

# Making sense of the Rwandan Law Relating to Serving Life Imprisonment with Special Provisions

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## Summary

*In October 2010, the Rwandan Law Relating to Serving Life Imprisonment with Special Provisions came into force. As the name suggests, the law is applicable to offenders sentenced to life imprisonment with special provisions. This article highlights the gaps in that law and suggests ways through which those gaps could be eliminated.*

## 1 Introduction

When Rwanda abolished the death penalty for heinous offences, it substituted it with life imprisonment with special provisions. Article 4 of the Organic Law Relating to the Abolition of the Death Penalty<sup>1</sup> defines life imprisonment with special provisions to mean '(1) a sentenced person is not entitled to any kind of mercy, conditional release or rehabilitation, unless he or she has served at least twenty (20) years of imprisonment; (2) a sentenced person is kept in prison in an individual cell ...' reserved for people convicted of serious crimes such as genocide and crimes against humanity. The human rights implications of the sentence of life imprisonment with special provisions have been discussed elsewhere

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<sup>1</sup> Organic Law Relating to the Abolition of the Death Penalty 31/2007 of 25 July 2007.

and will not be repeated here.<sup>2</sup> It is precisely because of those human rights concerns that the International Criminal Tribunal for Rwanda (ICTR), amongst other reasons, refused to transfer some of the accused to stand trial in Rwanda. This would later force the Rwandan government to amend its relevant legislation to specifically provide that life imprisonment with special provisions shall not be applicable to those people transferred from the ICTR to serve their sentences in Rwanda or those transferred from the ICTR to stand trial in Rwanda.<sup>3</sup> The sentence of life imprisonment with special provisions still applies to those convicted of heinous crimes by Rwandan courts. In order to presumably address the concerns by human rights activists and academics about the human implications of life imprisonment with special provisions, in October 2010 the Rwandan government enacted a specific law relating to serving life imprisonment<sup>4</sup> that 'provides for specific modalities of enforcement and serving the sentence of life imprisonment with special provisions'.<sup>5</sup>

The purpose of this article is to show the gaps in the October 2010 law relating to life imprisonment with special provisions as they relate to the rights of prisoners and to argue that, in order to cure some of its defects, the law should either be amended or should be read in conjunction with the Law Establishing and Determining the Organisation of the National Prison Service.<sup>6</sup> Although the Law Relating to Serving Life Imprisonment with Special Provisions was enacted pursuant to the Law Establishing and Determining the Organisation of the National Prison Service,<sup>7</sup> it provides under article 15 that '[a]ll prior legal provisions inconsistent with this Law are hereby repealed'. Article 15 does not expressly repeal the relevant provisions of the Law Establishing and Determining the Organisation of the National Prison Service that appear to conflict with the Law Relating to Serving Life Imprisonment with Special Provisions. The discussion that follows should thus be seen against the background that it is possible for one to argue that either that the Law Relating to Serving Life Imprisonment with Special Provisions repealed those provisions of the Law Establishing and Determining the Organisation of the National Prison Service by invoking the later-in-time rule, or that it did not repeal those provisions because it does not expressly say so. Before discussing the gaps as they relate to

<sup>2</sup> See JD Mujuzi 'Issues surrounding life imprisonment after the abolition of the death penalty in Rwanda' (2009) 9 *Human Rights Law Review* 329-338.

<sup>3</sup> See JD Mujuzi 'Steps taken in Rwanda's efforts to qualify for the transfer of accused from the ICTR' (2010) 8 *Journal of International Criminal Justice* 237-248.

<sup>4</sup> Law Relating to Serving Life Imprisonment with Special Provisions, Law 32/2010 of 22 September 2010, *Special Official Gazette* 14 October 2010.

<sup>5</sup> n 4 above, art 1.

<sup>6</sup> Law 38/2006 of 25 September 2006 Establishing and Determining the Organisation of the National Prisons Service.

<sup>7</sup> See Preamble, para 5.

the rights of the offenders, I will first illustrate the first weakness of the Law Relating to Serving Life Imprisonment with Special Provisions.

