

INHUMAN SENTENCING: LIFE IMPRISONMENT OF CHILDREN

SUMMARY

In 2010 CRIN, with other partners, launched a campaign for the prohibition of inhuman sentencing of children - defined to include sentences of death, life imprisonment and corporal punishment.

Frustrated by the narrow focus on life imprisonment without parole within the children's rights community, CRIN published a report on life imprisonment in the Commonwealth in 2012, highlighting the prevalence of life imprisonment throughout the Commonwealth States and the different forms that life sentences could take. This report was followed up in 2013 with a report on life sentences for children in the European Union.

This paper is a summary of the findings of CRIN's new global report on life imprisonment of children, a report which highlights the prevalence and plurality of laws permitting life imprisonment for children, laws that potentially condemn children to die in prison. You can read the full report as well as detailed profiles on life imprisonment in each country around the world online at: www.crin.org/life-imprisonment.

CONTENTS

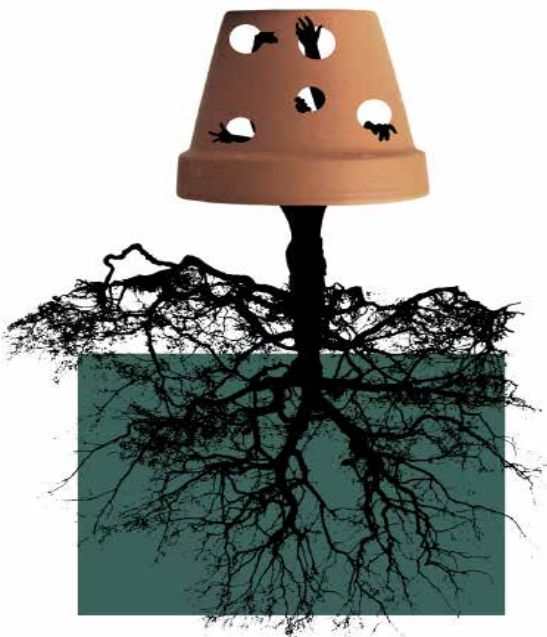
1. Life imprisonment as inhuman sentencing
2. Life imprisonment of children around the world
3. The meaning of life imprisonment
4. How many children affected by life imprisonment?
5. Maximum detention sentences for children
6. Recommendations

1. LIFE IMPRISONMENT OF CHILDREN AS INHUMAN SENTENCING

Life imprisonment sentences cover a diverse range of practices, from the most severe form of life imprisonment without parole, in which a person is sentenced to die in prison so long as their sentence stands to more indeterminate sentences in which at the time of sentencing it is not clear how long the sentenced person will spend in prison. What all these sentences have in common, however, is that at the time the sentence is passed, a person is liable to be detained for the rest of his or her natural life.

International human rights standards universally condemn life imprisonment without parole for children, and now the United States is the only State which continues to sentence children to this form of extreme sentencing. This focus on the worst forms of the sentence, however, has disguised the practice of less severe or overt forms of life imprisonment. The United Nations has begun to look at life imprisonment of children more generally and in November 2012, the General Assembly urged States to consider repealing all forms of life imprisonment for children. The Human Rights Council, meanwhile, has called on States twice to prohibit life imprisonment of children in law and practice.

Nonetheless, 73 States retain life imprisonment as a penalty for offences committed while under the age of 18 and a further 49 permit sentences of 15 years or longer and 90 for 10 years or longer. Life imprisonment and lengthy prison sentences for child offenders are not the preserve of a diminishing few, they can be found in the criminal laws of the majority of States.



73 States retain life imprisonment as a penalty for offences committed while under the age of 18

CRIN is concerned that States are handing out lengthy sentences to children, yet international condemnation is often limited to life imprisonment without parole and the death penalty. It is essential - indeed long overdue - to widen the focus and challenge any sentence which, at the time it is passed, a child is liable to be detained for the rest of his or her natural life. It is also time to look at laws permitting the lengthy detention of children, which fall short of the standards set by the Convention on the Rights of the Child. CRIN, with other commentators, believes that the only justification for the detention of a child should be that the child has been assessed as posing a serious risk to public safety. Courts should only be able to authorise a short maximum period of detention after which the presumption of release from detention would place the onus on the State to prove that considerations of public safety justify another short period of detention. The same principles should apply to pre-trial detention.

2. LIFE IMPRISONMENT OF CHILDREN AROUND THE WORLD

Life imprisonment of children is rife. At least 73 States retain at least one form of life imprisonment for offences committed while under the age of 18.

