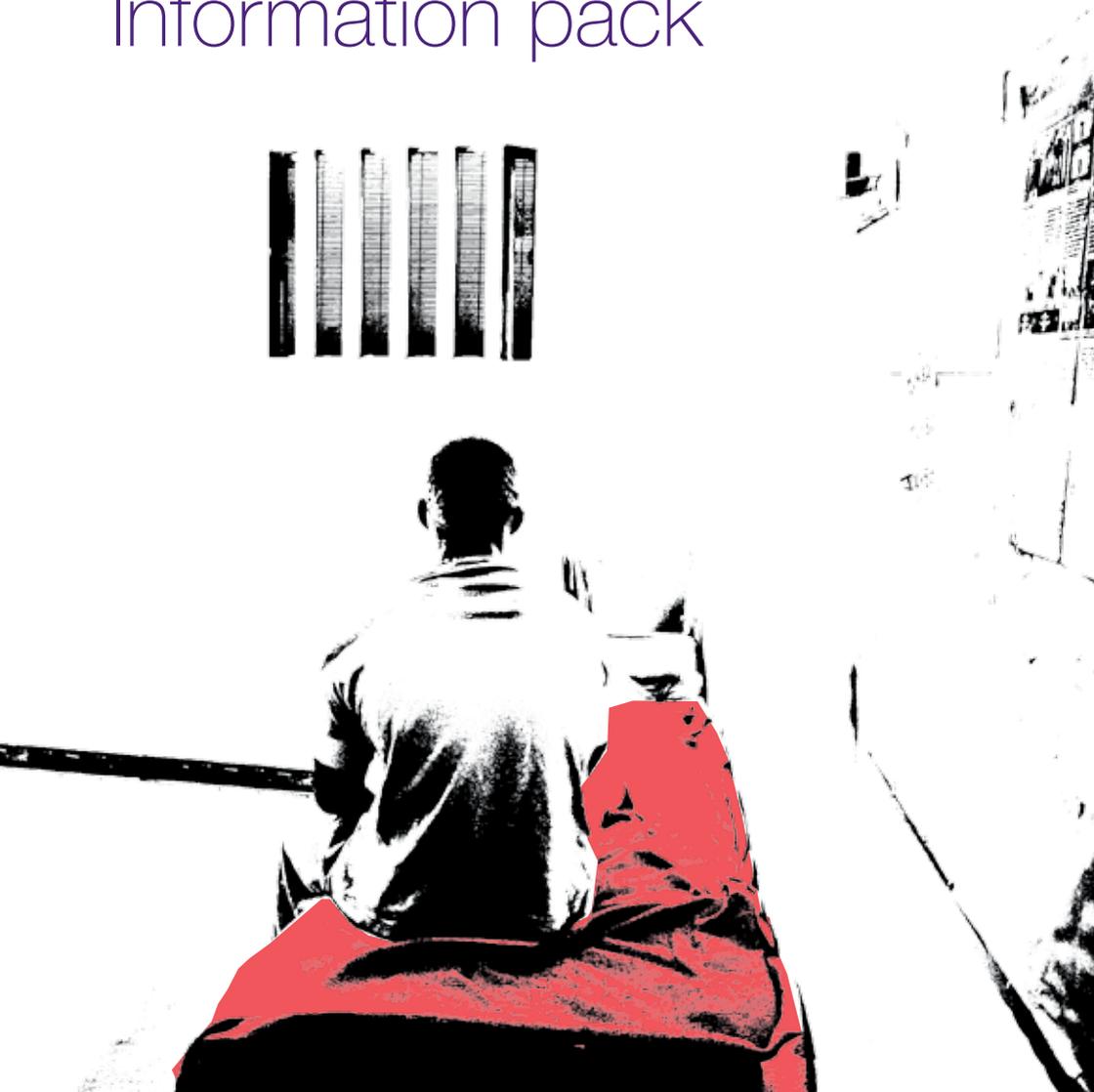


New and updated



# Alternatives to the death penalty Information pack



## Alternatives to the death penalty information pack Second edition 2015

This information pack has been produced as part of PRI's project 'Progressive abolition of the death penalty and implementation of humane alternative sanctions'.

This document has been produced with the financial assistance of the European Union and the UK Government.

The contents of this document are the sole responsibility of PRI and can under no circumstances be regarded as reflecting the position of the European Union or the UK Government.

This publication may be freely reviewed, abstracted, reproduced and translated, in part or in whole, but not for sale or for use in conjunction with commercial purposes. Any changes to the text of this publication must be approved by Penal Reform International. Due credit must be given to Penal Reform International and to this publication. Enquiries should be addressed to [publications@penalreform.org](mailto:publications@penalreform.org).

### Penal Reform International Head Office

60-62 Commercial Street  
London E1 6LT  
United Kingdom

Telephone: +44 (0) 20 7247 6515  
Email: [publications@penalreform.org](mailto:publications@penalreform.org)  
Twitter: @PenalReformInt

[www.penalreform.org](http://www.penalreform.org)

Second edition first published in February 2015.  
First edition 2011.  
ISBN: 978-1-909521-36-0

© Penal Reform International 2015

Graphic design and illustration by Alex Valy ([www.alexvalydesign.co.uk](http://www.alexvalydesign.co.uk))  
Source photo: ©Mirrorpix/Rowan Griffiths

**Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.**

We promote alternatives to prison which support the rehabilitation of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus, and work with partners in East Africa and South Asia.

To receive our monthly e-newsletter, please sign up at [www.penalreform.org/keep-informed](http://www.penalreform.org/keep-informed).

# Contents

Acronyms	4
The declining use of the death penalty	5
Alternatives to the death penalty: a review of current practices	10
The increasing use of 'life' and long-term sentences	16
Life imprisonment without the possibility of parole (LWOP)	22
A human rights framework for life and long-term prisoners	28
Use of solitary confinement for life and long-term prisoners	35
Vulnerable life and long-term prisoners	37
Prison management and resources	46
Monitoring prisons where life and long-term prisoners are held	49
Social reintegration of life and long-term prisoners	53
Life and long-term sentencing practices in PRI countries	58
12 steps toward alternative sanctions to the death penalty	62
Endnotes	64

# 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 (of the United Nations)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LWOP	Life imprisonment 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
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
WHO	World Health Organization

# The declining use of the death penalty

## More and more states are moving towards 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 140<sup>1</sup> states and territories have abolished the death penalty in law or in practice and 58<sup>2</sup> retain the death penalty. There are 82<sup>3</sup> states that have ratified international and regional instruments that provide restrictions on the use of the death penalty and aim at its ultimate abolition; 22 countries carried out executions in 2013.<sup>4</sup> (For further information on the death penalty, see PRI's *Death penalty Information pack*.)

This worldwide movement away from the death penalty can also be seen by states which have imposed moratoriums on death sentences and executions, or have increased restrictions on its application. As states follow this global trend towards abolition, they need to consider how to operate without capital punishment. This information pack highlights the issues and consequences of abolition and the successful ways states have found to administer justice fairly and help those found guilty of the worst offences to prepare for the possibility of resettlement in the community. As many of the alternatives to execution are also used by states that retain the death penalty, this pack will also be of use to them.

## When states select alternative sanctions to the death penalty

The offences that used to attract the death penalty are often serious and can evoke public outrage. Offenders are likely to be sentenced to 'life', life without the possibility of parole (LWOP) or to another indeterminate sentence, following the abolition of the death penalty or implementation of a moratorium.

Governments often try to appease a concerned public by taking a 'tough on crime' approach, without proper consideration of whether the sanction is necessary, 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. However, this viewpoint ignores the dignity of the individual, the rehabilitative goal of imprisonment and the related 'right to hope' that one could one day be released and make something better of one's life (for more on this concept, see *Undermining fundamental human rights standards and norms* on page 8).

Furthermore, states that introduce such alternatives to the death penalty may not have fully considered the different options available in responding to the most serious crimes. The harshest sentences are not necessarily the best: particularly where punishments are arbitrary or selected on purely punitive grounds, they may be incompatible with states' responsibilities towards their citizens or obligations under international law.

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?'<sup>5</sup>

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

While sentencing usually has a punitive element, the nature of the sentence should be proportionate to the seriousness of the offence and individualised to the particular case, including the circumstances in which it was committed. Additionally, and as stated in the International Covenant on Civil and Political Rights (ICCPR) Article 10(3) and elsewhere: 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation'. Sentences should not, therefore, be used to serve wider political purposes or purely to punish the offender. Effectively locking away offenders for life and creating the belief that prisons can solve all 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, in order to be able to lead law-abiding and self-supporting lives after release.

The UN Crime Prevention and Criminal Justice Branch's 1994 report *Life Imprisonment*<sup>6</sup> 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.

### **There should be 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. This erodes the possibility of an individualised and proportionate response and may limit the independence of judges.

### **There should be genuine reviews of the sentences that replace death**

Any term of imprisonment short of LWOP should include the possibility of review of the sentence (including pardon or clemency), to see whether it is still necessary. Such reviews should consider whether the offender has proved to be capable of reform, and the extent to which they pose a continuing risk to society: they do not mean that someone is automatically released.

However, often states cannot or will not conduct such reviews. They may not have the measures/regulations in place to conduct such a review. Alternatively, it may be assumed that 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, mean that long, whole life or indeterminate sentences are justified. In all situations, if a review finds that someone is no longer deemed to pose a risk to society, there is no rehabilitative value to continuing their imprisonment.

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

Government policies, legislation and sentencing practices have contributed in several countries to a growing number of offenders serving very long terms in prison.

Long prison terms are a major cause of increased imprisonment rates (often in conditions that are inhuman and degrading), but increasingly harsh sentences are a far less effective deterrent to would-be offenders than increasing the likelihood that they will be detected and caught.<sup>7</sup>

Furthermore, the steady increase in the number of life and long-term prisoners makes it harder to conduct individual assessments of their needs, rather than general presumptions based on the type of sentence they are serving.

### **Undermining fundamental human rights standards and norms**

Some state responses to crime, once the death penalty is abolished, can ultimately undermine fundamental human rights standards and norms. International standards require that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Universal Declaration of Human Rights Article 5); that all those detained shall be treated with humanity and with respect for the inherent dignity of the human person (International Covenant on Civil and Political Rights (ICCPR) Article 10); and that the treatment of prisoners will have as its essential aim their reformation and social rehabilitation (ICCPR Article 10(3)).

However, life and long-term prisoners are often subjected to worse conditions and treatment than other prisoners.<sup>8</sup> 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. The length of their sentences can mean that prison authorities do not see the value in providing rehabilitative programmes for life or long-term prisoners, as it will be many years or decades before they are released, if at all. However, such attitudes ignore the fact that keeping people in prison for years with no meaningful activity will make it harder for them to reintegrate or benefit from such programmes at a late stage of their sentence. It also risks damaging the mental health and wellbeing of the prisoner.

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

Separately, there is a new and growing body of jurisprudence that limits the application of (in particular) LWOP sentences. The UN Convention on the Rights of the Child states in Article 37(a) that 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age'. Court rulings in the USA have held (in 2010 and 2012) that LWOP for offences committed under 18 breaches that country's constitutional ban on cruel and unusual punishment.<sup>9</sup>

More generally, the European Court of Human Rights (ECtHR) has ruled against the legality of 'grossly disproportionate' sentences and, separately, has stated in recent rulings that LWOP is incompatible with the European Convention on Human Rights.<sup>10</sup> Such decisions often focus on 'proportionality as an aspect of the protection of human dignity'<sup>11</sup> and the related 'right to hope', described by ECtHR judge Ann Power-Forde as follows:

*Hope is an important and constitutive aspect of the human person. Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed... To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading.<sup>12</sup>*

### **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 human rights standards can pose a significant challenge for legislators and policy makers, as well as for all those responsible for implementation (including judges, defence lawyers, and prison and probation staff). It can also be challenging to explain the new laws, policy and practice to the public, including victims, in such a way that they are credibly reassured 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 these 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 or have become incapable of living in the community.

# Alternatives to the death penalty: a review of current practices

## A 'life' sentence: what is it?

The term 'life' sentence is often confusing as it varies from country to country. It may comprise:

- Imprisonment until (natural) death, with no possibility of release, either with or without the possibility (theoretical or realisable) of a pardon. This is sometimes called life without parole (LWOP).
- Life sentence for a minimum number of years, after which, at a certain defined point, the prisoner may be considered for release, but may never be granted release.
- Life or long-term sentence for a determinate number of years, after which the prisoner is released either with or without further restrictions (such as requirements to report to the police at regular intervals).

