

Penal Reform International

Alternative Sanctions to the Death Penalty Information Pack



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Acronyms

Bangkok Rules	UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders
CPT	Council of Europe Committee for the Prevention of Torture
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECOSOC	UN Economic and Social Council
ECtHR	European Court of Human Rights
FHRI	Foundation for Human Rights Initiative
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LWOP	Life without the possibility of parole
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention Against Torture
PRI	Penal Reform International
SMR	UN Standard Minimum Rules for the Treatment of Prisoners
SPT	Subcommittee on Prevention of Torture
TB	Tuberculosis
UK	United Kingdom
UN	United Nations
US	United States
WHO	World Health Organization

The declining use of the death penalty: implications for policy, legislation and sentencing

More and more states are facing a future without the death penalty

There has been a global trend towards the abolition of the death penalty and a restriction in the use of capital punishment over the last fifty years. At the time of writing 149¹ states and territories have abolished the death penalty in law or in practice, 47² retain the death penalty, 81³ states have ratified international and regional instruments that provide restrictions on the use of the death penalty and its ultimate abolition, and 23⁴ countries carried out executions in 2010. (For further information on the death penalty, see PRI's *Death Penalty Information Pack* 2011.)

However, the global trend towards abolition of the death penalty, including moratoria on death sentences and executions, and increasing restrictions on its application, pose important challenges for states in fulfilling their responsibility to protect the public and allay their fears, while administering justice fairly and helping those found guilty of the worst offences to prepare for the possibility of resettlement in the community.

When states select alternative sanctions to the death penalty

Not surprisingly, given that the crimes to which states are responding are serious ones that evoke public outrage (usually crimes involving loss of life in particularly abhorrent circumstances), hardened sentencing practices have resulted in the increased prevalence of offenders being

sentenced to 'life', life without the option of parole (LWOP) or indeterminate sentences, following the abolition of the death penalty or implementation of a moratorium.

Governments try to appease a concerned public by taking a 'tough on crime' approach, without proper consideration of whether or not the sanction is proportionate, just or compatible with international human rights standards. It is often considered a sufficient benefit if the convicted person's life has been spared: though, such an assumption has disregard for the rehabilitative nature of imprisonment.

Furthermore, it is far from clear whether the implementation of such sentencing policies by states has been the result of comprehensive consideration of the different options available in responding to the most serious crimes, which are compatible with states' interests and responsibilities, or if they have been arbitrarily selected for purely punitive grounds.

According to the Council of Europe's Commissioner for Human Rights, the use of life sentences should be questioned. Are they necessary? Are they humane? Are they compatible with agreed human rights standards?⁵

¹ *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, Report of the Secretary-General to the UN ECOSOC (18 December 2009), UN document E/2010/10, Table 1. ² *Ibid.* ³ *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, supra at note 1, para. 55. ⁴ *Death sentences and executions 2010*, Amnesty International (28 March 2011), AI Index ACT50/001/2011, p.5.

What should a state consider when selecting alternative sanctions to the death penalty?

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.

The UN Crime Prevention and Criminal Justice Branch's 1994 report⁶, *Life Imprisonment*, makes a number of recommendations for consideration by national jurisdictions in this regard. 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 further that individuals sentenced to life imprisonment should have the right to appeal and to seek pardon or commutation of sentence. States should provide for the possibility of release and only apply special security measures for genuinely dangerous offenders.

Discretion in applying the maximum sentence that replaces the death penalty

After abolition of the death penalty in law, many states have felt it appropriate to give judges no discretion in deciding, in relation to certain crimes, whether or not to apply the new maximum sentence available, further eroding the possibility of an individualised and proportionate response.

Lack of genuine review of those who receive the sentences that replace death

Where a sentence replacing the death penalty is, by law, susceptible to review, including pardon or clemency, that review often involves no consideration of whether the individual has proved to be capable of reform, and the extent to which they pose a continuing risk to society. Often the state has no means or measures in place to facilitate conducting such a review. The heinous nature of the crime, and/or the (often assumed rather than investigated) interests of the victim of the original crime or their family, will be cited in defence of the continuation of imposition of long, full life and indeterminate sentences.

These practices and omissions are not reducing crime but are contributing to prison population growth

These resulting government policies, legislation and sentencing practices have contributed in several countries to a growing number of offenders serving very long terms in prison. In many countries

⁶ *Life Imprisonment*, UN Crime Prevention and Criminal Justice Branch (1994), UN document ST/CSDHA/24.

this has been a major factor in producing increased rates of imprisonment (often in conditions that are inhuman and degrading) in a way that bears no proven relationship on crime rates or reducing serious criminal behaviour in society.

Furthermore, the steady increase in the number of life and long-term prisoners makes it difficult to determine the needs of these prisoners on an individual basis rather than on the basis of the type of sentence they are serving.

Undermining fundamental human rights standards and norms

The shortcomings displayed by some states in their response to crime in the absence of the possibility of execution ultimately undermine fundamental human rights standards and norms. These require that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 5 Universal Declaration of Human Rights, UDHR); that all those detained shall be treated with humanity and with respect for the inherent dignity of the human person (article 10 International Covenant on Civil and Political Rights, ICCPR); and that the treatment of prisoners will have as its essential aim their reformation and social rehabilitation (article 10(3) ICCPR).

However life and long-term prisoners are often subjected to worse conditions and treatment than other prisoners. The conditions are often highly restrictive and damaging to physical and mental health, with no effort or willingness to invest in rehabilitation or to consider alternative sanctions or early release.

Being sentenced to prison is punishment in itself: the conditions of imprisonment and the treatment and care received in prison should not amount to further punishment.

Abolition of the death penalty poses real, but not insuperable challenges for states

There is no doubt that adjusting to the post-death penalty landscape while adhering to such principles based on good practice poses a significant challenge for legislators and policy makers, as well as for all those responsible for implementation (including judges, defence lawyers, prison and probation staff and managers). It is also extremely challenging to explain the new policy, practice and the law to the public, including victims, in such a way as credibly to reassure them that justice is being done and public safety is protected.

However, experience shows that states that fail to make this adjustment in planning for, or responding to abolition of the death penalty, and in addressing the most serious crimes, solve few of the challenges posed by the most serious crimes and create many new and entrenched problems. Not least of the latter is the question of what to do with prisoners who become eligible in law for release into the community but have been so neglected, or treated with such calculated lack of respect for human dignity that they may still pose a risk.

Alternative sanctions to the death penalty: a review of current practices

A 'life' sentence: what is it?

The term 'life' sentence is often very confusing, varying from country to country, and includes:

- 'Life' or long-term sentence for a determinate number of years, after which the prisoner is released with no further restriction.
- 'Life' sentence for a minimum number of years, after which, at a certain defined point, the prisoner may be considered for release.
- Imprisonment until (natural) death, with no possibility of release (LWOP), and/or with a possibility (theoretical or realisable) of a pardon.

Long, determinate prison sentences

It is commonly assumed that the universal alternative to the death penalty adopted after its abolition is a 'life' sentence. However, not all countries recognise a sentence of 'life', instead adopting a determinate tariff system on sentences.

Spain, for example, opted for long and determinate sentences rather than indeterminate life imprisonment, but prison sentences can be up to 30 years.⁷ Brazil, Colombia, Croatia, El Salvador, Nicaragua, Norway, Portugal and Venezuela also have no 'life' sentence.⁸ Perhaps confusingly, prisoners in these countries may, nevertheless, serve long prison sentences, and these may even exceed the minimum terms that must be served before the possibility of release arises for some 'life' sentenced prisoners elsewhere. In

Croatia the maximum sentence that may be imposed is, for example, 40 years, and in Georgia the maximum determined term of imprisonment has been increased from 25 to 40 years.⁹

The reasoning behind the rejection of the notion of a 'whole life' sentence is often related to the principle that all prisoners must be considered to have the possibility of improving in prison and the prospect of being released. It is also, for example in Spain, related to the notion that the state should not have untrammelled power over the liberty of its citizens.

Indeterminate or reducible 'life' sentences

Many countries do recognise the sentence of 'life'. A common feature of that sentence is that it is indeterminate, but with some possibility (theoretical or realistic) for release. Often these states set a minimum tariff that must be served by the prisoner before which a sentence can be reviewed. The review does not always guarantee release. This means that in effect prisoners stay in prison until they are considered safe to be released, and are not given a release date to work toward.

In the UK, for example, a person can be kept in prison beyond the minimum term recommended by the sentencing judge if the offender is still considered to be a threat to the public.

⁷ *Replacing the Death Penalty: the Vexed Issue of Alternative Sanctions*, Andrew Coyle, in *Capital punishment: strategies for abolition*, by Peter Hodgkinson and William Schabas (eds.) Cambridge University Press: 2004, p. 92-115, p. 105. ⁸ See for example, *The Meaning of "Life": Long Prison Sentences in Context*, Mauer, M. et al., The Sentencing Project: 2004; and *Managing the Penal Consequences of Replacing the Death Penalty in Europe*, Newcomen, N., in Centre for Capital Punishment Studies occasional paper series three: managing effective alternatives to capital punishment, Browne, N. and Kandel, S. (eds.) CCPS: 2005. ⁹ Article 50 of the Criminal Code of Georgia (adopted 22 July 1999), amended 29 December 2006.

Where there is release, the offender may then be subjected to lifetime supervision, with the sentence being suspended and the convicted person susceptible to recall, sometimes to serve a prison sentence until the end of natural life or until further, successful review.

Indeterminate sentences can be considered to lack the element of proportionality essential in a humane punishment¹⁰, and even to risk offenders' psychological health by subjecting them to an unknown length of sentence. The uncertainty of release makes it difficult for prisoners to envisage a future outside the prison environment.

"The lifer, though he may know the average sentence, can never count on release until it is actually granted. This uncertainty weighs heavily on lifers, for in some cases the whole of their future lives are at risks from moment to moment; they can never know that they have not condemned themselves to a vastly extended term in prison because of one momentary aberration."¹¹

Examples of indeterminate 'life' sentences

In England and Wales, a distinction is made between mandatory and discretionary sentences of life imprisonment, with the former not being available for review until after 15 years have been served.

In Germany, prisoners serving a life sentence will be considered for release only after they have served a minimum of 15 years.

In the International Criminal Court, people sentenced to life imprisonment will not be considered for conditional release until they have served 25 years.

