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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 Human Rights Advocates, Inc. (HRA), 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.

[13 February 2010]

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

Privatized Prisons and Human Rights

Introduction

1. Human Rights Advocates submits this statement calling the attention of the Member States to the rapidly growing trend toward privatization of prisons and the resulting increased threat to human rights. HRA urges the Council to address critical issues related to privatization, particularly the risks posed with regard to safety and access to healthcare; the impact on prisoners and their families, prison personnel, and migrants who are disproportionately detained in private facilities; and the incentives created for over-incarceration and denial of opportunities for rehabilitation.

2. Prison privatization is not a new phenomenon, nor is it necessarily incompatible with human rights. Public prisons have historically been site to some of the most egregious human rights violations, and as states struggle with thinly-stretched budgets to accommodate growing numbers of prisoners, it is not surprising that governments consider private alternatives. Although problems persist in public institutions, and there may be some perceived or short-term economic advantage to privatization, the evidence obtained thus far suggests that privatization is a dangerous practice that frequently results in the deprivation of human rights. HRA urges the Council to request that the Working Group on Arbitrary Detention consider the effects of prison privatization and prepare a report.

The Incarceration Business

3. Private corporations have one main priority: to make a profit. Publicly traded companies would violate their duty to their shareholders if they did not. One private prison inmate reported prominently placed signs in the prison's administration buildings displaying the dollar amount of the previous day's stock closing.¹ When financial concerns are at the forefront of administrators' minds, the health and safety of prisoners and guards is not. From healthcare to warfare, the privatization of public services has repeatedly posed risks to human rights, as the desire to respect human beings is trumped by the need to profit. A closer look at privatization also reveals that it often fails to deliver its promised reduction in public spending. Thus, privatization may create a lose-lose situation for both prisoners and the public.

4. One illustration is the alarming rise in privatization occurring in the United States, both in the traditional prison context as well as in detention facilities for migrants.² This is likely due in part to the huge profit potential, as the U.S. leads the world with 7.3 million people under the control of correctional departments, state spending reaching \$47 billion per year.³ Although many countries currently employ private and quasi-private prison

¹ Alex Friedmann, Prison Privatization: The Bottom Line, Corp Watch, Aug. 21, 1999, available at <http://www.corpwatch.org/article.php?id=851>.

² See, e.g., Jennifer Steinhauer, Arizona May Put State Prisons in Private Hands, N.Y. Times, Oct. 24, 2009, available at <http://www.nytimes.com/2009/10/24/us/24prison.html> (describing Arizona's plans to seek bids from private companies for nearly all of the state's prisons, including death row).

³ One in 31, The Pew Center on the States, Mar. 2009, available at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf; Roy Walmsley, World Prison Population List, Eighth Edition, King's College London, International Centre for Prison Studies, Dec. 2008, available at http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppl-8th_41.pdf; See also Adam Liptak,

systems,⁴ the U.S. provides a number of examples of the risks inherent in privatization. While privatized prisons pose threats to a large number of international human rights – indeed, every right affected by any form of incarceration – the effects can be seen most dramatically with regard to the right to life, to liberty (including freedom from arbitrary detention), and to be treated with humanity and dignity.

Threats Posed to the Right to Life

5. Article 9(1) of the ICCPR protects the human right to life, a right that has been repeatedly threatened by unsafe conditions within private prisons.

6. Last year, a federal court found that California's failure to provide prisoners with healthcare was killing at least one inmate per month, ordering the state to reduce its prison population by 55,000 inmates in three years.⁵ California already houses 13,000 of its 168,000 inmates in private prisons, 8,000 of whom are housed out-of-state.⁶ While continuing to challenge this ruling,⁷ California has considered everything from moving more prisoners out-of-state,⁸ to sending them out-of-country,⁹ to increasing privatization¹⁰ if forced to comply.

7. Given the track record of privatized prisoner healthcare, increased privatization would likely fail to address the underlying concerns of the federal court. A 1998 report found that although contracts with private corporations had cut the cost of healthcare in some states, there were "more than 20 cases in which inmates allegedly died as a result of negligence, indifference, understaffing, inadequate training or overzealous cost-cutting."¹¹

8. Immigration and Customs Enforcement in the U.S. has counted 107 deaths in migrant detention facilities since 2003.¹² One private facility in Arizona was site to nine fatalities – the most of any federally contracted immigration jail.¹³ In 2007, a detained Guinean tailor named Boubacar Bah suffered a skull fracture at a privately run facility in New Jersey. He was left in isolation without treatment for over 13 hours before an

U.S. Prison Population Dwarfs that of Other Nations, N.Y. Times, Apr. 23, 2008, available at <http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html>.

