Political Overview by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery, MP, on behalf of the Minister of Justice and Correctional Services on the Occasion of the Presentation of the Briefing by the Department of Justice and Constitutional Development to the Portfolio Committee on Justice and Correctional Services, 10 October 2018

Acting Chairperson  
Honourable members  
                          
Firstly, I wish to extend to the Committee the greetings of the Minister of Justice and Correctional Services, who cannot be here this morning as he is attending the 57th Annual Session of the Asian-African Legal Consultative Organisation in Japan.

1.            As we near the end of the MTSF, we must assess how the performance of the Department as a whole, and the extent to which our policies and programmes, have improved the lives of the people of our country.

2.            In the Annual Report we reflect on progress we have made towards the finalisation of key transformative legislation and implementation of policies and programmes in advancing government’s programme of action.

3.            In the year under review, a significant proportion of our R12 billion allocated budget, estimated at 73%, was spent on the compensation of employees whose responsibility it is to deliver services across the length and breadth of the country, in pursuance of the Department’s vision of “Justice for All in South Africa”.

4.            The country’s slow economic growth continued to affect the **departmental budget in 2017/18.** The situation was further exacerbated by the reprioritisation of spending towards tertiary education to assist middle-income families.

5.            Despite the austerity measures the Department continues to prioritise posts that are critical to service delivery and the optimum functioning of the courts. The filling of most of the critical posts, totalling of 217 in Court Services to the amount R58 million, are at different stages of the recruitment process.

6.            Despite the severe budget cuts, we have continued to fill vacancies of Magistrates.  The Minister has, since April 2017, filled the positions of 1 Regional Court President (for North West, to take office on 1 November), 1 Chief Magistrate (1 October) and 48 Senior Magistrate and 178 entry-level magistrates. The advertisements for the next round of interviews have been placed and it is envisaged that the interviews will be conducted by the end of the year.

7.            Budget cuts meant that a number of projects could not be completed in line with departmental plans. These included the conversion of backlog courts to permanent courts where the needs are permanent in nature.

8.            The mandate of the Department includes programmes to promote access to justice delivered through 722 Lower Courts across the Republic which services are managed through the **Court Services** Branch of the Department.

9.            The Infrastructure Programme of the Department extends to the Office of the Chief Justice and the National Prosecuting Authority.

10.          Key problem areas were the Limpopo High Court in Polokwane and Mpumalanga High Court in Mbombela.  The recurring day to day maintenance challenges in respect of the Limpopo High Court are domestic water shortage, rising underground water flooding the underground parking area , leaking water pipes, faulty roller-up shutter security doors, lifts constantly get stuck and bulbs blowing up, due to problems with the electricity supply.

11.          With regard to the Mpumalanga High Court the Department, after missing the initial target date for completion of the construction of the left-in-left out access route into the court house from the Samora Machel main thoroughfare, is pushing hard for the completion of same by December 2018.  The land for the site, like in the case of the Limpopo High Court, was donated land.

12.          These challenges which are being addressed by the Director-General and his counterpart in the Department of Public Works and these have also been escalated to the level of Ministers.  The Department will also share with the Committee some of new courts that will be finalised in the remaining months of the current financial year and these include Bityie in Eastern Cape, Booysens in Gauteng and Plettenberg Bay in the Western Cape.

13.          The justice service offerings we provide also include services of the **Office of the Master** through its 15 Offices across the country and in the Lower Courts, covering deceased estates, insolvencies, the registration of trusts and payment of dependents’ benefits being administered under the Guardian’s Fund.

14.          The **Office of the State Attorney**, which through 13 offices across the country, delivers state litigation services to all their clients, while the Office of the Chief state Law Advisor, which has a presence in both of the country’s Administrative and Legislative Capitals, provides legal opinions on matters pertaining to the Constitution, drafts Bills and international and other legal instruments involving organs of the State.

15.          The procurement of outsourced services by the State Attorney was raised by the Auditor-General as a significant matter of non-compliance with the procurement framework.  As you are aware, the principles relate to transparent, fair, competitive and cost effectiveness processes. The transformation of the legal profession has also been a major concern of the public in the past.

