

“MOST SERIOUS CRIMES” VS “ESPECIALLY SERIOUS CIRCUMSTANCES” THE ECONOMIC CRIMES UNDER ICCPR AND DEATH PENALTY IN CHINA

Ye Liangfang, Hafiz Abdul Rehman Saleem*, Ayesha Mumtaz

Guanghua Law School, Zhejiang University, Hangzhou, Hangzhou, Zhejiang Province,
310008PR China

ABSTRACT: *The International Covenant on Civil and Political Rights is of vital important as a cumulative world's perception regarding human rights standards. China is on the verge of abolishing death penalty for economic crimes. The accession of 'life imprisonment without possibility of parole and commutation(LWOP)' came as a replacement but the pre-requisite invoking this article is not clearly mentioned in the article 383 of Chinese criminal law 1997. The concept of 'extremely serious circumstance' in article 383 repugnant to the concept of 'most serious crime' in article 6 of International Covenant on Civil and Political Rights. This article examines the concept on the standards and jurisprudence of ICCPR and comment on the resultant punishment to make it appropriate to the international standards. Further proposed a modified model of current LWOP for complete abolition of death penalty for economic crimes of corruption and bribery.*

KEYWORDS: Death Penalty, Economic Crimes, ICCPR, Extremely Serious Crime, Most Serious Crime

INTRODUCTION

The growing civilization and awareness of rights rhetoric in global context is becoming more and more concerned about the protection of human rights. Death penalty became a mature concern affecting the right to life in the international community. The wave initiated with the promulgation of 'International Covenant on Civil and Political Rights (ICCPR) in 1976.' The ICCPR instill the global importance of human rights and started the wave of abolition of death penalty declaring it an exception to the right of life.(United Nations, 2005). The debate of death penalty regarding utility and other penal functions ends parallel in arguments(Zhang, 2017). The international community is agreed to the imposition of death penalty on some of the 'most serious crimes' after satisfying pre-requisite requirements of procedural safeguards and excluding certain group of offenders such as mentally retarded, juveniles, pregnant women and elderly individuals(International Commission Death Penalty, 2013).

The concession to impose death penalty or in other words the authority for judicial execution gather impetus from the ICCPR. The article 6 of ICCPR emphasize on the right to life whereas also mention the exception of this right in paragraph 2 for the reason of 'most serious crimes.' It does not present a universal definition of most serious crimes but provide a track to follow towards abolition by obligating states to gradually restrict the usage of death penalty for a few crimes considered affecting whole humanity. The notion of 'most serious crimes' is more related to the loss of life. In 2006, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution interpreted the 'most serious crimes' as the acts where there is an intention to kill and also there is loss of life. This interpretation links the components of culpability with violence and loss of life. Contrarily, the reasons different countries provide for retaining death

penalty is mostly related to the national circumstances, culture and in many cases religion(Mathias, 2013). (Note 1, 2)

Apparently, every retentionist country provide the best suitable reason for its retentionist stance to the opposite. The best example in this case is the Islamic countries where religion provides reason for the retention of death penalty(Schabas', 2000). China advocates the national circumstances to justify the death penalty. Li Keqiang in reply to the question asked by a reporter about death penalty in Canada, said 'We maintain that the penalty is consistent with our national conditions and for years the ruling on the death penalty has been very strict.' Even the international community is also somewhat relaxant to allow the death penalty for 'most serious crimes'(International Commission Death Penalty, 2013). The choice of most serious crimes is given to the respective country to decide based on the culture and sentiments of the public. The United Nations and other international bodies advocating protection of human rights have interpreted the offences and categorizes the crimes which fulfill the criteria of 'most serious crimes' to create an international standard to follow by all states not as jus cogens but as guiding principles. The narrow classification includes the offences against the state and public order, acts of terrorism, military crimes at the time of war, treason, crimes resulting in death and drug related offences. (Note 3, 4)

The economic crimes do not meet the threshold criteria for the 'most serious crimes' and the states most of the time face criticism for it. China hold its fame for huge number of executions. According to the report of Amnesty International, China execute max number of offenders each year. But the recent developments shows China' firm commitment to denounce the execution and willingness to reduce the death eligible crimes (Trevaskes, 2013). The latest trend of penal reforms showing China's gradual shift to exclude economic crimes from the list of capital crimes(G, 2016a). China abolished the death penalty for 13 non-violent crimes (mostly economic crimes) in 2011 under the Eighth Amendment to the 1997 Criminal Law of China. The efforts kept continuous and 9 more crimes removed from capital crimes list keeping the crimes of huge bribery and embezzlement on board in the Ninth Amendment to the 1997 Criminal Law passed in 2015. The Chinese efforts to reduce capital crimes is to soften the image in international community. Although China has changed his attitude towards strict and harsh approach of death penalty but still international community has concerns about its imposition of death penalty for economic crimes. (Note 5, 6, 7)

