**The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development, dated 5 November 2013**

The Portfolio Committee on Justice and Constitutional Development, having considered the performance and requests for additional allocations for the medium term period of the Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, Special Investigating Unit, Office of the Chief Justice; South African Human Rights Commission and Public Protector, reports as follows:

1. **Introduction**

1.1      The Committee oversees the Department of Justice and Constitutional Development and several other institutions that receive their allocation under the Justice and Constitutional Development Vote. These other institutions, which are either statutorily or constitutionally independent, include the National Prosecuting Authority (NPA); Legal Aid South Africa; Special Investigating Unit (SIU); South African Human Rights Commission (SAHRC) and Public Protector (PP).

1.2      The Vote has five programmes:

·            The Department of Justice and Constitutional Development is directly responsible for the Administration, Court Services and State Legal Services programmes. The Office of the Chief Justice (OCJ) was proclaimed a department in August 2011 but until it is fully capacitated with its own Vote the OCJ is funded under Court Services.

·            The National Prosecuting Authority (NPA) receives its allocation under Programme 4. (Although the Director-General: Justice and Constitutional Development remains its accounting officer, the NPA accounts separately for its performance and spending.

·            Programme 5 contains allocations to various auxiliary and associated services, including transfer payments to: Legal Aid South Africa and the Special Investigating Unit (SIU), as well as to two of the State Institutions Supporting Democracy – the South African Human Rights Commission (SAHRC) and the Public Protector (PP).

1.3      Briefly, the core functions of the Department, NPA, Legal Aid SA, SIU, SAHRC and PP are as follows:

·            The *Department of Justice and Constitutional Development*supports the management of the criminal and civil justice systems. It is also responsible for several other activities, for example, the provision of legal services to government and the reparations policy flowing from the Truth and Reconciliation Commission (TRC) process. The Department plays a leading role in the JCPS Cluster towards delivery of Outcome 3. Notably, since 2013/14, the management of funding for political parties no longer falls under the Justice Vote.

· *National Prosecuting Authority (NPA)*institutes criminal proceedings on behalf of the State.

· *Legal Aid South Africa*(Legal Aid SA) provides independent legal representation to the poor and vulnerable at State expense. Although the main thrust of its work is to provide legal representation to criminal accused, more recently Legal Aid SA has expanded its services to provide advice and representation in civil matters.

·            The *Special Investigating Unit (SIU)*recovers and prevents financial losses to the State due to acts of corruption, fraud and maladministration; and can assist departments with systemic improvements that will improve service delivery. The SIU has civil litigation powers to correct any wrongdoing it uncovers in its investigations. Investigations are authorised by Presidential proclamation.

·            The *Office of the Chief Justice*(OCJ) provides support to the Chief Justice in his or her role as Head of the Judiciary and the Constitutional Court and provides administrative support to the South African Judicial Education Institute.

·            The South African Human Rights Commission’s (SAHRC) mandate is extremely broad, encompassing almost every aspect of civil, political, social 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. The Commission has specific obligations in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 and the Promotion of Access to Information Act 2 of 2000.

·            The Public Protector (PP) is mandated to ensure government’s accountability and to provide remedies for maladministration and abuse of authority. The Public Protector is empowered to investigate, report on and suggest remedial action for a wide range of wrongdoings in the public administration.

1.4      The Money Bills Procedures and Related Matters Amendment Act 9 of 2009 sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department. In October of each year, portfolio committees must compile Budgetary Review and Recommendation Reports (BRRR) that assess service delivery performance given available resources; evaluate the effective and efficient use and forward allocation of resources; and may make recommendations on the future allocation of resources. These BRR reports are also source documents for the Standing Committee on Appropriations when it makes recommendations to the House on the Medium-Term Budget Policy Statement (MTBPS). The annual review and analysis of performance forms part of this process. This is the fourth year that the Committee is undertaking the BRRR process.

1.5      The Committee engaged with the Justice Department, NPA, Legal Aid SA, SIU, SAHRC and PP on their respective annual performance and spending for 2012/13. The meetings also addressed service delivery performance and spending to date, as well as any additional funding needs for the 2014 MTEF. In addition, the Committee met with the OCJ on the process of capacitation, the performance of selected projects and funding requirements.

1.6      These briefings took place over a two-week period, from 8–18 October 2013, as follows:

·            National Prosecuting Authority, 8 October 2013.

·            Department of Justice and Constitutional Development, 9-10 October 2013.

·            South African Human Rights Commission, 11 October 2013.

·            Public Protector, 15 October 2013.

·            Legal Aid South Africa, 16 October 2013.

·            Special Investigating Unit, 17 October 2013.

·            Office of the Chief Justice, 18 October 2013.

1.7      The Committee also met with the Auditor-General on the audit outcomes for the Vote on 8 October 2012.

1.8      On 18 October 2013, the Secretary-General of the Office of the Chief Justice (OCJ) presented an overview of the process of capacitating and its performance to date, as well the OCJ’s resource needs going forward.

1.9      Copies of the presentations are available from the committee secretary.

1.10    The Committee has expressed its view in previous reports that it is not enough to engage on performance annually, as monitoring is an ongoing process. Unfortunately, once again, the Committee’s workload precluded it from meeting as regularly as it had intended with the Department and other institutions on their performance against predetermined objectives, as well as related expenditure. However, the Committee has considered and reported on the respective strategic plans and budget proposals of the Justice Department, NPA, Legal Aid South Africa, OCJ, SIU, SAHRC and PP for the period under review (2012/13 and 2013/14). As part of these processes, the Committee made extensive reporting requests on specific issues that it had identified as requiring further monitoring. The Department and other institutions have provided substantive responses, which form part of this report. In addition, expenditure for the Vote is monitored quarterly.

1.11    This Report comprises five parts:

·         Part 1 provides:

Ø  An overview of the key policy focuses for 2012/13 and 2013/14.

Ø  An overview of the allocation to the Justice and Constitutional Development Vote: 2011/12 – 2015/16.

Ø  A discussion of expenditure patterns for 2012/13 and the First Quarter 2013/14.

Ø  Responses to the Budgetary Review and Recommendation Reports’ Recommendations for 2011 and 2012.

Ø  A summary of key issues raised by the Auditor-General relating to the audit outcome for the Department’s financial statements, as well as those of the relevant institutions, for 2012/13.

Ø  An overview of the reported additional financial needs for the 2014 MTEF.

·         Part 2 gives:

Ø  An overview of the strategic and operational environment that informs the delivery of justice services;

Ø  Selected performance information, as reported to the Committee, for the programmes for which the Department is directly responsible - Programme 1: Administration; Programme 2: Court Services and Programme 3: State Legal Services.

·         Part 3 has selected performance information, as reported to the Committee, for the NPA.

·         Part 4 contains selected performance information for Programme 5: Legal Aid SA; SIU; SAHRC and PP.

·         Part 5 sets out the Committee’s observations.

·         Part 6 contains a summary of the Committee’s requests for additional information and its recommendations relating to the requests for additional funding for the medium term expenditure period.

**Part 1**

2. **Overview of key policy focus areas**

Crime and corruption are regarded as a threat to the realisation of all the five priorities of Government. The Justice Department leads the Justice Crime Prevention and Security (JCPS) Cluster, which is responsible for the facilitating achievement of the outcome to ensure that ‘All People in South Africa are and feel safe’ (Outcome 3). The related JCPS delivery agreement with accompanying targets has been incorporated within the strategic and annual performance plans of the Department and the entities that fall within the Vote in so far as they are applicable.

The JCPS Cluster is implementing the seven-point plan of action approved by Cabinet in 2007 to provide for a well-functioning criminal justice system. Most of these elements have been incorporated in the Cluster’s service delivery agreements. The Minister announced that in 2013/14, a review of the work of the JCPS Cluster would be undertaken, as this is the last year of the fourth administration.

Notably, the National Development Plan 2030 identifies the need to build safer communities. Strengthening the criminal justice system remains a focus area for further action. A resilient, credible and powerful anti-corruption system is also required for a state that has zero-tolerance for corruption. Strengthening governance and the rule of law supports this goal. During the 2013/14 financial year, the Department focused on aligning strategy with the National Development Plan (NDP) 2030 and putting plans in place to implement initiatives mentioned in the 2013 State of Nation Address (SONA).

The Department’s priorities have remained increased access to justice, addressing the needs of vulnerable groups and transformation of judicial services:

*Transformation of judicial services -*

In 2012/13, the Department published two significant policy frameworks which detail proposals for the transformation of the judiciary and state legal services:

·         The *Discussion Paper on the Transformation of the Judicial System and the Role of the Judiciary in the Developmental South African State*recommends, among others, that:

Ø  The role of the South African Judicial Education Institute to facilitate the development of an appropriate judicial education curriculum is optimised.

Ø  The efficiency and the integrity of the Judicial Service Commission and the Magistrates Commission are enhanced.

Ø  An assessment of the judgments of the Constitutional Court and the Supreme Court of Appeal is undertaken.

·         The *Policy Framework on the Transformation of the State Legal Services Sector*proposes various reforms including:

Ø  Overhauling the management of State Legal Services. It is intended that a Solicitor General be appointed in 2013/14 but this will require an amendment to the State Attorney’s Act. The Secretary-General will be responsible for transforming state legal services in line with the recommendations contained in the framework.

Ø  Broadening the pool of legal practitioners briefed by the state to ensure a fair representation of black and female practitioners.

The establishment of the Office of the Chief Justice (OCJ) is regarded as being crucial for strengthening judicial governance and the rule of law. The intention is that the OCJ will have its own Vote. In the meantime, the focus is on enhancing capacity to support the Chief Justice in his or her role as head of the Judiciary. The promulgation of the Superior Courts Act and Constitution Seventeenth Amendment Act has laid the foundation for a judiciary-led court administration: The Chief Justice is affirmed as head of the Judiciary and is responsible for overseeing the development and monitoring of norms and standards for performance in all courts. A Secretary-General was appointed at the beginning of the 2013/14 financial year as the OCJ’s administrative head and accounting officer. Staggered migration of the administration of the courts from the Department to the OCJ is underway. This migration of functions to the OCJ will impact on the Department’s operations although it is unclear what the extent of this will be.

Various institutional reforms are intended to further strengthen both judicial accountability and independence. These take the form of legislation, strengthened judicial governance and regulatory arrangements and measures to improve judicial training, etc. Other aspects of transformation address the realignment of magisterial boundaries, which are based on ‘old-order’ racial and geopolitical boundaries of the self-governing and independent states, with municipal boundaries. This includes transforming branch courts to full-service courts.

*Access to justice –*

The review of the civil justice system is another important initiative to increase access to justice. In addition, establishing small claims courts in each of the 384 magisterial districts by 2014, reviewing the Rules of Court for simplified processes and the institutionalisation of alternative dispute resolution mechanisms are all important projects to increase access to justice.

The Department has several major infrastructure projects in progress. Notably, the completion date for the Limpopo High Court at Polokwane was revised from January to July 2012 and requires further revision due to added scope and other delays. The plan to build a new court in Mpumalanga at Nelspruit is to be implemented in 2013/14.

*Vulnerable groups -*

The re-establishment of dedicated sexual offence courts throughout the country was announced as a priority at the beginning of 2013/14.

In addition, recent violence committed against Lesbian, Gay, Bisexual and Transgender (LGBT) individuals prompted the establishment of a national task team comprising of civil society organisations and key government departments in the JCPS Cluster to develop a national intervention strategy. During 2013/14, the Department intended to focus on formulating a policy framework in response to the violence.

3. **Overview of Justice and Constitutional Development Vote: Budget allocation and expenditure**

**Table 1: Justice and Constitutional Development Vote: Budget allocation and expenditure 2011/12 – 2015/16**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Justice and Constitutional Development Vote:**  **Budget allocation and expenditure 2011/12 – 2015/16** | | | | | | |
| **Programme** |  | **Budget 2011/12– 2015/16** | | | | |
| **(R thousand)** |  | **Main** | **Adjusted** | **Medium-term estimates** | | |
| **2011/12** | **2012/13** | | **2013/14** | **2014/15** | **2015/16** |
| Administration | 1 686.3 | 1 762.6 | 1 463.9 | 1 534.8 | 1 622.2 | 1 703.4 |
| Court Services | 4 331.8 | 5 284.6 | 5 377.4 | 5 862.4 | 6 223.8 | 6 500.7 |
| State Legal Services | 721.4 | 768.2 | 784.9 | 852 | 898.5 | 976.1 |
| NPA | 2 651.7 | 2 815.8 | 2 839.8 | 3 050.4 | 3 236.2 | 3 357.4 |
| Auxiliary & Associated Services | 2 190.1 | 2 448.5 | 2 555.5 | 2 834.7 | 3 079.6 | 3 274.4 |
| **Total** | **11 581.2** | **13 079.6** | **13 021.4** | **1 434.2** | **15 060.3** | **15 812.1** |
| Direct charge  (Judges and Magistrates’ salaries) | 2 104.2 | 2 401.9 | 2 401.9 | 2 575.7 | 2 730.3 | 2 855.9 |
| **Total** | **13 685.4** | **15 481.5** | **15 423.3** | **16 709.9** | **17 790.6** | **18 667.9** |

3.1. **Overview of 2012 MTEF Budget Allocation: Vote 24 – Justice and Constitutional Development**

·         The main appropriation increased from R11.6 billion in 2011/12 to R13.08 billion in 2012/13. In addition, a direct charge against the National Revenue Fund of R2.4 billion for judges and magistrates’ salaries brought the overall appropriation for 2012/13 to R15.5 billion.

·         An amount of R253 million was added to the Department’s and NPA’s baseline for 2012/13. Additional amounts were for court infrastructure (R100 million) and improved conditions of service (R167.6 million). The Department, however made R14.4 million available to Legal Aid SA from its baseline for carry through costs of the Children’s Act and Child Justice Act.

·         A cumulative amount of R152.1 million was allocated to the independent bodies in addition to their baselines. The bulk went to the SIU and the Public Protector for increased investigative capacity (R100 million and R15 million respectively) and, as mentioned above, to Legal Aid SA for the carry through costs of the Children’s Act and Child Justice Act (R14.4 million). The remainder was for improved conditions of service.

·         A total amount of R41 million was set aside for priority projects in 2012/13. Specifically, R16 million was for the Commission of Enquiry: Strategic Defence Procurement Package; R2.5 million for the assessment of the impact of the decisions of the Constitutional Court and the Supreme Court of Appeal on South African law and jurisprudence; and R22.4 million was for the transformation of State Legal Services.

3.2.     Notably, the following amounts were added to the baseline from 2012/13 in response to the Committee’s BRRR recommendations in 2010:

·         Accommodation, specifically to build a high court in Mpumalanga at Nelspruit and to address related infrastructure issues, such as maintenance of buildings. The additional amounts allocated are R240 million and R250 million in 2012/13 and 2013/14 respectively.

·         Information Communication Technology, specifically to replace obsolete equipment and to expand its network. Additional amounts of R100 million in 2012/13 and R110 million in 2013/14 were allocated for this.

3.3. **Adjusted Appropriation 2012/13**

· *Adjustments*resulted in the appropriation decreasing by R58 million from R13.08 to R13.02 million.

· *Rollovers.*In Auxiliary and Associated Services, R30.3 million was rolled over to the Justice Department from unspent funds of the Department of Public Works (DPW) for costs owed to the SIU as a result of its investigation of the DPW.

· *Declared savings*. The Department declared ‘savings’ of R200 million due to delays in the implementation of infrastructure projects. The Department received permission to reprioritise this amount elsewhere. (Note. Police declared savings of R300 million on infrastructure projects, while DPW declared R212 million as savings on infrastructure projects).

· *Unforeseen and unavoidable expenditure in 2012/13.*An amount of R8 million in ‘unforeseeable and unavoidable expenditure’ was allocated to the Public Protector for its investigations that target the systematic causes of problems and complaints against organs of state.

· *Virements and shifts within the Vote.*Virements were within acceptable limits (well below the 8% permitted in terms of Treasury regulations). Notably, the largest virements were from Court Services to Legal Aid South Africa at R10.7 million and to Auxiliary and Associated Services - Justice Modernisation at R46 million. Funds were shifted from Administration (R305.9 million) and Auxiliary and Associated Services (R5.03 million) to Court Services flowing from a function shift relating to court security projects.

·         A further adjustment of R103.4 million was made to all programmes as a result of higher personnel remuneration increases than provided for in the main budget.

3.4. **Overview of 2013 MTEF Budget Allocation: Vote 24 – Justice and Constitutional Development**

·         The main appropriation to the Vote increased from R15.3 billion in 2012/13 to R16.7 billion in 2013/14. This includes a direct charge against the National Revenue Fund of R2.6 billion for judges and magistrates’ salaries. If the direct charge is excluded, the appropriation in 2013/14 for the Vote’s five programmes is R14.1 billion.

·         Overall, in 2013/14, the allocation grows in real terms by 3.3%. The Administration, Court Services and State Legal Services programmes, which the Department administers directly, show little real growth from 2012/13 (The programmes grow in real terms by -0.72%, 3.24% and 2.8% respectively). Similarly, the allocation to the National Prosecuting Authority grows in real terms by only 1.72%. The Auxiliary and Associated Services programme shows the largest growth: this programme grows in real terms by 9.73% driven by additional allocations for the criminal justice system revamp and further capacity in the public entities and constitutional institutions.

·         Additional allocations to the Vote for 2013/14 are for the following policy priorities:

Ø   R318 million in 2013/14, R419 million in 2014/15 and R558 million in 2015/16 for the criminal justice system revamp, Thuthuzela Care Centres (TCCs) and security at courts.

Ø   R22 million in 2013/14, R31 million in 2014/15 and R40 million in 2015/16 for additional capacity in public entities and constitutional institutions.

