INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINE DES DROITS DE L'HOMME

IACHR 50 years defending HUMAN RIGHTS

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006 U.S.A.

May 3, 2012

RE: Juveniles Sentenced to life without parole in the USA
Case 12.866
United States

Dear Petitioners:

I am pleased to address you in order to inform you that the Inter-American Commission on Human Rights examined the petition referred to above and adopted its Report on Admissibility N° 18/12 on March 20, 2012, copy enclosed, in compliance with Article 37 of the Commission's Rules of Procedure.

In accordance with Article 36(2) of the Commission's Rules of Procedure, Petition No. 161-06 has been registered as Case No. 12.866, as cited above. I ask that you utilize the latter reference in all future communications.

Pursuant to Article 37(1) of its Rules of Procedure, the Commission has set a period of three months, as from the date of the present communication, for you to present additional observations regarding the merits.

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Further, as provided for in Article 37(4) of the Rules of Procedure, the Commission places itself at the disposal of the parties with a view toward reaching a friendly settlement of this matter, in compliance with Article 40 of the Rules of Procedure of the IACHR.

Accordingly, I request that you present your response to that offer as soon as possible.

Sincerely,

Mario López-Garelli
By authorization of the Executive Secretary

Enclosure

Organization of American States

Inter-American Commission on Human Rights IACHR

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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REPORT No. 18/12
PETITION 161-06
ADMISSIBILITY
"JUVENILE OFFENDERS SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE"
UNITED STATES

Approved by the Commission at its session Nº 1896
held on March 20, 2012

REPORT No. 18/12*
PETITION 161-06
ADMISSIBILITY
"JUVENILE OFFENDERS SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE"
UNITED STATES
March, 20 2012

I. SUMMARY

1. On June 23, 2006, the Inter-American Commission on Human Rights (hereinafter "the Commission", the "IACHR" or "the Inter-American Commission") received a petition lodged by the American Civil Liberties Union of Michigan, the American Civil Liberties Union - Human Rights Working Group, and the Columbia Law School Human Rights Institute (hereinafter "the petitioners"), on behalf of 32 individuals (the "alleged victims")[1] against the United States of America (the "United States" or "the State"). The petitioners alleged that the 32 alleged victims were tried as adults and sentenced to life imprisonment without parole for having committed the crime of homicide in the state of Michigan, with the result that the State has violated Articles I, VII, XVIII, XXIV, XXV y XXVI of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"), interpreted in conjunction with various international treaties in the sphere of human rights. Also, the petitioners also argued that some of the alleged victims' detention conditions violated the American Declaration. With respect to the exhaustion of domestic remedies, the petitioners relied on the exception to the fullfilment of that requirement due to the lack of effective remedies available in domestic law to redress the rights violated. Finally, they added that the petition had been filed within a reasonable time.

2. The State argued that the petition was inadmissible because the petitioners had failed to exhaust all available domestic remedies due to the fact that some alleged victims had not been sentenced and others still had procedures pending before federal courts. The State added in its response that the petitioners had not filed a valid petition in relation to 27 of the 32 alleged victims, since they had not exhibited the corresponding information. The State also alleged that the petition had not been filed within the required time limit. Additionally, the State maintained that sentencing juveniles to life imprisonment without parole does not represent a violation of the American Declaration.

3. As this report has established, after having examined the parties' allegations in the matter of admissibility and without prejudice to the merits of the case, the Inter-American Commission concludes that this case is admissible with regard to the 32 alleged victims for the alleged violations of Articles I (right to life, liberty and personal security and integrity), II (right to equality before the law), VII (right to protection for mothers and children), XII (right to education), XVIII (right to a fair trial), XXV (right to protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration. Finally, the IACHR considered that the petition was inadmissible with regard to the right contained in Article XXIV (right of petition) of the American

*Commissioner Dinah Shelton, a United States national, did not participate in either the deliberations or the decision in the present report, in accordance with the provisions of Article 17.2 (a) of the IACHR's Rules.

[1] The alleged victims are Henry Hill, Barbara Hernandez, Kevin Boyd, Damion Todd and Patrick James McLemore. In Annex A of the petition, the petitioners also included an additional 27 alleged victims: Matthew Bentley, Maurice Black, Larkets Collier, Cornelius Copeland, John Espie, Maurice Ferrel, Mark Gonzalez, Chavez Hall, Lamar Haywood, Lonnell Haywood, Christopher Hynes, Ryan Kendrick, Cedric King, Eric Latimer, Juan Nunez, Sharon Patterson, Gregory Petty, Tyrone Reyes, Kevin Robinson, I.J. Tremble, Marlon Walker, Olisee Webb, Elliot Whittington, Ahmad Williams, Johnny Williams, Leon Williams and Shytour Williams.

Declaration. The Commission also decides to advise the parties of this decision, to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The petition was received by the IACHR on February 23, 2006 and assigned No. P-161-06. On June 14, 2006, the petition was sent to the State and a time limit of two months was granted for it to present its response, in accordance with the IACHR's Rules of Procedure. On August 7, 2006 the IACHR received a request by the State to extend the time period for its response, and the Commission granted a 30-day extension from the date of notification of the extension. The IACHR received the State's reply on April 25, 2007.

5. The IACHR received observations and additional information from the petitioners, presented on January 30, 2007, May 9, 2007, July 19, 2007, August 22, 2007, December 12, 2008, May 19, 2009, June 16, 2010, November 1, 2010, December 20, 2010, June 24, 2011, September 28, 2011, and on March 8, 2012. It also received the State's observations on February 13, 2009, September 24, 2010, and on February 3, 2012. The observations and information were duly sent to the parties.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

General Allegations

6. The petitioners indicated that the 32 alleged victims committed various breaches of the criminal laws of the State of Michigan, United States, when they were between 14 and 18 years of age. They informed that after the relevant criminal proceedings finished, the 32 alleged victims were sentenced to life imprisonment without parole. Subsequently, they stated that the victims filed various legal remedies against the judgments and criminal proceedings against them, but these were unsuccessful. The petitioners alleged in essence that the laws of the State of Michigan, United States, as well as the various orders applying them, violated several rights of the 32 alleged victims, which are enshrined in the American Declaration, interpreted in conjunction with various international treaties in the area of human rights.

