



18 June 2019

VOTE 21: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT - BUDGET 2019

TABLE OF CONTENTS

1. INTRODUCTION.....	1
2. OVERVIEW OF THE 2018/19 FINANCIAL YEAR.....	1
3. POLICY PRIORITIES FOR 2019/20	5
4. BUDGET ANALYSIS.....	7
5. REFERENCES	26

1. INTRODUCTION

Vote 21 comprises **five programmes**, (Administration, Court Services, State Legal Services, the National Prosecuting Authority and Auxiliary and Associated Services), as well as the direct charge against the National Revenue Fund for magistrates' salaries.

Programme 5 (Auxiliary and Associated Services) provides for transfers of funds to Legal Aid South Africa; the Special Investigating Unit; the Public Protector and the South African Human Rights Commission. It also includes the Justice Modernisation subprogramme which; (i) funds the implementation of IT infrastructure for the Department; and (ii) distributes earmarked funds for JCPS Cluster projects for the Integrated Justice System (IJS)).

This paper will compare the budgets for the 2018/19 and 2019/20 financial years in respect of the Administration, Court Services and State Legal Services programmes as well as the Auxiliary and Associated Service programme (focusing on the Justice Modernisation subprogramme).¹

2. OVERVIEW OF THE 2018/19 FINANCIAL YEAR

The **2018/19** Budget for Vote 21 of **R19.26 billion** (or **R17.05 million** if the allocation from the National Revenue fund for magistrate's salaries is excluded) experienced a *real decrease of -3 per cent* from the 2017/18 allocation.

¹ At the time this paper was written the 2019/20 Annual Performance Plan (APP) of the Justice Department was not available.



2.1 Baseline reductions

In the **2018 Budget** Vote 21 underwent **a baseline reduction** of R2 billion over the medium term (R643 million in 2018/19; R667 million in 2019/20 and R705 million in 2020/21.)²

The baseline reduction of **R643 million** in the 2018/19 financial year (included R200 million from the Court Services programme; R43.7 million from the Administration programme; R49 million from State Legal Services programme; R200 million from the NPA; and R92.8 million from Legal Aid South Africa.)³

The Portfolio Committee (PC) expressed deep concern at the adverse effects of these budget cuts in the 2018 Budget Review and Recommendation Report (BRRR).⁴ The PC was particularly worried about the impact of a reduced staff establishment. The BRR Report noted that there, “*is a thin line between a so-called ‘lean’ organisation where the available resources – both human and financial - are used carefully and well and an organisation that is so starved of means that it is no longer able to perform its mandated task.*”⁵ The Committee was of the view that this could undermine the work needed to create a transformed and responsive justice system.

2.2 Adjusted Appropriation

In the **October 2018 Adjusted Budget**, the Vote’s main appropriation of **R19.26 billion** was adjusted **upwards by R409.4 million** to **R19.67 billion**. The increase in the adjusted budget was a result of:

- An additional **R409.4 million** allocated for the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Zondo Commission) and for the Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service (the Nugent Commission).

2.3 Expenditure

By the end of the third quarter of 2018/19 higher than planned spending occurred on item: accommodation charges (Administration programme), as a result of a decision by the Department to settle accruals carried over from 2017/18 in respect of Department of Public Works accommodation charges. On the other hand, prominent lower than anticipated spending occurred on item: implementation of the criminal justice system seven-point plan (Auxiliary and Associated Services Programme). The Department also recorded a gap in personnel numbers of 1 071 as a result of funded vacant posts.⁶

²ENE 2018 Budget Overview (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2018/enebooklets/Overview.pdf>)

³Ibid

⁴ATC181024: Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 24 October 2018 (Accessed at <https://pmg.org.za/tabled-committee-report/3549/>)

⁵Ibid

⁶SCOA Third Quarter Report 2018/19



2.4 Key Challenges

The Committee may wish to take note of the following challenges affecting the Department in 2018/19:

- **Resolving audit issues.** In 2017/18 the Department received a **qualified audit for a second consecutive year.**⁷ The Auditor General (AG) pointed to the failure of Management as a factor in the poor audit outcome.⁸ In 2018/19, to address the issues identified by the AG, the Department reported that a **High Priority Audit Action Plan** was developed and presented to the Departmental Executive Committee (Exco) on 14 September 2018.⁹ The plan focused on strategic High Level Audit Findings and contained 41 findings and 105 planned interventions.¹⁰ The Department identified two key risk areas - (i) procurement of outsourced legal services (where an exemption has been requested from National Treasury); and (ii) resolving of timely and accurate performance information in relation to court performance as well as the accurate recording of magistrates leave.¹¹
- **Allegations of corruption and maladministration at the Office of the State Attorney (OSA).** In July 2018, the President authorised the Special Investigating Unit (SIU) to probe alleged improprieties in the OSA - which has offices in the nine provinces and provides legal services to national and provincial departments. Head of the SIU Adv Mothibi said the investigation team would be given 12 months to investigate the allegations.¹²

In November 2018, it was reported that in Gauteng, the head of the Johannesburg Office of the State Attorney Adv Lekabe was placed under precautionary suspension following alleged collusion with a private advocate.¹³ This followed a judgement from the South Gauteng High Court Johannesburg which described their conduct as "*apparently fraudulent, disgraceful and deceitful*". In July 2018, the Minister of Police had approached the High Court to halt the execution of a judgment that ordered the ministry to pay more than R34-million for the alleged wrongful arrest, detention and shooting of a citizen. The Johannesburg state attorney, Adv Lekabe, and a private Advocate Mr Kajee had previously conceded the liability of the South African Police Service (SAPS) in this claim, although the police Ministry stated it had given express instructions to defend the claim. In August 2018, Judge Thifhelimbilu Mudau found in favour of the SAPS's application to stop the payment. He lambasted Adv's Lekabe and Kajee actions.¹⁴ The Judge noted that this matter "involved allegations of apparent collusion or fraudulent conduct involving millions of public monies."¹⁵

⁷ Department of Justice and Constitutional Development Annual Report 2017/18 p135

⁸ ATC181024: Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 24 October 2018 (Accessed at <https://pmg.org.za/tabled-committee-report/3549/>)

⁹ DoJ&CD Responses to the Budgetary Review And Recommendation Report: Progress Report To The Portfolio Committee on Justice And Correctional Services (November 2018)

¹⁰ Ibid

¹¹ Ibid

¹² EWN, SIU Says Probe Into Corruption At State Attorney's Office To Take 12 Months (Accessed at <https://ewn.co.za/2018/08/14/siu-says-probe-into-corruption-at-state-attorney-s-office-to-take-12-months>)

¹³ Evans J, Lawyers nabbed for alleged fake cerebral palsy lawsuits worth millions (Accessed at <https://www.news24.com/SouthAfrica/News/lawyers-nabbed-for-alleged-fake-cerebral-palsy-lawsuits-worth-millions-20190225>)

¹⁴ Saba, A, Advocate, state lawyer suspended, (Accessed at <https://mg.co.za/article/2018-11-16-00-advocate-state-lawyer-suspended>)

¹⁵ Minister of Police v Kunene and Others (25544/2018) [2018] ZAGPJHC 664 (15 August 2018) (Accessed at <http://saflii.org/za/cases/ZAGPJHC/2018/664.html>); Johannesburg Society of Advocates v Kajee (35095/2018) [2018] ZAGPJHC 606 (24 October 2018) (Accessed at <http://saflii.org/za/cases/ZAGPJHC/2018/606.html>)



These were not the only matters in which the two had been cited as allegedly colluding. It was reported that Adv's Lekabe and Kajee had been working together since 2014.¹⁶

- **Allegations of corrupt activities in Supply Chain Management at the Justice Department emanating from the Zondo Commission.** These allegations relate to a 2008 contract awarded to a Bosasa subsidiary, Sondolo IT (the initial contract was worth R600-million), for the provision of CCTV and access control systems at buildings administrated by the Justice Department around the country, which included court buildings. According to the testimony provided at the Commission the agreement was that Sondolo IT would pay 2.5 percent lobbying fees/management fees (effectively bribes) for the duration of the tender to certain officials in the Department of Justice and Constitutional Development.¹⁷

In September 2015 there was an **extension of the Sondolo IT contract for 36 months (3 years), for 'corrective and preventative maintenance'** until **September 2018**. This three year maintenance contract appears to have been extended further beyond the end date of September 2018 on a month to month basis. Reportedly, the Security Management Section did not prepare a business case for the extension of the contract beyond September 2018. **According to the Justice Minister this has led the Justice Department to incur irregular expenditure from October 2018 to date.**¹⁸

On 25 February 2019, the Justice Minister reported that Audit firm Sizwe Ntsaluba Gobodo had been appointed to review all security contracts awarded since 2006, with specific focus on Bosasa/African Global Operations, and its subsidiaries.¹⁹ Sizwe Ntsaluba Gobodo was given three months to complete the review. At least one official in security management in the Justice Department was placed under precautionary suspension.

