

## **STATEMENT OF DEBORAH LaBELLE, ESQ.**

A child, cannot leave school or home, decide to marry, get medical treatment, drive a car, vote, enter a contract or sit on a jury in this country, yet in thirty-eight states they may be tried and sentenced as if they are an adult and punished with life in prison without the possibility of parole.

Although it may take time to fully register in a child's mind, the life without parole sentence sends an unequivocal message to children that they are banished from society forever. This unforgiving sentence to die in prison for an act committed during a time of immaturity does not enhance public safety and burdens us all both morally and fiscally.

When the sentencing of youth to life without parole, became the subject of significant press coverage over the last few years, it revealed that few members of the public were aware that the United States issues such a punishment to children. Subsequent polls and survey groups have demonstrated overwhelming opposition to this sentence.

I am here to testify in support of legislation that will right the course of over ten years of a law that has committed over 2,225 children, to be sentenced to serve life in adult prisons in the United States without any possibility of parole. In the rest of the world there are nine (9).

The sentencing of children to a life sentence without ever looking at them again, serves neither the goals of fair punishment nor protection of public safety that are the twin essences of our criminal justice system. The current laws mete out disproportionate punishment on youthful offenders without any opportunity to demonstrate that they have

matured and grown into adults that pose no risk to the public.

The child's right to special protection is a well-established principle of international law and is reflected in all major human rights treaties concerning the rights of the child. For instance, Article 19 of the American Convention establishes that "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." According to the Inter-American Court, the special protection of children derives "from the specific situation of children, taking into account their weakness, immaturity or inexperience."<sup>1</sup> Other treaties and international instruments also recognize a child's rights to special measures of protection. The International Covenant on Civil and Political Rights [hereinafter ICCPR], Art. 24, for example, provides that "[e]very child shall have . . . the right to such measures of special protection as are required by his status as a minor." And Article 3 of the CRC provides that "[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration."

Like the American Declaration, international law also recognizes that the right to special protection applies to children who come into conflict with the law. For example, Art. 37(c) of the CRC requires that "[e]very child deprived of liberty shall be treated . . . in a manner which takes into account the needs of persons his or her age." International standards also require that juvenile justice systems emphasize the well being of the juvenile and that the treatment of the

---

<sup>1</sup> Inter-American Court Of Human Rights, Advisory Opinion Oc-17/2002 [hereinafter Oc-17/2002], Of August 28, 2002, Requested By The Inter-American Commission On Human Rights *Juridical Condition and Human Rights of the Child*, para. 60, available at [http://www.corteidh.or.cr/seriea\\_ing/index.html](http://www.corteidh.or.cr/seriea_ing/index.html).

juvenile should balance the circumstances of the offender and the offense.<sup>2</sup> Regard for the special needs of the child is also reflected in numerous provisions requiring separate facilities and different procedures for children.<sup>3</sup> Two of the most fundamental rights inherent in the right of children to special protection are the right to be incarcerated for the shortest possible duration and to reintegration and rehabilitation. Both are violated by the current state and federal laws which try and convict youth, as if they were adults, and sentence them to spend the rest of their lives in prisons for acts they committed as a child.

The imposition of life sentences without the possibility of parole is also contrary to any concept of rehabilitation. A concept that is embedded in all correctional departments by virtue of their name and espoused goals. Further, the very point of a juvenile justice system is premised on the understanding that juveniles respond to and are entitled to a chance at rehabilitation in their youth to allow them to participate as full citizens upon adulthood. This concept is also embeded in laws and documents signed and ratified by

---

<sup>2</sup>

Beijing Rules, *supra* note 54, 5.1 concerning the “Aims of Juvenile Justice” provides “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.” Rule 14.2 requires that court and other proceedings concerning a juvenile offender “be conducive to the best interests of the juvenile,” and Rule 17 provides that any disposition by a competent authority shall be guided by the principle of proportion – consideration of “the needs of the juvenile as well as [] the needs of society” (Rule 17.1(a)) and that “the well-being of the juvenile shall be the guiding factor in the consideration of her or his case” (Rule 17.1(d)). *See also* Oc-17/2002, *supra* note 62, para. 61 (“it is necessary to weigh not only the requirement of special measures, but also the specific characteristics of the situation of the child.”)