## 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 have 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: prison sentences can be up to 30 years for a single offence<sup>13</sup> or 40 years for multiple offences. Brazil, Colombia, Croatia, El Salvador, Nicaragua, Norway, Portugal and Venezuela also have no life sentence.<sup>14</sup> However, prisoners in these countries may serve long prison sentences, which can even exceed the minimum terms that must be served in some other countries for persons sentenced to life. In Croatia the maximum sentence that may be imposed is, for example, 40 years, and in Georgia the maximum determinate term of imprisonment should be no more than 20 years, or 35 years involving cumulative convictions.<sup>15</sup>

The reasoning behind the rejection of the notion of an LWOP or '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 such a sanction is indeterminate, but with some possibility (theoretical or realisable) for release. Usually, these states set a minimum length of time that must be served by the prisoner before they can be considered for release, and the review does not guarantee they will be freed. This means that in effect prisoners stay in prison until they are considered safe to be freed, and are not given a release date to work towards.

In the UK, the judge after imposing a life sentence sets a minimum period that each offender must serve for purposes of punishment and deterrence. After that, offenders should be released unless they are still a danger to society. In practice, in the UK as elsewhere, many of them are kept in prison beyond the minimum term.

Where there is release, the offender may subsequently be subjected to supervision for a limited or lifelong period. Failure to comply with supervision conditions can lead to the convicted person being returned to prison, 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 punishment<sup>16</sup> and even to risk offenders' mental 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 senses the whole of their future lives are at risk 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.*<sup>17</sup>

### Examples of indeterminate life sentences

Pursuant to the Rome Statute, individuals sentenced to life imprisonment by the International Criminal Court will not be considered for conditional release until they have served 25 years.<sup>18</sup>

In Germany, prisoners serving a life sentence will be considered for release only after they have served a minimum of 15 years.<sup>19</sup>

In Canada, those convicted of first degree murder must serve 25 years before being eligible for consideration of parole. Those convicted of second degree murder must serve between 10 and 25 years\* (determined on a case-by-case basis by the courts).<sup>20</sup>

In the USA, the minimum period served by life sentenced prisoners before they could be considered for conditional release varies between jurisdictions. Many require life sentences to be served without parole (possibility of release), but of those with determinate life sentences, the minimum terms include:

State	Minimum term before release
Alaska	20-99 years' imprisonment <sup>21</sup>
Arizona	25 years (except for drug offences, murder or dangerous crimes against children) <sup>22</sup>
California	25 years <sup>23</sup>
Connecticut	60 years <sup>24</sup>
Indiana	45 years <sup>25</sup>
Maine	25 years <sup>26</sup>
Vermont	35 years <sup>27</sup>

In Russia, which has observed an official moratorium on executions since 1999, the law states that lifers have the possibility to apply for early release after 25 years of imprisonment. In practice, however, chances of returning to society are minimal and only a few of the 1,872 lifers in prison on 1 May 2014 are likely to live long enough to be considered for early release.

\* In Canadian law, first degree murder is murder with one or more aggravating circumstances such as being planned or deliberate, involving sexual assault, kidnapping or hijacking, or as part of a criminal organisation. Second degree murder is murder without any of these aggravating circumstances. Canadian Criminal Code, Section 231, accessed 6 November 2014 at <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-116.html#docCont>.

### Preventive detention

Norway has a maximum sentence of 21 years but, in common with several other countries, can hold prisoners beyond that time in 'preventive detention'. Such detention is imposed in cases where it is suspected that a prisoner would pose a particularly high risk to the public following release. It may be limited to cases where a serious violent or sexual offence was committed in the first place, and the preventive element of the sentence must (in several jurisdictions) be included in the original sentence. This form of imprisonment should not be confused with pre-trial preventive detention, where a person is imprisoned without having previously been convicted of an offence.

In Norway, once someone sentenced to preventive detention has completed a minimum term of imprisonment (between 10 and 21 years), a review is conducted and the sentence extended by five years if deemed necessary for protecting the public. This process is repeated every five years, with the possibility that some prisoners may be held for the rest of their lives.<sup>28</sup>

Germany formerly had a provision that certain individuals could be given an additional 'preventive detention' sentence to run after the main sentence. Various elements of this were amended over the years in response to court rulings (for example, imposing the additional sentence subsequent to the initial sentence was forbidden in 2009<sup>29</sup>). The practice as a whole was ruled unconstitutional in 2011.<sup>30</sup>

In the UK (England & Wales), Indeterminate Sentences for Public Protection (IPP) were imposed between 2005-2012. These gave a minimum sentence length, and after that time the prisoner would only be released when they could demonstrate that they no longer posed a risk to the public. This was shown through completion of courses while imprisoned; many prisoners served far longer than their minimum term because the courses they needed to take were not available to them. The actions of the authorities in not making 'reasonable provision' for the rehabilitation of the prisoners was found by the European Court of Human Rights to breach their rights under Article 5(1) (no arbitrary deprivation of liberty) of the European Convention on Human Rights.<sup>31</sup> This finding has also been upheld by the UK Supreme Court.<sup>32</sup>

### 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 offender, the circumstances of the case and the gravity of the crime committed. 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, Germany and the UK.<sup>33</sup> In Canada and many other countries, other serious offences such as manslaughter, aggravated sexual assault and kidnapping carry a sentence of life imprisonment, but as one among several possible sentences. In Kenya, life imprisonment was introduced for offences of rape and 'defilement' under the Sexual Offences Act 2006. However, the offences all include a sentence range, to be determined by the judge, between a minimum sentencing option and life imprisonment.<sup>34</sup>

The reasoning behind mandatory sentencing is that a crime is considered so heinous that lawmakers seek to ensure a severe minimum sentence whatever the circumstances, to act as a deterrent against future crimes and to ensure consistency within a jurisdiction. However, if the court cannot take into consideration all the circumstances of the offender and case, then it will mean that relevant mitigating or aggravating factors cannot be taken into account. (Relevant factors may include the nature and circumstances of the offence, the defendant's own individual history, their mental and social problems and their capacity for reform.) It means that judges cannot use their knowledge of the cases before them and of criminal justice in general to make decisions that are tailored and proportionate.

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 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; however, parole must be considered after 25 years.<sup>35</sup>

In Uganda, legislation provides that offenders sentenced to life imprisonment must be released after 20 years. However, following the abolition of the mandatory death penalty in the case of *Susan Kigula and others v Attorney General*, judges are passing multiple life sentences or resorting to the use of very long determinate sentences of up to 100 years. In a few cases they have passed sentences for the natural life of the convict, to which the 20-year limit apparently does not apply. As of 19 November 2013, seven prisoners were sentenced for the whole of their natural life (four women and three men). The offences that carry very lengthy sentences include murder, aggravated robbery, rape, aggravated defilement and kidnapping with intent to murder.<sup>36</sup>

In the USA, in those states that do not enshrine LWOP sentences in law, judges have implemented it *de facto* through the use of consecutive life sentencing. For example, in 2000, a fraudster in Florida was given a series of consecutive sentences totalling 845 years<sup>37</sup> (reduced to 835 on appeal). The use of consecutive sentences effectively removes the chance for parole 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.<sup>38</sup> A similar provision is in force in Alaska.<sup>39</sup>

# The increasing use of 'life' and long-term sentences

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 USA, the number of life-sentenced prisoners increased from nearly 70,000 prisoners in 1992 to 128,000 in 2003<sup>40</sup> and 159,520 in 2012. In 2013, one in every nine prisoners was serving a life sentence<sup>41</sup> and 10,360 juveniles were serving life (with or without parole).<sup>42</sup>

In South Africa, the number of life-sentenced prisoners increased from 443 to 5,745 between 1995 and 2005.<sup>43</sup> The overall prison population growth was 60 per cent during the same period.<sup>44</sup>

### Changes in parole use over time<sup>45</sup>

State	Year 1		Year 2	
	Date	Population	Date	Population
Canada	2008	2,908	2013	3,209
France	2001	578	2014	478
Germany	1995	1,314	2013	1,994
Italy	2005	1,224	2014	1,604
Japan	1998	968	2012	1,826
UK (England & Wales)	1994	3,192	2013	7,566

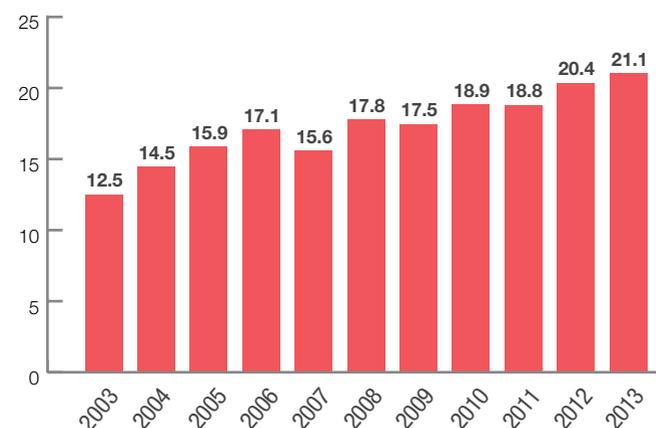
In Uganda, the number of lifers grew from 37 in 2008 to 329 in 2010. However, this number only includes those sentenced for periods of up to 20 years (the former definition of life in Uganda) – it does not include the 37 people on new 'natural life' (whole life) sentences or on

determinate sentences of over 20 years (which may in effect act as life sentences). These uncounted sentence types both emerged in the wake of the case of *Susan Kigula & 417 Ors v Attorney General*, which required all death sentences to be reviewed, commuted the sentences of those on death row for more than three years to life (20 years) imprisonment, and had as an unexpected impact an increase in the number of very long sentences imposed by judges.<sup>46</sup>

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

The length of time served in prison by life-sentenced prisoners appears also to be rising in some countries. In the USA, the average length of time served in prison by lifers increased from 21.2 years to 29 years between 1991 and 1997.<sup>47</sup> In England and Wales (UK), the average minimum term imposed for those receiving life sentences (excluding whole life sentences) between 2003-2013 was as follows:

Average length of minimum 'life' sentence (in years) in England and Wales<sup>48</sup>



### Reduction in the granting of parole

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

Figures published by the England and Wales Parole Board, for example, 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.<sup>49</sup> In 2010 there was only a one in thirteen chance of being released.<sup>50</sup>

In Japan, the number of people being released on parole is generally declining, but has also experienced dramatic highs and lows, complicating the trend. There were 15 people released in 1998, and only six in 2012, which suggests a decline over time. However, in between these dates there have been several fluctuations, most notably a high of 13 releases in 2003, followed in 2004 by a low of one, and another high in 2005, of 10 releases.<sup>51</sup>

In South Africa, amendments to sentencing legislation have resulted in longer periods that must be served before parole is considered and more stringent requirements for granting parole to life-sentenced prisoners.<sup>52</sup>

### 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: between 1989 and 2010, only one person serving a life sentence (who was terminally ill) was released.<sup>53</sup>

A groundbreaking judgment took place at the German Constitutional Court on 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.<sup>54</sup>

The jurisprudence of the European Court of Human Rights (ECtHR) in this regard has only developed in recent years. In 2008, the ECtHR held<sup>55</sup> that the imposition of an irreducible life sentence may raise issues under Article 3 of the European Convention on Human Rights (the right not to be subjected to torture or to inhuman or degrading treatment or

punishment). However, the Court found that such sentences comply if national law provides 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.<sup>56</sup>

However, in 2013 the Grand Chamber of the ECtHR ruled in the case of *Vinter and Others v The United Kingdom* that imprisonment for the whole of one's life without the possibility of any review or release would constitute a violation of the right not to be subjected to inhuman or degrading punishment. Human dignity requires that all prisoners must have the hope of release. When they are sentenced they should therefore know what their prospects of release are and what they can do to enhance them. This does not mean that whole life sentences cannot be imposed or that people have to be released at some point: the Court found that these are legitimate actions for a state to take. However, where there are no 'legitimate penological grounds' for further detention (such as punishment, deterrence, public protection and rehabilitation) then it is improper to continue that detention, and the way to identify whether such grounds still exist is to carry out a review. The Court did not state how or when such a review had to be carried out, but did require that a review happen. However, it did note that 'comparative and international law ... show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter'.<sup>57</sup>

A subsequent judgement in the 2014 case of *László Magyar v Hungary* found that Hungary's system for the review of life sentences was not compliant with the ECHR. 'The Court was not persuaded that Hungarian law allowed life prisoners to know what they had to do to be considered for release and under what conditions. Moreover, the law did not guarantee a proper consideration of the changes in the life of prisoners and their progress towards rehabilitation. Therefore, the Court concluded that the sentence of Mr Magyar could not be regarded as reducible, which amounted to a violation of Article 3.'<sup>58</sup> The Hungarian government was required to reform its entire 'system of review of whole life sentences to guarantee the examination in every case of whether continued detention is justified on legitimate grounds and to enable whole life prisoners to foresee what they must do to be considered for release and under what conditions'.<sup>59</sup>

These rulings affirm the vast body of international, regional and national law that promotes the rehabilitative purpose of imprisonment, and link it explicitly to the need for clear pardon or parole procedures that allow prisoners the possibility of eventually returning to society.\* 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**

Life and long-term sentences, as the most severe sentence available following the abolition of the death penalty, are intended to apply only to formerly capital crimes. However, they are often imposed for less serious offences that would not have received the death penalty, including non-violent offences, as perceptions of proportionality become distorted.

