Yale Law School

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC

Written Testimony of the
Allard K. Lowenstein International Human Rights Clinic, Yale Law School
In Support of H.B. No 6581& S.B. No 1062
Judiciary Committee
March 11, 2013

Dear Members of the Judiciary Committee:

Yale Law School's Allard K. Lowenstein International Human Rights Clinic strongly supports second-look sentence review for people serving long sentences for acts they committed as children. Such reform to Connecticut's juvenile sentencing practices would be an important expression of Connecticut's commitment to its responsibility to protect the rights and well-being of its children and to uphold international human rights law standards.

As a human rights law clinic, we are concerned that Connecticut's current juvenile sentencing practices violate international standards, deviate from widespread global practice, and contravene Connecticut's commitment to human rights. We enclose a brief report highlighting key international law principles relevant to Connecticut's child-sentencing practices.

Countries around the world recognize that children who have committed crimes should be incarcerated only as a measure of last resort and for the minimum necessary period, and limit maximum sentences for children to between five and twenty-five years. For example:

- In England and Wales, judges are effectively required to impose sentences that are half the length of adult sentences. The longest known sentence imposed on a juvenile for any crime or combination of crimes that occurred when they were under 18 is 30 years.
- In Europe, maximum sentences for children under 18 are limited to: 24 years in Italy; 10 years in Estonia; 10 years in Germany; 5 years in the Czech Republic; 4 years in Switzerland; and 3 years in Portugal.
- Comparative maximum sentences for children under 18 in the rest of the world include: 25 years in South Africa; 10 years in Chile; 8 years in Colombia; 8 years in Honduras; and 8 years in Paraguay.

Connecticut, however, sentences children as young as 14 to prison sentences of twenty-five years or longer. People in Connecticut are serving sentences of more than sixty years, including natural life without the possibility of release, for acts they committed as children.

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Currently, five people in Connecticut are serving sentences of life without parole for crimes committed as children. In comparison, the entire rest of the world – excluding the United States – has only seven people known to be serving life-without-parole sentences for crimes committed as children.

International law requires proportionality in sentencing practices applied to children; sentencing must promote the well-being of the child and reflect the special circumstances of the offense and the individual child. In addition, international law requires that criminal sanctions for children promote their rehabilitation and reintegration into society.

Please find enclosed a copy of the written testimony that we submitted to the Joint Committee on Judiciary during their consideration of H.B. No. 5546 (Raised), An Act Concerning Sentence Modification for Juveniles in the spring. We hope that this comparative and international law perspective will support the Committee's consideration of the proposed legislation to create a procedure for reviewing long sentences imposed on children. This "second look," with the possibility of a reduction in the length of sentence, would take place after the child has served some portion of the original sentence. Such a procedure would move Connecticut closer to compliance with international standards and with its obligation to protect the rights and well-being of Connecticut's children.

Sincerely,

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Attachment

International Human Rights Standards and the Long-Term Incarceration of Connecticut's Children

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Summary:

Connecticut's child sentencing practices do not meet international standards.

- Countries around the world recognize that children who have committed crimes should be incarcerated as a **measure of last resort** and for the **minimum necessary period**.
    - Connecticut sentences children as young as 14 to prison sentences of twenty-five years or longer.

- Most countries around the world **limit maximum sentences for children** to between 5 and 25 years.
    - Children in Connecticut are serving sentences of more than sixty years, including natural life without the possibility of release.

- International law requires **proportionality**; sentencing must promote the **well-being of the child** and reflect the special circumstances of the offense and the offender.
    - Connecticut laws mandating that some children be tried and sentenced as adults fail to take age or other circumstances into account and result in disproportionate sentences.

- International law requires that criminal sanctions for children promote their **rehabilitation and reintegration.**
    - Connecticut's lengthy sentences for children isolate them from society and impede rehabilitation. Historically, these children have been housed with adults and have received very little programming that takes into account their special circumstances.

- International law requires **equal treatment** before institutions of justice.
    - Children of color in Connecticut are far more likely to spend the most productive years of their lives in prison. Ninety-four percent of people serving sentences of 50 years or more for crimes committed as children in Connecticut are African American or Hispanic.

Connecticut should look to international standards that consider the best interests of the child as the state evaluates and modifies its sentencing laws. Connecticut must comply with its obligation to protect the rights and well-being of Connecticut's children.

