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The Privatization of Immigration Detention: Towards a Global View

A Global Detention Project Working Paper

By Michael Flynn and Cecilia Cannon

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PROGRAMME FOR THE STUDY OF GLOBAL MIGRATION

THE PRIVATIZATION OF IMMIGRATION DETENTION: TOWARDS A GLOBAL VIEW

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Summary: The phrase "private prison" has become a term of opprobrium, and for good reason. There are numerous cases of mistreatment and mismanagement at such institutions. However, in the context of immigration detention, this caricature hides a complex phenomenon that is driven by a number of different factors and involves a diverse array of actors who provide a range of services. This working paper employs research undertaken by the Global Detention Project (GDP)—an inter-disciplinary research project based at the Graduate Institute of International and Development Studies—to help situate the phenomenon of the privatization of immigration detention within a global perspective. Part of the difficulty in assessing this phenomenon is that our understanding of it is based largely on experiences in English-speaking countries. This working paper endeavors to extend analysis of this phenomenon by demonstrating the broad geographical spread of privatized detention practices across the globe, assessing the differing considerations that arise when states decide to privatize, and comparing the experiences of a sample of lesser known cases.

I. INTRODUCTION

The phrase "private prison" often conjures images of rapacious corporations out to make a buck at the expense of prisoners. Abetted by neoliberal economic policies, private security companies are given a responsibility long considered a core function of the state—the appropriate treatment of people imprisoned because of their crimes. Once granted entry into this state function, these contractors—like their counterparts in other sectors of private enterprise—endeavor to maximize their profits and expand their businesses, which some observers argue have led to abuses at detention sites and hardening penal laws.

Observers have voiced similar concerns with regards to privately-run detention centers used to hold irregular immigrants and asylum seekers (Fernandes 2007; Bacon 2005). However, within the context of immigration detention, the phenomenon of privatization exhibits a number of unique characteristics. For

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example, detainees in immigration detention facilities are generally not convicted criminals, or even remand prisoners waiting for their day in court. Rather, they are administrative detainees, people who are not charged with a crime but whom the state has decided to detain in order to carry out administrative procedures, like deportations or decisions on asylum claims. As we will see later in this paper, this quality of immigration detainees has been at the core of a number of states' decision-making vis-à-vis privatization.

In addition, while scholars have argued that neoliberal economic policies are a key driving force behind the privatization of prisons, such policies are far from being the unique or even the prime motive behind many states' decisions on the privatization of immigration detention. Also, as we will see later in this paper, the experience of privatization has not been negative in all cases. While some companies have cut corners and unabashedly put profits ahead of the protection of rights, others seem to have learned from criticism and put in place better practices than those of government agencies. Further, the concept of privatization, especially with regards to immigration detention, encompasses a diverse range of relationships, including the contracting of services to non-governmental organizations and differing configurations of private ownership and operation of detention facilities.

Part of the challenge in assessing the phenomenon of private immigration detention is that the discourse on the subject has focused almost exclusively on English-language countries, in particular the United States, Australia, and the United Kingdom, perhaps because they were the initial countries "to delegate operations of imprisonment facilities to private entities" (McDonald 1994, p. 29). According to an advocacy director at Jesuit Refugees Services (JRS), "Except for a few cases like the UK, there is little discussion in Europe about privatization of immigration detention centers. It is not talked about as a pan-European phenomenon" (Amaral 2009). To address this lack of knowledge, JRS has made questions regarding the operations of different entities in immigration detention centers part of a survey it is undertaking in 23 European Union members states, the results of which are to be published in early 2010.

The goal of this working paper is to begin to situate the phenomenon of the privatization of immigration detention within a global perspective. By providing a broad geographical sampling of countries, the paper endeavors to highlight the array of challenges that arise when states decide to privatize detention centres and details some of the outcomes of this practice in different countries. What have been some of the key motives for (and against) privatization? And which factors seem to have been key in determining the performance of privatized facilities?

This paper employs research undertaken by the Global Detention Project (GDP), an inter-disciplinary research initiative based at the Graduate Institute of International and Development Studies that investigates the role detention plays in states' responses to immigration. Using both primary and secondary source material—including informal interviews with government and non-governmental actors, studies produced by international organizations, the publications of state institutions, information attained through freedom of information requests, and media reports—the project is creating a comprehensive database of detention sites that categorizes detention facilities

along several dimensions, including security level, facility management, bureaucratic chain of command, facility type (is a given site an exposed camp, a dedicated migrant detention facility, or a common prison), spatial segregation (are there separate cells for criminals and administrative detainees, for women and men), and size. To date, project researchers have coded the detention infrastructures of nearly 70 countries and entered more than a thousand detention sites in the database. A partial listing of this data is available on the maps and lists of detention facilities provided on the project's website (http://www.globaldetentionproject.org).

