

# **PRIVATISATION OF PRISONS AND PRISON SERVICES IN SOUTH AFRICA**

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the degree of Masters in Administration in the School of Government  
Faculty of Economic and Management Sciences  
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## DECLARATION

I declare that “Privatisation of prisons and prison services in South Africa” is my own work, that it has not been submitted for any degree or examination in any university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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## KEY WORDS

Privatisation

Outsourcing

State Owned Enterprise

Regulation

Service delivery

Efficiency

Growth, Employment and Distribution (GEAR)

Congress of South African Trade Unions (COSATU)

Structural Adjustment Programme (SAP)

Prison privatisation

Public Private Partnerships (PPP)

Department of Correctional Services (DCS)



Overcrowding

Human Rights

Rehabilitation

Prison Industrial Complex

New public management

Market economy

Police and Prisons Civil Rights Union (POPCRU)

South African Prisoners Organisation for Human Rights (SAPOHR)

Assets Procurement Operating Procurement Systems (APOPS)

## ABSTRACT

This study explored options for the provision of efficient prison services in South Africa. The researcher compared public and private prisons with respect to costs, quality, accountability and impact on jobs. The study also drew lessons from the international experience on prison privatisation.

The primary objective of the study was to develop practical options for privatisation of prison and prison services in South Africa. The study includes a literature review as well as an assessment and selection of theoretical frameworks. The researcher relied on reports and legislation(s) with respect to prison privatisation. A case study was developed on three countries where prison privatisation had gained momentum (USA, Australia and UK). In Africa, at the research report focused on Lesotho, Malawi and Botswana, focusing on the extent of overcrowding and prison privatisation in these respective countries.



The study found that, the legislation regulating private prisons favours private contractors and needs to be revisited. It also emerged that the privatisation of prisons and prison services has become an international trend, spreading to other continents such as Africa, Asia and South America.

The study also found that the project on private prisons was rushed and not properly piloted in South Africa, however, it also came out that private prisons could coexist alongside public prisons. The general claim that private prisons are cheaper than public prisons could not be proved, especially in relation to South Africa. The main finding in relation to costs was that, private prisons have at least helped to come up with a formula to establish how much it really costs to keep a person in prison.

Finally, the study concluded that the topic on prison privatisation needs further exploration and that; there is a need for renewed partnerships between private and public prisons that would be mutually beneficial.

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# CHAPTER 1

## INTRODUCTION

### 1.1 INTRODUCTION

The privatisation of public prisons has caused much controversy in South Africa as well as internationally. However, it should be noted that the level of resistance to privatisation within the South African context has been minimal by international standards. It is not clear what might have contributed to this quiet approach given the fact that there are many anti-privatisation campaigns driven by the labour movement and civil society groups in South Africa. This research investigation focused on the privatisation of prisons and prison services in South Africa and has explored the various advantages and disadvantages that exist in this respect.

In this Chapter, the researcher defines the research problem and objectives and has reflected on the planning and designing of this research investigation. The methodology and the significance of the study are also discussed in Chapter One. The composition of the entire study as well as the limitations of the study is also addressed.

### 1.2 BACKGROUND

Privatisation has followed many trends and has also been influenced by many perspectives and paradigms. Historically, there was a clear divide between the responsibilities of the private and public sector(s). Such divides were rigid and often uncomplimentary. The discussion below provides a short background to this debate.

Privatisation of state owned enterprises and the involvement of private sector in the provision of public services became popular in the 1980s. It coincided

with the pendulum shift against state involvement in the economy that has characterised developed economies in the post-war (second world war) period (Sassoon, 1997:151). Traditionally, the provision of criminal justice services has been seen as the exclusive domain of the state. There has been a shift such that many states have considered, and are considering, the privatisation of key areas of the criminal justice systems, including prison services (Berg 2002:1).

Like the 'military industrial complex', the 'prison industrial complex' is an interweaving of private business and government interests. Its twofold purpose is profit and social control. Its public rationale is the fight against crime (Goldberg et al 1995:1). Not so long ago, communism was regarded as 'the enemy' and communists were demonised as a way of justifying military expenditures. Now, fear of crime and the 'demonisation' of criminals serve a similar ideological purpose: to justify the use of tax dollars for the repression and incarceration of a growing percentage of the population (Ibid).

The omnipresent media blitz surrounding serial killers, missing children, and 'random violence' feeds our fear. In reality, however, most of the criminals we lock up are underprivileged people who commit non-violent crimes out of economic need. Violence occurs in less than fourteen per cent (14%) of all reported crime, and injuries occur in just three per cent (3%) of all cases. In California, the top three charges for those entering prison are: possession of a controlled substance, possession of a controlled substance for sale, and robbery. Violent crimes like murder, rape, manslaughter and kidnapping don't even make the top ten crimes (Ibid).

The United States (US), United Kingdom (UK) and Australia are currently leading the push towards prison privatisation. South Africa is the first African country that has considered prison privatisation as a policy option. Whilst there has been an international outcry against prison privatisation, especially in the United States and Australia, it is interesting to note that prison privatisation in South Africa has not been met with the same levels of resistance. This is even more interesting when there are already many strong anti-privatisation campaigns driven by trade unions and civil society groups.

Could the lack of opposition be a result of a general consensus that private prisons provide better service as opposed to the 'appalling service' provided by public prisons? Or, can this lull be attributed to the power of capital to influence public policy in this respect?

Africa has also been identified as a market in which to expand the privatisation of prison services. In response to overcrowding and inefficiency in public prisons, South Africa and Lesotho have opted for the privatisation of prison and prison services as policy options. This may spread to the rest of Africa; however, resource constraints and bureaucratic red tape have made it difficult for private prison companies to permeate the African market.

### **1.3 RESEARCH STATEMENT**

Overcrowding has reached alarming proportions in South African prisons, making it difficult for the Department of Correctional Services to provide any meaningful rehabilitation to offenders. It is evident that the public sector, given its limitations as a result of 'bureaucratic red tape' and resource constraints, will find it challenging to turn the situation around. This brings us to the following questions:

- Can private sector involvement in correctional services bring about positive spin-offs?
- What are the options for the Department of Correctional Services in order to provide an efficient correctional service within a democratic dispensation?


As an attempt to answer these questions, the research investigation is broken down into six chapters, all of which are systematically organised to deal with specific areas in a quest to investigate the conditions under which privatisation of prisons and prison services are administered and organised in South Africa. The study has explored options for the provision of efficient prison services in South Africa. The researcher compared public and private

prisons with respect to costs, quality, accountability and impact on employment creation. The study also drew lessons from the international experiences on prison privatisation.

The key problem under investigation in this study is that, **a thorough assessment of the advantages and disadvantages of the privatisation of prison and prison services has not yet been undertaken in South Africa.** The purpose of this study was to provide an overview of this debate and to develop options for the privatisation of prisons and prison services in South Africa.

#### **1.4 RESEARCH OBJECTIVES**

The primary objective of the study is **to develop practical options for the privatisation of prison and prison services in South Africa.** The secondary objectives of the study include the following:

- 
- To establish a theoretical perspective on privatisation.
  - To establish lessons of experience regarding international initiatives.
  - To establish a South African perspective on the nature, extent and time-scale of prison privatisation.
  - To develop research findings based on the application of theory to fieldwork results.
  - To draw conclusions and to make recommendations.

#### **1.5 RESEARCH METHODOLOGY**

Qualitative research methods were used that include a literature review as well as an assessment and selection of theoretical frameworks. The field research involved formal interviews. Different approaches and methods were used in carrying out the South African and international studies.

### **1.5.1 The South African context**

The contents of the South African chapters required a more extensive search for information due to the fact that little has been written about the subject. Various means of data collection were used to complement the various sections of the paper. An extensive literature survey was conducted. This consisted of primary sources such as reports and legislations and secondary sources such as journals on private prisons in South Africa.

Interviews were held with policy makers, experts, trade unions, NGO's, staff and management in prisons, both private and public prisons (see 'Annexure B' for listing of interviews conducted). During formal interviews, questionnaires were used that employed both semi-structured and structured questions.

### **1.5.2 International Study**

An extensive documentary analysis was conducted on the question at hand. Besides South Africa, the countries of focus were the United States of America (USA), the United Kingdom (UK) and Australia, precisely because of the valuable, informative literature and experience on prison privatisation available in these countries.

There is a lot of material written on US prison privatisation. The researcher consulted books, legislation and reports on the existing private prisons. This also covered the work of the largest company in the US dealing with private prisons, the Corrections Corporation of America (CCA). The work by Public Service International (PSI) on private prisons and penal reforms assisted with the theoretical arguments for and against private prisons. The researcher also went on a working visit to the US wherein formal and informal interviews were conducted with trade unions, staff and management from public and private prisons.

The researcher was also able to visit the United Kingdom to have first hand exposure to prison privatisation in Britain. Interviews were conducted with

trade unions, staff and management in both public and private prisons. To complement the work done, telephonic and electronic interviews were also conducted (see 'Annexure B' for listing of interviews conducted). Much has been written about UK prison privatisation; given this, access to the relevant material did not pose a challenge. The researcher consulted books, journals, legislation and reports on existing private prisons in Britain.

Similar to the situation in the US and the UK, there is enough literature on prison privatisation in Australia. The researcher consulted books, workshop reports, policy reports, legislation, and commission(s) reports. Unfortunately, a visit to Australia could not be realised, however, the literature was sufficient to shed light on prison privatisation in that country.

To supplement the African experience, the researcher visited Lesotho, Botswana and Malawi. Nothing much has been written about prison privatisation in these countries except that their prison services are facing challenges and that Lesotho is also considering privatising its prison system. Interviews were conducted with policy makers, experts, senior government officials and trade union officials. The researcher was able to get two commission reports dealing with prison conditions in Lesotho.

## **1.6 COMPOSITION OF THE STUDY**

The study is composed of six chapters outlined as follows:

*Introduction* – Chapter One is the introduction that provides a short contextual background as well as a problem statement. The Chapter also defines the objectives of the study and states the significance of the research. In this Chapter, the researcher also highlights the limitations of the study in terms of applicability and other challenges.



*Theoretical background to privatisation* – In Chapter Two, the theoretical debate around privatisation has been captured. This Chapter showed that most debates around the privatisation of prisons and prison services TURP (2000:4) are dominated by one of two positions, either supporting the privatisation because business can run prisons cheaper than government (an economic argument), or rejecting privatisation, because it leads to worse conditions for inmates (a human rights argument).

This Chapter also addresses the ‘New Public Management’ (NPM) approach to privatisation. It emerges that ‘new managerialism’ as part of NPM, has also been a powerful tool to introduce private sector values in the public sector administration. The NPM can be defined as “Importation of business management practices, designed specifically to increase profit and efficiency, into public agencies including strategic planning activities, performance pay systems and organisational reinvention, redesign or reengineering” (Edwards, 1999:2).



*Lessons from the international experience* – Whilst the focus of the study is on prison privatisation in South Africa, Chapter Three has reflected on international trends with the purpose of drawing lessons from the international experience. The three main countries involved with prison privatisation; the USA, the UK and Australia have been discussed at length. The research investigation also looked at African scenarios, focussing on Lesotho, Malawi and Botswana. What emerged however is that, private jailers have identified a market and they are determined to expand it at all costs.

The international study revealed the determination by civil society groups to oppose prison privatisation because in their view, private prison companies are not entitled to provide what is naturally the responsibility of the state. The study has also shown that, the state and the private sector are not involved in a ‘zero-sum’ game, but can actually co-exist to complement each other.

The findings that are coming out of fieldwork results are mixed, providing no unequivocal evidence to support the reasons for and against prison privatisation. There is limited evidence to support claims that private prisons

are cheaper than public prisons. It is further argued that private prisons cut corners in order to maximise profits. In pursuit of profit maximisation, private companies operate on reduced staffing levels and reduced rehabilitation programmes.

*Prison privatisation in South Africa* – In Chapter Four, the study has investigated the nature, extent, costs, and time-scale of prison privatisation in South Africa. The Chapter started off with the history of prison privatisation in South Africa and later provided a comparative analysis between public and private prisons.

The study revealed that the South African public prison system faces many challenges including, amongst others, the lack of resources to meet the increasing demand for correctional services. In response to this and other challenges, the Department of Correctional Services has *inter alia* turned to the private sector for solutions.

There are now two private prisons in South Africa, one in Bloemfontein and the other in Louis Tritchardt (Judicial Inspectorate of Prisons, 2004:21). The fieldwork results also form part of this Chapter, strengthening arguments for and against prison privatisation.

Now that, to some extent, correctional services have been 'liberalised', can we say that the set objectives (providing an effective and efficient correctional services) have been met, especially in South Africa? Chapter Five attempted to provide answers to this difficult question. Amongst the findings of this study, one saw that there is no proof that private prisons are cheaper than public prisons. However, there is strong evidence that South African private prisons were built along the lines of 'unit management', which places more emphasis on rehabilitation and safe custody.

The study also revealed that private prisons could co-exist alongside public prisons, complementing each other rather than competing. Finally, this Chapter revealed that the market for the provision of prison services is growing. Because of the mixed experiences of private prisons and the

privatisation of prison services, today's private prisons have been developed in an incremental fashion.

The findings here revealed that private prisons are no worse in providing correctional services. Public institutions face serious under-investment that compromises the quality of care. Public institutions have no choice but to accept inmates even if this is beyond their holding capacity, yet private prisons have a choice.

*Conclusions and Recommendations* – In Chapter Six, the researcher concludes by summarising the most important aspects of the study. The study makes recommendations and identifies areas for future research. The main conclusions that the researcher arrives at are that whilst very little has been written about South African prison privatisation, there are prospects for the growth of a market for the provision of prison services within the context of the South African government industrial development strategy.

*The research findings*, amongst others, reveal that private prisons in South Africa are experiencing little overcrowding compared to public prisons. Whilst there is no evidence that private prisons are cheaper than public prisons, the study finds that private prisons have provided a basis to calculate the actual costs of incarceration, rehabilitation and building of prisons.

On the negative side, the study finds that, rehabilitation in private prisons is misdirected because they (private prisons) only accommodate maximum-security prisoners who are serving long-term sentences with no hope of being re-integrated back to into the community. Secondly, it has been established that the long-term contracts that the state entered into with private companies limit the room for flexibility.

The study also establishes that there is a high risk of regulatory capture in South African private prisons, which also compromises accountability. Regulatory capture, in simple terms, is when regulators who have been appointed to ensure that private prisons comply with contractual obligations

start sympathising with institutions they were appointed to oversee because they (regulators) see themselves as part of the establishment.

*Areas for future research* – As mentioned earlier, this research investigation is aimed at covering the practical and ideological aspects of prison privatisation within the context of the broader privatisation debate. It is evident that there is still a lot that needs further exploration in this field.

For instance, the nature of contracts that are entered into between governments and private entities need to be researched. Secrecy surrounding these contracts makes the accountability of both public and private prisons difficult. Another area that needs further research is the aspect of public private partnerships. There is a need to investigate the extent to which such projects bring economic and work opportunities. Are these opportunities sustainable or short-lived? Future research may be able to focus on these aspects and the study has proposed a set of important research themes for future attention. Privatisation has sharply raised the need to fully calculate and account for the actual costs of running correction services, which may require further research on costs and impact on rehabilitation. Finally, the study concluded that there is a need for renewed partnerships between private and public prisons with the aim of enhancing service delivery.

## **1.7 SIGNIFICANCE OF THE STUDY**

If used, the findings and recommendations of this study will help government to improve the quality of service in public prisons. The findings will also assist authorities to develop concrete options when approaching prison-privatisation or privatisation of prison services in future.

This study will stimulate the interest of scholars and policy experts to embark on further research on areas that have not been covered. The findings of this study will assist the Department of Correctional Services to further explore optimal options in support of 'unit management concept' in the 'new generation prisons'. It will assess the benefits and disadvantages of public-

private partnerships. Finally, the study will be used as a basis for developing new approaches for countries that are considering taking the private prison route.

## **1.8 LIMITATIONS OF THE STUDY**

The findings of this study are not necessarily directly applicable to those countries that are not affected by prison overcrowding and crime in general. The study will also not be applicable to countries that have not taken and don't intend to take prison privatisation as a policy option. However, the research may be relevant to the extent that the private prison industry has identified such countries as markets for the growth of the prison industrial complex.

## **1.9 CONCLUSION**



This Chapter has set the scene in terms of privatisation of public assets with a particular emphasis on private prisons in South Africa. The debates around privatisation are two-pronged in approach. There is a position that supports privatisation on the grounds that private sector can manage prisons cheaper than the state. However, the human rights argument rejects privatisation on the grounds that it perpetuates inhuman treatment and conditions for inmates. Clear lessons have been selected from other countries that have experienced similar issues before South Africa.

The following Chapter would provide an overview of prison privatisation within an international context.

## CHAPTER 2

### THEORETICAL BACKGROUND TO PRIVATISATION

#### 2.1 INTRODUCTION

The purpose of this chapter is to highlight the debates pertaining to theoretical underpinnings with regard to the privatisation of public assets, with specific attention to private prisons. In this Chapter, definitions of privatisation are provided from different perspectives. The one school of thought supports privatisation as it is associated with productivity, efficiency and competition in public utilities. The other school of thought is opposed to privatisation because it seen as representing the maximisation of profits at the expense of service delivery.

The Chapter also introduces the notion of the new public management approach to privatisation. According to the South African Minister of Public Service and Administration, Ms Geraldine Frazer Moleketi, the New Public Management is seen as the “new paradigm for public administration that would displace old-style Weberian public administration, known for its commitment to rules, hierarchy and red-tape” (Moleketi, 2003:197).

Chapter two shows that the Marxists theorists similarly, dispute the efficiency of the private sector. They feel that the efficiency of the private sector has been oversold to the detriment of the state. They assertively argue that the state is not inherently ineffective whilst the private sector is not inherently effective.

Regardless of one’s viewpoint on the proper role of the state, what is most relevant for this chapter is the role that states have taken and the role individual states presently take in national and international economies. According to Braithwaite (2000:222), state functions can generally be described as rowing, that is, the state performing the function itself, or steering, when the state relegates the function to another institution and then

regulates the sector. Finally, the Chapter briefly touches on arguments for and against prison privatisation and concludes by depicting the main lessons of the chapter.

## **2.2 DEFINING PRIVATISATION**

Before we can even define privatisation, we need to understand the difference between the private and the public sector. Ferlie at al. (1997: 226), makes this distinction by departing from the assertion that, “the core purpose of the public service is to provide a service, not to make a profit”. In the contrary, private entities were solely established to make profits. Furthermore, public sector organisations are not free to change or choose their primary purpose as private sector organisations are to a larger extent (Ferlie at al. 1997: 226). The source of funding is also a determinant. Whilst private entities thrive from ‘mainly’ private capital, public service organisations are exclusively funded from public funds. It is against this backdrop that when a comparison is made between the two entities, one must bear in mind that the two have different mandates.

There are many definitions to privatisation. In narrow terms, privatisation can be defined as the sale of state assets/utilities to private owners. Privatisation is however not restricted to the sale of public assets by public auction or direct sale. Privatisation can be broadly defined to include granting of sub-contracts and concessions for government services; licensing agreements; management contracts; operating equipment or asset leasing agreements; joint ventures; and build-operate-transfer schemes (BOT); management-contracts; build-own-operate (BOO) and build-own-operate-transfer (BOOT) arrangements (Chang & Grabel, 2004:82; Jarvis, 2000:7). Chang & Grabel, (2004:26) define privatisation as the transfer of resources from the public or state sector to the private sector.

Privatisation is further described as the conversion of a state-run company to a public limited company status often accompanied by a sale of shares to the public. According to Megginson and Netter (2001:321), “privatisation is one of

the most important elements of the continuing global phenomenon of the increasing use of markets to allocate resources,” closely tied to the growth of neo-liberalism starting in the 1980s as we shall see later in the chapter.

It has come out that most of those who support privatisation are influenced by the public choice theory. In support of this theory, FitzGerald (1995:517) argues that the state allocates public goods on centralised bases. Clients or consumers of services have minimal control over the quantity, quality and manner in which services are delivered. In this context, the state is seen as running a monopoly by being the sole provider of public services.

