

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 fulfillment of that requirement due to the lack of effective

inadmissible with regard to the right contained in Article XXIV (right of petition) of the American 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

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 abet(o)-21(u)-21(t)-94()-82(e)14(l167(p)-9(e)1134TBT1 0 0 1 72.024 51)-155(c)-410

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,

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

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 courts⁴ and Michigan state appeals courts⁵ 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

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 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 232 219.02 T-9 2551(In)-20

and Articles 23 and 51 of its Rules of Procedure.¹¹ The Commission reminds the parties that it has 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.

victims had made numerous attempts for the State to make reparations for the harm suffered

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 Commission 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 in

Supreme Court. Therefore,

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 20th 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 Maria Ortiz, and Rose-Marie Antoine, Commissioners.