

**UNITED STATES HUMAN RIGHTS VIOLATIONS IN CORRECTIONAL PRACTICES**  
**A contribution to the UN Universal Periodic Review**  
**By NGO International CURE**

**I. ACCESS TO THE COURTS**

**A. RELEVANT HUMAN RIGHTS**

Article 14, Paragraph 3 of the *International Covenant on Civil and Political Rights (ICCPR)*, ratified by the US: “Minimum guarantees: to be informed promptly and in detail in an understandable language the nature and cause of charges; to have adequate time and facilities for preparation of a defense and communication with counsel of one’s own choosing; or legal assistance assigned without payment if one is indigent; to have free assistance of an interpreter.”

Article 2, Paragraph 3 states: “Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 5 (a) of the *International Convention on the Elimination of Racial Discrimination (ICERD)*: “the right to equal treatment before the tribunals and all other organs administering justice.”

**B. VIOLATIONS.**

*ICCPR*: Inadequate legal defense for persons living in poverty results in many false convictions of innocent persons. Over one-hundred individuals in capital cases have been exonerated, through subsequent DNA technology, after spending years in prison for crimes they did not commit. This extent of injustice in high visibility capital cases is a certain indicator of more injustice in non-capital cases.

Capital juries are death qualified which means jurors have to be willing to give the death penalty in order to serve. The prosecution customarily has an unlimited budget and resources whereas public defender offices are traditionally staffed by lawyers carrying large caseloads with limited budgets. This often means limited, if any, investigation. Interrogation techniques are often manipulated by law enforcement, witnesses are threatened, confessions are coerced, eyewitness testimony is extracted with prejudicial techniques, jailhouse informants are used to gain convictions. Prosecutors cannot be prosecuted even for hiding exculpatory evidence.

Police are permitted to lie to defendants to get confessions. In many cases, defendants do not have any communication with their attorneys, even in capital cases, and little preparation takes place prior to trial. Despite a Supreme Court ruling requiring 2 lawyers and 2 investigators, one of which must be a mitigation specialist for capital trials, this is still not the norm.

Foreign nationals who are arrested are frequently not permitted to contact their consulate for help. Non English speaking defendants are often not provided with interpreters.

Denial of effective redress of constitutional violations. Persons who seek their rights must not be punished because of those efforts. The constraints on access to legal review imposed by the *Prison Litigation Reform Act of 1995 (PLRA)* have been significant impediments to the redress of violations of prisoners’

rights. By keeping constitutional claims out of court, the PLRA places severe limitations on the possibility of challenging and redressing abusive prison conditions through litigation.

*ICERD*: Racial discrimination has dominated our criminal justice system. People of color are convicted disproportionately to their makeup in the overall population, particularly if the victim is white. Juries continue not to reflect the actual population. Drug laws are less severe for the so-called white drugs vs. drugs commonly found in the poorer, non white population.

### **C. RECOMMENDATIONS:**

1. Change jury qualification to eliminate “death qualification” in capital juries. Make certain juries actually reflect the racial make-up of the community.
2. In capital trials enforce ABA recommendations: defense team must have 2 lawyers, 2 investigators, one of which is a mitigation specialist.
3. Implement videotaping in interrogations, double-blind eyewitness identification techniques.
4. Eliminate police freedom to lie to defendants to obtain confessions.
5. Jailhouse informants are unreliable and should only be used after extreme scrutiny of deals made for their testimony.
6. Prosecutors should be subject to prosecution and lawsuits for not disclosing exculpatory evidence.
7. Foreign nationals should be put in contact with their consulate immediately after arrest. Non-English speaking defendants should be provided with interpreters at every step in legal processes.
8. DNA and other forensic testing should be provided.
9. Amend the PLRA to eliminate the barriers to effective redress of constitutional violations.

## **II. CONTROL UNITS**

### **A. RELEVANT HUMAN RIGHTS**

Article 7 of the *International Covenant on Civil and Political Rights* states: “No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”

### **B. VIOLATIONS.**

A study of a hundred randomly selected inmates at California’s Pelican Bay supermax prison, noted that after months or years of complete isolation, many prisoners “begin to lose the ability to initiate behavior of any kind—to organize their own lives around activity and purpose.”... “Chronic apathy, lethargy, depression, and despair often result. In extreme cases, prisoners may literally stop behaving,” becoming essentially catatonic. (Craig Haney, a psychology professor at the University of California at Santa Cruz)

Such debasement of human beings clearly violates the intent of Article 7 of the *ICCPR*.

### **C. RECOMMENDATIONS.**

1. Current practice of prolonged isolation in control/segregation units should be stopped completely.
2. There should be narrowly defined criteria for placement into control/segregation units so that they are used only for prisoners who are the most serious threats to safe and humane operations of correctional facilities. Placement in such units may never be done for prisoners with known psychiatric problems.
3. There should be a clearly articulated system in place for prisoners to work their way back to open population settings over a reasonable period.

4. The conditions inside the cells must not lead to adverse sensory deprivation, overstimulation, or disorientation, due to lack of natural light or excessive sound/noise/music. Deprivation of food, water or sleep, or spatial disorientation must be avoided at all costs. Restraints should not be used for punishment.
5. The mental health of all prisoners who are in control/segregation units should be regularly reviewed by properly trained and certified mental health professionals. If, in the opinion of these professionals, the inmates need treatment, it should be provided immediately, including transfer to a psychiatric setting if necessary.

### **III EDUCATION IN PRISON**

#### **A. RELEVANT HUMAN RIGHTS**

The *Universal Declaration of Human Rights (UDHR)* states, in Article 26.1: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit.”

