

Conditions and Conduct in the California Criminal Justice System

A Report on U.S. Government Compliance with the United Nations International Covenant on Civil and Political Rights (ICCPR)

Table of Contents

Executive Summary — p. 2

Abuses of Imprisoned Youth — p.5

Sexual Misconduct and Abuse in Women's Prisons — p.7

Abuses of Elder Women Prisoners — p.9

Abuses of Pregnant Prisoners — p.10

Abuses of Transgender Prisoners — p.12

Abusive Testing and Treatment of Hepatitis C — p.14

Conclusion — p.15

Recommendations for the U.S. Government — p.15

Contributors and Further Information — p. 18

Executive Summary

“Conditions and Conduct in the California Criminal Justice System: A Report on U.S. Government Compliance with the United Nations International Covenant on Civil and Political Rights (ICCPR)”

California-based WILD for Human Rights, Justice Now, Legal Services for Prisoners With Children, and the Transgender Gender Variant and Intersex Justice Project welcome the opportunity to comment on the 2nd and 3rd Periodic Report of the United States of America to the United Nations Committee on Human Rights concerning its compliance with the International Covenant on Civil and Political Rights (ICCPR), submitted in October 2005. This report will examine identity-based discrimination in the California prison system, the failures of medical care, sexual violence and misconduct, and egregious conditions of confinement facing youth. It will highlight the gravity of human rights concerns facing California’s imprisoned populations, as the mistreatment of inmates has resulted in a spectrum of abuses that particularly impact marginalized populations including transgender persons, women¹, the elderly, youth, the disabled, and the mentally ill. This report also demonstrates that prisoners face multiple forms of discrimination and subjection to violence based on their gender and racial identities, economic status, age and sexual orientation. California not only houses a prison population that is 1/10th that of the nation’s incarcerated, but historically the state also has influenced the political landscape and social policies of the rest of the country.

Context

Due to the increased imprisonment of drug offenders and other low-level offenders, the dismantling of California’s mental health system as well as a trend toward imposing long prison sentences, California’s inmate population has swelled to over 500 percent since 1980. The number of institutions has nearly tripled from 12 to 33, currently holding 164,000 inmates. In addition, there are marked racial disparities in sentencing and incarceration in California. The 2000 national census reported that only 6.7% of California’s population was African Americanⁱ, but African Americans account for more than 29% of California’s prison population.ⁱⁱ In contrast, white persons make up 59.5% of the population, but make up 28.4% of the state’s incarceratedⁱⁱⁱ. California has also implemented the Three Strikes Law, which incarcerates repeat offenders for a term of 25 years to life for any third felony. Under Three Strikes, where sentencing is solely under the discretion of the prosecutors, this has resulted in a disproportionate number of African Americans sentenced under the law. Of the 7,736 men serving Three Strike 25 years to life sentences, 44% are African American, while only 25% are white.^{iv}

California prisons are approximately 195% over capacity.^v Between 15 and 30% of the inmates in the system suffer from mental illness. Another 15 to 30% suffer from substance addiction. And at least another 2/3 are in custody for non-violent offenses. The numbers for women are even more stark; more than 2/3 of women are imprisoned for nonviolent offenses and the majority are the primary caretakers for children under 18. The system operates without the necessary management structure, policy standardization, training and capacity of staff, information technology, health care services and rehabilitative programming to comply with its obligations under the International

¹ For the purposes of this report, "women" also includes transgender women, and all those persons who identify as women whether or not they are biologically female while incarcerated.

Covenant on Civil and Political Rights (ICCPR). In addition, individual wardens wield extensive independent authority to determine standards and operating procedures and often act without impunity. This lack of accountability has created a health care system with a more than US\$1 billion annual budget with widespread medical malpractice and neglect that results in, on average, at least one needless inmate death every 6 to 7 days. Consequently, the medical system was taken from state control by a federal court as of June 2005. Moreover, Federal courts, state legislators, the Governor of California, auditors, and California Department of Corrections and Rehabilitation (CDCR) officials all concur that the Juvenile Justice system is also broken beyond repair. The system is plagued by excessive violence, overcrowding, and fails to provide imprisoned youth adequate medical and mental health care, safety, or educational and rehabilitative programming.

Systemic Failures to Uphold Human Rights: Priority Concerns Under the ICCPR

The California Department of Corrections is unable to provide a minimum standard for the humane and safe treatment of incarcerated persons. In California prisons, women, including transgender women in men's prisons, experience rape, sexual assault and abuse by both correctional officers and other inmates, and often receive punitive treatment or administrative segregation for filing a complaint. Staff fails to inform women prisoners of correctional policies on sexual misconduct and the processes available to report abuse. In the provision of medical care, women experience sexually inappropriate pat and strip searches, sexualized treatment and assault by medical personnel, and unwarranted invasions of their privacy. Medical personnel delay treatment and medication to elder women and transgender prisoners, thereby obstructing access to adequate care. Incarcerated mothers experience substandard pre and post-natal care, including physically violent treatment such as shackling during labor. Hepatitis C infected prisoners experience negligence and inadequate medical treatment, which too often results in premature deaths. California correctional facilities for youth are overcrowded and marked by excessive violence. Safety concerns have contributed to increasing rates of teen suicides. Youth also lack access to school programs and sufficient mental health treatment and rehabilitative programming, particularly gender-specific programming for young women offenders.

We urge the Human Rights Committee to critically analyze the United States' Periodic Report concerning its compliance to the following articles under the ICCPR, as it pertains to areas of concern in the California criminal justice system:

Article 6—the right to life—is implicated by the high rate of premature deaths of prisoners due to medical neglect and malpractice, and overcrowding;

Article 7—the obligation to protect against torture or cruel, inhuman or degrading treatment or punishment—is implicated by the failure to provide adequate medical care, or a safe environment free of gang violence; the use of excessive force; sexual harassment and violence; verbal degradation and abuse; and the excessive use of administrative segregation (isolation), particularly as punishment for reporting cases of assault or abuse by correctional staff.

Article 9—the right to liberty and security of person—is implicated by the failure to provide due process protections to offenders who are facing parole violations, arbitrary arrests and detentions, and prolonged segregation and isolation.