Keeping in mind the present situation in China regarding death penalty and the Ninth Amendment amending article 383 of Criminal Law, the article will focus on the threshold standards of economic crimes and try to suggest a solution on how China can achieve abolition of death penalty. The author will employ the comparative approach, first to extract the 'most serious crimes' narrative in Chinese Criminal Law, secondly analyze the nature of crime of bribery and embezzlement to judge the threshold of 'most serious crimes' template. Finally find the alternative solution to full abolition of death penalty for crimes of bribery and embezzlement. The paper is useful as it will provide a comparative approach on improving the system and enhance safeguards against death penalty usage. Furthermore, it will be helpful in enhancing the global efforts of fight against corruption by international cooperation for which the death penalty presents a major hurdle.

The paper is designed to be divided into four parts. The first part examines the 'extremely serious crime' narrative in Chinese Criminal Law and 'most serious crimes' requirement under ICCPR to restrict the use of death penalty. The second part gave the latest improvements, nature

and the deficiencies in the recent amendments regarding abolition of death penalty and the threshold of ‘most serious crimes’ with the crimes of embezzlement and bribery. The new punishment ‘life imprisonment without parole’ under the Ninth Amendment as good substitute to reduce executions and provide a mechanism that not only save the life but also fulfill the principle of proportionality for crime and punishment will make part three. It will also include the authors analysis regarding punishment based on the comments of Chinese legal experts and the proposals for redressal of system. The forth part consist of conclusion.

Most serious crimes in Chinese Criminal Law

China expressly mention the intention to ratify the ICCPR and to incorporate its fundamental principles in the domestic system. The improvement in the human rights recognition came in 2004, when China formally incorporated the provision of “respecting and protecting human rights” into the Constitution of the People’s Republic of China. The Chinese government is committed to rule the country according to law and fundamental rights based development approach implies the intent to implement the global standards of human rights after bringing it into conformity with the national conditions(Universal Periodic Review reoport, 2016). This does not mean to give a new code of socialist human rights approach to the world but to raise the level of awareness and integrity of the nation and the government to the point where the full implementation of ICCPR do not pose a threat to the stability of the regime. (Note 8)

The basic framework of the laws protecting basic rights of individuals in China is the Criminal Law of China 1997. The criminal law provides for 68 crimes punishable by death including various economic crimes. The constitution does not provide for death penalty and many of the offences under this law do not satisfy the standards requirements of ‘most serious crimes.’ The category of crimes attracts most criticism from abroad is the category of economic crimes including extremely large amount of bribery and embezzlement (Yang, 2017). The parallel provision prescribing the threshold for death penalty in criminal law of China is article 48, which says the death penalty can only be applied to the criminals committing ‘extremely serious crimes.’ This implies the nature and circumstances of the crime is extremely serious and the criminal is also very dangerous. The notion of ‘extremely serious crimes’ and ‘most serious crimes’ are different in interpretation. The former focuses the circumstances of the crime and criminal actions including the social impact whereas the latter specify the categories of crimes. The criminal act of either description can be termed as ‘extremely serious crimes’ concerning the imminent national and cultural circumstances. It also makes the punishment more of the political nature rather an act violating human right in either gravity (Ahl, 2014). (Note 9, 10)

The use of death penalty cannot be denied as Marc Ancel, the renown French jurist stated in 1962, that certainly:

“Even the most convinced abolitionists realize that there may be special circumstances, or particularly troublous times, which justify the introduction of the death penalty for a limited period.” (Note 11)

This instant usage does make sense but also require to keep and observe the procedural requirements rather ultimate condemnation. Referring to the nature of economic crimes as capital crimes, the Economic and Social Council published ‘Safeguards Guaranteeing the Protection of Those Facing Death Penalty’ in 1984 are useful to mention here. The first safeguard stipulates that the scope of ‘most serious crime’ should not exceed the intentional

crimes of lethal nature and other ‘extremely grave consequences’. The ‘extremely grave consequences’ here correspond to the same meaning as given in article 48 of Chinese criminal law. The abstract nature of the notion ‘extremely serious consequences’ was open to broad interpretations and hold instrumental value (Miethe, 2005). The particular nature of this was further addressed by the United Nations committee, and recommended the usage of death penalty under ‘extremely serious’ rhetoric restrictive to violent crimes only as an ultimate and exceptional measure. The economic crimes especially bribery and embezzlement specifically do not fall under any definition that allow for death penalty prescribing them violent or grave in nature. (Note 12)