- **Delays in operationalisation of the Information Regulator.**²⁰ This has affected the commencement of the remaining sections of the Protection of Personal

¹⁶Saba, A, Advocate, state lawyer suspended, (Accessed at <https://mg.co.za/article/2018-11-16-00-advocate-state-lawyer-suspended>)

¹⁷Zondo Commission Transcript 28 January 2019 p31 and 32 (Accessed at https://www.sastatecapture.org.za/site/files/transcript/44/28_January_2019_Sessions.pdf)

¹⁸ It appears that the Department has been forced to retain the services of Sondolo IT "pending the appointment of a new service provider on a quotation basis. The process is expected to be finalised soonest.

¹⁹Media Statement, Minister Michael Masutha: Bosasa Contracts within the Justice and Correctional Services Portfolio (Accessed at http://www.justice.gov.za/m_statements/2019/20190225-BosasaContracts.pdf). In 2008, the Department of Justice and Constitutional Development was formally contracted to Sondolo IT for the supply, delivery, installation, commissioning, support and maintenance of comprehensive CCTV, and Access Control System for court buildings identified as high risk and head office. The installation of security infrastructure under this contract was concluded in 2015, followed by a warranty period of 12 months during which Sondolo IT continued to deliver mandatory maintenance service. The value of this contract totalling R601, 863,632. In September 2015, the contract with Sondolo IT was extended for an additional period of 36 months for corrective and preventative maintenance as per the original contract. This was also covering surveillance monitoring services in the identified high risk court buildings and the main control room at head office. The value of the contract which ended in September 2018 was R373, 709,412, of which the total expenditure is R340, 738,014. The Security Management section failed to prepare a business case and the requisite tender documents on time for the procurement of these services. Consequently, the security section allowed Sondolo IT to continue rendering these services on a month-to-month basis, pending the finalisation of the necessary business case for the procurement of these services going forward. Following the delays in the finalisation of this process, considering the critical nature of this service, the Department was left with no option but to keep the services of Sondolo IT, pending the appointment of a new service provider on a quotation basis. The process is expected to be finalised soonest.

²⁰ The Information Regulator is established as a public watchdog, with a range of powers and functions including enforcing the requirements of the PoPI Act as well as the Promotion of Access to Information Act 2 of 2000. In terms of the POPI Act the Information Regulator;

i. has jurisdiction throughout the Republic
ii. is independent and is subject only to the Constitution and to the law



Information Act 4 of 2013.²¹ At present, only those parts of the Act relating to the establishment of the Regulator are operational. These sections were proclaimed on **11 April 2014**. The Members of the Information Regulator took office on **1 December 2016**. There have been challenges with the listing of the Information Regulator in terms of the Public Finance Management Act 1 of 1999. According to the Department budget allocations of; R27 million in 2018/19, R29 million in 2019/20 and R30 million in 2020/21, have been set aside for the establishment of the Regulator.

- **Delays in funding for and finalisation of legislation for Regulation of Paralegals.** The statutory recognition and funding of the paralegal sector is included in the Department's transformation project. The Department has been working with the National Alliance for the Development of Community Advice Offices (NADCAO) and the Association of Community Advice Offices of South Africa (ACAOSA) to ensure the sustainability of community advice offices and to regulate the work of community-based paralegals. Although the Department reported that it has prepared a draft bill, it cannot be finalised until the issue of funding is resolved.
- **Delays in completion of Mpumalanga High Court.** Although operational from 13 May 2019, the finalisation of the court was subject to a number of delays. In the 2017 State of the Nation Address the former President Mr JG Zuma stated that the Mpumalanga High Court would be completed during the 2017/18 financial year.²² There have, however, been ongoing challenges relating to an access road. The court has reportedly cost the state R1.1 billion and the completion date has been extended repeatedly.²³ The AG has also flagged an amount of R133 million relating to construction costs for the court which is under investigation.

3. POLICY PRIORITIES FOR 2019/20

The State of the Nation Address (SONA) in February 2019 highlighted a need to fight state capture and corruption. Following a commitment in the 2018 SONA to stabilise and restore the credibility of institutions like the National Prosecuting Authority (NPA), a new National Director of Public Prosecutions (NDPP), Advocate Shamila Batohi, was appointed as from 1 February 2019 to lead the revival of the NPA and to strengthen the fight against crime and corruption.²⁴

-
- iii. must be impartial and perform its functions and exercise its powers without fear, favour or prejudice
 - iv. must exercise its powers and perform its functions in accordance with POPIA and the Promotion of Access to Information Act; and
 - v. is accountable to the National Assembly.

²¹ The Protection of Personal Information Act No. 4 of 2013, (POPIA) regulates the processing of personal information. The PoPI Act is South Africa's first specific data protection legislation. A person's right to privacy means a right to have control over his or her personal information and the ability to conduct his or her personal affairs relatively free from unwanted intrusions. One of the means of protecting personal information is data protection. The Act applies to public and private bodies, including juristic persons, and aims to achieve a balance between the free-flow of information and the right to privacy

²²Africacheck, Mpumalanga High Court in SA not yet completed (Accessed at <https://africacheck.org/reports/zumas-broken-promise-mpumalanga-high-court-not-yet-completed/>)

²³ This problem was identified by the Portfolio Committee on Public Works in 2016 when they raised "issues surrounding full access to the court". Other problems included non-performance of consultants, inadequate bulk electricity and stormwater management.

²⁴ President Cyril Ramaphosa: 2019 State of the Nation Address (Accessed at <https://www.gov.za/speeches/president-cyril-ramaphosa-2019-state-nation-address-7-feb-2019-0000>)



In addition, an Investigating Directorate was established by Proclamation in the office of the National Director of Public Prosecutions to deal with serious corruption and associated offences, especially those identified by the various Commissions of Inquiry. The Directorate will be headed by Adv H Cronje and will bring together a range of investigatory and prosecutorial capacity from within government and in the private sector.

In the June 2019 SONA the President pointed out that with 10 years to go before the year 2030, not nearly enough progress has been made in meeting the **National Development Plan (NDP)** targets. **Unless extraordinary measures are taken, the state will not realise Vision 2030.** This means that there is a need to prioritise and to focus on those actions that will have the greatest impact.²⁵ **Now is the time to focus on implementation.**²⁶

The NDP vision for 2030 means that people living in South Africa should feel safe at home, at school and at work, and enjoy a community life free of fear. Achieving this vision requires a well-functioning criminal justice system, in which the police, the judiciary and correctional services work together to ensure that suspects are caught, prosecuted, convicted if guilty, and securely incarcerated and rehabilitated. In addition, according to the NDP in 2030 the anti-corruption agencies have adequate resources and are staffed by highly skilled and experienced officials, are independent from political influence, have powers to investigate alleged cases of corruption and prosecute those suspected to be involved in corruption. The NDP also refers to the need to accelerate reforms towards a judiciary-led, independent court administration and scaling up judicial training.

Both the February and June 2019 SONA's also focused on the critical issue of **Gender Based Violence**. Ending gender-based violence is an urgent national priority that requires the mobilisation of all South Africans and the involvement of all institutions.²⁷ It is vital that the resolutions of the **Presidential Gender-based Violence and Femicide Summit** are implemented at a departmental level.²⁸

Specifically, this means expanding and dedicating more funds to places of support, such as the Thuthuzela Care Centres as well as working to ensure the better functioning of sexual offences courts. Funding has apparently been allocated in the current budget to support the decisions taken at the Summit.²⁹ However, capacitating and equipping the police and court system to support survivors of gender-based violence, is only one aspect of a response that requires the involvement of multiple stakeholders.

