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Life Imprisonment without Parole in China: Substituting Death for Economic Crimes

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Abstract

Life imprisonment without parole and commutation (LWOP) came under Ninth Amendment to the 1997 Criminal Law of Peoples Republic of China as a proviso to the suspended death penalty for corruption crimes. The legislative intent given for the arrival of new punishment depicts LWOP as a solution for the disparity in a suspended death sentence, controlling judicial discretion and proportional punishment for corruption which is debated as not an exhaustive and compelling justification. The manuscript addresses a substantive question; if LWOP is suitable for the criminal justice system in China? And is answered under three normative claims, namely necessity, effectiveness, and humanness. The examination of the topic contends LWOP is more of an effective tool in broader anti-corruption strategy than a need for domestic utilization. LWOP in China gives no hope of release and stands inconsistent with Article 3 of the European Convention on Human Rights.

Key Words: Death Penalty, LWOP, Strike Hard, Corruption, Balance Leniency, and Severity

Introduction

Life imprisonment, typically, is a fixed imprisonment term with eventual release; however, the punishment named life imprisonment without parole comprises perpetual imprisonment for the whole life (Nellis, 2017). China is the contemporary example where it has adopted life imprisonment without parole and commutation (hereinafter LWOP) for a single crime, namely "corruption" (Trevaskes, 2016). China's adoption of LWOP has developed curiosity among legal scholars and jurists about the need and suitability of LWOP in the Chinese penal canvas. A general understanding has been established regarding corruption as the catalytic factor and its relevance with death penalty reforms for non-violent

economic crime, specifically corruption. However, amid all this common sense lies an overwhelming need to answer if LWOP is good for the criminal justice system in China?

LWOP adopted in the Ninth Amendment to the Criminal Law of the People's Republic of China (PRC) 1997 (hereinafter 1997 Criminal Law), which came into force in 2015, amended Article 383, and added a layer of execution for the suspended death penalty to punish corruption (S. Jiang, 2017). A distinguishing feature of the Chinese criminal justice system is the suspended death penalty or death with a two-year reprieve. The suspended death penalty is provided in Article 50 of 1997 Criminal Law, which grants a two-year

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suspension in death penalty execution if the severity of crimes committed do not warrant immediate execution ([Seet, 2017b](#)). The two years suspension comprises a contesting period after which the sentence shall be commuted to fixed-term imprisonment, which typically lasts for 25 years if the offender performs the "deeds of great merits" and abstain from committing further crimes. The Ninth Amendment makes an addition to Article 383, which specifically addresses crimes of bribery and embezzlement and entails a bypass provision to the existing mechanism of suspended death penalty provided in article 50, hence giving it a confused individual stature ([Smith & Jiang, 2017](#)).

Officially, the Ninth Amendment is taken as progressive development to reduce executions in China' ([Trevaskes, 2008](#)) and signify its relevance to the policy of "balance leniency and severity" ([Margaret K. Lewis, 2011](#))." The policy "balance leniency and severity" ([Trevaskes, 2010](#)) is the counter policy of "strike hard (*yan da*)" ([B. Liang, 2005](#); [Trevaskes, 2003](#)) periodically used to counter increasing crimes and a hallmark of excess in executions ([Miao, 2013b](#)). The policy shift towards a lenient approach is evident in recent amendments and progressively shows a descending trend to the number of capital crimes in 1997 Criminal Law ([Gui, 2016](#); [Miao, 2016](#); [Seet, 2017b](#); [Smith & Jjiang, 2017](#)). LWOP provides an alternative to the death penalty with immediate execution, other than the alternatives given in Article 50, but also keeps the death penalty intact for the non-violent economic crime of corruption ([Miao, 2016](#)). The Ninth Amendment added a new paragraph in Article 383 and prescribed the death penalty for crimes of bribery and embezzlement if an extraordinary amount of money is involved (detail is given in the following section), and the sentencing judge can commute the death penalty into LWOP via suspended death penalty mechanism after considering the cooperation of offender in locating looted money and voluntary disclosure of other facts related to the early disposal of the case.

