



*Sexual Abuse Behind Bars: A Human Rights Crisis in  
New York Detention Facilities*

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Prepared for the New York UPR Human Rights Consultation  
Criminal Justice Panel

February 26, 2010

Good afternoon, and thank you to the U.S. State Department and the other agencies represented here today for convening this consultation in connection with the United States' participation in the UN Human Rights Council's Universal Periodic Review. I am a Program Director with Just Detention International (JDI).

Formerly known as Stop Prisoner Rape, JDI is an international human rights organization, and the only U.S. organization exclusively dedicated to ending sexual violence in detention. All of JDI's work takes place within the framework of international human rights laws and norms. Specifically, we work 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 these 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 with us.

## **I. Sexual Abuse in U.S. Detention Facilities**

Sexual abuse behind bars is a widespread human rights crisis in prisons, jails, and juvenile facilities across 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.<sup>1</sup> The rate for women's facilities varies dramatically from one prison to another, with one in four inmates being victimized at the worst institutions.<sup>2</sup>

In a 2007 survey of prisoners across the country, 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 in the previous

year alone.<sup>3</sup> A BJS survey in county jails was just as troubling; nearly 25,000 jail detainees reported having been sexually abused in the past six months.<sup>4</sup>

In its recent survey of youth in juvenile detention, the BJS found that a shocking 12.1 percent—almost one in eight—of youth reported being abused at their current facility in the past year. In the worst facilities, the rate was as high as 30 percent.<sup>5</sup> A 2005 BJS study of sexual abuse reported in adult prisons and jails found that young inmates were at heightened risk for abuse in these facilities as well.<sup>6</sup> Although the Juvenile Justice and Delinquency Prevention Act prohibits detaining juveniles with adults except in very limited circumstances,<sup>7</sup> this protection does not apply to youth who are prosecuted as adults.<sup>8</sup>

## **II. Focus on Sexual Abuse in New York Corrections Facilities**

Sexual abuse of prisoners—a human rights crisis in facilities across the country—pervades New York detention facilities as well. For example, two of the five New York state prisons included in the 2007 BJS survey of inmates in state and federal facilities had rates of abuse substantially higher than the national rate. At Wende Correctional Facility, in Erie County, 6.4 percent of inmates surveyed reported having experienced sexual abuse within the preceding 12 months. At Great Meadow Correctional Facility in Comstock, the rate was 11.8 percent.<sup>9</sup>

Very high rates of abuse have also been documented in New York jails: at both the Franklin County Jail and New York City's Rose M. Singer Center, more than seven percent of jailed inmates surveyed as part of the BJS' 2007 national survey reported that they had experienced sexual abuse within the preceding six months, compared with a national rate of more than three percent.<sup>10</sup>

As in other parts of the country, gay and transgender inmates in New York corrections facilities are at a disproportionately high risk of sexual abuse. Take the case of a transgender woman whom I shall refer to using her initials, “D.W.” From May through October 2008, while incarcerated at the Shawangunk Correctional Facility, a men’s prison in Ulster County, D.W. experienced ongoing sexual harassment and abuse at the hands of another inmate.<sup>11</sup> Because of her assailant’s threats, D.W. feared for her safety and felt that it was too dangerous to report the abuse.

When D.W. eventually decided she had no choice but to report the abuse, she hoped that corrections officials would immediately take steps to ensure her safety, provide treatment for the physical injuries she had suffered during the most recent sexual assault, and conduct a thorough investigation. Instead, in violation of agency policy, D.W. was charged with a disciplinary infraction for having engaged in a sexual act, based on the investigating officer’s flawed impression that the sexual conduct between D.W. and the assailant was “more consensual than it was...rape.”<sup>12</sup>

As we hear in letters Just Detention International receives from inmates around the nation every week, incidents like these are far from rare. Corrections officials often conflate homosexuality and transgender identity with consent to rape, contributing to an environment in which sexual abuse thrives, and in which vulnerable inmates are left with nowhere to turn.

As evidenced by the *Amador* case, a class action lawsuit brought on behalf of women inmates who were sexually abused by male staff while incarcerated in New York prisons, such abuse by corrections officials continues to be rampant in the state’s detention facilities.<sup>13</sup> Moreover, that case underscores that even when inmates have the

courage to come forward—including when multiple instances of abuse by the same official have been reported—it is rare that appropriate administrative and criminal sanctions are imposed. One of the defendants in *Amador* had multiple prior complaints lodged against him year after year; only when a woman inmate had sperm on her shirt after being forced to perform oral sex was he terminated from employment and criminal charges finally brought.<sup>14</sup>

### **III. The U.S.’ Obligation to Address Sexual Abuse Behind Bars**

The sexual assault of prisoners, whether perpetrated by corrections officials or by other inmates, amounts to torture under international law. Torture is prohibited by Article 5 of the Universal Declaration of Human Rights, along with international conventions and treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>15</sup> and the International Covenant on Civil and Political Rights (ICCPR),<sup>16</sup> both of which have been ratified by the U.S.