7. The petitioners explained that the criminal law of the State of Michigan has incorporated three types of legislative policies over the course of time:

i) *The exclusion of juvenile justice based on age or on certain types of offenses.* - Since before 1988, the law provided that all juveniles of 17 years of age had to be automatically tried as adults when they committed certain breaches of criminal laws - such as the offense of homicide - being liable for a sentence of life imprisonment without parole. Also, adolescents between the ages of 15 and 16 could also be sentenced to life imprisonment without parole if the judge decided, after a hearing, to treat them as adults in cases of the commission of certain offenses such as murder. The petitioners alleged that Damion Todd's case fits under the first premise, due to his age, and Henry Hill's case under the second, by reason of the offense committed;

ii) *Prosecutors' discretion to determine whether minors breaching criminal laws should be tried under the juvenile justice system and the suppression of the judge's ability to decide whether they should be sentenced as minors.* - Beginning in 1988, prosecutors were legally entitled, at their discretion, to decide whether juveniles between the ages of 15 and 16 should be treated as adults, reserving to the ordinary criminal judge only the ability to decide, on conviction by a jury,

whether they should be sentenced as adults or minors when committing certain offenses. Beginning in 1996, the law removed the judge's ability to decide whether or not to sentence individuals aged between 15 and 16 as adults, as well as post-sentence hearings, such that life imprisonment without parole became the automatic punishment for committing certain offenses without the possibility of considering their individual circumstances, background, or possibility of rehabilitation. The petitioners alleged that Barbara Hernández and Kevin Boyd's cases illustrate the first scenario, and the cases of Patrick Lamore and the 28 victims referenced in Annex A to the petition are illustrated under the second, and:

iii) *Lowering the minimum age at which minors could be tried as adults.* - Since 1996, adolescents aged 14 could be treated as adults if prosecutors so decided, at their discretion, and could be sentenced to life imprisonment without parole when committing offenses such as murder. The petitioners group the cases of Matthew Bentley and T.J. Tremble under this heading.

8. The petitioners explained that in the State of Michigan, the crime of murder in the first degree includes: first degree murder, premeditated murder, felony murder, murdering a peace or corrections officer, or aiding and abetting first degree murder. The petitioners alleged that the 32 alleged victims were sentenced to life imprisonment without parole for committing the crime of first degree murder whose classification is broader and regulates different conduct without differentiation between, for example, the perpetrator of the offense and those aiding and abetting the offense. They also pointed out that in the State of Michigan, in 2006 there were 307 juvenile offenders sentenced to life imprisonment without parole, of whom 211 belong to ethnic minorities, overwhelmingly African-Americans.

9. The petitioners alleged that the United States violated the right to special protection set out in Article VII of the American Declaration, by treating the 32 alleged victims that are minors, as adults; and by trying and convicting them, in accordance with the law of Michigan, to life imprisonment without parole without consideration of their age, mental capacity and culpability. In particular, they argued that the State violated the 32 alleged victims' right to special protection by not opting for a prison sentence of the shortest possible length, and for having sentenced them to a punishment which controverts the aims of rehabilitation which should be the goal of the legislation applicable to minors who breach criminal laws.

10. The petitioners argued that the United States violated Articles I, VII and, XXVI of the American Declaration, by criminally classifying and applying the sentence of life imprisonment without parole to the 32 alleged victims, since it constitutes cruel, infamous or unusual punishment, with no consideration given to the vulnerability, immaturity, and consequently, the diminished moral and legal responsibility of minors.

11. The petitioners also alleged that the State is responsible for violating Articles I, VII, and XXVI of the American Declaration for treating the 32 alleged victims inhumanely by imposing this punishment on them. Above all, the State is responsible for the disproportionate amount of moral and psychological harm that the sentence of life imprisonment without parole causes to minors, and for 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, which, in some cases, ends in suicide attempts.

12. The petitioners alleged that with the United States' applying the State of Michigan's legislation to the 32 alleged victims, it violated Articles VII, XVIII, XXIV, XXV, and XXVI of the American Declaration, by: i) not guaranteeing specialized proceedings and court trials in the area of the rights of children and adolescents; ii) not guaranteeing differential treatment between minors 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 minors and adults in other areas; iii) for the courts' failure to take into account 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, and; iv) the State's failure to give them 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. Finally, the petitioners added that the alleged victims were not provided with an opportunity to effectively revise or appeal the imposition of the life imprisonment without parole punishment.

13. The petitioners stated in their December 12, 2008, brief that the deprivation of the alleged victims' rights was compounded by the consequent omission by the State to provide them with opportunities for their rehabilitation, education and adequate health services. This includes requiring the inmates in Michigan to pass the General Educational Development Test in order to be able to gain paid work or a vocational program within the prison, and denying them access to this test due to the duration of the sentences. They also added that the mental health services directed at the alleged victims are derisory.

14. The petitioners argued that in light of the fact that the Convention on the Rights of the Child had been almost universally ratified and that this international treaty expressly prohibits life imprisonment without parole and obliges that incarceration be a measure of last resort for minors; and taking into account that the Commission recognized in the *Case of Michael Domingues* that the prohibition on the death penalty applied to juvenile offenders constituted a consuetudinary rule recognized as a *jus cogens* norm, given the extensive ratification of the Convention on the Rights of the Child,[2] the State has violated customary international law in this case, by virtue of the fact that the prohibition on life imprisonment without parole within the Convention on the Rights of the Child constitutes a norm belonging to customary international law.

Allegations relating to the case of Damion Todd

15. The petitioners alleged that in accordance with the legislation in force in the State of Michigan prior to 1988, the judicial authorities automatically treated Damion Todd as an adult at the age of 17; that the jury convicted him of having committed the crime of first degree murder; and the judge sentenced him to life imprisonment without parole, in violation of Articles I, VII, XVIII, XXIV, XXV, and XXVI of the American Declaration. They also added that Damion Todd comes from a family of limited means and that his family had to hire a defense attorney who only interviewed him one day prior to trial. They indicated that the judge did not provide Damion Todd's defense counsel with a letter from various witnesses stressing that he had not fired. They added that in the adult prison, Damion Todd had only received four disciplinary infractions in 18 years, and that he had completed his high school studies.

Allegations relating to the case of Henry Hill

16. The petitioners alleged that in accordance with the legislation in force in the State of Michigan prior to 1988, the judicial authorities treated Henry Hill as an adult at the age of 16, the jury convicted him of aiding and abetting first degree murder. The judge sentenced him to life imprisonment without parole, in violation of Articles I, VII, XVIII, XXIV, XXV y XXVI of the American Declaration. The petitioners informed that given the applicable legislation, the prosecutor requested that the judge treat him as an adult, and, once the trial hearing had taken place, the juvenile justice judge decided that he should be tried in ordinary criminal court without considering,

[2] IACHR, Report No. 62/02, Case 12.285, Merits, *Michael Domingues*, United States, October 22, 2002, para. 85.

among other questions, that he had the maturity and capacity level of a nine-year-old child. The petitioners added that upon conviction, Henry Hill was locked up for one year in solitary confinement in an adult prison where he remained until the age of 17, and that he was only allowed to be out for one hour each day, two days per week. The petitioners noted that Henry Hill was afraid of physical and sexual abuse, a common occurrence in the prison he was incarcerated, and that he had not received psychological treatment. Since his incarceration, Henry Hill has taken various courses, and at the date of the petition was in charge of serving food to the prison officials and inmates.

