

CSPRI SUBMISSION ON THE CORRECTIONAL SERVICES BUDGET VOTE, VOTE 20, 2010/11



Introduction

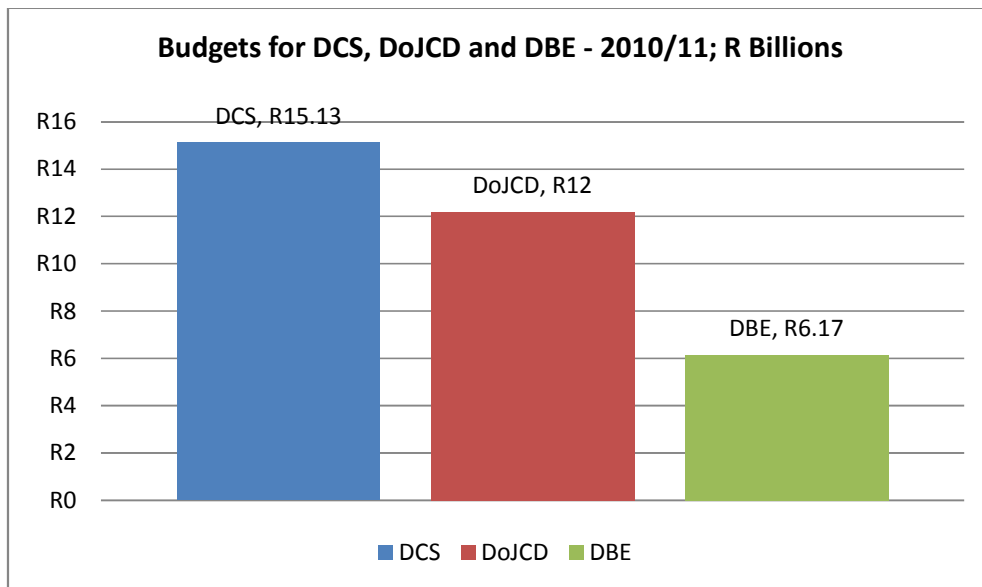
1. The Civil Society Prison Reform Initiative (CSPRI) is a project of the Community Law Centre at the University of the Western Cape and was established in 2003. CSPRI focuses on prisons and corrections, with the aim of improving the human rights situation in South African prisons through research-based lobbying and advocacy, and collaboration with civil society structures. By stimulating public debate and participation in government structures, the aim is to influence the development of appropriate human rights oriented transformation in South African Correctional Services.
2. We wish to express our gratitude to the Portfolio Committee on Correctional Services for the invitation to make a submission on the budget vote. This is always a highlight on the calendar. This submission will focus on 5 aspects of the budget vote which are, in our view, fundamental to the direction of the Department of Correctional Services (DCS). These are:
 - the budget in relation to other budgets;
 - meeting the minimum standards of humane detention;
 - the performance indicators;
 - high prison construction costs; and
 - social reintegration.
3. As a matter of process it needs to be emphasised that the Department of Correctional Services Strategic Plan 2010/11-2014/5 accompanying the budget became available only 3 March 2010 and then only in CD ROM format. The budget vote and the strategic plan must be read together, but the late release of the Strategic Plan makes it extremely difficult, if not impossible, to conduct a thorough analysis of both documents and provide the Portfolio Committee on Correctional Services with a well-informed input. In 2009 the situation was similar when the strategic plan was not available prior to the public hearings. While CSPRI will continue to participate in the upcoming public hearings, we wish to place on record that the late release of the strategic plan accompanying the budget vote places the entire process of public participation at risk.
4. Many of the issues raised in this submission have been raised in the past with this committee as well as its predecessor. CSPRI continues to be concerned about expenditure on capital intensive projects; the lack of alignment between the White

Paper and the budget; and the low outputs in respect of objectives supportive of the rehabilitation and prisoner re-entry.

