**2. Report of the Portfolio Committee on Justice and Correctional Services on Budget Vote 21: Justice and Constitutional Development, dated 14 April 2016**

The Portfolio Committee on Justice and Correctional Services, having considered Budget Vote 21: Justice and Constitutional Development, reports as follows:

1. **Introduction**
   1. The Budget Vote 21: Justice and Constitutional Development comprises five programmes, as well as a direct charge for magistrates salaries:

* The Department of Justice and Constitutional Development is directly responsible for the Administration, Court Services and State Legal Services and National Prosecuting Authority (NPA) programmes, as well as the Justice Modernisation subprogramme under Programme 5: Auxiliary and Associated Services.
* Programme 5 contains allocations to various auxiliary 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 (PP).

1. **Method**
   1. The Minister of Justice and Correctional Services presented an overview of the priorities that inform the policies and strategies for the Department of Justice and Constitutional Development.
   2. The Department of Justice and Constitutional Development, Legal Aid South Africa, the Special Investigating Unit, the South African Human Rights Commission and the Public Protector each presented their revised strategic plans, annual performance plans for 2016/17 and budgets for the 2016 MTEF.
   3. The briefings took place as follows:

* Department of Justice and Constitutional Development – 6 April 2016.
* Special Investigating Unit - 7 April 2016.
* Legal Aid South Africa – 7 April 2016.
* South African Human Rights Commission – 7 April 2016.
* Public Protector – 7 April 2016.
  1. All presentations can be obtained from the Committee Secretary.

1. **Overview of Vote 21: Justice and Constitutional Development**
   1. **Fiscal environment**
      1. Economic growth in many parts of the world is subdued. The slump in commodities and slower growth in China has negatively affected economic growth rates in developing countries in particular. In South Africa, low savings and structural weaknesses further impact on its ability to absorb external shocks. Domestic economic growth forecasts, therefore, have been revised down. As a result, the 2016 Budget proposals aim to return South Africa to a sustainable path. This is to be achieved by speeding up the pace of fiscal consolidation to narrow the Budget deficit more quickly than the Medium Term Budget Policy Statement (MTBPS) proposed and by stabilising the growth of public debt. South Africans will also need to share the burden of these adjustments: The bulk of tax increases will fall on the better off South Africans; limits to government compensation of employees’ budgets will require greater efficiency from public servants; and pro-poor spending and public investment in infrastructure will be maintained. However, this is not enough – South Africa needs a far higher rate of inclusive, job-creating economic growth. In the next three years, collaboration with business, labour and civil society will increase. For the 2016 MTEF period, budget amendments were effected through the reprioritisation of existing funding within a lowered expenditure ceiling
      2. Over the MTEF, the baseline allocation for defence, public order and safety decreases overall by R441 million - from R571.5 billion to R571 billion. In 2016/17, the overall allocation for this function is R179.2 billion, of which approximately 9% goes to the Justice and Constitutional Development and 0.5% to the Office of the Chief Justice and Judicial Administration.

**Table 1: Spending on Public Order and Defence 2016/17**

| **Public Order and Defence** | **2016/17**  **(R’000)** | **% of Public Order and Defence Spending** |
| --- | --- | --- |
| Justice and Constitutional Development | 16 049.7 | 9% |
| Office of the Chief Justice and Judicial Administration | 865.0 | 0.5% |
| Correctional Services | 21 577.3 | 12% |
| Police | 80984.9 | 45.2% |
| Independent Police Investigative Directorate | 246.1 | 0.14% |
| Defence and Military Veterans | 47 169.7 | 26.3 |
| National Treasury: Financial Intelligence and State Security | 12 335.3 | 6.9% |
| **Total Public Order and Defence Spending (excluding Direct Transfer: Magistrates and Judges’ salaries)** | **179 228.0** | **-** |

* + 1. The overall allocation to the Justice and Constitutional Development Vote (Vote 21) for 2016/17 is R18.09 billion (compared with R16.9 billion for 2015/16), including magistrates’ salaries. Over the medium term, the allocation increases to R20.1 billion in 2018/19. In 2016/17, the total for programmes is R16.05 billion.

**Table 2: Vote 21 - Justice and Constitutional Development for the 2016 MTEF per programme**

| **Programme**  **(R ‘000)** | **Budget**  **2016 MTEF** | | | |
| --- | --- | --- | --- | --- |
| **2015/16** | **2016/17** | **2017/18** | **2018/19** |
| Administration | 1 872.9 | 2 079.9 | 2 118.8 | 2 197.4 |
| Court Services | 5 579.1 | 6 121.6 | 6 463.6 | 6 827.1 |
| State Legal Services | 1 045.7 | 1 1278 | 1 221.2 | 1 285.7 |
| National Prosecuting Authority | 3 394 | 3 557.5 | 3 684.3 | 3 836.8 |
| Auxiliary and Associated Services | 3 118.5 | 3 162.7 | 3 495.2 | 3 698.1 |
| **TOTAL** | **15 010 8** | **16 049.7** | **16 983 2** | **17 845.2** |
| Magistrates’ Salaries | 1830.8 | 2 040.2 | 2 140.5 | 2 264.7 |
| **Total** | **16 841.5** | **18 089.9** | **19 123.7** | **20 109.9** |

* + 1. The allocation to the Vote increases in nominal terms by 7.4% from 2015/16. In real terms, however, the Vote receives only 0.74 % (or R128.4 million) more than in 2015/16. Further, if the allocation for magistrate’s salaries is excluded, the budget increases in real terms by only 0.30 %.

**Table 3: Vote 21 – Justice and Constitutional Development: Nominal and real change to allocation per programme**

| **Programme**  **(R’000)** | **Budget** | | **Nominal % change 2016/17** | **Real % change 2016/17** |
| --- | --- | --- | --- | --- |
| **2015/16** | **2016/17** |
| Administration | 1 872.9 | 2 079.9 | 11.05 % | 4.18 % |
| Court Services | 5 579.1 | 6 121.6 | 9.72 % | 2.93 % |
| State Legal Services | 1 045.7 | 1 1278 | 7.87 % | 1.19 % |
| National Prosecuting Authority | 3 394 | 3 557.5 | 4.80 % | -1.69 % |
| Auxiliary and Associated Services | 3 118.5 | 3 162.7 | 1.42 % | -4.86 % |
| **TOTAL** | **15 010 8** | **16 049.7** | **6.9 %** | **0.30 %** |
| Magistrates (salaries) | 1830.8 | 2 040.2 | 11.44 % | 4.54 % |
| **TOTAL** | **16 841.5** | **18 089.9** | **7.4 %** | **0.76 %** |

