



Life imprisonment without parole in the development of Vietnam's criminal policy: Challenges and recommendations for legal reform

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Abstract

Life imprisonment without parole has emerged in Vietnam's criminal policy as a severe alternative to capital punishment, strengthening incapacitation and crime prevention. However, its irreducible nature raises concerns regarding proportionality, humanitarian principles, and the long-term objectives of punishment. This article examines the theoretical foundations and policy rationale of this sanction within the development of Vietnam's criminal law. It identifies key challenges, particularly the absence of a structured review mechanism and tensions between deterrence and the protection of fundamental rights. The paper proposes targeted legal reforms aimed at balancing preventive effectiveness with humanitarian safeguards, thereby enhancing the coherence and legitimacy of Vietnam's criminal policy.

Keywords: Life imprisonment without parole, criminal policy development, crime prevention, legal reform

Introduction

The global restriction of the death penalty has reshaped contemporary criminal policy, reflecting a growing commitment to human dignity and the humanization of punishment. As states narrow the scope of capital punishment, life imprisonment without parole (LWOP) increasingly emerges as a potential alternative. However, in European human rights jurisprudence, particularly in the case law of the European Court of Human Rights, irreducible life sentences have been critically examined under the principles of proportionality, human dignity, and the "right to hope," which requires a realistic prospect of release and a meaningful review mechanism.

In Vietnam, the gradual limitation of the death penalty forms part of the broader development of criminal policy. Within this context, debates surrounding LWOP raise fundamental questions concerning the limits of penal severity and the balance between crime prevention and humanitarian principles. Despite its relevance, the normative implications of irreducible life sentences remain underexplored in Vietnamese scholarship.

This article situates LWOP within the evolution of Vietnam's criminal policy, identifies the principal legal challenges associated with irreducibility, and proposes recommendations for legal reform aimed at reconciling preventive objectives with the demands of human dignity and proportionality.

The concept of life imprisonment without parole

In the history of criminal justice, punishment has not merely functioned as a response to criminal conduct but as a mechanism for balancing the protection of social order with the objectives of education and rehabilitation. From a theoretical perspective, punishment is understood as a special form of state coercion aimed at preventing and combating crime, serving both retributive and normative functions. As many countries progressively restrict or abolish the death penalty in order to strengthen human rights protection, LWOP has emerged as one of the most severe alternative sanctions, positioned immediately below capital

punishment within the hierarchy of penalties. Unlike ordinary life imprisonment, which typically allows for sentence reduction or parole eligibility, LWOP is characterized by irreducibility, excluding the possibility of release based on rehabilitation. From the foregoing theoretical analysis, LWOP may be understood as a severe criminal sanction under which the offender is required to remain incarcerated until death, without eligibility for sentence reduction on the basis of reform, except in narrowly defined extraordinary circumstances as provided by law.

Balancing Penal Severity and Human Rights in LWOP

Normative and Policy Justifications LWOP is commonly regarded as a severe alternative to the death penalty, allowing the State to maintain a high level of punishment without depriving the offender of the right to life. In this sense, it reflects a partial shift toward the humanization of criminal policy while preserving strong retributive and preventive functions. The sanction ensures permanent incapacitation of particularly dangerous offenders, thereby enhancing social protection and reinforcing public confidence in the effectiveness of criminal justice.

Additionally, unlike capital punishment, LWOP avoids the irreversible consequences of judicial error. By preserving the legal existence of the convicted person, it maintains the possibility of correcting miscarriages of justice in extraordinary circumstances. From a policy perspective, LWOP may therefore be viewed as a cautious compromise between penal severity and the protection of fundamental rights.

Structural and Human Rights Challenges

Notwithstanding these advantages, LWOP raises serious human rights concerns. Its irreducible nature potentially conflicts with principles of human dignity and the "right to hope," as recognized in international human rights discourse. The absence of a review mechanism may render the sentence disproportionate and incompatible with rehabilitative objectives.

Moreover, LWOP significantly weakens the incentive structure underlying correctional policy. When no prospect of release exists, the rehabilitative function of punishment risks being overshadowed by pure incapacitation.

Finally, the long-term enforcement of LWOP imposes substantial institutional and financial burdens. The accumulation of aging prisoners serving irreversible sentences creates structural pressures on prison management and public resources, raising questions regarding the sustainability of such a policy within the broader development of Vietnam's criminal justice system.

Reforming LWOP in Vietnam: Toward a Rights-Compliant Framework

1. Scope of Offences Eligible for LWOP

Comparative experience suggests that the scope of offences eligible for LWOP must be narrowly defined and context-sensitive. In China, LWOP is primarily applied to particularly serious corruption offences as a substitute mechanism following the commutation of a suspended death sentence, subject to strict conditions and review mechanisms. This model reflects a policy choice: retaining a sanction of exceptional severity while gradually reducing reliance on capital punishment.

In Vietnam, the 2025 Criminal Code amendment abolishing the death penalty for embezzlement and bribery marks a significant shift in criminal policy. However, this reform simultaneously raises a structural question: whether ordinary life imprisonment sufficiently addresses exceptionally serious corruption offences that cause systemic harm to public administration, undermine political legitimacy, and erode public trust.

Unlike violent crimes driven by ideological extremism or persistent violent tendencies, corruption offences are typically instrumental and economically motivated. Their social harm lies not in physical destruction but in institutional destabilization and large-scale misappropriation of public assets. In this context, LWOP may be conceptually justified not as a response to irredeemable dangerousness, but as a calibrated substitute for capital punishment in cases of extraordinarily grave corruption.

