The Experience of Service Privatization in Developing Countries: The Case of South Africa's PPP Prisons

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Abstract

Privatization, and particularly privatization of services, is a worldwide trend that has grown tremendously over the past 25 years. This growth has been particularly pronounced in developing countries in recent years. Prison services is one of many sectors that has contracted with the private sector, however, until South Africa outsourced the design, construction, finance, and operation of two maximum security prisons to the private sector for a period of 25 years, private prison companies were only involved in some developed countries. Many argue that the sector's involvement in South Africa signals its intention to expand throughout the developing world, and undoubtedly, South Africa's experience will be influential in the future growth of this sector in such countries. This paper aims to explore the experience of South Africa's public-private partnership (PPP) prisons thus far, within a context of international and domestic service privatization, in order to identify key trends and issues which may be relevant to future private sector involvement in prisons and other service sectors.

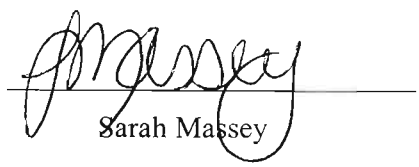
Research was conducted qualitatively, with a total of 12 interviews carried out telephonically and in person. Respondents included members of the government, PPP prison administrations, and members of civil society in order to gain as wide a perspective as possible. An extensive review of the literature, as well as relevant government sources, was also undertaken.

While these prisons have certainly brought benefits to South Africa's correctional service, a number of key concerns about private sector involvement in service provision were identified through this research. Firstly, the whole experience, starting with the initial decision, has lacked transparency and debate. Although contracting with the private sector was supposed to lead to increased efficiency and reduced cost, the prisons have, in fact, led to unexpected high costs and risks for the DCS. Furthermore, private sector involvement has led to a tiering of prison services, with PPP prison services generally much better than the public sector. Finally, the research indicates that there are serious questions to be raised about the effectiveness of the regulation of this sector and whether PPP prison companies are truly being held accountable by government.

Preface

The work contained in this document was undertaken in the fulfilment of a Master's Degree from the School of Development Studies at the University of KwaZulu Natal, Durban, and was conducted at this university under the supervision of Imraan Valodia of the School of Development Studies.

This is to declare that this research is my own work and has not been used previously in the fulfilment of another degree at this university or any other. Any use of the work of others has been fully noted in the text. Confidentiality of participants has been ensured and interviewee's names have only been used by expressed consent.



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List of Acronyms

ANC	African National Congress
APOPS	Asset Procurement and Operating Partnership System
BCC	Bloemfontein Correctional Contracts
BEE	Black Economic Empowerment
BOT	Build, Operate, and Transfer
CORE	Public Enterprise Corporation (Australia)
COSATU	Congress of South African Trade Unions
DCFM	Design, Construct, Finance Manage
DCS	Department of Correctional Services
DPW	Department of Pubic Works
GATS	General Agreement on Trade of Services
GATT	General Agreement on Tariffs and Trade
GEAR	Growth, Employment, and Redistribution
GSL	Global Solutions Ltd.
IFP	Inkatha Freedom Party
IMF	International Monetary Fund
IPV	Independent Prison Visitor
MTC	Management and Training Corporation
PDE	Previously Disadvantaged Enterprise
PDI	Previously Disadvantaged Individual
PMG	Parliamentary Monitoring Group
POPCRU	Police and Prisons Civil Rights Union
PPP	Public-private partnership
RDP	Reconstruction and Development Program
RFP	Request for Proposals
RFQ	Request for Qualification
SACM	South African Custodial Management
SACP	South African Communist Party
SACS	South African Custodial Services
SOE	State-Owned Enterprise
TURP	Trade Union Research Project
WCC	Wackenhut Corrections Corporation
WTO	World Trade Organization

Introduction

This study aims to provide a schematic picture of South Africa's two PPP prisons. This discussion is pertinent within the international context of privatization of services and international private prison experience, as well as domestic forces within South Africa and the privatization, or partial privatization, of a number of South African public services.

South Africa's two prisons were the country's first PPP projects. The contracting process, which took place throughout the mid to late 1990s, was conducted under a great deal of secrecy and, to this day, public awareness of these prisons is very limited. Compared to the international private prison literature, very little has been written about South Africa's PPP prisons. Furthermore, as both contracts are 25 years long, it is imperative for government and those involved in prison monitoring to have as full a picture as possible in order to best manage the contracts. The government has plans to build eight new prisons in the next five years and, as yet, there is still the potential for private sector involvement in four of them.

These prisons were also the first prisons in a developing country both built and operated by the private sector; the other five countries which have had this level of private sector involvement in prisons are located in the developed world. Both prisons are partially owned and managed by major international prison companies; some argue that the involvement of these companies signals their intention to expand throughout other parts of Africa and the rest of the developing world.

In order to understand these PPP prisons, research was focused both on the process of private sector involvement, that is, how the prisons came to be PPP, and the experience thus far. While a full assessment is impossible, as the prisons have only been in operation for three and four years respectively, the key benefits and problem areas that have been identified are discussed in order to point towards future research.

The remainder of this dissertation will take the following structure:

Chapter One will provide the international context for this research. The growth and spread of privatization specifically, and privatization of services more generally, will be discussed. A brief explanation of international private prison developments and the experience of the five countries which have had this degree of private sector involvement in prisons will follow.

Chapter Two discusses the domestic context in which the PPP prisons came about. Private sector involvement in service provision was a key component of ANC economic policy until recently, and other important services which have undergone a degree of privatization will be briefly described. Following this will be an introduction to South Africa's correctional services.

Chapter Three will describe the methodological framework for this project. It will explain how research was conducted and why it was conducted in this way.

In Chapter Four, South Africa's two PPP prison will be discussed in depth. The chapter is divided into three sections. The first section will discuss how the PPP prisons came about. The second section will look at how the prisons are working and the experiences of key prison populations, particularly prison workers and inmates. The final section will assess the experience of PPP prisons so far and what is likely to be the future of the sector.

The final chapter will conclude the paper, providing an overview of the key issues raised in this research and suggesting areas for future research in this field.

Chapter One

International Privatization

Privatization is a policy which has spread tremendously across the world in the last two decades. Privatization, generally, can be defined as the transfer of resources from the public or state sector to the private sector (Chang & Grabel, 2004, 82). This transfer can take a number of different forms, including the sale or lease of state assets, the subcontracting of different functions of a state-owned enterprise (SOE), the full or partial selling off of SOEs, and the establishment of partnerships between the state and private sector in owning or financing government assets (Chang & Grabel, 2004, 82; Jarvis, 2000, 7). Although the UK was not the first country to privatize state assets post-World War II, the successful privatization of British Telecom by the Thatcher government in the early 1980s marked the transition of international policy towards privatization (Megginson & Netter, 2001, 324). Before 1979 and Thatcher's election, it was believed by many politicians and government leaders that the state should control certain economic sectors, including "strategic" manufacturing industries, telecoms, the postal services, utilities, and non-road transport such as airlines and railways (Megginson & Netter, 2001, 323). SOEs had proliferated across the world post-World War II and post-colonization (Megginson & Netter, 2001, 323). However, after the sale of British Telecom to the private sector in 1984, privatization became established as the basic economic policy of the UK and quickly spread across both developed and developing countries (Megginson & Netter, 2001, 324). According to Megginson and Netter, "privatization 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 neoliberalism starting in the 1980s (2001, 321). Privatization has significantly reduced the role of the state in the economy; this reduction was particularly pronounced in the 1990s throughout the developing world (Megginson & Netter, 2001, 380). In 1979, the SOE share of global GDP was more than 10% (Megginson & Netter, 2001, 380). By 2000, this share had dropped to less than 6% (Megginson & Netter, 2001, 380). It is important to note, however, that in this era of privatization, the state's role has not been reduced as much as it has been changed. Rarely do state assets become purely private; instead, the

state becomes responsible for regulating these new private functions (Megginson & Netter, 2001, 321).

This chapter will be divided into two parts. The first section will discuss the growth of privatization across the world. Privatization will be considered both theoretically, from within the wider debate on the role of the state, and historically, as a phenomenon which has progressed since the 1980s when neoliberalism became dominant in international political economy and the market, rather than the state, became the vehicle for national development. Trade agreements have been instrumental in shaping the form that global neoliberalism has taken, and these will also be discussed, with particular attention to the General Agreement on Trade of Services (GATS) as this is most relevant to the analysis of prison privatization. The reasons why governments have chosen to privatize, and the experiences they have had with privatization, will then be briefly examined. The second section will examine international experience of private prisons[1], specifically, what factors have influenced the decision to contract with the private sector, effects of private sector prison service provision on government, and a brief look at the other five countries which have experienced a level of prison privatization equal to that in South Africa.

1.1 Privatization Generally

1.1.1 Theory: The State versus the Private Sector

The ideology behind privatization is related to wider debates around the role of the state. Philosophically, those in favour of state intervention argue that the state, as the representative of all members of society, may intervene, even at the expense of efficiency, for anything that "society" deems necessary, for example, laws against child labour or the protection of natural resources (Chang, 1994, 12). Individualists oppose this view, arguing that any decisions made on behalf of "society" interfere with individual decision-making and thus violate individual freedom (Chang, 1994, 13). While individualists tend to argue from a scientific standpoint, Chang argues that both sides of the debate are different forms of morality concerning what the state "should" and "should not" do (Chang, 1994, 15).

Privatization is widely debated within the economic realm as well. On the one side, theorists in favour of government intervention argue that market failures are

inevitable, and state interventions can be used to correct them; for instance, in the case of natural monopolies, externalities, or public goods (Chang, 1994, 7). Opposing theorists often point out that such interventions are unlikely to result in improved welfare (Chang, 1994, 9). However, theorists such as Polanyi have argued that an enormous amount of state intervention was needed in order to establish the market and the capitalist system in the first place (in Chang, 1994, 16-17). On the other side of the debate, theorists who are opposed to the state taking an active role in the economy argue that it is, in fact, state intervention that leads to these market failures and distortions (Chang, 1994, 10). For instance, protectionist policies such as subsidies lead to cartels and price distortions (Chang, 1994, 10). There is a wide literature that speaks to government failure and the problems state intervention can cause in the economy (Chang, 1994, 25). There are two main arguments that run through this literature. Firstly, it is argued that, while government can collect and process information for the correction of market failure, this process can, in fact, be more costly than the market failure itself (Chang, 1994, 25). Secondly, there may be additional wastes created by intervention, particularly through rent-seeking by government officials, which may outweigh any benefits (Chang, 1994, 27). Chang counters both of these arguments, arguing that, in fact, these trends are problems inherent in the private sector as well, and thus cannot be used solely to discredit state economic involvement (Chang, 1994, 26, 29). Furthermore, there are many social benefits to be accrued through state intervention. Murtha and Lenway argue that, while the evidence suggests that there are more market disruptions with more government intervention, citizen demands are given more influence, and social and political goals are placed above motives of profit and efficiency (in de Castro & Uhlenbruck, 1997, 126).

Regardless of one's viewpoint on the proper role of the state, what is most relevant for this paper is the role that states have taken and the role individual states presently take in national and international economies. According to Braithwaite, 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 (2000, 222). Until the 19th century, governments in most countries worldwide had a small role, and rowing and steering were largely performed by civil society and the private sector (Braithwaite, 2000, 223). In the early 20th

century, however, particularly within developed countries, views about the role of the state markedly changed (Marglin, 1991, 4). Unemployment caused by the economic depression of the 1930s was to such an extent that it could not be blamed on individual workers, and thus, according to Marglin, "permanently changed the way people throughout Europe and North America would think about the role of government" (1991, 4). The legacy of the depression influenced many countries to increase the power of the government, shifting towards a Keynesian model of state coordination (Marglin, 1991, 4; Braithwaite, 2000, 223). Often referred to as the "welfare state," governments took over the management of many activities which had previously not been performed or regulated by the state (Braithwaite, 2000, 223-4). According to Braithwaite, states focused on rowing, with much less attention to steering (2000, 225). Development theorists believed that the state was key to economic growth, particularly for developing countries (Megginson & Netter, 2001, 323). Lal argues that government intervention in the economy had increased after World War II in order to expand the breadth of government control and to establish "order" post-war (2000, 149). The state was seen as "benevolent, omniscient, and omnipotent," and the driver of economic development (Lal, 2000, 148; Debebe, 1992, 5). Industrialization and development strategies relied on strong public sectors and heavy state involvement (Debebe, 1992, 2).

Worldwide trends in government policy changed again in the 1980s, led by the Thatcher government in England, and the pre-eminence of neoliberalism led to regulatory states focused on market competition, privatization, and decentralized forms of state regulation (Braithwaite, 2000, 224, 222). According to Peet, "an obsession exists in contemporary neoliberalism with deregulation and the privatization of previously state-run enterprises...in critical reaction to Keynesianism and social democracy..." (2002, 75). Many development theorists similarly abandoned state-led policies, arguing that increased controls, particularly those protecting infant industry and limiting imports and exports, bred "disorder" and corruption as people attempted to evade tariffs and other controls (Lal, 2000, 149). According to Krueger, by the early 1980s, it was accepted by nearly all economic theorists that controls were not effective or efficient in achieving any economic aims (1990, 183). A study conducted by Krueger and Bhagwati in the late 1970s, which surveyed a number of developed and developing countries, determined that export-

oriented growth policies were superior to inward-oriented policies (Bhagwati, 1978). Many development theorists have promoted policies of liberalization and the gradual loosening of controls in order to "regain control over what seems to have become ungovernable economies" (Lal, 2000, 149). The success of European and Japanese economies post-war, as well as the collapse of the USSR in 1989, has increased support for liberalization above state-led or socialist development policies (Krueger, 1990, 183; Lal, 2000, 130). States that subscribe to this neoliberal ideology concentrate mainly on steering, relying largely on self regulation and other responsive regulatory methods in the private sector as opposed to direct control or direct regulation (Braithwaite, 2000, 224).

1.1.2 Global Privatization

It is within this new role of the state that privatization has been so widely followed as a government and development strategy. Privatization has become a key element in state neoliberal programs which aim to increase the role of the market in the economy. Throughout the 1980s and 1990s, thousands of privatizations occurred throughout the world (Braithwaite, 2000, 224). According to Megginson, over these two decades, "the privatization of state enterprises...[went]...from novelty act to global orthodoxy" (2000, 14). Privatization is an economic act, but, as is clear from the discussion above, it is also a political one, signalling an ideological change to market based development and away from state control of national resources and productive assets (Megginson, 2000, 14).

The first major 'denationalizations[2]' in the 20th century took place in Germany in the 1960s, but, as discussed earlier, it was not until the UK's Thatcher government in the 1980s that modern privatization really began (Megginson, 2000, 15). In 1984, the state sold British Telecom, raising $4.8 billion for the British government (Megginson, 2000, 15). This highly successful example of privatization proved to countries worldwide that privatization was a viable and potentially desirable policy option (Megginson, 2000, 15). At the same time, economic crises in the 1970s and early 1980s forced many developing countries to turn to the World Bank and IMF for assistance (Debebe, 1993, 7). These institutions promoted "good governance" and structural adjustment programs, with a heavy emphasis on liberalization of national economies, privatization of state assets, and shrinking large state bureaucracies

(Braithwaite, 2000, 224). Braithwaite argues that the IMF and World Bank have been very instrumental in globalizing privatization, particularly throughout the developing world (2000, 224). While privatization became a popular national policy throughout the world, according to a World Bank study in 1995, by the mid-90s, more than three-quarters of all privatization transactions took place in developing countries (in Kirkpatrick, 2002, 121). These countries initially privatized only small state assets, but by the early 1990s, many larger, core enterprises, including national infrastructure, banking, and telecom, and much more foreign capital was involved (Kirkpatrick, 2002, 121).

Across the African continent, privatization has most recently taken the form of public-private partnerships (PPPs). PPPs are contractual agreements between governments and private companies, in which the private company will deliver or administer part of a government service, assuming all risks involved for the length of the contract (Shonteich, 2004, 27). For more than a decade, African states have experimented with different forms of these partnerships to facilitate the private sector's more efficient involvement in public service delivery (Farlam, 2005). There is a pressing need in most African states to improve basic services, including electricity, health, water and sanitation, education, access to telecommunications, and infrastructure such as roads and ports (Farlam, 2005). PPPs have been heralded as the solution for inefficient SOEs and state businesses, lacking in capacity, to "harness the funding and expertise of the private sector" while the state, through the contracts, will often retain ownership of the assets (Farlam, 2005).

In recent years, however, enthusiasm for privatization has begun to ebb. According to Bond, private sector involvement in basic service provision has dramatically slowed in developing countries, with private sector involvement in 2001 half of what it was in 1997 (2004b, 131). As will subsequently be discussed, international development experience, particularly in China and Russia, has influenced many in the international community to reassess their support of this policy.

1.1.2.A Liberalization of Trade in Services

Privatization is closely linked to the increasing liberalization of worldwide economies. As discussed earlier, over the last two decades, international policy has

shifted decisively towards neoliberalism and market-based solutions, with a reduced direct role for the state in the economy. Liberalization is the reduction of government controls in the economy, thus facilitating a larger role for the market in economic development and growth. Privatization is one of a number of core policies which the government can use to increase the role of the private sector and thus the market.

Support for liberalization has been growing gradually over the past sixty years; the General Agreement on Tariffs and Trade (GATT), an international agreement to reduce tariffs on international trade, was first negotiated in 1947 (Lal, 2000, 130; CIESIN Thematic Guides, 1996). Initially there were 23 member countries, mostly developed countries, who signed the agreement (Wikipedia, 2005). By the 1980s, liberalization was an accepted worldwide economic strategy, and trade agreements proliferated, expanding liberalization across the globe and setting its rules and standards (Jomo, 2001, xxii). In 1995, the World Trade Organization (WTO) was created to replace the GATT (Jomo, 2001, xxii). With 148 member countries as of October 2004, the WTO has become the main vehicle in which worldwide trade agreements come about (WTO, 7/9/05; Jomo, 2001, xxii). Dominated and controlled by powerful developed nations, the WTO has expounded global commitment to free trade, establishing guidelines and principles by which all member nations must liberalize trading sectors including manufacturing, agriculture, and services, as well as investment (Khor, 2001, 60). According to Khor,

> the newest and perhaps most important phenomenon in the globalization process is the emergence of trade agreements as key instruments of economic liberalization and as mechanisms used by the major countries to have disciplines and rules placed on developing countries in a wide range of issues (2001, 59).

At the same time, further agreements, such as the Trade-Related Intellectual Property Rights (TRIPS) agreement, have established protection for intellectual property rights and patents, as well as technological advances, most of which are located in developed countries (Khor, 2001, 63). International agreements have changed global governance structures, reducing individual member state control over economic policy within their own countries and largely disadvantaging those in developing countries.

One of the most important agreements that the WTO has negotiated is the General Agreement on Trade of Services (GATS). In the past fifteen years, international focus has increasingly turned to the liberalization and privatization of services, a sector which, according to McCulloch, Winters, and Cirera, made up nearly one-third of all global trade in 1997 (2002, 231). The development of information and communication technologies has boosted growth in this sector, and increased deregulation allowing greater market access, specifically for foreign firms, has raised international interest (McCulloch, et al, 2002, 231). Public services in particular, including sectors such as health, water, electricity, transportation, and correctional services, have increasingly been under pressure to lift restrictions and, in many cases, fully or partially privatize. International agreements related to services trade have focused both on deregulation, that is, the reduction of state intervention in the sector, and liberalization, which ensures that existing regulation does not discriminate against foreign firms (Hodge, 2002, 222). This has been particularly significant for public monopolies and service providers. According to Hodge, "...continued monopolization for the sake of universal services, when alternative regulatory means of fulfilling these social objectives are available, would clearly fall foul of attempts to give market access to foreign firms" (2002, 222). In many cases, particularly in developing countries, this has lead to the privatization of services which previously had been viewed as strictly government functions.

The GATS, initially negotiated in the Uruguay Round of the WTO in the early 1990s, was the first international agreement concerning the trade of services (Hodge, 2002, 24). This agreement consists of a set of general principles and rules relating to all measures which deal with trade in services (Adlung, et al, 2002, 270). It also includes a commitment schedule in which each country pledges to the liberalization of specific service sectors or subsectors by a particular date (Adlung, et al, 2002, 270). In terms of the first section, the central tenets of the agreement are national treatment, which prohibits discrimination against foreign firms in domestic markets, and market access, which, unless specified in the country's schedule, cannot be restricted (Adlung, et al, 2002, 260). With regards to the commitments, participating governments must first determine which sectors will be subject to the agreement, and then must decide what regulations and protections which violate the GATS will remain in place, at least temporarily, within those sectors (Adlung, et al, 2002, 261). Ultimately, it is expected

that all regulations will be lifted, allowing privatization on a much larger scale. The majority of commitments have been within tourism, and then business and financial services, communications, transport, and construction services, while education and health have had the least (Adlung, et al, 2002, 263).

Liberalization of services has remained central to many international agreements throughout the last decade. The GATS has continued to be negotiated since its inception, with an interim agreement in 1995, and negotiations in 1997 and 2001 (Adlung, et al, 2002, 266). Regional agreements such as the EU, NAFTA, and MERCOSUR also include stipulations for the liberalization of services (Hodge, 2002, 24).

1.1.3 Reasons for Privatization

Within this discussion of the international expansion of privatization, it is important to examine the factors which influence individual governments to privatize. While for most developed countries the decision is mainly philosophical, for developing countries and transitional economies, it signals a decisive shift in development strategy (de Castro & Uhlenbruck, 1997, 123). It is not just ideology, but also economic and political factors which influence the decision. The primary factors can be grouped into two categories. The first relates to conditions within state-owned enterprises (SOEs) and changing views regarding the public sector. The second group of factors is related to macroeconomic indicators and, for many developing countries, pressure from international organizations. The importance of a factor in any given situation depends very much on the individual country and the specific moment in which the decision to privatize is made.

Many theorists and advocates of privatization point to the weakness of the public sector. According to Kirkpatrick, many state enterprises perform poorly and are inefficient and uncompetitive (2002, 122). It is argued that SOEs are mismanaged and wasteful by virtue of their management, ownership, incentive, and market structures (Chang & Grabel, 2004, 82). After colonization, new leaders in developing countries believed that the public sector should be the engine of economic growth, thus most countries underwent massive nationalization and SOEs proliferated (Chang & Grabel, 2004, 84). However, according to this argument, starting in the mid-1980s,

these leaders, as well as those in post-communist countries, began to recognize the failings of the public sector, and turned to privatization (Chang & Grabel, 2004, 85). According to Kirkpatrick, the traditional view that public ownership is necessary to maximize social welfare has begun to be challenged (2002, 123). Firstly, there may be more efficient ways to meet these social goals, for instance, through government regulation of a more efficient private company (Kirkpatrick, 2002, 123). Secondly, government bureaucrats and politicians at times may maximize their own utilities rather than the social welfare of the nation (Kirkpatrick, 2002, 123). Finally, assuming a competitive private sector, competition can improve allocation of resources and productive efficiency (Kirkpatrick, 2002, 123). Many of these arguments have influenced governments to consider privatization as a cure to inefficient public companies.

