

FIRST RESPONDERS, SECOND PRIORITY: GEORGIA’S
INMATE FIREFIGHTER PROGRAM AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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I. INTRODUCTION

In the U.S. state of Georgia, some prison inmates work as firefighters in twenty-four hour shifts, seven-days-a-week for zero pay.¹ These inmates are a part of what the Georgia Department of Corrections (the “Department”) has dubbed the Inmate Firefighter Program (“IFP” or “the Program”).² The Program began in 1963³ as an entity designed to protect prison premises from fire, but it has become wholly unrecognizable from that purpose.⁴ Today, the IFP is designed, funded, and maintained to protect not just prison premises from fire, but also the local communities surrounding the prisons.⁵ Georgia Public Broadcasting noted in a 2016 article on the IFP that “[n]early one third of Georgia’s 159 counties look to the prison system to serve as fire protection.”⁶ In some of those Georgia communities, inmates serve as the sole fire protection and emergency medical response units in the entire area.⁷ Moreover, in some of those same communities, primary essential services are provided exclusively by inmates.⁸ These services include: emergency response to motor vehicle accidents, calls for medical assistance, responses to brush fires, structure fires, wildfires, and natural disasters like hurricanes.⁹ Additionally, the communities receive these inmate-sourced essential services at no cost.¹⁰ This means that the communities benefitting from the IFP neither pay the

¹ GA. DEP’T OF CORR., STANDARD OPERATING PROCEDURES: FIRE SERVICES OPERATIONS 511.02, 3 (2018) <https://www.powerdms.com/public/GADOC/documents/15843>; E-mail from Crystal Hendley, Att’y 1, Ga. Dep’t of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. of Ga. Sch. of Law (Sept. 7, 2018, 08:39 EST) (on file with author); *see also* George Mathis, *Georgia Prisoners May Replace County Firemen*, ATLANTA J.-CONST.: NEWS TO ME (Oct. 10, 2014), <https://www.ajc.com/blog/news-to-me/georgia/prisoners-may-replace-county-firemen/w6bWrudC5WZn2o88OZAjUM/>.

² GA. DEP’T. OF CORR., 2019 FIRE SERVICES FACT SHEET (2019), http://www.dcor.state.ga.us/sites/default/files/Fire%20Station%20JC_1.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.*; GA. DEP’T OF CORR., STANDARD OPERATING PROCEDURES 511.04 (I)(A), <https://www.powerdms.com/public/GADOC/documents/105850> (stating that “[t]he GDC shall establish a fire department with stations located in areas where community (free-world) fire fighting [sic] capabilities are not sufficient to respond to emergency needs in a correctional setting.”).

⁶ Leah Fleming, *Georgia Felons Find Purpose Fighting Fires*, GA. PUB. BROADCASTING (July 14, 2016), <http://www.gpbnews.org/post/georgia-felons-find-purpose-fighting-fires>.

⁷ GA. DEP’T. OF CORR., *supra* note 2.

⁸ *Id.*

⁹ *Id.*; *see also* Press Release, Ga. Dep’t of Corr., GDC Recovery Operations Following Hurricane Irma (Sept. 14, 2017), <http://www.dcor.state.ga.us/NewsRoom/PressReleases/gdc-recovery-operations-following-hurricane-irma>.

¹⁰ GA. DEP’T. OF CORR., *supra* note 2.

inmates a salary nor do they pay the State of Georgia any fee, and IFP inmates do not receive any sort of compensation from the Department for their labor.

Department leaders justify the IFP by emphasizing its voluntary nature¹¹ and the fact that participating inmates could be hired as career firefighters upon release.¹² As later detailed, this is only partially true.¹³ In addition to this reasoning, Department leaders and reporters from Georgia's regional news outlets maintain that the IFP is a way for inmates to "serve their time *and* serve their community."¹⁴ For example, one news outlet praised the IFP and stated: "[t]he bulldog chain gang isn't paid for their services. However, you can't put a price on redemption."¹⁵ Shawn Wombles, the Department's Chief of Fire Services, even said in an interview with WSAV3 that the IFP "teaches the inmates teamwork, it teaches them compassion, and it teaches them how to have a little bit of character."¹⁶

Former Department Commissioner Homer Bryson wrote in the Department's 2016 Annual Report that "Georgia has continued to lead the way as a model for criminal justice reform throughout the nation."¹⁷ He also noted that the Department continually evaluates its processes and programs, adjusting them to best meet the needs of its offenders and their families.¹⁸ If true, it follows that Department leaders would be interested in learning whether the IFP comports to international prison labor rights, standards, and principles. As Susan Kang wrote in a 2009 article on prison labor standards, these are components that "make up the key rights for humans in their capacities as

¹¹ E-mail from Crystal Hendley, Att'y 1, Ga. Dep't of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Oct. 18, 2018, 09:10 EST) (on file with author).

¹² See Press Release, Ga. Dep't of Corr., Inmate Fire Station Opens at Smith State Prison: Offering Firefighter Certification to Offenders (Jan. 17, 2019), <http://www.dcor.state.ga.us/NewsRoom/PressReleases/inmate-fire-station-opens-smith-state-prison>; see also *Fire Services and Life Safety*, GA. DEP'T OF CORR., <http://www.dcor.state.ga.us/Divisions/Facilities/FireServices> (last visited Sept. 30, 2019) ("The Georgia legislature amended Title 25 OCGA in order to permit former offenders to be hired and certified as career firefighters. Following release, a total of 50 former inmates are known to have been hired at free world stations.").

¹³ See *infra* page 31.

¹⁴ Courtney Cole, *Serving the Community & Saving Lives: Inmate Firefighter Program at Smith State Prison*, WSAV3 (June 15, 2016), <https://www.wsav.com/news/serving-the-community-saving-lives-inmate-firefighter-program-at-smith-state-prison/1093389687> (emphasis in original).

¹⁵ *Convicted Felons or Firefighters?*, WALB NEWS (Feb. 11, 2011), <http://www.walb.com/story/14011588/are-they-convicted-felons-or-firefighters/>.

¹⁶ See Cole, *supra* note 14.

¹⁷ GA. DEP'T OF CORR., 2016 ANNUAL REPORT 3 (2016), <http://www.dcor.state.ga.us/sites/default/files/sites/all/gdc/files/pdf/Rsearch/Monthly/GDC%20FY2016%20Annual%20Report.pdf>.

¹⁸ *Id.*

workers.”¹⁹ This Note seeks to address whether the IFP passes international legal scrutiny.

This Note will assess the conditions in which Georgia’s political leaders and the Department commissioner base their declaration that Georgia’s practices should be replicated and consider whether the IFP provides inmates with what the International Labor Organization deems as “the most fundamental protections for workers.”²⁰ This analysis will include comparison to political rights expressed by the International Covenant on Civil and Political Rights (ICCPR), the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), and the Basic Principles for the Treatment of Prisoners (Basic Principles).

First, although this discussion may be comparable to prison labor practices of other U.S. states,²¹ this Note is determinative of Georgia’s Program only. Second, although this Note will attempt to produce a comprehensive evaluation of the IFP, it is important to note that the Department does not maintain thorough records. Specifically, the Department does not publish any figures related to the number of IFP inmates per year or the yearly number of inmates hired following their time in the IFP.

This Note will first review the IFP and the Department, and discuss the evolution of the IFP. Second, this Note will discuss the nature and conditions of participation in the Program, including eligibility criteria, recruitment procedure and processes, working conditions, the absence of compensation, the inmates’ experiences, and job opportunities after release. Additionally, it will review two documents the inmates must sign before admittance into the Program. Next, the Note will review international law and norms relevant to inmate labor, including the ICCPR and the Mandela Rules. Next, this Note will review how the Program violates international legal norms and make recommendations for improving the Program in accordance with international legal standards. Finally, this Note concludes that the IFP is in violation of international legal standards, and it briefly suggests why changes to the Program should be made.

¹⁹ Susan Kang, *Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States*, 31 NEW POL. SCI. 137, 141 (2009).

²⁰ *Id.*

²¹ See German Lopez, *California is Using Prison Labor to Fight its Record Wildfires*, VOX (Aug. 9, 2018), <https://www.vox.com/2018/8/9/17670494/california-prison-labor-mendocino-carr-ferguson-wildfires>; see also Nick Sibilis, *Inmates who Volunteer to Fight California’s Largest Fires Denied Access to Jobs on Release*, USA TODAY (Aug. 20, 2018), <https://www.usatoday.com/story/opinion/2018/08/20/californias-volunteer-inmate-firefighters-denied-jobs-after-release-column/987677002/>.

II. THE INMATE FIREFIGHTING PROGRAM OF THE DEPARTMENT OF CORRECTIONS IN THE U.S. STATE OF GEORGIA

A. *The Georgia Department of Corrections*

2016 data from the U.S. Bureau of Justice Statistics shows that Georgia has the tenth-highest imprisonment rate in the nation, with 512 individuals incarcerated per every 100,000 residents in the state.²² Accordingly, Georgia has one of the largest prison systems in the United States,²³ with more than 54,000 inmates²⁴ serving time in one of the State's thirty-four prisons.²⁵ The Department is the Georgia agency tasked with the mission of operating these prisons, as well as "reducing recidivism through effective programming, education, and healthcare," according to the Department's website.²⁶ Accordingly, the Department is responsible for managing all state inmates. Georgia's official government website states that the Department has become "the largest law enforcement agency in the State, with approximately 10,500 employees."²⁷ Although this large number of employees may be justified, the 2018 Report of the Georgia Council on Criminal Justice Reform reported that over the past few years, Georgia's prison population has decreased from "a peak of 54,895 in July 2012" to 52,962 at the end of 2017.²⁸

Elizabeth Pelletier, Bryce Peterson, and Ryan King with the Urban Institute attribute this decrease to various state initiatives and legislative actions, especially the passage of House Bill 1176.²⁹ In their assessment of Georgia's sentencing reforms, the trio stated that House Bill 1176 "included numerous reforms to criminal justice policy and practice, with the goal of reducing

²² E. ANN CARSON, U.S. DEP'T OF JUSTICE, PRISONERS IN 2016 8-9 (2018), https://www.bjs.gov/content/pub/pdf/p16_rv.pdf.

