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Life Imprisonment under International Criminal Law: A Human Rights Approach

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Abstract

Unsurprisingly, life imprisonment is a maximum penalty under international criminal law, where the position of death penalty throughout the world tends to be mostly abolished owing to the stance of human rights jurisprudence. Likewise, through the lenses of a human rights approach, if life imprisonment is critically looked, it raises serious concern though the imposition of such sentence is not directly prohibited. This is because the inherent spirit of international human rights norms, this paper argues, that reveals the incompatibility of such sentence with human dignity, right not to be subjected to cruel, inhuman or degrading punishment as well as right to rehabilitation and hope for release of the offenders, even the most heinous criminals, and also with the principle of proportionality as well as legal certainty. This paper endeavors to revisit the implications of such a human rights approach in the infliction of life imprisonment by rendering a realistic release mechanism for lifers by international criminal tribunals. This paper also tries to argue that retribution and deterrence in sentencing have been unduly emphasized proffering no clear justifications for inflicting such sentence. Therefore, this paper stresses to be adopted a more focused and cautious human rights approach to life imprisonment under international criminal law because if such approach would be emphatically embraced, it would have also served rehabilitative purpose of sentencing jurisprudence and rendered a dynamic and early release mechanism for lifers.

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Introduction

Since the emergence of the *ad hoc* Tribunals, robust respect for the rights of the offenders has been a basic concern of international criminal law (Zappala, 2005). This is because the aftermath of World War II human rights movement contributing to break the silence of international law concerning the impacts of government-sponsored human rights violations fueled the development of international criminal law (Ratner, 1998). Pertinently to mention here that sometimes proponents of international criminal law become oblivious to the rights of the offenders owing to their intense yearn for promoting human rights of the victims by prosecuting heinous international crimes such as genocide, war crimes, crimes against humanity (Robinson, 2008). Even human rights advocates also tend to adopt a more severely punitive stance for such crimes in the name of retribution and deterrence (Schabas, 1997) throwing the 'rehabilitation box' into the dustbin. Resultantly, due to showing such one-sided respect for human rights, the projection of promoting and adhering to universally applicable norms in total becomes impracticable. Therefore, international criminal courts and tribunals should promote the rights of both the victims and offenders including life prisoners reflecting the human rights norms and principles (deGuzman, 2014). Truly speaking, the rights and protection regime of life prisoners lie in the inherent spirit of international human rights jurisprudence.

With regard to life imprisonment, international human rights norms contemplate that life imprisonment should be avoided expect perhaps in the most extreme cases (Appleton & Grover, 2007) and should always have the realistic possibility of early release (Smit, 2006). Such sentence must not be cruel, degrading and inhuman and must be proportionate to the gravity of the crimes committed. In addition to this, the principle of human dignity which lies at the core of the human rights regime reiterates the imposition of excessively prolonged sentences including life sentence for all the offenders as the infringement of basic dignity rights (Smit, 2010), which creates barriers to their successful reintegration into the society (Nilsen, 2007). This is because robust respect for human dignity entails not only the requirement of humane conditions of incarceration but also the confirmation of the prospect of reformation and social rehabilitation (Smit, 2010). The reflection of this aim in any penitentiary system that inflicts imprisonment for any term including life imprisonment is mandated in the International Covenant on Civil and Political Rights (hereinafter 'ICCPR')[1] (Schabas, 1997) and the jurisprudence of the European Court of Human Rights (hereinafter 'ECtHR').[2] This is the ECtHR that has restricted to impose life imprisonment requiring that such imprisonment must render the possibility of parole or a realistic prospect of early release (Vinter v. United Kingdom, 2013). Apart from this, many states' penal systems also mandate for the imposition of imprisonment for ten to fifteen years, far from the permissibility of inflicting life imprisonment (Tonry, 2001; Sirazi & Halder, 2018).[3] And several constitutional courts also have questioned the congruity of such imprisonment without the prospect of release with human rights norms and censured unconstitutional

[1] Please see Article 10(3) of the International Covenant on Civil and Political Rights, 1966.

[2] In the Vinter decision [Vinter and Others v. United Kingdom, (ECtHR) Application Nos. 66069/09, 3896/10 and 130/10, (2013)], the European Court of Human Rights has recently affirmed this sentencing goal.

[3] The minimum waiting period for life prisoners is 10 years in Sweden, Italy, Lebanon, New Zealand, South Africa, Jamaica, Japan, People's Republic of China (for nonviolent crimes), and South Korea; 12 years in Denmark, Finland, and Ireland; 15 years in Germany, Belgium, Liechtenstein, Luxembourg, Macedonia, Monaco, North Korea, and Austria.

(Smit, 2006; Sirazi & Halder, 2018).[4] Even the United States having its harsh sentencing culture has accepted the prohibition of life imprisonment without parole for juvenile offenders who commit non-homicide crimes (Graham v. Florida, 2010) taking the lenient view in the imposition of life imprisonment with no prospect of release.

These developments entrench perhaps an emerging human rights jurisprudence, though less established (Appleton & Grover, 2007). Such developments have influenced international courts which relatively inflict life imprisonment infrequently and typically only for genocide (D'Ascoli, 2011), and convincingly tended to create the judicial mindset of not shutting the door of the prospect of tangible and dynamic release for such prisoners forever. It entails that the infliction of life imprisonment closing the door of the prospect of realistic early release is antithetical to sentencing jurisprudence. So it would not be exaggerated to surface that the relevance and implications of human rights norms to the sentencing jurisprudence of international criminal law becomes widely recognized (deGuzman, 2014). As William Schabas has argued that international criminal tribunals and courts should look and adhere to human rights norms for sentencing guidance (Schabas, 1997). Accordingly, life imprisonment as the maximum penalty under international criminal law should be imposed in compliance with human rights norms. With specific reference to the Nuremberg Tribunal, the Tokyo Tribunal, the International Criminal Tribunal for Rwanda (hereinafter 'ICTR'), the International Criminal Tribunal for the Former Yugoslavia (hereinafter 'ICTY'), the Special Court for Sierra Leone (hereinafter 'SCSL'), and the International Criminal Court (ICC), this paper tries to examine how such sentence has been applied under international criminal law and whether a more cautious human rights approach to the infliction of such sentence needs to be adopted. This paper tends to commence with a succinct overview of human rights approach to life imprisonment, which endeavors to reveal the incongruity of such sentence without the prospect of release for lifers with the inherent spirit of international human rights norms and suggests for rendering a realistic possibility of early release for them. By adopting such a human rights approach to life imprisonment, this paper argues, international criminal courts and tribunals also should render a tangible and realistic prospect of early release for the prisoners sentenced to life imprisonment.

Human Rights Approach to Life Imprisonment

The imposition of life imprisonment raises serious human rights concerns, if it is looked through different lenses of human rights framework. This is because all human beings including the most heinous criminals are entitled to the protection of their fundamental human rights (Sirazi & Halder, 2018). Life imprisonment is undeniably a harsh sentence and of unnecessarily punitive nature to some extent (Tonry, 2001). With regard to life imprisonment, though international human rights norms don't strictly and explicitly prohibit the infliction of such sentence, it can be said that such infliction is incongruous with the inherent spirit of these universally recognized norms. Such spirit lies in the principle of human dignity at the core of the human rights regime. This is because international human rights instruments guarantee the robust respect for human dignity for all people[5] even

[4] The Constitutional Courts of Germany, South Africa, Namibia, Zimbabwe, Argentina have censured life imprisonment without possibility of release as unconstitutional.

