

The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 3 December 2021

The Portfolio Committee on Justice and Correctional Services, having considered the financial and non-financial performance information for 2020/21 and the available quarterly financial and non-financial performance information for 2021/22 of the Department of Justice and Constitutional Development, National Prosecuting Authority, Information Regulator, Legal Aid South Africa, Special Investigating Unit, South African Human Rights Commission and Public Protector, reports as follows:

1. Introduction

- 1.1 The Money Bills Procedure Amendment and Related Matters Act 9 of 2009, as amended, (the Money Bills Act) requires portfolio committees to compile Budgetary Review and Recommendation Reports (BRRR) each year.
- 1.2 In particular, section 5(1) of the Money Bills Act provides that committees *must* make their assessment of the performance of national departments and institutions, with reference to the following:
 - The medium term estimates of expenditure of each national department, its strategic goals and measurable objectives, as tabled in the National Assembly with the national budget;
 - Prevailing strategic plans;
 - The expenditure reports or statements relating to a vote appropriating funds for such department;
 - The financial statements and annual report of such department;
 - The reports of the Standing Committee on Public Accounts relating to a department; and
 - Any other information requested by or presented to a House or Parliament.
- 1.3 Committees may make recommendations on the future allocation of resources, having assessed service delivery performance to date; evaluated the effective and efficient use of the resources already allocated; and considered the planned forward allocation of resources.
- 1.4 Delays in tabling annual reports and the financial statements because of the Covid-19 pandemic has affected the work of committees, which require the audited performance information and financial statements contained in the annual reports to prepare the BRRR. The holding of local government elections on 1 November 2021 has also impacted on the parliamentary programme.
- 1.5 The Committee was briefed by:
 - The Minister of Justice and Correctional Services, who provided a political overview of Vote performance, on 9 November 2021.
 - The Auditor General South Africa (AGSA) on the audit outcomes for Vote 25: Justice and Constitutional Development on 9 November 2021.
 - The Department of Justice and Constitutional Development (the Department) and National Prosecuting Authority (NPA) on 12 November 2021
 - The Information Regulator on 19 November 2021.
 - Legal Aid South Africa (Legal Aid SA) on 19 November 2021.
 - The Special Investigating Unit (SIU) on 19 November 2021.
 - Public Protector South Africa (PPSA) on 10 November 2021
 - The South African Human Rights Commission (SAHRC) on 10 November 2021.
- 1.6 Copies of all the presentations are available from the committee secretariat.

2. Mandate

- 2.1. The Committee oversees the Department of Justice and Constitutional Development (the Department) and other entities and institutions that receive their allocation under the Justice and Constitutional Development Vote (Vote 25). These include the Information Regulator, NPA, Legal Aid SA and SIU. The Vote also contains the allocations to the SAHRC and PPSA, both established in Chapter 9 of the Constitution as State Institutions Supporting Constitutional Democracy.
- 2.2. The Department is directly responsible for the Administration, Court Services and State Legal Services programmes, as well as the Justice Modernisation sub-programme found under Programme 5: Auxiliary and Associated Services. At present, funding for the Information Regulator is found under Programme 3: State Legal Services.
- 2.3. The NPA appears as Programme 4 under the Vote as the National Prosecuting Authority Act, 1998, provides for the Director General: Justice and Constitutional Development to be its accounting officer.
- 2.4. Programme 5 contains allocations to various auxiliary and associated services, including transfer payments to Legal Aid SA, the SIU, the SAHRC and the PPSA.

3. Context

- 3.1. Consideration of financial and non-financial performance for the period under review takes place in the context of the declaration of a state of national disaster on 15 March 2020 as a result of the Covid-19 pandemic, which was followed by the announcement of a hard lockdown from 26 March 2020. From 1 May 2020, Government has adopted a risk-based strategy, easing and tightening restrictions as required.
- 3.2. Although the courts and justice-service points have remained open, at times access has been restricted. This has significantly affected operations and, among others, there has been a marked increase in backlogs.
- 3.3. In addition, subsequent to the tabling of the Budget in February in 2020, Government announced a R500 billion economic and social support package to help battle the impact of the coronavirus pandemic. There was also massive reprioritisation of funds across government. Consequently, a special appropriations bill was tabled on 24 June 2020, which also affected the Vote. In October 2020, the AENE provided for further downward revisions.
- 3.4. For 2021/22, fiscal policy focuses on short-term economic support, pro-growth fiscal consolidation and debt stabilisation. Narrowing the budget deficit and stabilising the debt-to-GDP ratio requires curbing expenditure growth. The 2021 Budget, therefore, proposes to reduce expenditure over the MTEF period by R264.9 billion, or 4.6% of GDP. Most of the proposed adjustments are to the public sector wage bill.

4. Overview of key policy and operational developments

- 4.1. The five-year strategic plans of the 6th Administration were tabled at the beginning of 2020/21 addressing the priorities of the new administration. However, as these were developed prior to the declaration of the state of national disaster, they were then adjusted to reflect the new circumstances and re-tabled.
- 4.2. The Medium Term Strategic Framework (MTSF) 2019-2024 identifies seven priorities and related interventions. Justice has specific responsibilities in respect of two priorities: namely Priority 1 'A capable, ethical and developmental state' and Priority 6 'Social cohesion and safe communities'.
- 4.3. In addition, the MTSF identifies a lack of access to resources and opportunity for Women, Youth and People with Disabilities as cutting across all sectors, requiring a variety of interventions, including legislative amendments.
- 4.4. Key interventions for which the Justice Department is allocated responsibility for the MTSF period include:
 - Instituting a programme to prevent and fight corruption in government in partnership with anti-corruption agencies and non-state actors to resolve reported incidents of corruption in the Government through disciplinary measures and criminal interventions.
 - Coordinating engagements between the leadership of the executive, legislature and judiciary in order to develop a social compact by 2021 and implement the compact by 2024.
 - Developing a system to ensure consistent barrier-free access to justice for persons with disabilities across the justice value chain.
 - Coordinating the Implementation of the National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance.
 - Establishing Specialised Commercial Crime Courts (SCCC's) in five (5) provinces (Limpopo, North West, Mpumalanga, Eastern Cape and the Free State).
 - Ensuring an efficient, modernised and co-ordinated criminal justice system through integrated digital information systems.
5. **Budgetary Review and Recommendation Report (BRRR) (2020) and Minister of Finance's response to Parliament**
 - 5.1. The Committee did not support budget reductions in the case of the NPA, Legal Aid SA, and the SIU. The Committee was especially concerned that a reduced budget could undermine the contributions of each of these to the Rule of Law.
 - 5.2. In the case of the Department, the Committee recommended that the Public Service Commission be approached with the request that it evaluate the Department with a view to identifying the reasons for the Department's non-performance and any systemic challenges, and report to Parliament on its findings and recommendations.
 - 5.3. The Committee recommended that additional funding be allocated to the Information Regulator to allow it to recruit staff as planned.
 - 5.4. The Committee did not support the proposed application of budget reductions in the case of the SAHRC to prevent any further loss of human resource capacity and to enable it to maintain its existing activities. The Committee also supported the additional forward funding needs presented to it by the SAHRC.

- 5.5. The Committee did not support the application of budget reductions at the PPSA. The Committee also recommended that special consideration be given to allocating additional funds to allow the PPSA to address the absence of security at its offices.
- 5.6. The Minister of Finance responded to the recommendations as follows:
 “Due to the country’s constrained fiscal outlook, there is limited scope to provide additional funding to institutions over the 2021 MTEF. Reprioritisation is the main policy tool for making such funding available, and, through this process, funding totalling R150 million was reprioritised towards the capacitation of the Information Regulator. Other institutions are regrettably required to reprioritise existing funding for emerging priorities.”
6. **Financial performance**
- 6.1. ***Vote Allocation and expenditure 2020/21***
- 6.1.1. The Vote was allocated R22.4 billion for 2020/21, inclusive of Magistrates’ salaries. In June 2020, the supplementary budget revised the allocation to the Vote downwards by –R416 million to R21.9 billion; and in October 2020 the allocation was revised downwards once more by R886.1 million to R21.1 billion.
- 6.1.2. Reported cost drivers for 2020/21 were:
- Compensation of employees: R11.5 billion.
 - Goods and services: R4.6 billion.
 - Computer services: R820.9 million
 - Operating leases: R944.2 million.
 - Property payments: R1.4 billion.
 - Building and other fixed structures: R290.6 million.
- 6.1.3. Despite the downward revisions, the final Vote expenditure for 2020/21 was R20.03 billion or 94.9% of the final appropriation of R21.05 billion with an amount of R1.08 billion unspent (compared with 2019/20, when 96.4% of the final allocation was spent
- 6.1.4. In March 2021, Treasury approved the use of R452 million in savings from Court Services to fund other areas of expenditure, including: R30.5 million to the PPSA; R75 million to State Capture Commission; and R40 million to Administration.

Table 1: Justice and Constitutional Development –Final Allocation vs Actual Expenditure 2020/21 (with a comparison to 2019/20)

Programme (R'000)	Final Allocation v Actual Expenditure					
	2020/21			2019/20		
	Final	Actual	%	Final	Actual	%
Administration	2 920 749	2 704 685	92.6	2 589 469	2 537 688	98.0
Court Services	6 373 234	6 204 613	97.4	6 595 401	6 428 654	97.5
State Legal Services	1 454 823	1 374 690	94.5	1 544 762	1 295 058	83.8
NPA	4 300 819	4 196 852	97.6	4 134 650	4 009 197	96.9
Auxiliary and	3 616 658	3 404 641	94.1	3 917 224	3 917 223	99.9

Programme (R'000)	Final Allocation v Actual Expenditure					
	2020/21			2019/20		
	Final	Actual	%	Final	Actual	%
Associated Services						
Magistrates' Salaries	2 442 459	2 146 761	87.9	2 263 695	2 100 166	92.8
TOTAL	21 108742	20 032 242	94.9	21 045 201	20 287 986	96.4

- 6.1.5. Key areas of underspending were under *compensation of employees* as a result of unfilled vacant posts attributed to natural attrition; *goods and services* as a result of protracted procurement processes that delayed the implementation of planned Integrated Justice System projects, exacerbated by Covid-19 restrictions; and *payments for capital assets* due to underperformance by the Department of Public Works and Infrastructure in connection with court infrastructure projects attributable to Covid-19 restrictions.
- 6.1.6. Furthermore, there was an under-expenditure of R295.7 million under the *Direct Charge* due to vacant magisterial posts.
- 6.1.7. Irregular expenditure: The closing balance for irregular expenditure at 31 March 2021 was R2.06 billion. In total, irregular expenditure increased by R401.6 million in 2020/21, compared to R563.2 million in 2019/20.
- 6.1.8. The closing balance for fruitless and wasteful expenditure amounted to R2.41 million in 2020/21 compared to R2.5 million in 2019/20.

