



15 October 2011

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT:
QUARTERLY EXPENDITURE TRENDS 2011/12 AND FIRST QUARTER 2012**

1. Overall expenditure trends 2011/12

(Note these are based on Fourth Quarter spending for 2011/12 as at the end of March 2012 but encompass the entire 2011/12 financial year).

1.1. Table 1: Overall spending per programme 2011/12

Programme (R'000)	Expenditure	%Spent (Over/under spend)	Reason for over/underspending
Administration	1 842 330/ 1 718 423	107.2 (123 907)	Outstanding claim from 2010/11 for security services
Court Services	4 221 010/ 4 359 477	96.8 138 467	Vacancies
State Legal Services	697 704/ 717 654	97.2 19 949	Vacancies
NPA	2 616 850/ 2 651 665	98.7 34 815	Deliberate savings on machinery and goods to assist with the SIU's cash flow problems
Auxiliary and Associated Services	2 222 878/ 2 211 827	100.5 (11 051)	SIU's cash flow problems
Direct transfer for judges and magistrates salaries	2 037 100 / 2 104 162	98.6 67 062	Vacancies (magistrates)

1.2. Table 2: Overall spending per economic classification 2011/12

Economic Classification	Actual spending (R'000)	% Spent	Reason for under/over spending
Current payments	10 759 290	98.7	-
• Compensation of employees	7 561 611	98.5	
• Goods and services	3 187 281	99.6	
• Interest and rent on land	10 399	53.2	
Transfers and subsidies	1 934 874	99.9	-
• Provinces and municipalities	349	85.1	
• Department agencies and accounts	1 835 322	101.1	
• Foreign governments and	7189	102.7	

Economic Classification	Actual spending (R'000)	% Spent	Reason for under/over spending
international organisations			
• Households	92 014	79.8	
Payments for capital assets	943 710	101.7	Payments for security services (installation of security equipment)
• Buildings and other fixed structures	683 095	97.3	
• Machinery and equipment	254 330	118.5	
• Software and other intangible assets	2448	22.4	
Payments for financial assets	3 837	796.1	No budgetary provision (Court Services) for this item
Total	13 637 873	99.1	

Although 99.5% of the allocation to the Vote for 2011/12 was spent, at programme level there are significant variations in spending:

- Higher than expected spending occurred in Administration (107.2%) and Auxiliary and Associated Services (100.5%).
- In Administration overspending arose as a result of payments for security services. Although the services were rendered in 2010/11, the outstanding claim was settled in the 2011/12 financial year.
- In Auxiliary and Associated Services, the overspending is attributed to the SIU's cashflow problems.
- Court Services (96.8%) and State Legal Services (97.2%) both under-spent. Underspending for both these programmes is attributed to unfilled posts:
 - There were 1438 funded posts that remained unfilled in Court Services at the end of March 2012.
 - In State Legal Services, there were 219 funded posts that remained unfilled.
- The NPA also under-spent marginally (98.7%). The under-spending is attributed to a deliberate savings on 'machinery and equipment' to assist the SIU with cash flow problems.
- Under the Direct Charge, there was less than expected spending on judges and magistrates salaries (98.6%), which was attributed to delays in filling vacant magistrate positions.

2. Spending per programme

2.1. Administration: Overall, there was greater than expected spending (107.2%) in Administration. As already mentioned, this is attributed to payments for security services arising from outstanding claims incurred in 2010/11.

2.1.1. Spending at sub-programme level

At subprogramme level, the following over/under-spending occurred:

- Overspending in the subprogramme Corporate Services at 118.5% was attributed to the high payments for security services.
- But there was less than expected spending for all the remaining subprogrammes:

- *Office Accommodation* underspent at 96.4% because of late invoicing on the part of the Department of Public Works;
- The *Ministry and Management* subprogrammes underspent at 92.6% and 57.9% respectively. This is attributed to high vacancies at senior management level.

2.1.2. Spending per economic classification

In terms of economic classification, greater than expected spending occurred under:

- **Payments for capital assets** - machinery and equipment (at 232.3%) due to spending on security services.
- **Transfers and subsidies** -
 - *Transfers to provinces and municipalities* (at 124.3%) on vehicle licences as a result of an unanticipated number of vehicles bought during 2011/12.
 - *Transfers to foreign governments and international organisations* (at 102.7%) for an unanticipated amount that was paid to the International Criminal Court.

