



Prisoner Rape is Torture Under International Law

RAPE AND other forms of sexual assault in detention are a particularly despicable violation of the inherent dignity and right to physical integrity of every human being; and accordingly constitute an act of torture.¹

— United Nations
Special Rapporteur on Torture

The sexual assault of prisoners, whether perpetrated by corrections officials or by other inmates, amounts to torture under international law. Torture is prohibited by international conventions and treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)² and the International Covenant on Civil and Political Rights (ICCPR),³ both of which have been ratified by the United States.

The ICCPR provides that all people, including prisoners, have a broad range of civil and political rights, including that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁴ The CAT focuses specifically on this right and requires ratifying nations to take action to prevent acts of torture within their jurisdictions.

The CAT also provides a definition of torture:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁵

Sexual violence behind bars meets each element of this definition. Victims of prisoner rape are left beaten and bloodied, contract HIV and other sexually transmitted diseases,⁶ and suffer severe psychological harm.⁷ Sexual violence has been used as a tool to punish inmates for misbehavior, or to further marginalize vulnerable populations.⁸ Even when corrections staff are not the perpetrators, some officials have set up inmate-on-inmate rape by intentionally housing vulnerable inmates with known predators. Furthermore, the failure of corrections officials to take appropriate steps to prevent and address prisoner rape amounts to state acquiescence in this type of abuse.

To ensure that the right to be free from torture is protected, both the ICCPR and the CAT have international bodies that monitor their implementation in signatory states. The CAT is monitored by the U.N. Committee Against Torture (the CAT Committee), and the ICCPR is monitored by the Human Rights Committee. 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.⁹ 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.¹⁰

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.¹¹ The Committee also noted its concern about widespread hate crimes committed against lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, including by law enforcement.¹²

The CAT Committee and the Human Rights Committee monitor compliance by relying on reports from the signatory countries and from advocacy groups that prepare ‘shadow reports.’¹³ To allow for more extensive prison

oversight, an Optional Protocol to the Convention Against Torture (OPCAT) was developed. The U.S. has not yet signed the OPCAT, which establishes a system of regular visits undertaken by international and national bodies to places of detention in order to prevent torture and other forms of ill-treatment.¹⁴ As sexual violence in detention rarely is reported, the additional oversight provided through the OPCAT is urgently needed in the U.S., to ensure a zero-tolerance approach to prisoner rape.¹⁵

The torture of inmates in U.S. detention facilities through sexual assault has long been allowed to occur with impunity. JDI calls on the U.S. to comply with the mandates of the CAT and the ICCPR, and to restore its standing as a human rights leader by ratifying the OPCAT.

Endnotes

1 *Summary Record of the 21st meeting*, U.N. ESCOR, Comm’n Hum. Rts, 48th Sess., ¶ 35, U.N. Doc. E/CN.4/1992/SR.21 (1992).

2 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).

3 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).

4 ICCPR, Art. 7.

5 Convention Against Torture, Art. 1.

6 For more information on the link between prisoner rape and infectious diseases, see Just Detention International, Fact Sheet, Sexual Abuse in Detention is a Public Health Issue (2009).

7 Robert W. Dumond & Doris A. Dumond, *The Treatment of Sexual Assault Victims*, in PRISON SEX: PRACTICE & POLICY 82 (Lynne Rienner Publishers, Inc. ed., 2002); see also Just Detention International, Fact Sheet, Mental Health Consequences of Sexual Violence in Detention (2009).

8 In an academic study, funded by the California Department of Corrections and Rehabilitation and conducted at six California men’s prisons, 67% of inmates who identified as LGBTQ reported having been sexually assaulted by another inmate during their incarceration. See Valerie Jenness, et al., Center for Evidence Based Corrections, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (2007).

9 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.*).

10 *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).

11 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.

12 *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).

13 As noted above, see endnote 10, JDI, under its former name Stop Prisoner Rape, provided one such shadow report to the CAT Committee.

14 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). To learn more about why the U.S. should ratify the OPCAT, see Just Detention International, Fact Sheet, U.N. Optional Protocol to the Convention Against Torture (OPCAT) (2009).

15 For more information about why increased oversight is needed, see Just Detention International, Fact Sheet, The Need for Prison Oversight (2009).

About Just Detention International (JDI)

Just 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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