One area where there is increasing use of life or long-term sentences is in offences linked to a capital (or formerly capital) crime. These may include ‘accountability’ sentences that are applied in a number of US states, under which 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.<sup>60</sup> Another area is terrorism-related offences, where all activities regarded as terrorism-related receive equally harsh punishments, regardless of the nature of the activity. This is particularly concerning in jurisdictions where activities that should not be criminalised, such as peaceful demonstrations or speaking out against the government, can be classified as terrorism.†

In the USA, life sentences can be imposed for drug crimes, non-violent and sometimes petty offences (such as ‘shoplifting three belts’<sup>61</sup>) due to mandatory sentencing rules. Life sentences for non-violent offences, either with or without possibility of parole, may be imposed for a first offence (one survey found that 18 per cent of LWOP prisoners in the federal system are there for a first offence<sup>62</sup>) or a subsequent offence, often as a result of so-called ‘three strikes’ rules.

\* One early example is Article 10(3) of the 1966 International Covenant on Civil and Political Rights, which states (in part): ‘The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation’.

† For more on this issue, see PRI’s publications *The death penalty, terrorism and international law* and *Counter terrorism in Kazakhstan: why the death penalty is no solution*.

The ‘three strikes’ policy means that a person is sentenced to life imprisonment after committing a third crime, which in some states must be violent and in others can also include non-violent offences.<sup>63</sup> A sentence of LWOP was upheld in Texas for the fraudulent use of a credit card to obtain \$80 worth of goods or services, passing a forged cheque in the amount of \$28.36, and finally, obtaining \$120.75 under false pretences.<sup>64</sup> A fifty-year sentence was upheld in California for stealing videotapes on two separate occasions after three prior offences.<sup>65</sup>

Other countries have similar provisions for sentencing repeat offenders, though not all of these include mandatory life imprisonment. Hungary, for example, introduced a ‘three strikes’ provision in 2010 that could provide for life imprisonment for some repeat offenders; however, parts of this legislation were struck down by the country’s Constitutional Court in July 2014 because they violated the principle of predictability.<sup>66</sup>

# Life imprisonment without the possibility of parole (LWOP)

*No human being should be regarded as beyond improvement and should therefore always have the prospect of being released.*<sup>67</sup>

Dirk van Zyl Smit

Where there is an absence of confidence in parole systems, and a ‘tough on crime’ approach, stricter sentencing practices and the pressure for ‘truth in sentencing’ (no early release) have resulted in the increased prevalence of offenders being sentenced to life imprisonment without the possibility of parole (LWOP). However, there is also a growing body of evidence suggesting that a 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.<sup>68</sup>

Rationales advanced for life imprisonment, as a form of the most severe punishment, include deterrence, retribution, restoration and incapacitation (stopping an offender from reoffending in the interests of public protection). While in the theory of punishment, rehabilitation is one of the most important elements, 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 principle 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 (The Sentencing Project).*<sup>69</sup>

## 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 sentence: prisoners will still only leave prison after they die.<sup>70</sup>

LWOP does not respect the inherent human dignity of the offender, the prohibition against cruel and inhuman punishment, or rehabilitation as the purpose of criminal sanctions.

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 the community causes prisoners to lose contact with family and friends and massively curtails their ability to bring up their children (which has impacts on the child’s wellbeing and development,<sup>71</sup> as well as affecting the parent). Stress and anxiety is caused by the removal of normal patterns of social interaction and prisoners’ powerlessness to provide support to others. While such effects may occur with any period of imprisonment, long-term or indefinite imprisonment means they can be particularly hard, as the institutionalisation and (for indefinite sentences) inability to plan for release inhibit efforts to (re)connect with the outside world.

The loss of responsibility and the increased dependence that results from prolonged detention can hamper efforts at rehabilitation. Those serving LWOP may not be included in prison activities geared towards release and resettlement, because it is presumed they won’t ever leave prison and so will never be able to benefit from them. However, courses and other activities can improve prisoners’ mental health as well as preparing them for release; ensuring the good mental health of prisoners can also make things easier for prison staff. Conversely, negative coping mechanisms can result in emotional or situational withdrawal, including heightened risk of psychological disability.

One of the more worrying aspects of LWOP is that prisoners with no possibility of release or improvement may be less willing to comply with the prison system. Prisoners who do not comply are harder to manage, causing additional difficulties for prison staff. Some prisons have responded by creating new, even harsher prison regimes for what some term ‘super inmates’.<sup>72</sup> Such regimes do not necessarily comply with the need to respect the human dignity of all prisoners, and even the term ‘super inmate’ can promote ideas of increased power and dangerousness of the prisoners, leading to greater concerns about maintaining dominance over them. ‘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.’<sup>73</sup>

According to the former Chief Inspector of Prisons for England and Wales, Anne Owers, the increasing number of lifers makes Britain's prisons harder to manage: 'it 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 something literally worth living for. Because if prisoners feel there is nothing to lose, then prisons become less safe.'<sup>74</sup>

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.'*<sup>75</sup>

### 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 Argentina, Estonia, the Netherlands, India, Lebanon, Nigeria, USA and Vietnam). While in some countries like the USA and Turkey, LWOP sentences do not provide for the possibility of release under any circumstances, other countries' policies are more flexible. 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.<sup>76</sup> In many other countries, the president or head of state may grant clemency.

In England and Wales, in February 2014 there were 53 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).<sup>77</sup> In the 2000 case of *Hindley*,<sup>78</sup> 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. However, this approach has been repeatedly rejected by the European Court of Human Rights in 2013 and 2014, most notably in the *Vinter* case, where it found that imprisonment for the whole of one's life without the possibility of review and release constituted cruel and inhuman punishment (for more, see above in *The increasing use of life and long-term sentences*).

The US Supreme Court endorsed the use of LWOP in 1974 in the case of *Schick v Reed*,<sup>79</sup> and it has since become a widely used punishment. It has also either partially or completely eliminated the pressure to apply the death penalty in certain US states.<sup>80</sup> In the USA, one in nine prisoners are serving a life sentence, with 30 per cent of life sentenced prisoners being ineligible for parole; this means one in 30 of the entire prison population is serving an LWOP sentence.<sup>81</sup> In the states of Louisiana, Massachusetts and Pennsylvania at least one in ten of the entire prison population is serving a sentence of LWOP.<sup>82</sup> In 2009 six states in the USA imposed all life sentences without the possibility of parole – Illinois, Iowa, Louisiana, Maine, Pennsylvania and South Dakota.<sup>83</sup>

### 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.<sup>84</sup> This conclusion is shared by a number of Central American countries.<sup>85</sup>

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's] 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.'<sup>86</sup>

Constitutional courts in countries such as France<sup>87</sup>, Italy<sup>88</sup> and Namibia<sup>89</sup> 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.<sup>90</sup>

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 would be cruel, inhuman and degrading.<sup>91</sup> In a more 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.

*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>92</sup>*

### Challenges to the legitimacy of LWOP in European law

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 compatible neither with modern principles on the treatment of prisoners... nor with the idea of the reintegration of offenders into society.'<sup>93</sup>

*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.<sup>94</sup>*

The Council of Europe Convention on the Prevention of Terrorism, under Article 21(3), allows extradition to be limited in certain instances if the person who is to be extradited may be subjected to LWOP. However, in 2003 its Committee of Ministers passed Recommendation (2003) 23 on 'the management by prison administrators of life sentence and other long term prisoners', which details the ways in which such prisoners should be treated. Among these is the principle of 'progression': that there should be the possibility of progressing through different security levels within prison and of return to society.<sup>95</sup> LWOP would prevent at least the latter stages of such progression.

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 the United Kingdom*, the Court stated that 'an arbitrary or disproportionately lengthy sentence might in some circumstances raise issues under the Convention [... and] a life sentence without any possibility of release might raise issues of inhuman treatment'.<sup>96</sup>

In 2008, the ECtHR went a step further by finding that the imposition of an irreducible life sentence raises issues under Article 3 (the right not to be subjected to torture or to inhuman or degrading treatment or punishment) of the ECHR,<sup>97</sup> and in 2013 and 2014 has ruled in three cases (*Vinter* (2013) and *László Magyar and Trabelsi* (2014)) that life sentences without the possibility of review are in breach of Article 3. The *Vinter* case was particularly significant, as the first verdict of its kind and because it required that a system of review be set up, though it did not state when or how such a review should take place.<sup>98</sup> However, *Trabelsi* is weighty in that it reversed previous jurisprudence. In the 2012 case *Babar Ahmed and Others v the United Kingdom*, the ECtHR had ruled that suspects could be extradited to a country where they faced a potential sentence of LWOP, whereas the *Trabelsi* ruling implies that extradition from Council of Europe member states cannot take place if individuals are facing LWOP or if proper release procedures are not in place in the country to which they are to be sent.

### Challenges to the legitimacy of LWOP in international law

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 USA) in the world have ratified the CRC.\*

International law makes provisions for life sentences to be subject to review. ICCPR Article 10(3) states (in part): 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation'.

Measures contained in the Rome Statute of the International Criminal Court ensure that life imprisonment without parole is not applied as a punishment, even 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.

The UN Standard Minimum Rules for the Treatment of Prisoners state in Rule 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.'

\* Some have stated that South Sudan is not a state party, but international human rights norms are that human rights treaties continue to apply in the entirety of the territory in which they were enacted, meaning that Sudan's human rights obligations would apply in South Sudan.

# A human rights framework for life and long-term prisoners

*Long-term imprisonment can have a number of desocialising 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 Committee for 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.<sup>99</sup>*

European Committee for the Prevention of Torture

## **Punitive conditions of detention**

Prisoners serving life or long-term imprisonment often experience different treatment and worse conditions of detention compared to other categories of prisoners. 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, limited visit entitlements and exclusion from work, education and rehabilitation programmes.

Punitive conditions of detention and less favourable treatment are known to be particularly prevalent for repressed 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 previously have been executed (Andrew Coyle).<sup>100</sup>*

## **‘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 Universal Declaration of Human Rights 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 of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>101</sup>*

## **Equality of rights**

Life and long-term prisoners are entitled to the same rights as other categories of prisoners, 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 Prisoners (SMR) and other relevant standards.<sup>102</sup>

*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 rehabilitation’, as stated in Article 10(3) of the ICCPR.

An individualised and rights-based approach to managing life and long-term prisoners would base their management on the actual risk the prisoner presents to the correctional system and their risk to the community (risk of reoffending). The level of security applied to life-sentenced prisoners should be based on an individual assessment of risk.

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. However, in practice life and long-term prisoners are often separated from the rest of the prison population and kept in so-called maximum-security prisons. This may happen because the offences that receive life or long-term sentences are considered the most serious and those who perpetrate them the most dangerous. But this dangerousness is often presumed purely because of the nature of the sentence, rather than being based on the risk the individual prisoner actually poses. The realities in fact often indicate otherwise: life-sentenced prisoners are generally better behaved in prison compared to other categories of prisoner, and have lower reconviction rates on release.<sup>103</sup>

Wherever a prisoner's categorisation and separation is based solely on the sentence or length of imprisonment (and is unrelated to real issues of prison security or the protection of other inmates), it constitutes discrimination within prisons and contradicts basic human rights principles.

