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The Right to Life: Infringement on the Children's Rights Through the Weakness of the Colombian Penal System

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INTRODUCTION

“Everyone has the right to life, liberty, and security of person.”¹ All nation states must protect the essential right to life of their citizens and governments have the responsibility to provide them the assurance that this right is and will be respected.² The majority of the international community has declared the right to life as a fundamental right of society.³ Article two of the European Convention of Human Rights declares that the right to life is an essential human right.⁴ This right is also protected by the United States Declaration of Independence, which describes the rights to “life, liberty and pursuit of happiness” as “unalienable” rights.⁵

Even though the majority of the countries have agreed that the right to life is a fundamental right that must be respected and protected by each State’s laws,⁶ this right is

¹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/ 217(III) (Dec. 10, 1948).

² International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966). The ICCPR is a multilateral treaty adopted by the United Nations General Assembly in which the nation states agreed to respect every individual’s civil and political rights, including the right to life. *International Covenant on Civil and Political Rights*, WORLD HEALTH ORGANIZATION, 1, http://www.who.int/hhr/Civil_political_rights.pdf (last visited Nov. 1, 2011). The ICCPR also monitors the Human Rights Committee and reviews annual reports on how the rights are been implemented on each nation state. *Id.* at 2-3.

³ G.A. Res. 2200, *supra* note 2.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, Apr. 11, 1950, 213 U.N.T.S. 221.

⁵ U.S. Declaration of Independence, Jul. 4, 1776 (stating that the right to life is an unalienable right). An unalienable right is a natural right that cannot be taken away, transferred to another, or altered by the law. Michael Shaw, *Understanding Unalienable Rights*, FREEDOM ADVOCATES (Aug. 4, 2009, 8:45 PM), http://www.freedomadvocates.org/articles/legitimate_government/understanding_unalienable_rights_2009_0805368/.

⁶ G.A. Res. 2200, *supra* note 2.

been violated throughout the world.⁷ This article discusses violations of children's right to life in Colombia. In part I of this comment, I will delineate the problem of violations of the right to life of the children in Colombia. I will begin by introducing the international perspective on the right to life and its nexus with the nation state's obligation in protecting children. I will also discuss the criminal and psychological aspects of pedophilia, child abuse, and murder in Colombia. I will finalize by exploring the reasons why the Colombian government penalizes these crimes the way it does and how this contributes to an increase of recidivist conduct by the offenders.

In Part II, I will discuss an opposing perspective of the problem by exploring the international perspective on the rights of the offenders. I will introduce the opposing claimants and explain their justifications of why they do not support a reform on the Colombian penal code. I will also discuss two attempts for modifications on the Colombian penal code: one attempt of allowing further control by the authorities on sex offenders after they are released from prison and the other attempt of implementing life imprisonment sentences. I will finalize by explaining the reasons of why these modifications were not approved by the Constitutional Court of Colombia and the justifications that supported such decisions.

In part III, I will explore the legal system of Colombia and describe the way Colombian criminal laws penalize violations on the rights of the children. I will discuss the history of the Colombian Penal Code and the reasons of why Colombia developed such criminal laws. I will examine how Colombian governmental measures for criminal

⁷ Michelle Maiese, *Human Rights violations*, BEYOND INTRACTABILITY (Jul. 2003), http://www.beyondintractability.org/essay/human_rights_violations/ (explaining that even though there is a universal consensus on the right to life, this right is been violated throughout the world).

behavior deterrence have contributed to Colombia's criminal reality. I will provide three cases of violations on the rights of the children that serve as examples of the consequences of the current Colombian penal code. I will finalize this section by discussing the way Colombian criminal courts decided these cases through the implementation of benefits and sentence reductions provided by the penal code.

Part IV will emphasize the projection of the future of Colombian society and the effect on its future generations if the penal code is not reformed. I will conclude in part V with recommendations for reforms on the penal code that would go in accordance with Colombian reality and that would protect the children's right to life.

I. Violation of the Right to Life of Children in Colombia

A. The International Perspective

1. The Right to Life

The United Nations ("U.N.")⁸ views the right to life as a fundamental human right.⁹ Generally, the illegal deprivation of a human life by another human being is internationally condemned.¹⁰ In 1998, the Rome Statute of the International Criminal Court ("ICC")¹¹ described mass murders as crimes against humanity.¹² The statute

⁸ See U.N. Charter art.1 (declaring that the United Nations is an international organization created for the purpose of facilitating international cooperation on economic and social development, respect for human rights, and the achievement for universal peace).

⁹ G.A. Res. 217, *supra* note 1.

¹⁰ *The Right to Life*, HUMAN RIGHTS EDUCATION ASSOCIATES [HREA], http://www.hrea.org/index.php?base_id=159 (last visited Nov. 1, 2011). The article describes the right to life as an inherited right in every human being and that the legal systems have an obligation to protect it. *Id.* It also states that historically, the taking of a human life has been condemned by most religions and philosophies and this condemnation has influenced the international human rights law in its protection for life. *Id.*

¹¹ *Establishment of the Court*, INTERNATIONAL CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Establishment+of+the+Court.htm> (last visited Oct. 1, 2011) (explaining that the Rome Statute is an international treaty that established the International Criminal Court's structure, function, and jurisdiction to try international criminal cases).

declared these types of crimes as violations of the 1949 Geneva Conventions¹³ and established jurisdiction within the ICC¹⁴ over such crimes.¹⁵ The American Convention of Human Rights¹⁶ also sets the importance on the right to life and describes it as an essential element for human rights.¹⁷ This convention states that life must be protected and respected and that no one has the right to arbitrarily take anyone's life.¹⁸

2. The Protection of Children

The United Nations Declaration of the Rights of the Child¹⁹ acknowledged that children throughout the world are one of the most vulnerable groups of society.²⁰ The declaration recognized that because of their "legal and mental immaturity", children need special legal protection.²¹ The international community agreed to guarantee that

¹² Rome Statute of the International Criminal Court art. 6, Jul. 1, 2002, 2187 U.N.T.S. 90 [hereinafter *Rome Statute*].

¹³ *The Geneva Conventions of 1949 and their Additional Protocols*, INTERNATIONAL COMMITTEE OF THE RED CROSS (Oct. 29, 2010), <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> (stating that the 1949 Geneva Conventions are international treaties that provide the core for international humanitarian law, regulate the conduct of armed conflicts, and define humanitarian protections).

¹⁴ *ICC at Glance*, INTERNATIONAL CRIMINAL COURT, <http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/> (last visited Oct. 18, 2011) (explaining the function of the ICC as the last resort on international conflicts). The ICC is an international court that only tries the most serious cases of international crimes that cannot be resolved on a national level. *Id.*

¹⁵ *Rome Statute*, *supra* note 12, at art. 5. Article 5 of the Rome Statute states that the ICC has jurisdiction over cases involving crimes against humanity. *Id.* Article 7 of the Rome Statute defines crimes against humanity as acts that are committed systematically and directed to civilian population and which include murder, rape, and torture. *Id.* at art. 7.

¹⁶ *Preamble*, AMERICAN CONVENTION ON HUMAN RIGHTS [ACHR], http://www.hrcr.org/docs/American_Convention/oashr2.html (last visited Sept. 22, 2011) (declaring that the ACHR function is to consolidate a framework of social justice, democracy, and personal liberty through the respect and promotion of fundamental human rights).

¹⁷ American Convention of Human Rights art. 4, Jul. 18, 1978, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 [hereinafter *ACHR*] (explaining that the right to life is a right that must be protected and respected by the law throughout the world).

¹⁸ *Id.*

¹⁹ United Nations Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (Dec. 10, 1959). The Declaration of the Rights of the Child establishes additional protections and safeguards on the children and reaffirms the fundamental human rights and dignity of the human person. *Id.*

²⁰ *See id.*; *see also Children's Rights: International Law*, LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/child-rights/international-law.php> (last updated Apr. 4, 2011).