Article 10—the requirement to treat persons deprived of their liberty with humanity and with respect for their inherent dignity, including the aim to socially rehabilitate and reform

incarcerated youth—is implicated by negligence and insensitivity in medical care; sexualized and/or degrading verbal humiliation of transgender people, women, and elder women prisoners; and the failure to ensure incarcerated youth are in a safe and nonviolent environment.

Article 17—the right to privacy—is implicated when women are subjected to inappropriate pat and strip searches, and sexualized treatment and assault by medical personnel, and unwarranted invasions of privacy; and

Article 19—the right to information—is implicated when prisoners are not informed of the available remedies and/or processes to report abuse; the deprivation of medical information; and the failure to train staff in the special needs of prisoners, particularly youth, the elderly, and transgender persons.

Limitations of Domestic Remedies to Address ICCPR Obligations

The United States has ratified the ICCPR in a way that precludes the treaty from having any real effect domestically. Under the “federalism understanding,” the U.S. government pledges that it will implement the ICCPR to the extent that it has legislative and judicial jurisdiction, and allow state and local governments to implement the treaty where they have respective jurisdiction. However, the federal government has yet to name the types of matters where state and local governments have unique jurisdiction and therefore specific obligations under the ICCPR treaty. Nor has the federal government taken steps to pass implementing legislation to ensure that all branches of government understand their human rights obligations. Finally, should states and local governments fail to uphold their obligations under the ICCPR, the federal government has not clarified its authority to ensure the treaty is upheld and enforced.

In direct opposition to its obligations under the ICCPR, U.S. legislation such as the Prison Litigation Reform Act (“PLRA”) effectively prevents many prisoners from seeking redress in federal court. Under the PLRA, federal court supervision over prison systems failing to maintain humane conditions in their facilities automatically terminates unless the court can make detailed factual findings of a current and on-going constitutional violation. This drastically reduces the ability of the courts to remedy human rights violations in prisons. In addition, the PLRA caps the attorney fees that can be recovered in cases filed by prisoners and limits the tasks for which fees can be awarded. In effect, this discourages attorneys from representing even prisoners with strong cases. Congressional legislation like the Prison Rape Elimination Act (PREA) of 2003 exists to address sexual violence, however the State of California has not taken action to implement PREA-based recommendations to provide safety in its correctional complex or to hold perpetrators accountable for custodial sexual misconduct.

General Recommendations

This report seeks to support the State of California to take affirmative steps to fulfill its obligations under the ICCPR. Towards that end, this report sets forth the following opportunities for impact:

- Implement decarceration strategies to address excessive burdening of the correctional system, including but not limited to, the creation of local treatment alternatives and early release for all low risk, disabled and nonviolent prisoners.
- Take steps to effectively improve the correctional medical care system, with specific attention to providing appropriate and non-discriminatory care for HCV-positive, transgender, elder and pregnant women prisoners, and rehabilitative treatment for youth.

- Improve administrative oversight, employee training and response procedures to effectively address sexual misconduct, violence and abuse in the correctional system.
- Establish minimum standards for correctional operations compliant with international obligations by which all prison officials must abide.
- Create effective oversight mechanisms to ensure compliance with international obligations.

**Abuses of Imprisoned Youth
Violations of ICCPR Articles 6, 7, 9, 10 and 19**

“I have spent the last four years watching [my son] appear in the visiting room with cuts, choke marks and bruises. He has been attacked by other youth or staff more than 40 times. I have seen him lose confidence in himself, become cold and depressed and fearful for his life.”

California’s juvenile justice system has approximately 14,000 children and young adults between the ages of 11 and 23 imprisoned at youth prisons^{vi}, camps, and detention facilities, which is 17% of the nation’s incarcerated youth. Youth corrections in California is an antiquated system and warehouse model plagued by excessive violence, the use of long term isolation of youths, inadequate medical and mental health care, and a failed system of educational and rehabilitation programming. The federal courts^{vii}, state legislators^{viii}, California’s governor, auditors, and prison officials all agree, that the system is “broken” and has completely failed in its mission to rehabilitate youth.^{ix}

Overcrowding: California’s juvenile justice system is systematically overcrowded, from local detention centers to youth prisons.

Familial Alienation: Prisons are often hundreds of miles away from the youth’s home and family. Families, particularly lower income families, are unable to travel the great distances to see their children, leaving the youth alone and vulnerable.

Insufficient Programming, Treatment and Education: California’s Youth Prisons fail to provide even rudimentary education, treatment for substance abuse, mental disorders, or the effects from the sexual and/or physical abuse the child had previously suffered. This, coupled with familial alienation, leaves youth completely vulnerable.

Extreme brutality, suicides, and sub-standard physical conditions are reported as commonplace.^x As a result of the extreme levels of violence and gang control, the staff places youth in the position of either renouncing gangs and facing violent retribution, or living in isolation indefinitely. During lockdown, aside from brief showers about three times per week, youth receive virtually no exercise, education, mental health treatment or other basic and mandated services. Because of the fear of violence and of the depraved environment of administrative segregation, too many youth choose suicide.^{xi}

Court-appointed experts and monitors filed a report in March 2006, which found that the constant and pervasive violence remains “stunning”, and an unchanged environment since 2003.^{xii} In May 2004, an officer was caught on video letting his German shepherd bite a 20-year-old prisoner on

the leg, even though the inmate was following orders and lying on the floor. This was the second such episode in four months.^{xiii} Data shows that in 2002, there were more than 4,000 ward-on-ward fights for an agency that houses about 4,000 youth. With the overcrowding conditions and lack of programming or training, staff are overwhelmed, leading to harsh treatment such as forcing youths to spend considerable time on their knees with their hands bound behind them or forcing them to sleep on concrete slabs in chilled rooms wearing only underwear. The California Youth Authority (CYA) is the only youth penal system in the country that houses youth in cages^{xiv}, even though it is recognized to be a practice that is "degrading and antithetical to the mission and goals of (the department)". Investigators reported that state correctional facilities have no set criteria for who is put in cages, but that a higher percentage of African American and Latino wards are placed in the cages.^{xv} Administrators and experts agree that the high level of violence undermines the department's control of its facilities and impedes any rehabilitative programming.