In Canada, 25 years must be served before being eligible for consideration of parole.

In the US, the minimum period served by life sentenced prisoners before they can be considered for conditional release ranges from 20 years in North Carolina; 21 years in Virginia; 25 years in Arizona, Florida, Georgia, Kentucky, New York and Tennessee; to 30 years in Indiana, Minnesota, New Jersey, New Mexico, North Dakota and South Carolina; 33 years in Alaska; 35 years in Texas; and as much as 40 years in Kansas.¹²

Russia, which has observed an official moratorium on executions since 1999, offers lifers the possibility to apply for early release after 25 years of imprisonment. In practice, their chances of returning to society are very minimal and only a few of the current 1,729 lifers are likely to live long enough to be released.

Mandatory and discretionary life sentences

Where a 'life' sentence is applied, jurisdictions generally make the distinction between a mandatory and discretionary sentence: offences which automatically carry the sentence of life imprisonment and those where sentences are subject to the discretion of the judge depending on the personal characteristics of the defendant and the gravity of the crime committed.

¹⁰ *UN Covenant on Civil and Political Rights: CPCR Commentary*, Manfred Nowak (1st ed.), N.P. Engel, 1993. ¹¹ Sapsford 1978, cited in UN document ST/CSD/HA/24 (1994). ¹² *Sentencing for Life: Americans Embrace Alternatives to the Death Penalty*, Richard Dieter, Death Penalty Information Center: 2003.

Effectively, a mandatory sentence is one where judicial discretion is limited by law.

Mandatory minimum life sentences are often reserved for very serious offences such as murder, as is the case in New Zealand and the UK.¹³ In Canada, other serious offences such as manslaughter, aggravated sexual assault, and kidnapping carry a sentence of life imprisonment, but as a maximum discretionary sentence only. In Kenya, life imprisonment has recently been introduced for offences of rape and 'defilement' under the Sexual Offences Act 2006. However, the offences all include a minimum sentencing option and life imprisonment is only imposed at the discretion of the judge.¹⁴

The reasoning behind mandatory sentencing is that a crime is so heinous that a strong minimum sentence must always be imposed whatever the circumstances, to ensure consistency within a jurisdiction and to act as a useful deterrent against future crimes.

However, an offender should have the opportunity to inform the court of all relevant circumstances of his or her case, so that the court can take them into consideration when deciding whether this exceptional form of punishment is appropriate. This may include factors regarding the nature and circumstances of the offence and about the defendant's own individual history, their mental and social problems and their capacity for reform.

A court should impose a life sentence only for the most serious crimes, where there are no significant mitigating circumstances.

De facto life sentences

Depending on the convicted person's age and state of health and the conditions of detention, a long, determinate prison sentence, or a number of sentences served consecutively, might be considered by some a *de facto* life sentence.

This is the case in South Africa, where multiple, determinate sentences can amount to the same or even longer prison terms than life imprisonment.¹⁵

In Uganda, legislation sets the tariff for life imprisonment at 20 years, however following the abolition of the mandatory death penalty, judges are passing multiple life sentences or resorting to the use of several years and in a few cases passed sentences for the natural life of the convict. Thus, as at 22 September 2010, 5 prisoners were sentenced for as long as their natural life, one prisoner received a sentence of 65 years and others range between 22 – 60 years. The offences that carry such lengthy sentences include murder, aggravated robbery, rape, aggravated defilement and kidnap with intent to murder.¹⁶

In states in the US that do not use LWOP sentences, judges have nonetheless implemented it *de facto* through the use of consecutive life sentencing. For example, in 2005, a serial killer in Kansas was sentenced to ten consecutive life sentences – one for each of his victims – meaning that the prisoner would not be eligible for parole until he had served a minimum of 175 years.¹⁷ The use of consecutive sentences effectively removes the chance for parole

¹³ *Replacing the Death Penalty*, supra at note 7, p. 98. ¹⁴ Kenya Prisons Paralegal Project (KPPP) and Legal Resource Foundation Kenya (LRF), personal communication, see *Penal Reform International Briefing No. 1: Alternatives to the death penalty: the problems with life imprisonment*, PRI: 2007, p. 2.

¹⁵ Lukas Muntinghe, Civil Society Prison Reform Initiative, personal communication, *ibid*, p. 4. ¹⁶ Information regarding Uganda has been provided by FHRI (Kampala, Uganda) following research into the application of life imprisonment (2010). ¹⁷ *State of Kansas v. Dennis L. Rader* (2005).

without regard to the crime's severity. In the state of Wisconsin, the sentencing judge has the power to set the parole eligibility date, which, in reality, could be longer than a person's natural life. A similar provision is in force in Alaska.¹⁸

¹⁸ *Sentencing for Life*, *supra* at note 12.

The increasing use of 'life' and long-term sentences and their contribution to growing prison numbers

Figures from a number of countries around the world seem to show an increase in the number of life sentences passed over the last decade or so.

In the US the number of life-sentenced prisoners increased from nearly 70,000 prisoners in 1992 to 128,000 in 2003. In 2004, one in every eleven offenders in state and federal prisons was reported to be serving a life sentence.¹⁹ By 2009, of the 2.3 million being held in jails across the US, 140,610 were serving 'life', among them 6,807 juveniles.²⁰

In South Africa, the number of life-sentenced prisoners increased from 443 to 5,745 between 1995 and 2005.²¹ The overall prison population growth was 60 percent during the same period.²²

In England and Wales the prison population serving life sentences increased from 3,192 in 1994 to 6,741 in 2008.²³

In Armenia there were 76 male prisoners serving life imprisonment in 2009²⁴ and in Azerbaijan 235.²⁵ In Georgia there were 72 men and 2 women sentenced to life imprisonment as of August 2008.²⁶ In Belarus 130 persons were serving life sentences in 2008.²⁷ In Ukraine there are approximately 1,400 life-sentenced prisoners.²⁸ In Uganda, the number of lifers has grown from 37 in 2008 to 329 in 2010.²⁹

The growing length of 'life' and long-term sentences

The length of time served in prison by life-sentenced prisoners also appears to be rising in some countries. In the US, the average length of time served in prison by lifers increased from 21.2 years to 29 years between 1991 and 1997.³⁰ The average time served in England and Wales for those given a mandatory life sentence increased from 13 years in 1999 to 17.5 years in 2009.³¹

Reduction in the granting of parole

Increased use of life and long-term sentences has also been matched by a reduction in the granting of parole, pardon or commutation of sentence.

Recent figures published by the England and Wales Parole Board showed a significant reduction in the proportion of both life and fixed-sentenced prisoners being freed on parole. Between April and September 2006, one in nine life-sentenced prisoners was released on parole (of 901 requests for parole by life sentence prisoners, only 106 were granted), compared to one in five for the same period the previous year.³² In 2010 there was only a one in thirteen chance of being released.³³

In South Africa, amendments to sentencing legislation have resulted in longer non-parole periods and more stringent

¹⁹ *The Meaning of "Life"*, supra at note 8, p. 9. ²⁰ *Number of Life Terms Hits Record*, New York Times (22 July 2009) <<http://www.nytimes.com/2009/07/23/us/23sentence.html>> (accessed 17 September 2010). ²¹ *The effect of sentencing on the size of the South African prison population*, Giffard, C. and Muntingh, L., Open Society Foundation for South Africa: 2006, <http://www.osf.org.za/File_Uploads/docs/SENTENCINGREPORT3SizeofPrisonPopulation.pdf> (accessed 21 March 2011), p. 10. ²² *Ibid*, p. 1. ²³ HM Prison Service <http://www.hmprisonservice.gov.uk/advicandsupport/prison_life/lifesentencedprisoners/> (accessed 17 September 2010). ²⁴ *Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries*, PRI: 2009, p. 14. ²⁵ *Ibid*, p. 40. ²⁶ *Ibid*, p. 88. ²⁷ *Death Penalty in Belarus*, Human Rights Center Viasna <<http://spring96.org/en/publications/26686/>> (accessed 16 September 2010). ²⁸ Information regarding Ukraine has been provided by PRI-Eastern Europe office (Moscow, Russia) following research into the application of life imprisonment (2010). ²⁹ Information regarding Uganda has been provided by FHRI (Kampala, Uganda) following research into the application of life imprisonment (2010). ³⁰ *The Meaning of "Life"*, supra at note 8, p. 3. ³¹ Hansard House of Commons Daily Debates, 22 February 2010, c256W. ³² *Drop in Lifers released on parole*, BBC News (6 November 2006), <<http://news.bbc.co.uk/1/hi/uk/6119576.stm>> (accessed 21 March 2011). ³³ *Parole Board Annual Report Statistics 2009/10*, <http://www.paroleboard.gov.uk/about/annual_reports/> (accessed 17 September 2010).

requirements for granting parole to life-sentenced prisoners.³⁴

Meaningful pardon/parole

While many countries make provisions for some kind of pardon or parole procedure for life or long-term prisoners, often these provisions are only a theoretical right and are not realised in practice. For example, in the Netherlands, prisoners have the opportunity to apply for parole but it can be granted only by royal decree and is rarely applied: since 1989, only one person serving a life sentence (who was terminally ill) has been released.³⁵

The jurisprudence of the European Court of Human Rights (ECtHR) on this regard is confusing to say the least. The ECtHR has held³⁶ that the imposition of an irreducible life sentence may raise issues under article 3 of ECHR (the right not to be subjected to torture or to inhuman or degrading treatment or punishment). However, the Court found that this bar will not be met if national law affords the possibility of review that would allow remission or conditional release of the prisoner, even if that possibility of release was remote. Furthermore, the Grand Chamber of the ECtHR emphasised that there was no unanimity in Europe about what procedures should be followed when releasing prisoners sentenced to life imprisonment and that they would not give any guidance on what such procedures should entail.³⁷

However, the vast body of international, regional and national law that promotes the rehabilitative purpose of imprisonment link

it explicitly to the need for clear pardon or parole procedures that allow prisoners the possibility of eventually returning to society.

The leading European case at the national level is the German Constitutional Court's decision of 21 June 1977. The court held that for life sentences to be compatible with the norm of human dignity, prisoners must have a hope of being released with a clear release procedure. The procedure for releasing people sentenced to life had to be spelled out in primary legislation that makes provision for a court to decide on their release.³⁸

Without meaningful pardon or parole procedures, international standards on rehabilitation and reintegration would be empty rights. Such procedures should not be discriminatory or arbitrary. Pardon/parole procedures should be clearly defined in law, and should meet due process safeguards, including the right of appeal.

