



10 October 2014

SUMMARY AND ANALYSIS OF THE JUSTICE DEPARTMENT 2013/14 ANNUAL REPORT

*'how we wish that our sister was a celebrity so that fair justice could be served.'*¹

1. INTRODUCTION

This paper will consider briefly the following matters in respect of the performance of the Justice Department:

- Transfer of functions to the Office of the Chief Justice
- Policy environment
- Assessment of Performance 2013/14: Achievements and challenges
- Budget Overview and Programme performance
- A snapshot of Human Resources matters
- External reports/investigations
- Issues for consideration

2. SIGNIFICANT EVENTS IMPACTING THE JUSTICE DEPARTMENT: TRANSFER OF FUNCTIONS CONFIRMED - OFFICE OF THE CHIEF JUSTICE

The transfer of administrative functions and identified staff attached to the Superior Courts (Constitutional Court, Supreme Court of Appeal, High Courts) from the Justice Department to the Office of the Chief Justice (OCJ) **commenced on 1 October 2014.**² The Department reports that since the OCJ was established as a government department (in terms of the Public Service Act through a Presidential proclamation) it will be headed by the Justice Minister as its Executive Authority with the Secretary General as its administrative head. As the Minister's proxy, the Secretary-General engages and consults with the Chief Justice and other Heads of Courts in respect of the administrative functioning of the Superior courts, while the Chief Justice controls the judicial functions of the Superior and lower courts.³

Personnel performing an administrative role to support judicial functions at the Superior Courts as well as other staff attached to the regional offices and national office of the Department of Justice and Constitutional Development whose roles are directly connected to the Superior Courts will be transferred to the Office of the Chief Justice.⁴

- In total **1 486 members of staff (at National and regional offices) will be transferred** from the Department to the Office of the Chief Justice.

¹ As contained in an open letter (dated 17 March 2014) to the Minister of Justice from the family of Victoria Masemola who along with her two daughters was shot by her estranged partner. The letter raised concerns about the quality of justice they were receiving in the matter.

² Announcement of the transfer of administrative functions and staff from the Department of Justice and Constitutional Development to the Office of the Chief Justice by the Minister of Justice and Correctional Services, Adv Michael Masutha (30 September 2014) http://www.justice.gov.za/m_statements/2014/2014-09-30-OCJ.html

³ Section 11 (4) of the Superior Courts Act 10 of 2013

⁴ These functions relate to: (a) the appointment of court managers, registrars, interpreters and court clerks responsible for case flow management support functions; (b) performance management in relation to the personnel of the Superior Courts; (c) procurement of goods and services pertaining to the administrative support functions at the Superior Courts; and (d) management of library publications.



- The transfer will **not** have any impact on the conditions of service of the affected employees.
- For 2014/15 a pro rata sum of **R1.4 billion will be transferred**, which is the total budget for a year.
- Plans for the OCJ to get its **separate vote in the 2015/16 financial year** are reported to be on track.
- With the exception of the judicial functions of magistrates all other administrative management functions pertaining to the Lower Courts remain the responsibility of the Department, and **not** the Office of the Chief Justice at this stage.

Comment

- It is now clear that the final phase of institutional reform for the establishment of a separate independent or autonomous judicial administration model will take some time to finalise. In September 2014 Cabinet approved that the Justice Minister commission the development of a concept paper. During 2013/14, the Chief Justice had prepared a report entitled “*Capacitating the Office of the Chief Justice and laying foundations for judicial independence – the next frontier in our constitutional democracy: judicial independence*”. This report (the institutional models report) is the culmination of the work started by former Chief Justice Ngcobo who, in 2009, established a committee led by the late Chief Justices Chaskalson and Langa to advise on appropriate institutional reforms aimed at protecting the independence of the judiciary. A report containing views and comments on the institutional models report was prepared and submitted to the Minister for his consideration.⁵ This report will apparently be taken into consideration in the course of developing the required concept document which the Departments estimates will take 2 to 3 years to complete.⁶
- Can the Department elaborate on the logistical implications of this transfer – 1486 staff will now be reporting to the Secretary General (OCJ) but in the absence of adequate infrastructure to house the OCJ will still be based in Justice Department office space - how will this be managed?
- The Department reports that there is inadequate funding for the implementation of the Superior Courts Act 10 of 2013.⁷ What is the shortfall in funding and what are the implications for the OCJ?

3. POLICY ENVIRONMENT

The key government policy directives shaping the activities of the Justice Department for 2013/14 were (i) the Outcomes-based approach to performance (driven by a Justice, Crime Prevention and Security (JCPS) Cluster Delivery Agreement for Outcome 3 -- ‘*All People in South Africa are and feel safe*’ and its associated outputs which focused on the fight against serious crimes, the fight against corruption (through the Anti-Corruption Task team); strengthening the criminal justice system; addressing cyber-crime and the integration of

⁵ DoJ&CD Annual Report 2013/14 p35

⁶ http://www.justice.gov.za/m_statements/2014/2014-09-30-OCJ.html

⁷ DoJ&CD Annual Report 2013/14 p18



systems across the JCPS); and (ii) the 2013 State of the Nation Address which prioritised the fight against corruption and stemming the tide of violence against women.

4. ASSESSING PERFORMANCE: 2013/14 ANNUAL REPORT

4.1 TECHNICAL CONCERN

Notably **absent** from the Justice Department's 2013/14 Annual Report are statistics from the courts (statistics are usually provided for the Constitutional Court, Supreme Court of Appeal (criminal appeals and criminal and civil petitions), Labour court, Land claims court, High court (civil), Child justice court, regional court (civil), equality courts, family courts, district courts (civil), small claims courts as well as for maintenance and domestic violence matters).⁸ Such statistics have been included in previous Annual Reports and provide a useful monitoring tool. No explanation is given for the absence of these statistics for the period under review.

4.2 PERFORMANCE SNAPSHOT

The Departments performance was driven by four strategic goals of - increased accountability through an unqualified audit (Goal 1); improved efficiency in the delivery of justice services (Goal 2), transformed legal services (Goal 3) and effective leadership of the Justice cluster (Goal 4). Two new strategic objectives (Enhanced litigation services and Administration of the Promotion of Access to Information Act (PAIA) of 2000) and new indicators for 2013/14 included: the number of re-established sexual offences courts; the number of magisterial districts aligned to municipal boundaries and the number of Service Delivery Implementation Plan (SDIP) progress reports and annual surveys on the implementation of PAIA by public bodies concluded.

The Department has focused intensively over the last three financial years on strengthening financial governance to address persistent qualified audit findings from the Auditor General. These interventions resulted in an unqualified audit for the 2012/13 financial year (for the first time in seven years). **This has been repeated in 2013/14 with a second consecutive unqualified audit** (with findings).

The Department acknowledges **certain challenges persist in respect of consistency of performance** over the financial year noting that, *'by the end of the third quarter of the year under review there were numerous areas where performance was lagging and affected senior managers were required to put projects in place to ensure a rapid turnaround in performance.'*⁹ This should be addressed through more effective performance management and streamlined performance reporting.

Nonetheless, significant attention has been paid to refining strategic planning and management of performance information. In some cases this has meant adjusting or setting more attainable (or reduced) targets. This has had a positive spin-off with **80 per cent of performance targets achieved (or exceeded) in 2013/14 compared with 44% in 2012/13.**

⁸ In the October 2012 Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development, dated 30 October 2012 the Committee expressed grave concern when, important data relating to court performance, found in previous annual reports, has been omitted. Specifically, court statistics relating to maintenance and domestic violence cases are not reported. The Committee is unclear as to why this is so and specifically requests that it is included in future annual reports. <http://www.pmg.org.za/files/doc/2012/comreports/121031pcjusticebrrr.htm>

⁹ DoJ&CD Annual Report 2013/14 p50



One of the challenges, however, in measuring performance this way, is that it may not accurately reflect the operating environment. For instance, the Department reports that the State Attorney achieved 100% of its targets in 2013/14.¹⁰ The State Attorney has certainly met its targets for the value of briefs to be allocated to Previously Disadvantaged Individual (PDI) counsel; and has significantly increased its percentage of enrolled cases successfully concluded (by exceeding the target set by 22 per cent.)¹¹ However, a series of highly critical court judgements paint a contrasting picture of performance at the State Attorney which is not reflected in the positive picture presented in the Annual Report statistics. For instance, a recent judgement from Bertelsmann J (2 September 2014) refers to 'a chaotic state of dysfunctionality' at the State Attorney (particularly in the Pretoria office).¹²

The Department states it is committed to the effective and cost efficient provision of state legal services.¹³ It has acknowledged the challenges that exist in this office in its Policy Framework on the transformation of State legal services¹⁴ and has provided in the State Attorney Amendment Act 13 of 2014 for the appointment of a Solicitor General who will consolidate and streamline state legal services. However, it would seem greater urgency is needed to address the current situation in light of the 'grave concern' expressed by Bertelsmann J (North Gauteng High Court) that:

*'nothing the courts have said about the situation at the state attorney appears to have been heeded by the Minister or the Department. Courts cannot function effectively without the professional support of its attorneys and advocates. The state attorney is involved in most of the litigation affecting the state and is funded by the public purse. The present condition of this office causes significant unnecessary expenditure of public funds that are wasted by cost orders granted against organs of state because of the poor quality of professional service' provided by the officers of the court.*¹⁵

Another key area of service delivery for the Department is to facilitate the provision of accessible, efficient and quality court services, thereby improving finalisation rates of cases, efficiencies and backlogs at courts and justice service points. The Department reports on positive improvements in court performance in the criminal justice system in line with the outputs of Outcome 3 in respect of case finalisation and highlights successes in reducing criminal case backlogs¹⁶ (to 27 379 - the target set by the Outcome 3 delivery agreement was 38 414 by 2014.)¹⁷ Significantly, the Chief Justice introduced national and provincial efficiency enhancement committees last year in response to concerns about case backlogs, specifically that cases were postponed too often and judgments were delayed for too long.

