



## **DEATH BY INCARCERATION IS TORTURE**

### **THE CRUELTY OF LIFE IMPRISONMENT IN THE UNITED STATES**

*Isn't part of the human experience learning from mistakes and becoming better? . . . We transgress, we're held accountable, we transform, and then we make amends. Death by incarceration strips people of this experience. To be human is to have the ability to live fully within that human experience to be better, it is to exercise that latent capacity that we all have to redeem ourselves.*

*- Right to Redemption Committee Members Robert Labar, Vernon Robinson, Charles Bassett, and Terrell Carter (sentenced to LWOP in Pennsylvania)*

NGO Shadow Report before the United Nations Human Rights Committee  
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This report is being submitted by the following human rights and community organizations: Abolitionist Law Center, Amistad Law Project, California Coalition for Women Prisoners, Center for Constitutional Rights, Drexel University Thomas R. Kline School of Law Andy and Gwen Stern Community Lawyering Clinic, DROP LWOP Coalition, Promise of Justice Initiative, Release Aging People in Prison, Right to Redemption, and The Sentencing Project. The partners welcome the opportunity to contribute to the UN Human Rights Committee's review of the United States' compliance with the International Covenant on Civil and Political Rights.

## PAST SUBMISSIONS

This submission is made by the groups listed above and supplements a complaint that they and other organizations sent to United Nations Special Procedures mandate-holders on September 15, 2022.<sup>1</sup> That submission included a deeper discussion of the issue summarized below and included an addendum of letters of testimony from over 40 people impacted by death by incarceration sentences.

## ISSUE AND SUMMARY

### I. Introduction

This submission describes the United States' racially discriminatory and cruel practice of death by incarceration (DBI), more commonly known as life imprisonment, which in this submission includes sentences of life without parole (LWOP), life with parole (LWP), "virtual life" (sentences that exceed life expectancy), and other lengthy or indeterminate sentences.<sup>2</sup> Though life imprisonment is often viewed as an alternative to the death penalty, incarcerated people, their loved ones, and advocates in the United States refer to this as "death by incarceration" or "the other death penalty" to describe their cruel reality.<sup>3</sup>

Nearly a decade ago, in 2014, the Human Rights Committee urged the United States to abolish LWOP for juveniles, as well as mandatory and non-homicide-related LWOP for all.<sup>4</sup> But years later, the United States continues engaging in these practices; at present, over 200,000 people are serving some form of a life sentence in prisons across the country. The United States should be held to the Committee's vital 2014 recommendation. **Moreover, it is time for the Committee to go further: international human rights law requires that all sentences that have no meaningful opportunity for review and release be abolished, not only those that are mandatory, non-homicide related, or imposed on youth. In addition, lengthy sentences in the United States, which are infected by racial bias and inhumane conditions, may still violate international human rights safeguards on torture, cruelty, racial discrimination, and life, even if they allow an opportunity for review and ultimate release. Taken together, international human rights law should prohibit all sentences that may lead to death by incarceration, including LWOP "virtual life" sentences, and other lengthy or indeterminate sentences, whether imposed on youth or adults.**

In its 2019 list of issues regarding the United States, the Human Rights Committee asked about the disproportionate length of sentences for racial and ethnic minorities (arts. 2, 3 and 26), and about whether the United States "has considered establishing a federal moratorium on executions, with a view to abolishing the death penalty" (art. 6). **The United States has neither established a consistent federal moratorium on the death penalty much less abolished it,**

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<sup>1</sup> <https://www.deathbyincarcerationistorture.com/the-complaint>.

<sup>2</sup> "Virtual life" is defined in most studies and reports as sentences of 50 years or more.

<sup>3</sup> Terrell Carter, Rachel López, Kempis Songster, *Redeeming Justice*, 116 Nw. U. L. Rev. 315, 328 (2021), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1471&context=nulr>.

<sup>4</sup> Hum. Rts. Comm., *Concluding observations on the fourth periodic report of the United States of America*, ¶ 23, U.N. Doc. CCPR/C/USA/CO/4 (April 23, 2014).

**and its racially discriminatory practice of death by incarceration at the federal and state levels is another form of death penalty that we urge the Committee to examine and condemn.**

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The United States is a global leader in sentencing people to die in prison, though such sentences appear to be rising globally as well.<sup>5</sup> DBI is often viewed as an alternative to the death penalty, but research shows that an increase in DBI sentences has not led to a decline in death penalty sentences in the United States.<sup>6</sup> One study concluded that more people are serving DBI sentences in the United States than in all the other 113 surveyed countries combined, and that individuals serving LWOP in the United States made up more than 80 percent of those serving the sentence worldwide.<sup>7</sup>

- There are over 200,000 people, or 15 percent of the total U.S. prison population,<sup>8</sup> serving some form of a DBI sentence in the United States.
- 46% of those sentenced to DBI are Black, although only 12.4% of the total U.S. population is Black.<sup>9</sup>
- Almost half of all people serving LWOP in the United States are considered aging or elderly, over the age of 50; a quarter are over the age of 60.<sup>10</sup>

Death by incarceration sentences in the United States leave a majority Black and aging population without any meaningful opportunity for release. In some states and the federal system, anyone serving a life sentence is precluded by law from applying for parole, rendering all life sentences LWOP sentences in those jurisdictions.<sup>11</sup> In most states, those serving LWOP have virtually no opportunity for release; their only option may be to seek clemency, an entirely discretionary power that state governors and U.S. presidents have all but stopped using in recent

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<sup>5</sup> The rise of DBI globally is in part caused by countries replacing one form of deprivation of life with another: as countries eliminate the death penalty, they replace it with DBI.

