



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

Five-year trend analysis:

Analysis of the financial and service delivery performance of government departments, entities and Chapter 9 Institutions during the 5th Parliament for the portfolios:

Justice

Police

Defence

Correctional Services

Research Unit

June 2019

In preparation for the incoming Members of the 6th Parliament, this research paper provides a five-year trend analysis of the financial and service delivery performance of the government departments, entities and Chapter 9 Institutions under the oversight ambit of the Portfolio Committees on Police, Defence and Military Veterans, Justice and Correctional Services, the Joint Standing Committee on Defence and the Select Committee on Security and Justice.

The paper focusses on the oversight role of Parliament to hold the Executive Authority to account.

This paper must be read together with the Legacy Reports of the relevant Parliamentary Committees, which were adopted by the NA and the NCOP.



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Analysis of the 5th Parliament portfolios: JUSTICE, POLICE, DEFENCE AND CORRECTIONAL SERVICES

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INTRODUCTION

The 5th Democratic Parliament was established after the 2014 general elections. Parliament was formally opened by the former President through his State of the Nation Address (SONA) during a joint sitting of the National Assembly (NA) and the National Council of Provinces (NCOP), which was held on 17 June 2014. The 5th Parliamentary term spanned a five-year period from June 2014 to March 2019.

In preparation for the incoming Members of the 6th Parliament, this research paper provides a five-year trend analysis of the financial and service delivery performance of the government departments, entities and Chapter 9 Institutions under the oversight ambit of the Portfolio Committees on Police, Defence and Military Veterans, Justice and Correctional Services, the Joint Standing Committee on Defence and the Select Committee on Security and Justice. The paper focusses on the oversight role of Parliament to hold the Executive Authority to account through the main oversight tools available, namely Annual Performance Plans (APP), Budget allocations and Annual Reports (AR).

The paper aims to assist incoming Parliamentarians to form an overarching understanding of the work done by their respective Committees during the 5th Parliamentary term. The focus of the paper is to identify areas of underperformance as well as excellent performance by Government structures. The objective of this paper is to facilitate continuity in oversight going forward into the 6th Parliament.

This paper must be read together with the Legacy Reports of the relevant Parliamentary Committees, which were adopted by the NA and the NCOP.



Structure of the paper

The paper consists of three main sections looking back on the work done by the various Parliamentary Committees during the term of the 5th Parliament spanning the period mid-2014 to mid-2019.

Section 1: National Development Plan. Since the adoption of the National Development Plan (NDP) in 2013, Parliamentary Committees must shape their engagements with Government structures on the realisation of the 2030 Vision. As such, the first section focusses on the NDP and how it relates to the Justice, Police, Defence and Correctional Services Portfolios.

Section 2: Parliamentary Committees. This section is divided into four chapters, dealing with the oversight function of relevant Parliamentary Committees in the areas of Police, Defence and Military Veterans, Justice, and Correctional Services. Each chapter is divided into five sections (with slight variations where necessary). These are:

- 1) Introduction.** The section provides an introduction to the mandate of the various government structures overseen by the respective Parliamentary Committee.
- 2) Key events that impacted the oversight portfolio.** The section provides a summary of selected events that had a significant impact on the operational capacity and policy direction of the respective oversight portfolio.
- 3) Oversight architecture.** Many departments have internal oversight mechanisms that are provided for in their governing legislation. These structures provide either an internal complaints mechanism or oversight capacity that is accountable to Parliament. This section provides a summary of these oversight structures.
- 4) Focus areas of Parliamentary oversight.** The section provides an overview of the performance of departments and entities during the 5th Parliament, focussing on the three most important documents in Parliamentary oversight, namely the Budget, Annual Performance Plan (including the Strategic Plan) and the Annual Report.
- 5) Conclusion.** The section concludes the chapter and links the oversight function of the Committee and performance of departments and entities back to its responsibility in realising the 2030 Vision of the NDP.

The chapter on the **Select Committee on Security and Justice** follows a different structure to the rest of this paper due to its provincial focus. The Select Committee performs oversight on all the departments, entities and Chapter 9 Institutions within the Justice, Police, Defence and Correctional Services Portfolios. Furthermore, the Select Committee has an interest in national departments' allocation to provinces.



The chapter is divided into three main sections:

- 1) **Provincial issues.** This section focusses on key provincial issues for the Department of Police, providing an overview of the most prominent crime areas and statistics per province. The section further provides an overview of correctional centres, including the number of offenders and overcrowding rates.
- 2) **Budget.** This section provides an overview of the provincial budget allocations to the Departments of Police and Correctional Services. Select Committees are not required to report to the National Council of Provinces (NCOP) on departmental Budgets and only hold policy debates on selective departments during the Budget Vote period of the National Assembly.
- 3) **Selected issues for follow-up in the 6th Parliament.** This section identifies key issues for follow-up in the 6th Parliament for the Departments of Police, the Independent Police Investigative Directorate (IPID), Justice and Constitutional Development, Correctional Services, and Defence and Military Veterans.

Section 3: Shared Challenges and Joint Oversight Responsibilities. This section contains key crosscutting challenges affecting the Justice, Police, Defence and Correctional Services Portfolios (such as the built environment and information communication technology (ICT)). The section also provides a summary of the issues on which these Portfolios have a joint oversight responsibility, like Child Justice and Gender-Based Violence (GBV).





NATIONAL DEVELOPMENT PLAN (NDP)

All departments, entities and Chapter 9 Institutions within the Justice, Police, Defence and Correctional Services Portfolio play a significant role in realising the 2030 vision as set out in the National Development Plan (NDP) to build safer communities and eradicate corruption.

The vision of the NDP for building a safer society is that -

In 2030, people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the streets and children play safely outside. The police service is well-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice.

Achieving this vision requires a well-functioning criminal justice system, in which the police, the judiciary and correctional services work together to ensure that suspects are caught, prosecuted, convicted if guilty, and securely incarcerated and rehabilitated. There are five priorities to achieve a crime-free South Africa:

- Strengthen the criminal justice system;
- Make the police service professional;
- Demilitarise the police;
- Increase rehabilitation of prisoners and reducing recidivism;
- Build safety using an integrated approach; and
- Increase community participation in safety.

The vision of the NDP for eradicating corruption is that -

In 2030, South Africa will be a society in which citizens do not offer bribes and have the confidence and knowledge to hold public and private officials to account, and in which leaders have integrity and high ethical standards. Anticorruption agencies should have the resources, independence from political influence, and powers to investigate corruption, and their investigations should be acted upon.

Achieving this vision the following four areas in which policies should be implemented towards an accountable state:

- Building a resilient anti-corruption system;
- Strengthen accountability and responsibility of public servants;
- Create a transparent, responsive and accountable public service; and
- Strengthen judicial governance and the rule of law.

In addition to the focus on a well-functioning criminal justice system the NDP also contains proposals for building a resilient anti-corruption system by strengthening the protection of



whistle-blowers; developing greater central oversight over the awarding of large tenders or tenders with long duration; and empowering the tender compliance monitoring office (now the Chief Procurement Officer) to investigate corruption and the monetary value of tenders.

Moreover, the NDP has recommended the following:

- More funding is required for the investigative agencies – for additional skilled personnel and investigative technologies.
- Specialised teams of prosecutors and dedicated courts to expedite corruption cases should be established.
- A review of the mandates and functions of all agencies with a view to some rationalisation.
- The autonomy of each agency should be reinforced to insulate them from political pressure.
- The National Anti-Corruption Forum be resurrected and more funding committed from the various sectors.
- Public education drives to communicate the effects of corruption are conducted, and anti-corruption agencies are required to conduct public awareness campaigns.
- The private sector is placed under an obligation to make use of the criminal justice system to pursue incidences of corruption.
- Businesses are required to include corruption cases in their annual reports to increase transparency and build public trust.

Chapter 13 of the NDP also outlines proposals for strengthening the accountability and responsibility of public servants as well as judicial governance and the rule of law by accelerating reforms towards a judiciary-led, independent court administration and by dramatically scaling up judicial training.



PORTFOLIO COMMITTEE ON POLICE

1. Introduction

The Police Portfolio consist of three Departments and one Public Entity.

The Departments are:

- **South African Police Service (SAPS).** The core function of the SAPS is to prevent, investigate and combat crime.
 - Directorate for Priority Crime Investigation (DPCI/Hawks). The Directorate was created as a Directorate within the SAPS and must prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption.
- **Civilian Secretariat for Police Service (CSPS).** The CSPS develops policing policy and legislation. This Department also exercises civilian oversight over the SAPS on the implementation of legislation by the SAPS.
- **Independent Police Investigative Directorate (IPID).** The Directorate investigates alleged criminality in the police, including murder, rape and corruption.

The Public Entity is:

- **Private Security Industry Regulatory Authority (PSIRA).** The PSIRA is established under schedule 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999). The Authority regulates the registration, operation and training of private security service providers, including companies and guards.

2. Key events that impacted the Police Portfolio

During the 5th Parliament, various events had a significant impact on the policing environment in terms of operational response and policy development. The Marikana massacre had a significant impact on operationalisation of Public Order Policing (POP). Continuous leadership instability caused disruptions in the efficiency and continuity in the SAPS, DPCI and IPID.

2.1. South African Police Service

Changes in National Commissioners of SAPS during the 5th Parliament:

- 2012 to 2015: General Phiyega was appointed in 2012 and suspended in 2015 based on a recommendation of the Farlam Commission of Inquiry.
- 2015 to 2017: General Phahlane was appointed as Acting National Commissioner when General Phiyega was suspended and was relieved of his duties in 2017 due to serious allegations of corruption.
- 2017: General Motihiba was appointed as Acting National Commissioner after the removal of General Motihiba, who was removed from duty in the same year.



- 2017 to present: General Sitole was appointed as permanent National Commissioner.

Changes in the Ministers of Police during the 5th Parliament:

- 2014 to 2017: Hon Nhleko;
- 2017 to 2018: Hon Mbalula; and
- 2018 to present: Hon Cele.¹

Marikana: The incident at the Lonmin Mine located near Marikana, brought about significant changes to the policing landscape. On 16 August 2012, striking miners clashed with the police leading to 34 deaths and 78 miners injured. The Marikana massacre led to the establishment of the Marikana Commission of Inquiry. A Panel of Experts was appointed by the Commission to recommend changes to the deployment of POP Units.

The Portfolio Committee on Police has been tracking the implementation of the recommendations since 2013 and to date, several changes have been made to the operations of POP Units, including the taking of video footage and first aid training to members of the POP Units.

2.1.1. Directorate for Priority Crime Investigations

Although the DPCI (commonly referred to as the Hawks) is not a Department, it demands special attention as an elite Directorate of the SAPS that focuses on priority crime investigations, including corruption.

The DPCI was besieged by leadership instability during the 5th Parliament. In 2014, the incumbent National Head was suspended following allegations of the illegal rendition of Zimbabwean nationals (the charges were officially withdrawn in 2018). In 2015, General Dramat resigned and the leadership was taken over by General Ntlembeza who was dismissed in 2017. General Matakata (then Deputy National Head) was appointed as Acting National Head in 2017 and in the following year, General Lebeya was appointed as new National Head of the DPCI.

2.2. Independent Police Investigative Directorate

The 5th Parliament was marked by conflict over the tenure of the Executive Director of IPID. Former Minister of Police, Hon. Mthethwa appointed Mr McBride in 2012 as the Executive Director of IPID. In 2015, Mr McBride was suspended by former Minister Nhleko on allegations of unethical conduct. Subsequently, Mr McBride approached the Gauteng High Court² to set aside the suspension. The High Court ruled that the suspension was unconstitutional, which was confirmed by the Constitutional Court³ in September 2016 and Mr McBride resumed his position shortly thereafter. Mr McBride's contract of employment came to an end in February 2019. The non-renewal was challenged in the High Court and an agreement was reached that the Portfolio Committee on Police must deliberate on the merits of renewal/non-renewal. On

¹ Hon Cele was also National Commissioner of the Police from 2009 to 2012.

² *McBride v Minister of Police and Another* [2015] ZAGPPHC 830; [2016] 1 All SA 811 (GP); 2016 (4) BCLR 539 (GP)

³ *McBride v Minister of Police and Another* [2016] ZACC 30



28 February 2019, the Committee recommended that Mr McBride's contract should not be renewed. This matter is currently being litigated and will presumably be referred back to the Committee dependent on the outcome thereof.

2.3. Private Security Industry Regulatory Authority

The involvement of private security in public order protests, notably in the *#feesmustfall* protests of October 2015, came under intense scrutiny, as crowd control is the exclusive purview of the SAPS.

3. Oversight architecture

The Police Portfolio has a unique oversight architecture in that two of its Departments, namely the IPID and CSPS having a legislative mandate to investigate alleged criminal conduct and also to evaluate the implementation of policing policy. In addition, two key oversight mechanisms form part of the governing legislation of the SAPS aimed at ensuring ethical conduct, namely:

- The Office of the Directorate for Priority Crime Investigation (DPCI) Judge was established through section 17L of the SAPS Act to investigate misconduct of DPCI members.
- The National Forensic Oversight and Ethics Board (DNA Board) was established through section 15V of the SAPS Act to ensure that DNA is collected in an ethical manner that does not infringe individual rights and to ensure that the SAPS administers the taking, storage and use of DNA effectively and efficiently.

The abovementioned structures are both required to submit separate Annual Reports to the Minister of Police for tabling in Parliament. However, in 2018 the two structures became subprogrammes of the CSPS. As such, the Annual Reports will be incorporated into that of the CSPS Annual Report for Parliamentary scrutiny.

4. Focus areas of oversight

The most important documents tabled in Parliament are the Budget, Annual Performance Plan (APP) and Annual Report (AR). These documents are read together to provide a holistic assessment of performance. The format and submission criteria of these documents to Parliament for scrutiny is regulated through the Public Finance Management Act, 1999 (Act No. 1 of 1999) ("PMFA") and the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No. 9 of 2009).

The APP and budget of a Department are *forward-looking*. They set out what the Department intends to do and the funds it will spend in the coming financial year. The Annual Report, on the other hand is *backward-looking*, as it reports on actual performance at the end of the financial year, reporting on how its strategic plan and budget were implemented.⁴

⁴ National Treasury (2005)



4.1. Budget allocation

The Committee scrutinises the budget allocations of Departments during three main stages of the budget process, namely the Main Appropriation, Adjusted Appropriation and the Final Appropriation.

Departmental Budgets are referred to as a Vote in the Estimates of National Expenditure (ENE) (colloquially referred to as the “red book”) published by National Treasury. Parliament must approve the budget allocation annually by approving the Appropriations Bill and Division of Revenue Bill. Government has 40 Budget Votes, of which the Police Portfolio has two Votes (Vote 19: IPID; Vote 23: SAPS). The CSPA is currently a Department within the Police Vote. Until 2014/15, the CSPA operated as a cost-centre of the SAPS through a sub-programme of the Administration Programme. Although the Department is located in the Police Vote, it receives a separate budget allocation for which the Secretary of Police, as Accounting Officer, is accountable.

The table below shows the budget Final Appropriations of the SAPS, IPID and CSPA for the 2013/14 to the 2017/18 financial years, as well as the Adjusted Appropriation for the 2018/19 financial year.

Table 8: Overview of budget allocations for the Police Portfolio 2013/14 – 2017/18

Final Appropriation <i>R' million</i>	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19 Adjusted appropriation
SAPS	68 791.4	72 507.2	76 720.8	80 984.8	86 761.2	91 684.1
CSPA	61.0	82.4	117.6	99.4	124.7	131.2
IPID	193.1	232.4	234.2	241.7	255.3	315.1

Table 9: Narrative on the budget allocation of Departments in the police portfolio

South African Police Service (SAPS)

At 11% of the national expenditure, the SAPS receives the second largest budget allocation of government departments.

Between 2014/15 and 2017/18, the budget had an average growth rate of 6.2%. The growth rate is expected to remain at this level between 2017/18 and 2020/21.

Between 2014/15 and 2017/18, the Crime Intelligence Programme and Protection and Security Services Programme have had the highest average growth rate at 7.2% and 9.4%, respectively. The Visible Policing Programme receives the largest portion of the SAPS budget at 51% of the total allocation.

The main cost driver of the SAPS is *Compensation of Employees (CoE)*. Expenditure on this item represents 75% of the total SAPS budget. In 2017/18, CoE received R66.2 billion of the R86.8 billion allocation. On average, the allocation grew by 6.7% between 2014/15 and 2017/18 and is expected to grow by 7.3% (on average) between 2017/18 and 2020/21.



The Department has consistently spent 100% of its budget allocation during the period under review. Due to the significant size of the budget allocation, under expenditure of even 1% would translate to an underspending of almost R1 billion.

Civilian Secretariat for Police Service (CSPS)

The Secretariat came into operation on 01 April 2012 and remained a cost centre of the SAPS until 2013/14 when it became a Budget Vote. Since then, the budget allocation grew significantly from R61 million to R124.7 million in 2017/18. Between 2014/15 and 2017/18, the allocation has shown an average growth rate of 7.7%.

The Administration Programme receives the largest proportion of the total budget allocation (of 40.4%) and also has shown the highest average growth rate between 2014/15 and 2017/18 of a significant 17.9%. It should be noted that departments are discouraged to allocate the majority of the budget to the Administration Programme, as administration is not the core service delivery mandate of departments.

The Legislation and Policy Development Programme is a key legislative mandate of the Secretariat, yet the average growth rate decreased by 11.7% between 2014/15 and 2017/18. This is indicative of the continuous underperformance of the Programme.

Since the establishment of the Secretariat as a designated Department, it has consistently underspent on its allocated budget (2017/18: 94.4%; 2016/17: 89.9%; 2015/16: 98.8%; 2014/15: 82.5%; 2013/14: 71.9%).

Independent Police Investigative Directorate (IPID)

The budget allocation grew from R193.1 million in 2013/14 to R255.3 million in 2017/18. Between 2014/15 and 2017/18, the allocation has had an average growth rate of 2.9%. It is expected that the average growth rate between 2017/18 and 2020/21 will be 12% (2020/21: R359.4 million).

The Investigation and Information Management Programme holds the core mandate of the Directorate and thus receives 64% of the total budget allocation. The Compliance Monitoring and Stakeholder Management Programme receives the smallest portion of the total budget allocation (3%), but has had an average growth rate of 47.6% between 2014/15 and 2017/18.

Expenditure on CoE is the largest cost driver of the Directorate. Between 2014/15 and 2017/18, the average expenditure on CoE against the total budget allocation (proportion of the total budget) was 63.8%. This average is expected to be 68.2% between 2017/18 and 2020/21.

In order to provide a detailed account of the budget allocations, percentage increases and expenditure, the Departments of the Police Portfolio are discussed individually below.



Table 10: Budget allocations, increases and expenditure of the SAPS: 2014/15 – 2019/20

Year	Voted Allocation (R'million)	% change from previous year (nominal)	* Voted Allocation adjusted for inflation (R'million)	** % change from previous year (adjusted for inflation)	Adjusted Allocation (R'million)	Expenditure (R'million)	Expenditure as a percentage of Adjusted Allocation (%)
2014/15	72,507.2		72,507.20		72,507.2	72,507.2	100.0%
2015/16	76,377.1	5.3%	72,601.81	0.1%	76,720.8	76,720.8	100.0%
2016/17	80,984.9	6.0%	72,419.42	-0.3%	80,984.9	80,984.8	100.0%
2017/18	87,025.1	7.5%	74,185.67	2.4%	86,761.1	86,605.0	99.8%
2018/19	91,834.2	5.5%	74,204.03	0.0%	91,684.2	-	-
2019/20	97,595.3	6.3%	74,961.14	1.0%			
* Real change in Rand value							
** Real change in percentage terms							

The table above illustrates that the SAPS has a good track record of expenditure against allocated funds. Between 2014/15 and 2016/17, the Department spent their full budget allocation. In 2017/18, the SAPS underspent by 0.2%, which is an amount of R156.080 million that remained from the voted allocation for the financial year. The underspending was realised in the Administration, Visible Policing and Detective Services Programmes by R58 million, R13.6 million and R84.3 million respectively.

The fourth column (in italics) titled **Voted allocation adjusted for inflation* shows that when taking inflation into account, the SAPS budget has remained stable across the period under review. Although the Voted Allocations seem to increase significantly from R72.5 billion in 2014/15 to R97.5 billion, the real increase has been marginal.

Table 11: Budget allocations, increases and expenditure of the IPID: 2014/15 – 2019/20

Year	Voted Allocation (R'million)	% change from previous year (nominal)	* Voted Allocation adjusted for inflation (R'million)	** % change from previous year (adjusted for inflation)	Adjusted Allocation (R'million)	Expenditure (R'million)	Expenditure as a percentage of Adjusted Allocation (%)
2014/15	234.7		234.70		234.7	232.4	99.0%
2015/16	234.8	0.0%	223.19	-4.9%	234.8	234.1	99.7%
2016/17	264.1	12.5%	236.17	5.8%	242.1	241.7	99.8%
2017/18	255.5	-3.3%	217.80	-7.8%	255.5	255.3	99.9%
2018/19	315.1	23.3%	254.61	16.9%	315.1	-	-
2019/20	336.7	6.9%	258.61	1.6%			
* Real change in Rand value							
** Real change in percentage terms							

The table above shows instability in the budget allocations of the IPID during the 5th Parliament. In 2016/17, the allocation of the IPID increased significantly in nominal terms (12.5%) and also in real terms (5.8%). Conversely, the allocation decreased significantly in the 2017/18 financial year. This decrease in allocation was followed in 2018/19 by an increase



of R60 million (R59.6m), which is a nominal increase of 23.3% and a real increase of 16.9%. This growth in budget allocation continued in 2019/20 (6.9% nominally and 1.6% in real terms).

The column depicting the *Voted allocation adjusted for inflation* mirrors these changes in budget allocation over the 5th Parliament. Comparatively, the buying power increased from R234.7 million to R258.61 million between 2014/15 and 2019/20.

Table 12: Budget allocations, increases and expenditure of the CSPS: 2014/15 – 2019/20

Year	Voted Allocation (R'million)	% change from previous year (nominal)	* Voted Allocation adjusted for inflation (R'million)	** % change from previous year (adjusted for inflation)	Adjusted Allocation (R'million)	Expenditure (R'million)	Expenditure as a percentage of Adjusted Allocation (%)
2014/15	99.7		99.70		99.7	82.3	82.5%
2015/16	113.2	13.5%	107.60	7.9%	113.2	111.8	98.8%
2016/17	110.6	-2.3%	98.90	-8.1%	110.6	99.4	89.9%
2017/18	124.7	12.7%	106.30	7.5%	124.7	118.3	94.9%
2018/19	131.2	5.2%	106.01	-0.3%	131.2	-	-
2019/20	146.7	11.8%	112.68	6.3%			
* Real change in Rand value							
** Real change in percentage terms							

The table above shows that the budget allocation for the CSPS increased significantly between 2014/15 and 2019/20. The CSPS only became fully independent from the SAPS in 2014/15 and this was also the first year during which the Department was audited by the Auditor General. The Department struggled to find its feet during the first two years of operation (2014/15 and 2015/16) and received qualified audit opinions in both years. The overall growth in the budget since 2014/15 was largely due to increases in personnel numbers.

Taking inflationary effects into account, the buying power of the Department stayed relatively stagnant. It is only in 2019/20 that the budget showed a meaningful increase in real terms.

4.1.1. Private Security Industry Regulatory Authority (PSIRA)

PSIRA is not a budget Vote of Government, but a public entity under schedule 6 of the PFMA. The Authority does not receive direct funding from the State, but generates revenue (enabled through its governing legislation) which allows the Authority to collect annual fees from private security companies and guards. Therefore, the Authority is accountable to Parliament on its revenue and expenditure.

The table below shows the fluctuating financial position of the Authority between 2013/14 and 2017/18.

Table 13: Statement of financial performance PSIRA

PSIRA R' million	2013/14	2014/15	2015/16	2016/17	2017/18
Surplus/(Deficit)	(6.6)	(16.7)	31.1	6.6	(12.4)



The financial position of the Authority has been in flux during the 5th Parliament. At the end of the 2014/15 financial year, a deficit of R16.7 million was recorded.

The fluctuating financial position and nett deficit prompted the Office of the AG to question whether the Authority would be able to operate as a going concern in future.

During 2015/16, the financial performance improved and a surplus of R31.1 million was recorded. Following this, the financial position deteriorated again to a R12.4 million deficit at the end of the 2017/18 financial year.

The instability of the financial position resulted from the current Annual Fee Funding model of the Authority and needs to be reviewed through the proclamation of the Private Security Industry Levies Act, 2002. The Act has not been proclaimed by the President since 2002 and as such, is not in operation. The reason for this is unclear. It is believed that the Act will commence during the 2019/20 financial year.

The Committee should follow up on the progress made to operationalise the PSIRA Amendment Bill, as well as the proclamation of the Private Security Industry Levies Act, 2002.

4.2. Annual Performance Plan and Annual Reports

Annual reports are the key reporting instruments for departments to report against the performance targets (APP) and budgets outlined in their strategic plans, read together with the ENE. An annual report is required to contain information on service delivery, in addition to financial statements and the audit report from the AG. It is meant to be a backward-looking document, focusing on performance in the financial year that has just ended. It reports on how the budget for that financial year was implemented.⁵ Ideally, the percentage of targets achieved should be in-line with the percentage of departmental expenditure.

From the table below it is clear this alignment is not achieved in the departments within the Police Portfolio. This is especially the case of the IPID, which consistently achieved low achievement on predetermined targets, while expenditure remained high.

Table 14: Targets achieved vs. Expenditure

Financial year	SAPS		IPID		CSPS	
	% Targets achieved	% Budget Spent	% Targets achieved	% Budget Spent	% Targets achieved	% Budget Spent
2013/14	73.4%	100%	27%	89%	92.4%	71.9%
2014/15	74.2%	100%	42.2%	99%	65%	66.6%
2015/16	75.2%	99.9%	74.5%	99.7%	48.4%	89.8%
2016/17	76.5%	100%	35.1%	99.8%	80.5%	89.9%
2017/18	78.3%	99.8%	64.7%	99.8%	81.2%	94.4%

⁵ National Treasury (2005)



The table below identifies the Key Performance Indicators (KPIs) and predetermined performance targets which the departments have consistently performed well in and those indicators and targets of continuous underperformance.

Table 15: Key trends in service delivery performance

	Performance targets achieved	Underperformance on targets
SAPS	<ul style="list-style-type: none"> • Training in specialised areas • Border security management • Crowd management • Implementation of sector policing • Enhanced processing of forensic evidence 	<ul style="list-style-type: none"> • Reducing levels of violent and serious crime • Reducing serious crimes against women and children • Improving detection rate for serious crime, contact crimes and crimes against women and children. • Capital works, building infrastructure and Information Communication and Technology (ICT) • Reduction in material findings by the AG • Initiate and finalise disciplinary cases related to recommendations by the IPID
CSPS	<ul style="list-style-type: none"> • Stakeholder participation 	<ul style="list-style-type: none"> • Evaluation of Community Policing Forums (CPFs) and Community Safety Forums (CSFs) • Drafting of legislation • Finalising research studies
IPID	<ul style="list-style-type: none"> • Investigations of deaths in police custody • Investigations of rape while in police custody (not by officer, but cellmate etc.) • Investigations of torture 	<ul style="list-style-type: none"> • Filling of vacancies • Underspending of allocated budget • Accumulation of accruals • Investigation of assault and torture in police custody • Systemic corruption
PSIRA	<ul style="list-style-type: none"> • Registration and communication • Stakeholder participation 	<ul style="list-style-type: none"> • Recovery of bad debt

4.2.1. Key issues emanating from Annual Reports

The table below provides a summary of the key issues emanating from the Annual Reports of the departments and public entity within the Police Portfolio.

Table 16: Key issues emanating from Annual Reports

	Key issues
SAPS	Supply Chain Management (SCM): Fraud and corruption in the tender process and contract mismanagement are hampering service delivery. A key example is the procurement contract for the provision of forensic sciences consumables between the SAPS and the FDA Company. Significant procurement fraud was exposed and several high-ranking SAPS officers were suspended and are facing criminal charges.