<sup>3</sup> ICCPR, Art. 10(2)(b)(“[a]ccused juvenile persons shall be separated from adults”), Art. 10(3)(“Juvenile offenders shall be segregated from adults and accorded treatment appropriate to their age and legal status.”); Art. 14(4)(juvenile criminal procedure shall “take account of their age”); CRC, Art. 37(c)(“every child deprived of liberty shall be treated . . . in a manner which takes into account the needs of persons of his or her age.”), Art. 40(3)(requiring States Parties to establish “laws, procedures, authorities and institutions specifically applicable to children” accused or recognized as violating the penal law); American Convention, Art. 5(5)(requiring that minors be separated from adults and “brought before specialized tribunals . . . so that they may be treated in accordance with their status as minors.”)

nearly all national states.

Article 10 of the ICCPR establishes that incarcerated juveniles must receive special treatment aimed at their reintegration in society.<sup>4</sup> Article 14(4) of the ICCPR requires that procedures “take account of [juveniles’] age and the desirability of promoting their rehabilitation.”<sup>5</sup> In the United States context, the U.S. Supreme Court has also noted the potential to rehabilitate children stating, “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”<sup>6</sup> The Inter-American Court has held that, “When the State apparatus has to intervene in offenses committed by minors, it should make substantial efforts to guarantee their rehabilitation in order to “allow them to play a constructive and productive role in society.”<sup>7</sup>

The sentence of life without parole for children contradicts the right to rehabilitation and

---

<sup>4</sup> Article 10, ICCPR: “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. [2](b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.” General Comment No. 21 on article 10 echoes the rehabilitative goal stating that juveniles should be separated and treated differently from adults “with the aim of furthering their reformation and rehabilitation.”

<sup>5</sup> Although the U.S. issued a reservation to Article 10 and 14(4), the reservation is limited, stating that the U.S. only “reserves the right *in exceptional circumstances* to treat juveniles as adults.” See discussion on the reservation *infra* note 85 and accompanying text.

<sup>6</sup> United States Supreme Court, *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 1195 (2005).

<sup>7</sup> *Street Children Case*, *supra* note 59, para. 197. Article 5 of the American Convention holds that, “Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.” The Beijing Rules state that the objectives of institutional treatment must be to “provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.” Rule 26.1, Beijing Rules *supra* note 54.

the often stated assertion that imprisonment should promote rehabilitation.<sup>8</sup> It reflects a determination that there is nothing that can be done to render the child a fit member of society. It is an unforgiving sentence of permanent banishment – which rejects any concept of redemption or faith that time, treatment or hard work can promote positive change. The sentence denies youth any hope that they may atone for their crimes and improve their lives.

Recently, the United States Supreme Court in the case of *Roper v. Simmons*, 125 S.Ct. 1183 (2005) struck down the death penalty for juveniles as violation of our constitution’s prohibition on cruel and unusual punishment, holding:

First, as any parent knows, and as the scientific and sociological studies...confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.

\* \* \*

Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. This is explained in part by the prevailing circumstances that juveniles have less control, or less experience with control over their own environment.

These words apply with equal force to juveniles who commit crimes that carry mandatory life without any possibility of parole sentences for adults.

Scientific research in the last five years has confirmed the areas of the brain that control impulses, anticipation and understanding of consequences, logical judgment,

---

<sup>8</sup> The Michigan Supreme Court has stated that “[t]he rehabilitative function of sentences, with an eye towards returning the offender to society at a future time, is not present in nonparolable life sentences.” *People v. Fernandez*, 427 Mich. 321, 339 (1986).

ability to foresee and appreciate consequences is simply not developed in adolescents.

This punishment of juveniles also incorporates two of the more disturbing elements that course through our criminal justice system, race and class. The life without parole sentences are imposed on African-Americans and children of color in a disproportionate manner. In Michigan, 72% of the juveniles who were tried as adults and sentenced to life without parole, are children of color. An overwhelming number of the children who receive life without parole did not have the resources to hire independent counsel.

Each year in the United States, children as young as 14 are sentenced to die in prison without a date of execution. Thousands of children have been arrested and sentenced to life without possibility of parole for crimes committed at an age in which we as a society of adults are required to take of them. Boys and girls across the country are being tried in adult courts without any consideration of their age or mitigating factors. The cost of warehousing our children for life is staggering to our communities and to our own humanity. Children are entitled basic rights that derive directly from their status as human beings and children in our society.