[5] Please see Article 1 of the Universal Declaration of Human Rights, 1948 (hereinafter 'UDHR'); Article 10(1) of the International Covenant on Civil and Political Rights, 1966 (hereinafter 'ICCPR'); Article 5(2) of the American Convention on Human Rights, 1969 (hereinafter 'American Convention'); and Articles 4 and 5 of the African Charter on Human and Peoples' Rights, 1979 (hereinafter 'African Charter').

though they commit the most sever offences like genocide, war crimes and crime against humanity. Respect for human dignity arguably entails that, in order to simply achieve some benefits from the retributive and deterrent effect of imposing life imprisonment on the offenders, they should not be transformed into a mimic object of the crime prevention to the prejudice of their universally recognized rights to social worth and respect (Miller, 2003). Such respect also requires not only the affirmation of humane conditions of incarceration but also the recognition of the prospect of reformation and social rehabilitation (Smit, 2010). The reflection of this recognition and aim in any penitentiary system imposing imprisonment for any term including life imprisonment is mandated in the ICCPR and the jurisprudence of the ECtHR. In the case of *Vinter and Others v. United Kingdom, 2013* the ECtHR adjudged that respect for human dignity entails the necessity for adopting a rehabilitation oriented approach to punishment and incorporates an obligation on 'the prison authorities to work towards the rehabilitation of an offender and that rehabilitation is constitutionally required in any community that establishes human dignity as its centerpiece' (Vinter v. United Kingdom, 2013). Such rehabilitation oriented approach necessitates for the reducibility of life imprisonment and requires the possibility of release for the offenders. As the justification for imprisonment with a balance of the requirements of punishment, deterrence, retribution, public protection and rehabilitation, might change over time; the imposition of whole life imprisonment purely for the purposes of punishment directly undermines human dignity, destroys the human spirit, ignores the capacity for the countervailing justifications for conditional release which can arise in future, and contradicts the principle of reintegration.

It is also pertinent to explicate here that human rights norms have guaranteed the right to liberty of the offenders, which lies in the prohibition of arbitrary detention.[6] So continued detention of a prisoner not following the procedures for the periodic review of that detention may be interpreted as infringement of this right because detention should not be continued beyond the appropriately justified period (Sirazi & Halder, 2018).[7] For this, whereas international standards inspire the infliction of non-custodial sentences, continued indeterminate detention of prisoners by the infliction of life imprisonment beyond the punitive element of sentencing which becomes very much undesirable and unacceptable at the human rights regime takes shape of arbitrary detention infringing liberty rights. To protect such rights, periodic review of such prolonged and indeterminate detention is necessitated (McCutcheon & Coffey, 2006). The ECtHR held that since balancing the justifications for life imprisonment based on penological grounds may shift with the passage of time, it creates the prospect that further detention is unnecessary (Vinter v. United Kingdom, 2013). If such detention is based on dangerousness and the offender raises no longer a dangerous risk to the society, it becomes arbitrary and disproportionate (Kafkaris v. Cyprus, 2008). If the door of adequate release is shut down, such detention restrains the substance of liberty right and undermines this right's substance which is human dignity and the prohibition of cruel, degrading and inhuman punishment (Bruszt, 2009). That's why human rights jurisprudence implies that an adequate release mechanism must be in place. And the adoption of such a dynamic and realistic prospect of release mechanism for life prisoners mandating the retention of periodic review of sentencing after a certain period of time to be served will guarantee the protection of all the fundamental human rights.

[6] Please see Articles 3 and 9 of the UDHR, Article 9(1) of the ICCPR, Article 7 of the American Convention, and Article 5 of the African Charter.
[7] See also Article 5(1) (a) of the ECHR.

It is axiomatic that the right not to be subjected to cruel, degrading and inhuman punishment is protected in human rights norms.[8] Many jurisdictions have also adopted policies denying the use of cruel, unusual, inhuman and degrading punishments and thereby including the non-acceptability of whole life sentences and sometimes even all life sentences (Appleton, 2015; Smit, 2010). The ECtHR ruled that where the penological justifications for life imprisonment have changed over the ensuing years, a review mechanism for consideration of release for lifers must be in place. Otherwise life sentence without the possibility of release would be interpreted as a cruel, inhuman and degrading sentence (Vinter v. United Kingdom, 2013). Such jurisprudence clarifies that such sentence in itself does not qualify as cruel and inhuman punishment (Levay, 2016). Further, by the mere fact that life sentence may be fully served in practice, it does not become irreducible if there is a *de jure* and *de facto* opportunity to reduce the sentence through the possibility of review of such sentence with a view to its commutation, remission, termination or the conditional release of the lifers (László Magyar v. Hungary, 2014). It requires such review procedure which permits to consider any significant changes in the lifers' behavior and sufficient progress towards rehabilitation in the course of such sentence, and entails a realistic prospect of release for lifers. Otherwise lack of a realistic prospect of release and a proper procedure reviewing whether the continued enforcement of the sentence is justified fails to meet the criteria of the prohibition of cruel and inhuman punishment (Levay, 2016) and makes such sentence disproportionate to fit the crimes (Smit, 2002). That's why it is evident that the absence of a realistic release system and a proper procedure of reviewing the continued sentence including life sentence creates incongruity with the right not to be inflicted cruel, degrading and inhuman punishment and the doctrine of proportionality.

It is also pertinent to delineate here that human rights concerns as to the imposition of life imprisonment hinge on the issue of proportionality. This paramount principle in sentencing jurisprudence has been embraced in different human rights norms and spelt out specifically in a number of treaties.[9] So a broad international consensus has been made on the principle that punishment ought to fit the crime, and the imposition of sentences that are grossly disproportionate to the offence is contrary to international standards (Smit & Ashworth, 2004). Truly speaking, proportionality must be ensured within the sentence itself. This is possible by addressing the minimum period the prisoners must serve before being considered for release. Explicitly, this is not possible for life imprisonment without any prospect of release. But when a life imprisonment does offer some possibility of release, it becomes congruous with the principle of proportionality (Life Imprisonment Case, 1977). In order to ensure proportionality in individual cases, greater discretion in setting minimum periods also allows the release of prisoners (Penal Reform International, 2018). Albrecht argues that in some jurisdictions, ranging 15 to 25 years' imprisonment is regarded as adequate and proportionate rather than the enforcement of life imprisonment without parole as the deserved sentence for the most atrocious crimes (Albrecht, 2001). Further, the indeterminacy of any sentence may make it a disproportionate sentence. Resultantly, life imprisonment being disproportionate owing to its distinguished feature of inherent uncertainty of release period contradicts the principle of legal certainty (Smit, 1999). This is

[8] Please see Article 5 of the UDHR, Article 7 of the ICCPR, Article 3 of the ECHR, Article 5 of the American Convention, Article 5 of the African Charter, and Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT).

[9] Please see Article 5 of the UDHR, Article 7 of the ICCPR and Article 5(2) of the American Convention.

because how long a lifer will be imprisoned and after how long he or she will be released is unknown to the lifers (Sheleff, 1987). In order to making them know as to how long he will stay in prison, the quantification of sentences is very needed for the interest of justice (S v. Tcoeib, 1996). But life imprisonment leaves the quantification to death penalty itself. For this reason, life imprisonment is contemplated as a belated death sentence or equivalent to it (Sheleff, 1987) and a prisoner's staying in a waiting room until his demise (Beco, 2005). Therefore, the review procedure of sentence must be clear from the moment the sentence is awarded. That's why a prisoner should not have to wait for an indeterminate period of time to ask for review as it would be infringement of legal certainty (Vannier, 2016). Resultantly, it would be whimsical to expect the whole-life prisoners to work towards rehabilitation without knowing whether and when would be entitled to be considered for release (Vinter v. United Kingdom, 2013, para 122). That's why it is evident that the lifers have the right to know for what period they will stay in prison and when they will be released after a periodic reviewing of their sentences.

