DOMESTIC CRIMINAL JUSTICE ISSUES AND THE ICCPR

Introduction

1. The Criminal Justice Policy Foundation, Open Society Policy Center, Penal Reform International, and The Sentencing Project welcome the opportunity to comment on the periodic report of the United States submitted to the Human Rights Committee in October 2005 report ("Report"),[1] as it pertains to domestic criminal justice issues.

2. The US is a wealthy country that has chosen to commit substantial resources to a prison-centered penal system. Nationally, the United States sentences more than 1 million people to state and federal prison every year, and there are currently 7 million people under correctional supervision, including more than 2 million in prison and jail. Six percent of the American adult population have a felony conviction. As the American criminal justice system continues to expand, its burden has fallen most heavily on the poor and people of color. Their powerlessness and lack of resources make even more urgent their need for human rights protections at trial, at sentencing and while being held in custody. We urge the committee to critically analyze the United States' periodic report regarding its compliance with Articles 7, 10, 14, and 24 of the ICCPR.

Executive Summary

Article 14

3. The rights enumerated under Article 14 are generally supported by United States constitutional jurisprudence. This includes the right to be represented by counsel at trial and, for indigent defendants facing the possibility of imprisonment, to have counsel provided to them. However, this basic requirement of a fair trial is often not met. With three-quarters of criminal cases requiring the public provision of counsel, a system without a vibrant and well-funded indigent defense system is not sufficiently meeting the requirements of guaranteeing counsel. In practice, the United States does not make adequate resources available for indigent defense and there are no mechanisms to ensure that states provide competent counsel.

4. Effective counsel is necessary at all stages of a criminal court proceeding. Ninety five percent of all criminal cases are settled not at trial but through plea bargains. Defendants facing long mandatory sentences determined by legislation or strict sentencing guidelines are very vulnerable to pressure from prosecutors and the assistance of a skilled and knowledgeable attorney during the negotiation process is essential.

5. A competent attorney with the resources to mount an adequate defense can also challenge police interrogation measures, coerced confessions, erroneous eye-witness

[1] Second and Third Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, at § 281 (Oct. 21, 2005).

identification, perjury by police officers and other unjust practices that frequently deny the defendant those aspects of a fair trial required by the ICCPR. Without adequate resources to meet the growing need for effective assistance of counsel for indigent defendants, the US cannot meet its obligations under the ICCPR.

Article 26

6. Article 26 of the ICCPR recognizes that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law." Despite this internationally accepted norm, a double standard of justice has been evident in criminal sentencing in the United States, particularly for drug offenses. The national prison population has more than tripled since 1980, with nearly half of that population being black, although African Americans constitute only 12 percent of the U.S. population. The increase in the prison population is not in response to rising crime and, nor an indication of more criminal activity by blacks. Instead, it is a reflection of more stringent penalties in the form of mandatory minimum sentences, particularly the penalty disparity between crack and powder cocaine.

Articles 7 and 10

7. The United States has more than 2.2 million people in its prisons, jails, immigration detention and juvenile facilities. The rapid growth of the prison population has taken place at the same time as crime and punishment has become deeply politicized, with increasing disrespect for the dignity and humanity of prisoners. As a result, both deliberate policy and inadequate resources have led to increasingly inhuman conditions within the United States prison and jail system that frequently contravene both Article 7 and Article 10 of the ICCPR.

8. Endemic overcrowding leads to greater levels of violence, lack of privacy, excessive noise, inadequate programs and lack of essential services, including healthcare. Especially at risk in these conditions are the large number of mentally ill within prisons and jails. The mentally ill are overrepresented among those sent to super maximum security ("Supermax") prisons. In these prisons, people spend a minimum of 23 hours a day in small cells with almost no interaction with other people, limited activities, sensory deprivation, and harsh security restrictions. Confinement in a supermax can be devastating for anyone, but for the mentally ill it surely constitutes torture.

9. In addition to the inhuman treatment suffered by all prisoners, women are especially at risk for sexual abuse and humiliation, inadequate medical and obstetric care, including shackling during childbirth, and loss of contact with their children. The separation from children and risk of losing parental rights is gravest for those in private, for-profit prisons who are often held in different states from where their families reside making it almost impossible to maintain contact with their children.

10. Confining children within adult prisons and jails not only contravenes Article 14 but also Articles 7 and 10 as their youth and vulnerability make the conditions they face

particularly inhuman and damaging. Children in adult prisons and jails are at increased risk of suicide and sexual and physical abuse by guards and other prisoners. The sentence of life without the possibility of release for children is an extreme form of cruel and inhuman punishment that denies any possibility of rehabilitation.

Articles 14 and 24

11. The United States fails to recognize the right of children in conflict with the law to procedures that take account of their age as required by Article 14 or the more general requirements for the special protection of minors required under Article 24 of the ICCPR. State legislation routinely allows children, in some cases as young as ten years old, to be subject to adult criminal proceedings. Once in the jurisdiction of criminal court, child offenders lose the protections that they would have received in the juvenile court which takes account of their status as children and are eligible for adult sentences including life in prison without the possibility of release.

12. While the number of new commitments of children to adult prisons has declined from its peak, the Department of Justice's latest figures show more than 9,000 children in adult prisons and jails with more than 4,000 children per year entering the adult system, 70% of them youth of color.[2] When the United States ratified the ICCPR, it attached a limiting reservation stipulating that it "reserve[d] the right, in exceptional circumstances, to treat juveniles as adults." Clearly, however, given the numbers involved, the circumstances in which children are treated as adults is far from exceptional. It is a routine and everyday occurrence.

