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Privatized Prisons and Human Rights
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I. Introduction

Over the past thirty years, countries around the world have begun shifting some of the massive responsibility for managing incarceration from the hands of government bodies to those of private corporations. The rapidly growing trend toward privatization has raised an increased threat to human rights in numerous ways, impacting prisoners, their families, prison personnel, and migrants who are disproportionately detained in private facilities. The transfer of a state power to private companies seeking a profitable enterprise creates incentives for over-incarceration, maltreatment of prisoners and guards, and a denial of opportunities for prisoner rehabilitation.

Prison privatization is not a new phenomenon, nor is it necessarily incompatible with human rights. Public prisons have historically been site to some of the most egregious human rights violations, and as states struggle with thinly-stretched budgets to accommodate growing numbers of prisoners, it is not altogether surprising that governments consider private alternatives. Although problems persist in public institutions, and there may be some perceived or short-term economic advantage to privatization, the evidence obtained thus far strongly suggests that it is a dangerous practice that frequently results in the deprivation of human rights. A closer look at privatization also reveals that it often fails to deliver its promised reduction in public spending. When governments commit to what are sometimes 25-year contracts that heavily favor private industry, and that industry fails to perform at an adequate standard, privatization creates a lose-lose situation for both prisoners and the public.

Many countries throughout the world currently employ private and quasi-private

prisons,¹ but the practice is most prevalent in Australia, the United Kingdom, and the United States.² Although no country as of yet has completely privatized its prison system, the state of Arizona has recently announced plans to do so, potentially becoming the first to place death row inmates in private custody.³

Private corporations' main priority (and legal obligation) is to make a profit, and they have recognized a huge profit potential in corrections, on which the U.S. alone spends \$52 billion per year.⁴ The profit-driven nature of private prisons affects both employees and prisoners alike. One inmate reported prominent signs in the prison's administration buildings displaying the dollar amount of the previous day's stock closing.⁵ Evidence has shown that when financial concerns are at the forefront of administrators' minds, the health and safety of prisoners and guards is not. This creates an environment ripe for human rights abuse.

While private prisons pose threats to a large number of international human rights – indeed, every right affected by any form of incarceration – the effects can be seen most dramatically with regard to the right to life, to liberty (including freedom from arbitrary detention), and to be treated with humanity and dignity. Although there is much debate surrounding the cost and quality of private prisons, the purpose of this report is to highlight the grave human rights concerns associated with privatization, primarily using

¹ See, e.g., *Prison Privatisation Report International*, Public Services International Research Unit of the University of Greenwich, London, England, No. 74, Oct. 2006, available at <http://www.psiu.org/ppri.asp>.

² A 2004 report found that Australia had the highest percentage of its prisoners in private facilities at 17%, followed by the United Kingdom with 10%, and the United States with 7%. Brian Gran and William Henry, *Holding Private Prisons Accountable: A Socio-Legal Analysis of "Contracting Out" Prisons*, Social Justice, 2007, abstract available at <http://www.britannica.com/bps/additionalcontent/18/34207418/Holding-Private-Prisons-Accountable-A-SocioLegal-Analysis-of-Contracting-Out-Prisons>.

³ Jennifer Steinhauer, *Arizona May Put State Prison in Private Hands*, N.Y. Times, Oct. 23, 2009, available at <http://www.nytimes.com/2009/10/24/us/24prison.html>.

⁴ *One in 31*, Pew Center on the States, Mar. 2009, available at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

⁵ Alex Friedmann, *Prison Privatization: The Bottom Line*, Corp Watch, Aug. 21, 1999, available at <http://www.corpwatch.org/article.php?id=851>.

the U.S. as an example, and to call for further investigation and consideration of alternatives.