Pertinently to depict here that, as a matter of human rights, prisoners sentenced to life imprisonment should retain a right to hope (Vannier, 2016). The rationale for providing prisoners hope is surfaced on the principle of rehabilitation. Unless prisoners are afforded a realistic prospect of release, it would negate any possibility of change for lifers (Vinter v. United Kingdom, 2013, paras 11, 113, 117). As discussed earlier, human rights regime suggests that every prisoner, even the convicted person of the most serious crimes, should have the opportunity to be rehabilitated back into society and lead a law abiding and self-supporting life (Life Imprisonment Case, 1977). Therefore, sentences must not only have a punitive purpose but must also have a reformative purpose for the sake of social reintegration of those sentenced persons (Kafkaris v. Cyprus, 2008, para 98). But life imprisonment without any possibility of release denies the rehabilitative aim of imprisonment because it deprives the lifers of the right to hope of rehabilitation and reintegration into the society (Beco, 2005). Denial of the right to rehabilitation undermines the right to human dignity (Smit, 1999) since the right to human dignity includes the right to rehabilitation (Life Imprisonment Case, 1977). Further, as hope is corollary of human dignity in that it is an important and constitutive aspect of the human person, even the most atrocious prisoners retain their fundamental humanity and what makes them 'human' is the capacity to change. Therefore, to deprive them entirely of the hope of release would be inhuman and degrading (Vinter v. United Kingdom, 2013), and thus infringes all the basic human rights as enshrined in the international human rights law. Therefore, such sentence must be reviewed at regular intervals after a set period of time and must proceed for early release in which such decisions must be made by an independent and impartial judicial body since pardon of lifers by the executive or the president is not sufficient alone due to lack of procedural fairness (Sirazi & Halder, 2018). This requires the institution of a dedicated review mechanism of a realistic and tangible possibility of early release for the prisoners sentenced to life imprisonment. That's why it becomes evident that any sentencing body including international criminal courts and tribunals should critically look and stringently adhere to the aforesaid a human rights approach reflecting a rehabilitation oriented approach to life imprisonment in compliance with international human rights norms and jurisprudence while imposing such severe sentence as like as life imprisonment under international criminal law. Now let me examine whether the international criminal courts and tribunals have or are having adhered to such a human rights approach or not at the time of inflicting life imprisonment.

Life Imprisonment under International Criminal Law: Adherence and Non-adherence to Human Rights Approach

Nuremberg Tribunal and Tokyo Tribunal:

During the aftermath of World War II, the allied nations had to decide how to deal with Nazi war criminals. Some proposed that they should be shot without trial; others that they should be prosecuted and brought to justice before an international court. The latter option was approved and for this purpose, the London Agreement for the Prosecution and Punishment of the Major War Criminals, to which the Charter of the International Military Tribunal was annexed, was signed (Kabir & Chowdhury, 2014). This agreement established the Nuremberg Tribunal and made it clear in its Preamble that the 'United Nations have from time to time made declarations of their intention that war criminals shall be brought to justice.[10] On the other hand, with intent to render a just and prompt trial of the Far Eastern war criminals, the Charter of the International Military Tribunal for the Far East established the Tokyo Tribunal with its permanent seat in Tokyo.[11] Both the tribunals were empowered to try and punish persons who as individuals or as members of organizations were charged with offences committed within their own respective jurisdictions, which include crimes against peace, war crimes, crimes against humanity and conspiracy to commit such crimes.[12] Article 27 of the Nuremberg Charter and Article 16 of the Tokyo Charter stipulate that death or such other punishment determined by the tribunals to be just shall be imposed on the offenders on conviction. It is on the basis of these legal provisions that the tribunals can sentence the convicted persons to death penalty, life imprisonment[13] and imprisonment for any term, though sentencing of life imprisonment was not expressly enumerated. Surprisingly to say, the Nuremberg Tribunal reiterated no sentencing purpose that the sentences inflicted were meant to achieve, but it can be deduced from different propositions that retributive and deterrent purposes were prioritized over any other objective of punishment i.e. rehabilitative purpose, as a consequence of which human rights approach for the offenders becomes nugatory. For instance, the Soviet Union claimed such a public trial as will 'expose anti-human essence of fascism' and 'establish the causes and conditions from which it sprang' (Larin, 1990). Truly, it wanted the war criminals convicted by the Nuremberg Tribunal to be punished in such a way that would disseminate an explicit message to the international community that the commission of the aforesaid crimes infringing international law principles had serious outcomes and the community was not ready to entertain the commission of such atrocities any more (Mujuzi, 2009). The tribunal also held that such heinous criminals should not escape punishment, and deserve to be severely punished for their atrocious crimes. It manifestly explicated that punishment should serve both the retributive and deterrent objectives. It can also be deduced from the fact that those sentenced to life imprisonment were supposed to be in prison for the 'whole of their lives'. Two of the lifers, Funk and Raeder, were released after serving a substantial number of years because of their deteriorating health conditions, not because of consideration that they would be reformed or rehabilitated. However, even though other allied members advocated that

[10] Please See Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis.

[11] Please Articles 1 and 12 of the Tokyo Charter and Rule 9 of the Tokyo Tribunal Rules of Procedure.

[12] Please see Article 6 of the Nuremberg Charter and Article 5 of the Tokyo Charter.

[13] Three defendants were sentenced to life imprisonment by the Nuremberg Tribunal and sixteen defendants by the Tokyo Tribunal.

another life prisoner, Hess, should have been released as well due to the same condition, the Soviet Union disagreed all the time until Hess, at the age of 92, committed suicide in prison (Kress & Sluiter, 2002). Therefore, truly saying, it is ironic that the Nuremberg Tribunal had no release mechanism for life prisoners in practice.

Like the Nuremberg Tribunal, the Tokyo Tribunal also served retributive and deterrent purpose of sentencing. It can be easily deduced from the saying of Sir William Webb that 'it is universally acknowledged that the main purpose of punishment for an offence is that it should act as a deterrent to others' and life imprisonment under 'sustained conditions of hardship in an isolated place/s outside Japan...would be a greater deterrent to men like the accused' (Röling & Rüter, 1977). Not only this, Webb also opposed death sentence and considered it to be purely vindictive and argued for life imprisonment as the maximum sentence (Brackman, 1989). But unlike the Nuremberg Tribunal where life prisoners were sentenced to the whole of their lives, the Tokyo Tribunal didn't detain life prisoners for the whole of their lives (Mujuzi, 2009). This was because that the Tokyo Charter empowered the Supreme Commander for the Allied Powers to reduce or otherwise alter the sentence at any time except to increase its severity.[14] Resultantly, life prisoners were to be considered for parole after serving 15 years. It has been seen that not a single prisoner actually served his life sentence unless he died of natural causes within a very few years. By 1958, they were all paroled and pardoned (Penrose, 2000). Truly speaking, the Tokyo Charter did lay down criterion for early release for life prisoners not detaining the whole of their lives and recognized, no doubt, the rehabilitative purpose of sentencing. It appears that unlike the Tokyo Tribunal where a combined approach to rehabilitation along with retributive and deterrent purpose of sentencing was adopted by retaining de jure and de facto early release mechanism for life prisoners, the Nuremberg tribunal put undue emphasis on only retribution and deterrence denying the rehabilitative approach of sentencing jurisprudence. Resultantly, if such negation is critically looked through human rights approach, the Nuremberg tribunal while imposing whole life imprisonment infringes the prisoner's right to human dignity, right to liberty as well as right not to be subjected to cruel, inhuman and degrading punishment and undermines the principle of proportionality, legal certainty as well as the principle of rehabilitation and right to hope for release; and resultantly denies to adhere to such a human rights approach.