²³ *Georgia Department of Corrections*, GA. GOV, <https://georgia.gov/agencies/georgia-department-corrections> (last visited Sept. 30, 2019); *see also* E. ANN CARSON, *supra* note 22, at 8.

²⁴ GA. DEP'T OF CORR., *supra* note 17, at 7.

²⁵ *Facilities Division*, GA. DEP'T OF CORR., <http://www.dcor.state.ga.us/Divisions/Facilities/Corrections> (last visited Sept. 30, 2019).

²⁶ GA. DEP'T. OF CORR., 2019 FACILITIES FACT SHEET (2019), http://www.gdc.ga.gov/sites/default/files/Facilities%20Division_0.pdf.

²⁷ GA. GOV, *supra* note 23.

²⁸ MICHAEL P. BOGGS & CAREY A. MILLER, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 7 (2018), <https://dcs.georgia.gov/document/publication/2017-2018-criminal-justice-reform-council-report/download>.

²⁹ ELIZABETH PELLETIER ET. AL., URBAN INST., ASSESSING THE IMPACT OF GEORGIA'S SENTENCING REFORMS: JUSTICE REINVESTMENT INITIATIVE 1 (2017), https://www.urban.org/sites/default/files/publication/91731/ga_policy_assessment.pdf.

prison population growth and improving public safety.”³⁰ After analyzing commitments, sentence lengths, and time served, these authors concluded that House Bill 1176 resulted in reduced incarceration for those offenses affected by the Bill; specifically, burglary, theft, shoplifting, forgery, fraud, and drug possession.³¹ House Bill 1176 may not be the only cause for Georgia’s declining incarceration rate, however, because the decline is consistent with national trends. In a 2018 article on the Bureau of Justice Statistics’ 2016 incarceration data, John Gramlich with the Pew Research Center explained that “[a] variety of factors help explain why U.S. incarceration trends have been on a downward trajectory.”³² He stated that “crime rates have declined sharply in recent decades despite an uptick in the violent crime rate between 2014 and 2016, according to FBI data.”³³ He also stated that, “[a]s crime has declined, so have arrests: The nationwide arrest rate has fallen steadily in recent years and is well below where it was in the 1990s, according to BJS.”³⁴ Gramlich also recognized that “[c]hanges in prosecution and judicial sentencing patterns, as well as criminal laws, also may play a role in the declining number and share of people behind bars.”³⁵

Despite this combination of factors, Department leaders and Georgia’s elected representatives have boasted that Georgia is a “model for criminal justice reform throughout the nation.”³⁶ However, success in the criminal justice reform arena should be measured by more than just Georgia’s declining prison

³⁰ *Id.* at 1; *see also* Aaron Gould Sheinin, *Governor to Sign Sweeping Justice Reform Bill*, ATLANTA J.-CONST. (May 2, 2012), <https://www.ajc.com/news/state-regional-govt-politics/governor-sign-sweeping-justice-reform-bill/k2hlftKECpVrEX7wM0qs8O/>; *Accord* H.B. 1176, 148th Leg. Reg. Sess. (Ga. 2012).

³¹ PELLETIER, *supra* note 29, at 4, 12 (“Based on our analysis of commitments, sentence lengths, and time served, we see evidence of reduced incarceration for offenses affected by H.B. 1176 reforms. After the bill’s passage, the number of probation commitments declined, as did admissions to prison. Mean prison and probation sentence lengths also declined for most offenses, and initial trends indicate a decline in time served in prison and on probation.”).

³² John Gramlich, *America’s Incarceration Rate Is at a Two-Decade Low*, PEW RESEARCH CENTER: FACT TANK (May 2, 2018), <http://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ GA. DEP’T OF CORR., *supra* note 17; *see* GA. DEP’T OF CORR., 2017 FISCAL YEAR REPORT 3 (2017), <http://www.dcor.state.ga.us/sites/default/files/sites/all/gdc/files/pdf/Research/Monthly/GDC%20FY2017%20Annual%20Report.pdf> (“[The Georgia Department of Corrections] continues to lead the way in criminal justice reform efforts implemented by our Governor, Nathan Deal.”); *see also* GA. DEP’T OF CORR., 2015 FISCAL YEAR REPORT 3 (2015), <https://view.joomag.com/mag/0959351001458589032> (“This report highlights the Department’s pioneering efforts in offender rehabilitation that align with Governor Nathan Deal’s visionary approach to Criminal Justice reform.”).

population.³⁷ One such measurement is an assessment of the state's prison labor programs, which includes an analysis of equitability, humane conditions, and fair wages, among other factors. To date, there has been no comprehensive, external assessment of the Department's prison labor programs. In this respect at least, the idea that Georgia's system should serve as an example for other states to follow is misguided.

B. Evolution of the Department's Inmate Firefighters Program

The IFP is one of the Department's prison labor programs which has not undergone an external assessment. The IFP is a part of the Department's Fire Services and Life Safety unit and one of six prison labor programs offered by the Department.³⁸ According to the Department's website, non-inmate employees of the Department's Fire Services and Life Safety unit train "[s]pecially selected minimum security offenders"³⁹ to be State-certified firefighters, allowing those selected inmates "to work in the prison fire stations responding to prison and rural fire emergencies."⁴⁰ More specifically, according to the Department's Standard Operating Procedures for Fire Services Operations, the IFP calls on these inmates to provide 24-hour coverage to both the correctional facility and to the communities surrounding the facility.⁴¹ The IFP does not provide the inmates with compensation.⁴² In 2017, these inmate firefighters responded to fires in communities across fifty-one counties in Georgia.⁴³ In 2016 alone, they responded to 2,872 calls, which included 966

³⁷ Charles Decker, *Time to Reckon with Prison Labor*, YALE INST. FOR SOC. & POL'Y STUD., <https://isps.yale.edu/news/blog/2013/10/time-to-reckon-with-prison-labor-0> (last visited Sept. 30, 2019) ("A decrease in incarceration is certainly good news, but reformers must not forget that 'mass imprisonment' is a political institution encompassing much more than just incarceration rates."); see generally ADAM GELB, PAPERS FROM THE EXECUTIVE SESSION ON COMTY CORR., YOU GET WHAT YOU MEASURE: NEW PERFORMANCE INDICATORS NEEDED TO GAUGE PROGRESS ON CRIMINAL JUSTICE REFORM 1, 3 (2018), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/you_get_what_you_measure.pdf ("[A simple count of incarcerated individuals and demographic information] [is] helpful, but by [itself] [this information] reveal[s] only fragments of the information necessary to paint a meaningful portrait of the population of people in prison or under community supervision.").

³⁸ *State Prisons*, GA. DEP'T OF CORR., <http://www.dcor.state.ga.us/Divisions/Facilities/StatePrisons> (last visited Sept. 30, 2019) (listing Work Details, Food and Farm Operations, Offender Construction, Community Work Details, and Georgia Correctional Industries as the other labor programs).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ GA. DEP'T. OF CORR., *supra* note 1, at 3.

⁴² E-mail from Crystal Hendley, Att'y 1, Ga. Dep't of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Sept. 7, 2018, 08:30 EST) (on file with author).

⁴³ GA. DEP'T. OF CORR., *supra* note 2.

“good intent,”⁴⁴ 287 brush fires, 235 motor vehicle accidents, 496 medical assistance calls, and 626 structure fires.⁴⁵ Inmate responses to such calls have increased more than 600% since 1993.⁴⁶

According to the Department’s 2019 Fire Services Fact Sheet, Fire Chief Richard H. “Buddy” Brooks established the IFP in 1963 at the Georgia Industrial Institute, which is now Lee Arrendale State Prison in Alto, Georgia.⁴⁷ The fact sheet also states that “at that time, the program consisted of one fire station, eight inmate firefighters, and one part-time staff person.”⁴⁸ Today, the Program is much larger. The IFP operates nineteen state-owned fire stations and six county-owned fire stations on prison premises throughout rural Georgia.⁴⁹ According to an attorney with the Department, approximately 250 inmates have been a part of the IFP since October 2014.⁵⁰ As illustrated by the IFP’s expansion to state and county prisons throughout rural Georgia, it is clear that the IFP has become essential to both the Department and to the small communities scattered throughout the rural parts of Georgia. For example, in Camden County, officials said in 2014 that six inmates working all three fire-fighting shifts would save the county more than \$100,000 a year per inmate.⁵¹ Similarly, in Sumter County, officials said “it costs at least \$40,000 to pay a fireman per year, but inmates that can work all three shifts only need food and housing, which costs less than \$15,000 per year.”⁵² In Johnson County, County Commission Chairman Jason McAfee contended, in a 2016 interview about the county’s use of inmate firefighters, that Johnson County could not afford non-inmate-sourced fire protection services.⁵³ McAfee said that the county depends on the IFP, stating that “we don’t have a fire department in

⁴⁴ The definition of a “good intent” call may vary from state to state, but typically, according to the National Fire Incident Reporting System, “good intent” calls are those that are dispatched, then cancelled en route; wrong locations, where no emergency is found; controlled burns; vicinity alarms; steam or other gas mistaken for smoke; and similar, non-emergency calls. NAT’L FIRE INCIDENT REPORTING SYS., INCIDENT TYPE CHEAT SHEET, <http://www.nfic.org/docs/IncidentTypeCheatSheet.pdf>.

⁴⁵ GA. DEP’T. CORR., *supra* note 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ E-mail from Crystal Hendley, Att’y 1, Ga. Dep’t of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Sept. 26, 2018, 14:02 EST) (on file with author).

⁵¹ George Mathis, *Georgia Prisoners May Replace County Firemen*, ATLANTA J.-CONST.: NEWS TO ME (Oct. 10, 2014), <https://www.ajc.com/blog/news-to-me/georgia-prisoners-may-replace-county-firemen/w6bWrudC5WZn2o88OZAjUM/>.