LWOP punishment has its finality by the verdict of the judge at first instance not in the review after the expiry of two years suspension period. In order to avoid confusion here, the possibility of execution lasts till first review, which held after two years and

"deeds of great merits" will stay intact as safeguard to save from execution. The proper order for allocation of LWOP in Ninth Amendment is established as; if the offender has done corruption of extraordinary large amount of money, the judge first pronounces the death penalty, and at the same time convert the capital sentence into suspended death penalty and finally choose the administration mode of the suspended death penalty as LWOP ([Smith & Jjiang, 2017](#)). LWOP is a sentencing option has an anomalous structure because of its placement in the Special Provisions Part rather than in the General Provisions Part of 1997 Criminal Statute. The General Part govern the mechanism given in Article 50 and applies to all death penalty cases to provide a criterion to suspend the execution. However, the LWOP is considered as a proviso to the suspended death penalty but not exactly a part of it ([S. Jjiang, 2017](#)). The details about the nature and structure of punishment are beyond the scope of this article, and the focus specifically converges to find the legislative intent and functional instrumentality of LWOP in China.

Globally, LWOP is accepted in many jurisdictions, specifically the United States, as a substitute for the death penalty ([Nellis, 2017](#)), and a tool for incapacitation ([Samuel R. Gross, 1998](#)). Normatively speaking, LWOP in China is related to capital punishment but not as a formal substitute or a move towards formal abolition because it retains the possibility of execution, though only for two years till the end of the suspension period ([Seet, 2017b](#)). LWOP also does not appeal to the incapacitation endeavour in China. The LWOP in the US is employed as an alternative to address the public concerns of repeat offenders. The Chinese character "*guanxi*" ([Fan, 2000](#)) and corruption prove LWOP a weak grounding for recidivism ([L. Li, 2011](#)), because corruption in China is linked with the public office and any official once convicted for any crime become ineligible to hold public office ([F. Li & Deng, 2016](#)) hence no danger of recidivism ([Ireland & Prause, 2005](#)). The official reasons also do not nominate incapacitation as a penal logic for LWOP ([Smith & Jjiang, 2017](#)). There is an enduring curiosity that prevails around the bringing of LWOP and the ultimate underlying question that says; if LWOP is good for the criminal justice system in

China? This question trifurcates the interrogative point into three substantive questions namely; is it necessary? is it effective? And is it humane?

These questions need a thorough analysis of recent penal calibrations done by the Chinese government on the backdrop of policy transition from "strike hard" to "balance leniency and severity". Corruption and the death penalty are common denominators for contemporary concerns of the Communist Party of China (CPC), hence in order to justify the necessity and effectiveness of LWOP, there are stakes to analyze the penal policy transition, along with the scholarship to broader anti-corruption efforts of Xi Jinping ([Economy, 2018](#)). The manuscript comprises the document analysis of policy documents presenting official legislative logic for LWOP. The situational analysis of events addressing eradication of corruption and China's engagement in international anti-corruption politics. Reference will be made to the decided cases and other secondary sources of relevance, including published journal articles, opinions of scholars, and Chinese Criminal Law experts.

The paper is divided into four parts; part I deal with the first question and addresses the necessity articulated by the Chinese Communist Party, and narrates the transitional policy initiatives that resulted in penal reforms dedicated to reducing the death penalty. Further discussion about the slogan of a harmonious society in the crossroads of penal policy transition and anti-corruption efforts. Part II answer the second question; is it effective? by establishing a logical link between the international anti-corruption efforts and China's engagement in global anti-corruption politics. The question about human rights commitments says; is it humane? Is addressed in Part III. The conclusion in Part IV discusses the implications in the context of a broader anti-corruption drive and insight about how it can be used in future constellations of penal reforms, regime stability, and appropriation of punishment.

Is it Necessary?

The Ninth Amendment is one of the most controversial Amendment in 1997 Criminal Law ([Bingzhi, 2015](#)). The controversy raised in the general public and academia was on the removal of

capital punishment for the smuggling of nuclear material, but LWOP did not come under the radar of public discussion until it was passed ([Bingzhi & Zhiwei, 2014](#)). The sudden arrival of LWOP may violate the Article 29 of the Legislative Law of PRC ([Bingzhi, 2015](#)). The legislative procedure under Article 29 requires every legislative draft put on the agenda of the Standing Committee of National People's Congress should pass three review stages. The LWOP bypasses the first two stages and is inserted in the third review ([Bingzhi, 2015](#)). There is not much discussion about its necessity([Smith & Jiang, 2017](#)); rather, only three documents are there to excavate the necessity proposition in the light of official reasons provided for LWOP.

