

# INHUMAN SENTENCING: LIFE IMPRISONMENT OF CHILDREN AROUND THE WORLD



## **Acknowledgements**

CRIN is a global children's rights advocacy network. Established in 1995, we press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children. We link to nearly 3,000 organisations that between them work on children's rights in every country in the world and rely on our publications, research and information sharing.

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PART I

INHUMAN SENTENCING OF  
CHILDREN

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.

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 of 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.

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.

This report serves to highlight the prevalence and the plurality of laws permitting life imprisonment for children, laws that potentially condemn children to die in prison, and hopes to lead to reviews of the sentencing of children to ensure they are fully compliant with the CRC and other instruments. CRIN believes that life imprisonment, of any type, does not have a place in juvenile justice.

The report is launched alongside online country profiles giving full information on life imprisonment of children around the world.

PART II

FINDINGS

This section is intended to give a brief overview of the findings of this report. For full details on all of these issues and complete references, see the Country Profiles available online at: [www.crin.org/life-imprisonment](http://www.crin.org/life-imprisonment).

## 1. The legality of life imprisonment

What is immediately clear from this report is that life imprisonment for 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.<sup>1</sup> The Spanish legal tradition is also largely hostile to life imprisonment, with the result that in 2012, mainland Latin America became the first region on earth where it is not legal to sentence someone to life imprisonment for any offence committed while under the age of 18. 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.

## 2. How many children affected by life imprisonment

One of the aims of this report 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 do 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

### Forms of life imprisonment

This report reviews the laws and practices around the world with regards to life imprisonment of children; that is all persons under 18 years of age. Where official information is available on how many children are affected by the relevant sentences, this has been included, and where government figures are not maintained, this too is highlighted. For the purposes of this report, “life imprisonment” has been defined to include a variety of types of sentence under which it is possible for a person to be legally detained for the rest of his or her natural life for an offence committed whilst under the age of 18 years. Such sentences include:

**Life imprisonment without parole**, in which at the time of sentencing, the court orders that the convicted person will never be eligible for release. This sentence means that, short of a pardon, commutation or other form of leniency after sentencing, a person serving such a term will spend the rest of his or her natural life in detention.

**Life imprisonment with the possibility of parole**, simply referred to as life imprisonment throughout this report. Definitions vary in their precise form, though they usually require the setting of a minimum term which must be served in detention before a person becomes eligible for release. If a person serving a life sentence is released, his or her release is usually subject to restrictions and controls, and he or she will remain liable to be detained upon breaching those restrictions.

**Detention at the pleasure of the executive or the courts:** such sentences are strictly speaking indeterminate, in that it is possible that a person will be unconditionally discharged without restrictions. However, such sentences have been included within the definition of life imprisonment here, as in law they allow for a person to be detained for the rest of his or her natural life.

**Indefinite detention sentences** are those other than detention at the pleasure of the executive or the courts which allow for an undefined period of detention that may be extended for the rest of a person’s life.

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. In a small number of States, however, it has been possible to access sufficient information to identify the scale of the problem and to highlight some of the States who are the worst offenders when it comes to

<sup>1</sup> 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 a 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.

sentencing children to life imprisonment.

Of those countries where statistics were sufficient to estimate the number of children in detention, the United States leads on the number of children sentenced to life imprisonment, with an estimated 7,626 people serving some form of the sentence across 47 states. Of these, an estimated 2,574 are serving life imprisonment without the possibility of parole.

The United Kingdom is also among the States that sentence the most children to life. Since 2008, England and Wales sentenced 117 children to detention at Her Majesty's pleasure (DHMP) and Scotland sentenced 113 "young offenders" to "detention without limit of time" between 2001 and 2011.<sup>2</sup> Though the United Kingdom was among the most open about the sentencing of children, it also highlights some of the problems in identifying the number of child offenders serving life imprisonment. First, the figures for England and Wales

were not published pro-actively, but were released following a freedom of information request.<sup>3</sup> Second, when questioned in Parliament about the number of children serving life sentences, the Ministry of Justice revealed that while it maintained figures on the number of children sentenced to life imprisonment it did not know how many were serving such sentences in total nor how long child offenders sentenced to DHMP served in practice.<sup>4</sup>

It must be acknowledged, however, that these figures disproportionately highlight States with good records on publishing official information or with effective freedom of information laws. It is entirely possible - if not likely - that some of the States with the worst records on the imprisonment of children are unidentifiable because of their poor record keeping or poor publication record.

Maximum period of deprivation of liberty permitted for child offenders (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

<sup>2</sup> The term "young offenders" in Scottish law includes persons aged 16 to 21 so it was not possible to distinguish between people who were sentenced for offences committed while under the age of 18 and those who were sentenced later.

<sup>3</sup> Freedom of information request made by CRIN. See UK Country Profile for full figures.

<sup>4</sup> Hansard, HL Deb, 16 November 2011, c.170w. Available at: <http://www.theyworkforyou.com/wrans/?id=2011-11-16a.170.3&s=2011-11-15..2011-11-17+section%3Awrans+speaker%3A13129#g171.0>.



The Democratic People's Republic of Korea, for example, is reported to have one of the highest incarceration rates in the world,<sup>5</sup> but no authoritative figures are available on the number of child offenders sentenced to any form of detention in the country.

In the absence of reliable statistics for many countries covered in this report, every effort has been made to identify court judgments in which children were sentenced to life imprisonment in order to determine whether children are so sentenced in practice. Where court reporting is also lacking, media searches have been conducted to identify cases in which children have been sentenced to life. This kind of research can be no replacement for thorough, official and independently verified statistics, but can act as a guide to whether and how States are using life sentences for child offenders.

### 3. Maximum detention sentences 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.

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.

### 4. The meaning of life imprisonment

In looking at life imprisonment for children, this report also looks at the way that life imprisonment has been defined in national legal systems. Where life imprisonment is lawful for child offenders, the aim is to clarify the diversity of sentences that are covered by this term and where life sentences are

prohibited for children the intention is to make it clearer what protection this actually provides.

#### ***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 States<sup>6</sup> 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 persons biological life, but release can occur if permission is granted by the President in consultation with the Attorney-General.<sup>7</sup> In practice such releases do take place, in total 11 times between 1993 and the 2008.<sup>8</sup> 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 persons natural life, but subject to the possibility of being conditionally released at some point during that sentence.<sup>9</sup>

#### ***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

6 Antigua and Barbuda, Australia, Cuba, Dominica, Nigeria, Saint Vincent and the Grenadines, Solomon Islands, Sri Lanka, China (Hong Kong SAR), United States. Many more States permit life without the possible of release for adults.

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

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

9 Antigua and Barbuda, Australia, 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.

5 For information on the population of prison camps in the Democratic People's Republic of Korea, see Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/63, p.11 and 12.



those States, however, the practice remains very common and is retained in 27 States.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

#### **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.<sup>13</sup>

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".<sup>14</sup> 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.

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<sup>10</sup> 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.

<sup>11</sup> See United Kingdom Country Profile for full information on the structure of life sentences in England and Wales.

<sup>12</sup> Prisons Act, No. 49 of 1962, Section 48.

<sup>13</sup> See the United Kingdom Country Profile below for full details on DPP sentences.

<sup>14</sup> Children's Act, Section 219(1).

## PART III

# LIFE IMPRISONMENT AND THE UNITED NATIONS

A large number of international treaties, covenants and conventions touch on the issue of life imprisonment for child offenders. Increasingly consensus is emerging that life imprisonment violates the rights of children, creating legal obligations on States to abolish this practice. Explicit standards on lengthy prison sentences, however, are yet to be developed. This section focuses on the main United Nations human rights mechanisms that have dealt with life imprisonment and sets out how they have done so.

## Treaty Bodies

### UN Committee on the Rights of the Child

The UN Committee on the Rights of the Child has made it clear that life imprisonment for children violates the rights of children under the Convention on the Rights of the Child (CRC).

Article 37(a) prohibits torture, cruel, inhuman or degrading treatment or punishment, and explicitly prohibits life imprisonment without parole for offences committed while under the age of 18 years. Article 37 also explicitly requires that deprivation of liberty is only used as a measure of last resort and for the shortest appropriate period of time.<sup>15</sup>

Article 40 covers additional rights of children in relation to justice systems, emphasising that “States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and self worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

The Convention also requires that the best interests of the child be a primary consideration “in all actions concerning children”, including those taken by courts of law,<sup>16</sup> and that States ensure “to the maximum extent possible the survival and development of the child”.<sup>17</sup>

In its General Comment on juvenile justice, the Committee specifically addressed the issue of life imprisonment noting that “[given] the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.”<sup>18</sup>



15 UN CRC, Article 37(b).

16 UN CRC, Article 3(1).

17 UN CRC, Article 6.

18 UN CRC, CRC/C/GC/10, General Comment, para. 77.

The Committee has also regularly raised the issue of life imprisonment in its review of States and has made 38 recommendations to 30 States to abolish life imprisonment for child offenders.<sup>19</sup> However, the Committee has not systematically raised the issue of life imprisonment during its review process. Of the 73 States that currently retain life imprisonment for child offenders in law or practice, around half have received a recommendation on the subject.

The issue of lengthy detention has also played a peripheral role in the Committee's review of States, though standards have not been clearly developed in this area. It has become standard language in the vast majority of Concluding Observations, to urge States to "ensure that detention is a measure of last resort and for the shortest possible period of time"<sup>20</sup>, but the Committee has largely not applied this standard to specific sentencing regimes. No consensus emerges from the 15 recommendations given in which the Committee has explicitly criticised sentences of imprisonment in relation to their length. Denmark and Nigeria have both received recommendations to address excessive sentences of eight years' imprisonment while a further 11 states have received similar recommendations in relation to longer prison terms varying from 10 to 20 years. In the case of Chile, the Committee considered that detention for up to five years for children aged 14 to 16 violated the CRC.<sup>21</sup>

However, these recommendations do not reflect the scale of lengthy sentences affecting children. Of those States that have clearly prohibited life imprisonment, 99 have laws permitting sentences of 8 years or more, 90 for 10 years or more and 25 for 20 years or more.

### **UN Human Rights Committee**

The International Covenant on Civil and Political Rights prohibits torture, cruel, inhuman or degrading treatment or punishment.<sup>22</sup> The Covenant also entitles every child to "such measures of protection as are required by his status as a minor on the part of his family, society and the State."<sup>23</sup>

The Committee has examined the issue of life imprisonment in its review of States, but has not extended its scrutiny to the full range of life imprisonment sentences to which children can be subject. For example, in 2014, the Committee recommended that the United States prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed", but did not address the plight of the thousands of children who are subject to life imprisonment with the possibility of parole.<sup>24</sup>

### **UN Committee against Torture**

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also requires States to prevent in any territory under their jurisdiction "acts of cruel, inhuman or degrading treatment or punishment".<sup>25</sup> During its review of States, the Committee against Torture has raised the issue of whether life imprisonment of children constitutes cruel, inhuman or degrading treatment or punishment. In its 2006 review of the United States, for example, the Committee expressed concern at the large number of children sentenced to life imprisonment and called on the State to "address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment."<sup>26</sup>

### **Human Rights Council**

The Human Rights Council, during the Universal Periodic Review, in its resolutions and through its Special Rapporteurs has developed a clear position that life imprisonment of child offenders should be abolished.

### **Resolutions**

The UN Human Rights Council Resolution on human rights in the administration of justice, in particular juvenile justice of 2011 urged States to ensure that life without the possibility of parole is not imposed on persons under 18,<sup>27</sup> but in two resolutions since, the Council has established that no form of life imprisonment should be applied to persons under 18.<sup>28</sup>

### **Universal Periodic Review**

Abolishing life imprisonment for child offenders has been a regular, though not consistent part of the recommendations made during the Universal Periodic Review (UPR). In the first cycle of the review, States made eight recommendations to

19 See the Concluding Observations in relation to the following States, year of review in brackets: Antigua and Barbuda (2004); Argentina (2010); Bahrain (2011); Bangladesh (2003, 2009); Belgium (1995); Belize (2005); Burkina Faso (1994, 2002); China (1996, 2005); Dominica (2004); Ethiopia (1997, 2001); Fiji (2014); Gambia (2001); Jamaica (2003); Japan (2004); Liberia (2003, 2012); Malawi (2009); Malaysia (2007); Netherlands (1999, 2004, 2009); Niger (2009); Nigeria (2010); Qatar (2001); Saint Lucia (2005, 2014); Singapore (2011); Solomon Islands (2003); Sudan (2002); Tanzania (2001); Trinidad and Tobago (2006); Tuvalu (2013); Zambia (2003); Zimbabwe (1999).

