



6 October 2013

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT:
EXPENDITURE TRENDS 2012/13 AND FIRST QUARTER 2013**

1. Introduction

The document provides an overview of spending trends for the Vote (in particular the Department's Administration, Court Services and State Legal Services programmes; the NPA; and the Auxiliary and Associated Services: Justice Modernisation sub-programme; as well as the direct charge for Judges and Magistrates Salaries). It both describes the reported trends, as well as providing comment. There are two parts:

- Part 1 contextualises spending within the broader fiscal and sector policies and the 2012 (Appropriation and Adjusted) and 2013 Budget Allocations. Spending trends or patterns for 2011/12, 2012/13 and the First Quarter of 2013/14 are provided and emerging issues identified.
- Part 2 describes spending for each quarter from 1 April 2012 to 30 June 2013 at both programme and economic classification level.

Part 1

2. Background

2.1. Fiscal policy

From a fiscal perspective, government has emphasised its intention for the medium term to contain spending while maintaining key social and economic programmes. There is concern that additional budget allocations in previous years have not resulted in improvements to service delivery. The quality and composition of spending are identified as being a challenge.

Therefore, three policy objectives are set out for the medium term to address the above:

- *Improving the outcomes of spending and shifting the composition of spending from consumption to infrastructure by creating social and economic assets.*
- *Ensuring that expenditure grows at a moderate pace.*
- *Stabilising public debt.*

Generally, with no upward adjustments of the overall spending projections as set out in the 2012 Budget and during the first two years of the MTEF period, departments are expected to ensure that budgets are spent efficiently by making savings and reprioritising funds from underperforming programmes.

2.2. Sector policy

Crime and corruption is regarded as posing the greatest threat to the realisation of all the five priorities of Government. Delivery on Government's Outcome 3 (All people in South Africa are and feel safe) gave impetus for a JCPS Cluster delivery agreement to achieve the Outcome and accompanying targets. For some time now, funds have been prioritised to the Justice Vote to improve the efficiency of the criminal justice system, including technology and modernisation programmes that also focus on alignment and integration of systems where appropriate.

An increased focus on efforts to combat waste, inefficiency and corruption includes strengthening the anti-corruption system by providing additional resources to the Public Protector South Africa, the Anti-Corruption Task Team (of which the SIU is a part), etc.

The establishment and strengthening of the Office of the Chief Justice (OCJ) is regarded as vital to transforming of the judicial system. The intention is that the OCJ, in the medium term, will have its own Vote. In the meantime, the focus is on strengthening the Office to enhance its capacity to support the Chief Justice in his or her role as head of the Judiciary. The Office was proclaimed a government department in 2010. A Secretary-General was appointed at the beginning of the 2013/14 financial year as the Office's administrative head and accounting officer.

Various institutional reforms are intended to further strengthen both judicial accountability and independence. These take the form of legislation, strengthened judicial governance and regulatory arrangements and measures to improve judicial training, etc. Other aspects of transformation address the realignment of magisterial boundaries, which are based on 'old-order' racial and geopolitical boundaries of the self-governing and independent states with municipal boundaries. This includes transforming branch courts in traditional black areas and rural areas to full-service courts. Also, a process of rationalising the areas of jurisdiction of courts to enhance access to justice by aligning magisterial with municipal boundaries is underway.

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

In 2012/13, three key goals already identified as priorities continued to receive special attention:

- Good governance and clean administration (No audit qualification in 2012/13).
- Service turnaround in maintenance services.
- Service turnaround in Masters Branch.

The Department also had several major infrastructure projects in progress. Notably, the completion date for the Limpopo High Court at Polokwane was revised from January to July 2012 and would require further revision due to added scope and

other delays. The plan to build a new court in Mpumalanga at Nelspruit is to be implemented in 2013/14. The

This year, 2013/14, the re-establishment of dedicated sexual offence courts throughout the country was announced as a priority. Forty-seven of these courts should be ready to operate in the 2013/14 financial year, while others will be designated in subsequent years. The JCPS Cluster is developing an integrated programme to take forward the work already done by task teams established to look into the re-establishment of the sexual offences courts. This will ensure co-ordination between the sexual offences courts and the SAPS Family Violence, Child Protection and Sexual Offences Units. There are also on-going discussions with the Office of the Chief Justice, the South African Judicial Education Institute and Regional Court Presidents aimed at strengthening social context training for judicial officers to deal effectively with these matters.

4.2. Overview of the MTEF Budget Allocation: Vote 24 – Justice and Constitutional Development

Table 1: Budget Allocation 2011/12 – 2015/16

Programme	Budget 2011/12– 2015/16					
		Main	Adjusted	Medium-term estimates		
(R thousand)	2011/12	2012/13		2013/14	2014/15	2015/16
Administration	1 686.3	1 762.6	1 463.9	1 534.8	1 622.2	1 703.4
Court Services	4 331.8	5 284.6	5 377.4	5 862.4	6 223.8	6 500.7
State Legal Services	721.4	768.2	784.9	852	898.5	976.1
NPA y	2 651.7	2 815.8	2 839.8	3 050.4	3 236.2	3 357.4
Auxiliary & Associated Services	2 190.1	2 448.5	2 555.5	2 834.7	3 079.6	3 274.4
Total	11581.2	13079.6	13021.4	14 34.2	15060.3	15812.1
Direct charge (Judges and Magistrates' salaries)	2 104.2	2 401.9	2 401.9	2 575.7	2 730.3	2 855.9
Total	13685.4	15481.5	15423.3	16 709.9	17790.6	18667.9

- The *main appropriation* increased from R11.6 billion in 2011/12 to R13.08 billion in 2012/13. In addition, a direct charge against the National Revenue Fund of R2.4 billion for judges and magistrates' salaries brought the overall appropriation for 2012/13 to R15.5 billion.
- An amount of R253 million was added to the Department's and NPA's baseline for 2012/13. Additional amounts were for court infrastructure (R100 million) and improved conditions of service (R167.6 million). The Department, however made R14.4 million available to LASA from its baseline for carry through costs of the Children's Act and Child Justice Act.

