



Human Rights Advocates

P.O. Box 5675, Berkeley, CA 94705 USA

Prison Privatization and Prison Labor: The Human Rights Implications

Contact Information:

**Martha Elena Menendez, Frank C. Newman Intern
Representing Human Rights Advocates through
University of San Francisco School of Law's
International Human Rights Clinic**

Tel: 415-422-6961

martha.e.menendez@gmail.com

Professor Connie de la Vega

delavega@usfca.edu

Introduction

Privatization of prison systems is a troubling trend that is quickly becoming more and more common as governments attempt to cut down on spending. Where the efficiency of business may indeed be beneficial and arguably preferable in some industries (e.g. travel, manufacturing), privatizing traditional public functions such as the care and administration of prison populations places basic human rights at the mercy of a free market system that is governed by the laws of supply and demand. Such scenarios make commodities out of human beings and prisoners, because of their low social status, are particularly vulnerable to abuse.

This report will highlight the irreconcilable nature of basic business incentives with the human rights principles implicated in the deprivation of liberty. The first section will give a brief summary of the debate surrounding the privatization of prisons and their growing popularity around the world. Next, the report will highlight the fundamentally flawed relationship between the incentives of a private sector business model and the maintenance of basic human rights as well as the inadequate accountability and remedial mechanisms available for the prevention of civil and human rights abuses by private actors. The final two sections will focus on the disproportionate impact that prison privatization is having on immigrants and minorities and the disturbing implications of the recent move towards legitimizing prison labor for private gain. While the report seeks to bring attention to the global threat of prison privatization and its growth around the world, much of it will focus on the acts of the private prison industry in the United States, the first country to allow privatization in this context,¹ where the world's two largest correctional corporations are headquartered² and where the private prison lobby has been most successful in pushing legislation that guarantees an extraordinary number of inmates remain behind bars.³

¹ Kim Richard Nossal & Phillip J. Wood, *The Raggedness of Prison Privatization: Australia, Britain, Canada, New Zealand and the United States Compared* 6 (Paper prepared for the Prisons 2004 conference on Prisons and Penal Policy: International Perspectives, City University, London, 23-25 June 2004), available at http://post.queensu.ca/~nossalk/papers/nossal_wood_prisons_0604.pdf.

² Corrections Corporation of America is headquartered in Nashville, Tennessee; GEO Group (formerly Wackenhut) is headquartered in Boca Raton, Florida.

³ *Crime and Punishment in America: Rough Justice*, THE ECONOMIST, July 22, 2010, available at <http://www.economist.com/node/16640389>.

The Debate Surrounding Private Prisons

The two principal arguments in favor of prison privatization are, 1) that it helps solve the problem of prison overcrowding by adding much needed prison bed capacity, and 2) that it does so in a less costly manner.⁴ As this section will demonstrate, both arguments are severely flawed; the former, because the introduction of private sector incentives in the context of incarceration, rather than helping to manage a reasonable number of inmates, has led to an ever increasing prison population meant to ensure the growth of correctional corporations. As to the latter, several studies performed on the matter, have failed to substantiate the claim that a privately run facility is in fact less costly to operate.⁵ Furthermore, as will be discussed in the following section, any reduction in the operational costs of a private prison will derive from cuts to labor expenses,⁶ resulting in a reduced number of staff members who are underpaid and inadequately trained.

The privatization of prisons initially grew out of a perceived need for more bed space that conveniently coincided with a politicized move towards tough-on-crime legislation which began to take shape in the United States in the 1970s.⁷ Accordingly, the first correctional institution that was entirely privately run and operated was a juvenile detention center in Pennsylvania beginning in 1976.⁸ What followed was a steady rise in private prison facilities through the 1980s and 90s⁹ as incarceration rates multiplied and the problem of prison overcrowding was born.

The overpopulation of prisons has since become the most popular reason for the introduction of the private prison industry in other countries as well. Chile's 2002 decision to become the first Latin American country to allow prison privatization arose out of the conditions in many of its appallingly overcrowded jails.¹⁰ The move to privatize was endorsed as a way to increase inmate capacity by two

⁴ U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, EMERGING ISSUES ON PRIVATIZED PRISONS 13 (2001).