16.          To this extent, the Department has started various processes so as to transform the profession and to align its processes accordingly.  Policies on the briefing of counsel and related tariffs have been formulated and the Department is also reporting, on a monthly basis, on its website, the allocation of work in accordance with these policies.  The amount/value of the briefs are not shown, as the advocates’ profession have not been keen to have to information made public. My personal view is that, since it is public funds, it should be made public.

17.          The Department is also at an advanced stage in researching the suitability of the establishment of a framework contract with the assistance of the National Treasury in this regard.

18.          Much progress has been made regarding the transformation of **state legal services**. A business case to consolidate the transformation of the delivery of state legal services to be effective, efficient and economical as well as produce quality legal outcomes to serve the needs of the State has been prepared. The business case provides an analysis of the current context of State Legal Services and its challenges, which informs the desired outcomes to be achieved from a transformed service. It also considers the finances as well as the financial model suited to the operation of a transformed State Legal Services.   An Implementation Plan to transition from the current to the proposed transformed state legal service, as well as a State Legal Services SA Bill has been developed.   It is envisaged that we will conclude it within this 4th quarter where after it will be submitted to Cabinet for in principle approval to initiate the formal consultation process. The merging of the State Attorneys offices and the State Law Advisers offices is being proposed.

19.          The prevention and combating of **gender-based and sexual violence** remain high on our Departmental agenda. The Department continued with the roll-out of sexual offences courts. An additional 17 court rooms were adapted in line with the sexual offences model and this brought the total number of court rooms adapted to 75.

20.          The improved conviction rate in sexual offences of 72,7% is an all-time high, reflecting a firm commitment to deliver justice for the most vulnerable members of society: the victims of sexual offences and gender based violence.

21.          The SOCA unit established 55 operational TCC’s, in support of the victims of crime. Funds have been allocated from the CARA for the rollout of another 5 TCC’s over the next 3 years. A remarkable conviction rate of 74,5%, with 1 899 convictions, was recorded in relation to TCC reported cases.

22.          The National Forum on the Implementation of the Sexual Offences Act- Bridging the Gap, was held from 30 to 31 October 2017 in Kempton Park. I established a Steering Committee which organised and planned the said National Forum. The Steering Committee comprised various stakeholders and role-players from the side of Government as well as from the side of civil society. The National Forum was structured in such a way as to identify the challenges that continue to hinder the successful implementation of the Sexual Offences Act and to come up with a set of proposals to be formulated for actual implementation.

23.          The draft Sexual Offences Regulations have been the subject of many consultation processes. The draft Regulations were first published for public comments in September 2015.  The draft Regulations also had to be scrutinized in order to determine whether any amendments are required because of the changes effected to section 55A of the Act by the Judicial Matters Amendment Act, 2017.  Due to the complexity of some of the issues raised and the fact that some of the stakeholders have strong but different views about a number of the requirements, the need was identified to have a workshop with all the relevant stakeholders where the revised set of draft Regulations can be discussed.  The workshop took place in July 2018.  Most of the inputs have since been received, the latest of which was received on 5 October 2018.  These comments are being evaluated and the draft Regulations will then be amended where necessary.  Upon completion of this process a final set of draft regulations will be submitted via the Minister to the Chief Justice before finalization in terms of section 67 of the Act. We envisage finalising the draft Regulations during the first quarter of next year. The regulations will contain a minimum set of standards for Sexual Offences Courts.

24.          With regards to **child justice**, 75% of preliminary enquiries for children were finalised within 90 days, against a target of 55%. The Child Justice Amendment Bill was tabled in Parliament last week.

25.          We remain on course to complete the **rationalisation of magisterial districts** in all provinces by the end of the term of the 5th Administration.  To date, the project has been rolled-out in six provinces, with the North West being completed in May this year, the Free State and the Northern Cape to be completed by the end of the year, and the Eastern Cape, KwaZulu Natal and the Western Cape targeted for finalisation by 31 March 2019.   Through the process of rationalising the courts we ensure that there is at least one magistrate’s courts in every municipal area, District or Local Municipality.  Therefore the outcomes of the rationalisation process points to areas in dire need of court infrastructure.

26.          With regards to **court performance,** this is an area which the Chief Justice views as falling within the responsibility of the judiciary. However, there are other role-players such as interpreters, clerks of the court, transcribers and so forth which are not part of the judiciary and thus other aspects which fall outside the purview of the judiciary. Great strides have been made to ensure that high conviction rates were maintained and improved on, in all court forums. Historically, the high courts have fluctuated from 91% in 2014/2015, 89.9% in 2015/2016, back to 91% in 2016/2017 and then to 91.7% for the period 2017/2018 against a target of 87%.