<sup>6</sup> Michelle Miao, *Replacing Death with Life? The Rise of LWOP in the Context of Abolitionist Campaigns in the United States*, 15 *Nw. J. L. & Soc. Pol'y.* 173 (2020), <https://scholarlycommons.law.northwestern.edu/njls/vol15/iss2/2> (“[a]vailable data do not support the thesis that the proliferation of LWOP has caused the decline of death sentences. Meanwhile, moving away from capital punishment in some parts of the country has recently played an important role in legitimizing and entrenching the use of LWOP.”).

<sup>7</sup> Dirk van Zyl Smit & Catherine Appleton, *Life Imprisonment: A Global Human Rights Analysis* 88, 94 (2019).

<sup>8</sup> Ashley Nellis, *The Sent’g Project, No End in Sight: America’s Enduring Reliance on Life Imprisonment* 10 (2021), <https://www.sentencingproject.org/wp-content/uploads/2021/02/No-End-in-Sight-Americas-Enduring-Reliance-on-LifeImprisonment.pdf>.

<sup>9</sup> *Id.* at 19. Population data comes from *Race and Ethnicity in the United States: 2010 and 2020 Census*, US Census Bureau (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html> [hereinafter 2020 US Census Data].

<sup>10</sup> Prison Policy Initiative, *The aging prison population: Causes, costs, and consequences* (August 2, 2023), <https://www.prisonpolicy.org/blog/2023/08/02/aging/>.

<sup>11</sup> Release Types: Parole, Fla. Comm’n on Offender Rev., <https://www.fcor.state.fl.us/release-types.shtml>; 61 Pa. Cons. Stat. § 6137(a)(1) (2022); US Sent’g Comm’n, *Life Sentences in the Federal System* 20 n.1 (2015), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226\\_Life\\_Sentences.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf).

years.<sup>12</sup> In other states, those serving LWOP are prohibited by virtue of their sentence from even applying for clemency.<sup>13</sup> Individuals serving life with parole or virtual life sentences may be given the opportunity to be reviewed by a parole board, but the procedures for both clemency and parole across the United States fall far short of what is required under international standards.<sup>14</sup> Yet even if the processes were meaningful, DBI sentences in the United States would still violate international law for all the reasons discussed in this submission.

Death by incarceration is the devastating consequence of a cruel and racially discriminatory criminal legal system that begins with violent policing and ends with the condemnation of people—particularly Black people—to prison until their death, by sentence and by the social, medical, and psychological consequences of incarceration. These sentences impact not only individuals, but entire communities, rupturing family ties and perpetuating intergenerational cycles of poverty, trauma, and pain. The sentence has increased the number of aging people in prison, which in turn has led to the cruel phenomenon of nursing homes and hospice inside prisons.<sup>15</sup> This system is not driven by respect for the right to life. It is not designed to address harm, violence, and its root causes, but compounds them, and in fact diverts resources and political will away from systems that do.<sup>16</sup> Instead, it is rooted in the legacy of slavery and racial hierarchy in the United States<sup>17</sup> and, given the continuous disproportionate impact on Black people and communities, perpetuates those traumas in different forms.<sup>18</sup>

Through DBI sentences, the United States deprives individuals of their human right to demonstrate that they have changed and to hope for a life outside of prison—a form of torture, cruel, inhuman, or degrading treatment condemned by the Committee Against Torture and the European Court of Human Rights.<sup>19</sup> This development in international human rights law finds significant parallels in the work of those who are advocating—many from inside prison—for the

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<sup>12</sup> American Civil Liberties Union (ACLU), *False Hope: How Parole Systems Fail Youth Serving Extreme Sentences* 45–47 (2016), [https://www.aclu.org/sites/default/files/field\\_document/121416-aclu-parolereportonlineingle.pdf](https://www.aclu.org/sites/default/files/field_document/121416-aclu-parolereportonlineingle.pdf).

<sup>13</sup> Carter et al., *supra* note 3, at 357 (citing statutes).

<sup>14</sup> Jon Miller, Zach Russo, and Sumit Poudyal, *How Former Prisoners Few the Parole System*, *The New Yorker*, Nov. 17, 2021, <https://www.newyorker.com/culture/the-new-yorker-documentary/how-former-prisoners-view-the-parole-system>

<sup>15</sup> PPI, *The aging prison population*, *supra* note 10; López, Rachel, *The Unusual Cruelty of Nursing Homes Behind Bars*, 32 *Fed. Sent'g Rep.* 264 (2020).

