**UNREVISED HANSARD**

**MINI PLENARY - NATIONAL ASSEMBLY TUESDAY, 25 MAY 2021**

**Watch video here:** [**Vote No 25 – Justice and Constitutional Development**](https://www.youtube.com/watch?v=ei-_147K3AU)

***PROCEEDINGS OF MINI-PLENARY SESSION – NATIONAL ASSEMBLY CHAMBER***

Members of the mini-plenary session met on the virtual platform at 14:00.

Ms R M M Lesoma, as Chairperson, took the Chair and requested members to observe a moment of silence for prayer or meditation.

The Chairperson announced that the virtual mini-plenary sitting constituted a meeting of the National Assembly.

The MINISTER OF JUSTICE AND CORRECTIONAL SERVICES The ACTING HOUSE CHAIRPERSON (Ms R M M Lesoma)

**APPROPRIATION BILL**

Debate on Vote No 25 – Justice and Constitutional Development:

The MINISTER OF JUSTICE AND CORRECTIONAL SERVICES: Hon House

Chairperson, members of the executive present, Deputy Minister for Justice and Constitutional Development, Mr John Jeffery and Deputy Minister for Correctional Services, Nkosi Phathekile Holomisa, Chairperson of the Portfolio Committee on Justice and Correctional Services, hon Magwanishe, hon members of the Portfolio Committee on Justice and Correctional Services, hon members of the House, the Director-General for the Department of Justice and Constitutional Development, Adv Mashabane, the representative of the National Prosecuting Authority, Adv Anton Du Plessis, distinguished guests, ladies and gentlemen, it is perhaps a great coincidence of fate, that we gather on this historic day, Africa Day, to discuss how South Africa, as a sovereign state, can continue to deepen constitutionalism, respect for the rule of law, promote the respect of human rights and provide quality and state legal services, as well as access to Justice, which continuously restore the dignity of her people.

This budget for the Department of Justice and Constitutional Development, is presented on the backdrop of the 25th Anniversary of the Constitution. In an article which traverses

the history of our great constitution, former President Thabo Mbeki, makes a point that none will refute, and that is:

This historic document seeks to establish a social order and governance system that is the direct opposite of what the Act of South Africa in 1909 and D.F. Malan and his National Party sought to impose our country, building on and consolidating three centuries of colonial conquest, oppression and exploitation.

House Chairperson, as we celebrate this historic document, we convey our gratitude to the speaker for acceding to our request for a debate on the Constitution during a Joint Sitting of Parliament on Friday 28 May 2021.

Honourable Members, on this day in 1963, 58 years ago, Pan African revolutionaries like Kwame Nkrumah and many others, gathered in Addis Abba on the invitation of the Ethiopian Emperor, Haile Selassie. As a collective, they formed the Organization of African Unity, which we know as the African Union today.

House Chairperson, the words of Emperor Haile Selassie at this gathering are a clear demonstration of what the liberation of South Africa meant to the other states on the continent.

Emperor Haile Selassie said the following:

Our liberty is meaningless, unless all Africans are free. Our brothers in South Africa, cry out in anguish for our support and assistance. We must align and identify ourselves with all aspects of their struggle. It would be betrayal were we [to] pay only lip service to the cause of their liberation and fail to back our words with action.

Hon members, it is this firm commitment towards our liberation that helped us break the stranglehold of apartheid. Our African brothers and sisters spared no effort to help us break a regime premised on systemic corruption and total disregard for human rights.

We want to take this opportunity and wish all Africans a progressive Africa Day, which celebrates and acknowledges our successes in the fight against colonialism and apartheid. We

also reflect on the journey ahead in terms of common challenges that Africa is confronted with.

Today, we table a budget which advances a new social order and enables us to uproot the legacy of apartheid and the remnants of a society which had no regard for human rights.

The budget allocation of the Department of Justice and Constitutional Development for the financial year 2021-22, amounts to R21,5 billion. This is inclusive of the allocation for the National Prosecuting Authority, and transfers to the two constitutional bodies, namely the Public Protector and the SA Human Rights Commission.

In addition, the budget allocation also provides funding for the Information Regulator as well as transfers to the Legal Aid South Africa, the Special Investigating Unit and a Direct Charge to the National Revenue Fund in respect of Magistrates salaries. This budget enables the department and its entities to execute their respective constitutional and statutory mandates.

The above-mentioned budget was reduced by R2,4 billion. R2 billion is allocated to Legal Aid South Africa, R437,9 million to the Special Investigations Unit,

R329 million to the Public Protector South Africa and R195 million, to the SA Human Rights Commission.

Further, the tabled budget also includes an amount of

R2,4 billion for the Direct Charge to the National Revenue

Fund in respect of magistrate’s salaries.

To combat crime, fraud and corruption, the National

Prosecution Authority’s allocation for 2021-22 amounts to R4,

446 billion, an amount of R106,4 million has been set for the Investigative Directorate whilst an amount of R40 million is provided for the establishment of four additional Special Commercial Crime Courts in Limpopo, Mpumalanga, Northern Cape and the North West.

The Specialised Commercial Crimes Courts, SCCCs, are central to the fight against corruption and will contribute to the successful implementation of the anti-corruption strategy. The SCCCs have been established in all provinces.

All serious economic crimes, including corruption and fraud cases, are being channelled through these courts. Cases enrolled in these courts, are being monitored separately to enable targeted interventions where necessary.

We will also continue to roll out Sexual Offences Courts, they play a critical role in the fight against gender-based violence and femicide. In the current financial year, a total of 100 Sexual Offences courts will be dedicated in terms of Section 55A of the Sexual Offences Act to improve the adjudication of sexual offences matters.

The modernisation of the criminal justice system continues to be one of the Justice Crime Prevention and Security, JCPS, cluster’s priorities, hence an amount of R622,2 million has been allocated for the Integrated Justice System. A further R524,3 million is set aside for the department’s specific modernisation projects.

Hon members, the review of the criminal and civil justice systems remains a priority area of focus. We have assigned this important task to the SA Law Reform Commission and we

have commenced with initiatives to increase the capacity of the commission to carry out this important task.

During the 2020-21 financial year, the department was able to complete the consultation processes regarding the rationalisation of the magisterial districts in respect of the Eastern Cape and KwaZulu-Natal provinces.

In the current financial year, we will commence with the second and last phase of the rationalisation project. This phase entails the rationalising of the areas under the jurisdiction of the Divisions of the High Court and the judicial establishments of both divisions of the High Court and Magistrates’ Courts.

The terms of reference of this important phase of the rationalisation project will be published in the Government Gazette in due course. A rationalisation committee will be established to provide a detailed report and recommendations which will enable us to finally dismantle the remaining apartheid-era judicial demarcations and fully align the courts to the new democratic dispensation.

Their work will culminate in the equitable distribution of judicial posts in both the High Court and Magistrates’ Courts. This will translate into greater access to justice for all, as each court will have the requisite capacity and capability to dispense justice to the local community.

The department is continuing with the improvement of infrastructure to increase access to justice. Despite the slowdown in the capital infrastructure projects, which are co- ordinated through the Department of Public Works and Infrastructure, the department was able meet its target in the last financial year.

For instance, the Durban Point Magistrate’s Court which I had the pleasure of opening on 26 March 2021, is the case in point. This court, with its immaculate design and modern fittings, will go a long way in alleviating the congestion at the main District Court of Durban.

This court will be the first court in South Africa, where a domestic violence survivor can apply online for a protection order. We hope to learn important lessons from this pilot as

we prepare to roll out a more comprehensive version throughout the country.

Construction of the Dimbaza Magistrate’s Court, in the Eastern Cape, was also completed in October 2020. The department also completed major refurbishments and upgrading in a number of courts.

The department, in intensifying its efforts to utilise ICT as a strategic enabler, and a mechanism to improve access to justice, has done some considerable work.

Through technology, the serving of court processes like summons, which traditionally are served physically by the police and sheriffs, will now be able to be served electronically to the parties, thus freeing up time to focus on service delivery priorities.

