

## CHAPTER 7 CONCLUSION

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The South African government has been outsourcing some of its functions and services for some time. Highway construction and financing (through toll fees) by private companies, and the protection of strategic state assets or ‘national key points’, such as oil depots and radio stations, with private security personnel has been going on since the 1980s. A more recent, post-1994, development is the adoption, even embrace, of outsourcing – or Public Private Partnerships (PPPs) – as official government policy to boost the delivery of public services and infrastructure.

Beginning in the late 1990s, the South African government has been developing a regulatory framework to promote the use of PPPs by state departments and private investors. Speaking in May 2003, the Minister of Finance, Trevor Manuel, was unambiguous about the government’s commitment to PPPs:

We are serious about making private public partnerships work in South Africa. Deeply, profoundly, serious. The challenges we face – building and maintaining roads, rehabilitating our hospitals, streamlining the justice system, banking the unbanked, delivering water, preserving our biodiversity heritage, bringing computers and connectedness into schools and clinics – are deeply serious undertakings. And so when we seek to harness the resources, the project management capacity, the technology and knowledge that resides in the business sector in pursuit of these public purposes, we do so on the strength of legally secure, financially sound, forward-looking, affordable, cost-effective, transparent contracts.<sup>180</sup>

### **(Over)Regulated Outsourcing?**

According to the head of the Treasury’s PPP Unit, Michael Schur, PPPs in themselves are not necessarily beneficial. A great deal of work needs to go into each venture to ensure an optimal outcome, Schur argues. This work relates to set-

ting in place stringent performance agreements, appropriate pricing rules and accounting standards, competitive tendering processes, strong management of contracts, and an appropriate assignment of risks and rewards.<sup>181</sup>

There is much to be said for adequately regulating the PPP framework in South Africa – a country where civil servants often lack the experience and skills to negotiate complicated PPP agreements and, given their novelty, PPPs are viewed with some caution (some would say suspicion) by the broader business community. Regulations create minimum standards, establish safeguards for state agencies and private investors alike and, ultimately, fashion an environment where partnerships between the public and private sectors are seen as a sound and tested means of delivering quality services to both the state and the general public.

There is a danger of over-regulating the PPP environment, however. According to Ketso Gordhan, Executive Director of Rand Merchant Bank and ex-CEO of the Greater Johannesburg Metro, the issue of market capacity is important when assessing the future success of PPPs. There exists a constraint on capacity within the PPP market, and more emphasis needs to be on “deal making” versus “regulating”, argues Gordhan.<sup>182</sup> This is echoed by Tutu Mnganga, chairman of the empowerment company Vulindela Holdings, who warns that regulations place an onerous obligation on government departments to get PPPs off the ground.<sup>183</sup>

## **No Criminal Justice Sector Outsourcing Policy**

Once PPPs are firmly entrenched within government and private sector thinking, it may be necessary to revisit some of the more onerous regulations which hamper the development of innovative and flexible PPPs. In the context of this monograph, on outsourcing criminal justice services, the dearth of outsourcing activity does not appear to be a result of an over-regulated environment. Rather, the main impediment to outsourcing is the lack of a coherent outsourcing policy in the three core criminal justice departments (Safety and Security, Justice and Constitutional Development, and Correctional Services) and the National Prosecuting Authority. The South African Police Service (SAPS) has attempted to develop an outsourcing policy, but the policy not only lacks a broad strategic vision of what it would like to achieve, but is incoherent.

For example, uniformed SAPS officers guard, and perform access control functions at, the country’s national parliament in Cape Town, even though the

guarding of other government buildings has largely been outsourced to private security personnel. The SAPS' argument, that Members of Parliament require police protection, is unconvincing given that the provision of guarding and security services at some provincial legislatures (including the Gauteng Legislature situated in central Johannesburg) has been outsourced to private security companies.

The lack of a coherent outsourcing policy for the different criminal justice departments is aggravated by inter-departmental squabbling about which department is responsible for outsourcing services traditionally performed by its personnel. As has been discussed in chapter four of this monograph, the SAPS has investigated outsourcing the transporting of prisoners to and from court. However, this has been rejected partly because there is no uniform national policy on the transporting of prisoners by the SAPS and the Department of Correctional Services. Outsourcing the guarding of court rooms and holding cells at courthouses has been prevented because the justice department and the SAPS (which presently performs these functions) cannot agree about which department should be responsible for providing these services and, consequently, should foot the bill for any replacement service outsourced to the private sector. Similarly, outsourcing the administration of mortuaries has been delayed over a dispute between the SAPS and the Department of Health over which department should pay for outsourcing such a service.

In a country such as South Africa, where crime levels are high and criminal justice departments strain to meet their responsibilities because of a lack of personnel, inter-departmental outsourcing disputes are especially worrisome. Literally thousands of uniformed police officers spend their time transporting and guarding prisoners. Yet, public feelings of security could be significantly enhanced if these officers were used to patrol the country's streets and other public spaces.

