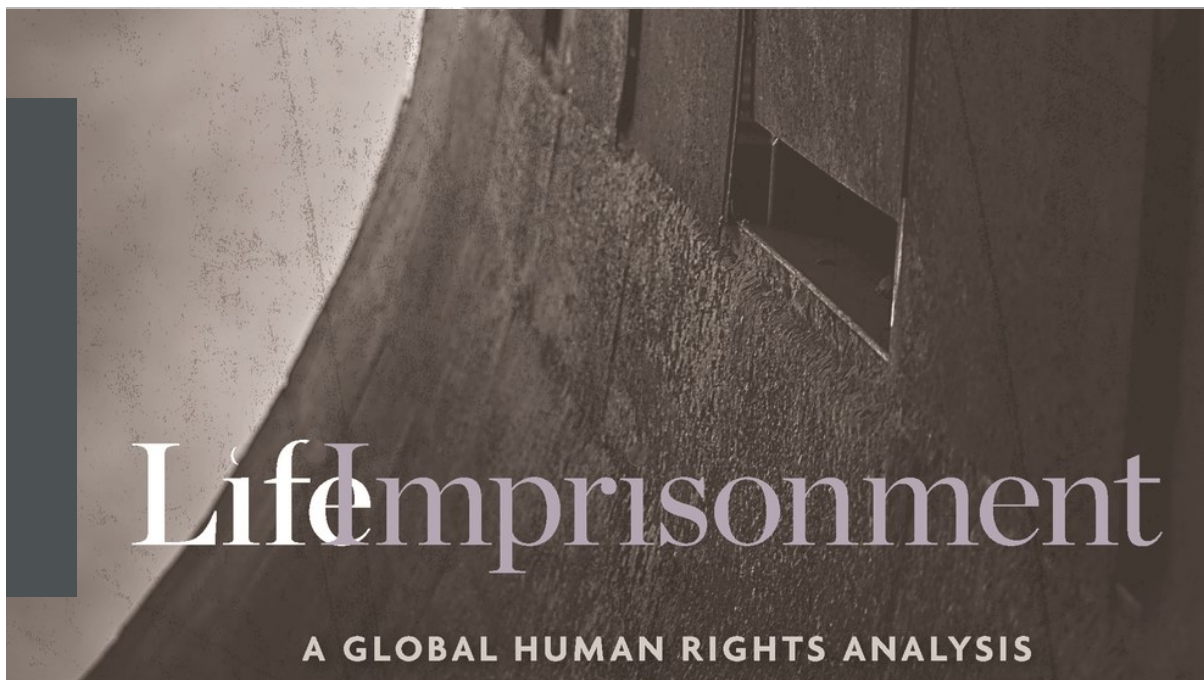


Asian Life Imprisonment in Worldwide Perspective

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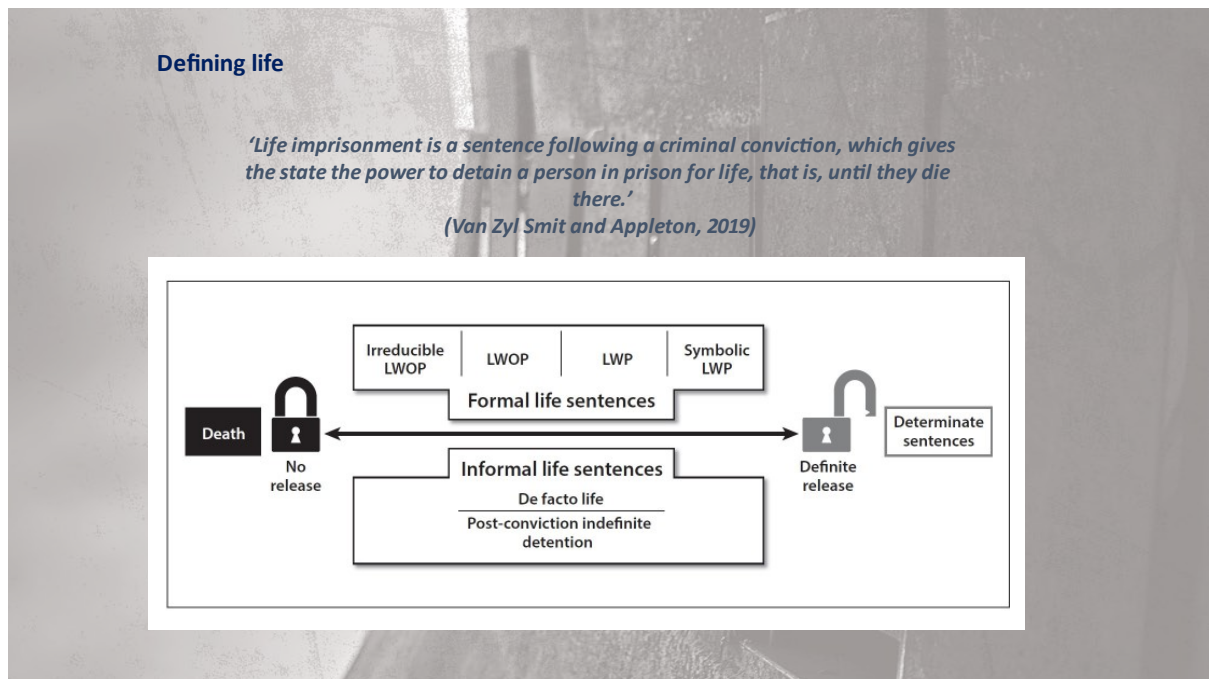


This paper sets out to put what we already know about life imprisonment in Asia into a worldwide perspective. Of course, we would do much better to write such a paper after this conference – and we will! What we are doing now is to map out the analytical concepts we have developed in order to compare life imprisonment in various countries and to illustrate these concepts with what we already know. We speculate about some structural patterns that we see emerging in Asia, some with strong colonial links.

The paper also collects the information that we have on how often life imprisonment is used in Asian countries and for which offences it can be imposed. A further section deals with the particular pains of life imprisonment and uses some work we did in Kazakhstan as an example of challenging conditions.

We hope that these preliminary thoughts will be of some use to our colleagues, for, as we emphasise in our conclusion, any attempts to make life imprisonment compliant with international human rights norms, must be based, in Asia as elsewhere, on a clear understanding of the legal and factual position in respect of life imprisonment in the countries of the region.

Figure 1



Several conferencegoers may have seen an earlier version of this graphic. It is crucial to our understanding of what the object of inquiry, life imprisonment, is. Our overall definition aims to be inclusive: *“Life imprisonment is a sentence following a criminal conviction, which gives the state the power to detain a person in prison for life, that is, until they die there.”*