The integration of this technology across the justice system, will also enable a real-time single view of individuals engaging with the justice system, where for example, an integrated system will indicate, at any given point, whether individuals have protection orders against their names or are

applying for maintenance from different defendants at different courts, across the country.

In the current digital era, it has become imperative to have an effective online presence between citizens and the department. This initiative improves citizens’ service through greater flexibility, cost savings, faster delivery of justice service, less paper to waste and certainly increased professionalism. We will ensure that the Justice Services are accessible to citizens via digital platforms. The services will include the following:

Maintenance services available on the Department of Justice Internet Portal online, protection orders available on the Department of Justice Internet Portal online and expungement of criminal records services accessible via digital platforms.

In March 2021, we announced plans to transfer the Land Rights Management Facility housed within the Department of Agriculture, Land Reform and Rural Development to Legal Aid SA. The implementation of these plans commenced in April 2021.

This is an extension of the entity’s mandate to ensure access to justice, and the right of a person to have legal representation as envisaged in the Constitution, is materialised in pursuit of land justice, which has long evaded the majority of the population in particular farm dwellers and farm workers.

Hon members, I would like to really commend this House and our portfolio concerned. The work you have done as members of this committee on the three Gender-based Violence and Femicide, GBV, bills is an invaluable contribution. These Bills are the fruits of the Presidential Summit on Gender-based Violence and Femicide in 2018.

The high conviction rate of 75,8% for sexual offences reflects the firm commitment to deliver justice to the honourable and members of society.

The fight against corruption is a key priority for the National Prosecuting Authority, NPA, as this scourge impedes service delivery, undermines the rule of law; and costs citizens trillions in monetary value.

A review of existing anti-corruption legislation and institutional arrangements in line with implementing the National Anti-Corruption strategy continues to be a priority.

The National Anti-Corruption Strategy, adopted by Cabinet in November 2020 to deliver on its work. The Anti-Corruption Task Team, ACTT, case management committee was revived and serious corruption cases, in co-operation with all other stakeholders.

A total of 128 cases were registered with 91 cases under investigation, 19 were closed, and 18 cases are currently before court with 35 accused persons. A total of 25 new cases were included on the list of ACTT priority corruption cases.

One of the most important projects within the NPA in terms of corruption is increased co-ordination among relevant entities in fighting corruption. An example of this is the Fusion Centre in which corruption related to Covid-19 funds are dealt with. The number of incidents registered was 146, with 118 incidents under investigation and 28 closed.

The Asset Forfeiture Unit, AFU, plays a critical part in the fight against corruption, it has delivered significant returns in the past year, illustrating that crime does not pay.

In an effort to curtail the increase of corruption, the NPA obtained freezing orders to the value of R611 million in corruption or related offences in the last financial year.

The NPA and in particular the AFU, is implementing significant prioritisation initiatives during the 2021-22 period in partnership with the Directorate Priority Crime Investigation, DPCI, the Specialised Commercial Crime Unit, SCCU, Special Investigating Unit, SIU, Financial Intelligence Centre, FIC, SA Revenue Service, Sars and the Reserve Bank. Two main projects are the establishment of the Fusion Centre Regional Offices and the Expansion on the Anti-Corruption Task Team presence in the Regions.

The purpose of both these projects is to fast track the process of referral of high value cases, with asset forfeiture potential to the AFU. The NPA finalised the high-performance strategy in the AFU space to address the fight against priority crimes.

A process is underway to amend the Proceeds of Crime Act, Poca, legislation in order to increase the effectiveness of the asset recovery religion.

In partnership, the AFU and the Investigative Directorate through closely working together, are fast tracking cases with a view of initiating asset forfeiture proceedings and the recovery of stolen money from all jurisdictions, both national and foreign, this includes cases which are under the state capture related processes.

Hon members, the Investigating Directorate, with its multi- disciplinary approach brings prosecutors, investigators and analysts together in order to combat serious, complex or high- profile corruption, this is the cornerstone of addressing corruption.

The NPA currently has its full top leadership team in place and it is prioritising the filling of other key senior posts in the coming months, this will bring much needed stability and leadership innovation to the National Prosecuting Authority.

The top leadership is driving the following 4 priorities over the coming few months: Expediting high-profile corruption cases nationally and provincially. A stronger focus on serious violent and organised crime, and crimes that disproportionately undermine public safety. Capacitating the NPA through recruiting crucial additional skills and expertise, and capabilities, to respond to existing and emerging priorities. Enhancing staff morale and well-being.

It should be noted that high conviction rates were maintained in all court forums. The conviction rates of 93,8% in the High Courts, 82,6% in the Regional Courts and 95,9% in the District Courts, were recorded.

Regardless of these impressive conviction rates, the Covid-19 pandemic had a negative knock-on effect on the number of outstanding court rolls and backlog cases.

A National Integrated Criminal Case Backlog Management Plan was developed by the department to create a framework and to provide guidelines for the management of historical and current criminal case backlogs in the Lower Courts which resulted from the lockdown measures.

The NPA, the department and the Legal Aid South Africa and the judiciary, participate in the optimisation project which is led by the Deputy Minister Mr John Jeffery.

Cases at a local level are prioritised, backlogs are monitored and steps to address the local challenges are agreed on by local stakeholders.

Several measures and interventions were over the years, initiated to remove apartheid era laws from the statute book. The purpose of the Justice Laws Rationalisation Act, 1996, was to remove colonial and apartheid era legislation. A rigorous and robust constitutional review by the Constitutional Court also resulted in the declaration of a myriad of statutory provisions found by the court to be inimical to the values and ethos contained in the Constitution.

Numerous other projects were also initiated or supported by government, such as the statutory law revision project conducted by the SA Law Reform Commission which focused on the legislative compliance with the section 9 of the Constitution and the removal of archaic terminology and reference to repealed legislation.

However, some pieces of legislation which are not overtly unconstitutional, unjust or anti-democratic, nonetheless still formed part of our suite of legislative enactments designed to foster the policies of apartheid, have survived. A few examples of these statutes include the Transkei Penal Code, Act 9 of 1983, the KwaZulu-Natal Act on the Code of Zulu Law Act 16 of 1985 and the Riotous Assemblies Act, Act 17 of 1956.

Following the approval of the inclusion of the project onto the programme of the SA Law Reform Commission, I appointed experts to assist the SA Law Reform Commission in undertaking this critical task in November 2020. A call for submissions was widely publicised in May 2021, seeking public input into the repeal of these statutes.

The continued existence of these laws in our statute book is not compatible with our constitutional order. We will lead the process to review and repeal these statutes. At the same time, great care should be taken to ensure that the abrogation of these statutes does not leave or create a *lacuna* in the law.

By way of example, the current Extradition Act as well as the Insolvency Act come to the fore. The Extradition Act, 1962, is

an outdated Act which is not in line with modern law and practices. We will introduce a new Bill which seeks to clarify the roles and responsibilities of the different functionaries and put procedures in place to expedite extradition requests. This Bill is aimed at ensuring that South Africa is not a safe haven for international fugitives.

It is anticipated that the South African Law Reform Commission will finalise Project 142: Investigation into legal fees, including access to justice and other interventions, by the end of the first quarter of the 2021-22 financial year.

Chapter 13 of the National Development Plan, NDP, refers to building a capable and developmental state, with the first objective being a state that is capable of playing a developmental role as well as functioning service is fully aligned with this vision.

The Solicitor General is also developing a comprehensive policy framework to address the transformation of the legal profession in a systematic manner, focusing on work distribution, management, oversight, skills development, and exposure as well as reporting. This policy framework is done

with a particular bias to Previously Disadvantaged

Individuals’.

I am also pleased with the progress to date on the Legal Sector Code. Together with the Legal Practice Council, we have concluded all internal processes in developing the Legal Practice Code. The transformation of the legal profession is not only a matter of demographical change, but it must also be linked to the quality of work that historically disadvantaged practitioners engage in. Thank you. [Time expired]

Mr G MAGWANISHE: Hon Chairperson, hon Minister Lamola, hon Deputy Minister John Jeffery, hon Deputy Minister Patekile Holomisa, Ministers and Deputy Ministers present here and hon members, we are mindful that the situation we are in unprecedented. So, we need a careful balance between the management of debt service costs and service delivery. For if both are not properly managed they can be a thread to our democracy as a failure to manage either of them, can lead to a failed state. Therefore, the budget cuts should be fit for purpose.