⁵ *Id.* at 22-29.

⁶ *Id.* at 16.

⁷ *Crime and Punishment in America: Rough Justice*, *supra* note 3.

⁸ U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, *supra* note 4 at 12.

⁹ *Id.*

¹⁰ *Chile: Prison, S.A.*, THE ECONOMIST, July 17, 2003, available at <http://www.economist.com/node/1929224>.

thirds in a manner that would generate as much as a 12% profit for investors.¹¹ The first three prisons to follow this model were opened in 2005¹² and the move towards privatization has since proven to be a failure in both the management of overpopulation and the reduction of costs.¹³

In 2008, the Government of Chile was forced to pay a fine of 353 million pesos (US \$558, 813) to one of its private prison contractors for sending more inmates than had originally been budgeted and thereby overpopulating the private facility.¹⁴ At the time, Chile continued to house the greatest number of inmates of any Latin American country with 240 prisoners per 100,000 people.¹⁵ Human rights abuses also ran rampant with reports of inmate suicides at the Rancagua facility, the first privately run prison, alone reaching 10 by the first half of 2008.¹⁶ A prison fire which killed 81 inmates in Santiago in December of 2010 further highlighted the still persistent overcrowding that privatization had failed to correct.¹⁷ The government's solution: yet another prison system overhaul designed to add even more prisons with various degrees of private concessions.¹⁸

Notwithstanding these flaws, private investors and international organizations continue funding private prison projects around the world. The Correctional Corporation of America ("CCA") and GEO Group, the industry's two largest corrections corporations, continue to expand both in and out of the United States as their stock value continues to rise.¹⁹ The combined profit of both companies for 2011, before taxes and interest, totaled more than US \$718 million,²⁰ a figure representing an increase of over

¹¹ *Id.*

¹² *Rancagua: Inauguran Primera Cárcel Concesionada Del País*, LA NACIÓN, Nov. 22, 2005, available at <http://www.lanacion.cl/noticias/site/artic/20051122/pags/20051122165403.html>.

¹³ Mauricio Becerra R., *Gobierno Pagará Multa a Concesionarios de Cárceles*, EL CIUDADANO, Jan. 16, 2009, available at <http://www.elciudadano.cl/2009/01/16/5482/gobierno-pagara-multa-a-concesionarios-de-carceles/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Pascale Bonnefoy & Elissa Gootman, *81 Die in Chilean Prison Fire*, N.Y. TIMES, Dec. 8, 2010, at A17.

¹⁸ GOBIERNO DE CHILE, GOVERNMENT BEGINS MAJOR REFORM OF THE PRISON SYSTEM, Apr. 14, 2011.

¹⁹ Yahoo Finance, Corrections Corporation of Amer (CXW) Historical Prices, <http://finance.yahoo.com/q/hp?s=CXW+Historical+Prices> (last visited Feb. 16, 2012).

²⁰ See News Release: CCA Announces 2011 Fourth Quarter and Full-Year Financial Results, available at [http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle&ID=1658614&highlight=](http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle&ID=1658614&highlight=;); see also, Market Watch, Annual Financials for Geo Group, Inc., available at <http://www.marketwatch.com/investing/stock/geo/financials>.

16% from the year before.²¹ In the accompanying press release for their latest financial statements, CCA attributed this rise to a “3.4% increase in [their] average daily inmate population to 81,016 for 2011 from 78,319 during 2010.”²²

Furthermore, a 2010 World Bank Report analyzing the use of Public Private Partnerships (“PPPs”), a financing scheme that is highly favored by the World Bank,²³ in a variety of industries within Chile, Australia, and South Africa recognizes their growing popularity in the prison context.²⁴ The report goes on to commend these three countries for their “good practices” in managing liabilities that arise from these partnerships, thereby legitimizing the use of development aid in the private prison context despite the well-documented implications to human rights. Not surprisingly then, since Chile’s innovative and flawed foray into the private prison business, several other Latin American countries have moved to follow suit. Peru, for example, is considering adopting the private prison model²⁵ and Brazil already has at semi-private jails in at least six states.²⁶