International Criminal Tribunal for Rwanda (ICTR):

In order that the prosecution of and trying the offenders who committed genocide of almost one million Rwandan lives and massacre of ten thousands of men, women and children owing to ethnicity (Mujuzi, 2008) seriously infringing international humanitarian law in the territory of Rwanda and its neighboring states required the establishment of the ICTR.[15] Therefore, the ICTR is empowered to try the offences of genocide,[16] crimes against humanity[17] and violations of Article 3 Common to the Geneva Conventions and of Additional

[14] Please see Article 17 of the Tokyo Charter.

[15] Article 1 of the Statute of the ICTR which says that the tribunal was given jurisdiction to prosecute persons liable for serious infringements of international humanitarian law committed in the territory of Rwanda and Rwandan citizens liable for such infringements committed in the territory of neighboring States between January 1, 1994 and December 31, 1994.

[16] Please see Article 2 of the Statute of the ICTR.

[17] Please see Article 3 of the Statute of the ICTR.

Protocol II.[18] To punish the offenders of such offences, the ICTR is given the powers to impose such penalty that will be limited to imprisonment[19] and hence life imprisonment also may be inflicted. Again, pursuant to Rule 101(A) of its Rules of Procedure of Evidence (RPE), a person convicted by the ICTR may be sentenced to imprisonment for a fixed term or the remainder of his life, but such Rule did not prescribe the term 'life imprisonment'. As a result, a distinction between life imprisonment and imprisonment for the remainder of the offender's life has been drawn as in *Kayishema case*, the Trial Chamber endeavored to differ life imprisonment from a sentence of 'imprisonment for a term up to and including the remainder of a defendant's life' as enumerated in the Rule (Prosecutor v. Kayishema and Ruziandana, 1999, para 31) and inflicted four concurrent sentences of remainder of life for the convicted person with stating that such sentence should be distinguished from life imprisonment as mandated in national jurisdictions and the phrase 'remainder of life' under Rule 101A should be rendered its plain meaning (Prosecutor v Eliézer Niyitegeka, 2003, para 31; and Prosecutor v. Clément Keyishima and Obed Ruzindana, 1999, para 489). Thus the Tribunal put more emphasis on the imposition of life imprisonment until demise as the statistics reveals that the ICTR has sentenced more people to imprisonment for the remainder of their lives as awarded in some cases (Prosecutor v. Sylvester Gacumbifsi, 2001; Prosecutor v. Jean de Dieu Kamuhanda, 2005; Prosecutor v. Clément Keyishima and Obed Ruzindana, 1999; Prosecutor v. Mikaeli Muhima, 2004; Prosecutor v. Emmnuel Ndindabahizi, 2004; Prosecutor v. Eliezer Niyitegeka, 2003; Prosecutor v Eliézer Niyitegeka, 2003; Prosecutor v. Ferdinand Nahimana, 2000; and Prosecutor v. Hassan Ngeze, 2003) than to life imprisonment as sentenced in some cases (Prosecutor v. Jean Paul Akayesu, 2001; Prosecutor v. Jean Kambanda, 2000; Prosecutor v. Alfred Musema , 2001; and Prosecutor v. Georges Rutaganda, 2003). It entails that such an offender shall never be released from prison. In *Kamuhanda case*, the Appeal's Chamber also held such view that though domestic courts in some jurisdictions i.e. the German Federal Constitutional Court as a precondition of a humane penal system in principle adjudged that an accused should be rendered the possibility of release, even if he is sentenced to imprisonment for the remainder of his life, this view is inapplicable in such cases which involve extraordinary egregious crimes i.e. genocide and crimes against humanity (Jean de Dieu Kamuhanda v. Prosecutor, 2005, para 357). It appears that the Tribunal's reasoning that an offender should be detained in perpetuity poses human rights concern and thereby infringes the right to human dignity. It also endangers an emerging sentencing jurisprudence from international and regional human rights norms and bodies that life imprisonment without the possibility of release is cruel, inhuman and degrading punishment. In another case (Prosecutor v. Eliezer Niyitegeka, 2003, paras 481, 489), where the Prosecution argued that the Tribunal should impose on the offender a sentence to imprisonment for the remainder of his life, the Defense submitted that an excessively long sentence can amount to cruel and inhumane punishment. It is regrettable to depict that the tribunal did not surface any relevancy of the defense's such argument (Mujuzi, 2009). Thus the Appeal's Chamber emphasized on retributive and deterrent justifications of sentence paying no attention to other justification of punishment such as the possibility of rehabilitation of the offender, though the ICTR had jurisdiction to reduce the sentence. With regard to the reduction of sentence, the Charter of the ICTR stipulates that any convicted person will qualify for pardon or commutation of sentence, if pursuant to the applicable law of the state in which he is imprisoned. If he is so eligible, the state of enforcement is required to notify the Tribunal.

[18] Please see Article 4 of the Statute of the ICTR.
[19] Please see Article 23(1) of the Statute of the ICTR.

Only then, based on the interests of justice and the general principles of law, the President of the Tribunal, in consultation with other judges, will take the final decision[20] with a careful consideration of some factors including gravity of the crime, the treatment of similarly-situated offenders, the demonstration of rehabilitation by the offender, and any substantial co-operation with the prosecutor.[21] But the ICTR has not manifestly shown any strong justification, rather put undue emphasis on the gravity of the offence with holding that life sentence can be inflicted even if there exists mitigating circumstances so long as 'the gravity of the offence requires the imposition of a life sentence provided for' (Musema v. Prosecutor, 2001, para 396). Notwithstanding having the offender's plea of guilty and substantial co-operation with the Prosecutor, the gravity of offences and the offender's senior position played a major role for the Tribunal to inflict such sentence (Prosecutor v. Kambanda, 1998, paras 44, 61 & 62; Kambanda v. Prosecutor, 2000, para 126; and Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze, 2007, para 1038(3)). Truly saying, there is no threshold of gravity that undeniably fits to such sentence (Gumboh, 2011). In fact, due to putting undue emphasis on retribution and deterrence, the existence of mitigating circumstances does not automatically preclude the infliction of life imprisonment.