Notably though, both Legal Aid South Africa (LASA) and National Prosecuting Authority (NPA) identify continued inefficiencies in the criminal justice system. LASA points to

¹⁰ DoJ&CD Annual Report 2013/14 p77

¹¹ DoJ&CD Annual Report 2013/14 p68

¹² Minister of Rural Development and Land Reform v Griffio Trading CC; In Re: Griffio Trading CC v Minister of Rural Development and Land Reform (12440/11) [2014] ZAGPPHC 666 (2 September 2014).

¹³ <http://www.treasury.gov.za/documents/national%20budget/2013/enebooklets/Vote%2024%20Justice%20and%20Constitutional%20Development.pdf>

¹⁴ Released on 21 May 2012 http://www.justice.gov.za/m_speeches/2012/20120521_min_pftsls.pdf

¹⁵ Ibid para [41]

¹⁶ Backlog cases are cases that have been on the roll longer than six months in district courts, longer than 9 months in regional courts and longer than 12 months in High Courts.

¹⁷ 82 Backlog Courts (59 Regional Court and 23 District Courts) were operating. 42 of these Regional Courts have been identified to become permanent additional courts, replacing the temporary courts, during 2013/14. The 42 posts have been advertised



challenges with backlogs.¹⁸ The NPA Annual Report 2013/14 refers to ongoing challenges with case flow management with too few trial cases placed on court rolls in the lower courts; postponement of cases due to the unavailability of legal aid practitioners and magistrates; various high courts impacted negatively by delays in the Justice Department in appointing Acting Judges; a decrease in the number of court days and lack of dedicated courts in some of the Specialised Commercial Crime Unit (SCCU) regional offices.¹⁹

With regard to civil matters, a key focus area for the Department has been the roll-out of the small claims courts and improvement in turnaround times in the finalisation of quasi-judicial services. Specifically, two such services, namely default judgments by the Clerk of the Court and taxation services, were identified for improvement in turnaround times during the year under review and targets were met or exceeded in these areas.

4.2.1 Progress during 2013/14:

ISSUE	ACHIEVEMENT
Second consecutive unqualified audit	<p>The Department has prioritised good governance and administration and worked intensively with the Auditor-General (AG), National Treasury and has 'beefed up' its own internal audit capacity in pursuit of an unqualified audit. It achieved this in 2012/13 and again in 2013/14. (Note though the AG has identified areas where compliance is still lacking.)</p> <p>The Guardians Fund and Presidents Fund also received an unqualified audit for 2013/14.</p>
Significantly improved overall performance in achieving targets	<p>80% of performance targets were achieved in 2013/14 compared with 44% in 2012/13 and 28% in 2011/12.</p>
National action plan on crimes against LGBTI²⁰ persons and rapid response team formed²¹	<p>During 2013/14 the following was developed: Terms of Reference of the National Task Team; Terms of Reference of the Rapid Response Team²²; and the National Intervention Strategy on Gender and Sexual Orientation based Violence perpetrated against Lesbian, Gay, Bisexual, Transgender And Intersex (LGBTI) Persons (2014-2017) with three key strategic outputs (and associated targets) namely to: (i) Develop Prevention Programmes to address violence on the grounds of sexual orientation and gender identity; (ii) Develop an Improved response by Criminal</p>

When will the Policy Framework on Combating Hate Crimes, Hate Speech and Unfair Discrimination be finalised and released?

What is the status of the Hate Crimes legislation?

¹⁸ LASA Annual Report 2013/14 p18

¹⁹ NPA Annual Report 2013/14 p29

²⁰ The Deputy Minister is reported as saying that he hopes "that this policy can be put out in the public terrain for debate and discussion so that legislation criminalising hate crimes can be put to Parliament soon after next year's elections". <http://www.mambaonline.com/2013/09/19/hate-crime-bill-set-for-2014/>

²¹ DoJ&CD Annual Report 2013/14 p36

²² This team consists of Departments of Justice and Constitutional Development, South African Police Services, Correctional Services, Social Development, National Prosecuting Authority and civil society organisations. Urgent resolutions were adopted to track progress of these cases as well as to urgently develop rapid response mechanisms within civil society networks so that the South African Police Services can be immediately alerted when a gender and sexual orientation-based crime takes place against an LGBTI person. This team meets on a regular basis to map progress on the pending cases in the criminal justice system. http://www.justice.gov.za/m_speeches/2014/20140325_dm-salo.html#sthash.UBgoGYIr.dpuf



	Justice System to crimes affecting LGBTI sector; and (iii) Strengthen Public Service Institutions to deal with LGBTI issues including discrimination and Hate Crimes. In respect of reported cases of hate crimes against LGBTI persons - 14 cases had been finalised, five with sentences of 15 to 20 years with an additional 19 cases pending.
Expansion of family advocates offices	Over the last two years, underfunding and a limited national footprint impacted negatively on delivery of services and meeting of targets in the office of the Family Advocate. However, seven new offices were established in 2013/14 (Welkom, Palm Springs, Sibasa, Vossman, Upington, Rustenburg, and Mitchells Plain). ²³ Additional funds were also provided for new posts to create much needed additional capacity.
Payment of maintenance monies and guardians funds electronically increased significantly (reducing the cash handled at courts and the potential for theft and fraud and speeding up payments)	In 2011/12, 15 983 beneficiaries were paid via EFT at 10 courts (at a value of R9 million). In 2013/14 214 443 beneficiaries were paid via EFT at 390 courts (at a value of R164.8 million). 98 per cent of maintenance payments are now made electronically. 96% (50 793) of Guardians Funds payments were made via EFT in 2013/14.
Anti-corruption task team (ACTT)²⁴	More than 800 persons (in the public and private sphere) are under criminal, and or forensic investigation with pre-trial proceedings initiated against 298 persons and actual trial proceedings against 174 persons by end December 2013. 48 persons were convicted by end December 2013 in cases where more than R5 million in illicit gains was involved. R149 was paid into the Criminal Assets Recovery Fund in the first six months of 2013/14.
Small claims courts target exceeded²⁵	30 small claims courts were established exceeding the 2013/14 target of 20. (No statistics were provided in the 2013/14 Annual report to monitor case load in these courts)
Access to justice	Five branch courts were redesignated as full service courts ²⁶ (New Brighton in Eastern Cape, Kagiso and Soweto in

According to the NPA 15 officials in the Justice Department were convicted of corruption.

How much public education/community awareness is provided by the Department to promote access to these courts?

²³ Establishment of these sites was necessitated, firstly, by the increase in workload as a result of the Civil Jurisdiction Act that designated magistrate courts to handle divorce matters. Secondly, mediation services for families are now mainly handled by the Chief Family Advocate and less by the Department of Social Development.

²⁴ The NPA Annual Report 2013/14 p 64 notes that 73 JCPS officials were convicted of corruption (54 of these were finalized by the NPS and 19 more serious cases by the SCCU. See State v Maphuthuma – the accused an administrative official stationed at Tembisa magistrate court was convicted on 12 counts of corruption and sentenced to four years on each count to run concurrently.

²⁵ Claims in the Small Claims Court are civil disputes, usually over money lent to someone else, movable or immovable property, occupation of a property, mortgage bonds, promissory notes and credit agreements. Claimants involved in civil disputes can now claim for amounts of up to R15 000. Proceedings in the Small Claims Court are similar to that of an arbitration conducted informally by a presiding officer who is known as the Commissioner. Currently there are 1 750 Commissioners country-wide, 1 465 male and 285 female. http://www.justice.gov.za/m_speeches/2014/20141008_Howick.html#sthash.BLMK06sc.dpuf

²⁶ These converted courts offer services that include child and family law, civil justice, criminal justice and deceased estates.



