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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 the 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.

[11 February 2012]

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

Private prisons, prison labor and their human rights implications

Human Rights Advocates (“HRA”) submits this statement to call attention to prison privatization and the growing trend of forced prison labor. While many countries continue to turn to privatization to cut governmental costs, the additional move towards legitimizing prison labor has serious human rights implications as it raises troubling parallels with slavery.

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 abuses.

Both Article 10(3) of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 58 of the Standard Minimum Rules for the Treatment of Prisoners (“SMR”) firmly establish that the principle purpose of imprisonment should be rehabilitation. Notwithstanding, some countries have firmly maintained or shifted towards a “tough-on-crime” stance that gives greater weight to deterrence, punishment, and retribution as primary goals of imprisonment.¹

Incompatibility of Private Sector Incentives and Maintenance of Human Rights Principles

Private sector incentives are inherently incompatible with the maintenance of human rights principles. The basic motivation of private sector corporations is to increase profits. Indeed, in the U.S., most states require corporations to place the accumulation of stockholder wealth above all other considerations.² In the prison context, inmates become the commodities through which profit maximization is achieved.

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.³

Arbitrary detention: Vulnerable populations

Incarceration in and of itself deprives a human being of one of his most fundamental rights, his 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. Even the most developed countries consider it necessary to strip prisoners of some of their most basic

¹ CRS Report for Congress, Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options, at 14, June 30, 2007; also, the U.K.’s Criminal Justice Act of 2003 §142 lists rehabilitation as merely one purpose to consider when determining an appropriate sentence.

² See e.g., *Dodge v. Ford*, 204 Mich. 459, 1919; see also, *eBay v. Newmark*, Court of Chancery of Delaware 16 A.3d 1, 2009.

³ Making a Killing: How Prison Corporations Are Profiting From Campaign Contributions and Putting Taxpayers at Risk, American Federation of State, County and Municipal Employees, http://www.afscme.org/news/publications/privatization/pdf/AFSCME-Report_Making-A-Killing.pdf.

human and civil rights as part of an effective putative scheme. For example, in the U.S., otherwise prohibited forms of discrimination (e.g. housing, employment, and voting) are legal with respect to felons.⁴ As such, these groups are particularly vulnerable to abuse and the UN has adopted two bodies of laws setting forth minimum standards for their care.⁵

The increase in immigration from developing to developed countries has led to a boom in immigration detention centers around the world and created a clear profit motive for private prison companies⁶ making immigrants more vulnerable to systemic abuses when facing incarceration in foreign lands.

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,⁷ some States maintain legislation that either dictates mandatory detention of undocumented immigrants⁸ or is highly deferential to immigration enforcement agencies,⁹ many of which are contracting with private prison companies.¹⁰

SMR Art. 94 sets forth 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. In practice, immigrant detention continues to rise¹¹ though the “civil” nature of these incarcerations denies immigrants basic legal safeguards available only in criminal actions.¹²

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.¹³

Recent data 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.¹⁴

⁴ Michelle Alexander, In Prison Reform, Money Trumps Civil Rights, NY Times, May 14, 2011.

⁵ The Standard Minimum Rules for the Treatment of Prisoners (1957); The Basic Principles for the Treatment of Prisoners (1990)

⁶ Prison Economics Help Drive Ariz. Immigration Law, Laura Sullivan, NPR, <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>.

⁷ Report of the Working Group on Arbitrary Detention, Geneva, February 2009, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_en.pdf

⁸ Australia’s Migration Act of 1958, http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html; U.S. Immigration and Nationality Act §236(c)(1), §101(a)(43).

⁹ U.K.’s Nationality, Immigration, and Asylum Act 2002 §62; John Morton, Memorandum re: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, May 2, 2011, <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

¹⁰ Nina Bernstein, Companies Use Immigration Crackdown to Turn a Profit, N.Y. Times, Sept. 28, 2011.

¹¹ Id.

¹² ACLU, Issue Brief: Criminalizing Undocumented Immigrants, http://www.aclu.org/files/assets/FINAL_criminalizing_undocumented_immigrants_issue_brief_PUB_LIC_VERSION.pdf.

¹³ The Privatization of Immigration Detention: Towards a Global View, Michael Flynn and Cecilia Cannon, September 2009, http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

¹⁴ How the Mass Incarceration of Black Men Hurts Black Women, The Economist, April 8, 2010.

The profit motive of the private prison system and its 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.¹⁵ These acts are in direct violation of various Articles of the International Convention on the Elimination of All Forms of Racial Discrimination.

Prison labor

In recognition of the vulnerability of prison populations, there exist several human rights provisions that seek to protect inmates from forced prison labor.¹⁶

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 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.¹⁷

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 where the private prison lobby is behind some of the most aggressive legislation to legalize the use of prison labor for private gain. It has been reported that the American Legislative Exchange Council (ALEC), a conservative 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.¹⁸

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.¹⁹ More disturbing are allegations that the 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 thus creating conditions reminiscent of slavery.²⁰

¹⁵ Supra note 4.

¹⁶ ICCPR Article Art. 8(3)(a); ILO Convention number 29 on Forced or Compulsory Labor; SMR Articles 71, 72, 73, 76.

¹⁷ Sebastian Strangio, Cambodia: prison labor concerns, Dec. 11, 2011, GlobalPost, <http://www.globalpost.com/dispatch/news/regions/asia-pacific/111206/cambodia-prison-labor-garments-exports-ILO>.

¹⁸ The Hidden History of ALEC and Prison Labor, Mike Elk and Bob Sloan, August 1, 2011, The Nation.

¹⁹ Alabama Agriculture Department Advances Plan To Replace Immigrant Workers With Prisoners, Marie Diamond, Dec 6, 2011, ThinkProgress, available at <http://thinkprogress.org/justice/2011/12/06/382852/alabama-agriculture-department-promoting-plan-to-replace-immigrants-with-prisoners-to-farmers/>.

²⁰ Jon Burnett and Fidelis Chebe, Captive Labour: Asylum Seekers, Migrants and Employment in UK Immigration Removal Centres, Race and Class, April 2010.

Recommendations

HRA urges the Council to consider the human rights violations inherent in the private prison system and recommends its complete prohibition. However, in lieu of a total ban 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.
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