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## Human Rights Council

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Agenda item 3

**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.

[9 February 2013]

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

## Human Rights implications of private prisons

### Introduction

The increasing role of private prisons raises concerns of human rights violations. They create an incentive for higher rates of imprisonment in order to maximize profits. The resultant treatment of prisoners in such an environment violates many international human rights standards.

### International standards

The drafting history of article 9 of the International Covenant on Civil and Political Rights, (“ICCPR”) “confirms that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.”<sup>1</sup> Placing individuals in temporary custody in stations, ports and airports or any other facilities where they remain under constant surveillance may not only amount to restrictions to personal freedom of movement, but also constitute a de facto deprivation of liberty, and any ill-treatment would constitute a violation of the prohibition of arbitrary detention.

Article 10(1) of the ICCPR states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Additionally, Article 29 of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners stresses 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.” A company creating a business model that profits from the detention of prisoners, is responsible to their shareholders, not to the public, and thus has little accountability for their treatment of prisoners.<sup>2</sup> These realities are contrary to the international legal standards protecting the rights of prisoners.

### Countries of concern

#### 1. United States

The lobbying strategy of the private prison companies is an example of their efforts to maximize their profits. In February 2011, Pennsylvania Juvenile Court Judge Ciavarella was convicted of racketeering in a “cash for kids” jail scheme. The judge was paid by private prison officials to sentence kids to harsher punishments in order to keep the company’s private facility filled.<sup>3</sup>

It was reported that Governor Brewer of Arizona accepted nearly \$60,000 in campaign contributions from people associated with private prisons. Brewer came under fire after signing Senate Bill 1070 in 2010, which would have increased enforcement of immigration laws and likely allowed private companies to increase detention of undocumented immigrants in the state.<sup>4</sup>

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<sup>1</sup> Report of the Working Group on Arbitrary Detention, United Nations General Assembly, 2012.

<sup>2</sup> A Brief History of Private Prisons in Immigration Detention, Detention Watch Network, 2008, [http://www.detentionwatchnetwork.org/privateprisons\\_note2](http://www.detentionwatchnetwork.org/privateprisons_note2).

<sup>3</sup> Brickner, Michael and Diaz, Shakyra, Prisons for Profit: Incarceration for Sale, ACLU, <http://www.acluohio.org/issues/CriminalJustice/ABAPrivatePrisonsReport.asp>.

<sup>4</sup> Arizona’s Private Prison Pay-to Play Scandal Widens: Chair of House Appropriations Committee Appropriated by GEO Group, Tucson Citizen, 2011, <http://tucsoncitizen.com/cell-out->

The federal government has plans that include new private facilities ready to house the 400,000 immigrants detained annually. The increases in immigrant detentions are coupled by a rise in prison privatization, which results in lengthy terms to derive the greatest profits.<sup>5</sup> Illegal re-entry into the U.S. was the most commonly filed federal charge of last year marking a dramatic shift in the U.S. criminal justice system, which has been dominated by drug crimes in recent decades.<sup>6</sup>

Private prisons nationwide suffer from untrained and undisciplined staff that is ill-equipped to cope with the problems that occur in most prisons. In order to increase profits, private prisons pay staff less than public workers, with little or no benefits, which lead to high staff turnover rates. The ineffectiveness of proper staff has led to increases in assaults, which on average is higher than assaults in state prisons. A lawsuit brought by inmates in Idaho alleges that the company is cutting back on personnel costs by partnering with violent prison gangs to help control the facility.<sup>7</sup>

In November 2012, a company was sued by civil rights organizations after Mississippi youth claimed “barbaric, unconstitutional conditions,” at the company’s correctional facility.<sup>8</sup> Referred to as “second-hand prisoners,” it was reported that they are subjected to clogged water fountains, falsification of food service records, padlocked fire exits, moldy showers, unsecured cleaning chemicals, and no guards monitoring “pill call” when inmates receive medications.<sup>9</sup>

## 2. United Kingdom

England and Wales have the most privatized prison systems in Europe with fourteen prisons; most are immigrant detention centres. The Colnbrook Immigration Removal Centre has been accused of contributing to the death of a Pakistani asylum seeker after he suffered a heart attack. The staff failed to call for help or administer basic first aid. His roommate at the time pressed the emergency buzzer 10 times over a period of almost two hours trying, but failing to get help.<sup>10</sup>

A 34-year old Indian national with severe mental illness was unlawfully locked up in a Harmondsworth Immigration Removal Center for five months and subjected to inhuman and degrading treatment, according to a high court ruling. A judge ruled that his treatment amounted to a breach of article 3 of the European Convention on Human Rights.<sup>11</sup>

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arizona/2011/07/20/arizona’s-private-prison-pay-to-play-scandal-widens-chair-of-house-appropriations-committee-appropriated-by-geo-group/.

<sup>5</sup> For-Profit Prison System Preying on Immigrants: Report, Common Dreams, 2012, <https://www.commondreams.org/headline/2012/08/02-2>.

<sup>6</sup> Illegal Reentry Becomes Top Criminal Charge, TRAC Immigration, 2011, <http://trac.syr.edu/immigration/reports/251/>.

<sup>7</sup> Private Prison Company Allegedly Partnered with Violent Gangs to Save Money, Think Progress Justice, 2012, <http://thinkprogress.org/justice/2012/11/15/1189091/lawsuit-private-prison-company-partnered-with-violent-gangs-to-save-money/?mobile=nc>.

