

# **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 17 November 2023**

The Portfolio Committee on Justice and Correctional Services, having considered the relevant financial and non-financial performance information 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. 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 10 October 2023.
  - Minister of Justice and Correctional Services, who provided a political overview of Vote performance, on 10 October 2023.
  - Legal Aid South Africa (Legal Aid SA) on 10 October 2023.
  - Department of Justice and Constitutional Development (the Department) on 11 October 2022.
  - National Prosecuting Authority (NPA) on 11 October 2023.
  - Information Regulator on 12 October 2023.
  - Public Protector South Africa (PPSA) on 13 October 2023.
  - South African Human Rights Commission (SAHRC) on 17 October 2023.
  - Special Investigating Unit (SIU) on 18 October 2023.
- 1.5. Copies of the presentations are available from the committee secretariat.

## **2 Mandate**

- 2.1. The Committee oversees the Department of Justice and Constitutional Development (the Department, as well as the NPA, Legal Aid SA, SIU, Information Regulator. Further, the SAHRC and PPSA, both established in Chapter 9 of the Constitution as State Institutions Supporting Constitutional Democracy, report to the Committee. All receive their allocation under Vote 25 Justice and Constitutional Development.

- 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. 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 form part of the Committee's assessment of performance.
- 2.4. Programme 5 contains allocations to various auxiliary and associated services, including transfer payments to the Information Regulator, 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 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.

#### **JUSTICE AND CONSTITUTIONAL DEVELOPMENT: MTSF INDICATORS AND TARGETS 2022/23**

<b>MTSF INDICATORS</b>	<b>JUSTICE DEPARTMENT MTSF TARGETS 2023/24</b>
Coordinating engagements between the leadership of the executive, legislature, and judiciary to develop a social compact by 2021 and implement the compact by 2024.	For the 2023/24 financial year, the Department plans to submit the Social Compact discussion document to the President for adoption by the three Branches of State.  <b><i>(Although according to the Justice Minister's performance agreement signed with the President this agreement should have been signed and implemented by 2022.)</i></b>
Developing a system to ensure consistent barrier-free access to justice for persons with disabilities across the justice value chain.	<b>The target is for 65 courts to be compliant</b> with the strategy on universal access for persons with disabilities in the 2023/24 financial year.
Coordinating the Implementation of the National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related	Virtual data repository for collection of disaggregated statistical data for measurements of racism, racial discrimination, xenophobia, and related intolerance

MTSF INDICATORS	JUSTICE DEPARTMENT MTSF TARGETS 2023/24
Intolerance.	developed by 31 March 2024.
Establishing and capacitating Specialised Commercial Crime Courts (SCCC's) by 2024.	Two specialised Commercial Crimes Courts will be capacitated in 2023/24.

- 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.
  - Court-based victim support services and witness protection are made available, particularly in rural areas.
  - Quality legal aid support is readily accessible for women and LGBTQIA+ persons who cannot afford litigation.
  - Information on GBV laws and policies is made widely available.
  - E-services are available to survivors to ensure quick access to justice.
  - Information on cases is readily available for victims to access and track.
  - The backlog of GBVF cases is cleared.
  - The effective implementation of GBV legislation with adequate resources and budget.
  - The ongoing vetting of officials providing services to children and mentally disabled persons.

#### 4 Overview of audit outcomes 2022/23

- 4.1. The audit outcomes for the nine auditees within the portfolio have regressed over the administration term. The PPSA and SIU have regressed from unqualified opinions with no findings to unqualified with findings for PPSA and qualified for the SIU. The SIU's audit opinion is qualified as material misstatements were identified concerning revenue from legal services. The Department's audit outcome has improved from a qualified opinion to unqualified with findings. The SAHRC has been stagnant with an unqualified opinion for the past four years.
- 4.2. The Guardian's Fund, President's Fund, Justice Administration Fund, and Legal Aid SA; sustained unqualified audit opinions with no findings for 2022/23. However, regarding the Guardian's Fund, President's Fund, Justice Administration Fund, the Auditor-General identified material misstatements in the annual financial statements but as these Funds do not fall under the Public Finance Management Act, 1999, they are nonetheless reflected as achieving a clean audit opinion.
- 4.3. Under the Guardian's Fund, the Auditor-General identified material irregularities in the form of duplicate payments amounting to R7.2 million made to beneficiaries and unauthorised transactions of R17 million processed at the Pietermaritzburg Master's Office. Action has been taken to recover the money, with R3.7 million recovered and R21.3 million is in the process of recovery. Consequence management has also been implemented. The Auditor-General, however, observes that despite steps taken to recover the money and to implement consequence management (including referral to law enforcement), the root causes of the irregularities are not addressed appropriately and efficiently.
- 4.4. The Department improved its audit outcome to achieve an unqualified audit opinion for 2022/23, with material findings on compliance and on performance information. The Department was able to make progress from previous years regarding its accounting of contingent liabilities and although misstatements were identified on the Annual Financial Statements, these were corrected.

- 4.5. Both the PPSA and SIU's audit outcomes regressed from clean audit outcomes in previous years. The PPSA remained unqualified but with findings on compliance and the SIU received a qualified opinion, as material misstatements were identified relating to revenue from legal services.
- 4.6. The SAHRC's outcome has remained stagnant, receiving an unqualified audit opinion, with material findings on compliance and performance information.
- 4.7. *Commitments proposed to the Committee.* The Auditor-General proposes that the Committee make the following commitments to strengthen the effectiveness of its oversight function:
  - Ensure the inclusion of all the key service delivery indicators through the review and approval of Annual Performance Plans to ensure inclusion of all the key service delivery indicators with the intention to address current backlogs of court cases and clear the grey-listing status.
  - Influence the Integrated Justice System committee and hold departments accountable for slow progress on the programme to accelerate implementation.
  - Follow up on progress regarding the maintenance of and the availability of backup systems in the magistrate courts with the intention to address current backlogs and clear the grey-listing status.
- 4.8. Details of the Auditor-General's findings as these relate to an auditee are contained under the specific section of the report on the relevant institution.

## 5 **Minister's response to Budgetary Review and Recommendation Report (BRRR) (2022)**

- 5.1. The Minister of Finance replied to the Committee's observations concerning budget cuts made in its 2022 Budgetary Review and Recommendation Report, as follows:

*"The National Treasury notes the Committee's concern. Since the 2022 Budget, no reductions have been made to the baselines of the department, its entities, and related Chapter 9 institutions. Instead, the department has received additional allocations totalling R3.7 billion, the majority of which is allocated to the National Prosecuting Authority to strengthen capacity and advance the recommendations of the State Capture Commission [Judicial Commission of Inquiry into State Capture (State Capture Commission)]. In addition, funds are provided to Legal Aid South Africa to appoint legal practitioners to serve in the specialised commercial crime courts, the Information Regulator to grow its establishment and effectively discharge its legal mandate, the Public Protector and South African Human Rights Commission to increase capacity and to finance once off information and communication technology, the Special Investigating Unit to initiate civil litigation in the special tribunal flowing from proclamations that tie into the recommendations of the State Capture Commission for investigation".*

## 6 **Overview of financial performance**

### 6.1. **Fiscal policy**

- 6.1.1. 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.
- 6.1.2. The 2022 Budget responded 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, declined in real terms over the MTEF due to compensation ceilings and baseline reductions to fund the Covid-19 spending response in 2021/22.

- 6.1.3. The economy has weakened since the 2022 MTBPS. Although revenue performance was better than estimated in the 2022 Budget, a larger than anticipated budget deficit is expected in 2023/24. As a result, finances are severely constrained with cost containment measures being announced in August 2023.
- 6.1.4. Spending in the 2023 MTEF is targeted towards specific priorities, namely infrastructure and to support the social wage (health, education, housing, social protection, transport, employment, and local amenities), rather than baseline allocations. Baseline allocations across departments largely target spending on the social wage and infrastructure projects and to fund initiatives towards strengthening the criminal justice system. A further priority is to reduce fiscal and economic risks through conditional in-year support to key public entities and to debt relief to Eskom to promote the security of energy supply.
- 6.1.5. The Peace and Security function, of which Law Courts and Prisons are a part, accounts for approximately 12.1% of government's consolidated expenditure. Approximately 23% of the overall allocation for Peace and Security goes to 'Law courts and prisons. Specifically, the Justice and Constitutional Development Vote receives 10.20% of the overall allocation to the function (including magistrates' salaries).
- 6.1.6. The 2023 MTEF allocated R1.3 billion to the NPA over the medium term to support implementation of the recommendations of the Judicial Commission of Inquiry into State Capture and the outcomes of the Financial Action Task Force's evaluation of South Africa's framework for combatting money laundering and terror financing. Among others, the funding will be used to appoint 120 new employees to the National Prosecutions Service and the Independent Directorate, procure specialist prosecution services for complex matters, commission contracted forensic auditors and accountants to deal with high priority asset forfeiture matters, establish a digital forensic data centre, provide close protection services and integrated security systems, and finance increased witness protection costs.

## 6.2. **Overview of Vote 25: Justice and Constitutional Development 2022/23 – 2023/24**

- 6.2.1. The overall allocation to Vote 25 for 2022/23 was R22.42 billion (inclusive of Magistrates' salaries.) In November 2022, the Adjusted Estimates of National Expenditure provided for an upward adjustment, which increased the appropriation by an amount of R89.6 million to R22.51 billion. (The increase to the budget of R89.6 million was a result of the transfer of funds from the Department of Agriculture, Land Reform and Rural Development to Legal Aid South Africa.)
- 6.2.2. The overall allocation to the Justice and Constitutional Development Vote (Vote 25) for 2023/24, including the Direct Transfer for Magistrate's salaries, is R23.2 billion, compared with the adjusted budget of R22.9 billion in 2022/23. In real terms, the Vote allocation decreases by - 3.37% compared with 2022/23.
- 6.2.3. In 2023/24, the total allocated in 2023/23 for programmes is R20.8 billion, compared with R20.5 billion in 2022/23, while R2.4 billion is allocated to Magistrate's salaries.
- 6.2.4. The three Justice administered programmes (Administration, Court Services and State Legal Services), as well as the Justice Modernisation subprogramme under Programme 5, are together allocated R12 billion for 2023/24, compared with an adjusted appropriation of R11.8 billion in 2022/23.

### **Vote 25 - Justice and Constitutional Development – Allocation for the 2023 MTEF per programme**

Programme (R 'million)	Budget 2023 MTEF	Average % Total Expenditure	Real % change

	2022/23	2023/24	2024/25	2025/26	2022/23-2025/26	
Administration	3 049.8	3 088.0	3 229.8	3 374.0	13.4%	-3.48%
Court Services	6 680.2	6 760.8	7 058.1	7 367.9	29.6%	-8.18%
State Legal Services	1 303.8	1 347.1	1 404.3	1 464.4	5.9%	-8.80%
National Prosecuting Authority	4 690.9	5 407.1	5 552.9	5 796.9	22.8%	3.98%
Auxiliary and Associated Services	3 670.6	4 191.1	4 354.4	4 537.9	18%	-1.29%
<b>TOTAL</b>	20 482	20 793.9	21 599.6	22 541.1	89.6%	-3.22%
Magistrates' Salaries	2 398.5	2 398.7	2 505.9	2 617.7	10.4%	-4.66%
<b>TOTAL</b>	22 880.5	23 192.7	24 105.5	25 158.8	100%	-3.37%
Change to 2022 Budget estimate	460.1	981.7	896.2	-		

***Vote 25 - Justice and Constitutional Development – Allocation for the 2023 MTEF per economic classification***

Programme (R 'million)	Budget 2023 MTEF				Average: Expenditure/ Total (%)
	2022/23	2023/24	2024/25	2025/26	2022/23-2025/26
Compensation of employees	13 161.7	12 939.3	13 516.3	14 115.5	56.4%
Goods and services	5 529.2	6 051.3	6 235.5	6 492.6	25.5%
Transfers and subsidies	3 365.4	3 413.3	3 545.5	3 692.6	14.7%
Payments for capital assets	823.9	788.8	808.4	855.6	3.49%
Payments for financial assets	0.2	-	-	-	0%
<b>Total</b>	22 880.5	23 192.7	24 105.5	25 158.8	100%

6.2.5. The key cost drivers for the Vote remain unchanged from 2022/23, namely:

- *Compensation of employees.* A total of R12.93 billion is allocated to compensation of employees, at 56.4% of the total allocation to the Vote. Notably, the amount allocated decreases in real terms by -6.3% when compared to 2022/23 (R13.16 billion). It is projected that the number of personnel in the Department will decrease from 24 172 in 2022/23 to 23 860 in 2023/24.
- *Goods and services.* Budgeted expenditure for *Goods and Services* accounts for 25.5% of the allocation to the Vote at R6.05 billion, of which:
  - R1.405 billion is for property payments. (This is a real decrease of -0.08% when compared to 2022/23).
  - R1.25 billion is for operating leases. (This is a real increase of 22.5% when compared to 2022/23).
  - R1.31 billion is for computer services. (This is a real increase of 6.67% when compared to 2022/23).
  - R313.4 million for travel and subsistence. (This is a real increase of 10.39% when compared to 2022/23).
  - R246.4 million for agency and support/outsourced services. (A real increase of 15.36% when compared to 2022/23).

**6.3. Additional funding**

6.3.1. An additional R2.78 billion is allocated to the Vote baseline over the MTEF period, to cover improved conditions of service in the compensation of employees' budget, as follows:

***Additions to the Vote baseline 2023 MTEF***

R'million	2023/24	2024/25	2025/26	MTEF Total
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<b>Compensation of employees</b>	417.0	430.2	443.1	1290.3
<b>Goods and Services</b>	406.7	343.4	350.4	1 100.5
<b>Legal Aid SA (Land Justice)</b>	76.6	80.1	83.7	240.4
<b>Agencies and accounts</b>	48.7	28.8	18.8	96.3
<b>Machinery and equipment</b>	40.9	22.5	23.5	87.0
<b>Buildings and other fixed structures</b>	1.7	2.3	2.3	6.3
<b>Households</b>	-10.0	-11.0	-12.0	-33.1
<b>Total</b>	<b>981.7</b>	<b>896.2</b>	<b>909.8</b>	<b>2 787.7</b>

6.3.2. The 2023 ENE outlines additional funding for selected indicators in the Court Services Programme. However, as the additional funding is from the Criminal Assets Recovery Account and does not affect the Budget.

<b>OUTPUT</b>	<b>INDICATOR</b>	<b>ADDITIONAL BUDGET SUPPORT FOR KEY INDICATORS</b>
<b>Increased access to justice services</b>	Number of sexual offences courts established at designated courts	R15 million over the medium term to support the establishment of sexual offences courts. The allocation does not affect the Department's budget as it is from the Criminal Assets Recovery Account.

## 7 Financial performance

### 7.1 *Vote expenditure 2022/23*

- 7.1.1. The final Vote expenditure for 2022/23 was R22.7 billion or 99% of the final appropriation, compared with R21.3 billion or 97.1% of the final appropriation in 2021/22.
- 7.1.2. Programme expenditure for 2022/23 was R20.4 billion or 99.4% of the final appropriation of R20.5 billion (compared with 97.9% in 2021/22).