⁵² *Id.*

⁵³ Justin McDuffie, *Johnson County Using Inmates to Fight Fires*, 13WMAZ (May 9, 2016), <https://www.13wmax.com/article/news/johnson-county-using-inmates-to-fight-fires/93-179200116>.

our county, we have volunteer fire departments, and they kind of back up our fire departments. They've got a lot better training, they've got a lot better equipment."⁵⁴ The chairman stated that if Johnson County were required to provide fire services, approximately \$400,000-500,000 more dollars would have to be added to the county budget.⁵⁵

Department officials likewise assert the Department's importance to those communities. For example, the Department's 2019 Fire Services Fact Sheet states that IFP inmates serve as the sole fire protection for many communities throughout Georgia.⁵⁶ Additionally, the IFP serves as Emergency Medical Responders and supplements single, small, or limited community fire stations and services.⁵⁷ Lastly, the IFP assists with lowering property insurance ratings for the communities they serve.⁵⁸ According to a Department attorney, these lowered property insurance ratings result from a lowered Insurance Services Organization's ("ISO") fire services rating.⁵⁹ The community receiving IFP support can claim the automatic aid response of the IFP.⁶⁰ This, in turn, lowers business and homeowners' insurance premiums.⁶¹ Despite these significant contributions, however, IFP inmates are not paid a salary.⁶²

C. Nature and Conditions of Participation in the Program

i. Recruitment Process & Eligibility Criteria

Inmate participation in the IFP is strictly voluntary, according to the Department.⁶³ To acquire new IFP inmates, the Department hosts recruitment days at the Georgia Diagnostic and Classification State Prison, where representatives from the Fire Services and Life Safety unit introduce inmates to the IFP and its requirements.⁶⁴ In addition to these recruitment days, counselors

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ GA. DEP'T. OF CORR., *supra* note 2.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ E-mail from Crystal Hendley, *supra* note 50.

⁶⁰ *Id.*

⁶¹ *Id.*; see also *The Public Protection Classification (PPC) Program: ISO's Analysis of Public Fire Protection Capabilities*, VERISK, <https://www.verisk.com/insurance/about/faq/the-public-protection-classification-ppc-program/> (last visited Sept. 30, 2019) ("Virtually all U.S. insurers of homes and business property use ISO's Public Protection Classifications in calculating premiums. In general, the price of fire insurance in a community with a good PPC is substantially lower than in a community with a poor PPC, assuming all other factors are equal.").

⁶² E-mail from Crystal Hendley, *supra* note 42.

⁶³ E-mail from Crystal Hendley, *supra* note 11.

⁶⁴ *Id.*

at each facility review potential inmates for the Program.⁶⁵ Once the inmate requests to be part of the Program, the Department's Offender Management and Fire Services unit reviews the inmate's eligibility.⁶⁶

An inmate is deemed eligible to participate if the inmate he or she meets all of the requirements listed in the Department's Fire Services Policy number 511.02.⁶⁷ The policy's requirements are two-fold: first, the policy compels all potential IFP inmates to pass an endurance test and physical examination before they are accepted into the Program; second, it outlines eight non-physical, threshold criteria inmates must meet to be a part of the IFP.⁶⁸ These criteria require the inmate to: (1) be minimum security; (2) have no physical limitations; (3) have no less than 18 months remaining on sentence but no more than 13 years; (4) have no arson convictions; (5) have no sexual offense convictions; (6) have no escape charges or attempts; (7) have or be actively working toward a high school diploma or GED; and (8) be able to read at a 10th grade level.⁶⁹ The policy also clarifies that inmates with life sentences may serve as inmate firefighters if approved by the Department.⁷⁰

In addition to those requirements, the Department reviews the nature of the inmate's crime and the length of the inmate's remaining sentence.⁷¹ If the inmate satisfies all the Department's requirements and passes the review process, then the inmate must sign both a waiver of liability form and a communications release form.⁷² These required forms merit further inspection, and they are discussed in Section 4, below.

An inmate is eligible to participate in the IFP only after the inmate passes the Department's requirements and physical exams and signs these two waivers.⁷³ The next step for the inmate is taking and passing firefighter certification courses, provided by the Georgia Firefighter Standards and Training Council (Council).⁷⁴ These courses, although provided exclusively to the participating inmates, are identical to those provided to non-inmate firefighters.⁷⁵ In fact,

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ GA. DEP'T. OF CORR., *supra* note 1, at 4.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ E-mail from Crystal Hendley, *supra* note 11.

⁷² GA. DEP'T OF CORR., *supra* note 5, at 511.04 (I)(C).

⁷³ *Id.* at 511.04 (VI)(C), (I)(C); *see also* GA. DEP'T OF CORR., *supra* note 1 at 511.02 (IV)(E).

⁷⁴ GA. DEP'T OF CORR., STANDARD OPERATING PROCEDURES 511.04 (VI)(F), 511.07 (VI)(A) (2011), <https://www.powerdms.com/public/GADOC/documents/105850>; *Georgia Firefighter Standards and Training Council*, GA. GOV, <https://georgia.gov/agencies/georgia-firefighter-standards-and-training-council> (last visited Oct. 1, 2019).

⁷⁵ *Compare* GA. DEP'T OF CORR., STANDARD OPERATING PROCEDURES 511.07 (2001), <https://www.powerdms.com/public/GADOC/documents/105855> (outlining inmate firefight-

according to the Council's 2016 Rules & Regulations, the only difference separating inmate firefighter training requirements from non-inmate firefighter training requirements is the obligation for inmate firefighters to "be trained to the level of Firefighter I as required by the Georgia Department of Corrections Fire Service within one year of appointment to be in compliance with O.C.G.A. 25-4-9 and Rules & Regulations of the Georgia Firefighter Standards and Training Council[.]"⁷⁶ and the requirement that inmate firefighters "pass the Firefighter I written test delivered by Council Staff or Council approved Proctors within the time frame established by the Georgia Department of Corrections Fire Service."⁷⁷ Once all of these steps are completed, and the inmate has passed the applicable firefighter certification courses, the inmate is then considered a full-fledged member of the IFP.⁷⁸

ii. Working Conditions, Absence of Compensation or Salary

Once in the IFP, inmates move out of the main prison facility and into one of the nineteen prison fire stations throughout Georgia, where they work, live, and train.⁷⁹ Life in the prison fire station is much like that in any other fire station in Georgia. The inmate firefighters sleep in the station, they can cook their own meals in the station kitchen, and they go out as soon as calls come in.⁸⁰ A significant difference is that the inmates are not allowed to leave the fire station when their shift is over because, technically, they are always on duty.⁸¹ One similarity with other firefighters, however, is that the inmates must maintain a certain number of training hours in order to retain their certification.⁸² This is despite the fact that inmate firefighters are required to receive many more training hours than non-inmate firefighters in the first place.⁸³ Pursuant to the Department's policy, IFP inmates receive twenty hours per month of fire-related training while in the assigned Department fire

er training requirements), *with* GA. FIREFIGHTER STANDARDS AND TRAINING COUNCIL, RULES & REGULATIONS (2016), <https://www.gfstconline.org/index.php/files/download/ac39eca1d4bf5c1> (outlining firefighter training requirements generally).

⁷⁶ GA. COMP. R. & REGS., 205-1-3-.04 (8)(e) (2016).

⁷⁷ *Id.* at 205-1-3-.02 (g) 4.

⁷⁸ E-mail from Crystal Hendley, Att'y 1, Ga. Dep't of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Nov. 15, 2018, 08:59 EST) (on file with author).

⁷⁹ *Id.*; *see also* McDuffie, *supra* note 53.

⁸⁰ *Id.*

⁸¹ McDuffie, *supra* note 53.

⁸² *Id.*

⁸³ *Compare* GA. DEP'T OF CORR. STANDARD OPERATING PROCEDURES 511.07 (2001), <https://www.powerdms.com/public/GADOC/documents/105855>, *with* GA. COMP. R. & REGS., 205-1-3-.04 (6) (a) 5 (2016).

station.⁸⁴ Non-inmate firefighters receive only twenty-four hours of professional development training per year to maintain their certification.⁸⁵

Another difference between inmate and non-inmate firefighters is that IFP inmates are not compensated for their labor.⁸⁶ According to the May 2017 report from the U.S. Bureau of Labor Statistics, Georgia firefighters were paid an average hourly wage of \$17.71 and an average annual wage of \$36, 830.⁸⁷ Although Georgia law permits compensation for county inmates participating in work-release programs,⁸⁸ it does not provide for the compensation of state-inmates participating in similar programs. Department policy is also silent. However, the GDC is currently enrolled in the Prison Industries Enhancement Certification Program (PIECP).⁸⁹ PIECP is a voluntary program providing compensation for certain goods-producing labor.⁹⁰ Firefighting is not included.⁹¹

iii. Inmates' Experiences and Job Opportunities After Release

Department press releases and IFP fact sheets state that on release from prison, IFP inmates are eligible to be hired as career firefighters.⁹² In reality, the post-incarceration job search is not so simple. Under the rules and regulations of the Council, and according to a 2018 e-mail from that Council's Executive Director, Gordon Henderson: "Anyone convicted of a felony cannot be eligible to be hired as a [full-time] firefighter or appointed as a volunteer until 10 years after the date of conviction. If the person completes the inmate firefighter program that time is reduced to 5 years. Either way the [Council]

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ E-mail from Crystal Hendley, *supra* note 42.

⁸⁷ U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, MAY 2017 STATE OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES: GEORGIA, https://www.bls.gov/oes/current/oes_ga.htm.

⁸⁸ GA. CODE ANN. § 42-1-9 (2019).

⁸⁹ E-mail from Jamila Coleman, Assistant Counsel, Ga. Dep't of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Jan. 7, 2019, 13:36 EST) (on file with author).

⁹⁰ *Id.*

⁹¹ *Id.* (According to Department Assistant Counsel, the GDC has approval of PIECP operations in the following industries: Sign Making Operations, Upholstery/Re-upholstery, Wood Furniture, Welding (Metal Furnishings, File Cabinets, and Grills), Offender Package Program, Garments, Printing, Embroidery, and Mattress and Pillow Production. GDC Assistant Counsel states that "offender participation [in PIECP operations] is voluntary, and all offenders must sign the voluntary agreement of participation and wage deduction form. Offenders eligible for participation in PIECP jobs earn \$7.25/ hour and are eligible for a pay raise every 416 hours worked. Raises vary based on their assigned SOC job code and prison location.").

