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**ANNUAL REPORT OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT 2006/2007**

**1. INTRODUCTION**

The Department of Justice and Constitutional Development's Annual Report for 2006/2007 provides an overview of its activities for the 2006/2007 financial year. In addition, the Auditor-General's report on the Department's financial statements is included.

This brief provides an analysis of the Report in order to assist the Portfolio Committee on Justice and Constitutional Development in exercising its oversight responsibilities. Accordingly, the brief:

- Highlights certain technical shortcomings of the Report.
- Provides an overview of the Department's performance during the period under review, namely 2006/2007.
- Highlights both successes and shortcomings in respect of the targets set by the Department, as well as raising questions concerning service delivery. The approach is to compare the performance of the Department as reported in the Annual Report against the performance indicators set out in the Estimates of National Expenditure 2006, as well as the Department's Strategic Plan 2005 – 2008.
- Provides a summary and raises questions in connection with the Report of the Auditor General for 2006/2007.
- Provides a summary and raises questions in connection with the management of Third-Party Funds (previously called Monies in Trust).

**2. MANDATE AND FUNCTIONS**

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 being 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.



### 3. GOVERNMENT PRIORITIES FOR JUSTICE AS PER THE STATE OF THE NATION ADDRESS, 2006

During the 2006 State of the Nation Address, the President committed Government to reaching a number of targets in relation to the Justice sector. The President identified the following key objectives for 2006:

- Further improving the case-load management in the courts.
- Combating corruption. This requires that the Department to accelerate the finalisation and distribution of the Guideline booklet on the Prevention of Corruption and Corrupt Activities Act. Furthermore, the Department needs to ensure that co-ordination between the agencies responsible for dealing with matters of corruption is improved.
- Processing legislation on matters relating to the rationalisation of Courts.
- Managing post-Truth and Reconciliation Commission cases. This requires the Department to finalise outstanding reparations to victims of human rights violations, deal with perpetrators who were refused amnesty or who did not apply for amnesty and to trace persons who went missing as victims of human rights violations.
- Accelerating infrastructure investment in underdeveloped urban and rural areas of the country to provide more courts.
- Consideration of the comments of the Khampepe Commission into the Mandate and Location of the Directorate of Special Operations.
- Sexual Offences Courts. The Department needs to accelerate the rollout of Sexual Offences Courts.

### 4. STRATEGIC PRIORITIES

The Department reports that its allocation of resources aims at addressing historical inequalities and the distribution of legal services to people living in marginalised areas, such as townships and rural areas. In order to ensure that justice is both accessible and in line with constitutional values, the Department has adopted the following three key strategic priorities:

- Access to justice for all, particularly the disenfranchised, the poor and vulnerable persons.
- 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.
- Transforming Justice, State and Society. Transformation of the judiciary and the legal profession is a priority.

### 5. TECHNICAL SHORTCOMINGS OF THE REPORT

At first glance, the Report comprises a comprehensive account of the Department's activities for the year under review. However, closer scrutiny reveals a number of shortcomings, including:

- It is cumbersome to compare the indicators and targets contained in the Annual Report against those set out in are not easily compared with the Department's strategic objectives as set out in its Strategic Plan for 2005 – 2008. The Strategic Plan catalogues the strategic objectives and key performance indicators for each of the Department's strategic priorities but does link these clearly to the Department's programmes. While it is possible to deduce which are the lead branches for each strategic objective, the manner in which the information is presented creates difficulties in measuring the Department's performance in the medium term. Nor is it possible to link the allocation of funds to the Department's strategic priorities.
- In some cases, the actual performance does not address the indicators and target.
- In some instances, timeframes for 2006/07 are not provided, making it difficult to assess whether the Department has met its targets for 2006/2007.



- While in some instances explanations are provided for why targets are not met, this is not done for all cases where this is so.
- The information contained in the section on Human Resource Management could have been presented in a more reader-friendly fashion. For example, the use of percentages for the breakdown of employment equity figures would have been useful.

## 6. OVERVIEW OF SERVICE DELIVERY FOR 2006/2007

### 6.1. Achievements

The Department reports a number of achievements with regard to its activities during the period under review, including:

#### *Accessibility*

- As part of efforts to improve accessibility of courts, the Department has worked to increase the proximity of service delivery points to the people, especially to rural and township communities. The Department has initiated the process of re-aligning the jurisdictional boundaries of courts, taking into consideration the country's new provincial and municipal jurisdiction. This process is expected to be finalised in 2007/2008.
- Two new mobile courts were placed at Galeshewe in the Northern Cape and Ikageng in North West.

#### *Improving operational efficiency*

- The Department has spent R308 million on infrastructure
- R 60 million was spent towards the upgrading of existing facilities under the Repair and Maintenance Programme (RAMP). A total of 301 courts are now registered on the RAMP programme. Furthermore, ten major renovation projects were undertaken, of which 6 are in previously disadvantaged and rural areas.
- During the year under review, R10 million was allocated to make 35 buildings fully accessible for disabled persons and the elderly.
- The Department has purchased a further 35 mobile courts to be deployed to sites where the periodical courts are currently held in police stations and prisons.
- In total, 38 mobile units were purchased to alleviate the pressure on 33 centres.
- Improved security. The Department has installed 126 X-ray machines, 191 walk through detectors and 19 close-circuit televisions. A total of 154 courts have been burglar-proofed and 124 courts have been secured with perimeter fencing.

