

HUMAN RIGHTS COMMITTEE COUNTRY REPORT

United States

Independent Information for the 107th session of the Human Rights Committee (HRC)

MIDWEST COALITION FOR HUMAN RIGHTS

CRITICAL ISSUES

Failure to properly and completely outlaw juvenile life without parole

Denial of opportunities for rehabilitation to juveniles sentenced to life without parole

Failure to apply new ban on mandatory sentencing of life without parole to juveniles already in prison

Racial discrimination in sentencing juveniles to life without parole

PROPOSED QUESTIONS FOR THE GOVERNMENT OF THE UNITED STATES

- In light of the new ban on mandatory life without parole for juveniles, please describe the measures being taken to review the sentences of juveniles already serving sentences of life without parole.
- Please describe the measures being taken to ban *all* sentences, without exception, of life without parole for juveniles.

I. Introduction

1.1 The United States signed and ratified the International Covenant on Civil and Political Rights (“ICCPR”) in 1992. As a party to the ICCPR, it is required to submit regular reports on how the rights and obligations are being implemented to the Human Rights Committee (“HRC” or the “Committee”), which is the body of independent experts responsible for monitoring implementation of the ICCPR.

1.2 In addition to reports from state parties, non-governmental organizations may submit “shadow” reports to the Committee—addressing omissions, inaccuracies, or deficiencies in the official government reports. This memo, prepared for the Midwest Coalition on Human Rights, focuses on the practice of sentencing of juveniles to life imprisonment without the possibility of parole in the United States. Its contents are intended for use in a future shadow report.

1.3 The memo proceeds in six parts. It will explain why the United States’ continued use of juvenile life without the possibility of parole (“JLWOP”) sentences violates the ICCPR, notwithstanding a reservation that it may treat children in the criminal justice system as adults in “exceptional circumstances.” It also explains why JLWOP is a particularly harmful practice for those children affected. In explaining the nature and extent of the violation, we pay particular attention to the situation in the Midwest, where Michigan and Illinois impose JLWOP at particularly high rates. This memo also includes an aggregation of previous United States’ reports to the Committee, as well as the Committee’s responses, to illustrate just how much work must still be done. We conclude with a look forward in light of recent Supreme Court cases, and offer recommendations on how to finally bring the United States into compliance with the ICCPR.

II. Obligations Under the ICCPR

2.1 While there is no express provision of the ICCPR that addresses sentencing juveniles to life without the possibility of parole, several articles unmistakably prohibit the practice when read together:

- Article 7 states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹
- Article 10 expands on the specific rights for incarcerated individuals. “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”²
- Article 14(4) requires that the adjudication of juveniles “take account of their age and the desirability of promoting their rehabilitation.”³
- Article 24(1) states, “[e]very child have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”⁴

2.2 JLWOP directly contradicts the requirement in Article 14(4) that imprisonment should promote rehabilitation, and the requirement in Article 24(1) that every child be given protection based on her status as a minor.

2.3 The United States is the only country in the world that imposes sentences of life without the possibility of parole on juvenile offenders.⁵ No other country in the world imposes this sentence

¹ United Nations International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter “ICCPR”].

² *Id.* at art. 10.

³ *Id.* at art. 14(4).

⁴ *Id.* at art. 24(1).

⁵ Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 985–86 (2008).

on juveniles, even those who commit a homicide crime.⁶ The United States' continued use of juvenile life without parole ("JLWOP") violates its obligations under the ICCPR, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), and the Convention on the Rights of the Child ("CRC").

III. United States' Reservations and Reporting

A. Reservations

3.A.1 When the United States signed and ratified the ICCPR,⁷ it did so subject to five reservations, five understandings, and four declarations⁸—one of which specifically addressed sentencing practices for youth offenders. The ICCPR generally recognizes the special status of children and the special needs they have in the administration of criminal justice.⁹ It thus requires that state parties separate youth offenders from adult inmates and provide age-appropriate treatment and educational services.¹⁰ It also requires that state parties adopt sentencing practices with rehabilitative goals rather than punitive ones.¹¹ But the United States has failed to meet both of these requirements to varying degrees, in large part because the fifth reservation attached to ratification stipulates:

That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.¹²

⁶ *Id.* at 986, n.14; *see also* Brief for Amnesty International et al. as Amici Curiae in Support of Petitioner at 15–17, *Graham v. Florida*, 130 S.Ct. 2011 (2010) (No. 08-7412).

⁷ *See* SENATE COMM. ON FOREIGN RELATIONS, REPORT ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1992), *reprinted in* 31 I.L.M. 645 (1992) [hereinafter "SENATE REPORT"].

⁸ *Id.* The reservations concern ICCPR provisions that prohibit war propaganda, capital punishment, cruel, inhuman or degrading treatment, criminal penalties, and treatment of juvenile offenders. The understandings concern provisions on equal protection, compensation for illegal arrests, separate treatment of the accused from the convicted, and the right to counsel. The declarations concern the treaty's self-executing nature, rights that may be taken away during emergencies, the Human Rights Committee, and the savings clause on natural wealth and resources. *See generally* Kristina Ash, *U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 *N.W. U. J. INT'L HUM. RTS.* 7 (2005).

⁹ United Nations International Covenant on Civil and Political Rights art. 10(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter "ICCPR"]. The ICCPR "is the first document formally to address juvenile rights in judicial proceedings." Scott Hechinger, *Juvenile Life without Parole: An Antidote to Congress's One-Way Criminal Law Ratchet*, 35 *N.Y.U. REV. L. & SOC. CHANGE* 408, 476 (2011).

¹⁰ ICCPR, *supra* note 9, at art. 10(3).

¹¹ ICCPR, *supra* note 9, at art. 14(4).

¹² SENATE REPORT, *supra* note 7, at 651–52. This reservation is particularly interesting because the United States was a co-sponsor of Article 14 and presumably understood the breadth and scope of its language. Indeed, the history of the reservation reveals that "it was intended to permit—on an exceptional basis—the trial of children as adults and the incarceration of children and adults in the same prison facilities," rather than exceedingly harsh sentencing practices directed toward youth offenders. AMNESTY INT'L & HUMAN RIGHTS WATCH, *THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES* 97 (2005) [hereinafter "HRW REPORT"] ("According to the United States Senate Committee on Foreign Relations, the reservation was included because, at times, juveniles were not separated from adults in prison due to their criminal backgrounds or the nature

The United States has relied on this reservation to justify the continued existence of state statutes allowing youth offenders to receive sentences of life in prison without the possibility of parole.

