

## SUBMISSION: Older persons deprived of their liberty

2. Please provide **figures and data** on older persons deprived of their liberty. Has the number of older persons deprived of their liberty increased or decreased over the past decade?

A global trend towards the abolition of the death penalty has resulted in many states adopting life imprisonment as their ultimate penalty. A recent study shows that 149 out of 216 countries and territories impose life imprisonment as the most severe penalty and as of 2014, there were roughly 479,000 persons serving formal life sentences around the world, compared to 261,000 in the year 2000, a rise of nearly 84 per cent in 14 years.<sup>1</sup> As a result there has been a significant growth in the number of older persons serving life sentences in prison, particularly in countries that impose life imprisonment without parole (LWOP) sentences, with no prospect of release, and where tough on crime policies either prevent or delay the possibility of release.

Though global data on the number of older persons serving life sentences remain limited, a study in the US revealed that in 2020, there were 61,417 life prisoners who were at least 55 years old, accounting for 30 per cent of the total life-sentenced prison population. In some states, including Delaware, Maine, Michigan, New Jersey and New California, approximately 43 per cent of the life sentence prison population was at least 55 years old. In Idaho, Massachusetts and South Dakota, *more than half* of the LWOP population was over 55 years old.<sup>2</sup> Similarly in Canada, a 2019 report on the experiences of older individuals in federal custody revealed that 50 per cent of older persons detained in federal prisons were serving a life or indeterminate sentence. Furthermore, 40 per cent of federally sentenced women and 58 per cent of federally sentenced Indigenous individuals who were 50 years and older, were serving life or indeterminate sentences. The report stated: ‘The accumulation of “lifers” creates a stacking effect over time. Many inmates have become elderly or even geriatric or palliative behind bars.’<sup>3</sup> A report from Penal Reform International also warned that ‘the “greying” of the prison population has seen an upward trend and warrants attention as it is a group that will certainly grow given the rise in life sentences handed down globally’ and called for a greater focus on this group of vulnerable persons sentenced to life imprisonment.<sup>4</sup>

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<sup>1</sup> Van Zyl Smit, D. and Appleton, C. (2019) *Life Imprisonment: A Global Human Rights Analysis*. HUP.

<sup>2</sup> Nellis, A. (2021) *No End in Sight: America’s Enduring Reliance on Life Imprisonment*. The Sentencing Project, p.20.

<sup>3</sup> Office of the Correctional Investigator of Canada and Canadian Human Rights Commission, ‘[Aging and Dying in Prison: An Investigation into the Experiences of older individuals in Federal Custody](#)’, February 2019. Available at: (accessed 23 March 2022).

<sup>4</sup> Prais, V. (2019) ‘[Elderly life-sentenced prisoners](#)’, Penal Reform International blog post, 23 August 2019. Available at: (accessed 23 March 2022).

1. What are the **key human rights risks and violations** affecting older persons deprived of their liberty, considering different intersectional factors<sup>1</sup>?

On a purely practical level, imprisoning older persons raises concerns about the housing and management of ageing and dying populations. Older people in prison face complex medical conditions, including so-called ‘geriatric syndromes’ such as falls, dementia, incontinence, sensory impairment and mental health or emotional problems related to social isolation and long-term imprisonment (‘institutionalisation’), all of which demand enhanced medical care and attention.<sup>5</sup> Prisons were never built with the intention to be nursing homes or hospices for older persons. But in the USA and Canada, the correctional ‘ageing crisis’ has required prison services to adapt their practices to accommodate the needs of older persons and create special facilities for medical and geriatric care.<sup>6</sup> Such systems are not cheap – one estimate suggests that older prisoners are three times more expensive than younger prisoners.<sup>7</sup> As Nellis (2021) highlighted in her report on ‘America’s enduring reliance on life imprisonment’, both state and federal prisons in the US now face ‘a crisis of managing a growing population of elderly prisoners who are costly to house, feed, and provide medical care for — but even more important, who pose no serious threat to public safety.’<sup>8</sup>