<sup>16</sup> Erin Reinhart, *Biden's Plan for More Police Won't Make America Safer*, *TIME*, Aug. 24, 2022, <https://time.com/6208047/police-crime-america/>.

<sup>17</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010); Douglas A. Blackmon, *Slavery by Another Name* (2008).

<sup>18</sup> *See, e.g.*, Working Grp. on Arbitrary Detention, *Rep. of Visit to the US*, ¶ 61, U.N. Doc. A/HRC/36/37/ADD.2 (July 17, 2017).

<sup>19</sup> CAT, *Concluding Observations on the Seventh Periodic Report of the Netherlands*, ¶ 35, U.N. Doc. CAT/C/NLD/CO/7 (Dec. 18, 2018); CAT, *Concluding Observations on the second periodic report of South Africa*, ¶ 19, U.N. Doc. CAT/C/ZAF/CO/2 (June 7, 2019); CAT, *Concluding Observations on the Third Periodic Report of Lithuania*, ¶ 12, U.N. Doc. CAT/C/LTU/CO/3 (June 17, 2014); CAT, *Concluding Observations on the seventh periodic report of Greece*, ¶ 37(d), U.N. Doc. CAT/C/GRC/CO/7 (Sep. 3, 2019); CAT, *Concluding Observations on the seventh periodic report of Poland*, ¶ 14, U.N. Doc. CAT/C/POL/CO/7 (Aug. 29, 2019); *Vinter v. United Kingdom*, App. Nos. 66069/09, 130/10 & 3896/10, ¶ 113 (July 9, 2013), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-122664%22%5D%7D>. *See also*, Juan E. Méndez (Special Rapporteur on torture), *Rep. on Children Deprived of Liberty*, ¶¶ 37, 74, U.N. Doc. A/HRC/28/68 (Mar. 5, 2015).

recognition of a “right to redemption.”<sup>20</sup> These sentences also violate the prohibition on racial discrimination, and the prohibitions on the arbitrary deprivation of life and liberty.

## II. Articles 7 and 10: Death by Incarceration Violates the Prohibition on Torture and Cruel, Inhuman or Degrading Treatment or Punishment

*“The sentence of LWOP has taken all hope from me, just waking up and knowing that you’re never getting out of prison is devastating, it slowly drains the hope and life out of us. It’s like being buried alive.” – Bee Vue (serving LWOP sentencing in California)*

Several treaties that are binding on the United States protect individuals’ rights to dignity and prohibit torture and cruel, inhuman, or degrading treatment or punishment, including **article 7 and 10** of the International Covenant on Civil and Political Rights (ICCPR), as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). **ICCPR article 10** “complements . . . the ban on torture or other cruel, inhuman or degrading treatment or punishment” with regard to incarcerated people,<sup>21</sup> and mandates that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,” and requires that any prison sentence should serve the purpose of rehabilitation.

Death by incarceration sentences fail to provide incarcerated individuals with any, or any meaningful opportunity, to demonstrate that they have changed and to hope for a future after release, thereby violating the prohibition on torture and other cruel, inhuman or degrading treatment or punishment. The Committee against Torture has repeatedly recommended that states should abolish irreducible life sentences, including LWOP sentences, precisely because of this.<sup>22</sup> It has stated that there should be “no blanket prohibition for life-sentenced prisoners to apply for release on parole for good reasons”<sup>23</sup> and that states should “guarantee the periodic review of life sentences with a view to their commutation.”<sup>24</sup> It has noted that these requirements are crucial to protecting an individual’s “right to hope,”<sup>25</sup> and without them a prison sentence may “hinder respect for the principle of human dignity and of a humanitarian approach to the treatment and rehabilitation of prisoners.”<sup>26</sup>

In arriving at these recommendations to abolish irreducible life sentences, the Committee against Torture relied on European case law,<sup>27</sup> which recognizes that such sentences are incompatible with the right to human dignity and the prohibition against torture contained in Article 3 of the European Convention on Human Rights. According to the European Court in *Vinter v. United Kingdom*, “it would be incompatible with . . . human dignity . . . to deprive a person of his freedom without at least providing him with the chance to someday regain that

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<sup>20</sup> Carter et al., *supra* note 3 at 337.

<sup>21</sup> Hum. Rts. Comm., *General Comment 21*, ¶ 3, U.N. Doc. HRI/GEN/1/Rev.1 (Apr. 10, 1992).

<sup>22</sup> *See supra* note 19.

<sup>23</sup> CAT, Concluding Observations on Lithuania, *supra* note 19, ¶ 12.

<sup>24</sup> CAT, Concluding Observations on Greece, *supra* note 19, ¶ 37(d).

<sup>25</sup> CAT, Concluding Observations on Netherlands, *supra* note 19, ¶ 35.

<sup>26</sup> CAT, Concluding Observations on Poland, *supra* note 19, ¶ 14.

