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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Private Prisons and the Arbitrary Detention of Migrants: A Global Human Rights Crisis

The privatization of prisons has exploded in recent years as a worldwide human rights crisis. In countries all over the world, including the United States and Australia, corporations have partnered with governmental immigration agencies to provide detention services. Private prisons are inherently more interested in profits than in the protection of detainees' human rights. With little government oversight, privately-run prisons escape true accountability, making it much easier for human rights violations to occur.

The International Covenant on Civil and Political Rights (ICCPR), entered into force in 1976. Since that time, it has done much to protect the civil and political rights of many. However, migrants are a distinct group that has continuously and disproportionately suffered from rights violations by governmental entities of the nations in which they presently reside. It is essential that all States Parties honor their treaty obligations and work to protect the rights of arbitrarily detained migrants, including those housed in private detention facilities.

Arbitrary Detention

Article 9(1) of the ICCPR holds that all people have the right to liberty and security of person. Under this provision, no one shall be subjected to arbitrary arrest or detention. Migrants should enjoy this long-established right regardless of their country of origin, race, or religion. They also are entitled to this right whether or not the facility in which they are detained is government or privately operated. States Parties to this treaty violate the right to liberty and security of person when migrants are held in detention facilities indefinitely as evidenced by the examples that follow.

The Christmas Island, Perth, Melbourne, Sydney, and Darwin immigration detention centers in Australia have been operated by a corporation called Serco since 11 November 2009.¹ Serco also manages the immigration residential housing and immigration transit accommodation. The Australian Government's Department of Immigration and Citizenship (DIC) declares that one of its Key Immigration Detention Values is that "Detention that is indefinite or otherwise arbitrary is not acceptable."² At the same time, the DIC indicates in its Immigration Statistics Summary dated 26 March 2010 that of the 2505 people held in immigration detention as of 26 March 2010, 447 people (17.8% of the total) were detained for a period of between 3 months – 6 months, 364 people (14.5% of the total) were detained for a period of between 6 months – 12 months, 23 people (0.9% of the total) were detained for 12 months – 18 months, 6 people (0.2% of the total) were detained for 18 months – 2 years, and 19 people (0.8% of the total) were detained for over 2 years.³

In total, 34.2% of the 2505 migrants detained in Australia on 26 March 2010 had been held for over 3 months. Not only is this a violation of Australia's own Key Immigration

¹ Serco, http://www.serco-ap.com/au/verve/_resources/Media_Release_ITA-IRH_announcement.pdf (last visited May 13, 2010).

² Australian Government Department of Immigration and Citizenship, <http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm> (last visited May 3, 2010).

³ Australian Government Department of Immigration and Citizenship, http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-20100326.pdf (last visited May 3, 2010).

Detention Values, it is also a violation of Australia's treaty obligations under the ICCPR. Migrants held for excessively long periods of time for immigration violations are by definition being arbitrarily detained.

Migrant Deaths in Privately-Operated Detention Facilities

Article 6(1) of the ICCPR states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” This most basic of rights is clearly set forth in the ICCPR and pertains to all people, including migrants. A person's citizenship status should have no impact on his or her right to life. Certain States Parties to the ICCPR, including the United States, have violated this right when migrants within their borders have died or been killed arbitrarily.

Since October 2003, 107 detainee deaths have been counted by United States Immigration and Customs Enforcement (ICE)⁴ Many of these deaths occurred in prisons that are operated by corporations like the Corrections Corporation of America (CCA). CCA builds and operates correctional facilities and detention centers on behalf of the Federal Bureau of Prisons and ICE.⁵ CCA has been operating in the United States since 1983, and as of 2007, operates 66 facilities in 19 states and the District of Columbia with over 75,000 inmates in its charge.⁶

The deaths occurring at private correctional facilities and detention centers are of grave concern to Human Rights Advocates. They are indicative of other potential human rights abuses occurring at detention facilities, such as mistreatment of detainees and inadequate medical care. The New York Times reported in January 2010, in fact, that ICE officials deliberately covered up details about many of the deaths that had occurred in recent years at their facilities. For example, recently obtained documents show that a detainee housed at the Eloy Detention Center in Arizona, which is run by CCA, for two years died from heart problems most likely related to his diabetes and high blood pressure.⁷

Violations of the Right to be Treated with Humanity and Dignity

Article 10(1) of the ICCPR declares that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Migrants subjected to arbitrary detention are treated with a complete lack of humanity and dignity when they are forced to live in sub-standard conditions and are not given medical care when it is needed.