Imposing life sentences on older persons raises the question of the underlying purpose of the prison system. Retribution, incapacitation and deterrence are among the main justifications for imposing lengthy and whole life sentences, but international human rights standards emphasise the importance of rehabilitation and reintegration as the *primary* purpose of prison. Article 10.3 of [the International Covenant on Civil and Political Rights](#) states that: ‘The penitentiary system shall comprise treatment of prisoner the essential aim of which shall be their reformation and social rehabilitation.’<sup>9</sup> Yet, older life prisoners have been described as a ‘forgotten minority’ who are offered little, if any opportunities for rehabilitation compared to those serving determinate sentences or younger people in prison, and are at risk of becoming institutionalised.<sup>10</sup>

Research has found that the pains of imprisonment can be heightened for individuals serving life and indeterminate sentences, particularly when there is no possibility of release. Most older persons serving life sentences have lost touch with their families and friends who are either dead or too old to visit, too far away from the prison, or have simply moved on. Concerns about health become a preoccupation, including the uncertainty and fear surrounding the prospect of dying in prison.<sup>11</sup> Global research shows that in some countries, individuals sentenced to life imprisonment are subjected to *restrictive regimes* and *heightened security* compared to other prisoners, including poor

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<sup>5</sup> Williams, B., Cyrus, A. and Greifinger, R. (2014) ‘The older prisoner and complex chronic medical care’ in S. Enggist et al. (eds). *Prisons and Health*, Denmark: WHO Regional Office for Europe.

<sup>6</sup> Bedard, R. Metzger, L. and Williams, B. (2016) ‘Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities’ *International Review of the Red Cross*, 98(3): 917-39, p.917.

<sup>7</sup> The Economist (2021) ‘Pointlessly Punitive’, *The Economist*, 10-16<sup>th</sup> July 2021, p.14.

<sup>8</sup> Nellis, A. (2021) *No End in Sight: America’s Enduring Reliance on Life Imprisonment*. The Sentencing Project, p.8.

<sup>9</sup> See also Rule 4 of the [Nelson Mandela Rules](#).

<sup>10</sup> See n.4.

<sup>11</sup> Bolger, M. (2004) ‘Offenders,’ in Oliviere, D. and Monroe, B. (eds.) *Death, Dying and Social Differences*. OUP.

conditions, limited human contact or access to rehabilitation, often falling below international standards.<sup>12</sup>

5. Please share examples of **good practices** on how to ensure that older persons deprived of their liberty can exercise their human rights.

As noted by van Zyl Smit and Appleton (2019), a number of countries, mostly in Africa, have adopted ways of reducing the impact of life imprisonment on older persons. Such countries allow life sentences to be imposed on older people but exclude such prisoners from any form of hard labour, which might accompany the sentence for younger individuals. Furthermore, some countries that allow for the imposition of life imprisonment in general, specifically do not allow such a sentence to be imposed on older persons. Van Zyl Smit and Appleton revealed this to be the case in many former Soviet Union countries, but also in Mauritania and Romania. The age limits, however, vary: 60 in Georgia, Kyrgyzstan, Mauritania and Uzbekistan; 65 in Belarus, Kazakhstan, Romania, Russia and Ukraine. In France and Spain, people serving life sentences can become eligible for release when they reach the age of 70 and in Tunisia, individuals serving life sentences who are over the age of 60, can be paroled earlier than other individuals serving life sentences.<sup>13</sup>

Such exemptions raise wider questions about excluding life sentences for other groups of vulnerable people, or to all individuals facing a possible life sentence. Yet elsewhere, individuals serving life sentences are excluded from compassionate or medical release, or any type of early release scheme. This was highlighted further during the pandemic when some countries specifically excluded life sentence prisoners from release schemes, despite their vulnerability to Covid-19 due to age or health status.<sup>14</sup>

The rapid expansion in the number of ageing and older individuals serving life sentences represents a significant challenge to managers and practitioners across prison systems worldwide. In the absence of a fundamental shift across most jurisdictions to limit or abolish the use of life imprisonment, the phenomenon of older prisoners will remain. The imposition and impact of indeterminate and life sentences on older persons needs to be properly examined, and much more research is needed. The adverse age-related consequences of such extreme forms of punishment, including death in prisons, need to be addressed.



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<sup>12</sup> See n.1.

<sup>13</sup> See n.1, p.119-20.

<sup>14</sup> Penal Reform International (2021) *Global Prison Trends 2021*. Penal Reform International.

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