<sup>27</sup> *See, e.g.*, CAT, *Concluding Observations on Netherlands*, *supra* note 15, at ¶ 34.

freedom.”<sup>28</sup> The Court emphasized that “there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release . . . .”<sup>29</sup>

But the United States continues the practice of DBI. In some states, individuals serving LWOP have no access to the clemency process at all, and therefore lack any avenue for release. In jurisdictions where those serving LWOP do have access to clemency processes, and those serving other forms of DBI have access to parole processes, the procedures for both fall far short of what is required under international standards to ensure a meaningful prospect for review and release: they lack clarity, transparency, and partiality, and as described below, are racially discriminatory.<sup>30</sup> And, because of the discretionary and often political nature of clemency decisions, the actual numbers of those granted clemency or parole in the United States are vanishingly small, rendering DBI sentences, even those eligible for parole, de facto irreducible.

Consistent with analysis from other human rights bodies, the Human Rights Committee should clarify that 1) the United States’ practice of DBI, denies those sentenced to life or virtual life a meaningful opportunity for review and release, thereby condemning them to die in prison; 2) this practice is a violation of the prohibition on torture and cruel, inhuman or degrading treatment or punishment, and racial discrimination; and 3) all forms of DBI should be abolished.

### **III. Articles 2 and 26: Death by Incarceration Violates the Prohibition on Racial Discrimination**

*“[DBI] condemns men, women and children to die in prison. In doing this, the state is making the argument that it has the moral right to strip a human being of all hope and dignity until they die. This rationale is a byproduct of a historic cycle of violence that the United States was founded upon—slavery, racism, classism, misogyny, the genocide of Native Americans and the theft of their ancestral lands. The total lack of compassion and the dehumanization of DBI sentences has its roots in this historical legacy.” – Right to Redemption Committee Members Robert Labar, Vernon Robinson, Charles Bassett, and Terrell Carter (sentenced to LWOP in Pennsylvania)*

The ICCPR prohibits racial discrimination under Articles 2 and 26, and international human rights bodies have emphasized that states must not use race or ethnicity as a factor in determining

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<sup>28</sup> *Vinter v. United Kingdom*, supra note 19, ¶ 113.

<sup>29</sup> *Id.* at ¶ 114.

<sup>30</sup> For example, the European Court and the Inter-American Commission have both concluded that the United States’ federal clemency system does not satisfy minimum human rights standards. *Trabelsi v. Belgium*, App No. 140/10, ¶¶ 136-137 (Sept. 4, 2014); *Hall v. United States*, Case 12.719, Report No. 28/20, OEA/Ser.L/V/II doc. 38 ¶¶ 79-80 (2020). In most states, clemency and parole procedures lack clarity, transparency, and impartiality. [https://www.deathbyincarcerationistorture.com/files/ugd/22acfc\\_8b4c9394670c44099f562da0481cd2d1.pdf](https://www.deathbyincarcerationistorture.com/files/ugd/22acfc_8b4c9394670c44099f562da0481cd2d1.pdf) at 24-28.

criminal sentences.<sup>31</sup> But first in 2014 and most recently in 2022, the Committee on the Elimination of Racial Discrimination has expressed particular concern over the racism that pervades the United States' criminal legal system, including its sentences of life imprisonment.<sup>32</sup>

Yet the racially disparate rates of harsh sentences, including DBI sentences, persist in the United States. While in 2020 only 12.4 percent of the US population was Black, 46 percent of all of those serving DBI sentences nationwide were Black.<sup>33</sup> Stark racial disparities among Black and white people exist in virtually every state when it comes to DBI sentencing.<sup>34</sup> Disparities in DBI sentencing also exist between Latinx people and non-Latinx white people.<sup>35</sup>

Racial disparities also exist with respect to rates of release. Unless they are resentenced, individuals sentenced to LWOP can generally only be released through clemency, and those sentenced to other forms of DBI can generally only be released through parole – both of which are wholly discretionary and infected by racial bias.<sup>36</sup> A 2021 study found significant racial disparities in parole grants between Black and white applicants in New York, for example an analysis of 2013 to 2016 data showed that the Parole Board released 30 percent of white individuals under 25 who had no prior state prison sentences, but only 14 percent of Black and Latino individuals.<sup>37</sup> Another study found significant racial disparities in parole outcomes for those sentenced to DBI in California, where Prosecutors opposed parole in 88 percent of hearings where the parole candidate was Black and 82 percent of hearings where the candidate was Latino, but only 73 percent of hearings where the candidate was white.<sup>38</sup> Similarly, empirical studies suggest that racial disparities also exist in the clemency context, which includes commutations and pardons.<sup>39</sup>

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<sup>31</sup> CERD, *General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, ¶¶ 34–37, U.N. Doc. A/60/18(SUPP) (Aug. 17, 2005).

<sup>32</sup> CERD, *Concluding Observations of the Comm.: United States*, ¶¶ 26, 27, U.N. Doc. CERD/C/USA/CO/10-12 (Aug. 22, 2022); CERD, *Concluding Observations of the Comm.: United States*, ¶¶ 20-21, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 15, 2014).