According to project research, more than a dozen countries across the globe have employed private contractors in some form within their immigration detention institutions. These include the United States, Sweden, South Africa, Canada, the United Kingdom, Japan, Australia, the Czech Republic, Luxembourg, Ireland, Estonia, Italy, France, Portugal, Finland, and Germany.

Seen through the lens of say the U.S. experience, where a handful of heavily criticized companies have dominated much of the private detention market,[1] one might conclude from this list that international private security firms have successfully penetrated immigration detention systems across the globe, broadly diffusing their practices. While in some respects this is indeed true, it is only a part of the overall picture. In fact, in the countries mentioned above, the types of contractors involved and the nature of the services provided vary greatly. For instance, in Portugal and France, private not-for-profit organizations are contracted by government agencies to provide a range of services to detainees, including social, legal, and psychological counseling. In Italy, the Red Cross is contracted to manage detention facilities. And one *Lander* in Germany employs a relatively small private security contractor to manage operations in its detention center, the operations of which have been lauded by government and non-governmental observers alike.

Clearly, privatization in the context of immigration detention is an extremely diverse phenomenon. The next section of this working paper briefly presents the experiences of privatization in a select group of countries across the globe, focusing mainly on lesser-known cases. The countries reviewed are Australia, Germany, Italy, South Africa, and Sweden. The paper concludes with a discussion of key questions and areas of research suggested by the cases, making references to relevant examples in the United States and the United Kingdom, as well as in other countries not fully discussed here.

II. CASES

Australia

Until 1998, Australia's immigration detention, reception, and processing centers were run by a government agency, the Australian Protective Services. The government tabled the idea of using private contractors in 1996, announcing in

[1] Accounts of privatization of U.S. immigration detention centers are provided in Welch 2002 and Fernandes 2007.

its budget that year that it intended to pursue this option. According to the Public Interest Advocacy Center (PIAC), the government saw privatization “as a means of cutting costs and improving efficiency in the provision of immigration detention services” (Mainsbridge & Thomas 2006).

In 1998, the Australian government secured a contract with Australasian Correctional Services (ACS), the Australian subsidiary of Wackenhut Corrections Corporation (WCC), which became the first private company to manage immigration detention centers in Australia (Polaris Institute; Mainsbridge & Thomas 2006). The contract specified that ACS (and its subsidiary, Australasian Correctional Management) was to run seven immigration detention centers across the country for a period of three years, with the possibility of extension (DIAC website, “Detention Services Provider Contract”; Mainsbridge & Thomas 2006).

After intense media and NGO criticism of ACS operations, the government ended its immigration-related detention service contract with the company in 2003. The government entered into a new contract with the private security firm Group 4 Falck (now G4S) in August 2003 (HREOC 2004; GSL 2008). This occurred just one year after Group 4 Falck had purchased the ACS parent company, Wackenhut Corporation, and just three months after WCC and ACS de-merged from Group 4 Falck. Since then, Group 4 Falck has undergone several mergers and name changes, and is now called G4S. According to its website, the company specializes in “outsourced business processes where security and safety risks are considered a strategic threat” (G4S website). It is currently responsible for the management of Australia’s 11 immigration-related detention facilities, as well as the transport of immigration detainees.

Management of Australia’s detention centers has been repeatedly criticized. In 2001 and 2002, detainees protested their inhumane treatment in the facilities by setting fires to several of them and attacking guards with iron bars in breakout attempts (DIAC 2002). A complaint was lodged against GSL in 2005 by a consortium of rights groups, which claimed that GSL, through its public-private partnership contract with the government, was accountable for the human rights abuses of detainees. The groups claimed that violations were well documented by national and international human rights bodies, and included the detention of immigrants without a specified or legal time limit and inadequate access to appropriate health care, leading to high rates of depression, self-harm, and attempted suicide (International Commission of Jurists 2005; libertysecurity.org 2005).

The 2005 Palmer Report, a government-sanctioned report spurred by the unlawful detention of a German-born Australian resident, concluded that the management of detention centers was fraught with organizational problems that jeopardized the government’s capacity to carry out its migration policy while respecting human dignity. Among its findings, the report criticized the government’s contract with GSL as “fundamentally flawed,” found health care to be inadequate, and found arrangements governing surveillance of female detainees to be unacceptable (Palmer 2005).

In 2005, the government introduced significant policy changes, which appear to have led to a number of improvements at detention centers. Among the reforms

was a program designed to improve the administrative processes and staff attitudes in relation to the detention of children (Ombudsman 2006). The government claims that these changes have led to a decline in the number of children and women in immigration detention, with many of them now staying in Immigration Residential Housing (DIAC website, “Managing Australia’s Borders”).

In 2007, the Australian Human Rights Commission (HREOC) reported marked improvements in detention conditions, including a significant reduction in tension levels and more positive attitudes of DIAC and GSL staff towards detainees. There were no complaints from detainees during HREOC’s 2007 visit, in contrast to the multiple complaints HREOC reported in previous years. Many of the problems previously raised by HREOC had been corrected by 2007, with renovations and refurbishments continuing to improve the physical environment of centers, and programs and activities more readily available to detainees. The new Sydney and Perth Immigration Residential Housing facilities have also been praised as improving the living conditions of detainees (HREOC 2007).