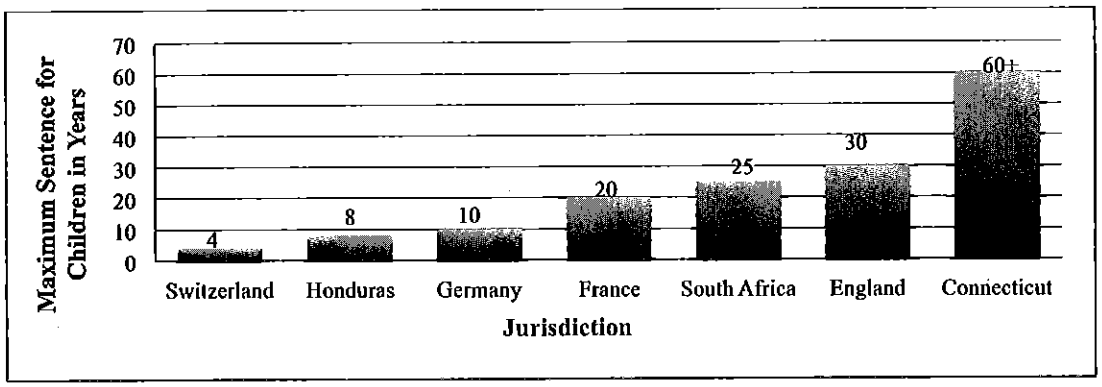
Connecticut Does Not Meet International Standards in Its Child Sentencing Practices

The United States and, in particular, Connecticut do not meet international standards in their child sentencing practices. Countries around the world recognize that children who have committed crimes should be incarcerated as a measure of last resort and for the minimum necessary period.[1] Connecticut does not conform to international standards on proportionality of sentences and consideration of the best interests of the child. Instead, Connecticut sentences children as young as 14 to prison sentences of twenty-five years or longer, including life sentences.[2] International law requires that criminal sanctions for children promote their rehabilitation and reintegration, but Connecticut's lengthy sentences for children isolate them from society for longer than necessary and do not foster rehabilitation. Furthermore, Connecticut sentences children of color to long prison terms at a much higher rate than it does white children. The vast majority of individuals serving sentences of more than three years for crimes they committed as children are African American or Hispanic,[3] and the racial disparity grows more pronounced with longer sentences.[4]

Connecticut's Harsh Sentencing of Children Deviates from Widespread Global Practice

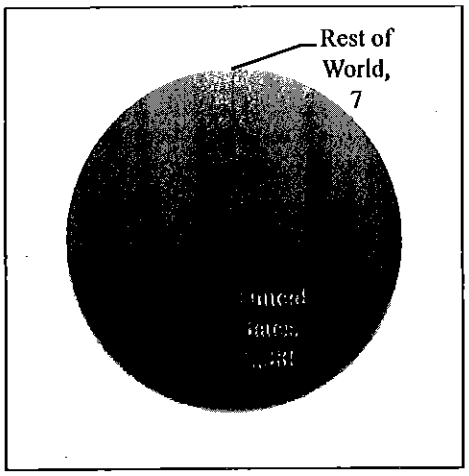
International standards emphasize that criminal sanctions against children must be a measure of last resort and for the shortest appropriate time period.[5] In Connecticut and other parts of the United States, however, children are serving prison terms of as long as life, which is defined in Connecticut as sixty years. Connecticut also sentences children to prison terms of natural life, which can total more than sixty years.[6] Most countries around the world have significantly shorter sentences for children, often capping children's sentences at between 5 and 25 years.[7]

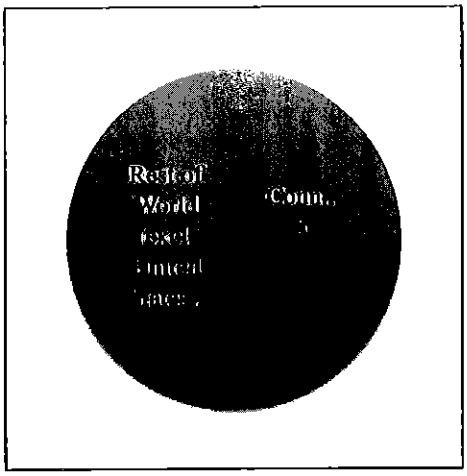
Connecticut Sentences Children to Longer Prison Terms Than Most Countries[8]



