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# Life imprisonment

## A policy briefing

### Introduction

Life imprisonment is a harsh sanction that is used in many parts of the world. Hundreds of thousands of people are serving life sentences, and yet it has rarely been assessed as a global phenomenon. More than 20 years ago, the United Nations (UN) published a report on life imprisonment, highlighting for the first time some of the problems and issues pertinent to life and long-term imprisonment at an international level.<sup>1</sup> There have, however, been substantial developments in penal policy and practice over recent decades.

A global trend towards the universal abolition and restriction of the death penalty has resulted in many states adopting life imprisonment as their ultimate sanction. At the same time, international human rights standards on imprisonment have developed dramatically, but these have focused largely on prison practice in general rather than the specific issue of life sentences.

This policy briefing examines life imprisonment worldwide. It draws on key findings from international research, and places them in the context of Goal 16 of the UN Sustainable Development Goals, which is 'dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all', as well as the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and other relevant standards. The briefing describes the different types, extent and practice of life imprisonment around the world.

As of 2014, there were roughly 479,000 persons serving formal life sentences around the world, compared to 261,000 in the year 2000, representing a rise of nearly 84 per cent in 14 years. This trend will persist unless penal policies and practices are changed to limit life imprisonment.

From both a human rights and a prison management perspective, life imprisonment poses concerns. In many cases, it is unnecessarily punitive, especially for non-violent crimes, and does not satisfy the principle of proportionality. Life imprisonment without parole, in particular, raises issues of cruel, inhuman and degrading punishment, and undermines the right to human dignity by taking away the prospect of rehabilitation.

This briefing calls on the UN and its member states to rethink, revise and update the guidance on the sanction of life imprisonment. It also provides recommendations for policymakers and practitioners who impose and implement life sentence regimes.

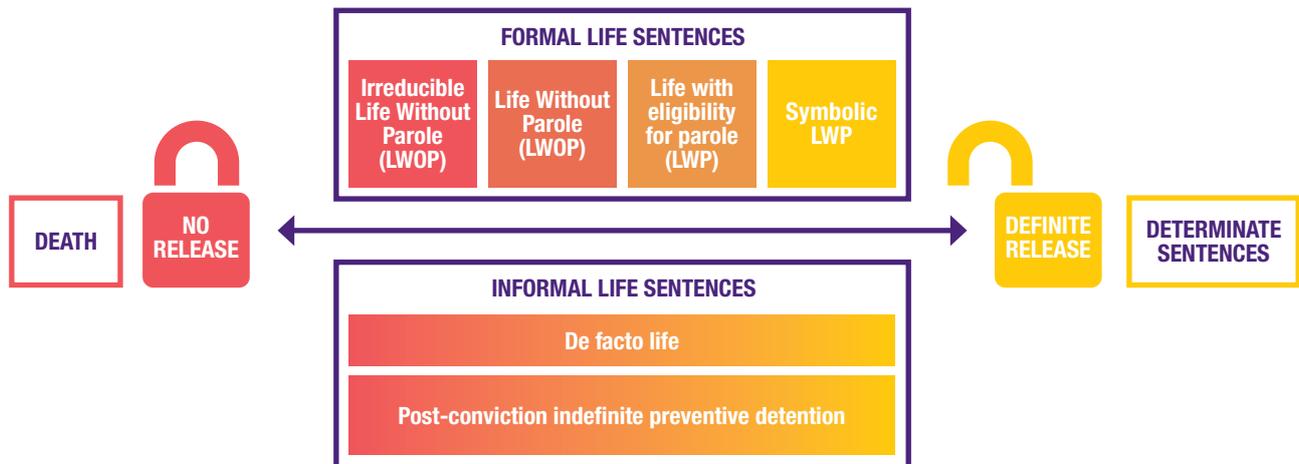
“ [Life in prison is] a slow, torturous death. Maybe it would have been better if they had just given me the electric chair and ended my life instead of a life sentence, letting me rot away in jail. It serves no purpose. It becomes a burden on everybody. ”<sup>2</sup>

### Types of life imprisonment

The term 'life imprisonment' has different meanings in different jurisdictions. In some countries, it means that life-sentenced prisoners have no right to be considered for release. In others, life-sentenced prisoners are routinely considered for release after a certain period. There are also other sentences that are not formally identified as life imprisonment, but which have the power to detain a person in prison until death.

<sup>1</sup> Much of the research that underpins this publication was carried out by Professor Dirk van Zyl Smit and Dr Catherine Appleton of the Life Imprisonment Worldwide project at the University of Nottingham. Their full findings are to be published in *Life Imprisonment: A Global Human Rights Analysis* (Harvard University Press, forthcoming). All references are to this publication except where otherwise indicated.

Figure 1: Types of life sentences



The following definition aims to encompass all types of life imprisonment: **Life imprisonment is a sentence following a criminal conviction, which gives the state the power to detain a person in prison for life, that is, until they die there.**

Within this definition, two basic types of life sentences can be identified: (1) **formal life imprisonment**, where the court explicitly imposes a sentence of imprisonment for life, and (2) **informal life imprisonment**, where the sentence imposed may not be called life imprisonment but may result in the person being detained in prison for life. Both formal and informal life imprisonment can be further divided.

Defining life imprisonment is not straightforward, but the different types of life sentences are summarised in Figure 1.

### Formal life imprisonment includes:

#### Irreducible life without parole (LWOP)

Where there is no possibility of release.

#### Life without parole (LWOP)

Where release is not routinely considered but may be granted by the executive or Head of State.

