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April 7, 2008

Letter of Support for the “Youth PROMISE Act,” H.R. 3846, and Opposition to H.R. 3547, the Gang Prevention, Intervention, and Suppression Act.

Dear Representative:

Human Rights Watch, an independent, nongovernmental organization dedicated to protecting human rights around the world, submits this letter in support of H.R. 3846, the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act (“Youth PROMISE Act”), and in opposition to H.R. 3547, the Gang Prevention, Intervention, and Suppression Act. Human Rights Watch supports the Youth PROMISE Act because it makes sense, comports with scientific research on prevention, intervention, and adolescent brain development, and is consistent with US treaty obligations under international law. In contrast, we oppose H.R. 3547 because its excessive emphasis on overly punitive sanctions—including life without parole sentences for youth¹—rather than prevention and intervention is contrary to basic principles of juvenile and criminal justice, is inappropriate in light of adolescent brain development research, and violates US treaty obligations under international law.

I. Human Rights Watch Supports H.R. 3846, the Youth PROMISE Act

The Youth PROMISE Act makes sense.

The Youth PROMISE Act is unique among current legislative proposals aimed at curbing youth and gang violence. In contrast to punitive legislation that would funnel more young people into the juvenile and criminal justice systems,² the Youth PROMISE Act builds upon promising and evidence-based practices that have led to reduced rates of violence and delinquency. Rather than creating duplicative penalties and sanctions that would increase rates of federal prosecution and incarceration, the Youth PROMISE Act invests resources in local communities to prevent juvenile gang violence, delinquency and crime from occurring in the first place.

The Youth PROMISE Act first brings communities together in local councils, including representatives from community and faith-based organizations, schools and the education community, health and mental health providers, social services, the judiciary, the defense bar and law enforcement to assess the strengths and needs of the local community. Based on that assessment, the councils then develop comprehensive plans to support young people and their families, while making communities safer, reducing rates of victimization, and helping at-risk youth lead law-abiding and healthy lives, free of gangs,

¹ The terms “youth,” “children,” and “juveniles” in this letter refer to anyone below the age of 18.

² See S. 456 (the Gang Abatement and Prevention Act of 2007) and H.R. 3547 (the Gang Prevention, Intervention, and Suppression Act), which create additional federal crimes, significantly increase penalties, and focus the majority of resources on prosecution and enforcement, rather than prevention and intervention.

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delinquency and violence. The Act also provides for a rigorous evaluation, including an analysis of the cost savings generated from the investment in prevention and intervention rather than in more costly, ineffective prosecution and incarceration. In turn, savings realized under the Act from reductions in detention, incarceration and other criminal justice costs will be reinvested in Youth PROMISE programs.

The Youth PROMISE Act comports with scientific research on prevention, intervention, and adolescent brain development.

A growing and widely accepted body of neuroscience research reveals that the process of cognitive brain development, including the formation of impulse control and decision-making skills, continues into early adulthood—well beyond age 18.³ Relying on this research, the United States Supreme Court highlighted the inherent differences between juveniles and adults that should inform criminal justice policy:

As any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.⁴

Research also reveals that given sufficient support, the majority of children and youth involved in gang activity will “age out” of gang involvement through the simple process of maturation.⁵ Supporting youth with prevention and intervention services that foster positive growth and development is sound criminal justice policy.

The Youth PROMISE Act promotes US compliance with its treaty obligations under international law.

By valuing youth as assets, and focusing on the ability of youth to assume a constructive role in society, the Youth PROMISE Act comports with human rights principles and US treaty obligations under international law. Rather than adopting the discredited approach of stiffer penalties for youthful offenders, the Youth PROMISE Act instead emphasizes promising and evidence-based strategies that prevent and intervene in youth gang involvement, delinquency and crime, and promote rehabilitation. The Act is thus consistent with the International Covenant on Civil and Political Rights (ICCPR), a treaty the United States ratified in 1992. Article 14.4 of the ICCPR requires that governments shall “[i]n the case of juvenile persons ... take account of their age and

³Research Network on Adolescent Development and Juvenile Justice, MacArthur Foundation, “Less Guilty by Reason of Adolescence 3,” Issue Brief 3, http://www.adjj.org/downloads/6093issue_brief_3.pdf (accessed April 7, 2008).