·         Notably, previous budgets provided additional allocations for infrastructure spending: R 340 million in 2012/13; R350 million in 2013/14 and R100 million in 2014/15. The Department, however, reported a ‘savings’ of R200 million in 2012/13 on its capital expenditure budget as a result of delays on the part of the Department of Public Works. With National Treasury approval, the amount was reprioritised.

·         The Department made R14.4 million (2012/13), R15.1 million (2013/14) and R15.9 million (2014/15) available to Legal Aid SA from its baseline for carry through costs of the Children’s Act and Child Justice Act.

·         Cabinet-approved reductions of R610 million over the medium term are to be effected over spending for goods and services and payments for capital assets flowing from delays in the implementation of capital works projects.

4. **Spending trends 2012/13 and First Quarter 2013/14**

**Table 2: Percentage (%) spending at programme level for each quarter 2012/13 and the first quarter 2013/14**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Programme** | **2012/13** | | | | **2013/14** |
| **1st Quarter** | **2nd Quarter** | **3rd Quarter** | **4th Quarter** | **1st Quarter** |
| Administration | 31.2% | 53.8% | 68.7% | 100.8% | 18.3% |
| Court Services | 24.3% | 44.4% | 72% | 100.3% | 20.3% |
| State Legal Services | 22.9% | 49.2% | 72.8% | 101.2% | 22.8% |
| NPA | 23.9% | 47.7% | 75.6% | 100% | 22.7% |
| Auxiliary and Associated Services | 23.6% | 45.4% | 65& | 97.3% | 18% |
| Direct Charge | 21.7% | 42.1% | 64.3% | 85.7% | 23.3% |

4.1. **Overview of spending 2012/13 and First Quarter 2013/14**

·         In 2012/13, although 99.8% of the programme Vote was spent with only R1 million surrendered, at programme level there are variations in spending.

·         Higher than expected spending occurred in Administration (100.8%), Court Services (100.3%) and State Legal Services (101.2%) -

Ø   In Administration, overspending arose as a result of payments for security services relating to 2011/12, as well as higher than budgeted increases in municipal rates and taxes and the cost of security services.

Ø   In Court Services, the overspending related to salary upgrades for clerks on levels 3 and 4 to level 5.

Ø   In State Legal Services, overspending was attributed to unanticipated payment for claims against the State.

·         In Auxiliary and Associated Services, under-spending was attributed to delays in receiving invoices from JCPS Cluster departments for justice modernisation programmes.

·         The NPA spent 100% of its budget (although it’s ‘compensation of employees’ budget was under pressure in the second half of 2012/13 as a result of implementing a court order relating to 2005 job evaluation results, OSD costs and notch increases).

·         Under the Direct Charge, there was less than expected spending on judges and magistrates salaries (85.7%), which was attributed to delays in filling vacant magistrate and judges positions.

·         In the first quarter 2013/14, there was under-spending for all programmes, mostly attributed to outstanding invoices. At economic classification level, significant under spending occurred once again under the item ‘Buildings and Fixed Structures’ because of capacity challenges at DPW (at 2%).

4.2. **Key spending trends 2012/13 and First Quarter 2013/14**

4.2.1.     Key trends that emerged in 2012/13 included:

·               The cost of providing security at courts and other justice service points is a funding challenge for the Department that remains unresolved.

·               Accruals, in particular those related to expenditure on security services, remain a challenge.

·               Although the vacancy rate within the Department itself has improved overall, vacancies in key occupations remain a challenge.

·               Only 85% of the direct transfer was spent because of unfilled magistrates’ posts.

·               Less than 75% of the Capital Payments - Buildings and other fixed structures’ budget was spent, despite a declared savings of R200 million.

·               Justice modernisation. There is consistent under-spending under this sub-programme despite its key role in the development of integrated systems within the JCPS Cluster for an improved criminal justice system.

4.2.2.     Key trends emerging in the first quarter of 2013/14 include:

·               There is under spending for all programmes, mostly attributed to outstanding invoices.

·               Notably, the NPA reports that it has delayed paying performance bonuses until the second quarter but the impact payment of the bonuses would have on spending in the second quarter is unclear.

·               Once again, there is under-spending in the Auxiliary and Associated Services: Justice Modernisation as a result of delays in implementing IJS projects.

·               At economic classification level, significant under spending on ‘Buildings and other fixed structures’ (at 2.8%) indicates continuing capacity challenges which impact on spending this budget.

5. **Responses to the Budgetary Review and Recommendation Report Recommendations 2011 and 2012**

5.1      In 2011, the Committee recommended that additional funds be allocated over the 2012 MTEF period for, among others, additional capacity in the Department and the NPA; the institutionalisation of donor-funded positions within the Thuthuzela Care Centres; start-up and operational costs of new courts; court security; and municipal rates, taxes and leased accommodation. Further, the Legal Aid SA should receive an additional R358.9 million and the South African Human Rights Commission R65.5 million, mainly for additional capacity.

5.2      When tabling the 2012/13 Budget, the Minister of Finance gave the following response to these recommendations:

· *Thuthuzela Care Centres (NPA)*. Going forward, additional funding could be considered for this project. However, there was a high vacancy rate within the NPA that could be used to employ those staff on a permanent basis. Notably, National Treasury did not receive a funding request from the NPA for this item.

· *Additional capacity at Legal Aid South Africa.*Additional funding has been allocated over the MTEF to expand capacity. The importance of expanding Legal Aid South Africa’s footprint was acknowledged but the National Treasury recommended that Legal Aid South Africa look at the possibility of sharing court space, as well. Cost saving measures in 2011/12 could be redirected to improve the information technology infrastructure.

· *Additional funding to the SAHRC for their advocacy and access to information mandates.*The Committee’s recommendation was noted but the National Treasury was of the view that the restructuring process underway at the SAHRC was likely to realise savings, which could be redirected towards funding these mandates.

5.3      In 2012, the Committee supported the following additional allocations for the 2013 MTEF:

**Table 3: Summary of recommendations relating to requests for additional funding for the MTEF**

**Department/Entity/Institution**

**R’000**

**2013/14**

**2014/15**

**2015/16**

**Total MTEF**

|  |
| --- |
|  |
| **Justice Department**  ·         Additional capacity related to the appointment of additional judges and magistrates  ·         Start-up and operational cost funding for new lower courts funded through investment in Capital Works programme  ·         Shortfall on municipal rates, taxes and leased accommodation  ·         Baseline adjustments for security services | 200  91.5  250  361.5 | 420  95  293.3  399.2 | 660  100  345  441.4 | 1 380  286.5  688.3  1202.1 |
| **National Prosecuting Authority** | 760.0 | 652.6 | 707.8 | 2 120.4 |
| **Legal Aid South Africa** | 119.2 | 113.4 | 120.2 | 352.9 |
| **Special Investigating Unit** | - | - | - | - |
| **South African Human Rights Commission** | 37.3 | 21.2 | 21.2 |  |
| **Public Protector** | - | - | - | - |

5.4      The Minister of Finance gave the following response at the time of tabling the 2013/14 Budget to the 2012 BRRR recommendations: *‘*Over the MTEF period, the Department of Justice and Constitutional Development has been allocated an additional R88 million for court security, R75 million for start-up and operational costs of new courts, and R90 million for Thuthuzela Care Centres. Additionally, R45 million has been allocated to Legal Aid South Africa and R24 million to the South African Human Rights Commission for additional capacity. The National Treasury concurs with the Committee’s other recommendations, which might be considered for funding in future should the fiscal framework permit’.

6. **Audit outcomes for 2012/13**

**Table 4: Summary of audit opinion 2008/09 – 2012/13**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Audit opinion** | | | | |
| **2008/09** | **2009/10** | **2010/11** | **2011/12** | **2012/13** |
| **Department of Justice** | Qualified | Qualified | Qualified | Qualified | Unqualified  with findings  (Compliance and PDOs) |
| **NPA** | Qualified | Qualified | Unqualified with findings | Unqualified with findings | Unqualified |
| **Legal Aid SA** | Unqualified | Unqualified | Unqualified | Unqualified with findings | Unqualified |
| **SIU** | Unqualified with findings | Unqualified | Unqualified with findings | Unqualified with findings | Unqualified with findings  (PDOs and compliance) |
| **Public Protector** | Qualified | Unqualified with findings | Unqualified with findings | Unqualified with findings | Unqualified with findings |
| **SAHRC** | Unqualified with findings | Unqualified with findings | Unqualified with findings | Unqualified with findings | Qualified with findings  (Payables; property, plant and equipment) |

6.1.     In 2012/13, for the very first time in seven years, the Department achieved an unqualified audit outcome (albeit with findings). The Department has steadily worked to clear the basis for audit qualifications relating to Human Resource Management, Assets and Irregular Expenditure: the remaining qualification related to Third Party Funds (TPF). The Auditor-General reported in 2011/12 that the qualification matter of the Third Party Funds was mainly due to inadequacy of the systems to ensure proper controls and financial reporting. The JDAS system that is in place for reporting on transactions in the TPF environment is inadequate for ensuring accuracy of financial reporting. The breakthrough has been the reliability of the revenue figures for TPF in the Vote account. Financial statements for the TPF have been prepared and audited but have not yet been tabled.

6.2.     The audit outcome for the South African Human Rights Commission has regressed: The Commission received a qualified audit opinion for 2012/13 as a result of accounting system changes that were not adequately managed. This led to an aggregation of immaterial uncorrected misstatements for accounts payables and inadequate controls over property, plant and equipment (assets). In-year controls were ineffective to ensure the correct capture of transactions and creditors reconciliations, as well as to ensure the correctness of the fixed assets register.

7. **Spending pressures and priorities for the 2014 MTEF**

7.1.     Generally, with no upward adjustments of the overall spending projections as set out in the 2012 Budget and during the first two years of the MTEF period, departments are expected to ensure that budgets are spent efficiently by making savings and reprioritising funds from underperforming programmes. Over the MTEF, the Vote’s budget is reduced by R1 billion. The Department, however, continues to argue that there is little manoeuvrability within the budget, as the main cost driver is personnel. Any cuts would need to be made from its operational budget, which may negatively impact on service delivery. Similarly, the NPA has little room within its budget as its compensation of employees budget already consumes close to 80% of its budget. (The NPA estimates a shortfall on its ‘compensation of employees’ budget in 2013/14 of R78 million.) The reprioritisation of funds from ‘goods and services’, ‘interest’ and ‘capital assets’ (R50 million) impacts on the NPA’s operational effectiveness.

7.2.     The following critical funding priorities are reported for the 2014 MTEF:

**Table 5: Department of Justice and Constitutional Development and NPA - 2014 MTEF Funding proposals**

**Department of Justice and Constitutional Development and NPA: MTEF Funding proposals**

|  |
| --- |
|  |
| (R’000) | **2014/15** | **2015/16** | **2016/17** | **Total** |
| NPA | 306 130 | 394 168 | 453 913 | **1 154 211** |
| Capacitating the OCJ | 67 475 | 57 995 | 65 626 | **191 096** |
| Leases of buildings and municipal services | 300 000 | 350 000 | 400 000 | **1 050 000** |
| Transformation of State Legal Services | 25 000 | 35 000 | 40 000 | **1000** |
| Upgrading of Clerks 3 and 4 to 5 | 294 000 | 310 000 | 326 000 | **930 000** |
| Upgrading of Clerks 5 to 6 and 7 | 109 000 | 114 000 | 120 000 | **343 000** |
| Courts support structure | 75 000 | 80 000 | 100 000 | **255 000** |
| Security Guard Services | 400 000 | 400 000 | 400 000 | **1 200 000** |

7.2.1.     Department of Justice and Constitutional Development

· *Escalating security costs in service points and offices.*The Department continues to identify crime against staff and public at service points and offices to be a risk. Limited funds have led to some of the security projects planned being reduced. The National Security Infrastructure project, which was meant to reduce reliance on external service providers and build sustainable capacity in the Department, was initially intended to cover 127 courts in Phase 1 of a 3 to 4-phase approach. Projected expenditure patterns indicate that only 90-98 sites can be covered (so far 81 projects have been completed). Finalising the plan remains a challenge and this affects preventative maintenance of security equipment. There is a shortfall on security guard services and security infrastructure investment of around R400 million per annum to cover the new courts and the current level of service and additional funds amounting to R1.2 billion are requested for the medium term. The average spent annually is R428 million against the available budget of R300 million.

· *Funding shortfall on municipal rates, taxes and leased accommodation.*In the past four to five years, the budget for leasehold expenditure has grown on average by 5.5% per annum, while actual expenditure charges have escalated by more than 8% per annum. In real terms, the shortfall on the budget has increased from R31.7 million in 2009/10 to more than R185.7 million in 2012/13. It is projected that the shortfall will increase to around R242 million by 2014/15. The Department reports it is no longer able to absorb the shortfall within its baseline without compromising service delivery. Similarly for rates and taxes, all municipalities have increased their property taxes at a rate that is higher than inflation. From 2009/10 to 2012/13, the shortfall between the allocation and actual accounts has grown 172% from R9.8 million to R58.9 million. If the current trend continues, the deficit will be R102.9 million by 2015/16. The Department requests an additional R300 million in 2014/15; R350 million in 2015/16 and R400 million in 2016/17 to fund these shortfalls.

· *Start up costs for newly commissioned and completed infrastructure projects.*The start-up costs for the infrastructure that will be finished in the MTEF period is estimated at R255 million. At the same time, capacity will need to be expanded in the NPA and Legal Aid SA.

· *Increased capacity.*The appointment of more judges and magistrates requires additional court administration, prosecution services and legal aid capacity consistent with the capacity increases in magistracy and judiciary. This is related to costs for the expansion of support personnel establishment in the courts (interpreters, finance and supply change management personnel), as well as staff performing quasi-judicial functions (default judgements, court orders, warrants of execution, etc.).

·               An amount of R191 million is needed over the MTEF to establish the *Office of the Chief Justice*.

· *Transformation of State Legal Services*will require an estimated R100 million.

·               The cost of the proclaimed *Commissions of Enquiry*is estimated to be R152 million for 2013/14.

· *Personnel costs.*The higher than anticipated salary increases, as well as the directives from the Department of Public Service and Administration (DPSA) on the upgrading of clerical posts requires R150 million to cover the carry-through costs.

· *Cost of living increases above the inflation rates*. This is a challenge as a bigger part of our budget (74%) is consumed by compensation of employees.

· *Infrastructure support to other stakeholders*. Spending pressures include increasing the establishment of the lower courts and providing judicial officers with tools of trade.

7.2.2.     The NPA requires R1.15 billion over the MTEF period, mostly for increased capacity:

·               The Sexual Offences and Community Affairs (SOCA) Unit requires R243.5 million over the MTEF for increased capacity at 60 additional designated sexual offences courts (R38.9 million in 2014/15; R87.8 million in 2015/16; and R117 million in 2016/17).

·               Increased prosecutorial capacity at courts requires R446 million over the MTEF (R111.9 million in 2014/15; R154 million in 2015/16; and R180 million in 2016/17).

·               The Aspirant Prosecutors programme requires R104 million over the MTEF to appoint aspirant prosecutors (R32.8 million in 2014/15; R35 million in 2015/16; and R37.2 million in 2016/17).

·               The Asset Forfeiture Unit (AFU) requires R59.1 million for the MTEF for increased capacity (R18.7 million in 2014/15; R19.7 million in 2015/16; and R20.8 million in 2016/17).

·               The Specialised Commercial Crimes Unit (SCCU) requires R44.3 million for the MTEF to increase accessibility (R22 million in 2014/15; R11.3 million in 2015/16; and R11 million in 2016/17).

·               The Office of Witness Protection (OWP) requires R243.5 million for the MTEF to increase capacity and to address the impact on the ‘goods and services’ budget (R78.1 million in 2014/15; R82.1 million in 2015/16; and R83.2 million in 2016/17).

7.2.3.     Legal Aid SA reports the following funding needs for 2014/15:

**Table 6: Legal Aid South Africa - 2014 MTEF Funding proposals**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Proposals for funding**  **(R’000)** | **Total new staff** | **2014/15** | **2015/16** | **2016/17** | **Total** |
| Increasing criminal capacity | 252 | R109.3 | R115.9 | R122.8 | R348.1 |
| Increasing civil capacity | 44 | R22.5 | R23.9 | R25.3 | R71.7 |
| Expansion of the National Footprint | 11 | R33.6 | R28.6 | R30.3 | R92.6 |
| Upgrade of the IT infrastructure | 136 sites | R4.8 | R5.08 | R5.4 | R15.3 |
| Administrative support | 31 | R7.02 | R7.5 | R7.9 | R22.4 |
| **Total** |  | **R181.2** | **R182.7** | **R193.7** | **R557.6** |

· *Increased capacity in criminal matters*. A total of R109.3 million is required to employ 252 new staff for increased coverage of Legal Aid Practitioners in the District Courts. The impact of not obtaining the additional funds is that practitioners will be unable to be present at all courts on a daily basis and there is need for relief capacity to assist when staff is absent.

· *Increased capacity in civil matters*. A total of R22.5 million is required for 44 new staff to increase civil capacity to meet the increasing demand for these services. The impact of not obtaining the funds will be that some clients will be refused legal aid services because of capacity constraints.

· *Expansion of the national footprint*(Improve services at six satellite offices to Justice Centres; establish four new satellite offices and one new Justice Centre). A total of R33.6 million is needed to improve the range of services available at six existing satellite offices, as well as increase services by opening new offices. The impact of not obtaining the funds will be that services offered are not in line with the needs of the communities in which the offices are located and access to legal aid services, generally, has been identified as a challenge.

·               Upgrading of IT infrastructure. A total of R4.8 million is required to upgrade IT infrastructure at 136 sites. This will be used to increase the bandwidth capacity to improve the IT network performance and connection to it. The impact of being unable to upgrade the bandwidth will result in connectivity problems for Justice Centres and Satellite Offices.

·               Increased administrative support at Justice Centres. A total of R7.02 million is needed for 31 new staff to ensure that ratio of administrative to legal staff is maintained so that legal staff can concentrate on legal work. The danger of not having adequate administrative capacity is that administrative backlogs may increase and legal staff may be required to attend to administrative issues, which reduces time dedicated to services.

