that the Auditor-General found that, in addition, there was over-expenditure on the erection and purchasing of the mobile courts contract of R271 974, which was entered into in 2014 and is on-going. A further amount of R10.9 million is under investigation for potential irregular expenditure, as a result of audit findings raised on the procurement processes. The Committee asks that the Department provides it with a full report, including details of overspending on the contract and costs incurred to date (against the projected budget), as well as an assessment of the value added by 30 November 2017.

#### 17.6. **Expansion of justice services for improved access to justice**

17.6.1. The Committee welcomes that there has been improved delivery in the context of capital works projects by the Department of Public Works and the Independent Development Trust (IDT). Historically, it has been a challenge to deliver new courts on time and within budget. The Department has time and again reported slow spending on this budget item and this led to the Department's infrastructure budget being adjusted downwards at the end of 2016/17. Ironically, the recent improvement in delivery has created its own challenge, as the remaining budget was not adequate for the 2016/17 year.

In 2017/18, the Department is faced with a shortfall, as a result of the reduced allocation and accruals from 2016/17, which take up a large portion of the infrastructure budget for 2017/18.

17.6.2. The funding of new court infrastructure is a concern to the Committee, as the building of new courts remains a core element of the Department's efforts to improve access to justice. The establishment of the new High Court in Mpumalanga, in particular, is vital in this regard and the expectation is that this court will be completed later this year. The Committee was also dismayed to learn from various stakeholders that the operationalisation of this court may be affected by a lack of budget. This is unacceptable to the Committee.

The Committee requests that the Department provide a written report on its progress in implementing its infrastructure programme by 30 November 2017. In addition, the Department is requested to report on progress as part of the quarterly reporting process.

17.6.3. The Committee was informed during the budget process earlier this year that there are no funds within the Department of Public Works to carry out planned maintenance of justice service points. The Committee remains unclear about how the Department is addressing this challenge and requests it receives a comprehensive written report of the schedule of, and progress made relating to, planned maintenance of court buildings by 30 November 2017 and continue to report on this as part of the quarterly reporting process.

17.6.4. In addition, the Committee will schedule a joint briefing on all aspects of the infrastructure programme, including planned maintenance, as soon as its programme permits.

17.6.5. **Court performance.** The Committee is unable to comment with any certainty on efforts to improve the overall performance of courts, as the Department no longer reports data that allows the Committee to make such an evaluation. While some

information exists, the Committee's picture of court performance is too incomplete for it to usefully comment on progress, which is entirely unsatisfactory for the purposes of exercising oversight. The Committee is aware that court performance is a judicial function and agrees that it would be entirely inappropriate for it to engage with an official regarding delays in the delivery of judgements, for example. The Committee will engage with the Judiciary about putting in place an appropriate mechanism to address accountability for court performance as an interim measure, until the matter is resolved finally. The Committee does, however, note that backlogs have decreased, which is pleasing. The Committee will also arrange a joint briefing on case-flow management to gain a firmer grasp of the responsibilities of all roleplayers in its implementation as soon as its programme permits.

## **17.7. Transformation of State Legal Services**

17.7.1. The Committee has previously noted that the State is the largest consumer of legal services in the country. It also employs hundreds of professionals who provide litigation and legal advisory services for the State in different capacities. Of concern to it are reports of disarray within the offices of the State Attorney and complaints regarding the provision of state legal work to young, previously disadvantaged legal practitioners in a context where there is currently no comprehensive set of clearly defined rules governing how litigation services are to be acquired, managed and monitored. In this regard, it notes that the Department intends to prioritise the transformation of State Legal Services.

17.7.2. At present, a fragmented approach to the management of state litigation exists. Towards the end of the Fourth Parliament, legislative amendments were passed to provide for a 'chief' State Attorney – the Solicitor-General - but this appointment has been delayed because of challenges relating to the level of the post. More recently, the filling of the position was halted pending the restructuring of the entire state advisory and litigation offices. The Committee is extremely pleased that the Department has taken the initiative to designate Ms Vedalankar, who has been the CEO at Legal Aid SA for many years and is instrumental in not only turning it around but also in ensuring its excellence, as Project Leader to assist with the transformation. She was able to confirm that the project is progressing well.

The Committee will arrange a dedicated briefing on the full scope of the plans as soon as its programme permits. In the meantime, the Committee requests that the Department provide a written report with clear timeframes attached on progress made by 30 November 2017. The Department is also requested to report on progress quarterly.