²⁵ SONA 20 June 2019 (Accessed at <https://www.gov.za/speeches/2SONA2019>)

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

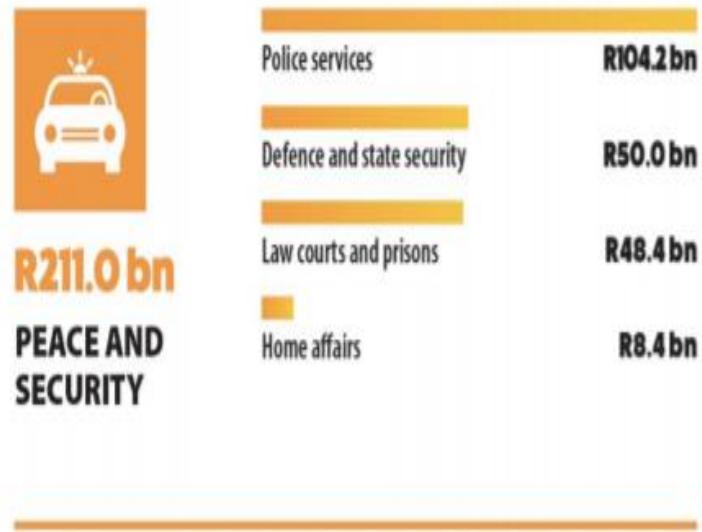
²⁹ SONA 20 June 2019 (Accessed at <https://www.gov.za/speeches/2SONA2019>)



4. BUDGET ANALYSIS

The allocation of R48.4 billion in the 2019 Budget to Law Courts and Prisons for the 2019/20 financial year constitutes **23 per cent** of the total allocation of R211 billion to the Peace and Security Cluster.

This **23 percent** is allocated to three Departments; (i) Justice and Constitutional Development, (ii) Correctional Services and (iii) the Office of the Chief Justice and Judicial Administration (and includes the transfers under Programme 5 to Legal Aid South Africa, Public Protector of South Africa, Special Investigating Unit and South African Human Rights Commission.) In comparison **49 per cent** of the total budget for peace and security is allocated to Police Services.



Vote 21 receives a budget allocation for the **2019/20** financial year of **R21.1 billion** (*or R18.7 billion if the R2.38 billion from the national revenue fund for magistrate's salaries is excluded*).

The Committee should note that the 2019 Budget provides for an **increase** to the baseline of **R1.43 billion over the Medium Term Expenditure Framework (MTEF)**, which consists of:³⁰

- (i) **R853 million** shifted from the integrated justice programme budget of the Police Vote to the Justice Vote where the IJS modernisation programme is currently governed (consisting of R269.3 million in 2019/20; R284.1 million in 2020/21 and R299.7 million in 2021/22) ;
- (ii) An additional **R300.3 million** allocated to Legal Aid South Africa (consisting of R95.2 million in 2019/20; R100.1million in 2020/21 and R105 million in 2021/22); and
- (iii) **R272.9 million** allocated to the Zondo Commission (for the 2019/20 financial year) to enable the Commission to continue its work to February 2020.

³⁰ 2019 Budget ENE Overview
(Accessed at <http://www.treasury.gov.za/documents/national%20budget/2019/enebooklets/Overview.pdf>)



However, the baseline is also affected by a decrease over the MTEF of:³¹

- (i) R225.4 million for goods and services across the Vote (consisting of R92.4 million in 2019/20; R90.3million in 2020/21 and R42.7 million in 2021/22); and
- (ii) Specific reductions to the budgets of the SAHRC (R4.2 million); Public Protector (R3.9 million) and SIU (R25.5 million) through the application of a salary increase freeze for senior management staff.

These positive and negative changes to the baseline over the MTEF are set out in the table below:³²

Table 1: Net change to function baseline

R million	2019/20	2020/21	2021/22 ³³	MTEF total
Shift of the integrated justice system programme budget from the Police vote	269.3	284.1	299.7	853.0
Legal Aid South Africa: Operations	95.2	100.1	105.0	300.3
Judicial commission of inquiry into allegations of state capture, corruption and fraud in the public sector, including organs of state: Goods and services, compensation of employees, and payments for capital assets	272.9	-	-	272.9
South African Human Rights Commission: Salary increase freeze/reduction for senior management staff	-1.3	-1.4	-1.5	-4.2
Public Protector of South Africa: Salary increase freeze/reduction for senior management staff	-1.2	-1.3	-1.4	-3.9
Special Investigating Unit: Salary increase freeze/reduction for senior management staff	-8.0	-8.5	-9.0	-25.5
Goods and services	-92.4	-90.3	-42.7	-225.4
Justice and Constitutional Development	534.4	282.5	350.2	1 167.1

In the 2018 Budget Review and Recommendation Report the Portfolio Committee made the following recommendations to Treasury relating to additional funding:³³

- The National Prosecuting Authority to be provided with additional funding to address the shortfall on; its compensation of employees' budget; to fill vacancies; and to create capacity at new courts, as well as additional funds for the resumption of its Aspirant Prosecutors programme.

Treasury response. No additional funding was provided for the NPA in the 2019 Budget. Treasury responded to the Portfolio Committee by stating that '*due to the constrained fiscal outlook, the scope to provide additional funding is limited. Departments, public entities and constitutional institutions are required to reprioritise funds, within their existing baselines to fund any emerging priorities. Should the fiscal outlook improve, future*

³¹ 2019 Budget ENE Overview
(Accessed at <http://www.treasury.gov.za/documents/national%20budget/2019/enebooklets/Overview.pdf>)

³² Ibid

³³ ATC181024: Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 24 October 2018 (Accessed at <https://pmg.org.za/tabled-committee-report/3549/>)



recommendations for additional funding may be considered.³⁴ However, the Finance Minister did state in his 2019 budget speech that National Treasury and the Department of Justice will work swiftly to support the establishment of a new Investigating Directorate in the NPA.³⁵

- Legal Aid South Africa be provided with additional funding to prevent it from having to cut posts with adverse consequences for service delivery and to ensure so that it is able to maintain its civil work despite the current fiscal environment.

Treasury Response. Legal Aid South Africa received additional funds to retain public defenders of R300 million over the MTEF. (R95.2 million in 2019/20; R100.1 million in 2020/21 and R105 million in 2021/22.) **It should be noted, however, that R104.5 million of this R300 million is re-prioritised funding from the Justice Department.**³⁶

Comment

- **Baseline cuts.** The Committee may be interested to establish from the Department the impact of the baseline cut in the 2019/20 financial year of **R92 million** from the Goods and Services budget?
- **Reprioritised funding for the NPA Investigating Directorate.** It has been reported that the Justice Department has had to provide funding to 'start-up' the NPA's new Investigating Directorate.³⁷ The National Treasury is yet to provide dedicated funds for the Directorate.³⁸ Reportedly, the NPA has prepared a budget request for consideration by Treasury in the Adjusted Estimates of National Expenditure (AENE) in October 2019. In the interim, the Justice Department has made funds available. The Committee may be interested to know how much was reprioritised by the Justice Department's Chief Financial Officer and from where within the Vote the funds were reprioritised.

4.1 Comparing Budget Allocations: 2018/19 and 2019/20

The budget for Vote 21 has experienced a real decrease for the past two consecutive financial years. However, the 2019/20 budget shows a small real increase of 1.95 per cent from the 2018/19 allocation (inclusive of the allocation from the National Revenue Fund for magistrate's salaries).

The largest real increase of 7.58 per cent is to be found in Programme 5: Auxiliary and Associated Services as a result of the shift of integrated justice funds from the Police Vote to the Justice Vote and additional/re-prioritised funding for Legal

³⁴ 2019 Budget Review p104

³⁵ Budget Speech 2019

³⁶ Ibid

³⁷ Mailovich C, Justice department reprioritises funds to kickstart elite NPA unit, (Accessed at <https://www.businesslive.co.za/bd/national/2019-06-19-justice-department-reprioritises-funds-to-kickstart-elite-npa-unit/>)

³⁸ Established to look into revelations made at the commissions of inquiry into state capture, the SA Revenue Service and the Public Investment Corporation



Aid South Africa. Of all the programmes in the Vote, the Court Services programme continues to receive the largest budget allocation at 37 per cent.