In terms of economic classification, under-spending was notable under:

- **Current payments** –
 - *Compensation of employees* at 91%.
 - *Interest and rent on land* at 70%.
- **Payments for capital assets** –
 - *Software and other intangible assets* at 24.8%.

2.2. Court Services

Overall, there was less than expected spending in the Court Services Programme at 96.8% largely due to vacancies.

2.2.1. Spending at sub-programme level

At subprogramme level, the following over/under-spending occurred:

- There was underspending in all of the Court Services subprogrammes, except for the High Courts (110.9%) and Specialised Courts (132.9%) subprogrammes.
- Overspending in the High Courts and Specialised Courts subprogrammes is attributed to high spending on travelling and subsistence for judges.
- Under-spending in the remaining subprogrammes is attributed to vacancies (1438 funded posts remained unfilled at the end of March 2012); late invoices from public works; and delays in procurement of motor vehicles.
- Notably, the Constitutional Court and Supreme Court of Appeal subprogrammes spent 77.8% and 77.6% respectively of the allocated budget.
- The Family Advocate subprogramme also spent less than expected at 85%.

2.2.2. Spending per economic classification

At economic classification level, underspending was notable for the following items:

- **Current payments** – *interest on rent and land* – 29.1%.
- **Transfers and subsidies** – 72% (overall)
- **Payments for capital assets** –
 - *Machinery and equipment* – 62%

- *Software and other intangible assets* – 0%.

Note that payments for financial assets amounting to R3.3 million were made although there was no budgetary provision for this item.

2.3. State Legal Services

Overall, spending in the State Legal Services programme was less than expected at 97.2%.

2.3.1. Spending at sub-programme level

At subprogramme level, the following over/under-spending occurred:

- There was overspending in the *State Law Advisors* (at 102.55%); *Litigation and Legal Services* (at 103%) and *Master of the High Court* (at 103.6%) subprogrammes. The overspending is attributed mostly to OSD payments, as well as legal costs.
- There was underspending for *Legislative Development and Law Reform* (at 69.7%) and *Constitutional Development* (at 31.7%) subprogrammes because of vacancies.

2.3.2. Spending per economic classification

At economic classification level, underspending was notable for the following items:

- **Current payments** (97%) – *Compensation of employees* (97.4); *Goods and services* (94.6%); and *interest and rent on land* (29.5%).
- **Payments for capital assets** – *machinery and equipment* (86.4)%.

Notably, under transfers and subsidies there was overspending at 857.5%. Although the amounts involved are not exceedingly large, there does not appear to have been any budgetary provision for transfer to provinces and municipalities (R19 000) and only a small allocation for transfers to households (R311 000) which was exceeded by 851% (R2 336 000).

2.4. National Prosecuting Authority

The NPA spent 98.7% of its budget for 2011/12. There was, however, a deliberate savings under Goods and Machinery amounting to R30 million. This amount was transferred to the SIU as a virement.

2.4.1. Spending at sub-programme level

At subprogramme level, the following over/under-spending occurred:

- There was overspending in *Public Prosecutions* at 101.7% because of undercosting of the OSD.
- There was underspending in the *Asset Forfeiture Unit* (83.5%), *Office for Witness Protection* (89.6%) and *Support Services* (92%) due to vacancies.

2.4.2. Spending per economic classification

There was overspending on:

- **Current payments** –
 - *Compensation of employees* – 101.4%
 - *Goods and Services* – 100.4%

- **Transfers and Subsidies** – *departmental agencies and accounts* – 130.8%.

There was underspending on all other items. Notably only 3% of the 'payments for capital assets' budget was spent.

2.5. Auxiliary and Associated Services – Justice Modernisation

There was a discrepancy/variance between the spending recorded under the *Justice Modernisation* subprogramme and that of the IJS expenditure report. The *Justice Modernisation* subprogramme reports spending at 97.7% with R8.9 million unspent. However, the IJS expenditure report shows R33.9 million unspent. The IJS funding is earmarked and cannot be used for any other purpose unless National Treasury approves.