<sup>33</sup> Nellis, *No End in Sight*, supra note 8, at 19 (2021). 2020 US Census Data, supra note 9.

<sup>34</sup> *Id.*

<sup>35</sup> Quinn Cozzens & Bret Grote, Abolitionist L. Ctr., *A Way Out: Abolishing Death by Incarceration in Pennsylvania* 17, (2018), [https://abolitionistlawcenter.org/wp-content/uploads/2018/09/ALC\\_AWayOut\\_27August\\_Full1.pdf](https://abolitionistlawcenter.org/wp-content/uploads/2018/09/ALC_AWayOut_27August_Full1.pdf); ACLU, *A Living Death*, supra note 9, at 31.

<sup>36</sup> Carter et al., supra note 3, at 362–65.

<sup>37</sup> Parole Preparation Project, *The Problem with Parole: New York State's Failing System of Release* 4, 13, 14 (2021), <https://drive.google.com/file/d/1BstOpE8BufZ2HiqqJ2fNL1E2ieaJ7Nfr/view>. See also Michael Winierip et al., *For Blacks Facing Parole, Signs of Broken System in New York*, N.Y. Times, Dec. 4, 2016, <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

<sup>38</sup> Kathryn M. Young & Jessica Perlman, *Racial Disparities in Lifer Parole Outcomes: The Hidden Role of Professional Evaluations*, L. & Soc'y Inquiry 1, 19 (2021), [https://www.kathrynemyoung.com/uploads/2/4/8/6/2486969/young\\_pearlman\\_2022.pdf](https://www.kathrynemyoung.com/uploads/2/4/8/6/2486969/young_pearlman_2022.pdf).

<sup>39</sup> See, e.g., Marvin Wolfgang et al., *Comparison of the Executed and the Commuted Among Admissions to Death Row*, 53 J. Crim. L. & Criminology 301, 311 (1962); Margaret Vandiver, *The Quality of Mercy: Race and Clemency in Florida Death Penalty Cases*, 27 U. Rich. L. Rev. 315, 331 (1993); Dafna Linzer & Jennifer LaFleur, *Presidential Pardons Heavily Favor Whites*, ProPublica, Dec. 3, 2011, <https://www.propublica.org/article/shades-of-mercy-presidential-forgiveness-heavily-favors-whites>; Carol Jacobsen & Lora B. Lampert, *Institutional Disparities: Consideration of Gender in the Commutation Process for Incarcerated Women*, 39 Signs: J. Women Culture and Soc'y 265, 270 (2013); Ed Monahan et al., *A Comparison of Executions and Death to Life Commutations in Kentucky, 1901–2019*, 101 Prison J. 591, 603 (2021).

But racially disparate rates of DBI sentences are not only a result of the racial bias at sentencing and release. They are the inevitable result of a racially discriminatory criminal legal system that is rooted in slavery and its legacy, and which, at every step of the way—from surveillance, to arrest and pre-trial detention, to charging and trial—discriminates against people of color, particularly Black people, and ultimately leads to racially disparate rates of DBI.<sup>40</sup> More particularly, the punitive power of the US criminal legal system is disproportionately imposed on communities of color that are also subjected to poverty, housing discrimination, health insecurity, and violence by private actors. The systematic deprivation of resources in education, healthcare, and other social support and services, because of intersecting and compounding factors, in turn, brings more policing and surveillance in these communities and more exposure to the criminal legal system. Further, the racial discrimination in every aspect of the criminal legal system inevitably results in the reality that Black people are disproportionately condemned to death—and as described below, premature death—in prison. The consequences ripple through their families, communities, and future generations.

In accordance with other U.N. treaty bodies’ pronouncements calling for the abolition of policies that disproportionately subject people from racially and ethnically marginalized groups to some of the worst consequences of the criminal legal system, such as the death penalty and juvenile LWOP sentences,<sup>41</sup> the Committee should recommend the abolition of all DBI sentences in the United States, which disproportionately and to devastating effect, impact Black people and communities of color in the United States, and violate their right to be free from racial discrimination.

#### **IV. Article 6: Death by Incarceration Violates the Right to Life**

*“While fighting the Death Penalty, I was given a LWOP sentence instead, to me both were the same, as it meant ‘Die in Prison One Way or Another.’” – Alvin Ronnel Ross (serving LWOP sentence in California)*

**Article 6** of the ICCPR protects the right to life.<sup>42</sup> The Human Rights Committee has interpreted this right broadly, and considers it not only a prohibition on direct killings, but also the “entitlement of individuals to be free from acts and omissions that are intended or

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<sup>40</sup> Louisiana leads the U.S. in the highest number of life sentences, nearly all of them the result of jury trials where the jury was majority white, and the verdicts were unanimous. Black people make up roughly one-third of the population in Louisiana, but they are three-fourths of people serving life without parole. See Jeff Adelson et al., How an Abnormal Louisiana Law Deprives, Discriminates and Drives Incarceration: Tilting the Scales, ADVOCATE (Apr. 1, 2018), [https://www.theadvocate.com/baton\\_rouge/news/courts/article\\_16fd0ece-32b1-11e8-8770-33eca2a325de.html](https://www.theadvocate.com/baton_rouge/news/courts/article_16fd0ece-32b1-11e8-8770-33eca2a325de.html)

