**3. The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 26 October 2016**

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

1. **Introduction**
	1. The Money Bills Procedures and Related Matters Amendment Act 9 of 2009 sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department. In October of each year, portfolio committees must compile Budgetary Review and Recommendation Reports (BRRR) that assess service delivery performance given the available resources; evaluate the effective and efficient use and forward allocation of resources; and may make recommendations on the future allocation of resources. These BRRR are source documents for the Standing Committee on Appropriations when it makes recommendations to the National Assembly on the Medium-Term Budget Policy Statement (MTBPS). The annual review of expenditure and performance for 2015/16 also forms part of this process.
	2. On 1 April 2015, the Office of Chief Justice (OCJ) became a fully-fledged Department with its own Vote – Vote 22: Office of the Chief Justice and Judicial Administration. The administration and allocation for the Superior Courts, Judicial Services Commission (JSC) and South African Judicial Education Institute (SAJEI) were transferred to the OCJ, together with personnel, from the Department of Justice and Constitutional Development. The funds for judges’ salaries were also transferred to the new Vote. This is the first year that the OCJ will be participating in the BRRR process as a fully-fledged department.
	3. On 18 October 2016, the Committee engaged with the Office of the Chief Justice on its annual performance and spending for 2015/16. The meeting also addressed service delivery performance and spending for the First Quarter 2016/17.
	4. The Committee met with the Auditor-General on the audit outcomes for the Vote on 11 October 2016.
	5. Copies of all the presentations are available from the committee secretary.
2. **Strategic overview**
	1. Strengthening judicial governance and the rule of law is considered vital to further the transformative promise of our Constitution.
	2. On 23 August 2010, the President of the Republic of South Africa proclaimed the Office of the Chief Justice (OCJ) as a national department within the public service. The establishment of the OCJ was envisaged as the first phase towards an independent judiciary-led court administration system in order to fully realise the Judiciary’s institutional independence in line with the Constitution, 1996, and the Superior Courts Act, 2013.
	3. The Constitution Seventeenth Amendment Act, 2013, affirms the Chief Justice as head of the Judiciary responsible for establishing and monitoring the norms and standards for the exercise of judicial functions of all courts. The Superior Courts Act, 2013, establishes a legislative framework for the Chief Justice to exercise his/her judicial leadership supported by the OCJ and provides for the delegation of certain functions flowing from the Act to the OCJ.
	4. The Minister of Justice and Correctional Services heads the OCJ as its Executive Authority, while the Secretary-General is the accounting officer. The Secretary-General acts as the Minister’s proxy, engaging and consulting with the Chief Justice and other Heads of Court in respect of the administrative functioning of the Superior Courts, while the Chief Justice is in charge of the judicial functions of the Superior and Magistrates’ Courts. However, until the legislative framework for the Magistrates’ Courts has been overhauled to transform these courts in line with the Superior Courts Act, 2013, the Justice Department will continue to provide the necessary administrative support to the Magistrates’ Courts.
	5. The strategic focus remains on strengthening the OCJ to enhance its capacity to support the Chief Justice in his or her role as head of the Judiciary and to provide a platform for the implementation of judicial reforms that will improve service delivery and address administrative challenges in a context that also respects judicial independence.
	6. The OCJ performs the following functions:
* Provides and co-ordinates legal and administrative support to the Chief Justice.
* Provides communication and relationship management services and inter-governmental and international co-ordination.
* Develops courts’ administration policy, norms and standards.
* Supports the development of judicial policy, norms and standards.
* Supports the judicial function of the Constitutional Court.
* Supports the Judicial Services Commission in the execution of its mandate.
* Supports judicial education through the South African Education Institute (SAJEI).
1. **Strategic priorities 2015 – 2019**
	1. The OCJ contributes to the National Development Plan’s (NDP) call for strengthened judicial governance and the rule of law, and also to ensuring an efficient and effective criminal justice system in support of Outcome 3 of the Medium Term Strategic Framework 2014-2019 (MTSF) – ‘All people in South Africa are and feel safe’.
	2. The OCJ has aligned its plans to the NDP and the MTSF, as follows:
* Administration is linked to Outcome 12 of the MTSF: An efficient and effective development-orientated public service.
* Both the Judicial Support and Court Administration and Judicial Education and Research programmes are linked to Chapter 14 of the NDP: Strengthening judicial governance and the rule of law. Relevant MTSF targets are: The reduction of the number of cases on the roll for more than two months (High Courts); and the finalisation of criminal cases with verdict (High Courts).
	1. The NDP recommends the need for a strategy to improve the quality of judges both through appointments and the scaling up of judicial training as a measure to strengthen judicial governance.
	2. The OCJ has the following broad strategic outcome-orientated goals.
* Capacitate the Office of the Chief Justice: Secure adequate human resources for the OCJ to enable it to carry out its mandate effectively by attracting and recruiting competent personnel.
* Support the Chief Justice in fulfilling his/her functions as Head of the Judiciary: Enable the Chief Justice as head of the Judiciary to deliver on his/her consitutional mandate by providing administrative support.
* Render effective and efficient administration and technical support to the Superior Courts: Support the efficiency of the Superior Courts in the provision of their services to improve case finalisation rates and reduce case backlogs by providing continuous administrative and technical support.
1. **Budget allocation 2015/16 and 2016/17**
	1. The OCJ received R1.65 billion in 2015/16 and is allocated R1.78 billion for 2016/17. The budget is expected to increase to R1.97 billion and R2.08 billion in 2017/18 and 2018/19 respectively. The 2015/16 allocation is divided as follows: Funds allocated for departmental programmes amount to R783.4 million, while the direct charges for judges’ salaries is R873.7 million.
	2. During the Budget process for 2015/16, the OCJ identified that unfunded mandates create a shortfall of R100.8 million for 2015/16. The Department of Justice and Constitutional Development assisted with an amount of R25 million. During the Adjustment’s process, the OCJ received an additional R40.9 million.

