



8 July 2014

## **OVERVIEW OF DEPARTMENTS REPORTING TO THE SELECT COMMITTEE ON SECURITY AND JUSTICE (5<sup>TH</sup> PARLIAMENT): JUSTICE AND CORRECTIONS**

### **1. Introduction**

This document provides a brief overview of the Departments of Correctional Service and Justice and Constitutional Development.

In the new Cabinet formed in May 2014 the Departments of Justice and Correctional Services have been merged and both will now report to the Minister of Justice and Corrections. However, the Department of Justice and Correctional Services will remain two separate and self-standing portfolios, with their own heads of department and their own budgets. For the purpose of this overview these departments are discussed as separate departments.<sup>1</sup>

Selected issues are highlighted for follow-up / engagement with the Departments in areas where the Select Committee can play a role in ensuring a provincial and regional focus in its oversight over the Departments in line with the mandate of the NCOP.

*The comprehensive analyses of the 2014/15 Budget Votes of each department and entities reporting to the Select Committee are available as separate documents.*

### **A. DEPARTMENT OF CORRECTIONAL SERVICES (DCS)**

#### **LEADERSHIP STRUCTURE**

According to the 2014/15 Annual Performance plan the DCS organisational environment ‘has experienced leadership instability, inadequate and inappropriate staffing patterns, unstable and insecure ICT systems, inconsistencies in spending patterns, and challenges in procurement and contract management’.<sup>2</sup>

The DCS received a qualified audit opinion in 2012/13 and currently it is without a permanent National Commissioner. Justice and Correctional Services Minister Masutha appointed the Regional Commissioner of Gauteng, Zach Modise, as Acting National Commissioner of Correctional Services on 17 June 2014.<sup>3</sup> Since 9 September 2013, following the retirement of National Correctional Services Commissioner Moyane (appointed in 2007) Chief Operations

<sup>1</sup> Delegates are advised to read this overview in conjunction with the Legacy Report of the Select Committee on Security and Constitutional Development (June 2009 – March 2014) of the Fourth Parliament; and the Fact Sheet on Intersectoral Legislation & Policy.

<sup>2</sup> at p9

<sup>3</sup> SA News 17 June 2014



Officer Jolingana had been Acting National Commissioner. Since taking office Acting National Commissioner Modise appointed a new Acting Regional Commissioner for the Gauteng region and an Acting Area Commissioner for Johannesburg.

## 1. Legislation and key policy applicable

The DCS derives its mandate from: the Correctional Services Act (111 of 1998); the Correctional Matters Amendment Act (5 of 2011) and the Criminal Procedure Act (51 of 1997). The White Paper on Corrections (2005) is the key policy document governing the Department.<sup>4</sup>

The DCS has three strategic goals through which contribute to Outcome 3: Ensuring that all people in South Africa are and feel safe. They are: (a) ensuring the efficiency of the criminal justice is improved through effective management of remand processes; (b) ensuring society is protected through incarcerated offenders being secured and rehabilitated; and (c) ensuring society is protected by offenders being reintegrated into the community as law abiding citizens.

In the 2013/14 financial year the DCS had 243 correctional centers with a population of 155 836 inmates and bed space for 118 154 inmates. The Department has a funded establishment of 42 006 posts, with 2 011 posts filled additional to the establishment. There were 2 266 vacancies at the end of December 2013. These vacancies were due to natural attrition (resignations, retirement, death) and the length of time it takes to finalise recruitment processes. Vacancy levels are expected to drop in 2014/15 due to the decentralisation of post advertisements to regions in 2013/14 to speed up the filling of vacant posts.

At 31 March 2013 the vacancy rate under Programme Incarceration was 2.3%; Rehabilitation 11.6%; Care 7.9% and Social Integration 4.1%. All these programmes had posts additional to the establishment filled.<sup>5</sup>

### Vacancies in critical occupations category

| Critical occupations                     | Number of posts | Number of posts filled | Vacancy rate | Number of posts filled additional to the establishment |
|--|-----------------|------------------------|--------------|--|
| Custodian personnel (wardens)            | 2 534           | 2 348                  | 7.3          | 0  |
| Educationists                            | 538             | 463                    | 13.9         | 0  |
| Professional nurses                      | 988             | 877                    | 11.2         | 0  |
| Psychologists and vocational counsellors | 90              | 67                     | 25.6         | 4  |
| Security officers                        | 32 359          | 31 814                 | 1.7          | 623  |
| Social work and related professions      | 591             | 504                    | 14.7         | 0  |
| <b>TOTAL</b>                             | <b>37 100</b>   | <b>36 073</b>          | <b>2.8</b>   | <b>627</b>   |

<sup>4</sup> Key intersectoral legislative and policy initiatives that the DCS plays a role in are more fully set out in the Intersectoral Papers, the Summaries of the Annual Reports on the implementation of the Child Justice Act and the Paper on the Bail Protocol.

<sup>5</sup> Correctional Services 2012/13 Annual Report, pp94 - 97



### Questions

1. How many of the funded posts are custodial (wardens)?
2. In which (a) regions and (b) centres are the most vacancies for (i) custodian personnel (wardens), (ii) educationists, (iii) professional nurses, (iv) psychologists and vocational counsellors; (v) security officers; and (vi) social work and related professions?
3. Does the vacancy rate include additional posts? How many posts were additional to the establishment in each occupational category at each affected centre?
4. What plans does each region have to reduce the vacancy rates for these key categories of personnel?