⁹² GA. DEP'T OF CORR., *supra* note 12; GA. DEP'T OF CORR., *supra* note 2.

has to approve the person to be State Certified as a firefighter.”⁹³ Additionally, the former-inmate must retain his or her certifications or be recertified to remain eligible.⁹⁴ Former inmates must also wait five years to gain hiring eligibility, and even after that time period has lapsed, the Council still has the discretion to hire or reject the former inmate.⁹⁵ In other words, IFP inmates are not eligible to be hired as a firefighter on release. This discretionary authority comes from the Council’s rules, which state:

All registered members of any fire department operating in the State of Georgia shall:

...

... Have a good moral character as determined by investigation of the criminal history of the candidate to verify that there are no recent patterns of criminal involvement or intent related to stealing, cheating, lying, or other offenses that may indicate a disregard for the law or ethical and moral conduct.⁹⁶

Only fifty-five inmates have been hired as full-time, part-time, or volunteer firefighters since the Program’s inception in 1963.⁹⁷ The Department does not retain records detailing the number of IFP inmates hired per year. In fact, the Department does not even keep records regarding the number of inmates in the Program at present. This makes it difficult to determine whether the Program may be classified as a success or whether it is a program worthy of replication.

iv. Assessment of the Waiver of Liability Form and the Communications Release Form

As previously mentioned in Section 1 above, the forms the inmates must sign before they are admitted into the IFP merit further analysis. First, the waiver of liability form – included in its entirety below – relieves the State of Georgia, the Department, and its employees from any liability in the event the

⁹³ E-mail from Gordon Henderson, Exec. Dir., Ga. Firefighter Standards & Training Council, to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Oct. 10, 2018, 7:40 EST) (on file with author).

⁹⁴ GA. COMP. R. & REGS., 205-1-3-.04 (2016).

⁹⁵ E-mail from Gordon Henderson, *supra* note 93.

⁹⁶ GA. COMP. R. & REGS., 205-1-3-.02 (2)(d) (2016).

⁹⁷ E-mail from Crystal Hendley, *supra* note 50.

inmate firefighter is injured in the course of his or her duties with the IFP.⁹⁸ Second, the communication release form, included in its entirety below, releases the Department from civil and financial liability stemming from inmate participation in any form of media activity.⁹⁹

⁹⁸ Waiver of liability provided in e-mail from Crystal Hendley, Att’y 1, Ga. Dep’t of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Nov. 6, 2018, 13:45 EST) (on file with author).

⁹⁹ Communications Release Form provided in email from Crystal Hendly, Att’y 1, Ga. Dep’t of Corr. Office of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Nov. 6, 2018, 13:45 EST) (on file with author).

From the waiver alone, it is apparent that IFP inmates may not sue the Department, its employees, or the State of Georgia in the event of injury. However, the Georgia Code makes it equally unclear whether IFP inmates may recover for injury at all. Typically, when a firefighter is injured in the line of duty in Georgia, he or she may recover in two ways: the Georgia State Indemnification Program (Fund) and Georgia's Workers' Compensation Act (Workers' Compensation).¹⁰⁰ Although it is unclear whether IFP inmates may recover under the Fund, it is undisputed that IFP inmates may not recover under Workers' Compensation.¹⁰¹

First, as detailed in a presentation created by Quatavia McLester of Georgia's Department of Administrative Services, the Georgia General Assembly created the Fund in 1976 to provide compensation to certain public officials, like firefighters, who are permanently disabled or killed in the line of duty.¹⁰² Over time, the Georgia Legislature expanded benefits under the Fund to include payments for supplemental income, partial permanent disability, total permanent disability, and death.¹⁰³ In order to receive compensation from the Fund, individuals must meet the definition of "firefighter" under Georgia law, O.C.G.A. § 45-9-81.¹⁰⁴ This definition is unclear about whether IFP inmates are eligible to receive compensation from the Fund.

O.C.G.A. § 45-9-81 defines a "firefighter" as

[A]ny person who is employed as a professional firefighter on a full-time or part-time basis by any municipal, county, or state government fire department employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing any law pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.¹⁰⁵

Additionally, the statute defines "firefighter" as:

¹⁰⁰ GA. CODE ANN. § 45-9-84.2 (2008); GA. CODE ANN. § 34-9-2 (2007).

¹⁰¹ GA. CODE ANN. § 34-9-1 (2) (2015).

¹⁰² KIM KRAMER, GA. DEP'T OF ADMIN. SERVS., GEORGIA STATE INDEMNIFICATION PROGRAM 2, <http://doas.ga.gov/assets/Risk%20Management/Georgia%20State%20Indemnification%20Program%20Documents/Risk%20Management-%20Georgia%20State%20Indemnification%20Program.pdf>.

¹⁰³ *Id.* at 2-3.

¹⁰⁴ GA. CODE ANN. § 45-9-81 (5)(A) (2018).

¹⁰⁵ *Id.*

[A]ny individual serving as an officially recognized or designated member of a legally organized volunteer fire department, or any employee of the State Forestry Commission whose job duties include fire mitigation, who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.¹⁰⁶

The Georgia Attorney General's Office released their Official Opinion regarding inmate firefighter classifications in 2012.¹⁰⁷ Assistant Attorney General Angelique McClendon wrote the Opinion to the Executive Director of the Georgia Firefighter Standards and Training Council, hereinafter referred to as the Council, which is the Georgia agency that provides certification standards for "all firefighters, fire inspectors, fire investigators, and fire and life safety educators."¹⁰⁸ In the Official Opinion, McClendon asserted that inmate firefighters should be considered volunteer firefighters rather than a separate category.¹⁰⁹ She reasoned that inmate firefighters are not specifically defined in Georgia law, and she further noted that they "do not meet the definition of full-time or part-time firefighters since they are not employed for compensation."¹¹⁰ McClendon asserted that because

inmate firefighters are not employed for compensation but are appointed and regularly enrolled to serve as firefighters for municipal, county, state, or private incorporated fire departments, they meet the definition of volunteer firefighter and, consequently, they should be considered volunteer firefighters so long as they have the requisite duty and training requirements listed in O.C.G.A. § 25-4-2(6) (Supp. 2011).¹¹¹

Despite McClendon's recommendation, however, the Council continues to classify inmate firefighters in a category of their own, separate from volunteer firefighters.¹¹² This distinct classification makes it unclear whether IFP inmates are eligible to recover under the Fund.

¹⁰⁶ GA. CODE ANN. § 45-9-81 (5) (B) (2018).

¹⁰⁷ Ga. Att'y Gen. Op. No. 2012-4 (2012).

¹⁰⁸ *Georgia Firefighter Standards and Training Council*, GA. GOV, <https://georgia.gov/agencies/georgia-firefighter-standards-and-training-council> (last visited Sept. 30, 2019).

¹⁰⁹ Ga. Att'y Gen., *supra* note 107.

¹¹⁰ *Id.* at 1.

¹¹¹ *Id.*

¹¹² GA. FIREFIGHTER STANDARDS AND TRAINING COUNCIL, RULES & REGULATIONS 205-1-3-.01 (16), 205-1-3-.02(2)(a) (2016), <https://www.gfstconline.org/index.php/files/download/ac39eca1d4bf5c1>.

Second, according to the Georgia State Board of Workers' Compensation's 2013 employee handbook, workers compensation is "a benefits program created by state law that provides medical, rehabilitation, income, death and other benefits to employees and dependents due to injury, illness and death resulting from a compensable work-related claim covered by the law."¹¹³ IFP inmates and other inmate-laborers, however, may not recover under workers compensation because they are not considered "employees" under Georgia's Workers' Compensation Act.¹¹⁴ Thus, inmates are not eligible to receive workers compensation benefits when injured in a work release program, including the IFP.¹¹⁵

Accordingly, if an IFP inmate is injured, disabled, or killed in the line of duty, it is unclear whether they may recover at all. What is clear is that if an inmate is injured during the course of his or her duty in the IFP, the Department is required to provide medical care¹¹⁶ – and potentially a very large bill. That is, the State of Georgia does not place sole financial responsibility on the Department. Rather, according to Georgia law, it allows "the inmate's health insurance carrier to pay the health care provider for the medical service rendered."¹¹⁷ Accordingly, the Department "only bears responsibility for those medical expenses not covered by the inmate's health insurance," wrote Taylor Hamrick in a 2016 law review comment.¹¹⁸ In her comment, Hamrick noted, however, that "given that an estimated ninety percent of inmates released from prison are uninsured or otherwise lack the financial resources to pay for medical care, private health insurance does little to ease the government's duty to pay."¹¹⁹ She stated that "a companion code section, O.C.G.A. § 42-4-51, clarifies that, where an inmate is not eligible for health insurance benefits, the inmate 'shall be liable for the costs of such medical care provided to the inmate and the assets and property of such inmate may be subject to levy and execution under court order to satisfy such costs.'"¹²⁰ Hamrick concluded that, "this code provision creates a right of recovery on the part of the governmental

¹¹³ GA. STATE BD. OF WORKERS' COMP., EMPLOYEE HANDBOOK 5 (2013), https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/related_files/site_page/employee_handbook.pdf.

¹¹⁴ GA. CODE ANN. § 34-9-1 (2) (2015).

¹¹⁵ See *Clarke v. Country Home Bakers*, 294 Ga. App. 302, 304-05 (2008) (holding that a prisoner participating in work release program was not an "employee" under the Workers' Compensation Act, notwithstanding prisoner's claim that his participation in the program was voluntary and not "part of the punishment"; even while at work site, prisoner was legally "confined" as an inmate, and Department of Corrections retained tight control over prisoner even as he exercised his limited privilege.).

¹¹⁶ GA. CODE ANN. § 42-5-2 (a) (2019).

¹¹⁷ GA. CODE ANN. § 42-4-51 (b) (2019).

