

# .....PEOPLE'S REPUBLIC OF CHINA

## The Death Penalty in 1998

Amnesty International has recorded 2,701 death sentences and 1,769 confirmed executions in China during 1998. These figures include a number of sentences handed down in 1997 but not reported until 1998. They do not include many sentences which may be deduced from ambiguous reports, including the numerous press reports from China in 1998 which refer to "group" executions without revealing individual's names or the number of people executed.

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, as recorded in the attached log. 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 as well as public executions and the sentencing to death of minors - both contrary to Chinese law.

These minimum figures for 1998 reveal a state which sentences to death, on average, over 51 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 1998 Amnesty International has recorded a figure of over 25,500 death sentences in China and over 16,760 executions - an average of at least 2,800 death sentences and 1,850 confirmed executions every year in China.

Amnesty International opposes the death penalty unconditionally on the grounds that it constitutes the ultimate form of cruel, inhuman 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, the speed and fairness of trials and the wide range of offences punishable by the death penalty.

The last decade or more has seen a striking increase in the crime rates in China with the regional and national crackdowns on crime having no significant long term impact on the crime rates.

The death penalty still falls predominantly on those people with a low educational and social standing. It is significant that the largely white-collar crimes of corruption, embezzlement and fraud appear to be more frequently 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 or arbitrary executions reported in 1997 that he considered "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>1</sup>

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<sup>1</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. On 11 February 1998, Judge Zhang Jin from the Supreme People's Court announced that "The greater restriction [in the revised criminal law] on capital punishment shows that China cherishes the lives of criminals".<sup>2</sup>

On 6 October 1998, the semi official Guangming Daily outlined "China's Legislative Guarantees for Human Rights in the Judicial Field". It 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"

Such statements about the limited application of the death penalty are not borne out by some of the cases Amnesty International has monitored throughout 1998 and previous years. Additionally statements relating to a 'large reduction' in the use of the death penalty are not backed up by any facts or figures given by Chinese officials. Amnesty International has seen no evidence of such a large reduction. Furthermore such a pronouncement would be believed more readily if it was accompanied by the facts, the figures, and the individual cases behind them. Instead, national statistics on the death penalty remain a secret.

In April 1998 the United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, Bacre Waly Nidaye, announced that he was continuing to request a visit to China; "Since 1992 I have requested to visit China, for the same reasons that I visited the United States - the expansion and use of the death penalty which are not in conformity with international standards".<sup>3</sup> In April 1998 the United Nations Commission on Human Rights urged states to put a moratorium on executions and work towards abolishing the death penalty. The Commission was stated that in the majority of states there is a clear trend towards abolition. However exceptions like China remain. Mary Robinson, the UN High Commissioner for Human Rights, stated that "I hope the day will come when...with consensus, we rule out the death penalty because as High Commissioner, I must say, it is contrary to my sense of the dignity of the human person".<sup>4</sup>

Amnesty International's 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).

The following pages analyse some of the reports that Amnesty International has received during 1998. It is designed to be read alongside "People's Republic of China: The Death Penalty Log" (ASA 17/56/99) which is a chronological listing of reports of death sentences and executions in China in 1998 monitored by Amnesty International. These come from various sources, including the official Chinese media. Amnesty International is not in a position to confirm the accuracy of each report.

## ANALYSIS OF SENTENCING TRENDS

### 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

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<sup>2</sup>Xinhua 11/02/98

<sup>3</sup>Reuters 16/04/98

<sup>4</sup> Reuters 3/04/98

justice. The campaign continued throughout 1997 and into 1998 against selected crimes, including drug trafficking, corruption and value added tax fraud and “separatism” in Xinjiang. In many provinces since 1997 there are local or regional “Strike Hards” against crime in general or against targeted 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 huge public rallies are held to mark the start of a new “Strike Hard”. For example, on 25 August, 164 people were sentenced in 88 separate cases in “Strike Hard” rallies held by Guangzhou city and ten district courts. It was reported that “several” people were executed after the rallies.<sup>5</sup> In Tianjin, on 3 April four people were executed after a sentencing rally held as part of a “Strike Hard” campaign.<sup>6</sup>

On 11 December 1998, the Legal Daily newspaper reported that since September 1998, a “Strike Hard” campaign against ‘crimes of violence’ had been in operation and as a result, since then, Liaoning province alone had held ten public rallies to sentence criminals ‘seriously damaging public order’. In what was described as the biggest mass execution in Shenzhen city, 30 people were executed following sentencing by Shenzhen city Intermediate People’s Court as part of the national “Strike Hard Campaign” - a total of 53 people were sentenced in a mass sentencing rally on charges ranging from murder to robbery and theft and 39 people were given the death sentence.<sup>7</sup>

The Xinjiang Daily reported that 13 people were executed following sentencing by the Urumqi City People’s Court on 27 August 1998. An official was quoted as saying that the executions were carried out according to the “policy of...cracking down on crime”. On 10 June 1998, ten people were executed in Guangzhou in the south of China for various alleged crimes. It was reported that these were the first executions held after “intensifying” the “Strike Hard” campaign at the start of June. It is not clear from reports if this ‘intensification’ was a national or regional initiative.<sup>8</sup>

In May, Jiangxi province held a series of sentencing rallies in which 555 people were convicted and “a number” of serious offenders executed<sup>9</sup>. In May in Beijing it was reported that all Beijing courts had “recently” adopted “Strike Hard” initiatives against the crimes of burglary and theft.<sup>10</sup> In Tianjin it was reported that in the fourth quarter of 1998 the city cracked down on the theft and smuggling of motor vehicles. A total of 288 suspects were detained with 135 formally arrested.