In the latest paradigm, many countries have either abolished or restricted the usage of death penalty following the aspiration of United Nations policy. China is also determined to abolish the death penalty and quote the example of Europe as a compelling argument for its gradual approach (Hood, 2006). Emphasizing on several European countries where the complete abolition reach through a gradual process; first by reducing the scope of capital crimes to only violent and homicidal crimes such as murder, later subsequently to the specific kinds of murder till it reach the final abolition (Hood, 2006). The recent developments gradually limiting the use of death are given in the next section. (Note 13)

Latest Developments and Economic Crimes

The full implementation of ICCPR standards is an ‘ongoing process’ so long as the concerned parties are willing in good faith to implement it. It does not require an instant and abrupt implementation rather it allows for necessary improvements in the existing criminal justice system to locate and amend the provisions inconsistent with the spirit of ICCPR. China holds complementarity approach in terms of human rights obligations and emphasize on the principle of indivisibility stressing the integrity and political rights as of equal importance but the exposure of each right locate at different places in the hierarchy (Ahl, 2014). (Note 14)

China has a reputation regarding execution and death penalty. Since the mid of twentieth century China has adopted an approach of killing few, killing cautiously and implemented the suspension mechanism of death penalty (Seet, 2017). The trend continued, when the latest revision of criminal law promulgated in 1997 contain 68 offenses punishable by death. China signed the ICCPR in 1998, since that time till now, no increase has occurred in the number of offenses punishable by death. The article 48, mention the condition for execution as the ‘extremely serious crimes’ and also stipulate the condition for suspension of execution as ‘if the immediate execution is not deemed necessary.’ Both the expressions are ambiguous and tricky to find a definite standard to follow. The 1997 Criminal Law is silent on the sentencing qualifications that can guide distinction between ‘serious’ and ‘extremely serious’ and also the formula to find the aggregate finality that can justify with reason the death penalty with execution and suspension keep the gravity of ‘extremely’ seriousness of crime (Zuojun, 2005). Reflecting on the Mao Zedong insight, the jurisdiction of suspension of execution can only invoke when the crime falls in the sphere of ‘serious crime’ rather ‘extremely serious crime.’ This further categorizes the ‘extremely serious crimes’ with violence and death which contradict, in essence, with the economic crimes. The Eighth Amendment in 2011, however for the first time addressed the death penalty crimes and reduced thirteen non-violent crimes (Miao, 2013). This was a significant progress towards incorporating the norms set by ICCPR. Further improvement happened in 2015, when in the Ninth Amendment another 9 crimes, mostly, of non-violent nature taken down from the capital crimes list hence leaving 46 crimes eligible to death (G, 2016b). (Note 15)

China has also improved the criminal procedure to safeguard the procedural rights. The procedure specifically is relevant if the death penalty is on board. In case of less severe penalty, the procedural deficiencies also become less important (Nellis, 2013). The major improvement happened in 2007 when the review power reverted back to Supreme People's Court in 2007, which was stripped off in 1983 during the 'strike hard' campaign (B. Liang, 2005). This reduced the execution to many fold in the later years. The later developments include the adherence of exclusionary rule in 2010 for the illegally obtained evidence. Further developments in 2010 includes the policy shift from the consistent practice of severe and speedy justice since the first strike hard (yanda) campaign to a balance approach (Trevaskes, 2013). The balance approach requires the trial judge to be lenient on minor crimes and strict on serious crimes whereas also respect any element of leniency in serious crimes to give possible lenient punishment to the offender (Trevaskes, 2010). The policy of balanced approach came specifically to reduce death penalty and improved the procedural measures, further initiated the push for standardization of sentences and crimes (G. Liang, 2017).

All these improvements address the internal requirement and flaws of the criminal justice system prevalent to the imminent needs. The Eighth and Ninth Amendment specifically addressed the question of most serious crimes on the obligation of ICCPR although not expressly and target the economic crimes to waive off death penalty as final punishment. The recent wave of anti-corruption initiated by Xi Jinping and the severe temperament lead the judges and legislature to define crimes and sentences to better apply the principle of proportionality (Lin, 2016). The SPC court launched the first guidelines to standardize the sentence in 2013 and subsequently in 2017, which is a step closer to condense the death penalty to limited number of crimes (Wang, 2012). The standardization work is also important to fix the ultimate boundary of each crime and mark its severity on the penal scale. The sentencing guidelines are modeled on Federal Sentencing Guidelines of United States and England which also address the inequality of punishments for similar or same crimes in different or same courts (Yu, 2008). (Note 16, 17)

Another step in the exploration expedition to fully accept the ICCPR standards that a substitute has been derived in the form of 'life imprisonment without parole (LWOP)' to replace the death penalty (Xiumei, Chenguang, Zhu, & Zhijuan, 2017). The applicable criteria for the LWOP is somewhat tricky based on the procedural pattern of suspended death penalty. According to article 383 of the 1997 criminal law, the perpetrators of extremely huge amount of bribery and embezzlement with their crime having 'especially serious' impact on the interest of society and state will be sentenced to death with two-year suspension and the sentencing judge can bar all rights of commutation and parole simultaneously after it commuted to life imprisonment. It is a good step towards complete abolition of death penalty for economic crimes by introducing the substitute for death penalty. (Note 18)