3.A.2 Of course, the true extent of this reservation turns on the practical meaning of “exceptional circumstances.” In its attempts to downplay interpretive differences with the Human Rights Committee, the United States has emphasized that JLWOP is imposed on only the worst offenders, and even then, only after following the most stringent procedural safeguards.¹³ But the steadily increasing numbers of children serving such sentences strains the use of the “exceptional” qualifier beyond credulity.¹⁴ JLWOP and other lengthy sentences are commonplace in many states—including those in the Midwest, especially Michigan and Illinois. Moreover, mandatory statutory sentencing schemes that impose JLWOP and other lengthy or “effective” life sentences without consideration of age as a mitigating factor undermine any plausible construction of “exceptional circumstances”—a qualifier that is context-driven by its very definition.¹⁵ The United States has thus failed to adhere to the letter of its own reservation.¹⁶

3.A.3 These inconsistencies have not gone unnoticed by the Committee. In its 2006 concluding observations, for instance, the Committee noted that the “treatment of children as adults is not only applied in exceptional circumstances,”¹⁷ and it urged the United States to revisit its position in light of actual practice. Criticism aimed at the fifth reservation is consistent with the Committee’s long-standing position that reservations made by state parties to the ICCPR “should be withdrawn at the earliest possible moment. Reports to the Committee should contain information on what action has been taken to review, reconsider or withdraw reservations.”¹⁸ Pressure from the Committee notwithstanding, the United States has thus far refused to move an

of their offenses. In other words, the reservation is not about the length or severity of sentences, only about the need to sometimes try children as adults and incarcerate them in adult prisons.”); *see also* SENATE REPORT, *supra* note 7, at 651 (“Although current domestic practice is generally in compliance with these provisions, there are instances in which juveniles are not separated from adults, for example because of the juvenile’s criminal history or the nature of the offense. In addition, the military justice system in the United States does not guarantee special treatment for those under 18.”).

¹³ U.N. International Covenant on Civil and Political Rights, *Written Replies to the List of Issues to be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America* [hereinafter “Written Replies”], available at <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/USA-writtenreplies.pdf>.

¹⁴ For a detailed discussion, see *infra* Part III.

¹⁵ It should be noted that, as discussed in further detail *infra*, the United States Supreme Court recently held that *mandatory* juvenile life without the possibility of parole sentences are unconstitutional under the Eighth Amendment of the United States Constitution. *Miller v. Alabama*, 132 S.Ct. 2455 (2012). While this is an important step in eliminating JLWOP, the Supreme Court did not ban the sentence entirely and it is still unclear what the precise effect of *Miller* will be on other lengthy sentences imposed on children.

¹⁶ *See* Hechinger, *supra* note 9, at 477 & n.383.

¹⁷ U.N. International Covenant on Civil and Political Rights, U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee on United States of America*, P 34, U.N. Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006) [hereinafter “Concluding Observations”], available at <http://www2.ohchr.org/english/bodies/hrc/hracs87.htm>.

¹⁸ U.N. Human Rights Comm., *General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, U.N. Doc. No. CCPR/C/21/Rev.1/Add.6 (Nov. 4, 1994), available at <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/69c55b086f72957ec12563ed004ecf7a?Opendocument>.

inch on any of its reservations, including the one that ostensibly allows the United States to sentence youth offenders to life without parole. Recent reports and responses from the United States take the continued operation and effect of this and other reservations for granted. The federal government has declined to address at length what it euphemistically calls “the continuing difference of view between the Committee and the U.S. concerning certain matters relating to the import and scope of provisions of the Covenant.”¹⁹ Indeed, the fourth periodic report, submitted in 2010, only devotes a single footnote to the issue of its reservations, and the text of that footnote simply refers back to non-answers in the second and third periodic reports.²⁰

3.A.4 The total failure of the United States to meaningfully consider withdrawal or even review of its reservation undermines some of the ICCPR’s most important protections. It also impedes the evolution of human rights norms in domestic matters, and compromises the nation’s position as a leader in the international community.

B. Previous Reporting

3.B.1 The Committee is responsible for overseeing the implementation of the ICCPR. States parties are required to report on their compliance to the Committee whenever it makes a request (usually every four years). The United States last appeared before the Committee for consideration in 2005, when it submitted both its second and third periodic reports as a single document after a delay of over two years.²¹ The consolidated report explained the measures the federal government had taken to implement its obligations under the ICCPR.²²

3.B.2 Despite using more than one hundred pages, the United States failed to squarely address the practice of sentencing juveniles to life without the possibility of parole. The report did, however, obliquely discuss the application of criminal procedures to youth offenders:

288. All states and the federal criminal justice system allow juveniles to be tried as adults in criminal court under certain circumstances. In some states, a prosecutor has discretion over whether to bring a case in criminal or juvenile court. Some state laws also provide for automatic prosecution in criminal court for serious offences, repeat offenders, or routine traffic citations. A juvenile who is subject to the adult criminal justice system is entitled to the constitutional and statutory rights and protections provided for adults.²³

¹⁹ U.N. Human Rights Comm., *Third Periodic Reports of States Parties Due in 2003: United States of America*, U.N. Doc. CCPR/C/USA/3 (Nov. 28, 2005) [hereinafter “U.S. Third Report”], available at <http://tb.ohchr.org/default.aspx?Symbol=CCPR/C/USA/3>. The United States also said it “reviewed its reservations, declarations and understandings to the Covenant, and concluded that they are appropriate.” *Id.*

²⁰ U.N. Human Rights Comm., *Consideration of reports submitted by States parties under article 40 of the Covenant: Fourth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/4 (Dec. 30, 2011) [hereinafter “U.S. Fourth Report”] (“The United States has provided the text and explanations for reservations, understandings and declarations it undertook at the time it became a State Party to the Covenant in its prior reports. For purposes of brevity those descriptions and explanations will not be repeated in this report.”).

²¹ The second periodic report was originally due on September 7, 1998, while the third periodic report was originally due on the same date in 2003.

²² See U.N. Human Rights Comm., *General Guidelines of the Human Rights Committee regarding the form and content of periodic reports to be submitted by States Parties*, U.N. Doc. No. CCPR/C/66/GUI/Rev.2 (Feb. 26, 2001), available at <http://www.unhchr.ch/tbs/doc.nsf/0/b75df84e0465f1ffc1256a14005abc70?OpenDocument>.

²³ U.S. Third Report, *supra* note 19, ¶ 288.

The implication seems to be that the transfer of juveniles into adult courts for prosecution is not inconsistent with the United States' obligations under various provisions of the ICCPR. Indeed, this passage was placed in a section of the report touting robust rights for the accused in the criminal justice system.²⁴ The United States chose to avoid discussing any controversy relating to the sentencing of youth offenders altogether.