The first official document is the "Report on the outcomes of deliberations on the draft 9th Amendment to the 1997 Criminal Law of the PRC" (*Guanyu Zhonghua Renmin gonghe Guo xingfa xiuzheng an jiu cao'an shenyi jieguo de baogao* (Report)), released along with the Amendment Draft in 2015 ([Smith & Jiang, 2017](#)). In this report, there are two reasons provided for the LWOP, which says, "to safeguard the impartial administration of justice and to balance leniency and severity."

The second official document comprises the explanation furnished by the Legal Affairs Committee of the Standing Committee of the NPC (*Zhonghua Renmin gonghe Guo xingfa shiyi*, (Explanation)) of the 1997 Criminal Law. The explanation provides two reasons to signify the necessity of the arrival of LWOP. ([Smith & Jiang, 2017](#)) The first reason is a discrepancy between suspended death penalty and immediate execution ([N. Jiang, 2014](#)). The second reason is the excessive leniency by the courts in sentence reduction and medical parole to powerful elites ([S. Jiang et al., 2013](#)).

The third official document is the interpretation by the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) (Joint Interpretation) in 2016 ([Supreme People's Court and Supreme People's Procuratorate, 2016](#)). The Joint Interpretation clarifies the procedural criteria for the imposition of LWOP and the monetary threshold to invoke the provisions of Article 383 of 1997 Criminal Law. The monetary threshold established in the Joint Interpretation at three

million RMB. The Joint Interpretation further clarify that the LWOP will be imposed at the first instance of sentencing rather than after the expiry of a two-year period of the suspended death penalty. The suspension of execution is a sentence adjustment to denounce the death penalty given in the General Part of 1997 Criminal Law in Article 50. Article 50 is applicable to the whole class of capital offenses. The provision for LWOP is added in Article 383 which is in Special Part of 1997 Criminal Law and prohibits its use for other crimes except for corruption (Smith & Jiang, 2017). The placement of LWOP as a special provision rather than in general principles contemplate it a *de facto* replacement of the death penalty for corruption. In the presence of an already available mechanism to avoid executions, the LWOP hold no necessary logic in the existing penal canvas.

To further the scholarly debate, there are three reasons that demands for LWOP in China extracted from the three official documents that entail: 1) safeguard the impartial administration of justice; 2) balance leniency and severity; 3) exceptionally short prison term spent by corrupt officials after conviction. All these three reasons have the same root that demands for keeping the corrupt officials in prison proportionate to the intensity of their crimes (Goh, 2013). LWOP may exacerbate the gravity of punishment from the crime committed (Miao, 2016). There are efforts already carried out to cope with all the three reasons in the previous amendments. The first reason provided in the first official document is about the exceptionally short prison term spent by officials convicted of corruption and their early release from prison using the political power or money (Lin & Shen, 2017). The second reason reinstates the policy motivation of balance leniency and severity, once deployed to moderate the frequent use of the death penalty (S. Jiang, 2017). The third reason seeks motivation from the second reason and demand to remove the disparity in suspended death penalty system.

The sentence reduction in China is governed by the commutation procedures and parole, for which the prison authorities hold review every two years and send a report to the court (S. Jiang et al., 2013). The 1997 Criminal Law provide fixed-term

imprisonment as a threshold for early release on parole (S. Jiang et al., 2013), which, during the first review of the death penalty suspended for two years, commute to fixed-term imprisonment and satisfy the eligibility criteria to avail parole (S. Jiang et al., 2013). The early release in parole and sentence reduction in the regular review process place corruption offenders at an advantaged position (Lin & Shen, 2017) and corresponds to the violation of impartial character of justice. Balance leniency and severity denominates as the key foundational logic embedded in the recent political struggles of social stability and corruption eradication. In order to understand the functionality of the Balance policy, it is necessary to provide a brief outlook of its evolution and its link with the death penalty and corruption.

Backdrop of Penal Policy Transition to Gauge the Necessity Proposition

Corruption is a political crime in China that is linked with power monopoly. Corruption is a disciplinary issue, and the investigation is carried by Central Commission for Discipline and Inspection (CCDI), which after investigation, transfer the case to Procuratorate (Lin & Shen, 2017). The criminal law in China do not hold CCDI accountable hence may hold the possibility of politically driven motivation in the investigation process. The contemporary political deviation is severe in anti-corruption motivation, and there are chances that LWOP may be inserted as a tool of utmost political need rather than a need of collective social justice. The argument is supported by the fact that it is added without public consultation and by the higher echelon who has the most pressing concerns with corruption. There is a cascade of systematic development in death penalty reforms, sobriety in the criminal justice system, and anti-corruption institutionalization (Bin Liang, 2016). The momentum of anti-corruption campaigns started since the opening of China in 1979 and has been continuing ever since. The political struggle to control excessive crimes and corruption started a notorious campaign to strike hard (*yan da*) in 1983 (Xiangqing, 2001). This strike hard style vigorous campaigns continued in a periodic fashion till the 21st

Century and changed the public perception that contemplate it as a tool to suppress political rivals ([Trevaskes, 2016](#)).

