Political Overview by the Minister of Justice and Correctional Service, the Hon Ronald Lamola, MP on the Occasion of the Presentation of the Briefing by the Department of Justice and Correctional Services to the Portfolio Committee on Justice and Correctional Services, 03 July 2019

Chairperson the Hon Bulelani Magwanishe;
Honourable members of the Portfolio Committee and other members present
Deputy Ministers for Justice and Correctional Services, Mr John Jeffreys and Nkosi Phathekile Holomisa;
The Director General Vusi Madonsela;
Senior Officials from the Department of Justice and Correctional Services;
All guests present

Honourable Members

Allow me to express my profound gratitude for the privilege of addressing this august Portfolio Committee at its inaugural meeting of the 6th Parliament of our democratic State.

The deliberation over the Annual Performance Plans of the three departments and entities that form the Justice and Correctional portfolio which will be debated over the next few days provides an opportunity to be introduced to each other as we continue the journey of hope and renewal.  As we do so, let me, at this point, congratulate the Honourable Chairperson, the Hon Bulelani Magwanishe, on his election to lead this Committee.  On behalf of the entire Ministry comprising myself, the two Deputy Ministers and the departments and the entities we represent, I wish to assure the Chairperson and Members of the Committee of our cooperation and commitment towards the work under its auspices. We look forward to your esteemed leadership and guidance as we navigate through the tasks, both big and small, that lie ahead.  You can count on our youth-powered energy to go the extra mile.

The people of South Africa have, through the recent national democratic elections, bestowed on all of us to champion the speedy resolution of the persistent challenges of poverty, unemployment and inequality which are clearly outlined in the National Development Plan Vision 2030 (NDP).  Our efforts and by extension the health of our young democracy will be measured against the extent to which we have been able to build an inclusive economy, substantially reduced unemployment, especially amongst the youth, eradicated gender based violence and created a conducive environment for the advancement of the Rule of Law.    It is in this context that we are fully conscious of the important role that the Justice sector must play in advancing the radical socioeconomic transformation agenda to realise those transformative ideals and to grow South Africa together.

Upon my appointment to this portfolio, I have had an elaborate briefing from the previous Minister, Adv Masutha as well as from senior officials from the departments of Justice and Constitutional Development, the Office of the Chief Justice and Correctional Services and some of the entities that fall under the portfolio.  I hope to meet the remaining entities which I could not engage with in the shortest space of time.  I have also been in liaison with the Chief Justice with whom we have agreed to meet soon.  This is very important as the Judiciary does not only play a critical role in this portfolio and government, but is an indispensable cog of the State machinery.  I will, during the budget vote debate later this month, reflect deeply on the aspects I would have canvassed with him as head of the Judiciary.

For purposes of today’s discussion I have been asked to reflect mainly on the Annual Performance Plans of the departments and their respective entities as well as the Budget. I am hopeful that my reflection and the presentation by the departments and their entities will enable the Portfolio Committee to exercise its oversight role over us as the Executive.

As Honourable members would know, we are in a transitional phase towards a new Medium Term Strategic Framework (MTSF). The new MTSF will infuse the priorities that were identified by South Africans during the robust electioneering season that we have just emerged from.  These priorities have been succinctly and unambiguously outlined by the country’s first citizen, President Ramaphosa, in the recent State of the Nation Address. Both the SONA and the areas of emphasis that emanated from our Cabinet lekgotla form our important points as we focus on the work at hand.

The immense mandates of the three departments and a combination of no less than 10 entities and statutory bodies under their ambit underscore the enormity and magnitude of this portfolio. Of these entities, the National Prosecuting Authority, Legal Aid South Africa and the Special Investigating Unit present their separate Annual Performance Plans apart from their mother departments.  The work of the other entities and statutory bodies, amongst them, the Asset Forfeiture Unit (AFU), Information Regulator, SIU Special Tribunal, South African Law Reform Commission, South African Board for Sheriffs, Rules Board for Courts of Law, Council for Debt Collectors, Judicial Inspectorate, National Council for Correctional Services, Legal Practice Council and Provincial Councils and the South African Judicial Education Institute in incorporated into the APPs of their line-function department. Honourable Members will be the full run down of their role and contribution in the Justice value chain.