On the other hand, opponents of privatisation are blaming International funding organisations for placing privatisation into prominence. They are moving from the premise that that conditions attached to aid offered by the International Monetary Fund (IMF) and the World Bank have promoted the privatisation of state assets. In their view, the perceptions attached to the offering of aid by these two multi-national institutions brought to the fore the thinking that private companies are more productive than public entities.

COSATU (2001) and the Tanzanian policy framework on privatisation (1992) followed a different definition of privatisation. For COSATU, privatisation is the extension of the control and wealth of the private sector at the cost of the state. This definition of privatisation covers not only the open sale of state assets but also other processes that turn state functions over to the private sector and the market.

Similarly, the Tanzanian policy framework (1992:2) incorporates the following forms of privatisation: namely sale; leasing, with a buy-out clause; and sale under suspending and cutting-off condition. To recap, the broad definition of privatisation goes beyond the sale of assets but includes any form of private sector involvement in the public sector and confirms that there are many types of privatisation.



## 2.3 DIFFERENT TYPES OF PRIVATISATION

Privatisation involves more than the sale of assets previously held by the state to the private sector. COSATU (2001) and the Tanzanian policy framework on privatisation (1992) follow the broader definition of privatisation. Both approaches define privatisation as entailing the following components:

- Privatisation covers not only the open sale of state assets but also other processes that turn state functions over to the private sector and the market.
- The sale or partial sale of state owned assets or enterprises.
- The introduction of private competitors in sectors historically controlled by the state. Effectively, this approach privatises part of an industry or sector, even if the state does not itself sell any assets. It effectively subjects state interests to pressure to compete on the market, ultimately reducing their capacity to meet social needs.
- Relinquishing the management of state functions to private interests. This can take the form of outsourcing services from the public service to private companies. In these cases, the state does not necessarily sell assets, but they nonetheless fall under private control.
- Commercialisation of state assets. The requirement that state functions operate on a commercial basis, in some cases registered under the Companies Act. Commercialisation both often forms a first step toward privatisation and subjects state activities to the logic of the market. As with the privatisation of historically state-run industries, it makes state interests pursue commercial imperatives rather than broader social needs.
- Sale, leasing with a buy-out clause, and sale under a suspending and cutting-off condition.
- Public Private Partnership (PPP) where the state and private entities establish, finance and manage a project jointly. This has been the preferred approach in the South African prison privatisation programme.

The International Confederation of Free Trade Unions (ICFTU) lists other methods of privatisation not covered, namely granting of sub-contracts and concessions for government services, licensing agreements, management contracts, operating equipment or asset leasing agreements, joint ventures, and build-operate-transfer (BOT) schemes, management-contracts, build-own-operate (BOO), and build-own-operate-transfer (BOOT) arrangements (ICFTU, 2002:6).

## **2.4 HISTORICAL PERSPECTIVE OF PRIVATISATION**

The theoretical foundations for privatisation are to be found in the neo-liberal economic paradigm and the new managerialism. The study will expand on the new management approach to privatisation later in Chapter Two. The debate around privatisation is in essence about the role of the state and the market in a capitalist economy. Classical political economic theory, which coincided with the free market capitalism, saw a limited role for the state. According to Adam Smith, the father of modern economics, the state's primary role was centred on:

- Enforcement of contracts;
- Defence and national security;
- Protection of property rights.

The economic role of the state was limited to providing public infrastructure such as roads, telephones and railways. Private capital was considered ill-equipped and under-resourced to provide this major infrastructure. It was then considered prudent that these services should be provided by natural monopolies, often in public hands. A natural monopoly exists if the resources required providing a service cannot be efficiently provided by private capital or if such were to be provided without excluding a greater proportion of the population.

Neo-classical economics, as shall be pointed out below, turned this argument around on its head by pointing out that private capital was no longer facing

limited resources and could easily provide these public goods in favour of private capital. However, during the period of developing capitalism, objective private capital could not undertake the enormous and risky project of providing public goods.

New public sector theories that emerged after the 2<sup>nd</sup> World War refined the classical theories on state intervention in a capitalist economy. In essence, while positing the centrality of the market or private capital in a capitalist economy, the new theories conceded that there are a number of circumstances in which the state can intervene in a capitalist economy.

First, the state should intervene to correct market failures. Markets in a capitalist economy often fail to provide goods to all those who are in need or do so in a skewed manner. For example, in the South African economy, a segment of the population cannot access housing finance as typically private financial institutions consider them (low cost housing) unprofitable.

Second, the state should intervene in the case of negative externalities. An externality is a cost that arises in the course of production but is not fully reflected in the cost of production. For example, pollution is a major cost arising out of the production process and imposes severe public health costs on the rest of society. However, this cost is not accounted fully in the cost of production. The state can intervene in a number of ways in the public interest to limit emission of pollutants or to raise resources to mitigate the public health effects of privatisation.

Marxist scholars on the other hand point out that the case for and against state intervention in a capitalist economy depends on the relative prosperity of the economy. Typically, when a capitalist economy goes through a slump a case is often made for the state to intervene to restore the economy to positive growth. During periods of prosperity the reverse argument is that the state should withdraw from the economy.

For example, the state can impose tariffs or provide support to particular branches of capital. Contemporary examples of this type of state intervention

include the protection of the steel industry in the USA and the European Union Common Agricultural Policy (CAP). Through the CAP the European Union (EU) spends billions to subsidise farmers, which ultimately reduces the cost of production in agriculture.

Development theory argues that the state should intervene in the earliest stage of the capitalist economy to drive development. The state in this case, using a variety of strategies, selects and promotes a sector of the economy regarded as having potential to spur growth and employment. All capitalist economies have experienced for one reason or another state intervention. The aeronautics industry in the US has depended largely on state intervention, for example. Other examples include attempts by post-colonial societies to use the state to steer development.

#### **2.4.1 Rise of privatisation**



Privatisation of state owned enterprises and involvement of private sector in the provision of erstwhile public services became popular in the 1980s. It coincided with the pendulum shift against state involvement in the economy that has characterised developed economies in the post-war period. Sassoon (1997:151) captures this development as follows:

*By 1945, it was widely assumed ... that capitalism would not be able to guarantee constant growth and economic development. It was thus necessary for the state to take over some of its key sectors through a policy of gradual nationalisation. If priority had to be given to social reforms and their financing, it followed that the gradual transfer of segments of the private economy into public ownership would be inevitable.*

The post-World War 2 consensus was largely in favour of state intervention in the economy to lead reconstruction and provide employment. To that end, the

state played a major role in Western Europe in creating state enterprises such as railways and through public works programmes, creating large-scale employment in infrastructure services. The state also intervened in selected industries to support industrialisation and full-employment

The period after the Second World War (Perotti, 2004:3) coincided with a sweeping movement for nationalisation in Europe as “ ... Public demand for greater social control over markets followed a series of devastating financial crises (hyperinflation, the 1929 stock market crash, and banking crises) and the Great Depression”. Outside Europe the process also continued in newly liberated societies that were eager to modernise their societies. For that reason, the state became the principal actor in fostering development and providing services in the absence of well-developed markets.

In the previous two decades there was substantial privatisation of productive activities and other activities that were considered public services across the world. The process of privatisation has been spurred (Perotti, 2004) by, among others, aid conditionalities by the IMF and the World Bank and perceptions and realities of poorly performing state enterprises and institutions. This has resulted in the boundary between private and public institutions being redrawn and is in some cases blurred. The above trends also informed the ‘neo-liberal paradigm’.

#### ***2.4.2 The neo-liberal paradigm***

The neo-liberal paradigm insists on a ‘minimalist role of the state’ and unfettered markets. Thus neo-liberalism tends to have a hostile attitude towards the state in so far as it goes beyond certain minimal functions. The state should be “ ... Just large enough to maintain public order, protect property rights and enforce contracts” (Hughes: 1993:37). Further, the state should maintain macro-economic stability, provide physical and social infrastructure or public goods; improve the functioning of markets by eliminating market imperfections and price distortions; resolving market

failures and protecting or ameliorating the plight of vulnerable social groups (Mhone: 2003:3).

The broader neo-liberal package includes privatisation, trade liberalisation; low budget deficits and building the capacity of governments to pay their debts. The World Bank and the IMF have chiefly promoted, including as part of lending conditions, privatisation. Privatisation expanded rapidly after the World Bank introduced its structural adjustment programmes and the IMF its poverty reduction and growth facility (PRGF) programmes in the 1980s. The IMF has been instrumental in the adoption of these strategies through its Letters of Intent, while the World Bank has provided special loans for technical and financial assistance for privatisation projects.

Lipton and Simkins (1993:19-20) trace the historical evolution of World Bank and IMF thinking and gradual adoption of privatisation as part of their toolkit:

*The shift in the intellectual climate in the late 1970s and early 1980s has had a large impact on the policies and practices of international financial institutions, particularly the World Bank and the International Monetary Fund. Increasingly these institutions have worked together on stabilisation and structural adjustment policies, especially after the second oil crisis in 1979 and the emergence of a substantial debt problem among many developing countries following Mexico's default in 1982. During the 1980s, the World Bank and IMF used their leverage over heavily indebted African and Latin American countries to press for policy reforms, attaching stabilisation and structural adjustment conditions to loans and aid. Severe budgetary constraints within these countries reinforced pressures for cutbacks in state expenditure.*

Kessides (2004:11) attributes the sharp decline to a deteriorating global market for private financing of infrastructure assets – reflecting financial crises, stock market collapses, and corporate scandals – though lack of economic reforms might also have played a role. Nonetheless it is argued that

reforms have expedited service expansion in a variety of sectors and countries. Telecommunications coverage has seen the largest jump, but significant increases have also occurred in electricity, transportation, and access to safe water. This depended on the extent to which the market is liberalised and the effectiveness of regulation.

## **2.5 ARGUMENTS FOR AND AGAINST PRIVATISATION**

Kessides (2004) highlights the efficiency and rationale that underpins arguments for privatisation. According to his argument, the “State owned infrastructure monopolies suffered from low labour productivity, deteriorating fixed facilities and equipment, poor service quality, chronic revenue shortages and inadequate investment, and serious problems of theft and non-payment” (Kessides, 2004:2).

As such, private companies, because of competition, have an incentive to be efficient, including by producing via the cheapest means to maximise profits. This leads to perceptions and assumptions that the private sector tends to be more efficient than the public sector. Perotti (2004:4) makes the observation that state owned enterprises “Exhibit significantly lower productivity efficiency in comparison with privately owned counterparts. The main causes of this can be traced to a general lack of accountability leading to:

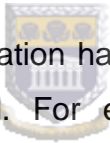
- A lack of managerial and employee incentives to efficiency.
- Problems of competence or corruption by state authorities.
- The use of State owned enterprises (SOEs) for political purposes in favour of favoured constituencies.

Often, it is argued that inefficient state enterprises are a drain on the fiscus and that a government facing a fiscal crisis will consider privatisation to ease off their financial woes. As such, privatisation offers states that are facing a budget deficit much needed cash flow and relief from the burden of keeping state owned companies afloat. For example, Kessides (2004:3), citing a World

Bank 1994 report, shows that developing countries incurred annual losses of about US\$180 billion in the early 1990s.

Public utilities are no longer seen as integrated natural monopolies but as encompassing a range of activities that should be unbundled. The new model argues for a separation of public utilities, separating competitive segments from monopoly components (Kessides, 2004:3-4):

- In electricity, transmission and distribution should be unbundled from generation.
- In telecommunications, the local loop should be split from long distance, mobile, and value-added services.
- In natural gas, high-pressure transmission and local distribution should be separated from production, supply, and storage.
- In railroads, tracks, signals, and other fixed facilities should be separated from train operations and maintenance.

Critics however argue that privatisation has been oversold and the promised benefits have never materialised.  For example, the ICFTU argues that privatisation has led to “mass retrenchments, a lack of democratic discussion, the refusal of governments to properly compensate unemployed workers and ... failure of most schemes to benefit the poor,” (ICFTU, 2002:3).

COSATU (2002) takes this argument further by pointing out that the arguments for privatisation are deeply flawed. These arguments essentially start by assuming the efficiency of markets and private managers – an assumption that is belied by examination of South African realities. Markets are inefficient because of massive income inequalities, the failure of market returns to reflect the full benefits from development, and factor immobilities in a period of high unemployment. Proponents of privatisation also evince an unwarranted belief in government’s ability to regulate private interests irrespective of market imperatives.

Further, privatisation undermines the ability of the developmental state to fulfil its core functions in terms of social protection, industrial strategy, increasing



assets for the poor, and enhancing democracy. Privatisation has also been criticised for replacing public monopolies with private ones.

Even the World Bank increasingly concedes that privatisation has its drawbacks and limitations. According to Kessides (2004:6) the public discontent with privatisation has been fuelled by price increases, job reductions and the high profits of firms that have improved operating performances. Recently, the World Bank's subtle change includes the recognition of the role of the state and a balanced approach to privatisation. First, it argues that each sector must choose among imperfect options, as privatisation may not be appropriate for all infrastructural activities and countries. Second, reforms should be properly sequenced – restructuring to introduce competition must precede privatisation, and regulation should be in place to regulate both competitive and monopoly elements. Third, several institutional preconditions must be met for privatisation to achieve its public interest and objectives, such as (Kessides, 2004:7):

- Suitable, market-friendly institutions;
- A conducive legal system;
- Country-and-sector-specific strategies;
- A micro-economic structure open to competition; and
- Effective regulation.

These arguments bring us to the new public management approach to privatisation. New managerialism has also been a powerful tool to introduce private sector values in the public sector administration. This can be defined (Edwards, 1997:2) as “Importation of business management practices, designed specifically to increase profit and efficiency, into public agencies including strategic planning activities, performance pay systems and organisational reinvention, redesign or reengineering.”

## 2.6 THE NEW PUBLIC MANAGEMENT APPROACH TO PRIVATISATION

Before talking about the new public management approach to privatisation, Wooldridge (1995:517) revealed that the traditional public administration model is premised on the concept of the 'neutral' Weberian bureaucracy. In terms of this model, it is assumed that the state is neutral and that the policy-making processes are based on rational scientific procedures. He contrasts the traditional public administration model to other models. What most of these models have in common as opposed to the former is that, they recognise that "Public Administration cannot be conceived as ... neutral machine".

The new public management approach to privatisation seeks to bring private sector solutions to public sector problems. New-managerialism as part and parcel of NPM which was initially developed for the private sector has now been extended to the public sector. This approach sought to divide activities into core and non-core segments. Business units that are not considered core are to be hived-off or outsourced. This argument holds that the state has no business in economic activities, or alternatively its productive economic activities are not the core business of the state. As such, these should be privatised as they distort the market. Power is also reconfigured and vested in managers – away from 'meddlesome' politicians.

Ideologically, the private sector is held to be more efficient than that the state. The Private sector is also regarded as having access to technology and capital, whereas the public sector depends on debt. State subsidies to public entities are regarded as shielding managers in the public sector and promoting underperformance since the state will rescue failing public institutions. What is central in the NPM debate is the support for a lean and mean public service as well as the division of functions.

Ferlie (1997:233) like other NPM proponents supports the notion of a fragmented however powerful public service by identifying the role and power of the 'strategic apex' within the public service. Firstly, he suggests that, to put NPM into action, there is a need to unbundle a large vertically integrated

public service organisation and reorganise them into quasi-autonomous organisations. “The strategic apex of these devolved organisations assumes greater significance as it operates within an enhanced range of delegated powers and can potentially be seen as a major power source, reshaping the local organisation along strategic lines”. In essence, Ferlie links decision making power to efficiency at the same time he drives a point home that ‘the smaller the entity the more efficient it is’.

According to Minoque (1997:278) any application of NPM should be dealt within a specific context. His view is that, we should not take a one-size fit all approach. Whilst not opposed to the approach, he assertively argues that local factors as well as the level of development and exposure to the system will determine the successful implementation of the NPM. Finally, he argues that issues of governance including public management reform should be considered within a balanced perspective. What is good for the ‘developed countries’ may not necessarily be a solution for the ‘less-developed countries’.

In the contrary, the South African Minister of public service and administration, Ms Geraldine Frazer Moleketi, whilst being a proponent of NPM herself, warns against uncritical embracing of this paradigm without introducing checks and balances. She made a strong point that public representatives have a political mandate to provide an efficient and sustainable service delivery. Making a case for NPM, the Minister assertively argues that there is a need to utilise all the best practices that come out of the NPM paradigm. Equally so, “We need to put in the checks and balances to stop us from going overboard on its associated thinking, tools and techniques, inadvertently placing the country in a situation where public servants would undermine the developmental goals of the broader South African public (Moleketi, 2003:198).”

Also supporting public service reforms towards embracing NPM, Monteiro (2003:61) argued that it is crucial to have a consequential, comprehensive vision or purpose for the reforms. He asserted that civil service reforms are a political process. Accordingly “politics need to be taken seriously and not as a disinfected notion of management, governance or administration” (Monteiro,

2003:61). In essence, Menteiro is making a point that there is no best practice when approaching public service reforms. Countries and localities are unique with their own peculiarities. Therefore, prevailing circumstances would determine which approach to follow, whilst the bottom line is providing an effective and sustainable service delivery.

The recent anecdotal evidence of minimising the role of the state in entirely embracing the NPM can be seen in New Zealand, Australia and the United Kingdom. These countries now have to re-build the state and all the systems to handle the complexity of the landscape in terms of the public service delivery. This complexity has been created through outsourcing, 'agentisation', privatisation and many other forms as earlier illustrated (Moleketi, 2003:199). These are the countries that are also supporting and practicing the notion of bringing in the private sector in correctional services; an area that many people never thought would be opened to the private sector. What could be the rationale for prison privatisation?



## **2.7 THE RATIONALE FOR PRISON PRIVATISATION**

The rationale for prison privatisation is based largely on the justifications elucidated in the preceding section. In short, privatising prisons is premised on the belief that introducing the private sector and its resulting competition would introduce a level of responsiveness and cost-efficiency into government service delivery (ISS, 2001:13).

To take this debate around private prisons further, the Trade Union Research Project (TURP, 2000:4) argues that the privatisation of prisons and prison services is dominated by two positions, namely, the economic and human rights arguments:

The Economic Argument supports privatisation, moving from the premise that business can run prisons cheaper than government whilst the Human Rights

argument rejects privatisation on the presumption that it leads to worse conditions for prisoners (TURP, 2000:4).

### **2.7.1 Forms of prison privatisation**

The privatisation of prisons and prison services is found in many forms with varying degrees of application. The typology includes the following formats (ISS, 2001):

- The general format is that the state pays for the costs of incarceration and the private sector provides various services;
- Contracting – where a private entity is hired to perform specific services;
- Contracting private entities to provide management services such as staffing, administration and security;
- Hiring private operators to design and build prisons;
- Private sector can also be involved in financing the project to build prisons;
- Predominant form of prison privatisation is where the state contracts out the design, construction, finance and management (DCFM).

Not very different from those outlined by the ISS, the Trade Union Research Project (TURP, 2000: 8) identifies two main forms of private prisons:

- Prisons owned by government and operated by private companies on short-term outsourcing contracts and concessions; and
- Prisons that are built under government tender by a private company that has a long-term lease of the prison.

In the whole, what is typical with all the above scenarios is that the private sector is in charge of public services with the aim of making profits. The state pays for the costs, either immediately or within a long-term arrangement depending on the nature of the contract or arrangement.

### **2.7.2 Arguments supporting prison privatisation**

Whilst there are views that condemn prison privatisation on moral, ideological and political grounds, according to the ISS (2001) citing Logan, who is considered an authority on this matter, there are ten points supporting privatisation of prisons, namely:

- True costs become highly visible and can be analysed, compared and minimised as a result of contracting out prison services. This provides competitive price and product information.
- Private companies can construct prisons more quickly and cheaply. Whereas the government takes two to five years, a private company can do it in six months to one year. Also, a private company is more apt to design for efficient operation.
- Private contractors have greater speed and freedom in matters from personnel to purchasing. This flexibility promotes innovation and experimentation, because it allows for risk taking. It becomes easier to undo mistakes and creates an environment that is ideal for change.
- Involving the private sector adds expertise, skills, and experience of a multinational company's head office, which will exceed that of smaller jurisdictions.
- Contracting out reduces a tendency towards bureaucratic self-perpetuation and helps limit the size of government. It is easier to control business interest in encouraging greater spending than government's insatiable craving for internal expansion.
- Private prison contracts increase accountability because market mechanisms of control are added to the political process.
- Private prisons are highly visible while the public ignores state prisons. Great public suspicion toward Big Business translates into increased vigilance over those who run prisons.
- Private prison contracts promote the development and use of objective performance measures. The government spends taxpayers' money without incentives to measure quality of performance, but contracts

usually specify performance indicators, and to the same extent broader goals as well.