The United States accounts for 99.7% of individuals worldwide who are serving sentences of life without parole for crimes they committed as children.[9] According to the Connecticut Department of Correction, there are five individuals serving life without parole in Connecticut for crimes they committed as children,[10] compared to seven known to be serving such sentences in the world outside the United States.[11]

Connecticut Imprisons Nearly as Many People for Life Without Parole for Crimes Committed as Children As the Rest of the World Combined[12]





International Law Requires Special Protections for Children

The aims of criminal justice as applied to children must be the promotion of the well-being of the child and the proportionality of sanctions to the circumstances of the offense and the child offender.[13] Therefore, custodial sentences for children, unlike sanctions imposed on adults, must conscientiously account for the child's age and for the need to safeguard "the well-being and the future of the young person."[14] The proportionality principle, as set forth in international guidelines, requires that sentencing reflect the diminished responsibility of a child, whose mind and character are still developing. It also requires consideration of the more severe effects extremely long sentences have on children.

In order to respect the unique circumstances of children, international standards insist that institutionalization be limited to the shortest appropriate amount of time and employed only as a last resort.[15] In particular, life imprisonment without the possibility of release is prohibited for those under eighteen years of age,[16] and, according to the Committee Against Torture, could constitute cruel, inhuman or degrading treatment or punishment.[17] International law recognizes that the effects of incarceration, with the resulting loss of liberty and separation from the usual

social environment, are "more acute for juveniles than for adults because of their early stage of development."[18] Relevant standards call for the full use of alternatives to incarceration [19] and the greatest possible use of conditional release at the earliest possible time, even for offenders who were initially deemed dangerous, as long as there is satisfactory evidence of rehabilitation.[20] To that end, there must be appropriate scope for discretion at all stages of the justice process,[21] and the possibility of early release should not be precluded.[22]

Connecticut does not follow these principles. Connecticut laws mandating that some children be tried and sentenced as adults fail to promote the well-being of the child. They prevent the proper proportionality analysis, which would necessarily align the criminal procedures employed and sanctions imposed with the special circumstances of the child, including his or her age. As a result, children are sentenced to extremely long prison terms, including sentences so long that many will spend the rest of their lives in prison (and some, as discussed above, are serving life sentences). Research indicates that where the special status of children is not recognized and children are inappropriately subject to the same criminal procedures as adults, they often receive harsher sentences than adults,[23] including their adult co-defendants.[24]

International human rights standards, acknowledging the special status of children, promote rehabilitation and reintegration of children who have been found to have committed crimes. For such children, "the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives."[25] Thus, for institutionalized children, the goal 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."[26] That view finds broad global consensus.[27]

Because children in institutionalized settings are "highly vulnerable to abuse, victimization and the violation of their rights,"[28] states must take special steps to promote their rights, safety, and physical and mental well-being.[29] Separation of children from adults is essential[30] but insufficient; children are further entitled to rehabilitative opportunities for education[31] (including special education services),[32] vocational training,[33] medical and psychological assistance,[34] and recreation.[35] International guidelines also recognize the specific developmental needs of juveniles for privacy, sensory stimuli, opportunities for association with peers, participation in sports and physical exercise,[36] and adequate communication with the outside world.[37] Child-friendly justice must strictly prohibit all disciplinary measures

constituting cruel, inhuman, or degrading treatment, including solitary confinement, and any punishment that may compromise the physical or mental health of the juvenile concerned.[38]

Sentences that "fail to emphasize rehabilitation or reintegration," such as long or life sentences for children, violate international law.[39] Connecticut's practice of sentencing children who commit certain crimes to mandatory adult sentences and other long sentences does not facilitate rehabilitation or reintegration. Instead, life or effective life sentences indicate a community's determination that a child cannot be rendered a fit member of society.[40] Such a determination contradicts Connecticut's obligation to meet the needs of children, respect their human rights, and ensure their well-being.

