

## **Addressing Sexual Abuse in U.S. Detention Facilities Just Detention International (JDI)**

### ***Key Recommendations<sup>1</sup> for the Ninth Session of the Working Group on the UPR Human Rights Council 1 - 12 November 2010 United States of America***

Prisons, jails, and other detention facilities across the U.S. maintain dangerous policies and practices that have resulted in widespread sexual violence and other abuses. In a study published in August 2010, the U.S. Department of Justice's Bureau of Justice Statistics (BJS) found that at least 88,500 adult inmates in U.S. facilities had been victimized at their current prison or jail during the preceding year – most of them by corrections staff.<sup>2</sup> In other words, 4.4 percent of inmates held in federal and state prisons and 3.1 percent of jail detainees experienced sexual abuse.<sup>3</sup> In a previous BJS report, a shocking 12 percent of detained youth also reported that they had experienced at least one instance of sexual abuse during the preceding year.<sup>4</sup> These numbers are mere snapshots, representing the individuals at a facility on the day of the survey; the total number of people abused in U.S. detention facilities every year is significantly higher.

Consistent with these alarming statistics, both the U.N. Committee Against Torture and the Human Rights Committee have identified sexual violence in detention as a serious problem in the U.S. Following their 2006 review of U.S. compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR), both committees commended the U.S. on the passage of the U.S. Prison Rape Elimination Act of 2003, while noting that more action was needed. The Committee Against Torture detailed concerns about the government's failure to prevent sexual abuse of gay and transgender inmates and the failure to investigate instances of prisoner rape in a prompt and transparent manner.<sup>5</sup> The Human Rights Committee expressed concern that male officers have full access to women's detention quarters.<sup>6</sup>

Exacerbating the problem of sexual abuse in detention, few U.S. jurisdictions empower an independent oversight entity to monitor their corrections and detention facilities. There is growing recognition internationally that prisons and jails must be transparent, and – in addition to having strong internal accountability mechanisms – must be open for external monitoring. The historical lack of transparency of U.S. detention systems has been a major contributing factor to human rights abuses, such as rape and other forms of sexual violence – precisely the kinds of abuses international monitoring systems are put in place to eliminate.

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<sup>1</sup> Adapted from Just Detention International's (JDI) *Submission to the United Nations Universal Periodic Review*, (United States of America, 2010), available on-line at <http://www.justdetention.org/pdf/JDI-UPR-report.pdf>.

<sup>2</sup> ALLEN J. BECK, PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2008-09 (2010).

<sup>3</sup> *Id.*

<sup>4</sup> ALLEN J. BECK, PAIGE M. HARRISON, & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008-09 (2010).

<sup>5</sup> Committee Against Torture, 36th Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/USA/CO/2, at ¶ 32, 34.

<sup>6</sup> Human Rights Committee, 87th Session, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, CCPR/C/USA/CO/3/Rev.1, at ¶ 33.

Just Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention. To ensure that the U.S. addresses sexual abuse behind bars and increases external oversight of its corrections and detention facilities, in compliance with its international human rights obligations, JDI makes the following recommendations:

Adopt strong binding standards to address prisoner rape: In keeping with the Committee Against Torture's recommendation that the U.S. put in place measures to prevent sexual violence in detention,<sup>7</sup> the U.S. should adopt without further delay the recommended national standards for the prevention, detection, response, and monitoring of sexual abuse in detention, as proposed by the National Prison Rape Elimination Commission (NPREC).<sup>8</sup> Among other measures, the NPREC standards require incident reviews, data collection, and independent audits as means to ensure internal accountability and external scrutiny.

Ratify the Optional Protocol to the Convention Against Torture (OPCAT): The OPCAT would provide urgently needed independent oversight of U.S. corrections and detention facilities. With its collaborative approach to monitoring, whereby international and domestic entities visit detention facilities and confidentially propose recommendations to prevent torture and ill treatment, the OPCAT would help ensure that the U.S. meets its obligations under the CAT.

Amend the Prison Litigation Reform Act (PLRA): U.S. prisoners are virtually barred from challenging conditions of confinement that violate their constitutional rights, due to the complex procedural requirements and substantive demands of the Prison Litigation Reform Act (PLRA). Among the most problematic requirements of the PLRA is that a "physical injury" must be established for damages to be awarded; shockingly, courts have found that some forms of sexual assault do not constitute a physical injury.<sup>9</sup> In accordance with the Committee Against Torture's recommendation to amend the PLRA,<sup>10</sup> the U.S. Congress should enact the *Prison Abuse Remedies Act of 2009*, H.R. 4335 (PARA), which would help restore the crucial oversight role played by the courts in addressing violations of the constitutional rights of inmates.

Permit Article 22 communications with the Committee Against Torture: The U.S. should recognize the competence of the Committee Against Torture to consider communications from or on behalf of detainees once they have exhausted available avenues of relief within the U.S. legal system. Permitting Article 22 communications – which would require the U.S. to report in writing the steps it has taken in response to individual communications to the Committee Against Torture – would help address abuses that often remain unresolved by the U.S. legal system.<sup>11</sup>

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<sup>7</sup> Committee Against Torture, 36th Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/USA/CO/2, at ¶ 32, 34; Human Rights Committee, 87th Session, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, CCPR/C/USA/CO/3/Rev.1, at ¶ 33.

<sup>8</sup> The NPREC was established pursuant to the Prison Rape Elimination Act of 2003 (PREA), a federal law which mandated the development of national binding standards to address sexual abuse in detention.

<sup>9</sup> 42 U.S.C. §1997e(e). See *Hancock v. Payne*, 2006 WL 21751 at \*1, 3 (S.D. Miss., Jan. 4, 2006) (holding plaintiffs' allegations of abuse, including that a staff member "sexually battered them by sodomy," were barred under §1997e(e).)

<sup>10</sup> Committee Against Torture, *supra* note 5, at ¶ 29.

<sup>11</sup> U.S. ratification of the First Optional Protocol to the ICCPR, which provides an individual complaint mechanism, would further improve domestic accountability.