The desire for fiscal austerity and 'good governance' has also been very influential in the decision to privatize. According to Megginson, governments choose to privatize in order to increase efficiency, improve competition, create market discipline for surviving SOEs, and encourage foreign investment (2000, 17). Governments also privatize for the expected revenue it will generate; this is often used to finance debts and reduce public deficits (Ramamurti, 1992, 227). Kirkpatrick argues that the fiscal burden is reduced both through the sale of enterprises performing at a loss, and through the end of subsidies and costly protection measures in place to assist those SOEs (2002, 122). In many cases, countries feel pressure to improve their macroeconomic indicators from international organizations such as the World Bank, IMF, and USAID (Ramamurti, 1992, 228). Ramamurti found that privatization was associated with financial problems in developing countries, particularly when these countries relied on external rather than domestic borrowing (1992, 241). Furthermore, the ability of international agencies to influence the use of privatization as a development strategy was directly related to the financial desperation level of the country (Ramamurti, 1992, 241).

1.1.4 Privatization Experience

Although privatization has been a major feature of global economic policy for more than twenty years, the evidence is still inconclusive as to whether it is an improvement on SOEs and the public sector. The experience of different countries

and different sectors has been varied. Kirkpatrick argues that the empirical evidence on ownership and performance tends to support privatization, although not by a vast majority (2002, 124). He argues that privatization is likely to lead to increased investment, but also to job loss and labour adjustment costs (Kirkpatrick, 2002, 126). According to Chang and Grabel, however, case studies are generally case *selections*, and depending on which country or which sector one chooses, the private sector may be better, worse, or the same as the public company or sector that it replaced (2004, 88). Similarly, de Castro and Uhlenbruck argue that, while the worldwide spread of privatization can create many opportunities, its success depends largely on conditions in the host country and how privatization comes about and is managed (1997, 124). They argue that there is no clear conclusion as to its effectiveness and, as so much depends upon domestic conditions, government reliance on international experience can be problematic (1997, 125).

International experience has proven that privatization is not the panacea it was once thought to be. The former USSR, after the dissolution of its economic and political structure in 1992, was advised to undergo massive privatization and sell off nearly all former socialist state assets (Megginson & Netter, 2001, 326). Throughout the Soviet bloc, state assets were sold, largely through the dissemination of vouchers which people could use to bid for shares in privatizing companies (Megginson & Netter, 2001, 326). According to Megginson and Netter, however, "Russia provides an example of what can go wrong with privatization" as it was quickly apparent that the majority of key state transfers went to a small group of oligarchs and any benefits that were to be gained through privatization were not spread to the majority of people (2001, 363). China's economic reforms cast more doubt on the success of the market-led model over state-led development. From the late-1970s, the Chinese socialist government propelled the country through a number of major economic reforms (Megginson & Netter, 2001, 325). While there is some debate as to whether China's reform has been gradual and sustainable, or abrupt and not maintainable long term, what is important from the Chinese experience is the role the state has played (Walder, 1995, 963). Ignoring the advice that was given to the former USSR, the Chinese government decided to privatize only its smaller assets, improving efficiency and performance of government functions through incentives and by changing the constraints on public officials (Walder, 1995, 979). According to Walder, "with

public industry protected rather than subject to privatization, China's reform path has confounded the widespread and deeply held belief that gradual reform and public ownership simply cannot work, not even as a transitional strategy" (1995, 963). The Chinese example proved that economic reform does not necessarily mean the end of state involvement but rather a change in how the state is involved (Walder, 1995, 978).

There have been other concerns with privatization. The selling of state assets can cause a number of adjustment costs within government. Chang and Grabel argue that privatization can be costly both politically and socially, particularly in terms of distribution (2004, 40). In developing countries, chronic backlogs in basic service provision make privatization an attractive option to speed up delivery and expand access to services. However, what makes these services more affordable for government are methods of cost recovery which generally result in higher user fees and the reduction of state subsidies for the poor. At the same time, there is little incentive for private companies to expand services to populations which will not be able to pay, thus the poor often do not experience the purported benefits of privatization such as increased access and lower prices. Furthermore, as was highlighted earlier, when government privatizes its former functions, it becomes more responsible for 'steering' and regulating these sectors. This is not always a smooth transition. According to Megginson, "privatization...forces divesting governments to wear a new and sometimes uncomfortable hat: supervisor and regulator of the newly privatized companies" (2000, 22). This function is critical, particularly with regards to privatized basic services. When the UK began its mass privatizations in the 1980s, the government recognized the need for a regulatory body to ensure competition and protect consumers (Stanislaw & Yergin, 1998, 6). According to Stanislaw and Yergin, "the establishment of such a regulatory body was essential to public acceptance of the new arrangements" (1998, 6). Although policymakers initially tried to make this regulation as minimal as possible, as a primary goal of UK privatization was to decrease state involvement in the economy, it quickly became apparent that they had underestimated the regulatory needs of the newly privatized sectors (Stanislaw & Yergin, 1998, 6). The role of the state needed to be changed more than it needed to be reduced, and much larger regulation authorities were soon established (Stanislaw & Yergin, 1998, 6). Similarly, in a Lebanese policy workshop focused on

telecom privatization in 2000, regulation was identified as a key component of the privatization program (Workshop Report, 2000). While regulation is a great challenge to rich and poor governments alike, as many had provided only token oversight of sectors before privatization, it is a necessary development for privatizing governments.

Although enthusiasm for privatization as a key component of economic policy has begun to ebb due to its mixed results worldwide, it is a policy that is still promoted vigorously in an increasing number of countries and government sectors. Correctional services is one sector that has been privatized very controversially and to varying degrees in a number of countries throughout the world. This paper will now turn to the discussion of private prisons, as they fit within the wider discourse of global privatization.

1.2 Private Prisons Worldwide

Private prisons have been in existence for as long as incarceration has been used to punish societal offenders. Modern prison privatization, however, began in the mid 1980s in the United States (Coyle, et al, 2003, 9). Twenty years later, relatively few countries have contracted the private sector in this service, and the majority of those that have are still experimenting with its use (Coyle, et al, 2003, 9). Presently, only six countries worldwide have prisons which are fully privatized, that is, where ownership and management of a prison both rest with the private sector, although in all cases, the prisons will be transferred back to the state when the contracts end. While the sector's growth has begun to dramatically slow in the US, many new international markets are opening, and even more countries are paying closer attention to private prison experience worldwide (Nathan, 2003b, 191). Furthermore, while the first decade of growth was limited to rich, developed countries, international private prison companies have begun, more and more, to look to new markets in emerging and developing economies (Nathan, 2003b, 191).

1.2.1 Why Privatize Prisons?

The decision to privatize prisons is attributed to a complex interaction between both international forces and domestic conditions. In addition to the general factors laid out in the previous section, there are a number of sector-specific developments that

have influenced the growth of the private sector in criminal justice. External factors include globalization and the strength of multinational corporations, as well as the rise of the prison industrial complex, an industry based on growing rates of incarceration in a growing number of countries. The election of "new right," conservative governments, as well as increasing rates of incarceration and overcrowding are identified as key domestic forces. However, according to Nossal and Wood, while each of these forces can add understanding to the decision process, ultimately, none sufficiently explains where, how, and why prison privatization has occurred (2004). Furthermore, what is intriguing about the privatization of prison provision is the unevenness in which the private sector has been used, both over different countries and within the same country over different periods of time (Nossal & Wood, 2004, 1-2). Relatively few countries worldwide have chosen to privatize prisons, and within those countries, oftentimes poor service or a change in government has lead to de-privatization (Nossal & Wood, 2004, 1-2).

Globalization has been a major explanation given for the growth of the international private prison sector (Nossal & Wood, 2004, 14). According to Nossal and Wood, "since the late 1970s, in the name of global neoliberalism, state institutions and policy regimes have been radically restructured in the name of international competitiveness" (2004, 15). Liberalization has weakened state ability to make national decisions and this has contributed to the expansion of multinational corporations (Nossal & Wood, 2004, 14). Related to this is the emergence of the global private prison industrial complex. Mainly discussed with respect to the US criminal justice system, the prison industrial complex, like the military industrial complex, is made up of multinational corporations whose growth is based on the sustained expansion of the prison system, and thus on their ability to organize and be politically influential by "[inserting] themselves into" the policy-making process (Nossal & Wood, 2004, 16). The most successful private prison companies have directly influenced the expansion of the private prison industry by influencing criminal justice policy in other countries (Jones & Newburn, 2002, 184). The strength of the US prison industrial complex made expansion easier, particularly in English-speaking countries; all six countries that have one or more fully privatized prisons are English-speaking (Nossal & Wood, 2004, 17).

In terms of domestic factors, Nossal and Wood argue that the emergence of the 'new right' in many governments and powerful international bodies worldwide has led to the promotion of private prisons across the globe (2004, 15). Arguably, the spread of neoliberalism and free market ideology have lead to reactionary policies and a willingness, even by governments not considered "new right," to consider privatization as a policy option. In all but one of the countries that have fully privatized prisons, the election of a 'new right' government was necessary for the implementation of prison privatization (Nossal & Wood, 2004, 15). Additionally, incarceration numbers in many countries have grown explosively over the past twenty-five years (Shichor, 1999, 227). While theorists have argued that social pressures, particularly the institution of neoliberal, market oriented economic policies, which have lead to massive cuts in social programs and dramatic decreases in wages and employment, are primarily responsible for this increase, according to Tapscott, the increase in prisoner numbers specifically over the past decade is linked to more punitive sentencing legislation (Shichor, 1999, 227; Tapscott, 2005, 6). In many cases, the growth in incarceration rates has led to massive overcrowding within prisons.

For many, particularly developing countries, this increased pressure on prison systems has not coincided with an increase in resources for correctional services, thus compelling governments to look for outside resources or other methods of incarceration (Tapscott, 2005, 6). The US specifically subscribed to the notion that it could build its way out of overcrowding (Tapscott, 2005, 6). Similar to the discussion in the previous section, it is argued that privatization provides the most efficient solution to government's need for expanded infrastructure (Nossal & Wood, 2004, 13). It is argued that private firms can build new facilities more quickly, are more flexible in their operation, and have more reliable budgets then their public counterparts, as they are not subject to changes of public opinion or cuts in funding (Nossal & Wood, 2004, 13).

At the same time, within each country and jurisdiction, there are myriad local pressures which influence the decision to contract with the private sector. According to Harding, many public prisons worldwide have excessive costs due to the high labour costs of unionized prison guards, and there is concern that prison officer unions

have too much control over prison operations; the use of contracts can loosen union power in private prisons (1992, 2). Furthermore, it is believed that private prisons have more effective prisoner programs and are more flexible in their operations (Harding, 1992, 2). Governments may assume that privatization will reduce costs, with private companies able to purchase goods and materials more quickly and keep lower inventories as they have more power to negotiate and do not need to go through wasteful bureaucratic procedures (Shonteich, 2004, 17). It is also believed that private sector involvement will bring more competition to the sector, and this will result in better quality services and increased innovation and flexibility (Shonteich, 2004, 19).

1.2.2 Effects of Prison Privatization on Government

Despite the array of factors that may contribute to the decision, the use of the private sector ultimately has a marked effect on the government in the host country. According to Shichor, privatization brings great changes to the prison system which are not easily reversible, and these factors should be taken into account when the decision is made (1999, 245).

Privatization changes the way that prisons are managed and administered. When private companies are contracted, profit becomes one of the many goals of correctional services (Shichor, 1999, 230). Profit may even become the central goal, as, without sufficient profit, companies would not be able to operate their facilities (Shichor, 1999, 230). In order to generate profit and properly manage contracts, private prison companies look to hire administrators with strong backgrounds in business, finance, accounting and law, rather than criminal justice (Shichor, 1999, 230). Similarly, the host country's correctional service, as well as policy makers involved in the creation of the contracts, must have the capacity and expertise to manage and regulate the private sector service (Shichor, 1999, 230). The benefit structure also changes through contracts with the private sector. Whereas traditionally, rehabilitation programs placed the benefit of prisoners at the forefront, in private prison systems, the top beneficiaries become the shareholders and executives of the corporation (Shichor, 1999, 231). In the US, many of the shareholders and administrators within private prisons are closely related to government or other prison businesses, are former politicians, or are public prison

officials themselves (Shichor, 1999, 239-240). This overlap has impaired the autonomy of decision making within the sector, and is directly related to the rise of the prison industrial complex in the US.

Criminal justice provision is quite different from other government services, and this has significant implications for privatizing governments. According to Schneider, prisons are a special case in terms of services because they deliver punishment rather than some kind of regulation or benefit to their users (1999, 192). The population that they serve is not free, has no political power, nor can it make choices about the services received (Schneider, 1999, 192). Therefore, the decision to use private prisons can be fruitful for elected officials, as a tough line on crime is often heavily supported by the voting public, while the marginalized prison population has no power to demand better service, and most of the social and financial costs of privatization are pushed far into the future (Schneider, 1999, 193). The criminal justice system is also different in terms of the effects of the changing role of the state in provision of social services. According to Braithwaite, not only has there been growth in the private sector, but there has been an equal amount of growth in the public sector (2000, 226). "...It is unlikely that, in the foreseeable future, the operation of all confinement facilities systems will be privatized" (Shichor, 1999, 243). Unlike other services, such as telecoms, from which governments can withdraw and concentrate on regulation once the service is privatized, in the criminal justice system, government must "steer and row simultaneously" (Shichor, 1999, 243). Despite the rollback of the welfare state, the strengthening of punitive measures has meant that the state must both increase service provision, as well as effectively regulate the private sector. According to Shichor, "this will make their task more complex, and it may introduce tension and confusion between their operational and monitoring roles" (1999, 243). Regulation has been problematic for many governments that have chosen to privatize prisons, as public agencies often do not have the capacity to effectively monitor the private sector contracts (Shichor, 1999, 242).

Government policies and legislation may also be affected by the involvement of the private sector in prison services. Ultimately, for private companies to get higher profits, they need more prisoners. In the US, private prison companies have

facilitated this by becoming involved in politics and the creation of criminal justice policy, both through campaign contributions and lobbying, and by participating in a conservative public policy organization, the American Legislative Council (ALEC), which creates model legislation for state legislators (Bender & Sarabi, 2000, vi). According to a 1998 US Congressional study, "[most] contracting for imprisonment services was not taken at the initiative of the correctional agency but was instead mandated by either the legislature or the chief executive of the jurisdiction, typically the governor" (in Bender & Sarabi, 2000, 2). These legislators have been influenced by large campaign donations, including nearly $1 million over five years from Corrections Corporation of America (CCA), the largest US prison company (Khan, et al, 2003, 26). In order to facilitate more effective lobbying, the CCA and other private prison companies established the Association of Private Correctional and Treatment Officers (APCTO) in 2001 to disseminate information in support of private prisons, and help the industry become further involved in the creation of public policy (Khan, et al, 2003, 30).

Private companies are further involved in policy formation through ALEC, a conservative policy organization in which private prison companies have been very influential. According to a BBC Report in 2003,

> Most Americans have never heard of...ALEC...But behind the scenes ALEC has changed the way the country deals with crime and punishment, perhaps more than any other organization. Every year, working with politicians at state level it helps to pass hundreds of laws from tax cuts to longer prison sentences. The private prison companies sit on the Council and pay thousands of dollars a year for the privilege (in Nathan, 2005, 29).

According to different reports, anywhere from 33% to 42% of state legislators are members of ALEC (Khan, et al, 2003, 25; Bender & Sarabi, 2000, 3). ALEC is particularly committed to harsh criminal justice legislation, and the Criminal Justice Task Force is regularly chaired by CCA executives (Khan, et al, 2003, 25). ALEC's most successful criminal justice policies have been the Three Strikes You're Out Act, which designates a life sentence for a person's third conviction, and the Truth In Sentencing Act, which stipulates that prisoners must serve at least 85% of their sentences; according to the Task Force, at least one of these model bills has been passed in half of all US states (Bender & Sarabi, 2000, 4). It is important to note that over the past 25 years, while the US prison population has grown from less than

200,000 to more than 2 million, crime rates have been steadily decreasing (Wood, 2003, 17; Nathan, 2005a; Bender & Sarabi, 2000, vi). Much of the growth in prison population has resulted from criminal justice legislation.

US private prison companies have also influenced criminal justice legislation abroad. The CCA specifically played a significant role in the implementation of private prisons in both Australia and the UK, both through lobbying government and by promoting private prisons as a "proven concept" (Khan, et al, 2003, 42-43). This will be examined further in the next section, which discusses global experiences of prison privatization.

1.2.3 Country Specific Experiences

Although its growth has slowed some since its heyday in the mid 1990s, the global private prison industry is still a thriving business. As of 2001, there were 151 private prisons in the US and another 30 abroad (Perrone & Pratt, 2003, 301). In fiscal year 2000, the two major US private prison companies, CCA and Wackenhut Corrections Corporation (WCC), reported profits of $238.3 million and $135 million respectively (Perrone & Pratt, 2003, 302). At the time of this writing, there are six countries[3] which have or have had fully privatized prisons, that is, one or more prisons both owned and operated by the private sector for the length of the contract: the US, the UK, Australia, Canada, New Zealand, and South Africa. Of these six, half have only one or two private prisons (Nossal & Wood, 2004).

According to Nossal and Wood, many jurisdictions have approached private prisons tentatively, often running experimental or pilot projects before deciding whether to commit to the policy (2004, 18). While prisons owned and managed by the private sector are certainly the most controversial, prisons can be privatized to varying degrees. Many prisons worldwide are partially privatized, for instance, with services such as catering, telephone, or laundry provided by the private sector, or by the use of prison labour for corporate production (Sinden, 2003, 40). France has 21 semi-private prisons, with plans to implement a program of 30 more prisons, built by the private sector but with custodial services performed by publicly employed prison officers (Nathan, 2003a; 169, Nathan, 2003b, 191; Nathan, 2005b). Belgium, Germany, Brazil, and Chile all have or are planning similar mixed public-private prisons on a

smaller scale (Nathan, 2003b, 191). South Korea has recently awarded a prison management contract to an evangelist Christian organization (Nathan, 2005a, 3). Venezuela, Lebanon, Thailand, and Mexico are in various stages of feasibility studies or contract tendering with private companies (Nathan, 2003b, 191). In Costa Rica, an attempt by the government to award a contract to the private sector was blocked by a Constitutional Court mandate, ruling the contracting of custodial functions to be unconstitutional (Nathan, 2005c). The Israeli government was recently accepting bids for the finance, design, construction, and operation of a prison; human rights groups, however, have petitioned the High Court of Justice to issue an injunction to stop the tendering process (Nathan, 2005d). According to Stephen Nathan, editor of the Private Prison Report International Newsletter, governments in other countries such as Poland, Malaysia, Hong Kong, Japan, and the Netherlands, have not yet taken action but are closely watching worldwide developments in the sector (2003b, 191). With interest in private involvement so high, it is essential to look at the international experience with private prisons thus far. As the focus of this paper is the two PPP prisons in South Africa, which are both owned and operated by the private sector, the following discussion will concentrate on the five other countries which have experienced private sector involvement in prison services to the same extent: the US, the UK, Australia, Canada, and New Zealand. First, however, it is worth a brief discussion of the major corporations involved in the sector.

1.2.3.A The Multinational Corporations

The international private prison market is dominated by a few key firms; mergers and joint ventures have consolidated corporate control (Nathan, 2003b, 190). Initially the CCA and the WCC were the main US-based international prison companies. According to Khan, Mattera, and Nathan, WCC was originally a subsidiary of Wackenhut Corporation, a prominent international securities company, and thus had a "ready-made international corporate structure" which they could use to expand internationally; as of 2003, they controlled 57% of the international market (2003, 42; Nathan, 2003b, 190). The CCA, despite its influence in international policy, did not fare as well in the international market. After the Australian government took over its contract in Victoria, making it the only private prison operator to be bought out by the government for prison failure, and after losing contract bids in both Canada and New Zealand, the company decided to sell its international shares in 2000 and concentrate

on the US domestic market (Khan, et al, 2003, 42). Recently, the US-based Management and Training Corporation (MTC) also won a number of international contracts. In terms of European-based companies, the main players are securities firms: Denmark-based Group 4 Falck, Securicor, and Sodexho (Nathan, 2003b, 190). There have been a number of mergers and transformations of these companies. In May 2002, Group 4 Falck acquired the Wackenhut Corporation, making it the largest security firm in the world (Nathan, 2003b, 191). However, the following year, WCC repurchased its majority share from Group 4 Falck and, in November of that year, changed its name to the GEO Group[4] (Puscas & Girard, 2003, 1; Nathan, 2005, 24). In 2004, Group 4 Falck acquired Securicor to form Group 4 Securicor (Nathan, 2004). In July 2004, the company disposed of its Global Solutions Ltd division, which operates prisons in the UK, Australia, and South Africa, to two private equity firms[5] (Nathan, 2004). Through strategic alliances and joint ventures, these corporations have managed to control the majority of the international market (Nathan, 2003b, 190).

1.2.3.B The US

Nowhere in the world has the private prison industry been as prosperous nor as sustained as in the United States. Similar to the experience internationally, however, the growth of the prison industry in the US has been uneven; only a handful of states in addition to the federal prison system have experimented with privatization. The modern private prison sector emerged in the US, thus US experience is crucial as it has provided the model to other countries considering privatization of prison services.

The private sector had been involved in the provision of auxiliary, non-custodial services in US prisons for many years, but modern prisons both owned and managed by private companies was a new development in the 1980s (Jones & Newburn, 2002, 183). The prison population, steady at between 100,000 and 200,000 for most of the 20th century, doubled by the mid 1980s due to the implementation of neoliberal policies and stricter sentencing legislation (Nossal & Wood, 2004, 3). Prisons country-wide were quickly overcrowded and conditions worsened; by 1986, 38 states were operating at or above prison capacity (Nossal & Wood, 2004, 3). Stricter legal requirements and tighter budget controls limited state capacity, and many states had reached their debt limits and thus were not able to pay for the construction of new

prisons (Jones & Newburn, 2002, 183; Nossal & Wood, 2004, 3). However, Schneider argues that privatization was only one of many options state governments could choose to address criminal justice problems (1999, 201). In addition to the federal correctional system, only a handful of states, most located in the South and Midwest, have decided to contract with the private sector (Nossal & Wood, 2004, 3). This unevenness is attributed to various factors, including the lobbying of private prison companies, punitive ideologies of particular state governments, and the socio-political histories of varying regions of the country (Schneider, 1999, 200; Nossal & Wood, 2004, 19).