#### Life with parole (LWP)

Where release is routinely considered by a court, parole board or similar body.

#### Symbolic LWP

Where release takes place automatically after a certain period of imprisonment has been served.

### Informal life imprisonment includes:

#### De facto life

Long, fixed terms of imprisonment such as a sentence of 99 years.

#### Post-conviction indefinite preventive detention

A range of interventions that result in an individual being detained indefinitely post-conviction.

## How prevalent is life imprisonment?

The use of life imprisonment varies significantly across different countries.

- Formal life imprisonment exists in 183 out of 216 countries and territories; in 149 of these it is the most severe penalty available. It is also the most severe penalty in current international criminal courts and tribunals.
- 33 countries do not impose life imprisonment or the death penalty as the ultimate sanction.
- LWP is the most common type of life imprisonment in the world. In 144 of the 183 countries with formal life imprisonment, there is some provision for release.
- 65 countries impose LWOP sentences.

Dramatic variations in life-sentenced prison populations exist around the world. Table 1 shows the number and ratio of prisoners serving formal life imprisonment as a percentage of the total prison and national populations in selected countries in 2014.

The number of life-sentenced prisoners around the world has nearly doubled since the year 2000. Currently, there are roughly 479,000 persons serving formal life sentences (see Figure 2).

This growth has been more dramatic in some countries than in others. For instance, the US accounts for nearly 162,000 of the world's formally life-sentenced prisoners. For every 100,000 individuals in the national population in the US, 50 will be serving formal life imprisonment. South Africa leads the way in terms of increasing reliance on life imprisonment, with an 818 per cent growth since the turn of the millennium (see Figure 3 on page 4).

**Table 1: Number and ratio of prisoners serving life imprisonment in 2014**

Country	Life-sentenced prisoners	Percentage of sentenced prisoners	Per 100,000 of national population
France	466	0.8	0.7
Germany	1,953	3.6	2.4
India	71,632	53.7	5.5
Kenya	3,676	11.4	8.2
Russia	1,766	0.4	1.2
South Africa	13,190	10.5	22.7
United Kingdom	8,661	11.0	13.4
United States	161,957	9.5	50.3

Another trend to highlight is the increase in the use of LWOP in the US. In 2017, the Sentencing Project revealed that between 1992 and 2016, the number of persons serving LWOP increased by 328 per cent, from 12,453 individuals imprisoned for life to 53,290.<sup>3</sup>

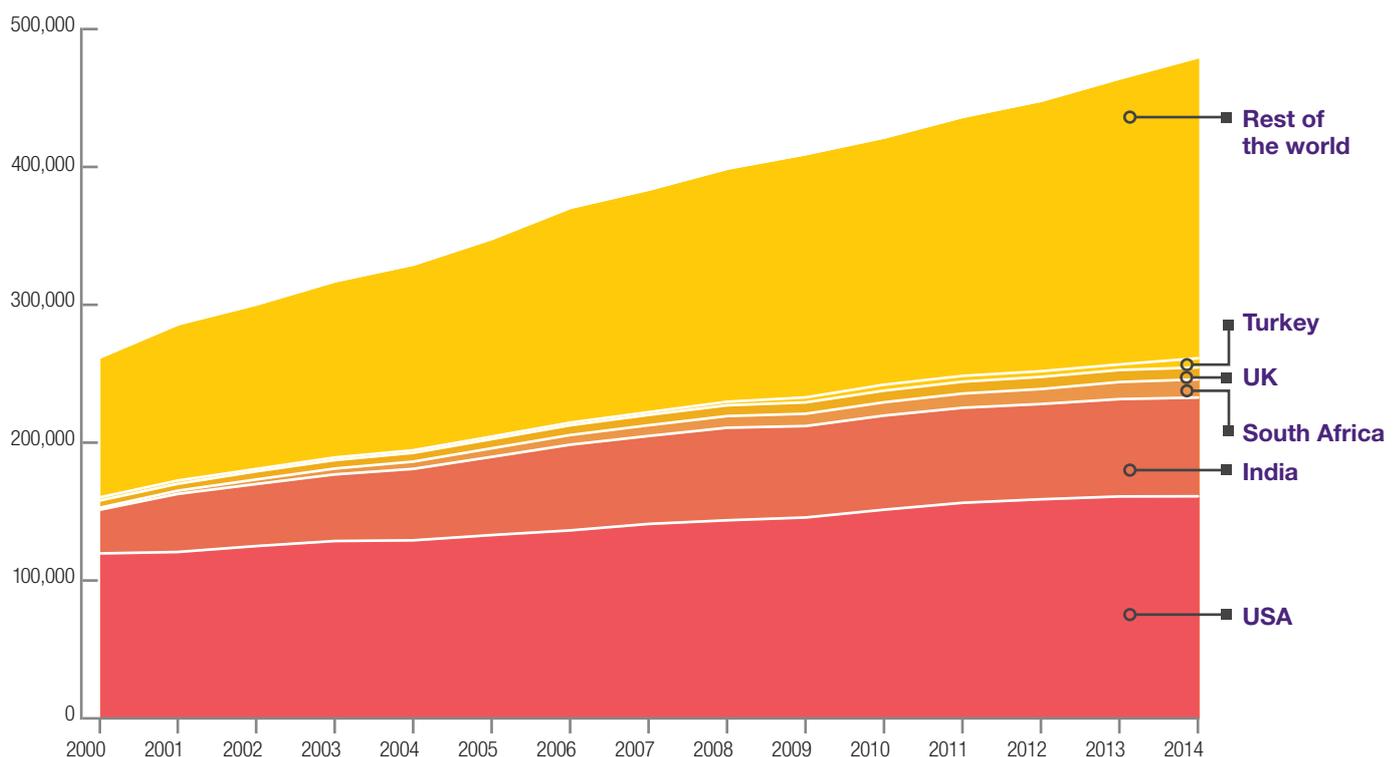
While this particularly harsh form of life imprisonment has been abolished in most European countries, other countries such as India and China have recently adopted LWOP as a formal statutory sanction. This may lead to a significant increase in the numbers of prisoners sentenced to lifelong imprisonment around the world.

