


Life imprisonment as an alternative to the death penalty in a period of political transition: Choices and consequences

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- ▶ Can life imprisonment seamlessly replace the death penalty?
 - ▶ What about the the former Yugoslavia?
 - ▶ (A question not answered)
 - ▶ Reasoning by analogy
- 

ICTY

An inadequate Statute

- ▶ The *penalty* imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia. (Article 24 (1))
- ▶ *Prosecutor v Blaškić*, IT-95-14-A (29 July 2004)
- ▶ *Prosecutor v Stakić*, IT-97-24-T (31 July 2003) and IT-97-24-A (22 March 2006)

ICTY

Release

- ▶ If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for *pardon or commutation* of sentence, the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law. (Article 28)
- ▶ *Prosecutor v Galić*, MICT-14-83 (23 June 2015)

International Criminal Court

A better but untested Statute:

- ▶ Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. (Article 77)
- ▶ When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. (Article 110)

Life Imprisonment in the Post- Soviet Era

Country	Death Penalty Until	Life Imprisonment Since	Minimum Term
Russia	2010	1960/1996	25
Ukraine	1999	2000	45
Kazakhstan	Moratorium 2003	2004	25
Poland	1998	1998	25/30/50
Hungary	1990	1978, 2012 (LWOP)	40

Reforming Prison Conditions

- ▶ **Russia:** 2002 Report on Russia by PACE; Critical Judgments of the ECHR: *Kalashnikov v Russia* 2002, *Popov v Russia* 2006
- ▶ **Ukraine:** 2009 PACE Resolution 1676
- ▶ **Kazakhstan:** PRI 2012
- ▶ **Poland:** CPT Reports 1996, 2002; Critical Judgment of the ECHR: *Orchowski v Poland* 2009
- ▶ **Hungary:** CPT Reports 1996, 2001

Release of Lifers

László Magyar v Ukraine 2014

58. The Court is not persuaded that the institution of presidential clemency, taken alone ..., would allow any prisoner to know what he or she must do to be considered for release and under what conditions. The regulation does not guarantee a proper consideration of the changes and the progress towards rehabilitation made by the prisoner, however significant they might be. The Court is therefore not persuaded that the applicant's life sentence can be regarded as reducible for the purposes of Article 3 of the Convention. There has accordingly been a violation of Article 3 of the Convention.

Prison Conditions for Lifers

- ▶ **Russia:** CPT Report 2013; CoE Rec (2003) 23; *Koroshenko v Russia* 2015
- ▶ **Ukraine:** CPT Report 2002; *Trosin v. Ukraine* 2012
- ▶ **Kazakhstan:** PRI 2012
- ▶ **Poland:** CPT Report 2011
- ▶ **Hungary:** CPT Reports 2006, 2014

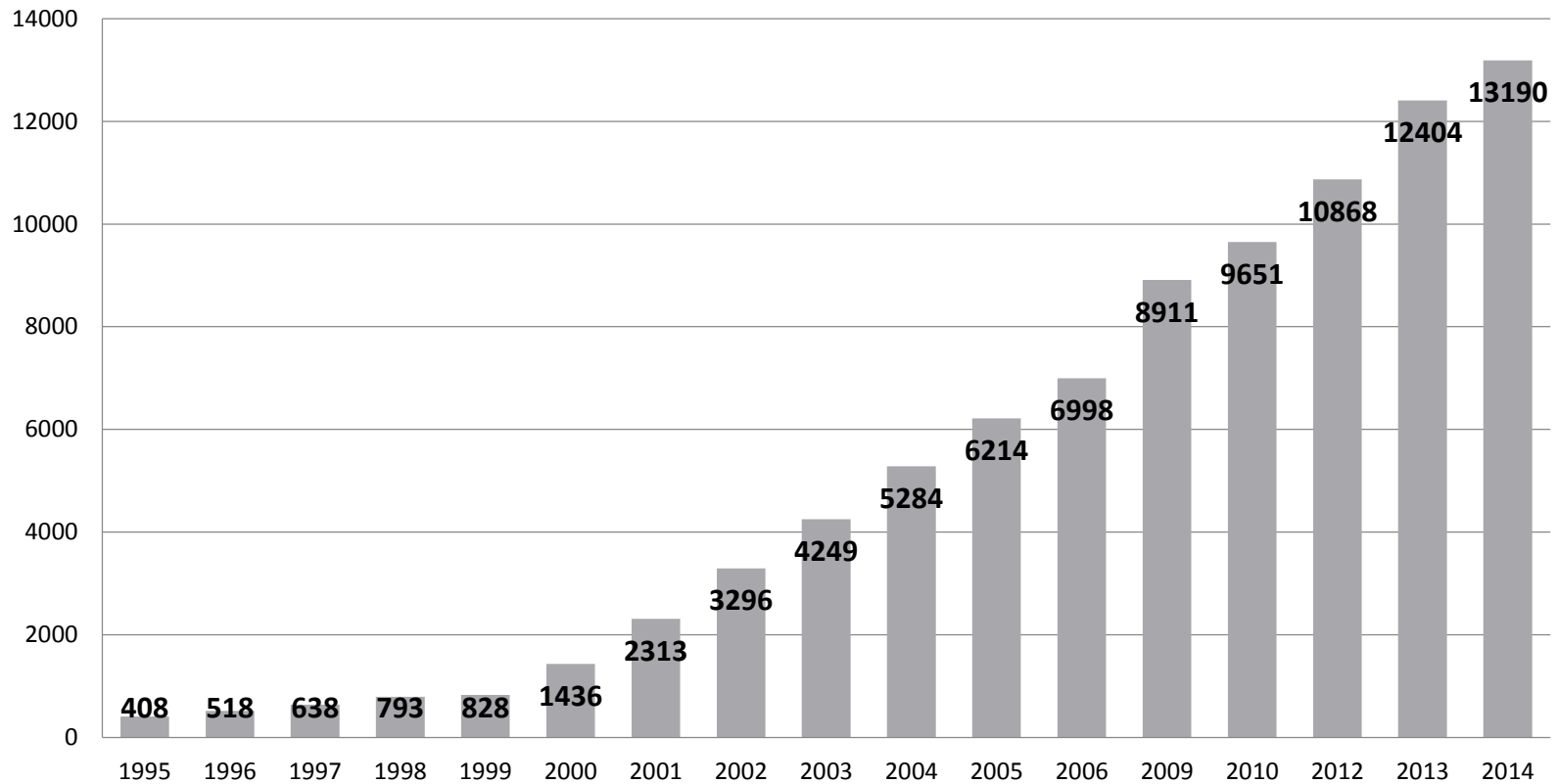
Abolishing the Death Penalty in South Africa

Favourable climate for life imprisonment

- Existing sentence
- Political support
- Sound constitutional and liberal Court
- Good transitional arrangements
- Human rights shaped prison law

But overuse! (see next slide)

Life Imprisonment In South Africa



Conclusion: What Have We Learnt?

If you are going to introduce life imprisonment:

- Think through your release procedures before you start (ICTY problem)
- Avoid too much executive release discretion
- Make sure you have proper treatment provisions in place
- Guard against overuse of life imprisonment

Perhaps not introduce life imprisonment at all?

- But beware of irreducible fixed-term sentences that amount to de facto life imprisonment