In Shenzhen on 24 April a large rally was held which sentenced 40 criminals in over 11 cases. Of those it is believed that 14 received the death penalty and were ‘escorted’ to the execution ground straight after the rally to be shot.<sup>11</sup> On 29 June 1998, 37 people, including a woman, were sentenced to death at a public rally held at a sports stadium in Guangzhou city. After the rally eight people were executed. Of the 37, 33 were reported to have appealed their sentences. All appeals were rejected. The audience of 7,000 people allegedly included school children.<sup>12</sup>

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<sup>5</sup>Yangcheng Evening News 25/08/98

<sup>6</sup>Tianjin Daily 4/4/98

<sup>7</sup>Reuters 27/08/98

<sup>8</sup>Southern daily 11/06/98

<sup>9</sup>People’s Court News 21/05/98

<sup>10</sup>Beijing Evening News 04/05/98

<sup>11</sup>Shenzhen Legal Daily 25/04/98

<sup>12</sup>Yangcheng Evening News 30/06/98

## Public Rallies and the Parading of Prisoners

The Criminal Procedure Law outlaws public executions but does not expressly prohibit the public display of prisoners sentenced to death. The parading and humiliatiion of condemned prisoners at mass rallies or in trucks on the way to the execution ground remains common, even though a series of regulations outlawing the practice have been issued by government departments and judicial authorities since the 1980s.<sup>13</sup> The prisoners are generally paraded with their hands tied behind their back, their arms tied with rope and sometimes with a placard hanging from their neck listing their crime. As in previous years, mass rallies, public sentencing rallies and televised events have been held all over China in 1998. Often the prisoners are executed immediately after the rally.

Amnesty International believes that such practice constitutes cruel inhuman degrading treatment and adds to the inherent cruelty of the death penalty.

After an anti-drugs rally held in front of Chengdu Railway Station it was reported that nine criminals sentenced to death were paraded on a truck on their way to be executed. They were reportedly unable to conceal their fear of death and one "trembled throughout".<sup>14</sup>

On 24 June, three people were sentenced to death at a rally held by Baoshan city in Yunnan province. The rally was reportedly attended by 5,000 people.

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. For example, in April, Tianjin No 1 Intermediate People's Court held a rally to sentence people who had killed their spouses. Three people were taken to the execution ground after the rally and executed.<sup>15</sup>

The Qianjiang Evening News on 2 April 1998 carried a report on the last three hours in the life of Yan Chengcheng, who was executed on 10 March for "deliberate wounding". Yan Chengcheng was reportedly publicly sentenced at an open rally entitled "Strike Hard Public Meeting". The article states that Yan was brought onto the stage wearing handcuffs and leg shackles and when the sentence of death was read out the victim's mother shouted out 'revenge!'. Yan was then pushed onto the prison vehicle outside the rally where rain did not 'discourage' the crowds who lined the route.

On 5 June, the Xigu district of Lanzhou city, Gansu province, held a public sentencing rally at the cultural palace of Lanzhou Oil Refinery. More than 1,300 people were reported to have attended the rally. One criminal was sentenced to death and executed after his case was reviewed by the Gansu provincial High People's Court. No mention was made of any review by the Supreme People's Court. A further ten were formally arrested.<sup>16</sup>

Amnesty International is also concerned about common practices which constitute cruel degrading treatment of prisoners sentenced to death. Prisoners sentenced to death are usually kept handcuffed and some also have their feet shackled from the time they are sentenced to death until their

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<sup>13</sup> This prohibition has been 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>14</sup> Sichuan Countryside Daily 24/06/98

<sup>15</sup> China Women's news 21/04/98

<sup>16</sup> FBIS 1/07/98

execution. Those taken to public sentencing rallies are made to stand facing the audience with their hands tied behind their back wearing a placard on their chests, on which their name and crime are written.

They are usually forced to keep their head bowed by soldiers escorting them. In some cases, their feet are also chained and their mouth is gagged with a rope or wire tied tightly at their back to prevent them from speaking or shouting. These practices violate international standards on the treatment of prisoners.

## **Public Executions**

Amnesty International is also concerned that there have been reports of executions which have taken place in public - contrary to both Chinese Law and International Law.

On 20 January 1998, 11 Uighurs were executed after a public sentencing rally held on that day by the Ili Prefecture Intermediate People's Court, at which 45 "serious criminals" involved in four different cases were sentenced. The 11 executed included a man named in Chinese as Abudousilimu Kahaer (Abdusilim Kari, or Abbas Kari). Three other defendants were sentenced to death with suspension of execution for two years. The prisoners were accused of having "threatened state security and conducted reactionary incitement on a large scale", as well as "burning police cars, murdering ordinary people and injuring and killing basic level cadres".<sup>17</sup> According to unofficial sources, the 11 sentenced to death were publicly executed on 20 January 1998 in the village of Jelilyuzi, north of the city of Gulja (Yining). They had been arrested during an incident in the village on 26 July 1997, after a van of armed police arrived to arrest 15 villagers. According to the sources, the villagers doubted the guilt of those being arrested and a religious teacher from the village, the 50 year-old Abbas Kari, tried to intervene. He was immediately surrounded by the armed police and taken towards the police van. His students then tried to free him. A fight followed and quickly developed into a violent confrontation, during which the police van was set on fire by the religious students and several other people, including some police officers, were killed or injured. Armed police reinforcements arrived soon after and arrested 42 people, including Abbas Kari and 26 of his students. The 11 people reportedly executed in **public** in the village on 20 January 1998 included Abbas Kari and three of his students.