<sup>41</sup> See, e.g., Hum. Rts. Comm., *Concluding Observations on the fourth periodic report of the United States*, ¶¶ 8, 23, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014); CERD, *Concluding Observations of the Comm.: United States*, ¶ 27(d), (g), U.N. Doc. CERD/C/USA/CO/10-12 (Aug. 22, 2022); CERD, *Concluding Observations of the Comm.: United States*, ¶¶ 21, 23, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008); CERD, *Concluding Observations on the combined seventh to ninth periodic reports of the United States*, ¶¶ 20–21, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014); CAT, *Concluding Observations on the combined third to fifth periodic reports of the United States*, ¶ 24, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014); CAT, *Concluding Observations on the second periodic report of South Africa*, ¶¶ 18–19, U.N. Doc. CAT/C/ZAF/CO/2 (June 7, 2019).

<sup>42</sup> International Covenant on Civil and Political Rights, art. 6.



may be expected to cause their unnatural or premature death.”<sup>43</sup> Under international law, any deprivation of life must not be “arbitrary,” with arbitrary taken to mean unlawful under international law, or inappropriate, unjust, unpredictable, unreasonable, unnecessary, disproportionate, or lacking in due process.<sup>44</sup> The HRC has also stated that when States deprive individuals of their liberty, such as through imprisonment, they have a “heightened duty of care to take any necessary measures to protect the lives” of these individuals. But United States prisons are “death-making institutions”<sup>45</sup> that create risks of fatal harm. This is why advocates have coined the term “death by incarceration” to reveal the reality that those serving these prison sentences are condemned to die, often prematurely in prison.

Several empirical studies have found a clear and consistent relationship between rates of incarceration and adverse health outcomes for incarcerated people.<sup>46</sup> These outcomes emerge as a result of a variety of conditions that characterize US prisons and are exacerbated by deepening environmental and climate injustice: overcrowding,<sup>47</sup> extreme temperatures,<sup>48</sup> inadequate sanitation procedures,<sup>49</sup> hard labor, and a lack of access to adequate physical and mental healthcare services for vulnerable populations.<sup>50</sup>

The negative health impacts of being incarcerated ultimately lead to a higher probability of premature death: the longer one spends in prison, the shorter one’s life expectancy becomes. One study published in 2013 found that spending a year in prison can lead to a two-year

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<sup>43</sup> Hum. Rts. Comm. (HRC), General Comment No. 36, ¶ 3, U.N. Doc. CCPR/C/GC/36 (Sep. 3, 2018) (emphasis added).

<sup>44</sup> *Id.*, ¶¶ 18, 21; Christof Heyns (Special Rapporteur on extrajudicial, summary or arbitrary executions), Rep. on Protection of the Right to Life during Law Enforcement, ¶ 55, U.N. Doc. A/HRC/26/36 (Apr. 1, 2014).

<sup>45</sup> Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, New Yorker, May 7, 2021, <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition>; Advancing Public Health Interventions to Address Harms of the Carceral System, Am. Pub. Health Ass’n (Oct. 26, 2021), <https://www.apha.org/Policies-andAdvocacy/Public-Health-Policy-Statements/Policy-Database/2022/01/07/Advancing-Public-Health-Interventions-to-Address-theHarms-of-the-Carceral-System>.

<sup>46</sup> See Christopher Wildeman & Emily A. Wang, *Mass Incarceration, Public Health, and Widening Inequality in the USA*, 389 *Lancet* 1464, 1467–68 (2017), and Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 *Ann. Rev. Socio.*, 291, 291, 295–96 (2015).

<sup>47</sup> See Paul S. Appelbaum, *Lost in the Crowd: Prison Mental Healthcare, Overcrowding, and the Courts*, 62 *Psychiatric Servs.* 1121, 1121–22 (2011).

<sup>48</sup> Many prisons lack air conditioning, making living in them unbearable, especially as temperatures rise due to climate change. See Prison Policy [https://www.prisonpolicy.org/blog/2022/04/20/environmental\\_injustice/](https://www.prisonpolicy.org/blog/2022/04/20/environmental_injustice/).

<sup>49</sup> See Sharon Bernstein, California Prison Inspection Uncovers Unsanitary Conditions, Reuters, May 13, 2015, <https://www.reuters.com/article/us-usa-california-prisons/california-prison-inspection-uncovers-unsanitary-conditions-idUSKBN0NZ07D20150514>; Shannon Heffernan, The Way Prisoners Flag Guard Abuse, Inadequate Health Care, and Unsanitary Conditions Is Broken, ProPublica, Dec. 2, 2020, <https://www.propublica.org/article/the-way-prisoners-flag-guard-abuse-inadequate-health-care-and-unsanitary-conditions-isbroken>.