While initially there was some hesitancy over the use of the private sector, by the early 1990s, this caution was abandoned (Nossal & Wood, 2004, 4). In 1985 the percentage of prisoners incarcerated in private prisons was close to 0.5%; by 1997 it had grown to 8.5% (Schneider, 1999, 196). According to Perrone and Pratt, from 1990 until 2001, the industry experienced an 832% increase in the number of prisoners it incarcerated (2003, 303). "By the mid 1990s, the private corrections industry had shifted its status from interesting experiment to proven option" (Jones & Newburn, 2002, 183). The two largest US private prison companies, the CCA and the WCC, together account for more than 75% of the industry, and in 1998, the CCA was the ninth largest prison system in the US, after the Federal Bureau of Prisons and seven other states (Shichor, 1999, 227; Camp & Gaes, 2001, 4). A US Justice Department report in 2001 estimated that total annual revenues for the industry were close to $1 billion (Sinden, 2003, 44). Post-2000, growth began to slow markedly, largely due to negative experiences within many states. However, the present Bush Administration has been a boon to private prison companies; since 2000, the number of federal inmates incarcerated privately has grown by more than 65% to more than 24,000 people (Berman, 2005).

The US experience of private prisons has been problematic for a number of reasons. The effect of private services on rehabilitation is unclear. Oftentimes, private prisons will be built in one state and filled with prisoners from another, with potentially negative effects on rehabilitation, as inmates are located so far from their families (Schneider, 1999, 195). Furthermore, a recent research study in Florida found that there was no evidence that private prisons reduced recidivism rates (Nathan, 2005c).

Private companies argue that private prisons reduce costs, as cost saving techniques used in the private prisons are often adopted in the public sector (Blumstein & Cohen, 2003, 13). However, according to Hart, Scleifer, and Vishny, any cost savings that private prisons can offer are largely related to lower wages and less skilled, non-unionized workers (1997, 1147). This has lead, in some prisons, to outbreaks of violence and abuse against inmates by the guards, as well as decreased security and safety (Parenti, 2003, 34). According to Camp and Gaes, private prisons "appear to have systemic problems in maintaining secure facilities," likely linked to worker inexperience caused by high rates of staff turnover (2001, 11, 16). Conditions for inmates have been similarly problematic. According to Parenti, gross abuses in private prisons are widespread, with countless reports of deprivations, beatings, brutality, escapes, and "appalling disregard for basic human rights" (2003, 31-32). Prison labour is widely used and highly controversial; more than 70 companies use prison labour for manufacturing, services, and light assembly within US private prisons (Jarvis, 2000, 8). Many private prison corporations have either lost contracts or been forced to sell off facilities due to the bad press these incidents have created (Camp & Gaes, 2001, 31). At the same time, however, US public prisons are plagued with similar problems, including violence among inmates, sexual abuse, excessive force by guards, suicides, and deprivation (Human Rights Watch, 2004). Regardless, "the fundamental problems remain: private prisons are far too abusive, chaotic, and poorly run to be the super profitable growth machines once imagined" (Camp & Gaes, 2001, 31).

The literature also discusses a number of problems that state and federal governments have had with controlling the private prison companies. Hart, Schleifer, and Vishny argue that shortcomings in the service contracts with government have helped facilitate, in a number of instances, the problems found in the quality of service and provision in many private prisons countrywide (1997, 1152). "Although in some respects, prison contracts are very detailed, they are still seriously incomplete. There are significant opportunities for cost reduction that do not violate the contracts, but that, at least in principle, can substantially reduce quality" (Hart, et al, 1997, 1152). Another major problem is the inability of governments to properly manage the contracts and sufficiently monitor the prisons. Many states only inspect private prisons once or twice a year (Sinden, 2003, 45). Others have required full time

government monitors to work within the private prisons, but, according to Sinden, this can increase costs for the state, is often resisted by the prison company, and the monitors can be co-opted by the prison company in which they work (2003, 45). Incentives to cut cost are, at the moment, stronger than the monitoring mechanisms which are meant to limit the effect of cost cutting on quality (Sinden, 2003, 45). This is related partly to lack of government capacity to monitor, and partly to the strength of private prison companies and the level of corruption and mixed loyalties within the prison industrial complex (Hart, et al, 1997, 1153). Profit skimming has also been a problem. A recent Florida audit discovered that CCA and WCC/GEO Group together had overcharged the state by $13 million for five prisons over eight years, including $4.5 million for jobs that were not filled, $2.9 million for maintenance that was never done, and $5 million for cost-of-living adjustments that were never made to employees salaries (Berman, 2005). However, according to Greene, "this poor performance history has not yet extinguished support for privatization at the federal level in the US," as the CCA recently won a three year, $109 million contract for a new federal prison (2003, 65).

1.2.3.C The UK

Private prisons were not constructed in the UK until the early 1990s (Nossal & Wood, 2004, 9). Similar to the experience in the US, enthusiasm for prison privatization was initially low; even for the conservatives in power, prison privatization was seen as too extreme (Jones & Newburn, 2002, 183, 185). Although UK prisons had problems of overcrowding, the impetus behind the creation of private prisons was largely political. According to Jones and Newburn, what eventually caused the drastic turnaround in policy towards private prisons was the desire by Prime Minister Thatcher to prove the radicalism of her conservative government (Jones & Newburn, 2002, 185). According to Windlesham, the decision was made "because of her conviction of the need for reform outside of the prevailing consensus; not for any reasons of penological principle or administrative practice" (in Jones & Newburn, 2002, 185). Nathan argues that US private prison companies were also very instrumental in lobbying the UK government and heavily influenced the direction of prison legislation (2003a, 164).

In the mid-1980s, the government decided to undertake prison privatization as an experiment; the UK's first private prison opened in 1992 (Nossal & Wood, 2004, 9). Despite both a report in 1993 by the Prison Reform Trust raising concerns about the first year of service in the prison, and a report in 1996 by the national Home Office stating that private prisons were not clearly better than public prisons, according to Nathan, since 1992, all new prisons in the UK have been privately financed, designed, constructed, and managed (2005a, 3). Privatization has spread to immigration detention centres, juvenile jails, electric monitoring systems and other prison services, courts, and police stations, and there are plans to privatize probation services (Nathan, 2005a, 3). Although the decision to privatize was mainly political, even after the Labour Party came to power in 1997, private prisons continued to flourish (Pollitt, 2000, 2). The UK presently has the most privatized criminal justice system in Europe, second in the world only to the US, with approximately 8% of total prison population in England and Wales in private prisons, while 10% of the Scottish prison population is privatized (Nathan, 2003a, 165).

A number of issues have been raised in analyses of the UK experience. Although UK private prisons do not have records of abuse and deprivation as extreme as their counterparts in the US, there have been instances of assault, high drug use, escapes, the death of an inmate during restraint, and, in one case, the temporary takeover of a private prison by the national Prison Service (Nathan, 2005, 25-27). There also have been issues of profit skimming and minimizing services, including a lack of work and educational provision for prisoners and low staffing levels (Nathan, 2005, 26). According to Nathan, the average hourly basic pay for private sector prison officers in England and Wales was 43% less than their public counterparts in 2004 (2005a, 7). Pollitt discusses a number of concerns in terms of the contracts, arguing that they are inflexible, and both difficult and costly to terminate before the time period has finished (2000, 19). The contracts are 25 years long, which means that the life of the contract is longer than that of any government in power and thus has implications for future government budgets (Pollitt, 2000, 19). According to Pollitt, contract costs are often inflated during the bidding process, and, in several contracts, it was not clear whether the government had actually received value for money or saved any costs by using the private sector (2000, 25).

Prison privatization has had a few positive results. Mike Newell, president of the Prison Governor's Association claims that, while they are often more expensive and of poorer quality, private prisons in the UK have, in fact, led to the improvement of the public sector (Nathan, 2003a, 174). The public prison service has even won a number of bids against private prison companies, with proposals of lower cost but better quality than the private sector (Nathan, 2003a, 169). According to Newell, "Perhaps this is the legacy the experiment leaves behind but it has no more to offer in its current shape" (in Nathan, 2003a, 174).

1.2.3.D Australia

Prison privatization began in Australia at roughly the same time as in the US, but growth here has been much slower and more limited (Nossal & Wood, 2004, 6). As of 2001, there were nine private prisons in Australia, located in four of six states and two territories (Nossal & Wood, 2004, 6). What is interesting about the Australian case is the involvement of the public sector. Contracts are structured to facilitate turnover; as ownership and operation functions are contracted separately, there is more potential for the public sector to become involved in the process (Harding, 1998, 1-2). While building and ownership contracts generally last for 20 years, management contracts tend to be short, with subsequent re-bidding by the private sector and often the public sector as well (Harding, 1998, 1-2).

Private sector involvement in Australia has been very region specific. Although initially opposed to privatization of prisons, by 1992 the Victorian government had moved to the forefront of this development; at the time, it was the only state in which ownership was also contracted to the private sector (Harding, 1992, 2; Daly, 1997, 2, 5). By 1998, the state had 50% of its prison population in private prisons, more than any other jurisdiction in the world (Harding, 1998, 1). It was envisioned that privatization would reduce public costs, loosen labour union's strength in the sector, and provide a benchmark for what public prison provision should be (Harding, 1998, 6). To initiate public sector involvement, in 1996, the government created the Public Enterprise Corporation (CORE) within the Ministry of Justice to semi-corporatize public prison services and to provide a public body to compete with the private sector (Harding, 1998, 3; Daly, 1997, 6). Other states and territories have privatized on a smaller scale. In Queensland, the government initially allowed the public sector to

bid against the private sector in contract negotiations (Harding, 1998, 2). When this created problems, the government also withdrew from its service provider role completely and created a government corporation to compete with the private sector (Harding, 1998, 2). Correctional Services in South Australia and New South Wales have also privatized to a limited degree (Nathan, 2005b, 2005c).

The enthusiasm of some Australian states for private prisons began to ebb in the late 1990s and early 2000s. In 1999, the Queensland Minister for Police and Corrections announced that, while existing contracts would be honoured, they would not necessarily be renewed and future developments would entail more public sector involvement (Nathan, 1999). Similarly, in Victoria in the same year, the newly elected Labour Party announced their intention to end the province's three private contracts and remove the profit motive from future developments in the sector (Nathan, 1999a). In its plans to build three new prisons in 2001, the government stipulated that management of the prisons would rest with the public sector and CORE (Nathan, 2001). In 2002, the Northern Territory passed legislation to keep all prison officers as public employees (Nathan, 2002). At the same time, however, the Australian federal government contracted out a number of its immigration detention centres to the private sector (Nathan, 2002/2003).

The experience of private prisons in Australia has been mixed. Many contend that the sector has been well regulated. Richards argues that many of the prison monitoring mechanisms have become more effective since the involvement of the private sector (1997, 4). Harding contends that problems found in private prisons worldwide, including the power of the private prison industry and inadequate accountability measures, have not been problems for Australia largely because of proper accountability measures, though he acknowledges that the situation could easily change with weaker regulation (1992, 3). However, Australia has experienced problems similar to other countries in terms of inmate and worker conditions. Escapes, abuse, and death are widespread; for instance, in 1997, a prison managed by Group 4 in Port Phillip report seven deaths within its first five months of operation and approximately 100 incidents of self-injury or death in the first six months (Harding, 1998, 4). There have also been allegations that private companies, in order to limit worker costs, have used electronic surveillance and drugs to sedate inmates

(George, 2003). Problems for employees include sexual harassment, bullying, low wages, unsafe work environments, and a lack of willingness on the part of administration to negotiate with unions (Nathan, 2005b). Although Australian public prisons have similar problems, the lack of full transparency and debate around private prisons, including private companies threatening critics with defamation writs and keeping sections of contracts non-public, have made the situation seem much worse (Harding, 1998, 4). Furthermore, according to Giffard, US prison companies are involved in all the private prisons in Australia and in some cases, prisons are managed by Americans, which has led to criticism that the specific cultural needs of prisoners are not being met (1999, 333).

However, like the experience in the UK, a positive result of this privatization has been the strengthening of the public sector. Many theorists argue that prison privatization has led to the improvement of public sector prisons, thus making them more competitive with international private companies (Berg, 2004, 20; Harding, 1992, 1997).

1.2.3.E New Zealand and Canada

There has not been much written about private prisons in New Zealand and Canada, likely because privatization began more recently and on a much smaller scale. New Zealand has had only one private prison which opened in 2000 (Nossal & Wood, 204, 13). The New Zealand government has privatized a number of state assets since the 1980s, and prison privatization was a continuation of this trend (Nossal & Wood, 2004, 13). However, by the time the prison was operational, the government had been voted out of power and the new government was less supportive of private prisons (Nossal & Wood, 2004, 13). In 2004, New Zealand became the first country to legislate against private prisons; Corrections Act 2004 prevents private prison management (Nathan, 2005a, 7). On 12 July 2005, the private prison, previously operated by the GEO Group, was taken over by the government (Nathan, 2005d). Although the opposition party has threatened to change this policy if it wins the next election, for now, private prisons are effectively blocked in New Zealand (Nathan, 2005d).

In Canada, there is also only one private prison, located in Ontario (Nossal & Wood, 2004, 11). While the Canadian federal government has emphasized rehabilitation and reintegration in its correctional service policy, individual provinces have the authority to determine their own correctional service practices and Ontario has taken a much more punitive approach (Moore, et al, 2003, 152). Seeking to be both 'tough on crime' and cost-effective, the Progressive Conservative Party, which came to power in 1995, initiated a campaign of prison reform (Moore, et al, 2003, 152, 154). The government decided to consolidate its prison system into a number of 'super-jails' which would be more centralized and homogenous in service provision (Moore, et al, 2003, 157). The government created two of these jails, one public and the other contracted to the US prison company MTC, and proposed a five year study comparing the two institutions (Moore, et al, 2003, 159). According to Moore, Burton, and Hannah-Moffat, the government was initially extremely cautious in terms of prison privatization, likely because of the concerns that have been raised about US private prisons (2003, 159). However, despite the fact that by 2003 the study had still not begun, the government is already planning future privatized prisons (Moore, et al, 2003, 159). According to Nathan, the MTC, in an internal memo, has admitted to consistently being in violation of its contract, with some positions overstaffed while others are understaffed (2004). The Quebec government recently proposed forming a PPP prison; however, this has been met with severe opposition from both human rights groups and labour organizations (Nathan, 2005d).

The remainder of this dissertation will examine the experience of private sector involvement in South Africa's correctional services. South Africa, like Canada and New Zealand, became involved with private prison companies only recently, and to date has only two prisons which involve the private sector through public-private partnerships (PPPs); both are constructed and managed by the private sector through 25 year contracts. What makes the South African case important is that it is the first developing country to contract with the private sector in this way, and thus its experience will impact the development of this sector in other developing countries. Furthermore, the South African Department of Correctional Service has plans to build eight new prisons by 2009; thus far, the level of private sector involvement has not been decided (Department of Finance, 2005).

Endnotes

[1]This paper will use the terms "private prison" interchangeably with "PPP prison" and "prison contracted to the private sector." Ultimately, while the literature overwhelmingly refers to prisons whose construction, finance, and management functions are contracted to the private sector as "private prisons," these prisons are technically only "private" in the sense that the private sector has temporary ownership and/or management functions. At the end of the contracts, these prisons will transfer back to government.

[2] Privatization was known as "denationalization" until the 1980s when Thatcher adopted the term "privatization" to describe her policies.

[3] Excluding Hungary, which presently has one private prison being built and another one under tendering (Nathan, 2005b). As neither will be operational until late 2006 or early 2007, they have not been included in the analysis.

[4] In this paper, both names will be used. WCC will be used when it is referring to events which occurred before 2003, and GEO Group will be used when referring to events which occurred after 2003. Ultimately, however, the names denote one and the same company.

[5] Similarly, "Group 4" will be used when referring to events before 2004, and "GSL" will be used for events afterwards.

Chapter Two

South African Political Economy

Similar to the experience in other privatizing countries, South Africa's PPP prisons emerged out of a specific economic, political, and social context. This was closely tied to South Africa's transition from repressive, minority-rule to a democratic state faced with the monumental task of transformation. Although initially committed to people-centred, state-led development, the first few years of democracy witnessed a marked shift towards market-led strategies. The ANC's call for nationalization put forth during the transition was hastily withdrawn, and government policy was aimed at fiscal austerity and reducing public expenditure. There is debate as to what was behind this political turnaround; regardless, the outcome was an embrace of privatization, at least in concept, across many public service sectors, including correctional services.

The following section will focus on South Africa's transition to a democracy and its transformation into a largely market-led economy. Examples of a few key service sectors that have recently had some degree of private sector involvement, namely telecoms, transportation, electricity, water, and health, will be briefly discussed in order to lay the framework for subsequent comparisons with privatization in correctional services. Following this will be an examination of the criminal justice system post-transition and the challenges it faced at the end of apartheid.

2.1 South Africa's Transformation

On the eve of South Africa's democratic transition, the country seemed poised for massive social and economic reforms to redress past inequalities and injustices. The new government's first economic developmental strategy was called the Reconstruction and Development Program (RDP), and it was premised on the fulfilment of basic needs; the expansion of basic service provision was given top priority (Gelb, 2004, 3). Committed to a "broadly Keynesian framework," the RDP was premised on economic growth and development based upon transformation and redistribution (Barnett, 1999, 653). According to Saul, however, the government's later shift to free market principles was already apparent within this document,

particularly in the sections dealing with macro-economic policy (2002, 11). By 1996, the government had adopted Growth, Employment, and Redistribution (GEAR), which was focused on economic growth and stability. According to this plan, redistribution would be achieved through the trickle-down effects of economic growth (Gilson & McIntyre, 2001, 205). Many argue that GEAR has signalled the government's full embrace of neoliberalism; however the government's development goals, as well as its lack of full commitment to a number of neoliberal policies, most particularly privatization, imply that the situation is more complicated than that. Before this is discussed, however, it is important to briefly examine the various causes said to be at the root of South Africa's policy shift.

According to Gelb, dominant explanations for the government's change in policy are linked to the inadequacy of ANC leadership (Gelb, 2004, 1). This inadequacy is either explained as a "lack of will," that is, the abandonment of progressive policies in order to accumulate wealth and power for the elite, or "lack of skill," the government's political weakness in introducing progressive policies against powerful vested interests (Gelb, 2004, 1). McDonald and Pape relate some of the ANC's "lack of will" to powerful international influence (2002, 2). They argue that, as early as the late 1980s, international forces were consulting with South Africa's leaders on both sides of the transition, to "woo South Africa's political and economic leaders into the market-forces camp," and ensure that the new government would follow the neoliberal economic model (McDonald & Pape, 2002, 2). Webster and Adler argue that Western, pro-market forces were able to exert this dominant influence due to the collapse of the USSR and the Eastern block, and subsequent discrediting of socialist economic policies (1999, 369). According to this argument, the power of international players and the weakness of the ANC to implement people-driven development have led to the embracement of market-led policies.

Gelb, on the other hand, argues that the foundation for the country's change in economic strategy was laid during South Africa's transition and that, in fact, the new ANC government never had full control over the direction of economic policy (2004, 1). Business, bearing the negative results of economic crises dating from the 1970s, including decreasing profitability and productivity in manufacturing, balance of payment problems, and the cumulative effects of years of trade and financial

sanctions, negotiated with and eventually supported the anti-apartheid forces in order to ensure that its interests would be secured in the transition agreement (Gelb, 2004, 1-2). Specifically, business wanted a policy which would increase exports and the inflow of capital, as well as an end to the international sanctions (Gelb, 2004, 2). In the negotiated transition that ensued, business was guaranteed macroeconomic stability and international competitiveness, while agreeing to capital reform within the private and public sectors to amend discriminatory ownership structures (Gelb, 2004, 2). Even before the ANC took power in 1994, a number of reforms were passed which further limited the parameters in which ANC development policy could be constructed, including commitments to the GATT and the liberalization of trade which would reduce the number of tariff rates from more than 100 to six in five years, legislation to open the banking system and the stock exchange to the international market, and plans to relax capital controls (Gelb, 2004, 2-3; Jenkins, et al, 1996, 11). While Gelb claims that these were structural constraints put upon ANC policy makers, Bond argues that these constraints were, in fact, created and embraced by key ANC members (Bond, 2004b). According to Bond, three key decisions were made by the ANC prior to 1994 which signalled their own commitment to market-led forces: to drop "nationalization" from the ANC policy goals, to repay the $25 billion apartheid debt, and to grant the central bank formal independence (Bond, 2004). Furthermore, once in power, the new government's first act was to accept an $850 million loan and the IMF's structural adjustment policies (Bond, 2004a, 45). According to Saul,

> there can be little doubt that, in the end, the relative ease of the political transition was principally guaranteed by the ANC's withdrawal from any form of genuine class struggle in the socio-economic realm and the abandonment of any economic strategy that...[would have]....directly service[d] the immediate material requirements of the vast mass of desperately impoverished South Africans (2002, 8).

Saul argues that, since 1994, there has been an "extreme, precipitate, and unqualified" movement towards a free market, with liberalization being implemented at an even faster rate than required by the GATT (2002, 11). As maintained by this argument, the ANC government was not lacking in "skill" but lacking in commitment to the progressive politics of the anti-apartheid movement.

Despite the diverse causes to which the government's change in policy is attributed, the end result was a steady shift, throughout the first few years of democracy, from the ideals of the RDP and towards an economic strategy which saw redistribution "as an outcome, rather than a condition, of economic growth" (Barnett, 1999, 653). GEAR, as stated earlier, emphasized economic growth which, it was argued, would create jobs and thus lead to redistribution (Gilson & McIntyre, 2001, 205). Economic growth would be stimulated through greater private investment, greater export competitiveness, and by improving productivity (Gilson & McIntyre, 2001, 204). To encourage confidence and investment, the government focused on reducing the deficit, primarily through the control and tightening of public spending (Gilson & McIntyre, 2001, 204). Furthermore, in order to increase productivity according to GEAR, public assets would be restructured, largely by creating partnerships and engaging with the private sector (Gilson & McIntyre, 2001, 204).

Reducing the size of the public service sector was a long-stated goal of Mandela's government, but it was effectively blocked during his presidency by unions and ANC political fears of the approaching election (Cameron & Tapscott, 2000, 84). Still, according to Cameron and Tapscott, from 1995 to 1998, public service employment dropped by 9.8% despite the fact that, compared internationally, the South African public service is not particularly large (2000, 84). The issue, instead, seems to be affordability (Cameron & Tapscott, 2000, 85). In 1995, the government drafted the White Paper on the Transformation of the Public Service which detailed the plan to restructure this sector (Bardill, 2000, 105). This white paper was in line with the people-driven development goals of the RDP, cautioning against the use of privatization to effect restructure (Bardill, 2000, 105). However, when GEAR was passed, public service transformation was envisioned within a budget-driven model, with primary goals being cost-cutting, 'right' sizing, and privatization (Bardill, 2000, 106). According to Cameron and Tapscott, the government's drive to privatize services was related to its goal of restructuring the public service (2000, 85).