## **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 October 1<sup>st</sup>, and the marking of 'International Anti Drugs day' on 26 June.

On 29 September, just days before National Day, Luoyang City Intermediate People's Court held a public sentencing rally which was reportedly attended by tens of thousands of people.<sup>18</sup>

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 sentenced during a "strike hard"

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<sup>17</sup> *Xinjiang Daily*, 22 January 1998.

<sup>18</sup> Guizhou Public Security News 18 December 1998

or in the run up to a major event may attract a much harsher penalty, the death penalty, than if the sentence was given at another time.

For example in Guangdong province, Zong Hake and Pu Yingshun were both executed for drugs offences along with other criminals at a rally on 16 January 1998. They were then escorted to the execution ground and shot. Having read out the order finalising the death sentence, a Guangzhou Intermediate People's Court judge reportedly "solemnly stated "Spring Festival is arriving, some thugs are cherishing the illusion of gaining a windfall before going home for Spring Festival, but they will only come to the same end as these convicts" .<sup>19</sup>

Eighty nine criminals were executed in the weeks leading up to Chinese New Year in Beijing alone. It was reported that the executions were a "guarantee given at all levels of the Beijing justice system to

assure Beijing residents of a stable and peaceful Lunar New Year". It was said that the authorities would maintain the momentum of the "Strike Hard" campaign throughout Chinese New Year.<sup>20</sup>

On 21 January 1998, Xie Jianmin and Zhao Qijun were executed for drugs crimes and murder allegedly in order "to purify the air".<sup>21</sup> In the week from 23 to 29 April 1998, five people were sentenced to death as part of a province wide crackdown in Hebei for the Labour Day holiday on 1 May. Two people were accused of robbing goods from bus passengers to the value of 18,000 Yuan (approx US \$2,143). Three others were accused of stealing nine motorbikes and wounding four people in the process.<sup>22</sup>

### **Crime Types**

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<sup>19</sup>People's Daily 16/01/98 reported in SWB 09/02/98

<sup>20</sup>South China Morning Post 25/01/98

<sup>21</sup>Gansu Daily 09/02/98

<sup>22</sup>Hebei politics and Law News 08/05/98

As in previous years, people were executed and sentenced to death for a wide variety of crimes. It is difficult to determine the exact number of capital crimes because of the vague wording of many of the articles in the revised Criminal Law. However, capital crimes have been steadily increasing since the 1980s. Revisions to the Criminal Law in 1997 confirmed the increasing scope for the use of the death penalty, incorporating new capital crimes which were previously covered by regulations, as well as re-defining others. Many crimes are punishable by death if they are 'extremely serious' - but no precise interpretation exists for "extremely serious".

### **Drug Crimes**

In 1998, at least 461 people were sentenced to death for drug trafficking or possession of drugs, many of whom were confirmed to have been executed on or around 26 June, International Anti-Drugs Day.

At rallies in Foshan and Shantou cities, Guangdong province, a total of 12 people were sentenced to death and 11 executed on 24 June 1998. A further 32 people received terms of imprisonment. The defendants were reportedly involved in cases dating back to 1995.<sup>23</sup>

One hundred and seventeen people were sentenced in an anti-drugs rally held in front of the main Chengdu Railway Station in Sichuan province on 23 June 1998.<sup>24</sup> Wang Junli and Shen Wei were executed on 25 June 1998 after being sentenced by Beijing Railway Transport Intermediate Court.

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<sup>23</sup>Yangcheng Evening News 25/06/98

<sup>24</sup>Sichuan Countryside Daily 24/06/98

Ye Zhaoxiong was given the death penalty on or around 29 January 1998 for drug trafficking. It was reported by the Chinese media that two others in the same case were found guilty of producing and trafficking in drugs for which "no punishment less than death can appease the people's fury".<sup>25</sup>

### **Drink Driving**

This seems to be a growing crime which is increasingly attracting the death penalty. Wang Guojun was sentenced to death for murder on 20 March 1998 in Tianjin after he was found guilty of drink driving and injuring someone who died after being left by the side of the road. It was reported that the court applied "new" provisions in the revised Criminal Law which set punishment at imprisonment of seven years and above. Seven others accused of similar offences were also sentenced at the same time as Wang Guojun.

Bian Qingming, a driver at a driving school was sentenced to death on 2 December 1998 for "using dangerous means to harm public safety" for a drink-driving incident in which one person was killed and seven injured, one of them seriously. On 28 August 1998 Bian reportedly drank six litres of beer and some spirits before traveling home in a company jeep. When Bian's superior felt too drunk to drive, Bian was instructed to take over: however he crashed the car shortly afterwards. Bian's lawyer reportedly stated that Bian was too drunk to realize what he was doing and that the crime was not committed intentionally. The court decided that Bian knew drink driving was against regulations and that his action "caused serious harm to society so should be severely punished".

### **Economic Crimes**

People were sentenced to death for a variety of non violent economic crimes ranging from tax and value added tax fraud to counterfeiting, embezzlement and credit card theft.

Luo Feng, a 32-year old manager in a Beijing computer company, was sentenced to death on 22 June 1998. He was accused of embezzling a total of 3.9 million Yuan and accepting bribes. According to court documents, Luo Feng was found guilty of embezzlement, even though the court found that the amount of money allegedly involved was inaccurate and one charge was rejected. In his defence, Luo Feng's lawyers rejected the accusations on several strong counts.