The budget in perspective

5. At a broader level it must be asked: How does the DCS contribute to create a safer society and promote the values and principles underlying the Constitution? Moreover, it should be asked if the proposed allocation is supportive of these goals. In the past 15 years the DCS has had a chequered history that initially resulted in the appointment of the Jali Commission. The Jali Commission's findings led to the appointment of the Special Investigating Unit (SIU) to conduct a number of investigations. However, there was reason to extend the contract of the SIU to investigate a number of large tenders. The Committee is versed in the most recent preliminary findings of the SIU and it is not necessary to repeat them here, save to say that the findings are of an extremely serious nature with top officials reportedly implicated in corruption. It should therefore not be surprising that public confidence in the DCS is perhaps at an all-time low. The persistent allegations of corruption in the DCS cannot be ignored when assessing the budget vote. It must be acknowledged that the persistence of these allegations does not instil confidence in the tax payer that his or her taxes are utilised appropriately.
6. The DCS budget has grown rapidly over the past 15 years and while such growth may in certain circumstances be justified, the size of the DCS budget needs to be compared with other budgets. In Figure 1 below the 2010/11 total allocations for the DCS, Department of Justice and Constitutional Development (DoJCD) and the Department of Basic Education (DBE) are presented. The DoJCD is, amongst other, responsible for the entire criminal and civil legal system; the National Prosecuting Authority; and the SA Human Rights Commission. The DBE is responsible for the more than 7 million children in our schooling system. On the other hand the DCS is responsible for an estimated 165 000 prisoners in custody at any given point. It is therefore somewhat surprising that the total allocation for DCS (R15.1 billion) is more than double the total allocation for the DBE (R6.1 billion) and nearly 25% more than the DoJCD allocation. **It is indeed an unfortunate situation that we are now spending more than double the amount on prisoners than on the education of children in South Africa.**

Figure 1



7. CSPRI also takes note of the fact that, at the time of writing, the DCS had an acting Chief Financial Officer; an acting National Commissioner has been at the helm for several months, and the DCS has received its sixth consecutive qualified audit. Moreover, the Auditor General has found, in respect of the 2008/9 financial year, wasteful and fruitless expenditure to the value of R344 million.¹ These attributes do not instil a sense of confidence in the DCS.

Meeting the minimum standards of humane detention

8. Section 2 of the Correctional Services Act requires that prisoners must be detained under conditions of human dignity. Overcrowding in many of our prisons make this impossible. However, not all prisons are overcrowded. In its 2007/8 annual report the Judicial Inspectorate for Correctional Services (JICS) reported on an infrastructural audit it undertook at 224 of the 237 prisons. Amongst others, it found that:
 - At 19 prisons prisoners were not issued with eating utensils;
 - At 6 prisons, prisoners were not issued with beds;
 - At 102 prisons there were no private search areas;
 - At 94 prisons there were no facilities to separate prisoners with contagious diseases;
 - Severe under-utilisation of technical workshops;
 - At more than 40% of the prisons there were no libraries
9. In its submission on the 2008/9 DCS Annual Report, CSPRI noted with extreme concern that the DCS had incurred liabilities in excess of R988 million as a result of "Bodily

¹ "Audits show waste of hundreds of millions in taxpayers' money" By Florence de Vries, *Business Report*, 27 January 2010, <http://www.busrep.co.za/index.php?fArticleId=5327480>

injury/assault” (p. 148). This amount constitutes 74% of total claims against the department, being R1.76 billion. It is further noted that this amount increased more than ten-fold from the 2007/8 level of R81 million. This high amount is interpreted to be indicative of the Department’s failure to ensure safe custody to prisoners. It is regrettably the tax-payer that must foot the bill. CSPRI submits that a thorough investigation must be done of this situation; and where officials are guilty in law of incurring these liabilities, the costs should be recovered from them as provided for in the *Guidelines to the Public Finance Management Act*: “Losses or damages suffered by a department because of an act committed or omitted by an official must be recovered from the official if he or she is liable in law.”²