The Racially Disparate Effect of Connecticut's Child-Sentencing Practices Violate International Protection Against Prohibited Discrimination

Connecticut and the United States have failed to comply with the international prohibition on racial discrimination and the guarantee of the right to equal treatment before institutions of justice.[41] The United States and 174 other countries are parties to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), which affirms these fundamental rights.[42] The Committee on the Elimination of Racial Discrimination (CERD Committee) has found that certain U.S. sentencing practices with respect to youth violate CERD by disproportionately imposing life sentences on children of minority race, ethnicity, and nationality.[43]

The racial disparities in youth sentencing in Connecticut have been recognized as particularly egregious. A 1999 National Center for Juvenile Justice Report, *Juvenile Offenders and Victims,* noted that Connecticut was among only seven states in the United States in which more than 75% of confined youth were minority youth, even though minorities accounted for only 26% of the overall population.[44] Currently, 85% of people serving sentences of more than 3 years for crimes committed as children in Connecticut are African American or Hispanic.[45] People serving sentences of 50 years or more for such crimes are 94% African American and Hispanic.[46] African-American youths in the United States as a whole are serving sentences of life without parole at a rate ten times that of white youth.[47] A letter from U.S. and international human rights organizations to CERD in 2009 named Connecticut as one of four states in the United States with the "highest black to white ratios" for children receiving life without parole (LWOP) or equivalent sentences.[48] Indeed, all of the five youths serving LWOP in Connecticut

are African American.[49] The disparate outcomes of Connecticut's youth sentencing practices violate the United States' obligations under CERD and other international human rights law to eliminate racial injustice.

Conclusion

Several countries around the world have recently modified their justice systems in compliance with international standards on children.[50] The U.S. Supreme Court has suggested that international standards and practice may be persuasive in determining whether sentencing practices conform to the rights of children.[51] Connecticut should similarly look to international standards as the state evaluates and modifies its sentencing laws. Connecticut's sentencing laws must be consistent with its obligation to protect the rights and well-being of Connecticut's children.

Notes:

[1] *See* Inter-Am. Comm'n H.R., *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, princ. III(1) (March 3-4, 2008) [hereinafter IACHR Best Practices], *available at* http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm. *See also* Convention on the Rights of the Child art. 37(b), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC]; EUR. PARL. ASS., *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice*, IV(A)(6)(19) (Nov. 17, 2010) [hereinafter Council of Europe Guidelines] ("Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time."), *available at* https://wcd.coe.int/ViewDoc.jsp?id=1705197&Site=CM#RelatedDocuments.
[2] *See* Legal Clinic, Quinnipiac University School of Law, A Second Look: Review of Lifetime Incarceration of Connecticut Children (Feb. 9, 2012) (on file with Quinnipiac University School of Law) [hereinafter A Second Look].
[3] *Id. citing* Connecticut Department of Correction (DOC), Population Data (July 1, 2011); Connecticut DOC Juvenile Data (Sept. 28, 2011) (85% of people serving sentences of more than three years for crimes committed as children are African American or Hispanic).
[4] For example, 90% of people serving sentences of 10 years or more for crimes committed as children are African American or Hispanic, as are 94% of people serving 50 years or more for crimes committed as children. *Id.*
[5] *See* Council of Europe Guidelines, see note 1 above, at IV(A)(6)(19). *See also* CRC, see note 1 above, art. 37(b); *See also* IACHR Best Practices, see note 1 above, at princ. III (1).
[6] Connecticut defines a life sentence as 60 years and a life sentence without the possibility of release as imprisonment for the remainder of the sentenced individual's life ("A sentence of imprisonment for life shall mean a definite sentence of sixty years, unless the sentence is life imprisonment without the possibility of release, imposed pursuant to subsection (g) of section

53a-46a, in which case the sentence shall be imprisonment for the remainder of the defendant's natural life"). CT PENAL CODE, Ch. 952, §§ 53a-35b, *available at* http://www.cga.ct.gov/2011/pub/chap952.htm#Sec53a-35b.htm. For any felony committed prior to July 1, 1981, Connecticut sentences people to indeterminate sentences, which have a maximum term for class A felonies of life imprisonment (60 years). CT PENAL CODE, Ch. 952, §§ 53a-35(b), *available at* http://www.cga.ct.gov/2011/pub/chap952.htm#Sec53a-35.htm.

