

*'Many countries have replaced the death penalty with the sentence of life imprisonment. In many countries that does not mean life in prison. It means time in prison, usually in regular prisons with other prisoners and moving to lower security prisons as the years go by. Release comes after a complex and I must say expensive process of risk assessment – psychiatric reports, probation reports, sometimes the views of the victim's family are taken into account – and when release comes the person is let out of prison but is still not free. The person comes out with an identity as a life-sentence prisoner. That lasts for the length of his or her life. It can mean reporting to the authorities, the possibility of being returned to prison, telling employers and the local police, always being known as someone who committed the worst crime.'*

Baroness Vivien Stern, speech to the Second World Congress against the Death Penalty, Montreal, 6 October 2004.

## Alternatives to the death penalty: the problems with life imprisonment

*This briefing examines the use of life imprisonment worldwide, including the increasing trend of life imprisonment without the possibility of release, or life without parole (LWOP). Emerging trends indicate an increase in the number of offences carrying the sanction of life imprisonment, a greater prevalence of indeterminate sentencing, a reduction in the use of parole, and the lengthening of prison terms as a whole. The abolition of the death penalty has played a significant role in the increased use of life imprisonment sentences, and LWOP in particular. Conditions of detention and the treatment of prisoners serving life sentences are often far worse than those for the rest of the prison population and more likely to fall below international human rights standards.*

*Life imprisonment, particularly life without the possibility of release, is contributing to the overuse of imprisonment, a phenomenon underpinned by the belief that prisons represent the panacea to problems of crime and social control. Life-sentenced prisoners should be entitled to the same rights as other categories of prisoners and these should comply with the United Nations (UN) human rights standards including the Standard Minimum Rules for the Treatment of Prisoners. Their treatment and care in prison should be determined by individual needs rather than the type of sentence they are serving. All prisoners should have the right to parole, and release from prison should be determined by the risk they present to society rather than politically driven factors.*

# Life imprisonment

## Life imprisonment around the world

With the exception of countries which apply the death penalty, life imprisonment is usually the maximum punishment for criminal offences and is therefore applied to the most serious of crimes.

Although the sanction of life imprisonment has different meanings in different countries, in the majority of cases those sentenced to life imprisonment become eligible for release after a certain period and are then subject to ongoing supervision in the community. The minimum period of detention served by life-sentenced prisoners and the conditions under which they are granted parole vary from country to country. In Germany, for example, prisoners serving a life sentence will not be considered for release until they have served 15 years. In England and Wales, mandatory sentences for life imprisonment are not reviewed until after 14 years. In the International Criminal Court, people sentenced to life imprisonment will not be considered for conditional release until they have served 25 years (van Zyl Smit, 2002). In the US, the minimum period served by life-sentenced prisoners is considerably higher: 25 years in Arizona, Florida, Kentucky, Tennessee and New York; 30 years in Dakota, South Carolina, Minnesota and Indiana; 35 years in Texas; and as much as 40 years in Kansas (Dieter, 2003).

Jurisdictions will generally make the distinction between mandatory and discretionary life sentences: offences which automatically carry the sentence of life imprisonment and those where sentences are subject to the discretion of the judge. Mandatory minimum life sentences are often reserved for murder and treason. This is the case in Canada, where other serious offences such as manslaughter, aggravated sexual assault, and kidnapping carry the sentence of life imprisonment, but as a maximum 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 sentence and life imprisonment is only imposed at the discretion of the magistrate.<sup>1</sup>

Different sentencing practices necessarily result in different proportions of the national prison populations serving life imprisonment. In 1999, offenders serving

life sentences comprised 10.7 per cent of the prison population in the US, 8.4 per cent in England and Wales and just 3.1 per cent in Germany (van Zyl Smit, 2002).

Not all countries make provisions for life imprisonment. It is prohibited for example in Brazil, Colombia, Croatia, El Salvador, Nicaragua, Norway, Portugal, Norway, Spain, Slovenia, and Venezuela (Mauer *et al.*, 2004; Newcomen, 2005). However, this does not exempt prisoners from serving long prison sentences in these countries. Prisoners may in fact serve prison terms that far exceed the minimum terms served by life-sentenced prisoners elsewhere. Spain, for example, has opted for long and determinate sentences rather than indeterminate sentences of life imprisonment, but prison sentences can be up to 30 years (Coyle, 2005).

