



16 April 2008

**SUMMARY AND ANALYSIS – DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT BUDGET: VOTE 21**

**1. Introduction**

The Department's mandate is to uphold and protect the Constitution and the rule of law, and to provide accessible, fair, speedy and cost effective administration of justice in the interests of a safer and more secure South Africa. In addition, the Department provides certain legal services to the Government.

The Department identifies the following as among its core functions:

- Ensuring equitable access to justice for all.
- Providing and managing court facilities.
- Improving security at courts.
- Strengthening the Department's establishment.
- Modernising justice systems.
- Facilitating the adjudication and resolution of criminal and civil matters.
- Developing and assisting in the development of the Constitution and legislation.
- Administering deceased and insolvent estates, including the Guardian's Fund.
- Educating the public on their constitutional rights.

In order for it to achieve its mandate, the Department has organised its work into five programmes, namely Administration, Court Services, State Legal Services, National Prosecuting Authority and Auxiliary and Associated Services.

However, it should be noted that the National Prosecuting Authority (NPA) accounts separately for its spending. Also, Programme 5: Auxiliary and Associated Services include independent constitutional institutions such as the South African Human Rights Commission, the Commission for Gender Equality and the Public Protector, who account to Parliament. The Department's role with respect to their finances is merely that of a conduit.

This paper provides an overview of allocation to the Department for 2008/09. It also seeks to assess whether the Department's planned expenditure for 2008/09 gives effect to its strategic priorities, as stated in its Medium Term Strategic Framework (MTSF),<sup>1</sup> and whether this is in line with Government's priorities.

It should be noted that this paper uses the figures provided in the adjusted appropriation for 2007/08 and the main appropriation for 2008/09. Furthermore, growth is indicated by the real

<sup>1</sup> Department of Justice and Constitutional Development, *Medium Term Strategic Framework (MTSF) – Access to Justice for All, 2005/06 – 2008/09*.



growth rate (that is, taking into account the impact of inflation). The inflation rate that is used is 7.1%.<sup>2</sup>

## 2. Policy Priorities - 2008

### 2.1. Key strategic priorities

The Department's policy priorities for 2008/09 remain those identified in its Medium Term Strategic Framework, namely:<sup>3</sup>

- Access to justice for all, particularly the disenfranchised, the poor and vulnerable persons.

The following key objectives aim at improving access to justice for all in 2008/09:

- ❖ The re-demarcation of magisterial districts and improving and transforming access to legal services through the legal services charter. In this regard, 91 branch courts have been identified as requiring alignment to allow them to provide all magistrate court services. This process is expected to be finalised by the end of 2008/09. This includes rationalisation of courts and alignment of the traditional courts.
  - ❖ The Repair and Maintenance Programme (RAMP) envisages the continued development and maintenance of its facilities.
  - ❖ New courts will be constructed, while mobile courts will provide services in remote communities until permanent facilities can be provided.
  - ❖ Periodical courts are to be phased out, particularly those held in police stations.
  - ❖ The number of Small Claims Courts is to be increased.
  - ❖ Operational security improvements are to be made in all facilities.
  - ❖ The promotion of public awareness about: services and assistance for victims of crime; maintenance services; the Guardian's Fund; sexual and domestic violence; the Truth and Reconciliation Commission's recommendations; and other matters that may affect vulnerable groups.
- **Enhancing organisational efficiency.** To improve the provision of access to justice, the Department has focused on improving its organisational efficiency, in particular modernisation of its court systems. In this regard, the following key strategic goals are identified for 2008/09:
    - ❖ The continued rollout of Re Aqa Boswa (We are Rebuilding) project.
    - ❖ The appointment of professional court managers.
    - ❖ Training of the judiciary.
    - ❖ Access to maintenance services has been improved through the initiation of Project Isondlo. In addition, systems are being put in place to decrease the backlog of maintenance cases and to ensure that maintenance provisions are enforced.

<sup>2</sup> This is the figure identified by the Minister of Finance when he presented the Budget for 2008.

<sup>3</sup> Note that the Department is compiling an annual plan for 2008/09. However, the plan was not available at the time this paper was being written.



- **Transforming Justice, State and Society.** Transformation of the judiciary and the legal profession remains a priority. The following key strategic goals give effect to this is 2008/09:
  - ❖ A review of the criminal justice system remains a priority within the Justice, Crime Prevention and Security Cluster. This is found in initiatives that include the finalisation of the Legal Services Charter in December 2007. The protection and promotion of the rights of victims remains a priority as seen by the launch of the plan to implement the Victim's Charter.
  - ❖ Several Bills address the issues such as judicial transparency; the promotion of gender in the law; and the prevention of human trafficking. (These Bills include the Customary Law of Succession Amendment Bill, which brings the customary law of succession in line with the Constitution; a bill that deals with the role of traditional courts; the Magistrate's Courts Amendment Bill that deals with the disposal of immoveable property of the poor in certain circumstance; and the Jurisdiction of Regional Courts Amendment Bill which extends civil jurisdiction to the Regional Courts as well as incorporate the divorce courts within the Regional Courts.
  - ❖ The NPA 2020 strategy establishes several initiatives including ensuring that there are two prosecutors for each lower court and to reduce criminal case backlogs.

