

OEA/Ser.L/V/II
Doc. 460
November 19, 2021
Original: English

REPORT No. 448/21

CASE 12.866

REPORT ON MERITS

JUVENILE OFFENDERS SENTENCED TO LIFE IMPRISONMENT
WITHOUT PAROLE

UNITED STATES OF AMERICA

Approved by the Commission at its Session No. 226 on November 19, 2021

Cite as: IACHR, Report No. 448/21. Case 12.866. Merits. Juvenile Offenders sentenced to Life Imprisonment without Parole. United States of America. November 19, 2021.

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I. INTRODUCTION

1. On February 23, 2006, the Inter-American Commission on Human Rights (the “Inter-American Commission”, “Commission” or “IACHR”) received a petition¹ submitted by the American Civil Liberties Union of Michigan (“ACLU”) and the Columbia Law School Human Rights Institute (hereinafter “the petitioners”)², alleging the international responsibility of the United States of America (the “State” or “the United States”) for the violation of the rights of 32 juveniles in the state of Michigan who were tried as adults and sentenced to life imprisonment without parole for homicide related offenses.³

2. On May 3, 2012, the Commission notified the parties of the adoption of its admissibility report,⁴ in accordance with Article 37.4 of the IACHR’s Rules of Procedure and placed itself at the disposition of the parties to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACHR’s Rules to present additional observations on the merits. All the information received by the Commission was duly transmitted to the parties.⁵

II. POSITIONS OF THE PARTIES

A. Petitioners

3. The petition was submitted on behalf of 32 named individuals serving a life sentence without any possibility of parole, for crimes committed in the state of Michigan before age 18. The petitioners claimed that in Michigan and many other states, adolescents can be tried in adult courts and sentenced to life without parole. It is asserted that sentencing of the alleged victims was done without any consideration of their statuses as children or the circumstances of their offenses.

4. The petitioners alleged that the application of Michigan’s legislation violated Articles I, VII, XVIII, XXIV, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration”). In this regard, they claimed firstly, that the State did not guarantee specialized proceedings and court trials according to the rights of children and adolescents, by failing to consider their age, mental capacity and culpability.

5. Secondly, that the State did not guarantee differential treatment between adolescents under the age of 18 and adults in accordance with substantial equality and their different needs, taking into account that a difference is drawn between adolescents and adults in other areas. According to the petitioners, Michigan is one of 13 states that have no age limit for life sentences without possibility of parole. To this end the petitioners provided that in 1988 Michigan changed its law, allowing prosecutors to directly file charges for certain crimes against individuals 16 and under in adult criminal courts. However, it required that judges determine whether the adolescents should be sentenced as juveniles or adults following a conviction.

6. Thirdly, they alleged that the State failed through the courts, to consider the age and diminished responsibility of children and adolescents, the difference in ability between children and adolescents and adults to understand and participate in the proceedings and defense counsel’s lack of ability to represent minors in these cases. Fourthly, that the State failed to give the alleged victims an opportunity to present testimony relating to the inappropriateness of life imprisonment without parole, since every time they were treated as adults, this sentence was automatic. In this regard, the petitioners argued that the State again violated the right to special protection by not opting for a prison sentence of the shortest possible length, and

¹ Petitioner correspondence to the Commission dated June 10, 2010.

² Listed persons: Deborah LaBelle, JoAnn Kamuf Ward, Peter Rosenblum, Steven Macpherson Watt, Allie Frankel.

³ The 32 alleged victims are identified below in section III of the report.

⁴ IACHR, Report No. 18/12, Petition 161-06. Admissibility. Juvenile Offenders Sentenced to Life Imprisonment Without Parole, United States, March 20, 2012. The IACHR declared admissible Articles I, II, VII, XII, XVIII, XXV and, XXVI of the American Declaration. It declared the petition inadmissible in relation to Article XXIV of the Declaration.

⁵ Final observations regarding the merits of the case was submitted via correspondence dated September 4, 2012 by the Human Rights Program, American Civil Liberties Union; American Civil Liberties Union of Michigan; and the Human Rights Institute, Columbia Law School.

for having sentenced the alleged victims to a punishment which controverts the aims of rehabilitation which should be the goal of the legislation applicable to adolescents who breach criminal laws.

7. The petitioners asserted that in 1996, Michigan eliminated post-conviction sentencing hearings for certain crimes, including aiding and abetting a homicide, felony murder and murder. Those particular crimes carry a mandatory sentence, and the sentencing judge could not consider any individual factors in sentencing and were required to impose a life without possibility of parole sentence. Therefore, the adolescents convicted in adult criminal proceedings did not benefit from the consideration of their juvenile status, at any stage of the proceeding from initial criminal complaint through sentencing and incarceration, post-1996.

8. The petitioners argued that, given the near universal ratification of the Convention on the Rights of the Child and its express prohibition on life imprisonment without parole and obligations that incarceration be a measure of last resort for adolescents, the State has violated customary international law.

9. It is asserted that sentencing the alleged victims to life without parole violates the right to special protection and constitutes inhumane treatment and cruel, infamous, or unusual punishment with no consideration given to the vulnerability, immaturity, and consequently, the diminished moral and legal responsibility of minors. The petitioners stated that the alleged victims were placed in adult facilities as adolescents upon conviction and sentence, and that in general, some of the alleged victims' detention conditions violate the Declaration. They alleged that, by incarcerating them in adult prisons, in some cases in maximum security wings where they remain in solitary confinement and where, given their vulnerability, they are at greater exposure to sexual attacks or to other forms of violence, as well as suffering from profound depression, and in some cases, suicide attempts. In particular, it is alleged that the State is responsible for the disproportionate moral and psychological harm that the sentence causes to minors.

10. The petitioners stated that these violations were compounded by the consequent omission by the State to provide the alleged victims with opportunities for their rehabilitation, education and with the facilities for their sustained good health. With respect to education and rehabilitation, the petitioners explained that, in order to be able to gain paid work or a vocational program within the prison, the inmates in Michigan are required to pass the General Educational Development Test and that the alleged victims were denied access to this test due to the duration of their sentences. They also added that, with respect to health, the mental health services directed at the alleged victims are derisory.

11. The petitioners further stated that the alleged victims were not provided with an opportunity to effectively revise or appeal their sentences, given that challenges to the sentences condemning the alleged victims to life imprisonment without parole had no reasonable possibility of success in accordance with federal and state laws, particularly the jurisprudence of Michigan. Specifically, that the United States Supreme Court of Justice has held that, as a punishment, life imprisonment without parole is not unconstitutional,⁶ and that federal appeals courts⁷ and Michigan state appeals courts⁸ have decided that sentencing minors to life imprisonment without parole does not violate the Eighth Amendment to the Constitution of the United States or the Constitution of Michigan.

12. Moreover, it is claimed that there was no realistic, adequate, or effective measure at the time that would permit a substantive examination of the alleged victims' cases, taking into account that they were adolescents. The petitioners claimed that the state's lack of effective remedies is evidenced by the unsuccessful challenges to the constitutionality of the alleged victims' sentences to life without parole.⁹ The constitutional challenges were based on the argument that the Eighth Amendment of the United States Constitution prohibits a sentence of life without the possibility of parole for an adolescent under the age of 18.