3.B.3 A number of shadow reports from civil society organizations, however, brought the issue of JLWOP to the Committee's attention.²⁵ The American Civil Liberties Union, Amnesty International, and Human Rights Watch—among others—detailed the many ways in which state-level sentencing practices and human rights norms expressed in the ICCPR are fundamentally incompatible. The shadow reports all concluded that sentencing youth offenders to life in prison without any possibility of release violates the prohibition on cruel, inhuman, or degrading treatment. On the strength of this conclusion, the Committee ultimately took up the issue and requested a direct explanation in light of the evasiveness of the United States' report:

24. Forty-two states are reported to have laws allowing children to receive life without parole sentences, and about 2,225 children are allegedly currently serving such sentences in U.S. prisons. . . . Please comment, and explain how such legislation complies with the Covenant. (Periodic report, § 287-288)²⁶

3.B.4 With its hand forced, the United States finally undertook a detailed discussion of JLWOP in its written response to the Committee.²⁷ The United States acknowledged that statutes allowing states to impose such sentences were the norm rather than the exception across the nation. Notwithstanding this admission, the United States steadfastly maintained that “the sentencing and treatment of juveniles in custody in the United States fully complies with the obligations of the United States” under the ICCPR.²⁸ The response cited two decisive factors in support.²⁹ First, it characterized those youth offenders actually serving LWOP sentences as “hardened criminals” guilty of only the most heinous crimes.³⁰ What the report did not note is that even first-time youth offenders can and do receive LWOP sentences in many states.³¹ The perception of the affected population thus hardly matches reality. Second, the report declared that JLWOP sentences are only imposed pursuant to “extraordinary [procedural] safeguards.”³²

²⁴ *Id.*

²⁵ The Human Rights Committee has archived all of these reports on its website. To view them, please visit http://www2.ohchr.org/english/bodies/hrc/87ngo_info.htm.

²⁶ U.N. International Covenant on Civil and Political Rights, U.N. Human Rights Comm., *List of Issues to be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America*, P 34, U.N. Doc. CCPR/C/USA/Q/3 (Apr. 26, 2006), available at <http://www2.ohchr.org/english/bodies/hrc/hracs87.htm>.

²⁷ See Written Replies, *supra* note 13.

²⁸ *Id.* at 75.

²⁹ The United States also cited its express reservation to the controlling provision of the ICCPR. *Id.*

³⁰ *Id.* (“As a general matter, . . . the lengthy sentences were imposed on persons who, despite their youth, were hardened criminals who had committed gravely serious crimes.”)

³¹ Indeed, it is estimated that approximately 60% of youth under the age of 18 sentenced to life without the possibility of parole were first-time offenders. HRW Report at 28.

³² *Id.* at 76 (“If a person under the age of 18 has been sentenced to life in prison without parole, or has had his or her freedom otherwise severely restricted, that juvenile will already have been tried and convicted of an extremely

As discussed in further detail below, the frequency of mandatory LWOP sentences flatly contradicts the report’s supposition that this sentence is the result of a formal determination that an individual poses an extreme danger to society.³³ The report noted that age and its attendant considerations are a significant factor in the decision to prosecute a juvenile in the adult court system.³⁴ The precise calculus, however, varies from state to state based on the nature of applicable sentencing laws. The federal government—including the federal judiciary—has been content to let states administer their criminal justice systems with minimal oversight. Consider the relative dearth of legislation (Congress) or constitutional rules (the judiciary) placing boundaries on acceptable state sentencing practices. Indeed, the federal government only involves itself in rare circumstances, expressing a preference instead to return youth offenders “to their respective states for handling according to [state] laws.”³⁵

3.B.5 In its concluding observations following the second and third periodic reports, the Committee was clear that the United States’ explanation regarding JLWOP left it mostly cold. The observations strongly condemned the practice:

34. The Committee notes with concern reports that forty-two states and the Federal government have laws allowing persons under the age of eighteen at the time the offence was committed, to receive life sentences, without parole, and that about 2,225 youth offenders are currently serving life sentences in United States prisons. The Committee, while noting the State party’s reservation to treat juveniles as adults in exceptional circumstances notwithstanding articles 10 (2) (b) and (3) and 14 (4) of the Covenant, remains concerned by information that treatment of children as adults is not only applied in exceptional circumstances. The Committee is of the view that sentencing children to life sentence without parole is of itself not in compliance with article 24 (1) of the Covenant. (articles 7 and 24).³⁶

The Committee thus advised the United States that youth offenders should not—under any circumstances, not even exceptional ones—receive a sentence of life without possibility of parole.³⁷ The Committee further urged the United States to swiftly review the situations of convicted youth currently serving such sentences in order to mitigate the consequences of the ongoing violation.³⁸ These recommendations were delivered in unequivocal terms—the Committee left the clear impression that it expected substantial progress in conforming to obligations under the ICCPR.

3.B.6 Toward this end, the Committee “welcom[ed] the Supreme Court’s decision in *Roper v. Simmons*,”³⁹ which held that the death penalty could not be constitutionally imposed on any

serious crime as an adult (e.g., murder or rape) and would be determined through formally constituted judicial proceedings to be an extreme danger to society.”).

³³ See section III(c), *infra*.

³⁴ *Id.*

³⁵ *Id.* at 77 (“Federal courts do not become involved in a juvenile’s case unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that it is necessary to invoke federal jurisdiction over that particular case.”).

³⁶ Concluding Observations, *supra* note 17, at ¶ 34.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at ¶ 6.

minor convicted of any crime under the Eighth Amendment.⁴⁰ Federal judicial (and especially Supreme Court) decisions constitute the most promising avenue for implementing the Committee’s recommendations in the absence of federal legislation. Naturally, then, they have been the focal point of efforts to rein in JLWOP in recent years.