## 2.2. State of the Nation Address (SONA) 2008

In addition, to the key strategic priorities mentioned above, the following priorities were identified in the 2008 State of the Nation Address and are relevant to the Department's work for 2008/09:

- Revamp of the criminal justice system.
  - ❖ The development of a holistic approach to the revamping of the criminal justice system includes establishing a new co-ordinating and management structure. The initiative to revamp the criminal justice system is a continuation of the theme expressed in the 2007 State of the Nation Address and Government's Plan of Action calling for more effective organisation and leadership in the sector. However, the approach this year is a more structured approach with mention of specific plans revolving around the new co-ordinating and management structure.<sup>4</sup>
  - ❖ In an effort to combat crime, the 2008 State of the Nation Address calls for a new and integrated criminal justice system that is 'modernised, efficient and transformed'. At the nucleus of this new system is a co-ordinating and management structure that will include all stakeholders within the criminal justice system.

---

<sup>4</sup> Ngakula, C. (2008).



- ❖ A further aspect of this revamp will entail a review of laws, procedures, processes and structures that underpin the criminal justice system, particularly those relating to the regional courts.<sup>5</sup>
- ❖ Special attention is to be paid to the matter of case backlogs.<sup>6</sup> As part of the Apex Priorities, the Government seeks to reduce the number of pending trial cases by 30% by 2009.<sup>7</sup> For this to be achieved, the Department will need to employ additional magistrates, prosecutors, legal aid attorneys and administrative staff. This will have budgetary implications for the Department.
- Transformation of the Judiciary. The 2008 State of the Nation Address calls for the passing of legislation on the transformation of the Judiciary. This initiative continues from the 2007 State of the Nation Address and seeks to facilitate transformation through legislation and other measures.<sup>8</sup> Such action is required to address the need for greater gender and racial representivity, greater judicial accountability and the desire to create a better functioning court system.
- Implementation of the Victims' Charter.
  - ❖ The Victims' Charter is an initiative that recognises the rights of victims and aims to empower victims of crime by meeting both their emotional and material needs. The 2008 State of the Nation Address indicates that the implementation of this Charter is an imperative.
  - ❖ In this regard, the Minister of Justice and Constitutional Development launched a Five Year Implementation Plan for the Victims' Charter in the latter part of 2007.
- Implementation of additional measures derived from the Truth and Reconciliation Commission's (TRC) recommendations.
- The relocation of the Directorate of Special Operations (DSO).

Priorities that were not specifically directed at the JCPS Cluster but which are generally relevant include:

- The adoption of the second National Anti-Corruption Programme.
- The need to fill critical vacancies within six months of the vacancies occurring.
- Entering into performance agreements with senior managers.

---

<sup>5</sup> Ngakula, C. (2008).

<sup>6</sup> Ngakula, C. (2008).

<sup>7</sup> <http://www.info.gov.za/otherdocs/2008/apex-priorities0208.pdf>

<sup>8</sup> Some of the legislative measures that are planned include legislation to rename the High Courts, the Traditional Courts Bill<sup>8</sup> and the Jurisdiction of Regional Courts Amendment Bill.



### 3. Budget Analysis

**Table 1: Overall Programme Allocation MTEF: 2007/08 – 2010/11**

Budget				
Programme	2007/08	2008/09	2009/10	2010/11
R thousand				
Administration	885 952	941 145	1 094 686	1 195 454
Court Services	3 155 670	3 371 615	3 808 084	3 997 339
State Legal Services	443 625	503 153	562 056	589 383
National Prosecuting Authority	1 804 691	2 122 727	2 423 230	2 552 706
Auxiliary and Associated Services	1 248 729	1 402 792	1 591 920	1 735 180
<b>Total</b>	<b>7 538 667</b>	<b>8 341 432</b>	<b>9 479 976</b>	<b>10 070 062</b>

The main appropriation to the Department increases from R7.5 billion in the 2007/08 financial year to R8.3 billion in 2008/09. This amount does not include a direct charge against the National Revenue Fund of R1.4 billion for judges and magistrates' salaries, which brings the main appropriation for 2008/09 to 9.7 billion.