- A cumulative amount of R152.1 million was allocated to the independent bodies in addition to their baselines. The bulk went to the SIU and the Public Protector for increased investigative capacity (R100 million and R15 million respectively) and, as mentioned above, to LASA for the carry through costs of the Children's Act and Child Justice Act (R14.4 million). The remainder was for improved conditions of service.
- A total amount of R41 million was set aside for priority projects in 2012/13. Specifically, R16 million was for the Commission of Enquiry: Strategic Defence Procurement Package; R2.5 for the Assessment of the impact of the decisions of the Constitutional Court and the Supreme Court of Appeal on South African law and jurisprudence; and R22.4 million was for the transformation of State Legal Services.

4.3. Adjusted Appropriation 2012/13

- Adjustments resulted in the appropriation *decreasing* by R58 million from R13.08 to R13.02 million.
- In Auxiliary and Associated Services, R30.3 million was rolled over to the Justice Department from unspent funds of the DPW for costs owed to the SIU as a result of its investigation of the DPW.
- The Department declared 'savings' of R200 million due to delays in the implementation of infrastructure projects. The Department received permission to reprioritise this amount elsewhere. (Note. Police declared savings of R300 million on infrastructure projects, while DPW declared R212 million as savings on infrastructure projects).
- An amount of R8 million in 'unforeseeable and unavoidable expenditure' was allocated to the Public Protector for its investigations that target the systematic causes of problems and complaints against organs of state.
- Virements were within acceptable limits (well below the 8% permitted in terms of Treasury regulations). Notably, the largest virements were from Court Services to Legal Aid South Africa at R10.7 million and to Auxiliary and Associated Services - Justice Modernisation at R46 million:
- Administration - There were no virements from Administration, although 1.8% of the programme budget was shifted within the programme.
- Court Services - There were virements from Court Services (at 1.2% of the programme budget) to -
 - Administration. R1.6 million was shifted for translation of extradition and mutual legal assistance documents and service charters for courts; R914 million was shifted for Khaedu training of senior management.
 - NPA and Legal Aid SA. R2.9 million and R1.6 million were shifted to the NPA and Legal Aid SA respectively for their participation in the establishment of One-Stop Child Justice Centres.

- Auxiliary and Associated Services – Justice Modernisation. R42 million was shifted for the maintenance of the digital court recording systems and the deployment of an integrated cases management system.
- Legal Aid SA. R9.1 million was shifted for the implementation of legislation.
- State Legal Services. Virements from State Legal Services amounted to 0.2% of the programme budget, while shifts within the programme were at 0.4%
- National Prosecuting Authority and Auxiliary and Associated Services. There were no virements, while shifts within both programme budgets were at 1.4%.

In addition, funds were shifted from Administration (R305.9 million) and Auxiliary and Associated Services (R5.03 million) to Court Services flowing from a function shift relating to court security projects.

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

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

- The main appropriation to the Vote increased from R15.3 billion in 2012/13 to R16.7 billion in 2013/14. This includes a direct charge against the National Revenue Fund of R2.6 billion for judges and magistrates' salaries. If the direct charge is excluded, the appropriation in 2013/14 for the Vote's five programmes is R14.1 billion.
- Overall, in 2013/14, the allocation grows in real terms by 3.3%. The Administration, Court Services and State Legal Services programmes, which the Department administers directly, show little real growth from 2012/13 (The programmes grow in real terms by -0.72%, 3.24% and 2.8% respectively). Similarly, the allocation to the National Prosecuting Authority grows in real terms by only 1.72%. The Auxiliary and Associated Services programme shows the largest growth: this programme grows in real terms by 9.73% driven by additional allocations for the criminal justice system revamp and further capacity in the public entities and constitutional institutions.
- Additional allocations to the Vote for 2013/14 are for the following policy priorities:
 - R318 million in 2013/14, R419 million in 2014/15 and R558 million in 2015/16 for the criminal justice system revamp, Thuthuzela Care Centres (TCCs) and security at courts.
 - R22 million in 2013/14, R31 million in 2014/15 and R40 million in 2015/16 for additional capacity in public entities and constitutional institutions.
- Notably, previous budgets provided *additional* allocations for infrastructure spending: R 340 million in 2012/13; R350 million in 2013/14 and R100 million in 2014/15. The Department, however, reported a 'savings' of R200 million in 2012/13 on its CAPEX budget as a result of delays on the part of the

Department of Public Works. With National Treasury approval, the amount was reprioritised.

- The Department made R14.4 million (2012/13), R15.1 million (2013/14) and R15.9 million (2014/15) available to LASA from its baseline for carry through costs of the Children's Act and Child Justice Act.
- Cabinet approved reductions of R610 million over the medium term are to be affected over spending for goods and services and payments for capital assets flowing from delays in the implementation of capital works projects.

3. Spending trends in 2011/12 (for comparative purposes)

In 2011/12, although 99.5% of the allocation to the Vote for 2011/12 was spent, at programme level there are significant variations in spending:

- Higher than expected spending occurred in Administration (107.2%) and Auxiliary and Associated Services (100.5%) -
 - In Administration, overspending arose as a result of payments for security services. Although the services were rendered in 2010/11, the outstanding claim was settled in the 2011/12 financial year.
 - In Auxiliary and Associated Services, the overspending was attributed to the SIU's cash flow problems.¹
- Court Services (96.8%) and State Legal Services (97.2%) both under-spent. Underspending for both these programmes was attributed to unfilled posts:
 - There were 1438 funded posts that remained unfilled in Court Services at the end of March 2012.
 - In State Legal Services, there were 219 funded posts that remained unfilled.
- The NPA also under-spent marginally (98.7%). The under-spending was attributed to a deliberate savings on 'machinery and equipment' to assist the SIU with cash flow problems.
- Under the Direct Charge, there was less than expected spending on judges and magistrates salaries (98.6%), which were attributed to delays in filling vacant magistrate positions.