20 See, for example, Combined third and fourth reports of Togo to the UN Committee on the Rights of the Child, CRC/C/TGO/CO/3-4, 8 March 2012, para. 76.

21 UN Committee on the Rights of the Child, Concluding observations on the third periodic report of Chile, CRC/C/CHL/CO/3, 23 April 2007, paras. 71 and 72.

22 International Covenant on Civil and Political Rights, Article 7.

23 International Covenant on Civil and Political Rights, Article 24(1).

24 UN Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, 23 April 2014, para. 23.

25 UN Convention Against Torture, Article 15.

26 Conclusions and recommendations of the Committee against Torture on the second periodic report of the United States of America, CAT/C/USA/CO/2, 25 July 2006, para. 34.

27 A/HRC/18/L.9, para. 13.

28 A/HRC/25/L.28, para. 22 and A/HRC/25/L.10, para. 8(g).

abolish life imprisonment for minors,<sup>29</sup> while in the second cycle to date, five recommendations have been made to end life imprisonment for child offenders.<sup>30</sup>

The minimum age of criminal responsibility (MACR) has received a significantly higher profile during the UPR, as States received 45 recommendations urging them to raise or consider raising the MACR during the first cycle, and at the time of writing six recommendations during the second cycle.<sup>31</sup> Recommendations have tended to be vague however, generally calling on a State to raise the MACR to an internationally acceptable level or in accordance with the Convention on the Rights of the Child. When States have made recommendations calling for a raise in the MACR to a particular level, this has usually been at least 12 (in line with the the CRC's General Comment No. 10). In two instances, however, Turkey and Belgium called on States to set the MACR significantly higher than this standard, at 16 years.

### **UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

In March 2015, the Special Rapporteur on torture directly addressed the issue of life imprisonment of children, finding that:

“Life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child. Life sentences or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment.”<sup>32</sup>

The Rapporteur followed up this finding by recommending that States “prohibit laws, policies and practices that allow children to be subjected to adult sentences and punishments, and to prohibit the death penalty and life imprisonment in all its forms.”<sup>33</sup>

### **UN Secretary-General**

Life imprisonment of child offenders has also recently been included within the remit of the UN Secretary-General's annual report on the question of the death penalty. In 2014, the report recommended that when the death penalty is

abolished for child offenders, States must avoid sentencing children to life imprisonment as an alternative punishment.<sup>34</sup>

29 Antigua and Barbuda (Hungary), Argentina (Slovenia), St Lucia (Mexico), Trinidad and Tobago (Slovakia), United States (Belgium, Switzerland and Slovakia). Recommendations can be searched through UPR-Info ([www.upr-info.org/database/](http://www.upr-info.org/database/)).

30 Bangladesh (Uruguay), Netherlands (Belarus), Niger (Norway)

31 Recommendations retrieved from UPR Info on 9 July 2014.

32 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para. 74.

33 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para. 85(h)

34 Report of the Secretary-General on the Question of the Death Penalty, A/HRC/C/27/23, 30 June 2014, para. 74

## PART IV

# THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY



The purpose of this report is to address the sentencing of children to life imprisonment and other lengthy forms of detention. However, it is impossible to look meaningfully at the penalties to which children can be sentenced without also addressing how States define who can be subject to those penalties. To this end, it is unavoidable that this report must also look at the minimum age of criminal responsibility.

In its basic sense, the minimum age of criminal responsibility is a simple concept: the age at which a person can be charged with a criminal offence and processed within the criminal justice system. In practice, however, many features of a national legal system interact to determine this age and comparative information on the minimum age of criminal responsibility can be misleading when it applies a figure without explaining the criminal justice system that lies beneath.

In discussing the minimum age of criminal responsibility, this report takes a substantive approach to criminal responsibility, looking at the characteristics of a criminal justice system and criminal responsibility rather than taking the definition adopted in national legislation at face value. In doing so, there are several factors that are taken into account.

**Criminal responsibility v. criminal majority.** It is common in any discussion of the minimum age of criminal responsibility for this age to be conflated with criminal majority. Throughout this report, criminal majority is used to describe the age at which a person can be tried and sentenced as an adult. The minimum age of criminal responsibility is used to describe the lowest age at which a person can be held liable in the criminal justice system.

**Exceptions for specific offences.** It is a common feature of many criminal justice systems to set an age under which children cannot be held criminally responsible, but then permit exceptions to this general rule. In Ireland, for example, children under the age of 12 cannot generally be held liable for a criminal offence, but children aged 10 or 11 can be held liable for murder, manslaughter or rape.<sup>35</sup> Where a State has such a provision, this report treats the lowest age at which a child can be held criminally liable as the minimum age of criminal responsibility. For Ireland, this age is 10.

**Capacity based tests.** The English legal doctrine of *doli incapax* is retained in a number of criminal justice systems around the world. Put simply, legal systems that retain such provisions set an absolute minimum age of criminal responsibility under which no person can be held criminally

liable and a second age under which people are *presumed* not to be criminally responsible.

For example, in New Zealand, no person can be convicted of a criminal offence for an act or omission committed while under the age of 10. A child aged 10 to 14 is presumed incapable of committing a criminal offence, unless it can be proved that he or she knew that the act or omission was wrong or that it was contrary to the law.<sup>36</sup> As with exceptions to a general minimum age of criminal responsibility, this report treats the lowest age at which a child can be subject to criminal law as the MACR; 10 years in the case of New Zealand.

#### **Measures indicative of criminal responsibility.**

Many of the above issues are simply about drawing semantic distinctions and agreeing terms, but the issue becomes more complicated when trying to determine what amounts to a criminal justice measure. A State can set out a “minimum age of criminal responsibility” in its legislation, but if this age does not correspond with the age at which people can be subject to criminal penalties and criminal proceedings then it merely serves to mask what the minimum age is in practice. There are several characteristics of a criminal justice system that would indicate *de facto* criminal responsibility regardless of the formal definition in a national legal system.

#### **Labelling**

Labelling a person as having violated the criminal law through a conviction and criminal record is certainly an indicator of criminal responsibility. The recording of a conviction and its preservation on a person’s criminal record is a clear way of establishing criminal responsibility.

#### **Criminal penalties**

The application of penalties that are punitive in nature as opposed to those that focus on rehabilitation or reintegration is also a clear indicator of criminal responsibility.<sup>37</sup> Deprivation of liberty is in many ways the paradigm example of a criminal penalty and so in this report is treated as strongly indicative of the application of the criminal justice system unless it is clearly based on protection of the public and the best interests of the child. Where sentencing measures are closely modelled on those for adults - even if they are reduced - this is also indicative of criminal responsibility.

For example, Brazil’s Child and Adolescent Code describes

35 Children’s Act 2001, Section 52. (as amended by the Criminal Justice Act 2005, Section 129). Available at: <http://www.irishstatutebook.ie/pdf/2006/en.act.2006.0026.pdf>.

36 Sentencing Act 2002, Sections 21(1) and 22(1). Available at: <http://www.legislation.govt.nz/act/public/2002/0009/latest/DLM135342.html>.

37 See Cipriani D., *Children’s Rights and the Minimum Age of Criminal Responsibility: A global perspective*, 2009, Ashgate Publishing, pp. 93 to 97 for a discussion of rehabilitation and punishment in the context of the minimum age of criminal responsibility.



# 18

the minimum age of criminal responsibility as 18. Below this age, actions that would be considered criminal offences for an adult are described as “infractions” and subject to a different sentencing regime.<sup>38</sup> However, these sentences include deprivation of liberty (“total institutionalisation in a socio-educational facility”<sup>39</sup>) and the Committee on the Rights of the Child has criticised these practices as lacking a socio-educative basis.<sup>40</sup> Though this penalty is less severe than that for an adult, this detention mirrors the nature of adult detention sentences.

### ***Criminal offences***

Criminal law prohibits certain types of conduct defined as criminal offences. Where the minimum age of criminal responsibility defines when someone can be held responsible for a criminal offence, people under that age should not be governed by those offences. The holding of children accountable for criminal offences for which those over the nominal minimum age of criminal responsibility are held criminally liable also undermines any distinction based on the age of criminal responsibility.

Many Latin American criminal justice systems illustrate this problem well. For example, Honduras maintains a formal

minimum age of criminal responsibility of 18, but children can be processed under the juvenile justice system from

the age of 12 for the same offences as adults.<sup>41</sup> Poland, too, formally sets its minimum age of criminal responsibility at 15, but Polish courts have the power to impose measures on children of any age in response to evidence of “demoralisation” of a child. As evidence of demoralisation includes criminal activity, it is difficult to maintain a distinction based on the application of criminal offences.<sup>42</sup>

### ***Criminal process***

The characteristics of the procedure applied when a child is in conflict with the law are also highly relevant. Where a child can be brought before a formal process in relation to a criminal offence despite not being held formally criminally responsible, this would be indicative of criminal liability.

This is not to say that where a child under the age of criminal responsibility is accused of committing what would be a serious criminal offence for someone older, there should not be an investigation into what happened or that such an investigation should not respect due process standards. Where the investigation is modelled on the criminal justice process and ascertaining guilt and liability in the way that it would be for people aged over the minimum age of criminal

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38 Child and Adolescent Code, Article 103. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/18069.htm](http://www.planalto.gov.br/ccivil_03/leis/18069.htm).

39 Child and Adolescent Code, Article 112.

40 UN Committee on the Rights of the Child, Concluding Observations on Brazil’s initial periodic report, CRC/C/15/Add.24, 13 November 2004, para. 68.

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41 Article

42 See Country Profile below for more information and references.

responsibility, however, it is difficult to maintain a distinction based on a stated minimum age of criminal responsibility.

This is an aspect of criminal responsibility that is not a major focus in this report, the subject matter of which is criminal penalties, but it is nonetheless an important consideration in determining the reality of criminal responsibility in a State.

### **The minimum age of criminal responsibility and the Convention on the Rights of the Child**

The Convention on the Rights of the Child itself does not provide explicit guidance on the implementation of the minimum age of criminal responsibility, though the text as adopted does require States to set such an age:

“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;”

- UNCRC, Article 40(3)<sup>43</sup>

Nonetheless, scrutiny of the MACR has become a standard part of the Committee’s reviews of States. Since the Committee began its work, it has made 196 recommendations to 126 States in relation to the minimum age of criminal responsibility. Of these recommendations nine were positive, welcoming a raise of the MACR in conformity with the CRC, and four more were made in relation to MACRs that have now been raised. The overwhelming majority of the recommendations, however, were critical of the low age at which children can be subject to criminal penalties.

The approach of the Committee towards the MACR can be broadly divided into three phases. In the early years of the Committee’s work, it tended to avoid making recommendations as to what the MACR should be, instead criticising those States that had particularly low minimum ages and making recommendations for States simply to raise the minimum age or to raise it in line with international standards.<sup>44</sup> This approach explicitly used this language, based on that of the CRC, but did not explain how it should be applied in practical terms.

Minimum age of criminal responsibility (years)	Number of States
None	12
Puberty	1
7	27
8	12
9	7
10	26
11	2
12	30
13	20
14	48
15	9
16	6

43 See Cipriani, p. 53-56 for a discussion of the history of the drafting of this provision.

44 For examples, see country profiles at [www.crin.org/life-imprisonment](http://www.crin.org/life-imprisonment).

General Comment 10 on juvenile justice, published in 2007, marked a shift in the Committee’s approach. For the first time, the Committee developed the idea of an internationally acceptable minimum age of criminal responsibility, namely that “a minimum age of criminal responsibility below the age of 12 years is not considered ... to be internationally acceptable”. The Comment went on to encourage States to raise the MACR to 12 years as the absolute minimum and to continue to increase it to a higher age level. In following up on this General Comment, the Committee’s recommendations became focused on those States with minimum ages of criminal responsibility under the age of 12, and corresponding recommendations to raise the MACR to at least this level.<sup>45</sup>

It appears that the standard advocated by the Committee may now be evolving again, increasing the minimum which is considered internationally acceptable. In recent Concluding Observations, the Committee has begun to explicitly urge States to raise the MACR to 14.<sup>46</sup> This higher standard is in addition to continuing criticism of any State which has lowered its minimum age of criminal responsibility, regardless of whether the lower age remained higher than 12.<sup>47</sup>

### **The minimum age of criminal responsibility in practice**

There is no consensus on the minimum age of criminal responsibility around the world, though patterns emerge between regional groupings and legal traditions that will be discussed in the regional chapters below.