⁶ *Harmelin v. Michigan*, 501 U.S. 957 (1991).

⁷ *Harris v. Wright*, 93 F.3d 581 (9th Cir. 1996), *Rodriguez v. Peters*, 63 F.3d 546 (7th Cir. 1995) and *Foster v. Withrow*, 159 F. Supp. 2d 629 (S.D. Mich. 2001), aff'd 42 Fed.Appx. 701 (6th Cir. (Mich.) July 30, 2002).

⁸ *People v. Launsbury*, 217 Mich App, 358, 551 N.W. 2d 460, 463 (1996) and *People v. Jarrett*, 1996 WL 33360397 (Mich. App.) at *3, appeal denied 454 Mich 921 (1997).

⁹ Petitioner correspondence to the Commission dated September 26, 2011.

13. Finally, the petitioners highlighted that there was notable racially disparate application of the sentences and provide to this end that in the State of Michigan, in 2006, there were 307 juvenile offenders sentenced to life imprisonment without parole, of whom 211 belonged to ethnic minorities, overwhelmingly African-Americans. Further, the petitioners claim a lack of access to adequate counsel for the alleged victims.

14. In 2010 the petitioners informed that, since the submission of the initial petition, an additional 300 juvenile offenders were serving life sentences without parole within the state of Michigan and claim that the relief sought in the petition would by extension provide relief to these juveniles.¹⁰ The petitioners mentioned that these were individuals under 18 years of age who were treated as adults and sentenced to life imprisonment without parole for having committed the crime of homicide under the same judicial framework. The petitioners also informed that 62 of these individuals have served more than 25 years in prison for offenses committed while they were adolescents; two have served more than 50 years and another 2 have died in prison. It is claimed that many others are in ill health with terminal prognosis. The petitioners also informed that 23 children were subjected to being sentenced to life imprisonment without parole.¹¹

B. State

15. The State argued that sentencing juveniles to life imprisonment without parole does not represent a violation of the American Declaration. It submitted that the petitioners have made general claims with respect to the law without referencing facts that demonstrate harm caused and, consequently, a violation of the American Declaration. The State asserted that, in accordance with Article 34 of the Commission's Rules of Procedure, a petition must include facts that tend to establish a violation of the American Declaration. The State also argued to this end that some of the alleged victims had not been sentenced at the time of the filing of the petition. Further, that the petitioners had not filed a valid petition with respect to 27 of the 32 alleged victims, since they had not exhibited the corresponding information.

16. They also highlighted that, although the petitioners had referred to violations of Articles I, VII, XVIII, XXIV, XXV, and XXVI of the American Declaration, their allegations are based on a mistakenly broad interpretation of those Articles, as well as their arguments resting on a systematic and erroneous analysis of the applicable international law. The State further contended that the petitioners rely on the judgments and opinions of the Inter-American Court of Human Rights, which it claims are not binding on the United States and are, in some cases, along with the international law referenced, not within the jurisdiction of the Commission to apply.

17. With respect to the reference of international law and custom, the United States highlighted that it had not ratified the Convention on the Rights of the Child, in part, due to the prohibition of sentencing minors to life imprisonment without parole that is included in Article 37. The State asserted that, for a customary rule of international law to exist, there must be a uniform and widespread practice of States, as well as their sense of legal obligation or *opinio juris*, which has not been demonstrated by the petitioners in this case. The State added that, even if such a rule existed, it would not be binding on the United States, since it has consistently reserved its right to sentence minors to life imprisonment without parole when they commit serious breaches of criminal laws, and thus has continuously objected to the practice having acquired the status of obligation.

III. FINDINGS OF FACT

A. Relevant legal framework and jurisprudence regarding juvenile justice in the United States

18. Prior to 1988, charges against children under the age of seventeen were required to be brought before the juvenile court. Prosecutors had to request via judicial waiver that children aged fifteen or sixteen be transferred from juvenile court to be tried before the circuit court (adult court). To grant such a waiver, a judge must decide whether it served the best interest of the child and the public. The decision was based on the seriousness of the offense, the juvenile's maturity and "pattern of living," prior juvenile record, whether

¹⁰ Petitioner correspondence to the Commission dated June 10, 2010.

¹¹ Petitioner correspondence to the Commission dated June 10, 2010.

the juvenile would be amenable to rehabilitation in the juvenile system, and consideration of the public safety and welfare¹². Children under fifteen could never be transferred to the circuit court for trial¹³. The petitioners alleged that Damion Todd's case and Henry Hill's case fit under this premise by reason of age and offense committed respectively.

19. In 1988, an automatic waiver was created allowing prosecutors to charge fifteen and sixteen-year-olds with certain crimes in circuit court. If convicted, a hearing would be held to determine whether a juvenile or adult sentence would serve the best interest of the child and the public based on the same factors as the judicial waiver but evaluated by a circuit court judge. There were only two sentencing options for first degree murder, which were commitment to a juvenile facility until age nineteen, or mandatory life without possibility of parole¹⁴. The petitioners alleged that Barbara Hernandez and Kevin Boyd's case illustrate this scenario.

20. In 1996, the automatic waiver provision was broadened to include fourteen-year-olds charged with a range of offenses including homicide¹⁵. Further, all juveniles tried in the circuit court were required to be sentenced as adults, and therefore subject to the mandatory sentence of life without parole for first-degree murder¹⁶. A mechanism was also created whereby juveniles of any age could be tried in juvenile court with adult-like proceedings, under a process called "designation"¹⁷. If the child was found guilty of first-degree murder, a judge would have three options available; commit the child to a juvenile facility until the age of twenty-one, sentence the child as an adult to life without parole, or suspend adult sentencing and send the child to a juvenile facility with the determination of the appropriateness of adult sentencing to be done at a later date¹⁸. The petitioners allege that Patrick McLemore and other victims referenced in the petition fit under this premise.

21. In 2010, in *Graham v. Florida*, the United States Supreme Court held that the Eighth Amendment categorically prohibits life-without-parole sentences for children who commit "non-homicide" crimes.¹⁹ In such cases, states must provide juveniles with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." In concluding that children who commit non-homicide crimes may not receive life without parole, the Court reasoned that "[t]he age of the offender and the nature of the crime each bear on the analysis."²⁰

22. In 2012, in *Miller v. Alabama*, the U.S. Supreme Court held that mandatory life-without-parole sentences violate the Eighth Amendment when imposed on children.²¹ Under *Miller*, children facing the possibility of life-without-parole sentences are entitled to "individualized sentencing," and the sentencer must give mitigating effect to the characteristics and circumstances of youth.²² The case unlined that mandatory life without parole for a juvenile precludes consideration of chronology of age, and "hallmark features" such as immaturity, impetuosity, and failure to appreciate risks and consequences; as well as incompetencies

¹² Mich. Comp. Laws 712A.4 (1972).

¹³ American Civil Liberties Union of Michigan, Report prepared by Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Anna Phillips, Research Coordinator, and Laural Horton, Research Assistant, 'Second Chances, Juveniles Serving Life Without Parole in Michigan Prisons', 2004.