#### ***Vote 25 Justice and Constitutional Development – Final Allocation vs Actual Expenditure 2022/23 (with a comparison to 2021/22)***

<b>PROGRAMME (R'000)</b>	<b>FINAL ALLOCATION V ACTUAL EXPENDITURE</b>					
	<b>2022/23</b>			<b>2021/22</b>		
	<b>FINAL</b>	<b>ACTUAL</b>	<b>(OVER)/ UNDER EXPENDITURE</b>	<b>FINAL</b>	<b>ACTUAL</b>	<b>(OVER)/ UNDER EXPENDITURE</b>
Administration	2 975.5	2 933.5	41.4	2 985.6	2 754.7	230.8
Court Services	7 036.2	7 021.5	14.7	6 751.6	6 680.2	71.4
State Legal Services	1 522.1	1 479.0	43.0	1 457.0	1 372.8	84.2
NPA	5 027.2	5 013.2	14.0	4 691.2	4 690.9	236
Auxiliary and Associated Services	3 921.1	3 909.3	11.9	3 623.3	3 601.6	21.7
Subtotal	20 482.0	20 356.5	125.5	19 508.7	19 100.3	408.4
Magistrates' Salaries	2 398.5	2 297.4	101.1	2 396.5	2 174.5	222.0

PROGRAMME (R'000)	FINAL ALLOCATION V ACTUAL EXPENDITURE					
	2022/23			2021/22		
	FINAL	ACTUAL	(OVER)/ UNDER EXPENDITURE	FINAL	ACTUAL	(OVER)/ UNDER EXPENDITURE
<b>TOTAL</b>	<b>22 880.5</b>	<b>22 653.9</b>	<b>226.6</b>	<b>21 905.2</b>	<b>21 274.7</b>	<b>630.4</b>

7.1.3. Key cost drivers for the Vote in 2022/23 include:

- *Compensation of employees (57% of the total allocation):* R12.98 billion expenditure (98.7%) with under-expenditure of R175.8 million. (In 2021/22, expenditure of R12.21 billion (96.8%) with under-expenditure of R558.43 million).
- *Goods and Services.* R5.26 billion (99.7%) with under-expenditure of R17.8 million. (In 2021/22, expenditure of R4.79 billion (95.6%) with under-expenditure of R21.7 million).
- *Property payments.* R1.34 billion (R1.32 billion expenditure in 2021/22.)
- *Operating leases.* R1.15 billion (R930.79 million expenditure in 2021/22.)
- *Buildings.* R475.9 million (R609.15 million expenditure in 2021/22.)

7.1.4. In respect of specific line items under *Goods and Services*:

- R685.5 million was spent on computer services, compared with R857.8 million in 2021/22. However, the adjusted allocation for computer services was R1.23 billion, but amounts were shifted to other items during the financial year).
- R419.8 million was spent on travel and subsistence, compared with R280.3 million in 2021/22. R136.5 million was shifted to increase the allocation during the financial year.

7.1.5. The underspending is attributed to:

- Lower than planned spending on Compensation of Employees and Goods and Services due to funded vacancies,
- Delays in the procurement of software licenses for IT security programmes, and
- Underperformance on projects by Departments participating in the integrated justice system programme.

7.1.6. In addition, savings were on 29 March 2023, National Treasury granted approval to the Department to utilise savings identified under the following Programmes:

- Administration Programme: (Office accommodation – municipal services, R46.8 million) to fund outstanding SIU investigation invoice expenditure in the same programme.
- Court Services: (Court infrastructure projects, R100 million) to - (i) fund outstanding SIU investigation invoice expenditure in the Administration Programme (R20.2 million); (ii) accommodate excess expenditure on security services (R65 million), and (iii) pay state legal costs in the State Legal Services Programme (R14.8 million).
- State Legal Services Programme: (Foreign governments and international organisations – membership fees, R4 million) to fund a shortfall on claims against the state in this programme.
- National Prosecuting Authority: (Investigating Directorate - compensation of employees, R51 million) to fund shortfalls in compensation of employees.
- Auxiliary and Associated Services Programme: (Integrated Justice System Programme, R88.2 million) to - (i) pay state legal costs in the State Legal Services Programme (R68.2 million) and (ii) to increase the transfer payment of the Public Protector of South Africa in the same programme (R20 million).

7.2 *Irregular expenditure*

- 7.2.1. The Department opened 2022/23 with an amount of R2.99 billion irregular expenditure and resolved twenty-three (23) cases to the value of R2.1 billion. The balance of R872 million balance relates to cases still under investigation. Two cases to the value of R667 million are under investigation by the Special Investigating Unit for possible fraud and collusion.
- 7.2.2. R89.4 million of irregular expenditure was identified in 2022/23, of which R6.8 million was incurred during the financial year under review and R82.6 million related to the prior year.
- 7.2.3. According to the Department's Internal Control Unit, the R89.4 million of irregular expenditure identified in 2022/23 is mainly due to the following:

**Breakdown of irregular expenditure 2022/23**

Non-compliance with SCM processes on the procurement of Legal Services	R65.1 million
Services rendered without valid contracts	R2.4 million
Variation orders exceeding 15 percent	R756 000
Sourcing of services through one quotation	R20.2 million

**7.3 Fruitless and wasteful expenditure**

- 7.3.1. The total amount of fruitless and wasteful expenditure incurred during 2022/23 increased from R57 000 to R71 000.
- 7.3.2. The Department opened 2022/23 with a balance of R998 000 fruitless and wasteful expenditure and closed with a balance of R77 000.
- 7.3.3. The Department resolved a total of 62 cases during 2022/23 to the value of R991 000, of which R966 000 was written off and R45 000 was recovered. The balance of R77 000 has been referred to Law Enforcement for determination of legal liability.

**8 Department of Justice and Constitutional Development**

- 8.1 The Department's strategic focus remains 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 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 using a 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.

8.2 The Department declared 2022/23 'to be a Year of the Community', which would culminate in the roll out of an extensive community outreach programme to interact with communities about justice services and issues of constitutionalism, promotion of human rights and respect for the Rule of Law. Furthermore, the Department's projected performance and expenditure was to be shaped by focusing on increasing access to its services and strengthening the fight against maladministration and corruption.

### 8.3 **Human Resources:**

- As of 31 March 2023, the Department had a total workforce (excluding magistrates) of 16 063 (79.0% of employees are concentrated in programme 2 (Court Services)).
- The overall vacancy rate was maintained at 8.6% and at SMS level, the vacancy rate was reduced from 16.9% as of 1 April 2022 to 9.4% as of 31 March 2023.
- A total of 3 641 (22.9%) employees fall in the youth category.
- The Department achieved the set Employment Equity targets: 50% women at SMS level and 2.1% of persons with disabilities.
- 400 youth were placed through internship and learnership programmes, of which 160 were appointed permanently (40%).

### 8.4 **Programme performance**

8.4.1 The Department reports that it achieved 80 of 93 or 86% of its indicators in 2022/23, compared with 79% in 2021/22. If the indicators for the NPA are removed, the Department achieved 85% of planned indicators.

#### **Department of Justice and Constitutional Development - overall performance 2022/23 (with a comparison to 2021/22)**

PROGRAMME	2022/23			2021/22	
	PERCENTAGE PERFORMANCE	TARGETS ACHIEVED	PLANNED TARGETS	PERCENTAGE PERFORMANCE	ACTUAL/ PLANNED TARGETS
Administration	76%	22	29	77%	24/31
Court Services	100%	14	14	87%	15/17
State Legal Services	93%	27	29	79%	22/28
NPA	75%	12	16	71.4%	10/14
Justice Modernisation	100%	5	5	100%	3/3
<b>Overall</b>	<b>86%</b>	<b>80</b>	<b>93</b>	<b>79%</b>	<b>74/93</b>

### 8.5 **Audit outcome 2022/23**

8.5.1 The Department improved its audit performance from a qualification on contingent liabilities to unqualified with findings on predetermined objectives and compliance with laws and regulations. Although misstatements were identified on the Annual Financial Statements, the misstatements were corrected. The Auditor-General attributes the improvement to Management's commitment to implementing corrective action plans relating to misstatements on contingent liabilities identified in the prior year. A repeat finding was, however, made in respect of performance reporting as the reliability of performance information remains a concern: achievements reported in the annual performance report differed from the supporting evidence, undermining the credibility of the reported performance information. The reported achievement, therefore, may not be a true reflection of the actual performance.

8.5.2 In comparison with previous financial years, the Department has addressed the following: Contingent liabilities.; Procurement and contract management; Asset management; and a Lack of consequence management.

#### 8.5.3 The Auditor-General made the following findings:

- *Material impairment.* The impairment of claims receivables amounting to R1.5 billion relates to long-outstanding balances owed by various client departments for legal fees paid through the State Attorney's offices on their behalf. These balances have been impaired after taking into account the payment history and financial situation of the client departments.
- *Restatement of corresponding figures.* The corresponding figures for 31 March 2022 were restated because of an error in the financial statements of the Department at, and for the year ended, 31 March 2023.
- *Performance reporting (repeat finding).* The Auditor-General identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information for the selected programmes.
- *Revenue management.* Effective and appropriate steps were not taken to collect all money due, as required by the PFMA.
- *Management inaction.* Management did not (i) adequately prepare accurate and complete financial and performance report that are supported and evidenced by reliable information; (ii) review and monitor compliance with applicable laws and regulations which resulted in material non-compliance with key legislation.

#### 8.5.4 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 operating 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 Auditor-General reports that R2.2 billion has been allocated between 2018/19 and 2022/23 but only R1.3 billion was spent during that period. Of the 62 planned projects, only 16 are completed. Even though there is significant spending, most projects are not yet completed.
- iv. The consequence of the slow progress is that the member departments are unlikely to digitally connect and exchange meaningful CJS information to fulfil integrated business process by 31 March 2024 to meet the MTSF target. This delays the realisation of an integrated and modernised criminal justice system contributing to reliance on manual systems, worsening backlogs, and difficulties in retrieving information required for investigations causing delays in investigations and long-drawn-out court cases.
- v. The Auditor-General recommends that the Committee hold the member departments and entities to account for slow implementation of the IJS.

#### 8.6 **Linking financial and non-financial performance information:**

- The Department spent 99% of the overall budget for 2022/23, while achieving 86% of planned targets.
- However, the Department revised its 2022/23 Annual Performance Plan (APP) twice. The first time was in response to the Committee's concerns about reduced targets in respect of certain indicators. The second time was because of a reassessment of indicators and targets for the period January 2023 – March 2023.
- Further, the reliability of the reported performance information remains a concern and undermines the credibility of the Department's reported overall performance of 86% of targets achieved. In 2022/23, the Auditor-General assessed selected indicators in the State Legal Service and NPA programmes, identifying over-reporting in respect of a key indicator

for the Masters Office (Percentage of Liquidation and distribution accounts in large estates (>250 000) examined within 21 days from receipt of all required documents); and under-reporting in respect of an indicator for the office of the State Attorney (litigation cases settled). Under the NPA, the Auditor-General found both over-reporting and under-reporting of performance.

- Further, the Department did not meet certain targets relating to priority areas, specifically, indicators relating to the modernisation of justice services.
- Concerning the audit outcome, the Department improved its audit outcome to achieve an unqualified audit outcome with findings.
- The Department reports an improvement in the SMS vacancy rate. At the end of the financial year 2022/23, there were 15 vacant positions out of 160 positions at Senior Management Services (SMS) level, resulting in a SMS vacancy rate of 9%, compared with a SMS vacancy rate of 15% at 31 April 2022.

## 9 Programme 1 - Administration

- 9.1 The Administration programme provides strategic leadership, management, and support services to the Department.
- 9.2 There are six sub-programmes: Ministry, Management, Corporate Services, Financial Administration, Internal Audit and Office Accommodation.
- 9.3 In 2022/23, the Administration programme was allocated R3.05 billion and spent 98.6% of the final appropriation (compared with 92.3% in 2021/22).

APPROPRIATION				EXPENDITURE		
MAIN	ADJUSTED	VIRE-MENT	FINAL	ACTUAL	UNDER	%
R2.98 billion	R3.04 billion	(R74.3 million)	R2.97 billion	R2.93 billion	R41.9 million	98.6%

- 9.4 The Programme reported under-expenditure of R42 million in 2022/23, compared with R230.8 million in 2021/22. The underspending is mainly attributed to delays in filling of vacant posts.
- 9.5 The programme had three outcomes for 2022/23:
- Modernised and digitised justice services platforms.
  - Improved organisational capability and good governance.
  - Improved awareness of justice services and constitutionalism.
- 9.6 The Programme achieved or exceeded 76% (or 22 out of 29) of its performance targets (compared with 77% (or 24 of 31) in 2021/22, and 40% (6 out of 15) in 2020/21.)
- 9.7 Performance highlights are as follows:
- The Modernisation and Digitisation Strategy, which seeks to re-engineer, automate, and integrate business processes across the criminal justice value chain, was approved during 2022/23.
  - The Department reduced fruitless and wasteful expenditure by 91% and reduced the value of irregular expenditure was reduced by 70% in the financial year 2022/2023 under review.
  - A National Conference to celebrate the 25th Year of the Coming into Effect of the Constitution was held by 31 March 2023.

- On 31 March 2023, 52% of women held senior management positions, while youth made up 23% of the total workforce.

9.8 Areas of underperformance were as follows:

- Phase 2 (Online Solution with Transacting capability) was not completed by 31 March 2023.
- Phase 2 (Online Solution with Transacting capability) was not completed by 31 March 2023
- Phase 2 (Online Solution with Transacting capability) was not completed by 31 March 2023
- Phase 1 (Legal practice management solution i.e., case management component) piloting was not completed by 31 March 2023.
- No courtrooms rolled-out with the Courts Audio-Visual Solution (CAVS) against a target of 85 courtrooms.
- 99% of undisputed and valid invoices were paid within 30 days from date of receipt against a target of 100%.
- 25 backlog disciplinary hearing cases for misconduct resolved against a target of 30.

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

- The programme achieved 76% of planned targets for 2022/23, regressing from 77% in 2021/22, and spent 98.6% of the allocation, underspending by R42 million.

## 10 **Programme 2 - Court Services**

10.1 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.

10.2 The Programme has the following outcomes:

- Increased access to justice.
- Crime and corruption reduced through effective prosecution.

10.3 In 2022/23, the Programme met or exceeded 14 or 100% of 14 planned targets (compared to 87% of its targets in 2021/22).

