



## **Submission to the Special Rapporteur on contemporary forms of slavery**

**April 11, 2024**

### **Introduction**

This submission was prepared by [The National Council of Incarcerated and Formerly Incarcerated Women and Girls](#) (“The National Council”). The National Council is a non-governmental organization founded in 2010 by a group of women incarcerated in the federal prison in Danbury, Connecticut in the United States. Most were mothers, separated from their children. The mission of The National Council is to end incarceration of women and girls and create healthy, thriving people and communities. More than 5,000 individuals, primarily formerly incarcerated women, from across the United States are members of The National Council. At the international level, The National Council has led an initiative to form an [International Network of Formerly Incarcerated Women](#) that includes more than 200 women from 20 countries on five continents. We seek to elevate the voices and alternative approaches of women directly impacted by criminal legal systems around the world.

This submission responds to the request for comment from the Special Rapporteur on contemporary forms of slavery. It answers key questions 1 – 7 by discussing the exploitation of currently incarcerated people and the disparate gendered impacts of the prison labor system, including sexual exploitation.

### **An Overview of Prison Labor in the United States**

The 13<sup>th</sup> Amendment of the United States Constitution outlaws slavery and involuntary servitude, except for those who have been convicted of a crime.<sup>1</sup> This loophole has allowed forced labor of incarcerated people to flourish within U.S. prisons, creating a pervasive prison labor system that serves as a replacement for antebellum slavery.<sup>2</sup>

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<sup>1</sup> U.S. Const. amend. XIII.

<sup>2</sup> See, e.g., Neveen Hammad, *Shackled to Economic Appeal: How Prison Labor Facilitates Modern Slavery while Perpetuating Poverty in Black Communities*, 26 Va. J. Social Pol’y & L. 65, 67 (2019) (describing how post Civil War emancipation, Southern state legislatures enacted laws criminalizing conduct by former slaves to create an incarcerated free labor force); see also generally, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010).

The Bureau of Justice Statistics at the U.S. Department of Justice reports that in 2021, approximately 1,775,300 people were incarcerated in the United States in either state or federal prisons or local jails.<sup>3</sup> According to a 2022 ACLU report, about 800,000 of those incarcerated in state or federal prisons work, with more than 76% of those workers describing their participation in work programs as forced.<sup>4</sup> Refusal to work leads to additional punishment including solitary confinement, loss of visitation privileges, and disqualification for sentence reductions.<sup>5</sup> In addition, many have to work to afford basic necessities like hygiene products, which prisons do not provide.<sup>6</sup>

Incarcerated individuals perform a variety of functions, including working directly for their prisons as clerks and janitors. They can also work for the state or federal government (UNICOR) or private companies as contractors. More than 80% of incarcerated workers nationwide perform maintenance work for the prison incarcerating them, including cleaning, food preparation, as well as other services like laundry, staffing the library, etc.<sup>7</sup> Incarcerated people can also work for state-owned corporations producing goods and services for other government agencies. In Virginia, for example, public universities are required to purchase dorm and office furniture constructed by incarcerated people from Virginia Correctional Enterprises, a state-owned corporation.<sup>8</sup>

### **Dangerous Workplace Conditions and Sexual Exploitation**

Incarcerated people do not have a right to choose their work assignments because they are excluded from labor protections such as the Fair Labor Standards Act, Title VII of the Civil Rights Act, and the National Labor Relations Act.<sup>9</sup> Thus, incarcerated workers can legally be subject to unsafe working conditions and discrimination, and they can be prevented from unionizing. Incarcerated workers are also excluded from the federal minimum wage, which is currently US\$7.25 per hour.<sup>10</sup> Within the federal prison system, the pay scale for non-industry jobs ranges from 12 cents per hour to 40 cents per hour, while federal prison jobs in state-owned correctional industries range from 23 cents an hour to \$1.15 per hour.<sup>11</sup> The average minimum wage for the majority of workers in non-industry jobs across all prisons (state and federal) nationwide is 13 cents per hour; the average maximum wage is 52 cents per hour. In seven states

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<sup>3</sup> E. Ann Carson & Rich Kluckow, *Correctional Populations in United States, 2021 – Statistics*, U.S. Dept. Justice, Bureau of Justice Statistics 1, 4 (Feb. 2023) <https://bjs.ojp.gov/document/cpus21st.pdf>.

<sup>4</sup> Captive Labor: Exploitation of Incarcerated Workers, ACLU & GHRC Research Report (2022).

<sup>5</sup> *Id.* at 46.

<sup>6</sup> *Id.* at 5, 73.