¹⁴ American Civil Liberties Union of Michigan, Report prepared by Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Anna Phillips, Research Coordinator, and Laural Horton, Research Assistant, 'Second Chances, Juveniles Serving Life Without Parole in Michigan Prisons', 2004.

¹⁵ Mich. Comp. Laws 712A.2a (2004).

¹⁶ Mich Comp. Laws 769.1 (2004).

¹⁷ Mich. Comp. Laws 712A.2d (2004).

¹⁸ American Civil Liberties Union of Michigan, Report prepared by Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Anna Phillips, Research Coordinator, and Laural Horton, Research Assistant, 'Second Chances, Juveniles Serving Life Without Parole in Michigan Prisons', 2004.

¹⁹ *Graham v. Florida*, 560 U.S. 48 (2010).

²⁰ Juvenile Sentencing Project. Overview of US Supreme Court Decisions. Available at: <https://juvenilesentencingproject.org/us-supreme-court-decisions/>

²¹ *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

²² Juvenile Sentencing Project. Overview of US Supreme Court Decisions. Available at: <https://juvenilesentencingproject.org/us-supreme-court-decisions/>

associated with being a youth like the inability to deal with police officers, prosecutors or attorneys.²³ In 2016, the U.S. Supreme Court held in *Montgomery v. Louisiana* that *Miller v. Alabama* applies retroactively to final convictions on collateral review.²⁴

23. On April 22, 2021, the US Supreme Court ruled in *Jones v. Mississippi* that *Miller* and *Montgomery* do not require the sentencer to make a separate factual finding of “permanent incorrigibility” before sentencing a juvenile offender to life without parole.²⁵

24. As of the day of the adoption of the present report, the United States remains the only country in the world to sentence individuals to life without parole for crimes committed before turning 18. At the beginning of 2020, 1,465 people were serving juvenile life without parole sentences in the United States. Twenty-five states, half of the states in the country, allow in their legislation life without parole for juveniles who committed homicide.²⁶

B. Juvenile justice in the state of Michigan

25. Under Michigan law recorded in 2004, a child as young as fourteen could be charged, tried, and sentenced to life without parole without an evaluation or assessment of how their age could affect culpability, rehabilitative capacity, cognitive ability, or public safety concerns. Children aged fourteen to sixteen were eligible for juvenile treatment if the prosecutor elects to trial in a juvenile court and does not request a transfer. Seventeen children aged seventeen were not eligible for juvenile treatment. Children aged thirteen and younger could be sentenced to life without parole through designation procedures²⁷. The petitioners allege the cases of Matthew Bentley and T.J. Tremble fit under this category.

26. In response to the Supreme Court’s decision in *Miller*, the Michigan state legislature enacted Public Act No. 22 in 2014 which amended its statutory scheme as follows:²⁸

(2) The prosecuting attorney may file a motion under this section to sentence a defendant described in subsection (1) to imprisonment for life without the possibility of parole if the individual is or was convicted of any of the following violations:

[...]

(3) If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described in subsection (1)(a), the prosecuting attorney shall file the motion within 21 days after the defendant is convicted of that violation. If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section. The motion shall specify the grounds on which the prosecuting attorney is requesting the court to impose a sentence of imprisonment for life without the possibility of parole.

(4) If the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for in that subsection, the court shall sentence the defendant to a term of years as provided in subsection (9).

(5) If the prosecuting attorney files a motion under subsection (2) requesting that the individual be sentenced to imprisonment for life without parole eligibility, the individual shall file a response to the prosecution’s motion within 14 days after receiving notice of the motion.

(6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in

²³ *Miller v. Alabama*, 567 U.S. 460 (2012), at 478

²⁴ *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016).

²⁵ *Jones v. Mississippi* 593 U.S. __ (2021).

²⁶ Josh Rovner. Juvenile Life Without Parole: an Overview. The Sentencing Project. May 24, 2021. Available at: <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>

²⁷ American Civil Liberties Union of Michigan, Report prepared by Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Anna Phillips, Research Coordinator, and Laural Horton, Research Assistant, ‘Second Chances, Juveniles Serving Life Without Parole in Michigan Prisons’, 2004.

²⁸ State of Michigan. Act No. 22. Public Acts of 2014. Approved by the Governor on March 4, 2014.

Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

(7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.

(8) Each victim shall be afforded the right under section 15 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.765, to appear before the court and make an oral impact statement at any sentencing or resentencing of the defendant under this section.

(9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.

27. In 2016, following *Montgomery*, the state of Michigan started applying the new statute retroactively, so juveniles convicted of first-degree homicide offenses before *Miller* who received mandatory life-without-parole sentences are eligible for resentencing. At that time, 363 individuals were in Michigan prisons serving life without the possibility of parole for homicides they committed as juveniles.²⁹ Michigan prosecutors initially filed motions seeking the re-imposition of sentences of life-without-parole for 236 of these individuals.³⁰

28. As indicated in the section below, after the filing of a class-action lawsuit alleging that Michigan's revised sentencing scheme and parole system denied youth offenders a meaningful opportunity for release, federal courts held in the case of *Henry Hill et al v Gretchen Whitmer* that the Michigan statutory scheme was unconstitutional. The United States District Court held in 2019 that the state of Michigan, through its sentencing practices, violated the Eighth Amendment of the US Constitution when juveniles were sentenced to life without the possibility of parole.³¹ The US Court of Appeal reviewed the decision and held that the unique characteristics of youth warranted its consideration into sentencing decisions for juvenile offenders facing life imprisonment. Via the class action, the petitioners were to be re-sentenced and given the opportunity to be heard before the Parole Board.

29. On October 31, 2019, Governor Whitmer signed a bipartisan bill to raise the age for juvenile offenders from that of age 17 to 18. This legislation, known as "Raise the Age," took effect on October 1, 2021. Besides raising the age for juvenile offenders, it established funding to ensure that 17-year-olds can access services available in the juvenile justice system and prohibited the placement of youth under 18 in adult jails and prisons, providing access to age-appropriate rehabilitation.³²

30. The current law within the state of Michigan provides the following:³³

PROBATE CODE

712A.4 Waiver of jurisdiction when child of 14 or older accused of felony.
Sec. 4.

(1) If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense.

[...]

²⁹ Thomas Dawson. Sentencing the Juvenile Lifer. The Wayne County Experience. Michigan Bar Journal. January 2019, p. 36. Available at: <http://www.michbar.org/file/barjournal/article/documents/pdf4article3568.pdf>

³⁰ Henry Hill et al v Gretchen Whitmer et al, case no. 10-cv-14568 (2019). Class action settlement agreement available at: https://www.aclumich.org/sites/default/files/field_documents/jlwop-exhibit_2-settlement_agreement.pdf

³¹ Henry Hill et al v Gretchen Whitmer et al, case no. 10-cv-14568 (2019).