II. Rights Violated

A. Right To Life

Article 9(1) of the ICCPR protects the human right to life, a right that has been repeatedly violated by actors within private prisons. Deaths in the U.S. have included that of Gregorio de la Rosa who was beaten to death by inmates using a padlock tied to a sock while private guards stood by, watching and laughing.⁶ The incident occurred just a few days prior to his release from a New Mexico private prison run by the GEO Group, the second largest prison company in the U.S. In 2006, a jury found the corporation liable for the death and for trying to cover up by losing and destroying evidence, ordering the company to pay \$47.5 million in compensation.⁷

England's Rye Hill private prison has been site to several inmate deaths, and was declared by the Chief Inspector of Prisons to be "unsafe and unstable for both prisoners and staff."⁸ In Australia in 2005, the second largest private employer in the world, known as G4S, came under scrutiny following the death of an Aboriginal man who was deprived of water and suffered third degree burns while being transported in a van that reached 50 degrees Celsius.⁹ The next year, an inmate in a G4S facility was found dead in his cell beside a hand-written note reading: "Asthma attack. Buzzed for help. No response." His repeated attempts to call for help went unheard, as the intercom system in

⁶ *Beating Death Lawsuit Ends in Settlement*, Brownsville Herald, Jan. 7, 2010, available at <http://www.brownsvilleherald.com/news/rosa-107144-settlement-beating.html>.

⁷ *Id.*

⁸ *Privatisation of Parklea: Analysis of the Potential Operators*, Stop The Cell-Off, July 2009, available at http://www.stopthecelloff.org.au/documents/Private_Prisons_Company_Profiles_30jul09.pdf.

⁹ *Id.*

his cell was broken.¹⁰

Some prisoners have resorted to taking their own lives rather than endure the conditions of their confinement in private facilities. In 2007, the GEO Group settled a lawsuit with the family of a woman in Texas who committed suicide shortly after being locked in a cell with male inmates who allegedly raped and beat her.¹¹ A mentally ill prisoner in a Santa Fe County Jail was found hanging in his cell while he was supposedly under surveillance.¹² Last year, five prisoners attempted a group suicide by hanging (one actually died), in a semi-private facility in Chile. Six inmates committed suicide in the same facility after being transferred there four years ago.¹³

Over a dozen countries around the world have employed private companies within their immigration detention systems, often with tragic results.¹⁴ U.S. Immigration and Customs Enforcement (ICE) has counted 107 deaths in migrant detention facilities since 2003,¹⁵ one Arizona private detention center topping the rest with nine fatalities.¹⁶ In 2007, a detained Guinean tailor named Boubacar Bah suffered a skull fracture at a privately run facility in New Jersey.¹⁷ He was left in isolation without treatment for over 13 hours before an ambulance took him to a hospital where he eventually died. The Yarls Wood detention center in the UK has been accused of denying medical treatment to

¹⁰ Natalie Tkaczuk Sikora, *Prisoner Left Death Note in Cell*, Herald Sun, Nov. 29, 2006, available at <http://www.heraldsun.com.au/news/victoria/prisoner-left-death-note-in-cell/story-e6frf7kx-111112600729>.

¹¹ *Privatisation of Parklea*, supra note 8.

¹² *Id.*

¹³ Stephen Nathan, *Prison Privatisation: A Brief International Overview*, Discussion at UNDP Mission on Penitentiary Modernisation in Panama City, Panama, Oct. 29-30, 2009.

¹⁴ These include the U.S., Sweden, South Africa, Canada, the U.K., Japan, Australia, the Czech Republic, Luxembourg, Ireland, Estonia, Italy, France, Portugal, Finland, and Germany. Michael Flynn and Cecilia Cannon, *The Privatization of Immigration Detention: Towards a Global View*, Global Detention Project, available at http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

¹⁵ Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, N.Y. Times, Jan. 9, 2010, available at <http://www.nytimes.com/2010/01/10/us/10detain.html>.

¹⁶ *Id.*

¹⁷ *Id.*

children in their custody, often producing life-threatening results.¹⁸

B. Right to Liberty

Article 9(1) of the ICCPR ensures the right to liberty and security of the person, and states that “[n]o one shall be subject to arbitrary arrest or detention.” Private prisons increase the risk of arbitrary detention, as individuals standing to profit may seek to influence legislators, parole boards, and even judges. In February 2009, two Pennsylvania judges were charged with accepting \$2.6 million in exchange for sentencing thousands of juveniles to two privately run youth detention centers.¹⁹