**Table 2: Increase/decrease per programme from 2007/08 – 2008/09**

R thousand	Budget 2007/08	Budget 2008/09	Nominal % change	Real % change
Administration	885 952	941 145	6.23%	-0.81%
Court Services	3 155 670	3 371 615	6.84%	-0.24%
State Legal Services	443 625	503 153	13.42%	5.90%
National Prosecuting Authority	1 804 691	2 122 727	17.62%	9.83%
Auxiliary and Associated Services	1 248 729	1 402 792	12.34%	4.89%
<b>Total</b>	<b>7 538 667</b>	<b>8 341 432</b>	<b>10.65%</b>	<b>3.31%</b>

In nominal terms, the allocation for 2008/09 increases by 10.7% compared to 2007/08. However, in real terms, the appropriation for 2008/09 increases by only 3.3%.

According to the Estimates for National Expenditure (ENE) 2008, the largest part of this increase is intended towards improving the capacity at courts and providing services. This, according to the ENE, is reflected in relatively large increases in the *Court Services*, *State Legal Services* and *National Prosecuting Authority* Programmes. However, while the allocations for *State Legal Services* (5.4%) and the *National Prosecuting Authority* (9.8%)



programmes have indeed increased in both nominal and real terms, the allocation for *Courts Services* has, in fact, declined in real terms by 0.2%.

**Table 3: Percentage of budget allocated per programme**

R thousand	Budget for 2008/09	% of Total budget per programme	% change in allocation
Administration	941 145	11.75%	-0.47%
Court Services	3 371 615	41.86%	-1.44%
State Legal Services	503 153	5.88%	0.15%
NPA	2 122 727	23.94%	1.51%
Auxiliary and Associated Services	1 402 792	16.56%	0.25%
<b>Total</b>	<b>8 341 432</b>	<b>100%</b>	<b>0%</b>

The allocation across the five programmes comprising the Vote remains approximately the same as for 2007/08, with some minor shifts. For example, in real terms, Court Services receives 1.44% less than in 2007/08, while the NPA receives an additional 1.5%.

#### Issues for consideration

- It should be noted that in past years the trend has been for the Department to spend less than the amount it was allocated (The revised estimate for 2007/08 anticipates that an amount of approximately R400 million will be unspent. A closer look at the figures indicates that the main appropriation in 2007/08 was approximately R7.3 billion. The Department received an additional appropriation of R261 million. However, the revised estimate projects that spending will not even meet the main appropriation amount let alone the adjusted appropriation. Has the Department in fact underspent once again for 2007/08? If so, by how much? What are the reasons for this? What measures, if any, have been put in place to ensure that the problem does not persist/reoccur?
- It is of concern that Court Services is receiving less money in real terms (albeit marginally so) than in 2007/08. Why is this?

#### 4. Expenditure per Programme

As can be seen from Tables 1 and 3 above, three of the five programmes in this Vote experience real increases, i.e., which is more than the current consumer price inflation rate. In real terms, however, the *Administration* and *Court Services* programmes, experience a decrease in their allocations when compared to 2007/08.



#### 4.1 Programme 1: Administration

The *Administration* programme manages the Department, develops strategies and policies for the efficient administration of justice and conducts research, including improving legislation and making Constitutional amendments. It comprises five sub-programmes, namely *Minister*, *Deputy Minister*, *Management*, *Corporate Services* and *Property Management*.

**Table 4: Percentage of budget allocated per sub-programme**

Sub-programme R thousand	Budget for 2008/09	% of programme budget	% change in allocation
Minister	1 019	0.11%	0%
Deputy Minister	828	0.09%	0%
Management	71 572	7.60%	-0.23%
Corporate Services	481 913	51.20%	-1.83%
Property Management	385 813	40.99%	2.06%
<b>Total</b>	<b>941 145</b>	<b>100%</b>	<b>0%</b>

The *Administration* programme receives R941 million, which comprises 11.6% of the allocation for the Department. In real terms, this represents a marginal decrease of 0.8% from the amount allocated in 2007/08. This is in contrast to 2007/08, where it grew by 2.7%.

The *Corporate Services* sub-programme dominates expenditure under this programme, consuming 51% of the programme's overall budget allocation. *Property Management* follows, receiving 41% of the overall programme allocation. When compared to 2007/08, however, any shifts in spending priorities within the programme are minor.

**Table 5: Increase/decrease per sub-programme from 2007/08 – 2008/09**

Sub-programme R' 000	Budget 2007/08	Budget 2008/09	Nominal % change	Real % change
Minister	951	1 019	7.15%	0.05%
Deputy Minister	773	828	7.12%	0.01%
Management	69 451	71 572	3.05%	-3.78%
Corporate Services	469 835	481 913	2.57%	-4.23%
Programme Management	344 942	385 813	11.85%	4.43%
<b>Total</b>	<b>885 952</b>	<b>941 145</b>	<b>6.2%</b>	<b>-0.81%</b>

According to the Estimates of National Expenditure 2008, growth in the allocation is intended mainly for human resources development, appointing legal interns and improving capacity of Justice College. Increases in the *Property Management* sub-programme are for the payment of increased market-related rental.