	Key issues
	<p>Performance management system: The performance management system of the SAPS does not provide accurate and reliable performance information. A review of key performance indicators and targets was undertaken to identify gaps and the optimisation of the performance management system was prioritised. The main challenge is that targets are often set without the appropriate resources attached to successfully deliver on the set target.</p> <p>Detection rates for violent crime: A low target has been set for detection of serious crime and there has been a gradual decrease in performance on the target over the past couple of years.</p> <p>Corporate Renewal Strategy of Crime Intelligence: Although the Crime Intelligence Division has consistently performed well on its performance targets, the Division faced several serious challenges. As such, a Corporate Renewal Strategy has been implemented. During previous engagements the SAPS indicated that the Strategy is ambitious and that it would be implemented over the MTEF period. Additionally, the SAPS stated that the crime intelligence team is being established. The current situation in the Crime Intelligence Division is an example of how performance targets are not the ultimate measure of departmental performance, but that a holistic oversight approach that goes beyond the annual report targets is necessary.</p> <p>Rural safety: The ineffective implementation of the Rural Safety Strategy has an impact on rural crime, like stock and crop theft. This has a devastating economic impact on commercial, emerging and subsistence farmers. The NDP highlights the importance of resources made available to rural communities, as access to justice and other government services, is limited due to its isolation.</p> <p>White Paper on Policing: The White Paper on Policing is a key policy paper on realising the 2030 vision of the NDP. The White Paper is grounded on building legitimacy and trust. It has four focus areas, namely 1) a demilitarised police; 2) community-orientated policing; 3) adherence to human rights principles; and 4) accountability. The policy is not yet fully implemented.</p> <p>White Paper on Safety and Security: The White Paper on Safety and Security was approved in 2016 and provides a comprehensive policy approach to crime prevention. The White Paper is focussed on realising the vision of the NDP and calls for an integrated and holistic approach to safety and security across all government departments and civil society. The implementation of the White Paper is still uncertain. The political authority and effective oversight of the White Paper is located within the Presidency with the CSPS providing a coordinating role to support implementation and facilitate engagements with civil society and Government on community safety.</p>
CSPS	<p>Drafting of legislation: Various pieces of legislation have been long overdue, most notably the overhaul of the South African Police Service Act, 1995 which is still based on the 1993 Interim Constitution. The failure to table the IPID Amendment Act in 2018, led to Parliament</p>



	Key issues
	<p>drafting a Committee Bill and subsequently missing a Constitutional Court deadline to remedy defective sections of the IPID Act, 2011.</p> <p>Lack of monitoring and evaluation mechanisms: One of the key mandates of the Secretariat is to monitor adherence to policy and legislative provisions. This include the effectiveness of Community Policing Forums (CPFs) and Community Safety Forums (CSFs), and also the provisions of the Domestic Violence Act. However, the effectiveness of this mandate is questionable.</p> <p>DNA Board and Office of the DPCI Judge: These structures have been established as separate sub-programmes within the CSPS. Neither structure is operating effectively due to various operational challenges, including concerns about independence.</p>
IPID	<p>Backlogs: The increase in the number of backlog investigations poses a significant risk to the effectiveness of the IPID. This increase has been largely due to the reprioritisation of cases based on the principle of high impact, low volume.</p> <p>Reinvestigation of cases by SAPS: The SAPS conducts its own internal investigation on disciplinary recommendation made by the IPID. The recommendations from the IPID should be enough to secure a disciplinary conviction without an internal investigation by the SAPS. This challenge should be addressed in a review of both the SAPS Act as well as the IPID Act.</p> <p>Case management system (<i>FlowCentric</i>): The system is a crucial part of the ICT infrastructure and should be maintained and upgraded to ensure effective quality control of the reported performance information. The inadequate performance management system of the Department has been raised as a concern by the AG and the Audit Committee. The effective implementation and use of the system will assist the Department to report reliable performance information and evidence.</p>
PSIRA	<p>Funding model: The Private Security Industry Levies Act, 2002 must be promulgated in order for the Authority to revise its funding model. Failure to do so will mean that the Authority can no longer operate as a going concern.</p> <p>Debt recovery: In 2018, the provision for impairment to the amount of R55 768 534 (2017: R44 389 024) was raised on trade debtors, as a result of uncertainty regarding the recovery of the amounts due. This has been a repeat matter of emphasis since 2015.</p> <p>Private Security Industry Regulation Amendment Bill, 2012: The Amendment Bill was introduced in September 2012, passed by Parliament in March 2014 and submitted to the President for assent. A major contentious issue in the Amendment Bill was a provision forcing 51% domestic ownership of private security companies. To date the Amendment Bill has not been assented to and it is believed that the Amendment Bill will be resubmitted to Parliament. The Amendment Bill contains provisions that will enhance the regulatory authority of PSIRA, and thus it is important that the Bill becomes operational as soon as possible.</p>



4.2.2. Audit Report

According to National Treasury, the audit report by the Auditor-General is the most important, and only, independent assessment of the quality of financial statements, including all its disclosures. It is therefore one of the most important reports to consider when reviewing a department's Annual Report. The role of the auditor is to comment to the legislature on the reasonableness and fairness of the annual financial statements submitted by departments and entities.⁶

The table below reflects the Auditor General's audit outcomes for the departments and entity within the Police Portfolio between 2009/10 and 2017/18. The table shows a significant improvement in the audit outcomes of the CSPS, from receiving a qualified audit in 2014/15 to a clean audit in 2017/18. Importantly, the SAPS received two consecutive qualified audit opinions in 2016/17 and 2017/18.

Table 17: AG Opinions: 2009/10 to 2017/18

	SAPS	IPID	CSPS ⁷	PSIRA
2009/10	Unqualified with material findings	Unqualified with material findings (ICD)	- <i>Not audited</i>	Qualified
2010/11	Unqualified with material findings	Unqualified with material findings (ICD)	- <i>Not audited</i>	Unqualified with material findings
2011/12	Unqualified with material findings	Unqualified with material findings	- <i>Not audited</i>	Unqualified with material findings
2012/13	Unqualified with material findings	Unqualified with material findings	- <i>Not audited</i>	Qualified
2013/14	Unqualified with material findings	Unqualified with material findings	- <i>Not audited</i>	Unqualified with material findings
2014/15	Unqualified with material findings	Unqualified with material findings	Qualified	Unqualified with material findings
2015/16	Unqualified with material findings	Unqualified with material findings	Qualified	Unqualified with material findings
2016/17	Qualified	Qualified	Unqualified with material findings	Unqualified with material findings
2017/18	Qualified	Unqualified with matters of emphasis	Unqualified with no material findings (clean audit)	Unqualified with emphasis on matters

The recurring material findings made by the AGSA were based on the following areas:

- Reliability and usefulness of performance information.
- Compliance with legislation, prominently the PFMA.
- Insufficient internal controls.
 - Audit Committees
- Ineffective leadership. Mostly not acting against personnel responsible for irregular expenditure.

⁶ National Treasury (2005)

⁷ The CSPS became a designated Department in 2014/15.



NOTE: It is important to mention that the outcome of AG audits do not measure the overall performance and effectiveness of service delivery. Despite an unqualified audit opinion, with or without material findings, performance on a department's core mandate could be poor.

5. Conclusion

The Portfolio Committee on Police has continuously recommended that the Strategic Plans of all departments must be aligned to the recommendations of the NDP's Vision 2030. Particularly, the SAPS' Strategic Plan should further be aligned to the changed strategic direction of the Department. The new planning cycle for government departments will begin from 2020/21 and end in 2024/25, and as such the revision to the strategic direction will be published as an annexure to the 2019/20 APP in March 2019.

The SAPS must be transformed into a more professional police service, achieved through the recommendations of the NDP.

The IPID and CSPA play pivotal roles in realising this vision. The CSPA by ensuring strategic direction through evidence-based policy and legislative development and the IPID through effectively investigating alleged police criminality and abuse of power.





PARLIAMENTARY COMMITTEES ON DEFENCE

1. Introduction

Two parliamentary defence committees exist, namely the Portfolio Committee on Defence and Military Veterans (PCDMV) and the Joint Standing Committee of Defence (JSCD). During the 5th Parliament, both these committees have conducted oversight of the two departments within the portfolio. However, oversight of the entities has largely fallen to the PCDMV. The JSCD's mandate is prescribed specifically in Section 228(d) of the 1993 Interim Constitution (still in effect) and highlights why limited focus is placed on entities:

The committee shall be competent to investigate and make recommendations regarding the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the National Defence Force and to perform such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

Jointly, the PCDMV and JSCD oversee the following departments and entities:

- The Department of Defence (DOD): The DOD is responsible for providing, managing, preparing and deploying defence capabilities commensurate with the needs of South Africa.
- The Department of Military Veterans (DMV): The DMV aims to deliver and coordinate all activities that recognise and entrench the restoration of dignity and appreciation of the contribution of military veterans in South Africa.
- The Armaments Corporation of South Africa (Armcor): Armcor aims to meet the defence materiel requirements, defence technology, research, development, analysis, and test and evaluation requirements of the DOD.
- The Castle Control Board (CCB). The CCB oversees the management of the Castle of Good Hope in Cape Town and aims to make this an accessible centre of excellence that showcases South Africa's shared heritage.
- The Office of the Military Ombud. The Military Ombud provides an independent, impartial and expeditious complaints resolution process for serving and former members of the SANDF and public to promote good governance.
- The Defence Force Service Commission (DFSC). The DFSC has the mandate to, among others, make recommendations regarding remuneration and conditions of service of members of the SANDF.

2. Key events that impacted the Defence Portfolio

During the 5th Parliament, no major events impacted on the general trajectory of the portfolio. Most significantly, the SANDF's international peacekeeping commitments were reduced through the termination of the SANDF's contribution to the United Nations/African Union (UN/AU) Mission to Darfur. In turn, the SANDF assumed an additional domestic role through the deployment in restoring sewage plants along the Vaal River.⁸ This potentially signifies the

⁸ Phakgadi (2018).



increased domestic utilisation of SANDF services. However, the continued reduction (in real terms) of the DOD budget during the 5th Parliament may impact negatively on the Department's ability to fulfil its constitutional mandate in future.

3. Oversight architecture

Two aspects are important in terms of the oversight architecture in the defence portfolio, namely 'civil control' and 'civil oversight'.⁹ This has specific reference to the DOD. The defence sector is subject to civil control by the President and the National Executive, as represented by the Minister of Defence in that:

- The President is the head of State, head of Executive and Commander-in-Chief.
- The President as head of the National Executive appoints the Military Command.
- Only the President may authorise the employment of the Defence Force in certain instances.
- A member of Cabinet must be responsible for Defence.
- The command of the Defence Force must be exercised in accordance with the directions of the Cabinet member responsible for Defence, under the authority of the President.
- The Minister may authorise the employment of the Defence Force in instances other than reserved for the President in the Constitution.
- A civilian Secretariat for Defence is established to function under the direction of the Cabinet member responsible for Defence.

Civil oversight refers to the civil oversight role of Parliament. The National Assembly must provide for mechanisms to hold national organs of state accountable to it and to maintain oversight over National Executive authority and the implementation of legislation. Parliamentary committees, established from the body of elected public representatives, play an important oversight role with regard to the security services. This is reflected in Parliament's responsibility to approve:

- The finances for the security forces
- The legislation governing activities of the security forces
- The policy framework within which the security forces will function

In relation to the oversight structure of the DMV it should be noted that the DMV does not function as an independent department with its own budget Vote. Rather, it forms part of the broader Defence and Military Veterans Vote. The Minister responsible for the DMV remains accountable to Parliament.

4. Focus areas of oversight

The most important documents tabled in Parliament for any department are the Budget, Annual Performance Plan (APP) and Annual Report (AR). These documents read together to form a holistic assessment of performance. The format and submission criteria of these documents to Parliament for scrutiny is regulated through the Public Finance Management

⁹ Defence Review (2015). p. 4-3



Act, 1999 (Act No. 1 of 1999) (“PMFA”) and the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No. 9 of 2009).

The APP and budget of a department are *forward-looking*. They set out what the department intends to do and the funds it will spend in the coming financial year. The Annual Report, on the other hand is *backward-looking*, as it reports on actual performance at the end of the financial year, reporting on how its strategic plan and budget were implemented.¹⁰

4.1. Budget allocation

The tables below provide a five-year trend of the budget allocations for the DOD, the DMV and the Military Ombud. These two departments and entity are reliant on state allocations for their operations.

Table 18: Overview of budgetary allocation and expenditure of the DOD and the DMV for 2014/15 – 2019/20

Year	Voted Allocation (R'million)	% change from previous year (nominal)	* Voted Allocation adjusted for inflation (R'million)	** % change from previous year (adjusted for inflation)	Adjusted Allocation (R'million)	Expenditure (R'million)	Expenditure as a percentage of Adjusted Allocation (%)
Department of Defence (DOD)							
2014/15	42 831,2		42 831,20		42 856,9	42 842,4	100,0%
2015/16	44 579,4	4,1%	42 375,86	-1,1%	45 088,2	45 071,5	100,0%
2016/17	47 169,7	5,8%	42 180,73	-0,5%	47 236,5	47 197,1	99,9%
2017/18	48 618,8	3,1%	41 445,73	-1,7%	48 999,6	48 977,2	100,0%
2018/19	47 949,7	-1,4%	38 744,40	-6,5%	48 496,2	48 496,2	100,0%
2019/20	50 513,0	5,3%	38 798,10	0,1%			
Department of Military (DMV)							
2014/15	504,2		504,20		504,2	463,1	91,8%
2015/16	582,2	15,5%	553,42	9,8%	582,2	348,6	59,9%
2016/17	597,6	2,6%	534,39	-3,4%	597,6	504,6	84,4%
2017/18	622,1	4,1%	530,32	-0,8%	622,1	601,5	96,7%
2018/19	627,1	0,8%	506,71	-4,5%	627,1	627,1	100%
2019/20	662,6	5,7%	508,93	0,4%			
* Real change in Rand value							
** Real change in percentage terms							

In terms of the DOD expenditure, the key cost driver relates to compensation of employees. By 2017/18, the DOD had a total expenditure of R48.496 billion of which R27.116 was for compensation of employees. This equates to 55.9% of total expenditure. In terms of its programmes, Programme 3 (Landward Defence) is the main cost driver. This is due to the large personnel contingent of the SA Army. Furthermore, it can be noted that although the percentage increase from 2013/14 reflects net growth (19.9%), this signifies a major reduction

¹⁰ National Treasury (2005)



in real terms over the five-year period. Given the lack of an effective exit mechanism for personnel, this resulted in the noted increase of compensation of employees as a percentage of total expenditure.

Expenditure in the DMV increased significantly over the five-year period, largely due to the expanding of the Department after its establishment and the subsequent roll-out of benefits to veterans. The main cost driver comes in the form of payment for goods and services related to Programme 2 (Socioeconomic support). This programme encompasses the provision of housing, health care, education and training benefits to deserving military veterans. Despite the significant increase in budget allocation over the five-year period, several challenges with the roll-out of benefits (except for education benefits) remain. Education benefits to veterans and their dependents reflect one of the largest cost drivers in the DMV.

The allocation to the Military Ombud is not reflected in the Estimates for National Expenditure as it does not form a specific subprogramme of the Department of Defence and Military Veterans (DODMV). However, the Annual Reports of the Military Ombud reflect a significant increase in the expenditure of the Office as it grew after its establishment (see the table below). The main cost driver for the Military Ombud relates to compensation of employees due to the mandate of the Office as an investigative body that requires investigators to oversee complaints regarding the SANDF.

Table 19: Overview of expenditure of the Military Ombud for 2014/15 – 2019/20

Final Appropriation	2013/14	2014/15	2015/16	2016/17	2017/18
<i>R' million</i>					
Ombud¹¹	19.6	30.6	37.7	48.7	46.5

The table below relates to the CCB and Armscor. While allocations from the fiscus are made to these entities, they are also responsible for raising their own revenue. As such, the table reflects the revenue generated for each year (2013/14 – 2017/18) as well as the surplus/deficit for each year.

Table 20: Armscor and the CCB – Revenue trends 2013/14 – 2017/18

Final Appropriation	2013/14		2014/15		2015/16		2016/17		2017/18	
	Revenue	Surplus/ (Deficit)	Revenue	Surplus/ (Deficit)	Revenue	Surplus/ (Deficit)	Revenue	Surplus/ (Deficit)	Revenue	Surplus/ (Deficit)
Armscor	1 447.6	103.1	1 604.1	84.0	1 878.4	200.0	1 587.4	(127.0)	1 815.8	2.0
CCB	4.4	0.41	4.7	(1.5)	4.9	(2.5)	4.0	(5.9)	5.8	(2.6)

The main cost driver for Armscor is compensation of employees. Most recently, in 2017/18, Armscor's expenses totalled R1.678 billion of which R940.1 million related to compensation of employees. Goods and services (R673.2 million) make up the rest of expenses.

¹¹ Military Ombud. (2017). p. 22



While significant efforts have been made to grow the revenue of Armscor, challenges remain and the expected reduction in the state allocation to Armscor is likely to impact negatively on the ability of the entity to maintain a surplus.

Similarly, compensation of employees is also the main cost driver at the CCB. In 2017/18, the CCB's expenses totalled R8.453 million of which R5.797 million related to employee costs.

4.2. Annual Performance Plans and Annual Reports

Annual reports are the key reporting instruments for departments to report against the performance targets (APP) and budgets outlined in their strategic plans, read together with the ENE. An annual report is required to contain information on service delivery, in addition to financial statements and the audit report from the AG. It is meant to be a backward-looking document, focusing on performance in the financial year that has just ended. It reports on how the budget for that financial year was implemented.¹²

The various departments and entities in the defence portfolio have been characterised by both good and bad performance during the period of the 5th Parliament. The DOD and Armscor's performance should be viewed in the context of significant financial constraints. In turn, performance at the DMV and the Military Ombud should be viewed against the background that they are still in a developmental stage having only been established during or immediately prior to the 5th Parliamentary period. The table below captures some of the most significant areas of good and bad performance during the 5th Parliament.

Table 21: Performance in the Defence Portfolio departments and entities

	Areas of good performance	Areas of underperformance
DOD	SANDF continues to provide soldiers for: <ul style="list-style-type: none"> • International Peacekeeping in the DRC and Mozambican channel • Border safeguarding • Other internal deployments 	Poor performance is largely personnel related: <ul style="list-style-type: none"> • Force rejuvenation • Loss of critical skills • Top-heavy personnel structure
DMV	Provision of the benefits to veterans: <ul style="list-style-type: none"> • Access to healthcare • Bursaries to veterans and dependants 	Provision of the benefits to veterans: <ul style="list-style-type: none"> • Housing opportunities • Skills development • Assistance with burial claims • Database management
Armscor	Ability to raise revenue to compensate for shortages in state funding. Successful completion of several SANDF acquisition programmes.	Dockyard management and efficiency. Exploiting of Intellectual Property for commercial gain. Finalising Defence Industrial Participation (DIP) agreements.
CCB	Increased visitor numbers to the Castle. Increased number of commercial events at the Castle.	Utilisation of the Castle surplus for operational sustainability. Safety concerns at the Castle.

¹² National Treasury (2005)



	Areas of good performance	Areas of underperformance
Military Ombud	Relatively high levels of complaints finalisation.	Limited number of investigators. Recommendations by Military Ombud not all enforced by the DOD.
DFSC	Various recommendation made to Minister of Defence on DOD conditions of service.	Delays in implementation of recommendations by the DOD.

In addition to the areas identified above, the DOD and DMV (that are both dependent on a state allocation) can be reviewed in terms of the targets set and achieved per financial year. This, in turn, should be viewed against the budget spent in order to provide a superficial view on value for money spent by the relevant department. As is clear from both the DOD and DMV data reflected in the table below, a significant gap is visible between the percentage of targets achieved and the percentage of budgetary allocation spent every year.

Table 22: Summary of financial and performance information 2014/15 – 2017/18

Year	No. of targets Set*	No. of targets achieved	% Targets achieved	% Budget Spent
Department of Defence (DOD)				
2014/15	143	80	74.3%	100,0%
2015/16	109	71	65.1%	100,0%
2016/17	108	64	65.3%	99,9%
2017/18	101	65	64.3%	100,0%
Department of Military Veterans (DMV)				
2014/15	25	14	56%	91,8%
2015/16	20	10	50%	59,9%
2016/17	23	14	61%	84,4%
2017/18	18	4	22%	96,7%
*Excluding classified targets				

4.2.1. Key issues emanating from Annual Reports

A number of key issues related to the defence portfolio came to the fore during the 5th Parliament. The sections below provide an overview of the most salient issues that may also impact on further discussions during the 6th Parliament.

Department of Defence

- **Personnel cost.** Personnel costs as a total percentage of expenditure have been continuously rising in the DOD. Towards the end of the 5th Parliament, in 2017/18, the DOD had a total expenditure of R48.496 billion of which R27.116 was for compensation of employees. This equates to 55.9% of total expenditure¹³ and is not aligned to the aim of the 2015 Defence Review for a 40 per cent spending on personnel. The figure is expected to increase to 59% in 2019/20.¹⁴

¹³ Janse van Rensburg (2018). p. 20.

¹⁴ National Treasury. (2019). p. 388.



- **Ageing personnel.** On 29 August 2018, the Secretary of Defence indicated to the PCDMV that the average age of SANDF soldiers is very high. This is of specific concern at lower ranking levels. As such, force rejuvenation is urgently needed in the SANDF. To facilitate such rejuvenation, the DOD requires an effective exit mechanism for older personnel. However, such a system remains undeveloped in the DOD.
- **Ageing prime mission equipment** (and the impact on the defence industry). Given the rising number of employees in the Department, little funding is left for the two other elements of military development namely operations and capital acquisitions. As such, the SANDF's prime mission equipment is ageing rapidly. Of specific concern is the SA Army prime mission equipment such as logistics vehicles (trucks) and infantry fighting vehicles. A secondary concern in this regard is the impact of a lack of capital acquisition on South Africa's broader defence industry.

Department of Military Veterans

- **Housing.** The provision of housing to deserving military veterans was raised as an ongoing concern in the 5th Parliament. By 2017/18, the target for housing was set at 1 000, but only 270 houses were provided to veterans.
- **Skills audit.** Due to the Department experiencing challenges in attracting and retaining critical and scarce skills, a programme for the implementation of a skills audit is in place and was conducted during the 2018/19 financial year. The outcome of this audit should require careful further scrutiny to ensure that the required skills are present in the DMV to execute its mandate.
- **The DMV database and benefits management.** The integrity of the DMV database is essential to ensure that the Department renders services to deserving military veterans that qualify for benefits. Finalising the database has been an ongoing concern and creates the opportunity for non-deserving veterans and others to abuse the system of benefits provided for by the Department.

Armcor

- **The context of a defence industry in decline.** Armcor and the broader defence industry continues to be under increased financial pressure, given the reduced spending capability of the DOD. This underlies Armcor's current Turnaround Strategy which entered Phase 2 (Implementation) during the 2017/18 financial year. The continued decline in the defence industry will remain an impacting factor on the financial stability of the entity.
- **Turnaround of the Armcor Dockyard.** The Armcor Dockyard serves as the primary maintenance supplier to the SA Navy. The Dockyard continues to face major capacity constraints and financial pressures that impacts on its ability to render effective services to the SA Navy. The CEO of Armcor noted in the 2017/18 Annual Report that "the Dockyard will continue to explore a variety of collaborative measures with the



private sector to reduce the Dockyard deficit and enhance the ongoing sustainability of the Dockyard.”¹⁵

The Castle Control Board

- **Castle subsidy and financial self-sustainability.** The request for a ring-fenced annual operational subsidy of R4.5 million from the DOD should be engaged thoroughly against the background of the CCB’s performance over the last three years of the 5th Parliament. Issues to consider are the enhanced media coverage which was exceeded by R488 million;¹⁶ the increase in the staff component; increase in expenditure and the deficit; and the increase of revenue and the dwindling accumulated surplus. It should be noted that prior to the appointment of the CEO and the CFO, the Castle was self-sustainable and able to have a surplus of over R13 million.

The Military Ombud

- **Recognition as a Level 3 Public entity.** The Military Ombud has, in several Annual Performance Plans over the timespan of the 5th Parliament, indicated a desire for the Office to be recognised as a Level 3 Public Entity as a means of enhancing its independence.¹⁷ This will place additional service requirements on the Office, including (1) Governance Risk and Compliance, (2) Procurement Function, and (3) A Chief Financial Officer. The total additional cost to adhere to these requirements is estimated to be R2.872 million per year (in 2017/18 cost-terms).

4.2.2. Audit Report

According to National Treasury, the audit report by the Auditor-General is the most important, and only, independent assessment of the quality of financial statements, including all its disclosures. It is one of the most important reports to consider when reviewing a department’s Annual Report. The role of the auditor is to comment to the legislature on the reasonableness and fairness of the annual financial statements submitted by departments and entities.¹⁸

The table below highlights the audit findings by the AGSA for the five-year period spanning the 5th Parliament. Only the DOD, DMV and Armscor are evaluated by the AGSA.

Table23: AGSA Opinions on the defence portfolio: 2013/14 to 2017/18

	DOD	DMV	Armscor
2013/14	Qualified audit opinion <ul style="list-style-type: none"> • Intangible assets • Unsubstantiated corrections from previous year 	Disclaimer <ul style="list-style-type: none"> • Various financial statement items 	Unqualified audit opinion <ul style="list-style-type: none"> • Expenditure management
2014/15	Unqualified audit opinion	Qualified audit opinion	Clean Audit opinion

¹⁵ Armscor. (2018) p. 17

¹⁶ CCB (2018) . p. 18

¹⁷ Military Ombud. (2017). p. 17

¹⁸ National Treasury (2005)



	DOD	DMV	Armsscor
	<ul style="list-style-type: none"> Financial reporting framework Restatement of corresponding figures 	<ul style="list-style-type: none"> Tangible assets Transfer payments 	
2015/16	Unqualified audit opinion <ul style="list-style-type: none"> Restatement of corresponding figures Payables 	Qualified audit opinion <ul style="list-style-type: none"> Tangible assets 	Clean Audit opinion
2016/17	Qualified audit opinion <ul style="list-style-type: none"> Understatement of fruitless and wasteful expenditure Moveable tangible capital assets Immoveable capital assets Intangible capital assets 	Unqualified audit opinion <ul style="list-style-type: none"> Future litigation 	Clean Audit opinion
2017/18	Qualified audit opinion <ul style="list-style-type: none"> Capital assets work in progress Tangible capital assets Intangible capital assets Commitments 	Unqualified audit opinion <ul style="list-style-type: none"> Future litigation Accruals and payables not recognised 	Unqualified audit opinion <ul style="list-style-type: none"> Intangible assets

5. Conclusion

The NDP has a broad scope - its intrinsic focus is on aspects of socio-economic development. While a country's military has defined roles to play in terms of socio-economic development, these are marginal compared to those of many other departments. As such, the NDP's pronouncements on defence-related matters are limited. Given the focus on socio-economic development, the reduction in funding to the DOD during the five-year period under review is not surprising. Simultaneously, the dangers of a reduced budget and limited focus on matters related to defence also emerged during the period under review.

This relates specifically to the lack of force rejuvenation and an inability to maintain and replace prime mission equipment. These threats have real potential to impact negatively on the SANDF's ability to retain specialised skills and could result in significant capacity loss in the organisation. In the long-term, this could also impact on the capacity of the SANDF to be utilised in domestic roles as was observed in its deployment to the Vaal River towards the end of 2018. The lack of funding may also impact on the broader defence industry which, in turn, impacts negatively on an entity such as Armsscor. The defence industry can serve as a significant economic growth point and thus contribute to the goals of the NDP. However, without investment in the domestic industry and without purchases from the DOD, the potential of this sector is likely to remain underdeveloped.

The NDP also preceded the establishment of the Department of Military Veterans and thus makes no specific pronouncements in this regard. Although limited, there are some recommendations flowing from the NDP that have clear bearing on the Department of Defence



and Military Veterans. The expansion of benefits delivered by the DMV to military veterans clearly contributes to the socio-economic development of this group of citizens. However, it is essential that the Department's database is managed correctly to ensure that only deserving veterans who qualify for benefits according to the set regulations benefit from the system.



PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

The Portfolio Committee on Justice and Correctional Services oversees two Departments, namely the Department of Justice and Constitutional Development and the Department of Correctional Services. As such, the two Departments will be discussed separately.





Department of Correctional Services

1. Introduction

The Department of Correctional Services' mission is to:

Contribute to a just, peaceful and safer South Africa through effective and humane incarceration of inmates and the rehabilitation and social reintegration of offenders.

The Department of Correctional Services operates a total of 243 correctional facilities across the country of which 8 are temporarily closed due to renovations and upgrading. The 243 correctional facilities accommodate on average 160 583 inmates with an approved bed space 118 723. Of these inmates, 46 260 are remand detainees and 117 869 are sentenced inmates.¹⁹

The Department of Correctional Services has the following five (5) budget programmes:

- Administration: provide strategic leadership, management, support and judicial inspection services to the Department.
- Incarceration: provide for safe and secure conditions of detention consistent with humane dignity of inmates.
- Rehabilitation: provide offenders with needs-based programme and interventions to facilitate their rehabilitation and enable their social reintegration.
- Care: provide needs-based care services for the personal wellbeing of all inmates in the Department's custody.
- Social Reintegration: provides services focused on preparing offenders for release, effective supervision of offenders placed under the system of community corrections and facilitation of offenders' social reintegration into communities.