Migrants lack adequate living conditions in many detention centers in the United States, which is a violation of their right to be treated with humanity and dignity. For example, at the Willacy County State Jail in Texas, which is operated by CCA, a review of the facility conducted in 2007 found that the medical clinic was too small to adequately care for the 1,800 detainees housed there.⁸ Nearly half of the 46 medical staff positions were vacant at

⁴ 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>.

⁵ Corrections Corporation of America, <http://www.correctionscorp.com/> (last visited May 3, 2010).

⁶ *Id.*

⁷ Bernstein, *supra* note 4.

⁸ Emily Ramshaw, *Detaining Care, Part Two: Health Scare*, Texas Tribune, Nov. 17, 2009, available at <http://www.texastribune.org/stories/2009/nov/17/health-care-failing-immigrants-texas-detention-centers/>.

that time, leaving the facility grossly understaffed and detainees vulnerable.⁹ Migrants do not surrender their right to receive medical care when they are detained. The Willacy County State Jail's lack of sufficient medical personnel makes that right nearly impossible to realize, however.

Felix Franklin Rodriguez-Torres, a migrant from Ecuador, died in the Eloy Detention Center in Arizona in 2007 of testicular cancer.¹⁰ This facility, too, is operated by CCA. Despite experiencing enormous pain, Mr. Rodriguez-Torres' cancer went undiagnosed during the two months he spent at the facility. He was finally taken to Maricopa Medical Center in Phoenix when he had a large mass in his neck.¹¹ Mr. Rodriguez-Torres' death was covered up by federal immigration officials as it did not originally appear on official documents listing detainee deaths from that period. The lack of humanity and dignity demonstrated toward Mr. Rodriguez-Torres during his detention is a violation of the United States' treaty obligation under the ICCPR.

Unfortunately, Mr. Rodriguez-Torres is but one of many migrants to suffer needlessly in Arizona. The state may privatize its entire prison system, which would mean that the nearly 40,000 prisoners held in Arizona would be managed by a private corporation.¹² The harsh immigration bill passed by the Arizona legislature and signed into law by Governor Jan Brewer in April 2010 continues the disturbing trend of eliminating migrants' rights in that state.¹³ The law makes it a crime for migrants not to carry immigration documents, and gives police the power to detain any person they suspect of being in the United States illegally.¹⁴

Recommendations

- Human Rights Advocates urges the Human Rights Council to request that the Working Group on Arbitrary Detention study the effects that privatized prisons have on the human rights of detainees, particularly those of migrants, and prepare a report on its findings.
- States Parties utilizing private corporations for detention services should carefully monitor the living conditions and medical care that detainees are subjected to and should intervene when necessary to ensure that detainees' human rights are respected.
- Migrants should only be detained as a last resort. Alternatives to detention should be used whenever possible, including monitoring with electronic ankle bracelets and housing in residential facilities.

⁹ *Id.*

¹⁰ Nina Bernstein, *Hurdles Shown in Detention Reform*, N.Y. Times, Aug. 20, 2009, available at <http://www.nytimes.com/2009/08/21/nyregion/21detain.html>.

¹¹ *Id.*

¹² Jennifer Steinhauer, *Arizona May Put State Prisons in Private Hands*, N.Y. Times, Oct. 23, 2009, available at <http://www.nytimes.com/2009/10/24/us/24prison.html>.

¹³ Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. Times, April 23, 2010, available at <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.

¹⁴ *Id.*