5. Spending trends 2012/13 and First Quarter 2013/14

Table 2: % quarterly spending at programme level 2012/13 and First Quarter 2013/14

Programme	2012/13				2013/14
	Quarter 1 (%)	Quarter 2 (%)	Quarter 3 (%)	Quarter 4 (%)	Quarter 1 (%)
<i>Administration</i>	31.2	53.8	68.7	100.8	18.3
<i>Court Services</i>	24.3	44.4	72	100.3	20.3
<i>State Legal Services</i>	22.9	49.2	72.8	101.2	22.8
<i>NPA</i>	23.9	47.7	75.6	100	22.7

¹ This has been resolved.

<i>Auxiliary and Associated Services</i>	23.6	45.4	65	97.3	18
<i>Direct Charge</i>	21.7	42.1	64.3	85.7	23.3

5.2. Overview of spending trends 2012/13 and First Quarter 2013

- In 2012/13, although 99.8% of the programme Vote was spent (97.6%, if the allocation to Judges and Magistrates salaries is included), at programme level there are variations in spending:
- Higher than expected spending occurred in Administration (100.8%), Court Services (100.3%) and State Legal Services (101.2%) -
 - In Administration, overspending arose as a result of payments for security services relating to 2011/12, as well as higher than budgeted increases in municipal rates and taxes and the cost of security services.
 - In Court Services, the overspending related to salary upgrades for clerks on level 3 and 4 to level 5.
 - In State Legal Services, overspending was attributed to unanticipated payment for claims against the State.
- In Auxiliary and Associated Services, under-spending was attributed to delays in receiving invoices from JCPS Cluster departments for justice modernisation programmes.
- The NPA spent 100% of its budget (although it's 'compensation of employees' budget was under pressure in the second half of 2012/13 as a result of implementing a court order relating to 2005 job evaluation results, OSD costs and notch increases).
- Under the Direct Charge, there was less than expected spending on judges and magistrates salaries (85.7%), which was attributed to delays in filling vacant magistrate and judges positions.

In the First Quarter of 2013/14, there is under spending for all programmes, mostly attributed to outstanding invoices. At economic classification level, significant under spending occurred once again under the item 'Buildings and Fixed Structures' because of capacity challenges at DPW (at 2%).

5.3. Emerging trends in spending 2012/13 and First Quarter 2013

5.3.1. Trends in 2012/13:

- In 2011/12, overall, there was considerable overspending on *Administration* at 107% or R123 million, while there was less than expected spending on *Court Services* at 96.8% or R138 million and *State Legal Services* at 97.2% or R19.9 million. However, in 2012/13, there was only slight over-spending on Administration (at 100.8%). Core service delivery programmes, such as Court Services, State Legal Services and the NPA, spent 100.3%, 101.2% and 100% respectively.
- In terms of economic classification, at 31 March 2013, current payments was at 99%; transfers and subsidies at 97% and; payments for capital assets was at 80.5% against projected expenditure.

- The cost of providing security at courts and other justice service points is a funding challenge for the Department that remains unresolved.
- Accruals have also been a problem within the Department, especially related to expenditure on security services – although more recent indications (2013/14) are that the Department has improved its systems to better manage payment of its creditors within the 30-days stipulated.
- Although the vacancy rate within the Department itself has improved overall, vacancies in key occupations remain. For the overall Vote, there was under-spending for the compensation of employees' budget at 97%, which is a concern given that this is a service delivery driven Vote. Nor is it clear what the consequences of abolishing certain posts, especially in the NPA (prosecutors) as a result of funding challenges, will be for service delivery and for the effective and efficient functioning of the sector as a whole. Although overall, there is decided improvement in the vacancy rate, this should be viewed with some caution.
- Only 85% of the direct transfer was spent because of unfilled magistrates' posts.
- Less than 75% of the CAPEX – Buildings and other fixed structures' budget was spent, despite a declared savings of R200 million.
- Justice modernisation. There is consistent under-spending under this sub-programme.

5.3.2. First quarter 2013/14

- There is under spending for all programmes, mostly attributed to outstanding invoices.
- Notably, the NPA reports that it has delayed paying performance bonuses until the second quarter but the reasons for this are unclear, as is the impact payment of the bonuses would have on spending in the second quarter.
- Once again, there is under spending in the Auxiliary and Associated Services: Justice Modernisation as a result of delays in implementing IJS projects. This is a concern given the key role that this sub-programme has for the CJS Revamp project.
- At economic classification level, significant under spending on 'Buildings and other fixed structures' (at 2.8%) indicates continuing capacity challenges which impact on spending this budget.

6. Issues emerging during the period under review

There are a number of identifiable concerns that appear across the years under review (2011/12, 2012/13 and 2013/14 to date):

6.2. *Vacancies*²

Vacancies within the Department are an ongoing challenge at both programme and economic classification levels. For the overall Vote, at 31 March 2013, there was under-spending for the 'compensation of employees' budget at 97%, which is especially concerning as the upgrade of clerks from levels 3 and 4 to level 5 should have inflated spending under this item.

² It is unclear from the expenditure reports whether the figures provided relate to the Department, NPA and Direct Vote. There does appear to be a discrepancy when the figures are compared with the figures reported in the Annual Report 2011/12 and 2012/13.

Although it is true that the Department's overall vacancy rate appears to have decreased significantly (from 13.5% at 31 March 2012 to 11% at 31 March 2013), the challenges relating to vacancies at senior management level and in critical occupations remain:

- Vacancies at senior management level have shown significant improvement during the period under review (decreasing from 20.3% at 31 March 2012 to 16.9% at 31 March 2013 according to the Annual Reports, and further to 10% at 30 June 2013 according to Treasury's expenditure report). But these vacancies still pose 'control' issues with potentially undesirable consequences for the Department's operations, as well as for service delivery.³
- According to Treasury's expenditure report, at 31 March 2013, vacancies under critical occupations include: Attorneys 16.9% or 42 posts; general legal and related professionals 19.8% or 204 posts; Judges 24.5% or 141 posts; language practitioners and interpreters 20.6% or 95 posts; legal-related officers 17.7% or 46 posts; Magistrates 19.7% or 445 posts; and social work and related professionals 22.8% or 29 posts.