LWOP and Abolition of Death Penalty for Economic Crimes

The Ninth Amendment came up with a new punishment that is fair enough to save the life of the person but at the same time have the possibility of execution. The Article 383 of 1997 Criminal Law provides for 'especially huge' amount of bribery and for other 'especially serious circumstances' the punishment of death with two years suspension and subsequently life imprisonment, further allows no possibility of parole or commutation (LWOP). This simply means the offender will stay in prison for rest of his/ her natural life (Xiumei et al., 2017). Although the LWOP present a good solution but the possibility of execution still creates concern about the nature of punishment. Some scholars do not consider the suspended death

sentence as degrading and inhumane punishment(Seet, 2017, Ye & Saleem, 2017). But the LWOP present a situation where applying the criteria of suspended death sentence makes its nature arbitrary. The debate here is not focused on the nature of punishment as a layer of execution of suspended death sentence or vice versa, but on the credibility of the nature of crimes to attract with sufficient justification that, they fulfill the requirements of death penalty. (Note 19, 20)

The suspended death sentence with two-year reprieve is a long-established tool but the practice is especially promoted since 2007. According to article 50 of the criminal law, if the immediate execution is not deemed necessary can be suspended for two years. The later treatment will depend on the conduct of prisoner during his two-year stay in the prison. The procedure before the Ninth Amendment was to convert the death penalty into life imprisonment which subsequently converted into fix-term imprisonment. But the Ninth Amendment does not provide for commutation and parole after it converted into life imprisonment. The article 383 allows the judge to bar the commutation and parole right at the first instance which implies the suspension of all merits of observation period of two years hence creates a situation of complete abolition of death penalty even for economic crimes. But some scholars still hold the belief that, if the offender during observation period of two years commit any intentional crime can be executed by the court(Miao, 2014). This makes the nature of the punishment confusing. Furthermore, although very little chances, but the presence of death penalty still attract criticism from other countries. As the extradition treaty with Australia was rejected because of death penalty and lack of fair trial. The wording of article 383 prescribe the ‘especially huge amount, and ‘especially serious circumstance’ as the prerequisite of criminal act for this punishment. The exact meaning of ‘especially serious circumstance’ here also invite to play a guessing game to extract the proper meaning. The SPC later in 2016, interpreted the ‘especially huge amount’ in judicial interpretation and fixed 200,000 million Chinese Yuan as the threshold to invoke article 383 (Xiumei et al., 2017). In the interpretation of Article 383, the SPC have clarified the criteria of especially huge amount of money which makes the crime fall under 10 years imprisonment or life imprisonment or death penalty, but did not address the ‘especially serious circumstances’ that cause ‘especially material loss to the interest of party or state’ as pre-requisites sufficient enough for clear and distinctive demarcation of the death punishment. In fact, the interpretation has increased the confusion from a specific amount to vague monetary standards by expanding the scope of crime for multiple punishments in each category and also increased the pre-requisite components of death penalty. (Note 21, 22)

In the contemporary practice, the monetary threshold is the only well-defined criteria for LWOP, the ‘especially serious circumstance’ still needs clarification. Resorting back to the recommendations of United Nations’ committee and safeguard of Economic and Social Council, the substantive qualifying element for any death penalty should be intentional violent crime resulting in loss of life. it is required that the concept of ‘especially serious circumstance’ must be interpreted in the light of the abolition movement towards a customary international legal culture that either opposes the death penalty completely or regards it as a sanction to be imposed on extremely rare cases. The article 383 specifically addressing the crime of corruption, so examining the nature of crime, if the crime is just economic nature should not be sentenced to death penalty. The death penalty should only be given in the case where the corruption act involves violent crimes and also loss of precious lives occurred. For the best solution, the LWOP can be legislated as a separate punishment for corruption crimes of monetary nature and the corruption involving grave violent acts retain the death penalty. The human right should be considered over utilitarian purposes. The Chinese criminal law is in

transition and need further improvements in many regards to make it suitable to the standards of ICCPR. The Chinese government is enthusiastic to incorporate all necessary changes in the National Human Rights Action Plan of China (2016-2020). Furthermore, interpretation is also needed for the ‘especially serious circumstance’ to make it distinct from the monetary threshold. (Note 23)

Additionally, the LWOP satisfies the principle of proportionality and retains the death penalty as a gate pass to enter the suspended death penalty procedure. This creates a layer of unnecessary interference and presence of death penalty. The status of LWOP as a separate punishment pretty well satisfy the abolitionist concerns. The promulgation of ‘balance leniency and severity policy’ in 2010 elaborates the changed mentality of Chinese leadership to abide by the human rights standards as well as due process safeguards and the future reforms emanates the struggle to find best solutions or alternatives.

