



Just Detention International

Submission to the Inter-American Commission on Human Rights
Rapporteurship on the Rights of Persons Deprived of Liberty

*Promotion of the Principles and Best Practices on the Protection of Persons
Deprived of Liberty in the Americas Project*

June 21, 2010

I. Introduction

Just Detention International (JDI) appreciates the opportunity to submit this report to the Inter-American Commission on Human Rights' Rapporteurship on the Rights of Persons Deprived of Liberty for its *Promotion of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas Project*. The United States incarcerates more people than any other nation in the world, but facilities across the U.S. maintain dangerous policies and practices that have resulted in widespread sexual violence and other abuses. To make matters worse, few jurisdictions empower an independent entity to monitor their corrections facilities.

JDI is an international human rights organization that seeks to end sexual abuse in detention. JDI is the only U.S.-based organization exclusively dedicated to eliminating this type of violence. Specifically, JDI works to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse. All of JDI's efforts are guided by the expertise of men, women, and children who have endured sexual violence behind bars and who have been brave enough to share their experiences.¹

II. Sexual Abuse in U.S. Detention Facilities

Sexual violence is a pervasive problem in detention facilities throughout the U.S. According to the best available research, 20 percent of inmates in men's prisons are sexually abused at some point during their incarceration.² The rate for women's facilities varies dramatically from one prison to another, with one in four inmates being victimized at the worst institutions.³ In a 2007 survey of federal and state prisoners, the U.S. Department of Justice's Bureau of Justice Statistics (BJS) found that 4.5 percent (or 60,500) of the more than 1.3 million inmates held in federal and state prisons had been sexually abused at their current facility in the previous year alone.⁴ A 2008 BJS survey in county jails was just as troubling; nearly 25,000 jail detainees reported having been sexually abused at their current jail in the past six months.⁵ More recently, a survey of youth detained in juvenile facilities found that an alarming 12.1 percent – almost one in eight youth – reported sexual abuse at their current facility during the preceding year.⁶

The BJS data revealed disturbing trends. In all three studies, staff-on-inmate abuse was more prevalent than inmate-on-inmate abuse.⁷ Staff perpetrators were typically of the opposite sex from their victims, with female staff and male inmates constituting the greatest number of incidents.⁸ In contravention of accepted international human rights standards,⁹ detention facilities throughout the U.S. allow officials unfettered access to inmates of the opposite sex.

Even though custodial sexual misconduct is a crime in all 50 states,¹⁰ corrections staff members are rarely held responsible for the abuses they commit. In substantiated cases of staff-on-youth sexual abuse, only 39 percent of perpetrating officials in juvenile facilities were arrested and/or referred for prosecution, and 11 percent were allowed to keep their jobs.¹¹ In county jails, 56 percent of confirmed perpetrators were arrested and/or referred for prosecution and 23 percent were allowed to keep their jobs.¹²

Even when they are not the perpetrators, corrections staff frequently encourage or acquiesce in inmate-on-inmate sexual abuse. Some officials have intentionally housed vulnerable inmates with known predators, and have allowed sexual violence to be used as a tool to punish inmates and/or to further marginalize vulnerable individuals. While anyone can become the victim of sexual violence, inmates who are gay, transgender, young, mentally ill, or incarcerated for the first time and for non-violent offenses are especially likely to be victimized.¹³

Once an inmate has been assaulted, she or he can be abused relentlessly, sometimes for long periods of time, and marked as fair game for attacks by others. In some cases, prisoners are treated like the perpetrators' property and sold within the facility. One study found that nearly 75 percent of prisoner rape survivors in men's facilities and 57 percent of survivors in women's facilities were sexually abused more than once, and 30 percent of all prisoner rape survivors endured six or more assaults.¹⁴

Victims of prisoner rape are left beaten and bloodied, contract HIV and other sexually transmitted diseases, and suffer severe psychological harm. Little to no access to adequate medical and mental health services in the aftermath of an assault causes many prisoner rape survivors to develop serious long-term problems, like post-traumatic stress disorder (PTSD), depression, and alcohol and other drug addictions.¹⁵ Moreover, the high rates of HIV and other sexually transmitted diseases in detention place incarcerated survivors at great risk for infection.¹⁶ Once released – and 95 percent of inmates do eventually return home¹⁷ – survivors bring their emotional trauma and medical conditions back to their communities.

