

EXECUTIVE SUMMARY

Spending on the South African criminal justice system has been increasing in real terms for a number of years. One-tenth of annual government expenditure is devoted to policing, prosecuting and incarcerating the country's criminals. Notwithstanding the increase in public expenditure on the criminal justice system, criminal justice departments are overwhelmed by the number of cases, trials and prisoners they are expected to handle.

Increasingly, demands are placed on the criminal justice system to do more with less. This is not an impossible task, provided policy makers adopt new and innovative ways of providing public services by outsourcing selected criminal justice functions to private service providers.

There is much scope for greater private sector participation in the provision of criminal justice services through outsourcing schemes. (Public Private Partnership is the official term the South African government uses to refer to outsourcing the delivery of public services by private parties.) The criminal justice system provides a wide array of services. Many of these services are not related to the core functions the criminal justice departments have the responsibility to perform. These non-core functions are particularly amenable to outsourcing to private or non-state service providers.

The state can benefit in a number of ways by outsourcing some of its functions and services to the private sector. To be effective, however, outsourcing contracts must contain detailed service level agreements between the contracting parties. Thus, provided outsourcing contracts are properly conceptualised, and the implementation thereof effectively monitored, benefits of outsourcing can include providing services at lower cost and higher quality, greater flexibility in the provision of services, and a more rapid response to changing service and customer needs.

The South African Treasury has developed comprehensive outsourcing norms and standards for government departments that elect to outsource the provision of some of their services. Treasury regulations have been published to

govern the implementation of public private partnership agreements. A Treasury manual on public private partnerships seeks to assist government departments to structure successful deals with private partners for improved public service delivery.

The South African Police Service (SAPS) has outsourced a number of its functions and services to private-sector service providers. These include the guarding of government buildings, the maintenance of police buildings, the management of the police's vehicle fleet and vehicle pounds, and the provision of information technology services for the SAPS.

A multitude of non-core policing functions are, however, still being performed by an overworked police service. These include transporting and guarding prisoners, court orderly duties, running state mortuaries, managing the Firearms Register and the Criminal Record Centre, and providing VIP protection services to parliamentarians and politicians. The provision of these non-core policing functions could, with the proper controls and police oversight, be outsourced to the private sector. Outsourcing the multiplicity of peripheral tasks the police service presently performs, will permit the SAPS to meet its constitutional obligations, to prevent, combat and investigate crime.

South Africa's judiciary, courts and prosecution service do not have the capacity to adequately deal with the case load swamping the country's criminal courts. While the state can employ more prosecutors, it is expensive to train new recruits and pay them high enough salaries to keep experienced and skilled prosecutors in its employ. Moreover, the effective prosecution of certain intricate crimes requires specialised skills, which the prosecution service does not have.

A cost-effective way of dealing with the large backlog of cases, and the prosecution of intricate cases, is to outsource their prosecution. Another way to lighten the burden on the state's prosecutors is to make it easier for crime victims to institute private prosecutions. Other outsourcing options to relieve the pressure on the criminal courts include private arbitration and mediation schemes to deal with minor criminal offences, and outsourcing the management and administration of criminal courts.

The private sector has a role to play to finance, design, construct and manage prisons in South Africa. However, over the long run massive prisons construction programmes are not sustainable, and alternatives need to be developed. The private sector—in the form of business, non-governmental organisations, and civil society in general—must play a greater role in this regard.

Outsourcing selected criminal justice services to the private sector will allow the country's criminal justice departments to focus on their core responsibilities. It remains the responsibility of the state, however, to ensure that all outsourcing agreements involving the criminal justice system – and, by implication, the rights of suspected offenders, victims and the public – are prudently negotiated to leave no ambiguity about the rights, duties and responsibilities of both the state as outsourcer and the private contracting parties. Any outsourcing contract can, and must, contain enough built-in safeguards to guarantee the preservation of rights and the observance of the rule of law.