## 2. 2014/15 BUDGET SUMMARY: VOTE 21

### 2.1 National Allocation

The rounded-off budget allocation for DCS in 2014/15 is R 19.72 billion (a 5.17% increase compared to the adjusted 2013/14 appropriation of R18. 75 billion). Over the MTEF the DCS allocation is R20.8 billion for 2015/16; and R22 billion for 2016/17.

| R million              | 2014/15         |                  |                         |                             | 2015/16         | 2016/17         |
|------------------------|-----------------|------------------|-------------------------|-----------------------------|-----------------|-----------------|
|                        | Total           | Current payments | Transfers and subsidies | Payments for capital assets | Total           | Total           |
| <b>MTEF Allocation</b> |                 |                  |                         |                             |                 |                 |
| Administration         | 3 622.9         | 3 435.5          | 17.0                    | 170.4                       | 3 837.1         | 4 103.4         |
| Incarceration          | 12 299.0        | 11 404.2         | 64.1                    | 830.7                       | 12 924.8        | 13 708.7        |
| Rehabilitation         | 1 165.8         | 1 121.3          | 0.1                     | 44.4                        | 1 237.0         | 1 333.5         |
| Care                   | 1 747.2         | 1 739.7          | 0.5                     | 7.0                         | 1 852.2         | 1 938.9         |
| Social Reintegration   | 886.2           | 884.8            | 0.1                     | 1.3                         | 944.2           | 996.5           |
| <b>Total</b>           | <b>19 721.1</b> | <b>18 585.5</b>  | <b>81.8</b>             | <b>1 053.8</b>              | <b>20 795.3</b> | <b>22 080.9</b> |

### 2.1 Spending priorities for the 2014/15 financial year and over the MTEF

- The bulk of DCS spending is in the *Administration* and *Incarceration* programmes for expenditure on compensation of employees and related goods and services.
- In 2014/15 funds from the *Incarceration*, *Rehabilitation* and *Social Reintegration* programmes will be used to: (a) reduce escapes. (b) register 80% of offenders for participation in education and skills development programmes and complete such programmes between 2014/15 and 2016/17; and (c) increase the percentage of parolees without violations per year.
- Cabinet approved the reprioritisation from non-essential goods and services items of R72.6 million in 2014/15, R72.8 million in 2015/16 and R77.9 million in 2016/17 to



- purchase security equipment, replace dilapidated workshop and agriculture machinery and equipment, roll out electronic monitoring and implement victim-offender dialogues.
- R207.2 million in 2014/15, R216.7 million in 2015/16 and R228.2 million in 2016/17 is set aside for the repair and maintenance of correctional and other facilities, while R605.8 million in 2014/15, R603.2 million in 2015/16 and R635.2 million in 2016/17 has been reserved for the upgrading of correctional and other facilities.
  - Spending on consultants will be for upgrading IT infrastructure and maintain information systems.

### Comment

1. National Treasury supported Parliament's recommendation that the Department's budget allocation must be aligned with Rehabilitation and Reintegration objectives; and that it reconsider and increase its targets for developmental interventions and reprioritise funds towards its Care, Rehabilitation and Social Reintegration programmes over the 2014 MTEF period. These services take up a larger proportion of the Department's budget relative to other programmes.

2. **There has been consistent underspending on capital works projects.** Infrastructure spending is, however, expected to increase to R863.4 million in 2016/17. **Large projects** include the upgrading of 16 correctional facilities and the creation of 4 748 additional bed spaces (634 bed spaces at Ceres, Vanrhynsdorp and Matatiele in 2013/14; 480 bed spaces at Tzaneen, Pretoria C-Max and Maphumulo in 2014/15; 485 bed spaces at Estcourt and Parys in 2015/16; and 3 149 bed spaces at Zeerust, Ingwavuma, Standerton, Nongoma, Nkandla, Lichtenburg, Burgersdorp and Potchefstroom in 2016/17). **Small projects** include the construction of new parole board offices and additional school facilities; installation of integrated IT systems, security systems, access gates and visitors' waiting rooms; installation of standby generators; replacing kitchen equipment, boilers, incinerators, and power, water and sewerage facilities.

### Questions:

- Which regions have the highest rates of overcrowding and shortages of correctional centre bed spaces?
- How will the 2014/15 allocation and plan for infrastructure assist in alleviating overcrowding per region? In other words, how many additional bed spaces will be created per region and how will this impact on the overcrowding rates per region?
- Where will the new parole board offices be constructed? Why are these required?
- Where will the additional school facilities be? Which regions are facing the most severe problems in delivery of educational programmes to children of school going age and how will this be addressed in the MTEF?



## 2.2 Regional Allocation<sup>6</sup>

| R THOUSAND                      | 2014/15           |
|---------------------------------|-------------------|
| HEAD OFFICE                     | 5 526 852         |
| EASTERN CAPE                    | 1 996 751         |
| FREE STATE AND NORTHERN CAPE    | 1 981 829         |
| GAUTENG                         | 3 087 591         |
| KWAZULU-NATAL                   | 2 361 949         |
| WESTERN CAPE                    | 2 746 297         |
| MPUMALANGA, NORTH WEST, LIMPOPO | 2 019 842         |
| <b>TOTAL</b>                    | <b>19 721 111</b> |

## 3. SELECTED PERFORMANCE INDICATORS: 2014/15 ANNUAL PERFORMANCE PLAN

- (i) The **White Paper on Remand Detention** was expected to be approved and aligned with operational policies during 2013/14. It once again features as an indicator in the 2014/15 Annual Performance Plan (APP). **What is the status of the White Paper?**
- (ii) **Overcrowding:** **Was the 2013/14 target to reduce overcrowding in correctional centres by 30% met? What is the projected impact that the increased bed-space will have on overcrowding nationally and at each of the centres targeted for upgrade in 2014/15?**
- (iii) **Escapes** are a concern. In terms of the 2014/15 budget the DCS plans to reduce the percentage of **escapes** from a projected 0.032 per cent (49 inmates) in 2013/14 to 0.024 % (37 inmates) in 2016/17; In 2014/15 this target is 0.026 percent or 40 out of 154 278 inmates. **Which (a) regions and (b) centres have the most escapes? To what extent was staff involved in aiding escapes and at which centres? What corrective steps were or are being taken to address the problem, including deterring staff involvement?**
- (iv) **Assaults:** The target for assaults is 4.1 per cent or 6 325 out of 154 278 inmates (more than double than the previous year's target). The increase in assaults is cause for concern. **Why has this target doubled? (b)(i) At which centres were the most assaults reported and (b) how many were (i) offender-on-offender and (ii) staff-on-offender assaults?**
- (v) **Unnatural deaths:** The target for **unnatural deaths** is 0.035 per cent or 54 out of 154 278 inmates.
- (iv) The **TB cure rate** was a new 2013/14 indicator with a target of 75%. The 2014/15 target is 80%. **Which regions and centres have the highest incidence of TB infections and what plans are in place to (a) bring down the number of infections and (b) prevent new infections at these centres, including ensuring inmates with XDR TB are kept separately from other inmates while at hospital and in their cells? Are the sufficient health care personnel at affected centres? If not, what is the situation regarding vacancies and plans in place to recruit critical staff, including time-frames?**