Use of longer sentences has also widened the net and is no longer confined to formerly capital crimes

In many countries it is only the most serious offences, such as murder, which carry the sentence of 'life' imprisonment. However, recent trends can be seen of long and indeterminate sentences being applied for less serious crimes, including non-violent offences, as perceptions of proportionality become distorted.

In the US, life sentences can be imposed for drug crimes and non-violent offences as a result of the 'three strikes' rule used

³⁴ *The effect of sentencing on the size of the South African prison population*, supra at note 21, p. 28. ³⁵ *Outlawing Irreducible Life Sentences: Europe on the Brink?*, Dirk van Zyl Smit, in *Federal Sentencing Reporter*, Vol. 23, No. 1, pp. 39-48, p. 41. ³⁶ *Kafkaris v Cyprus* [2008] ECHR 21906/04 (12 February 2008). ³⁷ *Outlawing Irreducible Life Sentences*, supra at note 35, p. 43. ³⁸ Dirk van Zyl Smit, *Is Life Imprisonment Constitutional? – The German Experience*, 1992 Public Law 263, cited in *Outlawing Irreducible Life Sentences*, supra at note 35, p. 40.

in some states. The ‘three strikes’ policy means that a person is sentenced to life imprisonment after committing a third crime. In some states it is necessary to have violent crimes on your record for the third offence to trigger such a response, however, in other states less violent crimes can also be counted under such policy.³⁹ 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.⁴⁰ A fifty-year sentence was upheld in California for stealing videotapes on two separate occasions after three prior offences.⁴¹

In May 2010, New Zealand also passed a controversial ‘three strikes’ law as part of a Sentencing and Parole Reform Bill.⁴²

‘Accountability’ sentences are also 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 murder, even if they were not directly responsible for committing the murder.⁴³

³⁹ *No Exit: The Expanding Use of Life Sentences in America*, Ashley Nellis and Ryan S. King, The Sentencing Project: 2009, p. 30. ⁴⁰ *Rummel v. Estelle*, 445 U.S. 263 (1980). ⁴¹ *Lockyer v. Andrade*, 538 U.S. 63 (2003). ⁴² *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> (accessed 17 September 2010).

⁴³ *The Meaning of “Life”*, supra at note 8, p. 18.

Life imprisonment without the possibility of release (LWOP)

“No human being should be regarded as beyond improvement and should therefore always have the prospect of being released.”⁴⁴

Where there is an absence of confidence in parole systems, and a ‘tough on crime’ approach in many jurisdictions, stricter sentencing practices and the pressure for ‘truth in sentencing’ have resulted in the increased prevalence of offenders being sentenced to life imprisonment without the possibility of parole (LWOP). However, there is a growing body of evidence that suggests the reviewable life sentence is a very effective penal measure, with lower reconviction rates for lifers released under supervision in the community than any other sanction.⁴⁵

Rationales advanced for life imprisonment, as a form of the most severe punishment, include deterrence, retribution, restoration and incapacitation (stopping a criminal from reoffending, in the interests of public protection). In the theory of punishment, rehabilitation is one of the most important elements, yet it is missing in most of today’s life sentencing policies. Life imprisonment becomes unnecessarily punitive in many cases, especially for non-violent crimes, and does not satisfy the principles of proportionality. LWOP in particular raises issues of cruel, inhuman and degrading punishment and undermines the right to human dignity by taking away the prospect of rehabilitation.

“A crime prevention policy which accepts keeping a prisoner for life even

if he is no longer a danger to society would be compatible neither with modern principles on the treatment of prisoners during the execution of their sentence nor with the idea of the reintegration of offenders into society.”⁴⁶

Use of LWOP at the national level

LWOP is seen by some as the most appropriate alternative sentence to the death penalty, and it can be found in a number of states and in all regions of the world (for example, in Bulgaria, England and Wales, Estonia, the Netherlands, Sweden, Turkey, UK, Ukraine, US and Vietnam). While in some countries, like the US and Turkey, LWOP sentences do not provide for the possibility of release under any circumstances, other countries’ policies are less severe. In Vietnam amnesties are usually granted after the prisoner has served between 20 and 30 years. In Bulgaria and Sweden, it is possible to petition the government for a pardon.⁴⁷ However in Estonia, the President may grant clemency but has not done so since the country gained its independence.

In England and Wales, there are around 35 people serving sentences that could be considered to amount to LWOP where no minimum period has been set before they will be considered for parole.⁴⁸ In the case of *Hindley*⁴⁹, the House of Lords held that there was no reason in principle why a crime, if sufficiently heinous, should not be regarded as deserving of life-long incarceration for the purposes of pure punishment.

⁴⁴ *Outlawing Irreducible Life Sentences*, supra at note 35, p. 40. ⁴⁵ *The pros and cons of life without parole*, Catherine Appleton and Bent Grover, (24 April 2007) in *British Journal of Criminology* (2007) 47, 597-615, p. 604. ⁴⁶ *The Meaning of “Life”*, supra at note 8, p. 1. ⁴⁷ *The pros and cons of life without parole*, supra at note 45, p. 601. ⁴⁸ *Whole life tariffs: prisoners who will die behind bars*, The Telegraph, (16 July 2010), <<http://www.telegraph.co.uk/news/uknews/crime/7894459/Whole-life-tariffs-prisoners-who-will-die-behind-bars.html>> (accessed 21 March 2011). ⁴⁹ *R. v. Secretary of State for the Home Department, ex parte Hindley* [2000] All E.R. 385 (HL).

The US Supreme Court endorsed the use of LWOP in 1974 in the case of *Schick v. Reed*⁵⁰, and it has since become a widely accepted punishment. In fact the availability of a stringent life sentence, which ‘says what it means’, has either partially or completely eliminated the pressure to apply the death penalty in certain US states.⁵¹ In the US, one in four prisoners currently serving a life sentence is ineligible for parole, representing one in 36 of the entire prison population.⁵² In some states, such as Louisiana, one in ten of the entire prison population is serving a sentence of LWOP.⁵³ In six states in the US, all life sentences are imposed without the possibility of parole – Illinois, Iowa, Louisiana, Maine, Pennsylvania and South Dakota.⁵⁴

The potential effects on prisoners of LWOP

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 sentence⁵⁵. LWOP does not respect the inherent human dignity of the offender or the prohibition against cruel and inhuman punishment.

Prolonged deprivation of liberty, and the curtailment of basic rights that may accompany a sentence of LWOP, can lead to numerous effects, including desocialisation, the loss of personal responsibility, an identity crisis and an increased dependency on the penal institution. Removal from a social

environment causes prisoners to lose contact with family and friends and bringing up their children. Stress and anxiety is caused by the removal of normal patterns of social interaction and prisoners’ powerlessness to provide support to others. The loss of responsibility and the increased dependence that results from prolonged detention can hamper any efforts at rehabilitation. Negative coping mechanisms can result in emotional or situational withdrawal, including heightened risk of psychological disability.

A new class of ‘super inmates’

One of the more worrying aspects of LWOP is the creation of a new class of ‘superinmates’⁵⁶, for whom ‘super’ regimes have to be created that do not necessarily comply with the need to treat all prisoners with respect for human dignity. “In the case of LWOP prisoners, the ‘carrot’ of parole cannot be used as an incentive to ensure the compliance and cooperation of those who have neither hope of release nor anything to lose.”⁵⁷

According to ex-Chief Inspector of Prisons for England and Wales, Dame Anne Owers, the increasing number of lifers makes Britain’s prisons harder to manage, “[I]t means you are managing some very different risks. If you’re looking at whole-life tariffs and you want prisons and prisoners to be safe, you’ve got to create some horizons, some milestones within that – whether that’s through activity, achievements, education, you’ve got to create an environment in which there is

⁵⁰*Schick v. Reed* 419 U.S. 256, 267 (1974). ⁵¹*The pros and cons of life without parole*, supra at note 45, p. 600. ⁵²*No exit*, supra at note 39, p. 9.

⁵³*Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States*, Ashley Nellis (The Sentencing Project: 2010), Federal Sentencing Reporter, Vol. 23, No. 1, October 2010, p. 28. ⁵⁴*The Meaning of “Life”*, supra at note 8, p. 3. ⁵⁵*Arguments against Capital Punishment: The Anti-Death Penalty Movement in America 1972-1994*, Haines, H., Oxford University Press: 1996. ⁵⁶*A Matter of Life and Death: Why Life Without Parole should be a Sentencing Option in Texas*, Blair, D. (1994), in *American Journal of Criminal Law*, 22: 191-214, p. 213. ⁵⁷*The pros and cons of life without parole*, supra at note 45, p. 604.

something literally worth living for. Because if prisoners feel there is nothing to lose, then prisons become less safe.”⁵⁸

In an interview with a whole-life prisoner from England and Wales, the prisoner, who had been involved in a non-fatal stabbing while in prison, stated:

*“[W]hen he [the judge] sentenced me to natural life [he] gave me an invisible licence that said I can breach any laws I want, no matter how serious, and the law can’t touch me. I’m above the law.”*⁵⁹

⁵⁸ Simon Hattenstone, *Letters from lifers*, The Guardian (30 October 2010), <<http://www.guardian.co.uk/society/2010/oct/30/whole-life-sentences-letters-prison>> (accessed 8 November 2010). ⁵⁹ Interview with a whole-life prisoner from England & Wales, in *Letters from lifers*, *ibid.*

Legal challenges to the legitimacy of life imprisonment without the possibility of release (LWOP)

International prohibitions on the use of LWOP

While international law does not explicitly prohibit passing a sentence of life imprisonment without the possibility of parole for adult offenders, it does specify that LWOP shall not be imposed for offences committed by persons below eighteen years of age (article 37(a) of the UN Convention on the Rights of the Child [CRC]). All but two countries (Somalia and the US) in the world have ratified the CRC.

Life sentences should be subject to review

International law makes provisions for life sentences to be subject to review. The ICCPR mandates reformation and social rehabilitation as the essential aim of the penitentiary system.⁶⁰

Measures contained in the Rome Statute of the International Criminal Court ensure that life imprisonment without parole is not available as a punishment for the gravest crimes: war crimes, crimes against humanity and genocide. Article 110(3) of the Rome Statute also provides that sentences of life imprisonment, the maximum sentence available to the court, must be reviewed after 25 years.