At least 39 of the States included in these figures maintain different ages of criminal responsibility for different offences, usually allowing children to be held criminally responsible from a lower age when accused of a more serious offence.<sup>48</sup> For example, Kazakhstan’s Criminal Code provides that children can be held criminally responsible for all offences from the age of 16, but from the age of 14 for offences specifically listed in the Code.<sup>49</sup> Other States, set a minimum age of criminal responsibility, but provide a small number

of exceptions for which children must be older in order to be held responsible. For example, in Fiji, children can be held criminally responsible from the age of 10, but males under the age of 12 are presumed incapable of having “carnal knowledge” and so cannot be prosecuted for certain sexual offences.<sup>50</sup>

In 2012, CRIN published a policy paper calling for an approach to the minimum age of criminal responsibility that moved beyond pragmatism and compromise and fully respected children’s rights. You can read *Stop Making Children Criminals* at [www.crin.org/node/136](http://www.crin.org/node/136).

<sup>45</sup> UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Myanmar, CRC/C/MMR/CO/3-4, 14 March 2012, paras. 93 and 94.

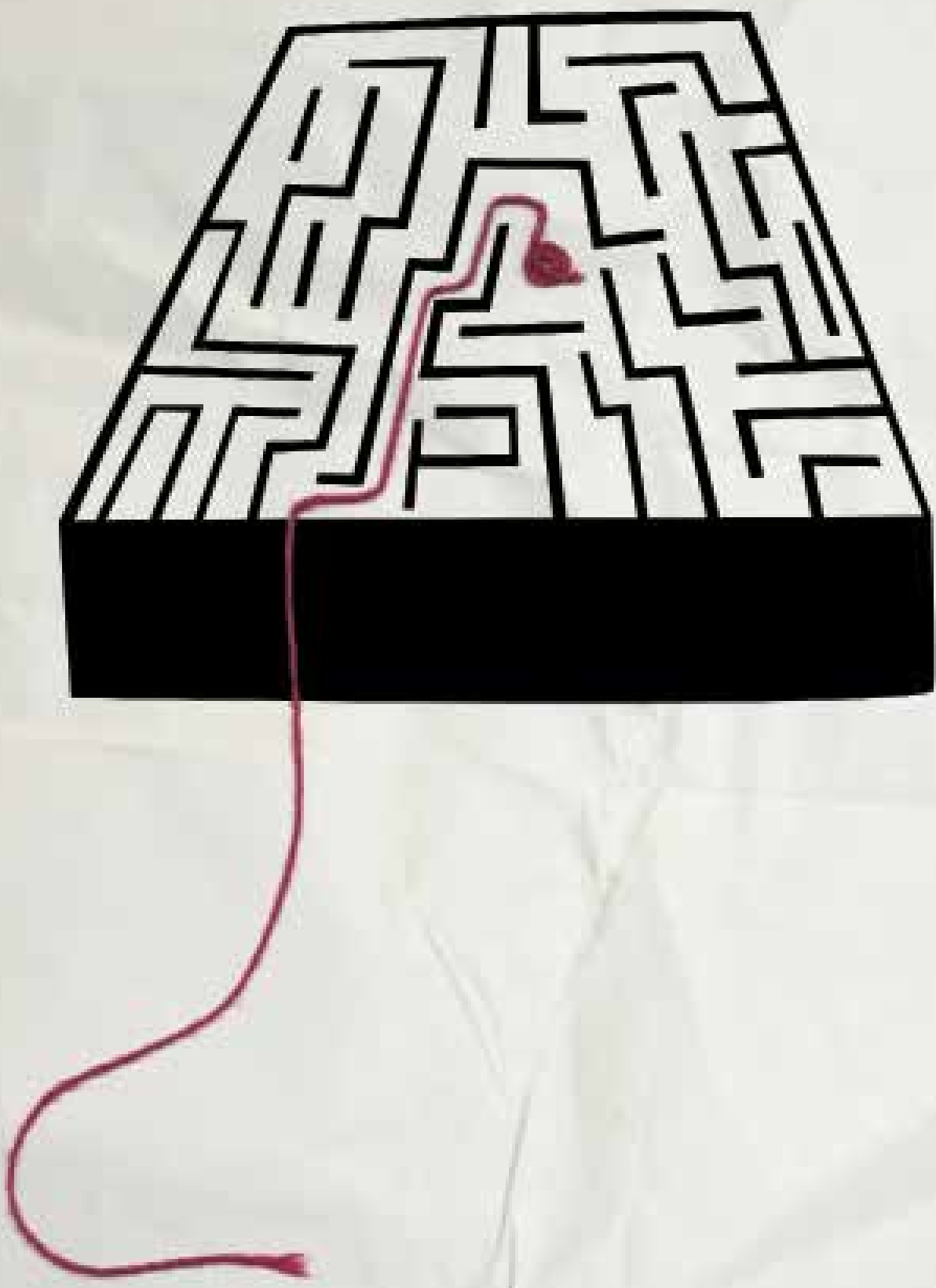
<sup>46</sup> See, for example, UN Committee on the Rights of the Child, Concluding observations on Indonesia’s combined third and fourth periodic reports, CRC/C/IDN/CO/3-4, 13 June 2014, paras. 77 and 78; Concluding observations on Malta’s second periodic report, CRC/C/MLT/CO/2, 18 June 2013, para. 66.

<sup>47</sup> See, for example, UN Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Denmark, CRC/C/DNK/CO/4, 7 April 2011, paras. 65 and 66.

<sup>48</sup> For more information, see the country profiles of Albania, Argentina, Armenia, Austria, Azerbaijan, Bangladesh, Botswana, Chile, China, Cyprus, Fiji, Georgia, Ireland, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lithuania, Malawi, Malaysia, Maldives, Moldova, Mongolia, Nepal, New Zealand, Nigeria, Pakistan, Papua New Guinea, Russian Federation, Seychelles, Sudan, Tajikistan, Turkmenistan, Tuvalu, Ukraine, Uzbekistan, Viet Nam, Zambia, Zimbabwe.

<sup>49</sup> Criminal Code, Article 15.

<sup>50</sup> Penal Code, Section 14.



## PART V

# LIFE IMPRISONMENT OF CHILDREN AROUND THE WORLD

# AFRICA

WWW.CRIN.ORG/LIFE-IMPRISONMENT/AFRICA

## 1. The legality of life imprisonment

Life imprisonment for child offenders remains prevalent in Africa: at least 23 out of 54 States on the continent retain laws that permit people to be sentenced to at least one form of life imprisonment for offences committed while under the age of 18.<sup>51</sup> There is a very clear geographic divide between North Africa, which has largely abolished life imprisonment for child offenders, and Sub-Saharan Africa, where such sentences commonly remain legal.

Beyond this simple geographic pattern, the prevalence of life imprisonment is closely tied to the legal history and legal cultures across the continent. In this respect it is difficult to ignore the extensive impact colonialism has had on the criminal law of African States.

### *North Africa*

There are few jurisdictions across North Africa that permit life sentences for child offenders. A small number of States retain laws which fall short of an explicit prohibition of life imprisonment, however, and it may be that enforcement remains an issue in some of the States in this region. Sudan and South Sudan, in particular, retain laws which do not clearly distinguish between the age at which the offence was committed and the age at the time of trial, which could result in people being sentenced to life imprisonment even though they were under 18 at the time of the offence.

### *The Commonwealth*

As elsewhere around the world, many of those States that have retained life sentences in Africa are members of the Commonwealth, share a British colonial history and, in many cases, provisions originally enacted during the colonial period. More than half of the States that currently permit life imprisonment for children are current or former members of the Commonwealth.<sup>52</sup>

The relationship is not absolute, however. A small number of African Commonwealth members have taken steps to eliminate life sentences for children from their legislation, though of the five Commonwealth States that have done so only Ghana, Cameroon and Uganda were part of the British Empire.

### *Community of Portuguese Language Countries*

Meanwhile, African members of the Community of Portuguese Language Countries have almost all - with the exception of Mauritius - abolished life imprisonment of children.<sup>53</sup> At least with respect to the origins of the legislation, this pattern seems to be at least partially an outcome of the way in which the Portuguese Empire was dissolved. 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 a 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 includes a prohibition on sentences of a perpetual nature.<sup>54</sup> This provision has been widely replicated with the consequent impact on life sentences for child offenders and adults.<sup>55</sup>

## 2. How many children affected by life imprisonment

Statistics on the detention of children across Africa were particularly poor with the result that it has not been possible to estimate the number of child offenders who are serving life imprisonment across the continent. For a small number of States, evidence could be found of such sentences being used for children, for example in Liberia,<sup>56</sup> Nigeria<sup>57</sup> and South Africa,<sup>58</sup> but this evidence is by no means indicative of the prevalence of life imprisonment across the Africa.

## 3. Maximum sentences across Africa

Among the 26 States that set clear time limits on deprivation of liberty for child offenders, standards vary widely. While

53 Angola, Cape Verde, Equatorial Guinea, Guinea-Bissau, Mauritius, Mozambique, Sao Tome and Principe, Senegal.

54 Constitution of Portugal, Article 30(1).

55 See Constitution of Angola, Article 66; Constitution of Mozambique, Article 61(1); Constitution of Cape Verde, Article 31; Constitution of Sao Tome and Principe, Article 37(1);

56 United Nations Quarterly report on human rights situation in Liberia, October 2007. Available at: <http://www.refworld.org/pdfid/47454d132.pdf>.

57 Amnesty International (2009), op cit.; Amnesty International & Legal Defence and Assistance Project (2008)

58 Carina du Toit, “A measure of last resort? Child offenders and life imprisonment”, SA Crime Quarterly No. 17, September 2006. Available at: <http://www.issafrica.org/uploads/CQ17duToit.pdf>.

51 Botswana, Burkina Faso, Eritrea, Ethiopia, Gabon, Gambia, Kenya, Liberia, Madagascar, Mauritius, Malawi, Namibia, Nigeria, Seychelles, Sierra Leone, Somalia (South Central and Puntland), South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

52 Botswana, Gambia, Kenya, Malawi, Namibia, Nigeria, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Zambia.

Maximum period of deprivation of liberty permitted for child offenders (years)	Number of States
3	1
4	1
8	2
10	8
12	1
15	3
20	9
30	1

Uganda's three year cap on deprivation of liberty for child offenders is among the world's shortest, 22 States permit courts to sentence child offenders to 10 years' imprisonment or more<sup>59</sup> and 10 States to 20 years or more.<sup>60</sup>

A further three States set a cap on detention for children in reference to the maximum penalty for an adult. Libya, for example, limits the maximum penalty for a child to a third of that for an adult. In Djibouti, the cap is half the applicable adult sentence and in Guinea-Bissau two-thirds of the sentence for an adult.

#### 4. The meaning of life imprisonment

There are a variety of forms of life imprisonment across the continent, though all fall into the following broad categories.

##### *Life imprisonment with parole*

Life imprisonment in which a minimum term of detention must be served before some form of parole is possible is by far the most common form of life imprisonment for child offenders across Africa; 14 of the 23 States that permit life sentences for children retain this form of the sentence.<sup>61</sup>

<sup>59</sup> Burundi, Cameroon, Chad, Democratic Republic of the Congo, Egypt, Guinea, Togo, Tunisia, Mauritania, Angola, Morocco, Somaliland, Algeria, Benin, Central African Republic, Comoros, Cote d'Ivoire, Lesotho, Mali, Rwanda, Senegal, Niger.