ARTICLE 14 OF THE ICCPR – RIGHT TO A FAIR TRIAL

The Need for Counsel in a Criminal Proceeding

13. United States government officials maintain that the right to counsel is guaranteed in all federal and state criminal court proceedings through the Sixth and Fourteenth Amendments.[3] In addition, the United States asserts that decisions in *Gideon v. Wainwright*[4] and *Argersinger v. Hamlin*[5] extended this protection further by guaranteeing public assistance of counsel for all indigent defendants charged with a felony (*Gideon*) or any crime that might result in incarceration (*Argersinger*). What is not mentioned in the Report is that the United States' failure to adequately fund a system of public provision of counsel has rendered the protections of *Gideon*, in the words of the American Bar Association, a "broken promise."[6] As such, effective representation of counsel remains elusive for the vast majority of criminal defendants and the United States routinely fails to satisfy even the basic rudiments of legal protections, thereby violating Article 14 (3)

---

[2] Howard Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report*, (March 2006), US Dept. of Justice, Office of Justice Programs.

[3] *Supra*, note 1.

[4] 372 U.S. 335 (1963).

[5] 407 U.S. 25 (1972).

[6] American Bar Association, "*Gideon's* Broken Promise: America's Continuing Quest for Equal Justice," ABA Standing Committee on Legal Aid and Indigent Defendants, (December 2004).

(d). In addition, this failure to provide a vibrant and effective indigent defense system jeopardizes the "presumption of innocence" requirement of Article 14 (2) in light of the increased risk of erroneous convictions due to insufficient representation of counsel and the over reliance on plea bargains to resolve cases.

14. Considering that more than three-quarters of all criminal defendants rely on the public provision of counsel,[7] a well-funded and effective indigent defense system is necessary to ensure the fulfillment of the requirements of a fair trial. The American adversarial system of justice is fundamentally flawed and unable to reach just outcomes if one party has substantial resource advantages, which is commonplace in the domestic criminal court system. In a country with a federal and state sentencing structure that routinely sentences individuals to prison terms measured in decades, the stakes in the more than 1 million criminal cases annually could not be higher.

15. A recent study of exonerations between 1989 and 2003 concluded that the primary reason for an erroneous criminal conviction was eyewitness misidentification.[8] Some of this misidentification came as the result of perjury by police officers. Another common cause for an incorrect conviction was a false confession, which was particularly of concern among juveniles and those suffering from a mental disability. The researchers found coercion in the files of over half of the cases involving a false confession. "False confessions don't come cheap. They are usually the product of long, intensive interrogations that eventually frighten or deceive or break the will of a suspect to the point where he will admit to a terrible crime that he did not commit."[9] The awareness of the consequences of false confessions has been heightened in recent years as a result of a steady stream of exonerations that have come about through advances in the use of DNA-testing technology.[10] These risks inherent in the elicitation of criminal confessions underscore the need for the presence of competent counsel in order to ensure the protection of basic individual rights against a compelled confession of guilt, a violation of Article 14 (3) (g).

16. Law enforcement tactics raise constitutional issues regarding the legality of the search of person and property as well as the constitutionality of interrogation measures. These tactics exist in a legal limbo, where the circumstances of the arrest, custody, and interrogation techniques are critical in determining whether certain constitutional protections should have been invoked. Theoretically a post-interrogation review is available in which a defendant's statements may be contested as inadmissible, but if a confession has already been elicited, a successful challenge amounts to a Herculean task. Only a competent attorney is capable of navigating these legal obstacles and sufficiently representing a client's interests.

---

[7] Caroline Wolf Harlow, "Defense Counsel in Criminal Cases," Washington, DC: Bureau of Justice Statistics, (November 2000).

[8] Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, Nicholas Montgomery, and Sujata Patil, "Exonerations in the United States, 1989 through 2003," *The Journal of Criminal Law and Criminology*, Vol. 95, (2), (2005), pp. 523-560.

[9] Id.

[10] For more discussion of DNA-based exonerations, see www.innocenceproject.org

17. Arraignment, pre-trial hearings, and plea negotiations with the prosecutor are critical steps in criminal case processing which demand the guidance of counsel. In light of the fact that an estimated 95% of all criminal cases are resolved with a plea bargain, it is crucial that a skilled attorney be present and involved in crafting an outcome that meets the needs of the client and society. The expansion of the number of charged offenses eligible for mandatory minimums in the last 20 years coupled with a severe sentencing guideline and criminal code structure creates a "hammer" of impending punishment at the disposal of the prosecutor as leverage in the negotiation process. In many cases, there will be critical legal questions regarding the plea process as well as the admissibility of evidence. A defendant is literally helpless to negotiate this process and make an informed decision without the assistance of counsel. This threat of a severe sentence also skews the calculus of the decision-making process regarding the admissibility of evidence, because challenging a search or interrogation may result in potential exposure to a lengthy mandatory minimum sentence. The decision to take this risk is significant, and only an experienced attorney who has worked in the criminal court system can provide guidance.

Consequences of Inadequate Funding

18. Despite the obvious need for assistance of counsel and the overwhelming reliance on the public provision of counsel for the majority of criminal defendants, the United States has failed to develop and fund an effective indigent defense system. This failure is tantamount to violating the basic requirements of Article 14 (3) (d) which necessitates that an individual "have legal assistance assigned to him, in any case where the interests of justice so require; and without payment by him in any such case if he does not have sufficient means to pay for it." Although there are national standards issued by the American Bar Association and the Department of Justice as to guidelines for indigent defense, in practice these are frequently ignored. A report issued by the United States Department of Justice concluded that "indigent defense in the United States today is in a chronic state of crisis."[11]

19. The failure to adequately fund indigent defense has a number of consequences.[12] First, counsel is poorly compensated, meaning that it is difficult for public defender programs to attract and retain talented attorneys. Most public defender programs are unable to offer competitive starting salaries and even experienced counsel make a fraction of what one may earn through other legal employment. For example, in the state of Massachusetts, an attorney with 10 years of experience can only expect to make $50,000 per year.[13] This salary is substantially out of line with other areas of legal practice. In Illinois, for a contract defender, the rate of remuneration for defense of a

[11] Richard J. Wilson, *Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations*, National Symposium on Indigent Defense. Department of Justice, Office of Justice Programs and Bureau of Justice Assistance, March 2000.
[12] For more information, see the supporting materials from the ABA's "*Gideon*'s Broken Promise: America's Continuing Quest for Equal Justice," available: www.indigentdefense.org/brokenpromise
[13] American Bar Association, Indigent Defense Briefing Sheet: Massachusetts, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/ma.pdf

felony charge is $1,250.[14] This statutorily-set rate has not changed in more than twenty-five years. In the case of contract defenders, in which indigent defense services are provided by either a private attorney or an organization that enters into an agreement with the State or local jurisdiction, the determination of who is awarded a contract is generally determined by the lowest bidder, rather than who is situated best to deliver effective legal representation.