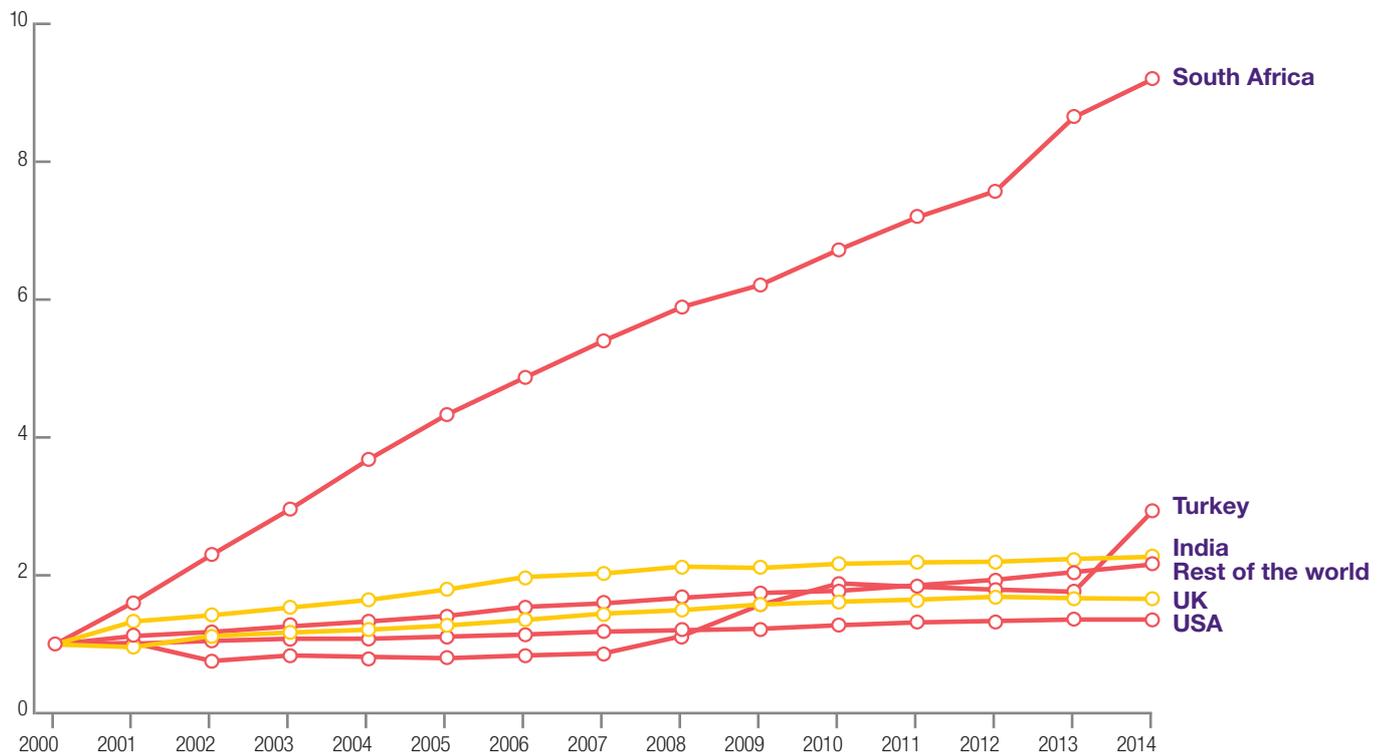
The prevalence and growth of informal life sentences is much more difficult to calculate. At least 64 countries have provision for de facto life sentences, including 15 that do not have formal life sentences at all. At least 50 countries have provision for post-conviction indefinite preventive detention, but there are almost certainly more.

## Why is there an increase in life imprisonment?

### Reduction in the death penalty

An increasing reliance on life imprisonment can be partly explained by a reduced use of the death penalty worldwide.<sup>4</sup> The global trend towards the abolition of the death penalty has been mirrored by an increasing use of life imprisonment.<sup>5</sup> In many sentencing codes, life imprisonment has replaced capital punishment as the ultimate penalty. In addition, many prisoners on death row have their sentences commuted to life imprisonment.<sup>6</sup>

**Figure 2: Number of life-sentenced prisoners in the world, 2000–2014**

**Figure 3: Annual index rate of growth of life-sentenced prisoners around the world, 2000–2014**

### More punitive responses to crime

The global trend towards the abolition of capital punishment does not entirely explain the increasing use of life imprisonment. ‘Tough on crime’ policies have also led to an increase in life imprisonment, notably for drug-related offences. There are at least 4,820 criminal offences globally which carry some formal type of life imprisonment as a sentence. Not all of these are the ‘most serious crimes’ for which capital punishment may be imposed.