In prisons and jails throughout the U.S., officials often fail to take simple preventive measures to protect inmates from sexual abuse. Due to the risk of retaliation and the often well-founded fear that reporting sexual abuse is futile or dangerous, many survivors suffer in silence. Those inmates who do file a complaint often find that their reports are ignored, that they are denied assistance, or that they are subjected to punitive conditions such as isolation.

III. Legal and Institutional Framework

A. U.S. Law

The sexual assault of prisoners, whether perpetrated by corrections officials or by inmates with the acquiescence of corrections staff, is a violation of U.S. constitutional, civil, and criminal laws. The U.S. Supreme Court has recognized that prisoner rape can amount to cruel and unusual punishment, in violation of the Eighth Amendment of the U.S. Constitution.¹⁸ Moreover, every state has rape and custodial sexual misconduct laws that criminalize this form of abuse.¹⁹

In a promising development, the U.S. passed the Prison Rape Elimination Act (PREA) in 2003, which calls for a “zero-tolerance” standard for rape in U.S. detention facilities, the gathering of information about the problem, and the development of binding national standards to guide corrections officials in how to prevent, detect, and respond to sexual violence in their facilities.²⁰

On June 23, 2009, the bipartisan National Prison Rape Elimination Commission released recommended national standards, in accordance with PREA.²¹ The standards address core management issues affecting inmate safety, such as inmate screening, staff training and inmate education, investigations, and the provision of medical and mental health care in the aftermath of a sexual assault. By law, the U.S. Attorney General has until June 23, 2010 (one year after the Commission's release of its recommended standards) to publish a final rule adopting national standards.²² Once adopted, the standards will be immediately binding on federal facilities; states will have one year to certify their compliance or risk losing five percent of their federal corrections-related funding.

Although the Commission's standards are the product of several years of research and extensive consultation with corrections professionals, researchers, advocates, and survivors of sexual abuse in detention, opponents to PREA are actively working to water them down, claiming that even though they are legally obliged to protect inmates in their charge, it is too costly to take these basic measures. In addition to trying to assess the implementation costs, without a corresponding analysis of the benefits, the Attorney General has acknowledged that he will need an extension, perhaps by as much as a year, before issuing his final rule.

B. International Law

The right of detainees to be free from sexual abuse is further protected by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)²³ and the International Covenant on Civil and Political Rights (ICCPR),²⁴ both of which the U.S. has ratified, and the American Convention on Human Rights,²⁵ which the U.S. has signed.

In 2006, the Committee Against Torture and the Human Rights Committee reviewed U.S. compliance with the CAT and the ICCPR respectively, and each identified sexual violence as a serious problem.²⁶ Each committee commended the U.S. on the enactment of PREA, while noting the need to improve protections for vulnerable inmates.²⁷ In particular, the Human Rights Committee expressed concern that male officers continue to have full access to women's detention quarters.²⁸ The CAT Committee pointed to the failure to prevent sexual abuse of gay and transgender inmates, to separate consistently detained children from adult inmates, and to investigate instances of prisoner rape in a prompt and transparent manner.²⁹ The full implementation of PREA, particularly the ratification of binding national standards, would address many of the concerns highlighted by the CAT Committee and the Human Rights Committee.

IV. Judicial Remedies and External Oversight

There is growing recognition internationally that prisons and jails must be transparent, and – in addition to establishing strong internal accountability mechanisms – must be open for external monitoring. In the corrections context, few U.S. jurisdictions empower an external entity, such as an Inspector General or ombudsperson, to respond to inmate complaints and/or to audit facilities.³⁰ Private accreditation organizations, such as the American Correctional Association, have their own standards but only review prisons at the request of the corrections administrators and charge a fee for this service.