Allegations relating to the cases of Bárbara Hernández and Kevin Boyd

17. The petitioners stated that in accordance with the law in force between 1988 and 1996, the judicial authorities treated Bárbara Hernández and Kevin Boyd as adults at the age of 16, the jury convicted them of having committed felony murder, the judge sentenced them to life imprisonment without parole, in violation of Articles I, VII, XVIII, XXIV, XXV, and XXVI of the American Declaration. The petitioners informed that in their cases, given the applicable legislation, the prosecutor in his discretion decided to treat them as adults. Once convicted by the jury, the judge ought to have considered in their case whether they should be sentenced as acults or minors. In accordance with the legislation, the judge ought to have considered: i) background, character, maturity and way of life, ii) the seriousness of the crime; iii) whether the crime formed part of a pattern; iv) whether the adolescent's type of behavior represented a danger to society upon release at the age of 21; v) whether the adolescent was able to be rehabilitated in adult institutions or for minors and young persons; and vi) the superior interests of the common good and the protection of public security. The petitioners informed that in these kind of cases, the judge had two options: if they were to be sentenced under the juvenile justice system, they would remain at liberty at the age of 21, and if sentenced as adults, the punishment of life imprisonment would be automatic for the crimes committed. The petitioners informed that this last sanction was the one imposed by the judge in their case.

18. The petitioners alleged that in the case of Bárbara Hernández, the judge sentenced her as an adult in accordance with the expert's report that indicated that she demonstrated no remorse about the death of the victim and the severity of the crime, without considering her psychological condition and that she had been sexually abused since childhood. For her incarceration in an adult prison, the judge considered the fact that the juvenile justice facilities did not offer the medical attention that Bárbara Hernández required, as well as the low probability for rehabilitation. Bárbara Hernández has been the victim of sexual violence and has suffered various injuries whilst incarcerated in the adult prison.

19. The petitioners alleged that the judge considered that Kevin Boyd should be covicted and sanctioned as an adult, given the nature of the crime, and the fact that two years would be insufficient for his rehabilitation since he was 19 at the time of conviction for the crimes committed at the age of 16. They also indicated that a confession was taken into consideration as evidence and that he was never informed of his Miranda Rights. They added that Kevin Boyd attempted to commit suicide on more than one occasion in the adult prison, and that since then, Kevin Boyd has gained a General Education Diploma.

Allegations relating to the cases of Patrick James McLemore and the 27 alleged victims referred to in Annex A

20. The petitioners alleged that, by applying the State of Michigan's law to Patrick James McLemore and the 27 alleged victims referred to in Annex A of their petition, the State violated Articles I, VII, XVIII, XXIV, XXV, and XXVI of the American Declaration, interpreted in conjunction with various international treaties in the area of human rights, since *beginning* in 1996,

the prosecutors, exercising their discretion treated the adolescents between the ages of 14 and 17 as adults. Once the jury had convicted the minors for first degree murder, they had no opportunity for the judge to consider whether they should have been sentenced as adults or as minors. In relation to Patrick James McLemore, the petitioners added that he was treated as an adult and sentenced to life imprisonment without parole at the age of 16 for committing felony murder. Since being in prison, he has obtained a General Education Diploma and substantially improved his academic performance.

21. Except in some cases, the petitioners did not present particularized allegations on the 27 alleged victims, although they mentioned that these were individuals under 18 years of age that were treated as adults and sentenced to life imprisonment without parole for having committed the crime of homicide under the same judicial framework applied to Patrick James McLemore, in accordance with those listed in the corresponding Annex A of the petition as well as Annex I of their December 20, 2010, brief.

22. The petitioners alleged with regard to Matthew Bentley, one of the 27 alleged victims referred to in Annex A of the petition, that even though he argued before the domestic courts that the punishment of life imprisonment without parole represented cruel or unusual punishment according to the Constitution of Michigan, and that the automatic imposition of the sentence on minors for having committed the crime of homicide was contrary to the guarantee of due process, the Michigan Court of Appeals rejected his arguments, stating that these questions had been decided previously. The petitioners informed that the Supreme Court of Michigan later rejected reconsideration of this decision. Finally, the IACHR observes that the petitioners alleged John Espie's mental condition had not been considered at trial, since he had been diagnosed with frontal lobe syndrome, and that T.J. Tremble was arrested and issued his confession without his parents or a lawyer being present.

23. They also alleged with regard to Oliver Webb, Cedric King, Eric Latimer, Chavez Hall, Matthew Bentley, Maurice Black, Maurice Ferrell, Mark Gonzalez, Lonell Haywood, Christopher Hynes, Juan Nunez, Sharon Patterson, T.J. Tremble, Marlon Waker, Oliver Webb, Ahmad Williams, Larketta Collier, Cornelious Copeland, Lamar Haywood, Tyron Reyes, Kevin Robinson, Elliott Whittington, Leon Williams, and Jonny Williams, that they do not have access to an education that is equivalent to the education individuals not facing life imprisonment without parole receive, or, in general, access to rehabilitation programs.

Allegations related to the admissibility of the petition

24. The petitioners alleged that the 32 alleged victims do not need to exhaust domestic remedies, invoking the exception to the rule of the exhaustion of domestic remedies set out in Article 31.2 (a) of the Commission's Rules of Procedure. The petitioners alleged that the remedies in the United States were ineffective, 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 and jurisprudence of Michigan and the Federation.

25. The petitioners added that according to the laws of the United States, there was no realistic, adequate or effective measure at the time the alleged victims violated the criminal laws that would permit a substantive examination of their cases, taking into account that they were minors, such that any measure lodged in the aforementioned terms had very little possibility of success, the latter being futile. They also pointed out, in any case, that the State had to demonstrate the availability of an adequate remedy so that the allegations in the petition could be successful.

26. The petitioners indicated that the United States Supreme Court of Justice has held that, as a punishment, life imprisonment without parole is not unconstitutional,[3] and that federal appeals courts[4] and Michigan state appeals courts[5] 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. They added that the *ratio* of *Roper v Simmons*,[6] outlawing the death penalty for minors, does not permit the conclusion that the victims had an adequate remedy before the domestic courts, above all, if this decision was based primarily on the fact that 30 states from the United States had prohibited the death penalty for minors.

27. The petitioners argued, contrary to the position of the State that the alleged victims do not have to exhaust every theoretical domestic remedy, and are not obliged to exhaust extraordinary remedies such as the writ of *certiorari* before the Supreme Court, in an analogous way to the Commission's decision on admissibility in the *Case of César Alberto Mendoza*.[7] The petitioners added that they had exhausted all available domestic remedies in accordance with Annex I of that brief, the State having had ample opportunity to make reparations to the alleged victims for the violations alleged in the petition. Finally, the petitioners indicated that the decision of the United States Supreme Court of Justice in *Graham v. Florida* is not relevant, given that it decided that life imprisonment without parole represents cruel and unusual punishment in the case of minors sentenced for non-homicide offenses, and also because that decision only allows the convicted minors to get out of prision with parole, without preventing a long-term punishment sanction.[8]

28. The petitioners argued that the two new cases admitted by the Supreme Court of Justice on November 7, 2011, being reviewed through writ of *certiorari* (*Miller v. Alabama* and *Jackson v. Hobbs*), have more limited issues than those presented in the petition. In these cases, the Supreme Court of Justice will only review if life sentence without parole, imposed as a sanction for two juvenile offenders who committed murder in Alabama and Arkansas when they were 14 years old, pursuant to a statutory scheme under which that penalty is mandatory, violates the Eighth and Fourteenth Amendments of the Constitution of the United States.

