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**The Human Rights Implications of Prison Privatization
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I. Introduction

Several countries utilize private corporations to perform the services associated with the detention of criminal inmates and migrants. The form of these arrangements may vary greatly. Ranging from contracting for a limited service, such as food or transportation, to complete private construction, operation and management. There are also great varieties between the types of private facilities, from low-security immigration detention centers to maximum-security prisons.

Some of the countries that have experimented with privatization of prisons have seen widespread violations of fundamental human rights including the right to life, the right to be treated with humanity and dignity, the right to food and medical care and the right to family unity. The United States, Australia and the United Kingdom are the focus of this report because they have the largest privatized prison systems. Their private prisons have also produced egregious human rights violations.

Human Rights Advocates (“HRA”) is concerned that the prison privatization phenomenon is a dangerous trend that creates an environment which allows for human rights violations. Private corporations’ duty to their shareholders is to maximize profits. In the prison industry they strive to spend the minimum on costs such as guards, food, and medical care. This results in an unsafe environment where prisoner safety and human dignity are compromised. Private prisons are charged with the responsibility of performing the states function of prisoner rehabilitation. However, their dedication to this objective can be questioned as recidivist offenders are turned into potential new contracts.

In 2004, the Israeli legislature passed an amendment which allowed for prisoners to be transferred to private facilities. This decision set off a controversy and petitions challenging its legality. In 2009, the Israeli High Court of Justice ruled that private prisons violate prisoner's basic human rights and dignities.

The Court found that the privatization amendment gave the prison corporations an invasive authority over prisoners. It further found that the ability to enforce criminal law by incarcerating inmates was a one of the state's fundamental powers. There was concern that the legitimacy of depriving a person of their liberty would be lost if control was placed in the hands of private corporations.

The Court also expressed concerns that prisoners human rights would be undermined by a desire to operate at profit maximizing efficiency.¹ HRA expresses hope that other nations will take heed to the principles articulated in the Israeli High Court of Justice's decision regarding the practice of prison privatization.

II. The Private Prison Industry

A. The United States of America

In the 1980s many state and federal agencies faced budgetary concerns associated with the high cost of imprisoning a growing number of inmates. This led several agencies to seek private investment. Private corporations were awarded lucrative, often long-term contracts to construct, manage, and operate prison facilities. In 2000, 6% of the United States' prisoners were detained in private facilities. This figure has now risen

¹ Tomer Zarchin, *International Legal Precedent: No Private Prisons in Israel*, *Haaretz*, November 20, 2009. Available at <http://www.haaretz.com/print-edition/news/international-legal-precedent-no-private-prisons-in-israel-1.3774>

to 9%.² It is reported that private prisons are a \$22.7 billion dollars industry in the United States.³

A brief examination of the major corporate actors illustrates the pervasiveness of the private prison industry. One of the largest of these corporations is Correction Corporation of America (“CCA”). CCA has seen rapid growth since it was founded in 1983. It currently houses approximately 75,000 offenders in more than sixty facilities. CCA has contracts with all three federal corrections agencies and with nearly half of all states.⁴

Other companies have similarly flourished in the quickly expanding private prison industry. CCA’s main competitor in the industry is the GEO Group Inc. (“GEO”), which operates 118 facilities with over 81,000 beds. The immense profit potential of the industry is exemplified by GEO’s recent merger with Cornell, another private prison company. GEO took on additional debt in the deal that was worth an estimated \$685 million dollars. It is can be assumed that this merger occurred because the corporation’s board is confident that the lucrative government contracts will continue to remain available.⁵

Some of the harshest critics of private prisons are the public correction officer and prison guard unions who recognize the threat poised by privatized prisons. The private

² *The Perverse Incentives of Private Prisons*, The Economist, August 24, 2010, available at http://www.economist.com/blogs/democracyinamerica/2010/08/private_prisons

³ D.M. Levine, *What’s Costlier than a Government Run Prison? A Private One*, CNN Money, August 18, 2010. Available at http://money.cnn.com/2010/08/17/news/economy/private_prisons_economic_impact.fortune/index.htm

⁴ <http://www.correctionscorp.com/about/>

⁵ Matt Kelley, *What’s Better Than Two Private Prison Companies? One Big One!*, April 26, 2010 available at

http://criminaljustice.change.org/blog/view/whats_better_than_two_private_prison_companies_one_big_on_e

prisons do not have to comply with the same wage and pension requirements of government agencies.⁶ This results in a high turnover rate of a poorly trained staff.