	Gauteng, Ezakheni in KwaZulu-Natal and Grabouw in the Western Cape). 36 magisterial districts were aligned with municipal boundaries against a planned target of 20.
<p>Audio-visual remand²⁷</p> <p>Was this project expanded to any new sites in 2013/14? Are there any plans to expand in the future?</p>	<p>9 068 remand cases were processed through the audiovisual remand project which is operating at 47 magistrates courts and 22 correctional centres</p> <p>A draft National Protocol on audio visual remand has been developed including best practices. Roll-out of the protocol was envisaged during 2014. Has this happened?</p>
<p>Sexual offences courts re-established</p>	<p>Nine (regional courts) were identified for completion within the 2013/14 financial year. By the end of the financial year 21 courts had been re-established. (Both the NPA and LASA have, however, expressed concern at budget constraints limiting the provision of required capacity at these courts.)</p>
<p>Digitalisation of court records</p>	<p>This project was implemented at two additional sites (Durban High Court and Durban Labour and Labour Appeal Court) in 2013/14. In total 171 million pages of records were digitised in the nine courts at which this project has been implemented.</p>

4.2.2 Ongoing challenges:

ISSUE	CHALLENGES
<p>Underspending in 2013/14 of R475 million²⁸</p> <p>This trend looks set to continue for another financial year. First quarter expenditure for 2014/15 shows underspending for building (capital works) and IJS projects. Are the Departments intervention strategies (which involved - meeting and formal correspondence at project management level; CFO level; Accounting Officer level; and Ministerial level with escalation to National Treasury and Cabinet intervention having any impact?</p>	<p>(i) R347.6 million underspent on capital works projects due to delays in Department of Public Works (this impacted the Limpopo High Court, Plettenberg Bay Magistrate office, Mamelodi Magistrate Office, Kagiso Magistrate Office, Mpumalanga High Court and Port Shepstone Magistrate Court.) The under spending on Buildings and Other Fixed Structures was blamed on non-performance of contractors, late hand over of sites to the contractor as well as the late completion of tender documents for the projects.²⁹</p> <p>(v) The under spending of R120 million on</p> <p>While capital works budgets are underspent spending on property leasing increases; accommodation pressures mean buildings become increasingly dilapidated and vital access to justice projects are delayed. None of the new construction projects that were to have commenced in 2013/14 proceeded as planned.</p>

²⁷ The use of a video link between the court and correctional centre obviates the need for the detainees to be physically brought to the courts merely for the purpose of remands that last only a few minutes. This has also resulted in the reduction of costs and risks associated with detainees being conveyed to the courts.

²⁸ This trend is noted again by National Treasury in the First Quarter Expenditure Report for 2014/15

²⁹ DoJ&CD Annual Report 2013/14 p84 and 85



	<p>the Integrated Justice System (IJS) was blamed on delays in procurement processes. Challenges were experienced with the State Technology Information Agency (SITA), there were delays in publishing approved specifications, delays in evaluation of bids and delays in the adjudication process.</p>
<p>Maintenance of buildings and insufficient court infrastructure³⁰</p> <p>In July 2013, the Department reported that it had 650 projects registered for planned maintenance, the majority of which were at planning or design phase. The DPW's own budget constraints has impacted on these planned projects.</p> <p>Judge Jake Moloi referred at the recent Judicial Service Commission (JSC) hearings to the severe infrastructure problems at the Free State High Court.</p>	<p>Deferred maintenance (has created a backlog) and an increase in users means many of the Departments buildings are in poor shape. The DPW's planned maintenance has been slow and its planned maintenance budget is underfunded (and even when funded it failed to address space constraints at courts.) The Department has had to take over most of the unfunded planned maintenance projects in cases of additional accommodation and include them in the funded capital works programme to try to address the backlog.³¹.</p> <p>The current arrangement where the Department only has responsibility for day to day maintenance (the guidelines for which limit what the Department can and cannot do) and NOT planned or preventative maintenance. This means it is difficult to prevent further deterioration of infrastructure.³² The Department has engaged the DPW to increase the scope of this work to include some preventative maintenance.</p> <p>The Department reports that there is continuous engagement with DPW. It will explore other ways (which it does not elaborate upon) of managing the property portfolio and has engaged DPW in this regard.³³</p>
<p>Auditor General's Report (2013/14)</p> <p>In 2013/14 an amount of R83.9 million irregular expenditure largely as a result of a failure to follow procurement policies and procedures.</p>	<p>The AG's audit may be unqualified but it is not a clean audit.</p> <p>Areas identified by the AG in 2013/14 that need to be addressed include:³⁴</p> <ul style="list-style-type: none"> • The Department is involved in various legal cases to a potential value of R3.3 billion (contingent liability).³⁵ • Effective steps were not taken to prevent irregular expenditure.³⁶

³⁰ The Public Service Commission (PSC) in a series of reports in 2012 also identified outdated/dilapidated court infrastructure at Regional Courts in all 9 provinces as contributing to court backlogs and delayed case finalisation rates.

³¹ DoJ&CD Annual Report 2013/14 p85

³² A meeting of facilities managers for the JCPS Cluster was held in November 2011, in which it was agreed that a study would be commissioned on best method of capacitating user departments to effectively manage their maintenance functions.

³³ DoJ&CD Annual Report 2013/14 p89

³⁴ DoJ&CD Annual Report 2013/14 p106

³⁵ DoJ&CD Annual Report 2013/14 p105

³⁶ Note that the DoJ&CD 2013/14 Annual Report reflects irregular expenditure (awaiting condonation to be R83.9 for 2013/14 and R233 million for 2012/13 bringing the total to R317.2 million – of this R86.3 has been condoned by the Departmental Bid Adjudication



	<ul style="list-style-type: none"> • Effective disciplinary steps were not taken against officials who made and or permitted irregular expenditure • Not all creditors are paid within 30 days (R119.9 million in 2013/14).³⁷ • Invitations for competitive bids were not always advertised for a minimum of 21 days.³⁸ • Contracts and quotations were awarded to bidders who did not submit a declaration on whether they are employed by the state or connected to a person employed by the state. • Management did not prepare adequate and complete performance reports.
<p>Third Party Funds Annual Report 2013/14³⁹ (AG issues a Disclaimer)</p> <p>In order to reduce the number of maintenance payments that flow through the courts the Department is seeking to promote direct maintenance payments (by the defendant or employer) and all regions have initiated projects where bulk of new maintenance orders are direct payments.</p>	<p>There are number of positive developments in respect of the administration of Third Party Funds (such as the production of annual financial statements, use of electronic transfers for maintenance monies, appointment of more finance staff and intensive training.)</p> <p>However, there are still issues to be addressed namely:</p> <p>(i) The AG issued a Disclaimer for the 2012/13 and 2013/14 Third Party Fund Annual Reports.⁴⁰</p> <p>(ii) The AG reports that the Department may be liable to make good shortages totalling R74.5 million as a result of theft and losses incurred in the administration of the TPF account.⁴¹</p> <p>(iii) Treasury has made a ruling that State Attorney monies and all categories of fines are in fact government monies and should be accounted for on the Departments Vote Account and not separately. The Department has been given a reporting exemption until 2015/16.⁴²</p> <p>(iv) The third party fund IT system (phase 2) was not completed because of a delay at SITA in</p>

What is the status of the Justice Administered Fund Bill to address the legal status of the TPF?

The current accounting system is inadequate - it is more of an administrative than a financial system. The Department is waiting for SITA to approve the appointment of a service provider for development of a new accounting system.

Committee (p149). The Department also reports an amount of R49 million in fruitless and wasteful expenditure (R500 000 in 2013/14) at p150.

³⁷ DoJ&CD Annual Report 2013/14 p146.

³⁸ 16A6.3 The accounting officer or accounting authority must ensure that –

(c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;

³⁹ The department administers the Third Party Funds which manage maintenance beneficiary monies (72%), fines, bail monies, debts and conveyancing matters from the State Attorney. It involves R3 billion being processed on an annual basis in 501 bank accounts (four banks)

⁴⁰ Third Party Fund Annual Report 2013/14 p16

⁴¹ DoJ&CD Annual Report 2013/14 p105

⁴² Ibid p23



	<p>concluding the tender specifications.⁴³</p> <p>(v) The AG reports that various investigations are in progress to probe cash shortages in the court environment.⁴⁴</p>
<p>State Attorney⁴⁵</p> <p>What progress has been made with the appointment of a Solicitor General?</p> <p>In <i>Central Authority for the Republic of South Africa v R</i> (6364/13) [2014] ZAGPPHC 19 (18 February 2014) the Judge stated in respect of the State Attorney that 'a litany of failures to observe both law and practice fills one with disquiet.'</p>	<p>The Department released a Policy Framework on the Transformation of State Legal Services in May 2012.⁴⁶ Linked to this is the State Attorney Amendment Act.⁴⁷</p> <p>Ongoing challenges in this office (particularly the Pretoria office) have been highlighted in a number of recent judgements:</p> <p>(i) See the case of <i>Minister of Rural Development and Land Reform v Griffio Trading CC; In Re: Griffio Trading CC v Minister of Rural Development and Land Reform</i> (12440/11) [2014] ZAGPPHC 666 (2 September 2014). This is the most recent in a series of court cases that have been highly critical of the State Attorney.⁴⁸ Of particular concern is the Judge's comment that it seemed as if nothing had changed since the court in the <i>Tasima</i> case in 2013 drew attention to the unacceptable levels of service delivery in the State Attorney, Pretoria.</p> <p>'In 2012 in the G4S case <i>Van Oosten J</i> stated that 'the instances of neglect and general decline in standards of service at the office of the State Attorney required an urgent in-depth investigation by the authorities'</p>

⁴³ DoJ&CD Annual Report 2013/14 p55

⁴⁴ Third Party Fund Annual Report 2013/14 p16

⁴⁵ The State Attorney Amendment Act 13 of 2014

⁴⁶ The primary objective of the Policy Framework, in the medium term, is to consolidate and streamline all state legal services under a single functionary who will be appointed as Head of State Legal Services. The Head of State Legal Services, who will occupy a position of, or that similar to that of Solicitor-General in comparable jurisdictions, will be the state's chief legal adviser who will represent the state in all civil litigation. The Transformation of State Legal Services forms part of on-going initiatives aimed at transforming the administration of justice broadly. In particular it is aimed at addressing the apparent lack of effective coordination of legal services that has led to a number of operational challenges experienced across government, which include the following: Prescription of claims involving government; Default judgments granted against government; Lack of monitoring systems over the work and outputs of attorneys and advocates; Inconsistency in the determination of counsel fees; and Low success rates in cases against the State.