Overuse of Isolation Cells: The prison overuses Isolation Cells to punish, and "protect" youth. Youth stay in isolation for months without contact with counselors, family, friends, and the little education that is afforded youth is either done in the isolation cell, or they are caged in the classroom. Edward Jermaine Brown was locked in a filthy isolation cell for 23 hours a day for seven months. The toilet in the cell often did not function and Brown was fed "blender meals," a whipped mix of food groups, through a straw pushed through his cell door.^{xvi} One young man, at age 19, sits in a cell by himself for 23 hours a day. He can't go to church, school or vocational classes because he is in protective custody. Meanwhile, he has been jumped and beaten up four times while he has been in protective custody.^{xvii}

Inhumane Conditions in Juvenile Detention Facilities: California counties house more than 10,800 youths in juvenile halls and camps. These youths are generally pre-trial detainees, or low-level offenders who range in age from 11 to 19. The conditions inside these detention facilities, like the Youth Authority, include severe overcrowding, lack of access to school programs, endemic violence, excessive use of force by staff, and virtually non-existent mental health care.^{xviii}

Denial of Due Process: Youth who have been released on parole are reincarcerated for lengthy terms for technical violations such as drug or alcohol use. These same parolees may spend months in custody before having a violation hearing. Furthermore, parole authorities have steadfastly resisted giving simple due process protections, such as counsel and a timely hearing.^{xix}

Female Offenders are Committed at Higher Rates for Property and Drug Offenses than their Male Counterparts: Young women and girls in the CYA parole population comprise 6% of the total parole population. Female offenders are committed at higher rates for property and drug offenses than their male counterpart. The only CYA facility that accepts girls is located in Southern California. With over 50% of girls committed from the Northern region, this distant location, inaccessible by public transportation, presents a barrier to an increasing number of families.^{xx}

Juvenile Girls Denied Access to Education, Programming, Treatment and Information: Staff and educators are not specifically trained in the needs of pre-adolescent and adolescent girls. Therefore, in violation of Article 19, young women are denied information on issues particular to their special needs such as safe sex, menstruation, child-care, and basic life skills. Additionally, the general educational needs are not met as the teachers are substandard and often fail to attend classes. There are very few treatment programs; most are run by other prisoners. There is also no sexual or child abuse counseling provided.

Juvenile Girls Subjected to Sexual Abuse in Youth Authority: Juvenile Girls are guarded by both male and female staff. Male staff are allowed to roam freely throughout the facility. As a result, sexual abuse is a common occurrence. In California, correctional staff sexual abuse is chargeable as either a misdemeanor or felony, as determined by the local prosecutor. A misdemeanor conviction will not hinder future employment at the youth authority^{xxi}. Nevertheless, the local District Attorney's office has repeatedly refused to prosecute the staff members even with the lesser offenses.

Many states in the U.S. have started to implement their juvenile justice systems through state departments of human services.^{xxii} California needs to move in that direction. California's admission for the need for change^{xxiii} is in accordance with its own domestic laws against torture and cruel and inhumane treatment of prisoners^{xxiv}. However the state continues in its failure to implement the changes necessary to meet its domestic and international obligations. It fails to have the political will to change.

Questions for the U.S. Government

- What steps is the U.S. government taking to educate the individual states concerning their obligations to incarcerated juveniles under the ICCPR?
- What steps is the U.S. government taking to ensure that California's and other individual states' juvenile justice systems comply with the international obligations under the ICCPR?

Sexual Misconduct and Abuse of Women Prisoners

Violations of ICCPR Articles 7, 10, 17, and 19

“Some of the women who get strip searches and touched in certain ways, it causes them flashbacks [of sexual assault]. I've seen it make women depressed for a while or sad. We can't stand them. They are degrading, humiliating. It makes us angry at them, the officers. We feel helpless, we're just helpless.”

Women prisoners in the California Correctional system are regularly subjected to sexual misconduct and violations of their human rights. Hundreds of women have reported sexual misconduct ranging from rape, inappropriate pat and strip searches, sexual assault by medical personnel, sexualized and degrading verbal harassment, and unwarranted invasions of their privacy.

Sexual Abuse in Medical Care: Reported assault by medical personnel includes sexual violence or excessive force by male doctors during routine Pap, pelvic or breast exams; unnecessary or unwanted pelvic exams; and appropriate medical care given only on the condition that the individual not file a sexual misconduct complaint. According to one woman's report:

“There was one doctor who required pap smears every time you went, no matter what you went for. Sometimes he wouldn't have gloves on or sometimes you couldn't tell because you couldn't see the way he was positioned. Or he'd give a breast exam and be playing with your breasts instead of examining them.”^{xxv}

Custodial Sexual Misconduct: Reports of sexual misconduct in recent years demonstrate an uncoordinated response to abusive and illegal penal management and a failure of the California Department of Corrections and Rehabilitation (CDCR) to effectively take steps to prevent sexual violence and rape in its facilities. Hundreds of allegations identify correctional staff, ranging from parole agents, guards, contract employees, or Medical Technical Assistants as responsible for coercing inmates into sexual activity in return for medical attention, early relief from house arrest, or as a threat to negatively influence parole hearings. Of these allegations, “there are at least 400 separate incidents, 200 of these are serious and prosecutable.”^{xxvi} It should also be noted that the State of California did not criminalize sexual misconduct in custody until 1994, and procedures and policies to effectively respond to patterns of abuse stand yet to be institutionalized.

Abuses of Transgender Prisoners: Transgender and gender variant people in men’s prisons are either sexually assaulted and/or raped by prison staff, or prison staff actively encourage other prisoners to harm them. It is not uncommon for transgender and gender variant prisoners to be used as human sexual “currency” to be traded among prisoners and staff alike, nor is it unusual for many to be forced into sexual slavery in exchange for protection.

Unwarranted Violations of the Right to Privacy: Many prisoners experience inappropriate and unnecessarily invasive violations of their right to privacy. On her trip to California women’s prisons, the U.N. Special Rapporteur on Violence Against Women remarked that the presence of male corrections officers in women’s showers and toilets and the restriction of women’s use of towels is “intolerable, unacceptable and unnecessarily intimidating and humiliating.”^{xxvii} To date, the CDCR has not developed any policy to address female inmate privacy.^{xxviii} California has made important advances, for instance discontinuing, effective in September 2005, the practice in women’s prisons of male custodial staff conducting pat searches on women inmates. However, male corrections officers continue to have the authority to enter prisoners’ cells and living areas.^{xxix} And the larger issue of inappropriate and abusive pat and strip searches by staff of both genders remains unaddressed. The unrestricted access of male correctional staff into a prisoner’s cell and living area only creates greater opportunities for inappropriate, sexualized interactions or abuse to occur.

