

# PEOPLE'S REPUBLIC OF CHINA

## The Death Penalty in 1999

Amnesty International has recorded 2,088 death sentences and 1,263 confirmed executions in China during 1999. These figures include a number of sentences handed down in 1998 but not reported until 1999. As in previous years, numerous press reports from China in 1999 which refer to "group" executions without revealing individual names or the number of people executed cannot be fully represented in this total.<sup>1</sup>

These figures are believed to be far below the actual number of death sentences and executions in China during the year. They are based on the public reports which Amnesty International has monitored. Only a fraction of death sentences and executions carried out in China are publicly reported, with information selectively released by the relevant authorities. Included in these figures are reports of the execution of political prisoners. Also included are death sentences imposed on defendants who appear to have been under 18 at the time of the alleged crime - such sentences are contrary to Chinese law.

These minimum figures for 1999 reveal a state which sentences to death, on average, over 40 people a week and - as throughout the 1990s - executed more people than the rest of the world put together.

From 1990 to the end of 1999 Amnesty International has recorded a figure of over 27,599 death sentences in China and over 18,194 executions - an average of at least 2,759 death sentences and 1,802 confirmed executions every year.

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<sup>1</sup> Reports stating that a "group" or "several" people have been sentenced to death are included in the figure as one sentence. Similarly, an ambiguous report stating for example that "15 people received sentences of between 10 years and the death penalty" is included in the figure as one death sentence only.

Amnesty International is the only international organization which systematically monitors and records executions and death sentences in China. In many cases, the Death Penalty Log is the only easily accessible public record of a death sentence or judicial execution. In many of the cases monitored, there are very few details and the organization is unable to ascertain the defendant's alleged crimes nor the circumstances surrounding their arrest, trial and subsequent execution or sentencing. It is likely that many of the defendants recorded did not have fair trials. Many may have been subjected to torture to obtain a confession. Many may be illiterate and have little way of arguing their defense or understanding the processes. Many more have been executed summarily during peaks in sentencing or crime crack downs.<sup>2</sup>

The following pages analyze some of the reports that Amnesty International has received during 1999. This report is designed to be read alongside the Death Penalty Log 1999 (ASA 17/49/00), published separately. The Log itself is a chronological listing of reports of death sentences and executions in China in 1999 monitored by Amnesty International. These reports come from various sources, including the official Chinese media. Amnesty International is not in a position to confirm the accuracy of each report.

Amnesty International opposes the death penalty unconditionally on the grounds that it constitutes the ultimate form of cruel, inhuman and degrading punishment and that it violates the right to life as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International also has concerns about the way in which the death penalty is applied in China including the speed and fairness of trials and the wide range of offences punishable by the death penalty.

The death penalty falls predominantly on those people with a low educational and social standing. For example, Amnesty International has monitored numerous death sentences being imposed on migrant workers who are often marginalised in their communities and labelled by the local population as the main source of crime. It is also significant that the largely white-collar crimes of corruption, embezzlement and fraud appear to be more often punished by a two-year suspended death sentence than other capital crimes.

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crimes more effectively than other punishments. The Special Rapporteur for the United Nations on extrajudicial, summary and arbitrary executions stated in 1997 that "the death penalty is not an appropriate tool to fight the growing crime rate in China" and "the death penalty should be eliminated for economic and drug related crimes".<sup>3</sup>

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<sup>2</sup> Amnesty International's more general concerns about the death penalty in China can be found in "People's Republic of China: The Death Penalty in China: Breaking Records, Breaking Rules" (ASA 17/38/97). Changes in the provisions related to the death penalty in the Criminal Procedure Law are described in: "People's Republic of China: Law Reform and Human Rights" (ASA 17/14/97, March 1997).

<sup>3</sup> Report for 1996; E/CN.4/1997/60/Add.1.

In September 1998, the Supreme People's Court reported that there had been a very large reduction in executions following revisions to the Criminal Law in 1997 and in April 2000, China's Foreign Ministry spokesman Sun Yuxi reportedly stated that China strictly controls and cautiously uses the death penalty, imposing it only on "extremely abominable criminals".<sup>4</sup> Other officials have stated that "China's principle in applying the death penalty has consistently been to kill only a few, not to kill when this is not absolutely necessary, and only to apply such a sentence for criminals who have committed particularly serious crimes of extremely profound subjective evil, when social order could not be maintained if they were not killed".<sup>5</sup>

Official Chinese statements about the limited application and large decline in the use of the death penalty are not borne out by the monitoring of cases by Amnesty International. The organization has seen a change in the media reporting of cases and a decrease in the number of reports giving confirmation of execution. Amnesty International continues to call upon the Chinese government to make public national statistics on the imposition of the death penalty. Only then can claims of a reduction in the use of the death penalty be taken seriously. Instead such statistics remain a state secret.

