

**J&D**justice&development  
working paper series

25/2013

# Public-Private Partnerships in Prison Construction and Management

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Legal Vice Presidency  
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# Public-Private Partnerships in Prison Construction and Management

by Rob Allen and Paul English<sup>1</sup>

## Abstract

Over recent years lower income countries have shown increasing interest in the potential benefits of public private partnerships in the prison field. This paper opens with a brief survey of the history of prison privatisation, a description of the various models applied in different countries and an outline of the potential attractions of those models. It then assesses the evidence about whether private prisons produce value for money and improved performance as well as analysing their impact on the wider prison and criminal justice system. The paper concludes that while specific evidence from low income countries is limited, there may be significant risks attached to private prisons where robust legislative and regulatory frameworks are less developed. The starting point before the consideration of private sector involvement in prisons must be a full analysis of the infrastructure and processes required by a country in its criminal justice system in order to meet international norms and standards and contribute to development goals. Within such a framework, community based alternatives to pre-trial detention and short prison sentences are likely to prove more economical and effective than prison expansion.

## 1. Introduction

Since the 1980s, private sector profit-making enterprises have played an increasing role in prison systems around the world. Although historically, private profits had long been made from jailing detainees and debtors and using convict labor, by most of the 20th century, imprisonment had come to be seen as a core state function. While there are still examples of wholly private prisons operating according to traditional customs, usually in areas or nations where government is weak,<sup>2</sup> in the vast majority of countries, responsibility for detaining suspects awaiting trial and implementing prison sentences lies with the state.

Over the last 30 years, the practice of contracting out the implementation of these custodial functions to the private sector has grown steadily in a number of high- and middle-income countries, starting in the United States. While the allocation of detention and punishment remains a matter for the state, the administration of a sizable number of prison facilities has been contracted entirely or in part to private companies in parts of North America, Europe, and

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<sup>2</sup> According to the U.S. State Department 2012 Human Rights Report for Yemen, “Unauthorized ‘private’ prisons and detention centers controlled by tribes in rural areas continued to operate on the basis of traditional tribal justice.” See U.S. Department of State, “Country Reports for Human Rights Practices for 2012: Yemen” (Washington, DC: U.S. Department of State, 2013), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204392>.

Australasia. The option of private management is also being actively considered in many other areas of the world, including in a number of low-income countries. This paper aims to summarize the experience of private involvement in the prisons field to help inform policy makers about the potential costs and benefits of this approach. It will demonstrate that there are likely to be significant risks in introducing private prisons in low income countries where robust legislative and regulatory frameworks are not well developed. It will also argue that the starting point before the consideration of private sector involvement in prisons must be a full assessment of the infrastructure and processes required by a country in its criminal justice system in order to meet international norms and standards; and in particular the development of a full range of measures to reduce overcrowding in prison<sup>3</sup>.

## 2. A Range of Private Contracting Models

There are a variety of outsourcing arrangements in place in different jurisdictions, generally described by the term “public-private partnerships” (PPPs). No prisons established by legitimate governments are completely private, in the sense of being *fully* independent of government authority, control, and revenue. At one end of the PPP spectrum, private companies have been contracted to build and run prisons in their entirety. This model is common in the United States and has also been followed in the United Kingdom, Australia, and South Africa. A private company or consortium agrees to finance, design, construct, and manage a prison for an agreed period of time, usually 25 or 30 years, after which time the building reverts to the ownership of the state. In this model, all of the staff, including the custodial and security staff, are employed by the private company, and the role of the public sector is limited to monitoring the company’s compliance with the contract—and sometimes, but not always, dealing with disciplinary infractions by prisoners. (Under South African law, for example, the contractor is explicitly prohibited from taking disciplinary action against prisoners, and is also barred from involvement in determining the computation of sentences, the prison at which any prisoner will be detained, the placement or release of a prisoner, or whether temporary leave will be granted.) This full-scale private operation of prisons has generally taken place in common law jurisdictions, where there are limited legal obstacles to private entities undertaking hitherto public functions.

According to another model, more common in civil law countries, private companies finance the building of a new prison and operate certain functions within it, such as maintenance, health care, catering, or the provision of rehabilitation activities. In this hybrid model, which originated in France and has been followed in Hungary, parts of Latin America, and Japan, security staff are not employed by the private company (although in Japan, some security functions are outsourced). The arrangement is governed by two contracts, the first to construct the facility and the second to operate the prison or to provide the specified services.

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<sup>3</sup> The UN Office on Drugs and Crime (UNODC) have developed a Criminal Justice Assessment Toolkit available at <http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html?ref=menuaside>. UNODC has also published , in conjunction with the International Committee of the Red Cross (ICRC) a Handbook on strategies to reduce overcrowding in prisons **available at** [http://www.unodc.org/documents/justice-and-prison-reform/Overcrowding\\_in\\_prisons\\_Ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf)

In each of these two models, the funds to pay for the construction of a new prison are raised by the private sector. These capital costs are then paid back at regular intervals by the government alongside the fee that the private company charges for running the prison, either in whole (in the first model) or in part (in the second).

A third model involves the contracting out of certain limited functions within an existing prison to a private company, for example, catering, maintenance, the provision of regime activities, or transportation. The contracts are usually for much shorter periods (for example, five years) than the terms in the first two models. Responsibility for the construction of the prison—if it is new—and for security and custodial functions remains in public hands. This model is used in the Netherlands and various other European countries.

These three forms of PPP can be distinguished from the more specific roles that private construction companies might play as contractors involved in the construction of new public prisons, or indeed from the remuneration that is paid to private individuals who work in state-run prisons. These models can also be distinguished from arrangements in which institutions are run by not-for-profit or charitable organizations that use surplus revenues to achieve a range of outlined goals rather than have them distributed as profit or dividends—although many of the overall questions about cost effectiveness and accountability also apply in these instances.

### **3. Recent History and Scope of Private Sector Involvement**

Although relatively recent in its existing form, there is a long tradition of some kind of private involvement in prisons. Examples include jailors who made money from debtors in 18th-century England and convict leasing in the Southern states of the United States, which lasted from the Civil War well into the 20th century. The wave of private sector participation in the modern era began in the 1980s in the United States, where it was triggered by the urgent need of the immigration services for additional beds to house a surplus of detained immigrants. Since that time, privately managed prisons of one sort or another have been developed in more than 30 U.S. jurisdictions. A recent study by the Washington D.C based Sentencing Project reported that at least 11 countries, in North America, South America, Europe, Africa, and Oceania, are engaged in some level of prison privatization. While the United States maintains the highest total number of privately held prisoners, Australia, Scotland, England and Wales, and New Zealand hold a larger proportion of prisoners in private facilities, with a high of 19 percent in Australia.<sup>4</sup> At the time of this writing, 16 percent of federal prisoners in the United States and 14 percent of all prisoners in England and Wales were being held in privately managed prisons.

