

June 4, 2009

**Letter from United States and international human rights organizations to the Committee on the Elimination of Racial Discrimination (“CERD”)**

Re: Clarifications on Juvenile Life Without Parole Sentences: Information Presented by the United States in its Response to CERD’s Recommendations (January 19, 2009)

Dear Members of the Committee on the Elimination of Racial Discrimination:

The undersigned organizations submit this letter to clarify information about the United States’ practice of sentencing juveniles to life in prison without the possibility of parole (“JLWOP”). We offer these clarifications in reaction to the United States’ follow-up report of January 19, 2009, responding to the Committee’s recommendations contained in its Concluding Observations on the United States, adopted on March 7, 2008.

We urge that the Committee consider the following.

**Paragraph 21: U.S. Response**

1. The United States stated that juvenile life without parole sentences are “imposed in rare cases where individuals, despite their youth, have committed gravely serious crimes...--typically murder--...”

In fact, while no other country in the world has imposed this sentence on a juvenile, over 2,500 individuals are serving this sentence in the United States for crimes committed while they were below the age of eighteen.<sup>1</sup> This number illustrates that the sentence is not imposed only “in rare cases,” as the United States claims.

In addition, the United States does not reserve the sentence for juveniles convicted of gravely serious crimes. Across the United States, an estimated 26% of juvenile offenders are serving JLWOP for felony or “accomplice” murder, in which the juvenile was not the person who killed the victim.<sup>2</sup>

In some specific state studies, the percentages of youth serving life without parole for felony or “accomplice” murder are even higher. Nearly half of youth sentenced to life without parole surveyed by the American Civil Liberties Union in Michigan were sentenced for aiding and abetting or an unplanned murder in the course of a felony.<sup>3</sup>

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<sup>1</sup> These statistics have been gathered by Human Rights Watch, in collaboration with many organizations and state departments of corrections throughout the United States.

[http://www.hrw.org/sites/default/files/related\\_material/JLWOP\\_Table\\_May\\_7\\_2009.pdf](http://www.hrw.org/sites/default/files/related_material/JLWOP_Table_May_7_2009.pdf).

<sup>2</sup> Human Rights Watch/Amnesty International, *The Rest of Their Lives*, at 27 (2005), available at: <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives-0>.

<sup>3</sup> American Civil Liberties Union of Michigan, *Second Chances, Juveniles Serving Life without Parole in*

Thirty-three percent of youth sentenced to life without parole whose cases Human Rights Watch investigated in Colorado had convictions based on the felony murder rule.<sup>4</sup> In 45 percent of California cases surveyed by Human Rights Watch, youth sentenced to life without parole had not actually committed a murder and were convicted for their role in aiding and abetting or participating in a felony.<sup>5</sup> These are all cases in which someone else was the primary actor. A significant number of these cases involved an attempted crime gone awry—a tragically botched robbery attempt, for example—rather than premeditated murder.

Still other youths were given the sentence *not* for murder but for lesser crimes. For example, Antonio Nunez was sentenced to LWOP at the age of 14 for a crime that resulted in no bodily injury. (*See, e.g., State of California v. Antonio Nunez, 2001*).<sup>6</sup>

2. The United States stated that JLWOP is imposed on juveniles “only after a judge has made a determination that the juvenile can be tried as an adult. In such cases, whether a juvenile offender is prosecuted as an adult depends upon a number of factors that are weighed by a court, such as, . . . the age; personal, family or other relevant circumstances or background . . . ; the juvenile’s role in committing the crime; and the juvenile’s prior record.”

In fact, 19 states require the automatic transfer of a child to adult court when the child is accused of certain crimes, without providing a hearing to make determinations about whether the child *should* be tried as an adult.<sup>7</sup> Once in adult court, 21 states then mandate the LWOP penalty upon conviction of certain crimes.<sup>8</sup> Thus, the court cannot consider the child’s age, background, involvement in the crime, or other factors militating against placement in adult court and/or sentencing to this harshest of penalties. While 43 states could allow such a sentence for a juvenile, 38 states actually impose the LWOP sentence on juveniles in practice.<sup>9</sup>

3. The United States stated that H.R. 4300, the Juvenile Justice and Accountability and Improvement Act of 2007, is pending in the United States Congress.

H.R. 4300 was introduced in the House of Representatives in 2007, but it failed to pass. Another bill, HR 2289, was introduced May 6, 2009. However, neither the President nor

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*Michigan’s Prisons*, at 4 (2004),

<http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf>.

<sup>4</sup> Human Rights Watch, *Thrown Away: Children Sentenced to Life without Parole in Colorado* (February 2005) at 18-19, available at: <http://hrw.org/reports/2005/us0205/>.

<sup>5</sup> Human Rights Watch, *When I Die, They’ll Send Me Home: Youth Sentenced to Life without Parole in California*, at 21 (January 2008), available at: <http://www.hrw.org/reports/2008/us0108/>.