<sup>60</sup> Algeria, Benin, Central African Republic, Comoros, Cote d'Ivoire, Lesotho, Mali, Rwanda, Senegal, Niger.

<sup>61</sup> Botswana, Burkina Faso, Eritrea, Ethiopia, Gabon, Liberia, Madagascar, Namibia, Nigeria, Seychelles, Somalia (South Central and Puntland), South Africa, Zambia, Zimbabwe.

##### *Detention at the pleasure of the executive or the courts*

Eight African States permit child offenders to be detained at the pleasure of the courts or the executive.<sup>62</sup> For example, in Kenya, any person under the age of 18 who would otherwise be eligible for the death penalty must be sentenced to "detention at the president's pleasure". In practice, this means that the child can be detained indefinitely, and the Minister responsible for prisons has the discretion to order release. Courts can make recommendations for a release date, but the final decision lies with the executive.<sup>63</sup> The precise formulation of these sentences varies among the other seven States, but at the time of sentencing they all authorise detention for a period up to the end of a person's natural life. All of these States introduced these provisions upon abolishing the death penalty for child offenders.

##### *Other indefinite detention*

A second type of indeterminate sentence has also begun to emerge in a small number of States, in which the established form of DHMP is replaced with a less well established type of sentencing. In Gambia, for example, the Children's Act allows courts to authorise the detention of a child in "in such a place and on such conditions as the court may direct".<sup>64</sup> 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.

<sup>62</sup> Botswana, Kenya, Malawi, Nigeria, Sierra Leone, Swaziland, United Republic of Tanzania, and Zambia.

<sup>63</sup> See Kenya Country Profile for more information and references.

<sup>64</sup> Children's Act, Section 219(1).



## 5. The minimum age of criminal responsibility

It is difficult to generalise about the minimum age of criminal responsibility across Africa, as approaches vary significantly as does the way the term is used. National provisions also often defy the desire to identify a single age limit. For example, in Mozambique, the minimum age of criminal responsibility could be described as 16, the point at which children can be “charged”,<sup>65</sup> though children under the age of 16 are subject to the jurisdiction of the juvenile courts, and can be subject to penalties of a criminal nature, including deprivation of liberty. Since there is no explicit lower age limit on the age at which children are able to be subject to these penalties, the minimum age of criminal responsibility could also be described as 0. In several jurisdictions, minimum ages vary between different legal systems within a single country. For example, in Comoros, the minimum age of criminal responsibility is 13 years under the Penal Code, but for under the Sharia justice system, no one can be held criminally responsible before reaching puberty.

Eight of these States maintain variable minimum ages of criminal responsibility under which children can be tried for certain offences at an earlier age.<sup>66</sup> Botswana, Kenya, Malawi, Seychelles and Zambia all have identical provisions preventing boys under the age of 12 being prosecuted for sexual offences for which “carnal knowledge” is required. Zimbabwe has a similar provision, though the the presumption that boys under the age of 12 cannot have “carnal knowledge” is not absolute, and a prosecution can still take place if it can be proved that the child was capable of sexual intercourse.<sup>67</sup>

Minimum age of criminal responsibility (years)	Number of States
0	3
7	12
8	4
9	1
10	5
11	0
12	6
13	12
14	7
15	2
16	4

65 Penal Code, Article 42.

66 Botswana, Kenya, Malawi, Nigeria, Seychelles, Sudan, Zambia, Zimbabwe.

67 See online country profiles for full citations of the relevant laws.

## LIFE IMPRISONMENT AND THE AFRICAN UNION

Two major human rights mechanisms exist under the African Union to monitor and promote human rights: the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. Both bodies have a mandate that would permit them to consider life imprisonment as a violation of the rights of the child, but to date, neither has been active on the issue.

### **The African Committee of Experts on the Rights and Welfare of the Child**

The African Committee was formed to monitor the implementation of the African Charter on the Rights and Welfare of the Child. The ACERWC contains a number of rights provisions that touch on the issue of life imprisonment for children. In particular, States are required to ensure that no child who is detained or imprisoned or otherwise deprived of his or her liberty is subject to torture, inhuman or degrading treatment or punishment” and that “the essential aim of treatment of the child ... shall be his or her reformation, reintegration into his or her family and social rehabilitation.”<sup>68</sup>

In implementing these standards, the African Committee is yet to develop a clear position on a number of juvenile justice issues, including life imprisonment of children. The issue has not featured in the Committee's recommendations to States, though four of the States to which it has issued recommendations retain life imprisonment.<sup>69</sup> The Committee also has the authority to receive complaints of violations under the Charter (“communications”), though at the time of writing, only one complaint had been finalised and it did not touch on the issue of life imprisonment.<sup>70</sup> Nonetheless, this communications procedure may provide an avenue for children to challenge life sentences in the future.

### **The African Charter on Human and Peoples' Rights**

The African Charter on Human and Peoples' Rights (ACHPR) is monitored by the African Commission on Peoples' Rights and can be enforced before the African Court on Human and Peoples' Rights.

As is the case in most regional human rights treaties, the African Charter on Human and Peoples' Rights contains a

prohibition on “all forms of exploitation and degradation of man particularly ... torture, cruel, inhuman or degrading punishment and treatment”.<sup>71</sup> The Charter also requires States to ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions”.<sup>72</sup> The two provisions in conjunction would appear to have an obvious application to life sentences for child offenders. The Inter-American Court of Human Rights and the European Court of Human Rights have both held that life imprisonment for children could engage the prohibition of cruel, inhuman or degrading punishment under their respective treaties, though they have adopted slightly different approaches in their jurisprudence. The Committee on the Rights of the Child has also consistently found that life sentences violate the Convention on the Rights of the Child and the Committee against Torture has addressed life imprisonment of child offenders as a violation of the Convention against Torture.

The Court delivered its first judgment on the merits of a case in 2011 and so is still in the early days of developing its jurisprudence. To date, the Court has not addressed the issue of the compatibility of life imprisonment with the Charter, even obliquely, so any discussion of potential standards can only be a matter of speculation.

<sup>68</sup> Article 17(2)(a) and (3).

<sup>69</sup> Burkina Faso, Kenya, Nigeria and Tanzania.

<sup>70</sup> See Institute for Human Rights and Development in Africa and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. Government of Kenya [2011] Decision No. 002/Com/002/2009. Available at: <http://www.acerwc.org/wp-content/uploads/2011/09/002-09-IHRDA-OSJI-Nubian-children-v-Kenya-Eng.pdf>.

<sup>71</sup> Charter on Human and Peoples' Rights, Article 5. Available at: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

<sup>72</sup> Charter on Human and Peoples' Rights, Article 18(3).

# THE AMERICAS

WWW.CRIN.ORG/LIFE-IMPRISONMENT/AMERICAS

## 1. The legality of life imprisonment

There is a sharp contrast between North America and Central and South America with regards to life imprisonment for child offenders. While Argentina became the last country in mainland Latin America to abolish life imprisonment for children in 2012, life imprisonment remains common in the laws of North American and Caribbean States. Of the 35 States in the Americas, 15 retain at least one form of life imprisonment as a penalty for offences committed while under 18.<sup>73</sup> All of these States, with the exception of Cuba and Haiti, formed part of the British Empire at some point in their history and many retain laws strongly influenced by the British criminal law tradition.

Of the 20 States that have outlawed life imprisonment for child offenders,<sup>74</sup> 13 have absolute prohibitions on life imprisonment regardless of age,<sup>75</sup> though some of these States permit adults to be sentenced to prison terms so long as to effectively render them *de facto* life sentences. El Salvador, for example, has a Constitutional prohibition on perpetual punishment, but permits incarceration of up to 75 years for an adult.<sup>76</sup> Given that the United Nations Development Programme calculated the life expectancy in El Salvador at 72.4 in 2012,<sup>77</sup> such prison terms would be difficult to characterise as anything other than *de facto* life imprisonment. Costa Rica and Guatemala both retain maximum sentences of 50 years' imprisonment for adults, which might also be considered effectively life sentences.<sup>78</sup>

73 Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Cuba, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, United States of America.

74 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.

75 Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay, Venezuela.

76 Constitution of El Salvador, Article 27 and Penal Code, Article 45.1.

77 UNDP, Human Development Report 2013: El Salvador. Available at: <http://hdr.undp.org/sites/default/files/Country-Profiles/SLV.pdf>.

78 See Country Profiles below for further details.

## 2. How many children affected by life imprisonment

As in all regions, it is incredibly difficult to locate reliable and up to date figures on the number of child offenders serving life imprisonment in the Americas. Of those States where it was possible to access sufficient information to estimate the number of children affected, the United States clearly detained the most children under life sentences, an estimated 7,626 in total, 2,574 of whom were serving life imprisonment without the possibility of release.<sup>79</sup>

The lack of comprehensive and publicly available sentencing statistics has made it difficult to accurately estimate the prevalence of life imprisonment of children across the region, but in the absence of such figures, this report has surveyed case law databases and national media to try to ascertain whether children are sentenced to life imprisonment in practice. In doing so, CRIN found evidence that children had been sentenced to life imprisonment in seven States<sup>80</sup>, though it must be recognised that this figure may significantly underestimate the actual prevalence of life imprisonment sentences, as only States with good records on publishing legal information through databases and online news sources would show up through such a survey.

## 3. Maximum sentences across the Americas

Across the 20 States where life imprisonment for children has now been outlawed, maximum periods of detention for child offenders vary widely. A small number of States in South America have capped detention for minors at three years,<sup>81</sup> the lowest in the world, while sentences in Central America are significantly higher. Costa Rica and Suriname both permit children to be detained for up to 15 years. Argentina may also

79 This figure was determined using a combination of the data provided in The Sentencing Project's report No Exit: The Expanding Use of Life Sentences in America (available at [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=280&id=106](http://www.sentencingproject.org/detail/publication.cfm?publication_id=280&id=106)) and State Distribution of Estimated 2,574 Juvenile Offenders Serving Juvenile Life Without Parole, an update to Human Rights Watch and Amnesty International's joint report The Rest of Their Lives: Life without Parole for Child Offenders in the United States, first published in 2005 (Updated table available at <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole>; original report available at <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives>). No Exit lists 6,807 juvenile offenders serving sentences of life imprisonment, including 1,755 without the possibility of parole. Because No Exit uses figures that track states' definitions of juvenile offender and hence exclude some persons under 18 serving sentences of life imprisonment where they were ineligible for juvenile court jurisdiction, the figure provided for juveniles serving life sentences without the possibility of parole has been replaced with the comparable and more robust figure of 2,574 provided in State Distribution. Even with this substitution, this figure still likely underestimates the total number of persons serving sentences of life imprisonment for offences committed when they were under the age of 18 given the varying definition of juvenile offender in No Exit.

80 Argentina, Barbados, Canada, Grenada, Jamaica, Trinidad and Tobago, United States of America.

81 Brazil, Bolivia and Peru.

permit detention of this length or more, though there is a lack of clarity as to the maximum sentences for child offenders since life sentences for offences committed while under the age of 18 were ruled unconstitutional.<sup>82</sup>

Of particular note, is a move towards harsher penalties for children in some of the States across South and Central America. Panama, in particular, has dramatically increased its maximum sentences for offences committed while a child, which were capped at five years in 1999, but have since risen to 12.<sup>83</sup>

#### 4. The meaning of life imprisonment

Across the Americas, there are examples of all forms of life imprisonment. The United States has been widely castigated for its use of life imprisonment without parole for child offenders - and it is certainly the most prolific user of such sentences - though legislation in Antigua and Barbuda and Cuba could also be read so as to permit a person under the age of 18 to be sentenced to spend the rest of his or her natural life in prison, though no evidence could be found of such sentences being used.