A further concern is that the Department's budgetary pressures may discourage it from filling the vacancies to fund operations, especially as staff need also to be provided with tools of trade, affecting the already stretched 'Goods and Services' budget. (Notably although there was some overspending on the Goods and Services budget for 2012/13, this was attributed to escalating rates and taxes and increased costs of security services).

6.3. Accruals from one financial year to the next (security services)

The Department began 2012/13 owing R100 million for security services. Notably, the Department also reported accrued invoices in 2011/12 for security services delivered in 2010/11. Once more in 2012/13, the Department paid invoices arising in 2011/12 for security services in the First Quarter of 2012/13. The AG's observed for the 2011/12 financial year that the Department's overall financial health was a concern: In particular, the AG noted that accrued claims exceeded the voted funds surrendered: If the Department had paid all accrued invoices timeously, it would have overspent its budget leading to unauthorised expenditure. The Committee also queried whether budget pressures had a role in delayed payments to creditors (beyond the stipulated 30 days (section 38(1) PFMA)).

Interestingly, for the first-half of the 2012/13 financial year, the rollover of this amount was given as a reason for over-spending in the Administration programme but by the fourth quarter the reason reported for over-spending was unanticipated increase in the cost of security services. Meeting the cost of providing security services at justice service points and to officials appears to be an ongoing challenge for the Department.

³ Note that the statistics contained in National Treasury's Expenditure reports and the Annual Reports do not correlate. However, it is unclear (but probable) that National Treasury's statistics includes the NPA.

6.4. *Non-payment of creditors within the 30-day directive.*

Recently (17 September 2013), the Department briefed the Standing Committee on Appropriations (SCOA) on measures it has taken in to ensure payment of creditors within the 30-day directive: It acknowledged that this had been a challenge but measures had been put in place to correct the problem. In the past 13 months, the Department has paid 90% of creditors (R5.4 billion of R6.08 billion) within the 30-day directive. The Department did provide cogent operational reasons for delayed payments but also alerted SCOA to the impact of budget cuts in the face of expectations to expand services delivered. Some of these pressures include: Unfunded prioritised and emerging priorities and mandates, especially the Specialised Courts (Sexual Offences); in-year pressures relating to difficulties anticipating increased fuel costs and the impact on transport costs for the Department; high security costs at the Department, NPA and for Judges and Magistrates; ongoing Commissions' of Inquiry; increased in municipal charges and leases well above budget growth (in the past 3 years, R215 million has been diverted away from programmes for this item); and rollover of expenditure (accruals). That the Department identifies the specialised sexual offence courts as an unfunded emerging priority is concerning.

6.5. *Escalating rates and municipal taxes and leased accommodation*

Escalating rates and municipal taxes and leased accommodation charges are given as a reason for the overspending in the Administration programme at 31 March 2013. The Department reported during the Budget 2013/14 that the shortfall between projected and actual expenditure for these items has become so great that it is no longer able to absorb it within its baseline without compromising service delivery. The Committee therefore supported the Department's request for the following additional amounts: R250 million in 2013/14; R293.3 million in 2014/15 and; R345 million in 2015/16.

6.6. *Direct charge*

There was considerable under-spending (at 31 March 2013 – 85%) under the Direct Charge as a consequence of unfilled posts - especially for magistrates. (In 2011/12, 98% of the Direct Charge was spent).

6.7. *Infrastructure spending (building courts)*

The priority on funding infrastructure is reflected in substantial increases (R3 billion over the MTEF) to the Department's CAPEX budget from 2012/13 to build new courts, including the Limpopo High Court at Polokwane and the Mpumalanga High Court at Nelspruit. (Historically, these provinces have not had High Courts and have been serviced from Gauteng. Building new courts are a policy imperative, increasing access to justice and contributing to transformation.) Notably, the Annual Report 2011/12 stated that in 2011/12, there were 3 courts under construction, of which 1 was completed. The Ntuzuma court, which could not be completed in 2010/11, was finished in the last quarter of 2011/12 as well (but was only officially opened in May 2013/14). The Department has been allocated approximately R3 billion for capital expenditure over the medium term, specifically: R1.19 billion 2012/13; R1.26 2013/14 and R1.37 billion 2014/15.

Unfortunately, the Department has consistently shown itself unable to spend the allocated funds as a result of delays on the part of the Department of Public Works. In 2012/13, Department declared a savings of R200 million of its CAPEX budget and, even then, only managed to spend approximately 75% of the allocation for building as a result of capacity constraints in the Department of Public Works. Again, in 2013/14, by the end of the First Quarter, CAPEX spending is alarmingly low at 2% and it is possible that the Department will once more need to declare a savings.

The Committee has in the recent past expressed concern at the state of repair of many of the courts – the infrastructure is often old and degraded with adverse consequences for service delivery. The PSC also identified outdated/dilapidated court infrastructure at Regional Courts in all 9 provinces as contributing to court backlogs and delayed case finalisation rates. The Committee has requested that the Department weigh carefully the need to build new courts against maintain what already exists while acknowledging budget constraints.

6.8. Impact of budget cuts for operations

The reluctance to fund spending that is categorised as ‘consumption’ impacts on the Department’s operational budget. The mandated delivery of a wide range of justice services requires not only a large national footprint but also enough staff (with the requisite expertise) to do so. Given these factors, the Department’s budget is, for example, vulnerable to higher than projected/planned escalations in leased accommodation, rates and taxes, and wage settlements (Note, although there is a three-year wage settlement (for 2012/13; 2013/14 and 2014/15), the increase in 2012/13 was higher than originally budgeted for and the Vote received R103.4 million in the Adjustments budget for this purpose)).