³² Raise the Age. Available at: <https://www.raisetheage.org/youth-in-prison-package>

³³ Michigan Legislature. Probate Code of 1939 (Excerpt), Act 288 of 1939. Available at: [http://www.legislature.mi.gov/\(S\(iiw2h2l4r2mb0dvkwomboyzs\)\)/mileg.aspx?page=GetObject&objectname=mcl-712a-4](http://www.legislature.mi.gov/(S(iiw2h2l4r2mb0dvkwomboyzs))/mileg.aspx?page=GetObject&objectname=mcl-712a-4)

(11) As used in this section, "felony" means an offense punishable by imprisonment for more than 1 year or an offense designated by law as a felony.

C. Facts of the case

1. Trial and sentencing

31. According to the information provided,³⁴ the 32 alleged victims were brought to trial for homicide related charges and sentenced to life without parole as follows:

- Henry Hill was sentenced on June 3, 1982, for felony murder committed at the age of 16.
- Barbara Hernandez was sentenced on August 10, 1991, for felony murder committed at the age of 16.
- Kevin Boyd was sentenced on May 28, 1996, for first degree murder committed at age 16.
- Damian Todd was sentenced on December 30, 1986, for homicide, assault and firearm charges committed at age 17.
- Patrick McLemore was sentenced on December 8, 1999, for felony murder committed at age 16.
- Matthew Bentley was sentenced on August 13, 1998, for felony murder committed at age 14.
- Maurice Black was sentenced on February 12, 2001, for felony murder committed at age 16.
- Larketa Collier was sentenced on April 13, 2004, for aiding and abetting first degree murder committed at age 16.
- Cornelius Copeland was sentenced on June 9, 2000, for felony murder committed at age 16.
- John Espie was sentenced on September 10, 1999, for first degree murder committed at age 16.
- Chavez Hall was sentenced on October 8, 1999, for felony murder committed at age 15.
- Maurice Ferrell was sentenced on June 4, 2002, for felony murder committed at age 16.
- Mark Gonzalez was sentenced on July 19, 2000, for open murder committed at age 15.
- Lamarr Haywood was sentenced on August 10, 1999, for first degree murder committed at age 15.
- Lonnell Haywood was sentenced on August 24, 1998, for first degree murder committed at age 16.
- Christopher Hynes was sentenced on September 13, 1999, for first degree murder committed at age 16.
- Ryan Kendrick was sentenced on July 19, 2000, for open murder committed at age 16.
- Cedric King was sentenced on November 24, 1998, for first degree murder committed at age 15.
- Eric Latimer was sentenced on January 11, 2002, for first degree murder committed at age 16.
- Juan Nunez was sentenced on April 20, 1998, for felony murder committed at age 16.
- Sharon Patterson was sentenced on April 13, 2004, for first degree murder committed at age 16.
- Gregory Petty was sentenced on March 12, 1999, for felony murder committed at age 15.
- Tyrone Reyes was sentenced on May 14, 1998, for open murder committed at age 16.
- Kevin Robinson was sentenced on June 7, 2001, for felony murder committed at age 15.
- T.J. Tremble was sentenced on December 5, 1997, for felony murder committed at age 14.
- Marlon Walker was sentenced on August 15, 2001, for felony murder committed at age 16.
- Oliver Webb was sentenced on May 6, 1999, for first degree murder committed at age 16.
- Elliot Whittington was sentenced on November 10, 1998, for first degree murder committed at age 16.
- Shytour Williams was sentenced on November 5, 1997, for first degree murder committed at age 15.
- Ahmad Williams was sentenced on May 25, 2001, for first degree murder committed at age 15.
- Leon Williams was sentenced on August 8, 2001, for first degree murder committed at age 16.
- Johnny Williams was sentenced on April 4, 2005, for felony murder committed at age 16.

32. According to the petitioners' allegations, not contested by the State: (i) Damian Todd and Henry Hill were tried and sentenced in the Circuit Court as adults by virtue of the grant of judicial waiver under Michigan state law prior to 1988, as opposed to within the juvenile court as would be required for persons of their age; (ii) Barbara Hernandez and Kevin Boyd were prosecuted in the circuit court under automatic waiver of the jurisdiction for juvenile court proceedings, under Michigan State law existing prior to 1996; (iii) an automatic waiver was granted allowing prosecutors to elect trial in circuit court for Patrick McLemore and the other alleged victims, to be tried as adults, under Michigan state law applicable for persons aged 14 and older; and (iv) Matthew Bentley and T.J, Tremble were tried and charged in the circuit court as adults prior to 2004.

³⁴ Information from Annex I of Petitioner response dated December 17, 2010, to state submission on non-exhaustion of domestic remedies.

2. Appeals and other remedies

33. According to the information provided,³⁵ all the alleged victims, save for Sharon Patterson, appealed before the Court of Appeals for the State of Michigan and were denied relief. In addition, twelve alleged victims submitted petitions for federal habeas corpus relief and were denied. Further, three alleged victims petitioned for pardon or commutation but were denied and four submitted petitions for pardon or commutation, which were pending a final decision at the date of submission of supporting documents.

34. According to the allegations and evidence supplied by the petitioners and not challenged by the State, the IACHR observes that on various occasions, the Court of Appeals for the State of Michigan has considered groundless appeals presented by persons below the age of 18 alleging that they had been unjustifiably treated as adults, or that the sentence of life imprisonment without parole imposed on them represented cruel or unusual punishment. The IACHR observes that in these judgments, the courts concluded that life imprisonment without parole was not prohibited by the Constitution of the State of Michigan, and that it did not represent cruel or unusual punishment. One of these judgments relates to the case of Matthew Bentley, one of the 32 alleged victims.³⁶

35. Further, the Commission notes that in 2006, the Supreme Court of Justice denied Matthew Bentley his petition for a writ of *certiorari*, which presented substantially similar questions to those advanced in the petition received by the Commission, including the allegation that life imprisonment without parole represents cruel or unusual punishment, and the allegation of the necessity of differential treatment for adults and persons below the age of 18.³⁷

3. Post-conviction relief

36. The American Civil Liberties Union sought a class action lawsuit against the State of Michigan, what will be referred to as the *Henry Hill* decision, over what it claimed as its unconstitutional practice of sentencing children to life imprisonment without parole, on behalf of persons who were sentenced accordingly for crimes committed when they were children.

37. Through the litigation process,³⁸ the United States District Court ordered that the state of Michigan to comply with the Supreme Court's decision in *Miller*.³⁹ This decision, which challenged the constitutionality of such a sentence for non-homicide related offenses, was used, along with the *Graham* decision,⁴⁰ as the basis to make the imposition of the same sentence unconstitutional where juveniles were convicted of homicide. Reasoning for the current matter was borrowed from the Supreme Court, within the *Miller* decision, which held that a sentencing scheme must provide juvenile offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."⁴¹

38. The United States Court of Appeal for the Sixth Circuit reviewed the federal court's decision thereafter,⁴² subsequent to the state of Michigan amending its statutory scheme to be in compliance with *Miller*. This review was in light of a challenge that Michigan's revised sentencing scheme and parole system denied youth offenders a meaningful opportunity for release. Further, the challenge also claimed that Michigan's policies and procedures that govern parole deprived the alleged victims, and all mentioned persons within the class

³⁵ Information from Annex I of Petitioner response dated December 17, 2010, to state submission on non-exhaustion of domestic remedies.