Our democracy requires a stable and a well-functioning justice system to prosper. Delivering justice services is labour intensive. So, budget cuts affect our legal system severely.

We are therefore concerned by the extent of the cuts to the salaries budgets.

We remain concerned by the growing number of case backlogs. Preventing these backlogs from overwhelming our system will require added resources.

Budget reductions at the Legal Aid SA, has meant a cut in posts which will increase the number of pending matters and case backlogs in criminal courts. This also means that fewer clients can be assisted in civil matters and with advices.

We do not support budget cuts to the National Prosecuting Authority, NPA, and the Special Investigating Unit, SIU. These are entities that can bring money back to the state. We believe that this can also undermine efforts to rebuild our economy and our society. We cannot afford to have a situation where criminals in organised crime, have more capacity than the state. I must hasten to say that this a global phenomenon,

but governments all over the world, have a responsibility to turn the tide against criminal syndicates.

We do not support the budget cuts in the Public Protector’s Office and the SA Human Rights Commission. The Chapter 9 institutions uniquely contribute towards strengthening our constitutional democracy and we have a constitutional duty to assist them.

We have raised our concerns about the department’s poor performance, attributing this partly to a lack of leadership at senior management level as a result of high vacancy rate. We therefore welcome the steps to stabilise the department’s leadership. A new Director-General, Adv, Dr Mashabane has been appointed, as well as the Deputy-Director-General Corporate Services, Ms Mametja and the Chief Master, Adv Mafojane. We congratulate them on their appointments.

We also welcome the department’s intentions to finalise its macro structure and the intentions to reduce the senior management service, SMS vacancy rate to 10% and below.

The intentions to accelerate information and communication technology, ICT, aimed at fast-tracking court modernisation and digitisation is welcomed. We also welcome the intention to designate more Sexual Offences Courts this year. Last year the department implemented a Justice Rapid ResultS Challenge at selected courts, aimed at rapidly at eradicating the backlog in domestic violence cases. We will continue to monitor the backlogs in respect of gender-based violence and femicide, GBVF, cases.

We note that the department has targeted 75 courts this year, to be made compliant with the strategy for universal access for persons with disability.

We are also pleased about the appointment of regional heads in the Office of the State Attorney. We also note the ongoing engagement with the National Treasury on the framework contract model to support the fair and transparent procurement of litigation services.

We also welcome the intention to develop a policy for the management of state litigation. We also note that five specialised commercial crimes courts have been established so

far. We note that the Protection of Personal Information Act will commence fully on 1 July, this year. Therefore, we are pleased that the Information Regulator received added funds over the Medium-Term Expenditure Framework, MTEF, for the needed capacity.

We will continue to monitor the progress of corruption matters referred to the NPA for prosecution, particularly those involving alleged corruption in COVID-19 related procurements.

We will continue to monitor the NPA’s recruitment drive. We welcome the transfer of the legal representation fund currently undertaken by the Department of Agriculture, Land Reform and Rural Development to Legal Aid SA to assist the indigent that seek land justice.

We agree that the SIU funding model must be addressed. We propose to request to the Speaker of the National Assembly that she brings the matter of the monies owed by the state institutions to the SIU to the attention of the President. We note that the Public Protector of SA’s intention to develop amendments to the Public Protector Act.

We welcome the resent collaboration between the Public Protector of SA and the SA Human Rights Commission. We welcome the decision of the Public Protector to open a new regional office in Thohoyandou and also the decision to install the complaint job boxes at certain Magistrate Courts countrywide to enhance access to services.

We will monitor the progress of the transfer of the SA Human Rights Commission’s Promotion of Access to Information Act function to the Information Regulator which will take place soon. We will monitor the SA Human Rights Commission’s work in respect of the national preventative mechanism established in terms of the Optional Protocol to the Convention, OPCT, against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment acts as the designated independent monitoring mechanism under the convention of the rights of people with disabilities.

We are aware that some departments do not co-operate with the SA Human Rights Commission. We have asked for a list of errant departments so that the matter can be taken up to the Speakers Office with the Leader of Government Business. We recommend that this budget be supported. I thank you, Chairperson.

Adv G BREYTENBACH: Thank you House Chair, hon members, the Department of Justice and Constitutional Development has submitted an annual performance plan that gives an impression of it being on a very brink of turning the corner, of being on a very brink of improvement. Almost as if there really is someone actually out there who is in control. Actually has a vision of how to turn it around. Someone who is actually capable of implementing this.

The Annual Performance Plan, APP, looks distinctively convincing and invites a false sense of security. It is cleverly crafted to make us all feel like everything is going to be okay. It is full of details of wonderful sound in the 21st century plans that on paper looks like as if the only way is up. And we all, myself included, desperately wants this to be true.

But on a closer and soberer inspection, it becomes clear, painfully so, that it is all words on paper. And worse, it is words on paper that we have heard before. Certainly, it is saved up in a different guise, updated for the year 2021. But it really says nothing new.

And very little has happened. There has been no improvement in the department and its performance continues to languish. Many important areas have declined. The department has failed to deal with important disciplinary issues and had seriously negative impact on its performance over a year and these matters have not been near completion.

Hon members, this speech is about improvement suggests on key important areas. It is full of details of wonderful sound in the 21st century plans that on paper looks like as if the only way is up. And we all, myself included, desperately wants this to be true.

Almost as if there really is someone actually out there who is in control. Actually has a vision of how to turn it around.

Someone who is actually capable of implementing this. Many important areas have declined. The department has failed to deal with important disciplinary issues and had seriously negative impact on its performance over a year and these matters have not been near completion.

On an urgent basis, in order to encourage transparency, in order for the criminal justice to assist with ... [Inaudible.]

... at all costs continue to fight and defend an independent judiciary.

By so doing take us to the path that we belong.

To harness the good job that exist. it is indeed going to make an improvement. If he is serious about turning it around, I would encourage him to include all the systems he can master. To harness all the hard work that exists to succeed. It is in the interest of all South Africans. I thank you.

Ms Y N YAKO: Thank you, Chairperson, the EFF rejects this Budget Vote. Minister Lamola who was a part of youth leaders in this country, who redefined the nature of our struggle post 1994, has now become so comfortable in getting the perks that comes with being in power, that he forgot what they defined as their generational mission.

If he has not forgotten, how then do we explain that the department he leads, to which the National Prosecuting Authority reports, has blatantly refused the past 27 years to prosecute apartheid criminals? Why has that murderous apartheid criminal, F.W. de Klerk, not being charged for the

murder of so many black people in this country? Including the murder of the Mpendulo children in 1993? He publicly admitted to have authorised that murder.

Why has this democratic state dragged its feet in prosecuting white criminals? Why has the NPA dragged its feet in charging and prosecuting Marcus ... [Inaudible.] ... as the biggest kingpin of those who are correct post 1994? The list of white criminals still walking about freely is too long. This leads to the perception that justice in South Africa has eyes and ears, and it particularly does not like black faces and views whites as saints. This is not a way to go about in administering justice in a democratic society.

The NPA still operates under the colonial and apartheid modus operandi, that all blacks are savages and all whites are saints. Shamila Bathohi, a renowed Indian racist as head of the NPA only strengthen the strength hold of this racist have over our justice system. Over and above that, she has failed to initiate any significant corruption case against any of the army of corrupt criminals and business people we have in this country.

Her only priority, her brief, is to only harass those who are against her backers. Contrast to the treatment of ... [Inaudible.] ... that of the PP, Busisiwe Mkhwebana. The Public Protector is today threatened with an ejection from office by the DA, supported by the ANC, a party supposedly fighting for the emancipation of black people. The PP’s only sin was to go after those who are considered untouchable by society. She went after Absa and how they corruptly benefited under apartheid.

