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Human Rights Committee
Office of the High Commissioner for Human Rights
UNOG-OHCHR
CH 1211 Geneva 10
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Dear Committee Members:

We write in advance of the Human Rights Committee's 109th Session to urge you to include the widespread practice of incarcerating youth in adult jails and prisons and the practice of sentencing youth to life without parole among the list of issues for review of the United States. These practices violate Articles 4, 7, 10, 14, 24 and 26 of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992.

On June 30 2009, there were 9,998 youth[1] held in jails and prisons across the U.S.[2] Each year over 2,700 young people will be held in adult prisons.[3] In addition, an estimated 2,500 people are serving life without parole sentences for crimes committed when they were below 18 years of age.[4] The conditions in the jails and prisons where these young people grow and mature into adulthood violate their human rights. They are often housed with adults, deprived of peer-support and age-appropriate programs, denied adequate age-appropriate medical and mental health care and disproportionately punished through disciplinary actions and solitary confinement. Young people housed with adults, particularly young women, also face a higher

[1] Throughout this letter we use the term "youth" or "young person" to refer to anyone under the age of 18.
[2] This figure combines counts of youth in adult prisons and youth in jails (including pre-trial detainees) on June 30, 2009. TODD D. MINTON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2009 – STATISTICAL TABLES 9 tbl. 6 (2010) *available* at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=38 (citing 5,847 youth held in local jails as adults, and 1,373 youth held in local jails as juveniles.); HEATHER C. WEST, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISON INMATES AT MIDYEAR 2009 – STATISTICAL TABLES, 24 tbl. 21 (2010), *available at* http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=38 (citing 2,778 youth in adult prisons).
[3] *See* MINTON, JAIL INMATES AT MIDYEAR 2009–STATISTICAL TABLES 9 tbl. 6 (2010); WEST, PRISON INMATES AT MIDYEAR 2009– STATISTICAL TABLES 24 tbl. 21 (2010).
[4] Adam Liptak & Ethan Bronner, *Justices Bar Mandatory Life Terms for Juveniles*, N.Y. TIMES, June 25, 2012, at A1, *available at* http://www.nytimes.com/2012/06/26/us/justices-bar-mandatory-life-sentences-for-juveniles.html?_r=0.

risk of physical and sexual assault.[5] Deprived of a childhood and the chance to meaningfully rehabilitate, these young people face devastating collateral consequences including discrimination in employment, housing, and education,[6] as well as an extraordinarily high recidivism rate.[7] Furthermore, these sentencing practices reflect a dramatic pattern of racial disparity and discrimination.

At the last review of the U.S. in 2006, the Committee expressed concern about the practice of subjecting youth to adult criminal sentences of life without the possibility of parole (LWOP), stating that this practice violates Articles 7 and 24(1) of the Convention.[8] Other international human rights treaty bodies have encouraged the U.S. to end the practice of detaining youth in adult facilities and imposing LWOP sentences. In its 2006 Conclusions and Recommendations, the U.N. Committee Against Torture stressed that the U.S. "should ensure that detained children are kept in facilities separate from those of adults in conformity with international standards."[9] It also expressed concern about "the large number of children sentenced to life imprisonment" in the U.S., instructing the government to address these sentences "as these could constitute cruel, inhuman or degrading treatment or punishment.[10] Juvenile LWOP is also "incompatible with Article 5 (a) of the Convention [on the Elimination of All Forms of Racial Discrimination (CERD)]," according to the CERD committee, because "of the disproportionate imposition of life imprisonment without parole on young offenders, including children, belonging to racial, ethnic, and national minorities."[11] In a 2006 resolution, the U.N. General Assembly called on all States to abolish LWOP sentences for those under 18 at the time of commission of the offense, with the U.S. casting the only opposing vote out of 186 votes.[12] Since the U.S.'s 2006 review, there has been some improvement in this area,[13] but the overall practice of treating youth as adults and subjecting them to life without parole sentences remains in place.[14] Moreover, despite

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[5] JUST DETENTION INTERNATIONAL *Incarcerated Youth at Extreme Risk of Sexual Abuse*, March 2009, at 1; *See also* HON. REGGIE B. WALTON (CHAIR) ET. AL., NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 7 (2009) ("Youth, small stature, and lack of experience in correctional facilities appear to increase the risk of sexual abuse by other prisoners.").

[6] *See infra* Part V.

[7] Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, OJJDP Juvenile Justice Bulletin, June 2010, at 6, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf.

[8] Human Rights Committee, *Concluding Observations: United States of America*, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (2006).

[9] Committee Against Torture, *Concluding Observations: United States of America,* ¶ 34, U.N. Doc. CAT/C/USA/CO/2, (2006).

[10] *Id.*

[11] Committee on the Elimination of Racial Discrimination, *Committee Report on the U.S.* ¶ 21, CERD/C/USA/CO/6 (2008).

[12] Rights of the Child, G.A. Res. 61/146, ¶ 31(a), U.N. Doc. A/Res/61/146 (Dec. 19, 2006).

[13] *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (holding that mandatory sentencing of people under the age of 18 to life without the possibility of parole violates the 8th Amendment of the United States Constitution. However, this still allows for sentences of life without parole for juveniles following discretionary review by a Judge). *See also* Equal Justice Initiative, *Jackson v. Hobbs and Miller v. Alabama* (2012), http://www.eji.org/childrenprison/deathinprison/jackson.miller (last visited Dec. 21, 2012).