[7] In England and Wales, judges are effectively required to impose sentences that are half the length of the adult sentences. See Brief for Amnesty Int'l, et al., as Amici Curiae in Support of Petitioners, Graham v. Florida, Sullivan v. Florida, 130 S.Ct. 211 (2010) (Nos. 08-7412 and 08-7621), 36-38 [hereinafter Graham Amnesty Amicus Brief]. See also UNITED KINGDOM SENTENCING GUIDELINES COUNCIL, OVERARCHING PRINCIPLES – SENTENCING YOUTHS: DEFINITIVE GUIDELINES 24 (2009) *available at* http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf ("Where there is no offence specific guideline, it may be appropriate, depending on maturity, to consider a starting point from half to three quarters of that which would have been identified for an adult offender."). The longest known sentence imposed on a child under the age of 18 in England and Wales is 30 years. Graham Amnesty Amicus Brief at 36. In Europe, maximum sentences for children under 18 include: 5 years in the Czech Republic, Brief for Amnesty Int'l et al. as Amici Curiae Supporting Petitioners, Miller v. Alabama, Jackson v. Hobbs, 132 S.Ct. 2455 (2012) (Nos. 10-9646 and 10-9647), 17 [hereinafter Miller Amnesty Amicus Brief]; 10 years in Estonia, *id.*; 10 years in Germany, *id.*; 24 years in Italy, CODICE PENALE arts. 23, 65 and 98 (It.); 3 years in Portugal, Miller Amnesty Amicus Brief at 16; 10 years in Slovenia, *id.*, at 17; and 4 years in Switzerland, *id.*, at 16. Comparative maximum sentences for children under 18 in the rest of the world include: 10 years in Chile, IACHR Juvenile Justice Report, *Juvenile Justice and Human Rights in the Americas*, Inter-Am. Comm'n H.R., ¶ 369 (2011) [hereinafter IACHR Juvenile Justice Report], *available at* http://www.cidh.oas.org/countryrep/JusticiaJuvenileng/jjtoc.eng.htm; 8 years in Colombia, *id.*; 8 years in Honduras, *id;* and 8 years in Paraguay, *id.* South Africa's Child Justice Act, enacted in 2008, sets a 25-year maximum sentence for children under 18 years of age. Child Justice Act 75 of 2008 (S. Afr.).

[8] See notes 6 and 7 above. Note that although longer sentences are legally permissible in England and Wales, the longest known sentence imposed on a juvenile for any crime or combination of crimes that occurred when they were under 18 is 30 years. Graham Amnesty Amicus Brief, note 7 above, at 36.

[9] HUM. RTS. WATCH, WHEN I DIE THEY'LL SEND ME HOME: YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA 3 (2008), 14 [hereinafter Hum. Rts. Watch 2008 Report], *available at* http://www.hrw.org/reports/2008/us0108/.

[10] Connecticut Department of Correction (DOC), Population Data (March 2012); Connecticut DOC Juvenile Data (March 2012).

[11] Hum. Rts. Watch 2008 Report, see note 9 above, at 14.

[12] *Id.* ("In the United States at least 2,380 people are serving life without parole for crimes they committed when they were under the age of 18. In the rest of the world, just seven people are known to be serving this sentence for crimes committed when they were juveniles.").

[13] Relevant circumstances of offenders include: social status, family situation, harm caused, or other factors, including "an offender's endeavor to indemnify the victim or willingness to turn to a wholesome and useful life." United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33, art. 5.1, Commentary, U.N. Doc.

A/40/53 (Nov. 29, 1985); *see also* IACHR Juvenile Justice Report note 7 above, ¶ 359 ("The IACHR encourages States to enforce laws allowing the state's response to offenses by children to be in proportion to the circumstances under which the offense was committed, the seriousness of the offense, the child's age and needs and other considerations.").

[14] The Beijing Rules, see note 13 above, art. 17 Commentary.

[15] CRC, see note 1 above, art. 37(b); The Beijing Rules, see note 13 above, art. 17, 19.1; United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules"), G.A. Res. 45/113, art. 1, U.N. Doc. A/RES/45/113 (Dec. 14, 1990); United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), G.A. Res. 45/112, art. 46, UN Doc. A/RES/45/112 (Dec. 14, 1990); Human rights in the administration of justice, GA A/Res/65/213, art.14, U.N. Doc. A/RES/65/213 (Apr. 1, 2011); Council of Europe Guidelines, see note 1 above, at IV(A)(6)(19); IACHR Best Practice, see note 1 above, at princ. III (1). *See also* IACHR Juvenile Justice Report, see note 7 above, ¶ 360 ("When, in observance of the principles of last resort and the proportionality of the sentence, a State decides to sentence a child to some form of deprivation of liberty for violation of a criminal law, it must also make certain that the measure has an upper limit, which should be reasonably short.").

[16] CRC, see note 1 above, art. 37.