Incompatibility of Private Sector Incentives and the Maintenance of Human Rights Standards

The profound danger of injecting a profit motive into the prison industry was made alarmingly obvious three years ago in what became known as the “Cash-for-Kids” scandal of Lucerne County, Pennsylvania. There, it was discovered that for nearly a decade, two judges had been scheming with the developer and owner of two private juvenile detention centers to ensure that the facilities would remain well-populated and therefore profitable.²⁷ The result was that hundreds of children, many of whom had no prior criminal histories, were often sentenced to spend time behind bars for absurdly minor infractions,²⁸

²¹ *Id.*

²² News Release: CCA Announces 2011 Fourth Quarter and Full-Year Financial Results, *supra* note 22.

²³ Public-Private Infrastructure Advisory Facility, <http://www.ppiaf.org/ppiaf/> (last visited Feb. 16, 2012).

²⁴ Timothy Irwin and Tanya Mokdad, *Managing Contingent Liabilities in Public Private Partnerships: Practice in Australia, Chile, and South Africa* (The World Bank 2010).

²⁵ *Peru to Seek Bids for First Private Prison*, BLOOMBERG BUSINESS WEEK, Apr. 1, 2010, available at <http://www.businessweek.com/ap/financialnews/D9EQJ0OG0.htm>.

²⁶ *Private Jails: Locking in the Best Price*, THE ECONOMIST, Jan. 25, 2007, available at <http://www.economist.com/node/8599146>.

²⁷ Ian Urbina, *Despite Red Flags About Judges, a Kickback Scheme Flourished*, N.Y. TIMES, Mar. 27, 2009, at A1.

²⁸ *Id.*

all in exchange for payments of more than U.S. \$2.6 million.²⁹ While it might be easy to dismiss such a case as an anomaly within an otherwise purportedly balanced criminal justice system, a deeper analysis of the incentives that naturally drive for-profit industry paints a wholly more dangerous picture.

The basic motivation of private sector corporations is to increase their bottom line. Indeed, in most states in the United States corporations are legally obligated to place the accumulation of shareholder wealth above all other considerations.³⁰ In order to do so, companies must seek a steady and predictable, if not growing, flow of income while continuously finding ways to cut expenses. In the prison context, inmates become the commodities through which such profit maximization is achieved and the cost reductions come at the expense of both prisoner and staff safety, likely to result in the quick dismissal of basic principles of human dignity.

Article 10(1) of the International Covenant on Civil and Political Rights (“ICCPR”) provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Article 10(3) further establishes the basic tenet that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”. The ICCPR thus makes it perfectly clear that the principle purpose of imprisonment should be rehabilitation. Additionally, Article 29 of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners, 1957, (“SMR”) further demands that the State retain exclusive power and regulation over the “types and duration of punishment which may be inflicted” and “the authority competent to impose such punishment.” Article 58 reiterates that in order to protect society from crime, the only justification for imprisonment is to rehabilitate offenders so that they might reenter society as productive, law-abiding citizens. Rehabilitation and recidivist prevention programs are designed for the purpose of reducing criminal activity and consequently, prison populations. A business model where shareholder wealth is directly proportional to the number of people brought and kept behind bars is inherently incompatible with these principles.

²⁹ John Schwartz, Clean Slates for Youths Sentenced Fraudulently, N.Y. Times, March 26, 2009, at A13.

³⁰ See e.g., Dodge v. Ford, 204 Mich. 459 (1919); see also, eBay v. Newmark, 16 A.3d (Ct. of Chancery of Delaware, 2009).