- By creating alternative prison contracts, this encourages competitive evaluation, thus raising standards for government as well as for private contractors.
- Private prison contracts provide a surgical solution. If reform is needed, public management is entrenched and inert, whereas a contractor is easier to replace than a government agency.

The above justifications have assisted in the support for the privatisation of incarceration, an area that was historically the exclusive domain of the state and for that matter, uncontested unlike other areas like provision of water and electricity.

### ***2.7.3 Arguments against prison privatisation***

Like there are positions against privatisation of prison services, TURP (2000:5) on the other hand lists nine points as arguments against privately run prisons:

- The state is the only institution that should be ethically and morally allowed to use force legitimately as it is the elected representatives acting on behalf of the people – it is unethical for private companies to take on this role.
- The claims that private prisons provide lower costs are not entirely true – lower costs can occur in the building of prisons but not in the running of them.
- There is no real evidence that private prisons have better rehabilitation rates than government run prisons.
- Private prisons make use of essentially forced (prison) labour in income and profit generation, activities outlawed by the International Labour Organisation (ILO).

- Contracts between private prison companies and government are confidential and there is no transparency, unlike in public prisons.
- Sometimes the privatisation of prisons is a strategy used to undermine trade unions. In some countries, private prison contractors mainly employ non-unionised members, subjecting them to inferior working conditions.
- Private prisons experience systematic failures that often arise from their nature as profit-making institutions.
- Higher rates of sexual and physical abuse of prisoners are found in private prisons, and, generally, there is a lower quality of life than what is found in public institutions.
- As with other types of concessions, conflicts of interest arise where government officials and government consultants monitoring and reporting on private prisons are shareholders or employees of those prisons.

These are sharp and critical arguments, which are advanced by opponents of prison privatisation and tend to take “confrontational” as some would say assertive forms when turned into public campaigns. They rally behind these strong sentiments with the purpose of influencing public policy for government to reclaim the role of sentencing and imprisonment.

## **2.8 CONCLUSION**

This Chapter has captured the essence of the debates in and around privatisation. Proponents of privatisation show how ineffective the state is and how this ultimately leads to the loss of productivity, deterioration of facilities and equipment. Lack of professionalism and sense of accountability by managers and employees in general impacts negatively on service delivery.

Marxist theorists on the other hand reject the reduction of the role of the state, arguing that the state is not inherently ineffective whilst the private sector is not inherently effective. The new paradigm that is recently preferred is the



new managerialism, which thrives on bringing private sector principles in public management. It also has its own shortcomings if no proper checks and balances are put in place because managers may be tempted to undermine the developmental goals of the nation.

The privatisation of prisons and prison services has become popular in some parts of the globe including South Africa. There are two arguments for and against prison privatisation. The economic argument supports prison privatisation because it is said that the private sector can build and run prisons efficiently. The human rights argument rejects privatisation of prisons on the understanding that it leads to unhealthy and inhuman conditions for prisoners.

Against this background on theoretical perspective regarding privatisation, the following Chapter will investigate the extent of prison privatisation internationally. The study will focus on countries where prison privatisation has gained momentum. The countries will include the US, UK and Australia. To establish the extent of this phenomenon in Africa, with the exception of South Africa, the study will look at Lesotho, Botswana and Malawi.

## CHAPTER 3

### SELECTED INTERNATIONAL EXPERIENCES

#### 3.1 INTRODUCTION

This Chapter will focus on international experience with regard to private prisons. The researcher will use the US, the UK and Australia as a case study considering the fact that prison privatisation has gained popularity in these countries. African countries used for this study are Malawi, Botswana and Lesotho, with varying degrees of experience. Most correctional services in Africa are characterised by overcrowding and lack of resources, which in a number of instances make the conditions of life inhuman and dangerous.

International experience on prison privatisation, which dates as far back as the 18<sup>th</sup> century, reflects that private individuals who made profits out of contracting prison labour operated prisons. This private ownership was particularly evident in the United States of America and the United Kingdom.

Evolution in this matter brought in governments that took over responsibility of prison environment. A new wave of prison privatisation could be witnessed in the mid-1980s when governments and private companies entered into agreements with private companies taking over certain sections of services in prisons. The USA and Australia have practised prison privatisation programmes in varying proportions and as such their lessons are worth looking at.

The study will also look at the impact of prison privatisation on the well-being of prisoners, officials and the general quality of service. These international experiences will help us understand as to whether the world has made a progress or retrogression in this regard and therefore lessons for South Africa will be drawn.

### **3.2 BACKGROUND**

Private involvement in the prison system is not a recent development since it dates as far back as the 18<sup>th</sup> Century. During this era, most prisons were operated by private individuals who made profits out of contracting out prison labour (ISS, 2001:24). As such, privately owned prisons were a norm in countries such as the USA and the UK during this period. It was only during the 1900s that governments around the world assumed responsibility for almost all the areas of imprisonment, signalling a paradigm shift (TURP, 2000:8).

A new round of prison privatisation started during the mid-1980s. At first, agreements were entered into between government and private companies, with private companies taking over sections or particular services of prisons. This was done through outsourcing and signing of concession agreements. Later, some of these companies took full ownership of prisons, consequently transferring the entire prison services into private hands (TURP, 200:8).

Modern prison privatisation is different from the earlier forms. This has led to the growth of the 'Industrial Prison Complex' as some would refer to this phenomenon as prison services industry. The United States, United Kingdom and Australia have implemented prison privatisation programmes with varying degrees of success. Developing and developed countries (Berg 2004:ii) face different challenges when opting to liberalise their prison services. Later in the chapter, we shall see that whilst prison privatisation in South Africa faced its own advantages and disadvantages, the move to privatise Lesotho's prison system brings new challenges unique to many developing countries.

### **3.3 LESSONS FROM THE AMERICAN EXPERIENCE**

The United States of America is one of the leading countries in so far as it relates to privatisation of prisons and prison services. Whilst prison

privatisation is experiencing some growth in the US, civil society has embarked on an aggressive campaign to do away with private involvement in what is traditionally supposed to be the exclusive domain of the state, such as security. Privatisation of security in the US can be traced as far back as the seventeenth century when prison labour used to be a popular factor in the US labour system.

### ***3.3.1 The shift towards private prisons***

During the 1800s, prison in the United States of America was a combination of labour and punishment. Entrepreneurs owned and operated prisons through the use of prison labour. Prisons in many states were self-sufficient private enterprises and some even became profitable. During the time of the Civil War, between 1861 and 1865, the market for prison manufactured goods died as most men were away fighting (ISS, 2001:25).

The private prison industry re-emerged in the US in the early 1980s and this development coincided with the coming to power of the Republican Party (Nathan 2003:6). The Reagan Administration believed in keeping the public service lean and mean. The role of government was then seen as an agency of oversight rather than for providing services to harness the efficiency of the private sector (ISS, 2001:25). During this era, privatisation in general gained popularity when the society began to depend upon private industry to advance the country's economic position by relying on competition to induce innovation, research, technological changes, and managerial and entrepreneurial advances (ISS, 2001:26).

The shift according to Berg (2002:31) was exacerbated by overcrowding problems that were experienced by the prison system then. According to Berg quoting ABT Associates (1998), "by 1986, the prison population was triple that of the population in 1973 and it was growing fifteen times faster than the general population". Overcrowding had reached the stage where in many systems imprisonment resulted in unusual and cruel punishment, essentially

giving very few options to policy makers to improve the situation (Fenton, 1985:42).

At this point, the criminal justice system turned to the private sector at first by contracting for programs and services, and then later for the provision of cell space and general prison management services. Whilst some attribute the growth of prison population to the prison industrial complex, Nathan (2003:6) argues that these companies came into existence because entrepreneurs spotted a business opportunity and they seized it. To support the 'conspiracy theory' on prison population growth in America, Schlosser (1998:54) sees the prison industrial complex as:

*A set of bureaucratic, political and economic interest that encourage increased spending on imprisonment, regardless of the actual need. It is a confluence of interest that has given private prison construction an unstoppable momentum.*

Economic crises, rising prison population, overcrowding, the need for more space and middle class tax resistance formed the context in which prison privatisation began to emerge in the US (Nossal and Wood, 2004:3). In 1982 there was a declaration that the Tennessee's prison system was in violation of constitutional prohibitions against cruel and unusual punishment owing to overcrowding. Subsequently in 1983, Thomas Beasley, a former chair of the state Republican Party, founded the Corrections Corporation of America (CCA). In 1984, the CCA was awarded a contract to run an immigration detention centre in Houston, Texas; however, the company (CCA) also submitted a proposal to take over the management of the entire Tennessee system. Whilst the state legislature rejected the plan on the basis of risk, the proposal established the privatisation idea as an attractive policy option (Nossal and Wood 2004:3).

In 1985, the CCA won its first adult prison contract and in the same year, Wackenhut, a Florida corporation with three decades of experience in the security industry, won a contract to build a detention facility in Denver, Colorado (Bates 1998). Of importance in the legislation regulating

Tennessee's private contract was the fact that the involvement of the private sector was to be experimental and only to run for no longer than three years (Cody and Bennett, 1987).

### **3.3.2 *The prospects of the Prison Industrial Complex***

The United States remains at the forefront of prison privatisation. Prisons operated by private companies have increased dramatically, exacerbated by the increase in the number of citizens behind bars. By 2001, the United States had more than 2 million prisoners (ISS, 2001:26). The two largest private prison companies in the world are based in the US: the Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation (WCC). CCA is the largest provider of prison services in the world. Inmates held in privately operated facilities rose to 94,948 and about 6.8 per cent of all prisoners in the US during the period under review (Harrison and Karberg, 2003). These figures were also confirmed by the Bureau of Justice Statistics Bulletin (2004) except that the Bulletin puts the percentage at 6.5 per cent.

It had emerged that the motivation for the perpetuation and propagation of the prison industrial complex is both political and economic. A political candidate can win an entire election simply by providing evidence that portrays an opponent as 'soft on crime'. John Burpo, the Executive Director of the National Coalition of Public Safety Officers, whose organisation is opposed to prison privatisation, confirmed this view. According to Burpo, few politicians would risk speaking out on behalf of drug addicts and criminals, preferring a "Clint Eastwood" image to the challenge of explaining basic tenets of penology to the voting public. Equally important to politicians is the provision of jobs and economic growth, and the provision of correctional services is an attractive growth industry. Prisons are labour intensive, and are often located in rural areas where they provide jobs in otherwise depressed economies (ISS, 2001:27).

Building a prison is expensive, and by 2001, the US government was spending US\$35 billion each year on prison construction. Equally important is the fact that the prison industry is considered big business, such that by 2001, at least two private prison companies (CCA and WCC) were listed on the stock exchange in the United States (TURP, 200:8).

There are powerful lobby groups in the US who are determined to make this market (prison industry) viable. They have gone as far as supporting party campaigns to influence public policy. Berg (2004:3) identifies the American Legislative Council (ALEC) as one of such groups. ALEC is a powerful group promoting a conservative agenda and influencing sentencing policy. The irony is that, whilst this group (ALEC) has been consistently fighting to legitimise prison privatisation efforts, the CCA is its corporate member. In return, the CCA would influence a demand for its services by encouraging the greater use of incarceration (Mattera et al, 2003).

Just as powerful business and political interests are in favour of prison privatisation, there are equally powerful groups who are opposed to it, most notably the labour unions. Unions were a major force behind legislation in Pennsylvania, which imposed a one-year moratorium on new privatisation of prisons or jails. The American Federal, State, County, and Municipal Employees union (AFSCME) became involved and provided support to two candidates for county commission who ran on a 'take back the jail' platform. This resulted in the non-renewal of a jail management contract in Pennsylvania (ISS, 2001:25).

Public employee unions and other similar organisations have consistently supported the campaigns of those who promise to halt prison privatisation, and often accuse the private companies involved of greedily promoting their own self-interest. There have even been charges that correctional employee organisations in several states have blocked any attempt at penal reform, including the use of prison alternatives or community based corrections. Clearly the interests of those employed by the public prison sector are just as much aligned with the increasing use of prison sentences in criminal justice policy – an accusation often aimed at private prison companies. The unions

(ISS, 2001) have charged that private prison companies seek out profit by cost cutting and exploitation of labour, including lower wages, lower pensions, and less employee benefits. Burpo confirmed this view during an interview in June 2005.

Other organisations opposed to prison privatisation include the American Bar Association (ABA) and the American Civil Liberties Union (ACLU). The American Civil Liberties Union (ACLU) has gained a reputation for championing the rights of individuals against encroachment by the state. The concern of the ACLU is that prisoners' due process rights are more likely to be jeopardised in privately run prisons than in public-sector prisons. A substantial part of the ACLU's position against private prisons, however, is based on its position against prisons in general. The ACLU has long charged that there is too much incarceration and the fear is that privatisation will only lead to more (Nathan, 2003: 21).

When asked about contracts signed between private entities and the state, Burpo mentioned that such contracts are not subjected to public scrutiny "under the guise of protecting commercial interests". Inmates and workers in public prisons feel more vulnerable because private prisons rely more on technology against high personnel figures (Interview with John Burpo June 2005). Many studies aimed at assessing the performance of private prisons were conducted in the US. These included, among others, studies conducted by the Adam Smith Institute as well as by the General Accounting Office (GAO).

### **3.3.3 *The Study by the Adam Smith Institute***

The Adam Smith Institute (ASI) is based in Washington and London. In the early 1980s, the ASI was instrumental in promoting prison privatisation in the United Kingdom. It now describes itself as "Britain's leading innovator of market economic policies and as part of the movement towards free markets" (Prison Privatisation Report International 2002:1). One of the first advantages



cited in favour of prison privatisation is cost savings. The ASI conducted a study in 2002 that unequivocally stated: “the record of private prisons in America has so far, been impressive.” The report was used as a marketing tool to promote private prisons in the UK and beyond, according to Grassroots Leadership (2002:61). On the question of costs and quality, the report suggests that there is empirical evidence that private prisons cost less than public prisons and their quality is no worse. It further asserts that, despite all possible faults, private prisons are a promising avenue for the future development of prison system in the US and beyond (Mattera et.al, 2003:61).

This report was criticised by ‘anti-privatisation lobbyists’ for reaching subjective and unverified conclusions. It is argued that the report is anecdotal and the role of ASI as a promoter of private prisons hardly made it an independent arbiter, which brings us to the next study, conducted by the General Accounting Office (GAO).

### **3.3.4 The GAO Study**



The federal government’s GAO conducted the ‘first major independent analysis on private prisons’ in 1996. The GAO examined five studies that compared cost savings at public and private prisons in the United States. The following are the findings of the GAO Report (GAO, 1996):

- Could not draw any conclusions about cost savings or quality of service, since the four studies that assessed operations costs indicated little difference or mixed results and the two studies that addressed quality of life reported either equivocal findings or no differences between private and public facilities.
- The studies provided little information that could be applied to different correctional settings since states may differ widely in terms of correctional philosophy, economic factors, and prisoner population characteristics.

### **3.3.5 The ABT Associates Report for Congress**

In 1997, the Congress ordered the Attorney General to conduct a study on correctional privatisation that was carried out by the ABT Associates. The report was published in 1998. In essence, ABT study found that the proclaimed benefits of privatisation were unproven (ABT Report, 1997 in Mattera et al, 2003:64). In their summary, the researchers also stated:

*“It appears to us ... the private sector’s approach to corrections has been to build upon correctional practices that already exist in well-run public prisons. The private sector does not appear to argue that they run prisons in a dramatically different way based on different philosophies of managing inmates. However, there has been little attention given to documenting the private sector on the practices of the public sector.”*

Some of the main conclusions of the ABT study included (ABT Report, 1997 in Mattera et.al, 2003:64):



- There is no evidence that private prisons are cheaper than public prisons,
- Few studies have been conducted to compare relative performance of privately and publicly operated prisons. “Most are affected by a variety of methodological problems. Given these shortcomings and paucity of systematic comparisons, one cannot conclude whether the performance of privately managed prisons is different from similar to public operated ones.”
- With respect to public safety and prisoner programmes, the available surveys of either privately or publicly operated facilities do not provide the information needed to compare the quality of such programs or the extent of prisoners’ engagement with them.

### **3.3.6 Current prison privatisation trends in the US**

Whether prison privatisation has been a solution to the US correctional system is one thing, the reality is that prison privatisation entrepreneurs spotted a potentially lucrative business opportunity, as assertively articulated by Nathan (2003), and they are determined to expand beyond the USA. Private prisons in the US have shown a talent to extract profitable employment from inmates in prisons run by them (that is, they make a profit from prison labour). Despite the fact that the ILO outlaws prison labour, many companies in the United States use prison labour from private prisons in manufacturing, services and light assembly operations (TURP, 2000:9). This arrangement is said to provide skills to inmates and allow them to earn an income, while at the same time providing income to the private prison companies.

Opponents of private prisons have also mobilised support and have now come up with innovative ways of reversing private prison contracts that include utilising the political platform. There are many lobby groups that campaign against private prisons. These groups include trade unions, religious groups, research groups, NGO's, and even politicians. Recently, the Presbyterian Church (USA) passed a resolution calling for the abolition of private prisons. The resolution was crafted along the following lines (*PCUSA 2002: 8*):

*“Since the goal of for-profit private prisons is earning a profit for their shareholders, there is a basic and fundamental conflict with the concept of rehabilitation as the ultimate goal of the prison system. We believe that this is a glaring and significant flaw in our justice system and for-profit private prisons should be abolished).*

In the final analysis, the *Criminologist* (September, 2003) raises a thought-provoking argument that “The so-called privatisation debate has served as a diversion from the more basic and fundamental question of why the American Society imprisons so many of its people. Rather than trying to build a better

mousetrap, we should ask why we need so many traps, whether they be public or private.”

In essence, the argument does not support nor oppose public or private prisons. The desired outcome here is to reduce the number of people flooding the American prisons by correcting criminal behaviour. The emphasis is rehabilitation and restorative justice. Finally, we are seeing these private entities becoming global. Is it because they have exhausted the American market and that there are no prospects for further growth? Or because they see the private prison business as viable? The reality is that they (private prison entities) have decided to expand beyond the borders of America (GAO, 1996). Prison privatisation has now become an option in countries such as Australia, the United Kingdom, Canada, New Zealand and many more countries, including South Africa and Lesotho.

### ***3.3.7 Impact of prison privatisation on the quality of service***

There have been many media reports in the USA of serious lack of quality in private prisons for many reasons. What has been confirmed is that workers are paid less compared to their public sector counterparts and there are restrictions on them on the freedom of association (Friedman, 2001). The safe working environment within the private prisons may be compromised, as workers are encouraged not to take leave or overtime, and are offered low incentives to perform.

These facilities also provide poor training to employees; there is understaffing, an influx of inexperienced employees, and lack of immunity – all of which contribute to poor quality of service. Overcrowding is no longer exclusive to public prisons because in the US, contracts of private prisons have been amended to increase the number of inmates allowed in private prisons. The State of Florida authorised that the entire prison should operate at 50 per cent above its normal capacity, private prisons included (Berg, 2004:18). All the above conditions can only have negative implications on the prisoners, officials and the public alike.

### **3.4 THE BEST PRACTICE IN AUSTRALIA**

Similar to the US, Australia has also considered prison privatisation as a policy option. What is interesting about the Australian scenario is that public prisons have the opportunity to compete with private prisons for government contracts. Also important to note is that two of the biggest private prison companies, Wackenhut and Group 4 Securitas, run facilities in Australia.