She went after the darling of our influential group, Pravin Gordan, a self-proclaimed crusader against corruption but who himself is a white enabler of corruption in this country.

South Africans are fooling themselves if they think that the courts are in partial adjudication of dispute in this country. When the then Public Protector rightfully investigated the corruption of the then President Jacob Zuma, the courts affirmed her powers to do so and even said the ruling of the PP cannot be ignored, unless decided by the court of law.

Today, the same office of the Public Protector makes the similar ruling against the darling of the establishment, Busisiwe Mkhwebana is slapped with personal cost order and

Parliament, under the leadership of the ANC threatens to impeach her. The modus operandi is the same everywhere, whether in the prosecution of fees must fall activists or the arrests and prosecution of community leaders agitating for change and service delivery.

The department has also not lifted a finger to investigate the allegations about some judges in our courts and that they structure judgements in such a way that they arrive at a predetermined conclusion. The capture of our judiciary would mark the death of democracy as you have come to know it. It must be fought and prevented by all means possible.

Mr Lamola has betrayed the ideals he has committed himself to abide to as part of that generation of leaders. He is not presiding over the department he is hell-bent on preventing Africans on seeing justice in their lifetime. Once again, the EFF rejects this Budget Vote.

The ACTING HOUSE CHAIRPERSON (Ms R M M Lesoma): Before I thank you, hon member, hon Radebe, I saw your hand up on the platform.

Mr B A RADEBE: Chairperson, I was rising on a point of order that the member was attacking the person being removed by Parliament, that is the director of public prosecution. I think it was unparliamentary. Thank you, Chair.

Ms O M C MAOTWE: No, sit down Radebe maan. Sit down, eish!

The ACTING HOUSE CHAIREPRSON (Ms R M M LESOMA): No, wait hon

members. Hon members, you are aware that you can’t make a direct personal attack on an individual who cannot defend herself in Parliament. We must all desist from doing that. We shall move hon members, to hon Msimang of the IFP.

Prof C T MSIMANG: Thank you, hon House Chair, hon Minister Lamula, hon Deputy Ministers and hon members of the House. This year marks 25th Anniversary of our Constitution, while a number of programmes are in the pipe line to commemorate this milestone, the IFP wishes to highlight critical areas that would benefit from any funds the department would divert to such celebration.

The Department of Justice and Constitutional Development is an essential service whose functions have long been cripple by

lack of resources. The state of affairs was exacerbated by the pandemic. With this knowledge in mind, the IFP remains concerned about the budget reductions for the programmes of the department.

The first area to be hit by budget cuts is the filling of critical vacancies across the department, negatively affecting the department’ services delivery and compromising the rights of court users to access to justice.

The IFP, welcomes the filling of critical vacancies at the top of the organisational chart, however the filling of crucial roles, that are client facing must be expedited. To allow efficient service delivery, the high vacancy rate in the department has been compounded by the slow pace of the recruitment processes.

The IFP trusts that the department’s plan to finalise its three configuration of its structure will be implemented with urgency it deserves. The IFP has expressed and wishes to express again, its disappointment in the consistent budget cuts experienced by Legal Aid South Africa. Since 2015-16, period Legal Aid has lost R449 million and continues to loose

funding. The bulk of this budget is allocated to employee cost and as such the budget cuts, directly affect the legal aids ability to assist those people who cannot afford private legal assistance. The IFP does not support any reduction of legal aids’ budget, which will lead to an increase in backlog cases affecting the right to access to courts and speeding up process for far too many people.

Further, budget cuts will directly impact the number of remind prisoners in our correctional facilities, as the already limited staff compliment and will continue to be stretched thin.

The IFP notes that despite the persistent cuts, legal aid has managed to achieve impressive results, yet bears the brand of department’s fiscal challenges. The IFP, has long been calling for the establishment of an independent well-resourced

anti-corruption integrity commission, under the auspices of Chapter 9 to investigate and prosecute, high level corruption in the public service. This institution will strengthen our constitutional democracy and is even more vital now, with the release of large amount of money for essential procurement.

As we look back the work of the Constitution, and look forward at its potential impact, the IFP trusts the Department of Justice and Constitutional Development is recognised through appropriate funding as a critical agent of transformation and buttress of the rule of law. The IFP supports the Budget and I thank you, hon House Chair.

Dr F J MULDER: Thank you, hon House Chair, the mandate of the Department of Justice and Constitutional Development of promoting the constitutional democracy in South Africa. Should be measured in the department’s ability to uphold and protect the Constitution and the rule of law, to render accessible fair, speedy and cost effective administration of justice, in the interest of the safer and more secured South Africa.

House Chair, the FF Plus share the opinion of Professor Koos Malan of the University of Pretoria, who published the book in 2019, with the entitle; *There is No Supreme Constitution*. The set of misconceived in the Constitution is quiet clear. The Constitution is not supreme, nor is definite, constant or enduring.

If individuals rely on it for protection, he lives in the fool’s paradise. The Constitution is vulnerable to patent socio-political forces, it changes continuously and often profoundly regardless of string amendment requirements.

The three folds’ separation of power is more methodical and real and therefore enable to secure effective checks and balances. Through institutionally separated with their own personnel and functions, the three powers are ordinarily integrated into a single dominant political leadership, committed to achieve the same ideological goals.

The Bill of Individual Rights cannot guarantee justice, because rights are subject to the ideology driven exercise of the judicial interpretation. Often with damaging consequences for those relying of the Bill of Rights.

South Africa needs an improved mode of constitutionalism, equipped with the sounder system of checks and balances and better indulge towards the achievements through a balance of honest Constitution.

Hon House Chair, according to the Constitution the public sector, which include the public service must be impartial and professional. Consequently, the forming of relationships, patronage, appointments, promotions, delivery of services and awarding of contracts on account of involvement or in exchange for loyalty to the ruling party or any of its faction is impermissible and unconstitutional.

Since the Constitution took effect ... [Inaudible.] ... themselves with marginalised of these values and principles.

The South African Judiciary should uphold these values. The committee report before the House today tells a story of a department with unfilled critical positions at senior management level. Underfunded Special Investigative Unit, with unfilled critical positions, reduced budget for the National Prosecuting Authority, vacancies at the Information Regulator, serious service delivery concerns at the Master’s Office. Yet another turnaround strategy in the State Department at the State Legal Services. The poor audit outcome with another turnaround strategy, case backlogs in lower courts, budget reductions ... [Inaudible.] ... constrain physical environment.

A partial and political driven human rights commission, a political charged and failed office of the Public Prosecutor, the aging and unstable Infrastructure Development Act that cause the disruption of services. Poor contract management leading to irregular expenditure. Inadequate management of people. Compromised and physical information security and inadequate disclosure process of contingent liabilities of state attorneys.

Chair under the medium term, the Budget allocation for the department will be reduced by R7,8 million. This department should be have put under administration long ago. The department is failing its mandate. Thank you.

The ACTING HOUSE CHAIREPRSON (MS R M M LESOMA): Thank you, hon

members before I recognised hon Deputy Minister, hon Mahlaule will take over, after I have recognise the hon Deputy Minister responsible for Justice and Constitutional Development, over to you Deputy Minister.

THE DEPUTY MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

(Responsible for Justice and Constitutional Development): House Chair, hon Minister Ronald Lamola, members of the

executive, the Deputy Minister for Correctional Services, Nkosi Phathekile Holomisa, the Chairperson of the Portfolio Committee on Justice and Correctional Services, hon members, the Director-General, Adv Mashabane and other members of the department, distinguished guests and friends, as we celebrate Africa Day, we are once again reminded of the words of Kwame Nkrumah when he said that, and I quote:

Freedom is not something that one people can bestow on another as a gift. They claim it as their own and none can keep it from them.

Freedom and access to justice go to the very heart of what our department does, as we work towards building and deepening constitutionalism and respect for human rights and the rule of law. We are celebrating Africa Month under the theme: “The year of Arts, Culture and Heritage in the year of Charlotte Maxeke”. Charlotte Maxeke was a pioneer and an activist when, at the turn of the twentieth century, she became the first African woman in our country to attend university, when she enrolled at Wilberforce University in the United State of America.