* + 1. The Vote receives additional allocations in the amount of R207.8 million in 2016/17; R591.4 million in 2017/18 and R720.1 in 2018/19. These additions go towards the costs of the 2015 wage settlement; funding of key positions at the Public Protector; the establishment of the Information Regulator; and, in the SAHRC, for additional field capacity and to undertake xenophobia investigations.
    2. There are, however, budget cuts over the medium term of R1.7 billion (R147.5 million in 2016/17; R639.2 million in 2017/18; and R915.6 million in 2018/19). Therefore, although the Vote receives a net additional allocation of R60.3 million in 2016/17, in 2017/18 and 2018/19 the Vote receives a net decrease in the amounts of R47.8 million and R195.5 million respectively. For Justice, which is a labour intensive department, it must develop a plan to manage personnel expenditure within a reduced personnel budget.
    3. The following priorities are funded:
* Establishment of the Solicitor General Office.
* Establishment of the Information Regulator.
* Capacitation of the State Attorney.
* Rehabilitation and construction of new court facilities.
* Reduction of case backlogs.
* Creation of youth employment opportunities.
* Justice modernisation projects, including implementation of the direct payment system to maintenance beneficiaries and modernization of Master’s services.
  1. **Spending trends 2015/16 (First - Third Quarter)**
     1. In 2015/16, the Department received R16.86 billion but this was adjusted downwards in October 2015 to R16.84 billion: Unspent funds in the amount of R110 million were returned to the National Revenue Fund as a result of delays in the implementation of the integrated justice system projects; and delays in the filling vacant magistrates’ posts. However, by the end of 2015/16, the budget was adjusted down again with a revised estimate from National Treasury of R16.44 billion.
     2. In terms of spending patterns during the 2015/16 financial year, by the end of the third quarter the Justice Department had spent R11.9 billion (70.6 %) of the adjusted appropriation of R16.84 billion. Lower than projected expenditure was mainly due to delays in the filling of vacant posts, delays in receiving claims from the JCPS cluster departments for the Criminal Justice System (CJS) modernisation programme, and delays in the implementation of infrastructure projects by the Department of Public Works (DPW). These are areas where under-spending is regularly observed.
     3. In respect of performance, by the end of the third quarter of 2015/16 the Department reported that it had achieved 61% of its intended targets (47 of 77 indicators).

1. **Policy developments**
   1. The National Development Plan (NDP) requires, among others, that we build safer communities; promote accountability and fight corruption; and strengthen judicial governance and the rule of law.
   2. In terms of the Medium Term Strategic Framework (MTSF) 2014-2019, which contains the actions that Government must undertake to ensure the realisation of the NDP, it is possible to assign responsibilities to Justice in four key areas:

* Safety (by contributing to an efficient and effective Criminal Justice system; securing cyber space; 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 and its administration of the Guardians Fund).
* Nation building and social cohesion (by promoting knowledge of the Constitution and fostering Constitutional values, and enabling participation and communication).
  1. The Department has aligned its plans with the NDP and MTSF 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).
  2. The Department has 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). An amount of R177.8 million is allocated to improve internal audit, risk management and vetting for 2016/17.
* 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). An amount of R78.5 million is allocated to address capacitation of court in rural areas for 2016/17.
* Provision of quality legal services that strengthens the capacity of the State (aligned to Outcome 12: An efficient, effective and development-orientated Public Service). An amount of R36 million is allocated for the re-engineering of State Legal Services for 2016/17. A total of R113.6 million is allocated to this goal for the MTEF period.
* Promote constitutionalism and social justice to contribute to social cohesion (Outcome 14: Nation-building and social cohesion). An amount of R76 million is allocated in 2016/17 to promote constitutional awareness and of related rights and responsibilities.
  1. Notably the Department’s internal key priorities remain the same:
* Good governance and clean administration, resulting in a no qualification audit.
* Service turnaround in the State Attorney.
* Service turnaround in maintenance services.
* Youth employment opportunities.
  1. There is need to accelerate transformative processes to ensure a justice system that is able to deliver on constitutional imperatives. The establishment and capacitation of the Office of the Chief Justice (OCJ) is regarded as vital to transforming the judicial system. During 2013/14 plans were made to migrate the Superior Courts to the OCJ, in line with Superior Courts Act, 2013, with the intention that the OCJ have its own Vote by 1 April 2015. On 1 October 2014, 1 486 staff were transferred from the Department to the OCJ with attached administrative functions. An *ad hoc* budget of R1.4 billion for 2014/15 was also transferred. On 1 April 2015, the OCJ was established as a fully-fledged department with its own Vote.
  2. A policy and legislative framework is being developed on court administration: the intention is to replace the current OCJ model. The model that is being developed will be subject to public discourse in the form of a colloquium to be held towards the end of 2015/16.
  3. The transformation of the magistrates’ courts to advance access to justice is also to be addressed. The Superior Courts Act sets out a blueprint that will guide revision of the Magistrates Court Act, 1944. The overhaul will also look at less adversarial forms of adjudication, including community courts and court-annexed mediation.
  4. Multi-lingualism as a constitutional imperative requires parity of languages and, in the legal sector, calls for development of the use of indigenous African languages in our courts. The Department is looking into how to bring this about. There is a need for proficiency in an African language as a prerequisite for attaining an LLB degree. Further, at the level of continuing education, the South African Judicial Education Institute (SAJEI) has a role in developing appropriate training on diversity and indigenous language proficiency, as part of social context training.
  5. The traditional justice system has a vital role to play in the administration of justice. Traditional courts do not need legislation to exist: the Constitution recognizes these courts. Further, these courts, which continue to dispense justice according to African indigenous law, operate under the Black Administration Act, 1927. However, legislation is needed to regularize the courts and to bring them in line with the Constitution, as well address the procedural differences of traditional courts.
  6. Progress towards realisation of key policy and legislative initiatives, includes -
* Traditional Courts Bill: The Department intends to finalise a report stemming from dialogues with stakeholders and a draft bill by the end of April 2016. The Bill will then proceed to Cabinet and be introduced during April and May 2016.
* Policy and legislation on paralegals: The Department intends to develop draft legislation by 30 September 2016.
* Prevention and Combating of Hate Crimes and Hate Speech Bill: The Department intends to introduce the Bill to Parliament by the end of September 2016.
* National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances: The final NAP is to be submitted to Cabinet for approval and deposit to the United Nations by 31 March 2017.
* Inclusion of indigenous languages in the LLB curriculum: A proposal on the key transformative issues with regard to the development of the curriculum for the LLB degree is to be finalised by the end of April 2016; consultation with the Department of Higher Education follows from May to July 2016; and a final report is to be prepared by 30 August 2016.
* Policy on the Language of Court Record: A policy framework is to be finalised by 31 December 2016. The policy will form the basis of legislation for introduction by 31 March 2017.
* Policy framework on the transformation of magistrate’s courts and the Lower Courts Bill: A Lower Courts Bill is to be introduced by July-September 2017.
* Policy on community courts: The South African Law Reform Commission is to be approached to conduct research on community courts with the intention of producing a draft report by 30 September 2017.
* Policy framework on Alterative Court Administration (Court Agency Bill): The intention is to introduce a Judicial and Court Administration Bill by January 2018.
* Policy framework on court-annexed mediation: The intention is to introduce a bill on court annexed mediation by November 2017.

1. **Department of Justice and Constitutional Development**

**Table 4: 2016/17 Budget Allocation for programmes administered by the Department**

| **Programme**  **(R’000)** | **Budget** | | **Nominal % change 2016/17** | **Real % change 2016/17** |
| --- | --- | --- | --- | --- |
| **2015/16** | **2016/17** |
| Administration | 1 872.9 | 2 079.9 | 11.05 % | 4.18 % |
| Court Services | 5 579.1 | 6 121.6 | 9.72 % | 2.93 % |
| State Legal Services | 1 045.7 | 1 127.8 | 7.87 % | 1.19 % |
| National Prosecuting Authority | 3 394.0 | 3 557.5 | 4.80 % | -1.69 % |
| Auxiliary and Associated Services: Justice modernisation | 910.3 | 852.7 | -5.39% | -11.25 % |
| **TOTAL** | **12 802.0** | **13 739.5** | **7.4%** | **0.75 %** |

