

## VOTE 21: JUSTICE AND CONSTITUTIONAL DEVELOPMENT

### INTRODUCTION

The mandate of the Department of Justice and Constitutional Development is to give effect to the constitutional requirement of a fair, equitable and accessible system of justice. The vision of the Department is an "accessible and transformed justice service committed to the promotion of constitutional values for all"<sup>1</sup> and its mission is providing "accessible, fair, speedy, cost-effective and quality justice for all".<sup>2</sup>

### POLICY PRIORITIES FOR 2009/10

The Department's overall key policy priorities are:<sup>3</sup>

- Improving justice for all
- Enhancing organisational efficiency
- Transforming legal and justice systems

These strategic objectives will be met by capacitating and restructuring the courts, integrating the justice system, catering for the needs of the vulnerable groups and improving the maintenance system to relieve the pressure on the courts.<sup>4</sup>

The Department seeks to improve justice for all by 'bringing justice services closer to all, with the emphasis on rural and township communities'.<sup>5</sup> This will redress the unequal distribution of court services, a legacy of apartheid that denied the vast majority of South Africans equal access to justice.<sup>6</sup> The Department will continue its construction of courts in townships and rural areas.<sup>7</sup> Certain branch courts which at present offer limited services have been identified and will be redesignated. They will in future offer all magistrates' court services including civil court services.<sup>8</sup> Existing Departmental facilities that are dilapidated will be 'renovated, refurbished and extended through the Repair and Maintenance Programme (RAMP).'<sup>9</sup>

Ensuring justice to vulnerable groups such as women and children continues to be an important aim of the Department.<sup>10</sup> This will be done by implementing the Child Justice Bill, improving services such as maintenance and the Guardians Fund and providing assistance for victims of crimes.<sup>11</sup>

The Department aims to improve organisational efficiency by filling critical vacancies, rolling out case-flow management system to 50% of courts by the 2009/10 financial year,<sup>12</sup> reducing case backlogs and modernising justice services.<sup>13</sup>

A major priority in the Department's strategic goal of transforming the legal and justice system is the review of the criminal justice system. This priority was identified by Cabinet as one of the apex priorities and is aimed at improving 'the overall function of the criminal justice cluster'.<sup>14</sup>

In addition, the 2009 State of the Nation Address pointed "to weakness in the efficiency of the court system, both in terms of technical and other infrastructure and management" as one of the reasons contributing to the crime rate.<sup>15</sup> These inefficiencies are to be addressed by the

revamp of the criminal justice system and will include the "optimal utilisation of information and communication technology and the better management of the courts."<sup>16</sup>

## BUDGET ANALYSIS

Table:

Programme	Budget				Nominal Rand change	Real Rand change	Nominal % change	Real % change
	R million	2008/09	2009/10	2010/11	2011/12	2008/09 - 2009/10	2008/09 - 2009/10	2008/09 - 2009/10
Programme 1: Administration	967.8	1 038.6	1 138.1	1 230.3	70.8	17.6	7.32 per cent	1.82 per cent
Programme 2: Court Services	3 342.5	3 911.1	4 176.8	4 475.5	568.6	368.2	17.01 per cent	11.02 per cent
Programme 3: State Legal Services	503.2	589.9	605.1	645.1	86.7	37.5	13.26 per cent	7.45 per cent
Programme 4: National Prosecuting Authority	2 115.5	2 480.1	2 618.3	2 777.7	364.6	237.5	17.23 per cent	11.23 per cent
Programme 5: Auxiliary and Associated Services	1 586.6	1 658.3	1 804.6	1 927.7	71.7	- 13.3	4.52 per cent	-0.84 per cent
<b>TOTAL</b>	<b>8 516.6</b>	<b>9 658.0</b>	<b>10 342.9</b>	<b>11 056.3</b>	<b>1 142.4</b>	<b>647.6</b>	<b>13.42 per cent</b>	<b>7.60 per cent</b>

Source: National Treasury (2009): Vote 21

An amount of R9.66 billion was allocated to the Department for 2009/10. A further R1.8 billion was allocated for the payment of judges and magistrate's salaries. This is a direct charge against the National Revenue Fund.