In 1977, the Council of Europe's Committee on Crime Problems was of the opinion that "it is inhuman to imprison a person for life without any hope of release" and that a crime-prevention policy which keeps prisoners detained for life even when they

represent no danger to society "would be incompatible neither with modern principles on the treatment of prisoners ... nor with the idea of the reintegration of offenders into society."⁶¹

"As a matter of principle, the Commissioner [on Human Rights of the Council of Europe] firmly believes that sentencing to a non-reducible life imprisonment is wrong. There should at least be a review within a reasonable time, with possibilities for either release or conditional release entailing post-release conditions, control measures and assistance carefully adapted to the prisoners' needs and risks. It is unfair and cruel to take away any hope from an individual. There should be an individual risk assessment of each inmate."⁶²

The Council of Europe Convention on the Prevention of Terrorism allows extradition to be limited in certain instances if the person who is to be extradited may be subjected to LWOP.⁶³

Challenges to the legitimacy of LWOP in national law

The legality of LWOP has been widely discussed in different legal forums. In Mexico, LWOP was declared unconstitutional by the Supreme Court because it was considered to amount to cruel and unusual punishment.⁶⁴ This conclusion is shared by a number of Central American countries.⁶⁵

⁶⁰ Article 10(3), ICCPR. ⁶¹ *Treatment of Long-Term Prisoners*, Council of Europe, Strasbourg: 1977, p. 22. ⁶² Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to Azerbaijan (3 to 7 September 2007), CommDH (2008)2 / 20 February 2008, para. 57. ⁶³ Article 21(3) of the Convention on the Prevention of Torture, Council of Europe, C.E.T.S. No. 196 (2005). ⁶⁴ *Alternatives to the death penalty – the United Kingdom Experience in Council of Europe*, Hodgkinson, P., in *Death Penalty: beyond abolition* Strasbourg: Council of Europe: 2004. ⁶⁵ *Life Imprisonment: Recent Issues in National and International Law*, Dirk van Zyl Smit in the *International Journal on Law and Psychiatry* 29 (2006) 405-421, p. 410.

In Germany, the constitutionality of life imprisonment was raised back in 1977 when the Federal Constitutional Court recognised that a whole-life sentence invariably entails the loss of personal dignity and the related denial of the right to rehabilitation. The Court expressed that the duty of a prison is “to strive towards their [the prisoner] resocialization, to preserve their ability to cope with life and to counteract the negative effects of incarceration and destructive personality changes that go with it.”⁶⁶

“To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of dignity. Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end.”⁷²

Constitutional courts in countries such as France⁶⁷, Italy⁶⁸ and Namibia⁶⁹ have followed the route of the German Constitutional Court and recognised that those subject to life sentences have a fundamental right to be considered for release.⁷⁰

In South Africa, the Constitutional Court held in *S v. Dodo (CCT 1/01) [2001] ZACC 16* that a sentence of imprisonment which requires a prisoner to be detained for a lengthy indeterminate period without taking into consideration the gravity of the offence committed is unconstitutional, in that it violates the right to human dignity. The Supreme Court of Appeal also held that prisoners should have the prospect of being released; otherwise, punishment that would require a prisoner to spend the rest of his life in prison is cruel, inhuman, and degrading.⁷¹ In a recent South African case, *S v Nkomo [2007] 2 SACR 198 (SCA)*, the Court held that the prospect of rehabilitation of the offender is a substantial and compelling circumstance to justify the imposition of a lesser sentence.

European jurisprudence

In recent years, the European Court of Human Rights (ECtHR) has considered the application of the European Convention on Human Rights (ECHR) in cases involving LWOP. In the 2001 case of *Sawoniuk v United Kingdom*, the Court stated that “an arbitrary or disproportionately lengthy sentence might in some circumstances raise issues under the Convention...While the Commission expressed the view that a life sentence without any possibility of release might raise issues of inhuman treatment.”⁷³

In 2008, the ECtHR went a step further by finding that the imposition of an irreducible life sentence may raise issues under article 3 (the right not to be subjected to torture or to inhuman or degrading treatment or punishment) of the ECHR.⁷⁴

More recently though, the Court extended interim measures to prevent the extradition of four men to the US to face terrorism charges until it is satisfied they would not

⁶⁶ 45 BVerfGR 187 (1977). ⁶⁷ Decision no. 93-334 DC 20 January 1994 of the Conseil Constitutionnel. ⁶⁸ Corte cost. sentenza, 27 September 1987, nr 274 *Foro Italia*, 1, 2333. ⁶⁹ *S. v. Tsoelib* 1996 (1) S.A.C.R. 390 (NmS). ⁷⁰ *Taking Life Imprisonment Seriously*, Dirk van Zyl Smit, in *Kluwer Law International, The Hague*: 2002, p. 213. ⁷¹ *Nikosi v State* [2002] JOL 10209 (SCA). ⁷² South African Constitutional Court Judge Ackerman in the case of *S. v. Dodo* 2001 (3) S.A. 382 (CC) at 404, para. 38. ⁷³ *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, 29 May 2001. ⁷⁴ *Kalfaris v Cyprus* (21906/04) 2008.

be treated inhumanely. The Court will go on to decide whether practices such as subjecting prisoners to prolonged periods of isolation and sentences of life without parole constitute ‘cruel and unusual punishment’ as prohibited under article 3 of the ECHR.⁷⁵ We await the Court’s final judgment in this case.

⁷⁵Press Release issued by the Registrar, *Decision on admissibility* (8 July 2010) *Babar Ahmad and Others v. the United Kingdom* (application nos. 24027/07, 11949/08 and 36742/08), <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=abu%20%7C%20hamza&sessionid=63791431&skin=hudoc-pr-en>> (accessed 20 December 2010).

A human rights framework for the conditions for, and treatment of, 'life' and long-term prisoners

“Long-term imprisonment can have a number of dissociating effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society; to which almost all of them will eventually return. In the view of the CPT [European Commission on the Prevention of Torture], the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.”⁷⁶

Punitive conditions of detention

Prisoners serving life or long-term imprisonment often experience differential treatment and worse conditions of detention compared to other categories of prisoner. Examples include separation from the rest of the prison population, inadequate living facilities, excessive use of handcuffing, prohibition of communication with other prisoners, inadequate health facilities, extended use of solitary confinement and limited visit entitlements.

Punitive conditions of detention and less favourable treatment are known to be particularly prevalent for reprieved death row prisoners.

“Singling long-term prisoners out for harsh treatment is a particular problem in countries that are in the process of adjusting their penal policy to deal

with those prisoners who would have previously been executed.”⁷⁷

‘Life’ and long-term sentenced prisoners have a right to be treated with humanity and dignity and protection from torture and inhuman treatment

Treaty standards related to life imprisonment obliquely concern the extent to which life imprisonment may constitute a loss of dignity or amounts to inhuman or degrading treatment. Article 5 of the UDHR provides that:

“No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment.”

Article 10(1) of the ICCPR states:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

The Human Rights Committee, the UN expert body tasked with overseeing implementation of the ICCPR, has commented on article 10 as follows:

“Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the state party. This rule must be applied without distinction

⁷⁶ European Commission on the Prevention of Torture 11th General Report, Strasbourg: 3 September 2001, para. 33. ⁷⁷ *Management of Long-term and Life-Sentenced Prisoners Internationally in the context of a Human Rights Strategy*, Andrew Coyle (2005) in N. Browne and S. Kandelia (eds.) Centre for Capital Punishment Studies occasional paper series three: *managing effective alternatives to capital punishment*, London: CCPS, p. 44.

*of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*⁷⁸

Equality of rights

Life and long-term prisoners are entitled to the same rights as other categories of prisoner, and their conditions of detention and treatment should be compatible with human dignity and comply with the UN Standard Minimum Rules for the Treatment of Prisoners⁷⁹ (SMR).

“There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (SMR, Rule 6)

Such rights should include an adequate standard of living, including adequate food and drinking water, accommodation, clothing, bedding and access to physical and mental health care. Their treatment should encourage personal reformation and social rehabilitation⁸⁰. The principle of equality also calls for these prisoners to have a right to parole and opportunities for release from prison, taking into consideration the risk of each individual life sentenced or long term prisoner rather than wider political or punitive factors.

However, life and long-term prisoners are often separated from the rest of the prison population and kept in so-called maximum-security prisons.

Where such separation is unrelated to real issues of prison security or the protection of other inmates, different treatment and separation of life or long-term prisoners from the rest of the prison population on the basis of their legal status shows discrimination within prisons and contradicts basic human rights principles.

The level of security applied to life-sentenced prisoners should be based on an individual assessment of need. Not all life-sentenced prisoners are, for instance, dangerous or need to be detained in high security prisons or segregated from other categories of prisoner. What is important is to structure a management regime that is based on the actual risk the prisoner is presenting to the correctional system and risk of re-offending (risk to the community) in general. The appropriate management regime can then be structured according to the actual risk, rather than having a single regime for life and long-term prisoners.

The realities in fact often indicate otherwise: the majority of life-sentenced prisoners do not pose a risk to the public, are generally better behaved in prison compared to other categories of prisoner, and have lower reconviction rates on release.⁸¹

Prison conditions at the national level

The practice of separation of prisoners is applied in most countries that have life imprisonment as the harshest sentence. For example, in Azerbaijan researchers assessed that the conditions for life prisoners were substantially worse than

⁷⁸ UN Human Rights Committee, General Comment 21 (1992), para. 4. ⁷⁹ Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the ECOSOC by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. ⁸⁰ Article 10(3) ICCPR. ⁸¹ See, for example, *Management of Long-term and Life-Sentenced Prisoners Internationally in the context of a Human Rights Strategy*, supra at note 77; or *Alternatives to the death penalty – the United Kingdom Experience in Council of Europe*, supra at note 64.

conditions for other prisoners in the same facility.⁸² This included inadequate living conditions, including health facilities, food and a total lack of any useful activities, work, educational programmes or possibilities for communication with other categories of prisoner.