29. The petitioners alleged that the petition was presented within a reasonable time, given that the circumstances of the violations of the alleged victims' rights, in all cases, are similar and ongoing, considering that all the alleged victims continued being deprived of their liberty. Finally, the petitioners requested that the decision on admissibility relating to the exhaustion of domestic remedies and timeliness of the petition be deferred until the arguments and decision on the merits are made.

B. Position of the State

30. The State alleged that the petitioners failed to exhaust domestic remedies and that none of the exceptions to the prior exhaustion of domestic remedies were applicable. As opposed

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[3] *Harmelin v. Michigan*, 501 U.S. 957 (1991).

[4] *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).

[5] *People v. Launsburry*, 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).

[6] *Roper v. Simmons*, 543 U.S. 551 (2005).

[7] IACHR, Report No. 26/08, Petition 270-02, Admissibility, *César Alberto Mendoza et al.*, Argentina, March 14, 2008.

[8] *Graham v. Florida*, 130 S. Ct. 2011 (2010). See People v. Caballero, Cal. Rptr. 3 d 920, 925 (Cal. Ct. App. 2011) and Thomas v. State, 2011 WL 6847814, No. 1D10-1613, *1 (Fla. Dist. Ct. App. Dec. 30, 2011).

to the petitioners, the State argued that the international standard for the exhaustion of domestic remedies cannot be interpreted in a manner implying that whenever there is a lack of reasonable prospect of success the corresponding remedy need not be exhausted. In its view "[t]he mere likelihood of an adverse decision is insufficient: there must be 'something more than probability of defeat but less than certainty.'"[9]

31. The State submitted that the petitioners' arguments on admissibility were based entirely on precedents of the United States prior to the decisions of the Supreme Court of Justice in *Roper v. Simons* and *Atkins v. Virginia*,[10] prohibiting the application of the death penalty to minors and to persons with mental disabilities, respectively. It added that these decisions allow the possibility for the courts of the United States to take into account the arguments brought forward by the petitioners. The State also stressed that the exhaustion of domestic remedies requires that the issues alleged in the petition before the Commission have been debated and decided by the domestic courts, and indicated that none of the alleged victims had argued the claims brought in the petition before the domestic courts.

32. The State argued that the alleged victims Henry Hill, Bárbara Hernández, Kevin Boyd, Damion Todd and Patrick McLemore had not exhausted the domestic remedies because the issues argued in the petition had not been argued in the domestic proceedings. Also, the State indicated that Henry Hill, Bárbara Hernández, Kevin Boyd had not exhausted the available domestic remedies since federal *habeas corpus* writs were pending at the date of presentation of the petition. The State argued that the claims in these remedies differ from the allegations made in the petition filed with the Commission because in the federal *habeas corpus* writs, they did not question the constitutionality of the convictions in a substantially similar way to that used in the petition.

33. The State alleged that should the Commission decide that the alleged victims have exhausted domestic remedies, the petition should be declared inadmissible by virtue of the fact that it was not presented within the time limit of six months or within a reasonable period of time from the date of notification of the final judgment. The petition is inadmissible with respect to the cases of Henry Hill, Bárbara Hernández, Kevin Boyd, Damion Todd, and Patrick James McLemore, since they were sentenced in 1982, 1991, 1986, 1996, and 2000, respectively, well before the petition was lodged in 2006. They also add that the appeals filed by the petitioners against these sentences concern different questions to those alleged in the petition presented to the Commission, and therefore cannot be taken into account at the moment of considering the time limit, and indicated that the claims alleged in the petition have never been raised in a U.S. state or federal court.

34. The State alleged 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 submitted that in their briefs the petitioners made general claims with respect to the law without referring to facts demonstrating harm and, consequently, a violation of the American Declaration. It added that the petitioners continually referred in their petition to the application of a number of international instruments other than the American Declaration, as well as to judgments and opinions of the Inter-American Court of Human Rights, without these instruments, decisions and opinions being binding on the United States or, in some cases, the Commission being entitled to apply them. 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 not

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[9] International Law Commission, *Third Report on Diplomatic Protection*, J. Dugard, Special Rapporteur, 54th Period of Sessions, A/CN.4/523, March 7, 2002, para. 42. Available for consultation at: http://untreaty.un.org/ilc/documentation/english/a_cn4_523.pdf

[10] *Roper v. Simmons*, 543 U.S. 551 (2005) and *Atkins v. Virginia*, 536 U.S. 304 (2002).

matching the letter of the text, resting on a systematic and erroneous analysis of the applicable international law.

35. The State alleged that the Commission was not competent to consider whether the laws of the United States violated customary international law. The State emphasized 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. Finally, it added that the United States has not ratified the Convention on the Rights of the Child, in part, due to the prohibition of sentencing minors with life imprisonment without parole that is included in Article 37.

36. The State alleged that not being a member of the OAS, the State of Michigan cannot be considered part of the present proceedings. Therefore it requested that the Commission declare the petition inadmissible in all the points relating to the State of Michigan.

37. The State argued that, in accordance with the Commission's Rules of Procedure, it was competent to consolidate admissibility and merits issues in serious and urgent cases only. It indicated that to that effect, the petitioners ought to have requested the consolidation at the moment of lodging their petition, and the Commission to have requested observations on this point at the moment of sending the petition to the State, which was not the case here.

38. Finally, the State alleged that the judgment in *Graham v Florida* constitutes a precedent allowing the view that the petitioners should have exhausted domestic remedies, since their efforts would not be bound to fail as alleged. The State also argued that the two cases admitted on November 7, 2011 by the Supreme Court of Justice for review through writ of *certiorari* (*Miller v. Alabama* and *Jackson v. Hobbs*), show that the petitioners had not exhausted the internal remedies, and that these remedies should not be considered futile, since the facts in these cases are comparable to those reported in the petition.