Legal history and culture has clearly been influential in the retention of life imprisonment. Of the 73 States that permit such sentences for children, 46 are within the Commonwealth. It is difficult to ignore the impact that the British criminal legal tradition has had on the Commonwealth States, and this tradition includes a punitive approach to the sentencing of children, including the retention of life imprisonment. This pattern is most striking in Oceania, where every State retains life imprisonment for child offenders for at least one offence.

By contrast, States within the Community of Portuguese Language Countries, influenced by the reaction against the use of detention by the Estado Novo regime, have almost all

prohibited life imprisonment for children.¹ The Spanish legal tradition is also largely hostile to life imprisonment. In Europe, too, life imprisonment for children is on the wane: only three States clearly retain life imprisonment for children, while in a further three States laws remain unclear on the subject.

3. THE MEANING OF LIFE IMPRISONMENT

In looking at life imprisonment for children, the report will also address the way that life imprisonment has been defined in national legal systems.

Life imprisonment without the possibility of parole

Life imprisonment without the possibility of parole has garnered a great deal of international attention, but is now rarely used around the world for child offenders. The sentence remains lawful for child offenders in approximately nine States² but only the United States continues to apply the sentence to children.

Labelling sentences as “life without parole”, however, can oversimplify how life sentences function. In a number of States, all life sentences are formally sentences of life imprisonment without the possibility of parole. However, in some of these States the effect is not that people sentenced to life are sentenced to die in prison. In Cyprus, for example life imprisonment is defined as the extent of a person’s biological life, but release can occur if permission is granted by the President in consultation with the Attorney-General.³ In practice such releases do take place, in total 11 times between 1993 and the 2008.⁴ In States that adopt this model, there is a potential gap between the formal law and practice. Whether life without the possibility of parole exists is effectively a matter of policy for the executive.

Life imprisonment with the possibility of parole

Life imprisonment with the possibility of parole is by far the most common form of life sentence retained for child offenders. At least 63 States have legislation that permits children to be sentenced to detention which may extend for the rest of a person’s natural life, but subject to the possibility of being conditionally released at some point during that

1 Most of the current members of the CPLC gained their independence in the aftermath of the “Carnation Revolution” as Portugal moved from a dictatorship to democracy. As a reaction to harsh abuses of the Estado Novo regime, the new constitutions introduced strong limits on deprivation of liberty. Portugal’s Constitution, which has acted as a model for many of the CPLC States, included a prohibition on sentences of a perpetual nature.

2 Antigua and Barbuda, Australia, Cuba, Dominica, Nigeria, St Vincent and the Grenadines, Solomon Islands, Sri Lanka, United States. Many more States permit life without the possibility of parole for adults.

3 See *Kafkaris v. Cyprus* [2008] App. No. 21906/04 for an overview of Cypriot and European Court of Human Rights law in the area of life imprisonment. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-85019>.

4 See *Kafkaris v. Cyprus* [2008] App. No. 21906/04 at para. 103.

sentence.⁵

Detention at the pleasure of the courts or executive

Detention at the pleasure of the courts or executive has its origins in English law and so is only found in the criminal laws of members of the Commonwealth of Nations. Among those States, however, the practice remains very common and is retained in 27 States.⁶

In different legal systems, the distinction between detention at the pleasure of the courts or executive and life imprisonment can blur into insignificance. In the United Kingdom, for example people serving detention during Her Majesty's pleasure are subject to the same release provisions as those serving life imprisonment. In Kenya people serving life imprisonment or detention during the president's pleasure can only be released subject to the president's prerogative of mercy. The result of this rule is that the release provisions of life imprisonment without the possibility of parole and detention during the president's pleasure are formally the same.⁷

Indefinite detention sentences.

In a small number of jurisdictions, further forms of indefinite detention are beginning to emerge for children. In 2003, the United Kingdom introduced Detention for Public Protection (DPP) sentences, which permit children to be detained for a minimum tariff period, as under a life sentence, and remain detained until released on licence. While on licence, the sentenced person could be recalled to prison for breaching any of the conditions placed upon him or her. Unlike a life sentence, a licence period could be brought to an end after a person had been out of detention for 10 years.⁸

In a small number of Commonwealth States, traditional sentences of detention at the pleasure of the courts or executive have been replaced by less well established forms of indefinite sentencing. In Gambia, for example, the Children's Act allows courts to authorise the detention of a child "in such a place and on such conditions as the court may direct".⁹ This sentence

mirrors the language of detention at Her Majesty's pleasure but in departing from an established form of sentencing leaves the length of sentencing unclear. Like DHMP sentences, however, these sentences authorise detention without limit and could in principle be used to detain a child for life.