### 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 conditions for other prisoners in the same facility.<sup>104</sup> 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 Kyrgyzstan, a mission in 2012 by the UN Special Rapporteur on torture found that life prisoners lived 'in basements in dreadful conditions, confined in virtual isolation and solitary confinement in cells built in 1943 and designed for death row prisoners. Their isolation is applied automatically because of their life sentence and is not related in any way to their behaviour in custody'.<sup>105</sup>

In the Russian Federation, reprieved death row prisoners are contained in five special colonies and one special division of the 'colony with special regime'. Between two and four prisoners live together in cells

with running water and natural light and space of no less than four square metres per person. Their diet is the same as that of other prisoners and they have the right to exercise for one and a half hours daily in special larger cells whose bar-covered ceilings open to the air.

Life-sentenced prisoners in Russia are subject to 'strict conditions' sanctioned by the Criminal Executive Code, with greater limitations than other prisoners. During the first ten years they have the right to have two short (four-hour) family visits a year and to receive one big (up to 20 kg) and one small (up to 2 kg) parcel. In most prisons, lifers have limited access to job opportunities. They face daily and nightly surveillance, as they are considered more dangerous than other prisoners.<sup>106</sup>

In Kenya, life-sentenced prisoners are separated from other prisoners and automatically held in maximum-security prisons. They are prohibited from engaging in the industrial work afforded to other prisoners. The fear of being transferred to other prisons, or of being punished, prevents prisoners seeking redress when they are denied their rights.<sup>107</sup>

In Morocco, a report from the UN Special Rapporteur on torture stated that the 'prison regime and physical conditions are especially harsh for those [...] serving life sentences compared to those of the general prison population'.<sup>108</sup> He highlighted the dependence of prisoners on their families for food and medication, and the ongoing collective 'denial of access to books, newspapers, exercise, education, employment or any other type of prison activities'<sup>109</sup> following the death of a prison guard several years previously.

### International and regional standards for the treatment of 'life' and long-term prisoners

International standards related to the treatment of prisoners, whether from a prison management or human rights perspective, do not differentiate between different types of sentences: the rights and rules apply equally. The SMR, which set out the minimum standards to which all prison systems should adhere, include the following relevant provisions:\*

- Prisoners should be entitled to appropriate accommodation, personal hygiene, clothing and bedding, food, drinking water, exercise and sport. **(Rules 9-21)**
- Prisoners should have access to medical treatment, including transfer to outside hospitals or institutions where needed. **(Rules 22-26)**

\* The SMR are at time of writing undergoing a process of revision, as some of its provisions (adopted in 1955) are considered outdated or incompatible with modern standards.

- Disciplinary measures in prison should not be more restrictive than is needed for safe custody and well-ordered community life; corporal punishment, imprisonment in a dark cell, and using instruments of restraint are prohibited as punishments. **(Rules 27-34)**
- 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 the prisoners or the respect due to their dignity as human beings. **(Rule 60)**
- Prisoners should be allowed access to work, education and recreation. **(Rules 71-78)**

Standards also derive from Articles 7 and 10 of the ICCPR (see above). Other international treaties also enshrine human rights that are equally applicable to prisoners, including those 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 2006<sup>110</sup> provide the most comprehensive and up-to-date statement of the standards that European nations believe all prisons should meet, including 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 already enter the prison service with multiple pre-existing 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)*

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 sterilisation to prevent fertility) may constitute torture or ill-treatment if enforced or administered without the free and informed consent of the person concerned.<sup>111</sup>

The UN Basic Principles for the Treatment of Prisoners<sup>112</sup> 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)*

The World Health Organization Regional Office for Europe has been operating a Health in Prisons Programme since 1995. It identifies the following issues of concern:

- Up to 40 per cent of prisoners suffer from a mental health problem.
- Many people entering prison have a severe drug problem.

- Because of overcrowding and poor nutrition, tuberculosis rates in prisons are up to 84 times higher than in the general population.
- Rates of HIV and hepatitis C infection are much higher among prisoners than among people living in the outside community. In one country 10 per cent of male prisoners and 33 per cent of female prisoners have HIV.
- Prisoners are seven times more likely to commit suicide than people at liberty.
- Young people in prison are especially vulnerable and are 18 times more likely to commit suicide than those in the outside community.
- Between 64 per cent and over 90 per cent of prisoners smoke tobacco. The European average smoking rate is 28 per cent.<sup>113</sup>

At a meeting held in Madrid, Spain, in October 2009, 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:<sup>114</sup>

- 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 [hospital-acquired] 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.

# Use of solitary confinement for life and long-term prisoners

*No prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime.*<sup>115</sup>

UN Special Rapporteur on Torture

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.

One extreme case comes from the US state of Louisiana, where one man was held in solitary confinement for 42 years. 'He is confined alone for 23 hours a day in a small cell, and allowed out for only five hours a week for solitary exercise or showers. He has had no opportunities for meaningful social interaction, nor rehabilitation programmes.'<sup>116</sup> He is subjected to strip searches each time he leaves or enters his cell. He has been reported to be suffering from serious health problems caused or exacerbated by his years of close confinement in a small cell. On 20 November 2014 his conviction was quashed<sup>117</sup> but the Louisiana authorities indicated that they would seek to keep him in prison pending a retrial.<sup>118</sup>

## Solitary confinement should be restricted and abolished

Protracted or indefinite solitary confinement is a form of cruel, inhuman or degrading punishment, and can amount to psychological torture because of the lack of human contact and sensory deprivation that often accompanies it. It can have a severe negative impact on a prisoner's mental state: 'medical research [...] confirms that the denial of meaningful human contact can cause "isolation syndrome" the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and can destroy a person's personality'.<sup>119</sup>

The UN Special Rapporteur on torture and other cruel, inhuman or 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.’<sup>120</sup> He subsequently defined prolonged solitary confinement as ‘any period of solitary confinement in excess of 15 days’.<sup>121</sup>

The UN Human Rights Committee has expressed the view that: ‘the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with Article 10(1) of the Covenant [ICCPR]<sup>122</sup> and may amount to acts prohibited by Article 7 (torture and cruel, inhuman or degrading punishment).’<sup>123</sup>

There is no operational justification for keeping life or long-term prisoners, as a category, 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 or cruel, inhuman or degrading punishment was breached due to a regime of strict solitary confinement that was imposed for more than three years (on a prisoner who had previously been on death row).<sup>124</sup> It has also held that being imprisoned in solitary confinement can impede a person’s right to petition the Court.<sup>125</sup>

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 should 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 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 USA 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.<sup>126</sup>

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.<sup>127</sup>

Among vulnerable prisoners are those who face an increased risk to their safety, security or well-being as a result of imprisonment. Vulnerability may be caused by age, gender, ethnicity, health, legal or political status, and persons affected can include juveniles, women and mothers, persons with disabilities, foreigners, minorities or Indigenous peoples, those under sentence of death and the elderly.

## Juveniles

Life imprisonment of children is banned by the UN Convention on the Rights of the Child (CRC), the world’s most widely ratified human rights treaty with 194 states parties. Article 37 of that convention not only prohibits a sentence of life without possibility of release for offences committed under the age of 18, but it also requires particular measures be taken with regards to child prisoners. In addition, further details and guidance on this Article is provided in two key international standards relating to juveniles: the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Where persons under 18 years of age are detained, there must be special safeguards put in place to protect them. This is needed because they are in their formative years, learning and developing

physically and emotionally into adults, and may be at higher risk from abuse while detained. Depriving children of their liberty can lead to long-term and costly psychological and physical damage, while overcrowding and poor detention conditions threaten their development, health and wellbeing.\* Girls are particularly at risk of sexual abuse and likely to suffer mental health problems as a consequence of detention. Children's social and economic disadvantage and marginalisation can be compounded by removing them from their family and community networks, as well as from educational or vocational opportunities at critical and formative periods in their lives. The stigma of association with the criminal justice system can damage a child's long-term prospects and make them more likely to reoffend after returning to society.

It is also well documented that children who are arrested and held in detention are vulnerable to violence, abuse, neglect and exploitation at the hands of police, fellow detainees and staff in detention facilities. There are a number of contributing factors to such violence, including: the fact that abuse frequently goes unreported and remains invisible; that perpetrators are not held accountable; that the issue is rarely a priority for policy-makers; that professionals are not properly qualified; and that there is a lack of effective oversight and inspection systems in detention facilities. International law always calls for their best interests to be a primary consideration in any decisions related to them, and for deprivation of liberty to be the last resort and for the shortest period of time possible.

Juveniles are regarded as being more amenable to change and to learning different ways of behaving than are adults. The treatment of juvenile offenders should be consistent with the promotion of the child's sense of dignity and the desirability of the child's reintegration into society (as stated in Article 40 of the CRC). 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 punitive 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; SMR Rule 8(d))**
- Prohibiting the use of corporal punishment against juveniles. **(SMR Rule 31)**
- 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; 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). In its 2014 resolution on the rights of the child, the UN General Assembly further invited states to 'consider repealing all other forms of life imprisonment for offences committed by those under 18 years of age'.<sup>128</sup>

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.<sup>129</sup>

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

In Jordan, legislation prohibits life imprisonment of those under the age of 18. Juveniles aged between 15-18 years who commit a capital crime may be sentenced to 8-12 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 6-10 years and 3-8 years respectively. Jordan has special 'rehabilitation centres' for juveniles: five for boys and one for girls.

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 apply a sentence of life for juveniles include Algeria, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Uzbekistan and Ukraine.

\* The UN study on violence against children contains extensive evidence of the sort of damaging impact detention can have upon on children's rights. See Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006.

\* Children are normally imprisoned only if they have committed 'the most severe crimes' or after a number of alternative sanctions have been applied and the child continues to offend.

In some countries children are not only sentenced to life, they also have no possibility of being released. However, this is becoming increasingly rare and less acceptable to courts. The Supreme Court in the USA ruled in the 2010 case of *Graham v Florida* that nobody could be sentenced to LWOP for non-homicide offences committed while under 18. A mandatory sentence of LWOP for murder committed while under 18 was ruled unconstitutional in 2012 in the case of *Miller v Alabama*. However, despite these rulings, approximately 2,500 juvenile defendants in the USA are serving LWOP sentences.<sup>130</sup> In 2013, the Inter-American Court of Human Rights ruled in the case of *Mendoza et al v Argentina* that life imprisonment for minors must be prohibited in Argentina.

### Women prisoners

Women prisoners sentenced to life or long-term imprisonment share many of the same vulnerabilities as prisoners in general. They are a minority group within a system primarily designed to deal with and cater to the majority male population; as a group they exhibit a high rate of mental health issues, which are likely to be exacerbated by the conditions of life or long-term imprisonment; they are disproportionately affected by the impact their incarceration has on their children; and the stigma they face as women prisoners is even higher than that faced by male prisoners.

As is true of prisoners more generally, only a small minority of life sentenced prisoners are women. This has implications for their vulnerability, as the prison systems in which they are placed tend to be designed and run with the majority male population in mind. Issues which solely or disproportionately affect women prisoners, such as women's health needs or family-related matters, are frequently ignored or under-supported. Additionally, the backgrounds of women serving life and long-term sentences can increase their vulnerability compared to women in general: research has shown 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.<sup>131</sup> The closed prison environment can repeat or exacerbate exposure to violence: women prisoners are vulnerable to physical, emotional and sexual abuse from both male staff and prisoners.

There are safeguards that can be put in place to prevent or limit the risk of harassment or abuse. Most importantly, women should always be detained separately from men, as provided by Rule 8 of the Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955. Rule 53 states that they should be supervised by female staff.

More detailed standards on the treatment of women prisoners, including those serving a life or long-term prison sentence, were adopted in 2010 in the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules).<sup>132\*</sup>

Many of the mental health concerns related to women are relevant for all prisoners (such as the closed and coercive nature of prisons) and are covered in the next section. However, there are particular concerns related to women. Women's mental health care needs 'are likely to become more acute in prison settings, due to separation from children, families and communities and regimes that do not take account of women's gender-specific needs. Research indicates that women in prison have high rates of mental health problems such as post-traumatic stress disorder, depression, anxiety, phobias and neurosis.'<sup>133</sup> Guidance on how to respond appropriately to women's mental health (and other) needs is contained in PRI's *Guidance Document on the UN Bangkok Rules*.