The allocation to the Department is 9.5 per cent of the total budget allocated to the Justice, Crime Prevention and Security cluster. In comparison with the 2008/09 allocation, the 2009/10 budget increased by 13.42 per cent in nominal but by 7.60 per cent in real terms. The increased allocation will be prioritised to improve court capacity and the services rendered by the different departmental sub-programmes.<sup>17</sup>

The Department has improved in the spending of its budget. In 2006/07 7.3 per cent of its allocation was not spent.<sup>18</sup> In 2007/08 the Department underspent its budget by 2.3 per cent.<sup>19</sup> At the end of the third quarter of the 2008/09 financial year, the Department had spent 72.6 per cent of its budget and at the end of February 2009, the Department had spent 90.6 per cent of its budget. This means that the Department must spend the remaining 9.4 per cent of its allocation by the end of 2008/09 financial year.

A saving of R172.1 million has been identified in goods and services, and transfers to public entities for the 2009/2010 financial year.<sup>20</sup> The Department has also reprioritised operational expenditure to contribute funds towards physical security at courts and reducing criminal case backlogs in the Legal Aid Board.<sup>21</sup>

The Department's current payments<sup>22</sup> for 2009/10 increases by 8.21 per cent in real terms, in comparison with 2008/09. A real increase of 10.67 per cent is visible in Compensation to Employees. A significant increase of 256.99 per cent in real terms occurs in the payment of Administrative Fees. An amount of R91.6 million is allocated to Consultants and professional services: Infrastructure and planning. This is a new item in the 2009/10 budget.<sup>23</sup> The item Consultants and professional services: Legal costs increases by 55.38 per cent in real terms. An amount of R12 million (41.15 per cent decrease in real terms in comparison with 2008/09) in Catering and R 16.9 million (71.11 per cent decrease in real terms in comparison with 2008/09) will be saved during the 2009/10 period. Payment on Capital Assets increases by 25.74 per cent in real terms in comparison with 2008/09. Notable increases occur in

Machinery and Equipment (152.22 per cent) and Software and tangible assets (186.94 per cent).

An amount of R3 billion was allocated to the restructuring of the criminal justice sector over the medium term and will be used to expand the criminal justice system, case management systems and upgrading IT networks.<sup>24</sup> The Department will receive an additional R525 million over the medium-term for the implementation of an occupation specific dispensation for legally qualified professionals. This increased allocation will be used to employ 250 more court clerks and 50 more family advocates.<sup>25</sup> An amount of R150 million has been allocated over the medium term for the implementation of the Child Justice Bill and the Sexual Offences Act.<sup>26</sup>

An amount of R1.9 billion has been allocated over the medium-term for infrastructure development.<sup>27</sup> An amount of R593.2 million is available for the 2009/10 financial year of infrastructure projects. Projects include the construction of four magistrates' offices in the Transvaal Provincial Division.<sup>28</sup> Other projects include 86 sites under construction and making 366 sites accessible for people with disabilities.<sup>29</sup> However, despite improvements to infrastructure being an important focus for the Department, the allocation for infrastructure expenditure for 2009/10 decreases by 1.05 per cent in real terms, in comparison with 2008/09.<sup>30</sup>

## Programme Analysis

The Department's activities are organised into five programmes, namely: Administration, Court Services, State Legal Services, National Prosecuting Authority, Auxiliary and Associated Services.

The purpose of the **Administration programme** is to "manage the department, develop policies and strategies for the efficient administration of justice, and provide centralised support services."<sup>31</sup> This programme received an allocation of R1 038.6 billion which is a 1.82 per cent real increase on the 2008/09 allocation. This is the smallest percentage increase of all the Departmental programmes.

There was a notable real decrease of 21.2 per cent in the allocation to the Management sub-programme. As in 2008/09, the allocation to the Corporate Services sub-programme decreased. In 2009/10, the sub-programme was decreased by 1.21 per cent in real terms. There is a significant real increase of 10.39 per cent in the Office Accommodation sub-programme.

The **Court Services programme** "facilitates the resolution of criminal, civil and family law disputes through providing accessible, efficient and quality administrative support to the courts, and manages court facilities."<sup>32</sup> This programme receives the largest allocation in the Department's budget. It is the Department's most extensive programme consisting of ten sub-programmes and was allocated an amount of R3.9 billion in 2009/10. This is an 11.02 per cent real increase in comparison with the 2008/09 allocation and is the second largest percentage increase in this budget Vote. The increase in the Court Services programme will be used to build new and improve existing court infrastructure<sup>33</sup>, reduce case backlogs and implement the Children's Bill.<sup>34</sup>

Despite the overall increase in the Court Services programme, the budget allocation for five out of its ten sub programmes decreased in real terms. The following real percentage decreases occurred: Supreme Court of Appeals (-9.35 per cent), Specialised Courts (-0.46 per cent), Magistrates Commission (-5.12 per cent), Facility Management (-1.05 per cent) and Court Administration (-11.05 per cent).