This does, however, not absolve the Department from its primary responsibility, namely to ensure safe custody. The *Guidelines to the Public Finance Management Act* also states that “The accounting officer may write off losses or damages arising from criminal acts or omissions and other unavoidable causes if, after a thorough investigation, it is found that the loss or damage is irrecoverable. The Act requires all such write-offs to be disclosed in the annual report, and the policy adopted to be set out in a note to the annual financial statements.”³ Annexure 3B and Annexure 4 (pp. 148-149) provide some information on liabilities and Recoverable Claims, but the “policy” referred to in the *Guidelines to the Public Finance Management Act* was not found in the annual report. Moreover, Annexure 4 does not provide information that would indicate that liabilities as a result of “Bodily injury/Assault” were recovered from officials who are liable in law.

10. Ensuring prisoners’ safety under humane conditions of detention must be the critical objective of the DCS. It is unacceptable that prisoners continue to be detained under inhumane conditions and that they often are victimised by officials and/or fellow prisoners.
11. As will be elaborated on further below, the 2010/11 budget vote continues the trend of allocating funds to high-cost and often low impact infrastructure and technology projects, whilst little is being done about the fundamentals of humane detention and combating impunity in the prison system. It is thus submitted that the Committee should enquire what steps the DCS has undertaken to:
 - Address the shortcomings identified by the JICS in its 2007/8 annual report
 - Address the risks the DCS is exposed to in respect of litigation alleging human rights violations
 - Recoup the losses the DCS has incurred as a result of acts committed or omitted by officials with specific reference to human rights violations.

² National Treasury (2000) *Guide for Accounting Officers Public Finance Management Act*, National Treasury, Pretoria, p. 37.

³ National Treasury (2000) *Guide for Accounting Officers Public Finance Management Act*, National Treasury, Pretoria, p. 38.

The performance indicators

12. The selected performance indicators presented in the budget vote and contained in Table 20.1 (pp. 3-4) are reproduced here with further analysis (See Table 1 below). In respect of each of the indicators, the question must be asked: At what cost will this improvement be achieved? The projected improvement is reflected in the third column of Table 1. For each indicator a cost-benefit analysis must be done. For example, it must be asked: *What will it cost to reduce the number of escapes from the 4 per 10 000 prisoners to 3 per 10 000 prisoners?* The question can similarly be asked: *What will it cost to reduce overcrowding by 6%, as is being proposed in the budget vote?* This section of the submission highlights a number of concerns in this regard. The intention here is to avoid projects that are high in cost, but low in impact. On the other hand, projects that are low in cost and high in impact should be promoted.

Table 1

Indicator	Current 2009/10	Target 2012/13	Improvement from 2010/11 to 2012/13
Number of escapes from correctional centres and remand detention facilities (per 10 000 inmates) per year	4/10 000	3/10 000	1/10 000
Number of assaults in correctional centres and remand detention facilities (per 10 000 inmates) per year	83/10 00	61/10 000	22/10 000
Percentage of overcrowding in correctional centres and remand detention facilities	40%	34%	6%
Percentage of incarcerated offenders with sentences longer than 24 months with correctional sentence plans (calculated against the projected average of 41 828 offenders with sentences longer than 24 months without correctional sentence plans)	5600	14 640	9040
Number of offenders on antiretroviral treatment per year	5100	7056	24%
Number of offenders participating in literacy programmes per year	2082	2765	32%
Percentage of offenders participating in skills development programmes (calculated against the total number of offenders eligible for skills development programmes) in terms of their correctional services plans	27.8%	31.1%	3.3%
Percentage of parole violations per 10 000 parolees	28.1%	21.7%	6.4%
Number of new bed spaces created	3338	14 525	

The information presented thus suggests that certain DCS initiatives are reaching a point of diminishing returns. To create any further improvement will be more expensive than the value that it adds to the Department's operations. The following activities, in CSPRI's view fall into this category:

- [vetting security personnel and] installing biometric access and x-rays at 16 correctional facilities by 2012/13 (p. 9)
- implementing the anti-gang and security technology strategies at 35 correctional facilities by 2012/13 (p. 9)
- R52.1 million is to be paid to a service provider in 2009/10 for the maintenance and staffing of the security control rooms and the maintenance of security access control systems and security fences.” (p. 11)

The three items listed above indicate the DCS’s intentions to continue spending of security hardware, but that the improvements projected are in fact extremely low, namely an improvement of one escape per 10 000 prisoners. Moreover, the DCS intends to continue using a private sector company to maintain and operate the security control rooms. It should be borne in mind that the initial plan was that DCS would take over this function once the contract of the service provider came to an end in 2009. Security at state institutions is fundamentally the responsibility of the state and in this case, the DCS. It is also noted that the DCS plans to continue with the privatisation of nutritional services and plans to privatise pharmaceutical services (p. 15). A total of R53.1 million has been set aside to pay consultants to undertake feasibility studies in this regard. Private sector involvement in the prison system may have advantages, particularly when specialised skills are required. Questions, however, remain as to the desirability of this level of private sector involvement to deliver services that are in fact core functions of the Department, such as providing prisoners with food and medication. The situation is exacerbated by the fact that the Department employs officials to fulfil these functions. An added negative consequence is that the Department will remain dependent on private sector contractors for certain services, as was recently demonstrated by the lapsing of the Sondolo IT contract and security control rooms were left unstaffed.

13. A reduction of 6% in overcrowding is projected over the MTEF. In real numbers this means 17 500 more bed spaces (3000 at Kimberley; 12 000 at four new PPPs, and 2525 created through upgrading existing facilities). The Kimberley prison already cost the tax payer R600 million more than the initial estimate. This is cause for deep concern when one considers that plans are afoot for the construction of four facilities similar to Kimberley. The 12 000 new beds under the proposed PPPs will cost an estimated R3.94 billion (based on the costs of the Kimberley facility). The per bed space cost will be R328 833.
14. The budget vote reports that an additional 2525 bed spaces⁴ will be created through the upgrading of existing facilities (p. 21). Additional Table 20.E explains this in more detail (p.27).⁵ Based on this information calculations were made to determine the per bed construction costs at these facilities. While it is accepted that at least some of these projects includes other maintenance and upgrading as well, the measurement being

⁴ Please note that there is a difference of 74 bed spaces between the figure reported here and the calculations made in Table 2. The difference does not seem to be material to the point being raised here.

⁵ Please note that there are differences in respect of this Table in the two versions of the Budget Vote (the booklet format and the original format). In this case the information presented in the original format is relied on and not the booklet format. Also note that Table 20 E in the original format is Table 20F in the booklet format.

used here is the number of bed spaces gained. This is presented in Table 2 below. For illustrative purposes, Kimberley is also included, but excluded from the “overall cost per bed” calculation.

Table 2

Prison	Number of new beds	Total cost	Cost per bed
Kimberley	3000	R 986,500,000	R 328,833
Brandvlei	346	R 386,800,000	R 1,117,919
Van Rhynsdorp	338	R 278,500,000	R 823,964
Ceres	262	R 70,600,000	R 269,466
Burgersdorp	500	R 298,000,000	R 596,000
Tzaneen	435	R 264,000,000	R 606,897
Bergville	29	R 39,000,000	R 1,344,828
Ingwavuma	198	R 278,000,000	R 1,404,040
Zeerust	127	R 230,000,000	R 1,811,024
Nkandla	153	R 225,000,000	R 1,470,588
Mapumulo	39	R 89,000,000	R 2,282,051
Matatiele	24	R 19,000,000	R 791,667
Total	2451	R 2,177,900,000	
Overall cost per bed			R 888,576

Table 2 indicates , amongst others that the 39 bed spaces created at Mapumulo will cost R89 million or R2.2 million per bed space. The average cost per bed space for all facilities (excluding Kimberley) is R888 576. At nearly R900 000 per bed space, questions need to be asked about the exorbitant costs. It should equally be asked why Kimberley could be built at R328 33 per bed space compared to the more than three times higher cost at the other prisons, and if this indeed correct, why was this cost-saving measures not used at the other facilities.

