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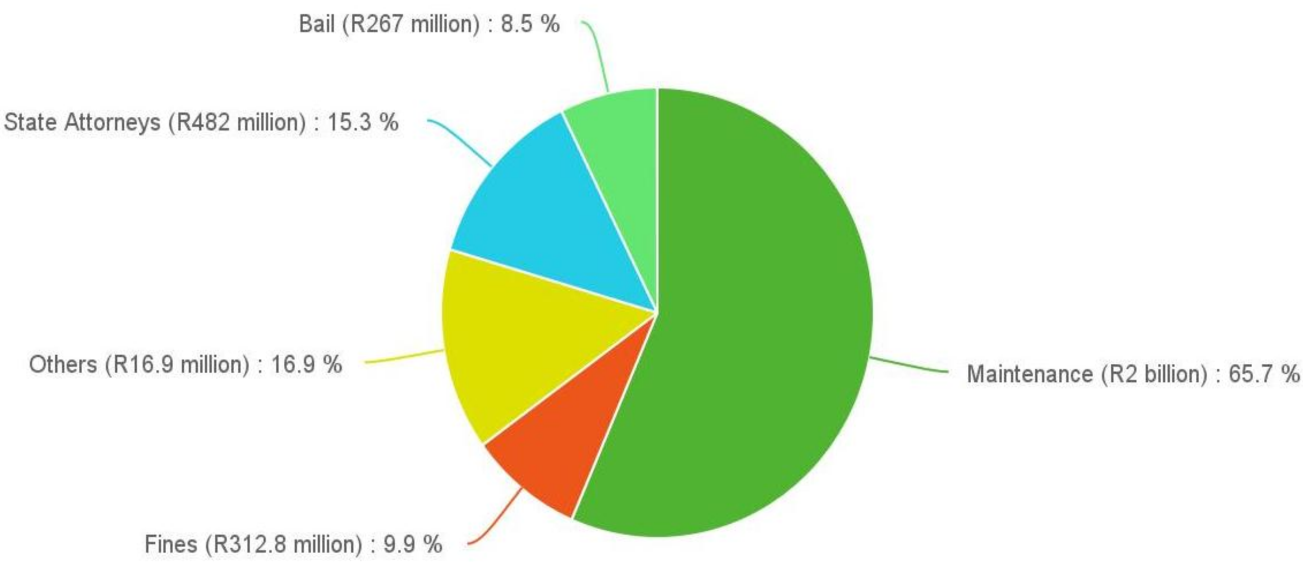
SUMMARY AND ANALYSIS:
JUSTICE ADMINISTERED FUND BILL [B26-2015]

1. INTRODUCTION

The Department of Justice and Constitutional Development (Justice Department) administers funds on behalf of third parties (known as **Third Party Funds**) which comprise of monies:

- Received from maintenance orders (Maintenance Act 99 of 1998);
- Received as bail (Criminal Procedure Act 51 of 1977 or any other Act of Parliament);
- Paid to court in terms of any Rule of Court or any other law, of which the intended beneficiary is a third party;
- Received (but which cannot immediately be allocated into any of the categories listed in paragraphs (a) to (c)); and also of the
- Interest earned, or bank charges raised on money paid into or retained by the Fund.

The Funds are distributed through 510 bank accounts with 4 clearing banks. In 2014/15 the Fund handled approximately **9.5 million transactions** to the value of **R3 billion**[1] consisting of the following payments:[2]



[1] DoJ&CD TPF Annual Report 2014/15 p5
[2] DoJ&CD TPF Annual Report 2014/15 p4

Two key issues have challenged the Department's management of the TPFs. Specifically the:

(i) Lack of an effective and efficient accounting/financial management system (which has meant the Department has been unable to prepare reliable, accurate and complete accounting records of the funds it processes), and

(ii) ***Uncertainty in respect of <u>the exact legislative framework</u> that should govern the existence, processes and operations of the TPFs***.[3]

This in turn has had a negative impact on service delivery and also created an environment susceptible to fraud.[4]

2. HISTORICAL SNAPSHOT OF THE THIRD PARTY FUND ENVIRONMENT

From 1994/1995 the Department either did not submit Annual Financial Statements for TPF or submitted partial statements. These statements were disclaimed by the Auditor-General (A-G). mainly as a result of the following root causes:[5]

- Inadequate financial reporting systems to enable preparation of complete and accurate financial statements. (The Justice Deposit Account System (JDAS) and the State Attorney System (SAS), utilised for the administration of TPF, *were designed as case administration systems and lacked sufficient financial capabilities and internal controls to allow for proper accounting principles in accordance with the Public Finance Management Act (PFMA)*).