I will give a reflection of the APPs of the departments and the entities that are required to table their plans to his this august House.

I have decided to defy the advice of our technocrats that I start with the Department of Justice and Constitutional Development and end with Correctional Services and decided to reverse the sequence. The President prefaced his State of Nation Address reminding us of the agony of the devastating effects of the Land Act of 1913 which took effect in the month of June. Furthermore the emphasis on the challenges facing the youth in SONA was in remembrance and the resilience of the generation of 1976 who on 16 June took it upon themselves to fight the tyranny of the apartheid government.

Similarly, the July month is important in the calendar of our constitutional democracy as in 15 days today we will celebrate, together with the world at large, the role and contribution of our world icon and statesman Nelson Mandela.  In honour of the immense contribution that our beloved first President of a free and democratic South Africa, the United Nations adopted what have become known as the Mandela Rules which are the Revised Standard Minimum Rules for the Treatment of Prisoners. These Rules provide a set of universally acknowledged minimum standards for the treatment of inmates.  Our Mission, in honour of Madiba’s remarkable long walk to freedom is to translate these rules into daily reality for inmates in our 243 correctional centres country-wide.

In giving effect to its legislative and policy mandate, over the medium-term, the Department will prioritise providing appropriate services for safe, secure and humane detention in correctional centres and remand detention facilities by means of providing needs-based rehabilitation programmes and interventions to sentenced offenders and reintegrating offenders into communities. The Department has embarked on  projects which are aimed at equipping inmates with agricultural skills and training in the cultivation of vegetables, meat, chicken, fruit and milk production.  It is thus exciting to note that 3,307 inmates have opted for agriculture as a career of choice, and will want to see this number increasing.

Looking at trends over the years, the percentage of sentenced offenders in correctional programmes is expected to remain at 80%.  The number of inmates stood at 162 875 as at 31 March 2019 against the bed spaces of 118 572 which translates to a 37% level of overcrowding. Overcrowding will therefore remain a reality as the Department cannot refuse to detain inmates since this will be equivalent to the breach of section 165(5) of the Constitution of the Republic of South Africa which provides that an order or decision issued by a court binds all persons to whom and organs of State to which it applies.  We are mindful that the challenge of overcrowding in our correctional centres continues to undermine the creation and maintenance of a safe and secure environment for inmates and personnel at the coalface of service delivery as well as delivering efficient and effective rehabilitation. The down management of the inmate population requires an integrated approach which takes into consideration external factors that indirectly and directly drive the population levels. These factors include criminal tendencies in society; increased focus on implementing effective measures to combat and prosecute crime, the unemployment rate, the economic climate of the country, impeding legislation such as mandatory minimum sentences with limited investment on building an efficient and an effective non-custodial system. While the latter will require buy-in from the community at large, it is a critical option for exploration considering the socio-economic status of the country.

It has been brought to my attention that the Correctional Services Act, which is 13 years old, requires a review, given new developments in fields such as restorative justice, child justice, rehabilitation and social reintegration and victim empowerment.  The scenes at the St Albans Correctional Centre which caught the imagination of many South Africans demand that we transform our Correctional Centres from being havens of drug and gang syndicates into proper rehabilitation centres. A point I have observed during my engagement with the different departments and entities is the need to locate law reform across the entire portfolio in place which is ideally the Department of Justice and Constitutional Development.  This in view of its proximity to the work and mandate of the South African Law Reform Commission. This therefore brings me to the DOJ&CD’s APPS.

DCS demonstrated character and courage when it had to in-source provision of nutrition to inmates within six weeks, in its 26 kitchens which were serviced by African Global Operations (AGO), formerly known as Bosasa.

AGO’s contract was terminated in March 2019 and it is a courageous reflection as inmates are now preparing their own meals and no major challenges were reported. The kitchens continue to function optimally and inmates are benefiting in terms of skills attainment.

The insourcing of food services for inmates has in turn opened doors for local businesses to supply perishable and non-perishables food items to DCS. Hence a concerted effort is being made to boost small businesses who generally battle to attract customers and maintain profitability, which often hinges on access to markets.  By stimulating the inclusion of local enterprises, where correctional centres are located, this will translate into ripple effects which must realise job creation through the development of small, medium and micro-enterprises as well as the advancement of designated groups such as youth and women.