In addition to running prisons entirely and/or a range of activities within them, private companies have become increasingly involved in related activities, such as providing closed institutions for juvenile offenders, community-based programs, prisoner transportation, court services, and electronic monitoring. Private companies also continue to manage a large number of immigration detention facilities and play a growing role in policing and court functions.

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<sup>4</sup> Cody Mason, “International Growth Trends in Prison Privatization”, The Sentencing Project, 2013.



There is currently little in the way of international law regulating the private management of prisons. The United Nations (UN) “Standard Minimum Rules for the Treatment of Prisoners” states that prison personnel “shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness.”<sup>5</sup>

Much of the experience of establishing PPPs in the operation of prisons has been in higher-income countries. However, three middle-income countries—South Africa, Chile, and Mexico—have also implemented differing models of prison privatization in the last 15 years. In addition, six Brazilian states have outsourced various functions in approximately 25 existing prisons, and the first new PPP prison opened in January 2013 in the state of Minas Gerais. One prison in Belize is contracted to a religious foundation, and other countries such as Peru and Jamaica have started to explore private prison projects.<sup>6</sup>

A number of lower-income countries are also reportedly considering privatization. Nigeria, for example, is among states said to be planning to invite bids for private prisons.<sup>7</sup> Private prisons have also been considered in countries as diverse as Lesotho, the Dominican Republic, Costa Rica, Kenya, Latvia, and Lebanon.<sup>8</sup>

In some countries, private sector management of prisons is not permitted by law, such as in Germany, or even by the constitution. Israel’s Supreme Court recently upheld the view that imprisonment is a core state activity that cannot be delegated, on the basis that the violations of human rights inherent in imprisonment should only be exercised by the state.<sup>9</sup> In other countries, attitudes to private sector involvement have swung widely depending on the party in power, with right-of-center governments generally more enthusiastic than those left of center. In post-apartheid South Africa, interest has ebbed and flowed with “policy flip-flopping by the

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<sup>5</sup> United Nations, Office of the High Commissioner for Human Rights (UNHCR), “Standard Minimum Rules for the Treatment of Prisoners,” UNSMR Rule 46(3) (Geneva: UNHCR: 1955), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

<sup>6</sup> Peru: “Peru to Seek Bids for First Private Prison,” *Associated Press*, April 1, 2010, <http://www.businessweek.com/ap/financialnews/D9EQJ0OG0.htm>; Jamaica: Ingrid Brown, “Gov’t Talks of Building Modern Prison...Again,” *Jamaica Observer*, February 27, 2012, [http://www.jamaicaobserver.com/news/Gov-t-talks-of-building-modern-prison-again\\_10852239](http://www.jamaicaobserver.com/news/Gov-t-talks-of-building-modern-prison-again_10852239), and Balford Henry, “Gov’t Seeks Help To Raise \$25b for New Prison,” *Jamaica Observer*, November 15, 2012, [http://www.jamaicaobserver.com/news/Gov-t-seeks-help-to-raise--2b-for-new-prison\\_12983416](http://www.jamaicaobserver.com/news/Gov-t-seeks-help-to-raise--2b-for-new-prison_12983416);

<sup>7</sup> Nigeria: Abdulkadir Badsha Mukhtar, “Nigeria: Rumble Over Proposal to Privatise Prisons,” *Daily Trust* (Lagos), December 31, 2012, <http://allafrica.com/stories/201212311079.html?viewall=1>.

<sup>8</sup> Lesotho: Stephen Nathan, “Private Prisons: Emerging and Transformative Economies,” in *Capitalist Punishment: Prison Privatisation and Human Rights*, ed. A. Coyle, A. Campbell, and R. Neufeld, 189–201 (London: Zed Books, 2003); Dominican Republic and Costa Rica: Elias Carranza, “Penal Reform and Prison Overcrowding in Latin America and the Caribbean: What to Do, What Not to Do. The Good Examples of Costa Rica and the Dominican Republic” (Tokyo: United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), 2010), [http://www.unafei.or.jp/english/pdf/Congress\\_2010/14Elias\\_Carranza.pdf](http://www.unafei.or.jp/english/pdf/Congress_2010/14Elias_Carranza.pdf); and Kenya: Steve Mbogo, “G4S Opens Talks to Run Kenya’s Prison Services,” *Business Daily* (Nairobi), January 20, 2011, <http://www.businessdailyafrica.com/Corporate+News/G4S+opens+talks+to+run+Kenyas+prison+services/-/539550/1092596/-/item/1/-/15n3fry/-/index.html>.

<sup>9</sup> Richard Harding, “State Monopoly of ‘Permitted Violation of Human Rights’: The Decision of the Supreme Court of Israel Prohibiting the Private Operation and Management of Prisons,” *Punishment & Society-International Journal Of Penology* 14, no. 2 (2012): 131–46.



Department of Correctional Services (DCS) on private sector involvement in prison management and facility development.”<sup>10</sup> Long-standing proposals for four new private prisons (in addition to the two existing ones) were finally abandoned in autumn 2011, although there is a suggestion of smaller-scale partnerships in the future. The reasons for frequent changes of policy in South Africa appear to reflect a range of technical and political opinions within the governing party about the efficacy and desirability of private prisons.

While in opposition in the 1990s, the UK’s Labour Party described private prisons as morally repugnant and promised to end the experiment and restore privatized prisons to the public service as soon as contractually possible. Once in government, however, Labour embraced and extended private sector financing and management of prisons. Thus when the currently ruling Conservative Party Justice Secretary announced the award of a contract for a 1,600-place prison to the private security company G4S in 2011, he was able to agree with the Labour shadow secretary in Parliament to leave aside “stale ideology and dogma, and instead look at what works and what produces the right solutions for the public.”<sup>11</sup>

#### **4. Why Involve the Private Sector in Prisons?**

It has been suggested that “the decision to privatize can be taken from an economic, budgetary, political or ideological perspective.”<sup>12</sup> With respect to prisons, there have been a range of motivations for involving the private sector, many of which reflect the conventional arguments in favor of private sector investment in any other domain. One underlying reason is that the introduction of competition is seen as a way of driving down costs and driving up quality. The public authority, in this case the prison service or relevant ministry, specifies the outcomes it wishes to obtain and finds a provider best able to deliver those outcomes at the best price. This process of competition is seen to encourage innovation, which can improve practice not just in the particular establishment under private management but across the prison estate as a whole.