- Inadequate daily and monthly reconciliations to ensure credibility of figures reported in the financial statements.

Over the years the Auditor-Generals (AG's) recommendations to address these root causes have focused on the following:

[3] DoJ&CD Annual Report 2006/07, p102
[4] In the TPF 2014/15 Annual Report the Department noted - recorded losses including overpayments and dishonoured cheques of R66 million.
[5] AG Briefing Note 2014/15

- Upgrading of current information systems (JDAS and SAS) to enable both administrative management of funds held in trust as well as to generate reliable and timeous financial reports.
- Improved records management at court level to ensure that all amounts disclosed in the financial statements including the year end balances are supported by credible audit evidence.
- Discipline of daily and monthly reconciliations of cash, bank and beneficiary accounts to ensure validity and completeness of all transactions in the accounting records.

From **2002/03** it was determined that in order to address the lack of critically needed capacity, which had existed for decades in the TPF, the Justice Department would enter a Public Private Partnership (PPP).[6] The PPP would be responsible for financial management, receipts, record keeping and financial reporting and the provision of a front-end administrative system.[7] The Justice Department would remain responsible for administrative and legal duties.

In **2010** the plan to establish a PPP was terminated.[8] The Department reported that this decision was based on various factors which included: (a) the financial cost in the context of the economic climate; (b) affordability of an outsourced arrangement through a Public Private Partnership (PPP); and (c) the substantial labour relations implications with estimated staff redundancy and possible consequent lay-offs.[9]

Instead, in response to the significant risks identified on an ongoing basis by various oversight bodies (namely the AG, the Standing Committee on Public Accounts[10] and the Portfolio Committee on Justice and Constitutional Development), which continued to negatively impact the administration of the Fund, the Department proposed an '*in-house*' solution.

This led the Department to initiate '*a transformation plan*' which entailed;

(i) providing credible accounting and financial performance information;
(ii) substantial investment in staff training;

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[6] DoJ&CD Annual Report 2003/04, p7.
[7] DoJ&CD Annual Report 2007/08, p106.
[8] DoJ&CD TPF Annual Report 2010/11
[9] Ibid
[10] For example in its March 2011 report SCOPA recommended in respect of the TPF's that: A proper financial/accounting system is developed or the Justice Deposit Account System (JDAS) is enhanced to ensure complete, accurate and reliable financial information; Vacancies at court level should be filled with adequately skilled officials; All fraud, cash shortages and loss investigated timeously and disciplinary action taken against officials who fail to comply with policies and procedures or who were charged with misconduct; and the internal audit scope with regards to the Fund should be increased to ensure daily controls are implemented and effective.

(iii) reviewing and enhancing of business processes;

(iv) procurement of personnel to enhance capacity; and

(v) ***legislative reforms to ensure an appropriate and effective governance framework for the TPF***.[11]

Specific elements of this plan included:

- Improving baseline financial reporting. (Requiring the daily reconciliation of monies at court level being submitted electronically for review by the regional supervisory staff and weekly review of reconciliations submitted by National Office. Due to the Departments inability to produce credible financial statements it employed a service provider to produce financial statements for the 2010/11 financial year.[12] Subsequently the Department, with its own capacity, concluded and submitted the 2011/12 and 2012/13 financial statements. Although the AG continued to issue disclaimers for these years as well as for 2013/14 and 2014/15, the Department has at least been able to determine the extent of financial shortages, improvements required in areas of financial administration, and the inherent management and control weaknesses within the TPF environment.[13] Daily and monthly reconciliations are now being done at the majority of courts.)
- Expanding capacity (45 finance practitioner posts created in Regional offices – 42 filled as at 31 March 2015)
- Training of staff in courts and Regional offices through the development of comprehensive TPF training manuals and flowcharts of processes which were distributed to every court that is a service point for TPF to be a reference point for staff responsible for TPF.
- Decentralising EFT payments at courts.
- Replacing the JDAS and SAS systems with a new financial accounting and administration system.[14] (In November 2014, the Department reported to the Portfolio Committee that it had appointed a private sector service provider to develop a new financial and accounting system to manage the TPF and this system is being tested.)[15]
- Legislative review through:
  - (i) **New legislation to provide a legal framework for the administration of the TPF**; and

[11] DoJ&CD TPF Annual Report 2010/11

[12] DoJ&CD Third Party Fund Annual Report 2010/11-2012/13

[13] DoJ&CD Third Party Fund Annual Report 2014/15

[14] The Department reports that it will ring-fence historical shortages and losses.

