

# 24: JUSTICE

## AIM

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

## EXPENDITURE ESTIMATES

**Table 24.1 Expenditure by programme**

R million	Expenditure outcomes			Preliminary outcome 1998/99	Medium term expenditure estimates		
	1995/96	1996/97	1997/98		1999/00	2000/01	2001/02
Administration <sup>1</sup>	142,6	150,1	202,9	256,3	148,1	177,5	186,5
Administration of justice	948,6	1 126,5	1 267,7	1 292,6	1 373,5	1 505,8	1 570,6
Administration of law	96,5	112,8	140,5	132,6	151,0	178,4	187,2
Public protector <sup>2</sup>	1,6	2,5	4,8	7,3	15,4	17,3	18,1
Legal aid	75,6	167,8	334,5	220,6	233,9	263,3	275,6
Auxiliary and associated services	17,9	96,6	121,8	274,5	367,7	398,2	415,8
Judges' salaries and allowances	75,6	84,4	102,3	108,7	110,7	112,7	114,7
<b>Subtotal</b>	<b>1 358,4</b>	<b>1 740,7</b>	<b>2 174,5</b>	<b>2 292,6</b>	<b>2 400,3</b>	<b>2 653,2</b>	<b>2 768,5</b>
Capital works <sup>3</sup>	46,4	31,7	36,2	103,8	144,7	154,9	183,8
<b>Total</b>	<b>1 404,8</b>	<b>1 772,4</b>	<b>2 210,7</b>	<b>2 396,4</b>	<b>2 545,0</b>	<b>2 808,1</b>	<b>2 952,3</b>

<sup>1</sup> Authorised losses added: 1995/96 R0,5 million; 1996/97 R0,5 million; 1997/98 R0,7 million.

<sup>2</sup> Spending by programme has been reclassified where possible to correspond to the current programme structure.

<sup>3</sup> Appropriated on Vote: Public Works.

The budget of the Department of Justice has increased by just less than 20 per cent per year over the last three financial years (1995/96-1998/99). Further real increases are reflected in the MTEF allocations for the next three years. This rapid growth illustrates Government's commitment to upholding law and order. The activities of the Department are divided into six programmes.

Programme changes have been effected over the past four years, and expenditure was subsequently reclassified in terms of the current

programme structure. The *Ombudsman* programme was renamed *Public protector* in 1995/96.

- ◆ *Administration* deals mainly with policy formulation by the Minister, Deputy Minister, Director-General and other members of management.
- ◆ *Administration of justice* aims to preserve law and order through the administration of justice.
- ◆ *Administration of law* deals with the administration, interpretation and application of the law relating to matters entrusted to the Department.
- ◆ *The Public protector* exposes or rectifies maladministration, abuse of power, improper prejudice occasioned by administrative decisions and improper use of state funds.
- ◆ *Legal aid* renders legal aid to indigent persons in terms of the Constitution.
- ◆ *Auxiliary and associated services* includes transfers to the Truth and Reconciliation Commission, the Human Rights Commission and the Commission on Gender Equality, among others.

**Table 24.2 Economic classification of expenditure**

R million	Expenditure outcomes			Preliminary outcome	Medium term expenditure estimates		
	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02
Current							
Personnel expenditure <sup>1</sup>	1 040,9	1 219,6	1 392,9	1 453,9	1 533,5	1 633,0	1 697,1
Other current expenditure	228,2	358,0	446,4	399,6	333,1	435,6	459,6
Transfer payments	76,4	156,3	325,5	417,5	507,5	554,8	580,8
Capital							
Transfer payments	1,1	0,9	0,9	0,9	4,0	4,0	4,0
Acquisition of capital assets	58,2	37,6	45,0	124,5	166,9	180,7	210,8
<b>Total</b>	<b>1 404,8</b>	<b>1 772,4</b>	<b>2 210,7</b>	<b>2 396,4</b>	<b>2 545,0</b>	<b>2 808,1</b>	<b>2 952,3</b>

<sup>1</sup> Departmental personnel expenditure includes employer's contributions to pension funds at a rate of 17 per cent of basic salary in 1998/99 and 15 per cent of basic salary in subsequent years.

## OUTPUTS AND SERVICE DELIVERY TRENDS

The Department of Justice provides both prosecutorial and judicial services. The functions of the Department are continuously expanding in respect of both criminal justice and a range of civil justice functions.

