



Human Rights Advocates

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HUMAN RIGHTS IMPLICATIONS OF PRIVATE PRISONS

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I. Introduction

The human rights implications of private prisons raise concern in countries where private companies are profiting off imprisonment. Private companies have an incentive for higher rates of imprisonment in order to maximize profits. The most affected are immigrants who have taken the brunt of the privatization, by being imprisoned for non-criminal offenses across the globe. The United States, United Kingdom, and Australia utilize private prisons the most. The facilities cut costs in order to maximize profits. The resultant treatment of prisoners in such an environment creates an advocacy for transparency in the prisons. It is a multi-billion dollar industry profiting off the despair of its prisoners.

II. International Standards

The Working Group on Arbitrary Detention states that arbitrariness may include detention authorized by domestic law, including sentences that are disproportionately long or harsh. 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.”¹ Placing individuals in temporary custody in stations, ports, 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.

¹ *Report of the Working Group on Arbitrary Detention: Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development*, Human Rights Council, United Nations General Assembly, A/HRC/22/44, 24 December 2012.

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.² These realities are contrary to the international legal standards protecting the rights of prisoners.

III. Countries of Concern:

1. United States

A. History

The two biggest private prison companies in the United States are the Corrections Corporation of America (CCA) and The GEO Group. In 2010, the annual revenue for the two companies combined was \$3 billion with the CEOs of each company making over \$3 million each.³

An article recently published states that GEO, a private company converted its corporate status to maximize profits. As of January 1, 2013, GEO group received the status of Real Estate Investment Trust (REIT). GEO converted from a class-c corporation to REIT. REIT is an entity that annually distributes at least 90 percent of its taxable income to shareholders in the form of dividends in exchange for a zero federal and state corporate tax liability. GEO estimates a \$50 million annual tax

² A Brief History of Private Prisons in Immigration Detention, Detention Watch Network, 2008, http://www.detentionwatchnetwork.org/privateprisons_note2.

³ Wade, Lisa, *Race, Rehabilitation, And The Private Prison Industry*, The Society Pages, 2013, <http://thesocietypages.org/socimages/2013/01/25/race-rehabilitation-and-the-private-prison-industry/>.

savings, invests at least 75 percent of its total assets in real estate, and derives at least 95 percent of its gross income from real estate-related sources. “Fundamentally, GEO is in a real estate intensive industry...and GEO has attractive real estate characteristics,” reads an excerpt from its most recent investor presentation, one that leaves out all mention of rehabilitation. Interestingly, GEO’s real estate holdings consist mainly of prisons. Hours after GEO received REIT status, the company’s share’s hit an all- time high. CCA is currently waiting for their REIT conversion. ⁴

B. Lobbying

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 Robert Mericle, builder of two private, for profit juvenile facilities to sentence kids to harsher punishments in order to keep the company’s private facility filled. The scandal led to the reversal of thousands of cases and the release of many of the juveniles. The Judge was sentenced to serve 29 years in prison for his crime. ⁵

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. ⁶

⁴ Petrella, Christopher, *The Legacy of Chattel Slavery: Private Prisons Blur the Line Between Real People and Real Estate With New IRS Property Gambit*, Truth-Out, 2013, <http://truth-out.org/news/item/14255-the-legacy-of-chattel-slavery-private-prisons-blur-the-line-between-real-people-and-real-estate-with-new-irs-property-gambit>.

⁵ Brickner, Michael and Diaz, Shakyra, *Prisons for Profit: Incarceration for Sale*, ACLU, <http://www.acluohio.org/issues/CriminalJustice/ABAPrivatePrisonsReport.asp>.

⁶ 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->

C. Race and The Private Prison Industry

1. Statistics

Racial minorities and immigrants are disproportionately housed in private prisons. Racial minorities are over-represented in private prisons by an additional 12 percent. Minorities make up 50 percent of Texas's population, but are detained in private prisons at 71 percent. Arizona's minority population totals around 40 percent, while the private prisons in the state consist of 65 percent minorities.⁷ Furthermore, while African-Americans make up 20 percent of Virginia's population, and 61 percent of the state's total correctional population, they account for 75 percent of all inmates housed in GEO's for-profit Lawrenceville facility.⁸

2. Lack of Rehabilitation for Minorities

State prisons are much more likely than private prisons to offer programs that help prisoners: psychological interventions, drug and alcohol counselling, coursework towards high school or college diplomas, job training, etc... One researcher argues that what is good for private prisons, is bad for individuals, their families, communities, and our country.⁹

Lake Erie Correctional Institute and North Coast Correctional Treatment Facility, both private facilities, have no trauma recovery programs, no contract or grant-funded job-training programs, and no program addressing mental illness, disease management, or general health, or sex offender issues. There are very few

[arizona/2011/07/20/arizona's-private-prison-pay-to-play-scandal-widens-chair-of-house-appropriations-committee-appropriated-by-geo-group/](http://thesocietypages.org/socimages/2013/01/25/race-rehabilitation-and-the-private-prison-industry/).