20. There is also significant disparity between funding made available for defense compared with prosecution. In California, a study found that funding for public defense is 40% lower than monies dedicated to the prosecution.[15] Inadequate funding also prevents the hiring of experts to assist in the preparation of a defense and the frequent failure to remunerate for expenses, administrative supplies, and investigatory costs. This funding issue also results in irresponsibly high caseloads and reduced client-attorney contact. While the National Advisory Commission on Criminal Justice Standards and Goals calls for a caseload limit of 150 felony cases per year, a survey of public defenders in Baltimore reported attorneys handling 80 to 100 felony cases at one time.[16] Public defenders are frequently re-assigned as new cases come into the system, resulting in an alarming lack of continuity of representation for a client. Each new assigned counsel must learn the particularities of the case, and this increases the likelihood of mistakes.

21. The United States Supreme Court in *Gideon* did not provide a uniform set of standards by which states are required to establish and maintain an indigent defense system. Many states operated without any standardized practice of representation, and as such, defendants may not have been offered counsel. In Georgia, which only implemented a statewide public defense system in 2005, defendants commonly pled guilty to charges in the absence of any legal counsel.[17] Even in cases in which the eventual sentence was probation, the collection of onerous fines can become an insurmountable albatross for many defendants.

22. It is left to the states, counties, and cities to determine the structure of delivery and funding for the public provision of counsel. On average, counties are responsible for paying nearly two-thirds of indigent defense services, while another one-quarter of funding comes from the state.[18] There are two states (Utah and Pennsylvania) in which the county is entirely responsible for compensating the entire indigent defense program. This results in disparities between jurisdictions in salary and support for public defense,

---

[14] American Bar Association, Indigent Defense Briefing Sheet: Illinois, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/il.pdf
[15] American Bar Association, Indigent Defense Briefing Sheet: California, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/ca.pdf
[16] American Bar Association, Indigent Defense Briefing Sheet: Maryland, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/md.pdf
[17] In response to the problems of inadequate public defense in Georgia, The Sentencing Project and the Prison and Jail Project of Americus, GA produced *The Rule of Law: Citizens' Rights in a Georgia Court of Law*. Available: www.sentencingproject.org/pdfs/ruleoflaw.pdf. This document informed the public of their rights and the responsibilities of a public defender and the officers of the court.
[18] Bureau of Justice Statistics, *Indigent Defense Statistics*. Available: www.ojp.usdoj.gov/bjs/id.htm

thereby creating inequalities in representation based on the geographic location of a proceeding.

23. The tragedy in New Orleans in the wake of Hurricane Katrina has resulted in a public defender system that has been completely decimated. There were estimates that 3,000 trials were pending prior to the arrival of Katrina. Since then, it is estimated that as many as 6,000 individuals have been languishing in jail, some for months, awaiting trial. This represents a substantial challenge for the Orleans County Public Defender. However, despite this looming backlog of cases and the pending resumption of criminal proceedings by the beginning of June, 31 county public defenders have been laid-off since Katrina. These pending cases raise heretofore unseen legal questions and are further complicated by spotty court records and missing witnesses scattered across the country in the months following Katrina. In light of these seemingly insurmountable legal challenges, a recent Department of Justice report has called for the hiring of 70 attorneys and a tripling of federal funding to more than $10 million.[19] The situation in New Orleans has already resulted in the postponement of many criminal cases due to a lack of available counsel. Without additional funding and a commitment to more personnel, the quality of legal representation will be violative of minimum ethical standards of conduct.

24. The result is a public defense system that is underfunded and frequently staffed by inexperienced attorneys with high caseloads and limited resources who are compelled to seek pleas rather than put forth a vigorous defense of their client. In Alabama, an analysis of case files found that in 99.4% of the cases in which defendants were represented by a contract defender, there were no motions filed.[20] In Mississippi, nearly half of indigent cases resulted in a guilty plea on the day they were assigned to counsel.[21] The Clark County, Nevada (Las Vegas) public defender reports a trial rate of less than 1%.[22] In many cases, these restrictions prevent counsel from providing constitutionally sufficient representation of a client, but the caselaw regarding review of the effectiveness of counsel offers little relief. The landmark case of *Strickland v. Washington* provides an onerous legal bar to demonstrate ineffective assistance of counsel, requiring both a showing of incompetence as well as a demonstration that conduct of counsel had a demonstrable impact on the verdict in the case.[23] In addition, review of representation in pre-trial proceedings is incredibly difficult to obtain. In practice, the *Strickland* standard results in few reviews and even rarer reversals.

---

[19] Henry Weinstein, "Report Sees Little Justice for Poor in New Orleans," *The Los Angeles Times*. May 9, 2006. As of the date of issue of this shadow report, the Department of Justice report has yet to be released publicly.
[20] American Bar Association, Indigent Defense Briefing Sheet: Alabama, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/al.pdf
[21] American Bar Association, Indigent Defense Briefing Sheet: Mississippi, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/ms.pdf
[22] American Bar Association, Indigent Defense Briefing Sheet: Nevada, 2005. Available: www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/nv.pdf
[23] *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984).

25. A survey of indigent defense systems in the United States indicates a dramatic increase in the demand for the public assistance of counsel during the mid-1990s, thereby exacerbating caseload pressure.[24] This has occurred during a period where funding has not increased accordingly. Clients relying on public assistance of counsel are less likely to receive pretrial release on bail, which has been demonstrated to be one of the most important predictors of the outcome in a criminal trial. In addition, of all persons convicted in court, defendants using public counsel are more likely to receive a sentence to prison than individuals with private counsel. This may be an artifact of the fact that people using public counsel tend to have a longer criminal record. However, the heightened complexity of these types of cases underscores the need for a vigorous advocate during pretrial proceedings as well as sentencing. In addition, the fact that people of color are more likely to rely upon the public provision of counsel results in a higher concentration of these consequences in the African American and Latino community.