3. Comment/analysis

- Overall, there was considerable overspending on *Administration* at 107% or R123 million, while there was less than expected spending on *Court Services* at 96.8% or R138 million and *State Legal Services* at 97.2% or R19.9 million. This is a serious concern as *Court Services* and *State Legal Services* deliver the Department's core justice services.
- **Vacancies.** Overall, underspending attributed to vacancies affects the *Administration*, *Court Services*, *State Legal Services* and *NPA* programmes. In *Administration*, vacancies at senior management level are just less than 20% (it was at 25% in 2009/10). This poses serious control challenges and can undermine operational efficiency. Vacancies also impact on service delivery: The high level of vacancies under *Court Services* (1438 funded posts were unfilled) is especially concerning. There is also the issue/question/concern that the Department may rely on continued vacancies to fund operations?
- **Accrued payment for security services.** The Department paid the invoices for security services that accrued in 2010/11 from its 2011/12 budget. It would seem that the trend has continued in 2012/13 - the Department paid invoices arising in 2011/12 for security services in the First Quarter. Notably, the AG's also observed that the Department's overall financial health is a concern. In particular, the AG notes that accrued claims exceed the voted funds surrendered: If the Department had paid all accrued invoices timeously, it would have overspent its budget leading to unauthorised expenditure.
- **Capital assets.** Overall spending under 'Payments for Capital Assets' was at 101.7%. The overspending is largely attributed to the installation of security equipment. There was less than expected spending (at 97.3%) for 'Buildings and Other Fixed Structures' (approximately R18 million was left unspent). In its Budget report, the Committee has indicated that there a balance is needed between building new courts and the maintenance of the existing court infrastructure. Notably, the Annual Report notes that in 2011/12, there were 3 courts under construction, of which 1 was completed. The Ntuzuma court which could not be completed in 2010/11 was finished in the last quarter of 2011/12 as well. All RAMP projects were put on hold, as all funds under RAMP were diverted to capital projects where funds were desperately needed. This year (2012/13) the Department has allocated R85 million to RAMP for 33 prioritised projects that

includes facilities management, as well as upgrading and minor additional accommodation. (The Department has a large allocation for capital expenditure for 2012/13 (R1.19 billion 2012/13; R1.26 2013/14 and R1.37 billion 2014/15)). Spending on building and maintenance will need to be closely monitored to ensure that there is 'quality of spend', as delays are costly and impacts on effective and efficient service delivery.

- There was significant underspending for '**software and other intangible assets**'. Overall, only 22.4% of the budget for this item was spent. What had the Department intended to spend the available/projected budget for this item on? Why was there less than expected spending? What impact has underspending on this item had for operational efficiency and effectiveness and had there been any impact of service delivery.
- **National Prosecuting Authority/ SIU.** Savings from the NPA's machinery and equipment budget were used to assist the SIU's cash flow problems (R30 million). (There was also a substantial adjustments appropriation in 2011/12 to the SIU to tide it over until the necessary legislative amendments were made to allow it to generate its own income).
- Given that **Justice modernisation** is intended to 'design and implement IT infrastructure and networks to re-engineer business processes for the administration of civil and criminal justice in the integrated justice system', it would be expected that there would be some correlation between spending under IJS Budget and the *Justice Modernisation* sub-programme. There, however, is a difference in the amounts left unspent IJS – R8.9 million and Justice Modernisation – R33 million). Could the Department please clarify what funding under *Justice Modernisation* is used for – IJS and ISM? It may be useful for the Department to include the relevant indicators and targets in the strategic plans and report on performance in the annual report and that this is linked to the **Criminal Justice Revamp project**.

Expenditure trends First Quarter 2012 (1 April – 30 June 2012)

4. Overall expenditure trends First Quarter 2012/13 (1 April – 30 June 2012)

4.1. Table 3: Overall spending per programme

Programme	Actual (R thousand)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Administration	550 497	31.2 (24.5)	Payment of security invoices from previous years (R100 million)
Court Services	1 402 426	19.9 (24.3)	Vacancies and delays on the part of DPW re capital works project
State Legal Services	176 029	22.9 (23.9)	Delays in receiving legal costs claims from private law firms
NPA	672 300	23.9 (23.9)	-
Auxiliary and Associated Services	586 484	23.6 (24.8)	Delays in receiving claims from JCPS Cluster departments from Justice Modernisation projects
Direct transfer for	522 333	21.7 (24.1)	Delays in filling posts (magistrates)

judges and magistrates salaries			
Total	3 550 070	22.9 (24.3)	