⁷ Wade, Lisa, *Race, Rehabilitation, And The Private Prison Industry*, The Society Pages, 2013, <http://thesocietypages.org/socimages/2013/01/25/race-rehabilitation-and-the-private-prison-industry/>.

⁸ Petrella, Christopher, *The Legacy of Chattel Slavery: Private Prisons Blur the Line Between Real People and Real Estate With New IRS Property Gambit*, Truth-Out, 2013, <http://truth-out.org/news/item/14255-the-legacy-of-chattel-slavery-private-prisons-blur-the-line-between-real-people-and-real-estate-with-new-irs-property-gambit>.

⁹ Wade, Lisa, *Race, Rehabilitation, And The Private Prison Industry*, The Society Pages, 2013, <http://thesocietypages.org/socimages/2013/01/25/race-rehabilitation-and-the-private-prison-industry/>.

programs that help inmates once they are free, which can be attributed to the fact that recidivism is good for private prisons. The more people are returned to prisons, the more business private prisons receive.¹⁰

3. Immigration

It has been argued that privatization of immigration detention centers in the U.S. served as a “seedbed” for prison privatization, and that private firms in the U.S. were careful to initially choose immigrant detention centers and other low-security facilities in the “less visible regions of the adult and juvenile penal systems” before expanding into high-security adult facilities.¹¹ 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.¹² 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.¹³

D. Untrained Staff

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 private prison industry’s own statistics

¹⁰ *Prisons for Profit: A Look at Prison Privatization*, ACLU Ohio, 15-16,

http://www.acluohio.org/assets/issues/CriminalJustice/PrisonsForProfit2011_04.pdf.

¹¹ Flynn, Michael and Cannon Cecilia, *Privatization of Immigrant Detention: Towards a Global View*, A Global Detention Project Working Paper, 2009,15,

http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

¹² For-Profit Prison System Preying on Immigrants: Report, Common Dreams, 2012, <https://www.commondreams.org/headline/2012/08/02-2>.

¹³ Illegal Reentry Becomes Top Criminal Charge, TRAC Immigration, 2011, <http://trac.syr.edu/immigration/reports/251/>.

show that at private prisons the turn-over rate was 53 percent, while at public prisons it was a mere 16 percent.¹⁴

Prison safety depends on a stable workforce. The more frequently a larger number of employees quit, the more dangerous prisons become. High turnover rates mean the staff are fewer in number and less experienced. Workforce instability has resulted in riots, rapes, assaults, and escapes. A 2004 report by the Federal Probation Journal found that private prisons had 50 percent more inmate on inmate assaults, and almost 50 percent more inmate on staff assaults.¹⁵

Private prisons control their labor costs by reducing the number of staff, hiring low-wage, non-union labor, and eliminating fringe benefits. Prison guards hired by private facilities often have little to no training or experience, and in some instances barely out of high school. The result is a labor force that is ill prepared for the violent crises that may erupt at any moment.¹⁶

The consequences of cost cutting are illustrated in the Youngstown Private Prison in Ohio in 1999. Upon opening the facility in 1997, CCA staffed it “with guards who had little or no experience in corrections-and then imported 1,700 of the most violent inmates from Washington, D.C., to fill what was supposed to be a medium security prisons.” In its first 14 months of operating the facility experienced 13 stabbings, two murders, and six escapes.¹⁷

Furthermore, a recent lawsuit brought by inmates in an Idaho prison alleges that the company is cutting back on personnel costs by partnering with violent prison gangs to help control the facility. The inmates contend that CCA officials use gang

¹⁴ *Prisons for Profit: A Look at Prison Privatization*, ACLU Ohio, 13-14, http://www.acluohio.org/assets/issues/CriminalJustice/PrisonsForProfit2011_04.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Prisons for Profit: A Look at Prison Privatization*, ACLU Ohio, 13-14, http://www.acluohio.org/assets/issues/CriminalJustice/PrisonsForProfit2011_04.pdf.