PPPs are also attractive to governments because they may offer a way for the costly construction of new prison facilities to be met through private capital and therefore kept off the government’s balance sheet. The state pays for the capital costs over what is effectively a mortgage period of 25 years, alongside the costs of the management of the prison, a particularly appealing proposition to countries where large capital sums are hard for the government to raise. It is also appealing in instances where the government budget is being prioritized elsewhere. Of course PPP’s require the state to meet the borrowing costs of private companies, which can produce a questionable deal for the public finances over the longer term, since it is generally cheaper for governments to raise funds than it is for private companies.

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<sup>10</sup> Lukas Muntingh, “Love Me, Love Me Not – Public Private Partnerships in The Department of Correctional Services” Paper Delivered at Institute of Security Studies Seminar, August 2010.

<sup>11</sup> UK House of Commons Hansard March 31, 2011 Column 529  
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110331/debtext/110331-0001.htm#11033156000004>

<sup>12</sup> Peter Wilms, Rafiq Friperson, and Jamie Weda, “Final report of the Literature Review on Prison Privatization” (The Hague, WODC), 2011.

Proponents of privately managed prisons point also to the transfer of risk involved in the arrangement. Since payments to the private company begin only when the prison opens, there is a strong incentive to build speedily. The company bears the revenue risks of any delay to an agreed timetable plus the cost of any penalties that may accrue. Once operating, the private company is paid to provide places and services according to the terms of a closely specified contract; if for whatever reason the company does not provide these goods and services, it is not paid and can be penalized. There is therefore an incentive for the company, assuming that the contract is carefully drafted, monitored and enforced, to build, maintain, and operate the prison in accordance with the specifications in the agreement.

#### **4.1. In High- and Middle-Income Countries**

The motivations for private sector involvement in prisons have varied in different countries. In the United States, the primary impetus was the apparent need for a rapid, large-scale expansion of prison facilities and the lack of funds at the local and state levels to build new jails and prisons and maintain existing ones. In the United Kingdom, in addition to the need to modernize an estate of prison facilities dating back hundreds of years, an important consideration was the deemed need to break the power of the prison officers' trade union, the Prison Officers Association (POA). The minister responsible for the initial decision to privatize later wrote that "If private firms free of the burden of the POA could deliver higher standards that could be an advantage huge enough to overcome my earlier doubts."<sup>13</sup>

In South Africa in the early 1990s, the African National Congress (ANC) government inherited a severe shortage of capacity in the country's prison system, with prisons generally designed for "warehousing" rather than rehabilitating inmates. At the same time, the ANC government also adopted a policy of reducing public spending. Given the demand for improving public services, particularly health, education, and housing, the DCS thought it unlikely that it would receive the necessary budget allocation to raise the capital needed to increase capacity or refurbish its existing prison operations and facilities. In 1997, the Minister of Correctional Services visited the United States and the United Kingdom, concluding that "wherever the private sector got involved, they have delivered a better service, and have done it at less cost to the taxpayer."<sup>14</sup> The following year's *Correctional Services Act* permitted the minister to "enter into a contract with any party to design, construct, finance and operate any prison or part of a prison established or to be established."

In Mexico, the federal government was faced with a serious shortfall in the number of prison places, with the vast majority of federal prisoners housed in poor quality state facilities. Since 2008, US\$5 billion has been spent on 16 new facilities—U.S.-style penitentiaries with increased capacity on Islas Marias, an island with a huge prison complex. Eight of the new prisons have been built through PPPs, according to which companies provide capital and facilities management and the public sector manages all of the face-to-face contact with prisoners.

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<sup>13</sup> Douglas Hurd, "Memoirs" Little, Brown 2003.

<sup>14</sup> Quoted in KC Goyer, "Prison Privatisation in South Africa: Issues Challenges and Opportunities," ISS Monograph 64 (Pretoria: Institute for Security Studies, 2001), <http://www.issafrica.org/uploads/Momo64.pdf>.

The need for upgrading obsolete facilities has also prompted Jamaica to propose a PPP to develop two new prisons. The Minister of National Security told Parliament that “most of the existing correctional facilities were never designed with {prisoner} rehabilitation as a priority, and they are in need of major rehabilitation and upgrading. Therefore, we must look at new facilities.”<sup>15</sup>

## 4.2. In Low-Income Countries

The context in which lower-income countries consider private sector involvement in prison supply and management is enormously challenging. The UN Special Rapporteur on Torture told the UN General Assembly in 2009 that “in many countries of the world, places of detention are constantly overcrowded, filthy and lack the minimum facilities necessary to allow for a dignified existence. Moreover, tuberculosis and other highly contagious diseases are rife. Inter-prisoner hierarchies and violence are common features of many places of detention, and the guards often delegate their authority and responsibility to protect detainees against discrimination, exploitation and violence to privileged detainees who, in turn, use this power to their own benefit.”<sup>16</sup> In the worst cases, prisons are little short of humanitarian emergencies. As in all such emergencies, the response must include “short term relief and the development of longer term sustainable solutions.”<sup>17</sup> The search for remedies has led to the consideration of private sector initiatives.

In Kenya, where the prison system has a capacity of 22,000 and houses a population of 50,000, the prison service sees the private sector as a way of making up for years of neglect since the country’s independence in 1963. A senior official is quoted as saying that “the option of the private prisons is favored because it will help to decongest prisons and help introduce new correctional measures that equip prisoners with skills that will enable them to integrate more easily into the society.”<sup>18</sup> In a similar vein, Nigeria’s interior minister stated in December 2012 that his country’s prisons “are plagued by poor maintenance of infrastructure, poor management, and bad criminal justice system, which have led to many awaiting trial inmates and congestion of the prisons.” He added that “it is in the effort to get rid of these problems that the government decided on the privatization initiative, while also planning to resuscitate prison farms, rehabilitate prisoners, reduce incidence of offences, as well as build an adequate database of prisoners.”<sup>19</sup>

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<sup>15</sup> “Private Interests Come Forward to Build Modern Prison,” *Jamaica Information Service*, June 24, 2013, <http://www.jis.gov.jm/news/leads/34333>.

<sup>16</sup> Statement by Manfred Nowak, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 64th session of the General Assembly, Third Committee, Item 71 (b) October 20, 2009.

<sup>17</sup> Rob Allen, “Current Situation of Prison Overcrowding,” International Centre for Prison Studies (London: King’s College London, 2010)

[http://www.prisonstudies.org/info/downloads/Current\\_Situation\\_of\\_Prison\\_Overcrowding\\_paper.pdf](http://www.prisonstudies.org/info/downloads/Current_Situation_of_Prison_Overcrowding_paper.pdf).

<sup>18</sup> Steve Mbogo, “Officials Warm Up to Private Prisons after Learning Tour,” *Business Daily* (Nairobi), June 7, 2011, <http://www.businessdailyafrica.com/Corporate-News/-/539550/1176096/-/vuy4ij/-/index.html>.