Recommendations:

- The United States should review its current scheme of providing public assistance of counsel, particularly in light of the consequences to the criminal court process, the racially and economically disparate impact, and the manner in which it endangers just outcomes.

- The United States should develop a plan to address the inadequacies of the current system and ensure that there is a national commitment to funding a vibrant and effective public defender system in all states and the federal government.

- The United States should commit substantial resources to hiring attorneys and other staff personnel in the Orleans Public Defender Office as well as institute federal oversight to ensure that effective representation is provided to the thousands of defendants sitting in jail awaiting trial.

ARTICLE 26 OF THE ICCPR – RACIAL DISCRIMINATION IN SENTENCING

Mandatory Minimum Sentences Result in Unequal Treatment

26. A mandatory minimum sentence is a prison term predetermined by Congress and automatically levied for offenses mainly involving drugs and firearms. In most cases the sentence is at least five years, and often is 10, 15, 20 years or more for low level, nonviolent offenders. Judges are barred from considering mitigating factors, resulting in the application of inordinately harsh sentences which apply regardless of the defendant's role. In 1991 the U.S. Sentencing Commission,[25] an independent agency in the judicial branch with responsibility for advising the U.S. Congress on sentencing matters,

[24] *Supra*, note 5.
[25] The U.S. Sentencing Commission (USSC) is an independent agency in the judicial branch with responsibility for advising the U.S. Congress on sentencing matters.

completed a meticulous study on mandatory minimums, finding that such sentences are applied in a discriminatory fashion, with non-whites being more likely to receive them.[26] The Federal Judicial Center reported that in cases where a mandatory minimum prison term could be applied, African Americans and Hispanics were more likely than whites to receive at least the minimum sentence.[27] Although Congress' stated intention was to reduce arbitrariness and unwarranted disparities in sentencing, the report concluded that mandatory minimums actually increase such problems. Mandatory minimum sentences have been wrought with racial bias, with studies indicating that in cases where a mandatory minimum could apply, African American offenders were 21 percent more likely, and Latinos 28 percent more likely, than whites, to receive at least the mandatory minimum prison term. Largely due to mandatory sentences, from 1994-2003 the difference between the average time African American offenders served in prison versus white offenders increased by 77 percent, compared to an increase of 28 percent for white drug offenders.[28] African American and Hispanic defendants now serve virtually as much time in prison for a drug offense (58.7 months) as whites do for a violent offense (61.7 months).[29] The fact that people of color received mandatory sentences twenty percent more often than similarly situated white defendants further evinces discriminatory treatment in the administration of justice proscribed by the ICCPR.

27. The most flagrant example of discriminatory treatment in the application of mandatory minimum sentences is the sentencing distinction between crack and powder cocaine. In what has come to be known as the 100-to-1 quantity ratio, it takes 100 times as much powder cocaine compared to crack cocaine to trigger the same mandatory minimum penalty. In 2002, African Americans constituted more than 80 percent of the people sentenced under federal crack cocaine laws, and served substantially more time in prison for drug offenses than did whites,[30] despite the fact that more than two-thirds of crack cocaine users in the United States are white or Hispanic.[31] This disparate sentencing scheme has been touted as the single most important factor accounting for the dramatic racial disparities in federal sentencing between black and white drug offenders. The Sentencing Commission has stated that revising the crack/powder disparity would better reduce the sentencing gap between blacks and whites than any other single policy change, dramatically improving fairness.[32]

<u>Federal Drug Prosecutions are Discriminatory</u>

---

[26] U.S. Sentencing Comm'n Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Judicial System (1991).

[27] Barbara S. Meierhoefer, "The General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentencing Imposed" (1992)

[28] Bureau of Justice Statistics [BJS], *Compendium of Federal Justice Statistics*, 1994 (Washington, D.C.; March 1998)) Table 6.11, p. 85 and BJS, *Compendium of Federal Justice Statistics*, 2003 (Washington, D.C.: Oct. 2004) Table 7.16, p. 112.

[29] *Compendium of Federal Judicial Statistics*, 2003 (Oct. 2004), Table 7.16, p. 112.

[30] USSC, Sourcebook (2002), Table 34.

[31] Substance Abuse and Mental Health Services Administration, 2004 National Survey on Drug Use and Health, Population Estimates 1995 (Washington, D.C.: Sept. 2005), Table 1.43a.

[32] USSC, Fifteen Years of Guidelines Sentencing (Nov. 2003), p. 132.

28. Year after year, the Federal government's prosecution of criminal cases demonstrates a racial disparity. In 2004, for example, whites were only 30.2 percent (66,033) of all persons convicted federally.[33] Since immigration criminal cases (which were 22.6 percent of all cases) may involve a disproportionate number of non-whites that may distort the total.

29. Drug cases demonstrate an even more egregious racial disparity that does not appear to be justified. Drug use seems to be fairly consistent across races. But almost three-quarters of all federal narcotics cases are filed against blacks and Hispanics – many of which are low-level offenders - only one in four is white (27 percent in 2004).[34]

30. Although federal drug law enforcement authorities state that their priority is the targeting of major trafficking organizations and drug "kingpins," the reality is that enforcement has been primarily waged against low level street dealers, resulting in much longer sentences for low-level sellers than for wholesale drug suppliers who provide the powdered cocaine from which the crack is produced. Indeed, street level crack sellers receive similar sentences to interstate powder cocaine dealers, and interstate crack offenders receive average sentences longer than international powder cocaine traffickers.