IV. ANALYSIS OF ADMISSIBILITY

A. Commission's Competence *ratione personae, ratione materiae, ratione temporis* and *ratione loci*

39. The Inter-American Commission considers that it is competent *ratione personae* to examine the complaints set forth in the present petition. In accordance with Article 23 of the IACHR's Rules of Procedure, the petitioners are authorized to submit claims alleging violations of the rights protected in the American Declaration. The 32 alleged victims are persons whose rights are protected by this international instrument. The State is bound to respect the provisions contained in the American Declaration, and the IACHR is competent to receive petitions alleging violations committed by the State contained in the aforementioned instrument, because the State ratified the OAS Charter on June 19, 1951, having been subject to the Commission's jurisdiction since 1959, the year of that organ's creation, and in accordance with Articles 1 and 20 of the IACHR's Statute and Articles 23 and 51 of its Rules of Procedure.[11] The Commission reminds the parties that it has

[11] Articles 1 and 20 (b) of the IACHR's Statute; OAS Charter, Articles 3, 16, 51, 112 and 150; IACHR's Rules, Articles 23 and 51; and IACHR, Report No. 3/87, Case 9647, Admissibility and Merits, *James Terry Roach and Jay Pinkerton*, United States, December 22, 1987, paras. 46-49. *See also* I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paras. 35-45.

concluded in previous cases, that the federal clause can not be claimed to the effect that federal States do not comply with the obligations contained in the American Declaration or, in any case, ignore the personal jurisdiction of the Inter-American Commission.[12]

40. Taking account of the fact that the petition alleges violations of the rights protected by the American Declaration taking place within the territory of the United States, the IACHR concludes that it is competent *ratione loci* to examine them. In addition, the petition is based upon facts occurring at a time when the obligations undertaken by the State in accordance with the OAS Charter and the American Declaration were in force, so that the Inter-American Commission is competent *ratione temporis* to examine the claim.

41. Finally, in view of the fact that the petitioners have advanced claims alleging the violation of Articles I, VII, XVIII, XXIV, XXV, and XXVI of the American Declaration, the IACHR is competent *ratione materiae* to examine the petition. Therefore, the Inter-American Commission considers that it is competent to examine the claims set out in the petition.

B. Other Requirements of Admissibility

1. Exhaustion of Domestic Remedies

42. In accordance with Article 31.1 of its Rules of Procedure, the Inter-American Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted, in accordance with the generally recognized principles of international law. However, Article 31.2 of the Rules of Procedure specifies that this requirement does not apply when: a) the domestic legislation of the State concerned does not afford due process of law for protection of the right that has allegedly been violated; b) the party alleging a violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under these domestic remedies.

43. The IACHR recalls that any decision on the application of exceptions to the rule on the exhaustion of domestic remedies shall be adopted previously and independently of an analysis on the merits of the case, because it is premised on type and nature of evidence different from that employed to determine whether or not there has been a violation of Articles XVIII and XXVI of the American Declaration.[13]

44. The State submitted that the alleged victims have not exhausted all the domestic remedies, including a federal *habeas corpus* appeal, and that, even if they had, the alleged victims have not brought forward domestically the same questions presented in the petition, thereby failing to fulfill the requirement of the prior exhaustion of domestic remedies. For their part, the petitioners argued that the State had been aware of the arguments of the alleged victims since the petition was presented in 2006, having adequate opportunity to consider them and, in their case, make reparations to the victims. The petitioners also added that before filing the petition the alleged victims had made numerous attempts for the State to make reparations for the harm suffered through an exhaustion of the appeals available under domestic law. They pointed out that when the Court of Appeals for the State of Michigan rejected all appeals impugning the legality and constitutionality of treating adolescents as adults and of sentencing them to life imprisonment, this demonstrated the lack of any effective remedy to vindicate their rights. Finally, the petitioners

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[12] Véase IACHR, Report No. 3/87, Case 9647, Admissibility and Merits, *James Terry Roach and Jay Pinkerton*, United States, September 22, 1987, paras. 62 and 63.

[13] IACHR, Report No. 42/10, Petition 120-07, Admissibility, *N.I. Sequoyah*, United States, March 17, 2010, para. 38.

alleged that the alleged victims did not present arguments before the domestic courts similar to those submitted in the petition because the former had no possibility of success, given that the remedies provided for in the domestic legal order did not have reasonable prospects of succeeding in light of the case law of the United State's courts.

45. Also, the State argued that the 32 alleged victims did not file a petition for a writ of *certiorari*, in accordance with the Supreme Court's precedent in *Graham v. Florida*, where it decided that a sentence of life imprisonment without parole imposed on individuals below the age of 18 who break criminal laws by commission of non-homicide offenses, represented cruel and unusual punishment according to the Eighth Amendment to the Constitution of the United States. The State alleged that by means of the writ of *certiorari* appeal, the alleged victims had the opportunity to seize the Supreme Court of Justice to remedy their situation, and that the Commission is not competent to prejudge the chances of success the petitioners might have at the domestic level. The State added that the cases *Miller v. Alabama* and *Jackson v. Hobbs* showed that the petitioners had not exhausted domestic remedies, and that these remedies should not be considered futile, since the facts in these cases are comparable with those reported in the petition. In contrast to the State's allegations, according to the petitioners, the alleged victims did not have to exhaust the writ of *certiorari* appeal before the Supreme Court because it is an extraordinary remedy. In addition, the petitioners alleged that in accordance with the Commission's decisions, the remedies to be exhausted must be available, adequate and effective to remedy the alleged violation of human rights, and submitted that the writ of *certiorari* does not fulfill these requirements, its exhaustion proving futile.[14] Finally, the petitioners argued that the cases *Graham v. Florida*, *Miller v. Alabama*, and *Jackson v. Hobbs* dealt with issues more limited than those presented in the petition.

46. The IACHR has observed that the purpose of the requirement to exhaust domestic remedies is to ensure that the State in question is aware of the alleged violation of a protected right, and has the opportunity to resolve controversies within its own legal framework before they are taken to an international body.[15] For the IACHR "if the alleged victim endeavored to resolve the matter by making use of a valid, adequate, alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled."[16]

47. However, in accordance with the jurisprudence of the Commission and with that of other international human rights organs, ineffective remedies do not need to be exhausted. In the IACHR's view, for the purposes of the petition's admissibility, remedies are ineffective when it is shown that none of the means to vindicate a remedy before the domestic legal system appears to have prospects of success.[17] In order to satisfy this point, the Commission must have before it evidence allowing it to evaluate effectively the probable outcome of the petitioners' proceedings. The mere doubt about the prospects of filing a case is insufficient to exonerate the petitioners from

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[14] IACHR, Report No. 3/87, Case 9647, Admissibility and Merits, *James Terry Roach and Jay Pinkerton*, United States, September 22, 1987, para. 30.

[15] *Inter alia*, IACHR Report No. 51/08, P299-07, *Robert Ignacio Díaz Loreto et al*, Venezuela, July 24, 2008, para. 42.

[16] IACHR, Report No. 70/04, Petition 667-01, Admissibility, *Jesús Manuel Naranjo Cárdenas et al. – Jubilados de la Empresa Venezolana de Aviación VIASA*, Venezuela, October 13, 2004, para. 52.

