



# General Assembly

Distr.: General  
3 March 2014

English only

---

## Human Rights Council

Twenty-fifth session

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.

[17 February 2014]

---

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

GE.14-11662



\* 1 4 1 1 6 6 2 \*

Please recycle 



## Private Prisons' impact on the integrity of the judicial system

### I. Introduction:

This report addresses the need for an investigation of private prisons' impact on the judicial system. Private prisons have the potential to affect the administration of justice in a variety of ways. The focus of this report is to outline ways private prisons affect the "integrity of the judicial system" through comparing different nations' responses to private prisons.

### II. International Human Rights Standards:

The Universal Declaration of Human Rights provides each person deemed to have violated a law has the right to be judged by competent national tribunals<sup>1</sup> and is entitled to "a fair and public hearing by an independent and impartial tribunal."<sup>2</sup> Furthermore, the International Covenant on Civil and Political Rights (ICCPR) emphasizes the need for a competent authority to determine when and how to infringe on a person's right.<sup>3</sup> Most importantly, anyone incarcerated "shall be treated with humanity and with respect for the inherent dignity of the human person."<sup>4</sup>

The main question many opponents of private prisons ask is how to ensure these private companies comply with these human rights standards. Generally, a private company is only accountable to their shareholders and contractual obligations with the government. It is feasible human rights may be neglected in pursuit of fulfilling duties to shareholders.

### III. Case Study of Countries:

Each country discussed below approached private prisons in a different way. The first country, Israel, considered privatizing prisons and eventually decided it was unconstitutional. Next, the United States (US) and United Kingdom (UK) portray types of human rights violations that compromise the integrity of the judiciary. Finally, Australia and Brazil highlight potential options for governments to regulate a private prison to ensure human rights compliance.

#### Israel

In 2009, Israel's Supreme Court declared private prisons unconstitutional.<sup>5</sup> The Court found the State cannot delegate correctional powers to a private corporation. The powers highlighted were general powers in upholding order and security.<sup>6</sup> To fulfill these duties, prisons may isolate a prisoner, conduct physical examinations, order urine samples or use force to conduct a search. As the court reasoned, private entities cannot have these powers because its prisoners would serve the interests of generating profits and not public interests of deterrence or rehabilitation.<sup>7</sup>

#### The United State

Unlike Israel, the US government and many of its states' governments embrace private prisons as a solution to overcrowding and bloated budgets. Only two states ban private prisons, Illinois<sup>8</sup> and New York.<sup>9</sup> Moreover, private

---

<sup>1</sup> Art. 8.

<sup>2</sup> *Id.* at Article 10.

<sup>3</sup> Art. 2(b).

<sup>4</sup> Art. 10.

<sup>5</sup> H CJ 2605/05 Academic Center of Law and Business v. Minister of Finance.

<sup>6</sup> *Id.* at 45.

<sup>7</sup> *Id.* at para. 30, p. 70.

<sup>8</sup> 730 ILCS 140/3.

<sup>9</sup> N.Y. Correctional Law §§120-121.

prisons are publically traded. The GEO Group's 2012 Annual Report<sup>10</sup> and Corrections Corporation of America (CCA) 's 2012 Annual Report<sup>11</sup> contained substantial earnings in the multi-millions. Corporations also file projected risks. In this section, the GEO Group cited profit numbers for 2013 may suffer due to settling or losing legal claims stemming from conditions, mistreatment, and sexual misconduct within their facilities.<sup>12</sup> CCA only cited "pending or threatened litigation"<sup>13</sup> but in another part mentioned their cash flow is dependent on crime rates, sentencing patterns, government budgets and public acceptance.<sup>14</sup> To secure lucrative contracts, CCA also lobbies state and federal governments.<sup>15</sup> In 2012, CCA paid \$1.6 million to "consultant government relations professionals for direct lobbying."<sup>16</sup>

While political donations are legal, private actors have been found to bribe judges to ensure a continual flow of detainees to maintain revenue.<sup>17</sup> The "kids for cash" scandal in Pennsylvania detailed two state judges received over \$2 million in a span of three years from a builder and an attorney "for helping to construct and operate juvenile detention centers and placing juvenile offenders there."<sup>18</sup> The investigation found "that there was routine deprivation of children's constitutional rights to appear before an impartial tribunal."<sup>19</sup>

This case demonstrates how privatizing detention centers has the potential to sway the judiciary to issue longer sentences to generate profits. Except for this example of blatant bribery, many private corporations are able to operate with impunity despite reports of inhumane conditions<sup>20</sup> and racial disparity.<sup>21</sup> Overall, an investigation by the Special Rapporteur on the Independence of Judges and Lawyers would be beneficial in assessing how governments hold private prison companies accountable and what mechanisms they use to ensure the integrity of the judiciary.