<sup>50</sup> See Tina Maschi et al, *Palliative and End-of Life Care in Prisons: A Content Analysis of the Literature*, 10 *Int’l J. Prisoner Health* 172, 188 (2014); Steve Belenko et al, *Treating Substance Use Disorders in the Criminal Justice System*, 15 *Current Psychiatry Reps.* 414, 416 (2013); Keri Blakinger, Prisons Have a Health Care Issue – And It Starts at the Top, Critics Say, The Marshall Project, July 1, 2021, <https://www.themarshallproject.org/2021/07/01/prisons-have-a-health-care-issue-and-it-starts-at-the-top-critics-say>; Tiana Herring, COVID Looks Like It May Stay. That Means Prison Medical Copays Must Go, Prison Pol’y Initiative, Feb. 1, 2022, [https://www.prisonpolicy.org/blog/2022/02/01/pandemic\\_copays/](https://www.prisonpolicy.org/blog/2022/02/01/pandemic_copays/).

decline in an incarcerated individual's life expectancy.<sup>51</sup> According to the latest Bureau of Justice Statistics (BJS) report, the number of deaths (3,853 prisoners) and mortality rate in US state prisons (330 deaths per 100,000 prisoners) in 2019 was at one of the highest levels since BJS started collecting data in 2001.<sup>52</sup> The COVID-19 pandemic has exacerbated this reality.<sup>53</sup>

By permanently confining people to these environments that lead to premature death, these sentences amount to a death penalty. The practice of death by incarceration in the United States is a violation of **article 6(2) of the ICCPR** because it is imposed contrary to the protections in the ICCPR as described throughout this submission.

## V. Article 9: Death by Incarceration Is an Arbitrary Deprivation of Liberty

*“Sentences of DBI do not allow for true acts of atonement for a changed life, nor does it end in the healing process for those affected by these crimes.” – Sheena King (serving LWOP sentence in Pennsylvania)*

**Article 9** of the ICCPR protects the right to liberty. Under international human rights law, any deprivation of liberty must be justified by legitimate aims and must be proportionate to those aims.<sup>54</sup> In the context of a deprivation of liberty through incarceration, while rehabilitation must be a central aim of the deprivation, human rights bodies have found that other legitimate aims for incarceration may include incapacitation, deterrence, and, to a limited extent, retribution.<sup>55</sup> But, in addition to failing to serve the purpose of rehabilitation as described above, DBI also fails to serve any of these other legitimate aims, resting instead on the political demand for harsher sentences.

First, as to incapacitation, studies have shown that lengthy prison sentences are unlikely to reduce re-offending, and that recidivism rates drop as people age, so sentences like DBI keep people in prison even though they are unlikely to commit a crime if released.<sup>56</sup> Second, as to deterrence, experts, including U.N. Special Procedures mandate holders, have raised doubts as to

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<sup>51</sup> Evelyn J. Patterson, *The Dose–Response Time Served in Prison on Mortality: New York State, 1989–2003*, 103 Am. J. Pub. Health 523, 526 (2013); see also Sebastian Daza et al, *The Consequences of Incarceration for Mortality in the United States*, 57 Demography 577, 595 (2020).

<sup>52</sup> E. Ann Carson, Bureau of Just. Statistics, *Mortality in State and Federal Prisons, 2001-2019 – Statistical Tables 1* (2021), <https://bjs.ojp.gov/content/pub/pdf/msfp0119st.pdf>.

<sup>53</sup> Neal Marquez et al, *COVID-19 Incidence and Mortality in Federal and State Prisons Compared with the US Population, April 5, 2020 to April 3, 2021*, 326 J. Am. Med. Assoc. 1865, 1866 (2021).

<sup>54</sup> Hum. Rts. Comm., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004); Anand Grover (Special Rapporteur on the right to health), Rep. to Hum. Rts. Council in its Fourteenth Session, ¶ 5, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010); Christof Heyns, supra note 37, at ¶¶ 55-65.

<sup>55</sup> HRC, General Comment No. 21, ¶ 10; Anand Grover, supra note 45, ¶ 5; *Vinter v. United Kingdom*, supra note 15, ¶ 111.

<sup>56</sup> Damon Petrich et al., *Custodial Sanctions and Reoffending: A Meta-Analytic Review*, 50 Crime and Just. 353 (2021); US Sentencing Comm'n, *The Effects of Aging on Recidivism Among Federal Offenders* 3 (2017), [https://www.ussc.gov/sites/default/files/pdf/research-andpublications/research-publications/2017/20171207\\_Recidivism-Age.pdf](https://www.ussc.gov/sites/default/files/pdf/research-andpublications/research-publications/2017/20171207_Recidivism-Age.pdf); John L. Anderson, *Recidivism of Paroled Murderers as a Factor in the Utility of Life Imprisonment*, 31 Current Issues in Crim. Just. 255, 261 (2019).