<sup>8</sup> A Brief History of Private Prisons in Immigration Detention, Detention Watch Network, 2008, [http://www.detentionwatchnetwork.org/privateprisons\\_note2](http://www.detentionwatchnetwork.org/privateprisons_note2).

<sup>9</sup> Bischoff, Laura, Auditors Uncover Problems at Private Prisons in Ohio, Dayton Daily News, 2012, <http://www.daytondailynews.com/news/news/state-regional/auditors-uncover-problems-at-private-prisons-in-oh/nTgQ5/>.

<sup>10</sup> Taylor, Diane, Detention Centre Failures Contributed to Death of Asylum Seeker, Inquest Finds, The Guardian, 2012, <http://www.guardian.co.uk/uk/2012/may/25/detention-centre-death-asylum-seeker>.

<sup>11</sup> United Kingdom Hall of Shame, Private Corrections Working Group, [http://www.privateci.org/shame\\_UK.html](http://www.privateci.org/shame_UK.html).

The private prison industry exploits cheap, captive labor of prisoners. A company has recently launched a public relations campaign entitled “Working Prisons; Working People” to urge the UK business community to “open its mind to the growth opportunities from being involved in ‘working prisons.’” One of the “benefits to business” listed is “a committed workforce and low overheads.” They hope ‘working prisons’ will “become the norm” in the future.<sup>12</sup> One enterprise has apparently been “so successful,” or so cheap, that work previously done in India has been brought back to the UK and done in the prison.<sup>13</sup>

### 3. Australia

The same global wide companies operating in a multi-billion dollar industry are in five jurisdictions in Australia.<sup>14</sup> Western Australia’s Deaths in Custody Watch Committee spokesperson stated that the idea of private prisons is “basically making a profit out of people’s misery.” The major issue is public accountability, especially in view of the immunity of private companies to Freedom of Information applications.<sup>15</sup>

One case involved the failure to replace a 20-cent telephone pin in a G4S’s Port Philip prison in mid-2011 led to the death of a 55-year old man. A note was found by his body reading, “Asthma attack buzzed for help, no response.”<sup>16</sup>

Australia is home to the privately run Christmas Island. Asylum seekers traveling by boat who are intercepted in the ‘excision zone’ are taken there rather than the Australian mainland to have their applications for asylum assessed. They spend months in the remote Island with no idea of when their claims will be finalized or whether they will be sent back to their countries of origin to face the persecution they are fleeing.<sup>17</sup> Amnesty International emphasized that unaccompanied minors and families with children continue to be subjected to mandatory detention on Christmas Island, in breach of Australia’s obligations under the Convention on the Rights of the Child.<sup>18</sup>

An inquiry into riots that took place on the Island described conditions as “severely compromised “with failing sewage systems, a precarious supply of water and access to toilets, and, education under stress.”<sup>19</sup> It was reported that administrative staff were ordered to go out on the front lines and quell the riots.<sup>20</sup>

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<sup>12</sup> Working Prisons: Working People, Providing Solutions to Business, G4S, 2011, <http://www.g4s.uk.com/EN-GB/Media%20Centre/News/2011/11/21/Working%20Prisons/>.

<sup>13</sup> Id.

<sup>14</sup> Alizzi, John, Private Prisons in Australia: Our 20 year trial Article, Deaths in Custody Watch Committee, 2012, <http://www.deathsincustody.org.au/private-prisons-australia-our-20-year-trial>.

<sup>15</sup> Australia Hall of Shame, Private Corrections Working Group, [http://www.privateci.org/shame\\_aust.html](http://www.privateci.org/shame_aust.html).

<sup>16</sup> Id.

<sup>17</sup> Baird, Jessica, A Short Stay on Christmas Island, Amnesty International 2009, <http://www.amnesty.org.au/refugees/comments/22308/>.

<sup>18</sup> Immigration Detention on Christmas Island, Australian Human Rights Commission, 2010, [http://humanrights.gov.au/human\\_rights/immigration/idc2010\\_christmas\\_island.html](http://humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html).

<sup>19</sup> Needham, Kirsty, Warning Bells Before Detainee Riots, The Age, 2011, <http://www.theage.com.au/national/warning-bells-before-detainee-riots-20111129-1o57x.html>.

<sup>20</sup> Buckley-Carr, Alana, Officer Staff Allegedly Ordered to Quell Riot, The West Australian, 2011, <http://au.news.yahoo.com/thewest/a/-/breaking/10407708/office-staff-allegedly-ordered-to-quell-riotForceRecrawl/>.

**Conclusions & recommendations**

As prison privatization escalates, rates of incarceration have increased. Dismal conditions, scarce security protections, and high number of immigrant detentions have resulted in an array of human rights violations for prisoners in private facilities. With this in mind, Human Rights Advocates urges:

The Council to request:

- That the Working Group on arbitrary detention conduct studies on the connection between private prisons and rates of incarceration, including that of immigrants, and the effect on the human rights of those in detention.
- That states protect human rights against violations committed by private actors.

States to observe the ICCPR's protection of prisoners, that they be treated with humanity and with respect for the inherent dignity of the human person and the UN's Standard Minimum Rules for the Treatment of Prisoners in all facilities in their jurisdiction.

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