

## CHAPTER 5

### THE DEATH PENALTY

*(Taken from CHINA - No One is Safe: Political Repression and Abuse of Power in the 1990's, AI Index: ASA 17/01/96)*

The death penalty is applied arbitrarily in China, frequently as a result of political interference. There are hardly any safeguards to prevent miscarriages of justice.

Thousands of people are sentenced to death every year, often following grossly unfair and summary trials. Many of them are executed shortly after sentencing, usually by a single shot to the back of the head. In 1994 Amnesty International recorded more than 2,780 death sentences and 2,050 executions - three times as many executions as in the rest of the world. During the first half of 1995, the organization recorded some 1,800 death sentences and 1,147 executions in China. These figures, however, which are based on a limited number of published reports, are believed to represent only a fraction of the actual totals. The Chinese authorities do not publish statistics about the death penalty as they treat these as a "state secret".

Amnesty International opposes the death penalty without reservation in all cases on the grounds that it is the ultimate cruel, inhuman and degrading punishment and violates the right to life as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments.

Amnesty International has long been concerned about the extensive use of the death penalty in China and about many of the ways it is applied. These include the lack of safeguards to prevent miscarriages of justice, the use of

summary trial procedures in some death penalty cases, the parading of condemned prisoners before they are executed, the shackling of prisoners while they await execution and the use of organs from executed prisoners for transplants.

### **Extensive use of the death penalty**

The Chinese authorities have long used the death penalty extensively. They have also continued to expand its scope – from an original list of 21 offences under the 1980 Criminal Law, the death penalty now applies to an estimated 68 offences. According to international standards, the death penalty should be used only for the "most serious crimes". (45) The UN Human Rights Committee, a group of experts that monitors implementation of the International Covenant on Civil and Political Rights, has declared that the death penalty "should be quite exceptional measure". The UN has also called for the worldwide and progressive reduction of crimes carrying the death penalty.

During the first half of 1995, people were executed in China for a wide range of violent and non-violent crimes. These included: murder, attempted murder, manslaughter, armed robbery, robbery, rape, causing injury, assault, habitual theft, theft, burglary, kidnapping, trafficking in women or children, prostitution, pimping, organizing pornography rings, publishing pornography, hooliganism, seriously disrupting public order, causing explosions, destroying or causing damage to public or private property, "counter-revolutionary sabotage", arson, poisoning of livestock, drug-trafficking, killing a tiger, corruption, embezzlement, taking bribes, fraud, speculation and profiteering, forgery, reselling value-added tax receipts, tax evasion, stealing or illegally manufacturing weapons, illegally possessing or selling firearms and ammunition, stealing or dealing in national treasures or cultural relics, selling counterfeit money and blackmail. Others were sentenced to death and may have been executed for gambling, selling fake invoices, causing death through torture, bigamy and misappropriation of public funds.

In recent years, a growing number of people have been sentenced to death for non-violent offences such as theft, as well as for drug-trafficking, and some have been executed for relatively minor offences. In 1994, for instance, two peasants were executed in Henan province for stealing 36 cows and small items of agricultural machinery worth US\$ 9,300. According to some sources, a person can be sentenced to death if the "economic loss" involved is 40,000 yuan (about US\$ 5,000) or more.

Spates of executions regularly take place before major festivals or events, including the UN Conference on Women in mid-1995, or shortly after the authorities launch crackdowns on crime. A nation-wide anti-corruption campaign begun in 1993, for instance, has led to a large number of executions for corruption. This has had no apparent impact on corruption. Local authorities have applied the death penalty to make examples of certain types of offenders who are deemed to pose a problem locally. Thus the same offence can be punished by death in one province and by a term of imprisonment in another.

Death sentences also appear to be used by the authorities to ensure that sensitive policies are carried out. For example, Yu Jian'an, the vice-president of a hospital in Henan province, was executed for reportedly taking bribes in exchange for issuing false sterilization certificates. (46)

Amnesty International is also concerned that minors aged between 16 and 18 can be sentenced to death with a two-year reprieve. Chinese law allows the courts to pronounce death sentences in which execution is suspended for two years "if immediate execution is not essential" (Article 43 of the Criminal Law). In these cases, the prisoners must carry out "reform through labour" during the period of reprieve and their attitude is examined for evidence of "repentance" or "reform". If the prisoner shows appropriate signs of repentance then the sentence may be commuted to life or fixed-term imprisonment. However, if the prisoner is deemed not to have "reformed",

the execution is carried out at the end of the two-year reprieve. Thus, someone who was a minor at the time of the offence can be executed, in flagrant violation of international standards.(47) Although Chinese official sources claim that most of those sentenced to death with a two-year reprieve have their sentences commuted, they do not publish information on such cases. The fate of many of those who have received "suspended" death sentences remains unknown.

Advocates of the death penalty in China argue that its scope has been expanded to tackle growing crime, including violent and organized crime. However, there is no evidence to show that the extensive use of the death penalty has succeeded in reducing either the crime rate or certain kinds of crime. In fact, there is substantial evidence that all forms of crime have been steadily increasing in China during the past decade, despite increased use of the death penalty. The most recent survey on the relation between the death penalty and homicide rates, conducted for the UN in 1988, concluded that: "This research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment".