#### *Transformation*

- The Department has worked to increase awareness of the Equality Courts, Victims' Charter, as well as child and spousal maintenance. The success of Operation Isondlo, a campaign that aims to raise awareness about maintenance among the general public, is reflected in increased and improved services in respect of the Maintenance Courts.
- A Legal Services Sector Charter Steering Committee has been established to draft the Legal Services Charter. A draft Charter has been developed for public consultation, and the Department envisaged finalising the Charter in the 2006/07 financial year. However, this timeframe was not met.





- The Department played an important role in the launch of the South African Women Lawyers Association.
- Concerning transformation of the judiciary, two important Bills were finalised following extensive consultation with the Chief Justice and Heads of Courts, namely the Judicial Service Commission Amendment Bill and the Judicial Education Institution Bill. Both Bills were introduced in Parliament.
- The Department is finalising a policy document on transformation of the judiciary including the harmonisation of the Constitutional Court and the Supreme Court of Appeals and the rationalisation of the High and Lower courts, and the use of languages.
- The Department reports substantial progress in the modernisation and reform of the administration and delivery of justice. For example, the e-Scheduler system is being implemented in 446 courts; 280 scanners were purchased and deployed at various courts to assist with the scanning of relevant court documents.
- The Video Postponement Project has substantially impacted on the remand of court cases. In a period of 12 months, 4 899 remands were concluded without detainees having to leave correctional facilities.
- Digital recording systems were installed in the High Courts and are currently being installed in Magistrate's Courts.

## 6.2. Challenges

Some of the challenges that emerge include:

- **Capacity (Vacancies, staff turnover rates and recruitment turn-around times):** Vacancy rates (23%) are high, as are the staff turnover rates (61%). This is expanded on in the section on Human Resource Management. The Department specifically reported that it has struggled to improve its turn-around time for recruitment to 3-4 months, its target being 3 months. This, however, is very close to the target and, as such, cannot be regarded as being as being unduly long.
- **Resolution of disciplinary matters:** Although the Department was able to resolve all but 42 disciplinary cases, it identifies the resolution of internal disciplinary matters as remaining a challenge.
- **Court performance:** The Department has not managed to reduce case backlogs, particularly for criminal cases, during the year under review. This a long-standing problem, which has a spillover effect to the Department of Correctional Services. Court hours have also decreased.
- **Management of Third Party Funds.** This is a long standing issue which provided grounds for a qualified audit opinion. A fuller discussion is found under the section on the Auditor-General's report.
- **Roll-out of the case-management system.** According to National Treasury the e-scheduler system was rolled out to less than 60 courts out of a total of 495 court buildings.

## 7. PERFORMANCE PER PROGRAMME

Note that as there a large number of sub-programmes in the Departmental Vote, the analysis is limited to instances where the Department has either exceeded or failed to meet its targets.

### 7.1. Programme 1 – Administration

The Annual Report contains an extensive list of indicators and output targets for the Programme. These indicators and targets appear to in line with the programme's purpose, as well as the spending priorities mentioned in the Estimates of National Expenditure. Spending priorities include human resource development,



establishing the Truth and Reconciliation Commission Unit and the Office of the Chief Operating Officer, as well as risk and litigation management.

**Purpose:** This programme manages the Department and develops strategies and policies for the efficient administration of justice, conducts research, including improving legislation and making Constitutional amendments.

The Programme comprises of the following sub-programmes: Office of the Director-General; Office of the Chief Operations Officer; Corporate Services; and Justice College.

These sub-programmes reported being able to fulfil some, but not all, of their service delivery objectives

**Table 1: Selected service delivery indicators/ measurable objectives as per the Annual Report 2006/2007**

<b>Office of Director-General: Policy Co-ordinating Unit</b>			
<b>Outputs/Indicator</b>	<b>Indicator</b>	<b>Target</b>	<b>Actual Performance</b>
Legal Services Charter	To be completed - November 2007	Draft Charter completed by June 2007	Conceptual framework paper developed. Discussion document developed. Draft Charter developed and consultative workshops held. Report developed and conceptual framework developed for Focus Working Group. <b>NO TIMEFRAMES FOR 2006/2007</b>
Increasing the pool for appointment of female judicial officers	Special programme to increase the pool of female judicial officers for appointment	Increase the number of women on the High Court bench	23 women selected to undergo judicial education programme in 2007/08 <b>NO TIMEFRAMES GIVEN</b>
Re-alignment of jurisdictions of Magistrate's Courts	Increase jurisdiction of the lower courts to deliver full range of services	Realignment of the 366 magisterial districts, 90 Branch Courts and 230 Periodical Courts with the constitutional dispensation by 2007/08	Provincial consultations with the JCPS Departments completed by March 2007 24 Branch Courts were analysed and are ready for proclamation in 2007/08 <b>TARGET NOT MET</b>
<b>Office of the Chief Operations Officer: Strategy Monitoring and Evaluation</b>			
Monitor implementation of Department strategy	Produce EXCO approved quarterly reports on implementation of MTSF	Quarterly progress reports on the implementation of the MTSF	The Strategy Implementation Action Plan was produced and approved <b>DOES NOT STATE IF QUARTERLY REPORTS WERE PRODUCED</b>
<b>Office of the Chief Operations Officer: Risk Management</b>			
Implementation of the Anti-Fraud and Corruption Plan	Full compliance with minimum anti-corruption capacity requirement	Preventing corruption	Anti-Fraud and Corruption Plan is being finalised and approved The pre-employment screening procedure for potential new employees and contractors was developed and is due for implementation The confidentiality agreements process was established and implemented The financial disclosure