Despite these reforms, advocacy groups have continued to argue that the government should terminate its use of private corporations in immigration detention centers and assert government control over them (Mainsbridge & Thomas 2006).

While the government has thus far not imposed direct managerial control over the centers, it has decided to change contractors. In June 2009, the multinational security firm Serco announced that it had signed a contract with the DIAC for the provision of detention services in the immigration detention centers (Serco 2009). In a media release, Serco stated that it will “transform its immigration detention centers across the country” (Serco 2009). Media reports claim that Serco, which currently operates two immigration centers and associated services in the United Kingdom, will also provide national and international transport and escort services from Australia. It was awarded a five-year contract, valued at around $370 million, with the potential for a four-year extension, and will gradually take over from G4S, the existing service provider, between July and November 2009 (Reuters 2009).

Germany

Germany’s immigration detention practices and infrastructure are decentralized, making it challenging to get comprehensive information about the country. Each individual *Lander* (or state) has significant discretion in setting policy and establishing which facilities (including prisons) are to be used to hold immigration detainees in administrative detention.[2]

There appear to be two private contractors involved in managing immigration detention centers in Germany, European Homecare and B.O.S.S. Security and

[2] For detailed discussions of immigration and detention policies in Germany, see European Parliament 2007, pp. 3-5; and Council of Europe 2007a, pp 21-31.

Service GmbH. European Homecare operates several reception centers as well as a transit-zone detention facility at Dusseldorf Airport and the Büren Detention Centre in North Rhine Westphalia (European Homecare website, "Development"). B.O.S.S. manages the day-to-day operations of the immigration detention center in the city of Eisenhuttenstadt, which is located near the border with Poland (CPT 2007, p. 34).

This paper focuses exclusively on the B.O.S.S. facility because that is the one about which the Global Detention Project has the most detailed information.

B.O.S.S. is a German company with operations in Berlin, Magdeburg, and Eisenhuttenstadt (B.O.S.S. website). Among the services it offers are "security," "catering," and "cleaning." Although its website claims that the company has been involved in private security since 1990, it does not specify if it operates any additional detention centers (B.O.S.S. website, "Sicherheitsdienste").

The Eisenhuttenstadt facility, which has employed a private contractor since at least 2000, appears to be a state-owned facility that is privately operated (CPT 2007, p. 34). However, government officials maintain a near-constant presence in the facility. According to a 2007 report by the Council of Europe's Committee for the Prevention of Torture (CPT), "[I]n principle, during the day, two members of staff employed by the Ministry of the Interior and ten staff employed by the private security company were in attendance at the detention center" (CPT 2007, p. 34).

B.O.S.S.'s management of the Eisenhuttenstadt facility has been lauded by government and non-governmental observers. The CPT, whose 2007 report was based on a visit in 2005, reported: "Many of the private security staff met by the delegation had already been present at the time of the previous visit [in 2000]. The delegation observed that their general attitude towards foreign detainees had significantly improved. They were ready to communicate and were described by most inmates as sympathetic. This is a welcome development" (ibid).

Similarly, the authors of a 2007 European Parliament study complimented B.O.S.S. staff for their treatment of detainees (European Parliament, p. 24) as did a rights advocate interviewed by the Global Detention Project, who favorably compared Eisenhuttenstadt to a police-run immigration detention facility in Brandenburg. In conversation with the Global Detention Project, the advocate said that the Eisenhuttenstadt center was much better managed than the police-run facility. He added, "If it were me, I'd prefer to be in the B.O.S.S. facility."

The only substantive criticism leveled at Eisenhuttenstadt management in recent reports was made by the CPT. The committee argued that because the "care and custody of foreign nationals whom the State deprives of liberty under immigration law is an important public responsibility," when this function is delegated to a private entity it is paramount "that the public authority … maintain a presence to ensure compliance with standards and timely corrections of any breaches." However, according to the committee, during its visit to Eisenhuttenstadt, "certain sensitive activities, such as searching and other security measures, including means of restraint, were frequently

performed exclusively by private security staff." The CPT concluded by stressing that "private security staff working at Eisenhuttenstadt should be held to the same standards in the execution of their duties as apply to staff employed by the Ministry of the Interior. In order to safeguard the rights of immigration detainees and prevent ill-treatment, special arrangements should be made to ensure that the standards … are applied" (CPT 2007, pp. 34-35).

Since B.O.S.S. took over operations at Eisenhuttenstadt, other private contractors have made inroads in German penal institutions. Serco, a multinational private prison company with operations in Europe, the Middle East, Asia Pacific, and North America, operates the Justizvollzugsanstalt prison in Huenfeld, Germany (Serco website; Nathan, p. 5). According to Serco, the Justizvollzugsanstalt prison is a "partially privatized penal institution" managed in cooperation with the Hessian Department of Justice. The company claims to excel in these types of "public private partnerships" in which operations are "performed in close coordination with the public sectors. The industrial partner integrates himself into the structures and processes of the customer in order to perform the services more efficient [sic] and more effective [sic]" (Serco website, "Operating Models").