15. The proposed expenditure on new prisons (estimated at R3.94 billion) stands in sharp contrast to the lukewarm promises made for more classrooms to enable more prisoners to have access to education. On p. 16 of the budget vote it is stated that: “The department does not have the human resources or infrastructure to support the requirements of full-time tuition. Arrangements for acquiring pre-fabricated classrooms will be made and acquiring suitable infrastructure requirements will be explored over the medium term.” If the DCS does not have the necessary human resources it should develop a plan to acquire the necessary human resources, or enable the Dept. of Education to render educational services in prisons. Moreover, if it does not have the necessary infrastructure, it can develop such infrastructure, instead of a vague promise regarding “pre-fabricated classrooms”.
16. Over the years CSPRI and other stakeholders (including the Inspecting Judge) have consistently emphasised other solutions to alleviate overcrowding because it is well-

known that prison construction is not a solution for prison overcrowding. Prison overcrowding in South Africa is a systemic problem caused by inappropriate arrests; the management of cases in the criminal justice system; the underutilisation of mechanisms available in law; and the over-emphasis of imprisonment and particularly long terms of imprisonment imposed. The construction of more prison space will not alleviate overcrowding in the medium to long term. The alternatives are, amongst others:

- Comprehensive sentencing reform to facilitate the use of non-custodial measures;
- Screening cases at an early stage to avoid withdrawal or scrapping from the roll after lengthy detention periods;
- Review of sentencing legislation to guide presiding officers;
- Avoiding the use of unaffordable bail;
- Effective utilisation of plea and sentence agreements; and
- Heads of Correctional Centres to utilise section 63A of the Criminal Procedure Act

17. Three other performance indicators need to be mentioned here: (a) the percentage of offenders with sentence plans (b) the number of offenders in literacy programmes (c) the number of offenders in skills development programmes. These three indicators are central to the overall vision of the DCS as articulated in the White Paper. The extremely low targets set in respect of each of these remain a matter for concern and CSPRI has noted this in its submission on the 2009 budget vote.
18. There were 101 370 prisoners in custody on 31 December 2010 who were serving sentences of longer than 24 months.⁶ The target at the end of 2012/13 is for 14 640 prisoners in this category to have a sentence plan. This is only 14% of the total number of prisoners entitled by law to have sentence plans.⁷
19. Whilst it is unknown how many prisoners are illiterate, an annual target of less than 3000 prisoners participating in literacy programmes appear to be extremely low. The number of offenders participating in skills development looks more promising, but the target is conditional as it is set against the number of offenders who is entitled to skills development in terms of their sentence plans. It is therefore unclear how 48 186 offenders will be involved in skills development (as required by their sentence plans) but only 8400 offenders will have sentence plans in 2010/11.
20. In numerous instances in the budget vote the increase in expenditure is motivated by the following, or similar, phrases: “adjustment of staff compensation” and “the implementation of the occupation specific dispensation” (OSD) and “the implementation of seven-day establishment”. Presumably the implementation of the OSD and the seven-day establishment should have a marked and very visible impact on the operations of DCS. Running a seven-day establishment and remunerating staff accordingly is indeed an ideal situation and should give rise to optimism. However, the targets set over the MTEF do not in any material manner reflect how the 7-day establishment will increase the Department’s ability to deliver on its mandate and in

⁶ Statistics obtained from the DCS website.

⁷ Section 38 of the Correctional Services Act (as amended)

particular how it will increase delivery in respect of development, rehabilitation and reintegration services. The targets set for the next three years show a growth pattern very similar to the targets sets prior to 2009/10. In this regard we request the Committee to seek clarification from the DCS on how the OSD and the 7-day establishment will increase the Department's performance in respect of services to prisoners.