2. Key areas that impacted the Corrections Portfolio

The following key areas impacted the Corrections Portfolio during the 5th Parliament:

- Proclamation R18 of 2016 to investigate irregularities in the procurement of an electronic monitoring system between 1 June 2011 and 15 April 2016.²⁰
- On 15 June 2016, the National Treasury issued a report to the National Commissioner on a review of the bidding process for the appointment of a service provider for the supply, installation, commission and maintenance of a development framework for an integrated inmate management system. This matter is still the subject of a legal processes.²¹

¹⁹ Annual Report of the Department of Correctional Services, 2017/18

²⁰ Annual Report of the Department of Correctional Services, 2016/17

²¹ Annual Report of the Department of Correctional Services, 2015/16



- The Department of Correctional Services was merged with the Department of Justice and Constitutional Development to form the Department of Justice and Correctional Services reporting to Minister Adv Michael Masutha since 2014.
- The Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the public Sector including Organs of State chaired by Deputy Chief Justice Raymond Zondo was established in 2018 in terms of section 84(2)(f) of the Constitution, 1996. The Commission has so far made several revelations regarding tender contracts between DCS and Bosasa. These included allegations of corrupt relationships between some DCS officials and Bosasa. Chief amongst these allegations is that top DCS officials (as well as politicians) received monthly bribes up to R100 000 as a result of the tender contract awarded to Bosasa.

3. Oversight architecture

Section 85 of the Correctional Services Act, 111 of 1998 establishes the Judicial Inspectorate for Correctional Services (JICS) to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres.²²

The Judicial Inspectorate for Correctional Services has a total of 86 approved staff establishment of which 66 positions were filled on a permanent basis; 10 were filled on a fixed-term contract basis and 10 were vacant at the end of 2017/18 financial year. The organisation was allocated a total budget of R69.7 million in the 2017/18 financial year. Section 92 of the Correctional Services Act, 111 of 1998 further provides for the appointment of Independent Correctional Centre Visitors (ICCVs) for each correctional centre. The role of ICCVs includes conducting independent oversight over correctional centres and reporting independently on the treatment of inmates and the conditions under which they are incarcerated. A total number of 310 ICCVs positions are allocated across 243 correctional centres. As at 31 March 2018, only 243 ICCV posts were occupied.²³ The Judicial Inspectorate of Correctional Centres has been experiencing challenges related to its independence over the years. The Report of the High Level Panel on the Assessment of Key Legislation and Acceleration of Fundamental Change noted that, there is a lack of legal, operational, institutional and financial independence for JICS with the impact that the Inspectorate depends heavily on the Department of Correctional Services which is the very same department the Inspectorate must oversee.

Another on-going challenge facing the Inspectorate has been the filling of ICCV vacancies as well as retention of ICCVs in which the Inspectorate has invested training and resources. In this regard, JICS is recommending an overhaul of the ICCV appointment process and the revision of length of ICCV contract

4. Focus areas of oversight

The most important documents tabled in Parliament for any department are the Budget, Annual Performance Plan (APP) and Annual Report (AR). These documents read together to

²² Correctional Services Act, 111 Of 1998

²³ Annual Report of the Judicial Inspectorate for Correctional Services, 2017/18



form a holistic assessment of performance. The format and submission criteria of these documents to Parliament for scrutiny is regulated through the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“PMFA”) and the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No. 9 of 2009).

The performance targets (as per the APP) and budget of a Department are *forward-looking*. They set out what the department intends to do and the funds it will spend in the coming financial year. The Annual Report, on the other hand is *backward-looking*, as it reports on actual performance at the end of the financial year, reporting on how its strategic plan and budget were implemented.²⁴

4.1. Budget allocation

The Committee scrutinises the budget allocations of departments during three main stages of the budget process, namely the Main Appropriation, Adjusted Appropriation and the Final Appropriation.

Departmental Budgets are referred to as a Vote in the Estimates of National Expenditure (ENE) (colloquially referred to as the “red book”) published by National Treasury. Parliament must approve the budget allocation annually by approving the Appropriations Bill and Division of Revenue Bill. Government has 40 Budget Votes, of which the Corrections Portfolio has one Vote (Vote 18: Correctional Services). The JICS gets its allocation share from the Department of Correctional Services. For 2019/20 the Inspectorate was allocated a total of R77 million from the Department of Correctional Services’ budget.²⁵

Table 24: Overview of budgetary allocation and expenditure for DCS: 2014/15 – 2019/20

Year	Voted allocation (R'million)	% Change from previous year (Nominal)	Voted allocation adjusted for inflation (R'million)	% change from previous year (Adjusted inflation)	Adjusted allocation (R'million)	Expenditure (R'million)	Exp as a % of adjusted allocation (%)
2014/15	19 721.1	-	19 721.1	-	19 721.8	19 529.3	99%
2015/16	20 616.6	4.5%	19 597.53	- 0,6%	20 588.6	20 588.7	100,0%
2016/17	21 577.3	4.7%	19 295.15	-1,5%	21 580.2	21 542.2	99,8%
2017/18	22 814.1	5.7%	19 448.17	0,8%	22 814.6	22 788.6	99.9%
2018/19	23 848.5	4.5%	19 270.11	-0,9%	23 849.0	-	0.0%
2019/20	25 407.6	6.5%	19 515.11	1,3%	-	-	-

The table above shows that the voted budget allocation for the Department of Correctional Services over the six-year period increased from R19.7 billion (in 2014/15) to R25.4 billion (in 2019/20). Between 2014/15 and 2017/18 expenditure on the budget has remained stable between 99% and 100%. The table also shows that the nominal percentage increase between the years has mostly been under 5% except in 2017/18 and 2019/20. However, in real terms (when inflation is taken into account) the allocation has remained static.

²⁴ National Treasury (2005)

²⁵ National Treasury (2019)



The budget of the Department of Correctional Services has been guided by the following three policy priority areas:

- Remand detention is effectively managed by ensuring that remand detainees attend courts as determined by relevant legislation and are held in secure, safe and humane conditions, and provided with personal wellbeing programmes, and relevant services are provided to awaiting trial detainees, thus contributing to a fair and just criminal justice system
- All sentenced offenders are incarcerated in safe, secure and humane facilities and are provided with health-care needs, and effective rehabilitation programmes in line with their correctional sentence plans to enable their successful placement into society after their lawful release
- Offenders, parolees and probationers are successfully reintegrated back into society as law-abiding citizens through provision of social reintegration programmes.²⁶

These priorities are in line with the commitments in Outcome 3 (All people in South Africa are and feel safe) of Governments' 2014-2019 Medium Term Strategic Framework. It should be noted also that the Departments' work overall is informed by Chapter 12 (Building a safer communities) of the National Development Plan.

The biggest cost driver for the Department includes compensation of employees. Currently the Department has a staff complement of 41 994 and an amount of R17 billion (2018/19) has been allocated to compensation of employees. This constitute 74% of the total budget of the Department. Capital projects is another cost driver of the budget of the Department, this includes construction, upgrading, and maintenance of correctional centres as well as creation of additional bed spaces. The Department has a total of 243 correctional centres of which 8 are temporarily closed for renovations or upgrading.²⁷

The Departments' budget allocation was reduced by R177.7 million (in 2015/16), R222.6 million (in 2016/17) and R245.2 million (in 2017/18) as a result of Cabinet approved budget reduction. The reduction has been mostly on goods and services (contractors, computer services, audit costs) and machinery and equipment (IT equipment) and to a lesser extent on compensation of employees. Another Cabinet baseline reduction was observed for 2018/19-2020/21. For the Department of Correctional Services, Cabinet approved a baseline reduction of R605.1 million (in 2018/19), R668.2 million (in 2019/20) and a further R709.6 million (in 2020/21). Most of the reductions were effected on accommodation charges for the maintenance of facilities in the Incarceration programme

4.2. Annual Performance Plan and Annual Reports

Annual reports are the key reporting instruments for departments to report against the performance targets (APP) and budgets outlined in their strategic plans, read together with the ENE. An annual report is therefore required to contain information on service delivery, in addition to financial statements and the audit report from the AG. It is meant to be a backward-

²⁶ Department of Correctional Services, Annual Performance Plan for 2018/19

²⁷ Department of Correctional Services, Annual Report for 2017/18



looking document, focusing on performance in the financial year that has just ended. It reports on how the budget for that financial year was implemented.²⁸

Table 25: Targets, performance and budget spending for DCS

Year	Total targets	Target Achieved	% of target achieved	% of budget spent
2014/15	29	17	59%	99%
2015/16	48	29	60%	100%
2016/17	42	26	62%	99.8%
2017/18	36	30	83%	99.9%

The above table provides an analysis of targets, performance as well as spending of the Department of Correctional Services between 2014/15-2017/18. The Department has increased its targets from 29 (in 2014/15) to 36 (in 2017/18). In 2014/15 the Department managed to achieve only 59% of their targets. This was sharply increased to 83% achievement in 2017/18. Expenditure in the same period has remained steady between 99% and 100%.

The table below identifies the Key Performance Indicators (KPIs) where the Department has consistently performed well and those of continuous underperformance.

Table 26: Performance of the DCS

	Areas of good performance	Areas of underperformance
DCS	Targets for parolees and probationers without violations has consistently been exceeded	Security in correctional centres has always been a challenge. This is shown by the number of escapes, assaults and unnatural deaths in correctional facilities over the years
	Target for officials trained in Work-place Skills Plan has always been exceeded	The Department has consistently been faced with challenges of irregular expenditure, as well fruitless and wasteful expenditure
	Consistent achievement of grade 12 pass rate	Filling of vacant positions has been a challenge especially critical skills
	The number of children in correctional facilities have been reduced from 204 (in 2014/15) to 126 (in 2017/18)	Overcrowding of correctional facilities has consistently been a challenge
	Target for inmates tested for HIV and know their status has consistently been achieved. For 2016/17, the target was 99% and actual achievement was 136%.	Delays in construction of correctional facilities has been the order of the day for the Department over the years

²⁸ National Treasury (2005)



4.2.1. Audit Reports

According to National Treasury, the audit report by the Auditor-General is the most important, and only, independent assessment of the quality of financial statements, including all its disclosures. It is therefore one of the most important reports to consider when reviewing the Department's Annual Report. The role of the auditor is to comment to the legislature on the reasonableness and fairness of the annual financial statements submitted by departments and entities.²⁹

Table 27: AGSA Opinions: 2013/14 to 2017/18

	DCS
2013/14	Qualified Opinion: Movable tangible capital assets
2014/15	Qualified Opinion: Movable tangible assets
2015/16	Unqualified Opinion
2016/17	Qualified Opinion: Immovable tangible assets
2017/18	Qualified Opinion: On the basis of commitments

The table above indicates that in the period of 5 years (2013/14-2017/18) the Department has received a qualified audit opinion (except in 2015/16), which was mostly based on tangible assets. The Department has since put more focus on its assets register in order to be able to account for its assets in the 243 correctional centres and regional offices.

The recurring material findings made by the AGSA over the years were based on the following areas:

- Reliability and usefulness of performance information;
- Compliance with legislation;
- Insufficient internal controls;
- Leadership; and
- Governance.

5. Conclusion

In term of Correctional Service, the key focus of the NDP is to increase rehabilitation of prisoners, reduce recidivism, and reduce overcrowding in prisons. The recommendations include: 1) a greater focus on substance abuse treatment during imprisonment; 2) the extension of education and training programmes to increase chances of employment and reintegration of released prisoners; 3) capacitation of organisation to assist in sustaining the rehabilitation of former prisoners and assist with reintegration; 4) overcrowding must be addressed; and 5) youth in prisons should be addressed as a priority focus for restorative justice based on their propensity for rehabilitation. This chapter has shown that the Department of Correctional Services continues to struggle with the implementation of the recommendations, especially overcrowding in correctional facilities.

²⁹ National Treasury (2005)



Department of Justice and Constitutional Development

1. Introduction

In respect of Justice matters key agencies over which the Portfolio Committee has oversight include the following:

Departments:

- **Department of Justice and Constitutional Development (Vote 21).** The Justice Department derives its mandate from a number of Acts. These Acts and the constitutional framework assign functions to the Department including: the establishment of magistrate's courts; the appointment of magistrates and administrative support to the lower courts; the appointment of masters of the high courts; the administration of the Guardian's Fund and deceased and insolvent estates; the regulation and provision of legal advisory services to government departments; drafting of legislation; the promotion, protection and enforcement of certain human rights; the protection of vulnerable groups; the management of third-party funds; and the provision of support to chapter 9 institutions.
- **Department of Office of the Chief Justice (OCJ) and Judicial Administration – Office of the Chief Justice (Vote 22).** The mandate of the OCJ is to render support to the Chief Justice as the head of the judiciary, as provided for in the Constitution. The Superior Courts Act No. 10 of 2013, empowers the Chief Justice to exercise responsibility over the establishment and monitoring of norms and standards for the exercise of judicial functions for all courts. The Minister of Justice and Correctional Services has, in terms of this Act, delegated certain powers and functions to the Secretary-General (SG) of the OCJ for the purposes of providing administrative support functions to the Chief Justice and the Judiciary. From the 2015/16 financial year, in line with the Superior Courts Act, all Superior Courts were transferred to the Office of the Chief Justice.

Prosecuting Authority:

- **National Prosecuting Authority (NPA).** The NPA is empowered to institute criminal proceedings on behalf of the state through general and specialised prosecutions. It also seeks to remove the profit from crime through the Asset Forfeiture Unit and to protect certain witnesses through the Witness Protection Unit.³⁰ The Constitution and the National Prosecuting Act No. 32 of 1998 provide that the NPA must exercise its functions without fear, favour or prejudice.³¹

³⁰ Section 179(4), Constitution, 1996.

³¹ Section 179(2), Constitution, 1996.



Entities:

- **Legal Aid South Africa:** Legal Aid South Africa is an autonomous statutory body established in terms of the old Legal Aid Act, as amended by the Legal Aid Amendment Act No. 20 of 1996, which was, after a thorough review, replaced recently by the Legal Aid South Africa Act No. 39 of 2014. It derives its mandate from the Constitution of the Republic of South Africa, the Legal Aid South Africa Act and other pieces of legislation which require the Government to provide legal assistance to the indigent.
- **Special Investigating Unit (SIU):** The legislative mandate of the Special Investigating Unit (SIU) is derived from the Special Investigating Unit and Special Tribunals Act No. 74 of 1996 (as amended). The SIU's principal function is to investigate serious malpractices, maladministration and corruption in connection with the administration of state institutions, state assets and public money, as well as any conduct, which may seriously harm the interests of the public. Matters are referred to the SIU through Presidential proclamations, which set out the scope of the investigation. The SIU is empowered not only to investigate but also to institute civil proceedings (for the cancellation of contracts, recovery of funds etc.). The Unit refers relevant matters to the Directorate for Priority Crime Investigation (DCPI or Hawks) for criminal investigation and National Prosecuting Authority for criminal prosecution (as well as the Asset Forfeiture Unit to recover the proceeds of crime). In addition, it refers disciplinary matters to the relevant organs of state. The Unit must report to the President on the outcome of investigations.
- **Judicial Services Commission.** The Judicial Service Commission (JSC) was established in terms of section 178 of the Constitution and consists of 23 members. In terms of section 178(5) of the Constitution, the JSC is entitled to advise the national government on any matters relating to the Judiciary or administration of justice. Additionally, it performs the following functions: interviewing candidates for judicial posts and making recommendations for appointment to the Bench; and dealing with complaints brought against Judges. The JSC is required by legislation to table an Annual Report in Parliament.
- **Information Regulator:** The Protection of Personal Information Act No. 4 of 2013, (POPIA) regulates the processing of personal information. The Act applies to public and private bodies, including juristic persons, and aims to achieve a balance between the free-flow of information and the right to privacy. Section 39 of POPIA provides for the establishment of the Information Regulator which has a wide range of powers and functions. Significantly, POPIA also transfers certain key responsibilities concerning the Promotion of Access to Information Act of 2000, (PAIA) to the Information Regulator. However, at present, only those parts of POPIA relating to the establishment of the Regulator are operational. Only when the Regulator has reached a stage of operational readiness will the remaining provisions of the legislation come into force.



Constitutional Institutions:

- **South African Human Rights Commission (SAHRC).** The SAHRC is established in terms of section 184 of the Constitution. The Commission's 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 also has specific obligations in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 and the Promotion of Access to Information Act No. 2 of 2000.
- **Public Protector South Africa (PPSA):** The PPSA is an independent constitutional institution whose mandate, broadly, is to support and strengthen constitutional democracy by investigating maladministration or improper conduct in state affairs or the public administration in any sphere of government and to take appropriate remedial action. The Constitution also states that the Public Protector must be accessible to all persons and communities. The Constitutional Court has confirmed that the PPSA's remedial action is binding and has described the Public Protector as 'one of the most invaluable constitutional gifts to our nation in the fight against corruption, unlawful enrichment, prejudice and impropriety in State affairs and for the betterment of good governance.'³²

Other bodies:

- **South African Law Reform Commission (SALRC).** The SALRC is a statutory body established in terms of the SALRC Act of 1973. The objectives of the Commission are to make recommendations for the development, improvement, modernisation and/or reform of the law. The SALRC is chaired by a judge and consists of members from the judiciary, legal professions and academic institutions. The Commission's programme must be approved by the Minister of Justice and Constitutional Development.
- **Magistrates' Commission.** The Magistrates' Commission seeks to ensure that the appointment, promotion, transfer or discharge of, or disciplinary steps against, judicial officers in the lower courts takes place without favour or prejudice, and that the applicable laws in connection with such actions are applied uniformly and correctly. In terms of the Magistrates' Act of 1993, the Justice Minister appoints magistrates after consultation with the Commission. Although the Commission investigates grievances and complaints about magistrates it must submit reports and recommendations to the Justice Minister, who in turn tables them in Parliament. The Commission has established various committees to deal with appointments, misconduct, disciplinary

³² Economic Freedom Fighters and Others v Speaker of the National Assembly and Another (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (Accessed at <http://www.saflii.org/za/cases/ZACC/2017/47.html>)



inquiries and incapacity, grievances, salary and service conditions, and the training of magistrates.³³

- **South African Board for Sheriffs.** The SA Board for Sheriffs is a statutory body established under section 7 of the Sheriffs' Act and has as its objects the maintenance of the esteem of; the enhancement of the status of, and the improvement of the standard of training of and functions performed by sheriffs. Its general functions are set out in section 16 of the Sheriffs' Act. It also plays an indirect role in the appointment of sheriffs through its control over the issuing of Fidelity Fund Certificates, without which a person is not entitled to function as a sheriff. The Minister for Justice and Constitutional Development is responsible for the appointment of sheriffs, as well as the appointment of the Chairperson of the Board. The Minister may also remove a sheriff from office, and may authorise any person to charge sheriff with misconduct if sound reason exists for doing so. The issue of the transformation of sheriffs has been a significant issue during the time under review.

2. Key events that shaped the Portfolio's environment

- **Merging of Departments.** In 2014, the Department of Justice and Constitutional Development (DoJ&CD) and the Department of Correctional Services (DCS) were merged to become the Department of Justice and Correctional Services on a ministerial level, yet still functioning as separate departments in practice as well as when reporting in official capacity and in legislative terms. In response, Parliament placed oversight responsibilities for the two Departments under one Committee, the Portfolio Committee on Justice and Correctional Services.
- **New National Department allocated budget vote.** The Office of Chief Justice (OCJ) was proclaimed as a national Department on 23 August 2010.³⁴ The establishment of OCJ was envisaged as the first phase towards an independent Judiciary-led court administration system in line with the Constitution. Following the finalisation of the Constitution 17th Amendment Act and Superior Courts Act No. 10 of 2013, the Department began the process of transferring the administration/functions of the Superior Courts from the Justice Department to the Office of the Chief Justice. The OCJ was allocated its first budget vote as from 1 April 2015. 1 775 officials were transferred from the Justice Department to the Office of the Chief Justice at the beginning of the 2015/16 financial year.
- **Leadership instability (and allegations of political interference) at the National Prosecuting Authority:** The history of the senior leadership at the NPA "has been one of paralysing instability."³⁵ Not one National Director of Public Prosecutions (NDPP) has served the full term of ten years. Since 1998, when the NPA came into being, there have been five permanently appointed NDPP's and three acting NDPPs. Mr Mxolisi Nxasana who was appointed NDPP in 2015 exited less than two years after

³³ SA Yearbook 2016/17 (Accessed at <http://www.justice.gov.za/about/sa-yearbook/2016-17Justice.pdf>)

³⁴ Proclamation 44 of 2010

³⁵Corruption Watch (RF) NPC v President of the Republic of South Africa [2017] ZAGPPHC 743; [2018] 1 All SA 471 (GP); 2018 (1) SACR 317 (GP)



the President established an inquiry to assess his fitness to hold office. Mr Nxasana resigned after a deal was struck between the parties. Advocate Shaun Abrahams was then appointed and served as NDPP from June 2015 to August 2018. He left the institution after the Constitutional Court ruled that his appointment was constitutionally invalid.³⁶ The Court gave the President 90 days to appoint a new NDPP. A selection panel was appointed by the President to interview and shortlist possible contenders for the position. On 4 December 2018 the President announced the appointment of Advocate Shamila Batohi as NDPP. It should be noted that this institutional instability is not restricted to the position of the NDPP. It has been compounded by the suspension of a Deputy National Director of Public Prosecution (Advocate N Jiba) and a Special Director of Public Prosecutions (Advocate L Mrwebi). President Ramaphosa established an enquiry into the fitness to hold office of Advocates Jiba and Mrwebi. Former Constitutional Court Justice, Yvonne Mokgoro, was appointed to preside over the Enquiry.³⁷ The Enquiry submitted its final report to the President on 31 March 2019. The President has subsequently decided to remove Adv's Jiba and Mrwebi from office and the matter must now be considered by Parliament.

- **Information Regulator: New entity established in line with the Protection of Personal Information Act No. 4 of 2013.** The Protection of Personal Information Act No. 4 of 2013 (POPIA) regulates the processing of personal information by providing a framework that sets out the minimum standards with which responsible parties must comply. The Act applies to public and private bodies, including juristic persons, and aims to achieve a balance between the free-flow of information and the right to privacy. The Information Regulator was established in terms of section 39 of POPIA and has a wide range of powers and functions. At present, only those parts of the Act relating to the establishment of the Regulator are operational. These sections were proclaimed on 11 April 2014.
- **Weak inter-agency co-operation hampered the fight against maladministration and corruption.** The National Development Plan 2030 states that a multi-agency approach to the fight against corruption provides the checks and balances that are essential in the South African context and develops a systemic resilience against interference.³⁸ However, it is clear that this approach in its current format has failed to stem the tide of corruption that has infected both the public and private sector. The SAPS and the NPA appear to have been compromised and have not worked effectively together, despite provisions in both the SAPS Act and the NPA Act, which provide for inter-agency co-operation. Critical units at the NPA, specifically the Asset Forfeiture Unit and the Specialised Commercial Crimes Unit have been detrimentally affected by funding constraints. The SIU has conducted many investigations (often into the same departments) and written reports but its referrals to the NPA and to other agencies do not appear to have been followed-up. The effectiveness of the Anti-Corruption Task Team (ACTT) has also been questioned. In September 2016, Parliament's Standing

³⁶ Ibid

³⁷ Terms of Reference - Enquiry in terms of section 12(6) of the National Prosecuting Authority Act 32 of 1998, into the fitness of Advocate N Jiba and Advocate LS Mrwebi to hold the office of Deputy National Director of Public Prosecutions and Special Director of Public Prosecutions respectively (Accessed at http://www.justice.gov.za/legislation/notices/2018/20181109-gg42029_gen699-JibaCommission.pdf)

³⁸ National Development Plan 2030 p448



Committee on Public Accounts (Scopa) suggested to the ACTT that it was making a mockery of its mandate after the Directorate for Priority Crime Investigation (Hawks) head Berning Ntlemeza struggled to explain how it worked or what it has achieved.³⁹ Moreover, the Deputy National Director of Public Prosecutions, conceded that the monthly meetings of ACTT were not attended by Director-Generals, but by lower ranking officials. SCOPA has also expressed disappointment that none of the cases investigated and prosecuted by the ACTT was resolved with the conviction of the offenders. Instead all the finalised case were settled through plea bargaining.⁴⁰ In April 2018 the Head of the Independent Police Investigating Directorate (IPID) informed Parliament that the ACTT had lacked the will to carry out its mandate.⁴¹

3. Focus areas of oversight

3.1. Budget allocation

Vote 21 (Justice and Constitutional Development) comprises five programmes, (Administration, Court Services, State Legal Services, National Prosecuting Authority and Auxiliary and Associated Services) as well as the direct charge against the National Revenue Fund for magistrates' salaries. Under Programme 5: Auxiliary and Associated Services, the Justice Modernisation sub-programme funds the Departments IT programme as well as JCPS Cluster projects relating to the Integrated Justice System (IJS). Programme 5 is also where the budgets for Legal Aid South Africa; the SIU, PPSA and SAHRC are located.

Table 28: Budget allocation – Vote 21

Year	Voted Allocation (R'million)	% change from previous year (nominal)	* Voted Allocation adjusted for inflation (R'million)	** % change from previous year (adjusted for inflation)	Adjusted Allocation (R'million)	Expenditure (R'million)	Expenditure as a percentage of Adjusted Allocation (%)
2014/15	17 892,1		17 892,10		17 892,1	17 394,0	97,2%
2015/16	16 864,7	-5,7%	16 031,08	-10,4%	16 841,5	16 693,5	99,1%
2016/17	18 089,9	7,3%	16 176,60	0,9%	18 050,8	17 884,7	99,1%
2017/18	18 927,3	4,6%	16 134,82	-0,3%	18 827,3	18 540,6	98,5%
2018/19	19 265,0	1,8%	15 566,54	-3,5%	19 674,3	19 674,4	100,0%
2019/20	21 100,8	9,5%	16 207,13	4,1%			
* Real change in Rand value							
** Real change in percentage terms							

³⁹ Ferreira E, SCOPA blasts Anti-Corruption task team, (Accessed at <https://www.iol.co.za/news/politics/scopa-blasts-anti-corruption-task-team-2068219>); Naki E, Parliament shocked that corruption offenders get off with slaps on wrist, (Accessed at <https://citizen.co.za/news/1543657/parliament-shocked-that-corruption-offenders-get-off-with-slaps-on-wrist/>)

⁴⁰ SCOPA Press release, Scopa Shocked and Disappointed at Anti-Corruption Task Team settling of all cases through Plea Bargaining (Accessed at <https://www.parliament.gov.za/press-releases/scopa-shocked-and-disappointed-anti-corruption-task-team-settling-all-cases-through-plea-bargaining>)

⁴¹ Presence C, Anti-corruption task team lacks will to carry out mandate, MPs hear, (Accessed at <https://www.iol.co.za/news/politics/anti-corruption-task-team-lacks-will-to-carry-out-mandate-mps-hear-14562391>)



The budget allocation for the Vote, over the period of review, is set out above. It should be noted that until the 2015/16 financial year Vote 21 received an allocation from the national revenue fund for judges and magistrates salaries. However, in 2015/16 with the shift of functions the funding for salaries for judges was moved to the new Department of the Office of the Chief Justice and Judicial Administration.

In addition the following may be noted:

- **Funding for the Information Regulator.** The Information Regulator received funding for the 2016/17 financial year through the Justice Department under programme 3 (State Legal Services). It was allocated a budget of R10 million for the 2016/17 financial year of which only R1.7 million was spent due to the slow pace of the full establishment of the Regulator. A budget of R25 million was allocated for the 2017/18 financial year.⁴² However, the Information Regulator did not produce Annual Financial Statements (AFS) for the 2017/18 financial year. Instead the Regulator reported that it had accounted for the use of its allocated budget of R24 million through an '*expenditure report*' which was compiled by seconded officials from the Justice Department. It is unclear how much was spent by the institution during the 2017/18 financial year, however, the Regulator reported, that it did not spend its entire budget due to delays in the establishment of its administration.⁴³

3.1.1. Key cost drivers over the review period

- **Human Resources/ Compensation of Employees.** The administration of justice is labour-intensive, and compensation of employee's remains the main cost driver in the Department's budget, with expenditure expected to increase to R11.86 billion in 2019/20.⁴⁴ The Department received increases in compensation of employees of R208 million in 2016/17, R543 million in 2017/18 and R669 million in 2018/19 towards the costs of the 2015 public sector wage agreement. However, in the 2017 Budget, Cabinet approved budget reductions in compensation of employees of R429 million in 2017/18 and R671 million in 2018/19 in line with its decision to lower the national aggregate expenditure ceiling.⁴⁵ After consultation with the Department of Public Service and Administration and National Treasury, the Justice Department reports it has developed and implemented a plan to manage its personnel expenditure within its reduced personnel budget. This will be achieved by filling only critical posts, sharing services such as support personnel wherever possible, and investing in skills development.⁴⁶

⁴² Briefing of Portfolio Committee on Justice and Correctional Services on the Activities of the Information Regulator, 10 October 2017 (Accessed at <https://pmg.org.za/committee-meeting/25227/>)

⁴³ Information Regulator Briefing of the Portfolio Committee on Justice and Correctional Services Cape Town 11 October 2018 (Accessed at http://pmg-assets.s3-website-eu-west-1.amazonaws.com/181011IR_AR.pdf)

⁴⁴ ENE Vote 21 Budget 2016 (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2016/enebooklets/Vote%2021%20Justice%20and%20Constitutional%20Development.pdf>)

ENE ⁴⁵Vote 21 Budget 2017 (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2017/enebooklets/Vote%2021%20Justice%20and%20Constitutional%20Development.pdf>)

⁴⁶Ibid ENE Vote 21 Budget 2017



3.1.2. Key areas of under/over expenditure

- **Infrastructure/capital works.** The building of new court infrastructure to improve access to justice services has resulted in significant budget allocations for buildings and fixed structures over the past five years. However, there have been ongoing challenges with spending. Delays in implementing capital works projects led Cabinet in 2014 to approve budget reductions in the capital works budget of R438 million over the MTEF (R207 million in 2014/15; R220 million in 2015/16 and R10 million in 2016/17).⁴⁷ In 2015/16 the delays led to the reprioritisation of R129 million in 2015/16, R136 million in 2016/17 and R143 million in 2017/18 from the infrastructure budget. In the 2017 budget, Treasury reduced the allocation by R186.8 million in 2017/18, R191.4 in 2018/19 and R212.8 million in 2019/20 affecting the buildings and other fixed structures (infrastructure) budget.⁴⁸ In 2017/18 despite a virement of R300 million in the October adjustment budget (which increased the appropriation for the 2017/18 infrastructure budget from R769.3 million to R1.08 billion), the Department was unable to spend its infrastructure budget. Approval was granted by the National Treasury on 15 March 2018 for the Department to utilise/reprioritise projected savings of⁴⁹ R117 million in buildings and other fixed structures (infrastructure).⁵⁰ It has been an ongoing challenge to deliver new courts on time and within budget.
- **Magistrate's salaries.** Persistent underspending of this budget allocation over the review period has been due to the number of vacancies of permanent magistrates as well as the long period that posts remain vacant.