In 1999, in her annual report to the United Nations, the Special Rapporteur on extrajudicial, summary and arbitrary executions stated that she was "pleased to note that the revisions to the Criminal Code will serve to better protect the rights of defendants in criminal cases. However, the Special Rapporteur continues to be concerned at the great extent to which the country applies the death penalty and regrets that the revisions to the Criminal Procedure Code fail to decrease the number of capital offences."<sup>6</sup>

In the face of calls from international bodies, including the European Union and the United Nations, endorsing and promoting the global trend towards the reduction in use and abolition of the death penalty, the Chinese government still maintain that they need the death penalty for reasons of "social stability".<sup>7</sup> At the United Nations General Assembly in November 1999, the European Union tabled a Resolution, co-sponsored by over 70 countries, which would have called on all states that still maintain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty". China was one of several countries which actively worked against the resolution, which was eventually 'not acted upon'.

## ANALYSIS OF SENTENCING TRENDS

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<sup>4</sup> BBC SWB 28/04/ 2000, quoting Zhongguo Xinwen She news agency in Beijing 27/04/2000.

<sup>5</sup> Guangming Daily 06/11/98.

<sup>6</sup> E/CN.4/1999/39/Add.1 Report of the SR on extrajudicial, summary and arbitrary executions: country situations, 6.01.99.

<sup>7</sup> EU reports 21/12/99.

### Continued “Strike Hard”

The nationwide “Strike Hard” anti-crime campaign, launched on 28 April 1996, led to mass executions in 1996 on a level unprecedented since 1983 and was marked by numerous cases of summary justice. The campaign has continued until today, focussed in different provinces, on selected crimes and criminal activities. The crimes targeted include primarily corruption which is seen as a number one priority throughout China as well as drug trafficking, ‘separatism’ in Xinjiang and more general economic crimes.

During a “Strike Hard” people are often sentenced to death or executed for crimes which may have received a lesser penalty at other times or in another region. In some cases public rallies are held to mark the start of a new “Strike Hard”. Amnesty International is concerned that in effect, this can mean people are being sentenced to death for reasons of political expediency.

For example on 5 February 1999, five people in Chongqing city, Sichuan province were executed for various crimes reportedly as part of a “winter strike hard” which was held to “improve the rate and quality of sentencing”.<sup>8</sup>

Many counties or provinces have held their own mini crack downs on crime. For example, on 24 December 1999, it was reported that public security organs in Liangshan Yi nationality Autonomous Prefecture in Sichuan province launched an “all out operation to wipe out cargo thieves and plunderers active in the Liangshan section of the Chengdu-Kunming Railway.” It was further reported that from 24 to 26 December the crackdown had resulted in the capture of 211 criminal suspects and the seizure of 64 grams of heroin and about 100,000 Yuan worth of stolen electrical goods.<sup>9</sup>

From 27 to 29 April 1999, Hunan Provincial High People’s Court held anti- crime rallies

Media reports in China frequently dwell on the paralyzing fear exhibited by prisoners condemned to death. In a newspaper article, legal and military guards who were present as Wang Yousheng was executed gave the following account:

*“When the prison van arrived at the execution ground, Wang did not get out, and had to be helped out by the guards. After only a dozen metres or so, Wang was unable to stand; his body was limp and weak and he was unable to walk, his face pale and white. He was ushered onto the execution platform. It is clear that no one can escape the fear of death! With one crack of a gunshot, Wang Yousheng fell to the ground, dead” .*

On 27 April 1999 Legal Life News gave this account of what happened when Chen Xiaoba, a 32 year old peasant was sentenced to death for the murder of two of his relatives during an argument over money which escalated into a fight:

*“On hearing the sentence, Chen went weak at the knees and beads of sweat rolled down his face. He continually shouted in a desperate, faint voice ‘it’s all over, it’s all over” .*

<sup>8</sup> Legal Daily 06/02/99.

<sup>9</sup> Sichuan Daily 03/01/00.

which were reportedly each attended by over 10,000 people. The rallies were held in conjunction with several city courts and a ‘number’ of people were executed immediately afterwards. The crimes targeted by this particular anti-crime drive were described as robbery, kidnapping and murder and “other serious crimes reminiscent of the dark side of society”.<sup>10</sup>

### **Peaks of Sentencing**

It is generally the case that prior to major events, public holidays and anniversaries, the authorities sentence and execute more prisoners than usual. The chart below shows very clearly some peaks in sentencing which occurred in China at the beginning and end of the year and in the run up to Chinese New Year in February, the anniversary of the founding of the People’s Republic of China on 1 October, and the marking of ‘International Anti Drugs day’ on 26 June.

These peaks and the use of regional or national “Strike Hard” campaigns increase the possibility of miscarriages of justice and unequal or arbitrary sentencing. A crime punished during a “strike hard” or in the run up to a major event may attract a much harsher sentence, the death penalty, than if the punishment was imposed at another time.

