**5. THE BUDGETARY REVIEW AND RECOMMENDATIONS REPORT OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES ON THE OFFICE OF THE CHIEF JUSTICE, DATED 18 OCTOBER 2017**

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

1. **Introduction**
	1. The Money Bills Procedure Amendment and Related Matters Act 9 of 2009 sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department. 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. The annual review of expenditure and performance for 2016/17 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 for the Superior Courts, Judicial Services Commission (JSC) and South African Judicial Education Institute (SAJEI) were transferred to the OCJ, together with the budget and personnel, from the Department of Justice and Constitutional Development. The funds for judges’ salaries were also transferred to the new Vote.
	3. On 10 October 2017, the Committee engaged with the Office of the Chief Justice on its annual performance and spending for 2016/17. The Committee met earlier with the OCJ on its service delivery performance and spending for the First Quarter of 2017/18 and reports on that meeting as part of this process.
	4. The Committee met with the Auditor-General on the audit outcomes for the Vote on 3 October 2017.
	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 proclaimed the Office of the Chief Justice (OCJ) as a national department within the public service. The intention was that this would be the first phase towards an independent judiciary-led court administration system to realise fully the Judiciary’s institutional independence in line with the Constitution, 1996, 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.
3. **Strategic priorities 2015 – 2019**
	1. The National Development Plan (NDP) recommends a judiciary-led independent court administration. To strengthen judicial governance, the NDP also identifies the need for a strategy to improve the quality of judges through appointments and the scaling up of judicial training.
	2. The OCJ contributes to the National Development Plan’s call for strengthened judicial governance and the rule of law, and also to ensuring an efficient and effective criminal justice system in support of Outcome 3 of the Medium Term Strategic Framework 2014-2019 (MTSF) – ‘All people in South Africa are and feel safe’. In addition, the OCJ contributes to creating a capable state by:
* Accelerating reforms to implement a judiciary-led court administration.
* Ensure an efficient court system.
* Reduce court administration inefficiencies.
* Ensure judicial accountability.
* Provide training to the judiciary though SAJEI.
	1. 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 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. In 2017/18, the OCJ has revised its indicators to reflect performance that is in its control and mandate.
1. **Audit outcomes**
	1. The OCJ received an unqualified audit opinion with findings on:
* The usefulness and reliability of the reported information in respect of Programme 2: Judicial Support and Court Administration. The reported achievement was misstated for the following indicators:
	+ Percentage of default judgements finalised by Registrars.
	+ Percentage of taxations of legal costs finalised.
	+ Percentage of warrants of release delivered within one day of the release granted.
* Material misstatements in the financial statements, which were subsequently corrected during the audit process with the exception of the reported information for the three indicators identified in respect of Programme 2: Judicial Support and Court Administration.
	1. With regard to the predetermined objectives, the Auditor-General highlighted that Management must construct 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 material misstatements to ensure reliable reporting of performance information. This is because of inadequate supervision and review during the performance reporting process. 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. The Auditor General noted that the OCJ has improved compliance with legislation.
1. **Financial performance**
	1. **Budget allocation**
		1. The OCJ received R1.8 billion for 2016/17 and is allocated R2 billion for 2017/18. These amounts include a direct transfer for judges’ salaries. The budget is expected to increase to R2.1 billion and R2.2 billion in 2018/19 and 2019/20 respectively.

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

| **Programme** | **Adjusted Appropriation 2016/17** | **MTEF** |
| --- | --- | --- |
| **2017/18** | **2018/19** | **2019/20** |
| **R’000** | **R’000** | **R’000** | **R’000** |
| Administration | 144 999 | 198 991 | 213 717 | 240 468 |
| Superior Court Services | 679 052 | 737 470 | 771 333 | 813 246 |
| Judicial Education and Support | 49 939 | 82 104 | 85 923 | 90 198 |
| **Subtotal** | 873 990 | 1 018 565 | 1 070 973 | 1 143 912 |
| **Direct Charge:** * Judges’ Salaries
* Transfers & subsidies
 | 950 057868 15381 903 | 966 060908 24157 819 | 1 022 091960 91861 173 | 1 098 5461 033 94864 598 |
| **Total**  | 1 824 047 | 1 984 625 | 2 093 064 | 2 242 458 |