<sup>6</sup> National Treasury. Electronic ENE 2014. Correctional Services Vote 21. pp27 - 36



- (v) The Department intends to increase the percentage of **inmates tested for HIV** from 50% in 2013/14 to 70% in 2014/15; and to increase the percentage of **inmates on anti-retroviral** therapy from 94% in 2013/14 to 95% in 2014/15. **How many new inmates were tested for HIV on admission to DCS facilities? Which regions and centres have the highest HIV prevalence? What targets are set for 2014/15 for these regions and centres? Were any HIV infections contracted after admission to DCS facilities? If so, at which centres?**

#### 4. **VARIOUS ISSUES RAISED BY THE SELECT COMMITTEE OF THE 4<sup>TH</sup> PARLIAMENT**

- (i) **Appointments:** **Are there any positions in which staff members have been acting for a long period? If so, (a) in which regions and centres, (b) which positions and (c) what steps have been or will be taken in this regard?**
- (ii) **Shifts and Management of Personnel:** **The issues of shifts were identified as a problem and as a causal factor for some of the violence at Groenpunt in 2012.** A report on the outcome of the investigation by the Ministerial Task Team (comprising officials from DCS, members of POPCRU and the PSA) on staff-related issues, including overtime and shifts) was to be completed in June 2013. **What was the outcome of the report? Are there any regions and centres that are currently at risk due to staffing/shift-related issues?**
- (iii) **Audio visual remand (AVR):** The DOJ reported that 7000 cases were postponed using AVR. **(a) How many and (b) which centres are using the audio visual system and when is it expected to be rolled out to all centres?**
- (iv) Investigations and institute disciplinary proceedings in **MCCALLUM CASE**<sup>7</sup>: The Wits Justice Project reported recently that the DCS failed to act against wardens at **St. Albans prison in Port Elizabeth who allegedly committed acts of torture 9 years ago.** Following a United Nations Human Rights Commission (UNHRC) decision in 2010, the DCS undertook to re-open investigations and institute disciplinary proceedings against identified wardens, and to investigate the conduct of medical personnel and senior DCS officials who overturned the initial investigation. Proceedings against the wardens were allegedly withdrawn in September 2013. **What steps have been or are being taken to comply with UNHRC's ruling? Are any other cases pending or being investigated over allegations of torture / mistreatment of offenders by DCS officials? If so, (a) at which centres and (b) what is the status or progress in respect of each?**

#### 5. **Entities issues: Judicial Inspectorate for Correctional Services**<sup>8</sup>

The Judicial Inspectorate of Correctional Services (JICS) is an independent office under the control of the Inspecting Judge (currently Justice V. Tshabalala) established in terms of section

<sup>7</sup> Raphaely, C (2014). St Albans prison scandal: SA ignores UNHRC and risks international embarrassment. 1 June 2014. The Daily Maverick. Internet. <http://www.dailymaverick.co.za/article/2014-06-01-st-albans-prison-scandal-sa-ignores-unhrc-and-risks-international-embarrassment/#.U48F23KSx8F>. Accessed 4 June 2014.

<sup>8</sup> The office of the Inspecting Judge is situated in Durban, with a Head office in Cape Town and regional offices in George, Centurion, Bloemfontein and Durban. The Acting CEO is Mr. Mike Masondo.



85 of the Correctional Services Act, 1998. The object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions in prisons. In terms of section 91 of the Correctional Services Act the DCS is responsible for all expenses of the Inspectorate. The Inspectorate submits its budget and adjustment budget to the DCS as well as National Treasury for consideration.<sup>9</sup> The JICS received a budget of R31.7 million in 2013/2014 and in 2014/2015 it increases to R44, 67million.

A key concern with the budget of the JICS is that it receives its allocation from the DCS which may impact on its independence and perceived independence.

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<sup>9</sup> JCIS (2013). Judicial Inspectorate for Correctional Services. Annual Report for the Period 01 April 2012 to 31 March 2013.





**B. DEPARTMENT OF JUSTICE**

**LEADERSHIP STRUCTURE**

**Minister of Justice and Correctional Services:** Mr Michael Masutha, MP

**Deputy Minister of Justice and Constitutional Development:** Mr John Jeffery

**Director-General:** Ms. Nonkululeko Sindane (*Accounting Officer*)

**Chief Operations Officer:** Dr Khotso De Wee

**Chief Financial Officer:** Ms Louraine Rossouw

**Chief Director: Strategy, Monitoring and Evaluation:** Ms Lebogang Mphahlele-Ntsasa

**Chief State Law Advisor:** Mr. Enver Daniels

**Chief Litigation Officer:** Ms. Mohube Phahlane (Acting)

**Chief Master:** Adv. Basson

**Deputy Director-Generals:** Court Services (Acting); Legislative Development; Corporate Services; Constitutional Development (Vacant)

**DEPARTMENT**

**Department of Justice (DOJ)** aims to uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost effective administration of justice in the interests of a safer and more secure South Africa. It is responsible for, *inter alia*, the functioning of court services,<sup>10</sup> protecting vulnerable groups and providing support to Chapter 9 Institutions. Its mandate is aligned to the National Development Plan and Government Outcome 3: ensuring safer communities, fighting corruption and enhancing accountability in order for all people in South Africa to feel and be safe.

**National Prosecuting Authority (NPA)** provides a co-ordinated prosecuting service that protects certain witnesses and removes the profit from crime. Although listed as a Programme under the Department's Budget Vote, the NPA is an independent body, headed by the National Director of Public Prosecutions (NDPP) which reports separately on its performance and financial statements. The Asset Forfeiture Unit (AFU) is a sub-programme of the NPA.

**ENTITIES (Selected)<sup>11</sup>**

**Legal Aid South Africa** provides independent and impartial legal aid to indigent people and legal representation at the states expense to eligible people in terms of the Constitution. It provides services in all district, regional and high courts.

**Special Investigating Unit** was established in terms of the Special Investigating Unit and Special Tribunals Act (1996) and investigates cases referred to it by the President. It provides professional forensic investigating and litigation services to combat maladministration, corruption and fraud at national, provincial and local levels.

<sup>10</sup> The Office of the Chief Justice is responsible for the judicial functioning of Courts.

<sup>11</sup> Other entities include the Council for Debt Collectors and the Rules Board for Courts of Law.