<sup>19</sup> “Proposed Privatisation of Prisons,” *The Sun* (Lagos), December 3, 2012, <http://sunnewsonline.com/new/editorial/proposed-privatisation-of-prisons/>.

### 4.3. Reaching a Decision to Privatize Prisons

In some of the lower-income countries, however, it is not clear that the interest in private sector solutions has always emerged from a comprehensive diagnosis of the problems and appraisal of potential solutions. In Kenya, for example, while the Deputy Head of Prisons reported that “the option of private prisons is an idea that has been explored and accepted here, and we plan to bring it on board,” the enthusiasm appears to have been stimulated in part by a visit from the British company G4S as well as study tours to the United Kingdom and South Africa. In Nigeria, the apparent commitment was reportedly announced following a meeting between the People’s Democratic Party and South Africa’s ANC, but it is not clear exactly what lay behind it.<sup>20</sup>

In the case of other countries such as Jamaica, interest appears to have been grounded in a more thorough analysis of the shortcomings of existing facilities and weaknesses in the system as a whole. Nevertheless, it is not clear on what basis the proposal for a 5,000- or even 6,000-place prison has been drawn up, as the prison population as a whole is 4,500.

The importance of a careful needs assessment (see section 7 below) and population projection analysis is shown by South Africa’s experience. In 1995, the DCS had predicted that the prison population would be 328,000 by 2004, a forecast that prompted an urgent, large-scale prison building program. In fact, the estimate proved to be wildly pessimistic, as the actual population in 2004 turned out to be about one-half of what was predicted. This was in part due to an inefficient criminal justice system, but also to measures put in place to reduce pretrial detention and the imprisonment of petty offenders. Giving further attention to these problems became the preferred strategy in 2011, when the head of DCS said that building new prisons was not a panacea to the problems, arguing that “If we can deal effectively with the remand detainees, the problem of overcrowding would not be so acute.”<sup>21</sup>

## 5. Evidence about Privately Managed Prisons

### 5.1. Value for Money

The evidence that private prisons are more cost effective than public prisons is mixed. While some research supports this argument, “numerous other studies and reports have indicated that private prisons do not save money, cannot be demonstrated to save money in meaningful amounts, or may even cost *more* than governmentally operated prisons.”<sup>22</sup> An obstacle to making a more definite conclusion is the considerable methodological difficulties that exist in making fair comparisons.

A review of empirical studies around the world conducted for the Dutch government found that while operational costs were reduced in private prisons by between 2 and 13 percent, these

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<sup>20</sup> “Proposed Privatisation of Prisons.”

<sup>21</sup> See Carien du Plessis, *How the Private Prisons were Barred* (Pinelands, South Africa: Open Society Foundation for South Africa, 2012), [http://osf.org.za/wp/wp-content/uploads/2013/01/CJI-Occasional-paper-13\\_How-the-private-prisons-were-barred\\_Carien-du-Plessis.pdf](http://osf.org.za/wp/wp-content/uploads/2013/01/CJI-Occasional-paper-13_How-the-private-prisons-were-barred_Carien-du-Plessis.pdf).

<sup>22</sup> American Civil Liberties Union (ACLU), “Banking on Bondage: Private Prisons and Mass Incarceration” (New York: ACLU, 2011), 19, [http://www.aclu.org/files/assets/bankingonbondage\\_20111102.pdf](http://www.aclu.org/files/assets/bankingonbondage_20111102.pdf).

savings disappeared once transaction and other additional costs were taken into account. The study therefore could not conclude that privatization would lead to a reduction of the overall costs.<sup>23</sup> Corresponding conclusions about the purported cost effectiveness of private prisons were also not able to be drawn.

On the costs of privately raised finance in England and Wales (known as the Private Finance Initiative or PFI), the National Audit Office reported in 2011 that “there has not been a systematic value for money evaluation of operational PFI projects by departments. There is, therefore, insufficient data to demonstrate whether the use of private finance has led to better or worse value for money than other forms of procurement.” However, a parliamentary review of PFI overall (covering all services and not just the prison service) concluded that “the use of PFI has the effect of increasing the cost of finance for public investments relative to what would be available to the government if it borrowed on its own account. We have not seen clear evidence of savings and benefits in other areas of PFI projects which are sufficient to offset this significantly higher cost of finance. Evidence we studied suggests that the out-turn costs of construction and service provision are broadly similar between PFI and traditional procured projects, although in some areas PFI seems to perform more poorly.”

As for the costs of prisons in particular, although much of the data are shrouded as “commercial in confidence”, according to answers to questions in the British Parliament, in 2007, the costs of private prisons per place were higher than public sector prisons in all but one prison category.<sup>24</sup> By 2010–11, however, private sector prisons for adults were less costly than public prisons, but privately run young offender institutions cost more.<sup>25</sup> The UK government has stated that the unit costs of private and public prisons are not directly comparable because of the different methods of financing and of scope.<sup>26</sup>

Evidence from the United States is also mixed. A 2009 analysis of privatization studies by researchers at the University of Utah concluded that “[c]ost savings from privatization are not guaranteed and quality of services is not improved. Across the board effect sizes were small, so small that the value of moving to a privately managed system is questionable.”<sup>27</sup> In Georgia, the Department of Corrections (GDC) has estimated that the cost in state funds is \$1.30 higher per inmate per day in private prisons than in state prisons.<sup>28</sup> A recent study has found that two thirds of private prison contracts in various states which were made subject to analysis included occupancy guarantees which require payments even when cells are empty.<sup>29</sup>

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<sup>23</sup> Wilms and others, “Literatuuronderzoek Privatisering Gevangeniswezen.”

<sup>24</sup> Hansard House of Commons 9 January 2007, column 546W

<sup>25</sup> Hansard House of Commons 10 Jan 2012, column 280W

<sup>26</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218336/prison-costs-summary-11-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218336/prison-costs-summary-11-12.pdf)

<sup>27</sup> Brad Lundahl and others, “Prison Privatization: A Meta-Analysis of Cost and Quality of Confinement Indicators,” *Research on Social Work Practice* 19, no. 4 (2009): 383, <http://www.epsu.org/IMG/pdf/luhdahl-prisons-.pdf>.

<sup>28</sup> Georgia Department of Corrections, “FY2011 Allocation of Cost to Inmates, Probationers, Etc.,” February 28, 2012, <http://www.dcor.state.ga.us/pdf/CorrectionsCosts.pdf>.