According to a 2005 study on the market for privatized penal services in Europe, "semi-private prisons" have been under development or consideration in the *Landers* of Saxony-Anhalt, North Rhine-Westphalia, Mecklenburg-Western Pomerania, and Baden-Württemberg (Nathan, p. 3).

Italy

Italy serves as a principal border state within the European Union, receiving tens of thousands of African immigrants and asylum seekers yearly (UN Service 2009a). Pressured by its EU partners as well as by its own public, Italy has fortified its maritime border control efforts in recent years. To cater to its burgeoning detainee population, the country has increased the number of detention centers and engaged a broad array of actors, in addition to the Italian Red Cross, to assist in the treatment of detainees, including the International Organization for Migration (IOM) and the UN High Commissioner of Refugees (UNHCR).

The country operates two distinct types of secure detention facilities, I Centri di Accoglienza (CDA) (literally "Welcome Centers"); and I Centri di Identificazione ed Espulsione (CIE) ("Identification and Expulsion Centers"). The CDAs confine migrants who enter Italy without necessary documentation. Once their status is determined, they are either transferred to a deportation center or a non-secure center for Asylum Seekers (Ministero dell'Interno, "I Centri dell'immigrazione").

Both the CDAs and the CIEs fall under the authority of the Department of Civil Liberties and Immigration of the Interior Ministry. While the overall authority for both types of centers is centralized, the CDAs and CIEs have separate management structures. The management of the CDAs remains at the national level, with the Central Directorate of Civil Services for Immigration and Asylum (Direzione Centrale dei servizi per l'immigrazione e l'asilo), which also

facilitates the verification process to determine whether detained immigrants can remain in Italy (Ministero dell'Interno website). Some CDAs contract out the provision of services to non-governmental groups (Comitato Dirritti Umani 2006).

CIEs are managed at the local level, by local prefectures, including the *questura* (the local police) and the local magistrate, who play an administrative role in determining identification and subsequent deportation measures, if required. Local prefectures have service contracts with a variety of private entities, including non-governmental groups, for the provision of basic needs and services within facilities (Ministero dell'Interno, "I Centri dell'immigrazione").

The *corpo militare* of the Italian Red Cross (Croce Rossa) serves as a principal private contractor for the expulsion centers, operating a number of CIEs—including those in Turin, Milan, Crotone, and Rome—in partnership with the local prefecture in each region. It also assists in the operations of the secure welcome center in Foggia (Croce Rossa, "Strutture per I migranti"). The government reportedly chose the Red Cross because of its ability to address the humanitarian needs of the detainee population (Comitato Dirritti Umani 2006, p. 84). Among the services the Red Cross provides and/or oversees are accommodation, food, health care, psycho-social counseling, cultural-linguistic assistance, and facility maintenance (Ministero dell'Interno, "I Centri dell'immigrazione"). The Red Cross claims that it does not handle the processing of migrants held in these centers; it only manages certain aspects of the centers and administers to detainee needs prior to their deportation (Croce Rossa, "Centri di Identificazione ed Espulsione").

For many years, the Red Cross was the only private organization working inside detention centers. In contrast, human rights organizations have been frequently denied access to the facilities (HRW 2006). However, various high-profile incidents at centers, including deaths and fires, led the government to broaden the number of organizations involved in the facilities beyond the Red Cross, which claimed to be understaffed (Statewatch 2000).

As of 2006, among the other charities and cooperative organizations providing services in detention centers were: Misericordia, in Modena, Bologna, Lampedusa, and Bari Palese; Cooperativa Albatros, in Caltanissetta; Cooperativa Insieme, in Trapani; and the Cooperativa "La Minerva," in Gradisca d'Isonzo (Comitato Dirritti Umani 2006). Despite repeated requests for information from many of these organizations, including the Red Cross, the Global Detention Project has not been able to confirm the current operating status of the organizations in detention centers, apparently reflecting a continuing lack of transparency in the practice of immigration detention in the country.

The Italian government and the Italian Red Cross have repeatedly been criticized by human rights organizations, the media, and the Council of Europe's Committee for the Prevention of Torture (CPT) for conditions at immigration detention facilities across the country, and in particular at the facility on the island of Lampedusa, one of the main detention facilities in the Mediterranean (HRW 2006; CPT 2007a).

In March 2006, an agreement was reached by the Italian government, UNCHR, IOM, and the Red Cross to put in place a pilot program requiring a constant presence of representatives from all partners at the Lampedusa facility (CPT 2007a, p. 10; HRW 2006). UNHCR helps identify asylum applicants and aids the processing of claims; IOM provides information to the immigrants about Italian legislation on migration matters and assists immigrants who opt to voluntarily return to their countries of origin; the Red Cross takes charge of unaccompanied minors and provides a general humanitarian assistance to detainees (CPT 2007a, p. 10).