In different legal systems, the distinction between detention at the pleasure of the courts or executive and life imprisonment can blur into insignificance.

4. HOW MANY CHILDREN AFFECTED BY LIFE IMPRISONMENT?

One of the aims of the global report on life imprisonment was to establish how many children around the world are affected by sentences of life imprisonment, but unfortunately, it has not been possible to obtain sufficient information to meet this aim. While many of the States reviewed regularly publish figures on sentencing within the juvenile justice system, no country publishes comprehensive and up to date statistics on the number of child offenders serving life imprisonment or the amount of time spent in detention by those serving life sentences.

This void of authoritative information on the sentencing of children to life imprisonment not only makes it difficult to hold States accountable for their treatment of child offenders, but undermines the ability of States to engage in evidence based reviews of sentencing and measure the rehabilitative merits of that sentencing. The forthcoming report, however, does collect the limited statistics published by States and where they are lacking attempts to identify court judgments and media coverage that indicate where children are being sentenced to life imprisonment.

5 Antigua and Barbuda, Australia, the Bahamas, Bahrain, Barbados, Belize, Botswana, Burkina Faso, Canada, China, China (Hong Kong SAR), Cuba, Dominica, Eritrea, Ethiopia, Fiji, France, Gabon, Gambia, Guyana, Haiti, India (Jammu and Kashmir), Iran, Israel, Japan, Jamaica, Kiribati, Democratic Peoples Republic of Korea, Liberia, Madagascar, Marshall Islands, Micronesia, Mongolia, Namibia, Nauru, Nepal, Netherlands (Overseas Territories), New Zealand, Nigeria, Pakistan, Palau, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Seychelles, Solomon Islands, Somalia (South/Central and Puntland), South Africa, South Sudan, Sudan, Tonga, Tuvalu, Trinidad and Tobago, United Kingdom, United States of America, Vanuatu, Zambia, Zimbabwe.

6 Antigua and Barbuda, the Bahamas, Barbados, Botswana, Brunei Darussalam, Cyprus, Dominica, Fiji, Grenada, Guyana, Jamaica, Kenya, Malawi, Malaysia, Nigeria, Papua New Guinea, St Kitts and Nevis, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tonga, Trinidad and Tobago, Tuvalu, United Kingdom, United Republic of Tanzania, Zambia.

7 Prisons Act, No. 49 of 1962, Section 48.

8 See CRIN, INHUMAN SENTENCING: Life imprisonment of children in the European Union, 2014, pp. 35-36.

9 Children's Act, Section 219(1).

5. MAXIMUM DETENTION SENTENCES FOR CHILDREN ACROSS THE WORLD

Where States have abolished life imprisonment for child offenders, they have often retained sentences that permit children to be sentenced to lengthy prison terms. Of the 112 States that set a clear limit on the maximum term to which a person may be sentenced for an offence committed while under the age of 18, 90 permit imprisonment for 10 years or more, 49 for 15 years or more and 25 for 20 years or more. In practice, such sentences may result in child offenders serving longer periods in detention for fixed terms than they would under a life sentence. Thailand permits the longest fixed term penalty for child offenders, at 50 years, a sentence which might well amount to a de facto full life sentence if served in full.

Maximum Detention Period (years)	Number of States
3	5
4	3
5	3
6	2
7	1
8	8
9	1
10	30
12	10
14	1
15	21
16	1
17	1
18	1
20	18
21	1
30	5
50	1
Total	112

A further four States don't set an explicit maximum period of imprisonment for child offenders, but define the maximum term as a proportion of the corresponding sentence for an adult offender. For 12 States, it wasn't possible to identify the maximum detention sentence applicable to children.

6. RECOMMENDATIONS

TO STATES

- Prohibit life imprisonment in all its forms for any offence committed while under the age of 18;
- Immediately review the sentence of any person currently serving any form of life imprisonment for an offence committed while under the age of 18;
- Ensure that children are not sentenced to life imprisonment as a result of inaccurate or inadequate measures of age determination;
- Collect and publish statistics on children sentenced to life imprisonment including how long they serve in detention. These statistics should identify the age of the child at the time of the offence, age at the time of sentencing, the offence for which the child was sentenced and where he or she is detained, while maintaining the privacy and anonymity of children;
- Amend laws and practices so that children are only detained as a last resort and for the shortest period possible, specifically when they are assessed of being a serious risk to others' or for their own safety and only where that risk cannot be reduced to an acceptable level without detention;
- Ensure that any necessary restriction of liberty is authorised by a legal process with the child independently represented and that detention is frequently reviewed;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;
- Ratify relevant international complaints mechanisms, including the third optional protocol to the UN Convention on the Rights of the Child, to ensure that children are able to challenge violations of their rights at the international level;