C. Latest Report

3.C.1 The United States submitted its fourth periodic report to the Committee on December 30, 2011—more than a year overdue. The report is the first one prepared after President Barack Obama took office in 2008. It is also the first one prepared after the Supreme Court handed down its groundbreaking decision in *Graham v. Florida*.⁴¹

3.C.2 Unlike the prior consolidated report, the fourth periodic report chose to address the fact that states continue to sentence juveniles to life without the possibility of parole despite clear statements from the Committee to the contrary. It did so against the backdrop of both impressive change and significant stasis. First, the change: *Graham* fundamentally altered the constitutional landscape regarding permissible sentences for youth offenders. Though JLWOP remains a possibility for certain crimes, the Court placed important limits on its application.⁴² Under *Graham*, states no longer had the power or discretion to impose the sentence on youths convicted of non-homicide crimes—arguably confining JLWOP to circumstances that may be fairly characterized as “exceptional.” *Graham* thus marks some progress toward compliance with the ICCPR and international human rights norms, at least in light of its reservations. But the change resulting from *Graham* and by the recent decision in *Miller*, may be more illusory than real. Overwhelming stasis can be found in state justice systems where thousands of youth offenders remain locked up without any meaningful opportunity for release.⁴³ Moreover, as discussed in further detail below, many states continue to employ mandatory sentencing schemes and impose JLWOP for accomplice crimes like felony-murder in contravention of the United States’ obligations under the ICCPR. All considered, the positive developments since 2006 are still inadequate given the magnitude of the problem.

3.C.3 The contents and tone of the latest United States’ report reflect the ambivalence of intervening developments. Much of the report’s discussion regarding JLWOP focuses on *Graham* and what the decision means for youth sentencing going forward.⁴⁴ Explicitly acknowledging the Committee’s concluding observations and concerns expressed by civil society, the United States points to *Graham* as evidence of significant progress.⁴⁵ The report takes pains to underscore the narrow constitutional confines within which JLWOP continues to exist.⁴⁶ Striking an unmistakably conciliatory note, it seems clear that the United States at least

⁴⁰ See *Roper v. Simmons*, 543 U.S. 551 (2005). For a more complete discussion of constitutional developments, see *infra* Parts III and IV.

⁴¹ 130 S.Ct. 2011 (2010). For a complete discussion of *Graham*, please see *infra* Part III.

⁴² *Id.*

⁴³ For a complete discussion of the current state of juvenile sentencing practices, please see *infra* Part III.

⁴⁴ See U.S. Fourth Report, *supra* note 20, at ¶ 212, 679.

⁴⁵ *Id.*

⁴⁶ *Id.* at ¶ 679 (“Following the Supreme Court’s decision in *Graham*, a person under the age of 18 at the time of the crime who has been sentenced to life in prison without parole will have been tried and convicted, pursuant to law

recognizes the harm caused by JLWOP—a welcome change from prior reports. Gone is the harsh language that pervaded the federal government’s responses to Committee and civil society concerns in years past.⁴⁷ It is equally clear, however, that the government remains unwilling (or, perhaps, unable) to take affirmative steps to “ensure that no child offender is sentenced to life imprisonment without parole.”⁴⁸ No mention is made of pending legislation or other measures that would implement the Committee’s recommendations. The government seems content to leave any progress to federal judges, who have the power to find that sentencing youth offenders to life without parole is a categorical violation of the Eighth Amendment. Indeed, the report cites the same hollow assurance that “important safeguards” accompany LWOP sentences as an argument that the government is fully compliant with the ICCPR.⁴⁹ Much of the language here is lifted wholesale from the 2006 response to the Committee.⁵⁰

3.C.4 Ultimately, the latest report simultaneously applauds positive developments restricting JLWOP—like *Graham*—while refusing to back off the federal government’s official position that JLWOP is not incompatible with the United States’ obligations under the ICCPR. The federal government seems deeply conflicted, though this is of little comfort to those children in prison that continue to suffer from official inertia.

IV. Current Juvenile Sentencing Practices

4.1 In light of the deficiencies of the United States’ fourth periodic report, it is necessary to underscore the precise magnitude of the problem and the consequences of inaction. The following discussion vividly illustrates the ongoing violation of the ICCPR, especially as it relates to the Midwest.

4.2 As of March 2012, approximately 2,300 juvenile offenders in the United States are serving a sentence of life without the possibility of parole.⁵¹ Thirty-nine states and the federal government allow for such sentences in at least some circumstances.⁵² In the Midwest alone—an area comprised of Michigan, Illinois, Minnesota, Iowa, Wisconsin, North Dakota, Ohio, Indiana, and Nebraska⁵³—540 juveniles are currently serving JLWOP sentences.⁵⁴ Illinois and Michigan account for more than three-quarters of these sentences, with 346 juveniles in Michigan and approximately 100 juveniles in Illinois having received a life sentence.⁵⁵ Despite the Supreme Court’s recent admonition that juveniles are fundamentally different than adults and should not

and procedures ensuring due process of law, of a homicide offense, and determined through formally constituted judicial proceedings to be an extreme danger to society.”).

⁴⁷ See *supra* note 30 and accompanying text.

⁴⁸ See U.S. Fourth Report, *supra* note 20, at ¶ 677.

⁴⁹ *Id.* at ¶ 679.

⁵⁰ Cf. Written Replies, *supra* note 13, at 76.

⁵¹ Transcript of Oral Argument at 13, *Miller v. Alabama* 132 S.Ct. 548 (2011); see also ASHLEY NELLIS, THE SENTENCING PROJECT, THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY 7 (2012) (noting that 1,579, or 68.4 percent, of juveniles serving life without parole sentences responded to the Project’s survey).

⁵² Brief for Petitioner at App. A & B, *Jackson v. Hobbs*, 132 S.Ct. 548 (2011) (No. 10-9647).

⁵³ Although the definition of what states comprise the “Midwest” varies slightly, the Midwest Coalition for Human Rights considers the above-listed states within its focus as part of the “Midwest.”

⁵⁴ *Sentencing Juveniles*, N.Y. TIMES (Apr. 20, 2011),

⁵⁵ *Id.*

be given such harsh sentences for non-homicide offenses, JLWOP sentences are imposed in the United States at a rate that is three times higher than just fifteen years ago.⁵⁶

A. The United States’ Supreme Court’s Recent Decisions Acknowledge the Inappropriate Nature of the Sentence in Many Cases but Fall Short of Banning the Sentence Entirely

4.A.1 As the United States noted in its latest report, the Supreme Court held in *Graham v. Florida* that juveniles cannot be sentenced to life in prison without parole for a non-homicide offense.⁵⁷ In its decision, the Court was clear that juveniles are categorically less culpable than adults for a number of scientific, penological, and moral reasons.⁵⁸ The Court also looked to international practices and standards for confirmation that the practice amounted to “cruel and unusual punishment” in violation of the Eighth Amendment.⁵⁹ It ultimately concluded that juveniles have a “lack of maturity and an underdeveloped sense of responsibility;” that they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and that their characters are “not as well formed.”⁶⁰ Its decision rested in substantial part on the idea that JLWOP is a particularly severe sentence that shares several significant characteristics with the death penalty, especially when applied to juveniles.⁶¹ Building on the decision in *Graham*, the Supreme Court in *Miller v. Alabama* has now held that *mandatory* life without possibility of parole sentences for homicide offenses committed by children under the age of 18 are unconstitutional.⁶² In so doing, the Court acknowledged that “[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features. . . . [a]nd disregards the possibility of rehabilitation even when the circumstances most suggest it.”⁶³ Notwithstanding the decisions in *Graham* and *Miller*, while the continued existence of JLWOP is a violation of several provisions of the ICCPR in and of itself, the conditions under which the sentence is imposed and the conditions under which prisoners serve their sentences constitute independent human rights violations that remain unaddressed.