[17] The Committee Against Torture, the body established by the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment to monitor compliance with the Convention's provisions, in its *Consideration of Reports Submitted by States Parties under Article 19 of the Convention* in July 2006, warned that the United States should "address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman, or degrading treatment or punishment." CAT/C/USA/CO/2 ¶ 34 (July 25, 2006). The United States and 149 other countries are parties to the Convention Against Torture.

[18] The Beijing Rules, see note 13 above, art.19.1 Commentary; *see also* IACHR Juvenile Justice Report, see note 7 above, ¶ 371 ("The Commission urges the States to establish, by law, the maximum duration of the sentences that minors held responsible for violating the law can receive, and to ensure that the length of the sentence is suited to a child's age and development, recognizing that the adverse effects of incarceration are even more pronounced in children.").

[19] CRC, see note 1 above, art. 40 (4) ("A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence"); The Beijing Rules, see note 13 above, art. 17 Commentary.

[20] The Beijing Rules, see note 13 above, art. 28.1 and Commentary.

[21] The Beijing Rules, see note 13 above, art. 6.

[22] The Havana Rules, see note 15 above, art. 2.

[23] ROSEMARY SARRI & JEFFREY SHOOK, INSTITUTE FOR SOCIAL RESEARCH, UNIVERSITY OF MICHIGAN, HUMAN RIGHTS AND JUVENILE JUSTICE IN THE UNITED STATES 16 (forthcoming Harwood Press), *available at* www.aclu.org/hrc/JuvenileJustice_Sarri.pdf.

[24] *See* IACHR Juvenile Justice Report, see note 7 above, ¶ 356 ("[T]he Commission has received information indicating that in the United States, children are prosecuted with adults for the same crime, and yet the children can receive tougher sentences than their adult co-defendants.").

[25] U.N. Committee on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice, ¶10, U.N. Doc CRC/C/GC/10 (Apr. 25, 2007) [hereinafter CRC General Comment 10].

[26] The Beijing Rules, see note 13 above, art. 26.1.

[27] The Convention on the Rights of the Child emphasizes that children should 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." CRC, see note 1 above, art. 40(1). The International Covenant on Civil and Political Rights confirms that criminal procedures involving juveniles should "take account of their age and the desirability of promoting their rehabilitation." International Covenant on Civil and Political Rights art. 14(4), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. Further, the Inter-American Commission on Human Rights held in *Domingues v. United States* that the American Declaration requires States to work to guarantee children's rehabilitation "in order to 'allow them to play a constructive and productive role in society.'" Domingues v. United States, Case 12.285, Inter-Am. Comm'n H.R., Report No. 62/02, doc. 5 rev. 1 at 913 ¶ 83 (2002). Indeed, regional bodies affirm that rehabilitation must be the objective for the detention of children who have committed crimes. The African Charter on the Rights and Welfare of the Child describes that the "essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation." African Charter on the Rights and Welfare of the Child art. 17(3), *entered into force* Nov. 29, 1999, OAU Doc. CAB/LEG/24.9/49 (1990) (emphasis added). The Inter-American Commission on Human Rights views the essential purpose of detention to be the "reform, social readaptation and personal rehabilitation of those convicted; the reintegration into society and family life; as well as the protection of both the victims and society. " IACHR Best Practices, see note 1 above, pmbl.

[28] The Havana Rules, see note 15 above, pmbl.

[29] The Havana Rules, see note 15 above, art. I(1); *see also* CRC General Comment 10, note 25 above, ¶ 89, summarizing the principles and rules that must be observed in situations in which children are deprived of their liberty.

[30] At the most basic level of protection, children must be separated from adult offenders. Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663 C (XXIV), U.N. Doc. A/CONF/611, annex 1, at ¶ 8(d) (July 31, 1957); The Beijing Rules, see note 13 above, art. 26.3; The Havana Rules, see note 15 above, art. IV(29); CRC, see note 1 above, art. 37(c) ("In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so."); ICCPR, see note 27 above, art. 10(3) ("Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status"). The Inter-American Court of Human Rights has even recommended prosecution of officials responsible for sending children to adult prisons. Minors in Detention v. Honduras, Case 11.491, Inter-Am. Comm'n H.R., Report No. 41/99, OEA/Ser.L/V/II.95, doc. 7 rev (1998) (finding that Honduras failed to meet its obligations under the American Convention to respect the rights of juveniles incarcerated in adult prisons).

[31] *E.g.*, Standard Minimum Rules for the Treatment of Prisoners, see note 30 above, art. 77; The Havana Rules, see note 15 above, art. 38; CRC, see note 1 above, art. 28.1 ("State Parties recognize the right of the child to education . . .").