* 1. The allocation for programmes that are administered by the Department (including the Justice Modernisation sub-programme under Auxiliary and Associated Services) in 2016/17 is R13.7 billion, compared to R12.8 billion in 2015/16. In real terms, the programme budget increases by 0.75%.
  2. The bulk of spending remains directed towards Court Services, which is the Department’s main service delivery programme and receives a total of R6.12 million. The NPA receives the next largest allocation of R3.1 billion in 2016/17.
  3. The Department notes that its spending focus in 2016/17 and over the medium term will be on improving access to the courts, as well as deepening the protection of the right to privacy through the establishment of the Information Regulator.
  4. The Department’s projected infrastructure budget for 2016/17 is R911 million. The Mpumalanga High Court is to be completed in 2016 at a cost of R706.4 million. Magistrates’ courts prioritised for completion over the MTSF are Mamelodi, Port Shepstone, Plettenberg Bay, Dimbiza, Booysens, Richards Bay and Bityi at a projected cost of R1.4 billion. The Department’s Long Term Infrastructure Plan indicates that that a new ‘mega-project’ at a projected cost of R1.2 billion will begin in 2016/17 at the Soweto Magistrate’s Court. While the Department places great emphasis on its infrastructure programme, it has significant challenges as a result of (i) the escalation of construction costs beyond inflation; (ii) the failure of construction firms to deliver as per contracts; and (iii) the use of the infrastructure budget for additional staff accommodation. In addition, there is a constant need for refurbishment of existing infrastructure, as well as taking care of day-to-day maintenance and accessibility programmes.
  5. Budget constraints create spending pressures in the following areas:
* The maintenance of security infrastructure.
* Introduction of paralegals in Regional and District courts.
* The introduction of mediators, according to the Draft Rules on Mediation (Magistrates Act).
* The Small Claims Court Re-engineering programme.
* The creation of technical capacity within the Department to fast-track projects to be implemented by the Department of Public Works.
* Rollout of the Office of the Protection of Personal Information Regulator.

1. **Department of Justice and Constitutional Development: Programmes**
   1. **Programme 1: Administration**
      1. The Administration programme is allocated R2.1 billion in 2016/17 compared to R1.9 billion in 2015/16 (for the Ministry, Management, Corporate Services, Financial Administration, Internal Audit and Office Accommodation subprogrammes). The programme shows a real percentage increase of 4.18 % from 2015/16.
      2. The purpose of this programme is to manage the Department, develop policies and strategies for efficient administration of justice and provide centralised support services.
      3. Strategic objectives for this programme are as follows:

* Increased compliance with prescripts to achieve and sustain an unqualified audit opinion.
* Implementation of programmes aimed at creating employment opportunities for the youth.
* Reduction of fraud and corruption in the Department.
* Increased number of public bodies complying with Promotion of Access to Information Act, 2000 (PAIA).
  1. **Programme 2: Court Services**
     1. The Court Services programme is allocated R6.1 billion in 2016/17, compared to R5.6 billion in 2015/16 (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 increase of 2.93% from 2015/16.
     2. The purpose of this programme is to facilitate the resolution of criminal, civil and family law disputes by providing accessible, efficient and quality administrative support to the courts and to manage court facilities.
     3. Strategic objectives for this programme are as follows:
* Improved finalisation of criminal cases in support of Outcome 3.
* Provide improved court-based services to achieve clients’ satisfaction within vulnerable groups.
* Increased protection of best interests of children and promotion of family cohesion through mediation services.
* Increased access to justice services to historically marginalised communities.
* Improved level of compliance with quasi-judicial standards of services.
  1. **Programme 3: State Legal Services**
     1. The State Legal Services programme is allocated R1.1 billion in 2016/17, compared to R1.0 billion in 2015/16 (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 shows an increase in real terms of 1.19% from 2015/16.
     2. The programme provides legal and legislative services to organs of State; supervises the administration of deceased and insolvent estates and the liquidation of juristic persons, registration of trusts; and management of the Guardian’s Fund.
     3. Strategic objectives for this programme are as follows:
* Increased efficiency in providing Master’s services to all beneficiaries thereof (the Guardian’s Fund, trusts and insolvent and deceased estates).
* Improved management of litigation on behalf of the State to reduce litigation costs and transform the legal profession.
* Enhanced re-integration of petty offenders into the socio-economic environment.
* Provision of quality legal advisory services which pass constitutional muster.
* Increased compliance with 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.
* Implementation of the Truth and Reconciliation Commission (TRC) recommendations, as approved by Parliament.
  1. **National Prosecuting Authority**
     1. The NPA programme is allocated R3.4 billion in 2016/17, compared to R3.2 billion in 2015/16 (for the National Prosecutions Service, Asset Forfeiture Unit; Office of Witness Protection; and Support Services). The NPA The programme shows a decrease in real terms of -1.39% from 2015/16. Notably, an amount of R44 million is reprioritised to fill approved critical posts that were previously unfunded. The funds are reprioritised from the Asset Forfeiture Unit and Support Services sub-programmes.
     2. The NPA provides a co-ordinated prosecuting service that ensures that justice is delivered to the victims of crime through general and specialized prosecutions; removes the profit from crime; and protects certain witnesses.
     3. The NPA’s strategic objectives are as follows:
* 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.
  1. **Programme 5: Auxiliary and Associated Services**
     1. The programme provides a variety of auxiliary services associated with the Department’s aims and funds transfer payment to the South Africa Human Rights Commission, the Public Protector, Legal Aid South Africa, the Special Investigation Unit and the President’s Fund.
     2. The Justice Modernisation sub-programme contains funds for the modernisation of IT systems within the Department and earmarked funds for the Criminal Justice System Revamp and Integrated Justice System (IJS) on behalf of the Justice Crime Prevention and Security (JCPS) Cluster departments and entities. The allocation to this subprogramme decreases from R901.3 million in 2015/16 to R852.7 million in 2016/17, decreasing in real terms by -11.25%.
     3. The related strategic objectives for the Justice Modernisation sub-programme are as follows: establishment of a functional, integrated electronic criminal justice system to monitor performance of the criminal justice system; and establishment of an integrated electronic Criminal Justice System to modernise management of the criminal justice information.

1. **Legal Aid South Africa**
   1. Legal Aid South Africa is an autonomous statutory body established in terms of the Legal Aid South Africa Act 39 of 2014. The main object of Legal Aid SA is to render or make available legal representation to the poor and vulnerable at State expense. Although the main thrust of its work is to provide legal representation to criminal accused, more recently Legal Aid SA has expanded its services to provide advice and representation in civil matters.
   2. Legal Aid SA receives its funding as a transfer from the Justice and Constitutional Development Vote: Auxiliary and Associated Services programme. The entity is allocated R1.59 billion in 2016/17 compared to R1.6 billion in 2014/15. In real terms, Legal Aid SA receives -8.62% less than in 2015/16. 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 towards programmes that support the delivery of services.