### **Ill-treatment of Prisoners Sentenced to Death, Public Rallies and the Parading of Prisoners**

Under relevant laws and regulations in China, no time limit is imposed on the use of handcuffs and shackles on prisoners sentenced to death. Such prisoners usually kept

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<sup>10</sup> Hunan Daily 30/04/99.

handcuffed and some also have their feet shackled from the time they are sentenced to death until their execution. The use of leg irons and chains as instruments of restraint is prohibited by international standards. The application of leg irons and the prolonged use of other restraints amount to cruel, inhuman and degrading treatment and add to the cruelty of the application of the death penalty.

The Criminal Procedure Law outlaws public executions but does not expressly prohibit the public display of prisoners sentenced to death. The parading and humiliation of condemned prisoners at mass rallies or in trucks on the way to execution grounds remains common, even though a series of regulations outlawing such practices have been issued by government and judicial authorities since the 1980s.<sup>11</sup> Prisoners may be paraded in trucks driven from a detention centre to the execution ground, often via a public sentencing rally. They are often paraded with their hands tied behind their backs, their arms tied with rope and sometimes with placards hanging from their necks listing their names and alleged crimes.

As in previous years, mass rallies, public sentencing rallies and televised events have been held all over China in 1999. Often the prisoners are executed immediately after the rally. Some rallies occur in conjunction with specific anti-crime crackdowns or to sentence a group of people involved in one case or one type of crime. At such rallies, prisoners are made to stand facing the audience with their hands tied behind their backs, wearing placards on their chests listing their names and alleged crimes. They are usually forced to keep their heads bowed by the police or soldiers escorting them. In some cases, their feet are also chained and their mouths gagged with rope or wire tied tightly at their backs to prevent them from speaking or shouting. Amnesty International believes that such practices constitute cruel, inhuman and degrading treatment and add to the inherent cruelty of the death penalty.

Usually rallies are held in public areas so that huge crowds can gather to watch the sentencing. For example in February, Yang Wenxing, a 22 year old man from the Miao ethnic minority was executed for rape after a public sentencing rally held in the Dafeng County Sports Stadium, Guizhou Province.<sup>12</sup> Often prisoners are taken straight from the rallies to be executed nearby, for example in deserted fields or enclosed courtyards linked to the police or military forces. Often the local populace know of these sites and have heard the shots being fired. With the advent of lethal injections as a method of execution it is likely that more

One report on an execution in the Hebei Legal News 29 April 1999, gave details of the execution of the newly-wed Li Ximei, who strangled her drunk husband while on honeymoon. The news report stated that:

executions will take place in hospitals or clinics linked to prison or police facilities.

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<sup>11</sup> This prohibition was repeated in 1998 - The Supreme Court Interpretation of Specific Questions on the Implementation of the Criminal Procedure Law (No. 23) which states that "Executions shall be announced. Parading in public (*youjie shiwei*) or other actions which humiliate the person being executed are forbidden".

<sup>12</sup>Legal Life Paper - Guizhou province 18/02/99.

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*“On a dazzling bright spring morning in March, at an execution ground in the southern suburbs of Wuhan. After identities were verified, a row of cave-black gun barrels take aim at those criminal heads. A crisp crack of gunfire signaled the end of the brief but evil life of thirty something Li Ximei”.*

A rally was held on 15 July, 1999, by Longgang district People’s Court ‘on behalf of’ Shenzhen city Intermediate People’s Court to sentence 40 people, all under the age of thirty. Of these 21 were sentenced to death and 20 of those were executed immediately after the rally.

The death sentences imposed on Bu Ni, Bai Lun (believed to be ethnic Tibetans) and Zhang Yanwu, were handed down at a public sentencing rally held in Lhasa on 24 March 1999. A newspaper report covering the rally stated that all three stole and used violent means to steal, as well as causing several deaths and:

*“as harsh punishment was handed down to these criminal elements guilty of robbery, theft, drug trafficking and other crimes which cause serious harm to society, the citizens of Lhasa applauded and cheered. In the opinion of the masses who witnessed the event, striking hard at criminal elements has the support of the masses, and is in line with the will of the masses - a good thing!”*<sup>13</sup>

## **CRIME TYPES**

As in previous years, people were executed and sentenced to death for a wide variety of crimes. As reported by Amnesty International in 1998, the revised Criminal Law includes nearly three times as many capital offences as the 1980 version, since almost all of the capital crimes introduced in the interim, through decisions of the National People’s Congress (NPC) Standing Committee, have been included.<sup>14</sup> Many crimes are punishable by death if they are ‘extremely serious’ - but no precise interpretation exists for “extremely serious”. These and other regulations surrounding the death penalty remain vague and open to abuse.

### **Drug Crimes**

A large proportion of reported death sentences monitored by Amnesty International in 1999 were imposed for drug related crimes. In Shenzhen, south China, anti-drugs rallies took place on 15 June 1999 prior to the International Anti-Drugs day of 26 June and to mark the 50<sup>th</sup> anniversary of the founding of the People’s Republic of China. Nineteen people were executed after the rally for alleged drug-trafficking crimes. One report stated that “as there were too many corpses to cremate at once, the excess corpses were stored in the mortuary”

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<sup>13</sup> Tibet Daily 25/3/99.