## **2 Offences that attract life imprisonment with special provisions**

Article 2 of the Law Relating to Serving Life Imprisonment with Special Provisions provides as follows:

Life imprisonment with special provisions shall be applicable to persons sentenced for the following inhuman or recidivism crimes: (1) torture resulting into death; (2) murder or manslaughter with dehumanising acts on the dead body; (3) the crime of genocide and other crimes against humanity; (4) child sexual abuse; (5) sexual torture; (6) forming or leading criminal gangs.

The above crimes are indeed serious. However, the challenge associated with the law is that it does not define what recidivism is.<sup>8</sup> Put differently, it does not give a criterion that should be used by the sentencing judge in determining that the offender is a recidivist or not. This leaves two important questions unanswered: one, how many such offences should a person have committed for him or her to be categorised as a recidivist? Two, what should be the time frame between the first offence and the second or third offence before someone is considered a recidivist? In other words, if a person were convicted of child sexual abuse in 2010 and a sentence other than life imprisonment with special provisions was imposed, and that same person, 20 years later — in 2030 — commits the same offence, should that person be considered a recidivist? Before someone is punished in terms of article 2, there is a need for a definition of recidivism so that sentencing officers have a clear understanding of the kind of person they should consider a recidivist.

## **3 Rights of offenders sentenced to life imprisonment with special provisions**

This section deals with the various rights of offenders that are likely to be sentenced in terms of the Law Relating to Serving Life Imprisonment with Special Provisions. The author highlights the weaknesses in the law as far as they relate to these rights and make recommendations on how those weaknesses may be eliminated.

<sup>8</sup> For a discussion on the meaning of recidivism, see G Hallevy 'The recidivist wants to be punished: Punishment as an incentive to reoffend' (2009) 5 *The International Journal of Punishment and Sentencing* 120-145. See also MD Maltz *Recidivism* (1984).

### 3.1 Right to freedom from torture, cruel, inhuman and degrading treatment

Article 4 provides that '[t]he rights of the sentenced person to life imprisonment with special provisions under this Law shall be respected all the time and the sentenced person shall be protected against any form of torture and cruel, inhuman and other degrading treatment'. Although Rwanda ratified the United Nations (UN) Convention Against Torture (CAT), it is yet to enact legislation giving effect to that treaty. This means that torture is not defined under any Rwandan domestic law. Therefore, although torture is prohibited under Article 4 of the Law Relating to Serving Life Imprisonment with Special Provisions, torture is not defined under that law. It is recommended that the relevant authorities (such as courts and prison officials) should refer to the definition of torture under Article 1 of CAT<sup>9</sup> in their definition of torture under article 4 of the Law Relating to Serving Life Imprisonment with Special Provisions.<sup>10</sup> There are two reasons for this: One, Rwanda ratified CAT without making any reservation or declarative interpretation to article 1 which defines torture.<sup>11</sup> It is thus under a duty to adopt the definition of torture under article 1 of CAT *verbatim* or to adopt a definition of torture that does not differ substantially from the one under article 1 of CAT.<sup>12</sup> Two, the defi-

<sup>9</sup> Art 1 of the CAT defines torture to mean 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.' For the drafting history of art 1, see M Nowak & E McArthur *The United Nations Convention Against Torture: A commentary* (2008) 27-86.

<sup>10</sup> In some African countries, such as Uganda and South Africa, where the respective states ratified CAT without making reservations on art 1, courts have relied on the definition of torture under art 1 although these countries are yet to domesticate CAT. See *Attorney-General v Susan Kigula & 17 Others* (Constitutional Appeal 3 of 2006) UGSC 6 (21 January 2009) (Supreme Court of Uganda); *S v Mthembu* [2008] 4 All SA 517 (SCA) para 30 (South Africa Supreme Court of Appeal).

<sup>11</sup> See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations Treaty Series Vol 1465 85 Ratification Status [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en) (accessed 1 March 2011).