			procedure was implemented (HR) Awareness campaigns and training programmes are continuous (Budget constraints to roll-out of awareness to regions) <b>TARGET MET IN PART</b>
Security management services and guarding outsourced	Service providers were appointed	Kwa-Zulu Natal: 88 Eastern Cape: 81 Gauteng: 53 Mpumalanga: 30 Western Cape: 37 North West: 13 Limpopo: 38 Free State: 24 Northern Cape: 12	Not all offices received guarding services in 2006/2007  (Additional financial required for 2007/2008 year)  <b>UNCLEAR IF TARGET MET</b>
<b>Justice College</b>			
Research, curriculum development, development training material, and presentation of courses	% courses conducted	<b>7 054 officials trained</b>	<b>7 289 officials trained</b>  <b>TARGET EXCEEDED</b>
Transforming and restructuring	Fulfil initial phase of transformation and restructuring mandate in terms of the Medium Term Strategic Framework	Prepare concept document for the transformed/restructured College for Minister's approval	Concept document finalised and submitted for Minister's approval Implementation plan prepared <b>TARGET MET</b>

#### Achievements

Key aspects of performance included:

- **Policies.** The Department is in process revising its gender policy and gender mainstreaming strategy, as well as its disability framework. (It would be useful if we could have a copy of these once they are finalised).
- **Review of the Criminal Justice System.** This is an inter-departmental project. A research team was established and subproject chairpersons appointed. The scope of the review project was determined. 'Quick wins' – issues that can be addressed within 6 months or less and which have few budgetary implications – were identified. Plans of action for the medium and long term were identified for implementation (to begin June 2007). These include video postponements, the electronic interface of the Legal Aid Board and SAPS to alert the Board as to an accused requiring legal aid, release of awaiting trial prisoners who cannot afford to pay bail, etc.
- Asset management policy was compiled and included in the Department's financial instructions.
- **Anti-Fraud and Corruption Plan** and approved. The plan is now being implemented.
- **Security measures.** The Report lists considerable achievements in putting security measures in place in the form of X-ray machines, perimeter fencing, etc.
- **Justice College.** Justice College exceeded its training targets – 7 289 officials trained.

#### Issues for consideration

- **Legal Services Charter.** According to the Strategic Plan, the Legal Services Charter was to be completed by 2006/2007. However, the Annual Report lists a revised target, namely November 2007. A draft Charter has been developed (June 2007). What is the current state of progress regarding finalisation of the Legal Services Charter? What are/have been the challenges?
- **Victims of Crime Services Charter.** Can the Department provide an overall account of its progress in implementing this Charter?





- **Quarterly reports.** The Auditor-General raises the issue that quarterly reports were not available. Please can the Department explain?
- The College reported that it underspent because of vacancies. Has this impacted negatively on its service delivery, given that it exceeded its training targets? Has the issue of vacancies been addressed?
- What is the progress in transforming the College?

## 7.2. Programme 2 – Court Services

- **Purpose:** Provide and manage efficient court services and facilitate the resolution of criminal, civil and family law matters in South Africa.

The Programme reported being able to meet some but not all service delivery objectives:

**Table 2: Selected service delivery indicators as per the Annual Report 2006/2007**

Sub-programme	Output	Performance measures/service delivery indicators	Target	Actual
<b>Constitutional Court</b>	Case flow management	% cases on the court roll finalised. Case cycle time.	80% per year finalised. 6 months from date of enrolment.	73/102 (71.6%) new cases finalised <b>TARGET NOT MET</b>  NO DATA GIVEN
<b>Supreme Court of Appeal</b>	Case flow management	% of appeals on the court roll finalised. Case cycle time.	80% per year finalised.  6 months from date of enrolment.	52% of civil appeal cases finalised (received 170, 168 finalised; pending 152) 85% of civil appeal petitions cases finalised (received: 313, finalised 339, pending 87) 76% of criminal appeal cases finalised (received 28, finalised 39, pending: 23) 87% of criminal appeal petitions cases finalised (received: 180, finalised: 188, pending 37).  <b>TARGET NOT MET FOR CIVIL AND CRIMINAL APPEALS</b>  NO DATA GIVEN
<b>High Courts</b>	Case flow management	Number of appeals finalised. Case cycle time.	1 500 finalised. 75% of cases must not be older than 6 months.	957 cases finalised (total received 1772; outstanding: 815) <b>TARGET NOT MET</b>  NO DATA GIVEN
<b>Specialised Courts</b>	Case flow management	% cases finalised.	All cases on outstanding roll and 50% of new cases received.	32% of cases finalised (51 cases) (160 cases received during the financial year, 68% (109) outstanding). <b>NO BREAKDOWN GIVEN FOR OUTSTANDING AND NEW CASES RECEIVED</b>
<b>Lower Courts</b>	Case flow management	No. cases finalised per month. Case cycle time.	40 per district court and 15 per regional court.  75% of cases not older than 6 months.	311 623 cases finalised in the year, with monthly finalisation rate of 31 162 cases per month. This is 4.8% below target. <b>TARGET NOT MET</b>  NO DATA GIVEN



