

The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services on 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, dated 18 November 2022

The Portfolio Committee on Justice and Correctional Services, having considered the financial and non-financial performance information for 2021/22 and the available quarterly financial and non-financial performance information for 2022/23 for 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. The Committee was briefed by the:
 - Auditor-General South Africa on the audit outcomes for Vote 25: Justice and Constitutional Development on 12 October 2022.
 - Legal Aid South Africa (Legal Aid SA) on 12 October 2022.
 - Information Regulator on 12 October 2022.
 - Minister of Justice and Correctional Services, who provided a political overview of Vote performance, on 13 October 2022.
 - Department of Justice and Constitutional Development (the Department) on 14 October 2022.
 - Special Investigating Unit (SIU) on 18 October 2022.
 - South African Human Rights Commission (SAHRC) on 19 October 2022.
 - Public Protector South Africa (PPSA) on 20 October 2022
 - National Prosecuting Authority (NPA) on 25 October 2022.
- 1.5. 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. Vote 25 Justice and Constitutional Development contains five programmes. 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.
- 2.3. For 2021/22, funding for the Information Regulator was ring-fenced under Programme 3: State Legal Services but, as from 2022/23, the Regulator is listed under the Programme 5: Associated and Auxiliary Services, with other public entities and constitutional institutions, namely the SAHRC, PPSA, SIU and Legal Aid SA.
- 2.4. The NPA appears under Programme 4 but reports to Parliament under both the Public Finance Management Act, 1999, and the National Prosecuting Authority Act, 1998. Both reports have formed part of the Committee's assessment of performance.
- 2.5. 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 Overview of key policy and operational developments

3.1. *Medium Term Strategic Framework (MTSF) 2019-2024, as revised*

- 3.1.1. The MTSF 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'.
- 3.1.2. 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.
- 3.1.3. Key interventions for which the Justice Department is responsible 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 and implement a social 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 all provinces.
 - Ensuring an efficient, modernised and co-ordinated criminal justice system through integrated digital information systems.
- 3.2. ***National Strategic Plan on Gender-Based Violence and Femicide (NSP on GBVF)***. Pillar 3 of the NSP-GBVF provides for Justice, Safety and Protection and seeks to address the systemic challenges that have resulted in an inadequate response to the management of GBVF cases, particularly domestic violence, sexual offences, child homicide, human trafficking, and other related matters. Departments are required to integrate related NSP-GBVF outcomes in their five-year strategic plans and annual performance plans. For Justice this includes ensuring:
 - Infrastructural alterations to court buildings so that they are victim-friendly, disability friendly and child friendly.
 - That court-based victim support services and witness protection are made available, particularly in rural areas.

- That quality legal aid support is readily accessible for women and LGBTQIA+ persons who cannot afford litigation.
- That information on GBV laws and policies and how these can assist is made widely available.
- That e-services are available to survivors to ensure quick access to justice.
- That information on cases is readily available for victims to access and track.
- That the backlog of GBVF cases is cleared.
- The effective implementation of GBV legislation with adequate resourcing and budget.
- The ongoing vetting of officials providing services to children and mentally disabled persons.

3.3. Fiscal Policy

- 3.3.1. Medium-term fiscal policy has focused on reducing the budget deficit and stabilising the debt-to-GDP ratio. Government has attempted to slow expenditure growth by reducing baseline budgets and setting ceilings on compensation spending. Despite this, the gap between revenue and expenditure has widened, as much of the increased budget has been absorbed by rising public-service salaries and debt-service costs.
- 3.3.2. The 2021 Budget proposed to reduce expenditure over the MTEF period by R264.9 billion, or 4.6% of GDP. Most of the proposed adjustments were to the public sector wage bill.
- 3.3.3. The 2022 Budget responds directly to the effects of the Covid-19 pandemic while aiming to grow the economy. The allocation to functions that employ large numbers of staff, such as Peace and Security, (continue to) decline in real terms over the MTEF due to compensation ceilings and baseline reductions to fund the Covid-19 spending response in 2021/22.
- 3.3.4. Notably spending on Peace and Security has declined on average by -8.5% between 2012/13 and 2021/22 and will continue to decrease over the 2022 MTEF by -3.1%.
- 3.3.5. Approximately 23% of the overall allocation for Peace and Security goes to 'Law courts and prisons'. Specifically, the Justice and Constitutional Development Vote receives 10.14% of the overall allocation to the function (including magistrates' salaries).
- 3.3.6. Over the next three years, this function will focus on intensifying the fight against crime and corruption, and implementing personnel reforms to contain departmental compensation within the expenditure ceiling.
- 3.3.7. A total of R36 million is reprioritised in 2022/23 to invest in information and communication technology in the Office of the Chief Justice, NPA's Investigating Directorate, PPSA, SAHRC and Financial Intelligence Centre.
- 3.3.8. Over the medium term, R426 million is allocated to the Investigating Directorate in the National Prosecuting Authority and the Financial Intelligence Centre to intensify the fight against corruption and ensure sufficient capacity for the investigation and prosecution of criminal cases emanating from the State Capture Commission. This allocation – of which R262.1 million is from reprioritisation within the function – will provide for the permanent appointment of an estimated 90 staff in the Investigating Directorate and 68 staff in the Financial Intelligence Centre.
- 3.3.9. An amount of R34.3 million is reprioritised to Legal Aid SA over the MTEF period to capacitate the six newly established Specialised Commercial Crimes Courts in Limpopo, Mpumalanga, North West and the Northern Cape.

4 Overview of audit outcomes 2021/22

- 4.1. The Guardian's Fund; President's Fund; Justice Administration Fund; Legal Aid SA; PPSA; and SIU sustained an unqualified with no findings or 'clean' audit opinion for 2021/22.

4.2. The Department received a repeat qualified audit opinion on contingent liabilities, with material findings on compliance and on performance information.

4.3. The SAHRC once more received an unqualified audit opinion, with material findings on compliance and performance information.

4.4. *Irregular expenditure 2021/22*

4.4.1. The following irregular expenditure was identified:

Table 1: Irregular expenditure incurred 2021/22

AUDITEE	DESCRIPTION	AMOUNT	CAUSE	IMPACT
Department	Bids which did not comply with the stipulated qualifying criteria were not disqualified.	R859 million	Bidders submitted fabricated documents.	Evaluation committee did not identify the discrepancies in the submitted records.
SAHRC	Evaluation and adjudication criteria not applied consistently.	R10.7 million	Non-adherence to policies and procedures.	Investigations are yet to be conducted.

4.4.2. The Auditor-General also reported that the Department's investigation of irregular expenditure is not yet complete, specifically:

- For 2021/22, the Department reported instances of irregular expenditure of R49.7 million that is under investigation relating to procurement processes not followed and renewal of contracts without obtaining necessary approvals.
- In addition, possible irregular expenditure for 2020/21, amounting to R999 million is being investigated.

4.4.3. *Commitments proposed to the Committee.* The Auditor-General proposes that the Committee make the following commitments to strengthen the effectiveness of its oversight function:

Table 2: Table of proposed Committee commitments

INSTITUTION	PROPOSED COMMITMENT
Department	Monitor the implementation of record keeping management in the State Attorney's office, that is the development of a consolidated state litigations' register.
	Monitor the progress of the implementation of the strategy for reducing state litigations.
	Obtain regular feedback from the Department on the action plan to address the findings on the contingent liabilities and performance management issues.
SAHRC	Monitor the vacancies at the SAHRC, especially in key positions such as the that of the CFO.
PPSA	Obtain quarterly updates on the implementation of remedial actions, which the Committee could share with relevant committees for monitoring and follow-ups on implementation.
SIU	Share the details of long outstanding debts at the SIU with relevant committees so that these committees also follow-up on non-payment.

4.5. Further details of the Auditor-General's findings are contained under the relevant institution.

5 Budgetary Review and Recommendation Report (BRRR) (2021) and Minister of Finance's response to Parliament

- 5.1. In the Budgetary Review and Recommendation Report (BRRR) (December 2021), the Committee expressed concern that the reduced salaries' budget will affect the overall effectiveness of the legal system, which relies heavily on warm bodies to deliver a wide range of services. The Committee was especially concerned that a reduced staff establishment would undermine the work needed to create a transformed and responsive justice system.
- 5.2. Specifically, the Committee did not support budget reductions in the case of the NPA, Legal Aid SA, and the SIU; and also recommended that additional funding be allocated to the NPA, for the Independent Directorate and for Witness Protection; the Information Regulator, for capacity and to fund its responsibilities in terms of PAIA; and Legal Aid SA for land matters; as well as to the PPSA and SAHRC.
- 5.3. The Committee also observed that an appropriate funding model for the Chapter 9 institutions is necessary.
- 5.4. The Minister of Finance responded to the recommendations as follows:
"The baseline budgets for justice-related institutions are not reduced in the 2022 Budget. Additional funding has been allocated through reprioritisation ... Funds will also be transferred to Legal Aid South Africa, in line with current budget processes, to enable the entity to provide the specified legal services upon receipt of a formal request to facilitate such a transfer from the institutions involved. No additional funding is allocated to the Information Regulator, although R105 million was provided in the 2021 Budget to enable it to grow and meet its legislative mandate".
- 5.5. Details of the reprioritised funds referred to by the Minister of Finance in his response include:
- A total of R36 million, in 2022/23, to invest in ICT in institutions that include the Investigating Directorate, PPSA and SAHRC.
 - A total of R426 million over the medium term to intensify the fight against corruption and ensure sufficient capacity for the investigation and prosecution of criminal cases emanating from the State Capture Commission. Among others, this will allow the Independent Directorate to appoint an estimated 90 staff members in a permanent capacity.
 - An amount of R34.3 million is reprioritised to Legal Aid SA over the MTEF period to capacitate the six newly established Specialised Commercial Crimes Courts in Limpopo, Mpumalanga, North West and the Northern Cape.

6 Financial performance

6.1 Vote expenditure 2021/22

- 6.1.1. The Vote was allocated R21.9 billion for 2021/22, compared with R21.1 billion in 2020/21, inclusive of Magistrates' salaries. The allocation to programmes was R19.5 billion.
- 6.1.2. The final Vote expenditure for 2021/22 was R21.3 billion or 97% of the final appropriation, compared with R20.03 billion or 94.9% of the final appropriation in 2020/21.
- 6.1.3. Programme expenditure for 2021/22 was R19.1 billion or 98% of the final appropriation of R19.5 billion (compared with 95.8% in 2020/21).

Table 3: Vote 25 Justice and Constitutional Development – Final Allocation vs Actual Expenditure 2021/22 (with a comparison to 2020/21)

PROGRAMME (R'000)	FINAL ALLOCATION V ACTUAL EXPENDITURE	
	2021/22	2020/21

	FINAL	ACTUAL	%	FINAL	ACTUAL	%
Administration	2 985.6	2 754.7	92	2 920.7	2 704.7	92.6
Court Services	6 751.6	6 680.2	99	6 373.3	6 204.6	97.4
State Legal Services	1 457.0	1 372.8	94	1 454.8	1 374.7	94.5
NPA	4 691.2	4 690.9	100	4 300.8	4 196.9	97.6
Auxiliary and Associated Services	3 623.3	3 601.6	99	3 616.7	3 404.6	94.1
Sub -Total	19 508.7	19 100.3	98	18 666.3	17 885.6	95.8
Magistrates' Salaries	2 396.5	2 174.5	91	2 442.6	2 146.8	87.9
TOTAL	21 905.2	21 274.7	97	21 108.7	20 032.2	94.9

6.1.4. Reported key cost drivers in 2021/22 include:

- *Compensation of employees.* R12.21 billion (96.8% expenditure with under-expenditure of R558.43 million). (In 2020/21, there was expenditure of R11.52 billion, with under-expenditure of R591 million).
- *Goods and Services.* R4.79 billion (95.6% expenditure with under-expenditure of R21.7 million). (In 2020/21, expenditure of R4.61 billion with under-expenditure of R375.72 million).
- *Property payments.* R1.32 billion (R1.38 billion in 2020/21.)
- *Operating leases.* R930.79 million (R944.23 million in 2020/21.)
- *Buildings.* R609.2 million (R290.58 million in 2020/21.)

6.1.5. In respect of specific line items, the following was spent:

- R128 million on contractors, comprising of day-to-day maintenance and repairs (R72.7 million), security services (R24.2 million), forensic investigators (R19 million) and curator fees (NPA - R3.3 million).
- R857.8 million on computer services, comprising of R464.5 on SITA' computer services and R393.3 million on external computer service providers.
- Expenditure on Covid-19 protective personal equipment: R16.81 million.

6.1.6. The most significant under-expenditure occurred as follows:

- Administration programme - 92% of the budget was spent, with an under-expenditure of R230.8 million.
- State Legal Services programme - 94% of the budget spent with an under-expenditure of R84.1 million.
- Magistrates salaries - 91% of the budget was spent, with an under-expenditure of R221.9 million.

6.1.7. The underspending is attributed to:

- Vacant posts across all programmes, magistrates' salaries and lower than anticipated payment of performance bonuses.
- Less than anticipated expenditure on private leases and municipal services and delays in awarding the procurement of ICT licenses (Citrix and Trend) and ICT Services (ICT Central Support, Service Desk and Security Support Services), as well as the underperformance of the IJS/CJS (Transversal).
- Lower than anticipated payments for leave gratuity resulting from natural attrition for magistrates.
- Slow progress by the Department of Public Works and Infrastructure (DPWI) in implementing planned court infrastructure projects.

6.2 **Vote allocation 2022/23**

- 6.2.1. The overall allocation to the Justice and Constitutional Development Vote (Vote 25) for 2022/23, including the Direct Transfer for Magistrate's salaries, is R22.4 billion (compared with the final allocation of R21.9 billion in 2021/22). The allocation to the Vote decreases in real terms by - 2.06% compared with 2021/22.
- 6.2.2. The total allocation for programmes, excluding the direct charge for magistrates' salaries, is R20.0 billion. This allocation decreases in real terms by -1.79% from 2021/22.
- 6.2.3. The three Justice administered programmes (Administration, Court Services and State Legal Services), as well as the Justice Modernisation sub-programme under Programme 5, are allocated R11.9 billion for 2022/23.

Table 4: Vote 25 - Justice and Constitutional Development – Allocation for the 2022 MTEF per programme

Programme (R 'million)	Budget 2022 MTEF				% Total expenditure 2021/22- 2024/25	Real % change 2022/23
	2021/22	2022/23	2023/24	2024/25		
Administration	3 140.7	2 988.9	3 059.4	3 200.5	13.8%	-8.9%
Court Services	6 767.4	6 809.6	6 516.0	6 808.0	30%	-3.71%
State Legal Services	1 330.8	1 322.7	1 303.3	1 362.0	5.9%	-4.89%
National Prosecuting Authority	4 535.6	4 910.3	4 870.9	5 089.6	21.6%	3.6%
Auxiliary and Associated Services	3 734.2	3 990.4	4 052.7	4 232.2	17.8%	2.26%
TOTAL	19 508.7	20 021.9	19 802.2	20 692.4	89.2%	-1.79%
Magistrates' Salaries	2 396.5	2 398.5	2 408.7	2 516.9	10.8%	-4.23%
TOTAL	21 905.2	22 420.5	22 211.0	23 209.3	100%	-2.06%
Change to 2021 Budget estimate	358.9	607.5	259.9	272.3	-	-

6.3 Vote expenditure for Quarter 1 2022/23

- 6.3.1. Inclusive of direct charges, at the end of June 2022, R3.7 billion (or 16.4%) of the available budget of R22.4 billion had been spent. This spending is lower by R1.6 billion when compared with the projection to spend R5.3 billion, and is mainly due to lower than planned spending on goods and services and payments for capital assets under the Administration and Court Services programmes. The underspending is attributed to a payment rejection encountered on the Basic Accounting System (BAS) when processing invoices for private leases in June 2022, and underperformance by the DPWI on courts infrastructure projects, respectively.
- 6.3.2. Programme 1: Administration: Expenditure under this programme is lower by R1.5 billion, mainly on goods and services, due to challenges experienced by the Department in the processing of invoices for private leases, which resulted in a negative expenditure. The Department is in the process of rectifying the payment error.
- 6.3.3. Programme 2: Court Services: Expenditure under this programme is lower by R84.6 million, mainly on goods and services and payments for capital assets (buildings and other fixed structures). The slow spending is attributed primarily due to lower than anticipated expenditure on security services, late receipt of invoices for the virtual library, and lower than anticipated expenditure on court infrastructure projects implemented by the DPWI.