6.9. Justice modernisation.

This sub-programme is intended to ‘design and implement IT infrastructure and networks to re-engineer business processes for the administration of civil and criminal justice in the integrated justice system’. It is closely related to the Integrated Justice System (IJS) projects. The need for improved co-ordination and integration of the JCPS Cluster Department’s IT systems was identified in 2007 as vital to efforts to ensure the effective implementation of the Criminal Justice System’s Seven-Point Plan (now the CJS Revamp). However, there appears to be consistent under-spending for this sub-programme for every quarter. The under-spending is attributed mostly to delays in receiving invoices from JCPS Cluster departments (at 31 March 2013 - 97.3%). In the first Quarter 2013/14, however, the reason for under-spending was given as delays in implementation of CJS projects (not just delays in receiving invoices): an amount of R300 million is recorded as unspent (R300 million was reprioritised from SAPS in 2013/14 to Justice from the criminal justice sector revamp and modernisation programme; R400 million in 2014/15 and R450 million in 2015/16). Notably, the strategic and annual plans do not address this sub-programme, which creates difficulties in tracking and evaluating performance. It is unclear how much money has been spent on the IJS/CJS Revamp, or what value has been received?

6.10. Unfunded mandates

The Department reports unfunded priorities/mandates. Further clarification is needed regarding any unfunded priorities/mandates (such as the dedicated sexual offence courts) and their impact on the Department's projected budget? The Committee expressed concern in its Budget report 2013/14 regarding the impact that the commissions of inquiry, for example, have for the Department's budget. The Department is expected to fund these commissions and be reimbursed later. However, it is still not clear whether the Department has been reimbursed.

6.11. National Prosecuting Authority

The NPA spent 100% of its budget in 2012/13, compared with 2011/12 when the NPA under-spent marginally (98.7%). The under-spending in 2011/12 was attributed to a deliberate savings on 'machinery and equipment' to assist the SIU with cash flow problems. In contrast, the NPA experienced a funding crisis towards the end of 2012/13 flowing, especially, from implementing a Job Evaluation award. As a result, the NPA has had to affect cost-saving measures which impact on its overall operations. Among others, this has also led to the suspension of the Aspirant Prosecutor Programme. The NPA projects that there will be a shortfall of R78 million in year 2014/15 and R82 million in 2015/16 on its compensation of employees' budget and is unable to fill vacancies as they arise. The consequences of this strategy for the effective and efficient functioning of the criminal justice system is concerning.

The NPA also indicated that there is no money for payment of performance awards and that these will be affected by way of forced savings under the Goods and Services budget (only 20% of the NPA's overall budget). Notably, the NPA has delayed payment of the performance awards to the Second Quarter 2013/14. In its Budget report 2013/14, the Committee indicated that it was sympathetic to the NPA's request for additional funding (R200 million) but that it was puzzled at the tepid response of the Department and National Treasury to the NPA's predicament given the potentially disastrous consequences.

In addition, the Committee has been told that the NPA is addressing its funding crisis by removing all vacant posts from its staff establishment and will not fill any further vacancies that arise as it cannot afford to do so. It is unclear how this strategy has affected the overall vacancy rate, if at all. However, the possible consequences of this strategy for the delivery of prosecutorial services, as well as for the effective and efficient functioning of the sector as a whole, require further clarification. The NPA made it clear, for example, that it did not have capacity/resources to assign two prosecutors to each of the dedicated sexual offences courts when these are re-established, despite this being a national priority.

Part 2

7. Quarterly expenditure 2012/13 (1 April 2012 – 31 March 2013)

7.2. Expenditure trends First Quarter 2012/13 (1 April – 30 June 2012)

Table 3: Overall spending per programme First Quarter 2012/13 (1 April – 30 June 2012)

Programme	Actual (R thousand)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Administration	550 497	31.2 (24.5)	Payment of security invoices from previous years (R100 million)
Court Services	1 402 426	19.9 (24.3)	Vacancies and delays on the part of DPW re capital works project
State Legal Services	176 029	22.9 (23.9)	Delays in receiving legal costs claims from private law firms
NPA	672 300	23.9 (23.9)	-
Auxiliary and Associated Services	586 484	23.6 (24.8)	Delays in receiving claims from JCPS Cluster departments from Justice Modernisation projects
Direct transfer for judges and magistrates salaries	522 333	21.7 (24.1)	Delays in filling posts (magistrates)
Total	3 550 070	22.9 (24.3)	

Table 4: Overall spending per economic classification First Quarter 2012/13 (1 April – 30 June 2012)

Economic Classification	Actual (R'000)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Current payments	2 777 854	22.7 (23.3)	<ul style="list-style-type: none"> • Compensation of employees - vacancies • Goods and services – payment of invoices for security services (R100 million) • Interest and rent on land – delays in verifying claims received
• Compensation of employees	1 900 596	22.4 (23.5)	
• Goods and services	875 632	23.7 (22.8)	
• Interest and rent on land	1 626	5.7 (16)	
Transfers and subsidies	534 252	25.8 (24.8)	<ul style="list-style-type: none"> • Transfers to provinces and municipalities – higher than anticipated number of vehicle licences expired in first quarter
• Provinces and municipalities	152	46.1 (15.6)	
• Department agencies and accounts	507 781	26.3 (25)	
• Foreign governments	-	0 (0)	

and international organisations			
• Households	26 319	20 (23)	
Payments for capital assets	235 826	19.7 (32.9)	• Buildings and others fixed structures – delays receiving claims from DPW
• Buildings and other fixed structures	128 454	12.2 (32.3)	• Machinery and equipment – invoice for security services (R100 million)
• Machinery and equipment	98 941	67.5 (37.2)	
• Software and other intangible assets	8 430	10 157 (0)	
Payments for financial assets	2 138	421.7	Asset write offs for theft and losses
Total	3 550 070	22.9 (24.3)	

7.2.1. **Administration:** Actual spending in the Administration programme is greater than expected and is attributed to payment of invoices from previous years for security services that were paid in the first quarter. Underspending occurred in the Management sub-programme (at 21.3%) because of vacancies for senior managers.

7.2.2. **Court Services:** Overall, there is underspending for the programme at 19.9%.