Family Advocate	Assistance to the courts in issues relating to children in family matters	No. of High Court custody documents scrutinised.	38 000 documents	13 003 High Court 9 681 divorce court 13 150 settlement agreements.
		No. of enquiries finalised.	8 000 enquiries	8770 enquiries conducted – 6 975 matters finalised. <b>TARGET MET</b>
Magistrate's Commission	Appointment of magistrates and related employment matters	% Magistrates employment matters dealt with.	90% of new matters received.	104 vacant posts advertised during Nov 2005, and filled during 2006. 26 vacant posts advertised during Oct 2006
		Appointment cycle time.	3 months from vacancy advertisement.	<b>UNCLEAR IF TARGETS MET</b>
Capital Works	Adequate and secured court infrastructure.	No. of new courts built.	15 new courts	2 new facilities and 3 major renovations.
		No. of courts renovated.	130 courts renovated.	78 courts renovated. <b>TARGETS NOT MET</b>

#### 7.2.1. OVERVIEW OF COURT PERFORMANCE

Key aspects of performance for all courts for 2006/2007 included:

- The total number of new cases for all courts was 875 038, of which 313 702 were finalised and 587 037 removed (Note that there was a decline in new cases in the High Courts, as well as a decline in the number of minimum sentencing matters referred to the High Court).
- Conviction rate for all courts – 85.7%.
- Court roll increased from 205 361 to 210 685 cases (2.2% increase).
- Case cycle time exceeding 6 months risen from 34 111 to 36 559 at the end of January 2006.
- Average hours sat = 4 hours per day (This is a decrease from 2005/06 4h05).
- Conviction rates: High Court 86% for trial cases; Lower courts: 87% for District Courts and 72% for Regional Courts.
- In the High Courts efforts have been successfully made to expedite new cases as well as older cases from previous years. 84% of cases were finalised within three years from the date of first appearance in the District Courts.
- The number of cases withdrawn in the Lower Courts decreased by 2.8% from 2005/2006 and 5.2% in 2004/2005, indicating that the better screening procedures are effective.
- The number of cases being diverted has also increased by 24% (37 225 cases diverted).

#### Overall challenges

- According to the Report, court hours are a good indicator of the overall performance of the court. In the Lower Courts, however, it is increasingly difficult for prosecutors to ensure that court time is effectively used as the scheduling of cases is not the responsibility of the presiding officer. There has been a gradual decline of court hours sat since 2004/2005 for all courts (for both superior and lower courts)
- The finalisation rate for the Lower Courts was 4.8% below target.
- With fewer cases being finalised, the outstanding roll of all courts reached the 210 000 mark. In the Lower Courts, the outstanding roll at the end of January 2007 was 209 572 cases, of which 17.3% (36 322) were backlog cases (In January 2005, the outstanding roll was 207 182, and backlogs were 33 783; in January 2006, the outstanding roll was 204 051, and the backlogs were 33 958).
- Fewer cases were enrolled in the Lower Courts compared to 2005/2006.





- NPA Audit of Regional and High Courts in November 2006 found that while only 30.8% of accused are in custody, 30% of these detained persons are in custody for a period longer than 12 months.

#### 7.2.2. Special courts

In terms of the special courts, the following key issues can be noted:

**Children's Courts:** Emphasis was placed in the finalisation of foster care applications: 35 409 children were placed in foster care in 2006/2007. A challenge is the need for training of children's court clerks, particularly concerning the implementation of the Children's Act.

#### **Maintenance and Family Courts:**

- Implemented Operation Isondlo (maintenance) in the regions.
- 171 maintenance investigators appointed.
- Managed/co-ordinated the tracing agent project.
- 13 acting additional magistrates appointed for family law matters.
- Creation of 143 additional posts to support Operation Isondlo.

#### **Equality Courts:**

- At present 220 Magistrate's Courts are designated as Equality Courts. In addition, all High Courts sit as Equality Courts.
- The Equality Act has been translated into all but 2 of the official languages.
- The Equality Courts are not being used. A total of 169 cases were reported for the entire year. The highest number of cases were reported in Mpumalanga (88 cases), Gauteng (35 cases) and Kwa-Zulu Natal (26 cases). The Western Cape reported 15 cases, while the Eastern Cape reported only 3 and the North West 2 cases. The remaining provinces did not report any cases.