This bill eliminates life without parole sentences, and offers the opportunity for a second chance, by requiring only that we look at these children and make an assessment of whether they pose any danger to society or whether they have in fact grown up into an adult who can participate as a citizen, starts us on the right path toward reclaiming this humanity.

No one can say with any assurance what a child will be when they grow into adulthood. And, the U.S. stands virtually alone in rejecting youth's unique potential to grow, to change, to learn and contribute, it stands without support in asserting that a girl or a boy is so unredeemable that you need never look to see the woman or man they become.

All that this legislation requires is that we look at these individuals again and that we acknowledge that children can, and do, change. This legislation will make our criminal laws consistent with our civil laws which are based on the understanding that a child is not as responsible as an adult. This legislation acknowledges that putting a child away for life – without consideration of what role the youth's immaturity, lack of judgment and undue influence by peers played in their crime, constitutes disproportionate punishment.

Indeed a recent decision of The U.S. Supreme Court recognized that children are less culpable than adults in striking down the death penalty for all youth who committed their crime under the age of 18, holding that:

Juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows, and as the scientific and sociological studies (...) tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults. (...) The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. (...) The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an

adult.<sup>9</sup>

The Supreme Court fully acknowledged the persuasiveness of recent adolescent brain research that scientifically affirms that children's brains are physiologically different from adult brains, with children reacting more in their impulse area to stress, and adults reacting more in their cognitive area.<sup>10</sup>

Given the greater vulnerability, lesser maturity and consequent lesser moral and legal culpability of persons under 18 years of age, the imposition of life sentence without the possibility of parole constitutes cruel, infamous and unusual punishment and also violates their right to be free from inhumane treatment.. International instruments also confirm an international consensus on the right to humane treatment. Article 5 of the American Convention<sup>11</sup> states that, “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” Article 7 of the ICCPR establishes that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The ICCPR also recognizes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of

---

<sup>9</sup> *Roper v. Simmons*, *supra* note 75, at 1195.

<sup>10</sup> See e.g. Jay N. Giedd, et al., “Brain Development During Childhood and Adolescence: A Longitudinal MRI Study,” *Nature Neuroscience*, vol. 2 (1999), at 861, cited in *The Rest of their Lives*, *supra* note 2, at 47.

<sup>11</sup> American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), available at <http://www.cidh.org/Basicos/basic3.htm>



the human person.<sup>12</sup> Article 16 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment requires that States Parties undertake to prevent "acts of cruel, inhuman or degrading treatment or punishment." Similarly, Article 3 of the European Convention on Human Rights and Fundamental Freedoms ("European Convention") prohibits inhuman or degrading treatment or punishment.

Because a child's moral and mental maturity is different from an adult, severe forms of punishment such as LWOP are not appropriate. Indeed, in many states, life without possibility of parole is the severest sentence that can be meted out for any crime. The result is a vastly disproportionate inequitable punishment – where an adult with full faculties who commits the most heinous crime – perhaps after eschewing many opportunities, receives a life without possibility of parole sentence. If that person is 45 years old, it will likely be 30 years – the rest of their adult life in prison.

Yet, a child, whether it be for a first offense, perhaps even for a felony murder conviction, when the youth did not commit a homicide, will also receive the mandatory adult sentence of life without possibility of parole. Only for the child it will be even harsher, likely 60 years in a cell until death. Not only is there no consideration for their child status, but they are punished harsher.

International standards also require that a child's status be taken into account when determining whether punishment is inhumane. For example, the CRC treats JLWOP as a form of

---

<sup>12</sup> ICCPR, *at art.* 10(1).

cruel, inhuman and degrading treatment. The CRC's prohibition on life without parole appears in Art. 37(a) and generally prohibits torture and other cruel, inhuman or degrading treatment. Art. 37 reads:

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

In *Jailton Neri Da Fonseca*,<sup>13</sup> the Commission found a violation of Art. 5 of the American Convention, reasoning,

... although this article leaves some room for interpretation in defining whether a specific act constitutes torture, in the case of children the highest standard must be applied in determining the degree of suffering, taking into account factors such as age, sex, the effect of the tension and fear experienced, the status of the victim's health, and his maturity, for instance.<sup>14</sup> (emphasis added)

While an LWOP sentence would be difficult for any person, juveniles in particular have heightened vulnerability. Applying the highest standard to determine the degree of suffering of children,<sup>15</sup> sentences of life without the possibility of parole constitute such cruel, infamous and unusual punishment and also violates their right to humane treatment. Punishments "prescribed by law and applied in fact should be humane and proportionate to the gravity of the offense."<sup>16</sup> Life without parole sentences for child offenders are per se disproportionate. Indeed, giving an adult sentence of natural life to a

---

<sup>13</sup> *See Jailton, supra* note 58.