Impacts of Sexual Abuse on Survivors of Trauma: 50% of women prisoners have experienced physical, sexual and emotional abuse prior to incarceration, so they are often retraumatized by experiences of sexual harassment and abuse in prison. Survivors of sexual abuse in prison often return to their communities with sexually transmitted diseases and learned violent behavior. This only contributes to higher rates of recidivism and return back into the criminal justice system.

Institutional Failures to Respond to Sexual Misconduct: CDCR procedures on reporting and investigating allegations of sexual abuse are not comprehensive. Concerns include failure to ensure confidentiality for the individual filing a complaint, correctional staff focusing on the consent of the victim, and retaliatory action taken in response to complaints of sexual misconduct, including forcing inmates into administrative segregation and denying basic privileges. Reports increasingly demonstrate a failure to provide adequate remedy to victims and general inconsistency in how cases are treated. In one instance, a parole agent was arrested and accused of sexually abusing a female parolee. He was then released and received paid administrative leave.^{xxx} Investigations of sexual misconduct are prolonged and disciplinary action is often taken on inmates for filing a complaint process. One woman was denied her personal belongings, transferred to another facility (which obstructed her husband’s visitation rights for an 8-week period), and was forced to sit for eight hours a day with no staff and no work in an office that was the exact layout of where she’d been

repeatedly raped. The staff accused of sexual assault continues to work at the California Correctional Women's Facility (CCWF).^{xxx1}

Questions for the U.S. Government

- What steps has the U.S. government taken to ensure that the California Department of Corrections and Rehabilitation (CDCR) keeps adequate statistics on sexual misconduct and abuse of detainees, including the number of reported incidents, whether the abuse was perpetrated by a staff member or another inmate, the outcome of the investigation, and whether there was resolution of the complaint?
- What substantive steps has the U.S. government taken to ensure that states implement the federal Prison Rape Elimination Act of 2003, mandating the prevention of sexual violence and rape in prisons, including administrative action and the development of systems to hold perpetrators accountable for custodial sexual misconduct?

Abuses of Elder Women Prisoners

Violations of ICCPR Articles 7, 10

“If we get sick...it might be a month or two months before they call us down. Once in a while it's faster but as a rule it takes three, four or five weeks to get in to see a doctor.”

Elder prisoners, ages 55 and older, are particularly at risk of violations of their human rights due to their age, physical limitations, and unique needs relating to health, safety, and social support. California incarcerates approximately 7,550 elder prisoners, 7% of which are women.^{xxxii} Elder prisoners warrant unique consideration given that most are nonviolent and often pose little threat to themselves or other inmates. Research demonstrates that as persons age in the criminal justice system, rates of recidivism decrease and that elder prisoners are the least likely to return to prison.^{xxxiii} In the California Department of Corrections and Rehabilitation (CDCR), elder women prisoners report that they are at greater risk of physical and verbal abuse, insensitivity by medical technicians and delays in providing treatment, and obstructed access to adequate and preventative medical care. Such reported practices demonstrate a systematic failure of the CDCR to prevent, address and respond to egregious violations of elder women prisoner's rights.

Abuse and Failures to Address Special Needs: Reported abuses of elder women prisoners include verbal and physical abuse from correctional staff or other prisoners, neglect and insensitivity, and retaliation or punitive action taken on prisoners that file a complaint. Many elder women prisoners report the inaction of correctional staff and the failure of the CDCR to prevent abuses. Staff are reluctant to address the specific needs of elder women prisoners thereby providing “special treatment”, even though many claim a fear of abuse from younger inmates and an inability to protect themselves. In 2004, of a respondent group of female prisoners over the age of 55, two out of three reported to have been verbally abused by correctional staff; one out of three reported physical abuse by another prisoner; and 83% reported that prison staff do not take adequate action to protect against physical abuse by other prisoners.^{xxxiv}

Obstructed and Sub-Standard Medical Care: Reported obstacles to the enjoyment of adequate and preventative medical care include 1-2 month delays before receiving medical treatment, poor monitoring of chronic illnesses, delays in refilling medication, a reluctance to provide mental health care that doesn't involve prescribing medication, lack of access to an age-appropriate diet (particularly for those persons with an inability to chew or digest certain foods), and substandard preventative care.^{xxxv} The latter is of particular concern for elder women prisoners due to weakened immune systems, greater susceptibility to life-threatening illnesses and the need for vaccines, and the specific need for preventative screenings to address the risks of breast, cervical, colon or uterine cancer. Additionally, the California co-pay system which requires most prisoners to pay \$5 to access medical services, is an obstacle for many elder prisoners and forces a choice between medical care and the purchase of needed goods such as hygiene items and food.

Questions for the U.S. Government

- What steps has the U.S. government taken to ensure that the CDCR keeps adequate statistics on misconduct and abuse of elder women prisoners, including the number of reported incidents, whether the abuse was perpetrated by a staff member or another inmate, the outcome of the investigation, and whether there was resolution of the complaint?
- What steps has the U.S. government taken to ensure the humane treatment of elder women prisoners, including the training of correctional staff on policy toward protecting vulnerable persons against abuse, and the provision of preventative and curative medical care that is both timely and age-appropriate?

Abuses of Pregnant Women Prisoners

Violations of ICCPR Articles 6, 7 and 10

"There's a [guard] in there the whole time. The whole experience is horrible. I freaked out—it's scary and they're yelling at you. They treat you like an animal."

Pregnant women in California prisons, many of whom are high risk due to past histories of poverty or malnutrition, face rampant violations of their human rights. Doctor visits for pregnant women are infrequent and erratic. In some cases, prison medical staff has ignored obvious warning signs of complications, such as extensive bleeding. Special dietary requirements are not fully met and despite recent changes in the state law, some, if not many, women are still shackled during labor and post-delivery. And post-natal care is virtually nonexistent. Underlying all of these abuses is a complete lack of respect for the humanity of pregnant women in prison. When interviewing women in prison about their doctor-patient relationship, all responded that they did not have a relationship with their doctor. One woman was told, "If you wanted better care, you shouldn't have gone to prison." The following overview of pregnancy-related abuses experienced in women's prisons comes from first person testimonials.