Table 1: Budget Allocations per programme

Programme	Budget		Nominal Increase / Decrease in 2019/20	Real Increase / Decrease in 2019/20	Nominal Percent change in 2019/20	Real Percent change in 2019/20
	2018/19	2019/20				
Administration:	R2.502 billion	R2.504 billion	2,0	- 121,8	0,08 per cent	-4,87 per cent
Court Services:	R6.43 billion	R6.82 billion	393,9	56,5	6,13 per cent	0,88 per cent
State Legal Services:	R1.25 billion	R1.35 billion	104,0	37,3	8,35 per cent	2,99 per cent
National Prosecuting Authority:	R3.65 billion	R3.93 billion	280,3	86,1	7,68 per cent	2,36 per cent
Auxiliary and Associated Services:	R3.63 billion	R4.11 billion	478,2	275,1	13,17 per cent	7,58 per cent
TOTAL	R17 46 Billion	R18.72 billion	1 258,3	333,1	7,2 per cent	1,91 per cent
Magistrates salaries:	R2.22 billion	R2.38 billion	168,2	50,4	7,59 per cent	2,27 per cent
TOTAL	R19.67 billion	R21.1 billion	1 426,4	383,4	7,3 per cent	1,95 per cent

In respect of the budget allocations for the specific programmes over which the Justice Department has responsibility the allocation for 2019/20 is **R11. 95 billion** (excluding the allocation for magistrate's salaries) which shows a small real *increase* from 2018/19 of 1.81 per cent.

Table 2: Budget allocations for specific Justice Department programmes

Programme	Budget		Nominal Increase / Decrease in 2019/20	Real Increase / Decrease in 2019/20	Nominal Percent change in 2019/20	Real Percent change in 2019/20
	2018/19	2019/20				
Administration:	R2.502 billion	R2.504 billion	2,0	- 121,8	0,08 per cent	-4,87 per cent
Court Services:	R6.431 billion	R6.824 billion	393,9	56,5	6,13 per cent	0,88 per cent
State Legal Services:	R1.245 billion	R1.349 billion	104,0	37,3	8,35 per cent	2,99 per cent



Justice Modernisation subprogramme:	R983.2 Million	R1.276 billion	293,5	230,4	29,85 per cent	23,43 per cent
TOTAL	R11.162 billion	R11.955 billion	793,2	202,2	7,1 per cent	1,81 per cent

Comment

- Key cost drivers:
 - **Compensation of employees.** The administration of justice is labour intensive. This item continues to be the main cost driver for the Vote. In 2019/20 it consumes R11.8 billion or an estimated 56% of the total budget for the Vote. (Of this R6.08 billion in compensation of employees is allocated to the Administration, Court Services and State Legal Services programmes administered by the Justice Department.) In 2017/18 the Department reported that a review of the organisational structure was underway.³⁹ Treasury has made it clear that Departments are expected to adhere to set expenditure ceilings during the 2019 MTEF and to manage the workforce within the allocated compensation budget ceilings.⁴⁰ According to Treasury the 2019 MTEF indicative baseline does not provide for general funding of new posts, except in cases where departments were specifically allocated funding to create new critical posts in the 2018 MTEF or where departments have effected savings within their compensation budgets.⁴¹ The Committee should note that in the 2019 Budget the Finance Minister stated that over the medium term the government will take additional steps to manage growth in compensation, including early retirement (from the age of 55) without penalties.⁴² According to the Department's 2017/18 Annual Report a total of 1102 or **6.9 percent** of the workforce is in retirement age category between 55 and 64 and most of these (82%) are concentrated in Court Services **In respect of Senior Management positions 17.1 percent are in retirement age category.**⁴³
 - **Infrastructure.** The Department leads a number of ongoing projects to increase access to justice services. Historically, however, the Department has struggled with the spending of its infrastructure budget.⁴⁴ In the **2017 Budget**, Treasury imposed a **reduction** to the allocation for buildings and fixed infrastructure over the MTEF of R591 million (R186.8 million in 2017/18; R213.3 million in 2018/19 and R253.2 million in 2019/20).⁴⁵ In **December 2018**, due to underperformance by some service providers for court infrastructure projects and the resultant cancellation of their contracts, the Department identified a saving of R150 million

³⁹ DoJ&CD Annual Report 2017/18 p243

⁴⁰ Treasury Guidelines (Accessed at <http://www.treasury.gov.za/publications/guidelines/2019%20MTEF%20COE%20guidelines.pdf>)

⁴¹Treasury Guidelines (Accessed at <http://www.treasury.gov.za/publications/guidelines/2019%20MTEF%20COE%20guidelines.pdf>)

⁴² Ibid p245

⁴³ Ibid

⁴⁴ DoJ&CD Responses to the Budgetary Review And Recommendation Report: Progress Report To The Portfolio Committee on Justice And Correctional Services (November 2017)

⁴⁵ ENE 2017 Vote 21 (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2017/enebooklets/Overview.pdf>)



on buildings and other fixed structures and approached the National Treasury with a request for approval to utilise this amount to settle accruals carried over from 2017/18 in respect of Department of Public Works accommodation charges. Approval was granted by Treasury on 15 January 2019.⁴⁶

- Notably, the Department has spent **R2.24 billion** on the construction of the Limpopo and Mpumalanga High Courts. These construction projects have a critical role to play in increasing access to justice services. The construction of these courts has, however, been impacted by significant challenges including contract dates extended and cost overruns. On 13 May 2019, after a three year delay, the Mpumalanga Division of the High Court in Mbombela became operational. The project started in October 2013 and was supposed to be completed 24 months later, by October 2015.⁴⁷ Originally R600 million was budgeted to complete the court, however, the final cost was R1.1 billion. Former Justice Minister Mr M Masutha attributed the escalating costs to the additional time needed to complete the project.⁴⁸
- The Limpopo High Court was finally completed at a cost of R1.2 billion and officially opened on 16 November 2016. Having access to the Limpopo High Court meant that people would no longer have to endure the costs of commuting to Pretoria for high court services. However, although this is a new building the Department recently highlighted significant maintenance challenges in respect of the Court including domestic water shortage, rising underground water flooding the underground parking area, leaking water pipes, faulty roller-up shutter security doors, lifts constantly getting stuck and bulbs blowing up, due to problems with the electricity supply.⁴⁹ Reportedly these challenges, which are being addressed by the Director-General and his counterpart in the Department of Public Works, have been escalated to the level of the respective Ministers.⁵⁰
- **The budget allocation for buildings and fixed infrastructure in the 2019/20 financial year is R855 million.** Projects to monitor include the Soweto Magistrates Court the total projected cost for which is estimated to be R1.26 billion; the Durban High Court projected to cost R902 million over the project life-cycle, with R175.9 million estimated to be spent in 2019/20; and Soshanguve Magistrates Court projected to cost R424 million over the project life-cycle, with R31.2 million estimated to be spent in 2019/20.⁵¹

⁴⁶ Standing Committee on Appropriations (SCOA) 3rd Quarter Expenditure Report 2018/19 Financial Year

⁴⁷ Janse van Rensburg A , Opening date postponed for new High Court building, (Accessed at <https://lowvelder.co.za/451790/opening-date-postponed-new-high-court-building/>)

⁴⁸ Janse van Rensburg A, Taxpayers coughed up R 1.1 billion for new Mpumalanga High Court (Accessed at <https://lowvelder.co.za/470978/taxpayers-coughed-r-1-1-billion-new-mpumalanga-high-court/>)

⁴⁹ Department of Justice & NPA 2017/18 Annual Reports, with Deputy Minister (Accessed at <https://pmg.org.za/committee-meeting/27188/>)