<sup>6</sup> This sentence was recently overturned by a California appellate court and it is uncertain whether the state Attorney General will seek to challenge this ruling before the state’s highest court. Meanwhile, two cases involving juveniles sentenced to LWOP for non-homicide convictions (*Graham v. Florida and Sullivan v. Florida*), have been accepted for hearing by the United States Supreme Court in its 2009-2010 term.

<sup>7</sup> De la Vega, C. and Leighton, M., *Sentencing Children to Die in Prison: Global Law and Practice*, 42 USF L. Rev. 983 (Sp. 2008), at <http://www.law.usfca.edu/centers/documents/jlwoplawreview.pdf>.

<sup>8</sup> *Id.*, *See the law review article’s Appendix* for a list of the relevant state laws.

<sup>9</sup> *Ibid.*

the executive branches of government have yet to support this bill. In fact, not only has the federal government failed to support legislative reform to JLWOP at the state level, the United States did not even alert the Committee to the fact that there are 37 individuals in the federal prison system serving LWOP sentences for federal crimes committed as juveniles. Thus, it is not just the states that impose this sentence but also the federal government.

4. The United States also failed to respond to the Committee's central inquiry about the racially discriminatory practices that lead to the imposition of this sentence on so many youth of color in the United States. For example, according to FBI data, black youth (under age 18) arrested for murder are sentenced to LWOP at rates that are between 1.2 and 6 times that of white youth arrested for murder.<sup>10</sup> On a per capita basis, black youth in the United States are serving LWOP at a rate that is ten times that of white youth, and in some states, the racial disparities are even more stark. The highest black to white ratios are in Connecticut, Pennsylvania, and California, where black youth are between 18 and 48 times more likely to be serving a sentence of LWOP than white youth, on a per capita basis.<sup>11</sup> In U.S. federal prisons, of those youth serving LWOP whose race has been identified, 73% are youth of color and 56% are black.

5. In its response to the Committee, the U.S. devotes several pages to discussion of its investigation of juvenile detention facilities. While we commend any investigation by the federal government into the abuses committed at these facilities, this response is not relevant to the Committee's concerns, since many children sentenced to LWOP are incarcerated in adult facilities while they are still juveniles. Youths convicted of murder in Michigan, for example, are automatically sent to adult prison at ages as young as 14.<sup>12</sup> By transferring juveniles to the adult court system, many states fail to honor the status of these individuals as children.

Moreover, every juvenile offender serving LWOP in the United States serves the bulk of his or her sentence in an adult facility, often entering adult prison at the age of 18, making the United States' lengthy description of its investigations of juvenile facilities inapposite to the Committee's concerns. Although mostly segregated from the adult population, youth in adult facilities are subject to physical violence, abuse and even rape by older inmates.<sup>13</sup> Research on youth in prison, as well as letters our organizations have received from juveniles serving LWOP, demonstrate the tremendous suffering of these young people. This leads them to commit or attempt to commit suicide at greater rates than adults and to suffer lifelong emotional trauma.

In conclusion, we respectfully submit this letter to the Committee for its consideration in interpreting the United States responses to its recommendations. We urge the Committee

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<sup>10</sup> Human Rights Watch, Submission to the Committee on the Elimination of Racial Discrimination (February 2008), available at: <http://www.hrw.org/en/node/62449/section/2>.

<sup>11</sup> Human Rights Watch, *The Rest of Their Lives: Updated Executive Summary* (2008), available at: <http://www.hrw.org/sites/default/files/reports/us1005execsum.pdf>.

<sup>12</sup> LaBelle, et al., *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (ACLU, 2004), available at: <http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf>.

<sup>13</sup> De la Vega, C. and Leighton, M., *Sentencing Children to Die in Prison*, *supra* note 7.

to consider these points of clarification on the use of JLWOP sentences in the United States, and to reinforce the Committee's conclusion that the imposition of this sentence violates the treaty obligations of the United States and recognized customary international human rights law.

Sincerely,

American Civil Liberties Union  
Amnesty International  
Center for Constitutional Rights  
Center for Law and Global Justice, University of San Francisco School of Law  
Children and Family Justice Center, Northwestern University School of Law  
Coalition of African, Arab, Asian, European, and Latino Immigrants of Illinois  
Columbia Law School Human Rights Institute  
Developing Justice Coalition  
Four Freedoms Forum, Hawai'i Institute for Human Rights  
Human Rights Advocates  
Human Rights Watch  
Lawyers Committee for Civil Rights Under Law  
National Association of Criminal Defense Lawyers  
National Coalition for the Fair Sentencing in Youth  
Penal Reform International  
Sisters in Sobriety, Transformed, Anointed & Healed  
The Sentencing Project  
University North Carolina, Chapel Hill, Juvenile Justice Clinic

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