⁴*Roper v. Simmons*, 543 U.S. 551, 561 (2005).

⁵Judith Greene and Kevin Pranis, Justice Policy Institute (JPI), “Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies,” July 2007, http://www.justicestrategies.net/files/Gang_Wars_Full_Report_2007.pdf (accessed April 7, 2008); and Steinberg and Scott, “Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,” *American Psychologist*, vol. 58 (2003), p. 1014. (“For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood”).

the desirability of promoting their rehabilitation.”⁶ The Youth PROMISE Act is consistent with US obligations under this treaty; the Act is designed to address and prevent juvenile delinquency and gang violence and promote rehabilitation by providing vulnerable communities with programs to promote positive youth development.

The Youth PROMISE Act is also consistent with the internationally recognized principles articulated in the United Nations Convention on the Rights of the Child (CRC).⁷ Article 40 of the CRC provides: “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.” Although the United States has not yet ratified the CRC, it is a signatory. As such, the United States is obliged to refrain from actions which would defeat the treaty’s object and purpose.⁸

The Youth PROMISE Act is premised upon the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.⁹ The Act also focuses on the best interests of the child, and is thus in line with the CRC’s mandate that legislative bodies shall deem the best interests of the child a primary consideration.¹⁰

Human Rights Watch is pleased to support H.R. 3846, and urges you to co-sponsor and fully support this important legislation.

II. Human Rights Watch Opposes H.R. 3547, the Gang Prevention, Intervention, and Suppression Act

Human Rights Watch understands the desire to find effective measures to curtail gang violence, and agrees that perpetrators of violent crimes should be held appropriately accountable. Protecting communities from gang violence and responding to youth crime is, however, compatible with human rights principles and recognition of children’s unique vulnerabilities, diminished culpability, and capacity to reform. Federal gang legislation such as H.R. 3547, which would increase the already enormous federal prison population by creating unnecessary additional federal crimes and inappropriate sanctions—including an increased number of offenses for which children could be sentenced to life without parole—is not the solution.

⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, Article 14.4.

⁷ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

⁸ Vienna Convention on the Law of Treaties, May 23, 1969, entered into force on 27 January 1980, Art. 18. United Nations, *Treaty Series*, vol. 1155, p. 331.

⁹ The first 21 (out of a total of 23) findings in the Youth PROMISE Act highlight the importance of positive youth development and reintegration into society as effective criminal justice policy.

¹⁰ Article 3(1) of the CRC provides: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Sentencing Children to Life Without Parole Violates US Treaty Obligations.

H.R. 3547 increases the number of offenses for which children could receive sentences of life without parole.¹¹ Human Rights Watch opposes the sentence of life without parole for juveniles because it is cruel, inappropriate, and a violation of international law.

As the Supreme Court has acknowledged, there are fundamental differences between adults and adolescents, and the “culpability or blameworthiness” of an adolescent’s crimes are “diminished, to a substantial degree, by reason of youth or immaturity.”¹² As discussed above, cognitive brain development, including the formation of impulse control and decision-making skills, continues into early adulthood. The fact that juveniles are still developing their identity and ability to think and plan ahead means that even a heinous crime committed by a juvenile is not “evidence of an irretrievably depraved character.”¹³ While the crimes they commit cause undeniable suffering, juvenile offenders are not the “worst of the worst” and should not be subject to life without parole sentences. Moreover, Human Rights Watch estimates that 59 percent of the youth serving life without parole in the United States received this sentence *for their very first offense*—they had no juvenile or adult criminal record whatsoever prior to the offense that resulted in their life sentence.¹⁴

The United States is the world’s worst human rights violator in terms of sentencing youthful offenders to life without parole. Human Rights Watch has found that there are currently 2,417 persons in the US serving sentences of life without parole for crimes they committed as children. In contrast, there is *not a single youth* serving the sentence of life without parole anywhere else in the rest of the world.