Among Caribbean States, it is common for life imprisonment to adopt a model in which a person is sentenced to a minimum period of detention which must be served before the sentenced person can be considered for conditional release. For example, in Jamaica when a court sentences a person to life imprisonment, the court may make an order setting a period of detention to be served of no less than seven years before the person becomes eligible for parole. For violent offences, this period is likely to be much longer, though the court has discretion.<sup>84</sup>

Across the Caribbean, there is also a marked trend for many States to introduce life imprisonment in lieu of the death penalty upon abolishing the death penalty for child offenders. Ten States have implemented such provisions.<sup>85</sup>

Nine Commonwealth States in the Caribbean have also retained sentences of detention at the pleasure of the courts or the executive which permit children to be lawfully detained

indefinitely,<sup>86</sup> though the way in which these sentences are applied has been the subject of many court cases over the last 20 years leading to reform in the way they are overseen. In the original form of this sentence the executive had the discretion to order the release - depending on the State, the responsible person may have been the minister of justice, minister for the home department or the governor-general. In 1994, the European Court of Human Rights ruled that such an arrangement in the United Kingdom violated the right of the child to challenge the lawfulness of their detention before a court with the power to order release.<sup>87</sup> Since this decision, there has been a wave of cases across the Caribbean ruling against similar sentencing regimes,<sup>88</sup> so it has become standard practice that courts or parole boards can now determine when to order the release of child offenders serving detention at the pleasure of the executive.<sup>89</sup>

#### 5. Minimum age of criminal responsibility

National approaches to the minimum age of criminal responsibility across the Americas divide along similar lines to life imprisonment: North America and the Caribbean have largely adopted much lower minimum ages than Latin America. The United States and Cuba set the lowest minimum age across the region, the United States has no lower limit for criminal prosecution in 17 states, while Cuba permits penalties including deprivation of liberty in re-education centres without a minimum age. Across the English speaking Caribbean, minimum ages of between 7 and 10 years are common.

Legislation in many South American States proclaim the highest minimum ages of criminal responsibility in the world. The laws of Brazil, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Peru and Uruguay all contain provisions asserting that the minimum age of criminal responsibility is 18 years, though these figures belie a more complicated situation. For example, Brazil's Child and Adolescent Code describes the minimum

82 See *Causa N° 14.087-Sala II-C.F.C.P "Mendoza, César Alberto y otros s/ recurso de revisión"*. Summary and link to full judgment available at: [www.crin.org/node/39316](http://www.crin.org/node/39316).

83 See Combined third and fourth periodic report of Paraguay to the UN Committee on the Rights of the Child, CRC/C/OAN/3-4, 27 January 2011, para. 578 for a comparative table of the relevant reforms.

84 Parole Act, Sections 6(3), 6(4A), (5) and (6)

85 Antigua and Barbuda, the Bahamas, Belize, Dominica, Guyana, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago.

86 Antigua and Barbuda, the Bahamas, Barbados, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Trinidad and Tobago.

87 *Singh v. the United Kingdom* [1996] Application No. 23389/94 and *Husain v. United Kingdom* [1996] Application No. 21928/93. See the section of this report on life imprisonment and the European Court of Human Rights for further information on these cases.

88 See, for example, *Greene Browne v. the Queen* [1998] Privy Council Appeal No. 3 of 1998.

89 See Country Profiles for discussion of sentencing regimes in each of the relevant States.

90 Includes the United States, where there is no MACR in 33 States, though in the remaining 17 States, MACRs are set at between 0 and 10 years.

91 Includes Latin American states in which legislation proclaims that the minimum age of criminal responsibility is higher than 12, though in practice children can be subjected to penalties of a criminal nature from the age of 12. See the Part IV of this report on the minimum age of criminal responsibility for further discussion of this phenomenon.

Minimum age of criminal responsibility (years)	Number of States
None	2 <sup>41</sup>
7	2
8	3
9	1
10	3
11	1
12	13 <sup>42</sup>
13	5
14	4
15	0
16	1

age of criminal responsibility as 18. Below this age, actions that would be considered criminal offences for an adult are described as “infractions” and subject to a different sentencing regime. However, these sentences include deprivation of liberty, and infractions cover the same offences that would apply to an adult.

Though child offenders are undeniably treated more leniently than adults, this system of offences and penalties clearly takes the model of a criminal justice system and so for the purposes of these figures, Brazil has been identified as having a MACR of 12. The same principle has been applied to other countries across the region.<sup>92</sup>

Variable minimum ages of criminal responsibility, whereby children can be held criminally responsible for specific offences from an earlier age, are quite rare across the Americas. However, the criminal law of Argentina and Chile maintain such distinctions.<sup>93</sup>

<sup>92</sup> See the section above on the minimum age of criminal responsibility for an explanation of how this concept has been defined in this report.

<sup>93</sup> See country profiles for full details.

## Life imprisonment of children and the Organisation of American States

There are two major human rights mechanisms within the Organisation of American States: the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. Both bodies were created by the Charter of the Organisation of American States and the American Convention on Human Rights to enforce the rights under that Convention. The Commission can receive petitions from individuals who claim their rights have been violated and attempt to reach a “friendly settlement” with the responsible State, while the Court can receive cases referred from the Commission or from a State that is a party to the Convention. The Convention makes no explicit mention of life imprisonment, for children or adults, yet the American Court of Human Rights has taken perhaps the strongest stand of any regional human rights court against life imprisonment for child offenders.

### 1. Challenging life imprisonment under the ACHR

The Inter-American Court of Human Rights’ most comprehensive analysis of life sentences for children is laid out in *Mendoza v. Argentina*. The case is based on the combined complaints of five young men who were sentenced to life imprisonment for offences committed while under the age of 18. All five were sentenced to life imprisonment under Argentinian legislation which permitted adult sentences to be applied to child offenders and in which life imprisonment meant detention for a minimum period of 20 years before the possibility of parole could arise.<sup>94</sup>

The judgment is complicated by the number and variety of rights violations involved in the case. One of the applicants died during proceedings, while three others alleged that they had been tortured while detained. One applicant, who went blind while he was detained, argued that the state had not met its obligations with regards to his medical care. While these issues of ill-treatment and neglect complicate the analysis of the Court, nonetheless a clear and strong standard emerges on life imprisonment for child offenders.

### 2. Life imprisonment as arbitrary imprisonment

The Court has tackled the legality of life imprisonment most directly when discussing the prohibition on arbitrary

arrest or imprisonment in article 7(3) of the ACHR.<sup>95</sup> The Court had previously interpreted this article as prohibiting imprisonment that is “unreasonable, unpredictable or disproportionate”<sup>96</sup> and in applying these standards to detention of children, developed three standards:<sup>97</sup>

- Detention must be a last resort and for the shortest time possible;
- The length of detention must be clear from the point of sentencing; and
- There must be periodic review of the deprivation of liberty.

These standards have clear parallels in the UN Convention on the Rights of the Child,<sup>98</sup> which the Court explicitly considered in its judgment. Applying these standards to the case in hand, the court ruled life imprisonment violated Article 7(3) because it was not an exceptional punishment, did not entail deprivation of liberty for the shortest possible time or for a period specified at the time of sentencing and did not permit periodic review of the need for deprivation of liberty.<sup>99</sup>

### 3. The purpose of deprivation of liberty

The court dealt swiftly with alleged violation of Article 5(3) - which provides that an essential aim of deprivation of liberty must be the reform and social rehabilitation of prisoners - finding that life imprisonment entails the maximum exclusion of the child from society, and so functions “in a purely retributive sense”.<sup>100</sup>

### 4. The prohibition on cruel, inhuman and degrading treatment

Like many regional and international human rights treaties, the ACHR includes a prohibition on inhuman or degrading punishment, which sets a clear limit on the types of criminal sentences that the State can impose. This provision was at the heart of many of the arguments put forward by the applicants and based on substantial expert evidence, the Court ruled that “the extreme psychological impact produced [by the sentences] constituted cruel and inhuman

95 American Convention on Human Rights, Article 7(3). Available at: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

96 Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 90.

97 *Mendoza et al v. Argentina* [2013] para. 162. Summary and full judgment available at: [www.crin.org/node/40373](http://www.crin.org/node/40373).

98 See UN Convention on the Rights of the Child, Article 37. Available at: <https://www.crin.org/en/home/rights/convention/text-convention>.

99 para. 163.

100 para. 166.

94 See Argentina’s Country Profile for full details.



treatment.<sup>101</sup> However, much of this evidence turned on the specific regimes to which the children were subject, in particular the Court cited evidence on the 20 year period before being considered for release under the Argentinian form of life imprisonment, so it is not clear whether the Court would consider all forms of life imprisonment to violate the prohibition on inhuman or degrading punishment. It was not necessary for the court to rule specifically on whether life imprisonment for child offenders will always amount to inhuman or degrading punishment - the court had already ruled that life imprisonment violates the ACHR on other grounds - which leaves some uncertainty in the relationship between life imprisonment and this standard.

sentences for children in at least that State.

## 5. Violations of the rights of next of kin

Moving beyond the impact of the sentences on those who were actually sentenced, the Court also addressed the effects on the families of the applicants. It is an established part of the Court's jurisprudence that the next of kin of a victim of a human rights violation may also be victims in their own right.<sup>102</sup> The judgment found violations of the right to mental and moral integrity of several family members - children, partners and parents - of the sentenced young men. It is not entirely clear from the reasoning of the court which aspects of the sentencing and prison regimes led the Court to find violations of family members rights to personal integrity, though in setting out its decision, the Court highlighted the separation of children from their families, the psychological harm caused by relatives of seeing their children, partners or fathers injured during visits and the harm caused by knowing that a family member may never be released from prison.<sup>103</sup> Though it is not clear whether all life imprisonment sentences would violate the rights of family members as well as the sentenced child offender, it is clear that some forms of life imprisonment or some regimes of life imprisonment will.

## 6. Further challenges in the Americas?

The IACHR's judgment in *Mendoza v. Argentina* sets a clear standard on life imprisonment for child offenders: such sentences violate the American Convention on Human Rights. This standard presents an opportunity for children's rights advocates to challenge life imprisonment sentences across the Americas. To date, 20 States have accepted the jurisdiction of the Inter-American Court and of these one - Barbados - retains some form of life imprisonment for child offenders. At present, the Court presents a viable means of challenging life

101 *Mendoza v. Argentina*, para. 183.

102 *Case of the Serrano Cruz Sisters v. El Salvador* [2005] Series C No. 120, para. 113 and 114; and *Case of the Massacre of Santo Domingo v. Colombia*, para. 242.

103 See para. 268 to 303.

# ASIA

WWW.CRIN.ORG/LIFE-IMPRISONMENT/ASIA

## 1. The legality of life imprisonment

Life imprisonment for child offenders remains prevalent in the criminal justice systems of Asia: at least 16 of the 45 States in the region retain life imprisonment for some offences committed while under the age of 18.<sup>104</sup> Of the 16 jurisdictions that retain the sentence for children, seven are members of the Commonwealth, whose criminal laws still show the influence of the British colonial legal systems; a further five are located in the Middle East and four lie in east Asia.

## 2. How many children affected by life imprisonment

No statistics were available on how many child offenders are serving life imprisonment across Asia. It is clear that in a number of jurisdictions children continue to be sentenced to life imprisonment – research for this report identified cases of child offenders being sentenced to life imprisonment in Bahrain,<sup>105</sup> Bangladesh,<sup>106</sup> China (Hong Kong Special Autonomous Region),<sup>107</sup> Israel,<sup>108</sup> Pakistan<sup>109</sup> – but it is impossible to determine the extent of sentencing across the region.

104 Bahrain, Brunei Darussalam, China, China (Hong Kong SAR), India (Jammu and Kashmir), Iran, Israel, Japan, Democratic People's Republic of Korea, Malaysia, Maldives, Pakistan, Qatar, Saudi Arabia, Singapore, Sri Lanka,

105 Bahrain Centre for Human Rights, "Bahrain Children in Bahrain: Victims of physical & sexual abuse, abduction, arbitrary detention and unfair trial", 22 November 2010. Available at: <http://bahrainrights.hopto.org/en/node/3619%20>. Bahrain Center for human Rights, "Bahrain violates convention on the rights of the child and hands down life imprisonment to two children" 18 August 2014. Available at: <http://bchr.hopto.org/en/node/7003>.

106 Ministry of Women and Children Affairs, as per Third and Fourth periodic reports of Bangladesh to the UN Committee on the Rights of the Child, CRC/C/BGD/4, 23 October 2008, para. 392. Note: Bangladesh's Children's Act 2013 has abolished life imprisonment for child offenders, but at the time of writing it was not possible to ascertain what had happened to children who were serving life sentences.