Social reintegration

21. The Social Reintegration programme, which should be a flagship programme in the DCS, is indeed a stepchild. A mere 3.8% of the budget is allocated to this programme. It must be emphasised that the success or failure of the Department's interventions with offenders during their imprisonment should be measured by their ability to re-enter society and refrain from re-offending. Once released, offenders are faced with the same, if not additional, risks that they faced prior to imprisonment. Effective post-release support is therefore critical to bring the investment made by the DCS during imprisonment to fruition. It would in fact be wasteful and counter-productive to release offenders without accessible post-release support services.
22. CSPRI has conducted its own research into the matter in two studies with former prisoners. The findings confirmed that former prisoners had received no post-release support services. While such services may be delivered by non-governmental organisation, prisoners are seldom informed about where and how to access such services. While the DCS may argue, as it does on p. 18 of the budget vote, that it needs the cooperation of other stakeholders; it cannot abdicate itself from taking responsibility for those placed in its care, including those offenders placed under community corrections. The DCS acknowledges the important role that civil society organisations play in this regard, but there still is no provision in the budget for the financial support of these organisations despite their direct contributions to the DCS mandate. This again stands in sharp contrast to the billions that have been spent on security hardware in the past ten years.
23. It is noted with deep concern that only two objectives are articulated under the Social reintegration programme: (a) to increase the number of probationers, and (b) decrease the number of parole violations. In effect, community corrections (parole and correctional supervision) have been turned into a policing function - officials purely monitor whether or not parolees and probationers are complying with their conditions and little post-release support services are rendered. Moreover, the White Paper is clear that there must be stakeholder engagement to render services to released offenders. The most recent Strategic Plan (2010/11-2014/5) articulates an objective in this regard on p. 64 and requires that Service Level Agreements (SLA) be entered into with local government and other stakeholders. However, a similar target appears in the previous Strategic Plan (2009/10) on p. 82. The 2008/9 Annual Report (on p. 68) merely states that "guidelines for partnerships" have been developed. The Strategic Plan of 2006/7, on p. 69, has a similar target. It appears then that since the White Paper was adopted in 2005 and the engagement of stakeholders has been in the successive strategic plans of the DCS, very little has materialised. Since 2005 the DCS has spent billions of Rand to

affect a marginal reduction in escapes, while a comparatively low cost investment in social reintegration services and agreements with civil society would have yielded high impact service delivery to released offenders.

Conclusion

In view of the above CSPRI submits the following:

- We continue to see the same problems and questions raised in successive budget votes and little change seems to take place. **We request the Committee to engage assertively with the DCS to ensure that problems identified are indeed addressed.**
- High-cost and low-impact projects are undesirable and should be avoided. **We request the Committee to identify such projects and seek clarification from the DCS how these projects will contribute to the Department's overall output and utilise tax payer money effectively and efficiently.**
- Meeting the minimum standards of safe humane detention must be the Department's priority. We encourage and will support where possible the Committee to undertake oversight visits. **We further call on the Committee to actively monitor the problems identified by the Judicial Inspectorate and call the Department to account in this regard. We further request the Committee to investigate the extremely high legal liabilities incurred by the DCS as well as the steps taken by the DCS to recoup these losses from the officials who have been found guilty of violating the rights of prisoners.**
- The performance indicators in the budget vote require urgent review. **We request the Committee to seek clarification from the DCS on how the seven-day establishment will increase the Department's capacity and how this will affect target setting.**
- The cost of creating additional bed space through the Facilities maintenance programme is by all accounts exorbitant. **We request the Committee to seek clarification from the Department on these extremely high construction costs.**
- The Social Reintegration programme is central to the overall impact of the DCS in supporting a safer society. **We request the Committee to seek clarification from the Department how it will re-engineer the Social reintegration Programme to make a meaningful contribution to prisoner re-entry.**

End

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10 March 2010