<sup>29</sup> Criminal: How Lockup Quotas and “Low-Crime Taxes” Guarantee Profits for Private Prison Corporations. In the Public Interest 2013



## 5.2 The Importance of Specifications

Costs of course depend on the specifications of the contract and in particular, on staffing levels, which can account for as much as 70–80 percent of the budget. In South Africa, a review of the two PPPs established at the end of the 1990s found that the development and operating specifications set by the DCS were too high for South African conditions. This led to “additional budgetary pressures for DCS, resulting from the lack of feasibility work that should have established DCS’ affordability limits prior to procurement. Relatively high costs of debt were due to high base interest rates prevailing at the time of the deals and higher than normal margins charged by Lenders. These PPPs predated the strict legal criteria currently in place for ensuring affordability, value for money, and appropriate risk allocation in PPP deals.”<sup>30</sup> As a result, the two private prisons will take up roughly 5 percent of the DCS’ annual budget until at least 2026, though holding between 3 and 4 percent of the prisoners.

In South Korea, a prison managed by a religious organization is reportedly “fully equipped with extensive assembly halls, physical exercise facilities and high-tech electronic lock devices, all way above the standard of those in average state-run prisons.”<sup>31</sup> In Chile, it was reported that inmates in state prisons cost US\$9 per day; in the private prisons the costs are higher, but more services are provided, such as clothing, a laundry service and better food. The contracts envisage a 12 percent profit for investors.<sup>32</sup>

Concern about value for money has led two countries in Latin America to decide against developing high specification private prisons. Although Costa Rica had signed a precontract for the construction of a private prison with a capacity for 1,200 inmates for US\$73 million, it did not proceed, instead building facilities at its own expense for 2,600 inmates for only US\$10 million. “The government realized that if it built that prison whose management and maintenance would be undertaken by private enterprise for twenty years at a daily per capita cost of US\$37 per inmate while the cost within the state system was US\$11, the cost of operation of that prison alone would keep it from being able to make other improvements in the rest of the system which was responsible for 80% of the inmates. The government decided to improve the situation of all individuals under confinement raising the daily per capita amount for all the population to US\$16.”<sup>33</sup>

An offer was made also to the Dominican Republic to build a similar prison for 1,200 inmates for US\$53 million. The government, which had already built and refurbished nine prisons that were operating with good quality standards for slightly more than US\$10 million, did not accept

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<sup>30</sup> “Technical Review of the Public-Private Partnership Prisons Contracts for the PPP Prisons Task Team” (Cape Town: Parliamentary Monitoring Group, 2002),

<http://www.pmg.org.za/docs/2003/appendices/030318correctreport.htm>.

<sup>31</sup> “First Private Prison Plan Halted,” *Korea Herald*, September 24, 2010, <http://www.koreaherald.com/view.php?ud=20100924000597>.

<sup>32</sup> “Chile, Prison SA: Can Private Money Ease a Jail Problem?” *Economist*, July 17, 2003, <http://www.economist.com/node/1929224>.

<sup>33</sup> Carranza, “Penal Reform and Prison Overcrowding in Latin America and the Caribbean.”

the offer, and continued with a state comprehensive penitentiary program that is generating very good results and has been recognized by the UN as an example of excellence.<sup>34</sup>

## 5.2. Prison Performance

Given the ethical, political, and economic debates about privately managed prisons, it is perhaps surprising that there is lack of robust evaluation of their impact. This partly reflects the difficulties noted above of making genuine comparisons. France's Audit Office in 2006 found that the government had no method for quantifying cost or value for money or for making a direct comparison between semi-private and public prisons. The Dutch report already mentioned also could not draw conclusions about quality for methodological reasons. Although at least one comparative study from Brazil appears to show a private prison outperforming a similar public facility in Bahia state, in general, controlling for the necessary variables makes reliable comparative analyses difficult.<sup>35</sup> In the United Kingdom, research has found "huge variations in the quality of privately managed prisons, so a superior quality from private sector provision should not be assumed – in particular if privatization is done 'on the cheap.'"<sup>36</sup> In 2003, the National Audit Office found that the performance of PFI prisons against the terms of their contracts has been mixed and that PFI prisons span the range of prison performance from among the best to among the worst.

More recent UK data confirm this mixed picture. The performance of privately managed prisons in 2010–11 was similar to that of public prisons. Nine out of 11 privately managed prisons were graded 3 (on a scale of 1 to 4) in the Prison Service performance ratings—that is, they were meeting the majority of their targets. One was graded 2—its overall performance was of concern—and one was graded 4, showing exceptional performance. Among the 120 public prisons evaluated, 98 were graded 3, 18 were graded 4, and four were graded 2.<sup>37</sup>

Detailed research has shown a similarly diverse picture. In a recent four prison comparison in the UK, private prisons showed weaknesses in policing and control, organization and consistency, and prisoner development. Managers in the private sector prisons acknowledged that their staff did not follow procedures as well as public sector staff, though the ways that staff used their authority had a significant impact on prison performance and the prisoner experience. In one of the private prisons, staff tended to overuse their authority to achieve order, to the detriment of interpersonal relationships; in another, staff underused their power and maintained good relationships but at the expense of safety and control.<sup>38</sup>

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<sup>34</sup> Ibid.

<sup>35</sup> Sandro Cabral and Paulo Azevedo, "The Modes of Provision of Prison Services in a Comparative Perspective," *Brazilian Administration Review* 5, no.1 (2008).

<sup>36</sup> Alison Liebling, "Reforming our Prisons," Economic and Social Research Council, June 24, 2011, <http://www.esrc.ac.uk/news-and-events/features-casestudies/features/15929/reforming-our-prisons.aspx>.

<sup>37</sup> Prison Annual Performance Ratings 2010-11 Ministry of Justice 2011 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218350/prisons-annual-performance-ratings2010-11.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218350/prisons-annual-performance-ratings2010-11.pdf)

<sup>38</sup> Alison Liebling and others, "Values, Practices and Outcomes in Public and Private Sector Corrections," ESRC Impact Report, RES-062-23-0212 (Swindon: Economic Social and Research Council, 2011), <http://www.esrc.ac.uk/my-esrc/grants/RES-062-23-0212/outputs/Read/3e0fdcb7-238d-44e8-a54a-2d8cc7571c8c>.



For the most part, privately run prisons in South Africa and Chile have generally thought to have been efficiently managed, in part because they tend not to suffer the overcrowding that is common in public prisons. The private prisons have not been without problems, however. The two private sector prisons in South Africa have experienced escapes, and strikes by staff. Such operational problems are not, of course, unique to the private prison environment.<sup>39</sup> In October 2013, the South African government announced that they would take over the running of the private prison at Bloemfontein because G4S had “lost effective control of the facility. Investigations have been launched into allegations that some prisoners were forcibly injected with anti-psychotic medication and subjected to electric shocks.”<sup>40</sup>

### 5.3. Definitive Evidence Still Lacking

As noted, little robust assessment exists even in high-income countries of the value of PPPs in terms of justice outcomes and value for money and where it does exist, it is just as easy to find evidence of both weak and good performance. Lack of independent data which enables a fair comparison to be made between PPP and other arrangements is not limited to the prison field. In 2006, in the Australian State of Victoria, for example, a Parliamentary Committee reported that after 15 years, “the biggest barrier to determining benefits or otherwise for PPP’s has been lack of public information.”<sup>41</sup> Much the same could be said in many countries today.