### **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". In theory, this would have led to a large reduction in executions for theft, and the Supreme People's Court reported in September 1998 that such a reduction had taken place, without revealing the relevant figures. However executions for theft seem to have continued since the revised Criminal Law came into force and Amnesty International has recorded executions for theft in both 1997 and 1998. It remains to be seen how far the changes in the law will be consistently implemented in practice. The majority of reports have few details attached so it is difficult to ascertain if the executions and death sentences were for theft alone or for theft and other crimes.

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<sup>25</sup>Xinmin Evening News 29/01/99



It was reported by Hong Kong radio and other media that on 28 September seven people were executed following a mass public rally held by a local district court in Sichuan province. According to reports, a nineteen year old boy was one of those executed for the alleged crime of the theft of 60 yuan.<sup>26</sup>

In or around July 1998, five people were sentenced to death (two of them to the death penalty with a two year reprieve) for stealing from "ancient graves".<sup>27</sup>

Another example, is from August 1998 when Chen Rongbao, a 19 year old, was executed after being sentenced by Suzhou city Intermediate people's Court for robbery and theft. It was reported that he and others had boarded a boat in Shanghai and robbed people of 70,000 Yuan (US \$8,400), a mobile phone and pager, shirt, watch and cigarettes. They escaped by jumping into the river and one of the group was drowned.<sup>28</sup>

### Crimes Against Officials

In 1998, much prominence has been given to the harsh punishment of crimes committed against officials.

Lei Yuanling, a peasant, was executed on 26 September 1998 for the alleged attempted murder of an official. It was reported that on 2 March 1998, Lei had gone to sell two sacks of his rice and was detained by two officials from the local agricultural bureau who confiscated the sacks. Later that day Lei Yuanling saw the officials having lunch and attacked them in a fit of anger.

Another case involving confrontation with officials is the one of Rehem Sajeden. On 15 July 1998, a Uighur<sup>29</sup> man named as Rehem Sajeden was executed in Aksu immediately after a public sentencing rally held by the Aksu District Intermediate People's Court and attended by 5,000 people. According to a report in the official press, on 10 May 1998 Rehem Sajeden had killed the leader of the local Family Planning and Birth Control Office when the latter – a Uighur woman - had come to Rehem Sajeden's house "to talk to his wife about birth control". This visit was part of checks and medical examinations carried out by birth control teams on women of child bearing age in this area. According to the report, Rehem Sajeden fled after the murder but gave himself up to police after three days and "confessed to his crime". He was then tried by the Aksu Intermediate People's Court on 16 June 1998, found guilty of "intentional murder" and sentenced to death. His appeal against the verdict was subsequently rejected by the XUAR High People's Court.<sup>30</sup>

### Foreign Nationals and Extradition

The Chinese authorities have also executed scores of people who are not nationals of the People's Republic of China, including many from Hong Kong and Taiwan. It is not clear how many foreign nationals exactly have been sentenced to death but it is believed to run into many dozens, many of them Hong Kong and Taiwanese nationals. All death sentences involving Hong Kong, Macau and Taiwan affairs must be approved by the Supreme People's Court, but it is not clear if this safeguard

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<sup>26</sup>RTHK Radio 3 Hong Kong 29/09/98 and UPI 29/09/98

<sup>27</sup>Henan Legal News 17/07/98

<sup>28</sup>Suzhou Daily 13/08/98

<sup>29</sup>Uighurs are one of the indigenous people of the Xinjiang Uighur Autonomous Region in the north west of China

<sup>30</sup>*Xinjiang Daily*, 17 July 1998.

makes any impact in terms of a reduction in sentence or the increased likelihood of a two year reprieve.

One case involved a Hong Kong man, Chueng Tze-Keung, who was executed with four others on 5 December 1998 after appeals were rejected. Chueng's case caused controversy as he was tried in mainland China for crimes committed primarily in Hong Kong and because, by not requesting the trial in Hong Kong, the Hong Kong authorities were seen to be surrendering their judicial autonomy and authority to the mainland courts, which does not bode well for the future. Hong Kong does not have the death penalty. The Hong Kong authorities stated that they did not have enough evidence to prosecute Cheung in Hong Kong for the crimes he was subsequently executed for in China.

In mid-July it was reported that the Chinese authorities began an intensive national crack-down on smuggling in a bid to increase the collection of import duties and expose corrupt officials. In October Zou Weiquan, a Hong Kong business man, was executed for smuggling electrical goods and other items into China. Liu Jiachen, the Vice President of the Supreme People's Court stated that "People from Taiwan Macau or foreign countries caught smuggling into China will be punished according to Chinese law. If appropriate they could also be given the death penalty".<sup>31</sup>

It was also reported for the first time that a Swiss citizen, Manfred A (full name not given) was sentenced to death with a two year reprieve for the alleged murder of an ethnic minority girl. The alleged crime took place in April 1997 and the trial was held in October 1997. The verdict was only made known on 23 June 1999. Reportedly the "Swiss federal Foreign Affairs Bureau made numerous efforts to avoid the death penalty".<sup>32</sup>

## Two Year Reprieve

The Chinese authorities often claim that the use of the death sentence with a two year reprieve shows how 'careful' they are in using the death penalty. It is claimed that of those people sentenced to death with a two year reprieve, the majority have their sentence commuted to life after the two years has been served. Because the statistics on the death penalty are still regarded as a state secret, Amnesty International is in no position to verify this claim. However, Amnesty International is pleased to note that one of the revisions in the Criminal Law has made it, in theory, more likely for such prisoners to escape execution at the end of the two years .