violence and the threat of gang violence as an “inexpensive device to gain control over the inmate population,” and that housing gang members together allows the company to use fewer guards, reducing payroll costs.¹⁸

E. Conditions

In November 2012, GEO was sued by civil rights organizations after Mississippi youth claimed “barbaric, unconstitutional conditions,” at the company’s correctional facility.¹⁹ 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.²⁰

2. United Kingdom

A. History

The private prison phenomenon extends beyond the United States. The United Kingdom government took the first steps toward privatization in the early 1990’s by issuing short term contracts to security companies to operate a limited number of publicly owned prisons. England and Wales have the most privatized prison systems in Europe with fourteen prisons; most are immigrant detention centers.²¹

B. Conditions

The wave of deaths in immigration removal centers in the U.K. has caused alarm among critics of the government’s detention policy, who warn that the system is

¹⁸ 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>.

¹⁹ A Brief History of Private Prisons in Immigration Detention, Detention Watch Network, 2008, http://www.detentionwatchnetwork.org/privateprisons_note2.

²⁰ 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/>.

²¹ Verkaik, Robert, *Private Prisons ‘performing worse than state-run jails,’* 2009, <http://www.independent.co.uk/news/uk/home-news/private-prisons-performing-worse-than-staterun-jails-1722936.html>.

at “breaking point” with poor healthcare putting people’s lives at risk. John McDonnell, Labour MP for Hayes and Harlington, a constituency in Greater London, said he feared there would be more deaths as the system struggled to cope with the number of people being detained. “The government is now detaining people on such a scale that the existing services are swamped,” he said. “It is inevitable if we put the services under such relentless strain that there will be more deaths a result...we are dealing with people who are extremely stressed and extremely vulnerable and the services are not able to cope and not able to guarantee their safety.”²²

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.²³

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 in the case of *The Queen (on the Application of S) v. The Secretary of State for the Home Department*. Judge David Elvin ruled that his treatment amounted to a breach of article 3 of the European Convention on Human Rights. In the ruling, Judge Elvin said: “S’s pre-existing mental condition was both triggered and exacerbated by detention and that involves both a debasement and humiliation of S since it showed a serious lack of respect for his human dignity. It creates a state in S’s mind of real

²² Taylor, Diane and Taylor, Matthew, *Detention centre deaths spark police investigations*, The Guardian, <http://www.guardian.co.uk/uk/2011/aug/05/detention-centre-deaths-police-investigations>.

²³ 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>.

anguish and fear, through his hallucinations, which led him to self-harm frequently and to behave in a manner which was humiliating....”²⁴

C. Exploitation of Labor

To exacerbate the human rights implications, the private prison industry exploits cheap, captive labor of prisoners. This can lead to slavery like practices. 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.²⁵ 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.²⁶

3. Australia

A. History

The same global wide companies operating in a multi-billion dollar industry are in five jurisdictions in Australia.²⁷ Western Australia’s Deaths in Custody Watch Committee spokesperson stated that the idea of private prisons is “basically making a

²⁴ The Queen (on the Application of S) v. The Secretary of State for the Home Department, Interested Parties, (1) GEO Group Limited, (2) Drummonds Medical Limited, (3) The Secretary of State of Justice, (4) The Central and North West London NHS Foundation Trust, Case No: CO/8140/2010, Citation Number: [2011] EWHC 2120 (Admin). Royal Courts of Justice, Strand, London, 5 August 2011.

²⁵ 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/>.

²⁶ Id.

²⁷ 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>.

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.²⁸

B. Conditions

Australia's immigration detention centers have been repeatedly criticized. In 2001 and 2002, detainees protested their inhumane treatment in the facilities by setting fires to several of them and attacking guards with iron bars in breakout attempts. International human rights groups claim that human rights abuses of detainees were well documented by national and international human rights bodies. These included the detention of immigrants without a specified or legal time limit and inadequate access to appropriate health care, leading to high rates of depression, self-harm, and attempted suicide.²⁹

In 2007, the Australian Human Rights Commission (HREOC) reported marked improvements in detention conditions; there were no complaints from detainees during HREOC's 2007 visits, in contrast to the multiple complaints HREOC reported in previous years. Despite these reforms, advocacy groups have continued to argue that the government should terminate its use of private corporations in immigration detention centers and assert government control over them.³⁰

The ramifications of cost cutting in these prisons are exemplified in deaths of detainees. For example, 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."³¹

²⁸ *Australia Hall of Shame*, Private Corrections Working Group, http://www.privateci.org/shame_aust.html.