Although it enjoys the lion's share of expenditure under *Administration*, the allocation to *Corporate Services* declines in real terms by 4.23%. The *Management* sub-programme also declines (by 3.78%). In real terms, *Programme Management* experiences the most significant growth of 4.43% for 2008/09. As already mentioned, the overall amount allocated to the programme declines in real terms by 0.8%.

### Issues for consideration

- The *Corporate Services* sub-programme encompasses the Chief Directorate: Human Resources Management. Personnel issues have been identified as posing a challenge to the Department. However, despite the explanation given in the ENE that growth in *Corporate Services* sub-programme is to cover human resource development, appointing legal interns and improving the capacity of Justice College, this sub-programme experiences a decrease in real terms of 4.23%. Can the Department explain how it intends addressing important challenges in human resource development given the decrease in the allocation?
- The ENE reports that the allocation to *Administration* will be partially used to improve the capacity of the Justice College. Given that in real terms *Administration* receives less money than in 2007/08, how does the Department intend funding additional training requirements flowing from legislative reforms to the court system (for example, the Jurisdiction of Regional Courts Amendment Bill)?
- Similarly, the South African Judicial Education Institute Bill aims to establish a national education and training institute for the judiciary that will be responsible for the judicial education and training of judicial officers and aspiring judicial officers. Its main source of funding will be an allocation in the budget of the Department. Has the Department included sufficient monies in its budget to cover implementation of the Bill's provisions in the 2008/09 financial year?
- Now that sites have been acquired, what is progress with plans to build new High Courts in Mpumalanga and Limpopo? Can the Department please provide timeframes?





#### 4.2 Programme 2: Court Services

The *Court Services* programme provides and manages efficient court services, and facilitates the resolution of criminal, civil and family law matters. It is a priority programme of the Department and receives 42% of the overall budget allocation to the Department. *Court Services* has 10 sub-programmes in all: *Constitutional Court*; *Supreme Court of Appeal*; *High Courts*; *Specialised Courts*; *Lower Courts*; *Family Advocate*; *Magistrate's Commission*; *Government Motor Transport*; and *Facilities Management*.

**Table 6: Percentage of budget allocated per sub-programme**

Sub-programme R thousand	Budget for 2008/09	% of programme budget	% change in allocation
Constitutional Court	59 743	1.77%	-0.09%
Supreme Court of Appeal	15 723	0.47%	-0.02%
High Courts	204 783	6.07%	0.47%
Specialised Courts	22 465	0.67%	-0.07%
Lower Courts	2 147 113	63.68%	5.06%
Family Advocate	79 516	2.36%	0.07%
Magistrate's Commission	8 611	0.26%	0.02%
Government Motor Transport	31 821	0.94%	-0.02%
Facilities Management	508 703	15.09%	-6.11%
Administration of Courts	293 137	8.69%	0.69%
<b>Total</b>	<b>3 371 615</b>	<b>100%</b>	<b>0%</b>

The Court Services programme receives R3.4 billion for 2008/09. While this is a nominal increase of 6.8%, in real terms the Programme allocation decreases by 0.24% compared to 2007/08.

The *Lower Courts* sub-programme once again dominates expenditure under this programme, receiving 64% of the overall programme allocation. This is in line with the Department's objective of improving access to justice and services.

There are some shifts in spending priorities within the Programme budget when compared to 2007/08. Thus, the sub-programme *Lower Courts* receives 5.06% more of the Programme's budget when compared to 2007/08, while *Facilities Management* receives 6.11% less than in 2007/08.



**Table 7: Increase/decrease per sub-programme from 2007/08 – 2008/09**

Sub-programme R' 000	Budget 2007/08	Budget 2008/09	Nominal % change	Real % change
Constitutional Court	58 883	59 743	1.46%	-5.27%
Supreme Court of Appeal	15 196	15 723	3.47%	-3.39%
High Courts	176 926	204 783	15.75%	8.07%
Specialised Courts	23 141	22 465	-2.92%	-9.36%
Lower Courts	1 849 968	2 147 113	16.06%	8.37%
Family Advocate	72 309	79 516	9.97%	2.68%
Magistrate's Commission	7 508	8 611	14.69%	7.09%
Government Motor Transport	30 306	31 821	5%	-1.96%
Facilities Management	668 799	508 703	-23.94%	-28.98%
Administration of Courts	252 634	293 137	16.03%	8.34%
<b>Total</b>	<b>3 155 670</b>	<b>3 371 615</b>	<b>6.8%</b>	<b>-0.24%</b>

The allocation to the sub-programme *Facilities Management* in 2008/09 decreases both in nominal (23.94%) and real terms (28.98%). In addition, the allocation to the *Constitutional Court* (5.27%) and *Supreme Court of Appeal* (3.39%) sub-programmes declines in real terms. The allocation to *Specialised Courts* for 2008/09 declines in both nominal and real terms by 2.92% and 9.36% respectively.

