

£CHINA

@Victims in their thousands: the death penalty in 1992

1. Introduction

China has sentenced to death and executed more prisoners in 1992 than ever since the 1983 mass "crackdown against crime" in which 20,000 people were reportedly executed. Amnesty International's survey, based on the limited information available, indicates that at least 1,890 people were sentenced to death in 1992, of whom at least 1,079 were executed. The real figures are probably much higher.

In 1993, this trend has apparently continued. Seventy-one prisoners were reportedly executed on 9 January 1993 alone as part of the yearly "anti-crime crackdown" carried out by the government in the run-up to the Chinese New Year festival. From January to May 1993, Amnesty International recorded more than 400 death sentences, of which about 300 were reportedly carried out. Hundreds more executions have probably been carried out without publicity.

The proportion of those convicted of economic crimes among those sentenced to death appeared to be increasing. Many were sentenced to death for offences which did not involve the use of violence and which in other countries are punishable only with fines or imprisonment.

On 9 June 1992, for example, six men were executed in Chengdu, Sichuan Province, because they had allegedly stolen a total of 300,000 *yuan* (US\$ 52,160) worth of telecommunications wire between April 1990 and March 1991.

On 18 October 1992, Luo Deming was sentenced to death for allegedly selling alcohol under a fake brand name. He reportedly sold ordinary spirits under the prestigious *Maotai* name. Luo Deming made an alleged total profit of over two million *yuan*. The Supreme People's Court approved the death sentence on 4 November 1992, stating that Luo's action had "infringed the interests of the Maotai Distillery and the consumers" and "severely disrupted the socialist economic order", so that "the circumstances of the offence were especially serious". To Amnesty International's knowledge, it is the first time in China that the death penalty has been applied to a person accused of infringing trademark rights.

On 10 July 1992 in Jinan, Shandong Province, five men were executed for stealing money from train passengers. The prosecution said that the five were part of a 15-strong gang which, from April 1990 to July 1991, had stolen a total of 173,760 *yuan* (US\$ 30,220). Four

other men were executed on the same day in Jinan because they had allegedly stolen goods worth 30,000 *yuan* (US\$ 5,216) from railway warehouses "over a long period of time".

On 12 May 1992, in the remote province of Qinghai, three men were executed for allegedly stealing 14 cars between April 1988 and November 1989 as well as 7,246 *yuan* (US\$ 1,260) worth of other goods such as cassette recorders and bicycles.

The death penalty is also increasingly used to deal with alleged drug offenders. From January to June 1992, in the southwestern province of Yunnan alone, 277 people were officially reported to have been sentenced to death for drug trafficking. Nationwide, more than 920 death sentences were passed in 1992 for drugs-related offences.

2. More executions, not less

Figures compiled by Amnesty International suggest that the number of death sentences and executions has grown since 1990. This has apparently not resulted in any reduction in the crime rate. Amnesty International recorded 980 death sentences (750 executions) in 1990 and 1,650 (1,050 executions) in 1991. Officials are regularly quoted in the official press as saying that criminality remains "serious". Calls by political leaders for "a severe crackdown" on "serious crime" are routine. Despite these calls and the officially-sanctioned severity of tribunals, there has been no indication that years of massive use of the death penalty have helped in any way to reduce the incidence of criminality in China.

Amnesty International compiles statistics on the use of the death penalty based mainly on reports in the official press, reports of public notices posted outside court buildings and accounts of sentences provided by witnesses of public sentencing rallies. The figures compiled in that way cannot be complete and therefore underestimate the real number of death sentences and executions. Comprehensive statistics are compiled by the Supreme People's Court, which by law must either review or be informed of all death sentences, but they are classified as a "state secret". Some sources estimate that there may be over 5,000 death sentences in China each year.

Amnesty International is concerned that the use of the death penalty has increased in China in recent years, and that a growing number of death sentences have been passed for economic offences, theft and drug trafficking. Economic offenders may be sentenced to death if they are involved in cases classified by the authorities as "very serious"- that is, if the "economic loss" caused by the defendant is above a given threshold (see page 5). As China's economy grew rapidly in the past years, this threshold has been reached more often than in the past, even by first-time offenders.

3. A criminal procedure weighted against defendants

Chinese legal experts have expressed concern about laws and judicial practices which result in prisoners in capital and other cases being afforded less rights than provided for under international standards.¹

Those who suffer most from these faults in the protection of human rights are the poor and the less-educated, who are often unaware of their rights and of the legislation which leads to their execution. They are caught defenceless in an administrative and legal quagmire: they have no access to effective defence and the legal arsenal deployed against them is overwhelming.

