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**Reference:** e3013pdc**Date:** Monday, June 20, 2022**Type:** Human rights violation**Original:** English**Consent:** I am/we are the representative(s) of the alleged victim(s), and I/we have her/his/their consent**Related mandates**

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- arbitrary Detention
- health
- older persons
- torture

**Victims**

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**Name:** Phil Tomlin**Type:** Individual**Sex:** Male**Date of birth:** 25/03/1954**Victim is a child (under 18 years of age)?** No**Nationality:** United States of America**Address:**  
Limestone Country Prison**Other status:** Older person**Identity document number** AIS # 00235217

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**Submitted by**

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**Name:** The Initiative for a Just Society, Columbia University, New York**Type:** Group**Email:** beh2139@columbia.edu**Address:**  
435 West 116th Street, NewYork-10027**Describe the activities of the group/community, civil society or other entity:**

The Initiative for a Just Society engages in criminal defense and impact litigation and research at Columbia Law School. Representation of individuals sentenced to death in the United States is at the core of the initiative's work. The Initiative supports researchers, lawyers, and instructors who work at the intersection of emancipatory theory and practice. Members of the Initiative work directly with incarcerated clients, civil rights plaintiffs, and organizers on the ground in order to ensure close cooperation with the most vulnerable and those at the forefront of social justice work. Students at Columbia University are involved in all aspects of the Initiative's work.

**Contact persons of the group/community, civil society or other entity:**

Bernard E. Harcourt, Executive Director and Attorney-at-Law

**Disclosure**

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**Does the alleged victim(s) or group/community agree to have their name(s) disclosed in a letter that may be sent to the Government, or others, such as intergovernmental organisations including United Nations entities, businesses, military or security companies?**  
Yes

**Does the alleged victim(s) agree to have their name(s) appear in a public report to the Human Rights Council?**  
Yes

**Please confirm that the victim, or the victim's family, or the victim's legal representative is in agreement that the case can be dealt with through the regular procedure of the Working Group**  
Yes

**The identity and the details of the victim's case can be communicated to the Government concerned**  
Yes

**The identity of the victim can be published in the communications report to the UN Human Rights Council**  
Yes

**Case details**

**Country where the incident allegedly occurred/is occurring/might occur:** United States of America

**District:** Harvest, Limestone County, Alabama

**Please provide a short chronological summary of the incident: what happened; when (date/time); who was involved?**

The case involves Phil Tomlin, a 67-year-old man who has been incarcerated for 44 years by the State of Alabama, U.S.A. After spending 27 years on Alabama's death row, he was sentenced to life imprisonment without the possibility of parole ("LWOP") and is now serving that sentence. Mr. Tomlin is incarcerated at the Limestone Correctional Facility in the State of Alabama. Mr. Tomlin is not eligible for any type of parole or release or review and has no hope of ever leaving the prison. Mr. Tomlin is not eligible for medical parole or compassionate release and Alabama's governor does not have the power to grant clemency or otherwise transform Mr. Tomlin's LWOP sentence. Under Alabama law, there is no hope whatsoever for Mr. Tomlin to ever be paroled.

Mr. Tomlin was sentenced to death in 1978 at age 22 and spent 27 years on death row at Holman Correctional Facility before being resented to life without the possibility of parole in 2004. He has been serving that sentence now for 17 years. After decades of litigation, the Alabama Supreme Court recognized that Mr. Tomlin's conviction had never been eligible for the death penalty. The Alabama courts also recognized that Mr. Tomlin had been a "model prisoner," had provided parental support for his children, had no reputation or history of violent behavior, and had sought to improve himself spiritually and educationally.

After being resented, Mr. Tomlin sought post-conviction relief in the state and federal courts. In 2007, he filed a state habeas corpus challenge that was denied in 2008, with his appeals rejected by higher courts in 2009 and 2010. He then filed a federal habeas corpus petition in 2013, arguing that Alabama's laws at the time of his crime only allowed for a possible sentence of life, not life without the possibility of parole. The United States District Court for the Southern District of Alabama denied his challenge in 2018. Mr. Tomlin sought certiorari from the United States Supreme Court based on the Eleventh Circuit's extraordinarily low rates of granting appellate review in non-capital cases but was denied in 2020. Mr. Tomlin has therefore exhausted all available opportunities for a remedy.