#### **Small Claims Courts:**

- 156 small claims courts nationally, including 2 that were established in 2006/2007 (Mhala (Limpopo) and Tulbagh (W. Cape)).
- Reported 108 351 enquiries, 28 200 summonses issued and 22 912 trials held.
- The Courts experience a number of challenges in terms of physical and human infrastructure.
- The Department has developed a strategy to address these problems.

**Labour and Labour Appeal Courts:** No information was provided regarding the performance of these courts.

#### **Land Claims Court**

- Matters on review: 159
- Restitution matters: 128

#### 7.2.3. Children Awaiting Trial Intersectoral Committee and Task Team

- Children Awaiting Trial. The Intersectoral Child Justice Steering Committee, which is convened by the Chief Directorate, reports that it established and strengthened 9 provincial child justice fora.



- Established a Children Awaiting Trial Task Team in November 2006. This is chaired by the Inspecting Judge of Prisons, to ensure the fast-tracking, monitoring and prioritisation of such cases within the criminal justice system. This has led to a reduction in the percentage of children awaiting trial for more than 3 months from 30% to 26% from November 2006 to May 2007.
- Established a Child Justice Task Team to establish an integrated database on the management of children in conflict with the law.
- Between 1043 and 1321 children awaiting trial were in custody for each month of the year from February 2006 to February 2007.

#### **Issues for Consideration**

- What are the main factors for the increase in the number of new cases enrolled (2.2% increase overall).
- What are the main factors contributing to the overall decline in performance in the Lower Courts when compared to previous years? How does the Department intend addressing this?
- What are the factors that are contributing to the decline of court hours? How does the Department intend addressing this? (Although overall there is a marginal decline from the previous years, when compared to 2004/2005, the decline is more substantial.)
- What is being done to ensure that accused awaiting trial for lengthy periods are tracked and to decrease the numbers of accused detained for periods longer than 12 months.
- The Equality Courts are not being used effectively for various reasons. The number of cases being brought is also very low. What is the Department doing to promote awareness of these courts? A complaint regarding the effective functioning of the Equality Court concerned the fact that officials felt that they were insufficiently trained or had been trained so long ago that they had forgotten. How does the Department intend ensuring that presiding officers and court officials are confident when dealing with these matters?
- How have the specialised courts, in general, facilitated access to justice, particularly for vulnerable groups such as women, children, and people with disabilities?
- Can the Department provide a progress report on the matter of the finalisation and promulgation of the regulations bringing into effect the second part of the Equality Act relating to the promotion of equality?
- Is the database intended to track children in conflict with the law linked to that of the Legal Aid Board?

#### **7.3. Programme 3 –State Legal Services**

- Purpose: Provide legal services to government and facilitate constitutional amendments through developing and promoting appropriate legislation.
- Measurable Objective: Promote justice and corporate governance through the provision of a legal system and legislative services to the State and the public, and by completing instructions received.

The programme has four sub-programmes, namely: Office of the State Law Advisor, Master of the High Court; Chief Litigation Officer; and Legislative and Constitutional Development.

**Table 3: Selected service delivery indicators as reported in the Annual Report 2006/2007**

Sub-programme	Output	Performance measures/service delivery indicators	Target	Actual
Office of State Law Advisor	Reduce private sector assistance to government depts	% decrease in requests for private sector services	4 % less requests	No information provided



Master of High Court			Estates of 50 000 or less completed within 4 months Estates of more than 50 000 completed within 10 months	Estates more than R125 000: 25 924 Estates less than R125 000: 104 937  <b>Unclear if target met</b>
Legislative and Constitutional development	Legislation	No. of draft bills introduced and acts implemented	11 draft bills	3 Bills and 2 rules introduced and tabled. 1 Act implemented  <b>Target not met</b>
	Research publications	No. of documents submitted to the SA Law Reform Commission for consideration and approval	10 research documents per year	7 research documents  <b>Target Not Met</b>
State Litigation Unit	Approval of Chief Litigation structure	Existence of a Litigation Unit Structure	By 31 December 2006	Structure proposed but not yet approved <b>Target not met</b>
	Strengthening capacity in State attorney's office	Decrease in private briefs to private practitioners by 31 March 2007	25% decrease	<b>Target Not achieved</b>
			Existence of approved State Advocate posts	<b>Target Not achieved</b>
Design format for outreach programme	By 31 March 2007	Draft outreach programme available for internal circulation and discussion		<b>Target Not achieved</b>

### Service Delivery Achievements

Key aspects of service delivery included:

- **State Law Advisors:** Received 578 briefs, of which 566 were finalised.
- **The Legislative Drafting Unit:** Scrutinised 87 Bills (49 new Bills and 38 Bills carried forward from 2005). A total of 31 Bills were certified.
- **Master of the High Court:** Attended to 15 000 more deceased estates than the previous year (15% growth). More people are using the Magistrate's Courts (instead of Master's Offices) to report their matters than previously (A ratio of 50:50, in contrast to 60:40 in favour of the Master's Office in 2005/2006). This appears to indicate that people are being serviced closer to their homes.
- **Guardian's Fund:**  
The total of number of receipts was 15 738 valued at R710 million. This is an increase of 28% from 2005/2006. The total number of payments was 52 139 valued at R379 million.
- **State Litigation Unit:**
  - ❖ The Chief Litigation Officer was appointed to provide strategic leadership. A pilot project to establish in-house counsel in Pretoria, Johannesburg and Cape Town is underway. A total of 50 advocate posts were approved for the pilot project.
  - ❖ A State Attorneys' office was opened in Kimberley. Previously, the nearest office for clients in the Northern Cape was in Bloemfontein.





- ❖ Improvement in the race and gender balances when briefing counsel. The number of black counsel that has been briefed has steadily increased at all offices.

### Challenges

The following key challenges can be identified:

- **Guardian's Fund:** The Auditor-General failed to express an opinion on the Guardian's Fund for 2005/2006. The Fund has always used a manual system to manage and administer the fund, and now recognises the need to Automate activities for all offices in 2007/2008 (Offices in Bloemfontein and Kimberley automated in 2006/2007).
- **State Attorneys' offices:** Finalisation of litigation is slow. The Report identifies that the current targets are not practical as external factors impact on their achievement. The volume of litigation, its allocation on the court roll and the readiness of the parties to proceed with and finalise matters are all factors beyond the control of State Attorneys.

### Issues for Consideration

- **Translation Unit.** The Report indicates that the Department plans to start a translation service to translate Bills tabled in Parliament into all official languages. What is the progress in this regard?
- **The Master of the High Court:** The Report indicates that there has been consultation with SARS, the Department of Home Affairs, the Association of Trust Companies, the Law Society of South Africa, COSATU, and NEDLAW to improve collaboration in the delivery of services. What was the outcome of such consultation, and has it translated into improved service delivery?
- **Guardian's Fund:** The Auditor-General failed to express an opinion on the Fund for 2005/2006. Can the Department provide details on the Guardian's Fund Accounting Turnaround Project?
- **Insolvency.** The Report indicates that lack of capacity is a challenge. Can the Department provide further explanation of this lack of capacity, and how it impacts on service delivery? The Report also states that there is no need to regulate the industry. What is meant by this statement?

### 7.4. Programme 4 - National Prosecuting Authority

The Department's Annual Report does not contain any details on service delivery under this Programme, as this information is captured in a separate annual report published for the NPA.

### 7.5. Programme 5 - Auxiliary and Associated Services

The objective of this Programme is to support the National Crime Prevention Strategy and guarantee the independence and integrity of the administration of justice by providing additional legal services and advice to vulnerable groups.



**Table 4: Selected service delivery indicators as reported in the Annual Report 2006/2007**

Subprogramme	Output	Measure	Target 2006/07	Actual
National Crime Prevention Strategy	IT resources	No. of users to receive infrastructure	100%	TARGET MET
		No. of users connected to network	All users at implemented sites	15 000 connected UNCLEAR IF TARGET MET
President's Fund	TRC reparation payments.	Extent of reparation payments made.	To pay 6 837 beneficiaries (Note the ENE reports the target as reparations paid to all victims)	Paid 15 610 beneficiaries R519 million. (Difficulties in locating beneficiaries) TARGET MET ITO ARBUT NOT ITO ENE

**Overview of service delivery achievements:**

**Information Technology:**

- E-scheduler is being rolled out to 436 sites. (Allows for courts to register and schedule court cases electronically, as well as extract information relating to court performance). (Note that National Treasury indicated that it was rolled out to only 60 sites for 2006/2007).
- Digital Nervous System III project successfully completed. This project aimed at providing connectivity to smaller remote regions previously overlooked. Includes ICT infrastructure, hardware, various applications, and IT literacy training). 94% of sites now connected.

**Truth and Reconciliation Unit**

- A progress report on government's implementation of the Truth and Reconciliation Commission's recommendations was compiled and updated.
- The Exhumation Policy on Missing Persons Cases Report to the TRC was drafted.
- Unit co-ordinated handover ceremonies and reburials of remains of persons exhumed by the Missing Persons Task Team. This included ensuring that families received the necessary assistance such as grief counselling, apply for reparation grants and special pension benefits.
- Draft regulations to allow for access to monies in President's Fund were submitted for Ministerial approval. The remaining monies are to be used for a variety of reparation purposes, including medical benefits and other forms of social assistance and community rehabilitation.

**Issues for consideration**

- Please explain in everyday terms what connectivity in terms of DNS will mean for the increased operational efficiency of the Department?
- Justice Deposit Account System: Please explain how this initiative addresses non-service delivery?