[15] Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services, dated 22 October 2015https://pmg.org.za/tabled-committee-report/2557/

(ii) Planned amendments to existing legislation (including Maintenance Act for direct beneficiary payments- and Criminal Procedure Act –to redirect admission of guilt fines to municipalities). This required stakeholder engagement with magistracy to promote direct maintenance payments and with SALGA and Local authorities (admission of guilt fines)

Other processes being implemented to '*transform*' the TPF environment include:

- Reducing the number of bank accounts utilised to administer the TPF. (In 2012 the Departments Acting Chief Financial Officer Mr J Johnson told Parliament's Standing Committee on Public Accounts that the Department had accounts with all of the big four banks for the TPF — four at Nedbank, 130 at Absa, 174 at Standard Bank and 187 at First National Bank (FNB). However, it was only at FNB that the bank charges were marginally less than the interest earned.[16] The Department success in its efforts to: (i) reduce the number of bank accounts and (ii) negotiate with the Banks involved for a better deal in respect of the bank charges is unclear.[17])

- Implementing measures to tackle fraud.[18]

THIRD PARTY FUNDS FRAUD

- It was recently reported that 191 officials have faced actions for specified losses from the Funds since April 2012.[19]

FINANCIAL YEAR[20]	(a) NUMBER OF OFFICIALS	(b) AMOUNT (R)
2012/2013	87	2, 525, 622.45

[16] Mr Johnson reported that during the 2010-11 financial year at Nedbank, the charges were R198 000 while the interest earned was R113 000. At Absa the charges were R12.4m and the interest R12.3m, while at Standard Bank the charges were R6.9m with interest at R6.3m. At FNB the charges were R8.1m and interest earned R8.5m.

[17] http://www.bdlive.co.za/national/2012/08/14/bank-charges-exceed-interest-on-department-of-justices-third-party-fund

[18] SCOPA undertook oversight visits to courts in respect of the management of the TPF's in March 2011 and made the following general findings in respect of the management of TPF's: Delays in criminal investigations; Inadequate fraud prevention plans and Centres were under-capacitated for the finalisation of internal disciplinary cases, especially those related to financial misconduct Report of the Standing Committee on Public Accounts on oversight visits to Third Party Fund centres in KwaZulu-Natal, Eastern Cape, Mpumalanga, Limpopo and Gauteng, dated 24 August 2011 (Umlazi Magistrate Court (KZN), Tubase and Seshogo Magistrate Court (Limpopo), Thulamahashe Magistrate's Court (Mpumalanga), and Mdantsane Magistrates Court (Eastern Cape). At a later date the Committee then visited Johannesburg Magistrate's and Family Courts, Protea Magistrate Court and the Pretoria Magistrate Court in Gauteng)

[19] Sidimba L, Papgeld millions stolen', The Sowetan, (26 October 2015) (Accessed at http://www.pressreader.com/south-africa/sowetan/20151026/281479275272082/TextView).

[20] Response to a Parliamentary Question (27 July 2015 - NW2282). Note that the officials listed were subjected to disciplinary processes as a result of the specified losses for the amounts stated for each financial year in question. It should also be noted that such disciplinary processes may have taken place in different financial years as to when the actual registration of the receivables occurred.

2013/2014	56	1, 138, 621.01
2014/2015	43	1, 839, 635.60
April & May 2015	5	769, 807.78

- The Fund is administered by 2813 Department officials but it has been reported that only 354 (12.5 per cent) were vetted in 2014/15.[21]
- The 2014/15 TPF Annual Report indicates that criminal elements targeted six of the Funds bank accounts in 2014/15 and managed to defraud the Department of **R8.8 million**. The Department reported that it had recovered R6.6 million.[22] The status of the unrecovered R2.2 million and the action taken against those identified as being responsible for the fraud are unclear.
- The AG reported in 2014/15 that **various investigations** are in progress to probe cash shortages of R69 million from the Fund at various courts.[23]

The Department has committed to achieving an unqualified audit opinion for the TPF's by **2017/18**.

