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# Informal life imprisonment

**A policy briefing on this harsh, hidden sentence**



## **Informal life imprisonment: A policy briefing on this harsh, hidden sentence**

This briefing was produced by Penal Reform International (PRI), the Human Rights Law Centre at the University of Nottingham, and the Centre for Research and Education in Security, Prison and Forensic Psychiatry at St Olavs University Hospital, Trondheim. It was supported by the International Penal and Penitentiary Foundation (IPPF).



Its contents are the sole responsibility of PRI and the authors.

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# Introduction

There is growing recognition that life imprisonment is a severe sentence that, if it is used at all, should be imposed sparingly, implemented humanely and give people serving life sentences hope of release when they cease to pose a danger to society.<sup>1</sup>

Figures from 2014 show that globally, there are an estimated 479,000 people serving a formal life sentence, with national figures suggesting it is on the rise.<sup>2</sup> However, this figure is limited to sentences explicitly called 'life imprisonment' and excludes *informal* life imprisonment – sentences which are not called 'life imprisonment' but which can detain a person for life (until their death).

Informal life imprisonment can be as harsh, and in some cases even harsher, than formal life imprisonment. Whilst attention has been given to formal life imprisonment,<sup>3</sup> little is known about informal life sentences. Failure to examine the imposition and implementation of informal life sentences allows for a further class of harsh sanctions and their shortcomings to go unnoticed.

This policy briefing therefore examines *informal life imprisonment* worldwide, drawing on key findings from international research. It places these findings in the

context of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and other relevant criminal justice and human rights standards. It describes the different types, extent and practice of informal life imprisonment around the world, as well as highlights the impact of such sentences on people who are serving them.

Life imprisonment, both formal and informal, poses serious concerns from a human rights and prison management perspective. It can be unnecessarily punitive and fail to satisfy the principle of proportionality. In some cases, it can amount to cruel, inhuman and degrading punishment, and undermines the right to human dignity by taking away the prospect of rehabilitation and release. Informal life imprisonment poses an additional risk: in the absence of sufficient safeguards, it can be used surreptitiously to lock up those deemed to be incorrigible and 'beyond rehabilitation' until they die in prison.

This briefing calls on policymakers and practitioners to reflect on informal life sentences and to include within them the more general constraints that should apply to the use of all forms of life imprisonment. It also provides specific recommendations on the imposition and implementation of informal life sentences.

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1. Penal Reform International and University of Nottingham, *Life imprisonment: A policy briefing*, April 2018.

2. Van Zyl Smit, D. and Appleton, C., *Life imprisonment: A global human rights analysis*, Harvard University Press, January 2019, p. 88.

3. Ibid. See for further example: Van Zyl Smit, D., Appleton, C., and Vucong, G. (eds.), *Life imprisonment in Asia*, Palgrave Macmillan Singapore, 2023; Mauer, M. and Nellis, A., *The meaning of life: The case for abolishing life sentences*, New York: The New Press, 2018; Van Zyl Smit, D. and Appleton, C. (eds.), *Life imprisonment and human rights*, Bloomsbury Publishing, 2016.

# What is informal life imprisonment?

Defining ‘life imprisonment’ is never straightforward because it has different meanings in different jurisdictions. The following definition encompasses 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 imprisonment are identified: (1) **formal life imprisonment**, where the sentencing court explicitly pronounces a sentence of imprisonment for life, and (2) **informal life imprisonment**, where the sentence imposed is not called life imprisonment, but where it may also result in the person being detained in prison for life. Both formal and informal life imprisonment can be further divided. The different types of formal and informal life sentences are summarised in the diagram below.

Formal life sentences can be divided between those from which release on parole is possible (life with parole - LWP), or not (life without parole - LWOP). Informal life sentences are less straightforward to identify

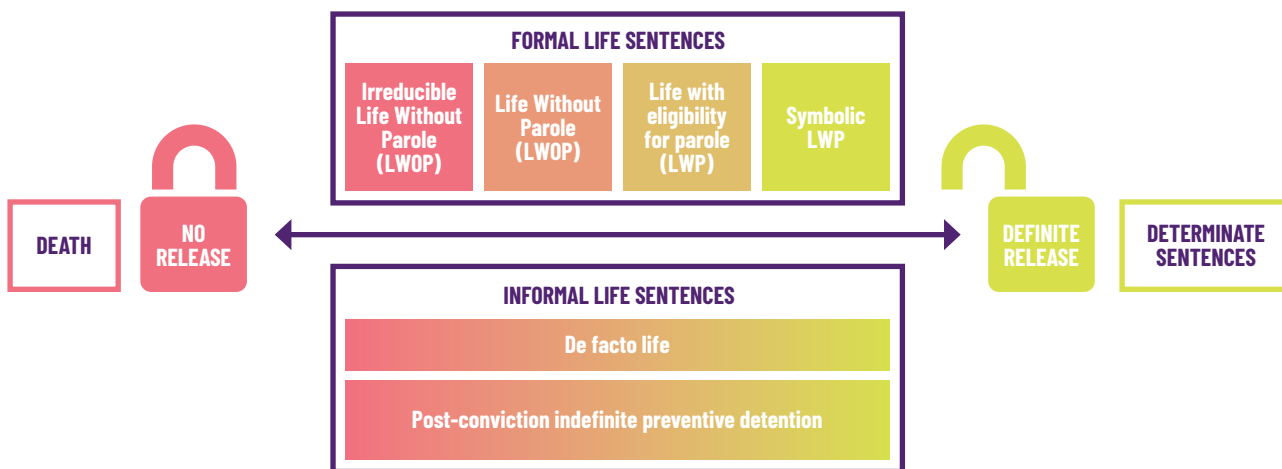
and categorise than formal life sentences. Informal life imprisonment comprises of 1) de facto life, and 2) post-conviction indefinite preventive detention.

## De facto Life

De facto life sentences are very long, fixed terms of imprisonment, such as a single sentence of 99 years, or lengthy consecutive fixed-term sentences for multiple convictions. For example, a sentence imposed on a man convicted in 2009 in New York, US (see table overleaf) meant he died in prison long before he could serve his full term.

De facto life sentences can have different names depending on the jurisdiction. For example, the US organisation, The Sentencing Project, in its periodic national survey on life imprisonment, considers people serving sentences of 50 years and above as serving ‘virtual’ life sentences, because ‘the term of years they must serve is so long they are unlikely to survive it even though they are not statutorily sentenced to life’.<sup>4</sup> Others have used 35 years as reflecting de facto life.<sup>5</sup> There is no consensus yet on what fixed-term sentences amount to de facto life.<sup>6</sup>

### Types of life sentences



4. In the US State of Florida, in addition to ‘imprisonment for life’, the law provides specifically for punishment by ‘a term of years equal to life’, which would equate to a de facto life sentence, Florida Statutes Title XLVI, Crimes § 775.082, (1)(b)2.  
 5. Van Zyl Smit, D. and Appleton, C., *Life imprisonment: A global human rights analysis*, p. 75.  
 6. See: Laugalis, V. R., Koza, S. S., and Vaughn, M. S., ‘Technically not Life: How De Facto Life Sentences Condemn Juveniles to Die in Prison’, *Criminal Justice Review*, 23 November 2023, 1-27, p. 3.

### A 150-year sentence

Bernard L. Madoff's sentence was based on these charges:

| Charge                                       | Years      |
|--|------------|
| Two counts of international money laundering | 40         |
| Securities fraud                             | 20         |
| Mail fraud                                   | 20         |
| Wire fraud                                   | 20         |
| False filing with the S.E.C                  | 20         |
| Money laundering                             | 10         |
| Investment adviser fraud                     | 5          |
| False statements                             | 5          |
| Perjury                                      | 5          |
| Theft from an employee benefit plan          | 5          |
| <b>Total</b>                                 | <b>150</b> |

This table was first published in an article by the New York Times.  
Data source: United States District Court, Southern District of New York.

De facto life sentences may be simple to describe in the abstract, but in practice it is difficult to identify which fixed-term sentences are so long that they should be regarded as de facto life. Different factors can be taken into consideration, including: 1. life expectancy; 2. the convicted person's individual circumstances; and 3. length of sentence.