[14] Equal Justice Initiative, *Jackson v. Hobbs and Miller v. Alabama,* http://www.eji.org/childrenprison/deathinprison/jackson.miller (last visited Dec. 21, 2012).

a 2012 ruling that mandatory life without parole sentences for youth are unconstitutional, over twenty five hundred youth remain in prison under this sentence.[15] Still others are serving virtual life sentences where they are not eligible for parole until they have served 70 years or longer.[16]

Background

In the U.S., state and federal governments operate separate criminal justice systems. Each has separate juvenile justice systems with jurisdiction over offenses committed by youth. States have both different laws that govern the treatment and sentencing of youth accused of committing crimes, and differing definitions of who is a child, with a handful of states considering 16 or 17 year olds to be adults for all criminal prosecutions. Since the early 1980s, changes in state laws have resulted in a growing number of youth being tried and sentenced as adults.[17] Forty-five states have passed or amended legislation that makes it easier to prosecute and sentence young people as adults at the discretion of the prosecutor or judge.[18] Youth as young as seven can be tried as adults in twenty-two out of fifty states.[19] In addition to placement in adult prisons, trial as an adult can result in youth being denied more flexible juvenile justice system sentencing schemes and instead being subject to the lengthier and mandatory sentences that mark the adult criminal justice system.[20] Forty-five states allow a life without possibility of parole sentence to be imposed on a child and thirty-eight states have imposed these sentences. Moreover, no U.S. court restricts a youth from receiving an adult term of years that constitutes a de facto or virtual life sentence.[21]

Youth are criminally charged as adults through one of the following five types of state laws:

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[15] Liptak & Bronner, *Justices Bar Mandatory Life Terms for Juveniles*, N.Y. TIMES, June 25, 2012, *available at* http://www.nytimes.com/2012/06/26/us/justices-bar-mandatory-life-sentences-for-juveniles.html?_r=0.

[16] CONNIE DE LA VEGA, AMANDA SOLTER, SOO-RYUN KWON, & DANA MARIE ISAAC, CENTER FOR LAW AND GLOBAL JUSTICE, UNIVERSITY OF SAN FRANCISCO, CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT 60 (2012), *available at* www.usfca.edu/law/docs/criminalsentencing.

[17] Prior to 1970, for instance, only two states allowed for prosecutors to use their discretion as to when to try youth as adults. Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, OJJDP Juvenile Justice Bulletin, September 2011, at 8-9, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf.

[18] JASON ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS, U.S. DEP'T OF JUSTICE: NAT'L INST. OF CORRECTIONS 3 (2011); *See also* Griffin, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. Dep't of Justice, OJJDP Juvenile Justice Bulletin, September 2011, at 2, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf.

[19] LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS, UNIV. OF TEXAS AT AUSTIN, FROM TIME OUT TO HARD TIME: YOUNG CHILDREN IN THE ADULT CRIMINAL JUSTICE SYSTEM, 29 (2009) (The 22 states are: Alaska, Arizona, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Maryland, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin. Additionally, a seven year old can be prosecuted as an adult in the District of Columbia, a jurisdiction, but not a state.).

[20] *Id.* at 38.

[21] *See* CONNIE DE LA VEGA ET AL. CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT 37-38 (2012), *available at* www.usfca.edu/law/docs/criminalsentencing (discussing the U.S. practice of imposing concurrent sentences and how state and federal courts have repeatedly rejected claims that consecutive sentences are unconstitutional punishment.)

1) **Limitation of Juvenile Court Jurisdiction:** Several states set the upper age limitation for juvenile court below 17. This results in youth aged 16 or 17 being tried in adult criminal courts for any offense.[22]
2) **Statutory Exclusion Laws:** These laws automatically require that youth charged with certain offenses or of a certain age be treated as adults.[23]
3) Prosecutorial Discretion: These laws establish concurrent jurisdiction over a certain offenses in adult and juvenile court. In such cases, it is left to the prosecutor's discretion to decide where to file.[24]
4) **Judicial Waiver Laws:** Waiver laws allow judges to waive juvenile jurisdiction and transfer youth to adult courts.[25]
5) **"Once an Adult, Always an Adult" Laws**: These laws provide that a young person will always be tried as an adult following one adult trial, no matter how minor the offense.[26]

Although in some instances, judges may have discretion to impose a juvenile sentence after an adult criminal conviction,[27] in many instances, youth are required to be sentenced as adults.[28] Many states impose mandatory sentences for certain crimes, precluding a consideration of individual circumstances during sentencing. As a result of mandatory sentencing laws, twenty-nine states have imposed LWOP sentences without any consideration of the child's status resulting in over 2,000 youth sentenced to prison for their natural life.[29] Some states also provide that juvenile courts can impose adult criminal sentences in certain instances.[30]

I. The Practice of Placing Youth in Adult Facilities Violates Youth's Rights to Separation and Appropriate Treatment, Special Protection, and Freedom from Racial Discrimination Under Articles 10(3), 24 and 26 and Is Not Excused By the U.S.'s Reservation

