

2. Policy Assessment and Recommendations Report of the Select Committee on Security and Justice on the 2023/24 Budget Vote 25, Annual Performance Plan (APP) of the Department of Justice and Constitutional Development, dated 30 May 2023.

1. Introduction

This report serves to assess the strategic plans, annual performance plans and budget of the Department of Justice and Constitutional Development (DOJ) for 2023/24 against the backdrop of service delivery. It is with this in mind that the Select Committee presents this report on the budget briefing by the DOJ. The Select Committee on Security and Justice, on 24 May 2023, held a virtual briefing on the 2023 Budget and APPs of the Department and reports as follows:

2. Strategic Priorities of the Department of Justice for the 2023/24 financial year

- a. Modernising and increasing access to justice services.
- b. Commitment to build and deepen Constitutionalism, respect for Human Rights and Rule of law.
- c. Review of justice-related colonial and apartheid era legislation with the aim of aligning this legislation with the Constitution of the Republic of South Africa, 1996 (Constitution).
- d. Implementation of the National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance in order to advance constitutionalism, human rights and the rule of law.
- e. Addressing the scourge of Gender-Based Violence and Femicide (GBVF) and against women and children.
- f. Transformation of state legal services to improve effectiveness and efficiency through the implementation of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014).
- g. Transformation of the legal profession.
- h. Provision of facilities (offices/courts/service points) that are accessible to persons with disabilities as required by building regulations.
- i. Implementation of an integrated education campaign that will profile justice services through the use of variety of multi-media communication to improve citizens' experience of justice services.

- j. Improvement of audit outcomes in respect of the vote account and pre-determined objectives.
- k. Improving the departmental performance.
- l. Strengthening the fight against fraud and corruption, by ensuring that the Specialised Commercial Crime Courts (SCCCs) are being extended to every province in the country which does not yet have a SCCC.
- m. Transformation of the Masters services to allow effective and optimal operation.

3. DOJ Budget Allocation 2023/24

According to the 2023 Estimates of National Expenditure, the projected performance and expenditure for Vote 25, for the 2023/24 financial year and over the medium term, is shaped by a focus on:

- Implementing the recommendations of the State Capture Commission.
- Implementing the recommendations of the Financial Action Task Force. (*Additional funding of R1.3 billion and R100 million is provided to the NPA and SIU respectively in this regard.*)
- Reducing Gender-Based Violence and Femicide. (*Additional funding of R15 million is provided through the Criminal Asset Recovery account and through reprioritised funding for the Sexual Offences Courts and Thuthuzela Care Centres.*)
- Coordinating and contributing to the implementation of the National Action Plan for Combating Racism, Racial Discrimination, Xenophobia and Related Intolerances. (*Additional funding of R1.5 million is provided to the State Legal Services programme.*)

The total allocation in the 2023 budget for Vote 25 is **R23.19 billion** (*inclusive of R2.39 billion for Magistrate's salaries*). Excluding magistrate's salaries, but including the National Prosecuting Authority allocation (R5.4 billion), the budget is **R20.79 billion**. While additional funding is allocated by Treasury to Vote 25 in 2023 these funds are for the National Prosecuting Authority (R1.3 billion over the medium term) and the Special Investigating Unit (R100 million over the medium term).

The Administration programme: The budget allocation of **R3.08 billion for 2023/24** shows a nominal *increase* of R38.2 million when compared to the previous financial year.

The Court Services Programme: The budget allocation for **2023/24** of **R6.76 billion** shows a real *decrease* of -8.18% when compared to the previous financial year.

State Legal Services Programme: The budget allocation for **2023/24** of **R1.34 billion** shows a real *decrease of -8.8%* when compared to the previous financial year.

The National Prosecuting Authority receives **R5.407 billion**. The Investigating Directorate shows the largest real increase at 43.35%.