### Life expectancy

Some jurisdictions look to the prevailing national life expectancy to identify de facto life sentences.

For instance, in El Salvador, the Supreme Court considered a 75-year sentence a de facto life sentence because the 70-year life expectancy in the country meant that any individuals serving the full term of imprisonment are almost certain to die in prison.<sup>7</sup>

A similar approach was taken in the US by the Supreme Court of California, when it rejected the imposition of a 110-year minimum term sentence on a child under 18 years of age.<sup>8</sup> This decision explicitly recognised that a sentence in which the minimum term was longer than the life expectancy of children should be treated in the same way as a formal LWOP sentence.<sup>9</sup>

### Individual circumstances

Long fixed-term prison sentences, which mean that an individual is unlikely to survive due to age or state of health at the time of sentencing, could also be considered de facto life sentences.

A 2015 report by the US Sentencing Commission on life sentences found that, of all sentenced individuals in the federal system in 2013, 153 were serving formal life sentences; 168 were serving de facto life (in the US federal system, sentences of 39+ years); and 291 convicted individuals with sentences shorter than 39 years were likely to die in prison, given their age. In other words, there were more people in this last group than those serving de facto and formal life sentences.<sup>10</sup>

### Length of sentence

The length of a particular sentence can also identify a de facto life sentence. Several Central and South American countries, which have no formal life imprisonment, have provisions for particularly lengthy fixed-term sentences. For instance, Colombia and Costa Rica allow for sentences of up to and longer than 50 years; Guatemala, like El Salvador, has provisions for 60-year sentences.<sup>11</sup> In certain jurisdictions, lengthy fixed-term sentences are mandatory in some circumstances.<sup>12</sup>

De facto life imprisonment can also result from allowing the consecutive execution of multiple fixed-term sentences. Even if individual fixed-term sentences have limitations, their successive accumulation can lead to exceedingly prolonged terms of imprisonment. This is the case in countries such as Chile and Kenya, as well as in US jurisdictions like Arizona and New York.<sup>13</sup> In Chile and Kenya, except for formal life sentences,

7. *Decision on cases 5-2001/10-2001/24-2001/25-2001/34-2002/40-2002/3-2003/10-2003/11-2003/12-2003/14-2003/16-2003/19-2003/22-2003/7-2004*, of December 23, 2010, [www.escuela.fgr.gob.sv/wp-content/uploads/Leyes/Leyes-2/Sentencias\\_INC\\_Acumulas\\_CSJ\\_DICIEMBRE\\_2010.pdf](http://www.escuela.fgr.gob.sv/wp-content/uploads/Leyes/Leyes-2/Sentencias_INC_Acumulas_CSJ_DICIEMBRE_2010.pdf).

8. Supreme Court of California, *People v. Caballero*, (2012) 55 Cal. 4th 262. The decision was taken in response to the ruling of the US Supreme Court in *Graham v. Florida*, 560 US 48 (2012) that imposing LWOP for a non-homicide crime was unconstitutionally severe.

9. For an in-depth review of legal precedents and statutes concerning de facto life sentences for children in the US, see: Laugalis, V. R., Koza, S. S., and Vaughn, M. S., 'Technically not Life: How De Facto Life Sentences Condemn Juveniles to Die in Prison,' *Criminal Justice Review*, 23 November 2023, 1-27.

10. United States Sentencing Commission, *Life sentences in the federal system*, February 2015. The Commission used the prevailing life expectancy of federal inmates to arrive at 470 months as the cut off beyond which sentences would be deemed de facto life. See also, United States Sentencing Commission, *Life sentences in the federal system*, July 2022.

11. For details on sentence duration in Central and South America, see: De León Villalba, F. J., 'Long-term Imprisonment in Latin America,' in *Life Imprisonment and Human Rights*, p. 329.

12. For example, in the US State of Florida, if a court determines that life imprisonment is not appropriate for a minor who is found guilty of a capital offence, it must impose a minimum sentence of no less than 40 years in prison, Florida Statutes Title XLVI, Crimes § 775.082, (1)(b).

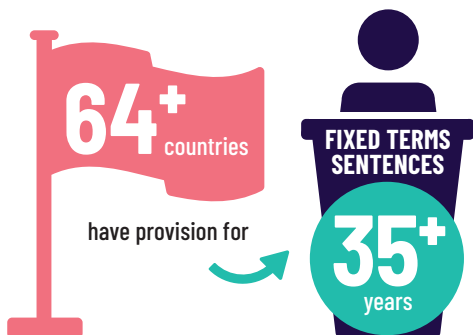
13. In the US States of Arizona and New York, the maximum term for a single offence is 35 (Arizona Revised Statutes Title 13, Criminal Code § 13, Chapter 7) and 25 years (New York Penal Law Part 2, Title E, Article 70) respectively. However, there are no limits to the number of fixed term sentences that can be served consecutively for multiple offences. For example, an Arizona court sentenced a defendant to a cumulative term of 139.75 years in prison for a series of arson and attempted arson offences, some of which were committed when the defendant was a child (Court of Appeals of Arizona, *State v. Kasic*, 228 Ariz. 228, (Ariz. Ct. App. 2011)).

the maximum term for a single offence cannot exceed 20 years and 15 years respectively, but there are no limits to the number of fixed term sentences that can be served consecutively for multiple offences.<sup>14</sup>

De facto life sentences can arise from policies that prescribe harsher sentences based on an individual's criminal record, rather than considering their individual circumstances and their most recent offence. In the US State of Florida, for example, sentencing provisions allow for terms of 50 years or more for 'habitual felony offenders' or 'habitual violent felony offenders',<sup>15</sup> meaning many offences that would not individually attract sentences of 50+ years become eligible based solely on a person's prior criminal record. Similarly in Washington DC, judges can impose a longer sentence of up to 30 years more than the maximum penalty for the offence if a person has two previous felony convictions.<sup>16</sup>

### Prevalence of de facto life

There are at least 64 countries, and likely even more, that have provisions for fixed-term sentences of more than 35 years before release can be considered.<sup>17</sup>



This includes 13 countries that do not have formal life imprisonment.<sup>18</sup>

Even when using a more conservative threshold of sentences lasting 50 years or more,<sup>19</sup> there are still several jurisdictions that allow these exceptionally long fixed-term sentences. For example, in the federal

jurisdiction of Mexico, where there is no provision for formal life imprisonment, the maximum fixed-term sentence can go up to 140 years.<sup>20</sup>

Among the 64 countries that have de facto life sentences, 51 also have formal life imprisonment in their legal systems, with 40 having provisions for formal LWP sentences.<sup>21</sup> In some cases, lengthy fixed-term sentences serve as substitutes for formal life sentences that might otherwise have been imposed. For instance, in Croatia which has no formal life imprisonment, the maximum jail term for a single offence is 40 years and, exceptionally, consecutive sentences may extend up to 50 years.<sup>22</sup>

### 'Virtual' life imprisonment in the US

In its fifth national survey on life imprisonment in the US, The Sentencing Project found that in 2020, there were 42,353 people serving virtual (in our terms 'de facto') life sentences, i.e., following their definition, determinate sentences of 50 years or more.<sup>23</sup>

In Texas, one in five people in prison is serving a virtual life sentence. The remaining States with the highest proportions of the virtual life population were Indiana (9%), Pennsylvania (7%), and Illinois (6%) and together with Texas account for 43% of individuals serving virtual life sentences in the US.

The US already accounts for over 30% of the estimated global total of individuals serving formal life sentences, with 161,512 people serving LWOP and LWP sentences in 2020. Including people serving de facto life in this figure would add 26% to the overall number, bringing it to 203,865. With this total, one in seven people in US prisons is serving a life sentence, either LWOP, LWP or virtual life.

In 2020, 8,600 people in the US were serving LWP or virtual life sentences for crimes committed as minors (below the age of 18).