Corruption has been an eternal problem in China since opening up, and the easy crack for corrupt politicians was to settle in other countries to get rid of vigorous campaigns. In order to capture the absconded corruption offenders, it was important to devise an ultra-national anti-corruption mechanism. China ratified the United Nations Convention Against Corruption (UNCAC) in 2005 to establish the international cooperation mechanism. Since the accession to WTO, it has been established politically that the international cooperation is an important aspect of globalization, and the negation of international norms may present a hinge to sustainable and healthy relations. The death Penalty proved to be the first hurdle restricting the momentum in international cooperation and pushed the system overhaul, which brought the Harmonious Society Resolution to counter the Strike Hard practices and rather proposed a more balanced approach in criminal justice system. The details about China's engagement in international anti-corruption efforts in relation to LWOP are given in the next section, and this part limits the scholarship to LWOP in National scenario.

The balance of leniency and severity as a progeny of harmonious society came diachronically and synchronize the previous stimulated campaigns to a more institutionalized sustainable system. A harmonious society is a recessive notion, once an eye-catching phrase during 2004-2006, has no contemporary express notation, but the effects seeped through the whole system ([Klimeš & Marinelli, 2018](#)). Instead, saving the social order, what happened was the shifting of focus from the excessive crimes towards identifying individuals as a prime beneficiary of the system, which was once designed to take down the offender even for small crimes ([Trevaskes, 2010](#)).

In the backdrop of policy transition, the necessity of LWOP can be taken from two perspectives; a necessary replacement of the death penalty and an ultimate punishment for corruption. In the first perspective, the calibration of the criminal justice system has never doubted a punishment less

severe than the death penalty for corruption, although it is already scarcely used in practice ([Zhu, 2015](#)). Since 2011, no corrupt official has been sentenced to immediate execution on the sole charges of economic crimes or misuse of public office ([Yuxiao et al., 2017](#)). In the run-up of the Eighth Amendment in 2011, NPC debated to abolish the death penalty for corruption but resulted in the addition of a layer in the suspended death penalty to cover up the play in the existing options of the suspended death penalty ([G. Liang, 2017](#)). The changes in the Chinese criminal justice policy since the advent of 21st century highlighted a concern that the system is not ready to replace the death penalty but is also not willing to use it for corruption ([Miao, 2013a](#)). However, the developments in the 2011 Eighth Amendment have addressed the excessive leniency by courts, filled the discrepancy in the suspended death penalty system, and tried to make the punishment proportionate ([Smit & Ashworth, 2004](#)) to the severity of crime to establish balance ([Gui, 2016](#)). This does not necessitate the need for LWOP, and the dilemma of LWOP with death penalty and corruption still persist even after the Ninth Amendment.

Is it Effective?

The criminal justice system in China is complex and inseparable from the politics of the leading Party. The policy making process in China can be defined as a fine-tuning of policy rationale and the Party rhetoric to reach a conclusive sum ([S. Jiang, 2017](#); [Trevaskes, 2016](#)). LWOP is perhaps a targeted solution for some sort of acute problem that is typically stated as corruption but the way it addresses the criminal justice system and corruption demands to justify its effectiveness. In order to justify the domestic needs of new punishment, it is imperative to take a survey of the functional setup of LWOP and gauge the resulting effect. Let us resort back to the reasons provided in the official documents given above and contest the effectivity of LWOP. The reasons provided in the official documents present the legislative logic that LWOP can: safeguard the impartial administration of justice; balance leniency and severity, and control the

problem of exceptionally short prison term spent by corrupt officials after conviction.