Many countries have either firmly maintained or shifted towards a “tough-on-crime” stance that openly and popularly gives greater weight to deterrence, punishment, and retribution as the primary goals of imprisonment. For example, in the United States, the Sentencing Reform Act of 1984 specifically “abandoned one of the traditional goals of punishment, rehabilitation, and asserted the following goals: retribution, education, deterrence and incapacitation.”³¹ The United Kingdom, in its Criminal Justice Act of 2003, lists rehabilitation as only one of five purposes to be considered by a judge when determining an appropriate sentence³² and also bans the imposition of “community orders”, an alternative to incarceration, for crimes that have fixed sentences by law.³³

Article 9(1) of the ICCPR establishes that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The rule prohibits arbitrary detention but further qualifies it as that which is not in accordance with the laws of the State. In the U.S. especially, the private prison industry circumvents this principle by lobbying for legislation that aims to increase prison populations and for federal laws that funnel public money towards private prisons rather than state-run institutions.³⁴ For example, in the first half of the past decade, Corrections Corporation of America (“CCA”) and GEO Group (“GEO”), the largest private prison companies in the world, their officials and lobbyists, contributed over \$1.1 million and \$880 thousand, respectively, to support state campaigns and policies that sought tougher criminal sanctions and mandatory prison sentences.³⁵

“Companies favored states with some of the toughest sentencing laws, particularly those that had enacted legislation to lengthen the sentence given to any offender who was convicted of a felony for the third time. Private-prison interests gave almost \$2.1 million

³¹ CRS REPORT FOR CONGRESS, FEDERAL SENTENCING GUIDELINES: BACKGROUND, LEGAL ANALYSIS, AND POLICY OPTIONS 14, June 30, 2007; *see also*, 18 U.S.C. §3553(a)92.

³² Criminal Justice Act 2003, §142, *available at* <http://www.legislation.gov.uk/ukpga/2003/44/part/12/chapter/1/crossheading/matters-to-be-taken-into-account-in-sentencing>.

³³ *Id.* §150

³⁴ AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, MAKING A KILLING: HOW PRISON CORPORATIONS ARE PROFITING FROM CAMPAIGN CONTRIBUTIONS AND PUTTING TAXPAYERS AT RISK, *available at* http://www.afscme.org/news/publications/privatization/pdf/AFSCME-Report_Making-A-Killing.pdf.

³⁵ THE INSTITUTE ON MONEY IN STATE POLITICS, POLICY LOCKDOWN: PRISON INTERESTS COURT POLITICAL PLAYERS 11-12, April 2006, *available at* <http://www.followthemoney.org/press/Reports/200605021.pdf>.

in 22 states that had a so-called “three-strikes law,” compared with \$1.2 million in 22 states that did not.”³⁶

Another way in which for-profit corporations increase their wealth is by cutting down on their costs. Indeed, as mentioned above, one of the leading arguments in favor of privatizing prison systems is that the private sector has “an incentive to seek efficiencies bureaucrats overseeing government institutions lack.”³⁷ What this argument fails to recognize is that many of these cost efficiencies are derived through methods that make the prisons less secure for both inmates and prison personnel.

Labor costs account for approximately 65-70% of a prison’s overall operational costs and containing these expenses “is the crux of the privatization movement.”³⁸ Unencumbered by the demands of unionized government workers, private prison corporations are free to offer lower salaries and benefits packages,³⁹ leading to greater employee turnover of up to 90% in some cases.⁴⁰ An unstable workforce means fewer and inadequately trained prison personnel who are unprepared for the volatility of the prison environment and incapable of safely protecting themselves or the inmate population, when dangerous situations arise.⁴¹ In fact, a 2004 study published by the Federal Probation Journal found that private prisons reported double the number of inmate-on-inmate assaults.⁴² Not surprisingly, this lack of adequately trained prison staff is a direct violation of article 46(3) of the SMR which specifically requires that in order to secure the humane and dignified treatment of prisoners, “personnel shall be appointed on a full-time basis as professional prison officers and have civil service status” and “salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.”

³⁶ *Id.* at 5.

³⁷ *The Perverse Incentives of Private Prisons*, THE ECONOMIST, Aug. 24, 2010, available at http://www.economist.com/blogs/democracyinamerica/2010/08/private_prisons.

³⁸ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *supra* note 4 at 16.