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[22] Griffin, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. Dep't of Justice, OJJDP Juvenile Justice Bulletin, at 2, 3, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf. In New York and North Carolina 16 and 17 year olds are treated as adults. ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 4 (2011); An additional, ten states treat 17 year olds as adults. *Id.* (Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin).
[23] Griffin, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, OJJDP Juvenile Justice Bulletin, at 2 & 6, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf.
[24] *Id.* at 2, 5.
[25] *Id.* at 2, 4-5.
[26] Thirty-four states have statutes providing that once tried as an adult, anyone under the age of 18 automatically becomes an adult for any future offense, no matter how small. *Id.* at 2, 7.
[27] *Id.* at 2.
[28] *See e.g.* M.C.L.A. § 769.1 (Michigan law requiring that juveniles convicted of certain crimes be sentenced as adults.
[29] *Miller v. Alabama*, 132 S. Ct. 2455, 2477 (2012) (Roberts, C.J., dissenting) (the court recognizes that over 2,000 of the 2,500 prisoners serving LWOP sentences for crimes committed before the age of 18 received mandatory sentences).
[30] Griffin, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, at 2, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf.

Article 10 of the ICCPR provides that a person deprived of liberty shall be treated with humanity and dignity.[31] In recognition of the special needs and vulnerabilities of youth, Article 10(3) provides that "Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

When the U.S. ratified the ICCPR, it reserved that "in exceptional circumstances" young people could be treated as adults.[32] This reservation is contrary to the object and purpose of the ICCPR, leaving the U.S. bound by the obligation to ban the treatment of young people as if they are adults. Further, rather than occurring in rare or exceptional circumstances, incarceration of youth as adults is an increasingly common practice in most states and a required practice in others. The trend in state law is to make it easier for youth to end up in adult prisons. The data compiled the U.S. Department of Justice (DOJ) supports this trend but significantly under counts the number of youth transferred to adult courts.[33] In addition, the transfer number does not include the youth who are automatically tried as adults in the 12 states where juvenile court jurisdiction ends at 15 or 16. DOJ estimates the number of 16 or 17 year olds tried as adults under such circumstances could be as high as 175,000.[34] African-American youth are disproportionately represented amongst youth serving adult prison sentences. Nationwide, African-American youth represent 17 % of the overall youth population,[35] yet they represent 28% of juvenile arrests and account for 35% of youth waived to adult court[36] and more than half of youth sent to adult prisons.[37] The concentration of African-American youth becomes greater the harsher the sentence in question.[38]

Although the federal government has recognized that youth should be not be incarcerated in adult facilities and has prohibited the practice at the federal level, no such prohibition has been enforced in state prisons. The federal government has not required that states stop incarcerating youth in adult facilities, but it does try to provide funding incentives that seek to achieve this result. States wishing to receive certain allocations of federal funding must ensure that youth on

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[31] International Covenant on Civil and Political Rights (ICCPR), art. 10, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. The U.S. ratified the ICCPR in 1992.

[32] The reservation provides: "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. The United States further reserves to these provisions with respect to States with respect to individuals who volunteer for military service prior to age 18." United States of America Reservations and Declarations, at 1, *available at* http://www.bayefsky.com/docs.php/area/reservations/state/184/node/3/treaty/ccpr/opt/0 (last visited Dec. 22, 2012).

[33] Griffin, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, at 20, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf. In 2007, the DOJ recorded almost 14,000 transfers of youth to adult courts (8,500 judicial waivers and 5,116 non-judicial transfer based on data from seven states). Because 29 states did not provide data on non-judicial transfers, the actual number of transfers is likely to be much higher. *Id.*

[34] *Id.* at 21.

[35] ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 7 (2011).

[36] Juvenile Court Statistics 1985-2009, National Center for Juvenile Justice, www.ojjdp.gov/ojstatbb/ezajcs/ (last visited Dec. 22, 2012).

[37] ASHLEY NELLIS & RYAN S. KING, SENTENCING PROJECT, NO EXIT 19- 23 (2009) (African-American youth account for 58% of youth sent to adult prison).

[38] *Id.* (African-American youth account for 47.3% of life sentences and 56.1% of life without parole sentences).

"juvenile delinquency" charges are separated from adults.[39] However, in a loophole that devours the restriction, a youth who is charged or sentenced as an adult is not understood to be a "juvenile".[40] Additionally, standards implementing the federal Prison Rape Elimination Act (PREA) encourage but do not mandate the separation of anyone under 18 years old by "sight, sound, and physical contact" from anyone 18 or older in housing units.[41] PREA standards for young people in adult facilities were only published in June 2012, and the reporting, ability to monitor or implement, as well as the effects of not following these standards are still not known.[42] At the current time, however, countless children as young as 13 are placed in adult facilities without separation based on age.

II. Placing Youth in Adult Prisons, Where They Face Greater Risk of Physical Assaults, Rape and Sexual Assaults, Violates the U.S.'s Obligation to Prevent Torture and Cruel and Inhuman Treatment in Violation of Articles 7, 10(3) and 24

Youth in adult facilities face significantly greater risk of harm and violence from staff and other inmates than youth in juvenile facilities, including physical violence and victimization, sexual assault, and rape.[43] Youth in prison are twice as likely to be violently assaulted by correctional officers or other staff, and fifty percent more likely to be attacked with a weapon.[44] These harms are tantamount to torture or cruel, inhuman or degrading treatment or punishment in violation of Articles 7, 10(3) and 24.