## International trends in life imprisonment

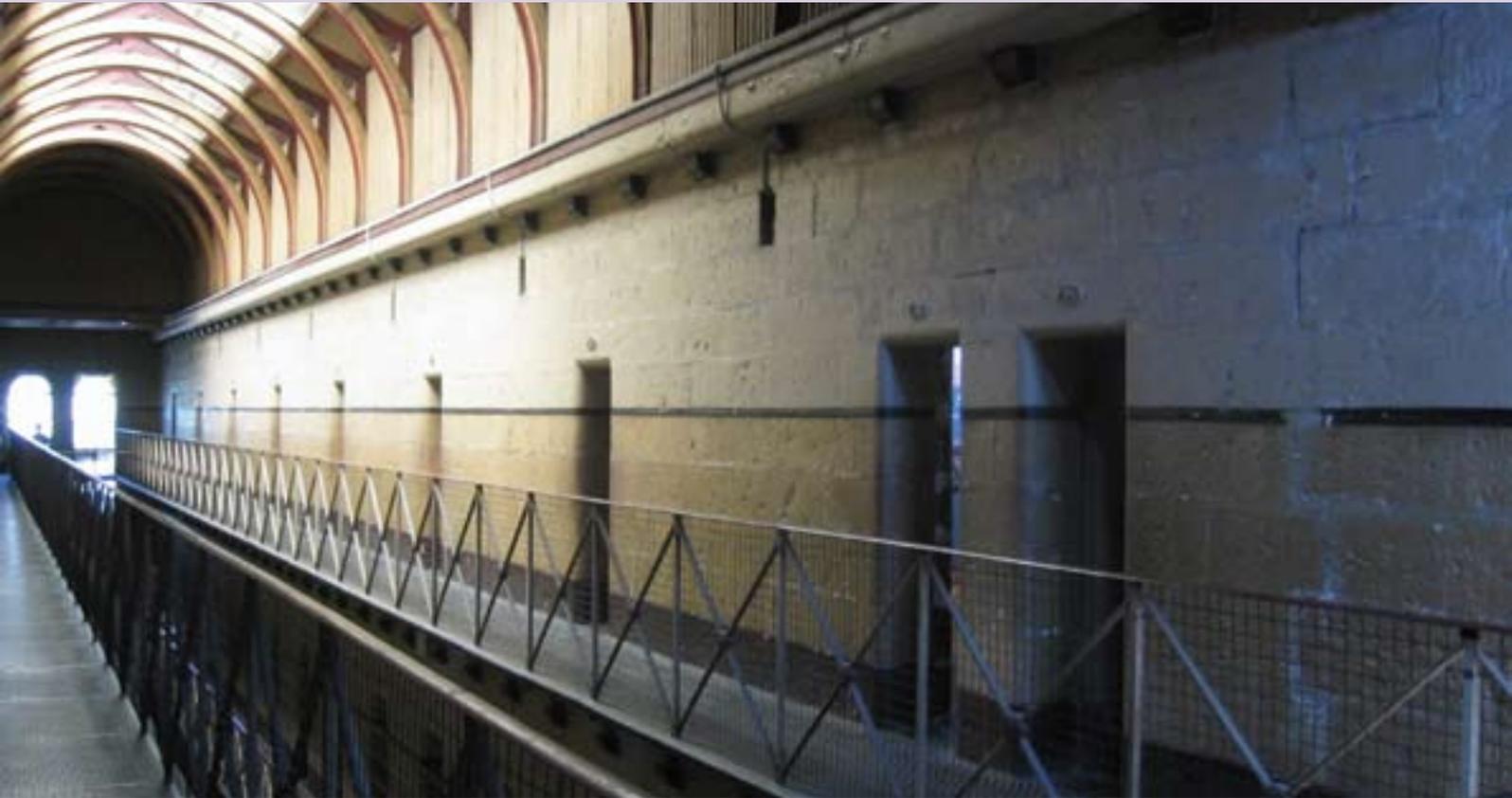
Recent trends show an increase in the number of offenders serving life sentences. In England and Wales, the prison population serving life sentences increased from 3,192 in 1994 to 5,594 in 2004 – an increase of 75 per cent during the 10-year period. Annual receptions into prison establishments of offenders serving life sentences increased from 222 to 582 during this time (Home Office, 2005). In fact the UK prison population serving life sentences comprises nearly half of the total life-sentenced prison population in Europe (Council of Europe, 2005).<sup>2</sup>

In the US, the number of life-sentenced prisoners increased by 83 per cent between 1992 and 2003 – an increase from nearly 70,000 prisoners to 128,000 prisoners. As a result, one in every eleven offenders in state and federal prisons is currently serving a life sentence (Mauer *et al.*, 2004). However, in some states, the average is significantly higher: in the states of Alabama, California and New York, for example, 17 per cent, 18 per cent and 19 per cent of the prison population respectively are serving life sentences – almost one in five of the prison population (as above).