Prisons that deny inmates opportunities for education and rehabilitation effectively hinder their chances of obtaining release and a better life outside of prison. After three decades of privatization, there is still no proof that private prisons better rehabilitate than public, with substantial evidence to the contrary.²⁰ A report by the Chief Inspector of Prisons on a private facility in Scotland stated that the “lack of proper provision for basic education in reading, writing and numeracy is a serious concern.”²¹ A recent U.S. study found that “private prison inmates had a greater hazard of recidivism in all eight models tested, six of which were statistically significant.”²²

Private facilities present additional risks of violating the liberty rights of migrants. The Working Group on Arbitrary Detention has consistently stated that “detention shall be the last resort and permissible only for the shortest period of time, and that alternatives to detention shall be sought whenever possible, all of which particularly concern the

¹⁸ Sophie Black, *Private Contractor Serco to Run Detention Centres*, Crikey, July 1, 2009, available at <http://www.crikey.com.au/2009/07/01/private-contractor-serco-to-run-detention-centres/>.

¹⁹ Matt Rourke, *Pennsylvania Judges Accused of Jailing Kids for Cash*, Feb. 11, 2009, available at <http://www.msnbc.msn.com/id/29142654/>.

²⁰ Nathan, *supra* note 13.

²¹ *Privatisation of Parklea*, *supra* note 8.

²² Andrew L. Spivak and Susan F. Sharp, *Inmate Recidivism as a Measure of Private Prison Performance*, University of Oklahoma Department of Sociology, Feb. 29, 2008.

deprivation of liberty applied to asylum-seekers, refugees and irregular migrants.”²³ In its 10th Session Resolution on Arbitrary Detention, the Human Rights Council asked states to ensure that anyone deprived of his/her liberty by arrest or detention, including those detained for administrative reasons, have the opportunity to challenge the lawfulness of his/her detention in court and to “ensure that the conditions of pretrial detention do not undermine the fairness of the trial.”²⁴ Despite these urgings, many countries continue to routinely detain undocumented immigrants and to deny them a fair opportunity to rebut charges made against them.

Migrant detainees in the U.S. are frequently transferred from facility to facility, often away from major cities and into remote areas, and often without notice to either detainees or their families.²⁵ This practice interferes with detainees’ rights by separating them not only from family, but also from the resources and evidence that may be vital to defending against deportation. Human Rights Watch has called this a “chaotic game of musical chairs [that has] dire consequences since it may keep [detainees] from finding an attorney or presenting evidence in their defense.”²⁶ When the director of the New York City Bar Justice Center asked the warden at a private facility if letters containing lawyers’ legal advice could be forwarded to transferred detainees, she was told that he would first

²³ *Report of the Working Group on Arbitrary Detention*, 10th Session, A/HRC/10/21, Feb. 16, 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/110/43/PDF/G0911043.pdf?OpenElement>.

²⁴ *Resolution on Arbitrary Detention*, Human Rights Council, 10th Session, A/HRC/RES/10/9, Mar. 26, 2009, available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_9.pdf.

²⁵ *Locked Up Far Away*, Human Rights Watch, Dec. 2, 2009, available at <http://www.hrw.org/en/reports/2009/12/02/locked-far-away> (stating that in 2008, the majority of detainees were transferred at least once, with 24% subject to multiple transfers).

²⁶ *U.S.: Remote Detainee Lockups Hinder Justice*, Human Rights Watch, Dec. 2, 2009, available at <http://www.hrw.org/en/news/2009/11/30/us-remote-detainee-lockups-hinder-justice>.

have to consider the financial interests of his private shareholders.²⁷

Australia has persisted in its policy of mandatory detention for any non-citizen without a valid visa since the passage of its Migration Act in 1958.²⁸ In July of 2008, however, the Minister of Immigration announced new directions for Australia's immigration detention system based on seven key values. These values include a commitment to using detention only as a last resort, and for the shortest practicable time; avoiding the detention of children and their families, where possible; and ensuring conditions that comport with the inherent dignity of the human person.²⁹ Human rights groups hope this pronouncement will translate into change at the practical level.