Describing the pilot program, entitled Praesidium and jointly funded by the Italian government and the European Union, the Red Cross states that it "aims at strengthening the management capacity of mixed migration flows arriving in [Lampedusa]. The phenomenon of migration is very complex and the management of so-called 'mixed flows' requires an equally complex, multi-sector approach of intervention founded on the principles of intra-agency cooperation and security" (Croce Rossa Website "Progetto PRAESIDIUM"). The program, which has been lauded by the CPT, has been extended to other parts of Italy (CPT 2007a, p. 10; Croce Rossa Website "Progetto PRAESIDIUM").

Despite the efforts to improve some of its detention practices, Italy has also been engaged in the controversial practice of "push-back," forcibly redirecting boats at sea en route to Italy back to Libya, which has been spurred by mounting deaths at sea from the sinking of migrant smuggling vessels. In response to the "push-backs" policy, Antonio Guterres, the UN High Commissioner for Refugees, has called for a convention between Italy, Malta, and Libya to address the increasing rates of irregular migration across the Mediterranean and ensure that people are not sent back to places "where their lives or freedom would be jeopardized" (UN News Service 2009c).

South Africa

Long a key destination for refugees and immigrants from across Africa, South Africa has one dedicated immigration detention center, the Lindela Holding Facility, which was built in the mid-1990s. The country also makes extensive use of prisons, police stations, and ad hoc camps located near its borders with neighboring countries, in particular Zimbabwe, to detain unauthorized immigrants.[3]

In 1996, the Department of Home Affairs (DHA) and the Dyambu Trust, an organization created by the African National Congress's women's league, established the Lindela Holding Facility (also known as the Lindela Repatriation Center) as an experimental center for undocumented immigrants slated for deportation. Built to relieve overcrowding in the Guateng province prison (Berg, p. 75), Lindela is located outside Johannesburg, on the site of a former miners

[3] A detailed description of South Africa's detention infrastructure is provided on the Global Detention Project website, "South Africa Country Profile," June 2009, http://www.globaldetentionproject.org/de/countries/africa/south-africa/introduction.html. See also Lawyers for Human Rights, *Monitoring Immigration Detention in South Africa*, December 2008.

camp that was comprised of a series of huts (SRR 1999). As the country's only dedicated immigration detention facility, Lindela has grown to respond to South Africa's increasing detention efforts, with one press report putting capacity at more than 6,000 (SAPA 2005). A 2009 report by the Consortium for Refugees and Migrants in South Africa claims that some 50,000 non-nationals are detained at Lindela annually (CORMSA 2009).

When it was established, Lindela was owned and operated by Dyambu under the authority of DHA, which maintained a presence in the facility to carry out formalities related to admission, release, and deportation (SRR 1999). While in Dyambu's hands, the facility was repeatedly criticized for severe overcrowding, the serial abuse of detainees, excessively long detention periods, and ineffective and/or indifferent monitoring by government bodies. Writes one scholar, "The marks of a developing country emerge when one compares" Lindela to privately owned facilities in other countries. "Although overcrowding and abuses may have occurred in the facilities in the USA and the UK, these problems were relatively minor compared to the severe overcrowding and completely unacceptable human rights abuses suffered by the migrants in Lindela" (Berg 2000, p. 76).

In 2007, a subsidiary of the South African private-security firm Bosasa (Pty) Ltd., Leading Prospect Trading, was awarded a controversial 10-year contract to manage Lindela (*Independent* 2007). As with contractors in other countries, particularly the United States,[4] Bosaso has close ties to the government agency that contracts it and supposedly monitors its work (Stephen & Quintal 2007). In addition, according to the U.S. State Department's 2008 human rights report, "There were allegations of corruption and abuse of detainees by officials at the overcrowded Lindela Repatriation Center. ... Officers from Lindela were among those convicted by the DCS [Department of Correctional Services] of corruption or abuse" (U.S. State Department 2009).

A key issue raised by human rights groups is the lack of access they or any other oversight body has in Lindela (CORMSA, p. 63; LHR, p. 5). According to the Pretoria-based Lawyers for Human Rights, "By pointing to Bosasa as the entity responsible for the treatment of detainees, DHA seeks to avoid accountability under the provisions of the Constitution and the Bill of Rights, South African administrative law, and international human rights instruments. At the same time, enforcement of these provisions against Bosasa is hindered by the status of Bosasa as a private entity that is not eager to cooperate in human rights monitoring and oversight efforts" (LHR, p. 5). The group adds that while prisons fall under the monitoring mandate of the judicial inspectorate, Lindela, which operates under a separate authority, does not.