However, as the following case shows, not all prisoners have their death sentences commuted: Wang Fujian was executed in Henan province on 13 October 1998. He had previously been sentenced to death on 16 October 1997 with a two year reprieve for murder. It was reported that in March 1998 his wife came to the prison and asked for a divorce. Following this, Wang twice tried to escape from the prison and was caught. It was then decided that he should be executed without receiving a commutation.<sup>33</sup>

## "Separatism"<sup>34</sup> and Public Executions

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<sup>31</sup> AFP 09/10/98

<sup>32</sup> SCMP 25/06/99

<sup>33</sup> People's Court News 22/10/98

<sup>34</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)

During 1997 and 1998 “separatism” was a major target of “Strike Hard”, and a crack-down on suspected Muslim nationalists and religious leaders intensified throughout 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. Amnesty International is aware of approximately 30 ethnic Uighurs sentenced to death in 1998 on these charges and related ones.

The XUAR is the only region of the People’s Republic of China where political prisoners have been executed in large numbers 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. Some of these cases have been publicly reported by the Chinese authorities, but others have not. 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. The 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.

On 25 May 1998, three Uighur people were sentenced to death for alleged armed robbery and murder. An official of the local court was reported as saying that the three were common criminals. However a radio monitoring service quoted local radio as saying the defendants were convicted of inciting a separatist rebellion in Xinjiang and that the three peasants had killed three Han Chinese peasants as part of a strategy of “killing one to frighten thousands” of Chinese settlers in their “homeland”. Government officials declined to comment on the case.<sup>35</sup>

In October 1998, according to unofficial sources, a group of young Uighurs, including Abdusalam Shamseden and Abdusalam Abdurahman, were sentenced to death after being convicted of political offences at a secret trial by the Ili Prefecture Intermediate People’s Court. They were accused of forming a political group and involvement in “armed activities to overthrow the government”, reportedly in connection with the February 1997 protests in Gulja (Yining) city. On 20 October 1998, 10 Uighurs, including two women, were reportedly executed after a public sentencing rally held in Urumqi. They were convicted of “separatist” activities and reportedly included six religious students.

### **Mitigating Circumstances and excessive punishment**

Many of the reports that are logged by Amnesty International tell harrowing stories of distress, emotional upheaval, severe poverty, and violence. While mitigating circumstances cannot be used as an excuse for crime, some of the stories of the thousands of people executed make for disturbing reading, revealing mitigating circumstances such as the violence of a spouse leading to unpremeditated murder in self defence or extreme hardship leading to theft and violence. Amnesty International does not condone any of the crimes, but in publicising the cases of these people it gives a voice to their stories in contrast to the harshness and finality of the death penalty.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary executions has made statements about mitigating circumstances in capital cases. 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 points, stated clearly that the abuse, violence and rapes which she suffered at the hands of her common-law

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<sup>35</sup>Reuters 25/05/98

husband should have been and were not considered by the investigating authorities or the courts as mitigating circumstances.

It was stated in the appeal that;

***“The Special Rapporteur 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.”***

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

Sun Changlan, a 36 year old woman, was executed on 24 April 1998 after being found guilty of the murder of her husband. It was reported that her husband used to beat her and her daughter as well as take her earnings for gambling. One night in July 1997 during a beating she stabbed him to death and was arrested and charged with his murder.

Xie Shuigui was sentenced to death for arranging the murder of her older brother. It was reported that her older brother used to rape and beat her so often that her husband divorced her. He became involved in criminal activities and beat her when she refused to help him. He also beat and mistreated his own wife and his younger brother who eventually developed a mental illness and left home. When the brother began to mistreat her father after the death of her mother, Xie decided to put an end to the situation.

Zhang Hanbin was executed on 15 January 1998 for the murder of his son. It was reported that Zhang was impoverished by three years of serious illness and his wife then divorced him, leaving him to look after their nine year old son. The local authorities arranged for the son to move into the care of a foster family nearby as it was obvious that Zhang had no means to support him. The night after the move, the family told Zhang that his son was crying and inconsolable. Zhang then took his son back home. Zhang decided that there was no other way to survive and then decided on suicide. He killed his son with a club and then tried to kill himself by beating and then when that failed by hanging himself. The rope reportedly broke and Zhang was revived and arrested for murder.

Recidivism is often taken into consideration in the prosecuting and sentencing of crimes. Re-offending is a factor in receiving a harsher punishment including the death penalty. For example on 23 March 1998, Shaoguan City Intermediate People's Court sentenced Zhong Wangxing to death and fined him 20,000 Yuan (US\$2,380). It was reported that on 13 December 1997, he slit a bus passenger's pocket and stole 30 Yuan (US\$3.5) and stabbed another passenger causing her serious injury. His appeal was rejected by the provincial high people's court, and he was executed following a public sentencing rally held on 5 June 1998. Zhong Wangxing had previously served a term of re-education-through-labour for pickpocketing.

The highly subjective criteria of the “masses anger” often appears to be used by courts to justify a death sentence for crimes which might otherwise attract a lower penalty. On 25 November 1998, Zhu Mingdong was executed following a public sentencing rally held in Xiangzhou County by Liuzhou District Intermediate People's Court. It was reported that two people were blinded in an armed vengeance attack by a group of villagers including Zhu Mingdong. The severity of the sentence was reportedly because of the serious damage to society and the “masses' anger”. It was also reported

that Zhu's family disputed the sentence, claiming that the two blinded men had in fact recovered their sight. The court argued that they had nevertheless suffered severe trauma from the attack.