The sub-programmes that reflect the most significant real growth in 2008/09 are *Lower Courts* (8.37%), *Administration of Justice* (8.34%) and *High Courts* (8.07%).

It should be noted that in 2007/08, *Facilities Management* grew in real terms by 65%. This growth was to fund the construction of new courts and the rehabilitation of existing court infrastructure. In 2007/08, the *Family Advocate* sub-programme also grew significantly in real terms by 24%. The reason given for the increase was to appoint more family advocates and family counsellors. In 2008/09, the *Family Advocate* sub-programme's increased allocation in real terms is far more modest (2.68%).

The *Magistrates' Commission* sub-programme also reflects significant real growth in 2008/09 of 7.09%.

#### Issues for consideration

- In past financial years there has been a strong focus on intensifying the process of setting up specialised courts as a national priority. However, this sub-programme experienced a real decrease of 5.5% in the 2007/08 financial year. Once again in 2008/09, the allocation for this sub-programme declines (by 9.36% in real terms). Why is this so, given that until very recently the setting up of specialised courts was a priority?

... of the allocation



- What is the intended use of the increase for the Magistrates' Commission sub-programme?

### Programme 3: State Legal Services

This programme provides the Government with legal and legislative services; supervises the administration of deceased and insolvents estates and the Guardian's Fund (the Master's Office); prepares and promotes legislation; and facilitates constitutional amendments. Accordingly, spending on this programme is organised into four sub-programmes, namely *State Law Advisors*; *Litigation and Legal Services*; *Legislation and Constitutional Development*; and *Master of the High Court*. The *State Law Advisors* sub-programme is relatively new to the programme as it was added in the 2007/08 financial year.

**Table 8: Percentage of budget allocated per sub-programme**

Sub-programme R thousand	Budget for 2008/09	% of programme budget	% change in allocation
State Law Advisors	33 923	6.74%	-0.52%
Litigation and Legal Services	189 422	37.65%	-3.07%
Legislation and Constitutional Development	38 935	7.74%	-2.22%
Master of the High Court	240 873	47.87%	5.81%
<b>Total</b>	<b>503 153</b>	<b>100%</b>	<b>0%</b>

This programme receives R503 million for 2008/09. In real terms this is an increase of 5.9% when compared to 2007/08. Within the programme, the *Master of the High Court* sub-programme receives 47% of the overall programme allocation, followed by the *Litigation and Legal Services* sub-programme, which is allocated 37% of the programme expenditure.

**Table 9: Increase/decrease per sub-programme from 2007/08 – 2008/09**

Sub-programme R' 000	Budget 2007/08	Budget 2008/09	Nominal % change	Real % change
State Law Advisors	32 203	33 923	5.34%	-1.64%
Litigation and Legal Services	180 648	189 422	4.86%	-2.09%
Legislation and Constitutional Development	44 161	38 935	-11.83%	-17.68%
Master of the High Court	186 613	240 873	29.52%	20.52%
<b>Total</b>	<b>443 625</b>	<b>503 153</b>	<b>13.4%</b>	<b>5.90%</b>



The *Master of the High Court* sub-programme is the only sub-programme to experience a real increase in funds allocated – it grows in real terms by 20.5%. The *Legislation and Constitutional Development* sub-programme experiences the most significant decrease in real terms of 17.68%.

The Department reports that the increase experienced by the overall programme will be utilised to improve access to the Guardian's Fund, facilitate the accessibility of deceased and insolvent estates services, increase capacity by employing more personnel in the state attorney's office and to develop the skills of existing personnel.

#### Issues for consideration

- Over the past couple of financial years, the Department has allocated major resources to the revamping of the office of the Master of the High Court. Yet there have been reports that this Office is not operating as it ought. What are the challenges that have been identified in this Office, and how does the Department intend addressing them?
- What is the progress with regard to the implementation of the unified management system for deceased estates and the computerised Guardian's Fund system? How have these initiatives impacted on the work performed by the Master's Office?

#### 4.3 Programme 4: National Prosecuting Authority (NPA)

This programme provides for prosecution services, witness protection (particularly in serious criminal cases), and the investigation and prosecution of serious, complex and organised crime and removes the profit from crime. Expenditure under this programme is organised into four sub-programmes, namely *Public Prosecutions*, *Witness Protection*, *Directorate of Special Operations* and the *Asset Forfeiture Unit*.