⁵⁰ Vote 21 ENE 2019

⁵¹ Vote 21 ENE 2019 p29



- **Integrated Justice Projects (IJS).** The Justice Department plans to spend R1.03 billion on Computer services in 2019/20.⁵² This includes funds for IT infrastructure for the Department as well as for IJS/CJS projects.⁵³ The National Development Plan (NDP) prioritises the implementation of the Criminal Justice System Seven Point Plan to achieve its vision of building safer communities. The CJS 7 Point Plan incorporates both the Integrated Justice System and CJS Revamp and Modernisation programmes. The Integrated Justice System (IJS) programme forms part of the broader CJS Revamp/Review and focuses on the integration of technology systems. The allocation for Justice Modernisation experiences a *real increase of 23.4 per cent* from the previous financial year.
- The 2019 Budget reflects a shift of **R853 million** of IJS Funds (over the MTEF) from the Police Vote to the Justice Vote. National Treasury has identified persistent challenges with lower than anticipated spending during the 2018/19 financial year affecting the implementation of the criminal justice system seven-point plan. This has been due to delays in the finalisation of service level agreements between IJS member departments and SITA leading to interruptions in the rendering of required services and submission of claims to the Department.⁵⁴ The implementation of this plan has also faced various challenges respect of governance and project management and determining value for money.
- **In 2018 the Department reported on plans to implement an Integrated Criminal Justice Strategy (ICJS).** The Strategy seeks to address the “silo” approach of the relevant departments and entities in the criminal justice system in order to strengthen co-ordination and cooperation within the Justice, Crime Prevention and Security (JCPS) Cluster. The ICJS also incorporates the modernisation of the CJS. **According to the 2018/19 APP the ICJS was to be submitted to Cabinet for approval by 28 February 2019.**⁵⁵ An Integrated Task Team on Criminal Justice Reform (ITT-CJR), which is headed by Adv. Lungi Mahlathi and is made up of senior designated officials from the line function departments and law enforcement agencies, was established to accelerate the development of the ICJS. It would be useful to have more information on planned activities for the implementation of the ICJS in the 2019/20 financial year.

4.2 Programme Allocations

4.2.1 Administration Programme

In 2018 **all** National and Provincial Departments were required to reduce their spending on administration.⁵⁶ In the case of the Justice Department, this amounted to a baseline reduction of R139 million over the MTEF.⁵⁷ The 2019/20 budget allocation for the Administration Programme experiences a real decrease of -4.87 per cent from 2018/19.

⁵² Vote 21 ENE p6

⁵³ The CJS 7 point plan allocation is earmarked. This means that the funds are designated for a specific purpose i.e for use towards projects related to the implementation of the CJS 7 point plan, unless NT directs otherwise.

⁵⁴ SCOA Report Third Quarter 2018/19

⁵⁵ DoJ&CD APP 2018/19 p31

⁵⁶ ENE 2018 Vote 21

⁵⁷ Ibid



However, there is a 7.86 percent real increase in the allocation to the Management subprogramme. The Office Accommodation subprogramme continues to receive the largest allocation, consuming 55 per cent of the total budget allocation.

Table 3: Nominal and real increases/decreases in the Administration Programme

Programme	Budget		Nominal Increase / Decrease in 2019/20	Real Increase / Decrease in 2019/20	Nominal Percent change in 2019/20	Real Percent change in 2019/20
	2018/19	2019/20				
Ministry	R33. 6 million	R36.6 million	3 064,0	1 254,0	9,13 per cent	3,74 per cent
Management	R49.8 million	R56.5 million	6 701,0	3 910,3	13,47 per cent	7,86 per cent
Corporate Services	R821.7 million	R721.69 million	- 028,0	- 135 700,9	-12,17 per cent	-16,51 per cent
Financial Administration	R210.38 million	R223.24 million	12 853,0	1 818,3	6,11 per cent	0,86 per cent
Internal Audit	R87.18 million	R93.81 million	6 630,0	1 992,9	7,60 per cent	2,29 per cent
Office Accommodation	R1.29 Billion	R1.37 billion	72 793,0	4 942,1	5,60 per cent	0,38 per cent
TOTAL	R2.502 billion	R2.504 billion	2 013,0	- 121 783,3	0,1 per cent	-4,87 per cent

According to the 2019 ENE the allocation for the line item Agency and support/outsourced services jumps exponentially from an amount of R1.2 million in 2018/19 to an estimated R101.9 million in 2019/20.⁵⁸ It is likely that this is a result of the work being done by the Zondo Commission.

Comment

- **Second qualified audit.** The Department received a second consecutive qualified audit from the Auditor-General in the 2017/18 financial year. The Committee may be interested in actions taken by the Department to address the AG's findings and to ensure an unqualified audit for 2018/19. Specifically, the implementation of the High Priority Audit Action Plan.
- **Specific Audit issues.** In response to concerns about the AG's findings audit raised by the PC in the 2018 Budget Review and Recommendation Report, the Justice Department reported in November 2018 that the following was under investigation.⁵⁹ The Committee may be interested in an update on the status of these investigations.

⁵⁸ Vote 21 ENE 2019 p9

⁵⁹ DoJ&Cd Responses to 2018 BRRR (November 2018)



	AUDITOR GENERAL FINDING	AMOUNT BEING INVESTIGATED	DOJ RESPONSE
Mpumalanga High Court	The Department and Independent Development Trust (IDT) as the implementing agent did not ensure that approval of variation orders was done in a timely manner.	R133.3 million	Under investigation Justice blamed IDT as implementing agent/managing the project According to Justice variation orders only received at the end of the project without prior approval from DoJ or Treasury
Limpopo High Court	The Department and IDT did not ensure payments to the contractor were made in a timely manner. This meant the Department incurred additional costs	R233.1 million	Under investigation by the Special Investigating Unit

- **Office of the State Attorney (OSA).** Following the announcement in July 2018 of a Special Investigating Unit investigation into the state attorney offices the Justice Minister acknowledged that: “*It is clear that our supply chain management system was undermined by specific role players in our environment exploiting gaps in the design of our governance system*”.⁶⁰ Following a number of highly critical court judgements since 2014, as well as an in depth report by the Public Service Commission in 2016, plus a commitment to transform this office,⁶¹ the Committee may wish to establish why the ‘*gaps in the design of the OSA governance system*’ were not remedied sooner. Perhaps the Committee could consider requesting a meeting/ or undertaking an oversight visit to meet with some of the provincial heads of the OSA offices in order to better understand the specific and ongoing challenges affecting these offices.
- **Monitoring the Impact of new AG Regulations.** The Committee should note that following the enactment of the Public Audit Amendment Act on 1 April 2019

⁶⁰ SA News, SIU investigations yield arrests for medico-legal fraud (Accessed at <https://www.sanews.gov.za/south-africa/siu-investigations-yield-arrests-medico-legal-fraud>)

⁶¹ it was reported in November 2017 that the KwaZulu-Natal state attorney's office embarked on a go-slow (refusing to take on new cases for a month) due to the workload and working conditions



that new regulations empowering the Auditor-General (AG) to go after public servants guilty of wasting public funds will apply to audits for the 2018/19 financial year. The **Material Irregularity Regulations** and the **Investigations and Special Audits Regulations** came into effect on 1 April 2019. They empower the AG to carry out appropriate investigations or special audits of any institution should he consider it to be in the public interest, or upon the receipt of a complaint or request. These include possible financial loss or negative impact on the institution, showing the possible involvement of the institution's management, accounting officer, accounting authority or political office bearers in any activities or decisions constituting non-compliance or contravention of applicable law, codes of conduct or principles of good governance.

- **Vacancies (in critical service areas).** A recent Sunday Times article identified ongoing challenges experienced by women accessing maintenance services at courts.⁶² This is despite amendments in 2015 to the Maintenance Act aimed at speeding up the process.⁶³ The Woman's Legal Centre has expressed concern that women continue to struggle to access maintenance and has identified one of the challenges as insufficient dedicated staff at courts. The Department has confirmed staff shortages at courts have impacted critical services such as maintenance matters and has reportedly embarked on a process to fill vacant posts. Because of the significant socio-economic impact on families where maintenance is not paid the Committee may want information on the number of vacancies to be filled.