**Table 1: Budget allocation for the Office of the Chief Justice per programme**

| **Programme** | **Adjusted Appropriation 2015/16** | **MTEF** |
| --- | --- | --- |
| **2016/17** | **2017/18** | **2018/19** |
| **R’000** | **R’000** | **R’000** | **R’000** |
| Administration | 99 479 | 161 173 | 202 329 | 212, 96 |
| Judicial Support and Court Administration | 649 541 | 665 972 | 749 494 | 787 814 |
| Judicial Education & Training | 34 359 | 37 845 | 57 184 | 60 141 |
| **Subtotal** | **783 379** | **864 990** | **1 009,007** | **1 060 851** |
| **Direct Charge:** * Judges’ Salaries
* Transfers & subsidies
 | **873 748**821 45452 294 | **920 057**864 99155 066 | **966 060**908 24157 819 | **1 022 091**960 91861 173 |
| **Total**  | **1 657 127** | **1 785 047** | **1 975 067** | **2 082 942** |

* 1. The operationalization of the Superior Courts Act is to be prioritised over the medium term with increased funding in the amounts of R34.5 million in 2017/18 and R36.3 million in 2018/19. These amounts go to the Judicial Support and Court Administration programme for additional capacity in the Judge Presidents’ offices to co-ordinate judicial functions and to ensure that judicial norms and standards are implemented, monitored and reported on.
	2. In order to facilitate the appointment and training of judicial officers, the OCJ also receives an increase of R17.2 million in 2017/18 and R17.9 million in 2018/19 for Judicial Education and Research. This programme is expected to increase from R37.8 million in 2016/17 to R60.1 million in 2018/19.
1. **Spending 2015/16**
	1. The OCJ spent R775.4 million or 98.9% of the total annual budget of R783.4 million for programmes. If the Direct Charges are included, total spending at year end was 99.9% of the adjusted budget with underspending of R1.8 million. However, if the Direct Charges are excluded, expenditure at the end of the period was R767.8 million (or 98%) of the adjusted budget of R783.4 million, which means that the OCJ underspent by R15.6 million.
2. **Audit outcomes**
	1. The OCJ received an unqualified audit opinion with findings on predetermined objectives and compliance.
	2. Key findings raised include:
* The usefulness and reliability of the reported information in respect of Programme 2: Judicial Support and Court Administration and Programme 3: Judicial Education and Research. Important indicators were not well defined and the reported performance information was not reliable when compared to source information.
* Material misstatements in the financial statements, which were subsequently corrected during the audit process.
* Suppliers were paid outside of the prescribed 30 days.
* Vacancies remained unfilled for longer than 12 months.
	1. With regard to the predetermined objectives, the Auditor-General highlighted that Management must craft clearer and unambiguous indicators and targets conforming with SMART principles that are aligned to the OCJ’s mandate. Further, the absence of reviewing mechanisms at court-level led to some files being omitted from performance management, which undermined the reliability of the performance information when compared to source.
	2. The Auditor-General highlighted weaknesses in the OCJ’s internal processes to detect non-compliance and to ensure reliable reporting of performance information. In this regard, the Auditor-General recommended that:
* Management regularly monitors progress against the audit action plan to avoid repeat findings and continued non-compliance.
* Management undertakes regular assessments on the status of internal controls so that any deficiencies are addressed when they arise. There should also be consequences for officials who transgress.
* The filling of vacancies should be prioritised.
1. **Office of the Chief Justice: Programme Performance**
	1. **Programme 1: Administration**
		1. The purpose of this programme is to provide strategic leadership, management and support services to the Department.
		2. The programme consists of the following sub-programmes:
* The Management subprogramme provides administrative, planning, monitoring, evaluation and reporting functions necessary to ensure effective functioning of the Department.
* The Corporate Services subprogramme provides integrated Human Resources Management (HRM), Information and Communication Technology, Security Management and Communication support services to the Judiciary and the OCJ.
* The Finance Administration subprogramme provides overall financial, asset and supply chain management services to the Judiciary and OCJ.
* The Internal Audit and Risk Management subprogramme provides overall internal audit and risk management services to the OCJ and the Superior Courts.
* The Office Accommodation subprogramme provides for acquisition of office accommodation for the OCJ.
	+ 1. The OCJ met or exceeded 10 of 14 or 71% of performance indicators for 2015/16:

**Table 2: Administration: Selected performance 2015/15 and First Quarter 2016/17**

| **Performance Indicator** | **Performance****2015/16** | **Performance** **First Quarter 2016/17** |
| --- | --- | --- |
| % of identified critical funded posts filled | **NOT ACHIEVED** 57% against a target of 90% | **NOT ACHIEVED**17% against a quarterly target of 20% (annual target remains 90%) |
| No. of communication activities in line with the communication strategy | **NOT ACHIEVED**8 against a target of 12 | - |
| % of reported fraud cases investigated within 60 days | **NOT ACHIEVED**61% (20 of 33) against a target of 100% | **NOT ACHIEVED** 83% against a quarterly and annual target of 100% |
| % of audit findings (internal and external addressed) addressed | - | **NOT ACHIEVED** 49% against a quarterly target of 65% with an annual target of 80% |
| % of received invoices paid within 30 days | **NOT ACHIEVED**83% (16 928 of 20 333) against a target of 100% | - |

* + 1. Key issues emerging:
* A high overall vacancy rate of 19.8% at the end of 2015/16.
* Capacity constraints impacted on performance in the Administration programme. In particular, the lack of human resource capacity impeded efforts to recruit staff. The OCJ, however, reports that it has prioritized recruitment in 2016/17.
* Delays in paying creditors within the requisite 30 days are the result of inadequate capacity and IT systems to process payments. The OCJ has created new posts, which were to be filled in the Fourth Quarter of 2015/16, to enhance the processing of payments. Also the payment of travel invoices (60% of all invoices) was to be automated.
* The OCJ struggled to reach its targets relating to the investigation of fraud cases within 60 days. The OCJ reports the unavailability of suspects and witnesses to conduct interviews within the prescribed investigation period and inadequate capacity in the Forensic Unit. The OCJ intends to improve on the management of witnesses and suspects to expedite the process. The recruitment of an additional forensic investigator will be finalized in the Second Quarter of 2016/17.
* To address the audit outcome, the OCJ reports that it intends to work with its Unit Heads to address the outstanding audit findings. Internal Audit will follow up to provide assurance.
	1. **Programme 2: Judicial Support and Court Administration**
		1. This programme provides judicial support and court administration services to the Superior Courts, including secretariat and administrative support services to the Judicial Service Commission.
		2. The programme consists of the following sub-programmes:
* The Administration of Superior Courts subprogramme provides administrative and technical support to the Superior Courts, monitors the overall performance of the Superior Courts, and enhances judicial stakeholder relations.
* The Judicial Service Commission subprogramme is responsible for secretariat and administrative support services to the Judicial Service Commission to effectively perform its constitutional and legislative mandates.
* The Constitutional Court adjudicates on constitutional matters and any other matter that is of general public importance.
* The Supreme Court of Appeal adjudicates appeals in any matters arising from the High Court of South Africa or a court of a status similar.
* The High Courts’ adjudicate and provide resolutions on criminal and civil disputes and hear any appeals from the lower courts.
* The Specialized Courts adjudicate over various types of matters excluded from the jurisdiction of the High Courts and Magistrates’ Courts. These include adjudication on labour, land, electoral and competition matters.
	+ 1. The programme achieved 15 of 18 or 83% of indicators for 2015/16:

**Table 3:Judicial Support and Court Administration– Selected performance 2015/16 and First Quarter 2016/17**

| **Performance indicators** | **Performance****2015/16** | **Performance** **First Quarter 2016/17** |
| --- | --- | --- |
| Number of Superior Courts performance monitoring reports produced  | **NOT ACHIEVED**2 reports against a target of 3 | **ACHIEVED**1 against a quarterly target of 1 and annual target of 5 |
| % of warrants of release delivered within a day of the release granted | - | **NOT ACHIEVED**85% against a quarterly and annual target of 100% |
| % of cases finalised (CC)  | **NOT ACHIEVED**75% against a target of 80% | **NOT ACHIEVED**31% against quarterly and annual target of 80% |
| % of cases finalised (SCA)  | **EXCEEDED**83% against a target of 80% | **EXCEEDED**83% against a quarterly and annual target of 80% |
| % criminal cases finalised with verdict (High Courts) | **NOT ACHIEVED**36% against a target of 62% | **NOT ACHIEVED**43% against an annual and quarterly target of 64% |
| No. criminal cases on the backlog roll (High Courts) | **EXCEEDED**137 against a target of 206 | N/A |
| % of civil cases finalised (High Courts) | **EXCEEDED**63% against a target of 52% | **EXCEEDED**66% against an annual and quarterly target of 54% |
| % of reserved judgments finalised (High Courts) | **EXCEEDED**72% (3 168 of 4 393) against a target of 70% | **EXCEEDED**75% against a quarterly and annual target of 70% |
| % of land claim cases finalised | **EXCEEDED**52% against a target of 50% | **EXCEEDED**67% against a quarterly and annual target of 54% |

* + 1. Key issues emerging:
* In the Constitutional Court, there was a marked increase in the number of cases (almost double) for finalization, as a result of its increased jurisdiction and that all 11 Justices must hear a matter. This has adversely impacted on the rate of finalisation of cases. This trend continues in the First Quarter of 2016/17.
* The High Court, in particular, underperformed in respect of reaching its target for the finalization of criminal cases with verdict. This is attributed to dependencies on other stakeholders that, in turn, delays the finalisation of criminal cases. The OCJ reports that the matter is being dealt with by the Provincial Efficiency Enhancement Committees (PEECs).
* In the High Court, the target for the percentage of reserved judgements finalized was exceeded (72% against a target of 70%). This trend continues in the First Quarter 2016/17. The recently established Judicial Performance Monitoring Committees chaired by the responsible Judge President will also assist to improve performance.
* In the Specialised Courts, the following can be noted: Performance relating to the finalisation of land claims cases improved in the Fourth Quarter. The challenges identified in the Land Claims Court relate to dependencies on other stakeholders, the parties’ unpreparedness; and difficulties securing evidence and expert reports. Improved performance in the Specialized Courts is once more observed in the First Quarter of 2016/17.
	1. **Programme 3: Judicial Education and Support**
		1. Judicial Education and Support provides education programmes to Judicial Officers, including policy development and research services for the optimal administration of justice.
		2. The programme has the following sub-programmes:
* The South African Judicial Education Institute (SAJEI) provides judicial education for Judicial Officers and training of aspirant Judicial Officers.
* The Judicial Policy and Research subprogramme provides advisory opinions on policy development, research and regulatory support services to enhance the functioning of the Judiciary.
	+ 1. The programme met 1 of 3 or 33% of its indicators for 2015/16:

**Table 4:** **Judicial Education and Support - Performance indicators and annual targets**

|  |  |  |
| --- | --- | --- |
| **Performance indicators** | **Performance****2015/16** | **Performance** **First Quarter 2016/17** |
| No. judicial education courses conducted | **Not achieved**59 against a target of 65 | **EXCEEDED**9 against a quarterly target of 5 and annual target of 70 |
| % disclosure for Judges Registrable interest  | **NOT ACHIEVED**99.6% (241 of 242) against a target of 100% | - |
| No. of legal advisory opinions on policy development and regulatory services provided (Revised 2016/17: within 15 days of receipt) | **EXCEEDED**38 against a target of 14 | **EXCEEDED**100% against quarterly and annual target of 80% |