The police often detain suspects for months to interrogate them and obtain confessions. The Criminal Procedure Law allows the police to hold suspects for at least four and a half months before a decision is taken on whether or not to prosecute them. In practice, detention before prosecution often lasts much longer. During that period suspects have no right to obtain a lawyer's assistance or to meet with a judge.²

Once a court decides to adjudicate a case - usually several months after arrest - detainees can seek the assistance of a lawyer but they often have no time to prepare an effective defence. If normal procedures apply, the trial may take place just seven days after the defendant receives the bill of prosecution.

Furthermore, some defendants can be brought to trial without advance notification of the trial and of their right to appoint a lawyer and without being given in advance a copy of the bill of prosecution. This applies to cases involving murder, rape, robbery, causing explosions or other acts which "seriously endanger public security" under legislation adopted in 1983.³ In such cases defendants are either tried without a lawyer or with a court-appointed one who has had no time at all to prepare the defence.

Even in cases which are not tried under the 1983 legislation, the right of lawyers to meet with detainees and their powers to challenge the findings of the prosecution are severely limited. In practice, lawyers have access to only a part of the file concerning a defendant; they

¹ See for example: "Chinese Criminal Procedure Law and Human Rights" in *Peking University Law Journal*, No 2, 1992, p. 38-43. The author criticizes the absence of presumption of innocence in Chinese legal practice and the failure of tribunals to call witnesses, especially for the defence.

² See for example: *Torture in China*, AI Index ASA 17/55/92, December 1992 and *Continuing Patterns of Human Rights Violations in China*, AI Index ASA 17/32/92, May 1992.

³ See *Decision of the Standing Committee of the National People's Congress Regarding the Procedure for Rapid Adjudication of Cases Involving Criminal Elements Who Seriously Endanger Public Security*, 2 September 1983.

cannot confront witnesses and are effectively barred from challenging the validity of the charges. In many cases, lawyers merely call for mitigation of the sentence. Amnesty International believes that many criminal cases are processed without the defendants getting any advice at all from a lawyer.

About 65 offences are currently punishable by death, according to a study by Chinese scholars: this amounts to one third of all offences punishable under the Criminal Law. The scholars have criticized this excessive use of the death penalty, arguing that crimes such as "speculation", "corruption", or "bribery" should not be capital offenses.⁴

There is no presumption of innocence in Chinese legal practice.⁵ Decisions on guilt and sentence are generally made outside the court hearings of the cases by committees subject to political influence. In some cases a "preparatory court" (*yupeitíng*) meets to decide on cases on the basis of the findings of the police and of the requisitions of the prosecution, but without the presence of the accused and of the defence lawyer. Besides, all "major and difficult" cases - which include those liable to the death penalty - are submitted for discussion and decision to the court's "adjudication committee" (*shenpan weiyuanhui*)⁶, a body set up in each court to supervise judicial work. Again, the adjudication committees make decisions on the basis of files and without the presence of defendant or lawyer.

As a result of the powers vested in the "preparatory courts" and in the "adjudication committees", the formal trial procedures have little bearing on the outcome of cases. Although witnesses could in theory be called before the courts to testify for the defence, this rarely happens in practice. In the overwhelming majority of cases known to Amnesty International, court verdicts are almost verbatim reproductions of indictments presented by prosecutors and take virtually no account of the defence.

In cases involving theft of goods or "economic loss" to the State, death sentences appear to be imposed almost mechanically when the amount of the alleged theft or loss exceeds 30,000 *yuan* (US\$ 5,216).⁷ This threshold appears to be very loosely interpreted: for example, when a death sentence is imposed after the value of goods allegedly stolen by a defendant over a long period of time is added up to reach the 30,000 *yuan* level.

⁴ See *Sixing Zhidu Bijiao Yanjiu (Comparative Research on the Death Penalty System)*, by Li Yunlong and Shen Deyong, published by the China Public Security University, February 1992.

⁵ See note 1.

⁶ Article 107 of the Criminal Procedure Law.

⁷ See *Circular of the Supreme People's Court and the Supreme People's Procuratorate Concerning the Revision of Monetary Criteria in Crimes of Theft*, 30 December 1991.

Once a death sentence is imposed, the defendant may lodge a single appeal to a higher court, generally a Provincial or Municipal High People's Court. If no appeal is lodged, the High Court reviews the sentence as a matter of course. No hearing is normally held on appeal: the High Court simply reviews the file of the case, including any submission made by the defendant or the lawyer. The original verdict is hardly even changed in appeal.

If a death sentence is confirmed on appeal there is no further avenue for appeal. In principle, defendants may seek commutation of their sentence by the President of the Republic or the Standing Committee of the National People's Congress, which have the constitutional authority to grant pardons or amnesties. However, there is no known record of death sentences being commuted in that way since at least the early 1980s. Petitions for commutation do not suspend the execution of the sentence.

