

# Justice and Constitutional Development

## Aim

*The aim of the Department of Justice and Constitutional Development is to promote order within the community by maintaining an efficient system of judicial administration.*

## Policy developments

The Department's Vision 2000 is a 5-year strategy to improve service delivery and the efficiency of the justice system, expand access to justice and improve working conditions in the Department.

As an integral partner in the National Crime Prevention Strategy, the Department is working with the South African Police Service (SAPS) and the Department of Correctional Services to improve the effectiveness and efficiency of the integrated justice sector. Additional funds are earmarked for the implementation of these plans in 2000/01, including R106 million for fast-track improvement programmes, R50 million for the automation of processes and R30 million for upgrading equipment.

The National Directorate of Public Prosecutions (NDPP) is being set up and will operate with some autonomy in the Department, to manage and coordinate the prosecutions service. R150 million is allocated to fund its activities in 2000/01, rising to R161 million in 2001/02 and R166 million the year after.

The newly established Directorate of Special Operations, known as the Scorpions, is currently recruiting staff. It investigates serious crime, including organised crime, political violence, serious economic offences and other matters. R150 million is allocated to the Scorpions in 2000/01, increasing to R199 million in 2001/02 and R250 million in 2002/03.

The Department has recently assumed some constitutional development responsibilities from what is now the Department for Provincial and Local Government Affairs. Some Department of Provincial and Local Government Affairs staff are set to move to the Department of Justice to ensure continuity of the function.

## Expenditure estimates

**Table 23.1 Expenditure by programme**

R million	Expenditure outcome			Revised estimate	Medium-term expenditure estimate		
	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Administration	149,6	202,2	249,1	243,3	292,9	303,5	316,4
Administration of courts	1 126,5	1 267,7	1 251,3	1 281,2	1 490,8	1 553,4	1 617,9
State legal services	112,8	140,5	118,7	150,4	157,9	164,9	171,9
National Prosecuting Authority	170,3	339,3	115,1	144,9	318,9	381,0	436,8
Auxiliary and associated services	96,6	121,8	439,5	627,7	445,3	540,0	523,1
<b>Departmental vote<sup>1</sup></b>	<b>1 655,4</b>	<b>2 072,3</b>	<b>2 174,7</b>	<b>2 438,4</b>	<b>2 705,7</b>	<b>2 942,8</b>	<b>3 066,1</b>
Statutory amounts: Judges' salaries	84,4	102,3	113,8	110,7	120,0	120,0	120,0
Public works <sup>2</sup>	31,7	36,2	103,8	144,7	154,9	183,8	191,1
<b>Total</b>	<b>1 772,5</b>	<b>2 210,8</b>	<b>2 392,3</b>	<b>2 693,8</b>	<b>2 980,6</b>	<b>3 246,6</b>	<b>3 377,2</b>
Change to 1999 Budget estimate	–	–	–	148,9	172,5	294,2	–

<sup>1</sup> Includes authorised losses of R0,6 million in 1996/97, R0,7 million in 1997/98, R1 million in 1998/99.

<sup>2</sup> Appropriated on Vote 26: Public Works.

- *Administration* comprises policy formulation and senior management tasks in the Department of Justice and Constitutional Development.
- *Administration of courts* funds the various courts that constitute the system of justice in South Africa.
- *State legal services* provides legal opinion to Government in the drafting of legislation, as well as in the justice process.
- *National Prosecution Authority* manages the prosecution services, the witness protection programme and some specialised investigative offices linked to the Directorate of Public Prosecutions.
- *Auxiliary and associated services* includes a variety of independent institutions, such as the Legal Aid Board, the Public Protector and the Human Rights Commission.

