THE RAPE of persons in custody is a reality that needs to be acknowledged and addressed effectively in South Africa.

— Department of Correctional Services, Republic of South Africa

SOUTH AFRICAN detention facilities are plagued by sexual abuse, in contravention of domestic law and international human rights principles. The country’s prisons tend to be overcrowded, and suffer from high levels of violence and poor management. Pre-trial detainees, first-time, non-violent offenders, and those who are gay or transgender, physically small or mentally disabled are among the most likely targets of sexual abuse. Gangs play an integral role in perpetuating sexual violence in South Africa’s prisons.

In 2006, the Jali Commission of Inquiry, appointed by former President Thabo Mbeki, described “the horrific scourge of sexual violence that plagues [South African] prisons where appalling abuses and acts of sexual perversion are perpetrated on helpless and unprotected prisoners.” Young inmates are especially vulnerable to being viewed by more powerful prisoners as commodities to be sold or traded. One nationwide South African prison gang — known as the ‘28s’ — uses rape as a means to recruit and control so-called ‘wyfies,’ who are forced to provide sex and domestic services to other gang members. While the 28s is most often associated with rape and forced prison ‘marriages,’ all of the dominant gangs, including the two other so-called numbers gangs (the ‘26s’ and ‘27s’) are also involved in sexual abuse.

Fueling the incidence of sexual violence in South African prisons are ineffectual and detrimental corrections policies. Because inmates are not properly classified, those most vulnerable to sexual violence are commonly housed with predatory gang members in large communal cells. Perhaps the most problematic practice in prisons throughout South Africa is the system of “lock-up.” Each afternoon, inmates are provided their dinner in a paper bag and sent to their cells, mostly large dormitories, at which point these housing units are locked until the next morning. During the late afternoon, evening, and throughout the night, the prisons operate with a minimal staff, leaving inmates to fend for themselves. It is during lock-up that the vast majority of sexual assaults in South African prisons occur.

Rape in South African prisons is directly linked to the country’s HIV/AIDS crisis. HIV prevalence in South Africa is among the highest in the world, and the rate among prisoners is estimated to be more than double that of the general population. The Jali Commission concluded that, in light of the egregious sexual abuses in prisons nationwide, the national Department of Correctional Services (DCS) “is effectively, by omission, imposing a death sentence on vulnerable prisoners.”

With 360,000 prisoners in South Africa released back into their communities each year, the consequences for the public are dire as well.

Efforts to address prisoner rape are in the early stages in South Africa. The DCS is developing initiatives focused on the link between prisoner rape, gangs, and HIV/AIDS. For example, in 2008, the DCS convened a day-long “Seminar on Offender
Rape in Correctional Centres,’ bringing together senior corrections officials, non-governmental organizations (including JDI), oversight officials, and academics to analyze the problem and to develop a response. At the invitation of the DCS, JDI has since provided a five-day ‘master training’ for corrections officials at Pollsmoor prison – one of South Africa’s most notorious detention facilities – in order to create a core group of staff who are equipped to address sexual abuse and the spread of HIV.

With the passage of the Sexual Offences Amendment Act in 2007, the South African Parliament adopted a gender neutral definition of rape. Previously, when the victim was a man, rape was prosecuted as ‘indecent assault’ – a much lesser offense. In a country where 98 percent of prisoners are men, this legislative change represents an important move toward ending impunity for prisoner rape. Commenting on the new law, former DCS Commissioner Vernie Petersen stated, “[w]hereas previously such an act against a male was euphemistically described as sodomy or assault, this definition liberates us from the inaction that engulfed South African penal institutions.”

South Africa has developed an important model for independent oversight of its prisons, which, if fully utilized, could help put an end to sexual abuse in detention. The Judicial Inspectorate of Prisons (JIOP), an independent monitoring body, employs more than 200 community-based ombudspersons – Independent Prison Visitors (IPVs) – who have access to all South African prisons, are able to speak confidentially with inmates, and can assist with requests ranging from facility transfers to access to medical care. JDI has conducted workshops on sexual violence for these ombudspersons, in order to increase their capacity to detect instances of sexual abuse, secure assistance for survivors, and identify policies and practices that contribute to the problem. South Africa is expected to enhance further its prison oversight capacity through the U.N. Optional Protocol to the Convention Against Torture (OPCAT), a protocol the government has signed, but not yet ratified.

Endnotes
1 Department of Correctional Services, Republic of South Africa, Discussion Document on Offender Rape 2-3 (presented at the Seminar on Offender Rape in Correctional Centres, Johannesburg, South Africa (June 30, 2008)) (available on-line at http://www.dcs.pw.gov.za/) (last visited March 6, 2009).
6 Jali Commission, supra note 3, at 393.
8 Jali Commission, supra note 3, at 179 (recommending that the DCS addresses the understaffing that “results in [corrections staff] being unable to monitor incidents of gang activity, particularly sexual abuse, that occur during lock-up, particularly in the awaiting trial section of the prisons.”
9 For more information about the link between HIV and prisoner rape in detention, see Just Detention International, Fact Sheet, Sexual Violence in Detention is a Public Health Issue (2009).
12 Jali Commission, supra note 3, at 446–47.
13 Singh, supra note 10, at 77.
14 Materials from the seminar can be viewed on-line at http://www.dcs.pw.gov.za/ (last visited March 6, 2009).