<sup>14</sup> For more information see People’s Republic of China: The Death Penalty in 1998 (ASA 17/57/99 & ASA 17/66/99.corr) and People’s Republic of China: The Death Penalty Log 1998 (ASA 17/56/99 & ASA 17/64/99.corr).

and relatives had to wait all day when they came to pick up the ashes. Another report states that more than 1000 soldiers were also present at the rally.<sup>15</sup>

In Mianyang town, Sichuan Province, 20,000 people reportedly attended a sentencing and anti-drugs rally at the Mianyang Sports Stadium. Three people were executed immediately after the rally.<sup>16</sup> In Maoming city, Guangdong province, 10,000 people reportedly attended an anti-drugs rally on 23 June 1999.<sup>17</sup>

Li Zhijian was reportedly the first person to be executed for drug related crimes in Ping county, Jiangxi province and a lengthy report on the case was given in the Jiangxi Legal News on 27 February 1999:

*“The bullet of justice, embodying the resolve of the party and the government to stop drugs, pierced the breast of drug pusher Li Zhijian, putting an end to his evil life, but with the wish that young people in generations to follow should remember his dying wish, warning them not to taint their lives with drugs.”*

### **Economic Crimes**

People were sentenced to death or executed for a variety of non-violent economic crimes ranging from tax and value-added-tax fraud to counterfeiting, embezzlement and credit card theft. Corruption has been a focus for an anti-crime crack down with major resources directed towards stemming corruption in government and financial circles.

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<sup>15</sup> AFP 26/06/99, Shenzhen Daily 26/06/99 and Oriental Daily 26/06/99.

<sup>16</sup> Sichuan Legal News 29/06/99.

<sup>17</sup> Guangdong Public Security News 28/06/99.

In some cases the amounts of money involved are very large but in others appear relatively small. For example; in Sichuan province, Hu Youde, a 40-year-old tax office deputy head was sentenced to death with a two year reprieve on 8 January 1999 for allegedly taking approximately US \$69,000 (about 572,800 Yuan) and defrauding his office of US \$21,000 (174,700 Yuan).<sup>18</sup> Another case involving relatively small amounts of money is that of Wang Zhanjie and Wang Zhanlong, who were both sentenced to death on 8 July 1999 for allegedly using an accomplice's position in a tax firm to issue 23 false tax certificates and for using false names to buy tax certificates, profiting by 450,000 Yuan (US \$54,347). Three co-defendants were sentenced to terms of imprisonment.<sup>19</sup> A contrasting case is that of Wang Shuguang, a manager in an local enterprise in Fuyang city, Zhejiang province. Wang was sentenced to death with a two-year reprieve in April 1999 in reportedly the biggest corruption case in Fuyang where he was accused of obtaining 1.37 million Yuan and giving his mistress 2.7 million Yuan of public money.<sup>20</sup>

However, lower level officials still appear to be sentenced to death for much smaller amounts. For example, Cheng Xingbao was sentenced to death around July 1999 by Hainan Intermediate People's Court for alleged misappropriation of public funds and forgery . He was accused of stealing 605,000 Yuan. It was reported that he had planned to hand the money back in December 1995 but was discovered before he could. It is not known whether or not he was executed.<sup>21</sup>

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<sup>18</sup> Legal Daily 08/01/99.

<sup>19</sup> Legal Daily 16/07/99.

<sup>20</sup> Zhejiang Legal News 16/04/99.

<sup>21</sup> Chongqing Legal News 7/07/99.

Reaction to recent trials and executions for corruption shows that members of the public often see the issue as a political one, linked directly to shifting relationships among the powerful. In one high profile case under investigation in Xiamen city, Fujian province, throughout 1999, many residents were reported expressing their opinion that those being arrested for fraud, embezzlement and similar crimes in this particular case were scapegoats. The arrests were seen as a symbol of “who is going up, who is going down, who is allied to whom” and the arrested officials were seen as victims of local politics rather than criminals. This attitude is compounded by the widespread view that corruption in China is so pervasive that anyone arrested is simply unlucky and that those arrested are unlikely to be the principal criminals, as all officials are corrupt.<sup>22</sup>

Another major case of construction undermined by corruption (termed “beancurd” construction) was tried in 1999 following the collapse of a pedestrian bridge in Qijiang county, Sichuan province. Lin Shiyan, the secretary of the county government committee,

was sentenced to death on 3 April 1999 for his alleged involvement in corruption over the building of the bridge. Bribes were reportedly taken from the construction company which did not build according to safety regulations. Forty people died as a result of the collapse of the bridge. Co-defendants were sentenced to varying terms of imprisonment.<sup>23</sup>

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<sup>22</sup> AFP 30/01/00.