International human rights law prohibits life without parole sentences for those who commit their crimes before the age of 18, a prohibition that is universally applied outside of the United States. Indeed, the United States’ practice of sentencing youth to die in prison is a violation of US obligations under two international treaties to which the United States is party: the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹⁵

The Human Rights Committee (the oversight and enforcement body for the ICCPR) has stated that “[t]he Committee is of the view that sentencing children to life sentences without parole is of itself not in compliance with article 24(1) of the Covenant.”¹⁶ Similarly, in March 2008, the Committee on the Elimination of Racial Discrimination (the oversight and enforcement body for ICERD) found that, in light of the racial disparities in the sentencing of youth to life without parole

¹¹ See Title I, Sec. 522(b)(1)(A) and Title II, Sec. 424(a)(1).

¹² *Roper v. Simmons*, 543 U.S. 551, 571 (2005).

¹³ *Ibid.*, at 570.

¹⁴ For more information, please see Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, October 2005, <http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> (a 2005 Human Rights Watch report on juveniles sentenced to life without parole throughout the United States), and Human Rights Watch, *When I Die They’ll Send Me Home: Youth Sentenced to Life Without Parole in California*, Vol. 20, No.1(G), January 2008, <http://www.hrw.org/reports/2008/us0108/us0108web.pdf> (a 2008 Human Rights Watch report on life without parole for juveniles in California).

¹⁵ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, adopted by the United States on November 20, 1994.

¹⁶ UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: United States of America,” CCCPR/C/SR.2395, July 27, 2006, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/od83f7fe89d83ed6c12571fb00411eb5/\\$FILE/Go644318.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/od83f7fe89d83ed6c12571fb00411eb5/$FILE/Go644318.pdf) (accessed April 7, 2008), para. 34.

in the US, “the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against [youth offenders], and review the situation of persons already serving such sentences.”¹⁷

The practice of sentencing children to life without parole also raises serious concerns under a third treaty ratified by the US, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁸ The Committee Against Torture (the oversight and enforcement body for CAT) has stated that life without parole sentences for youth “could constitute cruel, inhuman or degrading treatment or punishment”¹⁹ in violation of the treaty.

Increased federal sanctions to address gang crime are unnecessary and inappropriate.

Additional federal legislation to prosecute gang crime is unnecessary. Federal statutes such as the Racketeer Influenced and Corrupt Organizations (RICO) Act and conspiracy law have been used successfully for years to prosecute gang crime, and law enforcement officials have stated clearly and unequivocally that additional federal statutes would be duplicative and unnecessary.²⁰

Only a year ago, at a hearing on *Making Communities Safer: Youth Violence and Gang Interventions that Work*, Paul Logli, Chairman of the National District Attorneys Association, testified:

I don't need any more laws. I've got all the criminal laws I need in the state of Illinois. I don't need any more sanctions, the sanctions are plenty tough What I need is ... programs on the street that have staying power and that have credibility and that will work with people that I can refer people to. Because what I do have is the hammer. I have the coercion that might just make that person stick to a program. Whether you call it pulling levers or anything else, we make that decision whether they're worth working with or it's just time to warehouse them, and that's a real loss to society....

What helps us make those decisions is if we have available to us programs, many of which have been described here this morning, that give us alternatives, that show us that this person can be put in that anti-truancy program, if we can work with that family to get that person to go to school and to learn how to read and write, and how to develop job skills so that they can get a job. The most important thing for many of these people is to have a job so they can support a

¹⁷ UN Committee on the Elimination of Racial Discrimination, “Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America,” CERD/C/USA/CO6/, March 7, 2008, <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf> (accessed April 7, 2008), para. 21.

¹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, adopted by the United States in October 1994.

¹⁹ Committee Against Torture, “Conclusions and Recommendations of the Committee Against Torture: United States of America,” CAT/C/USA/CO/2, 25 July 2006, <http://library.uchastings.edu/library/Library%20Information/News%20and%20FAQ/CATreport.pdf> (accessed April 7, 2008), para. 35.