whether lengthy and harsh sentences actually deter violence.<sup>57</sup> And third, as to retribution, while international law accepts a limited form of retribution as a legitimate carceral aim, as the European Court of Human Rights has noted, strong retributive justifications for incarceration diminish as a prison sentence goes on.<sup>58</sup> And while crime victims are often used as a justification for harsh, retributive punishments, they are not a monolith. For example, advocates in Pennsylvania have uplifted the experiences of “dual victims:” individuals, some of whom advocate for the abolition of DBI, who have lost loved ones to crime and also have a loved one serving a DBI sentence.<sup>59</sup> The first-ever national survey on crime victims’ views on safety also indicates that most prefer shorter prison sentences and a criminal legal system focused on rehabilitation rather than retribution.<sup>60</sup> Additionally, many DBI sentences are imposed mandatorily, which fails to account for individual responsibility.

### SUGGESTED QUESTIONS TO THE UNITED STATES

1. What legal and policy measures are state and federal governments undertaking to eliminate death by incarceration sentences? For example, are governments retracting laws that impose life without parole, life with parole, “virtual life,” and other lengthy sentences, so as to comply with international obligations, including the prohibition on torture and CIDT and racial discrimination?
2. What legal and policy measures and other steps are federal and state governments undertaking to ensure that all prison sentences include parole eligibility within a determined and reasonable number of years, and to ensure that parole-eligible individuals are released at their eligibility date?
3. What steps are federal and state governments undertaking to address racial bias in parole and clemency, to ensure that parole and clemency decisions are based on pre-established, clear criteria, and that release is granted if those criteria are met?
4. What steps are federal and state governments undertaking to ensure that parole reviews and other potential release mechanisms are fair and impartial?

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<sup>57</sup> Special Rapporteur on extrajudicial, summary, or arbitrary executions et al., letter dated Mar. 1, 2022 from the Special Rapporteur on extrajudicial, summary or arbitrary executions et al. to the Office of the High Commissioner for Human Rights, at 6–7, U.N. Doc. USA 12/2021 (Mar. 1, 2022). *See also* Cozzens & Grote, supra note 28, at 43 (citing Paul H. Robinson, *Life Without Parole Under Modern Theories of Punishment*, in *Life Without Parole: America’s New Death Penalty?* 138, 140 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012)).

<sup>58</sup> *Dickson v. United Kingdom*, App. No. 44362/04 ¶ 28 (Dec. 4, 2007), <https://hudoc.echr.coe.int/engpress#%7B%22itemid%22:%5B%22003-2204926-2350295%22%5D%7D>.

<sup>59</sup> Elizabeth Hardison, *These Crime Victims Have Lost Loved Ones to Murder — And to Prison. That’s Why They Want to End Life Without Parole in Pennsylvania*, Pa. Cap. Star, Aug. 27, 2019, <https://www.penncapital-star.com/criminal-justice/these-crime-victims-have-lost-loved-ones-to-murder-and-to-prison-thats-why-they-want-to-end-life-without-parole-in-pennsylvania/>.

<sup>60</sup> All. for Safety and Just., *Crime Survivors Speak: The First-Ever National Survey of Victims’ Views on Safety and Justice* 5 (2016), <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

5. What steps are federal and state governments undertaking to rectify the over representation of parole commissioners with law enforcement backgrounds, to ensure that parole hearings provide a meaningful opportunity for release and do not constitute a second trial, or an additional opportunity to punish parole applicants?
6. What commitments will the Biden Administration make to repair the harm done to marginalized and racialized communities who have been disproportionately impacted by death by incarceration sentences?

## RECOMMENDATIONS

We call on the Human Rights Committee to declare that:

1. Death by incarceration sentences in the United States, including all LWOP sentences, life with parole sentences, and virtual life sentences, and other lengthy and indeterminate sentences, violate the absolute prohibition on torture and cruel and inhuman or degrading treatment; the principle of non-discrimination; Art. 6(2) of the ICCPR; and the prohibition on arbitrary deprivation of life and liberty.

We call on the Human Rights Committee to recommend that the constituent states and federal government of the United States should implement a moratorium or establish a prohibition on death sentences, including abolishing all death by incarceration sentences, including LWOP, life with parole sentences, virtual life sentences, and other lengthy or indeterminate sentences, whether imposed on youth or adults. Specifically:

1. All laws that permit or mandate LWOP, LWP, and other terms-of-years sentences that exceed life expectancy must be repealed.
2. All prison sentences must include parole eligibility within a reasonable number of years, and there must be periodic and meaningful opportunities for parole review.
3. All those eligible for parole should be released at their eligibility date through a process that meets international human rights standards. Parole boards must be guided by the presumption of release.
4. The United States should immediately engage in a state and federal level review of the racial disparities and intergenerational impact of death by incarceration sentences with a commitment to accountability and repair in most impacted communities.
5. The United States President and the governors of all 50 states in the United States must exercise their clemency powers to commute the sentences of the over 200,000 people currently sentenced to death by incarceration in the U.S., granting them release or, at a minimum, the possibility of release before an advanced age.