31. The original purpose of the cocaine sentencing scheme was to ensure mandatory sentences for major and serious traffickers – heads of drug organizations and those involved in preparing and packaging crack cocaine in "substantial street quantities." Congress calibrated the sentencing structure based on drug quantities which were believed to reflect different roles in the drug trade. But in its effort to swiftly address rising concern over crack cocaine, the numbers became skewed. The five and fifty grams that trigger mandatory five- and ten-year sentences are indicative of street-level peddlers, not major or even mid-level participants in the drug trade.[35] Indeed, few cocaine offenders prosecuted in the federal system are traffickers, those for whom the law was intended. Two-thirds of all federal crack cocaine offenders prosecuted in the federal system in 2000 were street-level sellers, or people simply in possession of crack cocaine for personal use.[36] Only 15 percent of the federal sentences for cocaine offenses are of managers and organizers of the cocaine trafficking enterprise.

32. In 2004, whites were only 7.6 percent of the 4,928 federal crack cocaine defendants, while blacks were 82.4 percent. For the 5,354 powder cocaine offenses, whites represented only 16.7 percent of the federal defendants, in both instances substantially below the average for whites in the criminal justice system or in the drug trade.

33. In its General Comment No. 18, the Committee points to Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, for guidance as to what constitutes "discrimination." As the General Comment notes, the ICERD provides that the terms "racial discrimination" shall mean any distinction,

---

[33] http://www.ussc.gov/ANNRPT/2004/table4.pdf
[34] Ibid.
[35] USSC (1997), at p. 5.
[36]

exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose *or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." [Emphasis added].

34. Current U.S. constitutional interpretation makes it very difficult to remedy racial discrimination in the U.S. criminal justice system because of the requirement to prove intentional discriminatory conduct. In reality, as opposed to discrimination by an overt actor, many of the disparities in today's criminal justice system arise from institutional and structural inequities, which manifest in discriminatory impacts against minority groups.

35. While it has not been legally established that the United States Congress acted with discriminatory intent when enacting the drug laws during the 1980's, the discriminatory impact of the application of these laws is clear. Mandatory minimum sentences particularly the crack/powder differential, represent one of the most flagrant examples of a law that, on its face, is neutral, but whose impact is discriminatory. Given the Committee's definition of discrimination in its General Comment No. 18, these laws clearly contravene Article 26 of the ICCPR.

Recommendations:

- The US should end all mandatory sentences.
- Penalties for the possession and distribution of crack cocaine should be equivalent to those for the possession of powder cocaine.
- All new sentencing laws should require an analysis of their racial impact before passage.

ARTICLES 7 AND 10 OF THE ICCPR – CONDITIONS OF CONFINEMENT

Conditions within Domestic Prisons and Jails

36. The United States has almost 2.3 million people in its prisons, jails, immigration detention and juvenile facilities. Most prisoners are held in seriously overcrowded facilities. For example, Federal prisons (under the direct control of the United States government) hold 140% of the number of people they were designed for, Alabama state facilities hold 205% of design capacity and California prisons 203%[37] -- Avenal State Prison in California designed to house 2,320 prisoners currently houses 7,062 and the Deuel Vocational Institution designed for 1,681 currently houses 3,748.[38]

[37] Harrison, P.M. & Beck, A.J. (2005). Prisoners *in 2004*. United States Department of Justice, Bureau of Justice Statistics.
[38] California Department of Corrections and Rehabilitation, http://www.corr.ca.gov/Visitors/facilities.html

37. Such endemic overcrowding leads to greater levels of violence, lack of privacy, excessive noise, inadequate programs and essential services, including healthcare. It is impossible to subject people to those conditions and at the same time to treat them with humanity and with respect for the inherent dignity of the human person as required by Article 10 of the ICCPR.

38. Overcrowding also exacerbates the many other problems faced by prisoners and described in more detail below, all of which subject prisoners to cruel, inhuman or degrading punishment prohibited under Article 7 of the ICCPR.

39. In its report to the Committee, the United States' emphasis under both Articles 7 and 10 is on the prosecution of those found to have contravened federal law yet the number of law suits in this area brought by the government is declining and the Prison Litigation Reform Act continues to severely restrict the access of prisoners to the courts. With the single exception of the Prison Rape Elimination Act, there is no discussion in the report of ways to prevent abuses occurring nor of any training for state and private prison staff on their obligations under the ICCPR. There are no national mechanisms in place to set standards for the treatment of people deprived of liberty or to provide oversight and accountability.

40. Criminal prosecutions for abuse of prisoners are a rarely used and ineffective tool. William Yeomans, a former Chief of Staff in the Department of Justice Civil Rights Division, described some of the reasons for declining government prosecutions at a recent hearing of the Commission on Safety and Abuse in America's Prisons.[39] The Civil Rights Division can prosecute criminally state and local officials who deprive persons of rights protected by the Constitution and laws of the United States. However, it is difficult to convict a corrections officer in a trial in front of a jury without overwhelming circumstantial and forensic evidence, a videotape or a cooperating correctional officer. Criminal prosecutions are too few in number to result in systemic change.

41. The Civil Rights Division Special Litigation Section also enforces the Civil Rights of Institutionalized Persons Act (CRIPA) which gives the United States authority to initiate litigation to remedy egregious conditions in prison and jails that violate the Constitution or laws of the United States. However, the number of different facilities that are covered under CRIPA (including nursing homes and juvenile facilities) and the limited resources and wide responsibilities of the Special Litigation Section, as well as the restrictions imposed by the Prison Litigation Reform Act, have severely limited the effectiveness of CRIPA in recent years. The federal courts have traditionally provided a means by which prisoners can gain relief from cruel, inhuman and degrading treatment. However, the Prison Litigation Reform Act (PLRA) of 1996 has seriously restricted the ability of the courts to take effective action. Particularly egregious is the PLRA's provision establishing that "no federal civil action may be brought by a prisoner for mental or

[39] *Statement of William R. Yeomans Regarding The Role of the Civil Rights Division of the United States Department of Justice in Addressing Conditions in Prisons and Jails to the Commission on Safety and Abuse in America's Prisons*, Los Angeles hearing, February 2006, available at http://www.prisoncommission.org/public_hearing_4_witness_yeomans_william.asp

emotional injury….without a prior showing of physical injury." Courts have used this provision to dismiss cases involving forcible strip searches, body cavity searches and even sexual abuse, as well as other complaints of inhuman and degrading conditions of confinement. Similarly, the federal courts have dismissed claims involving confinement in filthy cells, unnecessary shackling of prisoners' hands and feet while they are in solitary confinement, and confinement in cells so small that the prisoners could not sit down, as well as claims that prisoners were denied any water to take care of their personal hygiene needs, and even claims that prisoners were wrongfully not released from jail.