⁴⁷ The State Attorney Amendment Act 13 of 2014

⁴⁸ In ***South African Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others* 2006 (8) BCLR 901 (CC)**. O' Regan J expressed displeasure at 'the office of the State Attorney in Pretoria whose systems of training and supervision appear to be woefully inadequate.' In response she made an order of costs de bonis propriis against the State Attorney.

In ***Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another* 2008 (5) SA 94 (CC)** Madala J expressed concern at the ineptitude of the state attorney and noted as follows; 'relying on the moral obligation of the State Attorney and the Department of Justice to improve the state of affairs has been an exercise in futility. I, accordingly, find that the relevant state institutions should take steps to rectify the problems highlighted above and report back to this Court as to the progress made.'

In ***Minister of Safety and Security v G4S International UK Ltd, In re: G4S International UK Ltd v South African Airways (Pty) Ltd and Others* (07/12735) [2012] ZAGPJHC 50 (30 March 2012)** Van Oosten J of the South Gauteng High Court observed that the instances of neglect and general decline in standards of service at the office of the State Attorney required an urgent in-depth investigation by the authorities.

In ***Tasima v Department of Transport* 2013 (4) SA 134 (GNP)** Tuchten J of the North Gauteng High Court stated that the experience of each of the members of this full Bench has been that frequently and most disturbingly civil litigation against the State in this division is allowed to go by default. He was of the view that 'the office of the State Attorney, Pretoria, an important organ of state, is presently unable to comply with its constitutional and statutory obligations.' He ordered the individual state attorney and office of the State Attorney, Pretoria, jointly and severally to pay the costs of the application for a postponement of the appeal, including the costs of both senior and junior counsel on the attorney and own client scale. The liability of the individual state attorney for these costs was de bonis propriis.



<p>What disciplinary action if any has been taken against the state attorneys involved in the Tasima and Griffio matters?</p>	<p>The Judge in the Griffio case referred to a chaotic state of dysfunctionality, a failure to render a professional service; unacceptable excuses; and the unprofessional manner in which pleadings and affidavits are prepared. 'nothing our courts have said appears to be heeded by the Minister or the department.'⁴⁹</p> <p>The Judge would have made an order holding individual officers of the court employed by the State Attorney liable if they had been properly identified. The failure to identify the individuals appeared to be deliberate to avoid the consequences of having personally to pay for the waste of taxpayer's money. The court expressed hope that the authorities would take the appropriate action against the delinquent individuals.⁵⁰</p> <p>(ii) The Auditor General reports in 2013/14 on an internal investigation into possible irregularities that resulted in fruitless and wasteful expenditure in the State Attorney in Pretoria.⁵¹ This issue was also flagged by the AG in the 2012/13 Annual report. It is unclear when this investigation will be concluded.</p>
<p>Transformation (briefing of black women advocates)</p> <p>R482 million was allocated to PDI counsel in 2013/14</p> <p>Structural inequality remains a problem. According to statistics from the General Council of the Bar, only 645 of 2 571 advocates at the Bar are female (25%). Of these only 4.5% (116) are African females. Of the 451 senior counsel, only 27 (6%) are female and only 4 are African.</p>	<p>The Department reports on achieving its target of 75% briefing of PDI in 2013/14 but the information provided in the Annual Report is inadequate.⁵² Given the slow pace of transformation for Black women counsel in particular information should be provided on:</p> <p>(i) The number of PDI women briefed by the Department on an annual basis (statistics should be provided for each regional state attorney office).⁵³</p> <p>(ii) The value of the matters that were allocated to PDI women in 2013/14.⁵⁴</p> <p>Advocates for Transformation informed the Department that in certain instances female or Black practitioners would be briefed, but only to, for example, draft pleadings, then another counsel would be briefed to continue the matter to trial. This then merely resorts to a numbers-game, of PDIs being briefed.</p>

⁴⁹ Minister of Rural Development and Land Reform v Griffio Trading CC; In Re: Griffio Trading CC v Minister of Rural Development and Land Reform (12440/11) [2014]ZAGPPHC 666 (2 September 2014)

⁵⁰ Ibid

⁵¹ DoJ&CD Annual Report 2013/14 p106

⁵² DoJ&CD Annual Report 2013/14 p68

⁵³ In the State Attorney: Cape Town 572 briefs were given to counsel, of those 272 (47%) briefs went to female advocates and 300 to males. Of the 272 briefs that went to female counsel, 94 were given to African females, 94 to Coloured females, 47 to Indian females and 37 to white females.



<p>Ongoing Fraud/theft from cash halls (courts)</p>	<p>A recent report noted an Acting Manager at Protea Magistrates Court (Soweto) was convicted and sentenced to five years for fraud and theft to the amount of R60 000 (this included maintenance monies). She was identified by a specialist task team and will have to pay back the money taken. The magistrate expressed concern at the lax controls at the court. The report notes the loss of R30 million a year at the Gauteng courts alone. This needs to be verified with the Department. Apparently there are still quite a number of court employees under investigation.⁵⁵</p>
<p>Access to justice (language)</p> <div data-bbox="153 887 619 1173" style="border: 1px solid black; border-radius: 50%; padding: 10px; width: fit-content; margin: 10px auto;"> <p>What is the status of the indigenous languages in court project? Has a policy framework been developed?</p> </div>	<p>Language is a fundamental human rights issue. A <i>Report on the Usage of Official Languages in Courts</i>, which was authored by four Judges Presidents of the High Courts (JP Zondo, Hlophe, Kgomo and Malherbe) in 2003 made various recommendations and makes a convincing and constitutionally sound argument that failure to utilize the nine indigenous languages as languages of record will result in their development being stifled, whereas they should be given every opportunity to develop.⁵⁶</p> <p>A pilot project on use of indigenous languages in courts was initiated in 2009 at one pilot site per province. By 2010 the Department reported that the project was being implemented at 27 District Courts country-wide. The lessons learned during the pilot project were to inform the policy framework for language use in the courts which was envisaged to be completed before the end of 2010.</p>
<p>Occupation Specific Dispensation (OSD)</p>	<p>The Department reports that the DPSA has put an embargo on certain posts in the State Legal Services programme due to issues with the implementation of OSD. When these posts are vacated, they cannot be filled. Performance within subprogrammes; Office of the Chief State Law Advisor, Legislative Development, Office of the Chief Litigation Officer and the Office of the Chief Family Advocate is affected by this challenge.</p> <p>The Department reports that a project plan has been developed to address identified OSD issues in 2014/15.⁵⁷</p>

⁵⁴ Keynote Address by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery, MP, at a Seminar on Gender Transformation in the Legal Profession, hosted by NADEL Western Cape, 6 October 2014 - See more at: http://www.justice.gov.za/m_speeches/2014/20141006_Nadel.html#sthash.wUMhDgKS.dpufhttp://www.justice.gov.za/m_speeches/2014/20141006_Nadel.html

⁵⁵ Wagener L, 'Jailed for stealing maintenance money', (25 September 2014) <http://m.timeslive.co.za/local/?articleId=12805174>

⁵⁶ Dano M, Background Document on Language Rights and Access to Courts, (2014)

⁵⁷ DoJ&CD Annual Report 2013/14 p180



5. BUDGET OVERVIEW 2013/14

The Justice Department was allocated R11.08 billion for 2013/14. This excludes the allocation to the National Prosecuting Authority and the direct charges for judges and magistrates salaries but includes the transfers to Legal Aid South Africa, Special Investigating Unit, Public Protector and South African Human Rights Commission.

During the Adjusted Estimates of National Expenditure (AENE) in October 2013 the Vote was increased by an amount of R54 million (to fund a higher wage bill and cover increases for personnel in certain clerical posts) which increased the final appropriation to R11.13 billion.

The Department spent R10.66 billion or 95.7% of the final appropriation. This increase in under-expenditure is in comparison with 2012/13 when the Department spent 99.8 per cent of its final appropriation (underspending of R1 million on compensation of employees due to vacancies).

During 2013/14 the amount underspent was R475.8 million (an underspend of 4.3 per cent) and occurred mainly in:

- (i) Court Services programme (R347.6 million underspent) in respect of building and fixed structures (capital works) due to non-performance of contractors, later handover of sites and late completion of tender documents.
- (ii) Justice Modernisation subprogramme in respect of spending on the Integrated Justice System (IJS) and Criminal Justice System revamp (R120 million underspent) due to delays in procurement processes encountered with SITA for replacement of digital court recording systems.
- (iii) Compensation of employees (R8 million underspent) due to vacancies under the Court Service Programme (specifically the lower courts subprogramme).

The compensation of employees consumed 39 per cent of the budget in 2013/14 compared with 38.1 per cent in 2012/13.