10.4 Key performance highlights for 2022/23 include:

- A total of 3 127 backlog cases were processed and issued through the National Register of Sex Offenders in 2022/2023, which was above the annual target of 3000.
- The Department upgraded 83 courts into section 55A Sexual Offences Courts
- Office of the Family advocate: 97% of non-litigation matters were finalised within 6 months; and 94% litigation matters within 12 months.
- A total of 7 Specialised Commercial Crime Court were capacitated during the year under review against the annual target of 2.
- 70 courts were upgraded as planned in line with the Minimum Standards to provide reasonable accommodations and disability-centric support services as planned.
- As an effort to ensure adequate and well-functioning courts, 69 courts were Refurbishment and upgraded through minor capital works.
- 88% maintenance cases were finalised within 90 days from the date of proper service of process. A total of 96% of maintenance investigations were finalised within 90 days.

10.5 In 2022/23, the Programme was allocated R7.03 billion, spending R7.02 billion or 99.8% of the final allocation, with R14.7 million going unspent.

10.6 In 2022/23 the Department spent 100% of R473.6 million allocated to its buildings/infrastructure budget. However, the adjusted appropriation for infrastructure/buildings was R571 million but was reduced during the financial year, following a virement of R95 million.

- 10.7 **Linking financial and non-financial performance information:** The Programme improved both its performance and spending, by achieving 100% (14 of 14) of the performance targets (compared to 87% (15 of 17) in 2021/22) and spent 99.8% of the programme budget (compared to 98.9% in 2021/2022).

## 11 Programme 3 - State Legal Services

- 11.1 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.
- 11.2 The Programme has the following outcomes:
- Improved organisational capabilities and good governance.
  - Improved and transformed Masters services.
  - Colonial/Apartheid era Justice-related legislation reviewed and replaced.
  - Transformed State legal services.
  - Transformed legal profession.
  - Advanced constitutionalism, human rights, and the rule of law.
- 11.3 In 2022/23, the Programme met or exceeded 27 or 93% of its 29 planned targets (compared with 79% in 2021/22).
- 11.4 Performance highlights included:
- Master's office: Self-service computers are in place and Master's Own Verification Technology (fingerprint verification) was further rolled out to 302 service points.
  - The Office of Solicitor General (OSG) finalised 6 and these were approved by Cabinet – (1) Management of state litigation; (2). Briefing and outsourcing of state legal work; (3). Initiating, defending, and opposing of matters; (4). Alternative dispute resolution (ADR state mediation policy); (5). State legal representation policy; and (6). State management of contingency liability.
  - A total of 9 bills and regulations were submitted to Ministry for approval; 4 colonial/apartheid era justice-related legislation submitted to Ministry for repeal; and 21 rules of court were submitted to the Board for consideration and approval.
  - 93% of legal opinions were finalised within 30 days. 88% of suggested bills and subordinate legislation were finalized within 30 days.
  - The Department finalised 96% of international agreements within 30 days.
- 11.5 Areas of underperformance included:
- Number of interventions from the Master's Turnaround Strategy implemented – one of four planned interventions achieved.
  - Percentage of expungements finalised within 3 (three) months after receipt of complete application -75% against a target of 80%.
- 11.6 In 2022/23, the Programme was allocated R.1.52 billion and spent R1.47 billion or 97.2% of the final allocation (compared to 94% in 2021/22). The Programme reported underspending of R43 million (compared to R84.2 million in 2021/22) mainly due to delays in the filling of vacant posts. The highest under-expenditure was in the Constitutional Development subprogramme (at 87.2%).

### State Legal Services: Appropriation and Expenditure 2022/23

APPROPRIATION				EXPENDITURE		
MAIN	ADJUSTED	VIREMENT	FINAL	ACTUAL	(UNDER)/ OVER	%
R1.32 billion	R1.41 billion	R106.1 million	R1.52 billion	R1.47 billion	(R43 million)	97.2%

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

- The Programme achieved 93% (27 out of 29) performance targets (compared to 79% in 2021/22) and spent 97.2% of its budget (compared with 94% in 2021/22).
- The reported underspending of R43 million (compared to R84.19 million in 2021/22) is attributed to delays in filling vacant posts.
- Notably, the Auditor-General reports that for six indicators, the reported achievements materially differed from the supporting evidence provided because 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.

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

- 12.1 *Programme 5* contains the Justice Modernisation sub-programme which has funds for the implementation of IT infrastructure for the Department and 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,
- 12.2 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.
- 12.3 The Justice Modernisation sub-programme has the following outcome: Modernised and digitised justice services platforms.
- 12.4 The sub-programme met 100% or 5 of 5 indicators (compared to 100% in 2021/22). The following achievements are reported:
- 12.5 The subprogramme spent 100% of its budget (compared to 96.4% in 2021/22 and 69.3% in 2020/21). However, there was a virement of R138.6 million from the subprogramme so to reduce the adjusted allocation to the final allocation of R597.6 million.

**Justice Modernisation subprogramme: Appropriation and Expenditure 2022/23**

APPROPRIATION	EXPENDITURE

MAIN	ADJUSTED	VIREMENT	FINAL	ACTUAL	(UNDER)/ OVER	%
R777.2 million	R736.2 million	(R138.6 million)	R597.58 million	R597.44 million	R133 000	100%

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

- The sub-programme met all targets and spent all but R133 000 million of the final allocation.
- However, the sub-programme had an adjusted allocation of R736.2, a virement from the subprogramme resulted in a decreased final allocation of R597.6 million.
- 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.

### 13 Information Regulator

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

#### 13.6 ***Human Resources***

- During 2018/19, the Regulator approved its first organisational structure of 378 positions. This structure is being implemented in a phased approach.
- During 2021/2022 and 2022/2023, the organisational structure was reviewed, and as at 31 March 2023, the number of posts in the organisational structure had increased to four hundred and thirteen (413).
- During 2021/22, Phases Three (3) and Four (4) of the organisational structure were implemented. Fifty-five (55) positions were filled during these two phases.
- The 2022/23 staff complement of the Regulator is eighty-eight of 93 funded posts. (This is 21% of the envisaged final structure of 413.)
- During 2022/23, the Regulator did not receive any funding to implement Phase Five of the organisational structure. However, the structure was reviewed, and a new sub-division was created to deal with security compromises.
- The Regulator reports that the Audit Committee, Internal Audit Unit and Provincial Co-ordination Division are not yet funded.
- Significant appointments made by the Regulator in 2022/23 include the Chief Financial Officer (CFO), Chief Legal Officer (CLO), and the Executive for the POPI Act.
- The vacancy rate for 2022/23 was 5.7%.

- A total of 23 of 25 SMS posts are filled with a vacancy rate of 8%.
- The turnover rate was 14% (13 resignations, compared with 9 resignations in 2021/22).
- In respect of employment equity, 57% of employees are African women (compared with 54% in 2021/22) but there are no employees with disabilities. (This was also the case in the previous financial year.)

13.7 R3.1 million was spent on consultants, although a part time member of the Regulator is defined as a consultant (R247 622); and the 14 members of the Enforcement Committee are defined as consultants (R524 740). The most significant expenditure was R1.7 million paid to three consultants for Research and Advisory Services.

### 13.8 **Additional reporting in terms of POPAI (section 39(d)) and PAIA (section 84)**

13.8.1. In the 2022/23 Annual Report the Regulator reports as follows:

PAIA	2021/22	2022/23
Statistics on how the public bodies are giving effect to the constitutional right of access to any information, in terms of section 84(b) of PAIA.	228 public bodies submitted their annual statistics.	195 public bodies submitted their annual reports.
Statistics on how the Private Bodies are giving effect to the constitutional right of access to any information that is required for the exercise or protection of any rights, in terms of section 83(4) of PAIA.	Due to capacity constraints, the Regulator did not collect statistics but undertook to report in 2022/2023.	20 200 private bodies submitted their annual report.
Number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by PAIA and the nature and outcome of those complaints.	The Public Protector reported receiving only two complaints relating to access to information in 2021/22.	The Public Protector did not submit its report to the Regulator.

13.9 **Audit performance:** The Regulator did not produce a separate Annual Financial Statement (AFS) for the 2022/23 financial year, as its financial records still form part of the Department's AFS and are audited as such.

13.10 The Information Regulator was allocated R100.6 million for 2022/23 compared with R87.2 million for 2021/22. In 2021/22, it was announced that 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.

13.11 In 2022/23, the Regulator spent R88.9 million or 88% of its allocation, underspending by R11.7 million (To compare, in 2021/22, the Regulator spent R66.2 million or 76% of its allocated budget, with under-expenditure of R22.89 million). The key cost drivers were as follows: R64 million (64% of total expenditure) on Compensation of Employees and R22 million on Goods and Services.

13.12 The under-expenditure was attributed to the following:

- R7.8 million on Compensation of Employees due to delays in the appointment of employees during the first quarter of the financial year.
- There were delays in the implementation of the two State Information Technology Agency (SITA) projects, namely System Development for R8.2 million and Cloud Hosting for R3.6 million. SITA invoiced the Regulator an amount of R4.17 million, which could not be processed due to the reprioritisation of SITA funded projects in the last quarter of the financial year.

### 13.13 **Non-financial performance 2022/23**

13.13.1 The Regulator reported an overall performance of 91% (31 out of 34 planned targets) in 2022/23 compared with 68% (19 of 28 planned targets met) in 2021 and 61% (11 out of 18 targets) in 2020/21:

**Table 13: Information Regulator - Programme performance 2021/22**

PROGRAMME	TARGET	ACTUAL
Protection of Personal Information	9	9 (100%)
Promotion of Access to Information	5	5 (100%)
Education and Communication	7	8 (88%)
Legal Services, Policy, Research, and Information Technology Analysis	4	4 (100%)
Administration	6	8 (75%)

13.13.2 The Regulator highlights the following achievements in 2022/23:

- The Enforcement Committee is fully operational, with the chairperson and members appointed. The rules and procedure for the PAIA division on the referral of matters to the Enforcement Committee were approved. The Rules of Procedure for the Referral of Matters to the Enforcement Committee on POPIA matters were approved and gazetted for public comment.
- Positions have been filled in the POPIA and PAIA Divisions.
- The POPIA Division has developed several controls to handle the backlog of complaints, such as the Rules of Procedure for the Handling of Complaints, standard operating procedures for compliance, and a complaints' register.

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

- The Information Regulator achieved 91% of its targets and spent R88.9 million or 88% of its allocated budget.
- The Information Regulator continues to report 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 create operational challenges.

**14 NPA**

14.1 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.

14.2 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.

14.3 To achieve these outcomes, the NPA commenced with several strategic initiatives:

- *Restoring the NPA's credibility:* Several strategic initiatives have focused on driving this important aim and improving performance. Critically, key vacancies at a senior level were filled, which has been vital to improving the NPA's credibility.
- *Office for Ethics and Accountability (OEA):* The OEA will be a new structure within the Office of the National Director of Public Prosecutions (NDPP). It will elevate the key functions of ethics promotion and staff accountability to the highest levels of the institution.
- *Enhancing organisational capacity:* Additional budgetary support has enabled the NPA to recruit specialised skills and better allocate its existing human resources. The NPA has added approximately 450 employees to its workforce in the past year, including promotions, external appointments, and contract appointments in critical areas.

- *Strengthening communications:* A new communications strategy has elevated the NPA's public profile through credible, accurate and explanatory public communications on key issues, for example, high-profile corruption cases.
- *Promoting employee well-being:* An innovative and critical culture enhancement initiative is being implemented in a phased approach, as stress and trauma interventions are in high demand, especially for court-based officials.
- *Strengthening performance through skills development.*
- *Community Prosecution Initiative (CPI):* The CPI is progressing well and is being institutionalised (it is established at 25 sites, focusing on GBV, substance/drug abuse etc.)
- *International Cooperation and Engagement with Relevant International Organisations:* The NPA has a responsibility in relation to mutual legal assistance (MLA) and extraditions. While these requests are channelled through the Director-General: Justice and Constitutional Development as the Central Authority, implementation of the legal and criminal justice aspects rests with the NPA. In this regard, the NPA has established a component to coordinate MLA and extradition matters.

14.4 The programme has the following sub-programmes:

- **National Prosecutions Service:** Primarily responsible for general and specialised prosecutions and the appeals that might follow, which include resolving criminal matters outside of the formal trial process through alternative dispute resolution mechanisms, settling admissions of guilt for minor offences and considering dockets brought by the police where persons have not been charged. This sub-programme further deals with priority crimes litigation, sexual offences, and community affairs and specialised commercial crimes.
- **Investigating Directorate** provides for the Investigating Directorate, established in the Office of the National Director of Public Prosecutions, to deal with offences or criminal or unlawful activities involving serious, high- profile and complex corruption, including allegations of corruption arising from commissions of inquiry.
- **Assets Forfeiture Unit:** Seizes assets that are the proceeds of crime or have been part of the offence through a criminal or civil process.
- **Office of Witness Protection:** Provides for protection, support and related services to vulnerable, intimidated witnesses and related persons in judicial proceedings in terms of the Witness Protection Act (1998).
- **Support Services** provides corporate support services to the NPA in terms of finance, human resources, ICT, strategy support, integrity, security, communication, and risk management.

14.5 Overall, in 2022/23, the NPA achieved 12 of 16 or 75% of indicators (compared to 71% of indicators in 2021/22 and 50% of indicators in 2020/21), as follows:

- **Conviction rate in High Court:** Achieved 89.2% (705/790) /Target - 87%.
- **Conviction rate in Regional Court:** Achieved 82.6% (17 196/20 824) /Target - 74%.
- **Conviction rate in District Court:** Achieved 94.,5% (139 979/148 186) /Target - 88%.
- **Number of investigations authorized:** Achieved 13 (18) Target – 11.
- **Conviction rate in cable theft:** Achieved 86.2% (299/347) Target - 80%.
- **Number of persons convicted of private sector corruption:** Achieved 204 /Target – 180.
- **Conviction rate in sexual offences:** Achieved 74.8% (3 460/4 627)/ Target - 70%.
- **Number of persons convicted of corruption and/or offences related to corruption:** Achieved 203 /Target – 168.
- **Total Number of Thuthuzela Care Centers:** Achieved 62 /Target – 58.
- **Value of recoveries relating to corruption or related offences:** Achieved R2,63bn (restated) /Target - R1.4 billion.
- **Number of public awareness sessions conducted:** Achieved 307 /Target – 300.
- **Number of witnesses and related persons threatened, harmed, or killed while on WPP:** Achieved 0 /Target – 0.

14.6 Areas of underperformance were as follows:

INDICATOR	PERFORMANCE	REASON(S) FOR UNDER-PERFORMANCE
<b>Conviction Rate in Complex Commercial Crime ENE indicator</b>	Achieved 87.1% (364/419) against a target of 90%	Cases take longer to finalise; and properly investigated cases often require expert witnesses and investigators with specialised skills.
<b>Value of freezing orders obtained from corruption or related offences</b>	Achieved R570 million against a target of R2.4 billion	Trials are protracted, with Defence parties mounting legal challenges, interlocutory applications and making use of Stalingrad tactics.
<b>Number of cases finalised with a verdict involving money laundering. ENE indicator</b>	Achieved 89 against a target of 100	Delays in the finalisation of trials in serious corruption, and high-value matters. <b>ENE indicator</b>
<b>Actual value of completed forfeiture cases. ENE indicator</b>	Achieved R495 million against a target of R550 million	Delays in the finalisation flows in investigation of high-value cases. Freezing orders are a preceding step to ultimate recoveries. (A delay in obtaining the ABB potential freezing order of R2.55bn impacted on the ABB Recovery, which would have seen AFU exceeding the target by 60%.) Accordingly, the orders of R583 million and R165 million were obtained in April 2023, shortly after the end of 2022/23.