### The United Kingdom

The UK has followed a similar model as the US, and has recently created a government institution, the National Offenders Management Service (NOMS), to oversee all prisons and issue reports on their compliance with contract provisions.<sup>22</sup> A prominent provision in contracts stipulates providing vocational and/or rehabilitative programs for prisoners to develop skills and seek parole. In a 2005 report on a Serco private prison in Doncaster, Nicola Padfield assessed how programs are cut to maintain profits which impacted a prisoner's chances for parole.<sup>23</sup>

The most recent NOMS report of Serco's prison in Doncaster,<sup>24</sup> found the education was overall satisfactory, but the vocational training was inadequate compared to commercial standards.<sup>25</sup> One of the main recommendations was to enhance education and training so that prisoners have at least part time education, training or work.<sup>26</sup> Since 2010, it is unclear whether Serco implemented the recommendation. From Padfield's article and the NOMS report, inadequate advancement means prisoners are more likely to be denied parole and remain in prison longer. This undermines the

<sup>10</sup> GEO Group's Annual Report p. 3. <http://phx.corporate-ir.net/phoenix.zhtml?c=91331&p=irol-reportsannual>.

<sup>11</sup> CCA's Annual Report, p. 49. <http://cca.com/investors/financial-information/annual-reports>.

<sup>12</sup> GEO Group Annual Report Reserves for Insurance Losses, p. 26.

<sup>13</sup> CCA Annual Report, Item 1A. Risk Factors, p. 26.

<sup>14</sup> *Id.* at p. 28.

<sup>15</sup> "Political Activity and Lobbying Report for 2012." <http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-politicalcontributions>.

<sup>16</sup> *Id.* at p. 6.

<sup>17</sup> *United States v. Ciavarella*, 716 F.3d 705 (3d Cir. 2013).

<sup>18</sup> *Id.* at pp. 713-716.

<sup>19</sup> *Id.* at 716.

<sup>20</sup> *Capitalist Punishment*. Clarity Press, Inc. (2003).

<sup>21</sup> Petrella, Christopher. "Color of Corporate Corrections, Part II." *Journal of Radical Criminology* (2014). <http://journal.radicalcriminology.org/index.php/rc/article/view/44/pdf>.

<sup>22</sup> <http://www.justice.gov.uk/about/noms>.

<sup>23</sup> Padfield, Nicola. *Parole and early release: the Criminal Justice and Immigration Act 2008 changes in context*, *Crim. L.R.* 2009, 3, 166-187.

<sup>24</sup> <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/doncaster/doncaster-2010.pdf>

<sup>25</sup> *Id.* at p. 13.

<sup>26</sup> *Id.* at p. 16.

integrity of the judiciary because without access to rehabilitative programs, prisoners do not have the right to a fair hearing for parole.

### **Australia**

Australia has been criticized for human rights violations in its private prisons. One state, Western Australia (WA), decided to create a monitoring system, the Office of the Inspector of Custodial Services (OICS), to rectify issues of accountability. This is unique to this particular jurisdiction. To ensure compliance with basic rights, the OICS has statutory autonomy, direct access to parliament, ability to publish public reports, and unrestricted ability to conduct inspections.<sup>27</sup>

In OICS' 2012-2013 report, the inspector noted the problem of overcrowded prisons. To address this issue, the Inspector cited a private prison, Acacia, will add 387 beds.<sup>28</sup> Yet, the last report (2011) on Acacia noted a major problem of maintenance conditions.<sup>29</sup> The Inspector recommended the operator, Serco, take more responsibility in maintaining the prison. This demonstrates the government is aware of problems and is attempting to hold the private prison accountable. Yet it is unclear whether such government monitoring will spread to other states in Australia or even succeed in WA.<sup>30</sup> Strict monitoring upholds the integrity of the judiciary because private prisons are held accountable to the same standards as the government which the judiciary enforces.

### **Brazil**

Brazil adopted a hybrid model in creating their private prison industry.<sup>31</sup> Unlike in the US, UK or Australia, the warden is a public servant and oversees the operations of the private prison. To uphold vigilant monitoring, two solutions were proposed. There must be enough compensation for the warden and there must also be a thorough monitoring system headed by the press, human-rights organizations and public prosecutors.<sup>32</sup> As in Australia's case, it is unclear whether this model will be successful in holding private prisons accountable for human rights violations since reports are not yet available. More investigation is necessary to determine private prisons' impact on the administration of justice.

## **IV. Recommendations**

Human Rights Advocates urges:

1. The Human Rights Council to request that the Special Rapporteur on the Independence of Judges and Lawyers conduct an investigation of private prisons' impact on the judicial system; and
2. State parties to:
  - To conduct an investigation of their private prison complex to determine appropriate measures of accountability;
  - Develop legal redress mechanisms, similar to public prisons, to hold private prison companies accountable for violation of human rights standards;
  - Ensuring programs offered by private prisons advance a prisoner's success after incarceration by implementing certified vocational programs;
  - Reevaluate sentencing methods to avoid overcrowding prisons.

---

<sup>27</sup> OICS Annual Report for 2012-2013 OCIS, p. 6.

<sup>28</sup> *Id.* at p. 9.

<sup>29</sup> <http://www.oics.wa.gov.au/go/inspections/inspection-reports>. March 2011 OCIS Report on Acacia, p. 7.

<sup>30</sup> OCIS said a follow up investigation occurred in November 2013, but the report has yet to be published.

<sup>31</sup> Cabral, Sandro, Lazzarini, Sergio G., Furquim de Azevedo, Paulo. "Private operation with public supervision: evidence of hybrid modes of governance in prisons." 15 November 2009 Springer Science+Business Media, LLC 2009.

<sup>32</sup> *Id.*