²⁹ Flynn, Michael and Cannon Cecilia, *Privatization of Immigrant Detention: Towards a Global View*, A Global Detention Project Working Paper, 2009, 5-6, http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

³⁰ *Id.*

³¹ *Australia Hall of Shame*, Private Corrections Working Group, http://www.privateci.org/shame_aust.html.

C. Christmas Island

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.³² 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.³³

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.³⁴ It was reported that administrative staff were ordered to go out on the front lines and quell the riots.³⁵

4. South Africa

South Africa has one key immigration detention center, the Lindela Holding Facility, a privately run facility. Run by Bosasa, Lindela was built to relieve overcrowding in other prisons, and it is located outside Johannesburg. Capacity level is 6,000, however it was conveyed by a 2009 report by the Consortium for Refugees and Migrants in South Africa that 50,000 non-nationals are detained at Lindela

³² Baird, Jessica, *A Short Stay on Christmas Island*, Amnesty International 2009, <http://www.amnesty.org.au/refugees/comments/22308/>.

³³ Immigration Detention on Christmas Island, Australian Human Rights Commission, 2010, http://humanrights.gov.au/human_rights/immigration/idc2010_christmas_island.html.

³⁴ Needham, Kirsty, *Warning Bells Before Detainee Riots*, The Age, 2011, <http://www.theage.com.au/national/warning-bells-before-detainee-riots-20111129-1o57x.html>.

³⁵ 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/>.

annually. The facility is repeatedly criticized for severe overcrowding, the serial abuse of detainees, excessively long detention periods, and ineffective, and/or indifferent monitoring by government bodies. Two scholars note, “the marks of a developing country emerge when one compares” Lindela to privately owned facilities in other countries.³⁶ “Although overcrowding and abuses may have occurred in the facilities in the USA and the UK, these problems were relatively minor compared to the severe overcrowding and completely unacceptable human rights abuses suffered by the migrants in Lindela.”³⁷

IV. Model Country-Sweden

Sweden is now considered to be a model country for immigration detention. In response to human rights violations in the centers, the government introduced momentous reforms in immigration policy, which came into force in 1997. Sweden is the rare case of a country that reversed direction on privatization when private management spurred widespread criticism. The government removed privately contracted security companies from immigration detention centers, transferred responsibility of the centers to the Migration Board, required that qualified health professionals be available, and ordered that facilities used for administrative detention not resemble prison cells. The reforms revealed a growing mindfulness that immigration detainees were not criminal inmates and thus necessitated separate treatment.³⁸

The Refugee Council of Australia, in its research of alternatives to detention, has cited the “The Swedish Model of Detention” as an example. The Refugee Council

³⁶ Flynn, Michael and Cannon Cecilia, *Privatization of Immigrant Detention: Towards a Global View*, A Global Detention Project Working Paper, 2009, 10-11, http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

³⁷ Id.

³⁸ Id. at 13.

explains that Sweden achieved these reforms “not by increasing security and secrecy, but by: increasing consultation and access for NGO’s, researchers and the media; the removal of companies running the detention centers, who don’t have the experience in the sensitive issues involved in working with asylum seekers; and by ensuring all detainees are treated with dignity and fairness, are aware of their rights and have the right to appeal.”³⁹

V. 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. The disparate effect of detentions on immigrants and minorities raises striking issues in the dynamic. Prisoners across the globe have suffered as a result of the industry cutting corners in maintaining adequate conditions of their facilities.

Private companies often uphold or improve their services only when confronted with elevated degrees of surveillance and oversight, especially by international organizations or other supra-national bodies. Research shows, specifically in the Swedish model, that significant influence is exerted on some countries after official visits are made by such organizations, commanding them to provide detailed responses to each point of concern raised by the outside institution. In Sweden, the media and human rights groups reported instances of violence, hunger strikes, suicide attempts, and growing unrest at detention facilities. The Swedish government ordered an inquiry into the detention practices, leading to the introduction of significant reforms in immigration policy.⁴⁰ Other countries should follow suit.

³⁹ Id.

⁴⁰ Flynn, Michael and Cannon Cecilia, *Privatization of Immigrant Detention: Towards a Global View*, A Global Detention Project Working Paper, 2009, 16-17, http://www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

With this in mind, Human Rights Advocates urges:

1. The Council to request:
 - a. 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 in private facilities.
 - b. That states protect human rights against violations committed by private actors;
2. States to:
 - a. 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.
 - b. Look to The Swedish Model of Detention as an example of alternatives to detention.