In some countries, a distinction may be drawn between sentences that may legally be imposed and the maximum time that can actually be spent in prison. Brazil, for example, allows for the imposition of sentences of 100 years, yet provides that no one can serve more than 30 years.<sup>24</sup>

14. Chile: Article 56 of the Criminal Code; Kenya: Penal Code; Section 14(1) of the Criminal Procedure Code; The Judicial Service Act Sentencing Guidelines, paras. 7.13-7.16.  
 15. Florida Statutes Title XLVI, Crimes § 775.084, (1)(a)(habitual felony offender); (1)(b)(habitual violent felony offender).  
 16. Code of the District of Columbia Title 22, Criminal Offenses and Penalties § 22-1804a. In cases where the previous and current convictions are for violent crimes, the individual may be subject to a sentence of up to life imprisonment without parole for their current offence.  
 17. Van Zyl Smit, D. and Appleton, C., *Life imprisonment: A global human rights analysis*, p. 95.  
 18. The following countries have provision for de facto life sentences but do not have formal life imprisonment: Afghanistan, Angola, Colombia, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Guatemala, Montenegro, Panama, Puerto Rico and Uruguay. The US State of Alaska also has no formal life imprisonment but has provisions for a term of imprisonment of 99 years, Alaska Statutes Title 12, Code of Criminal Procedure § 12.55.125, (a).  
 19. This was the threshold used in the research conducted by DLA Piper for this briefing.  
 20. Mexico: Article 11 of the General Law to Prevent and Punish Crimes Related to Kidnapping, Regulation of Sextion XXI of Article 73 of the Constitution ( La Ley General para Prevenir y Sancionar los Delitos en Materia de Secuestro, Reglamentaria de la fracción XXI del Artículo 73 de la Constitución Política de los Estados Unidos Mexicanos), 2010, as amended.  
 21. The following countries have provisions for de facto life and formal life with parole sentences: Antigua and Barbuda, Argentina, Belgium, Belize, Benin, Bhutan, Burundi, Cambodia, Chile, Estonia, France, Gabon, Guinea (Republic of), Hong Kong, Hungary, India, Israel, Japan, Jordan, Kazakhstan, Liberia, Madagascar, Mali, Mauritius, Namibia, Papua New Guinea, Peru, Philippines, Rwanda, Serbia, South Korea, Spain, St Christopher and Nevis, Swaziland, Sweden, Trinidad and Tobago, Turkey, United Kingdom, United States and Zimbabwe.  
 22. Croatia: Article 46 of the Criminal Code.  
 23. The Sentencing Project, *No end in sight: America's enduring reliance on life imprisonment*, 2021.  
 24. Frisso, G. M., 'The Abolition of Life Imprisonment in Brazil and Its Contradictions,' in *Life imprisonment and human rights*, p. 307.

In other countries, it is theoretically possible to impose sentences of 50 years or more. However, in practice, this rarely happens and, in some cases, could be considered unconstitutional if challenged. This is the case in Germany,<sup>25</sup> and the Australian States of New South Wales<sup>26</sup> and Western Australia.<sup>27</sup> Similarly in Canada, consecutive sentences are permissible, potentially resulting in a total sentence exceeding 50 years, provided that the combined sentence is not 'unduly long or harsh'.<sup>28</sup> Yet in practice, imposing such consecutive sentences is highly unlikely.

## Post-conviction indefinite preventive detention

This includes a range of interventions following a criminal conviction that result in an individual being detained indefinitely.

Post-conviction forms of indefinite preventive detention can be defined by what they are not: they are not fixed terms of imprisonment, and they are not formal life imprisonment. Whether they are referred to as 'sentences', 'sanctions', 'reactions', 'measures' 'civil confinement' or 'civil commitment', what these interventions have in common is that they follow from a criminal conviction (sometimes indirectly) and allow the State to detain people until they die in detention.

Post-conviction indefinite preventive detention can be imposed under both criminal and civil law. It is used most frequently when a person is considered dangerous and therefore poses a significant threat to public safety. The detention must be related to an initial criminal conviction, whether it is imposed immediately after conviction or subsequently after an initial fixed-term sentence has been served. Post-conviction indefinite preventive detention does not include people detained solely on grounds of insanity as technically they do not have a criminal conviction. The decision to use this kind of informal life sentence, however, usually relies to some extent on evidence from psychiatrists and psychologists assessing the person as 'dangerous'.

Broadly speaking, there are two types of post-conviction indefinite preventive detention regimes: 1) single-track systems, and 2) dual-track systems.

### Single-track systems

In single track systems, criminal courts can only impose punishments, such as fixed-term sentences or formal life sentences after a conviction. If there is a need for indefinite detention that goes beyond a fixed-term sentence, it must be ordered outside the criminal justice system, as a form of civil confinement or commitment. Single track systems are mostly found in common law jurisdictions.

An example of a single-track system is civil commitment in the US, where 20 States and the federal system permit the indefinite detention of so-called 'sexually violent predators' who have served their full sentence but are still considered a danger to the public.<sup>29</sup> This measure is imposed in a civil proceeding, based on a recommendation from the prosecuting authorities. For example, in Florida, individuals convicted of sexually violent crimes can be held indefinitely in a secure facility if they have a 'mental abnormality' or 'personality disorder' that makes them likely to commit such crimes again.<sup>30</sup> A State attorney can request their indefinite detention before they are released from an initial fixed-term sentence, supported by psychiatric or psychological evidence. Upon confirmation as a 'sexually violent predator' in a civil trial, they remain in custody until their mental condition improves and allows safe release.<sup>31</sup>

The US Supreme Court has consistently upheld these types of laws that allow for civil commitment, even when they use a looser standard of 'mental abnormality' than otherwise acceptable in mental health law to justify detaining individuals because they are considered dangerous.<sup>32</sup> Using civil law to enforce what are essentially hidden forms of punishment has attracted a lot of criticism.<sup>33</sup>

Sometimes, jurisdictions that consider themselves single track systems may allow sentences that are not typical fixed-term sentences or formal life sentences,

25. In Germany, while legally capped at 15 years for a non-life sentence, a theoretical possibility exists for consecutive offences to cumulate sentences beyond this limit, albeit highly improbable due to legal constraints and constitutional considerations (Sections 38(II), 54(II) of the German Criminal Code; Federal Constitutional Court's precedent on life sentences).

26. In New South Wales, while there is no general maximum term for a single offence under the Crimes Act and Sentencing Act, statutory maximum penalties, mandatory life imprisonment for severe crimes like murder (Section 19A of the Crimes Act), and prescribed standard non-parole periods (Section 54B of the Sentencing Act) significantly deter the imposition of sentences exceeding specified limits for single offences in practice.

27. In Western Australia, while there is no specific statutory maximum term for a single offence under the Sentencing Act and Criminal Code, in practice, the scheme of varied minimums and maximums, alongside common law principles, significantly restricts the imposition of sentences exceeding specified limits. See *Office of the Director of Public Prosecutions Comparative Sentencing Tables* detailing sentences for reference.

28. Canada: Section 718.2(c) of the Criminal Code.

29. Calkins, C., et al., 'Sexual Violence Legislation: A Review of Case Law and Empirical Research,' *Psychology, Public Policy, and Law*, 2014, pp. 443-462.

30. Florida Statutes Title XLVII, Criminal Procedure and Corrections § 916.33 (Renumbered as 394.913 and amended by Laws 1999, c. 99-222, §§ 1, 6, effective May 26, 1999); Florida Statutes Title XXIX, Public Health § 394.912.

31. *Ibid.*

32. US Supreme Court, *Kansas v. Hendricks*, 521 US 346 (1997). See also US Supreme Court: *Seling v. Young*, 531 US 250 (2001); *Kansas v. Crane*, 534 US 407 (2002); *United States v. Comstock*, 560 US 126 (2010).