In low- and middle-income countries that have experimented with private prisons, there is even less evidence assessing the value of private prisons, though there are many examples of the risks involved in terms of performance and particularly in relation to value for money. Chile’s seven “concession” prisons were designed to alleviate the country’s chronic overcrowding problem, but this objective was frustrated by a relentless rise in prison numbers from 36,000 in 2006 to 53,000 in 2010 (though the prison population had declined to 47,000 by April 2013). The creation of a further four concession prisons is under discussion, although the Ministry of Justice has reportedly been concerned about the costs involved.<sup>42</sup>

## 6. Impact of Privatization on the Wider System

It is sometimes argued that the involvement of private companies can have a broader impact on the criminal justice system as a whole – both negatively and positively. Some contend that by turning a regrettable duty into a market opportunity, privatization creates a vested interest in increasing imprisonment unnecessarily and inappropriately. (Imprisonment is considered unnecessary when it is imposed on alleged and even convicted offenders who could be dealt with by measures short of incarceration; it is inappropriate when the development of prison facilities is unsuited in scale or nature to the needs of the particular jurisdiction.) U.S. private prison companies, for example, have identified legislative and policy reforms that involved the

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<sup>39</sup> du Plessis, *How the Private Prisons were Barred*.

<sup>40</sup> <http://www.theguardian.com/world/2013/oct/09/g4s-sacked-south-africa-prison-mangaung> and <http://uk.reuters.com/article/2013/10/28/uk-g4s-safrica-prison-idUKBRE99R00520131028>

<sup>41</sup> The Public Accounts and Estimates Committee 71<sup>st</sup> Report to Parliament [http://www.infrastructureaustralia.gov.au/publications/files/Private\\_Investment\\_in\\_Public\\_Infra\\_Vic\\_PAEC\\_Oct2006.pdf](http://www.infrastructureaustralia.gov.au/publications/files/Private_Investment_in_Public_Infra_Vic_PAEC_Oct2006.pdf)

<sup>42</sup> See “Private Prisons: Revitalizing the Model,” *Public Issues* (Libertad y Desarrollo) 1 (August 2012), [http://www.lyd.org/wp-content/files\\_mf/pi1074.pdf](http://www.lyd.org/wp-content/files_mf/pi1074.pdf).

decriminalization of drugs as risks to their business, as well as the greater use of alternative sentences and more generous parole systems. In order to protect and expand business interests, such companies will necessarily campaign for more punitive policies, whether or not these are in the wider public interest.<sup>43</sup>

Even when increased capacity for incarceration is in the public interest, profit seeking may favor a type and nature of imprisonment that is unsuited to the needs of particular countries or cultures. In 2004, Lesotho considered but rejected a proposal by the multinational company Group 4 (now G4S) to replace the country's existing 12 prison facilities, which held some 3,000 prisoners, with a privately financed, designed, built, and operated 3,500-bed prison complex at Maseru, its capital city.<sup>44</sup> The country's prison population has since declined to 2,500.<sup>45</sup> Arguably the proposed incarceration policy was driven by the commercial interests rather than the criminal justice policy and needs in Lesotho. Already noted above were the two PPPs in South Africa that were found to be unsuited to local conditions, resulting in their having ordered, as one administrator has said, a "Rolls Royce when we needed a Toyota."

The introduction of private prisons also raises questions about their impact on the rest of the prison system more directly. Questions of equity and discrimination arise when the budget allocation per prisoner per day is higher in private than in public prisons. More pragmatically, contractual agreements may make it difficult or expensive to overpopulate the PPP prisons, despite severe overcrowding in the system as a whole. If prison numbers rise, the impact is felt more sharply in the public prisons.

Proponents of private prisons argue that having a range of providers produces competition which raises standards across the board. Competition can also produce incoherence in the system as a whole and act as a barrier to information sharing. This may be true both at the level of individual prisoners, (where private prisons may not be integrated into system wide processes of assessment and resettlement planning); and also in the way that best practices can be spread across the prison estate.

Concerns have also been raised about the impact of a profit-making dynamic in the prison system on a country's wider political and judicial system. Prison privatization has given rise to examples of corruption among politicians,<sup>46</sup> prison officials,<sup>47</sup> and even judges, in the form of the "Kids for Cash" scandal in the United States.<sup>48</sup> While corruption is a deep-seated problem in procurement of all kinds (and is commonplace in public prison administration in many

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<sup>43</sup> See e.g. Corrections Corporation of America Annual Report 2010 quoted in (p3) Paul Ashton, "Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies" (Washington, DC: Justice Policy Institute, 2011).

<sup>44</sup> Prison Privatisation International, "Report 49" (London: Prison Reform Trust, 2002).

<sup>45</sup> International Centre for Prison Studies (ICPS), "World Prison Brief: Lesotho," ICPS, London, [http://www.prisonstudies.org/info/worldbrief/wpb\\_country.php?country=26](http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=26).

<sup>46</sup> ACLU, "Banking on Bondage," 34.

<sup>47</sup> Civil Society Prison Reform Initiative, "Governance and Corruption," *30 Days* Dec-Jan (2008-09), <http://cspri.org.za/publications/30-days-dae-izinsuku/December%202008%20-%20January%202009.pdf>.

<sup>48</sup> Michael Rubinkam, "Judge Gets 28 years for 'Kids for Cash' Scandal," *The Independent* (London), August 12, 2011,

<http://www.independent.co.uk/news/world/americas/judge-gets-28-years-for-kids-for-cash-scandal-2336260.html>.

countries), there are reasons to consider that commercial confidentiality clauses and the lengths of contracts could increase the scope for improper and unethical behavior.

Wider questions about the reliability of the private sector field more generally were raised in the United Kingdom following the failure of G4S to deliver on its contract to provide security guards at the 2012 Olympic Games in London. A parliamentary committee inquiring into this unsatisfactory situation fiasco considered that the episode “has focused attention on the role of the private sector in delivering public services, and the way in which private-sector providers are managed and monitored. Both the Culture Secretary and the Defense Secretary have been quoted in the media as saying that the issue had caused them to think again about the role of the private sector.” The committee recommended that the government should satisfy itself as to the quality of various aspects of G4S’ practices with respect to the delivery of other services, including prisons.<sup>49</sup> Since then the company has been referred by the UK Government to the Serious Fraud Office to investigate alleged wrongdoing in respect of a contract to provide electronic monitoring of offenders and together with another major company Serco, has been required to undertake a process of corporate renewal. The scandal broke when it emerged that the contractors had been billing the government for tracking the movements of offenders who had moved abroad, returned to prison or had even died.

