

CHAPTER 1

INTRODUCTION

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In a seminal paper published in 2001, two internationally renowned experts on policing, David Bayley and Clifford Shearing, argue that policing is undergoing a historic restructuring. Further, that this restructuring has two distinguishing features: the separation of those who authorise policing from those who do it; and the transference of both functions away from government.¹

Policing is being transformed and restructured in the modern world... The key to the transformation is that policing, meaning the activity of making societies safe, is no longer carried out exclusively by governments... Gradually, almost imperceptibly policing has been 'multilateralized': a host of nongovernmental groups have assumed responsibility for their own protection, and a host of nongovernmental agencies have undertaken to provide security services. Policing has entered a new era, an era characterized by a transformation in the governance of security.

Back to the future?

The restructuring of policing as described by Bayley and Shearing is not without historical precedent. The state has not always had a monopoly over all functions of the police or other services provided by the modern criminal justice system. Private arrangements for the security of people and property predate the organised policing function of the state.² The earliest security guards may have been the temple priests in the ziggurat at Ur, enlisted by wary Sumerian moneychangers in the third millennium BC to protect their lucrative banking operations.³

Only a few centuries ago, most societies had largely informal and private mechanisms to resolve what were in essence criminal disputes. There were "no public prosecutors, and the police were public in name only, deriving most of their income from bounties and shares of revenues from fines".⁴ In Britain, and in other parts of the world, the responsibility for law enforcement,

“how it was used, against whom and when it was enforced were not matters for state initiative, but for the aggrieved private citizen”.⁵

With the advent of industrialisation and urbanisation the local, personal, and voluntary basis of law enforcement disappeared. It was replaced by a state owned, organised, and disciplined police force, with responsibilities for public safety and the prevention of crime within the entire territory of the state. By the late nineteenth century the state had taken over virtually all remaining aspects of the modern criminal justice system. This was the case in countries around the world irrespective of their level of development or economic system. In countries with a free market economy, and those with a centrally controlled one, the criminal justice system was one of the most protected monopolies of the state.

Since the 1960s, however, the trend towards the state monopolising the provision of criminal justice-related services has undergone a reversal in many capitalist states. Aspects of policing, prison construction and management, and even prosecution, are again being performed by the private sector. There are a number of reasons for this.

First, even for wealthier states, maintaining and expanding all aspects of a criminal justice system has become too costly. Second, private enterprise has developed the expertise and capacity to provide specialised services more cost-effectively than the state. Third, rising crime levels, and public concerns about high levels of crime, has forced policy makers to look for new and alternative providers of criminal justice services.

Finally, as services, facilities and industries hitherto monopolised by the state were successfully outsourced to private contractors, and even completely privatised, innovative reformers could develop an outsourcing agenda for criminal justice systems. If airports, harbours and railways can be privatised, and the provision of electricity, water and healthcare outsourced, why not the provision of criminal justice services?

The cost of crime

South Africa is a good example of a country where the cost to the state of combating crime is becoming prohibitive. Spending on the criminal justice system has been increasing in real terms for a number of years, and should continue to do so for some years to come.⁶ One-tenth of annual government expenditure is devoted to policing, prosecuting and incarcerating the country's criminals.

South Africa – a country with the largest HIV-positive population in the world – allocates the same amount of public money to fighting crime as it does to health-related expenditure.

Or, in respect of policing only, the safety and security department's budget allocation for 2003/04 is almost R22 billion, or approximately 6% of national expenditure. In a country with a variety of important socio-economic needs, and a huge backlog in the provision of housing, schools and transportation infrastructure, South Africans can ill afford spending more on policing than what is absolutely necessary.

Notwithstanding increased spending on the criminal justice system, public feelings of insecurity have worsened since 1994.⁷ Moreover, a range of legislative and operational initiatives to combat crime, and improve the effectiveness of the criminal justice system, have had only a limited positive impact so far. Many criminal justice performance indicators reveal that large segments of the justice system are performing sluggishly.⁸

In essence, South Africans are not getting value for money from the state owned, managed, and financed criminal justice system. Resources spent on the criminal justice system are not having the desired effect of deterring and apprehending criminals so that people feel safe in their home, suburb, shopping area, or city.⁹ The state has largely failed to provide the service for which taxpayers have paid.

For every 100 crimes recorded by the South African Police Service (SAPS) just after South Africa's first democratic election in 1994/95, there were 125 in 2001/02. Over the same period police numbers have decreased. The recorded crime figures serve as an index of the demands made on the police by the public with regard to crime.¹⁰ A clearer way of grasping the increase in workload of the police is to consider the number of crimes recorded per police officer. Thus, in 1994/95 there were some 17 recorded crimes per officer. In 2001/02 the ratio was 23 recorded crimes per police officer.

A significant number of new police officers are to be recruited over the coming years. Yet, should the number of recorded crimes increase by another half a million over the next seven years (as was the case in the seven years between 1994/95 and 2001/02), the expected increase in police numbers will do little to reduce the workload on the average police officer. Moreover, while an increase in police numbers should boost the police service's ability to meet its objectives, there is a limit to the number of police officers the national fiscus

can afford.¹¹ Already over three-quarters of the Department of Safety and Security's expenditure is devoted to personnel related costs. Any increase in personnel numbers is not only costly, but also restricts capital expenditure on items crucial to effective policing, such as vehicles, communication equipment and computers.

Doing more with less

Increasingly, demands are placed on the criminal justice system to do more with less. Surprisingly, given the limited financial resources of the state, this is not an impossible task, provided policy makers are willing to explore new and innovative ways of providing public services – notably by outsourcing selected criminal justice functions to private service providers.