²¹ G.A. Res. 1386, *supra* note 19.

governments would implement protective measurements so children will not be subject to any physical or mental abuse.²²

In 1989, the United Nations Convention on the Rights of the Child (“CRC”)²³ discussed that poor children and children living on the streets are even more neglected and vulnerable to abuses and therefore concluded that governments have an obligation to provide special measures to protect them.²⁴ However, the phenomenon of children living in the streets is increasing due to their social and economic situations and the failure of governments in providing them protective measures.²⁵ The United Nations Children’s Fund (“UNICEF”)²⁶ reported that worldwide, there are more than eighty million children living in the streets.²⁷ The increase of violence against these children is also alarming since they have become a target of abuse by society.²⁸ The main problem is that third world countries see these children as a nuisance²⁹ instead of victims.³⁰ Therefore, abusers

²² *Id.*

²³ *Convention on the Rights of the Child*, UNICEF, <http://www.unicef.org/crc/> (last updated Jun. 3, 2011). The Convention on the Rights of the Child is the first binding international agreement that declared the basic rights of the children and that established the basic standards that governments throughout the world must maintain and protect. *Id.*

²⁴ *Making a Difference for Children: Street Children*, UNICEF, <http://www.unicef.org/turkey/dn/cp8.html> (last visited Oct. 10, 2011) (explaining that children living in the streets are usually the most vulnerable class of society and that they need urgent special protection by the nation state’s governments).

²⁵ Farhana Zuberi, *Assessment of Violence Against Children in the Eastern and Southern Africa Region*, UN SECRETARY GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN, 1, 26 (2005). The article discusses the problem of violence against children around the world and it emphasizes on the serious violence towards children who are living in the streets. *Id.*

²⁶ *Who we are*, UNICEF, http://www.unicef.org/about/who/index_introduction.html (last updated Sept. 21, 2011) (stating that UNICEF is an international organization that promotes the rights of the children around the world and that provide the children with assistance and relief for poverty, discrimination, violence, and disease).

²⁷ Lewis Aptekar, *Are Colombian Street Children Neglected? The Contributions of Ethnographic and Ethnohistorical Approaches to the Study of Children*, 22 ANTHROPOLOGY AND EDUCATION QUARTERLY, 326 (1991). This article explains how children living in the streets in Colombia are victims of daily abuses by society because most of these children have no family, no shelter, and no protection. *Id.*

²⁸ *Id.*

²⁹ See Merriam Webster Dictionary (defining nuisance as something annoying, unpleasant, or obnoxious).

³⁰ Zuberi, *supra* note 25.

take advantage of these children's economic and social situation and commit crimes and offenses against them.³¹

B. The Reality of Pedophilia, Sexual Assaults, and Murder

1. The Concern of Pedophilia and its Nexus with Violent Crimes

Pedophilia is a mental disorder in adults characterized by the sexual interest in children usually younger than thirteen.³² The majority of nation states condemn sexual intercourse or contact with children.³³ A pedophile psychological study demonstrated that ninety percent of pedophiles do not wish to give up their sexual contact with children despite the criminal consequences.³⁴ Even though pedophilia and sexual assault are not synonymous, a great percentage of pedophiles generally commit sexual offenses against children.³⁵ Pedophiles often use violence against children as the mean to fulfill their sexual desires.³⁶ Pedophilia is a major social problem that not only affects third world countries since in countries like the United States, it has been estimated that one out of four girls and one out of six boys have experienced sexual abuse.³⁷ The majority of the children who have experienced sexual abuse are children living in the streets or children

³¹ Zuberi, *supra* note 25.

³² Michael C. Seto, *Pedophilia and Sexual Offenses Against Children*, 15 ANNUAL REVIEW OF SEX RESEARCH, 321 (2004). The author reviews the definition and assessment of pedophilia and its relationship to sexual offenses against children. *Id.*

³³ *Id.* at 322.

³⁴ *Id.* at 324.

³⁵ *Id.* at 323.

³⁶ Ryan Hall & Richard Hall, *A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues*, 82 MAYO CLINIC PROCEEDING, 457, 458 (2007). The authors explain how pedophilia has become a concern because of the likelihood of danger that the pedophiles represent to children. *Id.* at 457. The article also defines pedophilia and states the characteristics of a pedophile and the percentages for recidivism. *Id.* at 457-458.

³⁷ Ann S. Botash, *Child Sexual Abuse in Emergency Medicine*, PEDIATRIC ANNUAL, 1, 2 (1997). This article discusses the vast number of children that have been victims of sexual abuse and provides statistics of it. *Id.*

from the poorest sectors of society.³⁸ In recent years, pedophilia has become a main concern because of the growing nexus between child abusers and murders.³⁹ Another concern regarding pedophilia is the offender's likelihood for recidivism on child abuses.⁴⁰ The rate of pedophile recidivism is up to fifty percent.⁴¹ This rate may decrease if offenders receive psychiatric treatments that can help them control their sexual future impulses.⁴²

2. Pedophilia, Child Abuse, and Murder in Colombia

In Colombia there is a high percentage of abuses against children.⁴³ Everyday more than thirty-five children are raped or sexually offended.⁴⁴ More than 15,000 of children are children living in the streets and more than half of them are victims of violence or sexual assault.⁴⁵ There is also a high percentage of murdered children every year in Colombia.⁴⁶ For example, more than 1,100 children in Colombia were murdered in 2009.⁴⁷ The majority of these crimes are left in impunity since the penal processes have not progressed because of the weakness of the penal code or the corruption of the

³⁸ Evgenia Berezina, *Victimization and Abuse of Street Children Worldwide*, YOUTH ADVOCATE PROGRAM INTERNATIONAL, <http://www.yapi.org/rpstreetchildren.pdf> (last visited Nov. 1, 2011) (discussing the worldwide problem of violence and sexual abuse against children who are living in the streets and describing their vulnerability for been sexually exploited and assaulted by adults).

³⁹ Hall, *supra* note 36, at 457.

⁴⁰ *Id.* at 467.

⁴¹ Jodie Tillman, *Recidivism: It's Not Open and Shut*, 41 PSYCHIATRIST NEWS (2006).

⁴² *Id.*

⁴³ Macarena Aguilar, *Colombia's Suffering*, THE MAGAZINE OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT, http://www.redcross.int/EN/mag/magazine2000_4/Colombia.html, (last visited Nov. 1, 2011) (discussing the reality of the children in Colombia and providing statistics of crimes and abuses against them).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Más de 1.100 niños fueron asesinados en Colombia en 2009*, COOPERATIVA (Jan. 20, 2010), http://www.cooperativa.cl/mas-de-1-100-ninos-fueron-asesinados-en-colombia-en2009/prontus_notas/2010-01-20/152923.html (discussing the high percentage of children murdered in Colombia every year and publishing the statistics of murdered children in 2009).

⁴⁷ *Id.*

authorities.⁴⁸ In Colombia, when abusers of children are imprisoned, they do not receive any psychological treatment.⁴⁹ Therefore, most of them are not rehabilitated.⁵⁰ Also, when offenders are released from prison, Colombian authorities do not exercise further control on them.⁵¹ Both of these factors contribute to the high levels of recidivism.⁵² There have been proposals to reform the penal code and to enact certain types of laws that would enforce control over offenders after they are released from prison, however every attempt for reforms have been denied.⁵³

II. The Opposing Perspectives

A. The International Perspective on the Rights of the Offenders

The Universal Declaration of Human Rights highlights the principle that no one should be subject to cruel or degrading punishment.⁵⁴ The International Covenant on Civil and Political Rights (“ICCPR”) reaffirmed this principle by declaring that no one, regardless of the crime committed, should be subject to torture or inhumane treatment.⁵⁵

⁴⁸ *Violaciones a Niñas Sacuden al País pero Gana la Impunidad*, W RADIO (Nov. 13, 2009), <http://www.wradio.com.co/nota.aspx?id=909226> (explaining how crimes against children in Colombia, especially sexual related crimes, are left in impunity since Colombian laws are not strong enough to protect the sexual integrity of children).