* + 1. Key issues emerging:
* Although the targets relating to judicial training were met, the planned training took place in the final Quarter of 2015/16. The reasons given for the underperformance during the year were: late and insufficient RSVPs for some courses; late review of training material; and the unavailability of facilitators.
1. **Committee’s observations**

The Committee makes the following observations:

* 1. The Committee has expressed itself previously on the need for rapid transformation of the legal system. In its view, a transformative agenda that focuses largely on redressing structural inequality does not go far enough as there is need to transform the substantive law as well. The Committee is aware that policy development lies with the Executive Authority and is pleased at the progress that is being made in this regard. However, the Committee believes that the Judiciary has a vital role to play in transforming our legal system to ensure that proper recognition is given to indigenous African law and that the opportunity to develop a legal jurisprudence infused with the principles of Ubuntu is not lost.
	2. The Committee intends to arrange to meet with the Chief Justice and Heads of Court as soon as possible to confer on matters of mutual interest, including the advancement of broader transformative issues and court performance.
	3. The Committee is extremely concerned at the lack of progress in resolving land claims and, in particular, the role of the Land Claims Court in this regard. Despite an increase in the case finalisation rate, the Committee does not believe that the Court is doing enough. The land question is at the heart of poverty, unemployment and inequality: the failure to settle land claims in a timely fashion may encourage people to take the law into their own hands. The Committee is planning a visit to the Land Claims Court as soon as its programme permits and has identified the need to convene a workshop with stakeholders.
	4. The Committee is generally pleased with the OCJ’s performance and spending to date. The OCJ received an unqualified audit opinion with findings. Although the Committee would have been better satisfied with a clean audit opinion, it is mindful that this is a new department and some challenges are to be expected. The Committee agrees with the Auditor-General’s recommendations regarding the need for regular oversight of progress made against the audit action plan. The Committee, therefore, requests that the OCJ provide more details of its audit action plan and give quarterly reports on:
* The implementation and progress of the action plan.
* The status of key controls.
* The filling of vacancies.
	1. The Committee is disappointed that capacity constraints prevented the OCJ from compiling all of its intended monitoring reports of the norms and standards on the performance of the Superior Courts. The Committee believes that these are very important analytical tools. The Committee observes, however, that that there do not appear to be similar reports for the Lower Courts and asks that the OCJ clarify whether this is so.
	2. The Committee notes that there has been a decline in several indicators for court performance for both the Superior and Lower Courts, including a significant drop in the number of courts hours sat and a reduction in the number of cases finalized with verdict. The responses from various role-players to the Committee’s questions in this regard tend to highlight dependencies on others. At this stage, however, the Committee finds itself unable to say much more, as it does not have enough information regarding the specific challenges being experienced or whether the interventions introduced by the Judiciary are having the desired impact. The Committee, therefore, requests that the OCJ provide a written report setting out the root causes of the decline that is observed and what concrete measures have put in place to address these.
	3. The Committee is concerned about the Constitutional Court’s low case finalisation rate. The Committee accepts the explanation. However, the Court is not required to hear every matter that is referred to it and the Committee questions whether the test provided for in section 167(3)((b)(ii) adequately assists the Court to manage its case load. In addition, the Committee wonders what additional measures have/are being put into place to assist the Court to deal with the increased jurisdiction.
	4. The Committee remains concerned that the allocation for judicial education and training is inadequate to drive a transformative agenda although the budget does increase over the medium term. In the Committee’s view, the SAJEI performs a vital role in supporting transformation initiatives and should be properly resourced if it is to play its intended role. The Committee is interested in its training programme and asks that it is provided with more information in writing. The Committee suggests too that SAJEI look at ensuring that judicial officers are provided with training in indigenous African law and languages.
	5. The Committee requests more information on whether the aspirant women judges training programme still exists? If so, could the OCJ inform the Committee how many aspirant women judges have been trained and been taken up to the judiciary?
1. **Recommendation**

The Committee makes the following recommendation with the Democratic Alliance reserving its position:

* 1. The SAJEI ensure that judicial officers are provided with training in indigenous African law and languages.
1. **Appreciation**
	1. The Committee wishes to thank the Minister and Deputy Minister of Justice and Correctional Services; and the Secretary-General: Office of the Chief Justice and her team for appearing before the Committee.
	2. The Committee also wishes to thanks the Auditor-General SA for briefing the Committee on the OCJ’s audit outcomes for 2015/16.

**Report to be considered**