On 30 April 1998 Li Shiqing was reportedly executed for the alleged crime of murder. Allegedly, on 28 August 1994, Li Shiqing was accused of unauthorized fishing and stabbed his accuser, who subsequently died. In May 1995, Taizhou City Intermediate People's Court sentenced him to death, with a two-year suspension. The dead man's mother appealed and reportedly some 531 neighbours of the dead man demanded an investigation and a harsher sentence. On 26 August 1996, Taizhou City People's Congress Standing Committee ordered fresh investigations into the case as they believed there were no grounds for leniency. Zhejiang Province High People's Court ordered a retrial on 31 December 1996. On 26 February 1997 Taizhou City Intermediate People's Court sentenced him to death. Li's appeal was rejected and on 29 December 1997, the provincial high people's court upheld the sentence. He was executed around 30 April 1998.

## **TORTURE**

Amnesty International continues to record cases where confessions extracted by torture often result in miscarriages of justice. For example, Gao Ding was sentenced for murder and robbery by Harbin City Intermediate People's Court on 13 September 1996. It was reported that he retracted his confession and said that it had been made under duress. He then appealed his sentence. He was re-tried following the arrest of a co-defendant and sentenced to death on 20 May 1998.<sup>36</sup>

Another case of torture and miscarriage of justice occurred in Henan Province, Pingdingshan City, Ye County. In 1996, following a series of burglaries and murders, the injury of several people and the theft of 1800 Yuan and several bicycles, a man named Zhou Shaodong became the main suspect. He was arrested on 18 February. It was reported that he refused to accept the 'proof' of his alleged guilt. Because of the start of the national "Strike Hard" campaign in 1996, the local Ye county Public Security Bureau (PSB) made the case their priority and set up a special investigation team, for rapid investigation and trial. Eventually they "fully overcame Zhou's resistance". On 7 May another suspect, Zhou Guanjun, was arrested and after investigation, the two confessed to over 10 crimes. The police then declared the case solved, and on 14 May 1996 held a meeting at the scene of the crimes and "the two defendants were paraded in 48 jin [approx 48 lb] shackles for all to see". On 12 November 1996 a medal ceremony was held for those who solved the case.

However, both fathers did not believe their sons were guilty, as Zhou Guanjun had been at a wedding that night, and Zhou Shaodong had been at a friend called Ma's house all the time. They both hired defence lawyers from Wuyang county Yinhai lawyers office, and asked the village doctor to be the defender. The doctor personally interviewed those at the wedding and got four Communist Party members and two village cadres to be witnesses. He wrote this down and Zhou Guanjun's father, Zhou Jinmu, handed it over to the police, but the person who accepted it said it was worthless. Ye county PSB Legal office reportedly stated that as the two had already accepted that they had committed the crime and there was no way to change the situation. "Hearing this, and that his son would be executed, Zhou Jinmu bought a coffin and funeral clothes for his son."<sup>37</sup>

However, the family was persistent and in January 1997 the lawyer and defender went again to the scene of the crime and investigated for three days to get further evidence about the defendants whereabouts. They drafted a legal opinion form saying that the detention, arrest, and prolonged detention of the two was wrong. However when they delivered it to Ye county PSB, a leading cadre

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<sup>36</sup>People and law September 1998

<sup>37</sup>China Women's news 15/05/98

reportedly replied that as the two had already confessed, there was no use in collecting any new evidence whatsoever. The Public Security Bureau in the local city, Pingdingshan, also said the same. In October 1997, when the two had been in custody for 500 days, another robbery occurred in Lehe city and the suspects of that crime gave details of the robbery which Zhou Shaodong and Zhou Guanjun were accused of. The two were finally released and emerged from detention with stories of severe torture and beatings to obtain their confessions.

Later Zhou Guanjun testified " As soon as I reached the police station, they used rope to tie me up and made me kneel on the floor, asked if I had killed someone, beat me when I said no. Policemen Cha and Gao used electric batons to hit me and electric wire to tie me up and give me shocks. When I passed out, they revived me with cold water, made me kneel on shards of glass, and pushed my head into muddy water. "When they beat me I said I murdered [the victims], when they stopped I said I didn't".<sup>38</sup>

Zhou Shaodong said: "they tied me up and taught me to say the first incident happened at.xx.. the next.at xx.. etc. when I didn't retell it properly, they beat me with belts, clubs, until I passed out. The last time policeman Lan showed me a gesture, saying it was part of the crime, and they videoed me copying it".

The men are still reportedly scarred from the torture and Zhou Shaodong walks with a limp.

On 31 October 1997, when the two were due to be released from custody after the detention of the other suspects, the public security officials attempted to make a deal - they would be given 30,000 Yuan (approx US\$3,800) in exchange for not taking the case any further.

