



# Human Rights Advocates

P.O. Box 5675, Berkeley, CA 94705 USA

**Submission by HUMAN RIGHTS ADVOCATES,  
a non-governmental organization based in special consultative status with  
ECOSOC,  
to the Human Rights Council for its Universal Periodic Review  
of the UNITED STATES OF AMERICA**

**Ninth Session of the Working Group on the UPR  
Human Rights Council  
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## Executive Summary

1. Human Rights Advocates (HRA) is a non-governmental organization based in Berkeley, California, in special consultative status with ECOSOC. We are dedicated to promoting and protecting international human rights in the United States and abroad. Through extensive research and analysis, HRA addresses the panoply of human rights issues, including: minority and peoples' rights; the rights of the child; juvenile criminal sentencing; trafficking in women and children; migrant worker rights; the right to housing; the right to food; affirmative action; and corporate accountability.
  2. In this submission, HRA commends the United States Government in its process of analyzing commitments to international human rights treaties and compliance therein. This report addresses five issues where the U.S. Government could improve its human rights performance. These include: juvenile life without possibility of parole (“JLWOP”), the death row phenomena, corporate accountability in the context of immigrant detention, and racial inequality and affirmative action. The Center for Law and Global Justice contributed to this report.
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### **A. Right to Life, Liberty and Security of the Person: *Juvenile Life Sentences Without Possibility of Parole***

3. There are currently an estimated 2,574 juveniles serving life sentences without possibility of parole in the United States.<sup>1</sup> This sentence disregards the fact that juveniles do not have the same mental and developmental capacity as adults. Incarcerated children are at much greater risk of sexual assault in prison and face severe mental health consequences as a result of their sentence. Additionally, there is a gross disparity in the impact that this sentence has on children of color. African American children are ten times more likely than white children to be given a life without parole sentence. In some states, including California, the rate is 20 to 1.
4. The Convention on the Rights of the Child (CRC), ratified by every country in the world except the United States and Somalia, codifies an international customary norm of human rights that forbids the sentencing of child offenders to life in prison without possibility of release. In addition, the International Covenant on Civil and Political Rights (ICCPR) provides that court procedures involving juvenile persons shall take into account their age and the desirability of promoting their rehabilitation. State practices demonstrate a consensus in the prohibition of imposing these sentences on juveniles. Only 11 countries remain that allow or may allow such a punishment, though no juvenile

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<sup>1</sup> Human Rights Watch, News, “*State Distribution of Juvenile Offenders Serving Juvenile Life Without Parole (JLWOP)*,” Oct. 2, 2009. Available at: <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole>.

offenders have been found to be serving JLWOP sentences outside the United States. Both the Human Rights Committee and the Committee on the Elimination of Race Discrimination have urged the United States to abolish the sentence in order to comply with its obligations under those treaties. Numerous other U.N bodies have also condemned the sentence and confirmed that incarceration of juveniles should be of last resort. The universal prohibition against such a sentence reflects not just customary international law, but a peremptory, non-derogable *jus cogens* norm of international law.<sup>2</sup>

## 5. Recommendations

- ⌘ There are currently 37 youth offenders in federal prison serving life sentences without possibility of parole.<sup>3</sup> Human Rights Advocates recommends that the U.S. abolish these sentences under federal law and allow these prisoners to apply for parole.
- ⌘ H.R.A. encourages the United States to undertake efforts to bring the U.S. states into compliance with U.S. international obligations to prohibit this sentencing, including rectifying the sentences of all those juveniles now serving these sentences. In addition, the U.S. should support legislation efforts that are trying to abolish the sentence at the state level. The U.S. should encourage its states to repeal mandatory sentencing guidelines in cases where juveniles are transferred to adult court.
- ⌘ H.R.A. recommends that in keeping with Articles 14(4) and 24 of the ICCPR, the U.S. increase funding and provide for greater implementation of restorative justice and rehabilitation programs. Restorative justice programs at the federal level can provide guidance and a model for state programs.
- ⌘ H.R.A. recommends that the U.S. ratify the Convention on the Rights of the Child.

### B. A Violation of the Prohibition of Torture: *The Death Row Phenomenon*

6. The manner in which the death penalty process is carried out in the United States constitutes a violation of the ban on torture. Among those practices is the death row phenomenon, a severe psychological and physical deterioration that affects inmates who spend long periods of time on death row under extremely harsh conditions. When decades of incarceration precede execution, a prisoner effectively serves two sentences: a death sentence and a life sentence marked by prolonged psychological torture.

