

# **INTERNATIONAL HUMAN RIGHTS LAW ON LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR PEOPLE UNDER THE AGE OF 18 YEARS OLD**

## ***EXCERPTS***

### **The UN International Covenant on Civil and Political Rights *Selected Articles Regarding Life Without Parole for Youth***

#### ***Article 10***

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### ***Article 14***

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to 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;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

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**The UN Convention on the Rights of the Child**  
*Selected Articles Regarding Life Without Parole for Youth*

**Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

**Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to [paragraph 1](#) of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the

provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

## **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## **Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

## **Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional

care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

**TO READ MORE FROM THIS DOCUMENT, GO TO THIS WEBSITE:**

<http://www.hrweb.org/legal/child.html>

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**The UN Convention against Torture and  
Other Cruel, Inhuman or Degrading Treatment or Punishment**  
*Selected Articles Regarding Life Without Parole for Youth*

**Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

**TO READ MORE FROM THIS DOCUMENT, GO TO THIS WEBSITE:**

<http://www.hrweb.org/legal/cat.html>

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**Conclusions and Recommendations of the Committee Against Torture: United States of  
America. 25/07/2006.**

*Selected Conclusions and Recommendations Regarding Life Without Parole for Youth*

**Paragraph 34.**

The Committee reiterates the concern expressed in its previous recommendations about the conditions of the detention of children, in particular the fact that they may not be completely

segregated from adults during pretrial detention and after sentencing. The Committee is also concerned at the large number of children sentenced to life imprisonment in the State party (art. 16).

*The State party should ensure that detained children are kept in facilities separate from those for adults in conformity with international standards. The State party should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment.*

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**Concluding observations of the Committee on the Elimination of Racial Discrimination**  
**UNITED STATES OF AMERICA**  
*Selected Observations Regarding Life Without Parole for Youth*

**Paragraph 21.**

The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole. (Article 5 (a) The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders – including children – belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.

**TO READ MORE FROM THIS DOCUMENT, GO TO THIS WEBSITE:**

<http://www1.umn.edu/humanrts/CERDConcludingComments2008.pdf>

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**Committee on the Rights of the Child General Comment no. 10 (2007): Children’s rights in juvenile justice.**

***Selected provisions Regarding Life Without Parole for Youth***

◇ To promote the integration, in a national and comprehensive juvenile justice policy, of other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”).

**Paragraph 7.**

Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40 (1)).

**The right to life, survival and development (art. 6)**

**Paragraph 11.**

This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a very negative impact on the child’s development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child’s development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of CRC (see paragraphs 75-77 below). The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child’s right to development is fully respected and ensured (see paragraphs 78-88 below).

**No life imprisonment without parole**

**Paragraph 77.**

No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon

children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

**TO READ MORE FROM THIS DOCUMENT, GO TO THIS WEBSITE:**

<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

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**UN General Assembly Promotion and Protection of the rights of children: promotion and protection of the rights of a child.**

***Selected recommendations Regarding Life Without Parole for Youth***

**Children alleged to have or recognized as having infringed penal law**

34. Calls upon all States, in particular those States in which the death penalty has not been abolished:

(a) To abolish by law, as soon as possible, the death penalty and life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offence;

(b) To comply with their obligations as assumed under relevant provisions of international human rights instruments, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights;

(c) To keep in mind the safeguards guaranteeing protection of the rights of those facing the death penalty and the guarantees set out in United Nations safeguards adopted by the Economic and Social Council;

35. Also calls upon all States to ensure that no child in detention is sentenced to forced labour or any form of cruel or degrading punishment, or deprived of access to and provision of health-care services, hygiene and environmental sanitation, education, basic instruction and vocational training;

**TO READ MORE FROM THIS DOCUMENT, GO TO THIS WEBSITE:**

<http://daccessdds.un.org/doc/UNDOC/LTD/No7/602/70/PDF/No760270.pdf?OpenElement>

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**United States Response to Specific Recommendations Identified by the Committee on the Elimination of Racial Discrimination**

***Selected responses Regarding Life Without Parole for Youth***

Paragraph 21

Recommendation:

“The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee Against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life

imprisonment without parole on young offenders – including children – belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.”

Response:

As the United States explained to the Committee during the February 2008 meeting, and previously to both the Committee Against Torture and the Human Rights Committee, the imposition of life without parole sentences on juveniles is a lawful practice that is imposed in rare cases where individuals, despite their youth, had committed gravely serious crimes. The imposition of such sentences is accompanied by procedural safeguards and robust due process protections enshrined in the United States Constitution. While the considerations vary from state to state, juvenile life without parole (JLWOP) sentences are generally only imposed on juveniles that have committed "serious" offenses – typically murder – and, only after a judge has made a determination that the juvenile can be tried as an adult. In such cases, whether a juvenile offender is prosecuted as an adult depends upon a number of factors that are weighed by a court, such as, inter alia, the age; personal, family or other relevant circumstances or background of the juvenile; the type and seriousness of the alleged offense; the juvenile's role in committing the crime; and the juvenile's prior record/past treatment records. This ensures that these lengthy sentences are imposed only when it has been determined through a judicial process that the juvenile is no longer amenable to the treatment and rehabilitative nature of the juvenile justice systems found in most states in our country. While they serve their sentences, juvenile offenders are separated from adult prisoners to the extent possible, taking into account factors such as the security risk that they pose to other prisoners, the risk of harm to themselves, their need for medical and/or mental health treatment options, and the danger they pose to others and to the community.