The examination of the first and third reason relate it to the arbitrary use of discretionary powers by judges in the discharge of their official duties (Lin & Shen, 2017). Primarily the initiative of the "China guiding case system" in 2010 has the potential to synchronize and ameliorate the discretion of judicial powers (Guo & Jili, 2018). Further, the allocation of monetary threshold imposed by the Joint Interpretation of SPC and SPP is an effective strategy to control the exercise of discretionary power of judges by determining threshold criteria specifying the intensity of crime and punishment, respectively (Liangfang et al., 2018). The allocation of monetary threshold and its necessary stipulation with LWOP signify an unpersuasive move. The monetary threshold to afford the balance of severity with leniency does not compulsorily require LWOP as the ultimate proportional punishment (Goh, 2013). The imprisonment term limitation of 25 years after commutation from the suspended death penalty in 2011 Eighth Amendment already provides an enhanced length of incarceration (Standing Committee of the National People's Congress, 2011). The court may impose permanent restrictions on commutation after finality of 25 years fixed-term imprisonment to heighten the gravity of punishment.

The second instance of employing discretion by the judiciary is in the commutation process. The computation is carried out by the judiciary in China and keeps excessive leeway to manipulate the system (S. Jiang et al., 2013). The apprehension that corruption plays its role in manipulating commutation policies is true and is the crux of the third reason. The introduction of a new punishment to cope with the procedural inefficiencies may provide a better solution for a single crime but keeps the plague to erode other criminals (Luo, 2008). Further about the commutation policy, if an offender fulfills the monetary penalty such as fine or so; the law deems it as a positive sign towards rehabilitation, or do the "deeds of great merits/great meritorious performance"; a condition for compulsory commutation, the offender secures more chances of longer commutation (Lin & Shen, 2017). The LWOP may prove to be an effective

solution in tackling both the first and third problem by controlling the commutation vis-à-vis discretion and disparity, but it is not permanent. LWOP is not a sustainable solution for controlling the judicial discretion in corruption cases below the monetary threshold. Further, the problem of commutation and parole is already tackled by 2011 Eighth Amendment and subsequently by the 2014 Party Regulations for the Commutation and Parole Cases (Political and Law Committee of the CPC Central Committee, 2014). The 2014 Party Regulations highlighted the judicial corruption as the primary concern and emphasized strict regulation of commutation and parole. This *prima facie* proves LWOP an ineffective measure to incorporate in penal statutes (Lin & Shen, 2017).

In order to address the second reason that demands a need for balanced punishment and warrant a philosophical debate about the crime, criminality, and punishment. To discuss the philosophical ends, we resort to the principle of proportionality in western jurisprudence (Peerenboom, 2001). Death penalty as an absolute banishment has deterrent and retributive value but no rehabilitation, whereas LWOP in its normative sense has deterrent and retributive value and also contains traces of rehabilitative capacity; a reason precedent to spare the life (Lerner, 2013). The Chinese LWOP grant no opportunity for release is an express judgment that implies; the human being is so awful that there left no interest regarding him and his capacity for improvement. The complete banishment is a contradiction of rehabilitation motivation (Kleinfeld, 2016) which China advocates in community correction practices (Bingzhi, 2009), re-education through labour (Hualing, 2005), and even in suspended death penalty system (Seet, 2017a). The Joint Interpretation provides explanation about the appropriate application of law and entails detailed procedure that says in clause 4, paragraph 3;

"A person who falls under any of the circumstances as prescribed in paragraph 1 of this Article may be sentenced to death penalty with a two-year reprieve on the basis of the criminal circumstances, and the court may decide at the same time to commute the sentence to life imprisonment according to the law upon expiration

of the two-year reprieve, and such person shall be imprisoned for life without any other commutation or release on parole.”

Death penalty is the most suitable punishment, and courts, based on the cooperative behaviour of the offender, decided to spare life for two years with a motivation that he may show true remorse ([Political and Law Committee of the CPC Central Committee, 2014](#)), a clear expectation for rehabilitation, further also commute the sentence to life imprisonment at the first instance which starts after two years. The detailed analysis of the order of punishment gives the evidence that the court is already persuaded of his ability to rehabilitate that the court decided to spare his life. Further, that the commutation is the downgrade of punishment not that enhance it as in the case of China's LWOP, which still retain the possibility of execution. After acknowledging the rehabilitative capacity and giving time for further rehabilitation, the court abandons the offender to a punishment that is a slow death and even harsher than immediate execution ([Feld, 2008](#); [Jr & Sarat, 2012](#))

One finds no reason to rehabilitate in prison when the rehabilitation comprises slow death whereas derogation of rehabilitation is synonymous with quick relief from the miseries of slow death. This makes it even harsher than the death penalty and contradict the official reasons that demands harsher punishment that the offender should not come out early. Keeping in mind the recent trend of scant application of death penalty with immediate execution, the corresponding demand requires something between indeterminate sentence (suspended death penalty) and immediate execution not that surpass the immediate execution ([Miao, 2016](#)). LWOP is severe beyond the legislative intent and ineffective in addressing the concerns that brought the 2015 Ninth Amendment.