³⁹ *Id.*

⁴⁰ See Private Corrections Institute, Inc., Quick Facts About Prison Privatization, claiming that “the FY 2008 turnover rate at seven state-contracted private prisons in Texas was 90% (60% at privately-run state jails), compared with a 24% turnover rate at public prisons,” available at http://www.privateci.org/private_pics/Private%20prison%20fact%20sheet%202009.pdf.

⁴¹ AMERICAN CIVIL LIBERTIES UNION OF OHIO, PRISONS FOR PROFIT: A LOOK AT PRISON PRIVATIZATION 13-14, April 2011.

⁴² Curtis R. Blakely & Vic W. Bomphus, *Private and Public Sector Prisons: A Comparison of Selected Characteristics*, 68 Fed. Probation, June 2004.

Further exacerbating these abuses, the privatization of the prison industry makes it more difficult for victims to seek and find justice. Though the ICCPR states in article 9(5) that “[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation,” many countries where the private prison industry is most prevalent do not hold private actors to the same standards of accountability as they do their public institutions and officials. For example, in New Zealand, efforts to gain access to private prison records through the Official Information Act (“OIA”) have failed because the Act only covers public records.⁴³ Similar legislation, known as the Freedom of Information Act in the U.S. and much of the U.K., sets the same limitations in an effort to protect the proprietary interests of private institutions. What this means for victims of a human or civil rights violation and their advocates is that obtaining necessary information for possible litigation against a private prison is nearly impossible. Furthermore, even when these hurdles are overcome, the U.S. Supreme Court has on various occasions ruled that “a person can only assert a denial of due process rights if that deprivation resulted from ‘state action’”⁴⁴ thus seriously restricting the remedial mechanisms available to victims of abuse at private facilities.

Vulnerable Populations

Incarceration in and of itself deprives a human being of one of the most fundamental rights, his or her liberty. This deprivation of liberty is the punishment and care should be taken that incarceration does not further violate prisoners’ rights and human dignity. The safety and dignity of criminal offenders is an unpopular cause and the U.N. has recognized their vulnerability by adopting two bodies of laws setting forth minimum standards for their care.⁴⁵ Despite this, many countries consider it necessary to strip prisoners of some of their most basic human and civil rights as part of an effective punitive scheme. For example, in the U.S., otherwise prohibited forms of discrimination (e.g. housing, employment, and

⁴³ Rory MacKinnon, *False Economy: The Case For Private Prisons*, Media Darlings, October 2011, available at <http://mediadarlings.net/2010/10/27/economical-with-the-truth-the-case-for-private-prisons/>.

⁴⁴ David Yarden, *Prisons, Profits, and the Private Sector Solution*, 21 Am. Crim. L. Rev. 411 (1994).

⁴⁵ The Standard Minimum Rules for the Treatment of Prisoners (1957); The Basic Principles for the Treatment of Prisoners (1990)

voting) are legal with respect to felons.⁴⁶ The continued popularity of campaigns to criminalize immigrants and mandate tougher sentencing laws threatens to create an ever increasing population of human beings for whom these fundamental rights are non-existent.⁴⁷

The increase in immigration from developing to developed countries, for example, has led to a boom in immigration detention centers around the world and created a clear profit motive for private prison companies⁴⁸ making immigrants more vulnerable to systemic abuses when facing incarceration in foreign lands. Indeed, an investigation by National Public Radio in 2010 uncovered the deep ties between the U.S. private prison lobby and controversial legislative efforts to criminalize and incarcerate an unprecedented number of immigrants.⁴⁹ The report alleges that the language of the proposed Arizona's anti-immigrant was drafted at a meeting of the American Legislative Exchange Council (ALEC), a conservative organization which includes high-ranking executives from the Corrections Corporation of America on its Board of Directors.