¹¹⁸ L. Taylor Hamrick, Comment, *Where Healthcare and Policing Converge: How Georgia Law Promotes Evasion of Financial Responsibility for Indigent Arrestees' and Municipal Inmates' Medical Care*, 67 MERCER L. REV. 741, 749 (2016) (citations omitted).

¹¹⁹ *Id.*

¹²⁰ *Id.*

unit with custody of the inmate against the inmate for medical services paid for by the government.”¹²¹

In short, IFP inmates who are injured, disabled, or killed on the job must have insurance, or they should expect to pay for these medical expenses when they get out of prison.

Next, IFP inmates must sign the Department's communication release form¹²²:

¹²¹ *Id.* at 749-50.

¹²² GA. DEP'T OF CORR., *supra* note 5, at 511.04 (I)(C).

Revised 4/01/2011

Attachment 2
GDC-SOP IVN04-0001

GEORGIA DEPARTMENT OF CORRECTIONS

COMMUNICATION RELEASE FORM

Agreement for release of civil and financial liability growing out of inmate participation in any form of communications media activity.

I, the undersigned, hereby release the State Board of Corrections and the Department of Corrections, their agents and employees, any and all forms of communications media, and their agents of employees from any liability growing out of the use of my name, image, voice, writings, opinions, or any other form of communications created by or attributed to me.

I also release and give to any of the above persons or organizations all right, title and interest in any completed work incorporating any of the above uses of my name, voice, image, writings, opinions, or any other form of communications created by or attributed to me.

The above persons or organizations may use these items as it/they see fit including the right to transfer to assignees, who I also specifically herein release from any such liability.

Inmate Signature & Number

Staff Witness

Institution/Center

Date

cc: Institution
Inmate File

This document releases the Department from civil and financial liability arising out of an inmate's "communications media activity" while simultaneously bestowing upon the Department an inmate's "right, title and interest" to his or her "name, voice, image, writings, opinions, or any other form of communications created by or attributed to by the inmate."¹²³ There is not much scholarship on media release forms in the prison context, but it seems that a release of this kind only serves to further the Department's interest, rather than an inmate's.

III. INTERNATIONAL LAW AND NORMS RELEVANT TO INMATE LABOR

The IFP will be analyzed through an international law lens not because there is a chance that Georgia officials might be held accountable in an international forum, but because international legal analysis is useful in applying pressure on officials for change. As exemplified in the United States' shifting views on capital punishment, international law can be a valuable tool in beginning and maintaining criminal justice reform.¹²⁴ As Professor Russell G. Murphy said in a 2008 lecture on how international law influences the United States Supreme Court's decision-making process in capital punishment cases, "international law and foreign court decisions do actually influence U.S. Supreme Court decision-making in death penalty cases."¹²⁵ Perhaps the same is true for Georgia policy makers and Department officials.

A. *International Covenant on Civil and Political Rights*

i. *Background*

The American Civil Liberties Union (ACLU) describes the ICCPR as "a key international human rights treaty, providing a range of protections for civil and political rights."¹²⁶ The ACLU also states that "the ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights."¹²⁷ According to Vladislava Stoyanova's 2017 law review article on slavery and the United Nations, the "drafting of the ICCPR was completed in 1954, though its approval by the U.N. General Assembly

¹²³ See generally GA. DEP'T OF CORR., COMM. RELEASE FORM (2011).

¹²⁴ See, e.g., Russel G. Murphy, *Executing the Death Penalty: International Law Influences on United States Supreme Court Decision-Making in Capital Punishment Cases*, 32 SUFFOLK TRANSNAT'L L. REV. 599, 617 (2009).

¹²⁵ *Id.*

¹²⁶ *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, ACLU, <https://www.aclu.org/other/faq-covenant-civil-political-rights-icepr> (last updated Apr. 2019).

¹²⁷ *Id.*

was secured only in 1966. It took another ten years for the instrument to enter into force.”¹²⁸ Stoyanova also wrote that, “with the entry into force of the ICCPR, international law conferred for the first time an individual right not to be subjected to slavery, servitude, or forced labor. This right is embodied in Article 8 of the ICCPR.”¹²⁹ This fact is important for purposes of this Note. According to Nicholas R. Bednar and Margaret Penland’s 2017 law review article, the ICCPR is “only binding to the extent that Congress incorporates it into domestic law.”¹³⁰

ii. Key Provisions

Article 8 of the ICCPR states in full:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
 - (a) No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

¹²⁸ Vladislava Stoyanova, *United Nations Against Slavery: Unravelling Concepts, Institutions and Obligations*, 38 MICH. J. INT’L L. 359, 397 (2017).

¹²⁹ *Id.*

¹³⁰ Nicholas R. Bednar & Margaret Penland, *Asylum’s Interpretative Impasse: Interpreting “Persecution” and “Particular Social Group” Using International Human Rights Law*, 26 MINN. J. INT’L L. 145, 173 (2017).

- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.¹³¹

As Stoyanova explained in her article, the conferral of rights under Article 8 is extremely significant.¹³² Citing Louis Henkin, Stoyanova clarified that “with the entry into force of the ICCPR, antislavery is not anymore only policy reflected in states willingness to assume international obligations to abolish the practice.”¹³³ Rather, she explained, “freedom from slavery is a right, an entitlement for every individual, one of an array of individual rights that in their sum reflect a conception of the minimum implications and needs of human dignity that states have come to recognize and to which they are obliged to give effect.”¹³⁴

Stoyanova, too, noted in her article that although the United Nations’ Human Rights Council has “issued thirty-five comments touching upon different issues emerging from the ICCPR,” the Human Rights Council has not issued a General Comment for Article 8.¹³⁵ This is unfortunate considering that the General Comments are documents “intended to elaborate on states’ obligations under specific articles of the Covenant.”¹³⁶ Although, as Stoyanova explained, “this absence is to a certain extent understandable since the HRC issues General Comments to consolidate its experience gathered in the examination of state reports and individual communications. In relation to Article 8 of the ICCPR there is not much experience to consolidate.”¹³⁷

Stoyanova explained that in order to interpret Article 8 of the ICCPR, the Article “needs to be subjected to the interpretative methodology of the Vienna Convention on the Law of Treaties (VCLT). Article 31(1) of the VCLT codifies the rule that ‘a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and

¹³¹ International Covenant on Civil and Political Rights, pt. III, art. 8, Dec. 16, 1966, 999 U.N.T.S. 171.

¹³² Stoyanova, *supra* note 128, at 398.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 404-05.

¹³⁶ *Id.* at 404.

¹³⁷ *Id.*

in the light of its object and purpose.”¹³⁸ She also notes that the interpretation of Article 8 “must ensure that Article 8 can function within the contemporary social reality, which prompts progressive interpretation.”¹³⁹ Quoting the United Nations’ Human Rights Council, Stoyanova explains that the “character of the ICCPR as a living instrument has been emphasized by the HRC itself: ‘The Committee considers that the Covenant should be interpreted as a living instrument and the rights protected under it should be applied in context and in the light of present-day conditions.’”¹⁴⁰

B. The United Nations Standard Minimum Rules for the Treatment of Prisoners

i. Background

According to Kasey McCall-Smith’s 2016 article, the Mandela Rules synthesize a range of international laws relevant to ensuring the inherent dignity of all imprisoned individuals.¹⁴¹ These rules “reflect key human rights and criminal justice standards that have developed since the original rules were adopted.”¹⁴² Before revision, they were known as the Standard Minimum Rules for the Treatment of Prisoners, or SMRs.¹⁴³ The SMRs first constituted “the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world,”¹⁴⁴ according to the United Nations’ brochure on the Standard Minimum Rules for the Treatment of Prisoners. The brochure states that, “in recognition of the advances in international law and correctional science since 1955, however, the General Assembly decided, in 2011, to establish an open-ended intergovernmental Expert Group to review and possibly revise the SMRs. Civil society and relevant United Nations

¹³⁸ *Id.* at 410.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 410-11.

¹⁴¹ Kasey McCall-Smith, *Introductory Note to United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, 55 I.L.M. 1180, 1180 (2016).

¹⁴² *Id.*

¹⁴³ UNITED NATIONS OFFICE ON DRUGS AND CRIME, THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (THE NELSON MANDELA RULES): AN UPDATED BLUEPRINT FOR PRISON MANAGEMENT IN THE 21ST CENTURY, http://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf.

¹⁴⁴ *Id.*

bodies were equally invited to contribute to the process.”¹⁴⁵ Additionally, according to the brochure, the revision process came to an end at the group’s “fourth meeting held in Cape Town, South Africa, in March 2015.”¹⁴⁶ There, the “Expert Group reached consensus on all of the rules opened for revision. In May 2015, the Commission on Crime Prevention and Criminal Justice (CCPCJ) endorsed the revised rules and submitted the entire set of the revised SMRs for approval by the Economic and Social Council (ECOSOC) and subsequent adoption by the General Assembly as the ‘United Nations Standard Minimum Rules for the Treatment of Prisoners.’”¹⁴⁷ According to the brochure, nine areas were revised in the process, including those related to prisoners’ inherent dignity as human beings, vulnerable groups of prisoners, medical and health services, discipline and sanctions, investigation of deaths and torture in custody, access to legal representation, complaints and inspections, terminology, and staff training.¹⁴⁸ The revised Rules were unanimously adopted by the United Nations’ General Assembly in 2015.¹⁴⁹ These revised rules became known as the Mandela Rules.¹⁵⁰

Jennifer Peirce wrote in a 2018 law journal article on the Mandela Rules that the entire revision process “required considering sixty years of social science research, plus changes in prison operations, human rights laws, UN compliance mechanisms, and political dynamics.”¹⁵¹ She further noted, “contrary to initial dismissals of the Mandela Rules as a ‘paper tiger’ — words with no teeth — their influence is already apparent internationally.”¹⁵² For example, she wrote, “[s]ome countries, such as Argentina and Thailand, have drawn on the *Mandela Rules* for both legal argument and as a basis for updating domestic legislation on prison conditions.”¹⁵³ Additionally, she stated that the “*Mandela Rules* are a prominent example of international soft law norms that shape domestic laws and practices”¹⁵⁴ Therefore, although the Mandela Rules are not legally binding, they are nonetheless important in forming laws and prison practices.¹⁵⁵

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 5.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 3.