Justice and Constitutional Development

The department derive its mandate largely from Chapter 8 of the Constitution titled  “Courts and Administration of Justice” and a maze of legislation that pertains to the administration of justice.  The Department tentacles spread across various chapters of the Constitution in the Bill of Rights. Specific provisions of the Bill of Rights include section 9 on Equality; Section 12 on Freedom and Security of the person; Section 14 on Privacy; Section 28 on Children; Section 32 on Access to Information; Section 33 on Just Administrative Action; Section 34 on Access to Courts; and Section 35 on “Arrested, Detained and Accused Persons. There are several laws administered by the Department which flow from these constitutional provisions, which are aimed at advancing and sustaining constitutionalism and the rule of law. Its mandate extends to the Traditional Courts which are established in terms of Chapter 13 of the Constitution. Therefore the mandate of the department is vast and wide. Attempts to define each area of the Department’s mandate will defeat the purpose of my presentation which is to provide a political overview into which the Director-General and Heads of the Entities supported by their respective teams add the flesh.

Honourable Chairperson,
Allow me to highlight the following aspects which I believe are key to the work of the Department and its entities and the transformation trajectory that many South Africans want to see.  The achievement of these priorities will bring us close to the rallying theme of the Justice Crime Prevention and Security cluster that “All in South are and feel save.”

These briefly relate to the strengthening the fight against corruption; modernisation of the criminal and civil justice system and the courts, acceleration of the transformation of the State Attorney and legal profession and expeditious enactment of key legislation that require this Committee’s urgent attention.

The Department’s Annual Performance Plan for 2019/20 and that of the entities under its auspices lay a foundation on which the sixth administration may begin its work.

Honourable President Ramaphosa, as mandated by the Constitution and the law, has given us all the ammunition we need to tackle the scourge of corruption which has unabatedly eaten the very fruits that must nurture our democracy for the benefit of all South Africans.  In the Prosecution space, the President has revamped the National Prosecuting Authority, given the Institution a new lease of life to redeem its tarnished image of its past.  The appointment of Adv Batohi at the helm of this important Institution followed by the appointment of an Investigative Directorate has restored hope in the fight against crime and corruption. The Department has made the necessary funds available for the Investigative Directorate to commence with its tasks.  In particular the Investigative Directorate will pursue all matters that emanate from the Commissions of Enquiry, namely the SARS Commission of Inquiry, the PIC Commission of Inquiry and Commission of Inquiry into Allegations of State Capture.

Parallel to the work of the Investigative Directorate is the work of the Special Investigating Unit, which has been strengthened through the establishment of the Special Tribunal. This Tribunal will soon commence with the task of clawing back the moneys lost through corruption and other illicit flows. The required regulations for the Tribunal to commence its work have been finalised and have been sent to Judge Makhanya for his comments and they will be gazetted soon. Both Adv Batohi and the Head of the SIU, Adv Mothibi will share their programmes and plans they have put in place to accomplish the targets they have set in their respective APPs.

Other important work that will receive priority relates to transformation of state attorneys and the legal profession at large. I have been appraised of the project which was spearheaded by former Minister Masutha and its culmination into the draft State Legal Services Bill. I will reflect further on this work during the upcoming budget debate.

This past Saturday I had the privilege of meeting with the Legal Practice Council who shared with me the work they are putting forward to transform the legal sector. We were unanimous at the meeting that the finalisation of the legal services charter and the acceleration of the transformation of the criteria for conferring Senior Counsel status to eligible practitioners must be at the top of our priority list. What the charter should assist with is unlocking opportunities for Black and women practitioners to access the legal work in the corporate private sector including banks, State Owned Entities and big conglomerates and companies. The full implementation of the Legal Practise Act which I have committed to give attention to should enable us to open the law market which has been the preserve of the selected few. I am indebted to the Chairperson and the members of the LPC for the constructive engagement and look forward to better cooperation and collaboration as veer into the unchartered territory.