3.1.3. Cuts to baseline allocations.

The constrained fiscal outlook has resulted in a decrease in the Vote's baseline of R2 billion over the 2018 MTEF (R643 million in 2018/19; R667 million in 2019/20; and R705 million in 2020/21). The baseline reduction also affects the two Chapter 9 institutions as follows:

- PPSA: Reductions of R8 million in 2018/19; R13.7 million in 2019/20 and R14.5 million in 2020/21.⁵¹
- SAHRC: Reductions of R4.5 million in 2018/19; R4.8 million in 2019/20 and R5.1 million in 2020/21.⁵² (The Commission reports that as a result of the budget reductions it will introduce cost saving measures in 2018/19 which include the suspension of senior posts and revised strategic focus areas.⁵³)

⁴⁷ ENE Vote 24 2014 p539

⁴⁸ ATC170516: Report of the Portfolio Committee on Justice and Correctional Services on Budget Vote 21: Justice and Constitutional Development, dated 16 May 2017 (Accessed at <https://pmg.org.za/taled-committee-report/2974/>). This was a result of the reduced appropriation of R769 million for 2017/18 which had to be allocated as follows (accruals of R449 million; DPW allocation of R451 million and IDT allocation of R600 million).

⁴⁹ DoJ&CD Annual Report 2017/18 p81

⁵⁰ Ibid p149

⁵¹ ENE 2018

⁵² Ibid p15

⁵³ Ibid p13



The 2019 Budget imposes further cuts on the goods and services budget of R225 million over the MTEF. It also includes additional cuts to the two Chapter 9 institutions as follows:

- SAHRC: Salary increase freeze/reduction for senior management staff; R1.3 million 2019/20; R1.4 million in 2020/21 and R1.5 million in 2021/22.
- PPSA: Salary increase freeze/reduction for senior management staff; R1.2 million in 2019/20; R1.3 million in 2020/21 and R1.4 million in 2021/22.

Notably though, additional funding has been allocated in the 2019 Budget for operations at Legal Aid South Africa (R300.3 million over the MTEF), while the SAPS integrated justice budget of R853 million over the MTEF, has been shifted to the Justice Vote.⁵⁴

4. Annual Report and Annual Performance Plan

4.1. Department of Justice and Constitutional Development

4.1.1. Budget allocation

Table 29: Budget allocation against expenditure

Year	% Targets achieved	% Budget Spent	Audit opinion
2014/15	85%	97.2%	Unqualified (with findings)
2015/16	70%	99.1%	Unqualified (with findings)
2016/17	85%	99.1%	Qualified
2017/18	74%	98.5%	Qualified

4.1.2. Performance

Selected areas of good performance and underperformance over the past five-year period include:

Table 30: Performance for the Department of Justice and Constitutional Development

Areas of good performance	Areas of underperformance
<p>Sexual offences courts re-established. This commenced in the 2013/14 financial year following the release of the Report of the Ministerial Advisory Task Team on the Adjudication of Sexual Offences (MATTSO) which developed a model for sexual offences courts. The Department identified 57 regional courts for upgrading. 74 courts were upgraded between 2013/14 and 2017/18.</p> <p>Increasing access to courts. The Department leads a number of ongoing projects to increase access to justice services. This includes critical infrastructure projects to</p>	<p>Sexual offences courts face challenges with implementation. At least 30 of the upgraded sexual offences courts are 'hybrid' courts which have some features of the sexual offences court model but are not 100% compliant. In 2017/18, the Department in partnership with UNICEF drafted the Minimum Standards of the Sexual Offences Courts (SOC) Model. These minimum standards are awaiting the finalisation of the Regulations for the Sexual Offences Courts to ensure proper alignment and compliance. However, the Regulations have yet to be finalised and approved. There are also still significant challenges with</p>

⁵⁴National Treasury Budget 2019 Overview (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2019/enebooklets/Overview.pdf>)



Areas of good performance	Areas of underperformance
<p>improve access to justice including the construction of two new High Courts in Mpumalanga and Limpopo respectively.</p> <p>Improving access to maintenance services. The maintenance turnaround project has had considerable success in the implementation of EFT payments made to beneficiaries with 98% of payments now 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. Various policies and training interventions have been developed to improve service delivery overall.</p> <p>Transforming State Legal Services. In July 2017, the Justice Minister designated Ms V Vedalankar, Chief Executive Officer of Legal Aid Board South Africa as the Project Leader to assist with the Transformation of State Legal Services.⁵⁵ In 2017 a Consultation Document on the Business Case for the Establishment of a State Legal Services Public Entity was used in an extensive consultation process. The Department reports that the intention is to table the finalised business case and a State Legal Services Bill.⁵⁶ In addition, the transformation process has included the development of a number of policies (addressing for example, mediation, state representation, the management of state litigation and tariffs.) These are expected to be submitted to Cabinet for endorsement in 2019/20.</p> <p>Small claims courts. These courts were established to enable individuals to institute minor civil claims in an affordable manner. The limit of cases involving civil claims in these courts is now R20 000. By 2017, there was 100% coverage across the country. The vast majority of the new courts and places of sitting are in</p>	<p>sexual offences cases being postponed and withdrawn as well as a shortage of intermediaries.</p> <p>Delays in the construction of two High Courts. The construction of the two new High Courts was subject to significant delays. The Polokwane court was scheduled to be opened in 2012/13 and the Nelspruit court in 2014/15.⁵⁸ In 2015 it was reported that due to delays in construction, it was expected that the courts would be opened in 2015/16.⁵⁹ At the time it was estimated that the Limpopo High Court was projected to cost R876.3 million and the Mpumalanga court R706.3 million.⁶⁰ However, the projected completion date of the Mpumalanga High Court was revised to the end of 2018/19 at a total cost of R1.2 billion.⁶¹</p> <p>Backlog cases. The reduction of the backlog of criminal cases remains a priority countrywide. The deliverables in this regard have been integrated into the outputs of the delivery agreement of the JCPS Cluster departments and the MTSF. However, there have been ongoing challenges in reducing backlog numbers. By the end of 2017/18 there were 33 732 criminal backlog cases in the lower courts against a target of 30 344. This was reportedly due to a number of implementation challenges with the Integrated Case Management System which meant data could not be captured timeously. This resulted in more cases than usual being identified as backlog cases.</p> <p>Slow Implementation of Truth and Reconciliation Commission recommendations. In particular the regulations relating to medical benefits, housing assistance, and community rehabilitation which have been in the pipeline for many years now. The issue of community rehabilitation in particular has been contentious. In August 2017 the Department reported that it had set up a new project team with a new project leader to ensure that implementation of the community rehabilitation project is fast-tracked. Needs analysis had been conducted in eighteen communities. In</p>

⁵⁵ DoJ&CD Progress Report to the Portfolio Committee on Justice and Correctional Services (30 June 2017)

⁵⁶ DoJ&CD Annual Report 2017/18 p29

⁵⁸Vote 21 Budget 2015 (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2015/enebooklets/Vote%2021%20Justice%20and%20Constitutional%20Development.pdf>)

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Vote 21 Budget 2019 (Accessed at <http://www.treasury.gov.za/documents/national%20budget/2019/enebooklets/Vote%2021%20Justice%20and%20Constitutional%20Development.pdf>)



Areas of good performance	Areas of underperformance
<p>rural areas and peri-urban areas.⁵⁷ Guidelines for Commissioners and Guidelines for Clerks have also been finalised and will be effective as from 1 April 2019.</p>	<p>July 2018 a set of revised Draft Regulations Relating to Community Rehabilitation were published for public comment.</p> <p>Operational challenges with the National Register of Sexual Offenders. Section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007 established a National Register for Sex Offenders where the particulars of all offenders guilty of sexual transgressions against children or mentally-ill persons have to be included, regardless of whether they were found guilty before or after the coming into force of the Act. However, the Registrar has acknowledged that although the register is available to be accessed via an application <i>“there are still discrepancies and operational challenges.”</i>⁶²</p>

4.1.3. Key issues emanating from performance

- Cleaning up the Third Party Fund (TPF) environment.** The Justice Department administers funds on behalf of third parties; including maintenance beneficiary monies, bail monies on behalf of accused persons, and monies in respect of the State Attorney (such as monies in respect of provisional asset forfeiture, litigation and settlements of court action where a government institution is concerned). However, the lack of an effective and efficient accounting/financial management system meant the financial records of the funds were not reliable, accurate or complete. This led to years of audit disclaimers. The Department initiated a transformation plan in the 2013/14 financial year and following a concerted effort, the TPF’s achieved a qualified audit opinion in 2015/16. In the 2016/17 financial year, the Department procured a new administrative solution, called MojaPay to address the accounting and service delivery challenges of the legacy systems and inadequate management and administration of Third Party Funds. Finally, in the 2017/18 financial year, the Third Party Funds achieved a clean audit opinion. The Mojaypay system has now been implemented in 277 courts in eight provinces and 15 State Attorney’s offices. Notably, governance of the Funds has also been a challenge and this resulted in the enactment of the Justice Administered Funds Act No. 2 of 2017 which provides for the management, control, investment and utilisation of money in the Funds.
- Dysfunction at the Office of the State Attorney (OSA).** The functioning of the Office of the State Attorney (OSA) has been of concern since 2014. This followed a series of court judgements which highlighted the *‘serious dysfunction’* in the OSA. (It should be noted that significant challenges with these offices continue to be identified by the

⁵⁷ DoJ&CD Annual Report 2017/18 p32

⁶²Zama Z. Sex offenders register is accessible via application. (Accessed at <http://www.702.co.za/articles/305630/listen-sex-offenders-register-is-accessible-via-application>)



Courts).⁶³ In 2014 the Justice Department acknowledged various challenges impacting the Office of the State Attorney. According to the Department these were caused by:⁶⁴ Underfunding/ underinvestment and lack of capacity; high caseloads and lack of supervision of junior attorneys; lack of standard operating procedures; inadequate file management/poor diary management/use of manual registers due to issues with the electronic State Attorney System (SAS); and clients of the State Attorney (government departments) prolonging litigation till they had no other option but to settle. Solutions proposed by the Department included: Appointment of the Solicitor General; discussions with the Accounting Officers of departments to give the Justice Department standing settlement powers; establishing task teams with the Departments of Home Affairs, SAPS and Health;⁶⁵ ensuring standard operating procedures in place; and a broader and more comprehensive revision of the State Attorneys Act. A Public Service Commission (PSC) report in 2016 also highlighted various deficiencies and systemic challenges in these offices and made a number of recommendations (relating to workloads, ICT systems, and improved management structures etc.). Legislative amendments were passed in 2014 to provide for a 'Chief' State Attorney' – the Solicitor-General - but the filling of the position was subsequently halted pending the restructuring of the entire state advisory and litigation offices. This process is ongoing. In August 2018 a Proclamation was issued empowering the Special Investigating Unit (SIU) to investigate an array of allegations at the OSA, which once again placed a spotlight on the challenges affecting this office.⁶⁶

- **Transforming the legal system.** A key focus of the Justice Department has been the transformation of aspects of the legal system. This has resulted in various projects including a 'Renaissance Project' which aims to; overhaul the Criminal Procedure Act; reform the civil justice system with a focus on increased use of mediation; and increase access to justice through community courts and the use of language in courts. The Department reported in 2018 that a Draft Policy Framework has been submitted to the Minister for further discussion. The statutory recognition and funding of the paralegal sector is also included in the Department's transformation project. The Department has been working with the National Alliance for the Development of Community Advice Offices (NADCAO) and the Association of Community Advice Offices of South Africa (ACAOSA) to regulate the work of community-based paralegals. Although the Department reports that it has prepared a draft bill, the issue of funding remains a challenge. A task team was to have prepared a document on funding models by the end of September 2018. The issue of funding was also raised at a Donor Coordination Workshop in October 2018.

⁶³Mabuza E, Enough with court delays! Mpumalanga judge president fed up with tardy attorneys 21 June 2018 (Accessed at <https://www.timeslive.co.za/news/south-africa/2018-06-21-enough-with-court-delays-mpumalanga-judge-president-fed-up-with-tardy-attorneys/>)

⁶⁴ Department of Justice 2013/14 on its Annual Report & 1st Quarter 2014/15 with stakeholder input & Auditor-General report (Accessed at <http://www.pmg.org.za/node/47425>)

⁶⁵DoJ&CD 2007/08 Annual Report p110

⁶⁶ It has been reported that the scams, may have cost taxpayers over R80bn, and consists of either losing cases against the state and then proceeding to receive a portion of the payout or settling claims out of court. Reportedly, there are several criminal cases that have already been opened against certain private legal firms and state attorneys.



- **Implementing the Legal Practice Act No. 28 of 2014.** The Legal Practice Act (LPA) provides a legislative framework for the transformation and restructuring of the legal profession. Different provisions of the Act come into operation incrementally. Parts 1 and 2 (sections 96 – 109) of Chapter 10 of the LPA – deal with the establishment and functions of the National Forum on the Legal Profession (the National Forum) and various transitional provisions. These sections came into operation on 1 February 2015. The National Forum is a ‘*transitional entity*’ which has drafted various rules and regulations as well as making recommendations to the Justice Minister. Although the Forum was only supposed to have a lifespan of three years this was extended by the Legal Practice Amendment Act. The work of the National Forum concluded on 31 October 2018 and following an election process, 10 attorneys and 6 advocates were elected to serve on the South African Legal Practice Council (SALPC) in October 2018. The SALPC is a permanent structure and an important milestone in the transformation of the legal profession. Now all lawyers — both advocates and attorneys — fall under a single regulatory body for the first time. Among other things, the Council will pave the way for the establishment of community service for aspirant and serving legal practitioners as well as the enhancement of the accountability arrangements of the legal profession through the establishment of the legal service ombud.
- **Working Towards a Single Judiciary.** The passing of the Constitution 17th Amendment Act and the Superior Courts Act No. 10 of 2013 paved the way for the transformation of the magistracy and its full integration into the judiciary. Initially the substitution of the Magistrates' Courts Act No. 32 of 1944, was considered to be the main focus area of this transformation initiative and work started on a new Lower Courts Bill (LCB) with a draft of the Bill prepared early in 2016. The Justice Department approached the magistracy for their input. This led to the distribution, towards the end of 2016, of a "Draft Framework: Lower Courts Restructuring". Having considered the comments received on this policy framework, the Department continued to develop the LCB.⁶⁷ However, it became clear that changes were also needed to the Magistrates Act No. 90 of 1993, in respect of issues such as the appointment of magistrates, the composition of the Magistrates Commission and the procedures relating to the lodging and adjudication of complaints against magistrates. In response, a draft Magistrates Amendment Bill (MAB) was also developed.⁶⁸ In August 2017, it was decided that rather than just amending specific sections of the 1993 Magistrates Act an entirely new piece of legislation should be drafted. Early in 2018, comments were invited from the magistracy on the two draft Bills.⁶⁹ The Magistracy has also initiated a process to identify indicators and targets for court performance information for the Magistrates' Courts. This information will in future also be reported on and form part of an Annual Report.⁷⁰

⁶⁷ Keynote Address by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery, MP, at the Gala Dinner and Opening of the Annual General Conference of the Association of Regional Magistrates of Southern Africa (ARMSA), held at the Malibu Country Lodge, Kameeldrift, Pretoria, 25 January 2019 (Accessed at http://www.justice.gov.za/m_speeches/2019/20190125-ARMSA_dm.html)

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Chief Justice Mogoeng Mogoeng, "The Judicial Accountability Session" 23 November 2018 (Accessed at https://www.judiciary.org.za/images/chief_justice_2017/Judicial_Accountability_Session_Speech_as_at_10h00_23_November_2018.pdf)



4.2. Public Protector South Africa

4.2.1. Budget allocation

Table 31: Public Protector expenditure against performance and audit outcome

Year	% Targets achieved	% Budget Spent	Audit opinion
2014/15	52%	97%	Unqualified (with findings)
2015/16	62%	95%	Unqualified (with findings)
2016/17	53%	107%	Unqualified (with findings)
2017/18	50%	106%	Unqualified (with findings)

4.2.2. Performance

Selected areas of good performance and underperformance over the past five-year period in the PPSA include:

Table 32: Performance analysis – Public Protector

Areas of good performance	Areas of underperformance
<p>Release of the State of Capture Report No. 6 of 2016/17.⁷¹ The report recommended that, because the PPSA did not have enough funds to finalise the initial investigation, the President should appoint a commission of inquiry to complete the investigation, while Chief Justice Mogoeng should appoint the head of the inquiry. This led to the establishment of the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Zondo Commission).</p> <p>Developing Memoranda of Understanding with the Departments of Justice and Correctional Services, and Cooperative Governance and Traditional Affairs. These agreements will empower the PP to utilise local municipal offices and Magistrates Courts as additional access points for the institution's services.</p> <p>Public Protectors Rules Gazetted. After a two year process the Rules relating to Investigations by the PPSA were published in the Government Gazette in September</p>	<p>Failure of state institutions to implement remedial action. The Constitutional Court has stated clearly that if not taken on review, government institutions must adhere to the Public Protector's remedial actions. However, despite repeated efforts to communicate with them in writing and conducting follow-ups, certain state institutions have failed to meet the time frames or implement the requisite remedial action. The PPSA does not have the financial resources to pursue all these matters in the courts.</p> <p>Adverse court judgements (personal costs order). The North Gauteng High Court in the matter of <i>Absa Bank Limited and Others v Public Protector and Others</i> [2018] ordered the Public Protector, in her personal capacity, to pay 15% of the costs of the South African Reserve Bank.⁷³ The High Court had reviewed and set aside certain recommendations by the Public Protector in her report on the "Alleged Failure to Recover Misappropriated Funds" (Report) by the South African Reserve Bank (SARB). In November 2018, the Constitutional Court heard an application for leave to appeal, against the portion of the order of the North Gauteng High Court relating to the</p>

⁷¹ PPSA Report No:6 of 2016/17 on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of the State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses (Accessed at http://www.pprotect.org/sites/default/files/legislation_report/State_Capture_14October2016.pdf)

⁷³ *Absa Bank Limited and Others v Public Protector and Others* [2018] 2 All SA 1 (GP) (Accessed at <http://www.saflii.org/za/cases/ZAGPPHC/2018/2.pdf>)



Areas of good performance	Areas of underperformance
2018. ⁷² The purpose of the Rules is to promote and enhance access to the Public Protector by all persons who are concerned by conduct in state affairs; to facilitate cooperation by organs of state and other relevant persons; and to enhance the efficiency and effectiveness of investigations through the provision of service standards and time-frames.	personal costs order. This matter represents a reputational risk to the institution.

4.2.3. Key issues emanating from performance

- New Public Protector appointed.** Following the end of the term of Advocate Thuli Madonsela, a new Public Protector, Advocate Busisiwe Mkhwebane, was appointed by the President, on the recommendation of the National Assembly, for a non-renewable period of seven years, with effect from 15 October 2016.
- Binding power of remedial action confirmed.** The Constitutional Court (CC) clarified the power of remedial action held by the PPSA in the case of *EFF v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016].⁷⁴ The Court found that the remedial actions of the Public Protector are binding and consequently anyone wishing to challenge the remedial action can only do so through a review by a court of law. This has, however, resulted in an increase in the number of matters taken on review which has had an impact on the PPSA’s budget as a result of increasing legal fees.
- Financial health.** The Constitutional Court has highlighted the need for adequate resources to support the PPSA: “*Within the context of breathing life into the remedial powers of the Public Protector, she must have the resources and capacities necessary to effectively execute her mandate so that she can indeed strengthen our constitutional democracy.*”⁷⁵ The PPSA’s financial health has, however, been an ongoing concern. At the end of 2013/14, the PPSA had an accumulated deficit of R25.9 million and current liabilities exceeded total assets. In response, the PPSA implemented various austerity measures. These assisted to reduce the deficit and by the end 2015/16, the accumulated deficit had been significantly reduced. However, there was a regression in 2016/17 when the institution recorded an accumulated deficit of R24.3 million at the end of the financial year. The Auditor-General (AG) reported in 2016/17 that the PPSA was factually insolvent. The situation remained unchanged in 2017/18.⁷⁶ The Justice Department assisted with the provision of an additional R15 million in the 2017/18 financial year in order to enable the institution to pay outstanding creditors.⁷⁷ Even with

⁷² Public Protector Act No. 23 of 1994 Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 (Accessed at http://www.justice.gov.za/legislation/notices/2018/20180914-gg41903_gon945-PPArules.pdf)

⁷⁴ *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* 2016 (3) SA 580 (CC) (Accessed at <http://www.saflii.org/za/cases/ZACC/2016/11.pdf>)

⁷⁵ Ibid

⁷⁶ PPSA Annual Report 2017/18 p80

⁷⁷ Ibid p113



the additional funding, however, the institution still ended the year with an accumulated deficit of R30 million.⁷⁸

- **Delegations to and role of the Deputy Public Protector.** The role of the Deputy Public Protector (DPP) and the issue of delegations has been a concern. It has not been clear whether the Public Protector has been making best use of the DPP, who has an important leadership role to play within the institution. Notably the current DPP commenced his seven-year term in December 2012 and therefore his term will end in **December 2019**. The sixth Parliament will need to initiate processes for a new appointment.
- **The Public Protector Act outdated.** The Public Protector Act 23 of 1994, which predates the 1996 Constitution, requires review/amendment.

4.3. South African Human Rights Commission

4.3.1. Budget allocation

Table 33: SAHRC expenditure against performance and audit outcome

Year	% Targets achieved	% Budget Spent	Audit opinion
2014/15	92%	99%	Unqualified (with findings)
2015/16	90%	103.5%	Unqualified (with findings)
2016/17	84%	102%	Unqualified (no findings)
2017/18	75%	96%	Unqualified (with findings)

4.3.2. Performance

Selected areas of good performance and underperformance over the past five-year period for the SAHRC include:

Table 34: Performance analysis – South African Human Rights Commission

Areas of good performance	Areas of underperformance
<p>Hearing reports. The Commission has held hearings and released reports into a number of critical human right issues:</p> <ul style="list-style-type: none"> • Investigative Hearing Report on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa, (2018) • National Hearing Report on the Human Rights of the Khoi-San – (2018) 	<p>Inadequate monitoring of the impact of the Commission's work. The Commission only started to monitor the implementation of recommendations made in its reports during the 2016/17 financial year. The Commission has reported that the monitoring work it has done reveals a lack of accountability on the part of many public bodies, which does not bode well in building a culture of human rights.⁷⁹</p> <p>Challenges implementing the PAIA mandate. The NDP highlighted the importance of the PAIA. However, the Commission has consistently identified challenges in the annual PAIA Report produced by the Commission. The Commission reports that the majority of public bodies particularly at local government level are still non-compliant with reporting obligations to the SAHRC.</p>

⁷⁸ Ibid p80

⁷⁹ SAHRC Annual Report 2017/18 p6



Areas of good performance	Areas of underperformance
<ul style="list-style-type: none"> • Unfair Discrimination in the Workplace Report (2016) • Transformation in Public Universities in South Africa (2016) • Report on the Impact of Protest-Related Action on the Right to a Basic Education (2016) • SAHRC Access to housing Local Governance and Service Delivery (2015) • SAHRC Report on Access to Emergency Medical Services in the Eastern Cape (2015) • Safety and Security in Farm Communities (2015) • Unregulated Artisanal Underground and Surface Mining Activities (2015) • Older Persons Report (2015) • Delivery of Learning Material Report (2014) • Right to Access Sufficient Water and Decent Sanitation Report (2014) • Land Restitution Report (2013) 	<p>Life Esidimeni. The Commission has been criticised for its inadequate response to the Life Esidimeni tragedy. In 2016, the Health Ombud Malegapuru Makgoba released a damning report into the circumstances around the deaths of at least 144 mental health patients who had been removed from state-funded private Life Esidimeni healthcare facilities. The SAHRC received a complaint about the transfers in March 2016, but did not respond until August, just weeks before former health MEC Ms Qedani Mahlangu confirmed that a number of mental health patients had died, at mostly unregistered non-profit organisations.⁸⁰</p>

4.3.3. Key issues emanating from performance

- **New Commissioners appointed.** The South African Human Rights Commission Act 40 of 2013 provides that the Commission should consist of eight commissioners. In 2016 the terms of office of seven of the Commissioners came to an end. Seven new commissioners joined the remaining Commissioner Advocate Mohamed Ameerma and were appointed as from **1 January 2017** for a seven year term. The new appointments consisted of; Professor Bongani Majola (Chairperson); Ms Priscilla Sewpal Jana (Deputy Chairperson) Advocate Andrew Gaum Ms Matlhodi Makwetla, and Advocate Bokankatla Malatji as fulltime Commissioners; while Mr Andrew Christoffel Nissen and Mr Jonas Sibanyoni were appointed as part-time Commissioners.
- **Challenges with implementing the Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 (PEPUDA) Mandate.** Over the past five years the Commission has highlighted significant challenges with the implementation

⁸⁰ Van Dyk J, Does South Africa need a Human Rights Commission? (Accessed at <https://bhekisisa.org/article/2018-07-04-00-power-and-crisis-why-sas-watchdogs-are-more-bark-than-bite>)



of PEPUDA including:⁸¹ the failure to declare a commencement date for Chapters 5 and 6 of the Act, which provide for the State and private persons to promote equality and non-discrimination through awareness creation, development of action plans, codes of conduct, assistance and training and information campaigns; a lack of continuing legal education for presiding officers and frontline staff in the equality courts; the dysfunctionality of the Equality Review Committee (ERC); the need for the Commission for Gender Equality, the SAHRC and Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) to develop and strengthen effective inter-Commission relations in respect of the right to equality and prevention of unfair discrimination, and increase coordination at operational levels. A Bill to amend PEPUDA is being drafted by the Justice Department.

- **Challenges with implementing the Promotion of Access to Information Act No. 2 of 2000 (PAIA) Mandate and handover of PAIA responsibilities.** The Commission was never provided additional funding to fulfil its PAIA mandate and limited resources have been a persistent challenge in respect of effective implementation of its responsibilities. In addition, a lack of enforcement powers have also limited the effectiveness of the Commissions PAIA work. Significantly, most of the powers and functions of the Commission in terms of the PAIA will eventually be taken over by the Information Regulator (in line with the provisions of the Protection of Personal Information Act No. 4 of 2013).⁸² Unlike the SAHRC, the Information Regulator has the statutory power to enforce compliance. During the 2017/18 financial year, the SAHRC has been preparing for the handover of PAIA responsibilities to the Information Regulator.⁸³ In October 2018, it was reported that a Memorandum of Cooperation between the two institutions, which sets out the modalities of the handover, was in the process of being finalised.
- **Relationship with Parliament.** There is need for greater and more regular engagement between Parliament and the Chapter 9 and associated institutions. In September 2010, the Office on Institutions Supporting Democracy (OISD) was launched within the Office of the Speaker. The purpose of this office was to strengthen Parliaments capacity in respect of oversight and accountability, relating to the Institutions Supporting Democracy (ISD's), and to co-ordinate all activities between those Institutions and the National Assembly. However, there continue to be calls for a more structured and regular engagement between Parliament and the Chapter 9 and associated institutions. At a meeting held in February 2015, between the Presiding Officers and ISDs, the Speaker indicated that the Fifth Parliament would take it upon itself to consider the recommendations of the 2007 Report of the Ad Hoc Committee on the Review of Chapter Nine and Associated Institutions.⁸⁴ One of the key recommendations of the Ad Hoc Committee was the establishment of a "Single Human

⁸¹SAHRC Equality Roundtable Dialogue Report (2015) (Accessed at <http://www.sahrc.org.za/home/21/files/Equality%20Roundtable%20Dialogue%20Report.pdf>)

⁸² The Commission retains the constitutional obligations to promote, protect and monitor the right of access to information.