⁴⁹ Documentary: *Especiales Pirry: El Caso de la Bestia “Garavito”*, YOUTUBE (Jul. 8, 2011), <http://www.youtube.com/watch?v=4RvDRmUj3t8> [hereinafter *Especiales Pirry*]. This documentary explores the judicial process of Luis Alfredo Garavito, the person who murdered more than 140 children. *Id.* The documentary also highlights the fact that Garavito is probably only going to serve a sentence of less than fifteen years because the court applied on his sentence the benefits and reductions provided by the Colombian penal code. *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Lina M. Díaz, *Reflexiones Sobre la Propuesta de Reforma Constitucional para la Introducción de Cadena Perpetua: Respuesta al “Sexual Predator” en los Delitos Contra Menores*, 30 DERECHO PENAL Y CRIMINOLOGIA: REVISTA DEL INSTITUTO DE CIENCIAS PENALES Y CRIMINÓLOGICAS, 135, 145 (2009) The article analyzes the different initiatives of reforms for penalizing sexual crimes and abuses against children in Colombia. *Id.* at 136.

⁵⁴ G.A. Res. 217, *supra* note 1.

⁵⁵ G.A. Res. 2200, *supra* note 2.

In 2003, the UN adopted a resolution urging nation states to combat discrimination against ex-convicts.⁵⁶ Also, public policy supports rehabilitation and reintegration of ex-offenders.⁵⁷ One way to accomplish rehabilitation is by providing ex-convicts employment opportunities and support to their families.⁵⁸ Reintegration to society of ex-convicts has demonstrated to reduce future recidivist conduct.⁵⁹ There are also NGOs that work for providing ex-offenders second opportunities and that assert that criminal justice systems of every nation state should provide the basic tools to reintegrate and rehabilitate ex-offenders instead of segregating them from society.⁶⁰

B. The Justifications Against Reformation of the Colombian Penal Code

Developed countries have enacted laws in their penal systems that allow the authorities to enforce control over child offenders in order to verify that they would not commit future abuses and crimes against children.⁶¹ However, countries like Colombia have not been able to enact these type of criminal laws.⁶² The following two examples

⁵⁶ *La ONU Urge a Convatir la Discriminacion Contra los Ex Convictos*, CENTRO DE NOTICIAS ONU (Aug. 13, 2003), <http://www.un.org/spanish/News/fullstorynews.asp?newsID=780&criteria1=convictos> (publishing the United Nations decision for adopting resolutions opposing discriminatory practices against ex convicts).

⁵⁷ Timothy L. Creed, *Negligent Hiring and Criminal Rehabilitation: Employing Ex-Convicts, Yet Avoiding Liability*, SELECTED WORKS, 1, 13 (2007). The author discusses how it will be more likely for employers to hire ex convicts if they are aware of the steps that must be taken in order to avoid future liability for a negligent hiring suit. *Id.* at 3.

⁵⁸ *Id.* at 13.

⁵⁹ *Id.* at 2.

⁶⁰ *What is International Cure*, INTERNATIONAL CITIZENS UNITED FOR REHABILITATION OF ERRANTS, <http://www.internationalcure.org/> (last visited Oct. 18, 2011). CURE is an international organization that advocates for changes in the criminal justice systems. *Id.*

⁶¹ See Erika M. Fontecha, Daniel A. Hernandez, & Diego F. Vasquez, *Penalizacion Perpetua Para los Violadores de Menores de Edad en Colombia*, UNIVERSIDAD AUTONOMA DE COLOMBIA 1, 88 (2010). The authors describe the penalties regarding abuses and crimes against children in Colombia and compare them with developed countries like the United States and Great Britain. *Id.* at 60. The authors also discuss that in 1996, the United States passed the Megan's law, a law that facilitates to the public throughout Internet access information, such as the name, address, and current picture of offenders that have committed sexual abuses against children. *Id.* In Great Britain, the government publishes the number of people that have committed abuses against children in a specific location but does not publishes their names or their addresses. *Id.* at 61.

⁶² *Id.* at 88.

explore the attempts for reformation of the penal code and the justifications of why such claimants support the reformation. The examples also describe the justifications of the claimants from the opposite perspective on why the penal code should be maintained as it is.

1. Walls of Infamy Law

In 2007, a Colombian Senator, Gilma Jimenez (“Senator Jimenez”)⁶³, proposed a law called “Muros de la Infamia” (“Walls of Infamy”), a law inspired by Megan’s Law,⁶⁴ in the United States.⁶⁵ Walls of Infamy was projected to allow the Colombian government to publish information and photographs of child abusers in private and public schools, bus stops, public parks, shopping malls, churches, and cultural centers.⁶⁶ The law also proposed the distribution of flyers every three months that included the information and photograph(s) of the offender(s).⁶⁷ The information would include the name of the offender, his or her location, the offense committed, the duration of the sentence, and the

⁶³ Martha E. Ordoñez, *Gilma Jimenez*, EL ESPECTADOR (Dec. 6, 2008, 10:00 PM), <http://www.elespectador.com/noticias/actualidad/articulo96765-gilma-jimenez> (describing the biography of Senator Jimenez and how she has been an advocate for the reformation of the Colombian penal code in order to provide further protection and promotion to the rights of the children).

⁶⁴ *Megan’s Law: What it is and Who Megan’s Law Offenders are*, NATIONAL ALERT REGISTRY, <http://www.registeredoffenderslist.org/megans-law.htm> (last visited Oct. 18, 2011). Megan’s Law was enacted in 1996 and it mandates every state within the United States to create procedures for notifying residents of a community about information, such as the name and address, of past sex offenders living in the area. *Id.* The law was created after the rape and death of a 7-year-old child, Megan Nicole Kanka, who was lured, raped, and strangled by a two time sex offender, Jesse Timmendequas. *Id.*

⁶⁵ Corte Constitucional [C.C.] [Constitutional Court], enero 30, 2008, Sentencia C-061/08, Gaceta de la Corte Constitucional [G.C.C.] (Colom.). This Constitutional Court decision explores the proposed walls of infamy law and describes its similarities with Megan’s Law in the United States. *Id.* It also provides the reasons of why the Constitutional Court did not approve it. *Id.*; see also Tatiana Medina & Helman Niño, *Cadena Perpetua para Violadores de Menores, Mas que un Debate Moral*, UNIVERSIDAD DE BOYACÁ, http://www.uniboyaca.edu.co/agendaciudadana/index.php?option=com_content&view=article&id=465:cadena-perpetua-para-violadores-de-menores-mas-que-un-debate-moral&catid=52:infancia-y-adolescencia (last visited Oct. 14, 2011) (debating the supporting and opposing arguments for the walls of infamy law).

⁶⁶ Gilma Jimenez Gomez, *Exposición de Motivos Proyecto de Acuerdo No. 272 de 2007*, CONCEJO DE BOGOTÁ D.C., 1, 9, (2007) available at http://www.elabedul.net/Documentos/Temas/Otros/proyecto_muro_de_la_infamia.pdf (stating Senator Jimenez’s objectives and justifications in support for the approval and implementation of walls of infamy law).

⁶⁷ *Id.*

age(s) of the victim(s).⁶⁸ The justification for the proposed law is that a majority of the offenders do not rehabilitate after they complete their sentences in prison and that it exists a high probability that the offender would commit future abuses.⁶⁹ Therefore, Senator Jimenez argues that the government has an obligation to create awareness in society about this problem and that this could be achieved through the distribution of information and photographs of the offender throughout the country.⁷⁰

However, in 2008, the Constitutional Court did not approve the Walls of Infamy by reasoning that the law would violate the right to dignity, the good name, and the intimacy of the offenders.⁷¹ The Court also stated that such publications would not reverse the harm that was already caused by the offenders.⁷² It would instead create an irreparable injury on the offenders, their families, and their future.⁷³ It would also frustrate the purposes for rehabilitation, protection, and reintegration of the offenders provided by the legislative history of the Colombian penal code.⁷⁴

2. Life Imprisonment

In 2010, Senator Jimenez began a proposal to demand life sentences to people committing homicide, rape, torture, or kidnap of children under the age of fourteen.⁷⁵ The

⁶⁸ *Id.*

⁶⁹ *Id.* at 3.