- 14.7 Regarding state capture and corruption matters, the NPA reports that:
- The Investigating Directorate declared 99 investigations, and enrolled 34 cases, involving 205 accused persons.
  - The Specialised Commercial Crime Unit (SCCU) and DPPs in the regions have enrolled 78 cases (involving 363 accused) from the ACTT/NPCOC Priority Case List.
  - The Asset Forfeiture Unit (AFU) and partners have secured freezing/preservation orders to the value of R14 billion and recoveries to the value of R5.4bn (inclusive of the ABB landmark case).

#### 14.8 **Human Resources**

- On 31 March 2023, the NPA had an approved establishment of 6573 posts of which 5 904 were filled, with a 10.2% vacancy rate.
- From the start of the recruitment drive during October 2019 until 31 May 2022, the NPA has advertised 3 252 permanent posts and made 2 628 permanent appointments. Of the 2 628 permanent appointments made, 1 258 were external appointments, while 1 370 internal employees were promoted or transferred. During the same period, 493 contract appointments were made (excluding aspirant prosecutors or interns).

#### 14.9 **Financial performance**

##### **NPA: Allocation and expenditure 2022/23**

Appropriation			EXPENDITURE		
ADJUSTED	VIREMENT/ SHIFT	FINAL	ACTUAL	VARIANCE	%
R4.956 billion	R55.6 million	R5.027 billion	R5.013 billion	14.0 million	100%

- 14.9.1. The NPA had an adjusted appropriation of R4.96 billion and a final appropriation of R5.027 billion for 2022/23, compared with R4.62 billion in 2021/22, and spent R5.013 billion or 99.7% of the final appropriation, underspending by R14 million. Included in the Budget was an additional allocation of R2000 million for capacitation of the NPA and R62.2 million for the Investigating Directorate. (Notably in the 2023 MTEF, the NPA is allocated additional funds amounting to R1.3 billion over the MTEF to support the implementation of the State Capture Commission and Financial Action Task Force's recommendations).
- 14.9.2. The NPA spent 101.3% of the allocation before a virement of R55.6 million from the Department to the NPA. The virement was for the cost-of-living adjustment under compensation of employees.
- 14.9.3. The overspending of R52.4 million before the virement related to the cost-of-living adjustment, appointments, witness fees, and computer and protection services. After the cerement, the R14 million underspending was in respect of Machinery and Equipment.
- 14.10 ***Linking financial and non-financial performance information.***
- 14.10.1. In 2022/23, the NPA achieved 75% of its targets, compared with 71% in 2021/22 and 50% in 2020/21, and spent 99.7% of the allocated budget.
- 14.10.2. However, the Auditor-General could not determine the actual achievements in four of the selected indicators, which tends to undermine the credibility of the NPA's performance reporting as a whole.
- 14.10.3. The Auditor-General was also of the view that although most targets are met or are close to being achieved, the performance does not reflect the lived experience. The focus on the finalisation of cases does not take into account the impact of case backlogs on the criminal justice system. The Auditor-General observes that investigations take a very long time to finalise creating delays in the conviction process; backlog cases are not prioritised which delays justice processes; and the non-achievement of key targets affects the rectification of the strategic deficiencies identified by the Financial Action Task Force (FATF) and contributes to South Africa's continued greylisting.
- 14.11 The Auditor-General also noted that although the NPA met the annual target for 'Value of recoveries relating to corruption or related offences', the accumulated performance for the MTSF is at 69% of the MTSF target and there is a possibility that the NPA will not meet the MTSF target.

## 15 **Legal Aid South Africa**

- 15.1 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.
- 15.2 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.

- 15.3 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 Land Management Unit, Legal Aid SA now provides legal representation and advice services in land disputes for those who cannot afford legal representation. The Land Rights Management Unit had its first full year of operations and provided legal services to farm occupiers, labour tenants and restitution claimants.
- 15.4 The financial year 2022/23 is the third year (mid-way) 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.
- 15.5 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.
- 15.6 **Human resources**
- 15.6.1. For 2022/23, Legal Aid SA reported a staff establishment of 2 657 recruited staff with 2 840 budgeted posts. Legal staff, including paralegals, account for 76.3% of recruited staff (compared with 79% in 2021/22). Recruitment was at 93.6%, which is an improvement on 91.8% in 2021/22, compared to the annual target of 95%.
- 15.6.2. In terms of employment equity targets for overall total staff, Legal Aid SA reports the following for 2022/23:

***Legal Aid SA – Employment equity targets for total staff***

	<b>2022/23</b>		<b>2021/22</b>	
<b>Total staff</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>
Black	91.3%	91.4%	91%	90.8%
African	79.2%	77.6%	79%	76.2%
Women	45.2%	56.7%	45.0%	58.8%
People with disabilities	2%	1.45%	2%	1.6%

- 15.6.3. Targets for Senior Management:

***Legal Aid SA – Employment equity targets for senior management***

	<b>2022/23</b>		<b>2021/22</b>	
<b>Senior management</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>
Black	91.3%	81.4%	91%	80.17%
African	79.2%	69.5%	79%	64.4%
Women	45.2%	45.8%	45%	42.24%

**15.7 *Financial performance 2022/23***

- 15.7.1. Legal Aid SA had a final allocation of R2.4 billion for 2022/23 (compared with R2.14 billion in 2021/22):

- 15.7.2. Legal Aid SA spent R2.36 billion or 98% of the budget, compared with 95% of the budget in 2021/22, which is on target. The increased expenditure when compared 2021/22 is because of the implementation of the Cost-of-Living adjustment, which was not budgeted for.
- 15.7.3. Legal Aid SA had underspending of R225.2 million, which included R38 million in rollover requests, R60.9 million in Judicare commitments, and R75.5 million in Judicare land rights' commitments and savings from operations and salaries.
- 15.7.4. Legal Aid SA's budget has been reduced by 15% in the MTEF cycle 2021/22 – 2024/25. Rigorous mitigating measures continue to be implemented to absorb these reductions but is not sustainable in the long term. The expectation is that Legal Aid SA reduces its compensation to employees and goods and services expenditure 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 76.3% of the total staff component. Vacant permanent positions have not been filled due to lack of certainty regarding future funding requirements.
- 15.7.5. The baseline allocations for the LRMU for 2022-2023 to 2025-2026 were confirmed and included in the Legal Aid SA MTEF Allocation Letter of November 2022. The contingent liability recognised on 31 March 2022, which relates to fees due to Legal Practitioners for pending instructions held at 1 January 2022, remains unfunded.
- 15.7.6. An allocation for the LRMU from DALRRD of R89 million, Specialised Commercial Crimes Court of R11 million and the IJS for the development of the eLAA system of R6,9 million was received during 2022/23.
- 15.7.7. Payments to creditors and Judicare payments within 30 days were recorded at 99.3% and 95.4% respectively, with the target of 100% for each not met.
- 15.7.8. Irregular expenditure to the value of R14.2 million was incurred, compared with R566 322 identified in 2021/22. The increase is largely attributable to the newly established LRMU's allocation of matters to non-tax compliant practitioners and/or those not registered on the Central Supplier Database (CSD) to the value of R11.8 million. The eLAA system's integration for land rights matters will address the defect in control as the system can verify practitioners' tax compliance status and CSD registration. Irregular expenditure has been assessed and it was confirmed that it is not fraudulent. Consequence management has been implemented.

## 15.8 ***Non-financial performance***

- 15.8.1. Legal Aid SA reports the following performance highlights for 2023/24:
  - Increased access to justice by providing 581 430 persons with legal aid, in comparison to 487 552 persons in 2021/22.
  - Regarding the Business Plan 2022-2023 – achieved 97% of the predetermined objectives, in comparison to 84% in 2021/22.
  - Audit Opinion 2022-23: Achieved a clean audit outcome for the 15th consecutive year (and 22nd unqualified audit opinion).
  - Legal Aid SA spent 98% (R2.436 billion) of its allocated budget of R2.41 billion.
  - Human Resources practices ensured a stable workforce and Legal Aid SA was accredited as a Top Employer South Africa for the 14th consecutive year.
  - There was a focus on women empowerment in driving the transformation agenda.
  - A stable Governance Framework ensured that the entity met all statutory requirements timeously.
  - The IT platform remained stable with a system availability of 96.4% and more than 90% of the workforce are equipped to work remotely.
- 15.8.2. Legal service delivery

- All Criminal Courts, Specialised Child Justice Courts, Sexual Offences Courts, and Commercial Crimes Courts were covered, using the mixed model service delivery system. Planned Court Coverage:
  - District Courts at 86% – target of ≥80%
  - Regional Courts at 95% – target of ≥90%
  - High Courts – representation was provided in all matters requiring legal aid.
- Legal Aid SA reports that a total of 581 430 people were provided with legal representation and legal advice in 2022/23, which is a 16% increase when compared with 2021/22. This consists of 322 337 (55.4%) new criminal matters, 48 805 (8.4%) new civil matters, 326 land matters, 13 167 (2.3%) children's matters, and 209 962 (36.1%) legal advice matters.
- Although the number of legal advice matters has increased from 75 624 in 2020/21 to 132 411 in 2021/22 to 209 962, this is less than the 266 055 legal advice matters achieved in 2019/20.
- Overall, Legal Aid SA finalised 355 384 matters in 2022/23, compared with 360 655 matters in 2021/22.
- Legal Aid SA assisted 13 167 children in 2022/23, compared with 11 686 children in 2021/22, of which 7 161 (54%) were children in conflict with the law and 6 006 (46%) were children involved in civil matters.
- In Strategic Litigation Matters, a success rate of 90% was achieved for the 15 finalised matters with an outcome; nine (9) had a positive outcome and one (1) had a negative outcome and five (5) matters were finalised without an outcome.

15.9 **Audit performance.** In 2022/23, Legal Aid SA achieved an unqualified audit opinion for the twenty-second consecutive year and a clean audit outcome for the fifteenth year.

#### 15.10 **Linking financial and non-financial performance**

- Overall, Legal Aid SA provided 581 430 people persons with legal representation and advice; finalised 355 384 matters; achieved 97% of predetermined objectives for 2021/22; and achieved a clean audit outcome.
- Legal Aid SA reports spending only 98% (R2.02 billion) of its allocated budget, which was on target.
- A total of 80% of the budget is spent on employee costs and legal practitioners make up 76.3% of the total staff component. Vacant permanent positions have not been filled due to lack of certainty regarding future funding requirements. Recruitment for 2022/23 was at 93%, which is 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 remains fewer than before the Covid-19 pandemic.
- 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.

## 16 **Special Investigating Unit (SIU)**

16.1 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. In addition, the SIU:

- 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.
- Refers matters to the Directorate for Priority Crime Investigation (DPCI/the Hawks), the South African Police Service (SAPS) and the NPA for possible criminal prosecution.
- Works with the Asset Forfeiture Unit (AFU) in the NPA, where its powers are more appropriate or effective in recovering the proceeds of crime.
- Is a member of the Anti-Corruption Task Team (ACTT) and as part of its work for the ACTT is an active role-player in the Health Sector Anti-Corruption Forum (HSACF), Local Government Anti-Corruption Forum, and Infrastructure Build Anti-Corruption Forum (IBACF).
- Forms part of the Fusion Centre, which was established under the Financial Intelligence Centre to deal with corruption in respect of procurement of Personal Protective Equipment.
- Spearheaded the development of the National Anti-Corruption Strategy.
- Is investigating several matters mentioned in the report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including organs of State.

16.2 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.

16.3 The SIU locates its role under the MTSF priorities: 'Social Cohesion and Safe Communities' and 'A capable, ethical and developmental state'. The MTSF envisages an improvement in corruption perception by the end of the five-year period. The SIU is to contribute by reducing levels of fraud and corruption in the private and public sectors; freezing money and assets; establishing and strengthening the capacity of the Special Tribunal for civil recoveries; and increasing the use of the Financial Intelligence Centre's Reports in identifying high priority cases.

#### 16.4 ***Audit outcome***

16.4.1. The SIU's audit outcome regressed from a clean audit outcome in 2021/22, receiving a qualified audit opinion for 2022/23. This was because:

- Material misstatements were identified on revenue and cash flow. Management corrected misstatements on cash flow but misstatements relating to revenue formed the basis of the qualified audit opinion.
- Management did not implement adequate controls to ensure that revenue from legal services is recognised in the correct accounting period.

16.4.2. The SIU declared a dispute with the Auditor-General on when during the audit revenue relating to the recovery of legal costs should be recognised. The matter was escalated to the Office of the Accountant General at National Treasury during the audit. However, feedback on the outcome was received only towards the end of September 2023. In the interests of good governance and being able to table the Annual Report to Parliament without further delay, a decision was taken to finalise the Annual Financial Statements according to the original finding, which regrettably was a qualified audit opinion.

16.4.3. To address the Auditor-General's findings, the SIU reports that it will carefully consider the accounting treatment of the recovery of legal costs in future to ensure accurate and sensible financial integrated reporting and will involve all stakeholders, including the offices of the Accountant General and the Auditor-General; and devise and implement internal controls to address new gaps that may exist and to prevent a recurrence of the issue.

#### 16.5 ***Human Resources***

- The SIU reports that it is still in the process of capacitating its new organisational structure.

- As at the end of the 2022/23, the staff complement was 601, of which 583 are permanent and 18 on fixed term contracts. Notably the staff complement has increased from 587 at the end of 2021/22.
- The vacancy rate as at the end of 2022/23 was 7.5%, compared with 12% at the end of 2021/22, and the vacancy rate for senior management positions was 7%.
- The staff turnover rate for 2022/23 was 4.3%. (41 staff were appointed, 17 staff resigned, 4 retired and 2 were dismissed. In 2021/22 11 staff resigned and 1 was dismissed).
- In respect of employment equity, the SIU is represented overall by 49% male employees (compared to 71% in 2021/22) and 51% female employees (compared to 29% in 2021/22). There are 45 women employed in Top and Senior management, while 38.4% of employees in the professional skilled category are women.

**SIU: Employment equity 2022/23**

POSITION	2021/22		2022/23	
	MALE	FEMALE	MALE	FEMALE
TOP MANAGEMENT	71%	29%	68% (13)	31.5% (6)
SENIOR MANAGEMENT	69%	31%	69.7% (90)	30.2% (39)
PROFESSIONALLY QUALIFIED	62%	38%	61.6% (77)	38.4% (48)

**16.6 Financial performance**

- 16.6.1. 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 2022/23 was R1 billion, having increased from R830.2 million at the end of 2021/22 and R618.8 million at the end of 2020/21.

