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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.

[11 February 2011]

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

## The human rights implications of prison privatization

### Introduction

1. Human Rights Advocates (“HRA”) submits this statement to call attention to prison privatization. Many countries have turned to privatization to cut costs associated with the detention of criminals and migrants. This practice has led to human rights violations.
2. The economic structure of the private prison industry is in conflict with the state’s goal of prisoner rehabilitation. International Covenant on Civil and Political Rights (ICCPR) Article 10 (3) provides that the essential aim of the penitentiary system shall be “reformation and social rehabilitation”. Privatized prisons lack the incentive to rehabilitate prisoners because recidivist offenders are turned into profits and lucrative future contracts.
3. Privatized prisons are often understaffed with poorly trained and underpaid guards.<sup>1</sup> Prisoners are dehumanized and viewed as a commodity that translates into profits. These factors contribute to an unsafe environment where prisoner’s human rights are commonly violated.

### The Private Prison Industry

4. In 2004, the Israeli government passed an amendment that allowed for prisoners to be transferred to private facilities. However, in 2009, the Israeli High Court of Justice ruled that private prisons violate prisoner’s basic human rights and dignities.
5. This ruling found that the privatization amendment gave the prison corporations an invasive authority over prisoners. The Court found that the ability to enforce criminal law by incarcerating inmates was 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 and prisoners’ human rights would be undermined by a desire to operate at profit maximizing efficiency.<sup>2</sup> HRA commends Israel and expresses hope that other nations will take heed to the principles articulated in the High Court’s decision.
6. The majority of this report focuses on the United States, which has the largest number of private facilities. In the 1980s many state and federal agencies of the United States faced budget concerns associated with the high costs of imprisoning a growing number of inmates. This led several agencies to seek private investment. Private corporations were awarded lucrative, long-term contracts to construct, manage, and operate prison facilities.
7. One of the largest of these corporations is Correction Corporation of America (“CCA”), which has contracts with all three federal corrections agencies and with nearly half of all states.<sup>3</sup> CCA’s main competitor is the GEO Group Inc.

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<sup>1</sup> Ken Hedler, Prison Proposal: CCA criticized by union, Praised by Florence Officials, The Daily Courier, December 18, 2009,

<http://www.dcourier.com/main.asp?SectionID=1&subsectionID=1&articleID=75835>

<sup>2</sup> Tomer Zarchin, International Legal Precedent: No Private Prisons in Israel, Haaretz, November 20, 2009, <http://www.haaretz.com/print-edition/news/international-legal-precedent-no-private-prisons-in-israel-1.3774>

<sup>3</sup> <http://www.correctionscorp.com/about/>

8. Australia has seven private prisons holding 17% of all inmates. Australia's private prisons face the same criticisms regarding unsafe conditions that are levied upon private prisons in the United States.<sup>4</sup>

9. In 2003, Chile became the first South American country to contract with private investors to build and operate prison facilities. The Chilean government awarded two of four proposed contracts to build and operate ten new prisons.<sup>5</sup>

### **Violations of the Right to Life**

10. The right to life is protected by Article 6(1) of the ICCPR, and is violated at private prisons throughout the world. These violations occur as a result of unsafe conditions and poorly trained prison employees.

11. 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 beating at the hands of two inmates while prison guards watched, and afterwards destroyed critical evidence.<sup>6</sup>

### **Violations of the Right to Be Treated With Humanity and Dignity**

12. Under ICCPR Article 10, persons who are deprived of their liberty shall be treated with humanity and in a manner that respects their human dignity. In 2010 a CCA employee in Texas was charged with sexually abusing numerous female immigration detainees.<sup>7</sup> A Hawaiian inmate, incarcerated at a CCA facility in Arizona, filed charges against a guard alleging that he was forced to perform sexual acts.<sup>8</sup> It was reported in Australia that a group of guards have dominated a GEO facility, and created an environment of intimidation and abuse through the use of excessive force.<sup>9</sup>

### **Violations of the Right to Food and Medical Care**

13. The rights to food and medical care are recognized by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration on Human Rights. This right is commonly violated when private prisons deny prisoners adequate food and medicine in an effort to cut costs.

14. A youth detention facility operated by GEO, is under investigation by the U.S. Department of Justice for denying its inmates medical care and mental health treatment.<sup>10</sup>

<sup>4</sup> <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/ED4BA0B9D18C2546CA256EF9001B3ADA>

<sup>5</sup> Can Private Money Ease a Jail Problem?, *The Economist*, July 17th 2003, <http://www.economist.com/node/1929224>

<sup>6</sup> Emma Perez –Trevino, Beating Death Lawsuit Ends in Settlement, January 7, 2010 available at <http://www.brownsvilleherald.com/articles/rosa-107144-settlement-beating.html>

<sup>7</sup> <http://www.aclu.org/immigrants-rights-prisoners-rights/sexual-abuse-female-detainees-hutto-highlights-ongoing-failure-im>

<sup>8</sup> Purna Namani, More Abuse Reported at Private Prison, *Court House News Service*, January 17 2011, <http://www.courthousenews.com/2011/01/17/33358.htm>