· *Specific*funding challenges relate to:

Ø   The conversion of the backlog courts to permanent courts. Present funding will only cover 42 of the 85 courts covered now. A further R29 million has been identified as needed to ensure that all 85 converted courts are covered.

Ø   A total of 116 additional magistrates’ posts are planned at new courts. However, Legal Aid SA will not have capacity to cover any new courts that are established as a result and estimates that an additional R60 million would be required if all new courts are Regional Courts.

Ø   Also, a total of 57 dedicated sexual offence courts are to be established. Although, the intention was that existing regional courts would be converted to sexual offences courts, Legal Aid SA is being requested to provide additional capacity, which it is unable to do without extra funds being provided.

Ø   Additional funds are required to provide for funding for the representation of indigent persons when Commissions of Enquiry are established. The Legal Aid SA estimates it would require R17 million to fund representation of the families of deceased miners, as well as injured miners, security services staff and SAPS officials for 2013/14.

7.2.4.     The SIU made no requests for additional funding for the medium term.

7.2.5.     The South African Human Rights Commission submitted the following additional funding requirements for the MTEF:

**Table 7: SAHRC - Additional funding needs for the MTEF**

**Budget Item**

**(R’000)**

**2013/14**

**2014/15**

**2015/16**

|  |
| --- |
|  |
| **Legal Services** | | | |
| Legal services human resources capacity for complaints handling | R12. 3 | R1.14 | R1.14 |
| Internal capacity building of legal practitioners | R1.5 | R1.75 | R1.75 |
| Procurement of Experienced Legal Expertise for litigation of complaints | R1.5 | R2.18 | R2.18 |
| Revamping Legal Case Management System | R2.13 | R1.12 | R1.12 |
| Setting-up a call centre for complaints processing | R1.7 | R1.84 | R1.84 |
| **Human Rights Advocacy** | | | |
| Developing Advocacy and Education capacity and materials | R1.6 | R1.9 | R1.9 |
| **Research** | | | |
| Research reports, namely ESR, Equality and Focus Areas | R1.95 | R2.14 | R2.14 |
| Promotion of access to information | | | |
| Monitoring, compliance and advocacy of PAIA | R6,7 | R2.7 | R2.7 |
| **IT Infrastructure** | R3.43 | R1.7 | R1.7 |
| **Total** | **R32,81** | **R16. 4** | **R16.4\*** |

\* The budget will be reduced as a result of savings in rental and related costs

In addition, the following items were identified as requiring additional funding during the BRRR process:

* Commissioner’s travel – R2.21 million for 2013/14; R2.43 million for 2014/14 and R2.67 million for 2015/16.

7.2.6.     The Public Protector reports the additional funding needs for the MTEF:

**Table 8: Public Protector - Additional funding needs for the 2014 MTEF**

|  |  |  |  |
| --- | --- | --- | --- |
| **Budget Item** | **2014/15** | **2015/16** | **2016/17** |
| Upgrade of personnel | 3 241 086 | 3 871 409 | 3 672 241 |
| Realignment of legal professionals to the OSD | 11 552 847 | 12 176 701 | 12 882 066 |
| Funding for newly created posts | 17 025 024 | 17 944 375 | 18 895 427 |
| **TOTAL** | **31 818 957** | **33 608 485** | **35 389 734** |

**Part 2**

8. **Overview of the Department of Justice and Constitutional Development’s strategic and operational environment**

8.1. **Overview of (revised) Strategic Plan**

At the beginning of 2013/14, a fifth high-level goal was added to the four high-level goals of previous years, all of which are outlined below:

·               Goal 1: To enhance organisational performance on all aspects of administration. (Improved compliance with legal and good practice requirements in respect of governance across all branches and structures towards an unqualified audit.)

·               Goal 2: To facilitate the (effective and efficient) resolution of criminal, civil and family law disputes by providing accessible, efficient and quality administrative support to the courts. (Courts and justice service points are supported to improve finalisation rates, efficiencies and backlogs in respect of all criminal, civil and family matters.)

·               Goal 3: To provide effective and cost-efficient state legal services (The exposure of government to legal risk is reduced, citizens have access to quality guardian and probate services, the state has access to legal advice and services and constitutional development is promoted.)

·               Goal 4: To effectively co-ordinate the JPCS Cluster in the delivery of Outcome 3. (The provision of effective co-ordination of the cluster to enable the achievement of the eight outputs that will result in the successful delivery of Outcome 3: All people in South Africa are and feel safe.)

·               Goal 5: To promote the Constitution and its values (Compliance by government departments with the Promotion of the Administrative Justice Act, 2000, (PAJA) is substantially improved; citizens are better informed on how to exercise their constitutional rights; public engagement with relevant stakeholders, civil society and community-based organisations is improved through public participatory fora; and constitutional development is promoted.)

Two new strategic objectives (Enhanced litigation services and Administration of the Promotion of Access to Information Act (PAIA), 2000) and new indicators for 2013/14 include:

·               The number of re-established sexual offences courts.

·               The number of magisterial districts aligned to municipal boundaries.

·               The number of Service Delivery Implementation Plan (SDIP) progress reports and annual surveys on the implementation of PAIA by public bodies concluded.

The three MTSF projects prioritised since 2011/12 continue:

· *Good governance and clean administration*. The Department aimed to achieve a ‘no audit qualification’ in 2012/13 and sustain this in subsequent years. (The Department did achieve an unqualified audit for 2012/13.)

· *Service turnaround in maintenance services*. In 2011/12, a three-year turnaround project for maintenance services was initiated, focusing on the maintenance chain in its entirety. The key deliverable for 2012/13 was 100% implementation of the second year of the project. The Department achieved 65% instead of 100% of this target.

· *Service turnaround in the Masters Branch.*The focus has been on improving service delivery. The Paperless Estate Administration System is being used at the Nelspruit office and will be rolled out to additional offices.

Specifically, in 2012/13, there was a strong focus on turning around the Department’s administration to obtain an unqualified audit opinion on the Vote account. Initiatives to do so specifically addressed the qualification on Third Party Funds and the preparation of annual financial statements for the Funds; the putting in place of systems to identify and manage irregular expenditure and systems to improve performance information.

In addition, the following major issues were reported to have affected performance in 2012/13:

·               Fire outbreaks at the Polokwane Magistrate Court in Limpopo, Inkanyezi Magistrate Court in Kwa-Zulu Natal, and Bisho Master’s Office in the Eastern Cape. These not only affected service delivery but required intervention at senior management level to bring service delivery back on track.

·               Salary upgrades to level 3 and 4 employees in the Court Services was not only unfunded and put the compensation of employees budget under strain but difficulties relating to organisational structure and poor morale among employees who were excluded from the upgrade have arisen since

·               The challenges relating to the implementation of the OSD for legal practitioners continue.

·               Budget cuts have adversely affected the ability to fund security, leases, rates and taxes and funding shortfalls relating to ICT. The National Treasury, however, approved the reprioritisation of savings of R200 million in 2012/13, which was put towards the payment of accruals.

9. **Department of Justice and Constitutional Development: Programme performance 2012/13**

The Department administers three programmes: Administration; Court Services, which is the Department’s core programme and consumes the majority of the Department’s budget; and State Legal Services. Under Auxiliary and Associated Services, the Justice Modernisation sub-programme funds the JCPS Cluster projects relating to the Criminal Justice System Review/Revamp and Integrated Justice System.

Overall, the Department achieved or exceeded only 25 of its 57 key performance indicators and targets (46%). However, only five (9%) of its key performance indicators showed substantial (<50%) underperformance.

9.1. **Programme 1 - Administration**

9.1.1.     The Administration programme is responsible for the Department’s management and development of policies and strategies for the efficient adminstration of justice.

9.1.2.     The seven strategic objectives under this programme include increased compliance with prescripts to achieve and sustain an unqualified audit; and improved management of fraud and corruption cases. A strategic objective relating to the improved co-ordination of the JCPS Cluster towards the delivery of Outcome 3 is included under this programme. For the past three years, this programme has prioritised attaining an unqualified audit opinion for 2012/13, which was achieved.

9.1.3.     Programme performance. Met or exceeded target in 14 of 23 (61%) of the performance indicators.

**Table 9: Administration- Selected targets and actual performance 2011/12 - 2012/13**

|  |  |  |
| --- | --- | --- |
| **Administration** | | |
| **Selected indicators** | **Performance** | |
| **2011/12**  (Targets: 7/19 (37%) achieved/exceeded) | **2012/13**  (Targets: 14/23 (61%) achieved/ exceeded) |
| Percentage completion of activities on the approved Audit Action plan towards an unqualified audit. | **NOT ACHIEVED**  90.3% of this plan was implemented against the target of 100%. | **NOT ACHIEVED**  87% of the plan completed against target of 100%  **However, an unqualified audit was achieved**. |
| Percentage of the Audit Action Plan completed by Internal Audit | **ACHIEVED**  The Department exceeded its target, completing 82% of the Plan against the target of 80%. | **EXCEEDED**  The Department exceeded its target, completing 86% of the Plan against the target of 81%. |
| Percentage completion of integrity competency of senior management (vetting) | **NOT ACHIEVED**  Achieved 50% against the target of 65%. | **NOT ACHIEVED**  Vetted 101 senior managers against a target of 169 (Achieved 60% against the target of 68 %.) |
| ·         Number of priority courts to which the integrated security system is rolled out | **TARGET ACHIEVED**  50 against the target of 50.  (Previously included under Court Services | **TARGET ACHIEVED**  24 against the target of 24. |
| Reduce vacancy rate | **NOT ACHIEVED**  The vacancy rate stood at 11.14%, excluding judges and magistrates and 10.52% including judges and magistrates against a target of 7%. The overall performance in the reduction of vacancies was impacted on by an unexpected increase in terminations, transfers and promotions to other departments. | **ACHIEVED**  The vacancy rate stood at 10% against a target of 10%. |
| % grievance cases finalised | **ACHIEVED**  Exceeded its target of 50% by 15%, achieving 65%. | **NOT ACHIEVED**  Achieved 57% against a target of 60%, as OSD matters cannot be completed because of discussions with DPSA. |
| % misconduct cases finalised | **ACHIEVED**  Achieved its 65% target in misconduct cases against a target of 65%. | **NOT ACHIEVED**  Achieved 63% against a target of 70% as complex matters. |
| Number of outstanding TRC victims given access to the President’s Fund in terms of individual reparations | **NOT ACHIEVED**  Paid 219 people against the target of 250 | **NOT ACHIEVED**  Paid 73 people against the target of 123 |
| Number of regulations for providing assistance to TRC victims gazetted | **NOT ACHIEVED**  80% of two draft regulations against a target of completion of two regulations (health and education) | **NOT ACHIEVED**  12.5% completion of an additional set of draft regulations against target of 100% completion of regulations on community rehabilitation and housing **.** |
| Number of IJS quarterly reports | **ACHIEVED**  4 of 4 reports | **ACHIEVED**  4 of 4 reports |

9.1.4.     Key achievements in 2012/13 included:

·               Managed to address the qualification on the vote account that was owing to the Third party Funds.

·               Maintained its position as a leading department in the resolution of Presidential Hotline matters finalising 87% (against a target of 85%) within 30 days of receipt. Maintenance and trial-related cases form the majority (70%) of these matters.

·               Regulations on Housing, Basic Education, Higher Education, and Health are in the process of being finalised. Delays are due to consultative processes with civil society and relevant ministries. Two pilot community rehabilitation projects in Alexandra and Mamelodi were officially launched on 23 February 2013 and 9 March 2013 respectively. The results of a needs analysis will inform the allocation of projects to communities and the development of the necessary regulations.

9.1.5.     Challenges arising during 2012/13 included:

·               Vetting of employees has been slow. Only 60% of the senior managers were vetted against the target of 68%.

·               Spending pressures were experienced relating to the security infrastructure and the operational costs and spending resulting from the Commissions of Enquiry.

·               Office accommodation remains a challenge and impacts on the Department’s ability to fill vacancies.

9.2. **Programme 2 - Court Services**

9.2.1.     The Court Services programme facilitates the resolution of criminal, civil and family law disputes by providing accessible, efficient and quality administrative support to the courts and managing court facilities.

9.2.2.     The programme has six strategic objectives: Improved finalisation of activities in support of Outcome 3 (backlog courts); improved delivery of manintenance services; increased portection of the rights of vulnerable groups; increased access to justice by under-serviced communities; improved delivery of services at the courts; and capacitating the Office of the Chief Justice.

9.2.3.     Programme performance: Met or exceeded target in 4 of 13 (30.7%) performance indicators.

**Table 10: Court services - Selected targets and actual performance 2011/12 – 2012/13**

|  |  |  |
| --- | --- | --- |
| **Court Services** | | |
| **Performance** | | |
| **Selected indicators** | **2011/12**  (Targets: 6/20 (28.5%) achieved/exceeded) | **2012/13**  (Targets: 4/13 (30.7%) achieved/exceeded) |
| ·         Number of cases on backlog roll | **EXCEEDED** | **EXCEEDED** |
| ·         % implementation of Maintenance Turnaround Project | **NOT ACHIEVED**  65% of target of 100% of the year one plan | **NOT ACHIEVED**  **65% of**target of 100% of second year plan – limited space capacity at certain court buildings. |
| ·         % of convictions recorded on the NSRO | **-** | **ACHIEVED**  88% (2320/2622) of target of 72%. |
| ·         Number of additional one-stop child justice centres designated | **NOT ACHIEVED**  Nil (0) against the target of two. | **NOT ACHIEVED**  Nil (0) against the target of two |
| % family law cases finalised per year | **-** | **NOT ACHIEVED**  19% against a target of 100% |
| Number of new court buildings completed | **NOT ACHIEVED** | **NOT ACHIEVED**  1 of 2 court buildings completed. Poor performance and cash flow challenges delayed Polokwane High Court project |
| Number of branch courts converted to full-service courts | **NOT ACHIEVED**  18 of target of 24 converted | **NOT ACHIEVED**  18 of target of 24 converted (6 were designated in April 2013) |
| Establishment of small claims courts in every magisterial district. |  | **NOT ACHIEVED**  16 of 24 small claims courts established (total of 278/387) – dependent of availability of practitioners and retired commissioners. |
| % default judgments performed by Clerk of Court within 30 days (Lower Courts) | **-** | **NOT ACHIEVED**  56% of target of 65% - data collections problems |
| % unopposed taxations processed within 30 days of set down | **-** | **ACHIEVED** |
| OCJ: Number of positions filled | **-** | **NOT ACHIEVED**  40% of target of 60% - additional posts created in the year. |
| OCJ: Number of judicial officers trained at SAJEI | **-** | **EXCEEDED** |

9.2.4.     Court services recorded the following key achievements in 2012/13:

· *Backlogs.*The number of cases removed from District and Regional court rolls since inception is 82 271 (November 2006).  The number of cases on the backlog roll decreased to 31 054 against the target of less than 36 295. Since 2012/13, the number of backlog cases has been reduced to less than 28 000 in all courts.

· *Implementation of EFT payments for beneficiaries*: At the end of March 2013, 301 courts made use of EFT at court level to 171 712 beneficiaries. The value of decentralised payments is R110.5 million. The lean management business process was implemented at eight pilot sites (in addition to one pilot site in 2011/12) resulting in significant improvements to turnaround times for maintenance payments and the reduction of time spent queuing.

· *Default judgements*in civil matters (Lower courts) are being tracked for the first time and monitoring systems are being developed.

· *South African Judicial Education Institute*. A total of 1956 judicial officers received training at the SAJEI during 2012/13 against a target of 350 (targets were set low due to identified transitional operational risks).

9.2.5.     Key challenges arising in 2012/13:

·               The workload of the Office of the Chief Family Advocate has increased with the introduction of new legislation. This has resulted in a shortage of staff given the workload.

·               Unavailability of commissioners to serve at Small Claims Courts impedes the establishment of these courts.

·               Building of new courts remains a major challenge. The Department cannot reach targets due to delays and, in addition, there is a risk of inflationary cost escalations as a result of these delays.

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

9.3.1.     This programme provides legal and legislative services to government, supervises the administration of deceased and insolvent estates and the Guardian’s Fund, and prepares and promotes legislation and undertakes research in support of this.

9.3.2.     The Programme has four strategic objectives: Increased efficiency in the provision of services to beneficiaries of the Guardian’s Fund, trusts, insolvent and deceased estates; strengthened constitutional advocacy and participatory democracy to ensure respect for human rights; improved provision of legal services to the State organs; and legislation developed for effective and efficient justice services.

9.3.3.     Programme performance: Met or exceeded target in 7 of 21 (33.3%) performance indicators.

**Table 11: State Legal Services - Selected targets and actual performance 2011/12 – 2012/13**

|  |  |  |
| --- | --- | --- |
| **State Legal Services** | | |
| **Performance** | | |
| **Selected indicators** | **2011/12**  (Targets: 9/31 (29%) achieved/exceeded) | **2012/13**  (Targets: 7/21 (33%) achieved/exceeded) |
| Letters of appointment issues in deceased estates within 15 days of receiving all required documents | - | **EXCEEDED**  93% against a target of 90% |
| % of L&D accounts in large estates (>R125 000) examined within 15 days of receiving all required documents | **-** | **NOT ACHIEVED**  85% against a target of 90% - capacity constraints |
| Percentage of beneficiaries in receipt of services within 40 days (Guardian’s Fund) | **NOT ACHIEVED**  82.4% against the target of 90% | **NOT ACHIEVED**  86% against a target of 90% - slow response from fingerprint verification. |
| Percentage of L&D accounts examined in bankruptcy cases within 15 days of receiving all required documents | - | **NOT ACHIEVED**  60% against a target 0f 90% - capacity constraints. |
| % Letters of authority issued in trust within 14 days  of receiving all required documents | - | **EXCEEDED**  94% against a target of 90% |
| % completion of project to establish Master’s Office in Nelspruit | **-** | **ACHIEVED** |
| % of Guardian’s Fund money paid through EFT | **-** | **NOT ACHIEVED**  83% against a target of 90% |
| No. of activities towards improvement of PAJA compliance |  | **ACHIEVED** |
| Level of compliance with PAIA by the Department | **NOT ACHIEVED**  18% against the target of 100% compliance (141 requests were granted from a total of 792 received). | **NOT ACHIEVED**  61% against a target of 100% |
| % of briefs distributed to PDIs | **-** | **NOT ACHIEVED**  79% of target of 75% - - client departments prefer to brief specific counsel |
| % of successfully concluded cases by state attorney | **-** | **NOT ACHIEVED**  30% of 1987 cases against target of 50% - resource constraints |

9.3.4.     Selected achievements for 2012/13 include:

·               A new Masters Office was established in Nelspruit, Mpumalanga. The Office has already registered 1381 estates from June 2012 to March 2013. Service points at Barberton and Nelspruit Magistrates Offices have also been established.