³⁶ *People v. Launsbury*, 217 Mich.App. 358, 464 (1996) (*the trial court's imposition of a life sentence without the possibility of parole on a sixteen-year-old does not constitute cruel or unusual punishment*); *People v. Jarret*. Unpublished opinion (1996) (*under these circumstances, defendant's sentence of life in prison is proportionate to the offense and the offender..., neither cruel nor unusual*) and; *People v. Bentley*. Unpublished opinion (2000) (*it cannot seriously be contended that life imprisonment for taking of another life is grossly disproportionate*).

³⁷ See *Bentley v. McKee*, 547 U.S. 1058 (2006).

³⁸ *Henry Hill et al v Gretchen Whitmer et al*, case no. 10-cv-14568 (2019).

³⁹ *Miller v Alabama*, 567 U.S. 460 (2012).

⁴⁰ *Graham v. Florida*, 560 U.S. 48, 75 (2010).

⁴¹ *Miller v Alabama*, 567 U.S. 460 (2012), at 479 (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)).

⁴² *Henry Hill, et al v. Rick Snyder, et al*, Case No. 17-1252 (2017).

action lawsuit, of good time and disciplinary credits and failed to provide access to programming, education, training, and rehabilitation opportunities. The court affirmed the District Court's decision that the Michigan statutory scheme was unconstitutional.⁴³ Via the class action, the alleged victims were to be re-sentenced and given the opportunity to be heard before the Parole Board.

39. On September 30, 2020, the ACLU in Michigan and the state Attorney General reached a class action settlement agreement over 163 juveniles who were still awaiting resentencing, including 17 of the alleged victims. The settlement creates a schedule for prosecutors to review the cases of those still awaiting resentencing and makes them eligible for rehabilitation programming in prison, which had been previously denied.⁴⁴

40. According to publicly available information, the class action settlement gave county prosecutors until February 15, 2021, to review the sentences and commit to a timeline for resentencing hearings for eligible individuals. On February 16, 2021, Oakland County Prosecutor filed resentencing notices for 22 individuals in accordance with the settlement. In 20 of those cases, the resentencing filings indicate a recommendation for a time-bound sentence and the individuals may be eligible for a parole hearing due to the application of days served credit. The other two filings indicate a recommendation that life without parole be reimposed.⁴⁵

IV. ANALYSIS OF LAW

A. Preliminary considerations⁴⁶

41. Article VII of the American Declaration requires that States guarantee to children the special protection, care and aid that they require.⁴⁷ In addition, the Inter-American Commission has stated that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration, which constitutes a source of legal obligation for all Member States of the OAS, may be drawn from the provisions of other prevailing international and regional human rights instruments, such as the American Convention.⁴⁸ Likewise, the American Convention provides special protection for the human rights of children, and characterizes the obligation of the State in the following terms: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."⁴⁹

42. Furthermore, the IACHR has found that those OAS Member States that have not yet ratified the American Convention are nevertheless bound by the *corpus juris* regarding children's rights, pursuant to the obligation of those States to comply with the rights of a child as mandated in Article VII of the American Declaration.⁵⁰ According to the IACHR, "[t]he concept of a *corpus juris* on the subject of children is an acknowledgement of the existence of a body of basic rules whose purpose is to guarantee the human rights of children and adolescents."⁵¹ The Commission has stated that the Convention on the Rights of the Child, which contains specific rules regarding the protection of children,⁵² is part of this *corpus juris* and must therefore be "taken into account when interpreting [...] Article VII of the American Declaration, which guarantees children's rights to special measures of protection on the part of their family, society and the State."⁵³

⁴³ Henry Hill, et al v. Rick Snyder, et al, Case No. 18-1418 (2018).

⁴⁴ Henry Hill et al v Gretchen Whitmer et al, case no. 10-cv-14568 (2019). Class action settlement agreement available at: https://www.aclumich.org/sites/default/files/field_documents/jlwop-exhibit-2-settlement-agreement.pdf

⁴⁵ The Oakland Press. Oakland County prosecutor grants 22 juveniles lifers resentencing opportunity. February 16, 2021. Available at: <https://www.theoaklandpress.com/2021/02/16/oakland-county-prosecutor-grants-22-juvenile-lifers-resentencing-opportunity/>

⁴⁶ IACHR, Children and Adolescents in the United States Adult Criminal Justice System. OAS/Ser.L/V/II.167, Doc 34. 1 March 2018, paras. 17 and 18.

⁴⁷ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 42.

⁴⁸ IACHR, Report No. 12/14, Case 12.231, Merits (Publication). Peter Cash. Commonwealth of The Bahamas, April 2, 2014, paras. 58, 60."; Advisory Opinion OC-10/89, para. 37; Advisory Opinion OC-16/99, para. 115.

⁴⁹ American Convention on Human Rights, Article 19.

⁵⁰ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 15.

⁵¹ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 16.

⁵² IACHR, Report No. 41/99, Case 11.491 (Honduras), Admissibility and Merits, Minors in Detention, March 10, 1999, para. 72.

⁵³ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 15.

43. The IACHR⁵⁴ and the Inter-American Court of Human Rights⁵⁵ have established that, in the Inter-American system, the definition of who is a child follows the principles of Article 1 of the United Nations Convention on the Rights of the Child, as well as a range of other international norms, guidelines and standards. Article 1 defines children solely based on age; the protections of the CRC are extended to “every human being below the age of eighteen years.”⁵⁶ Likewise, the European System for the Protection of Human Rights⁵⁷ and the African Human Rights System⁵⁸ apply the same objective age-based criterion to define children as persons under the age of 18.

B. Right of children and adolescents to a fair trial and to due process of law⁵⁹

1. General considerations on specialized juvenile justice systems and children’s protections in criminal proceedings

44. The IACHR reminds the United States that, pursuant to international human rights law, a specialized system of juvenile justice must be in place for youth accused of committing crimes, and the rules and regulations of such a juvenile justice system must be fully applied, without discrimination, to all persons under the age of 18 years.⁶⁰ All adolescents who stand accused of a crime are entitled to be tried in a special juvenile justice system, separate from the criminal justice system in which adults are tried, in order to ensure that their fundamental rights are afforded due protection and respect, in accordance with their age and developmental needs.⁶¹

45. The specialized juvenile justice system must take a holistic approach that is based on the two main objectives of the system: to hold the adolescent accountable for his or her criminal conduct, if found guilty; and to rehabilitate and reintegrate the adolescent into his or her family and community by means of specialized State assistance that draws on the support and involvement of that family and community.⁶²

⁵⁴ IACHR, Annual Report 1991: Chapter VI: Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights: Strengthening of the OAS in the area of Human Rights: Respect for the Rights of Minors, Section VI Recommendations. OEA/Ser.L/V/II.81, Doc. 6 rev. 1, 14 February 1992.

⁵⁵ I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, Chapter V.

⁵⁶ Convention on the Rights of the Child (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and Entry into force 2 September 1990, in accordance with Article 49).

⁵⁷ European Convention on the Exercise of Children’s Rights, Article 1 – Scope and object of the Convention “1. This Convention shall apply to children who have not reached the age of 18 years.”

