

Ms. Gabriella Habtom  
Committee on the Elimination of Racial Discrimination  
Office of the High Commissioner for Human Rights  
UNOG-OHCHR  
CH 1211 Geneva 10  
Switzerland

February 3, 2014

Dear Ms. Gabriella Habtom:

We write in advance of the Committee on the Elimination of Racial Discrimination's (the "Committee") 85<sup>th</sup> Session to urge you to include the widespread practice of criminally prosecuting youth under 18 as adults and incarcerating them in adult jails and prisons among the themes for the upcoming United States review.

In 2008, the Committee appropriately expressed concern about discrimination within the U.S. criminal justice system, including harsh sentencing practices that discriminate against minority youth.<sup>i</sup> The sentences imposed on minority youth are the end result of laws in many states that subject youth to adult criminal proceedings and result in their incarceration in adult jails and prisons in violation of human rights law.<sup>ii</sup> Because of the dramatic racial disparities in the youth tried and sentenced as adults and incarcerated in adult jails and prisons, we respectfully request that the Committee adopt this issue as a theme for the U.S. review.

### **Issue Summary**

Nationwide, African-American youth represent 17 % of the overall youth population,<sup>iii</sup> yet they account for 28% of juvenile arrests, 35% of youth waived to adult court<sup>iv</sup> and more than 50% of the youth sent to adult prisons.<sup>v</sup> In New York, while only 32% of the state's total population is black or Latino,<sup>vi</sup> more than 70% of youth who are arrested are black or Latino.<sup>vii</sup> Once arrested, black youth in New York are nearly twice as likely to be incarcerated in an adult jail or prison than their white counterparts.<sup>viii</sup>

The federal government does not compile the number of youth serving time in adult prisons disaggregated by race. However, U.S. reports indicate that racial disparities among those held in prisons increase the younger the inmate population.<sup>ix</sup> In addition, available data from individual states illustrate staggering racial disparities.

- In Florida, of the 144 youth currently sentenced as adults and held in adult prisons, 78% (112) are black, 20% (29) are white and 2% (3) are Hispanic.<sup>x</sup>
- In Michigan, of the 89 youth inmates held in adult prisons on August 1, 2012, 71% (63) are black.<sup>xi</sup>
- In New York, of the 136 youth inmates held in adult prisons on December 31, 2012, 65% (89) are black, 24% (32) are Hispanic, and 9% (12) are white.<sup>xii</sup>

The minority youth (and indeed all youth) sent to adult jails and prisons are subjected to multiple additional human rights violations. Youth are at a high risk of physical and sexual assault.<sup>xiii</sup> They are deprived of peer-support and age-appropriate programs, denied adequate age-appropriate medical and mental health care and disproportionately punished through disciplinary actions and solitary confinement.<sup>xiv</sup> Once released from prison, these young people face devastating collateral consequences resulting from their adult criminal convictions, including discrimination in employment,<sup>xv</sup> housing,<sup>xvi</sup> and education, as well as an extraordinarily high recidivism rate.<sup>xvii</sup>

### **The Practice Of Placing Youth In Adult Jails And Prisons Violates The Rights Of Minority Youth To Be Free From Racial Discrimination And Equal Treatment Before Tribunals Under Articles 2 And 5(a).**

In 2008, this Committee expressed concern regarding discrimination in the U.S. criminal justice system and the treatment of minority youth. In particular, the Committee stated that the U.S. practice of sentencing youth to life imprisonment without parole was “incompatible with article 5(a) of the Convention.”<sup>xviii</sup> It also noted that the “stark racial disparities in the administration and functioning of the criminal justice system, including the *disproportionate number* of persons belonging to racial, ethnic, and national minorities in the prison population, may be regarded as factual indicators of racial discrimination” under article 5(a) (emphasis added).<sup>xix</sup>

The Committee’s General Recommendations 31 and 34 also make clear that states must ensure that measures taken to fight crime do not have a racially discriminatory effect and that disparate rates of incarceration and severity of sentences are indicators of racial discrimination.<sup>xx</sup> In particular, the Committee has emphasized that states should take measures to prevent discrimination by law enforcement against people of African descent, especially in connection with arrest and detention,<sup>xxi</sup> and pay particular attention to the situation of children, who are susceptible to multiple forms of discrimination because of their race and age.<sup>xxii</sup>