**Table 5: Legal Aid SA 2016 MTEF per subprogramme**

| **Subprogramme**  **(R’000)** | **2015/16** | **2016/17** | **2017/18** | **2018/19** |
| --- | --- | --- | --- | --- |
| Legal Aid Services | 1 298.4 | 1 263.0 | 1 434.3 | 1 517.2 |
| Administration | 298.7 | 288.3 | 291.2 | 307.5 |
| Special projects | 44.1 | 47.3 | 50.4 | 52.9 |
| **TOTAL** | **1 641.2** | **1 598.70** | **1 775.9** | **1 887.6** |

* 1. National Treasury has implemented budget reductions for entities with high cash balances. Consequently, Legal Aid SA’s grant allocation was reduced by R61.8 million in 2015/16 and by R92.7 million in 2016/17. The reductions are to be funded from Legal Aid SA’s cash reserves and, therefore, will not impact on service delivery.
  2. The increase in the number of permanently employed legal practitioners over the medium term is made possible by a Cabinet-approved reprioritisation of funds of R39.1 million in 2015/16, R42.3 million in 2016/17 and R45.4 million in 2017/18 from the Department of Justice and Constitutional Development. These additional funds will contribute to reducing the backlog of criminal case: The number of legal practitioners in the organisation is set to increase from 2797 to 2888, and is intended to provide human resource capacity to the Department’s court expansion programme, which aims to promote access to justice.
  3. Legal Aid SA’s Strategic Plan 2015 – 2020 sets out the outcomes and strategies that it will pursue for that period. Legal Aid SA’s strategic outcomes for 2015-2020 are to provide quality justice for, especially, the poor and vulnerable, and to be a respected, high performance, sustainable and accessible public entity that will have a positive impact on society, the economy and the environment.
  4. 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.
  5. 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.
  1. In carrying out its mandate, Legal Aid SA continues to identify the following priority groups: children; every detained person, including sentenced prisoners; every accused person who wishes to appeal or review a court decision in a higher court; women, particularly in divorces, maintenance and domestic violence cases; and the landless, especially in eviction cases.
  2. Legal Aid SA’s Annual Performance Plan 2016/17 is accompanied by a Review of the Strategic Plan. The Review notes the following:
* The Legal Aid South Africa Act 39 of 2014 replaces the Legal Aid Act 22 of 1969.
* The recent Constitutional Court ruling in *Magidiwana v Legal Aid South Africa and Others*.
* Budget cuts.
  1. Legal Aid SA: Selected indicators and targets 2016 MTEF:

**Table 6: Legal Aid SA - Selected indicators and targets 2016 MTEF**

| **Programme** | **Indicator** | **2014/15** | **2015/16** | **2016/17** | **2017/18** |
| --- | --- | --- | --- | --- | --- |
| Legal Aid Services and Special projects | No. new matters approved for legal aid per year | 449 538 | 451 785 | 454 044 | 456 314 |
| * Criminal matters | 392 029 | 394 029 | 399 599 | 401 556 |
| * Civil Matters | 54 023 | 54 214 | 54 485 | 54 758 |
| No. legal matters finalised per year | 444 630 | 446 853 | 449 087 | 453 590 |
| * Criminal Matters | 391 274  (88%) | 393 231  (88%) | 395 197  (88%) | 397 173  (88%) |
| * Civil matters | 53 356  (12%) | 53 622  (12%) | 53 890  (12%) | 54 160  (12%) |
| Ratio of practitioners per district court per year | 1.1:1 | 1.1:1 | 1.1:1 | 1.1:1 |
| Ratio of practitioners per regional court per year | 1.24:1 | 1.24:1 | 1.24:1 | 1.24:1 |

* 1. Legal Aid SA identifies the following pressures: Additional capacity is needed to increase coverage of courts – at present, Legal Aid SA is unable to cover courts for every day of the week - and to provide some relief capacity. This has adverse consequences for the criminal justice system, as courts are unable to function effectively on those days when legal aid practitioners are not present at court. This also impacts negatively on clients whose cases are delayed due to the limited availability of legal aid practitioners. Legal Aid SA proposes to increase coverage in the District Courts from 90% to 95% and in the Regional Courts from 99% to 105%. Legal Aid SA indicated in 2015/16 that an additional amount of R65 million was required to provide for this. Further, Legal Aid SA requires R16 million to expand its civil work and R36 million to expand its national footprint.

1. **Special Investigating Unit**
   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). Matters are referred to the SIU through a Presidential proclamation, which sets out the scope of an investigation.
   2. At present, the SIU has 30 active investigations, covering 38 proclamations, which include extensions or amendments to some proclamations (A total of 22 reports covering 27 proclamations are in the process of being prepared for submission to the President). A further two proclamations are to be published soon. Seven motivations for proclamation have been sent to the Presidency and four are with the Department of Justice and Constitutional Development. The organization is also busy preparing nine motivations for submission to the Justice Department.
   3. 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. 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.
  1. The SIU has a mixed funding model that derives income from a National Treasury grant, as well as work done for State departments. The SIU’s total revenue for 2016/17 is R572.6 million (compared with R499 million in 2015/16), increasing in real terms by 7.7%. Of the SIU’s total revenue, a total of R316.73 million is from the baseline grant and R255.9 million from (projected) revenue.
  2. In the 2016/17 financial year there is a real decrease in the baseline grant of -3.9%. This is accompanied by a significant real increase of 26.5% in projected revenue funding from fees charged for SIU’s forensic investigation and civil litigation services. As a result, the SIU projects that 55.3% of its funding will come from its baseline grant (compared to 68.2% in 2015/16) and 44.6% from revenue generated by charging client departments (compared to 31.7% in 2015/16). This is in line with the SIU’s projections that, over the medium term, project income would increase to 43% per cent of its overall revenue.

**Table 7: SIU 2016 revenue breakdown**

| **Programme** | **Budget**  **(R’000)** | | **Real % change**  **2016/17** |
| --- | --- | --- | --- |
| **2015/16** | **2016/17** |
| Revenue | 189.8 | 255.9 | 26.5% |
| Baseline grant | 309.2 | 316.73 | -3.9% |
| **Total** | **498.98** | **572.64** | 7.7% |

* 1. The SIU retains its programme structure. There are two Programmes, namely: Operations (Forensic Investigations and Civil Litigation); and Non-operations (Administration).

**Table 8: SIU 2016/17 Budget per subprogramme**

| **Subprogramme** | **2015/16**  **(R’000)** | **2016/17**  **(R’000)** | **Real % change**  **2016/17** | **% of Total budget** |
| --- | --- | --- | --- | --- |
| Administration | 167.4 | 208.1 | 16.6% | 36 |
| Investigations | 331.6 | 364.6 | 3.1% | 64 |
| **TOTAL** | **499** | **572.6** | **7.7%** | **100** |

* 1. The SIU has introduced an overarching strategic outcome orientated goal, which is to investigate corruption and maladministration and to facilitate or initiate remedial action in order to recover losses suffered by the State. This is aligned with two Government Outcomes, i.e. 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) which highlights the importance of building a resilient anti-corruption system.
  2. The SIU continues to ‘re-engineer’ itself:
* The new strategic approach seeks to ensure Proclamations are as specific as possible and focus on matters, contracts and tenders that relate directly to the allegations received. A criticism has been that in the past investigations remained open for long periods without resolution or final reports being issued to the President.
* There has been a complete review of technical indicators: The SIU acknowledges that there have been challenges in achieving targets in 2015/16. This is not new, as the SIU has struggled to meet its targets achieving a 50% success rate in 2014/15 (compared with 67% in 2013/14). The SIU continues to highlight ‘the practical difficulty’ it has in setting accurate targets as part of the Annual Performance Plan.
  1. The SIU has three strategic objectives:
* Conduct quality forensic investigations.
* Facilitate or initiate appropriate remedial action.
* Co-operate effectively with other role-players.

