



Submission by the Civil Society Prison Reform Initiative (CSPRI) to the Portfolio Committee on Justice and Constitutional Development on the National Prosecuting Authority Annual Report, 16 October 2012.

Right to Liberty and Pre-trial Detention

Data from the Department of Correctional Services shows that 23 546 people (51%) had been held in custody awaiting trial for more than three months as at 31 March 2012. As many as 2 470 (5%) had been held for more than two years, while 248 people had been held for more than four years.

Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause and not to be detained without trial.¹ Extended time periods in custody awaiting trial unjustifiably limit this right. This is particularly so in cases where no prosecution is ultimately carried out.

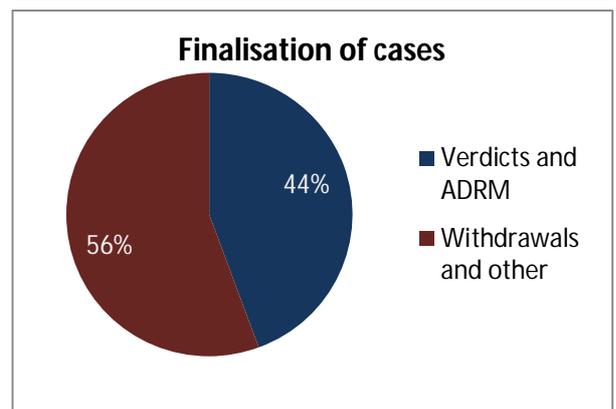
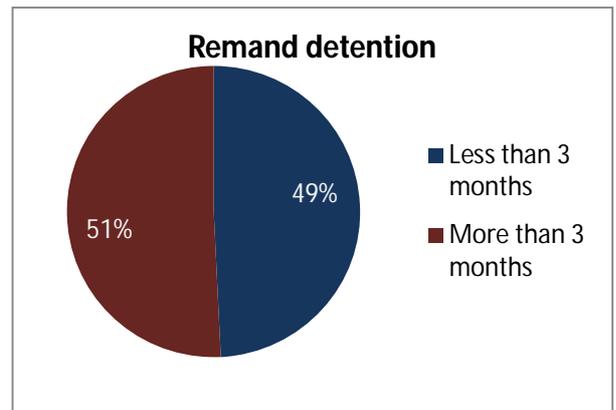
The National Prosecuting Authority (NPA) Annual Report for 2011/2012 under consideration says 930 932 cases were disposed of during 2011/2012. As many as 517 579 (56% of all cases disposed) were finalised in ways other than by verdict or dispute resolution i.e. by withdrawal or other removal of the case from the court roll.

A study in 2008 found that in the courts sampled, almost half of cases (48%) were withdrawn against accused persons who were still in custody at the time of finalisation.²

There is nothing in the NPA Annual Report which suggests that the NPA prioritises the finalisation of cases where the accused person is being held in custody.

CSPRI calls on the Portfolio Committee to exercise its power of oversight to enquire of the NPA the current measures taken to prioritise the review of evidence and finalisation of cases where accused persons are being held in custody.

CSPRI further calls on the Portfolio Committee to consider the introduction of legislative custody time limits, such as exist in Malawi, where legislation provides for an entitlement to bail if the accused has spent a specified period in custody (three months in district courts) and the trial has not yet commenced.



¹ Section 12(1)(a) & (b) Constitution of the Republic of South Africa Act 108 of 1996.

² Karth et. al. "Between a rock and a hard place: Bail decisions in three South African courts" Open Society Foundation for South Africa, 2008.