7. There are currently 3,207 people are on death row in the United States.<sup>4</sup> The situation

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<sup>2</sup> For references and additional information on this issue, see, Connie de la Vega and Michelle Leighton, Sentencing Our Children to Die in Prison: Global Law and Practice, 42 U.S.F. Law Review 983 (2008), available at [www.law.usfca.edu/law](http://www.law.usfca.edu/law).

<sup>3</sup> “Letter from Human Rights Organizations to CERD Regarding Juvenile Life Without Parole in the United States” (June 4, 2009), on file with Center for Justice and Accountability.

<sup>4</sup> United States Bureau of Justice Statistics, Capital Punishment 2008, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=18>. See also, Violations of the Prohibition Against Torture: The Death Row Phenomena, Report to the 13<sup>th</sup> Session of the Human Rights Council, available at [http://www.humanrightsadvocates.org/images/HRC13/HRC13\\_Violations\\_of\\_the\\_Prohibition\\_of\\_Torture.pdf](http://www.humanrightsadvocates.org/images/HRC13/HRC13_Violations_of_the_Prohibition_of_Torture.pdf) (March 2010).

for these inmates is extreme. They are only allowed brief periods of time out of their cells, usually one hour per day. They are subjected to arbitrary rules, unsanitary conditions, insect and rodent infestations, extreme temperatures and exposure to deafening volumes of noise, including the screams of mentally insane inmates who are not separated from other death row inmates. In addition, they are deprived of adequate mental and medical health care and their participation in programs and work is either severely restricted or prohibited all together.

8. In some instances, prisoners have spent several decades on death row before they are executed. Cecil Johnson was executed in 2009 after 29 years in solitary confinement on Tennessee's death row. Also in 2009 in Texas, a court granted Danielle Simpson's request to expedite his execution date, even though his lawyers said he suffered from "debilitating mental illness." In California – with the largest death row in the nation – condemned prisoners wait four to five years for appellate counsel to be appointed. Some have waited over a decade for appointment of habeas counsel. More than 150 of the 698 death-row prisoners in the state have been there for over than 20 years. H.R.A. has filed a petition with the Inter-American Commission on Human Rights regarding an inmate in California who has been on death row for 18 years without his first appeal having been heard through no fault of his own. He too suffers from severe mental illness.

9. Though many international judicial bodies have recognized the death row phenomenon as a violation of human right law, the U. S. Supreme Court has refused to hear appeals in cases alleging cruel and unusual punishment due to extremely long delays on death row. While it is imperative that due process procedures for prisoners appealing death sentences are strictly observed, the state should provide immediate legal redress to prisoners under death sentences when such procedures cannot be accomplished in reasonable amounts of time.

## **10. Recommendations**

⌘ Human Rights Advocates urges the federal government to remind the states of their obligations under international law regarding the prohibition of torture and to urge them to commute death sentences to life sentences where violations exist.

### **C. Right to Life, Liberty, and to be Treated with Human Dignity: *Corporate Accountability in the Context of Immigrant Detention Facilities***

11. Current U.S. immigration policy has resulted in a shortage of detention facilities with the capacity to adequately detain migrants. In order to deal with rising rates of detention, the government has increased its contracts with private companies to create and manage detention centers, as well as provided funding for local prisons and jails to expand their immigrant detention capacities.

12. Detention and imprisonment are governmental responsibilities. These sensitive public functions should not be turned over to private corporations who seek to commoditize individuals for profit. Moreover, the operation of detention centers by

corporations has lead to human rights abuses, which are particularly severe on migrant populations.

13. Although there have been some improvements since the new administration took office, the new “Secure Communities” initiative has not served to effectively address human rights abuses in detention facilities. Even under the new administration, there have been increasing reports that the lack of oversight by the federal government of the “Secure Communities” program has left much discretion in the hands of local law enforcement officers who often use racial profiling to target those arrested.<sup>5</sup>

14. Additionally, recently released documents show how officials used their role as overseers to cover up evidence of mistreatment, deflect scrutiny by the news media or prepare exculpatory public statements after gathering facts that pointed to substandard care or abuse in facilities.<sup>6</sup> Such evidence indicates that human rights abuses occurred and may continue to occur in these detention facilities, a clear violation of ICCPR Articles 10(1) and 9 (1).

## 15. Recommendations

- ⌘ H.R.A. recommends that stronger monitoring and accountability mechanisms over privately run facilities are put in place, both at the federal and state level, to ensure that private actors are not abusing the rights of detainees.
- ⌘ Human Rights Advocates recommends that clear federal standards need to be put in place to prevent arbitrary and racially discriminatory profiling through the “Secure Communities” program.
- ⌘ Detention of migrants who have not committed crimes should be of last resort.