27.          The regional courts have also gradually increased from 76.6% in 2014/2015 to 78.4% in 2015/2016, 79,8% in 2016/2017 and 81% in 2017/2018 against a target of 74%. In the district courts, we have increased our performance from 94.2% in 2014/2015 to 94.7% and 95.6% in the years thereafter, with 96.1% in 2017/2018 against a target of 88%. The performance of the 2017/18 financial year represents the best conviction rate performance over the last two decades.

28.          With regards to **remand detainees,** the Department, in conjunction with the Justice, Crime Prevention and Security (JCPS) Cluster Departments and the respective justice entities, have put in place measures to monitor the status of all persons awaiting the finalisation of their cases for long periods.

29.          Backlog cases are those cases on the roll longer than 6 months in the district court and 9 months from enrolment in the court till finalisation.  The Chief Justice has in his norms and standards for all courts indicated that in terms of criminal matters accused must plead before 3 months after enrolment and the matter must be finalised within 6 months.

30.          Once a case is longer on the roll than the 6 /9 months, the matter is to be provided preferential treatment and should be prioritised before any other newer matter.  Thus the oldest cases must be prioritised.  In this regard the NPA, Legal Aid and magistracy is monitoring the long outstanding cases and discusses them at Regional and District Efficiency Enhancement Committies and at Case flow management forums.  The NPA is also pushing for pre-trial hearings in the lower courts to ensure all issues including investigations are finalised as soon as possible and that the cases when enrolled for trial are ready to be adjudicated.

31.          The challenges preventing finalisation within the periods indicated are, amongst others, that the matters going to trial are more complex with many accused (especially in the regional courts); resource constraints with less legal aid representatives available requiring longer postponements, and less prosecutors.  Blockages such as interpreters (especially regarding foreign national cases); transcription services taking long, equipment or system issues also impact on cases having to be postponed.

32.          With regards to the magistracy, a key aspect of accessible justice is **transformation** and we have indeed made significant inroads in terms of appointing magistrates that broadly reflect the demographics of our country. In fact, if we compare the race and gender breakdown of the magistracy in 1998 with the position at the end of February 2018, there has been an increase of 163% of black magistrates and a 249% increase of women in our magistracy. The number of African female magistrates has increased from 62 in 1998 to 472 in 2018 – an increase of 661%.

33.          Key pieces of **legislation** were finalised during the 2017/18 financial year. The Protected Disclosures Amendment Act was assented to in August 2017 and aims to give greater protection to whistle-blowers in the workplace by extending the application of the Protected Disclosures Act beyond the traditional employer and employee relationship. It also criminalises deliberate false disclosures. The regulations in terms of this Act were gazetted in September.

34.          The Courts of Law Amendment Act protects the poor from actions of unscrupulous persons in the debt collection industry. By aligning the 1944 Magistrates’ Courts Act with the requirements of a Constitutional Court judgment affecting emolument attachment orders (EAOs), the Courts of Law Amendment Act seeks to ensure that presiding officers considering issuing an EAO take account of factors such as the size of a debt, the circumstances in which it arose, available alternative recovery options, a judgment debtor’s income; the rights and needs of vulnerable people and children likely to be affected by an EAO and how much of the debtor’s income is required to meet basic living expenses and those of his/her dependents.

35.          The **Justice Administered Fund Act** creates a new Fund and provides a proper statutory framework for the management and accounting of monies held in trust on behalf of third parties, such as bail and maintenance payments. This Act has been implemented with effect from 1 April 2018.

36.          A Draft Framework for the **restructuring of the** **lower courts** was developed towards the end of 2016 that formed the basis for the current process that is underway for the redrafting of the Magistrates Act of 1993 and the Magistrates Court Act of 1994. Towards the end of January 2017 I held a consultative meeting with the Regional Court Presidents Forum, the Chief Magistrates Forum as well as representatives from ARMSA and JOASA to seek their inputs on the draft Framework. The DOJCD then commenced with the drafting of the two Lower Courts Bills (‘Magistrates Courts Bill and the Magistrates Bill’) and a follow up meeting with them on took place on 9 April 2018.  It was decided that the magistracy be afforded a further opportunity to provide written comments and that the magistracy should designate magistrates from their midst to form part of a specialist task team to assist with particular reference to the provisions proposed by the Rules Board for Courts of Law, which have a bearing on civil procedure.