Mr. Tomlin is 67 years old and has chronic back injuries. He has had COVID-19 three times and reports that no one wears masks in Limestone Correctional Facility, where he is incarcerated. In addition to the COVID-19 pandemic, the prison recently experienced a tuberculosis outbreak. Mr. Tomlin also lives in fear of a recent rise in stabbings. Because of short staffing at the prison as a result of COVID-19, the correctional officers stay in secure areas and only emerge after a violence incident has occurred, often taking a long time to get there.

Despite his model behavior, his age, and his medical issues, Mr. Tomlin currently has no hope of release. Alabama's laws exclude him from compassionate release because he was convicted of a capital offense, so he will never be granted parole, no matter how elderly he gets or how severe his medical problems become.

**Are there witnesses to the incident?** Don't know

**Is there evidence or substantiating information concerning the incident?** Don't know

**Has the incident been reported to the relevant authorities?** Yes

**Has the Government taken action to prevent or investigate the incident, punish the perpetrators, or ensure compensation to the alleged victim(s)?** No

**Is this case under consideration by any other international or regional body?** Don't know

**arbitrary Detention****Date of arrest**

29/01/1977

**Place of arrest**

Humble, Texas

**What reasons were given for the arrest?**

Capital murder

**What was the legal basis for the arrest?**

Capital murder

**Date of detention arrest**

29/01/1977

**Duration of the detention**

45 years

**Place(s) of detention (indicate any transfer and the current place of detention)**

Holman Prison, Alabama; Limestone Prison, Alabama

**Reasons given for the detention**

Convicted and sentenced initially to a capital sentence which was thereafter commuted to Life Imprisonment Without Parole for the murder of two persons

**Legal basis for the detention**

Convicted and sentenced initially to a capital sentence which was thereafter commuted to Life Imprisonment Without Parole for the murder of two persons

**What are the reasons why you believe the deprivation of liberty is arbitrary?**

Mr. Tomlin's detention is arbitrary because it violates Article 5 of the Universal Declaration of Human Rights' (UDHR) prohibition against "cruel, inhuman and unusual treatment or punishment" and ensuing right to hope. This, in accordance with the meaning of "arbitrary" detention adopted for the purpose of determining the mandate of the UN Working Group on Arbitrary Detention. The test to determine whether a detention is arbitrary is a cumulative one: the detention must be in accordance with domestic and international law. Mr. Tomlin's detention outstandingly fails the second part of the test. It violates his right to rehabilitation and his right to hope as recognized by international law. In 1991, the former UN Commission

on Human Rights considered as “arbitrary” those deprivations of liberty “which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States.” The Commission further clarified that a deprivation of liberty is not arbitrary if in accordance with domestic law and with other relevant international standards and instruments accepted by the States concerned. In this case, Mr. Tomlin’s detention is not in accordance with the UDHR’s standards. In 2015, the UN General Assembly confirmed that “deprivation of liberty is regarded as ‘unlawful’ when it is not on such grounds and in accordance with procedures established by law. It refers to both detention that violates domestic law and detention that is incompatible with the UDHR, general principles of international law, customary international law, international humanitarian law, as well as with the relevant international human rights instruments accepted by the States concerned.” By depriving Mr. Tomlin of any chance of being released and reintegrating society, the State of Alabama violates his internationally protected rights to dignity and rehabilitation. A prisoner’s right to dignity implies his right to rehabilitation. Indeed, this right of dignity at the cornerstone of international law ties in with Article 10(3) of the ICCPR which states that the purpose of the carceral system is the “reformation and social rehabilitation” of prisoners. In its General Comment No. 21 (1992) on Article 10, the Human Rights Committee stated that no prison system should see its purpose only in retribution; it should seek the reformation and social rehabilitation of the prisoner. In other words, every prisoner should have the opportunity to be rehabilitated back into society and lead a law-abiding and self-supporting life, irrespective of the offense that has been committed. In 2015, the Special Rapporteur on Torture, Dr. Juan Mendez, also highlighted the importance of rehabilitative measures in prison in his report discussing LWOP for juvenile offenders – and reminded back then that the United States was the only country to sentence children to LWOP. The European Court of Human Rights (ECHR) consecrated the existence of a “right to hope” for lifers – a hope to be released, no matter how remote this hope might be. In many decisions, the Court held that an irreducible sentence like Mr. Tomlin’s violates Article 3 of the European Convention on Human Rights which prohibits torture and inhuman or degrading treatment or punishment. Significantly, in *Vinter and Others v. United Kingdom*, Judge Power-Forde – in her concurring opinion – held that the prohibition against inhuman and degrading punishment carries with it a “right to hope” for release. In sum, if the detention is not in accordance with international standards, it is arbitrary. Mr. Tomlin’s detention is an imposition of a life sentence without any prospect of release which is contrary to the prohibition against cruel, inhuman and degrading treatment or punishment and ensuing right to hope.