In South Africa, the number of life-sentenced prisoners increased from 443 to 5,745 between 1995 and 2005 – an increase over 1,000 per cent, compared to an overall prison population growth of 60 per cent during the 10-year period (Giffard and Muntingh, 2006).

1 Kenya Prisons Paralegal Project (KPPP) and Legal Resource Foundation Kenya (LRF), personal communication.

2 The UK lifer population in 2004 stood at 6,344, comprising 46 per cent of the total lifer population in Europe which numbered 13,699 (Council of Europe, 2005).



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In most countries, it is only the most serious offences, such as murder, which carry the sentence of life imprisonment. However, life imprisonment is increasingly being used for less serious and non-violent offences. In the US, life sentences are now imposed for drug crimes and non-violent offences resulting from the 'three strikes' rule used in some states.<sup>3</sup> In the US, four per cent of people serving life sentences have been convicted of a drug offence, which rises to 39 per cent within the federal system.<sup>4</sup> Under California's 'three strikes' law, 31 per cent of convictions are for property offences such as theft. Overall, 57.5 per cent of convictions involve a non-violent offence as the 'third strike'. '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 (Mauer *et al.*, 2004).

*De facto* life imprisonment occurs in countries that have placed a moratorium on the death penalty, where prisoners on death row are then subject to an indefinite prison term. The UN Special Rapporteur on torture recently reported on the practice of indefinite detention of death row prisoners in Abkhazia following a moratorium on death sentences (2006).<sup>5</sup> Similarly, in countries which use detention without charge or trial, increasingly as part of anti-terrorism measures, detainees can spend indefinite, prolonged periods in detention. As many as 58 countries were identified in 2003 as practising arbitrary arrest and detention without charge or trial (Amnesty International, 2004).<sup>6</sup>

- 3 The general rule under 'three strikes' legislation is that anyone convicted of a third offence, following two previous convictions for serious or violent crimes, can be sentenced to life imprisonment.
- 4 In the state of Michigan, for example, 200 people are serving life terms for drug offences under the '650 lifer' law. This law legislates for people convicted of selling 650 grams of cocaine or heroin to be sentenced to life imprisonment (Mauer *et al.*, 2004).
- 5 One example was cited of a woman in her 50s who was being held in indefinite detention in spite of health problems which rendered her immobile (UN Special Rapporteur on torture 2006)
- 6 These were: Afghanistan, Algeria, Bangladesh, Burundi, Brunei Darussalam, Central African Republic, Chad, China, Colombia, Cote d'Ivoire, Cuba, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Guinea-Bissau, India, Iran, Israel/OPT, Jamaica, Kenya, Lebanon, Libya, Madagascar, Malawi, Malaysia, Maldives, Mauritania, Morocco/Sahara, Myanmar, Nepal, Niger, Nigeria, North Korea, Palestinian Authority, Pakistan, Papua New Guinea, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Togo, Uganda, UAE, UK, USA, Vietnam, Yemen, and Zimbabwe.

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In Malaysia, 700 criminal suspects are being held under Emergency Ordinance, legislation passed in 1969 as a 'temporary measure' to curb ethnic riots. Detainees are subject to beating and ill-treatment, and are kept in overcrowded cells with poor hygiene, inadequate light and ventilation, and inedible food (Human Rights Watch, 2006). *De facto* life imprisonment may also occur where prisoners convicted of multiple offences are required to serve the sentences concurrently. This is the case in South Africa, where multiple, determinate sentences can amount to the same or even longer prison terms than life imprisonment.<sup>7</sup> In Nigeria, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions found that 3.7 per cent of an estimated prison population of 44,000 remain in prison because of lost case files (2006).