As in many other countries,[5] the privatization of immigration detention in South Africa preceded efforts to privatize prisons. When Lindela was established in 1996, South Africa had yet to pass enabling legislation that would allow for the privatization of penal institutions. By 2001, South Africa had negotiated contracts with two major transnational prison companies, Wackenhut (then known as SA Custodial Services in South Africa) and Group 4 Securitas, to

[4] See Fernandes 2007, pp.
[5] Including the United States, Germany, and the United Kingdom.

manage the country's largest prisons, in Louis Trichardt and Bloemfontein, respectively (Berg 2001, p. 327; Nathan 2005).

South Africa's experience with prison contractors has been mixed. Costs have proved exorbitantly higher than expected while services have in some cases shown a marked improvement over those offered by government agencies. "Although the financing arrangements have essentially tied the South African government's hands in terms of monitoring the operations of these prisons, the professionalism and reforms offered by private companies appear to have far surpassed the correctional services offered by the state" (Goyer 2001; see also Ntsobi 2005).

Sweden

Today considered a model country in terms of its treatment of immigration detainees (CPT 2009), Sweden is the rare case of a country that reversed direction on privatization when private management spurred widespread criticism. The shift away from private management was accompanied by a shift in government agencies responsible for immigration detainees, from the police to the Migration Board, which reflected a growing awareness in the country that immigration detainees were not criminal inmates and thus required separate treatment.

Until 1997, Sweden's four dedicated immigration detention centers were under the responsibility of the federal police, who contracted out the daily operations of the facilities to private security companies (Mitchell 2001). Early reports on these centers by supra-national bodies like the Council of Europe's Committee for the Prevention of Torture (CPT) generally commended operations at these centers (CPT 1992).

By the mid-1990s, however, the situation had changed dramatically as Swedish media and human rights groups reported instances of violence, hunger strikes, suicide attempts, and growing unrest at detention facilities. "Human rights watch dogs criticized the lack of knowledge and experience of contractors in their work with asylum seekers and also the lack of transparency in management of the centers. The police were criticized for incidents of forced and occasional violent deportations" (Mitchell 2001, p. 8).

The Swedish government ordered an inquiry into detention and deportation practices, leading to the introduction of significant reforms in immigration policy, which came into force in 1997 (Mitchell 2001; PAHASC 2002, p. 51). As part of the reforms, the government removed privately contracted security companies from immigration detention centers, transferred responsibility of the centers to the Migration Board, mandated that qualified health professionals be available, and decreed that facilities used for administrative detention not resemble prisons cells (Swedish Parliament 1997).

Discussing the government's reason for supporting the reforms, Anna Wessel, who was appointed head of the Migration Board in 1997, said, "It was an ambition from the government that the treatment of the detainees should also

reflect the fact that they were not criminals so that we could not enforce limitations on their civil rights more than was necessary to obtain the purpose of detention. Apart from the fact that they cannot leave the premises they are entitled to the same rights as any other person would be … which means we have to guarantee that they can have contact with the outside world, they have freedom of information. We have to ensure that they can have visits from friends and relatives. Any decision that is taken to further restrict their freedom of movement such as, for instance, searching for dangerous objects or drugs or alcohol is a decision that can be appealed with the local Administrative Board. We have also opened up the detention center for regular visits from the non-governmental organisations" (Mares 2000).

Since the reforms, there have been fewer incidents of self-harm and no major incidents of violence at Sweden's immigration detention facilities (PAHASC 2002, P. 52). In 1999, the CPT reported that "the most significant change at the center concerned staff; at the time of the 1998 visit, it was no longer staffed by the police, but by Immigration Board personnel. The delegation observed that staff appeared to be attentive to the needs of inmates and were well equipped to perform their duties vis-à-vis detained foreigners (e.g. as regards knowledge of languages)" (CPT 1999, p. 38).

Sweden has received some criticism in recent years, including allegations of excessive force and severe forms of restraint used by prison transport officers during the expulsion of foreigners (CPT 1999). The CPT has also criticized Sweden for continuing to confine immigration detainees in prisons for at times lengthy periods (CPT 2009).

Overall, however, Sweden is now considered to be a model country. In 2009, the CPT praised Sweden, stating that its "delegation did not hear of any allegations of ill-treatment of detained foreign nations by staff of the Migration Board detention centers in Marsta and Gavle. On the contrary, many detainees interviewed spoke positively about the staff, and the delegation observed that staff-detainee relations were generally relaxed" (CPT 2009). The Refugee Council of Australia, in its research of alternatives to detention, has cited the "The Swedish Model of Detention" as an exemplar, emphasizing the way the Swedish government was able to address common issues faced in immigration detention around the world with constructive solutions. The Refugee Council explains that Sweden achieved this "not by increasing security and secrecy, but by: increasing consultation and access for NGOs, researchers and the media; the removal of companies running the detention centers, who don't have the experience in the sensitive issues involved in working with asylum seekers; and by ensuring all detainees are treated with dignity and fairness, are aware of their rights and have the right to appeal" (Refugee Council of Australia 2000).