⁷⁰ *Id.*

⁷¹ See Sentencia C-061/08, *supra* note 64; see also Asdrubal Guerra, *Corte Prohíbe Exhibir Públicamente Fotos de Violadores*, WRADIO (Jun. 19, 2008), <http://www.wradio.com.co/nota.aspx?id=617362> (explaining the reasons of why the Constitutional Court did not approve walls of infamy law).

⁷² Sentencia C-061/08, *supra* note 64.

⁷³ *Id.*

⁷⁴ *Id.*; see also *Muros de la Infamia son Inconstitucionales*, CAMBIO, http://www.cambio.com.co/paiscambio/10preguntascambio/724/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-3552756.html (last visited Oct. 15, 2011).

⁷⁵ *A la Plenaria Llega Referendo de Cadena Perpetua para Abusadores de Menores/ Informe*, CONGRESO DE LA REPUBLICA DE COLOMBIA (May 12, 2011, 3:25 PM), <http://www.senado.gov.co/sala-de-prensa/noticias/item/11852-ra-estudio-de-la-plenaria-llega-referendo-de-cadena-perpetua-para-abusadores->

justification for this reform was based on the unjust manner of penalizing violations on the rights of the children who are vulnerable because of their age and mental incapacity.⁷⁶ The initiative for the law began after a statistical publication from the Institute of Forensic Medicine which indicated that in 2010, six children died daily in a violent way.⁷⁷ Additionally, from 2006 to 2009, more than 3,700 children were murdered.⁷⁸ Finally, in 2008, 882 of the murdered children were younger than fourteen years old and fifty-eight of them were younger than four years old.⁷⁹

However, the Constitutional Court did not approve the law.⁸⁰ The Court explained that approving life imprisonment in Colombia would violate the foundation of the Colombian penal code because abusers of children should have the opportunity to rehabilitate and reintegrate to society, as the history of the penal code infers.⁸¹ The other reason why the Court ruled against the law was based on a financial aspect.⁸² The Court concluded that there were scarce financial resources invested in prisons and that prisons

de-menores (informing what the proposers for a Constitutional reform aimed through the implementation of life imprisonment for abusers of children in Colombia).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Las Razones por la que Se Undió el Referendo de Cadena Perpetua para Violadores de Niños*, SEMANA (May 26, 2010), <http://www.semana.com/justicia/razones-hundio-referendo-cadena-perpetua-para-violadores-ninos/139413-3.aspx> (stating the reasons of why the Constitutional Court did not approve a Constitutional reform to implement life imprisonment sentences on abuser's of children).

⁸¹ *Redacción Política, Pierde Fuerza en Congreso Cadena Perpetua para Violadores de Menores*, EL TIEMPO (Aug. 23, 2011, 4:07 PM), http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-10211049.html (explaining the reasons why political parties, such as the conservative party and the green party, did not support the Constitutional reform to enact life imprisonment sentences).

⁸² *Las Razones por la que Se Undió el Referendo de Cadena Perpetua para Violadores de Niños*, *supra* note 79.

are already overcrowded.⁸³ Therefore, the government had no sufficient financial resources to retain inmates imprisoned for life.⁸⁴

III. Past Trends, Conditioning Factors, and Consequences of the Colombian Penal Code

A. Brief History of Colombian Penal Code

In the twentieth century, the Colombian Penal system was characterized for its social injustices and its hierarchical system based on disproportionate punishments between the rich and the poor.⁸⁵ The Spanish crown created the laws and its application established inequality between the social classes.⁸⁶ Also, the severity of the punishments applied only to the lowest classes.⁸⁷ However, in 1819 the Congress of Angostura⁸⁸ agreed to reduce the severity of the criminal penalties.⁸⁹ In 1837, Colombia adopted for the first time a codified penal system, which was inspired by the French and the Spanish Penal Code.⁹⁰ The code suffered many reforms including the 1849 prohibition of capital punishment in political crimes.⁹¹ In 1873, the code completely abolished the capital

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Jorge E. Nuño, *Sistema Penal y Control Social en Colombia*, PONTIFICIA UNIVERSIDAD JAVERIANA 1, 26 (2002). This article discusses the weakness of the Colombian penal system and describes it as a consequence of the obstruction and influence from third parties in the legislative process. *Id.* at 1. The author also discusses the history of the Colombian penal system and its substantial effects on the Colombian society. *Id.*

⁸⁶ *Id.* at 26.

⁸⁷ *Id.* at 26.

⁸⁸ Paul Halsall, *Modern History Sourcebook: Simón de Bolívar: Message to the Congress of Angostura, 1819*, FORDHAM UNIVERSITY (1998) available at <http://www.fordham.edu/halsall/mod/1819bolivar.asp>. This article explains that the Congress of Angostura was the inaugurated Congress after the war of independence of Venezuela and Colombia. *Id.* In this Congress, Simón Bolívar brought the ideas of truthful freedom from the Spaniards and the rejection for tyranny. *Id.*

⁸⁹ Nuño, *supra* note 84, at 27.

⁹⁰ Gilberto E. Parada, *Ley Formal y Ley Material: La Ley Penal y su Codificación en la Construcción del Estado Colombiano, 1819, 1837*, UNIVERSIDAD NACIONAL DE COLOMBIA 1, 69-73 (2011).

⁹¹ Nuño, *supra* note 84, at 27.

punishment and the maximum sentence was set for ten years.⁹² However, the code was again reformed in 1886 and the death penalty and other severe punishments were reestablished.⁹³ In 1910, another reform on the penal code included the abolishment of the death penalty, created benefits such as conditional sentences and conditional liberties, and reformed the laws for lesser rigid consequences on criminal behavior.⁹⁴

During the 1950s and 1960s, there was an increase of criminality and violence because of the growth of major drug cartels.⁹⁵ The Colombian government became concerned and was willing to create reforms punishing criminal behavior and therefore, the penal code was once again reformed in 1980.⁹⁶ The 1980 Colombian Penal Code was reformed based on positivist ideas.⁹⁷ Philosophers have concluded that the central claim of legal positivism is that "in any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits."⁹⁸ Therefore, the purpose of confinement was not to punish the offender but to protect society from social harm.⁹⁹ It also evaluated the punishments from a subjective perspective and based each sentence from the conduct of each of the offender.¹⁰⁰ The main purpose of the code was to rehabilitate, protect, and reinsert offenders into society.¹⁰¹ The code also declared that punishments were not to be measure by the

⁹² See *id.* at 27-28; but see Código Penal Colombiano [C. Pen.] art. 37 (stating that the maximum penalty of the current Penal Code is 40 years).

⁹³ Nuño, *supra* note 84, at 29.

⁹⁴ *Id.* at 33.

⁹⁵ *Id.* at 37.

⁹⁶ *Id.* at 39.

⁹⁷ *Id.* at 36.

⁹⁸ John Gardner, *Legal Positivism: 5 ½ Myths*, 46 AMERICAN JOURNAL OF JURISPRUDENCE 199, (2001).

⁹⁹ Nuño, *supra* note 84, at 36.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 55.

duration of the sentence given by a judge but by the duration of the rehabilitation process.¹⁰²

Furthermore, in 1991, because of the influence of major drug dealers, such as Pablo Escobar,¹⁰³ and their violent threats, the Constitution was rewritten.¹⁰⁴ Pablo Escobar influenced the content of the Constitution through the use of violent attacks against different branches of government and public sectors.¹⁰⁵ The 1991 Constitution provided that the Constitution was the supreme law of the land and established constitutional limits on the penal code.¹⁰⁶ It also created more protections to the offenders and prohibited the extradition of Colombian citizens.¹⁰⁷

The penal code positivist ideology and the constitutional limits of the 1991 Constitution are the main reasons why the Colombian Penal laws are so weak and the explanation of why so many crimes are left in impunity.¹⁰⁸ Colombian Penal Code is a result of social pressure.¹⁰⁹ It does not represent Colombian criminal reality since it does not punish offenders in accordance to their crimes.¹¹⁰ This has left in impunity a vast

¹⁰² *Id.* at 68.