C. Right to Be Treated with Humanity and Dignity

Article 10 of the ICCPR guarantees the right of “[a]ll persons deprived of their liberty [to] be treated with humanity and with respect for the inherent dignity of the human person.” Private prisons throughout the world have attracted notoriety and lawsuits for their inhumane conditions, mistreatment of prisoners and employees, and improper supervision, at times resulting in suicides, strikes, and major prison riots.³⁰

Migrant detainees in the U.S. have reported verbal abuse, strip searches, and poor to no mental health and medical care.³¹ Francisco Castaneda, a Salvadoran immigrant and father, was subject to what a federal judge called “beyond cruel and unusual” punishment at a San Diego facility operated by Corrections Corporation of America

²⁷ Nina Bernstein, *Immigrant Jail Tests U.S. View of Legal Access*, N.Y. Times, Nov. 1, 2009, available at <http://www.nytimes.com/2009/11/02/nyregion/02detain.html>.

²⁸ *Immigration Detention and Human Rights*, Australian Human Rights Commission, accessed Feb. 27, 2010 at http://www.hreoc.gov.au/Human_RightS/immigration/detention_rights.html#2.

²⁹ *Id.*

³⁰ See, e.g., *Prison Riots Show Continued Flaws of Private Prisons*, Institute for Southern Studies, Feb. 2, 2009, available at <http://www.southernstudies.org/2009/02/prison-riots-show-continued-flaws-of-private-prisons-more-than-2000-inmates-rioted-at-the-reeves-cou.html>.

³¹ Julia Dahl, *Private Prison Co. Again Accused of Human Rights Abuses*, abc news, Aug. 5, 2008, available at <http://abcnews.go.com/Blotter/story?id=5466166&page=1>.

(CCA), the nation's largest private prison firm.³² While in custody, Castaneda informed ICE medical staff of a painful lesion on his penis, but was denied a biopsy for 11 months. After the American Civil Liberties Union (ACLU) intervened, a biopsy was finally scheduled, but he was abruptly released before the procedure. Castaneda was diagnosed with metastasized penile cancer, which led to the amputation of his penis, and his death one year later. His testimony helped prompt the introduction of legislation that would ensure mandatory standards of care for detainees, but as of yet no bill has been passed.³³

Last June, the ACLU sued the GEO Group for its inhumane treatment of prisoners at a facility in New Mexico. Prison guards are alleged to have left a group of seven male prisoners, wearing little to no clothing, in a cold shower room for hours. The prisoners claimed they were teased and taunted, while being videotaped by a female guard. Several of them developed skin conditions but were denied treatment after the incident.³⁴

Australia's experience with private immigration detention has been fraught with problems. In 2001 and 2002, detainees set fire to several facilities and attacked guards with iron bars in protest of their inhumane treatment.³⁵ In 2005, a consortium of human rights groups filed a complaint against Global Solutions Limited, a corporation operating seven facilities throughout the country.³⁶ The complaint alleged various human rights violations including cruel, inhuman and degrading treatment resulting from indefinite detention and inadequate access to health care. It documented high rates of depression, self-

³² Henry Weinstein, *Feds' Actions 'Beyond Cruel,'* L.A. Times, Mar. 13, 2008. available at <http://articles.latimes.com/2008/mar/13/local/me-cruel13>.

³³ Nina Bernstein, *Better Health Care Sought for Detained Immigrants,* N.Y. Times, May 7, 2008, available at http://www.nytimes.com/2008/05/07/washington/07detain.html?_r=1.

³⁴ Deborah Baker, *Operator of Private NM Prison Sued by 7 Inmates,* abc news, Jun. 17, 2009, available at <http://abcnews.go.com/US/wireStory?id=7866633>.

³⁵ Flynn and Cannon, *supra* note 14.

³⁶ *Submission to the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises concerning Global Solutions Limited (Australia) Pty Ltd,* available at <http://www.hrca.org.au/OECD.pdf>.

harm, and suicide in these facilities. The government-sanctioned Palmer Report of 2005 criticized Australia's contract with GSL as "fundamentally flawed," finding inadequate health care in addition to unacceptable surveillance practices of female detainees.³⁷