LWOP has the highest preventive value and correspond the similar special prevention even in the absence of the death penalty ([Nellis & Chung, 2013](#)). Prevention or incapacitation, as discussed in this article, is not a motivation in China. Further, prevention is a penal sanction motivated for habitual offenders and not suitable for corruption. The effectiveness of LWOP can better be judged if the

NPC has highlighted a clear motivation that necessitates the room for LWOP. A research conducted by Lin Zhu (2011) on the corruption cases that resulted in penal sanction from 1993 to 2010 and found that in 25 years preceding 2012, only 6 officials were sentenced to death execution ([Zhu, 2015](#)). A similar trend can be seen after 2012 when execution for corruption crime is scarce ([N. Jiang, 2018](#)). The placement of LWOP proviso to the suspended death penalty system as a special measure links it with the death penalty. Although, the death penalty for corruption remained a symbolic feature of the Chinese criminal justice system after Xi Jinping came to power, LWOP specifically dismantle the death penalty for corruption and instigated the motivation to extend the scholarship to include the death penalty in broader context of global anti-corruption politics.

LWOP in Global Anti-corruption Politics

LWOP may consider as a smart customization to harness the domestically driven interests in the international anti-corruption strategy ([Hualing, 2013](#)). Many scholars solely link it to the national needs; however, it seems to have implications in the international anti-corruption efforts. Amid the changing dialectics of transitional criminal policy in China (discussed before), there are other factors that served as silent prayer in the overall design. Most importantly, China ratified the United Nations Convention Against Corruption (UNCAC) in 2006 and became an *ad hoc* observer of the Organisation for Economic Co-operation and Development (OECD) *Working Group on Bribery in International Business Transactions* in 2007 ([OECD, 2008](#); [United Nations Office on Drugs and Crime, 2020](#)), the same year when the review power to grant the execution orders of death penalty reverted back to the Supreme People's Court (SPC) from lower courts to tighten the oversight on the number of executions ([Monthly, 1998](#)). The ratification of the UNCAC bears on China a necessary obligation to bring the national law in conformity with the manifesto of UNCAC. China incorporated the standards defined by UNCAC to promote a uniform understanding of corruption related crimes by making amendments in 1997 Criminal Law ([Lang, 2017](#)). An example is the

incorporation of a new crime in 1997 Criminal Law under 2015 Ninth Amendment of offering bribes to family and close acquaintances of state functionaries for the purpose of illegitimate benefits ([Yang & Flaherty, 2015](#)).

The anti-corruption campaign started in 2013 under the Xi's leadership took the motivation first to cut the open-ended supply side ([Wang & French, 2013](#)) in China and later internationally. The extension of this international campaign called "Operation Foxhunt" (lie hu xingdong, 猎狐行动) launched in July 2014, by the Ministry of Public Security (MPS) to trace out the corrupt fugitives, repatriate them and bring the looted assets back from other countries ([Ross, 2018](#)). This high-profile campaign later dubbed as "Operation Skynet" (tian wang xingdong, 天网行动), function as a police-led manhunt to recover the stolen assets with the assistance of Supreme People's Procuratorate and the People's Bank of China ([Lang, 2017](#)). The tremendous economic growth and the vigorous crackdown on corruption always compel corrupts to find a safe haven in other countries ([Wedeman, 2017](#)).

The "Operation Skynet" was designed to specifically target the safe heavens where most "economic fugitives" flee from prosecution by Chinese law enforcers ([Lang, 2017](#)). Amid this cooperation with OECD-APEC (Asia-Pacific Economic Cooperation) countries and incorporating uniform standards given by UNCAC, China kept on feeling defensive by the western media chanting about human rights violations, more specifically the death penalty for economic crimes as an excuse to refuse extradition of corruption offenders ([Hofverberg, 2019](#)). In order to locate and repatriate the corrupt Chinese officials living overseas and freeze their assets to cut off their means for living, it is of utmost importance to seek the international collaborations and work with the international community. The most pressing concern for OECD-APEC member states has been the availability of the death penalty for corruption crime which is a clear violation of the non-refoulement principle enshrined inter alia in the 1951 Geneva Convention. The non-refoulement principle prohibits extradition on apprehension of a serious risk that the person in question might suffer

the death penalty, torture or other inhuman treatment ([Duffy, 2008](#)). This concern depicts the challenge in the broader anti-corruption efforts where although China is aggressive, it needs to heed the requirements of the international community.