**8. HUMAN RESOURCE MANAGEMENT**

Key issues that emerge for 2006/2007 include:

- The staff establishment grew by 7.2% with the creation of 1 017 new posts. The following vacant posts were filled: 345 clerks, 215 court managers, 142 maintenance investigators, 100 senior and family councillors and 85 maintenance officers



- All human resource policies were reviewed and are being finalised.
- A turnaround time strategy for handling of misconduct cases was implemented.
- The employment equity plan was signed and displayed and the employment equity report submitted to the Department of Labour. A breakdown of staff for race, gender and disability reveals as follows:

**Table 5: Breakdown of staff: Race, Gender and Disability**

Male (43%)					Female (56%)				
African	Coloured	Indian	Total Blacks	White	African	Coloured	Indian	Total Blacks	White
4 904	499	264	5 667	1 227	5 638	922	426	6 986	2 134
30.6%	3%	1.6%	35.4%	7%	35.2%	5.7%	2.6%	43%	13.3%
Persons with disabilities – Total 184 – 1.2%									

- The turnaround time on recruitment has been reduced to an average of 4 months. The target is 3 months.

#### Challenges

Key challenges that emerged include:

**Vacancies.** A key challenge is the high vacancy and staff turnover rates. The Department reports extremely high overall vacancy rates (23%). The vacancy rate for critical posts is of particular concern as the reduction of criminal case backlogs is a government priority (See Table below). People are the main driver of the justice system. Therefore, continued high vacancy rates on critical positions will have a negative impact on service delivery. This concern is echoed by the Auditor-General, who notes that the Department does not have a Human Resources plan as required in terms of Public Service regulations.

**Table 6: Vacancy rates: Critical Posts**

	Financed posts	Vacant posts	Vacancy rate
Total of DoJ&CD*	22 683	4 772*	21%*
Judges	498	278	56%
Magistrates	2215	425	19%
Prosecutors	2700	593	20%
Advocates	431	79	18%
Attorneys	283	120	42%

Source National Treasury: Presentation to Joint Budget Committee 6 June 2007.

This is for the Department of Justice in its entirety, including the NPA.

**Turnover rates.** The average turnover rate is 61.7%. According to the report, the number of employees for critical occupations is 15 772. There were 10 756 appointments and transfers within the Department, and 9 649 transfers and terminations out of the Department. This resulted in the turnover rate of 61.7%.

#### Issues for Consideration

- The Report states a vacancy rate of 23% (the target is 15%). Why is there such a high vacancy rate?
- Have there been difficulties in recruiting staff and, if so, what is the nature of such difficulties? Which offices experience the most difficulty in filling posts?
- Can the Department how it derives at its turnover rates as they appear to be unusually high?
- The Department employs very few disabled persons (184/16 014 or 1.1%). Can the Department explain this?





## 9. BREAKDOWN OF VOTED FUNDS AND SPENDING

Table 7: Department of Justice and Constitutional Development (excluding National Prosecuting Authority) spending 2005/2006 and 2006/2007

	2005/2006 R'000	2006/2007 R'000
Total amount appropriated (excluding the NPA)	3 738 043	4 893 562
Less total expenditure (excluding the NPA)	3 483 318	4 469 462
Under-spent	254 725	424 100
% under-spent	6.8%	8.7%

The revised estimate reflects that the Department received an appropriation of R 6.4 billion for 2006/2007. However, as the National Prosecuting Authority (NPA) accounts separately for its spending, the Department's budget in fact amounted to R 4.8 billion. Also, Programme 5: Auxiliary and Associated Services includes 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. It is noteworthy that even so the Department has underspent for both 2005/2006 (by 6.8%) and 2006/2007 (by 8.7%). Such underspending has occurred for all of the Department's core programmes. Key underspending occurred in Administration: 10.8% and court services: 11.6%.

**Spending patterns.** The Department spent below their expenditure for 9 months of the financial year. In March 2007, spending spiked. A contributing factor was the digital recording system, which received the largest share of approved roll-overs.

**Virements** for the Department of Justice amounted to a total of 536 million (7.1% of the total budget). This is very close to the Treasury limits of 8%.

**Requested rollovers.** The following rollovers were requested: R45.5 million for a dispute between NPA and Imperial Car rental; R 129 million for equipment, furniture and vehicles; and R182 million for building ramps in courts; and R81 million for refurbishment of the NPA offices.

### *Issues for consideration*

The Department has underspent on its Budget. The reasons given in the Annual Report refer to vacancies, problems with the delivery of orders and capital works projects not being finalised. Please expand on the reasons for the (increased) underspending?

## 10. REPORT OF THE AUDITOR GENERAL (PART 4A OF THE ANNUAL REPORT)

As was the case in 2005/06, the Auditor General gives a qualified opinion on the financial statements. The basis for the Auditor-General's qualified opinion related to the Department's administration of Third-Party Funds (formerly referred to as Monies in Trust) and asset management

- **Third Party Funds** (Note – Third-Party Funds are reported on separately in Part 4d of the Annual Report. The Auditor-General's report in this regard expresses a disclaimer. However, the Department's administration of Third Party Funds has also impacted negatively on the Auditor-General's assessment of the Department's financial statements and performance as expressed in Part 4a of the Annual Report).