These goings on reinforce the importance of monitoring the compliance of privately managed services of all kinds, but particularly in closed institutions such as prisons, where the risks arising from and opportunities for violations are high.

In the end, the experience with private prisons in the high-income states may have little relevance to lower-income ones, which may well have a less mature fiscal and legislative frameworks, weaker parliamentary and independent oversight, and very different civil service models. Moreover, in those countries where governments spend very little on the justice sector, there is likely to be little scope for genuine home-grown competition, meaning that bids and finance will come from corporations based in high-income countries, reinforcing the risks that private prisons are developed to serve external international interests rather than address the needs of domestic criminal justice policies

## **7. Assessing the Need for a Private Prison**

As noted above, the challenges faced by prisons and criminal justice systems in lower-income countries are different in many ways from those in richer states. Physical infrastructure is often wholly inadequate, and the ability of governments to raise the necessary funds to refurbish or replace aging prisons and maintain them over time are more limited. Staff are likely to be fewer in number, will have had less opportunity for meaningful professional development and are subject to less accountability and scrutiny in their work. Prisons tend also to be oriented towards security rather than rehabilitation. In this context, the prospect of a new, modern prison with adequate facilities and opportunities for education, work, and reform may look like an attractive proposition.

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<sup>49</sup> Home Affairs Committee, “Olympics Security,” Seventh Report, London, 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/531/53102.htm>.

Before taking that step, however, it is important that governments give careful and objective consideration to their current and future needs in the criminal justice sphere. Such deliberation needs to include a broad assessment of the best way of dealing with people who are in conflict with the law, not simply in terms of more effective processing through the criminal justice system but in terms of producing better outcomes for society. Decisions to expand prison capacity by private means should be made only after careful consideration of whether better use can be made of existing capacity and whether reductions can be made in what might be the unnecessary demand for prison places. As one World Bank report noted, “construction of new prisons without penal reform may simply lead to an increase in the prison population.”<sup>50</sup>

There are two aspects of penal reform that require particular attention and investment. The first involves a reduction in the use of unnecessary and excessive pretrial detention; the second requires the development of alternatives to short prison sentences. If implemented properly, these policies could serve significantly to reduce demand for prison spaces.

## **7.1. Reducing Pretrial Detention**

In many nations of the world, prisons are used in large part for what was once their original purpose—not as a punishment or correctional measure but to hold suspects and defendants until they can be tried in court. In more than 50 countries, the majority of people in prison on any one day are such pretrial detainees. Perhaps understandably the problem is gravest in postconflict and low-income states, where the justice system may function sporadically if at all. In these countries, more than seven out of ten prisoners may be awaiting trial.<sup>51</sup>

Official figures are likely to underestimate the numbers involved, since in many countries, detainees are held in police custody, escaping the prison statistics but not the fact of detention. Because of the generally shorter periods of their detention relative to the time served by sentenced prisoners, prisoners on remand represent a much greater proportion of those received into prison each year than they do of the prison population on any one day. Thus, although international law stipulates that penitentiary systems should comprise “treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation,” in practice, much of the work of prisons continues to be in fulfilling a jailing function.

The unnecessary use of pretrial detention is problematic for a number of reasons. It breaches norms that require that detention should be a last resort and for the shortest possible time for those presumed innocent until proven guilty. It damages the well-being of the suspects, some of whom will eventually be acquitted, and of their families. Moreover, it is also increasingly clear that locking people up before trial is costly, contributes greatly to overcrowding, and has a disproportionate impact on the day-to-day operations in prisons.

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<sup>50</sup> World Bank, “Staff Guidance Note: World Bank Support for Criminal Justice Activities,” Justice Reform Unit, Legal Vice Presidency, Report 67243 (Washington, DC: World Bank, 2012).

<sup>51</sup> See International Centre for Prison Studies World Prison Brief <http://www.prisonstudies.org/info/worldbrief/> For a fuller review on challenges in conflict affected see The UNODC manual Criminal justice reform in post-conflict States 2011

The demands of holding and processing detainees and transporting them to court tie up resources and impose opportunity costs on what prisons can do to rehabilitate and reintegrate convicts. Pretrial detainees are often held in conditions ranging from basic to life-threatening, with no system of classifying any risks they pose or needs they experience. There is generally little or nothing to occupy them in the way of education, employment, or recreation. These factors, combined with profile of the remand population contribute to an environment where the dangers of acquiring infectious disease or of being tortured or subject to corrupt practices by staff or other prisoners all seem to be greater among remand prisoners than among prisoners as a whole. Pre-trial detainees often experience greater levels of overcrowding and a more impoverished regime than do sentenced prisoners. In addition to the harm to the individuals involved, there is growing body of evidence of the negative socioeconomic impact of excessive pretrial detention.<sup>52</sup>

In coping with the problem of remand prisoners, prison administrators may often feel that they are simply passive recipients of decisions made further up the criminal justice chain by police, prosecutors, and courts. There is much that they can do, however, to assist the effective functioning of the process. For example, they can host paralegal services run by civil society organizations, which can help to expedite hearings, or even invite magistrates to hold court sittings within the prisons to avoid the need for escorts to court. Important too is the task of collecting—and sharing with other criminal justice agencies—data about the length of remand periods, in particular, numbers of prisoners charged with minor offenses, whose period on remand exceeds the maximum or likely sentence.

There are of course some fundamental reasons for the unnecessary use and length of pretrial detention, including the inability of most defendants to obtain legal advice and assistance. Without it, people have no help in applying for bail, preparing their case, or speeding up the trial process. The longer the time spent in prison without trial, the more the chance of a fair trial fades; evidence goes stale, witnesses move or disappear, and the pressure on people to plead guilty increases as people wish to put an end to the uncertainty over their future.

Recently adopted UN Principles and Guidelines say that anyone arrested, detained, suspected, or charged with an offense that is punishable with imprisonment should be entitled to legal aid at all stages of the criminal justice process.<sup>53</sup> This should prompt governments to address shortfalls in funding and capacity, but considerable investment will be needed to meet these demanding standards required by the UN.