**Table 23.2 Economic classification of expenditure**

R million	Expenditure outcome			Revised estimate	Medium-term expenditure estimate		
	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Current							
Personnel	1 375,0	1 392,9	1 455,1	1 538,9	1 726,5	1 822,6	1 916,8
Transfer payments	156,3	325,5	421,8	615,8	324,8	331,5	342,4
Other	202,6	446,5	402,9	375,0	671,1	801,3	814,9
Capital							
Transfer payments	0,9	0,9	1,4	4,0	–	–	–
Acquisition of capital assets	37,6	45,1	111,1	160,0	258,3	291,1	303,0
<b>Total</b>	<b>1 772,5</b>	<b>2 210,8</b>	<b>2 392,3</b>	<b>2 693,8</b>	<b>2 980,6</b>	<b>3 246,6</b>	<b>3 377,2</b>

The overall budget of the Department of Justice – including resources appropriated on the Public Works vote – increased by 17 per cent per year between 1996/97 and 1999/00, with further average annual growth of 7,7 per cent projected between 1999/00 and 2002/03. While personnel

spending will have increased by 5,7 per cent per year over the entire period, by far the fastest increase is in the acquisition of capital assets. This largely reflects allocations for modernisation and computerisation of the Department's processes to enhance productivity, as well as the development of new court infrastructure around the country to redress imbalances in access to justice. Particular emphasis has been placed on courts in previously disadvantaged communities, with 20 courts having been established or upgraded in Eastern Cape.

## Programme 1: Administration

**Table 23.3 Programme expenditure**

R million	Budget estimate	Adjusted appropriation 1999/00	Revised estimate	Medium-term expenditure estimate		
				2000/01	2001/02	2002/03
1999 Budget	231,6	234,3	234,3	301,2	315,7	–
<b>2000 Budget</b>	–	–	–	<b>292,9</b>	<b>303,5</b>	<b>316,4</b>
Change to 1999 Budget estimate	–	2,7	2,7	(8,3)	(12,2)	–

The *Administration* programme provides for the policy-making functions of the Minister, the management activities of senior management, the organisation of the Department, and its personnel, logistical and financial administration.

## Programme 2: Administration of courts

**Table 23.4 Programme expenditure**

R million	Budget estimate	Adjusted appropriation 1999/00	Revised estimate	Medium-term expenditure estimate		
				2000/01	2001/02	2002/03
1999 Budget	1 280,4	1 288,1	1 281,2	1 559,7	1 616,9	–
<b>2000 Budget</b>	–	–	–	<b>1 490,8</b>	<b>1 553,4</b>	<b>1 617,9</b>
Change to 1999 Budget estimate	–	7,7	0,8	(68,9)	(63,5)	–

The *Administration of courts* includes the provision of a judicial infrastructure for the justice system, and includes four levels of courts:

- The Constitutional Court, which adjudicates constitutional issues.
- The Supreme Court of Appeals, which is the final arbiter of non-constitutional matters.
- The High Courts, which decide serious criminal and civil cases and perform a range of administrative functions.
- The lower courts, which decide the bulk of criminal matters and some civil matters, and carry out administrative functions such as performing marriages, registering births and estates.

Several specialised courts were set up in terms of various Acts. These are on the level of the High Courts and include the following:

- The Labour Court and the Labour Appeal Court have authority over industrial relations and other matters as defined in the Labour Relations Act of 1995.
- The Land Claims Court provides for the restitution of land rights to persons or communities dispossessed for racial or discriminatory reasons, in terms of the Land Claims Act of 1994.

- Tribunals set up in terms of the Special Tribunals Act of 1996 investigate corruption-related matters.
- Family Courts deal primarily with divorces.

The decrease in the allocation to this programme in the 2000 Budget reflects the transfer of functions to the *National Prosecuting Authority* programme.

## Outputs and service delivery trends

**Table 23.5 Administration of courts: Key activities and outputs**

Key activities	Outputs
Constitutional Court, Supreme Court of Appeal, High Court, specialised courts, lower courts – deciding cases before the court	Expediently resolving matters and cases coming before court

In acting as arbiters for both criminal and civil matters, courts play two distinct roles in society. The figures below refer mainly to criminal matters, and are accordingly an incomplete reflection of the growing burden on the courts.