⁴ See, e.g., *Prison Privatisation Report International*, Public Services International Research Unit of the University of Greenwich, London, England, No. 74, Oct. 2006, available at <http://www.psiu.org/ppri.asp>.

⁵ Solomon Moore, Court Orders California to Cut Prison Population, Feb. 9, 2009, N.Y. Times, available at <http://www.nytimes.com/2009/02/10/us/10prison.html>.

⁶ Terrence Chea, *California Governor Wants More Money for Universities*, MercuryNews.com, Jan. 7, 2010, available at http://www.mercurynews.com/news/ci_14143733.

⁷ Don Thompson, *Supreme Court Rejects Challenge to California Prison Plan*, Jan. 10, 2010, The Californian.com, available at <http://www.thecalifornian.com/article/20100120/NEWS01/1200306/1002/rss>.

⁸ Roger Rapoport, *California's 'No' to Michigan on Inmates a Lose-Lose Deal*, S.F. Chronicle, Aug. 23, 2009 at E2.

⁹ *Send California Inmate to Mexico, Says Schwarzenegger*, Yahoo News, Jan. 25, 2010, available at http://news.yahoo.com/s/afp/20100126/ts_alt_afp/uspoliticscaliforniaprisons_20100126014519.

¹⁰ Wyatt Buchanan and Marisa Lagos, *Governor Pledges to Spare Education from Cuts*, SFGate.com, available at http://articles.sfgate.com/2010-01-07/news/17470387_1_higher-education-education-spending-spending-plan.

¹¹ William Allen and Kim Bell, *Death, Neglect and the Bottom Line*, Corp Watch, Sept. 27, 1998, available at <http://www.corpwatch.org/article.php?id=858>.

¹² Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, N.Y. Times, Jan. 9, 2010, available at <http://www.nytimes.com/2010/01/10/us/10detain.html>.

¹³ *Id.*

ambulance took him to a hospital where he eventually died. New evidence also reveals officials undercounting deaths at detention facilities and further attempting to cover up damaging facts to avoid scrutiny and media exposure.¹⁴

Threats to the Right to Liberty

9. Article 9(1) of the ICCPR ensures the right to liberty and security of the person, and states that “[n]o one shall be subject to arbitrary arrest or detention.”

10. The privatization of prisons increases the risk of arbitrary detention, as individuals standing to profit from incarceration may seek to influence legislators, parole boards, and even judges. In February 2009, two Pennsylvania judges were charged with accepting \$2.6 million in exchange for sentencing juveniles to two privately run youth detention centers.¹⁵

11. Migrant detainees in the U.S. are frequently transferred from facility to facility, often away from major cities and into remote areas, and often without notice to either detainees or their families.¹⁶ This practice interferes with detainees’ rights in multiple ways by separating them not only from family, but also the resources and evidence that may be vital to defending against deportation. Human Rights Watch has called this a “chaotic game of musical chairs [that has] dire consequences since it may keep [detainees] from finding an attorney or presenting evidence in their defense.”¹⁷ When the director of the New York City Bar Justice Center asked the warden at a private facility if letters containing lawyers’ legal advice could be forwarded to transferred detainees, she was told that he would first have to consider the financial interests of his private shareholders.¹⁸

Threats to the Right to Be Treated with Humanity and Dignity

12. Article 10 of the ICCPR guarantees the right of “[a]ll persons deprived of their liberty [to] be treated with humanity and with respect for the inherent dignity of the human person.”

13. Private prisons throughout the U.S. have faced repeated criticism and lawsuits for their inhuman conditions, mistreatment of prisoners, and improper supervision, at times resulting in major prison riots.¹⁹ Private facilities have also been notorious for mistreating and medically neglecting migrant detainees in their custody. Detainees have reported verbal abuse, sexual harassment, strip searches, and poor to no mental and physical healthcare.²⁰

¹⁴ *Id.*

¹⁵ Matt Rourke, *Pennsylvania Judges Accused of Jailing Kids for Cash*, Feb. 11, 2009, available at <http://www.msnbc.msn.com/id/29142654/>.