The Facilities Management sub-programme, "which funds the building of new courts and the rehabilitation of existing court infrastructure"<sup>35</sup> decreased in real terms. Furthermore, during 2007/08, this sub-programme failed to meet its target of building 15 courts, building only 3 courts during this period. The decrease is thus not in line with the Department's key aim to make justice accessible to all by improving infrastructure.

The allocation for the Lower Courts sub-programme has increased considerably with an 18.69 per cent real increase in comparison to its 2008/09 allocation. This is in keeping with the Department's objective to reduce case backlogs in regional courts through 37 dedicated case backlog courts.<sup>36</sup> The increased allocation will also be used to reduce the case cycle time for criminal cases involving children. The Department's aim is to reduce the case cycle time from 18 months to 16 months during 2009/10. This will be done by implementing the provisions of the Child Justice Bill.<sup>37</sup>

The Family Advocates sub-programme received a budgetary increase of 11.23 percent which will be used to appoint more personnel.<sup>38</sup> The increase in personnel can be attributed to the Department's objective to provide "adequate family law service litigation and family mediation."<sup>39</sup> The Department aims to finalise 50 per cent of all cases handled by the family advocate within 6 months in 2009/10.<sup>40</sup> During 2007/08 the Family Advocate finalised 8 150 queries against a target of 12 000 in that twelve month period.<sup>41</sup> Part of the allocation will be used by the Department to cater for its increased responsibility arising from the Children's Act.

The **State Legal Services programme** "provides legal and legislative services to the government and facilitates constitutional amendments, as well as the administration of estates, liquidation of companies and the supervision of the administration of trusts and property of minors deposited in the Guardian's Fund and that of persons under curatorship." Activities "include the provision for the State Attorney, State Law Advisers and the Master of the High Court. This programme also provides for research, preparation and promotion of legislation in relation to the Department's functions."<sup>42</sup>

The State Legal Services programme is the smallest of the Department's programmes and receives an allocation of R570 million in 2009/10. In comparison with the 2008/09 budget a real increase of 7.45 per cent is noted. "The increase will go towards improving access to the Guardian's Fund services, facilitating the accessibility of deceased and insolvent estates services, increasing capacity by employing additional personnel in the state attorney's office and developing the skills of existing personnel."<sup>43</sup>

The Master of the High Court sub-programme received a 13.39 per cent real increase. The Department's aim in this programme is to <sup>44</sup>reduce the time taken to register deceased estates worth R125 000 or less, to four months or less. It also aims to allow beneficiaries of estates access to assets within 60 days of application.<sup>45</sup> During 2007/08 only 56.9% of this type of estates were finalised within four months. The budgetary increase in this programme

will pay for the employment of additional personnel to meet this objective.<sup>46</sup> The Litigation and Legal Service sub-programme budget increased by 3.84 per cent. The increased budget facilitates the Department's aim to expand this programme and reduce government's reliance on private legal services.<sup>47</sup> Both the State Law Advisers and Legislative Development and Law Reform sub-programmes received reduced budget allocations in real terms.

The **National Prosecuting Authority (NPA) programme** "provides a coordinated prosecutorial service, protects certain witnesses and investigates serious organised crime." The NPA accounts directly to Parliament for its spending. This is the second largest programme in the Department's budget and it was allocated an amount of R2.5 billion. This was an 11.23 per cent real increase in comparison to the 2008/09 allocation.

All five of the NPA sub-programmes received sizeable increases with the following real percentage increases noted: Public Prosecution (9.43 per cent), Witness Protection programme (9.72 per cent), Directorate of Special Operation (8.63 per cent) and Assets Forfeiture Unit (17.10 per cent) and Support Services (19.38 per cent).

The increase in this allocation will be used to "appoint at least two prosecutors per court, reducing criminal case backlogs, and the cost of the Occupation Specific Dispensation for legally qualified professionals."<sup>48</sup> This programme also aims to establish 5 new Thuthuzela care centres.

The **Auxiliary and Associated Services programme** provides auxiliary services associated to the Department's aims and funds transfer payments to independent Constitutional institutions such as the South African Human Rights Commission, Commission on Gender Equality, the Legal Aid Board, the Special Investigative Unit, the Represented Political Parties' Fund and the President's Fund. These bodies also account directly to Parliament.