In another case, Zhang Jiaqing was originally sentenced to death on 31 March 1993 by Fuyang city Intermediate People's Court for the alleged murder and rape of a girl on 12 August 1992. Zhang Jiaqing admitted to the murder after six days of questioning. However he did not sign his confession and claimed he had been forced to make it. Ten witnesses said that, at the time of the murder, Zhang was working with them. The prosecution claimed that Zhang had throttled the victim until she fainted but the post mortem revealed no signs of strangulation. On 24 June 1993 the Anhui provincial High People's Court ordered a retrial because the facts were unclear. At the second hearing on 20 December 1993, although the facts were still unclear and there was no new evidence, the original Fuyang court once again sentenced Zhang Jiaqing to death and ordered him to pay compensation. The provincial high people's court ordered a third retrial at which Zhang Jiaqing was sentenced to life imprisonment and to pay compensation. However on 20 October 1997 Fuyang city Intermediate People's Court accepted that Zhang Jiaqing could not have committed the crime and he was pronounced innocent. Zhang was finally released in November 1997 after over five years in prison awaiting death.<sup>39</sup>

Li Huikun was sentenced to death by Yueyang city Intermediate Peoples Court on 25 April 1996 for the murder of his wife. When Li Huikun appealed against his sentence it was discovered that he had been tortured three times to force a confession. The Provincial High people's Court ordered a retrial as they believed there was insufficient evidence of motive. The Intermediate People's Court then sentenced Li Huikun to life imprisonment. Li Huikun appealed again and on 16 February 1998 the Provincial High People's Court reportedly overturned the sentence and found him not guilty.<sup>40</sup>

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<sup>38</sup>China Women's news 15/05/98

<sup>39</sup>Youth Daily 01/06/98

<sup>40</sup>Politics and law Today 13/03/98

## **MEDIA COVERAGE**

National statistics on the use of the death penalty remain a state secret even though Article 212 of the Criminal Procedure Law stipulates that “execution of death sentences shall be publicly announced but shall not take place in public view”. Domestic criticism of this continuing secrecy has not been heeded.

In 1998 as in previous years, there were many reports of executions which referred to “many” or “group” executions and did not cite individual names nor the specific numbers of people executed.<sup>41</sup> When death penalty cases are publicized, media reports are often inflammatory. For example on 15 January 1999 the Legal Daily reported the execution of Cao Chunsheng for murder by stating that “In the summer of 1998, a righteous bullet ended Cao Chunsheng’s evil life”.

It was reported that Zeng Sheng was sentenced to death on 1 July 1998 by Maoming city Intermediate Peoples Court in Guangdong province for accepting bribes. The media comment went on to state that on receiving the sentence Zeng “urinated in his trousers and was speechless”.<sup>42</sup>

In the case of the woman Sun Jie and Song Wei for murder and robbery the Liaoning Legal Daily wrote that during sentencing, “Sun Jie received the written judgement with shaking hands. Uncontrollable tears of regret streamed down her face. But no amount of tears could wash away her evil crime”.<sup>43</sup>

## **CHANGES IN THE CRIMINAL LAW**

Revisions to the 1980 Criminal Law were passed at the National People’s Congress (NPC) in March 1997 and came into force in October 1997. 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 NPC Standing Committee, have been included.<sup>44</sup>

On 17 November 1998, Ma Yulan received the death penalty for organising prostitution and running a brothel. It was reportedly the first time under the revised Criminal Law that Beijing No 1 Intermediate People’s Court had handed down a death sentence for such a crime.

Wang Jian was sentenced to death on or around 14 September 1998 in Shanghai for the crime of “forging financial documents”. This was reportedly a new addition to the revised Criminal Law and the first time it had been used in Shanghai.<sup>45</sup>

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<sup>41</sup> Such reports are not entered into the Death Penalty Log and do not figure in the total numbers of death sentences in the log.

<sup>42</sup> Legal Daily 24 September 1998

<sup>43</sup> Liaoning Legal Daily 1 April 1998

<sup>44</sup> For more information see People’s Republic of China: The Death Penalty in 1997 (ASA 17/xx/98) and People’s Republic of China: The Death Penalty Log 1997 (ASA 17/xx/98)

<sup>45</sup> Shanghai Liberation News 15/09/98

## Courts

Many people each year are tried and sentenced in courts that form part of the criminal justice system but are in addition to the local, regional and provincial level courts. The most well-reported courts of this type appear to be the rail transport courts. According to the Southern Daily, the number of crimes being committed on trains has increased dramatically, especially the robbery of passengers and drug transporting.<sup>46</sup> 1998 saw a 40% increase in the number of crimes occurring on trains in Guangdong province over 1997. This is despite the heavy use of the death penalty by the railway courts for robberies and drug trafficking crimes committed on the railways.

## Appeals

Successful appeals by defendants are very rare. In some cases the Procuratorate or even the victim's family will appeal the sentence as being too lenient. These types of appeals often succeed. 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.

For example, Ma Zengde was charged with the murder of a 14 year old girl in May 1992. He was tried by Binzhou Prefecture Intermediate People's Court and found not guilty because of insufficient evidence. However, the procuratorate appealed the verdict and the Shandong Provincial High People's Court found him guilty. He was executed on or around 15 July 1998. It is not clear if the procuratorate bought forward any more new evidence.<sup>47</sup>

In another case, Mei Xudong was sentenced to death, with a two-year reprieve, on 10 July 1997 by Baoji City Intermediate People's Court. It was reported that on 26 February 1996, after a disagreement in a card game, Mei had doused a man with petrol and set him alight; the man died two months later. Mei's defence of insanity was rejected. The court was said to have shown leniency because he had paid substantial hospital bills for the treatment of the victim's burns and 15,000 Yuan (US\$1,786) to the widow of the victim on the order of the court. However (presumably on appeal by the procuratorate), on 9 December 1997, he was sentenced to death by Shaanxi Provincial High People's Court after a retrial. Mei Xudong's own appeal was rejected on 29 July 1998 and he was finally executed on 27 August 1998.