New policies introduced in 2005 have reportedly led to significant improvements in Australia's immigrant detention facilities, including better relations between staff and detainees.³⁸ Significant concerns, remain, however. A recent report highlighted human rights abuses at the Christmas Island detention centers, which hold hundreds of asylum seekers arriving to Australia by boat, most from Afghanistan, Sri Lanka, Iraq, and Iran.³⁹ The report found serious deficiencies in areas such as accommodations, physical and mental health care, legal safeguards, education and recreation. In his visit to Australia just last December, the Special Rapporteur on the right to health expressed particular concern for the rights of Island detainees, who are largely isolated from health services and whose location presents obstacles to non-governmental monitoring.⁴⁰ He also noted that asylum claims on the Island are determined by a non-statutory process, and that these detainees thus lack the rights to judicial review afforded their counterparts on the mainland.⁴¹

Not only prisoners suffer in the hands of private corporations, which have also been criticized for mistreating their employees. In October of last year, CCA and Dominion Correctional Services agreed to pay \$1.3 million as part of a settlement with

³⁷ Flynn and Cannon, *supra* note 14.

³⁸ *Id.*

³⁹ *Immigration Detention and Offshore Processing on Christmas Island*, Australian Human Rights Commission, Oct. 2009, available at http://www.hreoc.gov.au/Human_RightS/immigration/idc2009_xmas_island.html. For other reports on immigration detention facilities in Australia, see http://www.hreoc.gov.au/Human_RightS/immigration/detention_rights.html#9_3.

⁴⁰ *Preliminary Observations and Recommendations*, UN Special Rapporteur on the Right to Health, Canberra, Australia, Dec. 4, 2009, available at <http://www2.ohchr.org/english/issues/health/right/>.

⁴¹ *Id.*

the Equal Employment Opportunities Commission (EEOC).⁴² The EEOC had brought suit on behalf of 21 female employees who were allegedly subject to a sex-based hostile work environment and retaliation, including numerous instances of harassment and rape.

One of the primary places that private prisons cut costs in order to maximize profit is in the training, payment, and benefits given to their employees. For example, whereas guards in the state of California commonly make three-figure salaries with bonuses and overtime payment,⁴³ private facilities, often located in rural areas, may pay as little as \$14,000 to \$20,000 per year.⁴⁴ A 2008 survey of seven private facilities in the U.S. found that the guard turnover rate was over 90%.⁴⁵ In August of last year, a Kansas District Court unsealed a settlement agreement in which CCA agreed to pay \$7 million in back pay and legal fees to more than 30,000 employees who brought a national class action lawsuit alleging they had been required to work without compensation.⁴⁶

Companies also save money by hiring untrained and inexperienced guards. One private detention center in Texas was deemed “at risk” after failing inspection on 17 grounds, including 24 guards working without a license. A recent surprise inspection of the same facility, following the accidental release of a prisoner, revealed that 72% of its employees held only temporary jail licenses, available without training or testing.⁴⁷

⁴² *Private Prison Pays \$1.3 Million to Settle Sexual Harassment, Retaliation Claims for Class of Women*, Press Release, U.S. Equal Employment Opportunity Commission, Oct. 13, 2009, available at <http://www.eeoc.gov/eeoc/newsroom/release/10-13-09.cfm>.

⁴³ Dan Morain, *Private Prisons? A Sweet Deal for Some*, Sacramento Bee, Jan. 7, 2010, at 13A, available at <http://www.sacbee.com/1190/story/2443722.html>.

⁴⁴ *Dan Rather Reports*, Feb. 16, 2010, abstract available at <http://www.prnewswire.com/news-releases/hdnets-dan-rather-reports-investigates-the-billion-dollar-business-of-private-prisons-84480222.html>.

⁴⁵ *Id.*

⁴⁶ *Court Orders Settlement Unsealed*, Prison Legal News, Aug. 28, 2009, available at [https://www.prisonlegalnews.org/\(S\(sfucfrvnnouanuqwmbord355\)\)/260_displayNews.aspx](https://www.prisonlegalnews.org/(S(sfucfrvnnouanuqwmbord355))/260_displayNews.aspx).

⁴⁷ Andrew Strong, *72% of Robstown Prison Guards Hold Temporary License*, Private Prison Watch, Feb. 2, 2010, available at <http://privateprisonwatch.net/2010/02/02/72-of-robstown-prison-guards-hold-temporary-license.aspx>.