Abysmal Pre-natal Care: One woman was told when she went to the doctor with complaints of bleeding heavily that it was pulled ligaments and sent home. Her premature daughter died shortly after birth. This same woman had been forced over her strong objections to have a Pap smear when

four months pregnant. Despite clear medical advice, there is no special diet for pregnant women. Every woman we spoke to raised concerns about her prenatal diet. They do not receive extra food; the fruits and vegetables are often inedible; they get an extra 4 oz. carton of milk; and occasionally, folic acid/iron supplements.

Slow Transport to the Hospital: It took prison staff an hour and a half of screaming before they transported a laboring woman to the hospital, “they don’t rush, they never rush.” One woman was told, “Shut the fuck up, you’re not a baby stop screaming.” A nurse made another woman check her own vagina for amniotic fluid and then sent her to the hospital in her underwear, which her ambulance attendant said was “ridiculous.”

Shackling During Labor: During labor and after giving birth, in all cases we have investigated, women are shackled. Thus, they cannot walk around, although walking has been shown to promote labor and post-birth healing, and they have to request permission from prison staff to use the bathroom. In one case, a woman urinated in her bed because the sergeant would not unshackle her. In October 2005, California passed AB478 which requires the California Department of Corrections to establish minimum standards of care for pregnant women and to transport pregnant women in the least restrictive way possible, including a presumption against shackling. Nonetheless, we have seen little, if any, change in the care and treatment that pregnant women receive. In fact, in April 2006 while on a hospital visit one of our staff attorneys saw an official notation that a laboring woman was in shackles.

Substandard Post-natal Care: We spoke to one woman who did not have the staples from her c-section removed until several weeks later. Women also routinely have their hospital-prescribed pain medications taken from them when they return to prison and are often unable to receive any more, even through the dispensary. Most of the women we spoke to, including a woman in remission from cancer, never received the customary 6-week post natal appointment.

Questions for the U.S. Government

- What steps has the U.S. government taken to monitor the rate of stillbirths and miscarriages, disaggregated by race, in state and federal prisons compared to the country as a whole?
- What steps has the U.S. government taken to ensure that pregnant women are treated humanely including, but not limited to, receiving adequate medical care and sufficient nutrition, and not being shackled during labor and after giving birth?

Abuses of Transgender Prisoners

Violations of ICCPR Articles 7, 10, and 17

"I felt scared, ashamed, hurt, betrayed, sick and [that] I deserved [to be raped] for being a Transgender. I had learned in San Quentin [State Prison]...not to tell staff if I got raped. This was not by another inmate but by a custody staff member. A sergeant said if I did, I would go to Administrative Segregation, lose my job, my program, [and] be labeled a rat."

Transgender and gender variant people^{xxxvi} are disproportionately incarcerated in the United States today.^{xxxvii} Because transgender and gender variant people are discriminated against in housing, education, health care, and employment, most transgender people are unemployed or underemployed^{xxxviii} and forced to commit "survival crime" like prostitution and selling illegal drugs to generate income.^{xxxix} Furthermore, transgender and gender variant people of color are especially affected – racism, sexism, homophobia and transphobia combine with other forms of discrimination in society and in the criminal justice system to create a complex web that too frequently ensnares transgender and gender variant people.

Transgender and gender variant people constitute a particularly vulnerable prison population. While no official numbers exist, we estimate there are several thousand to tens of thousands of transgender and gender variant people incarcerated in prisons and jails around the country. Because transgender and gender variant people do not conform to social expectations surrounding sex and gender, they face severe discrimination and are susceptible to torture and cruel, inhumane and degrading treatment. Prison staff members either commit these acts themselves, or allow or encourage other prisoners to harm transgender and gender variant prisoners. The following overview of abuses experienced by transgender and gender variant prisoners originate from first-hand testimonials from transgender and gender variant people in prison:

- **Verbal degradation:** Staff routinely subject transgender and gender variant people in prison to profanities and racial and homophobic slurs, and threaten them with physical violence.
- **Sexual humiliation & invasion of privacy:** Staff members perform needless strip searches to view the genitalia of transgender prisoners, force post-transition male-to-female transgender people to parade naked in front of or shower with male prisoners, and make sexually demeaning comments about their bodies.
- **Institutional discrimination:** Transgender people are disproportionately placed into punitive administrative segregation (isolation) solely because prison administration does not know where to place them. In other cases, transgender people defending themselves against attack have been given disproportionately harsh punishments and placed in isolation because they are seen as co-combatants rather than as survivors of violence. Finally, prison staff stereotype transgender and gender variant prisoners as homosexual "predators", and assume casual physical contact with others as violates prison policies against "homosexual conduct."
- **Sexual assault and rape:** Transgender and gender variant people in prison report rampant sexual harassment, sexual assault, and even rape. Both staff and other prisoners commit these incidents. Additionally, all prisoners are discouraged from reporting these incidents because institutional policies mandate that survivors be placed in punitive isolation pending internal investigations that may or may not take place.

- **Medical neglect:** As prisoners, transgender and gender variant people suffer the same medical neglect as is typical for all prisoners. While transgender-specific health care is widely accepted by the medical community, many prison medical staff members are either unfamiliar with these treatments, or willfully withhold such treatment out of personal bias. Refusal of prescribed treatments can cause long-term psychological and physical harm. Follow-up care when treatment is issued – such as counseling, monitoring hormone levels, and breast cancer screening – are nearly non-existent.
- **Retaliation:** Prisoners are routinely retaliated against for filing complaints and seeking legal help regarding the above issues.

There is little to no difference between prison conditions in different states, or between state and federal prisons, suggesting these problems are widespread and ingrained in the culture of U.S. corrections.

Questions for the U.S. Government

- What steps has the U.S. government taken to recognize the specific needs of transgender persons in prisons, including taking steps to train existing and incoming staff members on basic transgender cultural competency and the medical necessity of transgender-related health care. Additionally, what enforcement mechanisms have been developed to prevent verbal, physical and sexual harassment from staff?
- What has the U.S. government done to ensure transgender and gender variant people have increased access to health care, education, drug rehabilitation, low-income housing, and other services that alleviate poverty and reduce recidivism?