<sup>14</sup> *Id.*, at para. 64.

<sup>15</sup> *Id.*, at para. 63.

<sup>16</sup> "Report on the 1960 Seminar on the Role of Substantive Criminal Law in the Protection of Human Rights and the Purpose and Legitimate Limits of Penal Sanctions," organized by the United Nations in Tokyo, Japan, 1960.

minor is disproportionate even compared to the same sentence given to a forty-five year old adult. The years juveniles miss are the most formative, during which they would otherwise finish their education, form relationships, start families, gain employment, and through those experiences learn to become adults.

Moreover, adult prisons are especially harsh for juveniles. Juveniles held in adult prisons and jails are at a much greater risk of harm than their peers in juvenile facilities. Sexual assault of juveniles is five times more likely in adult facilities and beatings by staff are almost twice as likely. Because of their young age and smaller size, juveniles are often the prey for sexual predators and are over-represented as victims of custodial sexual misconduct.<sup>17</sup>

The mental anguish faced by juveniles who receive LWOP is reflected in the fact that the suicide rate for juveniles in adult prisons is eight times that of juveniles in detention facilities.<sup>18</sup> One juvenile in Michigan, Kevin Boyd, stated “the best part of your day is when you are sleeping; [] your life is nothing more than a daily routine that turns to a monthly or even yearly routine; [] you prayed for death to find you so you didn’t have to look into your own face watch it age with nothing to be proud of or show for those frown lines; [] you know that society looks at you as a piece of garbage and you start to believe it . . . .”

---

<sup>17</sup> *Second Chances*, *supra* note 5, at 18, citing Forst, Fagan, and Vivona, “Youth in Prisons and State Training Schools,” 39 *Juvenile and Family Court Journal* 1-14 (1989); Forst, Fagan, and Vivona, “Youth in Prisons and State Training Schools,” 39 *Juvenile and Family Court Journal* 1-14 (1989). “No Escape: Male Rape in US Prisons.” Human Rights Watch. April 2001, *available at*: [http://www.org.reports/2001/prison/report4.html\\_1\\_24](http://www.org.reports/2001/prison/report4.html_1_24)

<sup>18</sup> *See id*, citing James Austin, Kelly Johnson, & Maria Gregoriou, “Juveniles in adult prisons and jails: A National Assessment.” U.S. Department of Justice, Bureau of Justice Assistance. October 2000., citing Community Research Center, “Juvenile Suicides in Adult Jails. Juvenile Transfer Series. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.” (1980).

As a JLWOP prisoner who has been incarcerated since the age of sixteen put it, “When I went to prison, I was around . . . all the violence. I was like, ‘man I gotta get out of this—how am I gonna get out of this prison?’ I can’t do no life sentence here at that age. And so I thought of that [killing himself]. Gotta end it, gotta end it. . . . I’ve got so many cuts on me .”<sup>19</sup> Psychological experiments have found that the negative mental effects of imprisonment increase the longer one is imprisoned, but decrease as time of release nears.<sup>20</sup> JLWOP prisoners know they will never be released, thus providing no brake for a downward spiraling emotional state. A treatment director at Mitchellville prison in Iowa says JLWOP prisoners “tend to go through the grief cycle twice. The first time it has to do with the simple fact of entering adult prison, so they pass through shock, anger, depression, and then acceptance. But for the lifers, they go through all four stages again—often several years later or whenever the reality of their sentence finally sinks in.”<sup>21</sup>

Beyond the normally harsh conditions of prison life, JLWOPs are often sent to the harshest of environments: supermaximum security confinement (supermax). In Colorado, over fifty percent of JLWOPs had spent time in supermax. Supermaxes themselves may

---

<sup>19</sup> Human Rights Watch interview with Richard I., East Arkansas Regional Unit, Brickeys, Arkansas, June 21, 2004 (pseudonym), in *The Rest of their Lives*, *supra* note 2, at 64.