### D. Equality and Non-Discrimination: *Affirmative Action*

16. The United States began to end official policies of discrimination in the education arena over fifty years ago with the case of *Brown v. Board of Education* and in public employment with the passage of the Equal Employment Opportunity Act of 1972. Nevertheless, gross race-based inequality continues to exist.

17. Considering the gross segregation in education and employment, the U.S. has failed to comply with the special requirements under the Convention for the Elimination of All Forms of Racial Discrimination (CERD). The treaty emphasizes the need to prohibit and end racial discrimination and to achieve equality in the attainment and enjoyment of human rights and fundamental freedoms. At its 75<sup>th</sup> session in August 2009, the

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<sup>5</sup> See eg., American Civil Liberties Union of North Carolina Foundation and Immigration & Human Rights Policy Clinic, University of North Carolina, *The Policies and Politics of Local Immigration Enforcement Laws*, Feb. 2009, pgs 28-29.

<sup>6</sup> Bernstein, *Official Hid Truth of Immigrant Deaths in Jail*, New York Times, available at <http://www.nytimes.com/2010/01/10/us/10detain.html?pagewanted=1&th&emc=th>. See also, Privatized Prisons and Human Rights, Report to the 13<sup>th</sup> Sess. of the Human Rights Council, available at [http://www.humanrightsadvocates.org/images/HRC13/HRC13\\_Privatized\\_Prisons\\_and\\_Human\\_Rights.pdf](http://www.humanrightsadvocates.org/images/HRC13/HRC13_Privatized_Prisons_and_Human_Rights.pdf) (March 2010).

Committee on the Elimination of Race Discrimination adopted General Recommendation 32 on special measures. Paragraph 22 notes that programs should have the “objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination.” Programs should address structural and *de facto* inequality, which can include those resulting from historical circumstances, but it is not necessary to prove historical discrimination to validate a program. The emphasis should be on “correcting present disparities and on preventing further imbalances from arising.”

18. The United States is largely comprised of a White population, with an overall racial break down of 79.8% White, 12.8% Black, 1% American Indian and Alaska Native persons, 4.5% Asian, 0.2% Native Hawaiian and Pacific Islander, and 15.4% Hispanic or Latino.<sup>7</sup> There are clear economic distinctions based on race. For example, in 2006, 10.5% Whites, 25% of Blacks or African-Americans, and 21.5% of Hispanics or Latinos lived in poverty.<sup>8</sup> The racial discrepancy is more pronounced in groups of people living in “severe poverty,” which is defined as those living below 50% of the poverty line. Of the total U.S. population, 5.2% lived in severe poverty and almost all of them were non-white in 2007. Despite the discrepancies between race and income, severe limits have been placed on affirmative action programs in education and employment, primarily on the ground that the programs can only be used to address specific past discrimination.

19. California presents a striking example of racial disparities in the context of affirmative action programs, both because of the diversity of its population as well as the fact that in 1996 a law was passed by initiative that severely limited the use of affirmative action in higher education.<sup>9</sup> The population of California is 43.8% White, 35% Hispanic, 12% Asian, 6% Black, 3.2% other or declined to state. Despite the fact that Latinos, Blacks and Native Americans are 44.8% of high school graduates, they comprise only 15.3% of the premier public university U.C. Berkeley’s entering class. A further breakdown illustrates the discrepancy: Latinos are 36.5% of high school graduates but only 11.7% of the freshman class; Blacks are 7.6% of high school graduates but only 3.1% of that class. Not surprisingly, the lack of equality in the education field is having a clear impact on certain professions, particularly high-earning ones.

## 20. Recommendations

- ⌘ Human Rights Advocates recommends that the U.S. to notify the state and federal agencies addressing discrimination of the requirements of CERD, including those regarding special measures as set forth in General Recommendation 32.
- ⌘ Human Rights Advocates urges the U.S. to make more specific measures to address the *de facto* discrimination that continues in the education and employment arenas.

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<sup>7</sup> State & County QuickFacts, U.S. Census Bureau (2008).  
<http://quickfacts.census.gov/qfd/states/00000.html>

<sup>8</sup> Poverty Status in the Past 12 Months, U.S. Census Bureau (2006). <http://factfinder.census.gov> (follow “data sets” to “American Community Survey” to “subject tables” to “nation”).

<sup>9</sup> Cal. Const. Art. I, § 31, as amended by California Proposition 209 (1996).