4. Ill-treatment of prisoners sentenced to death

Prisoners sentenced to death are constrained with handcuffs or feet-shackles, or both, until their execution. A prisoner sentenced to death is informed of the sentence as soon as it is passed, but if the sentence is confirmed on appeal, the prisoner is usually informed only a few hours before the execution takes place.

There are no "death rows" in China. Prisoners under death sentences are generally held in detention centres until they are taken away for execution. Detention centres are meant to hold detainees awaiting trial and prisoners serving short sentences or terms of administrative detention. They are more crowded and have worse sanitary conditions than prisons, which hold prisoners after they have been tried. Whereas prisons are administered by the Ministry of Justice, the detention centres are administered by the police. The procuracy, which is nominally in charge of supervising the treatment of detainees, does not do so effectively.⁸

According to former detainees, prisoners under death sentence are sometimes kept handcuffed and shackled on a chair for the night preceding execution, to prevent suicide or acts of insubordination. Fellow detainees may be required by guards to keep a permanent watch on such prisoners.

Some prisoners sentenced to death are taken to "mass sentencing rallies", where their name, crime and punishment are announced publicly to "educate the masses". During the process, they are forced to stand facing the crowd with their head bowed and their hands tied

⁸ See *China: Update on Torture*, AI Index ASA 17/12/93, March 1993.

behind their back. Some are also paraded in trucks through cities before being taken to the execution ground (despite an official ban on such parades).⁹ Executions are normally carried out with a single bullet shot in the back of the head, although in some cases the shot is fired through the heart.

5. Organ transplants

Organs and tissues from executed prisoners are reported to be widely used for transplantations without the consent or knowledge of the executed prisoners or their relatives. Amnesty International is concerned by various aspects of this practice, including the apparent dependency on executed prisoners as a source of organs for transplantation and its possible link to increased use of the death penalty.

According to medical and paramedical professionals who have spoken to Amnesty International, executed prisoners are used as "donors" for kidneys, hearts, corneas, skin and other tissues. Although practices may vary from place to place, it is reported that in the majority of cases the authorities do not seek the consent of prisoners for the use of their organs after execution.

Executed prisoners appear to be a major source of organs for transplantations. A former transplantation surgeon who recently left China reported that over 90% of all kidneys transplanted there come from executed prisoners (at least 1,000 kidney transplants were performed in 1989).¹⁰ One Chinese medical doctor told Amnesty International that, in the absence of official programmes encouraging organ donation by members of the public, transplantations in effect depend on the availability of organs from executed prisoners.

Some hospitals in Beijing have reportedly specialized in certain kinds of organ transplants: the Youyi (Friendship) Hospital reportedly specializes in kidney transplants; Tongren Hospital in corneas, Jishuitan Hospital in skin and Anzhen Hospital in heart transplants. Kidney transplants from executed prisoners are apparently often performed at the Zhongshan Hospital in the southern city of Guangzhou. Hospitals in Mudanjiang (Heilongjiang province), Shanghai and Xi'an also reportedly perform such transplantations.

According to one source, the following procedure is usually followed: the head of the Intermediate People's Court notifies the Deputy Head of the court's executive office about

⁹ See *People's Republic of China: the Death Penalty in 1990*, AI Index ASA 17/17/91, February 1991.

¹⁰ See Ronald D. Guttman, MD, "On the Use of Organs from Executed Prisoners", in *Transplantation Reviews*, Vol. 6, No 3 (July) 1992, pp 189-193.

death sentences, and the latter in turn informs the relevant government Health Department. There, the person in charge of such cases telephones the relevant hospitals with details, such as the date of the executions, the number of people to be executed and medical details of those to be executed. After execution, the bodies are taken to the hospital by ambulance and some of the operations are carried out in the ambulance. Relatives of the executed are not told about the transplantations, the source said, and part of the doctors' task is to conceal all signs of the operation. Similar methods of operating after the executed prisoner is pronounced dead have been described by other sources.

Several sources indicate that the consent of prisoners to have organs removed after execution is not sought. There are also indications that often prisoners are not told the reason for medical tests performed on them before execution.

To the knowledge of sources consulted by Amnesty International, there is no procedure for prisoners giving approval to organ removal and no published legislation on it. The official newspaper *Fazhi Ribao (Legal Daily)* in July 1989 referred to that practice, criticizing the lack of legislative guidelines on the use of organs. The article was based on a case where an apparently illiterate prisoner had agreed orally to organ removal after execution. The author of the article said:

"Since in China there are relatively few donors of human organs, some medical units and People's Courts get together and use the opportunity of the execution of criminals to use organs of executed prisoners without obtaining the agreement of prisoners' families. By so doing they can obtain relatively healthy human organs and they do not need to spend money. But I reckon that this method is incorrect from a legal point of view.