42. Despite the many thousands of prisons and jails in the country and the fact that the Department receives more than 5000 written complaints every year regarding conditions in prisons and jails, in 2004 it opened only one new investigation into a prison or jail case, and it filed only one case in court.[40] In 2003, no new prison or jail cases were filed. Since 2002, not a single Department of Justice investigation of a prison or jail has resulted in an enforceable court order. In the entire period 2002 – 2004 the Department of Justice took action to enforce existing court orders in only one prison or jail case.

Recommendation:

- The United States should develop national standards for the treatment of people deprived of liberty with a national system of independent oversight to measure adherence to those standards.

- The United States should amend the Prison Litigation Reform Act to remove the language that denies claims from prisoners, pretrial detainees, and juvenile detainees who suffer torture or cruel, inhuman and degrading treatment that does not involve physical injury

Treatment of the Mentally Ill

43. The stressful conditions within overcrowded prisons are particularly damaging to those subject to emotional and psychiatric problems. As a result of policy decisions that closed state hospitals without providing adequate community alternatives, there are now three times as many men and women with mental illness in United States prisons as there are in mental health hospitals.[41] The rate of mental illness in the prison population, one in six United States prisoners is mentally ill, is three times higher than in the general population creating a grave problem recognized by many corrections administrators.[42] Many of them suffer from serious illnesses such as schizophrenia, bipolar disorder, and

---

[40] *Department of Justice Activities Under the Civil Rights of Institutionalized Persons Act, Fiscal Year 2004,* available at http://www.usdoj.gov/crt/split/documents/split_cripa04.pdf

[41] Abramsky, S. and Fellner, J. (2002). *Ill-Equipped: US Prisons and Offenders with Mental Illness*, Human Rights Watch.

[42] Ditton, P.M. (1999). *Mental Health and Treatment of Inmates and Probationers*, United States Department of Justice: Bureau of Justice Statistics.

major depression. Almost one quarter of women in prison and jail have been identified as mentally ill. A recent study of youth in detention in Cook County Illinois found that nearly two-thirds of the boys and three-quarters of the girls met diagnostic criteria for one or more psychiatric disorders and more than 10% of boys and 13% of girls had co-occurring major mental disorders and substance abuse problems.[43] Because of inadequate psychiatric care and inadequate training of prison staff, the mentally ill are at risk of elevated levels of violence against them by prisoners and staff.

44. Persons suffering with mental illness are also often punished more harshly as a result of their condition. For example, in Georgia's Phillips State Prison, mentally ill inmates are typically punished for infractions that often reflect symptoms of mental illness by being locked down in isolation, typically for two or three weeks at a time, but sometimes longer.[44] In New York, by the state's own estimate, approximately one-fifth (821) of the prisoners in disciplinary lockdown are recognized as needing treatment for mental illness. Yet, they are locked in a cell 23 hours a day with little natural light, minimal human contact, few activities and have only limited mental health services available to them. Because New York places no limit on the amount of time a person can be sentenced to disciplinary lockdown, prisoners with serious mental illness can spend years in social isolation.[45]

Recommendation:

- All prisoners with mental illness should be removed from facilities where they are locked down for 23-hours a day.
- National standards should require sufficient numbers of adequately trained staff, appropriate psychiatric care and housing facilities to ensure the humane treatment of mentally ill prisoners.

Super Maximum Security "Supermax" Prisons

45. There are currently estimated to be near 60 supermax prisons in the United States housing approximately 20,000 prisoners. In these prisons, people spend a minimum of 23 hours a day in small cells, usually alone, with limited activities, sensory deprivation, almost no interaction with other people, and harsh security restrictions. The very design of these facilities denies the humanity and dignity of those who are held within them and nothing done within them is designed to rehabilitate. For these reasons and other discussed below, the use of supermax prisons is a contravention of Article 10.

---

[43] Telplin, Linda A., et al, *Psychiatric Disorders of Youth in Detention*, (2006) US Department of Justice, Office of Juvenile Justice and Delinquency Prevention

[44] *Fluellen v. Wetherington*, First Amended Complaint, Civil Case No. 1:02-CV-479 (JEC) (N.D. Georgia, March 15, 2002), p. 22. Quoted in *Ill-Equipped: US Prisons and Offenders with Mental Illness*, Human Rights Watch.

[45] *Mental Health in the House of Corrections: A study of mental health care in New York State Prisons by the Correctional Association of New York*, June 2004.

46. The Federal Bureau of Prisons' own supermax is the ADX unit at Florence, Colorado where about one third of the prisoners are held in solitary confinement.[46] Prisoners remain in their 7 foot by 12 foot soundproof cells for a minimum of 23 hours a day with no view of the outside world, have no contact with other prisoners and only minimal contact with prison guards as they are strip searched before and after they leave the cell for their one hour of solitary exercise in the small concrete triangular recreation area knows as "the dog run." The cells contain a bed, desk and stool made of concrete and a toilet and shower. Food is delivered through a slit in the solid cell door. There are 1,400 remote-controlled steel doors. Motion detectors and hidden cameras monitor every move. The prison walls and razor-wired grounds are patrolled by laser beams and dogs.

47. According to court papers, the Boscobel unit of the Wisconsin state supermax required that prisoners spend day and night confined to single-person cells sealed with a solid door that opened onto an empty vestibule. The cells were illuminated twenty-four hours a day, and only a little natural light entered the cells through a small strip of glass at the top of the cell wall. Inmates were allowed four hours of exercise per week in an empty cell that was slightly bigger than a regular cell, contained no windows or equipment, and was too small for jogging. Prisoners had no access to outdoor exercise facilities. Their personal possessions were severely restricted. They were allowed only one six-minute telephone call a month, and were not allowed to participate in any prison programs. Mentally ill prisoners were included among the prisoners confined under these conditions.