33. See for example: Schulhofer, S. J., 'Two Systems of Social Protection: Comments on the Civil-Criminal Distinction, with Particular Reference to Sexually Violent Predators Laws,' *Journal of Contemporary Legal Issues* 7 (1996), 69-96; Janus, E. S., 'Failure to protect: America's sexual predator laws and the rise of the preventive State,' Cornell University Press, 2006; Lave, T. R. and McCrary, J., 'Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process—An Empirical Inquiry,' *Brooklyn Law Review*, Issue 78, pp. 1391-1439.



but punishments imposed by criminal courts that often differ from formal life sentences in name only – for example ‘Imprisonment for Public Protection’ (IPP), which was imposed in England and Wales between 2005 and 2012.<sup>34</sup> Although this sentence was abolished in 2012, this change did not apply retrospectively to those already subject to it, leaving thousands still serving this sentence (see detail in green below).<sup>35</sup>

Imprisonment for Public Protection was imposed on individuals convicted of a violent or sexual offence and found to be dangerous, usually due to at least one previous conviction for a specified serious, violent, or sexual offence. This sentence meant that after serving a minimum period set by a judge (usually a very short one), the convicted person could be kept in prison indefinitely, at least until a parole board decided that their continued detention was no longer necessary for the protection of the public.

### Imprisonment for Public Protection (IPP) in England and Wales (imposed between 2005–2012)

As of September 2023, there were 2,921 people in prison serving an IPP sentence.<sup>36</sup> Of these people, 1,269 have never been released from prison, despite nearly all having served their minimum prison term and a majority (55%) having been held for at least ten years beyond their minimum term.

The IPP sentence is very similar to formal life imprisonment in that:

- It was imposed by a sentencing court;
- The standard for release remained identical to that applicable to release from a formal LWP sentence after the minimum period had been completed; and
- Like individuals serving life sentences, people serving IPP were subject to conditions after release, with the potential of being returned or ‘recalled’ to prison.

The only difference is that people released from IPP, unlike those released from formal life sentences, can apply for their license conditions to be set aside after they have been living in the community for a period of 10 years. The IPP scheme has attracted much criticism directed at its indefinite nature, broad application, unclear release criteria, and disproportionate impact on individuals’ rehabilitation and human rights.<sup>37</sup>

On 28 November 2023, the Ministry of Justice announced changes to reduce the license period for released IPPs to three-years post-release instead of the current 10 years.<sup>38</sup> If the Parole Board rejects their application, the sentence would automatically expire after an additional two years, unless they are recalled prison during that time. The reforms will apply retrospectively, immediately ending licenses for approximately 1,800 released IPPs. However, the changes do not apply to the thousands of IPPs still in prison. Furthermore, released IPPs remain subject to recall at any time before their license is terminated.

As recently noted by the UN Special Rapporteur on torture, while the reforms are welcome, they do not go far enough because the changes do not tackle the cases of nearly 1,250 IPPs who remain detained indefinitely, “languishing in jail under a sentencing scheme that the justice secretary himself describes as a ‘stain’ on the entire legal system.”<sup>39</sup>

Some countries with single track systems explicitly distinguish between these informal life sentences and formal life sentences. For instance, in Canada and South Africa, both common law jurisdictions, there are laws that allow courts to label individuals convicted of serious violent crimes as ‘dangerous’ (based on criminal history and expert psychiatric advice), which then allows imposition of indefinite detention.<sup>40</sup> In both countries, there are more evidentiary safeguards and procedural requirements in place when deciding to impose this type of indefinite detention, compared to formal life imprisonment, thus mitigating its use.<sup>41</sup>

### ‘Dangerous Offenders’ in Canada

In 2021, there were 3,561 people in custody serving a life sentence and/or an indeterminate sentence, representing 26.8% of the total population of sentenced individuals<sup>42</sup>

18 of these people were serving both a life sentence and an indeterminate sentence.

611 were in custody serving an indeterminate sentence as a result of special designation as ‘Dangerous Offenders’, ‘Dangerous Sexual Offenders’ or ‘Habitual Offenders’.

34. House of Commons Library Research Briefing, *Sentences of Imprisonment for Public Protection*, 24 April 2023.

35. For details on the sentence of Imprisonment for Public Protection, including when it could be imposed and how these provisions were amended and subsequently repealed, see: Ashworth, A., *Sentencing and criminal justice*, 5th ed., Cambridge University Press, 2010 and 6th ed., Cambridge University Press, 2015; Annonis, H., *Dangerous politics: Risk, political vulnerability and penal policy*, Oxford University Press, 2015.

36. Ministry of Justice, *Offender Management Statistics Bulletin, England and Wales*, 26 October 2023.

37. See for example: The Howard League for Penal Reform, *Indeterminates Sentence for Public Protection*, 2007; Prison Reform Trust, *Definitely maybe? How the indeterminate sentence for public protection is unjust and unsustainable*, 2007; Edgar, K., Harris, M., and Webster, R., *No life, no freedom, no future: The experiences of prisoners recalled under the sentence of Imprisonment for Public Protection*, Prison Reform Trust, 2020; Coomber, A., ‘The decades-long injustice of the IPP sentence must end’, *Howard League blog*, 17 January 2022; United Group for Reform of IPP (UNGRIPP), ‘Today marks ten years since the IPP sentence was abolished’, *UNGRIPP blog*, 3 December 2022.

38. Reforms bring hope to rehabilitated people still serving abolished indefinite sentences’, *Ministry of Justice, HM Prison and Probation Service, and The Rt Hon Alex Chalk KC MP Press Release*, 28 November 2023, [www.gov.uk/government/news/reforms-bring-hope-to-rehabilitated-people-still-serving-abolished-indefinite-sentences](http://www.gov.uk/government/news/reforms-bring-hope-to-rehabilitated-people-still-serving-abolished-indefinite-sentences).

39. Siddique, H., ‘MoJ changes to indefinite jail sentences do not go far enough, says UN expert’, *The Guardian*, 19 January 2024, [www.theguardian.com/law/2024/jan/19/moj-changes-to-indefinite-jail-sentences-do-not-go-far-enough-says-un-expert](http://www.theguardian.com/law/2024/jan/19/moj-changes-to-indefinite-jail-sentences-do-not-go-far-enough-says-un-expert).

40. Canada: Section 753(1) of the Criminal Code; South Africa: Section 286A of the Criminal Procedure Act 1977.

41. See for example: Supreme Court of Canada, *R v. Lyons* [1987] 2 SCR 309 (Can.); South Africa: Section 286A of the Criminal Procedure Act, 1977, which stipulates that the sentencing court, not the parole board handling other sentences, determines release from post-conviction indefinite preventive detention.

42. Public Safety Canada Portfolio Corrections Statistics Committee, *Corrections and Conditional Release Statistical Overview: 2021 Annual Report*, March 2023, Figure C19.

Another form of post-conviction indefinite preventive detention can exist informally in places where there are no explicit laws for it. For instance, in the US State of Louisiana, there are no official rules allowing for the further indefinite detention of individuals convicted of sexually violent offences beyond their fixed terms. However, in practice, such individuals in prison, particularly those with mental health issues, can have their sentences extended, sometimes indefinitely. This occurs when they lack adequate mental health care and are isolated by prison authorities to prevent potential risks to others, leading to extended and uncertain periods of detention.<sup>43</sup>

### Dual-track systems

In dual-track systems, criminal courts are allowed to impose fixed-term punishments and formal life sentences for crimes, like in single-track systems, but they can also impose security measures based on the belief that a person might be dangerous in the future. These measures, although imposed by criminal courts, are aimed explicitly at preventing convicted individuals (deemed undeterrable) from committing further offences by detaining them, indefinitely if necessary.<sup>44</sup>

In certain dual-track countries, post-conviction indefinite preventive detention is imposed together with the initial sentence. For instance, in Norway, which abolished formal life sentences in 1981, a court can impose '*forvaring*' or preventive detention, beyond a fixed-term sentence, which can be renewed and kept in force until death if the individuals continue to pose a danger to society.<sup>45</sup>

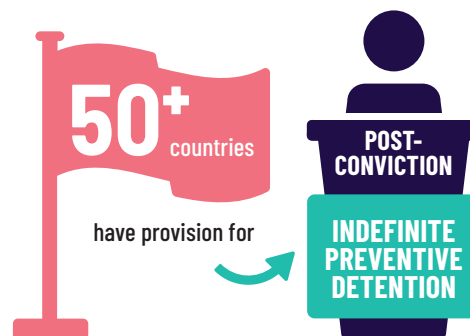
In other countries like Denmark, France, Germany, the Netherlands, and Sweden, where formal life imprisonment exists, individuals convicted of specific violent or sexual offences can face post-conviction

indefinite preventive detention in specialised facilities after completing their initial fixed-term sentences.<sup>46</sup> In some instances, this further detention may not be imposed initially but may be added while they are serving a fixed-term sentence. Such 'additions' are highly controversial.<sup>47</sup>

### Prevalence of post-conviction indefinite preventive detention

At least 50 countries have provisions for post-conviction indefinite preventive detention.<sup>48</sup> While we do not have sufficient data to calculate how many people are in this type of detention worldwide, there are signs that it might serve a preventive role similar to formal life imprisonment in certain societies. The Nordic countries offer an interesting example of this.