<sup>23</sup> Shenzhen Legal Daily 12/07/99.

## **Theft**

Under the revised Criminal Law, the death penalty should only be applicable to crimes of theft involving “theft of particularly large sums from financial institutions” and “serious theft of precious cultural relics”.

On 16 April 1999 it was reported that Beijing city No 1 Intermediate People’s Court sentenced Chen Mengxing to death for stealing Grade 1 cultural relics reportedly dating from 420 - 589 AD (exact dates unknown). No further details were given as to the extent of the theft or if any violent means were used. He was executed in August 1999. Two others were sentenced to life imprisonment for their involvement in the case.<sup>24</sup>

Media reports of such cases have often been highly subjective and inflammatory. In the monthly journal *People and the Law*, April 1999, it was stated in the case of Cao Haijun, a 23-year old who was sentenced to death for the theft of cultural relics from an Imperial Palace in Beijing that “the despicably evil Guo Haijun should never have been born...”.

Hebei Legal Daily of 24 April 1999 stated on the cases of Liu Xianming and Xiaochun who were both executed on 19 January 1999 for excavation and theft from ancient graves that: “the sound of the (executioner’s) gun firing is crime’s death knell; it is also a peal of justice for the common people” . The two executed prisoners and others were accused of stealing pictures, earrings and small boxes.

## **Organizing Prostitution**

Prostitution and pimping are reportedly increasing throughout China. In 1999 in Zhejiang province, Wang Hongying, a 34-year-old woman was sentenced to death for organizing prostitution. It was reported that she employed pimps to run 12 prostitutes at a popular massage parlour.<sup>25</sup> Her assistant reportedly received a life sentence. On 18 March 1999, in Hangzhou city, Zhejiang province, Wang Peng and Ling Yonggang were both sentenced to death for organizing prostitution. They were accused of 120 counts of prostitution, profiting by more than 40,000 Yuan.<sup>26</sup>

## **Spying**

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<sup>24</sup> Wenhui Daily 16/04/99.

<sup>25</sup> Zhejiang Legal News 22/01/99 & Reuters 28/01/99.

<sup>26</sup> Zhejiang Legal News 19/3/99.

On 31 August 1999, three people were reportedly executed for allegedly spying for Taiwan. Liu Liankun, a 58-year-old Army Major, Shao Zhengzhong, a 56-year-old Army Colonel and one unnamed female were all tried in secret by a military tribunal and found guilty of spying. From the news reports it does not appear that the case was made public in China and Amnesty International has no more information on the case or the proceedings of the secret trial.<sup>27</sup>

### **“Separatism”<sup>28</sup>**

During 1997, 1998 and 1999 “separatism” was a major target of “Strike Hard”, after a crack-down on suspected Muslim nationalists and religious leaders intensified in 1997 after several bombing incidents attributed to underground Uighur independence groups and anti-Chinese protests by Uighurs. Unrest in Xinjiang province is growing and there is a continuing trend of sentencing to death ethnic Uighurs on charges relating to state security. Additionally, as in previous years, the Xinjiang Uighur Autonomous Region (XUAR) is the only region of the People’s Republic of China where political prisoners are known to have been executed in recent years. Most of those sentenced to death in the region have been accused of offences related to clandestine opposition activities, street protests, violent clashes with the security forces, or “terrorist” incidents. Only a minority of these cases have been publicly reported by the Chinese authorities. Political prisoners are often tried in secret, under procedures which are reported to be summary. Trials are a mere formality, with the verdict usually decided by the authorities before the trial. Convictions are frequently based on forced confessions and statements extracted under torture. Defendants’ families are often excluded from the trials and few defendants are known to have had the assistance of defence lawyers. Defendants who appeal against the verdict invariably see their appeal rejected. Reports of torture are common. For example, Perhat Mollahun and Abdushukur Nurallah were accused of subversion and bombing and sentenced to death after an unfair secret trial on 16 January 1999 amid fears that they had been tortured to force them to “confess”. Abdushukur Nurallah was executed on 25 January 1999.<sup>29</sup>

### **Mitigating Circumstances and Excessive Punishment**

As in previous years, prisoners were sentenced to death or executed in 1999 for repeat offences or crimes which cannot be described as the “most heinous”.

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<sup>27</sup> Reuters 13/9/99 & 22/10/99, AFP 14 & 15/09/99 and Japan Times 14/09/99.

<sup>28</sup> For more details about conditions in the Xinjiang Uighur Autonomous Region see Amnesty International: People’s Republic of China: Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region (ASA 17/18/99).

<sup>29</sup> Reuters 22/01/99 and Court Notice Ili Intermediate People’s Court 29/01/99.