One of our earliest insights was that courts sometimes deliberately impose sentences that give the state the power to keep people in prison until they die there but do not call these sentences “life imprisonment”. This led to our first distinction, between formal life sentences and informal life sentences. The distinction is a simple one. Formal life sentences are where the court says something like “I sentence you to life imprisonment”. Informal life sentences are where the court says something else – a simple example would be: “I sentence you to 100 years of imprisonment”. The court does not mention ‘life imprisonment’ in this later example but everybody knows that the state is being given the power to keep that person in prison until he or she dies there. This basic distinction is reflected in the solid horizontal line in Figure 1 above.

The next step was to look more closely at each of the categories. To begin with formal life: that is, above the line. Here we drew a basic distinction between life without parole (LWOP) and life with parole (LWP). LWOP is an American term, and indeed, as far as we know, most people serving this sentence are in the USA. It means what it says: people who have LWOP sentences have no prospect of ever even being considered for release following a process of review after a fixed period, with a regular further review if their first application fails. Conversely, persons with LWP sentences will be considered for release regularly. The type of life imprisonment that is to be found in a particular country is not static and changes may make life sentences potentially harsher. In the last decade both China and India have added LWOP sentences to their punitive arsenal, whilst retaining LWP as their most often used type of life imprisonment. It is too early to assess the significance of this change but, given the sizable populations of these countries, the long-term impact may be enormous.