**Table 9: SIU - Selected indicators and targets 2016/17**

| **Strategic objective** | **Performance Indicator** | **2014/15** | **2015/16** | **2016/17** |
| --- | --- | --- | --- | --- |
| Conduct quality forensic investigations | No. of investigations closed out | - | Baseline established | 200 |
| No. of reports submitted to the Presidency | - | Baseline established | 5 |
| Facilitate or initiate appropriate remedial action | Value of potential loss prevented | - | Baseline established | R18 million |
| The value of contracts and or administrative actions/decisions set aside or deemed invalid  **(NEW)** | **-** | Baseline established | **R600 million** |
| The value of matters in respect of which evidence was referred or the institution of defence/opposition of civil proceedings (including arbitration or counter arbitration proceedings)  **(NEW)** | - | Baseline established | **R1.2 billion** |
| Strategic partner relations developed and maintained | No. of referrals made to the relevant prosecuting authority (amended) | 50 | 45 | 60 |
| The number of SIU members participating in joint operations or seconded to assist state institutions **(NEW)** | - | 30 | 30 |
| Number of referrals for disciplinary executive and administrative action **(AMENDED)** | - | 60 | **75** |

* 1. The SIU has identified and formulated mitigation strategies regarding the following risks:

**Table 10: SIU Strategic risks and strategies in mitigation**

| **Strategic risk** | **Mitigation** |
| --- | --- |
| Proclamation Inflow | * Identify allegations and motivate for proclamations * Secondment of SIU members to identify potential matters within state institutions |
| Ensure that remedial actions is implemented by the NPA and other state institutions | * Regular meetings * Regular communication * Sending copies of the referral letters to the Presidency |
| Inability to achieve expected targets | * Specific focus on legal outcomes * Continuously improve operating methodology * Secure quality skills/specialists for investigations * Management of expectations through effective communications |
| Inability to cooperate effectively with other law enforcement entities. | Facilitating targeted meetings with relevant entities to ensure practical co-operation and to peruse protocols to regulate relationships |
| Culture of non-payment by state intuitions continues. | The SIU is closely monitoring its cash flow as a result of this situation. |

1. **Public Protector** 
   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.
   2. In 2016/17, the Public Protector receives R263.3 million compared to R245.4 million in 2015/16 (a real increase of 0.36%). Additional funds in the amounts R15 million in 2015/16; R3 million in 2016/17; and R21 million in 2017/18 are allocated. The additional funds support government’s focus on fighting corruption and are to fund increased capacity. For many years, however, the Public Protector has indicated that the institution requires more funds: In 2014/15, the Public Protector requested a budget of more than R300 million and, in 2015, the Public Protector indicated that an additional R200 million was needed in addition to its baseline to fund the organisational structure.

**Table 11: Public Protector 2016 MTEF per programme**

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| **Programme** | **Budget**  **(R’000)** | | | | **Real % change**  **2016/17** |
| --- | --- | --- | --- | --- | --- |
| **2015/16** | **2016/17** | **2017/18** | **2018/19** |
| Administration | 83.2 | 99.6 | 113.9 | 120.2 | 12.5% |
| Investigations | 159.0 | 159.7 | 183.6 | 194.2 | -5.81% |
| Stakeholder engagement | 3.8 | 4.1 | 4.4 | 4.6 | 0.10 % |
| **Total** | **246.1** | **263.3** | **301.8** | **319.3** | 0.36 % |

* 1. The bulk of the budget goes towards funding: Investigation activities (R159.7 million). The remainder funds service points (1 Head Office, 9 provincial offices and 10 regional offices at R14.5 million); and stakeholder engagement programmes.
  2. The PP has tabled a new strategic plan 2016 – 2021 and reports that the indicators in the 2016/17 APP are refined. New strategic outcome goals have been introduced with associated new objective statements, as well as a significant number of new strategic objectives and indicators.
  3. Selected indicators and targets include:

**Table 12: Public Protector - Selected indicators and targets**

| **Performance Indicator** | **Target 2016/17** |
| --- | --- |
| **Administration** | |
| Completion of skills audit | Review report on planning, monitoring and evaluation support by 31 June 2016 |
| Upgrade ICT infrastructure and review HR capacity | ICT unit assessed and redesigned by 1 August 2016. Implement high speed connectivity by 31 March 2017 |
| Reconceptualization of Performance Management and Development System (PMDS) to a performance Enhancement and Accountability System (PEAS) | Finalise reconceptualization of Performance Management and Development System (PMDS) compliance reports submitted by 31 March 2017 |
| Refine and review business processes, polices and introduce tool to get things right the first time | Develop SOP’s templates and checklists for procurement, HR, facilities management by 30 April 2016. |
| Train all managers and investigators on project management by target date | Train all managers by 30 September 2016 |
| **Investigations** | |
| Percentage cases resolved according to approved investigation plans | 100 per cent of cases resolved according to approved investigation plans as confirmed in monthly spreadsheets by 31 March 2017 |
| Percentage reduction in cases 2 years and older through special response teams | 100 per cent of all cases 2 years and older as at 1 April 2016 resolved by 31 March 2017 |
| Finalisation of all existing systemic investigations/interventions as at 1 April 2016 by 31 March 2017 (*Amended)* | Conduct and finalise all existing systemic interventions as at April 2016 by 31 March 2017. Submit reports to departments on systemic deficiencies identified |
| **Stakeholder engagement** | |
| Number of good governance conversations held | 10 consultations on systemic challenges by 31 March 2017 |
| Number of dialogues with the Executive on the Executive Ethics Code by 31 March 2017 | 1 dialogue by target date |
| Proposal for amendment of the Public Protector Act | Submit a proposal by 31 July 2016 |

* 1. The Public Protector identified the following delivery challenges:
* The trainee investigator programme is unable to proceed as originally conceived (39 Assistant investigators have no allocated budget).
* A new Electronic Case Management System requires approximately R50 million. The PP is putting R6 million towards the new system in 2016/17.
* There has been an increase in the number of reviews since the Supreme Court of Appeals clarified the powers of the Public Protector.

1. **South African Human Rights Commission (SAHRC)**
   1. The SAHRC’s mandate is extremely broad, encompassing almost every aspect of civil, political and economic rights. It must promote respect for human rights; promote the protection, development and attainment of human rights; and monitor how well human rights are observed. The Constitution also provides that each year the Commission must require relevant organs of state to provide it with information on measures taken towards the realisation of the socio-economic rights contained in the Constitution. The Commission also has specific obligations in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA). The commencement of the Protection of Personal Information Act, 2013, will impact on the SAHRC’s obligations relating to the Promotion of Access to Information Act, 2000 (PAIA). These functions, excluding the Commission’s protection mandate, are to be transferred to an Information Regulator when it is established.
   2. The Commission has retained its 2015-20 Strategic Plan. Despite retaining its five (5) strategic objectives, a number of indicators have been removed in the APP 2016/17:
      1. The Commission’s Strategic Plan 2015 – 2020 sets out its strategic outcomes in terms of which the Commission commits to:

* Use and project a broader Constitutional and legislative mandate.
* Engage with processes of enacting legislation that promotes Constitutional human rights obligations.
* Enhance understanding of international and regional issues through engagement with stakeholders.
* Enforce protection of rights through alternative dispute resolution and other means, such as equality courts and litigation.
* Intensify advocacy as well as public and community outreach.
* Structure Commissioners’ strategic focus areas to enhance effectiveness.
* Strengthen key stakeholder relationships.
* Develop the institution as a learning organisation.
* Strengthen capacity that supports delivery on the mandate.
  + 1. The Commission has identified the following five strategic objectives:
* Promote compliance with international and regional obligations.
* Advance the realisation of human rights.
* Enhance and deepen the understanding of human rights and promote a human rights culture.
* Use and project a broader constitutional and legislative mandate.
* Improve the effectiveness and efficiency of the Commission to support delivery on the mandate.
  + 1. The Annual Performance Plan has been streamlined as follows:

**Table 13: South African Human Rights Commission - Selected indicators and targets**

| **Performance Indicators** | | **Performance Targets** | |
| --- | --- | --- | --- |
| **2015/16** | **2016/17** | **2015/16** | **2016/17** |
| **Strategic Objective 1: Promote compliance with international and regional obligations (Three indicators were removed)** | | | |
| Number of annual international and regional human rights’ reports completed | Completion of SAHRC annual international and regional human rights’ reports completed (**AMENDED)** | 1 | Complete 1 report |
| Percentage submissions on identified country reports and international human rights’ instruments | Submission of reports to international and regional human rights bodies (**AMENDED)** | 100% | Submit reports as required |
| **Strategic Objective 2:Advance the realisation of human rights (Nine indicators were removed)** | | | |
| Implementation of High Court judgement on Lindela | Implementation of responsibilities in terms of court orders (**AMENDED**) | Lindela Monitoring framework | Guidelines developed |
| Number of National hearings Conducted | Hosting of investigative hearings (**AMENDED**) | 4 | 2 |
| Percentage finalisation of cases | Percentage finalisation of complaints and enquiries (**AMENDED**) | 85% | 85% |
| **Strategic Objective 3: Enhance and deepen understanding of human rights and promote a culture of human rights (Four indicators removed)** | | | |
|  | Completion of advocacy and communications report |  | 1 |
| **Strategic Objective 4: Use and project a broader constitutional and legislative mandate** (Six indicators have been removed from the 2016/17 APP (most of these relate to the PAIA)) | | | |
| Number of annual equality reports completed | Completion of annual equality report **(AMENDED)** | 1 | Complete 1 Report |
| - | Completion of SAHRC civil and political rights report **(NEW)** | - | Complete 1 Report |
| **Strategic Objective 5: Improve the effectiveness and efficiency of the Commission to support delivery on the mandate (**Fifteen indicators have been **removed** from the 2016/17 APP) | | | |
| - | Compliance with institutional governance, risk and audit framework | - | Full compliance |
| - | Compliance with institutional policies | - | Full compliance |
| - | Completion of exit handover report | - | Complete report |

* 1. The Commission has identified the following as key risks to its achieving its goals: funding constraints; information technology risks; poor human rights awareness; education and advocacy, as well as inadequate mechanisms to monitor and assess the Commission’s impact.
  2. The Commission is funded by way of a direct transfer from the Justice and Constitutional Development Vote. The allocation increases from R144.3 million in 2015/16 to R153.5 million in 2016/17, increasing in real terms by 0.24%.

**Table 14: South African Human Rights Commission 2016 MTEF per programme**

| **Programme** | **Budget**  **(R’000)** | | **Real % change**  **2016/17** |
| --- | --- | --- | --- |
| **2015/16** | **2016/17** |
| Administration | 50.0 | 54.1 | 1.31 |
| Promotion and protection of human rights | 84.2 | 89.6 | -0.27 |
| Research and monitoring and evaluation. | 10.0 | 10.5 | -0.92 |
| **Total** | **144.3** | **154.1** | **0.24** |

1. **Committee’s observations: Department of Justice and Constitutional Development**
   1. The Committee repeats its view that transformation of the legal system to meet constitutional imperatives must address reform of the substantive law. As previously observed, we have largely been busy with the formal aspects of transformation to date and while the progress made in this regard is welcome, it is not enough to fulfil our constitutional promise of access to justice. The Committee, therefore, is pleased to learn that the Department has acted on the Committee’s views in this regard. If these developments come to fruition, they will have far-reaching consequences for the legal system by infusing the substantive law with a progressive jurisprudence that contributes to the State’s efforts to redress the legacy of apartheid, of inequality, exclusion and poverty.
   2. The Committee has on many occasions voiced its belief that to achieve access to justice for all, we should make better use of what is already in place. In this regard, traditional courts can considerably ease the burden on the judicial system but need the necessary legislative framework to ensure that constitutional concerns are properly addressed and that these courts are appropriately resourced. The Committee has repeatedly expressed its frustration at the delays in bringing the relevant legislation to Parliament, for as long as this state of affairs prevails, African Indigenous Law will continue to be regarded as secondary to that of other laws in this country, a situation which should not be supported. The Committee is, therefore, very encouraged by the Department’s recent initiatives in this regard. The Department has met with traditional leadership and civil society and held a policy dialogue. A reference group has met to discuss the report that emanated from the Dialogue, as well as a preliminary bill. The Department has provided the Committee with clear timeframes going forward, which sees the introduction of the Traditional Courts Bill in May or June of this year.

* 1. The Committee remains of the view that greater consideration should be given to using the structures that are already in place to bring justice closer to communities. The Committee has previously urged the Department to consider reviving community justice systems/courts. In theory, there are some community courts but, in practice, these have been subsumed into the mainstream system. Again the Committee is encouraged that the Department has taken up its views of this matter, providing the Committee with clear timeframes going forward. The South African Law Reform Commission is to be tasked with conducting research into community courts in South Africa and a draft report should be available by the end of September 2017. In this regard, the Committee requests the Department to provide it with an interim progress report by 30 July 2016.
  2. The Committee notes that the Department will also address the situation of paralegals and has given clear timeframes in this regard. The Committee was previously informed that the Department was exploring making use of the Justice of Peace Act, 1963, which provides a dispensation for the involvement of Justices of Peace in judicial processes, as an interim measure. The Committee is unclear as to the outcome of these processes but will hold the Department to its commitment to develop a concept paper for the regulation of paralegals (including consideration of options for an appropriate framework) by 30 May 2106 and development of draft legislation by 30 September 2016. In this regard, the Committee requests the Department to provide it with an interim progress report by 30 July 2016.
  3. 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 Department is looking at how it can assist at all stages of the process, including the provision of paralegals. The Department has also undertaken to arrange a workshop with stakeholders to discuss how to take the matter forward. The Committee requests also that the Department engage with the Foundation on Human Rights on how it can use its resources to assist advice centres and paralegals in support of this priority.
  4. The Committee supports the Department’s initiatives to promote multilingualism in courts despite logistical and resource-related challenges, as this is vital to ensuring access to justice,. The Committee feels strongly that law graduates be able to speak an African language as a pre-requisite to practicing law. The Committee is informed that the Department is busy drafting a proposal to present to the Department of Higher Education on developing the LLB curriculum by July 2016. The Department intends to be in a position to provide the Committee with a final report on the outcome of its engagements with the Department of Higher Education by the end of August 2016. The Committee asks that the Department continue to keep it informed of developments in this regard.
  5. The Department has also provided clear timeframes on its intended actions to address the use of official languages in courts. The Committee notes that the Department intends to submit a bill that will provide a legislative mechanism to promote the use of indigenous languages as the language of court record to Cabinet by the end of March 2017. The Committee believes that this intervention is critical for access to justice by the majority of our people. The Committee requests that the Department keep it informed and that it provide it with an interim progress report by 30 July 2016, and quarterly thereafter.
  6. The Committee is extremely concerned about the extent to which racism remains entrenched in our society and the destabilising effect that this has on our society. The Committee notes the Department’s steady progress of late towards finalizing the National Action Plan Against Racism, Xenophobia and Related Intolerances (NAP). There is a public consultation process underway, which should be finalised by the end of June 2016. The Committee suggests that the Department also make the NAP available to all members, together with an executive summary. Members of Parliament are well placed to assist in bringing the NAP to the public’s attention through their constituencies.

The Committee notes too that the Department intends introducing the Prevention and Combating of Hate Crimes and Hate Speech Bill by the end of September 2016 but is of the view that there is need for broader discussion on the criminalisation of racism, as is the case in other parts of the world.

