



Promoting
Pre-trial Justice
in Africa

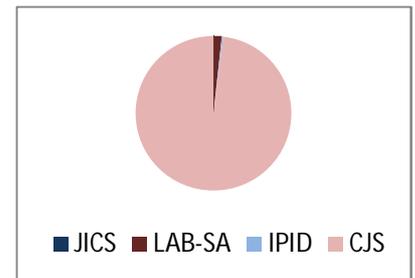


Submission by Civil Society Prison Reform Initiative (CSPRI) on the 2013 Budget Vote to the Portfolio Committee on Justice and Constitutional Development.

Protecting rights in the criminal justice system

Imperfections in the administration of criminal justice are inevitable. Democratic states employ a range of checks and balances in the application of criminal justice. Legal Aid South Africa, the Independent Policing Investigative Directorate (IPID) and the Judicial Inspectorate of Correctional Services (JICS) are state-funded entities with specific mandates to protect rights within the criminal justice system. It is incumbent on a democratic, rights-based state to ensure that such state entities are adequately supported in carrying out their mandates. It is incumbent on a Justice Committee to consider this across the criminal justice system. *The chart to the right shows the allocations to these institutions compared to allocations related directly to criminal justice.*

CSPRI calls on Parliament to consider whether the allocations to entities designed to protect the rights of persons in the criminal justice system are sufficient to operationalize that protection.



Legal Aid South Africa

Pre-trial detention the world over disproportionately affects poor people, who are more likely to be arbitrarily arrested or inappropriately affected by police action. Poor people are unable to pay for a lawyer. The *United Nations' Principles and Guidelines on Access to Legal Aid* recommend a fair allocation of the national budget to legal aid compared to the allocation for prosecution. This is particularly important in countries such as South Africa, in which a large proportion of the population is poor and an adversarial criminal justice system based on the notion of equal parties before an impartial court exists. Without legal aid that notion cannot be sustained.

The allocation to Legal Aid South Africa is approximately 8% of the allocation to the National Prosecuting Authority and Legal Aid South Africa. More than 12 times as much money is allocated to prosecution, compared to legal representation of indigent accused. CSPRI calls on Parliament to consider whether this is a fair allocation. The current expenditure estimates do not indicate a change in this percentage forward to 2015/16.

In considering the fairness of the allocation, Parliament should bear in mind that available data shows that 5% of accused detained awaiting trial endure more than two years awaiting trial and around 50% of all criminal matters end in withdrawal. Adequate legal representation during the pre-trial phase may assist in bringing unfounded cases more speedily to conclusion or reduce the occurrence of inappropriate long-term pre-trial detention, in turn reducing costs to other components of the criminal justice system.

The Independent Policing Investigative Directorate

Similarly CSPRI calls on Parliament to consider the allocation to the Independent Policing Investigative Directorate (IPID), compared to the allocation to Visible Policing. Although the allocation to IPID is set to increase by 25% over the period 2012/13 to 2015/16, the proportion of the combined allocations which IPID receives will by 2015/16 remain at less than 1% (0.69%). Recent highly publicised incidents of inappropriate police action resulting in death underscore the call for adequate funding of IPID.

The Judicial Inspectorate of Correctional Services

CSPRI calls on Parliament to require that the allocation to the Judicial Inspectorate of Correctional Services (JICS) to be itemised as a discrete entity in expenditure estimates. Currently the allocation is not separately itemised. Perusal of the JICS Annual Report, reveals that the current allocation to JICS comprises less than 0.1% of the allocation to the Department of Correctional Services. CSPRI submits this insufficient to support adequate oversight of a Correctional System responsible for almost 160 000 prisoners on any given day and calls on Parliament to work towards an adjustment of this allocation.