Youth are particularly vulnerable to rape, sexual assault, and coercive sexual practices when placed in adult prisons. The U.S. Department of Justice (DOJ) has found that state prison inmates below 18 are more than 8 times as likely as the average prison inmate to have a substantiated

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[39] Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5601 et seq., *See also* Griffin , *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, at 23, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf; The JJDP Act seeks to limit the incarceration of juveniles in adult jails. Should states choose not to follow the regulations they risk losing hundreds of millions of dollars in federal youth crime prevention funding. ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 9 (2011).

[40] Griffin et al., *Trying Juveniles as Adults,* at 23, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf; *See also* ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 9 (2011).

[41] National Standards To Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115.14 (a) (2012). *See also* Dana Shoenberg & Jason Szanyi, *Understanding the Impact of the Prison Rape Elimination Act Standards on Facilities That House Youth*, Center for Children's Law and Policy, at 8 (2012), *available at* http://www.cclp.org/documents/PREA/PREA%20Quick%20Ref.pdf

[42] *Id.* at 1-2.

[43] Attapol Kuanliang et al., *Juvenile Inmates in Adult Prison System: Rates of Disciplinary Misconduct and Violence*, 35 Crim. Just. & Behavior 1186, 1187 (2008); See also Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: *Hearing before the Subcomm. on the Constitution, Civil Rights and Human Rights of the Senate Judiciary Comm,* 112th Cong. (2012), *available at* http://solitarywatch.com/resources/testimony/ ("...we're seeing an alarming increase in isolation for those who don't really need to be there and for many, many vulnerable groups like immigrants, children, LGBT inmates, supposedly there for their own protection.").

[44] Martin Forst et al., *Youth in Prison and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 40 JUV. & FAM. CT. J. 1, 9 (1989).

incident of sexual abuse, based on reported incidents.[45] Moreover, DOJ recognizes that it is likely that unreported sexual abuse by young prisoners is higher than underreporting by adult prisoners.[46] The Department of Justice is not currently publishing separate data on survivors of rape and sexual assault under 18, but a congressional Commission tasked with developing national standards to prevent prison rape found that younger people in prison have both experiential and weight vulnerability.[47] That rape and sexual abuse continue to occur at alarming rates - particularly by or with the implicit tolerance of staff - is a human rights violation of grave consequence.

Although there is no data on girls in adult prisons, simply being an incarcerated woman is a risk factor for sexual assault and rape.[48] In 2006, 34% of the substantiated victims of sexual violence in state operated youth facilities were female even though they accounted for just 11% of the population.[49] Incarcerated women are at a heightened risk for being forced, coerced, or threatened into abusive sexual relationships with staff.[50] The risk of sexual abuse of girls in adult prisons is worsened by the fact that some states allow male guards to supervise women in adult prisons[51] despite international standards prohibiting such practices.[52]

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[45] National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01, 37128 (Jun. 20, 2012) (amending 28 C.F.R. pt 115) ("[F]rom 2005 through 2008, 1.5 percent of victims of substantiated incidents of inmate-on-inmate sexual violence in State prisons were under-18 even though under-18 inmates constituted less than 0.2 percent of the State Prison population.").

[46] *Id.*

[47] HON. REGGIE B. WALTON (CHAIR) ET. AL., NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 7 (2009) ("Youth, small stature, and lack of experience in correctional facilities appear to increase the risk of sexual abuse by other prisoners.").

[48] *Id.* at 17 ("Simply being female is a risk factor.").

[49] U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 231 (2006).

[50] HUMAN RIGHTS WATCH (HRW), AGAINST ALL ODDS: PRISON CONDITIONS FOR YOUTH OFFENDERS SERVING LIFE WITHOUT PAROLE SENTENCES IN THE UNITED STATES 17 (2012), *available at* http://www.hrw.org/reports/2012/01/03/against-all-odds-0; *See also* Just Detention International Incarcerated Youth at Extreme Risk of Sexual Abuse, March 2009, at 1; HUMAN RIGHTS WATCH (HRW), NOWHERE TO HIDE: RETALIATION AGAINST WOMEN IN MICHIGAN STATE PRISONS (1998), *available at* http://www.hrw.org/legacy/reports/reports98/women/ (This report does not differentiate between girls and women but is illuminating in its breakdown of how women are at an increased risk for rape and sexual assault in the US prison system).

[51] Federal regulations implementing the Prison Rape Elimination Act require states to end cross-gender pat down searches in female prisons absent exigent circumstances, or lose federal funding. National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01, 37108 (Jun. 20, 2012) (amending 28 C.F.R. pt 115) ("the final standards include a phased-in ban on cross-gender pat-down searches of female inmates. . . .And for all facilities, the standards prohibit cross-gender strip searches and visual body cavity searches except in exigent circumstances or when performed by medical practitioners, in which case the searches must be documented"). While these standards are too new to have been litigated, states are still continuing to use male guards on female prisoners. *See e.g. Griffin v. Michigan Department of Corrections,* 654 F. Supp. 690, 702-03 (E.D. Mich. 1982) (holding that "inmates do not possess any protected right under the Constitution against being viewed while naked by correctional officers of the opposite sex").

