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# Life after death

## What replaces the death penalty?

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**Penal Reform International (PRI)**<sup>1</sup> is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter-Parliamentary Union.

It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment, for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty.

### Introduction/Trends

There has been a global trend towards the universal abolition of the death penalty and a restriction in the scope and use of capital punishment over the last fifty years. According to Amnesty International, 141 states are abolitionist in law or in practice<sup>2</sup> and 57 states retain the death penalty. Of those 57 states, only 20 were reported to have carried out an execution in 2011.<sup>3</sup>

However, two trends accompanying the abolition of the death penalty give reason for concern: there is a striking increase in offences that carry the sanction of life imprisonment as the sanction which typically replaces the death penalty following abolition or a moratorium of the death penalty; and a striking increase in prisoners serving this indefinite sentence. Secondly, a differential, harsher treatment is applied to them as compared to other categories of prisoners.

At the same time, the development of international standards in any affirmative—if not legally binding—form are lacking. As a consequence states are more frequently enforcing a form of punishment problematic in terms of international human rights standards and norms.

### Increase in life-long sentences

As many countries move towards the abolition of the death penalty, research indicates a significant increase in the number of offences that carry the sanction of life imprisonment, often without the possibility of parole, and a striking increase in the number of life sentences passed by the courts.

#### Growing number of life-sentenced prisoners

The United Kingdom has more life-sentenced prisoners than the other Council of Europe member states put together (approximately 12,500 lifers in the UK and approximately 8,000 in the rest of Europe). What is interesting is that the UK has two types of indeterminate sentences: a whole life sentence (usually reserved for the most heinous crimes such as mass murder), and “Imprisonment for Public Protection” (IPP) which sets a minimum tariff but no maximum tariff. More than 50 percent of those imprisoned under an IPP sentence in the UK are past their tariff date and have no expectation of being released.

Thus, the replacement of the death penalty by life imprisonment (without parole) has resulted in a widening net, applying life sentences beyond the

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1 To receive our **monthly newsletter**, please sign up at <http://www.penalreform.org/keep-informed>. Penal Reform International (PRI) is an international non-governmental organisation working on penal and criminal justice reform worldwide. PRI has regional programmes in the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus.

2 97 states are abolitionist in law for all crimes, 8 states abolitionist in law for ordinary crimes, and 36 states abolitionist in practice (meaning they have not carried out an execution for at least ten years).

3 *Death sentences and executions 2011*, Amnesty International, ACT 50/001/2012.

“most serious crimes” and no longer confined to formerly capital offences. While in some countries it is only the most serious offences, such as murder, which carry the sentence of ‘life’ imprisonment, many others introduced long and indeterminate sentences for less serious crimes, including non-violent offences.

### ‘Accountability’ sentences

‘Accountability’ sentences are applied in a number of US states. Under these provisions, participants in a crime, such as the getaway driver in a robbery, can be held accountable if the crime results in a homicide, even if they were not directly responsible for committing the murder.

## Detention conditions of life-sentenced prisoners

At the same time, life-sentenced prisoners experience differential treatment and worse conditions of detention compared to other categories of prisoners. This includes:

- Solitary confinement or semi-isolation for long and indeterminate periods of time.
- Inadequate living facilities.
- Incarceration under a high-security regime based on the nature of sentence rather than on an individual risk assessment.
- Excessive use of handcuffing or other disciplinary measures.
- Inadequate physical and mental healthcare.
- Limited visitation entitlements.
- Lack of rehabilitation programmes including a lack of or limited access to employment or education programmes.

### Isolation of life-sentenced prisoners

Those sentenced to life imprisonment in Ukraine are held in harsh and inhumane conditions, in special correctional colonies with a high level of security and almost total isolation from society and often isolated from other inmates. They are kept in cells of no more than two people for 23 hours a day for at least the first 15 years of their sentence, with only six short-term visits with family per year.

Many other countries utilise solitary confinement or semi-isolation for prolonged periods of time for those serving a life sentence, often separating lifers from the rest of the prison population for the entirety of their sentence. This includes Armenia, Azerbaijan, Kazakhstan and Tajikistan.

Prolonged solitary confinement and semi-isolation of prisoners raises serious concerns regarding the mental health of such prisoners, especially the psychological and sociological impact on maintaining social ties and contact with family members, which is a fundamental requirement of rehabilitation. Such treatment also raises questions about double jeopardy: the deprivation of liberty constituting the punishment, prison conditions and treatment should not form a secondary type of punishment.