<sup>12</sup> The CAT Committee has recommended that '[s]erious discrepancies between the Convention's definition [of torture] and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases although a similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each state party to ensure that all parts of its government adhere to the definition set forth in the Convention for the

inition of torture under CAT is now widely considered to have attained the status of customary international law.<sup>13</sup>

As is the case with torture, the Law Relating to Serving Life Imprisonment with Special Provisions does not define the meaning of cruel, inhuman and degrading treatment. These terms are also not defined in CAT because '[d]uring the drafting of article 16 [of the Convention], it ... soon became clear that a proper definition of the terms cruel, inhuman or degrading treatment or punishment was impossible to achieve'.<sup>14</sup> It is against that backdrop that the CAT Committee has adopted a case-by-case analysis to conclude whether or not an individual was subjected to cruel, inhuman and degrading treatment or punishment or whether state parties have put in place measures to effectively prevent cruel, inhuman and degrading treatment or punishment.<sup>15</sup> It is recommended that the Rwandan authorities, especially judges and prison authorities, should rely, *inter alia*, on the jurisprudence of the CAT Committee in determining whether the alleged conduct amounts to cruel, inhuman and degrading treatment. Related to the above, CAT prohibits cruel, inhuman or degrading treatment or punishment. This jurisprudence is freely available on the internet, so the issue of accessibility does not arise. However, article 4 of the Law Relating to Serving Life Imprisonment with Special Provisions does not prohibit degrading punishment. The drafting history of CAT shows that the drafters of the Convention appear to have held the view that there is a distinction between degrading treatment, on the one hand, and degrading punishment on the other.<sup>16</sup> This explains why the conjunctive 'or' was placed between 'treatment' and 'punishment'. Jurisprudence emanating from the CAT Committee shows that the Committee has in most cases found that a person was subjected to inhuman and degrading punishment when such a person had been convicted of an offence and that a person was subjected to inhuman and degrading treatment when such a person was in detention illegally or legally awaiting trial.<sup>17</sup>

Jurisprudence emanating from the Human Rights Committee also shows that the Human Rights Committee draws a distinction between

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purpose of defining the obligations of the state. At the same time, the Committee recognises that broader domestic definitions also advance the object and purpose of this Convention so long as they contain and are applied in accordance with the standards of the Convention, at a minimum.' See CAT Committee General Comment 2 (implementation of art 2 by state parties) CAT/C/GC/2/CRP 1/Rev 4, 23 November 2007, para 9.

<sup>13</sup> *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vokovic* Case IT-96-23 and IT-96-23/1-A (judgment of 12 June 2002) para 146.

<sup>14</sup> Nowak & McArthur (n 9 above) 540.

<sup>15</sup> See generally Nowak & McArthur (n 9 above) 540-576.

<sup>16</sup> Nowak & McArthur (n 9 above) 539-540. The USSR delegates, during the drafting of the definition of 'torture' under CAT, argued that '... the institution of punishment is legally applicable to persons who have committed an offence'. See Nowak & McArthur (n 9 above) 32.

<sup>17</sup> Nowak & McArthur (n 9 above) 540-576.

degrading treatment, on the one hand, and degrading punishment on the other. In state reports and in individual communications, the Human Rights Committee has in most cases found that a person was subjected to inhuman treatment when that person was in detention or awaiting trial before his or her conviction and that a person's right not to be subjected to degrading punishment was found to have been violated when such a person had been convicted.<sup>18</sup> Practice by the CAT Committee shows that in most cases the Committee has used the word 'punishment' instead of 'treatment' in cases where capital punishment and corporal punishment have been discussed.<sup>19</sup> The drafting history of article 7 of the International Covenant on Civil and Political Rights (ICCPR) illustrates that the drafters were clear that 'the term "treatment" ... [was] broader than "punishment"'.<sup>20</sup> This is indicative of the Committees' understanding, at least by implication, that treatment and punishment are not synonymous.

The above discussion shows that there is room to argue that degrading treatment is more relevant to those who have not been convicted – although even those who have been convicted could be treated in a degrading manner which either relates or does not relate to the sentence they are serving. However, inhuman and degrading punishment is more relevant to those who have been convicted. The inquiry focuses on the nature of the punishment that has been imposed to answer the question of whether such punishment is degrading or inhuman. In other words, as philosophers have consistently and convincingly argued, one of the essential elements of punishment is the fact that it can only be imposed on someone who has been found guilty of breaking the law.<sup>21</sup> Therefore, the word punishment in CAT is not redundant. State parties have an obligation not only to prevent degrading treatment, but also degrading punishment. Against that background it is argued

<sup>18</sup> M Nowak *UN Covenant on Civil and Political Rights: CCPR Commentary* (2005) 157-192.