Increased sentencing of life imprisonment has been matched by an increase in the length of time served in prison by life-sentenced prisoners. In the US, the average length of time served in prison by lifers increased by 37 per cent between 1991 and 1997 – from 21.2 years to 29 years. The average life sentence in the US now results in nearly three decades of incarceration (Mauer *et al.*, 2004).

## Life imprisonment without parole

Hardening sentencing practices and the pressure for 'truth in sentencing' has resulted in the increased prevalence of offenders being sentenced to life imprisonment without the possibility of release, or life without parole. It has also been introduced in countries following the abolition of the death penalty. Sentences amounting to LWOP are currently applied in all regions of the world including in Bulgaria, Estonia, the Netherlands, Sweden, Turkey, UK, Ukraine, US, and Vietnam. Whilst in Vietnam amnesties are usually granted after the prisoner has served between 20 and 30 years, other countries' policies are more severe. In Turkey, LWOP sentences passed under their anti-terrorism law do not provide for the possibility of release under any circumstances. In the Netherlands, prisoners have the opportunity to apply for parole but it can be granted only by royal decree and is rarely applied. Similarly, in Estonia, the President may grant clemency but has not done so since the country's independence from the former USSR.<sup>8</sup>

In the US, one in four prisoners currently serving a life sentence is ineligible for parole, representing one in 40 of the entire prison population. In some states, such as Louisiana, one in ten of the entire prison population is serving a sentence of life imprisonment without the possibility of parole.<sup>9</sup> In five states in the US, all life sentences are imposed without the possibility of parole – Illinois, Iowa, Louisiana, Pennsylvania and South Dakota (Mauer *et al.*, 2004). In England and Wales, there are 22 people serving sentences amounting to LWOP where no minimum period has been set before they will be considered for parole (Newcomen, 2005). Two prisoners are currently serving a sentence of whole life imprisonment, following new sentencing measures contained in the Criminal Justice Act 2003.<sup>10</sup>

Increased use of LWOP sentences has 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

- 7 Lukas Muntinghe, Civil Society Prison Reform Initiative, personal communication. Life sentences in South Africa under the Correctional Services Act 2004 requires prisoners to serve a minimum of 25 years in prison before being considered for parole.
- 8 Wikipedia, 'life imprisonment', accessed 20 December 2006. This is not a definitive list of countries applying LWOP sentences.
- 9 Only two states in the US – New Mexico and Alaska – do not offer LWOP as a sentencing option (Death Penalty Information Center 2005).
- 10 The Criminal Justice Act 2003 introduced the sentence of whole life imprisonment as a maximum penalty for convictions of murder. It applies to exceptionally serious cases such as premeditated killings or two or more sexual or sadistic child murders or political murders.

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, compared to one in five for the same period the previous year.<sup>11</sup> Similarly, in South Africa, amendments to sentencing legislation have resulted in longer non-parole periods and more stringent requirements for granting parole to life-sentenced prisoners (Giffard and Muntingh, 2006).<sup>12</sup>

Not all states make provisions for LWOP. It has, for example, been prohibited in Mexico, where it was declared unconstitutional by the Supreme Court because it was considered to amount to cruel and unusual punishment (Hodgkinson, 2004). Similarly, courts in Germany, France, Italy and Namibia have recognised that those subject to life sentences have a right to be considered for release (van Zyl Smit, 2002).<sup>13</sup>

## Life imprisonment and vulnerable people

Outside the US, there are 14 other countries<sup>14</sup> which have laws allowing juveniles<sup>15</sup> to be sentenced to life imprisonment without the possibility of release, with 13 young people serving LWOP under these jurisdictions. Yet in the US as many as 2,225 young offenders are serving LWOP sentences. Sixteen per cent of children serving sentences of LWOP in the US were under the age of 15 when they committed the offence. The majority of offenders are male (only 2.6 per cent are female) and African-American (60 per cent). The majority are also first-time offenders; 59 per cent had no prior criminal record or juvenile adjudication prior to conviction (Human Rights Watch/Amnesty International, 2005).

The rate of LWOP sentencing for children has increased in the US since the 1980s. In 1990 there were 2,234 young people convicted of murder, three per cent of whom received a sentence of LWOP. Although the conviction rate had fallen to 1,006 by 2000, nine per

cent were sentenced to LWOP. Young people are not only tried in adult courts and made to serve sentences in adult prisons, but they also experience violence in prison and are at particular risk of rape because of their age (as above).