¹⁰³ *Biography: Pablo Escobar, CRIME AND INVESTIGATION NETWORK*, <http://www.crimeandinvestigation.co.uk/crime-files/pablo-escobar/biography.html> (last visited Oct. 17, 2011). The article provides the biography of Pablo Escobar and explains that Escobar was a major drug dealer who controlled in the 1980s over 80% of the drug trafficking in Latin America. *Id.* In 1985, the United States began pressuring the Colombian government for Escobar's extradition and this is why Escobar began a war against the Colombian government. *Id.* In this war Escobar killed thousands of Colombian citizens. *Id.* Also, this war, the deaths, and the threats of further violence by Escobar were the main reasons for the nullification of the 1979 American-Colombian extradition treaty. *Id.*

¹⁰⁴ Isaac de León-Beltrán, *Narcotráfico y Parapolítica en Colombia, 1980-2007*, at 13, Borrador de Metodo No. 50, ISSN: 1692-9667 (June 1, 2008) (discussing how the 1991 Constitution was a result of the war and the chain of violent acts by Pablo Escobar against the government and the State).

¹⁰⁵ *Id.*

¹⁰⁶ Nuño, *supra* note 84, at 73.

¹⁰⁷ León-Beltrán, *supra* note 64; *but see* Diana Rojas, *25 Años de la Extradición en Colombia*, Universidad Nacional de Colombia (Aug. 1, 2004) (discussing how during the administration of Alvaro Uribe, the 1991 Constitution was reformed and it re-imposed the extradition).

¹⁰⁸ Nuño, *supra* note 84, at 98.

¹⁰⁹ *Id.* at 97.

¹¹⁰ *Id.* at 98.

number of crimes against children and has created a society without incentives for deterrence on future criminal activities.¹¹¹

B. The Current Penal System of Colombia

1. The Constitution

Article 11 of the Colombian Constitution guarantees the protection of the right to life.¹¹² Article 44 expands the government protection for the rights of the children.¹¹³ This constitutional article states that the government has an obligation towards children to protect them from mental and physical violence and that the rights of children prevail over any other rights.¹¹⁴ However, the Non Governmental Organization (“NGO”), “Save the Children,”¹¹⁵ reported that every year twenty percent of children die in Colombia from hunger, abuse, and violence.¹¹⁶ The Institute of Forensic Medicine¹¹⁷ also reported that there has been an increment of thirty six percent on abuses and violence against children in the last five years.¹¹⁸

¹¹¹ *Id.* at 98.

¹¹² CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P] art. 11; *see also* Rigoberto Molina Parra, *El Derecho a la Vida en Colombia*, DEPARTAMENTO DE CALDAS, 1, 33, Aug. 28, 2009. The article explains that article eleven of the Colombian Constitution includes the right to life and describes it as a fundamental principle that cannot be violated by the Government or by society. *Id.* It also states that no one should be subject to torture, cruel penalties, or inhumane treatment. *Id.*

¹¹³ CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P] art. 44.

¹¹⁴ CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P] art. 44.

¹¹⁵ *Who we are, SAVE THE CHILDREN*, http://www.savethechildren.org/site/c.8rKLIXMGIpI4E/b.6146405/k.C7E9/About_Us.htm (last updated Sept. 2011) (explaining that Save the Children is an international organization and their mission is to protect children from abuse, starvation, poverty, illiteracy, and disease).

¹¹⁶ *20 de cada 100 niños en Colombia sufren de hambre, maltrato o violencia*, EL TIEMPO (Sep. 22, 2010), <http://www.eltiempo.com/archivo/documento/CMS-7952960> (publishing the statistics provided by Save the Children regarding negligence and abuse towards children in Colombia).

¹¹⁷ *Quiénes Somos*, INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES, http://www.medicinalegal.gov.co/index.php?option=com_content&view=article&id=2&Itemid=13 (last visited Sept. 18, 2011) (stating the Institute of Forensic Medicine is a public organization that controls the forensic medicine in Colombia and provides forensic services as scientific support for the administration of justice and the law enforcement).

¹¹⁸ *Medicina Legal reveló que maltrato infantil en Bogotá aumentó un 36%*, EL ESPECTADOR (Apr. 26, 2010, 11:43 AM), <http://www.elespectador.com/node/200117/print?q=node/200117/print>.

2. Constitutional Restrictions and the Penal Code

There are sections of the Colombian Constitution¹¹⁹ and the Colombian Penal Code¹²⁰ that contradict the government's obligation on protecting the basic rights and the well being of the children by not imposing stricter penalties on abusers of children.¹²¹ One of the most controversial sections of the Constitution is its constitutional restriction on the penal code.¹²² The Colombian Constitution prohibits capital punishment and life imprisonment.¹²³ Furthermore, article 37 of the Penal Code states that the sentence in prison has a maximum duration of forty years and such sentence is subject to benefits and durational reductions.¹²⁴

The percentage of impunity crimes is one of the highest in Colombia because of the allowance of benefits and durational reductions on the sentences of offenders who commit crimes and abuses against the children's fundamental human rights.¹²⁵ The percentage of impunity in Colombian penal system rates from twenty two percent to

¹¹⁹ Antonio Navarro, *Hace 10 Años Colombia Estreno su Constitución*, EL TIEMPO (May 23, 2011, 10:18 PM), http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-9432406.html. The article explains that the current Colombian Constitution was written in 1991 and served as a replacement of the Constitution of 1886. *Id.* The most important aspects of the 1993 Constitution are its values and respect for minorities, the separation of powers, and the set of a participative democracy and decentralization. *Id.*

¹²⁰ See Merriam Webster Dictionary (defining the penal code as a codified body that establishes crimes, offenses, and punishments of a system); see also Colombia Penal Code, BASEL INSTITUTE OF GOVERNANCE, <http://www.assetrecovery.org/kc/node/9faaa8c8-46a6-11dd-a84e-155588dfe3d4.1> (last visited Oct. 18, 2011) (stating that the Colombian penal code regulates the Colombia's penal system, establishes the crimes that can be punished, and sets the sentences for each crime).

¹²¹ O. Armenta, C. Herrera, L. Jimenez, B. Parra & L. Royet, *Los Abusadores de Menores en Colombia. Es Justo o no el Tiempo de su Condena?*, UNIVERSIDAD SIMON BOLIVAR, (2006) available at <http://www.monografias.com/trabajos35/abusadores-de-menores/abusadores-de-menores.shtml#justo> (discussing that the Colombian legislation is not rigorous enough on cases of abuse towards children).

¹²² *Id.*

¹²³ Constitución Política de Colombia [C.P.] art. 11, 34.

¹²⁴ Código Penal Colombiano [C. Pen.] art. 37.