Norway, which has no life imprisonment, uses post-conviction indefinite preventive detention more often than its neighbours, while Sweden and Finland, which have abolished post-conviction preventive detention, make more use of life imprisonment than Denmark, which has retained both post-conviction indefinite preventive detention and life imprisonment.<sup>49</sup>



43. Carlos, H. and Pontiff, C., 'Trick or Treatment', *American Bar Association*, 16 July 2019, [www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2019/summer2019-race-mental-health-poverty-incarceration-louisiana](http://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2019/summer2019-race-mental-health-poverty-incarceration-louisiana).

44. See Ashworth, A. and Zedner, L., *Preventive justice*, Oxford University Press, 2014, p. 13; Slobogin, C., 'Preventive Detention in Europe, the United States and Australia,' in Keyser, P. (ed.) *Preventive detention: Asking the fundamental questions*, Intersentia, 2013, p. 31.

45. *Forvaring* applies only to certain serious offences and may only be imposed 'when a sentence for a specific term is deemed to be insufficient to protect life, health or freedom of others' (Norway: Section 40 of Penal Code). See also Lappi-Seppälä, T., 'Life Imprisonment and Related Institutions in the Nordic Countries,' in *Life imprisonment and human rights*, p. 461.

46. Denmark: § 70 of the Criminal Code; France: Articles 706-53-13 to 706-53-22 of the Criminal Procedure Code; the Netherlands: Article 37a of the Criminal Code; and Sweden: Chapter 31, Section 3 of the Penal Code.

47. See Van Zyl Smit, D. and Appleton, C., *Life imprisonment: A global human rights analysis*, pp. 81-84.

48. *Ibid*, p. 96.

49. Lappi-Seppälä, T., 'Life imprisonment and Related Institutions in the Nordic Countries,' in *Life imprisonment and human rights*, p. 461. Finland, however, is currently considering introducing preventive detention similar to the Norwegian model (personal communication between the Life Imprisonment Worldwide project and the Finnish Ministry of Justice).

# Living under an informal life sentence

“

It's like a living death sentence... You just function from one day to the next.<sup>50</sup>

**A former resident at the Florida Civil Commitment Center serving an informal life sentence**

”

The hardships of imprisonment have been thoroughly researched, but what sets life imprisonment apart from other prison sentences is the anguish of indeterminacy and uncertainty. This is true for those serving both formal and informal life. 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>51</sup>

While the effects of a death sentence on a parent or family member have been extensively studied, relatively little is known about the impact of life imprisonment on the families of those in prison. One recent study

examining IPP sentences (see page 9) in the UK has shed some light on this issue, revealing ‘strong, recurring themes of uncertainty and a lack of hope regarding the future.’<sup>52</sup>

Statistics from a 2023 UK Ministry of Justice report on the safety of individuals in prison revealed concerning trends about IPP sentences. Since 2005, 81 people serving IPP sentences have taken their own lives in prison, with a record-high nine self-inflicted deaths in 2022,<sup>53</sup> and a notably high rate of self-harm that is double that of individuals serving formal life sentences.<sup>54</sup> The findings are further highlighted by a report from a UK Independent Monitoring Board (IMB) which emphasized the growing feelings of hopelessness and despair among people serving IPP.<sup>55</sup> This distressing trend followed the government’s rejection of a key Ministry of Justice Select Committee recommendation, which deemed the IPP scheme ‘irredeemably flawed’ and called for the resentencing of all individuals still subject to IPP.<sup>56</sup> The IMB also noted three apparent self-inflicted deaths among individuals serving IPP following the government’s decision.<sup>57</sup>

50. Statement from a former Florida Civil Commitment Center resident who spent four and a half years at the facility, [www.prisonlegalnews.org/news/2017/feb/8/floridas-civil-commitment-center-living-death-sentence](http://www.prisonlegalnews.org/news/2017/feb/8/floridas-civil-commitment-center-living-death-sentence).

51. Quoted in Zehr H., ‘Doing Life: Reflections of Men and Women Serving Life Sentences’, *Mennonite Central Committee*, 1996, pp. 58, 14, 60, 86 respectively.

52. McConnell, M. and Raikes, B., ‘It’s not a case of he’ll be home one day.’ The Impact on Families of Sentences of Imprisonment for Public Protection (IPP), *Child Care in Practice*, Volume 25, Issue 4, 10 April 2018.

53. Ministry of Justice, *Safety in custody quarterly: update to September 2022*, 26 January 2023, Deaths in prison custody 1978-2022 spreadsheet, Table 1.6.

54. *Ibid*, Self-harm in prison custody 2004 to 2021 spreadsheet, Table 2.6.

55. Independent Monitoring Boards, *The impact of IPP sentences on prisoners’ wellbeing*, May 2023.

56. House of Commons Justice Committee, ‘IPP Sentences’, *Third report of session 2022-23 HC 266*, 28 September 2022, p. 51.

57. Independent Monitoring Boards, *IPP prisoners report increased hopelessness following resentencing rejection*, 12 May 2023, [imb.org.uk/news/ipp-prisoners-report-increased-hopelessness-following-resentencing-rejection](http://imb.org.uk/news/ipp-prisoners-report-increased-hopelessness-following-resentencing-rejection). On the role of IPP in suicide, see for example: Prisons & Probation Ombudsman, *Investigating cases involving IPP prisoners*, 5 November 2019, [ppo.gov.uk/blog/investigating-the-deaths-of-ipp-prisoners](http://ppo.gov.uk/blog/investigating-the-deaths-of-ipp-prisoners).

# Release from informal life imprisonment

Release must mean more than simply freeing individuals from prison shortly before they die, with no prospects for a meaningful future in the community. Release from imprisonment should always entail returning a person to the community at a point in their sentence when there is still a possibility for them to reintegrate into society and lead a lawful life.<sup>58</sup> This principle applies also to informal life imprisonment.

In most jurisdictions, release from informal life imprisonment is considered by the same bodies as formal life imprisonment. Release mechanisms typically include: (1) release by a court, in some cases a specialist court which can call on other experts to inform judgements about the release of a person serving a life sentence; (2) release by a parole board; or (3) release by the executive.

## Release from de facto life

When it comes to release from de facto life sentences, the procedures are typically quite similar to those used for considering parole in fixed-term sentences. For example, in Colombia and Chile, all individuals serving sentences, including those with de facto life terms, become eligible for potential release after completing a portion of their terms – three-fifths and two-thirds, respectively.<sup>59</sup> However, sentences in both countries can exceed 50 years, and the proportion of a very long sentence actually served may still be considerably lengthy. Other countries set a fixed minimum term after which parole can be considered. For instance, Hong Kong allows consideration for release from 5 years into sentences of 10 years or more, with subsequent reviews every 2 years.<sup>60</sup>

In many places, the processes for release from de facto life sentences are similar to release from formal life sentences, albeit with subtle differences. For instance, in South Africa, where people serving terms of over 25 years – including those serving de facto life – become eligible for release after 25 years,<sup>61</sup> individuals with formal life sentences face an additional board review and require approval from the minister of correctional services for release.<sup>62</sup> In this case, it may be slightly easier for people with de facto life terms to be released compared to those serving formal LWP sentences.