Female offenders comprise a small minority of those serving life sentences worldwide. However, research shows that a significant proportion of women serving life and long-term sentences for serious violent crimes, committed the crimes within the context of abuse and prolonged exposure to violence. A study of women imprisoned for homicide in the US state of Georgia, for example, found that nearly two-thirds of the women had killed a partner as a result of abuse at the time of the crime. Another study conducted in the US estimated that between 800 and 2,000 women were serving prison terms as a result of killing their abusers (Mauer *et al.*, 2004).

The vulnerability of life-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, for example, found that offenders with a history of mental illness comprised one in five lifers, compared to one in every six for the prison population as a whole (Mauer *et al.*, 2004).

## Treatment and conditions of detention for life-sentenced prisoners

*'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.'*

(UN document ST/CSDHA/24, 1994:20)

11 BBC News: *Drop in Lifers released on parole*, 6 November 2006. For information on US sentencing and parole policies visit the Citizens Alliance on Prisons and Public Spending website ([www.capps-mi.org](http://www.capps-mi.org)) which outlines the state of Michigan's indeterminate sentencing and parole practices.

12 See the Correctional Services Act 2004.

13 Although the basis for consideration for such release in the case of serious offenders has not been clarified.

14 LWOP sentences are currently imposed on juveniles in Israel, Kenya, South Africa, and Tanzania. It is also provided for in criminal legislation in Antigua and Barbuda, Australia, Brunei, Dominica, Kenya, St Vincent and the Grenadines, the Solomon Islands, Sri Lanka, Burkina Faso, and Cuba (Human Rights Watch/Amnesty International, 2005).

15 As defined by the UN Convention on the Rights of the Child as those under the age of 18.

# Life imprisonment

Life imprisonment and long-term sentences can have a profound sociological and psychological impact on prisoners. This is particularly compounded by the indeterminate nature of some life and long-term sentences. The uncertainty of release makes it difficult for prisoners to envision 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.'*  
(Sapsford 1978, cited in UN document ST/CSDHA/24, 1994)

The prolonged deprivation of liberty and curtailment of basic rights can lead to numerous effects, including increased social isolation, 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. Stress and anxiety is caused by the removal of normal patterns of social interaction and prisoners' powerlessness to provide support to others. They are not only deprived of access to their families and bringing up their children, but also the opportunity of having children. The loss of responsibility and the increased dependence that results from prolonged detention can hamper efforts at rehabilitation and reintegration into society. Negative coping mechanisms can result in emotional or situational withdrawal (see above).

Prisoners serving long-term or life sentences can experience differential treatment and worse conditions of detention compared to other categories of prisoner. The 11<sup>th</sup> General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment described such situations in which prisoners were found to be subject to 'special

restrictions likely to exacerbate the deleterious effects inherent in long-term imprisonment' (2001:17). Examples included; separation from the rest of the prison population; handcuffing when they were taken out of their cells; prohibition of communication with other prisoners; and limited visit entitlements. In the Russian Federation, life-sentenced prisoners are accorded different treatment and subject to 'strict conditions' as outlined in the Criminal Executive Code. Prisoners are kept in cells of less than two metres squared and face daily and nightly surveillance as they are considered a greater public danger compared with other categories of prisoner. Contact with other prisoners is also prohibited.<sup>16</sup> Similarly, in Kenya, life-sentenced prisoners are separated from other prisoners and automatically held in maximum security prisons. Opportunities to engage in industrial work, like other prisoners, are forbidden. The fear of being transferred to other prisons, or of being punished, prevents prisoners seeking redress for the denial of rights.<sup>17</sup>

Punitive conditions of detention and less favourable treatment are thought 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.'*  
(Coyle, 2005:44)<sup>18</sup>

In extreme cases, prolonged and indefinite imprisonment has been attributed to cases of prison suicide. A review conducted by the Chief Inspector of Prisons in England and Wales found that life-sentenced prisoners were disproportionately represented among cases of prison suicides; although accounting for six per cent of the prison population, they accounted for 20 per cent of deaths (PRI, 2000). A more recent study conducted by the Prison Reform Trust found that the risk of suicide was twice as high as the average prisoner population; between 1998 and 2001, 80 life-sentenced prisoners took their own lives (Prison Reform Trust 2004).