When we analysed this distinction in more detail, we saw that both LWOP and LWP could be subdivided further. In a few countries LWOP was completely irreducible. This meant that not only

could life prisoners not get parole, they could also not be pardoned by the Head of State, that is. the President the King or the Sultan who traditionally has the prerogative to do so.

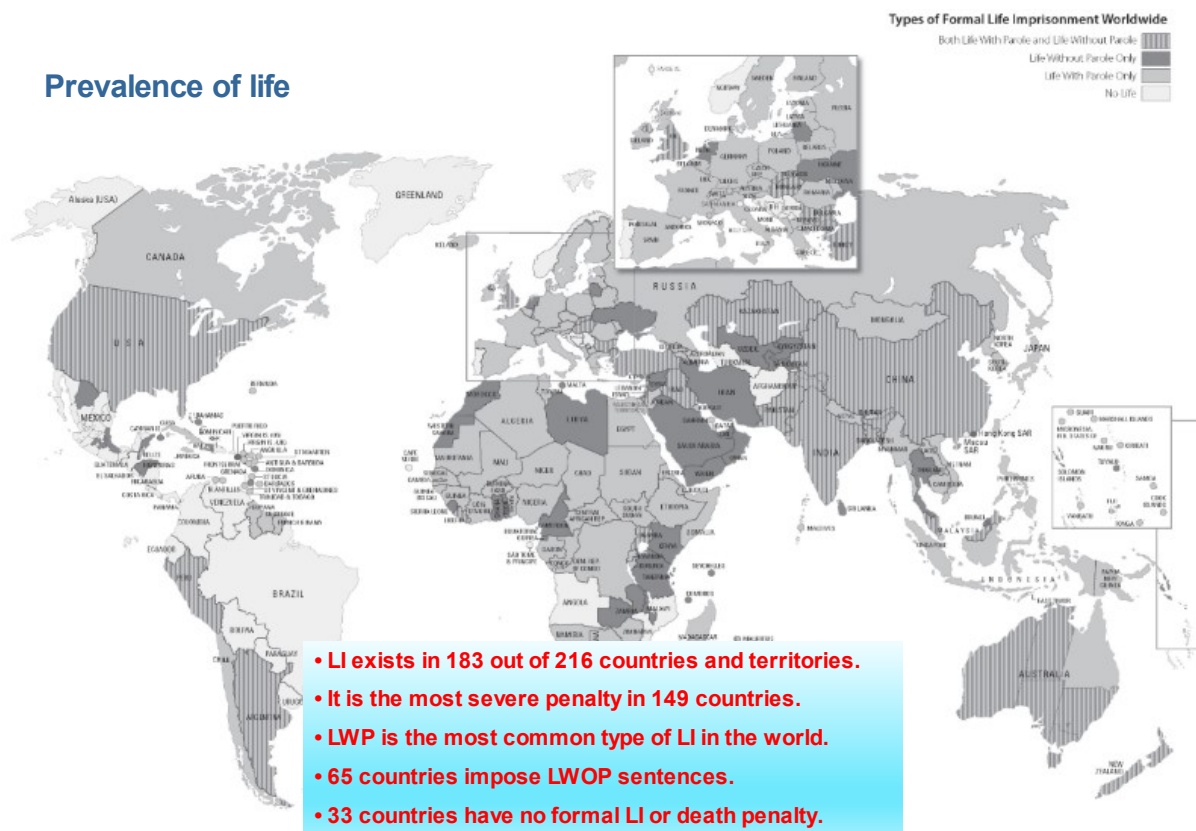
At the other end of the spectrum, we found to our surprise that, in some countries, life sentences were imposed by the courts, but the prisoners serving them were in law guaranteed release after a fixed period. Technically these sentences should fall outside our definition as they constrain state power to keep people in prison until they die there, but because countries call these sentences, 'life imprisonment' when imposing them (and include them in their statistics) we have left them in and refer to them as symbolic life sentences. (As we will see, they play an important role in some Asian countries.)