<sup>20</sup> For documentation of increased effects, *see, e.g.*, Stanton Wheeler, “Socialization in Correctional Communities,” *American Sociological Review*, vol. 26 (1961), p. 697; Peter Garabedian, “Social Role and Processes of Socialization in the Prison Community,” *Social Problems*, vol. 11 (1963), p. 140. For documentation of decreased effects, *see, e.g.*, Robert Johnson and Hans Toch, “The First Cut is the Deepest: Psychological Breakdown and Survival in the Detention Setting,” *The Pains of Imprisonment* (Thousand Oaks: SAGE Publications, 1982); “Psychology and the Limits to Prison Pain,” p. 499, in *The Rest of their Lives*, *supra* note 2, at 53.

<sup>21</sup> Human Rights Watch interview with Treatment Director at Iowa Correctional Institute for Women, Mitchellville, Iowa, April 5, 2004, in *The Rest of their Lives*, *supra* note 2, at 58.

constitute CIUP, with total isolation over 23 hours per day leading to devastating psychological effects including depression and difficulty relating to others once released from solitary. While most of the individual petitioners are not at the maximum-security levels, they have all been subject to isolation either as a mechanism for protecting themselves from harm or as a punitive detention. The Human Rights Committee in General Comment 20 notes that ““prolonged solitary confinement of the detained or imprisoned person may amount to” torture or CIDT.<sup>22</sup>

Although juveniles sentenced to a lifetime in prison do not face death or corporal punishment on a certain date, they are faced with a prison term that will end only with their death. Psychological studies of long-term prisoners show “protracted depression, apathy, and the development of a profound state of hopelessness.”<sup>23</sup> Children, naturally more dependent on their family relationships for support, are especially vulnerable to depression when they are cut off from family contact in prison. Here the anguish is caused not by the imminence of death, but with the fear and dread of physical harm and the prospect of continued incarceration until the end of their days.

The juvenile’s age and status as a child makes JLWOP particularly cruel, inhumane, infamous and unusual. Jailton Neri Da Fonseca’s holding that the mental trauma of a fourteen year-old child abducted by the Brazilian military police was CIUP

---

<sup>22</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 6

<sup>23</sup> “Psychology and the Limits to Prison Pain,” p. 499 (citing Judith Herman, “Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma,” *Journal of Traumatic Stress*, vol. 5 (1992), p. 377), in *The Rest of their Lives*, *supra* note 2, at 61.

emphasized “the highest standard must be applied in determining the degree of suffering” in children. Just as Jailton feared his abduction by the military police would mean torture and possible death for him, children sentenced to JLWOP face physical abuse, sexual predation, and the suicidal depression that accompanies lifetime in prison. The individual petitioners faced, and continue to face, adult prison life, with all the attendant traumas to which children are especially vulnerable, without the hope of ever being released. One juvenile in Michigan, Barbara Hernandez, wrote: “[d]eath sentence is what the judge gave me. A long slow death. I would have rather been taken out and shot.”

A fair trial in the context of juvenile criminal justice must include safeguards to protect the special needs and interests of those persons under 18 years old that are accused of having committed a crime. At a minimum level, these safeguards must include different courts and justice systems to judge persons under 18 years old and adults, independently of the crime committed and an opportunity for judges to make meaningful individualized determinations prior to imposing life without parole sentences. Michigan’s criminal system and laws do not provide adequate safeguards for these rights. Juvenile courts do not have jurisdiction over 17 year olds, and they are automatically tried as adults. Children 16 and under, accused of certain crimes, can be directly prosecuted as adults, without any individual judicial determination of the propriety of treating them as adults.<sup>24</sup> Once it has been determined that children will be tried and sentenced as adults, life without parole sentences are mandatory for certain crimes, and judges

---

<sup>24</sup> These cases are called “direct files” or “automatic waiver” cases since the juvenile status of the accused is never raised nor considered by the Court. The decision is taken by the prosecutor.

have no discretion to determine whether they are appropriate for the child being sentenced.