⁵⁸ African Charter on the Rights and Well-being of Children, Article II – Definition of a child for the purposes of this Charter, a child means every human being below the age of 18 years.

⁵⁹ Article VII of the American Declaration establishes: All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Article XVIII of the American Declaration establishes: Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Article XXVI of the American Declaration establishes: Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

⁶⁰ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, paras. 36-38. IACHR, Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II, Doc. 78, July 13, 2011, para. 38.

⁶¹ IACHR, Report No. 41/99, Case 11.491 (Honduras), Admissibility and Merits, Minors in Detention, March 10, 1999, para. 99; and IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/SER.L/V/II, (July 13, 2011), para.57.

⁶² The IACHR has recognized that: “[t]he juridical framework for the protection of children’s human rights is not confined to Article 19 of the American Convention or Article VII of the American Declaration. Instead, for the purposes of interpretation, it also includes, inter alia, the 1989 Convention on the Rights of the Child (hereinafter “the CRC”), the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter “the Beijing Rules”), the 1990 United Nations Standard Minimum Rules for Non-custodial Measures (hereinafter “the Tokyo Rules”), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (hereinafter “the Havana Rules”), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (hereinafter “the Riyadh Guidelines”), as well as international human rights instruments that are general in scope. For the purposes of interpretation, that corpus juris also includes the decisions adopted by the United Nations Committee on the Rights of the Child (hereinafter, the “Committee on the Rights of the Child”) in furtherance of its mandate, such as General Comment No. 10 on children’s rights in juvenile justice. That perspective represents a significant step forward that reveals the existence of a common framework of international human rights laws on the

[continues ...]

46. Moreover, the Commission has highlighted that OAS Member States' policies on juvenile justice must fully ensure respect for the civil and political rights of youth who are charged with committing a criminal offense. These include the right to a fair trial, the right to effective counsel throughout any judicial proceedings, and the right to personal liberty, with incarceration used only as a last resort and only for the most serious offenses.⁶³

47. As set out by the Committee on the Rights of the Child, sentencing of children should take 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".⁶⁴ Moreover, pursuant to Article 40(4) of the Convention on the Rights of the Child, and in accordance with the Beijing Rules,⁶⁵ the severity and duration of a sentence, custodial or otherwise, must be determined with regard to the child's circumstances and the facts of the offense that was committed.⁶⁶

48. The sentencing of juveniles to life without parole has been found incompatible with the International Covenant on Civil and Political Rights, a human rights treaty ratified by the United States.⁶⁷ In its review of the United States' compliance under this treaty, the Human Rights Committee stated that the U.S. "should prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed, as well as the mandatory and non-homicide-related sentence of life imprisonment without parole."⁶⁸ A report by the United Nations' Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also highlighted the United States' breach of international law with regard to the extreme life sentences imposed on children in the United States.⁶⁹

49. The IACHR has found that, in cases of children, life imprisonment "makes it impossible to achieve the purposes that punishment under the juvenile justice system is intended to serve, such as the child's rehabilitation and his or her reintegration into society."⁷⁰ The Commission has echoed the Committee on the Rights of the Child when it recommended to the States parties that they eliminate all forms of life imprisonment in the case of offenders under the age of 18. In the Commission's view, the legal possibility of release is not *per se* sufficient to make a sentence of life imprisonment compatible with the international obligations the States have undertaken to afford children special protection, nor does it serve the purpose of punishment.⁷¹ Therefore, based on the *corpus juris* on the rights of the child and the IACHR's jurisprudence, the special protection of children recognized by the American Declaration under Article VII encompasses the rehabilitation and reintegration of juveniles into society.

[... continuation]

subject of children, as well as the interdependence, at the international level, of the various international systems for the protection of children's human rights." See IACHR, *Juvenile Justice and Human Rights in the Americas* OEA/SER.L/V/II, (July 13, 2011), paras. 18-19; 510.

⁶³ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 136. IACHR, Press release No. 26/04, Joint Press Release, Inter-American Commission on Human Rights and UNICEF Express Concern over Situation of Boys, Girls, and Adolescents Involved with Gangs in El Salvador, Guatemala, and Honduras, December 4, 2004.

⁶⁴ 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, art. 40(1).

⁶⁵ Rule 5 (1) of the Beijing Rules states: "The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence."

⁶⁶ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, paras. 308 and 350.

⁶⁷ Human Rights Committee, Concluding observations of the Human Rights Committee: United States of America, U.N. Doc. CCPR/C/USA/CO/3 2395 (Sept. 15, 2006), para.34.

⁶⁸ Human Rights Committee, Concluding observations of the Human Rights Committee: United States of America, CCPR/C/USA/CO/4, 23 April 2014, para.23.

⁶⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/685 March 2015, Human Rights Council, Twenty-eighth session. para.78. "(...) [L]ife sentences without the possibility of release for children are expressly prohibited by international law and treaties, including article 37(a) of the Convention on the Rights of the Child. The Committee on the Rights of the Child, in its general comment No. 10 (CRC/C/GC/10), and the Human Rights Committee, in its general comment No. 21, confirmed that life imprisonment without the possibility of release is never an appropriate punishment for an offence committed by a juvenile offender (...)." See also, Committee on the Rights of the Child, *Children's Rights in Juvenile Justice*, General Comment No. 10, U.N. Doc. CRC/C/GC/10 (April 25, 2007).

⁷⁰ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 364.

⁷¹ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 364.

50. The Inter-American Court of Human Rights has analyzed the imposition of life sentences to adolescents in the case of *Mendoza v. Argentina*. It held that, although the American Convention on Human Rights does not refer to life imprisonment, according to Article 5(6) of the Convention the essential purpose of prison sentences is rehabilitation.⁷² It determined that, in accordance with Article 5.6 of the Convention:⁷³

“[...] life imprisonment, by its very nature, does not serve the purpose of social reintegration of children. On the contrary, this type of punishment implies the maximum exclusion of the child from society, in such a way that they operate in a merely retributive sense, since the expectations of resocialization are nullified to the greatest extent possible. Therefore, such penalties are not proportional to the purpose of the criminal punishment of children.”

51. In addition, given that domestic legislation only allowed the possibility of parole after 20 years, the Court found that the life sentences were contrary to the Convention because they did not allow a periodic review and the possibly to obtain early release at any time based on the individual circumstances.⁷⁴

52. Regarding mandatory sentences, the longstanding jurisprudence of the IACHR has ruled that the mandatory death penalty, that is, the imposition of the death penalty upon conviction for a crime, without an opportunity for presenting and considering mitigating circumstances in the sentencing process, contravenes the American Convention and the American Declaration.⁷⁵ By imposing a mandatory penalty, the State fails to individualize the sentence in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused. By its nature, then, this process eliminates any reasoned basis for sentencing a particular individual to death and fails to allow for a rational and proportionate connection between individual offenders, their offenses, and the punishment imposed on them.⁷⁶ The same reasoning could be applied by analogy to cases of automatic life-without-parole sentences, especially when imposed to children and adolescents or individuals who committed the crime before turning 18, given the interests at stake.