**Table 23.6 Criminal court case loads**

	Dec 1995	Jun 1996	Dec 1996	Jun 1997	Dec 1997	Jun 1998
Cases reported per month	244 263	214 285	246 831	216 814	250 493	212 087
Cases open (within SAPS)	673 282	667 609	768 637	791 006	895 616	824 843
Cases open (in Justice cycle)	240 748	314 863	354 802	380 665	431 912	434 657
Total cases open	914 030	982 472	1 123 439	1 171 671	1 327 528	1 259 500
<i>Growth: December to December (%)</i>			22,9%		18,%	

<sup>1</sup> Figures for 1999 are not yet available.

## Policy developments

The Department and the National Crime Prevention Strategy are developing tools for improving, and in some cases automating, court processes to increase efficiency. They have been assisted by the Bureau of Justice Assistance in New York.

The Department is establishing sexual offences courts to meet the specific needs of women and children; a pilot court has been set up in Mdantsane. A specialised commercial court project in Pretoria will deal with white-collar crime and complex fraud cases, and a specialised hijacking court is operating in Johannesburg.

These initiatives have increased the efficiency and effectiveness of the criminal justice process. The hijacking court, which has been operating longest, has had a particularly impressive impact on the handling of the investigation and prosecution of alleged perpetrators.

The Department is also exploring better ways to use prison court facilities and technology, such as video arraignment, to reduce the costs of criminal justice and the risk of escapes.

## Programme 3: State legal services

**Table 23.7 Programme expenditure**

R million	Budget estimate	Adjusted appropriation 1999/00	Revised estimate	Medium-term expenditure estimate		
				2000/01	2001/02	2002/03
1999 Budget	149,5	150,4	150,4	160,5	170,3	–
<b>2000 Budget</b>	–	–	–	<b>157,9</b>	<b>164,9</b>	<b>171,9</b>
Change to 1999 Budget estimate	–	0,9	0,9	(2,6)	(5,4)	–

This programme has two components – legal services and legislative services. Legal services provides legal advice and assistance to the state, including:

- Examining draft legislation
- Providing legal assistance and opinions to the President, ministers, government departments and statutory bodies
- Scrutinising international agreements to ensure that they do not conflict with South African municipal law
- Assisting the Chief State Law Advisor with legal opinion on international loan agreements and guarantees given by South Africa

In addition, the Family Advocate acts to safeguard the interests of minor or dependent children during divorces or applications to alter existing divorce orders.

The Legislative services subprogramme administers a variety of legislation and supports the work of the Law Commission in researching new legislation.

### Outputs and service delivery trends

**Table 23.8 State legal services: Key activities and outputs**

Key activities	Outputs
Legal services – providing legal services to the state	Provision of legal services to the state Drafting of legislation Furnishing of legal opinions Examination of applications for extradition
Legislative services – research new legislation	Law Commission research with respect to new legislation

These functions of the Department of Justice and Constitutional Development fall outside the integrated justice sector, but are a crucial service. For instance, during 1999 the Law Commission worked on more than 16 projects that led to the release of a discussion document or a report. These projects included work aspects for the law relating to Aids, sexual offences and the interception and monitoring of communications. In addition, substantial work on the harmonisation of indigenous and common law was completed, including reports on the role of traditional courts in the administration of justice. Work was also completed on discussion papers regarding the application of the Bill of Rights to criminal procedure and on the simplification of criminal procedure.

## Programme 4: National prosecution authority

**Table 23.9 Programme expenditure**

R million	Budget estimate	Adjusted appropriation	Revised estimate	Medium-term expenditure estimate		
		1999/00		2000/01	2001/02	2002/03
1999 Budget	108,0	144,9	144,9	175,7	193,3	–
<b>2000 Budget</b>	–	–	–	<b>318,9</b>	<b>381,0</b>	<b>436,8</b>
Change to 1999 Budget estimate	–	36,9	36,9	143,2	187,7	–

The new programme, *National Prosecution Authority*, covers the activities of the National Directorate of Public Prosecutions and the provincial directors of public prosecution. Their function is to provide a coordinated prosecutorial service to the state, to act as prosecutors in criminal matters in court and to investigate certain serious economic offences. The programme also provides for the witness protection programme – an essential element in ensuring that evidence is available in some serious trials – and the activities of the Directorate of Special Operations (the Scorpions).