Whilst the previous administrations have undertaken an enormous task in expanding the courts footprint by building new courts, especially in rural and previously marginalised areas, I have already expressed the need to modernise the court system as part of the legacy of the 6th Administration.   We cannot continue to function under the business processes defined by the Criminal Procedure Act of 1977 which does not exploit the efficiencies of the Fourth Industrial Revolution. We cannot, in this time and age, spend millions of rands if not billions to pay physical storage for records kept on paper when some modern jurisdictions are digitising their records, buy paper books when court judgments and publications can be accessed quickly and easily through technology and send police and sheriffs to effect physical delivery of court processes when such can be efficiently done through the use of information communication technology.  The modernisation and digitisation of our work will reduce the need for more space and its attendant cost of employing more staff to manage the manual process and paper.

We are determined to improve the quality of justice in particular the eradication of gender-based violence.  We will, in our APP ensure the full implementation of the Declaration of the Summit on Gender Violence, which the President hosted during the 5th Administration.  The Sexual Offences Courts must be geared towards the immediate reduction of the scourge of gender based violence and sexual offences with an aim toward its complete eradication in a decade’s time.

The DOJCD is part of the Justice Crime Prevention and Security cluster and works jointly with other government Departments and entities towards improvements within the criminal justice system. One of the key initiatives is the development of the Integrated Criminal Justice System, which allows seamless sharing of crime-related information between different entities. By the end of the 2018/19 financial year, at least 1.6 million electronic messages per month were exchanged via this platform.  The increased usage of systems and sharing of data has been most encouraging.

It is with pleasure that I present the Annual Performance Plan of 2019/20 of the Department of Justice and Constitutional Development
As the sixth administration begins, it is appropriate to reflect on the last five years and identify issues that might require the Department’s final efforts going forward. In this regard, the Annual Performance Plan for 2019/20 lays a foundation on which the sixth administration will begin its work.

Legal Aid SA continues to deliver sterling work, having taken on more than 426 000 new matters, finalising over 420 000 and assisting with legal advice in over 305 000 matters in 2017/18.

The long-awaited  National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance has been finalised and was approved by Cabinet on 27 February 2019. The Durban Declaration and Programme of Action adopted by the United Nations’ World Conference against Racism urges States to establish and implement national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerances, including their gender based manifestations. The NAP is not intended to replace existing laws and policies, but rather to be complementary to existing legislation, policies and programmes which address equality, equity and discrimination.

The NAP will provide mechanisms for documenting and monitoring on-going incidents of racism, racial discrimination, xenophobia and related intolerances including establishing a rapid response team, reporting directly to government and broader society, serving as a barometer measuring the extent of the incidents, the circumstances which allow for their continuation and the provision of tools to address them. Furthermore, the NAP is intended to assist South Africa to meet its international treaty and regional obligations in terms of combatting racism, racial discrimination, xenophobia and relates intolerance.

Legislation is a key function of our Department. A number of pieces of legislation, which were submitted to Parliament during the fifth administration, are still to be dealt with by the sixth administration and include:

* The Traditional Courts Bill which has been approved by the National Assembly and has been referred to the National Council of Provinces for consideration;
* The Cyber Crime Bill which was approved by the National Assembly in November 2018 and is awaiting deliberation by the National Council of Provinces and will be considered by the Select Committee in due course;
* The Prevention and Combating of Hate Crimes and Hate Speech Bill, where the National Assembly’s Portfolio Committee on Justice and Correctional Services is currently deliberating on the Bill;
* The State Liability Amendment Bill which is being deliberated by the Portfolio Committee following the finalisation of public hearings on the Bill, and
* The Child Justice Amendment Bill was approved by the National Assembly in November 2018 and has been referred to the National Council of Provinces for deliberation.

As I list some of the important Bills that will be processed through this Committee it is important to alert the Committee of the work under way which is aimed at strengthening the adjudication in relation to land restitution, expropriation of land and land distribution.   I will soon present to this Committee a draft Land Court Bill after we have dispensed with the  consultations of key stakeholders including the Judiciary on the draft.

I have already indicated the need to engage the Chief Justice on the range of initiatives that are postulated in the Annual Performance Pan of the Office of the Chief Justice. I will elaborate further on this, including the government’s commitment to finalise the judicial and court administration model during the budget debate of the OCJ.

As I conclude let me take this opportunity to wish the Committee well in its deliberation over the next few days. I would appreciate the reflection by Honourable Members on this overview which gives the context of the presentation by the departments and their line function entities.

I thank you!