- 6.3.4. Programme 3: State Legal Services: Expenditure on this programme is higher than planned by R27.1 million, mainly on goods and services under the Litigation and Legal Services subprogramme, due to an accrual invoice from the previous financial year being processed in this financial year for the Legal Practice Council. Plans are underway to address the budget shortfall in the 2022 Adjustments Budget.
- 6.3.5. Programme 4: National Prosecuting Authority: Expenditure under this programme is lower by R24 million, mainly on goods and services under the Investigating Directorate subprogramme, due to delays in receipt of invoices for operating leases, training, and forensic investigations and equipment.
- 6.3.6. Programme 5: Auxiliary and Associated Services: Expenditure under this programme is lower by R16.8 million, mainly on goods and services, due to delayed acquisition of tools of trade by the Information Regulator and underperformance by the IJS programme.

7 Department of Justice and Constitutional Development

- 7.1 The Department's strategic focus is as follows:
- Modernising and increasing access to justice services.
 - Building and deepening constitutionalism, respect for human rights and rule of law.
 - Reviewing justice-related colonial and apartheid-era legislation with the aim of aligning this legislation with the Constitution of the Republic of South Africa, 1996 (Constitution).
 - Implementing the National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance in order to advance constitutionalism, human rights and the rule of law.
 - Addressing the scourge of gender-based violence and femicide (GBVF) and violence against women and children.
 - Transforming state legal services to improve effectiveness and efficiency through the implementation of the State Attorney Amendment Act, 2014 (Act No.13 of 2014).
 - Transforming the legal profession.
 - Providing facilities (offices/courts/service points) that are accessible to persons with disabilities as required by building regulations.
 - Implementing an integrated education campaign that will profile justice services through the use of variety of multimedia communication mediums to improve citizens experience of justice services.
 - Improving audit outcomes in respect of the vote account and pre-determined objectives.
 - Improving the departmental performance.
 - Strengthening the fight against fraud and corruption, by ensuring that the Specialised Commercial Crime Courts (SCCCs) are extended to all provinces in the country which do not yet have a SCCC.
 - Transforming Master's services to allow effective and optimal operation.
- 7.2 Identified priorities for 2021/22 were as follows:
- A series of programmes would take place to commemorate the 25th anniversary of the Constitution to mark this milestone.
 - The filling of critical vacancies at the very highest level, with more to follow.
 - The turnaround of Justice College would allow for better capacitated justice officials through training and, in addition, position Justice College as a service provider to other departments and the continent.
 - The Department would invest in integration and modernisation programmes through the use of technology. Also, more effort would be directed towards the Integrated Justice System (IJS), as part of accelerating the digitisation and modernisation of the justice system. This would take place through a variety of ICT projects implemented across the security cluster.

- The process to operationalise the State Attorney Amendment Act would continue with the appointment of regional heads to the Office of the State Attorney at all High Courts to ensure better management of state litigation.
- Publication of a legal sector code for comment would take place in the near future as part of transformation efforts.
- The fight against fraud and corruption would continue.
- The NPA would continue with its Aspirant Prosecutors' programme in which young graduates are recruited to the NPA.
- The NPA would also establish an office of complaints in line with international best practice and to institutionalise the NPA's commitment to ethics and accountability.
- The Judicial Commission of Inquiry into State Capture (Zondo Commission) would be assisted to complete its work.
- With effect from 1 April 2021, the process to transfer the legal representation function and related budget from the Land Rights Management Facility in the Department of Agriculture, Land Reform and Rural Development to Legal Aid SA would begin.

7.3 **Human Resources**

- 7.3.1. The Department reports on a review and alignment of the organisational structure in 2021/22, estimating that the additional funding required to implement the structure is R53.46 million.
- 7.3.2. As at 31 March 2022, the Department had a total workforce (excluding magistrates) of 16 150 (77.8% of employees are concentrated in programme 2 (Court Services)).
- 7.3.3. The overall vacancy rate was 8.6% (compared with 10% in 2020/21 and 7.1% in 2019/20). The SMS vacancy rate was at 15% (as opposed to the target of 10%), improving from 22.5% at 31 March 2021.

7.4 **Financial performance 2021/22**

- 7.4.1. The Department's three programmes - Administration, Court Services and State Legal Services, as well as the Justice Modernisation sub-programme under Programme 5 - were allocated R11.8 billion in 2021/22, and spent R11.4 billion or 96.6% of the final allocation.
- 7.4.2. Irregular expenditure increased in 2021/22 by R900.2 billion, from R2.06 billion to R2.92 billion:

Table 5: Department of Justice and Constitutional Development - Overview of irregular expenditure

IRREGULAR EXPENDITURE	2019/20	2020/21	2021/22
Closing balance	R1.66 billion	R2.06 billion	R2.92 billion
Increase	R563.2 million	R401.6 million	R900.2 million
New cases detected	35 new cases to the value of R543 million were detected.	34 new cases to the value of R75 million were detected.	26 new cases to the value of R867 million, of which two cases relate to the prior year.
Forensic investigation for possible fraud and collusion	R968 million	R667 million	R667 million
Discipline		Thirty-three cases to the value of R429 million.	Twenty-two cases to the value of R668 million under disciplinary process
Under assessment	R867.7 million	R999 million	R49.7 million

- 7.4.3. According to the Department, the increase in irregular expenditure relates to:
- The non-adherence to bid requirements with the appointment of Security Guarding Services to the value of R863 million (prior years' expenditure).

- Prior approval not obtained to deviate from a competitive bidding process when procuring online library services to the value of R2.7 million.
- Contract extension without approval from National Treasury which resulted in irregular expenditure to the value of R922 000.
- Three quotations not obtained when procuring accommodation to the value of R834 000.
- R32.7 million when Supply Chain Management processes were not followed by the State Attorney's offices.

7.4.4. Fruitless and wasteful expenditure:

- Thirteen new cases of Fruitless and Wasteful Expenditure to the value of R23 000 were detected and reported to National Treasury during 2021/22. The fruitless and wasteful expenditure incurred were reportedly primarily the result of cancelled bookings or no shows related to transportation and accommodation on official trips.
- The Department resolved 333 cases of fruitless and wasteful expenditure to the value of R1.7 million during 2021/22, which made up 93% of the value of cases on the Register: 30 cases to the value of R1.4 million were written off as it was concluded that the Department incurred no loss, and 303 cases to the value of R210 000 were resolved as not fruitless or wasteful.

7.5 Non-financial performance 2021/22

- 7.5.1. The Department reports that it achieved 79% of its indicators in 2021/22, compared with 66% in 2020/21 (and 51% in 2019/20). If the indicators for the NPA are removed, the Department achieved 81% of planned indicators.

Table 6: Department of Justice and Constitutional Development - overall performance 2021/22 (with a comparison to 2020/21)

PROGRAMME	2021/22			2020/21	
	PERCENTAGE PERFORMANCE	TARGETS ACHIEVED	PLANNED TARGETS	PERCENTAGE PERFORMANCE	ACTUAL/ PLANNED TARGETS
Administration	77%	24	31	40%	6/15
Court Services	87%	15	17	81%	13/16
State Legal Services	79%	22	28	75%	33/44
NPA	71.4%	10	14	50%	7/14
Justice Modernisation	100%	3	3	67%	2/3
Overall	79%	74	93	66%	61/92

7.5.2. Key achievements include:

- Establishing a further three (3) new Special Commercial Crime Courts (SCCCs), two in the Eastern Cape (Mthatha and East London) and one court in KwaZulu-Natal (Pietermaritzburg). To date, eight (8) SCCC's have been established.
- Establishing 78 courts to comply with the strategy on universal access for persons with disabilities.
- Converting six branch courts to full-service courts, as follows: Bityi and Dimbaza courts in the Eastern Cape, Booyens and Lenasia courts in Gauteng, and Magudu and Nsuzi courts in KwaZulu-Natal.
- Making use of the Person Identification and Verification Application (PIVA) to check more than 122 339 accused persons. In near real-time, 46 479 of these individuals (38%) were found to have prior criminal records. Further, 3 379 (2.8%) wanted persons could be identified as persons of interest in other cases.
- Processing 1 989 246 cases through the IJS Transversal Hub using IJS system integrations between the SAPS, NPA and the Department.

- Developing, testing and piloting the following online services: Maintenance; Expungement of Criminal Records; National Register of Sex Offenders (NSRO); Civil Online; and Deceased Estates and Trust. However, the prolonged departmental procurement processes, as well as SITA procurement processes, have negatively impacted on delivery of some modernised projects and service delivery. As a result, the target for Courts Audio-Visual Solution (CAVS) was not achieved. The Court Recording Systems (CRT) were also affected, resulting in postponement of cases.
- Deploying 443 cashless solutions to reduce the amount of money processed through points of service and, therefore, to minimise the risk of theft and robberies.

7.5.3. Key reported challenges for 2021/22 were the negative audit outcome; the high vacancy rate and the aging ICT infrastructure.

7.6 **Audit outcome 2021/22**

7.6.1. This is the sixth consecutive year in which the Department has received a qualified audit opinion. As in 2020/21, the audit qualification for 2021/22 relates to significant deficiencies in the accounting of contingent liabilities.

7.6.2. *Contingent liabilities:*

- The Auditor-General found that the Department did not have adequate processes in place to prevent contingent liabilities in accordance with the requirements of the accounting framework and the CFO vacancy had contributed to the breakdown of internal controls. Further, the Department did not determine the possible outcomes of the litigations in support of the disclosure.
- The Auditor-General recommended that the Department employ temporal staff to capture the voluminous historical information on the litigations and claims register. Then, update the status of each litigation matter and claim throughout the year, where applicable. The Department's legal department should assess and record the possible outcome of each claim at year-end, based on progress, for disclosure of the contingent liabilities to the Annual Financial Statement (AFS). The finalisation of the revised population should be concluded for review by internal and external auditors prior to the official submission of the AFS.

7.6.3. *Material findings on compliance* were as follows

Table 7: Department of Justice and Constitutional Development - Material findings on compliance

DESCRIPTION	ROOT CAUSE
<ul style="list-style-type: none"> • Some of the goods and services were procured without obtaining at least three written price quotations. • The AFS included material misstatements on contingent liabilities. • The Department incurred and reported irregular expenditure worth R900.9 million in 2021/22, indicating that the process was not effective and appropriate to prevent irregular expenditure. • R857 million of the reported irregular expenditure originates from prior years' security contract payments. The non-compliance investigation was, however concluded in 2021/22. • There was no evidence to confirm that investigations were conducted into allegations of financial misconduct by officials and/or that 	<ul style="list-style-type: none"> • There is no framework for the procurement of legal services in the Department. Consequently, procurement processes were not followed by State Attorney offices. • The CFO position was vacant for the duration of 2021/22. The position is critical to reporting within the requirements of the reporting accounting framework. • There is slow progress in concluding the backlog of investigations by the Department.

DESCRIPTION	ROOT CAUSE
disciplinary steps were taken against officials who had incurred irregular expenditure.	

7.6.4. *Findings on the quality of the performance information:* The Department had material findings in the usefulness and reliability of the performance information reported under State Legal Services, as a result of inadequate monitoring and reporting.

7.6.5. *Integrated Justice System: Integrated Justice System (IJS)*

- i. The Auditor-General found that the goal to fully modernise the Criminal Justice System (CJS) has not been fully realised in line with resources and investments made over the years. A total of R8.65 billion has been allocated to fund the IJS programme from inception to date, while total expenditure is R7.84 billion.
- ii. Although the reconstituted programme governance structures are in operation and are overseeing implementation of projects outlined in the 2019-2024 MTEF, some projects are faced with challenges that range from procurement, resource constraints, contract management and vendor management. This has caused major project delivery delays that have impacted on the project timelines and budgets.
- iii. The drivers for the modernisation of the CJS depend on a fully Integrated Case Management System (ICMS), Integrated Person Management System (IPMS) and Business Intelligence (BI) platform. The integration status for the ICMS, IPMS and BI is at 100%, 40%, 80%, respectively. The delay in the implementation of the IPMS (at 40%) is attributed to delays in individual projects at the Department of Home Affairs (DHA), South African Police Services (SAPS) and Department of Correctional Services (DCS).

7.7 *Linking financial and non-financial performance information:*

- The Department spent 94.9% of the overall budget for 2021/22, while achieving 79% of planned targets.
- However, the Department amended its 2021/22 Annual Performance Plan (APP) in January 2021/22, revising certain targets downwards.
- Further, the Department did not meet certain targets which relate to priority areas, specifically indicators relating to combatting gender-based violence, reducing case backlogs, the modernisation of justice services, and improved organisational capability and good governance.
- Concerning the audit outcome, the Department has remained qualified, with a repeat finding on contingent liabilities, as well as material findings on compliance with legislation in the supply chain environment.
- Irregular expenditure incurred increased by R900.2 million.
- The Auditor-General also queried the usefulness and reliability of certain performance information under the State Legal Services programme.

8 Programme 1 - Administration

- 8.1 The Administration programme provides strategic leadership, management and support services to the Department.
- 8.2 There are six sub-programmes: Ministry, Management, Corporate Services, Financial Administration, Internal Audit and Office Accommodation.
- 8.3 In 2021/22, the Administration programme spent 92.3% of the final appropriation, compared with 92.6% appropriated to the programme in 2020/21.

- 8.4 The underspending of R230.8 million is attributed to delays in the filling of vacant posts and implementation of the youth programme, less than anticipated expenditure on accommodation charges, private leases and municipal services, and delays in awarding the procurement of ICT licenses and services (ICT central support, service desk and security support services).
- 8.5 The programme had three outcomes for 2021/22:
- Modernised and digitised justice services platforms.
 - Improved organisational capability and good governance.
 - Improved awareness of justice services and constitutionalism.
- 8.6 The following indicators and related targets were revised in-year:

Table 8: Administration programme – revised indicators and targets

ORIGINAL INDICATORS	REVISED INDICATORS AND TARGETS
Number of justice services available on the Department's Internet Portal (online) i.e. Maintenance applications, Protection Orders applications, Deceased estate, Trusts and Expungement of Criminal Records.	The annual target was revised from achievement by 31 September 2021 to piloted in February 2022 because of the ransomware attack.
Number of sites rolled-out with the Courts Audio-Visual Solution (CAVS).	The target for the CAVS solution to be rolled out at 45 courts was revised to Procurement of Courts Audio-Visual Solution (CAVS) completed by target date.
Percentage of women occupying senior management services	The target for 50% women occupying senior management services was revised to 50% of women occupying senior management services and LP10 positions.
Disciplinary hearings finalised within 90 days.	The target was revised from 60% to 55%.
Programmes to commemorate the 25th anniversary of the constitution implemented.	Number of reports on the implementation of programmes to commemorate the 25th anniversary of the Constitution submitted to the Minister for approval.

- 8.7 Overall, the Programme met or exceeded 24 of 31 or 77% of planned targets (compared with 6 of 15 or 40% of the planned targets for 2020/21).
- 8.8 Areas of underperformance were as follows:
- Protection order services available on the internet portal (online) by 28 February 2022 (Phase 1 (for legally represented complainants) developed and tested).
 - Procurement of Courts Audio-Visual Solution (CAVS) completed by 28 February 2022 (Bid specifications completed and approved for publication through SITA).
 - Percentage of vacancy posts at SMS level (Vacancy rate) (15% against a target of 10%).
 - Percentage of irregular expenditure reduced (43% increase against a target of 70% decrease).
 - Percentage of undisputed and valid invoices paid within 30 days from date of receipt (99% of invoices paid of a target of 100%).
 - Percentage of Rand value of discretionary procurement allocated to exempted micro enterprises (EMEs) and qualifying small enterprises (QSEs) (31% against a target of 40%).
- 8.9 **Linking financial and non-financial performance information:**
- The programme achieved 77% of planned targets for 2021/22, improving from 40% in 2020/21, and spent 92.3% of the allocation, underspending by –R230.8 million.