The reduction of government spending and the pressures of service delivery have been most acutely felt at the local level. According to Hart, the "developmental local state" has become increasingly important within the context of neoliberal globalization, both in South Africa and internationally; national governments, in an

attempt to "shed" functions in order to meet a tighter budget, delegate more responsibility to local governments because they are seen to be more democratic and efficient (2002, 19; Hart & Sitas, 2004, 36). In South Africa, this has meant that nearly all major public functions, including most basic services, have been decentralized to the local level (Hart, 2002, 19). At the same time, fiscal austerity has limited national, and consequently local, government budgets; national government now provides only 10% of municipal budgets, the other 90% must be raised through taxes and service fees (Hart, 2002, 19). This has put local government on the front lines of the implementation of GEAR, as they struggle to balance community demands for redistribution and service delivery, with fiscal austerity and limited budgets.

Many argue that the government's shift from the RDP to GEAR signals its full embrace of neoliberalism (for example, see Saul, 2002, Peet, 2002, Bond, 2004a). While the government still has a number of progressive developmental goals, Bond argues that this is rhetoric and that the government, in fact, is clearly following neoliberal policy prescriptions (Bond, 2005, 291). According to Bond,

> the independent left forces still allege that the ANC continues to implement neoliberal macroeconomic and micro development policies, as orthodox monetary policy is maintained, neoliberalism of trade and finance proceeds apace, corporatisation of state enterprises speeds up, and the ongoing attack by state service providers against low income people continues (2005, 291).

The government has, however, committed to a number of developmental policies that signal its divergence from neoliberalism. Most importantly, since 1994, the national budget has been used by government to address redistribution and poverty relief (PCAS, 2003, 17-18). According to the government's 10 Year Review, spending on social grants increased dramatically in the first 10 years of democracy, from R10 billion serving 2.6 million people in 1994 to R34.8 billion serving 6.8 million people in 2003 (PCAS, 2003, 17). These grants have been particularly well targeted to the poorest 20% of the population; according to the report, social grants make up two-thirds of the income of this quintile (PCAS, 2003, 18). Public works projects have also assisted in addressing income poverty, and public works expenditure increased by nearly tenfold from 1998 to 2003 (PCAS, 2003, 18). While these measures have not fully serviced all poor people, they are an important way through which government spending has been increased and reoriented to effect redistribution

(PCAS, 2003, 77). In addition, the government's commitment to neoliberal policies has not always been wholehearted; this is particularly apparent with privatization. Despite plans to privatize much of the public service and many basic services, policies have been only partially implemented, and steps towards privatization in many sectors have been delayed.

2.2 Privatization in South Africa

During apartheid, little was done to extend public infrastructure and services to the nonwhite population, and this was a serious and pressing problem for the new government. As previously discussed, GEAR promoted fiscal austerity and limits on government spending in order to reduce the deficit and attract private sector investment, which would help address this service backlog. This, coupled with government's aim of public services restructure, laid the foundation for the reduction of the role of the state in the economy, primarily through privatization (Barnett, 1999, 653). Bond argues that privatization was the key policy of the ANC to increase efficiency and new investment (2005, 45). Privatization was also aimed at increasing Black Economic Empowerment (BEE) ownership (Jarvis, 2000, 17). In 1996, Mandela himself declared that privatization "is the fundamental policy of the ANC and will be implemented" (in Barnett, 1999, 653). The government's privatization program prioritized the "Big Four" SOEs, that is, Eskom (electricity), Telkom (telecoms), Transnet (transportation), and Denel (defence) (Jarvis, 2000, 17). Privatization had begun well before the transition however, with services such as the construction and maintenance of roads sourced to the private sector in the 1980s (Jerome, 2004, 7). Nonetheless, due to the effects of sanctions and strong opposition from the ANC and the Congress of South African Trade Unions (COSATU), the role of the private sector did not grow extensively until the mid-1990s (Jerome, 2004, 7).

According to Cassim, privatization in South Africa has been a combination of full privatization, strategic management partnerships, and strategic equity partnerships, primarily through minority stakes of foreign firms (2004). Many SOEs, before engaging with the private sector, have had to be restructured in order to make them more competitive, efficient, and attractive to private companies (Cassim, 2004). In many cases, then, public entities follow a continuum from SOE to private company, first being commercialized, then coporatized, and finally privatized (Mavhungu &

Winkler, 2001, 2). Public-private partnerships (PPPs) are the primary way that outsourcing of service provision is achieved, and South Africa has been at the forefront of PPP development on the continent, with more than 50 programs implemented or in development at the national and provincial levels, and 300 at the municipal level (Farlam, 2005). There is some concern, however, particularly on the part of business, over the perceived slowness of the implementation of privatization (Jerome, 2004, 9). According to Jerome, the emphasis of government's policy has been more on restructure or partial privatization than on the full sale of assets (Jerome, 2004, 11). He argues that divesture has occurred, but mainly of non-core business and through the sale of minority stakes, primarily to foreign firms and BEE companies (Jerome, 2004, 14). Little emphasis is placed on increasing competitiveness, as will be seen in the following examples (Cassim, 2004).

Jerome attributes this lax commitment to privatization to the ANC's political imperative to maintain its association with COSATU and the South African Communist Party (SACP). The government's support of privatization has led to serious disagreements within the coalition, beginning in 1995 and continuing up to the present day (Barnett, 1999, 655; Bond, 2004). According to Jarvis, "the privatization process has been characterized by secrecy, a lack of clarity on government objectives, and a disregard for consultation with trade unions" (2000, 18). There has been a lot of largely successful pressure put on the government by unions and community groups to halt privatization, with an increasing number of strikes and protests as well as non-payment and illegal reconnection of basic services such as water and electricity (Bond, 2004). This opposition is largely related to the massive job losses that have been sustained through privatization, and also because of the government's controversial policy of cost recovery. According to this principle, rich and poor alike must pay user fees for basic services including electricity, telecommunications, and water usage above the free basic provision (McDonald & Pape, 2002, 4). McDonald and Pape argue that the state is no longer providing, but enabling and facilitating, and citizens can only get that for which they can pay (2002, 4-5). Furthermore, the tightening of public service budgets has effectively ended many government service subsidies to the poor and, as discussed earlier, the limited budgets of local municipalities and city councils has pressured them to look to partnerships and privatization as well (Mehta & Ntshona, 2004, 6). South African unions, in particular,

claim that privatization is yet another "attack on the government's power to control the economy in the interests of poor people" (Peet, 2002, 80).

The success of private sector involvement in public service provision in South Africa is contested. According to Bond, privatization is "almost universally failing from the standpoint of workers, consumers, and sometimes also business" (2005c, 64). The government has consistently failed in reaching both its revenue and BEE targets from selling SOEs (Bond, 2004c, 65). As will be seen in the following examples, the extension of basic services has led to massive disconnections and even service reduction, as in the case of Telkom. Government support, at least in rhetoric, has also begun to ebb. In 2003, the director general of the Department of Water and Forestry (DWAF), Mike Muller, stated that "resistance to private engagement is the result, in part, of the obvious failure of private initiative to address the core challenge of the unserved" (in Bond, 2004c, 125). According to Molaba, there has been some movement towards re-nationalization of former state assets, including discussion of re-insourcing services and allowing public servants to run privatized sectors (2002). Despite this recent weakening of support, a number of sectors have undergone some degree of private sector involvement and, in many cases, have continued on this often slow path towards private ownership. The following section will discuss the privatization experience of a few key service sectors in brief, specifically the telecom, transportation, electricity, water, and health sectors.

2.2.1 Service Sector Examples

2.2.1.A Telecommunications

Telecommunications is one of South Africa's most privatised service sectors, as Telkom, a former SOE with a monopoly on fixed line services, is now more than 60% privatised (Jerome, 2004, 14). Telkom's restructure process began in 1992 when it was corporatized (Cohen, 2001, 703). By 1994, overall teledensity in South Africa was only 10% and highly skewed by race and location (Gillwald, 2001). The Telecom Act was passed in 1996 with the twin goals of universal service and encouragement of competition and innovation (Cohen, 2001, 731). The plan for restructure included a five year period of exclusivity for the Telkom monopoly, in order to increase efficiency and competitiveness and to roll out services to underserviced areas, after which a Second National Operator (SNO) would be

introduced (Cohen, 2001, 732; Gillwald, 2001). There was also a 30% cap placed on foreign investment, and plans to create an effective regulation structure (Cohen, 2001, 732). Under the Act, Telkom was tied to a strict licensing agreement in which it would incur penalties if service delivery targets were not met (Achterberg, 2000, 366). Ultimately, although growth has been high, weak regulation and the dominance of a US-Malaysian consortium which owns 30% of the company has led to a 160% increase in local tariffs, the loss of two million fixed line subscribers, the retrenchment of 30,000 workers, and monopolistic practices by Telkom which have slowed growth in other telecom sectors (Gillwald, et al, 2005, 44). As yet, the SNO has not entered the market, although it is well past the five year period of exclusivity (Esselaar & Gillwald, 2004, 5). Furthermore, after the government put approximately $5 billion in funding towards Telkom's restructure, the company's initial public offering on the New York Stock Exchange raised only $500 million (Bond, 2004). Telkom's "managed liberalization" has been one of high profits and growth, but unsustainable extension of the market, largely due to lack of affordability and little competition in the sector (Hodge, 2000, 381). Many argue that these problems have arisen because privatization has been happening too slowly; in fact, in the resulting void of affordable service, the cell phone industry has grown rapidly to the point where it is competitive with fixed line provision (Hodge, 2003, 29). According to Hodge, the lag in full privatization has led to a situation in which South African consumers have paid the adjustment price of liberalization without incurring the benefits (Hodge, 2000, 379).

2.2.1.B Transportation

The transportation sector, although contracting with the private sector from the mid 1980s, has had varied experience with privatization. In terms of the rail and port services, government implementation of privatization policy has been a "stop start affair at best" (Gillwald, et al, 2005, 32). Government plans to privatize have largely been blocked by union opposition and by lack of clarity in vision and implementation (Gillwald, et al, 2005, 32, 39). Regulation has been weak and, in the case of railroads, restructure has led to the closing of unprofitable routes crucial for rural economies (Gillwald, et al, 2005, 31; Bond, 2004). The road service has experienced a higher degree of privatization, with the sourcing of maintenance and construction to the private sector (Leiman, 2003, 1). According to Leiman, tolling is at the centre of cost

recovery in road privatization, as road construction and maintenance are funded through road user fees (2003, 1). Bond, however, argues that these toll roads make travel unaffordable to the poor (2004). There are two forms of privatization at work. In one case, the private sector is contracted to build the roads and then maintain them for a certain length of time, generally through Build Operate and Transfer (BOT) schemes (Leiman, 2003, 1). Private companies are paid back by state guarantee of stipulated monthly revenues from tolls over the length of the contract, which is generally 20-30 years (Mbeki, 1997). In the other case of road privatization, the private sector takes over a road that has already been built by government and maintains it for a certain period of time (Leiman, 2003, 1). According to Leiman, regulation is ensured by an independent technical expert who makes sure that the contract is fulfilled, and through government monitoring of books, accounts, and approval of any toll changes (2003, 3).

2.2.1.C Electricity

Privatization in the electricity sector has been slow. According to Naidoo, before restructure, Eskom, the state electricity company, was one of the cheapest electricity producers in the world (2001). The Eskom Conversion Bill of 2001 corporatized Eskom, making it a public company with the state as its only shareholder (Mavhungu & Winkler, 2001, 2). There are plans to sell 30% of Eskom, potentially to a BEE consortium (Bond, 2004; Naidoo, 2001). Little has been done as yet and, although over the last 20 years the company has produced an increasing amount of power, serving a growing number of people, employment levels were halved during the restructure of the 1990s, with the loss of 30,000 jobs (Gillwald, et al, 2005, 26). According to Bond, user fees have rapidly increased since the cross subsidization of poorer households ended in the late 1990s, and the number of disconnections and illegal re-connections has dramatically increased (2004). Regulation of the sector has always been weak, as the government and regulatory body have minimal capacity and little information with which to critically assess the sector (Gillwald, et al, 2005, 29). This will likely prove problematic with future privatization in the sector.

2.2.1.D Water

Privatization of water services has been the most controversial of government privatizations, although only 5% of municipalities have formed partnerships with

private companies (Bond. 2004). Unlike the other sectors discussed, water service privatization has occurred on a local level rather than nationally. Due to budgetary constraints, almost all municipalities have adopted a 100% cost recovery policy for water services, largely by forming partnerships with NGOs, state water boards, or the private sector to deliver services (Bond, 2004; Mehta & Ntshona, 2004, 7). Cost recovery has led to unaffordable prices, massive disconnections, the underservicing of poor populations, and the outbreak of water-related disease (Bond, 2004). Ongoing problems with the sector include prepaid meters and tricklers which block many from getting the water they need, insufficient cross subsidization of tariffs, whose structures favour hedonistic water users, and government attention to increasing supply rather than addressing people's ability to pay (Bond, 2004c, 135). Water service privatization has been particularly problematic, largely due to renegotiations of contracts to increase profits by increasing prices, and the growth of the sector has slowed considerably as private firms are less willing to invest (Bond, 2004c, 131). Ultimately, however, because of local government adoption of free market, cost recovery principles, water provision in general is problematic, whether publicly or privately provided. To address this problem, in 2001, the national government instated a free basic water policy, guaranteeing 6,000 litres of free water per household per month (Bond, 2004c, 139). However, due to ineffective national funds, this policy has not been fully implemented and many households still rely on traditional sources of water such as rivers and boreholes (Naidoo, 2001).

2.2.1.E Health

South Africa has had a private health sector for many years. Health, like prisons, has been divided into two concurrent sectors: the private and the public. However, unlike prisoners, health service users have a choice, to some extent, about which sector they use. Although South Africa ranks relatively high compared to similar countries in terms of the amount of GDP spent on health, it ranks quite poorly in terms of health status; this is primarily because of inequity and the fragmentation of public and private services (Leon & Mabope, 2005, 33). There are great imbalances between the two sectors, stemming from apartheid inequalities, with the approximately 16% of the population served in private health facilities receiving more than half of the country's total expenditure on health, while the remaining 84%, mostly poor, rural, and black, receiving only about 41% of health expenditure in the public sector (Leon & Mabope,

2005, 33). According to Naidoo, fiscal constraints led to a 15% decrease in spending per person per day in real terms from 1996 to 2001 in the public health sector (2001). The private sector is primarily used by high and middle income earners with medical benefits (Bloom, et al, 1995, 42). Most for-profit facilities are located in metropolitan areas where profits can be made, thus perpetuating the underservicing of rural areas (Bloom, et al, 1995, 44). Private facilities tend to be newer and provide more efficient services. Furthermore, adding to the crisis in inequity, many key health professionals have moved to the better funded private sector (Naidoo, 2001). The private sector is not without its problems, however, as costs for users have continued to increase, while growth in the number of medically insured has stagnated over the past ten years (Leon & Mabope, 2005, 33). In addition, regulation of private healthcare, while generally successful, tends to be viewed by the private sector as unfairly strict (Leon & Mabope, 2005, 33).

2.3 South Africa's Correctional Services

The situation laid out in the previous section is the context in which the transformation of the country's correctional services took place. This section will outline correctional services in South Africa, starting with a brief explanation of prison services before 1994, and then outlining the key challenges which faced the department after the transition.

2.3.1 Historical Context

Prisons in apartheid South Africa were used largely for social control. From the 1950s, the prison system was organized according to military structures, with warders wearing uniforms and carrying ranks, and enforcing strict discipline and obedience (Dissel & Ellis, 2002, 2). Prisons were fiercely segregated and apartheid was embedded within the structure of correctional services (Giffard, 1999, 336). It was illegal for black wardens to be in charge of white inmates, and prisoners of different races were kept separate, with prisoners of colour receiving especially harsh treatment (Giffard, 1999, 336; Dissel & Ellis, 2002, 2). Laws restricting the movement and actions of people of colour maintained very high prison populations both before and during the apartheid era (Worger, 2004, 68). Prisoners were used as free and exploitable labour from the 19th century up until the 1980s, and were put to work building roads and harbours, in mining, and in agriculture (Dissel & Ellis, 2002, 2).

According to Corder and Van Zyl Smit, South Africa was a "relative latecomer in establishing what, until very recently, was the norm in almost all countries, that is, having all prisons firmly in the hands of the state" (1998, 482). Modern South Africa's first private prisons were built in the 19th century at the diamond mines in Kimberley as part of a convict lease system in which prisoners were outsourced to companies to provide cheap labour; this system continued into the 1980s (Van Zyl Smit, 1992, 13). Public and private prisons alike were designed to warehouse prisoners while they were not working, and in some cases, did not even have dining halls or recreational facilities (Fagan, 13/10/05). Although formal legislation promulgated ideals of rehabilitation for prisoners, in practice, the correctional services were more concerned with control of the population both within the prisons, by force, and outside of prisons, by threat of imprisonment (Van Zyl Smit, 1992, 102, 31).

2.3.2 Key Challenges

The South African Prison Service, renamed the Department of Correctional Services (DCS) in 1990, faced three key challenges with the country's transition to a democracy. Firstly, there was a pressing need for departmental transformation. Secondly, there was a growing fear of crime within the public, and the new government was under a great deal of pressure to be seen as tough in fighting this crime. Finally, overcrowding levels in the country's prisons were at near crisis levels and continuing to grow.

2.3.2.A Transformation

The government announced its intention to transform correctional services as early as 1990, but changes to the system were evident in the 1980s with the declining use of prison labour (Van Zyl Smit, 1992, 39). After 1994, both the new Constitution and subsequent DCS policy enshrined the rights of prisoners to be detained in safe custody and in a way which respects human dignity (Dissel & Ellis, 2002, 3). Demilitarization was one of the first priorities of the Department, and this was put into effect in early 1996 (Dissel & Ellis, 2002, 4). However, according to the Department's most recent White Paper, it did not happen smoothly (DCS, 2005, 30). Demilitarization was resisted by senior personnel and thus was poorly managed (DCS, 2005, 30). Furthermore, it led to an interruption of human resource development and confusion among wardens that this change indicated a reduced

emphasis on discipline and security (DCS, 2005, 30). While the military-style uniforms and ranks have been removed, according to Dissel and Ellis, prison administration in both approach and culture has remained somewhat militaristic in the years since demilitarization (2002, 4). Modernizing the prison system was also of great concern as most prisons built before 1994 were designed as holding places, with limited ability to provide for massive overcrowding, increased safety measures, and rehabilitation (Madlala, 20/8/05). According to the General Secretary of POPCRU, "you're still sitting with prisons which were really built as...dumping...[places]...for inmates" (21/9/05). A number of "new generation" prisons have been built over the last few years, however, the majority of public prisons remain "horribly antiquated" (Fagan, 13/10/05).

Another aim of transformation was to align the Department with international best practices in correctional services (DCS, 2005, 29). During apartheid, the prison system was not monitored nor was it transparent (Berg, 2004, 23). Human rights abuses proliferated without challenge (Berg, 2004, 23). Thus, in 1998, the Judicial Inspectorate was established as an independent monitoring body to ensure accountability and transparency within prisons and within the Department (DCS, 2005, 29). The Inspectorate will be discussed in further depth in the next chapter, however, suffice to say that this was a marked change from the repressive and secretive nature of the Department before demilitarization.

The Department also underwent significant personnel and management changes, largely in order to become more representative of the wider population (DCS, 2005, 29). Before transformation, the vast majority of Department was white and among the more conservative of government officials (Morris, 13/10/05; Giffard, 199, 336). However, according to the 2005 White Paper, the implementation of affirmative action within correctional services was done without considering the training and development needs of appointees (DCS, 2005, 30). Furthermore, there was a high degree of conflict, largely political, within the Department and between the Department and other government bodies for many years after 1994 (Sloth-Nielsen, 2003, 9-11). Over the same period, there was a high turnover in Department leadership, with three ministers in ten years, and, after the resignation of Commissioner Sithole in 1999 following allegations of corruption, a number of acting

commissioners until the present Commissioner Mti was appointed in 2001 (Sloth-Nielsen, 2003, 10). This has led to a crisis of vision and direction overall for the Department until recently (Sloth-Nielsen, 2003, 11). According to Sloth-Nielsen, Commissioner Mti, in the 2001-2002 DCS Annual Report,

> spoke frankly about the level of corruption, intimidation, and mismanagement within the Department of Correctional Services, particularly within the prisons themselves, as well as the inadequacy of the skills and the lack of appropriate training of the staff of the Department, resulting in their inability to carry out the legal mandate and core business of the Department, namely the correcting of offending behaviour (2003, 10-11).

In 2001, the Jali Commission of Inquiry into Corruption, Crime, Maladministration, Violence, or Intimidation in the Department of Correctional Services was created in order to thoroughly investigate the Department (Sloth-Nielsen, 2005). Although the Commission aimed to have its investigation completed within a year, the extent of corruption and nepotism within the DCS has delayed the completion of their report; the Commission expects to be finished in the latter half of 2005 (Sloth-Nielsen, 2005). However, the work of this commission certainly attests to government's commitment to transformation. Furthermore, there has been some optimism that recent developments, such as a more permanent leadership staff and the agenda set forth in the new White Paper, signal the end of the DCS' turbulent transformation (Sloth-Nielsen, 2005; Fagan, 13/10/05).

2.3.2.B Fear of Crime

The second major challenge facing the correctional services was related to the public's growing fear of crime. During the struggle against apartheid, the ANC had taken a highly politicized view of crime, that is, that people of colour were largely committing crimes against an illegitimate state (Dissel & Ellis, 2002, 3). They believed that the transition would lead to a decrease in crime among blacks, as the state would gain legitimacy and people would anticipate an increase in standard of living (Dissel & Ellis, 2002, 3). However, after 1994 there was, in fact, a surge in crime, particularly violent crime, and a growing pressure on the new government to be tough in fighting this crime (Dissel & Ellis, 2002, 3). Crime prevention has been the top priority of criminal justice and it is where the bulk of resources are put. According to Giffard, in relation to this, the improvement of prisons and transformation of correctional services has not been as high a priority for the criminal

justice system (1999, 336). The 1997 DCS budget decreased in real terms from the previous year, and the minister at the time claimed a shortfall of R284 million (Giffard, 1999, 336).