37.          The specialist task team met in July 2018 and the drafter is currently working on the inputs received. It is envisaged that the DOJCD will submit a revised Magistrates Bill to the Minister within the next two months and this will then also enable us to engage with the Chief Justice. A revised Magistrates Courts’ Bill should be ready for discussion early in 2019.

38.          I am pleased to inform the Committee that the Regulations dealing with the appointment of magistrates, as well as a new code of judicial conduct for magistrates (the code of conduct is very much in line with that of judges) - after  recommendation by the Magistrates Commission was approved and was gazetted on 7 September 2018. Newly appointed magistrates will no longer be subjected to a ‘probation period’ before they are permanently appointed, but will still be required to attend a course before commencing  with the functions of a judicial officer, the content and extent of which must be decided by the SAJEI Council.

39.          The draft **regulations**dealing with the **leave** of magistrates have also been recommended by the Magistrates Commission and published for further comment.  It will again serve before the Magistrates Commission at the end of November 2018 and it is envisaged that it will gazetted with effect from 1 January 2019. (Magistrates will in the future no longer be able to accumulate leave and will have to take it within a three year cycle. Some magistrates have accumulated hundreds of days leave that must be paid out to them when they retire/resign with great financial implications to the fiscus.)

40.          The **Legal Aid** SA will be presenting their report. It is important to highlight that the Legal Aid Act No. 39 of 2014 was fully operational and the Legal Aid Regulations (policy provisions) and Manual (procedural provisions) were approved and gazetted. Sound financial management in 2017/18 resulted in the 17th consecutive unqualified audit from the Auditor-General SA which is also a clean audit. The organisation utilised 98.7% of its budget.

41.          Contemporary human resources practices resulted in Legal Aid SA being awarded a Top Employer accreditation for the 9th consecutive year and a leader in the public sector for the 3rd year, as well as being named one of the Top 20 Employers in SA. High recruitment level of 95.1% and low turnover of 6% was maintained.

42.          Going forward the biggest challenge facing legal Aid SA is that of fiscal constraints. The reduction of staff could also result in a reduced coverage of criminal courts.  
43.          This year, the SIU once again received a clean, unqualified audit report from the Auditor General South Africa, meeting eight out of its nine targets and concluded 15 comprehensive investigations. A Proclamation was issued in July for the SIU to investigate State Attorneys for collusion with private attorneys.

44.          One of the departments that showed resilience during the 2017/18 financial year is the **Office of the Chief Justice.** The OCJ will also do their own presentation to the Committee. It is important to highlight that the transformation of the Judiciary remains one of Government’s mandate as a constitutional imperative. To this end, it is reported in the Annual Report that out of 250 Judges in the Superior Courts establishment, 184 Judges are black and 90 are women. We do however acknowledge that more still needs to be done in transforming our Judiciary.

45.          We are aware of media reports stating that more than two thirds of reserved judgments in South African courts have been outstanding for longer than the three month period which was set by the Chief Justice. We trust that this will be dealt with by committees such as the National Efficiency Enhancement Committee (NEEC) and the Provincial Efficiency Enhancement Committees (PEECs), which contributes to enhanced efficiency in the performance of the courts.

46.          Finally, it was announced yesterday that the members of the South African Law Reform Commission have been appointed, for a period of 5 years. The members are Judge Narandran Kollapen (chairperson); Irvin Lawrence (vice-chairperson); Professors Mpfariseni Budeli-Nemakonde; Karthigasen Govender and Wesahl Domingo; Advocates Tshepo Sibeko; HJ de Waal SC; Anthea Platt SC, and Herina Margaretha Meinjes SC.

Honourable Members,   
Our Department remain unwavering in our commitment to ensure that there is justice for those who have suffered injustice; freedom for those who are bound by shackles of poverty and inequality; and equality and human dignity for those who have suffered discrimination and prejudice.

Allow me to thank you, the Committee members for your leadership and diligent commitment of your oversight responsibility over this portfolio. Your leadership in this regard is highly appreciated.

I thank you.