* + 1. The operationalization of the Superior Courts Act is prioritised over the medium term. The OCJ, therefore, receives an additional R134 million over the MTEF, as follows: R58 million in 2017/18, R34 million in 2018/19 and R42 million in 2019/20. 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. The OCJ also receives R18.8 million in 2017/18 and R2 million in 2018/19 to facilitate the appointment and training of judicial officers. Overall, the Superior Court Services programme receives the largest share of the allocation to programmes (at 72%).
		3. The allocation to programmes is as follows:
* The allocation for Administration increases from R145 million in 2016/17 to R199 million in 2017/18. In 2017/18, the spending focus for this programme will be on capacitating the OCJ by reducing the vacancy rate and by implementing the ICT Master Systems Plan to ensure effective support to the Judiciary and the courts.
* The allocation to Superior Court Services increases from R679 million in 2016/17 to R737 million in 2017/18. The spending focus over the medium term remains that of improving the court system through effective and efficient case-flow management.
* The allocation for Judicial Education and Support Services increases from R50 million in 2017/17 to R82 million in 2017/18. However, R13.1 million of the increase is because of the shift of the Judicial Services Commission subprogramme to this programme. The spending focus is on capacitating the South African Judicial Education Institute in support of the NDP and ensuring that the Institute delivers on its mandate. Notably, a total of 246 judicial training and educational courses are planned for 2017/18.
	+ 1. The number of posts at the OCJ is expected to decrease over the medium term from 2 645 in 2016/17 to 2 559 in 2019/20 because of cabinet-approved reductions for spending on compensation of employees.
	1. **Spending 2016/17 and First Quarter 2017/18**
		1. In 2016/17, the OCJ spent R855.6 million or 97.9% of the final allocation of R873.9 million for programmes with underspending of R18.4 million. If the Direct Charges are included, total spending at year-end remains at 97.9 %, with underspending of R37.7 million.
		2. The OCJ reports that the underspending is because it is unable to afford the carry through costs if it were to appoint new staff.
		3. Expenditure at programme level was as follows:
* Administration spent R139 million of a final allocation of R142.2 million. There was R3.1 million in underspending on the compensation of employees’ budget.
* Judicial support spent R685.6 million of a final allocation of R699.4 million. There was underspending of 13.9 million mainly found under the compensation of employees’ budget.
* Judicial Education and Research spent R30.9 million of a final allocation of R32.4 million. Again underspending of R1.4 million is found under the compensation of employees’ budget.
* Under the Direct Charges, underspending of R19.4 million is because a lower number of gratuities than projected were paid out to Judges.
	+ 1. In the First Quarter of 2017/18, the OCJ spent R471.8 million of a projected budget for the Quarter of 482.2 million or 22% of its annual budget of R1.9 million.
1. **Performance**
	1. Overall performance compared to expenditure was as follows:
		1. In 2016/17, the OCJ improved its performance to achieve 85% of its planned targets spending 97.9% of the final allocation for programmes to achieve this.
		2. Performance at the end of the First Quarter 2017/18 is 93% with a total expenditure of 22% of the annual budget.
	2. **Programme 1: Administration**
		1. The purpose of this programme is to provide strategic leadership, management and support services to the department. The programme consists of the following sub-programmes:
* The Management subprogramme provides administrative, planning, monitoring, evaluation, performance reporting and risk management functions necessary to ensure effective functioning of the department.
* The Corporate Services subprogramme provides integrated Human Resources Management (HRM), Information and Communication Technology (ICT) and security management support services to the department.
* The Finance Administration subprogramme provides overall financial, asset and supply chain management services to the Judiciary and the department.
* The Internal Audit subprogramme provides overall internal audit and risk management services to the department and the superior courts.
* The Office Accommodation subprogramme provides for acquisition of office accommodation for the department.
	+ 1. Although there are no major changes to the programme structure in 2017/18, Risk Management, which was previously paired with Internal Audit, now falls under the Management subprogramme.
		2. In 2016/17, the OCJ met or exceeded 6 or 75% of its 8 performance indicators (compared to 71% in 2015/16).
		3. In the First Quarter of 2017/18, the OCJ reports that it met all of its 5 planned targets:

**Table 2: Administration: Selected performance 2016/17 and First Quarter 2017/18**

| **Performance Indicator** | **Performance****2016/17** | **Performance** **First Quarter 2017/18** |
| --- | --- | --- |
| ICT Master Systems Plan developed and implemented over MTEF | Partial implementation of the ICT Master Systems Plan | **-** |
| % of reported fraud cases investigated within 60 days | 83% against a target of 100% | - |

* 1. **Programme 2: Judicial Support and Court Administration**
		1. This programme provides judicial support and court administration services to the Superior Courts. The programme consists of the following sub-programmes:
* The Administration of Superior Courts subprogramme provides administrative and technical support to the Superior Courts, monitors the overall performance of the Superior Courts, and enhances judicial stakeholder relations.
* The Constitutional Court subprogramme funds the activities and operations of the Constitutional Court.
* The Supreme Court of Appeal subprogramme funds the activities and operations of the Supreme Court of Appeal.
* The High Courts’ subprogramme funds the activities and operations of the various high court divisions.
* The Specialized Courts subprogramme funds the activities and operations of the labour, land, electoral and competition courts.
	+ 1. This programme has been renamed “Superior Court Services” to reflect the shift of the judicial support function, which includes the Judicial Services Commission, to Programme 3: Judicial Education and Support.
		2. In 2017/18, all performance indicators and targets for the programme that address court performance have been removed, leaving only those that relate to quasi-judicial performance.
		3. The programme achieved 6 of 7 or 86% of indicators for 2016/17:
		4. In the First Quarter 2017/18, the OCJ reports that it achieved 5 of 6 or 83% of planned targets.

**Table 3: Judicial Support and Court Administration – Selected performance 2016/17 and First Quarter 2017/18**

| **Performance indicators** | **Performance****2016/17** | **Performance** **First Quarter 2017/18** |
| --- | --- | --- |
| Number of Superior Courts performance monitoring reports produced  | **NOT ACHIEVED**2 reports against a target of 3 | **ACHIEVED**2 against a quarterly target of 2 with an annual target of 5 |
| % of warrants of release delivered within a day of the release granted | **NOT ACHIEVED**88% against a target of 100% | **EXCEEDED**100% against a quarterly and annual target of 98% |
| Number of training workshops for Registrars, Statisticians and Registrars Clerks on case-flow management  | **ACHIEVED**4 of 4 | **NOT ACHIEVED** 0 against a target of 1 with an annual target of 4 |

* 1. **Court Statistics 2016/17**

**Table 4: Selected court statistics 2016/17**

| **Performance indicators** | **Performance** **2016/17** |
| --- | --- |
| % of cases finalised (CC)  | 74% against quarterly and annual target of 80% (297/402) |
| % of cases finalised (SCA)  | 93% against a quarterly and annual target of 80% (226/244) |
| % criminal cases finalised with verdict (High Courts) | 54% against an annual and quarterly target of 64% (I 061/1 955) |
| No. criminal cases on the backlog roll (High Courts) | 142 against a target of 156 |
| % of civil cases finalised (High Courts) | 67% against an annual and quarterly target of 54% (93 872/140 630) |
| % of reserved judgments finalised (High Courts) | 73% against a quarterly and annual target of 70% (3 080 0f 4 219) |
| % of land claim cases finalised | 57% against a quarterly and annual target of 54% (229/403) |

* 1. **Programme 3: Judicial Education and Support/Research**
		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 name has been amended from “Judicial Education and Research” to “Judicial Education and Support” to reflect the shift of the Judicial Service Commission subprogramme from Superior Court Services to this programme.
		3. The programme has the following sub-programmes:
* The South African Judicial Education Institute subprogramme funds the activities of the SAJEI to provide training for Judicial Officers.
* The Judicial Policy, Research and Support subprogramme funds the provision of advisory opinions on policy development and regulatory services to the Judiciary and the Department.
* The Judicial Service Commission subprogramme provides secretariat and administrative support services to the Judicial Service Commission to perform its constitutional and legislative mandates effectively.
	+ 1. In both 2016/17 and in the First Quarter of 2017/18, the programme met all 3 or 100% of its indicators.