An allocation of R1.7 billion was made to this programme. This is a 4.52 per cent nominal increase. However in real terms this is a 0.84 per cent decrease. The allocations for the Special Investigative Unit (22.70 per cent), Public Protector (17.25 per cent) and Office for the Control of Interception and Monitoring of Communication (10.69 per cent) received sizeable increases. The South African Human Rights Commission (6.93 per cent) also received an increased allocation.

Decreased allocations are noted in the following sub-programmes: Commission for Gender Equality (-0.81 per cent), Legal Aid Board (-5.87 per cent), Justice Modernisation (-2.57 per cent) and Represented Political Parties' Fund (-0.18 per cent). As in previous years, no allocation was made to the President's Fund.

In the Legal Aid Board sub-programme, the Compensation of Employees sub-programme received a real decrease 24.30 per cent in its allocation. This is despite one of the major aims of the Department being implementing the Occupational Specific Dispensation across all legal posts. Furthermore, despite the efforts to increase civil legal aid, funds for civil disbursements decreased by 1.73 per cent.

## **KEY ISSUES FOR PARLIAMENTARY CONSIDERATION**

Parliament should:

National Treasury (2009b). *Estimates of National Expenditure Budget Review..* Government Printer, Cape Town.

Nqakula, C. (2008) *Parliamentary Media Briefing: Justice, Crime Prevention and Security Cluster.* Cape Town, 30 October.

.Portfolio Committee on Justice and Constitutional Development. (2009). Report of the Department of Justice and Constitutional Development Budget (2007/08).

Silkstone, C. (2008). Analysis of the Budget of the Department of Justice and Constitutional Development (2008) Cape Town, Parliament of South Africa.

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<sup>1</sup> Department of Justice (2008a).

<sup>2</sup> Department of Justice (2008a).

<sup>3</sup> Department of Justice (2008a).

<sup>4</sup> National Treasury (2009a).

<sup>5</sup> Department of Justice and Constitutional Development (2008b).

<sup>6</sup> Justice Crime Prevention and Security Cluster media briefing. 30 October 2008.

<sup>7</sup> National Treasury (2009a).

<sup>8</sup> Justice Crime Prevention and Security Cluster media briefing. 30 October 2008.

<sup>9</sup> Department of Justice and Constitutional Development (2008b).

<sup>10</sup> Department of Justice and Constitutional Development (2008b).

<sup>11</sup> National Treasury (2009a).

<sup>12</sup> Department of Justice and Constitutional Development (2008b).

<sup>13</sup> National Treasury (2009a).

<sup>14</sup> National Treasury (2009a).

<sup>15</sup> Mthlanle, K. (2009).

<sup>16</sup> Mthlanle, K. (2009).

<sup>17</sup> National Treasury (2009a).

<sup>18</sup> Portfolio Committee on Justice and Constitutional Development (2009).

<sup>19</sup> National Treasury (2009a).

<sup>20</sup> National Treasury (2009a).

<sup>21</sup> National Treasury (2009a).

<sup>22</sup> Expenditure on current payments comprises of compensation of employees, payment for goods and services, interest paid for loans and bonds and financial transactions in assets and liabilities.

<sup>23</sup> National Treasury (2009a).

<sup>24</sup> National Treasury. (2009b).

<sup>25</sup> National Treasury. (2009b).

<sup>26</sup> National Treasury. (2009b).

<sup>27</sup> National Treasury (2009a).

<sup>28</sup> National Treasury (2009a).

<sup>29</sup> National Treasury (2009a).

<sup>30</sup> National Treasury (2009a).

<sup>31</sup> National Treasury (2009a).

<sup>32</sup> National Treasury (2009a).

<sup>33</sup> National Treasury (2009a).

<sup>34</sup> National Treasury (2009a).

<sup>35</sup> National Treasury (2009a).

<sup>36</sup> National Treasury (2009a).

<sup>37</sup> National Treasury (2009a).

<sup>38</sup> National Treasury (2009a).

<sup>39</sup> National Treasury (2009a).

<sup>40</sup> National Treasury (2009a).

<sup>41</sup> Department of Justice (2008a).

<sup>42</sup> Department of Justice (2008a).

<sup>43</sup> National Treasury (2009a).

<sup>44</sup> National Treasury (2009a).

<sup>45</sup> National Treasury (2009a).

<sup>46</sup> National Treasury (2009a).

<sup>47</sup> National Treasury (2009a).

<sup>48</sup> National Treasury (2009a).

<sup>49</sup> Portfolio Committee on Justice and Constitutional Development (2009).