·               A total of 1 887 estate matters involving minor beneficiaries were transferred the Legal Aid SA for assistance.

·               In 2012/13, a total of 209 079 people accessed the website; and 21 748 accessed the Portal and in total read 633 592 pages.

·               70% of the value of briefs was issued to previously disadvantaged individuals. This percentage translates into an amount of R314.4 million.

9.3.5.     A key challenge that arose during 2012/13 related to the estabishment of

·               a Solicitor-General’s post, which is intended to transform and oversee state litigation and drive transformation, including briefing patterns.

**Part 3**

10. **National Prosecuting Authority: Programme performance 2012/13**

10.1.       The National Prosecuting Authority provides a co-ordinated prosecuting service to ensure that justice is delivered to the victims of crime through general and specialised prosecutions, protects certain witnesses and removes the profit from crime. Although the Director-General: Justice Constitutional Development is the accounting officer, the NPA reports separately on its performance. Delivery is effected by means of the following subprogrammes: Public Prosecutions; Office for Witness Protection (OWP); Asset Forfeiture Unit (AFU); and Support Services.

10.2.       The NPA contributes to achieving the following outputs of the JCPS Cluster agreements:

·         Output 1: Reduced overall levels of serious crime, in particular contact and trio crimes;

·         Output 2: A more effective criminal justice system.

·         Output 3: Reduced corruption.

·         Output 4: Managed and improved perceptions of crime.

·         Output 7: Secured cyberspace.

10.3.       To give effect to its mandate, the NPA has the following strategic objectives:

·         Increased successful prosecution of serious crime.

·         Improved collaboration with JCPS partners.

·         Reduced corruption.

·         Improving justice services for the victims of crime.

·         Increased prosecution of cyber crime.

10.4.       Programme performance:

**Table 12: NPA Achievement of selected targets and indicators 2012/13**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Indicator** | **Actual 2011/12** | **Target**  **2012/13** | **Actual 2012/13** | **Deviation** |
| Number of criminal court cases finalised excluding ADRM | 316 098 | 344 419 | 323 390 | -6.1% |
| Number of criminal court case finalised through ADRM | 132 695 | 137 219 | 143 410 | 4.5% |
| Conviction rate: High Courts | 84.6% (963) | 87% | 87.5% | 0.5% |
| Conviction rate: Regional Courts | 74.3%  (28 665) | 74%  (28 491) | 75.1%  (28 198) | 1.1% |
| Conviction rate: District Courts | 90.8% (251 030) | 87%  (276 068) | 91.9%  (261 591) | 4.9% |
| Number of new completed forfeiture cases | 301 | 306 | 302 | -1.3% |
| Number of new freezing orders | 318 | 324 | 276 | 14.8% |
| Value of completed forfeiture cases per year | R163.6 million | R167 million | R118.5 million | -29% |
| Value of new freezing orders | R553.4 million | R600 million | R518 million | -13.7% |
| Success rate AFU | 96.1%  (295) | 94%  (306) | 94.1%  (289/307) | 0.1 |
| Number of TCCs | 30 | 35 | 35 | 0% |
| Number of witnesses threatened or harmed | 0 | 0 | 0 | 0% |

10.5.       Key achievements for 2012/13 include:

·         The NPA received a clean audit with no findings.

·         Of all indicators, 42.5% were exceeded or achieved; 17.5% were marginally below target; and 33% were not achieved.

·         A total of 58.3% of the core (ENE) indicators were exceeded or achieved; 8.3% were marginally below target; and 33% were not achieved.

·         A positive clearance ratio (at 3.5%) was maintained: a total of 916 917 cases were enrolled, while 949 397 were disposed of.

·         The number of cases finalised including those finalised using Alternative Dispute Resolution Mechanisms (ADRM) increased by 4% from 448 793 in 2011/12 to 466 800 in 2012/13. The focus on alternative measures to reduce trial cases led to an 8.1% improvement in the number of cases finalised through ADRM (from 132 695 in 2011/12 to 143 410 to 2012/13).

·         Verdict cases increased from 316 098 in 2011/12 to 323 390 against a target of 344 419 in 2012/13. The failure to reach the target is attributed to reduced court utilisation, the absence of key role-players, and challenges related to case-flow management.

·         The overall conviction rate improved from 88.8% in 2011/12 to 89.9% in 2012/13 (against a target of 88%). Conviction rates improved at all courts as follows: High Courts – from 84.6% in 2011/12 to 87.5% in 202/13; 74.3% in 2011/12 to 75.1% in 20102/13; and District Courts – 90.8% in 2011/12 to 91.9% in 2012/13.

·         There has been focused attention on the clearance ratio of decision dockets, which remained at 99.5% with 676 564 cleared in 2012/13 compared to 650 677 decision dockets cleared in 2011/12.

·         Specialised services to victims of sexual offences were delivered in 35 fully operational Thuthuzela Care Centres (TCCs). The number of fully operational TCCs increased from 30 to 35.

·         The conviction rate for sexual offences cases increased from 65.1% (4501/6913 finalised cases) in 2011/12 to 65.8% (4 669/7 092 finalised cases) in 2012/13.

·         With the ACTT, the AFU did well in dealing with serious corruption matters to meet the JCPS target of freezing assets of 100 persons to the value of R1.3 billion in corruption cases involving more than R5 million by 2014. The AFU froze the assets of 23 persons during 2012/13 (against a target of 20), bringing the total number of persons to 95 persons. The value of orders was R346 million, which was 73% above the target of R200 million, bring the cumulative total to R1 billion.

·         The prosecutions vacancy rate was reduced from 11.4% (against a target of 10%) in 2011/12 to 0% in 2012/13. This, however, was as a result of the budget shortfall.

10.6.       Key challenges identified during 2012/13:

·         Insufficient integrated operational planning with role-players to facilitate practical implementation.

·         Ineffective implementation of case-flow management.

·         Lack of joint and/or integrated training for JCPS officials that focus on improving court performance and service delivery.

·         The ‘Compensation of Employees’ budget poses a risk for the achievement of targets.

·         The Aspirant Prosecutor Programme has been affected by the budget cut. The programme, however, delivered 190 aspirant prosecutors in 2012/13.

·         Lack of capacity and resources and the lengthy nature of these typically complex cases have adversely affected the AFU’s performance. Although it maintained a high conviction rate (94.1% in 2012/13 from 96.1% in 2011/12), there was decreased performance for all other indicators. In 2012/13, a total of 302 (against a target of 306) new asset forfeiture matters were completed and 276 new freezing orders were made (against a target of 324). The value of completed asset forfeiture matters decreased from R163.3 million in 2011/12 to R118.5 million for 2012/13 (-29%); while the value of freezing orders decreased from R553.4 million in 2011/12 to R518 million in 2012/13. The decrease in value is attributed to delays in finalising cases, which were only finalised in this year.

10.7.       The NPA received an unqualified audit opinion in 2012/13 with no findings.

10.8.       Additional funding requested for the 2014 MTEF is set out under paragraph 7.

**Part 4**

**Programme 5 Auxiliary and Associated Services: Performance 2012/13**

This programme includes Legal Aid South Africa, the Special Investigating Unit, the South African Human Rights Commission and Public Protector.

**11. Legal Aid South Africa**

11.1.       Legal Aid South Africa provides quality, professional legal services, ensuring effective access to justice for the poor and vulnerable. In 2012/13, Legal Aid South Africa handled a total of 736 697 legal matters, including legal advice and impact matters.

11.2.       In 2012/13, the staff complement increased slightly from 2677 budgeted positions in 2011/12 to 2694 in 2012/13. (Notably, there are now 275 more budgeted positions than there were in 2008/09.) Of the 2 694 budgeted posts, 2 576 were filled. The staff recruitment rate was at 95.6%, although this did not meet the target of 96.4%. Legal staff, including paralegals, accounted for 79% of all staff.

11.3.       A total of 438 844 clients were assisted in new legal matters with a finalisation rate of 98%; while a further 297 835 clients were assisted with legal advice. The Legal Aid Advice Line, which provides legal advice*via*a toll-free number in five official languages, assisted with 15% of the 297 835 legal advice matters.

11.4.       Legal Aid SA has increased its coverage of the District Courts, which is where 72% of all new matters are received, to 88.7%. At present, 99.2% of all Regional Courts are covered. The High Courts are covered for all matters that require legal aid assistance. Coverage in civil cases is based on capacity.

11.5.       Criminal matters predominate by far, accounting for 87% of all matters dealt with. Still, the percentage of civil matters has grown to 13% in 2012/13, representing a 75% growth in the past two years.

11.6.       The Impact Litigation Unit dealt with 33 cases in 2012/13, with a success rate of 90% of finalised matters. Matters included the enforcement of the right of access to adequate housing; the challenge to the constitutional validity of legislation; and the constitutional obligation to protect the best interests of the child.

11.7.       A total of 26 105 children were assisted in 2012/13. Notably, the number of children assisted overall has declined by more than half compared with the 59 266 children assisted in 2009/10. The number of children assisted in criminal matters has decreased significantly since 2009/10 from 54 781 children to 19 840 in 2012/13. This is attributed to the Child Justice Act, which aims to divert children out of the criminal justice system. However, the number of children assisted in civil matters has grown from 4 485 in 2009/10 to 6 265 (by 34%) in 2012/13. This is as a result of Legal Aid SA’s partnership with the Master’s Office, providing assistance in estate matters where children are beneficiaries.

11.8.       Selected achievements, as reported, include:

·         Successfully completing the first year of its 2012-2017 Strategic Plan period, achieving overall performance against targets.

·         Providing access to legal aid to indigent clients, with 736 697 legal matters, including legal advice and impact matters, handled.

·         Increasing civil legal aid matters handled from 10% in 2011/12 of all new matters handled to 13% in 2012/13.

·         A total of 98.7% of the budget was spent as planned with no under-expenditure, as has been the trend for the past eight years.

·         A total of 99% of all trade creditors and 98.9% of Judicare accounts were paid within 30 days.

·         Strong financial management and governance were reflected in the twelfth unqualified audit and eighth year with no matters of emphasis. The issue of non-compliance on tax clearance certificates in Judicare matters, which the Auditor-General listed in 2011/12 as an ‘other matter’, has been attended to.

11.9.       Key challenges arising during 2012/13 include:

·         Budget cuts amounting to R34 million by National Treasury, as well as a R30 million shortfall relating to the OSD, which required funding from the baseline. Although some relief was provided, budget constraints resulted in inadequate coverage of courts; high practitioner case loads and supervisory ratios; staff recruitment did not meet its target and a lack of relief capacity contributed to court delays.

·         The number of matters that did not meet the turnaround times for the Regional and High Courts exceed the targets set.

·         The number of Awaiting Trial Prisoners in custody for more than two years is still too high.

·         The effectiveness and stability of the IT platform as a result of the instability of the Ad Infinitum (AI) system. The AI system has served the organisation for more than a decade but is experiencing technical and capacity challenges. An AI Redevelopment Project has been approved to address these challenges and the project will commence in 2013/14.

·         Insufficient civil capacity to meet increasing demand for civil legal aid services.

11.10.    Legal Aid SA achieved an unqualified audit opinion with no findings.

11.11.    Legal Aid SA’s additional funding requirements for the 2014 MTEF and specific funding challenges that have arisen are contained in paragraph 7.

**11. Special Investigating Unit (SIU)**

12.1.       The SIU’s ‘core’ strategic objective is to increase the impact of the SIU forensic service in the public sector by completing investigations successfully. The Unit has indicated its focus on procurement matters. This means investigating fewer but more complex cases. The Unit also reports on seven strategic drivers/enablers:

·         Achieve optimal institutional form.

·         Foster excellent cooperation with its law enforcement partners and stakeholders.

·         Develop effective, accountable and engaging leadership.

·         Secure appropriate capacity and funding.

·         Align and improve systems and processes.

·         Invest in appropriate technological capacity.

·         Build an engaged, diverse and competent organisation.

12.2.       In addition, the SIU participates in various multi‐agency interventions, including:

·         The Anti-Corruption Task Team (ACTT), which was created to deal with high level corruption.

·         The Multi-Agency Working Group (MAWG) in the Finance Cluster, which deals with irregularities in the government procurement system, focusing on closing systems gaps as well as detecting and investigating irregularities.

·         The Special Anti-Corruption Unit (with the Department of Public Service and Administration), which focuses on the investigation and prosecution of disciplinary cases against senior public servants involved in corruption.

12.3.       Performance against targets for 2011/12 – 2013/14

Table 13 **: SIU Achievement of selected targets and indicators 2012/13**

**INDICATORS**

**TARGET**

**2011/12**

**2012/13**

**Target**

**Not achieved/**

**Achieved/**

**Exceeded**

**ACTUAL PERFORMANCE**

|  |
| --- |
|  |
|  |
| Evidence prepared for civil litigation | TARGET | 2500 | 3500 | **Target exceeded** |
| ACTUAL PERFORMANCE | 6412 | 3570 |
| Evidence prepared for criminal action (Note from 2013/14 this indictor has been revised to ‘Number of referrals made to the prosecuting authority’) | TARGET | 2000 | 2000 | **Target not achieved** |
| ACTUAL PERFORMANCE | 2499 | 997 |
| Evidence prepared for disciplinary action (Note from 2013/14 this indicator was revised to ‘Number of recommendations made for disciplinary processes’) | TARGET | 2500 | 3500 | **Target not achieved** |
| ACTUAL PERFORMANCE | 2731 | 850 |
| No of completed investigations contributing to Outcome 3 | TARGET | 20 | 30 | **Target achieved** |
| ACTUAL PERFORMANCE | 15 | 38 |
| Savings | TARGET | R30 million | R35 million | **Target exceeded** |
| ACTUAL PERFORMANCE | R15 million | R57 million |
| Prevention of future loss | TARGET | R200 million | R210 million | **Target exceeded** |
| ACTUAL PERFORMANCE | R169 million | R378.2 million |
| Cash recoveries (Note from 2013/14 this indicator has  been split: ‘Value of potential cash recoverable and Actual value of cash recovered’) | TARGET | R30 million | R35 million | **Target exceeded** |
| ACTUAL PERFORMANCE | R224 million | R171.6 million |
| Value of procurement matters where irregularities were found (Note from 2013/14 this indicator revised to ‘Value of expenditure in procurement matters where financial misconduct has been identified’.) | TARGET | R20 billion | R1 billion | **Target exceeded** |
| ACTUAL PERFORMANCE | R5.06 billion | R2.6 billion |

12.4.       In addition to certain revisions to targets, two new indicators are included from 2013/14, namely: The value of contracts set aside (target for 2013/14 is R400 million) and the value of contractual obligations enforced (target for 2013/14 is R30 million).

12.5.       The SIU reports that, in 2012/13, a total of 25 active proclamations with seven extensions were in force, of which 67% related to procurement issues. The outcome of certain key investigations included systemic recommendations; recommendations relating to disciplinary action against officials; recommendations relating to prosecutions; identification of the value of irregularities and corrupt payments, as well as value of projects where no delivery or partial delivery.

12.6.       The SIU’s funding model provides for its baseline grant from National Treasury. In addition to the grants from National Treasury, the service-level agreements that SIU entered into with state institutions that required investigation made provision for SIU to charge for the services rendered, thus raising additional revenue. A legal opinion was obtained in 2011 to the effect that the SIU Act did not specifically empower such a model and that the SIU as a creature of statute could not continue with that model. The Unit was able to invoice on a limited basis between September 2011 and June 2012. This legal challenge has since been overcome by legislative amendments, which are now enacted. In 2012/13, the SIU generated R124.6 million in project income.

12.7.       The SIU has begun addressing its vacancies with eight appointments and promotions, while 104 temporary workers have been converted to fixed-term contract employees. The filling of senior management positions are to be finalised by the end of 2013/14.

12.8.       The SIU received an unqualified audit opinion for 2012/13 with findings.

12.9.       The following operational challenges were identified in 2012/13:

·         Greater capacity is needed in the form of more in-house specialist skills, such as forensic accountants, and specialised expertise on procurement investigations, such as quantity surveyors, engineers corporate governance experts and business analysts.

·         A stronger civil litigation capability needs to eb developed to meet the growing demands relating to procurement matters.

·         Special Tribunals need to be established at key centres.

·         Stronger technological infrastructure in Operations is required.

·         The need for improved operational and reporting mechanisms (to address, among others, inconsistent and delayed reporting).

·         The need to enhance the operational focus towards stronger civil legal outcomes.

·         The need to increase the impact of operations.

**13. South African Human Rights Commission (SAHRC)**

13.1.       The SAHRC’s mandate is extremely broad, encompassing the promotion, protection and monitoring of human rights in South Africa. The key human rights focus areas for 2012/13 were the rights to water and sanitation: hearings were held in all nine provinces and culiminated in a national hearing.