#### ***3.4.1 Australian prisons opening to private contractors***

Australia was the second country after the USA to open a private prison. Two of the biggest multinationals private companies; Wackenhut and Group 4 Securitas run facilities in Australia (TURP, 2000:9). The development of private prisons in Australia was similar to that of the United States in that the prison population was increasing while the public sector's willingness or ability to pay for prison expansion was decreasing (ISS, 2001:26). As with the developments in the US, privatisation became a viable solution to these problems (Berg, 2002:60). The first private prison in Australia opened in 1990 in Queensland. The private entity would provide management, administration, instructors and health care staff.

Stan Macionis, Deputy Director General of the Queensland Corrective Services Commission (QCSC), gave four reasons for the introduction of private management in Queensland's prison service (ISS, 2001: 27):

- The benefits of competition and the stimulus for improved performance by the public sector.
- Perceived cost savings and improved efficiency.
- The need for cultural and attitudinal change in the management and operation of prisons, including a greater emphasis on rehabilitation and offender programmes.
- The need for comparative information with which to make future decisions.

In proposing the enabling legislation to parliament, the state's minister for corrections promised that (*Grassroots Leadership 2003:55*):

*“The community and prisoners shall receive obvious benefits through the provision of new purpose-built facilities which provide additional capacity for prisoner numbers and which will have modern security methods built into their structure. Victorians will also benefit from significant private sector involvement in Victoria’s infrastructure and the achievement of cost efficiency and effectiveness through the establishment of a real competition in the delivery of correctional services”.*

The first private prison in Queensland, Borallon, became a pilot project and it was obvious that the government wished to see the project succeed. At this point, the state with the highest percentage of inmates in private facilities in Australia was Victoria. Victoria had 13 prisons with a total capacity of 2,875, although the prison population stood at more than 3,000. The Department of Justice was responsible for correctional services, but the actual public provider was set up as a separate government corporation – the Public Correctional Enterprise (CORE). CORE managed ten prisons that housed 55 per cent of the prisoner population; the other three prisons were run by private consortia and contained the remaining 45 per cent of the prisoner population (ISS, 2001:27).

The public prisons in Queensland are now operated by a separate government corporation, which now competes with the private companies for management contracts of correctional facilities. Since the involvement of private contractors, Queensland has achieved a substantial reduction in its incarceration rate. The success has further strengthened the support for prison privatisation. Contrary to the US approach, it should be noted that the Queensland privatisation model does not involve private financing. The government financed the building of the prisons and contracted out the management services only (ISS, 2001:27-28).

Figures published by the Australian Bureau of Statistics (2003) show that there were 4,197 prisoners in Australia's private prisons as of 30 June 2003. The total prisoner population is 23,555, with public prisons holding 17.8 per cent. These figures exclude those held in privately operated lock ups, court cells and immigration detention centres (Prison Privatisation Report, 2004:11). Below find the table that provides the brake down of the statistics in terms of different states.

**TABLE 3.4.2: STATISTICS IN PRIVATE PRISONS AS AT JUNE 2003**

<b>STATE</b>	<b>FACILITY</b>	<b>NUMBER OF INMATES</b>
New South Wales	Junee Correctional Centre	727
Victoria	Fulham Correctional Centre	746
	Port Phillip	724
Queensland	Borallon Correctional Centre	489
	Arthur Gorrie Correctional Centre	707
South Australia	Mount Gambier Prison	108
Western Australia	Acacia	696
<b>TOTAL</b>		<b>4197</b>

*Source: Prison Privatisation Report International, 2004*

### **3.4.3 Prison privatisation failures in Australia**

Australia has had a history of problems with private prisons. At some point, the Victorian government went as far as putting to an end prison privatisation processes. It was also interesting to learn that Queensland had been operating the cheapest prison service but wished to involve the private sector because it had problems with organised labour. Apparently organised labour was a nuisance as they interfered with the operational running of the prison, hence authorities decided to call in a private entity (ISS, 2001:4).

In 1996, amid large anti-privatisation protests, the Metropolitan Women's Correctional Centre was officially opened. Within a month, union representatives met prison officials to raise concerns about safety standards and working conditions. They also alluded to the fact that salary levels, at A\$34,000 per year, were substantially less than that of their public sector counterparts who earned around A\$50,000 plus benefits (Grassroots Leadership, 2003:56).

Western Australia also had its own share of failures and successes. The arrival of prison privatisation in Western Australia was delayed as a result of an agreement that was entered into between the Prisons Officers Union (POU) and the government in 1994. The union made a commitment that staff members were going to improve performance whilst the authorities agreed that they were going to keep their privatisation plans on hold. When a riot broke out in Casuarina prison in 1998, Smith conducted an inquiry. The riot took place at the time when the government was considering building a new correctional facility with the view of increasing the quality of life for prisoners while reducing the unit cost per prisoner. 'Coincidentally', the Smith inquiry also recommended the involvement of the private sector in a new prison. This recommendation was considered and shortly thereafter, a contract was signed with Australian Integrated Management Systems (AIMS) Corporation. The construction of the prison was completed in 2001 and the first prisoners arrived in May 2001 (Nossal and Wood, 2004:8).

Firstly, Berg (2002:64) argues that Western Australia's public prison system was the most expensive of all in terms of costs. It has cost government A\$55,000 per prisoner per annum compared to Queensland's A\$39,000 per prisoner per annum. There were about 2, 100 Western Australian inmates held in 16 facilities. Due to transformation of the prison system between 1980 and 1993, the prison service had to be streamlined. The positive development that came out of this process was the reduction of excesses, however it came at a cost. For example, 130 staff members were retrenched, overtime and other privileges were abolished, holiday entitlements and sick leave were cut back, a matter that did not auger well with trade unions. Staff members were



(Berg 2002:64) deployed more economically and modern management practices were introduced; but the question is, at whose benefit and at what cost? Since privatisation of prisons in other states had been used as a benchmark for prisons in Western Australia, one would have expected improvements in terms of costs and expenditure; however, the costs were not drastically reduced.

The Australian Integration Management Services (AIMS) was fined A\$300,000 for a security lapse that led to nine prisoners escaping from the supreme court in Perth, Western Australia, in June 2004. Over and above the imposition of a fine, this company also lost its contract to provide security in court (Prison Privatisation Report International 2004). The government commissioned an inquiry into the escapes and found the following:

- The processes and procedures employed by AIMS Corporation to unlock cell 1 were deficient and contributed to the escape;
- The management of keys at the court custody centre was also deficient;
- AIMS Corporation failed to take any steps, or any reasonable steps, to secure the locking of two doors, wedged open at the time of the escape, in the flight path of the escapes.

Even worse, the inquiry also found that the department of justice's monitoring of the company's performance under the contract was inadequate. In a statement to Western Australia's legislative assembly on 17 August 2004, the premier, Dr Geoff Gallop said (Prison Privatisation Report International 2004):

*“When presented with the draft findings of the inquiry for comment, AIMS Corporation publicly acknowledged that the escape had been inexcusable and that it had badly failed the people of Western Australia.”*

Another example of yet another failure was the Port Phillip prison in Melbourne. From the time that it was opened in September 1997, several riots, assaults, deaths, and suicides characterised the poor performance of

the prison. Here, the Port Phillip prison contracted to Group 4 Services (a UK company) experienced a number of problems that led the government to threaten termination of the contract. In the first ten months that the facility was open, there were four suicides, ten attempted suicides, at least 40 self-mutilations, and two riots. The prison was locked down after one incident where two prison officers were attacked and beaten by prisoners. After the government sent a letter of warning, the company responded with a 'cure plan' and promises to address the problems. A few months later the prison was locked down again as a result of fights amongst prisoners and the incidents of assaults seemed to be increasing (ISS, 2001:4).

The Port Phillip Prison attracted the attention of the Brunswick Community Legal Service who filed a suit to gain access to the three private prison contracts under the Australian Freedom of Information Act. After several years, the case was won, and the contracts were eventually made available on the government website. In addition, a management audit of the private prisons in Victoria was published in October 2000, referred to as the Kirby report after the investigation's chairperson, Mr. Peter Kirby (Grassroots Leadership, 2003:57).



#### **3.4.4 The Kerby Report**

The first irregularity that Kerby (2000) identified when examining the contracts was the hidden inflexibility of the arrangements. According to Grassroots Leadership (2003:57) quoting the Kirby Report, "The state owns the land, but the buildings are leased for as long as 40 years. The legal and financial complexities involved with terminating a contract in this form make it extremely inflexible". The independent auditor's report concluded, "In the case of private prisons, the contractual model can actually impede resolution because the operator and the Government can become locked in contractual enforcement mechanisms, rather than the Government simply directing that the problem be resolved."

The management audit found that the contracts actually negated many of the purported benefits of prison privatisation. In addition to the lack of flexibility, that defines any contract, the Kirby report found that the government was restricted in its ability to respond to poor performance by the contractors because, “The contracts effectively require the Government to tolerate significant shortfalls in performance”. The report goes on to note, “it is difficult if not impractical to enforce adherence to qualitative outcomes in a contractual agreement. This is a major problem inherent in using contracts as the preferred method of service delivery” (Grassroots Leadership 2001:58).

In the final analysis, as argued by Harding (1997) that, some would want to believe that privatisation has been positive in terms of costs, conditions and prisoner programmes. They also argue that the public prison system has failed to deliver on its legislative mandate, by correcting criminal behaviour (Berg 2002:64). On the contrary, others have been hostile to the development of prison privatisation in Australia, especially in the way it was introduced. According to these critics, “There was not enough time for public debate and investigation of American companies infiltrating Australian Corrections”. This typology has to some extent been seen as the example of ‘colonialism’, ‘economic imperatives’ overriding the well being of society (James et al., 1997 in Berg, 2002:64).

Victoria’s Minister for corrections and police, remarking on the poor performance of private prisons, was quoted as saying, “we don’t care who owns these facilities. We do care who runs them and we basically want the profit motive taken out of running the prisons.”

### ***3.4.5 The direct involvement of the state in prison privatisation***

One had observed that in the Australian privatisation process, the state has in one way or the other been involved, either in providing services or structural development. It has also emerged according to TURP (2000:9) that the government aims to take increasing control of the prison system owing to the

failures of both private and public prisons. The Victorian government has also been decisive in either cancelling or renegotiating the terms of the contracts with private entities that have failed to comply with the terms of the contracts. Another interesting feature in the Australian system is that public entities can compete with the private sector for prison contracts and the contracts are awarded merely on the basis of merit.

The above development should not be misconstrued as the eminent death of the private prison industry in Australia. Recently, the Victorian Correctional Infrastructure Partnership Consortium won a tender to build 600-bed remand centre and 300 bed correctional programmes centre. The contract runs for 25 years and it is being financed, designed, built and maintained by this entity. The state would operate the facilities and provide all correctional services. The construction of the correctional programs centre was completed in June 2005 and the remand centre in October 2005 (Prison Privatisation Report International, 2005).



#### ***3.4.6 Impact of prison privatisation on prisoners and officials***

The impact of prison privatisation on the public sector was similar to that experienced in the United Kingdom. This initiative resulted in job creation whilst on the other hand some jobs were shed and some officials lost their benefits they previously enjoyed. The quality of life for prisoners dropped, however not as bad as in America. In Australia, the government has been decisive in re-negotiating or cancelling contracts of public contractors (James et al., 1997). In this country, the Junee contract makes provision for an 80 per cent spare capacity to provide for 600 prisoners. Arthur Gorrie Correctional Centre and Borallen's capacities were also increased when the facilities were undergoing renovation (Berg, 2004:27).

### 3.5 THE UNITED KINGDOM EXPERIENCE

Much like in the US, the pragmatic appeal of private sector contracting gained popularity in the UK during the 1800s. The Adam Smith Institute played a role in popularising private prisons (Nossal and Wood 2004:8). In the United Kingdom, the juvenile justice system has a long tradition of involvement with the private sector. Reform schools were inspired and created by the private sector in the mid-1800s, and the role of the voluntary sector has remained strong (ISS 2001:5).

#### 3.5.1 Early prison privatisation stages

After visiting the USA in 1986, in 1987, a committee report entitled 'Contract Provision of Prisons' proposed to government to consider following the prison privatisation path. The report proposed that government should "as an experiment" allow private firms to tender for custodial facilities, particularly remand centres, which had grown severely overcrowded (Nathan, 2003:166, Rutherford 1990 in Berg, 2002:49).

At that time, the move was also influenced by the ideology that the 'market system brought better efficiency in any field' and faced with overcrowding, the UK had to come with a workable solution. To manage a growing prison population, the government increased spending on the prison system by 72 per cent between 1980 and 1987. This approach did not address the challenges associated with overcrowding and rehabilitation and recidivism (Berg, 2002:44). The statement of the Home Affairs Committee in 1987 confirmed this (Home Affairs statement, 1987, in Rutherford, 1990:56):

*"The present state of our prisons, blighted by age, severe overcrowding, unsanitary conditions and painfully slow progress in modernisation makes it necessary to consider urgent new ways of dealing with these problems which at present seem almost insoluble.*

Other attempts by government to curb overcrowding were to increase community-based alternatives, limiting the use of custody through various legislations and reducing the period spent in custody by awaiting-trial defendants. These attempts proved to be futile and the prison population spiralled upwards (James et al., 1997). Following 'overwhelming support' for the implementation of the recommendations of the Contract Provision of Prisons Report, proponents and opponents of prison privatisation made their pronouncements. The Prison Officers' Association had carried their own investigation, also visiting private prisons in the US. They concluded that private prisons were not an option for the UK. Proponents of privatisation, on the other hand, presented a rosy picture about private prisons. Sir Edward Gardner (Conservative Member of Parliament), who was also in the delegation that visited the US in 1986, gave the following report to the Home Office Minister responsible for prisons (Rutherford, 1990:48):

*Those of us who went to America and saw these private prisons ... were profoundly impressed by what we saw. Far from thinking that these prisons might be something in fantasy rather than something we could use in practice, I think we all felt that they are in fact institutions of a very high standard indeed.*

The Home Office commissioned two other studies – one of which was drafted by Peter Young of the Adam Smith Institute who recommended that the five existing British prisons be privatised experimentally. He also recommended for the building of a new remand prison in London. The other report came from two *liberal* criminologists – Maxwell Taylor and Ken Pease who emphasised the rehabilitative potential of private prisons. They even advocated for contracts with a “no reconviction” bonus – entailing a conviction-free two-year period after release structure (Rutherford, 1990:49).

At the early stages, there was a debate on making a distinction to privatise remand centres rather than existing prisons. This was a popular view until a “policy u-turn” was undertaken, giving effect to the privatisation of prisons as well with the enactment of section 84 of the Act (Berg, 2000 52). At this point, the Thatcher government had reached a point of no return. It was inevitable

that UK would follow Australia to privatise prisons and prison services. In 1989 the Remands Contract Unit was set and tenders for contracts were invited (Shaw 1992). Subsequently, concessions for prison services began to be awarded to the private sector as part of the broad privatisation programme (TURP, 2000:9). This was for the development of the Wolds remand prison in Yorkshire. In November 1991, Group 4 Remand Services were contracted to operate Wolds for five years (McDonald, 1996).

The contract with Group 4 entailed the management of the 320-bed medium security remand prison (ISS, 2001:5). The contractual provisions made the performance standards for Wolds prison higher than those expected of the public sector, including a provision that prisoners should have fifteen (15) hours out of cell time. As a result, the staff at Wolds was presented with both an opportunity and a challenge in that they were asked to provide a level of service that had never been offered in the prison service before (ISS, 2001:6). At this stage, all that had been achieved had been a contracting out of remand centres on a trial basis. During a policy review process, small amendments to the act were affected by also including section 84 of the Act, which made it possible to contract-out any prison, not only remand prisons (Cavadino and Dignan, 1997:157).

### **3.5.2 Performance of Wolds prison**

When Wolds prison opened on April 6, 1992, it was thought of as the "penal experiment of the century." The pressure for the great experiment of Wolds to succeed was intense, as then Prisons Minister Angela Rumbold declared, "If, and only if, the contracted remand centre proves a success might we move towards privatisation of other parts of the Prison Service."

The research team that studied Wolds throughout its early stages noted that none of the anticipated 'punishment for profit' ideology permeated the management structure. Rather, the senior management team was united

behind a vision of providing high quality correctional services. The Wolds' regime was guided by five principles (ISS 2001:7):

- The legal presumption of innocence in relation to remand prisoners meant that only those restrictions, the imposition of which was essential in order to hold remand prisoners securely, were justified.
- Since Wolds' prisoners were presumed to be innocent, prisoners should be provided with an environment that was as normal as possible.
- Control grounded in constructive relationships between staff and prisoners was more efficient and effective than control by coercion, a principle that they hoped to achieve partly through the recruitment of staff that had no previous prison experience.
- The frustrations of prison life should be reduced through the development of administrative procedures, of which both staff and prisoners need to be aware that facilitated the smooth daily running of the prison.
- Wherever possible, the regime provided would exceed the minimum standards specified in the contract that Group 4 could not operate without incurring financial penalties, particularly in relation to areas such as the provision of visits, which was regarded as a key component in reflecting the first four principles.

ISS (2001:6) commends the existence of 'guiding principles' in the UK prison system in the management of prisons irrespective of whether they are public or private entities. The fact that there is specific mention of exceeding the requirements of the contract may indicate that the private sector is 'committed to providing quality and not simply through cost cutting' (ISS, 2001:6). On the other hand, it could be argued that this clause is an imposition and that, if private companies had their own choice, clauses with such restrictions could have been excluded.

A subsequent research on the performance of Wolds arrived at the same conclusions. Whilst many negative aspects were identified, the interpretation



of the contract was taken as a positive tool in the monitoring of the private prison's operations. Findings of the research alluded to the fact that, by providing an outline of the regime intended for Wolds, the contract provided management at Wolds with a clear foundation on which to base their efforts to achieve their goals, as well as a degree of protection. Secondly, because of the contract, in their view, it would be more difficult to erode any aspect of the regime at Wolds than at a non-contract-out prison, putting the management in a stronger position to resist the vagaries of the criminal justice system, such as sudden increases in the numbers of prisoners being remanded to custody, since any changes would require the Home Office to renegotiate the contract (ISS, 2001:6).

A critical element of the management approach at Wolds was the employment of personnel who had not previously worked for HMPS. Some may argue that this is to avoid the hiring of anyone previously involved with the public employee's union, as union antagonisms towards prison privatisation have been clearly displayed (ISS, 2001:6). The few staff members that were interviewed confirmed that they were never involved in the prison system before. One staff member also raised a concern that the Wolds management does not encourage union membership.

After speaking to Mr Adam Cole, who is in the senior management of Wolds, he said the rationale for not hiring people with prison background was to ensure that the new approach is easily conveyed. He further said the prison wanted to start on a new slate and create its own legacy. According to ISS (2001:6) one senior manager explained that their hiring practices were employed in an effort to avoid the "negative bits of the prison service, the negative attitudes of staff to prisoners, negative attitudes of staff to management and negative attitudes of management to staff." Mr Bevan Powell, the Deputy Chairperson of the Black Police Association of London, said that this practice amounted to union bashing and private prison staff members have no protection as "they earned lower salaries with little benefits whilst their jobs were not guaranteed."

### **3.5.3 The extent of prison privatisation in the UK**

Between 1997 and 2003, eight private prisons were fully opened. While in the same period two private prisons (HPM Buckley and HPM Blakenhurst) had returned to public management (Nossal and Wood, 2004:10). By 2004 Britain held about eight percent of its population in private facilities and was second only to the United States in the number of private prisons (Nathan, 2003).

Overall, the experience of the first private prison in the UK was determined a success and shortly afterwards several other existing prisons were privatised while additional private prisons were planned. The private prisons in the UK have not been without problems, however, and the conditions in many prisons remain substandard. Recently, HMPS won a contract in competition with the private prison companies. The increasing use of the system, such as with CORE and QCORR in Australia, where the public actually competes with the private sector for the contracts, will hopefully allow for better understanding of the challenges of providing prison services and ultimately, better service delivery (ISS, 2001:7). While there is a strong argument on the lack of accountability in private prisons, the counter argument is that there is lack of accountability in public prisons as well.

### **3.5.4 Impact on prisoners, officials and quality of service**

In the UK provision for overcrowding is also built into the contracts. For instance, Berg (2004:27) mentions that the Doncaster contract allows for 50 per cent overcrowding. This situation impacts negatively on the lives of inmates as they are subjected to conditions of overcrowding. Similarly, the morale of officials is low because of these conditions, exacerbated by low salaries and poor benefits. The advantage is that the Prison Officers Association has fought to improve the conditions of its members including those who are in private prisons. Gains by prison officials tend to have a trickle-down effect on the inmates and the quality of service (Nathan, 2003).