<sup>19</sup> Nowak & McArthur (n 9 above) 543-448. See also Nowak (n 18 above) 167-172.

<sup>20</sup> Nowak (n 18 above) 159.

<sup>21</sup> Hart, eg, was of the view that for any treatment to qualify as punishment, it must have the following five elements: (i) It must involve pain or other consequences normally considered unpleasant. (ii) It must be for the offence against legal rules. (iii) It must be for an actual or supposed offender for his offence. (iv) It must be intentionally administered by human beings other than the offender. (v) It must be imposed and administered by an authority constituted by a legal system against which the offence is committed. See HAL Hart *Punishment and responsibility: Essays in the philosophy of law* (1968) 4-5. Pincoffs is of the view that legal punishment is an institution with the following three features: (i) There must be a system of threats, officially promulgated, that should given legal rules be violated, given consequences regarded as unpleasant will be inflicted upon the violator. (ii) The threatened unpleasant consequences must be inflicted only upon persons tried and found guilty of violating the rules in question, and only for the violation of those rules. (iii) The trial, finding of guilt, and imposition and administration of the unpleasant consequences must be by authorised agents of the system promulgating the rules. See EL Pincoffs *The rationale of legal punishment* (1966) 55-56.

that article 4 of the Law Relating to Serving Life Imprisonment with Special Provisions should be read as prohibiting degrading treatment and punishment, otherwise it would be in conflict with CAT. In the light of the fact that in 2007 the Rwandan Minister of Justice said that those sentenced to life imprisonment with special provisions be subjected to solitary confinement,<sup>22</sup> which is referred to as single cells in the legislation, the question is whether detaining a person in a single cell for 20 years, which in practice is the same thing as solitary confinement, does not amount to inhuman punishment.<sup>23</sup>

### 3.2 Freedom from discrimination

Article 4 also provides that '[a]ny form of discrimination against the sentenced person based on ethnicity, colour, sex, language, religion, political opinion, nationality, social and economic status, birth or any other ground is prohibited'. Unlike article 11(2) of the Constitution of Rwanda, article 4 of the Law Relating to Serving Life Imprisonment with Special Provisions, which is admittedly not exhaustive, leaves out some grounds upon which a person may not be discriminated against. Article 11(2) of the Constitution provides that '[d]iscrimination of whatever kind based on, *inter alia*, ethnic origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law'. Some of the grounds on which a person may not be discriminated against that appear in the Constitution but do not expressly appear in the Law Relating to Serving Life Imprisonment with Special Provisions are culture, region of origin, and physical or mental disability. This means that the implementers of the Law Relating to Serving Life Imprisonment with Special Provisions will have to read it in conjunction with article 11(2) of the Constitution so that the grounds that are not expressly mentioned in the Law Relating to Serving Life Imprisonment with Special Provisions but mentioned in the Constitution are

<sup>22</sup> See F Kimenyi 'Death penalty: Recidivist to have special imprisonment' 27 January 2007 <http://allafrica.com/stories/200701250767.html> (accessed 30 March 2011).

<sup>23</sup> The African Commission on Human and Peoples' Rights held that 'prolonged ... solitary confinement could be held to be a form of cruel, inhuman or degrading punishment and treatment'. See *Zegveld & Another v Eritrea* (2003) AHRLR 84 (ACHPR 2003) para 55. See also *Malawi African Association & Others v Mauritania* (2000) AHRLR 194 (ACHPR 2000) para 124, where the African Commission held that holding people in solitary confinement in a manner that deprives them of their right to see their family members violates art 18(1) of the African Charter. See also *Achutan & Another (on behalf of Banda & Others)* (2000) AHRLR 143 (ACHPR 1994), where the African Commission held that some forms of solitary confinement violate art 5 of the African Charter. For a discussion of the UN bodies and the European of Human Rights jurisprudence on solitary confinement, see UNVFVT *Interpretation of torture in the light of the practice and jurisprudence of international bodies* [http://www.ohchr.org/Documents/Issues/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Interpretation_torture_2011_EN.pdf) (accessed 24 March 2011) 10-12.

considered to be part of article 4 of the Law Relating to Serving Life Imprisonment with Special Provisions.