When she returned to South Africa, she committed herself to improving the lives of African women and children. She was also actively involved in helping women and children in prisons. She was unwavering in her commitment to women’s rights. As a country, we say that we value women’s rights and gender equality, yet many of the women of our country face gender-based violence on a daily basis. Addressing the scourge of gender-based violence and femicide and violence against women and children is a fundamental part of what our department does.

During the past financial year, the three GBV, gender-based violence and femicide were introduced. We note the work that has been done and the progress that has been made by the portfolio committee on these Bills and hope that the President will be able to enact the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill, the Criminal and Related Matters Amendment Bill, and the Domestic Violence Amendment Bill, during this financial year. These Bills provide for more protection for complainants of gender-based violence, more victim-centred mechanisms to be made available to them and a stricter approach towards the measures to be taken against perpetrators before, during and after the trial.

Our Sexual Offences Courts and our Thuthuzela Care Centres also play a critical role in the fight against gender-based violence and femicide. As the Minister has indicated, a total of 100 Sexual Offences courts will be designated in terms of Section 55A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, to improve the adjudication of sexual offences cases. The designation will mean that members of the public will know what they can expect from a Sexual Offences Court as a designated court will need to conform to the minimum requirements as set out in the Regulations.

When it comes to domestic violence applications for protection orders, it is extremely concerning that in excess of 194 000 such applications were made in the last financial year. Of these, a staggering 21% exactly a quarter come from KwaZulu- Natal, followed by Gauteng at 14% and Limpopo at 13%. When it comes to the types of abuse, one complainant can register more than one type of abuse and there were 137 800 instances of emotional, verbal or psychological abuse, followed by 64 400 instances of physical abuse. Because these are domestic violence applications, we know that these atrocities are being committed by people who know each other, people who are or were in a relationship – these are not strangers attacking

unknown victims. This is happening in our homes. Economic abuse is also a sad reality of the world we live in, particularly where parents and spouses default on their legal obligation to maintain their dependants. Plans are in place to introduce Maintenance On-line Applications, the Mola System, as the initial phase of establishing a comprehensive electronic management of maintenance matters.

Currently, magistrates Courts receive thousands of manual applications for maintenance claims and at times the complainant is not aware of what documentation is required - which then leads to them having to make multiple trips to the maintenance court. The new system seeks to ease the current cumbersome process by creating a Web Portal for the submission of maintenance application forms online. It will also enable the user to track how far the application is in the system.

The Portal will further inform the user of their next court appearance. This innovation will take us a step closer to our goal of using technology to simplify lengthy processes and continue to improve access to justice services for all. This is the Minister first phase of the comprehensive electronic management of maintenance. This solution will be piloted in

our model court in the Point Road, Durban, this year, before it is rolled-out to the other 450 maintenance courts.

Hon members, in July last year, when we delivered our previous Budget Vote, we had had to come to grips with Covid-19 and new ways of delivering justice in a South Africa in such circumstances. Our main focus remains the optimal functioning of our courts and the justice system as well as the protection of human rights and vulnerable groups in times of Covid-19.

We are working closely with key stakeholders in our magistrate’s courts – the Chief Magistrates, the National Prosecuting Authority, NPA, Legal Aid SA, the Department of Correctional Services, the SAPS and the Department of Social Development to ensure that we finalise the maximum number of cases that we are able to during this period.

The magistrates’ courts continue to grapple with huge case backlogs which were already high even before the pronouncement of the state of national disaster in March 2020. These backlogs increased during the hard lockdown. From the records kept by the department, case backlogs stood at 53% and 48% in the Regional Courts and District Courts respectively

immediately before the announcement of the lockdown in March 2020. By 31 March 2021, the backlogs had decreased to 48,87% and 14,14% in respect of the Regional Courts and the District Courts respectively. This is because of the continued focus which the department and our stakeholders have been putting on reducing the backlog cases and the prioritisation of matters involving GBVF, matters involving children as well as corruption - related matters. Matters where there are persons awaiting trial are also prioritised.

We continue with the implementation of measures to bring down the backlogs. As part of the measures underway, the department has procured over 1 500 new laptops with the requisite data and IT equipment for use by magistrates. This yielded results as many cases, particularly civil matters, were dispensed with on virtual platforms during the hard lockdown.

There were 37 572 matters where audio-visual remand was utilised as a virtual appearance method with the detainee in DCS custody in the last financial year. Regular meetings of all the stakeholders, except unfortunately the Regional Court Presidents, as part of our Court Optimisation Committee are

held to discuss ways of unblocking operational challenges for the lower courts to function optimally.

Our magistrates have to perform their duties at the very coalface of justice. The department is presently refining a draft Magistrates Bill which is aimed at replacing the Magistrates Act of 1993, in order to engage with, and obtain the inputs of, the interested role-players, including those of the superior courts' judiciary. We are also developing legislation, provisionally called the "Lower Courts Bill" that is aimed at replacing the Magistrates' Courts Act of 1944.

It is common cause that all legislative provisions pertaining to the Superior Courts and the judiciary of those courts were framed after our transition to democracy in 1994. The post- 1994 constitutional order elevated the constitutional status of the magistracy.

In terms of section 68(1) of the Constitution of the Republic of South Africa, 1983, that will have been Constitution hon Mulder would have spotted the one today. The judicial authority of the Republic was vested in the Supreme Court of South Africa. However, both the interim, the 1993 Constitution

in section 96 and the final Constitution in section 165 vested the judicial authority in all courts. Magistrates' Courts are also specifically mentioned in section 166 of the Constitution as forming part of the Republic's judicial system. Magistrates are therefore just as much part of the judicial authority as the judges of the superior courts.

The Magistrates Act, 1993, emanates from an era before the advent of the new constitutional dispensation in South Africa. The Magistrates’ Courts Act, 1944, has been amended on various occasions, but because it is still archaic, it is necessary to review the whole Act. Progress has been made in this area of work which is intended to transform the statutory framework regulating the structure and functioning of the lower courts and enhancing the independence, impartiality, dignity, accessibility and effectiveness of the lower courts.

The Minister of Justice appointed 24 Senior Magistrates to vacant offices with effect from 1 January this year after having considered the recommendations of the Magistrates Commission. The Magistrate Commission has also finalised their recommendations for the filling of 165 vacant posts of District Magistrates. A total of 476 candidates were

shortlisted and interviewed by the commission. It is anticipated the Minister will soon make appointments arising from the recommendations of the Magistrate Commission.

We would like to convey our appreciation to the members of the Magistrates Commission and the supporting officials in completing this mammoth task that had to be staggered over a 4-month period of due to the large number of shortlisted candidates and the other commitments of the members of the appointments committee.

The numbers of senior judicial heads that are currently suspended pending the finalisation of their misconduct proceeding, as well as the period of time that it takes to bring these matters to finality, remain a matter of considerable concern.

Hon members, I would like to pay tribute to the various officials and magistrates who continue to serve the public and ensure access to justice for all during this pandemic. Sadly, many of them passed away during the pandemic and we wish to convey our sincerest condolences to the families of these officials and magistrates and obviously at this point we also

acknowledge the sadness of passing of hon Jacqui Mofokeng, who was the whip of the portfolio committee.

With regards to the sheriffs’ profession, I want to convey my appreciation to the outgoing chairperson and members of the South African Board for Sheriffs for further enhancing the work of the sheriffs’ profession and for the clean audits received during their term.

With regards to the South African Human Rights Commission, in October last year we had to bid a very sad farewell to the Commission’s Deputy Chairperson and renowned human rights’ lawyer and activist, Priscilla Jana. She was responsible for the commission’s work on equality and dedicated her life to the struggle for liberation and democracy. We are pleased the committee is finalising the process of the appointment of the replacement. As you have heard, this is an important year for the Information Regulator. In June last year the President issued a proclamation to bring into effect a number of the remaining sections of the Protection of Personal Information Act on 1 July last year

The last two sections, sections 110 and 114(4), will commence on 30 June this year. Those are the section dealing with promotions and access to Information Act in transferring it to the Information Regulatory. In short, private and public bodies will have to ensure compliance with the Act by 1 July this year.