### Growing congestion in the judicial system

The judicial system is becoming increasingly congested. Apart from rising levels of crime, the main reasons are fewer admissions of guilt and greater provision of legal aid and more remands and case withdrawals. Several factors exacerbate the situation:

- ◆ Increased caseloads.
- ◆ Decreases in the number of judicial hours.
- ◆ Growing numbers of prisoners awaiting trial.

These factors all contribute to rising costs of personnel, administration, overtime and public works.

Case loads are increasing rapidly and data from a 1998 study conducted by the Mulweli Consortium suggests that the judicial system is struggling to cope.

**Table 24. 3 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
<b>Growth: December to December (%)</b>			<b>22,91</b>		<b>18,17</b>	

In a four-month survey of Johannesburg courts, the Consortium found that the volume of cases flowing into the judicial system increased by just under 4 per cent per month. On average, each case took 186 days to be completed. Data from the Department confirms that case numbers increased between 1993/94 and 1996/97 in the lower (main and periodical) courts. Magistrates' courts are becoming more congested as their civil jurisdiction increases.

### Number of judicial hours

Bench hours increased from 165 136 to 180 300 between 1994/95 and 1995/96. Nevertheless, the number of cases heard fell from 54 416 to 52 507, as did the number of hours spent on judicial and quasi-judicial work, from 1 055 901 to 1 030 624. This indicates that more time is being spent on non-core business such as marriages.

### Criminal investigation and court management

The quality of investigation and dockets issued by the police greatly influences both the number of charges withdrawn and remands and, in turn, the efficiency of the prosecutorial process. During its four-month survey of Johannesburg courts, the Mulweli Consortium found that almost 88 per cent of total cases exit the criminal justice system before trial and that the current conviction rate of all cases reported was just 7 per cent. Of the 3 058 cases surveyed, only 11 per cent were rendered a verdict. About 77 per cent of cases were remanded and the remaining 12 per cent withdrawn. The Consortium noted that the large number of remands was a substantial drain on court resources, because cases were

being sent back and forth between prosecutors and investigators while the case was being heard. Meanwhile, prisoners remained in correctional services at State expense.

As a result, the Department is planning to run a pilot Awaiting Trial Project to address the problem of poor case preparation.

### **Growing numbers of prisoners awaiting trial**

The result of growing case numbers, increasing bench hours dedicated to non-core matters, and ineffective investigations, is a rapid increase in the number of prisoners awaiting trial. From January 1995 to January 1998, the number of prisoners rose by 78 per cent from 24 265 to 43 103. This puts enormous pressure on all parts of the justice system: courts, correctional services and police. It is critical that the departments work together to re-assess the pre-trial procedures so that the court cycle time may be reduced.

## **POLICY DEVELOPMENTS**

A five-year strategy to transform the administration of justice by improving service delivery and enhancing the efficiency of the justice system, has been developed.

### **Legal Aid Forum**

The demand for legal aid has increased substantially partly owing to the obligation in terms of the Constitution. The Department has convened a consultative Legal Aid Forum to discuss the transformation of the system. The legal aid system will possibly be phased out in favour of a public defender system, which will be less costly to the state. A pilot project is to be launched during 1999.

### **National Director of Public Prosecutions**

Legislation establishing a National Director of Public Prosecutions was implemented during 1998/99. The legislation is aimed at co-ordinating the functions of the various directors of public prosecution.

### **Regional offices**

Following the amalgamation of the Justice Departments of the former TBVC states and self-governing territories, a new head office and nine regional offices have been established. The regional offices perform and co-ordinate administrative and legal functions in each of the provinces.

### **Cluster implementation of magistrates' offices**

The Department implemented a cluster system during 1997/98, which groups magistrates' offices in a particular region under the control of the head of the cluster. It aims to pool human and administrative resources to improve the administration of justice and to meet Government's objective that services should be taken to the community.

### **National Crime Prevention Strategy**

During 1997/98 the Department implemented several initiatives in terms of the National Crime Prevention Strategy, including:

- ◆ Upgrading infrastructure and providing essential equipment to offices and courts, mainly in the former TBVC states and self-governing territories.
- ◆ Enhancing the overall management of court cases.
- ◆ An extensive programme to train legal personnel.

**Community safety centres**

The Department, the South African Police Service (SAPS) and the Department of Welfare are developing community safety centres. This combines the resources of the various role-players in the integrated justice sector, and enhances service delivery to the community.