### 3.3 Physical exercise and religious beliefs

Article 5 of the Law Relating to Serving Life Imprisonment with Special Provisions provides for the following as some of the ‘basic needs’ of the person sentenced to life imprisonment with special provisions: the offender ‘shall be afforded a minimum standard of living to enable him or her to maintain a healthy life and personal hygiene’ and the offender ‘shall be entitled to time to perform physical exercises and act according to his or her religious beliefs’. The above are indeed some of the rights that any offender is entitled to irrespective of the offence he or she has committed. Article 5 is not detailed on how the rights it provides for shall be enjoyed, but it provides that ‘[m]odalities for the implementation [of the above] provisions ... shall be determined by internal rules and regulations of prisons’. It is possible that such rules and regulations could be drafted in a manner that makes it almost impossible for the offenders sentenced to life imprisonment with special provisions to enjoy the above rights. It is recommended that in drafting such rules and regulations, regard should be had to the spirit of the Constitution, which protects the right to freedom of religion and worship, and to the internationally-accepted standards such as those laid down in the international Standard Minimum Rules for the Treatment of Prisoners. At the time of writing, the author was unable to establish whether such regulations or rules had been drafted.

Article 6 of the Law Relating to Serving Life Imprisonment with Special Provisions provides that a person sentenced to life imprisonment with special provisions shall have the right to medical care. Although that provision makes it incumbent upon the prison authorities to put the necessary measures in place to ensure that that person receives medical care, the law does not expressly state that medical care shall be at the expense of the state. Although it could be argued that in practice the state has a duty to provide free medical care to prisoners,<sup>24</sup> for the avoidance of doubt it would be better for that to be expressly included in the legislation as has been the case in some African countries, such

<sup>24</sup> As is the case in Rwanda, in some African countries such as Uganda and Ghana, the laws do not specifically stipulate that a prisoner will be entitled to medical treatment at the state’s expense. See sec 35(1)(e) of the Ghanaian Prisons Service Act 1972, NRCD 46, which provides that ‘[t]he Director-General shall ensure that a prisoner is promptly supplied with the medicines, drugs ... or any other things prescribed by a medical officer of health as necessary for the health of the prisoner’. Sec 57(f) of the Uganda Prisons Act 17 of 2006 provides that ‘... a prisoner is entitled to the following ... (f) have access to the health services available in the country without discrimination of their legal status’.



as South Africa<sup>25</sup> and Malawi.<sup>26</sup> This is because, although states know or are expected to know that it is their responsibility to provide medical care for those in detention, jurisprudence emanating from the African Commission on Human and Peoples' Rights (African Commission) shows that there have been cases where states have failed to do so.<sup>27</sup> It is recommended that article 6 be amended to expressly provide that such an offender shall have the right to medical care at the state's expense.

### 3.4 Right to be visited

Article 7(1) of the Law Relating to Serving Life Imprisonment with Special Provisions provides that 'a person serving life imprisonment with special provisions may be visited by his or her parents, his or her spouse, his or her children and his or her members of the family'. The aforementioned provision is conspicuously silent on whether such an offender can be visited by his or her friends, who could include religious leaders. This should be contrasted with article 28(1) of the Law Establishing and Determining the Organisation of the National Prison Service, which provides that '[e]very prisoner has the right to be visited by his or her family members and friends'. It is clear that under article 28(1) of the Law Establishing and Determining the Organisation of the National Prison Service, the prisoner has a right to be visited by the enumerated groups of people, whereas in terms of article 7(1) of the Law Relating to Serving Life Imprisonment with Special Provisions, the prisoner 'may be' visited by those people. The Law Relating to Serving Life Imprisonment with Special Provisions does not explain why a prisoner serving life imprisonment with special provisions does not have a right to receive visitors and why his or her friends are not included in the category of people allowed to visit him or her. One could argue

<sup>25</sup> Sec 35(2)(e) of the South African Constitution provides that '[e]veryone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including ... the provision, at state expense, of ... medical treatment'.

<sup>26</sup> Sec 9(3) of the Malawi Prison Bill 2003 provides that '[e]very prisoner shall at the expense of the state be given adequate medical treatment for potentially life-threatening conditions and care where possible for other medical conditions that are not life threatening'.