Zhang Aimin and Liu Zicheng were executed on 20 August 1999 in Weinan city, Shaanxi Province, accused of poisoning 74 cows belonging to others. They then allegedly bought the dead cows at a low price to re-sell the meat. It is not clear exactly what crimes they were convicted of.<sup>30</sup> In Shanghai, on 15 June 1999, two brothers were sentenced to death for allegedly stealing cars using violent means and causing minor injuries on four occasions between 1997 and 1998.<sup>31</sup>

In Shanghai, Zhang Yi was sentenced to death with a two-year reprieve for the alleged crime of attempting to rob a rural credit cooperative. He was reportedly apprehended immediately after handing the bank staff a threatening note in which he demanded money. It does not appear that he had used violence in his attempt.<sup>32</sup>

Many of the sources monitored by Amnesty International reveal, behind the details of the alleged crimes, a context of extreme emotional distress, severe poverty, and ingrained violence. Death sentences have been imposed in the face of mitigating circumstances such as the violence of a spouse leading to unpremeditated murder in self defence or extreme hardship leading to theft and violence. Mitigating circumstances are no excuse for crime, and Amnesty International does not condone any of these crimes. However, carrying out executions where mitigating circumstances are demonstrated appears to undermine the Chinese government's stated policy "not to kill when this is not absolutely necessary" and executing only "extremely abominable" criminals.

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions has made statements about mitigating circumstances in capital cases relating to domestic violence. On 30 September 1998, she made an appeal to the authorities in Trinidad and Tobago not to execute a woman, Indravani Pamela Ramjattan, sentenced to death in May 1995 for the killing of her common-law husband. The appeal, among other points, stated clearly that the abuse, violence and rapes which she suffered at the hands of her common-law husband should have been and were not considered by the investigating authorities or the courts as mitigating circumstances. The Special Rapporteur stated in the appeal that she:

*"considers that domestic violence of the nature seen in this case must now necessarily be accepted by all jurisprudence as legitimate mitigating circumstances in any crime committed in such situations. The death penalty is too harsh a punishment for a crime committed in such situations."*<sup>33</sup>

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<sup>30</sup> Xian Evening News 25/8/99.

<sup>31</sup> Xinmin Evening News 20/06/99.

<sup>32</sup> Liberation Daily 02/06/99.

The following cases show how China is disregarding mitigating factors such as self defence, extreme violent provocation and terminal illness and instead is sentencing people to death who often have been the victims of violence or great hardship for many years.

The Jiangxi Legal News of 20 March 1999 gave details of the case of Chen Yanhua who was executed on 22 January 1999 after being convicted of murdering her brother-in-law. It was reported that Chen had been repeatedly raped by her brother in law and she then put poison in his rice cooker which killed him and her sister.

Another similar case is that of Long Xiaoqi, a 33-year-old woman from Benxi city in Liaoning province. Long Xiaomei was sentenced to death on 15 April 1998 for murdering her husband. Long appealed against the sentence and in her appeal she stated that because her husband “had made unlawful demands of her, threatened to kill her whole family and had been the first to hurt her.....a death sentence would be a miscarriage of justice”. On 20 July 1998 the Liaoning Provincial Court rejected her appeal and she was executed on 24 November 1998.

Yang Shaoxiang a 45-year-old man from Hunan province was sentenced to death on 12

November 1999 for the alleged murder of his son. It was reported that Yang was dying of Hepatitis B and poisoned himself in an attempt to commit suicide and also poisoned his son, who later died. Yang reportedly believed he would not be able to support his son through school and believed his son's life would be too harsh after his death. It is believed that Yang was raising his son alone.<sup>34</sup>

### **Sentencing of Juveniles**

Revisions to the Criminal Procedure Law and Criminal Law, which took effect in 1997, have been examined in numerous Amnesty International documents. One welcome revision to the Criminal Law withdrew the applicability of the death penalty for pregnant women and all people under the age of 18 at the time of their alleged offence. Prior to 1997, juveniles between the ages of 16 and 18 and pregnant women could be sentenced to death with a two-year reprieve.

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<sup>34</sup> Jiangxi Legal news 11/12/99.

However, in 1999 as in 1997 and 1998, there have been several reported cases of defendants whose age has been in question and at least one case where it appears that the defendant was actually under 18 at the time of his alleged crime but was still sentenced to death. Such penalties would be in violation not only of Chinese law, but also of international human rights standards, in particular the Convention on the Rights of the Child to which China is a party. In one example, Feng Jinliang was executed in Beijing on 22 April 1999 for the alleged crimes of murder and kidnapping. Feng had reportedly kidnapped two children for ransom and one child later died of injuries. The reports suggest that Feng was actually under 18 at the time of the crime and as such should not have been sentenced to death.<sup>35</sup>

### **Sentencing of Foreign Nationals and Residents of the Hong Kong Special Administrative Region (SAR) and Macao**

Foreign nationals have also been executed in China in 1999. For example, a Pakistani national was reportedly executed along with five Chinese in Urumqi city, Xinjiang Uighur Autonomous Region for alleged drugs offences on 24 June 1999.<sup>36</sup>

All death sentences involving Hong Kong, Macao and Taiwan affairs must be approved by the Supreme People's Court, but it is not clear if this safeguard makes any impact in terms of a reduction in sentences or the increased likelihood of a two-year reprieve.