Part 2

7. Department of Justice and Constitutional Development

- 7.1. The Department administers three of the Vote's programmes: Administration, Court Services and State Legal Services. Under Auxiliary and Associated Services, the Justice Modernisation sub-programme funds the JCPS Cluster projects relating to the Integrated Justice System (IJS).

7.2. *Audit outcome*

- 7.2.1. This is the fifth consecutive year in which the Department has received a qualified audit opinion. The audit qualification for 2020/21 relates to significant deficiencies in the accounting of contingent liabilities in the State Attorney environment, which were overstated by R234.6 million.
- 7.2.2. The Auditor General attributes the stagnation of the Department's audit outcome to the failure to adequately monitor the post-audit action plan to address the matter. Further, addressing the qualification requires collaboration between the State Attorney, Legal Services, NPA and Finance Unit but a lack of accountability meant that this was not the case again in 2020/21. The contingent liability should have been reviewed by senior officials. Further, management was given the opportunity to remedy the finding but could not.

- 7.2.3. Findings on compliance: The findings on compliance are similar to the previous year: Procurement and contract management; prevention of irregular, fruitless and wasteful expenditure; and expenditure management to ensure the timeous payment of service providers. The AGSA attributes the findings to vacancies in key management positions, which resulted in the failure to monitor the action plans to address significant internal control deficiencies.
- 7.2.4. Findings on the quality of the performance information: The Department had material findings in the usefulness and reliability of the performance information reported as a result of inadequate monitoring and reporting of reliable and useful performance information.
- 7.2.5. The Department incurred irregular expenditure amounting to R401 million in 2020/21, which is a reduction from 2019/20.
- There was a regression in supply chain management compliance (no effective and appropriate steps taken to prevent non-compliance; no competitive or fair procurement practices; and inadequate contract management).
 - Vacancies at senior management level in the Department, including the position of the Director-General which was only filled at year end, resulted in irregular expenditure investigations not being finalised timeously to allow for the consequence management process to take place.
- 7.2.6. The Auditor General also identified IT governance and IT systems control as cause for concern. Regarding IT governance, the inability to conduct skills development of officials as a result of Covid-19 was highlighted. Under IT systems control, weaknesses relating to service continuity and security management could be attributed to the failure to review procedures; a lack of capacity within the Department to implement critical security principles; expired security management tools; and lack of testing of the disaster recovery plan.
- 7.2.7. The Auditor General made the following recommendations:
- To the Department –
 - Fill key executive positions with skilled and experienced personnel.
 - Develop and implement effective audit action plans to address audit findings.
 - Monitor performance and consequence management.
 - To the Committee -
 - The Committee should request the accounting officer and the Minister to provide feedback on the progress of action plans to address the audit outcomes.
 - Monitor the vacancies to ensure leadership stability.
 - Follow up on whether there has been consequence management.

7.3. Non-financial performance 2020/21

- 7.3.1. Overall, in 2020/21, The Department reports that it achieved 66% of its planned indicators (compared with 2019/20, in which the Department achieved 51% of its planned indicators). If the indicators for the NPA are removed, the Department achieved 70% of the planned indicators (compared with only 49% in 2019/20).

Table 2: Department of Justice and Constitutional Development - overall performance 2020/21 (with a comparison to 2019/20)

Programme	2020/21			2019/20
	Percentage performance	Targets achieved	Planned Targets	Percentage performance
Administration	40%	6	15	18%

Programme	2020/21			2019/20
	Percentage performance	Targets achieved	Planned Targets	Percentage performance
Court Services	81%	13	16	40%
State Legal Services	75%	33	44	60%
NPA	50%	7	14	57%
Justice Modernisation	67%	2	3	66.6%
Overall	66%	61	92	51%

7.3.2. A key achievement in 2020/21, was the filling of the posts of the Director-General, Deputy Director-General: Corporate Services and Chief Master to bring stability to the Department.

7.3.3. Other achievements include:

- The completion of Phase 3 of the Femicide Watch.
- New buildings were completed at Durban (point) Family Branch Court, KwaZulu-Natal, and Dimbaza Magistrates Court, Eastern Cape.
- 6 new Specialised Commercial Crime Courts were established.
- The Cashless Solution was deployed at 25 courts.
- Trust and Deceased Estates online registration is at an advanced stage.
- The e-submission enhancements for memoranda and parliamentary questions were developed and rolled out.
- Mojapay was rolled out at the remaining 7 courts and all 12 State Attorneys Offices.
- A SMS notification capability was implemented in Domestic Violence and Family Advocate services to notify parties on the status of their cases.
- The Masters' web information portal has been updated to include case information for insolvency matters.
- Under the Integrated Justice System, more than 190 589 accused persons were tracked and 4 502 wanted persons could be identified and linked to SAPS circulations as persons of interest in other cases as a result of the CJS person integration achievements. Also, 371 593 cases were electronically processed via the IJS transversal hub using IJS integrations between SAPS, NPA and the Department. The case integration solution is in operation nationally connecting 1 144 police stations to 509 courts countrywide.

7.3.4. Key challenges include:

- Arresting the declining performance.
- Addressing the negative audit outcome.
- Addressing the high vacancy rate.
- In the area of ICT, refreshing key infrastructure technology, renewing licenses and ensuring infrastructure maintenance and support.

7.3.5. **Linking financial and non-financial performance information.**

- The Department spent 94.9% of the overall budget, while achieving 66% of the revised Annual Performance Plan for 2020/21 with the Administration programme reaching only 40% of its targets.
- Notably, the Department's revised annual performance plan for 2020/21 adjusted certain targets downwards as a result of human resource restraints imposed by the Level 5, 4 and 3 lockdown restrictions. Furthermore, the AGSA queried the usefulness and reliability of certain performance information under the Court Services programme.

7.4. **Programme 1 - Administration**

- 7.4.1. The Administration programme is responsible for the Department's management and for the development of policies and strategies for the efficient administration of justice.
- 7.4.2. In 2019/20, the Administration programme spent R2.7 billion or 92.6% of the R2.9 billion appropriated to the programme.
- 7.4.3. The underspending of R216.1 million is attributed to delays in filling vacancies, lower than anticipated payment of performance bonuses and less than anticipated expenditure in the Commission of Inquiry into State Capture.
- 7.4.4. Overall, the Programme met or exceeded 6 of 15 or 40% of the planned targets (compared with 18% for 2019/20).
- 7.4.5. Areas of underperformance were as follows:
- 25% of significant findings on key specific areas resolved against a target of 100%.
 - 27% of reported incidents of corruption resolved through the departmental disciplinary code and procedure for the Public Service.
 - Although 81% of total MMS posts are occupied by Africans against a target of 59%, 45% of these posts are occupied by women against a target of 46%.
 - 2.1% of the total workforce is occupied by persons with disabilities against a target of 2.2%.
 - The Department's reconfigured macro structure was not finalised by 31 March 2021 as planned.
 - 177 people were trained as per the workplace skills plan (WSP) against a target of 4000.
 - 99% of undisputed and valid invoices were paid within 30 days of receipt against a target of 100%.
 - The audio-visual remand system was rolled out at no sites against a target of 18.
 - There was 1 site where the Virtual Platforms Solution was deployed against a target of 12.
- 7.4.6. ***Linking financial and non-financial performance information:*** The programme achieved only 40% of planned targets for 2020/21, albeit this being an improvement from the 18% achieved in 2019/20, and underspent by –R216.1 million.

7.5. Programme 2 - Court Services

- 7.5.1. The Court Services programme facilitates the speedy resolution of criminal, civil and family law disputes by providing accessible, efficient and quality administrative support functions to the lower courts; and manages court facilities and justice security services.
- 7.5.2. The Programme has the following outcomes:
- Increased access to justice.
 - Crime and corruption reduced through effective prosecution.
- 7.5.3. In 2020/21, the Programme met or exceeded 81% or 13 of 16 planned targets (compared to 40% in 2019/20).
- 7.5.4. Areas of underperformance include:

- No additional courts were designated in terms of section 55A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, against an annual target of 27.
- There were no facilities with term contacts for unplanned maintenance against a target of 10.
- Zero percent of backlog cases on the priority roll were finalised against a target of 20%.

7.5.5. ***Linking financial and non-financial performance information:***

- In 2020/21, the Programme met or exceeded 81% or 13 of 16 planned targets (compared to 40% in 2019/20) but spent 97.4% of the final appropriation. Notably, the AGSA queried the usefulness and reliability of certain performance information under the Court Services programme.
- The underspending is even greater when reprioritised funds are taken into account. The programme was allocated R7.1 billion, which was adjusted downwards to the final appropriation of R6.37 billion, spending R6.2 billion.
- The underspending of R166.7 million is attributed to delays in filling posts, lower than anticipated payment of performance bonuses and slow progress by the Department of Public Works in implementing planned infrastructure projects due to Covid-19.

7.6. **Programme 3 - State Legal Services**

7.6.1. This Programme provides legal and legislative services to the Department government broadly; supervises the administration of deceased and insolvent estates; registers trusts, and manages the Guardian's Fund; and prepares and promotes legislation. In addition, the Programme facilitates constitutional development and undertakes research in support of this.

7.6.2. The Programme has the following outcomes:

- Transformed Masters services.
- Colonial/Apartheid-era justice-related legislation reviewed and repealed or replaced.
- Transformed state litigation services.
- Transformed legal profession.
- Advancement of constitutionalism, human rights and the rule of law.

7.6.3. In 2020/21, the programme met or exceeded 33 of 44 or 75% of its planned targets (compared with 60% in 2019/20).

7.6.4. Areas of underperformance include:

- 67% of letters of authority issued in trusts within 14 days of receipt of all required documents against a target of 70%.
- 8 research papers were submitted to the South African law reform Commission for approval against a target of 11.
- The draft Office of the Solicitor-General strategy was not approved by the Minister by 31 March 2021 as planned.
- 6 heads of offices of the State Attorney were appointed against a target of 6.
- No policies to implement the State Attorney Amendment Act were implemented against a target of 3.
- 80% of value of briefs were allocated to PDI legal practitioners against a target of 83%.
- The State Attorney framework contract was not finalised by 31 March 2021 as planned.
- No regulations in terms of the Legal Practice Act were approved by the Minister against a target of 2.