This item also formed part of the reason for the Department receiving a qualified audit in 2005/06. The Department administers funds on behalf of third parties (for example, maintenance beneficiaries, the National Revenue Fund, and local authorities). This entails collecting funds on behalf of others and then paying them over to those parties who are entitled to receive the funds. The types of funds/monies collected by the Department in respect of Third-Party Funds include admission of guilt fines, bail monies, court fines, Estate monies, maintenance, State attorney monies, compensatory fines, deferred fines and payment to court. It should be noted that historically these funds are reported on as a separate reporting entity.

Internal controls in respect of these Funds have been inadequate and full and proper accounting records have not been maintained since 1994. In 2002/03, Monies in Trust (as Third Party Funds was formerly known) was separated from the Vote account – hence the separate report. In that financial year, the Auditor General issued a disclaimer in the absence of financial statements. In 2003/04, the Department did not submit financial statements, while the Department produced a partial set of annual financial statements that covered the Monies in Trust operations for March 2005. In 2005/06, the Department compiled a set of incomplete financial statements for the year. These statements were submitted late (December 2006). The Auditor-General has not informed the Department of his opinion on these statements but the Department anticipates that there will be a disclaimer as the information received from many offices is incorrect, incomplete, inaccurate and cannot be confirmed or verified. As this situation continued during the 2006/07 financial year, the Auditor General has issued a disclaimer of opinion (See Part 4d of the Annual Report). The basis for the disclaimer lies in the inability to produce an accurate set of financial statements and the absence of supporting documentation for audit purposes. Additional factors include:

- ❖ Deficiencies in the internal control environment, which are mainly attributable to a lack of implementation of departmental policies and procedures. The audit found that subsidiary registers were incomplete; bank reconciliations were not performed or reviewed; inadequate document maintenance on case files; and non-payment of funds due to third parties.
- ❖ The uncertain legal status of Third-Party Funds.
- ❖ Allegations of financial misconduct and irregularities that are currently under investigation.

The Department's administration of Third-Party Funds also forms part of the reason for the qualified opinion expressed by the Auditor General on the Department's financial statements and performance. The Department has totally excluded the liability and bank balance relating to Third Party Funds in its financial statements, resulting in a material misstatement of the financial statements. In the emphasis of matter, the Auditor-General expresses the opinion that the lack of effective and efficient financial management system of the Third Party Funds resulted in the Department being unable to quantify with certainty the exact liability and potential claims against the Department.

- **Asset Management.** As a result of ineffective asset management, the Auditor-General was unable to confirm the completeness, existence of assets and the accuracy of the closing balance of the assets (value R535 622 000).

#### **Emphasis of Matter**

In addition attention was drawn in the 'emphasis of matter' to the following issues:



- **Potential claims against the Department.** This related to the Department's inability to quantify with certainty the exact liability and potential claims against the Department in respect of Third-Party Funds. (See also the comments under Third-Party Funds).
- **Various information systems matters.**
- **Non-compliance with laws and regulations.** Public Service Regulations. Declaration of interest. The declarations of designated employees were not submitted to the Department of Public Service and Administration within the required timeframes.
- **Material corrections** required to the financial statements submitted for audit.
- **Investigation into award of contract to supplier.** At the request of the Department, the Auditor-General is conducting a special audit into the procurement process of the award of a contract to a supplier. The results will be reported to management separately.
- **Audit findings.** The Auditor-General also drew attention to the fact that the Department has not reported on all the predetermined objectives as required by section 40(3)(a) of the PFMA. Also, the Auditor-General was unable to obtain all the quarterly reports. The Accounting Officer attributes this to a lack of clear policy and procedure framework to standardise, enforce and guide performance reporting (p 100 of the Annual Report).

#### *Issues for Consideration*

- What is the Department doing to ensure that these matters are being addressed?
- What progress has been made in correcting each of the items identified by the Auditor-General?
- The Auditor-General indicates that he was unable to obtain all the quarterly reports as required by section 40(3)(a) of the PFMA. Are quarterly reports available? What is the explanation for the Auditor-General's difficulty?
- What is the Department doing to address the problems with Third-Party Funds?
- In 2005/2006, the Auditor-General was unable to provide an opinion with regard to the Guardian's Fund. The Department has instituted a turnaround project in this regard. Please could the Department provide an update on progress made?

#### **11. CONCLUDING REMARKS**

Despite significant achievements, the Department continues to experience a number of problems of sufficient severity for the Auditor-General to provide a qualified opinion. Many of the Department's challenges/problems appear to find their source in staff vacancies and skills shortages. In addition, outdated systems and manual processes are creating problems. The Department is clearly aware of this and is busy computerising its systems. Nevertheless, these outdated systems have lent to an absence of internal controls, particularly in respect of Third-Party Funds and Asset Management. The qualification with respect to Third Party Funds is enormous concern as, in the opinion of the Auditor-General, it exposes the Department to liability.

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#### **Sources**

Estimates of National Expenditure 2006.

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

Department of Justice and Constitutional Development, Annual Report 2005/2006.

Department of Justice and Constitutional Development, Annual Report, Strategic Plan 2005 – 2008.