### **3.6 SELECTED AFRICAN PRISON SYSTEMS**

Until recently, one of the standard presumptions of political science was that politics was an autonomous sphere of activity and that states could make national decisions about economic management, the size and form of the public sector and so on. This view has been called into question by two decades of globalisation, which created for the first time in history global markets for labour-power, natural resources, and capital in all its forms (Ohmae, 1995 in PSIRU, 2005). The spread of private prisons has also gone beyond the boundaries of nation states. Africa was also among the continents that were targeted to expand this market.

In 1993, the Adam Smith Institute organised a conference in South Africa, which sought to deal with the future prison and justice policies for Africa. As part of the conference there was a planned visit to one of South Africa's private prisons. The view, according to conference organisers, was to "Stimulate discussion of the advantages of the relationship between government and the private sector". The event would also "identify potential for contracting out services to the private sector" (PSIRU, 2005). Among others, the organisers hoped to attract ministers and senior officials in the African ministries of the interior, national security, correctional services and justice. During this period, two private prisons were already in existence in South Africa and the prison services had outsourced some of the functions. While other countries in Africa were either moving slow or had not started to discuss this, consultations to privatise Lesotho prison system were at an advanced stage. Malawi, Lesotho, Botswana and South Africa present interesting cases in their response to this phenomenon.

#### ***3.6.1 The state of the Malawian prisons***

Like most parts of the globe, Africa has been affected by crime in many ways. In response to the challenge, the prison system would be expected to correct the criminal behaviour. Most correctional facilities in Africa are characterised

by overcrowding and resource constraints owing to poverty and 'underdevelopment'. During the researcher's visit to Malawi in May 2005, there was an opportunity to visit two police holding cells in Lilongwe, the capital. From a subjective point of view, the situation was appalling; many inmates sat cramped in one room with limited sanitation and ablution facilities. Even worse, in a women's section of the prison, awaiting trial inmates were compelled to sit on the floor with no cushions or mats. During an interview with the Deputy Commissioner of the Police, Commissioner Ernest Simfuka, the conditions according to him were relatively better compared to the rural parts of the country. He also mentioned that the situation is better in prisons where convicted inmates are being held. Prisons in Malawi are also overcrowded. Mr Simfuka did not rule out the possibility of going the private prison route, but in his view this was low on their countries' priority list. Their priority was fighting poverty and attracting foreign investment (Interview with the Deputy Commissioner of the Police in Malawi, May 2005).



### **3.6.2 Botswana's prison system**

In Botswana, the situation was different. Here, there is little overcrowding in prisons and the country is making relative progress in developing and improving the infrastructure. During a discussion with the National Commissioner of Prisons, Mr Kau, he remarked that his government has not as yet considered the option to privatise the prison system. His response to a question on privatisation was, "Why should we privatise when we have confidence in our prison system?". Solo (2005) also remarked that, in response to overcrowding Botswana Judges give offenders either custodial or non-custodial sentences. A custodial sentence forces the Presiding Officer to send the offender to prison while with the non-custodial sentence the Presiding Officer may refrain from sending the offender to prison. Mr Kau mentioned that they have crime under control and attributed the success to the harsh stance that the government and the Judiciary have taken against crime. Mr Kau admitted however that employees are not allowed to form and join trade unions; however the employment conditions of the police,

correctional officials, and soldiers, are better compared to other public servants (Interview with the Botswana National Commissioner of Prisons, April 2005).

### **3.6.3 Lesotho public prisons facing challenges**

Lesotho's prison population was standing at 3,000 as of September 2004. The prison system is also facing overcrowding and the estimated overcrowding rate is 20 per cent. The figure stood at 2,600 as of November 2005 according to Mr Malefatsane Masole, the Deputy Commissioner of Prisons (Interview with the Deputy Commissioner of Prisons, November 2005). A report on the inspection of prisons was released in May 2003 prisons with some of the following findings (Ombudsman Report, 2003):

- Prisons inspected are overcrowded by large margins,
- The overcrowding results from two factors, namely, the increasing prison population and the size of buildings which are very old,
- Buildings are old and neglected. There is no maintenance of prison buildings and this state renders them unsuitable for human occupation. They are a health hazard (see Table 3.4.3.1).
- Prisoners are not supplied with any bedding; they sleep on bare concrete floors.
- Prisoners do not have enough good quality blankets and wear bleached and tattered uniforms.
- That the Minister and the Principal Secretary do not visit prisons to see for themselves the conditions in which those communities live.

Three months after this report was submitted, a prisoner (Robert Phakiso Molise) escaped whilst at Queen Elizabeth II Hospital, which is unusual in Lesotho. A commission was established in August 2003 to investigate the general administration of the Lesotho prison service including the circumstances that led to that escape. Amongst the findings of the commission was that, prisoners are treated inhumanely in the Lesotho

prisons, owing to insufficient funds and resources. The commission also reported that, due to their dilapidated state, prisons in Lesotho are unhealthy and unfit for human habitation. “They do not meet health requirements” (Judge White Report, 2003:40-41). Mr Tsebo Matsasa of the Lesotho Council of NGO’s also confirmed the appalling state of most of the prisons. According to him, recommendations made by the commission, as we shall see later have not been implemented (Interview with the Director of the Lesotho National Council of NGO’s, 17 November 2005).

Table 3.6.4: State of the Lesotho Prisons

<b>Prison</b>	<b>Capacity</b>	<b>Occupancy</b>	<b>Percentage Occupation</b>	<b>Built</b>
Central	600	1066	177.7	1948
Leribe	300	426	142.0	1920
Mohale’s Hoek	534	325	60.9	1994
Thaba Tseka	240	186	77.5	1980
Mokhotlong	240	164	68.3	1962
Female	240	63	26.3	Unknown
Butha-Buthe	160	190	118.8	1907
Berea	135	306	226.7	1886
Mafeteng	135	210	155.6	1948
Qacha’s Nek	130	166	127.7	1948
Juvenile	66	128	193.9	1940
Lepper Open Prison (Maseru)	35	35	100	1974
Mafeteng Open	22	22	100	1978

Source: Judge White Report: 2003:5

This situation and other socio-economic considerations forced the Lesotho government to consider privatising its prisons (Nathan, 2003). In August 2000, a delegation from the Lesotho Justice Department visited the private prison in

South Africa (Bloemfontein-Mangaung Correctional Facility), which was still under construction. Shortly thereafter, in October 2000, Group 4 Correctional Services SA was requested to submit a proposal for the establishment of a 3 500-bed prison facility in Lesotho. This facility would be built in Maseru, the capital, and all prisoners in the country would be transferred to the new facility. It was hoped that this facility would alleviate overcrowding problems but the intention was also to close down the 12 existing prisons in the country (Berg, 2004:32).

Though there are possibilities that that the proposal may be approved, it has received immense opposition, even from the prison service of Lesotho (Berg, 2004:33). In an interview with the National Secretary of the Lesotho Police Staff Association, Mr Sello Mahashe, in April 2005, it was revealed that discussions to implement this project were at an advanced stage. Some argue that the approval of the enabling legislation is a mere formality because the Lesotho Congress for democracy holds 79 seats of the 80 in parliament, which is in support of the project (Prison Privatisation Report International 2002).



On the contrary, Mr Masole, the Deputy Commissioner of Prisons in Lesotho, who was also part of the delegation that was sent to the Mangaung correctional facility, disputed the fact that the Lesotho government may consider the proposal to privatise the entire prison system. Whilst he admitted that the proposal looked attractive and could be a solution to some of their challenges, the prison service could not support it in its current form. Bureaucrats, as opposed to politicians, felt that the costs were high and the proposal did not consider other factors such as (Interview with the Deputy Commissioner of Prisons November 2005):

- Distance of inmates from families - the prison would be built in Maseru and yet inmates are coming from vast areas of the country,
- Socio-economic implications, and

- Impact on Jobs – the proposal is expecting current official to apply for their jobs under different conditions with no guarantee that they would eventually get the jobs.

As of the 18<sup>th</sup> of November 2005, the decision as to whether or not to privatise the prison system had not been taken. Mr Masole indicated that most prison services members would support privatisation in prisons if it only relates to privatising some functions not the entire prison system. Based on the above situation, it is clear that the Lesotho authorities are still undecided on which privatisation option to opt for, which brings us to the fieldwork results.

### **3.7 FIELDWORK RESULTS**

Further to the results from fieldwork already discussed in this Chapter, the following specific observations on viability, costs and quality of service can be summarised as follows:



- Anti-prison privatisation campaigns are prominent in the US, UK and Australia – there is a strong emergence of anti-prison privatisation campaigns globally, rallying around philosophical and practical arguments that the state is the only institution that has a right to incarcerate. They further argue that conditions for inmates and correctional officials are worse off compared to their counterparts in public institutions. Americans also use the prison privatisation debate to influence public opinion, even during political polls (Interview with John Burpo, June 2005).
- Overcrowding is seemingly a worldwide phenomenon – Most of the countries that the researcher visited (US, UK, Malawi, Lesotho and Botswana) are experiencing some degree of overcrowding, save for Botswana.
- Conditions of correctional officials in public prisons are better off compared to those in private prisons – It had emerged during interviews with correctional officials in private and public prisons in the



UK and US that better working conditions exist in public prisons. Private prison staff was also complaining about security as their system relied more on technology as opposed to manpower.

- It may take time to privatise the entire Lesotho prison system – Whilst the discussions to privatise the Lesotho prison system were underway, it was clear that the proposal did not receive overwhelming support from all the stakeholders, especially prison authorities. It had emerged that it would be difficult for private contractors to opt for the privatisation of some services because Lesotho is a small country with a small population of just over 3 million. Because private companies wanted to make a profit they would prefer to privatise the entire prison system that may not be accepted by prison authorities.

### **3.8 CONCLUSION**

The international highlights of this Chapter are the international experiences. The 1980s is the period when privatisation gained general popularity when societies in different countries began to rely upon private industry to advance the different countries' economic positions. This was done by relying on competition to induce innovation, research, technological changes, managerial and entrepreneurial advances. In a number of instances overcrowding became a matter of serious concern due to a tremendous increase in prison population. Public prisons could not offer relevant solutions and therefore the wave of privatisation in many parts of the world was received as a burden relief for the state. Many African countries experienced the same problems associated with overcrowding in prisons, and as such, countries such as Lesotho were beginning to consider privatising their prison systems.

The implication for South Africa is that, because of its economic position and strategic location in Africa, South Africa may be used as a springboard to the African market by private jailors. It has been consistently argued that private

prison companies are now considering expanding this market and that Africa, South America and Asia have been identified as potential growth areas.

Key considerations are that, if not properly piloted in Africa in general and in South Africa in particular, international lessons unlearned from prison privatisation may have far reaching implications.



The next chapter focuses on the privatisation of prisons and prison services in South Africa whilst public prisons will also be used as a point of reference. The research investigation will reveal that South Africa opened its first two private prisons in 2001. They are now fully operational alongside public prisons that are facing many challenges.



## **CHAPTER 4**

### **CHALLENGES FOR PRISON PRIVATISATION IN SOUTH AFRICA**

#### **4.1 INTRODUCTION**

What the Chapter is about is looking at the nature, extent and timescale of prison privatisation in South Africa. It starts by focusing on the challenges faced by South African public prisons within a historical context. The chapter also compares private and public prisons in relation to costs and quality. Overcrowding is the thrust of Chapter Four. The legislation governing privatisation of prisons and prison services is looked at in detail while at the same time the Chapter attempts to assess the stakeholder participation in prison privatisation.



Later in the Chapter, a thorough assessment on the impact private prisons on security, correctional officials and inmates is done. Finally, findings on the fieldwork results would be tabled. The Chapter concludes by looking at the impact of private prisons on the entire public service.

#### **4.2 BACKGROUND**

Whilst the Department of Correctional Services (DCS) has made strides in transforming itself into a correctional service that is befitting of a democratic South Africa, the prison system is still facing many challenges. The South African Constitution (Act 108 of 1996), as entrenched in the Bill of Rights, guarantees prisoners the right “to conditions of detention that are consistent with human dignity, adequate accommodation, nutrition, reading material and medical treatment.” Current conditions in South African public prisons militate against this constitutional provision. The essential problem that the DCS has

confronted over the last ten years, according to ISS (2005:27), is that the number of inmates has risen inexorably while both staff levels and accommodation capacity have failed to keep up. This state of affairs has impacted negatively on the rehabilitation programmes of the department.

Like their counterparts in the US, UK, and Australia, the South African Government, overwhelmed by these immense challenges, has opted to take the route of prison privatisation as a policy option. This concept was introduced at a time of political and social changes and transformation in South Africa. As we have seen in the previous chapter, South Africa is the only country that started and continues to pursue this concept on the entire African continent.

As part of their strategy, the Department of Correctional Services has enlisted the services of private hands to find solutions to public sector solutions. South Africa currently has two private prisons, located at Bloemfontein in the Free State and at Louis Trichardt in Limpopo. The Bloemfontein prison, named Mangaung Maximum Security, holds 2,928 prisoners and was opened in July 2001. The Louis Trichardt facility, named Kutama-Sinthumule Prison, holds 3,024 prisoners and was opened in March 2002 (Berg, 2004:23, Judicial Inspectorate Report, 2004:20). The DCS has also outsourced some of the services to the private sector where there is no internal capacity. According to Mr Joe Maako, the Director of contracts in the DCS, outsourced services include kitchen services, electronic security devices for prisons, recruitment services, and so on. The other development is that there are plans underway to build four 'new generation prisons' within the context of a 'unit management' principle that emphasises security, care, development and corrections. The new generation prisons will be public prisons, as stated by Maako (Interview with the DCS Director of Contracts 4 October 2005).

The current situation in public prisons raises two fundamental questions: firstly, is enlisting the services of private hands in turning the situation around the best of decisions? The second question is whether there is a best and sustainable solution to keep up with this explosive trend (overcrowding), which we shall examine when we look at challenges facing the public prisons.

### **4.3 CHALLENGES FACED BY PUBLIC PRISONS**

There are about 241 public prisons in South Africa that were built to accommodate about 114,000 inmates. Most of these prisons are facing challenges. These challenges, amongst others, can be attributed to poor state of infrastructure, overcrowding, unsuccessful rehabilitation programmes, and resource constraints, which are discussed in detail below.

#### ***4.3.1 Public prison infrastructure***

The 241 public prisons mentioned above are not equal in size. Some are large, such as Modderbee in Johannesburg that carries a capacity of 2,993 prisoners and some are small, such as Uniondale in the Western Cape with a capacity of 24 prisoners. Of the 241 prisons, 72 are mixed (they have sections for males and females), 137 are for males only and 8 for females. There are 18 youth facilities that are meant to accommodate sentenced youth under the age of 18 years. It must be mentioned that most children and juveniles, both awaiting-trial and sentenced, are kept in ordinary prisons but are kept separate from adults.

There are currently 238 public prisons that are operational. The other four have been temporarily closed for repairs and renovations. Most of these prisons that are operational have communal and single cells. Communal cells accommodate between 2 to 90 prisoners whilst single cells take 1 to 3 people owing to overcrowding (Judicial Inspectorate Report, 2004:20-21). The figures exclude police holding cells where some of the awaiting trial prisoners are held before they are finally handed over to the care of DCS upon their appearance in court.

According to Berg (2004) many prison buildings are in a state of disrepair. She states that these prisons are so old the government should consider doing away with them as they are beyond reparation. Most of the buildings are severely dilapidated and some are encountering problems related to

sanitation and ablution. “Meaningful rehabilitation is almost impossible under such conditions ... exacerbated by overcrowding,” said Judge Fagan, the Inspectorate Judge of prisons (Judicial Inspectorate, 2004:21).

#### **4.3.2 *The extent of overcrowding***

The prisons that were built to accommodate about 114,000 were forced to house about 187,000 inmates as of March 2004. This was before the Minister released 66,000 inmates (33 inmates in under community corrections and 30 within correctional facilities) inmates on remissions between April and May 2005. After this exercise, the figure came down to just over 160,000. At that point when the figure was 187,000, 53,000 were awaiting trial prisoners while the remaining 133,000 were sentenced prisoners (Berg, 2004:23). “The ten most overcrowded prisons in South Africa range from 285 per cent to 386 per cent whilst the general rate of overcrowding in South African prisons is 39 per cent. Only 28 of these prisons hold the numbers they were designed for, otherwise the rest have more than their holding capacity. The worst of all prisons is Thohoyandou Female prison, which is 386 per cent overcrowded (See Table 4.3.3 for the 10 most overcrowded prisons in South Africa).

Miles Bhudu, the President of the South African Prisoners Organisation for Human Rights (SAPOHR), refers to overcrowding as a “Clicking time-bomb” (Sowetan, 18 January 2005) while Judge Fagan refers to it as a “worst catastrophe” (Judicial Inspectorate Report 2004).

Table 4.3.3: Overcrowding in SA Public Prisons: Prisons in the Top 10

PRISON	CAPACITY	ACTUAL NUMBER OF INMATES	% OVERCROWDED
Lusikisiki	148	422	285%
Modimolle	341	988	290%
Mount Ayliff	85	250	294%
Middledrift	411	1 325	322%
Johannesburg Med B	1 300	4 256	327%
Mount Frere	42	142	338%
Uniondale	24	82	342%
Umtata	580	2 108	363%
Durban Med C	671	2 480	370%
Thohoyandou Female	134	517	386%

Source: *Judicial Inspectorate Report 2004:21*



Bhudu further says that; “if South African prisoners were animals in a cage, the DCS would have been taken to task by the South African Pets Care Agency (SPCA) for committing animal abuse (Interview with the President of SAPHOR 13 July 2005). Expressing the view of the Police and Prisons Civil Rights Union (POPCRU) on this subject, Mr Abbey Witbooi, the General Secretary of POPCRU said, “Overcrowding in our prisons has reached alarming proportions such that the safety of our members is not guaranteed and there is no meaningful rehabilitation taking place under these conditions.”

Overcrowding was the key theme during the address to parliament by the Minister of Corrections, Mr Ngconde Balfour, in March 2005. The National Commissioner of Correctional Services, Mr Mti, attributed this problem to wrongful arrests and the fact that police are failing to accommodate the awaiting trial prisoners. “My responsibility under normal circumstances is to look after those who have been sentenced, awaiting trial prisoners are supposed to remain in police cells.” (Cape Argus 26 September 2005). Clearly there seems to be consensus among stakeholders that



overcrowding is a stumbling block preventing the department from delivering on its constitutional mandate. Supposing that the National Commissioner was correct and we subtract the 50,000 of the current 160,000 inmates housed in our prisons, thereby taking the figure down 110,000, would that mean the DCS would be able to cope with its prison population? The second question is whether or not it would have been necessary for DCS to have opted for the prison privatisation route if the numbers were down. These are difficult questions as many considerations are required before arriving at policy decisions, bringing us to the next topic of staff/prisoner(s) ratio.

#### **4.3.4 Staff complement in the DCS**

The growth of prisoner numbers was three times faster than that of staff numbers between 1998 and 2005, resulting in deteriorating prisoner-to-warder ratios (ISS, 2005:27). POPCRU disputes the figure that is reflected on the Judicial Inspectorate Report (2004) that there are about 33,000 correctional officials running the public prisons. In their view, the number is less because between January 2002 and January 2003 the DCS lost approximately 1,000 employees due to resignations. The National Commissioner gives a decline of 2,400 staff members a year; however, the department has embarked on a recruitment drive of 3,000 members a year for the coming three years. By 2007, according to the National Commissioner, the DCS shall have employed 10,000 new correctional officials (Cape Argus 26 September 2005).

This situation has seen correctional officials, the majority of which are members of POPCRU, going on a mass strike action between July 2004 and February 2005. Overcrowding and understaffing were among the issues contained in the POPCRU Memorandum during their march to parliament in February 2005 (Mail and Guardian online 2004). Understaffing, combined with the growing problem of overcrowding, is sure to undermine the rehabilitative efforts of the DCS (ISS 2005:27). Rehabilitation is the emphasis of the White Paper on Corrections of 2005 but it can only take place within a context of safe and secure facilities. Are the existing facilities capable of taking forward

the provisions the White Paper? If the researchers' presentation is a depiction of reality, it is clear that there is still a long way to go in bringing about real transformation in South African public prisons.

