



General Assembly

Distr.: General
14 March 2023

English only

Human Rights Council

Fifty-second session

27 February–31 March 2023

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.

[2 February 2023]

* Issued as received, in the language of submission only.



Treatment Of Children In Private Detention Centers

Private prisons date back to medieval age. This custom was brought to the colonies. States contracted with private persons to manage their prisoners.

By the early 1900s, however, the prison management was internationally held to be the State's responsibility. Nonetheless, the 1980s saw the re-emergence of private prisons.

A. Private Prisons

1. The United States of America as the pioneer

Private prisons in the United States of America were a response to President Reagan's "War on Drugs". The inmate population increased dramatically, and the government turned to private prisons. The American public was also dissatisfied with the results of the state penal system's rehabilitation of offenders. Thus, in 1984, CoreCivic (formerly Corrections Corporation of America) opened its first facility in Tennessee.

2. The emergence of private prisons in other countries

Shortly after the opening of Tennessee's first private prison, the United Kingdom of Great Britain and Northern Ireland sent a committee to the United States of America to study the concept. In 1987, the committee recommended that the United Kingdom of Great Britain and Northern Ireland "experiment" with using private prisons.

Australia opened its first private prison in 1990.

B. Private Immigration Detention Centers

1. What is "immigration detention"?

"Immigration detention" is the deprivation of a person's liberty for reasons related to migration. The United States of America has the largest immigrant detention infrastructure in the world.

2. Immigration detention facilities

a. The United States of America

The United States of America has 99,754 people, or 8% of its prison population, in private facilities. Among these private prisons are the immigration detention facilities of the United States of America Immigration and Customs Enforcement ("ICE"). Both under the Department of Homeland Security ("DHS"), ICE and Customs and Border Protection ("CBP") are responsible for enforcing immigrations laws.

The Immigration and Naturalization Service ("INS") took advantage of private prisons immediately after they emerged. In 1984, INS had two private immigration detention facilities. By 1988, this number had increased to seven, and they housed 800 of the 2,700, or 29.6%, aliens in custody.

Between February 2017 and June 2021, one in three people detained by the Border Patrol was a child. More than 650,000 minors were held during that period, 220,000 of whom spent more than seventy-two hours in custody.

According to an ICE Detention Statistics report in 2020, 33,724 people were held in immigrant detention facilities, and 81% of the almost-34,000 people were in private facilities. Little has changed in the Biden administration. In January 2021, Biden signed an Executive Order that prohibited the use of private detention facilities for federal prisoners. But the Biden administration has instead been filling those private prison beds emptied by its own executive order with detained immigrants. According to ACLU, in 2021, 79% of ICE detainees were in private immigration detention centers.

In 2021, 122,000 children were taken into the United States of America immigration custody without their parents.

Although CBP's facilities are required to comply with standards provided for by the Flores Settlement Agreement, such as "safe and sanitary" conditions in the "least restrictive setting" possible, and that they be released from government custody without "unnecessary delay," detainees have reported the reality to be far from those standards. Conditions in CBP facilities have been reported to have extremely low temperatures, with the children lying on mats on the concrete floor with disposable mylar blankets, chain-link fencing, and bright overhead lights that are on around the clock.

b. Australia

Australia has more than 20% of its prison population in private prisons.

Australia has an immigration detention system with a policy of mandatory, indefinite detention of all persons without a visa, including asylum seekers and children. Detainees are kept in immigration detention facilities for an average of 700 days, with at least fifty reaching eight years. "Thousands of children have been subject to prolonged detention, resulting in severe physical and mental harm." Australia's immigration system is the world's largest network of private carceral facilities.

In September 2021, 1,459 persons were in immigration detention in Australia. It is noteworthy that according to the Department of Home Affairs (DHA), on August 31, 2021, there were no children in onshore or offshore Australian immigration detention facilities, with 175 children approved for release into the community on August 31, 2021.

The Australian Human Rights Commission has said that the detention of asylum seekers in Australia far exceeds the time it takes to gather the requisite information to process their application, resulting in those persons, including children, remaining in detention for years with "very limited opportunities for legal review."

c. The United Kingdom of Great Britain and Northern Ireland

Although private prisons started in the United States of America, prisoners are more likely to be incarcerated in one in the United Kingdom of Great Britain and Northern Ireland. In England and Wales, 15% of prisoners are in private prisons, compared to the United States of America's 8%.