The 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 – the kinds of abuses that international monitoring systems are put in place to eliminate.³¹ Without external monitoring, officials who participate or acquiesce in sexual violence behind bars wield tremendous unchecked power over detainees.³² Even the most well-intentioned officials often cannot identify problems within their own systems – shortcomings that a neutral outsider frequently is able to recognize – and may not be aware of best practices from other jurisdictions.

Traditionally, the U.S. has relied on civil rights litigation as the primary means of external oversight – allowing those whose rights have been violated to seek redress and demand reforms in court. However, legislation targeting prisoner civil rights cases has essentially eroded this avenue for accountability. Prisoner rape survivors and other inmates whose rights have been violated are virtually barred from the courthouse, due to the complex procedural requirements and substantive demands of the Prison Litigation Reform Act (PLRA). According to the PLRA, prisoner rape survivors and other aggrieved inmates who were unable to file a grievance within deadlines imposed by their facilities cannot have a judge review the merits of their claims.³³ The PLRA also requires a “physical injury”³⁴ in order for damages to be awarded – and, shockingly, courts have found that some forms of sexual assault do not constitute a physical injury.³⁵

The U.S. has declined to participate in two mechanisms established by the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) that would significantly enhance external oversight of detention facilities. In particular, the U.S. has not signed the Optional Protocol (OPCAT),³⁶ and refuses to recognize Article 22 of the CAT.

The OPCAT does not impose new obligations on signatory states, but creates a system for monitoring compliance with the requirements already in place through the CAT. It also establishes a collaborative approach to monitoring whereby international and domestic entities visit detention facilities and confidentially propose recommendations to prevent torture, without the public shaming component common in human rights instruments. Specifically, the OPCAT requires signatory governments to establish an independent, national body that conducts regular visits to prisons and other detention settings with the aim of preventing torture and ill-treatment.³⁷ The OPCAT would complement the oversight provision in the proposed PREA standards, which require that every detention facility be independently audited for compliance at least every three years, and that the auditors’ findings be made public.³⁸

In addition, the U.S. should recognize the competence of the CAT Committee to consider communications from or on behalf of detainees under Article 22 of the CAT. Thus far, the U.S. has refused to permit victims of abuse to communicate with the CAT Committee once they have exhausted available avenues of relief within the U.S. legal system. As explained above, the PLRA bars many prisoner rape survivors from bringing their claims before a court. 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 CAT Committee – would help address abuse that often remains unresolved by the U.S. legal system.

V. *Recommendations*

In light of the serious human rights violations addressed above, JDI makes the following

recommendations to the U.S. government:

- Adopt swiftly and fully the national standards for addressing sexual abuse in detention, as recommended by the National Prison Rape Elimination Commission;
- Fulfill its international treaty obligations by complying fully with the mandates of the Convention Against Torture, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights;
- Ratify the Optional Protocol to the Convention Against Torture;
- Permit Article 22 communications with the Committee Against Torture; and,
- Reform the Prison Litigation Reform Act.

¹ To learn more about JDI, and to review testimonies from survivors of sexual abuse in U.S. detention facilities, go to <http://www.justdetention.org>.

² Cindy Struckman-Johnson *et al.*, *Sexual Coercion Reported by Men and Women in Prison*, 33 J. Sex Res. 67 (1996); *see also* Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men*, 80 Prison J. 379, 383 (2000).

³ Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Reported by Women in Three Midwestern Prisons*, 39 J. Sex Res. 217, 220 (2002).

⁴ ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN STATE AND FEDERAL PRISONS REPORTED BY INMATES, 2007* (2007) [hereinafter “PRISON SURVEY”].

⁵ ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN LOCAL JAILS REPORTED BY INMATES, 2007* (2008) [hereinafter “JAIL SURVEY”].

⁶ ALLEN J. BECK, PAIGE M. HARRISON & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008-09* (2010) [hereinafter “JUVENILE SURVEY”].

⁷ PRISON SURVEY, *supra* note 4, at 1; JAIL SURVEY, *supra* note 5 at 2, Table 1; JUVENILE SURVEY, *supra* note 6, at 3, Table 1.