## **Innovation**

The lack of a coherent outsourcing policy in the criminal justice sector is aggravated by a dearth of innovative thinking by policy makers on what could be outsourced. It may be a fairly radical proposition to outsource not only the prosecution of crimes which require rare and specialised prosecution skills, but also the prosecution of the many run-of-the-mill cases clogging the court rolls at the beginning of every year.

Yet, outsourcing the prosecution of a large volume of cases could promote the rights of accused and incarcerated persons, and save money. For example, some accused are incarcerated while they await the outcome of their trial. This is because the courts refuse to grant them bail, or because bail is set at an amount which is unaffordable to the accused. There are a number of factors which determine the length of time an accused spends in prison awaiting the finalisation of his trial. However, in many cases there are delays in the finalisation of trials for the simple reason that the courts' rolls contain too many cases for the limited number of prosecutors to deal with.

Unsurprisingly, as the number of recorded crimes has increased, so has the detention cycle time, or the average length of time unsentenced prisoners remain incarcerated until the finalisation of their trials. The detention cycle time has increased from 136 custody days in December 2000, to 143 custody days in September 2002 (the latest period for which figures were available at the time of writing).

This means that, on average, in September 2002 accused persons were imprisoned for almost five months awaiting the finalisation of their trial. This is a significant infringement on the liberties of accused persons, many of whom are at real risk of being attacked and sexually assaulted while incarcerated. Such delays in the processing of cases also place a considerable financial burden on the state. In 2002, a prisoner cost the state some R95 a day. Multiplied over an average of 143 custody days this comes to almost R13,600 per average unsentenced prisoner. Outsourcing the prosecution of a large volume of seasonal cases (as is proposed in chapter five of this monograph) could significantly reduce the human and financial cost resulting from the present backlog of cases in courts throughout the country.

Another innovative proposition worthy of further investigation is outsourcing the management of police stations and facilities. A radical version of this idea (as it involves a form of outsourcing bordering on privatisation of state infrastructure), which has been proposed by a South African company, is the purchase of police stations and court buildings by private sector investors.<sup>184</sup> Selling existing infrastructure would generate revenue for the state. This could be used to purchase much needed equipment for the criminal justice system, such as new vehicles and information technology equipment, or it could be invested to generate an income for the state. The private company purchasing the infrastructure, would rent it to the state for the latter's use.

Moreover, police stations – especially those in high crime areas – could be given a multi-purpose function. For example, attached to a police station

could be banks' Automatic Teller Machines (ATMs), pension payout points, and water and electricity pay points. This would provide a benefit to both the provider of the services and the consumer. An ATM connected to a police station is less likely to be stolen or vandalised, while the user of the service will be better protected outside, or even inside a police station, as the SAPS is a 24-hour service. Newspapers, groceries and other goods required on a daily basis, could also be sold at a venue connected to a police station. Other services such as doctors' rooms, and attorneys' offices could be attached as well. Eventually police stations could form the centre of a retail node for the area in which they are situated.

The providers of the services, such as banks, newspaper sellers, Eskom and the post office, would pay a fee or rent to be able to operate in, or on the property of, a police station. The income generated from these ancillary non-policing services could be used to subsidise the police station. This private sector subsidisation would allow the private operator to rent the police station to the state at a low cost.

Such a scheme would also assist the SAPS in improving its relationship with the public. People would no longer go to the police station only to report a crime, lay a charge or visit an arrested relative. They will also go there to bank, shop, and receive their pension money in the relative safety of the police station. In this way members of the public will get to know their local police officers.

In the United States, many local governments routinely contract with private firms for a wide array of traditional police functions, particularly in the area of 'police support' services, including accounting, maintenance, communications, data processing, towing illegally parked cars, fingerprinting prisoners and directing traffic. Security firms also provide guards for public buildings and other public facilities. For example, the state of Florida contracted with Wackenhut Services Incorporated for security guards at all its highway rest stops after a 1993 rest-stop murder of a tourist.<sup>185</sup>

Outsourcing, or public private partnership arrangements, is official government policy in South Africa. Increasingly, traditional government functions and services are being provided by the private sector. Outsourcing criminal justice related services remains controversial, however. The prevention and combating of crime, and the prosecution and incarceration of offenders, is frequently seen as the state's core function. Yet, the provision of criminal justice services has also been one of the South African state's most visible failures.

This monograph has sought to demonstrate that there is much scope for outsourcing a wide variety of criminal justice services to both the for-profit and not-for-profit private sector, without impinging on the state's prerogative to arrest and charge suspected offenders, and determine their guilt and eventual punishment.

Outsourcing criminal justice services entails some risk. As a policy, outsourcing is still under development in South Africa, competition for many outsourcing contracts is limited, and some government departments lack the expertise to properly design and monitor outsourcing contracts. These risks – all of which can be minimised through sound planning and the intelligent use of outsourcing contracts – are small compared to inaction, however. By not outsourcing many of the peripheral functions presently performed by the country's criminal justice agencies (and some core functions as well), the criminal justice system risks collapse under the increasing strain of more recorded crime, investigations, prosecutions and prisoners.

Criminal justice policy makers would be well advised to develop comprehensive and innovative outsourcing policies for the country's core criminal justice departments. This monograph has served its purpose if it has managed to encourage thinking and discussion in this respect.