17.7.3. The Committee believes that a great deal more needs to be done to support Black legal practitioners, in particular black women, wishing to make law their career. The many obstacles that women legal practitioners encounter are well documented and require a comprehensive response that also involves the profession. The Committee, therefore, will also engage with the National Forum on this when it meets with it in November. The Committee, however, requests that the Department include a breakdown of the percentage and value of briefs awarded to previously disadvantaged individuals, and include a breakdown according to gender, in its progress report the transformation of state legal services and in those that follow during the quarterly reporting process.

## **17.8. Expungement of criminal records**

The Committee is of the view that there is a need to amend the legislation to provide for greater scope for the expungement of criminal records. At present, many people are unable to obtain work because they possess a criminal record. The Committee recognises that this is a complicated matter but notes that the Ministry was

requested some years back to inquire into the matter and report to Parliament on its findings. Further, the South African Law Reform Commission has issued a report on this. The Committee, therefore, requests that the necessary legislation be fast-tracked, as the present situation acts as a significant obstacle to economic transformation. In addition, the Committee is unclear as to why the indicator that addressed expungements was removed from the annual performance plan, despite this forming part of the Department's strategy to contribute to economic transformation and youth employment. The Committee asks that the Department continue to provide it with the relevant information when it reports quarterly.

**17.9. Sexual offences matters**

The Committee is dismayed about the decline in the number of new sexual offence cases in our courts. As it is, the discrepancy between the number of sexual offences reported to the Police and the number of cases reaching our courts is a grave concern. The Committee understands that delays and postponements are a key systemic challenge. Further, because posts have been frozen, the Department has been unable to appoint more intermediaries leaving many courts with inadequate capacity in this regard. The shortage of intermediaries has resulted in the unfortunate postponement of cases involving children. The Committee notes also that the Department has tabled its 2016/17 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 joint briefing as soon as its programme permits.

**17.10. National Register for Sex Offenders (NSRO)**

The Committee notes the Auditor-General difficulties concerning the reported performance information in the case of the NSRO. The Committee is concerned about the failure of the Department's performance management system and notes that the Department is to implement improved processes and systems for quarterly monitoring of performance information. As the indicator in respect of the NSRO has been removed from the 2017/18 Annual Performance Plan, the Committee requests that the Department reports on the measures it has taken to ensure the reliability of the information captured on the NSRO. In addition, the Committee asks that the Department also provide it with a report on the outcome of previous initiatives to combine the NSRO with the Department of Social Development's Child Protection Register.

**18. National Prosecuting Authority**

- 18.1. The Committee is extremely concerned about the impact of budget reductions for the NPA. In 2016/17, the NPA overspent on its salaries budget by R32.5 million but was able to effect a virement from its goods and services budget to defray the overspending. At present, the NPA projects an overspending of R70 million on its compensation of employees' budget for 2017/18 and is, therefore, unable to fill vacancies, let alone create further capacity at new courts. Already the NPA has capacity challenges with an overall vacancy rate of 15% (although the vacancy rate for prosecutors in the Specialised Commercial Crime Unit, Asset Forfeiture Unit and the SOCA Unit is much higher at 15%, 22% and 25% respectively). The consequences of not having enough prosecutors include increased backlogs and poor court performance. There are other challenges associated with the lack of capacity, such as increased resignations, increased absenteeism as a result of stress, and the increased cost to employee wellness programmes. The Committee is of the view that budget reductions give insufficient weight to the essential nature of prosecutorial services and their role in contributing towards the Nation's priorities. The Committee, therefore, advocates that additional funds be made available to

address any budget shortfall on the NPA's salaries budget and, in addition, funds are made available to allow the NPA to staff the new DPP Office at Polokwane and Mpumalanga. The Committee also notes that the NPA has 239 other critical vacancies for which it requires funds and that funds are required for a new unit for organised crime. The breakdown of the NPA's funding needs in this regard are set out earlier in this report. The Committee also notes that acute shortage of funds extends not only to the salaries budget but also to operational expenditure, which sits at 15% of the overall budget.

- 18.2. The Committee notes too that the NPA has had to suspend its Aspirant Prosecutor programme. This programme not only provides young lawyers with an opportunity to gain critical experience and skills, but provides the institution with a stream of well-trained "new blood" as prosecutors already employed at the NPA progress within or even leave the institution. Further the creation of employment opportunities for the youth is a national priority. For all of the above reasons, the Committee supports that additional funds be made available to allow the NPA to resume its aspirant prosecutor programme going forward. A breakdown of the funds that are required for this item are set out earlier in this report.