The abolition of the death penalty has often resulted in net-widening, leading to life imprisonment being imposed for less serious crimes than the death penalty was previously.<sup>7</sup> For example, the US and Uganda use LWOP on a large scale for offences other than murder. In the US, 24 per cent of all prisoners serving LWOP are doing so for non-violent offences.

At least 41 countries retain formal life imprisonment for persistent offenders. The most famous of these is the ‘three strikes’ rule practised in the US, though it also exists in various forms in other countries, such as New Zealand.<sup>8</sup> Rather than focusing on the seriousness of the most recent offence, such policies are based on the offender’s criminal record.

#### Three strikes rule

The ‘three strikes’ policy means that a person is sentenced to life imprisonment after committing a third crime.

In some jurisdictions, this policy applies to offenders with two previous convictions and a previous record of violent crimes. In other jurisdictions, less violent crimes can be included under such a policy. Such policies lead to disproportionate sentences.

### Longer sentences

There is some evidence that the time individuals spend serving life sentences is becoming longer. This has resulted in more life-sentenced prisoners, as it is taking progressively longer for prisoners to be released. For example, in England and Wales, the average time spent in prison has more than doubled for life-sentenced prisoners since 1979. The average time has increased from 108 months in 1979 to 221 months in 2013, suggesting that authorities considering release on parole are being harsher in their assessments.

## Life imprisonment and specific populations

### Women

Women make up less than 3 per cent of prisoners serving life sentences, which is significantly less than the percentage of women in the overall world prison population – 6 per cent. Eight countries (Albania, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia and Uzbekistan) prohibit the life imprisonment of women. Furthermore, Armenia, Bulgaria, Tajikistan and Ukraine prohibit the imposition of life imprisonment on women who were pregnant when they committed the offence or at the time of sentencing.

### Children

The international prohibition on LWOP sentences for children is clear, as provided for in Article 37 of the UN Convention on the Rights of the Child (CRC). Except for the US, all member states of the UN have ratified this Convention. Some US states continue to sentence children who commit murder to LWOP, although the Supreme Court has sought to restrict the use of LWOP for all children. In the US in 2015, 12 states alone had 8,300 prisoners serving either life imprisonment or sentences longer than 40 years for crimes they committed when they were under 18 years of age.<sup>9</sup>

A further 73 countries retain some kind of formal life imprisonment for children. The UN Special Rapporteur on torture has gone further than the CRC, stating that any kind of life sentence is incompatible with the human rights of a child, as it causes ‘physical and psychological harm that amounts to cruel, inhuman or degrading punishment’.<sup>10</sup> Furthermore, the UN General Assembly has urged states to ensure that all forms of life imprisonment are prohibited for offences committed by persons under 18 years of age.<sup>11</sup>

### Elderly people

Where a minimum term of imprisonment has to be served before release can be considered, this term may well stretch beyond an elderly prisoner’s natural lifespan, meaning that their life sentence becomes LWOP. Some countries – for example, Russia, Ukraine and Romania – prohibit the imposition of life imprisonment on individuals over a certain age. Other countries, such as France and Spain, seek to ensure that elderly individuals will retain a possibility of leaving prison by making any life-sentenced prisoner eligible for parole when they reach a certain age.

## Limits to life imprisonment

### Principle of proportionality

Any restriction to an individual’s liberty must be in line with the principle of proportionality. In order to be just, a sentence must be of a length and type which fits the crime and the circumstances of the offender. This means firstly that, if a jurisdiction does have life sentences, they should be reserved only for the ‘most serious crimes’. In turn, the law must be sufficiently flexible to allow judges to choose not to impose a life sentence where it would be disproportionate.

The principle of proportionality is best protected when a life sentence is truly discretionary, and where there is no initial presumption that a life sentence should be imposed.

#### Judicial discretion in Malawi

In Malawi the judiciary have unrestricted discretion. Article 27 (2) of the Penal Code of Malawi allows that ‘[a] person liable to imprisonment for life or any other period may be sentenced for any shorter term’. There is no presumption that a life sentence is the starting point, rather a range of options from which a judge may choose – one of which is a life sentence.

### Ensuring proportionality within a life sentence

Proportionality must also be ensured within the sentence itself. This can be achieved by addressing the minimum period an individual must serve before they can be considered for release. Clearly, this is not possible for LWOP. But when a life sentence does offer some possibility of release on parole, this too should be shaped by the principle of proportionality. Greater discretion in setting minimum periods allows the release to be shaped to ensure proportionality in individual cases.

Judges have a varying degree of discretion when it comes to setting minimum periods. Sometimes the law will allow no flexibility; the crime will bear a specific minimum period as set out in law. However, in other cases the judge is given a limited degree of discretion as to how long an individual’s minimum period will be. For instance, in France, the minimum period can be set anywhere between 18 and 22 years for a life sentence – or up to 30 for certain forms of violent assassination.

**Figure 4: Levels of discretion available to judges**

**THERE ARE FOUR BROAD LEVELS OF DISCRETION THAT JUDGES ARE GIVEN WHEN SENTENCING INDIVIDUALS FOR CRIMES WHERE LIFE IMPRISONMENT IS AVAILABLE AS A PUNISHMENT:**

MANDATORY	MANDATORY ALTERNATIVE	QUALIFIED MANDATORY	DISCRETIONARY
Sometimes a life sentence is mandatory for a crime. The judge is given no choice but to impose it.	In some cases, a judge will have a limited degree of choice between a life sentence and another type of sentence. This 'choice' may be just between a life sentence and the death penalty.	The judge is obliged to impose a life sentence, unless certain conditions are present – usually mitigating factors.	<b>The judge is not obliged to impose a life sentence at all. there are a range of sentencing options available, from which he or she may choose the most appropriate option.</b>

← LEAST DISCRETION
MOST DISCRETION →

**Purposes of imprisonment**

The purposes of imprisonment should be borne in mind in sentencing decisions. The Nelson Mandela Rules stipulate that the purposes of punishment are to protect society against crime and to reduce recidivism. Rule 4 reiterates that these purposes ‘can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life’. The use of LWOP contradicts the purposes of imprisonment, as reintegration is impossible when a sentence is intended to keep an individual in prison for the rest of their life. Other life sentences may also be questionable if in practice they lead to individuals being imprisoned for longer than is necessary to meet the purposes of punishment, as the negative impacts of imprisonment are well-evidenced.