Additional funding is provided in the 2023 budget as follows:

R1.3 billion over the next 3 years to support the implementation of the State Capture Commission and Financial Action Task Force recommendations. These funds will be used as follows

- Increasing capacity in the Authority’s National Prosecutions Service and Investigating Directorate through the appointment of 26 and 94 personnel, respectively;
- Procuring specialist prosecution services for complex matters (especially financial crimes);
- Commissioning contracted forensic auditors and accountants to deal with high-priority asset forfeiture matters;
- Establishing a digital forensic data centre;
- Providing close protection services and integrated security systems;
- Financing increased operational costs for witness protection

Reprioritised funds have been made available to reduce gender-based violence and femicide.

- To strengthen capacity at the Thuthuzela Care Centres, **R27.5 million** over the medium term is reprioritised in the *National Prosecuting Authority* programme to appoint 15 additional personnel, who include site coordinators, victim assistant officers and state advocates. This reprioritisation is from the *National Prosecutions Service* sub-programme’s compensation of employee’s budget.

In addition, the number of Thuthuzela Care Centres is to increase to 68 by 2025/26 at an estimated cost of **R15 million** in the *National Prosecuting Authority* programme

Auxiliary and Associated Services Programme which includes Legal Aid and the SIU, amongst others, receives **R4.191 billion**. The SIU receives R1.08 billion for 2023/24, (which consists of a projected R576.1 in revenue from fees charged and R504.8 million from the national fiscus), experiences a real *increase* of 20.57% when compared to the previous financial year. In addition, the Unit reports on a surplus amount of R85.7 million, which brings the total budget for the 2023/24 financial year to R1.16 billion.

3.1 Financial Assessment of DOJ

PLANS TO REDUCE IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

The irregular, fruitless and wasteful expenditure for 2023 reduced significantly by:

- 72,5 percent for irregular and
- 90,8 percent for fruitless and wasteful expenditure.

The procurement process in relation to legal framework is currently underway and this is expected to be concluded by July 2023, however this process is managed by National Treasury. Root causes are analysed and mitigation measures are put in place through an internal compliance control committee to strengthen controls. Fruitless and wasteful expenditure arising from no shows by witnesses continues to be a challenge.

4. Annual Performance Plans 2023/24 per Programme

The 2023/24 APP has 10 Outcomes 96 indicators in total, 81 are for DoJ&CD and 15 are for NPA. 8 indicators that were on the 2022/23 APP were not included in the 2023/24 APP due to fact that they were either achieved or they had been planned for one financial year. 15 new indicators were included in the 2023/24 APP.

4.1 Programme 1: Administration Programme

The Administration programme is focused on **two key outcomes**:

- Modernised and digitised justice services platforms
- Improved organisational capability and good governance.

The purpose of the Administration programme is to provide strategic leadership, management and support services to the Department.

Two new indicators were introduced:

- Disaster Management Plan (DMP) approved by the DG by 31 March 2024.

- Social Compact discussion document submitted to the President for adoption by the 3 branches of State by 31 March 2024. (*This indicator is new to the Programme but not to the APP as it has been moved from the Court Service Programme.*)

Amended indicators:

- Percentage of grievances resolved within 90 days from the date of opening the matter. This indicator has been amended as follows: *Percentage of grievances resolved within **60 days** from the date of opening the matter.*

4.2 Programme 2: Court Services Programme

The Court Services programme is focused on **two key outcomes**:

- Increased access to justice services;
- Crime and corruption reduced through effective prosecution.

The purpose of the Court Services programme is to facilitate the resolution of criminal and civil cases and family law disputes by providing efficient and strategic court administration support functions in respect of the lower courts and to manage facilities and justice security services.

Under the Court Services programme in the 2023/24 APP the Department has introduced **nine new indicators**:

- Annual Report on Implementation of the Child Justice Act tabled in Parliament by target date.
- Number of activities actioned to enhance the effectiveness of the established Sexual Orientation, Gender Identity, Expression and Sex Characteristics (SOGIESC) Provincial Task Teams.
- National strategy for domestic violence court-based support services approved by 31 March 2024. (*The Committee could consider asking whether this strategy should have been introduced before the new DVA Act was implemented.*)
- Report of the review of the Small Claims Court system submitted to the Minister by 31 March 2024.
- Percentage of Decrees of Divorce issued by the Clerk of the court within 14 days of finalisation of the matter.