B. JLWOP Denies Children a Meaningful Opportunity for Rehabilitation

4.B.1 In *Graham* and *Miller*, the Court acknowledged that the penological justifications for imposing death-in-prison sentences—retribution, deterrence, incapacitation, and rehabilitation—were “diminished” with respect to children.⁶⁴ The lack of rehabilitative options provided for

⁵⁶ See generally HRW REPORT, *supra* note 12. For Illinois-specific information, see ILLINOIS COALITION FOR THE FAIR SENTENCING OF CHILDREN, CATEGORICALLY LESS CULPABLE 22 (2008) [hereinafter “CATEGORICALLY LESS CULPABLE”], available at http://www.law.northwestern.edu/cfjc/jlwop/JLWOP_Report.pdf (noting that in 1990, 2,234 children were convicted of murder nationwide and 2.9 percent of those children received life sentences; whereas in 2000, only 1,006 children were convicted of murder, but the rate of those who were sentenced to life more than tripled to 9.1 percent).

⁵⁷ *Graham v. Florida*, 130 S.Ct. 2011 (2010).

⁵⁸ *Id.* at 2023.

⁵⁹ *Id.* at 2033–34.

⁶⁰ *Id.* at 2026.

⁶¹ *Id.* at 2027.

⁶² *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁶³ *Id.* at 2468.

⁶⁴ *Miller* at 2466; *Graham* at 2028.

youth offenders sentenced to JLWOP, in particular, violates Articles 10(3) and 14(4), which respectively require that criminal procedures involving juveniles should “take account of their age and desirability of promoting their rehabilitation”⁶⁵ and that juveniles should be “segregated from adults and be accorded treatment appropriate to their age and legal status.”⁶⁶

4.B.2 Sentencing a child to life without the possibility of parole removes any hope for rehabilitation even though it is widely recognized that juveniles possess a unique capacity for reform.⁶⁷ JLWOP in the United States often denies the incarcerated child practical opportunities to change or prove that she has changed. Prisoners serving life without parole sentences are regularly denied access to education, vocational training, drug treatment, and other rehabilitative services that are available to other inmates, due to a combination of federal laws, prison policies, and limited resources. A survey published in 2012 found that 61.9 percent of juveniles serving life without parole sentences were not participating in rehabilitative programming.⁶⁸ Two-thirds of these juveniles were not participating in rehabilitative programming because of restrictions put in place by the corrections system; one-third of the non-participants are not permitted to participate because of their life sentences; and another 28.9 percent are in prisons that do not have sufficient programming available or have already taken every course or program available to them.⁶⁹ For example, post-secondary education is effectively unavailable to juveniles serving life without parole sentences.⁷⁰ What educational programs do exist are available only to inmates under thirty-five years of age who are within seven years of release—a standard that obviously excludes juveniles serving life without parole sentences.⁷¹

4.B.3 Other rehabilitative services are similarly unavailable to juveniles condemned to live out their lives in prison. Limited program resources plague most institutions, which forces officials to give enrollment preference for education, vocational, and other services to inmates with shorter sentences and a realistic shot at release.⁷² Basic rehabilitative services that may be denied to juveniles serving life without parole include GED courses or Alcoholics Anonymous meetings.⁷³

C. JLWOP has been Inappropriately Imposed as a Mandatory Sentence in the United States

⁶⁵ ICCPR, *supra* note 1, at art. 14(4).

⁶⁶ ICCPR, *supra* note 1, at art. 10(3).

⁶⁷ See Brief of the Sentencing Project as Amicus Curiae in Support of Petitioners at 8–9, *Graham v. Florida*, 130 S.Ct. 2011 (No. 08-7412) (citing *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. 1968) (“It is *impossible* to make a judgment that a fourteen-year-old youth, no matter how bad, will remain incorrigible for the rest of his life.”) (emphasis added)).

⁶⁸ NELLIS, *supra* note 51, at 23.

⁶⁹ *Id.*

⁷⁰ See Brief of the Sentencing Project as Amicus Curiae in Support of Petitioners at 11, *Graham*, 130 S.Ct. 2011 (citing 20 U.S.C. § 1070a(b)(7) and 20 U.S.C. § 1151(f)).

⁷¹ *Id.*

⁷² HRW REPORT, *supra* note 12, at 70–71.

⁷³ See CATEGORICALLY LESS CULPABLE, *supra* note 56, at 21; see also HUMAN RIGHTS WATCH, WHEN I DIE, THEY’LL SEND ME HOME: YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA 56–57 (2008), available at <http://www.hrw.org/reports/2008/us0108/us0108web.pdf>.

4.C.1 The majority of JLWOP sentences are imposed in states with mandatory statutory schemes; that is, judges are required to sentence children convicted of certain crimes to life in prison without the possibility of parole without any consideration of factors relating to the child's age or life circumstances.⁷⁴ As noted previously, thirty-nine states have statutes that allow for JLWOP sentences. In eighteen of these states, that sentence is mandatory.⁷⁵ Similarly alarming is that many juveniles sentenced to JLWOP were convicted only of felony-murder—they did not intend to commit murder or were only minimally involved in the actual act of violence that led to a homicide.⁷⁶ Nationwide, approximately twenty-five percent of those serving JLWOP sentences were convicted of felony-murder.⁷⁷ Additionally, more than half of the affected population received life sentences for their first criminal conviction,⁷⁸ and in one-quarter of the years between 1985 and 2001, children were actually more likely to be sentenced to life without the possibility of parole than were their adult counterparts.⁷⁹

4.C.2 In Illinois, for example, children as young as thirteen can be sentenced to life without the possibility of parole—and in many cases this sentence is mandatory.⁸⁰ Illinois law dictates that a mandatory life sentence must be imposed on juveniles (as must the child's transfer into adult court) in many circumstances, including instances of multiple murders, the murder of a police officer, or the murder of a child during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping.⁸¹ A study of Illinois' 103 JLWOP cases conducted in 2008 found that ninety-five percent of the children sentenced were transferred to adult court automatically, and seventy-nine percent received mandatory life sentences upon conviction in adult court.⁸² Thus, in nearly all of these cases, at no point did the judge or jury consider the child's age, home environment, degree of involvement in the crime, rehabilitative potential, or the circumstances of the offense—the law simply states that if a child commits an offense listed in the statute, she must be sentenced to life without parole and forfeit any chance of redemption.⁸³

4.C.3 Michigan's sentencing scheme is similarly severe. There, juveniles as young as fourteen can be charged with first-degree murder; juveniles are also automatically tried as adults in circuit court rather than the family division of circuit court for a number of other crimes.⁸⁴ Michigan

⁷⁴ NELLIS, *supra* note 51, at 3.