48. Mentally ill prisoners, whose behavior makes them difficult to manage in general population, all too often end up inside supermax prisons. In the case against Boscobel, the court noted,

> rather than being supplied the programming, human contact and psychiatric support that seriously mentally ill inmates needed to prevent their illnesses from escalating, inmates at supermax are kept isolated from all other humans, whether guards, other inmates or family members. Many of the severe conditions serve no legitimate penological interest; they can only be considered punishment for punishment's sake.

The court identified some of the super-maximum features that were particularly damaging to inmates with serious mental illnesses, including almost total isolation and sensory deprivation as well as the lack of programming.[47] The court in Wisconsin, as in Ohio and California, demanded an end to the incarceration of the mentally ill in supermaxes, but given the arbitrary nature by which classifications to supermaxes are made, with no objective criteria nor outside oversight, it is difficult to know if this ruling is being abided.

Recommendations:

---

[46] This is the facility to which convicted terrorist Zacarias Moussaoui was recently sentenced for life.
[47] Court findings quoted in *Human Rights Watch World Report 2003: United States*

- No mentally ill people should ever be confined in supermax prisons.

- The use of supermax prisons should be strictly limited and their conditions changed to be healthy and humane and respectful of human dignity.

The Abuse of Women Prisoners

49. The number of women in prison has in recent years grown at an even faster rate than the number of men,[48] yet prison systems continue to be designed and operated for male prisoners with little attention paid to the specific issues confronted by female incarceration. Many of the problems they face, including sexual abuse, inadequate general healthcare and particularly inadequate obstetric care, will be described in more detail in other reports to be provided to the Committee. The Committee's attention is drawn in particular to the reports submitted by the coalition of groups covering gender equity issues which discusses issues related to healthcare for women, and to the report submitted by a coalition of Californian human rights groups. While the latter report focuses on conditions for women in California prisons (third largest prison system in the United States after the federal and Texas state systems), the problems it describes are seen in prisons throughout the country. As documented by Amnesty International, women in 23 state prison systems and the federal bureau of prisons who give birth while in prison continue to be subjected to cruel, inhuman and degrading punishment by the use of restraints, including leg irons and shackles, during labor and child birth.[49] Male guards are used throughout women's prisons in the US. While many states say they limit the use of cross-gender searches or the presence of male guards in women's bathrooms, the Federal Bureau of Prisons does not put any restrictions at all on the duties of male guards. For women, many of whom have been victims of physical and sexual abuse prior to their imprisonment, this is cruel and inhuman treatment and a complete denial of their human dignity.[50]

50. The use of private, for-profit prisons raises significant human rights concerns. A system which treats people as commodities to be warehoused by the lowest bidder and allows profits to be made off the deprivation of liberty denies respect for the inherent human dignity of its prisoners. For women in private prisons, the inhumanity is even greater. Most women in prison were the primary caretakers for young children prior to their incarceration and retaining links with those children is of vital importance to them during their incarceration. Many states have prisons at great distance from the large cities which were home to most prisoners prior to incarceration. However, those people imprisoned in for-profit prisons are more likely to be incarcerated in another state many thousands of miles from home. These distances make travel for visits impossible for many families who are already struggling with entrenched poverty.

---

[49] *Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women,* Amnesty International, March 2006

[50] For more detailed information on the sexual abuse of prisoners, both male and female, the Committee is referred to the shadow report submitted by Stop Prisoner Rape.

51. There are women from Hawaii currently imprisoned in Kentucky, more than 4,000 miles away. Kentucky is only their latest stop as they have been shifted from one state prison to another. In the late 1990's, some of the Hawaii state prison system, including the Women's Prison on the island of Oahu, was under a court order which limited the number of women who could be confined in that facility. Faced with an increasing number of sentenced prisoners, the state corrections officials transferred 64 women prisoners to a private prison in Crystal City, Texas, a small town not far from the Mexican border. After almost two years of significant problems at this facility (inadequate medical care, no hot water, and no dining room) the women were transferred to a private prison in Oklahoma where more problems arose. In a few years they were transferred to a private prison in Colorado where there were claims of sexual abuse by guards, and where the prison was finally condemned by the Colorado Attorney General. The women were then transferred to a private prison in Kentucky in 2005 and there have been claims of serious problems with medical care, including the death of one woman. At each of these facilities, there have been almost no family visits for the prisoners, many of whom have small children. Even telephone calls are prohibitively expensive as a substantial surcharge is added to the cost of the calls which the families have to pay. Moreover, there has been almost no oversight by Hawaiian officials.

Recommendations:

- The US should follow international standards and end the employment of male guards in women's prisons.

- The US should end the use of restraints on women in labor.

- The US should end the practice of sending women with young children to out-of-state private for-profit prisons.

ARTICLES 7, 10, AND 24 OF THE ICCPR – TREATMENT OF CHILDREN IN CONFLICT WITH THE LAW

52. The United States fails to recognize the right of children in conflict with the law to special protection, care and aid (as provided by Article 24 of the ICCPR). State legislation routinely allows children, in some cases as young as ten years old, to be subject to adult criminal proceedings. In the last two decades, state legislation in the United States has made it progressively easier to transfer a child to criminal court. Although the practice varies by state, generally children accused of a crime can enter criminal court jurisdiction in one of three ways: 1) judicial waiver, 2) prosecutorial waiver, or 3) statutory waiver. A judicial waiver gives the judge the opportunity to conduct a transfer hearing for the child before criminal court jurisdiction attaches. A prosecutorial waiver gives the prosecutor discretion to file certain charges directly in criminal court.[51] A statutory waiver automatically grants criminal court jurisdiction over

[51] This type of procedure is also often called "direct file." Prosecutors have the discretion to file charges against a child directly in criminal court in the following states: Arizona, Arkansas, Colorado, the District

juveniles based on either the type of offense or their age.[52] Once in the jurisdiction of criminal court, child offenders lose the protections that they would have received in the juvenile court.