**Treatment of people serving life sentences**

**Security measures and segregation**

Rule 3 of the Nelson Mandela Rules reiterates that deprivation of liberty is a punishment in itself and should not be aggravated by the prison system. Life-sentenced prisoners are no exception to this. However, life-sentenced prisoners are often systematically segregated and treated more harshly than other prisoners on account of their sentence. In Central Asia for example, they are separated from other prisoners and kept under a much harsher and stricter regime, based on their legal status as life-sentenced prisoners.<sup>12</sup> In the Middle East and North Africa, the harsh and discriminatory prison regime for life-sentenced

prisoners reinforces its punitive nature in the region, and raises severe concerns about inhuman and degrading punishment.<sup>13</sup>

In Europe, the European Committee for the Prevention of Torture (CPT) has found that in some states, life-sentenced prisoners were kept separate ‘as a rule’ from other sentenced prisoners and subjected to strict security measures and impoverished regimes.<sup>14</sup> This included the systematic use of handcuffing and strip searches, as well as escorting prisoners from their cells with guard dogs.<sup>15</sup>

The segregation of life-sentenced prisoners in strict regimes is often not based on security concerns or individualised risk assessment.<sup>16</sup> In some countries, life-sentenced prisoners are separated from other prisoners and placed in solitary confinement for years at a time based purely on their status.<sup>17</sup> Prolonged solitary confinement (defined as in excess of 15 days) is prohibited by the Nelson Mandela Rules in recognition of the disastrous impact it has on an individual’s mental health.<sup>18</sup> Rule 45 further prohibits the use of solitary confinement by virtue of a prisoner’s sentence.

Long-term segregation and harsh treatment of life-sentenced prisoners is often justified because life prisoners are perceived to be ‘the worst of the worst’ and more dangerous than other prisoners. Yet research studies confirm that life-sentenced prisoners are less likely to engage in institutional misconduct or acts of violence in prison than other prisoners, and they often have a stabilising effect on the prison environment.<sup>19</sup> One exception to this may be prisoners under LWOP sentences; with no possibility of release or improvement, they may be less willing to comply with the prison system.

## Poor regimes

Life-sentenced prisoners are often subjected to impoverished regimes compared to other prisoners, including poor living conditions, restricted human contact and little or no access to meaningful activities or rehabilitation programmes.

Contact with the outside world is often limited for life-sentenced prisoners, despite it being vital for promoting their rehabilitation and protecting their mental wellbeing.<sup>20</sup> The 2015 case of *Khoroshenko v Russia*, heard in the European Court of Human Rights (ECtHR), revealed that life-sentenced prisoners were subject to a strict regime during the first 10 years of their sentence. They had the right to only two short-term visits per year, lasting no more than four hours, which took place in the presence of a prison guard.<sup>21</sup> Similarly, in Armenia, life-sentenced prisoners receive less visits per year – three short-term visits and one long-term visit – compared to other prisoners, who receive at least one short-term visit per month and one long-term visit every two months.

Many life-sentenced prisoners are also excluded from rehabilitative opportunities. In the US, for example, many LWOP prisoners, including children, are denied access to educational and vocational training available to other prisoners on the premise that they are beyond redemption. In several former Soviet Union countries, the absence of work opportunities is an additional punishment to the life sentence. Life-sentenced prisoners can spend up to 23 hours a day in their cells, with no access to rehabilitation, work programmes, social or psychological assistance.

## Impact of life imprisonment

The pains of imprisonment have been well-documented,<sup>22</sup> but unique to life imprisonment is the pain of indeterminacy. While there are differing responses among prisoners, individuals serving life

sentences commonly report that life imprisonment is a particularly painful experience due to the uncertainty of release.

Serving an indeterminate sentence has been described by different individuals as ‘a tunnel without light at the end’, ‘a black hole of pain and anxiety’, ‘a bad dream, a nightmare’, and even ‘a slow, torturous death’.<sup>23</sup> Many life-sentenced prisoners report a sense of shock and powerlessness during the initial stages of imprisonment. Lack of control, futility of existence and fear of institutionalisation are recurring themes among prisoners serving indeterminate prison terms.

Social isolation and the loss of contact with the outside world is one of the most significant effects of lengthy imprisonment. Many life-sentenced prisoners grieve over the loss of family members during the long years of confinement, as well as being no longer able to have or raise children, or provide support for family members.

“A life sentence means that, in effect, you’re dead. It’s just another form of a death sentence. Instead of having the gall to do it in one fell swoop, you die one day at a time.”<sup>24</sup>

While the impact of a death sentence of a parent or family member has been well-documented, there is little known about the impact of life imprisonment on family members. One recent study of indefinite preventive detention in the UK found that ‘strong, recurring themes of uncertainty and a lack of hope regarding the future emerged from the findings’,<sup>25</sup> which resonated with the children and family members of the prisoners as well as the prisoners themselves.