⁷⁵ NELLIS, *supra* note 51, at 42 n.38 (noting that Alabama, Arkansas, Delaware, Florida, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, Pennsylvania, South Carolina, and South Dakota are defined as those states having mandatory JLWOP sentences upon conviction for homicide).

⁷⁶ Brief of the Sentencing Project as Amicus Curiae in Support of Petitioners at 7–8, *Graham v. Florida*, 130 S.Ct. 2011 (Nos. 08-7412) (citing HRW REPORT, *supra* note 12).

⁷⁷ CATEGORICALLY LESS CULPABLE, *supra* note 56, at 19.

⁷⁸ *Id.* at 20.

⁷⁹ *Id.*

⁸⁰ 705 ILCS 405/5-130(4)(a) (providing for the mandatory transfer of children as young as thirteen to adult court when that child is charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping).

⁸¹ IL ST CH 730 § 5/5-8-1; 705 ILCS 405/5-130(1)(a); 705 ILCS 405/5-130(4)(a).

⁸² CATEGORICALLY LESS CULPABLE, *supra* note 56, at 11.

⁸³ *Id.*

⁸⁴ MCL 712A.2; MCL 600.606 (allowing the prosecuting attorney to file charges against a juvenile as a juvenile in the family division of circuit court or directly as an adult in the circuit court).

law requires that juveniles tried as adults in circuit court receive the same sentences as adult offenders for the most serious crimes—judges are not given discretion to determine whether such sentences are factually warranted, as under prior law.⁸⁵

4.C.4 The recent decision in *Miller*, banning mandatory life without-possibility-of parole sentences unconstitutional for children under the age of 18, is a powerful step toward eliminating mandatory JLWOP sentences in the future, but its broader effect is still unclear. First, despite the Court’s apparently clear mandate, some state courts have refused to apply *Miller* retroactively, leaving those individuals already serving the sentence without any remedy.⁸⁶ Second, although the Court required that a person’s individual characteristics and circumstances—including the “hallmark features of youth”—must be taken into account before imposing a life without parole sentence on a child, the language of the *Miller* decision strongly suggests that other lengthy mandatory sentences and perhaps, other mandatory sentencing schemes, should be subject to the same analysis.⁸⁷ Finally, as states attempt to revise their laws based on *Miller*, it is unclear whether they will take to heart the instruction contained in *Miller* and *Graham* and provide youth with meaningful opportunities to earn their release.⁸⁸

D. JLWOP is Imposed in a Racially Discriminatory Manner

4.D.1 The racial disparities in JLWOP sentencing are also a cause for serious concern, especially in light of ICCPR obligations. Indeed, JLWOP disproportionately impacts African-Americans in the United States. On average, African-American youth are serving life sentences without the possibility of parole at a per capita rate that is ten times greater than that of Caucasian youth.⁸⁹ Human Rights Watch examined data from twenty-six states that had five or more youths serving JWLOP sentences and found that the highest black-to-white ratios are in Connecticut, Pennsylvania, and California, where African-American children are eighteen to forty-eight times more likely to be serving a JLWOP sentence than are Caucasian children.⁹⁰ One study of thirteen- and fourteen-year-olds sentenced to JLWOP found that all of those children who had been sentenced for non-homicide offenses were children of color.⁹¹

4.D.2 A look at Illinois and Michigan again underscores the fact that this problem exists in the Midwest. Although Caucasians make up nearly ninety percent of the entire population of

⁸⁵ MCL 769.1(1).

⁸⁶ See, e.g., *Geter v. State*, No. 3D12-1736, 2012 WL 4448860 (Fla. Dist. Ct. App. Sept. 27, 2012) and *People v. Carp*, 2012 WL 5846553 (Mich. App. Nov. 15, 2012).

⁸⁷ See, e.g., *Miller*, 132 S.Ct. at 2468 (“... in imposing a State’s harshest penalties, a sentence misses too much if he treats every child as an adult.”).

⁸⁸ For instance, Pennsylvania’s Governor recently signed into law SB 850, which prospectively allows judges to sentence youth to sentences such as 25-to-life and 35-to-life. These youth would not have an opportunity for release until at least 25 or 35 years. The law does not eliminate JLWOP sentences for most youth. Available at: <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=S&billTyp=B&billNbr=0850&pn=2475>

⁸⁹ HRW REPORT, *supra* note 12, at 5.

⁹⁰ *Id.*

⁹¹ EQUAL JUSTICE INITIATIVE, CRUEL AND UNUSUAL: SENTENCING 13- AND 14-YEAR-OLD CHILDREN TO DIE IN PRISON 21 (2007), [hereinafter “EJI REPORT”] available at <http://eji.org/eji/files/20071017cruelandunusual.pdf>.

Illinois, they make up only eighteen percent of those serving JLWOP sentences.⁹² The remaining eighty-two percent are either African-American (seventy-two percent) or Latino (ten percent).⁹³ This racial disparity is especially strong in Cook County (where the City of Chicago is located), where sixty-four of the seventy-three individuals sentenced to life without parole are youth of color.⁹⁴ Put another way, for every 12.74 black youth arrested for murder in Illinois, one is serving a JLWOP sentence; while only one out of every 18.90 white youth arrested for murder is serving a JLWOP sentence.⁹⁵ Similarly, in Michigan, children of color are twenty-seven percent of the youth population⁹⁶ but comprise seventy-one percent of children serving life without parole sentences.⁹⁷ The majority (221) of Michigan's juvenile offenders are racial or ethnic minorities, more than ninety-five percent of whom (211) are African-American.⁹⁸ The percentage of African-American facing JLWOP sentences (sixty-nine percent) is greatly disproportionate to Michigan's general population, which is only fifteen percent African-American.⁹⁹ The disparities are even more significant at the county level. Children of color in Wayne County constitute ninety-four percent of the children sentenced to life without parole, though they constitute only half of the child population; in Oakland County, they constitute seventy-three percent of children sentenced to life without parole but only eleven percent of the child population; and in Kent County, children of color constitute fifty percent of children sentenced to life without parole but only thirteen percent of the child population.¹⁰⁰