9 Programme 2 - Court Services

- 9.1 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.
- 9.2 The Programme has the following outcomes:
- Increased access to justice.
 - Crime and corruption reduced through effective prosecution.
- 9.3 The following indicators and related targets were revised in-year:

Table 9: Court Services programme – revised indicators and targets

INDICATOR	REVISED INDICATOR AND TARGET
Phase 4 Functional Femicide Watch dashboard with available data.	The indicator was revised to “approved report on available data for Phase 4 Femicide Watch dashboard”
Criminal cases postponed due to unavailability of court administration staff.	The annual target was revised downwards from ≤0.3% to ≤0.2%
Number of additional courts designated in terms of section 55(A) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.	The original indicator was revised to “number of sexual offences courts established at designated courts.”
Percentage of NRSO clearance certificates issued within 10 working days.	The annual target was revised downwards from 65% to 50%.
Number of courts compliant with the strategy on universal access for persons with disabilities	The original indicator was revised to “number of courts compliant with the minimum standard on universal access for persons with disabilities”.
Maintenance matters finalised within 90 days from the date of proper service of process.	The annual target was revised downwards from 80% to 75%.
Social compact discussion document submitted to Cabinet by 31 December 2021.	The original indicator was revised to “social compact discussion document submitted to Minister for approval by 31 March 2022”.
Maintenance improvement framework developed and submitted to the Minister for approval by 31 December 2021.	The original indicator was revised to “Maintenance improvement framework developed and submitted to the Minister for approval by 31 March 2022.”
Case backlogs reduction framework adopted by 31 March 2022.	Case backlogs reduction framework submitted to the Minister for approval by 31 March 2022.

- 9.4 In 2021/22, the Programme met or exceeded 15 or 87% of 17 planned targets (compared to 81% or 13/16 targets in 2020/21).
- 9.5 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.
 - The Case Backlog Reduction Framework was not submitted to the Minister for approval by 31 March 2022 but, instead, was returned by the Deputy Minister with amendments to be made and an action plan developed.

9.6 **Facilities Management / Court infrastructure**

Table 10: Court infrastructure - Appropriation and expenditure 2021/22

‘R MILLION	APPROPRIATION			EXPENDITURE		
	MAIN	ADJUSTED	FINAL	ACTUAL	VARIANCE	%
2019/20	R855.6	R510.8	R328.0	R305.4	R22.6	93.1%
2020/21	R874.4	R456.9	R343.4	R290.6	R52.7	84.6%

'R MILLION	APPROPRIATION			EXPENDITURE		
	MAIN	ADJUSTED	FINAL	ACTUAL	VARIANCE	%
2021/22	R703.3	R666.2	R660.7	R609.1	R51.6	92.2%

- i. In 2021/22, the Department continued to report under-expenditure as a result of slow progress by the DPWI's implementation of planned court infrastructure projects. However, actual expenditure of R609 million in 2021/22 is a significant improvement on spending in the two previous financial years.
- ii. Reported challenges in respect of ongoing construction and renovation/refurbishment projects, include:
 - Mamelodi Magistrates Court - The project, which began in 2014, is delayed due to failure to appoint specialist subcontractors.
 - Port Shepstone Magistrates Court - The project was cancelled due to the contractor being placed on voluntary business rescue. Litigation is under way. Business forums are also a challenge.
 - Pretoria Magistrate's Court: Refurbishment of Burnt Building Project - The project, which began in 2015, was re-advertised for appointment of a replacement contractor.
 - Vulamehlo Magistrates Court – The project began in 2015. The Contractor was placed on terms for non-performance with the intention to cancel the contract. The project has been interrupted several times by Business Forums demanding 30% of subcontracting work.
 - Klerksdorp/ Jouberton Magistrate Office: Additional Accommodation - All work is behind schedule.

9.7 **Linking financial and non-financial performance information:**

- The Programme achieved or exceeded 87% (15 of 17) of the performance targets (compared to 81% (13 of 16) in 2020/21) and spent 98.9% of the programme budget (compared to 97.4% in 2020/21).
- The under-expenditure of R71.4 million is attributed to delays in filling vacant posts and implementation of the youth programme, and low spending of the court infrastructure budget by DPWI.
- Despite the reported improved performance, the following is noted:
 - 9 of 17 indicators were revised in-year.
 - There are concerns about the resourcing of the lower courts resulting in a lack of essential equipment, IT infrastructure and general resources for lower court staff.
 - At many courts, the infrastructure is poor or unsuitable to the administration of justice. Some courts have been closed because of their poor state of repair/the dangerous working conditions.
 - Internet connectivity on the Department's network at the lower courts is a challenge.
 - The case backlogs are described as insurmountable.

10 **Programme 3 - State Legal Services**

- 10.1 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.
- 10.2 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.

10.3 The following indicators were revised in-year:

Table 11: State Legal Services – revised indicators and targets

ORIGINAL INDICATOR	REVISED INDICATOR AND TARGETS
Percentage of Liquidation and distribution accounts in large estates (>250 000) examined within 15 days from receipt of all required document	The original 2021/22 target was 75% and was reduced to 70%.
Percentage of letters of appointment issued in deceased estates within 15 days from receipt of all required documents.	The indicator was amended to provide for the issuing of letters within 21 days). The original 2021/22 target of 75% was reduced to 65%.
Percentage of beneficiaries in receipt of services within 40 days from receipt of all required documents (Guardian's Fund).	The original 2021/22 target of 80% was reduced to 70%.
Percentage of certificates of appointment issued in all bankruptcy matters within 10 days from receipt of all required documents.	The original 2021/22 target of 75% was reduced to 70%.
Percentage of liquidation and distribution accounts in bankruptcy matters examined within 15 days from receipt of all required documents.	The indicator was amended to provide for the issuing of letters within 21 days.
Percentage of letters of authority issued in trusts within 14 days from receipt of all required documents.	The original 2021/22 target of 70% was reduced to 60%
Percentage of briefs allocated to previously disadvantaged female legal practitioners.	The indicator was revised to "percentage of briefs allocated to female legal practitioners".
Policy framework on the transformation of senior counsel status to advocate attorneys to the legal professionals who practice outside the courts developed by 31 March 2022.	The indicator was revised to "Draft policy framework and accompanying Regulations on the conferral of senior legal practitioner (advocates and attorney) submitted to the Minister for approval by 31 March 2022".
Draft framework on treaty obligations developed and submitted to the Minister for approval by 31 December 2021.	The indicator was revised to "draft framework on treaty obligations developed and submitted to the Minister for approval by 28 February 2022".

10.4 In 2021/22, the programme met or exceeded 22 or 79% of its 28 planned targets (compared with 75% in 2020/21).

10.5 Areas of underperformance included:

- Percentage of Liquidation and Distribution accounts in large estates (>250 000) examined within 15 days from receipt of all required document (74% achieved against a target of 70%).
- Number of Colonial/ Apartheid era justice-related legislation approved by the Minister for submission to Cabinet (1 against a target of 4.)
- Percentage of briefs allocated to female legal practitioners (40% against a target of 41%).
- Percentage of valid requests for extradition and mutual legal assistance in criminal matters processed and submitted to the Director-General within 20 days from the date of receipt (57% against a target of 80%).

10.6 **Linking financial and non-financial performance information:**

- The Programme achieved 79% (22 out of 28) performance targets (compared to 75% in 2020/21) and spent 94% of its budget (compared with 94.5% in 2020/21).
- The reported underspending of R84.19 million (compared to R80.1 million in 2020/21) is attributed to delays in filling vacant posts and the implementation of the youth programme; less than anticipated spending of the Information Regulator budget; and lower spending on foreign government subscriptions.
- Notably, the Auditor-General reports that for six indicators, the reported achievements materially differed from the supporting evidence provided as a result of poor record keeping in the State Attorney's environment.
- The Auditor-General also noted that, as there is no framework for the procurement of state legal services, the procurement of legal services is currently not fair, transparent and equitable (as required by the Constitution) and it is not possible to tell whether the rates paid for legal services by government are economical. The lack of a procurement framework is also a challenge for the Department in planning and realising the transformation agenda.

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

- 11.1 *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 sub-programme 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,
- 11.2 The Department is currently accountable for the overall delivery of the IJS programme and accounts for the entire IJS budget. The revised governance of the IJS programme aims at clarifying and strengthening the roles of the Director-General (DG) as the accounting officer of the programme, and that of the Minister as the executive authority of the programme
- 11.3 The Justice Modernisation sub-programme has the following outcome: Modernised and digitised justice services platforms.
- 11.4 The sub-programme met 100% or 3 of 3 indicators (compared to 67% in 2020/21). The following achievements are reported:
- As at 31 March 2022, ten (10) government departments/entities were connected to the IJS hub and able to electronically exchange information.
 - During 2021/22, court services and Masters related modules SMS notifications have been developed, tested and will be implemented in 2022/23.
 - The Person Identification and Verification Application (PIVA) used to check more than 122,339 accused persons, and in near real-time it was determined that over 46 479 of these individuals (38%) have prior criminal records.
 - 989 246 cases were electronically processed via the IJS Transversal Hub using IJS system integrations between the SAPS, NPA and the Department.
- 11.5 The sub-programme spent R575.7 million of the final allocation of R597.4 million in 2021/22. The underspending is attributed to delays in awarding the procurement of ICT licenses (Citrix and Trend) and ICT Services (ICT Central Support, Service Desk and Security Support Services), as well as the underperformance of IJS/CJS (Transversal).

Table 12: Appropriation and expenditure 2020/21-2021/22

YEAR	APPROPRIATION	EXPEDITURE

	MAIN	ADJUSTED	VIREMENT	FINAL	ACTUAL	VARIANCE	%
2020/21	R1.22 billion	R1.03 billion	(R345 million)	R690.88 million	R478.86 million	R212.01 million	69.3%
2021/22	R1.15 billion	R621.1 million	(R23.7 million)	R597.38 million	R575.67 million	R21.71 million	96.4%

11.6 **Linking financial and non-financial performance information:**

- The sub-programme met all targets while spending all but R21.7 million of the allocated budget.
- However, although the sub-programme was allocated R1.15 billion in the Main Appropriation, this amount was adjusted downwards to R621.1 million and there was an additional *virement* of -R23.7 million. The final allocation to the sub-programme was R597.4 million. Notably, in October 2021, R421.9 million was reallocated from the Justice modernisation program to the Administration programme for ICT maintenance.
- The Auditor-General found that the goal to fully modernise the Criminal Justice System (CJS) has not been fully realised in line with resources and investments made over the years. A total of R8.65 billion has been allocated to fund the IJS programme from inception to date, while total expenditure is R7.84 billion.

12 **Information Regulator**

- 12.1 The Information Regulator is established in terms of section 39 of the Protection of Personal Information Act, 2013, (POPIA) and has a wide range of powers and functions regarding promoting and enforcing the right to privacy.
- 12.2 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.
- 12.3 The full enforcement powers of the Regulator, in terms of both PAIA and POPIA, came into effect in the 2021/22 financial year, on 30 June 2021 and 1 July 2021, respectively.
- 12.4 Exemptions of certain private bodies from compiling PAIA Manuals came to an end on 31 December 2021. Accordingly, effective from 1 January 2022, every public and private body is required to compile a PAIA Manual.
- 12.5 The matter of the listing the Regulator in terms of the Public Finance Management Act, 1999, is unresolved. The separation of the Regulator from the Department is dependent on this classification.

12.6 **Human Resources**

- 12.6.1. During 2018/19, the Regulator approved its first organisational structure of 378 positions. This structure, which is being implemented in a phased approach. During 2021/22, the Regulator reports the following:
- A total of 55 posts were filled in line with the implementation of Phase Three (3), and Phase Four (4) of the organisational structure, bringing the staff complement to 89.
 - The vacancy rate is 3%.
 - A total of 23 of 26 SMS posts are filled with a vacancy rate of 12%. In respect of key SMS positions: Mr. M Mosala, was appointed as CEO in July 2021 and Ms. G Zulu was

appointed as CFO as from July 2022. A key SMS position that remains vacant is the Executive for POPIA. (This post was advertised on 25 April 2022.)

- The turnover rate was 20% (9 resignations).
- In respect of employment equity, 54% of employees are African women but there are no employees with disabilities. (This was also the case in the previous financial year.)

12.6.2. Four consultants were employed at a total cost of R431 250. 84 (This was for two projects: the recruitment of executives (30 days) and the recruitment of employees (30 days).)

12.7 **ICT environment.** The Regulator has migrated all its ICT systems from the Department's environment. A key aspects of the ICT environment includes an Automated Complaints Management System. On 18 March 2021, the Department issued an invitation to bid for the appointment of a suitably qualified service provider for the development, implementation, support and maintenance of a web-based automated Complaints Management System (CMC) for the Information Regulator for a period of three years. The 2020/21 Annual Report noted delays in contracting the Automated Complaints System service provider and the Regulator then engaged with SITA. The Regulator does not report on this item for 2021/22.

12.8 **Audit performance:** The Regulator did not produce a separate Annual Financial Statement (AFS) for the 2021/22 financial year, as its financial records still form part of the Department's AFS and are audited as such.

12.9 **Financial performance 2021/22**

12.9.1. The Information Regulator was allocated R87.2 million for 2021/22, compared with R45 million in 2020/21. An additional R105 million was made available to the Information Regulator over the medium term to appoint 54 new personnel to enforce compliance with the POPIA and the PAIA.

12.9.2. In 2021/22, the Regulator spent R66.2 million or 76% of its allocated budget, with under-expenditure of R22.89 million. The under-expenditure was attributed to the following:

- R15.5 million on Compensation of Employees due to delays in the appointment of employees during the first quarter of the financial year.
- R3.6 million for the appointment of the SITA for the development of the hosting of the Registration Portal and moving the Regulator to the SITA VPN. This was not completed due to delays in appointing SITA for these services.

12.9.3. The Regulator's key cost drivers for 2021/22 were: R46.17 million on Compensation of Employees and R15.12 million on Goods and Services.

12.10 **Non-financial performance 2021/22**

12.10.1. The Regulator reported an overall performance of 68% (19 out of 28 indicators) for 2021/22, compared with 61% (11 out of 18 targets) in 2020/21:

Table 13: Information Regulator - Programme performance 2021/22

PROGRAMME	TARGET	ACTUAL
Protection of Personal Information	7	1 (14%)
Promotion of Access to Information	3	3 (100%)
Education and Communication	6	6 (100%)
Legal Services, Policy, Research and Information Technology Analysis	6	4 (67%)
Administration	6	5 (87%)

12.10.2. Only 1 of 7 targets (14%) was achieved in the Protection of Personal Information Programme. Challenges that affected performance for the programme are identified as (i) a lack of leadership

in the Division after the resignation of the first POPIA Executive; and (ii) general institutional inexperience in POPIA work.

- 12.10.3. The Regulator has identified various strategies to overcome the under-performance in Programme 1: Protection of Personal Information, including:
- Recruitment of the POPIA Executive is at an advanced stage.
 - Members to transfer skills to the Executive and the Executive will in-turn transfer skills to officials.
 - Officials have been enrolled in a POPIA course with the University of Cape Town.
 - The outstanding documents in the Readiness Plan will be developed and implemented in 2022/23.
 - Concerning the percentage of Information Officers registered as prescribed, the online registration portal in the Regulator's own ICT domain has been developed and will go live in the financial year 2022/2023.
- 12.10.4. The Regulator highlights the following achievements for 2021/22:
- Conducted over one-hundred and three (103) stakeholder engagements with various sectors. The engagements were utilised to provide guidance on compliance with POPIA and PAIA.
 - Developed the PAIA guides in all official languages and in braille and also published the Regulator's PAIA manual in three (3) official languages and in braille.
 - Developed guiding templates for the development of PAIA manuals to equip public and private bodies with the ability to develop their PAIA manuals.
 - Developed an international cooperation policy which is intended to inform its participation on the global stage.
 - Initiated the establishment of a Security Compromises Unit within the Regulator.
- 12.11 **Committee's BRRR 2021 observations.** Key issues identified in the Committee's 2021 BRRR include:
- The Committee welcomed the commencement of the remaining sections of POPIA with effect from 1 July 2021.
 - Funding. The Committee regards it as vital that the Information Regulator be adequately funded so that it is able to provide guidance as South Africa goes about establishing its data protection regime. A well-functioning data protection regime is essential 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 was concerning as it suggests difficulties in its capacitation.
 - Legal status. The Committee queried 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 intended to arrange a meeting with the Ministers of Justice and Finance in an attempt to fast-track a solution.
- 12.12 **Linking financial and non-financial performance:**
- The Information Regulator achieved 68% of its targets and spent R66.2 million or 76% of its allocated budget.
 - The Information Regulator reports that its dependence on the Department's policies and processes, which will continue until the matter of its listing within the PFMA is resolved, contributes to the procurement delays it has experienced.
 - The reported underperformance falls largely within the Protection of Personal Information programme and is attributed to the lack of leadership in the Division and a general lack of institutional expertise in POPIA.