#### **4.3.4 Impact on security and quality of life**

The conditions of overcrowding perpetuate other problems within the prison system such as gang activities and a decrease in warder supervision and control. This could also imply a lower standard of living for all prisoners (Berg, 2004:28). Often there are not enough beds or blankets, and new arrivals must soon learn to align themselves with powerful gang members in order to obtain the basic necessities (Judicial Inspectorate Report 2004).

The food provided is also substandard in public prisons consisting of two meals. Bhudu, who complained that the 'three meal system' that is encapsulated in White Paper on Corrections of 2005 is not yet implemented in many prisons because of personnel shortages, confirmed this. It is believed that this could be a step in the right direction if properly implemented. According to him (Bhudu), other inmates and warders interviewed, a prisoner in South Africa is given breakfast of mielie pap and then dinner and lunch are combined into an afternoon meal at 15h00. This meal usually consists of ground fish meal and several slices of bread. Meat, fruit, and vegetables are scarce, but even the food that does arrive at the prison is smuggled and stolen so that it can be sold to the highest bidder. Most prisoners are poor (Gear and Ngubeni, 2002:19-20) and so the medium of exchange becomes sexual favours. "This results in victimisation, if not outright assaults between prisoners and the situation is only made worse by the increasing overcrowding and decreasing availability of basic provisions as well as gangsterim" (Steinberg: 2004).

That been said, this situation also places the lives of inmates, warders and the public at risk. The extent at which correctional officials and inmates have been killed in the recent past has led to a public outcry. More often than not, these

killings take place during the following intervals (Interviews with Correctional Officials between July 2003 and August 2005):

- During meal times,
- Over the weekends, when most inmates are back in their cells,
- During escapes,
- When inmates are escorted to courts and hospitals,
- During gang violence outbreaks.

In September 2004, two warders were killed in Pretoria C Max prison during a planned escape. In July 2005 a warder was trampled to death during mealtime in St Albans prison in the Eastern Cape. In July 2004 prisoners burnt themselves to death because meals were not served on time. Late in 2004 two inmates were killed and three warders injured in one of the Western Cape prisons during a gang fight (Interview with the General Secretary of POPCRU, November 2005).



Given the above conditions, the Department of Correctional Services has had to come up with practical measures to turn the situation around. Prison privatisation became an option.

Whilst some argue that the concept of private prisons in South Africa is both foreign and young as may be documented to date, ISS Crime (2003) traced the concept as far back as the 19<sup>th</sup> century. The De Beers Mining Company operated the 'first private prisons' in South Africa as early as the nineteenth century. De Beers built the prisons and the state provided the prisoners to fill them (ISS Crime 2003). Modern prison privatisation entails more than this setup as we have seen in the previous Chapters and as we shall see when dealing with South African prison privatisation.

#### **4.4 THE EVOLUTION OF PRISON PRIVATISATION IN SOUTH AFRICA**

Privatisation of state assets was part of the government's overall economic programme in the period following 1996. This was in pursuance of the

government economic policy then, the Growth Employment and Distribution (GEAR). This period was characterised by the privatisation and outsourcing of functions and utilities by state and parastatals in South Africa. Most government sectors were affected, including criminal justice. The Department of Correctional Services decided then to explore the possibility of privatisation as part of the new prisons building programme, one key aim of which was to address overcrowding through the rapid building of new facilities (CSPRI, 2003:20).

#### **4.4.1 The historical context of prison privatisation in South Africa**

In 1997, the then Minister of Correctional Services, Dr Siphon Mzimela and senior leadership of the Department of Correctional Services (TURP, 2000:18) visited various countries in Europe and the Americas to observe and learn of alternative methods in confronting the overcrowding phenomenon in prisons. It was during these excursions that the private prisons concept was observed and imported to South Africa. After the visit the minister was quoted as saying that (Mzimela in Nina, 1996:25).

*Wherever the private sector got involved, they have delivered a better service, and have done it at less cost to the taxpayer. What I have seen in the United States is very good. The prisons are run the private companies are far more efficient in every sense because they are run by business people, unlike those in the Department of Correctional Services who are not necessarily trained to run businesses.*

It is however argued by Giffard (1999) that the visit to the USA by the then Minister was not a coincidence, saying that the minister had long bought into the idea of prison privatisation when he was still a prison chaplain in the USA. The Department of Correctional Services announced in June 1996 that it would include the private sector in the financing, designing, construction, and

maintenance of prison facilities. The Department of Finance, Public Works, Correctional Services and Treasury had already prepared a prison privatisation plan to be presented to Cabinet (Berg, 2004:23). The Minister and his team to the USA presented the plan to Cabinet, which necessitated the visit in 1997. According to Berg (2004:73), the Minister also announced that in September the same year, a youth centre (Ekuseni) was going to be opened after being financed by the private sector.

Indeed, shortly after the minister's return, the process to implant the plan started. The DCS budget was increased from R2.5 billion to R3.3 billion for 1997/1998 year. The Correctional Services Amendment Act (No. 102 of 1997) was promulgated. The act gave powers to the minister to contract out prisons to private contractors. Finally, on the 27<sup>th</sup> of November 1998, the Correctional Services Act (No. 111 of 1998) was published.

At this point, it was clear that the government had made a choice. It was either private prisons or nothing. All options were pointing to one direction, according to Mr Raphepheng Mataka, the former Eastern Cape Regional Commissioner who was also representing DCS on this project. The reasons for opting for private prisons in his view were that:

*“Private prisons were essentially introduced as symbiotic relation between the government and the private sector, because of the bursting of the prison population. The government was unable to cope with the rapid numbers versus the contesting government priorities and social needs in general. As the private sector had adequate resources and immediate access to capital, these would be accordingly used to create more accommodation for the growing numbers.”*

#### **4.4.2 First Private Prisons**

Initially, seven (7) pilot private prisons were identified and at the time when the legislation was promulgated upon the return of the Minister from the USA, tenders to build four private prisons were advertised. However, only two were finally approved, as the DCS could not afford all seven at the same time (Interview with Raphepheng Mataka, March 2005). At some point in 1997, the then Minister of Public Works announced that five black empowerment companies would bid for contracts worth R 10, 5 billion to design and build four privately financed and owned prisons. According to Minister Radebe, "This was South Africa's biggest private-public sector partnership yet. "Initial estimates indicated that the initial capitalisation costs could range from R 150 million to R 200 million for each prison with the total contract over 25 years" Prison Privatisation News: 1997:1-3). The above scenario is put simply for general understanding, but the contradiction will be dealt with below.

It must be noted that both private prisons were constructed in less than 18 months. The first private prison opened in Bloemfontein in July 2001, and was called Mangaung Maximum Security Prison. This was contracted to a consortium led by a UK-based company called group 4. It received its first intake of prisoners on the 2<sup>nd</sup> of July 2001, and became fully operational on the 14<sup>th</sup> of January 2002, with 2,928 prisoners who were transferred from the DCS (CSPRI, 2003:22, ISS, 2001). The second prison, also a maximum-security facility was opened in Louis Trichardt in Limpopo in March 2002. This is a 3,024-bed facility and is called Kutama-Sinthumule. The sites were chosen because DCS already owned sufficient land in these two areas, as both are adjacent to existing prisons (ISS, 2001, PPP Prison Task Team 2002).

#### **4.4.3 Contract Arrangements in South Africa**

The arrangement that the Cabinet approved in entering into these contracts was the Asset Procurement and Operating Partnership System (APOPS) and

the Procurement Operating Partnership Systems (POPS) (Schonteich, 1999). In terms of the APOPS arrangement, the private sector would, at its own costs, design, build and operate prisons. The state would over a period of time (25 years) repay the private entity that built the prison and once the former settled the debt, the prisons would become state property. The Department would also pay the company a fee per inmate during the term of the contract. Any breach of contract from the side of the company would imply immediate termination. The state would then take over the prison and bring in its staff; however, the DCS would also have to pay, in full, the outstanding fees owed to the company in respect of financing prison construction (Berg, 2002:79).

On the other hand, POPS operates like APOPS except that it requires that the private sector should build (not merely finance) a new facility or modify an existing one. By using POPS, the DCS may end up paying less however, at the end of the contract term the building remains the property of the private entity rather than the property of the state. The private entity may decide what to do with the property after the duration of the contract. Berg (2002) notes that this is privatisation in its fullest sense or operational privatisation as opposed to nominal privatisation, where the contractor does not become involved with the internal operations after the building is complete (CSPRI 2003:21). However, Schonteich (1999) differed with this view, because in his view the full privatisation of a facility has not taken place on South African soil as yet. In terms of this arrangement, the National Commissioner will have ultimate control over the operation of the prison. What has been an ongoing issue is the extent of transparency of contracts signed between the South African government and private contractors. This is raised against the legislative framework (access to information Act of 2000) that encourages transparency.

#### **4.4.4 The extent of transparency in prison contracts**

The Access to Information Act of 2000 grants the public the right to access public information. This Act can be easily tested if private prisons and government could be taken to task on the contracts governing private prisons. It has been very difficult to access this information when conducting this research. Most parts of the contract between the private prisons and the South African government have not been made accessible to the public. The reasons given by government officials ranged from a claim that it was necessary to protect the commercially sensitive nature of the contract to the need to protect security information. One government official explained that it may become public information eventually. Lengthy discussions and informal examination of Schedule D was permitted, but the remainder of the contract has still been kept secret. The South African Constitution, Article 32 (1) guarantees access to any information held by the state that is required for the protection of rights. The Promotion of Access to Information Act was passed in 2000 in order to give effect to this constitutional right. In the preamble, the Act recognises that:



*The system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations.*

The preamble concludes with a statement regarding the intentions of the Act, which includes a desire to foster a culture of transparency and accountability in public and private bodies. In light of the constitutional rights of South African citizens and the intentions of the Access to Information Act of 2000, the contracts with private prison companies should be released to the public without further delay (Access to information Act of 2000). The day-to-day management of the facility will be in the hands of the Director who may be appointed by the private company, with the commissioner's approval (Schonteich, 1999).




#### 4.5 LEGISLATIVE FRAMEWORK GOVERNING PRIVATE PRISONS

The Correctional Services Act of 1998 (CSA 1998) contains a section that specifically authorises the government to contract out prison services to the private sector. Chapter XIV, "Joint Venture Prisons", Section 103(1) provides that:

*The Minister may, subject to any law governing the award of contracts by the State, with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any prison or part of a prison established or to be established.*

The CSA 1998 goes on to list very specific conditions and requirements for private prison contracts. The legislation states that (Correctional Services Act of 1998):

- 
- Contracts cannot exceed 25 years.
  - The contractor must "Contribute to maintaining and protecting a just, peaceful, and safe society."
  - The contractor is responsible for enforcing the sentences of the courts, detaining prisoners in safe custody, ensuring the prisoners' human dignity, and promoting the human development of all prisoners.
  - The contractor is explicitly prohibited from taking disciplinary action against prisoners or from involvement in determining the computation of sentences, deciding at which prison any prisoner will be detained, deciding on the placement or release of a prisoner, or granting temporary leave.

The latter safeguards are important to include in legislation, and not just in a prison contract, because this adds an authority and independence, which assists in enforcement and monitoring. Also, the CSA 1998 does a great deal to ensure that the responsibility for punishment rests with the state and that only the services are delegated to the contractor. According to Makubetse

Sekhonyana of the Institute of Security Studies, the extent of monitoring this clause could be cumbersome and impractical as inmates are under the supervision of private parties at all times and some transgressions may need immediate intervention, tempting private parties to enforce discipline. According to Friekkie Venter, the Managing Director of the Mangaung Correctional Facility, compliance is ensured at all costs, including on this matter (discipline) because non-compliance would have far reaching consequences.

One interesting component of the CSA 1998 is that, it explicitly forbids private contractors from becoming “Involved in the implementation of community corrections” (CSA, 1998). Community-based corrections refer to an effort to build or rebuild societies and a establishing a connection to the community in order to prevent future violations. This concept is also underpinned within the context of restorative justice and prevention of recidivism. This usually includes obtaining employment or education and assisting the offender with adapting to the routine functioning of society (CSA 1998). According to Mr Venter, six months prior release, inmates are transferred back to the DCS therefore private prisons will loose complete track of that individual. He also did not rule out the possibility that upon transfer to the DCS, inmates may relapse into the old ways due to conditions in private prisons (Interview with the Managing Director of the Mangaung Correctional Facility).

In the United States, as we have seen in Chapter Three, prison researchers contend that the criminal justice system needs to incorporate more prison alternatives offered by community corrections, such as halfway houses, parole, probation, and work-release programs (ISS, 2001). Newham further argued “The private sector has been a significant part of community corrections in other countries, so it is unclear why this area which is most likely to provide innovation and reform benefits from the private sector would be specifically labelled off-limits in South Africa.”

The CSA 1998 states that a controller must be appointed by the Commissioner of Correctional Services for each private prison, and then goes on to list the duties of the controller. However, the controller still reports to the

Commissioner, rather than to a separate regulatory body. It should be noted that the CSA 1998 also requires all prisons, public or private, to be monitored by the Judicial Inspectorate, which is an independent agency. The prison visitor from the Judicial Inspectorate for the private prisons will perform his or her normal monitoring duties, in addition to that provided by the appointed controller (CSA 1998).

Various monitoring programmes have been tried in the countries that have introduced prison privatisation, and none of them have proven to be immune to the phenomenon of 'regulatory capture'. However, the monitoring mechanisms that have been most successful at protecting the public interest are those that are designated by statute rather than by a section in a contract (ISS 2001).

#### **4.6 STAKEHOLDER PARTICIPATION**

According to Bhudu, his organisation was never involved in the process except later when they were invited on a tour to the UK and US to see these private prisons. Despite their later involvement, he maintained that his organisation was opposed to prison privatisation. Privatisation of prisons in his view is "Another stark contradiction between South African laws that emphasise human rights and a contrary the South African reality." While the South African Constitution (Act 108 of 1996) prescribes that the state is responsible for respecting, protecting and fulfilling the Bill of Rights, huge prisons are being built to be run by private entities instead of the state (National Symposium on Correctional Services, 2000: 108-109). Justifying this point recently, Bhudu argued that it was immoral for private companies to make profit out of punishment and called for the intervention of government.

When asked if they were involved in the process, POPCRU's Witbooi said, "The process was too fast for us. These companies were always a step ahead with ready-made answers for unready made questions ... even our government representatives were sometimes lost. This in our view was

consultation not participation.” Witbooi further emphasised that POPCRU’s position on private prisons was informed by COSATU’s position, which is opposed to privatisation in general. He said his organisation had engaged researchers from UK (Stephan Nathan) and the US (John Burpo) who advised that prison privatisation was no longer popular in the UK and US respectively. Whilst POPCRU acknowledged the positive spin-offs that came with prison privatisation, they would not advise the South African government to go that route because the negative outcomes outweighed the positive outcomes (Interview with POPCRU General Secretary 27 September 2005).

On the same issue of participation and consultation, Mataka revealed that (Interview with Mr Mataka, March 2005):

*The British model alone was discussed and debated for at least ten years and piloted very conservatively. At the time the South Africans were observing and importing this concept, little had been documented in terms of experience learned during piloting in Britain. “It is not inconceivable to believe that we may have inherited the British concept and its related problems with no reference of our own. It was not surprising that the majority of government consultants and advisors throughout the process were British. Instances where I was directly involved, the process was very tedious and quiet detailed.*

To prove that the process was full of complexities, there were various sub-committees such as finance, legal, architectural, human resources and many more over a period of three (3) years. It took South Africa only three years to pilot and implement the process whilst it took the British ten (10) years (Interview with Mr Mataka). The paper will reflect on the implications of this policy decision when dealing with costs and findings.

#### **4. 7 COSTS OF PRIVATE PRISONS**

Before we deal with costs, it must be noted that the Department of Public Works had earlier pointed out that there would be savings when working with the private sector. The total cost of the Louis Trichardt project was valued at R1, 8 Billion and the projected cost per 'bed' then was R65, 47 per day. On the other hand, the Bloemfontein project was valued at R1,7 Billion with cost per prisoner estimated at R85 per day. The projected savings for the Bloemfontein project was 31, 32 per cent and 31, 47 per cent for the Louis Trichardt project. Pushing for the involvement of the private sector in that project, ironically, at that time, the Department of Public Works mentioned that DCS would normally only save 4, 83 per cent and 4, 86 per cent if it was given the same project as opposed to the projected savings mentioned above (Berg, 2002).

Apart from training and paying their own staff, the services that would be provided by private jailors included laundry, catering, cleaning, uniform provision and building maintenance. The contractor would also provide rehabilitation and training programmes and provide for additional inmate outdoor time and three meals per day as opposed to the two meals per day provided by public prisons (Department of Public Works 1999, Berg, 2002, ISS 2001).

In the true sense, these cost comparisons are meaningless and cannot be over simplified, as the Department of Works would want us to believe. These costs do not include hidden costs as private sector entities have definite costs centres that public entities do not have. DCS determines its cost per prison per day by taking its annual budget and dividing it by the number of prisoners in custody (TURP, 2000). The annual DCS budget does not contain all the costs associated with running a prison. Most significantly, the cost of the facilities is included in the budget of the Department of Public Works. Also, the prison service is increasingly charged with incarceration of awaiting trial prisoners, who would more appropriately be included as responsibilities of the Department of Justice. Finally, the great majority of costs incurred by the DCS are for fixed overheads both in terms of personnel salaries and general sunk

costs. These are costs that do not vary with the size of the prison population, and as such should be treated differently when making cost comparisons (Berg, 2002:87, ISS 2001).

ISS (2003) suggests a better means of comparison that can be found when one compares the variable costs. A variable cost is one that changes with volume. For example, the cost of issuing each prisoner a blanket will increase as more prisoners enter the prison system. If a blanket costs R10, then DCS will have to spend R10 000 on blankets at a prison with 1 000 prisoners. If the prison finds itself with 2 000 prisoners, then it will need 2 000 blankets and the costs increase to R20 000. This approach assumes that the prison is actually able to pay for and obtain sufficient blankets for the additional prisoners.

What came out of an interview with Mr Friekie Venter, the Managing Director of the Mangaung Correctional Facility is that, "Clearly, standard of care is not comparable between the two facilities and so cost comparisons become difficult" (Interview with Mr Venter, 16 November 2005). It is impossible to ascertain whether private prisons in South Africa are cheaper than publicly run prisons because the standard of care offered by private prisons is entirely unmatched in the public sector. Perhaps the greatest contribution the PPP prisons have made to correctional services in South Africa is that, for the first time the government has learned exactly how much it costs to provide conditions of humane detention for prisoners.

Mataka and POPCRU's Witbooi hold a different view on the issue of costs. Firstly, Mataka argues that South African private prisons are more expensive to manage than public prisons because the contracts are (dollar denominated), meaning that costs are calculated on dollars. DCS pays per bed irrespective whether the bed is occupied or not, which is a fact the researcher managed to verify during the visit to the Mangaung correctional facility. In Mataka's view, this is a conservative projection because it will cost the DCS the whole of its current budget just to sustain the two private prisons for the duration of the contracts if no alternative funding is found. "Even if such alternative funding is found, the state will still lose because of the dollar

denomination of the current contracts” (Interview with Mr Mataka, March 2005).

Witbooi was unapologetic when it came to costs. His words were that, “It is immoral to allocate half of the DCS budget to only two private entities when you have 241 public prisons which are under resourced and overcrowded.” The lesson here is that, there is uneven distribution of resources between public and private prisons but the question is, can this be justified? Private prison management referred the researcher to the DCS when probed on the details about costs and future projections. On the other hand the DCS said they were not at liberty to disclose that information due to contractual restrictions.

Finally, it must be reiterated that cost comparison in this regard becomes unfair as we are comparing things that are not similar. To strengthen this point, Berg (2002:88) argued that “If there existed a prison in South Africa, which matched the standard of prisons overseas and existed in the same location and at the same level of security as private prisons in South Africa, perhaps it would have been easy to make that comparison” (Berg 2002:8).