107 HKSAR v. Hui Chi Wai and others [2001] HKCA 219; 2001 3 HKC 531; CAC C78/1999 (20 July 2001). Available at: <http://archive.is/QLvSL>.

108 Initial report of Israel to the UN Committee on the Rights of the Child, CRC/C/ISR/Add.4, 27 February 2002, para. 1372; See Combined second, third and fourth periodic reports of Israel to the UN Committee on the Rights of the Child, CRC/C/ISR/2-4, 28 August 2012, paras. 310 to 314, 807; Cr. A. 4379/02 Anonymous v. the State of Israel (18/01/2006); Cr. A 9937/01 Roei Horev et al v. the State of Israel (09/08/2004).

109 Child Rights International Network, Pakistan: Inhuman Sentencing of children. Available at: <https://www.crin.org/en/library/publications/pakistan-inhuman-sentencing-children>.

## 3. Maximum sentences across Asia

Of the 26 jurisdictions that prohibit life imprisonment for offences committed while under the age of 18, there is enormous variation in the periods set to which child offenders may be imprisoned. India sets the lowest maximum term at three years, among the lowest in the world, while Thailand sets a maximum period of imprisonment of 50 years, a fixed term which in practice may amount to a life sentence. A majority of jurisdictions have settled on a maximum term between 10 and 15 years,<sup>110</sup> while six retain maximum sentences of 20 years or more.<sup>111</sup>

The focus of this report is on life imprisonment and lengthy sentencing of child offenders, but it should be noted that in seven of the Asian States covered in this report, the death penalty remains lawful or applied for offences committed while under the age of 18.<sup>112</sup> Of these seven States, three have executed a child offender in the last five years.<sup>113</sup>

## 4. The meaning of life imprisonment

Across Asia, information on the practical use of life imprisonment was more scarce than for many other regions covered by this report. In some jurisdictions this may be indicative of the absence of legal literature translated from the national language, but in others there is ambiguity in the relevant law. In six of the 16 jurisdictions where life imprisonment may still be imposed for offences committed while under the age of 18, it has not been possible to ascertain how life imprisonment is defined.

Seven of the remaining jurisdictions that retain life imprisonment for child offenders adopt the typical model requiring people to serve a minimum period before being considered for conditional release. The minimum non-release period varies across legal systems, from seven years in Japan to 20 years in Singapore. As is common across the Commonwealth, both Malaysia and Sri Lanka have retained detention at the pleasure of the executive or court.

## 5. The minimum age of criminal responsibility

110 Afghanistan (10), Bangladesh (10), Bhutan (10), Myanmar (10), Oman (10), Yemen (10), though the death penalty is practiced against child offenders), Kazakhstan (12), Tajikistan (12), Iraq (15), Republic of Korea (15), Kyrgyzstan (15), Lebanon (15), Palestine (West Bank) (15), Turkmenistan (15), Uzbekistan (15).

111 Viet Nam (18), Cambodia (20), Lao PDR (20), Philippines (20), China (Macau SAR) (30), Thailand (50).

112 India (Jammu and Kashmir), Iran, Malaysia, Maldives, Qatar, Saudi Arabia and Yemen. For full details on the relevant legislation, see CRIN's Inhuman Sentencing Campaign, available at: [www.crin.org/node/224](http://www.crin.org/node/224).

113 Iran, Saudi Arabia and Yemen. See CRIN, Death Penalty: Submission to the Report of the Secretary-General on the Question of the Death Penalty, April 2014, April 2013 and April 2012. Available at: [www.crin.org/node/392](http://www.crin.org/node/392). Gaza has also carried out executions on people in relation to offences committed while under the age of 18, though it is not covered in this report.

114 Saudi Arabia has not been included in this table because of the uncertainty of national law with regards to the minimum age of criminal responsibility.



Approaches to the minimum age of criminal responsibility vary widely across Asia. Broadly speaking, minimum ages are lower in the Middle East, South and South East Asia, while ages are significantly higher in Central Asia. No State in the Middle East has a minimum age of more than 10 years while none of the former Asian members of the USSR has a minimum age of less than 13.

Four States set no minimum age for at least some offences. In Bahrain this is simply a matter of lack of clarity as to when a person may be subject to the criminal law, but in Malaysia, Nepal and Pakistan specialised security or anti-terrorism laws explicitly apply without regards to age.

Variable minimum ages of criminal responsibility are found in the criminal law of all of the Central Asian former members of the USSR. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan all maintain a list of serious offences, usually those involving violence, for which children can be tried at a younger age.<sup>115</sup>

Minimum age of criminal responsibility (years)	Number of States <sup>108</sup>
None	4
Puberty	1
7	12
8	3
9	3
10	3
11	1
12	5
13	0
14	10
15	2
16	1

<sup>115</sup> See country profiles below for full details of the relevant laws and offences.

## Life imprisonment and the Association of Southeast Asian Nations

ASEAN opened its Intergovernmental Commission on Human Rights (AICHR) in October 2009. Formed of 10 Commissioners – one from each Member State<sup>116</sup> – the organisation has a mandate to “promote and protect the human rights and fundamental freedoms of the peoples of ASEAN”. However, human rights organisations have widely criticised the body for lacking the power to implicate individuals or countries that have committed human rights abuses. The body’s mandate is limited to “promot[ing] human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds”. Certainly, the AICHR has had little or no impact in challenging life imprisonment for child offenders.

Similarly, the Commission on Women and Children (ACWC) opened in April 2010, tasked with promoting and protecting women’s and children’s rights. The ACWC developed its first strategic plan in February 2011, which includes a priority on violence against women and children. Life imprisonment for child offenders could certainly feature under this priority, but the ACWC has made little reference to life imprisonment in its work. As with the Commission on Human Rights, the Commission on Women and Children is hampered by its policy of non-interference in the internal affairs of Member States, which is likely to prevent it being a useful tool to combat life imprisonment of children.

## Life imprisonment and the Arab League

The Council of the Arab League adopted the Arab Charter on Human Rights in 1994 and after substantial delay it came into force in 2008. The juvenile justice standards set by the Charter are extremely limited and do little to combat life imprisonment of children.

The Charter prohibits physical and psychological torture, cruel, inhuman, degrading or humiliating treatment,<sup>117</sup> a provision similar to that which has been used to set limits on the application of life sentences under other regional treaties. However, the Charter appears to set an incredibly high threshold for the type of criminal sentences that would be considered to violate this prohibition, as it explicitly provides that the death penalty can be applied to children, provided that the sentence was a lawful penalty at the time the offence

was committed.<sup>118</sup>

There is also a potential contradiction under the Charter, in that it also provides that “[n]othing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.” For States that have ratified the Convention on the Rights of the Child – all parties to the ACHR – there is a direct conflict between the juvenile justice provisions of the two treaties, most explicitly, though by no means exclusively, with regards to the death penalty.

States parties must submit reports to the Arab Committee on Human Rights on the implementation of the ACHR, though to date only six States have done so and none of the subsequent recommendations addressed the issue of life imprisonment. No evidence could be found of a national court using the Charter to challenge the sentence of a child offender.

<sup>116</sup> Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

<sup>117</sup> Arab Charter on Human Rights, Article 8.

<sup>118</sup> Arab Charter on Human Rights, Article 7(a).



# EUROPE

WWW.CRIN.ORG/LIFE-IMPRISONMENT/EUROPE

## 1. The legality of life imprisonment

What is immediately clear in this report, is that the vast majority of States within Europe have abolished life imprisonment for children. Of the 48 States on the continent, 41 include within their laws an explicit prohibition on life imprisonment for children, or a clear limit on the period for which children may be detained which falls short of de facto life imprisonment. Nine countries have outlawed life imprisonment regardless of age.<sup>119</sup>

Three States retain forms of life imprisonment for children: Cyprus, France and the United Kingdom (including England and Wales, Northern Ireland and Scotland). In Luxembourg, Malta and the overseas territories of the Netherlands, CRIN has been unable to clarify whether life sentences are retained or not. Ireland's legislation seems to fall short of a prohibition on life imprisonment for children, but we have not been able to confirm this.

## 2. How many children affected by life imprisonment

In both Cyprus and France, life imprisonment for children remains very rare. In preparing this report, CRIN found no evidence of life sentences for children in Cyprus, and two children have been sentenced to life imprisonment in France in the last 25 years.<sup>120</sup>

In England and Wales, however, the sentence of "detention during Her Majesty's pleasure" (DHMP) remains much more common. Since 2008, 117 children in England and Wales have been sentenced to DHMP, in one instance the child was 13 years old at the time of sentencing.<sup>121</sup> Another cause for

concern, is that the UK Ministry of Justice did not maintain figures on how long children serving these sentences actually serve.<sup>122</sup>

A further 290 children have been sentenced to "detention for public protection" in England and Wales since the sentences came into force,<sup>123</sup> another sentence which can, in principle, authorise detention for a person's natural life.

Similarly, in Scotland, 113 people were sentenced to "detention without limit of time" between 2001 and 2011, though Scottish figures did not distinguish between children (defined as those under 18) and young offenders (defined as under 21).<sup>124</sup> In Northern Ireland up to date figures were not available on children sentenced to "detention during the pleasure of the Secretary of State", though three people were serving such sentences as of 2004.<sup>125</sup>

## 3. Maximum sentences across Europe

Of the 41 States that have abolished life imprisonment and set maximum periods of detention to which children can be sentenced, the period to which children may be sentenced varies wildly. Switzerland maintains the lowest maximum sentence of detention at four years,<sup>126</sup> while San Marino sets the maximum at 30 years.<sup>127</sup>

Across Eastern Europe, laws have coalesced around 10 years as the maximum period to which children may be sentenced, while 29 States set the maximum sentence at 15 years of imprisonment or less.

## 4. The meaning of life imprisonment

Definitions of life imprisonment vary widely across Europe. The majority of States, 32 out of the 39 that retain some form of life imprisonment, set a clear minimum period that must be served before a person can be conditionally released from prison. This limit, however, can vary from seven years in

119 Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. See country profiles for full details.

120 Le Monde, "Le meurtrier d'Agnès condamné à la réclusion criminelle à perpétuité" 28 June 2013. Available at: [http://www.lemonde.fr/societe/article/2013/06/28/le-meurtrier-d-agnes-condamne-a-la-reclusion-criminelle-a-perpetuite\\_3438832\\_3224.html](http://www.lemonde.fr/societe/article/2013/06/28/le-meurtrier-d-agnes-condamne-a-la-reclusion-criminelle-a-perpetuite_3438832_3224.html). Libération Société, "L'assassin d'Agnès Marin de nouveau condamné à la perpétuité" 10 October 2014. Available at: [http://www.liberation.fr/societe/2014/10/10/assassinat-d-agnes-marin-matthieu-condamne-a-la-reclusion-a-perpetuite-en-appel\\_1119253](http://www.liberation.fr/societe/2014/10/10/assassinat-d-agnes-marin-matthieu-condamne-a-la-reclusion-a-perpetuite-en-appel_1119253)

121 Figures were provided in response to a freedom of information request made to the Ministry of Justice. Response received 17 May 2013.

122 Hansard, HL Deb, 16 November 2011, c.170w. Available at: <http://www.theyworkforyou.com/wrans/?id=2011-11-16a.170.3&s=2011-11-15..2011-11-17+section%3Awrans+speaker%3A13129#g171.0>.

123 Ministry of Justice Sentencing Tables, December 2011. Available at: <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics>.

124 The Scottish Government, "Statistical bulletin – Crime and Justice series: Part 7" 2011.

125 Northern Ireland Yearbook 2005, p. 132.

126 Loi fédéral pénale des mineurs, du 20 juin 2003, Article 25(1).

127 Initial periodic report of San Marino to the UN Committee on the Rights of the Child, 17 March 2003 (CRC/C/8/Add.46) para. 101.

Minimum age of criminal responsibility (years)	Number of States / Jurisdictions
None	2 <sup>126</sup>
8	1
9	1
10	4
11	0
12	7
13	3 <sup>127</sup>
14	27
15	5 <sup>128</sup>

Ireland<sup>128</sup> to up to 36 years for certain offences in Turkey.<sup>129</sup> The United Kingdom may exceed Turkey in this regard, in that it retains full life sentences for adults, though following a series of cases heard by the European Court of Human Rights and national courts, these sentences must allow for the possibility of release.<sup>130</sup>

Six States do not set a minimum term to be served, but rely on a system of commutation, ministerial discretion or royal pardon to determine when a person becomes eligible for release from prison.<sup>134</sup> The remaining nine States do not retain life imprisonment in any form, and so do not define it in domestic law.