53. Because of the increased transfer of children into the adult criminal justice system, in 2003 there were 3,006 children in state prisons and 6,869 in adult jails (5,484 serving sentences as adults, 1,385 as juveniles).[53] When the United States ratified the ICCPR, it attached a limiting reservation stipulating that it "reserve[d] the right, in exceptional circumstances, to treat juveniles as adults." Clearly, however, the circumstances in which children are treated as adults is far from exceptional, even in the case of the most extreme sentence to which they are subjected, life in prison without the possibility of release.

54. Over 2,000 people in the United States are serving life sentences without the possibility of release for crimes they committed when under the age of eighteen.[54] Currently, forty-two states, and the federal system, provide for a possible sentence of life without possibility of release for children.[55] In many states, such treatment has become routine and automatic; life sentences are not even reserved for the most egregious of juvenile offences or only repeat offenders. Often, children sentenced to life without parole have no criminal history whatsoever; for many children, the crime for which they were convicted represented their first encounter with the criminal justice system.[56] In

---

of Columbia, Florida, Georgia, Louisiana, Massachusetts, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, and Wyoming. *See* Griffin, Patrick et al., *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*, U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (Dec. 1998), available at http://ojjdp.ncjrs.org/pubs/trying/juvasadult/toc.html.

[52] This type of procedure is also often called "automatic transfer." Twenty-eight states have automatic transfer provisions, either based on age, type of offense, or both: Alabama, Alaska, Arizona, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin. *See* Griffin, Patrick et al., *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*, U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (Dec. 1998), available at http://ojjdp.ncjrs.org/pubs/trying/juvasadult/toc.html.

[53] Harrison, P.M. & Karberg, J.C. (2004). *Prison and Jail Inmates at Mid Year 2003*. United States Department of Justice, Bureau of Justice Statistics. In addition to those in adult prisons and jails, more than 102,000 children are detained in juvenile facilities.

[54] Human Rights Watch & Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* (June 2005), available at http://www.hrw.org/reports/2005/us1005/index.htm (hereinafter "The Rest of Their Lives") Due to inadequate and often nonexistent recording procedures, this number could potentially be much greater.

[55] The states with the possibility of LWOP sentences for child offenders include: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. All states and the federal system permit the transfer of children to criminal court in some circumstances. *The Rest of Their Lives* at 17.

[56] *The Rest of Their Lives* (noting that research "suggests that 59 percent of youth offenders received a life without parole sentence for their *first-ever* criminal conviction of any sort").

many states, children also are subject to mandatory sentences of life without parole based on felony murders or aiding and abetting in a murder.

55. Research also demonstrates that life without parole sentences for children are not uniformly applied. Because laws vary by state, whether a child will face this extreme sentence depends on his or her geographic location. Additionally, the racial disparities observed in these sentences are particularly troubling. For instance, 60% of youth offenders serving life without parole sentences are African-American, while only 29% are white. Taking into account the demographics of the youth population in the United States as a whole, these figures mean that black children receive life without parole sentences ten times more often than white children.

56. In some states, these figures are even more disconcerting. In Michigan, for example, out of 307 child offenders currently serving life without parole sentences, 211 (69%) are African-American, while African-Americans only constitute 15% of the entire youth population in Michigan. In California, African-American children are 22.5 times more likely to be serving a sentence of life without parole than white children.

57. The laws and practice of the United States in permitting sentences of life without the possibility of release for children constitute cruel, inhuman, or degrading treatment or punishment in violation of Article 7 of the ICCPR.[57] (The attention of the Committee is drawn to the shadow report submitted by Human Rights Advocates analyzing the sentence of life imprisonment without possibility of release for children as a violation of customary international law). International norms recognize that children are less culpable than adults, both morally and legally. Entering prison in their formative years, children face a psychological and mental agony that even adult prisoners facing a life without parole sentence do not experience. As a result of their age, child offenders also face longer sentences than adults who have committed similar crimes. Suicide rates of children in the adult system are eight times higher than those of children in the juvenile system.[58] Children in the adult system are also much more susceptible to physical and sexual abuse by prison guards and adult prisoners.[59]

58. Article 10 of the ICCPR requires that children, both before trial and post-conviction, be segregated from adults in prison facilities. Article 10(3) mandates that children offenders "shall be segregated from adults and be accorded treatment appropriate to their age and legal status." Children offenders, especially those sentenced to life without the possibility of release, are routinely confined in the same facilities as adult offenders.

59. Article 14(4) of the ICCPR requires that in the adjudication of a child accused of a crime, "the procedure shall be such as will take account of their age and the desirability

---

[57] ICCPR, Article 7.

[58] Austin, James, Kelly Johnson & Maria Gregoriou, *Juveniles in Adult Prisons and Jails: a National Assessment*. U.S. Dept. of Justice, Bureau of Justice Assistance (Oct. 2000).

[59] *See. e.g., Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons*. ACLU of Michigan (2004) at 18, citing Forst, Fagan, and Vivona, *Youth in Prisons and State Training Schools*, 39 Juvenile and Family Court Journal 1-14 (1989) (documenting sexual abuse).

of promoting their rehabilitation."[60] A life sentence without the possibility of release offers no opportunity for rehabilitation, in express violation of Article 14(4). By their very nature, a rehabilitative function plays no part in statutory or prosecutorial waivers of juveniles into the adult criminal justice system.

Recommendations:

- The United States should end automatic transfer of juveniles into adult court and not allow prosecutors unfettered decision making power to charge children as adults. The determination to charge a child as an adult must be made on an individual basis.
- All children under the age of 18 (whether charged as a juvenile or an adult) should be held in a facility apart from adults and provided with programs, healthcare and education appropriate to their age and designed to promote their rehabilitation.
- Children should never be given life sentences without the possibility of release.

---

[60] ICCPR, Article 14(4).