However, the U.S. is far from the only country where immigrant detention is creating new business opportunities. Despite findings by the Working Group on Arbitrary Detention that immigration detention violates the principle of proportionality and its recommendation that such detention slowly be abolished,⁵⁰ some States maintain legislation that either dictates mandatory detention of undocumented immigrants, such as Australia's Migration Act,⁵¹ or is highly deferential to immigration enforcement agencies, for example, the U.K.'s Nationality, Immigration, and Asylum Act of 2002.⁵² Many of these

⁴⁶ Michelle Alexander, *In Prison Reform, Money Trumps Civil Rights*, N.Y. TIMES, May 14, 2011.

⁴⁷ Crime and Punishment in America: Rough Justice, *supra* note 3.

⁴⁸ Laura Sullivan, *Prison Economics Help Drive Ariz. Immigration Law*, NPR, available at <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>.

⁴⁹ *Id.*

⁵⁰ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention* ¶158, U.N. Doc. A/HRC/13/30 (January 18 2010).

⁵¹ See Australia's Migration Act of 1958, available at http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html; see also, U.S. Immigration and Nationality Act §236(c)(1), §101(a)(43).

⁵² U.K.'s Nationality, Immigration, and Asylum Act 2002 §62; also, John Morton, *Memorandum re: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, May 2, 2011, available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

nations are also leading in contracting with private prison companies.⁵³ In fact, the Global Detention Project reports that more than a dozen countries allow for some form of private contracting in immigration detention centers, including the United States, South Africa, the United Kingdom, and Australia.⁵⁴

Article 94 of the SMR provides that those imprisoned on civil matters “shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order.” In the U.S., despite the fact that federal immigration laws are enforced by the Department of Homeland Security in civil rather than criminal proceedings, the distinction is merely semantic. The official position of the United States Immigration and Customs Enforcement (“ICE”) is to prioritize the detention and removal of immigrants who pose a danger to public safety or national security, “recent illegal entrants”, and “fugitive aliens”, those who have failed to comply with deportation orders already issued.⁵⁵ However, the 2011 memo clarifying ICE’s enforcement priorities goes on to state that “[n]othing in this memorandum should be construed to prohibit or discourage the apprehension, detention or removal, of other aliens unlawfully in the United States.”⁵⁶ Moreover, the Immigration and Nationality Act requires mandatory detention of immigrants with certain prior convictions for certain removable offenses including non-violent drug offenses, forgery, perjury, and other “crimes of moral turpitude.”⁵⁷ Thus, in practice, immigrant detention continues to rise⁵⁸ though the “civil” nature of these incarcerations denies immigrants basic legal safeguards available only in criminal actions.⁵⁹

⁵³ Nina Bernstein, *Companies Use Immigration Crackdown to Turn a Profit*, N.Y. TIMES, Sept. 28, 2011.

⁵⁴ Michael Flynn & Cecilia Cannon, *The Privatization of Immigration Detention: Towards a Global View*, September 2009, available at http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

⁵⁵ John Morton, *Memorandum re: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, May 2, 2011, available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

⁵⁶ *Id.*

⁵⁷ Immigration and Nationality Act §236(c)(1) and §101(a)(43).

⁵⁸ *Id.*

⁵⁹ ACLU, ISSUE BRIEF: CRIMINALIZING UNDOCUMENTED IMMIGRANTS, available at http://www.aclu.org/files/assets/FINAL_criminalizing_undocumented_immigrants_issue_brief_PUBLIC_VERSION.pdf.

Recent data also indicates a disturbingly disproportionate number of minorities in the correctional control system of the United States with as many as 1 in every 9 African-American males in their 20s behind bars.⁶⁰ The profit motive of the private prison system and the lobbying for tough-on-crime legislation has directly led to a 1000% increase in U.S. drug convictions and evidence shows that drug laws disproportionately affect black youth with enforcement efforts aggressively targeting poor communities of color.⁶¹ Further, one study of private prison institutions found that in the U.S. the industry's growth has been highly concentrated in the south where conservative sensibilities and a history of racial inequality have resulted in a "hostility to unions, to taxes on income and wealth and to public spending on the black and white poor, who were to be kept as dependent as possible on low-wage labor markets."⁶²

Despite similar observations made by the Committee on the Elimination of Racial Discrimination in 2008⁶³ and their recommendation that the U.S. take appropriate steps to remedy these situations, these recent legislative and enforcement measures continue to violate various articles of the International Convention on the Elimination of All Forms of Racial Discrimination, particularly:

- Article 2(1)(c): "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists,"
- Article 4(c): "Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination."
- Article 5(a): "The right to equal treatment before the tribunals and all other organs administering justice."