In certain countries, consideration for release from de facto life and formal life is undertaken by different bodies. For example, in Chile, parole applications for individuals serving fixed terms are heard by Parole Commissions based on Prison Service reports, whereas for people serving formal life terms, parole must be granted or revoked by the Supreme Court.<sup>63</sup>

In extreme cases, the possibility of release from a de facto life sentence before completion of the full term can be very slim. In the US State of Arizona, where there are no limits on the number of consecutive sentences that can be served and there can be inordinately long sentences spanning multiple decades, parole has effectively been abolished. This leaves clemency as the only viable way to be released before completing a fixed-term sentence.<sup>64</sup>

## Release from post-conviction indefinite preventive detention

For those serving post-conviction indefinite preventive detention, the procedures vary. In some countries, there are more safeguards for the release of individuals subject to these measures. For example, in Canada, they are considered for release by the parole board,

58. European Court of Human Rights, *Vinter and Others v. UK*, Application Nos. 66069/09, 130/10 and 3896/10, 9 July 2013 [GC], para. 127, 115–118.

59. Colombia: Article 64 of the Penal Code; Chile: Decree-Law No 321, which provides for conditional release for persons sentenced to custodial sentences.

60. Security Bureau Long-term Prison Sentences Review Board, *Sentence Review Schedules*, [www.sb.gov.hk/eng/links/ltprsb/schedules.html](http://www.sb.gov.hk/eng/links/ltprsb/schedules.html).

61. South Africa: Section 73(6) of the Correctional Services Act 111 of 1998 (as amended).

62. *Ibid.*, Section 75(1)(c).

63. Chile: Decree-Law No 321, which provides for conditional release for persons sentenced to custodial sentences.

64. See Arizona's Truth-in-Sentencing law (Laws 1993, Chapter 255), which required offenders to serve 85% of their prison sentences and abolished parole for all offences committed on or after 1 January 1994. This law also established the Arizona Board of Executive Clemency, responsible for advising the Governor on executive clemency matters. Similarly, in Florida where there are no limits to consecutive sentencing and children can receive sentences of up to 40 years, there are very few mechanisms for early release because 'inmates must serve a mandatory 85% of their sentence,' such that 'most inmates are released when their sentence ends.' See Office of Program Policy Analysis and Government Accountability, *Parole and Early Release*, November 2019, p. 1, [oppaga.fl.gov/Documents/Reports/19-13.pdf](http://oppaga.fl.gov/Documents/Reports/19-13.pdf).

but this happens earlier and more frequently compared to those with formal life sentences.<sup>65</sup> In South Africa, the release of dangerous individuals subject to post-conviction indefinite preventive detention is decided by the sentencing court, which has more procedural safeguards than the parole board that deals with people serving other sentences.<sup>66</sup> In European countries like Belgium, France, and Germany, release from post-conviction indefinite preventive detention follows the same procedural safeguards as release from formal life imprisonment, with the final decision being judicially made.<sup>67</sup>

Such safeguards, however, do not exist in the harshest regimes. For instance, Florida law mandates an annual review to assess progress for a safe release in civil commitment cases. Individuals also have the right to request a civil commitment trial and petition for release.<sup>68</sup> Yet, practical delays often result in individuals waiting several years for their trial.<sup>69</sup> In a case where a defendant waited over eight years for trial despite requesting it, Florida's Supreme Court raised concerns about the civil commitment system's efficacy and the legality of prolonged detention.<sup>70</sup>

Controversial release practices for those subject to post-conviction indefinite preventive detention exist in certain jurisdictions, notably the US. In Minnesota, for instance, between 1994 and 2015, none of the 714 people committed to the Minnesota Sex Offender programme were released due to stricter release criteria than required for initial detention.<sup>71</sup> In 2015, a Federal District Court initially deemed these strict requirements unconstitutional and ordered changes, including a restructuring of the offered treatment to make release more realistic. However, in 2017, the Court of Appeal overturned this decision and established a high threshold for court intervention in such cases. This ruling raised further controversy by asserting that the provision of treatment was not a necessity because the State could detain people for whom treatment was not available.<sup>72</sup>

In England and Wales, individuals serving IPP face numerous challenges when seeking release. These challenges include limited resources, minimal opportunities for progression in prison, institutionalisation, and insufficient support after

years of imprisonment. Moreover, access to essential risk reduction programmes and mental health support is also lacking, with a severe shortage of psychological interventions and assessments. These individuals often struggle with complex mental health needs, complicating risk assessment due to the sentence's psychological toll, leading to a distressing.<sup>73</sup> Many people serving IPP question the possibility of ever regaining freedom, expressing deep concerns about spending their lives in prison.<sup>74</sup>

“

I wake up each day not wanting to be alive, even when I am released, I am waiting to come back to prison. My mental health is in bits and now it is starting to affect my family who are on the phone crying.<sup>75</sup>

Person serving an IPP sentence

”

In response, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has called for an urgent review of IPP scheme, urging the government to enhance rehabilitation opportunities for people still serving it and provide appropriate reparations for all affected individuals.<sup>76</sup>

## Recall to prison

Individuals serving informal life sentences, similar to their formal counterparts, can be recalled to prison if they violate release conditions or commit another offence.

In light of the significant impact of recalling someone 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

65. Canada: Sections 753 and 761 of the Criminal Code.

66. South Africa: Section 286A of the Criminal Procedure Act, 1977.

67. Belgium: Article 4 of the Law on the Court for the Implementation of Sentences 2007; France: Article 706-53-13 of the Criminal Procedure Code; Germany: § 67e of the Penal Code.

68. Florida Statutes Title XLVII, Criminal Procedure and Corrections § 916.38, § 916.40.

69. Reutter, D., 'Florida's Civil Commitment Center a "living death sentence"', *Prison Legal News*, 8 February 2017, [www.prisonlegalnews.org/news/2017/feb/8/floridas-civil-commitment-center-living-death-sentence](http://www.prisonlegalnews.org/news/2017/feb/8/floridas-civil-commitment-center-living-death-sentence).

70. Supreme Court of Florida, *Morel v. Sheldon* 59 So. 3d. 1082 (Fla. 2011).

71. 'Confining sex offenders after prison release is constitutional, Minn. court rules', *Washington Post*, 3 January 2017, [www.washingtonpost.com/national/confining-sex-offenders-after-prison-release-is-constitutional-minn-court-rules/2017/01/03/6d3e5318-d1d4-11e6-9cb0-54ab630851e8\\_story.html](http://www.washingtonpost.com/national/confining-sex-offenders-after-prison-release-is-constitutional-minn-court-rules/2017/01/03/6d3e5318-d1d4-11e6-9cb0-54ab630851e8_story.html).

72. Minnesota 8th Circuit Court of Appeals, *Karsjens v. Piper* 845 F.3d. 394 (2017). See also US Supreme Court, *Kansas v. Hendricks* 521 US 346, 366 (1997).

73. House of Commons Justice Committee, 'IPP Sentences', paras. 31-33, 49-51.

74. Independent Monitoring Boards, *The impact of IPP sentences on prisoners' wellbeing*, May 2023.

75. *Ibid.*, p. 3. Statement from a person in prison serving IPP who was almost 13 years over his two-year minimum term.

76. 'UK: UN torture expert calls for urgent review of over 2,000 prison tariffs under discredited IPP sentencing scheme', *UN Press Release*, 30 August 2023.

opportunity to present his or her case'.<sup>77</sup> Similarly, the Council of Europe's Recommendation on conditional release provides that people released from prison should have adequate access to their case file and the opportunity to appeal any decision.<sup>78</sup> Furthermore, the Recommendation advocates for proportionality by suggesting that minor breaches should be addressed with warnings or advice instead of immediate recall to prison.<sup>79</sup>

In England and Wales, people subject to IPP who are released from custody can be recalled to prison for poor behaviour, even if no further crime has been committed.