Hon Chairperson, as we celebrate the 25th Anniversary of our Constitution and in spite of what hon Mulder has said – a Constitution which has been lauded around the world as being one of the most progressive – it is an opportune time to reflect on how far we have come as a nation. To, once again, quote Dr Kwane Nkrumah, he said, and I quote: “Those who would judge us merely by the heights we have achieved would do well to remember the depths from which we started.” As much as leaders from a certain opposition party would argue to the contrary, nothing good came from colonialism. We had to, as the late President Mandela said, suffer the indignity of being the skunk of the world. Those were the depths from which we started.

But over the past 24 years our 1996 Constitution has enjoined us to the attainment of human rights for all and respect for

the rule of law. But there is still much more to be done. Poverty, inequality and discrimination stand in the way of the full attainment of the society we are trying to create – a society where every single person can claim freedom and human dignity as their own and none can keep them from it. Thank you.

Mr S N SWART: Thank you House Chair. The overall allocation to the department is R21,5 billion. The ACDP shares concerns with the budget cuts and the one size fits all approach. These budget cuts will undoubtedly have a negative effect on the service delivery in the courts which will impact access to justice.

Now, much is expecting from the National Prosecuting Authority in its fight against crime, including widespread fraud and corruption arising from state capture. However, without sufficient resources these expectations will not be realised. It is equally important for the Hawks to have to have resources for forensic investigations required for many of the complex cases of fraud and corruption. It also does not make sense to reduce the budgets of those entities that are able to recover ill-gotten gains for the state, such as the National

Prosecuting Authority, NPA, the Asset Forfeiture Unit and the Special Investigating Unit, SIU.

As an example, the SIU reports that more than 50 civil cases were enrolled at the special tribunal to the value of

R6,9 billion. The SIU has a mixed funding model that derives income form the Treasury and from work done for state departments. The ACDP is concerned that state department’s debtors will not pay the fees due to the SIU, due to their own budget cuts. This will have a devastating impact on the SIU which already sits with a debt owed in the amount of

R630,8 million. That is the debt owed by the departments to the SIU.

It can then be very easy to ...[Inaudible] ... into the SIU’s work by finding it to be not adequately. This makes no sense and this model funding must be revisited. It also time to recover all those stolen state funds sitting in foreign bank accounts. The Financial Intelligence Centre, FIC Hawks, the Asset Forfeiture Unit, SA Revenue Service, Sars has an extremely wide path to freeze bank accounts and attach assets worldwide. It is lawful ... [Inaudible] ... and possible to effect recoveries using the ... [Inaudible] ... banking system

and the civil courts that of the jurisdictions to which the funds have been transferred, using that very system.

Artificial intelligence applications can also be used.

One can apply *ex parte, i.e.* without notice for an order freezing the proceeds of crime in an account wherever it is situated across the world. We from the ACDP, would urge our law enforcement agencies, state-owned enterprises and other state agencies to approach these foreign courts for those freezing orders, which are obtainable within days of locating via friends in the ... [Inaudible] ... where the funds are, no matter where they are, so that they could be recovered and brought back to South Africa.

The ... [Inaudible] ... will assist us in fighting crime and will assist us with the financial constraints that we are faced with at the moment. I thank you.

Mr X NQOLA: Thank you very much hon Chair, the members of the House, the members of the executive, good afternoon. On this occasion of the debate on the Budget Vote of Justice and Constitutional Development, and keeping with the commemoration of the 25th Anniversary of the Constitution, I begin with the

words of the chairperson of the Constitutional Assembly, who was involved in the drafting of our democratic Constitution, President Cyril Ramaphosa, when he said and I quote:

This constitution, with its Bill of Rights, is the mirror of South African society. It reflects both the history from which we have emerged, and the values we now cherish, human dignity, equality and freedom. It proclaims to the world that we are a society committed to democracy, to the rule of law and the protection of human rights. It proclaims to all South Africans, the landless, the homeless, the women, the workers and the children of this country, that their basic needs and aspirations matter enough to be included in the country's Constitution.

The Constitution was adopted to, amongst others, heal the divisions of the past, of a deeply divided society which was characterised by strife, conflict, untold sufferings, and injustice and establish a society based on democratic values, social justice and fundamental human rights. The Constitution was adopted to lay the foundations for a democratic and open society, based on the will of the people.

Hon Chair, the roots of our Constitution and the Bill of Rights can be traced back to the founding documents of the ANC. Convened in Bloemfontein in 1923, the ANC adopted that African Bill of Rights. Things that were very central in that African Bill of Rights were demands for land, of all citizens before the law and justice. Two decades later in 1943, the African Claims Document was adopted. The ANC has been both a human rights and liberation movement. The resolutions of the African Claims Document have been proclaimed in the founding provisions of our much celebrated and internationally acclaimed final Constitution.

The ANC’s Ready to Govern, articulated that the Bill of Right would be enforced by the courts, headed by a separate newly created Constitutional Court, which would have the task of upholding the fundamental rights and freedoms of all citizens against the state, body or persons seen to deny those rights. Our constitution guarantees three generations of rights. While most democratic countries guarantee first generation rights, our Constitution has entrenched second generation rights which are the socioeconomic rights of the second generation rights.

Since its establishment, the Constitutional Court has shown willingness to adjudicate on and enforce socioeconomic rights in addition to political and other rights, showing the transformative purposes of our Constitution. In the matter between the Road Accident Fund and Another vs Mdeyide, the Constitutional Court described our Constitution as a transformative to the extent that, it should ensure to the weakest sections the realisation of their rights so they can enjoy a dignified life.

In Bato Star Fishing Pty Ltd vs the Minister of Environmental Affairs and Tourism and Others, the Constitutional Court observed that, the South African Constitution differs from other constitutions to the extent that, all other constitutions assume all people to be equal. In contrast the South African Constitution recognises the history of discrimination, and as such strives to achieve equality.

In President of the Republic of South Africa vs Hugo, the court recognised that the purpose of their new constitutional and democratic order was to establish a society in where all human beings are accorded dignity and respect, irrespective of their membership of particular groups. Through the

adjudication process, rich jurisprudence has been developed by our courts as aforementioned. Our courts have passed numerous landmark judgements which seek to protect human rights including rights to access housing, healthcare and education.

The Constitutional Court in the cases of Grootboom, Soobramoney and the Treatment Action Campaign are just a few classic examples.

Hon chair, the ANC government remains committed in the fight against crime and corruption. We welcome the efforts made by the Department of Justice and Correctional Services, and the entire Justice, Crime Prevention and Security, JCPS Cluster in the fight against fraud and corruption. The department indicated that, in enhancing the fight against corruption, it has an indicator dealing with the establishment of a specialised commercial crimes courts. The department targets to establish two specialised commercial crimes courts during the year 2021-22. The department also reported that, it will develop a position paper on the existing anticorruption legislation and institutional arrangements.

We welcome the commitment to strengthen the prosecutorial capacity of the National Prosecuting Authority by way of Aspirant Prosecutor Programme. The programme allows young graduates to be recruited into the ... [Inaudible] ... of the National Prosecuting Authority, NPA. In line with our constitutional accountability, it was reported that, an office of complaints and ethics will be established in the NPA during this financial year.

The Minister committed that the department will ensure that the State Capture Commission is assisted to complete its work. The commission will receive an amount of R75 million from National Treasury. This will allow the commission to complete its work and report. The Special Investigating Unit’s principal function is to investigate serial malpractices, maladministration and corruption in connection with the administration of states institution, states assets and public money as well conduct that may seriously harm the interest of the public.

The Special Investigating Unit, SIU institutes and also conducts civil proceedings in any court of law or special tribunal in its own name or on behalf of the state

institution, and brings potential disciplinary matters to the attention of the state institution. While the SIU does not have the power to arrest or prosecute offenders for criminal conduct, it reports matters to the Directorate for Priority Crimes Investigation, the Hawks, the SA Police Service and the National Prosecuting Authority.

