

## HUMAN RIGHTS WATCH

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300  
Email: hrwnyc@hrw.org

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February 2, 2007

Karen J. Mathis, President  
American Bar Association  
321 N. Clark St.  
Chicago, IL 60610

Dear Ms. Mathis:

Human Rights Watch writes to strongly support the American Bar Association's Criminal Justice Section Resolution to Repeal or Amend the Prison Litigation Reform Act (PLRA), and urges the American Bar Association (ABA) to approve it.

We have documented prison conditions in the US for nearly twenty years, and are deeply familiar with the burden the PLRA poses for prisoners trying to obtain judicial relief for violations of their basic human rights. Unfortunately, the most significant reform the PLRA instituted has been to severely limit the possibility of challenging and remedying abusive prison conditions through litigation.

In enacting the PLRA in 1996, Congress sought to curb what they perceived to be an overwhelming number of frivolous prisoner lawsuits. There certainly are frivolous prisoner lawsuits which have been kept out of court by the PLRA. However, after a decade of experience under the legislation, it is clear the PLRA is also keeping countless serious claims from reaching the courts—including claims of physical and sexual abuse, indifference to inmate on inmate rape, gross mistreatment of confined juveniles, and markedly deficient medical and mental health treatment. This effectively prevents the courts from exercising their role of protecting constitutional rights.

Based on our experience, we strongly agree with the Criminal Justice Section that the ABA should support reform of the following provisions of the PLRA:

1) **The exhaustion requirement.** It is entirely reasonable to provide prison officials an opportunity to respond to and resolve prisoners' complaints and grievances before a court steps in. It is not reasonable, however, to deny prisoners judicial relief from misconduct or mistreatment by those officials simply because they have not successfully navigated the complicated rules of prison grievance systems and their extraordinarily tight deadlines. In

practice, the exhaustion requirement has proven a formidable obstacle for prisoners seeking to have their legitimate claims heard in court. The US Supreme Court has interpreted the PLRA as requiring courts to dismiss the cases of any inmate who has not properly exhausted his administrative remedies process. The exhaustion requirement allows corrections departments to abuse their authority to determine the timeliness and transparency with which an inmate's grievance is addressed and remedied. Not surprisingly, corrections officials and attorneys generals opposed to amending the PLRA exhaustion requirement have failed to come up with a reasonable objection to changing the law to allow courts to suspend proceedings until an inmate has exhausted his administrative remedies. Such a suspension would give the departments what they claim to want—an opportunity to assess and respond to inmate complaints before the court intercedes—while not needlessly slamming the door on a prisoner's ability to get judicial relief.

2) **The physical injury requirement.** The PLRA prohibits prisoners from being awarded damages for violations of their constitutional rights absent more than de minimis physical injury. No other persons in the United States face such restrictions on their right to compensation when public officials violate their rights. The legislation precludes prisoners from receiving damages for constitutional violations that do not typically involve physical injuries, including sexual harassment and malicious humiliation, religious discrimination, and the right to petition government officials. Perhaps most disturbing is the effect the "physical injury" requirement may have on prisoners' seeking redress for rape. At least one court has held that rape is not a physical injury for the purposes of the PLRA, noting that the plaintiff needed to do more than "make a claim of physical injury beyond the bare allegation of sexual assault" to meet the physical injury requirements of the PLRA.

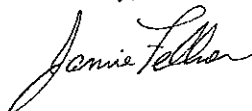
3) **Limitation on lawyers fees.** It goes without saying that succeeding in court, even with the most meritorious claim, is extremely difficult without legal representation. The PLRA has made it far more difficult for prisoners to get that representation. Because most prisoners are indigent and unable to afford the costs of litigation, they must look either to public interest lawyers or private lawyers who work on a contingency-fee basis to represent them in suits challenging prison abuses. Public interest lawyers rely on legal fees garnered from successful lawsuits to finance their work, and private lawyers who work on a contingency basis expect to be paid at fair rates if they are successful. Those who resist repealing this provision of the PLRA know that by restricting the amount of fees attorneys can receive in successful prison conditions suits, the legislation significantly curbs the ability of inmates to find qualified lawyers to help them. Inmates are all too often forced to proceed pro se—which dooms most of their cases to failure, whatever the true merits of their claims. There is no principled basis for imposing restrictions on attorneys fees in civil rights cases brought by prisoners that do not exist in other civil rights cases.

4) **Limits on the equitable authority of courts.** Prior to passage of the PLRA, when faced with officials who were indifferent to or who condoned the perpetuation of abusive prison conditions, prisoners turned to the courts for vindication of their constitutional rights. Confronted with appalling prison conditions and widespread violations of prisoners' rights, judges crafted comprehensive court orders or approved settlements requiring major changes in how prisoners were treated. Significant, necessary, and durable reform does not come easily, however. In numerous cases, courts had to retain jurisdiction and monitor the cases over a period of years and even decades. Anyone familiar with the history of prisons in the US knows the powerful and crucial role the courts played in securing much needed and long delayed improvements in the conditions prevailing in US prisons. There is no principled basis for making the scope of the courts' equitable powers to address constitutional violations in prison conditions different than their equitable powers in other cases.

5) **Application to juveniles.** The PLRA barriers to redress of civil and human rights are especially onerous for juveniles. All adolescents are more vulnerable than adults. In general, laws recognize their reduced capacity to assert their rights and make considered decisions, prohibiting them from entering into contracts, smoking, or voting. That same lack of maturity inhibits their ability to comprehend the significance of redress procedures, such as exhaustion deadlines, and the consequences of failing to assert their rights in a situation of abuse. Many youth who are incarcerated, however, are not typical teenagers and have even less ability to understand their rights and protect themselves. Incarcerated youth have higher incidents of mental health disorders and disabilities than youth in the general population. Research has found that most youth in the juvenile justice system qualify for at least one diagnosable mental health disorder, and conservative estimates are that over 30 percent of incarcerated youth have learning and other disabling conditions. This is an especially vulnerable population, and the PLRA's restrictions reduce juveniles' ability to challenge violations of their constitutional and federal statutory rights.

While not explicitly cutting back on prisoners' substantive rights, the PLRA has created formidable obstacles to the enforcement and protection of those rights. Ten years of experience with the PLRA leaves little doubt that seeking its reform should be a high priority for the ABA. Human Rights Watch strongly urges the ABA to support the Resolution to Repeal or Amend the Prison Litigation Reform Act (PLRA).

Sincerely,



Jamie Fellner, Esq.  
Director, U.S. Program