### Summary Trials

*"Once a head is chopped off, history shows it can't be restored, nor can it grow again as chives do, after being cut. If you cut off a head by mistake, there is no way to rectify the mistake, even if you want to."(48)*

**Mao Zedong, 1956**

Judicial errors can occur in any legal system. However, the chances of error are much greater when there is no protection for the rights of the accused, when there is a heavy reliance on confessions, when the outcome of a trial is decided in advance, and when the appeal procedure is a mere formality. In death penalty cases, judicial errors are irreparable.

According to many sources, the procedures in China for trial in death penalty cases are summary and grossly inadequate when a "law and order" campaign is under way. Even at the best of times, Chinese law does not include some of the minimum guarantees for fair trial spelled out in international human rights law. International standards make it clear that in death penalty cases there is a special obligation to ensure that the sentence is only imposed "after legal process which gives all possible safeguards to ensure a fair trial". (49)

In addition, some law enforcement and judicial practices, such as the use of torture to extract confessions, may result in wrong convictions in death penalty cases. Examples of innocent people who were executed have occasionally been cited by the Chinese press. For instance, in 1995 Li Xiuwu was declared innocent seven years after he was executed on conviction of murdering a farmer and stealing. Another man, Wei Liguang, was then executed for the same crime after being turned in to the police by associates.

Since 1983 some death penalty cases have been tried under legislation which clearly provides for summary trial procedures. The legislation was adopted on 2 September 1983 at the start of a nationwide "anti-crime campaign" that resulted in thousands of executions within a few weeks. This legislation was also used in the trials of scores of people who were summarily executed in the immediate aftermath of the 4 June 1989 crackdown. It continues to be used today.

The 1983 "Decision of the National People's Congress Standing Committee Regarding the Procedure for Rapid Adjudication of Cases Involving Criminal Elements Who Seriously Endanger Public Security" makes it clear that those to be tried under it are considered guilty before trial. It states that those "criminal elements" on whom death sentences "should be imposed" for offences "seriously endangering public security" should be tried rapidly and promptly "if the major facts of the crime are clear, the evidence is conclusive and they have incurred great popular indignation". The Decision further

provides that, in order to speed up trial procedures in such cases, the courts can bring defendants to trial without giving them a copy of the indictment in advance and without giving warning of the trial or serving summonses in advance to all parties involved. This means that defendants can be tried without the assistance of a lawyer and without knowing exactly what accusations they face until they arrive in court. The Decision also reduces the time limit for appeals against a judgment from 10 days to three days. Prisoners sentenced to death have the right to one appeal against the verdict, but these are rarely successful. Like the trials, they are usually a mere formality. If the defendant does not appeal, Chinese law provides for the case to be reviewed by a court higher than that which passed sentence in the first instance. The CPL, as adopted in 1979, also provided that all death sentences should be submitted to the Supreme People's Court for approval after review by a high court. This procedure, however, has been effectively curtailed in many cases since the early 1980s.

A permanent amendment to the law was introduced in 1983 to speed up the procedure for judicial review and approval in some death penalty cases. It allows the High People's Courts directly to approve some death sentences, instead of the Supreme People's Court. These cases are, as above, those concerning offences which "seriously endanger public security". As the high courts are also the bodies which hear appeals in death penalty cases, this measure means that the procedure for appeal and that for review and approval of the verdict are amalgamated into one, so that in many cases death sentences are approved by the High Court almost immediately after trial and the defendants are executed soon after being sentenced. Moreover, in violation of UN standards, Chinese law does not allow those sentenced to death to seek pardon or commutation of the sentence.

### **Execution of political activists**

Dozens of people were summarily executed in Beijing and elsewhere in the immediate aftermath of the 1989 crackdown. Others were sentenced to

death with a two-year reprieve on a mixture of political and criminal charges. For example, five people under suspended death sentences were reported in 1994 to be held at Beijing Prison No.2 for activities related to the June 1989 protests. They had been convicted of "counter-revolutionary sabotage" or "counter-revolutionary arson" in relation to the destruction of military vehicles and other property on 4 June 1989. Their current fate is unknown.

Several people were sentenced to death in connection with the 1990 "counter-revolutionary rebellion" in Baren township in the west of Xinjiang. They included Kurban Mohammed, Sulayman Sopy and Ghopor Awwal, who were reportedly publicly executed in Baren town centre in June 1992.

A number of Muslim nationalists have been executed in Xinjiang in recent years for alleged involvement in protests, underground political organizations or bombings. On 30 May 1995, for example, the authorities in Xinjiang publicized the execution that day of five Muslim nationalists accused of having planted bombs in Urumqi in 1992, one of which killed three people. Three of those executed were convicted of "causing explosions" and robbery, and the two others of forming a "counter-revolutionary group" and "counter-revolutionary sabotage". They had allegedly set up a clandestine party, the Islamic Reformers Party, and directed members of the group to rob a bank in order to buy weapons.