III. DISCUSSION

The cases above touch on a number of important issues regarding our understanding of the privatization of immigration detention, including the various modalities of privatization, the reasons for choosing for-profit or not-for-profit entities, differences in developed and developing countries, and the

impact that crises can have on privatization. While each of these issues merits discussion, we focus this section of the working paper on two broad areas: the motives for (and against) privatization and factors that can impact contractor performance.

Motives for (and against) privatization. An oft repeated refrain about the emergence of private prisons in the last two decades is that it has principally been driven by the influence of neoliberal economic policies. While there is little doubt that economic policies have abetted the growth of private prisons,[6] the picture that emerges from our cases is more complex, at least vis-à-vis the privatization of immigration detention centers. Except for the case of Australia, where the government's apparent reason for privatizing immigration detention was that private companies could presumably be more effective at lower costs, the cases do not generally point to a strong economic motive. This might be due to the fact that, in many instances, little is known about the reasons that spurred governments to privatize detention centers.

Despite this lack of knowledge, a few salient points emerge from these cases. For instance, in South Africa, the only developing country discussed here, it appears that the initial decision to build a dedicated immigration detention center was spurred by a prison-overcrowding problem. While the Global Detention Project has been unable to find a record of why the ANC government chose to use a private contractor—in this case, a group formed by the ANC's women's league—to initially own and operate the Lindela center, observers in South Africa have pointed to two separate rationales for using private contractors: (1) that it is part of an effort to share or diffuse responsibility for enforcing immigration policies (burden-sharing) and/or (2) that it served as an initial step towards more widespread prison privatization. Both rationales have also been observed in other countries.

Regarding the first theory, burden-sharing, observers in several countries have pointed to privatization as a government strategy of sharing—and in some cases, avoiding—responsibility for the treatment of unauthorized immigrants. Thus, in discussing the motives for using a private contractor at Lindela, a South African lawyers group argues that the Department of Home Affairs "seeks to avoid accountability under the provisions of the Constitution and the Bill of Rights, South African administrative law, and international human rights instruments" (LHR 2009). Similarly, in discussing the growing use of both for-profit and not-for-profit service-providers in European detention centers, an officer with the Jesuit Refugees Services argues that in some case it seems to be part of effort to "allocate responsibilities" among an array of stakeholders, which is clearly illustrated by Italy's Praesidium program in Lampedusa (Amaral 2009). Another example of burden-sharing is the effort by U.S. immigration authorities to involve private companies in cooperative efforts to apply immigration law—for instance, by using airlines as a "third-party liability system"

[6] One scholar highlights that in the cases of the United States, the United Kingdom, and Australia, the "ideological orientation of the governments in power" during the nascent period of the private prison industry were all conservative and had plans to cut back the state (McDonald 1994, p. 36).

to screen passengers and ensure admissibility into the United States (Gilboy 2006).

The reasons for entering these kinds of burden-sharing arrangements can vary from case to case. While in South Africa, burden-sharing might be a political strategy by government officials to avoid criticism, in Europe burden-sharing is viewed by some scholars as part of a larger trend of shifting modes of regulation that are a byproduct of European integration (Lahav 1998). Describing the "webbing" of entities involved in imposing immigration controls in Europe today, Lahav writes: "These shifts in implementation to private, local, or international arrangements reflect less an abdication of state sovereignty, than an experiment in which national states involve agents as part of rational attempts to diminish the costs of migration. … These strategies aim to enhance the political capacity of states to regulate migration, to make states more flexible and adaptable to all types of migration pressures, to shift the focus of responsiveness, and to generate more effective state legitimacy" (Lahav 1998).

The other motivational theory that emerges from the South African case concerns the relationship between private prisons and immigration detention centers. In fact, one of the more notable patterns that surfaces when comparing privatization experiences across several countries is how frequently immigration privatization precedes efforts to privatize prisons. Such appears to have been the case in Germany, South Africa, the United States, and the United Kingdom.[7] Whether the privatization of immigration detention has intentionally been used by public authorities and their counterparts in private industry as a strategy for introducing broader prison privatization is a hypothesis that has yet to be fully tested. But the "similarities in development," as Berg writes "are obvious" (Berg 2000, p. 76). Referring to South Africa, the United Kingdom, and the United States, Berg writes that in each case the private sector initially "chose a branch of corrections that required minimal security and the straightforward housing of detainees for short periods of time in warehouse-type complexes" (ibid). Similarly, McDonald claims that privatization of immigration detention centers in the United States served as a "seedbed" for prison privatization in that country, and that private firms in the United States were careful to initially choose immigration detention centers and other low-security facilities in the "less visible regions of the adult and juvenile penal systems" before expanding into high-security adult facilities (1994, p. 30).