⁶⁰ *How the Mass Incarceration of Black Men Hurts Black Women*, THE ECONOMIST, April 8, 2010, available at <http://www.economist.com/node/15867956>.

⁶¹ RYAN S. KING & MARC MAUER, DISTORTED PRIORITIES: DRUG OFFENDERS IN STATE PRISONS 1 (The Sentencing Project, Sept. 2002).

⁶² Phillip J. Wood, *Globalization and Prison Privatization: Why Are Most of the World's For-Profit Adult Prisons Found in the American South?*, Intl. Political Sociology Vol. 1 Issue 3, 224.

⁶³ Committee on the Elimination of Racial Discrimination, February 18 - March 7, 2008, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, U.N. Doc. CERD/C/USA/CO/6.

Prison Labor

In recognition of the vulnerability of prison populations, several international instruments seek to protect inmates from forced prison labor.⁶⁴ Hard labor as part of a legitimate sentencing scheme is allowed under certain circumstances. However, the trend toward privatization of prison management is seeing the introduction of prison labor in the private sector for private gain. This is in direct violation of ILO Convention number 29 on Forced or Compulsory Labor which specifically prohibits the use of prison labor for the benefit of the private sector.

Cambodia is an example of this. It recently passed a new law which would legalize forced prison labor. While the Government insists that the law will limit such labor to public sector work, reports indicate that at least some prison labor is being used in the manufacture of clothing for major U.S. brands.⁶⁵

The dangers of such a system in the context of private prisons are most evident in the evolution it has taken in the United States. The use of inmate labor and the disparate impact it has on people of color can be traced to the end of slavery in the U.S. South,⁶⁶ when a desire to preserve a cheap, captive labor force led many states to adopt laws designed to incarcerate an unprecedented number of blacks and subsequently “lease” them out to private industry.⁶⁷ Despite the brutality and abuse suffered by countless African Americans within the system, it was not until the 1923 brutal flogging death of a white convict laborer in Florida gained national attention that the practice was slowly phased out of existence.⁶⁸

Today, the slavery-like arrangement threatens to return as a result of the success of the private prison industry and the demonstrated power of their political lobby. It has been reported that the

⁶⁴ ICCPR Article Art. 8(3)(a); ILO Convention number 29 on Forced or Compulsory Labor; SMR Articles 71, 72, 73, 76.

⁶⁵ Sebastian Strangio, *Cambodia: Prison Labor Concerns*, GLOBAL POST, Dec. 11, 2011, available at <http://www.globalpost.com/dispatch/news/regions/asia-pacific/111206/cambodia-prison-labor-garments-exports-ILO>.

⁶⁶ Jaron Brown, *Rooted in Slavery: Prison Labor Exploitation*, 14 RACE, POVERTY AND THE ENVIRONMENT 1, (Spring 2007), <http://www.urbanhabitat.org/node/856>. See also, DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICA FROM THE CIVIL WAR TO WORLD WAR II* (Random House 2008).

⁶⁷ *Id.*

⁶⁸ Jerrel H. Shofner, *Postscript to the Martin Tabert Case: Peonage as Usual at the Florida Turpentine Camps*, 60 FLORIDA HISTORICAL QUARTERLY 161 (Oct. 1981).

aforementioned, American Legislative Exchange Council (ALEC), the organization largely responsible for tough-on-crime legislation, has also been instrumental in abolishing the prohibition against the use of prison labor in the private sector.⁶⁹ The Prison Industries Act of 1995, modeled by ALEC, “ provides for the employment of inmate labor in state correctional institutions and in the private manufacturing of certain products under specific conditions.”⁷⁰ Though the Act provides that the wages paid by participating private companies shall be no less than the minimum wage, payment is to be made directly to the prison which then distributes no more than 40% to the inmate and his family with the remainder going to a fund established to reimburse the prison for the inmates’ keep⁷¹ thereby ensuring that a private institution doubly profits from both the prisoner’s incarceration and his labor.