[52] U.N. Standard Minimum Rules for the Treatment of Prisoners (1955), Rule 53, *available at* http://www2.ohchr.org/english/law/treatmentprisoners.htm.

At this time, there is not research on lesbian, gay, bisexual, transgender, or questioning (LGBTQ) youth in adult facilities. However, the Bureau of Justice Statistics reported that youth in juvenile facilities who reported a sexual orientation other than heterosexual were assaulted at a rate nine times that of heterosexual youth.[53] Thirty-nine percent of people in adult men's prisons who reported a sexual orientation other than heterosexual experienced a rape or sexual assault compared with 3.5% of heterosexual identified adults.[54]

III. Adult Prisons Disproportionately Place Youth in Solitary Confinement in Violation of Article 7, 10(3) and 24

In the United States, solitary confinement of youth in adult jails and prisons is a widespread problem.[55] Young people are isolated either for punitive reasons, to manage them or because correction officials have deemed isolation to be "protective" in some capacity.[56] Whether punitive or protective, isolation generally involves segregating youth for 22 or more hours a day in their cells with little to no human contact and generally no access to educational or other programming.[57] Youth sometimes spend one hour a day out of their cell, suffer a complete absence of interpersonal contact, and have little to no opportunities to engage in rehabilitative programs.[58]

The Human Rights Committee has recognized that prolonged solitary confinement of incarcerated individuals amounts to "torture or other cruel, inhuman, or degrading punishment."[59] United Nations rules prohibit the use of solitary confinement on young people.[60]

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[53] ALLEN J. BECK, PAUL GUERINO, & PAIGE M. HARRISON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH 2008-09 11 (2010) (youth with a non-heterosexual sexual orientation reported 12.5% sexual victimization rates compared to heterosexual youth at 1.3% rates)

[54] U.S. Dep't of Justice, Bureau of Justice Statistics, *PREA Data Collection Activities 2012,* June 2012, at 2 (Note that this report does not provide for Lesbian, female bisexual, or transgender identified people).

[55] While there are no clear statistics, this disproportionality occurs because solitary confinement occurs to 1) separate special populations from general population, 2) to punish rule infractions and 3) in response to illness or self-harm. Young people are a special population that has difficulty following prison rules and self-harms in response to prison conditions. HUMAN RIGHTS WATCH (HRW) & THE AMERICAN CIVIL LIBERTIES UNION (ACLU), GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 20 (2012); *See also* JENNIFER L. WOOLARD ET. AL., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J OF FORENSIC MENTAL HEALTH 1, 14 (2005); AMNESTY INTERNATIONAL, BETRAYING THE YOUNG: HUMAN RIGHTS VIOLATIONS AGAINST CHILDREN IN THE U.S. JUSTICE SYSTEM (1998).

[56] HRW & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 20 (2012).

[57] *Id.* at 22.

[58] *Id.* at 37, 41.

[59] Human Rights Committee, *Gen. Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7),* ¶ 6 (44th Sess., 1992) ("The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.").

[60] United Nations Rules for Treatment of Juveniles Deprived of Liberty ¶ 67 (1990) ("All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical

Solitary confinement is particularly devastating for young people, who lack physical and mental coping mechanisms and other resources that adults use to sustain mental health.[61] Segregation also frequently results in a lack of access to programs. Youth in solitary have reported a significant lack of access to physical and mental health services, recreation, education materials, and visits or other contact with family members.[62]

Youth often end up in solitary for minor infractions as corrections officials do not know how to supervise juveniles. Youth state that they are placed in solitary confinement for failure to make their beds, for talking back, or other minor disciplinary write up.[63]

Youth in adult prisons and jails can also end up in solitary confinement due to restrictions on contact with incarcerated adults.[64] Many facilities place inmates vulnerable to sexual or other abuse and inmates who are, or are perceived to be, LGBTQ and intersex in protective segregation.[65] Although PREA attempts to impose limitations on the use of "protective" segregation, it does not prohibit such segregation.[66] For states that choose to follow PREA, "protective" segregation must be limited to 30 days and be used only as a last resort.[67] Yet these standards fall short of forbidding the practice, merely stating that best efforts must be made to avoid isolating young people.[68]

IV. The Treatment of Youth in Adult Prisons Is Not Appropriate To Their Age or Legal Status as Youth and Fails to Promote Their Rehabilitation in Violation of Articles 10(3) and 24

Article 24 provides that youth are entitled to special protection, and Article 10(3) requires that incarcerated youth "be accorded treatment appropriate to their age and legal status."[69]

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or mental health of the juvenile concerned."); *See also* U.N. Special Rapporteur on Torture Calls for the Prohibition of Solitary Confinement, U.N. Press Release (Oct. 18, 2011), *available at* http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11506&LangID=E (release specifically mentions that juveniles should not be placed in solitary confinement).

[61] HRW & ACLU GROWING UP LOCKED DOWN 24 (2012).

[62] *Id.* at *23.*

[63] *Id.* at 3, 52.

[64] Twenty-five of the forty-one jails surveyed by the University of Texas place youth in "protective" solitary confinement by default. HRW & ACLU GROWING UP LOCKED DOWN 54 (2012).