- 13.1 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, certain witnesses are protected and profit is removed from crime.
- 13.2 The NPA's strategic outcomes for 2020-2025 are:
- Increased feelings of safety and security for all South Africans.
 - Improved investor confidence in South Africa through high-impact prosecutions.
 - Improved access to NPA services for all.
- 13.3 To achieve these outcomes, the NPA commenced with the implementation of several strategic initiatives:
- Enhancing internal accountability through the development of an Office for Complaints and Ethics.
 - Capacitating the NPA and ensuring that all regions and business units have the requisite specialist capacity.
 - Increasing the use of information technology and digitisation.
 - Institutionalising the Innovation and Policy Support Office.
 - Implementing a countrywide Community Prosecution Initiative.
- 13.4 The NPA reported the following progress:
- 13.4.1. *Office for Ethics and Accountability:* As the NPA has a zero-tolerance approach to corruption and dishonesty in the workplace, it decided to establish an office to promote ethical conduct and effectively respond to legitimate complaints against NPA staff, at all levels. The Office for Ethics and Accountability is being established in terms of section 22(5) of the National Prosecuting Authority Act, 1998, to replace the Integrity Management Unit (IMU). The regulations have been drafted and submitted to the Minister for consideration. The relevant consultations were undertaken to facilitate this transition and the NPA intends for the new office to commence operations in 2022/23 once the Minister has approved the Regulations.
- 13.4.2. *Donor Oversight Committee:* The provision of funds and in-kind services to the NPA by civil society organisations (CSOs), the private sector and others can significantly enhance the capabilities of the NPA to deliver on its mandate. However, this also poses the risk that outside parties may seek to compromise the independence of the institution. In 2020, the NPA proposed establishing a structure to oversee the process of accepting donations. The NPA is working closely with the Department and National Treasury to establish this oversight committee.
- 13.4.3. *Community Prosecution Initiative:* This initiative involves prosecutors partnering with local stakeholders to collectively find long term sustainable solutions to specific crimes that most concern those communities. Working with communities to address the risk factors associated with the identified crimes is key, as is conducting strategic prosecutions. Twenty-three community prosecution sites were established across the country, focussing on various community irritants. Community prosecutor posts were created and are in the process of being filled. The NPA has undertaken training for community prosecutors and has commissioned an external service provider to conduct independent monitoring and evaluation of the initiative.
- 13.4.4. *Building a culture of innovation:* The NPA has sought to entrench a culture of innovation and local problem-solving in its divisions across the country. Committed and vibrant individuals were nominated to form part of the divisional innovation teams. These teams were trained and supported to conceptualise practical innovation initiatives to implement in their divisions to resolve local problems. Some of these innovations include improving the use of court preparation officers, enhancing staff wellness, improving divisional communications, improving skills transfer and instituting non-monetary recognition of good performance.
- 13.4.5. *Strengthening communications:* Improving public understanding of the NPA's functions, activities and achievements is central to rebuilding its credibility. The NPA has continued to implement

proactive communication initiatives, with a particular focus on anti-corruption and asset recovery efforts. The NPA's website has also been redesigned and a dedicated communications initiative was launched to demonstrate impact on high-level corruption matters. Internal communication has also been significantly improved to ensure that all NPA colleagues are up-to-date with the latest developments, and progress on strategy implementation.

- 13.4.6. *Non-prosecution decisions (NPDs)*: The Organisation for Economic Co-operation and Development (OECD) recommends that countries make strategic and appropriate use of NPDs to resolve corruption cases involving corporate entities and not individual directors. Globally, NPDs in the form of negotiated settlements are increasingly used to resolve complex corruption cases. In return for leniency, implicated entities are required to admit responsibility for a set of facts, disclose evidence that can be used to prosecute responsible individuals, make financial restitution and improve continued anti-corruption compliance measures. The NPA is at an advanced stage of developing a policy that provides for a simple and tailored form of NPD.
- 13.4.7. *NPA independence*: The NPA remains focused on strengthening the independence of the prosecution authority. The Minister has proposed the establishment of a task team to assess the options and agree on way forward. The NPA also submitted its views to the Zondo Commission, and these were shared with the Minister.
- 13.4.8. *Prioritising for impact*: To make demonstrable progress on priority matters in a short space of time, the NPA approved the following short-term, clear and measurable priorities:
- Expediting high-profile corruption cases nationally and provincially.
 - A stronger focus on serious violent and organised crime, and crimes that disproportionately undermine public safety.
 - Capacitating the NPA to respond to existing and emerging priorities through recruiting crucial additional skills, expertise and capabilities.
 - Enhancing staff morale and well-being.
- 13.5 Regarding the expedition of high-profile corruption cases, the following noteworthy cases were prioritised:
- The Gauteng High Court granted an order to seize assets worth R1.4 billion belonging to accused implicated in the corruption scandal involving the construction of Eskom's Kusile power station. The extradition hearing of former Eskom contractor Mr Michael Lomas is being heard in London, United Kingdom (UK).
 - Former Transnet board member Mr Iqbal Sharma and former senior members of the Free State Department of Agriculture were charged with contraventions of the Public Finance Management Act, 1999, fraud and money laundering.
 - The Bloemfontein High Court granted an unlimited restraint order to the value of R520 million for assets belonging to Mr Sharma, his company Nulane Investment, and the Gupta family through their company Islandsite.
 - The Free State High Court confirmed a provisional restraint order against Mr Edwin Sodi and his companies, as well as other accused, to the value of almost R300 million.
 - The Nelson Mandela Bay Municipality matter, which resulted from a contract with a consultancy firm from the Eastern Cape, was enrolled in July 2021 involving an amount in excess of R25 million.
 - The Free State Housing matter involving the Free State Department of Human Settlements was enrolled in August 2021. The value of purchases made are approximately R500 million.
 - One of the legs of the investigation into the Steinhoff matter has been finalised.
 - A Mutual Legal Assistance (MLA) request to one of the foreign authorities was submitted; another MLA, to a different foreign authority, is in the process of being transmitted.
- 13.6 The Independent Directorate (ID) and the Directorate for Priority Crime Investigation, working closely with prosecutors in the Specialised Commercial Crime Unit, are investigating the matters arising from the Zondo Commission reports. The NPA Task Force is coordinating activities and responses between the various role players. The NPA has made submissions to the Minister on creating a permanent ID in the NPA focusing on high profile and complex corruption-related

matters, and for the creation of permanent investigator posts, where the investigators have full criminal investigating powers in terms of the Criminal Procedure Act, 1977 (CPA). In this way, the ID can effectively deal with investigations authorised by the Investigating Director.

- 13.7 In addition to prioritising high-level corruption matters, the NPA has maintained its focus on several other serious violent and organised crimes, including:
- A Gender Based Violent Crimes training module and strategic plan was developed.
 - A National Organised Crime strategy was approved after extensive consultation.
 - A list of priority organised crime cases was developed.
 - A Sexual Offences and Community Affairs (SOCA) media plan was formulated and activated nationally.
 - Five additional Thuthuzela Care Centres (TCCs) were established bringing the total to 60.
 - Femicide, child murder and lesbian, gay, bisexual, transgender, queer and intersexed (LGBTQI+) databases were maintained. The NPA's Sexual Offences Community Affairs Unit is monitoring case progress, finalised prosecutions and the conviction rates.
 - A Deoxyribonucleic Acid (DNA) prioritisation task team was established. A DNA protocol was developed and is in place to ensure the acceleration of the backlog of DNA matters on the court roll. The project has been very successful, as reported under the activities of the National Prosecutions Service (NPS).

13.8 **Human Resources**

- 13.8.1. As at 31 March 2022, the NPA had an establishment of 5 990 of which 5 473 have been filled, resulting in an 8.6% vacancy rate.
- 13.8.2. From the start of the recruitment drive during October 2019 until 31 May 2022, the NPA has advertised 2473 permanent posts and made 1 890 permanent appointments. Of the 1 890 permanent appointments made, 942 were external appointments, while 948 internal employees were promoted or transferred. During the same period, 406 contract appointments were made.
- 13.8.3. Concerning the Aspirant Prosecutor Programme, there was an intake of 425 aspirant prosecutors in January 2021. Of this number, 286 were absorbed permanently as District Court Prosecutors. The 2022 Aspirant Prosecutor intake is 308 aspirant prosecutors.

13.9 **Allocation and expenditure 2021/22 and 2022/23**

- 13.9.1. The NPA was allocated R4.62 billion in 2021/22, compared to R4.3 billion in 2020/21, and spent R4.61 billion (or 99.72%) of the final budget, underspending by R13.2 million.
- 13.9.2. R74 million was shifted from the Department to the NPA in respect of *Goods and Services* related to overspending due to State Attorney payments.
- 13.9.3. The R13.2 million underspending largely relates to *Machinery and Equipment* (R12 million) due to delays by the service provider in the delivering laptops before the end of the financial year.
- 13.9.4. The budget reflects the focus of the NPA on its core mandate, with 79.34% of the total budget allocation spent on the NPS. The SOC provides centralised support services, such as security, fleet and ITC services, for which 12.58% of the total budget allocation was spent.
- 13.9.5. Additional funding of R1.8 billion has been requested through the MTEF process to enable the NPA to continue with the fight against crime and corruption.
- 13.9.6. The NPA is allocated R4.9 billion for 2022/23, compared with R4.6 billion in 2021/22. The NPA receives an additional R1.1 billion over the medium term, as follows: R422.7 million in 2022/23; R327.3 million in 2023/24 and R342.05 million in 2024/25. Specifically, an allocation of R393 million over the medium term is made to the Investigating Directorate sub-programme. The NPS sub-programme accounts for 77.21% of the 2022/23 budget.

Table 14: NPA: Allocation for 2022 MTEF

SUB-PROGRAMME R'000 000	BUDGET			
	2021/22 ADJUSTED	2022/23	2023/24	2024/25
National Prosecutions Service	3 507.3	3 706.4	3 666.7	3 871.4
Investigating Directorate	106.4	243.6	236.1	246.7
Asset Forfeiture Unit	195.2	212.4	210.2	219.7
Office of Witness Protection	196.6	219.9	221.5	231.4
Support Services	467.-	528.0	536.5	560.4
Total	4535.6	4 910.3	4 870.9	5 089.6
Change to 2021 estimate	-	89.4	422.7	342.0

13.9.7. The NPA has registered that it requires a further R750 million per annum and R1 billion per annum for it to respond to the Zondo Commission reports and for longer term 'structural needs' to strengthen the NPA's capacity as part of the criminal justice system's response to rising crime levels.

13.10 Non-financial performance

13.10.1. Overall, in 2021/22, the NPA achieved 10 of 14 or 71% of indicators, compared to 50% of indicators in 2020/21.

13.10.2. Areas of underperformance were as follows:

- Conviction Rate in Complex Commercial Crime (ENE Indicator): The conviction rate was 90.5% against a target of 93%. The reasons for the failure to reach the target are listed as the failing memory of witnesses, uncertainty in evidence, contradictions and uncorroborated evidence. Interventions include expediting high-profile corruption cases nationally and provincially; focused attention on cases longer than 2 years on the court roll; prioritising high-level corruption matters; and closely monitoring progress.
- Number of government officials convicted of corruption and/or offenses related to corruption (ENE Indicator). A total of 130 government officials were convicted of corruption and/or offenses related to corruption against a target of 232. The NPA does not have control over the number of cases received. The cases were intricate and there were several legal challenges causing delays.
- Number of cases involving money laundering. There were 86 money laundering cases against a target of 100. The target was not achieved because money laundering matters usually consist of several charges and intricate financial investigations, which are time consuming, and trials are protracted with several legal challenges. A lack of skills and capacity to dedicate staff to highly complex and voluminous matters is still a challenge in the NPA and in the criminal justice system.

Value of recoveries relating to corruption or related offences (ENE and MTSF Indicators). R3.3 million was recovered relating to corruption or related offences against a target of R311 million. Serious corruption cases take a long time to finalise. In many cases, huge amounts are under restraint and will remain so until the accused are convicted. Accused in high-value corruption cases have the means to vigorously oppose all actions, which leads to delays in the finalisation of cases.

13.11 **Committee's observations in the 2021 BRRR:** The Committee observed as follows:

- Budget reductions. The Committee opposed any attempt to reduce the NPA's budget, highlighting the NPA's key role in efforts to rebuild the economy and society. An under-resourced NPA will render the JCPS Economic Recovery Plan ineffective, as the NPA will be unable to address corruption, GBV and organised crime. The Committee noted that there are various initiatives underway to strengthen the NPA.
- NPA's performance. The Committee welcomed the NDPP's honesty about the NPA's performance not being as it should be for the reasons that were presented. The Committee

also acknowledged that the NPA had previously warned the Committee that Covid-19 would affect the NPS' performance, in particular. Although the Committee was disappointed, it accepted that it would need to be patient.

- Asset Forfeiture Unit. The Committee noted the AFU's poor performance. Many of the AFU's prosecutors and investigators were moved to the ID, and therefore, the AFU has a high vacancy rate for both prosecutors and investigators. The appointment of Adv. R Rasethaba to head the AFU was the first step in addressing the situation, and there is a process underway to develop a turnaround strategy.
- Strengthening the independence of the NPA. The Committee requested that it be kept updated on the progress of discussions to give effect to the NPA's operational independence.
- Recruitment. The Committee requested that it be provided with an update on the progress of the NPA's recruitment drive.
- Corruption-related cases. The Committee welcomed the continued prioritisation of corruption cases for their swift finalisation and the reorganisation of resources to that end.

13.12 **Linking financial and non-financial performance information.** In 2021/22, the NPA achieved 71% of its targets, compared with 50% in 2020/21, and spent 99.7% of the allocated budget.

14 Legal Aid South Africa

14.1 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.

14.2 In line with its mandate, Legal Aid SA continues to identify the following priority groups: children; every detained person, including sentenced prisoners; every accused person 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 eviction cases.

14.3 In the last quarter of 2021/22, management of the legal representation function of the Land Rights Management Facility (LRMF) of the Department of Agriculture, Land Reform and Rural Development was transferred to Legal Aid SA. Through the newly established Land Management Unit, Legal Aid SA now provides legal representation and advice services in land disputes for those who cannot afford legal representation. Most legal practitioners who were previously providing legal representation to farm occupiers, labour tenants and restitution claimants through the LRMF have accredited with Legal Aid SA on the Judicare system and continue to provide legal services as required.

14.4 The financial year 2021/22 is the second year of the Strategic Plan 2020-2025. Legal Aid SA's plans are aligned with the MTSF priority 'Social cohesion and safer communities'. The 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.

14.5 Delivery continues to occur nationwide through 64 Local Offices, 64 Satellite Offices, 6 Provincial Offices and the National Office. 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; approximately 3% by Judicare practitioners and through Agency Agreements; and 1% by co-operation partners.