[17] IACHR, Report 26/06, Petition 434-03, Admissibility, *Isamu Carlos Shibayama et al.*, United States, March 16, 2006, para. 48; Report No. 16/04, Petition 129-2002, Admissibility, *Tracy Lee Housel*, United States, February 27, 2004, para. 36; and Report, No. 51/00, Case 11.193, Admissibility, *Gary T. Graham currently known as Shaka Sankofa*, United States, June 15, 2000, para. 60.

exhausting domestic remedies[18]. In order to decide whether a case is admissible or not and without prejudging the merits issues, in those cases where the said remedies are considered ineffective due to a lack of prospects for success, the exception to the exhaustion of domestic remedies set out in Article 31.2 (b) of the IACHR's Rules of Procedure would be applicable.[19]

48. Also, the Commission has decided that "the requirement of the exhaustion of domestic remedies does not mean that the alleged victims must exhaust all the remedies available to them," which implies that extraordinary remedies do not need to be exhausted because they have a discretionary character,[20] and their procedural availability is restricted and does not fully satisfy the right of the accused to challenge the judgment.[21]

49. According to the information provided by the petitioners and unchallenged by the State, the Commission observes that Henry Hill, Bárbara Hernández, Kevin Boyd, Damion Todd, and Patrick James McLemore exhausted the remedies of appeal before the Court of Appeals for the State of Michigan,[22] or presented leaves to appeal before the Supreme Court of Michigan.[23] They also filed a federal *habeas corpus* appeal, which were decided against them.[24] Actually, the Commission notes that Damion Todd also filed a petition for a writ of *certiorari* which was rejected.[25] Additionally, the Commission observes that the petitioners mention in Annex I to their December 20, 2010, brief, that Henry Hill, Bárbara Hernández, and Damion Todd filed requests for commutation or pardon of the sentence, which were denied, without the State presenting observations in this regard.[26]

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[18] IACHR, Report No. 26/06, Petition 434-03, Admissibility, *Isamu Carlos Shibayama et al.*, United States, March 16, 2006, para. 48.

[19] IACHR, Report No. 134/11, Petition 1190/06, Admissibility, *Undocumented Migrant Workers*, United States, October 20, 2011, paras. 29 and 30.

[20] IACHR, Report No. 26/08, Petition 270-02, Admissibility, *César Alberto Mendoza et al.*, Argentina, March 14, 2008, para. 72.

[21] See IACHR, Report No. 55/1997, Case 11.137, Admissibility and Merits, *Juan Carlos Abella*, Argentina, November 18, 1997, para. 269.

[22] See *People v. Boyd*, 1998 WL 1991584 (Mich.App), *People v. Todd*, 180 Mich.App. 625, 465 N.W.2d 380 (1990), and *People vs. MacLemore* (unpublished, 2002). According to Annex I of the petitioners' brief of December 20, 2010, appeals were filed before the Court of Appeals for the State of Michigan. The convictions were upheld on the following dates: Henry Hill (March 23, 1984), Barbara Hernandez (February 4, 1994), Kevin Boyd (June 5, 1998 and October 6, 1998), Damion Todd (December 17, 1990) and Patrick James McLemore (December 20, 2002).

[23] See *People v. Hernandez*, 447 Mich. 1020, 527 N.W.2d 511 (1994). According to Annex I of the petitioners' brief of December 20, 2010, appeals were filed before the Supreme Court of the State of Michigan: Henry Hill (denied on November 26, 2003), Barbara Hernandez (denied on December 6, 1994), Kevin Boyd (both denied on October 26, 1999 and on October 25, 2004), Damion Todd (denied on February 20, 1992) and Patrick James McLemore (denied on December 29, 2003).

[24] The federal *habeas corpus* appeals were lodged by Henry Hill (April 2004), Barbara Hernandez (August 2006), Kevin Boyd (November 2004), Damion Todd (July 1998) and Patrick James McLemore (March 2007), all decided against them: Henry Hill (March 14, 2008), Barbara Hernandez (April 21, 2009), Kevin Boyd (June 5, 2006) and Damion Todd (April 24, 2000). In its reply, the State confirmed the filing of federal *habeas corpus* petitions with regard to Henry Hill, Barbara Hernandez and Kevin Boyd, and the lodging of these appeals with regard to Henry Hill, Barbara Hernandez, Kevin Boyd and Patrick James McLemore is mentioned in the case file and their outcome with regard to Kevin Boyd, Damion Todd and Patrick McLemore.

[25] In the case of Damion Todd, it appears from the case file that an appeal was lodged with the US Court of Appeals of the Sixth Circuit against denial of the federal *habeas corpus* of April 12, 2002, and a petition for a *writ of certiorari* before the Supreme Court was denied on October 31, 2002.

[26] According to Annex I of the brief of December 20, 2010, the requests for a pardon or commutation of sentence were denied on the following dates: Henry Hill on November 3, 2010, Barbara Hernandez on August 17, 2010, and Damion Todd on October 11, 2010.

50. Besides this, with respect to the 27 victims referred to in Annex A of the petition, the State argued that it possessed no information relating to their cases, and therefore requested that the Commission declare the petition inadmissible with respect to these victims. In this regard, the IACHR observes that the petitioners sent Annex A via a May 9, 2007, communication, which was sent to the State in a timely way.[27] In addition, by communication dated December 20, 2010, the petitioners appended Annex I to their communication, the same being sent to the State on January 11, 2011, without the State presenting its observations on this document. Finally, the Commision notes that the petition and Annex A of the petition are publicly available at the Internet page of the petitioners.[28]

51. The Commission notes that the petitioners presented the names, date of sentencing and other information about the abovementioned 27 alleged victims in Annex A of the petition, and, in Annex I of the December 20, 2010 brief, the remedies they had exhausted as well as the date in which they were decided were included. The Commission observes that of the 27 alleged victims referred to in Annex A and Annex I, only eight exhausted the federal *habeas corpus* appeal, those being: Matthew Bentley,[29] Maurice Black,[30] Cornelius Copeland,[31] John Espie,[32] Lamarr Haywood,[33] Lonell Haywood,[34] T.J. Tremble,[35] and Shytour Williams,[36] along with two of them who exhausted the writ of *certiorari* appeal, i.e., Matthew Bentley[37] and Shytour Williams.[38] However, according to the information presented by the petitioners, 26 of the 27 alleged victims lodged an appeal before the Court of Appeals for the State of Michigan, which affirmed the sentences of life imprisonment without parole.[39] The State did not contest the information provided by the petitioners, besides which the Commission observes that it is a matter of State power to deal with remedies and judgments.

52. According to the information provided by the petitioners, the IACHR observes that none of the 32 alleged victims, except Matthew Bentley, presented arguments before the domestic courts relating to the unconstitutionality of the laws of Michigan permitting prosecutors or judges to treat as adults minors who commit the offense of homicide, or arguments aiming to establish that life imprisonment without parole constitutes cruel or unusual punishment in terms of the Eighth Amendment to the Constitution of the United States.