<sup>7</sup> *Id.* at 28.

<sup>8</sup> Lilah Burke, *Public Universities, Prison-Made Furniture*, Inside Higher Ed (Feb. 13, 2020) <https://www.insidehighered.com/news/2020/02/14/public-universities-several-states-are-required-buy-prison-industries>.

<sup>9</sup> Andrea C. Armstrong, *Beyond the 13th Amendment—Captive Labor*, 82 Ohio St. L. J. 1039, 1048 (2021).

<sup>10</sup> 29 U.S.C. § 206 (a)(1)(C).

<sup>11</sup> Captive Labor, *supra* note 4, at 97.

(Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and Texas), the majority of prison labor is entirely unpaid.<sup>12</sup>

Private companies are some of the largest beneficiaries of prison labor. A recent investigation by the Associated Press revealed that private companies sold agricultural goods worth almost \$200 million that were produced by incarcerated laborers.<sup>13</sup> Louisiana State Penitentiary is the country's largest maximum security prison, where many incarcerated men are forced to work raising cattle that are then sold by major retailers like McDonald's and Walmart.<sup>14</sup> The prison is also located on a former slave plantation, meaning Black men incarcerated there are working the same fields as their ancestors.<sup>15</sup>

Because incarcerated individuals have no workplace protections, prison officials control their assignments. This creates a system rife with racism, favoritism, and sexual exploitation. A 2016 study found that race is a significant factor determining work assignments: Incarcerated Black men are more likely to be assigned to the lowest wage positions performing maintenance and prison facility services than white men.<sup>16</sup> About 41% of Black men were given such positions compared to 35% of white men.<sup>17</sup> This is an example of racial stereotypes and discrimination, originating from the chattel slavery system, relegating Black individuals to positions of greater servitude.

### *Abysmal Workplace Conditions*

Incarcerated people are made to do dangerous jobs with little to no training, meager pay, and no workplace protections. One incarcerated man in New York sustained first degree burns because he was ordered to remove asbestos from a hot pipe with no protective gear.<sup>18</sup> Incarcerated prisoners are often made to work long hours outdoors in sweltering heat. Seth Donnelly died of severe hyperthermia (overheating) when he was forced to wear 75-pounds of protective gear as he trained dogs to attack potential escapees.<sup>19</sup> Before his death, he told family and friends that sometimes guards refused to provide water and breaks to those working outdoors and would also generally refuse to provide incarcerated people with air conditioning.<sup>20</sup>

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<sup>12</sup> *Id.* at 55.

<sup>13</sup> Robin McDowell & Margie Mason, *Prisoners in the US are part of a hidden workforce linked to the hundreds of popular food brands*, Associated Press (Jan. 29, 2024).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Courtney A. Crittenden et al., *Being Assigned Work in Prison: Do Gender and Race Matter?* 13 *Feminist Criminology* 359, 369 (2018).

<sup>17</sup> *Id.*

<sup>18</sup> *Captive Labor*, *supra* note 4, at 62.

<sup>19</sup> Michael Barajas, *Death of Dog Trainer Highlights Strenuous Heat and Working Conditions at Texas Prisons*, *Texas Observer* (July 2, 2019 11:47 AM) <https://time.com/5457637/inmate-firefighters-injuries-death/>.

<sup>20</sup> *Id.*

In several states, incarcerated men and women are made to fight wildfires. In California, they receive only two weeks of training before going to the fires' frontlines.<sup>21</sup> They earn a maximum of \$1 an hour, up to about \$5 a day in total.<sup>22</sup> Incarcerated firefighters in California are four times more likely to be injured on duty than their professional counterparts and eight times more likely to suffer from smoke inhalation.<sup>23</sup> Four incarcerated firefighters have died in recent years while working.<sup>24</sup> States are using the prison labor force to fill positions that typically require large investments of time and money in training and safety, leading to unnecessary injury and death. Incarcerated people are often offered incentives to participate, such as promises for reduced time if a worker takes a firefighting position.<sup>25</sup>

### *The Gendered Impact of Prison Labor – Sexual Exploitation*

The prison labor system harms incarcerated women in particular because prison workplaces create additional hierarchies that foster sexual harassment and abuse by correctional staff. To be clear, any sexual contact between staff and those incarcerated is abusive; consent cannot exist where one party has literal, physical control over the body and livelihood of the other party.