CONCLUSION

In reaching judgements about what would be an acceptable use of the death penalty reference would need to be made not only to changes in the practices of nations as they affected the norms that defined acceptable forms and levels of state punishments, but also to the development of the concept of human rights itself. China is progressing to adopt international standards of human rights. The latest development is the addition of new punishment with the name of life imprisonment without parole (LWOP). It is a step forward towards the internalization of international norms and a step towards abolition of death penalty for economic crimes. The Chinese government is facing double edged problem, one regarding the reduction in death penalty and second to control corruption and punish the corruption harshly. Although appears counter in nature but are linked in a way that the reduction in death penalty or even abolition can bring a good will in the Xi Jinping anti-corruption movement. It is not only important to win the trust of its people but also the latest anti-corruption campaign success is dependent on it. In fact, since the 18th national congress of the communist party of China, no cadre is sentenced to death penalty for corruption or bribery. The 2014 ‘operation Fox Hunt’ and 2015 ‘operation Skynet’ can only hunt and bring back the criminals of economic crimes from the safe heavens of developed countries like Canada, Australia and US, unless it assures the preservice of human rights. Death penalty is one of the major concerns along with the due process procedural requirements. The LWOP in the Ninth Amendment was supposed to come up with a good solution to this problem, but the arbitrary nature still creates confusion about the legal status and possibility of inhumane treatment after extradition. Even the confusing criterion is functional to bring down the number of execution for economic crimes but to attract the international confidence needs more upgrade. The sharp demarcation of crime boundaries is important along with the interpretation of pre-requisite standards to grade the punishment fit in respective pocket of severity on the proportionality scale. The criminal law reforms are a process in constant transition and as said by Roger Hood in his book ‘The Death Penalty: A Worldwide Perspective,’ the pace of development in criminal justice system in China will soon be optimized to the international standards.

REFERENCES

- Ahl, B. (2014). Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People's Court. *The China Quarterly*, 217(2014), 121–139. <https://doi.org/10.1017/S0305741013001471>
- G, H. (2016a). Death Penalty in China after the Ninth Amendment: Legislatively Abolishing and Judicially Limiting. *Journal of Forensic Science & Criminology*. <https://doi.org/10.15744/2348-9804.4.303>
- G, H. (2016b). Death Penalty in China after the Ninth Amendment: Legislatively Abolishing and Judicially Limiting. *Journal of Forensic Science & Criminology*, 4(3). <https://doi.org/10.15744/2348-9804.4.303>
- Hood, R. (2006). CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE WORKING PAPER EXTRAJUDICIAL EXECUTIONS SERIES THE ENIGMA OF THE “MOST SERIOUS” OFFENCES. Retrieved from http://chrgj.org/wp-content/uploads/2012/07/WPS_NYU_CHRGJ_Hood.pdf
- International Commission Death Penalty. (2013). The death penalty and the “most serious crimes” A country-by-country overview of the death penalty in law and practice in retentionist states, (January). Retrieved from http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf
- Liang, B. (2005). Severe strike campaign in transitional China. *Journal of Criminal Justice*, 33(4), 387–399. <https://doi.org/10.1016/j.jcrimjus.2005.04.008>
- Liang, G. (2017). The vicissitudes of Chinese criminal law and theory. *Peking University Law Journal*, 5(1), 25–49. <https://doi.org/10.1080/20517483.2017.1330808>
- Lin, Z. (2016). Advancements and controversies in China's recent sentencing reforms. *China Information*, 30(3), 357–376. <https://doi.org/10.1177/0920203X16674193>
- Mathias, M. D. (2013). The Sacralization of the Individual: Human Rights and the Abolition of the Death Penalty. *American Journal of Sociology*, 118(5), 1246–1283. <https://doi.org/10.1086/669507>
- Miao, M. (2013). The politics of china's death penalty reform in the context of global abolitionism. *British Journal of Criminology*, 53(3), 500–519. <https://doi.org/10.1093/bjc/azt004>
- Miao, M. (2014). Moving towards Lengthy Life Imprisonment ? A Comparative Study on the Alternative Sanctions to the Death Penalty in the United States and China Entrenched Incarceration , Rising Penal Populism and A Regulated Capital Punishment Complex, 1–16. Retrieved from http://www.law.nyu.edu/sites/default/files/upload_documents/Michelle Miao - Global Fellows Forum_0.pdf
- Miethe, T. D. (2005). Cross-National Variability in Capital Punishment: Exploring the Sociopolitical Sources of Its Differential Legal Status. *International Criminal Justice Review*, 15(2), 115–130. <https://doi.org/10.1177/1057567705283954>
- Nellis, A. (2013). Life Goes on: the Historic Rise in Life Sentences in America. The Sentencing Project.
- Schabas', W. A. (2000). ISLAM AND THE DEATH PENALTY. *WILLIAM & MARY BILL OF RIGHTS JOURNAL*, 1. <https://doi.org/10.3366/ajicl.2011.0005>
- Seet, M. (2017). China ' s Suspended Death Sentence with a Two-Year Re- prieve : Humanitarian Reprieve or Cruel , Inhuman and Degrading Punishment ? National University of Singapore, (January 2014). <https://doi.org/10.2139/ssrn.2954419>