13.2.       At present, the SAHRC has four full-time and two part-time commissioners following the death of Commmissioner Sandi Baai in 2012.

13.3.       The SAHRC has undergone a three-year organsational restructuring and renewal process, which began in 2011/12, after having decided strategically to streamline its complaints-handling mechanisms. Among others, this resulted in a high vacanccy rate for 2011/12 of 29% (104/148 posts were filled). The vacancy rate improved in 2012/13 to 16% (147 of 178 posts were filled). A total of thirteen posts have been frozen as a result of funding constraints.

13.4.       The SAHRC has the following strategic objectives:

·         Promote compliance with international obligations.

·         Position the Commission as a focal point for human rights.

·         Strengthen advocacy and human rights awareness raising.

·         Advance the realisation of human rights.

·         Advance the right to equality and access to information.

·         Improve the effectiveness and efficiency of the Commission.

13.5.       The SAHRC’s performance has improved over the past four years from meeting 52% of its targets in 2009/10 to 84% in 2012/13. The SAHRC, however, met fewer of its target in 2012/13 than in 2011/12 (89%) as a result of organisational restructuring.

13.6.       Key achievements for each strategic objective, as reported by the SAHRC for 2012/13 include:

· *Promote compliance with international obligations:*

Ø  The Commission achieved 100% of all 5 targets.

Ø  The Commission was re-awarded A-status by the United Nations as a National Human Rights Institution.

Ø  In Commission hosts the Chair of the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights ICC), as well as continuing to chair the Network of African National Human Rights Institutions.

·         Position the Commission as a focal point for human rights.

Ø  The Commission achieved 82% (9/11) of its targets.

Ø  Both provincial and national public hearings were held on water and sanitation.

Ø  The Commission is participating at the Marikana Commission of Enquiry to ensure that the human rights dimensions to the tragedy receive sufficient attention.

Ø  A total of 79% (7 047/8 919) complaints-related cases dealt with in 2012/13 were finalised. The top five complaints categories relate to just administrative action (14%); labour relations (13%); arrested, detained and accused persons (13%); equality (12%); and human dignity (8%).

·         Strengthen advocacy and human rights awareness raising.

Ø  The Commission achieved 71% (5/7) of the targets.

Ø  The Commission launched the Charter of Children’s Basic Education Rights. UNICEF has recognised it as being the most comprehensive Charter internationally.

Ø  A roundtable on freedom of expression and hate speech was convened highlighting findings from provincial hearings in the 2011/12.

Ø  Public hearings were conducted on illegal mining in the Northern Cape *.*

·         Advance the realisation of human rights.

Ø  The Commission achieved 100% of all five targets.

Ø  The Economic and Social Rights report was drafted, as well as a monitoring matrix.

Ø  A Strategic Focus Area Report on Water and Sanitation was prepared.

Ø  An institution-wide monitoring and evaluation framework and plan were drafted.

·         Advance the right to equality and access to information.

Ø  The Commission achieved 100% of all 14 targets.

Ø  The 2011/12 Equality Report was completed and handed to the Ministry for Women, Children and People with Disabilities,

Ø  Hosting and training Information Officers countrywide promoted awareness of the right of access to information.

Ø  Compliance with PAIA was monitored and a separate annual report was tabled.

·         Improve the effectiveness and efficiency of the Commission.

Ø  The Commission achieved 69% (11/16) of targets.

Ø  An information system for handling administrative function requirements of human resources was implemented.

Ø  The new organisational structure, performance management policy and staff handbook were implemented.

13.7.       Key challenges reported for 2012/13 include:

·         Despite a relatively strong human rights framework, the implementation of the framework has far to go if the rights enshrined in the Constitution are to become the lived reality of all South Africans.

·         The politicization of human rights continued, particularly relating to socio-economic rights such as access to water and sanitation, tending to shift the focus away from ensuring that services are properly delivered to the affected communities.

·         Limited resources have forced the SAHRC to scale back on its work. For example, the Commissioners lack of a travel budget has limited their ability to travel to rural areas on a regular basis despite the need for this. Although the establishment has filled 150/178 approved posts, thirteen posts have been frozen as a result of a lack of funding.

·         There has been a decrease in the number of cases received and investigated in 2012/13 when compared to previous years (the SAHRC did not meet its target of finalising 85% of complaints). This is attributed to the upgrading of its electronic case management system. The number of cases carried through to 2013/14 also increased substantially (1872 or 21% of cases) as a result of operational challenges relating to restructuring and freezing of certain posts.

·         Receiving a qualified audit opinion in 2012/13.

13.8.       Performance for the first quarter of 2013/14 indicates that the SAHRC has already achieved 15% of its targets for the year, while 65% are recorded as being in progess while the remaining 20% are due for the latter half of the year. Some targets already achieved include: Completing the socio-economic rights report and 2012/13 Equality Report; developing an economic and social rights matrix for monitoring areas relating to health and social security; conducting hearings on delivery of learning materials in schools; and concluding a number of significant investigations relating to water and sanitation, racism in schools and the condition in prisons.

13.9.       The SAHRC’s budget for 2012/13 increased from R93.6 million in 2011/12 to R101.5 million in 2012/13 R8 million (including the cost of living adjustment). This is an 8% increase when compared to 2011/12. The budget allocation for the 2013 MTEF is R116.0 (2013/14); R125.1 (2014/15); R133.2 (2015/16) and R141.2 (R2016/17).

13.10.    The SAHRC reports that the additional R6 million received in 2012/13 went to support its focus on strengthening its protection mandate, by providing for additional legally qualified employees, as well as their training and orientation. The complaints mechanism was revamped to improve efficiency and effectiveness, and the systems hardware and infrastructure was upgraded and training provided on its use.

13.11.    The SAHRC’s audit opinion regressed in 2012/13. from a clean audit opinion for 2011/12 with no emphasis of matter. Disciplinary action has been taken against relevant officials, including performance management controls. An audit action plan has been developed to address the key areas and enhance controls relating to payables, record management, assets and supply chain management. Where systemic deficiencies are identified, additional training and capacity will be provided to address these. The Auditor-General will conduct an interim audit in November 2013 and has provided advice to the Commission. An Audit Review Committee has been established and meets weekly.

13.12.    Spending pressures and the SAHRC’s forward funding needs remain as indicated in the 2012 BRRR.

14. **Public Protector**

14.1.       The Public Protector’s activities continued to be anchored in the constitutional mandate to investigate, report on and take appropriate remedial action in respect of alleged or suspected improper conduct in all state affairs.

14.2.       The Public Protector has five strategic objectives:

·         Accessible to and trusted by all persons and communities.

·         Prompt justice, including remedial action.

·         Promotion of good governance in the conduct of state affairs.

·         The PP plays a vital role in executive ethics investigations.

·         An efficient and effective organisation.

·         An optimal perfomance and service focused culture.

14.3.       Key achievements as reported by the Public Protector for 2012/13:

·         A total of 37 770 cases were dealt with in 2012/13: A total of 25 860 complaints were received or initiated (compared to 16 251 in 2011/12) and 22 400 (14 148 in 2011/12) were finalized; 13 995 (5 608 in 2011/12) cases were carried over; and 2 085 cases were referred (1 709 complaints were out of jurisdiction in 2011/12).

·         A total of 37% of early resolution cases were resolved within three months, while only 12% of other investigations were resolved after 12 months.

·         The PP’s goal of reaching 30 million people was exceeded, as 51 million were reached. However, as this includes repeat interactions with target audiences, the number of persons reached was in all likelihood closer to 20 million.

·         A total of three systemic investigations were finalised in 2012/13.

·         A total of ten own initiative investigations were identified: three were finalised, while seven are ongoing.

·         A total of 24 formal reports were issued (41 reports were published in 2011/12).

·         A National Stakeholder Dialogue took place in July-August 2012 and a good governance conference was held in October 2012.

14.4.       The Public Protector reports a staff vacancy rate of 3.7% with 11 of 295 funded posts vacant.

14.5.       The Public Protector received an unqualified opinion with emphasis of matter relating to restatement of corresponding figures (as in 2011/12). The error was corrected when the case management system was written off as fruitless and wasteful expenditure. Additional matters included:

·         Predetermined objectives, in which 26% of targets were not achieved. These are attributed to a lack of investigative capacity that impact on turnaround times. The turnaround target times were reviewed for 2013/14.

·         Non-compliance with National Treasury regulations, which could have been prevented if monitored.

·         Supply chain management in which goods above R30 000 were acquired without obtaining original tax clearance certificates (photocopied certificates were provided).

·         Creditors were not paid within 30 days.

14.6.       Key challenges going forward relate mostly to a lack of resources:

·         Investigative capacity remains the main challenge. The lack of sufficient investigators impacts on attempts to balance rigor with promptness in the conduct of investigations or implementation of alternative dispute resolution.

·         The need to upgrade personnel in order to retain them within the organisation.

·         Implementation of the Occupational Specific Dispensation (OSD) for the Public Protector to be able to retain legally qualified staff.

·         The need to expand the Public Protector’s footprint, and the related challenge of acquiring adequate office space. The Thohoyandou Office could not be opened as it was not possible to find suitable accommodation and staff members appointed for this office are now working at the Polokwane Office. New regional offices in Port Elizabeth and Pietermaritzburg are planned but it remains difficult to acquire office space.

14.7.       The Public Protector’s additional funding requirements for the 2014 MTEF and specific funding challenges that have arisen are contained in paragraph 7.

**Part 6**

**15. Committee’s observations**

The Committee makes a number of observations relating to the performance of the Department, the NPA, Legal Aid South Africa, SIU, PP and SAHRC.

**BRRR process generally**

15.1.       This is the fourth year that the Committee is undertaking the Budgetary Review and Recommendation process and believes that sufficient time has elapsed for it to be possible – desirable even - to critically reflect on the process, with a view to identifying refinements. In particular, the Committee has found the time allocated to the process hugely challenging, despite having systems in place to monitor performance and spending throughout the year. Specifically, the conflation of the formal process of evaluating annual performance with consideration of requests for additional funding is problematic. The short space of time between the date for the formal submission of annual reports and the BRRR hearings leaves the Committee with little time for prior critical engagement with the reports and discussion of key focus areas. The process also provides little opportunity to canvas the public’s views on performance, which would be invaluable. The Committee is of the view that, as a first step, consideration should be given to esablishing whether it is feasible to require Departments and institutions to table their annual reports far earlier in the year – the end of August was mooted as a possible date.

15.2.       Further, the Committee has been told informally that it should make recommendations from where its budget proposals should be funded. The Committee hopes that in future the newly established Parliamentary Budget Office will be able to to provide the necessary technical assistance to strengthen the recommendations that it makes regarding the reallocation of resources.

15.3.       Also, the Committee appreciates that the response from National Treasury complies with the legal requirements. However, the Committee is of the view that the response is not sufficiently detailed for it to engage effectively with the bodies that report to the Committee on their funding needs. One of the institutions, in particular, expressed deep disatisfaction at the response from National Treasury to the Committee’s 2012 BRRR recommendations, which were adopted by the National Assembly. As the Committee has been unable to meaningfully engage with the National Treasury for it to fully appreciate the reasons for the response, the Committee’s ability to engage with that institution and with others on the question of their funding is undermined, as is the legitimacy of this process. The Committee recommends that a mechanism is developed for formal engagement with National Treasury, even at Cluster level.

**Department of Justice and Constitutional Development**

***Technical issues***

15.4.       Technically, the Department’s Annual Report for 2012/13 is greatly improved when compared to previous years with far fewer small errors and inaccuracies. A useful addition to the sections dealing with each of the Department’s programmes is some discussion of the challenges that are experienced and how these have been addressed. In addition, a separate chapter on goverance lists the five key risk areas identified, as well as progress made in resolving these. At the Committee’s request, court statistics relating to maintenance, domestic violence cases and equality cases have been reported and are welcome.

Still, it remains difficult to gain a comprehensive understanding of court performance without having to consult elsewhere. The statistics that the Department has reported are rather brief and relate mostly to the number of matters that each court has dealt with in 2012/13 (with statistics for 2011/12 provided for comparative purposes). Statistics that provide a broader perspective on court performance are not reported, despite these being available in the NPA’s Annual Report. It seems out of place, for example, that the NPA reports on court hours, which are largely related to case-flow management that now falls to the judiciary. Having to collate the information from several sources undermines the Committee’s ability to evalaute the effective and efficient use of resources towards service delivery.

***Funding proposals***

15.5.       Budget reductions. The Committee is sensitive to the broader fiscal context that shapes the funds that are available for spending. It has noted the directive to all government departments to reduce baseline allocations by 1% in 2012/13, 2% in 2013/14 and 3% in 2014/15 respectively through ‘savings’. In the case of the Justice Vote, this is a reduction in the baseline of R1 billion over the medium term. Still, the Committee remains of the view that application of the directive, giving insufficient weight to the circumstances in which justice services are rendered and their pivotal role in contributing towards government priorities, may actually undermine effective and efficient delivery. Specifically, the main cost driver for the Vote is personnel, which - as observed - leaves little room for trimmings.

Once again, the Auditor-General has ‘flagged’ the financial health of both the Department and the NPA, in particular. The Department’s and NPA’s cashflow problems can be seen, for example, in accruals and in delayed payments to creditors: in both 2011/12 and 2012/13, the Department deferred paying certain creditors beyond 30-days, settling these debts in the next financial year. The Auditor-General reported in 2011/12 that the Department would have incurred unauthorised expenditure if it had paid its creditors in the same financial year that the debts arose. Similarly, the Auditor-General reports that at the end of 2012/13, payables exceeding the payment term of 30-days as required amounted to R86 million. This amount exceeded the voted funds to be surrendered of R1 million and the difference would have amounted to unauthorised expenditure had these amounts been settled in a timely manner. Similarly, the NPA would have incurred unauthorised expenditure amounting to R609 000 if it had paid its creditors within the 30 days required. The NPA had no funds at the end of 2012/13 to surrender as it had spend 100% of its budget. As the Auditor-General has observed previously, these accruals also adversely affect cashflows going forward in a snowball effect.

15.6.       Additional capacity. The Committee agrees that the appointment of new judges and magistrates should be matched with additional capacity, specifically more prosecutors and legal aid practitioners, as well as administrative staff, for improved court performance. The Department has requested R255 million in the medium term for additional court support. Notably, significant underspending is observed in 2012/13 and in the first quarter of 2013/14 on judges and magistrates salaries, which is attributed to delays in filling these posts. The Department suggested last year that for the 2012 MTEF, given the budget pressures, it might be necessary to re-evaluate the number and/or timeframes for the appointment of judges and magistrates. In the Committee’s view the filling of these posts is vital for the administration of justice and should not be delayed.

The Committee is also dismayed that both the NPA and Legal Aid SA have indicated that they are not in a position to appoint additional prosecutors and legal aid practitioners going forward unless additional funding is provided. The NPA’s spending pressures are such that it has, in fact, removed all vacant posts from its staff establishment and is unable to fill any vacancies that arise going forward. It has made it clear to the Committee that it will be unable to provide additional prosecutors for new courts, such as any dedicated sexual offences courts that may be established.

Legal Aid SA has also indicated that its coverage of courts is already stretched and that, in the absence of additonal funds, it is unable to service new courts without impacting on court performance. This is a great concern, as there are plans to convert existing backlog courts to temprorary courts. This will entail the appointment of 82 magistrates. Legal Aid SA estimates that its budget is only enough for 42 courts. It will need additional funds if it is to be able to service these courts without impacting on coverage elsewhere. In the Committee’s view, without provision for additional capacity, the benefits of appointing more judges and magistrates for the administration of justice is likely to be undermined.

15.7.       Start up costs for new court infrastucture and the maintenance of court buildings

15.7.1.   The Department has substantial budget to build new justice service points, including courts. It is, however, a great concern that the Department so clearly struggles to spend its capital expenditure budget largely because of delays on the part of DPW. Only a limited amount of these unspent funds may be shifted between programmes to fund other priority areas. The Committee notes that the Department declared ‘savings’ in 2012/13 of R200 million from unspent funds relating to its capital expenditure budget, which it was permitted to reprioritise. Even then, however, the Department managed to spend only approximately 75% of this reduced amount by the end of the 2012/13 financial year. The trend has continued in 2013/14, with only 2% of the Department’s ‘Buildings and Fixed Structures’ budget spent at the end of June 2013. In the past the Committee has recommended that, in the light of the high expenditure needed to maintain existing courts, the Minister should give serious consideration to placing a moratorium on the building of new courts, whilst the current pressures on the current budget exists. It has expressed the view that it is of no use to create more courts if the existing courts cannot administer justice effectively, through the lack of working infrastructure. The Committee, however, acknowledges the difficulty with this approach as there is a great need for new courts: these form part of a strategy to transform judicial services by making justice accessible in areas that were under-serviced in the past. The establishment of the new High courts at Polokwane in Limpopo and Nelspruit in Mpumalanga, in particular, are vital in this regard.

The Committee is sympathetic but remains of the view that if the Department intends to continue with these capital works projects, it must look towards developing a strategy to manage/drive projects of this nature to ensure that projects are delivered on time, within budget, and are of quality.

The Committee requests that the Department provide it with a comprehensive written report, by 30 January 2014, on progress made with its capital works projects with targets and timeframes (in particular the Polokwane and Nelspruit High Courts); details of challenges experienced; and actual expenditure compared to projected expenditure. The Department should be prepared to brief the Committee quarterly on this item. The Committee is also interested in the impact of newly established courts for the communities they are intended to serve and access to justice as a whole and also requests that the Department look in future at conducting an assessment of the impact that new courts have had.