### Inclusion of lifers with the rest of the prison population

In the UK, life-sentenced prisoners are housed with other long- and short-term prisoners, including at both high and low security prisons. Where they are housed depends on how much of a security risk they are considered to be and not because of the type of sentence being served. In fact, prison officials have found that not only do life-sentenced prisoners “tend to be better behaved than other prisoners” they can in fact have a stabilising effect on those behind prison walls.

*SOURCE: Andrew Coyle, International Centre for Prison Studies*

## Concerns

1. Life imprisonment without the possibility of parole (LWOP) attracts many of the same objections as the death penalty: it undermines the inherent right to life. To lock up a prisoner and take away all hope of release is to resort to another form of death sentence. LWOP does not respect the inherent dignity of the offender or the prohibition against cruel and inhuman punishment.
2. Life imprisonment becomes unnecessarily punitive in many cases, especially for non-violent crimes, and does not satisfy the principles of proportionality. In fact in several countries it has been a major factor in producing increased rates of imprisonment in a way that bars no relationship to crime rates or reducing serious criminal behaviour in society.

### Three-strike rule

In the US, life sentences can be imposed for drug crimes and non-violent offences as a result of the ‘three strikes’ rule used in some states. The ‘three strikes’ policy means that a person is sentenced to life imprisonment after committing a third crime. In some states, this policy applies to offenders with two previous convictions and a previous record of violent crimes, however, in other states less violent crimes can also be counted under such policy. A sentence of LWOP was upheld in Texas for the fraudulent use of a credit card to obtain \$80 worth of goods or services, passing a forged cheque in the amount of \$28.36, and finally, obtaining \$120.75 under false pretences.<sup>4</sup> A fifty-year sentence was upheld in California for stealing videotapes on two separate occasions after three prior offences.<sup>5</sup>

In May 2010, New Zealand also passed a controversial ‘three strikes’ law as part of a Sentencing and Parole Reform Bill.<sup>6</sup>

3. Given the nature of a life sentence and with the number of lifers increasing, this development contributes to the growing prison population and mass overcrowding, already one of the most challenging problems faced by criminal justice systems worldwide in spite of extensive prison construction programmes.
4. The conditions of detention for lifers, compounded by the indeterminate nature of the sentences, typically have a profound sociological and psychological impact on prisoners, which negate the rehabilitative purpose of punishment.

The curtailment of many basic rights that often accompany a sentence of life exacerbate this effect, including de-socialisation, the loss of personal responsibility and an increased dependency on the penal institution. Removal from a social environment causes prisoners to lose their ability to socially interact, including with their family and friends, results in negative coping mechanisms and emotional withdrawal, and causes or worsens mental health issues. The loss of responsibility and the increased dependence resulting from prolonged detention hampers efforts of rehabilitation.

### International standards

International standards do not sufficiently reflect the phenomenon of life sentences. To date no treaty or guidelines include provisions addressing the specific situation of lifers.

In 1994 the UN Crime Prevention and Criminal Justice Branch produced a document on life imprisonment<sup>7</sup> which constitutes the sole international document that refers specifically to life imprisonment. The report states that penal policy should only allow for life imprisonment with the purpose of protecting society and ensuring justice, and should only be used on offenders who have committed the most serious crimes. It proposes that states should provide a possibility of parole for persons sentenced to life imprisonment, which should be carried out after 8–12 years of their actual sentence.

Yet, due to its nature of being a report rather than a set of guidelines or enshrined in a resolution adopted within the UN system, the extent to which this document has been able to shape UN Member States’ practice and guide the use of life-long prison sentences has been marginal.

Currently, the only explicit reference to life imprisonment is to be found in Article 37 of the Convention on the Rights of the Child (CRC), prohibiting the application of life imprisonment without parole to juveniles below the age of 18.

However, guidance can be drawn from the International Covenant on Civil and Political Rights (ICCPR), from the Rome Statute of the International Criminal Court and from other standards.

Article 10 (3) of the ICCPR, stating as the purpose of the penitentiary system the “reformation and social rehabilitation” of prisoners, indicates that every prisoner should have the opportunity to be rehabilitated back into society and lead law-abiding and self-supporting lives, even those convicted of the most serious offences. This explicit aim captured by the ICCPR cannot be achieved if sentences apply without a meaningful possibility of parole.<sup>8</sup>

Secondly, the absence of life imprisonment without parole (LWOP) as an applicable sentence even for the gravest offences within the jurisdiction of the International Criminal Court, war crimes, crimes against humanity and genocide, constitutes a distinct indication that LWOP is not a proportionate response

4 *Rummel v. Estelle*, 445 US 263 (1980).