Furthermore, in order to be tougher on crime, a number of stricter sentencing laws have been passed, starting with Act 105 in 1997, to implement minimum sentencing and limiting the use of parole (Steinberg, 2005, 8). This has increased pressure on correctional services, with a growing number of prisoners who must be detained for longer sentences. According to the Judicial Inspectorate's 2004 report, the number of sentenced prisoners has increased from 92,581 in 1995 to 133,764 in 2004 (23). To some extent, crime levels have levelled off in recent years. Murder has been on a relatively steady decline since 1994 (Criminal Justice Monitor, 2003; SAPS, 2005). Although robbery under aggravating circumstances has increased steadily since 1999, subcategories which fuel public fears, such as carjacking and house robbery, have not kept pace with this increase, the former decreasing yearly since 2002/2003, the latter increasing only incrementally in the past two years (Criminal Justice Monitor, 2003; SAPS, 2005). Similarly, common robbery increased dramatically from 1994-2002, but since then has remained relatively constant (Criminal Justice Monitor, 2003; SAPS, 2005). On the other hand, both rape and indecent assault have been relatively steady in their increase over the past 11 years (Criminal Justice Monitor, 2003; SAPS, 2005). According to Shonteich, the budget put towards criminal justice is equal to that spent on health (2004, 9). Regardless, people in South Africa generally do not feel any safer (Shonteich, 2004, 9).

2.3.2.C Overcrowding

The third major challenge for the Department has been massive levels of overcrowding. As of 1999, South Africa was ranked third internationally, behind Russia and the US, in terms of the proportion of citizens imprisoned (Giffard, 1999, 332). South Africa is the most highly incarcerated African country; as of 2004, four out of every 1000 South African citizens were in prison, while in two-thirds of the rest of the world, imprisonment rates were less than one and one-half per 1000 citizens (Goyer, 2004, 77; Fagan, 2004, 4). While in 1995, prisons were at 121% capacity, in 2003, the prison system overall was at 168% capacity, with 179,500 prisoners in 238 facilities built for 105,000 people (Steinberg, 2005, 7; Nathan, 2003, 3). More than

200 prisons are overcrowded; the ten worst are between 285% and 386% capacity (Fagan, 13/10/05; Fagan, 2004, 21). Harsher sentencing laws, as well as the dramatic increase in unsentenced, awaiting trial prisoners, are largely behind this overcrowding (Fagan, 2004, 23). This has been a tremendous obstacle for the government in providing safe custody and rehabilitative programs for prisoners. Although in the last year the government instituted its second amnesty, shortening prisoner sentences and releasing more than 60,000 sentenced and unsentenced prisoners, according to the 2005 White Paper, overcrowding is still the Department's most important challenge (DCS, 2005, 33).

The following section will outline the methodological foundation of this research. Chapter 4 will follow, providing an in-depth look at one method that DCS used in order to address the challenges it faced, namely, the PPP prisons.

Chapter Three

Methodology

3.1 Research Methods

The major aim of this research was to better understand South Africa's PPP prisons. The research problem was divided into three key questions, namely: What has private sector involvement in South African prisons entailed? Why did this development come about? What has the experience been thus far? Qualitative research methods were chosen to provide this overview.

Primarily, research consisted of interviews with key actors in the field, including members of government, the private companies, and civil society. Interviewees were chosen via the snowball method, stemming from a number of initial contacts with experience in or connection to South African correctional services. In many cases, it would take two or three consecutive contacts in order to access a potential interviewee at the desired level of involvement. New potential contacts were identified throughout the research, often during interviews. While the sample was not completely representative, this method guaranteed me access to information, as I was able capitalize on contacts that had already been made. Random sampling would likely have lead to difficulties, as it is not always easy to access members of the government, for instance, or to find people who would be willing to participate in this type of study. Furthermore, random sampling would not have been as useful in this research as the sector itself is quite small.

In order to speak to DCS employees, I needed approval from the DCS Research Ethics Committee. DCS employees include PPP prison employees, as contractors are under contract not to speak to researchers without prior approval. Approval required the completion of a number of forms as well as an in-depth proposal. Approval is not necessary for all government departments; I was able to speak to members of the Judicial Inspectorate without prior approval. However, this is a strict rule with Correctional Services, and the Committee only meets four times per year. This delayed much of my research by more than two months, as I had to wait for many weeks both for the committee to meet and then for approval to be granted. Initially,

because the proposal referred to the prisons as "private prisons," which is what they are called in both the international and South African literature, the committee rejected the proposal, arguing that there were no "private prisons," only "PPP prisons." Thankfully, an appeal to this decision was successful, and approval was finally granted in mid-November.

Interviews were conducted both telephonically and in person, via a trip to Cape Town, and, in one case, a meeting in Durban. In order to respect confidentiality, interviews were recorded, transcribed, and erased, and contact names were only used when permission was granted. In addition to these interviews, I conducted a thorough search of secondary sources, primarily government documents, including budgets, annual reports, white papers, legislation, and Portfolio Committee minutes from 2000 onwards, on the internet. I also conducted an exhaustive search of the existing literature on South Africa's PPP prisons, as this field is relatively small. Key researchers in the field were consulted both for their insight and expertise in the topic.

As my primary aim was to provide a full picture of the sector, I focused my research on key actors in the field, representative of as many points of view as possible. As the literature thus far is limited, my goal was to provide a broad overview of the prisons in order to identify areas where future research would be useful. Thus, as far as possible, directors, managers, and spokespeople were interviewed. Individual prisoners were not interviewed as, not only would it have been quite difficult to receive DCS approval to speak to prisoners, but it was felt that interviews with a number of Independent Prison Visitors (IPVs) and the Judicial Inspectorate would provide a general overview of prisoner experience. Similarly, individual workers were not interviewed because it was felt that interviews with leaders of POPCRU would provide a more comprehensive picture of the position of prison workers.

In order to ensure credibility, wherever possible, any information provided in an interview was compared and/or supported by data from other interviews and sources, particularly the minutes of the Portfolio Committee. My original contacts had experience in the field, many of them researchers themselves, and they recommended contacts who they found to be informative and reliable. Furthermore, two of the interviewees are also researchers who have written about private prisons and thus

helped to confirm information that I had gathered. Additionally, as mentioned earlier, experts in the field were contacted for their assistance and clarification of key issues.

3.2 Limitations of the Study

One of the major limitations of this study was the difficulty of gaining DCS approval to conduct the research. Not only did this delay my research but, because of the resulting time constraints, I was forced to do all DCS employee interviews telephonically in order to speed the process and I was not able to visit one of the PPP prisons as planned. Furthermore, it would have been useful to speak to more government officials involved with these PPP prisons. However, not only would this likely have made approval more difficult, but, in many cases, officials are not allowed to be interviewed and must defer to their superiors. This limits the breadth of information that can be gained from the government's side as well as from the side of the private companies. Apart from the two PPP prison officials I was granted approval to interview, the only representative of the private prison companies I was able to speak to was someone who had left the company nearly one year prior to the interview. This certainly limited the information I collected, particularly since government and PPP prison officials, in most cases, are more involved in, and have more knowledge about, these prisons than any other contacts.

The lack of available figures and reliable quantitative data was also a problem in this research. In many cases, specific details about the contracts, most particularly those related to cost, are kept confidential and cannot freely be disclosed by the private companies or by the government. This is similar to the situation in other sectors as well as in other countries with private sector involvement in prisons. However, this lack of information has lead to wide disparity in figures throughout the literature and wildly different estimates by various contacts. Furthermore, it perpetuates the aura of secrecy and lack of information that have permeated this process from its inception. It also prevented me from making a more thorough assessment of these prisons.

Another limitation of this study was that there were no prisoner interviews. I initially believed that they would not be necessary to the research, as my reading of the literature led me to assume that inmates would generally be happier in improved conditions. However, with further research, it became clear that prisoner viewpoints

would indeed be valuable. I found a great discrepancy between how conditions within the prisons were represented in the literature, by government and by the private prison companies, and how conditions were described by members of the Judicial Inspectorate who regularly visit these prisons and speak with inmates. While the IPVs certainly expressed the views of prisoners, I believe that interviews with individual prisoners may have proved illuminating as to what is actually happening in the prisons. Similarly, interviews with prison workers may also have afforded more clarification of these issues. However, as previously mentioned, DCS approval to speak to members of either of these populations would have been very difficult to attain and would likely have further delayed the research process.

Chapter Four

South Africa's PPP Prisons

South Africa presently has two prisons run by the private sector, one located in Bloemfontein, Free State and the other in Makhado (formerly Louis Trichardt), Limpopo. At the time they were built, they were the two largest privately run prisons in the world (Shonteich, 2004, 12). Operational in 2001 and 2002 respectively, these maximum security prisons are both pilot projects, run by consortia of international and local companies. Like the international examples discussed in the first section, the two prisons are run through public-private partnerships (PPPs); the consortia design, construct, and finance the prisons, and then are responsible for operations over the period of the contract, in this case, 25 years, after which the prisons will become the property of the state. Over that time, the government pays monthly fees for both capital and operational costs. The success of these projects is still widely debated and, to date, there have been no further contracts of this kind with the private sector, although other, auxiliary prison services have been outsourced in recent years. The future of this sector in South Africa is as yet unclear.

The remainder of this chapter will examine the two PPP prisons in South Africa. The first section will discuss how they came about, including the factors which influenced the decision, the relevant legislation which was passed, the tendering process undertaken by the government to choose private companies, and the contracts which were eventually signed for the projects. The second section will examine how the two prisons operate, including their design and measures of security, the services they provide, the experience of their employees, how they ensure empowerment of previously disadvantaged individuals (PDIs) and enterprises (PDEs), the experience of inmates, and measures of accountability. The final section will discuss the overall experience of these prisons, according to the government, civil society, and the private sector, as to what has been successful, what has been problematic, and what is the likely future of this sector in South Africa.

4.1 Establishment of PPP Prisons

4.1.1 The Decision

4.1.1.A Political Context

It is essential to understand the political environment within the DCS after the country's transition, at the moment the Department was poised for transformation, in order to understand the policy decisions which were subsequently made. As discussed in Chapter Two, the political situation within the DCS in the early years of democracy was volatile. The first minister, Sipho Mzimela, was an Inkatha Freedom Party (IFP) member and an ordained minister, who had served as a prison chaplain in the US while in exile (Sloth-Nielsen, 2003, 8; Morris, 13/10/05). Mzimela was supportive of the involvement of private companies in the prison sector, in addition to other US correctional practices, and had little tolerance for outside influence on correctional policy, particularly from civil society (Sloth-Nielsen, 2003, 8; Giffard, 13/10/05). Relations within correctional services were strained from the start, largely due to issues of power and politics (Morris, 13/10/05). In correctional services, the Minister is the political head of the Department, while the Commissioner is the functional head of the Department, and both are accountable to the Portfolio Committee on Correctional Services which represents central government (respondent 10, 25/11/05). According to Gideon Morris, who was a parliamentary officer to the Portfolio Committee on Correctional Services in the mid-1990s, there was a "serious lack of trust" between DCS officials, almost all of which were appointed by the old government, and the newly elected officials in the Portfolio Committee (13/10/05). Mzimela's relationships with both the Department and the Portfolio Committee were similarly strained and filled with distrust; Mzimela's relationship with Carl Niehaus, the first Portfolio Chairperson for Correctional Services and an ANC member, was particularly sour (Morris, 13/10/05; Giffard, 13/10/05). In addition, the Department became increasingly isolated from the rest of the criminal justice sector during this period, largely because it was seen, both internally and within other departments, to play a minor role in crime prevention, and because of the conflict between the Minister and the Portfolio Committee (Sloth Nielsen, 2003, 50). There were a number of public fights which took place between the Minister and the Department of Public Works (DPW), the body responsible for prison construction, during this time as well, as the Minister was increasingly unhappy with the DPW's service delivery;

prison construction, on average, could take as long as eight or nine years (Morris, 13/10/05).

4.1.1.B Influencing Factors

The literature primarily focuses on conditions within prisons, particularly massive overcrowding, as the major factors compelling government to outsource prison construction and management. According to government reports, reduction of overcrowding to improve conditions for rehabilitation, both within public and private prisons, was critical (Treasury, 2001, 413; DCS, 2003, 49). The speed at which the private sector could deliver services was also a crucial factor as Mzimela was dissatisfied with the DPW and hoped to have prisons built in 15 months in order to expediently address the issue of overcrowding (Berg, 2004, 24). According to respondent 8, a former member of the consortium which runs the prison in Limpopo, the aim in the consortium's partnership with government was to assist with prison matters, particularly the challenge of overcrowding and the delivery of services (20/10/05). A report by prepared by the Trade Union Research Project (TURP) for the Police and Prisons Civil Rights Union (POPCRU) states that the key factor in government's decision was a desire to reduce public sector spending, "not so much because of the real merits of private prisons" (Jarvis, 2000, 26).

However, in government reports, the benefits of PPP prisons, including the improvement of efficiency and economy in service delivery, the transfer of risk from government to the private sector, particularly in terms of initial construction costs, and the transfer of skills from the private sector to the Department, are often cited as key aims of the creation of these prisons (Treasury, 2001, 413; DCS, 2003, 49). Transfer of international skills, expertise, and finance were major contributing factors. Berg argues that most international private companies refused to invest in South Africa during apartheid (2004, 24). Correctional services had no access to years of development in new methods and technology in corrections due to sanctions and the apartheid government's isolation (Morris, 13/10/05). According to Morris, even the newer South African prisons, built in the late 1980s and early 1990s were not modern at all; partnerships with international companies would give correctional services access to new, more effective methods of corrections (13/10/05). Furthermore, correctional services was now accountable to the new Bill of Rights, and needed

facilities which would ensure that these rights would be upheld (Venter, 30/11/05). Thus, when plans were made to privatize, the Minister and other supporters wanted the best prisons they could get, in order to help modernize the rest of the prison system (Morris, 13/10/05). "I think the idea was that these private prisons would then fulfil a role later on as a kind of best practices, introducing, being a pocket of excellence from where you can actually cascade down the best practices and development which were very needed at the time" (Morris, 13/10/05).

While these factors were clearly important, it seems that the catalyst for the decision was, in fact, ideology and the political environment at the time, particularly the divisions that existed within correctional services. In the very least, according to Chris Giffard, a former member of the Transformation Forum, policy makers were "open to the possibility of private prisons" (13/10/05). According to Morris, "they were seeing the problems in correctional services as so overwhelming and they had no one which they could even trust in the prisons department and that, to a large extent, motivated them to say, 'but why don't we just go for private prisons?'" (13/10/05). Ultimately, Mzimela's goals in transformation were both to make the staff more democratically representative, and to do a "shake up" of prison employees, as there was a severe lack of discipline among prison warders (Morris, 13/10/05). Resistance to change was great within management and the existing units, as well as from the unions, and the Minister had little faith in their ability to transform (Morris, 13/10/05).

> And I think he realized...there's no way he's going to be able to get the changes implemented without outsourcing, which [would be] a smaller group of people which I think he had much more control over....and that was really used then to fit the changes that he felt necessary (Morris, 13/10/05).

This was, in fact, the main argument put forth by Mzimela in order to convince Parliament of the necessity of PPP prisons (Morris, 13/10/05). According to Morris, this may be why, when the contracts were drawn up, they were not only for construction, but also for operation (13/10/05). In 2002, Commissioner Mti reported to the Portfolio Committee that the decision for APOPS was largely political, with officials pressured to support the project although the Treasury had advised against it (PMG, 22/10/02).

It must not be assumed that the private prison companies played a passive role in this process. Both PPP prison consortia in South Africa are partially owned by major international private prison companies: Group 4/GSL and Wackenhut Corrections Corporation (WCC)/GEO. According to Harding, South Africa would be attractive to the private prison industry because, while there is a strong legal system, the prison system is run much less effectively and it "may be possible to export management know-how and technology wholesale" (in Giffard, 1999, 336). An article from September 1999 in the Wall Street Journal suggests that the reason that Wackenhut Corrections Corporation signed a contract with the DCS was in order to have a foothold in the market should any other opportunities arise (in Jarvis, 2000, 24). Nathan similarly suggests that private companies have used South Africa as a stepping stone to the rest of the continent (2003, 7). Giffard argues that, had private prison firms lobbied in South Africa, it would not have been done openly as the DCS is the only possible client in the country (13/10/05). While there is no solid evidence as to the extent private prison companies were involved in the decision making process, Mzimela's affinity for US prison practice is widely documented, as is the trip that a number of senior DCS officials made to prisons in the US while the issue was being discussed (Sloth-Nielsen, 2003, 20).

4.1.1.C The Enabling Environment

Overwhelmingly, what characterised the decision to create PPP prisons in South Africa was the speed at which it was made (see Giffard, 2004; Berg, 2001, 8; Nathan, 2003, 6; Dissel, 2003, 25). According to Giffard, the first reports in the press suggesting that government might privatize prisons were in April 1997; by July of that year, five consortia had been shortlisted to bid for four prisons (1999, 331). Treasury regulations for PPPs were only established in May 2000, months after the first contract was signed by the Department, and no feasibility study was conducted beforehand to ensure affordability (PMG, 8/11/02). According to Giffard, "everything was done under the table" (13/10/05). There was little, if any, public debate in Parliament or civil society and an unwillingness to allow outside research findings which might have influenced the decision (Giffard 2004; Berg, 2001, 8). The Transformation Forum[1] and the National Council[2], two bodies which were created post-transition to assist the Department and involve civil society in corrections, were completely uninformed about the intention to create PPP prisons (respondent 3,

12/10/05; Giffard, 13/10/05). Respondents 3 and 5, former members of the National Council and Transformation Forum respectively, reported that they were only made aware of this development through outside sources, mainly the media (12/10/05; 13/10/05). Even the Portfolio Committee was not completely aware in the beginning, and, in fact, the Committee was only given full insight into the agreements in November 2002 when a task team made up of DCS, DPW, and Treasury officials reported their findings after an in-depth investigation of the contracts (Sloth-Nielsen, 2003, 24).

In order for the Minister to sign the PPP agreements he needed legislation to be passed which would enable him to do so. According to Morris, "I think the Minister was probably the only one fully convinced that this was the way to go" (13/10/05). The Minister had to do a lot of lobbying in order to convince Parliament to give him this authority, especially since the agreements would involve a great deal of money (Morris, 13/10/05). Morris could not remember the extent of the debate around this issue, both publicly and within Parliament, but the legislation did go through Parliament and was passed in the National Assembly by the middle of 1997 (13/10/05). At the time, however, there was a great deal of legislation going through Parliament for all the changes made post-1994, and, according to Morris, "I think...prisons wasn't much of an issue, it went through almost unopposed with very little debate and everybody was just saying, 'oh great stuff'" (13/10/05). The result was Correctional Services Amending Act 102 of 1997, which provides for the Minister to contract out the design, construction, finance, and management (DCFM) of any prison or part of a prison (Corder & Van Zyl Smit, 1998, 484). The following stipulations were included: the contract cannot allow the contractor to discipline or grant parole, the contract must ensure the dignity of inmates and ensure that they are kept in a humane manner which complies with international laws, standards, and conditions, prison rules must be approved by the DCS Commissioner, there must be a DCS controller on site to monitor and report on activities within the prison, the Minister retains the right to intervene if needed, and that all activities are to be subject to the monitor of the Judicial Inspectorate (Corder & Van Zyl Smit, 484). Correctional Services Act 111, passed the following year, outlines in greater detail how "joint-venture prisons" would operate, with particular emphasis on the role of the

controller, the duties of the contractor, and how the Minister may intervene in the prison in emergency situations (DCS, 1998, 73-78).

4.1.2 The Process

When the tenders were initially announced, there were plans to build 11 PPP prisons (Sekhonyane, 2003, 33). This was reduced to seven, including two super maximum security prisons, two maximum security prisons, two juvenile detention centres, and one awaiting trial prison (Jarvis, 2000, 19). The first call for tenders was for four prisons and after the first two agreements were signed, the Department realized that affordability might become an issue and did not go ahead with the others (Morris, 13/10/05). Respondent 3 recalls that there was some unhappiness amongst the private contractors at the time as they were expecting more work, which would have been more cost effective (12/10/05).

There has been some concern over South Africa's level of privatization in prison services, that is, the Department's decision to start with two maximum security prisons, at the time, the two largest PPP prisons in the world, as opposed to initially privatizing on a smaller scale. Morris reported that, at the time, the argument was "the bigger the better" (13/10/05). The Department was looking to build its way out of overcrowding and wanted to create as many new beds as possible (Morris, 13/10/05). Furthermore, the decision to create maximum security prisons was very much tied to the political climate. According to Morris,

> There was a lot of political voice to the fear of people, you understand, 'crime is out of control, it's spiralling, look at these escapes, murderers running around' and the government wanted to clamp down on the fear, they said, 'no escapes, we cannot afford escapes from our prisons.' And they made it one of their strategic objectives, they spent millions and millions of rand on security fencing and whatever at the state prisons, but what they also said is, 'let's outsource the risk of keeping the worst of the worst, let's send those baddies then to the private prisons, so when they escape, it's not us' (13/10/05).

Both prisons were to be built through the Asset Procurement and Operating Partnership System (APOPS), a private sector construction program started by the DPW (Giffard, 1999, 332). Through this type of PPP, the private sector owns the facility and sells it back to the government on an instalment basis over the length of the contract, the downside being that they may, in fact, pay much more than the facility is worth in the long run (Berg, 2001, 4; Sloth-Nielsen, 2003, 21). APOPS

programs generally require a certain degree of black economic empowerment and the favouring of PDEs and PDIs (Giffard, 1999, 332). APOPS guidelines were created with the business community in June 1996 and approved by Cabinet in November of that year (PMG, 13/8/02).

As was mentioned earlier, much of the tendering process had already begun before the legislation was brought before Parliament, something which the Portfolio Committee was very unhappy about (Giffard, 1999, 339). According to Morris, Goltz Westman, who had come with Mzimela from the US to act as his special advisor, both initiated the call for tenders through the Minister and initiated the tendering of foreign private companies (13/10/05). Morris argues that, at the time, companies were still reluctant to invest in South Africa, so "he had to go and do lobbying work, he had to get these people on board, he had to make it attractive to them, otherwise the project would never have taken off" (13/10/05). It was hard for domestic companies to participate in the tender, as it required a huge sum of money, nearly R400 million up front for construction costs alone, and, according to Frikkie Venter, managing director of GSL South Africa, banks required strict guarantees which only international companies could ensure (Morris, 13/10/05; Venter, 30/11/05). Furthermore, the contracts had highly detailed specifications which were very different from what South African companies were accustomed, including technology to which they did not have access (Morris, 13/10/05). In order to facilitate local involvement, the government required private companies to form consortia, with a minimum of 40% ownership by PDEs, to bid for the tenders (Morris, 13/10/05; Jarvis, 2000, 18).

