

**Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the enjoyment of all human rights by older persons and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL USA 12/2023  
(Please use this reference in your reply)

19 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the enjoyment of all human rights by older persons and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/36, 45/24, 44/10, 44/5, 51/4 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged **racially discriminatory prison sentencing policies and the disparate impact of prison sentencing on individuals of African descent, Latino individuals and those from other racial and ethnic groups, resulting in violations of international human rights law**. More specifically, we would like to bring your Excellency's attention to prison sentencing policies and practices such as life without parole, life with parole, "virtual life" (i.e., any sentence that exceeds life expectancy), and other term-of-years exceeding life expectancy. These practices are sometimes referred to collectively as death by incarceration sentences.

Concerns about racial disparities within the criminal justice system have been the subject of several previous communications addressed to your Excellency's Government, including in [USA 10/2015](#) and USA 17/2021, which address the case of Mr. Mumia Abu-Jamal detained in the State Correctional Institution at Mahanoy, Pennsylvania. We thank your Excellency's Government for its replies to USA 10/2015 of [24 June](#) and [15 September](#) 2015 but note that the allegations of systemic racism within the criminal justice, contained within the communications, were not addressed.

According to the information received:

*Background*

In 1970, the prison population in the United States of America was 196,441.<sup>1</sup> Today, there are almost two million people held in prisons and jails in the

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<sup>1</sup> Patrick A. Langan, John V. Fundis, and Lawrence A. Greenfield, U.S. Department of Justice, Bureau of Justice Statistics, "Historical Statistics on Prisoners in State and Federal Institutions, yearend 1925-86 (1988)". Available at <https://www.ojp.gov/pdffiles1/Digitization/111098NCJRS.pdf>

country.<sup>2</sup> The rise in the prison population by 500% outpaces the growth of the general population.<sup>3</sup> The United States of America makes up five percent of the global population but has approximately 25% of the world's prison population.<sup>4</sup>

Against such a backdrop of rising mass incarceration in the United States of America, there are increasing numbers of prisoners serving life without parole, life with parole, “virtual life”, and other term-of-years exceeding life expectancy, which are sometimes referred to collectively as death by incarceration sentences. In a 2021 global survey of 216 countries, the United States of America had the largest number of prisoners serving life sentence.<sup>5</sup> Official corrections data for 2020 reveals that 15% of the total prison population nationwide or 203,865 incarcerated individuals were serving life or virtual life sentences, of which 6,252 were incarcerated in the federal prison system.<sup>6</sup> Also in 2020, 29 states within the United States of America had more people serving life sentences than was reported four years earlier.<sup>7</sup> The prison population serving life sentence by state shows that 40,878 people are serving life or virtual life sentences in California (33% of the prison population); 15,116 in Florida (16% of the prison population); 5,997 in Louisiana (19% of prison population); and 8,242 in Pennsylvania (18% the prison population).<sup>8</sup> There is also an increasing number of individuals serving life without parole, a sentence which is the harshest and most extreme type of life sentence. There were 55,945 people serving life without parole nationwide in 2020.<sup>9</sup>

*People of African descent, Latino and individuals belonging to other racial and ethnic groups are disproportionately represented in prisons and jails*

History shapes and influences the criminal justice system that exists in the United States of America today. After slavery was abolished, the Black Codes were passed. Enacted immediately after the American Civil War, these restrictive laws were used to maintain control of African Americans through criminalization and incarceration, which has become entrenched within the criminal justice system.

People of African descent, and other individuals belonging to other racial and ethnic groups, are reportedly subjected to racism and structural discrimination, rooted in colonialism and slavery, at every stage of the criminal justice system.