"... Although some criminals are executed and deprived of their political rights, their other rights as Chinese citizens remain intact and their last wills themselves are the embodiment of their exercise of rights; these legitimate rights should be respected. The Justice Ministry has ruled clearly: the question of the use of the bodies of those sentenced to death is very important from the point of view of medicine and science. However, from the point of view of China's legal system and of its social customs, it is not only the relatives of the criminals who disagree, but it is also the masses who are badly influenced.

"Although the body of executed criminals may be used when no-one claims it, in other cases the assent of the relatives should be obtained beforehand...

"In my view death penalty prisoners' last words about such important issues as the disposal of their bodies.... should be recorded in writing and bear the thumbmark of the person making the oral will; it should be transmitted to the relatives in the form of an official

legal document.... The units in charge of executing prisoners should give consideration to this work".¹¹

Amnesty International is unaware of any change in the procedures for organ removal since this article was published. Jin Yongjian, China's ambassador to the United Nations (UN) in Geneva, stated before the UN Committee against Torture in April 1993 that organs of executed prisoners have been used for transplant operations "only in rare instances" and "with the consent of the individual" due to be executed. This statement is not supported by the information obtained by Amnesty International.

Executions followed by organ removals are in effect quasi-medical operations. Blood tests are performed by medical personnel prior to execution to determine the suitability of the prisoner as organ "donor". Medical personnel are present at execution grounds, although they are specifically requested not to wear white coats and to use an ambulance without markings if they have to take the executed prisoner's body to hospital for organ removal.

Hospitals receive payment from patients (or their work unit) for performing transplantations of organs from executed prisoners. Contrary to World Health Organization guidelines, some of the money they receive goes beyond payment for the cost of the operation itself. According to medical personnel formerly involved in such operations, hospital personnel send gifts and otherwise compensate police personnel involved in executions which lead to the removal of organs. One source told Amnesty International that hospitals need to "compete" for organs and therefore try to channel some of their profits from operations to officials in charge of executions.

Amnesty International is deeply concerned about these practices. It believes that the use of organs from executed prisoners poses serious ethical problems regarding informed consent and risks an escalating involvement of the medical profession in the death penalty. The organization is concerned in particular that:

- ◆ prisoners do not appear to give free consent to removal of organs after executions, or may be coerced into giving consent; furthermore in some cases they are not told about the transplantations or the reason for medical tests performed on them before execution;
- ◆ executions are in effect transformed into quasi-medical operations;
- ◆ decisions concerning the timing of a particular execution could be influenced by pressure to use the organs of the prisoner concerned;

¹¹ "Some Thoughts on the Processing of the Wills of Executed Criminals" by Shi Kai, *Fazhi Ribao* 19 July 1989

- ◆ hospitals and officials in charge of overseeing executions may derive financial profits from the use of organs from executed prisoners, which is both unethical and likely to contravene the World Health Organization guidelines on transplantations.
- ◆ the widespread use of organs from executed prisoners and the apparent dependency on executed prisoners as a source of organs for transplantation, may become an obstacle to putting an end, or even limiting, the use of the death penalty, and may lead to increased use of the death penalty in China

6. Amnesty International's recommendations

The Chinese authorities say they do not oppose abolition of the death penalty in principle. Officials and experts have suggested that abolition could take place at some future date, when the "national conditions" are right and "reform" has made sufficient progress. But the increase in the use of the death penalty in China in recent years suggests that the prospect of its abolition is actually receding.

Whatever the role of factors which appear to favour the use of the death penalty (such as perceived "popular support" for the death penalty, or so-called "cultural factors"), the government has an inescapable responsibility in its widespread use, because it has continuously increased the number of capital offenses and has encouraged judicial organs to interpret the law so as to make the death penalty applicable to defendants even in cases which did not involve the use of violence. In addition, grave loopholes in the judicial practice and guarantees available to defendants result in trial and appeal procedures seriously weighted against defendants. This is known to have resulted in at least some cases in innocent people being executed.

China should abolish the death penalty. In the absence of a political decision to do so in China at present, Amnesty International urges the authorities to reduce the number of offences which can be punished with death and to make public the number of death sentences and executions carried out each year. It also calls on the authorities to:

- ◆ review legal procedures in order to ensure that defendants in capital cases can actually exercise their rights and are afforded opportunities for a good defence and a fair trial which they are entitled to under international human rights standards;
- ◆ stop all executions until legal procedures have been revised;
- ◆ end the ill-treatment of prisoners under death sentence, especially the use of hand and feet shackles and the virtual incommunicado detention of such prisoners;

- ◆ ban the use of organs from executed prisoners for organ transplants without their free fully-informed consent; and

- ◆ establish procedures to ensure that the President of the Republic and the National People's Congress are able to consider requests for commutation of death sentences made by prisoners under death sentences, their lawyers or their relatives, and to ensure that no execution is carried out before such commutation is considered.