## 19. Information Regulator

- 19.1. The Committee welcomes the members of the newly established Regulator, this being the first time that they have appeared before the Committee. It is impressed by their commitment to ensuring that the Regulator is up and running as soon as possible.
- 19.2. In the Committee's view the establishment of the Information Regulator is a priority. Unless the Regulator is adequately capacitated so that 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. In its view, while the MTSF focuses on cybersecurity, ensuring that personal data is properly secured, is a key aspect of cybersecurity, and will assist to prevent cybercrime.
- 19.3. There is an enormous amount of interest from stakeholders and the general public about POPIA. Already, the Regulator has received complaints, which it has been proactive in dealing with. However, the situation cannot continue, as the Regulator does not have the capacity at present to address large volumes of complaints. The Committee agrees that the Regulator is in a difficult position as turning people away might dampen the initial enthusiasm for a data protection regime but taken on cases in the absence of adequate capacity runs the risk of reputational damage.. For this reason, the Committee requests that the finalisation of the organogram, its costing and the filling of key positions be expedited. The Committee notes that the Regulator reports that the Ministry has been especially supportive of it. The Committee, therefore, requests that the Ministry intervene to accelerate the finalisation of the organogram so key appointments can take place. The Committee asks that it is informed in writing of progress in this regard.
- 19.4. Similarly, the Regulator will need office accommodation. The Committee again requests that should it become necessary, the Ministry intervene to address the issue of accommodation. The Committee asks that it is also kept informed of progress in this regard.

- 19.5. The Committee notes that the Regulator has met with the SAHRC about the transfer of its Promotion of Access to Information mandate. The Regulator is also evaluating why non-compliance is so high so that it can begin to target obstacles and challenges. The Regulator spoke briefly about the lack of resources allocated to information officers appointed to handle PAIA requests within public and private bodies, as one of the many obstacles.

## 20. **Legal Aid South Africa**

- 20.1. The Committee congratulates Legal Aid SA on receiving an unqualified audit for the past 16 years, with no matters of emphasis for the past twelve years. In addition, Legal Aid SA was awarded Top Employer accreditation for the eight consecutive year. Once again, Legal Aid SA impresses with its clear strategic vision and planning, management of resources and considerable achievements.
- 20.2. Legal Aid SA has been able so far to absorb budget cuts from its cash reserves but reports that it will have a budget shortfall in 2017/18 of R45 million and the shortfall will increase over the MTEF period. To address the budget shortfall, Legal Aid SA has capped its compensation of employees' budget and has implemented cost-cutting efficiency measures. Still, it will be necessary for it to cut posts, which will have an adverse effect in legal aid services. 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. This has serious consequences for the effective and efficient delivery of justice services. The Committee notes that Legal Aid South Africa has also made it clear that it is not in a position to take on any unfunded mandates. The Committee asks at what stage the lack of funds becomes a constitutional matter. The Committee, therefore, strongly, supports additional funding be given to Legal Aid SA to address the shortfall, so that it does not need to reduce its staff capacity.
- 20.3. 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 is concerned at the extent to which criminal matters are prioritised over civil matters. Without a greater balance between the criminal and civil work undertaken by Legal Aid SA, there is great risk of undoing our democracy as the legitimacy of a judicial system that does not speak to the needs of the people is brought into question. The Committee appreciates the many efforts that Legal Aid SA has taken to stretch its capacity to undertake civil work to the very limits. In past years, Legal Aid SA has done its utmost best and has slowly increased the amount of civil work that it does – now at about 13% of its caseload consists of civil matters. The Committee agrees that without additional funds, Legal Aid SA cannot significantly expand its civil work, despite the very real need of South Africans for assistance in this regard. The Committee feels very strongly that Legal Aid SA should receive additional funds to ensure that it is able to continue to provide assistance in civil matters. In addition, the Committee has previously noted Legal Aid SA's willingness to assist in land claims matters and is extremely appreciative of all its efforts in this regard.

## 21. **Special Investigating Unit**

- 21.1. The Committee congratulates the SIU on obtaining an unqualified audit opinion with no findings for the first time in 2016/17.
- 21.2. The Committee remains concerned that the SIU is experiencing difficulty in collecting monies owed from State institutions but notes its efforts to recover monies. It notes,



however, that of the R420 million that is owed to the SIU for its services, it has written off R288.5 million, which leaves the SIU with a net debtors' balance of R129 million. So far, it has recovered R66 million.

- 21.3. The Committee notes that the SIU intends to also bring legislative amendments that will address its flawed funding model and will provide it with a clear legislative mandate to undertake pre-proclamation investigations.
- 21.4. The Committee has previously expressed support for the establishment of Special Tribunals and is of the view that these should be expedited.