<sup>27</sup> Eg, in *International Pen & Others (on behalf of Saro-Wiwa) v Nigeria* (2000) AHRLR 212 (ACHPR 1998), where Mr Ken Saro-Wiwa was denied medical care by the Nigerian government while in detention, the African Commission held, amongst other things, that 'the responsibility of the government is heightened in cases where an individual is in its custody and therefore someone whose integrity and wellbeing is completely dependent on the actions of the authorities. The state has a direct responsibility in this case. Despite requests for hospital treatment made by a qualified prison doctor, these were denied to Ken Saro-Wiwa, causing his health to suffer to the point where his life was endangered. The government has not denied this allegation in any way. This is a violation of article 16 [of the African Charter on Human and Peoples' Rights]'. See para 112. See also *Achutan* (n 23 above), where the African Commission found that the prisoners had been denied adequate medical care (paras 3 & 7).

that this is discrimination on the ground of social status, which is prohibited by article 11 of the Constitution. This is because those serving life imprisonment with special provisions are grouped in a particular status group that does not have the same rights as other prisoners not serving life imprisonment with special provisions.

Related to the above is the issue of the offenders serving life imprisonment with special provisions being visited or not visited by their lawyers. Article 7(2) of the Law Relating to Serving Life Imprisonment with Special Provisions provides that 'a person serving life imprisonment with special provisions shall have the right of being visited by his or /her lawyer during working hours and they shall be allowed to communicate orally or in writing in the presence of a prison guard or any other competent prison staff'. This provision should be contrasted with article 28(3) of the Law Establishing and Determining the Organisation of the National Prison Service, which provides that '[t]he detainee<sup>28</sup> shall be entitled to the right of being visited by his or her lawyer during working hours and they shall be allowed to communicate in speech or in writing with no hindrance'. Everyone with an elementary knowledge of prison matters knows that one of the greatest hindrances to proper communication between an inmate and an outsider, be it a lawyer or a relative, is for the inmate to know that the discussion between him or her and the outsider is being listened to by the prison authorities. This could be through using electronic devices or the physical presence of a prison warder. Therefore, a detainee can rightly argue that the presence of a prison warder could hinder his or her communication with his or her lawyer.

An inmate communicating with his or her lawyer in the presence of a prison warder not only risks the real danger of reprisals should he or she, for example, allege that the prison administration mistreats him or her, but his or her right to communicate with a lawyer confidentially is also violated. Whereas a detainee has the right to communicate with his or her lawyer in private, a person serving a sentence of life imprisonment with special provisions does not have that right. It could also be argued that this is discrimination on the ground of social status which is contrary to article 11 of the Constitution. There are three ways to cure the defects in article 7 of the Law Relating to Serving Life Imprisonment with Special Provisions. One, it should be amended to rectify the discriminatory issues highlighted above; two, it should be read in conjunction with article 28 of the Law Establishing and Determining the Organisation of the National Prison Service; or three, its constitutionality should be challenged before a relevant court.

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<sup>28</sup> 'Detainee' is defined in art 3(7) of the Establishing and Determining the Organisation of the National Prisons Service to mean 'any person incarcerated in a prison in accordance with a legal decision taken by a court but who has not been tried for a definitive sentence'.

### 3.5 Right to appeal against corrective measures

Article 13(1) of the Law Relating to Serving Life Imprisonment with Special Provisions empowers the prison authorities to take corrective measures against prisoners serving life imprisonment with special provisions in cases where they have transgressed prison rules or regulations. Article 13(2) provides that such corrective measures 'shall in no way degrade the person or jeopardise the fundamental rights guaranteed to him or her by this Law'. Article 13(3) provides that the person sentenced 'to life imprisonment with special provisions or his or her family may request the Commissioner-General of National Prisons Service to review any disciplinary action taken against him or her in accordance with provisions of the internal rules and regulations of prisons'. Article 13(3) is based on at least one assumption: that the offender or his family has access to and is well acquainted with prison rules and regulations. Prison rules and regulations are sometimes voluminous and not readily available to the prisoner or members of the public unless requested from prison authorities, and some of them may not be willing to make these available to the prisoners or their family members. Even in cases where such rules and regulations are accessible to prisoners and their families, they may be reluctant to invoke them to challenge a sentence imposed by prison authorities for fear of reprisals against the prisoner. It is thus important that article 13 be amended to allow the prisoner's lawyer to act on behalf of the prisoner in challenging such corrective measures. It has to be recalled that article 33 of the Law Establishing and Determining the Organisation of the National Prison Service allows the prisoner, his or her family or his or her lawyer to challenge any disciplinary measure imposed against a prisoner before the relevant authorities or before a court of law. Article 13 of the Law Relating to Serving Life Imprisonment with Special Provisions should be amended to also allow the prisoner's lawyer to challenge a prisoner's disciplinary action not only before the prison authorities, but also before a court of law. Otherwise one could strongly argue that prisoners serving life imprisonment are being discriminated against.