The police's primary role is to prevent crime through visible patrols, searches and raids; react to crime through calls for assistance; and investigate crime. A study of a large metropolitan police station in South Africa revealed that the bulk of police time is not devoted to fulfilling the police's primary role.¹² The study revealed that a fifth (20%) of the station's staff was assigned to full time guard duty, as the station was responsible for security at the local court houses (which is common practice throughout the country) as well as its own holding cells. Almost a quarter (23%) of police officers' time was taken up by administrative work, while another 8% of was devoted to public administration such as acting as commissioners of oath and otherwise maintaining the charge desk. In contrast, visible patrols took up 15% of police officers' time, followed by investigations (10%) and responding to calls for assistance (8%).¹³

The above figures illustrate that even with the immense pressure the SAPS is under to respond to rising levels of recorded crime and public insecurity, the bulk of its human resources is devoted to performing functions peripheral to its mandate. Most of these functions, such as the guarding of court rooms and holding cells, and administrative and clerical work, could be outsourced to the private sector.

A similar case can be made for the prosecution service. As a result of rising crime levels and investigated cases, the backlog of the number of outstanding cases in the country's courts stood at 200,000 at the end of 2002.¹⁴ Notwithstanding this massive backlog, courts generally sit for only four hours a day. An important reason for this is that prosecutors are unduly occupied with performing a range of non- or quasi-prosecutorial functions such as pho-

tocopying documents, making phone calls of an administrative nature and negotiating with traffic offenders about the amount of their fine. Such peripheral functions could also be outsourced.

Finally, South Africa's prisons are overcrowded – many by 100% and more. Unsurprisingly, wardens working in prisons designed to accommodate a much lower inmate population cannot provide the meals, medical services, and correctional and vocational programmes necessary to care for and rehabilitate the prisoners under their control. In addition to outsourcing the design, construction and management of prisons (which is being done already), the provision of meals, and medical and rehabilitative services for prisoners could be outsourced to private service providers.

Outsourcing criminal justice

Somewhat sarcastically, Kim Nossal describes the trend of greater private sector engagement in traditional state functions as follows:¹⁵

In the past 20 years, privatization and outsourcing have been the watchwords in much of the developed world. Inspired by the preaching of neo-liberal economists who rail against the 'invisible hand' of the State, governments in numerous Western jurisdictions have increasingly passed ownership of a range of public enterprises to the private sector in order to allow the 'invisible hand' of the market to work its putative magic. The handmaiden of privatization has been outsourcing – contracting private actors to perform numerous other functions that used to be performed by State agencies.

Many in South Africa, including the government, accept that the state's monopoly over the provision of criminal justice services is weakening. Increasingly criminal justice departments – the departments of Safety and Security, Justice and Constitutional Development, Correctional Services, and the National Prosecuting Authority – are outsourcing their peripheral function and services to the private sector.

In some cases, departments have even begun to experiment with outsourcing certain aspects of their core functions:

- In Pretoria selected, serious commercial crimes are being prosecuted by private counsel.

- The largest privately designed, built and managed prison in the world is Kutama Maximum Security Prison, near Louis Trichardt, with 3,024 prisoner spaces.
- On the outskirts of Cape Town, police stations in gang-ridden areas have elected to use private armed response companies in the event that they come under attack or fall victim to armed robbers.¹⁶

South Africa is not alone in outsourcing the provision of criminal justice services and products to the private sector. For example, several municipalities in Montreal (Canada) have hired private security officers to augment the patrols of the public police. By 1998, within the jurisdiction of 18 of the 43 police authorities in England and Wales, local governments had hired private security patrols to police public spaces and areas.¹⁷ The following is a (slightly tongue-in-cheek) list of products provided by the private sector for prison administrators in the United States:¹⁸

Inside prisons the corporate world includes Aerko International's Mister Clear Out ('The state of the art in tear gas hand grenades especially designed for indoor use'); the Peerless Handcuff ('A major breakthrough in cuff design'); Disposable Waste Systems Muffin Monster ('It will grind up into small pieces all the things that inmates put down toilets'); Servomation, a food distribution company ('Justice is served') and Coca Cola ('Time goes better with Coke').

In 2002 the total value of signed and planned Public Finance Initiative (PFI) or Public Private Partnership (PPP) projects in the criminal justice system in the United Kingdom was £13 billion, including capital and operational costs.¹⁹ The Sussex Police Authority (in the United Kingdom) has awarded a 30-year contract to a consortium to provide police custody facilities and services across the whole county. As a result a number of police holding cells have been closed, and detainees are held in centralised facilities operated and managed by a private operator.²⁰ Among the 43 police authorities in England and Wales, outsourcing schemes range from facilities for firearms training, to riding stables, offices, custody suites and entire police complexes.²¹ A Metropolitan Police Authority outsourcing project provides not only new police stations, but also a wide range of police support staff such as custody processing and suspect processing staff, station reception offices, and selected support services including typists, prisoners property store and the storage of uniforms and special equipment.²² It is estimated that by 2010, private sector consortia will operate and manage most court complexes in England and

Wales.²³ In fact, in the United Kingdom, there already are privatised prisoner escort services; contractually managed prisons; outsourced ancillary services within publicly run prisons; privately run immigration detention centres and electronic monitoring services.²⁴

This monograph explores the potential of outsourcing the provision of functions and services, traditionally provided by the South African criminal justice system, to both the for-profit and the not-for-profit sector.

What follows is an analysis of the concept of outsourcing, its risks and benefits, and a discussion of the South African government's outsourcing policy. Thereafter, the outsourcing policies (to the extent that they exist) and outsourcing opportunities for each core criminal justice department – policing, justice and prosecutions, and corrections – is explored.