[32] *See, e.g.*, The Havana Rules, see note 15 above, art. 38.

[33] *E.g.*, Standard Minimum Rules for the Treatment of Prisoners, see note 30 above, art. 71(5).

[34] *See e.g.*, The Beijing Rules, see note 13 above, art. 26.2.

[35] *E.g.*, Standard Minimum Rules for the Treatment of Prisoners, see note 30 above, art. 21(2); CRC, see note 1 above, art. 31(1) ("State Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.").

[36] *See* The Havana Rules, see note 15 above, art. 32.
[37] *See* The Havana Rules, see note 15 above, art. 59.
[38] *See, e.g.*, The Havana Rules, see note 15 above, art. 67; CRC, see note 1 above, art. 37(a).
[39] ICCPR, see note 27 above, art. 14(4) ("In the case of juvenile persons, the procedure shall be such as will take account of . . . the desirability of promoting their rehabilitation."); CRC, see note 1 above, art. 40.1 (requiring State parties to take account of "the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.").
[40] *See* AMNESTY INT'L & HUM. RTS. WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 95 (2005) (explaining that a life without parole sentence "reflects a determination that there is nothing that can be done to render the child a fit member of society."). Long sentences for children reflect a similar determination that rehabilitation is not achievable in the foreseeable future.
[41] International Convention on the Elimination of All Forms of Racial Discrimination art. 5(a), *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD].
[42] *Id.*, Status. *See also* ICCPR, see note 27 above, art. 26; Universal Declaration of Human Rights, art. 7, G.A. Res. 217A (III), U.N. Doc. A/RES/810 at 71 (Dec. 10 1948).
[43] Committee on the Elimination of Racial Discrimination, *Concluding Observations: United States of* America, ¶ 21, U.N. Doc. A/CERD/C/USA/CO/6 (May 8, 2008) ("[T]he persistence of such sentencing is incompatible with article 5(a) of the Convention."). The Committee is the body established by CERD to monitor states' compliance with the Convention's provisions.
[44] HOWARD N. SNYDER & MELISSA SICKMUND, NATIONAL CENTER FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 194 (1999).
[45] A Second Look, see note 2 above, citing Connecticut Department of Correction (DOC), Population Data (July 1, 2011); Connecticut DOC Juvenile Data (Sept. 28, 2011).
[46] *Id.*
[47] HUM. RTS. WATCH, SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 7 (Feb. 7, 2008), *available at* http://www.hrw.org/node/62449/section/2.
[48] Letter from United States and International Human Rights Organizations to the Committee on the Elimination of Racial Discrimination ¶ 4 (June 4, 2009), *available at* http://www.hrw.org/news/2009/06/04/letter-human-rights-organizations-cerd-regarding-juvenile-life-without-parole-us.
[49] Connecticut Department of Correction (DOC), Population Data (March 2012); Connecticut DOC Juvenile Data (March 2012).
[50] Jelani Jefferson & John W. Head, *In Whose "Best Interests"? – An International and Comparative Assessment of US Rules on Sentencing of Juveniles*, 1 Hum. Rts. & Globalization L. Rev. 89, 119-124 (2007-2008) (describing recent statutory and constitutional changes in countries around the world that bring them more in line with the obligations of Article 37 of the CRC, including the requirements that children be imprisoned as a last resort and for the shortest appropriate period). These developments correspond with international guidelines requiring the constant improvement of juvenile justice administration. For example, Beijing Rule 1.6 "refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services." The Beijing Rules, see note 13 above, ¶ 1.6 Commentary. Rule 30 further recognizes that "with rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of the juvenile crime, the societal and justice responses to

juvenile crime and delinquency quickly become outmoded and inadequate." *Id.* at ¶ 30 Commentary.

[51] For example, in *Roper v. Simmons*, the Supreme Court looked to the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the laws of other nations, among other international and foreign authorities, "as instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments.'" Roper v. Simmons, 543 U.S. 551, 575-78 (2005). The Court explained: "It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime." *Id.* at 578. *See also* Graham v. Florida, 130 S. Ct. 2011, 2034 (2010) ("The question is whether that punishment is cruel and unusual. In that inquiry, 'the overwhelming weight of international opinion against' life without parole for nonhomicide offenses committed by juveniles 'provide[s] respected and significant confirmation for our own conclusions.'").