- The NAP governance structure was not established by 31 March 2021, as planned.
- No programmes were developed to commemorate the 25th anniversary of the Constitution by 31 March 2021, as planned.
- The policy framework for extradition was not submitted to the Minister for approval by 31 March 2021 as planned.

7.6.5. ***Linking financial and non-financial performance information:***

- Programme performance has improved since 2019/20 from 60% to 75%. Under-performance is observed in the Litigation and Legal Services and Constitutional Development sub-programmes in particular.
- Spending increased from 83.8% in 2019/20 to 94.5% of the final appropriation of R1.45 billion in 2020/21, with R80.1 million left unspent.
- The Department reports that unfilled vacancies and lower than anticipated payment of performance bonuses attributed to the underspending.

7.7. **Programme 5: Auxiliary and Associated Services Programme - Justice Modernisation sub-programme**

7.7.1 Programme 5 contains the Justice Modernisation sub-programme which has funds for the implementation of IT infrastructure for the Department and also includes the earmarked funds for IJS integration across the Cluster. The Justice Modernisation subprogramme designs and implements IT infrastructure and networks, reengineers, automates and integrates business processes for the administration of civil and criminal justice in the integrated justice system,

7.7.2 The Justice Modernisation sub-programme has the following outcome: Modernised and digitised justice services platforms.

7.7.3 The sub-programme met 67% or 2 of 3 indicators (compared to 67% in 2019/20): The programme did not meet the target to finalise the IJS assessment report by 31 March 2021, as planned.

7.8. **Overview of First and Second Quarter 2021/22 financial and non-financial performance**

7.8.1. The Department has embarked on a turnaround strategy that has the following pillars: Alignment of strategy to priorities; macro-structure redesign; human capital and skills audit; modernisation; the repositioning of justice college; change management; audit turnaround; and service delivery improvement.

7.8.2. Overall, in the First Quarter of 2021/22, the Department achieved 27 of 59 or 67% of planned targets:

Table 3: Programme performance 2021/22 Quarter 1

Programme	No. of indicators with planned targets	Actual Performance	% Performance
Administration	27	15	27%
Court Services	14	12	86%
State Legal Services	26	18	69%
NPA	13	8	62%
Justice Modernisation	3	3	100%
Total	83	56	67%

- 7.8.3. The ransomware attack in September 2021 impacted on both the delivery of services and the progress of the Department's modernisation programme. Second Quarter performance information is at present incomplete as the overall performance cannot yet be validated with certainty. However, the preliminary report indicates a drop in performance below 50%.
- 7.8.4. The Department spent R9.3 billion or 43.6% of its budget by the end of the Second Quarter of 2021. The projected spending to the end of September 2021 period was R10.6 billion, with underspending occurring as a result of vacant posts, delays in processing accommodation charges and municipal invoices, delays in procurements and payments process as a result of the system downtime, as well as lower than anticipated spending of the infrastructure budget and under-performance of IJS/CJS member departments.

8. National Prosecuting Authority (NPA)

- 8.1. In line with its constitutional mandate, the NPA provides a co-ordinated prosecuting service to ensure that justice is delivered to the victims of crime through general and specialised prosecutions, protects certain witnesses and removes the profit from crime.
- 8.2. The NPA is a programme within the Justice and Constitutional Development Vote and the Director-General: Justice and Constitutional Development is its accounting officer. In the past, National Treasury provided an exemption that allowed the NPA to prepare its own annual financial statements separate from those of the Department until legislation regularising the practice was enacted but the exemption expired on 31 March 2014. However, in terms of the National Prosecuting Authority Act, 1998, the National Director of Public Prosecutions (NDPP) has submitted an annual report on operations for 2020/21.
- 8.3. For the 2020-2025 term, the NPA has aligned its strategy with the Department's impact statement of 'Improved public perception, confidence in the justice system and respect for the rule of law' and to the Department's Outcomes 2 and 7, namely 'Modernised, accessible courts and people-centred services' and 'Crime and corruption significantly reduced through effective prosecution'. The NPA has also committed to making the following impact: 'A South Africa in which crime is significantly reduced and everyone feels safe and abides by the law'. The intended outcome is 'Crime and corruption significantly reduced through effective prosecution.
- 8.4. The NPA reported the following:
- While progress has been made, it's been patchy and too slow.
 - COVID-19 has impacted on the NPA's plans to improve progress, resulting in a less than satisfactory achievement of targets.
 - Despite this, the NPA has continued to deliver uninterrupted services and used the available time to attend to chamber work resulting in a significant increase in decision dockets being finalized, which include long outstanding decisions in complex commercial crime matters.
 - The NPA has prioritised dealing with corruption, specifically by capacitating and supporting the Independent Directorate.
 - Another focus has been on internal projects to improve efficiencies, capacities and staff morale, which include:
 - Building an Independent Professional, Accountable and Credible (IPAC) organisation - All strategic initiatives are designed to strengthen and complement the interrelated IPAC pillars.

- NPA Independence - This is a priority for the NPA and it has submitted an affidavit to the Commission of Inquiry into State Capture that makes a solid legal case for the independence of the NPA. Initial discussions are underway with the Minister to establish a working group in this regard.
- There has been good progress in establishing an Office for Complaints and Ethics (OCE) to assist in promoting the accountability of all NPA staff, including the top leadership. A proposal on draft legislation, the mandate and staffing requirements will be finalised by 30 November 2021.
- The Innovation, Policy and Support Office (IPSO) has been established as a permanent resource to support innovation across all parts of the NPA.
- Community Prosecution Initiative (CPI) - The NPA established 22 community prosecution sites (2 per division) and posts. The sites focus on important crime and public safety issues, e.g. GBV, stock-theft and crime driven by alcohol/drugs. The impact will be measured over the next two years.
- Non-Trial Resolutions (NTR) - A policy is being developed, providing for trial agreements based on international best practice and local realities.
- Prosecution Prioritisation Policy - A prioritisation initiative for prosecuting housebreaking and house robberies is being developed – strategic prosecution of organised criminal gangs involved in housebreaking and house robberies can have a disproportionate impact in terms of prevalence and fear of crime.
- Enhancing NPA Communication - Effective internal/external communication is now at the centre of NPA strategic priorities. The NPA intranet (Ithala) and cutting-edge website developed and launched.

8.5. Operational challenges experienced in 2020/21 included:

- COVID-19 impacted on performance as investigations, consultations and trials were hampered; specifically, in Regional Court matters.
- The NPA was particularly affected by the pandemic reporting a 22.47% infection rate (1 011) which is much higher than norm of 4.86% in South Africa. Likewise, the SAPS and the Department suffered from a similar trend impacting courts in many areas. The recorded death rate in the NPA was markedly higher than in the rest of South Africa.
- Money laundering matters usually consists of several charges and intricate financial investigations, which are time consuming, and trials are protracted with several legal challenges.
- Lack of skill and the ability to dedicate staff to highly complex and voluminous matters still plague the organisation and criminal justice system as a whole.
- All volumes of cases in courts declined dramatically during 2020/2021. In addition, finalised cases in all courts decreased by 40,2% (from 368 319 to 220 272).

8.6. ***Financial performance***

8.7.1. The NPA was allocated R4.3 billion for 2020/21, compared to R4.1 billion in 2019/20 and spent R4.2 billion (or 98%) of the final budget, underspending by R103 million.

8.7.2. The under-expenditure is attributed to delays in filling vacancies and appointing aspirant prosecutors as a result of the lockdown.

8.7. ***Non-financial performance***

8.8.1. Overall, in 2020/21, the NPA achieved 7 of 14 or 50% of planned targets (compared to 61% in 2019/20).

- 8.8.2. Areas of underperformance were as follows:
- 55 operational TCCs were in place against a target of 58.
 - 90.2% conviction rate in complex commercial crime achieved against a target of 93%.
 - 147 persons were convicted of private sector corruption against a target of 150.
 - 86 government officials were convicted of corruption and/or offences related to corruption against a target of 220.
 - 44 cases were prosecuted involving money laundering against a target of 90.
 - Freezing order to the value of R611 million were obtained for corruption and/or offences involving corruption against a target of R2.4 billion.
 - R3 million was recovered relating to corruption or related offences against a target of R1.4 billion.
- 8.8. ***Linking financial and non-financial performance information.*** In 2020/21, the NPA achieved 50% of its targets compared to 61% in 2019/20, and spend 98% of the budget.
- 8.9. Again the performance of the AFU was particularly poor but interventions have been put in place to address the challenges the AFU is experiencing.
- 8.10. ***Performance 2021 to date:***
- 8.10.1. The NPA is allocated R4.44 billion for 2021/22, compared with R4.3 billion in 2020/21 and has spent 55.6% of its budget by 31 October 2021.
- 8.10.2. The NPA has seen a marked improvement in the performance in the current financial year, with 69% of the targets achieved.
- 8.10.3. The spending focus is on personnel, computer services, consultants, legal services, property payments and travel and subsistence.
- 8.11. ***Funding:***
- 8.11.1. The NPA reports that it has submitted a request to National Treasury concerning funding for the MTEF informed by the following:
- Covid-19 contributed to the current economic crisis, compounded by corrupt activities allegedly committed by government officials. South Africa needs to bring criminals to book.
 - The benefit derived from corrupt activities must be returned to the State and the NPA is the only government institution mandated to do this.
 - The NPA is committed to the JCPS Economic Recovery Plan, however, under-resourcing will render the strategy ineffective and the NPA unable to address corruption, GBV and organised crime.
 - Current allocations over the MTEF are below inflation.
 - The NT has implemented budget cuts in the MTEF period.
 - While the NPA can absorb a budget baseline reduction for 2021/22, proposed cuts in respect of outer MTEF years will cripple its ability to deliver on its mandate.
- 8.11.2. The NPA reports a shortfall on its compensation of employees' budget over the MTEF. These projections are based on current warm bodies within NPA and excludes resignations; Cost of Living Adjustments (1.5% for non SMS and SMS) and new appointments.

Table 4: NPA MTEF allocation for compensation of employees

R' 000	2022 MTEF Budget (Adjusted)	Projected Total Expenditure	Variance
2021/22	3 926 046	3 880 295	45 751
2022/23	3 865 145	3 920 439	-55 294
2023/24	3 895 885	3 981 110	-85 225
2024/25	4 070 847	4 042 691	28 156

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8.11.3. Independent Directorate and Witness Protection

- An additional R363.4 million funding is needed due to the growth of the ID as a result of the Commission of Inquiry into State Capture ending. (R83 million for current financial year).
- There is also a growing need for witness protection causing pressure on the already inadequate budget.
- There has been no CARA allocation, which has helped the Office of Witness Protection in the past.