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<sup>2</sup> The population in state and federal prisons in 2020 is 1, 182, 200. See E. Ann Carson. U.S. Department of Justice, Bureau of Justice Statistics, “Prisoners in 2020—Statistics Tables (2020)”. Available at <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf> ; The total population in jails is 549,100. See Todd D. Minton and Zhen Zeng, U.S. Department of Justice, Bureau of Justice Statistics, “Jail Inmates in 2020—Statistical Tables (2020)”. Available at <https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf>

<sup>3</sup> Marc Mauer, “Long-Term Sentences: Time to Reconsider the Scale of Punishment” (footnote 8); ACLU, “What’s at Stake (2022).” Available at <https://www.aclu.org/issues/smart-justice/mass-incarceration>

<sup>4</sup> NAACP, “Criminal Justice Fact Sheet”. Available at <https://naacp.org/resources/criminal-justice-fact-sheet>

<sup>5</sup> Penal Reform International and Thailand Institute of Justice, “Global Prison Trends 2021”. Available at <https://cdn.penalreform.org/wp-content/uploads/2021/05/Global-prison-trends-2021.pdf>

<sup>6</sup> In 2020, The Sentencing Project obtained official corrections data from all states and the Federal Bureau of Prisons to produce their 5th national census on life imprisonment. See Ashley Nellis, The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment 10 (2021)”. Available at <https://www.sentencingproject.org/wp-content/uploads/2021/02/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf>

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

This affects children, women, transgender, gender diverse persons and LGBTQI+ persons, migrants and asylum-seekers, and others from such racial and ethnic groups. People of African descent are arrested at higher rates than white people, often as a result of racial profiling. People of African descent and those from other racial and ethnic groups can face barriers to good quality legal representation, including socio-economic disadvantage, racial preferences and prejudices amongst legal professionals and the underrepresentation of people of African descent and those from other racial and ethnic groups within the legal profession. In the context of such barriers to good quality legal counsel, people of African descent and individuals from other racial and ethnic groups are reportedly significantly more vulnerable to violations of their Miranda rights, with many reports of false and forced confessions amongst such individuals. Following the 1969 ruling of the Supreme Court in *Frazier v. Cupp*<sup>10</sup>, it is lawful in almost all States for the police to present false evidence to suspects during interrogations. Such provisions can disproportionately impact those from racially marginalised groups because of systemic racism within law enforcement bodies.

African descent defendants are also held in pretrial detention at highly disproportionate rates because of the high cost of bail and an inability to meet these costs, often as a consequence of systemic socio-economic discrimination. Pretrial detention also impacts sentencing, making it more likely that an individual will plead guilty, irrespective of the actual guilt of person, be sentenced to incarceration and/or be given longer sentences. Racism and racial bias in jury selection also results in unfair sentences and wrongful convictions of African descent defendants. Innocent people of African descent in the United States of America are seven times more likely than white Americans to be falsely convicted of serious crimes.<sup>11</sup>

As a result of the and multiple and mutually reinforcing racial inequities in the criminal justice system African Americans are significantly overrepresented in prisons, making up 38% of the incarcerated population, despite representing 12% of the population of the United States of America.<sup>12</sup> Women of African descent have imprisonment rates twice that of white women.

Reportedly, systemic racism within the criminal justice system also impacts other racial groups in the United States of America. In state prisons, Latino individuals are also incarcerated 1.3 times more than white Americans.

The consequences of this disproportionate incarceration are devastating on African descent and Latino incarcerated individuals, their families and their communities. As a result of incarceration and early death, more than one out of every 6 African descent men between the ages of 25 and 54 years old are missing from daily life.<sup>13</sup> Individuals with a history of incarceration are more likely to suffer from chronic diseases, have health risk factors and experience premature death.

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<sup>10</sup> “*Frazier v. Cupp*, 394 U.S. 731 (1969)”. Available at: <https://supreme.justia.com/cases/federal/us/394/731/>

<sup>11</sup> National Registry of Exonerations, “Race and Wrongful Convictions in the United States 2022”. Available at <https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf>

<sup>12</sup> Wendy Sawyer and Peter Wagner, Prison Policy Initiative, “Mass Incarceration: The Whole Pie 2022 (March 14, 2022)”. Available at <https://www.prisonpolicy.org/reports/pie2022.html>

<sup>13</sup> Ibid.