²⁰ Human Rights Watch has on file numerous examples of RICO gang prosecutions, law review articles citing RICO as an appropriate federal statute to prosecute gang crime, and statements and testimony of law enforcement officials and prosecutors in this connection. We would happy to make this information available upon request.

family and make their mortgage payments. But if we don't have programs that can bring them there, then my job is much tougher.²¹

Despite overwhelming evidence that excessive emphasis on prosecution and incarceration does not work to reduce crime, and is in fact counter-productive, H.R. 3547 would create a host of new sanctions and severely increased penalties, perpetuating the misguided policies that have resulted in a US prison population that has increased by a staggering 500 percent in the last 30 years.²² According to a recent report from the Pew Charitable Trust, more than one in every 100 adults are now in jail or prison in the United States.²³

Increasing penalties and sentences will also exacerbate the already stark racial and ethnic disparities in US incarceration rates. Figures from the Bureau of Justice Statistics (BJS) reveal that while one in 30 men between the ages of 20 and 34 is behind bars, the figure is one in nine for black men in that age group.²⁴

These stark racial disparities in US incarceration rates violate US obligations under ICERD. Although law enforcement practices do not violate the US Constitution as long as they are not the result of discriminatory intent, ICERD imposes no discriminatory intent requirement, and prohibits government policies that have racially discriminatory effects:

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, 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.²⁵

Thus, the Committee on the Elimination of Racial Discrimination has stated that "[i]n seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin."²⁶ ICERD proscribes race-neutral practices curtailing fundamental rights that unnecessarily create statistically significant racial disparities, even in the absence of racial animus. Under ICERD, governments may not engage in malign neglect, that is, they may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather, must act affirmatively to prevent or end policies with unjustified discriminatory impacts.²⁷

²¹ Paul Logli, Chairman of the National District Attorneys Association, "Prepared Testimony Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security," February 15, 2007, <http://judiciary.house.gov/OversightTestimony.aspx?ID=740> (accessed April 7, 2008).

²² "US: Record Numbers for World's Leading Jailer," Human Rights Watch news release, December 7, 2007, <http://hrw.org/english/docs/2007/12/05/usdom17491.htm>.

²³ The Pew Charitable Trusts, "One in 100: Behind Bars in America 2008," <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf> (accessed April 7, 2008).

²⁴ William J. Sabol, Ph.D., Heather Couture, and Paige M. Harrison, United States Department of Justice, Bureau of Justice Statistics (BJS), "Prisoners in 2006," December 2007, <http://www.ojp.usdoj.gov/bjs/pub/pdf/po6.pdf> (accessed April 7, 2008).

²⁵ ICERD, Art. 1(1) (emphasis added).

²⁶ ICERD, General Recommendation 14, Definition of Discrimination, U.N. GAOR, 48th Sess., Supp. No. 18, at 176, U.N. Doc. A/48/18(1993), para. 2.

²⁷ ICERD, Art. 2(1)(c): "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

In March 2008, the Committee on the Elimination of Racial Discrimination expressed concern, as it has done in the past, about racial discrimination in the US criminal justice system. “The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of [the United States], including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population.” The Committee called on the United States to “implement[] ... national strategies or plans of action aimed at the elimination of structural racial discrimination.”²⁸

It is impossible to justify the lengthier sentences and heightened penalties proposed in H.R. 3547, which threaten to exacerbate the already grossly disproportionate incarceration of racial minorities, when there are feasible and cost-effective alternative approaches to address and prevent gang involvement, crime and delinquency. While H.R. 3547 would increase prosecution and incarceration rates, funneling more young people into the juvenile and criminal justice systems, the Youth PROMISE Act would work to keep youth out of the system and prevent crime and gang violence from taking place.

For the foregoing reasons, Human Rights Watch opposes H.R. 3547 and urges you to do the same.

Thank you for your consideration, and please feel free to contact me if I can provide you with any further information.

Sincerely,

A handwritten signature in cursive script that reads "Carol Chodroff".

Carol Chodroff
Advocacy Director, US Program

²⁸CERD, “Concluding Observations: United States,” para. 20.