¹²⁵ Sneider Rivera & Luis H. Barreto, *La Impunidad en el Sistema Penal Acusatorio en Colombia*, MINISTERIO DEL INTERIOR Y DE JUSTICIA, 1, 6 (2009) available at <http://www.mij.gov.co/econtent/library/documents/DocNewsNo4362DocumentNo2463.PDF> (explaining how the Colombian penal code has been traditionally associated with the impunity of crimes in Colombia).

ninety nine percent.¹²⁶ This rate serves as evidence for the reality of the administration of the Colombian penal justice in penalizing these crimes and abuses.¹²⁷

3. Benefits and Sentence Reductions Within the Penal System in Colombia

a. Plea Bargain and Confession

Offenders may receive a sentence reduction through the benefit plea bargain and confession.¹²⁸ By confessing his or her crimes, the offender may solicit the plea bargain benefit.¹²⁹ Plea bargain is the process when the offender confesses his or her crimes before the beginning of the trial or before a judgment is made.¹³⁰ When the offender does so, judges will produce an original judgment.¹³¹ Based on that judgment, the sentence will automatically be reduced to one third of the original sentence.¹³² There may be also a reduction of one eighth of the original sentence if, after the judgment is made, the offender accepts his or her penal responsibilities by confessing his or her crimes and by accepting the penalty of the charges.¹³³ When the reduction for confession and plea bargain is made during the instruction phase, the reduction will be two fifths of the original sentence, and if the confession is through the phase of judgment, the reduction will be one fifth of it.¹³⁴

b. Judgments Unification

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ L. 600, Julio 24, 2000, Código de Procedimiento Penal [C.P.P.] (Colom.).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ A. Valdivieso, J. Serrano, V. Botero & C. Leon, *Análisis Jurisprudencial del Tipo Penal de Peculado*, PONTIFICIA UNIVERSIDAD JAVERIANA 1, 33 (2004) available at <http://www.javeriana.edu.co/biblos/tesis/derecho/dere6/DEFINITIVA/TESIS63.pdf> (explaining the main procedures of the sentence reduction benefits described in the Colombian penal code).

The unification of judgments refers to the fusion of every judgment against one person into one final sentence.¹³⁵ It would not matter if the judgments have been imposed in different jurisdictions.¹³⁶ By unifying the judgments, the judge will only sentence the most serious crime as the maximum penalty.¹³⁷ Therefore, if an offender commits several crimes, the judge will only sentence him or her for the most serious crime, while the other crimes will be considered unified into the final sentence.¹³⁸ If the criminal conduct is a severe one, the final sentence can be increased based on the circumstances of each case, but the sentence can never exceed more than forty years.¹³⁹ Also, if during the time of serving his or her sentence the offender commits a new offense, the judge must unify the last offense with the new one.¹⁴⁰

c. Sentence Reduction for Work and Study

A judge can execute an automatic reduction of a sentence if the offender has studied or worked during his or her time in prison.¹⁴¹ The reduction consists of one day less in prison for two days of work and study.¹⁴² The only requirements that an offender needs to solicit this reduction are a certification from the prison director stating that the

¹³⁵ Código Penal Colombiano [C. Pen.] art. 31; *see also Una Visión al Código Penal*, EL COLOMBIANO, (2001) *available at* http://www.elcolombiano.com/proyectos/codigo_penal/dispositivos_amplificadores.htm. The author explains the process of judgment unification. *Id.* It states how Colombian authorities do not sum the total judgments but only sentence the offender for the highest crime without exceeding forty years. *Id.*

¹³⁶ Código Penal Colombiano [C. Pen.] art. 31.

¹³⁷ *Id.*

¹³⁸ *Especiales Pirry*, *supra* note 49.

¹³⁹ Código Penal Colombiano [C. Pen.] art. 31.

¹⁴⁰ *Id.*

¹⁴¹ Código de Procedimiento Penal [C.P.P.] art. 530; *see also Judicial Forum: Judiciary, Legislators agree to work towards reforms to combat impunity*, PROYECTO IMPUNIDAD, (2008) *available at* <http://impunidad.com/comunicado.php?idioma=us&id=4023> (discussing the effect of impunity on crimes from the benefits and sentence reductions through the application of the benefit of work and study).

¹⁴² Código de Procedimiento Penal [C.P.P.] art. 530.

offender has behaved with good conduct and a certificate describing the work and study of the offender.¹⁴³

d. Conditional Liberty

A judge may provide conditional liberty to an offender if his or her sentence is over three years.¹⁴⁴ The requirements are that the offender must serve three fifths of his or her sentence, and the offender must behave in good conduct throughout the time of imprisonment.¹⁴⁵ The reason for the existence of this benefit is that the government should not deny liberty if the offender has fulfilled every requirement for rehabilitation.¹⁴⁶ If an offender fulfills the requirements for conditional liberty, and a judge denies it, the offender is allowed to invoke a constitutional action of habeas corpus,¹⁴⁷ where the case can evolve to an action of illegal retention of the offender's liberty.¹⁴⁸

C. Courts' Decisions on Cases of Abuses Against Children in Colombia

The following three cases serve as examples of the consequences of the implementation of sentence reductions and benefits provided by the Colombian penal code. These cases illustrate the effects of a penal code that through its benefits and sentence reductions does not go in accordance with the reality of one of the most violent countries in the world.¹⁴⁹

¹⁴³ *Id.*

¹⁴⁴ Código Penal Colombiano [C. Pen.] art. 64; *see also* Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casacion Penal Enero 17, 2006, M.P: Marina Pulido de Barón, Tutela No. 23628, (Colom.) (discussing how conditional liberty is applied on criminal cases).

¹⁴⁵ Código Penal Colombiano [C. Pen.] art. 64.

¹⁴⁶ *Id.*

¹⁴⁷ *See* Merriam Webster Dictionary (defining habeas corpus as a writ that a citizen may obtain in order to protect himself against illegal imprisonment).

¹⁴⁸ Valdivieso, *supra* note 135, at 99.

¹⁴⁹ *Colombia Country Profile*, BBC (Apr. 7, 2011), http://news.bbc.co.uk/2/hi/americas/country_profiles/1212798.stm (describing the basic facts of Colombia)

1. Pedro Alonzo Lopez

In the late 1970s, a vast number of young, poor, and indigenous girls began to disappear.¹⁵⁰ The authorities did not pay much attention to the incidents because the victims were from the poorest sectors of society.¹⁵¹ However, in March of 1980, a group of market vendors in Ecuador caught a thirty-one year old Colombian, Pedro Alonzo Lopez (“Lopez”) when he was attempting to kidnap an eleven-year-old girl.¹⁵² The market vendors surrendered Lopez to Ecuadorian authorities.¹⁵³ When he was apprehended, Lopez confessed of raping and murdering more than 300 young girls between the ages of eight and twelve throughout Ecuador, Colombia, and Peru.¹⁵⁴ He helped the authorities to find fifty-seven graves where the young girls’ bodies were buried.¹⁵⁵ Lopez also confessed that he chose his victims from poor families because he knew the authorities did not care about disappearances in slums or shantytowns.¹⁵⁶ He started to kill when he was twenty-three years old and he used to approach the little girls as a lost salesman in order to gain their trust.¹⁵⁷

and stating that Colombia is one of the most dangerous countries in the world because of the violence of drug traffickers, terrorists, and guerrilla groups).

¹⁵⁰ Documentary: A&E Biography Pedro Alonzo Lopez, YOUTUBE (Jun. 7, 2009), <http://www.youtube.com/watch?v=JkmLZUzZ3dA> [hereinafter *A&E Biography Pedro Alonzo Lopez*]. This documentary discusses the life and the judicial process of Pedro Alonzo Lopez, the man who killed at least 100 girls throughout Ecuador, Peru, and Colombia. *Id.*

¹⁵¹ *Id.*

¹⁵² *Pedro Lopez: The Monster of the Andes*, THE DAILY MIRROR (Jan. 29, 2011), <http://search.proquest.com/docview/848041918?accountid=14129>.*Id.*

¹⁵³ *A&E Biography Pedro Alonzo Lopez*, *supra* note 151.

¹⁵⁴ *Pedro Lopez: The Monster of the Andes*, *supra* note 153.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *News in Brief; Colombian Admits Killing 100*, BOSTON GLOBE NEWSPAPER, Mar. 19, 1980, <http://search.proquest.com/docview/293942338?accountid=14129>.