3. JUSTICE ADMINISTERED FUND BILL [B26-2015]

The Justice Administered Fund Bill [B26-2015] is part of the Departments transformation plan for the TPF. The Bill seeks to address existing gaps in the governance and administration of the TPF by providing for the establishment of a Justice Administered Fund to regulate the management, control, investment and utilisation of money in the Fund;

3.1 Key Aspects of the Justice Administered Fund Bill

The Department reports that the Minister of Finance has been consulted on the Bill which was prepared in close conjunction with National Treasury.[24]

The Bill provides that:

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[21] Ibid
[22] DoJ&CD TPF Annual Report 2014/15 p10
[23] TPF Annual Report 2014/15 p15
[24] Memorandum – Justice Administered Fund Bill

- The Director-General (DG) of the Justice Department is accountable for the Fund.
- The DG must open bank accounts, including a separate account known as the Reserve Account. (In terms of section 7 of the Public Finance Management Act (PFMA) 1 of 1994 a Department is authorised to open a bank account with a registered bank.)[25]
- The Reserve Account will contain:
    - (i) Any unclaimed monies; and
    - (ii) Monies which do not fall within the categories provided for in the Act.
- Monies in the Reserve Account may only be used to:
    - (i) Pay any interest earned on the TPF accounts; and
    - (ii) Cover deficits in the Fund.
- The Justice Minister, **in consultation with the Finance Minister**, may determine a limit on the maximum credit balance permitted in the Reserve Account.
- Any claims on monies paid into the Reserve Account made within a ten year period after such payment was made will be paid to the beneficiary.
- **Funding for any deficit not covered by the Reserve Account will have to be negotiated with Treasury, subject to a possible appropriation from Parliament**.
- The money in the Fund can only be used for the purposes for which it was paid into the Fund.
- Bank costs must be set off against any interest earned and excess bank costs will be paid from the Reserve Account.
- **Money not required for immediate use by the Fund may be invested with a financial institution approved by the Finance Minister**. Any balance in the Fund can be carried forward into the next financial year. Any interest earned must be paid into the Reserve Account.
- The Justice Minister may make Regulations **in consultation** with the Finance Minister.
- The *Regulations* may provide for amongst others; the manner in which the money in the Fund is accounted for; the writing-off of losses against the reserve account; **and that any person who contravenes or fails to comply with a provision may be guilty of an offence and liable to a fine or imprisonment for a period not exceeding 12 months**.
- The DG may, in consultation with the Finance Minister, issue financial instructions to facilitate the management, control and administration of the Fund.[26]

[25] Ibid
[26] This must be done in consultation with National Treasury.

Comments/Questions

- How does a 'Justice Administered Fund' fit within the financial framework provided by the PFMA? Why was it chosen as the mechanism for administration of the Third Party Funds?

- The Third Party Funds 2014/15 Annual Report notes that once the Justice Administered Funds Bill is enacted the Finance Minister **may declare the TPF 'a public entity'** in terms of the Public Finance Management Act (PFMA).[27]
  - Is the Justice Administered Fund Bill a 'stop-gap' measure?
  - If the Finance Minister does declare the TPF a 'public entity' will this require further legislative amendments?[28]

- Will the Funds activities be reported in the Justice Department's Annual Report or in a separate Annual Report? If not, how and to which oversight agency will the Funds activities be reported?

- The Department wants to move to a system of direct payments for maintenance – this would mean beneficiaries should receive their money faster and opportunities for fraud in the TPF environment would be reduced.[29] The Department reports that it is in discussion with the Magistracy and that the Regulations issued in terms of the Justice Administered Funds Bill will provide for direct payment beneficiaries.[30] What progress has been made with these discussions?

- The Department should report on progress with the implementation of the new financial and administration system for the management of the TPF (to replace/enhance JDAS and the SAS). Successful implementation of this system is essential to improving the overall financial health of the TPF environment.

4. CONCLUSION

The provision of a legal framework for the administration of the TPF is an important, if somewhat overdue step, in the ongoing reform of the TPF environment. However, this

[27] TPF Annual Report 2014/15 p15
[28] The Department reported in October 2010 that the establishment of the TPF as a Trading Entity was in progress. (DoJ&CD Presentation to the Portfolio Committee on the Department's Annual Report 2009/10, 13 October 2010)
[29] Nhlabathi H, New law to curb papgeld fraud, City Press (11 October 2015) The Deputy Minister of Justice was reported as stating that 'the Justice Department is not a bank.'
[30] Ibid p9

process cannot be delinked from critical issues such as the implementation of an effective financial/accounting system to replace the ineffective JDAS system and the need to address continuing challenges such as fraud which remain a challenge to the integrity of the TPF.

Sources

Justice Administered Fund Bill [B26-2015]

Third Party Fund Annual Reports 2010/11-2012/13, 2013/14 and 2014/15