**South African Law Reform Commission (SALRC):** Conducts research on the development, improvement, modernisation or reform of all branches of South African law.<sup>12</sup>

**South African Board for Sheriffs:** Monitors services of the sheriffs and deputies and ensure that services are executed in terms of the Code of Conduct for Sheriffs.

## FUNDS

**Guardians Fund** is a statutory trust established in terms of Chapter V of the Administration of Estates Act 66 of 1965. It consists of all monies received by Masters of the High Court under the Administration of Estates Act or any money accepted in trust or any known or unknown person. The Fund is held under the management of the Masters of the High Court.

**Third Party Funds** - the Department of Justice and Constitutional Affairs acts as an agent for the receipt and payment of funds on behalf of other parties, for e.g. the National Revenue Fund and other state departments. These funds include admission of guilt fines, bail, court fines, maintenance, and compensatory fines.

**Presidents Fund** provides funding for reparations flowing from the findings of the Truth and Reconciliation Commission.

**Represented Political Parties Fund provides funding for political parties participating in Parliament and the provincial legislatures.** The Independent Electoral Commission (IEC) manages the fund; and funds are paid over to political parties in accordance with the number of their representatives in national and provincial government.

## INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY (CHAPTER 9 INSTITUTIONS)

*The budgets for the Public Protector and the South African Human Rights Commission are located under Programme 5 (Auxiliary and Associated Transfers) of the Department of Justice.*<sup>13</sup>

### 2. 2014/15 JUSTICE BUDGET SUMMARY<sup>14</sup>

**The Justice Vote consists of Five Programmes, namely:**

**Programme 1: Administration** (Manage the department, develop policies and strategies for the efficient administration of justice, and provide centralised support services).

**Programme 2: Court Services** (Facilitate the resolution of criminal and civil cases and family law disputes by providing accessible, efficient and quality administrative support to the courts and managing court facilities).

<sup>12</sup> Funded from Legislative Development and Law Reform Branch.

<sup>13</sup> In terms of the Constitution Chapter 9 Institutions (including the South African Human Rights Commission, Office of the Public Protector and Commission for Gender Equality) are accountable to the National Assembly only. However, they can play a valuable role as stakeholders when engaging with departments and entities that the Select Committee oversees.

<sup>14</sup> Delegates are referred to the separate analyses of the Department and the NPA votes by G Nesbitt and M Dano which are available as separate documents.



**Programme 3: State Legal Services** (Provide legal and legislative services to government. Supervise the registration of trusts and the administration of deceased and insolvent estates and estates undergoing liquidation. Manage the Guardian's Fund, prepare and promote legislation, facilitate constitutional development and undertake research in support of this).

**Programme 4: National Prosecuting Authority** (Provide a co-ordinated prosecuting service that: ensures justice is delivered to the victims of crime through general and specialised prosecutions; removes the profit from crime; and protects certain witnesses).

**Programme 5: Auxiliary and Associated Services** (Provide a variety of auxiliary services associated with the department's aim. Fund transfer payments to the South African Human Rights Commission, the Public Protector, SIU, Master's Office, SA Law Reform Commission, Legal Aid South Africa and the President's Fund).

- The overall 2014/15 budget allocation for the DOJ (Vote 24) is **R17.8 billion**.
- Transfers and subsidies comprise 78.1% of the Department's spending under Programme 5: **Auxiliary and Associated Services**. **R8.05 billion of the overall budget is allocated as follows:**
  - In 2014/15 the **NPA Programme** receives **R3.25 billion**.
  - **R2.7 billion** is allocated for **judges and magistrates' salaries** as a direct charge against the National Revenue Fund.
  - **R2.1 billion** is earmarked **transfers**.<sup>15</sup>
- The **dedicated 2014/15 budget of the DOJCD** is thus **R9.8 billion** (in respect of the Administration, Court Services, State Legal Services, and the Justice Modernisation sub-programme), which shows a **real increase of only 0.87 per cent** compared to R9.12 billion (rounded off) received in 2013/14.<sup>16</sup> The table below illustrates the percentage change in the programme allocations for 2014/15 compared to the previous financial year.

The biggest portion of the budget goes to Court Services (R6.06 billion), followed by Administration (R1.85 billion).

**Staff related costs are the main cost drivers in the Vote**, affecting all programmes.

- The Department has a **funded establishment of 23 647** (excluding judicial officers) and 533 positions are filled additional to the establishment. **At the end of November 2013 there were 2 364 vacant posts** due to natural attrition and the length of time it takes to finalise the recruitment process. There were vacancies in critical occupations, for e.g. in the Family Advocate's Office and at senior management level which had 30 posts or (15%) vacancies at the end of June 2013. In 2013/14 the overall vacancy rate was approximately 10.3% (in line with Government's target of 10% vacancies by 2014).

<sup>15</sup> R1.46 billion to Legal Aid SA; R296.8 million to the SIU; R217.6 million to the Public Protector and R128.1 million to the SAHRC.

<sup>16</sup> Real increase refers to the impact of inflation.



| Programme<br><br>R million  | Budget  |         | Real Increase<br>/ Decrease in<br>2014/15 | Real Percent change in<br>2014/15 |
|---|---------|---------|---|-----------------------------------|
|   | 2013/14 | 2014/15 |   |                                   |
| Administration  | 1 896.1 | 1 853.5 | -150.8                                    | -7.95 per cent                    |
| Court Services  | 5 654.5 | 6 060.5 | 52.2                                      | 0.92 per cent                     |
| State Legal Services  | 876.6   | 925.0   | -5.6                                      | -0.64 per cent                    |
| Auxiliary and Associated Services: Justice<br>Modernisation sub-programme | 21.2    | 961.6   | 184.3                                     | 25.55 per cent                    |
| <b>TOTAL</b>  | 9 148.4 | 9 800.6 | 80.0                                      | 0.87 per cent                     |

## 2.1 MEDIUM TERM (MTEF) SPENDING FOCUS

The medium term spending focus will be on improving services in courts, transforming state legal services, implementing new pieces of legislation, opening high courts in Polokwane and Nelspruit, and accelerating access to services provided by the Master's and State Attorney's offices.