- Trevaskes, S. (2010). The shifting sands of punishment in China in the era of “Harmonious Society.” *Law and Policy*, 32(3), 332–361. <https://doi.org/10.1111/j.1467-9930.2010.00323.x>
- Trevaskes, S. (2013). The supreme people’s court, the suspended death sentence and the politics of penal reform. *British Journal of Criminology*, 53(3), 482–499. <https://doi.org/10.1093/bjc/azt002>
- United Nations. (2005). *Human Rights and Prisons a Pocketbook of International Human Rights Standards for Prison Officials*. Retrieved from <http://www.ohchr.org/Documents/Publications/training11Add3en.pdf>
- Universal Periodic Review report 2016. (n.d.). THE CHINA CHALLENGE TO INTERNATIONAL HUMAN RIGHTS: WHAT’S AT STAKE? A CHINA UPR MID-TERM PROGRESS ASSESSMENT BY HUMAN RIGHTS IN CHINA NOVEMBER 2016, (852), 2710–8021. Retrieved from http://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/HumanRightsChina_2.pdf
- Wang, Z. (2012). The Sentencing Standardization Reform in China.
- Xiumei, W., Chenguang, Z., Zhu, B., & Zhijuan, C. (2017). Is Life Imprisonment without Parole or Commutation an Effective Anti-Corruption Measure for China? *JOURNAL OF ANTI-CORRUPTION LAW*, 1(1), 70–87. Retrieved from <http://www.jacl.org.za/images/stories/XIUMEI.pdf>
- Yang, J. (2017). China’s Criminal Law Reform from the Perspective of the International Covenant on Civil and Political Rights. *CHINAHUMANRIGHTS.ORG*. Retrieved from http://www.chinahumanrights.org/html/2017/MAGAZINES_0706/8542.html
- Ye, L., & Saleem, H. A. R. S. (2017). Death Penalty Suspension Approach in Pakistan with Chinese Characteristics. *Journal of Law, Policy and Globalization*, 68, 26–33. Retrieved from <http://www.iiste.org/Journals/index.php/JLPG/article/view/40078/41221>
- Yu, P. (2008). Sentencing and computation of punishment - On “computerized sentencing.” *Frontiers of Law in China*, 3(4), 507–524. <https://doi.org/10.1007/s11463-008-0024-6>
- Zhang, Y. (2017). Reconsidering the Legitimacy of Capital Punishment in the Interpretation of the Human Right to Life in the Two Traditional Approaches, 11(3), 529–540. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2903819
- Zuojun, Z. (2005). The Suspension-of-Execution System and Limiting the Application of the Death Sentence. *Contemporary Chinese Thought*, 36(3), 53–76. <https://doi.org/10.1080/10971467.2005.11040602>

Notes

- Note 1. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime [...]. ICCPR article 6(2)
- Note 2. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/4/20, 29 January 2007, paragraphs 39-53 and 65. Guidance for the classification of crimes as “most serious crimes” has also been given by the Human Rights Committee in its General Comment 6 (16) on the right to life; by the UN Special Rapporteur for extrajudicial, summary or arbitrary executions, see UN Doc. A/HRC/11/2/Add.6, 26 May 2009, paragraph 84; and UN Doc. A/HRC/11/2/Add.5, 28 May 2009, paragraph. 23; and further by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/10/44, 14 January 2009, paragraph. 66; and by the UN Secretary-General in his report on the question of the death penalty and his quinquennial reports on capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those

facing execution, see UN Doc. E/2010/10.