Table 5: NPA: MTEF funding needs Independent Directorate

Additional funding needs MTEF	2022/23 R'000	2023/24 R'000	2024/25 R'000	Total
Shortfall on Compensation of Employees	83 265	74 097	77 049	234 411
Shortfall on Goods and Services	40 000	43 000	46 000	129 000
Total funding request	123 265	117 097	123 049	363 1

9. Information Regulator

- 9.1. The Protection of Personal Information Act, 2013, (POPIA) regulates the processing of personal information by providing a framework that sets out the minimum standards that responsible parties must comply with when processing personal information. 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.
- 9.2. The Information Regulator is established in terms of section 39 of POPIA and has a wide range of powers and functions regarding promoting and enforcing the right to privacy.

- 9.3. POPIA also transfers certain key responsibilities concerning the Promotion of Access to Information Act, 2000, (PAIA) to the Information Regulator. These include the handling of complaints, conducting investigations, and making assessments about compliance by public and private bodies. In accordance with a Memorandum of Co-operation, the SAHRC and the Regulator agreed that the SAHRC conclude its PAIA functions by 30 September 2021.
- 9.4. On 17 June 2020, the President issued a Proclamation to bring into operation certain outstanding sections of POPIA on 1 July 2020. The remaining sections came into effect on 1 July 2021 and, in terms of section 114(1), public and private bodies had a years' grace period to comply with POPIA.
- 9.5. In terms of POPIA, the Regulator is given the power to determine its own administration in consultation with the Minister of Finance.
- 9.6. The Regulator does not produce separate Annual Financial Statements for the 2020/21 financial year as its financial records form part of those of the Department and are audited by the Auditor-General as part of the Vote.
- 9.7. **Independence.** Although the CEO is the Accounting Officer in terms POPIA, this is not the case in terms of the PFMA, as the Regulator's budget is managed through the Department. The listing of the Regulator in the Public Finance Management Act 1 of 1999 (PFMA) remains unresolved, as the separation of the Regulator from the Department which will ensure its independence is dependent on this classification. Consultations with the Department and National Treasury were held during the year under review.
- 9.8. The Regulator's funding is ring-fenced under the Justice Departments' State Legal Services programme. An amount of R45 million is allocated to the Information Regulator for 2020/21, compared with R28.9 million in 2019/21. The allocation for the remainder of the 2020 Medium Term Expenditure Framework (MTEF) is as follows: R57.7 million in 2021/22; and R63.7 million in 2022/23.
- 9.9. The Regulator spent R29.9 million or 66% of the allocation for 2021, reporting under-expenditure of R15.6 million as follows:
- Under-spending of R10.8 million on compensation of employees was a result of delays in filling the positions of the executives for POPIA and Education and Communication, and resignations of three staff members.
 - Underspensing R3.2 million on Goods and Services was due to a delay in appointing the Communication and Branding Strategy service provider (appointment was done in March 2021), and due to the lack of utilisation on Travelling and Subsistence, Stationery and Printing, and Training and Development. Overspending on Household payments of R353 000 is due to unplanned resignations of staff.
 - Underspensing of R917 000 on Machinery and Equipment was due to commitments on office furniture and equipment received but not paid for.
 - Underspensing of R1.1. million on Software and Intangibles was due to the bidder's price on the Automated Complaints Management System being greater than the budget amount and, therefore, the bid could not be considered.
- 9.10. The Regulator achieved 11 of 18 or 61% of its performance targets. Key reported achievements for 2020/21 include:
- The Guidance Note on applications for Prior Authorisation was issued.

- The Regulator made use of digital meetings and social media platforms to ensure continuous engagement with stakeholders and the public.
 - Webinars were organized to commemorate the International Day for Universal Access to Information on 28 September 2020 and the Data Privacy Day on 28 January 2021.
 - The Guidelines to Develop Codes of Conduct and the standard for making and dealing with complaints under approved codes of conduct provided for in section 65 of POPI were adopted.
- 9.11. The Regulator reports a shortfall on its allocated budget: it requires R84.9 million in 2021/22; R138.4 million in 2022/23; and R306.3 million in 2023/24 if it is to grow the establishment to the planned 383 employees.
- 9.12. **Human Resources:** At the beginning of 2020/21, 13 positions had been filled as part of Phase One which had started in 2019/2020. A further 21 positions were added to the structure. As a result, the staff compliment increased to 34. At the end of 2020/21, Regulator had finalised a list of 43 positions that will form part of Phase Three of the structure. A 10% vacancy rate was reported against an approved establishment of 39.

Part 3

Auxiliary and Associated Services

10. **Legal Aid South Africa**
- 10.1. Legal Aid SA is an autonomous statutory body that derives its mandate from the Constitution, 1996; the Legal Aid South Africa Act 39 of 2014; and other legislation requiring the government to provide legal assistance to the indigent. Its main objective is to make legal representation available to indigent persons at State expense, ensuring the right of all citizens to access to justice. Notably, the Legal Aid South Africa Act, 2014, provides that Legal Aid SA must render or make available legal aid and legal advice; provide legal representation at state expense; and provide education and information concerning legal rights and obligations, as envisaged in the Constitution.
- 10.2. The main objective of Legal Aid SA is to render or make available legal representation to indigent persons at state expense as contemplated in the Constitution, ensuring the rights of citizens to access to justice.
- 10.3. The Strategic Plan 2020-2025 sets out the policy priorities, programmes and project plans for the period, as well as the related outcomes, outcome indicators and five-year targets. Legal Aid SA's plans are aligned with the MTSF priority 'Social cohesion and safer communities':
- 10.4. Legal Aid SA's strategic outcomes for 2020-2025 are to provide quality justice for all, especially, the poor and vulnerable, and to be a respected, high performance, sustainable and accessible public entity that will have a positive impact on society, the economy and the environment.
- 10.5. In carrying out its mandate, Legal Aid SA continues to prioritise the following vulnerable groups: children; detained persons, including sentenced prisoners; accused persons who wishes to appeal or review a court decision in a higher court; women, particularly in divorces, maintenance and domestic violence cases; and the landless, especially in eviction cases.

- 10.6. The transfer of land-related matters legal services from the Department of Agriculture, Land Reform and Rural Development to Legal Aid SA is at an advanced stage. The outstanding matter is the transfer of funds to Legal Aid SA so that it can begin offering services from 2022.
- 10.7. At 31 March 2020, Legal Aid SA reports a staff establishment of 2 551 with budgeted posts at 2 799. Legal staff, including paralegals, account for 80% of the establishment.
- 10.8. Delivery continues to occur nationwide through 64 Local Offices and 64 satellite offices. In addition, Legal Aid SA makes use of accredited Judicare partners; co-operation partners and agency agreements with private law firms to deliver services. This ensured a mixed model delivery system in which 96% of all new matters were handled by the Local Offices; 3% by Judicare practitioners and Agency Agreements; and 1% by co-operation partners.
- 10.9. In 2020/21, Legal Aid SA achieved an unqualified audit opinion for the twentieth consecutive year and a clean audit opinion for the fifteenth consecutive year.
- 10.10. **Financial performance**
- 10.11.1. Legal Aid SA was allocated R2.07 billion for 2020/21 (an increase from R2.04 billion in 2019/20).
- 10.11.2. Legal Aid SA reported that it spent R1.9 billion or 92.2% of the allocation for 2020/21. The under-expenditure is attributable to a reduction in operating expenses, such as travelling, as a result of restrictions placed by the Covid-19 lockdown, as well as the conservative management of the staff establishment. However, two budget cuts in 2020/21, totaling R127 million impacted negatively on service delivery and the ability to fulfil Legal Aid SA's constitutional mandate. Also, payments to creditors and Judicare within 30 days was below 100% target owing to system and accessibility challenges
- 10.11. **Non-financial performance**
- 10.12.1. Legal Aid SA reports the following key achievements for 2020/21:
- All criminal courts as well as specialised criminal courts, including specialised Child Justice Courts, Sexual Offences Courts and Commercial Crimes Courts, were covered as planned.
 - Civil legal aid services including legal advice services were affected by the Regulations, Directions and Directives issued to curb the spread of Covid-19.
 - There were significantly fewer new cases taken on and cases finalised as a result of the lockdown restrictions.
- 10.12. **Human Resources**
- At 31 March 2021, the number of funded posts was 2 799; with total staff recruited 2 426.
 - Legal staff were 1 871 (77% of recruited staff): Criminal legal staff 1 487; Civil legal staff 214; and Paralegals 170. There were 555 support staff.
 - The recruitment rate at financial end was 86.7% against a target of 95%. The 8.3% variance is mainly due to budget constraints to avoid overspending on the compensation of employee's budget.
- 10.13. **Funding**

10.13.1. The R534.7 million total budget cut over the 2021 MTEF period will result in a reduction in the coverage of courts and delivery of legal aid services to indigent and vulnerable persons, affecting the ability of Legal Aid SA to fulfil its mandate.

Table 6: Legal Aid SA MTEF baseline reductions

	Budget 2021/22	MTEF		
		2022/23	2023/24	2024/25
	R'000			
Baseline allocations	2 204 215	2 313 817	2 222 563	2 197 390
COE reductions	-100 692	-125 076	-121 808	0
Goods and Service reductions	-81 335	-105 759	0	0
Total Allocations	2 022 188	2 082 982	2 100 755	2 197 390

10.13.2. *New land mandate funding.* Although plans are under way to secure the funding for the transfer of the functions to Legal Aid SA from 1 January 2022, if the funding is not be made available, Legal Aid SA will not be able to take over the function in January 2022 as planned. Legal Aid SA has projected that the function will require R114 million for 2022/23 and approximately R97 million per annum after that.

11. Special Investigating Unit (SIU)

11.1. The legislative mandate of the Special Investigating Unit (SIU) is derived from the Special Investigating Unit and Special Tribunals Act 74 of 1996 (as amended). The SIU's principal function is to investigate serious malpractices, maladministration and corruption in connection with the administration of state institutions, state assets and public money, as well as any conduct, which may seriously harm the interests of the public. Matters are referred to the SIU through Presidential proclamations that set out the scope of the investigation. The SIU also:

- Institutes and conducts civil proceedings in any court of law or special tribunal, in its own name or on behalf of state institutions.
- Brings potential disciplinary matters to the attention of state institutions.
- Provides for the secondment of SIU officials to improve departmental systems.