Furthermore, in an effort to decrease government spending, the U.S. state of Georgia is also now considering outsourcing one of the most traditional public duties by replacing firefighters with free inmate labor. This move raises serious labor and public safety concerns on a variety of different levels.⁷²

The criminalization of immigrants has left a wide labor gap in the U.S. agricultural industry. In response to this, private prisons, already profiting from immigrants in detention, are now successfully pushing policies that would allow prison laborers to replace immigrant farm workers.⁷³ More disturbing are allegations that immigrants detained in private facilities in the U.K. are being funneled through the prison labor scheme to work for the benefit of the prison and the private employer.⁷⁴ The dangers of such a system developing in detriment of incarcerated immigrants in the U.S., has not gone undetected. Many immigrants’ rights groups and human rights observers have rightfully recognized that these are conditions reminiscent of slavery:

⁶⁹ Mike Elk & Bob Sloan, *The Hidden History of ALEC and Prison Labor*, THE NATION., Aug. 1, 2011.

⁷⁰ Prison Industries Act of 1995, available at http://heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/6275.pdf.

⁷¹ *Id.* §9

⁷² Ga. County Looks To Inmates To Fight Fires, CBS NEWS, Oct. 10, 2011, available at <http://www.cbsnews.com/stories/2011/10/10/national/main20118035.shtml>

⁷³ Marie Diamond, *Alabama Agriculture Department Advances Plan To Replace Immigrant Workers With Prisoners*, Think Progress, Dec 6, 2011, , available at <http://thinkprogress.org/justice/2011/12/06/382852/alabama-agriculture-department-promoting-plan-to-replace-immigrants-with-prisoners-to-farmers/>.

⁷⁴ Jon Burnett & Fidelis Chebe, *Captive Labour: Asylum Seekers, Migrants and Employment in UK Immigration Removal Centres*, RACE AND CLASS, Apr. 2010.

“First, the state passes a harsh immigration law. Then, it detains large numbers of immigrants. Third, private prisons (LCS, CCA, GEO) receive fresh inmates. And finally, the artificially created labor shortage is supplied by the new inmates. Does this sound like modern-day slavery to anyone?”⁷⁵

Conclusion and Recommendations

Private prison corporations have invested millions of dollars to ensure that more people commit crimes that will result in their prompt and prolonged incarceration. Such a system, which profits from the creation of laws designed to increase prison populations in private institutions that can avoid transparency and fail to provide adequate accountability mechanisms, has serious implications for the promotion of basic human rights. We commend Israel for its Supreme Court decision recognizing that “the human rights of prison inmates are violated ipso facto by the transfer of powers to manage and operate a prison from the state to a private concessionaire that is a profitmaking enterprise,”⁷⁶ and subsequently banning the practice in their country, a decision that we urge all nations to follow. Where public private financing schemes exist in the prison context, we also urge countries to follow France’s example in passing legislation that limits private actors to the construction of facilities and provision of services but maintains the detention and care of inmates as the exclusive responsibility of the State.⁷⁷

Finally, HRA urges the Council to consider the human rights violations inherent in the private prison system and recommends its complete prohibition. Meanwhile, HRA recommends:

- Greater oversight and transparency of private prisons
- Decriminalization of immigrants and abolishment of arbitrary immigrant detention
- Sentencing reform aimed at addressing discriminatory enforcement
- Strengthening of prohibitions against prison labor
- A review by the Working Group on Arbitrary Detention on the human rights implications of private prisons.

⁷⁵ Alex Caballero, *Alabama Brings Back Slavery for Latinos*, THE GUARDIAN, Oct. 12, 2011.

⁷⁶ Academic Center of Law and Business v. Minister of Finance, HCJ 2605/05 (2009)

⁷⁷ Loi n° 87-432 du 22 juin 1987 relative au service public pénitentiaire.