⁸³ SAHRC PAIA Annual Report 2017/18 p14

⁸⁴Report of Workshop on the Report of the Ad Hoc Committee on the Review of Chapter Nine and Associated Institutions (Accessed at https://www.parliament.gov.za/storage/app/media/misc/2017/may/12-05-2017/4.ISD_workshop_report_Final_mail.pdf)



Rights Body”.⁸⁵ This led to some discussions in the Fifth Parliament around the possible merging of some of the Chapter 9 institutions, however, the matter remains unresolved and was deferred to the Sixth Parliament.

- Unfunded mandates.** The Commission has reported that additional funding is needed to enable it to fulfil its monitoring responsibilities as a result of various court orders. This additional funding has not been forthcoming, in fact the Commission’s budget has been affected by baseline reductions, and it is unclear what this means for its court mandated monitoring role.

4.4. Special Investigating Unit

4.4.1. Budget allocation

Table 35: SIU expenditure against performance and audit outcome

Year	% Targets achieved	% Budget Spent	Audit opinion
2014/15	50%	87%	Unqualified (with Findings)
2015/16	29%	90%	Unqualified (with Findings)
2016/17	80%	95%	Unqualified (No Findings)
2017/18	75%	82%	Clean Audit

4.4.2. Performance

Selected areas of good performance and underperformance over the past five-year period in the SIU include:

Table 36: Performance analysis – Special Investigating Unit

Areas of good performance	Areas of underperformance
<p>Organisational review. In 2016 the new Head of the Unit Advocate Mothibi instituted an organisational review project. The Unit identified significant gaps in the operating environment that required immediate management intervention. This resulted in (i) the development of collaborative prevention plans and strategies with state institutions to avoid the recurrence of similar fraud, corruption and maladministration cases and (ii) the development of market data analytic services.</p> <p>MOU between the SIU, Justice Department and the Presidency. This purpose of this MOU is to ensure that the process of referring, signing and publishing of proclamations is better synchronised. A Monitoring and</p>	<p>Remedial action. The Unit notes that it has no power to enforce the implementation of legal recommendations which leads to a failure by state institutions to implement these recommendations. As part of its organisational review the Unit has introduced Monitoring and evaluation of the impact of the SIU. The will result in following up and tracking of SIU recommendations.</p> <p>Turnaround times for completion of investigations. The Unit has been criticised for slow turnaround times in respect of the completion of its investigations. Some cases have taken up to six years to finalise. The previous and current Head of the Unit acknowledged the need "to improve on our turnaround times." In response,</p>

⁸⁵ This would involve amalgamating the following institutions: The National Youth Development Agency, The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, The Commission for Gender Equality, The Pan South African Language Board, and The South African Human Rights Commission.



Areas of good performance	Areas of underperformance
<p>Evaluation Committee will monitor the implementation of this MOU.</p> <p>Roll-out of Consultative stakeholder engagements. The Unit has hosted consultative stakeholder engagement in the North West, in East London, Eastern Cape and in Polokwane, in the Limpopo Province in 2016 and 2017 respectively. The theme of the forums was “Working together towards ridding society of corruption, malpractice and maladministration.” These forums are aimed at enhancing the SIU’s partnership with various stakeholders, improving communication through dialogue and providing feedback on various projects.⁸⁶</p>	<p>proclamations were being made narrower and more specific, and in events where investigations took longer than a year, interim reports were being issued. Selected cases such as the Unit’s investigations at the South African Broadcasting Corporation (SABC) have become ‘a test case’ for how quickly the Unit can do its work.</p>

4.4.3. Key issues emanating from performance

- Leadership instability.** In 2011 Advocate W Heath was appointed to replace Mr W Hofmeyer who had served as Head of the Unit from August 2001 to November 2011. After less than two weeks in the position Advocate Heath resigned and Advocate Nomgcobo Jiba, the National Deputy Director of Public Prosecutions stood in briefly as acting Head of the Unit. Subsequently, the President appointed Advocate Nomvula Mokhatla (a Deputy National Director of Public Prosecutions at the NPA) as Acting Head of the SIU. Finally, in October 2013, Advocate Vas Soni was appointed by the President as permanent Head. However, in February 2015, Advocate Soni resigned and Advocate Gerhard Visagie was appointed Acting Head, pending the appointment of a permanent head. On 1 May 2016, President Jacob Zuma appointed Advocate Jan Lekhoa Mothibi to head the SIU.
- Challenges with Debt recovery and need for a new Funding model.** The Unit has a mixed funding model which derives income from a National Treasury grant as well as revenue received for forensic investigation/civil litigation work done for state departments/entities. The Unit has, however, reported that the current funding model is flawed and has highlighted difficulties experienced particularly in recovering monies owed to the SIU from state institutions for its services. The SIU has engaged with Treasury and reports that it is exploring possible legislative amendments to its enabling legislation.
- Non-implementation of SIU remedial action by state institutions.** The Unit cannot conduct criminal prosecutions nor can it ensure the necessary disciplinary action is taken against identified individuals within departments. Such matters must be referred to the NPA and the relevant departments respectively. However, the Unit’s recommendations/remedial actions appear to have been largely ignored. According to the Head of the Unit the majority of cases referred to the NPA for attention between 2013 and April 2018 have been left to gather dust. No feedback has been received

⁸⁶ SIU Interim Report (Accessed at <https://www.siu.org.za/wp-content/uploads/2017/12/SIU-Interim-Report-2017.pdf>)



since 2014/15 and these referrals keep accumulating. In August 2017, Advocate Mothibi signed a Memorandum of Understanding (MoU) with former National Director of Public Prosecutions Shaun Abrahams. The agreement sought to formalise the feedback process on criminal cases referred by the Unit to the NPA, through monthly meetings between the head of the NPA’s Specialised Commercial Crime Unit and SIU provincial heads, the establishment of a database to track cases and quarterly reports. However, this MoU does not appear to have been particularly effective. The SIU has reported that there has just been to-ing and fro-ing and no tangible action.⁸⁷

- Special Tribunal established.** The SIU has the power to conduct civil litigation in its own name or in the name of the affected state institution but heavy court rolls often result in its civil litigation work being delayed. During 2017 and 2018 the Unit reported that it continued to work with the Justice Department and Office of the Chief Justice towards the formalisation of the administrative arrangements for the operationalisation of a Special Tribunal. In February 2019 it was announced that President Ramaphosa had established the Special Tribunal. The Special Tribunal will be able to adjudicate any civil proceedings brought to it by the SIU, either in its own name or on behalf of a state institution or interested party, which stems from an SIU investigation. Judge Gidfonia Mlindelwa Makhanya has been appointed as president of the Tribunal, for a three-year term. The additional members of the Tribunal are: Judge Icantharuby Pillay; Judge Johannes Eksteen; Judge Selewe Peter Mothle; Judge Lebogang Modiba; Judge Thina Siwendu; Judge David van Zyl and Judge Sirajudien Desai.
- Amendments required to the Special Investigating Unit and Special Tribunals Act No. 74 of 1996.** These amendments have been requested by the Unit, not only to address its funding model, but also for a range of other issues including; empowering the Unit to undertake pre-proclamation investigations; and to monitor and enforce remedial measures. In addition, legislative amendments are required so that the SIU can provide the services/undertake the functions envisaged by the organisational review which was finalised in the 2017/18 financial year. For example, the SIU is not mandated at present to perform a market data analytics function. The Unit has reported the effectiveness of the SIU is dependent on amendments to the Special Investigating Unit and Tribunals Act No. 74 of 1996.

4.5. Office of the Chief Justice

4.5.1. Budget allocation

Table 37: OCJ expenditure against performance and audit outcome

Year	% Targets achieved	% Budget Spent	Audit opinion
2015/16	74%	98%	Unqualified (with findings)
2016/17	73%	97.9%	Unqualified (with findings)
2017/18	100%	97.9%	Unqualified

⁸⁷ Gules N, 'NPA is 'sitting' on 686 mostly corruption cases, says SIU head Andy Mothibi' (Accessed at <https://www.news24.com/SouthAfrica/News/npa-is-sitting-on-686-cases-20180909-2>)



4.5.2. Performance

Selected areas of good performance and underperformance over the past five-year period in the OCJ include:

Table 38: Performance analysis – Office of the Chief Justice

Areas of good performance	Areas of underperformance
<p>Fraudulent court orders. The Judiciary and the OCJ have been disturbed by the prevalence of fraudulent activities relating to court orders at both the Superior and Magistrates Courts. In order to reduce and prevent the proliferation of fraudulent court orders a Court Order Integrity Committee (COIC) has been established by the National Efficiency Enhancement Committee. The Committee engaged both SAPS and Directorate for Priority Crime Investigation (DPCI) on the issue. As a result, the production of fraudulent court orders was identified as a national priority offence and the DPCI was tasked with investigation. In addition, a unique court stamp, that prohibits fraudulent duplication, was designed for use at all Superior Courts.</p> <p>Audit improvement. The OCJ, a relatively new Department, has now achieved an unqualified audit outcome for the 2017/18 financial year with no findings. The Auditor-Generals office has noted the progress made by the OCJ.</p> <p>Establishment of a Judicial Accountability Committee for the Magistrates' Courts.⁸⁸ The Committee developed draft indicators for the Regional and District Courts. Members of the Magistracy were consulted on these indicators and it will be discussed in a workshop, prior to implementation in 2019.</p> <p>Court Annexed mediation. Judicial Officers from all courts have been trained on the practical implementation and benefits of court-annexed mediation as part of a broader judicial case flow management strategy. A pilot project will be started during 2018/19 in the Gauteng</p>	<p>Case flow management challenges. Case-flow management and efficient enhancement mechanisms in courts seem not to have gained traction, as reported by stakeholders in the criminal Justice system, such as the NPA which continues to express concern about availability of judicial officers across all courts as well as delays in proceedings and dwindling court hours.</p> <p>Judicial Norms and Standards. These have been operational since February 2014. There have been challenges experienced with the implementation of the Judicial Norms and Standards, particularly in respect of reports of reserved judgements at some High Courts. The norms and standards state that the Judicial Officers should make every effort to hand down reserved judgments no later than three (3) months after the date of the last hearing. In September 2018, the Heads of Court resolved that a reserved judgments report containing a list of judgments outstanding for 6 months or longer would be published on the OCJ website. On 27 February 2019 the Chief Justice released a report which noted that as at 31 December 2018 there were a total of 87 judgments reserved for longer than six months since the date of last hearing.⁹⁰</p> <p>Court Hours. It is reported that the average court hours have reduced steadily year-on-year from 4 hours 9 minutes in 2002/3 down to only 3 hours 6 minutes in 2017/18.⁹¹</p>

⁸⁸ OCJ Annual Report 2017/18 p23

⁹⁰ Reserved Judgment Report for the Chief Justice (dated 27 February 2018) (Accessed at https://www.judiciary.org.za/images/news/2019/Reserved_Judgment_Report_for_the_Chief_Justice_28_February_2019_final_002.pdf)

⁹¹ African Criminal Justice Reform, Fact Sheet: NPA Performance (November 2018) (Accessed at <https://acjr.org.za/resource-centre/npa-performance-nov-2018.pdf>)



Areas of good performance	Areas of underperformance
High Courts before proper mediation is rolled out to the entire court system. ⁸⁹	

4.5.3. Key issues emanating from performance

- **Transfer of functions from the Department of Justice to the OCJ.** On 17 September 2014 Cabinet noted the transfer of administrative functions and staff attached to the Superior Courts from the Justice Department to the Office of the Chief Justice. Personnel performing an administrative role to support judicial functions at the Superior Courts as well as other staff attached to the regional offices and national office of the Justice Department, whose roles were directly connected to the Superior Courts, were transferred to the Office of the Chief Justice. However, not all functions have been transferred. The two Departments share services through a Service Level Agreement and this has caused some challenges, for example the Chief Justice has complained that the judiciary’s access to law reports and other library materials has been seriously hampered by the fact that this function is yet to be transferred from the Justice Department.⁹² In addition, in terms of retained functions, the Justice Department continues to carry the cost on behalf of the OCJ in respect of the following: infrastructure-related costs; provision of security services; and provision of virtual libraries.⁹³
- **Delays in the finalisation of the Policy on the design of the judicial governance and court administration model.** The Constitution 17th Amendment Act established the Chief Justice as the Head of the Judiciary with responsibility for judicial functions of all courts. However, a policy framework and legislation is needed to further clarify the role of the Chief Justice in court administration versus the role of the Cabinet Member responsible for Justice. The Judiciary has made proposals on possible court administration models. In 2015, an Inter-Ministerial Committee (IMC), chaired by then Deputy President Ramaphosa, was appointed to make recommendations to Cabinet on an appropriate Judicial Governance and Court Administration Framework. A technical task team, chaired by the Deputy General: Justice, was to assist the IMC’s work. A Draft Policy on Judicial Governance and Court Administration was submitted to the Justice Minister at the end of the 2017/18 financial year for further discussion en route to Cabinet.⁹⁴ The original target date for the submission of the Policy on the Design of the Judicial and Court Administration Model to Cabinet was 28 February 2018. This target was not met as it was reportedly affected by the change in government administration.

⁸⁹ Chief Justice Mogoeng Mogoeng, “The Judicial Accountability Session” 23 November 2018 (Accessed at https://www.judiciary.org.za/images/chief_justice_2017/Judicial_Accountability_Session_Speech_as_at_10h00_23_November_2018.pdf)

⁹² Chief Justice Mogoeng Mogoeng, “The Judicial Accountability Session” 23 November 2018 (Accessed at https://www.judiciary.org.za/images/chief_justice_2017/Judicial_Accountability_Session_Speech_as_at_10h00_23_November_2018.pdf)

⁹³ DoJ&CD Annual Report 2017/18

⁹⁴ Ibid p28



- **Judicial Oversight Model.** With the establishment of the Department of the Office of the Chief Justice and Judicial Administration the continued absence of a model for judicial accountability has created difficulties for the purposes of exercising Parliamentary oversight regarding court performance. Given the need to respect judicial independence and the separation of powers this has led to ongoing discussions over the best approach to dealing with matters relating to court performance, and the ‘rules of engagement’ with Parliament. Court performance is regarded as a judicial function but there are no formal mechanisms whereby statistics relating to case performance are made available to the Portfolio and Select Committees. The leadership of the higher courts resolved to delink the accounting responsibilities of the administrative office – the Office of the Chief Justice (OCJ) from those relating to court performance. The Judiciary contends it should be responsible for setting its own performance indicators and targets for the purposes of accountability; evaluation of its performance and identification of areas that require improvement. Recently, the Judiciary announced they intended to account to the nation directly through a ‘Judicial Accountability Session.’ At this session in November 2018 a Judiciary Annual Report for 2017/18 was released, which addresses some elements of court performance. However, although members of the Portfolio Committee were invited to attend the launch, the report was not formally tabled before Parliament.
- **Language and the courts.** The Heads of Court decided in March 2017 that English should be the language of record at the Superior Courts.⁹⁵ This decision has not, however, been without controversy. A group of academics and language activists wrote an open letter, on 17 September 2017, questioning the decision to make English the only official language of record in South African high courts.⁹⁶
- **Budget constraints.** The OCJ has, expressed frustrations with budget cuts and how they affect programmes like the IT Systems Master Plan. This is important as far as it relates to court modernisation as a contributor to court effectiveness and efficiency.

4.6. National Prosecuting Authority

4.6.1. Budget allocation

Table 39: NPA expenditure against performance and audit outcome

Year	% Targets achieved	% Budget Spent	Audit opinion
2014/15	70%	100%	Unqualified (with findings)
2015/16	64%	100%	Unqualified (with findings)
2016/17	88%	100%	Unqualified (with findings)
2017/18	78%	100%	Unqualified (with findings)

⁹⁵ Judiciary Annual Report 2017/18 p29

⁹⁶ Docrat Z, Kaschula RH, Lourens CJA, Bailey A and Ralarala MK, Courts should promote all languages, 17 September 2017 (Accessed at <http://www.news24.com/Columnists/GuestColumn/courts-should-promote-all-languages-20170917-2>)



4.6.2. Performance

Selected areas of good performance and underperformance over the past five-year period in the NPA include:

Table 40: Performance analysis – National Prosecuting Authority

Areas of good performance	Areas of poor performance
<p>Improvements in conviction rates. In the high courts from 90% in 2015/16, to 91% in 2016/17 and then to 91.7% for the period 2017/18. In the regional courts from 77% in 2014/15 to 78% in 2015/16, 80% in 2016/17 and 81% in 2017/18. In the district courts, from 94% in 2014/2015 to 95% in 2015/16 and 96.1% in 2017/2018. Overall conviction rates have improved from 92.3% in 2014/15 to 94.7% in 2017/18.</p> <p>Cybercrime convictions. The NPA finalised 335 verdict cases and obtained 330 convictions representing a conviction rate of 98.5% in 2017/18. This means 41 more convictions were obtained compared to the previous year, with a similar increase of 1.5% in the overall conviction rate achieved. Compared to the previous years, the conviction rate of 98.5% is the highest achievement over the past five years.</p> <p>Rhino poaching prosecutions. A special focus has been placed on the prosecution of rhino poaching and related matters in order to curb this growing transnational phenomenon. This resulted in a significant increase in the number of convictions and verdict cases finalised. A total of 102 verdict cases was finalised and 95 convictions were obtained constituting a 93.1% conviction rate. This represents an increase of 265% (from 26 to the current 95) in the number of convictions obtained.</p> <p>Missing Persons Task Team. The MPTT continued to work to establish the fate and whereabouts of those who disappeared in political circumstances between 1960 and 1994, i.e. the period covered by the Truth and Reconciliation Commission (TRC).</p>	<p>Aspirant Prosecutor programme. This programme was suspended in 2015 due to budget constraints. The programme not only provides young lawyers with an opportunity to gain critical experience and skills, but provides the institution with a stream of well-trained “new blood” as prosecutors already employed at the NPA progress within or even leave the institution.</p> <p>Victim Impact Statements (VIS). The Supreme Court of Appeal in the case of <i>Mhlongo v The State (140/16) [2016] ZASCA 152 (3 October 2016)</i> highlighted the importance of a VIS which the court noted seemed to be disregarded wantonly and without fear of any repercussions, by the NPA. A VIS forms an integral part of the last phase of the trial and gives the sentencing court a balanced view of all aspects in order to impose an appropriate sentence. The NDPP was instructed by the court to draft comprehensive guidelines, protocols and model VIS instruments.</p> <p>Apartheid prosecutions. The failure of the NPA to pursue the prosecutions of the hundreds of persons who were refused amnesty by the Truth and Reconciliation Commission (TRC) that looked into gross human rights violations perpetrated between 1960 and 1993. Instead, the families of victims such as Nokuthula Simelane and Ahmed Timol have had to compel the National Prosecuting Authority (NPA) either to refer the matter for an inquest or to make a decision whether to prosecute. Former members of the Truth and Reconciliation Commission (TRC) have urged President Cyril Ramaphosa to appoint a commission of inquiry “into the political interference that has stopped the investigation and prosecution of virtually all the cases referred by the TRC to the National Prosecuting Authority (NPA)”.⁹⁷</p> <p>Lack of regulatory framework for informal mediation. Informal Mediation (also known as ‘Alternative Dispute</p>

⁹⁷City Press, ‘No justice for apartheid victims’ – Apologise and appoint inquiry, TRC members tell Ramaphosa (Accessed at <https://city-press.news24.com/News/no-justice-for-apartheid-victims-apologise-and-appoint-inquiry-trc-members-tell-ramaphosa-20190206>)



Areas of good performance	Areas of poor performance
	<p>Resolution Mechanisms' (ADRM) is a process by which a prosecutor negotiates with a complainant and the accused, leading to the withdrawal of the case. The court is not involved in the negotiations and the accused does not receive a criminal record. There is no central database to establish if a person has previously benefitted from informal mediation. Statistically, informal mediation has increased by 1144% from 14,808 in 2002/3 to 184,314 in 2014/15, decreasing to 159 654 in 2017/18.⁹⁸ No data is available in the NPA Annual Reports on the nature of cases informally mediated.⁹⁹ The NPA reported previously that it is monitoring the use of informal mediation to detect patterns that may suggest abuse of prosecutorial discretion.¹⁰⁰ It was reported that the Department was finalising policy guidelines but there may be need for legislation to regulate alternate dispute resolution methods that include both diversion and informal mediation.</p>

4.6.3. Key issues emanating from performance

- Reporting as a programme under the Justice Department.** Prior to 2014, National Treasury provided an exemption that allowed the NPA to prepare its own Annual Financial Statements (AFS's) separate from those of the Justice Department until legislation regularising the practice was enacted. This enabled the NPA to report separately on its financial and operational performance. This exemption expired on 31 March 2014. Despite indications that an Amendment Bill was being prepared to provide for the delinking of the NPA from the Justice Department no such Bill was ever tabled in Parliament.¹⁰¹ The Justice Minister in the 2016/17 financial year referred to an ongoing engagement between the NPA and the Department on the status of the NPA in the Department.¹⁰² Namely, whether the NPA should remain a programme within the Department or should be an independent entity with its separate budget vote. However, the matter remains unresolved and from 2016/17 to date, the NPA has continued to report as a programme of the Justice Department. Although the NPA continues to table a separate Annual Report on operations/performance the reporting on the AFS and audit performance remain part of the Justice Department's Annual Report. The newly appointed NDPP has stated that one of her priorities is to work with the Justice Department to ensure greater independence for the NPA on the basis that

⁹⁸ African Criminal Justice Reform Fact Sheet NPA performance (November 2018) (Accessed at <https://acjr.org.za/resource-centre/npa-performance-nov-2018.pdf>)

⁹⁹ Ibid

¹⁰⁰ ATC110606: Report on Budget Vote 24: Justice and Constitutional Development Report of the Portfolio Committee on Justice and Constitutional Development on Budget Vote 24: Justice and Constitutional Development, dated 2 June 2011 (Accessed at <https://pmg.org.za/taled-committee-report/1262/>)

¹⁰¹ A separate NPA Annual Report 2014/15 was also issued but this reflects on performance and contains no information on the financial statements.

¹⁰² DoJ&CD Annual Report 2016/17 p9



'it is both symbolically and organisationally unsatisfactory that the NPA's accounting officer is the DG of the Justice Department.'¹⁰³

- **Accountability structure.** In 2015, the Justice Minister noted that there was a need for the NPA to establish the following: (i) A mechanism to ensure an independent review of prosecutorial decisions; and (ii) a complaints management mechanism. In his political overview of the Department of Justice and Correctional Services on 18 April 2018, Minister Masutha stated that the National Director of Public Prosecutions had appointed a Task Team to draft an Accountability Structure as envisaged in Section 22 of the NPA Act, and that draft regulations were currently under consideration. The status of these regulation is unclear, however, according to the NDPP the accountability mechanism will enable members of the public to report any complaint to a Complaints Directorate which will report to the NDPP.¹⁰⁴
- **Sections of the National Prosecuting Authority Act No. 32 of 1998 declared constitutionally invalid.** In the matter of *Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others* [2018]¹⁰⁵ the Constitutional Court found that the vacating of office by former National Director of Public Prosecutions (NDPP) Advocate M Nxasana, as per an agreement with the President, was unconstitutional and the subsequent appointment of Advocate S Abrahams in the position was therefore invalid.¹⁰⁶ The Constitutional Court held that sections 12(4) and (6)(a) and (e) of the NPA Act were unconstitutional. The declaration of unconstitutionality was suspended for 18 months to allow Parliament to correct the defects in the legislation.¹⁰⁷ This has led to some calls for a complete review of the NPA Act.
- **Vacancies.** Budgetary constraints have meant vacant posts not being filled, placing severe strain on the institution's staff establishment. The NPA reports on a Compensation of Employee budget shortfall of R168 million for 2018/19 and an amount of R435 million shortfall cumulatively over the MTEF period.¹⁰⁸ The NPA's vacancy rate has been a matter of concern and has ballooned to 20%, of which almost 60% of the vacancies are prosecutorial posts. The vacancy rate is even higher in some specialised units (25% in the AFU and 28% in the Sexual Offences and Community Affairs Unit). Instances of a 25% vacancy rate are particularly problematic in rural areas. The moratorium on the filling of posts has had a severe impact on staff morale at the NPA. This was also identified as a serious concern by the Chief Justice in the Judiciary's Annual Report released in November 2018. The Chief Justice pointed out that the 665 unfilled vacant posts for prosecutors will weaken court performance even more. He pleaded for more funding for the NPA so that these posts can be filled and

¹⁰³Presentation by the NDPP Adv S Batohi –The War Against Corruption, 29 March 2019 (Accessed at <https://www.lssa.org.za/upload/files/Conference%202019/Address%20to%20LSSA%20Conference%20by%20NDPP%2029%20March%202019.pdf>)

¹⁰⁴Ibid

¹⁰⁵ *Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others* [2018] 2018 (10) BCLR 1179 (CC) (Accessed at <http://www.saflii.org/za/cases/ZACC/2018/23.html>)

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ NPA Annual Report 2017/18 p23



the criminal justice system strengthened.¹⁰⁹ From 2002-2018 while the number of SAPS personnel increased by 19.9% and the number of detectives increased by 47.5% the number of prosecutors declined by 2.2%.¹¹⁰ According to the NDPP the Justice Department has agreed that additional funding will be provided. It is unclear if this will come from reprioritised funds within the Justice budget or additional funding from National Treasury.

- Investigative Directorate.** The President signed a Proclamation (dated 27 March 2019) establishing the Investigative Directorate. The NDPP has stated that the Directorate is not a permanent solution to the corruption problems facing South Africa but before such a permanent solution can be developed it is necessary to wait for the recommendations of the Zondo Commission. The Directorate will draw on expertise from SAPS, NPA, SARS and other government departments as well as additional specialised capacity from the private sector on contract if necessary. The Directorate will focus on serious, complex and high profile corruption cases and it is envisaged it will take on a number of limited cases with a high impact. It will select cases using case selection criteria adopted by the NDPP and the Head of the Directorate. Only once it has taken on a case will resources be allocated accordingly.¹¹¹ There are some concerns about adequate funding for the Directorate given the significant budget constraints affecting critical units at the NPA, such as the Asset Forfeiture Unit (AFU), Specialised Commercial Crime Unit (SCCU) and Office of Witness Protection.

4.7. Legal Aid South Africa

4.7.1. Budget allocation

Table 41: LASA expenditure against performance and audit outcome

Year	% Targets achieved	% Budget Spent	Audit opinion
2014/15	83%	98.1%	Unqualified
2015/16	90%	99%	Unqualified
2016/17	90%	99%	Unqualified
2017/18	98%	99%	Unqualified

4.7.2. Performance

Selected areas of good performance and underperformance over the past five-year period in LASA include:

¹⁰⁹Chief Justice Mogoeng Mogoeng, “The Judicial Accountability Session” 23 November 2018 (Accessed at https://www.judiciary.org.za/images/chief_justice_2017/Judicial_Accountability_Session_Speech_as_at_10h00_23_November_2018.pdf)

¹¹⁰ Presentation by the NDPP Adv S Batohi –The War Against Corruption, 29 March 2019 (Accessed at <https://www.lssa.org.za/upload/files/Conference%202019/Address%20to%20LSSA%20Conference%20by%20NDPP%2029%20March%202019.pdf>)

¹¹¹Presentation by the NDPP Adv S Batohi –The War Against Corruption, 29 March 2019 (Accessed at <https://www.lssa.org.za/upload/files/Conference%202019/Address%20to%20LSSA%20Conference%20by%20NDPP%2029%20March%202019.pdf>)



Table 42: Performance analysis – Legal Aid South Africa

Areas of good performance	Areas of underperformance
<p>Unqualified audits. The institution has received an unqualified audit for the past 17 years, with no matters of emphasis for the past thirteen years.</p>	<p>Court relief programme. Legal Aid SA, has been significantly impacted by the budget shortfall/cuts. Its only recourse is to reduce the staff establishment. Legal Aid SA has discontinued its court relief programme at criminal courts because of funding cuts. Notably, the absence of a relief component is also a concern of Legal Aid SA's stakeholders, particularly those within the criminal justice system.</p>

4.7.3. Key issues emanating from performance

- Funding constraints.** One of the most significant challenges facing Legal Aid SA is that of budget cuts. In 2017, Legal Aid warned that fiscal constraints would affect service delivery. In 2018, it reported that it could no longer absorb budget shortfall/cuts through further efficiencies and cost containment measures with its only recourse being to reduce the staff establishment. The projected reduction in the number of its legal practitioners will significantly affect court coverage and, therefore, service delivery capacity. Legal Aid SA discontinued its court relief programme at criminal courts because of funding cuts. Notably, the absence of a relief component is also a concern of Legal Aid SA's stakeholders, particularly those within the criminal justice system. With regard to its criminal work, Legal Aid SA is involved in more than 70% of criminal cases in the lower courts and more than 80% of criminal cases in the superior courts. Without representation, presiding officers will have no choice but to postpone matters until representation is available: to do anything else would undermine a defendant's right to a fair trial. The budget reductions, therefore, have serious consequences for the functioning of the criminal justice system as a whole.¹¹² Although the 2019 Budget does provide additional funds for operations at Legal Aid South Africa (R300.3 million over the MTEF) it remains unclear how much relief this will bring to the entity.
- Role of Legal Aid SA in land reform matters.** The Departments of Justice and Constitution Development, and Rural Development and Land Reform as well as the National Land Claims Commissioner have met with Legal Aid SA at various stages during 2017 and 2018 regarding this matter. In July 2018, Legal Aid SA has indicated that the following issues need to be addressed; (i) if Legal Aid SA is required to take over the provision of legal representation relating to Land Restitution and Land Tenure matters, then they require clarity as to the budget that will be made available to Legal Aid SA; (ii) once Legal Aid SA has clarity on the budget to be made available then Legal Aid SA will be able to determine what delivery infrastructure such a budget would be able to sustain; (iii) how such budget would be supplemented should the demand for services exceed the budget that has been made available. Lastly, Legal Aid SA indicated that they require time to establish the relevant capacity to provide such a service. For that reason, if Legal Aid SA has confirmed the funding and the functions and policy, being the same as legal aid policy, then they will require 6 months to

¹¹² Legal Aid SA Annual Performance Report 2017/18 Presentation to Portfolio Committee on Justice and Correctional Services (Accessed at ://pmg-assets.s3-website-eu-west-1.amazonaws.com/181016Legal_Aid_SA.pdf)



develop this capacity before they will be able effectively to take over the delivery of legal representation.