- The number of personnel<sup>17</sup> is expected to increase from 23 022, in 2013/14 to 24 903 in 2016/17, as will spending on compensation of employees.
- A significant amount is directed towards the **Court Services** and the **NPA** programmes for expenditure on compensation of employees, property payments and capital expenditure.
- The Department aims to **increase the number of high courts from 14 to 16** in 2015/16, **re-establish 57 dedicated sexual offences courts**, and **increase the number of criminal court cases finalised**, including those involving alternative dispute resolution mechanisms, from 473 480 in 2014/15 to 486 026 in 2016/17.
- Spending on computer hardware and systems is expected to increase, partly due to the project to modernise justice services (*located under Programme 5: Auxiliary and Associated Services*).
- **Funds redirected from Capital works:** R286.9 million in 2014/15, R310.2 million in 2015/16 and R338.1 million in 2016/17 have been reprioritised for the appointment of permanent personnel in the Department, public entities and constitutional institutions. An amount of R11.9 million in 2014/15, R11 million in 2015/16 and R11.6 million in 2016/17 is intended for the implementation of legislation and criminal justice sector revamp projects in Legal Aid South Africa.
- **Court infrastructure spending:**<sup>18</sup> Spending on infrastructure is expected to increase from R784.6 million in 2013/14 to R1 billion over the MTEF. In 2013/14, the department

<sup>17</sup> Excluding judicial officers.

<sup>18</sup> Due to the delays in implementing a number of capital works and modernisation projects, Cabinet approved budget reductions of R507.7 million in 2014/15, R543 million in 2015/16 and R362 million in 2016/17. On 30 January 2014 the Department provided a progress report on its capital works projects, details of challenges experienced; and actual expenditure.<sup>18</sup> The Department should brief the Committee on progress relating to the (a) additional costs and the parking land issue between DPW and the municipality which could add to the financial costs of completing the Limpopo High Court; and (b) whether the (i) DPW finalised the land transfer in respect of the Mpumalanga High Court and (ii) tender for the renovations at the Mthatha High Court has gone out; (c) Now that the Department has taken over the funding of the Rustenburg Magistrates Court from DPW (the tender lapsed in 2012 as it was never awarded)



completed the construction of the new Kagiso Magistrate's Court<sup>19</sup> in Mogale City Local Municipality on the West Rand (opened in March 2014) at a cost of R74 million. The department will complete the construction of the Polokwane High Court in 2014/15 at a cost of R796.5 million, while the construction of the Mpumalanga High court is expected to be completed in 2015/16 at a cost of R706.4 million. In 2014/15, work on the construction of six new magistrate courts at Richards Bay and Port Shepstone (KwaZulu-Natal), Plettenberg Bay (Southern Cape), Booysens (Gauteng), and Bityi and Dimbaza (Eastern Cape) will commence at a total cost of R967.6 million. The refurbishment and provision of additional accommodation for the South Gauteng High is expected to be completed in October 2015. Other major projects include the relocation of the family court in Cape Town and the provision of new offices for the NPA.

## 2.2 OVERVIEW OF MTEF STRATEGIC PRIORITIES

All departments are required to align their Strategic Plans to the National Development Plan 2030. The Strategic Plan covers a period of five years (2014-19) in respect of which **the DOJ has identified the following three priorities:**

**Priority 1: Good governance and clean administration.** The Department achieved an unqualified audit opinion for the first time in many years. Nevertheless, the Auditor-General recommended that in-year controls are strengthened and that financial statements are prepared monthly (or at a minimum quarterly) with full disclosure notes. The DOJ aims to sustain the unqualified audit opinion for the vote, focus on improving audit outcomes for the Third Party Funds (TPF) and address TPF issues (including not achieving predetermined targets).

**Priority 2: Service turnaround in maintenance services.** The use of Electronic Fund Transfer (EFT) as a payment method has led to improved service delivery – turnaround times for payments to maintenance beneficiaries have reduced substantially. Capacity was also improved within the TPF Unit with the appointment of more staff have been appointed at national and regional level. Various training initiatives have been undertaken. Over the MTEF the emphasis will be on improving turnaround times in maintenance orders and payment processes. Approximately 83% of beneficiaries' payments were made by electronic funds transfer (EFT). By 31 March 2013, 171 712 beneficiaries received R110.5 million in benefits. The implementation of 'lean management' improved to queuing times and decreased the time taken to process maintenance. The new Service Delivery Charter and Service Standards is aimed at contributing to a more compassionate and responsive interaction with the public. As part of improving overall service delivery a maintenance complaints management training module was developed. The department also implemented a national defaulters' strategy to provide a uniform guide to courts on dealing with defaulters. Legal Aid South Africa (LASA) has proposed that it provide representation in maintenance matters where (a) there has been a failure by the system to

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what progress has been made? Has the issue been resolved to halt plans to close off the main gate of the Rustenburg Magistrates Court due to a proposed bus rapid stop and kiosk; (d) what has been the impact of newly established courts for the communities they are intended to serve and access to justice as a whole?

<sup>19</sup> It is the 29th branch court to be converted into a full-service court during the fourth democratic administration.



enable the applicant to seek or execute the order for a period longer than 12 months, or (b) there is an abuse of the system by the other party which makes it difficult to obtain the granting or execution of the order for a period longer than 12 months.

**Priority 3: Service turnaround in the Masters’ Branch.** Certain targets relating to improved turnaround times were not achieved due to capacity constraints. The turnaround project will focus on the ‘softer’ issues of working with clients in distress and the ‘hard’ issues related to the speedy finalisation of matters. A new Master’s Office was opened in Nelspruit in Mpumalanga and additional service points were established at Barberton and Nelspruit Magistrates’ Courts. The accessibility of the Master’s Offices for Guardian’s Fund matters continues to be a concern as there were only six offices countrywide to deal with Guardian’s Fund matters. Some of these are not located in the biggest urban areas and for those living outside of these centres access is difficult. To improve accessibility the department introduced a new paperless administration system to expand the number of service points where documents can be collected and quality controlled, and then sent to central offices for processing. This will reduce the potential for fraud, in addition to beneficiaries receiving payments via EFT. Nevertheless, the expansion of Guardian’s Fund services remains urgent. LASA will assist in 2071 matters referred to it in 2012/13 involving the interests of minors.