¹⁵¹ Jennifer Peirce, *Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards*, 43 *QUEEN’S L. J.* 263, 264 (2018).

¹⁵² *Id.* at 264-65.

¹⁵³ *Id.* at 265.

¹⁵⁴ *Id.*

¹⁵⁵ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* GA Res 70/175, UNGAOR, 70th Sess, U.N. Doc. A/RES/70/175 (2015) [hereinafter *Mandela Rules*].

ii. Key Provisions

The applicable inquiries into the Mandela Rules include the sections regarding services related to treatment and work, which provide rules related to wage and work organization. Specifically, Rules 91 and 92 in the section on Treatment and Rules 96 through 103 in the section on Work are applicable to this Note.¹⁵⁶ It is important to note some initial comments in the Mandela Rules, which will aid in the analysis and application portion of this Note. First, according to the preliminary observations in the Mandela Rules:

[The rules are] not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.¹⁵⁷

Second, the drafters of the Mandela Rules want to make clear that:

1. In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

2. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.¹⁵⁸

Finally, it is important to note that “representatives from the U.S. joined in on the drafting and were also a part of the unanimous vote to support the new

¹⁵⁶ *Id.* at 27-30.

¹⁵⁷ *Id.* at 1.

¹⁵⁸ *Id.*

measures.”¹⁵⁹ Consequently, although “the Mandela Rules are not binding on any state or the federal government,” if “governments and correctional administrations . . . reject such a global consensus on minimum standards—unanimously adopted by U.N. representatives in Vienna, including representatives from the U.S.—[they] need to be prepared to explain the logic to their opposition.”¹⁶⁰

Now that the background of the Mandela Rules has been reviewed, the following excerpts are the applicable rules related to this Note. First, Rule 91 of the “Treatment” section of the Mandela Rules holds that:

The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.¹⁶¹

Next, Rule 92 states:

1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.
2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.
3. The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and

¹⁵⁹ Robert McCrie & Annabelle Clénot, *The Mandela Rules: Will They Impact American Corrections?* 77 CORR. TODAY, 44, 45 (2015).

¹⁶⁰ *Id.* at 48.

¹⁶¹ Mandela Rules, *supra* note 155, at 27.

classified in such a way that it can be consulted by the responsible personnel whenever the need arises.¹⁶²

Next, Rule 96 states:

1. Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals.
2. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.¹⁶³

Rule 97 is also in the section on Work. This rule holds that:

1. Prison labour must not be of an afflictive nature.
2. Prisoners shall not be held in slavery or servitude.
3. No prisoner shall be required to work for the personal or private benefit of any prison staff.¹⁶⁴

Next, Rule 98 states:

1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.¹⁶⁵

Rule 99 states that:

¹⁶² *Id.* at 28.

¹⁶³ *Id.* at 29.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the prison.¹⁶⁶

Rule 100 states that:

1. Preferably, institutional industries and farms should be operated directly by the prison administration and not by private contractors.
2. Where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. Unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.¹⁶⁷

Rule 101, which relates to safety precautions of the inmates, states that:

1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons.
2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.¹⁶⁸

Rule 102 states that:

1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workers.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 29-30.

¹⁶⁸ *Id.* at 30.

2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners.¹⁶⁹

Finally, Rule 103, which relates to pay, states:

1. There shall be a system of equitable remuneration of the work of prisoners.
2. Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings should be set aside by the prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.¹⁷⁰

IV. VIOLATIONS OF INTERNATIONAL LEGAL NORMS & PROPOSED CORRECTIONS

A. *Georgia's Inmate Firefighter Program Violates International Legal Norms*

i. *Violations of the International Covenant on Civil and Political Rights*

a. *Article 8, Section 2: "No One Shall Be Held in Servitude"*

Although it is undisputed that the IFP inmates are not being held in slavery, a reasonable question exists as to whether IFP inmates are required to perform forced or compulsory labor, or in other words, whether IFP inmates are held in servitude.

“Although slavery and involuntary servitude are often conflated, involuntary servitude, subtly distinguished from slavery, is ‘forced labor for the benefit of another.’ In other words, involuntary servitude originates out of extralegal methods—either physical force or legal coercion—whereas the

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

compulsion to labor in slavery originates from and is reinforced by a legal framework.”¹⁷¹

Although the GDC has stated that the IFP is strictly voluntary, according to Joey Asher’s 1994 article on the United States’ violations of international law

“the legislative history of the [ICCPR], as well as the history of treaty language banning slavery and involuntary servitude, suggests that the drafters intended a far broader definition of ‘involuntary servitude’ than that of the Thirteenth Amendment. As a result, the United States’ ratification of the [ICCPR] seems to have incorporated into U.S. law a definition of involuntary servitude that broadens the rights of U.S. workers.”¹⁷²

Although it is not entirely clear what this broad definition entails, or whether the IFP falls into such a broad definition, relevant considerations likely include when and under what circumstances the ICCPR was passed. It must be noted from the outset that “[n]othing in the history of slavery treaties suggests that servitude can be accomplished only through physical or legal coercion.”¹⁷³ Rather, “much of the wording of the prior treaties suggests that servitude can be accomplished with all types of coercion.”¹⁷⁴ With that said, the ICCPR’s interpretation of slavery and servitude are not meant to be interpreted in an antiquated fashion.¹⁷⁵ Rather, those terms should be understood now as they were understood in 1966, the year the ICCPR was signed.¹⁷⁶

To aid in interpretation, consider the *Shackney* case, which was decided two years before the ICCPR was signed.¹⁷⁷ *Shackney* helps determine what policy-makers had in mind when barring involuntary servitude.¹⁷⁸ *Shackney* decided whether a Mexican family was being held in involuntary servitude when the family worked on a chicken farm without good work conditions.¹⁷⁹ The family stayed despite opportunities to leave because the farm owner

¹⁷¹ Sarah Morgan, *Civil Rights/Constitutional Law-Indebted to the State: How the Thirteenth Amendment’s Promise of Abolition Holds Protections Against the Modern Debtors’ Prisons*, 39 W. NEW ENG. L. REV. 327, 368 n.152 (2017).

¹⁷² Joey Asher, *How the United States is Violating its International Agreements to Combat Slavery*, 8 EMORY INT’L L. REV. 215, 221-22 (1994).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *United States v. Shackney*, 333 F.2d 475 (2d Cir. 1964).

¹⁷⁸ Asher, *supra* note 172, at 229.

¹⁷⁹ *Shackney*, 333 F.2d at 477.

threatened to deport them otherwise.¹⁸⁰ Although “the court in Shackney refused to broaden the definition of involuntary servitude, holding that the statute was designed only to outlaw practices ‘akin to African slavery,’”¹⁸¹ not all judges followed the majority’s reasoning.¹⁸² Judge Dimock, for example, stated that “argued that the statute should define ‘involuntary’ in terms of the alleged victim’s perception. If the employer subjugates the victim’s will to refuse, by psychological means or physical means, then the servitude is involuntary.”¹⁸³ Additionally, Dimock argued that “economic, psychological, and social pressure in certain circumstances could coerce a person into involuntary servitude.”¹⁸⁴

Although Dimock’s standard ultimately failed in the courts, and although the question in that case related to involuntary servitude, Asher suggests that the case nonetheless impacted the ICCPR,¹⁸⁵ which is conceivable considering the history of slavery treaties mentioned above and the discussion related to ICCPR’s second paragraph prohibiting servitude. “During negotiations over the [ICCPR, the United States] suggested only a minor change in the wording, arguing that the word ‘involuntary’ be added before the word ‘servitude’. The proposal was opposed, [however], because ‘it should not be made possible for any person to contract himself into bondage.’”¹⁸⁶

Taking all of these factors into consideration, the ICCPR’s definition of servitude includes a person or persons laboring against their will under coercion.¹⁸⁷ Further, this broad definition holds that if servitude is contractual, it is not considered to be voluntary.¹⁸⁸ Such a definition is indeed broad and a little murky. However, from its breadth and on the facts, it is clear that the IFP may nonetheless fail to comport to Article 8, Section 3 of the ICCPR.

First, although the IFP is strictly voluntary, and while all participating inmates understand the physical requirements, the danger involved, and the lack of a salary, inmate participation in the IFP could be considered the result of deceit if the inmates join the Program under the Department’s promise that they are able to be hired upon release. Inmates go into the IFP under the premise that the skills they learn in the Program will easily translate into a job after release, and although there are success stories out there,¹⁸⁹ they are rare.

¹⁸⁰ *Id.*

¹⁸¹ Asher, *supra* note 172, at 230.

¹⁸² See Shackney, 333 F.2d at 487-88 (Dimock, J., concurring).

¹⁸³ Asher, *supra* note 172, at 229.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 248.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Alima Mims is one such success story. Mims was convicted for burglary and possession of a firearm. Consequently, he spent ten years in Dooly State Prison and Autry State Prison where he served in the IFP. Once he was out, however, he did not automatically

Considering the actual number of inmates who have been employed as firefighters after they serve their sentence and the substantial amount of labor IFP inmates provide in local communities throughout the state, there is a reasonable argument that the GDC is violating the ICCPR by making hollow promises to people with severely limited choices in order to reap the benefits of their free labor.

Second, although IFP inmates “may voluntarily leave the program at any time,”¹⁹⁰ as previously noted in Asher’s article, the ICCPR does not allow for a person to “contract himself into bondage.”¹⁹¹ Additionally, it is important to note that while the protocol in place for inmates who no longer wish to be a part of the IFP is simple,¹⁹² it is entirely possible that the purported economic incentives following an inmate’s sentence could be enough to keep the inmate in the IFP. However, there is no evidence suggesting that inmates stay in the IFP only because of future employment prospects.