TO THE UNITED NATIONS

UN Committee on the Rights of the Child

- Systematically address life imprisonment and lengthy sentencing of child offenders during State reviews and press States to ensure that detention of children is only used as a last resort, for the shortest appropriate period of time and that in making this decision the best interests of the child are a primary consideration;
- Urge States to amend laws and practices so that children are only detained as a last resort for the shortest period possible, specifically only when they are assessed of being a serious risk to others' or for their own safety and where that risk cannot be reduced to an acceptable level without detention;
- In holding States to account for restriction of deprivation of liberty of children as a last resort, urge States to ensure

that any necessary restriction of liberty is authorised by a legal process with the child independently represented and that detention is frequently reviewed;

- Systematically recommend that States abolish life imprisonment for any offence committed while under the age of 18;
- Push States to provide statistics on the number of children sentenced to life imprisonment and how long they serve in practice;
- Revisit General Comment No. 10 to clarify the implications of the Convention on the Rights of the Child with regards to the detention of children in conflict with the law, including by addressing the minimum age of criminal responsibility and life imprisonment to clarify that life imprisonment of children in all its forms always violates their rights and to urge states to avoid criminalising children;

UN Committee against Torture

- Systematically address life imprisonment of children during reviews of States as a violation of the prohibition on torture and cruel, inhuman and degrading treatment or punishment;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

UN Human Rights Committee

- Systematically address life imprisonment during State reviews as a violation of the prohibition on torture and cruel, inhuman and degrading treatment or punishment in conjunction with the right of the child to such measures of protection required by his or her status as a minor;
- In line with General Comment 35, hold States accountable for the obligation under the ICCPR to ensure that children are deprived of liberty only as a last resort and for the shortest period of time and that the best interests of the child must be a primary consideration in every decision to initiate or continue deprivation;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

UN Special Representative of the Secretary-General on Violence Against Children

- Hold States accountable for the life imprisonment of child offenders as a form of violence against children;
- Incorporate scrutiny of life imprisonment of children into country visits;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

UN Special Rapporteur on Torture

- Address life imprisonment of child offenders as a form of cruel, inhuman or degrading treatment or punishment in any relevant country visit or thematic report;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

UNICEF

- Incorporate reform of laws permitting life imprisonment for child offenders when providing technical assistance to States on juvenile justice;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

TO REGIONAL BODIES

The African Union

- Systematically address life imprisonment of child offenders as a violation of their rights under the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights, particularly the prohibition on inhuman or degrading treatment or punishment;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

The Council of Europe

- Hold States to account for life imprisonment, detention during Her Majesty's pleasure and lengthy prison sentences for child offenders as a violation of Article 17(1) of the European Social Charter;
- Incorporate juvenile justice and child-friendly justice in the next Council of Europe Strategy for the Rights of the Child, including the elimination of life imprisonment for children;
- Continue involvement in the development of child-friendly justice standards;
- Support the development of standards and practices on the detention of children that protect the public but eschew punishment in line with international standards so that detention is only used as a last resort for the shortest period possible and in the best interests of the child;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

The European Union

- Work towards a European policy whereby life imprisonment of children is rendered unacceptable throughout the European Union;
- Support the development of standards and practices on the detention of children that protect the public but eschew punishment in line with international standards so that detention is only used as a last resort for the shortest period possible and in the best interests of the child;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;
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- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

The Organisation of American States

- Systematically hold States accountable for life imprisonment of children as a violation of the American Convention on Human Rights;
- Support the development of standards and practices on the detention of children that protect the public but eschew punishment in line with international standards so that detention is only used as a last resort for the shortest period possible and in the best interests of the child;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

Arab League

- Reform the Arab Charter on Human Rights to strengthen juvenile justice standards, including by making it clear that the death penalty and life imprisonment for child offenders are clear violations of the rights of the child in all circumstances;
- Support the development of standards and practices on the detention of children that protect the public but eschew punishment in line with international standards so that detention is only used as a last resort for the shortest period possible and in the best interests of the child;
- Cooperate with and support the forthcoming UN Global Study on children deprived of their liberty;

CIVIL SOCIETY

- Provide human rights bodies at the national, regional and international level with the information necessary to hold states to account for prohibited forms of sentencing of children;
- Use human rights mechanisms to challenge life sentences of people convicted of offences committed while under the age of 18;
- Support the development of standards and practices on the detention of children that protect the public but eschew punishment in line with international standards so that detention is only used as a last resort for the shortest

About CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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