Currently, forty-two states permit JLWOP sentences. Alaska, Colorado, Kansas, Kentucky, Maine, New Mexico, New York and West Virginia and the District of Columbia have prohibited JLWOP. Four of these prohibit life without parole sentences at any age. However, efforts are being made at the state and federal level to abolish JLWOP sentences. For example, since 2005, legislative efforts have been made in Florida, Illinois, Louisiana, Nebraska, Colorado, California and Michigan. Moreover, there are grassroots movements in support of abolition in various states including Iowa, Arkansas, Massachusetts, Washington, and Pennsylvania where, in September, the state Senate held a public hearing to conduct a "fact-finding" session on JLWOP sentences. Although most legislative efforts have either failed or are still pending in their respective legislatures, in 2006, Colorado passed legislation banning JLWOP sentences. More recently, in December 2008, the Michigan State House of Representatives passed legislation preventing judges from sentencing criminals who commit crimes before they turn 18 to life in prison with no chance at parole. The legislation has not been taken up in the Michigan State Senate.

On the federal level, currently pending in the United States Congress is H.R. 4300, the Juvenile Justice Accountability and Improvement Act of 2007, which would require states to enact laws and adopt policies to grant child offenders who are under a life sentence a meaningful opportunity for parole at least once during their first 15 years of incarceration and at least once every three years thereafter. On September 11, 2008, the House of Representatives Committee on the Judiciary,

Subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 4300. Among those who testified before the Subcommittee were a children's rights activist, the executive director of the Equal Justice Initiative, and a medical doctor who testified regarding the cognitive and psychological development of children and its implications for juvenile justice accountability.

In light of the Committee's concern about the detention of juveniles, we would also like to recall for the Committee various tools available to the United States to ensure that the human rights of juveniles are respected while they remain in confinement. Under Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, the Department of Justice has the authority to file civil lawsuits when administrators of juvenile justice systems engage in a pattern or practice of violating confined juveniles' federal rights. The Department has investigated conditions of confinement in more than 100 juvenile facilities across the United States and its territories. In FY 2008, the Department settled four complaints regarding eleven juvenile facilities and began three new investigations involving seven facilities. The Department currently monitors conditions in more than 65 public facilities that operate under settlement agreements with the United States. The cases involve conditions for youths at facilities ranging from 30-bed detention centers to 700-bed training schools, and the investigations range from single facilities to state-wide systems.

The investigations, and the subsequent settlements reached in most cases, have focused on a number of important federal rights of juveniles, including rights guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and youths' constitutional rights to reasonable safety, adequate medical and mental health care, rehabilitative treatment, and education. Several of the cases have involved allegations of staff abusing juveniles, preventable youth-on-youth violence, and excessive use of restraints and isolation. The Department has made a priority of ensuring adequate access to mental health treatment and has focused attention on the special needs of very young juveniles, juveniles with special medical problems, and on the myriad of problems created by crowding in juvenile facilities.

Recent examples of this work include the Department's complaints against the States of Ohio and Oklahoma regarding conditions in their juvenile facilities. In May 2008, the Department brought suit regarding conditions in all eight Ohio juvenile justice facilities (*United States v. State of Ohio, et al.*, Civil Action No: 2:08-cv-475). The litigation addressed an alleged pattern or practice of unconstitutional conditions of confinement in the State-run juvenile facilities under Section 14141. Specifically, the complaint alleged constitutional deficiencies regarding: (1) protecting youth from harm; (2) medical care; (3) mental health care; and (4) special education services. In June 2008, the court approved a judicially-enforceable settlement requiring Ohio to implement extensive reforms in each of these areas. The settlement agreement also contains requirements for structured rehabilitative programming designed to modify behaviors, provide rehabilitation to the types of youth committed to each facility, address general health and mental health needs, and address requirements for parole eligibility. This programming is to be coordinated with youths' individual behavioral and treatment plans and is to be developed with the assistance of teachers, school administrators, correctional officers, caseworkers, school counselors, staff, and other qualified individuals.

Similarly, in December 2006, the Department brought suit regarding conditions in Oklahoma's L.E. Rader Center, alleging a pattern or practice of unconstitutional conditions regarding inadequate safety, excessive use of force, sexual abuse, inadequate mental health care, inadequate suicide

prevention, inadequate rehabilitative services, and inadequate education (United States v. State of Oklahoma, et al., 06-CV-673-GKF-FHM (N.D. Okla.)). After a preliminary injunction hearing before the Court regarding alleged life-threatening issues, the parties settled the case. In September 2008, the court approved a consent decree that includes extensive reforms in each of these areas, including, inter alia: an orientation on reporting abuses, facility rules, and assurance of the right of youths to be protected from retaliation for reporting abuse; mental health, suicide, and substance abuse screening; access to programs and services for youths who have been placed on suicide precautions; mental health assessments for youths whose mental health screens, placement on suicide precautions or conduct indicates a possible serious mental illness; transition planning for youths with serious mental illness who are being released from the facility; identification of youths who were previously determined eligible and youth who are potentially eligible for special education services; and development and implementation of individualized education plans for all youths determined to be eligible for special education or related services.

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[http://www.state.gov/g/drl/rls/cerd\\_report/](http://www.state.gov/g/drl/rls/cerd_report/)

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**Center for Civil and Political Rights Concluding Observations of the Human Rights  
Committee, United States of America**

***Selected observations Regarding Life Without Parole for Youth***

**Paragraph 34.**

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

**The State party should ensure that no such child offender is sentenced to life imprisonment without parole, and should adopt all appropriate measures to review the situation of persons already serving such sentences.**

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