Private prisons often lower their costs and fill the frequently available positions by reducing the level of training that their employees receive. Investigators cited poorly trained guards as one of the causes of a recent Arizona prison escape.⁷ A 2008 audit reported that GEO hired 100 guards without performing criminal background checks.⁸ Prisoners' human rights are frequently violated when poorly trained guards control their environment.

B. Australia

Australia's first private prison became operational in 1990.⁹ Currently there are seven private prisons holding 17% of all inmates.¹⁰ Australia's private prisons face criticisms regarding unsafe conditions. Australia has attempted to address these concerns through a strategy that seeks to pressure corporations to maintain a safe environment to avoid government-imposed penalties.

For example, in Queensland, there is a \$100,000 penalty for an unnatural inmate death.¹¹ The effectiveness of this penalty strategy can be questioned with reference to the enormous profits of the private prison corporations. The concern is that corporations will

⁶ *Id.*

⁷ *Officials Unhappy After Changes to Kingman Prison*, Daily Herald, January 30, 2011, available at http://www.heraldextra.com/news/state-and-regional/utah/article_cb66f13c-4656-5966-9652-19618995b9a3.html

⁸ Erin Rosa, *GEO Group, Inc.: Despite a Crashing Economy, Private Prison Firm Turns a Handsome Profit*, March 1, 2009, available at <http://www.corpwatch.org/article.php?id=15308>

⁹ <http://www.aic.gov.au/documents/3/F/1/{3F18DF23-E9A6-4183-A861-68C9CF84FE27}ti36.pdf>

¹⁰ available at

<http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/ED4BA0B9D18C2546CA256EF9001B3ADA>

¹¹ *Private Prison Companies Dispute Criticisms*, The National Business Review, July 1, 2009, available at <http://www.nbr.co.nz/article/private-prison-companies-dispute-criticisms-104538>

effectively view the penalty associated with the loss of a human life as a cost of operation and continue run unsafe facilities.

In 2000 the Australian government took over the operation of a privately operated CCA women's detention facility in Melbourne. The takeover occurred after the discovery of numerous violations, mostly stemming from overcrowding and inadequate staffing. Alarming high rates, of suicide, self harm and drug overdoses were discovered. The rates of prisoner on prisoner violence and prisoner self-mutilation were found to be four times higher than the rates in government operated facilities.¹²

Australia also utilizes private facilities for immigrant detention. In 2009 Australia entered into a \$370 million (AUS) contract with the private prison corporation Serco for the operation of seven adult immigration detention facilities.¹³ One Serco operated facility located on Christmas Island exemplifies the dangerous conditions that persist in privately operated facilities.

The facility had been designed to hold 400 detainees with a surge capacity of 800. However, in 2009 the facility was operating at a surge capacity of 1,200 inmates. This overcrowding contributed to a riot after which at least 37 detainees required medical attention.¹⁴

C. The United Kingdom

The United Kingdom began to experiment with private prisons in the 1990s. Currently, 8% of Britain's prison population is incarcerated in ten private facilities. Eight

¹² Perla Astudillo, *Australia: private prisons to remain in Victoria despite government takeover of women's jail*, October 13, 2000, available at <http://www.wsws.org/articles/2000/oct2000/pris-o13.shtml>

¹³ *Serco signs AUS\$370m contract with Australian Government to transform immigration centres*, June 29, 2009, available at <http://www.serco.com/media/internationalnews/daic.asp>

¹⁴ Mike Head, *Australian Labor's Detention Regime Triggers Christmas Island Riot*, November 24, 2009, available at <http://www.wsws.org/articles/2009/nov2009/refu-n24.shtml>

of these facilities were built under the Private Finance Initiative. Under this program, the facilities are designed and constructed by private groups and then leased back to the state over a period of twenty-five years.¹⁵

In 2007 an undercover reporter for the BBC was hired as a prison guard at England's privately operated Rye Hill prison. The undercover reporter attended the requisite training course and received a salary of £250 a week, which he noted was a third less than officers in the public sector receive.¹⁶ The reporter's time in the prison facility provided a revealing glimpse into some of the dangers associated with private prisons.