One set of problems that women in prison face in particular are family-related issues. Since women tend to take responsibility for family and children, life or long-term imprisonment can have a major impact on family life and affect both the women in prison and their families outside. Societal gender roles can mean women have a higher sense of guilt for not fulfilling their role as mothers when detained and suffer more from the separation from their children. Practically, there are fewer prisons for women than for men, meaning they are more scattered and families may have to travel further to reach them. This, alongside the stigma of having a mother in prison, can mean there are fewer visits from children. The housing and care arrangements for any children may change; where imprisoned mothers do not have details of these new arrangements they may be unable to contact their children or engage even minimally in their upbringing, and their imprisonment can make it harder to trace family members. Their parental rights may be removed, for example where the prolonged period not living with their children is interpreted as their having abandoned their parental responsibilities.<sup>134</sup>

Where connections are maintained, life sentenced prisoners are typically allowed fewer visits or other forms of communication (such as letter writing or telephone contact) than other prisoners, and the conditions of visits may be more restricted (such as a ban on contact during visits). These measures can damage their relationships with those outside.

\* For more information on the Bangkok Rules and how they are applied in practice, see PRI's 'Bangkok Rules toolbox' of resources, available at <http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/>.

Connected to this, women have been found to experience particular stress, feelings of guilt and anxiety when there is family break-up or (perceived) failings in their parental responsibilities.

Arrangements may be made to compensate for this, for example by allowing families and prisoners' children to make visits lasting a whole day or overnight or multiple days (such as a whole weekend), 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). They could be given additional rights to contact children indirectly (e.g. by telephone or letter), with increasing engagement as prisoners near their release date. Where children interact with the prison (such as when visiting), the regime should be designed with the best interests of the children in mind, as required by Article 3 of the Convention on the Rights of the Child.\*

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: 'Deprivation of liberty for life shall not be imposed upon women'.<sup>135</sup> Azerbaijan has a similar provision, while Armenia excludes pregnant women from receiving life sentences.<sup>136</sup>

For more information about women prisoners, see PRI's toolbox on the UN Bangkok Rules, available online at <http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/>.

\* Convention on the Rights of the Child, Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

## Prisoners with mental ill health

Some people sentenced to life or long-term imprisonment suffer from mental ill health, and some people develop mental ill health due to the length or conditions of their imprisonment. Particularly in settings where prisoners are placed in solitary confinement, or where they are confined to their cells without access to work, education or activities to aid their rehabilitation, prisoners can become mentally ill.

Prisoners are often sentenced to life or long-term imprisonment for serious offences, which means there may be pressure or requirements to imprison them regardless of their mental health. However, some may not have been liable for their actions at the time of the offence (in which case they should not have been convicted and sentenced at all), and others may have their mental health worsen if imprisoned. In all situations, measures should be taken to protect the mental health of those in prison, including provision of meaningful activities in prison, an adequate visiting regime, good diet, mental healthcare and limiting or prohibiting the use of isolation.

Those imprisoned for life or a long-term sentence can develop mental ill health due to the conditions of imprisonment, especially in high security or so-called 'super-max' facilities. There, the high level of isolation, which may include solitary confinement for 23 or 24 hours a day and an absence of normal social interaction or environmental stimuli, can cause or exacerbate mental health problems.<sup>137</sup> Prolonged solitary confinement has been found by various UN human rights bodies to potentially amount to cruel, inhuman or degrading treatment, in contravention of the ICCPR and Convention Against Torture.<sup>138</sup>

The nature of the sentence can also have a mental health impact: a study of prisoners facing indefinite sentences in the UK found that over 50 per cent of them had 'problems with "emotional wellbeing" compared with two-fifths of life prisoners and one-third of all prisoners',<sup>139</sup> and that one in five had previously received psychiatric treatment. The lack of knowledge about when or if they would be released was felt by prisoners to cause their emotional distress, and the sentence and mental health of the prisoner also had negative effects on their children and other family members.<sup>140</sup>

Where persons with mental ill health are detained, support and services including psychological and psychiatric treatment and other non-medical support (peer support etc.) should be made available for those who request them. Those with mental 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, in accordance with the UN Convention on the Rights of Persons with Disabilities.

## Elderly prisoners

*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.*<sup>141</sup>

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 USA, prisoners aged '65 or older grew 94 times faster than the total sentenced prisoner population between 2007 and 2010. In the UK, older prisoners are the fastest growing group within the prison population; the number of those aged over 60 grew by 120% and those aged 50–59 by 100% between 2002 and 2013. In Canada the segment of the prison population over the age of 50 grew by more than 50% between 2001 and 2011. Increasing numbers of older prisoners are also reported in Australia and New Zealand, where a special wing for older prisoners was opened in Rimutaka prison in 2011 ... In Japan the number of prisoners over 65 increased by 160 per cent between 2000 and 2006'.<sup>142</sup>

Not all of these prisoners will be serving life or long-term sentences (in the Japan example above, most of the elderly prisoners were sentenced for minor non-violent offences like shoplifting or petty theft). But for those who are, prisons are likely to be ill-equipped for their needs. The same is likely true for those who have aged in prison while serving a life or long-term sentence. Difficulties can include prison layout, 'stairs, access to sanitary facilities, [and] upper bunk beds',<sup>143</sup> but also problems around activities and support. 'This shift in the prison population results in new healthcare challenges, including an increase in dementia among prisoners.'<sup>144</sup> 'Prison rehabilitation programmes tend to cater for younger offenders in terms of skills training and education. Release programmes may not address the resettlement challenges older prisoners may face'<sup>145</sup> – this could present particular problems for prisoners who need to show evidence of rehabilitation before being granted release. The UN Office on Drugs and Crime has encouraged 'the development of special policies and strategies by prison services to address the special needs of this vulnerable group of prisoners'.<sup>146</sup>

In some jurisdictions age is one of the bases for granting conditional release, including in the case of a life sentence. For example, in Azerbaijan<sup>147</sup> and Russia<sup>148</sup> the maximum age whereby the court will issue a life sentence is 65, while in Georgia conditional release can be considered at 60.<sup>149</sup>

## Foreign national prisoners

Persons sentenced to life or long-term sentences outside their country of citizenship face additional challenges. They may have reduced access to state support (including legal aid), may not speak the language and may be unused to the legal processes or practices. Once in prison, they may be at risk of being singled out and victimised due to their non-citizen status. These issues may particularly affect non-resident foreign nationals, but can also impact on resident foreign nationals who are based in the country of imprisonment.

Foreign nationals may also have specific additional rights, including the right to consular assistance under the 1963 Vienna Convention on Consular Relations (Article 36). Some states, such as Mexico, provide specific legal support to nationals facing criminal charges, in particular where they face long sentences or the risk of the death penalty (which may result in life or long-term imprisonment where a death sentence is not imposed). It may also be that the prosecuting state will provide this support: China permitted foreigners to receive free legal aid from January 2013 in cases involving the death penalty or a life sentence.<sup>150</sup>

States may apply to have a suspect or convicted prisoner extradited, under bilateral or multilateral treaties. However, international and regional standards may restrict this in certain cases. For example, Article 13(1) of the 1998 MERCOSUR Extradition Agreement of Rio de Janeiro prohibits extradition where the death penalty or a life sentence would be imposed. The European Court of Human Rights, in the 2014 case of *Trabelsi v Belgium*,<sup>151</sup> prohibited extradition from Council of Europe member states if individuals are facing LWOP or if proper release procedures are not in place in the country to which they are to be transferred.

Particularly for non-resident foreign nationals, whose residence and connections are not in the country of imprisonment, it may be desirable for them to serve their sentence in the country of citizenship. However, this should only be permitted to happen with the consent of the prisoner.

# 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. Prison 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:

- (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)**
- 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) 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 Officials,<sup>152</sup> Article 3)**

Training is essential to establish and maintain high-quality prison staff. It 'should provide prison officers with the skills they require for their role, including inter-personal communication skills and good prison management, and the essential values of their profession, including respect for the dignity and non-discrimination of all people in the prison'.<sup>153</sup>

However, also key is that the 'conditions of service for prison officers need to "enable them and their families to have a decent standard of living, given the risks, responsibilities and stressful situations inherent in their work, and the technical capacity their profession demands"'. The salary level and other conditions of service should seek to provide prison officers with a standing in the community that reflects the important contribution they make to society'.<sup>154</sup>

For more on prison staff, see PRI and APT's factsheet *Staff working conditions* at <http://www.penalreform.org/resource/detention-monitoring-tool-factsheet-staff-working-conditions/>.

## Rising costs and rational use of state resources

With growing prison populations in many countries, the financial cost of life imprisonment is increasing. In some states, life imprisonment costs less than the death penalty,\* but maintaining prisoners for life still requires more resources than releasing them after they have served the term necessary for their rehabilitation. Life and long-term prisoners pose significant financial challenges in relation to healthcare provision, rehabilitation programmes and other social services, and construction of additional prison facilities due to increase of the prison population.

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 training and prison management schemes may not work to rehabilitate the prisoners or meet their special needs.

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

\* 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 USA 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 that need to be met at the various trials, including hearing, sentence, appeals and clemency processes, as well as any procedures at the regional or international level that a defendant may use. See, for example, Philip Cook, 'Potential Savings from Abolition of the Death Penalty in North Carolina' in *American Law and Economics Review* Vol. 11, No. 2, 2009, pp. 498-529.

### Resources at the national level

Overcrowding and 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 was 3,200 in December 2013,<sup>155</sup> more than five times the capacity. The situation creates significant challenges for prison infrastructure and resources, including the availability of floor space for accommodation, lack of beds and clothing, insufficient ventilation, food, sanitation facilities and health services. 80 per cent of prisoners have no appropriate bedding and although each prisoner is entitled to two uniforms, the resources available are not sufficient to provide that. Tuberculosis and other diseases are widespread, and tuberculosis isolation facilities were constructed at Luzira and Kirinya prisons. Prisoners with HIV are provided with an enhanced diet, though there is inadequate supply of anti-retroviral drugs for prisoners with HIV/AIDS.<sup>156</sup>

# 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 distant prisons, under particularly isolated conditions and hence at increased risk of torture and ill-treatment. The length and conditions of imprisonment may also by themselves amount to torture or cruel, inhuman or degrading treatment or punishment, separate from whether they facilitate additional forms of ill-treatment.

The effect of life and long-term sentences on the attitude and behaviour of staff also create a heightened need for independent oversight and monitoring of prison facilities, including the conditions in which offenders are held and the way they are treated. Monitoring increases states' ability to identify systemic problems, to stop and prevent torture, ill-treatment and other human rights violations.

### Optional Protocol to the 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 76 states are party to the Protocol, and an additional 19 states are signatories.<sup>157</sup>

The Optional Protocol established a double-tiered system of torture prevention through international and national monitoring mechanisms: firstly by establishing an international Subcommittee on the Prevention of Torture (SPT); and secondly by obliging each state party to set up an independent National Preventive Mechanism (NPM).

## Mandate of the SPT

The SPT is composed of 25 independent and impartial members\* with relevant professional experience, serving in their individual capacities, to inspect and monitor places of detention in all states that are party to OPCAT.

The SPT is permitted to visit any place of deprivation of liberty (including prisons, police stations, immigration detention facilities and psychiatric detention facilities), unannounced, with the freedom to examine conditions of individuals' daily lives in places of detention and to speak to any detainee in private, without the presence of prison or other staff or government representatives. Members also talk with 'government officials, custodial staff, lawyers, doctors, etc, and can recommend immediate changes'<sup>158</sup> (recommendations are also made for non-immediate changes). Their work is governed by confidentiality and they do not give out names or details, nor may those assisting the SPT 'be subject to sanctions or reprisals for having provided information to the SPT'.<sup>159</sup>

To date, visits by the SPT have examined a state's entire prison and detention regime, with life or long-term imprisonment being only part of this. Concerns raised reflect the issues described earlier in this publication; they include 'the inhuman conditions of lifers held in former death row cells'<sup>160</sup> that have no access to natural light and ventilation; long imprisonment (including in unsuitable remand centres) for minor drug offences and 'resulting overcrowded conditions';<sup>161</sup> much stricter visiting and outdoor exercise regimes than are in place for other categories of prisoner, imposed due to 'an automatic assumption on the part of prison staff that all life prisoners were extremely dangerous';<sup>162</sup> and inadequate or non-existent mental health provision for those with long-term psychiatric conditions.<sup>163</sup>

## National Preventive Mechanisms

States who ratify OPCAT are required to establish one or several National Preventive Mechanisms (NPMs), mandated to undertake unannounced visits of any place of deprivation of liberty, make recommendations to authorities to strengthen the protection against torture and ill treatment, and to comment on existing or proposed legislation. In line with OPCAT, NPMs require functional independence as well as financial and operational autonomy. Their mandate and powers should be enshrined in law and needs to be in line with OPCAT, including a visiting mandate extending to all places of deprivation of liberty.<sup>164</sup>

\* The 25 members of the SPT as of January 2015 were nominated by the following states: Argentina, Armenia, Brazil, Costa Rica, Croatia, Estonia, France, Germany, Guatemala, Lebanon, Maldives, Mauritius, Moldova, New Zealand, Norway, Peru, Philippines, Serbia, Spain, Switzerland, The Former Yugoslav Republic of Macedonia, Togo, Tunisia, UK and Uruguay. Information from: 'Membership', *OHCHR website*, accessed 17 January 2015 at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Membership.aspx>.