11.2. Although the SIU does not have the power to arrest or prosecute offenders for criminal conduct, it reports matters to the Directorate for Priority Crime Investigation (DPCI/the Hawks), the South African Police Service (SAPS) and the National Prosecuting Authority (NPA). The SIU works closely with the Asset Forfeiture Unit (AFU) in the NPA, where its powers are more appropriate or effective in recovering the proceeds of crime. The MTSF also identifies the investigative reports of the Financial Intelligence Centre as key in the identification of high priority cases. The SIU is part of the Anti-Corruption Task Team (ACTT), which was established to fast-track investigations and prosecutions of serious corruption cases; and is also part of the Fusion centre which was established to

deal with corruption in respect of the procurement of Personal Protective Equipment.

- 11.3. The SIU locates its role under the MTSF priorities: 'Social Cohesion and Safe Communities' and 'A capable, ethical and developmental state'. The MTSF envisages an improvement in corruption perception by the end of the five-year period. The SIU is to contribute by reducing levels of fraud and corruption in the private and public sectors; freezing money and assets; establishing and strengthening the capacity of the Special Tribunal for civil recoveries; and increasing the use of Financial Intelligence Reports in identifying high priority cases.
- 11.4. The SIU is on a journey to become a risk intelligent organisation. A National Treasury Risk Maturity Model has been adopted to assess the progress of the SIU, which places the SIU at Level 5. The SIU is now aiming towards achieving Level 6, which is the highest level of maturity. The SIU has identified the following as key risks:
- Inability to financially sustain SIU operations in the short-medium term due to shortcoming in funding model.
 - Inability to timeously commence SIU investigations due to protracted approval process for proclamations
 - Failure by State Institutions to implement SIU legal recommendations
 - Inability to pro-actively assist public institutions to prevent corruption and maladministration practices
 - Insufficient preparedness to respond to physical threats to investigators and security breaches
 - Inability to achieve forensic investigation's legal outcomes
 - Inability to conduct forensic investigations according to predetermined standards
 - Inability to attract adequate and high performing workforce that is suitably skilled and properly managed
 - Ineffective collaboration with external and internal stakeholders
 - Failure to process and finalize civil matters enrolled in the Special Tribunal Court
 - Inability to provide appropriate ICT services across SIU business.
- 11.5. **Audit outcome.** The SIU maintained a clean audit outcome in 2020/21 (its fifth consecutive clean audit since 2016/17). However, the AG did note the issue of material debt impairment.
- 11.6. **Human Resources**
- As at the end of the 2020/21, the staff complement was 532, of which 509 (96%) were permanent and 23 (4%) fixed-term as compared to 530 in the previous year.
 - The vacancy rate as at the end of 2020/21 was 15% as compared to the 14% planned target. The conclusion of the Siyakha Recruitment Agreement with labour was delayed longer than anticipated, which affected the recruitment progress.
 - The staff turnover for the financial year 2020/21 was 14 which is 2.6%, with resignations being the main contributor compared to 4% in 2019/20.
- 11.7. **Financial performance**
- 11.7.1. The SIU's funding model provides for a baseline grant from National Treasury. In addition, the SIU charges state institutions for its services, thus raising additional revenue. The recovery of debts from state institutions for services has proven to be a challenge. The value of outstanding debtors at the end of 2020/21 was R691

million, which includes national, provincial and local government and public entities.

- 11.7.2. The approved budget allocation for 2020/21 was R756 million, consisting of R421.6 million received from a government grant, R299.5 million in project revenue and R34.8 million in other non-tax revenue.
- 11.7.3. In 2020/21, the SIU spent R688 million or 91% of the projected allocation. The SIU reports that its finances are very positive, despite challenges in the recovery of its debt that it has invoiced for investigation and related services performed.
- 11.7.4. As at 31 March 2021, the SIU had a R836 million accumulated surplus that it has managed to build over past years. For the year ended 31 March 2021, the SIU reflected a surplus of R68 million (2020: R193 million). Despite debt recovery challenges, the SIU still managed to reflect a positive "Net cash flow from operating activities" of R13 million at 31 March 2021 (2020: R194 million).
- 11.7.5. The Unit's main cost driver is compensation of employees. The Unit reported spending of R431 million in 2020/21 on this item, compared to R426 million in 2019/20; an increase of 1.13%. This is 63% of the SIU's total expenditure of R688 million.

11.8. **Non-financial performance**

- 11.8.1. The SIU's Strategic Plan 2020 – 2025 identifies certain high impact initiatives and interventions for the MTSF period:
- Pursuing Priority High-Impact Targets to optimise the deployment of its resources.
 - Rejuvenating the organisation by investing in critical parts of the business.
 - Differentiating the SIU through its 'unique offerings'.
 - Enforcing consequence management measures through a monitoring and evaluation competency (with the Auditor General).
 - Pursuing civil litigation.
 - Applying cutting-edge data analytics and technology.
 - Optimising the uniqueness of the Special Tribunal.
- 11.8.2. The SIU has identified the following impact statement, organisational outcomes and five-year targets for 2020-2025:

Table 7: SIU – Impact statement, outcomes and five-year targets 2020-2025

IMPACT STATEMENT: Ridding society of fraud and corruption in state institutions	
OUTCOME	FIVE-YEAR TARGET
A compliant, high performance SIU that is well capacitated to rid society of corruption, maladministration and fraud in State institutions	<ul style="list-style-type: none"> • Achieve and exceed all set performance targets • Maintain positive AG audit outcomes
State assets and cash resources are protected from maladministration, fraud and corruption for the realisation of full value for money for state programmes	Estimated R10 billion
Confidence in the governance systems, structures and policies of the State is restored and maintained	An established index on confidence in the state's ability to effectively combat corruption and maladministration
Corruption, maladministration and fraud deterred through proactive preventative mechanisms and	A minimum 10% annual decrease (aligned to the MTSF Priority Five-year

effective enforcement of consequence management measures	target)
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11.8.3. The SIU has three programmes:

Table 8: SIU – programmes

PROGRAMME	RESPONSIBILITY
Administration	Responsible for the provision of business oversight and enablement services to the core business units of the SIU.
Investigations and Legal Counsel	Responsible for ensuring the adequate execution of the mandated service delivery of the SIU.
Market Data Analytics and Prevention	Responsible for the implementation of relevant and proactive initiatives to prevent the reoccurrence of fraud and corruption cases as a result of systemic weaknesses in the public sector and to positively influence the behaviour of South African citizens

11.8.4. At programme level, the SIU reports that, in 2020/21, it achieved 18 of 24 or 75% of targets, compared to 69% in 2019/20. The majority of targets not achieved related to the Administration programme.

11.8.5. Notably, under the Investigations and Legal Counsel programme, the SIU far exceeded its targets in many instances. In respect of its civil litigation work, the SIU reports the following matters pending as at 31 March 2021: 56 cases in the High Court involving contracts to the value of R62 billion and 64 cases in the Special Tribunal involving contracts valued at R7 billion.

11.8.6. At 30 September 2021, the SIU reports that it achieved 71% of targets; did not achieved 29% of targets. Two targets did not form part of planned reporting for the Quarter.

11.9. *Linking financial and non-financial performance:*

- In 2020/21, the SIU achieved 75% of planned targets while spending 91% of the budget (4 unachieved targets related to the Administration programme and 2 to Market Data Analytics and Prevention).
- Under the Investigations and Legal Counsel programme, the SIU far exceeded its targets in many instances. For example, the rand value of actual cash and/or assets recovered was R1.8 billion against a target of R60 million, while the rand value of contracts set aside or deemed invalid was R7.1 billion against a target of R900 million.
- Despite the challenges in achieving planned targets in the Administration programme, the SIU was able to maintain its clean audit opinion.
- The SIU reports that, at present, its finances are healthy although debt recovery has been flagged as a concern.

12. South African Human Rights Commission (SAHRC)

12.1. The SAHRC's mandate is extremely broad, encompassing the promotion, protection and monitoring of human rights in South Africa. The Commission derives its mandate from the Constitution and South African Human Rights Act, 2014. The Commission also has specific obligations in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, among other. In 2020/21, the SAHRC published its final report on work undertaken in terms of the Promotion of Access to Information Act, 2000, following the transfer of its PAIA functions to the Information Regulator in terms of POPIA.

- 12.2. In recognition of South Africa's core challenges – high levels of poverty, inequality, unemployment and violence – all areas of the SAHRC's work attempt to contribute to addressing each of these challenges. The identified strategic focus for the period under review includes: children and migration; civil and political rights; disability and social security; education; equality and social cohesion; health care; land, environment and the right to food; and water, sanitation and housing. Its interventions include complaints handling, strategic impact litigation, investigative hearings, public outreach, monitoring recommendations and research.
- 12.3. Parliament ratified the Optional Protocol to the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) at the end of March 2019. The OPCAT obliges State parties to establish national preventative mechanisms (NPM) to monitor places of prevention of liberty through regular visits. The Commission is the co-ordinating body for the NPM in South Africa, in accordance with Article 17 of the OPCAT. The Commission received R1.68 million in 2019/20 from the Justice Department for this work.
- 12.4. The SAHRC has also been accredited as an Independent Monitoring Mechanism (IMM) under the Convention on the Rights of People with Disabilities (CRPD). This obligates the Commission to fully establish and ensure the functionality of the IMM, monitor and report on compliance with the requirements of the CRPD to the United Nations Committee on the Rights of Persons with Disabilities.
- 12.5. The MTSF highlights the need for social cohesion and a key outcome under the priority 'Social Cohesion and Safe Communities' is the implementation of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. In addition, the MTSF identifies the Commission as contributing to:
- The promotion of the Constitution and its values in schools, awareness campaigns, public engagements and dialogues.
 - The development of a system to ensure consistent barrier free access for persons with disabilities to justice across the justice value chain.
 - Strengthening and expanding protection measures for children and for adults with disabilities in institutionalised settings, such as special school boarding facilities, mental health care facilities and residential facilities.
- 12.6. The SAHRC's Strategic Plan 2020-25 provides for mandate-linked strategies:
- Promotion - Enhancing human rights advocacy, visibility and awareness programmes by conducting high impact engagements to influence policy, legislation and its application; establishing strategic partnerships for capacity and collaboration; empowering communities and the public to proactively engage with human rights issues; and utilising media platforms to raise awareness and increase visibility.
 - Protection – Increasingly using redress mechanisms to minimise human rights violations by instituting strategic impact litigation and proactively conducting investigative inquiries and hearings.
 - Monitoring – Comprehensive human rights monitoring and impact evaluation by strengthening and applying a comprehensive monitoring system to assess the state of human rights.
- 12.7. The Commission has four programmes: Administration; Promotion of Human Rights; Protection of Human Rights; and Monitoring of Human Rights.