III.A Culture of Secrecy

Assessments of human rights in private prisons, and progress toward improving conditions, have been hindered by what one researcher calls “a shroud of commercial confidentiality that prevents proper public scrutiny and accountability of government-private sector contractual relationships and operations.”⁴⁸ In the U.S., corporations have attempted to shield themselves from scrutiny by claiming they are not subject to the freedom of information laws that apply to the government. The Private Prison Information Act, introduced unsuccessfully in Congress in 2007, would have required federally contracted facilities to make public the same information required of federally run facilities.

Some states have recognized the need for greater transparency. Last year the Tennessee Court of Appeals ruled in favor of a former inmate and prison reform advocate seeking access to records held by CCA, including contracts, legal settlements, and cases in which CCA had been sanctioned or fined. The court held “without difficulty [that] CCA is the functional equivalent of a state agency” and as such is bound by the state’s Public Records Act. The court then reiterated the state’s primary role in incarceration:

The providing of prisons is a responsibility that the State cannot delegate away to a private entity. While the State can contract with private entities such as CCA to operate prisons . . . the ultimate responsibility to provide for its prisoners belongs to the State of Tennessee.

Despite the Tennessee ruling, private prisons operating in many states, as well as those contracting with the federal government, continue to withhold information vital to gaining a clear understanding of how such facilities are functioning. The federal

⁴⁸ Stephen Nathan, *Privatisation Still Not Proven: A Snapshot of International Developments*, Presentation at Scottish Consortium on Crime and Criminal Justice, Edinburgh, Scotland, Sept. 21, 2007, available at <http://74.125.155.132/search?q=cache:pomj0DRnr7gJ:www.scccj.org.uk/documents/Edinburgh.doc+PPP+stephen+nathan+france&cd=1&hl=en&ct=clnk&gl=us>.

government has also resisted disclosing information regarding its contracts with local and private facilities. Advocates were optimistic following the Obama administration's promise to increase transparency with regard to migrant detention, but the Office of the Federal Detention Trustee (OFDT), charged with overseeing that system, continues to decline requests for interviews and information.⁴⁹

Efforts at secrecy and cover-up have been especially prevalent with regard to migrant facilities. Documents recently obtained pursuant to the Freedom of Information Act revealed ten deaths of detainees that were never disclosed.⁵⁰ Records showed, for example, that officials debated sending the body of Boubacar Bah (mentioned above) back to Africa to avoid public embarrassment.⁵¹ Also discovered was a falsified medication log, showing that a 22-year old detainee had been given a prescription pain killer for a broken leg *after* the time the young man had committed suicide.

A recent paper on private immigrant detention noted that one of the key differences between countries that have been “amenable to reform,” such as Germany and Sweden (considered a “model country” for its detention policies), and those that have been more resistant, such as Italy, South Africa, and the U.S., was transparency.⁵² The report stated that “Sweden is the rare case of a country that reversed direction on privatization when private management spurred widespread criticism.” The Refugee Council of Australia, who has praised Sweden for its exemplary model, attributes its success in part to “not . . . increasing security and secrecy, but [rather] increasing

⁴⁹ Dan Rather Reports, *supra* note 42.

⁵⁰ William Fisher, *Accountability and Questions After Revelations of Immigrant Deaths Were Covered Up*, Truthout, Jan. 17, 2010, available at <http://www.truthout.org/accountability-questions-after-revelations-immigrant-deaths-were-covered-up56022>.

⁵¹ Bernstein, *supra* note 15.

⁵² Flynn and Cannon, *supra* note 14.

consultation and access for NGOs, researchers and the media.”⁵³

IV. Alternatives

Privatization is not an inevitable phenomenon, and some countries have recognized the dangers it presents and refused to engage in the practice. In 2006 the director general of the Dominican Republic’s prison service reiterated his government’s commitment to keeping incarceration in the public sphere. Referencing independent research in the U.S., he criticized the “crime market,” stating that “the consequences of this [privatization] phenomenon cannot be more sinister.”⁵⁴

In 2004 New Zealand became the first country to abolish private prisons through legislation, ending its nine year “experiment” with privatization and terminating all contracts with private companies.⁵⁵ Corrections minister Mark Gosche stated:

The government is aware of overseas experience of private prison contracting. However, the decision was based on the fact that prisons, by their very nature, involve the use of highly coercive powers against individuals 24 hours a day, seven days a week. The government believes that such powers should not be wielded by private sector organisations. Rather, the government itself should be directly responsible for exercising these powers appropriately.