4.2.2 Court Services Programme

The Court Services programme receives a budget of **R6.82 billion** for the 2019/20 financial year. Effectively this amounts to a small *real increase* of 0.88 per cent in the allocation when compared with the previous financial year. It may be noted that:

- After four years of negative real growth, the Lower Courts subprogramme, which is allocated 73 per cent of the total Court Services programmes budget, shows a slight real increase of 1.11 percent.
- The allocation for the Facilities Management subprogramme experiences a real decrease for a third consecutive year. Although the real decrease of -0.64 per

⁶²Fokazi S, 'How failing legal system lets Dad's off the hook', Sunday Times, (9 June 2019) (Accessed at <http://library.pressdisplay.com/pressdisplay/viewer.aspx>)

⁶³Maintenance Amendment Act 9 of 2015. The Maintenance Amendment Act, also provided stricter measures for defaulters. With effect from 5 January 2018, Sections 2, 11 and 13(b) of the Amendment Act were operationalised. These sections provided, amongst others, that parents who default on child maintenance will have their personal information submitted to credit bureaus, and face being blacklisted. (Accessed at http://www.justice.gov.za/m_statements/2018/20180104-Mnt.html) Section 2 of the Amendment Act deals with the investigation of maintenance complaints. If a parent responsible for maintenance cannot be traced, the court may now issue an order to an electronic communication service provider, e.g. Vodacom, MTN, Cell C or Telkom, to provide the court with their contact information, if any of those service providers have the contact information being sought. This order may only be granted if the court is satisfied that all reasonable efforts to locate the defaulter in question have failed. The cost implications to obtain the information from the service providers will be funded by the State if it is found that the complainant cannot afford to do so. This amendment will assist in tracing defaulters who often do everything in their power to dodge their maintenance obligations.



cent in the 2019 budget contrasts with the significant real decrease of -26.95 per cent in the 2018 budget.

Table 4: Nominal and real increases/decreases in the Court Services programme

Programme	Budget		Nominal Increase / Decrease in 2019/20	Real Increase / Decrease in 2019/20	Nominal Percent change in 2019/20	Real Percent change in 2019/20
	2018/19	2019/20				
Lower Courts	R4.66 billion	R4.96 billion	296 939,0	51 733,1	6,37 per cent	1,11 per cent
Family Advocate	R236.1 million	R253.5 million	17 421,0	4 889,2	7,38 per cent	2,07 per cent
Magistrates Commission	R18.3 million	R19.6 million	1 297,0	327,6	7,08 per cent	1,79 per cent
Facilities Management	R891.09 million	R931.42 million	40 326,0	- 5 713,9	4,53 per cent	-0,64 per cent
Administration of Lower Courts	R621.75 million	R659.63 million	37 882,0	5 276,4	6,09 per cent	0,85 per cent
TOTAL	R6.43 billion	R6.82 billion	393 865,0	56 512,5	6,1 per cent	0,88 per cent

The Department reported in October 2018 that Budget cuts meant that a number of projects in the 2018/19 financial year could not be completed in line with departmental plans. These included the conversion of backlog courts to permanent courts.

Comment

- **Transformation of the Legal System: Transformational Policies.** During 2018/19 the Department was to have either obtained Ministerial approval or submitted to Cabinet critical policies – specifically the following;⁶⁴
 - (i) **Policy on Judicial Governance and Court Administration** (to be submitted to Cabinet for approval by 28 February 2019). (The Portfolio Committee in the Fifth Parliament expressed its concern in the 2018 BRRR around the apparent lack of progress in finalising this policy. The need for a judicial governance and court administration model was already mooted in the previous administration and the Judiciary undertook extensive research and made proposals then);
 - (ii) **Policy Framework on the overhaul of the criminal justice system as part of the Renaissance project** (to be approved by the Minister by 28 February 2019); and
 - (iii) **Blueprint on community courts** (to be submitted to the Minister by 28 February 2019). The Committee may be interested in a status report.

⁶⁴ Updated DoJ&CD APP2018/19 (Accessed at <http://www.justice.gov.za/MTSF/dojcd-app-2018-2019.pdf>)



- Update on selected construction projects:** In 2018/19 the Justice Department was allocated an amount of R823.4 million for buildings and fixed structures. During the financial year there were 25 projects under construction and 169 in planning.⁶⁵ The Department works with the Independent Development Trust (IDT), an entity of the National Department of Public Works, which is mandated to support all spheres of government with infrastructure management implementation. In the 2019/20 year the budget allocation is **R855.6 million**.⁶⁶ Key construction projects include the following:

COURTS	Justice Department Reponses to 2016 BRRR ⁶⁷	Justice Department Reponses to 2017 BRRR ⁶⁸	Justice Department Reponses to 2018 BRRR ⁶⁹	Comment
Limpopo High Court	Expected completion date June 2017. The building was completed and occupied in January 2016. However, visitors parking was not completed and as a result the IDT has submitted an early warning statement for a possible request of an extension of time	Expected completion date June 2018. Visitors' parking is under construction, with 80% of work completed. However, the Contractor suspended works due to non-payments. Payments were withheld due to unresolved variation orders. Technical opinion has been sought from DPW. Possible litigation is pending	Expected completion date December 2018. The contractor reportedly moved back onto site in January 2018 following a variations impasse.	In November 2018 IDT reported it had completed construction of the parking facility which was to be open for use in December 2018. ⁷⁰ The contractor was busy on site with the completion of final outstanding installations. ⁷¹
Mpumalanga High Court	Expected completion date September 2017. Progress on the project stood at 94%.	Expected completion date June 2018. Project progress at 95%. Contractor is on site but work has stalled.	Expected completion date December 2018. The Mpumalanga High Court access road	Discussions were reportedly still underway between with, DPW, the Municipality and the TVET college for a primary access road solution.

⁶⁵ DoJ&CD Summary of Infrastructure Projects for the 2018/19 Financial Year

⁶⁶ ENE 2019

⁶⁷ DoJ&CD Response to the Budgetary Review And Recommendation Report of the Portfolio Committee On Justice And Correctional Services (dated 7 February 2017)

⁶⁸ DoJ&CD Reponses to the Budgetary Review And Recommendation Report: of the Portfolio Committee On Justice And Correctional Services (November 2017)

⁶⁹ DoJ&CD Reponses to the Budgetary Review And Recommendation Report: of the Portfolio Committee On Justice And Correctional Services (November 2018)

⁷⁰IDT completes Limpopo High Court parking facility, 21 November 2018 (Accessed at http://www.idt.org.za/wp-content/uploads/2018/11/Press%20Release_Limpopo_High_Court_Parkade_Final.pdf)

⁷¹ Ibid



COURTS	Justice Department Reponses to 2016 BRRR ⁶⁷	Justice Department Reponses to 2017 BRRR ⁶⁸	Justice Department Reponses to 2018 BRRR ⁶⁹	Comment
			remains a challenge. Although the municipality has approved a secondary road which was under construction.	
Gauteng Province: The Palace of Justice: Security Measures Upgrade	Project progress stands at 95%. Expected completion date is end June 2017. Main contractor experienced cash flow challenges a subcontractor employed to compete outstanding work	Project progress stands at 95%. Practical completion expected end November 2017. The contractor was served with a Mora letter for non-performance on 5 September 2017 and has committed to completing the project or face termination.	Project progress at 95%. The contract was terminated. The DPW was to re-advertise the project.	Completion date extended.
Kwa-Zulu Natal: Durban High Court: Additional accommodation and refurbishment	-	The project is ready for tender but deferred to 2018/19 financial year due to budget cuts.	Project to be advertised in January 2019.	Current status of project unknown.
Eastern Cape: Mthatha High Court Additional accommodation and refurbishment	Project site hand-over to contractor on 18 July 2017.	Project progress at 48%.	Expected completion date is August 2019.	Current status of project unknown
Gauteng Province: Mamelodi Magistrate's Office: Construction of a new building	Expected completion date is October 2017 Project progress at 42% The land on which the court is being built was donated by City of Tshwane.	Expected completion date is September 2018. Project progress at 59% The slow progress on site was noted and escalated to the National DPW for intervention	Expected completion date April 2019. It was reported that project was randomly delayed by community protests (issues of employment and non-payments by	At a meeting held on 18 September 2019 there was some contradiction over payments between the contractor and Project Manager. Intervention was to be sought



COURTS	Justice Department Reponses to 2016 BRRR ⁶⁷	Justice Department Reponses to 2017 BRRR ⁶⁸	Justice Department Reponses to 2018 BRRR ⁶⁹	Comment
			sub-contractors).	from DPW National office.
North-West: Rustenburg Magistrate's Office; and Gauteng: Soshanguve Magistrate's Office	-	Both these projects deferred to 2018/19 financial year due to budget cuts.	-	Current status of the project unknown.