15.7.2.   The Committee has observed repeatedly that existing court buildings are typically old: unless maintained routinely, the state of these building quickly deteriorates to the extent that major work is needed to restore them. In this regard, the Committee finds it puzzling that in there was no reporting on maintenance of court buildings for 2012/13. The Committee was told that DPW would continue to undertake planned maintenance. In July 2013, the Department reported that it has 650 projects registered for planned maintenance, the majority of which are at planning or design phase. The Committee has learnt, however, that the DPW’s own budget constraints has impacted on these planned projects, although the extent to which this is so is unclear to the Committee. The Committee notes that a meeting of facilities managers for the JCPS Cluster was held in November 2011, in which it was agreed that a study would be commissioned on best method of capacitating user departments to effectively manage their maintenance functions. The Committee is unclear of the outcome of this study if it were undertaken. For now, the Committee requests that the Department provide it with a comprehensive written report on progress with regard to planned maintenance of court buildings by 30 January 2014 and be prepared to report on this matter on a quarterly basis.

15.8.       Municipal rates and taxes. The Department has also requested additional amounts over the medium term to address the difference between the allocation for increases for leases and rates and taxes and actual increases, which are well above inflation. Given the size of the Department’s footprint, above inflation increases have a disproportionately large impact on the Department’s operational costs.

15.9.       Unfunded mandates. The Committee is concerned about the consequences that unfunded mandates have for the Department’s cashflow, especially those relating to Commissions of Enquiry. These commissions do not form part of the Department’s planned activities for the year and are funded from its baseline, although it seems that, for 2013/14, there will be an adjustment in this regard to cover the two Commissions that the Department hosts. The resources required are substantial – the Commission of Enquiry into the tragic incident at or near the areas commonly known as the Marikana mine in Rustenburg, North West province costs the Department approximately R49 million per annum; and the Commission into the strategic defence procurement package has cost R102 million per annum. These funds are drawn from the Department’s already stretched operational budget.

Commissions of Enquiry also impact on the operational budget of Legal Aid SA. The Committee believes that a process or strategy needs to be found to deal with commissions of enquiry when they arise that does not require the Department to find funds from its operational budget (even if these are later refunded in the adjustments process). Alternatively, a special appropriation bill should be tabled.

**Audit outcome**

15.10.    The Committee congratulates the Department on achieving an unqualified audit opinion for the very first time in many years. The Department’s considerable focus on addressing the underlying causes for the qualification has paved the way to the improved outcome. The process, however, has been both long and arduous, with times when the Committee has questioned progress. The audit outcome, therefore, is extremely welcome. Going forward, the Department intends to focus on not only maintaining but also on addressing the findings for a clean audit. The Third Party Funds remain a challenge but at last financial statements for these Funds have been prepared, are audited and should be tabled soon.

Still, the Committee notes the Department’s difficulties in meeting its predetermined targets: In 2012/13, of 55 planned targets, only 25 were achieved (a performance rate of 46%). Although there has been notable improvement since 2011/12, when only 28% of targets were met, this is still a concern. Further, the Committee notes that in only 5 or 9% of the performance indicators was there substantial underperformance. In the past, the Department has admitted that performance has been seriously compromised by the focus on audit issues. The Auditor-General reported problems relating to monitoring, as well as the failure to act swiftly to ensure that targets were met.

The Auditor-General has also observed previously (in passing) that the worst performers in terms of predetermined objectives (the Department, the NPA and the SIU) also experienced the greatest financial pressure. Once again, the Committee is unable to comment on this observation but notes it.

The Committee supports the Auditor-General’s recommendations going forward that performance against predetermined targets should be monitored continuously throughout the year and compared with actual supporting documentation to ensure validity of actual achievement. The Committee intends, therefore, to monitor actual peformance against predetermined objectives on a quarterly basis.

15.11.    On the audit outcome, the Committee supports the Auditor-General’s recommendation that in-year controls are strengthened and that financial statements are prepared montlhy (or at a minimum quarterly) with full disclosure notes. It intends to monitor that this is done. In addition, the Committee the specifically requests that, by 30 January 2014:

·            The Director-General provide the Committee with details of the formal commitments made to address the audit findings.

·            The Department provide written details of all its audit action plans and, in addition, reports quarterly on progress made.

The Department is also requested to address the Auditor-General’s recommendation that monthly financial statements are compiled with full disclosure notes and report to the Committee on this quarterly. Furthermore, Department is asked to provide the Committee with quarterly key dashboard reports with particular focus on compliance with laws and regulations and supply chain management.

15.12.    Management of Third Party Funds.

15.12.1.    The Department’s strategy to address the qualification relating to Third Party Funds (TPF) has not only focussed on compiling credible baseline financial statements but also on addressing risk by reducing cash handling at court level, encouraging instead use of Electronic Fund Transfer (EFT) as a payment method. This has led to improved service delivery – turnaround times for payments to maintenance beneficiaries have reduced substantially. In addition, capacity has been improved within the TPF Unit: More staff have been appointed at both national regional level and various training initiatives have been undertaken. The Committee was told at its 2012 Budget hearings that annual financial statements were prepared for 2011/12 but were held back while waiting for the Auditor-General’s findings on the annual financial statements submitted for 2010/11 (with 2009/10 submitted for comparison). These were obtained and the 2011/12 and 2012/13 statements have been submitted for auditing since. The tabling of these reports, as a matter of priority, is urged.

15.12.2.    The Committee observes once more that the legal status of the TPF has still to be resolved. The accounting framework for TPF was finalised with the Office of the Accountant General and the Department has tacit approval to submit TPF annual financial statements separately from the main vote account. The Department has prepared a Bill that addresses the legal status of TPF and the Bill has been submitted to the Minister of Finance for comment. However, until the status of the TPF is finally resolved, it remains a problem that the Department’s audit outcome would be adversely affected should it be required in future to report on TPF as part of the main Vote account.

Governance and operational issues

15.13.    Addressing fraud and corruption. Fraudulent activities have a bearing on delivery of services, misuse of public resources, and negatively impact on the reputation of departments as well as the confidence of citizens as recipients of services. The Department’s strategy to manage internal fraud and corruption has focused on raising staff awareness, especially those in high risk areas such as supply chain management and court services; the improved finalisation of forensic cases and the vetting of key staff members. The Department reports that it has finalised all forensic cases that predated 1 April 2012. Of the 133 cases that were received in 2012/13, 102 cases (77%) were finalised. The Committee is pleased that the Department exceeded its targets in this regard. It also notes the outcome of these cases, which included 26 dismissals, while six staff members and three members of the public were arrested. A former employee has been sentenced to four years imprisonment for fraud relating the the TPF. The Committee believes that  the timely finalisation of fraud and corruption matters together with commesurate sanctions when a guilty finding is made should contribute greatly to the deterring fraud and corruption within the Department.

The Committee is concerned that the Department was unable to meet its targets relating to the vetting of senior staff as a result of capacity issues in the forensic investigation units. It welcomes the additional mechanisms that the Department employs to reduce the risks of corruption, which include requiring senior staff to submit financial disclosure forms.

The Committee requests that the Department brief it by 30 January 2014 on progress made in vetting senior offficials and on preventing and combatting fraud and corruption within the Department and be prepared to brief the Committee quarterly on this item.

15.14.    Vacancies. The Department has taken great strides to address its overall vacancy rate, which is now approximately 10.3%. Although the Committee would prefer the vacancy rate to be even lower, it is cogniscent that the rate is in line with Government’s target of 10% vacancies by 2014. There has also been improvement at senior management level: the Committee was informed that, at the end of June 2013, there were 30 posts at senior management level that were vacant (15%). A recruitment action plan is in place to fill 15 posts in this performance cycle; another 15 posts are affected by a restructuring process and are put on hold. The Committee notes, in particular, the recent appointment of a CFO, DDG: Legislative Development and DDG: Corporate Services for the Department.

Still, vacancies remain in critical occupations. The trend has been to redirect unspent funds arising from unfilled posts to operations. But without personnel, the efficient and effective delivery of justice services is likely to be compromised. The impact of a lack of capacity on performance is evident: the Family Advocates Office provides a good example of this. Of course, the Department also requires sufficient funds to ensure that additional staff are adequately accommodated and resourced and has alerted the Committee to its difficulties in this regard.

The filling of senior management posts should continue to be prioritised as these positions are vital to organisational efficiency and effectiveness with important implications for service delivery. The Committee has observed previously that, in addition, from a control perspective managers are vital to ensuring an environment that is not conducive to corruption. Vacancies, in the Committee’s opinion, also present a stumbling block to requests for an increased budget allocation, especially as funds from the ‘compensation of employees’ budget continue to be redirected to cover operational shortfalls. While the Committee appreciates the challenges that recruitment processes entail, the Committee urges the Department to make its appointments urgently.

The Committee requests that the Department report to it, in writing, by 30 January 2014, on progress in filling vacancies at senior management level and in critical areas. Further, the Department should be prepared to continue to report quarterly, in writing, on this.

15.15.    Security at court. The Committee appreciates that the Department’s budget to secure courts and justice service points is stretched, despite the allocation of additional funds from 2012/13 over the medium term. Security at courts has become a high priority as a result of increased criminal incidents relating to the Department’s property and personnel. While the Department was briefing the Committee, for example, there was a shooting incident at the Western Cape High Court. The Committee is supportive of the Department’s bid for additional funds but is alarmed at exponential growth in the cost of securing courts: The Department has calculated that it needs approximately R1.2 billion over the medium term to address its security needs. Once more, over the medium-to-long term, the Committee questions whether it is feasible to spend these amounts on security alone. The Committee is aware that the Department has engaged with other departments in the past, including SAPS, to see if they can assist but with limited success.

The Committee requests that the Department provide a written report by 30 January 2014 on progress made in rolling out of the National Security Infrastructure project, as well as its plans to secure the remaining courts at identified sites where the project is not being implemented because of lack of funds. The Committee also asks that the Department be prepared to brief it specifically on its plans to address the provision of security at courts and justice service points in the longer term in light of the ever increasing costs.

15.16.    Integration of IT systems (IJS). A JCPS Cluster review in 2011 revealed that there were significant challenges relating to implementation of the Integrated Justice System (IJS) project, including with the governance and leadership of the IJS Board. The need for improved co-ordination and integration of the JCPS Cluster departments’ ICT systems has long been identified as key to the effective implementation of the Criminal Justice System’s Seven-Point Plan. Key priorities for the programme address the establishment of a single person identifier across the criminal justice system; the establishment of an integrated criminal justice system performance information dashboard with 28 key performance indicators; integration of the departmental case related systems; development and rollout of the Person Identification Verification Application (PIVA); and establishment of a single data store for the JCPS Cluster for statistical purposes.

The Committee welcomes the steps that have been taken since then to address the identified challenges and that there has been progress towards delivery of the priorities. Still, given the length of time that the project has been running and the considerable amount of money that has been spent, the slow pace of progress is cause for dissatisfaction. The Committee notes that, for many years, large sums of money have been earmarked for this project. While the Committee is pleased that there appears now to be some progress - project plans are in place with targets and timeframes – the extent of value received in the past is unclear. The Auditor-General was asked to audit the IJS project and the Committee is informed that this is underway.

In addition, it requests that the Department continue to provide a written report on progress made relating to the IJS, clearly indicating any revised targets and timeframes and the reasons for this, by 30 January 2014. In addition, the Department is requested to address the Committee quarterly on progress made.

**Performance/service delivery**

15.17.    Case backlogs and court performance.

15.17.1.             The criminal case backlog project has seen the number of backlog cases in the regional and district courts stabilising between 34 000 and 35 000 cases per month on an outstanding roll of about 200 000 cases. Since then the Committee is informed that the backlog has been further reduced to less than 28 000 cases per month. The project, which attracts earmarked funds, was intended as an interim measure but the Department has previously indicated its intention to explore the possibility of progressively creating permanent capacity to sustain the progress that has been made. This would require additional resources, including funding for court support. The Committee has already made observations regarding the Legal Aid SA’s concerns in this regard under ‘Additional Capacity’ in paragraph 15.6.

15.17.2.             The case backlogs project, however, targets only regional and district criminal cases. In the past year, there have been exciting developments to improve overall court performance. The Constitution Seventeenth Amendment Act and Superior Courts Act provide the legislative framework that will enable the judiciary to take responsibility for the administration of judicial functions of all courts. The Chief Justice is responsible for the development and monitoring of norms and standards for the performance of all courts and has for some time now begun to address judicial case flow management. A pilot case flow management project was initiated at three courts (North and South Gauteng; KZN High Court and Western Cape High Court in September 2012. The project has been such a success that the North West and Eastern Cape High Courts have volunteered to be additional pilot sites. The case flow management system is apparently based on the system implemented by the late Chaskalson CJ at the Constitutional Court whereby judges take charge of all applications from the time they are filed, and manage them personally, including by drafting directives and managing most of the correspondence to practitioners until judgment is delivered to prevent any unnecessary delays. The capacitation of the Office of the Chief Justice should also greatly assist the Chief Justice in addressing this priority. The Committee is interested in the progress of the project and looks forward to engaging with the OCJ in the near future on this.

15.18.    Truth and Reconciliation Commission (TRC) process. Parliament approved assistance measures for victims identified in terms of the Truth and Reconciliation process. The Committee once gain expresses dismay/displeasure/frustration at ongoing delays in giving effect to the assistance measures that the Department must implement. The Committee welcomes the continued progress in identifying and locating beneficiaries – it is told that only 40 beneficiaries remain to be traced. (Notably, in 2010/11, a total of 875 beneficiaries were outstanding)

The Committee is far less pleased at the extremely slow pace at which the relevant regulations are being finalised. The delays are attributed to consultative processes but the Committee remains of the view that the promulgation of regulations is taking far too long. The Committee was told to expect that regulations relating to educational assistance and medical benefits, in particular, would be promulgated before the end of the 2012/13 financial year but this did not occur. The draft regulations relating to educational assistance is very close to promulgation. Certain difficulties have emerged in connection with identifying those special health needs of victims, relatives and dependents that cannot already be addressed by the public health establishment. A working document has been prepared but will need further discussion. The Housing assistance regulations are delayed to determine the needs of victims. The Committee finds the lack of finality unacceptable and, therefore, requests the Ministry to look into possible interventions to speed up processes.

The Department has engaged the Independent Development Trust (IDT) to conduct a needs analysis and project manage the Community Rehabilitation regulations. The process has started in Mamelodi and Alexandria. The Committee notes these developments and requests that the Department continues to brief it quarterly on progress made.

The Committee requests that the Department continue to keep it informed, in writing, by 30 January 2014, of the progress made in identifying and making payments to outstanding beneficiaries, as well as the progress relating to the finalisation of the regulations. The Department should also indicate any difficulties it may be experiencing in obtaining the necessary co-operation from other roleplayers. Further, the Department should be prepared to comprehensively brief the Committee quarterly on progress made tracing the remaining beneficiaries and payments and the finalisation of the regulations.

15.19.    Constitutional Development. In 2013/14 the Department added a new strategic goal to promote constitutional development. The Committee notes that the Department reports that it has finalised the long-outstanding Code of Good Administative Conduct for officials and urges that it is tabled expeditiously. Compliance with requests for information has been a challenge – only 61% of a total of 1107 requests were granted. This is a relatively new branch and the Department is struggling to fill the position of DDG: Constitutional Development. A Chief Director has, however, been appointed. While the Committee is aware of the difficulties associated with recruitment processes it urges that the post be filled as soon as possible. It is of the view that, without a champion at its helm, this branch may continue to struggle to reach its full potential.

Vulnerable groups

15.20. *Reporting on spending for vulnerable groups.*Increased access to justice of women, children and persons with disabilities is a priority of government and of the Department. The Committee has expressed its interest in the details of spending on vulnerable groups many times in the past. During the 2013/14 Budget process, the Department suggested that a restructuring of its Court Services programme as a result of the migration of certain sub-programmes under to the Office of Chief Justice, might make it possible for it to consider including a programme for vulnerable groups. The Committee remains supportive of this as not only will it assist greatly to make spending under vulnerable groups more transparent but also will facilitate oversight. In the meantime, the Committee requests that the Department continue to report quarterly on its spending for vulnerable groups. This includes details of what was spent on the implementation of legislation such as the Child Justice Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Act and the Children’s Act.

15.21. *National Register for Sexual Offenders (NSRO).*The Committee learnt that there has been some progress made capturing the particulars of those convicted of sexual crimes but remains concerned at the slow pace of capturing the particulars of historical records of those convicted of sexual crimes (a total of 2 023 historic convictions have been recorded so far). In 2012/13, a total of 2 622 convictions were recorded of which 88% were recorded electronically. The Department told the Committee that discussions are underway with the Department of Social Development to combine the National Register with the register provided for in terms of the Children’s Act. The combined register would be located in the Department of Social Development. The Committee welcomes this, as it should prevent any duplication and waste of resources. The Department is requested to provide the Committee with a written report on progress made in recording convictions, challenges identified, as well as developments relating to the merging of the registers by 30 January 2014.

15.22. *Maintenance matters.*The Committee is pleased at the Department’s focus on maintenance matters to improve delivery of maintenance services. The maintenance turnaround project is a flagship project: the impact of this work affects the most vulnerable members of society. The project has had considerable success in the implementation of EFT payments made to beneficiaries with 83% of payments made by EFT. Not only does this reduce the amount of cash handled at service points with all the attendant risks, it also reduces travel costs for beneficiaries and has reduced queues at justice service points. Since March 2011, the number of beneficiaries paid by means of EFT at court level has increased from 15 893 to 171 712 (at 31 March 2013). The value of these decentralised payments has increased from R9 million to R110.5 million in the same period.

The Department has also introduced ‘lean management’ to reduce wastage and deliver value by improving business processes through interventions identified by officials working in the area. Improvements to queuing times and a decrease in the time taken to process maintenance payments have been observed at those sites where lean management has been introduced.

Committee members have highlighted the number of matters raised by the public that raise various difficulties relating to service delivery. The Committee has also expressed support for more stringent enforcement mechanisms for defaulters. It notes that various policies and training interventions have been developed to improve service delivery overall: A national defaulters strategy was produced to guide courts on how to uniformly deal with defaulters and is being implemented; and a maintenance complaints management training module is intended to equip maintenance complaints managers with the appropriate skills. In addition, IT solutions have been identified as critical to the effective management of daily maintenance and other TPF operations.