14.6 **Human resources**

- 14.6.1. For 2021/22, Legal Aid SA reported a staff establishment of 2 468 recruited staff with 2 689 budgeted posts; compared to 2 551 recruited staff with budgeted posts at 2 799 in 2020/21. Legal staff, including paralegals, account for 77% of recruited staff. Recruitment was at 91.8% compared to the annual target of 95%. Legal Aid SA advises that budget cuts have impacted on staffing and recruitment, as a moratorium has been placed on staff recruitment over the MTEF period.
- 14.6.2. At management level, Legal Aid SA reports that it had experienced two key changes at the Executive level in 2021/22, namely the Chief Financial Officer position became vacant when Ms P Mbingo resigned on 31 July 2021, and the National Operations Executive position became vacant due to the retirement of Adv. B Nair on 31 January 2022. Both positions have been filled: Ms T Mofokeng is appointed as the Chief Financial Officer with effect from 1 January 2022; and Mr T Mtati was appointed as the National Operations Executive with effect from 1 January 2022.
- 14.6.3. In terms of employment equity targets for overall total staff, Legal Aid SA reports the following for 2021/22:

Table 15: Legal Aid SA – Employment equity targets for total staff

Total staff	Target	Actual
Black	91%	90.8%
African	79%	76.2%
People with disabilities	2%	1.6%

- 14.6.4. Targets for Senior Management:

Table 16: Legal Aid SA – Employment equity targets for senior management

Senior management	Target	Actual
Black	91%	80.17%
African	79%	64.4%
Women	45%	42.24%

14.7 **Financial performance 2021/22**

- 14.7.1. Legal Aid SA had a final budget of R2.13 billion for 2021/22 (compared with R1.9 billion in 2020/21): Of this, an amount of R2.03 billion was in grant funding and subsidies. In addition, Legal Aid SA received funds for the Land Rights Management Unit (LMRU) from the Department of Agriculture, Land Reform and Rural Development (DALRRD) of R33 million, R11 million for the Specialised Commercial Crimes Court (SCCC) and R3.5 million for the development of the eLAA system.
- 14.7.2. National Treasury approved a retention of surplus funds from 2020/21 of R39.7 million and a portion was used to fund the Land Rights Management Unit that was transferred from the DALRRD in the last quarter of 2021/22. The retained surplus allowed for the interim establishment of the function and the taking over of matters. The funding for the last quarter of 2021/22 was received from the DALRRD in April 2022. The function is established within Legal Aid SA and the budget allocation will be received after the Medium Term Budget Policy Statement.
- 14.7.3. Legal Aid spent R1.97 billion or 95% of the budget, which is below the targeted expenditure trend of 98%.

- 14.7.4. Salary and related costs are the main cost drivers, accounting for 79% of the allocation. The staff rationalisation initiative contributed towards the increase in surplus funds and an amount of R9.4 million unspent is related to the vacancies in the approved structure.
- 14.7.5. The operational budget makes up 12% of the allocation and is used for goods and services. The delays in finalising procurement processes and suspension of procurement by the National Treasury resulted in underspending of R60.5 million (16.5%) in the operational budget.
- 14.7.6. The capital budget is 2% of the allocation: R10 million of the budget went unspent because of global supply chain constraints aggravated by the Covid-19 pandemic and the delay in securing service providers for the refurbishment of newly acquired office accommodation
- 14.7.7. Payments to creditors and Judicare payments within 30 days were recorded at 97.3% and 99.1% respectively, with the target of 100% for each not met.
- 14.7.8. There was irregular expenditure of R566 322 identified in 2021/22 relating to the current and prior period.
- 14.7.9. Of the R50 754 in fruitless and wasteful expenditure identified for the current and previous period, R25 751 was recovered.
- 14.7.10. Notably, the Minister has recently approved that Legal Aid SA be permitted to purchase office buildings. The Entity will commence with this procurement from 2022/23. A recent tender for proposals to conduct research and development on lease and acquisition of office building accommodation and develop a detailed geographical model execution plan for Legal Aid SA was published on 13 September 2022.
- 14.7.11. Legal Aid SA is allocated R2.11 billion for 2022/23 in grant funding. There are additional allocations of R11.2 million in 2022/23, R11.3 million in 2023/24 and R11.8 million in 2024/25 to fund the cost of 15 legal practitioners appointed in 2021/22 to service newly established Specialised Commercial Crimes Courts in Limpopo, Mpumalanga, North West and the Northern Cape.
- 14.7.12. Legal Aid SA's baseline is reduced by R352 million or 15% over the MTEF of 2021/22 to 2024/25, with the expectation that it reduces compensation to employees by R125 million and goods and services expenditure by R227.6 million during this time. This has had a negative impact on service delivery, as 80% of the budget is spent on employee costs and legal practitioners make up 79% of the total staff component. Vacant permanent positions have not been filled due to lack of certainty regarding future funding requirements. The impact of the baseline reduction on Judicare, staffing, service delivery and coverage is as follows:

Table 17: Legal Aid SA – Impact of Budget reductions

	2021/22	2022/23
Judicare	-R8.8 million	-R7.6 million
Staff	-131	-171
Criminal matters	-33 945	-52850
Coverage		
District Court	82.1%	76.5%
Regional Court	90.8%	85.4%
Civil matters		
Advice	236 355 (-11%)	209 985 (-10%)
Civil matters	40 034	36 034 (-8%)

14.8 **Non-financial performance**

- 14.8.1. Legal Aid SA reports that a total of 487 552 people were provided with legal representation and legal advice in 2021/22, which is a 31% increase when compared with 2020/21. This consists of 314 998 (89%) new criminal matters, 40 143 (11%) new civil matters and 132 411 legal advice matters.
- 14.8.2. Although the number of legal advice matters increased from 75 624 in 2020/21 to 132 411 in 2021/22, this is still 57% below the target of 305 050 matters for 2021/22, and is considerably less than the 266 055 legal advice matters achieved in 2019/20.
- 14.8.3. Overall, Legal Aid SA finalised 360 655 matters, comprising of 317 546 (88%) criminal matters and 43 109 (12%) civil matters. This is 9% more finalised matters than in 2020/21.
- 14.8.4. Legal Aid SA assisted 11 686 children in 2021/22, of which 6 935 (59%) were children in conflict with the law and 4 751 (41%) children involved in civil matters.
- 14.8.5. A total of 49 matters were assessed for recognition as strategic litigation matters in 2021/22, and 19 were approved. A success rate of 93% was achieved for the 13 finalised matters: 12 matters had a positive outcome and one had a negative outcome.
- 14.9 **Audit performance.** In 2021/22, Legal Aid SA achieved an unqualified audit opinion for the twenty-first consecutive year and a clean audit outcome for the fourteenth year.
- 14.10 **Linking financial and non-financial performance**
- Overall, Legal Aid SA provided 487 552 persons with legal aid; finalised 360 655 matters; achieved 84% of predetermined objectives for 2021/22; and achieved a clean audit outcome.
 - However, Legal Aid SA reports spending only 95% (R2.02 billion) of its allocated budget of R2.13 billion, which is 3% less than planned expenditure.
 - A total of 79% of the budget is spent on employee costs, and legal practitioners make up 77% of the total staff component. Vacant permanent positions have not been filled due to lack of certainty on future funding requirements. Recruitment for 2021/22 was at 91%, which is considerably less than the target of 95%. There is no relief capacity.
 - It should be noted that although the number of new matters has increased when compared to 2020/21, the number of new matters remain fewer than before the Covid-19 pandemic.
 - In terms of court coverage, actual court coverage was 84% in the District Courts, against a target of ≥ 80%, and 81% in the Regional Courts, against a target of ≥ 90%.
 - Regarding civil matters, the number of legal advice matters is significantly below the target.

15 **Special Investigating Unit (SIU)**

- 15.1 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.

- 15.2 Notably, a review of the SIU's founding legislation during 2021/22 has revealed that amendments could enhance the efficacy and impact of the SIU. A draft Bill was drafted with the Department for inclusion in the legislative programme.
- 15.3 The SIU's key law enforcement relationships include those with the National Prosecuting Authority, Financial Intelligence Centre, Directorate for Priority Crime Investigation (Hawks), South African Revenue Service and South African Police Service.
- 15.4 Over the years, it has proved challenging to ensure the implementation of recommendations by state institutions and government departments that were investigated. To address this, the Presidency has collaborated with the SIU to set up a structure that will monitor implementation of SIU recommendations.
- 15.5 The SIU is a 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.
- 15.6 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 the Financial Intelligence Centre's Reports in identifying high priority cases.
- 15.7 **Audit outcome.** The SIU maintained a clean audit outcome in 2021/22 (its sixth consecutive clean audit since 2016/17), although the Auditor-General did note the issue of material debt impairment.
- 15.8 **Human Resources**
- As at the end of the 2021/22, the staff complement was 587, of which 496 (86%) are permanent and 91 (14%) on fixed term contracts. Notably the staff complement has increased from 532 at the end of 2020/21, of which 509 (96%) were permanent and 23 (4%) on fixed-term contracts.
 - The vacancy rate as at the end of 2021/22 was 12% as compared to 15% at the end of 2020/21.
 - The staff turnover for 2021/22 was 20 or 3.4% compared to 2.6% in 2020/21. Resignation and death accounted for 55% and 25% respectively of the staff turnover.
 - Overall, male employees are at 71%, compared to 62% in the previous year; female employees are at 29%, compared to 38% in 2020/21; and 1.8% are persons with disabilities. There were 39 (31%) women employed in top and senior management positions, as well as in the professional skilled category.
- 15.9 **Financial performance**
- 15.9.1. 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 2021/22 was R830.2 million, compared with R618.8 million at the end of 2020/21, increasing by R211.4 million.
- 15.9.2. The approved budget allocation for 2021/2 was R917.8 million (compared to R756 million in 2020/21), consisting of R437.9 million received from a government grant, R447.5 million in project revenue and R32.4 million in other non-tax revenue.

- 15.9.3. In 2021/22, the SIU spent R832.4 million or 91% of the projected revenue. The SIU reports that its finances are positive, despite challenges in the recovery of amounts that it has invoiced for investigation and related services performed. As at 31 March 2022, the SIU had an accumulated surplus of R921.2 million that it has managed to build over past years.
- 15.9.4. The Unit's main cost driver is compensation of employees. The Unit reported spending R488.1 in 2021/22, compared with R431 million in 2020/21 on this item. This is 58.6% of the SIU's total expenditure.

15.10 Non-financial performance 2021/22

15.10.1. 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.

15.10.2. The SIU has three programmes:

Table 18: 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

15.10.3. Key reported achievements for 2021/22 are as follows:

- R5.96 billion value of potential cash and/or assets recovered.
- R6.26 billion value of potential loss prevented.
- 570 referrals made to the relevant prosecuting authority.
- 54 cases issued in the Special Tribunal.
- R436 million value of actual cash and/or assets recovered.
- 469 referrals made for disciplinary action against officials and/or executives.
- 28 135 investigations closed under a published proclamation.
- 19 reports submitted to the Presidency.
- 100% centrally registered allegations assessed by the Assessment Committee.
- R5.54 billion value of contract(s) and/or administrative decision(s)/action(s) set aside or deemed invalid.
- 24 786 referrals made for administrative action.
- R3.37 billion value of matters in respect of which evidence was referred for the institution or defence/opposition of civil proceedings.
- 100% allegations centrally registered for electronic tracking.

- 15.10.4. At programme level, the SIU reports that, in 2021/22, it achieved all 17 or 100% of planned targets (compared to 75% of targets in 2020/21 and 69% of targets in 2019/20).
- 15.10.5. Notably, under the Investigations and Legal Counsel programme, the SIU far exceeded its targets across all the 11 performance indicators. Some of the investigations that attributed to the civil litigation outcomes were the Transnet, Eskom and the Department of Water and Sanitation investigations, as well as the investigations into corruption, maladministration and practice relating to PPE procurement.
- 15.10.6. Further, the establishment of the Special Tribunal in 2019 has significantly contributed to the achievement of the civil litigation outcomes of the SIU investigations through adjudication and expediting the recovery of state funds. During 2021/22, 54 cases with a contract value of R9.9 billion were instituted at the Special Tribunal, with another 96 cases with the contract value of R65 billion ongoing in the Special Tribunal and High Court from previous financial years.
- 15.10.7. Another highlight is the Presidential report that was submitted in December 2021 on the investigations into corruption, maladministration and practice relating to PPE procurement during the Covid-19 pandemic, which cut across all spheres of government. The SIU identified 5 345 questionable contracts worth R144.1 billion. Of these, 64% were found to be irregular, and civil litigation was instituted to the value of R2.1 billion, while R9.5 million was recovered and R114.2 in potential loss was prevented. Money that can potentially be returned to the state totals R82.5 million. The PPE investigation is, however, still ongoing and interim and/or final reports for outstanding investigations will continue to be submitted to the Presidency during the 2022/23 financial year.

15.11 ***Linking financial and non-financial performance:***

- In 2021/22, the SIU achieved 100% of planned targets while spending 91% of the budget.
- Under the Investigations and Legal Counsel programme, the SIU far exceeded its planned targets.
- The SIU has maintained its clean audit opinion although the AGSA flagged the Unit's debt impairment as concerning.
- The SIU conducted a perception survey during 2021/22, which was designed to capture perception of the respondents on four crucial elements, namely investigations of allegation on maladministration and corruption, recovery of financial losses, whistleblowing and independence. Most of the respondents held an overwhelmingly positive view of the organisation, rating its work and ability to investigate allegations of corruption and maladministration highly. These perceptions were formed from media reports and from first-hand experience of the SIU's activities. Areas for improvement included the ability of the SIU to recover the state's financial losses and its independence.

16 **SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)**

- 16.1 The SAHRC's constitutional mandate is extremely wide, encompassing almost every aspect of civil, political and economic rights. It must promote respect for human rights; promote the protection, development and attainment of human rights; and monitor how well human rights are observed. The Constitution also provides that each year the Commission must require relevant organs of state to provide it with information on measures taken towards the realisation of the socio-economic rights contained in the Constitution.
- 16.2 The Commission has other mandates, including:
- The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA).
 - The Promotion of Access to Information Act, 2000 (PAIA).

- Coordinator and functionary of a multi-body National Preventive Mechanism (NPM) established in terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- Monitoring and reporting on the Convention on the Rights of People with Disabilities (CRPD). The CRPD was ratified by South Africa in 2007. In September 2018, the United Nations recommended that South Africa should expedite the designation of an Independent Monitoring Mechanism (IMM). The Commission has been designated as the IMM under the CRPD. This places obligations on the Commission to fully establish and ensure the functionality of the IMM, and monitor and report on compliance with the requirements of the CRPD to the United Nations Committee on the Rights of Persons with Disabilities.
- Monitoring and reporting on the Convention on the Rights of the Child (CRC) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

16.3 The MTSF specifically 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.

16.4 **Performance planning.** 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.

16.5 The Commission carries out its mandate through four programmes: Administration; Monitoring the observance of human rights; Promotion of human rights; and Protection of human rights.

16.6 **Human resources.**

- The Commission reports an overall vacancy rate of 20% as at 31 March 2022, with 158 posts filled of 198 approved posts (The vacancy rate in 2020/21 was 19%). At senior management level, the vacancy rate is 31%. In respect of vacancies by critical occupation there is a 54% vacancy rate for research, 33% vacancy rate for advocacy and communications and 9 % vacancy rate for legal.
- The turnover rate was 6% for 2021/22.
- One consultant was employed at a cost of R346 080 to develop a Balance Scorecard for managers.