There was higher than expected spending for the SCA (at 32%), High Courts (at 29%) and Specialised Courts (at 31%) sub-programmes attributed to travel and subsistence for judges. Underspending occurred in the Constitutional Court, Government Motor Transport and Facilities Management sub-programmes because of delays in procuring vehicles. However, there is also less than expected spending under the Lower Courts sub-programme (at 21%).

At economic classification level, for the most part actual spending is far less than projected, including 'compensation of employees' at 21.9% (because of non-filling of vacant posts). Under payments for capital assets, actual spending for 'Buildings and fixed structures' is at 11.9% because of delays on delivery of capital works project by DPW.

7.2.3. **State Legal Services:** Overall there was slightly less than expected spending at 22.9% because of delays in receiving legal costs claims from private law firms.

7.2.4. **National Prosecuting Authority:** Spending under this programme is largely on track. There was higher than expected spending under the Witness Protection sub-programme (at 25.9%) because of lease of vehicles for witness transportation; and the AFU sub-programme (at 29%) attributed to the appointment of two senior managers were appointed and consultancy fees. Under Goods and Services, spending was at 25.2% because of the Imperial Court settlement.

7.2.5. **Auxiliary and Associated Services:** Although spending is largely on track, there was higher than expected spending for the SIU (at 34.8%) attributed to non-renewal of existing contracts and non-invoicing of clients for work done as a result of legal opinion preventing the SIU from charging its clients. There was also less than expected spending under Justice Modernisation (at 13.9%) attributed to delays in receiving claims from JCPS Cluster departments.

7.3. Expenditure trends Second Quarter 2012 (1 July – 30 September 2012)

Table 5: Overall spending per programme Second Quarter 2012 (1 July – 30 September 2012)

Programme	Actual spending 2nd Quarter	Actual % spent 2nd Quarter / (Projected %)	Reason for under/over spending
Administration	934 412	53.8 (49.1)	Payment in the First Quarter of security invoices from previous years (R100 million)
Court Services	2 348 664	44.4 (50.1)	Vacancies and delays on the part of DPW re capital works project
State Legal Services	377 432	49.1 (49.2)	Delays in receiving legal costs claims from private law firms
NPA	1 342 221	47.7 (48.6)	Approved additional funding allocated to compensation of employees for greater than anticipated cost of living adjustment paid in October 2012
Auxiliary and Associated Services	1 110 770	45.4 (50.1)	Delays in receiving claims from government departments for IJS, as well as from SITA.
Subtotal	6 966 108	46.7 (49.6)	
Direct transfer for judges and magistrates salaries	1 010 222	42.1 (48.2)	Delays in filling posts for regional court magistrates.
Total	7 123 722	46 (49.3)	

Table 6: Overall spending per economic classification Second Quarter 2012 (1 July – 30 September 2012)

Economic Classification	Actual (R'000)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Current payments	606 066	45.9 (48.4)	<ul style="list-style-type: none"> • Compensation of employees - vacancies • Goods and services – the vacancy
• Compensation of employees	3 939 117	46.4 (48.3)	

<ul style="list-style-type: none"> • Goods and services • Interest and rent on land 	1 661 863 4 086	45 (48.7) 14.2 (34)	<ul style="list-style-type: none"> • rate has a direct impact on spending for goods and services. • Interest and rent on land – expenditure will be allocated during the 4th quarter 2012/13 after all expenditure for financial leases has been allocated.
Transfers and subsidies <ul style="list-style-type: none"> • Provinces and municipalities • Department agencies and accounts • Foreign governments and international organisations • Households 	1 004 481 228 965 194 - 39 058	48.6 (50) 84.6 (46.3) 50 (50.3) 0 (0) 30.1 (47.5)	Higher than anticipated number of vehicle licences expired in the 1 st Quarter.
Payments for capital assets <ul style="list-style-type: none"> • Buildings and other fixed structures • Machinery and equipment • Software and other intangible assets 	511 401 311 491 191 480 8430	42.7 (57.8) 29.6 (57.2) 130 (63.3) 11548.6 (53.4)	<ul style="list-style-type: none"> • Buildings and others fixed structures – delays in the capital works projects on part of DPW • Machinery and equipment – Changes in SCOA classifications for finance leases; R64 million was incorrectly allocated.
Payments for financial assets	2 774	0 (0)	Asset write offs for theft and losses
Total	7 123 722	46 (49.3)	

7.3.1. **Administration:** Overall spending in the Administration programme is greater than expected (at 53%) and remains attributed to payment of invoices from previous years for security services that were paid in the first quarter. Under-spending occurred in the Ministry and Management sub-programmes (at 40.7 and 24.4% respectively) because of vacancies.

7.3.2. **Court Services:** Overall, there is under-spending for the programme at 44.4%.

There was higher than expected spending for the SCA (at 53.7%), High Courts (at 61.6%) and Specialised Courts (at 74.9%) sub-programmes attributed to salary adjustments, payment of R10 million in this quarter from last year's expenditure and uncontrollable travel and subsistence for judges. Under-spending occurred in the Constitutional Court, Lower Courts and Facilities Management sub-programmes because of vacancies in the OCJ and delays on capital works projects.

At economic classification level, actual spending is far less than projected for transfers and subsidies (at 39%) and payments for capital assets (at 38.8%).

Actual spending for 'Buildings and fixed structures' is at 29.1%, - again attributed to delays on delivery of capital works project by DPW.

7.3.3. **State Legal Services:** Overall there was slightly less than expected spending at 49.1% - again because of delays in receiving legal costs claims from private law firms.

7.3.4. **National Prosecuting Authority:** Spending under this programme is largely on track. There was higher than expected spending under the Witness Protection sub-programme (at 53.8%) because of a court settlement payment in respect of witness fees; and the AFU sub-programme (at 52.6%) attributed to the appointment of two senior managers during the first quarter, compounded by legal cost and curator's fees.

7.3.5. **Auxiliary and Associated Services:** There was under-spending in this programme at 45.4%. There was also less than expected spending under Justice Modernisation (at 27.7%) attributed to delays in receiving claims from JCPS Cluster departments and from SITA.