4.2.2.1 Combating Gender Based Violence and Femicide

One of the Departments Strategic Objectives in the Court Services Programme is focused on the need to **Enhance a Victim Centric Criminal Justice System**.⁷² This refers to deliverables such as; adapting courts in line with the sexual offences courts model; upgrading the closed circuit television systems in regional courts; establishing the Femicide Watch and improving the recorded convictions on the National Register of Sexual Offences (NRSO).⁷³ The statistics for sexual offences in 2017/18 reveal, how few reported cases actually make it to court – in 2017/18 of the 50 108 sexual offences recorded by SAPS, 6879 cases went to court and there were 5004 guilty verdicts.⁷⁴ There are also still significant challenges with sexual offences cases being postponed and withdrawn as well as a shortage of intermediaries.

The **Presidential Summit and Declaration against Gender-based Violence and Femicide (in November 2018)** noted that the extent of gender-based violence and femicide in South Africa renders it a national crisis. It is clear that the implementation of the existing legal framework and its accompanying actions is not fully effective since survivors continue to experience high levels of secondary victimization and inadequate responses from the criminal justice system.

The President in the February 2019 SONA stated that work is underway to implement the decisions of the summit. These include:

⁷²DoJ&CD APP 2018/19 p32

⁷³ DoJ&CD APP 2018/19 p33

⁷⁴ SAPS Annual Report and NPA Annual Report 2017/18. It should be noted that cases and convictions include crimes committed in the years prior to 2017/18.



- The existing laws and policies applicable to gender-based violence and femicide are to be reviewed to ensure that the identified legislative gaps are addressed without delay.
- A comprehensive costing and resourcing, in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for the effective functioning and management of the facilities that render support services to survivors of gender based violence be conducted, which include the Thuthuzela Care Centres, sexual offences courts, family courts, so that they are able to address the needs of all survivors of gender-based violence, including persons with disabilities and LGBTQIA+ persons.
- The integration of systems for the optimal management of data throughout the justice system be finalised without further delay, which must include the collection of disaggregated data relating to survivors and offenders, from the point of entry into the justice system to the exit, with unique identifier functionality.
- Adequate resourcing of Thuthuzela Care Centres; and
- Working to ensure the better functioning of the sexual offences courts.

Comment

The Committee may be interested in more information on the following:

- **Actions to implement the decisions of the Presidential Summit and Declaration against Gender-based Violence and Femicide.** This should include information on conducting a comprehensive costing and resourcing, in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for the effective functioning and management of the facilities that render support services to survivors of gender based violence. This should include the Thuthuzela Care Centres, sexual offences courts, and family courts.⁷⁵
- **Sexual Offences courts.**
 - Establishing whether the Regulations for sexual offences courts have been finalised and gazetted. In 2017/18, the Department in partnership with UNICEF drafted the Minimum Standards of the Sexual Offences Courts (SOC) Model. These minimum standards are awaiting the finalisation of the Regulations for the Sexual Offences Courts to ensure proper alignment and compliance.
- **Challenges with the National Register for Sex Offenders (NRSO):**
 - The Auditor-General expressed concern about the reliability, accuracy and completeness of the NRSO data in the Justice Department's 2017/18 Annual Report. The Committee may be interested to know whether the challenges around NRSO data been resolved in the 2018/19 financial year.⁷⁶
 - **Gaps in the Criminal Law Sexual Offences and Related Matters Act 32 of 2017.** In the matter of *Abrahams v S (A131/18) [2019] ZAWCHC 62 (23 May 2019)*⁷⁷ Acting Judge Daniel Thulare and Judge Ed Baartman identified a loophole in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Specifically, that the name of the perpetrator in this

⁷⁵Msomi N, Promises, Promises: Has funding finally run dry for SA's rape crisis centres? (Accessed at <https://bhekisisa.org/article/2019-06-11-00-thuthuzela-care-centres-funding-global-fund-counselling-services-cut>)

⁷⁶DoJ&CD Responses to the Budgetary Review and Recommendation Report: Progress Report to the Portfolio Committee on Justice and Correctional Services (November 2017)

⁷⁷Abrahams v S (A131/18) [2019] ZAWCHC 62 (23 May 2019) (Accessed at <http://www.saflii.org/za/cases/ZAWCHC/2019/62.html>)



matter, who was convicted of raping a nine year old girl, did not appear on the National Register of Sex Offenders because the victims of his previous assaults were adults. Judge Thulare said this loophole in Act 32 of 2007 was part of the reason the perpetrator had access to his victim. The fact that not all sexual offences are reported [on the sexual offenders register] ... leaves a huge gap in curbing and combating sexual offences crimes against children in the broader community. (*The Committee should note that Acting Judge Thulare requested that a copy of this judgment be forwarded to the Chair of the Parliamentary Portfolio Committee on Justice and the Speaker of the National Assembly.*)⁷⁸

- **Femicide Watch – Phase 1.** The rate of femicide in South Africa is reported to be amongst the highest globally.⁷⁹ In the 2018/19 APP the Department introduced a new indicator for the establishment of a Femicide Watch. This should provide annual data on the number of femicides or cases of the gender-related killing of women, disaggregated by the age and the ethnicity of victims and the sex of the perpetrators and indicating the relationship between the perpetrator and the victim or victims.

4.2.3 State Legal Services Programme

One of the Departments key strategic priorities is the re-engineering of state legal services. This includes policy development, including a Counsel Briefing Policy, Tariff Policy and Mediation Policy, State representation and Management of State Litigation. These policies are to be submitted to Cabinet for endorsement in 2019/20.

The issue of briefing patterns remains a significant challenge. In 2016 the Department stated that it had recognised the crucial importance of empowering African female attorneys, and was committed to increase the percentage of mediation cases allocated to attorneys, in particular, African female attorneys from 10% in 2016 to 50% in 2020.⁸⁰ The Department has introduced a number of indicators in the Annual Performance Plan (APP) (e.g. Percentage of value of briefs allocated to Previously Disadvantaged Individuals (PDIs)), including those with a focus on empowerment of female practitioners (e.g. Percentage value of briefs allocated to female counsel and Percentage of briefs allocated to female counsel). The Department also releases monthly statistics on briefing patterns on its website.⁸¹

However, it has long been said that the State is the biggest procurer of legal services, which are procured through the Office of the State Attorney and more should be done by the Department to facilitate transformation.⁸² In a recent article one commentator noted that: “*It is hard to divine why the Department of Justice and Constitutional Development cannot design*

⁷⁸ Ibid. In an attempt to address this challenge, the department is looking at extending the scope of the act to include all victims of sexual offences.

⁷⁹ Presidential Summit Against gender Based Violence and Femicide: Declaration (November 2018)

⁸⁰ Transformation of Legal Profession: Briefing Patterns (Accessed at <https://www.lssa.org.za/upload/PRESENTATION%20ON%20BRIEFING%20PATTERNS%20DoJ&CD%20Direror%20General%20Sindane.pdf>)

⁸¹ State Attorney Services (Accessed at <http://www.justice.gov.za/branches/stateattorney.html>)

⁸² Maliti S, Skewed briefing’ robbing black lawyers (Accessed at <https://www.iol.co.za/weekend-argus/news/skewed-briefing-robbing-black-lawyers-17565386>)



and develop an incubation programme through the office of the state attorney as is the case with the medical profession - through the Department of Health."⁸³

The allocation to the State Legal Services programme of **R1.35 billion** in 2019 shows a real percentage increase of 2.99 percent compared with the 2018/19 financial year where a real percentage decrease affected all the sub programmes. The Constitutional Court subprogramme receives the most significant real increase of 8 percent. The Master of the High Court subprogramme receives the largest allocation at 41 per cent of the total allocation while 38 per cent is absorbed by the Litigation and Legal Services subprogramme.