Definitions

1. “Transgender” broadly describes people who do not conform to traditional societal gender roles. This term includes transsexuals, transvestites and cross-dressers, as well as masculine women and feminine men. This term describes a person’s deeply felt sense of *gender*, and is therefore distinct from sexual orientation.

2. “Gender variant” describes people who also transgress traditional gender roles and expressions, but for personal or cultural reasons do not call themselves “transgender.”

4. “Gender Identity Disorder” (GID) is the psychological term used in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) to describe the condition whereby a person strongly identifies with the other sex and may experience serious discomfort with their biologically assigned birth sex. Adults who have GID sometimes request reassignment of their sex, or sex-reassignment surgery. Prior to or in alternative to this kind of surgery, it is common to undergo hormone therapy which attempts to suppress same sex characteristics and accentuate other sex characteristics. For instance, biological males that have GID are given the female hormone estrogen. Biological females with GID are given the male hormone testosterone, to help them develop a lower voice, facial hair and greater muscle mass.

Abusive Testing and Treatment of Hepatitis C

Violations to Articles 6, 7, 10 and 19

“I’m so frustrated; I don’t want to see doctors anymore since they won’t do anything. I can feel my health drifting away and there’s nothing I can do about it. I’m getting weaker and weaker here.”

The pervasiveness of Hepatitis C in California prisons is astounding. Studies show that over 41% of all California prisoners are infected with Hepatitis C.^{xi} Yet, despite those numbers, to our knowledge the CDCR does not have an effective and coherent HCV testing and treatment policy. The Department of Corrections fails to offer non-mandatory, confidential HCV testing to all women prisoners who are at risk for infection, fail to attain informed consent for such testing, and additionally fail to report test results to women in a timely fashion. Hepatitis C is a blood-borne illness caused by the Hepatitis C virus (or “HCV”). First discovered in 1988, Hepatitis C chronically infects an estimated 170 million people worldwide, or approximately 3 percent of the world’s population, with as many as 180,000 cases occurring each year.^{xii} Without adequate care and treatment it will lead to liver failure and death. The following overview of HCV-related abuses experienced by people in women’s prisons come from first person testimonials.

Egregious Testing Policies: In some cases women are tested without their knowledge and or consent. On the other hand, many women prisoners must specifically request a test and are being asked to provide a co-pay of five dollars for a HCV test and/or results. This is an excessive charge for a woman making 7-10 cents per hour, often forcing them to forego basic necessities such as toiletries. Moreover, this charge directly contravenes California state law. In all cases, they may or may not get their results.

No Information Provided on Results or Disease: One woman learned of her HCV status when she went to her yard doctor for a thyroid test in 2001. At that time, he casually told her that she was HCV positive. Prior to that she did not even know that she had been tested. HCV-positive women prisoners often are not informed of treatment options or provided with education materials about this highly contagious and deadly disease. The specifics of testing, diagnosis, and treatment—such as the importance of fasting before an ultrasound, which one woman discovered after the examination—remain largely unknown to them. Very few are told of the potential risks for those who are HIV-Hepatitis C co-infected, as many women prisoners are.

Inadequate Medical Care: The main source of HCV treatment in California women’s prisons is a telemed doctor available every 90 days over a TV screen, which falls far short of an adequate standard of care. One woman notes, “The system of Telemed, where the doctor doesn’t have the patient’s medical history in front of him, doesn’t seem like proper care.” We heard woman after woman tell us about having to fight to see a specialist. According to Abigail C, “I have to fight for each pill. My kidney’s going down into renal failure. Took me eight months to see a kidney specialist and I still haven’t seen him.”

Negligent Provision of Medication: One woman has observed other women overdose on the medication used to treat HCV because they were not prescribed appropriate, height and weight-relative, amounts. Another woman reported being treated with Bengay and ibuprofen for pain

associated with HCV—a grossly insufficient treatment. Many other women reported reluctance to prescribe adequate pain medication to mitigate HCV-related symptoms.

Premature Death: Some women receive Tylenol or Motrin for pain, drugs that are contraindicated for persons with liver disorders. In 1999, Rosemary Willoughby, a Justice Now client, was given TB medications with no attention to the fact that she had active liver disease. The medications killed her. In 2003, according to Cynthia Chandler, co-Director of Justice Now “I just had another client this past summer who was given contraindicated meds, she had liver disease but not end-stage, and she died within a month.”

Questions for the U.S. Government

- What steps has the U.S. government taken to accurately assess the prevalence of HCV, disaggregated by race, in state and federal prisons and jails, and the rate of premature death due to HCV compared to non-imprisoned population?
- What steps has the U.S. government taken to ensure that state and federal prisons and jails provide medical care that adheres to the standard of care outside prison and that people are not dying prematurely or becoming HCV positive due to deficient care?

CONCLUSION

We strongly urge the Human Rights Committee to critically review the Periodic Report of the United States of America in terms of its compliance to ICCPR articles 6, 7, 9, 10, 17 and 19. As demonstrated by the case example of the State of California, we urge the Committee to pay specific attention to human rights concerns within the U.S. criminal justice system, including the failures of medical care, sexual abuse and misconduct, violence, neglect, and the unique discrimination impacting imprisoned populations of women, transgender persons, the elderly, youth, the disabled, and the mentally ill. The following are recommendations which we urge the Committee to consider in its review of the U.S. report.

RECOMMENDATIONS

International Obligations of the U.S. Government

- **Pass implementing legislation to give effect to the ICCPR**, including the identification of the unique obligations of states and all branches of government under the treaty, and the obligation of the federal government to enforce compliance.
- **Ratify the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)**, thereby fulfilling the minimum standard for the respect of human rights asked of all nations.
- **Ensure that the United Nations Standard Minimum Rules for the Treatment of Prisoners are implemented at U.S. state levels** as the basis for adequate practice in the treatment of prisoners and in managing correctional institutions.

- **Ensure the federal and state-level implementation of the recommendations of the U.N. Special Rapporteur on Violence Against Women to the United States** on upholding women’s human rights and protecting against violence within criminal justice.