## 4 Conclusion

This note has highlighted the challenges likely to be encountered in implementing the Rwandan Law Relating to Serving Life Imprisonment with Special Provisions. One should recall that offences that attract the sentence of life imprisonment with special provisions are serious and should attract serious punishments. However, the fact that they are serious offences does not mean that the sentences imposed on those convicted of such offences should be contrary to Rwanda's national and international human rights obligations. Put differently, in punishing heinous offences, Rwanda should not turn a blind eye to its national

and international human rights obligations. It could be argued that had Rwanda not abolished the death penalty, those found guilty of these callous offences would have been sentenced to death and therefore, with that in mind, life imprisonment with special provisions is a lenient sentence compared to the death penalty. In my opinion, this argument misses the point that what is in issue here is not whether the sentence of life imprisonment with special provisions is more lenient than the sentence of death. What is in issue here is whether the sentence of life imprisonment with special provisions complies with Rwanda's national and international human rights obligations. As the discussion above has shown, the sentence of life imprisonment with special provisions is contrary to Rwanda's national and international human rights obligations. It is on that basis that it has been suggested that many provisions of the Rwandan Law Relating to Serving Life Imprisonment with Special Provisions need to be amended to bring them in line with the Constitution and Rwanda's international human rights obligations. In cases where those amendments are not possible, it has been suggested that, where practicable, the Law Relating to Serving Life Imprisonment with Special Provisions should be read in conjunction with the Law Establishing and Determining the Organisation of the National Prison Service.

Another argument that could be advanced in support of the sentence of life imprisonment with special provisions as it is currently provided for in the Law Relating to Serving Life Imprisonment with Special Provisions is that it is in the community's interest for the government to be seen coming up with serious punishments for those who commit callous offences, especially in the light of the fact that the death penalty has been abolished. Many genocide survivors, and understandably so, would expect the government to seriously punish those who murdered their relatives and friends. Many of them were indeed opposed to the abolition of the death penalty and this could explain why the government introduced the sentence of life imprisonment with special provisions to convince them that those convicted of genocide and crimes against humanity will not be treated lightly by the criminal justice system. While addressing a Rwanda-based newspaper, *The New Times*, in January 2007 the Rwandan Minister of Justice, Tharcisse Karugarama, reportedly said that those sentenced to life imprisonment with special provisions 'will regret not having been hanged' as they will be subjected to 'solitary confinement' and have 'less frequent visits'.<sup>29</sup> When it comes to the question of punishment, there are different factors that have to be taken into consideration, such as the interests of the community, the rights of the offenders and Rwanda's duty to comply with its national and international human

<sup>29</sup> See Kimenyi (n 22 above). See also 'Rwanda death penalty: Recidivist to have special imprisonment' <http://www.afrika.no/noop/page.php?p=Detailed/13399.html&print=1&d=1> (accessed 30 March 2011).

rights obligations. Therefore, although the government is expected to ensure that the punishments that are provided for in the law for serious offences answer some of the concerns of its citizens so that they do not lose confidence in the criminal justice system and possibly start to take the law into their own hands, the government also has to ensure that those punishments do not violate its Constitution and its international human rights obligations. Therefore, a delicate balance has to be drawn to ensure that the punishments provided for serious offences meet citizens' reasonable expectations, but at the same time those punishments must fully comply with Rwanda's Constitution and international human rights obligations. Put differently, constitutional and international human rights obligations cannot be sacrificed at the altar of community's interest.