**Are the reasons for the deprivation of liberty authorized by the law?**

Yes

**If yes, please elaborate**

He has been sentenced by a court to Life Imprisonment without Parole, which has been recognized in international law to be cruel and inhuman. It is essential to look into the scenario around LWOP in the United States. The number of people currently serving LWOP in the United States and, in Alabama in particular, is dramatic. By way of background, 83% of people serving LWOP worldwide are in U.S. prisons. Between 1992 and 2016, the LWOP population rose 328% in the United States and, in 2020, the number of people serving sentences that will keep them imprisoned until they die is higher than ever before. Indeed, almost 56,000 people nationwide are now serving life imprisonment without parole – an increase of 66% since 2003, according to The Sentencing Project, a reference nonprofit that advocates for decarceration. Life without parole is slowly replacing the death penalty, as nationwide there are 2,500 persons currently on death row. As of August 2021, 1,489 people were serving LWOP in the State of Alabama under the custody of the Alabama Department of Corrections. Alabama thus ranks among the five highest states in the nation for the percentage of incarcerated people who are serving either LWOP, life with the possibility of parole or sentences of at least 50 years. While the death penalty is increasingly becoming less accepted and popular with Americans, life sentence without parole is a way to displace capital punishment and still condemn a person to die behind bars. The U.S. public defense system has, nevertheless, not been able to catch up to this shift. While there are minimum qualifications for lawyers representing people facing capital punishment as well as requirements to be provided with an investigator and a mental health expert, only 11 states report having minimum qualifications for lawyers representing impoverished people facing a life sentence. Most states have no rules; life in prison without parole cases are almost treated as other felonies. Additionally, people facing a life sentence have far fewer chances to appeal than those facing capital punishment and their cases draw far less scrutiny and civil society attention. Many legal experts thus have argued that people facing life without parole should receive the same level of representation as those facing the death penalty.

**Are the reasons for the deprivation of liberty linked to the exercise by the victim of her/his human rights or fundamental freedoms?**

No

**If applicable, do you know if the right to a fair trial has been respected? (for example : the right to defend yourself and the right to legal assistance; the right to be presumed innocent until proven guilty according to law; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; the right when charged with a criminal offence to be informed of the nature and cause of criminal charges brought against them; etc.)**

No

**If yes please elaborate**

Mr. Tomlin is currently sentenced to LWOP in violation of his right to fair notice and due process guaranteed by the United States Constitution. At the time of the offense on January 2, 1977, the controlling Alabama capital statute (the “1975 Alabama Death Penalty Act”) did not extend to the conduct and circumstances alleged against Mr. Tomlin because the capital statute did not include, as an aggravating factor, double intentional homicide. At that time—in 1977—Mr. Tomlin could not be charged under the 1975 Alabama Death Penalty Act, which was the exclusive vehicle for a sentence of death or of life imprisonment without parole. Mr. Tomlin could not be indicted under that capital statute. As a result, he could only be indicted for two murders under the ordinary homicide statute, with a maximum sentence of two life sentences with the possibility of parole. Thus, Mr. Tomlin did not have fair notice under the Due Process Clause of the United States Constitution that he could be sentenced to life imprisonment without parole. It was only as a result of subsequent judicial decisions by the Alabama Supreme Court—decisions that judicially rewrote the capital statute—that Mr. Tomlin became death eligible. Those judicial decisions, however, were entirely unforeseeable at the time of the offense and prosecution in 1977 and 1978. And they have been overruled by the Alabama Supreme Court. They were “unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue.” *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964). Due process would prohibit the retroactive application of any such judicial rewritings of the 1975 Act.