- Providing assistance to the most vulnerable.** Legal Aid SA represented the families of 144 mentally ill patients who died and 1 480 survivors of the Gauteng Life Esidimeni tragedy. In addition, Legal Aid averted a disaster similar to the Life Esidimeni tragedy in the Eastern Cape by successfully representing the families of 239 frail and handicapped patients who were about to be moved out of the Life Healthcare facility in that province in 2017. In a landmark case led by Legal Aid SA, the organisation blocked the Eastern Cape Social Development Department’s plan to relocate patients.¹¹³ Just as had happened in Gauteng, the Eastern Cape planned to not renew its contract with the Life Healthcare Group and move patients to other service providers, in this case the Algoa and Lorraine frail care centres in Port Elizabeth. The Frail Care Crisis Coalition Collective, formed by the affected patients’ families, approached Legal Aid SA to assist. Legal Aid won a High Court bid to stop the transfers on the basis that like in Gauteng, there was no real, executable plan.¹¹⁴

4.8. Information Regulator

4.8.1. Performance

The Information Regulator has not yet begun officially to table Annual Reports in Parliament, however, selected areas of good performance and underperformance, for the period under review, include:

Table 43: Performance analysis – Information Regulator

Areas of good performance	Areas of poor performance
<p>South African Social Security Agency. The Regulator was cited as a Respondent in the Constitutional Court case of Black Sash Trust v Minister of Social Development and Others. The Regulator has been monitoring the implementation of the court order regarding the protection of personal information of SASSA grant beneficiaries. The Regulator submitted two reports to the Independent Panel of Experts in fulfilment of its monitoring obligations.</p> <p>Recruitment. The Regulator has consulted with the Minister of Finance on the establishment of its administration in accordance with section 47(5) of POPIA. The Minister has approved the recruitment of a number of positions to be advertised before the end of October 2018.</p>	<p>Slow pace of its establishment. This has affected the commencement of the remaining sections of POPIA. Delays in the finalisation of the organisational structure. Limited capacity and a growing workload/demand for services. Given that the regulator is only expected to be fully operational this year (nearly three years after being formed), and is still staffing up, it may be some time before it has the necessary teeth to take on anyone flouting POPI.</p> <p>Data Breaches. The fact that the Regulator is not yet fully established means that South Africa continues experiencing an unprecedented number of data breaches which the Regulator is unable to deal with effectively. Personal information of data subjects continues to be processed with impunity and without adequate redress.</p>

¹¹³ Fengu M, How Legal Aid SA averted disaster similar to Life Esidimeni, (Accessed at <https://city-press.news24.com/News/how-legal-aid-sa-averted-disaster-similar-to-life-esidimeni-20180328>)

¹¹⁴ Medical Brief Another Life Esidimeni-type tragedy averted by Legal Aid SA (Accessed at <https://www.medicalbrief.co.za/archives/another-life-esidimeni-type-tragedy-averted-legal-aid-sa/>)



Areas of good performance	Areas of poor performance
<p>Task team to be established to tackle data breaches. Data breaches are a major source of concern. The Regulator has proposed a Task Team be established consisting of the Regulator, the NPA, SSA, and the HAWKS. The Regulator has developed the Task Team draft Terms of Reference.</p> <p>Promotion of Access to Information functions. The Regulator and the SAHRC have entered into a Memorandum of Co-operation which will ensure the transition of the PAIA functions from the SAHRC to the Regulator.</p>	

4.8.2. Key issues emanating from performance

- Chairperson and Members appointed.** President Zuma, on the recommendation of the National Assembly, appointed five persons as Members of the Regulator, namely: Advocate Pansy Tlakula (Chairperson); Advocate Lebogang Cordelia Stroom-Nzama (full-time); Advocate Johannes Collen Weapond (full-time). Prof Tana Pistorius (part-time); and Mr Sizwe Lindelo Snail ka Mtuze (part-time). These Members took office on **1 December 2016** for a five-year term.
- Listing of the Information Regulator in terms of the Public Finance Management Act No. 1 of 1999.** As part of the process of establishing the Regulator, the Members of the Regulator met officials of National Treasury in February 2017 to consult on the appointment of the Chief Executive Officer (CEO) in line with section 47(5) of the Protection of Personal Information Act No. 4 of 2013 (POPIA). The Members of the Regulator were advised by the Ministry that the Regulator should first be listed as a National Public Entity in Schedule 3A of the PFMA with the Members as its Accounting Authority. However, the Members expressed concern that such a classification would not be in line with section 48(a) of POPIA which designates the CEO as the Accounting Officer. Such a classification would result in the Regulator having an Accounting Authority and an Accounting Officer in the same body and the two authorities cannot co-exist. The Treasury officials noted the position of the Regulator but insisted on its classification as a National Public Entity. The Treasury officials also advised the Regulator to consult the Department of Public Service and Administration (DPSA) on the establishment of its administration. The Regulator met with the representatives of the DPSA during August 2017.

The DPSA requested the Regulator to benchmark its proposed structure against that of the Legal Aid South Africa. The DPSA advised the Regulator to compile a business case and to submit it to National Treasury for the Regulator to be listed as Schedule 3A National Public Entity in the PFMA. However, in its submission to the Finance Minister the Regulator recommended that: (a) its listing in the Public Finance Management Act No. 1 of 1999 (PFMA) should be dealt with separately from the



approval of the establishment of its administration; (b) the establishment of its administration should be approved whilst addressing the challenges related to its listing in the PFMA; (c) its Chief Executive Officer once appointed, should be recognised as its Accounting Officer as stipulated in section 47(1) of the POPIA; (d) its Chairperson should be designated as its Executive Authority in terms of National Treasury Regulations of 2001; (e) the proposed organisational structure should be considered and approved; and (f) that the current practices in the public sector should be used to determine the salaries and benefits of the staff. The Regulator has also requested that the Portfolio Committee should consider initiating the process of amending the Constitution to include the Information Regulator in Chapter 9.

4.9. Audit Reports

Table 44: Summary of audit opinions for the five-year period in the justice portfolio

	2013/14	2014/15	2015/16	2016/17	2017/18
Justice	Unqualified (with findings)	Unqualified (with findings on compliance)	Unqualified (with findings) (Material misstatements on the financial statements had to be corrected after being submitted for auditing; and compliance, including Supply Chain Management (SCM))	Qualified (Failure to account for immoveable capital assets)	Qualified (Leave entitlement; Magistrates; Contingent liabilities; Intangible assets)
Third Party Funds	Disclaimer	Disclaimer	Qualified	Qualified	Unqualified
Guardian's Fund	Unqualified	Unqualified	Unqualified	Unqualified	Unqualified
President's Fund	Unqualified	Unqualified	Unqualified	Unqualified	Unqualified
Office of the Chief Justice			Qualified	Unqualified (with findings)	Unqualified
NPA	Unqualified	Not applicable: Reporting as part of the Justice Department			
Legal Aid SA	Unqualified	Unqualified	Unqualified	Unqualified	Unqualified
SIU	Unqualified with findings	Unqualified with findings (Compliance)	Unqualified with findings (Compliance)	Unqualified	Unqualified
PPSA		Unqualified with findings (Compliance)	Unqualified with findings (Compliance)	Unqualified with findings	Unqualified with findings
SAHRC		Unqualified with findings (Compliance)	Unqualified	Unqualified	Unqualified with findings



The recurring material findings made by the AGSA were based on the following areas:

- Reliability and usefulness of performance information (material misstatements in performance reporting): Justice Department and Public Protector
- Compliance with legislation - Contracts awarded to bidders who did not submit a declaration as to whether they are employed by the state or connected to any person employed by the state. Contractual obligations (payments to creditors) not paid within 30 days: Justice Department and Public Protector
- Insufficient internal controls: Justice Department, Public Protector, SAHRC and SIU
- Leadership: Justice Department and Public Protector

5. Conclusion

A key aspect of the focus in Chapter 12 of the NDP on building safer communities is to have a single set of objectives, priorities, performance measurement and targets through the implementation of the Seven-point Plan of the *Criminal Justice System Review (CJSR)*. However, some of the challenges which have impacted the roll-out of this plan have been identified in this paper. The implementation of the *Integrated Criminal Justice System Strategy* which is intended to address the challenges that relate to the slow pace of modernisation of court processes should therefore be closely monitored.

The recommendations in Chapter 13 of the NDP for strengthening judicial governance and the rule of law by accelerating reforms towards a judiciary-led, independent court administration must still be fulfilled. The finalisation of the Policy on the design of the judicial governance and court administration model is critical in this regard.

Chapter 14 of the NDP focuses on *the fight against corruption* and refers to the need to build a resilient anti-corruption system by ensuring agencies have specialist resources and by establishing specialised teams of prosecutors and special courts to expedite the resolution of corruption cases. Institutional instability and lack of co-ordination have significantly impacted the fight against corruption during the period of review. The appointment of a new NDPP and establishment of an Investigative Directorate at the NPA to begin prosecuting high-level corruption cases, including those emanating from the work of the Zondo Commission, are critical first steps on the road to restoring the integrity of key institutions in the criminal justice system.





SELECT COMMITTEE ON SECURITY AND JUSTICE

1. Introduction

The National Council of Provinces (NCOP) appoints from its permanent members a number of Select Committees to shadow the work of the various national government departments and to deal with Bills. Because only 54 of the 90 NCOP Members are permanent delegates compared to the 400 of the NA, the Select Committees oversee the work of more than one national government department. In the case of the Select Committee on Security and Justice, it has an oversight responsibility over the following Departments:

- Department of Police/ South African Police Service;
- Independent Police Investigative Directorate (IPID);
- Department of Justice and Constitutional Development;
- Department of Correctional Services; and
- Department of Defence and Military Veterans.

The oversight role of the Select Committee on Security and Justice is focussed on provincial issues affecting the above-mentioned Departments.

2. Provincial Issues

2.1 South African Police Service

Total Number of Police Stations nationally: 1146¹¹⁵

Table 45: Number of Police Stations and Community Police Forums (CPF) per province at 31 March 2018

Province	Number of police stations	Number of police stations with a functional CPF	Number of police stations exempted from establishing a CPF	Number of police stations not implemented
Eastern Cape	196	195	1	0
Free State	110	110	0	0
Gauteng	142	141	0	1
KwaZulu-Natal	184	184	0	0
Limpopo	102	101	0	1
Mpumalanga	89	89	0	0
North West	82	81	1	0
Northern Cape	91	90	1	0
Western Cape	150	149	0	1
Total	1 146	1 140	3	3

Number of Police: At 31 March 2018, the SAPS establishment was 193 297, including 150 791 SAPS Act members and 42 506 Public Service Act members.

¹¹⁵ South African Police Service (2019). Annual Report 2017/2018



Police/population Ratio: The ratio at 31 March 2018 was 1:375

- **Selected Crime statistics**

Gauteng, the Western Cape and KwaZulu-Natal are the provinces most affected by crime. Gauteng has the highest number of crimes and the Western Cape the most serious crime.

The table below sets out the top three crime policing precincts per province in 2018 per selected crime categories.¹¹⁶

Table 46: Selected crime statistics per province (top three policing precinct per crime category) in 2018

PROVINCE	ROBBERY WITH AGGRAVATING CIRCUMSTANCES	ILLEGAL POSSESSION OF FIREARMS & AMMUNITION	SEXUAL OFFENCES	MURDER	ALL CRIMES
Eastern Cape	Kwazakele; New Brighton; East London	Bethelsdorp; Kwazakele; Lusikisiki	Mthatha; Lusikisiki; Bethelsdorp	Mthatha; Bethelsdorp; Kwazakele	East London, Mount Road, Humewood
Free State	Park Road; Thabong; Welkom	Thabong Welkom Bronville	Bloemspruit Thabong Park Road	Bloemspruit Thabong Welkom	Park Road, Welkom, Thabong
Gauteng	Johannesburg Central; Hillbrow; Jeppe	Johannesburg Central; Moroka; Diepsloot	Kagiso Dobsonville Temba	Jeppe Ivory Park Kagiso	Johannesburg Central, Honeydew, Pretoria Central
KwaZulu-Natal	Durban Central; Pinetown; Umlazi	Umlazi Empangeni Msinga	Inanda; Umlazi; Empangeni	Umlazi; Inanda; Kwamashu	Durban Central, Pinetown, Phoenix
Limpopo	Thohoyandou; Mankweng; Seshego	Hoedspruit; Tubatse; Dennilton	Thohoyandou; Mankweng; Seshego	Seshego; Thohoyandou; Mankweng	Seshego, Polokwane, Mankweng
Mpumalanga	Witbank; Vosman; Masoyi	Skukuza Masoyi Embalenhle	Tonga Calcutta Witbank	Embalenhle; Vosman; Witbank	Witbank, Nelspruit, Middelburg
Northern Cape	Kimberley; Galeshewe; Kuruman	Kimberley; Kuruman; Mothibistad	Mothibistad; Galeshewe; Kimberley	Mothibistad; Kimberley; Bathlaros	Kimberley, Galeshewe, Upington
North West	Rustenburg; Jouberton; Ikageng	Rustenburg; Mooiooi; Boitekong	Jouberton Rustenburg Boitekong	Boitekong; Rustenburg; Phokeng	Rustenburg, Potchefstroom, Klerksdorp
Western Cape	Nyanga; Khayelitsha; Mitchells Plain	Mitchells Plain Delft Nyanga	Nyanga; Delft; Gugulethu	Nyanga; Philippi East; Delft	Cape Town Central, Mitchells Plain, Kraaifontein

¹¹⁶ Crimestatssa (2019).



Gauteng: Gauteng reported 620 445 of all crimes in 2017/18 financial year, of which Johannesburg Central reported 4.3% of the total. Murder increased steadily over the past five years, from 3 325 2013/14 to 4 233 in 2017/18 (3.2% increase compared to 2016/17). Sexual offences increased by 5.7% in 2017/18 compared to 2016/17.

Table 47: Murder and Sexual offences – Gauteng

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	3 325	3 671	3 842	4 101	4 233	132	3.2%
Sexual Offences	10 264	9 902	9 510	9 566	10 116	550	5.7%

Western Cape: In 2017/18, the province had seven of the top ten police stations with the most reported murders nationally. Nyanga has consistently topped the national murder list. 492 956 crimes were reported in 2017/18, with Cape Town Central reporting 6.9%. In 2016/17, the Western Cape reported 3 311 murders after which it increased sharply in 2017/18 to 3 729 murders (12.6%). Contributing factors are increased proliferation of firearms sold to gangs by corrupt police officers and concomitant increasing gang violence on the Cape Flats.¹¹⁷ Illegal possession of firearms and ammunition in the Western Cape increased by 3.9% to 2 929 in 2016/17 (compared to 2 819 in 2015/16) and to 3 422 (16.8%) in 2017/18.

Table 48: Murder and Sexual offences – Western Cape

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	2 904	3 186	3 224	3 311	3 729	418	12.8%
Sexual Offences	7 760	7 369	7 130	7 115	7 075	-40	-0.6%

KwaZulu-Natal: Of the 351 207 crimes reported in the province in 2017/18, Durban Central reported 7.4%. Murder increased sharply by 9.2% to 4 382 in 2017/18 compared to 4 014 in 2016/17, Sexual offences increased by 3.2% to 8 759 in 2017/18 compared to 8 484 in 2016/17.

Table 49: Murder and Sexual offences – KwaZulu-Natal

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	3 616	3 810	3 929	4 014	4 382	368	9.2%
Sexual Offences	9 889	9 079	8 947	8 484	8 759	275	3.2%

¹¹⁷ Gun Free South Africa (2017). Media Statement. Guns fuel crime: 18 to 21 murders committed with guns every day. *Gun Free South Africa's response to 2016-17 crime stats*. Available at gfsa.org.za



Eastern Cape: Of the 203 977 crimes reported in 2017/2018, East London reported 6.8%. The 3 815 murders in 2017/18 were 5.2% more than the 3 628 murders reported in 2016/17. Sexual Offences increased by 0.5% in 2017/18 and illegal possession of firearms by 4.7% compared to 2016/17, while aggravated robbery decreased by 1.5%.

Table 50: Murder and Sexual offences – Eastern Cape

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	3 441	3 321	3 646	3 628	3 815	187	5.2%
Sexual Offences	9 616	9 224	8 797	8 050	8 094	44	0.5%

Limpopo: Reported 129 578 total crimes in 2017/18, with Seshego reporting 9.6% thereof. Murder increased by 12.1% and sexual offences by 0.9% in 2017/18, compared to the previous year.

Table 51: Murder and Sexual offences – Limpopo

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	728	777	898	813	911	98	12.1%
Sexual Offences	4 423	4 312	4 369	3 828	3 862	34	0.9%

Mpumalanga: There were 124 859 crimes in Mpumalanga in 2017/18, of which Witbank accounted for 15.8%. Murder increased steadily from 2013/14 to 954 in 2016/17, after which it decreased by 3.4% to 922 in 2017/18. Sexual offences has decreased since 2013/14 to 3 198 in 2017/18, a 0.6% decrease compared to 2016/17.

Table 52: Murder and Sexual offences – Mpumalanga

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	806	831	859	954	922	-32	-3.4%
Sexual Offences	3 797	3 474	3 331	3 216	3 198	-18	-0.6%

North West: Recorded 119 523 crimes. Rustenburg accounted for 15.7%. Murder increased by 5.4% in 2017/18 compared to the previous year, while sexual offences decreased by 3.3% for the same period.



Table 53: Murder and Sexual offences – North West

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	824	853	907	901	950	49	5.4%
Sexual Offences	4 616	4 585	4 164	4 326	4 182	-144	-3.3%

Free State: The Free State recorded 112 177 crimes, of which Park Road contributed 18.2% to the total. Murder increased by 10.9 % in 2017/18 compared to the previous year, while sexual offences decreased by 5.8% for the same period.

Table 54: Murder and Sexual offences – Free State

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	942	943	993	950	1 054	104	10.9%
Sexual Offences	4 584	4 094	3 928	3 488	3 284	-204	-5.8%

Northern Cape: Had the least reported crimes, with 49 570 in 2018, spread over a few areas. The worst precinct, Kimberly, is the most populated city in the province, and accounted for 30% of the total. Murder declined steadily over the past five years. Sexual offences saw a decrease of 3.1% in 2017/18 compared to 2016/17.

Table 55: Murder and Sexual offences - Northern Cape

	2013/14	2014/15	2015/16	2016/17	2017/18	Case Diff 2016/17 and 2017/18	% Change 2016/17 and 2017/18
Murder	437	413	372	344	340	-4	-1.2%
Sexual Offences	1 731	1 578	1 719	1 587	1 538	-49	-3.1%

2.2 Correctional Centres (Department of Correctional Services)

- **Number of correctional centres per region:** DCS has 243 correctional centres operating in six regions or management areas.¹¹⁸
- **Number of offenders per region:** The national imprisonment rate was 286 prisoners per 100 000 adult population (based on an estimated national population of 56.3 million on 31 March 2017 (Statistics South Africa figures). Awaiting trial or remand detainees (RDs) comprised 43 799 or 27.2% of the correctional centre population in 2017, at a rate of 74 (per 100 000 of the population). Child RDs comprised 110 or 0.25% of the

¹¹⁸ 2017-18 Inter-Department Annual Reports on the Implementation of the Child Justice Act 75 of 2008, p19.



prison population. Females comprised 2.6% of the correctional centre population, and juveniles 0.2%.

Table 56: Average number of Sentenced Offenders per Age Group during 2017/18

Children (Younger than 18 years)		Juveniles (18-20 years)		Youth and adults (21 years and older)		Total
Females	Males	Females	Males	Females	Males	Females/Males
1	125	67	3 239	2 901	111 545	117 878

The regions with the most inmates in 2017/18 were Gauteng, followed by the Western Cape.

Table 57: Inmates per region

Region	Sentenced Offenders			Un-sentenced Offenders			Total number of inmates
	Males	Females	Total number of sentenced offenders	Males	Females	Total number of un-sentenced offenders	
Eastern Cape	15 258	288	15 546	5 199	91	5 290	20 836
Gauteng	25 084	919	26 003	10 742	375	11 117	37 120
Free State and Northern Cape	17 847	279	18 126	4 953	96	5 049	23 175
KwaZulu-Natal	21 191	504	21 695	6 100	124	6 224	27 919
Western Cape	17 531	626	18 157	11 451	548	11 999	30 156
Limpopo, Mpumalanga and North West	18 002	340	18 342	6 445	136	6 581	24 923
Total	114 913	2 956	117 869	44 890	1 370	46 260	164 129

Source: Daily Unlock

The Western Cape had the most RDs, followed by Gauteng.

Table 58: Number of Remand Detainees per region as at 31 March 2018

Region	Females	Males	Total	Percentage
Eastern Cape	91	5 123	5 314	11.3%
Gauteng	375	10 742	11 117	24.09%
Free State & Northern Cape	96	4 947	5 043	10.93%
KwaZulu-Natal	124	6 080	6 204	13.45%
Western Cape	548	11 451	11 999	26.00%
Limpopo, Mpumalanga & North West	136	6 429	6 565	14.23%
National	1 370	44 772	46 142	100%

On average, KwaZulu-Natal had the most children (sentenced and RDs) followed by the Free State & Northern Cape, and then the Eastern Cape.



Table 59: Quarterly, Average Number of Children (remand and sentenced) during 2017/18 per Region

Region	March 2017	June 2017	Sept 2017	Dec 2017	March 2018	%
Eastern Cape	46	38	34	36	37	16.67
Gauteng	9	7	10	8	7	3.15
Free State & Northern Cape	61	50	49	45	67	30.18
KwaZulu-Natal	77	84	74	67	78	35.14
Western Cape	15	19	21	19	24	10.81
Limpopo, Mpumalanga & North West	12	22	11	10	9	4.05
Total	220	220	199	185	222	100

- **Overcrowding per region**

Overcrowding remains a challenge within correctional facilities.¹¹⁹ In 2016/17, the average inmate population reached 160 280 compared to an approved bed space of 119 134 (thus 134% occupancy) compared to 2017/18, when the average inmate population increased to 160 583 with an approved bed space of 118 723 (135.8% occupancy). On 31 March 2018, RDs comprised 46 142 or 28% of the total number of inmates. The 110 children RDs as of 31 March 2018, constituted 0.24% of the entire RD population.

Approximately 15 to 20 percent of RDs are in custody because they cannot afford bail. Section 63A of the Criminal Procedure Act 51 of 1977, provides for a procedure in terms of which the court may order the release of certain accused on warning (in lieu of bail), or order the amendment of the bail conditions imposed by that court. In 2009, as part of the review of the South African criminal justice system, the main criminal justice role players, the Department of Correctional Services (DCS), South African Police Service (SAPS), Department of Justice and Constitutional Development (DOJCD) and the National Prosecuting Authority (NPA) signed a Bail Protocol which set out the procedure to be applied in implementing section 63A of the Criminal Procedure Act 51 of 1977 (the CPA). By implementing the Bail Protocol¹²⁰ the court can relax too strict bail conditions to allow those who cannot pay bail and who pose no threat to society to be released.¹²¹ Overcrowding can also be alleviated through strict adherence to section 49G of the Correctional Services Act 111 of 1998, which limits remand detention to two years. In 2015 and 2016, Civil Society Organisations brought a number of court cases in an attempt to force the DCS to alleviate overcrowding at especially Pollsmoor Correctional Facility.¹²²

¹¹⁹ 2017/18 AR p19

¹²⁰ The Court can do so on application by a Head of a Correctional Centre (HOCC) if not opposed by the Director of Public Prosecutions concerned; and if the HOCC believes that the remand population is reaching levels that constitute a material and imminent threat to their human dignity, physical health or safety. This provision applies only to remand detainees (RDs) with bail charged with crimes listed under Schedule 7 of the CPA.

¹²¹ Whittle, P and Nesbitt, G (2013). Remand Detention. Assessing the implementation of the section 63A Bail Protocol at Johannesburg, Pollsmoor and Mthatha Correctional Centres. Research Unit. Parliament of South Africa.

¹²² On 5 December 2016 the Western Cape High Court held that the Government's failure to provide inmates at Pollsmoor's remand detention facility with exercise, nutrition, accommodation, ablution facilities and healthcare services as required by the Correctional Services Act 111 of 1998, was unconstitutional. It ordered the DCS to reduce the number of detainees at Pollsmoor to not more than 120 per cent of the approved number.



- **NGOs offering services per region (rehabilitation)**

The Department of Correctional Services (DCS) contributes to the NDP Chapter 12: Building Safer Communities including contributing towards reducing repeat offending or recidivism by (a) placing 68% of sentenced offenders in correctional programmes and (b) ensuring 97% parolees and 81% of probationers are without violations. The NDP has also framed in broad terms the importance of increasing substance abuse treatment and education programmes during imprisonment; and rehabilitating former offenders and assisting them to reintegrate into society. The DCS has partnerships with a number of state and civil society organisations, academic institutions, etc. to assist with developing and implementing rehabilitation programmes and enhance the employability of parolees and probationers through training in Information and Communication Technology (ICT), veld firefighting, building and civil construction and carpentry. Offenders have for e.g. as part of giving back to the community participated in renovating school buildings. The number of NGOs and other providers of services to inmates are, unfortunately not aggregated per region.

Halfway Houses per region: Halfway houses provide transitional accommodation to offenders who are eligible for parole but do not have support systems in the community. They are managed through a service level agreement and DCS disburses a monthly stipend for operational costs. Since 2012, 676 offenders have been accommodated in halfway houses. Of this, 409 parolees reintegrated into communities.¹²³

Table 60: Sub-programme performance indicators and annual targets for 2018/19 – 2020/2021

Programme Performance Indicator		Audited/Actual performance			Estimated performance	Medium-term targets		
		2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
8.2.2.1	Number of parolees and probationers reintegrated back into communities through Halfway House partnerships	81	111	127	N/A Not measured in 2017/18	160	170	180

To date, the Department has established 15 Halfway Houses in five regions, including the following listed below.¹²⁴

Table 61: Location of Halfway Houses per Region

REGION	HALFWAY HOUSES
Gauteng Region	Nonhlanhla Lettie Mthembu Halfway House (formerly "Naturena") ¹²⁵
Eastern Cape Region	Vezokuhle Youth Development Project

¹²³ PMG (2018). Meeting of the SC Security and Justice. 13 June 2018. Correctional Services and Judicial Inspectorate: Deputy Minister Policy overview. Annual Performance Plan and Budget. Available at <https://pmg.org.za/committee-meeting/26647/>. Accessed 26 February 2019. Parolees are expected to increase from 160 in 2018-19, to 180 in 2020-21.

¹²⁴ None of the DCS reports contain a full list of its halfway houses.

¹²⁵ Renamed by the Minister of Justice and Corrections on 13 December 2018.



REGION	HALFWAY HOUSES
Western Cape Region	Beauty for Ashes
Limpopo, Mpumalanga; North West (LMN)	Xilembeni Halfway House; World Focus Victim; Klerksdorp One Foundation Halfway House; Youth and Community Development
FS/NC	Bloemspruit; Divine Dawn Halfway House

2.3 Courts (Department of Justice and Constitutional Development)

The Constitutional Court is the highest or apex court in South Africa. There are also a number of superior courts (High Courts and Appeal Courts) and lower courts (Magistrates Courts).

