

Submission
No 22

**INQUIRY INTO SECURITY CLASSIFICATION AND
MANAGEMENT OF INMATES SENTENCED TO LIFE
IMPRISONMENT**

Organisation: Community Justice Coalition

Date received: 23/10/2015

Submission to Inquiry into Security classification and management of inmates sentenced to life imprisonment

On the understanding that the terms of reference are:

1. That the Standing Committee on Law and Justice inquire into and report on the security classification and management in custody of the following categories of inmates subject to sentences of life imprisonment:

- . (a) inmates serving a sentence of life imprisonment for the term of their natural lives,
- . (b) inmates serving a sentence of life imprisonment who are subject to non-release recommendations as defined in clause 1 of Schedule 1 to the Crimes (Sentencing Procedure) Act 1999, and
- . (c) inmates serving a sentence of life imprisonment that is an 'existing life sentence', as defined in clause 1 of Schedule 1 to the Crimes (Sentencing Procedure) Act 1999, who have not had a specified term and non-parole period set for the sentence under clause 4 of that schedule.

2. That in conducting its inquiry, the committee examine:

- . (a) whether the existing legislation, policies and procedures for determining the security classification and custodial management of such inmates are appropriate and consistent with community expectations,
- . (b) the impact of security classification and custodial management of such inmates on registered victims and the role of registered victims in the classification and management decision making process,
- . (c) communication with registered victims prior to and following a security classification and custodial management decision being made and the form that any communication should take,
- . (d) whether it is appropriate to reclassify and provide inmates sentenced to life imprisonment with access to rehabilitative programs and services if they have little or no prospect of release from custody, and
- . (e) the impact of inmate security classification and management decisions on the operation of the correctional system.

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The Community Justice Coalition Submits

The purpose of this submission is to underline a key issue that must be addressed: the decision made by Corrective Services Minister David Elliott to return several life-sentence prisoners to maximum security as a result of public press and public discussion about a prisoner's re-classification. It is highly inappropriate for decisions regarding the treatment of prisoners to be made in order to appease victims and public opinion. Although victims do have a role in the justice system, a victim's role should come to an end following the verdict and sentence delivered in court due to the fact that victims' opinions are most likely tainted by grief. Receiving updates regarding the security classification of their perpetrator continually re-opens the issue for the victims of a deceased relative and is almost invariably a constant source of pain. Moreover, it breaches the prisoner's right to privacy by informing victims, and as a result the media, of the prisoner's security arrangements. That is not to say that victim's should not be told of a proposed release of a prisoner for whatever reason or reduction from maximum or medium security to a minimum security prison where a person may easily abscond. A victim must have the right to move from their home location if someone is likely to be released to the community.

According to the European Court of Human Rights (ECHR), even life prisoners are still entitled to certain human rights. The ECHR has consistently ruled that prisoners should generally enjoy all fundamental rights guaranteed by the Convention except the right to liberty. In fact, a majority of the Council of Europe States choose not to discriminate between prisoners sentenced to life and other prisoners. All prisoners should receive certain privileges if they are well behaved as a part of their human right to development.

It is obvious that the ill treatment of prisoners may be able to constitute as torture under the United Nations Convention against Torture (UNCAT). Solitary confinement and some aspects of poor prison conditions are grey areas that some argue can amount to torture

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if the degree of suffering is substantial. Article 16 of UNCAT obliges States Parties to prevent public officials from committing acts of cruel, inhumane, or degrading treatment.

Sending lifers back to maximum security without genuine cause, such as the further misconduct from the prisoners, is a form of degrading treatment.

According to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders), rule 27 states “Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.” If the community is safe without these prisoners under maximum security then, further restricting the prisoners by ordering them to maximum security is not in compliance with rule 27. The security classification must remain as a form of safety, not a punishment. Rule 57 is that “Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.” If discipline is maintained while having the prisoners in medium security, it breaches rule 57 to have them further suffer in maximum-security settings. Additionally, rule 60 includes “the regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.” Even prisoners that are sentenced to life behind bars should still be able to maintain some fundamental respect as human beings.

Prisoner is a form of security. If a person has no hope of any improvement in conditions, even though it may be something as simple as a toaster or television set or an

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extra hour per day in an exercise yard, people who have literally no hope of ever getting out can be more easily disciplined if there are incentives.

It must be remembered that no matter how bad the offence which caused the incarceration of the life prisoner that the prisoners live in a community that involves other prisoners, prison guards, and prison staff. Rehabilitation is therefore necessary to make it safer for the community and the limited people with whom the prisoners come in contact. It will be easier on all prisoners and guards if there are incentives for people to improve their conditions. It is an important security and control mechanism.

It is easy for ordinary members of society to denounce evildoers, but it is necessary for the justice system to remain impartial and objective in terms of the management and security classification of prisoners. Regardless of the severity of the crime that a prisoner commits and the likelihood of his or her release, he or she should still have the access to rehabilitative programs in order to have the opportunity to recognise the harm he or she committed and learn. This issue of keeping lifers in maximum security affects society as a whole due to the fact that the treatment of prisoners, a group of helpless individuals, is an indication of civilization.

The Community Justice Coalition (CJC) submits that community expectations be taken into account only to the extent that the community is not involved in a particular case. The community is subject to press development of the problems of victims and their families and can be insensitive to the principles of rehabilitation that are used in the corrections system. "Community expectations" should be objective expectations not particular. The CJC further submits that communication with victims about the conduct of prisoners should only be when an increased likelihood of release or change in prison classification. The CJC further submits that for the reasons set out above that even life prisoners live in a community within

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the prison and should for humanity reasons have access to benefits and rehabilitation programs.

The CJC is concerned that the public opinion which has little understanding or indeed, cares little for the welfare of prisoners should be reminded that most prisoners will eventually be released into the community, and that the whole of the prison population has a need for incentives and disincentives and treatment by way of rehabilitation or the provision of services or amenities and this should continue for people in life imprisonment on the basis that we are a humane and compassionate society where human rights may not be taken away by governments.

Yours faithfully,

The Hon John Dowd AO QC
President
Community Justice Coalition

23 October 2015