**Table 5:** **Judicial Education and Support – Selected performance indicators and annual targets**

|  |  |  |
| --- | --- | --- |
| **Performance indicators** | **Performance****2016/17** | **Performance** **First Quarter 2017/18** |
| No. judicial education courses conducted | **EXCEEDED**90 against a target of 70 | **EXCEEDED**16 against a quarterly target of 11 and annual target of 77 |
| M&E Framework for judicial training and education developed and implemented | **ACHIEVED**Approved | **-** |
| 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 85% |
| No. of reports on judicial appointments and complaints produced  | **-** | **ACHIEVED**1 against a quarterly target of 1 and annual target of 3 |

1. **Committee’s observations**

The Committee makes the following observations:

* 1. While the Committee is acutely aware of the need for fiscal restraint, it is extremely concerned about the impact of the present funding constraints on the OCJ’s ability to deliver on its mandate. The OCJ has a relatively small budget (it receives approximately 0.5% of the allocation to the public order and defence function), in which it must achieve a great deal. During the 2016/17 budgetary process, National Treasury implemented a ceiling on the budgets of all state entities relating to Compensation of Employees. The Committee is informed that the OCJ had pointed out to Treasury that the application of a ceiling on the OCJ’s budget would result in the non-implementation of the Superior Courts Act, 2013. The OCJ indicated further that full use of the ceiling for 2017/18 would erode the ceilings for the 2018/19 and 2019/20 financial years. The effect of the current year’s ceiling of R615 million, if fully utilised, is that there will be a projected budget shortfall of R13.6 million in 2017/18, R16.2 million in 2018/19 and R20.9 million in 2019/20. This would constitute unauthorised expenditure, which is an option that cannot be supported. At present, the OCJ is unable to fill any new posts in order to increase much needed capacity to support the courts. The most critical area of pressure is for capacity to the Judges President to support judicial functions. This has also affected the OCJ’s ability to appoint staff for the new Mpumalanga High Court.
	2. The Committee also intends to arrange to meet with the Chief Justice and Heads of Court to confer on matters of mutual interest, including the advancement of broader transformative issues and court performance.
	3. The Committee finds the statistical information contained in the Annual Report very useful. At present, it is unable to comment with any certainty on efforts to improve the overall performance of courts, as neither the Justice Department nor the OCJ report data that will allow the Committee to make such an evaluation. In short, the situation is entirely unsatisfactory for the purposes of exercising oversight. The Committee is aware that court performance is a judicial function and agrees that it would be entirely inappropriate for it to engage with an official about delays in the delivery of judgements, for example. The Committee will engage with the Judiciary about putting in place an appropriate mechanism to address accountability for court performance as an interim measure, until the matter is resolved finally by way of legislation.
	4. The Committee is generally pleased about the alignment of the OCJ’s performance with spending.
	5. 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 relatively 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 implementation of the audit action plan. The Committee, therefore, requests that the OCJ include the following in its quarterly reports:
* The implementation and progress of the action plan.
* The status of key controls.
* The filling of vacancies.
	1. The Committee is pleased that the OCJ has overcome its capacity constraints that prevented it 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.
1. **Recommendation**

The Committee makes the following recommendation:

* 1. The Committee recommends that additional funds are made available to the OCJ for the operationalisation of the Mpumalanga High Court, as well as for the implementation of the Superior Courts Act, 2013, in particular, for additional capacity to the Judges President for judicial functions.

**Report to be considered**