2.3.1 High Courts

South Africa has 14 High Courts:¹²⁶

- Eastern Cape (4): Grahamstown, Port Elizabeth, Mthatha and Bhisho
- Free State (1): Bloemfontein
- Gauteng (2) : Pretoria (North Gauteng) and Johannesburg (South Gauteng)
- KwaZulu-Natal (2): Pietermaritzburg and Durban
- Limpopo (1): Polokwane
- Mpumalanga (1): Nelspruit
- Northern Cape (1): Kimberley
- North West (1): Mafikeng
- Western Cape (1): Cape Town

Outstanding reserved judgments

As at 31 March 2018, **823 out of 1 263 judgments were outstanding for more than three months**, while 593 (47%) of the judgments were outstanding for more than six months. The Johannesburg Division of the Gauteng High Court fared the worst with 94% of reserved judgements outstanding for more than three months. The Limpopo High Court in Polokwane only had 8% late judgments and no reserved outstanding for more than three months. Nearly 60% of the Constitutional Court's judgments are late.

Table 62: Outstanding reserved judgements

COURT	% Judgments delivered	Reserved judgments outstanding longer than 3 months on 31 March 2018
Supreme Court of Appeal	191 of 205 (93%)	2 of 14 (14%)
Limpopo High Court	171 of 185 (92%)	0 of 14 (0%)
Mthatha High Court	104 of 116 (90%)	8 of 12 (67%)
Bhisho High Court	44 of 52 (85%)	7 of 8 (88%)
Mafikeng High Court	167 of 197 (85%)	11 of 30 (37%)

¹²⁶ GCIS (2019). South Africa Yearbook 2017/18. Justice and Correctional Services. Available at <https://www.gcis.gov.za/sites/default/files/docs/resourcecentre/yearbook/15-Justice2018.pdf>. Accessed 28 March 2019.



COURT	% Judgments delivered	Reserved judgments outstanding longer than 3 months on 31 March 2018
Bloemfontein High Court	310 of 357 (87%)	15 of 47 (32%)
Kimberly High Court	158 of 186 (85%)	10 of 28 (36%)
Gauteng South High Court (Johannesburg)	673 of 873 (77%)	188 of 200 (94%)
Thohoyandou High Court	44 of 53 (83%)	5 of 9 (56%)
Pietermaritzburg High Court	210 of 262 (80%)	29 of 52 (56%)
Eastern Cape High Court (Grahamstown)	208 of 307 (68%)	68 of 99 (69%)
Eastern Cape High Court (Port Elizabeth)	94 of 127 (74%)	19 of 33 (58%)
Johannesburg Labour Court	503 of 652 (77%)	110 of 149 (74%)

2.3.2 Lower courts

- On 26 October 2018, there were 715 lower courts, which include regional courts, magistrates' courts and periodical courts.
- Regional courts largely follow provincial boundaries. Divorce courts fall under the regional court divisions.
- To improve access to justice, the Department established backlog courts to deal specifically with case backlogs. In 2017/18 there were 33 732 criminal backlog cases in the lower courts against a target of 30 344.
- There are nine regional court presidents and 351 regional court magistrates.
- The Magistrates Commission is responsible for disciplining magistrates. It makes recommendations to the Minister of Justice and Correctional Services regarding the suspension and removal from office of Magistrates. The Minister tables the reports on his decisions in this regard in Parliament for approval.
- Since 2001, the Magistrates Commission referred reports concerning 52 Magistrates (39 male and 13 female) to Parliament, of which 20 were suspended and 19 were removed from office.¹²⁷
- From 2014 to 2019, the Magistrates Commission referred 10 Magistrates to Parliament, of whom eight were provisionally suspended, while two were suspended and subsequently removed from office (See table below).

Table 63: Cases referred to Parliament by the Magistrates Commission 2014 to 2019

Year	Magistrate	Provisional suspended	Remuneration withheld	Suspended	Resigned	Date removed from office	Misconduct/ incapacity
2014	M J Kgomo Gauteng	X	X		X		Convicted of corruption. Sentenced to 15 years imprisonment

¹²⁷ Magistrates Commission (2019). Emailed information from Mr H Meijer. 29 March 2019.



Year	Magistrate	Provisional suspended	Remuneration withheld	Suspended	Resigned	Date removed from office	Misconduct/ incapacity
2014	R M Malahlela Mpumalanga	X	X		X		Poor work performance, absenteeism; bringing office of magistrate in disrepute.
2015	L Zantsi Eastern Cape	X				Passed away	Intoxicated at work; drunk driving arrest; absenteeism; vulgar and abusive language
2016	S R Monaledi North West	X	X		X		Numerous false S&T and transport claims; absenteeism; sold clothes during office hours
2016	X B Stuurman Eastern Cape			X		24/01/2018	Unprofessional behaviour at office and in court, offensive language, unauthorised discussion of matters with media
2017	V T Gqiba Eastern Cape		X	X		30/05/2018	False or incorrect statements; False S&T claim
2017	F Jasone-Twala Western Cape	X	X		X	Passed away	On probation since 2012. Alcohol dependency affected court performance
2017	M D Hinxa Western Cape	X					Sexual misconduct
2017	L B Freeman Western Cape	X					False transport claims; non-disclosure of previous theft convictions when appointed.
2018	ES Nzimande KwaZulu-Natal	X					Received bribes in exchange for appointing acting Regional Magistrates; sexual misconduct



2.3.3 Provincial issues for follow-up (infrastructure / access to justice)

Table 64: Provincial issues for follow-up (Infrastructure/access to justice)

PROJECT	STATUS AT 31 MARCH 2018
Pietermaritzburg NPA (KwaZulu-Natal): rehabilitation of old DPW workshop	Project handed over to three contractors in December 2016. Delays caused by liquidation of main contractor at 35% completion. Expected completion date December 2018.
Vulamehlo Magistrates Court (KwaZulu-Natal): office repairs, renovations	75% complete. Project delayed by forum group demanding subcontracting work from the contractor. Extension of time under adjudication by the Principal Agent. Expected completion date September 2018.
Chatsworth Magistrates Office (KwaZulu-Natal): additional accommodation, repairs	42% complete. Expected completion date December 2018.
Evander Magistrates Court (Mpumalanga): refurbishment, additional accommodation (Judiciary, DPP, administration)	Project handed over in November 2016. Expected completion date December 2018.
Albertinia, Heidelberg, Mossel Bay (Western Cape) facilities for persons with disabilities	Project handed over in September 2016. Contract was cancelled in December 2016 at 20% completion. Tenders closed. A commercial risk assessment to complete procurement process was underway.
Fraserburg Magistrate's Court (Northern Cape): additional accommodation	76% complete. Extension of time awarded to contractor due to hard rock, stoppages due to court sittings and delayed site handover. Expected completion July 2018.
Umbumbulu Magistrate's Office (KwaZulu-Natal): additional accommodation and alterations	98% complete. Challenges due to poor workmanship causing roof leakages and a lot of repair work. All challenges on site have been resolved. The contractor was finalising the snag list and attending to client requests. Expected completion date end June 2018.
Orange Farm (Gauteng): land acquisition	DPW negotiating with illegal tenants to vacate the land. Challenges were escalated to NDPW on 8 March 2018 during Client Liaison meeting.
Justice College (Gauteng): refurbishment of building	Delays due to finalisation of procurement strategy
Mamelodi Magistrates Court (Gauteng): new building	59% complete. Delays due to community protests seeking employment and non-payment of sub-contractors. Challenges were escalated to NDPW on 8 March 2018 during Client Liaison meeting.

2.4 Defence: Provincial Distribution of Military Benefits in terms of health, education and housing

The Select Committee on Security and Justice (SC) has had limited interaction with the Department of Defence and Military Veterans (DODMV) on policy and budget-related issues. A key challenge has been the consistent unavailability of the Minister of Defence and Military Veterans to attend Select Committee meetings that coincided with Cabinet meetings. During the 5th Parliament the Minister did not attend any SC meetings.

Due to the provincial mandate of the NCOP, the SC has focused mainly on those defence and military veterans issues with a provincial focus. This also informed its oversight visits



to the Hoedspruit Airforce Base in Mpumalanga and the housing projects for military veterans in Mpumalanga in 2016, and the Eastern Cape in 2017. Issues raised at Hoedspruit for follow-up by the 6th Parliament relate to the Department of Public Works – in particular the slow pace of maintenance delivery at the base and required improvements to the bulk water infrastructure at the base and the surrounding settlement.

The SC was also concerned about the slow turnaround of the DODMV and the impact this had on service delivery. In particular, the roll-out of housing, education and health benefits to military veterans, as well as the quality of housing built for military veterans. The Eastern Cape oversight visit identified capacity constraints relating to the transporting of patients at the South African Military Health Service (SAMHS) and the military veterans and beneficiaries database. The SC’s ongoing attempts to meet with the Minister to discuss concerns failed due to the unavailability of the Minister. The 6th Parliament should follow up on the progress regarding the roll-out of all benefits to military veterans.

3. Budget

NCOP Committees are not required to report to the NCOP on departmental budgets. During the Budget Vote period in the NA, the NCOP holds policy debates on selected departments and has, during the 5th Parliament, debated SAPS and the IPID together. The NCOP does not hold policy debates on the Defence Budget.

Estimates of National Expenditure (ENE) usually contain only national or centralised budget allocations, and information on provincial budget allocations are not readily available. This is especially true for the Department of Justice Budget. The DCS Budget includes a table with regional allocations, whereas the SAPS makes its provincial allocations available on request. The provincial and regional information below thus only focuses on the DCS and the SAPS allocations.

3.1 Correctional Services Decentralised / Regional Budget Allocations 2015/16 to 2021/22

The DCS 2019/20 Budget reflects a number of capital projects, some of which date back to 2015/16 but are still in “design” phase, even though funding has been allocated every year since inception. A comprehensive list can be made available to SC Members.

Table 65: Correctional Services Decentralised/Regional Budget Allocations – 2015/16 to 2021/22

Region R'000	Audited outcome			Adjusted Appropriation	Medium-term estimates		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Head Office	5 447 322	5 441 437	5 724 512	5 729 115	5 986 9177	6 335 417	6 810 302
Gauteng Region	3 356 779	3 615 124	3 825 639	4 059 165	4 338 682	4 655 068	4 951 336
KwaZulu-Natal Region	2 601 942	2 763 622	2 900 445	3 072 522	3 304 580	3 544 413	3 769 967



Region R'000	Audited outcome			Adjusted Appropriation	Medium-term estimates		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Eastern Cape Region	1 950 522	2 076 586	2 219 807	2 343 257	2 505 020	2 688 381	2 841 197
Western Cape Region	2 893 375	3 034 157	3 200 699	3 432 403	3 714 020	3 985 973	4 240 123
Limpopo, Mpumalanga & North West Region	2 269 120	2 391 427	2 572 711	2 679 308	2 889 498	3 093 313	3 291 492
Free State & Northern Cape Region	2 069 615	2 219 821	2 344 765	2 553 203	2 677 921	2 874 555	3 058 148
Total Regions	20 588 675	21 542 174	2 788 578	23 848 973	25 407 638	27 177 120	28 962 565

3.2 South African Police Services Provincial Budget Allocation 2016/17 to 2018/19

In 2019/20 the SAPS Budget allocation was R97.6 billion compared to the 2018/19 allocation of R91.8 billion (a nominal increase of 5.9%).

In 2018/19, R54.4 billion was allocated to provinces compared to R48.7 billion (R48 722 115 000) in 2016/17.¹²⁸

The table below sets out SAPS provincial allocations from 2016/17 to 2018/19.

Table 66: Police Provincial Budget Allocations

Total financial split R'000	2016/17	2017/18	2018/19
Western Cape	6 259 603	6 726 478	7 316 481
Northern Cape	2 223 619	2 389 469	2 616 234
Free State	3 728 309	4 006 387	4 184 073
Eastern Cape	6 149 596	6 608 267	7 083 866
KwaZulu-Natal	7 909 082	8 498 984	9 210 455
Mpumalanga	3 201 065	3 439 818	3 788 617
Limpopo	3 884 947	4 174 708	4 461 864
Gauteng	10 610 595	11 401 895	12 176 857
North West	3 123 309	3 356 263	3 515 648

SAPS indicated on 12 April 2019, that the SAPS Chief Financial Officer (CFO) must still conduct “an internal apportioning process...and the recommendations will be forwarded to the National Commissioner....this process will [likely] be concluded by the end of April 2019. The baseline figures for 2018/2019...will be used as a base for the allocation for 2019/2020”.¹²⁹

¹²⁸ Information on 2017/18 provincial allocation not available at time of writing.

¹²⁹ To be followed up and updated.



SAPS indicated on 12 April 2019, that the SAPS Chief Financial Officer (CFO) must still conduct “an internal apportioning process...and the recommendations will be forwarded to the National Commissioner....this process will [likely] be concluded by the end of April 2019. The baseline figures for 2018/2019...will be used as a base for the allocation for 2019/2020”.¹³⁰

The table below reflects the operational budgets from 2013/14 to 2017/18, and the SAPS baseline figures for 2018/19.

Table 67: Operational budgets for 2013/14 to 2017/18

	2015/16 R'000	2016/17 ¹³¹ R'000	2017/18 ¹³² R'000	2018/19 ¹³³ R'000	2019/20 ¹³⁴ R'000
Western Cape	711 558	725 762 998	766 648	770 932	
Northern Cape	271 461	270 581 685	301 020	326 685	
Free State	423 227	430 275 672	465 200	477 197	
Eastern Cape	759 026	776 207 439	824 890	861 549	
KwaZulu-Natal	974 482	994 971 160	1 070 332	1 100 902	
Mpumalanga	386 236	390 768 626	426 962	462 860	
Limpopo	489 257	490 275 011	531 959	548 322	
Gauteng	1 284 255	1 272 681 775	1 393 252	1 382 310	
North West	442 773	439 473 348	489 331	511 303	

Only operational funding is physically allocated to provincial commissioners for the management of operational expenditure. Gauteng, KwaZulu-Natal, Eastern Cape and Western Cape have the highest provincial allocations and operational budgets.

The following selected 2019 SONA priorities have a bearing on provinces for which the 2019/20 provincial SAPS allocations should provide:

- Implementing / roll out of the **Community Policing Strategy**, making more resources available for policing and better communication between the police and communities about crime prevention strategies.
- Strengthening units like the **Family Violence, Child Protection and Sexual Offences (FCS) Units**.
 - There are currently 178 complete FCS Units with a fixed establishment of 2 721 funded posts, of which 2 361 has been filled. The remaining 360 posts (SAPS Act and Public Service Act staff) will be filled in a phased-in approach, over a three-year cycle, at an estimated cost of R89.1 million.¹³⁵

¹³⁰ To be followed up and updated.

¹³¹ South African Police Service (2017)

¹³² South African Police Service (2017)

¹³³ SAPS (2019). Email response to request for information, 12 April 2019.

¹³⁴ SAPS (2019). Email response to request for information, 12 April 2019. The SAPS Chief Financial Officer (CFO) must still conduct “an internal apportioning process...and the recommendations will be forwarded to the National Commissioner....this process will [likely] be concluded by the end of April 2019. The baseline figures for 2018/2019...will be used as a base for the allocation for 2019/2020”.

¹³⁵ SAPS (2019)



- **Restructuring SAPS to shift more policing resources to the local level.**
 - In December 2018, the Equality Court judgement in the matter brought by the Social Justice Coalition (joined by the Nyanga Community Police Forum) affirmed poverty as an unlisted ground for discrimination, and that SAPS has not adequately resourced police stations in predominantly poor, black communities. SAPS indicated on 12 April 2019, that it is developing an Integrated Resource Strategy to ensure the appropriate resource planning and allocation criteria (resource matrix) that support the SAPS Turnaround Vision and focuses on addressing the key workforce and other resource challenges over the MTEF. Implementation will be annually, covering the beginning to the end of the financial year. The implementation plans for the restructuring and rationalisation of the SAPS and the deployment of Major Generals to the top 30 identified crime weight police stations, has been approved and includes establishing implementation committees (steering and working committees) at national and provincial level to drive the implementation process and to make recommendations for the approval of the placement of affected personnel by the National Commissioner. The process is being piloted in Gauteng and resources have been allocated, accordingly. Two Major General police stations have been identified and five districts were implemented. The Eastern Cape is preparing for the implementation of the approved districts and the top 30 crime weight police stations, in line with the restructuring. KwaZulu-Natal and the Western Cape will follow.
- **Ending gender-based violence (GBV)**
- **Shutting down taverns, shebeens and liquor outlets near school premises.**
 - In terms of a February 2019 SAPS National Instruction, all identified non-compliant or problematic licensed liquor outlets, situated in close proximity of schools must be reported and proof provided (copies of J534's, complaints received and cases registered) to the Provincial Liquor Board for hearing and possible consideration for closure of the licensed liquor premises as the responsible entity.

4. Selected issues for follow-up in the 6th Parliament

The following are some of the issues emanating from the 5th Parliament and that require follow up in the 6th Parliament. Of these issues, the Select Committee should prioritise those that have more provincial focus and are directed at provincial functions. The Select Committee on Security and Justice is ideally situated to consider progress across provinces in the portfolios of Police, Corrections, Justice and Defence. To assist in this process, the relevant departments should be required to table on a regular basis all provincially relevant information including provincial budget breakdowns, progress reports on performance and other information.



4.1 South African Police Service and IPID¹³⁶

- Leadership stability and filling key management posts in SAPS and IPID. The 5th Parliament resolved not to renew the contract of the IPID Head Robert McBride, whose contract expired on 28 February 2019. This decision is being challenged in court.
- Review of the SAPS Act by the 6th Parliament to address constitutional deficiencies relating to powers, functions and aspects of police management and administration.
- Finalising IPID Amendment Bill of 2018.
- Improve relationship between SAPS and IPID and implement IPID recommendations regarding implicated SAPS members.
- Ever-increasing crime statistics, especially sexual offences and Gender-based Violence.
- Restructuring SAPS to shift more policing resources to the local level, especially in high crime precincts.
- Recruiting more police reservists to augment SAPS members, especially during service delivery protests.
- Utilising CPFs in crime prevention and early detection of community dissatisfaction to prevent / manage service delivery protests.
- Tackling corruption: Vetting of police officers, life-style audits.
- Installation of CCTV cameras at all police stations.¹³⁷ To date 126 police stations have CCTV cameras. Of these, 68 have the old analogue systems with limited or no functionality, four police stations' CCTV systems are not yet commissioned and 54 police stations have fully-operational CCTV systems.¹³⁸
- Implementing the Anti-Gang strategy through the Anti-Gang Unit.
- More effective implementation of the Firearms Control Act 60 of 2000, to root out fraud and corruption in the gun-licencing process and prevent the loss, theft and sale to criminals of legally confiscated / surrendered guns. SAPS completed an assessment on the implementation of the Firearms Control Act in November 2018. The implementation of the Turnaround Plan will be phased in at a cost of R11 million per

¹³⁶ Van-Zyl Gous, N (2019). Five-Year Trend Analysis of Financial and Service Delivery Performance of JCPS Cluster Departments. Research Unit. Parliament of South Africa.

¹³⁷ News24 (2018). Safety of police stations and cops to be scrutinised in Parliament. 19 August 2018. Available at <https://www.news24.com/SouthAfrica/News/safety-of-police-stations-and-cops-to-be-scrutinised-in-parliament-20180819>. Accessed 9 April 2019.

¹³⁸ SAPS (2019). Email response to request for information, 12 April 2019.



financial year over the short to long term (2019/20 to 2024/25), starting on 1 April 2019.¹³⁹

- Following the attack on the Ngcobo SAPS in the Eastern Cape in 2018, the following police stations were prioritised for security upgrades in 2018/19:¹⁴⁰

Table 68: Police stations identified for security upgrades during 2018/19

Province	Police Station	Security Upgrades Finalised
Eastern Cape	Engcobo	Perimeter lights, internal lights, vehicle and pedestrian gates, installation of new electric perimeter fence, CCTV and security doors.
Western Cape	Table View	Perimeter lights.
Free State	Tweeling	Perimeter fence, perimeter lights and remote control gates, back and front.
KwaZulu-Natal	Mtunzini	Repaired fence.

4.2 Justice and Constitutional Development¹⁴¹

- **Access to courts:** The construction of new High Courts in Limpopo and Mpumalanga were subject to significant delays since 2012/13 and 2014/15 respectively. The Limpopo High Court was eventually opened in 2016 and the Mpumalanga High Court is expected to be completed by the end of 2018/19 at a total cost of R1.2 billion.
- **Implementation of sexual offences courts:** Significant challenges include postponement and withdrawal of sexual offences cases and a shortage of intermediaries through which child witnesses provide court testimony. Of the 74 upgraded courts upgraded between 2013/14 and 2017/18, at least 30 are 'hybrid' courts dealing with other types of matters. Minimum standards for hybrid courts were developed in 2017, but the Regulations are still outstanding.
- **Operational challenges with the National Register of Sexual Offenders:** Section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, established a National Register for Sex Offenders where the entry of particulars of all offenders guilty of sexual transgressions against children or mentally-ill persons. However, the Registrar has acknowledged that although the register can be accessed via an application there are still discrepancies and operational challenges.
- **Transforming State Legal Services:** Transformation entails finalising policies aimed at lowering the cost of litigation, establishing capacity to handle complex legal matters and ensuring the efficient management of the offices of the state

¹³⁹ SAPS (2019). Email response to request for information, 12 April 2019.

¹⁴⁰ SAPS (2019). Email response to request for information, 12 April 2019. SAPS provided a comprehensive list of upgrades per province for the period 2019/20 to 2023/24 that can be made available.

¹⁴¹ Nesbitt, G (2019). Five-Year Trend Analysis of Financial and Service Delivery Performance of JCPS Cluster Departments. Research Unit. Parliament of South Africa.



attorney. A proposal for the establishment of State Legal Services as a government component was expected to be submitted to Cabinet in 2018/19. Cabinet is expected to endorse in 2019/20 a number of policies (addressing *inter alia* mediation, state representation, the management of state litigation and tariffs) in the State Litigation environment.

- **Small claims courts.** These courts were established to enable individuals to institute minor civil claims in an affordable manner. The limit of cases involving civil claims in small claims courts is now R20 000. By 2017, there was 100% coverage across the country. The vast majority of the new courts and places of sitting are in rural areas and peri-urban areas.
- **Apartheid prosecutions.** The NPA failed to pursue the prosecutions of hundreds of persons who were refused amnesty by the Truth and Reconciliation Commission (TRC) that looked into gross human rights violations perpetrated between 1960 and 1993. Families of victims such as Nokuthula Simelane and Ahmed Timol have had to compel the NPA to either refer the matters for inquests or make a decision whether or not to prosecute. Former members of the TRC have urged President Cyril Ramaphosa to appoint a commission of inquiry “into the political interference that has stopped the investigation and prosecution of virtually all the cases referred by the TRC to the National Prosecuting Authority (NPA)”.
- **Slow Implementation of Truth and Reconciliation Commission** recommendations and slow progress in finalising the regulations relating to medical benefits and housing assistance
- **Court performance.** Case-flow management and efficient enhancement mechanisms in courts seem not to have gained traction, as reported by other relevant stakeholders like the NPA.
- **Case-flow.** Updates on the efficiency and effectiveness of the case management models and processes and how they have affected court performance (relevant stakeholders in the criminal justice system like the NPA bemoan the challenge that these systems have yet to gain traction).
- **Dwindling court hours and delays in proceedings.** These are compounded by concerns from e.g. the NPA over the unavailability of judicial officers across all courts.
- **Lengthy and costly processes to conclude disciplinary procedures against magistrates referred to Parliament for consideration:** Since 2001, of the 52 magistrates referred to Parliament for consideration, only 20 were suspended and 19 were removed from office. The SC reports over the years have expressed serious concerns over the length of time – often years – the Magistrates Commission took to conclude disciplinary matters against magistrates, many of whom were on full pay during their suspensions. This held significant financial implications for the state and



affected court performance as the Department would need to appoint another magistrate to act in the position of the suspended magistrate. The 6th Parliament should seek information on the financial costs to the state of magistrates disciplinary matters, consider introducing a Committee Bill or for the Department to submit legislation to change the current regime governing Magistrates in order to expedite disciplinary proceedings.

- **Non-implementation of Special Investigative Unit (SIU) remedial action by State Institutions.** The SIU has itself identified the issue of non-implementation as a significant and increasing risk. This refers to cases identified by the SIU for criminal prosecution by the NPA and matters referred to government department and agencies for instituting disciplinary processes. As part of its organisational review, the Unit has introduced monitoring and evaluation of its impact, following up, tracking of SIU recommendations, and involving the Auditor-General and Executive Authorities in oversight activities. Regarding remedial action, the SIU notes that it has no power to enforce the implementation of legal recommendations, which leads to a failure by state institutions to implement these recommendations. A part of its new strategic plan the Unit reports that it intends to initiate processes to ensure the implementation of its recommendations.

4.3 Correctional Services¹⁴²

- **Unacceptable conditions of incarceration in correctional and remand facilities:** The 2018 Budgetary Review and Recommendation Report¹⁴³ of the PC on Justice and Correctional Services notes the key persistent service delivery challenges, including (a) overcrowding, which increased to 38% in 2017/18 (from 35% the previous year); (b) a failure to create new bed spaces over consecutive years; and (c) an increasing number of unnatural deaths over the years.
- Additionally, the Judicial Inspectorate for Correctional Services (JICS) has highlighted the issue of the **large number of mentally ill inmates - some of whom are not even supposed to be in correctional facilities.**
- Parliament has also noted concerns around the contracts that **Bosasa** has with DCS, which had been flagged as early as 2009. Revelations about *inter alia* Bosasa's top management allegedly bribing DCS senior officials to award DCS contracts to Bosasa;, and non-adherence to PFMA rules, have again brought this issue to the forefront following testimony of whistle blowers at the Zondo Commission of Enquiry into state capture.

¹⁴² Nesbitt, G (2019). Five-Year Trend Analysis of Financial and Service Delivery Performance of JCPS Cluster Departments. Research Unit. Parliament of South Africa.

¹⁴³ Parliament of South Africa (2018). ATC 24 October 2018, p21



4.4 Defence and Military Veterans¹⁴⁴

- **Personnel costs** as a total percentage of expenditure (55.9%) rose to R27.116 billion in 2017/18 and was expected to climb further to 59% in 2019/20.¹⁴⁵
- **Ageing personnel:** On 29 August 2018, the Secretary of Defence indicated that the average SANDF soldier is much older than the global average and thus force rejuvenation is urgently needed. However, an effective exit mechanism for older personnel is still outstanding.
- **Ageing prime mission equipment:** Rising personnel costs left little funding for military operations and capital acquisitions, resulting in ageing prime mission equipment, especially logistics vehicles (trucks) and infantry fighting vehicles.
- **Military Veterans: Rollout of Benefits:** By 2017/18, only 270 houses out of a target of 1 000 houses were provided. Needs to increase access to healthcare benefits and bursaries for veterans and dependants.
- **A skills audit to assist the DOD to** attract and retain critical and scarce skills was in 2018/19.
- **The integrity of the DMV database is essential to ensure that the Department renders services to deserving and qualifying military veterans** and avoid non-deserving veterans and others from abusing the system of benefits provided for by the Department.

¹⁴⁴ Janse-Van Rensburg, W (2019). The Parliamentary Defence Committees. Research Unit. Parliament of South Africa.

¹⁴⁵ National Treasury. (2019). p. 388.





SHARED CHALLENGES AND JOINT OVERSIGHT RESPONSIBILITY

The Justice, Police, Defence and Correctional Services Portfolios have shared challenges and joint oversight responsibilities on crosscutting themes.

SHARED CHALLENGES

The challenges below should be addressed through joint meetings by the relevant Committees and Departments.

1) Criminal Justice System (CJS) and Integrated Justice System (IJS) Revamp and Modernisation programmes

The *Review of the South African Criminal Justice System (CJS)* was completed in 2007 and recommended that a 7 Point Plan (7PP) should be implemented to coordinate and achieve the integration of the entire CJS. The Plan was adopted by Cabinet and sets out the achievement of a modernised, efficient and transformed system.

The Plan included a new coordinating and management structure at every level, from national to local level; greater cooperation among the judiciary and the magistracy, the police, prosecutors, correctional services and the Legal Aid Board and initiatives such as the empowerment of Community Police Forums (CPFs). The National Development Plan (NDP) prioritises the implementation of the 7PP to achieve its vision of building safer communities.

The Integrated Justice System (IJS) modernisation programme forms part of the broader CJS Revamp/Review and focusses on the integration of technology systems. It is driving a multi-department effort to increase the probability of successful investigation, prosecution, punishment, and ultimately the rehabilitation of offenders and their restoration back into society to realise a national objective that all South Africans are and feel safe.