The United States indicated general support for special criminal procedures for children when it ratified the ICCPR. ICCPR Article 14 requires, “in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of their rehabilitation.”<sup>25</sup> When the United States ratified the ICCPR, it attached a limiting reservation that stipulates:

That the policy and practice of the United States are generally in compliance with and supportive of the Covenant’s provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of article 10 and paragraph 4 of article 14.<sup>26</sup>

The circumstances surrounding this reservation indicates that it was intended to permit – on an exceptional basis – the trial of children as adults and the incarceration of children and adults in the same prison facilities. As discussed below, instead of being limited to exceptional circumstances, in Michigan adult criminal procedures and sentences are being applied in a routine and automatic fashion. Further, while the reservation discusses criminal procedures, there is nothing in the reservation to suggest that the United States reserved the right to sentence children as harshly or harsher than adults who commit similar crimes. On the contrary, the reservation’s plain language and drafting history show that the United States sought to reserve the ability in “exceptional

---

<sup>25</sup> ICCPR, *at* art. 14(4).

<sup>26</sup> United Nations Treaty Collections, International Covenant on Civil and Political Rights, U.S. Reservations, Declarations and Understandings: Reservations, para. 5 (emphasis added); 138 Cong. Rec. 54781-01 (Daily Ed. April 2, 1992).

circumstance” to try children in adult courts and to require some of them to serve their sentences in adult prison. According to the United States Senate Committee on Foreign Relations, the reservation was included because, at times, juveniles were not separated from adults in prison due to their criminal backgrounds or the nature of their offenses.<sup>27</sup> The reservation is not about the length or severity of sentences for juveniles and it cannot be read to condone the automatic sentencing of juveniles involved in serious crimes as adults.

Art. XXVI of the American Declaration states, “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.”<sup>28</sup> In order to comply with due process guarantees, at a minimum, Michigan courts should consider children’s juvenile status and potential for rehabilitation and special needs in some meaningful way. Indeed, the American Convention not only requires consideration of juvenile status but also mandates special tribunals for juveniles subject to criminal proceedings. For example, Art. 5 of the American Convention states that “[m]inors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that

---

<sup>27</sup> United States, *Senate Committee on Foreign Relations Report on the International Covenant on Civil and Political Rights*, 31 I.L.M. 645, 651 (1992) (“Although current domestic practice is generally in compliance with these provisions, there are instances in which juveniles are not separated from adults, for example because of the juvenile’s criminal history or the nature of the offense. In addition, the military justice system in the United States does not guarantee special treatment for those under 18.”).

<sup>28</sup> Art. XVIII provides the right to “resort to the courts to ensure and respect [] legal rights” and requires a procedure for court protection “from acts of authority that [] violated any fundamental constitutional right.” Art. XXIV provides “the right to submit respectful petitions to any competent authority . . . and the right to obtain a prompt decision thereon.” Art. XXV provides “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by preexisting law” and [e]very person [deprived of liberty] has the right to have the legality of the detention ascertained without delay . . . the right to be to be tried without undue delay , , , [and] the right to humane treatment during his time in custody.”



they may be treated in accordance with their status as minors.”

According to the Inter-American Court, the special protection that must be afforded to children should be reflected in the creation of special courts and the “characteristics of State intervention in the case of minors who are offenders must be reflected in the composition and functioning of these courts, as well as in the nature of the measures they can adopt.”<sup>29</sup> Adults and persons under 18 years of age must be treated differently in order to maintain substantive equality given that they are different and have different needs. The Inter-American Court held, “[t]here are certain factual inequalities that may be legitimately translated into inequalities of juridical treatment, without this being contrary to justice. Furthermore, said distinctions may be an instrument for the protection of those who must be protected, taking into consideration the situation of greater or lesser weakness or helplessness in which they find themselves.”<sup>30</sup>

The Beijing Rules specifically address the need for special procedures for juvenile justice systems in its Rule 6 on scope of discretion:

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions. 6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion. 6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

According to the commentary to Rule 6,

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the

---

<sup>29</sup> Oc-17/2002, *supra* note 62, para. 137(10).

<sup>30</sup> *Id.*, at para. 46.

actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion.

Once it is determined that the children would be tried and sentenced as adults, they are subject to a mandatory adult sentence of life without parole in many states. Imposing such a severe mandatory sentence on children violates due process because the individual petitioners were not given an opportunity to make submissions or present evidence that the sentence was inappropriate given the particular circumstances of their cases. They were also denied the opportunity for effective review or appeal of the life without parole sentence.