Accordingly, should LWOP be considered within Vietnam's future criminal policy framework, this study proposes that its application be strictly limited to exceptionally serious corruption offences - specifically embezzlement and bribery involving extraordinary amounts, systemic abuse of power, or consequences threatening institutional integrity. Such a design would align with Vietnam's ongoing anti-corruption strategy, maintain strong punitive and deterrent effects after the abolition of capital punishment, and avoid excessive expansion of an irreducible sentence into other categories of crime.

2. Proposals for the LWOP in Vietnam

Constitutional and Policy Rationale for a Conditional Commutation Mechanism Based on Asset Recovery The proposed mechanism allowing for sentence reduction upon the restitution of at least three-quarters of assets derived from misappropriation or bribery should be understood not as a discretionary privilege, but as a normatively structured penal policy consistent with Vietnam's constitutional framework. The 2013 Constitution affirms both the protection of human rights and the safeguarding of public property and social order. Within this dual constitutional

mandate, criminal sanctions balance accountability with the restoration of the legal order.

In corruption cases - particularly embezzlement of property and bribery - the primary harm lies not only in moral culpability but in the tangible loss of public assets and the erosion of institutional integrity. Unlike crimes against life or physical integrity, the damage in corruption offences is economically quantifiable and, at least partially, remediable. A mechanism that conditions sentence reduction upon substantial restitution (e.g., 3/4 of illicit assets) therefore aligns punishment with restorative justice objectives, enhances the recovery of public funds, and reinforces the State's constitutional obligation to protect public property. From a constitutional proportionality perspective, such a mechanism does not undermine punitive rigor. Instead, it introduces a conditional and performance-based pathway that preserves deterrence while incentivizing concrete remedial conduct. The offender bears the burden of meaningful restitution; absent such effort, the original sentence remains intact. Thus, the mechanism satisfies the principles of legality, equality before the law, and proportionality by establishing clear, objective criteria applicable to all offenders within the defined category.

3. Rationale for Limiting the Mechanism to Embezzlement and Bribery Offences

The decision to confine this conditional reduction mechanism to the offences of embezzlement of property and bribery reflects Vietnam's contemporary criminal policy priorities. Following the abolition of punishment for these offences under the 2025 Penal Code reform, the legislature faces the challenge of preserving deterrence while advancing a more humanistic penal structure.

These offences share three characteristics that justify differential sentencing treatment:

First, they directly undermine public governance and institutional trust. In the Vietnamese socio-political context, large-scale corruption threatens not only economic stability but also public confidence in state authority. The gravity of such harm warrants stringent sanctions.

Second, the harm is primarily financial and structurally repairable. Unlike violent offences, the core damage - the misappropriation of assets - can be substantially restored. Designing a sentencing framework that conditions leniency on restitution therefore serves both preventive and restorative goals.

Third, practical enforcement challenges indicate persistent difficulties in asset recovery. Without strong incentives embedded within the sentencing structure, offenders may strategically opt for concealment over cooperation. A restitution-based reduction mechanism recalibrates that incentive structure, increasing the likelihood of asset recovery and reducing long-term enforcement costs.

In this sense, the proposal reflects a pragmatic adaptation to Vietnam's institutional and developmental context rather than a blanket transplantation of foreign models.

4. Reasons for Not Extending the Mechanism to Crimes Against Life

By contrast, applying a similar conditional reduction mechanism to offences involving intentional deprivation of life would raise significant normative and practical concerns.

Normatively, crimes against life involve irreversible harm. The loss suffered by victims and their families cannot be materially compensated in a manner comparable to economic crimes. Introducing a restitution-based reduction mechanism in such cases risks conflating fundamentally distinct categories of harm and may undermine the expressive function of criminal law.

Institutionally, Vietnam's penitentiary infrastructure continues to face resource constraints in terms of staffing, specialized risk assessment capacity, and high-security management. Expanding the long-term incarceration of particularly violent offenders would require substantial investment in segregation, monitoring, and rehabilitation systems. Without corresponding institutional upgrades, the broad application of reducible life sentences could generate systemic pressures within the prison system.

From a policy standpoint, maintaining the current structure for crimes against life reflects a cautious approach that prioritizes social protection and stability. The differentiation between corruption offences and violent offences is therefore grounded not in punitive excess, but in the distinct nature of the harm, the irreparability of consequences, and the present institutional capacity of the Vietnamese criminal justice system.

5. Contextualizing the Model within Vietnam's Criminal Justice Reform

The proposed model does not replicate the Chinese "death penalty with reprieve conditional commutation" structure. Instead, it represents a context-sensitive adaptation suitable for a legal system that has already abolished capital punishment for certain corruption offences. By embedding a clearly defined restitution threshold (3/4 of illicit assets) within the sentencing framework, Vietnam may achieve three concurrent objectives:

- Preserving penal severity following the removal of the death penalty;
- Enhancing asset recovery and public resource protection;
- Introducing a structured, rights-compatible mechanism consistent with modern penal policy.

In sum, limiting the conditional reduction mechanism to embezzlement and bribery offences reflects a balanced approach that integrates constitutional principles, practical enforcement realities, and Vietnam's ongoing criminal justice reform trajectory.

Conclusion

The possible introduction of LWOP into Vietnamese criminal law should be approached as a calibrated institutional adjustment following the abolition of the death penalty for corruption offences under the 2025 Criminal Code. Rather than expanding penal severity indiscriminately, LWOP should be narrowly confined to exceptionally serious corruption crimes, particularly embezzlement and bribery.

The proposed mechanism allowing sentence reduction upon restitution of at least three-quarters of misappropriated assets reflects a conditional and incentive-based model, balancing deterrence with constitutional principles of proportionality and humanity.

At the same time, extending LWOP to crimes against life does not appear contextually appropriate given Vietnam's

institutional capacity and penal structure. A differentiated and limited application therefore offers a more coherent and sustainable reform pathway.

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