In *Kambanda case* (Kambanda v. Prosecutor, 2000), the Appeals Chamber has also observed that unlike life imprisonment, such imprisonment of remainder of life is subject to possible reductions for all the time. This rather dichotomous interpretation makes more debatable and dubious and exemplifies such imprisonment as an equivalent to life sentence without parole in American jurisprudence (Smit, 2002). If so, such legal provision would infringe international human rights norms which explicates life sentence without parole as an infringement of human rights of the offenders (S v. Tjijo, 1991, para 22; S v. Bull 2001 , 2001, para 23; and Kafkaris v. Cyprus, 2008). However, in one case, the Trial Chamber specifically paid its heed to the offender's prospects of rehabilitation, but did not delineate its epilogue on the point that rendered the justification in inflicting life imprisonment (Prosecutor v. Ndindabahizi, 2001, para 498). So making challenge against this sentence based on the Tribunal's non-consideration of the mitigating circumstances remained inefficacious (Ndindabahizi v. Prosecutor, 2007, paras 124-142; and Prosecutor v. Ngiyitegeka, 2004, para 267). The Tribunal has since adjudged that where the offender has pleaded guilty for the purpose of 'encouraging others to come forward', life imprisonment should not be inflicted in general (Prosecutor v. Serugendo, 2006, paras 57 & 89). It also appears to hold the view by the tribunal that offenders sentenced to life imprisonment may be released after serving a certain number of years that the state of enforcement considers it to be equivalent to life imprisonment (Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze, 2007). One could argue that the Tribunal may not exactly refer 'whole-life spent in prison' in cases where it was held that the offenders should be in prison for the remainder of their lives. If, in the countries like Germany, Argentina, South Africa or Namibia where the Constitutional Courts held that the imposition of life imprisonment causing barriers to get lifers benefited from release after serving a certain time in prison amounts to a cruel, inhuman and degrading punishment and hence, if such international offenders were sentenced to life imprisonment with the prospect of release, it is more likely that Article 27 of the Charter of the ICTR would be invoked and life prisoners considered for release closing the door of spending their lives until demise in prison (Mujuzi, 2008). But a major drawback of the release system as

[20] Please see Article 27 of the Charter of the ICTR.
[21] Please see Rule 126 of RPE to the Charter of the ICTR.

envisaged in Article 27 lies initially in determining the eligibility for pardon or commutation of sentence by the state of enforcement (Smit, 2002; Mujuzi, 2009). Resultantly, there arises a scope of treating the prisoners on unequal footing owing to different legal provisions in domestic jurisdictions (Smit, 1999) and making the system dubious to states' manipulation (Hoel, 2005). Therefore, it is undeniably pronounced that this system renders no guarantee for a real prospect of release for a lifer (Gumboh, 2011). Apart from this, the non-potentiality of equally co-operating with the Prosecutor for all the prisoners in some crimes (Smit, 2002) may also create pressure for them in the hope of increasing their opportunity of early release (Gumboh, 2011). Another drawback is that what is understood by the 'interests of justice' or 'general principles of law' is not clear in the wording of the Statute, of which the former phrase renders too much discretion to the Tribunal (Schabas, 1997) and it creates a scope of generating a wide variety of factors resulting in acting in favor of or against the prisoner. Rather, it would be better if these factors were explicitly listed (Gumboh, 2011). Furthermore, it is bitter true that the Tribunal has no release mechanism of its own and hence, has the jurisdiction not to grant release contemplated by the state of enforcement. Thus, the Tribunal renders on guarantee of reconsidering release (Schabas, 1997). Therefore, this drawback may be removed by incorporating a clause for a realistic prospect of release pursuant to Article 27 which would give the supervisory powers to the Tribunals on the enforcement of sentences (Schabas, 1997), which would facilitate the tribunal to adopt a more cautious human rights approach in compliance with the realization of the aforesaid rights of the prisoners and adhering to the principle of proportionality and legal certainty.

International Criminal Tribunal for the Former Yugoslavia (ICTY):

The ICTY was established with the power to prosecute and try the persons accused of serious infringements of international humanitarian law committed in the territory of the former Yugoslavia since 1991 (O'Brien, 1993; Schabas, 2006).[22] Pursuant to the Statute of the ICTY and its Rule of Procedure and Evidence (RPE), the Tribunal is empowered to impose life imprisonment as these provisions unambiguously authorizes to inflict imprisonment for any term including the remainder of the offender's life.[23] The Trial Chamber, in *Stakić case* (Prosecutor v. Milomir Stakić, 2006), also considered imprisonment for the remainder of life as envisaged in Rule 101(A) to be synonymous with life imprisonment because the Trial Chamber used 'life imprisonment' language as the maximum penalty instead of the phrase 'the remainder of life' (Prosecutor v. Milomir Stakić, 2003, para 890). In this context, one question which needs to be answered arises that to what extent can the ICTY invoke its jurisdiction to inflict imprisonment for the remainder of life? Unlike the ICTR, the ICTY has been close-fisted with the imposition of life imprisonment (Mujuzi, 2009). But on appeal the Trial Appeals Chamber reduced such sentence to 'a global sentence of 40 years' imprisonment, subject to credit being given pursuant to Rule 101(C) of the RPE for the period the appellant has already spent in detention' (Prosecutor v. Milomir Stakić, 2006). This is because, in determining the terms of imprisonment, the tribunal must have recourse to the general practice as to prison sentences in the Courts of the Former Yugoslavia,[24] which were not allowed to inflict life imprisonment rather empowered to impose only death sentence or imprisonment for 20 years (Schabas, 2000). Resultantly, the ICTY argued in its defense that the maximum penalty in the national courts i.e. death sentence (Prosecutor v. Tadić, 1997,

[22] Please see also Article 1 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.
[23] Please see Article 24(1) of the Statute of the ICTY and Rule 101(A) of its RPE.
[24] Please see Article 24(1) of the Statute of the ICTY.

para 21) and the imposition of life imprisonment as its natural alternative (Prosecutor v. Erdemovic, 1996, paras 33-39) are not binding on the Tribunal. Such reluctance to the infliction of life imprisonment can be attributed to the fact that the Statute does not explicitly permit to do so. As Dirk van Zyl Smit observes that it cannot be argued, the infliction of life imprisonment is necessarily an inappropriate ultimate penalty for the Tribunal. But if the Security Council intended to inflict life imprisonment as its ultimate penalty, it would have enumerated it explicitly in the Statute in the interest of legal certainty rather than referring to the general practice concerning prison sentences in the courts of the former Yugoslavia (Smit, 2002). Further, the RPE being subordinate to the Statute, it can be argued that the infliction of life imprisonment is *ultra vires* the Statute (Smit, 2002). On the other hand, the principle of legal certainty can also be venerated without necessitating for the tribunals to be followed 'in a strict sense' the practice of Yugoslavia (Schabas, 1997). Relevantly it can be explicated that the Trial Chamber in that case demonstrated its approach of giving undue weight to retribution and deterrence excluding the rehabilitative purpose of sentencing (Mujuzi, 2009). This is because that in inflicting the sentence, the Trial Chamber has to look at such factors as the gravity of the offences and individual circumstances of the convicted person.[25] This entails that if the offenders committed sever crimes and refused to co-operate with the prosecutor[26] but did not show repentance for their offences, the Tribunal is more likely to inflict retributive and deterrent sentence. Further, if they committed less sever crimes, co-operated with the prosecution and showed repentance for that (Prosecutor v. Milomir Stakić, 2003, paras 918, 920), the Tribunal is more likely to inflict such sentence as will serve the rehabilitative purpose of sentencing. Indeed, this test guides the Tribunal in determining which sentencing purpose is served while inflicting imprisonment.