These "cradle to the grave" sentences are thus imposed without anyone -- neither judge nor jury -- having the opportunity to consider how the youth of the person, their child status should impact on the punishment. Nor, under the current laws, iwthout this bill will any other person be able to consider this matter.

The Convention on the Rights of the Child explicitly addresses th contradiction between the particular rights and needs of children and life without parole sentences.<sup>31</sup> Underpinning several of the treaty's provisions is the fundamental recognition of the child's potential for rehabilitation. Recognizing the unacceptability of sentences that negate the potential for children to make changes for the better over time, the CRC flatly prohibits sentencing children to life sentences without parole or to the death penalty.<sup>32</sup> Article 37(a) states:

---

<sup>31</sup> CRC, art. 37(a), G.A. Res. 44/25, U.N. GAOR, 44<sup>th</sup> Sess., Supp. no. 49, at 167, U.N. Doc. A/44/736 (1989) (entered into force Sept. 2, 1980), reprinted in 28 I.L.M. 1448, 1470 (emphasis added).

<sup>32</sup> The juvenile death penalty is now prohibited in the United States. *Roper, supra* note 75, at 1199 (finding the juvenile death penalty unconstitutional and citing to international standards).

Neither capital punishment *nor life imprisonment without possibility of release* shall be imposed for offenses committed by persons below eighteen years of age.<sup>33</sup>

The CRC also requires that a state's decision to incarcerate a child "shall be used only as a measure of last resort and for the shortest appropriate period of time."<sup>34</sup> A child who has committed a crime is to be treated in a manner that takes into account "the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."<sup>35</sup> States are to use a variety of measures to address the situation of children in conflict with the law, including "care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care."<sup>36</sup> The treaty also anticipates the need for regular and accessible procedures in which a child can "challenge the legality of the deprivation of his or her liberty."<sup>37</sup> Punishing a youth offender with the longest prison sentence possible, offering no hope of rejoining society, little motivation of rehabilitation, and scant opportunities for learning, violates each of these provisions.

The CRC has been accepted nearly universally, with 192 out of a total of 194 countries joining as parties. None of the state parties to the treaty has registered a reservation to the CRC's prohibition on life imprisonment without release for children.<sup>38</sup> The United States and Somalia<sup>39</sup>

---

<sup>33</sup> CRC, *at* art. 37(a) (emphasis added).

<sup>34</sup> CRC, *at* art. 37(b).

<sup>35</sup> CRC, *at* art.40.1.

<sup>36</sup> CRC, *at* art. 40.4.

<sup>37</sup> CRC, *at* art. 37(d).

<sup>38</sup> United Nations Treaty Collection Database, available online at <http://untreaty.un.org/>, accessed on July 16, 2004. Malaysia registered a reservation to art. 37(a) as follows: "The Government of Malaysia. . . declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia." Ibid. The government of Myanmar made a broad objection to Article 37,

are the only two countries in the world that have not ratified the CRC, although both have signed it.<sup>40</sup> As a signatory to the CRC, the United States may not take actions that would defeat the convention's object and purpose.<sup>41</sup>

The U.S. government has proclaimed commitment to the CRC's principles. When Ambassador Madeline Albright, as the U.S. Permanent Representative to the U.N., signed the CRC on behalf of the United States in 1995, she declared:

The convention is a comprehensive statement of international concern about the importance of improving the lives of the most vulnerable among us, our children. Its purpose is to increase awareness with the intention of ending the many abuses committed against children around the world. . .

---

which it later withdrew after other states protected. Ibid. The government of Singapore has maintained a declaration regarding Article 37. However, the declaration does not address the prohibition on life imprisonment without parole. Singapore's declaration reads: "The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit – (a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedom of others; or (c) the judicious application of corporal punishment in the best interest of the child." A number of states have interpreted the declaration as a reservation and objected to it as contrary to the object and purpose of the Convention. See UN Treaty Collection Database (Germany: Sept. 4, 1996; Belgium: Sept. 26, 1996; Italy: Oct. 4, 1996; The Netherlands: Nov. 6, 1996; Norway: Nov. 29, 1996; Finland: Nov. 25, 1996; Portugal: Dec. 3, 1996; Sweden: Aug. 1997). In the *Roper* decision, the United States Supreme Court took special note of the fact that no state party to the CRC made a reservation to the prohibition against the juvenile death penalty contained in Article 37. *Roper, supra* note 75, at 1199.

