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USA: Supreme Court to consider constitutionality of life imprisonment without parole for children

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Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age
Article 37(a), UN Convention on the Rights of the Child

The United States Supreme Court will hear oral arguments on 9 November 2009 in the cases of two prisoners in Florida who are serving sentences of life imprisonment without the possibility of parole (LWOP) for crimes committed when they were under 18 years old. Before the Court is the question of whether this sentence imposed on children violates the US Constitution.

Locking up children and forever throwing away the key violates clear principles of international law. The USA does so routinely.

The two prisoners whose cases have been consolidated for consideration by the Supreme Court on 9 November are among more than 2,500 individuals in the USA serving LWOP sentences for crimes committed when they were under the age of 18.

In these two cases, neither crime involved murder. Joe Harris Sullivan was convicted in Escambia County, Florida, of sexual battery committed in 1989 when he was 13 years old. Terrance Jamar Graham was convicted in Duval County, Florida, of armed burglary committed in 2003 when he was 16 years old. He was initially sentenced to three years probation, but was sentenced to LWOP the following year, when he was still only 17, for violating the terms of his probation. Both prisoners are African American.

Amnesty International joined an international law brief in this case filed in July 2009 with the Supreme Court seeking to have the Court find against the use of LWOP for children.¹

Article 37(a) of the UN Convention on the Rights of the Child (CRC) prohibits the use of LWOP in the case of individuals who were under 18 at the time of the crime, regardless of the offence in question. The CRC has been ratified by every country in the world except the USA and Somalia. The USA has signed the treaty, however, thereby binding itself under international law to refrain from acts that defeat the object and purpose of the treaty pending its decision on whether to ratify it.² In any event, Amnesty International considers that the prohibition against the use of LWOP for children has become a principle of international law from which there can be no derogation, regardless of which treaties a country has or has not ratified.

The Committee on the Rights of the Child, the expert body established by the CRC to oversee the treaty's implementation reiterated in a General Comment in 2007 the prohibition of this use of LWOP, stating that: "For all sentences imposed upon children the possibility of release should be realistic and regularly considered". In 2008, the Committee urged the USA to become a state party to the CRC.

The UN Human Rights Committee, established to oversee implementation of the International Covenant on Civil and Political Rights (ICCPR), has also recognized the prohibition of LWOP against children as an obligation under the ICCPR, a treaty which the USA ratified in 1992. In 2006, the Human Rights

Committee called on the USA to prevent any further LWOP sentencing of children and to ensure that “all appropriate measures to review the situation of persons already serving such sentences” is undertaken.

The Committee against Torture, the expert oversight body for the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) also expressed its concern to the USA in 2006 that such sentencing of children may violate the prohibition of cruel, inhuman or degrading treatment or punishment, prohibited under article 16 of UNCAT.

An indicator of the international consensus on this issue is provided by resolutions on the rights of the child passed annually since 2006 by the UN General Assembly. The resolutions call on those states which have not yet done so to ratify the CRC – effectively a call by the international community directed at the USA. The resolutions specifically call for the abolition in law of LWOP for those under the age of 18 at the time of the offence. The USA has been the only country voting against the resolutions, with more than 180 countries voting in favour.

Anyone asked to list characteristics associated with childhood would likely include at least one of the following: immaturity, impulsiveness, lack of self-control, poor judgment, an underdeveloped sense of responsibility, a vulnerability to the domination or example of elders, as well as the potential of a young person for personal development and rehabilitation. Common agreement about such attributes lies behind the international prohibition on the imposition of the death penalty for the crimes of children, as well as the sentence of life imprisonment without the possibility of parole. Both these sentences deny the possibility of change and assume absolute culpability on the part of the offender.

Four and a half years ago, the US Supreme Court abolished the death penalty for those under the age of 18 at the time of the crime, belatedly bringing the USA into line with this international legal prohibition. In *Roper v. Simmons* (2005), the Court acknowledged “the overwhelming weight of international opinion against the juvenile death penalty”, noting that this global consensus “rest[ed] in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime”. The Court concluded that:

“It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom”.

The USA should now recognize that it is resorting to a punishment against children which is an affront to international standards of justice and denies the attributes of youth and the capacity of young people for change. Among other things, it should ratify the CRC, without reservation, ensure its full and effective implementation, and take the necessary steps to review all cases of individuals serving sentences of life imprisonment without the possibility of parole for crimes committed when they were under 18 years old.

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See also:

The rest of their lives: Life without parole for child offenders in the United States, October 2005, <http://www.amnesty.org/en/library/info/AMR51/162/2005/en>

USA: Indecent and internationally illegal: The death penalty against child offenders, September 2002, <http://www.amnesty.org/en/library/info/AMR51/143/2002/en>

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<sup>1</sup> The *amicus curiae* (friend of the court) brief is available at [http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-7412\\_PetitionerAmCuAmnestyIntl.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-7412_PetitionerAmCuAmnestyIntl.pdf).

<sup>2</sup> Article 18, Vienna Convention on the Law of Treaties. The USA signed the Convention in 1970, but has still not ratified it. However, it considers many of its provisions to constitute customary international law on the law of treaties.