Lopez was charged for 110 murders and he pleaded guilty for fifty-seven of those charges.¹⁵⁸ He was convicted in Ecuador for a collective maximum sentence of sixteen years.¹⁵⁹ However, because of good behavior, he was released after serving a sentence of merely fourteen years.¹⁶⁰ He was then deported to Colombia where he also faced criminal charges.¹⁶¹ However, he was declared insane and spent three years in a psychiatric hospital until he was released after a prison psychiatrist declared him sane and recovered.¹⁶² Lopez was released through the use of benefit of conditional liberty, after only serving a fourteen-year sentence in prison and three years in a mental hospital.¹⁶³ After Lopez was released from prison, he disappeared and his whereabouts are currently unknown.¹⁶⁴ Since October 2002, the International Criminal Police Organization (“Interpol”)¹⁶⁵ has reported new cases of murders with similar characteristics and they suspect that Lopez is the author of these crimes.¹⁶⁶

2. Manuel Octavio Bermudez

At the beginning of 1999, five bodies were found in the southern part of Colombia.¹⁶⁷ The bodies found were those of male children between the ages of eight and

¹⁵⁸ *A&E Biography Pedro Alonzo Lopez*, supra note 151.

¹⁵⁹ *See News in Brief; Colombian Admits Killing 100*, supra note 158; but see Alfonso Zambrano, *La Reciente Política Legislativa Penal en Ecuador*, UNIVERSIDAD CATÓLICA DE GUAYAQUIL, 1, 3, (stating that today the maximum penalty of Ecuador is twenty five years).

¹⁶⁰ *A&E Biography Pedro Alonzo Lopez*, supra note 151.

¹⁶¹ *Pedro Lopez: The Monster of the Andes*, supra note 153.

¹⁶² *A&E Biography Pedro Alonzo Lopez*, supra note 151.

¹⁶³ *Id.*

¹⁶⁴ *Pedro Lopez: The Monster of the Andes*, supra note 153.

¹⁶⁵ *Overview*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Overview> (last visited Oct. 18, 2011). INTERPOL is an international police organization with the mission of maintaining a safer world and helping to combat the growing criminal challenges of the 21st century. *Id.*

¹⁶⁶ *A&E Biography Pedro Alonzo Lopez*, supra note 151.

¹⁶⁷ *Documentary: Instinto Asesino: El Monstruo de los Cañaduzales*, YOUTUBE (Mar. 11, 2011), <http://www.youtube.com/watch?v=-qONt3ax0tc&feature=related> [hereinafter *Instinto Asesino: El Monstruo de los Cañaduzales*]. This documentary discusses the life and crimes of Manuel Octavio Bermudez. *Id.* Manuel Octavio Bermudez confessed of raping and killing thirty-two children in Colombia. *Id.* The documentary also discusses Bermudez’s judicial process. *Id.*

thirteen.¹⁶⁸ The children were found without clothes and were thought to have been tortured and raped.¹⁶⁹ Based on the type and condition of their clothes and shoes, the police concluded that the children were from a low social class.¹⁷⁰ These victims were underprivileged children who were forced to work on the streets because of their social and economic conditions.¹⁷¹

During 2002 to 2003, sixteen more children were found in a related location and in similar conditions.¹⁷² At the end of 2003, Manuel Octavio Bermudez (“Bermudez”) was captured after killing his last victim.¹⁷³ The police was finally able to capture him after someone testified that they saw the child in company of Bermudez for the last time.¹⁷⁴ The police obtained a search warrant and investigated his house where they found a suitcase full of pictures of the murdered children.¹⁷⁵ The authorities also discovered that Bermudez was previously convicted and imprisoned for two years after raping a child.¹⁷⁶ While being questioned by the police, Bermudez declared, that when he was released from prison, he decided to murder his victims so there would be no testimony or evidence of his acts.¹⁷⁷

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Carolina Bohorquez, *Historia de un Asesino Confeso*, EL TIEMPO (Jul. 27, 2003), <http://www.eltiempo.com/archivo/documento/MAM-987513>. This article focuses on the fact that Manuel Octavio Bermudez had previously served a sentence for two years in prison after raping one child. *Id.*

¹⁷² *Instinto Asesino: El Monstruo de los Cañaduzales*, *supra* note 168.

¹⁷³ Bohorquez, *supra* note 172.

¹⁷⁴ *Id.*

¹⁷⁵ *Instinto Asesino: El Monstruo de los Cañaduzales*, *supra* note 168.

¹⁷⁶ Bohorquez, *supra* note 172.

¹⁷⁷ *El Asesino de los Cañaduzales*, SEMANA (Aug. 12, 2006), <http://www.semana.com/nacion/asesino-canaduzales/96448-3.aspx>.

The sum of Bermudez's sentences amounted to fifty years, nine months, and fifteen days.¹⁷⁸ However, he was only sentenced for forty years.¹⁷⁹ From this sentence, Bermudez received a one third reduction through the benefit of plea bargain and collaboration with justice.¹⁸⁰ Bermudez was also able to receive similar benefits provided by the Colombian penal code.¹⁸¹ Therefore, he may be released after serving a sentence of eleven years.¹⁸² Bermudez solicited his case to be in clandestinely, meaning that when he is set to be released, no one will know that he is out of prison and no one will recognize his physical aspect.¹⁸³

3. Luis Alfredo Garavito

The case of Luis Alfredo Garavito ("Garavito") is one of the worst serial killer cases in Colombia and in the world.¹⁸⁴ On April 22, 1999, Garavito was arrested for attempted rape.¹⁸⁵ Garavito then confessed to the authorities of killing more than 140 boys between the ages of eight and sixteen during a period of five years.¹⁸⁶ The bodies found demonstrated evidence of rape, torture, mutilation, and decapitation.¹⁸⁷ The victims

¹⁷⁸ *Especiales Pirry, supra* note 49.

¹⁷⁹ *Instinto Asesino: El Monstruo de los Cañaduzales, supra* note 168.

¹⁸⁰ *Especiales Pirry, supra* note 49.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Jared Kotler, *Colombian admits he killed 140 children*, SAN ANTONIO EXPRESS NEWS (Oct. 30, 1999), <http://search.proquest.com/docview/262091182?accountid=14129>. This article discusses the crimes of Luis Alfredo Garavito and describes his victims as been from the poorest sectors of society. *Id.*

¹⁸⁵ *172 niños víctimas de Luis Alfredo Garavito*, FISCALIA GENERAL DE LA NACIÓN, <http://www.fiscalia.gov.co/pag/divulga/InfEsp/Garavito.htm> (last visited Oct. 1, 2011). This is a report from the attorney general that provides information of the investigations about the crimes committed by Luis Alfredo Garavito. *Id.*

¹⁸⁶ Larry Rohter, *Behind a Grisly Confession, the Torn Lives of Colombian Children*, N.Y. TIMES, Nov. 1, 1999.

¹⁸⁷ M. Benecke, M. Rodriguez, A. Zabeck, & A. Mätzler, *Two homosexual pedophile sadistic serial killers: Jürgen Bartsch (Germany, □1946 - †1976) and Luis Alfredo Garavito Cubillos (Colombia, □1957)*, MINERVA MEDICOLEGALE 153, 162 (2005), available at http://www.benecke.com/pdf-files/bartsch_small.pdf. The author discusses the crimes of Luis Alfredo Garavito from a criminalist and legal perspective. *Id.* at 153. The article also examines the investigations by the authorities regarding

were usually poor children or children living in the streets and Garavito used their vulnerable condition to lure them with money, food, or drugs.¹⁸⁸ Garavito also used to dress up as a priest or pretended to be handicapped so he could obtain the trust of his victims.¹⁸⁹ The Colombian authorities said that Garavito was able to kill so many children without being detected because his victims were from the poorest status of society and no one really cared about them.¹⁹⁰

Out of the 172 adjudged cases, Garavito was convicted for 140.¹⁹¹ Cumulatively, Garavito should have been incarcerated for 1,853 years and nine days.¹⁹² However, since the maximum penalty in Colombia is forty years, he was convicted and sentenced for the same.¹⁹³ Garavito's sentence was reduced one-third for collaboration with the authorities through confession and plea bargain.¹⁹⁴ Garavito may also solicit another sentence reduction for work and study and can request a petition for conditional liberty.¹⁹⁵ Garavito has 8,300 hours of study and work; this means that Garavito may obtain his conditional liberty after only serving a sentence of twelve years.¹⁹⁶

IV. Future Projections if the Colombian Penal Code is Not Reformed

As I have discussed throughout the development of this article, the Colombian penal code is a consequence of social pressure and compromises between political leaders and drug cartels through the "use" of the legislative process.¹⁹⁷ Colombia's criminal laws

Garavito's crimes and the judicial outcome by the Colombian courts. *Id.*

¹⁸⁸ *Id.* at 161-162.