15.23.    The new Service Delivery Charter and Service Standards should also contribute to a more compassionate and responsive approach on the part of justice officials when dealing with the public. The Committee had intended to invite the Department to brief it specifically on its new Service Charter but, due to time constraints, was unable to do so. The contents of the Department’s briefing document and progress report on implementation, which the Committee received in July 2013, are noted.

15.24. *Child Justice Act*. The Committee has expressed its concern before at reports regarding the implementation of the Child Justice Act, 2008. The number of children coming into conflict with the law appears to be dwindling but there is no research reported to indicate whether this is a positive development. The Committee had intended to hold a meeting with stakeholders on the implementation of the Child Justice Act but time constraints have so far prevented this. The next annual report on the implementation of the Child Justice Act, 2008, is due and the Committee urges the Committee to table it as soon as possible for consideration.

The Committee has questioned the affordability of designating more One-Stop Child Justice Centres (OSCJC) despite the excellent work that has been done: The Mangaung One-Stop Child Justice Centre, for example, has received international acclaim. The Committee notes too that neither the planned rollout of two One-Stop Child Justice Centres in 2011/12 nor the planned rollout of two OSCJC’s in 2012/13 took place although the designation of Matlosane OSCJC was completed. The designation of the Khayalethemba Youth Centre was put on hold as it was too costly . Although establishing more centres specially designed for children is desirable – even preferable - this may not be affordable at present. Indeed, the Committee notes that a viability study on the establishment of further OSCJC’s is underway.

The Committee requests that the Department continue to keep it informed of progress of the study and the rollout of further One-Stop Child Justice Centres. In addition, the Committee requests that the Department also report on the status of the process to extend the jurisdiction of the OSCJC at Mangaung for it to be able to deal with regional court criminal matters by 30 January 2014.

15.25. *Designated sexual offences courts.*Th *e*Committee has been appalled for some time at the low conviction rate for sexual offences and has expressed its view previously on this. It remains firmly of the view that sexual offence matters require specialist skills and, for this reason, it supports dedicated sexual offence courts. The trend, however, was to mainstream’ these courts for various reasons. A Ministerial task Team Task Team (consisting of representatives from the NPA, Regional Court judiciary; Judiciary; Justice Sector Strengthening Programme; Legal Aid SA and the Foundation for Human Rights) investigated the feasibility of re-establishing Sexual Offences Courts. An announcement was made at the beginning of the year that dedicated sexual offences courts would be re-introduced. Since then, 57 regional courts have been identified for Phase 1 of upgrading process to comply with the new Sexual Offences Courts Model within available resources. In 2013/14, nine courts will be upgraded to meet the standard: the remaining courts will be upgraded as and when resources permit.

The Committee has introduced legislation that amends the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, to provide for a legislative framework to allow the Minister to designate Sexual Offences Courts to deal exclusively with sexual offence cases. The Committee, however, remains concerned that there does not appear to be additional funds for the establishment of these courts despite their prioritisation. The NPA and Legal Aid SA have both indicated that they are unable to fund capacity from their baseline and that additional funds will be needed if they are to provide services at these newly established courts.

The Committee requests that the Department provide it with a written report on the rollout of the designated sexual offences courts by 30 January 2014 and be prepared to brief it quarterly.

The Committee requested previously that any sexual offences matters that are also backlog cases be identified and prioritised for finalisation. The Department is requested to report on progress in this regard, in writing, by 30 January 2014.

15.26. *Master’s Office*

15.26.1.         The Committee welcomes the opening of a new Master’s Office in Mpumalanga, Nelspruit, which already shows signs of being well utilised. Additional service points at Barberton and Nelspruit Magistrates’ Courts have also been established.

15.26.2.         The Committee has in the past queried the accessibility of the Master’s Offices for Guardian’s Fund matters: in contrast to deceased estates which can be accessed at all magistrates’ courts; there are only six offices countrywide that can deal with Guardian’s Fund matters. Some of the six offices are not even located in the biggest urban areas and for those living outside of these centres access is difficult. The Department reported on various initiatives to address accessibility. told the A new paperless administration system should reduce the potential for fraud and will allow the Department to expand the number of service points where documents can be collected and quality controlled, and then sent to central Offices for processing. In addition, beneficiaries can be paid by means of EFT. The Committee appreciates these initiatives to increase access to Masters’ services but remains of the view that the expansion of Guardian’s Fund services is urgent.

The Committee is also pleased to learn that the Department has taken up its suggestion to request Legal Aid SA to assist in matters where the interests of minors are involved. In 2012/13, a total of 2071 such matters were referred to Legal Aid SA.

Nonetheless, the Committee notes that certain targets relating to improved turnaround times were not achieved, mostly as a result of capacity constraints. The Department highlighted that this did not mean that services were not rendered.

The Committee requests that the Department provide it with a progress report on the turnaround strategy and performance relating to improved Master’s services, including the Guardian’s Fund, as well as its action plan to address challenges identified, by 30 January 2014. The Department should also remain prepared to address the Committee on this quarterly.

15.27. *Transformation of State Legal Services***.**The discussion document on the Review of State Legal Services details plans to consolidate structures providing legal services to the State to enhance performance. The Committee has previously queried certain aspects relating to state litigation, including the fragmented approach to the management of state litigation in an increasingly litigious society, as well as briefing patterns to previously disadvantaged legal practitioners. The Committee engaged lengthily with the Department during these BRRR proceedings on the many challenges that it has identified relating to the conduct of state litigation. It looks forward to engaging further with the Department specifically on the Review and intends to ask the Department to brief it in the near future - time permitting. The Committee notes the Department’s intention to introduce legislative amendments to provide for a ‘chief’ State Attorney – the Solicitor-General. The Committee reminds the Department that there is only a narrow legislative window before the end of the Fourth Parliament’s term and urges it to table the legislation expeditiously.

15.28. *Assessment of the impact of the decisions of the Constitutional Court and Supreme Court of Appeal.*The Committee notes that despite delays some progress is reported as service provider has now been appointed to conduct the assessment. The Committee notes as well that the cost of the assessment has increased from R2.5 million in 2012/13 to R10 million.

**16. Office of the Chief Justice (OCJ)**

16.1.       The Committee was briefed on the process of capacitating the Office of the Chief Justice (OCJ), which is ongoing. Staff were initially seconded from the Department to capacitate the OCJ but permanent capacity is being created, including the appointment of a Secretary-General to head the Office, and four Deputy Chiefs. The OCJ was proclaimed a government department in September 2011. The Committee welcomes these developments and understands that this was the only way to establish the OCJ in the short-term was to proclaim it a government department but urges the the tabling of legislation that deals with judicial administration expeditiously. The Committee requests that it be kept informed of progress regarding capacitation and requests a comprehensive written report by 30 January 2014 on this.

16.2.       The Committee notes that National Treasury has approved the budget programme structure for the OCJ. The structure will cover the High Courts, South African Judicial Education Institute and Judges Salaries as direct charge from the National Revenue Fund. A Budget Vote for the OCJ will be created and the Secretary-General will become the Accounting Officer of the Office once Treasury requirements have been met. The Committee requests that it be kept informed of progress quarterly.

16.3.       The Committee is pleased that the OCJ intends to build a ‘judicial headquarters’ instead of leasing a building. The Committee has expressed its support in generals for buildings to be owned by the institution that occupies them. This, in the Committee’s view, tends to be more cost effective in the long term. This will also reinforce the perception that the judiciary is truly independent.

16.4.       The Committee notes that the OCJ is poised to report on its activities from the beginning of 2014/15 and welcomes this. In the Committee’s view there should be ongoing and close discussion with the Auditor-General to pre-empt any possibility of a poor audit opinion, which would reflect poorly on the Judiciary and the Chief Justice.

16.5.       The Committee also noted that many staff members will be transferred from the Department to the OCJ. It urges that the necessary consultation processes with employees/unions take place in order to better manage the transition. It requests that it is kept informed of progress made in this regard, in writing, on a quarterly basis.

16.6.       The Committee notes that a CEO for the SAJEI has been appointed and that the SAJEI has begun training judicial officers. During the 2012/13 financial year, a total of 1 956 judicial officers were trained (as against a target of 350). It is, however, concerning that SAJEI is unable to introduce more training programmes due to a lack of resources. Ongoing training is a vital component of judicial education and is required for improved technical knowledge of new pieces of legislation to facilitate implementation, social context training and the like. The Committee asks that it is kept informed of the training conducted, as well as any challenges experienced.

**17. National Prosecuting Authority**

17.1.       The Committee welcomes the recent appointment of the National Director of Public Prosecutions, Advocate Nxasana.

17.2.       The Committee once again congratulates the NPA for the excellent effort on achieving an unqualified audit opinion – this year with no findings. It has already commented on its concerns regarding the Auditor-General’s findings relating to the NPA’s financial health.

17.3.       Further, the Committee is informed that the NPA’s ‘compensation of employees’ budget is under severe pressure. This is as a result of the higher than anticipated carry through costs of implementing the OSD; the expansion of salary bands and ceiling as a result of implementing OSD; and the budget allocation for notch increases in respect of performance awards has increased from 1.5% to 2.5%. There is a cumulative shortfall of R78 million. The NPA has implemented cost saving measures and funds have been reprioritised from its ‘goods and services’ budget. Only priority posts are being filled. As a result it has managed to breakeven for 2013/14 but going forward there appears to be very little more that can be done without severely impacting on operations. In 2014/15, it is estimated that the shortfall will be R118 million and will affect court utilisation of 15 Regional Courts and 66 District Courts. In 2015/16, the shortfall will grow to R153.9 million and this will impact on 15 Regional Courts and 110 District Courts. The NPA may need to consider closing certain courts. The NPA has indicated very clearly that it will need to revise its targets downwards to accommodate the budget reductions, which will negatively affect effectiveness in combating crime. The Committee is extremely concerned about the impact of the budget cuts for prosecutions and for the performance of the criminal justice system as a whole.

17.4.       The Committee has previously expressed its concern regarding vacancies and the high number of acting positions within the NPA. The Committee notes that the NPA has ‘solved’ the problem of overall high vacancy rates by no longer counting posts for which it has no funds, reducing the overall vacancy rate from 15% for 2011/12 to 0.3% this year. This, however, is not sustainable and the lack of capacity is likely to affect performance (at present, just more than half of the NPA’s targets were met for 2012/13 but these were ‘stretch’ targets based on the previous year’s performance. The AFU, for example, lists the loss of experienced lawyers and financial investigators as a reason for not being able to meet targets for 2012/13. Nor are there funds available to replace lost capacity. The Committee notes that the AFU is one of the few state institutions that recovers money for the state and, in 2013/14, it has already returned R132 million against its total budget of R112 million for the year. It is anticipated that the AFU will recover significant amounts going forward flowing from the focus on corruption cases. The Committee believes that the AFU’s work is vital to addressing corruption, which is a priority of government. The lack of capacity may undermine achievement of this priority.

17.5.       Concerns have been raised relating to the NPA’s accounting status and governance arrangements. At present, although the NPA’s prosecutorial independence is constitutionally guaranteed; empowering legislation provides that its accounting officer is the DG: Justice and Constitutional Development. In addition, the NPA requires an exemption annually for it to prepare separate annual financial statements. The Committee is informed that amendments to the National Prosecuting Authority are being prepared to resolve these problems, further strengthening the NPA’s independence. The Committee was unable to clarify at what stage the Bill is at and requests that the Department provide it with a progress report in this regard by 30 January 2014.

17.6.       The Committee has already indicated its concerns relating to court performance and unnecessary delays in court processes. It once more believes that the conduct of all justice officials, prosecutors and public defenders needs to be strictly monitored and, if they are responsible for the causing unnecessary/unjustifiable delays, they should be sanctioned.

17.7.       The NPA has additional funds (R100 million over the medium term) for the institutionalisation of donor-funded positions within the Thuthuzela Care Centres (TCCs). The Committee notes that the National Treasury’s response to its previous recommendation regarding funding of TCC’s was favourable: The NPA receives R38 million in 2013/4; R44 million in 2014/15 and R55 million in 2015/16 for the TCCs. Donor-funded positions have been institutionalised and the intention is to increase the number of operational TCCs from 35 to 55 in 2015/16. The Committee supports this and requests that the NPA continue to keep it informed of progress of the rollout of the TCCs on a quarterly basis.

17.8.       Given the priority on combating violent crime, especially sexual violence against women and children, the Committee is dismayed that the NPA has indicated that it is unable to provide additional capacity for the dedicated sexual offences courts. At present, relatively few sexual offences cases go to trial. Further, the conviction rate for these matters (65.8%) is far lower than for other criminal offences (89.9%). Specialist courts create dedicated capacity with expertise in these matters. The establishment of these courts should also assist with secondary traumatisation of victims, as the courts are equipped in a way that is conducive and officials are trained to provide the necessary support to victims. The Committee, therefore, strongly supports the NPA’s request for additional funds for this purpose.

**18. Legal Aid South Africa**

18.1.       The Committee congratulates Legal Aid South Africa on receiving an unqualified audit for the past 12 years, with no matters of emphasis for the past eight years. Once again, Legal Aid SA impressed the Committee greatly with its strategic vision and planning, management of resources and considerable achievements.

18.2.       The Committee has observed previously that although a key stakeholder in the criminal justice system, Legal Aid South Africa’s budget is considerably smaller than that of the NPA and it feels budget cuts disproportionately. Further, the majority of its allocation is committed to salaries, which leaves it with very little room to cut costs without reducing posts. While Legal Aid South Africa has reported that has been able so far to absorb budget cuts to some extent without it having significant impact on court coverage, there is no provision for additional capacity in criminal matters. The current coverage of courts is already inadequate and the reductions will exacerbate this. The Committee is extremely concerned about the impact of the reductions on the efficiency and effectiveness of the criminal justice system as a whole. The Committee supports the need for more legal aid practitioners to increase coverage in all courts and to provide for relief capacity. It strongly feels that insufficient capacity has a considerable adverse effect on case-flow, contributing to backlogs and, generally, to delays in the criminal justice system. It notes too that Legal Aid SA reported that there are still far too many awaiting trial detainees in prison for more than two years. The Committee, therefore, supports the additional funding request to increase practitioner capacity by R348 million over the medium term.

18.3.       Further, the Committee is alarmed that Legal Aid South Africa will be unable to provide additional capacity where required, including at the dedicated sexual offences courts once designated. The Committee has already commented on the impact that the conversion of backlog courts to permanent courts and the need for funding for additional court support. The Committee supports Legal Aid South Africa in its request that in future any court expansion programmes factor in a budget allocation for legal aid capacity to service those courts if they are to be functional.

18.4.       The Committee continues to support Legal Aid South Africa’s goal of expanding expand its civil work and impact litigation, despite the financial constraints that it faces in this regard. It, therefore, supports Legal Aid SA’s request for additional funding for increased capacity of R71.7 million over the medium term.

18.5.       The Committee notes Legal Aid SA’s request that it be given time to study the recent judgment of the North Gauteng High Court regarding the provision of Legal Aid assistance to the miners who were injured or arrested at Marikana before it comments definitively on its implications. In the meantime, the Committee was informed that Legal Aid SA estimates that it would need approximately R17 million to fund representation of arrested and injured miners until the end of the financial year. The Committee supports the allocation of the additional R17 million for this purpose. The Committee has already commented on the need for Commissions of Enquiry to be proclaimed with adequate funding from the outset.

18.6.       The Committee notes that the number of cases involving children in criminal matters has decreased from 22 376 in 2011/12 to 19 840 in 2012/13. Legal Aid SA, however, requests more funds to represent children at the preliminary inquiries as these are regarded as first appearances. The Committee has expressed concern elsewhere that the reasons for the decline in the number of children that come into conflict with the law are unclear. It may well be the result of the increased number of children being diverted, which would be a positive outcome. But until the necessary research is done any comments are merely speculative and, therefore, not especially useful. It urges the Inter-sectoral Committee, of which Legal Aid SA forms part, to look into this phenomenon in monitoring and evaluating the implementation of the Child Justice Act.

18.7.       The Committee notes too that the number of cases involving children in civil matters has increased by from 5584 matters in 2011/12 to 6 265 in 2012/13. This is attributed to the assistance that Legal Aid SA provides in Guardian’s Fund matters and, also, maintenance matters. Given the enormous number of these maintenance matters, Legal Aid SA has proposed in the latest Guide that representation in maintenance matters be provided where (a) there has been a failure by the system to enable the applicant to seek or execute the order for a period longer than 12 months, or (b) there is an abuse of the system by the other party which makes it difficult to obtain the granting or execution of the order for a period longer than 12 months.

18.8.       The Committee also notes that Legal Aid South Africa did not get an additional R7.5 million that the Committee recommended for its IT needs in 2012/13. It is disappointed at National Treasury’s response: The Committee feels that Legal Aid South Africa uses its IT resources extremely effectively and should be supported in this, in particular as its AI system has begun to show signs of aging and need upgrading. An AI Redevelopment Project has been approved to address these challenges and the project will commence in 2013/14.

19. **Special Investigating Unit**

19.1.       The Committee congratulates the SIU on the recent appointment of a Head of Unit: Advocate Soni. The position has been filled in an acting capacity for a considerable period and the Committee welcomes the appointment.

19.2.       Although only two weeks into the position, Adv Soni maintained that the SIU would need to radically transform, developing a new vision, for it to be able to take up fully its role in tackling corruption, maladministration and abuse of power. The SIU intends to focus on its powers to initiate civil proceedings to recover ill-gotten gains in the courts or a Tribunal established under the SIU Act, 1996, as amended. The SIU has indicated that it will need to revisit its strategic plan, indicators and targets in light of these new additional powers, which transforms the SIU to both an investigating and litigating unit. The Committee is excited by the processes underway to re-envision the Unit. It looks forward to engaging further with the SIU once it has completed its planning processes.