## 5. Minimum age of criminal responsibility

The majority of States within Europe have settled on 14 years as the minimum age of criminal responsibility (MACR). The

lowest MACR across the region is eight years in Scotland though both of this figures is slightly misleading in this simple form, as children cannot be prosecuted for any offence committed while under the age of 12.<sup>135</sup>

A notable feature of the MACR across the region, is that of variable limits: 11 States across the Council of Europe maintain different minimum ages of criminal responsibility for different offences, typically, though not exclusively, a lower age for more serious offences.<sup>136</sup> Russia, for example, allows children to be held liable for any criminal offence from the age of 16, but from 14 for offences including homicide, the intentional infliction of grave bodily injury and occupying a car without the owner's consent.<sup>137</sup>

Three countries, at least theoretically, have laws which allow for penalties of a penal nature, including deprivation of liberty, to be applied to children without setting a lower age limit: France, Luxembourg and Poland.

French law, for example, provides that children may be criminally sentenced from the age of 13, which could reasonably be identified as the "minimum age of criminal responsibility" as it is usually understood.<sup>138</sup> However, under

128 Citizen's Information Ireland. Available at: [http://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/types\\_of\\_sentences.html](http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/types_of_sentences.html).

129 The Law on the Execution of Penalties and Security Measures, Law No. 5275, Article 107(1)-(3). Available at: [http://www.justice.gov.tr/basiclaws/law\\_1.pdf](http://www.justice.gov.tr/basiclaws/law_1.pdf).

130 See Life Imprisonment and the European Court of Human Rights below for more information on this issue.

131 In Luxembourg, the Youth Court can apply measures that include deprivation of liberty without limit of age. See Country Profiles below for more information.

132 Includes France, as children can be sentenced to criminal penalties from 13 years, but children can be held "criminally responsible" as the phrase is used in French law when they have "discernment". See below for more information.

133 Includes Poland, though commentators have argued that Polish law permit measures equivalent to Penal sanctions without limit of age. See the section on the minimum age of criminal responsibility and the Country Profiles below for more information.

134 Armenia, Cyprus, Iceland, Netherlands, Sweden, Ukraine. See country profiles for full details of the relevant laws.

135 The Criminal Procedure (Scotland) Act, Section 41A(1)-(2). The gap between the minimum age of prosecution and the minimum age of criminal liability means that criminal offences committed between the age of 8 and 12 may be included on a child's criminal record, though a prosecution may not take place.

136 Albania, Armenia, Belarus, Ireland, Lithuania, Luxembourg, Moldova, Poland, Russian Federation, Ukraine

137 Criminal Code, Article 20(2). Offences include homicide, the intentional infliction of grave bodily injury causing an impairment of health, the intentional infliction of bodily injury of average gravity, vandalism, the unlawful occupancy of a car or any other transport vehicle without theft.

138 Criminal Code, Article 122-8.

the Penal Code, children can be held “criminally responsible” within the meaning given in French law, if they have “discernment” and be subjected to protection, assistance, supervision and educational measures.<sup>139</sup> Since there is no minimum age at which a person can be said to have discernment, there is no minimum age at which children can be “criminally responsible”.

While the difficulties with French laws may be primarily semantic, those of Poland show a different problem. Formally, the minimum age at which children can be held criminally liable is 15, and only then for specific offences. However, Polish courts have the power to impose measures on children of any age in response to evidence of “demoralisation” of a child. Evidence of “demoralisation” includes criminal activity, and measures that can be handed down include those that amount to a deprivation of liberty. Some commentators have argued that in effect this equates to an absence of a minimum age of criminal responsibility.<sup>140</sup>

## LIFE IMPRISONMENT AND THE COUNCIL OF EUROPE

### **The European Court of Human Rights**

The European Convention on Human Rights (ECHR) does not explicitly address the issue of life imprisonment, but the European Court of Human Rights (ECtHR) has used the provisions of the ECHR to set limits on the imposition of life imprisonment.

Challenges to life imprisonment under the ECHR can be broadly divided into two types:

those challenging life imprisonment sentences as violating the ECHR in and of themselves  
 those challenging the procedure used to implement and monitor life imprisonment, and to challenge ongoing detention

In recent years, the ECtHR has clarified the standards set by the ECHR with regards to life imprisonment of adults, but the position in relation to children is much less clear, not least because of the small number of States within the EU that still sentence children to life imprisonment. Most of the relevant case law, therefore, originates from the United Kingdom.

To set out the court’s case law on life imprisonment clearly, it

is necessary to look at the established rule for adults as well as how the rule has been varied with regards to children, and finally how the ways that such sentences for children might be challenged in the future.

### **Challenging life imprisonment under the ECHR**

#### ***Life imprisonment and the prohibition of torture, inhuman and degrading treatment or punishment***

##### *Adult sentences*

The primary means of challenging sentences of life imprisonment in and of themselves has been using the Convention’s prohibition on torture, inhuman or degrading treatment or punishment under article 3. This prohibition is absolute, in that if treatment or punishment is judged to have reached the relevant standard, States will not be able to argue that it is justified.

First, it is clear from the ECtHR’s case law that life imprisonment is not prohibited by the Convention. The court has accepted that States are “free to impose life sentences on adult offenders for especially serious crimes such as murder” and that “the imposition of such a sentence on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention”.<sup>141</sup>

In recent years, the Court has made it clear that life imprisonment for adults will only violate article 3 where detention is “irreducible”, a term which has been defined to include only those sentences where release from detention is impossible in principle and in fact. Where there is the possibility of commutation, remission, termination or conditional release, life imprisonment will not be considered irreducible, nor will a life sentence be irreducible simply because it may extend to the rest of a person’s natural life.<sup>142</sup> In the case of any person serving a sentence of life imprisonment, domestic authorities must be able to consider “whether any changes in the prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.”<sup>143</sup>

Two recent examples from the Grand Chamber of the ECtHR have illustrated how this line is to be drawn. In Cyprus, life imprisonment is considered a sentence for the rest of a person’s natural life and the only way a person serving such a

<sup>139</sup> Criminal Code, Article 122-8; Ministry of Foreign and European Affairs, “juvenile Justice in France” May 2008. Available at: [http://www.ambafrance-nz.org/IMG/pdf/VA\\_-\\_juvenile\\_justice.pdf](http://www.ambafrance-nz.org/IMG/pdf/VA_-_juvenile_justice.pdf).

<sup>140</sup> See Poland Country Profile for more information

<sup>141</sup> *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10), 9 July 2013, para. 106.

<sup>142</sup> See *Kafkaris v. Cyprus* (Application No. 21906/04) 12 February 2008, p. 39.

<sup>143</sup> *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10), 9 July 2013, para. 119.

sentence can be released is upon an order of the President on the recommendation of the Attorney-General.<sup>144</sup> In deciding that this sentence was not irreducible, the court placed emphasis on the fact that the Presidential power to release people serving life sentences has been used, 11 times since 1993.<sup>145</sup>

The issue of when a sentence will be considered irreducible was taken up again in the context of the United Kingdom and “whole life tariffs”. Under the English system of life imprisonment for adults, a tariff period is set, which is the minimum term to be served before a person becomes eligible to be released on parole. For the most serious murders, typically those involving the murder of more than one person, a substantial degree of premeditation or sexual or sadistic conduct, this period can be set as a whole life period.<sup>146</sup> Those serving whole life tariff sentences would only be eligible for release upon the order of the Secretary of State. The ECtHR interpreted this discretion as limited to release for compassionate medical grounds.<sup>147</sup> The ECtHR did not consider that release on compassionate grounds met the requirement for persons serving life imprisonment to have the chance to be released on “legitimate penological grounds”, and so whole life tariffs violate the prohibition in article 3 of torture, inhuman or degrading punishment.

Since the Grand Chamber made this judgment, the issue of whole life orders has returned to the Court of Appeal of England and Wales. The court found that the Secretary of State’s discretion was limited to “exceptional grounds”, which must be read in a way that is compatible with Article 3 of the ECHR. The Court was, therefore, of the opinion that English law did present the possibility of release even where a whole life order had been imposed and so did not violate the ECnHR.<sup>148</sup> The ECtHR subsequently held that this clarification of the law brought English practice on life imprisonment within the standards set by the Convention.<sup>149</sup>

### *Sentences for children*

For children, the “irreducible” standard has not been applied. Unfortunately, all of the relevant cases that directly address life sentences for children pre-date the Grand Chamber decisions which developed the concept of “irreducible” life sentences, so the court has not clarified how the standards for

children and adults relate to each other.

As already noted, most of the cases before the ECtHR relate to the practice in the United Kingdom, in particular with regards to sentences of detention at Her Majesty’s pleasure (DHMP). While the courts in the United Kingdom have not traditionally called sentences of DHMP life imprisonment, such sentences authorise detention that could extend to the rest of a child’s life and are subject to many of the same release requirements as life imprisonment for adults.<sup>150</sup> DHMP sentences are compulsory for any person who commits murder while under the age of 18, and are made up of a “tariff period”, which is the minimum sentence of detention that a person must serve, after which continued detention becomes indeterminate.

The ECtHR has found that the punitive element inherent in the tariff period which is part of a DHMP sentence would not violate article 3 and that the ECnHR would not prohibit States from subjecting a child to an indeterminate sentence, the continued detention of the offender or recall to detention following release where necessary for the protection of the public.<sup>151</sup> At the time the ECtHR passed its judgment, the applicant had served six years in detention, which “in all the circumstances of the case including the applicant’s age and his conditions of detention” the court did not consider to amount to inhuman or degrading treatment.<sup>152</sup>

### ***Life imprisonment, challenging lawfulness of detention and the right to a fair trial***

A common challenge to ongoing detention under a sentence of life imprisonment has been in relation to the ability of those serving such sentences to challenge the lawfulness of their continued detention before a court. Article 5(4) of the ECnHR enshrines a right of every person deprived of his or her liberty “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”.

In two judgments delivered on the same day in 1994,<sup>153</sup> the ECtHR found that the parole system in place for children serving DHMP sentences did not meet the necessary requirements to allow children to challenge the legality of their detention. At the time these judgments were made, the Parole Board, which reviewed whether the ongoing detention

144 Constitution of Cyprus, Article 53(4)

145 *Kafkaris v. Cyprus* at p. 4.

146 Criminal Justice Act 2003, Schedule 21, para. 4(1).

147 See Prison Service Order 4700, Chapter 12.

148 *R v. Newel*; *R v. McLoughlin* [2014] EWCA Crim 188, paragraphs 29 to 36. Available at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-v-mcloughlin-and-r-v-newell.pdf>.

149 *Hutchinson v. United Kingdom* [2015] Application No. 57592/08. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150778>.

150 See *R v. Secretary of State for the Home Department, ex p Venables and Thompson* [1998] AC 407; *Greene Brown v. the Queen* [2000] 1 AC 45. Available at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/1997/25.html&query=1998+and+AC+and+407&method=boolean>.

151 *T v. the United Kingdom*, (Application No. 24724/94), para. 97

152 *T v. the United Kingdom* (Application No. 24724/94), para. 98

153 *Singh v. the United Kingdom* (Application No. 23389/94) 21 February 1996 and *Hussain v. United Kingdom* (Application No. 21928/93) 21 February 1996



of persons serving DHMP sentences was necessary, had the power to recommend release, but not the power to order release. Only the Secretary of State, on the advice of the Parole Board, Lord Chief Justice and the original trial judge, could order the release of those serving DHMP sentences. The ECtHR was very clear that this procedure did not meet the standards necessary for a person to be able to challenge the legality of his or her ongoing detention before a court able to order release. The Court also ruled that the convicted person had a right to an oral hearing before the panel which was considering his or her release in order to meet the standards of Article 5(4).<sup>154</sup>

The court was also of the opinion that allowing the Home Secretary to set tariff periods amounted to an infringement of the right to a fair trial under Article 6(1).