16 Vika Sergeeva (PRI Moscow) personal communication.

17 Kenya Prisons Paralegal Project (KPPP) and Legal Resource Foundation Kenya (LRF), personal communication.

18 Reprieved death row prisoners in Russia 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 (Coyle, 2005).

The increased length of prison sentences, in particular life imprisonment without parole, is contributing to an ageing prison population. In 2002, US state and federal prisons held 121,000 prisoners aged 50 or over, more than double the figure a decade earlier (Mauer *et al.*, 2004). In the state of Texas alone it is estimated that by 2008 there will be more than 10,000 prisoners over the age of 55 (see above). Although this is a relatively recent trend, an ageing prison population poses significant challenges for the care and treatment of offenders, particularly for those who require specialist medical treatment on a long-term basis.

## International standards relating to life imprisonment

The only human rights treaty standards that refer specifically to life imprisonment concern the use of life imprisonment without the possibility of release. Article 37 of the *UN Convention on the Rights of the Child* prohibits life imprisonment without the possibility of parole for offences committed by people below the age of 18.

*‘Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.’<sup>19</sup>*

Although there are no universal provisions to prohibit the sentencing of life imprisonment without the possibility of parole to adult offenders, 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 statute provides that sentences of life imprisonment, which is the maximum sentence available to the court, must be reviewed after 25 years.

*‘When the person has served two-thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.’*

19 The convention has been accepted by all but two countries, Somalia and the US.



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Other treaty standards related to life imprisonment concern the extent to which life imprisonment constitutes a loss of dignity or amounts to inhuman or degrading treatment. Article 10(1) of the *International Covenant on Civil and Political Rights* states:

*‘All deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’*

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The Human Rights Committee, the UN expert body overseeing implementation of the *International Covenant on Civil and Political Rights*, 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 of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.***<sup>20</sup>

National jurisdictions, such as the Mexican Supreme Court and the German Federal Constitutional Court, have ruled, for instance, that sentencing without the

possibility of release is an affront to human dignity.<sup>21</sup> Similarly, the European Court of Human Rights has considered whether LWOP amounts to contravention of Article 3 (prohibiting cruel and inhuman treatment or punishment) of the European Convention on Human Rights,<sup>22</sup> and the European Union (EU) is currently debating whether to extend its extradition policy to apply to cases where the offences carry the sentence of LWOP.<sup>23</sup> The Council of Europe ruled as early as 1977 that 'it is inhuman to imprison a person for life without the hope of release,' and that it would 'be compatible neither with modern principles on the treatment of prisoners ... nor with the idea of the reintegration of offenders into society.' (Council of Europe, 1977:22).<sup>24</sup>

The extent to which life imprisonment, particularly life imprisonment without the possibility of release, undermines the rehabilitative purpose of imprisonment is also subject to debate. Article 10(3) of the *International Covenant on Civil and Political Rights* states:

20 Human Rights Committee, paragraph 4, General Comment 21, 1992.

21 The German Federal Constitutional Court held in 1977 that life imprisonment could only be compatible with human dignity if there was a concrete and realisable expectation of being released. 'The essence of human dignity is attacked if the prisoner, notwithstanding his personal development, must abandon any hope of ever regaining his freedom' (cited in van Zyl Smit, 2005:20).

22 In the case of *Einhorn v France* (16 October 2001), the Court held that it 'does not rule out the possibility that the imposition of an irreducible life sentence may raise an issue under Article 3 of the Convention' (cited in Hodgkinson, 2004:186).

23 As above.

24 In 2003, the Council drafted recommendations to member states on the management of life-sentence and other long-term prisoners (Council of Europe, 2003).

***‘The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.’***

Removing the possibility of release, consequently removes the recognition of the potential for rehabilitation or reform.

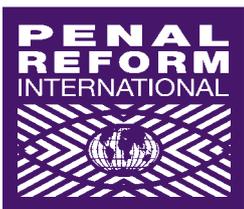
The UN Crime Prevention and Criminal Justice Branch’s 1994 report, *Life Imprisonment*, makes a number of recommendations for consideration by national jurisdictions. The report states that penal policy should only impose life imprisonment for the purpose of protecting society and ensuring justice, and should only be used on offenders who have committed the most serious crimes. It proposes that 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 (UN document ST/CSDHA/24).