**Public service employment**

The government is committed to establishing a judiciary which is representative of the population in terms of race and gender. By September 1998, 23 per cent of ordinary magistrates were women, 33 per cent were African, and 5 per cent were African women. The proportion of women decreases with increasing rank. In September 1998, only 7 per cent of those with higher ranks than ordinary magistrates were women.

In December 1998 over three-quarters of the 186 judges were white men, 17,8 per cent African men, 4 per cent white women and 2 per cent African women.

**Extensive building programme**

The Department has embarked on an extensive building programme, which is funded by donors. The objective is to upgrade buildings at magistrates' offices, mainly in the former Transkei, and provide essential facilities.

**Computerisation of judicial functions**

The Department is involved in an extensive computerisation programme in conjunction with SAPS and Correctional Services, which should improve service delivery and achieve uniformity of systems within the Justice Clusters.

## DISCUSSION OF PROGRAMMES

### Programme 1: Administration

	Budget estimate	Adjusted appropriation	Preliminary outcome	Medium term expenditure estimates		
R million		1998/99		1999/00	2000/01	2001/02
1998 Budget	136,2	259,0	256,3	136,4	141,3	–
<b>1999 Budget</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>148,1</b>	<b>177,5</b>	<b>186,5</b>

*Administration* deals with policy formulation by the Minister, Deputy Minister, Director-General and other members of management. It also involves organising the Department, managing its personnel and financial administration, and determining working methods and procedures.

### Programme 2: Administration of justice

	Budget estimate	Adjusted appropriation	Preliminary outcome	Medium term expenditure estimates		
R million		1998/99		1999/00	2000/01	2001/02
1998 Budget	1 299,6	1 306,1	1 292,6	1 375,1	1 465,2	–
<b>1999 Budget</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>1 373,5</b>	<b>1 505,8</b>	<b>1 570,6</b>

*Administration of justice* deals with the preservation of law and order.

- ◆ The *Constitutional Court* adjudicates on constitutional issues and performs administrative functions relating to actions in the Constitutional Court. Constitutional court judges deliver local and international lectures with regard to constitutional rights. The Court received 31 cases between August 1997 and July 1998. Six of these cases were heard, seven were finalised, eight refused, four withdrawn and six are pending.
- ◆ The *High Court* performs administrative functions relating to actions in the High Court and compensation courts. High Courts render a number of services to the public and various institutions. The directors of public prosecution conduct prosecutions and appeals in the High Court and decide whether or not to institute criminal proceedings in lower and superior courts. They also consult witnesses, weigh up evidence and advise and instruct public prosecutors and members of the public. The statistics in Table 24.4 show a sharp decrease in the number of criminal appeals filed in the District and Regional Courts between 1994/95 and 1996/97.
- ◆ The *Labour Appeal Court* is the final court of appeal in respect of all judgements and orders made by the Labour Court.
- ◆ The *Labour Court* is a superior court that has 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 rights over land in respect of persons or communities dispossessed for any racial or discriminatory reasons, in terms of the Land Claims Act of 1994. The number of cases handled has increased from 31 in 1996 to 35 in 1997 and to 89 in the first six months of 1998.
- ◆ The *Lower Courts* deal with the administration of justice by magistrates in the lower courts. Several model court projects are in progress to improve court management and to ensure public satisfaction with the efficiency of court processes.

**Table 24.4 High court statistics**

	1994/95	1995/96	1996/97
Applications received	108 963	101 737	107 196
Criminal cases entered	1 739	1 919	1 499
Civil appeals	717	863	836
Criminal appeals			
District courts	1 514	1 279	379
Regional courts	1 361	1 391	567
Judges' certificates	2 942	2 768	2 787
Reviews	43 496	34 488	27 027
<i>In forma pauperis</i> applications	1 725	1 132	822
Bills of cost taxed	28 170	27 377	23 794
Motion court appearances	56 100	48 032	47 201

**Table 24.5 Lower Courts statistics**

	1994/95	1995/96	1996/97
Criminal cases entered	2 801 638	2 680 150	2 620 327
Admissions of guilt entered			
Main Court	2 329 125	2 118 101	1 724 923
Periodic Court	50 830	90 708	37 056
Civil Cases entered	1 247 872	1 408 288	1 502 635
Civil applications dealt with	929 626	788 686	731 708
Process issued			
Public prosecutor	255 378	233 108	194 074
Other bodies	1 799 647	1 679 224	1 638 290
Hours spent on judicial work	1 055 190	1 030 624	955 892
Marriages solemnised and customary unions registered	34 906	32 740	22 573
Births registered	327 228	196 683	129 950
Applications for identity documents	746 151	609 824	325 160
Pensions and allowances cases	46 975	717 743	221 646
Deaths registered	51 004	43 114	22 965
Free hospitalisation applications	30 431	36 757	15 750
Farmers' assistance cases	21 975	22 075	10 805
Land Bank cases	636	476	308
Divorce summonses prepared	3 692	3 737	3 815
Estates registered	97 841	56 536	47 159