- Note 3. The note verbale of disassociation signed by 53 UN member states in response to the 2010 UN General Assembly resolution entitled “Moratorium on the use of the death penalty” takes a similar line, stating that: [T]he types of crimes for which the death penalty is applied, should be determined by each State, taking fully into account the sentiments of its own people, state of crime and criminal policy. Available at: <http://www.un.org/ga>, (accessed 6 November 2017).
- Note 4. In some retentionist countries, serious crimes (or felonies) like arson, aggravated assault, burglary or robbery resulting in loss of life are punishable by death. Felony murder – where a killing was unintentionally committed during the commission of another crime – is also defined as a capital offence by some states. These crimes do not necessarily meet the “most serious crimes” threshold since loss of life may occur without actual intent to kill.
- Note 5. The 13 crimes that would no longer be subject to the death penalty under the amendment are all non-violent, economic crimes, as follows: – smuggling of cultural relics; – smuggling of precious metals; – smuggling of precious animals or their products; – smuggling of ordinary freight and goods; – fraud connected with negotiable instruments; – fraud connected with financial instruments; – fraud connected with letters of credit; – false invoicing for tax purposes; – forging and selling value-added tax invoices; – larceny; – instructing in criminal methods; – excavating and robbing ancient cultural sites or ancient tombs; and – excavating and robbing fossil hominids and fossil vertebrate animals. (Id.), Available at: <http://www.loc.gov/law/foreign-news/article/china-death-penalty-crimes-to-be-reduced/>, (accessed 6 November 2017).
- Note 6. The nine crimes that will be exempt from the death penalty under the Ninth Amendment are: smuggling of weapons and ammunition; smuggling of nuclear materials; smuggling of counterfeit currency; counterfeiting of currency; fundraising fraud; organizing prostitution; forcing others into prostitution; obstructing the performance of military duties; and spreading rumors during war time. (Id.), available at: <http://www.loc.gov/law/foreign-news/article/china-peoples-republic-of-death-penalty-crimes-to-be-further-reduced/>, (accessed 6 November 2017).
- Note 7. See for example “Australia cancels vote on extradition treaty with China,” Available at: <https://www.reuters.com/article/us-australia-china-extradition/australia-cancels-vote-on-extradition-treaty-with-china-idUSKBN16Z03Y>, (accessed 6 November 2017).
- Note 8. See Article 33 has a third paragraph added: "The State respects and preserves human rights." The 2004 amendment of Constitution of PR China 1982, available at: <https://www.cecc.gov/resources/legal-provisions/2004-amendment-to-the-constitution-of-the-peoples-republic-of-china>, (accessed 6 November 2017).
- Note 9. Other crimes include abduction, arson, burglary, drugs trafficking, espionage, murder, rape, robbery, “terrorist” acts, treason and military offences.
- Note 10. Gao Mingxuan and Ma Kechang, eds., *Criminal Law (The Fifth Edition)* (Beijing: Peking University Press & Higher Education Press, 2011), 237.
- Note 11. Marc Ancel, *The Death Penalty in European Countries*. Report. Council of Europe, 1962, p. 3.
- Note 12. William A. Schabas, *The Abolition of the Death Penalty in International Law*, Cambridge University Press, 3rd ed. 2002, pp. 106-111.
- Note 13. Amnesty International “Death Penalty Statistics 2014,” available at: <https://www.amnesty.org/error.html?aspxerrorpath=/en/latest/research/2015/02/death-sentences-and-executions-2014/>, (accessed 6 November 2017).
- Note 14. U.N. Human Rights Committee, “General Comment No. 31 [80]: The Nature of the

General Legal Obligation Imposed on States Parties to the Covenant,” U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004), para. 14. available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en, (accessed 6 November 2017).

- Note 15. The suspension-of-execution system (sihuan zhidu) is where the death sentence is issued with a two-year reprieve. Unique to this country’s Criminal Law, this system came into being in 1951 at the height of the first Movement to Suppress Counterrevolutionaries [1950–52] as a system for carrying out punishment. By mid to late 1951, this movement had won a decisive victory. To consolidate the gains of the revolution, to divide and demoralize the counterrevolutionary camp, and to implement the policy of putting fewer people to death, Comrade Mao Zedong clearly stated at that time: “As for those whose crimes deserve capital punishment but who owe no blood debts and are not bitterly hated by the people or who have done serious but not extremely serious harm to the national interest, the policy to follow is to hand down the death sentence, grant a two-year reprieve and subject them to forced labor to see how they behave.” In May 1951, the Central Committee of the Communist Party of China issued a circular that stated: “The death sentence with a two-year reprieve is a new method aimed at thoroughly eliminating the counterrevolution but not at weakening the resolute struggle against the counterrevolution.” Zuojun, Zhao. 2005. “The Suspension-of-Execution System and Limiting the Application of the Death Sentence.” *Contemporary Chinese Thought* 36 (3):53–76. <https://doi.org/10.1080/10971467.2005.11040602>, (accessed 6 November 2017).
- Note 16. “Zuigao renmin fayuan guanyu shishi liangxing guifanhua gongzuo de tongzhi [shixiao]” (Notice of the Supreme People's Court on Conducting Sentencing Standardization Work (Title Only)), Available at: <http://en.pkulaw.cn/display.aspx?id=17363&lib=law&SearchKeyword=&SearchCKeyword=>, (accessed 6 November 2017).
- Note 17. “Zuigao renmin fayuan guanyu shishi xiuding hou de “guanyu changjian fanzui de liangxing zhidao yijian” de tongzhi (2017)” (Notice of the Supreme People's Court on Implementing the Revised Guiding Opinions on Sentencing for Common Crimes (2017)), available at: http://www.pkulaw.cn/fulltext_form.aspx?Gid=292969, (accessed 6 November 2017).
- Note 18. In 2014, after ten years’ development, the Supreme Peoples’ Court (SPC) issued its “Sentencing Guidelines for Common Crimes” (hereafter “Guidelines”), first comprehensive guidelines in China. Roberts, J. V., & Pei, W. (2016). Structuring Judicial Discretion in China: Exploring the 2014 Sentencing Guidelines. *Criminal Law Forum*, 27(1), 3–33. <https://doi.org/10.1007/s10609-015-9270-3>, (accessed 6 November 2017). Also see, The Coroners and Justice Act 2009 left many important issues unaddressed. For instance, should examples of seriousness of the offense represent extreme, average, or most common cases? On what basis are culpability and harm judged? How are culpability, harm, and other factors combined to judge seriousness? What are the "other factors" sentences should consider for judging seriousness? On what basis are the weights for aggravating and mitigating factors determined? Should the minimum and maximum sentences be displayed? I, M. K. D. (2013). SENTENCING GUIDELINES IN ENGLAND AND WALES: MISSED OPPORTUNITIES? *LAW AND CONTEMPORARY PROBLEMS*, 76(13013), 289–307.
- Note 19. Article 383 of the Criminal Law is amended to read: Whoever commits the crime of