19.3.       The SIU attained an unqualified audit with findings. There is some concern as this is the second year that there are findings. The Committee is concerned that the outcome may regress even further unless action is taken. In its view this would be wholly unacceptable for a body that addresses corruption, maladministration and abuse of power. The Committee accepts the SIU’s explanation for the findings and welcomes its commitments to improve on these. The Committee requests, however, that the SIU provide the Committee with written details of the formal commitments made to address the audit findings and its audit action plans in this regard. The appointment of a CFO, even if this is in an acting capacity will also contribute to improved outcomes. The SIU is also asked to report on progress at its next meeting with the Committee.

19.4.       The SIU informed the Committee that it is working towards filling the position of CFO, which the Committee welcomes. The post has been vacant for more than a year, which is wholly undesirable. The Committee also notes that in the past there were several resignations of experienced/senior staff members and is concerned at the number of acting positions. The Annual Report is unclear regarding vacancies at senior management: These are listed at 0 - although of 16 approved posts only 11 are reported as filled. The presentation puts the vacancy rate for Business Management at 14.3% and Business Operations at 15.5% for 2012/13. The Committee requests that the SIU addresses it on its establishment, including vacancies, at its next meeting with it.

20. **South African Human Rights Commission (SAHRC)**

20.1.       The Committee is extremely disappointed that the SAHRC received a qualified audit opinion for 2012/13, all the more dismaying when considered in light of the Commission having received an unqualified audit opinion with no emphasis of matter since 2009/10. The Committee, however, appreciates that the Accounting Officer has taken responsibility for the regression, provided a credible explanation for how the qualification came about; and presented the SAHRC’s audit action plan to rectify in this financial year the matters that were identified. The Committee notes that the Auditor-General will be conducting a mid-term audit (in October/November 203) and requests that the Commission informs it of the outcome of this process, in writing.

20.2.       The Committee notes the overall trend relating to improved performance: the Commission achieved just 52% of targets in 2008/09 when compared to achieving 85% of targets in 2012/13. Last year, however, the SAHRC managed to achieve 89% of its targets. Although the Committee queried certain of the targets achieved, the SAHRC was able to satisfy its concerns in this regard and, in addition, welcomed the Auditor General’s assurance (sought by the SAHRC) that the matter raised by the Committee would not have any material impact on his opinion. The Committee accepts that operational restructuring and budget constraints were largely responsible for the failure to meet all targets. Nonetheless, the Committee intends to monitor performance and, for this reason, requests that the SAHRC provide it with a report relating to performance and spending quarterly.

20.3.       The SAHRC argued last year extremely persuasively that it would not be ideal to reduce its baseline allocation in the short term. It had embarked on a three-year reprioritisation process and a reduction of its allocation would undermine this important process. The SAHRC also made important proposals to implement significant cost-savings in rental and related costs from 2015/16: A proposal that the Committee approved in principle.

The Committee was extremely disappointed when the Minister of Finance was unable to allocate the relatively modest amounts that it had recommended to the National Assembly be allocated to the SAHRC for the 2013 MTEF. Given the financial constraints the SAHRC is currently working under, it is impossible to implement the full structure of the SAHRC and maintain a presence in every province. Consequently, the Commission was faced with the unenviable task of either having to close three provincial offices, namely, Limpopo, Mpumalanga and the North West office, or freezing thirteen posts. The Commission chose to freeze thirteen posts while maintaining a presence in all provinces. The Committee understands from the SAHRC that the current situation is, however, untenable in the medium to long term since the provincial offices are not fully staffed to deal effectively with complaints. Consequently, the Commission proposed an increase of R32.81 million in the first year, followed by increases of R16.4 million in the second and third financial years. These additional amounts were approved by Parliament but were not given effect to by National Treasury. In short, unless additional funds are found the SAHRC will need to reduce its presence in the provinces. The Committee is alarmed at this possibility as the SAHRC’s role in advancing human rights in South Africa is vital. The Committee remains supportive of the SAHRC’s request for further funds.

20.4.       The Committee requests that it is kept updated on progress relating to the proposal to share office space with other Chapter 9 institutions quarterly.

20.5.       The Committee requested that the SAHRC report separately on its Promotion of Access to Information Act (PAIA) mandate, which the Commission has done now for two years in a row. The Committee found the report very useful, as was its report on the South Africa’s compliance with its international obligations. The Committee was briefed separately on these reports towards the end of 2012 and has undertaken to invite the SAHRC before the end of the term of the Fourth Parliament to brief it once more on this year’s PAIA report. It notes too that the Commission took up its suggestion that when it produces substantive reports of this kind, it formally tables them with a request that the reports be referred for consideration and report to the House.  The Committee welcomes the SAHRC’s initiative in approaching the Presidency to have compliance with PAIA included in its monitoring matrix.

20.6.       The Committee has still to engage formally with the Office on Institutions Supporting Democracy and Related Institutions in the Deputy-Speaker’s Office to clarify its role in supporting these institutions. It notes, however, the attendance of officials from the OISD at relevant committee meetings, which it has found useful. Still, going forward, the Committee believes that further engagement with the OISD would be useful and intends to make this suggestion in its exit report.

20.7.       The SAHRC has requested additional funds to enhance its legal services capacity. The Commission has appointed new senior legal officers but proposes that additional legally qualified persons are employed on short-term contracts of between 1-3 months to assist in reducing the complaint workload while these newly appointed staff members are being trained and orientated to take up their positions. It estimates that it will need R12.3 million for this. In addition, the SAHRC has requested additional funds to develop resources and training materials for personnel to reduce dependency and expenses incurred by reliance on external service providers. The SAHRC seeks R1.5 million for this.

20.8.       The SAHRC told the Committee previously that it has a number of cases that require resolution through formal processes but has been constrained by a lack of funds. The Committee suggested that the Commission seek assistance from Legal Aid South Africa, which has increasingly capacity to engage in civil litigation, including high impact litigation. The Committee is pleased that the Commission has contacted Legal Aid South Africa and that a memorandum of agreement is in the process of being concluded. The Committee requests that it is kept informed of developments in this regard, quarterly.

20.9.       The Committee was appalled last year to learn that commissioners lack the budget to travel internally to undertake investigations, meet with stakeholders, etc. It requested that the Commission provide it with funding proposals, which was done. The following amounts were proposed: R2.43 million for 2014/15 and R2.67 million for 2015/16. The Committee remains supportive of this proposal.

20.10.    The Committee congratulates the SAHRC on chairing the International Co-ordinating Committee of National Human Rights Institutions (ICC), which brings with it not only prestige but also important opportunities for sharing of knowledge in the international arena. The travel associated with the Chairperson and related costs will be covered by the ICC’s budget. The SAHRC was required to take on additional human resources and related incidental expenses to assist the Chairperson in carrying out his functions. The SAHRC informed the Committee that the necessary funds were sourced from the African Renaissance Fund, which is administered by the Department of International Relations and Co-ordination. Estimated costs are R2.33 million annually. The SAHRC also continues to chair the Network of African National Human Rights Institutions. The Committee is, in addition, very pleased to learn that the SAHRC was recently awarded A-status by the United Nations as a National Human Rights Institution.

20.11.    The SAHRC is participating at the Marikana Commission of Enquiry. At the outset, the Committee had certain reservations relating to the potential for conflict regarding the SAHRC’s intended role. The Committee appreciates the frank discussion that took place at that time. The SAHRC took the Committee’s concerns on board and revised its plans to ensure that there would be no conflict. The Committee is informed that SAHRC has since played an invaluable role at the proceedings and its contribution has been publicly acknowledged as such by the Commission itself. The SAHRC continues to monitor the proceedings, which the Committee supports, especially given that funding is undermining third party rights to legal representation.

21. **Public Protector**

21.1.       The Committee congratulates the Public Protector on its unqualified audit opinion, despite with findings. The Committee accepts the explanation for the findings and that there are processes underway to address these, including action against responsible individuals. The PP is requested to provide details of the management audit plan to address the findings. The Committee requests that the PP update it quarterly on progress made.

21.2.       The Committee notes that the Public Protector reported that it had reached more than 51 million people in 2012/13 through different media, although it appears that some of these are repeated interactions. The Public Protector conceded that it is likely that the number of people reached was closer to 20 million. Nonetheless, the Committee congratulates the Public Protector on this initiative to raise public awareness.

The Committee is also informed that a baseline survey sought to measure stakeholders’ levels of awareness, access, trust, confidence and faith in the Public Protector. The survey results indicate that there are high levels of awareness (> 70%) of the Public Protector but that worryingly 43% of respondents were unaware of the location and existence of provincial offices. It should be noted that the PPSA has sought additional funds to expand its footprint. The Committee notes too that efforts to open a regional office in Thohoyandou, Limpopo, were thwarted due to the Department of Public Works being unable to find suitable accommodation in the area. Staff members appointed for this Office now work from the Polokwane office. The Committee has, in the past, not generally supported the expansion of the Public Protector’s footprint as it has queried the distribution of offices for best use of resources. The Committee does not feel able to engage further on the opening of more offices until it has been briefed fully on the Public Protector’s strategy in this regard.

21.3.       The Committee is pleased to note the increase in cases finalized but at the same time the cases carried over have increased. In addition, the Public Protector has been unable to meet turnaround targets, which is attributed to a lack of investigative capacity. An investigator can have approximately 400 cases per year, although the average is closer to 200 cases. The Auditor-General suggested that the targets were set too high and not suitably developed during the strategic planning process. Only 37% of early resolution cases were resolved in three months, while only 12% of other investigations were resolved within the stipulated 12 month target. The Public Protector explained that she preferred to set the targets high and fail to meet them while trying hard to do so rather than to set targets too low from the outset. However, the Committee notes that going forward the Public Protector is likely to revisit these timeframes given the capacity constraints. The Committee has previously expressed the view that the Public Protector should consider being more strategic in taking on investigations, making use of systemic investigations in particular, to maximize the use of scarce resources.

21.4.       The Committee commends the Public Protector for its vacancy rate, which is at 3.7% (only 11 out of 295 funded posts were vacant at the end of 2012/13) – although vacancy at management level is at 8%. The presentation refers to an organizational structure of 556 posts, of which 261 posts remain unfunded. The Committee notes the Public Protector’s request for additional funds for new posts.

**Part 5**

22. **Summary of reporting requests for the Department of Justice and Constitutional Development and the NPA**

**Reporting matters**

**Action required**

**Timeframe**

|  |
| --- |
|  |
| *Building of new courts (paragraph 15.7.1.):*  Progress report on capital works projects with targets and time frames; challenges experienced; and spending (compared to projected spending *)* | Written progress report  Briefing | 30 January 2014  Refer to Committee programme |
| *Maintenance of court buildings and justice service points (paragraph 15.7.2)*  Progress report on planned maintenance of court buildings and justice service points, challenges experienced and spending (actual compared to projected). | Written progress report  Briefing | 30 January 2014  Refer to Committee programme |
| *Addressing the audit outcome (paragraph 15.11):*  Report providing details of the formal commitments made to address the audit findings and audit action plans.  Quarterly progress reports on:  ·         Progress made on the Audit action plans and the compilation of monthly financial statements with full disclosure notes  ·         Key dashboard reports with particular focus on compliance with laws and regulations and supply chain management | Written report  Quarterly progress reports | 30 January 2014  As available for the quarter. |
| *Preventing fraud and corruption in Department and vetting of senior management staff (paragraph 15.13)*  Written progress report with quarterly briefings | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| *Vacancies at senior management level and in critical areas (paragraph 15.14)*  Written progress report on vacancies especially at senior management level and in critical occupations. | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| Security at courts and justice service points (paragraph 15.15)  Progress report on National Security Infrastructure Project  Briefing on provision of security at courts and justice service points | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| Integrated Justice System (IJS) projects (paragraph 15.16)  Progress report with targets and time frames; challenges experienced; and spending (compared to projected spending). | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| *Truth and Reconcilation Commission process (paragraph 15.18)*  Progress made in identifying and making payments to outstanding beneficiaries, as well as the progress relating to the finalisation of the Regulations. | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| *Spending on vulnerable groups (paragraph 15.20)*  Written report and quarterly updates | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| *National Register of Sexual Offenders (NRSO) (paragraph 15.21)*  Progress report on capturing of data, as well as challenges experienced. Developments relating to the combining of the related registers. | Written report | 30 January 2014 |
| *Child Justice (paragrpah 15.24)*  Progress on the rollout of the One-Stop Child Justice Centres and on the extension of jurisdiction at the Mangaung OSCJ Centre. | Written report | 30 January 2014 |
| *Dedicated sexual offence courts (paragraph 15.25):*  Report on progress establishing the courts and specific briefing | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| *Guardian’s Fund services (paragrapgh 15.26)*  Progress on expansion of services for increased accessibility, with targets and timeframes.  The Department should also be prepared to address the Committee on this at the next quarterly meeting. | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| Office of the Chief Justice (paragraph 16)  Progress in establishing the OCJ – capacity, budget Vote | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| SAJEI (paragraph 16.6)  Progress report on judicial training conducted | Written report  Briefing | 30 January 2014  Refer to Committee programme |
| Amendments to the NPA Act to clarify accounting status (paragraph 17.5)  Progress report on process of drafting legislative amendments | Written report | 30 January 2014 |
| Thuthuzela Care Centres (paragraph 17.7)  Progress report and quarterly briefing on rollout of the TCCs | Written report  Briefing | 30 January 2014  Refer to Committee programme |

23. **Summary of recommendations relating to requests for additional funding for the MTEF**

23.1.       TheCommittee recommends that the Department of Justice and NPA be provided with the following additional funds for the MTEF period:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Department of Justice and Constitutional Development and NPA: MTEF Funding proposals** | | | | |
| (R’000) | **2014/15** | **2015/16** | **2016/17** | **Total** |
| NPA | 306 130 | 394 168 | 453 913 | **1 154 211** |
| Capacitating the OCJ | 67 475 | 57 995 | 65 626 | **191 096** |
| Leases of buildings and municipal services | 300 000 | 350 000 | 400 000 | **1 050 000** |
| Transformation of State Legal Services | 25 000 | 35 000 | 40 000 | **1000** |
| Upgrading of Clerks 3 and 4 to 5 | 294 000 | 310 000 | 326 000 | **930 000** |
| Upgrading of Clerks 5 to 6 and 7 | 109 000 | 114 000 | 120 000 | **343 000** |
| Courts support structure | 75 000 | 80 000 | 100 000 | **255 000** |
| Security Guard Services | 400 000 | 400 000 | 400 000 | **1 200 000** |

23.2.       The Committee recommends that the Legal Aid SA be provided with the following additional funds for the MTEF period:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Proposals for funding**  **(R’000)** | **2014/15** | **2015/16** | **2016/17** | **Total** |
| Increasing criminal capacity | R109.3 | R115.9 | R122.8 | R348.1 |
| Increasing civil capacity | R22.5 | R23.9 | R25.3 | R71.7 |
| Expansion of the National Footprint | R33.6 | R28.6 | R30.3 | R92.6 |
| Upgrade of the IT infrastructure | R4.8 | R5.08 | R5.4 | R15.3 |
| Administrative support | R7.02 | R7.5 | R7.9 | R22.4 |
| **Total** | **R181.2** | **R182.7** | **R193.7** | **R557.6** |

23.3.       TheCommittee recommends that the Public Protector be provided with the following additional funds for the MTEF period to:

|  |  |  |  |
| --- | --- | --- | --- |
| **Budget Item** | **2014/15** | **2015/16** | **2016/17** |
| Upgrade of personnel | 3 241 086 | 3 871 409 | 3 672 241 |
| Realignment of legal professionals to the OSD | 11 552 847 | 12 176 701 | 12 882 066 |
| Funding for newly created posts | 17 025 024 | 17 944 375 | 18 895 427 |
| **TOTAL** | **31 818 957** | **33 608 485** | **35 389 734** |

23.4.       The Committee recommends that the South African Human Rights Commission be provided with the following additional funds for the MTEF period:

|  |  |  |  |
| --- | --- | --- | --- |
| **Budget Item**  **(R’000)** | **2013/14** | **2014/15** | **2015/16** |
| **Legal Services** | | | |
| Legal services human resources capacity for complaints handling | R12. 3 | R1.14 | R1.14 |
| Internal capacity building of legal practitioners | R1.5 | R1.75 | R1.75 |
| Procurement of Experienced Legal Expertise for litigation of complaints | R1.5 | R2.18 | R2.18 |
| Revamping Legal Case Management System | R2.13 | R1.12 | R1.12 |
| Setting-up a call centre for complaints processing | R1.7 | R1.84 | R1.84 |
| **Human Rights Advocacy** | | | |
| Developing Advocacy and Education capacity and materials | R1.6 | R1.9 | R1.9 |
| **Research** | | | |
| Research reports, namely ESR, Equality and Focus Areas | R1.95 | R2.14 | R2.14 |
| Promotion of access to information | | | |
| Monitoring, compliance and advocacy of PAIA | R6,7 | R2.7 | R2.7 |
| **IT Infrastructure** | R3.43 | R1.7 | R1.7 |
| **Total** | **R32,81** | **R16. 4** | **R16.4\*** |

24. **Appreciation**

24.1.       The Committee thanks the Director General and all officials who appeared before the Committee for their co-operation.

24.2.       The Committee thanks the newly appointed National Director of Public Prosecutions and NPA staff for their co-operation in this process.

24.3.       The Committee also wishes to thank the Public Protector and Deputy Public Protector; the Chairperson and Commissioners of the South African Human Rights Commission; the Chairperson and Board of Legal Aid South Africa; and the newly appointed Head of the Special Investigating Unit, as well as all respective staff members that appeared before the Committee for their co-operation.

24.4.       The Committee thanks the Secretary-General: Office of the Chief Justice and her team for appearing before the Committee.

24.5.       The Committee finally wishes to thank the Auditor-General and his representatives for their assistance in this process.

Report to be considered.