Article 10.3 of the *ICCPR*: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”

Article 5 of the *ICERD*: “to guarantee the right of everyone, without distinction as to race...the right to education and training.”

#### **B. ANALYSIS.**

Especially for ex-offenders, adequate vocational training is key to economic survival and re-integration into society. In the workplace of the United States, this usually requires vocational training beyond secondary schooling. Specialized occupational training in careers like electrical installation, plumbing, welding, building construction, air conditioning, heating, auto mechanics, and semi professional skills that are available in community colleges, are essential.

#### **C. VIOLATIONS.**

1. *UDHR*: Post secondary vocational training, that is needed for economic survival in the U.S., is seriously inadequate in most U.S. places of detention.

In 1995, the U.S. Congress terminated all federal funding (financial aid via PELL Grants) for post-secondary education in prisons. Within five years the U.S. Congress established post secondary grants for financial aid of youthful offenders and now such funds are available for offenders up to the age of 35. However, funding is not adequate and the level of commitment must be changed to cover all ages of the incarcerated. These social exclusions and inadequacies violate the intent of Article 26 of the *UDHR*.

Compounding the reentry problem, laws needlessly deny licenses to persons with criminal records that are unrelated to the work involved.

2. *ICERD*: The grossly disproportionate inclusion of African-Americans and Hispanics in the prison systems of the U.S., and the relative inadequacy of Correctional Education, effectively deprives such persons of equal educational opportunity, thus violating Article 5 of the *ICERD*.

## **D. RECOMMENDATIONS.**

1. Federal and state laws and regulations should generally include correctional education as beneficiaries on a par with public education.
2. Steps should be taken to enhance education in places of detention so that educational content and quality there will approach a par with public education.
3. Federal funding of financial aid for post-secondary education in prisons (PELL Grants for prisoners) should be restored, on a par with federal aid in public education.
4. Unwarranted restrictions on work licenses should be removed.
5. To facilitate investment in correctional education, the use of lower cost technologies such as distance learning and online video should be encouraged and funded, as supplements to standard education delivery.

## **IV. MEDICAL CARE IN PRISONS**

### **A. RELEVANT HUMAN RIGHTS**

*1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT):* Deliberate indifference to the pain and suffering of those in custody evidenced by the denial of medical care, unreasonable delay in the provision of care, or the provision of substandard and ineffective care is prohibited by Article 16, which obligates each State Party to “undertake to prevent in any territory under its jurisdiction other acts of cruel or degrading treatment or punishment”

*2. The U.S. Constitution:* The 8<sup>th</sup> amendment to the U.S. Constitution prohibits cruel and unusual punishment. In *Estelle v. Gamble*, 429 U.S. 97 (1976), the Court concluded that deliberate indifference to serious medical needs of prisoners constitutes "unnecessary and wanton infliction of pain," whether the indifference is displayed by prison doctors in their response to the prisoner's need or by prison guards who deny or delay access to treatment or interfere with the treatment.

### **B. VIOLATIONS.**

1. *CAT:* The systematic failure to provide adequate resources to provide care to inmates, as illustrated by the placing in judicial receivership the medical services of the California Department of Corrections, also constitutes an 8<sup>th</sup> amendment violation and, by implication, a violation of Article 16 of The Convention.
2. Only 11 percent of inmates with substance use disorders receive any type of treatment during incarceration; few of those receive evidence-based care. (*“Behind Bars II: Substance Abuse and America’s Prison Population” CASA; February 2010*).
3. Many other instances of failure to provide prisoners and detainees with constitutionally adequate medical and psychiatric care. The articles referenced in the Annex provide a glimpse of the failure of penal institutions to provide constitutionally adequate care.
4. Medical co-pays from inmates are sometimes large when compared to their income, and can deter timely and preventive medical treatment.

## C. RECOMMENDATIONS

1. All inmates with substance use disorders should be provided evidence-based treatment and aftercare.
2. Provide adequate resources and staff training to ensure constitutionally sufficient medical care.
3. Institute a structure of review of prison performance independent of prison administrative structure. For example, establish an independent ombudsman to review prisoner complaints and to monitor the indices of prison administrative performance.
4. Eliminate or reduce medical co-payments by inmates in accord with their income.

## V. SEXUAL SECURITY

### A. RELEVANT HUMAN RIGHTS

The Preamble to the Article 3 of the *ICCPR* states: “The States Parties to the present Covenant shall undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Article 7 of that Covenant states: “No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”

### B. VIOLATIONS

1. **Sexual assault.** In 2009, the State of Michigan paid \$100 million to settle a class-action by more than 500 female prisoners who said they were sexually assaulted by prison guards.
2. **Sexual abuse.** In a 2007 survey of prisoners across the country, the 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>1</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>2</sup>

Incarcerated women have undergone intrusive pat-downs and body searches in public by male guards.

### C. RECOMMENDATIONS

1. Adopt and enforce the national standards that were developed under the *Prison Rape Elimination Act*.
2. Ratify 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.
3. Prohibit pat-downs and body-searches of women by male officers.
4. Adopt severe penalties for staff violence against women inmates.
5. Swiftly prosecute, and widely publicize punishment, for all violence by staff on women inmates.

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<sup>1</sup> Allen J. Beck & Paige M. Harrison, Bureau of Justice Statistics, *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007* (2007).

<sup>2</sup> Allen J. Beck & Paige M. Harrison, Bureau of Justice Statistics, *Sexual Victimization in Local Jails Reported by Inmates, 2007* (2008).