*Life without parole, life with parole, “virtual life”, and other term-of-years exceeding life expectancy sentences disproportionately imposed on those of African descent and individuals from racial and ethnic*

African Americans and people belonging to other ethnic and racial groups are not only overrepresented within the overall prison population but also within the cohort of prisoners serving life without parole, life with parole, “virtual life” sentences and other term-of-years exceeding life expectancy. The number of incarcerated individuals serving life sentence has grown faster than the overall prison population. People of African descent make up 46% of the prison population serving life sentences nationwide even though they comprise only 12% of the general population.<sup>14</sup> The inequitable treatment of people of African descent and those from other racial and ethnic groups within the criminal justice system, as outlined above, has a significant impact on their representation amongst the cohort of prisoners serving the harshest sentences.

Legislative measures, such as mandatory minimum sentences, habitual offender laws, and mandatory transfer of juveniles to the adult criminal system have given prosecutors a significant degree of discretion in determining charges and making sentencing recommendations to judges and have reduced the overall extent of judicial assessment of individual criminal cases. Racial bias against African descent defendants and those from other racial and ethnic groups can influence federal prosecutors’ decision to impose severe initial charges and mandatory minimum sentences. Research suggests that prosecutors are more likely to charge defendants of African descent under state habitual offender laws than similarly situated white defendants.<sup>15</sup> In many cases, the initial charges brought forth against arrested individuals by prosecutors becomes the final conviction, which carries harshly punitive sentences.

Many States, as well as the federal criminal justice system, permit or mandate life sentence in cases of non-violent offenses, if a person has drug offenses and/or other prior convictions. Two and three strikes laws for repeat offenses are in effect in more than half of the states in the United States of America, and under federal law. Harsh penalties for drug offenses have a greater impact on African Americans than their white peers even though individuals of African descent have lower levels of drug use and no higher demonstrated levels of trafficking than their white counterparts. Such trends are drivers in the growing application of life without parole, life with parole, “virtual life”, and other term-of-years exceeding life expectancy and their disproportionate impact on those of African descent and individuals from other racial and ethnic groups.

*Racial disparities in parole and clemency*

While the number of those sentenced to life without parole, life with parole, “virtual life” and other term-of-years exceeding life expectancy is increasing,

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<sup>14</sup> The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment (footnote 5)”.  
<sup>15</sup> Ashley Nellis, The Sentencing Project, “The Color of Justice: Racial and Ethnic Disparity in State Prisons”. Available at <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>

the use of parole and clemency is declining. Parole boards in many states deny release to many who would satisfy relevant criteria. There are wide discrepancies in the number of paroles granted from state to state, with significant racial disparities in many States, including amongst individuals sentenced to life without parole. Individuals serving life sentences are barred from applying for parole in Florida,<sup>16</sup> Pennsylvania,<sup>17</sup> federal system,<sup>18</sup> and other jurisdictions.

Not being able to apply for parole in many jurisdictions, clemency is the only possibility for release for individuals serving life without parole sentences. However, the power of the President and State Governors to grant clemency is applied sparingly.

The expansion of life without parole, life with parole, “virtual life”, and other term-of-years exceeding life expectancy sentences, alongside the constriction of options for release, particularly amongst people of African descent and Latino individuals, means that many individuals from such racial and ethnic groups are condemned to death in prison.<sup>19</sup>

*The number of women serving life sentences is rapidly increasing, with women of African descent and those belonging to other racial and ethnic groups, including those who have been victims of prior abuse, being disproportionately impacted*

Nationwide, women make up about 3% of the total prison population serving life sentences but the number of women serving such sentences is rising at a faster rate than that of men. Over the past decade, the number of women serving life sentences increased 32% faster than the number of men. One in every 15 women in prisons nationwide was serving a life sentence in 2021 with one third of those women serving life sentences being ineligible for parole.<sup>20</sup> Women of African descent are disproportionately represented within the cohort of women serving severe sentences. One out of every 39 women of African descent in prison is serving life without parole, as opposed to one out of every 59 imprisoned white women.<sup>21</sup>

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<sup>16</sup> Florida Commission on Offender Review, “Release Types: Parole”. Available at <https://www.fcor.state.fl.us/release-types.shtml>

Marshall Project, “Two Strikes and You’re in Prison forever (November 11, 2021).” Available at <https://www.themarshallproject.org/2021/11/11/two-strikes-and-you-re-in-prison-forever>

<sup>17</sup> Pennsylvania General Assembly, Title 61, Section 6137. Available at <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=61&div=0&chpt=61&sectn=37&subsectn=0>. Center for Constitutional Rights, “Pennsylvania Supreme Court to Weigh in on Death-By-Incarceration Lawsuit (2021)”. Available at <https://ccrjustice.org/home/press-center/press-releases/pennsylvania-supreme-court-weigh-death-incarceration-lawsuit>

<sup>18</sup> United States Sentencing Commission, “Life Sentences in the Federal System (2022)”. Available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726\\_Life.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726_Life.pdf)

<sup>19</sup> The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment (footnote 5)”.