The report also contains recommendations that address conditions of detention, training, treatment, and procedures for review and release. It states that conditions of detention and treatment of prisoners

-serving a life sentence should be compatible with human dignity and comply with the *Standard Minimum Rules for the Treatment of 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 work, study, 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. Preparations should equally be made with respect to pre-release programmes and post-release assistance (see above).

In addition to the *Standard Minimum Rules for the Treatment of Prisoners*, UN human rights treaties contain provisions that are highly pertinent to the treatment of prisoners serving life sentences. In particular, the *International Covenant on Economic, Social and Cultural Rights* 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).

## PRI’s response



PRI believes that the increasing use of life imprisonment, and LWOP in particular, accompanied by the lengthening of prison terms and the reduction in the use of parole, is contributing to the overuse of

imprisonment worldwide. These trends are driven by punitive policies underpinned by the belief that prisons represent the panacea to problems of crime and social control. Punishment through harsh sentencing as a means of controlling crime fails to tackle the structural roots of crime and violence.

Whilst 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 itself, including the circumstances in which it was committed.

Sentences should not, therefore, be used to serve wider political purposes such as to prevent crime or address repeat offending, as in the case of the ‘three strikes’ legislation.

***‘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.’<sup>25</sup>***

Life sentences without the possibility of parole should not be used for any category of offender. The removal of the possibility of release not only amounts to inhuman

25 Judge Ackerman in the case of *S v. Dodo*, South African Constitutional Court, cited in van Zyl Smit (2005:23).

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and degrading treatment, but denies the offender a meaningful opportunity for rehabilitation, and is thus in contravention of Articles 10(1) and 10(3) of the *International Covenant on Civil and Political Rights*.

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. As Principle 57 of the *Standard Minimum Rules for the Treatment of Prisoners* states:

***'Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.'***

Life-sentenced prisoners should have the same rights as other categories of prisoner, which should be in compliance with the *Standard Minimum Rules* and the non-treaty recommendations for life-sentenced prisoners. All life-sentenced prisoners, for example, should be offered rehabilitative activities and treatment in accordance with individual needs. Principles 58 and 59 state the following.

***Principle 58: '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.'***

***Principle 59: '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.'***

The level of security of life-sentenced prisoners should be based on individual assessments of need. Not all life-sentenced prisoners, for instance, are dangerous or need to be detained in high security prisons or segregated from other categories of prisoner.<sup>25</sup>

All prisoners have the right to seek parole. This should be reviewed on the basis of the risk that the offender may pose to the public and not on wider political or punitive factors.

These principles and internationally agreed standards should inform not only policies concerning the application of life imprisonment and the treatment of life-sentenced prisoners, but also form the basis for reviewing alternative sanctions to the death penalty.

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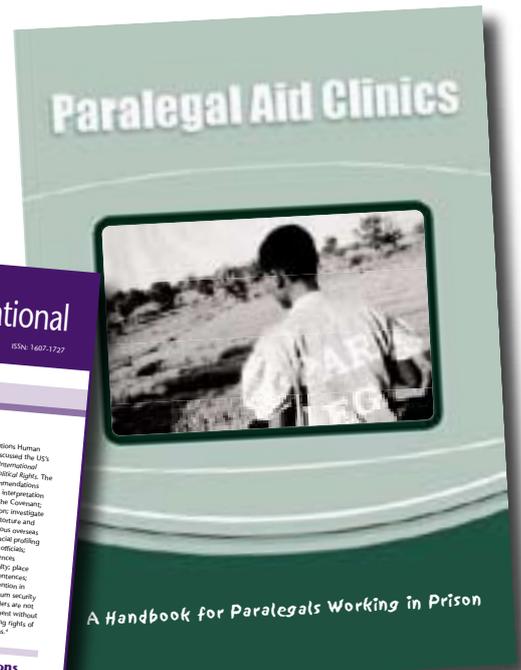
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25 The realities in fact often indicate otherwise; the majority of life-sentenced prisoners do not pose a risk to the public, are generally better behaved in prison compared to other categories of prisoner, and have lower reconviction rates on release (Coyle, 2005; Hodgkinson, 2004).

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Penal Reform International seeks to achieve penal reform, whilst recognising diverse cultural contexts, by promoting:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards;
- the elimination of unfair and unethical discrimination in all penal measures;
- the abolition of the death penalty;
- the reduction in the use of imprisonment throughout the world;
- the use of constructive non-custodial sanctions which encourage social reintegration whilst taking account of the interests of victims.