Finally, in Figure 1 we categorise informal life sentences further by distinguishing between de facto life sentences and post-conviction preventive detention. De facto life sentences are determinate sentences that are so long that prisoners cannot be expected to serve them before they die. They may consist of a single term (the 100-year example used earlier), or of shorter but consecutive sentences. For example, if someone is convicted of twenty counts of fraud and is sentenced to five years imprisonment for each, with the sentences to run concurrently, that is life imprisonment as well.

Post-conviction preventive detention is any sentence, order or measure that flows from a criminal conviction, and gives the state the power to hold someone in prison without a specific limit. Such sentences are typically used in Europe and elsewhere for "dangerous offenders" whose offences, for whatever reason, are not punished with a formal life sentence, but where the same effect is achieved indirectly. The link to a criminal conviction is important because people may be held indefinitely by states in terms of other 'non-criminal' laws, in mental institutions, for example, but these forms of detention are not included in our study.

Relatively little is known about informal life sentences as a global phenomenon. We are not aware of an Asian study of informal life imprisonment. We would be particularly keen to learn more about informal life sentences in Asia, as we are about to embark on further world-wide research on this form of life imprisonment.

Figure 2



What do we know about the prevalence of different forms of life imprisonment in Asia? Figure 2 above gives a world-wide picture, but if we focus closely enough on the 32 jurisdictions that we included in Asia in our 2019 book (based on 2014 data), we can draw some preliminary conclusions. (For any eventual publication we will produce a separate Asian map.) The vast majority of Asian jurisdictions have some form of life imprisonment. The only exceptions are Macau, which, like most former Portuguese countries, has no life imprisonment, and Turkmenistan and Afghanistan. (We are trying to check whether this is still true.) About half the jurisdictions (14) have provision for LWOP and some of them for LWP as well. Unfortunately, however, this does not tell us much about release rates, as countries that have LWP may of course use it very parsimoniously and not release prisoners very readily. We do not have enough statistics on Asia to generalise, but Japan would be a good example of such a country.

Figure 2 does not indicate which countries have symbolic life but we can identify it in Bangladesh, Malaysia, Maldives, Myanmar, Nepal and Pakistan, and arguably in India too. What these countries have in common is that they are former British colonies that have versions of the Indian Penal Code and related procedural and prison laws which were enacted in the 19th century. With some variations, versions of these laws have survived into the 21st century, and with them provisions, often but not always in the prison legislation, that life prisoners should be released after a fixed period. These laws have long caused considerable confusion and I am sure that some of the other papers will address how attempts have been made to resolve some of the confusion in recent years. What is interesting is that we begin to see a pattern that applies across a significant part of Asia, albeit not everywhere.

(Nor, we hasten to add does it apply in all former British colonies. This conference will include papers on Australia and New Zealand, which will show that, while there are no symbolic life sentences in these countries, there are other aspects that they have in common with British Commonwealth

countries in Asia including the (excessive) use of life imprisonment for children. Such sentences, sometimes called detention at her majesty’s pleasure, are (mandatory) life imprisonment in all but name.)

Other patterns that are found in more than one Asian country also have common roots in systems that are found in countries outside Asia. Notable in this regard is the way life imprisonment is implemented in countries of central Asia. Thus, for example, the pattern in countries such as Kazakhstan (which is discussed in more detail below) Uzbekistan, Kyrgyzstan and Tajikistan is that life sentenced prisoners are kept in specialised prisons in isolated parts of the country, where, for the first 10 years of their sentences, they are held in virtual solitary confinement. This is a pattern which we have observed also in Russia and the Ukraine and it follows, we believe a pattern established in the former Soviet Union.