[65] *Id.* at 56, FN 177 (2012); *See also* HON. REGGIE B. WALTON (CHAIR) ET. AL., NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 70 (2009).

[66] 28 C.F.R. § 115.43(c); *See generally* HRW & ACLU, GROWING UP LOCKED DOWN 55 (2012).

[67] National Standards To Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115.43(C) ("The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.").

[68] 28 CFR § 115.14(C).

[69] ICCPR, art. 10(3); See also United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted Nov. 25 1989, Rule 26.2, U.N. GAOR, 40th Sess., U.N. Doc. A/RES/40/ (1989), available at http://www.unhcr.org/refworld/docid/3b00f2203c.html; HRW, Against All Odds 12 (2012), *available at* http://www.hrw.org/reports/2012/01/03/against-all-odds-0 ("A prison sentence depriving a youth or young adult of adequate opportunities for growth has implications far beyond the years spent in a prison cell.").

International human rights standards recognize that youth that have violated criminal laws have the right to be treated in a manner that promotes the child's reintegration and constructive role in society.[70] When young people are incarcerated in adult jails and prisons – including before they are found culpable of any offense – without access to developmentally appropriate opportunities for growth and education, they are denied the chance to mature and rehabilitate.[71] International human rights standards have established that age appropriate treatment for incarcerated youth includes adequate educational and rehabilitative programming[72] provided by staff trained to work with youth,[73] age-appropriate medical and mental health services,[74] and housing that affords youth their right to family and community.[75]

A. Adult Prisons and Jails do not Provide Adequate Educational and Rehabilitative Programming

While in adult facilities, youth are not offered age-appropriate programs.[76] Youth have different developmental and educational needs than adults, and failure to address the specific needs of youth denies them a chance to achieve growth and maturity.[77] Adult prisons provide limited opportunities for meaningful education, work or other productive activities.[78] Most youth have not completed their high school education and need expanded options for high school equivalency or vocational education.[79] Because of youth's developmental challenges, appropriate youth programming requires greater emphasis on parental visitation and peer interaction.[80] Further, in managing youth, correctional staff employ tactics derived from adult-based training and are not encouraged to provide differential responses based on age. As a result youth housed with adults are charged with twice as many disciplinary reports.[81]

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[70] Convention on the Rights of the Child (CRC), art 40(1); Beijing Rules 26.1.
[71] ICCPR, art. 10(3); CRC, art. 37(c).
[72] United Nations Standard Minimum Rules for the Treatment of Prisoners, art. 77(1) ("The education of...young prisoners shall be compulsory and special attention shall be paid to it by the administration."); United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, ¶ 38 ("every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.").
[73] United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, ¶ 81, 85.
[74] ICCPR, arts. 6, 7, and 10(1); CAT, art. 16; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, ¶ 49-55.
[75] United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, ¶ 28 ("The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations.").
[76] ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 19 (2011); Jennifer L. Woolard et. al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations* 4 INT'L J OF FORENSIC MENTAL HEALTH 1, 12 (2005).
[77] HRW, Against All Odds 12 (2012), *available at* http://www.hrw.org/reports/2012/01/03/against-all-odds-0.
[78] HRW & ACLU GROWING UP LOCKED DOWN 18 (2012)
[79] Woolard, 4 INT'L J OF FORENSIC MENTAL HEALTH 1, 11 (2005).
[80] *Id.* at 11.
[81] *Id.* at 14, FN 88, *citing* U.S. Dep't of Justice, National Institute of Corrections, *Offenders Under Age 18 in State Adult Correctional Systems: A National Picture,* February 1995.

Those youth sentenced to life without parole, or de facto life sentences, because they have no potential release date, are frequently denied access to any rehabilitative programming, vocational training or education. Youth with LWOP sentences are the lowest priority for prison staff resulting in extreme idleness and hopelessness during a lifetime incarceration. This failure to provide rehabilitative programming has significant implication for those youth whom, under recent U.S. Supreme Court cases now have the opportunity for release upon demonstration of maturity and rehabilitation.[82]

B. Medical and Mental Health Services Do Not address the Unique Needs of Youth

Mental and physical health needs of adolescents differ from those of adults both in how illnesses manifest and in what treatments help. Staff in adult prisons, including doctors and mental health professionals, do not have specialized training to recognize pediatric and adolescent care needs.[83] The need for appropriate mental health care is critical for youth. Incarcerated young people under 18 have a suicide rate that is nearly four times that of older incarcerated people.[84]

C. Housing in Adult Prisons Deprives Youth of the Right to Family and Community

Adult prisons are often located in rural areas that are not accessible by public transportation. Lack of consistent access to family and friends is often more difficult for young people who "are more dependent on such relationships" to develop healthy social norms.[85] The effect of being cut off from family, friends, and the rest of society results in feelings of isolation and loneliness, and inhibits rehabilitation.[86]

V. The Practice of Imprisoning Youth With Adults Results in *Increased* Recidivism and *Increased* Negative Long-Term Consequences for Youth and Their Communities

Youth who have been transferred to the adult criminal system are 34% more likely to be re-arrested.[87] According to the U.S. Department of Justice this startling recidivism is linked to "the lack of access to rehabilitative resources in the adult corrections system as well as the hazards of

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[82] HRW, AGAINST ALL ODDS (2012), *available at* http://www.hrw.org/reports/2012/01/03/against-all-odds-0; *See Graham v. Florida*, 130 S. Ct. 2011 (2010) and *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *Cf. Naovarath v. State*, 105 Nev. 525, 526 (1989) (denial of an opportunity for parole "means a denial of hope; it means that good behavior and character improvement are immaterial....").