The question that we need to ask is whether the country can afford and sustain these prisons in the long run? Despite technicalities in conducting costs comparisons, we shall not have done justice if we did not compare these prisons with public prisons in terms of quality of service and care provided by various prisons regardless of location.

#### **4.8 IMPACT ON PRISONERS AND QUALITY OF SERVICE**

According to ISS (2001), private prisons are an improvement on public prisons because it would be almost impossible to perform any worse. The two private prisons have been able to live up to the expectations as espoused by the South African Constitution, which requires that prisoners must be given

exercise, adequate accommodation, nutrition, reading material and medical treatment (Constitution of the Republic of South Africa 108 of 1996).

The number one complaint amongst prisoners in South Africa is that the food is terrible. Not just in terms of the lack of nutritional content, but also the timing of meals is unsatisfactory as prisoners are fed only twice each day. In Johannesburg prison, the management claimed that the prisoners are fed three meals, but two are served simultaneously (Berg, 2004).

In the private prison contracts, the contractor is specifically required to serve three meals each day, one of which must be hot, and the time between each meal is not to be less than four and a half hours or more than six hours. This was also confirmed by the DCS controller who was present during the visit by the researcher to Kutama-Sinthumule in January 2004. The time between dinner and breakfast is not to exceed 14 hours, and 30 minutes is provided to eat breakfast while 60 minutes is provided for lunch and dinner. Food is never to be withheld as a disciplinary measure, and appropriate utensils and condiments are provided. This is an obvious improvement on the food service standards in public sector prisons. It would have been helpful to interview inmates to check if the prison complied with this regulation to the latter however this was not possible. Still, the fact that these standards are written down and signed by both parties in a binding legal document is extremely encouraging.

Mr Witbooi confirmed that he has been to both private prisons. When asked what he thought of quality, his response was that “If all public prisons were capacitated as these private entities, then surely rehabilitation would take place within a proper context, safe and secure environment.” He further confirmed that for now, private prisons outperformed public prisons but the question was “Would they be able to sustain that standard in the future in their quest for the maximisation of profits?”

Oupa Bodibe the Director of the National Labour and Economic Development Institute (NALEDI) argued against the privatisation of prisons on the basis that “There is a risk that, because the public sector cannot, at the moment,



compete with the private sector in terms of provision of correctional services, the government will become dependent on private prison companies.” Whilst this scenario may seem a long way off, because private prisons are just beginning in South Africa, the possibility exists that eventually the number of private prisons will outnumber the public ones, and the DCS will find itself at the mercy of private companies operating in facilities that the state neither owns nor can afford to purchase (Interview with the Director of NALEDI, 16 July 2005). Whilst competition and dependency may be the resulting reality, perhaps the assertion that the state may be entangled is far fetched. After the contracts run for twenty-five years, the government takes over the building according to the APOPS arrangement.

What makes it difficult at times to make an objective comparison with other countries internationally is the fact that, both private prisons in South Africa are taking care of maximum-security prisoners. This is not the situation in America and Britain as we have seen earlier. Private prisons in these countries only focus on minimum-security and awaiting trial prisoners. Newham, a researcher at the Centre for the study of violence and reconciliation criticised the fact that South African private prisons are exclusively designed to house maximum-security prisoners. In his view, the rehabilitation focus of these prisons is misdirected. He was moving from the premise that maximum-security prisoners were in there for a long period and they would come out quite aged, making it practically impossible for them to commit further crimes. “Because there is little overcrowding in private prisons, young and short-term prisoners could benefit from these resourced facilities which could also have a positive impact on rehabilitation” (Electronic Interview with Mr Newham, September 2005). This brings us to the issue of monitoring. What measures are in place to ensure that private contractors comply with contractual obligations?

## 4.9 MONITORING

The CSA 1998 provides that a controller must be appointed and enumerate some of the general duties of the controller. The contract lists the specific performance standards required of BCC in a section entitled "Schedule D". The performance standards in Schedule D assist the controller with his/her monitoring duties but an audit review team that periodically visits the prison also uses them. Schedule D was adapted from the contracts used in the United Kingdom with moderate variation. It includes seven basic goals that the prison is expected to attain (CSA of 1998):

- Keep prisoners in custody.
- Maintain order, control, discipline, and a safe environment.
- Provide decent conditions and meet prisoner needs.
- Provide a structured day programme.
- Prepare prisoners for their return to the community.
- Delivery of prison services.
- Community involvement.



The enforcement of these performance standards depends on the monitoring environment. Whilst the controller is appointed and employed by the DCS, one observed that these controllers spend more time in private prison premises. Though unwittingly, it was apparent that they have been co-opted into the prison management structure. One also observed the following in the Louis Trichardt Prison (Working visit to Kutama-Sinthumule, January 2004):

- The controller who has been appointed was hired from the DCS, as was the director and his deputies.
- The controller is given an office and a small support staff on the actual premises of the prison.

The above may seem like a good way to ensure consistent compliance; however, it is also likely to lead to an informal and overly sympathetic relationship with private prison management and staff (regulatory capture). According to the CSA of 1998, the controller should be in daily contact with

the private prison and will become extremely sensitive to the interests and operational challenges faced by the prison. It remains to be seen, however, if the controller would place the interests of the private prison management above his/her duty to ensure appropriate contract compliance and performance. The controllers appeared to be defensive when engaged on this aspect and it became clear that they had developed a strong bond with the prison that could easily be misconstrued as affinity. Be that as it may, one accepted that these controllers had a job to do and they would do anything practically possible to improve their working environment whilst at the same time trying to deliver on their set objectives (Working visit to Kutama-Sinthumule January 2004).

ISS conducted a study in 2001 and 2003 in an attempt to ascertain to what extent the prisons complied with provisions of the CSA of 1998 and the following came out (ISS, 2003):

- Some provisions of the Act were not complied with.
- There is clear mandate for regulators.
- There is regulatory capture which compromises accountability.

As seen earlier in the Chapter, the contract is specific and this is encouraging. Under each of the goals, as many as 30 separate points were listed as necessary activities. Some examples include the requirement that the contractor will provide postage for one letter per week for each prisoner, each prisoner will receive a free haircut every three weeks, and that there should be one newspaper per 15 prisoners. Some of these seem too specific to be effectively monitored, but their inclusion is encouraging proof that the government and the contractor are serious about taking the provision of correctional services to a level previously unseen in South Africa (Department of Correctional Services, Department of Public Works, and Treasury 2002).

#### 4.10 IMPACT ON SECURITY

The security in both private prisons is very specifically outlined in the contract, and is also necessarily improved from the public sector given the modern design of the prison itself. All the gates can be opened electronically, whereas most public prisons operate entirely with keys. The design of smaller cells with few prisoners in each one allows for much more effective monitoring of harmful situations, including bullying (Berg, 2002).

Each cell in Kutama-Sinthumule and Mangaung prison has a panic button that the prisoner can press if he/she is in need of assistance from the guard. This button turns on a red light that cannot be switched off without the guard actually venturing over to the cell to check on the problem. A computer automatically records the date and time when the button is pushed, and so incidents can be more easily verified. The prison is designed and organised in such a way that it holds much promise for being considerably safer and more secure than the public prisons in South Africa (Berg, 2002).

One correctional official in the Mangaung correctional facility said officials often felt unsafe inside prisons. They felt unsafe because, firstly, they were had to look after hardened criminals. Secondly, each street in the prison accommodated 60 inmates and one correctional official had to look after these sixty inmates. Sections in private prisons are referred to as streets, with specific designated areas for each warder to take charge of. "Even the retraining that is given to us is not sufficient to guarantee our safety during dangerous situations (Interview with a correctional official in Mangaung correctional facility).

The observation, which one could make, was that, security in private prisons is mostly reliant on technology as opposed to manpower. Central to the research question as outlined earlier is whether it is in the public interest to allow private companies to provide correctional services? Do private companies have public interests in mind when carrying out their duties? These questions would be answered when we deal with the next topic on public interest.

#### **4.11 PUBLIC INTEREST**

There is no reason to suspect that private prisons do not have the public interest in mind in carrying out their duties and fulfilling their contractual obligations. Both prisons already have a positive impact on the surrounding community through the employment opportunities they have created. Most of the employees at these institutions come from surrounding areas (Berg, 2004:29). The contract required that at least five per cent and eventually 10 per cent, of employees must be recruited from historically disadvantaged groups.

Though one could not measure this (contractual obligation to employ staff from surrounding communities), the researcher was informed by management at the Bloemfontein facility that they did not only meet the contractual requirement in terms of recruiting from previously disadvantaged communities, but exceeded this requirement as 94 per cent of staff and 60 per cent of management were drawn from these designated populations. The staff members were deliberately not recruited from the prison service although a significant portion of management positions were filled by former DCS employees. Mataka criticised this part of taking most managers from DCS. "The majority of the current senior management of the private prisons are mainly former DCS functionaries who will remain to administer these entities on the same principles of the public prisons. Further, the conditions of work are radically improved but with less numbers than the public prisons."

Except from providing jobs to local communities, it was clear, especially in the Kutama-Sinthumule consortium that very few people were economically empowered. Though the study did not focus on this aspect, it would be important to investigate the economic rationale of these deals because they seem to be advantaging the investing countries, at this instance, the US and the UK at the expense of local companies. What was also not clear was the extent to which skills transfer took place such that local companies could gain and sustain expertise in such a specialised field of security. Earlier, a brief background about public prisons was given. This was done as a way of

demonstrating that private prisons do not exist in isolation. They have an impact on the public service.

#### **4.12 IMPACT ON THE PUBLIC SECTOR**

There is a huge distinction between the private prisons and the rest of the South African public prisons. A Treasury Official who stated at the prison privatisation conference in London 2003 confirmed this view by making the following assertion, “We ordered a Rolls Royce when we should have ordered a Toyota Tazz” (Prison Privatisation Report International, 2003). It would be unfair to put blame on the private prisons for trying to run a service in line with contractual provisions; however, the inequalities that exist between public and private prisons cannot be overlooked. Yet these private prisons did not do anything extra-ordinary, they were benchmarked against the UN Human Rights Charter.



The other point that created tensions is the fact that the costs for these private prisons led to a situation where posts in the public sector had to be frozen to finance private prisons (Berg, 2004:26). For the 2002/2003 financial year, it is said that the two private entities were taking up to ‘50 per cent and some take it up to 75 per cent’ of the DCS budget, a fact that is disputed with contempt by DCS management. CSPRI (2003:25) makes a revelation that the DCS had admitted before the Portfolio Committee on Correctional Services that APOPS programmes were costing half of the DCS’ entire annual budget, compromising the affordability of other programmes such as filling frozen staff posts.

It has emerged that the Department of Correctional Services had actually agreed that the decision to privatise had been unwise, and that Treasury had at the time advised against the transaction. Apparently, the decision to undertake the APOPS project was ‘political’ in nature. The Chairperson of the Portfolio Committee on Corrections then, then asserted that, there should be an investigation, citing possibilities of corruption, and that the perpetrators had

to be brought to book (CSPRI, 2003:24). An inter-Departmental Task Team was established and they came up with the following findings and recommendations:

- The DCS design and operating specifications were too high, based on ideal prison conditions and the prisons remain driven by high DCS input specifications.
- Additional budgetary pressures for the DCS, resulting from the lack of feasibility work that should have established the DCS' affordability limits prior to procurement.
- Relatively high costs of debt due to high base interest rates prevailing at the time of the deals and higher than normal margins charged by the lenders.
- Higher than normal return on equities for both projects.
- Inability to over-populate the PPP prisons, despite severe overcrowding in public prisons.

The Task Team then made the following recommendations based on the above findings:



### Recommendations

- The DCS, supported by National Treasury, should urgently convene a team, including financial and legal experts, to engage with Contractors to improve value for money by:
  - Reviewing standards and specifications.
  - Amending a fee payment structure.
  - Considering options for accommodating additional prisoners on marginal cost per inmate basis.
  - Negotiating debt funding to improve cash flows and net present value benefits, including considering inflation-linked funding.

- The DCS should adopt as policy the Task Team's Prisons Feasibility Protocol for use in assessing the preferred options for procurement of all future prisons.
  - The DCS, supported by National Treasury, should set clear policies, processes and decision-making structures for procurement.
  - The DCS, supported by National Treasury, should set and publicly announce DCS policy on unsolicited bids.
- The DCS should plan for the training of key personnel in:
    - Prison Feasibility Protocol and.
    - DCS Procurement policy, methods and standards.

Another worrying development was the flight of the DCS members who were negotiating these contracts to the join private prisons. The bulk of the APOPS project team was recruited and this incapacitated the DCS in engaging on the content of the contracts and taking the relationship further (Department of Correctional Services, Department of Public Works and National Treasury, 2002). Based on the above, it is clear that the establishment of these private prisons had an impact on correctional officials in both private and public prisons.

#### **4.13 IMPACT ON CORRECTIONAL OFFICIALS**

According to Berg (2004), staff members working at the private prisons are on fixed term (full-time) contracts of up to five years. As such, private contractors have not created an impression that contracts would be automatically renewed. It is also apparent that the private contractors, in comparison to the public sector are not tolerant to any insubordination (Berg, 2004:30) hence they did not take a chance in employing those who are already in the employ of the DCS belonging to POPCRU. In defending this approach, management said the primary objectives of this entirely different approach were to build



better morale amongst both prisoners and staff. It is believed that it would be more difficult to make this mind-set change amongst those who have already developed an attitude towards this kind of work.

Both management and staff in the two private prisons affirmed that any employee is permitted to join POPCRU or whatever union they may choose as this is their constitutional right. What could not be answered is why they did not take the same approach in recruiting their managers. Witbooi confirmed that POPCRU is the majority union in both entities (Bloemfontein and Louis Tritchard) and they were determined to improve conditions of service for these members. Whilst these members were earning better than their counterparts in the public prisons, they wanted to be regarded as public servants by virtue of their work according to Witbooi. They were concerned about the security of their work. The union had signed collective bargaining and wage agreements with both prisons. It is the view of POPCRU however that most of the existing policies should be re-visited because unions were not recognised when the policies were adopted.



It is evident that prison privatisation in South Africa has its own challenges and therefore its long-term implications should be thoroughly investigated. Already the claimed benefits of privatisation are being outweighed by the high cost of prisons and the impact on the rest of South Africa's corrections system. For example, thousands of public sector jobs have been frozen due to the money being allocated to private prisons. On the other hand, private prisons have demonstrated that the rights that are enshrined in the South African constitution in respect of prisoners, which are currently being trampled upon by public prisons can be attainable. Looking into the future, it becomes incumbent upon policy makers to make correct policy choices so that, whilst we attempt to turn the situation around, the same mistakes should not be repeated. This also applies to international experiences; we should not benchmark such that we copy everything, including the mistakes that have been committed by our international counterparts, bringing us to the results of the field research.

#### 4.14 FIELDWORK RESULTS

Whilst conducting the field research on the South African scenario, the researcher arrived at the following results:

- Less overcrowding in private prisons compared to public prisons - the current state of overcrowding in South African public prisons militates against the Bill of Rights which guarantees to prisoners the right “To conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment” (Act 108 of 1996 s35 (2)(e)). These rights are continuously being infringed in South African prisons owing to overcrowding. While correctional officials have no say in how many prisoners are sent to their prisons by the courts, the Correctional Services Act of 1998 prohibits overcrowding in private prisons. There is little overcrowding in South African Private prisons.
- Little resistance towards private prisons in South Africa - whilst prison privatisation was met with a lot of resistance in Europe and in the US, very little resistance was visible in South Africa. Trevor Ngwane of the Anti-Privatisation Forum (APF) asserted that most of their anti-privatisation campaigns were not directly targeted at private prisons (Interview with Trevor Ngwane August 2005). The interview with Bhudu of SAPHOR and Witbooi of POPCRU also confirmed that except from philosophical arguments, limited substantive issues and campaigns were ever waged against private prison entities.
- Conditions for inmates and officials relatively better in private prisons - whilst some correctional officials in private prisons were concerned about their short-term contracts, it emerged that they were better off compared to their counter parts in public prisons in respect of salaries and working conditions. The same was evident with inmates who were kept in human and secured conditions as espoused by the RSA constitution and the White Paper on Corrections.

- Freedom of association is respected in South African private prisons - in so far as it relates to freedom of association in private prisons, correctional officials can form and join trade unions. POPCRU is the majority trade union in both the Bloemfontein and Louis Tritchard prison. The union has entered into collective agreements and salary agreements with these entities on behalf of its members.
- Limited stakeholder participation when the project started - this view was raised strongly by Bhudu and Witbooi that their participation and involvement was limited. Because the private prisons contracts were negotiated in an atmosphere of secrecy, it is evident that most stakeholders were left outside. According to both of them, this matter requires public debate and civil society should be at the forefront of its advocacy (Interviews with Bhudu July 2005 and Witbooi August 2005).
- The private prison project was introduced without sufficient piloting - in the discussions with Mataka (August, 2005) and with many other interviewees, it became apparent that the South African authorities did not adequately pilot the private prison project. It took the UK almost 10 years to pilot its project whilst, it took South Africa just over three years. The Task Team Report (2002) also reveals that shortcuts to secure the contracts were taken and a broad-based consultation process was neglected. The Portfolio Committee on Corrections was also bypassed and the feasibility study was also not conducted (Interview with Mataka, August 2005).
- Wrong category of prisoners in private prisons - it has been consistently argued that private prisons in South Africa are housing the wrong category of prisoners (Interview with Mr Venter). Newham (2005) had argued that, maximum-security prisoners would spend the rest of their lives in prison, so they may not benefit from the rehabilitation programmes. The prospects of rehabilitating first time offenders and young prisoners are high in private prisons given the good facilities and available resources.
- Possibility for regulatory capture exists - there is a strong possibility for regulatory capture since the controller appointed by the Department of

Correctional Services spends more time at the private prison. He or she may end up being sympathetic to the institution or may be persuaded by authorities to overlook some of the transgressions by the private contractor. An effective monitoring agent must be independent; he or she should not be part of the same department that is being monitored.

Furthermore, monitoring is a separate function from operations; DCS is not a regulatory agency but a provider of correctional services. Because of these conditions, the DCS monitor assigned to the private prison is at high risk to become co-opted into the management structure. In order to avoid this, a monitor should be appointed who does not report to the DCS but to a separate regulatory agency within the government. The monitoring of prison conditions and prisoner complaints is the role of the Judicial Inspectorate, both for public and private prisons.



#### **4.15 CONCLUSION**

This Chapter has outlined the conditions in the public prisons that necessitated the need to consider privatisation of the prison systems in South Africa to some extent. The overcrowding is a serious matter of concern since it breeds violence of different kinds, murder, sexual advances to weaker inmates and 'gangsterism'. Inadequate supply of personnel brings unnecessary behaviour by inmates who find the need to take advantage.

The security and quality of life for inmates and staff inside public prisons has been compromised, leading to unnecessary behaviour by inmates. Nutrition is also a problem in public prisons as the food provided is of low quality. The Department of Correctional Services in its search for solutions found no option but the need to go the privatisation route. This then brings us to the research findings that the researcher has arrived at. These findings are based on the literature consulted as well as interaction with different stakeholders and

experts. After tabling the findings, conclusions and recommendations will be made.



# CHAPTER 5

## RESEARCH FINDINGS

### 5.1 INTRODUCTION

In this Chapter, the study made findings in respect to legislation, costs and quality. Furthermore, some of the findings have pronounced on the relationship between business and the state as well as looking at the prospects for future relations. Finally, the researcher arrived at a conclusion that private and public prisons can co-exist to complement each other. The bottom-line is, privatisation should not have adverse effects, which brings us to the first research finding. Considering the fact that the scope of this research investigation covered the South African and International experiences, the researcher managed to explore most areas that needed to be investigated. Finally, the following findings were arrived at:



#### ***5.1.1 Costs of private prisons questionable***

There is no evidence that private prisons are cheaper than public prisons. Most of the literature consulted revealed that the building of the two private prisons had cost more than what was budgeted for. In fact, some sources go as far as saying that the costs on these prisons is taking more than 50% of the DCS budget, compromising the affordability of other programmes such as filling of frozen staff posts (CSPRI 2003:25). The actual cost of a prisoner per day is R132, 20 in Bloemfontein, in comparison to R93, 67 per day for prisoners in public facilities. Initially the Bloemfontein project was valued at R1, 7 billion with the cost per prisoner per day being R66, 04 while the Louis Trichardt project was valued at R1, 8 billion with the cost per prisoner estimated at R65, 47 a day. It became apparent that the costs were under calculated as they finally doubled. This escalation has thus forced the government to take a position not to build more private prisons owing to the

inordinate unforeseen expense (Berg 2002:87, Department of Public Works, 1999). A moral argument is also raised to the effect that 6 000 prisoners are housed in luxurious facilities compared to the remaining more than '160 000' housed in overcrowded prisons.

