



## U.N. Optional Protocol to the Convention Against Torture

**T**HE PROTECTION of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention.

— Preamble, *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

**T**HERE IS GROWING recognition internationally that prisons and jails must be transparent, have strong internal accountability mechanisms, and be open for external monitoring. Compared to Canada, the European Union, and South Africa, for example, the U.S. is lagging dangerously behind in allowing the vigorous scrutiny needed to protect inmates from abuse. In particular, the U.S. has not signed the Optional Protocol to the Convention Against Torture (OPCAT),<sup>1</sup> which requires establishing an independent, national body that conducts regular visits to prisons and other corrections settings with the aim of preventing torture.

Unlike other international treaties,<sup>2</sup> the OPCAT focuses on preventing torture, rather than responding to abuses that have occurred.<sup>3</sup> It also establishes a collaborative approach to monitoring whereby international and domestic entities visit detention facilities and confidentially propose recommendations to better prevent torture, without the public shaming component common in human rights instruments.<sup>4</sup>

The OPCAT does not impose new obligations on ratifying states, but instead creates a system for monitoring the requirements already in place through the Convention Against Torture. By ratifying the OPCAT, the U.S. would give consent for the U.N. Subcommittee on Prevention of Torture (SPT) and a national preventive mechanism (NPM) to conduct regular, periodic visits to places of detention. In

addition to inspecting facilities, these visitors have the right to interview any detainee, with or without witnesses, and have access to records, rules, and other relevant documents.<sup>5</sup>

The SPT is composed of ten experts from a variety of professional backgrounds and nationalities who conduct scheduled visits to detention facilities and provide assistance and advice in developing each NPM.<sup>6</sup> The NPM is established by the signatory and can be designed in whatever manner best suits the needs and capacity of that country, so long as it is independent and capable of conducting regular visits and providing recommendations.<sup>7</sup> Unlike the SPT, the NPM is also empowered to propose or comment on draft legislation.<sup>8</sup>

The federalist structure of the United States – whereby federal, state, and local jurisdictions each retain governmental powers and run their own detention facilities – creates unique challenges to establishing an NPM. However, the OPCAT provides for flexibility in how the NPM is developed, including relying on human rights commissions, ombudspersons, non-governmental organizations, or composite mechanisms combining elements of such entities.<sup>9</sup> Several countries with federalist or decentralized governmental structures, such as Mexico, the United Kingdom, South Africa, Argentina, and Switzerland have already ratified or signed the OPCAT.<sup>10</sup>

Ratifying the OPCAT, and establishing an NPM to provide domestic oversight, would help restore the moral authority of

the U.S. and constitute a key step forward in the effort to end sexual violence and other forms of abuse in U.S. detention facilities. Over the past few years, the U.S. has come under increased scrutiny for its mistreatment of detainees abroad, including the sexual degradation of inmates.<sup>11</sup> Sadly, sexual violence remains rampant in domestic facilities – and incarcerated survivors rarely have safe options for reporting their abuse.

Sexual violence and other forms of torture in U.S. detention are able to flourish in large part because detention facilities are subject to little to no external oversight. While some jurisdictions provide for external monitoring

by an Inspector General or ombudsperson, in most systems complaints of abuse and policy reviews are handled internally.<sup>12</sup> As a result, even in the most dangerous facilities, inmate accounts of abuse are habitually ignored and officers are encouraged to retain the status quo.

Ratification of the OPCAT would improve prison transparency and accountability, both of which are significantly lacking and urgently needed in U.S. detention facilities. External monitoring by an international entity and a mandated domestic body would make facilities safer for detainees and staff alike by preventing sexual and other forms of abuse.

## Endnotes

1 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).

2 The U.S. is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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), and the 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). To learn more about these treaties and their relevance to sexual violence in detention, see Just Detention International, Fact Sheet, Sexual Violence in Detention is Torture (2009).

3 INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS AND THE ASSOCIATION FOR THE PREVENTION OF TORTURE, OPTIONAL PROTOCOL TO THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT: A MANUAL FOR PREVENTION 28 (2005) (hereinafter “OPCAT MANUAL”).

4 *Id.*

5 OPCAT, Arts. 14, 20.

6 OPCAT, Arts. 5, 11.

7 OPCAT, Arts. 17, 18.

8 OPCAT, Art. 19(c).

9 OPCAT MANUAL, *supra* note 3, at 133.

10 Association for the Prevention of Torture, Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in Federal and other Decentralized States, Discussion Paper for the International Seminar “The Optional Protocol to the UN Convention against Torture and Federal States: Challenges and Possible Solutions” 3 (2008).

11 See, e.g., Bob Woodward, *Detainee Tortured, Says U.S. Official*, WASH. POST, Jan. 14, 2009, at A1; Eric Lichtblau & Scott Shane, *Report Details Dissent on Guantánamo Tactics*, N.Y. TIMES, May 21, 2008; Seymour Hirsch, *Torture at Abu Ghraib*, THE NEW YORKER, May 10, 2004.

12 To learn more about the need for external oversight generally, see Just Detention International, Fact Sheet, The Need for Prison Oversight (2009).

## About Just Detention International (JDI)

**J**ust Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention.

All of JDI’s work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture.

JDI has three core goals for its 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.

JDI is concerned about the safety and well-being of all detainees, including those held in adult prisons and jails, juvenile facilities, immigration detention centers, and police lock-ups, whether run by government agencies or by private corporations on behalf of the government.

When the government takes away someone’s freedom, it incurs a responsibility to protect that person’s safety. All inmates have the right to be treated with dignity. No matter what crime someone has committed, sexual violence must never be part of the penalty.

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