<sup>9</sup> Karen Kissane, Violent Guards Gang Accused of Running Jail, *The AGE*, November 23, 2007, <http://www.theage.com.au/news/national/violent-guards-gang-accused-of-running-jail/2007/11/22/1195321951494.html?page=fullpage#contentSwap1>

<sup>10</sup> [http://criminaljustice.change.org/blog/view/private\\_mississippi\\_prison\\_faces\\_lawsuit\\_over\\_treatment](http://criminaljustice.change.org/blog/view/private_mississippi_prison_faces_lawsuit_over_treatment)

In a CCA detention center in Arizona an inmate died while shackled to a bed after doctors failed to take his medical complaints seriously.<sup>11</sup> Inmates in Florida sued a CCA run facility alleging that prison guards defecated in prison food.<sup>12</sup>

### **Violations of the Right of Family Unity**

15. 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 consistently violated by private prisons through the practice of transferring inmates to private facilities away from their home states.

16. For example, there are roughly 10,300 California inmates that are housed in CCA facilities in other states and approximately 2,580 inmates are set to be housed in a GEO center in Michigan.<sup>13</sup> There are approximately 1,900 Hawaiian inmates incarcerated at a CCA facility in Arizona.<sup>14</sup>

17. Family visitation becomes impractical when inmates are transferred across state lines. The isolation that results from this violation inhibits the rehabilitation process.

### **Arbitrary Detention**

18. ICCPR Article 9(1) ensures the right to liberty and protects against arbitrary arrest and detention. The profits that are associated with the private prison industry create an incentive for arbitrary detention.

19. In 2009, two Pennsylvania judges pled guilty to crimes associated with a bribery scheme. The Judges were receiving kickback payments from two privately operated youth centers in exchange for committing defendants. This scheme led to thousands of youths receiving disproportionately harsh sentences.<sup>15</sup>

### **Detention of Migrants**

20. In an effort to obtain new contracts and increase profits the private prison industry has engaged in lobbying to expand the pool of detained persons. These efforts have been directed towards migrant detention.<sup>16</sup>

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<sup>11</sup> Nina Bernstein, Few Details on Immigrants Who died in Custody, The New York Times, May 5, 2008, [http://www.nytimes.com/2008/05/05/nyregion/05detain.html?\\_r=1&hp](http://www.nytimes.com/2008/05/05/nyregion/05detain.html?_r=1&hp)

<sup>12</sup> Associated Press, Ex-cons claim Human Waste was Put in Food, March 11, 2006, [http://www.msnbc.msn.com/id/11787723/ns/us\\_news-crime\\_and\\_courts/](http://www.msnbc.msn.com/id/11787723/ns/us_news-crime_and_courts/)

<sup>13</sup> Jim Christie, States look to Save with Lockdowns, Private Prisons, January 20, 2011, Westlaw News and Insight, [http://westlawnews.thomson.com/National\\_Litigation/News/2011/01\\_-\\_January/States\\_look\\_to\\_save\\_with\\_lockdowns,\\_private\\_prisons/](http://westlawnews.thomson.com/National_Litigation/News/2011/01_-_January/States_look_to_save_with_lockdowns,_private_prisons/)

<sup>14</sup> Tim Sakahara, Hawaii Inmates Complain About Safety in Arizona Prison, KGMB Hawaii News Now, June 16, 2010, <http://www.hawaiinewsnow.com/global/story.asp?s=12663457>

<sup>15</sup> Ian Urbina and Sean D. Hamill, Judges Plead Guilty in Scheme to Jail Youths for Profit, The New York Times, February 13, 2009, <http://www.nytimes.com/2009/02/13/us/13judge.html>

<sup>16</sup> Laura Sullivan, Prison Economics Help Drive Arizona Immigration Law, National Public Radio, October 28, 2010, <http://www.npr.org/templates/story/story.php?storyId=130833741>

21. The Working Group on Arbitrary Detention has stated that migrants should only be detained as a last resort.<sup>17</sup> The lobbying efforts of the private prison industry have resulted in increased detention of migrants in contravention of this principle.

22. In 2010, Arizona passed Senate Bill 1070 which required police to detain individuals who are unable to prove that they entered the country legally. This Bill was the culmination of the 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, drafted at the ALEC meeting, was almost identical to Senate Bill 1070.<sup>18</sup>

23. Thirty of the 36 Arizona Senate co-sponsors of the Bill 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.<sup>19</sup> The close relationship between lobbyists and government officials is a disturbing trend that leads to an increase in the number of incarcerated migrants.

### **Recommendations**

24. HRA urges the Council to consider the effects of privatization of prisons on the human rights of detained persons. HRA urges its prohibition, but in the absence of a complete ban, the following measures are recommended:

- More transparency and oversight of private facilities
  - Sentencing reforms
  - Increased emphasis on prisoner rehabilitation
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<sup>17</sup> 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](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_en.pdf)

<sup>18</sup> Sullivan, *supra* note 15.

<sup>19</sup> Peter Cervantes-Gautshi, How Wall Street Profits from the Criminalization of Immigrants and Lobbies for More To Be Locked Up, AlterNet, December 14, 2010, <http://www.alternet.org/story/148442>