### ***5.1.2 Prison Industrial complex is showing growth***

Whilst there are strong arguments and campaigns against prison privatisation, this industry has experienced immense growth over the years especially in Europe and America. Companies involved in this business such as Wackenhut Corrections Corporations and Corrections Corporations of America have become global entities and are also listed on the New York stock exchange. Their spread to the other parts of the globe including Africa and Asia is an indication of the viability of the market as opposed to imminent decline as suggested by Nathan (2003). Looking at the trends, we are likely to see many states opting for the privatisation of their prison services as a response to their prison service challenges especially in Africa and Asia. The danger here is that, some countries may also see this as an opportunity to utilise prison labour to boost their economies that may create instability in the labour market.

### ***5.1.3 Foreign Companies dominating the prison industry***

Linked to the growth of the prison industrial complex is the inevitable monopoly of two companies that have been formed (Corporate Corrections of America and Wackenhut Corrections Corporations). Nathan (2003:24) argues that the whole criminal justice has been rigged such that the market had to be artificially created by governments who wanted to privatise. The research has established that whilst there is an argument that markets did not exist before the intervention of the state, the truth is, there is now a market that is

characterised by those who sell services to those who require and may still require, such services in the future.

#### **5.1.4 Public and private prisons can co-exist**

Kessides (2004) has assertively argued that public and private sectors are not involved in a zero-sum game. There is no proof that the public sector neither is inherently ineffective nor is there proof that the private sector is completely effective. Having looked at the advantages and disadvantages of both sectors, the paper came to the conclusion that both public and private prisons, especially in South Africa can co-exist. The only challenge here is that, there is a need to ensure parity by bringing public institutions to the same level of private prisons. The ultimate measure should be the quality and the cost of the service. So long as government regulates and oversees these private entities, they will not find it easy to cut corners in pursuance of profit maximisation. Another reality is that, because of government red tape, it may take the state more than three years to build a prison whilst private entities may do that just over a shorter period.

#### **5.1.5 Private prisons and financial management**

For the first time in South Africa, the actual cost of incarceration, rehabilitation and building of modern prisons is revealed through the Public Private Partnerships project. Private companies have cost centres that provide accurate data with regard to costs. This information has been provided to the Department of Correctional Services. If used, the department is now better equipped to make sound financing decisions in the future. DCS could then perhaps investigate alternative arrangements that would not compromise the state's leverage while monitoring performance of the private prison companies.



### ***5.1.6 High standard of care in South African private prisons***

Most of the literature on the South African private prisons debate, including Nathan (2003) and Berg (2004) agree that staff at private prisons treats people with more respects and care. As private prisons are brand new, it seems that prisoners enjoy facilities that are of a higher standard. Something that would be considered an innovation is that, at entry level, private prisons employ people as prison officers who have no experience in public prison system and are therefore free from “Baggage” from that environment. This innovation is however, contaminated by the fact that all senior managers are all drawn from the public sector, who have a potential of clinging to the past in dealing with the new prison system challenges.

Private prisons generally employ fewer people, pay worse salaries and offer fewer benefits to staff than the public sector. In South Africa, the situation is different. The conditions for both inmates and correctional officials are better. Private prisons make use of more technology, enabling them to monitor the movements of inmates at all times.



### ***5.1.7 DCS lost APOPS project team members to private prisons***

Because of better salaries and working conditions, most of the members of the APOPS project team resigned from the department of correctional services to join private prisons. This flight impacted negatively on taking forward the relations with private entities and the contract because new members with limited understanding of the project came on board. This implied that DCS lost capacity whilst private prisons doubled their capacity.

### ***5.1.8 There is a veil of secrecy surrounding prison contracts***

Governments are complicit with the private sector in keeping operational and financial information from public scrutiny. For example, full contracts between

governments and private operators are not made available. Some parts are kept back and these have to do with the issue of the prison's security and some financial detail. The justification is that, this is to protect business interests (ISS, 2003:14). Such a tendency in South Africa militates against the Access to information Act that encourages transparency.

#### ***5.1.9 Long contracts benefit the private sector over the state***

The current contracts run for 25 years and the state shall have paid double the actual costs at the end of the contract. The bigger part of this payment goes to hidden costs and interest. To ensure the 'flexibility' that privatisation can offer government, future contracts should not be based on long-term financing arrangements.



#### ***5.1.10 Private Prisons have made an impact in reducing overcrowding***

Even though the two private prisons in South Africa between themselves hold just over 6000 inmates, relatively, they have made an impact in reducing overcrowding in South African public prisons. Few of the current public prisons in South Africa were built to accommodate more than 3000 inmates. The only downside here is that, both private prisons in terms of the Act (CSA, 1998) cannot take more than their intended capacity. Secondly, this 6000 capacity is taken at a huge cost, almost half the budget of the DCS.

#### ***5.1.11 Overcrowding is not a unique South African Phenomenon***

Most of the countries that the researcher had visited (US, UK, Malawi, Lesotho and Botswana) are experiencing some degree of overcrowding except for Botswana. This then proves, that while overcrowding is not unique to South Africa, the ways in which the various countries respond to this issue vary.

## 5.2 CONCLUSION

The major conclusion here is that, whilst the conditions of care, treatment and general well being are by far better in the privatised prisons in South Africa, experiences are quite different in the US and Europe. The following constitute key findings in this chapter:

- There is no proof that private prisons are cheaper than public prisons,
- There is some remarkable growth in the prison industrial complex,
- Public and private prisons can co-exist and complement each other,
- The establishment of private prisons have helped calculate the actual cost of imprisonment,
- Private prison contracts are surrounded by a veil of secrecy in almost all the countries that were studied.

In South Africa, the critical challenge is how to improve the conditions for inmates in the public prisons to be on par with those in privatised prisons. This motive has also been driven by the intention of saving costs and budgeting realistically. The final analysis suggests Public Private Partnership (PPPs) can be regarded as one possible solution in addressing the current crisis in the prison systems.

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

#### 6.1 INTRODUCTION

Chapter Six deals with conclusions, recommendations and areas for future research. The Chapter concludes by looking at issues on a strategic level coupled to reformations based on the findings. Issues that were not researched will be identified as areas for future research.

#### 6.2 CONCLUSIONS

The Privatisation of state assets in South Africa and abroad has been an extremely contentious issue. Prison privatisation is even more contentious in this country due to the establishment of these prisons behind a veil of secrecy, denying the civil society an opportunity to debate the issue. Logan (2003) assertively argued, "The goal of running prisons that are safe, secure, humane, efficient, and just is too important to reserve to government" (Logan, 2003). On the other hand, it could be argued that the goal of running prisons is too important to leave open to the volatility and questionable motives of the free market. The arguments for and against privatisation are usually motivated by various forms of self-interest, and some are more concerned with a general distrust of government or a general distaste for prisons than they are with private prisons.

Most debates around the privatisation of prisons and prison services TURP (2000:4) are dominated by one of two positions, either supporting the privatisation because business can run prisons cheaper than government (an economic argument), or rejecting privatisation because it leads to worse conditions for inmates (a human rights argument).

In the United States, criminal justice policy decisions are influenced by a variety of special interests, which are not necessarily in line with the overall public interest. The introduction of private prisons probably adds another tug in an already complicated and multi-directional tug of war contest. The Australian government on the other hand has taken hands-on approach, that of making an intervention in instances where these private entities showed signs of failure. Actually, prison privatisation is no longer a preferred policy option in Australia. The UK also privatised its prison services to respond to overcrowding however; the project was piloted for 10 years before it was rolled out. It also came out in the paper that most countries are experiencing overcrowding in their prisons systems thus are challenged to develop strategies that would respond to this challenge. The empirical evidence is not entirely convincing and the anecdotal evidence is not entirely reliable, but the general consensus of those who are genuinely unbiased is that private prisons are no worse or better than public prisons.

The South African public prison system is facing many challenges, many of which are associated with overcrowding and lack of rehabilitation programmes. The government has opted on liberalising its prison services as some of the responses to overcrowding. The differences in the experiences of developed and developing countries in terms of dealing with prison challenges should be noted. Whilst it took first world countries some time to pilot the concept, South Africa has jumped for prison privatisation without sufficiently drawing lessons from their counterparts abroad. Whilst it cannot be proven that private prisons are offering the service at a cheaper cost, it is evident that private prisons officials in South Africa handle inmates with care, in line with the concept of unit management, which is so espoused by management and correctional officials.

The study arrived at findings that prison privatisation is a complex phenomenon which requires caution and precision. It has also been apparent that private contractors in Europe, America and Australia have had to cut corners in maximising their profits including eroding the conditions of the employees. In the contrary, the conditions of correctional officials in South

Africa are better than those of their public prison counterparts. However, it had also emerged before the contracts with these companies were signed, proper procedures were not followed, let alone the failure to pilot the project. In the final analysis, it is evident that prison privatisation may have had a positive impact in reducing overcrowding but it came at a high cost. It further perpetuated disparities between those who are held in private prisons under better conditions and those held in public prisons under appalling conditions. However, there is a strong hope, especially in South Africa that public prisons can co-exist with private prisons, complementing each other instead of competing.

Key issues that emerged in this study laboured on policy choices and the legislative framework of different countries on dealing with correctional services. It also emerged that in instances where government was supportive of institutions, either private or public stood a chance of impacting positive on service delivery. Management capacity and sound leadership also emerged as a necessary requirement to ensure successful policy reforms. The final lesson was that, it is difficult to make sound policy choices without taking informed financial considerations, which brings us to our recommendations.

### **6.3 RECOMMENDATIONS**

Following all the information gathered, it is recommended that:

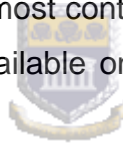
#### ***Recommendation One***

Legislation regarding prison privatisation needs to be revisited - Given the growth of the prison industrial complex, there is a need to revisit legislation governing private jailors. The aim is to ensure that privatisation does not have adverse effects and that the relationship is mutually beneficial. The tendency out of the international experience is that, private companies in pursuit of profits tend to undermine fundamental policy objectives.

Government should also consider renegotiating the contracts to make provision for limited overcrowding in order to alleviate the plight of private prisons so that the project can translate into value for money. Provision for cost escalation should also be made in the contracts. The downside here is that, private companies may not be interested, preferring to draw contracts that favour them. According to Nathan (2003), in the US programmes for prisoners suffer in order to maintain profits with some companies just walking away from these contracts because they are not profitable (Nathan, 2003:21).

### ***Recommendation Two***

Strengthen accountability to the public during the privatisation process - given the importance of accountability in the process of privatising prisons, and in light of the constitutional rights of South African citizens and the intentions of the Access to Information Act of 2000, the contracts with private prison companies should be subjected to public scrutiny. At least there has been an improvement in this regard since most contract information in relation to South African private prisons is now available on the website of the Parliamentary Monitoring Group.



### ***Recommendation Three***

The need to transform should be informed by policy direction. Government officials must be empowered to identify and advance policy priorities when dealing with transformation, especially when deciding to privatise. More often than not, external players would identify an opportunity instead of government identifying a need to transform. In essence, it is incumbent upon the state to initiate a need for transformation within the confines of the broader developmental agenda with a comprehensive transformation plan.

#### ***Recommendation Four***

Policy-makers must have the political will to engage on policy processes - the decision to privatise should enjoy the support of policy makers and they should direct the processes. History has proved that unscrupulous business people have a tendency to influence certain individuals with power to support their business interests irrespective of the outcomes. Such a situation has a potential to undermine a system and could also stall progress.

#### ***Recommendation Five***

Empowerment of government negotiators - government negotiators engaging big business on huge projects should be prepared and adequately empowered. This will also give government some leverage in understanding technical project matters, avoiding a situation where business would want to implement the project on its own terms. Such preparations require strategic planning. The new management approach to privatisation could equip public managers with the necessary tools and insight to respond to the dynamic public and private sector environment.

#### ***Recommendation Six***

Shorter financing agreements with private contractors be considered - to ensure the 'flexibility' that privatisation can offer government, future contracts should not be based on long-term financing arrangements as is the case with both private prisons in which both the financing and management services are contracted for a full 25 years—the maximum allowed by the CSA 1998.



### ***Recommendation Seven***

Private sector involvement in community corrections is a necessity to advance rehabilitation - the Correctional Services Act of 1998 forbids private contractors from becoming involved with community corrections. Prior to the current form of prison privatisation, private sector involvement has been an established and accepted component of many programs used as alternatives to incarceration. This is particularly true in the UK, where charities play a critical role in the juvenile justice system (ISS, 2001:25).

### ***Recommendation Eight***

Private prison monitors should report to an independent regulatory agency - an effective monitoring agent must be independent, not a part of the same department that is being monitored. Furthermore, monitoring is a separate function from operations; DCS is not a regulatory agency but a provider of correctional services. Because of these conditions, the DCS monitors assigned private prisons are at a high risk to become co-opted into the management structure. In order to avoid this, a monitor should be appointed who does not report to DCS but to a separate regulatory agency within the government.

### ***Recommendation Nine***

There should be piloting before implementation in future - It should be noted that that no comprehensive feasibility study was conducted by the DCS or Department of Public Works prior implementing the policy on private prisons. In future, before such a huge project is implemented, the need for piloting becomes paramount.

### ***Recommendation Ten***

The project should be properly costed before implementation - the private prisons projects can provide information to the Department of Correctional Services on the total cost of building a modern prison. The government, if given reliable data on the amount of capital necessary, would be better equipped to make sound financing decisions. DCS could then perhaps investigate alternative arrangements that would not compromise the state's leverage while monitoring performance of the private prison companies.

### ***Recommendation Eleven***

Government to consider outsourcing of ancillary services at public prisons - the outsourcing of ancillary services at public prisons should be investigated, as well as partnering with existing NGO's. The cost information gathered by the private prison companies should be shared with DCS in order for the government to appropriately estimate the actual cost of providing conditions of humane detention. Better information on the capital costs involved will assist the department with searching for alternative financing arrangements and thus avoid becoming beholden to the private prison consortium.

### ***Recommendation Twelve***

Every discipline in correctional services should be well resourced. People are the best assets of any establishment. Recruitment and selection of staff should take into consideration the nature of their new role. Collaborative strategies to staff development and retention should be explored. The employment practices should world class and observe the rights of the workers to freedom of association consistent with the recognised international labour standards.

### ***Recommendation Thirteen***

Education and Training should be consistent with the nature of the job and industry. Training should be standardised to accommodate both private and public prisons because they are in the same industry. Training should be aimed at making workers better equipped in service delivery. The nature of the job requires continuous learning and re-training because there must always be new approaches to new developing situations. Skills transfer should be utilised effectively to enhance capacity building and a holistic approach. Retention of trained personnel should be encouraged to avoid brain drain.

### **6.3 AREAS FOR FURTHER RESEARCH**

Considering that this research investigation did not cover some areas due to some limitations, future research on the subject should focus on the following areas:



An investigation should be conducted on the actual costs of private prisons, which could include costs assessment.

For instance, there is a need to conduct further research on the nature of contracts that are entered into between governments and private entities, focussing on transparency as opposed to safeguarding commercial interests. Secrecy surrounding these contracts makes the accountability of both public and private prisons difficult. Another area that needs further research is the aspect of public private partnerships. There is a need to investigate the extent to which such projects bring economic and work opportunities. Are these opportunities sustainable or short-lived?

Specific topics that may be pursued in this area may be:

- Profits and incarceration, can that be justified,
- New public management approach to public prisons,

- Cost benefit studies on privatisation of prisons,
- Privatisation of non-core functions by prison authorities,
- Comparative analysis on service and legitimacy between private and public prisons,
- Public private partnerships, do they benefit communities?
- The nature of prison contracts, an urge for transparency.

Future research may be able to focus on these aspects and the study has proposed a set of important research themes for future attention.

#### **6.4 FINAL CONCLUSION**

The debate on prison privatisation is topical and controversial. This study was conducted at the time when the prison industrial complex had permeated the African prison systems, which then sets basis for future engagement within the context of the African peer review process when dealing with continental and global issues affecting mankind.

Whilst it is evident that crime is a worldwide phenomenon, this study has also revealed that overcrowding is also not unique to South Africa. Overcrowding is a characteristic of many correctional systems including South Africa. The only difference is the manner in which different countries respond to this phenomenon, with some opting to privatise their prison systems and some capacitating their existing public prisons. Those who chose the middle ground allow their public prisons to operate alongside newly found private prisons.

The researcher concludes by assertively arguing that public and private prisons can co-exist. There is a need for renewed partnerships to enhance this co-existence to ensure that the relationship is mutually beneficial. There is a lot of potential in combining private and public prisons and this could also work for other African countries and beyond. The bottom-line is that,

privatisation should not be pursued in such a way that it has adverse effect on the public service and challenge the legitimacy of the state.



## LIST OF INTERVIEWS

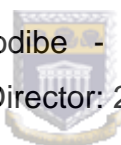
**Interview One** - Mr Raphepheng Mataka - Department of Correctional Services (DCS), Former Eastern Cape Regional Commissioner: 13 March and 23 August 2005. Johannesburg.

**Interview Two** - Mr Joe Maako - Department of Correctional Services (DCS), Director APOPS: 03 October 2005. Pretoria.

**Interview Three** - Mr Alfred Makgaila – Kutama-Sinthumulle, Prison Director: 04 January 2004. Louis Tritchard.

**Interview Four** - Mr Abbey Witbooi - Police and Prisons Civil Rights Union (POPCRU), General Secretary: 16 September and 15 October 2005. Braamfontein.

**Interview Five** - Mr Oupa Bodibe - National Labour and Economic Development Institute (NALEDI), Director: 28 July 2005. Kempton Park.



**Interview Six** - Mr Bevan Powell - Black Police Association of London (BPA), Deputy Chairperson: 23 August 2005. London.

**Interview Seven** - Mr Gareth Newham - Centre for the Study of Violence and Reconciliation (CSV), Researcher: 08 August 2005: Johannesburg.

**Interview Eight** - Mr Makubetse Sekhonyane - Institute for Security Studies (ISS), Former Researcher now with DCS: 03 October 2005. Pretoria.

**Interview Nine** - Mr Miles Bhudu - South African Prisoners and Human Rights Organisation (SAPHOR), President. 10 August 2005.

**Interview Ten** - Mr John Burpo - National Coalition of Public Safety Officers (NCPSO) US, Executive Director: 17 June 2005. Texas.

**Interview Eleven** - Mr Ernest Simfuka - Malawi National Police, Deputy Police Commissioner: 23 May 2005. Lilongwe.

**Interview Twelve** - Mr Relebogile Kau - Botswana Prison Services, National Commissioner of Prisons: 25 April 2005. Gaborone.

**Interview Thirteen** - Mr Sello Mahashe - Lesotho Mounted Police Staff Association-National Secretary: 06 April 2005 and 18 November 2005. Maseru.

**Interview Fourteen** - Frikkie Venter - Mangaung Correctional Facility, Managing Director: 18 November 2005. Bloemfontein.

**Interview Fifteen** - Mr Tsebo Matsasa - Lesotho Council of NGO's, Director: 17 November 2005. Maseru.

**Interview Sixteen** -Mr Trevor Ngwane – Anti-Privatisation Forums, Organiser: 23 August 2005. Johannesburg.



**Interview Seventeen** - Mr Malefatsane Masole - Lesotho Correctional Services, Deputy Commissioner of Corrections: 18 November 2005. Maseru.

Interviews with staff and management in both private and public prisons (South Africa, Malawi, Lesotho, Botswana, Malawi, US and the UK) between January 2004-November 2005.

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