The direct charge against the national revenue fund for judges and magistrates salaries in 2013/14 was R2.57 billion. Of this R2.29 billion (89.2%) was spent. The underexpenditure of R277 million (10.8 per cent), was attributed to delays in filling vacant magistrate and judges positions. Although there was a reduction in the underexpenditure from 2012/13 when 85.7% of the final appropriation was spent the continued underspending and its implications of a significant vacancy rate for magistrates is still a concern.

Spending over the period under review focused on improving services at courts, implementing new pieces of legislation, constructing the high courts in Polokwane and Mbombela, and accelerating access to the services of the Masters and State Attorney offices. Access to the services of the Master's offices was facilitated by increasing the number of offices from 15 in 2012/13 to 16 in 2013/14.



During the 2013/14 financial year the Department was required to provide funding for the Commission of Enquiry on Strategic Defence Procurement Package (Arms Procurement Commission) and the Marikana Commission of Enquiry.

Additional allocations to the Vote's baseline for 2013/14 were 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.

➤ **Spending pressures**

Particular spending pressures identified by the Department in 2013/14 include:

- The fact that the Marikana Commission was extended beyond the originally approved time period due to the complexity of matters.
- There is an increasing need for security services to protect judicial officers, prosecutors and courts, which puts pressure on other programmes of the Department.
- Improving legal capacity within Courts and State Attorneys to improve the performance of core-business in these areas.
- The impact on staff costs as a result of the Department of Public Service and Administration directives on lower level employees, and the pressure to include staff not covered by the directive remain an area of financial uncertainty and strain.
- Spending on property leasing due to delays in building.
- Funding constraints in respect of implementing legislation such as the Jurisdiction of Regional Courts Amendment Act; Legal Practice Bill; Protection of Personal Information Act; Older Persons Act and the Protection from Harassment Act.

(Note that in October 2013 following the submission from the Department (on forward funding needs) the Portfolio Committee's (PC's) 2013 Budget Review and Recommendation Report requested additional funding from Treasury for capacitating the OCJ; accommodation leases, transformation of state legal services; upgrading of clerks; court support structure and security.⁵⁸ Treasury, however, (in contrast to previous years) did not provide a specific response to the Committees funding recommendations but noted in general that: 'A number of committees recommended that additional budget allocations be made available for certain programmes, sub-programmes or other budget items. Where these recommendations are supported by the relevant departments when weighed against other priorities, they will be taken into account in future budget discussions.' Consequently, the Department will use the re-prioritised funding from goods and services and capital works (of R508 million in 2014/15, R543 million in 2015/16 and R362 million in 2016/17) to fund areas of budget shortfalls (such as the appointment of permanent personnel; upgrading of clerical posts etc).)

5.1 PERFORMANCE PER PROGRAMME

⁵⁸<http://www.pmg.org.za/atc131105-budgetary-review-and-recommendation-report-portfolio-committee-justice-and-constitutional-development> (The PC supported additional funding of R1.27 billion in 2014/15; R1.34 billion in 2014/15 and R1.45 billion in 2015/16.)



5.1.1 ADMINISTRATION

Expenditure

The Administration programme spent 100 per cent of the allocation of R1.77 billion. The issue of vacancies at senior management level has been a concern in this programme. The Department has committed to resolving this issue and there has been an improvement from a vacancy rate of 20% in 2011/12 to 13% in 2013/14.

The Office Accommodation subprogramme is the largest spending item in the programme. It provides for accommodation charges, leased buildings and municipal rates. The Department has a significant national footprint and between 2010/11 and 2013/14, the subprogramme grew due to additional funding for the increased cost of municipal services and accommodation charges, which is higher than the annual budget increases. In fact in the 2013 AENE R198 million was shifted from buildings/capitals works in Court Services for municipal rates and taxes and building leases in the Administration programme. The Department notes that office accommodation remains a challenge.

Expenditure on consultants increased significantly in 2013/14 due to the specialised skills required for work on asset management, third party funds and the commissions of inquiry (Seriti Arms Procurement Commission and Marikana Commission of Inquiry). The 2013/14 Annual Report reflects that Legal Costs (consultants) have more than doubled in to R135.4 million compared with R76 million in 2012/13.⁵⁹

Performance Trends

This programme has seven strategic objectives (i) Increased compliance with the prescripts for good governance; (ii) Reduction of fraud and corruption cases in the Department (iii) Improved effectiveness of support services (iv) Optimisation of ICT systems and infrastructure (v) Improved human resources services delivery; (vi) Complete regulations to finalise the implementation of the TRC's recommendations and (vii) Improved coordination of the JCPS Cluster towards the delivery of Outcome 3.

These objectives are linked to 21 key performance indicators. Targets were achieved in 8 performance indicators; exceeded in 9 indicators and not achieved in 2 indicators (in 2012/13 targets were not met in respect of 9 indicators.) Overall this is a **90 per cent achievement rate** compared with 61 per cent in 2012/13.

Table 2: Performance in selected indicators: Administration programme

Selected indicators	Performance	
	2012/13	2013/14
Percentage of new forensic investigations finalised	Exceeded 77% against a planned target of 60%	Exceeded 91% against a target of 50%
Percentage of older forensic investigations finalised	Exceeded 100% against a target of 70%	Exceeded 100% against a target of 55%

⁵⁹ DoJ&CD Annual Report 2013/14 p137



Percentage of presidential hotline cases finalised	Achieved 87% against a target of 85%	Exceeded 85% against a target of 80% ⁶⁰
Percentage of misconduct cases finalised	Not achieved 63% achieved against a target of 75%	Exceeded 65% achieved against a target of 50%
Third party Funds IT system	Not achieved 7% against a target of 25% completion of phase 1	Not achieved 75% against a target of 100% completion of phase 2
Number of regulations for providing assistance to TRC victims approved	Not achieved 12.5% completion of an additional set of draft regulations against target of 100% completion of regulations on community rehabilitation and housing.	Not achieved 2 of 3 (regulations on basic and higher education were approved by the Minister and submitted to the Presidency for consideration.) The regulations on medical benefits not yet approved.

Work continued on the audit action plan to sustain the previous year's unqualified audit. The focus in 2014/15, will be to address issues identified in the Third Party Funds. The focus on speeding the finalisation of fraud investigations meant targets were exceeded for 2013/14. The Department finalised 240 of 264 (91%) new forensic investigations and all (24) older forensic cases that were carried over from the previous financial years. 471 misconduct cases were registered and 304 of these were finalised (65%). 96 officials were dismissed and 64 suspended.

Challenges were experienced in respect of the finalisation of a tender for the purchase of an IT (financial system) for Third Party Funds due to delays from SITA and outstanding TRC regulations (health).

Comments

- Although the Department met its target for vetting forms completed (145 against a target of 115) this does not mean all these forms were submitted to National Intelligence and 58 SMS officials still need to complete vetting forms. Another key area for vetting of officials is supply chain management. The Department reported that as at 30 November 2013, 57 of 73 supply chain management officials had submitted their vetting clearance forms. Have all supply chain management officials now completed and submitted their vetting forms?
- The replacement of the TPF IT system is critical (it will assist the Department to achieve an unqualified audit opinion in the area of Third Party Funds) and the delays were experienced with SITA in concluding the final recommendation and tender award are unfortunate. What progress has been made with engaging SITA in this regard?

⁶⁰ The Department received 1147 Presidential Hotline cases during 2013/14 (complaints related to appeals, maintenance civil matters, trials and estates.).



- In respect of fulfilling the Truth and Reconciliation Commission recommendations the target for having the regulations on medical benefits approved was not achieved.⁶¹ The draft regulations on basic and higher education were approved by the Minister and submitted to the Presidency for consideration during the year under review. Has the Department received any feedback? The Department should also provide an update on the TRC community rehabilitation needs analysis process. (18 Communities are to benefit from the R1.13 billion available in the Presidents Fund, namely; Alexandra, Athlone, Balfour, Beaufort West, Bhambayi Settlement, Bisho, Crossroads, Duncan Village, Galeshewe, Ga-Nchabaleng, Lulekani, Mamelodi, Mmabatho, Mphopomeni, Nelspruit, Swanieville, Tumahole and Welkom.) The Department engaged the Independent Development Trust (IDT) to conduct a needs analysis in these communities. The process has been finalised in Gauteng (Mamelodi and Alexandria) and KZN (Bhambayi and Mpophomeni). Consultations had begun in the Free State communities of Thabong and Tumahole.⁶²
- The Department was requested by the previous Committee to provide quarterly key dashboard reports with particular focus on compliance with laws and regulations and supply chain management. It has not done so and should do so going forward⁶³

5.1.2 COURT SERVICES

Expenditure

This programme was allocated a budget of R5.78 billion and spent 94 per cent (R5.42 billion). As was the case in 2011/12 and 2012/13, delays in the implementation of capital works projects by DPW resulted in underspending of the capital works budget in the Facilities Management subprogramme. This subprogramme underspent its budget of R827.8 million by R347.6 million in 2013/14. The Department's reliance on the Department of Public Works (DPW) for implementation of funded projects means that projects do not (always) progress as planned. A further complication is that increases in construction and material costs make projects more expensive than initially planned. Underexpenditure was also noted in the lower courts subprogramme (R8.1 million due to vacancies).

The Department reports that during the period under review funds were utilised for the re-establishment of the sexual offences courts and to extend the national footprint of the Family Advocates Offices.