### **Executions for Crimes Committed in the Hong Kong SAR and Macao**

In several cases tried in 1999, defendants were executed in the mainland for crimes committed in Macao and the Hong Kong SAR. The death penalty has been abolished in both Macao and Hong Kong.

In the Macao cases, the Chinese authorities asserted jurisdiction on the basis that the defendants had all committed "cross-border" crimes or had carried out crimes in Macao which they had planned on the mainland. Several cases were widely publicized as major successes of the anti-crime crackdown initiated in China in May 1999. Others were presented as the accomplishments of close cooperation between the mainland and Macao authorities in the lead up to the transfer of full sovereignty over the territory from Portugal to the People's Republic of China.

On 23 December 1999, three days after Macao returned from Portuguese rule to the full sovereignty of the People's Republic of China, Guangdong Province High People's Court upheld a death sentence imposed on Gao Jingguang for the crime of kidnapping, committed in Macao. Gao was originally sentenced to death on 25 November by Zhongshan City

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<sup>35</sup> Beijing Legal News 23/04/99.

<sup>36</sup> Xinhua 24/06/99 and BBC 24/26/06/99.

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Intermediate People's Court. He had reportedly been arrested in Zhongshan City on 23 May 1999. Three co-defendants including a Macao resident, Liu Dehai, were sentenced to life imprisonment. The three were accused of robbing "Xing Fu Ya" pawnshop in Macao in May 1998 and kidnapping the owner for a ransom of 300,000 Yuan. Gao and others were alleged to have murdered the hostage, dismembered and burnt the body to evade capture. The Intermediate People's Court asserted jurisdiction on the basis that, although the kidnapping was committed in Macao, it was planned in Zhongshan city, where the stolen goods were also sold.

On 20 April 1999, Li Yuhui, was executed in Shantou City, Guangdong province on the orders of the Supreme People's Court. Li Yuhui had been sentenced to death by Shantou City Intermediate People's Court on 23 March, having been convicted of the robbery and poisoning of five women in July in 1998. He had reportedly given them cups of poisoned "magic water" as part of a geomancy ritual, claiming it would add years to their lives, and stole HK\$1.2 million from them. He was arrested on the mainland. At his trial, Li claimed that he had only acted as an assistant to a second fengshui master who performed the ritual and that he bought the chemicals used, but had no idea they were poisonous. His appeal was rejected on 20 April 1999. Li's lawyers complained about the difficulties of conducting an adequate defence in a cross-border case. They reported that it had not been possible, for example, to follow up on evidence such as additional unidentified finger prints found at the crime scene, which had undermined their request for the case to be returned to the procuratorate for further investigation. The case, following on from the 1998 execution of Cheung Tze-Keung on the mainland for crimes including those committed in Hong Kong, provoked controversy in Hong Kong. The Hong Kong government were criticized for not seeking the transfer of Li to face trial in Hong Kong and thereby undermining article 19 of Hong Kong's Basic Law which stipulates that Hong Kong courts have jurisdiction over all cases in the Special Administrative Region.

In November 1999 the UN Human Rights Committee, when reviewing the report of the Hong Kong Special Administrative Region on progress in implementing the International Covenant on Civil and Political Rights recommended that the government must ensure that "their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment".<sup>37</sup> Similarly, on Macao, the Committee expressed concern that "no firm agreement has been reached on the transfer of residents of the Macao Special Administrative Region to face trial in other jurisdictions in China, or their extradition to other countries in cases where they may face heavier penalties than those laid down in the Macao Penal Code, including the death penalty". The committee reiterated that "Macao residents enjoy the protection of the Covenant and should not lose that protection by being transferred to other jurisdictions".<sup>38</sup>

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<sup>37</sup> CCPR/C/79/Add.117, 4 November 1999

<sup>38</sup> CCPR/C/79/Add.115, 4 November 1999

## REMAINING INADEQUACIES IN CRIMINAL PROCEDURE

In spite of positive revisions to the Criminal Procedure Law, reinforced by subsequent interpretations and regulations, Amnesty International remains concerned that legal safeguards for those accused in death penalty cases remain inadequate<sup>39</sup>.

International standards generally require that the most careful legal procedures and all possible safeguards for the accused be guaranteed in death penalty cases, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to have adequate time and facilities to prepare the defence - including the right to have adequate legal assistance at all stages of the proceedings, the right to review of the conviction and sentence by a higher tribunal, and the right to seek pardon or commutation of the sentence.