7.3.6. **Direct charges:** There was less than projected spending at 2.1% and can be attributed to delays in filling posts of regional magistrates.

7.4. **Expenditure trends Third Quarter 2012/13 (1 October 2012 – 31 December 2012)**

(Note the adjustment reduced the Programme Vote to R13.02 billion)

Table 7: Overall spending per programme Third Quarter 2012/13 (1 October 2012 – 31 December 2012)

Programme	Actual (R' 000)	Actual % spent / (Projected %)	Reason for under/over spending
Administration	1 005 927	68.7/ (84.1%)	Vacancies in senior management posts
Court Services	3 878 410	72 (73.9)	-
State Legal Services	571 429	72.8 (72.5)	Unanticipated payment of claims against the state
NPA	2 147 843	75.6 (73.2)	Implementation of job evaluation court settlement in Nov/Dec 2112
Auxiliary and Associated Services	1 661 662	65 (72.5)	Delays in receiving invoices for justice modernisation projects
Subtotal	9 265 272	71.2 (74.5)	
Direct transfer for judges and magistrates salaries	1 543 691	64.3 (75)	-
Total	10 808	70.1	

	962	(74.6)	
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Table 8: Overall spending per economic classification Third Quarter 2012/13 (1 October 2012 – 31 December 2012)

Economic Classification	Actual (R'000)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Current payments	585 018	70.1 (73.7)	<ul style="list-style-type: none"> • Compensation of employees – vacancies
• Compensation of employees	5 112 580	72.4 (74.7)	
• Goods and services	2 467 479	65.2 (71.3)	
• Interest and rent on land	4 959	33.4 (114.9)	
Transfers and subsidies	1 525 780	71.6 (73.2)	<ul style="list-style-type: none"> • Provinces and municipalities - unanticipated number of vehicle licences during first quarter • Department agencies and accounts – the Department is still waiting for invoices from SASSETA
• Provinces and municipalities	8 553	3187.8 (65.9)	
• Department agencies and accounts	1 459 613	73.1 (73.3)	
• Foreign governments and international organisations	-	0 (12.1)	
• Households	57 614	45.3 (72.9)	
Payments for capital assets	700 500	66.6 (88)	<ul style="list-style-type: none"> • Buildings and other fixed structures - Delays in delivery of capital works project by DPW
• Buildings and other fixed structures	398 928	46.9 (98.1)	
• Machinery and equipment	283 347	142.9 (52.8)	
• Software and other intangible assets	15 420	368.6 (0.7)	
Payments for financial assets	2 805	-533.3 (0)	No budget for this item
Total	10 811 298	70.1 (74.6)	

7.4.1. **Administration:** Overall spending in the Administration programme was far less than projected at 68.8% instead of 84.1%. This is attributed to vacancies in senior management. Again, at sub-programme level, spending on security services led to over-spending in Corporate Services. However, this is a misallocation (R200 million) and will be rectified.

7.4.2. **Court Services:** Overall, there is under-spending for the programme at 72.1%.

There was higher than expected spending for the SCA (at 99.5%), High Courts (at 91.4%), Lower Courts (78.9%) and Specialised Courts (at 105%) sub-programmes attributed to payment of performance bonuses, travel and subsistence for judges.

Under-spending occurred in the Constitutional Court and Facilities Management sub-programmes because of vacancies in the OCJ and delays on capital works projects.

At economic classification level, actual spending exceeded projections for Goods and Services as a result of payment of travel and subsistence for judges and transfers to provinces and municipalities because an unanticipated number of vehicle licences expired during the first quarter.

There was far less than projected spending for payments for capital assets (at 50.4%). Actual spending for 'Buildings and fixed structures' is at 46.5%, - (despite the savings) again attributed to delays on delivery of capital works project by DPW.

7.4.3. **State Legal Services:** Overall there was slightly less than expected spending - again because of delays in receiving legal costs claims from private law firms.

7.4.4. **National Prosecuting Authority:** There was greater than projected spending for the programme as a result of implementation of a job evaluation court settlement in November/December 2012.

7.4.5. **Auxiliary and Associated Services:** There was under-spending in this programme at 65%. There was also less than expected spending under Justice Modernisation (at 35.7 %) attributed to delays in receiving claims from JCPS Cluster departments and from SITA.

7.4.6. **Direct charges:** There was significantly less than projected spending at 64.3% and can be attributed mostly to delays in filling posts of regional magistrates.

7.5. Expenditure trends Fourth Quarter 2012/13 (1 January – 31 March 2013)

Expenditure in the fourth quarter of 2012/13, including direct charges, was R15 079.9 billion (or 97.6%) of the R15 455.2 billion adjusted appropriated. This is 0.2% lower than the approved projection. However, 99.8% of the Programme Vote was spent.

Table 9: Overall spending per programme Fourth Quarter 2012/13 (1 January – 31 March 2013)

Programme	Actual (R' 000)	Actual % spent	Reason for under/over spending
Administration	1 475 599	100.8%	Higher than budgeted increases in municipal rates and taxes and the security service.
Court Services	5 393 660	100.3%	Salary upgrade of clerks on levels 3 and 4 to level 5
State Legal Services	794 502	101.2%	Unanticipated payment of claims against the state

NPA	2 839 824	100%	
Auxiliary and Associated Services	2 517 765	97.3%	Delays in receiving invoices from JCPS Cluster departments for justice modernisation projects
Subtotal	13 021 350	99.8	
Direct transfer for judges and magistrates salaries	2 058 648	85.7%	Delays in filling vacancies for magistrates and judges, as well as transfers to Households as there were fewer resignations and retirements than expected.
Total	15 079 998	97.6%	

Table 10: Overall spending per economic classification Fourth Quarter 2012/13 (1 January – 31 March 2013)