**Programme 3: Administration of law**

R million	Budget estimate	Adjusted appropriation 1998/99	Preliminary outcome	Medium term expenditure estimates		
				1999/00	2000/01	2001/02
1998 Budget	157,2	134,0	132,6	166,1	172,4	–
<b>1999 Budget</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>151,0</b>	<b>178,4</b>	<b>187,2</b>

*Administration of law* deals with the administration, interpretation and application of the law relating to matters entrusted to the Department. The activities of this programme including the following:

- ◆ The *Justice college* provides legal training services to meet the increasing demand for the training of new magistrates, public prosecutors and officials from other departments, such as probation officers.
- ◆ The role and the functions of the *State Law Advisors* cover a broad spectrum of work which includes:
  - ◆ The drafting, editing and certification of Parliamentary legislation.
  - ◆ Revision of subordinate legislation to guard against the exceeding of powers and against vague of imprecise formulation.
  - ◆ The furnishing of legal opinions to the President, Ministers, Government departments and statutory bodies.
  - ◆ The scrutinising of applications for extradition.
  - ◆ The scrutinising of various international agreements in order to ensure that they do not conflict with South African municipal law.
  - ◆ Assisting the Provincial governments and municipalities where necessary with various legal functions.
  - ◆ The furnishing of legal opinions by the Chief State Law Advisor with regard to international loan agreements and guarantees given by the Republic.

During 1998, 164 Parliamentary Bills were drafted, 357 written legal opinions furnished and 394 international agreements and regulations were scrutinised.

- ◆ The *Family advocate* inquires into the welfare and interests of minor and dependant children in divorce matters or in applications for amendments to, withdrawals of and suspensions of existing divorce orders involving guardianship or access to children.
- ◆ The *State attorney* furnishes the State with legal advice and conducts all civil litigation on behalf of the State. This includes the defence of public servants on criminal charges which arise from their duties. Other functions are:



- ◆ Collecting outstanding debts owed to the State.
  - ◆ Preparing and registering deeds in the Deeds Office on behalf of the State.
  - ◆ Acting as Patent Agents.
  - ◆ Appearing at inquiries and Arbitration Boards.
  - ◆ Drawing up and scrutinising contracts to which the State is a party.
  - ◆ The *South African Law Commission* has 28 projects on its law reform programme. The Commission is actively engaged in the implementation of legislation related to the legislation emanating from the Department's strategic plan Vision 2000.
- In addition several high priority investigations relate to the transformation of the Justice System with emphasis on improvement of the position of women and children. Amongst the investigations are the development of a new juvenile justice system, the review of the Child Care Act, sexual offences, sentencing, victim empowerment, the administrative law, religious marriages and the simplification of the Criminal Procedure.
- ◆ The *Witness protection programme* has on average 600 witnesses under its protection on a daily basis. Witnesses whose lives are in danger are protected to enable them to testify in court without fear of intimidation.

#### Programme 4: Public protector

R million	Budget estimate	Adjusted appropriation 1998/99	Preliminary outcome	Medium term expenditure estimates		
				1999/00	2000/01	2001/02
1998 Budget	7,7	7,4	7,3	8,0	11,2	–
<b>1999 Budget</b>	–	–	–	<b>15,4</b>	<b>17,3</b>	<b>18,1</b>

The Public Protector took up office in October 1995. Its objective is to investigate, report on and take appropriate remedial action on any conduct in state affairs, or in the public administration, that is alleged or suspected to be improper.

The office of the Public Protector was intended to deal with an estimated 40 complaints per month. However, demands for its services were so pronounced that the establishment has had to expand.