In 2006, the CAT Committee and the Human Rights Committee reviewed U.S. compliance with the CAT and the ICCPR respectively. Both committees recognize sexual violence in detention as part of their mandate and have identified it as a serious problem in the U.S. The CAT Committee commended certain U.S. initiatives, including the enactment of the Prison Rape Elimination Act of 2003, which calls for a “zero-tolerance” standard for rape in U.S. detention facilities.<sup>17</sup> However, the Committee detailed numerous concerns with U.S. policy and practice, including the 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>18</sup>

The Human Rights Committee also commended the adoption of PREA, but expressed concern that male officers continue to have full access to women's detention quarters.<sup>19</sup> The Committee also noted its concern about widespread hate crimes committed against lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, including by law enforcement.<sup>20</sup>

#### **IV. Recommendations**

Rape is not an inevitable part of prison life. On the contrary, when effective policies are in place and fully implemented, sexual violence can be prevented. In December 2010, the human rights record of the U.S. will be reviewed during a Universal Periodic Review (UPR), at which point the Office of the High Commissioner on Human Rights will call upon the U.S. to specify what actions it has taken to improve the human rights situation and to overcome challenges to the universal enjoyment of human rights. With the UPR examination approaching, JDI calls on the U.S. to fulfill its international human rights obligations by taking the following measures:

- Ratify the Optional Protocol to the Convention Against Torture, a critical tool in improving external oversight of detention facilities.
- Implement fully the Convention Against Torture (CAT) and the ICCPR, including by permitting Article 22 communications under the CAT.
- Adopt swiftly the standards for preventing, detecting, responding to and monitoring sexual abuse behind bars developed pursuant to the Prison Rape Elimination Act of 2003.

These actions will help restore U.S. standing as a human rights leader and significantly improve safety for the incarcerated adults and children at risk of sexual violence in New York and around the nation.

Thank you.

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<sup>1</sup> 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).

<sup>2</sup> Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Reported by Women in Three Midwestern Prison*, 39 J. Sex Res. 217, 220 (2002).

<sup>3</sup> ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN STATE AND FEDERAL PRISONS REPORTED BY INMATES, 2007* (2007).

<sup>4</sup> ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN LOCAL JAILS REPORTED BY INMATES, 2007* (2008).

<sup>5</sup> ALLEN BECK, PAIGE HARRISON & PAUL GUERINO, BUREAU OF JUSTICE STATISTICS, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH 2008-2009* 1 (2010).

<sup>6</sup> ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, *SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2005* (2006).

<sup>7</sup> 42 U.S.C. § 5633 (a) (13), (14). State delinquency agencies that fail to comply with this and other requirements within the Juvenile Justice and Delinquency Prevention Act will lose their federal funding.

<sup>8</sup> Three states consider 16 year olds to be adults as a matter of law; 10 states define 17 year olds as adults, and all states have provisions within their criminal justice laws allowing for youth who commit certain crimes and/or have prior contacts with the juvenile and criminal justice systems to be treated as adults. *See* Christopher Hartney, National Council on Crime and Delinquency, Fact Sheet, Youth Under Age 18 in the Adult Criminal Justice System (2006).

<sup>9</sup> *Supra*, note 3 at p. 18.

<sup>10</sup> *Supra*, note 4 at p. 2.

<sup>11</sup> Petitioner's Memorandum of Law in Support of Petition for Relief Pursuant to CPLR Article 78 at 2, *In the Matter of D.W. v. Brian Fischer*, New York State Department of Correctional Services Commissioner (2009) (No. 3127-09).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> Sexual abuse against youth in New York juvenile facilities has also been well-documented. *See* HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION (ACLU), *CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK'S JUVENILES PRISONS FOR GIRLS* 63-64 (2005).

<sup>14</sup> *Amador, et al., v. Andrews, et al.*, 03-Civ.-0650 (KTD) (GWG) (S.D.N.Y. 2003).

<sup>15</sup> 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).

<sup>16</sup> International Covenant on Civil and Political Rights, 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).

<sup>17</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 ¶¶ 9, 32 (citing the Prison Rape Elimination Act, 42 U.S.C. §15601, *et seq.*).

<sup>18</sup> *Id.* The concerns about sexual violence raised by the Committee Against Torture are detailed further in a "shadow report" that Just Detention International (then called Stop Prisoner Rape) submitted to the Committee. *See* Stop Prisoner Rape, *In the Shadows: Sexual Violence in U.S. Detention Facilities* (2006).

<sup>19</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.

<sup>20</sup> *Id.* at ¶ 25. To learn more about the specific dangers of LGBTQ detainees, *see* Just Detention International, Fact Sheet, LGBTQ Detainees Chief Targets for Sexual Abuse in Detention (2009).