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[27] Annex A was sent to the State dated January 14, 2009, together with the petitioners' observations to the State's rejoinder.

[28] Available at: http://www.aclu.org/files/assets/IACHR_Petition_Supplemental_Brief_FINAL_12_11_08.pdf

[29] Sentenced on August 31, 1998. Appeal against denial of his federal *habeas corpus* petition rejected on November 2, 2005.

[30] Sentenced on February 12, 2001. Federal *habeas corpus* petition denied on April 16, 2009.

[31] Sentenced on June 9, 2000. Federal *habeas corpus* petition denied on August 9, 2006.

[32] Sentenced on September 10, 1999. Federal *habeas corpus* petition denied on July 28, 2010.

[33] Sentenced on August 10, 1999. Federal *habeas corpus* petition denied on January 10, 2008.

[34] Sentenced on August 24, 1998. Federal *habeas corpus* petition denied on March 27, 2009.

[35] Sentenced on December 5, 1997. Federal *habeas corpus* petition denied on September 28, 2009.

[36] Sentenced on November 5, 1997. Federal *habeas corpus* petition and petition for *writ of certiorari* denied on April 4, 2005.

[37] Petition denied on April 3, 2006.

[38] Petition denied on April 4, 2005.

[39] According to Annex I of the brief of December 20, 2010, the Court of Appeals for the State of Michigan upheld the convictions of 26 of the 27 alleged victims. Sharon Patterson, the remaining alleged victim, was sentenced to life imprisonment without parole on April 13, 2004. The State did not specify if she did not appeal the sentence.

53. 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, via their counsel, 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.[40]

54. The Commission notes that in the case of Matthew Bentley, the Federal District Court denied him the federal *habeas corpus* requested, and concluded that the laws of Michigan sentencing individuals under the age of 18 to life imprisonment without parole did not breach the Eighth Amendment of the Constitution of the United States.[41] The Commission also observes 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.[42]

55. Similarly, the IACHR observes that on various occasions, the Supreme Court of Justice has denied a petition for a writ of *certiorari* presented by different individuals below the age of 18 from different States, including Michigan. When presenting this appeal, these individuals alleged that the sentence of life imprisonment without parole was unconstitutional according to the Eighth Amendment for being cruel and unusual punishment.[43]

56. Based on the above legal and factual analysis and for the purposes of admissibility, the Commission finds that the main questions raised in petition 160-06 have already been presented to different courts, in particular to the Supreme Court of the State of Michigan and, ultimately, to the Supreme Court of Justice of the United States, both in the context of this petition, as can be noted in the appeals lodged by Matthew Bentley, and in the framework of other cases in which various juvenile offenders have invoked multiple remedies to question and impugn the application of life imprisonment without parole when they breached criminal laws, as well as enforcement of laws that treat minors accused and convicted of committing homicide crimes as adults.

57. The Commission concludes from its review that the State has had ample opportunity to examine the questions presented in this petition and several occasions to remedy the situation claimed by the alleged victims, had it seen fit to do so. Furthermore, the Commission finds that for the purposes of admissibility, the domestic remedies cannot be considered to have had a reasonable prospect of success in light of the consistent case law of the United States courts, including the

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[40] *People v. Launsburry*, 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*). It is worth noting that the Constitution of Michigan prohibits cruel or unusual punishment, similar to the American Declaration, while the US Constitution prohibits cruel and unusual punishment.

[41] See *Bentley v. McKee* (2005).

[42] See *Bentley v. McKee*, 547 U.S. 1056 (2006).

[43] See *Massey v. Washington*, 499 U.S. 960 (1991); *McKinney v. Robinson*, 631 U.S. 819 (2000), *Lee v. North Carolina*, 537 U.S. 955 (2002); and *Craig v. Louisiana*, 552 U.S. 1062 (2007).

Supreme Court. Therefore, the Commission concludes that the exception to the rule of exhaustion of domestic remedies contained in Article 31.2 (b) of the IACHR Rules of Procedure is applicable in the cases of the 32 alleged victims.

58. In regards to the arguments of the State to the effect that the alleged victims had recourse to the Supreme Court through a writ of certiorari to remedy this situation and that the cases of *Graham v. Florida*, *Miller v. Alabama*, and *Jackson v. Hobbs* demonstrated that the domestic remedies could be considered futile, the IACHR observes that the writ of certiorari is a discretionary remedy permitting the United States Supreme Court to review the judgments of federal or state courts. The Supreme Court itself has recognized that this remedy is discretionary in the Rules of the United States Supreme Court, since a request for a writ of certiorari will only be admissible for compelling reasons; additionally, consideration of a request for a writ of certiorari is not a matter of right, but of judicial discretion.[44]

59. The Commission observes that this discretion is evident from the fact that Matthew Bentley, one of the alleged victims, who was 14 years old when he violated the criminal laws, presented to the Supreme Court issues that were basically similar to those raised in *Miller v. Alabama* and *Jackson v. Hobbs*, yet his request for a writ of certiorari was not admitted. The Commission further notes that whilst the Supreme Court considered the merits of *Graham v. Florida*,[45] in *Sullivan v. Florida*,[46] it did not. Both petitions were heard on the same day, and in both, the appellants alleged the unconstitutionality of the life imprisonment without parole, when at the time they committed the non-homicide crimes, they were below the age of 18.

60. In conclusion, for the purposes of admissibility, the Commission takes into account the fact that the petitioners' submissions question the framework of legal provisions applied to the alleged victims and the consequences of that application, not the individual circumstances of each conviction. In that regard, the country's courts have had repeated opportunities to examine and decide upon the compatibility of that framework with the principles of due process. Therefore, the Commission considers that, for the purpose of admissibility, it is unnecessary to require each alleged victim to lodge the same claim through a special and discretional remedy, and therefore has decided to apply the exception provided at Article 31.2 (b) of the Rules of Procedure of the IACHR.

2. Timeliness of the Petition

61. Article 32.1 of the Inter-American Commission's Rules of Procedure requires that petitions be lodged within a period of six-months following the date on which the final decision was notified. However, by virtue of Article 32.2 of the IACHR's Rules of Procedure, in those cases in which the exceptions to the requirement of the prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable time, as determined by the Inter-American Commission. For this purpose, the Inter-American Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.[47]

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[44] The Rules of the US Supreme Court are available at: http://www.supremecourt.gov/ctrules/ctrules.aspx. The Rules state that "*a petition for a writ of certiorari will be granted only for compelling reasons*" and that "*the review on a writ of certiorari is not a matter of right, but of judicial discretion*".

[45] *Graham v. Florida*, 130 S. Ct. 2011 (2010).

[46] *Sullivan v. Florida*, 560 U.S. ___ (2010).

[47] IACHR, Report No. 63/10, Petition 1119-03, Admissibility, *Garifuna Punta Piedra Community and its Members*, Honduras, March 24, 2010, para. 146.