The SIU works closely with the Asset Forfeiture Unit and the NPA where its powers are more appropriate or effective in recovering the proceeds of crime. The SIU is part of the Anti- Corruption Task Team which was established to fast-track investigations of corruption and prosecuting serious corruption cases. More recently, the Fusion Centre which was established in 2020 to provide a co-ordinated response by law enforcement and corruption fighting agencies to incidences of alleged corruption and fraud, abuse and maladministration related to COVID-19 procurement irregularities.

This demonstrates the importance, effectiveness and efficiency of a collaborative effort by state institutions. It was reported that, although the SIU’s budget is reduced by

R41 million in the 2021-22 financial year, it is in a strong position as it had managed to build up some cash resources

over the past last few years. However, this could change as it is planning to grow its headcount over the next few years to meet the high demand of incoming work. Notwithstanding the challenges faced by the department, we thank all the hardworking officials of the department and the South Africans who work tirelessly for the betterment of society. We wish all Africans a happy Africa Day. The ANC supports the Budget Vote. Thank you Chair.

Mr W HORN: Thank you, Chairperson. It was the end of last year that others have pointed out that it was clear that the Department of Justice was at the brink of collapse. Chair, this was despite the fact that it kept on spending close to 100% of its budget every year. When assessing this year’s budget – I repeat therefore, it is very important to ask – whether is this the type of change that will make real improvements a reality.

On this score we are very worried, Minister, at the state of affairs at the state legal services. We are not convinced that the interventions are anything more than an academic exercise at this stage. We also take note of the plans to turn around the Master of the High Court. We hope these plans will work.

However, here is the difficulty, it’s neither the slow response of the Master in respective of the milestone other than the issuing of the letters of appointment nor the perennial unavailability of the personnel when widows and orphans are need of assistance. Some of the real issues played in this office are addressed by the targets the department to set itself. Therefore, we can only hope to the appointments of heads of office at the different offices will translate into improved services where it really matters.

Chair, speaking of high level interventions we are thankful that the new director-general has finally been appointed for the Department of Justice and Constitutional Development. The fact that the person appointed was up to now your special advisor, Minister, of course, it makes a bit of a mockery of your argument the other day that your hands are tied when it comes to the continued appointment of the National Commissioner of Correctional Services. We see you Minister, and we don’t like the orchestration of Mr Fraser being kept in office in the face of what objectively speaking is information that should be precluding from ever again being allowed in any public funds. We know that you have real influence in who your senior officials are, just like you clearly had your way with

the appointment of advocate Mashabane as the new director general of the Department of Justice and Constitutional Development, you can do the right thing with Mr Fraser if you really want to.

Nonetheless, Chair, we wish Mr Mashabane well in this role as the director-general of Justice and have noted with interest that he has already spent some time listening to officials.

Hopefully, he has learnt that one of the ways in which both the staff wellness and the delivery of quality frontline services should be enabled is through the proper support of the functions of this department by management. Simple things like proper management of contract services so that magistrates’ offices are not forced to operate without outgoing telephone lines for months on end or the judiciary without access to online cases and timely reacting to simply requests for basic maintenance of court buildings will go a long way.

This is of course, tradition, Mr Mashabane, to improving financial management and access to justice for specifically the vulnerable long suffering parents who are depending on our courts to get their “papgeld” from sometimes unwilling

co-parents who spend long hours in queues. Victims of domestic violence, victims of sexual crimes and victims of other violent crimes and commercial crimes. All well doing what should be done to strengthen the resolve of all involved in the fight against corruption. ... [Inaudible.] ... order, but the mission that you chose to accept, Mr Mashabane. Please, make us proud.

Chair, this Budget Vote, of course, also includes the Public Protector and the Human Rights Commission both of these institutions had suffered serious reputational damage of the last years because of the way in which it has discharged its duties. In the case of the Public protector, anything more complex than ordinary bread and butter matters, like pension disputes which puts individuals South Africans against government in some way or form that turns out that the amount is too high and the value too low for the incumbent. ...

[Inaudible.] ... is still at acritical juncture to fight against endemic state capture and endemic corruption. We deserve much better from this institution. Once described by our Constitutional Court is one of the major invaluable constitutional gifts to our nation in the fight against corruption.

Chair, the Human Rights Commission is doing no better. Until the Human Rights Commission acts, for example, as forcefully against the failure of local governments in the Free State to get all the residents uninterrupted basic access to clean water, an issue which had been asked to deal with and the state at which it is but has done nothing more than to issue advisory reports. Over a hundreds of thousands of poor, mostly rural, Free State still have no proper access to clean water. Until it shows some urgency and enforce in matters like these when it deals with the alleged shortcomings of the City of Cape Town, in the Western Cape government, it will be viewed – and rightfully so - as nothing more but a special branch of the ANC.

This brings me in closing, Chair, to another important institution which received budget for other Budget Vote; information regulator. The regulator is due to become very busy on 01 July this year when it is its duty to oversee and enforce the protection of our personal information comes into effect. We are very worried that it is yet not in a position to deal with this type properly. The fact that on its own account it is struggling to recruit the right type of the number of experts poses a great danger to its functionality.

If one considers this against the state of intent against the regulator to use all powers available to it from 01 July, it needs no special insight to know that there is grave danger that this body too is at a risk of also ... [Inaudible.] ... in a selective, inconsistent manner and it might also through finding that it is viewed with some scepticism by South Africans. It should guard against this. Thank you, Chair.

Mr Q R DYANTYI: Hon Chair, just as I started to indicate that I have received a favourable two minutes from hon Magwanishe to add to what I want to say ...

It was a German philosopher Friedrich Engels who argued that the evolution of society was characterised by a decline from matriarchal societies where ownership was communal and production processes were egalitarian in nature. As new societies evolved, they were characterised by the emergence of classes and private property, and later the location of power in the state. Once these societies were established, sexism, racism, class inequalities and other forms of discrimination and subjugation began to emerge.

The ANC recognises the country’s historic oppression of Africans in particular and blacks in general. This understanding also recognises that the South African society, like many other societies, is patriarchal and anchored on the historic marginalisation of women and the perception that women are inferior to men. While all Africans were subjected to conquest, colonial rule and dispossession, the way in which women and men experienced this differed, as did their political, economic and legal statuses. These differences shaped their particular responses, how to determine the issues they took up and the methods of struggle adopted.

The main objective of the national democratic revolution is to attain a nonracial, nonsexist, united and prosperous society. Throughout history, women have been marginalised and regarded as the weaker sex, and incapable of fulfilling the duties which were traditionally considered as being for men. History teaches us that women in most parts of the world, including South Africa, were considered perpetual minors without rights to property, to inherit, to vote, to hold legal power and to hold certain occupations. Married women were legally dead in the eyes of the law. History teaches us that women were relegated to the lower rungs of society. Throughout all of

this, history also teaches us that the bodies of women have been considered and treated as objects, and sadly, you have that still continuing.

The ANC’s theoretical approach to gender transformation and equality is informed by women’s experiences of triple oppression on the basis of their race, sex and class position. We continue to anchor our resolve on a pursuit for a democratic society which is a society that has to address the challenges within class, race and gender contradictions, and as such we will continue to champion for gender equality and the empowerment of marginalised groups in society.

The President, in announcing the emergency response plan, made and listed some of the following measures: Around prevention; the issue of gender sensitivity; the training of law enforcement officials, prosecutors, magistrates and policy makers so that those who are found in breach of these responsibilities in this regard will be held to account. We have brought to Parliament suspensions of magistrates who have failed in this regard; the strengthening of the criminal justice system; a proposing of a range of legal and regulatory reforms that came to Parliament; engagement with the judiciary

on the role that it can play in supporting the national effort to end gender-based violence, GBV, to ensure that abusers, rapists and murderers know that they will be caught and punished; that the state should oppose bail for rapists and those who are suspected of that; to strengthen programmes that must rehabilitate offenders and youth at risk. We have spoken a lot about this in the Correctional Services debate last week; and that all parliamentary committees to prioritise these areas of legislative reform and ensure that we have effective legislation in place without delay. We are busy with this.