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### Recall of people subject to IPP in England and Wales

Individuals subject to IPP have been recalled at an even faster rate than those serving formal life sentences in recent years. In March 2012, there were fewer than 100 people subject to IPP recalled to prison. As of September 2023, this number had risen to 1,652, representing 56% of the total population of people still in prison serving sentences of IPP.<sup>80</sup>

The pressure of the post-release IPP 'license' (conditions) itself can contribute to recalls, as the fear of indefinite detention may discourage individuals from seeking help and negatively impact their mental health.<sup>81</sup>

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77. United Nations Office at Vienna, Crime Prevention and Criminal Justice Branch, *Life Imprisonment*, 1994, para. 64.

78. Recommendation Rec(2003)22 of the Committee of Ministers to Member States on conditional release (parole), adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies, paras. 32–33.

79. *Ibid.*, para. 30.

80. Ministry of Justice, *Offender Management Statistics Bulletin*, England and Wales, 26 October 2023.

81. Edgar, K., Harris, M., and Webster, R., *No life, no freedom, no future: The experiences of prisoners recalled under the sentence of imprisonment for Public Protection*, Prison Reform Trust, 2020.

# Limits to informal life imprisonment

## Principle of proportionality

Any restrictions on an individual's liberty must be in line with the principle of proportionality. It is widely recognised in national and international law that any sentence must be of a length and type which fits the seriousness of the crime and the circumstances of the individual.<sup>82</sup> This means that if a jurisdiction permits life sentences of any kind, they should be reserved exclusively for the most serious offences.

“  
As a general rule, indeterminate sentences should be used sparingly and only for the most serious crimes and offenders ... Sentencing should be assessed on an individual basis, taking into account all relevant factors.”<sup>83</sup>

**Dr Alice Jill Edwards, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

”

In some countries, there are restrictions on when informal life sentences can be imposed. For instance, El Salvador's maximum fixed-term sentence of 60 years is reserved for specific crimes like the murder of certain officials or aggravated abduction.<sup>84</sup> Some countries that allow consecutive fixed-term sentences, like Ecuador and Peru, set overall limits to prevent extremely long sentences, ranging from 30 to 40 years.<sup>85</sup>

In many countries, post-conviction indefinite preventive detention is typically reserved for individuals convicted of very serious violent or sexual crimes. The seriousness of the offence is often indicated by the length of the initial prison sentence. For example, in France, indefinite detention can only be applied to those sentenced to over 15 years for crimes like assassination, murder, torture, rape, or child abduction.<sup>86</sup> It also applies to aggravated versions of these offences when the victim is an adult or if the person convicted has a prior criminal record.<sup>87</sup>

In some countries, however, there are few to no restrictions on post-conviction indefinite preventive detention, and it can be applied for a wide range of offences. For example, in Greece, indefinite detention can be imposed after almost any offence if the individual has been convicted three times before and is deemed dangerous. In such cases, they may receive an indefinite sentence, with a minimum period set by the judge, but it cannot be less than two-thirds of the sentence for their most recent offence.<sup>88</sup>

To ensure proportionality, the law must be sufficiently flexible to allow judges to choose not to impose an informal life sentence where it would be disproportionate to the crime committed, bearing in mind mitigating factors. Adding extra time because someone is deemed to be dangerous distorts the proportionality between the crime and the time served. The principle of proportionality is best protected when a life sentence (formal or informal) is truly discretionary, and where there is no initial presumption that an indeterminate sentence should be imposed.

<sup>82</sup> Van Zyl Smit, D. and Ashworth, A., 'Disproportionate Sentences as Human Rights Violations', *The Modern Law Review*, Volume 67, Issue 4, July 2004, pp. 541-560.

<sup>83</sup> 'UK: UN torture expert calls for urgent review of over 2,000 prison tariffs under discredited IPP sentencing scheme', UN Press Release, 30 August 2023.

<sup>84</sup> El Salvador: Articles 71, 129, 149 and 150 of the Penal Code, adopted by Legislative Decree No. 1030 of April 26, 1997 (Código Penal, adoptado por Decreto Legislativo N° 1030, del 26 de abril de 1997).

<sup>85</sup> In Ecuador, cumulative sentences are capped at 40 years (Articles 40 and 55 of the Penal Code). Peru sets the maximum fixed-term sentence at 35 years, including for multiple offenses (Article 50 of the Penal Code). Paraguay (Article 38 of Law 3440/08 modifying the Penal Code), Venezuela (Article 44 of the Constitution and Article 94 of the Penal Code), and the International Criminal Court (Article 78 of the Statute of the International Criminal Court) establish a maximum of 30 years for sentences.

<sup>86</sup> France : Article 706-53-13 of the Criminal Procedure Code.

<sup>87</sup> Ibid.

<sup>88</sup> Greece: Article 90 of the Penal Code.

## Purposes of imprisonment

The purposes of imprisonment should be kept in mind in all sentencing decisions. The UN Nelson Mandela Rules stipulate that the purpose of imprisonment is to protect society from crime and reduce recidivism, and these aims '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'. Sentences that result in individuals serving longer than necessary to achieve these aims raise human rights concerns and call into question their effectiveness.

Moreover, Article 10(1) of the UN International Covenant on Civil and Political Rights states that 'All persons 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 individuals serving sentences in prison.<sup>89</sup> This means that every person in prison, even those convicted of the most serious offences, should have the opportunity to be rehabilitated, enabling them to return to society and lead a law-abiding and self-supporting life.

While there is little guidance on life imprisonment regimes at the international level,<sup>90</sup> at a regional level, the Council of Europe has outlined three primary objectives for the treatment and management of people serving life and long-term sentences:

1. Ensuring that prisons are safe and secure places for these individuals and everyone involved with or visiting them.
2. Counteracting the damaging effects of life and long-term imprisonment.
3. Enhancing opportunities and support systems for their successful reintegration into society, promoting a law-abiding life after their release.<sup>91</sup>

### Council of Europe general principles for the management of life sentence and other long-term prisoners<sup>92</sup>

#### 1. Individualisation

The individual characteristics of each person subject to a life sentence should be taken into consideration in sentence planning.

#### 2. Normalisation

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

#### 3. Responsibility

People serving life sentences should be given opportunities to exercise personal responsibility in prison life.

#### 4. Security and safety

People serving life sentences 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 individuals serving life sentences. 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.

In jurisdictions with no formal life imprisonment, there is a real risk that informal life sentences can be used to disguise a harsh, punitive purpose. For example, in Brazil, despite the constitutional ban on life imprisonment, there is ongoing pressure to extend maximum sentences from 30 to 50 years. Analysis of demographic data of the Brazilian prison population indicates that a 50-year term would result in most persons so sentenced potentially dying in custody, essentially introducing de facto life sentences.<sup>93</sup> Similarly, in Colombia, when discussing the possibility of introducing life sentences for specific crimes, the justice minister noted in 2015 that sentences of up to 118 years were already possible for certain offences, making the debate somewhat irrelevant.<sup>94</sup>

In jurisdictions with formal life imprisonment, there is a risk that informal life sentences can be used to bypass safeguards like minimum term restrictions and parole eligibility. This nearly happened in a South African case where two individuals faced sentences totalling 155 and 115 years. Under the law in force at the time, they would not have been considered for release until they had served two-thirds of their sentence, which meant they had to serve at least 70 years. Fortunately, the Supreme Court of Appeal intervened, replacing these sentences with formal life imprisonment, allowing for parole consideration. The court explained that 'to impose such a long term of imprisonment as to leave the offender with no possible hope of ever being released, no matter what happens, does not fit in a civilised legal system.'<sup>95</sup>

89. *International Covenant on Civil and Political Rights*, 16 December 1966, UN Treaty Series, Volume 999, p. 171.

90. See: United Nations Office at Vienna, Crime Prevention and Criminal Justice Branch, *Life Imprisonment*, 1994.

91. Council of Europe, Recommendation Rec (2003)23 of the Committee of Ministers to Member States on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003, para. 2.

92. *Ibid*, paras. 3-8.

93. Frisso, G. M., 'The Abolition of Life Imprisonment in Brazil and Its Contradictions,' in *Life imprisonment and human rights*, p. 307.