4.D.3 Evidence of racial disparities in sentencing practices can also be observed in the racial dynamics of the offender and the victim. Indeed, the racial dynamics of victims and offenders may play a key role in determining which offenders are given JLWOP sentences. African-American youth who commit crimes with white victims face a disproportionate likelihood of being sentenced to life without parole.¹⁰¹ The proportion of African-Americans serving JLWOP sentences for killing a white victim is 43.4 percent—nearly twice the rate at which African-American juveniles receive JLWOP sentences for taking a black victim's life (23.2 percent).¹⁰² Conversely, white youth offenders with black victims are about half as likely (3.6 percent) to receive a JLWOP sentence when compared to those arrested for killing white victims (6.4 percent).¹⁰³

⁹² CATEGORICALLY LESS CULPABLE, *supra* note 56, at 19 n.27.

⁹³ *Id.* at 19.

⁹⁴ *Id.*

⁹⁵ HRW REPORT, *supra* note 12, at 7.

⁹⁶ Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 990 (2008) (citing HOWARD N. SNYDER & MELISSA SICKMUND, NAT'L CENTER FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 3 (2006)).

⁹⁷ *Id.* (citing U.S. HUMAN RIGHTS NETWORK, CHILDREN IN CONFLICT WITH THE LAW: JUVENILE JUSTICE & THE U.S. FAILURE TO COMPLY WITH OBLIGATIONS UNDER THE CONVENTION FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 25 (2008)).

⁹⁸ DEBORAH LABELLE ET AL., ACLU OF MICH., SECOND CHANCES: JUVENILES SERVING LIFE WITHOUT PAROLE IN MICHIGAN PRISONS 6 (2004), available at <http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf>.

⁹⁹ *Id.*

¹⁰⁰ de la Vega & Leighton, *supra* note 96, at 994.

¹⁰¹ NELLIS, *supra* note 51, at 15 n.24.

¹⁰² *Id.* at 15.

¹⁰³ *Id.*

E. Children Sentenced to JLWOP are Particularly Likely to Become Victims of Sexual and/or Physical Violence in Prison

4.E.1 Incarcerated children are at risk for physical and sexual assaults, particularly children who are incarcerated in adult prisons.¹⁰⁴ Such concerns fall squarely within the purview of Article 10 of the ICCPR. Juveniles who enter adult prison while they are still younger than eighteen are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities.¹⁰⁵ One study found that only 19.3 percent of children were held in juvenile placements before trial— over fifty-six percent were held in adult jails.¹⁰⁶ Children that serve their sentences in adult prisons are typically victimized because they have no prison experience or social support.¹⁰⁷ As one expert put it, “Because they are physically diminutive, [juveniles] are subject to attack. . . . They will become somebody’s ‘girlfriend’ very, very fast.”¹⁰⁸ Similarly, a corrections officer said that a young inmate’s chances of avoiding rape were “almost zero. . . . He’ll get raped within the first twenty-four to forty-eight hours. That’s almost standard.”¹⁰⁹ Reflecting the dangers and harshness of incarceration in an adult prison, the suicide rate for juveniles in adult prisons is eight times higher than that of juveniles in age-appropriate detention facilities.¹¹⁰

V. Recent Developments

5.1 While JLWOP remains starkly at odds with international human rights norms, developments in the area of juvenile sentencing in the United States have seen some progress in recent times. As noted above, the Supreme Court’s decisions to bar states from sentencing youth to life without parole for non-homicide crimes in *Graham* and to end mandatory sentences of life without parole for youth in *Miller* are worthy of praise. And it is important to commend whatever progress has been made in practice and in attitude since the United States last reported to the Committee. Still, the political branches of the federal government have done next to nothing to correct the worst systemic abuses and move the United States closer to compliance with the ICCPR. Thousands of children remain locked up for the rest of their lives, and given states’ attempt to sidestep the principles behind the holdings in *Miller* and *Graham*, there is little hope that these individuals will ever get the second chance they deserve. The federal government has consistently refused to reconsider its reservation regarding the treatment of youth offenders or even acknowledge that JLWOP is in significant tension with its obligations under the ICCPR. In allowing the practice to continue, the United States has chosen to ignore the plain language of Articles 10(3) and 14(4) despite repeated warnings from the Committee. Whatever progress has been made, in other words, is simply not enough. We hope that the

¹⁰⁴ See Joshua T. Rose, *Innocence Lost: The Detrimental Effect of Automatic Waiver Statutes on Juvenile Justice*, 41 BRANDEIS L.J. 977, 984 (2003).

¹⁰⁵ HRW REPORT, *supra* note 12, at 73 (citing Martin Forst et al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 4 JUVENILE & FAMILY COURT 9 (1989)); see also JASON ZIEDENBERG & VINCENT SCHIRALDI, JUSTICE POL’Y INST., THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), available at: <http://www.cjcj.org/jpi/risks.html>.

¹⁰⁶ NELLIS, *supra* note 51, at 18.

¹⁰⁷ See EJI REPORT, *supra* note 91, at 14.

¹⁰⁸ SCHIRALDI & ZEIDENBERG, *supra* note 105, at 3.

¹⁰⁹ *Id.*

¹¹⁰ LABELLE ET AL., *supra* note 98, at 18.

Committee will renew its pressure on the United States to come into compliance with the ICCPR by ending the all too common practice of sentencing youth offenders to life without parole.

5.2 On this front, the fourth periodic report is largely non-responsive to concerns expressed by the Committee and civil society, proposing neither specific measures nor general plans to implement its obligations.¹¹¹ The Committee, of course, used its concluding observations to note that the United States ought to curb the practice immediately and reevaluate the status of those sentenced to life as juveniles.¹¹² But the United States' report makes clear that the federal government does not intend to take any action. Instead, the report falls back on stale talking points—leaving the gravest concerns surrounding JLWOP unacknowledged.

5.3 Ultimately, the Supreme Court is the only government entity that has crafted decisions that arguably implement the United States' obligations, at least in part. While it is possible that individual state legislatures will take the Supreme Court's lead in reforming sentencing and criminal procedure laws affecting children, there is much work still to be done. The Committee should continue to apply pressure to the political branches of the federal government to further carry out the Supreme Court's call.

VI. Individual Case Studies

A. Henry Hill, Michigan¹¹³

6.A.1 Henry Hill was sixteen in 1980 when he and two of his friends got into an argument with an acquaintance at a park. All of the people involved had guns—but Henry had already left the park when his eighteen-year-old friend shot and killed the acquaintance.