The key challenges include:

- Slow pace of modernisation of court processes through the Integrated Justice System (IJS) programme;
- Lack of effective co-ordination across the Justice, Crime Prevention and Security (JCPS) cluster;
- Slow spending in-year, as well as considerable underspending at year end, in respect of the earmarked funds allocated for the IJS;
- Challenges with the State Information Technology Agency such as the unpredictable and inefficient procurement processes as well as challenges with software development;
- Minimal information provided on the deliverables contained in the Criminal Justice System business plan; and
- Under-capacitation and lack of clarity on the role of the Project Management Office which as from the 2014/15 financial year was supposed to be adequately capacitated so that it could provide improved management of the CJS/IJS cluster projects.



Parliament should monitor the following process:

Transitioning from the Criminal Justice System's Seven-Point Plan (2007) to the Integrated Criminal Justice System Strategy. The Justice Department has reported that a complete overhaul of the criminal justice system is planned. The Integrated Criminal Justice System Strategy is intended to address challenges that relate to the slow pace of modernization of court processes through the Integrated Justice System (IJS) programme and the lack of effective co-ordination across the Justice, Crime Prevention and Security (JCPS) Cluster departments. The Department has presented a plan to Cabinet on the re-engineering process, which the JCPS Forum of Directors-General will lead.¹⁴⁶ The ICJS is to incorporate the modernisation of the CJS and will also address concerns raised at community level that include the implementation of the bail system and the lack of support for victims of crime. The target date for the finalisation of the Strategy was 31 March 2018 but this has been revised to 28 February 2019 (for submission to Cabinet). An Integrated Task Team on Criminal Justice Reform (ITT-CJR) headed by Adv. Lungi Mahlathi has been established.

2) Information Communication Technology (ICT)

The State Information Technology Agency (SITA) is an incorporated private company mandated to improve service delivery to the public through the provision of information technology, information systems and related services in a maintained information system security environment to the state to promote the efficiency of departments and public bodies through the use of information technology. However, many departments struggle with a lack of ICT development and maintenance.

Key challenges include:

- Long delivery timeframes to complete procurement processes;
- Locked into contracts after expiry due to a lack of effective contract management;
- Tenders cancelled due to poorly defined specification and evaluation criteria;
- Poor communication between SITA and customers (Government Structures);
- High prices for good/services procured due to a limited ability to leverage economies of scale;
- Capacity deficit; and
- ICT service delivery challenges, including a lack of digital government, security, transversal capabilities, managed infrastructure and networks.

3) Buildings and infrastructure

The National Department of Public Works (NDPW) is the custodian and manager of all national governments' fixed assets. This includes the determination of accommodation requirements, rendering expert built environment services to client departments, and the acquisition, maintenance and disposal of such assets.

¹⁴⁶ ATC181024: Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 24 October 2018 (Accessed at <https://pmg.org.za/taled-committee-report/3549/>)



The key challenges include:

- Persistent challenges with infrastructure spending due to protracted processes at the Department of Public Works;
- Delays in issuing of site clearance certificates;
- Escalation of construction costs beyond inflation;
- Failure of construction firms to deliver as per contracts;
- Constant need for refurbishment of existing infrastructure as well as day to day maintenance and accessibility programmes; and
- Lack of funding for maintenance.

JOINT OVERSIGHT RESPONSIBILITY

1) Gender-based Violence (GBV)

Despite progressive laws and policies on Gender-based Violence (GBV), South Africa has one of the highest rates of GBV worldwide.¹⁴⁷ South Africa has ratified various international instruments, like the UN Convention on the Elimination of All Forms of Discrimination against Women (Commission of Gender Equality) and has implemented various pieces of legislation to combat GBV. The two most prominent laws pertaining to violence against women in South Africa are the:

- Domestic Violence Act (DVA), 1998 (Act No. 116 of 1998) and
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (Sexual Offences Act) (SOA).

GBV includes domestic violence, physical violence, emotional violence, economic violence, sexual violence and femicide (amongst others). According to experts¹⁴⁸, sexual violence is the most common form of GBV and may involve rape, sexual harassment, sexual exploitation and trafficking for sexual purposes.

Studies have been done in South Africa on GBV, all of which have concluded that there are problems in the implementation of legislative and policy provisions to combat GBV and a lack of political will to address these shortfalls.¹⁴⁹

During the February 2019 State of the Nation Address (SONA), the President stated that **ending GBV remains an urgent national priority**. Over the last year, efforts to address gender-based crimes had intensified and saw an increase in coordination between stakeholders in the criminal justice value chain. The President indicated that going forward, various initiatives will be implemented to address GBV including:

- Expand and dedicate more funds to places of support, such as the Thuthuzela Care Centres and Khuseleka Care Centres.
- Ensure the better functioning of Sexual Offences Courts.
- Improve the quality of services in shelters and ensure they also accommodate members of the LGBTQI+ community.

¹⁴⁷ CEDAW Committee (1998).

¹⁴⁸ Mathews (2010); Vetten (2003).

¹⁴⁹ SAHRC (2018); DPME (2016); CSVR (2016).



- Strengthen the national hotline centre that supports women who experience gender-based violence and ensure it is functional.
- Government will lead the campaign to include men and boys as active champions in the struggle against gender-based violence.

It should also be noted that following the **Presidential Summit against Gender Based Violence and Femicide**, a Declaration was adopted by the delegates on 2 November 2018, and signed by the President on 28 March 2019.¹⁵⁰ The Declaration commits Government to the establishment of a national multi-sectoral coordinating body which will develop a National Strategy with Action Plan for gender-based violence and femicide.

Significantly for the JCPS Cluster the Declaration provides:

- Existing laws and policies applicable to gender-based violence and femicide are to be reviewed to ensure that they are more victim-centred and responsive, and that the identified legislative gaps are addressed without delay.
- The finalisation of outstanding legislative measures and policies that relate to gender-based violence and femicide, as well as the protection of the rights of women and gender non-conforming persons, be fast-tracked, in particular the Prevention and Combating of Hate Crimes and Hate Speech Bill.
- All laws and policies, programmes and interventions contemplated above, be adequately planned, costed and resourced, in line with the gender-responsive planning, budgeting and monitoring evaluation framework across Government.
- A comprehensive costing and resourcing for the effective functioning and management of the facilities that render support services to survivors of Gender Based Violence be conducted, which include the Thuthuzela Care Centres, designated public health establishments, sexual offences courts, family courts, shelters and Khuseleka Centres.
- The integration of systems for the optimal management of data throughout the justice system be finalised without further delay, which must include the collection of disaggregated data relating to survivors and offenders, from the point of entry into the justice system to the exit, with unique identifier functionality.

The **High Level Panel (HLP)**¹⁵¹ appointed by Parliament in 2017 to assess the implementation of legislation,¹⁵² made a number of recommendations in respect of the GBV, including that -

Parliament should consider having regular annual mandatory dedicated intersectoral public hearings with the relevant departments to monitor the implementation of all relevant legislation, notably the DVA and SOA.

¹⁵⁰GBV Summit Booklet (Accessed at <http://www.justice.gov.za/vg/201903-GBV-SummitDeclarationBooklet.pdf>)

¹⁵¹ Parliament of South Africa (2018). The Report of the High Level Panel (HLP) on the Assessment of Key Legislation and the Acceleration of Fundamental Change: Oversight and Legislative Imperatives for Parliament. Research Unit. Parliament of South Africa. p138

¹⁵² Ibid p142



Furthermore, the Report recommended that civil society organisations should be given the opportunity to comment on and be part of these processes.

- **Domestic Violence**

The Domestic Violence Act No. 116 of 1998 (DVA) aims to “afford victims of domestic violence the maximum protection from domestic violence that the law can provide”.¹ It defines domestic violence to include a wide range of behaviours, including physical, sexual, and psychological abuse, as well as verbal, emotional, and financial harm. However, statistics on Domestic Violence are not readily available, as domestic violence is not a defined criminal offence (crime), and the charges brought against offenders are normally that of assault or assault to cause grievous bodily harm (Assault GBH). This has been a longstanding concern of Parliament and calls to define domestic violence as a separate and distinct crime are increasing.

High Level Panel Recommendations –

- (a) Amending the DVA to (i) include rehabilitative measures for offenders in addition to punitive sanctions, put in place accountability mechanisms to ensure (aa) police and court staff who fail to fulfil their legal duties (as stipulated by the Act) are held accountable or (bb) implementation measures are put in place with penalties for non-compliance);
- (b) Recognising domestic violence as a crime in its own right;
- (c) Making application forms available in at least 5 of the 11 official languages;
- (d) Providing mandatory biannual training for police, magistrates and clerks;
- (e) Including specific mandates for the health and social development sectors;
- (f) Expanding the jurisdiction of the DVA to traditional courts for purposes of obtaining protection orders to improve the effectiveness of the DVA and
- (g) Including economic abuse in the definition of abuse.

Furthermore, the DVA also places an obligation on the South African Police Service (SAPS) to assist victims, including finding access to suitable shelter. Although 20 years have passed since its promulgation, implementation of the DVA remains weak and uncoordinated, and responses by the police are often misinformed and apathetic. Poor levels of police compliance with the DVA impose grave consequences for women who make up the vast majority of victims in South Africa and are five times more likely to be murdered by their intimate partners than



elsewhere in the world.¹⁵³ In addition, extremely high levels of poverty and inequality, make the provision of shelter services essential as they are sometimes the only available lifeline to victims.¹⁵⁴

The table below shows a 2.3% increase in criminal domestic violence cases in 2017/18 compared to 2016/17, and a 17.8% decrease in guilty verdicts in 2017/18.

Table 69: Summary of domestic violence criminal statistics: 2016/17 and 2017/18

	Cases registered	Finalised Cases			Cases removed from the roll					Cases disposed of	Outstanding cases
		Guilty	Not guilty	Other finalised	Other removed	Struck off the roll	Transferred	Warrant of arrest	Withdrawn		
2016/17	205 320	2 250	753	134	46	1 887	8	516	6 332	11 926	3 285
2017/18	210 067	1 850	639	112	28	1 548	10	611	5 351	10 149	3 355
Percentage change	2.3	-17.8	-15.1	-16.4	-39.1	-18.0	25.0	18.4	-15.5	-14.9	2.1

- **Sexual Offences**

South Africa has a strong legal and policy framework on sexual offences which include the (a) Constitution, 1996;¹⁵⁵ (b) National Policy Framework for the Management of Sexual Offences (NPF) and (c) Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 (SOA). The SOA seeks to provide victims of sexual offences the “maximum and least traumatising protection that the law can provide”.¹⁵⁶ It expanded the statutory offence of rape (now applicable to all forms of sexual penetration without consent irrespective of the gender of the perpetrator); and introduced (i) a statutory offence of sexual assault, applicable to all forms of unlawful and intentional sexual violation without consent; (ii) specific offences against children (statutory rape and sexual assault; sexual exploitation and grooming) and people who are mentally disabled; and (iii) specific services for victims of sexual offences, including affording victims the right to receive post-exposure prophylaxis (PEP) treatment to prevent the possible transmission of HIV after rape and for HIV testing of an accused.

The key departments/institutions responsible for the SOA’s implementation are the SAPS and the Departments of Justice and Constitutional Development, Correctional Services, Health and Social Development, and the National Prosecuting Authority (NPA). A National Intersectoral Committee and Provincial Sexual Offences Committees / Forums monitor the SOA’s implementation at national and provincial level and report to the National Operational

¹⁵³ Africa Check. (July 2017). Femicide in South Africa: 3 numbers about the murdering of women investigated. (Accessed at: <https://africacheck.org/reports/femicide-sa-3-numbers-murdering-womeninvestigated/>)

¹⁵⁴ Stone, K and Lopes, C (2018). Policing Responses to Domestic Violence: Exploring Reactions by the Police to Women in Need of Shelter. Research Paper. October 2018. Heinrich Böll Stiftung Southern Africa.

¹⁵⁵ Constitution of the Republic of South Africa, 1996

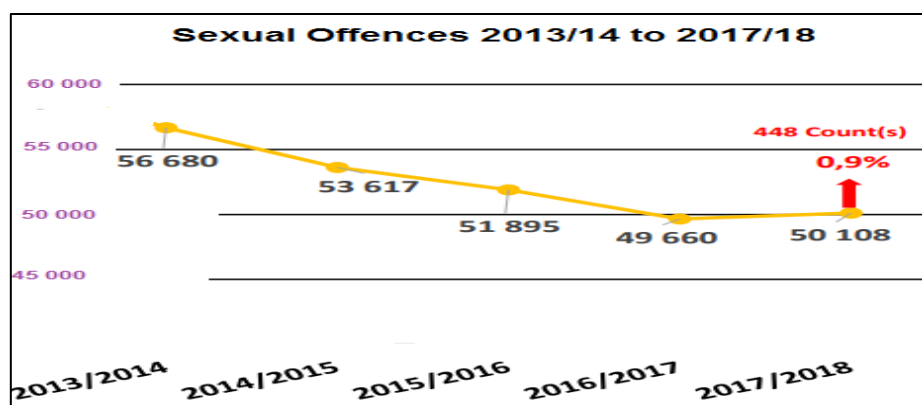
¹⁵⁶ Act 32 of 2007, section 2 (Objects).



Intersectoral Committee on Sexual Offences in respect of resourcing, implementation, monitoring and evaluation of all initiatives aimed at uprooting sexual offences.¹⁵⁷

The National Register for Sex Offenders is accessible to prospective employers and contains the details of individuals convicted of a sexual offence against a child or mentally disabled person. Such persons may not work with children or the mentally disabled, and cannot hold positions of “authority, supervision or care of a child” or may not “gain access to a child or places where children are present or congregate.”

Sexual offences, especially against women and girls, increased by 0.9% from 49 660 in 2016/17 to 50 108 in 2017/18.¹⁵⁸



Provincially, Gauteng contributed 20.18% to the national total, KwaZulu-Natal 17.48%, the Eastern Cape 16.15% and the Western Cape 14.12%.

Table 70: Comparative Provincial spread of sexual offences 2016/17 to 2017/18

	NW	GP	KZN	FS	MP	EC	WC	NC	LP
2016/17	4 326	9 566	8 484	3 488	3 216	8 050	7 115	1 587	3 828
2017/18	4 182	10 116	8 759	3 284	3 198	8 094	7 075	1 538	3 862
Case Diff	-144	550	275	-204	-18	44	-40	-49	34
% Change	-3.3% ↓	5.7% ↑	3.2% ↑	-5.8% ↓	-0.6% ↓	0.5% ↑	-0.6% ↓	-3.1% ↓	0.9% ↑

The NPA reported a conviction rate exceeding 70% for both mainstream courts and Thuthuzela Care Centres (TCC) for sexual offences over the past three years. However, a significant number of cases never make it to trial and many rapes go unreported for fear of stigma and secondary victimisation or victim blaming.

¹⁵⁷ Department of Justice and Constitutional Development (2016). Report on the implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Annual Report 2015/2016 at p19.

¹⁵⁸ SAPS (2019).



Table 71: Conviction rate for sexual offenses from 2012 to 2017/18

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Projected change over the previous year	Change over the period 2012/13 to 2016/17
Sexual Offences	66%	67.1%	69%	70.1%	71.1%	72.7%	2%	10%
Convictions	4 670	5 484	5 084	4 978	4 780	5 004	5%	7%
Verdict	7 093	8 174	7 372	7 098	6 669	6 878	3%	-3%

Table 4: TCC cases finalised with a verdict and conviction rate

Financial year	Verdict cases	Conviction rate
2013/14	2 357	65.9%
2014/15	2 285	68.4%
2015/16	2 340	71.8%
2016/17	2 334	71.1%
2017/18	2 549	74.5%

Parliament receives reports on the SOA's implementation. These reports must be scrutinised to ensure the effective implementation of the SOA to address GBV. The implementation of the SOA has received little attention from Parliamentary Committees during the 5th Parliament.

The HLP Report has recommended that Parliament should consider having regular annual mandatory dedicated intersectoral public hearings with the relevant Departments and stakeholders to obtain feedback from departments and input from the public on progress with the implementation of the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007, including bringing into operation Section 55 of the Act, and the regulations that should accompany this.

2) Child Justice

The Constitution, 1996¹⁵⁹ guards against the arbitrary arrest of children and protects children's rights, which include the right to a fair trial. In respect of children in conflict with law, the Constitution recognises that children are particularly vulnerable and in need of special protection, different from that of adults, and should only be detained as a measure of last resort. Thus, legislative measures and the criminal justice system must consider the best interests of the child at all times.

The Child Justice Act, 2008 (Act No. 75 of 2008) ("CJA") came into effect on 01 April 2010 and created special mechanisms, processes and procedures for children in conflict with the law. The Act promotes the spirit of *ubuntu* in the child justice system; provides special treatment for children in the justice system with the aim of breaking the cycle of crime;

¹⁵⁹ Constitution of South Africa, 1996



and promotes the cooperation between government departments (DOJCD, SAPS, Social Development, Health and Education) and civil society.¹⁶⁰

An Intersectoral-Committee for Child Justice (ISCCJ) was established through the CJA and is responsible for submitting an annual intersectoral report to Parliament, which highlights progress with the implementation of the CJA.

The DGs ISCCJ (there is also a National Operational ISCCJ) comprises the Director-Generals of Justice and Constitutional Development (as Chairperson), Social Development, Health, the National Director of Public Prosecutions, the National Commissioner of the South African Police Service (SAPS), and the National Commissioner of the Department of Correctional Services.

The child justice system provides *inter alia* that:

- Children who are arrested or who need to appear in court must be assessed by a probation officer to determine (a) whether a child is in need of care and must be referred to Children’s Court for placement by the Department of Social Development and (b) determine the age of the child for purposes of establishing whether the child has criminal capacity i.e. whether the child had the ability to (i) distinguish between right and wrong and (ii) conduct himself/herself in accordance with this insight into right and wrong, at the time of the commission of an offence.
- *The Child Justice Amendment Bill [B32 – 2018] (not finalised by 5th Parliament) proposes to raise the age of criminal capacity to 12 years of age. A child who lacks criminal capacity may be reported to a probation officer or social worker and can thus be referred to the Children’s Court (if the child is neglected) or to counselling and the State can divert them away from the formal criminal justice system if the magistrate believes they can benefit from diversion programmes.*
- Alternative sentences are imposed rather than custodial sentences.

From 2008, the CJA has drastically reduced the prison population of children through providing alternative sentences and diversion. However, the 2017/18 Inter-Department Annual Reports on the Implementation of the CJA, notes a “slight increase in the number of children detained in correctional facilities awaiting trial”, from 144 in 2016/17 to 147 in 2017/18.¹⁶¹ The increase in the number of children sentenced to imprisonment (from 51 in 2016/17 to 62 in 2017/18) may be attributed to the parallel increase in the number of children convicted of serious offences like rape, robbery with aggravating circumstances and murder.

Table 72: Types of sentence for child offenders

Type of sentence	2015/16	2016/17	2017/18
Community-based sentence	2	2	9
Restorative justice	1	3	4

¹⁶⁰ Wakefield L (2011). Is the Act Working For Children? Accessed at <https://www.issafrica.org/uploads/CQ38Wakefield.pdf>.

¹⁶¹ SA News (2018)



Type of sentence	2015/16	2016/17	2017/18
Alternative to fine	7	8	6
Correctional supervision	15	21	46
Compulsory residence at a child and youth care facility	17	26	39
Postponement or suspension of the passing sentence	97	169	222
Imprisonment	15	51	62
Total	154	280	407

Currently, South Africa has three **One Stop Child Justice Centres** (Nerina in the Eastern Cape, Matlosana in the North West and Mangaung in the Free State) which provide co-ordinated, co-operative service provision by a range of role-players and services providers, from Government and Non-Governmental Organisations in one place. A worrying trend is the decline in the performance of these Centres, especially Matlosana and Mangaung, which has prompted the Department to appoint a Task Team to visit these Centres.¹⁶²

Table 73: One Stop Child Justice Centres

One Stop Child Justice Centre	2015/16		2016/17		2017/18	
	New cases	Cases diverted	New Cases	Cases diverted	New Cases	Cases diverted
Nerina	285	100	309	21	327	38
Mangaung	176	32	122	34	77	4
Matlosana	172	2	106	92	82	0

The main aim of the CJA is to divert children away from the formal criminal justice system. It is a major concern that Matlosana did not have a single diversion in 2017/18, and only two in 2015/16, compared to 92 diversions in 2016/17. Since 2015/16, Matlosana had also not referred any children to Children's Court. The reasons for this phenomenon and the decline in the performance of particularly Matlosana requires urgent and appropriate intervention.

The implementation of the CJA has received little attention from Parliamentary Committees during the 5th Parliament.

The Child Justice Amendment Bill, 2018 [B32B-2018] was passed by the National Assembly on 27 November 2018 and transmitted to the NCOP for concurrence. Importantly, the Amendment Bill proposed the increase of criminal capacity of children from 10 years to 12 years. The Bill was not processed by the 5th Parliament and will be reintroduced in the 6th Parliament.

The HLP Report has recommended that Parliament should consider having regular annual mandatory dedicated intersectoral public hearings with the relevant departments, as well as stakeholders to obtain feedback from

¹⁶² Department of Justice and Constitutional Development (2018). 2017-18 Annual Reports on the implementation of the Child Justice Act, 75 of 2008. p30



departments and input from the public on progress with the implementation of the Child Justice Act.

3) Border Security through the introduction of the Border Management Agency (BMA)

The Border Management Agency (BMA) Bill, 2016 [B9-2016] was introduced on 26 May 2016 and referred to the Portfolio Committee on Home Affairs. The Bill [B9B-2016] was passed by the NA on 08 June 2017 and was transmitted to the NCOP for concurrence.

The Bill was not processed by the NCOP during the 5th Parliament and will be reintroduced in the 6th Parliament.

Once in operation, the Border Management Agency will form a national public entity outside of the public service, and is an armed service established in terms of section 199(3) of the Constitution. (2) The border law enforcement functions within the border law enforcement area and at ports of entry must be performed exclusively by the officers of the Authority. The formation of the BMA has far-reaching implications for the SAPS and its border security function under the Visible Policing Programme. The SANDF does not form part of the BMA.

The detention of illegal migrants also requires monitoring as part of border management. The **Lindela Detention Centre** is the only facility of its kind in South Africa where illegal migrants are detained while awaiting deportation. In 2014 the South African Human Rights Commission (SAHRC) and other applicant organisations argued that Lindela's practices regarding detention at the facility were unconstitutional and in contravention of the Immigration Act 13 of 2002. The court found in favour of the Commission and ordered the Department to consult and liaise on all the practices and non-compliance of the Immigration Act, such as those that happened when the immigrants were held up at the centre.¹⁶³

It was reported in December 2017 that the services provided by private security company Bosasa, which has run the Lindela Repatriation Centre, including health care services at its clinic, since 2007, are so poor that, not only are some detainees denied life-saving care, the centre may also be putting children behind bars alongside adults, in violation of Home Affairs policies.¹⁶⁴

4) Promotion of Access to Information Act 2 of 2000

The Promotion of Access to Information Act ("PAIA"), No. 2 of 2000 gives effect to the constitutional right of access to any information held by the State and any information held by another person and that is required for the exercise or protection of any rights.

The HLP Report has recommended that Parliament should consider having regular annual mandatory dedicated intersectoral public hearings with

¹⁶³ South African Human Rights Commission and Others v Minister of Home Affairs: Naledi Pandor and Others (41571/12) [2014] ZAGPJHC 198; 2014 (11) BCLR 1352 (GJ); [2014] 4 All SA 482 (GJ)

¹⁶⁴ SAHRC, Children illegally detained under Bosasa's watch at Lindela as healthcare crumbles (Accessed at <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1075-children-illegally-detained-under-bosasa-s-watch-at-lindela-as-healthcare-crumbles>)



departments and stakeholders to obtain feedback from departments and input from the public on progress with the implementation of the Promotion of Access to Information Act and the success of the Information Regulator in resolving the serious problems in accessing information.

5) Prevention and Combating of Torture of Persons Act 13 of 2013

The Prevention and Combating of Torture of Persons Act provides that the State has a duty to promote awareness of the prohibition against torture. As required by the Act the President has designated the Ministers of Justice and Constitutional Development and Police to cause programmes to be developed to ensure all public officials who may be involved in the custody, interrogation, or treatment of a person subjected to any form of arrest, detention or imprisonment are educated and informed of the prohibition against torture and to train public officials on the prohibition, prevention and combating of torture.

The Optional Protocol for the Convention against Torture (OPCAT) was passed by Parliament in March 2019. The extent of the roll-out of public awareness of the prohibition against torture programmes and the establishment of a National Preventive Mechanism (NPM), following the ratification of the OPCAT, to monitor places of deprivation of liberty on an announced or unannounced basis requires monitoring.

6) Prevention and Combating of Trafficking in Persons Act 7 of 2013

The aims of the Prevention and Combating of Trafficking in Persons Act can only be achieved through proper coordination. Several structures have been put in place, such as the National Inter-Sectoral Committee on Trafficking in Persons (TIP), Provincial Inter-Sectoral Committees and Rapid Response Teams. However, it has also been reported that more effective data collection and collaboration between stakeholders is still needed.

The Act provides that the Justice Minister must approve a National Policy Framework (after consulting with Ministers of the Department of Monitoring and Evaluation (DPME), Finance, Home Affairs, Health, International Relations and Co-operation, Labour, Police, Social Development, State Security, Women and the National Director of Public Prosecutions (NDPP) which must, within a year after the commencement of the Act be tabled in Parliament.¹⁶⁵

On 25 April 2019, at the launch of the National Policy Framework (NPF), the Deputy Justice Minister stated that on 5 March 2019, the Justice, Crime Prevention and Security Cluster approved and supported the implementation of the NPF and on the 1st of April 2019, Justice Minister Masutha approved the

¹⁶⁵On 9 August 2015, the Prevention and Combating of Trafficking in Persons Act came in to operation, with the exception of: section 15 (Protective measures for purposes of investigation and prosecution in respect of foreign victims of trafficking); section 16 (Facilitation of police investigation or prosecution in case of foreign witnesses) and section 31(2)(b)(ii). (Repatriation of victim of trafficking from Republic.)



NPF for roll-out.¹⁶⁶ The NPF must now be tabled in Parliament and must be published in the Gazette within two months after tabling in Parliament.

Within one year of the commencement of the Act each of the above mentioned Departments/institutions must submit a report to Parliament on the implementation of the Act as well as a report reflecting statistical information collected from the integrated information system established in terms of the Act to facilitate effective monitoring and evaluation of the Act.

To date, no Department has submitted a report on the implementation of the Prevention and Combatting of Trafficking in Persons Act to Parliament, despite this being a legislated mandate.

7) Anti-fraud and corruption machinery¹⁶⁷

The DOJCD has established an Ethics Committee to provide oversight and guidance on the management of ethics and integrity matters. It implemented and maintained the Fraud Prevention and Anti-Corruption Policy, Strategy and Plan, which outlines procedures for employees and the public to report incidents of alleged fraud and corruption. It also has a dedicated Fraud Audit Unit that investigates all the reported fraud and corruption allegations in line with the Government’s Anti-Corruption Strategy. The Audit and Risk Committee (ARC), which oversees allegations of fraud, corruption and financial misconduct, reported a 96% finalisation rate in 2017/18.¹⁶⁸

Over the past five years, there has been an increase in the number of government officials convicted of corruption.

Table 74: Convictions of corruption

Financial Year	Number of persons convicted of corruption- amounts exceeding R5 million	Government officials convicted of corruption
2013/14	34	73
2014/15	23	130
2015/16	24	206
2016/17	29	224
2017/18	37	213

The President established an Investigative Directorate in the Office of the National Director of Public Prosecutions¹⁶⁹ for purpose of prosecuting those referred by the various Judicial Commissions of Enquiry into state capture and corruption at a number of state entities. This is in addition to the matters of corruption ordinarily handled by the Special Investigative Unit (SIU) of the Department of Justice and Constitutional Development and the SAPS, especially

¹⁶⁶Keynote Address by the Deputy Minister of the Justice and Constitutional Development, the Hon JH Jeffery, MP, at the Launch of the Prevention and Combatting of Trafficking in Persons (TIP) National Policy Framework, held in Pretoria, 25 April 2019 (Accessed at http://www.justice.gov.za/m_speeches/2019/20190425-TIP_dm.html)

¹⁶⁷ Office of the Chief Justice and Judicial Administration (2018). Annual Report. Budget Vote 22. 2017/18.

¹⁶⁸ Office of the Chief Justice and Judicial Administration (2018). Annual Report. Budget Vote 22. 2017/18. p47

¹⁶⁹ Parliament of South Africa (2019). Announcements, Tablings and Committee Reports 39 – 2019. Sixth Session. Fifth Parliament. 27 March 2019.



the SAPS's DPCI, known as the Hawks. There is also a Specialised Commercial Crimes Court in Johannesburg and the recently appointed Special Investigating Unit Tribunal will expedite the finalisation of SIU matters for civil litigation.



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