**SIU: Debt impairment**

DEBTORS	GROSS DEBT OUTSTANDING			
	2019/20	2021/21	2021/22	2022/23
Local Government	R116.3 million	R142.5 million	R189.3 million	R216.4 million
National Departments	R45.9 million	R151.5 million	R188.8 million	R206.1 million
Provincial Government	R100.29 million	R155.9 million	R246.2 million	R254.4 million
Public Entities	R158.9 million	R168.8 million	R233.2 million	R328.5 million
<b>TOTAL</b>	<b>R421.4 million</b>	<b>R618.78 million</b>	<b>R830.14 million</b>	<b>R1 billion</b>

- 16.6.2. The approved budget allocation for 2022/23 was R934.8 million (compared with R917.8 in 2021/22), consisting of R452 million received from a government grant, R435 million in project revenue and R40.8 million in other non-tax revenue.
- 16.6.3. In 2022/23, the SIU spent R879.7 million (94%) of its final allocation (compared with 91% in 2021/22): R522 million (59%) was spent on compensation of employees and R154 million on general expenses.
- 16.6.4. Although the SIU is faced with a high debt burden, with the gross debt outstanding at the highest it has ever been at R1 billion, (an increase from R830 million in 2021/22), the SIU reports that it is still in a very strong financial position, with accumulated surpluses of R976 million and cash reserves at year end to the value of R748 million at year end.

16.6.5. *Irregular expenditure:* Irregular expenditure of R58 789 was incurred during 2022/23 because of payments made from petty cash that exceeded the threshold amount of R2 000 for various reasons.

16.6.6. There was no fruitless and wasteful, expenditure identified in 2022/23.

## 16.7 Non-financial performance 2022/23

16.7.1. 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.

16.7.2. The SIU achieved an overall performance of 88% (15 out of 17 targets) in 2022/23. This marks a decline from 2021/22 when the SIU met all targets. The SIU's overall performance for the past 5 years is as follows:

2018/19	2019/20	2020/21	2021/22	2022/23
62%	69%	75%	100%	88%

16.7.3. The SIU did not achieve one target in the Administration programme and another target in the Investigation and Legal Counsel programme.

16.7.4. The SIU has three programmes:

### ***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 because of systemic weaknesses in the public sector and to positively influence the behaviour of South African citizens

16.7.5. Notably, under the *Administration* programme, three of four or 75% of targets were met in 2022/23 (75%), as compared to 100% in 2021/22. The following target was not achieved in 2022/23: '*Implemented Phase 2 of the Data Analytics milestones*'. The reason for not meeting the target is that the supply chain management/tender process delayed the appointment of a service provider.

16.7.6. Under the *Investigations and Legal Counsel* programme, the SIU achieved or exceeded 10 out of 11 targets (91%). Performance over a three-year period is set out below:

INDICATORS	2020/21	2021/22	2022/23
Rand value of potential cash and/or assets recovered	<b>EXCEEDED</b> R818.62 million	<b>EXCEEDED</b> R5.96 billion	<b>EXCEEDED</b> R846 million

INDICATORS	2020/21	2021/22	2022/23
	against a target of R148 million	against a target of R300 million	against target of R350 million
Rand value of potential loss prevented	<b>EXCEEDED</b> R2.78 billion against a target of R300 million	<b>EXCEEDED</b> R6.26 billion against a target of R500 million	<b>EXCEEDED</b> R2.16 billion against a target of R600 million
Referrals made to the relevant prosecuting authority	<b>EXCEEDED</b> 435 against a target of 200	<b>EXCEEDED</b> 570 against a target of 225	<b>EXCEEDED</b> 680 against a target of 250
Referrals made for administrative action	<b>EXCEEDED</b> 41 187 against a target of 100	<b>EXCEEDED</b> 24786 against a target of 115	<b>EXCEEDED</b> 67 087 against a target of 120
Rand value of contract(s) and/or administrative decision(s) or action(s) set aside or deemed invalid	<b>EXCEEDED</b> R7.1 billion against target of R900 million	<b>EXCEEDED</b> R5.541 billion against a target of R1 billion	<b>NOT ACHIEVED</b> R300.6 million against target of R1.6 billion
Rand value of matters in respect of which evidence was referred for the institution or defence/opposition of civil proceeding	<b>EXCEEDED</b> R64.8 billion against a target of R1.6 billion	<b>EXCEEDED</b> R3.36 billion against a target of R1.7 billion	<b>EXCEEDED</b> R2.27 billion against a target of R2 billion
Cases issued in the Special Tribunal	<b>EXCEEDED</b> 40 against a target of 20	<b>EXCEEDED</b> 54 against a target of 30	<b>ACHIEVED</b> 35 against target of 35
Rand value of actual cash and/or assets recovered	<b>EXCEEDED</b> R1.8 billion against a target of R60 million	<b>EXCEEDED</b> R436 million against a target of R250 million	<b>EXCEEDED</b> R388.8 million against a target of R275 million.
Referrals made for disciplinary action against officials and/or executives	<b>EXCEEDED</b> 5749 against a target of 150	<b>EXCEEDED</b> 469 against a target of 170	<b>EXCEEDED</b> 376 against a target of 180
Investigations closed under a published proclamation	<b>EXCEEDED</b> 42 117 against a target of 1400	<b>EXCEEDED</b> 28 135 against a target of 1400	<b>EXCEEDED</b> 70 537 against a target of 1450
Reports submitted to the Presidency	<b>ACHIEVED</b> 15 against a target of 15	<b>EXCEEDED</b> 19 against a target of 18	<b>EXCEEDED</b> 21 against a target of 20

16.7.7. Under the *Market and Data Analytics* Programme, the SIU achieved 2 of 2 or 100% of its targets under this Programme for 2022/23.

16.7.8. A total of 19 proclamations were issued during 2022/23, compared to 15 proclamations issued in 2021/22, and 9 issued during 2020/21. Ongoing investigations in 2022/23 involved 28 National Departments; 23 Provincial Departments; 14 Local Governments; and 7 State Owned Entities.

16.7.9. The establishment of the Special Tribunal in 2019 has significantly contributed to the achievement of the SIU's civil litigation outcomes through adjudication and expediting the recovery of state funds. During 2022/23, 34 cases were instituted before the Tribunal, while there were 142 ongoing matters already before the Tribunal.

16.7.10. In 2022/23, the SIU reports having 66 ongoing cases in the High Court. In a number of these matters, the case numbers date back to some years ago.

16.7.11. Concerning the SIU's role in addressing the State Capture Commission's recommendations, the SIU responded as follows:

- Value of civil litigation already instituted - R64 billion.
- Value of civil litigation being prepared - R1.4 billion.
- Value of SIU recommendation to cancel contract already implemented - R130 million.
- Value of potential cash recoveries (advanced stage) - R2.9 billion.
- Value of contract likely to be set aside - R33 billion.

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

- In 2022/23, the SIU2021/22, the SIU achieved 88% of planned targets while spending 94% of the budget. Compared with 2021/22, the SIU's overall performance has declined but spending has increased.
- The SIU missed two (2) of 17 planned targets: The first, under the Administration programme, was '*Implemented Phase 2 of the Data Analytics milestones*'; and the second, under the Investigations and Legal Counsel programme, was '*Rand value of contract(s) and/or administrative decision(s) or action(s) set aside or deemed invalid*'.
- 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.
- The SIU's audit outcome regressed from a clean audit opinion to a qualification.

17 **South African Human Rights Commission (SAHRC/ Commission)**

17.1 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.

17.2 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).

17.3 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.

17.4 **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.

17.5 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.

17.6 **Human resources**

- The Commission reports an overall vacancy rate of 15.5% on 31 March 2022, with 168 posts filled of 198 approved posts (The vacancy rate in 2021/22 was 20%). At senior management level, the vacancy rate is 31%. In respect of vacancies by critical occupation there is a 30.7% vacancy rate for research, and a 33.3% vacancy rate for advocacy and communications.
- The overall turnover rate was 10.6% for 2022/23. However, the turnover in senior management posts was 31.8% and 22% turnover of critical occupations.
- Key positions that needed to be filled included the Chief Executive Officer, Chief Financial Officer, Head of Supply Chain, Head of Strategic Support and Governance and the Head of Legal.

17.7 **Audit outcome**

17.7.1 In 2022/23, the SAHRC received an unqualified audit opinion, with repeat findings. Details of the findings are provided below:

<b>EMPHASIS OF MATTER</b>	<ul style="list-style-type: none"> <li>• The institution incurred irregular expenditure to the amount of R11.15 million (REPEAT)</li> </ul>
<b>PROCUREMENT AND CONTRACT MANAGEMENT</b>	<ul style="list-style-type: none"> <li>• 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 local production and content as required by the 2017 Procurement. (REPEAT)</li> <li>• The Auditor-General was unable to obtain sufficient appropriate audit evidence that a material number of commodities designated for local content and production were procured from suppliers who submitted a declaration on local production and content.</li> <li>• The Auditor-General was unable to obtain sufficient appropriate audit evidence that commodities designated for local content and production were procured from suppliers who met the prescribed minimum threshold for local production and content, as required by the 2017 Preferential Procurement Regulation</li> </ul>
<b>IRREGULAR EXPENDITURE</b>	Effective and appropriate steps were not taken to prevent irregular expenditure. (REPEAT).

<b>NON-ADHERENCE TO POLICIES AND PROCEDURES</b>	
<b>PAYMENT OF INVOICES WITHIN 30 DAYS</b>	Payments were not made within 30 days or agreed period after receipt of an invoice (REPEAT).
<b>CONSEQUENCE MANAGEMENT</b>	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)
<b>ASSET MANAGEMENT</b>	The institution did not determine if any state institution involved in education and training required computer equipment before disposing of the equipment. (REPEAT)
<b>INTERNAL CONTROL DEFICIENCIES</b>	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) 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).
<b>PERFORMANCE INFORMATION</b>	Performance reports are not supported and evidenced by reliable information. (REPEAT)

17.7.2 Regarding performance information, the Auditor-General for the first time audited three of the Commission's programmes. The Promotion and Protection of Human Rights programmes received an adverse opinion, while the Monitoring of Human Rights programme was qualified. Specific findings by the Auditor-General relating to performance indicators were as follows:

PROGRAMME	INDICATOR	AUDIT FINDING
<b>Promotion of Human Rights</b>	Number of stakeholder Engagements conducted	An achievement of 560 engagements was reported against a target of 216 engagements. However, the audit evidence did not support this achievement. The Auditor-General could not determine the actual achievement but estimated it to be materially less than reported.
	Number of reports completed on SAHRC annual human rights engagements (HRE) held with the provincial governments	The Commission reports on an achievement of nine reports completed against a target of nine reports. This is disputed by the Auditor-General which reports the actual achievement as 7 reports.
	Number of human rights educational material (HREM) completed.	The Commission reports on an achievement of eight educational completed materials against a target of eight. This is disputed by the Auditor-General which reports the actual achievement as 7 educational materials.
	Number of workshops conducted to empower community human rights champions	An achievement of 27 workshops was reported against a target of 18 workshops. However, some supporting evidence was not provided for auditing; and, where it was, the Auditor-General identified material differences between the actual and reported achievements.
	Percentage implementation of Media and Communications Plan (MCP)	An achievement of 80% implementation of the media & communications plan was reported against a target of 80% implementation. The Auditor-General could not determine if the reported achievement was correct, as the processes established to consistently measure, and report achievements were inadequate. Adequate supporting evidence was also not provided for auditing.
<b>Protection of</b>	Number of complaints and	An achievement of 6662 complaints and enquiries

PROGRAMME	INDICATOR	AUDIT FINDING
human rights	enquiries finalised	finalised was reported against a target of 3000. However, some supporting evidence was not provided for auditing; and, where it was, the Auditor-General identified material differences between the actual and reported achievements.
	Number of initiatives undertaken to redress major and systemic human rights violations	An achievement of 44 initiatives was reported against a target of 39. Based on audit evidence, the actual achievement was 55 initiatives.
	Institute strategic impact litigation	An achievement of 16 impact litigation matters was reported against a target of 8. Based on audit evidence, the actual achievement was 9.
	Number of Memoranda of Understanding (MoU) signed with Universities	An achievement of 8 MOUs was reported against a target of 9 MOUs. However, the audit evidence showed the actual achievement to be only 7 MOUs.
Monitoring of human rights	Percentage implementation of Human Rights Monitoring Plan	An achievement of 90% implementation of the HRM Plan was reported against a target of 90%. The AG could not determine if the reported achievement was correct, as the processes established to consistently measure, and report achievements were inadequate. Adequate supporting evidence was also not provided for auditing.
	Percentage submission of identified NHRI Reports by deadline.	An achievement of 100% submission of identified NHRI Reports against a targeted of 100% was reported. The Auditor-General could not determine if the reported achievement was correct, as the processes established to consistently measure, and report achievements were inadequate. Adequate supporting evidence was also not provided for auditing.
	Percentage submission on identified legislation by deadline	100% submission on identified legislative against a target of 100% was reported. The Auditor-General could not determine if the reported achievement was correct, as the processes established to consistently measure, and report achievements were inadequate. Adequate supporting evidence was also not provided for auditing.

17.7.3 The Auditor-General attributes the poor outcome to inadequate monitoring, review, and consequence management, which resulted in the non-compliances. Further, under-capacity in the Finance Unit resulted in issues raised by the Auditor-General when reviewing the Annual Financial Statements.

17.7.4 *Audit Committee:* The Audit Committee expressed concern, as was the case in 2021/22 and 2020/21, about the low implementation of action plans. The Audit Committee also reported as follows:

- *Compliance.* From the various reports of the Internal Auditors, the audit report on financial statements, and the management letter from the Auditor-General South Africa (AGSA), non-compliance with policies and procedures have been reported. Some of these deficiencies were due to procurement system weaknesses and malfunction. Remedial actions are in progress to address these areas of concern and Internal Audit will review them during the new financial period (2022/23).
- *Risk management.* There is a need to improve the system of risk management, beginning by conducting organisation-wide annual risk assessments and implementing the risk management strategy.
- *Supply Chain Management.* There are areas of non-compliance identified within the Supply Chain Management area which require improvement of the monitoring control systems in

place. Internal controls systems are currently undergoing process improvements to address the weaknesses identified.

- *Performance reporting.* This has been declining for several years. The Auditor-General's opinion in 2021/22 year was a disclaimer and, in 2020/21, it was an adverse opinion. The main reasons for the adverse opinion were performance indicators which are not SMART, no adequate evidence for reported achieved performance, and late submission of performance evidence to the external auditors.

## 17.8 Financial performance 2022/23

17.8.1 The Commission was allocated R212 million in 2022/23 and spent R203.4 million or 94.1% of the final allocation, with R8.6 million going unspent.

17.8.2 The most significant cost driver remains the compensation of employees' budget at R137.7 million, with operating expenses of R52.2 million.

17.8.3 In the 2022/23 budget cycle, additional funding was 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 2023/24 and R5 million in 2024/25) to fulfil the Commission's commitments to the United Nations Optional Protocol to the Convention Against Torture.