Performance Trends

The programme has five strategic objectives: (i) Improved finalisation of activities in support of Outcome 3 (backlog courts); (ii) increased promotion and protection of vulnerable groups; (iii) increased protection of children and promotion of family cohesion through mediation; (iv)

⁶¹ Of the 16 837 TRC-identified beneficiaries that applied and were approved for individual reparations, only 12 beneficiaries are still to be paid. Payment of the 12 beneficiaries who applied are currently being processed by the President's Fund Office.

⁶² On 31 November 2013, the Justice Department gazetted proposed regulations for the community development projects in the 18 communities listed above. There has been some anger amongst civil society groups (such as the Khulumani Support group) about the limited time for commenting on these regulations (2 months) and the process of choosing the 18 areas where community rehabilitation projects will be located.

⁶³ <http://www.pmg.org.za/atc131105-budgetary-review-and-recommendation-report-portfolio-committee-justice-and-constitutional-development>



increased access to justice by under-served communities (facilities and infrastructure); and (v) improved delivery of services at the courts.

In both the 2011/12 and 2012/13 reporting period the Court Services Programme was the Departments weakest performing programme (in terms of meeting targets). In 2012/13 it met or exceeded targets in only 4 of 13 (30.7%) performance indicators. In 2013/14 there has been a turnaround in performance with **targets met or exceeded in 11 of 12 performance indicators (92%)**.

Table 3: Performance in selected indicators: Court Services programme

Selected indicators	Performance	
	2012/13	2013/14
Number of cases on backlog roll	Exceeded	Exceeded
Percentage implementation of Maintenance Turnaround Project	Not Achieved 65% of target of 100% of second year plan – limited space capacity at certain court buildings	Achieved 100% of a target of 100%
Percentage of convictions recorded on the National Register of Sex Offenders	Achieved 88% of a target of 72%.	Exceeded 100% of a target of 74% (15 452 convictions were recorded electronically)
Number of re-established sexual offences courts	-	Exceeded 19 courts against a target of 9
Percentage of non-litigation family law matters mediated	Not achieved 19% achieved against a target of 100%	Exceeded 28% achieved against a target of 15%
Percentage of family advocates reports filed within 15 days of completion of inquiry	Not achieved 9% against a target of 50%	Exceeded 82% against a target of 50%
Number of draft policy documents	.	Not achieved against a target of 3
Percentage default judgments performed by Clerk of Court within 14 working days (Lower Courts)	Not Achieved 56% of target of 65% (data collections problems)	Exceeded 83% against a target of 50% (341 784 requests for default judgments were received and 283 888 were dealt with by the clerk)
Percentage unopposed taxations processed within 14 working days of set down	Achieved 69% against a target of 65%	Exceeded 90% against a target of 65% (20 710 of the 22 888 unopposed taxations were processed within 14 working days)

A key service delivery area for this programme was the re-establishment of the sexual offences courts and additional posts were created in child justice and sexual offences courts in line with the strategic objective of increased promotion and protection of vulnerable



groups.⁶⁴ Turnaround in the area of maintenance has focused on nine pilot sites. Performance standards, have been set, which include a queue waiting time of not more than two hours. An average waiting time of 18 minutes was recorded for pilot courts which is a significant improvement. However, the standard of EFT maintenance payments made to beneficiaries not later than four days after the receipt of funds by the Department was not achieved. On average, it takes seven days to process EFT payments. Additional funding, capacity and an expanded national footprint has had a positive impact on the Family Advocates Office which for the past two years has been failing to meet its targets.

In 2013/14 financial year, two courts under construction were South Gauteng High Court (refurbishment) and the Polokwane High Court. The construction of the Kagiso Magistrates court was completed.

Challenges experienced in this programme included:

- The Blueprint for the transformation of the lower courts was delayed.
- The Adjusted Estimate of National Expenditure (AENE) in October 2013 noted the underutilisation of court hours because of planning issues around case flow management. The courts averaged 3h32 minutes for the first five months of 2013/14. The ENE indicator for 2013/14 is set well above this at 4h20 minutes and this is supposed to rise to 4h30 minutes in 2014/15.
- Building of new courts remains a major challenge. The Department cannot reach targets due to delays and, in turn this results in a risk of inflationary cost escalations as a result of these delays. (During the period under review none of the new projects proceeded as planned. Consider the impact on the following projects:
 - Mamelodi Magistrate's Court (the tender closed in 2012). However, the Department of Public Works (DPW) could not finalise the appointment of the contractor. The contract could not commence due to the delays in the finalisation of the process by DPW.
 - New Port Shepstone Magistrates' Court (the tender for this project only went out in November 2013). Construction could not commence as planned due to delays in the procurement process of DPW.
 - Major refurbishment and additions to Mthatha Magistrate's Court. The project did not go out on tender as planned due to delays by DPW.
 - New Dimbaza Magistrate Court. The project did not go out on tender as planned due to delays in the procurement system of DPW.
 - Booyens Magistrate's Court. The project did not go out on tender due to delays by IDT and DPW.)

Comment

- The Department plans to make a major impact in the turnaround time of granting maintenance orders. According to the pilot undertaken in 2013/14, 63% of maintenance orders were granted within 90 days after successful application. The Department plans to rollout the system to additional identified courts in 2014/15. The Department should provide an update on this roll-out?

⁶⁴ DoJ&CD Annual Report 2013/14 p180



- The Maintenance Act of 1998 makes provision for blacklisting defaulters with the Credit Bureau. However, non-payment of child maintenance does not currently affect one's credit record. The Department of Justice has already drafted a Bill to amend the Maintenance Act to make this a reality. This Bill will go even further, enlisting the assistance of credit bureaux in tracking down defaulters who can't be found.
- Public education sessions were held on maintenance services. At all these public outreach events, a total of 1 877 people were reached. Is this number sufficient? Given the need for greater public awareness in matters such as maintenance and the guardians fund how can the Department expand its public education footprint in an innovative and cost effective way?

5.1.3 STATE LEGAL SERVICES

Expenditure

This programme spent 100 per cent of its allocated budget of R871 million with most of the allocation spent on the Master of the High Court and the State Attorney.

Performance Trends

The programme has six strategic objectives: (i) Increased efficiency in the provision of services to beneficiaries of the Guardian's Fund, trusts, insolvent and deceased estates; (ii) enhanced litigation services; (iii) provision of legal advisory services; (iv) preparation of sound, effective and efficient legislation; (v) promotion of constitutional development and strengthening of participatory democracy; and (vi) administration of the Promotion of Access to Information Act.

These objectives are linked to 23 key performance indicators. In 2012/13 the Department met or exceeded targets in 7 of 21 (33.3%) of the indicators. There has been some improvement in 2013/14 with **65 per cent of targets either achieved or exceeded.**

Table 4: Performance in selected indicators: State Legal Services programme

Selected indicators	Performance	
	2012/13	2013/14
Letters of appointment issued in deceased estates within 15 days of receiving all required documents	Exceeded 93% against a target of 90%	Exceeded 94% against a target of 90%
Percentage of beneficiaries in receipt of services within 40 days (Guardian's Fund)	Not Achieved 86% against a target of 90% (slow response from fingerprint verification.)	Not Achieved 77% against a target of 90% (speed of the system a challenge)
Percentage of Guardian's Fund money paid through EFT	Not achieved 83% against a target of 90%	Exceeded 96% against a target of 94%
Percentage of briefs distributed to PDIs	Not achieved 70% against a target of 75% (R314 million of the	Achieved 75% of a target of 75% (R482.3 million of the total



	total value of briefs was allocated to PDI counsel.)	value of briefs of R641.8 million was allocated to PDI counsel)
Percentage of successfully concluded cases by state attorney	Not achieved 30% against a target of 50%	Exceeded 61% against a target of 50%
Percentage of legal opinions finalised within 20 days	Exceeded 77% against a target of 75%	Exceeded 81% against a target of 60%
Percentage of compliance with PAIA by the Department	Not Achieved 61% against a target of 100%	Not achieved 55% against a target of 100%

The Department experienced a deterioration in performance at the Guardian's Fund offices in Pietermaritzburg and Pretoria due to the speed of the Guardian's Fund system and Absa's EFT system. The offices, which experienced challenges, are also clearing the backlog, which will lead to an improvement in performance. The beneficiaries of the Guardian's Fund are mostly minors or persons incapable of managing their own affairs. Timeous finalisation of these matters is essential as they are dependent on funds paid out by the Master for their upbringing, education and livelihood.

The target of achieving 100% compliance with PAIA in the Department was not met, in fact it deteriorated in comparison with 2012/13. This is due to a delay in the transcription of records and applicants' failure to comply with the requirements of filing a Form A, which is used to request access to information in terms of section 18.1 of PAIA. The Department continues to respond to applicants in an effort to remedy the defects found in their applications. The Department has a leadership role to play in respect of this Act. It must also ensure records are transcribed as timeously as possible.