Considering that Article 8 of the ICCPR broadly defines “servitude” to encompass those laboring under deceit, the IFP most likely violates Section 8 by deceiving inmates into serving as firefighters under the false assumption that the inmate will gain employment upon release.¹⁹³

ii. U.N. Minimum Standards

a. Rule 91

Rule 91 of the Minimum Standards relates to the purpose of imprisonment, stating that the treatment of inmates must establish in them “the will to lead law-abiding and self-supporting lives after their release and to fit them to do so.”¹⁹⁴ Considering this rule in the IFP arena, it is clear that the IFP outfits

receive a job in a fire department. In fact, in his interview with the GDC, Mims seemed to indicate that he was rejected from multiple fire departments because of his criminal history. It was only during a chance encounter during his shift at McDonalds that Mims met the Augusta Fire Department’s Training Chief. Mims was later offered a position with the Augusta Fire Department, where he is now a lieutenant in charge of training. Mims’ interview can be found here: Ga. Corr. (@GACorrections), YOUTUBE (Jan. 10, 2017), <https://www.youtube.com/watch?v=zonRmg9PiyY>.

¹⁹⁰ E-mail from Crystal Hendley, Att’y 1, Ga. Dep’t of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Nov. 7, 2018, 15:28 EST) (on file with author).

¹⁹¹ Asher, *supra* note 172, at 248.

¹⁹² E-mail from Crystal Hendley, *supra* note 42. Offenders inform the Station Chief of their desire to quit or that they no longer wish to be in the program, and at that time, the offender goes back to the main facility and he or she will be removed from the program.

¹⁹³ International Covenant on Civil and Political Rights (ICCPR), art. 8, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

¹⁹⁴ Mandela Rules, *supra* note 155.

inmates to lead “self-supporting” lives in that inmates have the skills and expertise to become full-time firefighters. In practice, however, this is not actually what often happens. Reviewing the second half of the rule sheds a positive light on the IFP. In its purpose and effect, the Program develops a sense of responsibility. Although this paternalistic goal runs along the same lines as “many [prison labor programs] [which] are based upon the same goal—to imbue prisoners with the work ethic that they are supposedly lacking,”¹⁹⁵ that consideration is irrelevant for this Note’s purposes.

b. Rule 92

Rule 92 builds upon Rule 91 and requires those in charge of inmates to use “all appropriate means”¹⁹⁶ in order “to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so.”¹⁹⁷ The IFP passes muster under the rule’s first subsection since the IFP is a type of vocational guidance and training. Additionally, the Department takes “social and criminal history, physical and mental capacities and aptitudes, personal temperament, [and] the length of his or her sentence and prospects after release” into account when selecting inmates for the IFP.¹⁹⁸ Part two of Rule 92 is especially interesting with the IFP. At the outset, it seems to comport with Department policy that the IFP maintain records associated with each inmate and emergency calls the IFP responds to, generally. As discussed above, however, the Department does not organize or maintain detailed records. During the entirety of this research, Department personnel have repeatedly apologized for the absence of records such as total calls, the number of inmates hired per year as a result of their participation in the IFP, and similar requests.

c. Rule 96

At first glance, the IFP seems to comport with this rule, which requires inmates to have the opportunity to work.¹⁹⁹ The IFP provides the inmate the ability to participate in this form of rehabilitation only after the inmate has been cleared by the medical professionals at the Department.²⁰⁰ The second prong of this rule, however, is what holds the IFP back from full

¹⁹⁵ Mary Rose Whitehouse, *Modern Prison Labor: A Reemergence of Convict Leasing Under the Guise of Rehabilitation and Private Enterprises*, 18 LOY. J. PUB. INT. L. 89, 93 (2017).

¹⁹⁶ Mandela Rules, *supra* note 155, at 28.

¹⁹⁷ Mandela Rules, *supra* note 155, at 27.

¹⁹⁸ GA. DEP’T OF CORR., *supra* note 1.

¹⁹⁹ Mandela Rules, *supra* note 155, at 29.

²⁰⁰ GA. DEP’T OF CORR., *supra* note 5, at 511.04 (VI)(E).

compliance.²⁰¹ IFP inmates work in twenty-four hour shifts for seven days a week, without any break in duty.²⁰² Although it is likely that the IFP inmates are not actually working for that entire time, the period is nonetheless outside the confines of a “normal working day,” which, by U.N. standards, is limited to eight hours.²⁰³ Although the U.N. does “take into account the complexities of the workplace and [allows] for flexibility, responding, for example, to different types of work arrangements such as shift work, consecutive work shifts, work during emergencies and flexible working arrangements[.]”²⁰⁴ according to the U.N.’s 2016 Economic and Social Council’s Comment on Economic, Social and Cultural Rights, and although “[r]equirements for workers to be on-call or on standby need to be taken into account in the calculation of hours of work[.]”²⁰⁵ the Department has not clarified whether the IFP inmates are “actively employed for a normal working day.”²⁰⁶

d. Rule 97

Rule 97 requires that prison labor not be afflictive, that inmates not be held in slavery or servitude, and that no inmate is mandated to work for the personal or private benefit of any prison staff.²⁰⁷ To the first point, firefighting is necessarily characterized by distress, and the prison system is afflictive by the removal of one’s liberty.²⁰⁸ However, while the Mandela Rules were still undergoing the review process from 2011 to 2014, a meeting of the Expert Group on the Mandela Rules suggest that this kind of affliction is not what was meant under the rule.²⁰⁹ Rather, the “afflictive nature” seems to refer to labor practices that do not further “[t]he beneficial role of education, religion, vocational training and work for the rehabilitation of prisoners”²¹⁰ To that end, the IFP comports with this first prong. The Program furthers a sort of educational

²⁰¹ Mandela Rules, *supra* note 155, at 29.

²⁰² GA. DEP’T OF CORR., *supra* note 5, at 511.04 (VI)(E).

²⁰³ U.N. Econ. and Soc. Council, Comm. on Econ., Soc. and Cultural Rights, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C. 12/GC/23 (Apr. 7, 2016) (stating that “[w]orking days spent in all activities, including unpaid work, should be limited to a specified number of hours. While the general daily limit (without overtime) should be eight hours . . .”).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Mandela Rules, *supra* note 155, at 29.

²⁰⁸ *Id.* at 3.

²⁰⁹ Report on the Meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners Held in Vienna from 31 January to 2 February 2012, U.N. Doc. UNODC/CCPCJ/EG.6/2012/1 (Feb. 16, 2012).

²¹⁰ *Id.* at 6.

and vocational training to participating inmates, and while it may cause a type of distress, that distress—or affliction—is not within the contemplation of the rule.

The second prong of this rule is very similar to Article 8 of the ICCPR, and thus needs no further review. The last prong of the rule is worthy of further inspection, however. On the surface, IFP inmates do not work for the personal or private benefit of any prison staff. However, if the prison staff live in the surrounding area serviced by the IFP, then prison staff are indirectly benefiting from prisoner labor. This interpretation, though, is not what the drafters of the rule had in mind; it is far too attenuated. Rather, the drafters wanted this point—and the rule itself—to relate to the prohibition of slavery in prison labor, as the documents that came before the Mandela Rules did.²¹¹ Thus, the IFP likely comports to the third prong of this rule.

e. Rule 98

The IFP fails to meet Rule 98 because of the first prong, which mandates that the work provided to the inmates maintains or increases the inmate's ability to earn a living after release.²¹² The hiring rate of IFP inmates shows that the work the IFP inmates undertake does not maintain or increase their ability to earn a living post-incarceration.²¹³ Proponents argue that the skills inmates receive from the IFP increase their employment prospects, but the data tells a completely different story.²¹⁴ Although the IFP falls in line with the following two sections of Rule 98, the IFP fails to comport to the rule as a whole, because of the lack of data supporting the idea that the IFP maintains or increases an inmate's ability to earn a living after release.²¹⁵

f. Rule 99

The IFP complies with Rule 99.²¹⁶ It undoubtedly resembles, albeit hazily, the work of firefighters outside of prison. IFP inmates live, work, and train together, and they spend much of their time in an on-site fire station, much like non-inmate firefighters.²¹⁷ Although this Program has primarily expanded

²¹¹ See generally The Universal Declaration of Human Rights and the ICCPR, *supra*.

²¹² Mandela, *supra* note 155, at 29.

²¹³ E-mail from Crystal Hendley, *supra* note 50.

²¹⁴ *Id.*

²¹⁵ Mandela, *supra* note 155, at 29; *id.*

²¹⁶ Compare Mandela Rules, *supra* note 155, at 29 with McDuffie, *supra* note 53 and GA. DEP'T OF CORR., STANDARD OPERATING PROCEDURES 511.01-.34.

²¹⁷ E-mail from Crystal Hendley, Att'y 1, Ga. Dep't of Corr. Off. of Legal Servs., to Erin McGonigle, Law Student, Univ. Ga. Sch. of Law (Nov. 15, 2018, 08:59 EST) (on file with author); see also McDuffie, *supra* note 53 (“[The inmates] all sleep in one room upstairs

to save local communities the money and hassle of running their own fire station,²¹⁸ the IFP's purpose is not to make a financial profit from an industry in the prison, but rather, it is simply to provide fire protection and other essential services to the prison and its surrounding area.²¹⁹

g. Rule 100

Rule 100 states that institutional industries should preferably be operated directly by the prison administration rather than private contractors.²²⁰ Here, no evidence exists to suggest that the Program is run by any entity other than the Department. Thus, the IFP comports to this rule.

h. Rule 101

Similarly, the IFP is in accord with Rule 101, which relates to the safety precautions of the inmates.²²¹ Rule 101 requires the safety and health of inmates to mirror those of free workers.²²² In its policy section on fire services, the GDC touches on everything from personnel safety to occupational safety under a number of titles, including emergency incidents, protective clothing and equipment, and general fire station safety.²²³ These policies mirror those outlined in the Rules and Regulations of the GFSTC.²²⁴ Thus, the IFP complies with this rule.

i. Rule 102

Rule 102 relates to maximum daily and weekly working hours.²²⁵ The IFP's success in Rule 102, like in Rule 96, hinges on the number of working

in the fire station. The room has ten beds, bunk style. They even have the ability to cook their own meals in the kitchen.”)

²¹⁸ See McDuffie, *supra* note 53.