* 1. The Committee notes that the Department has revised its target to achieve an unqualified audit opinion for the Third Party Funds (TPF) from 2017/18 to 2018/19. Developing a new system to replace the Justice Deposit Accounting System (JDAS), which is an administrative rather than financial system, is key to the Department’s strategy to ensure a long-term solution to the management of these funds. This is a multi-year project, which was delayed by the late award of the tender for its development. There is, however, progress and the new system has been piloted.

For now, the Department has tacit approval from National Treasury to submit separate financial statements for the TPF in accordance with an agreed accounting framework. Legislation to resolve the legal status of the TPF is before this Committee for consideration and report.

The Committee requests that the Department provide it with a comprehensive progress report on the TPF by 30 July 2016, and continue to address the Committee quarterly on this matter.

* 1. The Committee remains extremely concerned at the pattern of delays in the completion of capital projects. There is a great need for these new courts: they form part of a strategy to transform judicial services by making justice accessible in areas that were under-serviced in the past. The establishment of the new High courts at Polokwane in Limpopo, and in Mpumalanga, in particular, are vital in this regard. The Committee is informed that the High Court in Polokwane is now operational, while it is expected that the Mpumalanga High Court will be completed by June 2016.

Although the Department is dependent on the Department of Public Works for implementation of funded capital projects, the constant delays frustrate access to justice services. They are also wasteful of scarce funds, leading to escalating project costs. In addition, funds allocated to capital works are consistently not spent, which does not assist the Department when it approaches Treasury for additional funding. The response so far has been for the Department to reprioritise funds without significant increases to the baseline. Given the strain on the Department’s funds in other priority areas, the Committee again notes these developments with dismay while appreciating that the challenges cannot be addressed by the Justice Department alone. The Committee is sympathetic but remains of the view that if the Department must look towards developing a strategy to manage/drive projects of this nature to ensure that projects are delivered on time, within budget, and are of quality. The Committee is concerned that an area in which the Department reports funding pressures is the development of technical expertise within the Department to better manage these projects. In the Committee’s view there is need for a bilateral agreement between the Department of Public Works and the Departments of Justice and Constitutional Development and Correctional Services going forward. It also notes that the Minister was to meet with the Minister of Public Works. It would be interested in the outcome of this meeting.

The Committee requests that the Department provide it with a comprehensive progress report on its infrastructure projects, especially progress regarding the completion of the Mpumalanga High Court, by 30 July 2016, and be prepared to address the Committee quarterly of this matter.

* 1. Parliament has approved assistance measures for victims identified in terms of the Truth and Reconciliation (TRC) process. The Committee remains concerned at the slow progress in promulgating the relevant regulations. The delays are attributed to consultative processes with the relevant departments, although in November 2014 the regulations on Assistance to Victims in respect of Basic Education and Higher Education and Training were published and came into effect. It would seem that the regulations for health, housing and community rehabilitation still need to be finalised. The Department has engaged the Independent Development Trust (IDT) to conduct a needs analysis and project manage the Community Rehabilitation regulations. A total of 18 communities are to benefit from the R1.13 billion available in the Presidents Fund.

The Committee requests that the Department provide it with a comprehensive progress report on this matter by 30 July 2016.

* 1. The Committee once more is concerned at the continued and significant under-spending that has taken place on IJS projects, as well as the apparent lack of results. The need for improved co-ordination and integration of the JCPS Cluster departments’ IT systems was identified in 2007 as vital to efforts to ensure the effective implementation of the Criminal Justice System’s Seven-Point Plan. Implementation of the Seven-Point Plan is a key component of the NDP’s vision of building safer communities. Although the Committee is informed that at last there is some progress, it has been exceedingly difficult for the Committee to track this in the absence of a Business Plan, which would allow for the alignment of departmental strategic and operational plans. The Business Plan was to be completed in 2014 but although finalised is yet to be implemented by the respective JCPS Cluster departments. The Committee is aware that the project continues to experience challenges, especially where the ICT infrastructure is not up to standard. The Committee requests that the Department provide it with a comprehensive progress report on this matter by 30 July 2016 and be prepared to continue to brief it quarterly thereafter.
  2. 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. There is currently no comprehensive set of clearly defined rules governing how litigation services are to be acquired, managed and monitored.

The State Attorney is faced with numerous challenges, including those related to its enabling legislation, instructions by clients, ICT systems, negative judgements and publicity, budgets, opportunistic litigation, the occupation specific dispensation and increasing costs of litigation. These systemic challenges in the office have led to poor performance. The State Attorney Amendment Act, 2014, provides for the appointment by the Minister of a ‘chief’ State Attorney – the Solicitor-General. The appointment of a Solicitor-General has been delayed as the level of the position required upgrading. A recruitment process is underway.

The Committee believes that this area requires urgent attention: at present 70% of cases involving the State are lost with cost implications. The Committee is informed that service turnaround will focus on containing litigation costs for the State by implementing clear guidelines that regulate how state litigation is to be conducted; clarifying the roles and responsibilities of stakeholders (state attorneys and government departments) in state litigation management; and implementing cost cutting measures.

The Committee requests that the Department brief it specifically on its policy to transform State Legal Services as soon as the programme permits.

* 1. For some time now the Department has reported on the challenges relating to the Occupation Specific Dispensation (OSD). It would seem that challenges relating to the OSD continue to have a significantly negative impact on the Family Advocates subprogramme; State Law Advisors; and Litigation and Legal services subprogrammes in particular. The Committee is concerned that despite ongoing consultation with DPSA, there does not appear to be any resolution in sight.
  2. The Committee is concerned that the target for the rollout of the dedicated sexual offences courts has been reduced in 2016/17 from 13 to 8 as a result of budget cuts. There is agreement about the need for these specialised courts in addressing the high levels of sexual violence.