The reporter found a severe shortage of prison staff.¹⁷ The undercover reporter also found an environment where bribery was rampant. The reporter was solicited by an inmate to smuggle drugs into the prison. The prisoner offered to double the reporter's weekly salary if he cooperated with the smuggling proposition.¹⁸ The prisoner's brazen request suggests that prison guards are often complicit in this type of behavior. The low salaries of private prison guards leads to a situation where they are tempted to supplement their income by engaging in the smuggling of drugs and other contraband.

A 2009 study found that Britain's private facilities are performing worse than the state run jails. The study attempted to grade prisons based on a variety of factors including escapes, rehabilitation and assault. The study found that the private facilities

¹⁵ available at http://news.bbc.co.uk/1/hi/english/static/in_depth/uk/2001/prison_ppp

¹⁶ *Private Prison Failings Exposed*. BBC News. April 16, 2007. Available at http://news.bbc.co.uk/2/hi/uk_news/6558153.stm

¹⁷ Eric Allison, *Drugs, Bribe Offers, Staff in Fear: Life at Rye Hill Jail*, *The Guardian*, April 16, 2007, available at <http://www.guardian.co.uk/uk/2007/apr/16/ukcrime.prisonsandprobation>.

¹⁸ *Id.*

had a lower combined score than the state run facilities. The study found that all but one of the ten facilities showed “serious concern”.¹⁹

D. Chile

In 2003, Chile became the first South American country to contract with private investors to build and operate prison facilities. The Chilean government handed out two of four proposed contracts to build and operate ten new prisons. These contracts anticipate that investors will receive a 12% return on their investments.²⁰

The Chilean model would rely on the same security guards who are currently employed in the public facilities to be in charge of security for the new private facilities. The service and maintenance of the facility will be provided by the private operator. This dynamic creates uncertainty regarding the line between services and security, when these areas often overlap in the prison.²¹

III. Violations of Human Rights

A. Violations of the Right to Life

The right to life is protected by Article 9(1) of the International Covenant on Civil and Political Rights. This human right is violated at private prisons throughout the world. These violations occur as a result of unsafe conditions and poorly trained employees.

One example was a settlement in Texas that followed a finding that GEO was responsible for negligently causing an inmate’s death. The inmate suffered a fatal

¹⁹ Robert Verkaik, *Private Prisons ‘Performing Worse than State Run Jails’*, The Independent, June 29, 2009, available at <http://www.independent.co.uk/news/uk/home-news/private-prisons-performing-worse-than-staterun-jails-1722936.html>

²⁰ *Can Private Money Ease a Jail Problem?*, The Economist, July 17th 2003, available at <http://www.economist.com/node/1929224>

²¹ *Id.*

beating at the hands of two inmates while prison guards watched, and afterwards destroyed critical evidence.²²

A 14 year old inmate at a private British facility committed suicide after being punched in the face by prison guards. A jury hearing the case found that physical restraints were being used unlawfully and that the death was attributable to the prison guards lack of training in high-risk assessment procedures.²³

B. Violations of the Right to Be Treated With Humanity and Dignity

Under Article 10 of the ICCPR, persons who are deprived of their liberty shall be treated with humanity and in a manner that respects their human dignity. This human right is commonly violated in private prisons.