17.8.4 *Irregular expenditure.* There was irregular expenditure to the value of R11.15 million (compared to R11.4 million in 2021/22 and R2.39 million in 2020/21). The Auditor-General found, among others, that effective and appropriate steps were not taken to prevent the irregular expenditure and there was no consequence management (The Auditor-General was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred irregular expenditure).

17.8.5 There was no fruitless and wasteful expenditure incurred in 2022/23.

## 17.9 Non-financial performance 2022/23

17.9.1 In 2022/3, the Commission achieved 19 of 39 or 52% of planned targets, compared with 61% in 2021/22, 64% in 2020/21 and 88% in 2019/20.

17.9.2 The reasons provided for the decline in performance include:

- The prolonged period of working from home due to the Covid 19. There was a lack of oversight of people working from home, which has been corrected by recalling staff back to the office.
- The high vacancy rate in Senior Management has caused instability.
- Targets were not SMART and Measurable.

17.9.3 Reported performance highlights for 2022/23 include:

FOCAL AREA	KEY ACHIEVEMENTS	IMPACT

Access to Health	Engagement with the Department of Health on the Mental Health Framework during Q4 2022/23. Section 11 Committee for the health focus area - developed a monitoring tool.	The realisation of the access to health care through interventions in government accountable to its mandate to provide health care.
Access to Water and Sanitation	Inquiry into access to water in KZN held in August 2022.	Upheld the progressive realization of the right to access to sufficient water in Kwa-Zulu Natal.
Human Settlements	Securing appropriate redress on the right to housing through a subpoena hearing held in 2022 against the Mpumalanga Provincial Dept. Human Settlements, where the Provincial Dept. agreed to rebuild the house of the complainant which had been demolished un-procedurally	Securing of redress through the rebuilding of a complainant's house and handover of the house on 18 July 2023.
Rights of Children	Engagement with Dept. of Social Development to address key priority areas of collaboration for children's rights issues.	Securing, promoting, and protecting the rights of all children South Africa.
Civil and Political Rights	<ul style="list-style-type: none"> <li>• Provided input and attended discussions in relation to ongoing litigation in the matter of the South African Human Rights Commission v The City of Cape Town and Others on the lawfulness of evictions.</li> <li>• Chaired the Western Cape hearing on alleged police brutality in the context of evictions during 2022/23.</li> </ul>	Securing, promoting, and protecting the rights of homeless, evicted, and displaced persons in South Africa.
Rights to Land, Environment and Food	Engagement with Parliamentary Portfolio Committee on Mineral Resources & Energy to address issues of compliance with the recommendation of the Commission's Artisanal Mining report.	Influencing policy direction on unregulated artisanal mining.
Basic Education	<ul style="list-style-type: none"> <li>• Engagement with the Minister of Basic Education and Education MECs on the eradication of plain pit latrines.</li> <li>• Model Human Rights Compliant Code of Conduct for Schools.</li> <li>• Submission to Parliament on Basic Education Laws Amendment Bill [B2-2022].</li> </ul>	Eradication of pit latrines & creation of a safe, diverse, and inclusive school environment.

17.10 At programme level, the Commission reports the following:

***SAHRC – Programme performance 2022/23 (with a comparison to 2021/22)***

PROGRAMME	PERFORMANCE	
	2022/23	2021/22

	ACTUAL	PERCENTAGE	ACTUAL/ PLANNED	PERCENTAGE
<b>Administration</b>	1/14	7%	5/13	38%
<b>Promotion</b>	9/10	90%	10/15	67%
<b>Protection</b>	3/6	50%	5/8	63%
<b>Monitoring</b>	6/9	67%	7/8	88%
<b>Total</b>	19/39	52%	27/44	61%

17.10.1. *Administration*: The Commission reports that it achieved 1 out of 14 or 7% of planned targets in 2022/23, compared with 38% in 2021/22.

17.10.2. Targets that were not achieved were as follows:

***SAHRC: Administration – Targets not achieved.***

INDICATOR	PERFORMANCE
Percentage expenditure against budget	94.1% expenditure against a target of 98% -100% expenditure
Percentage implementation of Risk Management Plan	64.3% against a target of 80% - 100% implementation
Percentage implementation of recommendations of 2020-21 Remuneration Structures and Conditions of Service Report	45% against a target of 80% - 100% implementation
Percentage implementation of Internal Audit Plan	91% against a target of 100% implementation
Percentage resolution of audit findings	45% against a target of 80% - 100% resolutions
Percentage implementation of Information and Communications Technology (ICT) Plan	78% against a target of 80% - 100%
Percentage implementation of Organisational Culture Renewal Plan	65% against a target of 80% - 100% implementation
Percentage implementation of Supply Chain Management Turnaround (SCMT)	61% against a target of 100% Implementation

17.10.3. *Promotion of human rights*: The Commission reports that it achieved 9 of 10 targets (90%) in 2021/22, compared to 66% of targets achieved in 2021/22. The target that was not achieved was as follows:

***SAHRC: Promotion of human rights – Target not achieved.***

INDICATOR	PERFORMANCE
Hosting of Commemorative Human Rights Calendar Day	Factor outside control of SAHRC - Human Rights calendar day event speaker cancelled appearance.

17.10.4. *Protection of Human Rights*: The Commission achieved 3 of 6 or 50% of planned targets, compared with 63% of planned targets in 2021/22. The following targets were not achieved:

***SAHRC: Protection of Human Rights – Targets not achieved.***

INDICATOR	PERFORMANCE
Number of Memoranda of Understanding (MoU) signed with universities	8 MOUs against a target of 9 MOUs.
Number of annual Complaints Trend Analysis (CTA) reports completed	Did not complete 1 CTA report by target date of September 2022 8
Hold 2 national inquiries	No inquiries were held against a target of 2.

17.10.5. *Monitoring of Human Rights*: The Commission achieved 6 of 9 targets (67%) in in 2022/23, compared 88% in 2020/21. The following target was not achieved:

***SAHRC: Monitoring of Human Rights – Target not achieved.***

INDICATOR	PERFORMANCE
Number of Integrated Human Rights Monitoring (HRM) Frameworks completed	Zero HRM Frameworks completed against a target of 1
Number of Provincial State of Human Rights Reports completed by February 2023t	5 Reports were completed against a target of 9 by February 2023.
Number of SAHRC Recommendations Monitoring Reports completed by 31 March 2023	6 of 11 Monitoring Reports were completed by 31 March 2023

#### 17.11 **Linking financial and non-financial performance:**

- Overall, the Commission's performance has steadily declined from 90% achieved in 2015/26 to 52% in 2022/23. It is also possible that the reported performance does not reflect the actual performance, as the Auditor-General found that the performance reports are not supported and evidenced by reliable information. The Auditor-General audited 3 programmes: two had an adverse outcome and the third was qualified.
- The Commission spent 94.1% of its allocation.
- The Commission's vacancy rate is high at 15.5% overall but the vacancy rate at senior management level and by critical occupation is even higher at approximately 30%. The overall turnover rate was 10.6% for 2022/23. And at senior management the turnover rate is even higher at 31.8% and there is a 22% turnover of critical occupations.
- Although the Commission achieved an unqualified audit outcome, there were repeat findings.

### 18 **Public Protector South Africa (PPSA)**

- 18.1 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.
- 18.2 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 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.
- 18.3 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'.
- 18.4 **Human Resources:** On 31 March 2023, the PPSA had 343 employees with approved posts of 372 (compared with 31 March 2022, the PPSA had 332 employees with approved posts of 368). The vacancy rate at 31 March 2023 was 7.8%, compared with 2021/22 at 9.8%. In 2022/23, 26 employees left the institution.
- 18.5 **Audit outcome.**

18.5.1. The PPSA's audit outcome regressed from a clean audit opinion achieved in 2021/22 to an unqualified audit opinion with findings.

18.5.2. The Auditor-General reported the following findings:

ISSUE	FINDING	MANAGEMENT RESPONSIBILITIES
<b>IRREGULAR EXPENDITURE</b>	R18.9 million in irregular expenditure as a proper tender process was not followed in respect of legal services.	Management did not ensure that internal controls were designed adequately in the supply chain management environment, which resulted in a material non-compliance with legislation.
<b>RESTATEMENT OF CORRESPONDING FIGURES</b>	The corresponding figures for 31 March 2022 were restated because of an error in the financial statements of the institution at, and for the year ended 31 March 2023.	
<b>PROCUREMENT AND CONTRACT MANAGEMENT</b>	Some of the tenders which achieved the minimum qualifying score for functionality criteria were not evaluated further in accordance with 2017 Preferential Procurement Regulation 5(7). The preference point system was not applied in some of the procurement of goods and services as required by section 2(a) of the PPPFA.	

## 18.6 *Financial performance*

18.6.1. In 2022/23, the PPSA had total revenue of R399.9 million. A breakdown of total revenue is as follows: R357.9 million was from grant funding; R20 million was reprioritised for the Department of Justice and Constitutional Development; and R21.7 million was from other income received.

18.6.2. At already mentioned, the PPSA received R20 million from the Department. This is the sixth consecutive year in which this has taken place. The PPSA reports that the reprioritised funds were received too late to spend but that the PPSA was given approval by National Treasury to retain the surplus. The money was intended to assist with expenditure relating to the Section 194 Enquiry process.

18.6.3. The PPSA spent R390.1 million or 99.7% of its Budget for 2022/23, with R9.8 million going unspent.

18.6.4. Compensation of employees remains the PPSA's main cost driver, at R263.5 million or 66% of the budget.

18.6.5. Administrative expenses increased from R90.6 million in 2021/22 to R119.1 million in 2022/23. Of the R119.1 million spent, R44.7 million was spent on consulting and professional fees, which increased by 56% when compared to 2021/22. The increase is attributed to the Section 194 enquiry process.

### ***PPSA Consulting and professional fees***

2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
R25.4 million	R17.18 million	R49.81 million	R35.91 million	R25.42 million	R44.7 million

## 18.7 *Non-financial performance 2022/23*

18.7.1. The PPSA reports that it achieved six of eight or 75% of targets in 2022/23, compared with 86% of its targets for 2021/22.

18.7.2. In terms of caseload, the PPSA received 5 233 new complaints (compared with 6 826 new complaints received in 2021/22), while finalising 5 366 matters (compared with 6 886 in 2021/22). However, 2 766 actual investigations were finalised.

**PPSA – Caseload 2016/17 – 2022/23**

<b>CASES</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>
<b>Cases carried over</b>	4 254	5 255	4 390	4 089	3 363	1 997	<b>1 766</b>
<b>New cases</b>	9 563	11 943	8 717	10 111	5 108	6 826	<b>5 233</b>
<b>Sub-total</b>	<b>13 817</b>	<b>17 198</b>	<b>13 107</b>	<b>14 200</b>	<b>8 471</b>	<b>8 823</b>	<b>6 999</b>
<b>Cases referred</b>	929	1 783	1 100	1 293	992	1 405	<b>573</b>
<b>Non-jurisdiction cases</b>	606	1 251	876	911	676	798	<b>578</b>
<b>Finalised cases</b>	10 787	13 572	9 921	11 643	6 927	6 886	<b>5 366</b>
<b>Total investigations finalized *</b>	7 874	9 771	8 226	9 198	5 334	3 189	<b>2 766</b>

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

**18.7.3. Programme performance**

- i. The Administration programme spent R178.5 million, largely on contractual obligations, (i.e., cleaning services, rental, buildings, parking, security, and information technology). The R10.9 million over-expenditure on the administration programme was, reportedly because of legal expenses, travel and other incidental expenses incurred relating to the Section 194 Enquiry process. In respect of performance there were only two indicators, of which one was achieved. The planned target 'Clean audit achieved and maintained' was not achieved.

<b>PLANNED ANNUAL TARGET</b>	<b>2022/23 ACTUAL ACHIEVEMENT</b>
Maintain a clean audit opinion for 2022/23 financial year	NOT ACHIEVED Unqualified audit opinion with findings.
100% implementation of a Case Management Application by 31 March 2023	ACHIEVED Case Management System 100% Implemented. System rolled out at all PPSA offices, and all end-users trained. Post implementation review report.

- ii. The Investigations programme spent R185.3 million, with R4.8 million going unspent. Four out of five targets were achieved or exceeded, while one target – 'Investigation and finalisation of systemic investigations/ interventions' was not achieved.

PLANNED ANNUAL TARGET	2022/23 ACTUAL ACHIEVEMENT
Number of investigation reports finalised	ACHIEVED 80 investigation Reports finalised by March 2023 against a target of 80.
Percentage of adherence to turnaround times in finalisation of cases	EXCEEDED 82% (2766/3385) of cases were finalised within turnaround times against a target of 80%
Investigation and finalisation of systemic investigations/ interventions	NOT ACHIEVED No systemic investigations/interventions were finalised against a target of 3 by 31 March 2023
Number of dialogues held with organs of state on systemic challenges	EXCEEDED 12 bilateral dialogues were held with organs of state on systemic challenges against a target of 10.
Quarterly reports on the implementation of remedial action submitted to Parliament	ACHIEVED 4 quarterly reports on the implementation of Remedial action were submitted to Parliament by 31 March 2023.

- iii. The Stakeholder Management Programme spent R16.3 million in 2022/23, over-spending on its budget by R1.3 million. The programme had one target in 2022/23, which was achieved.

PLANNED ANNUAL TARGET	2022/23 ACTUAL ACHIEVEMENT
Execute 117 activities in the implementation plan of an Integrated Access and Stakeholder Strategy	EXCEEDED Executed 159

## 18.8 MTEF requirements

### PPSA - MTEF requirements

DESCRIPTION	2022/23	2023/24	2024/25
	R'000	R'000	R'000
Funding of critical positions (x 22) - specialised investigators and other	11 200	12 000	15 309
Unbudgeted 7.5% wage settlement	19 761	21 243	22 836
Security (provincial and regional offices)	6 127	6 446	6 774
<b>Total</b>	<b>37 088</b>	<b>39 689</b>	<b>44 919</b>

## 18.9 Linking performance to spending

- In 2022/23, the PPSA achieved 75% of its targets and spent 99.7% of its budget.
- The PPSA's audit outcome regressed from a clean audit opinion to unqualified with findings.

## 19 Committee observations

The Committee makes the following observations:

### 19.1 *Funding*

The Committee is aware of the constrained fiscal environment and has previously expressed its concern about the risks of reducing budgets, especially the targeting of the salaries' budgets in a service delivery environment. The Committee has observed that having too many acting positions or vacancies can create challenges for an institution. The Committee has also argued that rather than encouraging efficiency, a chronic lack of resources can result in the very opposite.

We repeat our observation that officials working in the Lower Courts are not adequately resourced, despite this being the programme responsible for the delivery of – or at least providing accommodation for - most court services and note that this observation is confirmed by the NPA, which has made similar observations concerning the lack of resources in the Lower Courts.