### **Treatment of prisoners sentenced to death**

Prisoners sentenced to death are frequently paraded in front of large crowds at "mass sentencing rallies" where their crimes and sentences are publicized. These rallies, and other similar public meetings to announce sentences, usually take place just before the prisoners are taken to the execution ground.

In June 1995, for instance, tens of thousands of people attended mass rallies in several provinces in south China to hear the announcement of death

sentences on scores of prisoners convicted of drug-trafficking. The prisoners were executed immediately after the rallies.

During such rallies, the prisoners are usually forced to face the crowd with their head bowed, hands tied behind their back and a placard announcing their name and crimes tied around their neck. Some are gagged to prevent them from shouting out. Prisoners tied in this way are also paraded in open trucks through the streets before they are executed. Amnesty International considers that these practices amount to cruel and degrading treatment.

It is also common practice in China for prisoners sentenced to death to wear handcuffs and leg irons from the time they are sentenced until they are executed. Regulations published in 1982 for prison and labour camp wardens stipulate that "leg irons and handcuffs may be used together on prisoners awaiting execution". Whereas the time limit for wearing shackles is normally 15 days, both official and unofficial sources indicate that there is no time limit for their use on prisoners sentenced to death.

Former prisoners have confirmed that it is routine for prisoners sentenced to death to be shackled until they are executed. For example, Chen Gang, a young worker from Xiangtan who had been sentenced to death shortly after his arrest in June 1989, was held at Longxi prison in Hunan province with his hands and feet shackled continuously for about 10 months. The shackles were only taken off when his case was reviewed in April 1990 and his sentence was changed to death with a two-year reprieve. During the same period, at the Guangzhou No.1 Detention Centre, several female prisoners who had had appeals against their death sentences rejected were kept in leg irons for more than a month before they were executed.

The use of leg irons and chains as instruments of restraint is prohibited by international standards. Other restraints such as handcuffs are only allowed in very limited circumstances, such as when prisoners are being moved. The

application of leg irons and chains and the prolonged use of other restraints amount to cruel, inhuman or degrading treatment and add to the cruelty of the application of the death penalty.

### **Use of organs for transplants**

The main source of organs for transplants in China is reported to be executed prisoners. There is no system of voluntary donation. It is estimated that up to 90 per cent of transplant kidneys come from executed prisoners. Other organs reportedly taken from executed prisoners include corneas and hearts. According to some reports, foreign nationals can travel to China and buy transplants using organs from executed prisoners.

Details of the organ retrieval process are closely guarded by the Chinese authorities, but information has emerged through security and health personnel involved in the procedure. A medical source interviewed by Amnesty International described the procedure followed when executions were imminent. According to the source, the head of the Intermediate People's Court (which passed the sentences) gave notice of impending executions to the deputy head of the court's executive office, who in turn notified the health department of the relevant local government. The health department then contacted the appropriate hospitals, giving the number and date of the executions and medical details of the condemned.

Prisoners who are selected to provide organs are given medical examinations.

Blood samples are taken, usually without the prisoner being told why the tests are being done. Once the execution has been carried out, the body is usually taken to the designated hospital in an ambulance. Sometimes, the organs are removed from the body immediately in a vehicle parked at the execution ground. Generally, the body is cremated and the ashes returned to the family, who cannot therefore verify if organs have been removed. If the family requests the return of the intact corpse, they are usually given a

bill for the prisoner's upkeep during detention, which is often beyond the family's means.

According to Chinese official sources, transplants of organs from executed prisoners only happen if the prisoners or their family give their consent. Regulations in force since 1984 require such consent except when no one claims the body or the prisoner's family "refuses" to claim it. However, despite the regulations and official assurances, many sources concur that transplant organs do not normally come from unclaimed bodies or following consultation with the prisoner's family, and that consent for organ retrieval is rarely sought from the condemned prisoner.

The close liaison between courts, health departments and hospitals over the distribution of transplant organs, the secrecy surrounding the process, the fact that organ transplantation represents a source of income for hospitals, and the reported practice of giving gifts to officials involved in the execution process, all suggest that in some cases the imposition and timing of the death penalty may be influenced by the need for organs for transplantation. The Chinese legal system provides no protection against such abuse.

#### END NOTES

45 UN "Safeguards guaranteeing protection of the rights of those facing the death penalty" (ECOSOC Death Penalty Safeguards), approved by Economic and Social Council, 25 May 1984, Resolution 1984/50. See also Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR).

46 See *China: Death penalty figures recorded for 1994* (AI Index; ASA 17/17/95) March 1995.

47 See Article 6(5) of the ICCPR and Article 3 of the ECOSOC death penalty safeguards.

- 48            Mao Zedong, "On the Ten Major Relationships", 1956, in  
*Selected Works*            of Mao Zedong, Vol 5, Beijing, 1977, pp 299-300.
- 49            Article 5 of the ECOSOC death penalty safeguards.
- 50            See "The Massacre of June 1989 and its Aftermath",  
AI Index: ASA 17/09/90, pp 54-57