The loss of social contact and pain of indeterminacy is particularly acute for LWOP prisoners, who will usually die in prison. Many such prisoners speak of suicide, or a preference for the death penalty rather than a lifetime in prison.<sup>26</sup>

### Gendered impact of life imprisonment

A study in the UK found that life-sentenced women had far fewer support networks<sup>27</sup> than their male equivalents, with interviewees reporting that family and friends had severed contact with them immediately following the crime. Contact was also severed by the women prisoners themselves, mostly related to ‘historically abusive relationships with parental figures, siblings or intimate partners’.<sup>28</sup> This is relevant in a gender context too, as a large proportion of imprisoned women have survived domestic violence.<sup>29</sup> Equally, women prisoners

referred to the deteriorating relationships with their children, as it became more distressful and more difficult to remain in touch.<sup>30</sup>

Women prisoners disproportionately exhibit a high rate of mental health issues, which are exacerbated by life imprisonment as they face higher stigma and are disproportionately affected by the impact incarceration has on their children.<sup>31</sup> The study found that nearly six times as many life-sentenced women ‘reported self-injury or attempted suicide since their conviction’ as their male counterparts.<sup>32</sup>

LWOP prisoners express a profound and growing sense of loneliness and loss over being no longer able to raise children, and the realisation that family members will most likely die while they are in prison. Often deprived of rehabilitative opportunities, LWOP prisoners commonly highlight the sheer hopelessness of the sentence, are unable to understand the purpose of their punishment, and are particularly concerned about mental deterioration and prisonization.<sup>33</sup>

**“I am alive, and I really don’t want to be. I have nothing to live for. I’m serving life without the possibility of parole, and that might as well be a death sentence. I will never leave this place, and the thought of that forces any sliver of hope out of me.”**<sup>34</sup>

Research has long recognised that those sentenced to lengthy prison terms undergo a gradual process of prisonization, as a form of adapting to the routines and demands of prison life.<sup>35</sup> The nature and degree of prisonization varies among life-sentenced prisoners, and depends, in part, on the length of imprisonment, but also on the monotony of the regime, level of autonomy, contact with the outside world and personal experiences.<sup>36</sup> While the effects of prisonization may create fewer management problems, they undermine the process of rehabilitation and leave individuals ill-equipped for life outside of prison.

## Rehabilitation and the ‘right to hope’

Article 10(1) of the UN International Covenant on Civil and Political Rights (ICCPR) states that ‘All deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’, and Article 10(3) states that the purpose of the penitentiary system is the ‘reformation and social rehabilitation’ of prisoners. It indicates that every prisoner should have the opportunity to be rehabilitated back into society and lead a law-abiding and self-supporting life, even those convicted of the most serious offences.

Rehabilitation is especially important for life-sentenced prisoners who may struggle to readjust to life outside of the prison system. Reintegration requires preparing life-sentenced prisoners for release progressively. The denial of rehabilitation is particularly present for LWOP prisoners, who have effectively been told that ‘they are beyond repair or redemption, and any effort they may make to improve themselves is essentially futile’.<sup>37</sup> This is also a problem for life-sentenced prisoners who do have a chance of parole, as they are usually de-prioritised and their needs considered less urgent.<sup>38</sup>

The withdrawal and institutionalisation experienced by life-sentenced prisoners also acts as a barrier to ultimate reintegration back into society.<sup>39</sup>

## Principles to govern treatment and management of life-sentenced prisoners

At a regional level, the Council of Europe has been the most active body in developing recommendations for the treatment and management of life and long-term prisoners. It states that the aims of life and long-term prison regimes should be (i) ‘to ensure that prisons are safe and secure places for these prisoners and for all those who work with or visit them’; (ii) ‘to counteract the damaging effects of life and long-term imprisonment’; and (iii) ‘to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release’.<sup>40</sup> It proposes that the following six principles should govern the treatment and management of life-sentenced prisoners:

### 1. Individualisation

The individual characteristics of each life-sentenced prisoner should be taken into consideration in sentence planning.

### 2. Normalisation

Prison life should resemble as closely as possible life in the community.

### 3. Responsibility

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

### 4. Security and safety

Life prisoners are often wrongly assumed to be dangerous. The risk of harm to themselves and to others should be assessed at regular intervals.

### 5. Non-segregation

There should be no routine segregation of life prisoners. Segregation should only be used when there is a clear and present risk of danger to themselves or to others.

### 6. Progression

There should be progressive movement through the system from more to less restrictive conditions, and ultimately to open conditions.<sup>41</sup>

Specifically on dangerous prisoners, the CPT has noted that the treatment and management of dangerous life-sentenced prisoners should be to ‘reduce the level of dangerousness by appropriate interventions and return the prisoners to normal circulation as soon as possible’.<sup>42</sup> This includes a progressive system based on detailed individualised assessments of the prisoners concerned, risk management plans to address the individual’s needs and to reduce the likelihood of re-offending, and regular reviews of their security level.

### Promoting rehabilitation of life-sentenced prisoners in Denmark

In Denmark, life-sentenced prisoners (like the general prison population) are collectively responsible for managing a budget and preparing their own meals. This allows prisoners to exercise personal responsibility and retain a sense of normality in their day-to-day life, promoting their rehabilitation and protecting their mental wellbeing.