In 2010 a CCA employee in Texas was charged with sexually abusing numerous female immigration detainees.²⁴ The Governor of Kentucky ordered 400 female inmates to be transferred from a CCA facility after numerous reports of sexual misconduct.²⁵

A juvenile facility operated by the Wackenhut Corrections Corporation in Texas provides an example of the type of human rights violations that are rampant in the private prison industry. A youth inmate reported that she was raped by prison guards nearly

²² Emma Perez –Trevino, *Beating Death Lawsuit Ends in Settlement*, January 7, 2010 available at <http://www.brownsvilleherald.com/articles/rosa-107144-settlement-beating.html>

²³ *Private Prison Company Blamed in Boy's Death*, 3 News, January 28, 2011, available at <http://www.3news.co.nz/Private-prison-company-blamed-for-boys-death/tabid/423/articleID/196310/Default.aspx>

²⁴ available at <http://www.aclu.org/immigrants-rights-prisoners-rights/sexual-abuse-female-detainees-hutto-highlights-ongoing-failure-im>

²⁵ Rebecca Boone, *AP Enterprise: Guards Shown Watching Inmate Attacks*, Mercury News, November 30, 2010, available at http://www.mercurynews.com/news/ci_16740927?nclick_check=1

every night. She was joined by other inmates in a suit against the corporation. Two prison guards eventually pled guilty to charges of criminal sexual assault.²⁶

C. Violations of the Right to Food and Medical Care

The right to food and medical care is recognized by the Internal Covenant on Economic, Social and Cultural Rights and the Universal Declaration on Human Rights. This right is commonly violated when private prisons deny prisoners adequate food and medical services in an effort to cut costs.

The Walnut Grove Correctional Facility, operated by GEO, is currently under investigation by the US Department of Justice for denying its youth inmates medical care and mental health treatment.²⁷ In a CCA run detention center in Eloy, Arizona an inmate died while shackled to a bed after doctors failed to take his medical complaints seriously.²⁸ Inmates in Florida sued a CCA run facility alleging that prison guards urinated and defecated in prison food before serving it to inmates.²⁹

In 2009, an English jury found that the suicide of an inmate at the privately operated prison was caused by failure of the staff to provide necessary mental health care. The prisoner had begun to show severe signs of mental psychosis. These warning signs were repeatedly ignored by the prison staff, whom were later found to have falsified medical treatment records.³⁰

²⁶ *Locked Inside a Nightmare*, 60 Minutes, May 2000, available at <http://www.cbsnews.com/stories/2000/05/09/60II/main193636.shtml>

²⁷ http://criminaljustice.change.org/blog/view/private_mississippi_prison_faces_lawsuit_over_treatment_of_youth

²⁸ Nina Bernstein, *Few Details on Immigrants Who died in Custody*, The New York Times, May 5, 2008, available at http://www.nytimes.com/2008/05/05/nyregion/05detain.html?_r=1&hp

²⁹ Associated Press, *Ex-cons Claim Human Waste was Put in Food*, March 11, 2006, available at http://www.msnbc.msn.com/id/11787723/ns/us_news-crime_and_courts/

³⁰ Duncan Campbell, *Hanged Inmate was Failed by Staff, says Coroner*, The Guardian, February 10, 2009, available at <http://www.guardian.co.uk/society/2009/feb/10/rye-prison-suicide>

D. Violations of the Right to Family Unity

The right of family unity is recognized in many human rights treaties including the ICCPR, ICESCR and the European Convention on Human Rights. This right is violated by private prisons through the practice of transferring inmates to out-of-state facilities.

There are roughly 10,300 California inmates that are housed in CCA facilities in other states. California has a contract with GEO to house 2,580 inmates in Michigan.³¹ There are approximately 1,900 Hawaiian inmates incarcerated at a CCA facility in Arizona.³²

Family visitation becomes impractical and in some cases impossible when inmates are transferred to out-of-state facilities. The resulting isolation inhibits the prisoner's rehabilitation process.

E. Violations of the Right to a Remedy

In the United States prisoners who are housed in federal privately operated facilities are unable to bring a federal civil rights claim against the corporation that operates the facility, unlike prisoners who are in publically operated facilities.³³ The prisoner may file a claim against the individual officer, however the officer lacks the enormous financial resources of the employer. Insulating the employer from liability is disconcerting because the employer may bear responsibility for the violation because of unsafe staff levels or inadequate training programs. Denying prisoners the right to this

³¹ Jim Christie, *States look to Save with Lockdowns, Private Prisons*, January 20, 2011, Westlaw News and Insight, available at http://westlawnews.thomson.com/National_Litigation/News/2011/01_-_January/States_look_to_save_with_lockdowns,_private_prisons/

³² Tim Sakahara, *Hawaii Inmates Complain About Safety in Arizona Prison*, KGMB Hawaii News Now, June 16, 2010, available at <http://www.hawaiinewsnow.com/global/story.asp?s=12663457>

³³ *Correctional Services Corporation v. Malesko*, 534 US 61 (2001).

remedy helps to insulate the corporations from liability and perpetuates the cycle of human rights violations.