<sup>39</sup> According to the United Nations' agency for children, UNICEF, Somalia is currently unable to ratify the CRC because it lacks a recognized government. See UNICEF, "Frequently Asked Questions," available online at: <http://www.unicef.org/crc/faq.htm#009>, accessed on July 19, 2004.

<sup>40</sup> The United States signed the CRC on February 16, 1995, and the Somalia signed on May 2, 2002.

<sup>41</sup> See Vienna Convention on the Law of Treaties, art. 18, concluded May 23, 1969, 1155 U.N.T.S. 331 (entered into force on Jan. 27, 1980). Although the United States has signed but not ratified the Vienna Convention on the Law of Treaties, it regards this convention as "the authoritative guide to current treaty law and practice." S. Exec. Doc. L., 92d Cong., 1<sup>st</sup> sess. (1971), p. 1; Theodor Meron, "The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination," *American Journal of International Law*, vol. 79 (1985), p. 283. The U.S. government has also accepted that it is bound by customary international law not to defeat a treaty's object and purpose. See e.g., "Albright Says U.S. Bound by Nuke Pact; Sends Letters to Nations Despite Senate Vote," *Washington Times*, (November 2, 1999), p. A1 (describing the Clinton administration's acceptance of obligations under the Comprehensive Test Ban Treaty despite the Senate's failure to ratify).

United States' participation in the Convention reflects the deep and long-standing commitment of the American people.<sup>42</sup>

The United States has reaffirmed this commitment on subsequent occasions. For example, in 1999 Ambassador Betty King, U.S. Representative on the U.N. Economic and Social Council stated:

Although the United States has not ratified the Convention on the Rights of the Child, our actions to protect and defend children both at home and abroad clearly demonstrate our commitment to the welfare of children. The international community can remain assured that we, as a nation, stand ready to assist in any way we can to enhance and protect the human rights of children wherever they may be.<sup>43</sup>

The widespread ratification of the CRC demonstrates the almost absolute consensus in the international community against JLWOP. Only three countries appear to have prisoners serving LWOP sentences for crimes committed as children, and those states have about a dozen prisoners *combined*.<sup>44</sup> Further, the practice is inconsistent with international juvenile justice norms emphasizing the importance of taking into account the status and special of the child and a goal of rehabilitation.

In *Domingues*, the IACHR found that the prohibition against the juvenile death penalty to be a *jus cogens* norm. The Commission looked at the near-universal ratification of the CRC without reservation to article 37(a) and found that “the extent of ratification of this instrument

---

<sup>42</sup> “Remarks by Ambassador Madeline K. Albright, United States Permanent Representative to the United Nations on the Occasion of the Signing of the U.N. Convention on the Rights of the Child,” U.S. Press Release, (February 16, 1995).

<sup>43</sup> “Statement by Ambassador Betty King, United States Representative on the Economic and Social Council, to the Plenary of the 54<sup>th</sup> Session of the General Assembly on the Tenth Anniversary of the Convention on the Rights of the Child,” November 11, 1999, available online at: [http://www.un.int/usa/99\\_112.htm](http://www.un.int/usa/99_112.htm), accessed on July 22, 2005.

<sup>44</sup> *The Rest of their Lives*, *supra* note 2, at 105-7. The CRC Committee recently urged Liberia, the Netherlands and Aruba to amend legislation to prohibit JLWOP. CRC/C/15/Add/236, para. 68; CRC/C/15/Add.227, para. 59.

alone constitutes compelling evidence of a broad consensus on the part of the international community” against the juvenile death penalty.<sup>45</sup> The IACHR examined a widespread trend against the death penalty generally, and the juvenile death penalty in particular. With the juvenile death penalty, the Commission found that eight states still allowed the practice, and five were currently using it; with JLWOP fourteen states (at most) allow the practice, and only three are currently using it. The prohibition against JLWOP is part of the same sentence in the CRC that prohibits the juvenile death penalty, and state practice is almost equivalent to that against the juvenile death penalty, thus the Commission’s reasoning in *Domingues* strongly supports a finding that the prohibition on JLWOP constitutes customary international law.

/s/

---

Deborah LaBelle, Esq.

---

<sup>45</sup> *Domingues*, *supra* note 59, at para. 57.