²¹⁹ GA. DEP'T OF CORR. STANDARD OPERATING PROCEDURES 511.01 (2018), <https://www.powerdms.com/public/GADOC/documents/105842>; see also GA. DEP'T. OF CORR., *supra* note 2.

²²⁰ Mandela Rules, *supra* note 155, at 29-30.

²²¹ *Id.* at 30.

²²² *Id.*

²²³ Compare GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES: FIRE SERVICES OPERATIONS, <http://www.dcor.state.ga.us/content/511-policy-fire-services> (last visited Sept. 30, 2019), with GA. FIREFIGHTER STANDARDS AND TRAINING COUNCIL, RULES & REGULATIONS (2016), <https://www.Gfstconline.org/index.php/files/download/ac39eca1d4f5c1>.

²²⁴ GA. FIREFIGHTER STANDARDS AND TRAINING COUNCIL, *supra* note 112.

²²⁵ Mandela Rules, *supra* note 155, at 30.

hours.²²⁶ The IFP also fails to meet Rule 102 because of its untamed structure. Nowhere in the Department's policies does it cap the maximum daily or weekly working hours of IFP inmates. Rather, as discussed previously, it only states that the inmates are required to work in twenty-four-hour shifts.²²⁷ There is no mention of one rest day a week or rest time for other activities which may aid in the treatment and rehabilitation of the prisoners. With these considerations, the IFP fails to meet Rule 102.

j. Rule 103

Rule 103 relates to pay and requires remuneration of the work of prisoners.²²⁸ Since the IFP does not compensate the inmates, the IFP fails Rule 103.²²⁹

B. Recommendations for Improving the Inmate Firefighter Program

After a thorough review of the IFP and analysis of applicable international materials, the IFP likely does not comport with Article 8 of the ICCPR and fails to pass a number of rules in the Mandela Rules. Repairing this Program to align with these materials is no small task. There must be serious legislative action from the Georgia legislature in addition to a reconsideration and restructuring of the Department's and the Georgia Firefighter Standards and Training Council's internal policies.

First, the Georgia Legislature (Legislature) must amend the Georgia Code to classify IFP inmates as employees under the Workers' Compensation Act so that these inmates may receive workers' compensation in the event that they are seriously injured in the course of their firefighter duties. Next, the Legislature must address what to do with uninsured members of the IFP. Currently, if an IFP inmate is injured in the course of duty, the inmate will be provided medical care and a bill that they are likely unable to pay.²³⁰ Since the Department does not compensate IFP inmates, and since the inmates provide essential services to their surrounding community, it should follow that the state provides for their medical care if an IFP inmate is injured.

Second, the Department should revamp its policies, devise a payment plan for IFP inmates, provide for maximum daily and weekly working hours, and provide time off. Since the IFP functions like a non-inmate firehouse, the hourly operations should allow the inmates time for rest. The Department

²²⁶ *Id.* at 29, 30.

²²⁷ GA. DEP'T OF CORR., *supra* note 5, at 511.04 (VI)(E).

²²⁸ Mandela Rules, *supra* note 155, at 30.

²²⁹ *Id.*

²³⁰ GA. CODE ANN. § 42-4-51 (b) (2019).

should also create a functioning record-keeping and retention plan. The Department was unable to provide basic information about hiring statistics for purposes of this Note, and although some of the Department's internal policies require some form of record-keeping, that is not actually happening. An updated record-keeping strategy would also help the Department confront reality, be accountable to researchers and policy-makers, and understand the true success rate of its Program. It would also allow them the opportunity to address areas of the IFP that need improvement. Lastly, the Department should create an employment strategy for outgoing inmates who wish to continue work as a firefighter in their community. This would involve building relationships with local fire departments and finding solutions to these employment pitfalls.

Finally, the Georgia Firefighter Standards and Training Council should work with the Department to relax requirements for outgoing IFP inmates in an effort to provide employment without the five-year waiting period. This removal would allow inmates to get to work faster and begin saving money for themselves and their families. The GSFTC should also consider replacing the discretionary clause contained in their hiring criteria with measurable criteria to assess potential employees. This would hopefully prevent former IFP inmates from getting rejected at the whim of those hiring new firefighters and require them to articulate meaningful reasons for rejecting a former IFP inmate.

If Georgia is truly a model for criminal justice reform, it should meet these changes with open arms. However, I doubt that the Legislature, the Department, or the GFSTC will be eager to make these changes, especially when it comes to remuneration, workers compensation, and health care. After all, the IFP saves local communities and the state overall money.²³¹ Why would they have any incentive to change it?

V. CONCLUSION

The Inmate Firefighter Program must make a number of changes in order to comport to the ICCPR and the Mandela Rules. If not for international compliance, the changes should at least be made to strengthen the statement that Georgia is a model for criminal justice reform.

²³¹ McDuffie, *supra* note 53.

APPENDIX

PRISON NAME	FIRE STATION LOCATION	AREAS SERVED	AVERAGE NUMBER OF CALLS PER YEAR	CERTIFICATIONS & AVAILABLE SERVICES
Lee Arrendale State Prison	Alto, Georgia (Hall County)	Habersham County	100	Firefighter 1, First Aid, Hazardous Materials, Crash Victim Extrication, Liquid Propane Gas Burns, High Angle Rescue, Emergency Medical Responder, and Response to Railroad Incidents
Georgia Diagnostic & Classification Prison	Jackson, Georgia (Butts County)	Butts County	350-400	Firefighter 1 and First Aid
Dodge State Prison	Chester, Georgia (Dodge County)	Bleckley, Dodge, and Laurens Counties; Cities of Chester and Cochran	125	Firefighter 1, First Aid, Hazardous Materials, Crash Victim Extrication, and Emergency Medical Responder
Georgia State Prison	Reidsville, Georgia (Tattnall County)	Tattnall and Toombs Counties	115	Firefighter 1, Emergency Medical Responder, Vehicle Extrication, Hazmat, and Rescue Specialists
Lee State Prison	Leesburg, Georgia (Lee County)	Lee County	230	Firefighter 1, First Aid, and Hazardous Materials Awareness and Operations
Montgomery State Prison	Mount Vernon, Georgia	Montgomery and	200	Firefighter 1, First Aid, Rescue Specialist, Crash Victim

	(Montgomery County)	Toombs Counties		Extrication, and Hazardous Materials Operations
Hays State Prison	Trion, Georgia (Chattooga County)	Chattooga County; Cities of Trion and Summer-ville	500	Firefighter 1, Firefighter 2, Hazmat Operations, Hazmat Awareness, Aerial & Pump Apparatus Driver/Operator, First Aid, Emergency Medical Responder, Crash Vehicle Extrication, Wildland Firefighter, Confined Space Rescue, Rope Rescue, Rescue Specialist, Pressurized Cylinder Fire Control, and Ladder Tower Operations
Long State Prison	Ludowici, Georgia (Long County)	Long and Wayne Counties; City of Jessup	100-125	Firefighter 1, Firefighter 2, First Aid, Crash Vehicle Extrication, Wildland Firefighter, Hazardous Materials Awareness, Rescue Specialists, Wildland Fire Behavior, Pressurized Container, Rescue Specialist, Emergency Response to Railroad Incidents, Firefighter Evaluator, Structural Fire Control, Emergency Vehicle Driver Training, and Vehicle Rollover Prevention
Walker State Prison	Rock Spring, Georgia (Walker County)	Walker County; Cities of LaFayette	140	Firefighter 1, First Aid, and Hazardous Materials Awareness and Operations

		& Fort Ogle- thorpe		
Telfair State Prison	Helena, Georgia (Telfair County)	Telfair and Wheeler Counties; Cities of Jackson- ville and McRae	125	Firefighter 1, First Aid, Crash Victim and Bus Extrication, Pressurized Con- tainer, Hazardous Materials, Rescue Specialist, and Emer- gency Response to Railroad Incidents
Hancock State Prison	Sparta, Georgia (Hancock County)	Hancock and Washing- ton Coun- ties; City of Sparta	30	Firefighter 1 and First Aid
Ware State Prison	Waycross, Georgia (Ware County)	Ware County; City of Waycross	150	Firefighter 1, Fire- fighter 2, First Aid, and Crash Victim Ex- trication
Johnson State Prison	Wrightsville, Georgia (John- son County)	Johnson, Washing- ton, and Emanuel Counties; City of Wrightsvi lle	125	Firefighter 1, First Aid, Crash Victim Extrication, Hazard- ous Materials, and Medical First Re- sponder
Calhoun State Prison	Morgan, Georgia (Calhoun County)	Calhoun County; City of Morgan	125	Firefighter 1, Rescue Specialist, Crash Vic- tim Extrication, First Aid, and Hazardous Materials
Macon State Prison	Oglethorpe, Georgia (Ma- con County)	Macon County; Cities of Monte- zuma, Ogle- thorpe,	200	Firefighter 1, Fire- fighter 2, First Aid, Hazardous Materials Awareness and Oper- ations, Fire Instructor, Firefighter Evaluator, Wildland Firefighter,

		Ideal, and Marshall- ville		and Fire & Life Safety Educator
Wilcox State Prison	Abbeville, Georgia (Wil- cox County)	Wilcox County	100	Firefighter 1, First Aid, Pressurized Con- tainer, Hazardous Materials Awareness, Bomb Awareness, Rescue Specialist, and Vehicle Extrica- tion
Autry State Prison	Pelham, Geor- gia (Mitchell County)	Mitchell County	300-350	Firefighter 1, Fire- fighter 2, First Aid, Hazardous Materials Awareness & Opera- tions, Structural Fire Control, Vehicle Ex- trication, Pressurized Container, Emer- gency Vehicle Driver Training, Highway Safety Training, Ve- hicle Rollover Pre- vention, and Account- ability Training
Dooly State Prison	Unadilla, Geor- gia (Dooly County)	Dooly County	260	Firefighter 1, First Aid, Hazardous Mate- rials Rescue Special- ist, Crash Victim Ex- trication, Structural Fire Fighting, Pres- surized Container, First Responder, and Emergency Response to Railroad Incidents
Smith State Prison	Glennville, Georgia (Tattnall County)	Tattnall and Long County; City of Glennville	TBD	TBD