U.S. Government Obligations to Ensure California State Compliance with the ICCPR

- **Reform current parole policies to ensure the early release of all elder prisoners who have completed their minimum eligible release date and do not pose a threat to public safety.** Implement the recommendation of the Legislative Analyst’s Office to release all low risk and nonviolent prisoners over 55 on parole.^{xlii}
- **Repeal the “Three Strikes” law in California.** Under the Three Strikes law, individuals who have committed three felonies, many of which are for nonviolent offenses, receive a minimum of 25 years to life sentence. Unless California reforms its sentencing laws, an estimated 30,000 “Three Strikes” prisoners, a majority of which are disproportionately African-American and Latino, will be incarcerated by 2007.^{xliii}
- **Move children from state-run facilities to community-based safe placements** that promote rehabilitation, including providing access to medical and mental health care, education, vocational training, life skills training, drug-treatment, etc.
- **Reinvest resources saved from closing state-run facilities for youth into violence and poverty prevention mechanisms** that identify and address systemic failures at the community level (such as lack of substance abuse treatment programs, lack of housing, child poverty, etc.) that contribute to the reoccurrence of serious harms, combined with the implementation of decarceration strategies.
- **Properly screen correctional staff.** Ensure non-eligibility for employment of CDCR staff previously convicted of rape or sexual assault of either inmates or parolees, those who have a history of anti-gay and anti-transgender bias, or those individuals who have been fired or resigned as a correctional employee pursuant to an allegation of sexual abuse.
- **Reform and expand annual trainings for correctional staff beyond “overfamiliarity issues”^{xliv} to effectively address sexual misconduct and sexual violence in all forms.** Clarify the obligation of staff to report on all observed incidents of custodial sexual misconduct and take action in a timely and professional manner to address allegations of sexual assault.
- **Ensure that inmates who report abuse are not automatically segregated, unless requested by a victim for their own protection, and that segregation is *non-punitive* and does not result in a loss of rights or privileges.** Also ensure that victims of sexual assault or rape in women and men’s prisons receive appropriate acute-trauma care, including treatment of injuries, medical examination, testing for sexually-transmitted diseases, and emergency mental health counseling.
- **Release all pregnant prisoners with 12 months or less left on their sentences** so that they may receive appropriate medical care and give birth within their communities.

- **Prohibit the shackling of pregnant women** during all stages of labor and delivery and through the post-birth recovery process.
- **Allow transgender and gender variant people to choose to serve their sentences in either women’s or men’s prisons, regardless of genitalia.** Gender identity, gender presentation, and the overall safety of the prisoner – not genitalia – should determine placement. Prison officials in Spain have decided to allow qualifying prisoners to choose whether to serve their sentences in women’s prisons or men’s prisons.^{xlv}
- **Increase funding for transgender-inclusive drug rehabilitation (including harm reduction strategies), medical care, job training, and low-income housing at local levels.** The state should also produce and distribute educational materials for employers and landlords on the transgender protections in the state’s anti-discrimination statutes.
- **Provide mandatory, confidential HCV testing free of charge** to any person being detained in the United States who requests it.
- **Ensure that HCV-positive persons in state and federal prisons and jails receive medical care,** that conforms to the professionally accepted standard of care, either inside or outside of prison.

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ⁱ See 2000, US Census.

ⁱⁱ See, *Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations, 2004, supra.*

ⁱⁱⁱ *Ibid.*

^{iv} *Second and Third Strikers in the Adult Institution Population.* December 31, 2005. Department of Corrections and Rehabilitation Offender Information Services Branch Estimates and Statistical Analysis Section Data Analysis Unit.

^v *Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations, 2004* Department of Corrections and Rehabilitation, Offender Information Services Estimates and Statistical Analysis Section.

^{vi} California's Department of Juvenile Justice (DJJ) is one of the few states to retain jurisdiction over incarcerated youth until the age 24. Available at www.corr.ca.gov/DivisionsBoards/DJJ/index.html

^{vii} See *Ferrel v. Harper* complaint filed January 16, 2003. <http://www.prisonlaw.com/pdfs/cyastate.pdf> and *Waters v. Woodford* complaint filed April 19, 2006. <http://www.prisonlaw.com/pdfs/CSAComplaint2.pdf>

^{viii} Bell, J. and J. Stauring (2004). "Serious Problems Festering in Juvenile Justice System Require Serious Reforms." *Los Angeles Times* (May 2).

^{ix} Report on Disability Access and Programming; Report on Mental Health Care and Substance Abuse Treatment; Report on Health Care Services; Report on Education Programs; Report on Sex Offender Treatment Programs; Report on General Conditions (Safety, Use of Force, Segregation), <http://www.prisonlaw.com/events.php>.

^x Cannon, A. (2004). "Special Report: Juvenile Injustice." *US News and World Report* (August 3).

^{xi} Office of the California Inspector General Report. December 2005. "Special Review into the Death of a Ward on August 31, 2005 at the N.A. Chaderjian Youth Correctional Facility." http://www.oig.ca.gov/reports/pdf/death_of_a_ward.pdf.

^{xii} First Report of Special Master - Compliance with Interim Measures Provisions of Consent Decree and January 31, 2005 Stipulation. *Farrell v. Hickman*, <http://www.prisonlaw.com/pdfs/CYASMReport1.pdf>.

^{xiii} Warren, J. (2004). "Attack by Prison Dog Revealed." *Los Angeles Times* (May 7). Bell, J. and J. Stauring (2004). "Serious Problems Festering in Juvenile Justice System Require Serious Reforms." *Los Angeles Times* (May 2).

^{xiv} Bell, J. and J. Stauring (2004). "Serious Problems Festering in Juvenile Justice System Require Serious Reforms." *Los Angeles Times* (May 2).

^{xv} *Ibid.*

^{xvi} See, *id.* *Farrell v. Harper* complaint.

^{xvii} Talkington, Laura; Pacific News Service, May 23, 2004

<http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/05/23/INGVR6NVTI1.DTL>

^{xviii} *April 19, 2006* -- A statewide drive to end illegal and inhumane conditions in California county juvenile halls has started with the filing of a complaint in San Francisco County Superior Court. The lawsuit seeks court orders requiring the state authority responsible for being a watchdog over juvenile halls -- the Corrections Standards Authority (CSA) -- to fulfill its duties and take action to correct intolerable conditions. *Waters v. Woodford* available at <http://www.prisonlaw.com/pdfs/CSAComplaint2.pdf> (Attached hereto). The following week a second suit was filed against one California County alleging pervasive violence and use of excessive force, overcrowding, small food portions, failure to provide safe temperatures in the rooms, failure to provide hot running water, broken and dilapidated plumbing, pervasive use of isolation cells, denial of medical and mental health care, inadequate education system and grievance procedures. *Hixon v. Hope*.