¹⁸⁹ *Id.* at 163.

¹⁹⁰ Kotler, *supra* note 185.

¹⁹¹ *172 niños víctimas de Luis Alfredo Garavito, supra* note 186.

¹⁹² *Id.*

¹⁹³ *Especiales Pirry, supra* note 49.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Nuño, *supra* note 84, at 97.

do not reflect Colombian reality since the penal code has not achieved its purposes of rehabilitation, protection, and reintegration of the offenders.¹⁹⁸ To the contrary, Colombian penal system has not guaranteed its citizens a peaceful life or the respect for human dignity.¹⁹⁹ It can be concluded that Colombian criminal laws are inefficient because these laws have not contributed to the protection of the children's rights.²⁰⁰ One of the main problems is that this issue not only affects the children but also affects society as a whole since the children represent the future of the entire nation.²⁰¹

Pedophilia has a large nexus with sexual abuse and murder and these offenders are likely to continue their commission of crimes and abuses towards children.²⁰² In Colombia the number of children who are raped and murdered is incredibly high and most of these crimes are left in impunity because the penal code does not imposes stricter penalties on abusers of children.²⁰³ Also, studies have found that childhood abuse increases future delinquency and criminality on adults.²⁰⁴ Experts have concluded that forty percent of sexual abusers were sexually abused.²⁰⁵ Therefore, if the penal code is not reformed in accordance to the violent reality of Colombia,²⁰⁶ if offenders are allowed to receive the benefits and sentence reductions that the current Colombian penal code provides, and if offenders receive no psychological treatment during their time in prison

¹⁹⁸ *Id.* at 97-98.

¹⁹⁹ *Id.* at 98.

²⁰⁰ Fontecha, *supra* note 60, at 80.

²⁰¹ *Id.*

²⁰² Hall, *supra* note 36.

²⁰³ Aguilar, *supra* note 43.

²⁰⁴ Cathy S. Widom & Michael G. Maxfield, *An Update on "The Cycle of Violence"*, U.S. DEPARTMENT OF JUSTICE, 1 (2001).

²⁰⁵ *Child Sexual Abuse*, THE NATIONAL CENTER FOR VICTIMS OF CRIME, <http://www.ncvc.org/NCVC/main.aspx?dbName=DocumentViewer&DocumentID=32315#7>, (last visited Oct. 29, 2011) (discussing how children who were sexually abused or neglected have a higher probability of becoming criminal offenders and exploring the alternatives that can be implemented in order to stop this cycle of violence).

²⁰⁶ Nuño, *supra* note 84, at 98.

and no further control by the authorities after the offenders are released from prison, there will be more cases of sexual abuse and murders of innocent children and this will definitely have a substantial negative effect on the future generations of Colombia.²⁰⁷

V. Proposal for Reformation of the Colombian Penal Code Regarding Crimes Against Children

The Colombian penal code must be reformed in order to deter physical and sexual abuses and crimes against children.²⁰⁸ Steps must be taken in order to guarantee that offenders will not commit future abuses on children. Studies have concluded that psychological treatments on offenders can successfully reduce recidivism rates.²⁰⁹ Therefore, the first step is to establish in the penal code mandatory psychotherapy and counseling programs in prisons so abusers of children can understand and learn how to manage their future behavior.²¹⁰

The proposal for the Walls of Infamy law would frustrate the penal code's purpose for rehabilitation and reintegration to society of the offenders.²¹¹ However, it is needed further control from the authorities and additional educational and psychological treatments over the offenders after they are released from prison. An alternative may be psychotherapy and counseling programs where offenders are obliged to attend for a

²⁰⁷ Fontecha, *supra* note 60, at 80, 87.

²⁰⁸ *Id.* at 95.

²⁰⁹ Judith Becker, *Offenders: Characteristics and Treatment*, 4 THE FUTURE OF CHILDREN 176, 186 (1994). This article explains the typical characteristics of child sexual offenders. *Id.* at 176. It also discusses various therapies that can be effective on some offenders for their rehabilitation and for the reduction of future recidivist conduct. *Id.*

²¹⁰ See Nicholas Groth & Frank Oliveri, *Understanding Sexual Offense Behavior and Differentiating among Sexual Abusers: Basic Conceptual Issues*, 2 VULNERABLE POPULATIONS: SEXUAL ABUSE TREATMENT FOR CHILDREN, ADULT SURVIVORS, OFFENDERS, AND PERSONS WITH MENTAL RETARDATION 309, 324-25 (1989). The authors discuss how the cycle of violence can be terminated and the way sexual abusers of children can rehabilitate through psychological treatments such as psychotherapy and counseling. *Id.* The authors also highlight that receiving psychological treatments does not mean that the offender is cured since rehabilitated sexual offenders must always remain alert to the risks for reoffending. *Id.* at 326.

²¹¹ Sentencia C-061/08, *supra* note 64.

specific period of time after they are released from prison. Also, it can be establish a similar model as to the one in England where authorities exercise further control over the offenders' daily activities without publishing their names, addresses, or photos.²¹² This way the offenders' right to dignity, good name, and intimacy would not be violated.

The life imprisonment proposal would also violate the process of rehabilitation and reintegration declared by the Colombian penal code.²¹³ Additionally, Colombian government does not have sufficient financial resources to invest in prisons in order to extend its capacity to retain confined people for life.²¹⁴ However, an alternative may be to amend the penal code so the courts can prohibit the application of benefits and sentence reductions of abusers of children.²¹⁵ Therefore, offenders would not be able to negotiate their sentences and this would deter offenders from committing future crimes and abuses against children.²¹⁶

CONCLUSION

The Colombian penal code needs to reflect Colombia's social and criminal reality.²¹⁷ It is clear that the children's right to life is not been respected in Colombia due to the weakness of the Colombian penal code in the manner it penalizes crimes and abuses against children.²¹⁸ The right to life of children in Colombia must be respected

²¹² Fontecha, *supra* note 60, at 61.

²¹³ Redacción Política, Pierde Fuerza en Congreso Cadena Perpetua para Violadores de Menores, EL TIEMPO, Aug. 23, 2011, http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-10211049.html (explaining the reasons why political parties such as the conservative party and some members of the green party did not support the life imprisonment proposal).

²¹⁴ *Las Razones por la que Se Undió el Referendo de Cadena Perpetua para Violadores de Niños*, *supra* note 79.

²¹⁵ Fontecha, *supra* note 60, at 75-77.

²¹⁶ *Id.*

²¹⁷ Nuño, *supra* note at 84, 98.

²¹⁸ Fontecha, *supra* note 60, at 57, 80.

and protected by the Colombian laws and government.²¹⁹ Abusers of children must comply with the international standards for children's rights and criminal behavior against children must be deterred for the benefit and well being of the future generations in Colombia.²²⁰ Cases like Lopez, Bermudez, and Garavito must stop and criminals like these must serve a sentence in accordance to the crimes they committed. This is why there must be a reform on the Colombian penal code that would justly penalize these types of crimes and that would protect innocent children from future abuses and crimes.²²¹

²¹⁹ Child Rights Int't Network [CRIN], *Informe Alterno de Colombia Presentado al Comité Derechos del Niño*, at 18-20, (Mar. 3, 2006).

²²⁰ *Id.*

²²¹ Fontecha, *supra* note 60, at 88.