The Human Rights Implementation Centre (HRIC) at the University of Bristol Law School, the Omega Research Foundation (OMEGA), the African Policing Civilian Oversight Forum (APCOF), Louise Finer (Visiting Fellow, Human Rights Implementation Centre, and University of Essex Human Rights Centre), Michael Addo (Professor of Law, Director, London Law Program, Notre Dame Law School) welcome this opportunity to submit the following to the UN Special Rapporteur on Torture. We are making our submission with respect to two areas of focus.

1. **Maintaining *human rights standards in prisons outsourced to private companies.***

There has been insufficient focus to date on the implications for the prohibition and prevention of torture of outsourcing prisons to private companies, despite this being common practice in many states. There are different outsourcing models including full outsourcing of a prison; outsourcing specific services (e.g. maintenance, health, food services, fencing, security, etc.) that are all relevant from a human rights perspective. Those providing these services include small and even charitable enterprises, as well as companies that have national, if not, global reach, such as G4S, Serco and Amey/GEOAmey. Accusations of torture or other ill-treatment have been reported, including through the use of electric shock devices, rubber bullets, batons and other equipment, at some of the facilities run by such companies.[[1]](#footnote-1)

Some of the private companies involved have signed up to the UN Guiding Principles on Business and Human Rights, which provide a valuable point of reference for assessing the points of convergence or overlap between the State’s duty to protect and the private business enterprise responsibility to respect human rights. In particular, we note that the 'Cause, Contribute, directly-linked' typology in the UNGPs is a useful framework for the definition of contractual terms in private detention contracts.

In some countries, such as the UK, the extent of private sector involvement in the prison as well as the broader correctional and immigration detention sector is extensive, with several thousand contracts awarded, not only in prisons and immigration detention centres but police custody; court cells; various forms of accommodation for children convicted of crimes; escort/transport between these different facilities; as well as holding cells and rooms at airports, ports and borders; and being accompanied on flights if individuals are extradited or deported. There are also other facilities where individuals may be deprived of their liberty when they have been diverted from the criminal justice system, such as drug rehabilitation centres.

We consider that a number of key issues warrant further consideration and would like to draw these to the attention of the Special Rapporteur.

* **What is in the contract** – there needs to be further analysis of the boundaries of what contractors deliver and don’t deliver (e.g. in South Africa legislation prohibits them from being involved in disciplinary action), and what they need permission for. Further consideration needs to be given to what penalties are envisaged in the contract and whether these correspond to areas that would be considered human rights violations or engaging human rights issues (e.g. deaths in custody). These contracts are also not always public or sections are redacted on the grounds of commercial confidentiality. The extent to which the contracts provide incentives or disincentives for compliance with human rights standards also warrants further investigation.
* **The role of the state in supervising contracts** and how this relates to human rights obligations. Key areas in privatised prisons include use of force, searches, segregation. But there are also examples where specific services are outsourced. Questions then arise as to where the constitutional, contractual and operational obligations lie in practice.
* For instance, the National Audit Office in England identified the low level of performance by one provider, Carillion, in providing prison maintenance, as well as shortcomings in the contracts including compliance and due diligence processes.[[2]](#footnote-2) The impact of these issues has been picked up in countless reports by the independent inspection body, His Majesty’s Inspector of Prisons (HMIP), noting that, for example, that the “maintenance services contract was ineffective in enabling the prison to ensure that prisoners lived in decent conditions”.[[3]](#footnote-3)
* The Brook House Inquiry, which examined the ill-treatment of individuals detained at Brook House Immigration Removal Centre, reiterated the responsibility remained with the government, noting, however, the “comprehensive range of failings” of the private contractors including G4S, Serco and the Practice Plus Group, all companies that provide services to other places of detention.[[4]](#footnote-4) An earlier investigation into the abuse of detainees at Brook House had flagged the failure of Home Office performance monitoring, which “tended to be based on consideration of the individual elements of contract performance and compliance and […] had not taken an approach that examined and questioned the wider concerns of the care and welfare of detainees, their quality of life and experience of being detained.” [[5]](#footnote-5)
* **Moving between state/private providers**. There are some examples of prisons run under private contract being taken back into state hands, and in some instances, back again. There needs to be further interrogation of what planning happens prior to the contract end dates.
  + In the UK, Medway Secure Training Centre (a prison for children) was run by G4S, with the contract renewed in 2015. A year later, a TV documentary exposed staff verbally and physically abusing children at Medway. According to the National Audit Office, “Because government had already re-awarded the contract to G4S, it agreed not to pursue the company in exchange for G4S agreeing not to pursue government for costs it had incurred in competing for the retendered contract.”[[6]](#footnote-6)
  + In the UK, transfers of contracts from one provider to another, for instance, with respect to HMP Lowdham Grange. The independent inspection of the prison found that the contract was transferred from Serco to Sodexho, causing high staff attrition and sickness rates. The independent inspection of the prison found that key information was not passed on so when inspectors visited they were unable to find out how many prisoners had been segregated in the previous year as the data had not been transferred from the previous contractor. They also identified that reports of investigations into serious self harm had not been passed onto new prison managers.[[7]](#footnote-7)
  + In South Africa, the Lindela migrant repatriation centre received extensive criticism for human rights violations when under the management of the private security company, Bosasa.[[8]](#footnote-8) It is now returning to state control.
* Where states are party to the Optional Protocol to the UN Convention against Torture (OPCAT), they designate or establish an independent National Preventive Mechanism (NPM) to monitor all places of detention to prevent torture and other ill-treatment. Ensuring detention monitoring effectively prevents torture and ill treatment is a challenge, but privatisation adds further complications if the activities and contracts of private companies lack transparency and accountability, and enforcement can be problematic. Private companies may also be subject to other monitoring processes which need to be seen alongside, potentially sometimes enhancing, that offered by NPMs. Further consideration needs to be given to the ability of NPMs to perform their preventive role vis a vis private prisons – the extent to which they can access these contracts, and whether they are equipped to assess them.
* For both NPMs and the international bodies such as the UN Subcommittee on Prevention of Torture (SPT), there are questions regarding to whom they should direct their recommendations and findings and whose responsibility it will be to follow-up and implement them. While human rights responsibilities and those under treaties lie with the state, there are signs that states consider it necessary that these companies interact with the~~se~~ international bodies when states are reporting on the fulfilment of their international obligations.