### 3. OVERVIEW OF SELECTED INDICATORS IN THE 2014/15 ANNUAL PERFORMANCE PLAN

Each department also tables an Annual Performance Plan (APP) with specific performance targets that are linked to its budget for that specific financial year. The following summary is extracted from the detailed 2014/15 budget analysis of the DOJ.<sup>20</sup>

#### 3.1 Programme 1: Administration

| STRATEGIC OBJECTIVE                                       | 2014/15 APP<br>(Modified, and new indicators)  | 2013/14 APP<br>(Targets)                         |  |
|---|--|--|--|
|   |  | 2013/14  | 2014/15 (Target)                                   |
| Reduction of fraud and corruption cases in the Department | % of forensic investigations finalised (MTEF target 80% of investigations finalised by 2016/17)<br><b>MODIFIED</b> | 50%  | 70%  |
| Finalisation of TRC recommendations                       | Number of exhumation ceremonies for people whose remains have been exhumed. <b>(NEW)</b>                           | 3 Regulations (Basic, Higher Education & Health) | 2 Regulations (Community Rehabilitation & Housing) |
|   | Number of needs analysis completed in TRC identified communities <b>(NEW)</b>                                      | 100%   | Analysis for 8 (out of 18) communities completed   |

<sup>20</sup> Nesbit, G (2014). Analysis of the Department of Justice and Constitutional Development 2014 Budget and Strategic Plans. Research Unit. Information Services Section. Parliament of South Africa. at pp19 – 23.



**Comment:**

- **Under Programme 1: Administration four indicators were removed** namely (i) Percentage of older forensic investigations finalised; (ii) Number of regulations for providing assistance to the TRC victims approved; (iii) Percentage of TRC Victims applications processed within four months; (iv) Number of Integrated Justice System (IJS) quarterly progress reports. Why were they removed?
- **Fraud and corruption:** To reduce the risks of corruption, senior staff must submit financial disclosure forms. However, the Department did not meet its targets relating to the vetting of senior staff due to capacity issues in the forensic investigation units. What progress has been made to ensure key staff members are vetted?
- **Truth and Reconciliation Commission:**<sup>21</sup>
  - **Reparations.** As at 30 January 2014:<sup>22</sup> 13 outstanding beneficiaries could not be traced (and may have to be declared untraceable) and 42 beneficiaries (or next of kin) remained to be paid. Have the outstanding reparations payments to victims and next of kin been finalised?
  - **Regulations.** Draft regulations on basic and higher education were submitted to Cabinet for consideration and approval by the President in 2013/14. What is the status of the regulations?
  - **Community rehabilitation projects.** 18 Communities are to benefit from the R1.13 billion available in the Presidents Fund.<sup>23</sup> Needs analyses were finalised in Gauteng (Mamelodi and Alexandria) and KZN (Bhambayi and Mpophomeni). Consultations started in the Free State communities of Thabong and Tumahole. It is not clear how the 18 communities were selected. The Department should provide feedback on the selection of communities, the status of the needs analyses and the regulations. What exactly is the Department's role in the rehabilitation of the said communities? Details of any service level agreements / memoranda of understanding have been developed with other role player departments, including at provincial and local government level?

<sup>21</sup>The President's Fund was established in terms of section 42 of the Promotion of National Unity and Reconciliation Act, (Act No. 34 of 1995). Parliament approved the following measures to victims:

- A once off individual grant of R30000 to those individuals or survivors designated by the TRC
- Systemic programmes to project academic and formal records of history, cultural and art forms, and erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names.
- Medical and other forms of social assistance programmes to provide for medical benefits, education assistance and the provision of housing, as well as other social benefits to address the needs of victims identified by the TRC.
- Rehabilitation of entire communities that suffered and are still in distress.

<sup>22</sup> Response by the DOJ to Justice Portfolio Committees 2013 Budget Review and Recommendation Report.

<sup>23</sup> Alexandra, Athlone, Balfour, Beaufort West, Bhambayi Settlement, Bisho, Crossroads, Duncan Village, Galeshewe, Ga-Nchabaleng, Lulekani, Mamelodi, Mmabatho, Mpophomeni, Nelspruit, Swanieville, Tumahole and Welkom.





### 3.2 Programme 2: Court Services<sup>24</sup>

| STRATEGIC OBJECTIVE                                     | 2013/14 APP (target)   | 2014/15 APP (Modified, and new indicators)  | 2014/15 (Target)      |
|---|--|---|-----------------------|
| Increased promotion and protection of vulnerable groups | 100 % of three year plan implementation of the approved maintenance Turnaround Programme | % of maintenance cases finalised within 90 days after proper service of process ( <b>MODIFIED</b> ) | 15% of four year plan |
| Improved delivery of services at court                  | -  | Number of cases postponed by the audiovisual remand (AVR) system ( <b>NEW</b> )                     | 8000                  |
|   | -  | % of cases postponed due to unavailability of court staff ( <b>NEW</b> )                            | 10%                   |
| Capacitation of the Office of Chief Justice             | % of positions filled (95% of all funded posts filled by 2013/14)                        | % of funded vacancies filled ( <b>RE-INTRODUCED</b> )   | 90%                   |

#### Comment

- **Vulnerable Groups**
  - (i) How much will be spent on the implementation of legislation such as the Child Justice Act (CJA), the Criminal Law (Sexual Offences and Related Matters) Amendment Act and the Children’s Act in 2014/15?
  - (ii) What progress has been made in respect of plans to combine the National Register for Sexual Offenders with the CJA register to be located in the Department of Social Development?
  - (iii) There are currently only three One-Stop-Child-Justice Centres (OSCJs) in the country (in Mangaung (Free State), Klerksdorp (North West) and Nerina (Eastern Cape). The Mangaung One-Stop Child Justice Centre (OSCJC)<sup>25</sup> has received international acclaim. However, due to the high costs involved the DOJCD was in the process of conducting a

<sup>24</sup> Nesbitt supra. at pp26 – 29.

<sup>25</sup> Section 89 of the Act provides for the establishment of One-Stop Child Justice Centres. There are currently only three operational One-Stop Child Justice Centres (OSCJs): one in Port Elizabeth called the Nerina One-Stop Child Justice Centre, one in Bloemfontein called the Mangaung One-Stop Child Justice Centre and in Klerksdorp in North West. Additional One-Stop Child Justice Centres were reportedly to be launched in the course of 2012 in Buffalo City in the Eastern Cape.