Figure 3

| | Total no. life prisoners (2014) | Total no. life prisoners (2020) | Lifer population rate (2014) *per 100.000 inhabitants | Lifer population rate (2020) *per 100.000 inhabitants |
|-------------|---------------------------------|---------------------------------|---|---|
| India | 69133 | 77158 | 6 | 6 |
| Thailand | 3176 | 4874 | 5 | 7 |
| Nepal | 2283 | – | 8 | – |
| Japan | 1826 | 1765 | 1 | 1 |
| Taiwan | – | 1327 | – | 6 |
| South Korea | 1288 | – | 3 | – |
| Indonesia | 423 | – | 0 | – |
| Sri Lanka | 341 | – | 2 | – |
| Kyrgyzstan | 286 | 345 | 5 | 5 |
| Kazakhstan | 122 | – | 1 | – |

Figure 3 provides a snapshot of life sentence prison populations from ten Asian countries from which we have received figures from our 2014 survey (excluding Taiwan) and – in some instances – our 2020 survey. These are preliminary findings, and we are awaiting information from Nepal, South Korea, Indonesia, Sri-Lanka and Kazakhstan. Some countries, such as Vietnam and China, have provided a 2020 survey response, but unfortunately there were no population figures publicly available as these data – much like death penalty data – remain a ‘state secret’. From the countries where we have received both 2014 and 2020 data you can see that there has been an increase in the number of life-sentenced prisoners across all countries, except for Japan. India of course had the largest total of life-sentenced prisoners, but when we consider the number of inhabitants, Thailand had the largest life prisoner population rate per 100,000 country population in 2020, though we are waiting for figures from Nepal and elsewhere. Furthermore, the rate of growth since 2014 in India is not as significant as in Thailand and Kyrgyzstan. Between 2014 and 2020, the life sentenced prison population increased by 51% in Thailand, 20% in Kyrgyzstan and by 7% in India. Of significance, in Japan, the number of life-sentenced prisoners has been decreasing since 2014, together with the overall prison population.

The rate of growth in Thailand is particularly significant globally, as it is only second to Peru in its rate of growth of life sentenced prisoners since 2014. While Thailand’s life sentence figure in 2014 was 3,176, there are now 4,784 prisoners serving life sentences – an increase of 51 per cent. From our survey information, we know that 70 per cent of *all* prisoners were serving drug related offences in Thailand in 2020, and that 516 women in Thailand were serving life sentences in 2020. That is, 11 per cent of the life sentenced prison population. Significantly, women and girls make up 7 per cent of the global prison population (World Prison Brief, 2017). As mentioned, our figures to date show that Peru has the fastest rate of growth since 2014 – an increase of 176%. In 2014, Peru had 351 life-sentenced prisoners and in 2019, that figure had risen to 972, an increase of 176 per cent. This increase is most likely due to a change in the law in 2018, and the adoption of mandatory life sentences for child sex offenders


Figure 4

Offences that carry life in Asia...

Information on crimes that carry life from 20 out of 29 countries in Asia that can impose life.

Some key (preliminary) findings

- **Across Asia, there are a wide range of crimes that can attract the death penalty or life imprisonment:**
 - Crimes against the person
 - Crimes against the State
 - War-related crimes
 - Drug-related offenses
 - Crimes against properties
 - Environmental crimes
 - Financial crimes



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Figure 4 provides an overview of the broad categories of offences for which formal life sentences can be imposed in Asia. We have been able to obtain information on offences that carry life from 20 out of the 29 countries in Asia for which a formal life sentence can be imposed. Significantly, in most countries, life imprisonment can be imposed for the most serious offences, namely, homicide or crimes against the person, crimes against the state and war-related crimes. This is a pattern that we can identify across many jurisdictions worldwide. In at least nine countries in Asia, life imprisonment was a possible sentence for drug-related offences. Other crimes for which life sentences can be imposed included crimes against property, environmental crimes and financial crimes such as fraud. There were also three countries – China, Laos and Vietnam – for which a life sentence could be imposed for corruption.