### Outputs and service delivery trends

**Table 23.10 National Prosecution Authority: Key activities and outputs**

Key activities	Outputs
Public prosecution – managing and coordinating the prosecution service, public prosecutions	Quality prosecutions
Witness protection – protecting witnesses	Witnesses protected

Conviction rates reflect the quality of the work in the Justice sector as a whole. They should not, therefore, be used to assess the performance of either the courts or the prosecutors alone. As is evident from tables 23.11 and 23.12, the conviction rate (per case in court and per recorded crime) has been relatively stable for the past few years, and has even improved marginally in some cases. The departments that make up the integrated justice sector have, however, identified the relatively low rate of convictions per recorded crime as a priority.

**Table 23.11 Convictions per court case (%)<sup>1</sup>**

Crime <sup>2,3</sup>	1995	1996	1997	1998
Murder	15	26	27	28
Robbery	17	25	22	22
Rape	14	19	17	20
Serious property crime	30	39	37	38
Assault	23	37	37	37
Fraud	30	36	41	41
<b>Average conviction rate (serious crime)</b>	23	34	33	34
Less serious crimes	45	45	45	44
<b>Average conviction rate (all crimes)</b>	33	39	39	39

<sup>1</sup> This measure is not available for 1994, and the 1995 figure is estimated from 6 months of data.

<sup>2</sup> For ease of use, the categories in this table aggregate a number of crime types. Murder includes attempts, serious property crime includes burglaries of residential and business property and theft of vehicles, robbery includes aggravated robberies, and assault includes assault with intent to commit grievous bodily harm. The subtotal aggregates these rates, while the next row adds other crimes classified by the police as less serious and the total sums all crimes.

<sup>3</sup> Figures for 1999 are not yet available.

**Table 23.12 Convictions per recorded crime (%)<sup>1, 2</sup>**

Crime <sup>3</sup>	1995	1996	1997	1998
Murder	8	10	11	11
Robbery	3	4	4	4
Rape	7	9	8	8
Serious property crime	4	5	5	5
Assault	8	12	11	11
Fraud	6	8	9	8
<b>Subtotal</b>	<b>6</b>	<b>8</b>	<b>8</b>	<b>8</b>
Less serious crimes	12	12	12	12
<b>Total</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>9</b>

<sup>1</sup> This measure is not available for 1994 and the 1995 figure is estimated from 6 months of data.

<sup>2</sup> Refer to the recorded crime table SA Police Vote.

<sup>3</sup> Figures for 1999 are not yet available.

The Directorate of Special Operations began operations in 1999/00 and has already recorded some significant successes. In particular, the Asset Forfeiture Unit is, despite some legal problems, reducing the incentive to commit crime by seizing the proceeds of crime. In addition, several important investigations into crime, corruption and terrorism have been handed over to the Scorpions, with notable successes in both Western Cape and KwaZulu-Natal.

### Policy developments

The National Directorate of Public Prosecutions began operations in 1999. Its functions and authority are being extended and formalised, as is its relationship with the rest of the Department. It entered a performance agreement with public prosecutors to incentivise the efficient functioning of the integrated justice sector in general and the prosecutorial services in particular.