In the Russian Federation, reprieved death row prisoners are contained within a dedicated penal colony where they are forced to live in overcrowded cells with no work or activities. Toilets comprise communal buckets, which are emptied every 24 hours. There is no running water or natural light and the diet is poor.⁸³ Life-sentenced prisoners in Russia are also accorded different treatment and are subject to 'strict conditions' sanctioned by the Criminal Executive Code. Prisoners are kept in cells with less than two metres square and face daily and nightly surveillance, as they are considered more dangerous to the public than other categories of prisoner. Contact with other prisoners is also prohibited.⁸⁴

In Kenya life-sentenced prisoners are separated from other prisoners and automatically held in maximum-security prisons. There is no opportunity to engage in the industrial work afforded to other prisoners, as it is forbidden. The fear of being transferred to other prisons, or of being punished, prevents prisoners seeking redress when they are denied their rights.⁸⁵

In most Australian jurisdictions life-prisoners will remain in a form of secure custody for long periods of time; however,

within those prisons they may enjoy very low levels of supervision and are accommodated in self-catering small living units. Where appropriate life-prisoners can also be placed in open custody.

International human rights standards for the treatment of 'life' and long-term prisoners

The SMR, which set out the human rights framework for any prison system, apply equally to life and long-term prisoners. Key provisions include:

Prisoners should be entitled to appropriate accommodation, personal hygiene, clothing and bedding, food, drinking water, exercise and sport and medical services. (Rules 9-26)

"Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits." (Rule 37)

"So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life." (Rule 42)

"The regime of the institution should seek to minimise any differences between prison life and life at liberty which tend to lessen the responsibility of prisoner or the respect due to their dignity as human beings." (Rule 60)

⁸² *Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries*, supra at note 24, p. 75. ⁸³ *Management of Long-term and Life-Sentenced Prisoners Internationally in the context of a Human Rights Strategy*, supra at note 77, p. 44. ⁸⁴ Ms Vika Sergeyeva (PRI Moscow) personal communication (2010). ⁸⁵ Kenya Prisons Paralegal Project (KPPP) and Legal Resource Foundation Kenya (LRF), personal communication, cited in *Penal Reform International Briefing No. 7*, supra at note 14, p. 6.

Prisoners should be allowed access to work, education and recreation. (Rules 71-78)

In addition to the ICCPR and the SMR, other UN human rights treaties contain provisions that are highly relevant to the treatment of prisoners serving life and long-term sentences. For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the rights to: food and an adequate standard of living (article 11); the highest attainable standard of mental and physical health (article 12); and education (article 13).

*The European Prison Rules of 2006*⁸⁶ provides the most comprehensive and up to date statement of current European consensus on the standards that all prisons should meet for the treatment of life/long-term prisoners. Part 1 of the Rules provides nine basic principles that all prisons should adhere to:

1. All persons deprived of their liberty should be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate

as closely as possible the positive aspects of life in the community.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.
8. Prison staff carries out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.
9. All prisons shall be subject to regular government inspection and independent monitoring.

Health protection and promotion for life and long-term prisoners are particularly important

Prisoners serving life or long-term prison sentences are likely to be particularly vulnerable to ill health, including poor mental health, and may enter the prison service already with multiple health needs, such as alcohol and drug dependency, depression and psychological illness, or infectious disease (such as TB, HIV/AIDS and viral hepatitis). The SMR provide a clear statement of the basic medical needs to be met for all prisoners:

“The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner’s rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.” (Rule 62)

⁸⁶ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006.

However, all treatment should only be undertaken with the free and informed consent of the prisoner. Medical treatments of an intrusive and irreversible nature that are aimed at correcting or alleviating a disability (such as psychiatric drugs, electroshock or psychosurgery) or that lack a therapeutic purpose (such as sterilization to prevent fertility) may constitute torture or ill-treatment if enforced or administered without the free and informed consent of the person concerned.⁸⁷

The UN Basic Principles for the Treatment of Prisoners⁸⁸ provide that:

“Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.” (Principle 9)

At a meeting held in Madrid, Spain, in October 2009 and attended by representatives of 65 countries, national and international agencies, and experts in prison and public health, urgent need was recognised for the following health measures in relation to all prison systems:⁸⁹

- Measures to reduce overcrowding.
- Counselling, screening and treatment programmes for infectious diseases, including HIV/AIDS, tuberculosis [TB], hepatitis B and C and sexually transmitted infections.
- Treatment programmes for drug users, according to assessed needs, resources and national and international standards.

- Harm reduction measures, including opioid substitution therapy, needle and syringe exchange, and provision of bleach and condom distribution.
- Availability of post-exposure prophylaxis and prevention of mother-to child transmission.
- Guidelines on the hygiene requirements necessary for the management of communicable diseases in prisons and other infections and the prevention of nosocomial infections.
- Guaranteed through-care for prisoners upon entry and after release from prison, in close collaboration with stakeholders and local health services.
- Mental health support.
- Training of all prison staff in the prevention, treatment and control of communicable diseases.

⁸⁷ UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, UN document A/63/175 (28 July 2008) see for example paras. 47, 60 and 61. ⁸⁸ Adopted by UN GA resolution 45/111 (14 December 1990). ⁸⁹ *The Madrid Recommendation: Health protection in prisons as an essential part of public health*, World Health Organization (WHO) Regional Office for Europe, 2010.

Use of solitary confinement for ‘life’ and long-term prisoners

The use of solitary confinement for life and long-term prisoners is an increasing phenomenon, with inmates spending protracted periods in isolation, sometimes for years at a time.

In the US state of Louisiana, two men have been held in solitary confinement for 38 and 35 years respectively. They are confined, alone, for 23 hours a day in cells measuring approximately 2x3 metres. Their only access to natural light while inside their cells is from windows opposite the cell tier. They are allowed outdoor exercise in a small cage, for one hour, three days a week. Restrictions are imposed on their personal property, reading materials, access to legal resources, work and visits. Both prisoners are reported to be suffering from serious health problems caused or exacerbated by their years of close confinement in a small cell.⁹⁰

Solitary confinement should be restricted and abolished

Solitary confinement is a form of cruel and unusual punishment, and can amount to psychological torture because of the lack of human contact and sensory deprivation that often accompany it. It can have a severe negative impact on a prisoner’s mental state, and may lead to certain psychological disabilities such as depression.

The UN Special Rapporteur on torture and other cruel, inhuman, degrading treatment or punishment has stated: “The weight of accumulated evidence to date points to the serious and adverse health effects

of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well functioning. [...] In the opinion of the Special Rapporteur, the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort.”⁹¹

The UN Human Rights Committee has expressed the view that:

“[T]he use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10(1) of the Covenant [ICCPR]”⁹² and may amount to acts prohibited by article 7 (torture and cruel, inhuman or degrading punishment).⁹³

There is no operational justification for keeping such prisoners, as a class, in isolation simply because of the length or nature of their sentence. On the contrary, it is considered good management practice to keep prisoners fully occupied, both in their own interest and that of the smooth running of a prison.

The ECtHR held that the right not to be subjected to torture, cruel, inhuman or degrading punishment was breached due to a regime of strict solitary confinement for more than three years on a former death row inmate.⁹⁴

⁹⁰ USA: Amnesty International calls for immediate end to nearly 73 years of solitary confinement endured by Louisiana prisoners, *Herman Wallace and Albert Woodfox*, Amnesty International (30 March 2010), AI Index: AMR 51/026/2010. ⁹¹ UN document A/63/175, paras. 82-83. ⁹² UN Human Rights Committee, Concluding remarks on Denmark (31 October 2000), UN Document CCPR/CO/70/DNK, para. 12. ⁹³ UN Human Rights Committee, General Comment 21/44, 6 April 1992. ⁹⁴ *Iorgov v. Bulgaria* (2004) ECHR 113 (2005) 40 EHRR 7, ECtHR 185, para. 84.

The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium in Istanbul, states that: the use of solitary confinement to be “absolutely prohibited in the following circumstances:

- For death row and life-sentenced prisoners by virtue of their sentence.
 - For mentally ill prisoners.
 - For children under the age of 18.”
-

Vulnerable ‘life’ and long-term sentenced prisoners

The vulnerability of ‘life’ and long-term sentenced prisoners is often both a cause and consequence of their imprisonment. This is amply illustrated within the context of mental health, where research has shown that prisoners serving life sentences are more predisposed to mental illness than the rest of the prison population. A study conducted in the US found that people with a history of mental illness comprised one in five lifers, compared to one in every six for the prison population as a whole.⁹⁵

“Prisoners sentenced to life imprisonment may suffer from psychological and sociological problems that may cause desocialisation and dependence, which are harmful to the health of the individual prisoner.”⁹⁶

Among vulnerable prisoners are those who, for example because of age, gender, ethnicity, health, legal or political status, face an increased risk to their safety, security or well-being as a result of imprisonment. This group can include juveniles, women and mothers, the mentally ill or developmentally-disabled, foreigners, minorities or indigenous peoples, those under sentence of death, and the elderly, physically disabled or ill persons.

Juveniles⁹⁷

Young prisoners are considered to be one of the most vulnerable groups. They are in their formative years, learning and developing physically into adults. If these years are spent in an institution for those who have broken the law, there is a danger that the young person will absorb a criminal

identity and grow up expecting to lead a criminal way of life. There is also a grave and persistent danger of abuse, including sexual abuse, exploitation, and health risks for juveniles in detention. Children are unlikely to be able to protect themselves, and it is therefore highly questionable whether the advantages of detaining juveniles outweigh the substantial risks of detention. International law calls always for their best interests to be considered in any decisions made about their fate, and for deprivation of liberty to be the last resort.

Juveniles who have committed crimes are regarded as being more amenable to change and to learning different ways of behaving than are adults. The treatment of juveniles should be consistent with the promotion of the child’s sense of dignity and the desirability of the child’s reintegration in society.⁹⁸ Care must be taken to prevent long-term social maladjustment. The emphasis of any juvenile facility should be on care, protection, education and vocational skills, and not on confinement.

International standards emphasise that juveniles are not only entitled to all the human rights guaranteed as adults, including the right to be treated with humanity and respect for the inherent dignity of the human person, but also to additional protections which take into account the needs of a person of his or her age. These protections include:

- Separating juvenile detainees from the adult detainees (article 10(3) ICCPR; and SMR, Rule 8(d)).
- Prohibiting the use of corporal punishment against juveniles (SMR, Rule 31).