1. **Committee’s observations: National Prosecuting Authority**
   1. The Committee notes the lack of detail regarding the NPA’s budget and plans, compared to past years. This is of particular concern to it, as achievement of many of the MTSF indicators fall within the NPA remit. It is a further source of concern that quarterly progress reports for 2015/16 appear to indicate that performance in some areas has declined. The Committee acknowledges the role that the pressures surrounding the Budget briefings impacted on the time available to engage regarding its concerns and will make use of the next quarterly briefing to rectify this.
   2. The Committee is concerned about the shift of funds from the AFU to the National Prosecutions Service. This is a particularly so as the AFU had previously indicated that, given capacity and funding concerns, it may need in future to prioritise larger cases. The Committee was dismayed that this should be the case, given the focus on rooting out corruption.
2. **Committee’s observations: Legal Aid SA**
   1. There was unanimous support from the Committee for the view that Legal Aid SA is an exemplary institution.
   2. Legal Aid SA has new enabling legislation. The Committee notes that a new Board has been appointed to replace the transitional board. The Committee is especially pleased to learn that Justice Mlambo is to remain Chair of the Board. Regulations and the Legal Aid Manual are to be finalised in 2016/17.
   3. The Committee is pleased to learn of Legal Aid SA’s role in spearheading the inclusion of “Access to Justice” as a Sustainable Development Goal (SDG). Indicators are being developed at present. The Committee would be interested to know more about this process and will invite Legal Aid SA to brief it as soon as the programme permits.
   4. Legal Aid SA has so far been able to absorb budget cuts from its cash reserves. At this stage, these cuts are once off, for 2016/17 and 2017/18. The Committee notes, however, that Legal Aid SA has dropped its recruitment rate to 96%. 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, as gaps in court coverage place strain on the criminal justice system as a whole and can result in postponements, among others. The intention was that Legal Aid SA have at least one practitioner per court but this has not transpired as a result of budget constraints.
      1. Legal Aid SA’s budget goes largely towards funding legal representation of accused in criminal matters, as there is a consitutional obligation on the State to assist accused persons with legal representation. In past years, Legal Aid SA has done its best and has slowly increased the amount of civil work that it does – about 12% of its caseload consists of civil matters. Without additional funds, the Commitete cannot see how Legal Aid SA can 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 allow it to expand its civil mandate despite the fiscal environment.
3. **Committee’s observations: Special Investigating Unit**
   1. The Committee notes that the SIU once again indicated that it is adequately funded although it has experienced difficulties collecting monies owed from State institutions. The Committee is informed that the SIU had received some payments in March 2016 (and that the South African Post Office has plead poverty).The Committee, therefore, requests the SIU to provide a report on the debtors list as at the end of the 2015/16 financial year, by 31 July 2016. The Committee once again more urges the SIU to engage in discussions with National Treasury to establish a mechanism to ensure the collection of monies owed. Such a mechanism becomes increasingly important for the SIU as the percentage of project income as a share of total revenue increases.
   2. The Committee engaged in the past on the issue of possible duplication of roles among anti-corruption organisations. At the time, the SIU agreed that there was scope for better co-ordination and communication between institutions, a view that the Committee supported. The Committee is, therefore, pleased that the SIU and the PP now consult with each other before taking on an investigation to establish whether there is a duplication.
   3. The SIU indicates that it requires experienced legal expertise The SIU does provide opportunities to young law graduates to gain legal experience and is committed to their development. However, as the SIU has shifted its strategic focus to obtaining legal outcomes (civil, criminal and disciplinary), it also needs experienced lawyers to achieve these outcomes. The SIU also indicated that it requires other specialist skills, for example, accountants, and agrees that ideally these skills would be available to it in house. The Committee notes once more that the SIU has taken its views on the use of consultants to heart, sourcing in skills only when it is necessary to do so.

The Committee asks the SIU to provide it with a written reports by 30 July 2016 on its recruitment drive to increase its legal capacity; its mentorship programme for junior lawyers; and the extent of its reliance on external legal counsel.

* 1. The Committee is pleased to note that a permanent head for the SIU has been appointed: Adv. Jan Lekhoa Mothibi will take up the position from 1 May 2016. The Committee wishes to take this opportunity to thank Adv. Visagie, who has acted in this position since the former Head of the SIU, Adv. Soni, resigned on 28 February 2015.
  2. The Committee is informed that the Special Tribunal will only be established if there is sufficient case load. The Committee was uncertain that the decision to establish the Tribunal should solely depend on case-load. It strikes the Committee that a Special Tribunal would be able to process matters faster than the ordinary courts, where heavy court rolls often result in delays. The Committee, therefore, requests that the SIU provide it with a written report on the matter by 30 July 2016.
  3. The Committee feels strongly that it is important for officials of the SIU to be vetted, given the sensitive information they come across in the scope of their work. The Committee notes the delays in the vetting process by the State Security Agency (SSA), despite the SIU being a priority to the SSA. The SIU, however, assured the Committee that all officials must go through stringent internal screening processes and that they are rescreened regularly.

1. **Committee’s observations: Public Protector** 
   1. In 2013/14, the Public Protector received an unqualified audit opinion with findings. The Auditor General’s report on the Public Protector’s Financial Statements for 2013/14 stated, on the matter of the Public Protector as a going concern, that “*Note 28 to the financial statements indicates that the constitutional institution incurred a deficit of R20 450 499 during the year ended 31 March 2014 and, as of that date, the constitutional institution’s current liabilities exceeded its current assets by R38 912 530.* The Public Protector has committed to achieving a clean audit for 2015/16 and the Committee is pleased to receive an assurance from her that the issue of the budget deficit has been resolved. It is a concern to the Committee that the Chief Executive Officer has resigned and the position is to be vacant once more. In addition, there are a number of acting appointments at senior management level. The Committee is of the view that the existence of capacity at senior management level is vital for management supervision in an institution. The Committee, therefore, urges the Public Protector to see to filling these vacancies as a matter of urgency.
   2. The Committee notes the Public Protector’s difficulties relating to accessibility. In the past the Public Protector has sought additional funds to expand its footprint. The Committee, in the Fourth Parliament, did not generally support the expansion of the Public Protector’s footprint as it repeatedly queried the distribution of offices for best use of resources and did not feel able to engage further on the opening of more offices until it has been briefed fully on the Public Protector’s strategy in this regard. The Committee is pleased that the Office is making use of alternatives to extend its reach by, for example, making use of mobile offices.
   3. The Committee notes the suggestion that the Public Protector requires a new funding model, even more so now in light of an increase in the number of reviews of her recommendations, but feels that this requires substantial further discussion. The Committee also notes the Public Protector’s intention to explore “direct voluntary public funding” to establish a Public Protector Trust to fund non-core business, similar to the Constitutional Court Trust. The Public Protector informed the Committee that she is engaging with National Treasury for guidance on this. The Committee asks that it is kept informed of developments in this regard.
   4. The Committee will engage with the Speaker’s Office on initiating the process of filling the position of Public Protector before the term of office of the present Public Protector ends in October 2016. The Committee agrees that it is desirable for this to occur as soon as possible to facilitate a smooth transition and transfer of knowledge.
   5. 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.
2. **Committee’s observations: South African Human Rights Commission**
   1. The Committee agrees that there is need for greater and more regular engagement between Parliament and the Chapter 9 and associated institutions. This has long been identified as a challenge that requires attention. The Committee notes too that the National Assembly has not yet considered the Report of the *ad hoc* Committee on Chapter 9 and Associated Institutions in its entirety. While a considerable length of time has elapsed since the Report was published in 2007, certain recommendations may still be relevant.
   2. The Committee was fascinated generally to hear more from the Commissioners on their findings and recommendations and believes that the Commission’s work can play a very important role in deepening Parliament’s oversight function.
   3. The Committee recommended that greater use be made of the Forum for Institutions Supporting Democracy as a way for these institutions to identify common areas of interest, explore and reconcile overlapping workloads and mandates, and also to look for ways of enhancing collaboration and co-operation among these institutions for enhanced efficiency and effectiveness. The Committee is pleased to hear that the Forum is operating well. It asks that the Commission keep it regularly informed of the Forum’s activities.
   4. The Committee notes the Commission’s request that the role of the Office for Institutions Supporting Democracy (OISD) is clarified. The Committee will engage with the Office as soon as its programme permits.
   5. The Committee will engage with the Speaker’s Office regarding the need to initiate the process of appointing new commissioners when the terms of office of a number of commissioners, including that of the Chairperson, come to an end towards the end of the year.
3. **Recommendations**
   1. The Committee, having considered the Budget Vote 21: Justice and Constitutional Development supports it and recommends its approval. The Democratic Alliance, Economic Freedom Fighter and African Christian Democratic Party rejected the Report.
4. **Appreciation**
   1. The Committee thanks the Minister for the political overview provided.
   2. The Committee also thanks the Director General: Justice and Constitutional Development and all officials who appeared before the Committee for their co-operation.
   3. The Committee also wishes to thank the Public Protector and Deputy Public Protector; the Chairperson and Commissioners of the South African Human Rights Commission; the Chairperson and Board of Legal Aid South Africa; and the (Acting) Head of the Special Investigating Unit, as well as all respective staff members that appeared before the Committee, for their co-operation.

**Report to be considered**