Although the legislation did not abolish all forms of privatization (prisoner escort and courtroom custodial services may still be contracted out, as may prison construction and rehabilitation programs), this was a powerful step that may encourage other countries to follow suit. As an example of the politicized nature of the private prison debate, however, New Zealand’s stance toward private prisons has changed with the transfer of power to a new party. Despite fierce

⁵³ *Id.*

⁵⁴ *Prison Privatisation Report International*, *supra* note 1.

⁵⁵ Corrections Act of 2004, available at <http://www.corrections.govt.nz/policy-and-legislation/corrections-act-2005.html>; *Prison Privatisation Report International*, *supra* note 1, No. 54, Apr. 2003, available at <http://www.psir.org/justice/ppri54.1.htm>.

opposition, last year the National government announced that private firms will again compete with the Corrections Department to run new prisons.⁵⁶

In November of last year, Israel's High Court of Justice set world-wide precedent holding that private prisons violate individual rights to personal freedom and human dignity. Supreme Court President Dorit Beinisch wrote on behalf of eight of the nine justices:

[T]he very transfer of the powers to administer a prison from the state, which acts in the name of the public, to the hands of private businessmen who operate for profit, causes harsh and grave damage to the basic human rights of prisoners and to their personal freedom and human dignity.

Attorney Gilad Barnea, who represented one of the petitioners in the Israeli case, stated that other countries will study Israel's ruling carefully and that hopefully it "will be a light unto the nations." The only other court challenge to the legality of privatized prisons occurred in Costa Rica, where it was rejected.⁵⁷

The perceived need for privatized prisons and the resulting risks to human rights abuse are inextricably linked to other human rights issues within the criminal justice context, many of which could be addressed through sentencing reform. Where states have succeeded at lowering their prison populations – without foregoing community safety – much of the pressure to privatize is eliminated. For example, in the U.S., the Michigan Prisoner ReEntry Initiative is largely credited with reducing the state's prison population by several thousand since 2006. Despite record-breaking unemployment

⁵⁶ Martin Kay, *Private Firms to Tender for Jails Again*, The Dominion Post, Feb. 16, 2009, available at <http://www.stuff.co.nz/national/1401654>.

⁵⁷ Dan Izenberg, *High Court Prohibits Privately Run Prison*, Jerusalem Post, Nov. 20, 2009, abstract available at <http://www.jpost.com/Cooperations/Archives/>.

rates, Michigan's recidivism is also down from 48 percent to 33 percent.⁵⁸

A recent report by the National Council on Crime and Delinquency illustrates the potential savings of using alternatives to incarceration for low-level offenses. Options such as drug treatment, electronic monitoring, and work release programs could reportedly save the U.S. \$9.7 billion, while ameliorating the human rights issues posed by overcrowding and privatization.⁵⁹

V. Recommendations

The serious human rights abuse currently taking place in private prisons calls for greater attention and accountability. Only when governments and corporations allow for transparency in their incarceration practices will the information vital to a sound debate make a thorough assessment possible. Human Rights Advocates urges the Human Rights Council to ask the Working Group on Arbitrary Detention to investigate this matter and produce a report on its findings.

HRA asks countries currently employing private prisons to carefully monitor those facilities for human rights abuse, *ask* whether private prisons are working, and explore possibilities to move away from privatization. Countries contemplating privatization should conduct careful examination of the risks inherent in this practice and consider alternatives such as sentencing reform. Finally, HRA commends those countries that have resisted privatization and calls for cooperation among nations to discover the best mechanisms to manage incarceration – with the goal of *reducing* incarceration – in accordance with international law and respect for human rights.

⁵⁸ Roger Rapoport, *California's 'No' to Michigan on Inmates a Lose-Lose Deal*, S.F. Chronicle, Aug. 23, 2009 at E2.

⁵⁹ *The Extravagance of Imprisonment Revisited*, National Council on Crime and Delinquency, Jan. 2010, available at <http://www.nccd-crc.org/nccd/dnld/Home/focus0110%20.pdf>.