[83] HRW & ACLU, GROWING UP LOCKED DOWN 18 (2012)

[84] HRW, AGAINST ALL ODDS 37 (2012) (using statistics from CHRISTOPHER MUMOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS (2005), *available at* http://www.bjs.gov/content/pub/pdf/shsplj.pdf.)

[85] HRW, AGAINST ALL ODDS 42 (2012).

[86] *Id.* at 41.

[87] ZIEDENBERG, YOU'RE AN ADULT NOW 5 (2011). A Florida-based study of 315 "best-matched" pairs of young people found that 37% of youth brought to juvenile court re-offended, compared to 49% of those in adult court. Donna M. Bishop et al., Juvenile Transfer to Criminal Court Study: Final Report, 15 (Jan 2002).

association with older criminal 'mentors'."[88] Further troubling is that youth who witnessed or experienced violence while incarcerated were less likely to say that their incarceration would deter them from committing crime in the future.[89]

Adult incarceration has consequences far beyond the time inside, affecting a young person's ability to re-integrate upon release. The burden of an adult conviction on a young person's record is a heavy one, resulting in employment discrimination[90] and bars to public housing.[91]

VI. Sentencing Juveniles to Life Without Parole and Virtual Life Sentences Violates Youths' Freedom from Cruel, Inhuman or Degrading Punishment, and Rights to Separation, Special Protection Under Articles 4, 7, 10, 24 and Right to Non-Discrimination Under Article 26

In forty-five U.S. states, a youth below the age of eighteen can receive an LWOP sentence.[92] Youth sentenced to life without parole (LWOP) suffer all of the rights violations described above. They also face additional violations that stem specifically from their sentence, along with the frightening inevitability of dying in prison. This type of sentence "forswears altogether the rehabilitative ideal," in the words of the U.S. Supreme Court,[93] and violates States' duty under the Convention to direct the penitentiary system toward "the treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation."[94]

Death-in-prison sentences for youth are particularly disquieting given the recognition that young people change dramatically as they mature and have a unique ability to outgrow the behavior that led to their offense. The human brain does not fully form until people reach their 20s, and in particular, the part of the brain linked to impulse control, weighing decisions, and strategizing develops latest. Scientific research shows that youth are particularly amenable to changing risk-taking and illegal behaviors, and that these types of behaviors usually stop with the onset of maturity.[95]

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[88] Griffin, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. Dep't of Justice, OJJDP Juvenile Justice Bulletin, September 2011, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf.
[89] Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, OJJDP Juvenile Justice Bulletin, June 2010, *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf.
[90] Equal Employment Opportunity Commission, Employment Discrimination Faced by Individuals with Arrest and Conviction Records, Statement of Laura Moskowitz, Staff Attorney, National Employment Law Project's Second Chance Labor Project, 1-3 (Nov. 20, 2008).
[91] 42 U.S.C. § 13661(c) (In screening applicants to federally assisted housing, the housing agency or owner has the authority to deny admission to criminal offenders.).
[92] CONNIE DE LA VEGA, CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT 59 (2012).
[93] *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010).
[94] ICCPR art. 10(3).
[95] HRW, AGAINST ALL ODDS: PRISON CONDITIONS FOR YOUTH OFFENDERS SERVING LIFE WITHOUT PAROLE SENTENCES IN THE UNITED STATES 11 (2012), *available at* http://www.hrw.org/reports/2012/01/03/against-all-odds-0; HRW, WHEN I DIE THEY'LL SEND ME HOME: YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA 4 (2008), *available at* www.hrw.org/reports/2008/us0108/us0108web.pdf.

Youth's inability to negotiate the legal system, inadequate legal representation and lack of understanding of the process, leads to their disproportionately receiving LWOP sentences.[96] Studies of juvenile LWOP sentences in California and Michigan found that youth were more likely to receive harsher sentences than adults under whose influence or direction they acted (or who actually committed the homicide).[97] In Michigan, the state with the second highest number of children sentenced to LWOP, the vast majority of youth and their families lacked resources to hire representation. Thirty-eight percent of those assigned by the courts to represent these youth have been publically sanctioned. Youth of color were 421% more likely to have been represented by a disciplined attorney.[98]

Race plays a key role in determining which youth receive LWOP sentences. Throughout the U.S., relative to their population, African-American youth are serving LWOP sentences at rates ten times higher than white youth. The rate is as much as 18.3 times higher in California.[99] Racial disparity persists even when accounting for differences in arrest rates, with African-American juvenile murder defendants sentenced to LWOP 1.56 times on average more often than whites and up to 5.83 times more often in California.[100] In Michigan, 73% of youth serving LWOP are children of color, despite youth of color constituting only 29% of Michigan's youth. These facts implicate Article 26 of the Convention, which prohibits discrimination based on race.