- Percentage of domestic violence protection orders served by the Clerks of the Court on parties present at Court within 24 hours from the time the order is granted by the court.
- Policy Framework on foreign language interpreting submitted to the DG for approval by target date.
- Number of activities actioned in Collaboration with other stakeholders to prevent and combat Trafficking in Persons.
- A National Conference on the review of the criminal justice system in South Africa held by 31 March 2024.

4.3 Programme 3: State Legal Services

Under the State Legal Services programme in the 2023/24 APP the Department has introduced seven new indicators:

- Number of activities of the High Level Action Plan to exit the grey list of FATF implemented.
- Percentage of policy implementation action plan activities implemented. (The policy implementation action plan is meant to operationalise the State Attorney Amendment Act, 2014.)
- Number of constitutional dialogues held for the advancement of constitutionalism.
- Number of international Human Rights instruments submitted to Minister for approval.
- Number of constitutional rights awareness/education sessions conducted by Community Advice Offices.
- Framework on International Relations Engagement submitted to DG for approval target date.
- A National Conference on the State of Human Rights in South Africa held by 31 March 2024.

4.4 Programme 4: The National Prosecuting Authority

Key objectives of the NPA in respect of performance are reportedly to:

- Ensure successful prosecution over the medium term by maintaining a conviction rate of 87 per cent in high courts, 74 per cent in regional courts and 88 per cent in district courts.
- Enhance victim-centric services by increasing the total number of operational Thuthuzela Care Centres from 60 in 2023/24 to 68 in 2025/26.
- Ensure access to justice for victims of sexual offences by maintaining a conviction rate of 70 per cent over the medium term.
- Contribute to the fight against corruption by increasing the number of prosecutions of state capture, fraud or corruption and related matters enrolled in the courts from 9 in 2023/24 to 18 in 2025/26.
- Contribute to the effectiveness of the criminal justice system on an ongoing basis by ensuring that no witnesses and related people in the witness protection programme are threatened, harmed or killed.

The NPA introduced a new indicator:

- Number of prosecutions instituted involving money laundering.

4.5 Programme 5: Auxiliary and Associated Services

The Special Investigating Unit provides professional forensic investigating and litigation services to all state institutions at the national, provincial and local levels to combat maladministration, corruption and fraud and to protect state assets and public funds.

The SIU reports in the **2023/24 APP** that it has retained the following focus areas over the medium term:

- Improving investigation turnaround times;
- Monitoring implementation of the SIU referrals and consequence management;
- Implementing measures to accelerate civil litigation;
- Reviewing and strengthening the SIU funding model;
- Implementing targeted prevention and awareness campaigns;
- Making systematic recommendations to state institutions to prevent a recurrence of corruption, maladministration and malpractice;
- Improving communication and stakeholder relations;
- Implementing corruption, maladministration and malpractice data analytics;

- Improving the SIU governance framework; and
- Introducing a new organisational and individual performance management system.

4.6 Measurement of Performance against Service Delivery and Budgets

In its 2020-2025 Strategic Plan Mid-Term Progress Report, the Department noted the many challenges, which included dilapidated infrastructure, aging ICT and budget constraints, affecting its performance. *(These are exacerbated by cuts to the baseline and new legislation, which often results in an expanded mandate)*. These challenges are compounded by key interdependencies with Departments, such as Public Works and Infrastructure and entities such as the State Information Technology Agency, as well by load shedding, which has a direct impact on court performance and service delivery at justice service points. However, it is clear, that a number of these issues could be addressed by effective strategic planning and risk management. The Department reports in the 2023/24 APP that it intends to make an impact through improved public perception, confidence in the justice system and respect for the rule of law.

In addition, according to the **2023/24 APP** in the current financial year, the Department aims to introduce the following **critical Bills**:

- The **Decriminalisation of Sex Work Bill** – known as Criminal Law (Sexual Offences and Related Matters) Amendment Bill - which aims to decriminalise sex work.
- The **International Co-operation in Criminal Matters Amendment Bill** which seeks to create a legislative framework in terms of which South Africa may also provide mutual assistance to international entities in criminal matters, to ensure that our domestic law provides certainty in giving effect to our international obligations.
- The **Extradition Bill**, which aims to modernise the entire current Extradition Act.
- The Criminal Law Amendment Bill, to be called **Conspiracy, Instigation and Incitement to Commit Offence Bill**, which will repeal the Riotous Assemblies Act.
- The **National Prosecuting Authority Amendment Bill**, which will aim to establish the Investigating Directorate: as a permanent unit within the National Prosecuting Authority.