5 *Lockyer v. Andrade*, 538 US 63 (2003).

6 *Controversy continues after three strikes bill passed*, New Zealand Herald, (26 May 2010), <[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10647501&pnum=2](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10647501&pnum=2)>.

7 UN document ST/CSDHA/24.

8 See also references in human rights treaties relevant with regard to the impact of life imprisonment on the dignity of an individual and with regard to conditions amounting to inhuman or degrading treatment or punishment. Article 10(1) of the ICCPR states: “All deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

to the “most serious offences” punishable under the criminal jurisdiction of a state. Article 110(3) of the Rome Statute provides that a life sentence must be reviewed after 25 years.

The UN Standard Minimum Rules for the Treatment of Prisoners<sup>9</sup> (SMRs) contain provisions relating to substantive prison conditions, which, if fully enforced, would go some way toward setting clear standards against which prison systems could be judged. The SMRs do not contain any separate provisions for life-sentenced prisoners, but are applicable to life and long-term prisoners just as to any other category of prisoner.

Furthermore, persons deprived of their liberty are entitled to the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, such as the right to food (Article 11), the right to the highest attainable standard of mental and physical health (Article 12), and the right to education (Article 13).

The UN Minimum Rules for the Protection of Juveniles Deprived of Their Liberty prohibit the use of solitary confinement against juveniles. The UN Special Rapporteur on Torture, in his interim report to the UN General Assembly on 18 October 2011, has called for a ban on prolonged or indefinite solitary confinement as a punishment and as a harsh measure which is contrary to rehabilitation.<sup>10</sup>

## Conclusion/ recommendations

While the purpose of sentencing is ultimately punitive, the nature of the sentence should be proportionate to the seriousness of the offence and individualised to the specificities of the crime, including the circumstances in which it was committed. Sentences should not, therefore, be used to serve wider political purposes or purely to punish the offender.

Effectively locking away criminals for life and creating the belief that prisons can be the panacea to problems of crime and social control fails to tackle the structural roots of crime and violence. Sentences should provide the offender with a meaningful opportunity for rehabilitation and reintegration back into society, thereby leading to law-abiding and self-supporting lives after their release.

Penal Reform International therefore recommends:

- The UN should consider revising and updating the 1994 Crime Prevention and Criminal Justice Branch Report on Life Imprisonment, as this is the sole international document that refers specifically to life imprisonment.
- Standards enshrined in the 1994 UN Crime Prevention and Criminal Justice Branch Report on Life Imprisonment should be translated into a resolution adopted within the UN system, or incorporated into existing guidelines and basic principles.
- States should undertake a process of reviewing their criminal legislation to ensure that life imprisonment may only be used for the “most serious offences”. States should review the maximum length of time prisoners sentenced to life must serve in prison, and should adopt and implement principles of fairness and proportionality into their sentencing practice.
- The UN should engage in debate and dialogue as to how best to protect the rights of those sentenced to life imprisonment as a vulnerable category of prisoner, including upholding their rights to adequate living facilities, healthcare, and access to rehabilitation programmes. Reference should be made to the prohibition of life imprisonment without the possibility of parole, prolonged solitary confinement, and the obligation to equal treatment of prisoners including those serving a life sentence.
- The international community should continuously monitor the growing trend of life imprisonment as an alternative sanction for the death penalty, and aim to identify examples of where this sentence is not compatible with international human rights standards and norms.

For more information, please see Penal Reform International’s **information pack “Alternative Sanctions to the Death Penalty”**, available for download (in English, French, Russian and Arabic): <http://www.penalreform.org/death-penalty-publications>.

Penal Reform International  
First Floor  
60–62 Commercial Street  
London E1 6LT  
United Kingdom  
Tel: +44 (0) 20 7247 6515  
Fax: +44 (0) 20 7377 8711  
Email: [publications@penalreform.org](mailto:publications@penalreform.org)  
[www.penalreform.org](http://www.penalreform.org)

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9 Adopted in 1955 and approved by the Economic and Social Council in 1957.

10 Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, 5 August 2011.