The SPT has set out guidelines to add further clarity on the establishment and operation of NPMs. It also conducts advisory visits to OPCAT states focused on the establishment and proper working of NPMs. The SPT cooperates with NPMs once established, making itself available for ongoing dialogue and working in collaboration with the NPMs in order to increase the effectiveness of monitoring of all places of detention.

Many states have chosen to designate existing national mechanisms as their NPM, including Ombudspersons' offices and National Human Rights Institutions (NHRI). To date, 60 states have designated their NPM.<sup>165</sup> Some have provided specific recommendations related to life or long-term prisoners. The UK prisons inspectorate (one of the bodies designated as the UK NPM), for instance, focused in a 2013 report on the importance of ensuring that life or long-term prisoners are helped during their sentence to prepare for rehabilitation, including by periods of temporary release and involving the family of the prisoner.<sup>166</sup>

## 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. More recently, various UN standards have emphasised the importance of external, independent monitoring mechanisms and different world regions have set up preventive monitoring bodies.

Both the 1955 UN Standard Minimum Rules for the Treatment of Prisoners (in Rule 55)\* and the 1988 UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (in Principle 29)† make provision for prison inspection.

\* 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.*

† Principle 29:

*(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 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.*

The first body set up by an intergovernmental organisation specifically to carry out visits to places of detention as a measure to prevent torture and other ill-treatment was the European Committee for the Prevention of Torture (CPT), set up under the Council of Europe's European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989. This was followed in 1996 by the Special Rapporteur on Prisons and Conditions of Detention in Africa, established under the African Commission on Human and Peoples' Rights<sup>167</sup> and in 2004 by the Special Rapporteur on the Rights of Persons Deprived of Liberty within the Inter-American Commission on Human Rights.<sup>168</sup>

The mandates of these bodies vary slightly, but all are empowered to examine the state of prisons and other places of detention and make recommendations with a view to improving them (in the CPT's case, specifically to improve prisoners' protection from 'torture and from inhuman or degrading treatment of punishment'<sup>169</sup>). Within the European system, 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.

In relation to life or long-term prisoners, the different bodies have made various recommendations, usually as part of a wider inspection of a country's prison system. These can include analysis of trends or sentencing policies, such as the swiftly growing use of long-term imprisonment in South Africa<sup>170</sup> or the inability of life sentenced prisoners, among others, to receive reductions in sentence in Namibia.<sup>171</sup> It can feature discussion of the problems of particular prison regimes: '[those] serving long-term sentences should have access to a wide range of varied and satisfying activities (work which should preferably contribute towards professional training, education, sports, recreational and joint activities, permission to go out in order to develop family ties)',<sup>172</sup> And they can, when they have been established for a reasonably long time, make repeat visits to member states to see whether recommendations are being implemented. In 2012, for example, the CPT criticised Armenia for failing to improve the physical environment and prison regime for life sentenced prisoners at one prison and stated that 'virtually none of the recommendations made after previous visits as regards the detention of lifers have been implemented'.<sup>173</sup>

## 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.*

SMR, Rules 58 & 59

### 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 and 65). For women prisoners, rehabilitation should take into account their gender-specific needs (Bangkok Rules, Rule 46). 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 or 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.

\* For more guidance on the various structures and approaches that may be useful in preventing crime, see the UN Guidelines for the Prevention of Crime and the UNODC's Handbook on the crime prevention guidelines: Making them work.

The components of these programmes will depend on the individual needs, skills 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*<sup>174</sup> 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 Europe on 'the management by prison administrators of life sentence and other long-term prisoners'<sup>175</sup> also contains guidance on life and long-term sentence management. It includes the following key principles:

#### 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.

#### Normalisation

Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community.

#### Responsibility

Prisoners should be given opportunities to exercise personal responsibility in daily prison life.

#### Security and safety

A clear distinction should be made between any risks posed by life-sentenced and other long-term prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison.

### Non-segregation

Life sentence and other long-term prisoners should not be segregated from other prisoners on the sole ground of their sentence.

### 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.<sup>176</sup>

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.

Furthermore, in 2014 the Council of Europe adopted a Recommendation on Dangerous Offenders, detailing ways of managing dangerous offenders in a human rights-compliant manner.<sup>177</sup>

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

- Educational programmes. These should be aimed at developing the whole person, taking account of the prisoner's 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 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 exercises, receiving extra telephone time, being allowed to keep additional possessions in their accommodation, being allowed to wear their own 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 non-existent. 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 currently 2,500 prisoners undergoing training in carpentry and 500 in tailoring at Luzira Upper Prison.<sup>178</sup>

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. In Norway, the government has established a reintegration guarantee, which includes (where relevant) ‘an offer of employment, education, suitable housing accommodation, some type of income, medical services, addiction treatment services and debt counseling. Relevant services will be identified and included in such a way as to optimize their effect by reintegration coordinators employed by the correctional services’.<sup>179</sup>

### **Continued monitoring after release**

Where life prisoners have the possibility of being released, they will often be subject to close monitoring by the relevant official agency, as a condition of their sentence and/or following an individualised assessment. The released prisoner may be required 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.<sup>180</sup> Alternatively, and also on the basis of individualised assessment, the oversight may become nominal.



PRI Region	Country	Alternative responses to the most serious crimes
MIDDLE EAST AND NORTH AFRICA	<b>Algeria</b>	Information not available.
	<b>Bahrain</b>	No maximum limit. Eligibility for parole is conditional on the behaviour of the prisoner.
	<b>Egypt</b>	No maximum sentence. Minimum of 20 years need to be served before eligibility for requesting parole.
	<b>Jordan</b>	30 years.
	<b>Lebanon</b>	No maximum sentence.
	<b>Morocco</b>	No maximum sentence. Eligibility for parole is conditional on the behaviour of the prisoner. In some cases, amnesties can be provided by the state.
	<b>Tunisia</b>	No maximum sentence. Eligibility for parole is conditional on the behaviour of the prisoner.
	<b>Yemen</b>	The term 'life imprisonment' does not exist in Yemeni law; however, some crimes like drugs trafficking have a maximum sentence of 25 years.
SOUTH CAUCASUS	<b>Armenia</b>	'Life' means a life sentence without the possibility of parole (Article 60 of the Republic of Armenia Criminal Code).
	<b>Azerbaijan</b>	Whole life and long-term imprisonment are available. A pardon can be sought after 25 years imprisonment for lifers; this may result in release, no change or a replacement of the life sentence with a fixed sentence of up to 15 years' imprisonment.
	<b>Georgia</b>	'Life' means 35 years. A pardon can be requested after 15 years and early release after serving 25 years.

OPCAT status	NPM
–	Not established.
Acceded: 22 December 2008*	Not established.
Ratified: 24 November 2014	Not established.
Ratified 29 June 2011**	National Authority for the Prevention of Torture.
–	Not established.
Acceded: 14 September 2006†	Human Rights Defending Office.
Ratified: 28 January 2009	Commissioner for Human Rights.
Acceded: 9 August 2005	Public Defender.

\* Additionally there is an SPT member from Lebanon.

\*\*Additionally there is an SPT member from Tunisia.

† Additionally there is an SPT member from Armenia.

# 12 steps toward alternative sanctions to the death penalty

**01 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.

**02 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 issues including 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.

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

**04 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.

**05 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.

**06 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.

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

**08 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.

**09 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. Solitary confinement should in all cases only be imposed as a last resort and for as short a period of time as possible.