It is axiomatic that another example in which life imprisonment has been inflicted is the case of *Galić case* (Prosecutor v. Stanislav Galić, 2006) where the ICTY depicts that such infliction would serve both retributive and deterrent purposes of sentencing. In this case, the Trial Appeals Chamber substituted imprisonment for 20 years imposed by the Trial Chamber with life imprisonment and reasoned that the Trial Chamber had abused its discretion in inflicting such lighter sentence and taken recourse to the 'wrong shelf' in light of the aggravating factors (Prosecutor v. Stanislav Galić, 2006, paras 441, 455, 456). On the other hand, it could be doubted that whether the Trial Appeals Chamber had jurisdiction to increase a sentence against which no right of appeal would lie (Prosecutor v. Stanislav Galić, 2006, paras 2-4, 186, 187), by arguing, in order to reconsider the right of appeal,[27] for remitting the case to the Trial Chamber (Gumboh, 2011). It was also of contention that no ground existed for increasing the sentence as it was not 'so low that it demonstrably shocks the conscience' rather such sentence was inflicted after cautiously scrutinizing the circumstances of the case (Prosecutor v. Stanislav Galić, 2006).[28] Resultantly, it can be argued that the Appeals Chamber itself abused its discretion through the infliction of such severe sentence with no appropriate

[25] Please see Article 24(2) of the Statute of the ICTY.
[26] Please see Rule 101(B) (ii) of the RPE of the ICTY.
[27] Art 14(5) of the ICCPR guarantees the right to appeal against sentence.
[28] Please See separate and partially dissenting opinion of Meron J, paras 9 & 10 205-208. The gist of J. Meron J's argument was that the Trial Chamber had not committed a 'discernible error', hence the Appeals Chamber had no power to intervene on the sentence. [See Prosecutor v. Tadić, IT-94-1-A and IT-94-1-Abis, (2000) para 22.] Indeed, the Trial Chamber had noted that a 20-year sentence was the maximum prison term available in the former Yugoslavia Courts. See also, Prosecutor v. Galić, IT-98-29-T, (2003) para 761. Therefore, it can be argued that it was imposed as a comparably heavy penalty, short only of the death penalty itself.

justifications (Gumboh, 2011). Further, the infliction of such sentence without due regard for right to appeal can be seen as a matter of misfortune (Gacumbitsi v. Prosecutor, 2006)[29] and a stumbling block to procedural fairness. Undoubtedly, it can be admitted that if the infliction of life imprisonment is within the Tribunal's discretion (Prosecutor v. Jelišić, 2001, para 100), such discretion also covers the imposition of a lighter sentence after a careful consideration of the circumstances of the case (Gumboh, 2011). Therefore, it is undeniable that the Appeals Chamber put undue emphasis on retributive and deterrent purpose of sentencing making the rehabilitation nugatory. Here it becomes evident that the ICTY seldom adhered to international human rights standards while imposing any sentence including life imprisonment. That's why it can emphatically be argued that if the Trial Appeals Chamber would adopt a combined approach of retribution, deterrence and rehabilitation not putting an undue emphasis only on the retributive and deterrent purpose of sentencing as well as a more cautious human rights approach reflecting the rehabilitative purpose of sentencing, it would not increase the sentence of 20 years to life imprisonment. Furthermore, though increased to such sentence, if the Trial Appeals Chamber would render the lifers for a realistic and tangible prospect of release and thereby all the aforesaid basic rights of lifers would be protected and the principle of proportionality as well as the principle of legal certainty would be maintained.

The Special Court for Sierra Leone (SCSL):

The Special Court for Sierra Leone (SCSL) is a hybrid court of which proceedings are administered by the Statute of the Special Court for Sierra Leone and its Rules of Procedure and Evidence (RPE) subordinate to the Statute (Prosecutor v. Alex Tamba Brima and others, 2007, para 2). The Statute empowers the Court to impose imprisonment for a specified number of years on the offenders convicted of committing certain crimes against humanity, certain violations of Article 3 Common to the 1949 Geneva Conventions and of 1977 Additional Protocol II, other serious violations of international humanitarian law, and some crimes under Sierra Leonean law.[30] This entails that the SCSL cannot inflict a life imprisonment or imprisonment for the remainder of the offender's life because the time the offenders have to spend in prison to either of these two sentences cannot be specified (Mujuzi, 2009) and such sentence leaves the quantification as to how long the prisoners will stay in prison. Influenced by retributive and deterrent purpose of sentencing which seem to be the dominant considerations of international criminal tribunals, although the SCSL has sentenced the offenders to lengthy terms of imprisonment ranging from 45 to 50 years (Prosecutor v. Alex Tamba Brima and others, 2007), it has not sentenced the offender to life imprisonment. Schabas rightly observes that the SCSL has no jurisdiction to inflict life imprisonment as its Statute and Rules of Procedure of Evidence do not authorize it to do so (Schabas, 2006). It can be argued that the logical point of having lengthy terms of imprisonment in one hand and retaining no life imprisonment at all on the other hand is based on the same connotation that no human being should be treated as beyond improvement and hence should always have the possibility of being released (Smit, 2010). Pertinently, it is no denying the fact that based on 'the interests of justice and the general principles of law', the President of the SCSL in consultation of the judges may release the offenders on whom excessive sentences are imposed.[31] This renders a possibility of release

[29] In this case, the ICTR Appeals Chamber increased a 30-year sentence to life sentence.
[30] Please see Article 1 of the Statute of the Special Court for Sierra Leone.
[31] Please see Article 23 of the Statute of the SCSL.

for the offenders invoking excessively long sentences as they may be pardoned hinging on the laws in countries where they will serve their sentences subject to the agreement of the President of the SCSL to such thing (Mujuzi, 2008). It can be argued that where the SCSL has no jurisdiction to impose life imprisonment, whatever it takes form, for the offenders convicted of international crimes like crimes against humanity, the rationale of imposing such sentence by other international tribunals and courts for such crimes seems to be dichotomous. Therefore, it can be undoubtedly admitted that unlike the Nuremberg Tribunal, the ICTR and the ICTY; the SCSL adopted a combined approach of retribution, deterrence and rehabilitation as well as a more cautious human right rights approach for the offenders convicted of international crimes by retaining no life imprisonment at all and rendering the possibility of release for excessively long terms. If the prospect of release for such long terms would not be retained, it would, no doubt, be disproportionate sentence as well as a cruel, degrading and inhuman punishment and undermine human dignity and liberty rights of the prisoners and overall it would cause denial of international human rights norms.

The International Criminal Court (ICC):

The adoption of the Rome Statute of the International Criminal Court[32] establishing the International Criminal Court (hereinafter ICC)[33] encapsulates an incredible landmark in the historical development of international law, and more particularly, of international criminal law (Vagias, 2011). This Statute is an underlying basis for the incessant and tolerable fight towards effectuating the objectives of the UDHR to trigger universal respect for and observance of human rights and fundamental freedoms. It is undoubtedly the pinnacle of a prolonged expedition to deal with individual criminal liability as an enforcement mechanism through the ICC against the most heinous crimes committed against the humankind as a whole such as crimes of genocide, war crimes, crimes against humanity and crimes of aggression as defined by the Statute (Stein, 2014). Governed by the Rome Statute, the ICC has become a true judicial force in the world and is the treaty based and first permanent international criminal court established to replace impunity with accountability for the perpetrators of the grave international crimes of concern to the international community (Stein, 2014). The Preamble to the Rome Statute expounds that such perpetrators must not go unpunished (Czarnetzky & Rychlakt, 2003). For this reason, King and La Rosa have argued that, the wording of the preamble suggests, retribution is a goal of sentencing at the ICC (King & Rosa, 1999). But Schabas (Schabas, 2007) has suggested in a different way that one of the objectives of the ICC set out in its Preamble is to put an end to impunity for those perpetrators who will contribute to the prevention of such crimes gives at least one message that the existence of the court will have some deterrent effect on the perpetrators by imposing punishment for such gross violations of international human rights norms. The Statute allows the ICC to impose two types of penalties i.e. imprisonment for a fixed term or

[32] The General Assembly of the United Nations convened in Rome, Italy adopted the Rome statute of the International Criminal Court for the establishment of International criminal court (ICC) was adopted on July 07, 1998 and came into force on July 1, 2002 after ratification by the necessary sixty states. Since its adoption, 139 countries have signed the Treaty and as of 14-5-2003, 100 countries have ratified it (Singh & Mishra, 2004).