- 12.8. The Commission reports a vacancy rate of 19% with 161 posts filled out of 198 approved posts. (The vacancy rate in 2019/20 was 15%). At senior management level, the vacancy rate is 34%.
- 12.9. The Commission's Deputy Chairperson, Commissioner Priscilla Jana passed away in 2020/21.
- 12.10. **Audit outcome.** In 2020/21, the SAHRC received an unqualified audit opinion with emphasis of matter and findings, including errors in performance reporting and internal control deficiencies. Some of these were repeat findings: challenges within the supply chain management environment and performance information reporting remain.
- 12.11. **Financial performance**
- 12.11.1. The Commission was allocated R200 million for 2020/21, with an adjusted budget of R191.7 million for 2020/21, increasing from R190.3 million in 2019/20 and spent R179.3 million or 90% of the allocation.
- 12.11.2. In 2021/22, the Commission is allocated R206 million. As at 30 September 2021, the Commission had spent R88.1 million or 42% of the allocation.
- 12.12. **Non-financial performance**
- 12.12.1. Overall, in 2020/21, the SAHRC achieved 23 or 64% of 36 targets (compared with 88% in 2019/20).

Table 9: SAHRC – Performance 2020/21

Programme	Total Targets	Actual	Percentage achievement
Administration	12	7	58%
Promotion	9	6	67%
Protection	4	3	75%
Monitoring	11	7	64%
Total	36	23	64%

- 12.12.2. Much of the Commission's focus for 2020/21 was on human rights matters emanating from Covid-19 (particularly in respect of the issues of health, education, human settlements, water and sanitation) and the consequent lockdown. The monitoring programme of the Commission was the most affected by the lockdown. (Of a total number of 11 targets for this programme, the Commission achieved seven (64%).) Other achievements include:
- Finalised 7 129 complaints.
 - Meeting the South African Council of educators to discuss the integration of sexual offences registers and developments regarding the GBV Bills.
 - Participating in the South Africa Local Government Association in a research process focussing on the Service Charter on Local Government in order to set out basic standards for service delivery at local government level.
 - Engaging with the Housing Development Agency and the City of Tshwane concerning a commitment to complete 2000 houses.
 - Distributing the Equality Toolkit across provinces and to various stakeholders.
 - Entering a memorandum of understanding with the South African Depression and Anxiety Group to promote the rights of persons living with psycho-social and intellectual disabilities.

- Engaging with the South African Institute of Medico-Legal Experts to discuss challenges relating to the way in which the Road Accident Fund dealt with claimants, undermining access to justice.
- Celebrating the 25th anniversary of the Commission's establishment through various activities.
- Undertaking a proactive investigation of the North West Department of Health's alleged debt to medical suppliers.
- Engaging with the National Student Financial Aid Scheme on backlogs in applications and expanding methods of communication including remote access.
- Protecting against unlawful evictions in various provinces.
- Monitoring the response to the Commission's recommendations in the report on the Inquiry into the Sewerage Problem of the Vaal River.

12.12.3. As at 30 September 2021, the Commission reports that it achieved 73% of its targets. Highlights include:

- Convened strategic engagements on the civil unrest of July 2021.
- Initiated National Campaign on Social Cohesion, Healing and Harmony.
- Conducted workshops to promote awareness and the functionality of equality courts.
- Hosted provincial rounds of the National Schools Moot Court Competition.
- Secured undertaking to open sections of the Charlotte Maxeke Hospital in Gauteng.
- Initiated mental health awareness project focusing externally and internally.
- Hosted conference on impact of Covid-19 on children.
- Implementing resolutions from the Anti-Corruption and Human Rights Conference.
- Finalised more than 3 000 complaints and enquiries.
- Dealt with violations pertaining to citizenship, identity and stateless persons, which often create problems of access to many other services.
- Addressed service delivery complaints, especially relating to the provision of water and sanitation at local level, across the country.
- Protected employees against mandatory vaccinations at the workplace.
- Granted leave to intervene by the European Court of Human Rights in the Caster Semenya case.
- Provided protection to evicted farm dwellers and other communities
- Monitoring the implementation of the Commission's recommendations: Mental health care; Vaal River inquiry; mining-affected communities.
- Monitoring the implementation of the national vaccine roll-out strategy.
- Schools monitoring: opening of schools; Covid-19 compliance; water and sanitation provision and infrastructure; and learner teacher support material.
- Child rights monitoring.
- Monitoring under the National Preventive Mechanism.
- Monitoring observance of the rights of persons with disability and older persons.
- Completed annual report on compliance with the Promotion of Access to Information.

12.13. **Budget reductions**

12.13.1. Although the Commission did not experience a budget cut in the Supplementary/Special Adjusted Budget in July 2020, the Commission's budget was adjusted downwards by R8.4 million, to be funded from Compensation of Employees allocations.

12.13.2. The Commission's cost of employees' budget has reduced from 71% in 2020/21 to 66% in 2021/22. Ongoing mechanisms to reduce the cost of employees to the Treasury recommended rate of 60% include a review of posts as and when they become vacant, as well as organisational structure redesigning.

12.13.3. The implications of reducing the number of employees include:

- The personnel budget is aligned with the execution of the Commission's mandate, as a largely service driven organisation. Therefore, reductions in personnel budget imply reduction in operations.
- There is a high risk of retrenchments, which is undesirable, to maintain lower personnel costs.
- Certain critical posts have been eliminated including the Head of Commissioners Programme; management support to the Office of the COO.
- The Commission reports the following spending pressures and related forward funding needs:

Table 10: SAHRC Funding needs 2022 MTEF

Mandate Area	Current (Rands)	2022/23 (Rands)
National Preventive Mechanism	4 100 000	4 100 000
Independent Monitoring Mechanism	1 000 000	1 000 000
Information and Communications Technology	5 500 000	7 000 000
Human rights monitoring	2 400 000	4 800 000
Expanded Monitoring Framework: Local Government	0	2 100 000
4 IR: Digitisation and Website: Accessibility	3 000 000	3 000 000
Critical Reflection Publication – Handover	0	500 000
TOTAL	16 000 000	22 500 000

13. Public Protector South Africa (PPSA)

13.1. The Public Protector is an independent constitutional institution whose mandate, broadly, is to support and strengthen constitutional democracy by investigating maladministration or improper conduct in state affairs or the public administration in any sphere of government and to take appropriate remedial action. The Constitution also states that the Public Protector must be accessible to all persons and communities.

- 13.2. The PPSA's Vision 2023 is underpinned by the following pillars:
- Enhancing access to (PPSA) services.
 - Engaging targeted communities in their mother tongue.
 - Expanding the (PPSA's) footprint.
 - Leveraging stakeholder relations and formalising those relationships in Memoranda of Understanding.
 - Projecting the image (of the PPSA) as being a safe haven for the downtrodden.
 - Empowering people to understand their rights.
 - Encouraging organs of state to establish effective internal complaints resolution units.
 - Turning communities into their own liberators.
- 13.3. The PPSA has adopted a Strategic Plan 2020-2025 in terms of which it seeks to have the following impact: 'Empower everyone at all levels of society to effectively engage organs of state about any injustice, service delivery failure or improper conduct and assist organs of state to establish and maintain efficient and effective governance and administration'.
- 13.4. Due to the Covid-19 pandemic and measures in place to deal with it, the PPSA had to adjust its targets, especially within the Stakeholder Management Programme. A revised 2020/21 Annual Performance Plan was tabled in the National Assembly in August 2020.
- 13.5. **Human Resources:** As at 31 March 2021, the PPSA had 336 employees with approved posts of 356. The vacancy rate is 4.8%.
- 13.6. **Audit outcome.** The PPSA achieved a clean audit opinion once more in 2020/21.
- 13.7. **Non-financial performance.** The PPSA reports that it achieved 10 of 12 or 83% of its targets for 2020/21, improving from 79% of targets for 2019/20. Certain targets were revised downwards or removed as a result of the lockdown restrictions
- 13.8. In terms of caseload, the PPSA experienced a decline in the number of complaints received from 5108 compared to 10 111 complaints received in 2019/20), while finalising 6 927 matters (compared with 11 643 in 2019/20).
- 13.9. **Financial performance**
- 13.6.1. In 2020/21, the PPSA was allocated R339 million, which was adjusted downwards by R16.1 million from its compensation of employees' budget. This prevented the PPSA from filling critical vacancies or address ongoing issues with the aging ICT infrastructure.
- 13.6.2. At the end of R2020/21, a virement of R30.5 million from the Department assisted the PPSA to prevent unauthorised expenditure. This is the fourth consecutive year in which a virement has been made from the Department to the PPSA to prevent shortfalls.
- 13.6.3. In 2021/22, the PPSA's baseline is reduced by –R28.7 million and over the MTEF period by R-R85.1 million. is allocated R341.8 million, compared to R322.6 million in 2019/20. A total of 77.8% or R266 million is for compensation of employees, while the goods and services budget is R72.6 million or 21.2% of the overall budget.

13.6.4. For some years, the PPSA has indicated that it requires additional funding for the following priorities:

Table 11: Public Protector – additional funding needs

Table 11: Public Protector – additional funding needs				
Description	2022/23	2023/24	2024/25	Reason
	R'000			
Critical positions	6 973	19 941	19 942	Unfilled vacancies (>33) as a result of budget constraints
Subject matter experts	1 000	1 000	1 000	Subject-matter experts needed for complex investigations requiring specialised skills.
Security (provincial and regional offices)	6 127	6 446	6 774	No security at 17/18 offices
PABX	300	300	300	Currently 6 out of 18 offices have new PABX system being installed with new telephone management system. Due to budget constraints 12 offices do not have adequate telephone system
Skills Development	2 000	2 000	2 000	Cannot meet the 1% of the payroll budget as per the Skills Development Act
Total	16 400	29 687	30 016	

Part 4: Committee Observations

14. Committee observations

The Committee makes the following observations:

14.1. Funding

- 14.1.1. The Committee is acutely aware of the extremely constrained fiscal environment. Nonetheless, we believe that there should be careful consideration of how, in particular, the reduced salaries' budget, implying a further reduction of capacity, will affect the overall effectiveness of our legal system, which relies heavily on warm bodies to deliver a wide range of services.
- 14.1.2. The Committee is also aware that any recommendations concerning funding for the coming MTEF period must take into account how well the resources already

allocated have been put to use. With the notable exception of the SIU, performance and spending for 2020/21 has declined and in some instances is poor. However, it would be very unfair to not take into account how Covid-19 restricted the operations of our institutions. And it shouldn't be forgotten that all institutions have lost officials to Covid-19 and many officials have been seriously ill.