62. The Commission observes that the federal *habeas corpus* appeals lodged by Henry Hill, Bárbara Hernández, Kevin Boyd, and Patrick McLemore, and the *writ of certiorari* filed by Matthew Bentley, were decided subsequently to the presentation of the petition before the Commission. In the case of Damion Todd, the Commission observes that subsequent to the federal *habeas corpus* appeal, the alleged victim filed an appeal that was denied on January 4, 2007. It also points out that Damion Todd's request for a pardon or commutation of his sentence was denied on October 11, 2010 after the presentation of the petition, without the State presenting observations in this regard.

63. The Commission also observes that Maurice Black, Larketa Collier, Cornelius Copeland, John Espie, Maurice Ferrel, Mark Gonzalez, Chavez Hall, Lamar Haywood, Lonnell Haywood, Christopher Hynes, Ryan Kendrick, Cedric King, Eric Latimer, Juan Nunez, Sharon Patterson, Gregory Petty, Tyrone Reyes, Kevin Robinson, T.J. Tremble, Marlon Walker, Oliver Webb, Elliot Whittington, Ahmad Williams, Johnny Williams, Leon Williams, and Shytour Williams presented their petition within a reasonable time, since their last appeals filed were denied at a later date than the presentation of the petition before the IACHR,[48] and in other cases, the Court of Appeals for the State of Michigan affirmed its sentences when resolving the appeals or the alleged victims were convicted at least seven years prior to the presentation of the petition to the Commission on February 23, 2006.[49]

64. Finally, the Commission finds that in the instant case the petition was received on February 23, 2006, and that the effects of the deprivation of liberty of the 32 alleged victims under a legal framework allegedly contrary to the American Declaration extend to the present day. Therefore, in view of the context and characteristics of this case, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement on timeliness is met.

3. Duplication of Proceedings and *res judicata*

65. It does not appear from the case file that the content of the petitions is currently pending before another international instance, nor that it reproduces petitions already examined by this or another international body. Therefore, it is appropriate to find that the requirements established in Article 33.1 of the Inter-American Commission's Rules of Procedure are satisfied.

4. Colorable Claim

66. Article 34 (a) of the Inter-American Commission's Rules of Procedure provides that petitions filed before the IACHR must state facts that tend to establish a violation of the rights referred to in its Article 27, and in which failing, the petition must be declared inadmissible for being

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[48] According to Annex I of the brief of December 20, 2010; Maurice Black (April 16, 2006), Cornelius Copeland (August 9, 2006), John Espie (July 28, 2010), Lamarr Haywood (January 10, 2008), Lonell Haywood (March 27, 2009) and T.J. Tremble (September 28, 2009).

[49] According to Annex I of the brief of December 20, 2010, the Court of Appeals for the State of Michigan upheld the convictions of the 31 alleged victims who exhausted the remedies on the following dates: Matthew Bentley (April 11, 2000), Maurice Black (September 20, 2000), Larketa Collier (May 12, 2005), Cornelius Copeland (July 16, 2002), John Espie (January 22, 2002), Maurice Ferrel (November 16, 2004), Mark Gonzalez (February 11, 2003), Chavez Hall (May 29, 2003), Lamar Haywood (July 24, 2001), Lonnell Haywood (January 16, 2001), Christopher Hynes (September 21, 2001), Ryan Kendrick (February 11, 2003), Cedric King (August 18, 2000), Eric Latimer (June 19, 2003), Juan Nunez (February 23, 2001), Gregory Petty (April 26, 2002), Tyrone Reyes (November 27, 2000), Kevin Robinson (May 20, 2003), T.J. Tremble (February 1, 2000), Marlon Walker (March 18, 2003), Olisee Webb (June 12, 2001), Elliot Whittington (April 20, 2001), Ahmad Williams (May 25, 2001), Johnny Williams (July 20, 2004), Leon Williams (August 26, 2003), and Shytour Williams (December 7, 1999). Sharon Patterson was sentenced to life imprisonment without parole on April 13, 2004.

"manifestly groundless" or "out of order", according to the provisions of Article 34 (b). The criteria used to analyze admissibility differ from those used for an analysis on the merits of the petition, since the Inter-American Commission only undertakes a *prima facie* examination to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Declaration. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

67. Neither the American Declaration nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient element.

68. In view of the elements of fact and law presented by the parties, along with the nature of the matter submitted for its attention, the IACHR finds that the application to the purported victims of the alleged legal framework in each case, if proved, may, *prima facie*, characterize violations of the rights in Articles I, XII, XVIII, XXV, and XXVI of the American Declaration, to the prejudice of the 32 alleged victims. In the merits stage, the analysis will consider whether or not the legal framework applied ensured, in each case, the right of the minors to special protection, as well as different treatment to that of adults based on their needs, in accordance with the rights recognized in Articles II and VII of the American Declaration. The analysis relevant to the possible violation of Article XXV of the American Declaration will focus on the right to humane treatment during the deprivation of liberty within the legal framework of the Michigan laws applied to the alleged victims.

69. Furthermore, where appropriate, the Commission will analyze if, under the legal framework applied to the alleged victims, they had access to a public defender who specialized in the rights of juveniles, particularly since in a number of cases it was claimed that some of the alleged victims were assigned a public defender who did not guarantee their right to a proper defense, which could, *prima facie*, characterize violations of the rights in Articles XVIII and XXVI in connection with the rights recognized in Articles II and VII of the American Declaration.

70. With respect to Henry Hill, Bárbara Hernández, and Kevin Boyd, the petitioners alleged several specific questions about the conditions of their deprivation of liberty as a result of the legal framework that was applied to them, which may breach their right to personal integrity and their right to humane treatment, in accordance with their right to special protection as minor individuals, so that there may be *prima facie* violations of Articles I and XXV in connection with the rights recognized in Article VII of the American Declaration to their prejudice.

71. As the Commission has held, the rights contained in the American Declaration may be interpreted in accordance with the principle of the higher interests of the child and the *corpus juris* on the rights of the child.[59]

72. Finally, the IACHR considers that there may not be violations of Article XXIV of the American Declaration containing the right to petition.

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[59] See IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II, Doc. 78, July 13, 2011, pars. 18 and 20.

VI. CONCLUSIONS

73. The Inter-American Commission concludes that it is competent to examine the claims presented in the present matter and that the petition is admissible, in conformity with Articles 46 and 47 of the American Convention. Based on the arguments of fact and law expressed above, and without prejudice to an examination of the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible in relation to Articles I, II, VII, XII, XVIII, XXV and, XXVI of the American Declaration;

2. To declare the present petition inadmissible in relation to Article XXIV of the American Convention;

3. To notify the parties of the present decision;

4. To continue with its analysis of the merits of the case;

5. To publish this decision and include it in its Annual Report, to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 20 day of the month of March, 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Antoine, Commissioners.

The undersigned, Mario López-Garelli, by authorization of the Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 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.

Mario López-Garelli
By authorization of the Executive Secretary