**Table 10: Percentage of budget allocated per sub-programme**

Sub-programme R thousand	Budget for 2008/09	% of programme budget	% change in allocation
Public Prosecutions	1 488 044	70.10%	0%
Witness Protection Programme	127 839	6.02%	0.24%
Directorate of Special Operations	429 850	20.25%	-0.42%
Asset Forfeiture Unit	76 994	3.63%	0.19%
<b>Total</b>	<b>2 122 727</b>	<b>100%</b>	<b>0%</b>

The *National Prosecuting Authority* programme receives R2.1 billion for 2008/09. This is 23.9% of the overall departmental allocation, which is slightly more (1.5%) than in 2007/08. The allocation increases in real terms by 9.8%, which is well above the inflation rate. This increase is significantly more than the case for any of the other programmes in the Vote.



The additional allocation is to acquire new building infrastructure; refurbish existing office accommodation; appoint more prosecutors to fully achieve the target of two prosecutors per court and reduce criminal case backlogs.

The *Public Prosecutions* sub-programme once again dominates expenditure under this programme, receiving 70.1% of the overall allocation to the programme. The *Directorate of Special Operations* receives 20% of the programme allocation while the *Witness Protection* sub-programme and *Asset Forfeiture Unit* receive 6% and 3% respectively of the overall programme allocation.

**Table 11: Increase/decrease per sub-programme from 2007/08 – 2008/09**

Sub-programme R' 000	Budget 2007/08	Budget 2008/09	Nominal % change	Real % change
Public Prosecutions	1 265 099	1 488 044	17.62%	9.83%
Witness Protection Programme	104 435	127 839	22.41%	14.30%
Directorate of Special Operations	373 100	429 850	15.21%	7.57%
Asset Forfeiture Unit	62 057	76 994	24.07%	15.84%
<b>Total</b>	<b>1 804 691</b>	<b>2 122 727</b>	<b>17.6%</b>	<b>9.83%</b>

The NPA's budget allocation increases overall in real terms by 9.8%. All sub-programmes grow in both nominal and real terms. The *Asset Forfeiture Unit* and *Witness Protection* sub-programmes experience the most significant real increases of 15.8% and 14.3% respectively, while the *Directorate of Special Operations* sub-programme experiences the smallest growth of 7.6%.

#### Issues for consideration

- What is the progress in the plan to appoint two prosecutors for each court? How many prosecutors were appointed in 2007/08 (In the 2006/07 financial year the Department reported that additional allocations to the programme would be used to, amongst others, facilitate the rollout of specialised courts and to appoint an additional 800 prosecutors. In the 2007/08 financial year, the Department once again requested funds to appoint 650 prosecutors).
- What is the progress in the roll out of specialised courts, especially the Sexual Offences Courts?
- What is the status of plans to build 5 Thutuzela Care Centres in 2008/09? Where are they being built?
- Has the disciplinary action involving senior managers in the *Witness Protection* sub-programme been resolved?



- Please provide details and current status, as well as projected timeframes of the project to upgrade IT infrastructure in the NPA.

#### 4.4 Programme 5: Auxiliary and Associated Services

This programme provides for a variety of auxiliary services associated with the Department's aim. Expenditure under this programme is mostly in the form of transfer payments to the *Office for the Control of Interception and Monitoring of Communication*, the *South African Human Rights Commission*, the *Commission on Gender Equality*, the *Special Investigating Unit*, the *Legal Aid Board*, the *Public Protector*, *Justice Modernisation* (National Crime Prevention Strategy), the *President's Fund* and the *Represented Political Parties Fund*.

**Table 12: Percentage of budget allocated per sub-programme**

Sub-programme R thousand	Budget for 2008/09	% of programme budget	% change in allocation
Office for the Control of Interception and Monitoring of Communication	620	0.04%	0%
South African Human Rights Commission	60 603	4.32%	-0.11%
Commission on Gender Equality	44 193	3.15%	-0.03%
Special Investigating Unit	116 297	8.29%	0.43%
Legal Aid Board	660 312	47.07%	-0.82%
Public Protector	86 475	6.16%	-0.14%
Justice Modernisation (JCPS)	346 104	24.67%	1.06%
President's Fund	1	0.00%	0%
Represented Political Parties Fund	88 187	6.29%	-0.39%
<b>Total</b>	<b>1 402 792</b>	<b>100%</b>	<b>0%</b>

This programme grows in real terms by 4.89% from 1.2 billion in 2007/08 to R1.4 billion in 2008/09. Within the programme, itself, there has been little change in spending priorities. As has been the case in past financial years, the *Legal Aid Board* sub-programme dominates expenditure, receiving 47% of the total allocation to the programme. The next biggest sub-programme is *Justice Modernisation*,<sup>9</sup> which receives 24.67% of the overall programme allocation.