Other U.N. treaty bodies have encouraged the U.S. to end the practice of detaining youth in adult detention facilities. In its 2006 Conclusions and Recommendations, the U.N. Committee Against Torture stressed that the U.S. “should ensure that detained children are kept in facilities separate from those of adults in conformity with international standards.”<sup>xxiii</sup> In addition, the U.N. Human Rights Committee has included the practice of detaining youth in adult facilities on its list of issues for the upcoming U.S. review in March 2014.<sup>xxiv</sup>

### **Themes for the United States Review (Articles 2 and 5(a) and (b))**

- Given the racial disparities resulting from current state laws that allow youth to be criminally prosecuted and sentenced as adults, measures taken to stop states from criminally prosecuting people under the age of 18 and detaining them in adult jails and prisons.
- Efforts by federal and state governments to provide comprehensive data on individuals under 18 in the adult criminal justice system and in adult jails and prisons, including the imposition of solitary confinement, disaggregated by race.

- Specific measures taken to combat the documented discriminatory impact that arrest, waiver to adult criminal courts, and sentencing practices have on youth of color.
- Given the violations to the right to special protection, education and rehabilitation that flow from the disproportionate criminal incarceration of minority youth, efforts to ensure young people who are deprived of their liberty are afforded access to educational, vocational, and other rehabilitative programming, such as counseling, that account for their age and status.
- Given the violations to the right to special protection and rehabilitation that flow from the disproportionate criminal incarceration of minority youth, efforts to develop alternatives to incarceration that incorporate international norms of rehabilitation and use confinement as a last resort.

We hope this information will be useful for the preparation of the themes for the U.S. review. We would be grateful if you could make this letter available to all members of the country report task force on the United States.

Thank you.

Sincerely,

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Nell Hirschmann-Levy  
Meghan McLoughlin  
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<sup>i</sup> Throughout this letter we use the term "youth" or "young person" to refer to anyone under the age of 18.

<sup>ii</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), arts. 10(2)(b) and (3), 14(4), 24(1), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

<sup>iii</sup> ZIEDENBERG, YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 7 (2011).

<sup>iv</sup> Juvenile Court Statistics 1985-2009, National Center for Juvenile Justice, [www.ojjdp.gov/ojstatbb/ezajcs/](http://www.ojjdp.gov/ojstatbb/ezajcs/) (last visited Dec. 22, 2012).

<sup>v</sup> ASHLEY NELLIS & RYAN S. KING, SENTENCING PROJECT, NO EXIT 19- 23 (2009) (African-American youth account for 58% of youth sent to adult prison).

<sup>vi</sup> U.S. Census Bureau (2010), Profile of General Population and Housing Characteristic of New York, retrieved from: [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_DP\\_DPDP1](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1).

<sup>vii</sup> *Criminal Justice Case Processing of 16-17 Year Olds*, Prepared by New York Division of Criminal Justice Services, Office of Justice Research and Performance, January 4, 2013, p. 1-2, available at: <http://www.cardozo.yu.edu/sites/default/files/Criminal%20Justice%20Case%20Processing%20of%2016-17%20Year%20Olds.pdf>.

<sup>viii</sup> Of the black youth arrested, 14.8% received incarceration sentences, whereas only 8.2% of white youth arrested received incarceration sentences. *Criminal Justice Case Processing of 16-17 Year Olds*, *supra*, note 6 at 2.

<sup>ix</sup> Office of Justice Programs, Bureau of Justice Statistics, *Prisoner Series*, Prisoners in 2011, 7-8, Dec. 17, 2012, available at: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4559>.

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<sup>10</sup> Florida Department of Corrections, Inmate Population Search, (inmates ages 0-17, last accessed November 1, 2013) available at: <http://www.dc.state.fl.us/ActiveInmates/>. It is important to note that the Florida state prison system seems to classify inmates of Hispanic origin as “white,” perhaps inadvertently. The result, however, is that the statistics may not accurately represent the number of Hispanic youth in the adult prison population and may over-represent the number of white youth.