5. Discussion / Responses by the Department

5.1 Upgrading of courts: Members wanted to understand the progress and challenges related to the upgrading of courts in relation to DPWI. The Department responded that it has a budget for maintenance and it is the responsibility of regions to see that courts are maintained. In the case where major renovations and repairs are required, they appoint service providers.

5.2 Limpopo High Court: Members wanted to know about the high water table that is affecting the structure of the Limpopo High Court and what progress has been made. The Department responded that service level agreements are currently being vetted and will be sent to DPWI for sign off. The Limpopo High court is sitting on a water bed; however, they are busy pumping the water underground. There are already occupational certificates so that the court will not be condemned.

5.3 Thuthuzela centres (TCCs): Members wanted to know what the current status, progress and challenges are at these centres. The NPA responded that the centres are managed by the NPA sexual offences unit. Thuthuzela Centres were introduced in 2001, currently 63 centres are operational and they are mainly based at hospitals or park homes. The TCCs are internationally recognised as the best basket of pre-trial services for GBV victims. However, there are too few centres and the expansion of the footprint has been limited by the budget. The main challenges are the lack of space at existing public hospitals and those housed in park homes have exceeded their lifespan. They are working towards increasing the number of centres to 70 and are engaging with the mining and private sector to increase the number of centres. TCC services and locations are still not well known and they are now advertising the services on the SPAR grocery store bags with contact details which has seen an increase in people accessing the services. Conviction rates have increased and the Department has also made the services more accessible by providing access for the physically disabled and a video on the services are provided for persons with hearing disabilities.

5.4 Staff morale: Members wanted to know about staff morale generally. The NPA responded that they have linked up with EDWP to improve debriefing sessions and ensure annual training of prosecutors. These interventions are assisting with providing support to employees.

5.5 GBVF programme: Members wanted an update on progress in relation to GBVF initiatives and also to understand how the Department is ensuring that the relevant roleplayers are aware and implementing the changes to the GBV legislation. The Department responded that they are working hard to address systemic challenges and humanising service delivery. They have developed a safety plan for survivors of domestic violence and have an online portal for submission of reports of domestic violence. The Department is in the process of appointing more intermediaries to assist in non-criminal proceedings. Further, they are establishing more sexual offences courts and developing pillar 3 of the femicide watch for continuous monitoring to develop appropriate interventions. The Department is also fast tracking the vetting process for the register of sexual offenders. Further, in terms of legislation they are working on the finalisation of the Hate Crimes Bill, reviewing the Criminal Procedure Act and working on the Bill towards the decriminalisation of sex work. The Department is working with communities and stakeholders to ensure that they are understanding and implementing the GBV legislation.

5.6 Public awareness campaigns: Members wanted to know what the campaigns entail and the successes and challenges in relation thereto. The Department indicated that they continuously conduct constitutional and human rights education. These campaigns entail educating the public on the Constitution and a range of legislation. Their campaigns have also extended to education regarding xenophobia and the use of equality courts and they work with a wide range of stakeholders including the South African Human Rights Commission (SAHRC) and with civil society organisations.

5.7 Annual Performance Plan: Members wanted to understand why the APP had been tabled late and why targets had been reduced. The Deputy Minister responded that it was tabled at the end of April 2023 and due to some problems he had with the initial draft and the reduction of targets, it took some time to remedy.

5.8 The impact of load shedding on the functioning of courts: Members wanted to understand how the Department is addressing this to ensure optimal functionality of courts and whether there were any agreements in place with DPWI to go off grid. The Department responded that there are currently 139 generators in courts and that this project is continuous. The Department is working closely with DPWI and using the R1million devolved by DPWI to buy generators. The Department is also working on contracts with alternative sources eg solar panels.