### Appeals

Defendants are very rarely successful in their appeals against death sentences. One of the few cases Amnesty International has recorded of a death sentence being reduced to a lesser sentence on appeal in 1999 is that of Zhao Zhigang who was originally sentenced to death by Liuzhou Railway Transportation Court on 27 April 1997 for the alleged crime of murder. However, the provincial High People's Court, after a presumed appeal by the defendant's family and in light of the fact that Zhao confessed the crime, passed a lesser sentence of the death penalty with a two year reprieve. Zhao reportedly murdered his wife while she was knitting after having a dream that she was having an affair.<sup>40</sup>

Appeals by the procuratorate or the victim's family against sentences they consider too lenient are more often reported as successful. For example, Sun Ruigang was executed on 5 May 1999 for the crime of murder and additionally sentenced to three years imprisonment for disturbing traffic. It was reported that Harbin City Intermediate People's Court originally sentenced Sun to life imprisonment on 4 December 1997 plus three years for the reported crime of involvement in a lethal traffic incident. The victim's family appealed and the sentence was increased.<sup>41</sup>

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<sup>39</sup> For more details see People's Republic of China: Law Reform and Human Rights (ASA 17/14/97); The Death Penalty in China 1996: Breaking Records, Breaking Rules (ASA 17/28/97); The Death Penalty in 1997 (ASA 17/28/98); The Death Penalty in 1998 (ASA 17/57/99).

<sup>40</sup> Guangxi Legal paper 28/9/99.

<sup>41</sup> People's Public Security News 15/05/99.

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On 23 January 1999, Du Shanghong, a 30-year-old worker was executed for alleged murder. He was originally sentenced to a suspended death sentence on 29 October 1997. The procuratorate appealed the sentence as being too lenient and in March 1998 the sentence was duly increased to death.<sup>42</sup> It is not uncommon for the defendant and the procuratorate to appeal at the same time and for the sentence to be increased at the end of the process.

### **Final Approval of Death Sentences**

Under the Criminal Procedure Law, final approval of the death penalty rests with the Supreme People's Court in Beijing. In presentations to UN bodies, China's diplomats continue to present this as a significant safeguard against overuse of the death penalty. However, subsequent legal interpretations issued by the court have delegated powers of final approval back down to the High People's Courts and Military Courts for the majority of crimes.<sup>43</sup> Some legal analysts in China have described this as unconstitutional as it nullifies an additional safeguard for defendants set out in national law.

### **LETHAL INJECTIONS AND ORGAN TRANSPLANTS**

Execution by lethal injection as an alternative to the firing squad was introduced in China in the revised Criminal Procedure Law in 1997. It was first introduced on an experimental basis in Yunnan province. Although its use is now beginning to spread, this method was used in only five reported executions monitored by Amnesty International in 1999. For example, in the summer of 1999 it was used in Hunan Province to execute Zou Guiyun a 53-year-old woman convicted of poisoning her husband.

Lethal injection was reported as being *"faster, safer and less traumatic, allowing extreme punishment which is at the same time humane in spirit and in keeping with world trends"*<sup>44</sup>. It has also been reported that "Doctors appointed by the relevant courts administer the injections".<sup>45</sup> The involvement of doctors in executions runs contrary to internationally accepted standards of medical ethics. The Chinese Medical Association is a member of the World Medical Association which is opposed to medical participation in executions.

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<sup>42</sup> Procuratorial Daily 23/01/99.

<sup>43</sup> "Supreme People's Court "Notice on Delegating the Power of Approval of Death Sentences in Some Cases to High People's Courts and People's Liberation Army Military Courts", 26 September 1997. Final approval of the court was retained only in cases involving crimes of endangering national security, disruption of the order of the socialist market economy, embezzlement and bribery (chapter 1,3 and 8 of the Criminal Law); and for drug offences tried in provinces which had not had approval specifically delegated to them.

<sup>44</sup> *Xian Evening News* 21/02/99.

<sup>45</sup> Xinhua 14/05/98, see also Amnesty International, Lethal Injection: The Medical Technology of Execution (ACT50/01/98/corr).

There are compelling arguments to end judicial executions immediately, and the continued application of medical skills, techniques and medication to the extinction of human life at the behest of the state remains an abuse calling for the strongest rejection by organizations involved in health care. There are also well grounded fears that the use of lethal injections may facilitate the removal of organs from executed prisoners for transplantation - a practice which has been well-documented in China. Lethal injection can be used to execute a person without damaging crucial organs. This could lead to an ill-defined boundary between the execution itself and the subsequent resuscitation and removal of organs, since medical procedures involved in transplantation of major organs need to commence while the prisoner is still alive.

As in previous years there continue to be many news reports and testimonies from people alleging that the organ transplantation from the bodies of executed prisoners does take place and in some cases, does take place to order. Amnesty International has been unable to gather concrete evidence of these allegations. The Chinese authorities have denied that the trade in organs from executed prisoners takes place. However the one official document publically available which relates to organ trafficking is not backed up by specific provisions in the criminal law and its legal status and effectiveness are questionable. No prosecutions for such offences have yet been reported.<sup>46</sup>

**KEYWORDS:**

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<sup>46</sup> For more details see People's Republic of China: The Death Penalty in 1997 (ASA 17/28/98).