We have welcomed the additional resources allocated to the NPA and SIU to improve the fight against corruption and advance the recommendations of the State capture Commission and continue to support these additional allocations. 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 Chapter 9 institutions within the portfolio are historically underfunded and, as such, the Committee is 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 required and that this is highly prejudicial to their ability to perform the work that they are constitutionally mandated to do. The PPSA has made specific funding requests, which are captured elsewhere in the report. The Committee remains of the view that the budget allocated to these institutions do not support their unique role within our constitutional architecture and requires comprehensive review.

### ***Department of Justice and Constitutional Development***

### 19.2 *Performance*

The Committee welcomes the Department improved its performance to achieve 86% of planned indicators but remains cautious.

The Committee notes that the Department revised its 2022/23 Annual Performance Plan (APP) twice. The first revision was in response to concerns raised by the Committee about reduced targets in respect of certain indicators. The second revision was because of a reassessment of indicators and targets for the period January to March 2023. The Committee remains of the view that these revisions highlight a weakness in the ability plan and manage risk.

Furthermore, 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. That this is a repeat finding suggests a more general challenge with the Department's performance information system and undermines the credibility of the entirety of the reported information.

There are other specific indications that the Department continues to experience difficulties, which are discussed elsewhere in the report. However, in the Committee's opinion, the Department's improved

performance remains at odds with the accounts of those accessing critical justice services. Nor does it tally with the Committee's observations.

### 19.3 ***Backlogs***

The Committee is acutely aware of how important it is to address the case backlogs, which have escalated and, in its view, place the entire justice system at risk. There are many reasons for the existence of backlog cases: the unavailability of officials and legal representative, load-shedding, water outages, delays in obtaining interpretation services, postponements for further police investigation, outstanding DNA reports, plea and trial, malfunctioning court equipment, dilapidated and collapsed court rooms, and other factors.

The Committee has consistently highlighted the lack of statistics concerning backlogs as being a challenge for oversight, and notes that the Auditor-General also highlighted the absence of indicators that measure the backlogs as being a problem. The Auditor-General has recommended that the Department, NPA and Legal Aid SA include indicators that measure backlogs, as an intersectoral approach should result in key performance indicators that, once achieved, will have a critical impact on the reduction of backlogs and on court performance. The Committee welcomes the Department's intention to reduce case backlogs by working with all JCPS Cluster departments to sign Memoranda of Understanding that compel the inclusion of performance indicators, which support (criminal) case backlog reduction initiatives. Unfortunately, there are no timeframes attached to this initiative.

The Committee acknowledges that statistics on the backlogs may be recorded in operational plans but was informed that the reason that there are no indicators for case backlogs included in the annual performance plans submitted to Parliament is because case flow management is a judicial function, which the Judiciary addresses through its own mechanisms, specifically the Provincial and National Efficiency Enhancement Committees. As the Judiciary does not report to Parliament, and there is no mechanism to guide interactions between it and the Judiciary, the Committee has no access to statistics on the backlogs.

However, the responsibility for resolving issues that contribute to the case backlogs often lies with the Executive, which accounts to Parliament. From an oversight perspective, in the absence of information, it is difficult for the Committee to establish the extent of the problem or how well the problem is being managed across the sector, and to hold the Executive to account for its part in the matter.

In the meantime, the Department should consider reporting on the backlogs that do not fall within the judicial function, such as Master's services.

### 19.4 ***Court infrastructure and maintenance***

The Committee has extensively reported its observations concerning the dilapidated and aging court infrastructure and has met with the Ministers of Justice and Correctional Services and Public Works and Infrastructure to discuss its concerns.

The Committee is also acutely aware that there are factors falling outside of the Department's control that affect its operations, such as load-shedding. Reliance on other departments and agencies, such as with the Department of Public Works and Infrastructure (DPWI), has proven to be problematic. Although the Department has taken steps to address these, measurable progress is exceedingly slow.

The Committee notes the Auditor-General's assessment of the condition of three magistrate's courts, which found conditions that were very similar to those that the Committee has reported. The Auditor-General observes that the actual expenditure on maintenance does not correlate with the lived experience of citizens. Further, the underspending of the budget allocated means that the Department has a budget that could impact on the lived experiences of citizens positively but is not being used as intended. The consequences are felt in postponed court proceedings, delayed justice, and increased backlogs. The Auditor-General recommends, among others, that the Committee follow up on progress of the maintenance action plans agreed upon between the Department and DPWI and hold them accountable for progress.

The Committee agrees with the Auditor-General's views and has taken note of the recommendation for purposes of including it in its Legacy Report for the consideration of the Seventh Parliament.

#### **19.5 Court modernisation and digitalisation**

The Committee is concerned about the slow progress of the Department's modernisation and digitalisation initiatives, despite these being critical to the turnaround plan. A Modernisation and Digitisation Strategy, which seeks to re-engineer, automate, and integrate business processes across the criminal justice value chain, has only now been submitted to the Director-General, despite the target for finalisation being, first, December 2022, and then March 2023.

The Committee notes that the targets for Maintenance services, Trusts services, Protection Order services, State Attorneys services and Expungement of Criminal Records services available on the DOJ Internet Portal (online) were not achieved. Further, the targets concerning the National Register for Sex Offenders (NRSO) Integration Solution with SAPS for NRSO removal applications and the development of solution specifications for sites rolled-out with the Courts Audio-Visual Solution (CAVS) were not achieved.

The Committee notes that Auditor-General has also highlighted the link between delayed projects for the modernization of the Criminal Justice System and worsening case backlogs. Reliance on manual systems, and difficulties in the retrieval of information required for investigations leads to delayed investigations and drawn-out court cases.

#### **19.6 ICT**

The Committee remains concerned about the state of the Department's ICT. The challenges presented by aging IT infrastructure, network downtime and a dependence on contracted staff has affected all aspects of justice services. The Committee welcomes the establishment of a dedicated ICT branch. The Department reports that capacitation of the ICT organisational structure has commenced, in line with the allocated budget. Mr Jabulani Hlatshwayo was appointed to the newly established position of DDG: Information and Communication to lead the Branch, as the Department seeks to reduce its dependence on outsourced contract ICT staff, strengthen its internal ICT infrastructure and capacity following a devastating cyberattack and ramp-up its modernisation programme.

The Committee notes that a major ICT infrastructure renewal project was also undertaken in 2022/23: 3 043 desktops and 2 285 laptops were bought and the bandwidths of 176 identified sites were upgraded.

The Committee requests a report on the plans to capacitate the ICT organisational structure and details of the progress made to date before 31 January 2024.

#### **19.7 Audit outcome**

The Committee is very pleased about the Department's much improved audit outcome, notwithstanding the (repeat) findings. The Auditor-General noted that the Department was able to improve its accounting for contingent liabilities (the basis for the qualified outcome in previous years) and attributes this to Management's commitment to implementing corrective action plans relating to misstatements on contingent liabilities identified in the prior year.

The Committee requests a report setting out details of the commitments made, and the progress made to address the audit findings, before 31 January 2024.

#### **19.8 Financial management**

The Committee welcomes the Department's improved financial management under the direction of Ms Singo, who was appointed as CFO, with effect from 1 April 2022. In 2022/23, the Department spent 99% against the final appropriation, improving from the previous year's performance of 97.1%. The Department's under-expenditure of R226 million mainly relates to vacancies, lower than anticipated

spending on magistrates' households, as well as less than anticipated spending of the earmarked budget for Information Regulator and Investigating Directorate.

The Committee is pleased to note that the Department has been very successful in implementing processes to prevent irregular and wasteful expenditure. These processes resulted in fruitless and wasteful expenditure was reduced by 91% and the value of irregular expenditure decreased by 70% for the financial year 2022/2023.

#### 19.9 ***Vacancies***

The Committee notes the considerable improvement in the vacancy rate, particularly at SMS level but the Department has struggled to fill certain critical SMS positions on a permanent basis, notably the positions of Chief Master, and Head: Justice College. Also, despite repeated requests to resolve the matter of a permanent appointment of a Solicitor-General, there has been limited progress (the position was advertised with a closing date of 16 October 2023.). There also appear to be ongoing challenges with the appointment of Heads of State Attorneys offices, which has a major impact on the performance of the branch.

On a positive note, the Committee welcomes the recent appointments of Ms Shireen Said as Deputy Director-General: Constitutional Development and Mr Lucky Charles Mohalaba as DDG: Court Administration.

#### 19.10 ***Masters' services***

The Committee continues to be extremely concerned about the ongoing service delivery failures in Masters' offices. There appears to be no discernible progress to date, and stakeholders continue to speak of chaotic conditions. The Auditor-General's findings regarding the reported performance information also tends to support the Committee's views concerning the situation: The Auditor-General noted that the Master's Office had over-reported its achievements and its under-achievements were greater than reported.

The Committee notes that only one of four interventions that formed part of the Master's Turnaround Strategy for 2022/23 were achieved.

The Committee has already noted that the position of Chief Master is vacant and is informed that the Department now intends to headhunt for the position.

The Committee, therefore, asks for a report providing details of progress made regarding the strategy, in writing, before 31 January 2024.

Considering recent news reports that bring into question the adequacy of internal checks and balances relating to appointments in insolvency matters, the Committee requests the Department's views on the implementation of lifestyle audits for certain officials within the Master's environment by 31 January 2024.

#### 19.11 ***Guardians Fund***

The Guardian's Fund is managed by the Master of the High Courts of South Africa and administers monies for more than 800 000 beneficiaries who cannot manage their finances, such as minors, unborn heirs, and persons legally not capable of taking care of themselves. The Guardian's Fund has grown exponentially by approximately 35% over the past five years. This fund assists some of the most vulnerable members of society and has assets of R19.4 billion.

The Committee notes that the Auditor-General identified material irregularities in the form of duplicate payments amounting to R7.2 million made to beneficiaries and unauthorised transactions of R17 million processed at the Pietermaritzburg Master's Office. Despite the Department's actions to recover the money and to implement consequence management, the Auditor-General observes that the root causes of the irregularities have not been addressed appropriately and efficiently.

The Committee is very concerned by the view expressed by the Auditor-General, given that failures in the control environment seriously affect those dependent on monies from the Fund.

The Committee, therefore, requests the Department to provide it with a report on its understanding of the internal control deficiencies that exist in this environment, the reasons for this, and its plans to improve the situation before 31 January 2024.

#### **19.12 State Legal Services**

The transformation of state legal services remains a key outcome of the Department. The state attorneys' environment is beset by serious deficiencies. These include a lack of support from both state organs and private legal practitioners and resistance to change relating to the implementation of state policies; inadequate resources (tools of trade); infrastructure; technology; and funding.

The 2019/20 Annual Report reported that several policies to address issues of effectiveness and efficiency within State Attorneys had been approved for submission to Parliament, but the policies were never submitted to Parliament. However, with the appointment of the Solicitor General in 2020, there has been progress. Policies on the Management of State Litigation; State Mediation; Briefing and Outsourcing of State legal work; Initiating, Defending and Opposing of matters; State Legal Representation; and State Litigation Contingent Liability were approved by Cabinet in 2022/23 and tabled in Parliament for noting. These policies are targeted for implementation in 2023/24.

In addition, the Office of the Solicitor-General established a National Briefing Committee to monitor and assess the briefing patterns issued by State Attorney Offices across the country. This Committee will also provide guidelines on the criteria and processes to be followed on briefing patterns and protocols. The Committee notes that the Department has also committed to filling vacancies at the State Attorney in 2023/24.

Concerning the fraudulent and over-inflated claims against the State, the Committee notes that the Solicitor-General reports that he believes as much as half of the R189 billion claimed from the State are either fraudulent or massively over-inflated. These claims have had the effect of 'swallowing' legitimate legal action being pursued by those who have genuinely suffered damages because of state abuses or negligence. The Solicitor General said there is also growing evidence that fake claims were being paid because of collusion between certain officials, including functionaries at the State Attorney's Office. For this reason, he advocated the need for lifestyle audits for officials involved in responding to litigation against the state. The SIU's investigation of the Office of the State Attorney has identified 47 state attorneys whose repeated responses to civil litigation launched against the state were 'of interest' but only five had been fired. In addition, the Solicitor-General believed that the Legal Practice Council should urgently investigate attorneys implicated in state litigation abuses.

The Committee, therefore, requests the Department's views on the need lifestyle audits for certain officials in State Legal Services, and an update on the progress disciplinary proceeding and other actions against officials identified in the SIU investigation before 31 January 2024.

#### **National Prosecuting Authority**

#### **19.13 Improved performance**

The Committee welcomes the considerable progress that the NPA has made in the period under review, even if it is not yet where it should be. The Committee is largely pleased by the upward trajectory of the NPA's performance for the past three years, which has improved from 50% achieved in 2020/21 to 75% achieved in 2022/23.

In welcoming the NPA's improved performance, the Committee takes notes of the Auditor-General's findings regarding the reliability of the reported performance information. The Auditor-General could not

determine the actual achievements for four targets but estimated that they were materially less than reported, while the achievements in respect of two indicators were under-reported.

In addition, the Auditor-General's observed that the NPA's failure to prioritise backlog cases may contribute to delays in the effective and efficient administration of justice. The Committee agrees that with the observation and will ensure that the problem of the backlogs is captured in its Legacy Report for Seventh Parliament to take forward.

From a strategic perspective, the Committee notes that the NPA has made significant strides in implementing several innovative initiatives aimed at rebuilding and strengthening the NPA. The Committee continues to appreciate the NPA's frankness regarding its challenges, which it is clearly working hard to address, as well as its responsiveness to our comments and suggestions.

#### **19.14    *Enrolment of state capture cases***

The Committee is aware of the criticism that the NPA is not doing enough when it comes to state capture and corruption matters. The NPA continues to sharply refute the narrative. The Committee concedes that the Zondo Commission's findings do not necessarily provide a blueprint for a successful prosecution of cases, as the latter is more complex with a more onerous standard of proof.

On the issue of progress made, the Committee notes that the Investigating Directorate has declared 99 investigations, and enrolled 34 cases, involving 205 accused persons and 65 entities. These include cases against multinational firms. McKinsey & Company SA has recently been charged by the NPA in connection with the R398.4 million Transnet fraud case linked to state capture. Furthermore, the Specialised Commercial Crime Unit and DPPs in the regions have enrolled 78 cases (involving 363 accused) from Priority Case List. The AFU and partners have secured freezing/preservation orders to the value of R2.83 billion.

The Committee notes that the NPA has identified a lack of facilities and legal powers as hindering the Investigating Directorate's ability to conduct complex investigations into financial crimes outlined by the State Capture Commission. As a stopgap measure, legislation that proposes to amend the National Prosecuting Authority Act, 1998, to establish an Investigating Directorate Against Corruption as a permanent entity within the NPA and to provide for the appointment of investigators has been tabled in Parliament and is presently before the Committee for consideration and report.