We recommend that the Special Rapporteur,

* Call on states to ensure that all service level contracts between private providers and governments are accessible and transparent. This is of particular importance for NPMs in order to fulfil their mandates.
* Propose that governments require mandatory human rights due diligence of all bidders for private detention contracts.
* Remind private providers of the importance of ensuring their contracts with government are transparent and available, as a matter of course, to NPMs, and to recommend that the contracts stipulate a requirement to engage constructively with NPMs, a duty of candour, and to publish any inspection reports.
* In her visit to South Africa in 2024, and in all future visits, actively consider the role of private companies that run or operate prisons or other detention facilities, or that provide or supply services to them, including the weapons and equipment that are used within the facilities.
* Consider convening a joint meeting with the Working Group on Business and Human Rights and the Subcommittee on Prevention of Torture to examine current state practice in privatising detention through a torture prevention lens.
* Elaborate on the significance of the UN Guiding Principles in clarifying the lines of accountability for human rights in the private detention context. This should include assessing the value of the recommendation in the UNGPs for private enterprises to set up effective operational grievance mechanisms to deal with some allegations of human rights abuses in private detention centres alongside the state judicial and non-judicial mechanisms.

**The criminalisation of women**

Research on women in prison (and more broadly within the justice system) remains scarce and discrete. This leaves a stark gap and a critical absence of information about their pathways to prison and their experience once within the prison system. This issue is particularly pronounced in Africa, where the rate of incarceration of women is growing at a much faster rate than men. The issue of women in prison has been the focus of recent work by the African Commission on Human and Peoples’ Rights, which has adopted a set of action items following an expert meeting in 2022. This includes:

* Prioritising research and data collection;
* Reviewing discriminatory and other laws that impact the rights of women;
* Develop and promote alternatives to detention for women;
* Mainstream gender responsive measures in custodial settings;
* Ensuring training for all law enforcement officials on best practice related to justice outcomes for women;
* Establish and maintain effective oversight mechanisms over places of detention; and
* Investment in criminal justice reform.

Each of these areas of action are equally important and mutually reinforcing, they do not address the issue of the impact of the feminisation of poverty and the underlying socio-economic causes of women’s incarceration.

Globally, the number of women in prison has increased by approximately 59% between 2000 and 2020, at a much faster rate than that of men.[[9]](#footnote-9) The main driver of women coming into contact with the criminal justice system is poverty. To address the increasing number of women in prisons requires addressing the underlying causes of their incarceration. One area of significant concern is how women are disproportionately impacted by laws that criminalise poverty. These laws, which are evident across the world, criminalise the performance of life sustaining activities in public spaces, and include colonial-era laws that prohibit ‘vagrancy’ and ‘loitering’ or being a ‘rogue and vagabond’, petty offences, and laws that prohibit informal trade and hawking. The UN has issued a number of calls for States to decriminalise laws that punish poverty, however there is a need to mainstream gender (and women prisoners) into global action on the decriminalisation of poverty.[[10]](#footnote-10)

Using loitering as an example, the enforcement is often used to target women who work as informal traders, sex workers, drug users, and women who perform life sustaining activities in public spaces for reasons of their socio-economic marginalisation. In South Africa, for example, 45% of women are convicted on economically related crimes.[[11]](#footnote-11) In Sierra Leone, a 2020 study found that 34% of women in prison had been convicted or charged with crimes relating to poverty or drug use.