5.9 Masters office backlogs: Members wanted to understand why the backlog at the Master's office was not cleared by December 2022 and what the projections are for clearing the backlog. The Chief Master responded that the target was 100% last year however, they were unable to reach that target but had made considerable progress. Some challenges include IT, network connectivity and load shedding and they are hoping to interface with State Information Technology Agency (SITA). The target for this year is 75% and as they modernise services, they are hoping to achieve the target by the end of the financial year. An online system has already been piloted in Gauteng and Durban and it will soon be rolled out in Cape Town and then nationally.

5.10 Modernisation and digitisation of systems: Members wanted to know if the Department was confident that these systems could be effectively delivered through SITA and whether the information would be protected by using SITA. The Department responded that there are problems with SITA, however since the appointment of the new MD they have agreed they would put in place a firm plan of action. The Department has also, on its own, finalised the rebuilding of data centres and is finalising the migration of services.

5.11 NPA Decisions to decline to prosecute: Members wanted to understand, particularly in light of their engagement with IPID and SAPS, why the NPA declines to prosecute and what the relationship is between the NPA and other stakeholders. The NPA responded that they have an excellent working relationship with all law enforcement agencies. If and when the NPA makes a decision not to prosecute, there are usually valid reasons and all role-players are aware of these reasons. They entered into MOUs with stakeholders and hold regular meetings. The NPA also provides regular feedback.

5.12 Grey listing and State Capture: Members wanted to know what the NPA and SIU is doing to address issues related to money laundering and terrorism and the prosecution of state capture cases. The NPA responded that it co-ordinates activities to address the Financial Action Task Force (FATF) concerns. In respect of working relationships, the NPA has entered into an MOU with SIU to ensure that these matters receive priority. The taskforce coordinates the work of law enforcement agencies on state capture cases and they are working effectively together to pool resources and identify cases to prioritise matters for enrolment. In respect of grey listing, the NPA works closely with National Treasury who assists with co-ordination and this

is where progress is monitored. Law enforcement agencies develop an action plan in terms of FATF which determines how they will approach money laundering investigations and prosecutions. Since the Protection of Constitutional Democracy Against Terrorist and Related Activities (POCDATARA) legislation has been passed, they will also embark on joint training and work closely with financial authorities to identify risks for investigation and prosecution.

5.13 Capacity and Resources challenges: Members wanted to understand if there were any capacity or resource challenges which will impact the work of the NPA in respect of state capture and grey listing work. Members also wanted to know if the National Prosecuting Authority Amendment Bill would address some of these challenges and how far that Bill is. The NPA responded that since 2019 they have been on a recruitment drive and in past financial year added 1000 employees and 344 aspirants in the NPA. However, they realised capacity was not only about numbers but in determining what capacity in respect of prosecuting was actually required. In this regard they conducted a capacity enhancement survey which allowed the NPA to know where the gaps are and they are working on these gaps through a number of interventions, including normal training and mentoring programmes. The NPA was given an additional budget allocation and invested a significant amount of funding and capacity in the Investigating Directorate (ID) which has grown significantly. The NPA Amendment Bill will provide permanence which will also give a good indication of capacity actually required. The legislation needs to be amended to improve investigative powers. They have already started this process in respect of criminal investigative and forensic capacity and to improve cybersecurity skills. They are also working hard to ensure that prosecutors have enabling working environments. ID is making progress and has 9 seminal matters enrolled. The ID will make more progress now that various new appointments have been made in the last 3 months. The ID is also using expertise in terms of criminal and forensics from seconded personnel from IPID and DPCI. The NPA is also working with the private sector to ensure that they have data analysts who understand what they have to look out for in their cases. The SIU responded that their human capital turnover rate is at 4%. The SIU is growing and upskilling in partnership with the French embassy and the pilot will be able to help other law enforcement agencies.

5.14 Whistle Blowers: Members wanted to know what the most significant risk is for whistle blowers and how effective the internal unit is. The SIU responded that there is continuous monitoring of the risk of whistle blowers and they are collaborating with the NPA to ensure

adequate protection. Further, they engage witness protection in collaboration with crime intelligence and conduct a threat analysis.