However, this type of analysis can present a very distorted picture. Much of the information presented is concerned with legal provisions about offences that carry life imprisonment. But for what offences

can life imprisonment be imposed in practice? In England and Wales, for example, there are at least 50 crimes for which a life sentence can be imposed, but many of them are rarely imposed. Collating information on the practice of life imprisonment is crucial to assess the extent to which countries restrict the use of life imprisonment to the most serious crimes.

Figure 5

Serving life imprisonment

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- **Security measures and segregation**
 - Routinely separated from other prisoners
 - Handcuffed or shackled during movement from cells
 - Cell and body searches
 - Restrictions on visits, movement, association with other prisoners
 - Use of guard dogs
- **Impoverished regimes**
 - Poor living conditions
 - Excluded from work
 - Denied access to education or rehabilitative programmes
 - Solitary confinement

“It’s like going deep-sea diving. Going all the way down into the depths and losing your oxygen. You’re struggling to get to the top. You don’t know if you’re going to make it, but you never stop struggling.” (serving LWP)

“[Life in prison is] a slow, torturous death. Maybe it would have been better if they had just given me the electric chair and ended my life instead of a life sentence, letting me rot away in jail. It serves no purpose. It becomes a burden on everybody.” (serving LWOP)

The research we’ve carried out to date has also focused on the treatment of life-sentenced prisoners, and the experience of serving life imprisonment across jurisdictions. The key question here is: What is it like to serve life imprisonment? Two particularly concerning issues have arisen that distinguish the treatment of life (and death) prisoners from other prisoners.

Firstly, life-sentenced prisoners are often subjected to heightened security measures compared to other prisoners, and routinely segregated on the basis of their sentence. They are also often handcuffed or shackled during movement from cells within the prison, subject to cell and body searches. They are often allowed fewer visits or time outside of their cells compared to other prisoners on the basis of their sentence. And in some countries guard dogs are used to escort life-sentenced prisoners around the prison. To use a recent example, the CPT has published a report on Ukraine, with a focus on life-sentenced prisoners held at one of the prisons. The CPT mentions the positive – that *“some 75% of the life-sentenced prisoners held at Colony No. 100 were no longer systematically handcuffed when taken out of their cells.”* However, it goes on to state: *“That said, life-sentenced prisoners continued to be subjected to certain ...demeaning practices, such as making them to run in the corridor in a half-squatting position or to walk bent over at the waist with their hands lifted during escorts. The Committee calls upon the Ukrainian authorities to put an immediate end to such practices.”*

Secondly, life-sentenced prisoners are often living in poor regimes, including poor living conditions or excluded from work or rehabilitation programmes as an additional punishment. Of further concern is the routine use of solitary confinement. Many life-sentenced prisoners are not only segregated from other prisoners in high-security institutions but are routinely confined to their cells (alone or in pairs) for up to 23 or 24 hours per day. We know that the life sentence system in Turkey, for example, automatically subjects a sub-group of life-sentenced prisoners to a prison regime of solitary confinement from the beginning of their sentence. In Tajikistan too, where only LWOP sentences are implemented, prisoners are subjected to solitary confinement for the rest of their lives. The CPT report on the situation of life-sentenced prisoners in the Ukraine also highlighted a concern that many life sentenced prisoners continue to be locked up in their cells for 23 hours per day, their only out-of-cell activity being one hour of outdoor exercise which was taken on a cell-by-cell basis in small cubicles.