16.7 **Audit outcome.**

16.7.1. In 2021/22, the SAHRC received an unqualified audit opinion, with repeat findings on compliance and performance information. The Auditor-General recommended that the

Committee monitor the filling of vacancies, especially key positions such as the CFO. Details of the findings are provided below:

Table 19: SAHRC Audit findings 2021/22

FINDING	DETAILS
Emphasis of matter	<ul style="list-style-type: none"> The institution incurred irregular expenditure to the amount of R10.79 million.
Procurement and contract management	<ul style="list-style-type: none"> Some of the goods and services were procured without obtaining at least three written price quotations and some of the awarded contract prices were not market related. (REPEAT) Some of the contracts were not awarded in an economical manner and or the prices of the goods were not reasonable (NEW). Some of the contracts were awarded to bidders based on functionality criteria that were not stipulated in the original invitation for the bidding as required by the 2017 Preferential Procurement Regulations (NEW). Some of the tenders which achieved the minimum qualifying score for functionality criteria were not evaluated further in accordance with the 2017 Preferential Procurement Regulation (NEW). Some of the bid documentation/ invitation to tender for procurement of commodities designated for local content and production, did not stipulate the minimum threshold for production and content as required by the 2017 Preferential Procurement Regulation (NEW). Payment of invoices within 30 days (new finding)
Irregular expenditure Non-adherence to policies and procedures	Evaluation and adjudication criteria not applied consistently. R10.7 million (REPEAT).
Payment of invoices within 30 days	Payment were not made within 30 days or agreed period after receipt of an invoice (NEW).
Consequence management	The AG was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred irregular expenditure. This was because investigations into irregular expenditure were not performed. (REPEAT)
Asset management	The institution did not determine if any state institution involved in education and training required computer equipment before disposing equipment.(NEW)
Internal control deficiencies	<p>The Commission did not have sufficient monitoring controls to ensure the proper implementation of the overall process of planning, implementation and reporting on financial and performance information. (REPEAT)</p> <p>Although an action plan to address internal and external audit findings, is in place the appropriate level of management did not monitor adherence to the audit plan in a timely manner. There are findings long dated that remain open and not addressed (REPEAT).</p> <p>The overall senior manager vacancy rate regressed from 13% to 17% in 2021/22 (NEW).</p>
Investigations	The Commission conducted investigations into (i) payment in to incorrect supplier bank account; and (ii) theft of laptops. However, both investigations had limited scope and depth necessitating the services of an external service provider (approved by the Acting CEO). However, a service provider has not yet been appointed to determine any willful intent in the transgression or neglect. (NEW).
Performance information (concerning reported information for the Promotion of Human Rights programme)	<ul style="list-style-type: none"> The credibility of the reported performance information questionable and, therefore, the reported targets achievement might not be a true reflection of the actual performance. Furthermore, in the absence of supporting evidence, the service delivery to the citizens is unknown

16.7.2. The Auditor-General identified the following as being root causes for the findings:

- Slow response in filling critical vacancies, especially in the Finance Unit, which led to a lack of segregation of duties. In particular, the CFO position is vacant.
- Inadequate monitoring of the action plan to address assurance provider findings especially on compliance with SCM legislation.
- The instability in the CFO position during the year led to an increase in non-compliance areas in SCM and expenditure management.
- Capacity constraints in the strategic support and governance unit.

16.7.3. *Audit Committee:* The Audit Committee expressed concern, as was the case in 2020/21, about the low implementation of action plans. The Audit Committee also reported as follows:

- Compliance. Areas of non-compliance were identified within Supply Chain Management which requires improvement in monitoring controls.
- Internal Controls. The internal auditors and the Auditor-General identified significant non-compliance with policies and procedures.
- Risk management. The Commission's approach to risk management is partially adequate and effective. There is a need to improve the system of risk management through annual risk assessments and implementation of the Risk Management Strategy.
- Performance management. The performance management objectives received an adverse opinion from the external auditors in the prior year due to lack of adequate performance evidence. Internal audit embarked on an exercise of performance evidence gathering using a Microsoft platform and all business units were trained in its use.

16.7.4. The Commission reports that it has taken the following corrective actions to address the audit findings:

- The Executive Authority has engaged with the Auditor-General for strategic advice.
- Information systems are being digitized and automated for improved document management and to promote efficiency and accessibility of information.
- The performance indicators have been revised to meet SMART criteria and planning information has been subjected to expert review.
- The services of experts have been procured to enhance internal auditing of performance information.
- Internal quarterly performance information workshops have been convened with all staff.
 - A cross function Task Team has been established to assess, advise and act on the resolution of audit findings.

16.8 Financial performance 2021/22

16.8.1 The Commission was allocated R197 million in 2021/22 and spent R196 million. Notably, the baseline was adjusted down by –R16.5 million in 2021/22; –R20.8 million in 2022/23; and –R10.4 million in 2023/24).

16.8.2 The most significant cost driver remains the compensation of employees' budget at R140.14 million, compared with R128.54 million in 2020/21. The higher personnel costs are as a result of (i) monitors that were engaged on a contract basis but budgeted for in the provincial office budgets and (ii) extra assistance that was engaged for special projects such as the July 2021 Unrest hearing.

16.8.3 There was a significant increase in irregular expenditure in 2021/22 to the value of R10.79 (compared to R2.39 million in 2020/21). This was incurred due to non-adherence to policies and procedures. There was no fruitless and wasteful expenditure incurred (compared with R2.4 million in 2020/21).

- 16.8.4 **Allocation 2022/23:** The Commission is allocated R209.5 million for 2022/23 but reports a surplus of R11 million, rolled over from 2021/22, which brings the available budget for 2022/23 to R220.5 million.

Table 20: SAHRC – Budget 2022 MTEF

PROGRAMME (R'million)	2021/22 REVISED	2022/23	2023/24	2024/25
Administration	72.2	79.7	77.7	82.6
Monitoring observance of human rights	9.5	9.7	9.8	10.1
Promotion of human rights	106.5	106.8	108.3	112.7
Protection of human rights	9.8	13.3	13.6	14.1
Total	198.0	209.5	209.3	219.5

- 16.8.5 In previous budgets, the Commission has been affected by baseline reductions. However, in 2022/23, additional funding is allocated to the Commission, as follows:
- A once-off allocation of R5 million in 2022/23 for ICT infrastructure.
 - Additional allocations amounting to R17 million over the MTEF (R8 million in 2022/23, R4 million in 2023/23 and R5 million in 2024/25) to fulfil the Commission's commitments to the United Nations Optional Protocol to the Convention Against Torture.

16.9 Non-financial performance 2021/22

- 16.9.1 Overall, in 2021/22, the Commission achieved 27 of 44 indicators or 61% of targets in 2021/22, compared with 64% of its targets in 2020/21. The decline in performance is attributed to delays in procurement processes, misinterpretation of the performance indicators and capacity constraints.
- 16.9.2 Reported achievements for 2021/22 include:
- July Unrest Hearings. The Commission responded to the July Unrest through an Imbizo. This initiative provided a platform for the public and all other stakeholders to discuss the state of human rights and challenges in the country that led to the unrest. An Investigative Hearing was held in KwaZulu-Natal and Gauteng, with the purpose of fact finding and ensuring accountability for the unrest.
 - Protection of whistle-blowers. The Commission hosted a summit on the protection of whistle-blowers with local and international stakeholders.
 - Water and Sanitation. Provincial hearings were held in Mpumalanga and North West focusing on service delivery in relation to access to water and sanitation within communities and in schools.
 - School infrastructure. This was a focus in North West Province, which highlighted the dire situation and non-compliance of most schools to the Minimum Uniform Norms and Standards for Public School Infrastructure. The Commission has also decided to proceed to litigate against five provinces which still have schools that use pit latrines.
 - Equality Litigation. The work on equality remained a key focus for the Commission in the year. A highlight was long awaited Constitutional Court's judgement in the *Qwelane* matter.
 - Equality toolkit. The KwaZulu-Natal Provincial Office, in partnership with the Justice Department, conducted advocacy interventions on the Equality Toolkit in the north of KwaZulu-Natal. The toolkit was distributed across all provinces.
 - Racial discrimination in advertising. The Commission convened an inquiry into allegations of racial discrimination or discrimination in advertising in South Africa.
 - Investigative inquiry into service delivery challenges within local municipalities in Mpumalanga. The inquiry followed service delivery complaints against various local municipalities in the province over the years. The issues raised included the failure by

municipalities to provide water and housing, sewage spillages, sewage treatment challenges, electricity outages, non-collection of refuse and potholes on the roads.

- National Preventative Mechanism. The Commission remains the Secretariat for the National Preventative Mechanism along with other key stakeholders. In addition to monitoring work, the NPM with other stakeholders, hosted its annual Human Rights and Policing Lecture that focused on core challenges within detention facilities.
- National Schools Moot Court Competition. The Commission successfully hosted the final rounds of the National Schools Moot Court Competition. This is an annual flagship event for the Commission as its objective is to ensure human rights education.
- Complaints. The Commission finalised 7 129 complaints.
- The Commission met with the South African Council of Educators to discuss the integration of sexual offences registers and developments regarding the GBV Bills.
- With the South Africa Local Government Association, the Commission participated in research focussing on the Service Charter on Local Government in order to set out basic standards for service delivery at local government level.
- Engaged with the Housing Development Agency and the City of Tshwane concerning a commitment to complete 2000 houses.
- Entered 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.
- Engaged 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.
- Celebrated the 25th anniversary of the Commission's establishment through various activities.
- Undertook a proactive investigation of the North West Department of Health's alleged debt to medical suppliers.
- Engaged with the National Student Financial Aid Scheme on backlogs in applications and expanding methods of communication including remote access.
- Protected against unlawful evictions in various provinces.
- Monitored the response to the Commission's recommendations in the report on the Inquiry into the Sewerage Problem of the Vaal River.

16.10 At programme level, the Commission reports the following:

Table 21: SAHRC – Programme performance 2021/22 (with a comparison to 2020/21)

PROGRAMME	2021/22			2020/21	
	ACTUAL	TOTAL TARGETS	PERCENTAGE ACHIEVEMENT	ACTUAL	PERCENTAGE ACHIEVEMENT
Administration	5	13	38%	7/12	58%
Promotion	10	15	65%	6/9	67%
Protection	5	8	63%	3/4	75%
Monitoring	7	8	88%	7/11	64%
Total	27	44	61%	23/36	64%

16.10.1. Administration: The Commission reports that it achieved 5 out of 13 targets in 2021/22 (38%), compared to 7 out of 12 targets (58 percent) in 2020/21. Targets that were not achieved were as follows:

Table 21: SAHRC Administration – Targets not met

Percentage expenditure against budget	94.1% expenditure against a target of 98%- 100% expenditure
Percentage implementation of Risk Management Plan	67.5% against a target of 80% - 100% implementation
Percentage implementation of Recommendations of 2020-21	15% against a target of 80% - 100%

Remuneration Structures and Conditions of Service Report	implementation
Percentage implementation of Internal Audit Plan	63% against a target of 80% - 100% resolution
Percentage resolution of Audit Findings	45% against a target of 80% - 100% resolution
Completion of Impact Monitoring and Evaluation report	Report not completed.
Percentage implementation of Organisational Culture Renewal Plan	60% against a target of 80% - 100% implementation.
Completion of report on the sufficiency of the SAHRC Budget by Sept 2021	Report not completed.

16.10.2. Promotion of human rights: The Commission reports that it achieved 10 out of 15 targets (66%) in 2021/22, compared to 6 out of 9 targets (67%) in 2020/21. Targets that were not achieved were as follows:

Table 22: SAHRC Promotion of human rights – Targets not met

Percentage implementation of Action Plan based on 2020-21 Racial Polarisation Conference Resolutions	Action plan not implemented against a target of implementing 80% - 100% of Action Plan on Racial Polarisation Conference
Percentage implementation of Action Plan on Impact of Covid-19 on children and youth Conference Resolutions	0% implementation against a target of 80% - 100% implementation of Action Plan
Percentage implementation of Action Plan on Provincial Human Rights Dialogue Resolutions	0% implementation against a target of 80% - 100% implementation of Action Plan
Convening of Annual Provincial Human Rights Stakeholder Engagements	Convened 22 stakeholder engagements, but most of the reported activities did not meet indicator definition.
Hosting of Virtual National Schools Moot Court Competition	Hosted in October 2021 instead of September 2021 as planned.

16.10.3. Protection of Human Rights: The Commission achieved 5 out of 8 targets (63%) in 2021/22, compared with 3 out of 4 targets (75 percent) in 2020/21. The following targets were not achieved:

Table 23: SAHRC Protection of Human Rights – Targets not met

Institute strategic impact litigation	11 against a target of 15
Full (100%) utilisation of the CRM System to promote efficient and effective complaints handling	98% against target 100% utilisation of CRM System
Review of the SAHRC Complaints Handling Procedures	Revised but awaiting approval.

16.10.4. Monitoring of Human Rights: The Commission achieved 7 out of 8 targets (88%) in 2021/22, compared to 7 out of 11 targets (64 percent) in 2020/21. The following target was not achieved:

Table 24: SAHRC Monitoring of Human Rights – Target not met

Submission of NPM OPCAT Monitoring Report	The report was submitted in February 2022 against a target of September 2021.
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16.11 **Linking financial and non-financial performance:**

- Overall, the Commission's performance has declined from 90% achieved in 2015/26 to 61% in 2021/22.
- A lack of funding has led to posts being frozen to contain costs. Key vacant positions are substituted with contract and temporary assistance as a stop gap measure, which may create challenges with business continuity in coming financial years.

- Although the Commission achieved an unqualified audit outcome, there were both repeat and new findings. The Auditor-General has highlighted key vacancies, especially within the Finance Unit and within strategic support and governance as contributing to the outcome.

17 Public Protector South Africa (PPSA)

- 17.1 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.
- 17.2 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.
- 17.3 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'.
- 17.4 **Human Resources:** As at 31 March 2022, the PPSA had 332 employees with approved posts of 368 (compared with 31 March 2021, the PPSA had 336 employees with approved posts of 356). The vacancy rate as at 31 March 2022 was 9.78%, compared with 2020/21 at 4.8%.
- 17.5 **Audit outcome.**
- 17.5.1. The PPSA once again achieved a clean audit opinion in 2021/22, although both the Auditor-General and Audit Committee identify areas of weakness.
- 17.5.2. The Auditor-General identified the following as concerning: The DPCI undertook an investigation at the PPSA following an anonymous complaint relating to procurement processes followed during the appointment of service providers during 2013/14 and 2014/15. The investigation has since been completed and referred to the NPA, which decided not to prosecute the matter.
- 17.6 **Financial performance**
- 17.6.1. In 2021/22, the PPSA had a budget of R374.7 million compared with R339 million in 2020/21. A breakdown of the PPSA's revenue is as follows: R329 million was from grant funding, R30.8 million was reprioritised from the Department in the Third-Quarter of 2021/22 and R11 million was from other income received.
- 17.6.2. In 2020/21, the PPSA's allocation was adjusted downwards by R16.1 million from its compensation of employees' budget, which prevented the PPSA from filling critical vacancies or address ongoing issues with the aging ICT infrastructure.

- 17.6.3. At already mentioned, the PPSA received funds from the Department of R30.8 million in 2021/22. This is the fifth consecutive year in which this has taken place. The PPSA reports that total amount of reprioritised funds were received too late to spend but that the PPSA was given approval by National Treasury to retain the surplus. The PPSA plans to use the money on projects.
- 17.6.4. The PPSA spent R339.6 million or 91% of the total allocation, with a surplus of R35.1 million.
- 17.6.5. Compensation of employees remains the PPSA's main cost driver at R245.9 million or 72% of the budget, while Administrative expenses consume R87.4 million.
- 17.6.6. Notably, the largest line item in the budget under administrative expenses is consulting and professional fees (this includes legal fees) in the amount of R25.1 million.

Table 25: PPSA Consulting and professional fees

2017/18	2018/19	2019/20	2020/21	2021/22
R25.4 million	R17.18 million	R49.81 million	R35.91 million	R25.42 million

17.7 Allocation and expenditure First Quarter 2022/23

- 17.7.1. The original approved budget for the PPSA amounts to R360.9 million.
- 17.7.2. As at 30 June 2022, PPSA's total expenditure was R78.3 million with spending on employee costs of R63 million (23%) and Goods and Services R14.3 million (17%). The total expenditure trend of 22% is below average by 3%

17.8 Non-financial performance 2021/22

- 17.8.1. The PPSA reports that it achieved six of seven or 86% of targets in 2021/22, compared with 10 of 12 or 83% of its targets for 2020/21.
- 17.8.2. In terms of caseload, the PPSA received 6 826 new complaints (compared with 5 108 new complaints received in 2020/21), while finalising 6 886 matters (compared with 6 927 in 2020/21). However, 3 198 actual investigations were finalised.