<sup>xi</sup> Michigan Department of Corrections, List of Prisoners Under the Age of 18 on August 1, 2012, FOIA documents retained by American Civil Liberties Union of Michigan, Juvenile Life Without Parole Initiative. The practice of classifying Hispanic inmates in Michigan seems similar to Florida, *see* note 9, *supra*, and as a result the statistics may not accurately represent the number of Hispanic youth in adult prison and may over-represent the number of white youth. On August 1, 2012, there were no “Hispanic” inmates reported by Michigan.

<sup>xii</sup> NYS Department of Corrections and Community Supervision (DOCCS), Data Prepared by DOCCS, Report: *Current Age By Ethnic Status; Under custody December 31, 2012*, obtained through correspondence with Michele Staley, Acting Assistant Director, Division of Program Planning Research & Evaluation [on record with City University of New York School of Law, International Women’s Human Rights Clinic].

<sup>xiii</sup> JUST DETENTION INTERNATIONAL *Incarcerated Youth at Extreme Risk of Sexual Abuse*, March 2009, at 1; *See also* HON. REGGIE B. WALTON (CHAIR) ET. AL., NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 7 (2009) (“Youth, small stature, and lack of experience in correctional facilities appear to increase the risk of sexual abuse by other prisoners”).

<sup>xiv</sup> American Civil Liberties Union & Human Rights Watch, *Growing Up Locked Down: Youth In Solitary Confinement in Jails and Prisons Across the United States*, 63-65, 68 (October 2012). Solitary confinement has devastating psychological effects on youth, including an increased risk of suicide. *Id.* at 23-24.

<sup>xv</sup> Equal Employment Opportunity Commission, Employment Discrimination Faced by Individuals with Arrest and Conviction Records, Statement of Laura Moskowitz, Staff Attorney, National Employment Law Project’s Second Chance Labor Project, 1-3 (Nov. 20, 2008).

<sup>xvi</sup> 42 U.S.C. § 13661(c) (In screening applicants to federally assisted housing, the housing agency or owner has the authority to deny admission to criminal offenders).

<sup>xvii</sup> Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Dep’t of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, OJJDP Juvenile Justice Bulletin, June 2010, at 6, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

<sup>xviii</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations: United States of America*, ¶ 21, U.N. Doc. CERD/C/USA/CO/6, (8 May 2008).

<sup>xix</sup> *Id.* at ¶ 20.

<sup>xx</sup> Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent*, ¶ 38, U.N. Doc. CERD/C/GC/34 (3 Oct. 2011), available at: <http://www.refworld.org/docid/4ef19d592.html>. (State parties are to ensure that their criminal justice systems and any “measures taken in the fight against crimes... do not discriminate in purpose or effect on the grounds of race and colour”) (emphasis added) [hereinafter “CERD, General Recommendation No. 34”]; Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, ¶ 1(e) & (f), U.N. Doc. CERD/A/60/18(SUPP) paras. 460, (3 Oct. 2005), available at:

<http://www.refworld.org/docid/48abd56dd.html> (Indicators of racial discrimination in the criminal justice system include, inter alia, “[t]he number and percentage of persons belonging to those [racial or ethnic] groups who are held in prison or preventive detention, including internment centres, [and] penal establishments; ...and [t]he handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups”) (emphasis added) [hereinafter “CERD, General Recommendation XXXI”].

<sup>xxi</sup> CERD, *General recommendation No. 34* at ¶ 39 (The Committee recommends that States “[t]ake measures to prevent the use of... discrimination by the police or other law enforcement agencies and officials against people of African descent, especially in connection with arrest and detention, and ensure that people of African descent are not victims of practices of racial or ethnic profiling”).

<sup>xxii</sup> CERD, *General Recommendation XXXI* at Preamble.

<sup>xxiii</sup> Committee Against Torture, *Concluding Observations: United States of America*, ¶ 34, U.N. Doc. CAT/C/USA/CO/2, (2006).

<sup>xxiv</sup> Human Rights Committee, *List of Issues: United States of America*, ¶ 18, U.N. Doc. CCPR/C/USA/Q/4, (2013).