Table 5: Nominal and real increases/decreases in the State Legal Services programme

Programme	Budget		Nominal Increase / Decrease in 2019/20	Real Increase / Decrease in 2019/20	Nominal Percent change in 2019/20	Real Percent change in 2019/20
	2018/19	2019/20				
State Law Advisors	R74,6 million	R80,4 million	5 806,0	1 832,1	7,78 per cent	2,46 per cent
Litigation and Legal Services	R472,3 million	R509,7 million	37 387,0	12 191,5	7,92 per cent	2,58 per cent
Legislative Development and Law Reform	R91,6 million	R100,5 million	8 895,0	3 929,1	9,71 per cent	4,29 per cent
Master of the High Court	R517,9 million	R557,6 million	39 699,0	12 135,2	7,66 per cent	2,34 per cent
Constitutional Development	R89,4 million	R101,6 million	12 176,0	7 155,4	13,62 per cent	8,00 per cent
TOTAL	R1.25 billion	R1.35 billion	103 963,0	37 243,3	8,3 per cent	2,99 per cent

Comment

- **State Legal Services – Establishing a State entity - Feasibility study.** The Department reported previously on a feasibility study to determine the appropriate organisational form and funding model for State Legal Services.⁸⁴ The Chief Executive Officer of Legal Aid South Africa Ms Vidhu Vedalankar was assigned to. Develop a framework.⁸⁵ By the end of the 2018/19 financial year, discussions with relevant government departments and stakeholders were to have been completed. The Committee may be interested in an update on this process.

⁸³Mpahlwa M, Success in the legal profession, African Law Review (Accessed at <http://blalec.co.za/wp-content/uploads/2019/04/ALR%20Vol2%20issue%201-online.pdf>)

⁸⁴ENE 2018

⁸⁵DoJ&CD APP 2018/19 p8



- **Slow Implementation of Truth and Reconciliation Commission recommendations.** In particular the regulations relating to medical benefits, housing assistance, and community rehabilitation which have been in the pipeline for many years now. The issue of community rehabilitation in particular has been contentious. In August 2017 the Department reported that it had set up a new project team with a new project leader to ensure that implementation of the community rehabilitation project is fast-tracked. Needs analysis had been conducted in eighteen communities. Five (5) of these projects are to be handed over to communities in 2019/20. The Committee may be interested in more information on where exactly these community rehabilitation projects have launched; what types of rehabilitation projects have been agreed on with the communities; and whether there is sufficient funding for these projects.
- **Implementation of the Legal Practice Act 28 of 2014:** The Act and its regulatory scheme govern all legal practitioners in South Africa. Chapter 2 of the Act commenced on 31 October 2018.⁸⁶ This section deals with the establishment of the Legal Practice Council (LPC) and empowers the LPC to establish Provincial Councils. It has been reported that the Cape Bar Council has launched an urgent Western Cape High Court application challenging what it claims are ‘arbitrary and irrational’ Legal Practice Council rules that seek to ensure representation on its Provincial Councils by people from previously disadvantaged groups. The Bar Council argues that the ‘rigid quotas’ in the regulations have the opposite effect of what is intended, effectively protecting the positions of white people and men.⁸⁷ The Council contends that the effect of the Regulations is to cap the number of positions available to female and African applicants on the Provincial Council at 50% and reserve 50% for male and white advocates and attorneys – notwithstanding a democratic result in which female or African candidates for election receive more votes. The Justice Minister and Legal Practice Council are cited in the matter. Reportedly, the National Association of Democratic Lawyers (Nadel) is to oppose the application by the Western Cape Bar Council.⁸⁸ The Legal Practice Council is to deliberate on the issue on 29 June 2019.⁸⁹

4.2.4 Justice Modernisation

Following two years of real decreases (in 2016/17 and 2017/18) and a small real increase in 2018/19 of 2.45 per cent the allocation of **R 1.27 billion** for the Justice Modernisation subprogramme in the 2019 budget provides a significant real increase of 23.4 per cent when compared with the previous financial year. Of this amount, R516.2 million is allocated to computer services within the Justice Department

⁸⁶ With the exception of section 14

⁸⁷ Notice of Motion and Affidavit (Accessed at <https://legalbrief.co.za/media/filestore/2019/06/ATT01628.pdf>)

⁸⁸ National Association of Democratic Lawyers (Nadel) (Accessed at <https://legalbrief.co.za/diary/legalbrief-today/newsletters/>)

⁸⁹ LPC to debate Bar's race quota challenge (Accessed at <https://legalbrief.co.za/story/lpc-to-debate-bars-race-quota-challenge/P>)



Meanwhile, the continued roll-out of the Integrated Justice System programme is expected to result in expenditure of **R753.8 million in 2019/20**. This includes an amount of R269.3 million transferred from the Department of Police in 2019/20 (plus R284.1 million in 2020/21 and R299.7 million in 2021/22) as a result of a decision by the JCPS Cluster in August 2018 to consolidate allocations for the programme to the Justice Department.⁹⁰

Table 6: Nominal and real increases/decreases in the Justice Modernisation sub programme

Programme	Budget		Nominal Increase / Decrease in 2019/20	Real Increase / Decrease in 2019/20	Nominal Percent change in 2019/20	Real Percent change in 2019/20
	2018/19	2019/20				
Justice Modernisation	R983.2 million	R1.276 billion	293 490,0	230 382,0	29,85 per cent	23,43 per cent

Comment

- **IJS Expenditure.** The ultimate goal of the IJS is to ensure seamless integration and consolidation of critical information between the entities that form part of the JCPS Cluster. The Committee should request a breakdown of the R753.8 million to be spent on IJS projects in 2018/19 including specific deliverables and time frames.
- **CJS/IJS Implementation Challenges:** In October 2018 the Portfolio Committee on Police received a briefing on the IJS programme. This included inputs from National Treasury which identified certain concerns about implementation of IJS projects. These included; ⁹¹ the initial allocation of funding did not take into account other carry-through costs related to IT infrastructure such as maintenance; project scope too broad and/or not clearly defined –doing too many things at the same time; and no specific timeline for the completion of the programme. Treasury noted the significant budget investment made over the years but questioned whether there are any tangible outputs. Treasury also identified multiple coordination structures but no single governance structure to manage the implementation of the CJS 7 point plan in the Cluster. In an update report forwarded to the Committee in November 2018 the Justice Department did not identify any challenges with the roll-out of the IJS projects. The Committee could consider a dedicated briefing/ possibly even a joint meeting with the Portfolio Committee on Police as part of oversight over the IJS/CJS projects, which should include input from National Treasury.
- **Capacitation of Programme Management Office for the Integrated Justice Systems (IJS).** In the 2017/2018 financial year XON Systems (Pty) Ltd was awarded a tender at a cost of R67.99 million (incl. VAT) for the capacitation of the

⁹⁰ ENE 2019

⁹¹ Portfolio Committee on Police Briefing by the SAPS on the IJS Programme - Inputs by the National Treasury (31 October 2018)



Project Management Office for the IJS. The contract period is for 3 years.⁹² The Committee may be interested in establishing from the Department what this capacitation project entails and what are the deliverables over the three year contract period?

- **Digital Transformation Strategy.** The IJS programme in the Justice Department has drafted an IJS Digital Transformation Strategy which outlines several initiatives to modernise the justice system through technology solutions. Apparently this strategy is also aligned to the Integrated Criminal Justice Strategy (ICJS). What exactly is the Digital Transformation Strategy and how will it be implemented?

5. REFERENCES

ATC171019: Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 19 October 2017 (Accessed at <https://pmg.org.za/tabled-committee-report/3152/>)

ATC181024: Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 24 October 2018 (Accessed at <https://pmg.org.za/tabled-committee-report/3549/>)

DoJ&CD Annual Performance Plan 2018/19

DoJ&CD Annual Report 2017/18

DoJ&CD Responses to the Budgetary Review and Recommendation Report: Progress Report to the Portfolio Committee on Justice and Correctional Services (November 2018)

Estimates of National Expenditure (ENE) 2018

Estimates of National Expenditure (ENE) 2019

⁹² DoJ&CD Tenders (Accessed at http://www.justice.gov.za/cfo_tender/tenders-awarded.html)