6.A.2 Despite having the academic ability of a third-grader, the mental maturity of a nine-year-old, and recommendations from psychologists that he stay in the juvenile system, Henry was waived into adult court for his trial. He was convicted of aiding and abetting first-degree murder. He was then sentenced to life without parole pursuant to Michigan's mandatory statutory scheme. This is the exact same sentence given to the actual shooter.

6.A.3 Henry Hill is now forty years old and has been in prison in Michigan for more than twenty-five years. He has earned his GED and vocational qualifications, and has exhausted all programs and resources available to him.

B. Peter A., Illinois¹¹⁴

6.B.1 Peter A. was a fifteen-year-old sophomore in high school at the time of his crime. He lived at home in Chicago with his mother, her fiancé, and his younger brother. Peter spent a lot of time with his older brother, who had his own apartment and tried to keep Peter out of trouble, though he himself was involved in dealing drugs, mostly cocaine. Following a theft from his

¹¹¹ See *supra* notes 41–50 and accompanying text.

¹¹² See Concluding Observations, *supra* note 17, at ¶ 34.

¹¹³ LABELLE ET AL., *supra* note 98, at 2.

¹¹⁴ HRW REPORT, *supra* note 12, at 11–13.

brother's apartment, Peter went with an eighteen-year-old to steal a van to help get the stolen goods back. Peter acted on his brother's instructions and has always admitted his involvement in stealing the van. Peter sat in the back seat of the stolen van with another twenty-one-year-old man and the eighteen-year-old driver, both of whom had guns. When they arrived at the home where they believed the stolen goods were being held, Peter stayed in the van while the other two went inside. He heard shots, and a few seconds later one of the men came running out of the house, leaving the other man inside. Peter learned on the way back to his brother's apartment that two people had been shot to death in the botched robbery.

6.B.2 Peter was questioned for eight hours at the police station, without his mother or an attorney present. He readily admitted to stealing the van, but his admission, which the assistant State's Attorney wrote down, did not say whether he intended to kill the victims. There was no physical evidence indicating that Peter had entered the victims' home, and one of his co-defendants was proven at trial to have been the triggerman (and was later convicted for it). Peter was held accountable for the double murder because the state proved that he stole the van and drove to the victims' home. He was convicted of two counts of felony-murder, which carries a mandatory sentence of life without parole in Illinois. Peter had no prior record of violent crime and no prior felony convictions, and the judge in his case called him "a bright lad" with "rehabilitative potential." He stated that he had qualms about sentencing Peter to live out the rest of his life in prison. In his decision, the judge wrote: "[T]hat is the sentence that I am mandated by law to impose. If I had my discretion, I would impose another sentence, but that is mandated by law."

6.B.3 Peter has already spent more than half of his life behind bars. In prison, he has obtained his GED and completed a correspondence paralegal course. He works as a law clerk in the prison law library.

VII. Obligations Under Related Treaties

A. Convention Against Torture

7.A.1 JLWOP also violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). As a party to CAT, the United States is expected to take the necessary measures to prevent "acts of cruel, inhuman or degrading treatment or punishment."¹¹⁵

7.A.2 The Committee Against Torture—the United Nations body responsible for ensuring state compliance with the Convention—considered the second report of the United States in May 2006. The Committee largely focused its conclusions and recommendations on issues related to the torture of detained prisoners. However, it also noted concern over "the large number of children sentenced to life imprisonment" in the United States.¹¹⁶ The Committee expressed its

¹¹⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85.

¹¹⁶ U.N. Comm. Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, P9, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006).

judgment that JLWOP “could constitute cruel, inhuman or degrading treatment or punishment” under CAT if allowed to continue.¹¹⁷ The neglect, physical and sexual abuse, and psychological trauma experienced by children serving life sentences without the possibility of parole would seem to meet at least the minimum standard for most definitions of torture.¹¹⁸

B. Convention on the Rights of the Child

7.B.1 The United States has signed, but not ratified the Convention on the Rights of the Child (“CRC”).¹¹⁹ It must therefore “refrain from acts which would defeat the object and purpose of the treaty.”¹²⁰ The CRC’s preamble recognizes the needs for “special care and assistance” to children, “the full and harmonious development” of a child’s personality, and the extension of “particular care” and “special safeguards” for children.¹²¹ Article 37(a) of the CRC prohibits the imposition of “life imprisonment without possibility of release . . . for offences committed by persons below eighteen years of age.”¹²² Article 40 of the CRC recognizes the right of juvenile offenders “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth . . . and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”¹²³ This Article makes clear that juvenile sentencing must take into account the ultimate goal of reintegrating youth offenders and helping them assume a constructive role in society.¹²⁴ It thus sets out an unambiguous obligation to treat children differently than adults.

C. Convention on the Elimination of All Forms of Racial Discrimination

7.C.1 The Committee on the Elimination of Racial Discrimination found that JLWOP violates Article 5(a) of CERD,¹²⁵ which guarantees the right to equal treatment before all justice systems. It based this finding on the fact that JLWOP is disproportionately imposed on children belonging to racial, ethnic, and national minorities.¹²⁶

RECOMMENDATIONS

- The United States is violating the human rights of thousands of its citizens by

¹¹⁷ *Id.*

¹¹⁸ See Tera Agyepong, *Children Left Behind Bars: Sullivan, Graham, and Juvenile Life without Parole Sentences*, 9 NW. U. J. INT’L HUM. RTS. 83 (2010).

¹¹⁹ The United States is one of only two countries—Somalia is the other—that has not ratified the United Nations Convention on the Rights of the Child.

¹²⁰ Vienna Convention on the Law of Treaties, art. 18, 1155 U.N.T.S. 331.

¹²¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (signed by United States Feb. 16, 1995).

¹²² *Id.* at art. 37(a).

¹²³ *Id.* at art. 40.

¹²⁴ See TON LIEFAARD, DEPRIVATION OF LIBERTY OF CHILDREN IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS 74–117 (2008).

¹²⁵ U.N. Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United State of America*, P21, U.N. Doc. CERD/C/USA/CO/6 (8 May 2008).

¹²⁶ *Id.*

sentencing children to life without the possibility of parole and must end the practice immediately.

- We urge the Committee to recommend that the United States enact legislation or take other necessary measures to end the use of JLWOP, and to apply these changes retroactively.
- We urge the Committee to recommend that the United States investigate state and federal statutes permitting mandatory sentences for children and develop plans to revise these sentencing schemes to appropriately account for a child's youth and other individual circumstances.