There are no regional courts attached to the OSCJs – thus their areas of jurisdiction need to be increased as provided for by section 89(6)(a). This will result in the children, currently being detained at the Child and Youth Care Centres attached to the One-Stop Child Justice Centres, but who cannot be dealt with at the One-Stop Child Justice Centres because they committed offences outside the area of jurisdiction of the One-Stop Child Justice Centre, to also receive the benefits of the services offered there. The increased areas of jurisdiction will also ensure that the One-Stop Child Justice Centres and the resources allocated to them are fully utilised.

The establishment of regional courts at the One-Stop Child Justice Centre (even if only on a periodic basis) will ensure that children who commit serious offences and who are not diverted continue to enjoy the benefits of receiving the multidisciplinary support being offered at the Centre.

One-Stop Child Justice Centres also experienced a significant drop in children entering the child justice system and therefore the resources in place are not fully utilised at the moment. Establishing regional courts at the Centres and increasing the areas of jurisdiction of the Centres will ensure full utilization of the allocated resources.





viability study on the establishment of further OSCJCs. **What was the outcome of the viability study?**

- (iv) Of the **57 sexual offences courts** to be established, 22 were re-established in 2013/14 and 12 are to be re-established in 2014/15 (depending on the availability of resources).<sup>26</sup> The NPA and Legal Aid SA both indicated that they will not be able to provide capacity at these courts within their current budget constraints.<sup>27</sup> How will the concerns of the NPA and Legal Aid SA be addressed to ensure the Department meets its performance targets and the courts function effectively? Which regions and courts will be most affected by staff shortages? Has the Department identified and prioritised sexual offences matters that are also backlog cases as recommended by the Fourth Parliament?<sup>28</sup> If not, why not. If so, which courts and regions have the most backlog sexual offences matters?

• **Courts**

- a) **Under-utilisation of court hours:** The norms and standards for the performance of judicial functions which were gazetted by the OCJ on 28 February 2014 provide that trial courts should strive to sit for a minimum of 4.5 hours per day.<sup>29</sup>
- b) **Percentage of cases postponed due to unavailability of court staff:** this is a new indicator. At which courts were staff unavailability identified as a problem and what reasons were the most prevalent? How will this new indicator be monitored at will it be at all courts?
- c) **Conversion of backlog courts into permanent courts:** Both the NPA and LASA have identified budget constraints as a challenge in capacitating these courts. What progress has been made with the conversion process? Which courts will be most affected by staff / capacity constraints and what contingency measures are in place?
- d) **Court records:** The Court Records Off-Site Storage project was introduced in 2011 as part of the Departments modernisation programme to improve the management of court records; alleviate filing space challenges in the courts, and provide easy access to court records for the public, the judiciary and members of the legal fraternity.<sup>30</sup> However, missing transcripts and court records continue to be identified as a problem, especially in respect of appeals as this affect an accused's constitutional right to a fair trial and cause delays.<sup>31</sup> How is the department addressing this problem?
- e) **Capacitation of Office of the Chief Justice:** The OCJ was proclaimed a government department in September 2011. National Treasury (NT) has approved the budget programme structure for the OCJ. The structure will cover the High Courts, South African Judicial Education Institute and Judges Salaries as direct charges from the National Revenue Fund. A Budget Vote for the OCJ will be created and the Secretary-General will become the Accounting Officer. It would start reporting on its activities from the beginning of 2014/15. Capacity for permanent staff was being created, including the appointment of a Secretary-General to head the Office, and four Deputy Chiefs. A

<sup>26</sup> ENE Vote 24 2014 p5

<sup>27</sup> Ibid note 11

<sup>28</sup> BRRR 2013

<sup>29</sup> GG No 147 (28 February 2014)

<sup>30</sup> [http://www.justice.gov.za/m\\_speeches/2011/20110607\\_min\\_budgetvote.html](http://www.justice.gov.za/m_speeches/2011/20110607_min_budgetvote.html)

<sup>31</sup> <http://witsjusticeproject.files.wordpress.com/2014/05/anthology-of-the-justice-for-breakfast-roundtable-debates-2012-to-2013.pdf>



significant number of staff members will be transferred from the DOJ to the OCJ – how will this affect DOJ operations / programmes and which units and regions will be most affected?

#### 4. ADDITIONAL SELECTED ISSUES FOR FOLLOW-UP

- **UNFUNDED MANDATES: COMMISSIONS OF ENQUIRY** do not form part of the Department's planned activities for the year and are funded from its baseline. For 2013/14, there was an adjustment to cover the Marikana Commission of Enquiry costs of approximately R47.6 million per year, of which R35.4 million is estimated costs relating to personnel and consultants.<sup>32</sup> The Commission into the Strategic Defence Procurement Package has cost R101.87million per year of which R68.2 million is estimated costs relating to personnel and consultants.<sup>33</sup> These funds are drawn from the Department's already stretched operational budget and may impact negatively on service delivery. **How will the Department fund Commissions of Enquiry in 2014/15?**
- **Security at court:** Security at courts has been prioritised due to increased criminal incidents. A recent example is a shooting incident at the Western Cape High Court. The costs of securing courts have climbed dramatically – it was reported that the Department needs approximately R1.2 billion over the medium term to address its security needs. **Which courts and regions are in most need of security upgrades and how is this being addressed?**
- **Integration of IT systems (IJS):** The need for improved co-ordination and integration of the JCPS Cluster departments' ICT systems has long been identified as key to the effective implementation of the Criminal Justice System's Seven-Point Plan. Key priorities for the programme include the integration of the departmental case related systems and establishment of a single data store for the JCPS Cluster for statistical purposes. **What was the outcome of the Auditor- General audit of the IJS project underway in 2013/14? Is this report finalised and if not when can it be expected?**

#### 5. SELECTED NPA-SPECIFIC ISSUES

- **NPA Head:** In October 2013 the President appointed Advocate Nxasana as the National Director of Public Prosecutions (NDPP). On 4 July 2014 the Presidency announced that President Zuma has instituted an enquiry into the NDPP after it became known he did not have the required security clearance for the post.
- **Performance and budget:** Concerns remain about the impact of the budget cuts for prosecutions and the performance of the criminal justice system as a whole. The NPA received an unqualified audit opinion with no findings. However, the NPA's compensation of employees budget is under severe pressure due to higher than anticipated carry through costs of implementing the Occupation Specific Dispensation (OSD), resulting in a cumulative shortfall of R78 million. The NPA has implemented cost saving measures and funds have been reprioritised from its goods and services budget. Only priority posts are