94. 'La cadena perpetua existe hoy en Colombia: Minjusticia,' *El Tiempo*, 19 January 2015, [www.eltiempo.com/politica/justicia/la-cadena-perpetua-existe-hoy-en-colombia-minjusticia/15115637](http://www.eltiempo.com/politica/justicia/la-cadena-perpetua-existe-hoy-en-colombia-minjusticia/15115637).

95. Supreme Court of South Africa, *S v. Silulale and another*, 1999 (2) SACR 102 (SCA), 106-107. See also Supreme Court of Namibia, *S. v. Gaingob and others* (Case nos. SA 7/2008 and 8/2008) February 6, 2018, where the court came to the same conclusion; Supreme Court of South Africa, *S. v. Bull & another; S. v. Chavulla & others* 2002 (1) SA 535 (SCA).



## The right to hope

The 'right to hope' has been recognised by the European Court of Human Rights (ECtHR) as a 'fundamental aspect of...humanity'.<sup>96</sup> The Court has ruled that imposing a whole life order, i.e., a life sentence from which an individual has no hope of release, is inhuman and degrading under Article 3 of the European Convention of Human Rights (ECHR).

The ECtHR has also ruled that detaining people indefinitely on grounds of risk without giving them access to opportunities for rehabilitation is unlawful, and a violation of Article 5(1) of the ECHR.<sup>97</sup>

It emphasised that for indeterminate sentences of imprisonment for the protection of the public, 'a real opportunity for rehabilitation is a necessary element of any part of the detention which is to be justified solely by reference to public protection'.<sup>98</sup>

Any period of imprisonment should be used to support rehabilitation and reintegration, looking ahead to release. All individuals must be supported to lead a law-abiding life and, once a person has demonstrated they are low risk and have the ability to reintegrate into society, they should be considered for release.

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<sup>96.</sup> European Court of Human Rights, *Vinter and Others v. UK*, Concurring opinion of Judge Power-Forde.

<sup>97.</sup> European Court of Human Rights, *James, Wells and Lee v. UK*, Application nos. 25119/09, 57715/09 and 57877/09, 18 September 2012.

<sup>98.</sup> *Ibid.*, para. 209.

# Reforming informal life imprisonment: Recommendations

Policymakers and practitioners should rethink, revise and update existing guidelines on the sanction of life imprisonment to include informal life sentences.

Many of the following recommendations, aimed at reforming informal life imprisonment, apply to formal life imprisonment as well.

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## 01

### **Define and recognise all sentences that equate to life imprisonment and monitor their imposition and implementation**

Evidence-based reform requires information on when and how informal life imprisonment is imposed and implemented. Systems for data collection and monitoring of sentencing and imprisonment practices should also track informal life imprisonment to ensure compliance with international and regional human rights and prison standards.

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## 02

### **If informal life sentences are imposed, use them only as a last resort and for the most serious crimes.**

Informal life sentences should be reserved for the ‘most serious crimes’ when strictly necessary and no other measure is suitable to protect society. To prevent de facto life sentences and post-conviction indefinite preventive detention from being misused as hidden replacements for formal life sentences, clear rules for their use must be established.

Criminal codes should prevent post-conviction indefinite preventive detention in systems with formal life imprisonment by imposing strict limits on making sentences for offences that do not carry formal life sentences more severe on grounds of future dangerousness.

At the very least, post-conviction indefinite preventive detention should be used only in cases where there is a vivid danger of grave risk to society. When the law is changed to abolish the use of a particular form of informal life imprisonment, it should also be applied retrospectively to benefit individuals sentenced before the law was changed and who may still be in prison.

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## 03

### **Prohibit Informal life sentences for children.**

As with formal life sentences, informal life sentences should not be imposed on children, in line with the best interests of the child principle recognised under international and regional human rights law, including the UN Convention on the Rights of the Child.

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# 04

## **Abolish informal life sentences from which there is no prospect of release.**

It is widely recognised that formal life sentences without parole (LWOP) infringe fundamental human rights by denying people subject to this sentence any hope of release. Informal life sentences that have the same effect in practice should therefore be outlawed completely. This most severe form of life imprisonment can never meet international human rights standards and should be abolished.

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# 05

## **Abolish mandatory informal life sentences.**

Mandatory informal life sentences are in violation of the principle of proportionality. They do not allow for a thoughtful evaluation of whether such sentences are a suitable and reasonable punishment given the gravity of the offence. A more flexible approach that considers both the crime and the individual's circumstances, including their potential for rehabilitation, is needed to ensure that punishments are not overly harsh. Rights-based guidelines should be established to help judges and other decision-makers decide when an informal life sentence is appropriate.

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# 06

## **Implement measures to alleviate the harmful effects of informal life imprisonment.**

The damaging effects of informal life imprisonment should be recognised; adequate mental healthcare and psychosocial support should be available and prison staff should be trained specifically to mitigate the development or exacerbation of mental health problems among people serving these sentences.

People serving such sentences should be consulted and put centre stage in decisions concerning their treatment and access to programmes.

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# 07

## **Ensure proper release processes that meet due process standards when informal life sentences are imposed.**

All individuals serving informal life sentences of any kind should have a clear path to release. Independent bodies should review their cases regularly, particularly for individuals subject to indefinite detention. They should follow high procedural standards and assess whether continued detention aligns with the purpose of imprisonment. The goal should be to provide all individuals serving informal life sentences with a realistic hope of release.

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# 08

## **Reform systems of recalls to imprisonment for parole breaches so that blanket policies are not applied to individuals released from informal life imprisonment sentences.**

The power to recall someone to prison 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. Recalls should be limited to cases where a real and legitimate risk to society is assessed.

The period for any further imprisonment should be the minimum required to address the danger posed and should be reviewed at regular intervals. Furthermore, conditions imposed on persons released must be individualised, proportionate and time-limited.

Any conditions, particularly supervision, should be focused on assisting the process of reintegration for people subject to life sentences to reduce any risks of reoffending. Supervision should not be a continuing form of punishment. Recalls to imprisonment should be limited to cases where a real and legitimate risk to society is assessed.

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# 09

## **Abolish inordinately long fixed-term sentences.**

Statutory limits should be set on the maximum duration of fixed-terms to prevent excessively long sentences, especially for non-violent offences. No sentence should be so long that it cannot be served by someone at a certain stage of life. A failure to do so may result in sentences that amount to informal Life Without Parole.

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# 10

## **Place limits on the use of consecutive sentencing.**

Consecutive sentences may result in overall terms of imprisonment that are so long they amount to informal life sentences. The rules that govern the use of consecutive sentences should be designed to prevent this.

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# 11

## **Ensure rehabilitation and re-integration programmes are in place for people serving informal life sentences.**

Rehabilitation and re-integration programmes, including work and education opportunities, should be offered to people serving informal life sentences. A lack of access to these programmes in prison can result in sentenced individuals not meeting the requirements for parole or early release, even if they have served a substantial portion of their sentence. Individuals in prison should know what they need to do to be released so that they retain hope for the future.





### **About Penal Reform International**

Penal Reform International (PRI) is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

Registered in The Netherlands (registration no 40025979), PRI operates globally with offices in multiple locations.

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

### **About the Human Rights Law Centre at the University of Nottingham**

Life Imprisonment Worldwide is a research project facilitated by the Human Rights Law Centre of the University of Nottingham to examine life imprisonment on a global scale. Life Imprisonment Worldwide brings together an interdisciplinary team: Emeritus Professor Dirk van Zyl Smit and Zinat Jimada at the School of Law of the University of Nottingham, in partnership with Dr Catherine Appleton at the Centre for Research and Education in Security, Prisons and Forensic Psychiatry, St Olavs University Hospital and the Department of Mental Health, Norwegian University of Science and Technology. The team is working together with a global community of scholars and practitioners in law, criminal justice, and penology to collate information on life imprisonment around the world.

[www.nottingham.ac.uk/hrlc/research/life-imprisonment-worldwide](http://www.nottingham.ac.uk/hrlc/research/life-imprisonment-worldwide)


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