While recent U.S. Supreme Court decisions barring LWOP sentences for juveniles convicted of non-homicide offenses,[102] and barring mandatory LWOP sentences for youth convicted of homicide offenses (including aiding and abetting and felony murder)[103] are a positive step, they do not bring the United States into compliance without further action. The latter case, *Miller,* does not categorically prohibit juvenile LWOP sentences in homicide cases.[104] Nor have these decisions changed the situation of 2,500 individuals currently serving both mandatory and discretionary life without parole sentences for offenses committed as children because judges are restricting the application of both decisions in various jurisdictions.[105] Further troubling is that

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[96] HRW, AGAINST ALL ODDS: PRISON CONDITIONS FOR YOUTH OFFENDERS SERVING LIFE WITHOUT PAROLE SENTENCES IN THE UNITED STATES (2012).

[97] HRW, WHEN I DIE THEY'LL SEND ME HOME: YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA 35-36 (2008); DEB LABELLE & ANLYN ADDIS, BASIC DECENCY: PROTECTING THE HUMAN RIGHTS OF CHILDREN: AN EXAMINATION OF NATURAL LIFE SENTENCES FOR MICHIGAN'S CHILDREN (2012), *available at* http://www.aclumich.org/sites/default/files/file/BasicDecencyReport2012.pdf.

[98] LABELLE, BASIC DECENCY19 (2012), *available at* http://www.aclumich.org/sites/default/files/file/BasicDecencyReport2012.pdf.

[99] HRW, WHEN I DIE THEY'LL SEND ME HOME: YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA 25 (2008), *available at* www.hrw.org/reports/2008/us0108/us0108web.pdf.

[100] *Id.* at 29.

[102] *Graham v. Florida*, 130 S. Ct. 2011 (2010).

[103] *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

[104] *Miller*, 132 S. Ct. at 2469.

[105] For example, last year a Virginia Circuit Court judge refused to apply *Graham*, reasoning that the petitioner in the case has an opportunity at conditional geriatric release when he is 60 years old. *See* Kristin Davis, *Va. Beach Judge Dismisses Claims Against Life Sentence,* VIRGINIAN-PILOT, May 5, 2011, *available at* http://hamptonroads.com/2011/05/va-beach-judge-dismisses-claim-against-life-sentence; The Seventh Circuit Court of Appeals refused to offer relief based on the *Graham* decision to Reynolds Wintersmith, convicted nearly two

courts bypass these decisions by imposing *de facto* LWOP sentences by sentencing youth to adult term-of-years sentences that are as long as, or longer than, an average natural life, including up to 241 years in prison.[106]

VII. Questions for the United States Government

- What steps is the U.S. taking to ensure that all states and the federal government stop routinely detaining people under the age of 18 in adult jails and prisons, and stop sentencing youth as adults?
- What steps is the government taking to come into full compliance with the Convention by fully ending the practice of sentencing youth to life without parole, or *de facto* life without parole prison terms in the U.S.?
- Why do current Bureau of Justice Statistics data fail to provide comprehensive information on individuals under 18 in adult jails and prisons, including statistics on sexual assault disaggregated by sex, gender and sexual orientation?
- How does the U.S. plan to ensure that all young people who are deprived of their liberty are afforded access to educational, vocational, and other rehabilitative programming such as counseling that account for their age and status?
- Why has the U.S. not come into compliance with international standards prohibiting the placement of youth in solitary confinement?
- What steps is the U.S. taking to address the documented disparate impact that adult sentencing practices have on youth of color?
- Understanding that the practice of placing youth in adult jails and prisons significantly raises the risk of recidivism, what steps is the U.S. taking to develop alternatives to incarceration that incorporate international norms of rehabilitation and use confinement as a last resort?
- What steps is the U.S. taking to ensure that those individuals, serving a mandatory life without parole sentence for offenses committed before their 18th birthday, are resentenced, making an individualized determination that takes into consideration their youthful status and lesser culpability?
- How does the U.S. plan to ensure that, consistent with the United States Supreme Court ruling, all youth are provided an opportunity for release upon demonstration of maturity and rehabilitation?

We hope this information will be useful for the preparation of the list of issues, and that the concerns raised here will be reflected in the questions asked of the United States. We would be

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decades ago for a non-violent drug offense at age 17; *See* Annie Sweeney, *Supporters Seek Freedom for Convict Serving Life Sentence for First Time Conviction,* CHI. TRIB., Oct. 2, 2011, *available at* http://articles.chicagotribune.com/2011-10-02/news/ct-met-drug-lifer-1002-20111002_1_sentencing-guidelines-drug-conspiracy-life-sentence; A recent Michigan Court of Appeals decision found that *Miller* is not retroactive. *See People v Carp*, No. 307758 (Mich. Ct. App. Nov. 15, 2012) *available at* http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20121115_C307758_66_307758.OPN.PDF.

[106] CONNIE DE LA VEGA, CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT 60 (2012), *available at* www.usfca.edu/law/docs/criminalsentencing; *See also De Facto Life Without Parole*, N.Y. TIMES, Aug. 11, 2012, at SR12, *available at* http://www.nytimes.com/2012/08/12/opinion/sunday/de-facto-life-without-parole.html?_r=0.

grateful if you could make this letter available to all members of the country report task force on the United States.

Thank you.

Sincerely,

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