The laws are often drafted in broad terms, and provide police with broad discretion regarding their enforcement. Once arrested, gender stereotypes then inform the nature of the of the charges brought against women, while influencing the way in which they are treated during court proceedings and during the sentencing stage.[[12]](#footnote-12) Once imprisoned – and this applies to all women in prison, not just those charged or convicted with petty offences – prisons are not designed to meet women’s needs, with a lack of gender-sensitive hygiene, nutrition, sexual and reproductive health products, and psycho-social support. Research from South Africa also points to the lack of gender-sensitive rehabilitation programmes for women, who are bringing unaddressed trauma back to their own communities. While there are alternatives to prison, these options don’t usually address women’s unique needs, including care for children, and the socio-economic burden of women-headed households.

Beyond reform of criminal justice systems, prisons, and the use alternatives to prison, attention must be given to decriminalising women’s poverty. Criminalising poverty has, and will continue to have, a disproportionate impact on women, and challenging this must be at the centre of efforts to reduce the number of women in prisons. We recommend that states:

* Decriminalise victimless, poverty-related and minor crimes, and accompanying mandatory prison sentences;
* Mainstream gender (and women prisoners) into work on the decriminalisation of poverty;
* Document the gendered impact of law enforcement and laws that criminalise poverty.
* Work with and train key criminal justice role-players, such as the police, prosecutors, and the judiciary, in combating gender bias.
* Utilise the law through a legal empowerment approach by assisting women in knowing their rights.

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1. See for example Report on Incidents at Mangaung Correctional Centre (2020). The Preliminary Investigation Findings Report of 26 June 2014 and The Bloemfontein Correctional Contracts (Pty) Ltd's Response to the report dated 26 June 2014 prepared by the Department of Correctional Services of 31 July 2014, <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/rule-of-law/in-court/DCS%20Report%20on%20G4S_Redacted.pdf> and South African prisoners sue G4S over torture claims (2015) https://www.theguardian.com/world/2015/feb/13/south-african-prisoners-sue-g4s-over-torture-claims [↑](#footnote-ref-1)
2. <https://www.nao.org.uk/wp-content/uploads/2020/02/Improving-the-prison-estate.pdf>, Part Two. [↑](#footnote-ref-2)
3. <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/12/HMP-Wormwood-Scrubs-Web-2017-1.pdf>  (S47) [↑](#footnote-ref-3)
4. <https://brookhouseinquiry.org.uk/> [↑](#footnote-ref-4)
5. Verita, Independent investigation into concerns about Brook House immigration removal centre, para. 1.146 <https://www.verita.net/reports/independent-investigation-into-concerns-about-brook-house-immigration-removal-centre/> [↑](#footnote-ref-5)
6. [https://www.nao.org.uk/wp-content/uploads/2022/04/Children-in-custody-secure-training-centres-and-secure-schools.pdf](https://www.nao.org.uk/wp-content/uploads/2022/04/Children-in-custody-secure-training-centres-and-secure-schools.pdf.), p.22. [↑](#footnote-ref-6)
7. <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2023/08/Lowdham-Grange-web-2023.pdf>, paras 2.2, 2.5, 3.32 and 3.36. [↑](#footnote-ref-7)
8. See e.g. https://www.sahrc.org.za/index.php/sahrc-media/news/item/1075-children-illegally-detained-under-bosasa-s-watch-at-lindela-as-healthcare-crumbles [↑](#footnote-ref-8)
9. H Fair & R Walmsley “World Female Imprisonment List” (2022) <https://www.prisonstudies.org/sites/default/files/resources/downloads/world\_female\_imprisonment\_list\_5th\_edition.pdf > (accessed 02 June 2023). See also: MC Van Hout & R Mhlanga-Gunda “Contemporary women prisoners health experiences, unique prison health care needs and health care outcomes in sub Saharan Africa: a scoping review of extant literature” (2018) 18 *BMC International Health Human Rights* at 31. [↑](#footnote-ref-9)
10. UN Guiding Principles on Extreme Poverty and Human Rights 2012: States should "repeal and reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities". Furthermore, the Guiding Principles call on States to "review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay"; UN Guidelines for the Implementation of the Right to Adequatae Housing (A/HRC/43/43) 2020: “States should prohibit and address discrimination on the ground of homelessness or other housing status and repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless”, and recommend that States provide alternative procedures for dealing with minor offences of homeless people to help them break the cycle of criminalization, incarceration and homelessness and secure the right to housing; UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, “Deaths in prisons”, A/HRC/53/29, para. 73 (a): called on states to minimize the use of imprisonment by “repealing victimless, poverty-related and minor crimes and [accompanying] mandatory prison sentences” [↑](#footnote-ref-10)
11. L Artz, Y Hoffman-Wanderer & K Moult ‘Women, crime and incarceration: Exploring pathways of women in conflict with the law- The case of South Africa’ in P Van Kempen & M Krabbe (eds) *Women in Prison: The Bangkok Rules and Beyond* (2017) at 73. [↑](#footnote-ref-11)
12. A Rudman “Women’s Access to Regional Justice as a Fundamental Element of the Rule of Law: The Effect of the Absence of a Women’s Rights Committee on the Enforcement of the African Women’s Protocol” (2018) 18 *African Human Rights Law Journal* at 321. [↑](#footnote-ref-12)