**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.

# Endnotes

- 1 Amnesty International, *Death sentences and executions 2013*, UK, 2014 (*Death sentences and executions 2013*), pp. 54-55.
- 2 *Death sentences and executions 2013*, pp. 54-55.
- 3 United Nations, 'United Nations Treaty Collection', *UN website*, 17 July 2014, (accessed 17 July 2014 at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-12&chapter=4&lang=en)); Department of International Law, 'Signatories and Ratifications', *Organization of American States website*, undated (accessed 17 July 2014 at <http://www.oas.org/juridico/english/signs/a-53.html>); Council of Europe, 'Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty', *Council of Europe website*, 17 July 2014 (accessed 17 July 2014 at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=114&CM=&DF=&CL=ENG>).
- 4 *Death sentences and executions 2013*, p. 5.
- 5 Thomas Hammarberg, 'Time to re-examine the use of life sentences', *Council of Europe website*, 12 November 2007, accessed 19 January 2015 at <http://edu.dhr.org/01/file/Dep.%20Competences/COE/HRCommissioner%20EN1%20Hammerberg.txt>.
- 6 UN Crime Prevention and Criminal Justice Branch, *Life Imprisonment*, 1994, ST/CSDHA/24 (*Life Imprisonment 1994*).
- 7 Daniel Nagin and Greg Pogarsky, 'Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence' in *Criminology*, Vol 39, No. 4, 2001, quoted in Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*, The Sentencing Project, Washington D. C., November 2010, p. 4.
- 8 See for example, Penal Reform International, *The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan*, Penal Reform International, UK, February 2012, pp. 16-17, 32-33.
- 9 *Graham v Florida* 560 US \_\_ (2010) Docket No. 08-7412; *Miller v Alabama* 567 US \_\_ (2012) Docket No. 10-9646.
- 10 *Vinter v the United Kingdom* [2012] ECHR 61; *László Magyar v Hungary* [2014] ECHR 491; *Babar Ahmed and others v the United Kingdom* [2012] ECHR 609.
- 11 Mary Rogan, 'Out of balance: disproportionality in sentencing', *Penal Reform International website*, 25 August 2014, accessed 12 November 2014 at <http://www.penalreform.org/blog/balance-disproportionality-sentencing/>.
- 12 Quoted in Dirk van Zyl Smit, 'Even life prisoners should have hope and a chance to change', *The Guardian website*, 3 January 2014, accessed 12 November 2014 at <http://www.theguardian.com/commentisfree/2014/jan/03/life-prisoners-david-cameron-100-year-sentence>.
- 13 Andrew Coyle, 'Replacing the Death Penalty: the Vexed Issue of Alternative Sanctions', in Peter Hodgkinson and William Schabas (eds.), *Capital punishment: strategies for abolition*, Cambridge University Press, Cambridge, 2004 (*Replacing the death penalty*), pp. 92-115.
- 14 See for example, M. Mauer et al., *The Meaning of "Life": Long Prison Sentences in Context*, The Sentencing Project, 2004 (*The Meaning of "Life"*); and N. Newcomen, 'Managing the Penal Consequences of Replacing the Death Penalty in Europe' in Browne, N. and Kandelia, S. (eds.), *Centre for Capital Punishment Studies occasional paper series three: managing effective alternatives to capital punishment*, Centre for Capital Punishment Studies, UK, 2005.
- 15 Criminal Code of Georgia (adopted 22 July 1999), amended 29 December 2006.
- 16 Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary (1st edition)*, N.P. Engel, 1993.
- 17 R. Sapsford, 'Life-sentence prisoners: psychological changes during sentence', *British Journal of Criminology*, Vol. 18, No. 2, 1978, pp.128-145, cited in *Life Imprisonment 1994*.
- 18 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 110(3).
- 19 Charles Hanson, 'Life Sentences in Europe', *Inside Time website*, 17 December 2014, accessed 19 January 2015 at <http://insidetime.org/life-sentences-in-europe-5/>.
- 20 Canada Department of Justice, 'A Crime Victim's Guide to the Criminal Justice System: Life Sentences and Section 745.6 of the Criminal Code', *Department of Justice website*, 30 April 2013, accessed 22 August 2014 at <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/guide/secm.html>.
- 21 Unnamed, 'AS 12.55.125. Sentences of Imprisonment For Felonies.', *Alaska Legal Resource Center website*, 27 August 2011, accessed 19 November 2014 at <http://touchngo.com/iglcnt/akstats/Statutes/Title12/Chapter55/Section125.htm>.
- 22 Unnamed, '2011 Arizona Revised Statutes Title 13 Criminal Code 13-706 Serious, violent or aggravated offenders; sentencing; life imprisonment; definitions', *Justia US Law website*, undated, accessed 19 November 2014 at <http://law.justia.com/codes/arizona/2011/title13/section13-706>.
- 23 Unnamed, 'Penal Code Section 187-199', *Official California Legislative Information website*, undated, accessed 19 November 2014 at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=187-199>.
- 24 Unnamed, '2005 Connecticut Code – Sec. 53a-35b. "Life imprisonment" defined', *Justia US Law website*, undated, accessed 19 November 2014 at <http://law.justia.com/codes/connecticut/2005/title53a/sec53a-35b.html>.
- 25 Unnamed, 'Indiana Death Penalty Laws', *The Clark County Prosecuting Attorney website*, undated, accessed 19 November 2014 at <http://www.clarkprosecutor.org/html/death/dplaw.htm>.
- 26 Unnamed, '2005 Maine Code – §1251 – Imprisonment for murder', *Justia US Law website*, undated, accessed 19 November 2014 at <http://law.justia.com/codes/maine/2005/title17-ach0sec0/title17-asec1251.html>.
- 27 Unnamed, '2005 Vermont Code – § 2303. – Penalties for first and second degree murder', *Justia US Law website*, undated, accessed 19 November 2014 at <http://law.justia.com/codes/vermont/2005/title13/section02303.html>.
- 28 Information from Catherine Appleton, University of Nottingham; additional information from unnamed, 'Preventive detention', *Ila fengsel og forvaringsanstalt website*, August 2012, accessed 19 November 2014 at [http://www.ilafengsel.no/preventive\\_detention.html](http://www.ilafengsel.no/preventive_detention.html).
- 29 *M v Germany* [2009] ECHR 2071.
- 30 Daphne Grathwohl, 'German court rules preventive detention unconstitutional', *dw.de website*, 4 May 2011, accessed 12 November 2014 at <http://www.dw.de/german-court-rules-preventive-detention-unconstitutional/a-15046630>.
- 31 *James, Wells and Lee v The United Kingdom* [2010] ECHR 2219.
- 32 *R (Haney, Kaiyam, Massey and Robinson) v Secretary of State for Justice* [2014] UKSC 66.
- 33 *Replacing the Death Penalty*, p. 98.
- 34 Kenya Prisons Paralegal Project and Legal Resource Foundation Kenya, personal communication. For more, see Penal Reform International, *Penal Reform International Briefing No. 1: Alternatives to the death penalty: the problems with life imprisonment*, PRI, UK, 2007, p. 2 (PRI Briefing No. 1).
- 35 Correctional Services Act 1998, Section 73(6)(a).
- 36 Information regarding Uganda from Foundation for Human Rights Initiative.
- 37 Sally Whitney, 'Anatomy of a Failure' in *Best's Review*, September 2000, p. 102.
- 38 Christina D. Carmichael, *Felony Sentencing and Probation in Wisconsin*, Wisconsin Legislative Fiscal Bureau, January 2003, p. 3.
- 39 *Sentencing for Life*.
- 40 *The Meaning of "Life"*, p. 9.
- 41 Ashley Nellis, *Life goes on: The historic rise in life sentences in America*, The Sentencing Project, Washington, D.C., 2013, (*Life goes on*) p. 5.
- 42 *Life goes on*, p. 11.
- 43 C. Giffard and L. Muntingh, *The effect of sentencing on the size of the South African prison population*, Open Society Foundation for South Africa, South Africa, 2006, (*The effect of sentencing on the South African prison population*) p. 10.
- 44 *The effect of sentencing on the South African prison population*, p. 1.
- 45 Information from Georgie Benford, *Life imprisonment worldwide: principles and practice* project, University of Nottingham, and from Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2013*, UK, Autumn 2013, (*Bromley Briefings Autumn 2013*) p. 21.
- 46 Information regarding Uganda from Foundation for Human Rights Initiative.
- 47 *The Meaning of "Life"*, p. 3.
- 48 Information obtained from UK Ministry of Justice by Jonathan Bild, Freedom of Information Request 89346, 7 April 2014.
- 49 BBC News, 'Drop in Lifers released on parole', *BBC News Online*, 6 November 2006, accessed 11 September 2014 at <http://news.bbc.co.uk/1/hi/uk/6119576.stm>.
- 50 The Parole Board for England and Wales, *Parole Board Annual Report Statistics 2009/10*, The Parole Board for England and Wales, UK, 2010.
- 51 Information from Georgie Benford, *Life imprisonment worldwide: principles and practice* project, University of Nottingham.
- 52 *The effect of sentencing on the South African prison population*, p. 28.
- 53 Dirk van Zyl Smit, 'Outlawing Irreducible Life Sentences: Europe on the Brink?' in *Federal Sentencing Reporter*, Vol. 23, No. 1, p. 41 (*Outlawing Irreducible Life Sentences*).
- 54 Dirk van Zyl Smit, 'Is Life Imprisonment Constitutional? – The German Experience' in *Public Law*, 1992, pp. 263-278, cited in *Outlawing Irreducible Life Sentences*, p. 40.
- 55 *Kafkaris v Cyprus* [2008] ECHR 143.
- 56 *Outlawing Irreducible Life Sentences*, p. 43.
- 57 *Vinter v UK* (n 10), para 120.

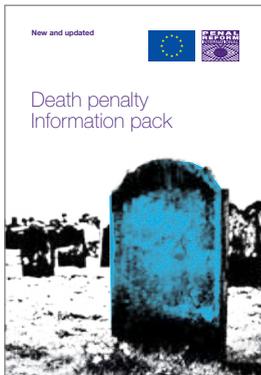
- 58 Registrar of the Court, *Press Release: Hungary should reform its system for reviewing whole life sentences*, European Court of Human Rights, Strasbourg, 20 May 2014 (*Hungary should reform its system for reviewing whole life sentences*).
- 59 *Hungary should reform its system for reviewing whole life sentences*.
- 60 *The Meaning of "Life"*, p. 18.
- 61 American Civil Liberties Union, *A Living Death: Life without Parole for Nonviolent Offenses*, ACLU Foundation, USA, 2013, p. 2.
- 62 American Civil Liberties Union, *A Living Death: Life without Parole for Nonviolent Offenses*, ACLU Foundation, USA, 2013, p. 2.
- 63 Ashley Nellis and Ryan S. King, *No Exit: The Expanding Use of Life Sentences in America*, The Sentencing Project, USA, 2009, p. 30.
- 64 *Rummel v Estelle*, 445 U.S. 263 (1980).
- 65 *Lockyer v Andrade*, 538 U.S. 63 (2003).
- 66 MTI, 'Stricter cumulative provisions in three strikes law unconstitutional, says top court', *Politics.hu website*, 8 July 2014, accessed 27 August 2014 at <http://www.politics.hu/20140708/cumulative-provisions-in-three-strikes-law-unconstitutional-says-top-court/>.
- 67 *Outlawing Irreducible Life Sentences*, p. 40.
- 68 Catherine Appleton and Bent Grøver, 'The pros and cons of life without parole' in *British Journal of Criminology*, Vol. 47, 2007, p. 604 (*The pros and cons of life without parole*).
- 69 *The Meaning of "Life"*, p. 1.
- 70 H. Haines, *Arguments against Capital Punishment: The Anti-Death Penalty Movement in America 1972-1994*, Oxford University Press, UK, 1996.
- 71 See for example, A. Jones and A. E. Wainaina-Woźna (eds.), *Children of Prisoners: Interventions and mitigations to strengthen mental health*, University of Huddersfield, UK, 2013.
- 72 D. Blair, 'A Matter of Life and Death: Why Life Without Parole should be a Sentencing Option in Texas' in *American Journal of Criminal Law*, Vol 22, pp. 191-214, p. 213.
- 73 *The pros and cons of life without parole*, p. 604.
- 74 Simon Hattenstone, 'Letters from lifers', *The Guardian website*, 30 October 2010, accessed 11 September 2014 at <http://www.guardian.co.uk/society/2010/oct/30/whole-life-sentences-letters-prison> (*Letters from lifers*).
- 75 Interview with a whole-life prisoner from England and Wales, in *Letters from lifers*.
- 76 *The pros and cons of life without parole*, p. 601.
- 77 BBC News, 'Court of Appeal upholds principle of whole-life prison terms', *BBC News Online*, 18 February 2014, accessed 14 July 2014 at <http://www.bbc.co.uk/news/uk-26236225>.
- 78 *R v Secretary of State for the Home Department, ex parte Hindley* [2000] UKHL 21, [2000] 2 All ER 385.
- 79 *Schick v Reed* 419 US 256, 267 (1974).
- 80 *The pros and cons of life without parole*, p. 600.
- 81 *Life goes on*, p. 5.
- 82 *Life goes on*, p. 6.
- 83 Solomon Moore, 'Number of Life Terms Hits Record', *New York Times*, 22 July 2009.
- 84 Peter Hodgkinson, 'Alternatives to the death penalty – the United Kingdom Experience in Council of Europe' in *Death Penalty: beyond abolition*, Council of Europe, Strasbourg, 2004 (*Alternatives to the death penalty – the UK experience in the Council of Europe*).
- 85 Dirk van Zyl Smit, 'Life Imprisonment: Recent Issues in National and International Law' in *International Journal on Law and Psychiatry*, Vol. 29, 2006, pp. 405-421, p. 410.
- 86 45 BVerfGE 187 (1977).
- 87 Decision no. 93-334 DC 20 of the Conseil Constitutionnel (January 1994).
- 88 Corte cost. sentenza, nr 274 *Foro Italia*, 1, 2333 (27 September 1987).
- 89 *S. v Tcoeib* 1996 (1) S.A.C.R. 390 (NmS).
- 90 Dirk van Zyl Smit, *Taking life imprisonment seriously: in national and international law*, Kluwer Law International, The Hague, 2002, p. 213.
- 91 *Nikosi v State* [2002] JOL 10209 (SCA).
- 92 *S v Dodo* [2001] ZACC 16 [38].
- 93 Council of Europe, *Treatment of Long-Term Prisoners*, Strasbourg, 1977, p. 22.
- 94 Council of Europe, *Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to Azerbaijan (3 to 7 September 2007)*, 20 February 2008, para. 57.
- 95 Council of Europe Committee of Ministers, 855th Meeting of the Ministers' Deputies, *Recommendation (2003) 23 of the Committee of Ministers of the Council of Europe*, 9 October 2003, paras. 3-8.
- 96 *Sawoniuk v the United Kingdom* [2001] ECHR 895.
- 97 *Kafkaris v Cyprus* (no 54).
- 98 Dirk van Zyl Smit, Pete Weatherby and Simon Creighton, 'Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What Is to Be Done?' in *Human Rights Law Review*, Vol. 14, No. 1, pp. 59-84.
- 99 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *11th General Report on the CPT's activities*, Strasbourg, 3 September 2001, para. 33.
- 100 Andrew Coyle, 'Management of Long-term and Life-Sentenced Prisoners Internationally in the context of a Human Rights Strategy' in N. Browne and S. Kandel (eds.) *Centre for Capital Punishment Studies occasional paper series three: managing effective alternatives to capital punishment*, Centre for Capital Punishment Studies, London, 2005, p. 44 (*Management of Long-term and Life-Sentenced Prisoners*).
- 101 UN Human Rights Committee, *General Comment 21*, 13 March 1993, para. 4.
- 102 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.
- 103 See for example, *Management of Long-term and Life-Sentenced Prisoners or Alternatives to the death penalty – the UK experience in the Council of Europe*.
- 104 *Life Imprisonment in the South Caucasus*, p. 75.
- 105 UN Human Rights Council, 19th Session, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez: Addendum: Mission to Kyrgyzstan*, 21 February 2012, A/HRC/19/61/Add.2, para. 69.
- 106 Information from PRI Eastern Europe office.
- 107 *PRI Briefing No. 1*, p. 6.
- 108 UN Human Rights Council, 22nd Session, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez: Addendum: Mission to Morocco*, 30 April 2013, A/HRC/22/53/Add.2, para. 52.
- 109 UN Human Rights Council, 22nd Session, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez: Addendum: Mission to Morocco*, 30 April 2013, A/HRC/22/53/Add.2, para. 52.
- 110 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.
- 111 UN General Assembly, 63rd Session, *Interim report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008, A/63/175, see for example paras. 47, 60 and 61.
- 112 Adopted by UN GA resolution 45/111 (14 December 1990).
- 113 World Health Organization Regional Office for Europe, *Fact Sheet: Prison and Health*, 2014.
- 114 World Health Organization Regional Office for Europe, *The Madrid Recommendation: Health protection in prisons as an essential part of public health*, 2010.
- 115 UN General Assembly, 68th Session, *Interim report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment*, 9 August 2013, A/68/295, para. 61.
- 116 Amnesty International, *USA: After decades in isolation, time to release Albert Woodfox*, Amnesty International, UK, 17 April 2014.
- 117 Ed Pilkington, 'America's longest-serving prisoner in solitary has conviction quashed', *The Guardian website*, 21 November 2014, accessed 24 November 2014 at <http://www.theguardian.com/us-news/2014/nov/21/albert-woodfox-angola-three-solitary-confinement-42-years-conviction-overturned>.
- 118 Emily Lane, 'Louisiana AG "committed" to keeping Angola 3 member Albert Woodfox imprisoned despite court ruling', *New Orleans Times-Picayune/Nola.com website*, 22 November 2014, accessed 7 January 2015 at [http://www.nola.com/crime/baton-rouge/index.ssf/2014/11/louisiana\\_ag\\_committed\\_to\\_keep.html](http://www.nola.com/crime/baton-rouge/index.ssf/2014/11/louisiana_ag_committed_to_keep.html).
- 119 Unnamed, *Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners review: Summary*, 20 November 2012, accessed 13 November 2014 at <http://www.penalreform.org/resource/outcomes-independent-experts-meeting-review-standard-minimum-rules/>.
- 120 UN General Assembly, 63rd Session, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008, A/63/175, paras. 82-83.
- 121 UN General Assembly, 66th Session, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011, A/66/268, para. 79.
- 122 UN Human Rights Committee, 70th Session, *Concluding Observations of the Human Rights Committee: Denmark*, 15 November 2000, CCPR/CO/70/DNK, para. 12.
- 123 UN Human Rights Committee, *General Comment 21*, 13 March 1993, para. 4.
- 124 *Jorgov v Bulgaria* (2004) ECHR 113 (2005) 40 EHRR 7, ECHR 185, para. 84.
- 125 European Court of Human Rights, *Press release: The extradition of an individual to a State in which he or she is liable to an irreducible life sentence is contrary to the Convention*, 4 September 2014, p. 4.
- 126 *The Meaning of "Life"*, p. 15.
- 127 *Life Imprisonment* 1994.
- 128 UN General Assembly, 68th Session, 68/147. *Rights of the child*, 7 February 2014, A/RES/68/147, para. 49(a).
- 129 *V v United Kingdom*, [1999] ECHR 171.
- 130 Ashley Nellis, *Life goes on*, p. 11.