<sup>20</sup> The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment (footnote 5)”; The Sentencing Project, National Black Women’s Justice Institute and Cornell Center on the Death Penalty Worldwide, “In the Extreme: Women Serving Life without Parole and Death Sentences in the United States (2021).” Available at <https://www.sentencingproject.org/wp-content/uploads/2021/09/In-the-Extreme-Women-Serving-Life-without-Parole-and-Death-Sentences-in-the-United-States.pdf>

<sup>21</sup> Ibid.

Most women serving life without parole, life with parole, “virtual life” and other term-of-years exceeding life expectancy sentences, irrespective of race, are survivors of abuse. A national study of people serving life without parole for offenses committed during youth revealed that prior to incarceration, 80% of female respondents experienced physical abuse, 77% experienced sexual abuse, and 84% had witnessed violence at home.<sup>22</sup> Despite such mitigating factors, women, including those of African descent and individuals from other racial and ethnic groups, are facing harsh and punitive sentences.

*Life without parole amongst children, including those of African descent and from other racial and ethnic groups*

The United States of America is the only country in the world that sentences children under 18 to life without parole. Several states continue to sentence juveniles as adults. Under federal law and some State laws, children are sentenced to life without parole, despite evidence demonstrating that the brains of juveniles are not fully developed and are more likely to lack impulse control.

Moreover, there is evidence that protections in the juvenile justice system are being eroded. Based on the 2021 case *Jones v. Mississippi*<sup>23</sup>, a child can be sentenced to life without parole without a specific factual finding of “permanent incorrigibility.”<sup>24</sup> The wide-reaching implications of this decision reverse the gains made in previous Supreme Court rulings that provided protections for youth defendants. By removing the requirement that a judge or jury determine whether the juvenile has “permanent incorrigibility,” the application of life without parole sentencing may increase amongst offenders aged under 18.

Racial and ethnic disparities are evident in the juvenile justice system. Nationwide data reveals that youth of African descent are more than four times more likely than white youth to be detained or committed.<sup>25</sup> Available data also indicates that 62% of juveniles serving life without parole are of African descent.<sup>26</sup> Children of African descent and those belonging to other racial and ethnic groups are therefore at risk of being disproportionately impacted by any increases in the application of life without parole sentences.

*Older adults in prison serving life without parole, life with parole, “virtual life” and other term-of-years exceeding life expectancy are especially vulnerable and make up 30% of the prison population serving such sentences*

As a result of the application of long prison sentences, the age of the prison population is rising. Between 1999 and 2016, the population of individuals

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<sup>22</sup> The Sentencing Project, “Women and Girls Serving Life Sentences (2019)”. Available at <https://www.sentencingproject.org/wp-content/uploads/2019/07/Women-and-Girls-Serving-Life-Sentences.pdf>

<sup>23</sup> Please see the opinion of the Supreme Court, 2020, *Jones v Mississippi*, available here: [https://www.supremecourt.gov/opinions/20pdf/18-1259\\_8njq.pdf](https://www.supremecourt.gov/opinions/20pdf/18-1259_8njq.pdf)

<sup>24</sup> As discussed in *Jones v Mississippi*, referenced above, permanent incorrigibility is a term used to describe a finding that a juvenile offender cannot be rehabilitated and that their crime/s an absence of the capacity for reform, as opposed to transient immaturity.