Since China has made the international anti-corruption cooperation a priority in foreign policy to achieve its defined goals. Assets recovery, extradition of fugitives, adoption of best practice to fight corruption, and the adoption of flexible approaches in domestic legislation to incorporate the norms of international law underlined as the key objectives in "Beijing Declaration on Fighting Corruption" in the 2014 Ministerial Meeting of the APEC members ([Annex H - Beijing Declaration on Fighting Corruption, 2014](#)). The key strategy contemplated by all stake holders emphasized bilateral cooperation using the existing international legal instruments such as the UNCAC and the United Nations Convention on Transnational Organized Crime (UNTOC) ([Annex H - Beijing Declaration on Fighting Corruption, 2014](#)). UNCAC provides a framework for the mutual legal assistance (MLA) under the Chapter IV of the Convention as a valid bilateral treaty with the member states to provide a legal basis for extradition where no formal treaty is already available between the respective states. Hence, all the extradition requests based on UNCAC will be given priority as a functional tool of international cooperation and MLA.

According to Article 8(1) of the 2000 Extradition Law of China (EL 2000), China do not have the tradition of extraditing its citizens rather prosecute them in China ([United Nations, 2016](#)). The launch of operation Skynet loses its sanctity if all the fugitives are refused extradition by the host country on the grounds of human rights violations. However, the issues that hinder healthy international cooperation is the conflict of norms with the norms of international institutions and host states. The primary of these norms is the conflict in human rights with lack of transparency, unreliable judicial system, *shuanggui* ([ZHOU, 2019](#)) system, and torturous investigations, worst among all the availability of death penalty for economic crimes ([Bin Liang, 2016](#)). The *de facto* abolition of the death penalty with LWOP provides a positive

gesture to the international community to enhance international cooperation to achieve the goals set collectively.

Is it Humane?

LWOP proposed as an imminent solution for a specific problem of death and excessive leniency, but the inclusion of a new penal sanction bears stakes about the nature it contains in terms of normative humanity. The most important question to consider now is if it is humane? In the 2011 Eighth Amendment, China reduced 15 death-eligible crimes, subsequently reduced nine death-eligible crimes in 2015 Ninth Amendment and included "respect and protect human rights" as a general principle in Criminal Procedure Law ([Zeldin, 2012](#)). This is indeed a shift towards accepting international values and norms of human dignity, but the humaneness of LWOP is still an uncontested topic in the Chinese scholarship. It is proviso to the suspended death penalty and invokes if the criminal is eligible for death penalty execution based on the severity of his crime. The death penalty is not the finality of punishment rather a point in between the final adjudication and crime. The mitigating and aggravating circumstances hence play the role which under the new policy motivation support the lenient treatment.

LWOP is a humane punishment taking the finality of punishment like the death penalty by saving the "right to life", but it is cruel as per the existing criteria of suspended death penalty provided in the Article 50 of 1997 Criminal Law ([Seet, 2017a](#)). According to Article 50, the suspended death penalty can be commuted to indeterminate and fix term imprisonment and contain an ultimate promise of release at the end of prison term. LWOP in China provides no hope of release that is contemplated in the words of Miao Michelle ([Miao, 2013b](#)) Deputy Director of Centre of Rights and Justice in China University of Hong Kong. LWOP is even harsher than death penalty as it still retains the possibility of execution. LWOP in the other parts of the world is taken differently for example; in most of the European Countries, LWOP is ruled out as an inhumane punishment violating Article 3 of the European Convention on Human Rights (ECHR). However, countries such

as United States, the United Kingdom, Ukraine, Australia and few other countries have kept LWOP even for non-violent crimes ([Smit & Appleton, 2019](#)).