⁹⁵ *The Meaning of “Life”*, supra note 8, p. 15. ⁹⁶ UN document ST/CSDHA/24, supra note 6. ⁹⁷ Defined by the CRC as those under 18 years of age ⁹⁸ Article 40, CRC.

- Making special efforts to allow juveniles to receive visits from and correspond with family members (articles 9, 10 and 37 CRC; SMR, Rule 37);
- Providing juveniles of compulsory school age with education and training (article 28 CRC; and SMR, Rule 71.5).

Article 37 of the CRC prohibits life imprisonment without the possibility of parole for offences committed by children (those under the age of 18 at the time the offence was committed).

The jurisprudence of ECtHR has also confirmed this position. In *V v. United Kingdom*, the Grand Chamber of the ECtHR underlined the importance of having a robust release procedure and of promptly stipulating a clear and relatively short minimum period after which release would have to be considered, particularly for cases in which the offender was very young at the time of the commission of the offence.⁹⁹

In some countries, children may not be sentenced to life imprisonment at all.

In Jordan, legislation prohibits life imprisonment to those under the age of 18. Juveniles aged between 15-18 years who commit a capital crime may be sentenced to 6-12 years imprisonment, and 5-10 years if the crime is punishable by life imprisonment. The punishment for those aged between 12-15 years would be 4-10 years and 3-9 years respectively.

Furthermore, Jordan has in place special rehabilitation centres for juveniles.

In Uganda age is one the factors considered for giving a lesser sentence other than the death sentence or life imprisonment.

In Russia, those under the age of 18 can only receive a maximum sentence of 10 years (Russian Federation Criminal Code).

Other jurisdictions that do not recognise a sentence of 'life' for juveniles include Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Kazakhstan, Kyrgyzstan, Uzbekistan and Ukraine.

However, in some countries children are not only sentenced to 'life', they also have no possibility of being released.

In 2005, it was known that there were 15 countries¹⁰⁰ that have laws allowing children to be sentenced to life imprisonment without the possibility of release. While many of these states do not impose these laws, the US still continues to affirm the use of LWOP for juvenile offenders. In November 2010, the Texas Court of Criminal Appeals ruled that LWOP for a 16 year old juvenile was not too harsh a sentence.¹⁰¹ Approximately 2,500 juvenile defendants in the US are serving LWOP sentences.¹⁰² Furthermore, in 2010, the US representative to the United Nations stated that the prohibition on LWOP for persons under the age of 18 "was not an obligation imposed by customary international law, but rather a

⁹⁹ *V v United Kingdom*, App. No. 24888/94, Eur. Ct. H. R. (1999), cited in *Outlawing Irreducible Life Sentences*, supra at note 35, p. 39. ¹⁰⁰ In 2005, it was known that LWOP sentences had been imposed on juveniles in Israel, South Africa, Tanzania and the US. It is also provided for in criminal legislation in Antigua and Barbuda, Australia, Brunei, Burkina Faso, Cuba, Dominica, Kenya, St Vincent and the Grenadines, the Solomon Islands and Sri Lanka. Cited in *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 2005, pp. 106-107. ¹⁰¹ *Meadoux v. Texas* No. PD-0123-10 (17 November 2010). ¹⁰² Joan Biskupic and Martha T. Moore, *Court limits harsh terms for youths*, USA Today (18 May 2010), <http://www.usatoday.com/news/washington/judicial/2010-05-17-supreme-court-jvenile-sentences_N.htm> (accessed 22 December 2010).

treaty obligation that the United States had not agreed to.”¹⁰³

Women prisoners

Women comprise a small minority of those serving life sentences worldwide. Since the vast majority of prisoners are men, prison systems tend to be run with men in mind.

In a closed prison environment women are especially vulnerable. Experience has shown that they are vulnerable to physical, emotional and sexual abuse from both male staff and prisoners. Special safeguards need to be put in place to ensure that women are not harassed or abused in any way. The most important of these is that women should be detained separately from men (SMR, Rule 8).

Research also shows that in many countries a significant proportion of women serving life and long-term sentences for serious violent crimes, committed those crimes within the context of abuse and prolonged exposure to violence.¹⁰⁴

The recently adopted UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the ‘Bangkok Rules’) set out how the needs of women and girl prisoners should be met by prison authorities. This covers issues dealing with pregnant women, breastfeeding mothers, and women with dependent children, as well as making specific references to gender-specific healthcare and prison facilities.¹⁰⁵

Women face particular problems in prison because of their role in the family. Since women tend to take responsibility for family and children, a life or long-term imprisonment can pose severe problems for them and their families outside the prison. Arrangements may be made to compensate for this, by allowing families and prisoners’ children to make visits lasting a whole day or a whole weekend, for example, and ensuring such visits take place in an environment that allows open conduct between mother and child and is conducive to a positive visiting experience (Bangkok Rules, Rules 26 and 28). Women prisoners should be allocated to prisons close to their home or place of social responsibility, taking into account their caretaking responsibilities (Bangkok Rules, Rule 4).

Women prisoners face special problems on release from prison. The stigma that faces many prisoners on release is likely to be experienced even more acutely by women. Prison authorities can benefit greatly from involving outside organisations in helping women on release from prison.

Some countries adopt more lenient policies towards women offenders, excluding them from the possibility of receiving a life sentence. For example, article 57 of the Criminal Code of the Russian Federation states that: ‘lifelong imprisonment may not apply to women...’ Similarly Azerbaijan¹⁰⁶ and Armenia¹⁰⁷ excludes women from life sentences.

¹⁰³ General Assembly will declare 30 August International Day for Victims on enforced disappearance, in resolution approved by Third Committee. Other texts: Ageing, Equitable Order, Coercive Measures, Social Summit, Peace Promotion, Human Rights Cooperation, African Institute, Administration of Justice, UN Department of Public Information (News and Media Division: New York), 19 November 2010, <<http://www.un.org/News/Press/docs/2010/gashc3999.doc.htm>> (accessed 22 December 2010). ¹⁰⁴ *The Meaning of ‘Life’*, supra at note 8, p. 14. ¹⁰⁵ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Prisoners (the ‘Bangkok Rules’), adopted by the UN GA resolution 65/229 on 21 December 2010.

¹⁰⁶ *Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries*, supra at note 24, p. 52. ¹⁰⁷ *Ibid*, p. 15.

People with psycho-social disabilities

Unless they pose a substantial and demonstrable threat to the community, mentally ill prisoners should not be kept in prison (SMR, Rule 82). Their different understanding of persons and events around them, and the particular risks they may face in prison, mandate that they be given special consideration and extra protection.

Where they are detained, support and services including psychological and psychiatric treatment and other non-medical support (peer support, religious practice etc.) should be made available for those who request them. Those with psychological disabilities should be able to participate fully in all programmes made available to the rest of the prison population, and reasonable accommodation should be provided to facilitate access and inclusion.

Elderly prisoners

The increasing length of prison sentences, in particular LWOP, is contributing to an ageing prison population in many countries. An ageing prison population poses significant challenges for their care and treatment, particularly for those who require specialist medical treatment on a long-term basis. Furthermore, as elderly prisoners often face physical or mental limitations, they are susceptible to abuse, discrimination, and exploitation in a tough prison environment.

In the US, special facilities have been developed to cater for medical and geriatric care because of the ageing prison population.

However, in some jurisdictions age is one of the bases for granting conditional release, even in the case of a life sentence (for example in Azerbaijan¹⁰⁸ and Russia the maximum age whereby the court will issue a life sentence is 65). In states that have indeterminate life sentences it is often not provided that prisoners may be released conditionally upon turning 65. However in some others, parole or early conditional release commissions operate under directives that recognise age as one of the factors that can contribute to a decision to release a life-long prisoner. In Georgia, the age where conditional release can be considered is 60.¹⁰⁹

“Prisons that are essentially geriatric wards for aged convicts who pose a minimal risk to the public can serve no public safety objective and are very costly for criminal justice systems.”¹¹⁰

¹⁰⁸ *Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries*, supra at note 24, p. 52. ¹⁰⁹ *Ibid*, p. 109. ¹¹⁰ *The pros and cons of life without parole*, supra at note 45, p. 604.

Prison management and resources

Quality of prison staff

The quality of prison staff is crucial in safeguarding both the dignity of life and long-term prisoners and the public's security, and staff should receive all necessary support.

Both the European regional standards and the SMR emphasise that in order for prisons to be places where people are treated humanely, professional, well-trained staff must manage them. Staff must themselves be treated with dignity and enjoy a reasonable standard of living. Prisons should be administered in a way that is open, transparent and subject to accountability. International standards relevant to prison management include:

"All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect." (SMR, Rule 48)

"(1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. (2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this

end all appropriate means of informing the public should be used." (SMR, Rule 46)

"(1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors. (2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers." (SMR, Rule 49)

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." (UN Code of Conduct for Law Enforcement Officials¹¹¹, article 3)

Rising costs and rational use of state resources

With growing prison populations in many countries, the financial cost of life imprisonment is increasing. Some argue that life imprisonment incurs less financial cost than the death penalty¹¹², but maintaining prisoners for life requires more resources than releasing them after they have served the term necessary for their rehabilitation. Life and long-term prisoners pose significant financial problems in relation to healthcare provision, rehabilitation programmes and other social services, and construction of additional prison facilities.

¹¹¹ Adopted by UN GA resolution 34/169 (17 December 1979). ¹¹² While there are a number of difficulties in determining the cost of capital cases, there has been a growing body of evidence coming from the US to indicate that the cost of life imprisonment is significantly less than the cost of the death penalty. One of the main reasons for this cost difference is the length and complex nature of a capital case, in particular the more onerous due process requirements needed to be met at the various trials, including hearing, sentence, appeals and clemency processes, not to mention any procedures at the international level, that a defendant may go through. See, for example, a recent study carried out by Duke University (North Carolina, US), *Potential Savings from Abolition of the Death Penalty in North Carolina*, Philip Cook, (December 2009), *American Law and Economics Review* (2009) 11 (2): 498-529.

The available resources have a direct effect on the welfare and the treatment of the prisoners. If there is a lack of resources, the prisoners either suffer from poor nutrition or, live in undignified conditions of poorly maintained prisons. Under such a constrained budget, prison staff are less likely to get proper trainings and prison management schemes are not able to accommodate the need to rehabilitate the prisoners or to meet special needs.