2. Analysis of the case

53. The 32 alleged victims were brought to trial for homicide related charges and sentenced to life without parole for crimes committed in the state of Michigan when they were between the ages of 14 and 17. Based on the legislation in force at the time, they were tried as adults and received an automatic sentence. The Commission notes that the state of Michigan facilitated the trial of juveniles within adult criminal courts, in which there were no provisions for the consideration of factors peculiar to the character of a child, and to which special regard should be had in all judicial proceedings. They were charged, tried, and sentenced without an evaluation or assessment of how their age could affect culpability, rehabilitative capacity, cognitive ability, or public safety concerns.

54. The Commission recognizes that, in response to the US Supreme Court's decision in *Miller*, the state of Michigan eliminated in 2014 the mandatory imposition of life-without-parole sentences on children. Prosecutors seeking imposition of a life-without-parole sentence must file a motion specifying the grounds for imposing such a punishment, and the sentencing court must hold a hearing on the motion to consider the factors set forth in *Miller* and other relevant criteria such as the individual's institutional record. Later, following the Supreme Court's decision in *Montgomery*, the state of Michigan applied the statute retroactively, and consequently all juveniles who received mandatory life-without-parole sentences before *Miller* are eligible for resentencing. Following a class-action lawsuit sought by the American Civil Liberties Union

⁷² I/A Court H.R., Case of *Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 165.

⁷³ I/A Court H.R., Case of *Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 166.

⁷⁴ I/A Court H.R., Case of *Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 296.

⁷⁵ IACHR, *The Death penalty in the Inter-American Human Rights Systems: From Restrictions to Abolition*, 31 December 2011, p. 27.

⁷⁶ IACHR, Report No. 12.231, Case 12.231. Merits (Publication). Peter Cash. Commonwealth of the Bahamas. April 2, 2014, para 72.

against the State of Michigan, the federal courts held that Michigan's revised sentencing scheme was unconstitutional. The parties reached a class action settlement agreement over 163 juveniles who were still awaiting resentencing, including 17 of the alleged victims.

55. The Commission notes, however, that Michigan and other 24 states have not abolished juvenile life-without-parole sentences, being the United States the only nation that imposes life-without-parole sentences for crimes committed before the age of 18. As indicated above, in 2006 the United Nations Human Rights Committee found these sentences incompatible with the International Covenant on Civil and Political Rights, to which the United States is a party. It has also requested the United States to abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed.

56. For the inter-American system, all juvenile life sentences are incompatible with the State's international human rights obligations, even when they offer the possibility of parole. The Commission has expressed concern regarding disparities in the sentencing process in the United States in the case of children belonging to racial minorities, who are more likely to receive longer sentences, and regarding information pointing to the disproportionate number of African-American children sentenced to life without parole.⁷⁷

57. The IACHR notes that, as of 2020, approximately half of the individuals eligible for resentencing under Michigan's new statute were still waiting for their cases to be reviewed, four years after the Supreme Court's decision in *Montgomery*. In the instant case, there is no indication that, at the time of the adoption of the present report and despite a class action settlement reached in 2020, all 32 alleged victims have been resentenced.

58. The Commission also notes that many of the alleged victims were subjected to the unconstitutional sentence for several years without any form of recourse within the state appeals system or federal habeas proceedings. At the time the alleged victims became eligible for resentencing in 2016, they had spent between 11 and 34 years in prison based on a sentence imposed in violation of the Eighth Amendment and international protected human rights.

59. Based upon the information available, the Commission notes that the state of Michigan has in place a juvenile justice system and that, since October 1, 2021, juveniles are no longer automatically treated as adults. However, in cases of children 14 and older accused of a felony, a juvenile court judge can transfer the case from juvenile to adult court in order to deny the protections provided by juvenile jurisdictions. Therefore, the State has failed to provide an adequate juvenile justice system in accordance with inter-American human rights standards, as well as effective remedies.

60. The civil and political rights of youth encompass the right to a fair trial, which requires that children are not tried or sentenced within adult courts but have the right to be tried via judicial proceedings with measures of protection tailored to the unique characteristics of a child.

61. Based on the above considerations, the Inter-American Commission concludes that the United States has violated the alleged victim's rights to special protection of children, to due process and to a fair trial under Articles VII, XVIII and XXVI of the American Declaration.

⁷⁷ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para. 115.

C. Right of children to humane treatment during custody,⁷⁸ to health,⁷⁹ to education,⁸⁰ and not to receive cruel, infamous, or unusual punishment⁸¹

1. Children and adolescents incarcerated with adults

62. The Commission maintains that the practice of holding children in adult facilities has severe consequences, primarily as a result of the basic differences in the purpose and governing standards of adult prisons and jails, as opposed to the approach of juvenile detention and residential centers. It is recognized that treatment of youth in juvenile systems is subject to special standards of protection according to the age and developmental status of the inmate; whereas the overall design, security classification and even the permissible range of physical coercion used against inmates in adult facilities frequently result in excessive use of force, solitary confinement, and many other forms of treatment that are particularly damaging to children.

63. As the Commission established in its report on the subject, “[a]ny punitive measures must, to the greatest extent possible, avert violations of rights other than the right to freedom of movement, such as the right to education and health, and serve to strengthen family bonds and community ties.”⁸² The failure to marshal sufficient resources to the task is not a valid excuse for violating children’s human rights in the criminal justice system.⁸³

64. The IACHR affirms that, in accordance with the *corpus juris* on the rights of the child that derive from the American Declaration, and pursuant to Article 37(c) of the Convention on the Rights of the Child, “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so. (...)”

65. The petitioners submit that many of the alleged victims are or were detained with adults, with no distinction made as to their vulnerable status and need for rehabilitative or protective care. The Commission observes that while juvenile systems are required to hold youth in specialized facilities, with an appropriate level of programming and services, adult correctional systems are not obligated to meet these requirements for youth sentenced to their custody. The Commission notes that the District Court granted a preliminary approval of settlement on the claim that the alleged victims were denied rehabilitative programming opportunities. Such treatment is in contravention of the rights of the child embodied within the Declaration and the State has thereby violated these rights by not detaining the alleged victims in juvenile detention facilities.

66. Therefore, based on the above considerations, the IACHR concludes that, by detaining the alleged victims with adults, the United States has violated their rights to security, to the special protection of children, to humane treatment during custody, and not to receive cruel, infamous, or unusual punishment, under Articles I, VII, XXV and XXVI of the American Declaration.

⁷⁸ Article I of the American Declaration establishes: “Every human being has the right to life, liberty and the security of his person.

Article XXV of the American Declaration provides: “[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody.”

⁷⁹ Article XI of the American Declaration establishes: “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

⁸⁰ Article XII of the American Declaration establishes: “Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living and to be a useful member of society.”

⁸¹ Article XXVI of the American Declaration establishes: Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

⁸² IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para.449. See also, Havana Rules, Rules 12 and 87(f).

⁸³ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para.451.