On 30 April 1998, Wu Zhongming and Zheng Shuiyao were given the death penalty and the death penalty with a two year reprieve respectively. It was reported that originally on 5 December 1998 Wu Zhongming, Zheng Shuiyao (and others) were tried on charges of smuggling. Wu Zhongming received a life sentence and Zhang received a 19 year sentence. On 24 December their appeals were turned down in a second trial. On 30 April the Jiangsu Provincial High people's Court made a final judgement in the case and "upgraded" the sentences from life and 19 years to the death penalty and the death penalty with a two year reprieve. It is not known if the two have been executed.

## Under 18's and Pregnant Women

Welcome revisions in the Criminal Law withdrew the applicability of the death penalty for all people under the age of eighteen at the time of their alleged offence and pregnant women. Previously, juveniles between the ages of sixteen and eighteen and pregnant women could be sentenced to death with a two year reprieve. It was not clear whether those already under suspended death sentences would have their sentence commuted. As a very small number of such cases were reported in the

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<sup>46</sup>Southern Daily 11/12/98

<sup>47</sup>Legal Daily 15/07/98



past, it is unlikely that these revisions will cause a significant decrease in the overall number of reports of death sentences.

However as in 1997, there have been several cases of people whose age has been in question and several cases where it would seem that the defendant was actually under 18 at the time of the crime and yet still received the death penalty. This would be in violation not only of Chinese law, but also of international human rights standards.

In August 1998, Liu Ying, a twenty year old girl from Sichuan province, was sentenced to death with a two year reprieve. She was accused of spraying her mother with sulphuric acid on 25 December 1995. The alleged crime occurred when she was only 17 years old .

In another case in Beijing seven people were executed on or around 3 December 1998 for various crimes. The seven named people included Hu Ronghua, who appears from the reports to be only 17 years old at the time of his execution.<sup>48</sup>

Another case where the new provisions seem to have been ignored is that of Ouyang Jiangbao who was sentenced to death with a two year reprieve on 21 August 1998 by Guangzhou city Intermediate People's Court for robbery and theft. It was reported that a total of ten people were sentenced to death, with Ouyang receiving a two year reprieve because he was under eighteen at the time of the alleged crimes. Under Chinese law he should not been sentenced to any form of the death penalty.<sup>49</sup>

## **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 reported that the first such execution took place in Yunnan province on 28 March 1997<sup>50</sup> on the orders of Kunming Intermediate People's Court after "thousands" of experiments on animals. In September it was announced that a total of 22 people had been executed by lethal injections on the orders of this court in 1997.<sup>51</sup> However, in November 1997, the same court reported that it intended to keep secret the exact number of people executed by lethal injection. In February 1998 it was reported in Hong Kong that the Kunming authorities had just executed the fourth 'batch' of people by lethal injection. The report further stated that the quickest to die took 31 seconds and the slowest took 58 seconds.<sup>52</sup> Other provinces began to execute prisoners by lethal injection in 1998, including Hunan Province where the Changsha Intermediate People's Court which executed Yang Meng on 9 May 1998. It was reported that Yang Meng, who was paralyzed, asked specifically for lethal injection. After obtaining approval from the Hunan Provincial High People's Court the execution was carried out.

The Chinese authorities state lethal injection is a more 'humane' method taken up for reasons of 'civilisation'.<sup>53</sup> According to Kunming Intermediate People's Court officials, the adoption of lethal injections brings Chinese practice more into line with international punishments. However, the United

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<sup>48</sup>Beijing Evening news 5 December 1998

<sup>49</sup>Southern Daily 22/08/99

<sup>50</sup> Legal daily 9/11/97, Xinhua 4/11/97, SCMP 5/11/97

<sup>51</sup> AFP 29/09/97, Reuters 29/09/97 citing *Liaoning Daily Weekend*

<sup>52</sup>Sing Pao 03/02/98

<sup>53</sup> Hebei Daily 9/07/97

States of America is the only other country which use lethal injection as a normal method of execution.<sup>54</sup>

In the Zhejiang Legal News on 2 February 1998, there was a discussion on the use of lethal injection stating that "political and legal opinion says that this is civilized progress - but some people think that such a clean way of dying is not enough to calm the public anger". It goes on to state that it may even be seen as "too easy a death for criminals".

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<sup>54</sup>Guatemala has used it once in 1998 and the Philippines has also used it, Taiwan is the only other country which currently provides in law for lethal injection, but has not yet used the method. For more details see Amnesty International; Lethal Injection : The Medical Technology of Execution (ACT 50/01/98).

It has been reported that "Doctors appointed by the relevant courts administer the injections".<sup>55</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.

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 organisations 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.

In the spring of 1998 two people were arrested in New York for the alleged trafficking in human organs from criminals who had been executed in Hainan province in the south of China. It is not clear how much, if any, official involvement was tied up with this particular case; however a major foreign company specialising in kidney dialysis pulled out of a joint venture with China in the light of the reports about the market in organs.<sup>56</sup>

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>57</sup>

Anyone wishing further details or to take action on this issue should also consult People's Republic of China: Death Penalty Log 1998 (AI Index ASA 17/56/99) and internal document CHIRAN ASA 17/62/99

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<sup>55</sup> Xinhua 14/05/98, for more information on this subject consult Amnesty International, Lethal Injection: The Medical Technology of Execution (ACT50/01/98/corr)

<sup>56</sup> Scotland on Sunday 08/03/98

<sup>57</sup> For more details see People's Republic of China: The Death Penalty in 1997 (ASA 17/28/98)