The exact statistics surrounding how many incarcerated women face harassment and abuse are hard to know. In addition to being underreported and under investigated, prison staff are the people required to process reports of sexual abuse, and they are unlikely to tell on themselves or their colleagues.<sup>26</sup> One report from the U.S. Senate Permanent Subcommittee on Investigations found that employees of the Federal Bureau of Prisons sexually abused incarcerated women in at least two-thirds of federal prisons.<sup>27</sup> Incarcerated women are commonly subject to unnecessary strip searches, sexual contact and requests for sexual acts, and verbal conduct such as sexual commentary and harassment.<sup>28</sup>

Prison labor grants sexual abusers more power over their potential victims as correctional staff hold all of the leverage over work assignments. This allows correctional staff to demand sex acts in exchange for favorable workplace assignments, and allows them to retaliate against those who report abuse by changing assignments to lower paid positions.

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<sup>21</sup> Francine Uenuma, *The History of California Inmate Firefighter Program*, Smithsonian Magazine (Sept. 1, 2022) <https://www.smithsonianmag.com/history/the-history-of-californias-inmate-firefighter-program-180980662/>.

<sup>22</sup> *Id.*

<sup>23</sup> Abby Vesoulis, *Inmates Fighting California Wildfires are More Likely to Get Hurt, Records Show*, Time Magazine (Nov. 16, 2018 7:40 PM) <https://time.com/5457637/inmate-firefighters-injuries-death/>.

<sup>24</sup> *Id.*

<sup>25</sup> Captive Labor, *supra* note 4, at 50.

<sup>26</sup> Erin Daly, Paul Stanley Holdorf, Kelly Harnett, Jane Doe & Domonique Grimes, *Women's Dignity, Women's Prisons: Combatting Sexual Abuse in America's Prisons*, 26 CUNY L. Rev. 260, 265 (2023).

<sup>27</sup> U.S. Senate Permanent Committee on Investigations, *Sexual Abuse of Female Inmates in Federal Prisons*, Staff Report (Dec. 13, 2022) <https://www.osssoff.senate.gov/wp-content/uploads/2022/12/PSI-Embargoed-Staff-Report-re-Sexual-Abuse-of-Female-Inmates-in-Federal-Prisons.pdf>.

<sup>28</sup> Daly et al., *supra* note 26, at 264.

For instance, at Albion Correctional Facility in New York, many incarcerated female workers reported that corrections officers asked for sexual favors in exchange for better assignments.<sup>29</sup> They also threatened women with demotion or losing their jobs if they refused to perform sexual acts with them. One woman claimed she was denied her requested work assignments because she refused to perform sex acts for prison officials, while another woman claimed she personally witnessed fellow incarcerated women giving oral sex to officers after being threatened with docked pay, job loss, or being switched to a lower paying job.<sup>30</sup> Kelly Harnett, who was incarcerated at Bedford Hills Correctional Facility in New York, was removed from her job at the law library after reporting having been sexually abused by an official.<sup>31</sup> An anonymous woman (“Jane Doe”) incarcerated at FCI Dublin in California reported having been repeatedly abused by a female staff member who forced Doe to undress while alone with Doe in her office. After reporting, Doe also lost her job as a unit staff clerk, was forced to transfer to a new facility, and was deprived of medical care. Her reports were never addressed by the Bureau of Prisons.<sup>32</sup>

## **Recommendations**

As the country with the highest number of prisoners in the world and a brutal history of slavery, we encourage the Special Rapporteur on contemporary forms of slavery to highlight the ongoing forms of slavery and coerced labor suffered by incarcerated and formerly incarcerated people in the United States.

We encourage the Special Rapporteur to pay particular attention to the plight of women, including trans women, who are at greater risk of sexual exploitation, abuse, and violence.

We encourage the Special Rapporteur to include the following recommendations for member states in its report to be submitted at the 57<sup>th</sup> Session of the Human Rights Council:

**Collect the data needed for making evidence-based policies.** The most recent survey of prison labor statistics in the United States took place in 2005, almost twenty years ago. New data and analysis at the state and federal level are urgently needed to document the systematic abuse and to determine where the most egregious abuses are occurring.

**Abolish prison slavery and forced labor.** No voluntary employment is possible if people are coerced into working by financial need or the potential for a reduced sentence. The United States should end the practice immediately and extend workplace protection to everyone, regardless of carceral status.

**Provide compensation.** Those who have been victims of forced labor while incarcerated at the state or federal level should receive compensation for their labor and restitution for the violations of their civil and human rights.

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<sup>29</sup> Captive Labor, *supra* note 4, at 53.

<sup>30</sup> *Id.*

<sup>31</sup> Daly et al., *supra* note 26, at 275.

<sup>32</sup> *Id.* at 276-78.