**Table 24.6 Statistical overview of Public Protector cases**

Period	New cases received	Cases finalised	Cases carried over
30 Sept 1995 (The office of the Ombudsman)	-	-	544
Oct – Dec 1995	408	127	825
Jan – Dec 1996	2 369	764	2 430
Jan – Dec 1997	3 341	2 367	3 404
Jan – Aug 1998	2 347	1 332	4 419

**Programme 5: Legal aid**

Rmillion	Budget estimate	Adjusted appropriation	Preliminary outcome	Medium term expenditure estimates		
		1998/99		1999/00	2000/01	2001/02
1998 Budget	222,9	222,9	220,6	259,1	284,3	–
<b>1999 Budget</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>233,9</b>	<b>263,3</b>	<b>275,6</b>

The mandate of the *Legal Aid Board*, established by the Legal Aid Act of 1969, is to provide legal aid to indigent persons and legal representation to accused persons at State expense. The Board uses the Judicare system. This involves instructing lawyers in private practice to represent, in criminal and civil matters, persons who qualify in terms of the Legal Aid Board's means test.

Since 1994/95 expenditure on Legal Aid has increased by 290 per cent from R91 million to R355 million in 1997/98. The large increase in spending in 1997/98 was attributable to an attempt to deal with the case backlog. Legal aid costs have grown from 6 per cent of total Justice expenditure in 1994/95 to 10 per cent in 1998/99. Measures will therefore be introduced to curb the huge potential cost of legal aid.

Payments by the Legal Aid Board to private practitioners who render legal aid services have also grown substantially in the last six years, from R19 million in 1990/91 to R244 million in 1997/98.

The percentage of successful applications for legal aid relating to criminal matters increased as a proportion of total applications, from 66 per cent in 1991/92 to 79 per cent in 1997/98. The corresponding percentage of civil matters approved decreased from 13 per cent of the total to 8 per cent, while approval of applications for divorce matters decreased from 20 per cent to 12 per cent. Applications granted in respect of labour and other matters accounted for less than 2 per cent of all successful applications.

**Table 24.7 Applications granted in terms of Judicare system**

Year	Criminal	Civil	Divorce	Labour	Total
1991/92	38 247	7 195	11 620	630	57 692

1992/93	45 599	7 792	12 802	910	67 103
1993/94	60 106	7 928	10 354	1 113	79 501
1994/95	67 062	7 293	9 547	1 329	85 231
1995/96	87 996	11 419	12 373	1 986	113 774
1996/97	123 983	16 915	20 353	2 498	163 749
1997/98	153 804	16 149	22 870	1 431	194 254

Source: Legal Aid Board

### Programme 6: Auxiliary and associated services

R million	Budget estimate	Adjusted appropriation 1998/99	Preliminary outcome	Medium term expenditure estimates		
				1999/00	2000/01	2001/02
1998 Budget	240,8	277,4	274,5	351,2	467,7	–
<b>1999 Budget</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>367,7</b>	<b>398,2</b>	<b>415,8</b>

The programme *Auxiliary and associated services* includes transfers to the Truth and Reconciliation Commission, the Human Rights Commission and the Commission on Gender Equality, among others. These commissions have been established in terms of the Constitution and subsequent legislation. Since 1994/95, programme expenditure has grown from just 1 per cent of the total Justice expenditure to an estimated 12 per cent in 1998/99.

- ◆ The Truth and Reconciliation Commission was appointed to approve amnesty to persons who fully disclose all relevant information on past political acts associated, in terms of the Promotion of National Unity and Reconciliation Act of 1995.
- ◆ The President's Fund effects reparations in terms of the TRC reparation programme. The regulations determining the guidelines for reparations are now in place. The budget includes R200 million for this purpose in 1999/00, R300 million in 2000/01 and R300 million in 2001/02.
- ◆ The Commission on Gender Equality is one of six state institutions established to support constitutional democracy. The functions of the Commission include monitoring and evaluating the policies and practices of government, the private sector and other organisations to ensure that gender equality is promoted.
- ◆ The Human Rights Commission promotes an increased awareness of human rights, providing information, education and training on human rights and on the Bill of Rights. Furthermore, the Commission provides an overview and analysis of the human rights situation in South Africa.

*Auxiliary and associated services* also includes:

- ◆ The Office for the Investigation of Serious Economic Offences.

- ◆ The Office for the Control and Interception and Monitoring of Communications.
- ◆ Regional offices, that assist the Minister, Deputy Minister and Director-General to formulate policy, determine goals and execute activities to improve the dispensation of justice and to make courts more accessible to the public.
- ◆ Government motor transport purchases for departmental use and for allocation under the subsidised motor transport scheme.