<sup>9</sup> The Justice Modernisation sub-programme designs and implements IT infrastructure and networks to re-engineer business processes for the administration of civil and criminal justice in the integrated justice system,



**Table 13: Increase/decrease per sub-programme from 2007/08 – 2008/09**

Sub-programme R' 000	Budget 2007/08	Budget 2008/09	Nominal % change	Real % change
Office for the Control of Interception and Monitoring of Communication	601	620	3.16%	-3.68%
South African Human Rights Commission	55 281	60 603	9.63%	2.36%
Commission on Gender Equality	39 745	44 193	11.19%	3.82%
Special Investigating Unit	98 111	116 297	18.54%	10.68%
Legal Aid Board	598 029	660 312	10.41%	3.09%
Public Protector	78 722	86 475	9.85%	2.57%
Justice Modernisation (NCPS)	294 885	346 104	17.37%	9.59%
President's Fund	1	1	0%	-6.63%
Represented Political Parties Fund	83 354	88 187	5.80%	-1.22%
<b>Total</b>	<b>1 248 729</b>	<b>1 402 792</b>	<b>12.3%</b>	<b>4.89%</b>

The *Special Investigating Unit* sub-programme reflects the most significant growth rate of 10.68%, followed by the *Justice Modernisation* sub-programme, which grows by 9.59% in real terms. The *Legal Aid Board* (3.09%), *South African Human Rights Commission* (2.36%), *Commission on Gender Equality* (3.82%) and *Public Protector* (2.57%) all experience modest real growth.

It is noteworthy that of the independent constitutional institutions, the *Commission on Gender Equality's* allocation grows slightly more than that of either the *Human Rights Commission* or the *Public Protector*. However, the *Commission on Gender Equality's* baseline allocation is smaller budget allocation than that of the *Human Rights Commission* and the *Public Protector*.

The Department's contribution to the *President's Fund* has remained constant at R1 million over the past couple of financial years, which means that in real terms the sub-programme decreases by 6.63%. The allocation in real terms to the *Represented Parties Fund* and *Office for the Interception and Monitoring of Communication* also decrease (by 1.22% and 3.68% respectively).

The increased expenditure is ascribed to increasing human resource capacity in the *Legal Aid Board* (R110 million) and for specific information technology (IT) projects for the *NPA* as part of the integrated justice system (R65 million).



### Issues for consideration

- The *Special Investigating Unit* sub-programme experiences very significant growth in the 2008/09 financial year. Over the MTEF the SIU plans to expand to 1000 staff by 2010/11. Can the SIU provide more details regarding its expansion plans?
- The increased allocation to the Legal Aid Board (R110 million over the MTEF) is to increase human resource capacity (mostly for the appointment of additional public defenders). What are the Legal Aid Board's plans in this regard: How many more public defenders does it intend appointing? Will this allow it to meet its target of two public defenders per court (Its present ratio of legal practitioners per district court is 0.91: 1. For regional courts the ratio of legal practitioners is 1.17:1)? What are the projected timeframes?
- An additional R65 million is allocated over the MTEF for specific IT projects for the NPA as part of the integrated justice system. Can the Department provide more details concerning these projects, their timeframes and progress made?

## 5. Budgeting for vulnerable groups

A strategic priority of the Department is to ensure accessible services to the poorest of the poor and the vulnerable. In defining the vulnerable, the Department includes children, women, the disabled, the elderly and those who are indigent. In addition, the Department sees its role as facilitating transformation of justice, state and society in line with constitutional principles.

### 5.1. Strategic goals and objectives

In order to achieve its strategic goal of ensuring accessible justice to all, especially to vulnerable groups, the Department has identified a number of strategic objectives. These are diverse and include:

- Implementation of relevant legislation and other policy instruments (for example, the promulgation of the Child Justice Bill into law and the implementation of the Sexual Offences Act).
- A number of deliverables are aimed specifically at children. These include: the speedy resolution of all cases involving children in conflict with the law; ensuring that the rights of children to receive support from earning parents is enforced; the allocation of intermediaries for all cases involving child victims; the extension of family advocate services to all courts dealing with domestic violence matters.
- Another objective is to improve the circumstances of children by facilitating transfer payments to children in need. Measures to improve access to the Guardian's Fund are of relevance in this regard. This involves the Master of the High Court and Court Services.
- With regard to the disabled and the elderly, the promotion of equality and prohibition of unfair discriminatory practices is identified as a deliverable. In this regard, the





provision of user friendly facilities in all justice service delivery points and the designation of Equality Courts countrywide give effect to this objective.

With regard to the goal of transforming justice, state and society, the effective management of sexual offences and domestic violence and enhancing the position of women in the law and in justice both are relevant to vulnerable groups.