<sup>32</sup> DOJCD (2013). Report on issues raised in 2013 BRRR dated 19 July 2013. at p6

<sup>33</sup> DOJCD (2013). Report on issues raised in 2013 BRRR dated 19 July 2013. at p5



being filled. **In 2014/15 the estimated shortfall will be R118 million and will affect court utilisation of 15 Regional Courts and 66 District Courts. In 2015/16, the shortfall will grow to R153.9 million and this will impact on 15 Regional Courts and 110 District Courts. The NPA may need to consider closing certain courts and revise its targets downwards to accommodate the budget reductions.**

- **Thuthuzela Care Centres<sup>34</sup>:** Donor-funded positions have been institutionalised and the intention is to increase the number of operational TCCs from 35 to 55 in 2015/16. The NPA receives R38 million in 2013/4; R44 million in 2014/15 and R55 million in 2015/16 for the TCCs.
- **Designated sexual offences courts:** The NPA and Legal Aid SA have both indicated that they are unable to fund capacity from their baseline and that additional funds will be needed if they are to provide services at dedicated sexual offences courts.

## 6. LEGISLATION

### 6.1 Amendment of Sexual Offences Amendment Act 32 of 2007 to comply with Constitutional Court rulings of 3 October 2013 and 6 May 2014 respectively that:

- (i) **Section 50(2)(a) is inconsistent with the Constitution** as it unjustifiably limits the right of child sex offenders to have their best interests considered of paramount importance. Therefore, child sex offenders who were younger than 18 when the offences were committed, must be excluded from the NRSO.<sup>35</sup> **The order of invalidity was suspended for 15 months from 6 May 2014 to allow Parliament to rectify the defect.**
- (ii) It was constitutionally impermissible for children to be subject to criminal sanctions in order to deter early sexual intimacy and combat the risks associated therewith. Consequently **Sections 15 and 16 were inconsistent with the Constitution** and invalid to the extent that they impose criminal liability on children under the age of 16 years. **The declaration of invalidity was suspended for 18 months from 3 October 2013 to allow Parliament to correct the defects.**<sup>36</sup> A moratorium was placed from 3 October 2013 on all investigations into, arrests of, prosecutions of, and criminal and ancillary proceedings against children under the age of 16 years in relation to sections 15 and 16 of the Act, pending Parliament's correction of the defects in the Act. The Minister had to take all

<sup>34</sup> *Thuthuzela Care Centres* are in operation in public hospitals in communities where the incidence of rape is particularly high. They are also linked to sexual offences courts, which are staffed by prosecutors, social workers, investigating officers, magistrates, health professionals, NGOs and police, and located in close proximity to the centres. The centres are managed by a top level inter-departmental team comprising Justice, Health, Education, Treasury, Correctional Services, Safety and Security, Local Government, Home Affairs, Social Development and designated civil society organisations. *Thuthuzela's* integrated approach to rape care is one of respect, comfort, restoring dignity and ensuring justice for children, women and men who are victims of sexual violence. When reporting, the rape victim is removed from crowds and intimidating environments, such as at the police station, to a more victim-friendly environment before being transported by ambulance to the *Thuthuzela* one stop care centre at the hospital. En route, the victim receives comfort and crisis counselling from a trained ambulance volunteer.

<sup>35</sup> *J v National Director of Public Prosecutions and Another* [2014] ZACC 13. Judgement delivered on 6 May 2014.

<sup>36</sup> *The Teddy Bear Clinic for Abused Children and others v Minister of Justice and Constitutional Development and another* [2013] ZACC 35 CCT 12/13.



steps necessary to ensure that the details of the children under the age of 16 years that were convicted in terms of sections 15 or 16, or issued a diversion order following a charge under those provisions, will not appear in the NRSO, and that a certificate of expungement is issued for their convictions and sentences or diversion orders to be expunged.

- 6.2 Follow-up on progress regarding the Justice Administered Fund Bill to clarify the legal status of the Third Party Fund (TPF).**<sup>37</sup> The Bill, when enacted, will formalise the establishment of TPFs with its own accounting and reporting arrangements. The Minister of Justice will also be able to make regulations to regulate the receipt and payment of TPF benefits. The bill was submitted to the Minister of Finance for comment in May 2013. The department has received the Auditor-General's comments on the bill. An update is needed on whether the Minister of Finance has submitted comments, when the bill will be submitted to Cabinet for approval and proposed introduction in Parliament.
- 6.3 Progress report on process of drafting amendments to the NPA Act:** To clarify the NPA's accounting status and further strengthen its independence.
- 6.4 State legal services:** Review of provision of state legal services, progress on identified challenges and implementation of State Attorney-General Bill (Act?).

## 7. GENERAL

- **Maintenance of courts:** Comprehensive progress on planned maintenance of court buildings. A media report recently highlighted the appalling state of toilets in the Cape Town Magistrates Court – the same has been observed in Wynberg Magistrates Court and is most likely to be duplicated at other courts.
- **Progress in filling vacancies at senior management (SMS) level and in critical areas.** The vacancy rate on SMS levels (13 – 16) was 15% (30 posts) on 28 June 2013, a slight improvement from 16.92% (33 vacancies) in April 2013.<sup>38</sup> Five posts were filled, including two Directors, one Chief Director and one Principal Legal Administrative Officer. Interviews were concluded for the posts of Senior Audit Manager: Cluster 3, Deputy-Director: Constitutional Development, Chief Financial Officer
- **Court orders against NPA in respect of payment and finalisation of maintenance matters:** The NPA was reportedly ordered by the South Gauteng Magistrates Court on 11 June 2014 to pay R21 600 in overdue maintenance to a mother of three within seven days. This was because the NPA had failed to appoint an investigating officer to follow up on the father who defaulted on maintenance payments since November 2013, causing delays in finalising the mother's maintenance claims. The NPA allegedly indicated that it would appeal the decision as it does not have enough maintenance officers.

<sup>37</sup> DOJCD (2013). Report on issues raised in 2013 BRRR dated 19 July 2013. at p8

<sup>38</sup> DOJCD (2013). Report on issues raised in 2013 BRRR dated 19 July 2013. at p8