2. Children and adolescent's right to education during custody

67. According to the IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XIII, "persons deprived of liberty shall have the right to education, which shall be accessible to all, without any discrimination."⁸⁴ The IACHR has held that the objectives of juvenile justice require "educational programs, including formal schooling, vocational and job training, recreational activities and sports."⁸⁵ According to the IACHR, all children deprived of their liberty, without distinction, must have access to educational programs. The Commission has emphasized that the right to education is closely related to detained children's right to recreation. Because they are still growing and maturing, children deprived of their liberty must have access to recreation programs.⁸⁶

68. According to the information provided by the petitioners, not contested by the State, the alleged victims were not provided with opportunities for their rehabilitation and education. As explained, in order to be able to gain a vocational program within the prison, the inmates in Michigan are required to pass the General Educational Development Test and the alleged victims were denied access to this test due to the duration of their sentences.

69. Further, as was established in the section of facts, the petitioners challenged the policies and procedures that govern parole in Michigan given that they failed to provide access to programming, education, training, and rehabilitation opportunities to the alleged victims, and all persons within the class action lawsuit. The District Court's decision that concluded that the Michigan statutory scheme was unconstitutional was affirmed. Following the class action settlement, those still awaiting resentencing became eligible for rehabilitation programming in prison.

70. Based on these findings, the IACHR concludes that the United States violated the alleged victims' right to access to education protected by Article XII of the American Declaration.

3. Use of solitary confinement

71. The Commission takes note of a large body of national and international research that highlights the harmful effect and psychological damage that solitary confinement has on people, and especially children.⁸⁷ Most notably, the U.S. Department of Justice has recognized that "[i]solation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as punish a child. After a period of time, room confinement begins to damage the juvenile, cause resentment toward the staff, and serves little useful purpose."⁸⁸ Similarly, the Federal Office of Juvenile Justice and Delinquency Prevention has affirmed the danger of the isolation of children and its inconsistency with juvenile justice standards, finding that excessive isolation may constitute cruel and unusual punishment.⁸⁹ The Commission additionally considers studies where it has been shown that isolation causes or intensifies mental health problems, producing psychological damage even in adults without any history of mental issues.⁹⁰

72. According to the Committee on the Rights of the Child, the Committee against Torture, and the Special Rapporteur on Torture, the use of solitary confinement on children, of any duration, constitutes cruel,

⁸⁴ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II.131 doc. 26. Principle XIII.

⁸⁵ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, para.492.

⁸⁶ IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II., Doc. 78, July 13, 2011, paras. 493 and 511.

⁸⁷ The American Academy of Child and Adolescent Psychiatry (AACAP) recommends that solitary confinement for youth be completely abolished. See Juvenile Justice Reform Committee, *Solitary Confinement of Juvenile Offender*, Approved by Council, April 2012.

⁸⁸ Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Standards of the Administration of Juvenile Justice*, 1980.

⁸⁹ *The Solitary Confinement of Youth in New York: A Civil Rights Violation*, New York Advisory Committee to the U.S. Commission on Civil Rights, December 2014.

⁹⁰ ACLU and Human Rights Watch, "Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States", 2012.

inhuman, or degrading treatment or punishment, or even torture.⁹¹ Likewise, the Committee Against Torture, in its concluding recommendations regarding the United States, indicated that it "remains concerned at the notable gaps in the protection of juveniles in the State party's criminal justice system. In particular, the Committee expresses once again its concern at the conditions of detention for juveniles, including their placement in adult jails and prisons, and in solitary confinement."⁹²

73. The petitioners have claimed that some of the alleged victims were subject to solitary confinement within adult facilities. A claim that has not been contested by the State. In the instance where alleged victims were subject to solitary confinement, the Commission submits that such detention conditions are not only contrary to the right of the child but also contrary to the right not to receive cruel, infamous, or unusual punishment.

74. The Commission also notes that lack of specialized services and the overall punitive treatment and conditions of adult facilities, and especially the use of solitary confinement, lead to detrimental mental and physical consequences for the children held there, such as severe depression and anxiety, incidents of self-harm, and suicide attempts. Furthermore, the various forms of isolation or segregation exacerbate existing mental health problems or other disorders that youth may have, placing them at an even greater risk of suicide.

75. In light of this, the Commission highlights that any child deprived of liberty is at an increased risk of suffering depression and anxiety, with a higher tendency for mental and developmental problems. As affirmed by the UN Special Rapporteur on Torture, ill treatment during incarceration may cause greater and more likely irreversible damage for children than it does for adults.⁹³

76. The IACHR stresses that holding children in adult facilities is in direct violation of the rights of the child to protection of his or her physical, emotional, and mental wellbeing and development, and places them at significant risk for suicide and self-harm. As aforementioned, such detention is contrary to the rights of a child within the Declaration and furthermore, is in violation to the right not to receive cruel, infamous, or unusual punishment.

77. Therefore, the Commission concludes that, by subjecting some of the alleged victims to solitary confinement, the United States has violated their right to special protection, to health and well-being, to humane treatment during custody, and not to receive cruel, infamous, or unusual punishment, under Articles VII, XI, XXV and XXVI of the American Declaration.

V. CONCLUSIONS AND RECOMMENDATIONS

78. Based on the determinations of fact and law, the Inter-American Commission concludes that the State is thereby liable for the failures of the state of Michigan to provide appropriate protective measure for juveniles, inclusive of specialized judicial proceedings and detention facilities with an objective of rehabilitation and reintegration of youth. Specifically, the State is responsible for the violation of Articles I (life, liberty, and security), VII (special protection of children), XI (preservation of health and well-being), XII (education), XVIII (fair trial), XXV (protection from arbitrary arrest) and XXVI (due process) of the American Declaration to the detriment of the alleged victims.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE UNITED STATES OF AMERICA,

⁹¹ Committee on the Rights of the Child, general comment No. 10 (CRC/C/GC/10), para. 89. See also: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/685, March 2015, Human Rights Council, Twenty-eighth session, para. 44; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 67.

⁹² United Nations Committee against Torture, Concluding observations on the third to fifth periodic reports of United States of America, CAT/C/USA/CO/3-5, para.23.

⁹³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/685, March 2015, Human Rights Council, Twenty-eighth session, para.70. See also: Anthony Lake and Margaret Chan, Putting science into practice for early child development, UNICEF, New York and WHO, Geneva, 20 September 2014; and Michael D. De Bellis et al., "Developmental Traumatology Part II: Brain Development," *Biological Psychiatry*, vol. 14, No. 10 (15 May 1999), pp.1271-1284.

1. Grants the victims identified in the report effective relief, including the payment of pecuniary compensation for the human rights violations declared in this report.
2. Ensures that those victims who are still awaiting resentencing are resentenced in accordance with the standards set out in this report.
3. Provides the victims, in a concerted manner, the necessary medical and psychological care for their rehabilitation, if it is their will.
4. Ensures that juveniles are not incarcerated with adults.
5. Ensures that juveniles are not subjected to solitary confinement, of any duration, and that they have access to educational programs, job training, and recreational activities, taking into account their best interest.
6. Adopts measures to abolish the sentence of life imprisonment for juveniles in Michigan and other states.

Approved by the Inter-American Commission on Human Rights on the 19 day of the month of November, 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.

The undersigned, Marisol Blanchard, Assistant Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 49 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.



Marisol Blanchard
Assistant Executive Secretary