June of 1997 was the deadline for the submission of requests for qualification (RFQ) by all interested consortia, which were then evaluated by a selection committee of government, and local and international specialists (Berg, 2004, 25). Five bidders were shortlisted to the request for proposals (RFP) stage (Berg, 2004, 25). In the RFP, government detailed what it required from contractors, including strict empowerment requirements and provision of services (Jarvis, 2000, 18). According to respondent 8, the tendering bid to which the consortia responded was a huge and highly specific document, as this was the first project of its kind in the country and government had to be very meticulous and thorough (20/10/05). Consortia were strictly evaluated by a point system, according to the following criteria: the

qualifications, experience, and responsiveness of the tendering consortium (30 points), the approach used in providing services and whether it was in line with South African legislation (20 points), the consortium's financial situation (20 points), the promotion of economic empowerment within the tender (20 points), and the achievement of other socioeconomic objectives, such as using local labour or promoting local businesses (10 points) (Jarvis, 2000, 20). From the consortia's side, they negotiated on three levels: with the bankers, in order to secure funding, with the lawyers, in order to draw up the tendering document, and with the government, in order to win the bid (respondent 8, 20/10/05).

Tenders were due by January 1998, at which time they were sent to the national tender board, which included members of the DCS, DPW, and the Treasury, for evaluation (Berg, 2004, 25). The guidelines for the tender board did not allow for PPPs of this magnitude, and Mzimela again had to do extensive lobbying to convince the board to approve the tenders (Morris, 13/10/05). In the end, it was decided to go ahead with two of the four proposed prisons, and in early 1999, Ikhwezi Bloemfontein Correctional Contracts (BCC) and the South African Correctional Service (SACS) were awarded the tenders (Berg, 2004, 25).

A number of senior officials involved in the tender board and in other parts of the DCS have since left the public service and gone to work for the private consortia. There was a great deal of concern over this, particularly within civil society, as it created doubts about the integrity of the tendering process (Sloth-Nielsen, 2003, 23). According to Morris, these officials were recruited by the private companies as they needed local people who were more knowledgeable about the situation in South Africa (13/10/05). "Many of these people who worked on the initial guidelines were then headhunted by the private prisons because they were the specialists, they wrote the guidelines, they were the best people to run it according to the guidelines" (Morris, 13/10/05). This was problematic as it undermined the ability of the DCS to monitor contracts, since the staff that remained was less knowledgeable about the agreements (Sekhonyane, 2003, 33).

4.1.3 The Contracts

Both contracts are DCFM agreements, in which the consortia both build and operate the prisons over a 25 year contract period (Giffard, 1999, 332). According to the Portfolio Committee minutes in November 2002, the contract specifications were based on inputs rather than outcomes and are of a very high level as they are based on UK prison provisions (PMG, 12/11/02). According to the task team's report to the Portfolio Committee, the contract is very specific, with detailed provisions about everything from how quickly an inmate's medical request must be addressed to what temperature and at what specific times food must be served (PMG, 8/11/02). The main provisions of the contract fall under three categories: construction, operation, and empowerment requirements (PMG, 8/11/02). In terms of construction, it is specified that they must be "state of the art facilities," with very high levels of security and a focus on rehabilitation and unit management (PMG, 8/11/02). Specifications for prison operation include the provision of a wide variety of activities for inmates, the implementation of case management, the availability of social services, and detailed food and medical service requirements (PMG, 8/11/02). Empowerment requirements are to be met through quotas and by a monitoring system; PDEs must participate in the consortia as well as in the design, construction, and operation phases of the prison, labour must be ascertained from targeted local communities, and there are quotas for employment and empowerment (PMG, 8/11/02).

According to the contracts, if the consortia fail to meet the requirements of the contracts, there are very strict penalties. Steven Korabie, the director of the PPP prison in Limpopo, said that these control mechanisms are "sharp" and tightly monitored by the DCS to ensure there are no transgressions (PMG, 12/10/01). Respondent 8 reported that there are many, many violations which can result in a fine, including serving food before or after the specified time (20/10/05). The transgression need only occur one time to incur a penalty (respondent 8, 20/10/05). There is no reward structure for companies who exceed service targets (Venter, 30/11/05).

Also within the contract are termination clauses which specify under what circumstances the contract can be ended early (PMG, 8/11/02). Government can

terminate the contract under a number of conditions, including the following: if the consortium does not comply with the operational standards, if it does not have the number of required inmates, if it has not paid fines to the DCS within a certain period of time, if it does not seek DCS approval before changing directors, or if it becomes insolvent (PMG, 8/11/02). Should this situation arise, the DCS is required to pay 80% of lender liability, with a cap of either R15 million (BCC) or R7.5 million (SACS), at which time the prison will transfer to the government (PMG, 8/11/02). A consortium can end the contract early if the DCS does not pay the contract fee within a certain period of time or if the government nationalizes or compulsorily acquires the prison (PMG, 8/11/02). In this case, government would be required to pay 100% of lender liability as well as a number of other fees, including the returns on equity to shareholders which they would have enjoyed for the full term of the contract (PMG, 8/11/02).

According to respondent 8, the final contract document is huge, nearly the height of a table, and

> because I was involved in the process, if you ask me something about the contract, I would know exactly where to go because I was involved...[when it was negotiated]....It's probably a very big challenge for people who come into the process now, to go through those documents...and it's not just reading, but it's reading to know because it informs your day to day operations (20/10/05).

The contracts were drafted separately, through negotiations between lawyers of each consortia and DCS lawyers, many of whom were international (respondent 8, 20/10/05). If there were any disagreements among the lawyers, the issue would be brought to negotiators representing the DCS and the consortium, at which point they would be discussed, agreed upon, and put into the document (respondent 8, 20/10/05). Any provisions left out of the contract were discussed and negotiated as they arose (respondent 8, 20/10/05).

There have been a number of concerns raised about the contracts. Returns on equity are said to be particularly high and there has been concern that this is leading to excessive profits (Nathan, 2003, 10). However, the contracts were negotiated in rand and, according to Morris, one must consider how much stronger the rand has grown over the last few years (respondent 10, 25/11/05; Morris, 13/10/05). Furthermore, as discussed earlier, the Minister and his special advisor needed to create provisions to

attract investors as, at the time, South Africa's political stability was not guaranteed, and investing in the country was seen as a high risk (Morris, 13/10/05).

The length of the contract has also been identified as a problem, particularly since it ties the Department and successive leadership to a contract over which they have very little control. As this project has become less and less affordable for the Department, this has become a point of contention, as part of the budget is automatically assigned to these two prisons every month, regardless of the different priorities which they might now have (Giffard, 13/10/05). However, at the time, the Chief Financial Officer for Correctional Services worked out how much the contract would cost per year depending on different contract lengths and decided that an extended term would be more affordable, as each instalment would be smaller (Morris, 13/10/05).

4.2 The Prisons

4.2.1 Mangaung Prison

Mangaung Maximum Security Prison was built in Bloemfontein by the BCC. The consortia won the tender in March 1999 and contract negotiations took place over the following year (PMG, 13/8/02). The final contract was signed in March 2000 and the facility opened just over a year later in July 2001, three months earlier than expected (Sloth-Nielsen, 2003, 22; PMG, 13/8/02). The prison has space for 2928 inmates, and has been at full capacity since January 2002 (PMG 13/8/02). Total cost to the government for this project is set at R1.76 billion over the length of the contract (Goyer, 2001).

When BCC was formed, it was made up of five companies: Group 4, the international partner which, as discussed in the first chapter, is a major player in the industry, and Murray and Roberts Construction, as well as Fikile Projects, 10 Alliance Holding, and Ikhwezi Community Trust, all three of which are BEE companies (Jarvis, 2000, 21). Murray and Roberts have since sold their shares to Old Mutual and from January 2004, Group 4 became Global Solutions Ltd. (GSL), thus BCC now consists of GSL, Old Mutual, Fikile, 10 Alliance, and the Community Trust (Venter, 30/11/05; Madlala, 30/8/05). GSL South Africa's administration is entirely South African, although the company is owned internationally (Venter, 30/11/05). According to Venter upon winning the contract, BCC then contracted functions to its

shareholders, namely, construction to Fikile and Murray and Roberts, and prison operation to GSL (30/11/05). Companies could then subcontract further, as GSL has outsourced medical services to Life Healthcare and catering to AKS (Venter, 30/11/05). 10 Alliance Holdings is a company which identifies business and investment opportunities that will benefit local communities, and then helps create a trust (in this case, the Bloemfontein Community Trust) to fund the projects (Jarvis, 2000, 21). The Trust uses its returns to fund local community initiatives (Venter, 30/11/05). All five companies own 20% shares in the consortium, thus the consortium has 60% empowerment shareholding, 20% of which goes directly back the community (Venter, 30/11/05). The consortium together pays 10% of the funding for the prison, while Investec, ABSA, and other local banks pay the remaining 90% (Goyer, 2001a).

4.2.2 Kutama-Sinthumule Prison

Kutama-Sinthumule Maximum Security Prison was built in Makhado, Limpopo by the SACS. This contract was signed in August 2000, the prison was opened in February 2002, and it reached its full capacity of 3024 in September 2002 (PMG, 12/11/02). The cost of this contract is similarly set at R1.7 billion over 25 years (Shonteich, 2004, 14).

The SACS is made up of Kensani Corrections, a black women's empowerment company, and the South African Custodial Management (SACM) which is a local subsidiary of Wackenhut Corrections Corporation (WCC), now the GEO Group (Jarvis, 2000, 23; respondent 8, 20/10/05). According to respondent 8, Kensani was created as a response to a need expressed by government and WCC to have a local player in the PPP prison consortium (20/10/05). This is the company's only project (respondent 8, 20/10/05). SACM, while initially set up by international administrators and still owned by GEO, is now entirely run by South Africans and Americans only come on short assignments (respondent 8, 20/10/05). Each company has a 50% share of the consortium and an equal vote in decision making (respondent 8, 20/10/05). Construction was contracted out to CGM Joint Venture, a consortium made up of Concor Construction, Group 5 Construction, and Makhosi Holdings (Jarvis, 2000, 24). Responsibility for prison operation is divided. SACM is responsible for security, health, and overall administration, which make up 75% of

operations (respondent 8, 20/20/05). Kensani runs the inmate development programs, maintains the facility, and is responsible for procurement of things that are used in the prison, all of which make up 15% of operations (respondent 8, 20/20/05). Although they are independent in this role, respondent 8 states that there was an exchange of best practices from the SACM as WCC has more experience (20/10/05). Catering, which makes up the final 10%, is contracted out to Royal Foods (respondent 8, 20/10/05). Lenders for the project are local branches of First Rand Bank Ltd. and BOE Merchant Bank (20/10/05).

4.2.3 Prison Design

The PPP prisons are designed to maximize security and rehabilitation. According to Korabie, the design of Kutama-Sinthumule prison takes into account both the developmental goals of society and the government, and the safety and enablement goals of prison workers (PMG, 13/8/02). Technology is the primary way that this is achieved. According to a statement made by Group 4, "technology, as opposed to the deprivation of human rights, will act as the greatest tool of punishment" (Jarvis, 2000, 21). The prisons have electronically operated doors and gates, voice, retina, and fingerprint recognition technology, CCTV coverage of certain areas, metal detectors, and high quality perimeter security with sophisticated detection and alarm systems (Tapscott, 2005, 18; Jarvis, 2000, 21-2). Computers are used in many aspects of prison operation, including the cash-free system, in which all monetary transactions are paid via an access code rather than with paper money (Tapscott, 2005, 26). According to Tapscott, this has helped limit the amount of smuggling and illegal activity in the prisons (2005, 26).

The physical layout of the prisons is likewise essential in achieving these goals. According to Moses Madlala, regional secretary of POPCRU in the Freestate, Mangaung prison is designed to maximize visibility (30/8/05). Warders are located centrally so that they can see things from a distance, and design is such that inmates cannot disappear or hide in corners as is often the case in public prisons (Madlala, 30/8/05). In Kutama-Sinthumule, there is a central control room and a number of sub control rooms, and the daily activities of staff and inmates are monitored and recorded for security and training reasons (PMG, 13/8/02). Unit management is a key component of prison operation, and the prisons are constructed to maximize this. In

Mangaung, the prison is divided into six "house units," each of which has eight sections or "streets" with cells of two to four inmates on each side, 30 to 60 inmates total per street (Jarvis, 2000, 22; Witbooi, 21/9/05). According to the TURP report, there have been complaints about this type of prison design internationally as it is said to limit human contact and lead to sensory deprivation (2000, 22). Abbey Witbooi, General Secretary of POPCRU, reports that there is generally one warder per street who sits centrally located in the street (21/9/05). There are lines on the floor around the warder, and inmates who approach the warder know they must not cross the line; if they do, it is clear that they have other intentions and the warder can immediately phone for assistance (Witbooi, 21/9/05). While these measures are much improved over security in many public prisons, according to Madlala, "at the end of the day, it does not remove the risks from the worker's side, because a prison will always be a prison" (30/8/05).

4.2.4 Prison Services

4.2.4.A Security

In addition to the technological and design features which have enhanced security, there are a number of other measures in place. According to Tapscott, there are three levels of prison security in the PPP prison: perimeter security, housing sections, and individual cells (2005, 18). Most public prisons only have two levels (Tapscott, 2005, 18). Kutama-Sinthumule has continuous vehicular patrols around the perimeter, and according to Jacobson, in Mangaung, there are sniffer dogs which are patrolled through the streets and the recreation rooms (Tapscott, 2005, 18; Jacobson, 2004). Staff is trained on security and management, and there are frequent tests of emergency procedure (Tapscott, 2005, 18). Furthermore, visitors are thoroughly searched and there are regular cell searches (Tapscott, 2005, 18). Should any issues arise, in each prison there is an Emergency Support Team on standby 24 hours a day to handle all physical confrontations with inmates and ensure that only the appropriate methods are used (Tapscott, 2005, 18).

4.2.4.B Training Programs and Social Services

Both facilities have high standard educational and training facilities. Inmates are kept busy and out of their cells from 7am to 7pm, unit management facilitated by a colour system, in which inmates are assigned a colour according to the activities in which

they will participate (Witbooi, 21/9/05). This is different to many public prisons in which Witbooi claims inmates are often confined (21/9/05). According to Judge Fagan, Inspecting Judge of the Judicial Inspectorate, the PPP prisons "planned it beautifully. There are programs from the moment the prisoner opens his eyes in the morning, as it should be. And it's been programmed. First he must go and do this, then he must go and exercise, then he must go and study" (13/10/05). Rehabilitation is conducted through case management, in which individual sentences are planned addressing each individual's needs (PMG, 13/8/02). These personal development plans address offending behaviour and provide inmates with social and vocational skills as well as education opportunities (Tapscott, 2005, 28). Educational services include ABET levels one to four, mother tongue education, secondary school, as well as provisions for tertiary distance learning (Tapscott, 2005, 30; PMG, 13/8/02). Vocational instruction provides skills in fields such as computer, business, leatherwork, horticulture, woodwork, metal work, tailoring, car mechanics, bricklaying, and candle making (PMG, 13/8/02; Tapscott, 2005, 30). Recreational amenities include gymnasiums and facilities for soccer, rugby, volleyball, basketball, and table tennis, as well as the organization of competitive sporting events (Tapscott, 2005, 30). Mangaung prison alone has nine teachers, 31 tutors, 12 vocational instructors, ten social workers, two psychologists, 39 part-time religious ministers, and 14 activities officers (Tapscott, 2005, 30). Each prison has more than 30 classrooms or multipurpose rooms, numerous computer rooms, as well as six workshops, and two gardens (Tapscott, 2005, 30). Newspapers are provided daily for inmate use (Tapscott, 2005, 30). According to Tapscott, "the skills learnt by offenders are such that they will be of value in securing jobs on their release" (2005, 30). Each inmate's personal development plan is reviewed every six months, however, once inmates complete their training in a specific field, they are not given the opportunity to refresh their skills, which Tapscott argues may lead to skill atrophy (2005, 28,30).

4.2.4.C Medical and Catering Services

Medical facilities in the PPP prisons are very well equipped, each having 50 hospital beds, clinics, a dispensary, and a dental clinic (Tapscott, 2005, 29). In Kutama-Sinthumule, there is a fully equipped emergency room (Tapscott, 2005, 29). There are nursing stations in each unit, and doctors pay regular visits to the prison (Tapscott,

2005, 29). Both prisons have HIV+ inmates, although these inmates are usually transferred to a public hospital before they pass away (Tapscott, 2005, 29). According to Tapscott's survey, both inmates and staff reported that medical services were of high quality and provided expediently (Tapscott, 2005, 29).

Catering services are also of very high quality. Standards are high in PPP kitchens, particularly in terms of hygiene (Tapscott, 2005, 31). According to Tapscott, the diet in these prisons is more varied than that found in most public prisons, as provisions are made for both summer and winter menus and most meals are high in protein (2005, 31-2).

4.2.5 Worker Conditions

PPP prison companies are responsible for hiring and firing prison staff (Madlala, 30/8/05). Many of those hired by the consortia come from the poor and unemployed in local communities (Madlala, 30/8/05). According to Madlala, Charles Erikson, the former director of Group 4 in South Africa, gave a speech in Parliament explaining how the company was helping the poorest of the poor; however, Madlala argues that the situation is more complicated than that (30/8/05). Some former DCS employees are also working for the PPP prisons; in a Portfolio Committee meeting in 2002, Commissioner Mti reported that many of the Department's best people have moved to the private sector because of better salaries (PMG, 26/2/02). However, according to Madlala, "some of them, after realizing that...conditions are not as people talked, they've resigned again" (30/8/05).

PPP prisons are required by contract to have a minimum number of staff in all occupational categories working each shift (Tapscott, 2005, 9). Nevertheless, in the Portfolio Committee meeting minutes on 12 October 2001, it was reported that the PPP prisons generally need less staff; prison design and technology, as well as worker training, has been designed to limit personnel costs (PMG). Inmate-warder ratios in PPP prisons are generally higher than those found in public prisons, and certainly higher than the DCS' determined ratio of 8:1 (Tapscott, 2005, 19; Madlala, 30/8/05). According to Witbooi, this is because there is generally only one warder assigned per street of 30 to 60 inmates (21/9/05). However, inmates are usually taken out for development each day, so at any given time, the ratio may be much lower (Witbooi,

21/9/05). In addition, warders are supported by the technology of the prisons (Madlala, 30/8/05). According to Witbooi, staff turnover in the PPP prisons is much lower than that of public prisons (21/9/05). Tapscott reports that the private consortia claim this is because of their competitive salaries, good working conditions, and support services for employees (2005, 10). According to Venter, "our officials are the basis of our success" (in Jacobson, 2004). In the event of job vacancies, however, GSL trains future workers in advance and maintains certified officers on file (Tapscott, 2005, 10).

Before being hired, every official must be certified by the Commissioner as a custody officer and in Mangaung, they must also complete GSL training (Venter, 30/11/05). According to Venter, DCS training "just takes care of a little small part of the training, because then you have to train them in what GSL wants because we have higher standards" (30/11/05). Preliminary training is generally much shorter than standard DCS employee training, on average lasting three as opposed to six months; according to a SACS report to the Portfolio Committee, this is because workers are trained for specific tasks rather than trained generally (Witbooi, 21/9/05; PMG, 12/10/01). However, training is continuous and in-service trainings are conducted regularly, consisting of more than 40 hours per year in Mangaung, which is not the case in many public prisons (Tapscott, 2005, 12; Venter, 30/11/05). Both prisons have formal succession plans for their employees, allowing them to apply for higher positions and providing regular feedback from prison officials (Tapscott, 2005, 12). In Mangaung, each employee is provided with a Performance Development Plan in which the employee's job aspirations are identified (Tapscott, 2005, 12). Like public prisons, the PPP prisons recognize outstanding performance through merit assessment policies; however, these are awarded not only to individuals but also to prison departments and staff units (Tapscott, 2005, 12). At the same time, these prisons have a zero tolerance approach to staff indiscipline and strict monitoring of staff behaviour (Tapscott, 2005, 17). According to Venter, "if there is ever corruption, the officer will be fired. Instantly" (in Jacobson, 2004).

POPCRU is the only union involved in the PPP prisons. Both POPCRU and the prison administrations report that relations are good and the parties regularly consult on worker issues (Madlala, 30/8/05; Witbooi, 21/9/05; Venter, 30/11/05).

Nonetheless, POPCRU's official position, in keeping with COSATU, is against privatization of state assets, including PPP prisons (Madlala, 30/8/05). However, the union felt it could not leave private sector prison employees un-organized (Madlala, 30/8/05). The union was not recognized when the contracts were made and, according to Witbooi, the contract's stipulations were not entirely aligned with South Africa's labour laws (21/9/05). POPCRU has subsequently entered into a number of bargaining agreements with each consortium (Witbooi, 21/9/05). The pertinent issues discussed include annual wage increases, allowances for things such as medical aid, housing, and night shift duty as are provided by the public sector, as well as overtime reimbursement (Group 4 & POPCRU, 3/7/03; POPCRU & SACM, 11/2/04). In a number of the negotiations with Group 4/GSL, however, the company denied many of POPCRU's requests claiming that they were financially constrained as their only source of income comes from the contracts (Group 4 & POPCRU, 19/11/03; GSL & POPCRU, 3/11/04). Mangaung employees are paid via a "total package" which is a salary inclusive of everything; the only additional allowances included are those required by the DCS such as night shift allowance (POPCRU & Group 4, 19/11/03; Venter, 30/11/05). GSL will provide a subsidy on certain benefits such as medical aid and housing, but ultimately, the cost of those services must come out of the worker's salary (Venter, 30/11/05). The SACM seems more responsive in terms of providing additional benefits outside of the salary (POPCRU & SACM, 2004). According to Witbooi, private sector wages are higher than the public sector unless overtime payment is considered (21/9/05). According to Madlala, "ever since we started bargaining with the private prisons, on issues we have finalized and resolved, you see them being implemented, you see a way forward" (30/8/05). This is quite different from POPCRU's relationship with the public sector, described by Madlala as "very sour," with little effort on the Department's side to implement changes (30/8/05). Witbooi reports that private prison companies are very responsive to bargaining as they want to avoid a situation where they would be in the press for bad relations with unions and employees (21/9/05).

According to POPCRU, the feelings of PPP prison employees are mixed. On the one hand, they need jobs (Madlala, 30/8/05). On the other, however, they want equal treatment to public sector employees, particularly the extra allowances (Madlala, 30/8/05). Job security is a major concern of employees, as private companies have

the potential to become insolvent or lose their operating contract (Witbooi, 21/9/05). Thus, according to Witbooi, many PPP prison employees would prefer to work for the public sector (21/9/05).