In a further case involving DHMP in the United Kingdom, the ECtHR was unwilling to consider whether a person serving a DHMP sentence should be able to challenge his or her detention during the tariff period under article 5(4), as the setting of the tariff period was addressed by the original court judgment and sentencing. Article 5(4) relates to challenging the lawfulness of detention, and in determining the tariff period, this opportunity exists at the time of sentencing or in an appeal against sentencing.

### The potential for change?

The rule for adults is now relatively clear, but where the Court has touched on the issue of detention for children, it appears that there is scope for a more lenient, children's rights approach to be taken. In *Kafkaris v. Cyprus*, the Grand Chamber of the ECtHR addressed life imprisonment for adults, but made a number of points that raised questions as to whether the Court would consider life imprisonment for children a violation of article 3.

First, the Court explicitly limited its comments on the incompatibility of irreducible life sentences with article 3 to sentences of life imprisonment for adults.

Second, the court has consistently recognised that age could be a consideration in determining what constitutes torture, inhuman or degrading punishment.<sup>155</sup>

Third, in addressing a potential violation of article 3 with regards to life imprisonment standards for adults, the ECHR noted a lack of a "commonly accepted standard amongst the member states of the Council of Europe concerning life

sentences". In *Vinter and others v. the UK* the ECtHR also looked at the practice across Europe in reaching its decision on the compatibility of whole life sentences with the ECnHR. For children there is an almost universal rejection of life sentences, something that the court may be willing to take into account with regards to life sentences for children.<sup>156</sup>

Fourth, The Convention is a living instrument that must be interpreted in light of present day conditions and so there is cause to question whether the ECtHR may develop a stronger position on DHMP sentences and other forms of life imprisonment if it considered the case again. In *T v. the United Kingdom*, five judges delivered a dissenting judgment in which they argued that "the sentence of detention during Her Majesty's pleasure, i.e. for an indefinite period ... entailed an enormous amount of uncertainty and anxiety ... It is questionable whether the Convention allows States to subject an 11-year-old child to an indeterminate sentence on conviction". As countries abandon the practice of sentencing young children to lengthy prison sentences, it is certainly possible that the ECtHR will develop its case law to consider that such sentences violate the prohibition on inhuman or degrading punishment, in particular when applied to young children.

Finally, during *Singh v. the United Kingdom*, the ECtHR commented on the nature of DHMP sentences in a way that might give rise to a broader challenge to DHMP sentences. The Court considered that "an indeterminate term of detention for a convicted young person, which may be as long as that person's life, can only be justified based on the need to protect the public." The court went on to note that a failure to have regard to the changes that take place as a child matures, would mean that persons sentenced to DHMP would have forfeited their liberty for the rest of their lives, which might give rise to issues under article 3.<sup>157</sup> It might well be the case that the court would be willing to consider whether mandatory sentences of DHMP for any offence could be justified without looking at the specifics of the crime. DHMP is a mandatory sentence for murder committed by a person under the age of 18 in the UK, but the offence of murder covers a range of acts from euthanasia to the most sadistic of serial killings.

## The European Committee on Social Rights

The European Social Charter, as revised in 1996, does not explicitly address the rights of children in conflict with the law. However, the protections of the rights of children and

<sup>154</sup> *Singh v. the United Kingdom* (Application No. 23389/94) 21 February 1996, paras. 63 to 69

<sup>155</sup> *Kafkaris v. Cyprus* at p. 38

<sup>156</sup> *Kafkaris v. Cyprus* at p. 41

<sup>157</sup> *Singh v. the United Kingdom* (Application No. 23389/94) 21 February 1996, para. 61



young persons to social, legal and economic protection under Article 17 clearly apply to children in the juvenile justice system and have been used by the European Committee of Social Rights to hold States accountable for the lengthy detention of children.

The maximum period of detention to which children can be sentenced has become a regular part of the Committee's conclusions on Article 17 of the Charter. The Committee has found that prison sentences of 20 years or more for child offenders are incompatible with the Charter. During the review of Denmark's report in 2011, for example, the Committee found that:

“the maximum prison sentence imposed on a minor aged between 14 and 17 years cannot exceed 16 years and in exceptional cases 20 years. The Committee considers that 20 years even in exceptional circumstances is excessive and therefore the situation is not in conformity with the Charter.”

The Committee has made similar recommendations during its reviews of the Netherlands, Norway and Turkey. With regards to Norway, which permits prison terms of up to 21 years for offences committed between the ages of 15 and 18, the Committee found that this maximum term was not in conformity with the Charter, even if it wasn't used in practice.<sup>158</sup> The Committee has also persistently asked States for information on the maximum prison terms that can be applied to child offenders when the State has not included this information in its report.<sup>159</sup>

In addressing reports, however, the Committee has not explicitly addressed the issue of life imprisonment as a penalty for child offenders. In reviewing reports of the United Kingdom in 2005 and 2011, the Committee noted the existence of detention during Her Majesty's pleasure, but did not address the form of the sentence in depth or express an opinion on whether it is compatible with the European Social Charter. In 2005, the Committee raised the issue of life imprisonment of children during its review of the Netherlands, but reserved its position pending further information from the State.

To date, the collective complaints mechanism under the Charter has not been used to challenge life sentences for children, though both Cyprus and France retain such sentencing and have accepted the complaints mechanism.

### **European Committee on the Prevention of Torture**

All members of the Council of Europe have also ratified the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT Committee issues a report to a State after its visit with recommendations. If a State refuses to cooperate or to implement recommendations of the CPT Committee, the Committee may decide to make a public statement by a majority two-thirds vote.

In upholding the Convention with regards to detention, the Committee has largely focused on conditions of detention rather than the use of detention itself. However, life imprisonment for child offenders is one use of detention that the Committee has explicitly included within its work. For example, during its report on Slovakia, the Committee called for the prohibition on life imprisonment for juveniles, drawing on the Convention on the Rights of the Child and the guidance of the Committee on the Rights of the Child.<sup>160</sup>

<sup>158</sup> European Committee of Social Rights, Conclusions 2011 (Norway), p. 15. Available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Norway2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Norway2011_en.pdf).

<sup>159</sup> See the 2011 Conclusions of the Czech Republic, Georgia, Greece, Malta, Moldova, Poland, Portugal, Romania, Spain, Ukraine. Available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp).

<sup>160</sup> Committee on the Prevention of Torture, Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2010) 1, 24 March to 2 April 2009, para. 66. Available at: <http://www.cpt.coe.int/documents/svk/2010-01-inf-eng.pdf>

# OCEANIA

WWW.CRIN.ORG/LIFE-IMPRISONMENT/OCEANIA

## 1. The legality of life imprisonment

Of all the regions covered in this report, Oceania has the most homogeneous laws on life imprisonment for child offenders. Children can be sentenced to life imprisonment in every country within the region, in some states from the age of 7.

Tentative steps have been taken in some jurisdictions to move away from life imprisonment for children. The Australian Capital Territory became the first Australian territory to abolish life imprisonment for child offenders in 2008, though child offenders can still be sentenced to a maximum penalty of 25 years' imprisonment. At least one of the states within the Marshall Islands - Kosrae - has also prohibited life imprisonment.

## 2. How many children affected by life imprisonment

Most of the States do not publish comprehensive and up to date statistics on the sentencing of children, and none provide clear figures on the number of children serving life sentences. It is very difficult, therefore, to establish how many people are serving sentences of life imprisonment for offences committed while a child. For each of the states covered by this report, an attempt has been made to identify judgments in which children have been sentenced to life imprisonment or media coverage of cases where judgments could not be located. However, this can be no substitute for official figures.

Nonetheless, research for this report found examples of children being sentenced to life imprisonment in seven jurisdictions, namely New South Wales,<sup>161</sup> Queensland,<sup>162</sup>

South Australia,<sup>163</sup> Victoria,<sup>164</sup> Western Australia,<sup>165</sup> Tonga, Tuvalu.<sup>166</sup> It is possible that child offenders have been sentenced to life imprisonment in New Zealand, but relevant statistics grouped young people aged 17 to 19.<sup>167</sup>

## 3. The meaning of life imprisonment

All 14 States of Oceania have indeterminate forms of life imprisonment which set a minimum period of detention which must be served before a person can be considered for conditional release or parole, though a small number of jurisdictions also permit life without the possibility of parole.

Australia has the shortest and longest non-parole period across the region, as Western Australia allows a non-parole period as low as seven years, while New South Wales does not allow courts to set non-parole periods, meaning that a person sentenced to life in NSW will continue to be detained unless the Governor invokes the prerogative of mercy. A number of Australian states or territories also retain life imprisonment without the possibility of parole, though no evidence could be found of such a sentence being applied to a child offender.

Of the non-Australian jurisdictions, the most common non-parole period is 10 years, which applies in four territories.<sup>168</sup> A further nine jurisdictions do not set clear minimum periods of detention and so examples have been located from national cases to illustrate how life imprisonment might be applied for offences in practice.

## 4. The minimum age of criminal responsibility

The minimum age of criminal responsibility is also relatively similar across Oceania. The vast majority of States in Oceania

161 R v. Elliott and Blessington [2006] NSWCCA 305. Available at: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCCA/2006/305>.

162 International Business Times, "Queensland teen gets life imprisonment for murder" 18 October 2011. Available at: <http://au.ibtimes.com/articles/232797/20111018/court-juvenile-murder-teenager-brisbane-life-imprisonment.htm#.VDPe2ymSzM1>. See R v. Maygar, ex parte A-G of Queensland; R v. WT, ex parte A-G of Queensland, CA No. 65 of 2007, CA No 92 of 2007 and SC No 926 of 2006. para. 15. Available at: <http://archive.sclqld.org.au/qjudgment/2007/QCA07-310.pdf>. Asian Political News, "Teen loses appeal against life term for Okuyama murder" 22 June 1998. Available at: <http://www.thefreelibrary.com/Teen+loses+appeal+against+life+term+for+Okuyama+murder.-a055038735>.

163 ABC News, "Lewis McPherson killer [LH] granted murder sentence appeal bid", 7 April 2014. Available at: <http://www.abc.net.au/news/2014-04-07/lewis-mcpherson-killer-liam-humbles-granted-murder-sentence-app/5372064>. Note, the sentence was being appealed at the time of writing.

164 R v. Debs and Roberts [2005] VSCA 66. Available at: <http://www.austlii.edu.au/au/cases/vic/VSCA/2005/66.html>. Sentencing Advisory Council, "Snap-shot 140: Sentencing Trends for Murder in the Higher Courts of Victoria, 2007-08 to 2011-12. Available at: <https://sentencingcouncil.vic.gov.au/node/536>.

165 BBC, "Perth girls get life for murder" 9 May 2007. Available at: <http://news.bbc.co.uk/2/hi/asia-pacific/6639027.stm>. F v. the Queen [2001] WASCA 247. Available at: <http://decisions.justice.wa.gov.au/supreme/supdcns.nsf/PDFJudgments-WebVw/2001WASCA0247/%24FILE/2001WASCA0247.pdf>.

166 Puloka v. R [1992] TOCA 2. Available at: <http://www.pacilii.org/cgi-bin/sinodisp/to/cases/TOCA/1992/2.html>. Note: the sentence was reduced to 6 years' imprisonment on appeal.

167 Official statistics on the number of people sentenced to life imprisonment for offences committed while under the age of 18 are not available. Between 2000 and 2013, 42 people aged 17 to 19 were sentenced to life imprisonment, but it is not clear how many of these people were 17 at the time of the offence.

168 Marshall Islands (Federal jurisdiction), Nauru, New Zealand, Papua New Guinea. Also two Australian jurisdictions: Australian Capital Territory, Western Australia (for murder).

have coalesced around 10 as a minimum age of criminal responsibility, though Solomon Islands and Tonga set lower ages, at seven and eight respectively. In the States of Micronesia, meanwhile, there is no lower age limit at which children can be subject to criminal penalties.

Fiji, Kiribati and Vanuatu effectively have a higher minimum age of criminal responsibility for certain sexual offences, as their provisions on the minimum age of criminal responsibility include presumptions that boys under 12 are incapable of “sexual intercourse” or having “carnal knowledge”.



PART VI

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;

## 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;

### 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 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;