The understanding about humanity and justness has been changing. The long practicing countries are deviant to abolish the use of LWOP for its inhumane character. In 2008 the European Court of Human Right picked the LWOP to re-evaluate its justness and humanity and finally, in 2013, declared LWOP against the spirit of Article 3 of ECHR in a land mark case of *Vinter and Others v the United Kingdom* ([Nellis & Chung, 2013](#)). The European Court of Human Rights held that it is a violation of human dignity to deny life prisoners any prospect of release or review of their sentence, which in the contemporary matrix of LWOP in China provides no hope of release for the remaining part of their life. The understanding of punishment, crime, and criminal also influence the penal fabric in different cultures ([Kleinfeld, 2016](#)). The European growing emphases on the "human dignity" contemplate the punishment as a derogatory element and the system strive to reform the offender to bring him / her back in the society as an ultimate part rather consenting to banish the offender for refusing to abide by the society's most basic rules ([Kleinfeld, 2016](#)).

The parallel notion in Chinese society is "collectivism" and "social stability," in which punishment is designed as a blue print to achieve the designed goals ([Dynton, 2008](#)). The contemporary needs demand the incorporation of western-based norms due to the opening up and globalization which China is willing to heed, and a consequence of that is a straight forward deviation from the previously used campaign style penal tool of strike hard ([Trevaskes, 2011](#)). The suspended death penalty as a lenient alternative to death became a compulsory feature in China's penal transition. LWOP links with the suspended death penalty; however, in reality it is no more than a rhetorical manipulation. The suspended death penalty is not a stand-alone punishment but an appendage to the death penalty in the existing framework provide a punishment that is humane and provide options that can afford the proportionality of punishment according to the

severity of the crime (Seet, 2017b). Among the existing options of death, indeterminate and fixed-term imprisonment, the Eighth Amendment increased the threshold for fixed-term imprisonment to a mandatory term of 25 years, also made it possible to put restrictions on commutation and parole in certain cases (B. Liang et al., 2019). Appropriating the LWOP in the existing criteria and placing it somewhere between the death and fixed-term imprisonment may provide a better form of punishment.

Analysing the recent cases of LWOP and the death penalty in China, there is an oscillating trend for the amount of graft involved to trigger the LWOP. Bai Enpei was the first offender sentenced to LWOP for taking bribes of 247 million RMB (Bingzhi, 2016). There are a number of corrupt officials that have been sentenced to LWOP including Guo Boxiong, Wu Changshun, Yu Tiewi, Wei Pengyuan, Zhao Zhengyong, and Sun Zhengcai. All these officials are charged with corruption of taking bribe except Zhang Zhongsheng who was sentenced to death with execution for charges of corruption and murders. Zhang Zhongsheng became the first person to be sentenced to death with execution since Xi Jinping came to power. The threshold amount for life imprisonment was redefined by the SPC in 2016, but the basic criteria to hand down death with execution is motivated by the same mentality as said by Mao Zedong in 1951, his words paraphrased as "those who owe blood debt be sentenced to death with execution but other having no blood debts but have committed serious offences be given suspended death sentence"(Seet, 2017b). The suspended death penalty is praised for protecting human life and a partial abolition of death penalty (Seet, 2017a). The LWOP is an amenity of the suspended death penalty may get the similar praise, but it requires minor trim to bring it in the spectrum of suspended death penalty. LWOP as a de facto

alternative to the death penalty is considered as a strategy towards complete abolition as noted by United Nations Secretary-General that "a de facto abolition is a useful and accurate indicator of future behaviour"(Hood & Hoyle, 2015).

Conclusion

LWOP in China brings a completely new set of prerequisites than to follow a general narrative of death penalty replacement or a tool for incapacitation. It is a carved tool to not only smash the international criticism against retaining the death penalty for economic crimes but also to fill the extraordinary gap between the suspended death penalty and immediate execution. The policy transition from strike hard to balance leniency and severity with its rationalisation in the minds of policymakers is the downward slope that emerged for a reduction in the death penalty and activism in fighting corruption globally. LWOP, in its prevalent format is on the verge of condemnation globally for its inhumane character. China also needs minor customization of LWOP to remove the tag of inhumane punishment; otherwise, sooner or later, there will be a new subject for the world community to criticize. China has a long story of anti-corruption campaigns, which ultimately proved as a futile effort with no sustainable results, but the efforts of President Xi Jinping are more focused on devising sustainable strategies to control corruption with proper institutionalization. There are more areas to expand research; however, this topic lies on the verge of anti-corruption efforts and criminal justice policy. One can choose any dimension to proceed further. China is always an interesting model to study because the Chinese character always serves as a semipermeable platform and filter the beneficial element for the fundamental realities and block the elements which are not imminently required or essential.

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