The Department has allocated funds for spending on socially vulnerable groups, although this is not reflected as such in the Estimates for National Expenditure. In addition, other sub-programmes include activities that will impact on the lives of vulnerable groups, although this may not be reflected directly as spending on vulnerable groups. For example, the Legal Aid Board provides public defender services to children in conflict with the law.

Over the Medium Term Expenditure Framework, R39.4 million in 2008/09; R48.8 million in 2009/10; and R51.4 million in 2010/11 is allocated to spending for vulnerable groups (this includes the poor).

Specifically, under the Lower Courts sub-programme, R2.2 million is allocated for sexual offences; R1.2 million for domestic violence; R10.7 for victim support; R11 million for the implementation of the Children's Act and R1.5 million for child justice.

In addition, the budget allocation under administration of courts sub-programme makes provision for the budget of the Chief Directorate: Special Courts and Vulnerable Groups. This Chief Directorate has been allocated R8.6 million for 2008/09, R8.9 million for 2009/10 and R9.4 for 2010/11.

The Family Advocate sub-programme makes recommendations to the court where there is litigation and mediation relating to children in family matters. This sub-programme, which is found in the Court Services programme, can also be considered as part of the allocations for vulnerable groups. This sub-programme is allocated R79.5 million, R80.9 million and R86.1 million over the MTEF period.

## **5.2. Challenges**

Arguably, the biggest challenge lies not in the budget allocation but in certain systemic problems that the Department faces. These include such problems as human resource capacity. The Department has high staff vacancy and turnover rates, which impacts on its capacity to deliver services efficiently and effectively.

A further problem is that until fairly recently many of the Department's systems have been manually based, which amongst others has made the collection of information for the purposes of monitoring very difficult. Although the Department has identified enhanced organisational efficiency as a strategic goal, translating this into reality is a challenge. For example, in the case of children in conflict with the law, the tracking of children who enter the criminal justice system is difficult. This problem is compounded by the inter-sectoral nature of



the information that is gathered as the systems of the various Departments involved are not always compatible.

A related challenge is inter-sectoral collaboration. This is evident in the case of child justice, for example, where the Department chairs the Inter-Sectoral Committee on Child Justice. A problem that it has identified is that the effective implementation of the Child Justice Bill, once it has been passed, will require joint programming. However, the joint budgeting that should go with this is hampered by the PFMA requirement that the relevant Departments all account separately.

## 6. Concluding remarks

The Department's budgetary allocations are generally aligned to the national strategic priorities outlined in the 2008 State of the Nation Address, as well as its strategic direction in terms of its MTSF. However, consistent underspending of the budget allocated is cause for concern. Spending throughout the year should be closely monitored.

There are a number of other issues that require close attention:

- The Department has experienced high staff turnover and vacancy rates in the past. The implementation of strategies to remedy these problems will need to be monitored if the employment of additional personnel to improve court performance is to be successful.
- Not only should the reduction of case backlogs be monitored, but overall court performance requires close attention (particularly as more than 60% of cases are removed from the roll).<sup>10</sup> The intention is that over the Medium Term Expenditure Framework (MTEF) the number of backlog cases decreases by 5% each year from 34 324 in 2007/08 to 32 608 in 2008/09. In addition, the outstanding court roll at the end of the financial year should decrease from 196 183 in 2007/08 to 186 374 in 2008/09. In addition to appointing more magistrates and judges, prosecutors, public defenders and support staff, the rollout of other initiatives (such as e-scheduler and video postponement) should be monitored in order to measure their impact on the operational efficiency of the courts.
- Progress made in the building of new courts and the upgrading of existing court infrastructures should be continuously monitored.
- Progress made in employing two prosecutors for each court room requires monitoring, as does the employment of more public defenders by the Legal Aid Board.

---

<sup>10</sup> Department of Justice and Constitutional Development (2007).



- The training of judges and magistrates should be monitored. In particular, Parliament should oversee the implementation of the Judicial Education Institute Bill, which amongst others, is intended to provide a vehicle for increasing the pool of suitable candidates for appointment to the bench.

---

### Sources

Department of Justice and Constitutional Development, Medium Term Strategic Framework (MTSF). Access to Justice for All, 2005/06 – 2008/09.

Department of Justice and Constitutional Development. (2007) Annual Report 2006/2007.

Mbeki, T. (2008) State of the Nation Address. Cape Town, Parliament of South Africa.

Nqakula, C. (2008) Parliamentary Media Briefing: Justice, Crime Prevention and Security Cluster. Cape Town, 19 February.

Republic of South Africa, National Treasury. Estimates of National Expenditure 2008.

Republic of South Africa, National Treasury. Estimates of National Expenditure 2007.

Republic of South Africa, National Treasury, Adjusted Estimates of National Expenditure 2007.

Republic of South Africa, National Treasury. Budget Speech 2008, 21 February 2008.

Republic of South Africa, National Treasury. Budget Review 2008.

---