Comment

- The State Attorney met its target for successfully concluded cases by state attorney (1 086 cases were decided in court; 667 of these cases were successfully concluded translating into 61% performance.) However, the Department has acknowledged that there is still a high number of cases that are settled and there is a greater necessity of interaction with client departments to improve relations and strengthen the approach to litigation management. The Department has established a task team to address challenges experienced and should provide an update on the work of this team
- The Department reports that the embargo on posts by the DPSA (as a result of problems identified with the implementation of OSD) in the Office of the Chief State Law Advisor, Legislative Development, Office of the Chief Litigation Officer State Law Adviser subprogramme is affecting performance. How many posts are affected by this embargo? How will the matter be resolved by the Department?



5.1.4 AUXILIARY AND ASSOCIATED SERVICES

Expenditure

The Justice Modernisation subprogramme was allocated a budget of R655 million in 2013/14 and spent 79.7 per cent of its budget. Notably, R120 million was not spent on the Integrated Justice System (IJS) and Criminal Justice System (CJS) revamp due to delays in procurement processes encountered with SITA for replacement of digital court recording systems.

Performance Trends

Following the initial roll-out of the case integration system between the SAPS and the Department in 99 police stations and 20 courts, the IJS further deployed the solution to an additional 360 courts linked to 509 police stations across all nine provinces during the year under review. This brings to 380 the courts linked to 608 police stations across all provinces to date.

A number of significant data quality challenges were experienced in the current reporting period, thereby delaying the deployment of the 28 key performance indicator (KPI) dashboards. The first nine of the 28 KPIs were planned to be rolled out during 2013/14. However, the State Information Technology Agency (SITA) team to provide support to the SAPS in terms of the service level agreement was extremely under-capacitated, thereby hampering the timeous implementation of the project plan. The solution is now planned for roll-out in 2014/15.

Comment

- R120 million could not be spent due to delays in the tender process for the procurement of court equipment. This budget is ring-fenced and could not be transferred to other pressing areas. National Treasury was requested to roll back the surplus capital expenditure into the 2014/15 financial year.
- The Department should elaborate on the significant data quality challenges were experienced in the current reporting period which delayed the deployment of the 28 key performance indicator (KPI) dashboards.
- The IJS further deployed the case integration system between the SAPS and the Department to an additional 360 courts linked to 509 police stations across all nine provinces. How effective is this system and have there been any challenges identified with its implementation?

6. HUMAN RESOURCES

A snapshot of Justice Department employees in respect of gender and employment equity reveals the following:



Table 5: Breakdown of DoJ&CD employees (race and gender)

MALE				FEMALE				
African	Coloured	Indian	White	African	Coloured	Indian	White	
6120	649	303	934	8268	1233	515	1662	19684
31%	3%	2%	5%	42%	6%	3%	8%	100%
41%				59%				

General observations about human resources in 2013/14 include:

- A vacancy rate of 9.98% as against a target of 10%. (In 2012/13 the vacancy rate was 9.72%). This target of 10% is a public service deadline set for 2014.
- Vacancies in certain critical occupations may be noted as follows:

Occupation	No of vacant posts 2013/14	Vacancy rate as a %	
		2013/14	2012/13
Advocates	22	24%	11%
Attorneys	37	13%	17%
Cleaners	16	11%	16%
Finance professionals	52	19%	16%
General legal administration	229	18%	20%
Magistrates	402	19%	15%
Security officers	97	25%	23%
Senior managers	27	13%	16%
Social workers	23	20%	24%

- The Department is non-compliant in respect of Government's target of 50 per cent women in the Senior Management Service, and 2 per cent of employees being people with disabilities. In 2013/14 42.53% of women at senior management level and 1.8% of people with disabilities. (There has been gradual improvement as in 2011/12 this was 38% and 1.29% respectively.)
- While, the Department of Monitoring and Evaluation (DPME) has determined in its 2013 MPAT study that there have been improvements in human resource planning more work is required in respect of disciplinary cases which are not being finalised within the 90 days required by policy.
- A vacancy rate of 13.37% (27 posts) for Senior Management (16.8% in 2012/13). (Vacant SMS posts should be advertised within six months and filled within 12 months. The Department reports that posts were not filled due to a moratorium because of re-structuring and difficulties in attracting suitable candidates.)
- The turnover rate was 13.29% (14.05% in 2012/13). The challenge of staff turnover is to be addressed through a retention policy which is in the last phase of approval.
- OSD determinations remain a challenge which makes it difficult to attract legally qualified employees and social workers,
- 304 misconduct/disciplinary hearings were held (96 officials were dismissed and 32 were suspended). The majority of the matters involved fraud (101); then theft (50) and 40 involved corruption.
- 77 employees are suspended. 27 of these suspensions exceeded 60 days. The total cost of suspensions was R11.2 million.



- As part of youth development 308 learnerships and 16 internships were provided in 2013/14.
- Consultants were appointed at a cost of R93 million.

7. EXTERNAL REPORTS AND INVESTIGATIONS

During 2013/14 note may be taken of the following reports and investigations which have relevance for the Justice sector:

- **Human Science Research Council (HSRC):** released a survey in May 2013 which examined public attitudes to the criminal courts. The analysis suggests there were significant increases in the levels of trust in the courts between 2000, when only 37% of South Africans said that they had trust in the courts, and 2004, when trust levels peaked at 58%. However, trust in the courts then deteriorated until 2007 when they hit a low of 49%, before starting to increase again, reaching a high of 57% in 2009. Since then trust levels have declined so that in 2012, exactly half (50%) of citizens surveyed displayed some level of trust in the courts.

Concerns over impartiality were more keenly felt among the more marginalised and socially vulnerable in society. About two in five respondents (44%) believed that the courts would be more likely to find persons guilty if they were black and 51% felt people were more likely to be found guilty if they were poor. Only a little more than one in three (38%) felt that the rich and the poor would be treated equally before the criminal courts. **Of particular concern was the negative view of the courts held by the young and the socially disadvantaged, since these groups constitute a large share of the population.** Their characterisation of the criminal courts as prejudiced could potentially have a damaging effect on the legitimacy of the courts.

- **Department of Performance Monitoring and Evaluation: Frontline Service Delivery Monitoring Annual Findings Report for 2013/14** (the project uses unannounced monitoring visits to assess the quality of service delivery in frontline services facilities (evaluating accessibility, signage, queue management, cleanliness, safety, opening and closing times and complaints management), using structured questionnaires to guide interviews with citizens and staff, as well as observations by monitors): the DPME monitors visited 17 magistrates' courts and while noting an overall improvement from 2012/13 the Report flagged the Magistrate Courts in Bloemfontein and Umzimkhulu as requiring special attention. In general visibility and signage and complaints management should be prioritised for improvement.

The DPME Report as one of its general recommendations noted that poor lease management, dilapidating infrastructure and unclear roles and responsibility for the management of cleaning and security contracts is impacting negatively on the overall performance of facilities. Most facilities indicated that they have been in contact with Department of Public Works to resolve these issues however the delays in responding and lengthy process that facilities and sector departments need to follow to correct minor issues remains a challenge. There are a few departments with a proven track record of good management performance (e.g. Justice) who may benefit from a different approach, whereby they are able to enter into lease agreements for facilities



directly and they can be fully responsible and accountable for the management of the lease.⁶⁵

The Departments own frontline monitoring programme which visited 31 sites identified particular challenges in respect of the state of facilities (toilets, waiting areas, cleanliness as well as records management).

- **Department of Performance Monitoring and Evaluation: Management Performance Assessment (MPAT).**⁶⁶ There are three phases to the assessment. An initial self-assessment, where the Department rates itself (backed up by evidence) is followed by external moderation of the self-assessment, where the departments can challenge the findings and present extra evidence before a final result is decided. The purpose of this is to establish a baseline from which the third phase, which is planning improvement, can operate and assist in the monitoring of planned interventions.

The MPAT measures four key performance areas (KPA's) on a scale of 1-4 (the four levels of proficiency are: (1) non-compliance with legal/regulatory standards, (2) partial compliance, (3) full compliance, and (4) full compliance while "doing things smartly").

The Justice Department was rated as follows:

- KPA 1: Strategic Management: the Department scored 4 (top marks) for strategic planning which means that it is legally compliant and is doing thing smartly.
- KPA 2: Governance and Accountability: The Department scored highly, as it was doing things smartly in respect of the functionality of its management structures and internal audit but was non-compliant in respect of risk management and the Promotion of Access to Information Act.
- KPA 3: Human Resources Management: The Department has improved its HR planning and development scores as it was working smartly in both areas. The Department, however, is non-compliant in respect of the management of diversity. (Diversity in this case focuses on Governments targets in respect of female employees in senior management and targets for people with disabilities. A minimum target is set of 50 per cent women in the Senior Management Service, and 2 per cent of people of people with disabilities.) The Department is also non-compliant in respect of disciplinary cases. (Disciplinary cases not finalised within the 90 days required by policy.)
- KPA 4: Financial Management: The Department showed improvement in respect of acquisition management and cash flow but work was required in payment of suppliers within 30 days.

⁶⁵ DPME FSDM Report 2013/14 p46

⁶⁶ Since its inception in 2009, the Department of Planning, Monitoring and Evaluation (DPME) in the Presidency has introduced various tools to drive and institutionalise monitoring and evaluation practices within the public service. The Management Performance Assessment Tool (MPAT) is one of these initiatives. The MPAT specifically focuses on the monitoring of management practices. The process requires a Head of Department and senior management to conduct a self-assessment against 31 key management standards and provide the necessary evidence to support their assessment. The self-assessments are then subjected to peer moderation where senior public servants, with extensive experience in the key performance areas covered by the standards, evaluate the self-assessment against the evidence provided. MPAT is based on the understanding that good quality management practices will contribute to improved departmental performance and improved service delivery outcomes.