It offends notions of fairness and justice that a prisoner's remedy is distinguished by the type of facility they are housed in. An aggrieved prisoner should be entitled to the same remedies whether the facility in which they are incarcerated is publicly or privately operated. Additionally, the right to sue private operators, which is enjoyed by inmates in private state facilities, should be extended to inmates in private federal facilities.³⁴

F. Violations on the Right to Rehabilitation

Article 10 of the ICCPR states that the essential aim of the penitentiary system shall be "reformation and social rehabilitation". Private prison operators lack the incentives to rehabilitate prisoners because recidivist offenders increase profits.

A private juvenile facility in Louisiana was built to provide drug treatment for juveniles. There were no drug rehabilitation services offered and inmates were routinely brutalized.³⁵ A similar lack of rehabilitation services was found at a private juvenile facility in Texas. The counseling that was offered was conducted by the poorly trained prison guards. The inmate's education lacked any substance, as she was promoted through three high school grade levels within three months.³⁶

³⁴ Geoffrey Segal, *Supreme Court Rules on Private Prison Liability*, Reason Foundation, January 7, 2002, available at <http://reason.org/news/show/supreme-court-rules-on-private>

³⁵ Fox Butterfield, *Privately Run Juvenile Facility in Louisiana is Attacked for Abuse of Six Inmates*, The New York Times, March 16, 2000, available at <http://query.nytimes.com/gst/fullpage.html?res=9C04EEDD163AF935A25750C0A9669C8B63&pagewanted=1>

³⁶ *supra* note 19.

A similar deficiency in juvenile prisoner rehabilitation was reported at a private facility Mississippi. Youth inmates were denied an education when repeated lockdowns prevented the school from meeting the 180 days required for certification.³⁷

Private prison corporations routinely fail to perform the necessary rehabilitative services. This inadequacy is partially a result of the underlying structure of the private prison industry. Private prisons are either compensated on a per diem basis or through construction contracts. Either method disincentives prisoner rehabilitation, as recidivist offenders become future profits.

G. Arbitrary Detention

Article 9(1) of the ICCPR ensures the right to liberty and protects against arbitrary arrest and detention. The profits that are associated with the private prison industry incentivize arbitrary detention.

In 2009, two Pennsylvania judges pled guilty to crimes associated with a bribery scheme. The Judges were receiving payments from two privately operated youth detention centers in exchange for committing the defendants there. This scheme resulted in thousands of youths receiving disproportionately harsh sentences.³⁸

H. Detention of Migrants

In an effort to increase obtain new government contracts and increase profits the private prison industry has engaged in lobbying designed to increase the detention of migrants.

³⁷ Jerry Mitchell, *Mississippi lawmakers Probe Conditions at Walnut Grove Youth Prison*, Clarion Ledger, January 11, 2011.

³⁸ Ian Urbina and Sean D. Hamill, *Judges Plead Guilty in Scheme to Jail Youths for Profit*, The New York Times, February 13, 2009, available at <http://www.nytimes.com/2009/02/13/us/13judge.html>

The Working Group on Arbitrary Detention has stated that migrants should only be detained as a last resort.³⁹ The lobbying efforts of the private prison industry have resulted in increased detention of migrants in contravention of this principle.