We are hoping to build up a clearer picture of the life sentence regimes imposed in Asia. It is clear from our research that life imprisonment, both legally and practically, can be implemented in very different ways. In some countries, though a minority, different forms of life imprisonment are enforced more harshly. For example, we know that at least a few Asian countries – India, Japan and South Korea – include life imprisonment with forced or hard labour in their penal arsenal. This is also the case in Caribbean countries, particularly for those individuals who have had their death sentences commuted to life.

We also know that some former Soviet Union countries, including countries in Central Asia, such as Kazakhstan, Kyrgyzstan and Tajikistan adopt a similar life imprisonment regime to Russia. In Russia, special-regime correctional colonies were used following the abolition of the death penalty, specifically to detain former death row prisoners, together with newly sentenced murderers, away from the general prison population, under harsh conditions and with heightened security. In some former Soviet Union countries in Central Asia life-sentenced prisoners are routinely segregated from other prisoners and subjected to austere regimes for at least the first ten years. In 2011, one of us had the opportunity to visit one of the penal colonies in Kazakhstan, and recalled the following:

[Life-sentenced prisoners] are held for the first ten years of their sentences in what is a form of semi-isolation where they are not allowed to work and, with the exception of contact with prison officials, effectively are allowed only to communicate with two or three other prisoners in their cells. Time out of cell is restricted to one and a half hours of exercise a day and even then cellmates are separated from all other prisoners. Exercise is in a small yard and may be further restricted by bad weather. The alternative is a small, cell-sized ‘gymnasium’, which cannot possibly accommodate more than a small number of prisoners, and is inadequate for the numbers involved. I was told that prisoners are able to read and have access to medical and psychological services. Even so, the regime as a whole is clearly not geared to rehabilitation and is more severe than is necessary merely for maintaining safety and security in an extremely isolated prison colony.

In our research, we have also looked at published accounts from lifers themselves. It has become very clear that the so-called pains of imprisonment are particularly heightened for this group of prisoners, primarily due to the indeterminate nature of the sentence which is unique to life imprisonment. Many of the individuals serving LWOP sentences report such a penalty to be inherently inhumane, and a punishment worse than the death penalty; a sentence of “endless pain”, “infinite meaningless”, “a slow death row” and “a fate worse than death” (Hartmann, 2013). This can result in some LWOP prisoners feeling that the death penalty would be preferable to life, as one LWOP prisoner has reflected: “*[Life in prison is] a slow, torturous death. Maybe it would have been better if they had just given me the electric chair and ended my life instead of a life sentence, letting me rot away in jail. It*

serves no purpose. It becomes a burden on everybody” (Zehr, 1996, p.86). Even prisoners on death row believe that life without parole is a worse punishment than the death penalty. Indeed, depending on how life imprisonment is implemented, it can be experienced as a fate worse than the death penalty, and we would argue that death penalty abolitionists should proceed with caution.

Conclusion

The knowledge base on life imprisonment in Asia is growing, but it is still very limited. Finding out more is not merely a matter of intellectual curiosity but can be of very real practical consequence.

As the world becomes more integrated and people move around more often, the importance of international co-operation in criminal matters has been growing exponentially as well. Extradition of persons alleged to have committed serious offences and the transfer of sentenced prisoners is becoming all the more important. As many countries are not legally permitted to extradite persons to face the death penalty (and even retentionist states will in practice often not allow the extradition of their citizens if capital punishment may be imposed on them), life imprisonment becomes the sentence most likely to be imposed on serious offenders who are extradited. In such cases, states will have to be able to show that their life imprisonment regimes meet international human rights standards in law and in practice. The best way to do this is to rely on good independent research and scholarship, and the expertise it brings, in Asia as elsewhere.

More widely: It is relatively uncontroversial that life imprisonment potentially poses severe threats to the fundamental rights of anyone who is subject to it. However, rights-infringing practices are not inevitable. The contribution that we as scholars can make is to analyse carefully what national law allows and what is actually happening in the practice of imposing and implementing life sentences. The work of this conference will be an important step towards creating an Asian knowledge base from which such informed critique will flow naturally.