- **Special Investigating Unit (SIU):**
 - (i) Is conducting an investigation into the Guardians Fund in the Masters Offices in Pretoria and Pietermaritzburg.⁶⁷ A preliminary report identifies three officials in the Master's Office Pietermaritzburg, who have to be held accountable for improper conduct, and the appropriate disciplinary steps have been instituted against the mentioned officials. More reports will be submitted to the National Prosecuting Authority (NPA). The investigation was not concluded.⁶⁸
 - (ii) In respect of Proclamation R58 of 2003⁶⁹ submitted a report to the President (on 31 May 2013) into investigations concerning the financial mismanagement by officials at 40 Magistrates offices⁷⁰ and related matters at national and regional offices.
- **Public Protector:** reports that 12% of the matters her office dealt with in 2013/14 concerned the Justice Department.
- **South African Human Rights Commission:** the Commission has noted improvements in the respect of International reporting – the Department should, however, provide an update of the Reports they have completed; the status of those reports and any reports that are outstanding.
- **Commission for Gender Equality:** The Commission released a Court Monitoring Report (2013/14) that monitored 12 equality courts of which only one was functioning. The Commission noted low levels of community awareness about the operation of equality courts and insufficient training provided to equality court officials, clerks of the court, court managers and Presiding officers. An aggressive marketing campaign by the Department was recommended.
- **Public Service Commission Fact Sheet on Monitoring Compliance with the Financial Disclosure framework for the 2012/13 Financial Year (released in March 2014):** All Senior Managers are required to disclose to their respective Executive Authorities (EAs), particulars of all their registrable interests (e.g. companies, properties, shares and gifts among others) no later than 30 April of each year. The EAs must then submit copies of the financial disclosure forms on which the SMS members disclosed their financial interests, to the PSC by no later than 31 May of each year. The financial disclosure forms of the 190 SMS officials at the department were submitted for 2012/13. The financial disclosure forms of seven (7) Directors-General including the DG: Justice & Constitutional Development were not submitted to the EAs by 30 April 2013 as required. As a result, the aforementioned Directors-General did not comply with the Framework. The PSC recommends that:
 - Portfolio Committees must closely monitor the status of compliance with the Framework by SMS members in the respective government departments and call defaulting EAs and employees to account. (The Committee should establish

⁶⁷ Proclamation R55 of 2012.

⁶⁸ DoJ&CD Annual Report 2013/14 p22

⁶⁹ Investigation focus period: 1 January 1996 to 25 July 2003.

⁷⁰ Libode, Maluti, Ngqeleni, Port Elizabeth, Umtata, Phuthaditjhaba, Makwane, Tseneng, Wepener, Thaba 'Nchu, Benoni, Randberg, Johannesburg, Soshanguve, Vereeniging, Chatsworth, Nkandla, Impendle, Madadeni, Ntuzuma, Seshego, Tzaneen, Naphuno, Giyani, Thoyohando, Kwamhlanga, Mbibane, Mkobola, Nkomazi, Nsikazi, Odi, Lehurutse, Taung, Ganyesa, Brits, Mitchells Plain, Somerset west, Clanwilliam, Sominstown and Porterville. (SIU 2013/14 Annual Report p20)



whether the DG: Justice & Constitutional Development submitted a financial disclosure form to the Minister by 30 April 2014 as required?)

- Portfolio Committees should assist in ensuring that recommendations made by the PSC are implemented.

8. ISSUES FOR CONSIDERATION

The Department should be requested to provide additional information in respect of the following:

- The management of the transfer of personnel, budget and functions to the Office of the Chief Justice.
- Actions to remedy the state of 'dysfunctionality' existing at the State Attorney (particularly the Pretoria office) as highlighted in a number of judgements from the South and North Gauteng High Courts.
- The planned response of the Department to the exemption granted by National Treasury for 2013/14 which allowed the NPA to continue to prepare separate financial statements.⁷¹ Unless this exemption is granted again for 2014/15 or legislation is drafted to provide for separate reporting arrangements for the National Prosecuting Authority then the NPA's financial statements will have to be incorporated into those of the Departments going forward.
- Implementation of legislation (specifically funding and implementation challenges) for the:
 - Legal Practice Act 28 of 2014 and the State Attorney Amendment Act 10 of 2013 – a project office is currently being established within the Department.
 - Protection of Personal Information Act 4 of 2013. The Department has begun consultations with relevant stakeholders regarding mechanisms for the establishment of the office of the **Information Regulator**. The Department should be asked to elaborate on these consultations.
 - Prevention and Combating of Trafficking in Persons Act 7 of 2013. What is the status of the Regulations? An integrated information system to facilitate the effective monitoring and implementation of the Act is to be established by 2015/16.
 - Prevention and Combating of Torture of Persons Act 13 Of 2013. Is the Department developing regulations for this legislation?
 - Protection from Harassment Act 17 of 2011. The Department has highlighted funding constraints in respect of implementing this Act and should elaborate on these constraints.
- Status of Pending legislation in respect of:
 - Governance arrangements for:
 - the South African Judicial Education Institute
 - Reporting arrangements of the:
 - Third Party Funds (Justice Administered Funds Bill)

⁷¹ DoJ&CD Annual Report 2013/14 p162



- Criminal Asset Recovery Fund
 - Amendments to the Maintenance Act to allow for action against defaulters (for instance to make it mandatory for magistrate's courts to provide credit bureaus with information on defaulters. At present this is discretionary.)⁷²
 - The Blueprint for the transformation of the lower courts to overhaul the outdated Magistrates Act 32 of 1944. A new Lower Courts Bill is to be developed. (Note that the University of Stellenbosch's Legal Aid Clinic (LAC) is taking on the Justice and Trade and Industry Ministers, the National Credit Regulator, 13 microlenders in a case against the legality of emoluments attachment orders (EAOs) which includes challenging the constitutionality of sections of the Magistrates' Courts Act, which allows an indebted consumer's salary to be attached without adequate court oversight. The DTI, National Treasury and the Department of Justice have apparently set up a task team which has been investigating the problem. The Departments should be asked to report on the work of this task team.)⁷³
- Report back on the Access to Justice and Promotion of Constitutional Rights programme: The European Union allocated a sum of 25 million Euros towards the implementation of the Access to Justice and Promotion of Constitutional Rights programme. Of this amount, five million euros were disbursed directly to civil society. The balance of 20 million Euros was allocated by the Foundation for Human Rights in partnership with the Justice Department. The 2013/14 Annual Report notes the period of commitment ending in April 2014 and the Department reports spending R158 million of the R214 million allocated.⁷⁴ The Department does report on achievements but more detail is required on the actual impact of this programme in improving access to justice and raising awareness of constitutional rights in rural and peri-urban areas.⁷⁵

Sources

Estimates of National Expenditure 2013 and 2014
Department of Justice and Constitutional Development Annual Report 2012/13
Department of Justice and Constitutional Development Annual Report 2012/13
Department of Justice and Constitutional Development Annual Performance Plan 2013/14
Medium Term Budget Policy Statement October 2013
Third Party Funds Annual Report 2013/14
Twenty Year Review (1994-2014)

⁷² On 9 September the South African Law Reform Commission released an Issue paper: Review of the Maintenance Act 99 of 1998 (Closing date for comment: 30 November 2014). This issue paper has been prepared to provide the basis for the Commission's deliberations, to elicit comments and suggestions from relevant stakeholders, and to disseminate information about the review of the Maintenance Act to the general public. The areas that were identified and approved by the SALRC for possible law reform are: future maintenance; locus standi; appointment of maintenance officers; the power of arrest by maintenance investigators; civil execution of maintenance orders; trusts; and cost orders and choice of remedy.

⁷³ The LAC alleges that using clerks of magistrate's courts to authorise EAOs without sufficient scrutiny of the underlying documents and using courts far from where the consumer works or lives have deprived indebted consumers of their constitutional rights, including access to justice. <http://www.bdlive.co.za/business/2014/10/12/court-challenge-to-dodgy-microlending>

⁷⁴ DoJ&CD Annual Report 2013/14 p82. The programme had three objectives; (i) Improving access to justice (activities of the programme include support to advice offices, promoting the use of the Equality Courts and Equality Legislation, restorative-justice programmes and the transformation of the legal sector. 45 community advice offices were to be established within a three year. Vulnerable and marginalised communities were to be supported to access human rights services in South Africa and the region, including through legal assistance (ii) Raising awareness of constitutional rights (activities of the programme include making 2 million persons aware of their constitutional rights and responsibilities in terms of the constitution over three years inter alia through a multimedia strategy; (iii) Strengthening democracy through partnerships with civil society. Public policy dialogue, civil-society networking and strengthening the capacity of civil-society organisations (CSOs). The Foundation for Human Rights is commissioning an evaluation to assess the design, implementation and the results of the Access to Justice and Promotion of Constitutional Rights Programme in order to determine its relevance, efficiency, effectiveness and impact in the context of its stated aims.

⁷⁵ DoJ&CD Annual Report 2013/14 p74 and 75.