¹⁶ *Locked Up Far Away*, Human Rights Watch, Dec. 2, 2009, available at <http://www.hrw.org/en/reports/2009/12/02/locked-far-away> (stating that in 2008, the majority of detainees were transferred at least once, with 24% subject to multiple transfers).

¹⁷ *U.S.: Remote Detainee Lockups Hinder Justice*, Human Rights Watch, Dec. 2, 2009, available at <http://www.hrw.org/en/news/2009/11/30/us-remote-detainee-lockups-hinder-justice>.

¹⁸ *Immigrant Jail Tests U.S. View of Legal Access*, N.Y. Times, Nov. 2, 2009, available at <http://www.nytimes.com/2009/11/02/nyregion/02detain.html>.

¹⁹ *Prison Riots Show Continued Flaws of Private Prisons*, Institute for Southern Studies, Feb. 2, 2009, available at <http://www.southernstudies.org/2009/02/prison-riots-show-continued-flaws-of-private-prisons-more-than-2000-inmates-rioted-at-the-reeves-cou.html>.

²⁰ Julia Dahl, *Private Prison Co. Again Accused of Human Rights Abuses*, abc news, Aug. 5, 2008, available at <http://abcnews.go.com/Blotter/story?id=5466166&page=1>.

Alternatives

14. States that have moved toward privatization have not necessarily saved money by doing so.²¹ Instead, they have handed authority over to private companies who naturally factor into their cost a substantial profit. Thus, while governments maintain liability for the wrongful treatment of prisoners, they have lost control over managing prisoners' wellbeing.

15. The perceived need for privatized prisons and the resulting risks to human rights abuse are inextricably linked to other human rights issues within the criminal justice context, many of which could be addressed through sentencing reform. Where states have succeeded at lowering their prison populations – without foregoing community safety – much of the pressure to privatize is eliminated. For example, the Michigan Prisoner ReEntry Initiative is largely credited with reducing the state's prison population from 51,500 to 47,000 since 2006.²² Despite record-breaking unemployment rates, Michigan's recidivism is down from 48 percent to 33 percent.

16. A recent report by the National Council on Crime and Delinquency illustrates the potential savings realized by using alternatives to incarceration for low-level offenses. Options such as drug treatment, electronic monitoring, and work release programs could reportedly save the U.S. \$9.7 billion, while ameliorating the human rights issues posed by overcrowding and privatization.²³

17. Privatization is not an inevitable phenomenon, and some countries have recognized the dangers it presents and refused to engage in the practice. In 2006 the director general of the Dominican Republic's prison service reiterated his government's commitment to keeping incarceration in the public sphere. Referencing independent research in the U.S., he criticized the "crime market," stating that "the consequences of this [privatization] phenomenon cannot be more sinister."²⁴ In November of last year, Israel's High Court of Justice set world-wide precedent holding that private prisons violate individual rights to personal freedom and human dignity.²⁵

Conclusion

18. In light of the international human rights concerns regarding the privatization of prisons, HRA urges the Council to ask the Working Group on Arbitrary Detention to investigate the matter and produce a report on its findings.

19. HRA asks countries currently employing private prisons to carefully monitor those facilities for human rights abuse and explore possibilities to move away from privatization. Countries contemplating privatization should conduct careful examination of the risks inherent in this practice and consider alternatives such as sentencing reform. Finally, HRA commends those countries that have resisted privatization and calls for cooperation among

²¹ Gerry Gaes, *Cost, Performance Studies Look at Prison Privatization*, National Institute of Justice Journal No. 259, available at <http://www.ojp.usdoj.gov/nij/journals/259/prison-privatization.htm>.

²² Roger Rapoport, *California's 'No' to Michigan on Inmates a Lose-Lose Deal*, S.F. Chronicle, Aug. 23, 2009 at E2.

²³ *The Extravagance of Imprisonment Revisited*, National Council on Crime and Delinquency, Jan. 2010, available at <http://www.nccd-crc.org/nccd/dnld/Home/focus0110%20.pdf>.

²⁴ *Prison Privatisation Report International*, Public Services International Research Unit of the University of Greenwich, London, England, No. 74, Oct. 2006, available at <http://www.psiu.org/ppri.asp>.

²⁵ Dan Izenberg, *High Court Prohibits Privately Run Prison*, Jerusalem Post, Nov. 20, 2009, abstract available at <http://www.jpost.com/Cooperations/Archives/>.

nations to discover the best mechanisms to manage incarceration in accordance with international law and respect for human rights.