The 'right to hope' has been recognised by the ECtHR as a 'fundamental aspect of...humanity'.<sup>43</sup> The Court has ruled that a life sentence from which the prisoner has no hope of release is inhuman and degrading and thus infringes Article 3 of the European Convention of Human Rights. It has emphasised the importance of the rehabilitative purpose of imprisonment. The Court has laid down certain requirements that life sentences have to meet, such as the prisoner knowing from the beginning of the life sentence what they have to do to be considered for release.<sup>44</sup> Similarly, Article 110(3) of the Rome Statute of the International Criminal Court does not support LWOP sentences and calls for a mandatory review of life sentences after 25 years have passed.

## Release from life imprisonment

Release from life imprisonment occurs when a life-sentenced prisoner leaves prison at a stage during their sentence when it is still possible for them to live a full and law-abiding life in the community. Release means more than simply allowing prisoners out to die in the community.

### Process of release

Across jurisdictions, there are different types of mechanisms for releasing life-sentenced prisoners. Some of these mechanisms do not meet procedural safeguards.

### Release by a court

Courts consider the release of life-sentenced prisoners in many European countries and also in some countries in Africa, Central Asia and South America. They have the advantage, in principle, of being independent bodies, and should be able to meet standards of due process and procedural fairness. In the best systems, specialist courts have been developed which can call on other experts to inform judgments about the release of a life-sentenced prisoner.

### Release by a parole board

This mechanism can be found in different parts of the world, including Australia, Bermuda, Botswana, Canada, Chile and Liberia. While some parole boards have been heralded as court-like bodies, the shortcoming of this system is that parole boards may come under political pressure to make decisions that are politically acceptable.

### Release by the executive

In some countries, including many African countries, the responsibility to consider the release of life-sentenced prisoners lies directly in the hands of a politician (usually a justice minister), who is even less likely to apply objective standards to the assessment of release.

### Clemency

Usually the prerogative of the Head of State, clemency release differs significantly from other release mechanisms for life-sentenced prisoners. It is an exercise of the power of mercy which can occur at any time for any reason, or not at all. It is therefore not sufficient to operate as the sole release mechanism for life prisoners but may be used in addition to it. In federal countries, such as the US or Germany, clemency powers rest with governors or first ministers of the individual states. In the US, the president retains the clemency power for prisoners convicted of crimes at the federal level.

Release from informal life imprisonment is often considered by the same bodies as formal life imprisonment. In Canada, release of those subject to indefinite detention is considered by the parole board that also considers the release of formally sentenced life-sentenced prisoners, while in Belgium, France and Germany, release is considered by the same specialist courts.

### Conditional release

A life sentence usually does not end following release from prison. Most released life-sentenced prisoners are subject to a number of parole conditions. In most countries, life-sentenced prisoners are usually required to be placed under supervision and report to the authorities soon after release, and at regular intervals afterwards. If conditions are breached, a released life-sentenced prisoner may be recalled to prison. It is important that conditions meet the principle of proportionality, especially considering that the release of life-sentenced prisoners will have already been dependent on them demonstrating that they are not dangerous any more.<sup>45</sup>

Common conditions on release include regular supervision attendance; approved residence; home visits by a supervising officer; approved employment; travel restrictions; drug testing; and travel and behaviour restrictions.

In England and Wales, all released life-sentenced prisoners are bound by a 'life licence', which specifies seven standard conditions as a minimum. A life-sentenced prisoner must:

- place him or herself under supervision
- report to a nominated supervising officer
- receive visits from that officer
- reside only where approved
- undertake work, including voluntary work, only where approved
- not travel outside the UK without prior permission
- be 'well-behaved'

In addition, life-sentenced prisoners can be subject to individualised restrictions on residence, movements, possessions, alcohol and substance use, as well as being required to undertake further offending behaviour courses. In several jurisdictions in Australia, for example, released life-sentenced prisoners must comply with random drug or alcohol testing and urinalysis, and they must participate in relevant treatment programmes.

In some parts of the world, supervision on release may also be combined with electronic monitoring and surveillance, while life-sentenced prisoners, particularly sex offenders, may be required to register with the police or public protection agencies. In Switzerland, Monaco and Peru, there can also be a requirement to make reparations for damage caused by the offence to the victims.

International standards emphasise that the purpose of conditional release is to assist prisoners in re-entering the community.<sup>46</sup> As such, released life-sentenced prisoners should be provided with 'adequate social support'.<sup>47</sup> Other conditions that can be imposed might therefore include the requirement to attend counselling sessions or training programmes.

The duration of release conditions varies greatly across jurisdictions, but in some countries, such as Kazakhstan, Ireland, the UK and the US, conditions remain in force until death.

## Recall to prison

If a released life-sentenced prisoner violates their conditions of release, they may be recalled to prison. Information on recall procedures around the world is limited. Out of 79 countries, 68 reported that released life-sentenced prisoners can be recalled to prison if they commit a further offence or violate their parole conditions.

In 23 countries, recall could also be initiated on much wider, more arbitrary grounds, such as 'the event of misconduct', 'cause for concern' or 'antisocial behaviour'. In a minority of countries (eight out of 79), recall could only be initiated following the commission of a new offence.