- 131 *The Meaning of "Life"*, p. 14.
- 132 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules'), adopted by the UN GA resolution 65/229 on 21 December 2010.
- 133 Penal Reform International and Thailand Institute of Justice, *Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)*, London, 2013, p. 49.
- 134 Arlene F. Lee, Philip M. Genty and Mimi Laver, *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents: Critical Issues*, Child Welfare League of America, Washington DC, 2005.
- 135 'Chapter 9. The Concept and the Purposes of Punishment. Types of Punishment', *The Criminal Code of the Russian Federation website*, 2000, accessed 26 September 2014 at <http://www.russian-criminal-code.com/PartI/SectionIII/Chapter9.html>.
- 136 Information from PRI South Caucasus office.
- 137 Jeffrey L. Metzner and Jamie Fellner, 'Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics' in *The Journal of the American Academy of Psychiatry and the Law*, Vol. 38, 2010, pp. 104-108.
- 138 See for example: UN Human Rights Committee, 44th Session, *General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, 1992, para. 6; UN General Assembly, 63rd Session, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008, A/63/175.
- 139 Sainsbury Centre for Mental Health, *In the dark: The mental health implications of Imprisonment for Public Protection*, Sainsbury Centre for Mental Health, London, 2008, p. 7 (*In the dark*).
- 140 *In the dark*, pp. 7-8.
- 141 *The pros and cons of life without parole*, p. 604.
- 142 Bridget Sleep, 'Old age behind bars: how can prisons adapt to the needs of increasingly elderly populations?', *Penal Reform International blog*, 25 September 2014, accessed 26 September 2014 at <http://www.penalreform.org/blog/age-bars-prisons-adapt-increasingly-elderly-populations/>.
- 143 Bridget Sleep, 'Old age behind bars: how can prisons adapt to the needs of increasingly elderly populations?', *Penal Reform International blog*, 25 September 2014, accessed 26 September 2014 at <http://www.penalreform.org/blog/age-bars-prisons-adapt-increasingly-elderly-populations/>.
- 144 Rob Allen, *Global Prison Trends 2015*, Penal Reform International, forthcoming.
- 145 Bridget Sleep, 'Old age behind bars: how can prisons adapt to the needs of increasingly elderly populations?', *Penal Reform International blog*, 25 September 2014, accessed 26 September 2014 at <http://www.penalreform.org/blog/age-bars-prisons-adapt-increasingly-elderly-populations/>.
- 146 Tomris Atabay, *Handbook on Prisoners with special needs*, UN Office on Drugs and Crime, New York, 2009, p. 124.
- 147 *Life Imprisonment in the South Caucasus*, p. 52.
- 148 Penal Reform International, *The abolition of the death penalty and its alternative sanction in Eastern Europe: Belarus, Russia and Ukraine*, Penal Reform International, UK, 2012, p. 30.
- 149 *Life Imprisonment in the South Caucasus*, p. 109.
- 150 Zhang Yan, 'Foreigners using free legal aid services on the rise', *China Daily website*, 2 September 2014, accessed 11 December 2014 at [http://www.chinadaily.com.cn/china/2014-09/02/content\\_18527144.htm](http://www.chinadaily.com.cn/china/2014-09/02/content_18527144.htm).
- 151 European Court of Human Rights, *Trabelsi v Belgium*, (application no. 14010), Press release: *The extradition of an individual to a State in which he or she is liable to an irreducible life sentence is contrary to the Convention*, 4 September 2014.
- 152 Adopted by UN GA resolution 34/169 (17 December 1979).
- 153 Penal Reform International and Association for the Prevention of Torture, *Staff working conditions: Addressing risk factors to prevent torture and ill-treatment*, Penal Reform International, London, 2013, p. 5.
- 154 Penal Reform International and Association for the Prevention of Torture, *Staff working conditions: Addressing risk factors to prevent torture and ill-treatment*, Penal Reform International, London, 2013, p. 6.
- 155 Admin, 'Prisons Boss Explains Proposed Luzira Prison Land Give Away', *Red Pepper website*, 9 December 2013, accessed 20 November 2014 at <http://www.redpepper.co.ug/prisons-boss-explains-proposed-luzira-prison-land-give-away/>.
- 156 Information regarding Uganda from Foundation for Human Rights Initiative.
- 157 APT, 'OPCAT database', *APT website*, 2014, accessed 19 January 2015 at <http://www.apr.ch/en/opcat-database/>.
- 158 'Factfile on the SPT', *OHCHR website*, 2014, accessed 16 July 2014 at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Factfile.aspx>.
- 159 'Factfile on the SPT', *OHCHR website*, 2014, accessed 16 July 2014 at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Factfile.aspx>.
- 160 Subcommittee on the Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan*, 28 February 2014, CAT/OP/KGZ/1, p. 17.
- 161 Subcommittee on the Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, 26 February 2009, CAT/OP/MDV/1, paras. 214, 220.
- 162 Subcommittee on the Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan*, 28 February 2014, CAT/OP/KGZ/1, p. 17.
- 163 Subcommittee on the Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, 26 February 2009, CAT/OP/MDV/1, para. 237.
- 164 See UN Optional Protocol to the Convention Against Torture, Articles 17-23, and Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 12th Session, *Guidelines on national preventive mechanisms*, 9 December 2010, CAT/OP/12/5.
- 165 APT, 'List of Designated NPM by regions & countries', *Association for the Prevention of Torture website*, 2014, accessed 19 January 2015 at <http://www.apr.ch/en/list-of-designated-npm-by-regions-and-countries/>.
- 166 HMI Probation and HMI Prisons, *A joint inspection of Life sentence prisoners: A Joint Inspection by HMI Probation and HMI Prisons*, September 2013, p. 9.
- 167 African Commission on Human and Peoples' Rights, 'Special Rapporteur on Prisons and Conditions of Detention', *African Commission on Human and Peoples' Rights website*, 2014, accessed 1 September 2014 at <http://www.achpr.org/mechanisms/prisons-and-conditions-of-detention/>.
- 168 Organization of American States, 'Rights of Persons Deprived of Liberty', *Organization of American States website*, 2011, accessed 1 September 2014 at <http://www.oas.org/en/iACHR/pdl/default.asp>.
- 169 Article 1, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).
- 170 African Commission on Human and Peoples' Rights, 37th Ordinary Session, *Prison in South Africa: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, 17 April-11 May 2005, p. 40.
- 171 African Commission on Human and Peoples' Rights, 33rd Ordinary Session, *Prison in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, 15-29 May 2003, p. 44.
- 172 African Commission on Human and Peoples' Rights, 33rd Ordinary Session, *Prison in Namibia: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa*, 15-29 May 2003, p. 30.
- 173 'New anti-torture committee report on Armenia', *Human Rights Europe website*, 3 October 2012, accessed 30 September 2014 at <http://www.humanrightseurope.org/2012/10/new-anti-torture-committee-report-on-armenia/>.
- 174 *Life Imprisonment* 1994.
- 175 Adopted by the Committee of Ministers of the Council of Europe (9 October 2003).
- 176 Council of Europe Committee of Ministers, 855th Meeting of the Ministers' Deputies, *Recommendation (2003) 23 of the Committee of Ministers of the Council of Europe*, 9 October 2003, paras. 3-8.
- 177 Council of Europe Committee of Ministers, 1192nd Meeting of the Ministers' Deputies, *Recommendation CM/Rec(2014)3*, 19 February 2014.
- 178 Information regarding Uganda from Foundation for Human Rights Initiative.
- 179 Kriminalomsorgen, *Fact sheet on the correctional services in Norway*, undated, accessed 19 September 2014 at [http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCMqFJAA&url=http%3A%2F%2Fkriminalomsorgen.custompublish.com%2Fgetfile.php%2F1974772\\_823.wwwbdduabd%2Ftalepunkter%2Bengelsk%2Bom%2Bnorsk%2Bkriminalomsorg%2B-%2Bno%2Bsoundbites.docx&ei=KEUcVKzIGleh7AbVxoGoBw&usg=AFQjCNGiPeQABE7\\_e6cckqffsIGWgNDsdlg&sig2=nqcW9sJvdCaAm2JlnueUeA&bv=mv.75774317.d.ZGU](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCMqFJAA&url=http%3A%2F%2Fkriminalomsorgen.custompublish.com%2Fgetfile.php%2F1974772_823.wwwbdduabd%2Ftalepunkter%2Bengelsk%2Bom%2Bnorsk%2Bkriminalomsorg%2B-%2Bno%2Bsoundbites.docx&ei=KEUcVKzIGleh7AbVxoGoBw&usg=AFQjCNGiPeQABE7_e6cckqffsIGWgNDsdlg&sig2=nqcW9sJvdCaAm2JlnueUeA&bv=mv.75774317.d.ZGU)
- 180 *Replacing the Death Penalty*, p. 95.

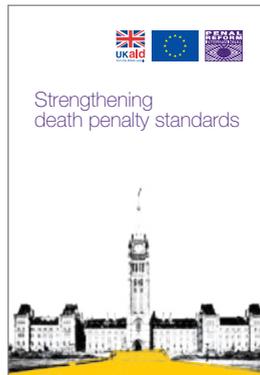


Also in this series:

## Death penalty Information pack



## Strengthening death penalty standards



For more resources on these issues, visit:  
[www.penalreform.org/resources](http://www.penalreform.org/resources)

### **Penal Reform International**

60–62 Commercial Street  
London E1 6LT  
United Kingdom

+44 (0) 20 7247 6515

[www.penalreform.org](http://www.penalreform.org)

Twitter: @PenalReformInt

ISBN 978-1-909521-36-0