Field Code Changed

- ^{xix} Burrell and Laba, *Violence-Prone Youth Authority Still Fails Its Children, Its Taxpayers*, 4/26/06 San Francisco Daily Journal <http://www.dailyjournal.com/>
- ^{xx} Michele Byrnes, Daniel Macallair, MPA, Andrea D. Shorter, August 2002, Aftercare as afterthought: Reentry and the California Youth Authority Prepared for the California State Senate Joint committee on Prison and Construction Operations. <http://www.cjcf.org/pdf/aftercare.pdf>
- ^{xxi} California Penal Code Section 289.6.
- ^{xxii} Sele Nadel-Hayes, Goldman School of Public Policy, University of California at Berkeley & Daniel Macallair, MPA, Executive Director Center on Juvenile and Criminal Justice, Report to the State Legislature on Restructuring Juvenile Corrections in California. September 2005. <http://www.cjcf.org/pdf/restructuring.pdf>.
- ^{xxiii} In November 2004, a state court judge approved a consent decree, under which state officials agreed to remedy the serious on-going problems with conditions in the state's juvenile correctional facilities. The decree requires the state to provide wards with adequate and effective care, treatment and rehabilitation services, including reducing violence and the use of force, improving medical and mental health care, reducing the use of lock-ups and providing better education programs. While it is of note, that the Governor and California correctional officials have acceded to the need for remedial action, it is unlikely that this will result in significant changes.
- ^{xxiv} The United States has incorporated international prohibitions against torture and mistreatment of persons in custody into its domestic law. The United States has reported to the Committee Against Torture that: "Every act of torture within the meaning of the Convention is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes. Such prosecutions do in fact occur in appropriate circumstances. Torture cannot be justified by exceptional circumstances, nor can it be excused on the basis of an order from a superior officer."
- ^{xxv} Monica. Valley State Prison for Women. July 15, 2005.
- ^{xxvi} Telephone call between Amnesty International USA and Ellen Barry on February 6, 2001.
- ^{xxvii} United Nations Special Rapporteur on Violence Against Women report on the issue of Violence Against Women in U.S. State and Federal Prisons (January 4, 1999, E/CN.4/1999/68/Add.2).
- ^{xxviii} Senate Concurrent Resolution 33, Commission Report on Female Inmates and Parolee Issues, June 1994, p. 37.
- ^{xxix} 15 California Administrative Code, Section 3287(4)(b)(1), "Cell, Property and Body Inspections."
- ^{xxx} Ventura County Star. May 26, 2000. "Officer Allegedly Forces Sex Act."
- ^{xxxi} Amnesty International Report "Abuse of Women in Custody: A State-by-State Survey of Polices and Practices in the USA." 2006. Available at <http://www.amnestyusa.org/women/custody/states/california.pdf>.
- ^{xxxii} Department of Corrections and Rehabilitation. (2005) "Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations." <http://www.corr.ca.gov/ReportsResearch/OffenderInfoServices/Annual/CalPris/CALPRISd2004.pdf>
- ^{xxxiii} Jonathan Turley, *Statement of Professor Jonathan Turley: California's Aging Prison Population*, before a Joint Hearing of the Senate Subcommittee on Aging and Long Term Care, Senate Committee of Public Safety, and the Senate Select Committee on the California Correctional System, February 25, 2003.
- ^{xxxiv} Heidi Strupp and Donna Willmott. *Dignity Denied: The Price of Imprisoning Older Women in California*. (2005) Legal Services for Prisoners with Children, at 38.
- ^{xxxv} *Dignity Denied*, (2005)
- ^{xxxvi} See Appendix for terms and definitions used in this report.
- ^{xxxvii} A 1997 San Francisco Public Health survey showed an astounding 65% of transgender women and 29% of transgender men respondents had been incarcerated. San Francisco Department of Public Health, Transgender Community Health Project, February 18, 1999, [at http://hivinsite.ucsf.edu/InSite?page=cftg-02-02](http://hivinsite.ucsf.edu/InSite?page=cftg-02-02). Hereinafter "SFDPH."
- ^{xxxviii} A 2006 employment survey of the San Francisco transgender community revealed that 75% of respondents did not have a full-time job, and over half of the transgender community lived below the poverty line. Tali Woodward, "Transjobless," San Francisco Bay Guardian, March 16-21, 2006.
- ^{xxxix} SFDPH
- ^{xl} J.D. Ruiz & J. Mikanda, "Seroprevalence of HIV, Hepatitis B, Hepatitis C, and Risk Behaviors Among Inmates Entering the California Correctional System," California Department of Health Services, Office of AIDS, HIV/AIDS Epidemiology Office (Mar. 1996).
- ^{xli} American Civil Liberties Union of Michigan, "Hepatitis C in Michigan Prisons," *available at* www.aclumich.org (Feb. 24, 2003).
- ^{xlii} Legislative Analyst's Office, Analysis of the 2003-4 Budget Bill, *Judiciary and Criminal Justice, Department of Corrections*, February 2003.
- ^{xliiii} Ryan S. King and Marc Mauer. *Aging Behind Bars: "Three Strikes" Seven Years Later*, The Sentencing Project, 2001 at 4; and California Department of Corrections, Data Analysis Unit, *Prison Census Data as of December 31, 2004*, Ref. No. CEN-SUS1, February 2005, Table 4.
- ^{xliiii} The report on the mission to California women's prisons by the U.N. Special Rapporteur on Violence Against Women (January 4, 1999, E/CN.4/1999/68/Add.2) showed that the use of the term "overfamiliarity" in correctional staff training was insufficient to refer to acts of sexual abuse, harassment and assault, and thereby "obscured the serious nature of the acts concerned."
- ^{xliiii} "Transsexuals can choose jails," May 3, 2006, *at* http://www.news24.com/News24/World/News/0,,2-10-1462_1892464,00.html.