<sup>25</sup> The Sentencing Project, “Black Disparities in Youth Incarceration (2021)”. Available at <https://www.sentencingproject.org/app/uploads/2022/08/Black-Disparities-in-Youth-Incarceration.pdf>

<sup>26</sup> Joshua Rovner, The Sentencing Project, “Juvenile Life Without Parole: An Overview (footnote 77)”.

aged 55 or older in state and federal prisons increased 280%.<sup>27</sup> An estimated 30% or 61,417 people of the population serving life sentences are 55 or older.<sup>28</sup> Older adults in prison are vulnerable to physical and mental health problems, including dementia, hypertension, diabetes and other illnesses and disabilities. Although incarcerated older adults often pose low safety risks, they continue to be held in prison, including during the Covid-19 pandemic, despite heightened risks for infection and death. Due to their age, the lack of basic preventive measures for Covid-19 in prison and existing co-morbidities, older adults in prison have been trapped in a dangerous and bleak situation.

*People with disabilities overrepresented in prisons*

The most recent data available indicates that 2 in 5 (38%) of state and federal prisoners have at least one disability.<sup>29</sup> Compared to the non-incarcerated population, state and federal prisoners are two and a half times more likely to report a disability. The most reported disabilities are intellectual, including down syndrome, autism, dementia, and learning disorders. Abject conditions in prisons, as well as inadequate access to health care and accommodations have not only worsened existing disabilities but also led to prisoners developing disabilities that were not present before incarceration.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that sentences such as life with parole, virtual life, life without parole and other sentences exceeding life expectancy, referred to collectively as death by incarceration sentences, may violate multiple provisions within the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the United States of America ratified in 1992, 1994, and 1994, respectively.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the experience of individuals of African descent and those belonging to other racial and ethnic groups,

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<sup>27</sup> Pew Research Center, Matt McKillop & Alex Boucher, Pew Trusts, “Aging Prison Populations Drive Up Costs (2018)”. Available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>

<sup>28</sup> Ashley Nellis, The Sentencing Project, “No End in Sight: America’s Enduring Reliance on Life Imprisonment (footnote 5)”.

<sup>29</sup> Laura M. Maruschak, Jennifer Bronson, and Mariel Alper, U.S. Department of Justice, Bureau of Justice Statistics, “Survey of Prison Inmates, 2016: Disabilities Reported by Prisoners (2016)”. Available at <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>

including children, women, transgender, gender diverse, LGBTQI+ persons, older persons and those with disabilities belonging to such groups, in engaging within the criminal justice system. In this regard, please provide statistics disaggregated by race and ethnicity, as well as offences, on access to legal representation, including the percentage of those receiving legal aid; the percentage of such persons held on remand; and recidivism rates.

3. Please provide information on what steps are being taken to address racial profiling, which results in higher number of arrests of people of African descent and individuals belonging to other racial and ethnic groups.
4. Please detail any steps being taken to address the structural racism that informs the treatment of those of African descent and individuals from other racial and ethnic groups, including people of African descent and Latino persons, at all stages of the criminal justice system and contributes to their disproportionate representation within the cohort of the prison population serving of life without parole, life with parole, “virtual life” and other term-of-years exceeding life expectancy sentences.
5. Please provide the findings of any studies commissioned or carried out by the Government on the use and impact of life without parole, life with parole, “virtual life” and other term-of-years exceeding life expectancy within the United States of America. Please detail any relevant information on evaluations undertaken on the impact on African Americans and individuals from other racial and ethnic groups, including women, older persons and people with disabilities belonging to such groups.
6. Please provide information on measures taken to bring the use of life without parole, life with parole, “virtual life” and other term-of-years exceeding life expectancy sentences in line with international human rights law, including any steps to repeal or amend laws that impose such sentences in a way that is arbitrary and/or disproportionately impacts African Americans and those from other racial and ethnic groups, including women, older persons and people with disabilities belonging to such groups.
7. Please provide information about the steps being taken to ensure that all prison sentences include parole eligibility within a determined and reasonable number of years, as well as to address racial bias and uphold due process in the parole eligibility process. In this regard, please provide statistics, disaggregated by race and ethnicity, on the number of applications for parole and their acceptance rate, as well as any such data on the application for and granting of clemency.
8. Please provide information on what steps are being taken to address racial bias and ensure a transparent clemency process, and to ensure that

clemency decisions are based on clear, objective criteria and that release is granted if those criteria are met.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

K.P. Ashwini

Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

Barbara Reynolds

Chair-Rapporteur of the Working Group of Experts on People of African Descent

Gerard Quinn

Special Rapporteur on the rights of persons with disabilities

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Claudia Mahler

Independent Expert on the enjoyment of all human rights by older persons

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to remind to your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the United States of America ratified on 21 October 1994. Article 1 of ICERD defines prohibited racial discrimination as "any distinction, 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".