We must commend the Justice, Crime Prevention and Security, JCPS, cluster on its work to ensure that perpetrators are brought to book and that the survivors receive the necessary help. As the legislative arm of government, we must commit to ensuring that gaps in existing legislations are tightened to assist in the JCPS cluster with its work. To this end, we must indicate that the Criminal Law, Sexual Offences and Related Matters Amendment Bill, the Domestic Violence Amendment Bill and the Criminal Matters Amendment Bill — what we call the three GBV Bills — are at an advanced stage in the Portfolio Committee on Justice and Correctional Services. On a weekly

basis, including this week, and hopefully concluding next week, we are dealing with these matters. We must also hasten to make the point that the issue of the Bills and legislation is only an enabler and not the solution on its own, and that we need to deal with the more fundamental issue of the emancipation of women and attend to the mind-set of society, and as mentioned earlier, the issue of patriarchy.

The Department of Justice has progressively rolled out sexual offences courts. Because of the intrusive nature of sexual violations, many survivors of sexual abuse choose not to report this crime, mainly because of shame or fear of not being believed. The sexual offences courts are therefore established to give them an experience defined by solace, care, compassion and justice. Minister, we want to ensure that this issue is going to be prioritised. We are happy with your

100 and more kind of courts, and as you know, we are watching the Khayelitsha Court in the Western Cape.

However, the major issue that we must also attend to is the issue of family breakdown. It is a major issue that does not need any shortcuts. Many of the problems become symptoms and

as long as that is not attended to we are going to continue having challenges.

At this point, let me attend to some of the issues that have been raised by the opposition.

*IsiXhosa:*

Ndizakuqala apha kwiDA.

*English*:

Hon Breytenbach makes the point about the annual performance plan, APP, being a false sense and ... making more promises. I want to indicate to hon Breytenbach that I think what you have said ... you have left something that I thought you would say

... that, in going forward ... and already, the ANC is leading on that journey of ensuring that we play an effective oversight in ensuring that the APPs are in line, and the annual reports are going to reflect that. We are already doing that in the portfolio committee. I was hoping that you would make that ... So, we are on the same journey with regard to that issue but the ANC will be leading you on that.

You have raised the issue about the National Prosecuting Authority, NPA. The only message I want to share with you and leave with you ... and this is what we all attended to when the NPA came before us ... that the NPA has presented and demonstrated to us that there is a rescue plan under the leadership of Batohi, and that rescue plan is promising and is emerging. We are already — besides what is on paper — able to see, not only the light at the end of the tunnel ... on a daily basis with evidence, we see the role of the NPA. Society can attest to that. So, it is an issue that we will continue to monitor, and again as the ANC, we are determined to lead in that oversight, as we have always been doing.

The issue of the recruitment and retention strategy is a task that we gave the NPA three weeks ago or a month ago when they came to us ... for them to focus on that so that we have a sustainable solution going forward.

Interestingly, you have raised a possibility that the DA, for a change, is now going to advocate for a constitutional amendment. I’m saying for a change because you have always been resistant to any constitutional amendment. More curious to me, this constitutional amendment ... it seems as if you

have learnt from the ANC about how it does things because you want to do the amendment in order for the country to establish an integrity committee. I can share with you that in the ANC our integrity committee is working. You can see results. Maybe a little advice for you would be that before you go on to amending the Constitution, start in the DA. Follow the ANC, create an integrity committee and deal with some of these claims of the qualifications of your members, because an integrity committee works. The fact that you think it could be something for the country demonstrates that.

Let me go to the EFF. Listening to the EFF, as always, it’s quite clear that it’s not worth giving attention to the EFF’s populist and gallery ... stance. Casting aspersions on the courts and the judiciary is an attack on the independence of the judiciary. It’s an attack on the supreme law of the land and quite clearly the EFF plays the racist card and yet accuses other people of being racist. Hence, I want to make the point that it is really not worth responding to many of the issues that the EFF has put forward here.

To the FF Plus’s hon Mulder, I’m looking forward to what you mean by an improved mode of constitutionalism. I’m really

looking forward to that and I can just give you the padkos [food for the road] that on Friday we are debating the 25th anniversary of our Constitution.

*Afrikaans*:

Ek kan nie wag nie. Ek lek my lippe. Sien jou Vrydag in daardie debat.

*English*:

Thank you very much, Chair.

The MINISTER OF JUSTICE AND CORRECTIONAL SERVICES:

Chairperson, with regards to the member’s views that they have raised, we want to thank them for their input and also strengthening our resolve for a constitutional democracy. With regards to the master’s office, the department is developing an online deceased estate system. This will be a convenient method that allows people who want to report deceased estate to do so in the comfort of their homes, offices or in any remote location. This will help us to cut a lot or reduce the cues that you see across the country in the master’s offices and hopefully, this will go a long way towards service delivery.

I want to agree with hon Dyantyi that these plans we have presented are not just nice on paper. They are plans that must be acted on and there must be action. There would be work that is going to be done. It is for this portfolio committee to then hold us to account for our ways and what we have brought to the House. Hon House Chairperson, I want to confirm that the National Prosecuting Authority, NPA, is bringing in new blood to the NPA. In the last financial year, they have appointed 415 aspirant prosecutors. It’s a programme that we have revived and we are continuing to give support to that programme. The will continue to recruit new and sharp minds who have just graduated from our universities and the NPA will again be the employer of choice.

With regards to the Truth and Reconciliation Commission, TRC, Chairperson, it is unfortunate that the EFF chooses to forget that out of their own wishful amnesia, that I am new in this department. These cases of the TRC have been here since 1994 or even before, but the NPA is now putting together a team that is going to be led by a senior NPA person, who is going to help in terms of both the investigation that will be done by the Hawks and the process of charging. This will be a team

that will have a multidisciplinary skill and they’ve got cases

that already are in the pipeline that they are dealing with.

If members remember, the current ongoing inquest of Ahmed Timol that ended, is an outcome of that process. There are many such processes that are unfolding and the NPA is responsive to this, including the Hawks that has also assigned a group of investigators to assist with this process. So, the new broom is helping this process. I was not there in 1994 or before that and ... but I understand. Sometimes, it may not be wishful amnesia, it may also be because the EFF is also new.

They could not have time to go to historic records to see that the Minister is new in this. I was not there when these cases of the TRC started. But we have given all our support to the NPA to help and start this process to ensure that all the TRC cases are attended to, and the families find the finality on these matters.

I cannot agree more with the speakers who say that. It’s important for us to continue to protect and support the work of the judiciary. It is the most important cornerstone of our democracy, and any unnecessary spurious allegations do not take us anywhere nor do they take this democracy further. But

it’s shocking that some of the organisations that continue to doubt and attack the judiciary on a day-to-day basis like the EFF, are in our courts trying to find justice. Why would you go to the platform that you believe is hijacked, bought and lacks integrity? It is because they trust that the system works. That is why they continue to use these courts, because the know that the judiciary is independent. It is able to dispense justice without any fear, favour or prejudice. This is what all of us, as a society, must cherish. We must protect and we must ensure that it is what must continue to give credence to the life of the Constitution.

I can’t agree more with the hon Dyantyi with regards to the supremacy of the Constitution. Mr Mulder, maybe might be yearning for the apartheid past, that is why he believes this Constitution is not supreme enough, is not giving what he used to benefit in the past. This Constitution has shown to work with a good social contract for the people of this country. We just need to enhance and strengthen it, so that all South Africans should benefit from the fruits of the Constitution.

Thank you very much, Chairperson and I also confirm that I heard the advices of Mr Swart with regards to the use of the

foreign jurisdictions to freezing orders. I hope Mr Anton du Plessis has also heard me.

The ACTING HOUSE CHAIRPERSON (Mr M G Mahlaule): That concludes the debate and the business of this virtual mini-plenary session. The mini-plenary will now rise.

Debate concluded.

The mini-plenary rose at 15:43.