Table 26: PPSA – Caseload 2015/16 – 2021/22

CASES	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Cases carried over	5 331	4 254	5 255	4 390	4 089	3 363	1 997
New cases	11 372	9 563	11 943	8 717	10 111	5 108	6 826
Sub-total	16 703	13 817	17 198	13 107	14 200	8 471	8 823
Cases referred	1 159	929	1 783	1 100	1 293	992	1 405
Non-jurisdiction cases	580	606	1 251	876	911	676	798
Finalised cases	12 735	10 787	13 572	9 921	11 643	6 927	6 886
Total investigations finalized *	-	7 874	9 771	8 226	9 198	5 334	3 189

*Note this is finalised cases less referred and non-jurisdiction cases

17.8.3. Programme performance

- i. The Administration programme had an approved budget of R139.4 million and spent R153.18 million, largely on contractual obligations, (i.e. cleaning services, rental, buildings, parking, security and information technology). The slight under-expenditure on the administration programme was, reportedly, as a result of the implementation of cost containment measures. In respect of performance there is only one planned outcome for this programme 'Clean audit achieved and maintained' which was achieved.
- ii. The Investigations programme had an approved budget of R186.2 million and spent R181.3 million. Four out of five targets were achieved or exceeded while one target – 'Percentage of 2 years and older cases finalised' was not achieved. In this regard, 65% of cases older than 2 years were finalised against a target of 80%.
- iii. The Stakeholder Management Programme had an approved budget of R15.3 million and spent R11.62 million in 2021/22 The programme has one target for this programme, which it achieved.

17.9 2023 MTEF requirements

Table 27: PPSA MTEF requirements

DESCRIPTION	2022/23	2023/24	2024/25	REASON
	R'000	R'000	R'000	
Funding of critical positions (x 23)	10 200	12 000	15 309	There are 23 critical posts to be filled. From August 2022 to March 2023, the estimated cost is R10.2 million; R12 million in 2023/24; and R5.3 million in 2024/25. Recruitment has since been expanded to ensure diversity of skills among investigators which would in turn ensure quality and prompt investigation
Section 194 expenses	7 000	0	0	On 9 June 2022, the Public Protector, Adv. Busisiwe Mkhwebane was placed on suspension by the President to pave way for the section 194 Parliamentary Committee Enquiry. The Constitutional Court ruling stated that the Public Protector is entitled to legal representation. The legal costs and travel costs must be paid by the PPSA, which was not budgeted for. The estimated cost is R 7.0 million
Security (provincial and regional offices)	6 127	6 446	6 774	The PPSA is currently not compliant with the requirements of section 2 of the Control of Access to Public Premises and Vehicles Act 53 of 1985, which requires the deployment of security officers to conduct access control. At a minimum the PPSA, should have two security officers in each office to manage access control. The PPSA does not have physical security at the 16 of its 17 offices across the country - only the Head Office has physical security services. As part of mitigation, a video alarm system was installed in the 16 offices - the contract is for 3 years. Ideally, physical security guards are required at all offices. The absence of physical guards poses threats to PPSA staff members, complainants, stakeholders and assets.
PABX	900	100	100	Currently 6 out of 17 offices have new PABX system being installed with new telephone management systems due to relocation of offices

17.10 Committee's 2021 BRRR observations and recommendations:

- The Committee did not support budget reductions in the case of the PPSA.
- The Committee noted that the PPSA continued to maintain that the current budget is inadequate. In this regard, the Committee has previously supported increased funding for

the PPSA. However, in the 2022/23 Budget Report, the Committee welcomed the PPSA's report that its funding pressures had eased as a result of additional funding. As a result, the PPSA has been able to provide for ICT infrastructure, an e-library, 22 staff posts and an electronic document management system. Current funding pressures include the filling of 22 additional positions, with estimated costs of R15.1 million.

- The Committee once more requested that the PPSA keep it informed of the number and progress of review applications and the associated litigation costs.

17.11 ***Linking performance to spending***

- In 2021/22, the PPSA achieved 86% or 6 of 7 targets and spent 91% of its budget.
- The PPSA maintained a clean audit opinion.

18 **Committee observations**

The Committee makes the following observations:

18.1 ***Funding***

The Committee has previously expressed its concern about the effect of the budget reductions to the Vote allocation for the MTEF on the salaries budget. These budget reductions are applied in a service delivery environment and negatively impact on the capacity available to deliver justice services. We have also argued that rather than encouraging efficiency, a chronic lack of resources can actually result in the very opposite.

We have reported our observation that officials working in the Lower Courts are not adequately resourced and note that the observation is confirmed by the NPA, which makes similar observations in its Annual Report. The lack of available resources in respect of the Lower Courts is widely attributed to budget cuts to the Court Services programme, despite this being the programme responsible for the delivery of – or at least providing accommodation for – the majority of court services.

We note that the NPA has put forward a request for additional funding over the medium term and are heartened by the Minister of Finance's statement that the NPA and SIU are among the institutions that will receive further allocations to improve the fight against corruption and advance the recommendations of the Judicial Commission of Inquiry into State Capture (Zondo Commission). These resources will help the institutions to identify sophisticated financial crimes, prosecute offenders, and recover money and assets that are the proceeds of fraud and corruption. The additional resources will be outlined in 2023 budget. We unreservedly support these additional allocations,

As we have stated on several occasions, the Chapter 9 institutions within the portfolio are historically underfunded and, as such, we are opposed to any cuts to their budgets. It is apparent to us that funding prevents both the PPSA and the SAHRC from appointing the capacity they require and that this is highly prejudicial to their ability to perform the work they are constitutionally mandated to do.

We repeat our view that the budget arrangements to these institutions do not support their unique role within our constitutional architecture and requires review.

Department of Justice and Constitutional Development

18.2 ***Performance***

We note the Department reports improved performance for 2021/22 at 79% of planned indicators met. Although this is considerably improved from previous years, we remain cautious.

In January 2022, the Department revised its 2021/22 Annual Performance Plan. As such, the Department reported against a revised plan. It is, therefore, quite possible that if the Department had reported as it

originally planned, it would not have been able to report such an improvement in its performance. The fact that the Department needed to revise its targets/indicators also highlights difficulties around its planning and ability to manage risk.

Furthermore, the Committee notes that the Auditor-General made a (repeat) finding on the usefulness and reliability of the Department's reported performance information under the State Legal Services programme, which undermine the credibility of not only that reported information but also casts doubt on the entirety of the Department's reported information.

The Committee also notes that the Department did not meet targets in respect of certain key indicators, including those intended to: address gender-based violence; modernise justice services to enhance efficiency and efficacy; improve organisational capability and good governance; and reduce case backlogs.

There are other indications that the Department is struggling, which we discuss elsewhere in the report. However, we have reported our observations during our recent oversight visits, which do not tally the Department's report of improved performance.

18.3 ***Audit outcome***

We note that the Department received a qualified audit opinion for the sixth consecutive year but are not surprised in light of the Department's various challenges.

The Auditor-General has once again identified significant deficiencies in the accounting of contingent liabilities in the State Attorney environment. The Auditor-General was unable to obtain sufficient appropriate audit evidence for contingent liabilities, as the Department did not maintain accurate and complete records of the information used to determine the possibility of the outflow of litigations and claims against the Department. The Auditor-General once again advised that the Department's Legal Department and Finance Unit should maintain the necessary information in a database to enable assessment of litigations and claims. The Auditor-General also reports that the lack of a framework for the procurement of legal services remains a critical challenge.

We acknowledge that a lack of senior leadership has significantly hampered the Department's efforts to address the qualification but the appointment of Ms. R Singo as the Chief Financial Officer, with effect from 1 April 2022, should assist greatly going forward.

We have also noted in our 2022 Budget report that the Department has developed an audit action plan to address challenges that have resulted in the audit qualification and also to develop sustainable systems and processes. The Department has specifically committed to no longer being qualified on the basis of contingent liabilities and has developed a Contingent Liability Plan.

We hope that the Department is able to make good on its commitment but would far prefer that it 'plays open cards' and alert us in good time should it realise that the commitment to address the qualification is unachievable. In that way, we are able to engage with the Department constructively and to provide assurance.

We request a report on the progress made to address the audit findings before 31 January 2023.

18.4 ***Irregular expenditure***

We note that, despite the Department's plan to decrease the amount of irregular expenditure incurred in 2021/22, the amount of irregular expenditure in fact increased by R900.2 million, largely as a result of non-compliance with Supply Chain Management (SCM) regulations. A total of 26 new cases to the value of R867 million were identified, of which two cases related to 2020/21. A total of 9 cases, valuing R667 million, are under investigation for possible fraud and collusion. A further R49.7 million is reported to be under assessment.

We believe that the high vacancy rate and lack of leadership in Supply Chain Management has significantly contributed to the Department's challenges in this environment. Although the Department reports that it has taken steps to address the problem for now, these measures seem temporary.

We, therefore request further information concerning the appointment of a Chief Director: Supply Chain Management and the progress in filling other critical vacancies within SCM by 31 January 2023.

We note that the Department had a new finding concerning the lack of consequence management, as the Auditor-General was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred irregular expenditure. This was due to a failure to ensure that proper and complete records were maintained as evidence to support the investigations into irregular expenditure.

The Committee has expressed itself very strongly on the need for consequence management in the past and the finding, therefore, is egregious.

We, therefore, request more information, in writing, before 31 January 2023, concerning the following:

- The steps that the Department is taking to address the root causes of and prevent the re-occurrence of irregular expenditure.
- The steps that the Department is taking to improve its record-keeping so as to avoid a repeat finding by the Auditor-General on the lack of consequence management.
- The progress of the nine cases under investigation by forensic auditors for possible fraud and corruption.
- The progress of the cases involving irregular expenditure that were referred for disciplinary action.

Further, on the issue of consequence management, we note that disciplinary proceedings were instituted in 2020/21 and continued into 2021/22, following investigations into allegations of possible procurement irregularities in the risk and security environment. However, during the course of the proceedings, the individuals resigned and the reports were finalised. We are unclear whether the impugned officials have faced any further action and, therefore, request that the Department clarifies this, in writing, before 31 January 2023.

18.5 *Vulnerability, procurement challenges and lack of internal capacity in the ICT environment*

We have responded previously regarding the cyber-attack that the Department experienced in September 2021. The attack exposed the weaknesses of the Department's aging ICT infrastructure and impacted negatively on systems across the Justice portfolio, as well as the delivery of services enabled by technology, and delayed the rollout of the Department's modernisation programme. The attack necessitated the revision of several of the Department's indicators and targets. The Department has reported that it is in the process of rebuilding the ICT infrastructure from scratch. However, the Department reported delays in awarding the procurement of ICT licenses (Citrix and Trend) and ICT Services (ICT Central Support, Service Desk and Security Support Services), which were concerning attributed to internal difficulties in assembling a Specifications Committee responsible for taking decisions on the procurement of ICT software licenses and services.

Regarding the Department's vulnerability to attack, we note that the Auditor-General has identified poor management of the IT control environment as a contributing factor. Also, the Department has acknowledged that contract positions for IT personnel and service providers came to an end at almost the same time, increasing the susceptibility of the Department's systems to attack. We note further that the Audit Committee has also expressed its concern about the level of risk in the ICT environment, recommending that the implementation of turnaround plans and other identified shortcomings be accelerated.

The Committee, therefore, requests further information, in writing, before 31 January 2023, on the progress of plans to turnaround the ICT environment and address other identified shortcomings, including

whether the necessary permanent internal capacity in the ICT environment has been created. We would also be interested in more information about the role of the State Information Technology Agency (SITA) in assisting the Department with its ICT challenges.

18.6 ***Court modernisation projects***

We note that lengthy procurement processes have negatively affected the delivery of some of the planned modernisation projects and service delivery. We, therefore, request that the Department provides us with a report, in writing before 31 January 2023, on the progress of all its modernisation projects.

18.7 ***Contract management***

We have engaged previously with the Minister and the Director-General on the Department's poor planning in respect of contract management and procurement delays, specifically the failure to ensure effective contract management that led to no service provider being appointed to maintain and provide support services in respect of the Court Recording Technology (CRT) machines. The failure affected the effective functioning of many courts, as matters could not be heard without the CRT machines being available to record proceedings. In other words, the Department's poor contract management contributed to increased case backlogs.

We note that a service provider was appointed in February 2022 for a period of twelve months and the Department reported that it had begun the process to appoint a service provider to deliver support and maintenance for the CRT equipment for a period of three years.

We ask that we be provided with a report, in writing, before 31 January 2023, on the current functionality of the CRT machines and the progress made towards appointing a service provider.

18.8 ***Women in SMS positions***

We note that the Department originally planned for a target of 50% of women occupying senior management service (SMS) positions in 2021/22 but revised the indicator in January 2022 to include women in LP 10 positions. We query why the Department believed it necessary to revise the indicator and believe this reflects rather poorly on the Department's commitment to gender transformation and parity. We would have preferred to have received a report that set out the percentage of women in Senior Management Services (SMS) and Middle Management Services (MMS) posts that was accompanied by details of the Department's plans to attract and retain women to management positions.

18.9 ***Case backlogs***

On several occasions, the Committee has expressed its concern about how the increase in case backlogs may become overwhelming. We note that the number of backlog cases has been exacerbated more recently by circumstances that include Covid-19, cases emanating from the July 2021 unrest in Gauteng and KwaZulu-Natal, the breakdown of court recording devices and the ransomware attack. In addition, severe water interruptions or shortages and power outages have negatively affect court operations, resulting in the postponement of matters.

The Department reported its intention to establish a case backlog reduction framework. A National Steering Committee involving all the JCPS Cluster departments would develop integrated plans to unlock the existing challenges of the criminal justice system through an inter-sectoral approach that will result in key performance indicators for each Department. These, once achieved, would have a critical impact on the reduction of case backlogs.

Although the finalisation of the framework and its implementation is of high importance, we note that the Department was unable to report that it was able to submit the Framework to the Minister for approval by 31 March 2022 as planned. Instead the Framework was submitted to the Deputy Minister, who returned it with his comments and for an action plan to be developed.

We, therefore, ask to be updated regarding the current status of the Framework and the accompanying Action Plan before 31 January 2023.

We remain concerned by the backlog of sexual offences cases, despite efforts to fast-track these cases. Many sexual offences cases get stuck at the district courts because of the delayed submission of DNA reports by SAPS to the NPA. More positively, 7 618 DNA reports were reported as having been finalised in 2021/22, which allowed for the related backlog sexual offences cases to be fast-tracked. The project is in progress but the slow submission of the DNA reports remains a significant challenge.

18.10 Court infrastructure

We have previously reported on the deplorable, even shocking, state of the Department's infrastructure. Not only are some court buildings so neglected that they have become structurally unsafe, a number of courts cannot access running water and electricity when there are outages which prevents the courts from operating.

We have also expressed our concern about the tendency to engage in reactive rather than proactive maintenance of many court buildings and have noted the plan to enter into term contracts for general building works, plumbing and fire services. The Department has also reported that it has requested an increase in the financial delegation to allow it to undertake more of its own maintenance work and that a framework was being developed to guide engagements between the Department and DPWI.

We have reported on the challenges that typically accompany infrastructure projects but note that a new concern is that these are being aggravated in some instances by so called 'Business Forums' that demand sub-contracting work. For example, in February 2022, arrests were made at the Durban High Court construction site when a group of armed men attempted to take over the site. These disruptions, delay infrastructure projects and are costly.

We intend to meet with the Ministers of Justice and Correctional Services and Public Works and Infrastructure to discuss our observations about the state of the courts as soon as the programme permits.

In addition, we request that the Department provide a comprehensive progress report on its infrastructure programme, as well as its maintenance programme, including the progress of its plans to enter into term contracts, raise the financial delegations and develop a framework to guide its interactions with DPWI, before 31 January 2023, and continue to report on progress as part of the quarterly reporting process.

18.11 Sexual offences

We note that the Department has tabled its 2021/22 Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act and believe that consideration of its contents will provide an opportunity for focused engagement on the issue. We will arrange a briefing on the Report as soon as its programme permits.