- 14.1.3. The Committee agrees with the NDPP's observation that the NPA's progress has been patchy and too slow. Still the Committee is encouraged by the commitment of the NPA's leadership to rebuilding the institution. The NPA's presentation of its performance, its frank engagement with the Committee on the challenges it has and the measures it has already, or plans to, put in place is promising. The NPA is well aware of the high expectations on it to deliver results, especially in tackling corruption and gender-based violence, but without the resources to address obstacles, such as capacity issues and expertise, these expectations are and will remain unreasonable. The Committee, therefore, repeats that it is opposed to any reduction to the NPA's budget, as this threatens the painstaking gains that have been made so far.
- 14.1.4. The Committee also notes the additional funds that the NPA requires for the Independent Directorate and for witness protection, and supports the request.
- 14.1.5. The Information Regulator reports that it will experience a shortfall if it is to grow its establishment as planned in order for it to be adequately capacitated to perform its duties as our data protection regulator and to undertake its PAIA mandate. The Committee, therefore, supports the additional funds required for this purpose.
- 14.1.6. Legal Aid SA, which is tightly and responsibly managed, can no longer absorb the budget shortfall/cuts through further efficiencies and cost containment measures. The only recourse has been to reduce the staff establishment, which is reflected in the lower recruitment rate. A reduction in the number of its legal practitioners will significantly impact on service delivery, resulting in an increase in pending matters and case backlogs in criminal courts, a reduction in the number of clients assisted in civil matters and advice matters and the further effect of compromising the quality of legal services. This compromises the constitutional obligations to make State-funded legal services available if substantial injustice would otherwise result. The Committee does not believe that it is an efficient or effective use of resources within the criminal justice system to reduce the number of legal aid practitioners, as it is likely to lead to more postponed criminal matters due to the unavailability of legal representation, in so doing increasing the number of awaiting trial detainees in our correctional centres and the length of their stay (for all of which the State pays). The reductions will also affect Legal Aid SA's ability to render services to the most vulnerable in our society through its civil work programme.

The Committee notes that Legal Aid SA will also require additional funds for the new Land Rights Management Unit.

The Committee, therefore, does not support any proposal to reduce Legal Aid SA's budget for the 2022 MTEF and supports the allocation of additional resources to allow Legal Aid SA to undertake the function of providing legal services to the indigent seeking land justice.

- 14.1.7. The Committee is extremely concerned by the impact of the cuts that have been made to the SAHRC and PPSA's budgets and does not support further cuts over the MTEF. Chapter 9 institutions are historically underfunded and, therefore, already have modest budgets that just cannot easily absorb budget cuts/reductions.

The Committee repeats its view that the decision to apply the budget cuts to the baseline allocation of a Chapter 9 institutions should carefully consider their unique and vital contribution towards strengthening our constitutional democracy, as well as the duty placed on other state institutions to assist them. The Committee, therefore, opposes any proposal to cut their budgets further over the MTEF.

The Committee observes once more that the matter of an appropriate funding model for the Chapter 9 institutions needs to be addressed.

14.2. ***Department of Justice and Constitutional Development***

14.2.1. The Committee remains gravely concerned by the lack of progress the Department has made in the year under review despite repeated commitments to do better. Plainly, its performance continues to be dismal, even taking into account the impact of Covid-19. The Department received a qualified audit opinion for the fifth consecutive year; achieved only 70% of its planned targets; and considerably underspent on its budget. The Committee has repeatedly expressed concern about the number of vacant positions in senior management, linking this to the Department's poor performance in past years.

14.2.2. On 11 February 2021, however, the appointment of a new Director-General (DG), Advocate Mashabane was announced, the position having been unfilled for more than a year. Other important appointments include the posts of Deputy Director-General: Corporate Services, Ms C Mamentja, and Chief Master, Advocate M Mafojane. The Committee, therefore, welcomes the steps that have been taken to stabilise the Department's leadership through these and other appointments to key positions and is generally pleased by the present rate of recruitment at senior management level.

23.1.1. The Committee appreciates the DG's frankness, as well as the considerable efforts so far by the Department's top officials to formulate a plan to reverse the underperformance. However, we believe the task to be monumental, requiring assistance from an independent and expert body. For this reason, the Committee draws attention to the recommendation in the 2020 BRRR that the Public Service Commission be approached to evaluate the Department so as to identify the reasons for the Department's non-performance and any systemic challenges, and report to the House on its findings and recommendations. The DG has reported that he met with the Chairperson of Public Service Commission, and that the Department's senior management had asked for 100 days to implement the turnaround plans, ending June 2021. Nonetheless, the Committee believes that the intervention is urgent, especially as serious internal control and other challenges have been exposed by, among others, the recent ransomware attack that crippled justice services, threatening the rule of law and, therefore, the country's security. There is no time to waste.

For its part, the Committee will continue to monitor progress very closely and will not hesitate to hold the Executive and top management to their commitments when doing so.

14.3. ***Audit Turnaround and Stabilisation Plan.*** The Committee notes the qualification on contingent liabilities in the State Attorney environment. Although action plans have been made to address the issue, these have not been adequately monitored. There were also findings, some of them repeat, which again indicate that audit action plans and a culture of consequence management have not been exercised effectively. Since 2019, we have questioned the Department's commitments and interventions to reverse the audit opinion and again request the DG to provide the

details of the commitments made, the interventions planned, as well the progress of these plans, by no later than 31 January 2022.

- 14.4. **Accountability.** The Committee has repeatedly highlighted the importance of consequence management and therefore, asks that it be given a consolidated report of all outstanding disciplinary matters so that it may track progress going forward by 30 January 2022.

14.5. **ICT infrastructure and Integrated Justice System (IJS) programme.**

- 14.4.1. The Committee has welcomed the focus on modernisation and digitisation projects for improved efficiency and effectiveness and for improved service delivery. We are, therefore, alarmed by the vulnerability of the Department's ICT infrastructure, which was publicly exposed by the September ransomware attack. The Committee appreciates the Department's difficulty in openly sharing details of the incident and the steps that have been taken to repair the damage and prevent another cybersecurity breach, but requests a report that addresses the adequacy of: the measures taken to repair the damage caused and to prevent a future attack; and the adequacy of the available IT capacity by no later than 31 January 2022.

- 14.4.2. The Committee intends to engage with the Department on the various aspects of its modernisation programme and on the IJS and will arrange a meeting as soon as its programme permits.

- 14.6. **Court infrastructure and planned maintenance.** The Committee notes that the Department reports completing the Durban Family Branch Court in KwaZulu-Natal and Dimbaza Magistrates Court in the Eastern Cape.

There has been a tendency not to make adequate provision for planned maintenance – instead savings from the capital works budget are reallocated to planned maintenance for that purpose. The Department of Public Works and Infrastructure (DPWI) reports that of 2 873 justice buildings, only 47 are in a 'very good condition; 544 in a good condition; 1 897 in a fair condition; and 57 in a very poor condition. The Department reports that the DPWI is unable to keep up with the backlog as a result of cuts to the maintenance budget cuts. Consequently, the Department plans to enter into term contracts for general building works, plumbing and fire services. The Department has also requested an increase in the financial delegation from R100 000 to R500 000 to allow it to undertake more of its own maintenance work. There is also a framework that is being developed to guide engagements between the Department and DPWI.

The Committee requests that the Department provide a comprehensive progress report on its infrastructure programme, as well as its maintenance programme by 31 January 2022 and continue to report on progress as part of the quarterly reporting process.

- 14.7. **Transformation of State Legal Services.** The Committee has been briefed on the progress of the SIU investigation of the Office of the State Attorney and will continue to regularly monitor the progress of the investigation.

14.8. **Gender-based Violence (GBV)**

- 14.8.1. The Committee notes that in the Department had planned to designate 27 regional courts as sexual offences courts in 2020/21. Although 32 instead of 27 regional courts were upgraded, we understand an administrative glitch prevented their designation. This was rectified subsequently but we noted previously that there has

been some concern from civil society about whether the upgrades are good enough.

The Committee also notes that the Western Cape and Eastern Cape recorded the highest backlog of sexual offences matters. We ask the Department to provide it with the number of GBV backlog cases currently on the roll and the plans to reduce the backlog, in the form of a written report by 31 January 2022.

14.8.2. The Committee has also previously noted the Justice Rapid Results Challenge that has been piloted at selected courts, intended to rapidly eradicate backlog domestic violence cases. The Committee had requested more information on the initiative and whether it has been or will be expanded to other courts, and repeats its request.

14.8.3. The Committee also notes that the Department has tabled its 2020/21 Report on the Implementation of the Criminal Law Sexual Offences and Related Matters Act and believes that consideration of its contents will provide an opportunity for focused engagement on this issue. The Committee will arrange a briefing on the Report as soon as its programme permits.

14.9. **Legal Services ombud.** The Committee notes the appointment of Judge Siraj Desai as the Legal Services Ombud during 2020/21 and requests a progress report on the provision of a structure to provide the necessary support to the Judge by 31 January 2022.

14.10. **Master's Office.** The Committee has repeatedly noted the many problems at the Master's Office, which have been exacerbated by the Covid-19 precautionary measures. The Committee noted the appointment of the new Chief Master in October 2020, providing the necessary leadership to the Office and met with him earlier this year. However, the overall vacancy rate in the Master's Office is high, with insufficient staff to deal with matters. The Committee, therefore repeats its request for a report detailing the vacancies and the plan to fill the positions by 31 January 2021.

The Committee has also noted that the Department's plan to invest in ICT technology to speed up the processing of matters in the Office and requests further information on these plans, in writing, by 31 January 2022.

The Committee has met with the SIU to be briefed on its investigation of alleged irregularities at the Master's Office and will continue to monitor the progress of the investigation. The Committee notes the SIU's preliminary recommendations to address systemic challenges in the Master's office.

14.11. **Justice College.** The Committee requests the Department to provide an updated report on the progress of its plans regarding Justice College by 31 January 2022 and be prepared to report quarterly on this item.

15. **National Prosecuting Authority**

15.1. **Budget reductions.** The Committee opposes any attempt to reduce the NPA's budget. Again, the Committee highlights the NPA's key role in efforts to rebuild our economy and society. The NPA is committed to the JCPS Economic Recovery Plan, however, under-resourcing will render the strategy ineffective and the NPA unable to address corruption, GBV and organised crime.