**Can you indicate if complaints were made to the administrative or judicial authorities, or remedies sought with respect to this particular case ?**

Yes

**If yes please elaborate**

His appeals were rejected

**torture**

**Please indicate where the person was seized (city, province, etc.) and location at which the torture was carried out, if known.**

Limestone County Prison

**Indication of the forces carrying out the torture.**

He faces torture by continuing to be in an environment where he has no proper access to health care along with his right to hope being taken away by the imposition of life imprisonment Without Parole

#### **Description of the form and methods of torture used and any injury sustained as a result.**

Limestone prison faces a serious—but not new—issue of overcrowding. Mr. Tomlin is currently detained in a two-floors dorm in which there are about 80 people. 42 people are detained on the first floor made of 21 sets of double bunks, and three showers which are shared by all the occupants. Mr. Tomlin is on the second tier, where there are individual cells, with two people per cell and with its own toilet and sink. Within this configuration, little to no social distancing is followed. In a report by the UN Officer of the High Commissioner on Human Rights, the Committee reminded that prison overcrowding had significant human rights implications. Among others, prison overcrowding can amount to ill-treatment or even torture as incarcerated people can be denied appropriate and sufficient access to medical care, nutrition, adequate sanitation, and safety. Moreover, NGOs worldwide have emphasized how overcrowding in prisons threatens an individual's right to privacy exacerbating mental health concerns, and rates of self-harm incidents. Violence rates are also negatively impacted by overcrowding compromising the effectiveness of rehabilitation programs and educational and vocational training. Alabama's prisons have been under scrutiny for decades, well-known for their use of excessive force by prison guards and widespread violence. Limestone Prison has a severe problem of understaffing. When Mr. Tomlin sought help for his shoulder injury, he had to find two guards that would accompany him to obtain the proper care he needed. The aforementioned logistical requirements for transporting people sentenced to LWOP cannot be easily met due to understaffing hindering overall quality of life at Limestone. Staff was increased by only 25 officers between 2018 and 2020 which corresponds to "less than 1.5% of the number of officers that the facility is required to add by 2022" according to attorneys from the Southern Poverty Law Center. This issue has resulted in widespread weapons made from various sharpened metal scraps and increased violence. Mr. Tomlin reported that his roommate had been stabbed in the dayroom. Understaffing also results in a lack of an appropriate and timely response to altercations. Further increasing the risk of conflict, the overcrowded facility forces people that have had prior conflicts or are not supposed to cohabitate to share the same spaces. Mr. Tomlin has ultimately also flagged a concern with the presence of a lot of gang members at Limestone facilitated by the multiple transfers of entire groups of incarcerated people. Thus, Mr. Tomlin's physical integrity is on the line. In light of the above, the conditions of Mr. Tomlin's incarceration in Limestone Prison, Alabama, violate his internationally protected rights to life, physical integrity and health.

#### **Was the alleged victim(s) examined by a doctor at any point during or after victim's ordeal? If so, when? Was the examination performed by a prison or government doctor?**

Mr. Tomlin requires different sorts of medical attention: besides the vital medical care necessary when exposed to two deadly diseases, he suffers from a pierced nerve resulting from an eight-year-old back injury, and requires shoulder surgery (for which he has recently obtained approval). Whilst in Limestone, access to proper health care is essentially nonexistent. In the beginning of the pandemic, those diagnosed with COVID-19 were kept in the hospital. Now, they are taken to administrative segregation ("lockup"). There is a gap of thirty days between sick calls. At first prisoners are only met by a nurse and if their condition is found to require a doctor, it takes further two to three weeks for a visit with a doctor. If there is an emergency (broken bones, open wound), the person in need of medical attention first has to walk over to the warden's office to receive permission. While the Nelson Mandela Rules 33 and 34 prohibit the use of restraint unless there are specific circumstances to justify its use, at Limestone, people sentenced to LWOP are permanently cuffed and chained at the waist, contrary to other prisoners. Lifers also need to be accompanied by two guards when they are, for instance, transported to the hospital, while others are transported by private security officers. This distinction ultimately results in lengthier timelines for people with LWOP sentences, like Mr. Tomlin, to obtain adequate access to medical care as it requires more logistics efforts in an already understaffed facility.

#### **Was appropriate treatment received for injuries sustained as a result of the torture?**

No

#### **Perpetrators**

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**Is the identity/occupation of the alleged perpetrator(s) known?** Don't know

**Were the alleged perpetrators State agents or believed to be State agents?** Yes

**If the alleged perpetrators were State agents, were they acting in their official capacity?** Yes

Officers and administration of Limestone County Prison and State administration

#### **Additional information**

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While submitting the complaint earlier with reference no. 1rdoshoh, an inadvertent error had been made with regard to the country of the complainant. Due to the error, the complaint is being re-submitted.