corruption shall be punished in light of the graveness of the crime according to the following provisions:

- (1) If the amount involved in the corruption is relatively large or there is any other relatively serious circumstance, the convict shall be sentenced to imprisonment of not more than three years or criminal detention in addition to a fine.
- (2) If the amount involved in the corruption is huge or there is any other serious circumstance, the convict shall be sentenced to imprisonment of not less than three years but not more than ten years in addition to a fine or forfeiture of property.
- (3) If the amount involved in the corruption is especially huge or there is any other especially serious circumstance, the convict shall be sentenced to imprisonment of not less than ten years or life imprisonment in addition to a fine or forfeiture of property; or if the amount involved is especially huge and especially material losses have been caused to the interests of the state or the public, the convict shall be sentenced to life imprisonment or death penalty and a forfeiture of property.

Whoever has committed repeatedly crimes of corruption without being punished shall be punished based on the accumulative amount involved in the crimes of corruption.

Whoever commits a crime as mentioned in paragraph 1, and before a public prosecution is filed, truthfully confesses his or her crime, shows sincere repentance and actively returns the illegally obtained money to avoid or reduce the occurrence of losses, if there is any circumstance as set forth in item (1), may be given a lighter or mitigated penalty or be exempt from penalty; or if there is any circumstance as set forth in item (2) or (3), may be given a lighter penalty.

Where a convict who commits a crime as mentioned in paragraph 1 and falls under any circumstance as set forth in item (3) is sentenced to death with a reprieve, the people's court may, in light of the circumstances of the crime committed, decide to commute the sentence to life imprisonment upon expiration of the two-year period, sentence the convict to life imprisonment, and shall not offer commutation or parole.” Article 44 of ninth amendment to criminal law of PR China 1997. “zhonghua renmin gongheguo xingfa xiuzheng an (jiu) [xianxing youxiao]”(Amendment (IX) to the Criminal Law of the People's Republic of China [Effective]), Beida Fabao, Available at: <http://en.pkulaw.cn/display.aspx?id=19864&lib=law&SearchKeyword=amendment&SearchCKeyword=>, (accessed 6 November 2017).

Note 20. Ibid

Note 21. “Australia cancels vote on extradition treaty with China,” Reuters, available at: <https://www.reuters.com/article/us-australia-china-extradition/australia-cancels-vote-on-extradition-treaty-with-china-idUSKBN16Z03Y>, (accessed 6 November 2017).

Note 22. Article 4(1), ‘Whoever embezzles or accepts bribes may be sentenced to death if the amount involved is especially large, the criminal circumstances are especially serious, the social impacts are especially adverse, and especially heavy losses are caused to the interests of the state and people.’ “Zuigao renmin fayuan, zuigao renmin jianchayuan guanyu banli tanwu huilu xingshi anjian shiyong falu ruogan wenti de jieshi [xianxing youxiao],”(Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases of Embezzlement and Bribery [Effective]). Available at: <http://en.pkulaw.cn/display.aspx?id=22056&lib=law&SearchKeyword=&SearchCKeyword=>, (accessed 6 November 2017).

Note 23. National Human Rights Action Plan of China (2016-2020), available at: http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, (accessed 6 November 2017).