18.12 State Attorney

We have repeatedly urged the Department to prioritise finalising the Solicitor-General position so that a recruitment process can get underway. The Department has reported that the outstanding aspect to finalise the filling of the position of Solicitor-General is a job evaluation. After seeking an intervention from the Department of Public Service and Administration (DPSA), the post is now scheduled to be job evaluated. Afterwards, the recruitment process will be finalised in terms of the executive protocol. As this position is key to the transformation of the State Legal Services programme, we request an updated progress report before 31 January 2023.

We note that five State Attorney Offices do not have Heads of Office. These positions have been vacant for a number of years. Although there is a process underway to fill the positions, we request a full report

on the challenges that have so far prevented these positions being filled, and the progress of the recruitment process, before 31 January 2023.

We have reported on the problems concerning the management of state litigation. We, therefore, welcome the following policies, which were finalised in 2021/22: The briefing and outsourcing of legal work; Initiating, defending and opposing of matters; and Management of the state litigation contingent liability.

The Office of the Solicitor-General also reports on various initiatives that it is engaged with, including developing monitoring systems and formulating processes to achieve consistencies in litigation procedures in the different state attorney offices; developing directives and standards to ensure streamlined oversight of the offices of the state attorney; developing and implementing various policies; and having regular ongoing and formal engagements with state departments to identify litigation trends, root causes of litigation and redress measures.

We also note that the Intergovernmental National Litigation Forum (INLF), which was launched in 2018 to address the various challenges related to management of state litigation, has been resurrected to ensure that the government has a co-ordinated approach to the management of state litigation, emphasising the reduction of state contingent liability

We note, however, the Auditor-General has reported that there is no framework for the procurement of state legal services, which among others, is a challenge for the Department in deliberately planning and realising the transformation agenda. A further challenge in the State Attorney office is poor record management, which makes it difficult to determine the extent of the State's possible legal liability. Specifically, the Department was unable to provide the Auditor-General with a list of all active state litigation matters from which it would be possible to assess the extent of the State's potential legal liability.

We, therefore, request a report on the progress made in developing a procurement framework; improving monitoring systems and establishing an efficient case management system at the State Attorney offices.

18.13 **Masters Office**

We have reported our observations concerning the deplorable state of affairs at the Masters' offices that we have visited, including long queues, poor working conditions, the unavailability of IT systems, a lack of capacity and difficulties in retaining staff. We believe that over the years Master's services have been neglected. Tackling the challenges will require a hands on approach at the very highest level and should be accompanied by a willingness to ensure that the necessary resources are swiftly deployed.

We have noted the Department's intention to implement a robust strategy in 2022/23 to transform the services rendered by the Master's Offices across the country. We have also previously reported our intention to engage with the Minister and Department on our observations and will do so as soon as the programme permits.

We note the Auditor-General's concern that the manner in which the indicators for the Master's Office are crafted may not provide an accurate account of performance. Specifically, the targets, which report on the percentage of finalised cases, do not provide any information on the backlogs.

Given the public's need for a responsive and efficient Master's Office, tackling the backlogs should be a priority. In this regard, we note that the Department has committed to clearing the backlogs by the end of December 2022. We hope that this commitment is realised but are not confident. We, therefore, request further information on the progress made in attending to the backlog cases for each of the Master's offices before 31 January 2023.

NPA

18.14 **Improved performance**

We commend the NPA on its improved performance. From the outset, the NDPP has been frank with us about the state of affairs at the NPA and it is particularly pleasing to see that the considerable effort that has been made over a number of years to address the underlying challenges is beginning to see a return.

18.15 *Progress of strategic litigation strategy*

We are pleased that the NPA's 6-months priority plan has resulted in the institution of impactful prosecutions and significant asset recoveries obtained: Specifically, the ID has enrolled over 20 matters; charged 65 accused and obtained freezing orders of R5.5 billion.

We note also that, as part of its ongoing response to State Capture and high-level corruption, the NPA successfully enrolled 9 seminal matters before the end September 2022. These cases illustrate the workings of state capture, involving accused persons from both government and the private sector who allegedly played vital roles in repurposing state institutions, syphoning off public funds for private gain and committing the most damaging forms of high-level corruption, including crimes committed as part of the state capture project.

18.16 *Funding*

The Committee has previously noted that the NPA is allocated an additional R1.1 billion over the medium term. Of the additional funds allocated, R393 million is allocated to the ID so that it can address capacity constraints by employing 90 extra permanent staff members with specialist skills and experience, and train and develop existing employees. The additional funds will also allow the NPA to increase its capacity by recruiting 17 senior state advocates for the AFU and 12 protectors for the Office of Witness Protection, as well as employ 700 aspirant prosecutors in the National Prosecutions Service.

The NPA reports that it will require additional funds for the 2023 MTEF and has made the necessary bid. In this regard, the Minister of Finance has indicated during the MTSF that additional funds will be made available to the NPA (and SIU), although the amount will only be announced when the 2023 Budget is presented. The additional funds are intended to improve the fight against corruption and advance the recommendations of the Zondo Commission.

18.17 *Independent Directorate*

We are pleased to note that the Minister has confirmed that the ID will become permanent and the NPA is in the process of finalising the structure.

We also note that the NPA reports that the most fundamental challenge to the ID's effective functioning is the legislative and regulatory framework that creates a dependency on SAPS to assist the ID through secondments. However, seconded staff are expected to assist in authorised ID investigations, while continuing to investigate the cases they were assigned to as members of the SAPS, which creates delays. The NPA has proposed legislative amendments. As this can be a lengthy process, the NPA reports that it is engaging the Minister to find an interim solution.

We, therefore, request a report on progress of the engagements by 31 January 2023.

18.18 *Establishment of the Office for Ethics and Accountability*

We support the establishment of the Office for Ethics and Accountability as an important step in establishing a mechanism to detect and address any future unethical behaviour. We are informed that the draft Regulations for the establishment of that office have been submitted to the Minister for approval with the intention that the Office be launched in the course of 2022/23 and, therefore, urge the Minister to engage with the Regulations as a matter of priority.

18.19 *Donor Oversight Committee*

We note that the NPA reports that it is working closely with the Department and National Treasury to establish a Donor Oversight Committee. We ask to kept informed of progress in this regard.

18.20 ***Independence***

We are concerned about the slow progress that has been made concerning the matter of the NPA's independence and request more information on whether a task team to assess the options and agree on way forward has been established, before 31 January 2023.

18.21 ***Occupation Specific Dispensation (OSD)***

We were informed earlier this year that the NPA had engaged with Deputy Directors of Public Prosecutions and Chief Prosecutors to settle the legal action on account of their being excluded from the improved salary dispensation for legal professionals working in the justice sector that was gazetted in 2010 (the OSD). Although legal professionals, this level of staff did not receive the benefit of the OSD because they are seen as part of senior management. It has created a situation in which junior and senior prosecutors earned the same as, or more than, their seniors. This has not only affected morale but has discouraged officials from applying for more senior positions. We are told that the option has been submitted to the Minister and, therefore, request further information on progress towards resolving the matter before 31 January 2023.

More generally, we have observed that the application of the OSD has affected not only the NPA. For instance, the Master's Office reports difficulty in retaining staff because the OSD does not apply and, therefore, salaries are lower than elsewhere within the Department. We understand that the intention of the OSD was to attract and retain legal (and other) professionals to the public service and, therefore, its implementation should not be divisive or drive away professional expertise. The problems associated with the application of the OSD are well known and long-standing and we, therefore, urge that the Minister engage with his counterpart in Public Service and Administration with a view towards resolving this matter once and for all.

18.22 ***Sexual offences***

We note that the NPA reports that it exceeded its target for the conviction of sexual offences and, in another positive development, the number of TCCs increased from 55 to 60. The NPA is working with the private sector to set up new TCCs. Further, much work is being done on the DNA Backlog project, despite the many challenges.

We will engage with the NPA further on its work concerning the prosecution of sexual offences when we consider the 2021/22 Annual Report on the Implementation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 as soon as the programme permits.

18.23 ***Greylisting***

The Financial Action Task Force (FATF) has identified South Africa as having weaknesses in its mechanisms to tackle terrorism financing and money laundering and made recommendations with which South Africa must comply by February 2023 to prevent it being 'greylisted'.

Although the NPA is not solely responsible for compliance with FAFT's recommendations, we note that the NPA reports that considerable work has been done to avoid greylisting, including the establishment of an Anti-Money-Laundering Deskin the NPA, which has developed a national strategy and has co-ordinated various initiatives. Since the evaluation report was done up until the end of March 2022, 534 money-laundering cases had been finalised and an additional 72 money-laundering cases are on the court roll.

We note also the NPA's assessment that a lot more needs to be done to address the issue of stand-alone money-laundering, where individuals are charged on money-laundering counts as stand-alone charges as opposed to charging individuals for money- laundering in relation to cases that involve other offences.

18.24 **Organised crime**

We note that the Global Initiative against Organised Crime's Risk Index places South Africa at 19 out of 193 countries globally. The accompanying Report argues that, although South Africa has robust anti-organized crime legislation and a strong overall legal framework, implementation is a challenge due to capacity issues and resource limitations.

In this regard, we note that the NPA reports that, in 2021/22, a national organised crime strategy was approved after extensive consultation, and a list of priority organised crime cases has been developed. We acknowledge that the NPA is but one role-player in the response from law enforcement to organised crime but ask for a comprehensive report on the strategy to address organised crime before 31 January 2023.

We see that the Report also notes that much of the intellectual and ideological architecture designed to combat organized crime at the systemic level remains unused or under-used. For example, in gang-related matters, it is often more straightforward simpler to pursue charges of murder or attempted murder rather than charges of gang association, racketeering or money laundering under section 9 of the Prevention of Organised Crime Act, 1998, even though these apply. We, therefore, request the NPA to comment further on this observation in the above response.

Legal Aid SA

18.25 **Audit outcome**

The Committee congratulates Legal Aid SA on its achievement in maintaining a clean audit opinion.

18.26 **Budget reductions.**

The Committee does not support any reduction to Legal Aid SA's baseline for the 2023 MTEF. We have previously expressed concern about the effect of the cuts on court coverage and the delivery of legal aid services to indigent and vulnerable persons. The Entity has, for now, budgeted for a lower recruitment rate and implemented a staff rationalisation programme to avoid over-expenditure but reports that workloads have increased contributing to backlogs and also that, as funds are prioritised towards services, projects must be postponed. There is also less money for Judicare and training.

We don't believe that the importance of Legal Aid SA as a strategic partner in our criminal justice system is fully recognised when decisions are made concerning the allocation of resources. Simply put, criminal trials cannot run if the accused is not represented, contributing to the backlogs and undermining access to justice.

We have repeatedly appreciated the many efforts that Legal Aid SA has taken to stretch its capacity to undertake civil work to the very limits but this very important work is at risk as a result of budget reductions. We feel very strongly that funding should at least maintain the current level of legal assistance provided in civil matters.

18.27 **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.

Special Investigating Unit

18.28 **Performance.**

The Committee commends the SIU on its outstanding performance in tackling corruption and recovering monies and value back to the State.

18.29 ***Audit outcome.***

The Committee congratulates the SIU on its excellent audit results but note the Auditor-General's concern regarding the SIU's debt impairment. We have also noted the Auditor-General's proposal that we engage with the relevant portfolio committees overseeing debtor departments, entities and institutions. We have already taken up the matter of amounts owing to the SIU by the Department for services rendered with the Minister and Director-General and will continue to monitor the situation.

18.30 ***Debt impairment.***

The SIU's enabling legislation provides that the SIU may recover fees from State institutions for the investigation services rendered. Regrettably, the SIU has struggled to recover fees, complicating the relationship between the SIU and its targeted clients; and creating serious challenges in respect of its funding. The SIU has engaged National Treasury to explore alternative funding models but with little success. As a result, legislative amendments were proposed but there appears to be little progress to date. We request a report that provides a breakdown of the debt impairment, as well as the progress of the various initiatives to find a solution to the problem.

Information Regulator

18.31 ***Performance***

We note that poor performance under the POPIA division is attributed to a lack of leadership and a lack of expertise in that division. We acknowledge that there is a shortage of expertise in this field but, given the alarming rise in data breaches, the Regulator's inability to attract and retain capacity is most concerning. On a positive note, the position of Executive: POPIA has now been filled by Adv. T Boikanyo.

We note that the Regulator has taken the step of sending officials for training and hope that this will assist. We will continue to monitor the Regulator's capacitation, including recruitment, going forward.

18.32 ***Legal status***

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 an obstacle to the Information Regulator's attempts to adequately capacitate itself and to its operations. For example, the Regulator cannot form its own bid adjudication committee which delays procurement. The Committee intends to arrange a meeting with the Ministers of Justice and Finance in an attempt to fast-track a solution.

18.33 ***Data breaches***

We welcome that the Regulator has taken the initiative to establish a Security Compromises Unit in response to the alarming rise in data breaches. This highly specialised unit will conduct detailed investigations into security compromises.

18.34 ***PAIA***

We are concerned by the reported lack of PAIA compliance and will engage further with the Information Regulator on this in the near future.

South African Human Rights Commission

18.35 ***Audit outcome.***

The Committee urges the Commission to prioritise addressing the Auditor-General's findings, some of which are repeat findings. We note that the Auditor-General has highlighted key vacancies, especially within the Finance Unit and within strategic support and governance as contributing to the outcome. We note further the Commission's plans to address the audit outcome. We will continue to monitor progress going forward, including the filling of vacancies in the Finance Unit and in strategic support and governance.

18.36 ***Vacancies***

We are very concerned about the high vacancy rate and its impact on the Commission's overall health. The Commission's had an overall vacancy rate of 20% at 31 March 2022 but vacancies among senior managers was even higher at 31%. In respect of vacancies by critical occupation there was a 54% vacancy rate for research, 33% vacancy rate for advocacy and communications and 9 % vacancy rate for legal. We note also that a lack of funding has led to posts being frozen to contain costs and key vacant positions are substituted with contract and temporary assistance as a stop gap measure.

We believe that the vacancies, which far exceeds the norms for the public sector, present a considerable risk to the SAHRC's future operations and request a comprehensive report on the positions that are unfilled, the length of time since the position was filled, and the reasons for the vacancies occurring, as well as the accompanying recruitment plan. The Commission could also provide us with more details of which positions have remained unfilled due to the budget cuts and precisely how this affects its planned outcomes.

18.37 ***Performance.***

The decline in the Commission's performance is concerning. However, the Commission's poor performance is unsurprising given the high vacancy rate described above.

18.38 ***Funding***

The extreme inequality that characterises our society has been laid bare by events such as the Covid-19 pandemic and 2021 July Unrest. The need for the Commission's intervening presence, given the degree of social conflict 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. However, capacity constraints threaten these and other important contributions that the Commission makes towards supporting our democracy.

We have remarked before on how large the Commission's mandate is and how inadequate its budget. We have also remarked on how the budget's for the Chapter 9 institutions began at a historically low base and require revision in line with their mandates. In the case of the Commission, we have also supported requests for additional funds and opposed any budget cuts. Our position on this issue has not changed.

Public Protector SA

18.39 ***Audit Outcome.***

The Committee commends the PPSA for maintaining a clean audit opinion.

18.40 ***Legal fees.***

We note that the Auditor-General has announced its intention to scrutinise the legal fees in future audits following from the details concerning payments for legal fees that emerged during the section 194 Enquiry initiated by the National Assembly into the removal of the Public Protector from office. The Committee has

on several occasions in the past asked for details of the legal fees incurred and, therefore, welcomes the announcement.

18.41 ***Budget reductions.***

The Committee does not support budget reductions in the case of the PPSA, as already discussed. The PPSA's additional funding requests for the 2023 MTEF are recorded elsewhere in this report.

19 **Appreciation**

- 19.1 The Committee thanks the Minister and Deputy Minister, the Director-General and all officials of the Ministry and Department of Justice and Constitutional Development for their co-operation.
- 19.2 The Committee thanks the National Director of Public Prosecutions and all NPA officials for their co-operation in this process.
- 19.3 The Committee also wishes to thank the Deputy Public Protector in her capacity as Acting 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 for their co-operation.
- 19.4 The Committee thanks the representatives of the various audit committees that appeared before the Committee.
- 19.5 The Committee wishes to thank the Auditor-General South Africa for the support it provided to the Committee.

Report to be considered