- 15.2. The NDPP previously told the Committee that she had found the NPA under-resourced in terms of skills, capacity and funding. The Committee notes that the initiatives reportedly underway to address these challenges include establishing an Office for Complaints and Ethics (OCE) to assist in promoting the accountability of all NPA staff; establishing an Innovation, Policy and Support Office (IPSO); establishing 22 community prosecution sites as part of the Community Prosecution Initiative (CPI) that focus on important crime and public safety issues, such as GBV, stock-theft and crime driven by alcohol/drugs; developing a policy on Non-Trial Resolutions (NTR) providing for trial agreements; developing a prosecution prioritisation policy as targeting the strategic prosecution of organised criminal gangs involved in housebreaking and house robberies can have a disproportionate impact in terms of the prevalence and fear of crime; and enhancing NPA communication.
- 15.3. ***NPA's performance.*** The Committee welcomes the NDPP's honesty about the NPA's performance not being at the level it should be for reasons that were presented. The Committee also acknowledges that the NPA had previously warned the Committee that Covid-19 would affect the NPS' performance in particular. Although the Committee is disappointed and is especially concerned about the AFU's performance, it accepts that it will need to be patient for now.
- 15.4. ***Asset Forfeiture Unit.*** The Committee notes the AFU's poor performance. Many of the AFU's prosecutors and investigators were moved to the Independent Directorate, and therefore, the AFU has a high vacancy rate for both prosecutors and investigators. The appointment of Adv. Rabaji Rasethaba to head the AFU is the first step in addressing the situation and there is a process underway to develop a turnaround strategy.
- 15.5. ***Strengthening the independence of the NPA.*** At the beginning of the 6th Parliament, the NDPP indicated that it is not satisfactory for the NPA to have the Director-General: Justice and Constitutional Development as its accounting officer. The Committee requests that it be kept updated on the progress of discussions to give effect to the NPA's operational independence.
- 15.6. ***Recruitment.*** The Committee requests that it be provided with an update on the progress of the NPA's recruitment drive.
- 15.7. ***Corruption-related cases.*** The Committee welcomes the continued prioritisation of corruption cases for swift finalisation and the reorganisation of resources to that end.
16. **Information Regulator**
- 16.1. The Committee welcomes the commencement of the remaining sections of POPIA with effect from 1 July 2021.
- 16.2. The Regulator is a relatively new organisation and, as such, is still busy setting itself. However, now that the Act is fully operational, it is vital for the Information Regulator be adequately funded so that it is able to provide guidance as South Africa goes about establishing its data protection regime. Furthermore, the Committee believes that a well functioning data protection regime is vital to international trade and, therefore, will contribute to South Africa's access to economic opportunities and growth. At the same time, the Regulator's continued under-expenditure is concerning as it suggests difficulties in its capacitation.

- 16.3. The Committee does not understand why it is taking so long to resolve the Information Regulator's status in terms of the PFMA. The resolution of this issue is key to the Regulator being able to function independently from the Department and is a blockage in the Information Regulator's attempts to adequately capacitate itself and to its operations. The Committee intends to arrange a meeting with the Ministers of Justice and Finance in an attempt to fast-track a solution.

17. **Legal Aid South Africa**

- 17.1. **Budget reductions.** The Committee does not support any reduction to Legal Aid SA's baseline for the 2022 MTEF and is concerned about how the budget reductions of R534 670 over the MTEF period 2021/22 – 2023/24 will result in a reduction in the coverage of courts and delivery of legal aid services to indigent and vulnerable persons, affecting the ability of Legal Aid SA to fulfil its mandate. The entity has budgeted for a lower recruitment rate and implemented a staff rationalisation programme to avoid over-expenditure on this item. The Committee cannot feel that Legal Aid SA's importance as a strategic partner in our criminal justice system is not fully recognised when decisions are made concerning the allocation of resources. Our legal system is adversarial, which requires that both the State and accused are represented in a matter.
- 17.2. **Land justice.** The Committee has previously expressed its approval that the legal representation function (and related budget) currently undertaken by the Department of Agriculture, Land Reform and Rural Development is finally to be transferred to Legal Aid SA, in order to assist the indigent that seek land justice. It is concerning that although plans are under way to secure the funding for the transfer of the functions to Legal Aid SA from 1 January 2022, if the funding is not made available, Legal Aid SA will not be able to take over the function in January 2022 as planned. Legal Aid SA has projected that the function will require R114 million for 2022/23 and approximately R97 million per annum after that.
- 17.3. **Audit outcome.** *The Committee congratulates Legal Aid SA on its achievement in maintaining a clean audit opinion.*
- 17.4. **Civil work.** Legal Aid SA's budget goes largely towards funding legal representation of accused in criminal matters, as there is a constitutional obligation on the State to assist accused persons without legal representation. The Committee appreciates the many efforts that Legal Aid SA has taken to stretch its capacity to undertake civil work to the very limits but that this capacity is at risk as a result of the budget reductions. The Committee, however, feels very strongly that funding should at least *maintain the current level of legal assistance provided in civil matters.*
- 17.5. **Employment equity targets.** The Committee notes that Legal Aid SA remains challenged in meeting its employment targets for African females at Top and Senior Management levels. Employees with disabilities are also under-represented at 1.6%. The Committee will continue to monitor progress.

18. **Special Investigating Unit**

- 18.1. **Audit outcome.** The Committee congratulates the SIU for its excellent audit results.

- 18.2. **Personnel.** The Committee has expressed itself previously on the need for the SIU to meet employment equity targets, in particular, regarding the employment of women in the professional qualified category and persons with disabilities. Although the Committee appreciates the SIU's commitment to address its challenges in this regard, as reflected in its plans, it is puzzling that there has been so little progress but will continue to monitor progress closely.
- 18.3. **Funding model.** The Committee notes that, for several years, there have been proposals to amend the SIU's enabling legislation and urges that these be finalised as soon as possible.
- 18.4. **Debt recovery.** The Committee notes the ongoing difficulties that the SIU has recovering monies owed to it by state institutions for its services and that this poses a significant risk going forward. Although the SIU is in a very healthy financial situation at present, this is especially concerning given the possibility that the SIU, like all organs of State, may experience cuts in future and faces difficulties in recovering money owed to it for its services.
- 18.5. **Performance.** The Committee commends the SIU on its outstanding performance in tackling corruption and recovering monies and value back to the State, under the Investigations and Legal Counsel programme. For example, the rand value of actual cash and/or assets recovered was R1.8 billion against a target of R60 million, while the rand value of contracts set aside or deemed invalid was R7.1 billion against a target of R900 million.
19. **South African Human Rights Commission (SAHRC)**
- 19.1. **Audit outcome.** The Committee welcomes the SAHRC's achievement in receiving an unqualified audit outcome but urges the Commission to address the Auditor General's findings. It is concerning that there are repeat findings, in particular as this indicates that audit action plans and consequence amangement are not effective.
- 19.2. **Performance.** The decline in the Commission's performance is concerning, albeit that this is in part due to the impact of Covid-19 on the Commission's operations.
- 19.3. **Whistleblowers.** The Committee notes with interest and would be interested in the response to the Commission's recommendations concerning improved protection to whistleblowers, broadly that a specialised unit be established tasked with protecting the rights of whistleblowers. There should also be a campaign that promotes whistleblowing to ensure that they feel protected.
- 19.4. **Budget reductions.** The Committee does not support the proposed budget reductions in the case of the SAHRC. The Covid-19 pandemic has laid bare the extreme inequality that characterises our society. The need for the Commission's intervening presence, given the degree of social conflict that is evident within our society, is more important than ever before. The Committee notes too the Commission's investigations and hearings have resulted in a deep understanding of the challenges that our society faces, which has the potential for many positive interventions towards upholding human rights. The Committee believes more should be done to ensure that the Commission's reports are taken up and acted on.
- 19.5. **Budget shortfall.** The Committee notes the Commission's presentation of its forward funding needs, the details of which are captured elsewhere in this report.

20. **Public Protector South Africa**

- 20.1. **Audit Outcome.** The Committee commends the PPSA for maintaining a clean audit opinion.
- 20.2. **Budget reductions.** The Committee does not support budget reductions in the case of the PPSA, as already discussed.
- 20.3. **Budget shortfall.** The Committee notes that the PPSA continues to maintain that the current budget is inadequate. The PPSA's funding needs are recorded elsewhere in this report. In this regard, the Committee has previously supported increased funding for the PPSA.
- 20.4. **Litigation.** The Committee once more requests that the PPSA keep it informed of the number and progress of review applications and the associated litigation costs.

21. **Recommendations**

- 21.1. The Committee does not support budget reductions in the case of the NPA, Legal Aid South Africa and the SIU. The Committee is gravely concerned at the potential of the reductions to undermine the contributions of each of these organisations to the maintenance of the rule of law. The Committee gives reasons to support its recommendations in each instance elsewhere in the report.
- 21.2. The Committee also supports the allocation of additional resources for Legal Aid SA to establish a Land Rights Management Unit that can provide legal services to poor and vulnerable persons seeking land justice. The amounts required are set out elsewhere in the report.
- 21.3. The Committee supports the allocation of additional resources to the Information Regulator for it to be able to capacitate itself, as detailed elsewhere in the report.
- 21.4. The Committee does not support the proposed application of budget reductions in the case of the SAHRC to prevent any further loss of human resource capacity and to enable it to maintain its existing activities. The Committee gives detailed reasons to support its recommendation elsewhere in the report.
- 21.5. The Committee supports the additional forward funding needs presented to it by the SAHRC.
- 21.6. The Committee does not support the application of budget reductions in the case of the PPSA and provides reasons for this elsewhere in the report.
- 21.7. The Committee also recommends that special consideration be given to allocating additional funds to the PPSA as requested. The amounts and the purpose for which the funds are required are set out elsewhere in the report.
- 21.8. The Committee recommends that the House looks into the matter of an appropriate funding model for the Chapter 9 institutions as recommended by Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions, 2007.

- 21.9. The Committee recommends that the House resolve to request the Public Service Commission to evaluate the Department to identify the reasons for the Department's non-performance and any systemic challenges, and report to the House on its findings and recommendations as a matter of urgency.

22. **Appreciation**

- 22.1. The Committee thanks the Minister and Deputy Minister, the Director-General and all officials who appeared before the Committee for their co-operation.
- 22.2. The Committee thanks the National Director of Public Prosecutions and all officials who appeared before the Committee for their co-operation in this process.
- 22.3. The Committee also wishes to thank the Public Protector and Deputy Public Protector; the Chairperson and Commissioners of the South African Human Rights Commission; the Board Members of Legal Aid South Africa; the Head of the Special Investigating Unit; and the Chairperson and Members of the Information Regulator, as well as all respective officials that appeared before the Committee for their co-operation.
- 22.4. The Committee thanks the representatives of the various audit committees that appeared before the Committee.
- 22.5. The Committee wishes to thank the Auditor General South Africa for the support it provided to the Committee.

Report to be considered