Given the magnitude of any decision to send someone back to prison, the UN has emphasised that 'recall procedures [must] be governed by law' and that 'a person faced with the risk of being recalled to prison should be given an opportunity to present his or her case'.<sup>48</sup> The Council of Europe Recommendation on conditional release provides that released prisoners should have adequate access to their case file and the opportunity to appeal any decision.<sup>49</sup> As such, the Recommendation further encourages ensuring proportionality by treating minor breaches with warnings or advice as opposed to recall to prison.<sup>50</sup> Where recall is necessary, it is important that the same principles of considering release as before 'should continue to be followed'.<sup>51</sup>

Studies carried out in the US and the UK reveal high numbers of recalled life-sentenced prisoners, many of whom have been recalled for a technical violation of their parole conditions. There is also some evidence that the recall population has increased significantly in recent years.<sup>52</sup>

Importantly, there is a growing body of evidence from different jurisdictions showing that recidivism and rearrest rates among released life-sentenced prisoners are low, compared to other released prisoners.<sup>53</sup> Research has found that very few released life-sentenced prisoners commit further crimes and that, despite facing significant barriers in the community, they are able to resettle successfully. Desistance studies show that key to successful resettlement in the community are programmes and supervision in the community that support new non-criminal, pro-social identities, a strong sense of self-efficacy and responsibility, and a determination to succeed.<sup>54</sup>

# Reforming life imprisonment

## Primary recommendation

**The international community, through the UN, should address the increase of life imprisonment, and the implementation of such sentences. The 14th UN Congress on Crime Prevention and Criminal Justice in 2020 provides an opportunity for a review of the imposition and implementation of life imprisonment, with a view to guiding member states to a system that is compliant with international standards. This can be done by specific recommendations on various aspects of life imprisonment.**

## 12 recommendations to reform life imprisonment:

**01** Life imprisonment without parole (LWOP) should be abolished. The most severe form of life imprisonment can never meet fundamental human rights standards. At the same time, abolishing LWOP will reduce the overall use of imprisonment.

**02** If life sentences other than life without parole are imposed, they should be used only when strictly needed to protect society and only in cases where the 'most serious crimes' have been committed.

**03** Mandatory life sentences should be abolished, as they deny judges any scope to consider whether a sentence of life imprisonment is proportionate. Rights-based guidelines should be established to assist judges in determining when a life sentence is appropriate.

**04** To ensure proportionality within a life sentence, minimum terms should not be excessive, so that release can be considered at the appropriate time.

**05** Life imprisonment should be prohibited for children in line with the best interests of the child principle. In cases of women, the UN Bangkok Rules encourage sentencing bodies, when considering any sentence including life imprisonment, to take into account women's caretaking responsibilities and typical backgrounds, including possible victimisation.

**06** All restrictions on the regime of life-sentenced prisoners shall be based on an individualised risk assessment, as opposed to being made purely on account of their sentence. As per Rules 56 and 57 of the Nelson Mandela Rules, life-sentenced prisoners should be able to raise complaints regarding their regimes and have these promptly dealt with by the prison administration.

**07** The damaging effects of life imprisonment should be recognised and counteracted; there should be no additional restrictions imposed on life-sentenced prisoners; and there should be a clear pathway to release.

**08** Necessary measures to alleviate the potential detrimental effects of life imprisonment should be put into place by prison administrations, including adequate and gender-sensitive mental healthcare. Prison staff should be trained specifically to mitigate the development or exacerbation of mental health problems.

**09** Rehabilitation programmes, including work and education opportunities, should be offered to life-sentenced prisoners on an equal basis as other prisoners. Life imprisonment should incorporate individualised sentence planning, normalised prison regimes and access to purposeful activities.

**10** Bodies entrusted with considering the release of life-sentenced prisoners must be independent to allow for impartial decisions that are grounded in law and fair procedure. Decisions should meet the highest procedural standards and be based on whether the continued detention is proportionate and legitimate within the purposes of imprisonment.

**11** Conditions imposed on life-sentenced prisoners upon release must be individualised, proportionate and time-limited. Any conditions, particularly supervision, should be focused on assisting the process of reintegration for life-sentenced prisoners to reduce any risks of reoffending. Supervision should not be a continuing form of punishment.

**12** Released life-sentenced prisoners who breach conditions imposed on their release should only be recalled to prison if they are found to pose a danger to society. The power to recall should be exercised with caution and governed by due process. Consideration should be given to an individualised and graded response to infringing the conditions of release. The period for any further imprisonment should be the minimum required to address the danger posed and should be reviewed at regular intervals.

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# Key resources

## **Guidance Document on the Nelson Mandela Rules: Implementing the revised United Nations Standard Minimum Rules for the Treatment of Prisoners**

This forthcoming publication (to be published in 2018) by the OSCE Office for Democratic Institutions and Human Rights and Penal Reform International gives comprehensive guidance on how to implement the revised Standard Minimum Rules for the Treatment of Prisoners, adopted as the Nelson Mandela Rules in 2015.

## **The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules): Short guide**

Available in 10 languages, this illustrated short guide summarises the 122 Nelson Mandela Rules, which were revised by the UN in 2015. It outlines the minimum standards that should be applied in prisons from admission to release. A summary of the revision process is included and Rules that were new in 2015 are highlighted throughout. Published in 2016.

## **Alternatives to the death penalty: Information Pack**

A short guide to the fundamental issues and arguments linked to the introduction of alternative sanctions following abolition of the death penalty. It reviews current trends in the application of long-term and life imprisonment, highlighting relevant international and regional human rights standards and provides examples of good practice. Available in English, French and Russian. Published in 2015.

## **Recommendation on the management by prison administrations of life sentence and other long-term prisoners: Council of Europe, Committee of Ministers, 2003**

This 2003 Recommendation outlines recommendations to member states of the Council of Europe on the treatment and management of life and long term prisoners.

## A policy briefing on life imprisonment

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