4.2. Overall spending per economic classification

Table 4:

Economic Classification	Actual (R'000)	Actual Percentage (Projected Percentage)	Reason for under/over spending
Current payments <ul style="list-style-type: none"> • Compensation of employees • Goods and services • Interest and rent on land 	2 777 854	22.7 (23.3) 22.4 (23.5) 23.7 (22.8) 5.7 (16)	<ul style="list-style-type: none"> • Compensation of employees - vacancies • Goods and services – payment of invoices for security services (R100 million) • Interest and rent on land – delays in verifying claims received
Transfers and subsidies <ul style="list-style-type: none"> • Provinces and municipalities • Department agencies and accounts • Foreign governments and international organisations • Households 	534 252	25.8 (24.8) 46.1 (15.6) 26.3 (25) 0 (0) 20 (23)	<ul style="list-style-type: none"> • Transfers to provinces and municipalities – higher than anticipated number of vehicle licences expired in first quarter
Payments for capital assets <ul style="list-style-type: none"> • Buildings and other fixed structures • Machinery and equipment • Software and other intangible assets 	235 826	19.7 (32.9) 12.2 (32.3) 67.5 (37.2) 10 157 (0)	<ul style="list-style-type: none"> • Buildings and others fixed structures – delays receiving claims from DPW • Machinery and equipment – invoice for security services (R100 million)
Payments for financial assets	2 138	421.7	Asset write offs for theft and losses
Total	3 550 070	22.9 (24.3)	

4.3. Spending at programme level

4.3.1. **Administration:** Actual spending in the Administration programme is greater than expected and is attributed to payment of invoices from previous years for security services that were paid in the first quarter. Underspensing occurred in the Management subprogramme (at 21.3%) because of vacancies for senior managers.

4.3.2. **Court Services:** Overall, there is underspending for the programme at 19.9%.

There was higher than expected spending for the SCA (at 32%), High Courts (at 29%) and Specialised Courts (at 31%) subprogrammes attributed to travel

and subsistence for judges. Underspending occurred in the Constitutional Court, Government Motor Transport and Facilities Management subprogrammes because of delays in procuring vehicles. However, there is also less than expected spending under the Lower Courts subprogramme (at 21%).

At economic classification level, for the most part actual spending is far less than projected, including 'compensation of employees' at 21.9% (because of non-filling of vacant posts). Under payments for capital assets, actual spending for 'Buildings and fixed structures' is at 11.9% because of delays on delivery of capital works project by DPW.

- 4.3.3. **State Legal Services:** Overall there was slightly less than expected spending at 22.9% because of delays in receiving legal costs claims from private law firms.
- 4.3.4. **National Prosecuting Authority:** Spending under this programme is largely on track. There was higher than expected spending under the Witness Protection subprogramme (at 25.9%) because of lease of vehicles for witness transportation; and the AFU subprogramme (at 29%) attributed to the appointment of two senior managers were appointed and consultancy fees. Under Goods and Services, spending was at 25.2% because of the Imperial Court settlement.
- 4.3.5. **Auxiliary and Associated Services:** Although spending is largely on track, there was higher than expected spending for the SIU (at 34.8%) attributed to non-renewal of existing contracts and non-invoicing of clients for work done as a result of legal opinion preventing the SIU from charging its clients. There was also less than expected spending under Justice Modernisation (at 13.9%) attributed to delays in receiving claims from JCPS Cluster departments.

5. Comment/analysis

- **Delayed payments (for security services).** See the comments under paragraph 4 above.
- **Vacancies.** Although the Department's overall vacancy rate is at 10.8%, high vacancies in critical posts such as senior managers (20%), legal related officers (16%), general legal administration and related professionals (14.7%), judges (18.9%) and magistrates (18.7%) remain a problem.
- **Capital Works (Courts Services).** There are delays in the capital works project on the part of DPW, which has led to less than expected spending. Will the Department be able to spend its CAPEX budget for this year? Over the longer term, will it receive value for its spending (delays cost money)?
- **Software and other intangible assets** – Why is there no budget for this item?
- Note that there was 241% (R2.1 million) overspend for payments for financial assets for theft and losses.