⁸ JAIL SURVEY, *supra* note 5 at 7; JUVENILE SURVEY, *supra* note 6, at 13. The Prison Survey did not provide this level of detail.

⁹ See Standard Minimum Rules for the Treatment of Prisoners, ECOSOC Res. 2076 (LXII), P 95, U.N. Doc. E/RES/2076 ¶ 53 (May 13, 1977).

¹⁰ *See infra* note 20.

¹¹ ALLEN J. BECK, DEVON V. ADAMS & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, *SEXUAL VIOLENCE REPORTED BY JUVENILE CORRECTIONAL AUTHORITIES, 2005-06* 8 (2008).

¹² ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, *SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006* 8 (2007).

¹³ See NATIONAL PRISON RAPE ELIMINATION COMMISSION, *FINAL REPORT 72-74*, 140-48 (2009). For more information about specific vulnerable populations, *see* Just Detention International, *Fact Sheet, LGBTQ Detainees Chief Targets for Sexual Abuse in Detention* (2009), available at http://www.justdetention.org/en/factsheets/JD_Fact_Sheet_LGBTQ_vD.pdf (last visited June 21, 2010); Just Detention International, *Fact Sheet, Incarcerated Youth at Extreme Risk of Sexual Abuse* (2009), available at <http://www.justdetention.org/en/factsheets/JDIFactSheetYouth.pdf> (last visited June 21, 2010).

¹⁴ *See* Cindy Struckman-Johnson & David Struckman-Johnson, *A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison*, 21 J. of Interpersonal Violence 1531, 1599 (2006).

¹⁵ For more information about the mental health consequences of prisoner rape, *see* Just Detention International, *Fact Sheet, Mental Health Consequences of Sexual Abuse in Detention* (2009), available at <http://www.justdetention.org/en/factsheets/JDIFactSheetYouth.pdf> (last visited June 21, 2010).

¹⁶ *See, e.g.*, Susan Okie, *Sex, Drugs, Prisons, and HIV*, 356 *New Eng. J. Med.* 105 (2007) (finding that, in 2004, the HIV prevalence rate inside U.S. prisons was more than four times higher than in society overall); Scott A. Allen *et*

al., *Hepatitis C Among Offenders—Correctional Challenge and Public Health Opportunity*, 67 Fed. Probation 22 (2003) (finding that Hepatitis C rates are 8 to 20 times higher in prisons than on the outside, with 12 to 35 percent of prison cases involving chronic infection); Centers for Disease Control & Prevention, U.S. Dep’t Health & Hum. Svcs., *Sexually Transmitted Disease Surveillance 2007* at 89 (2008). For more information about the public health impact of sexual abuse in detention, see Just Detention International, Fact Sheet, Sexual Abuse in Detention is a Public Health Issue (2009), available on-line at http://www.justdetention.org/en/factsheets/Public_Health_vPrint.pdf (last viewed June 21, 2010).

¹⁷ TIMOTHY HUGHES & DORIS JAMES WILSON, BUREAU OF JUSTICE STATISTICS, REENTRY TRENDS IN THE UNITED STATES (2003).

¹⁸ *Farmer v. Brennan*, 511 U.S. 825 (1994).

¹⁹ For a 50-state survey of laws criminalizing custodial sexual misconduct, go to: <http://www.wcl.american.edu/nic/responses.cfm> (last viewed June 14, 2010).

²⁰ *The Prison Rape Elimination Act of 2003*, 42 U.S.C. §15601, *et seq.* For more information about PREA, see Just Detention International, Fact Sheet, The Prison Rape Elimination Act (2009), available at <http://www.justdetention.org/en/factsheets/JDIFactSheetYouth.pdf> (last visited June 21, 2010).

²¹ NATIONAL PRISON RAPE ELIMINATION COMMISSION, STANDARDS FOR THE PREVENTION, DETECTION, RESPONSE, AND MONITORING OF SEXUAL ABUSE IN ADULT PRISONS AND JAILS (2009). The Commission released four sets of standards – one each for adult prisons and jails, lockups, juvenile facilities, and community corrections – as well as a supplement for immigration detention. Each set of standards is available on-line at <http://www.cybercemetery.unt.edu/archive/nprec/20090820154816/http://nprec.us/publication> (last visited June 14, 2010).