In 2010, Arizona passed Senate Bill 1070 which would require police to detain any individual who was unable to prove that they entered the country legally. This Bill was the culmination of aggressive lobbying efforts of the private prison industry. CCA is a prominent member of the American Legislative Exchange Council (“ALEC”). In December 2009, a CCA official presented ALEC with a proposal regarding a bill to incarcerate migrants. The language of the proposed bill was drafted at the ALEC meeting. The language of this proposed legislation was almost identical to Senate Bill 1070.⁴⁰

Thirty of the thirty-six Arizona Senate co-sponsors of Senate Bill 1070 have received campaign contributions from the private prison industry. Arizona Governor Jan Brewer, who signed the bill into law, employs two former CCA lobbyists as top aides.⁴¹ The close relationship between lobbyists and government officials leads to an increase in migrant detention.

In 2005 and 2006 CCA and GEO spent a combined \$6 million dollars on their lobbying efforts. These lobbying efforts were followed by the largest immigration raid in US history. A December 2006 raid of Swift Meatpacking plants in several states was perceived to signal a change in US immigration policy. Migrants were charged with

³⁹ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, Geneva, February 2009, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_en.pdf

⁴⁰ Laura Sullivan, *Prison Economics Help Drive Arizona Immigration Law*, National Public Radio, October 28, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=130833741>

⁴¹ Peter Cervantes-Gautshi, *How Wall Street Profits from the Criminalization of Immigrants and Lobbies for More To Be Locked Up*, AlterNet, December 14, 2010, available at <http://www.alternet.org/story/148442>

identity theft and other crimes that carry long prison sentences, as opposed to the previously used misdemeanor charge of misuse of a social security number.⁴² This change in immigration policy resulted in an increase in immigration detainees, many of which were held in privately operated facilities.

Between 2006 and 2010, the Immigration and Customs Enforcement Agency's budget for the identification, detention and removal of immigrants has been increased by 51%. After the 2010 earthquake in Haiti, GEO received a \$260,589 contract for services in anticipation of a surge in Haitian migrants.⁴³ Private prison lobbyists have found migrant detention to be a profitable focus.

IV. Entanglement of the Private Prison Industry and Government Officials

The close connection between the private prison industry and government officials allows for the continued growth of the private prison industry. For example, the CEO of GEO Group gave more than \$100,000 to the presidential campaign of George W. Bush.⁴⁴ In 2003 GEO was awarded a lucrative contract to run the Guantanamo Bay Detention Camp.⁴⁵

Another example is President Obama's recently appointee for the position of Director of the United States Marshall Service. Ms. Hylton's employment history includes six years as the Department of Justice's Federal Detention Trustee, where she awarded nearly \$88 million in contracts to the GEO group. Afterwards, Ms. Hylton

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Private Prison Company Gets Haiti Contract*, Center for Economic and Policy Research, February 19, 2010, available at <http://www.cepr.net/index.php/relief-and-reconstruction-watch/private-prison-company-gets-haiti-contract/>

became a consultant for GEO.⁴⁶ Ms. Hylton's close ties with private prison industry present a troubling conflict of interest. The entanglement of the private prison industry and the government allows for the continued expansion of the private prison industry.

V. Recommendations

HRA urges the Working Group on Arbitrary Detention to consider the effects of privatization of prisons on the human rights of detained persons. In the absence of complete ban on private prisons, the following measures may lessen the negative effects that are associated with privatization.

Greater transparency and oversight of private facilities will lessen occurrences of human rights violations. This oversight can be performed by both governmental and nongovernmental organizations. Effective oversight will prevent systematic violations and lead to an early detection of potential problems. In conjunction with this oversight, strict penalties for violations should be imposed. These penalties must be severe enough to deter future violations.

Sentencing reforms will help reduce the prison population and lessen the need to outsource prisons to private corporations. A greater emphasis on prisoner rehabilitation, including a prohibition on transferring inmates out-of-state will reduce recidivism. Restrictions on the influence of lobbyists will help to reverse the trend towards increasing migrant detention. The continued expansion of the private prison industry will be curtailed by the resulting decrease in demand for new detention facilities.

⁴⁶ Charles Davis, *Obama Nominates Private Prison Profiteer to Top DOJ Post*, November 10, 2010, [change.org](http://news.change.org/stories/obama-nominates-private-prison-profiteer-to-top-doj-post), available at <http://news.change.org/stories/obama-nominates-private-prison-profiteer-to-top-doj-post>