[33] Aftermath the World War II, the world witnessed the Nuremberg trials, the first attempt at prosecuting and making criminally liable at international level for the crimes of the Holocaust. However, it was not until the early 1990s that the ICTY and the ICTR were constituted to exercise jurisdictions over the mass genocides of these respective regions. These tribunals drew the international attention, and eventually the realization that mass atrocities continued all over the world fueled the creation of the ICC (Dubinsky, 2007).

life imprisonment.[34] So the ICC is given a discretion to choose between them in imposing sentence (Schabas, 2016). After much negotiations as to whether there should be minimum and maximum limits in case of the terms of imprisonment, the Statute only incorporates a maximum term of thirty years.[35] During the negotiations, while many states argued for the retention of death sentence (Slade & Clark, 1999),[36] several states resisted the inclusion of life imprisonment (Duffy, 2001). Finally, the delegates at the Rome Conference grudgingly acknowledged life imprisonment (Fife, 1999). But the imposition of life imprisonment is restricted in the Rome Statute by its Article 77(1) (b) to cases when it is 'justified by the extreme gravity of the crime and the individual circumstances of the convicted person' (Gumboh, 2011). Such restriction denotes that life imprisonment should be the exception rather than the rule (Smit, 2002), notwithstanding the ICC envisions 'to try nothing but crimes of extreme gravity and the most heinous offenders' (Schabas, 2007). So, under the Rome Statute life imprisonment with no prospect of release is denied as a punishment for the most atrocious crimes (Appleton & Grover, 2007). Such restriction along with the provision for distinct sentencing hearings in Article 76(2) of the Rome Statute will strengthen a more comprehensive and human rights based approach to the imposition of sentencing by the ICC.

Here it is mostly pertinent to mention that the sentencing judgment awarded by the ICC on 7 November, 2019 in the Bosco Ntaganda Case where the ICC denied the imposition of life imprisonment (Prosecutor v. Bosco Ntaganda, 2019). In this case where the ICC imposed the highest penalty ever since its journey, the Trial Chamber VI found Mr Bosco Ntaganda guilty, beyond reasonable doubt, of 18 counts of war crimes and crimes against humanity, committed in Ituri, Democratic Republic of the Congo (DRC), between 2002 and 2003, and unanimously, sentenced him to a total of 30 years of imprisonment. The Chamber determined that although Ntaganda's crimes were of extreme gravity and the degree of harm caused by each crime as well as his high culpability, namely his level of intent and degree of participation and overall specific aggravating circumstances were in existence, the Chamber didn't warrant life imprisonment as suggested by a lawyer for victims. The sentences for each of the crimes committed by him ranged from eight years to 30 years of imprisonment in accordance with the Rome Statute which doesn't permit to exceed a total of 30 years of imprisonment. Meanwhile, Mr. Ntaganda has appealed against his conviction and the appeal is pending. It is hoped that the Appeals Chamber would retain the conviction order of the Trial Chamber and refrain itself from imposing life imprisonment for those international crimes through the adoption of human rights approach in international criminal law looking at the rights of the heinous criminals through the lens of human rights jurisprudence.

Previously, on 14 March 2012, the ICC Trial Chamber I, in its first verdict in the Thomas Lubanga Case, convicted Thomas Lubanga of conscripting, enlisting or using children to actively participate in hostilities as a co-perpetrator pursuant to Articles 8(2)(b)(xxvi), (e)(vii) and 25(3)(a) of the Rome Statute and sentenced him to14 years of imprisonment which he is currently serving (Prosecutor v. Thomas Lubanga Dyilo, 2012). Furthermore, On 7 March 2014, the ICC Trial Chamber II found Germain Katanga guilty, as an accessory, within the meaning of article 25(3)(d) of the Rome Statute, of one count of crime against humanity

[34] Please see Article 77 of the Rome Statute.
[35] Please see Article 110 of the Rome Statute.
[36] If the death penalty was included, it would have rendered the Court entirely unacceptable to the majority of states.

(murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) committed on a single day of 24 February 2003 during the attack on a single village of the Ituri district of the Democratic Republic of the Congo (DRC) (Prosecutor v. Germain Katanga, 2014). Subsequently, his cooperation with the court and his expression of remorse for his crimes brought in his sentence the reduction of three years and eight months. Again, on 27 September 2016, the ICC Trial Chamber VIII convicted Mr. Ahmed Al Faqi Al Mahdi of the single war crime of destroying historic and religious monuments and sentenced to 9 years of imprisonment (Prosecutor v. Ahmad Al Faqi Al Mahdi, 2016). In these cases, the ICC didn't notice the extreme gravity of crimes and high culpability of those convicted to warrant life imprisonment. But it was quite surprising of taking a note on the Bemba case where the ICC Appeals Chamber, on 8 June 2018, acquitted Jean-Pierre Bemba, by majority, from the charges of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape and pillaging) committed in Central African Republican (CAR) between 2002 and 2003 by a contingent of MLC troops, but the Trial Chamber III sentenced him to 18 years following conviction, beyond reasonable doubt, of these crimes and guilty for failing to take all necessary and reasonable measures as a military commander with effective authority and control over the forces that committed the crimes (Prosecutor v. Jean-Pierre Bemba Gombo, 2018). Behind the reversal of the Trial Chamber's conviction order by the Appeals Chamber, two grounds were showed- firstly, that he was a remote commander of the MLC troops in CAR as an exonerating factor within the ambit of the exonerating grounds listed in Article 31 of the Rome Statute nor in the Rules of Procedure and Evidence.; and secondly, that the Trial Chamber erred when convicting him for the criminal acts which did not fall within the facts and circumstances described in the charges in terms of Article 74 (2) of the Statute (Taffo, 2018). This judgment clearly establishes the creation of the concept of "Remote Commander" as an exonerating factor and the automatic reversal of criminal acts proved beyond reasonable doubt following reversal of a conviction decision, which seem to be inconsistent with the theory of international criminal responsibility from an international criminal law perspective coming to the age of such a highly developed technological communication system through which anyone is, for sure, likely to commit crime and command for committing crimes not actively participating there.

However, in order to alleviate concerns about life imprisonment, a mandatory review mechanism of penalties was inserted (Singh & Mishra, 2004) as Article 110(3) of the Statute obligates the ICC to review the sentence whether it should be reduced after serving two-thirds of the sentence, or 25 years in case of life imprisonment. So the Statute itself bestows the ICC the right to reduction of sentences for which hearings are obligated to be heard by the three-judge Appeals Chamber or a judge authorized by it.[37] The ICC may permit reduction of sentences when it is satisfied that the offender was either willing to assist the Court from the very beginning juncture and approaches persistently to be so willing;[38] or rendered voluntary co-operation with enforcing Court judgments and orders;[39] or if there are other factors surfacing an unambiguous and paramount change of circumstances sufficient to justify the sentence reduction[40] such as behavior, rehabilitation, actual severance from the crime; prospect of reintegration into the society; consequence of release on social stability and

[37] Please see Rule 224(1) of the ICC Rules of Procedure and Evidence.
[38] Please see Article 110(4) (a) of the Rome Statute.
[39] *Ibid,* Article 110(4) (b).
[40] *Ibid,* Article 110(4) (c).

victims; momentum action taken by the prisoner for benefiting the victims; and the individual circumstances of the prisoner, such as age or poor psychological or physical health.[41] Therefore, the rules stated in both Articles 77 and 110 direct the ICC to take into account those factors of the convicted persons while exercising its sentencing and review functions. If release is denied, further review will be adjudged by a three-judge chamber every three years, or earlier if conditions so justify.[42] That's why it can be said that these provisions are friendly to step forward opening the lifers' lock up in perpetuity mandating a dynamic release system after a certain period of time to be served.