We would like to refer to article 2, paragraph 1, which obliges States Parties to condemn racial discrimination and to pursue, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms. Article 5 provides that State parties have the obligation to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to the right to security of person and protection by the State against violence or bodily harm. We also recall article 6, which states that State parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and State institutions.

We are deeply concerned that life without parole, life with parole, "virtual life" and other sentences whereby the term-of-years exceed life expectancy disparately impact those of African descent and Latino individuals. In this regard we would highlight obligations under articles 1(1) and 5 of ICERD to prohibit and eliminate racial discrimination in all its forms, including laws, policies, and practices that may be discriminatory in purpose and in effect. Furthermore, racial disparities in prison sentencing contravene the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the courts and the right to due process law, as guaranteed by article 5 of ICERD.

We wish to emphasis the recommendations of the Committee on the Elimination of Racial Discrimination (CERD/C/USA/CO/10-12) that the State amend laws and policies that lead to racially disparate impacts such as mandatory minimum sentencing policies; abolish life without parole for juveniles; and repeal other racially biased laws.

We also wish to express concern about the disparities faced by incarcerated individuals of African descent and those from other racial and ethnic groups when seeking parole and clemency. In this regard, we would like to draw the attention of your Excellency's Government to General recommendation No. 31 of the Committee on the Elimination of Racial Discrimination on the prevention of racial discrimination and functioning of the criminal justice system. In this General recommendation the Committee urges States to eliminate laws that have an impact in terms of racial discrimination, implement national strategies or plans of action aimed at the elimination of structural racial discrimination, guarantee persons serving prison terms the right to relations with their families, and ensure that the courts do not apply harsher

punishments solely because of an accused person's membership of a specific racial or ethnic group.

We also wish to refer to the conclusions and recommendations made by the Working Group of Experts on People of African Descent at the conclusion of the country visit to the United States of America in 2017 (A/HRC/33/61/Add.2), in particular paragraphs 29 to 42 raising similar concerns regarding, among others, the overrepresentation of African Americans in the penitentiary system, over sentencing, racial composition of juries.

In relation to the current application of life without parole, life with parole, "virtual life" and other sentences whereby the term-of-years exceed life expectancy, we also wish to draw your Excellency's Government's attention to relevant provisions within the International Covenant on Civil and Political Rights (ICCPR), which the United States of America ratified on 8 June 1992.

Article 6 of the ICCPR guarantees the right to life without distinction of any kind, including for persons suspected or convicted of even the most serious crimes. In paragraph 25 of its General Comment 36 (CCPR/C/GC/36) on the right to life, the Human Rights Committee reaffirms that: "States parties also have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The same heightened duty of care attaches to individuals held in private incarceration facilities operating pursuant to an authorization by the State. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities.

We would like to draw the attention of your Excellency's Government to obligations to prohibit and prevent acts of torture or other cruel, inhuman or degrading treatment or punishment (articles 1, 2 and 16), and warn that punishments that cause severe pain or suffering, beyond harms inherent in lawful sanctions, and applied for the purpose of discrimination is covered by the definition of torture in article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Disproportionate or excessive sentencing would also fall foul of the Convention against Torture (as well as article 7, ICCPR). Furthermore, we remind that all persons who come into conflict with the law are entitled to be treated with dignity and respect, and that any form of degrading or humiliating practices shall be prevented during their engagement throughout the criminal justice system. Articles 10 and 11 of UNCAT are also relevant such that each State party shall ensure that education and information regarding the prohibition against torture and ill-treatment are fully included in the training of public officials involved in custody, interrogation, or treatment of any individual to any form of arrest, detention or imprisonment, and included in relevant rules or instructions; and that interrogation methods and arrangements and treatment in custody and imprisonment are kept under periodic review. The obligations in articles 10 and 11 extend to the investigating teams, prosecution and judiciary.