4.2.6 Inmate Conditions

All inmates in the PPP prisons are maximum security, generally with very long sentences (respondent 10, 25/11/05). Inmates are not sentenced to PPP prisons; each is first assigned to a public facility and then transferred to Mangaung or Kutama-Sinthumule (respondent 6, 13/10/05). According to a number of different respondents, including various members of the Judicial Inspectorate as well as a former SACS employee, the inmates that are sent to PPP prisons tend to be the behaviourally difficult of the public prisons (Fagan, 13/10/05; respondent 6, 13/10/05; Morris 13/10/05; respondent 8, 20/10/05). Respondent 6, an inspector for the Judicial Inspectorate, reports, "For some reason it appears that it turns into a system where certain people are trying to get rid of a certain type of prisoner or a certain personality of prisoner;" this is the "daily bread" for PPP prisons (13/10/05; respondent 8, 20/10/05). PPP prison administration does not have a choice, they must receive who the DCS sends (respondent 8, 20/10/05). According to Giffard,

> The private prisons in Australia have been criticized for only taking medium security, healthy and easier-to- manage prisoners, whereas in South Africa, the private prisons are maximum security and are obliged to take whoever the DCS throws at them. To be fair to them, at this level, the South African private prisons seem to have it tougher than the private prisons in Australia. (13/10/05).

According to respondent 9, an Independent Prison Visitor (IPV) at Mangaung prison, this has been problematic for the prison population as a whole, as sometimes there will be a prisoner who is at the end of their sentence locked up with someone who has multiple life sentences and "those guys who have sentences of 500 years, 1000 years...those people have nothing to lose" (23/11/05). According to respondent 9, that is why there is a lot of gangsterism in Mangaung prison (23/11/05).

All PPP prison inmates are sentenced; neither prison houses awaiting-trial inmates (Madlala, 30/8/05). Inmates only go to court for crimes committed while in prison (Madlala, 30/8/05). The risk for escape is much higher when inmates are brought out of the prison, and Madlala argues that part of the reason the PPP prisons do not have

many escapes is because their inmates are sentenced (30/8/05). To date, the PPP prisons have had one escape incident (30/8/05).

As was discussed previously, rehabilitation is a major focus of PPP prisons. According to a SACS presentation to the Portfolio Committee, the process of preparing inmates for release begins as soon as they enter the prison (PMG, 12/10/01). The prisons are required to give 40 hours of purposeful activity to inmates per week; the international norm is 30 hours per week (Venter, 30/11/05). Madlala reports that "people are developed" and inmates work closely with teachers, social workers, and other specialists (13/10/05). There is some concern, however, that the training pre-release is disjointed, as inmates are required to spend their last six months in public prisons (Tapscott, 2005, 22). According to respondent 8, "My own perception is that a person who has been in public service and then goes to private service, when they go back to public again, they will not be able to cope, those who are serious about changing" (20/10/05).

A number of respondents reported that there are many inmates who are unhappy in PPP prisons and have requested to be transferred out (Giffard, 13/10/05; respondent 6, 13/10/05; respondent 8, 20/10/05). Respondent 6 argues that this is because conditions in PPP prisons are much more controlled than in most public prisons (13/10/05). "Maybe with the hope...of getting out of private prisons, they will make excuses such as to say the conditions are worse than in government prisons because they are being allowed much more in government prisons" (Respondent 6, 13/10/05). Controls on known gang members are particularly tight, as prison officials can monitor their phone calls and will often monitor their interactions with other inmates, making smuggling and other illegal activity more difficult (Tapscott, 2005, 26). Tapscott notes that many gang members find this control disempowering (2005, 26).

IPVs from the two prisons report a number of problems which have been identified by inmates in these prisons (respondent 9, 23/11/05; respondents 12 & 13, 9/12/05). One problem found in both prisons is the "transfers issue;" as prisoners from all over the country are sent to these prisons, inmates are very far from their families and many wish to be transferred to a prison closer to home (respondent 9, 23/11/05; respondents 12 & 13, 9/12/05). Another problem identified in Mangaung prison is the lengthy

amount of time inmates must wait before they can see a doctor (respondent 9, 23/11/05). Respondent 9 reported that, in early November of this year, a prisoner committed suicide because of he was so frustrated with the medical situation (23/11/05). In Mangaung prison, there is also the problem that prisoner complaints and reports against fellow inmates and warders are often lost (respondent 9, 23/11/05). According to this respondent, "sometimes that docket never appears again so inmates are very concerned about that....The dockets get lost and they never go to court" (23/11/05). Respondents 12 and 13 report that the other major problems reported by inmates in Kutama-Sinthumule are related to the court system, including difficulties with appeals and appearances before the parole board (9/12/05).

4.2.7 Monitoring Structures

PPP prison accountability is ensured through three methods: internal DCS monitors, primarily the DCS controllers, external monitors, most particularly the Judicial Inspectorate, and contract penalties, which inspire a degree of self-monitoring. This section will simply describe the structures which are in place; an assessment of their effectiveness will be discussed in the last part of this chapter.

Monitoring structures within DCS for PPP prisons include the APOPS Directorate, the DCS Internal Audit, DCS inspectors, and the controllers (PMG, 13/8/02; DCS, 2003, 49). It is the controllers who monitor the day to day management and operation of the PPP prisons (Giffard, 1999, 338). There is one controller with three to four DCS staff assigned to each PPP prison and there are controller offices within each prison, although controllers are permanent DCS staff (respondent 10, 25/11/05; respondent 8, 20/10/05). Controllers ensure that contract stipulations are always met, including standards of security, essential services, empowerment targets, and minimum staffing levels (PMG, 13/8/02). Most importantly, DCS controllers make decisions about inmate punishment, ensuring that it is the DCS and not the contractor which retains this function (Giffard, 1999, 338). The controllers are responsible for monthly reports, annual reports, incident reports, reports on any prison investigations, and for ensuring that the prison directors submit daily reports on prison activities (PMG, 13/8/02). According to respondent 8, the controller is on site every day, walking the corridors and making sure that things are happening in the proper ways (20/10/05). Controllers report to the APOPS Directorate, which is responsible for

managing the contract and making sure that contract standards are upheld (respondent 10, 25/11/05).

External supervision includes all monitors independent of the DCS, including the supervisory committee, the auditor general, the Judicial Inspectorate, and the media (PMG, 13/8/02). The Judicial Inspectorate is crucial in this discussion as this body maintains regular contact with prisons and inmates particularly. It is important to stress that the Inspectorate is independent from the DCS; this is, in fact, why their head office is located in Cape Town, while the DCS is located in Pretoria (Fagan, 13/10/05). The Inspectorate, created in 1998 as part of Act 111, is responsible for the oversight of all 240 prisons in South Africa, with a particular focus on prisoner conditions (Fagan, 13/10/05). One of the ways this is accomplished is through Independent Prison Visitors (IPVs), a number of which are assigned to each prison (Fagan, 13/10/05). IPVs sign three year contracts with the Inspectorate and are required to visit their respective prison and deal with prisoner complaints and issues for a total of 68 hours per month (Fagan, 13/10/05; respondent 9, 23/11/05). Should an IPV report any major issue, the Inspectorate has inspectors who will then be sent to investigate (Fagan, 13/10/05). PPP prisons are dealt with the same as any public prison, with three IPVs assigned to each (Fagan, 13/10/05).

Within the PPP prisons, there are a number of ways in which contract compliance is ensured. Prison directors are appointed by the DCS Commissioner, and any change of leadership must be approved by the Department (Jarvis, 2000, 24). According to Tapscott, "rigorous" internal monitoring systems include supervisors, managers and unit heads, an internal audit department, health and safety supervisors, the deputy director and director, and the consortium's board (2005, 33). Venter states, "Of course I believe in self audit because I want to know that I'm not going to get a penalty so my people are continuously auditing themselves to see that we don't do that" (30/11/05). In Mangaung prison, it is official policy that inmates receive a response to complaints within 24 hours and the prison has a confidential complaints box which can only be accessed by the director, in order to facilitate inmate expression (Tapscott, 2005, 21). Ultimately, the contracts themselves, as long as they are properly monitored, promote compliance, as there are heavy penalties if standards are not upheld (respondent 8, 20/10/05).

4.3 Assessment

As these two prisons are relatively new, both in operation for less than five years, it is difficult to fully assess their experience thus far. Much of the early literature points out that "private prison contracts...are assessed on their ability not to do a worse job than the public sector" and are often compared to the awful conditions said to be prevalent throughout public prisons (Goyer, 2001a, 12; see also Sekhonyane, 2003). While there are certainly many benefits from private service provision, such as improved rehabilitation capabilities, the situation is more complicated than simply claiming private prisons provide a better service. There are a number of growing concerns about PPP prisons, particularly about effective monitoring, contract costs, and unequal services, and there have been developments within the DCS in the past few years which make blanket assumptions about public service provision inaccurate.

This section will provide an overview of the major benefits and difficulties associated with South Africa's PPP prisons. For the most part, this assessment will rely on interviews with the spectrum of players involved in this field, as well as reports to the Portfolio Committee.

4.3.1 Benefits of PPP Prisons

One of the major benefits attributed to PPP prisons is the prison services provided, most notably rehabilitation, which are much better than those provided in most public prisons. According to Witbooi, "the private prisons are the ideal situation. If we could have such conditions all over the country, I think Correctional Services would be in a better position to carry out its mandate of rehabilitation" (21/9/05). According to respondent 8, the PPP prisons have developed more efficient ways of dealing with prisoners (20/10/05). Personal development plans allow prison staff to "zoom in" on individual prisoners, as opposed to many public prisons which, she claims, can allow prisoners to go through the full length of their sentences without anyone realizing they need help or attention (20/10/05). According to Venter, rehabilitation programs in Mangaung have been quite successful thus far, with 96% pass rates in Abet level 4 exams, a matric pass rate above 80%, and close to 2000 certificates issued for vocational training (30/11/05). Respondent 8 argues that PPP prison staff generally shows more initiative in dealing with problems, for instance male rape, which are

often accepted without question or address in many public prisons (20/10/05). Design has also facilitated rehabilitation, both by improving safety, for example, making it easier for warders to view what inmates are doing, thus improving the monitor of illegal activity, and by making unit management possible (Madlala, 30/8/05). Moreover, according to Witbooi, conditions overall, including food, facilities, and medical services, are simply better than the majority of public prisons (21/9/05). However, it is important to reiterate that prisoners are often far from their families, which can hinder the success of rehabilitation efforts (Morris, 13/10/05). Furthermore, as PPP prisons house long-term prisoners, the effects of rehabilitation programs will be difficult to assess for some time (respondent 10, 25/11/05).

PPP prisons have also been very successful in achieving empowerment targets. In the Portfolio Committee meeting on 13 August 2002, SACS reported that they had 1450 workers on site daily during construction, 80% of which were PDIs (PMG). Workers were given training and certification; by the end, 690 were qualified as artisans and 760 as skilled labourers (PMG, 13/8/02). As of 2002, 91% of SACS staff were PDIs, with 46% women and 80% from Makhado, and 79% of services for the prison were provided by PDEs (PMG, 13/8/02). According to respondent 8, SACS has been instrumental in setting up local business to meet the needs of the prison, including finding suppliers of food and uniforms (20/10/05). Even the professional staff is largely made up of individuals "raw from the desk" at the local University of Venda, who the SACS then trained for practical work (respondent 8, 20/10/05). Mangaung prison has similarly met impressive empowerment targets, as 83.7% of the staff is not white, and 40.6% is female (PMG, 13/8/02).

The benefits of PPP prisons are largely due to a number of advantages they have over the public sector. Firstly, PPP prison administrations are not restricted by the bureaucratic constraints of the public sector. According to Venter,

> you are not bound by the same red tape that you would be bound by if you were working in the public sector....if I know there's a benchmark somewhere in corrections in other parts of the world, I could implement it in this sector without going through the red tape to get it approved (30/11/05).

Furthermore, these prisons are not overcrowded and administrators know exactly how many prisoners they have and expect to have in the future (Fagan, 13/10/05). This is

a major benefit over the more than 200 state prisons which are overcrowded and must accept any prisoners the DCS assigns to them; PPP prisons are effectively protected from this (Fagan, 13/10/05). Respondent 8 argues that having a cap on prison numbers makes them better able to focus on individual prisoners (20/10/05). Madlala makes a similar observation, stating that the PPP prisons have "the potential of giving better service, because they are focused to a limited number of inmates" (30/8/05). According to Witbooi, if PPP prisons take more prisoners, they are paid accordingly, thus "they don't have such issues of budgetary constraints because what they get is according to the number of inmates they have within their facilities" (21/9/05). Thus PPP prisons have more money which they can put towards achieving their rehabilitation goals (respondent 6, 13/10/05).

Another advantage of PPP prison services is that companies are bound by contract (Giffard, 13/10/05). Prison administrators know that if anything goes wrong there will be a penalty, and they are careful to follow correct procedures (Witbooi, 21/9/05). According to Witbooi, in public prisons, "things happen, nobody is worried about any penalty" (21/9/05). Giffard argues that it would be beneficial if the Department could bind heads of public prisons to similar agreements, in order to make sure, for example, that all prisoners are outside of their cells for a certain amount of time each day (13/10/05).

4.3.2 Problems with PPP Prisons

Three major problems related to these prisons have been identified: potentially weak monitoring structures, unexpectedly large costs to the DCS, and inequity in prison services. In the interviews, only two other problems were identified. The first is the overall lack of transparency and information, both when the process initially began as well as now, in trying to access contracts or financial information (Madlala, 30/8/05; Witbooi, 21/9/05; respondent 3, 12/10/05; Giffard, 13/10/05). This is particularly acute for POPCRU, as union leaders argue that this lack of information is disadvantageous to the workers, who POPCRU believes should be sharing in the companies' profits (Madlala, 30/8/05; Witbooi, 21/9/05). According to respondent 10, a member of the APOPS Directorate, government is careful about disclosing figures because "we're being responsible, sometimes when we give these figures, people run with them and sometimes it's not true" (25/11/05).

The second problem identified is the PPP prisons' lack of involvement with the community (Madlala, 30/8/05). According to Madlala, at Mangaung, there is little knowledge within the community about the prison, and there has been limited interaction between BCC and the community; he argues that this is not the case in the local public prison, which does participate in community outreach programs (Madlala, 30/8/05). However, according to Jacobson and Berg, there is at least some contact between this prison and the locals, as the goods produced by prisoners are either donated to local charities or sold with the proceeds going to the Community Trust (2004; 2004, 29). Furthermore, Venter argues that the prison has contributed to local schools, AIDS homes, and soup kitchens, as well as participated in regional criminal justice forums and meetings (30/11/05).

4.3.2.A Evaluation of Monitoring Structures

As discussed previously, external responsibility for monitoring private prisons lies largely with the DCS controllers and the IPVs. However, there has been some concern that these individuals are becoming, to a certain extent, "co-opted" into the prison administration and not maintaining their independence as monitors (Giffard, 13/10/05; respondent 6, 13/10/05). Respondents 12 and 13 report having very close relationships with both prison management and the DCS controller in Kutama-Sinthumule, meeting with each at least once a week to follow up on any findings they have made (9/12/05). Both respondent 6 and respondent 9 reported events within Mangaung prison which imply the controller's lack of independence (13/10/05; 23/11/05). Respondent 6 discussed an inspection he made of the prison, in which he noticed that the controller seemed scared to speak out in front of a director, although there was indeed a problem which should have been addressed (13/10/05). In this prison, there are two solitary confinement cells which respondent 6 described as "more fit utilized as a cage for a wild animal" (13/10/05). Furthermore, it was not the controller who was sending prisoners to these cells for punishment, but the director of the prison, an act which can only occur when the director feels he cannot gain the controller's approval in an appropriate amount of time, which would influence the purpose of the punishment (respondent 6, 13/10/05). An IPV at Manguang similarly reported a number of events in which the prison was not held sufficiently accountable, including unreported deaths, segregating an inmate for a year when segregation is

meant to be used for a maximum of seven days, and reporting the suicide in November of this year as a natural death (respondent 9, 23/11/05). This respondent surmised that this may occur because "they are worried that it will reflect, at the end of the day, bad on Mangaung" (23/11/05).

It may be possible that internal auditing structures are effective enough to allow the prison administration to protect itself from punitive measures. Although the prisons have each been in operation for more than three years, the consortia have been fined a negligible amount of times. According to respondent 10, Kutama-Sinthumule has been fined once for contract violation, for something minor such as food served late, and Mangaung has been fined once for an escape, and a few times for minor issues; Venter argues that Mangaung has only been fined once (25/11/05; 30/11/05). Fines are relatively harsh. Altered according to the CPI, fines for an escape or an unnatural death are approximately R335,000 and fines for unfulfilled empowerment targets are R1 million (respondent 10, 25/11/05). Lesser violations receive smaller fines, closer to R41, 000 (respondent 10, 25/11/05). Thus, it is certainly in the best interest of the PPP consortia to prevent the occurrence, or at least the report, of major contract violations such as those reported by respondents 6 and 9. It is the controller who ultimately must ensure that these contracts are followed and fines are levied. Respondent 10 stated that he believed that monitoring was effective and that the controllers were "vigilant" (23/11/05). "If maybe the contractor was not performing in terms of the specifications then we could have long terminated the contract" (respondent 10, 23/11/05). However, the evidence seems to suggest that either the controller is failing to report contract violations or that DCS may be hesitant to concede that contracts have been violated a number of times, as potential termination of a contract would be incredibly costly to the Department.

Another concern related to accountability is the high turnover in DCS leadership since 1998. According to Portfolio Committee minutes from 8 November 2002, there has been limited understanding of the contracts and thus an inability to properly manage them on the part of the DCS (PMG). This, in large part, was why the joint-task team was formed to investigate the PPP contracts (PMG, 8/11/02).

4.3.2.B PPP Prison Costs

According to Sloth Nielsen, almost immediately after the PPP prisons were built, the debate around private sector involvement in prisons became focused on the costs involved; it soon became publicly known that projected costs were in fact quite lower than the actual costs (2003, 24). Fees paid by DCS to the PPP prisons include two components: the fixed and the indexed (DCS, 2003, 75). The fixed component covers capital costs, primarily the construction of the prison, and will be paid off after 15 years (DCS, 2003, 75). The indexed component pays for prison operation, based on costs per prisoner per day, and this amount changes every 6 to 12 months by a K-factor, built into the contracts in order to account for inflation and achieve smoothing of returns (PMG, 8/11/02).

Estimates of actual costs of these contracts have been varied, likely because, apart from DCS budget figures, little of the financial information of the contracts has been available to the public. When Mzimela initiated the contracts, he claimed there would be cost savings of up to R345.4 million over 25 years (Berg, 2004, 26). Although cost comparisons between PPP prisons and public prisons are next to impossible, it is widely accepted that public prison costs are much higher than PPP prison costs when the impact of overcrowding is removed (PMG, 8/11/02). However, POPCRU estimates put the cost of PPP prisons to DCS at between 50% and 70% of their total budget; according to Witbooi, the cost per prisoner per day in PPP prisons is almost double the cost of public prisoners (Sloth-Nielsen, 2005; Madlala, 30/10/05; Witbooi, 21/9/05). Many argue that these figures are exaggerated and according to the DCS Annual Report from 2003, total cost for the two PPP projects for financial year 2003/2004 is R491 million; Sloth-Nielsen reports that this is 6% of the overall DCS budget (DCS, 49; Sloth-Nielsen, 2003, 25). According to figures from the Treasury's 2005 Estimates of National Expenditure, the PPP prisons will cost 6% of the DCS budget in 2005/2006, decreasing to 5.51% in 2007/2008 (Department of Finance, 2005, 453, 470). Nevertheless, even if the two PPP prisons cost only 5% of the total DCS budget, 240 public prisons would be left with the remainder. If the entire balance of the budget was spent on these prisons and not on administrative costs, each public prison would receive only 0.4% of the budget, as opposed to 2.5% received by each PPP prison.

As early as March 2000, before either contract had been officially signed, the DCS had plans to freeze public posts in order to afford the PPP prisons (PMG, 7/3/00). Costs were particularly high for the DCS because prison construction, maintenance, and utility costs were typically the responsibility of the DPW and, although there had been some transfer of funds, it had not been enough (PMG, 12/11/02). On a number of different occasions, DCS reported to the Portfolio Committee on their need for more funds and their appeals to the Treasury for assistance (PMG, 7/3/00; 26/2/02; 13/8/02). In February 2002, the Department reported that the budget increase from 2001/2002 to 2002/2003 was not enough, particularly because of the costs going towards the PPP prisons, and that budget cuts would have to be made in rehabilitation programs in public prisons (PMG, 26/2/02). Mr. Bloem, who is now chair of the Committee, was unhappy about this, stating that he felt the Committee had been misled by APOPS, as "the government is losing while others gain as the necessity to sacrifice some of the Correctional Services budget to APOPS means the sacrificing of the rehabilitation program" (PMG, 26/2/02). According to Witbooi, "correctional services has also got a headache in terms of their budget. That's why you find now that the public prisons are further squeezed" (21/9/05). Giffard reports that this is a frustration to the DCS, as every month a certain portion of the budget, over which the Department has no control, is put towards the PPP projects (13/10/05). Madlala and Witbooi each report that the public budget has been tighter, with only a small increase in the total number of employees over the past few years, despite increasing overcrowding, and massive reductions in weekend staff numbers because of a shortage of money (30/8/05; 21/9/05). According to Madlala, "with the very same budget that was used previously, you cannot manage to pay workers, it indicates to say that something has sacrificed the whole process" (30/8/05). While it is not apparent what is at the root of these particular budget shortfalls, it is certainly clear that DCS cannot afford to continue to pay these rates to PPP prisons.

As mentioned earlier, these high costs dissuaded government from developing two more PPP prison projects. It also influenced government to form the joint-task team in 2002. The primary goal of the task team, made up of representatives of the DCS, DPW, and the Treasury, was to investigate the prisons and the contracts in order to determine whether there was anything that could be renegotiated to reduce cost, and to establish a framework for future PPP projects by the DCS (PMG, 8/11/02).

Treasury regulations for PPPs were passed in 2000, and are centred on affordability, value for money, and appropriate transfer of risk; the task team also aimed to determine whether these stipulations were fulfilled by the PPP prison projects (PMG, 8/11/02).