The decision to "go private" can also be driven by a straightforward needs-and-capability calculation. An early example of private sector involvement in immigration detention in the United State came in 1981, when the Immigration and Naturalization Service (INS) hired private security guards to bolster its staff at detention centers in Florida and New York, which at the time were overwhelmed by a massive influx of Haitian immigrants (*Washington Post* 1981; Gargan 1981). Although only a minor case, this pattern of involvement has been repeated on various occasions in the United States. Writes McDonald (1994), "Government officials in the INS 'went private' chiefly because contractors were able to create new detention facilities much more quickly than could the federal government" (p. 30).

[7] For the US and UK chronologies, see McDonald 1994 and Bacon 2005, respectively.

Lastly, decisions on the use of private contractors have at times hinged on the perceived differences between immigration detainees and convicted criminals, a consideration that has led some countries to choose humanitarian organizations to manage facilities, and not always with optimal results. For instance, Italy decided to employ the Red Cross in detention camps because immigration detainees were viewed as having a unique set of humanitarian needs. Authorities in countries like Portugal and France contract NGOs to provide a limited number of services in detention sites for the same reasons. And, rather incongruously, while Sweden eventually decided not to use private contractors to run its detention facilities out of an appreciation that these detainees merited specialized treatment, in the 1970s UK authorities drew exactly the opposite conclusion based on similar reasoning, arguing that private contractors should be employed in detention centers because "the use of prison or police officers would be seen as too oppressive for non-prisoners" (Bacon 2005, p. 6).

Performance factors. Some scholars have argued that given the nature of competitive enterprise, private prison firms have a built-in motive to provide adequate services. "At least during the early stages of contracting, there appear to be certain disincentives to diminish services: if performance falls below agreed-upon standards … firms risk losing contracts and clients" (McDonald 1994, p. 42).

Our cases support this theory to a limited degree. In Sweden, Australia, and Italy, criticism of contractors running immigration detention centers preceded changes in contracts. While it is indeed true that private contractors stand to lose if they under-perform, there are a number of mitigating circumstances. First, extremely close ties between facility operators and government decision-makers, as we have seen in the case of South Africa—and which many observers argue is to blame for the persistence of problems in some U.S. detention centers—can override market corrections, enabling underperforming companies to remain in place.

Second, the consolidation of large parts of a market under one or a few companies, which has occurred in the United Kingdom and the United States, can eliminate the impact of competition. "Where governments have to be careful is to avoid becoming too dependent upon private provision. Strategies to minimize the risks of this include government retaining ownership of existing correctional facilities, and contracting only for management of new ones—because firms that establish themselves with physical assets in a particular jurisdiction may develop an unbeatable edge over potential competitors in future contract competitions" (McDonald 1994, p. 44).

Third, and perhaps most importantly, private contractors often maintain or improve their services only when faced with high degrees of surveillance and oversight, particularly by international organizations or other supra-national bodies, like the Council of Europe's Committee on the Prevention of Torture (CPT). Our research appears to show that significant influence is exerted on some countries after official visits are made by such organizations, obliging them to provide detailed responses to each point of concern raised by the

outside institution. It is thus not surprising that the countries most amenable to reform have been in Europe, as the cases of Germany and Sweden attest.

Both Sweden and Germany also give advocacy organizations broad access to detainees, thereby ensuring an additional level of surveillance. In stark contrast to these two countries are South Africa and the United States, both of which have track records of impeding access to detainees by civil society groups, including representatives of international organizations.[8] Both also happen to be much more heavily criticized for their treatment of detainees than Sweden and Germany.

Lastly, an important issue thus far neglected in this paper is the impact that private industry arguably can have on national legislative and regulatory frameworks governing immigration detention, which can be closely tied to contractor performance. As many authors have pointed out, it is in the interest of private companies to protect and expand their businesses, and thus to pressure government representatives accordingly, pushing weak regulations and supporting legislation that could improve their share of the market (Bacon 2005; McDonald 1994; Welch 2002).

Although it can be difficult to observe a direct causal relationship between the lobbying efforts of private contractors and worsening and/or expanding detention practices, the establishment of deeply rooted private incarceration regimes can engender an institutional momentum that takes on a life of its own, leading to what one author calls the creation of an "immigration-industrial complex" (Fernandes 2007). Discussing the U.S. experience with privatized immigration detention, journalist Deepa Fernandes writes, "With the increase in prison beds to house immigrants comes the pressure to fill them" and "given the tight connections between the private-prison industry and the federal government" efforts to expand bed space will likely increase (Fernandes 2007, p. 199).

As much as any other issue, the potential impact of private contractors on the policy process merits serious scholarly attention. By taking into account a broad range of national experiences vis-à-vis the privatization of immigration detention and developing a set of best practices, scholars and their counterparts in government and civil society can be better prepared to provide alternative policy solutions in response to political and economic pressures.

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[8] In 2008, for example, Jorge Bustamante, the UN Special Rapporteur on the human rights of migrants, was denied access to the privately-run Hutto Detention Center in Texas despite having previously received approval from the U.S. State Department (Ruland 2007).

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