While legal and paralegal assistance is a key part of the answer, there are other remedies also. For example, there may be scope for diverting certain kinds of cases out of the criminal justice system altogether, so that they are dealt with through restorative processes. Where prosecutions are brought, affordable bail terms and community-based alternatives to incarceration are needed in low-risk cases. Systems are needed not only to assess the likelihood that a defendant will fail to attend court, interfere with witnesses, or commit further crimes, but also to reduce those risks. Supervised places to stay and electronic monitoring may also have a role to play. Exploring these

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<sup>52</sup> See Open Society Foundations (OSF) and United Nations Development Programme (UNDP), *The Socioeconomic Impact of Pretrial Detention* (New York: OSF, 2011).

<sup>53</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/V12/528/23/PDF/V1252823.pdf?OpenElement>



options was the preferred choice in South Africa in 2011, when the government decided not to proceed with a further round of prison PPPs. Developing these alternatives appears to be a more effective solution than building more prisons in a context where the country is already spending US\$300,000 per day jailing people who have been granted bail but are unable to afford it.”<sup>54</sup>

## 7.2. Developing Alternatives to Short Prison Sentences

A significant number of people in low-income countries are sentenced to prison for a few days or even weeks for minor offenses. Research in several East African countries, for example, has found imprisonment imposed for offenses such as using abusive language, operating a small business without a valid license, possessing “illicit liquor,” or committing petty theft.<sup>55</sup>

Many low-income countries have few if any alternatives to prison for such minor offenders who are unable to pay fines. Some have developed community service programs, which involve having suitable offenders carry out unpaid public works, but a recent study in Kenya, Uganda, and Tanzania found a range of challenges in ensuring the effectiveness of this and other alternatives to imprisonment. The first key challenge relates to the way in which alternative sentences are imposed by the courts; for various reasons, alternatives are not considered for many offenders for whom the sentence might be appropriate. In order to remedy this, innovative decongestion programs—through which eligible offenders can have short prison sentences commuted to community service after a period in custody—have been established, but there is scope for further initiatives in this vein.

The second main challenge relates to the implementation of the sentences once they are imposed. A lack of resources, particularly in Uganda and Tanzania, affects the successful placement and supervision of offenders and as a result, compliance and reoffending rates vary. Innovative initiatives that equip offenders with practical income-generating skills during their placements have been introduced in Kenya to improve outcomes, and the use of volunteer probation officers has strengthened the monitoring of offenders in Kenya and Uganda.

The third challenge is building the confidence of the public and the courts in noncustodial punishments. Although efforts were made to sensitize and educate people when community service was first introduced, many members of the public either lack awareness about, or are hostile to, alternative sentencing.

Building links to traditional and informal justice systems may have a role to play in developing alternatives to prison. While some such systems have serious flaws and biases, they offer important lessons. Research by the U.S. Institute of Peace has found that jail sentences may be reduced if a civil compensation settlement is successfully brokered.<sup>56</sup> As with alternatives to pretrial detention, investing in community-based measures to replace short prison sentences

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<sup>54</sup> See n 48.

<sup>55</sup> Penal Reform International (PRI), “Alternatives to Imprisonment in East Africa: Trends and Challenges” (London: PRI, 2012),

[http://www.penalreform.org/wp-content/uploads/2012/05/Alternatives-in-East-Africa\\_Trends-and-Challenges2.pdf](http://www.penalreform.org/wp-content/uploads/2012/05/Alternatives-in-East-Africa_Trends-and-Challenges2.pdf).

<sup>56</sup> For example Jirgas which are tribal assemblies of elders which takes decisions by consensus, particularly among the Pashtun people. <http://www.usip.org/programs/projects/rulelaw-afghanistan>

looks in many low income countries to be a better option than creating new prison places—or is at least one that needs to be pursued alongside any PPP initiatives.

## 8. Conclusions

In many countries, the increased use of incarceration is often seen as inevitable, although there are growing concerns, both about the outcomes and the costs involved. Evidence from high-income countries that privately managed prisons can produce better outcomes at lower cost is mixed. Experience in lower-income countries is limited, but there are indications that inappropriate specifications and standards which do not sustainably match needs can hinder the cost effectiveness of privately run prisons. While there are some good results achieved by individual private prisons in higher income countries, there may be a negative impact on the wider public prison system for which additional resources are not available. Competitive commercial practices and the influence of powerful lobbying from private prison corporations may also pose additional risks of promoting corruption.

Plans for investment in the criminal justice system need to be based on a clear analysis of existing and projected future demands and aligned with other government programs such as health, education, and social welfare. In low-income countries, many of the current demands on prisons are likely to be distorted through inefficiencies in criminal justice procedures, and there is a strong argument for addressing these before looking to expand prison capacity. In Malawi, for example, a groundbreaking paralegal program was introduced as a response to the lack of legal professionals in the country; in India, mobile courts were developed to reduce the courts' backlog of cases, an outcome that has been achieved also in Brazil by establishing committees to review case files. In a number of countries of the former Soviet Union, changes in sentencing policies have been enshrined in legislation. These kind of initiatives reflect carefully targeted reforms that responded to well-understood challenges that were manifested by overcrowded prisons, especially but not exclusively among the pretrial population.

Only after exploration of the most effective policies to respond to demands, including measures other than imprisonment, should decisions be made to increase prison capacity. Further consideration then needs to be given as to how it should be created, that is, whether through expanding existing capacity or building a new prison or prisons. Where necessary, proper plans also need to be drawn up for improving existing prison infrastructure.

Finally, when consideration is being given to inviting proposals from private companies for any involvement, careful deliberation must be given to the suitability of the specification, the affordability of any contract, and the overall cost of the deal, with an independent assessment of the costs and benefits. The most appropriate type of PPP needs to be considered. In the context of many developing countries, a mixed model in which security functions remain with state personnel may be the most suitable. This may prove useful in avoiding the state of affairs with regard to private prisons that has arisen in South Africa, where, in 2006, the South African Minister of Corrections described his country's two private prisons as being run "as if they are fiefdoms," complaining that his department had surrendered control.<sup>57</sup>

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<sup>57</sup> du Plessis, *How the Private Prisons were Barred*.



Once it is decided to embark on a PPP, there needs to be a genuinely competitive procurement process that results in a contract that is sufficiently flexible to allow for changes over time. The contract should transfer an appropriate level of risk to the private sector and provide for robust measures for monitoring performance and penalizing noncompliance. In addition, clear plans must be included in the contract, outlining responsibilities for dealing with emergency situations—disturbances, fires, hunger strikes, and other crises—that can often arise in prison environments.

Consideration also needs to be given to whether the private partner has the sufficient capacity, skills, and capability to deliver the project more efficiently than the government. The government, for its part, should have the competence, expertise, and willingness to oversee the project, and should not use PPPs as a strategy to allow it to abdicate its responsibility to adequately and justly house its incarcerated citizens.

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