It is pertinent to expound here that as the decision to release under international criminal law is conclusive and irreversible (Schabas, 2007), life imprisonment should render a real and tangible prospect of release in order to testify human dignity (Kafkaris v. Cyprus, 2008, para 6; and De Boucherville v. The State of Mauritius, 2008, para 23). It is significant to note that Articles 21(1) and (3) of the Statute along with the rules enshrined in the above-mentioned Articles also guarantee that apart from other human rights concern, the Court will have regard for rehabilitation. These provisions require the ICC to maintain compatibility with international human rights laws while applying the Statute and other sources of law. Thus, the ICC will have regard, for instance, the ICCPR which expounds that the essential objective of a penitentiary system should be rehabilitation.[43] Resultantly, this reinforces the principle enumerated in the Rules that while applying the provisions on sentencing and review, the Court will have regard for the principle of rehabilitation and those human rights standards relating to the rights of suspects and accused persons that form part of international human rights law (Duffy, 2001) and adopt a rehabilitation oriented approach based on human rights jurisprudence. Therefore the Rome Statute has tried to articulate a balancing ambience among the interests of the offender, the victims and society at large (Hoel, 2005). Nonetheless, the Statute is not without its loopholes. For instance, though the 25-year minimum fixed term for lifers for release is reasonable because of being the 30-year maximum specified term, it is rather harsh as a minimum and is indeed sufficient for retribution (Smit, 2002). Again, it is not unquestionable how two-thirds of a specified term has been analogous to 25 years. The indeterminacy of life sentence also implies that 25 years can be any fraction of sentences, more than its two-thirds sentence (Smit, 1999). The individual circumstances of the prisoner, as enshrined in Rule 223, seem to be more proper and reasonable. However, the problem is that such factors are taken into account after the fixed period served, but before the expiry of the minimum period, a prisoner may face a serious health or mental condition. So it is urged that a more reasonable position would be obtained if a general proviso to Article 110 (3) would be inserted and resultantly sentence reduction at any time would have regard on medical, humanitarian or other compelling grounds because the consideration of the age of the prisoner in case of sentence reduction is non-reasonable. It, therefore, can be drawn that the making of more terms fixed to serve for life prisoners for all times before considering to be released would be inappropriate and as a consequence, right to rehabilitation and resettlement in the society would be at risk. It requires that if adhered to a more cautious human rights approach to life imprisonment, the ICC needs to proceed a dedicated and dynamic prospect of early release for life prisoners for all times though its release and review mechanism is obviously commendable.

[41] Please see Rule 223 of the ICC Rules of Procedures and Evidence.
[42] *Ibid.*
[43] Please see Article 10(3) of the ICCPR.

Conclusion

The aforesaid justifications of life imprisonment under international criminal law feel heavily necessary for a more focused and cautious human rights approach to be adopted by international criminal tribunals and courts. This is because these courts and tribunals have paid little attention to the human rights based justifications of life imprisonment except the practice of aggravating and mitigating factors. As a consequence, these international judicial bodies have given undue weight on retribution and deterrence, and have emphasized that given the dangerousness of the committed crimes, rehabilitation should not be given undue weight, though human rights norms mandate for any penitentiary system to have a successful rehabilitation and social reintegration of life prisoners. Further, any penitentiary system where no independent and realistic release system is in place creates mush more potentiality to undermine human dignity, deny liberty indefinitely, destroy humane conditions of sentencing and create barriers to an effective social reformation of life prisoners by depriving them of the right to hope for release which is corollary of human dignity. Deviation from such human rights norms makes life imprisonment a cruel, degrading and inhuman punishment and contradicts with the principle of proportionality and legal certainty. The uncertainty of release weighs solidly on life prisoners and its negation has adverse effects on them. As the most atrocious criminals also retain their fundamental humanity and what makes them human is the capacity to change, they are not beyond improvement and would be able to lead crime free life in the society. Therefore, legal certainty as to the prospect of such release is, no doubt, imperative for any penal system whether national or international. Therefore, these tribunals should look and adhere to international human rights norms as the most heinous offenders convicted of international crimes are also entitled to the protection of their fundamental human rights. There is because, human rights norms encapsulate that life imprisonment should be avoided except in the most extreme cases and should have always the prospect of release for lifers. It entails that if life imprisonment is imposed, it must render a realistic and early release for them. Therefore, it is suggested that the criteria for a tangible and realistic early release for lifers should be manifestly mentioned in the Statutes of the aforesaid courts and tribunals. This is because, unlike the Tokyo tribunal where lifers are released after serving 15 years, the Nuremberg Tribunal has not rendered a dynamic release mechanism for lifers by imposing the whole life imprisonment. If the Nuremberg Tribunal would adopt the release mechanism like the Tokyo Tribunal, it would be more dynamic and realistic. Further, the ICTR and the ICTY, notwithstanding having their sentence reduction system, have actually no release mechanism of their own due to not having international prison and dependence on the sentence enforcing states and hence, has no jurisdiction to grant release contemplated by the states of enforcement. Therefore, it is suggested that these tribunals be empowered with supervisory jurisdictions on the states of enforcement in order to adopt a realistic release mechanism for lifers. In addition to this, the ICTY, the ICTR and the SCSL while inflicting much harsher and excessively long sentences should respect and adhere to human rights norms which restrict the imposition of any lengthy sentence including life imprisonment following a rehabilitation oriented approach to sentencing. It is pleased to share that the SCSL, with no life imprisonment, have rendered early release for the offenders in case of excessively long sentences. It is also glad to disseminate a commendable message with a blissful moment that the ICC pursuant to its Statute promises to work in conformity with international human rights norms. Accordingly, the ICC regime endeavors to confer better treatment of life imprisonment and render lifers release after 25 years to be served. However, as aforesaid, its release mechanism is not quite feasible and the manner of its implementation, particularly considerations of eligibility for release, raises significant

challenges. Nonetheless, there is a logical reason of hope that ICC will be more conscientious regarding life imprisonment by inserting a general proviso to Article 110(3) of its Statute in which early release may be proceeded by sentence reduction at any time on medical, humanitarian or compelling grounds not fixing a certain term to be served before the consideration of release. It can, undoubtedly, be claimed from the aforesaid discussions that with regard to life imprisonment, the position taken by international criminal law needs to be made revision in light of the challenges raised in this paper by adopting a more cautious human rights approach and incorporating a combined approach of retribution, deterrence and rehabilitation of sentencing jurisprudence in compliance with international human rights norms. Eventually it is incessantly hoped with much height and weight that the adoption of such a human rights approach to the imposition of any sentence including life imprisonment under international criminal law will see its practicability to promote and develop the protection of all the fundamental human rights of all the offenders including life prisoners who will face trials before the international criminal tribunals and courts in the near future.

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