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

- 22.1. The Committee welcomes that the SAHRC has maintained its clean audit outcome. It notes, however, that concerns relating to IT governance remain. The SAHRC is urged to ensure that it puts in place the necessary controls to ensure that the weaknesses are addressed.
- 22.2. The Commission has unfunded mandates relating to the monitoring of court orders and pending unforeseen strategic litigation and required a total of R42.3 million in addition to its allocation for 2017/18. The Commission has provided a detailed account of its other funding needs, which are set out earlier in the report. The Committee is largely sympathetic to the Commission's request for funds, as without monitoring it is likely that human rights violations will continue to take place with very serious consequences.
- 22.3. The Committee notes that the Commission has met with the Information Regulator and more meetings are planned to explore the modalities of handing over its responsibilities in terms of the Promotion of Access to Information Act, 2000, to the Regulator. The Committee requests that it be informed of progress in this regard.

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

- 23.1. The Committee notes that the PPSA received an unqualified audit opinion but with findings. In fact, the Auditor-General has indicated that the audit outcome has regressed, despite the commitment to achieving a clean audit opinion in 2016/17. The Committee repeats its belief that, as an integrity institution, the PPSA should prioritise attaining a clean audit and requires a clear commitment from Leadership/Management in this regard. The Committee requests that the PPSA provide it with its audit action plans, with clear targets and timeframes, by 1 November 2017 and report on progress quarterly.
- 23.2. The Committee remains concerned about the PPSA's financial health, which has been precarious since 2013/14. At the end of 2013/14, the PPSA had an accumulated deficit of R25.9 million and current liabilities exceeded total assets. In response, the PPSA implemented various austerity measures. These assisted to reduce the deficit and by the end 2015/16, the accumulated deficit had been significantly reduced. However, the trend has reversed and with an accumulated deficit of R24.3 million at the end of 2016/17, the PPSA's financial health is once more a concern.
- 23.3. The Committee notes that the PPSA continues to maintain that the current budget is inadequate and, indeed, the PPSA requested an additional R1 billion over the MTEF during the 2017 Budget process to fund an expanded organisational structure. During that process, although agreeing that our Chapter 9 institutions require the

resources and capacities necessary for them to execute their mandates effectively, the Committee requested that the PPSA use the BRRR process to provide details of its forward funding needs. These were submitted now and indicate that the PPSA requires additional funds amounting to R885 million for the MTEF. In this regard, the Committee notes that there is a mismatch between spending and performance, which weakens the PPSA's case for additional funding.

- 23.4. The Committee is of the view that the Public Protector Act needs to be reviewed, noting that PPSA agrees with it in this respect.
- 23.5. The Committee welcomes the Public Protector's efforts to address staff morale. These reportedly include the payment of the Occupation Specific Dispensation (OSD) to Managers and Senior Managers and the implementation of a performance management system.
- 23.6. The Committee supports the Public Protector's view that the Public Protector Act, 1994, as amended, requires revision to bring it in line with the Constitution.
- 23.7. The Committee agrees with the Public Protector's view that litigation should be a measure of last resort but notes that the PPSA has reported that there has been an increase in the number of reviews since the powers of the Public Protector were clarified by the Courts. The Committee is concerned that should this trend continue, there is a risk that legal fees will eat into the PPSA's budget going forward. The Committee is interested in learning from the PPSA what measures it has put in place to lessen this risk.

#### 24. **Recommendations**

The Committee makes the following recommendations:

- 24.1. The Department be provided with additional funding to address the shortfall in its compensation of employees and infrastructure' budgets.
- 24.2. The National Prosecuting Authority be provided with additional funding to address the shortfall on compensation of employees' and to fill vacancies and create capacity at new courts, as well as for the resumption of its Aspirant Prosecutor programme.
- 24.3. The Ministry intervene to expedite the finalisation of the Information Regulator's organogram and to ensure the appropriate allocation of resources, including accommodation, for the Regulator to be able to begin its work as a matter of extreme urgency.
- 24.4. Legal Aid South Africa receives additional funding to prevent it from having to cut posts with adverse consequences for service delivery.
- 24.5. The Ministry engage with the Ministry of Rural Development and Land Reform and National Treasury on the transfer of funds allocated to support legal advice to and litigation by land claimants to Legal Aid South Africa so that it can take on these matters.
- 24.6. Legislation is introduced as a matter of priority to allow for the appointment of permanent judges to the Land Claims Court.
- 24.7. Legal Aid SA receives additional funds to ensure so that it is able to maintain its civil work despite the current fiscal environment and, in particular, it is allocated a dedicated budget so that it is able to assist in land claims matters.

- 24.8. The South African Human Rights Commission is allocated funds for it to fulfil its monitoring obligations in terms of various court orders.
- 24.9. The Public Protector South Africa is allocated funds to stabilise the institution's financial health; for additional investigative capacity; and for litigation costs as a result of the increasing number of matters taken on review.

**Report to be considered**