Therefore, if a state is sincere in their intention to implement human rights standards into their criminal justice system, they must ensure that adequate resources are provided to make this a reality.

Resources at the national level

The cost of maintaining prisoners is one of the major challenges facing the Uganda Prison Service. For instance, the Luzira Upper Prison, which houses maximum sentence offenders, was built in 1927 for 600 inmates. However the total population of the prison currently stands at 2,567, which is more than three times the capacity. The situation creates significant challenges on the availability of floor space for accommodation, lack of beds and clothing, insufficient ventilation, food, sanitation facilities and health services. Tuberculosis and other diseases are widespread. Although Luzira Prison has a sickbay and hospital, the facilities have insufficient supply of medicines. For example, during the period June-July 2010, there were no antiretroviral drugs available for the 287 prisoners with HIV/Aids.¹¹³

¹¹³ Information regarding Uganda has been provided by FHRI (2010).

Monitoring prisons where ‘life’ and long-term prisoners are held

Prisoners who are deprived of their liberty for long periods of time will often lose contact with family and friends. They will sometimes be held in particularly distant prisons, under particularly isolated conditions. They are at risk of torture and ill-treatment when they are held in closed institutions, which are shut away from the rest of society. The effect of life and long-term sentences on the attitude and behaviour of staff all create a heightened need for independent oversight and monitoring of prison facilities including the condition and treatment that offenders are receiving. This increases the states’ ability to stop and prevent torture and ill-treatment and improve conditions of detention wherever necessary.

Optional Protocol to the International Convention Against Torture

On 22 June 2006, the Optional Protocol to the UN Convention against Torture (OPCAT) came into force with its twentieth ratification. At the time of writing 57 states had succeeded, acceded or ratified the Protocol, and an additional 22 states were signatories.

The Protocol established a double-tiered system of torture prevention through international and national monitoring mechanisms: firstly, the establishment of an international subcommittee on prevention of torture (SPT); and secondly, by obliging each state party to set up an independent national preventive mechanism (NPM)¹¹⁴.

Mandate of the SPT

The SPT is composed of 25¹¹⁵ independent and impartial members with relevant professional experience, serving in their individual capacities, to inspect and monitor places of detention.

The SPT examines conditions of individuals’ daily lives in places of detention. SPT members talk in private with people in custody, without the presence of prison or other staff or government’s representatives.¹¹⁶ Members also talk with government officials, custodial staff, lawyers, doctors, etc, and can recommend immediate changes. Their work is governed by strict confidentiality and they do not give out names or details. People who provide information to the SPT may not be subject to sanctions or reprisals for having provided information to the SPT.

National preventive mechanism

National preventive mechanisms (NPMs) are mandated to examine the treatment of people in detention, make recommendations to government authorities to strengthen protection against torture and ill treatment, and to comment on existing or proposed legislation. It is the responsibility of the state to ensure that it has in place a NPM that complies with the requirements of the OPCAT.

The SPT has set out guidelines to add further clarity on the establishment and operation of NPMs. The SPT also assists NPMs in reinforcing their power, independence and capacities and

¹¹⁴ Article 17, OPCAT. ¹¹⁵ The 25 members of the SPT were nominated by the following states: Argentina, Armenia, Brazil, Burkina Faso, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, France, Germany, Lebanon, Maldives, Mauritius, Mexico, New Zealand, Peru, Poland, Slovenia, Spain, The Former Yugoslav Republic of Macedonia, UK and Uruguay. ¹¹⁶ Article 14, OPCAT.

strengthening safeguards against ill treatment of persons deprived of their liberty. To that purpose, the SPT makes itself available for continuous dialogue and works in close collaboration with the NPM in order to ensure ongoing monitoring of all places of detention.

Many states have chosen to designate existing national mechanisms as their NPM, including Ombudsmen offices, National Human Rights Institutions (NHRI) and national Human Rights Commissions (HRC). To date, 35 states have designated their NPMs.¹¹⁷

Other international or regional provisions for inspection and monitoring of prisons

The idea of preventing torture and other ill-treatment of people held in places of detention through monitoring visits is one that has been acknowledged since 1915, when the International Committee of the Red Cross (ICRC) began conducting such visits to those deprived of their freedom during armed conflict.

The European Committee for the Prevention of Torture (CPT) was, in 1987, the first body set up by an inter-governmental organisation specifically to carry out preventive visits to places of detention. It is mandated to “examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment of punishment.”¹¹⁸ All member states of the Council of Europe must accept visits of the CPT at any time to any place

where persons are deprived of their liberty.

The African Commission on Human and Peoples’ Rights established a Special Rapporteur on Prisons and Conditions of Detention in Africa in 1996. In particular, the Special Rapporteur has a mandate to examine the state of prisons and conditions of detention in Africa and make recommendations with a view to improving them.

The Inter-American Commission on Human Rights established a Special Rapporteur on the Rights of Persons Deprived of Freedom in 2004, who can undertake visits to places of detention.

The SMR also makes provision for prison inspection, under Rule 55:

“There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.”

The UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment¹¹⁹ provides that:

“(1) In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and

¹¹⁷ See Association for the Prevention of Torture, *OPCAT Database* (last updated 31 March 2011), <http://www.ap.t.ch/index.php?option=com_content&view=category&id=143&Itemid=244&lang=en> (accessed 4 April 2011). ¹¹⁸ Article 1, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). ¹¹⁹ Adopted by UN GA resolution 43/173 (9 December 1988).

responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment. (2) A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.” (Principle 29)

Inspections at the national level

Her Majesty's Inspectorate of Prisons for England and Wales (HMI Prisons) is an independent inspectorate which reports on conditions for, and treatment of, those in prisons, young offender institutions and immigration detention facilities.

The Inspectorate collects information from many sources, including the people who work in prisons, the people who are imprisoned or detained, and visitors or others with an interest in the prison establishment. Inspection findings are reported back to the prison managers, who are expected to produce an action plan, based on the recommendations made within the report, within a short period following publication.

All inspections are conducted against the Inspectorate's published inspection criteria, 'Expectations'. 'Expectations' is based on international human rights standards, as well as Prison Service Orders and Standards, and over-all issues considered essential to the safe, respectful and purposeful

treatment of prisoners in custody and their effective resettlement. These criteria are used to examine every area of prison life, from reception to resettlement.

The HMIP approach to monitoring the treatment of life and long-term prisoners reflects the sentence management principles set out in the Returning to Society section of 'Expectations'. In addition, HMIP recognises the need for careful additional monitoring of the treatment of prisoners with 'indeterminate' sentences. At the earliest possible stage they should have the elements and implications of their sentence explained to them and, where appropriate, their families. Regardless of the type of establishment where they are held, or for how long, they should at least on an annual basis have the opportunity to participate in events designed to promote understanding of and engagement with reduction of the risk they have been deemed to pose, and reintegration.

'Expectations' includes specific sections dealing with 'dangerous offenders'. Mandating that inspectors ensure that prisoners who are held in a close supervision system (CSC) are managed according to their individual needs with a high level of staff contact and specialist input with the goal of assisting them to progress. Any restrictions and restraints imposed to control their behaviour should not result in treatment or conditions that are so impoverished that mental or physical health is compromised. Inspectors should also monitor the use of high security segregation units, and ensure that they be used only as a temporary measure with due regard to the isolating impact of such a location.¹²⁰

¹²⁰ Her Majesty's Inspectorate of Prisons, *Expectations: Criteria for assessing the conditions in prisons and the treatment of prisoners*, <http://www.justice.gov.uk/inspectorates/hmi-prisons/docs/expectations_2009.pdf> (accessed 1 April 2011).

Returning to society: social reintegration of ‘life’ and long-term prisoners

“The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life... To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.”¹²¹

The state’s obligation to reform and socially rehabilitate ‘life’ and long-term prisoners

Article 10(3) of the ICCPR states:

“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”

One of the main aims of prison authorities in their treatment of prisoners should be to help prisoners to lead law-abiding and self-supporting lives after their release, and to encourage their self-respect and develop their sense of responsibility. (SMR, Rules 58, 65). In this way a prison system can improve public safety by reducing the rate of recidivism of serious offenders once released back into society. This is especially important for those who have served a ‘life’ of long-term sentence and who may struggle to readjust to life outside of the prison system.

Access to effective education, rehabilitation and reintegration programmes in prison is therefore essential and should be an important part of any ‘life’ or long-term prisoner’s treatment and management.

The components of these programmes will depend on the individual needs and characteristics of the prisoner and may not differ hugely from those on offer to prisoners serving shorter periods of imprisonment. The variety of programmes on offer will need to be greater, owing to the long periods of deprivation of liberty.

Sentence management for life and long-term prisoners

The 1994 UN Crime Prevention and Criminal Justice Branch report *Life Imprisonment*¹²² contains recommendations that address conditions of detention, training and treatment, as well as procedures for review and release with regard to life sentenced prisoners. All prisoners should undergo a personality and needs assessment on admission, which should inform the provision of individualised training and treatment programmes. Opportunities for remunerated work, study, sport, leisure and religious activities should also be made available to prisoners, as well as opportunities for communication and social interaction with the outside community. Procedures should also be in place to review progress and, if appropriate, recommend or grant release. Preparation should equally be made with regard to pre-release programmes and post-release assistance.

Recommendation (2003) 23 of the Committee of Ministers of the Council of

¹²¹ SMR, Rules 58 and 59. ¹²² UN document ST/CSDHA/24, supra at note. 6.

Europe on “the management by prison administrators of life sentence and other long term prisoners” contains the most developed guidance on life and long-term sentence management.¹²³ This includes the following key principles:

1. Individualisation - there should be individual plans for the implementation of the sentences, and these plans should take into account the personal characteristics of the prisoners.
2. Normalisation - prison life should be arranged so as to approximate as closely as possible to the realities of life in the community.
3. Responsibility - prisoners should be given opportunities to exercise personal responsibility in daily prison life.
4. Security and safety - a clear distinction should be made between any risks posed by life sentence and other long-terms prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison.
5. Non-segregation - life sentence and other long-term prisoners should not be segregated from other prisoners on the sole ground of their sentence.
6. Progression – individual assessment of needs and risks should be linked to the possibility of progressing through the different security levels, and opportunities, available in the prison system and, ultimately, of return to society with or without supervision.