5.15 Delays in High Profile Cases in North West Province: Members wanted to know what the delays were in the cases dealt with by the inter-ministerial task team in the North West Province. The NPA committed to providing the Committee with a written response on these cases.

5.16 Targets and Outputs of NPA: Members wanted to understand what the challenges were in respect of the NPA meeting its targets in high profile cases. The NPA responded that even though the new NDPP took office in 2019 many senior management and leadership posts were only filled in 2022. There are currently over 850 000 cases in a year in the criminal courts. The NPA understands that the public is keen to see high profile accused persons incarcerated. The work of the ID is focused on 13 major investigation categories covering the public and private sectors in the following entities: Transnet, Eskom, Bosasa, Estina Company (Pty) (Ltd), SAPS, the NPA, State Security Agency (SSA), Bain (SARS), McGowan, Alexkor, South African Airways and the Public Investment Corporation. Several matters are already enrolled in court, whilst others are still under investigation. Since inception, the ID has so far declared 89 investigations, enrolled 34 cases, involving 203 accused individuals and 65 accused entities. ID enrolled 18 criminal cases in the year under review, from authorised investigations work that led to the arrest of 77 individuals. Further authorised 13 new investigations for the 2022/23, bringing the total number of investigations authorised since the establishment of the ID to 97. The NPA also referred to the delaying tactics used by accused persons in respect of prosecutions which needs to be taken into account in respect of the time periods for prosecution.

5.17 Colonial and Apartheid Legislation: Members wanted to understand why there were still so many pieces of Apartheid legislation and what the Department and the South African Law Reform Commission (SALRC) was doing to remedy this. The Department assured the committee that several pieces of apartheid legislation were currently under review including the Criminal Procedure Act which is currently under review by SALRC. The Department also mentioned the State Liability Amendment Bill which forms part of a recommendation from the SALRC. The Department is attending to repeal many of these pieces of legislation as soon as possible.

6. Recommendations

6.1 The Department should ensure that it prioritises the upgrading of courts and works hand in hand with DPWI to resolve any challenges. Further, the Department should continue with its work to ensure that the Limpopo High Court is fully functional and operational.

6.2 The Department should actively work towards increasing the number of Thuthuzela Care Centres across all provinces to provide the necessary services to victims of GBV. The expansion of the footprint of these services as well as good marketing, will go a long way in assisting victims of GBV.

6.3 The Department should continue to educate the public on GBVF and ensure that all stakeholders are capable of implementing the GBV Bills effectively to improve access to justice for all victims and survivors.

6.4 The Department should ensure that it rolls out generators and solar panels to all court buildings and that it addresses the challenges of load shedding with the DPWI in all provinces so that court services are not interrupted and to prevent further backlogs.

6.5 The Department should focus on reducing the backlogs at the Master's office and focus on rolling out the online service to all provinces as quickly and efficiently as possible. The modernisation and digitisation of all services should be prioritised to address backlogs.

6.6 The NPA and SIU should continue to prioritise high profile state capture cases and continue with its important work in addressing money laundering and terrorism. The implementation of the POCDATARA legislation should be prioritised.

6.7 The Department should prioritise the National Prosecuting Authority Amendment Bill to ensure that the Directorate has the necessary capacity and resources to focus on high profile state capture investigations and prosecutions.

6.8 The NPA should forward a written report, within 30 days of adoption of this report, to the Committee on the progress of the high profile cases dealt with by the inter-ministerial task team in the North West Province.

6.9 The Department should ensure that all colonial and apartheid legislation is repealed by the SALRC and the Department to enhance our legislation to be reflective of our Constitutional values.

6.10 The Department, NPA and SIU should focus its attention on the protection of whistle blowers and work collaboratively with other stakeholders to strengthen such protection.

7. Conclusion

The Committee encouraged the Department to ensure successful implementation of legislation, the continuation of the tireless work by the NPA and SIU to ensure that State Capture cases are prioritised. The Department was further encouraged to work tirelessly to overcome the challenges in relation to capacity, load shedding, ageing infrastructure and case backlogs to continue to promote access to justice for all our citizens both in urban and rural areas.

The Select Committee on Security and Justice supports Budget Vote 25.

Report to be considered.