Economic Classification	Actual (R'000)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Current payments	12 097 731	99.1%	
<ul style="list-style-type: none"> • Compensation of employees 8 195 057 • Goods and services 3 895 906 • Interest and rent on land 6 767 		<ul style="list-style-type: none"> • 97.1% • 103.9% • 45.6% 	<ul style="list-style-type: none"> • CoE: Delays in filling of posts (Vacancies) • Goods and Services: Higher than budgeted increases in municipal rates and taxes and security services.
Transfers and subsidies	2 080 770	97.7%	
<ul style="list-style-type: none"> • Provinces and municipalities 488 • Department agencies and accounts 1996 814 • Foreign governments and international organisations 1260 • Households 82 209 		<ul style="list-style-type: none"> • 180.6% • 100% • 24.2% • 64.7% 	<ul style="list-style-type: none"> • Foreign governments and international organisations: Delays receiving invoices from the ICC. • Households: Fewer than anticipated resignations.
Payments for capital assets	901 497	80.5%	
<ul style="list-style-type: none"> • Buildings and other fixed structures 634 987 • Machinery and equipment 250 089 • Software and other intangible assets 8571 		<ul style="list-style-type: none"> • 74.6% • 95.1% • 150.8% 	<ul style="list-style-type: none"> • Buildings and other fixed structures - Delays in delivery of capital works project by DPW
Payments for financial assets	7 850		<ul style="list-style-type: none"> • No budget for this item.
Total	15 079 998		

7.5.1. **Administration:** Overall spending in the Administration programme was greater than expected (at 100.8%) and remains attributed to higher than budgeted increases in municipal rates and taxes and the security services. that were paid in the first quarter. Office accommodation spent 11.1% of its budget because of rental increases. Under-spending occurred in the Ministry, Management and Corporate Services sub-programmes (at 88%, 75% and 93.5% respectively) because of vacancies.

7.5.2. **Court Services:** Overall, there is overspending for the programme at 100.3%.

There was higher than expected spending for the SCA (at 131%), High Courts (at 125%), Lower Courts (103.3%), Specialised Courts (at 143.3%), Government Motor Transport (at 142.9%) and Administration of Courts (at 104%) sub-programmes attributed to salary upgrades of clerks from levels 3 and 4 to level 5 and travel and subsistence for judges.

Under-spending occurred in the Constitutional Court, Lower Courts and Facilities Management sub-programmes because of vacancies in the OCJ and delays on capital works projects.

7.5.3. **State Legal Services:** Overall there was slightly greater than projected spending at 101.2% due to unanticipated payment of claims against the state.

7.5.4. **National Prosecuting Authority:** Spending under this programme was at 100%. The NPA's CoE budget under Public Prosecutions was under pressure because of court ruling requiring immediate implementation of the 2005 job evaluation results of prosecutors (R55 million), OSD, as well as notch increases from 1.5 – 2%.

7.5.5. **Auxiliary and Associated Services:** There was under-spending in this programme at 97.3%. There was also less than expected spending under Justice Modernisation (at 88.3%) attributed to delays in receiving claims.

7.5.6. **Direct charges:** There was less than projected spending at 85.7% and can be attributed to delays in filling posts of regional magistrates and judges, as well as fewer than anticipated resignations/retirements (Households).

8. Expenditure trends First Quarter 2013/2014 (1 April – 30 June 2013)

Table 11: Overall spending per programme First Quarter 2013/2014 (1 April – 30 June 2013)

Programme	Actual (R thousand)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Administration	280 514 1 534 761	18.3% (27.7%)	Office accommodation - Delays in receiving invoices from DPW on accommodation charges.

Court Services	1 911 633 4 670 734	20.3% (23.4%)	Delays in submission of invoices from DPW for infrastructure projects.
State Legal Services	194 390 (852 027)	22.8 (23.7%)	-
NPA	692 639 (3 050 359)	22.7% (25.6%)	Outstanding invoices relating to Telkom, SITA, and security services. Payment of performance bonuses to all staff delayed to second quarter.
Auxiliary and Associated Services (TRANSFERS)	510 111 (2 834 708)	18% (25%)	Delays in implementation of CJS projects (R300 m received under Justice modernisation unspent). Non submission of invoices for IJS projects.
Sub-total	2 869 287 (14 134 222)	20.3% (24.7%)	
Direct transfer for judges and magistrates salaries	599 349 (2 575 723)	23.3% (25%)	Delays in filling vacant posts – magistrates.
Total	3 468 636 (16 709 945)	20.8% (24.7%)	

Table 12: Overall spending per economic classification First Quarter 2013/2014 (1 April – 30 June 2013)

Economic Classification	Actual (R'000)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Current payments	2 890 938	21.6 (25%)	Goods and services – delays in receiving invoices from IJS Cluster departments and delays in implementing the CJS Revamp.
• Compensation of employees	2 253 397	24.4	
• Goods and services	637 541	15.3	
• Interest and rent on land	-	0	
Transfers and subsidies	521 520	24.5 (24.9)	-
• Provinces and municipalities	122	42.8	
• Department agencies and accounts	498 921	25.1	
• Foreign governments and international organisations	-	0	
• Households	22 477	16.6	
Payments for capital assets	56 177	4.8 (21.1%)	Buildings and other fixed structures – delays in the implementation of DPW

• Buildings and other fixed structures	28 598	2.8	projects.
• Machinery and equipment	26 454	15.2	Machinery and equipment - delays in receiving invoices from IJS Cluster departments and delays in implementing the CJS Revamp.
• Software and other intangible assets	-	0	
Payments for financial assets	1 126	?	No budget for this item

At programme level:

- There is under spending for all programmes, mostly attributed to outstanding invoices:
- Notably, the NPA reports that it has delayed paying performance bonuses until the second quarter but the reasons for this are unclear, as is the impact payment of the bonuses would have on spending in the second quarter.
- Once again, there is under spending in the Auxiliary and Associated Services: Justice Modernisation as a result of delays in implementing IJS projects. This is a concern given the key role that this sub-programme has for the CJS Revamp project.
- At economic classification level, significant under spending on 'Buildings and other fixed structures' (at 2.8%) indicates continuing capacity challenges which impact on spending this budget.