²² 42 U.S.C. § 15607(a)(1).

²³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”), G.A. Res.39/46, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987 and ratified by the U.S. Oct. 14, 1994)

²⁴ International Covenant on Civil and Political Rights (“ICCPR”), adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976 and ratified by the U.S. June 8, 1992).

²⁵ American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978 and signed by the U.S. June 1, 1977).

²⁶ The concerns about sexual violence raised by the Committee Against Torture are detailed further in a “shadow report” that Just Detention International submitted to the Committee, under its prior name Stop Prisoner Rape. See Stop Prisoner Rape, In the Shadows: Sexual Violence in U.S. Detention Facilities (2006).

²⁷ Committee Against Torture, 36th Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/USA/CO/2, at ¶ 9; 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.

²⁸ Human Rights Committee, *supra* note 27, at ¶ 33.

²⁹ Committee Against Torture, *supra* note 27, at ¶¶ 32, 34.

³⁰ American Bar Association, Criminal Justice Section, Report to the House of Delegates 2-3 (submitted by Stephen J. Salzborg Aug 2008), available at <http://www.abanet.org/crimjust/policy/am08104b.pdf> (last visited June 14, 2010).

³¹ For example, in 2007, a scandal at the Texas Youth Commission uncovered more than 1,000 cases of sexual abuse of teen detainees. Subsequent external investigations revealed that hundreds of these complaints were ignored or egregiously covered up, sometimes by high-ranking officials. See, David Kaiser & Lovisa Stannow, NEW YORK REVIEW OF BOOKS, *The Rape of American Prisoners*, March 11, 2010, available at <http://www.nybooks.com/articles/archives/2010/mar/11/the-rape-of-american-prisoners/> (last visited June 14, 2010).

³² An incident that took place in May 2010 at the T. Don Hutto Residential Center, an immigration detention facility in Texas, highlights the vital need for sensible corrections practices paired with external oversight. A Department of Homeland Security investigation revealed that a male officer at the Hutto facility transported female detainees by himself – a breach of Department protocol – and sexually abused several detainees. See William Fisher, INTERPRESS NEWS SERVICE, *Female Migrants Charge Sexual Abuse In Detention*, June 7, 2010, available at <http://www.globalissues.org/news/2010/06/07/5906> (last viewed June 14, 2010).

³³ 42 U.S.C. §1997e(a). For more information about the Prison Litigation Reform Act, see Just Detention International, Fact Sheet, The Prison Litigation Reform Act Obstructs Justice for Survivors of Sexual Abuse in Detention (2009), available at http://www.justdetention.org/en/factsheets/Prison_Litigation_Reform_Act.pdf (last visited June 21, 2010).

³⁴ 42 U.S.C. §1997e(e).

³⁵ See, e.g., *Hancock v. Payne*, 2006 WL 21751 at *1, 3 (S.D. Miss. January 4, 2006) (holding that prisoners' allegations that a staff member "sexually abused them by sodomy" did not qualify as a physical injury); *Moya v. City of Albuquerque*, No. 96-1257 DJS/RLP, Mem. Op. and Order (D.N.M. Nov. 17, 1997) (holding that male officers' strip-searches of women prisoners did not result in physical injuries, even where one woman allegedly attempted suicide due to the trauma of the search).

³⁶ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT"), G.A. Res. 57/199, U.N. Doc. A/RES/57/199 (Dec. 18, 2002). See also Just Detention International, Fact Sheet, U.N. Optional Protocol to the Convention Against Torture (OPCAT) (2009), available at http://www.justdetention.org/en/factsheets/JD_Fact_Sheet_OP_CAT_vF.pdf (last visited June 21, 2010).

³⁷ OPCAT art. 17.

³⁸ NATIONAL PRISON RAPE ELIMINATION COMMISSION, *supra* note 21, at Standard AU-1.