The Recommendation provides further, more detailed guidance on the management of life and other long-term sentenced prisoners, including: sentence

planning; risks and needs assessments; security and safety in prison; countering the damaging effects of life and other long-term sentences; managing special categories of life-sentence and other long-term prisoners (including juveniles, women, the elderly and the mentally or physically ill); managing reintegration into society for life-sentenced and other long-term prisoners; managing prisoners who are recalled to prison following release; and recruitment, selection, training and conditions of work for prison staff. It also encourages that research be undertaken into the effects of life and long-term sentences.

Examples of possible rehabilitation and reintegration programmes that should be available to all prisoners subject to individual need, including those serving a ‘life’ and long-term sentence, and incorporated into a sentence plan include:

- Educational programmes. These should be aimed at developing the whole person, taking account of prisoners’ social, economic and cultural background (SMR, Rule 59).
- Work in prisons and vocational training programmes. This work should give them skills that would enable them to earn an honest living after their release (SMR, Rule 71). This may include electronics, automobile repair, printing, carpentry, horticulture, telephone repair, catering and computer skills.
- Victim awareness programmes.
- Anger management programmes.
- Treatment programmes for health and psycho-social conditions that may hamper a prisoner’s rehabilitation (SMR, Rule 62). This includes alcohol

¹²³ Adopted by the Committee of Ministers of the Council of Europe (9 October 2003).

and drug dependency, depression, TB, HIV/Aids and viral hepatitis.

- Adaption to prison life programmes.
- Cultural and recreational programmes, such as organised team sports, physical exercise, arts and music programmes and reading.
- Religious instruction and counselling programmes.
- Life skills courses.
- Community interaction programmes.
- Promoting family visits.

Many administrations offer additional access to constructive activities for life and long-term prisoners such as additional visitation time with family and friends, being allowed to engage in additional exercises, receiving extra telephone time, being allowed to keep additional possessions in their accommodation, being allowed to wear street clothes, and receiving temporary release. Failure to meet targeted goals should not automatically result in punishment and deprivation of existing privileges. It should instead lead to a re-evaluation of what is realistic for that particular prisoner.

As a prisoner nears the end of his sentence the focus of sentence planning shifts from rehabilitation to reintegration: for example, in addition to in-prison programming, such as life skills courses, the prisoner who is about to be released might benefit from increased contact with members of the community and family members. Additional contact might be accomplished via work furlough, community volunteer opportunities, and supervised temporary release programmes.

Sentence planning for life and long-term prisoners

Each prisoner's sentence planning programme should be tailored to that particular prisoner. There is no one-size-fits-all sentence plan. This is particularly true for life or long-term prisoners, who are frequently neglected because their release date is either far in the future or nonexistent. Accordingly, these prisoners are often either completely ineligible for sentence planning programmes, or ineligible until just before their release date – which could be ten, twenty or thirty years into their sentence.

Sentence planning can help life and long-term prisoners adapt in a non-destructive way to life in prison. In particular, sentence plans that include training for life and long-term prisoners in creative work that can be done in a prison setting can enhance the quality of daily life and maintain the goal of social reintegration.

Programmes in practice

In Uganda, prisoners serving a life sentence have access to both primary and secondary level education. Upon completion of either "O" levels or "A" levels the prisoner is free to join any tertiary program such as carpentry and tailoring. For example there are 88 prisoners undergoing training in carpentry and 77 in tailoring at Luzira Upper Prison.¹²⁴

In Australia, life prisoners can work and participate in education and recreational activities. In addition, long-term prisoners will benefit from pre-release preparation programmes.

¹²⁴ Information regarding Uganda has been provided by FHRI (Kampala, Uganda) following research into the application of life imprisonment (2010).

Continued monitoring after release

Where life term prisoners have the possibility of being released, they will often be subject, as a condition of their sentence, and/or in support of an individualised assessment, to close monitoring by whatever official agency plays this role in the community in question. The released prisoner may be required by the court to check in with the police on a daily basis, to live in a certain area and/or to occupy their time in a prescribed manner,¹²⁵ or the oversight may, again on the basis of an individualised assessment, become nominal.

¹²⁵ *Replacing the Death Penalty*, supra at note 7, p. 95.

Overview of 'life' and long-term sentencing practices in countries covered by PRI's programme¹²⁶

COUNTRY	ALTERNATIVE RESPONSES TO THE MOST SERIOUS CRIMES	OPCAT status	NPM
CENTRAL ASIA			
Kazakhstan	A death sentence can be replaced with whole life imprisonment or 25 years under the Pardon Act.	Ratified: 22 October 2008.	Not established.
Kyrgyzstan	Whole life, or can be substituted by 30 years' imprisonment under the Pardon Act.	Acceded: 29 December 2008.	Not established.
Tajikistan	Whole life, or can be substituted by 25 years' imprisonment under the Pardon Act.	-	Not established.
Uzbekistan	Life or long-term imprisonment up to a maximum 25 years. For those serving life imprisonment appeal is allowed after serving 25 years. For those sentenced to long-term imprisonment, appeal is allowed after serving 20 years.	-	Not established.
EAST AFRICA			
Kenya	Life means life without parole (Kenya Penal Code).	-	Not established.
Uganda	Under the Uganda Prisons Act, life imprisonment carries a maximum 20 year sentence.	-	Not established.
EASTERN EUROPE			
Belarus	There is no maximum length of sentence. A minimum of 25 years need to be served before eligibility to request parole.	-	Not established.
Russia	25 years (30 in exceptional circumstances). Applicable only to men aged 18 – 65.	-	Not established.
Ukraine	25 years.	Ratified: 19 September 2006.	Not established.
MIDDLE EAST AND NORTH AFRICA			
Algeria	Information was not available.	-	Not established.
Bahrain	No maximum limit. Eligibility for parole is conditional according to the behaviour of the prisoner.	-	Not established.
Egypt	No maximum sentence. Minimum of 20 years need to be served before eligibility for requesting parole.	-	Not established.
Jordan	30 years.	-	Not established.
Lebanon	No maximum sentence.	Acceded: 22 December 2008 (SPT member from Lebanon).	Not established.
Morocco	No maximum sentence. Eligibility for parole is conditional according to the behaviour of the prisoner. In some cases, amnesties can be provided by the state.	-	Not established.
Tunisia	No maximum sentence. Eligibility for parole is conditional according to the behaviour of the prisoner.	-	Not established.
Yemen	The term of 'life imprisonment' does not exist in Yemeni law; however, some crimes like drugs trafficking have a maximum sentence of 25 years.	-	Not established.
SOUTH CAUCASUS			
Armenia	'Life' means a life sentence without the possibility of parole (article 60 of the Republic of Armenia Criminal Code).	Acceded: 14 September 2006 (SPT member from Armenia).	Human Rights Defending Office.
Azerbaijan	Whole life and long-term imprisonment are available. A pardon can be sought after 15 years through the courts, or after 25 years via the pardon system.	Ratified: 28 January 2009.	Commissioner for Human Rights.
Georgia	'Life' means 40 years. A pardon can be requested after 15 years and early release after serving 25 years.	Acceded: 9 August 2005.	Public Defender.

¹²⁶ PRI's programme of work focuses on supporting governments and other stakeholders towards the abolition of the death penalty and implementation of human rights standards in criminal justice systems, particularly concerning the treatment of death row, life and long-term prisoners. The programme of work is being carried out in five regions: Central Asia, East Africa, Eastern Europe, Middle East and North Africa, and the South Caucasus. The programme, funded under the European Union's Instrument for Democracy and Human Rights (EIDHR), commenced in February 2010 and will run for two years.

12 steps toward alternative sanctions to the death penalty that respect international human rights standards and norms

1

Discuss the alternatives – During the process of abolishing the death penalty, states should discuss with key stakeholders how to introduce an alternative sanction that is fair, proportionate and compatible with international human rights standards. Stakeholders include parliamentarians, government officials, police, prosecutors, judges, lawyers, prison and probation officials, academics, civil society, victims and their families, and the public.

2

Review death penalty cases – The cases and circumstances of those individuals who have received a death sentence should be the subject of a genuine review, taking into consideration, among others, the amount of time already spent in detention awaiting execution, any fair trial issues and the extent to which individuals pose a continuing serious risk to society.

3

Ensure that long-term prison sentences are determinate, with a realistic possibility of early release.

4

Include the realistic possibility of release in life sentences – Where life sentences are introduced or imposed, ensure that the possibility of release is included in all instances and that consideration of release will take place after a predetermined period.

5

Clearly define release procedures – Ensure that release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.

6

End mandatory life and long-term sentences – Review sentencing policies in relation to life and long-term imprisonment, with a view to abolishing mandatory sentences.

7

No life and long-term sentences for children, women, people with psycho-social disabilities and the elderly – Prohibit life imprisonment without possibility for release for offences committed by those below the age of 18. Consider excluding from life and long-term sentencing special groups such as children, women, people with psycho-social disabilities and the elderly, on the basis of their particular characteristics and needs.

8

Treat all prisoners equally and humanely – Ensure that international and regional human rights standards for the treatment of prisoners apply equally to life and long-term prisoners. This includes, at a minimum, implementing standards set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture, and the Standard Minimum Rules for the Treatment of Prisoners. Particular care should be taken with regard to the physical and mental health of life and long-term prisoners and their rehabilitation.

9

Make individual rehabilitation a fundamental aim in the management of all prisoners – The aim of social rehabilitation and reintegration should shape the management of individual life and long-term prisoners, and be based on individual characteristics and need. Resources should be provided to make this a reality.

10

End the practice of solitary confinement as a component of life and long-term sentences – Solitary confinement should not be imposed on those serving a life or long-term sentence merely by virtue of their sentence.

11

Carefully select, train and supervise staff working with life and long-term prisoners

– Particular consideration should be given to the selection, training, supervision of and support for prison staff working with life and long-term prisoners.

12

Ensure access for life and long-term prisoners to independent monitoring and oversight mechanisms

– Effective independent monitoring and oversight mechanisms for prison facilities should have access to life and long-term prisoners, including any considered particularly violent or dangerous. States should sign, ratify and implement the Optional Protocol to the Convention against Torture, and establish effective and independent National Preventive Mechanisms in their state.

For more information on PRI's work on the abolition of the death penalty and alternative sanctions that respect international human rights standards please contact:

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