## Programme 5: Auxiliary and associated services

**Table 23.13 Programme expenditure**

R million	Budget estimate	Adjusted appropriation	Revised estimate	Medium-term expenditure estimate		
		1999/00		2000/01	2001/02	2002/03
1999 Budget	520,0	627,7	627,7	336,1	352,3	–
<b>2000 Budget</b>	–	–	–	<b>445,3</b>	<b>540,0</b>	<b>523,1</b>
Change to 1999 Budget estimate	–	107,7	107,7	109,2	187,7	–

The *Auxiliary and associated services* programme funds several independent bodies and consists largely of transfers to these institutions, including the following:

- The Judicial Service Commission advises Government on the appointment of judges and on the administration of justice.
- The Magistrates Commission advises Government on the administration of personnel and on other matters affecting magistrates.
- The Office of the Control of Interception and Monitoring of Communications is the sole authority able to permit police and intelligence officials to ‘tap’ phones, etc.
- The Truth and Reconciliation Commission (TRC) is processing the amnesty applications of individuals who applied in terms of the relevant legislation. The President’s Fund, which is also

provided for through this programme, effects reparations in terms of the TRC reparations programme.

- The Human Rights Commission promotes increased awareness of human rights. It also investigates complaints of violations of the Bill of Rights against either the state, private individuals or institutions.
- The Commission on Gender Equality advises Government on policy regarding the empowerment of women, and monitors the implementation of government policy and its impact on women.
- The Special Investigation Unit investigates corruption and recovers misused or misappropriated public funds.
- The Legal Aid Board provides legal assistance to those who cannot afford it. R245,6 million is budgeted for the Legal Aid Board in 2000/01.
- R24 million is allocated in 2000/01 to the Public Protector, which investigates complaints of maladministration.

## Outputs and service delivery trends

**Table 23.14 Auxiliary and associated services: Key activities and outputs**

Key activities	Outputs
Legal Aid Board – providing free legal assistance	Case in which legal aid is provided, cost of legal aid per case
Human Rights Commission – investigating complaints regarding infringements of the Constitution	Extent of investigations and impact of recommendations on policy
Special Investigations Unit – investigating corruption	Extent of investigations and extent of recoveries
Public Protector – investigating complaints received	Extent of investigations and impact on public policies
Commission on Gender Equality – investigating and advising on the promotion of the equality of women	Extent of investigations and impact on public policy

**Table 23.15 Legal Aid expenditure**

R million	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Legal Aid (actual expenditure on instructions) <sup>1</sup>	75,6	291,4	286	278,2	–	–	–
Instructions issued	163 749	198 477	206 816	186 000	204 600	225 000	247 600

<sup>1</sup> Administrative costs are excluded, as are liabilities.

Legal Aid has become a significant cost to the state over the past five years, with expenditure rising from R94,3 million in 1995/6 to nearly R280 million in 1999/00. This increase has been driven by the enormous increase in eligible applicants following the adoption of the Constitution.

At present, the Legal Aid Board uses the judicare system of legal representation. It instructs lawyers in private practice to represent, in criminal and in civil matters, persons who qualify in terms of the Board's means test. Because the growth in expenditure on legal aid is unsustainable, the Department is reviewing this approach to providing legal assistance to the poor. This has already resulted in measures to cap costs, including reducing the tariffs paid to lawyers and examining the possibility of a public defender system. As a result of these steps, the Legal Aid Board has already seen a decline in the number of instructions issued to lawyers, as well as a decline in their average costs. Using the new tariff structure is expected to reduce legal aid spending by more than R1,1 billion over the next three years.



The Human Rights Commission has focussed on a range of issues during 1999/00, including an investigation into racism in the media and the tensions at Vryburg High School. The Commission has also dealt with numerous complaints of rights violations.

The Commission on Gender Equality promotes the empowerment of women through research, advocacy and public education. Its focus during 1999/00 includes gender inequality in society, especially the private sector; gender in the media and advertising; the impact of customs, culture and religion on gender equality; the impact of the law on gender, with a special focus on violence against women; pay and other inequalities at work; and the political empowerment of women.

The Public Protector released three major reports during 1999/00. These were the report on alleged nepotism in Government; the report on controversial statements attributed to the premier of Mpumalanga; and the report on alleged irregularities in the financial statements of the State Fuel Fund and on the Auditor-General's reports on these statements to Parliament.