In the United Kingdom of Great Britain and Northern Ireland, the Home Office is the government agency that handles immigration. The Home Office uses Immigration Removal Centres ("IRCs") and other facilities, including prisons. In 2021, roughly 24,500 people were in immigration detention, 100 of them children. On March 31, 2022, 56% of immigration detainees were held in IRCs. All IRCs are managed by private, for-profit prison firms.

The United Kingdom of Great Britain and Northern Ireland does not have a statutory time limit for immigration detention. Among the detainees who were released in 2021, 13% had been detained for twenty-nine days to more than one year.

C. Violence Against Children

According to the World Health Organization ("WHO"), violence against children includes all forms of violence against people under eighteen years old. Most violence against children involves one or more of six main types of violence. These are: (1) maltreatment; (2) bullying; (3) youth violence; (4) intimate partner violence; (5) sexual violence; and (6) emotional or psychological violence.

According to WHO, experiencing violence in childhood impacts lifelong health and well-being. Violence against children may result in impairment in brain and nervous system development that affects cognitive development, negative coping, and higher rates of anxiety, depression, and suicide.

D. International human rights laws implicated

Article 4 of the Optional Protocol to the Convention Against Torture defines deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.”

Article 7 of the International Covenant for Civil and Political Rights (“ICCPR”) provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Recommendations

HRA urges States to:

- a. provide for statutory limitations on how long detainees can be held at all immigration detention centers; and
- b. legislate laws that will disallow the placement of children in any immigration detention center and provide for their humane treatment, respecting all the rights protected by the CRC.

Austin & Coventry, Emerging Issues on Privatized Prisons, United States of America Dep’t Of Just. 9, Feb 2001.

Henry, Private Prisons & Human Rights: Examining Israel’s Ban on Private Prisons in a United States of America Context, 4 Concordia Law Rev. 198–212, 2019.

Young, Capital and the Carceral State: Prison Privatization in the United States of America and the United Kingdom of Great Britain and Northern Ireland, Harvard International Review, Sept. 23, 2020 Id.

Austin, supra at iii

Young, supra

Nossal & Wood, The Raggedness of Prison Privatization: Australia, United Kingdom of Great Britain and Northern Ireland, Canada, New Zealand and the United States of America Compared, p.9, Queen’s University, 2004.

Id.

Id. at 6

What is immigration detention? And other frequently asked questions, International Detention Coalition, [hereinafter What is immigration detention?]

Detention and Deportation Defense, Northwest Immigrant Rights Project

Denham Sadler, Private Prisons Are a Very Australian Problem, VICE, June 14, 2022, 8:52pm

Austin & Coventry, supra.

Id.

Id.

Flagg & Preston, ‘No Place for a Child’: 1 in 3 Migrants Held in Border Patrol Facilities Is a Minor, Politico And The Marshall Project, June 16, 2022 4:30 AM

Buday & Nellis, Private Prisons in the United States of America, The Sentencing Project, Sept. 2022

Eunice Cho, More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration, ACLU, Oct. 5, 2021

Id.

Id.

Mapping Migrant Children in Detention, Kids In Need of Defense (KIND)

Id.

Sadler, supra

Country Report: Immigration Detention In Australia: Turning Arbitrary Detention Into A Global Brand, The Global Detention Project, 7, February 2022 [hereinafter Immigration Detention In Australia]

Id.

Id.

Amy Nethery, Secrecy and Abuse in Australia's Immigration Detention Systems, The University of Melbourne, Nov. 25, 2019.

Immigration Detention In Australia, *supra*

Id.

Id.

Calum Rosie, Private Prisons Have Shown A Lax Approach To Human Rights, eachother.org.uk, Apr. 26, 2021.

Silverman, et al., Immigration Detention in the United Kingdom of Great Britain and Northern Ireland, The Migration Observatory At The University Of Oxford, 3, Feb. 11, 2022.

Id.

Silverman, *supra* at 3.

Id.

Id.

Id. at 11.

Id.

WHO, <https://www.who.int/news-room/fact-sheets/detail/violence-against-children> Nov. 29, 2022.

Id.

Id.

Id.

Id.