The task team found that, while risk transfer was appropriate, there were no feasibility studies done before the projects were signed and thus there were significant problems with affordability (PMG, 12/11/02). They concluded that, overall, this was not because of the PPP prison companies; they had delivered according to contract (PMG, 12/11/02). The task team found that the PPP prisons had provided competitive construction costs and had built the prisons on time and on budget, that delivery of services had been quick, that operating costs were comparable to public sector costs, that they had been successful in meeting their empowerment targets, as well as in providing higher quality facilities and higher levels of service (PMG, 12/11/02). Costs were too high largely because contracting specifications were too high, based on input specifications, such as cell size, number of hours of inmate engagement, and number of security levels, rather than on outputs (PMG, 12/11/02; Sloth-Nielsen, 2003, 24). A k-factor was built into the financial models for each prison in order to account for costs which increase faster than the CPI, such as employees salaries, and this has been related to the increase in fees to the DCS (Venter, 30/11/05). Furthermore, debt levels were high, largely because interest rates were particularly high when the contracts were negotiated, and both contracts included higher than normal returns on equity (PMG, 12/11/02). The task team found that the BCC was receiving nominal and real returns on equity of 29.9% and 20.3% respectively, with total equity required for the project set at R54 million (PMG, 8/11/02). Similarly, the SACS had nominal and real returns on equity of 25.1% and 15.57% respectively, with R53 million in equity required by the project (PMG, 8/11/02). Furthermore, the task team found that high costs were leading to budget problems for the DCS, as well as further problems of overcrowding as the PPP prisons could not be overpopulated (PMG, 12/11/02). The team's recommendations were as follows: to add more prisoners to each prison, by building an extension in Mangaung and by converting or overcrowding cells in Kutama-Sinthumule; to reduce rehabilitation specifications, for instance reducing the number of hours out of cell per day from 12 to 8, which would not have a "significant affect on prisoner well being" and would reduce staff costs; to

renegotiate food and medical services; to refinance the projects, particularly by linking the K-factor to inflation; and to renegotiate the interest rates on the loans (PMG, 8/11/02). Attempts by government to renegotiate PPP prison contracts are not new; Berg describes the experience of governments in the UK, US, and Australia who have "succumbed to the pressure of overcrowding" and amended contracts to allow overpopulation in PPP prisons (2004, 27).

Thus far, not much has happened in terms of negotiations around the contracts. According to respondent 8, who worked with the SACS from 1998 until the end of 2004, the DCS stated that they wanted to renegotiate the contracts, but when she left SACS, not only had nothing been done but, to her knowledge, the consortium had not even been given a copy of the task team's report (20/10/05). Sloth-Nielsen reports that in 2004, a transaction advisor was appointed by the DCS, at the insistence of the Treasury, to look into the feasibility of these renegotiations (2005). The results of the investigation are still unknown (Sloth-Nielsen, 2005).

4.3.2.C Tiering of Prison Services

The final major concern that has been expressed about PPP prisons is that it has lead to a "tiering" of South African prisons, with very different levels of service quality in PPP prisons as compared to most public prisons (Witbooi, 21/9/05; respondent 3, 12/10/05; PMG, 8/11/02). According to Sloth Nielsen, "debate about the morality of housing 6,000 prisoners in the undeniable (comparative) luxury of uncrowded new facilities, while 182,000 remaining prisoners are left to languish in cells where sleeping by rote is the order of the day, is...required" (2003, 26). It is argued that these prisons are not appropriate in South Africa, particularly since, with limited social grants from the government, the services provided by PPP prisons, in addition to being better than most public prisons, are much better than the conditions in which many, non-incarcerated South Africans live (respondent 3, 12/10/05).

Related to this, there is also concern that the prisoners sent to PPP prisons and given access to their rehabilitation programs, are those with the longest sentences (Madlala, 30/8/05; Morris, 13/10/05). It is argued that it would be much better to have prisoners with shorter sentences and first time offenders involved in these sorts of rehabilitation services, as they will be released into communities much sooner (Madlala, 30/8/05).

According to Madlala, "you ask yourself, if so much money is spent on those private prisoners, would it be better to change the lives of the South Africans who are arrested and going back to the public in a short space of time. In a week they are arrested [again] because not that much work has been done" (30/8/05). Respondent 10, however, argues that housing medium level prisoners in the present PPP prisons would not be feasible at this point, as security measures would be excessively high (25/11/05).

4.3.3 The Future of PPP Prisons in South Africa

These two prisons are pilot projects and, according to the Portfolio Committee minutes from 12 November 2002, future growth of the sector depends on how that experience is assessed (PMG). According to Venter, the report of the transaction advisor will largely determine whether there will be more PPP prisons built (30/11/05). On the Treasury's PPP website, it states that feasibility studies for four new PPP prisons are still being conducted (Department of Finance, 2005). Venter is positive that PPPs both in correctional services and in other public sectors will continue to grow; "I don't think there's much choice for government....The only way to create that infrastructure is to get the private sector to pay for it, because they don't have the budget" (30/11/05).

The majority of respondents, however, were pessimistic about additional PPP prisons, particularly of the size and scope of the two existing projects (respondent3, 12/10/05; Fagan, 13/10/05; Giffard, 13/10/05; Morris, 13/10/05). According to Giffard, "my sense is that government is thinking, what have we got ourselves into" (13/10/05). The government was led to believe that these prisons would be more affordable than public prisons, he argues, and perhaps this is the case in Europe or the US, but not in South Africa with such levels of overcrowding (Giffard, 13/10/05). Sloth-Nielsen's analysis of the Department's most recent White Paper, published this year, is that DCS is "rather coy" about future procurements of PPP prisons, not indicating whether it will abandon or embrace this option in future, and is ambivalent as to whether the projects have been affordable and whether they have achieved higher levels of rehabilitation, a measure which will be difficult to determine for years to come (2005). The 2005 White Paper states that "the Department's view is that all future design, procurement, and building of correctional facilities in South Africa should be

based exclusively on the South African realities...take into account our unique realities as a developing country" (DCS, 85). According to respondent 3, the DCS Strategic Plan through 2009 makes no indication that any of the eight new prisons which will be built over the next five years will be PPPs; the section dealing with Capital Expenditure makes no mention of PPPs (12/10/05). The DCS has built a number of new, model prisons and has initiated a program to select prisons which are "centres of excellence" across the country (Fagan, 13/10/05). According to Morris, "clearly, one can see with the so-called new generation prisons they're building now, they decided to run with an absolutely in-house government, it was not sourced out. And that is a strong indication to me as to...they can do it, in any case, themselves" (13/10/05).

Morris argues that the reason the sector has not expanded more is because of affordability, and because the political climate has changed; there is now a much better relationship between the Minister, the Commissioner, and the Department (13/10/05). Furthermore, the current Minister is not as strongly supportive of prison privatization as was Mzimela (Morris, 13/10/05). According to Morris, in the late 1990s, the Department was still convinced that it could build its way out of the problem of overcrowding (Morris, 13/10/05). However, now it is clear that the Department is looking for different ways to lessen overcrowding, including reducing the number of prisoners (Fagan, 13/10/05). The DCS conducted its second amnesty this year, releasing 60,000 sentenced and awaiting trial prisoners since February 2005, primarily by reducing sentences (Fagan, 13/10/05). According to Judge Fagan, "overcrowding has come down tremendously" (13/10/05).

The private prison companies have a different perspective. According to GEO's Annual Report in 2004, the company considers itself "in a remarkable position to strengthen its partnership with South Africa's DCS as solicitations for new prisons materialize" (in Nathan, 2005d). Respondent 8 argues that the biggest problem for the PPP prisons is that they lack visibility; the public and politicians alike have very little knowledge about these prisons and what they have done (20/10/05). "Without this visibility and awareness, critical decision makers will not be able to support this...the issue is that the very people who need to take that decision, they don't know that we're making a difference somewhere" (respondent 8, 20/10/05).

There have been other private sector developments in the prisons sector over the past few years. The outsourcing of juvenile detention centre operation, pre-trial facilities in particular, has been spreading in a number of provinces (Sloth-Nielsen, 2005). These facilities fall under the jurisdiction of the Department of Social Development, and the contracts are only for management functions, with much shorter durations than the DCS contracts (Sloth-Nielsen, 2005). A pilot project privatizing 36 prison kitchens around the country was started in September of 2004 (Sloth-Nielsen, 2005). According to respondent 3, the project will be evaluated after one year in order to determine, for example, whether it has been more cost effective, led to a higher service, or decreased corruption (12/10/05). Tapscott reports that, so far, outsourcing of kitchen functions has resulted in meals of a higher standard and a decrease in waste and theft (2005, 31). However, according to unofficial Portfolio Committee minutes, the Committee was again not notified of this development until after it was implemented, thus indicating that transparency of the Department is slow to improve (Sloth-Nielsen, 2005).

According to Harding, one of most important justifications for having private sector involvement in corrections is the potential for "cross fertilization" of best practices between the private and public sectors (in Giffard, 1999, 338). Giffard argues, "it's more than just whether they are sustainable, but their existence can become a kind of conscience to the public prisons" (13/10/05). According to Morris, it was initially planned that heads of public prisons should visit the private prisons to observe and be trained by international experts, and that this would be the basis for transformation throughout the prison sector (13/10/05). According to respondent 8, the private companies have brought many new practices, but that transfer of skills depends on whether the public sector is willing to learn (20/10/05). She stated that while she worked for SACS, some exchanges did take place, as the Department brought several public prison directors to visit and there were many exchanges with local prisons in terms of best practice (20/10/05). Furthermore, she stated that she also would visit public prisons to learn new techniques from them, for instance, she visited Pollsmoor prison near Cape Town to see how they dealt with gangsterism (20/10/05).

However, there is concern that this exchange has not occurred to its full potential. According to Morris, "I don't think the new minister and the new commissioner shared the same vision...[as Mzimela]....So therefore I think the project that started out as a pilot project that never, I don't think they've seen it through, it's left now" (13/10/05). Much of this is attributed to the "apparent standoff" that has developed between the DCS and the PPP prison operators in the last few years, particularly since the task team's report (Sloth-Nielsen, 2005). In a Portfolio Committee meeting in 2002, Commissioner Mti reported that the PPP prison contracts, entered into before his appointment, were a drain on the DCS budget, were not cost-effective, and had a "negative impact on the integrity of Correctional Services" (PMG, 26/2/02). Morris argues that the situation has reversed, and the Minister now has more confidence in the Department than he does with the PPP prison operators (13/10/05). He states that there is almost a competition between the DCS and the PPP prisons now, and perhaps a heightened sensitivity amongst government prison officials, as public prisons are almost always compared very negatively against the PPP prisons (Morris, 13/10/05). Respondent 8 states that one of the main challenges for PPP prisons is to be accepted by the DCS and not seen as a threat; she states that there is a perception that PPP prisons are taking away government jobs (20/10/05). States Morris, "you've seen a total turn around, where the private prisons...probably one of the biggest challenges to them now is how to get the government to have confidence in what they do" (13/10/05). Thus it seems that the possibility for 'cross fertilization' is stunted at the moment, largely due to limited resources and a change in leadership which is not as supportive of private prisons. However, there is optimism that this partnership will be strengthened in future and that the transfer of best practices will occur (respondent 3, 12/10/05; Morris, 13/10/05).

Endnotes

[1]The Transformation Forum, a body made up of representatives from the department, the portfolio committee, unions, and NGOs, was created shortly after the transition to assist the Department and debate the role of civil society in the transformation of corrections (Sloth-Nielsen, 2003, 9). However, the Forum was ineffectual and short-lived, largely due to little support from the Minister and because it was quickly plagued by departmental and political conflicts (Sloth-Nielsen, 2003, 9)

[2]The National Council was a board, including members of business, civil society, and government, created to advise the Minister in correctional policy (respondent 3, 12/10/05). The Council has very little power, and is only involved when the Minister engages with it (respondent 3, 12/10/05).

Chapter Five
Conclusion

This project was undertaken to explore the experience of private sector involvement in service provision in developing countries through the examination of South Africa's PPP prisons. While the research is certainly not an exhaustive representation of privatization in all countries and all sectors, it does illustrate a number of issues which have arisen not only in correctional services, but in other South African service sectors that have involved the private sector in service provision.

South Africa's two PPP prisons were tendered in the late 1990s and in full operation by 2001 and 2002, respectively. They were the first PPP projects in the country and, at the time they were contracted, there were no official Treasury guidelines in place. When the prisons opened, they were the two largest privately contracted prisons in the world, with approximately 3000 inmates each. Each prison is run by a consortium, made up of international and local players, and the consortia are contracted to design, construct, finance, and operate the prisons for a period of 25 years, after which the prisons will be transferred to the government. The following chapter will provide an overview of key findings from the experience of these prisons thus far, and suggestions for future research in this field of PPP prisons and service privatization.

5.1 The Process

One of the primary concerns that has been raised with regard to PPP prisons is the rushed and secretive way in which the decision to contract with the private sector came about. Two major problems that arose from this: first, the resulting lack of debate within civil society and even within government, and secondly, the lack of Department regulations to guide the process. Legislation allowing PPP prisons was passed in a policy vacuum, when many laws concerning a wide variety of post-apartheid issues were being pushed through Parliament rapidly. The decision was primarily steered by one individual, the then-Minister of Correctional Services, Sipho Mzimela. He faced a number of challenges, political and otherwise, upon receiving his post, and he felt these would best be handled through private sector involvement. There was little debate, in government, civil society, or in the general public, and

much of the process was completely non-transparent. Many people in the field did not learn of these prisons until after the contracts were signed; many in the general public and other parts of government still do not know of their existence. This was not an oversight; according to Giffard, Minister Mzimela "told a portfolio committee meeting that 'if you think what you're doing is good, you act first and apologize later. The reason why we could not develop the mineshaft idea...[a plan to house inmates in unused mineshafts]...was that we said it first. We learned from that'" (1999, 341). At the time, both the Treasury and the national tendering board did not allow PPPs, and extensive Treasury guidelines to steer the process were not in place until after the contracts were signed. No feasibility study was conducted, thus affordability was not ensured before the deals were complete. Many of the problems that have arisen subsequently are due to the hastiness of the decision.

New Treasury guidelines, as well as DCS experience with PPPs, ensure that any future private sector involvement will, in the least, be more carefully planned. According to Sloth Nielsen, "it can be predicted that future PPP exercises will be dealt with a great deal more caution" (2005). Three major pieces of legislation have been passed since 1999 when the PPP prison contracts were signed. The Strategic Framework for Delivering Public Services identifies constraints on private sector involvement and discusses reforms which may strengthen the enabling environment (PMG, 8/11/02). The Treasury Regulations for PPPs, which is within the Public Finance Management Act of 1999, outlines how PPPs are to be regulated and discusses the three stipulations which must be ensured in any PPP contract: value for money, affordability, and appropriate risk transfer (PMG, 8/11/02). This act also created the PPP Unit in the Treasury to oversee PPP projects (PMG, 8/11/02). Finally, the Guidelines for PPPs established procedures for procuring and implementing PPPs (PMG, 8/11/02). Any future PPP in DCS or any other government department must follow these regulations.

Debate and transparency, on the other hand, have not been similarly ensured. During 2005, kitchen services in a number of public prisons were outsourced to the private sector as a pilot project; this measure was passed with little knowledge and debate within the Parliamentary Portfolio Committee. To a large extent, there is still a gap in public knowledge about these prisons. Some of the reason for this is a secrecy clause

within each contract, limiting what contract details can be disclosed. Specific costs and figures particularly are kept secret, for instance, how much of the DCS budget goes towards paying APOPS prison fees, and thus there is much speculation as to what the true figures are. POPCRU, the prison workers' union, has also had trouble accessing these figures, which certainly has limited their negotiating capabilities in this sector. Moses Madlala, POPCRU's regional secretary in the Free State, argues that this restricts the ability of workers to share in company profit. Abbey Witbooi, POPCRU's General Secretary, stated that one of POPCRU's aims in relation to the PPP prisons is to increase knowledge and debate. Says Witbooi, "what we want to do is to gather as much information as possible and...to sensitize government" (21/9/05).

The gap in knowledge about PPP prisons is related to the limited exchange of information. Little research has been conducted on South Africa's PPP prisons, and much of the research that exists is not comprehensive; in many cases there are discrepancies in facts and figures. As I can attest through my own experience, approval to research prisons through the government is not easy to come by, and may discourage researchers from engaging with the public sector, thus limiting what is discovered. Respondent 8, a former employee of the SACS, argues that one of the sector's major problems has been lack of awareness, both of the general population and of politicians (20/10/05). Information is not disseminated easily within the sector as well. The strained relationship between government and the private sector has limited the knowledge transfer that has occurred. According to Frikkie Venter, managing director of GSL, the company which operates Mangaung prison, although there is some exchange of best practices between the public and private sectors, to a large extent, government is "trying to reinvent the wheel that already runs in Bloemfontein" (30/11/05).

5.2 Prison Operation

Internationally, the main operational issues raised about prisons which are contracted to the private sector revolve around conditions for prisoners and prison workers, as they are often much worse than public sector prisons. Ironically, the situation in South Africa is reversed, with PPP prisons generally setting the benchmarks for correctional service provision (Venter, 30/11/05). Unfortunately, many of the benefits attributed to private sector prison provision, such as improved rehabilitation,

are difficult to quantify at this point. However, there are a number of other issues that have been identified as problematic with regards to PPP prison service provision, specifically, the high cost to government, the tiering of prison services, and the monitoring of the sector. These matters have also been problematic in other South African service sectors.

5.2.1 The Costs of Private Sector Involvement

Privatization was used as a government strategy to address the backlogs in service provision at the end of apartheid, not only in correctional services but in a number of other public sectors. Government believed that outsourcing the risk and the financial insecurity, largely by having the private sector provide all initial, up-front costs, would make their job easier. Services would be provided quicker and government departments could focus on regulation and other aspects of service provision, for instance, the improvement of existing public sector facilities. This was the strategy followed in a number of sectors, particularly the Build Operate Transfer (BOT) schemes in road transportation and water. Telecommunications and electricity were also outsourced, or planned to be outsourced, in order to speed service delivery.

However, as the experience of the PPP prisons shows, in many cases, costs and risks for government have increased with private sector involvement. The DCS, like the Department of Transport and municipal water officials, is now tied into long-term contracts which take a set portion of the annual budget. Rather than making government's job easier, these contracts have created constraints, particularly on the budget, which will last for the 25 years. The present DCS leadership is locked into contracts over which they have little control. The contract termination clauses are quite specific, and even if there is just cause to end the contracts, for example, misconduct on the part of the consortia, government must pay all or almost all of the remainder of the balance of contract fees; this would be highly difficult for the DCS, which has had to freeze posts and cut rehabilitation programs in public prisons in order to the afford the contracts as they are now. Despite Minister's Mzimela's claims of massive cost savings through these projects, experience thus far has shown that these prisons are not easily affordable to the DCS and, although figures vary, they claim a disproportionate share of the budget, not unlike the private health care system. As a feasibility study is presently being conducted as to whether the contracts can be

renegotiated, it is too soon to assess what the future costs of this sector will be to DCS.

5.2.2 Tiering of Public and Private Services

While private sector involvement has been sought in order to improve service delivery, in many cases, privatization has led to increased inequality. In the case of prisons, as in health, private sector involvement has led to the tiering of services, with private sector facilities generally much better than public facilities. This raises many ethical issues, such as whether it is moral to create concurrent sectors and take resources away from a public sector that needs serious attention, and how equitable it is to allow certain individuals, either the 6000 maximum security prisoners in Kutama-Sinthumule and Mangaung or those able to afford private health care services, to enjoy such improved conditions. In the case of prisons, there is also a concern that PPP prisons offer luxuries that are not available to non-incarcerated South Africans, such as three nutritious meals each day and extensive vocational training and education opportunities.

In other service sectors, inequality is related to cost recovery and affordability. In sectors such as electricity, telecommunications, and water, the end of subsidies for the poor and increases in service fees have led to massive disconnections and illegal reconnections. Rather than extending services, privatization in some sectors has lead to a decrease in service use, as in the example of telecommunications where, during Telkom's period of exclusivity, despite millions of additional lines rolled out, there was a net loss in fixed line connection. Many people still rely on paraffin for light and cooking, and rivers and boreholes for water. Massive community mobilization against privatization was largely related to issues of cost recovery in these sectors, and has contributed to government's weakening enthusiasm for private sector involvement in service provision.

5.2.3 Regulation

One of the most critical issues identified in the PPP prison sector, like many other sectors both in South Africa and internationally, is the ineffective regulation of these prisons. Regulation is a challenge for many governments and government sectors which engage with the private sector; DCS has the added burden of having to

successfully run the public sector at the same time. Although there are a number of monitoring structures in place, including self auditing within the prisons, internal monitors in the DCS, and external monitors in other parts of government and civil society, it seems that regulation has been problematic. The main vehicle through which accountability is ensured is the DCS controller present at each prison on a daily basis. However, as has been the case internationally, there are signs that controllers may be subject to co-optation into the prison administration, thus weakening their role as independent monitors. Accounts from Mangaung prison by both an inspector and an IPV from the Judicial Inspectorate indicate contract violations which are not being properly dealt with, including suicides misrepresented as natural deaths and the illegal use of solitary confinement (respondent 6, 13/10/05; respondent 9, 23/11/05). Although the Judicial Inspectorate has been made aware of these issues, it is unclear how much power that body has over the DCS or the private companies. Furthermore, although many respondents argue that companies may be penalized for any breach of contract, including things as seemingly minor as serving food at the wrong temperature, the consortia have been fined a negligible number of times; Kutama-Sinthumule has been fined once and Mangaung either once, or "a few" times, depending on the account (Venter, 30/11/05; respondent 10, 25/10/05). While this could indicate impeccable service provision, from the accounts of Judicial Inspectorate employees, it seems more likely that the small number of fines is a sign of weak measures of accountability. Furthermore, as stated earlier, it may not be in the government's best interest for contract failure, if it exists, to be apparent; it is unlikely that DCS can afford to pay for either of the contracts to be terminated.

Regulation has been a major problem for other countries with private prisons; regulation has also been challenge for other South African service sectors. Specifically, in the telecom sector, weak regulation allowed Telkom to capitalize on its period of exclusivity, by drastically increasing prices and using its monopoly status to limit growth in other sectors of the market, such as internet provision and other value added services. Weak regulation leads to further inequality and the risk that services will not be delivered as desired by government.

5.3 Areas for Future Research

Although the future of the PPP prison sector is still unclear, with the interest the private prison sector has generated internationally, it is likely that South Africa's PPP prisons will not be the last prisons built and operated by the private sector. Thus, it is imperative to fully understand South Africa's experience as it may inform future decisions by governments in developing countries in their dealings with the private sector in correctional services and other public service provision. While this research has identified a number of key issues that have arisen around South Africa's PPP prisons, there are gaps which need to be addressed in future research.

Most importantly, further research on accountability needs to be conducted. Monitors from all facets of regulation, including those from within the prison administration, DCS monitors, particularly the controllers, and externals auditors, primarily the IPVs should be consulted. It would also be very useful to consult PPP prison inmates. Research should aim to uncover whether monitors are being co-opted, whether accountability is truly effective, or whether the situation within the prisons is different from what it should be. It might also be useful to make a detailed comparison of the PPP prisons with another privatized service sector with similar monitoring structures, such as road provision, in order to delve more deeply into these issues.

Further comparative studies, particularly with other PPPs which were created shortly after the PPP prisons, might also prove illuminating. Many concerns raised about these prisons are related to costs, such as the high profits, the k-factor, and the high interest rates; it may be that comparative research will explain some of these issues. Furthermore, a deeper assessment of two or more specific sectors might provide a more thorough assessment of private sector involvement in South African service sectors, for instance, what is working well and what is not working well, what the effect of Treasury guidelines has been, and whether there is perhaps a new and better PPP model that has been created from the PPP experience since the PPP prisons were contracted.

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