We further refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) adopted on 17 December 2015 by General Assembly resolution 70/175. In particular, rule 24 states that: “[...] Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.” (paragraph 1), and that: “Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.” (paragraph 2). Rule 27(1) stipulates that: “All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. [...]”.

We also wish to stress that rule 2(2) provides that “prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings” to apply the principle of non-discrimination. Older prisoners must benefit from all the human rights guarantees on an equal footing with other prisoners. This requires prison authorities to take specific measures to ensure age-sensitive and adapted detention conditions, including the provision of age-appropriate healthcare services, such as geriatric, palliative and other specialized health care. Older prisoners are particularly vulnerable to COVID- 19 as many places of detention are affected by overcrowding, making physical distancing and observance of sanitary measures challenging. The infection rate among older persons in prison due to infection by COVID-19 has been reported at twice that of the general population in some contexts (A/HRC/51/27, para. 46). In this context, a number of United Nations entities, including the Secretary General in his [Policy Brief on the impact of COVID-19 on older persons](#) and the Independent Expert on the enjoyment of all human rights by older persons through a [statement](#), called on States to consider options for release and alternatives to detention to mitigate such risks, particularly for older persons and people with underlying health conditions. We also refer your Excellency’s Government to the Bangkok Rules, which provide that additional protections are due to incarcerated women of all ages and girls.

Regarding the growing ageing prison population due to life without parole, life with parole, “virtual life” and other sentences, we would like to refer to the 2022 thematic report of the Independent Expert on the enjoyment of all human rights by older persons (A/HRC/51/27), analysing the human rights of older persons deprived of liberty. Firstly, the Independent Expert highlights that “The notion of the relativity of older age is crucial when addressing the situation of older persons deprived of liberty, especially in the context of the criminal justice system. For instance, a detained person may display biological signs of ageing earlier than those who continue living in their communities. Poor socioeconomic and health backgrounds, along with the harmful effect of imprisonment on health and well-being, tend to accelerate the ageing process in prison.” She also states that “In some jurisdictions, people deprived of liberty with ethnic or indigenous backgrounds are considered to be “older” at ages as low as 40.” (para. 26), The Independent Expert also stated that “Due to the prevalence of ageist stereotypes and age discrimination within the criminal justice system, older persons face heightened risk of discrimination, abuse and violence at all stages of their incarceration, from their arrest, interrogation, pre-admission and classification and in their subsequent living conditions, the provision of adequate health care and

rehabilitation and reintegration upon release.” (para. 41). She also specifically highlighted the intersectionality between age and other factors, including racial discrimination and older persons belonging to ethnic groups that might be denied due process and incarcerated based on existing discriminatory laws and harmful stereotypes (para. 43). Finally, we would like to highlight the recommendation made by the Independent Expert to “consider the necessity and proportionality of detaining older persons with complex health conditions and in need of palliative care; States should also examine the possibility of non-custodial alternatives at all stages of detention, including serving sentences in facilities where the needs of older persons would be addressed through or benefit from humanitarian or compassionate release.” (para. 88 (f)).

Regarding persons with disabilities in detention, the Convention on the Rights of Persons with Disabilities (CRPD), article 14, provides that “States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.”. Further, according to the CRPD Committee Guidelines on article 14, places of detention shall be accessible and provide humane living conditions for persons with disabilities. The Committee has also stressed that for persons with disabilities, deprivation of liberty for criminal proceedings shall be the last resort when other diversion programmes, including restorative justice, are insufficient to deter future crime. Such diversion programmes shall not involve the transfer to mental health commitment regimes or participation in mental health services, unless on the basis of the free and informed consent of the individual concerned.

We note with deep concern the sentencing of children under the age of 18 to life without parole and draw your Excellency’s Government’s attention to their obligations under international human rights law to protect children. Such provision include article 24 of the ICCPR, which makes clear that “every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. In this regard, we also highlight article 10(3) which requires that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation, as well as that juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

Furthermore, we would like to bring to your Excellency’s Government’s attention article 26 of the ICCPR stating that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.