#### **19.15    *Suspension of the Aspirant Prosecutors Programme***

The Committee is alarmed to learn that due to ongoing and government-wide budget constraints, the NPA has been forced to suspend the 2024 intake of Aspirant Prosecutors. The Aspirant Prosecutors Programme is an in-service training programme for law graduates interested in becoming prosecutors. The programme is key to ensuring the long-term sustainability of the NPA by providing a steady stream of competent candidates who can be appointed at entry-level prosecutorial positions within the NPA. The programme was suspended in 2015, also due to budget constraints. With the loss of experienced prosecutors in the years that followed and with no new prosecutors entering the criminal justice system, the NPA soon experienced significant challenges that it only now able to address. Although the Committee understands the reality of budget constraints, it does not support the suspension of the programme, regarding this action as a red flag.

#### **19.16    *Establishment of the Office for Ethics and Accountability***

The Committee has previously given its support for 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. The Committee notes that the draft Regulations were tabled in Parliament and the NPA seems confident that measures have been put in place to move ahead speedily on the establishment of the Office once the Regulations are gazetted.

#### **19.17    *Sexual offences***

The Committee notes that the NPA reports that it exceeded its target for the conviction of sexual offences and, in another positive development, the number of TCCs has increased to 62. The NPA has also previously reported that it is working with the private sector to set up new TCCs. Further, much work is being done on the DNA Backlog project, which despite the many challenges, appears to be paying dividends – since October 2020, a total of 28 110 DNA reports have been processed.

## **Legal Aid SA**

### **19.18    *Audit outcome***

The Committee congratulates Legal Aid SA on its achievement in maintaining a clean audit opinion. This is the fifteenth consecutive year in which Legal Aid SA has achieved a clean audit opinion and the 22nd consecutive year in which it is unqualified. This is a remarkable achievement of which Legal Aid SA should be most proud.

### **19.19    *Funding***

The Committee has repeatedly expressed concern about the impact of 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 that, as funds are prioritised towards services, the pressure on its operational budget means that projects must be postponed. There is also less money for Judicare and training.

The Committee continues to believe that the importance of Legal Aid SA as a strategic partner in our criminal justice system is not fully acknowledged when decisions about the allocation of resources are made. Simply put, criminal trials cannot run if an accused is not represented, and this contributes to delays within the criminal justice system, results in increased backlogs, and undermines access to justice.

The Committee continues to appreciate the effort 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 funding becomes more constrained. The Committee feels very strongly that funding should at least maintain the current level of legal assistance provided in civil matters.

The Committee notes that Legal Aid SA reports that the financial impact of business disruptions because of loadshedding on its finances during 2022/23 amounted to R44.3 million, which includes spending on cell phone allowances (R8 million), cloud hosting (R34 million over a 5-year period), and a diesel contract (R470 000).

### **19.20    *Land Rights Management Unit (LRMU)***

The Committee notes that 2022/23 was the first full financial year of operations for the new Land Rights Management Unit (LRMU), which provides legal representation in land rights matters. The Department of Agriculture Land Reform and Rural Development transferred R33 million to Legal Aid SA in April 2022 and the baseline allocation for 2022/2023 to 2025/2026 was confirmed in November 2022. However, the contingent liability recognised on 31 March 2022 relating to fees due to legal practitioners for pending instructions held at 1 January 2022 remains unfunded. The Committee is of the view that additional funding should be made available to Legal Aid SA for this purpose. The Committee finds it unacceptable that Legal Aid SA be expected to fund the contingent liability from its constrained finances, as this may negatively impact on other important areas of service delivery.

### **19.21    *Employment equity targets***

The Committee notes that Legal Aid SA has met its employment equity target for African females at Top and Senior Management levels but that employees with disabilities remain under-represented.

## **Special Investigating Unit**

### **19.22 Performance**

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

### **19.23 Audit outcome**

The Committee regrets the regression of the SIU's audit outcome, but notes the disagreement between the SIU and the Auditor-General, which was escalated to National Treasury. Unfortunately, National Treasury was unable to respond before the Annual Report was due to be tabled and, in the interests of good governance, the SIU tabled its Report. The Committee notes that the SIU reports that it will carefully consider the accounting treatment for the recovery of legal costs in future to ensure accurate and sensible financial integrated reporting and will involve all stakeholders, including the offices of the Accountant General and the Auditor-General. The SIU will also devise and implement internal controls to address new gaps that may exist and to prevent a recurrence of the issue.

### **19.24 Legislative amendments**

The Committee notes that based on the jurisprudence emanating from various judgments dispensed by the Special Tribunal, the SIU initiated a review of the provisions of its founding legislation. The exercise revealed that legislative amendments to the SIU's enabling legislation could enhance the SIU and Special Tribunal's impact. The SIU reports that it has finalised a draft Bill in consultation with the Department. The Committee will include this in its Legacy Report, as an item for the Seventh Parliament to consider.

### **19.25 Debt impairment**

The SIU's enabling legislation provides that the SIU may recover fees from State institutions for the investigation services rendered. Unfortunately, the SIU has struggled to recover fees owed to it. The SIU has engaged National Treasury to explore alternative funding models but with little success. To recover outstanding funds, the SIU initiated Operation Khokhela in September 2022 but should this initiative to recover outstanding funds fail, more drastic measures will be considered, including taking appropriate legal action and invoking of Intergovernmental Framework Relations Act, 2005. The Committee notes that, in 2022/23, the outstanding debt account has continued to increase but despite the high debtors account, the SIU reports that its finances are healthy. However, considering the seriousness of the present budgetary constraints, the Committee believes that the outstanding debt is a risk to the SIU's continued operations, and it is imperative that a solution be found.

### **19.26 Special Tribunal**

The Committee welcomes the clarity provided by the Constitutional Court regarding the Special Tribunal's powers in the matter of *Ledla Structural Development (Pty) Limited and Others v Special Investigating Unit*. The Constitutional Court ruled that although the Special Tribunal is not a court, it has jurisdiction to adjudicate legality reviews in terms of the Special Investigating Units and Special Tribunals Act, 1996. The judgment has brought finality to the jurisdictional factors, which have been the subject of a number of interlocutory applications, that have frustrated the final adjudication of justiciable matters.

## **Information Regulator**

### **19.27 Performance**

The Committee notes the upward trajectory of the Regulator's performance in past years and is particularly pleased with the significant improvement in performance of the POPI division. The poor

performance in that Division in 2021/22 was attributed to a lack of leadership and expertise. However, it appears that the appointment of a Legal Executive for the Division has made an enormous difference.

Although the Regulator met all its targets with regard to its PAIA mandate, the Committee notes that only 7 PAIA requests were made to the Regulator. This suggests that the Regulator's powers in relation to access to information are not well known.

The Committee notes, however, that to promote compliance with, and understanding of, PAIA and POPIA, the Regulator initiated its flagship programme - the "Dikopano" – which is about taking the Regulator to the people. The programme is in the form of provincial roadshows and comprises public activations, stakeholder engagement sessions and community engagements.

#### **19.28 *Capacitation***

The Committee believes it critical to ensure that the Regulator's structure is adequately funded, considering the increased prevalence and potential seriousness of data breaches. The Regulator has an approved structure of 413 posts but only 93 are funded.

The Committee notes the sharp increase in the demand for the Regulator's services: The Regulator received 589 data breach/security compromise notifications in 2022/2023, compared with 200 in the 2021/22 period, and by June 2023, had already received 1 021 data breach notifications.

Furthermore, the potential financial cost of data breaches for responsible parties (and the economy) is significant and is calculated to have reached approximately R45.5 million in 2023. In addition, there has been a marked increase recently in the number of impersonation crimes because of data breaches.

The Committee intends to address the funding of the Regulator's structure in its Legacy Report for the attention of the Seventh Parliament.

#### **19.29 *Legal status***

The Committee is frustrated by the lack of resolution concerning the Information Regulator's status in terms of the PFMA. The Committee met the Deputy Minister of Finance to discuss the issue and is hopeful that a solution will be found. Resolving this issue is key to the Regulator being able to function independently from the Department, as its dependence on the Department 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 also address this issue as part of its Legacy Report for attention of the Seventh Parliament.

#### **19.30 *Data breaches***

The Committee is concerned that levels of compliance by public and private bodies with POPIA remains low. The consequence is that the personal information of data subjects is not protected adequately with potentially serious consequences. The Committee has already noted the sharp escalation of notifications of data breaches since 2021/22. The Committee notes that the Security Compromises Unit has been established within the Regulator, as a sub-division of the POPI Division. This highly specialised unit will conduct detailed forensic investigations into security compromises.

#### **19.31 *Enforcement Committee***

The Committee notes that the establishment of the Enforcement Committee was finalised in 2022/23. The Enforcement Committee is responsible for considering all matters referred to it by the Regulator and making findings. In 2022/23, 6 matters were referred to the Enforcement Committee; 4 matters were considered, 1 matter was deferred to 2023/24 and 1 matter was withdrawn.

#### **19.32 *Codes of conduct***

The Committee notes that in 2022/23, for the first time, the Regulator issued codes of conduct, namely for the Banking Association of South Africa and Credit Bureau Association.

### **South African Human Rights Commission**

#### **19.33     *Audit outcome.***

The Committee is concerned by the Commission's audit outcome, which has not improved from 2021/22. The number of repeat findings remain a concern and there appears to be an ongoing challenge with accurate performance reporting. In 2021/22, the Auditor-General identified the high vacancy rate, especially in critical positions, as contributing to the poor audit outcome.

The Committee believes that the failure to address vacancies, coupled with several key resignations in 2022/23, has had a significant impact on the Commission's performance, including its ability to address audit findings.

The Committee notes that eleven of the Commission's senior staff resigned in 2022/23, including the CEO, CFO, Head of Supply Chain Management, and Head of Strategic Support and Governance.

The Committee hopes the appointment of the new CEO, Mr Vusumuzi Mkhize will see a rapid improvement in the situation and the Commission will find itself in a much better position to prioritise the Auditor-General's findings and, also, to address its staffing issues. However, it is concerning that the position of CFO remains filled in an acting capacity, and it is unclear whether other key senior positions have been filled.

The Committee requests that the Commission provide it with details of its commitments and audit action plan, as well as progress made to date, before 31 January 2024.

The Committee intends to include the matter of the audit outcome in its Legacy Report for the attention of the Seventh Parliament.

#### **19.34     *Vacancies***

As already mentioned, the Committee notes the high turnover of senior staff during 2022/23 and believes that this had a significant impact on the Commission's overall performance, which decreased to 50%. (It is likely that performance was even lower than this, as the Auditor-General queried the usefulness and reliability of the reported performance information).

For several years, the Committee has identified the need for the Commission to fill critical vacancies as a priority but, despite assurances that these matters would be addressed, this has not been the case.

The Committee believes that the vacancies continue to present a considerable risk to the SAHRC's future operations and request a comprehensive report on the positions that remain unfilled, as well as the accompanying recruitment plan, before 31 January 2024.

#### **19.35     *Funding***

The Committee believes that the Commission's presence is more important than ever before, given the degree of inequality and potential for social conflict within our society. The Committee notes that the Commission's investigations and hearings provide an opportunity for a deeper, more nuanced, understanding of emerging challenges within our society and have 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.

The Committee has repeatedly remarked on the extent of the Commission's mandate and the inadequacy of its budget. The Committee continues to hold the view that the budgets for the Chapter 9 institutions

have a historically low base and require revision in line with their mandates. In the case of the Commission, the Commission has consistently opposed any budget cuts and our position on this issue has not changed.

## **Public Protector SA**

### **19.36 Submission of revised annual report 2022/23**

The Committee notes the explanation for the need to table a revised annual report for 2022/23. It appears that subsequent to the submission of the Report, the PPSA identified a number of errors and it appears that the Report may have been tampered with at a very late stage.

### **19.37 Audit outcome**

The Committee is disappointed that the PPSA did not maintain a clean audit opinion, achieving an unqualified audit outcome with findings. The Committee notes that the regression largely relates to legal fees incurred in the previous financial year (2021/22). It appears that the PPSA had appointed a legal service provider from the panel of attorneys in respect of approximately 25 cases over the past 4 years, where an excess of R60 million has been paid. In July 2022, during the Section 194 Enquiry proceedings, it became publicly known that the allocation of work to legal firms had not been processed on a rotational basis. Subsequently, during the audit process the Auditor-General detected irregular expenditure as a result of unfair work allocation related to legal fees to the amount of R18.6 million.

The PPSA reports that the rotation of legal service providers has been identified as a risk area that requires improvement and the Legal Services Branch has, with effect from 1 April 2023, developed a strategy to mitigate and address this risk, including the introduction of a litigation register to improve the monitoring and management of this process.

### **19.38 Budget reductions.**

The Committee notes the PPSA's concern that its appropriated funds may be reduced by up to 10% in the 2024/2025 allocation. This has the potential to adversely affect the PPSA's future plans, operations and even its economic viability. The Committee notes the PPSA's intention to approach the Department to access funding from the Criminal Asset Recovery Account (CARA) in terms of the Prevention of Organised Crimes Act, 1998. This will enable the PPSA to contribute to the combatting and prevention of corruption in the public sector and the rendering of assistance to whistle-blowers.

The Committee has consistently opposed any budget cuts in the case of the Chapter 9 institutions that report to it. The PPSA and SAHRC's budgets are relatively small and any reductions have an disproportionate affect on their ability to deliver their mandates. In addition, the Chapter 9 institutions have a historically low base and their finding requires comprehensive revision in line with their mandates. The PPSA has included a request for additional funding, which is captured elsewhere in the report.

### **19.39 Amendments to the Public Protector Act, 1994**

The Committee has highlighted the need for amendments to the Public Protector Act, 1994, on several occasions. The Committee intends to note this as an issue for the Seventh Parliament to follow up on.

### **19.40 Case Management System (CMS)**

The Committee notes that the Case Management System was finalised during 2022/23. The PPSA reports that the CMS has made it easier to track the progress of complaints and give feedback to complainants and respondents more timeously and accurately.

## **20 Recommendations**

The Committee makes the following recommendations concerning future funding, namely that:

- 20.1 The importance of Legal Aid SA's contribution to the smooth functioning of the criminal justice system be taken into account when t allocations are made. Legal Aid SA has had to reduce court coverage in past years and there is no relief capacity. Without legal representation, cases cannot run, causing delays and contributing to backlogs. In addition, its civil work assists many poor and vulnerable persons, who would not otherwise have access to legal representation or advice.
- 20.2 Legal Aid SA be allocated funds for fees due to legal practitioners in land matters for pending instructions held at 1 January 2022, which remain unfunded.
- 20.3 Concerning the SAHRC and PPSA, the Committee does not support any budget cuts to their allocations.
- 20.4 The PPSA has made specific funding requests, which are captured in the Report.

## 21 ***Appreciation***

- 21.1 The Committee thanks the Minister and Deputy Minister, the Director-General and all officials of the Ministry and Department of Justice and Consitutional Development for their co-operation.
- 21.2 The Committee thanks the National Director of Public Prosecutions and all NPA officials for their co-operation in this process.
- 21.3 The Committee also wishes to thank the 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.
- 21.4 The Committee wishes to thank the Auditor-General South Africa for the support it provided to the Committee.

**Report to be considered.**