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People's Republic of China

Executed “according to law”? - The death penalty in China

Introduction

This document describes the process that someone suspected of committing a capital crime goes through under the Chinese criminal justice system, from detention through to execution. This process will be described using examples of cases researched by Amnesty International, and others monitored in the official press in China.

As will be seen, there is potential for the violation of human rights at every stage of the criminal justice process leading to execution. For example, access to immediate legal representation upon detention and adequate opportunity to prepare a defence thereafter is frequently denied; there is an ever-present risk of torture or other forms of ill-treatment to extort a confession which can then be used in court; verdicts and sentencing can be determined by internal committees before any trial hearing; defendants do not have the right to cross examine witnesses during trials, which are often curtailed; and an appeal can be rejected following a summary examination of a case by judges behind closed doors. Convicts are then subjected to the ultimate cruel and inhuman treatment – execution and the denial of the right to life.

Article 5 of ECOSOC Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1989/64): *Urges Member States to publish [...] information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, [and] the number of persons under sentence of death [...]*

Article 212(5) of the 1996 Criminal Procedure Law of the People's Republic of China states: *Execution of death sentences shall be publicly announced [...]*

The People's Republic of China continues to regard statistics on the death penalty as a “state secret” despite internationally accepted instruments requiring all countries still using the death penalty to publish statistics on its use.

It remains, therefore, impossible to know the number of people executed each year by the Chinese state. Since the 1990s, Amnesty International has published an annual log of reported death sentences and executions in China, compiled mainly through monitoring media reports. For example, the organization monitored reports of 1,060 executions in China in 2002, but the true total is certainly far higher. Only a fraction of death sentences and executions carried out in China are publicly reported, and the extent and detail of the information selectively released by the relevant authorities fluctuates widely year by year. Amnesty International's figures therefore reflect levels of reporting rather than underlying trends.

A partial illustration of the shortfall between the reports and reality is given by the following example: According to Amnesty International’s monitoring, 17 people were executed in Yunnan Province in 2002. However, in March 2003 the official press reported that Yunnan Province had acquired 18 mobile execution chambers – buses bought and converted at a cost of 500,000 Yuan (US\$60,000) each in which lethal injections are administered to convicts.¹ It is highly unlikely that 17 executions per year in the province could justify investment in a fleet of 18 such vehicles.

According to one estimate based upon internal Chinese Communist Party (CCP) documents, 60,000 people were executed in the four years from 1997-2001, an average of 15,000 people per year, although this figure includes extra-judicial killings, such as those killed during police operations including pursuit and apprehension.² Should this be the case, it would mean that the Chinese state chooses to execute or otherwise kills one person for every 86,000 head of population. The 1,060 judicial executions in China in 2002 recorded by Amnesty International is far more than the total executions recorded in the rest of the world combined; but if the figure is close to 15,000 per year, it would imply that China, with the largest population in the world, kills a higher proportion of its citizens than any other country, apart from Singapore which has one of the smallest populations.³

Chen Zhonglin, director of the law academy at Southwestern University of Politics and Law who is also a senior national legislative delegate from Chongqing Municipality, said on 15 March 2004 that China executes “nearly 10,000” people every year. When this figure was reported in the national and international media, Chen was quick to clarify it was an estimate based upon tabulations by scholars and other senior legislators, and did not represent an official figure.⁴

Chen’s estimate came in the wake of pronouncements made by senior officials on the need to reduce the number of executions in China. However, if statements on reducing the number of executions are to be taken seriously, it is incumbent on the Chinese government to regularly publish full statistical information on its use of the death penalty.

Another major concern of Amnesty International linked to the extensive use of the death penalty is the inadequacy of the Chinese criminal justice system. The conduct of the Chinese police, procuratorate and judiciary consistently fails to meet international human rights standards. Moreover, officials in the criminal justice system consistently disregard due procedure under China’s own national laws, encouraged and facilitated by the authorities with national and regional “strike hard” campaigns. These profound failings are exacerbated yet

¹ “Death, Yunnan Style”, *Beijing Today* 7 March 2003.

² *China’s New Rulers – The Secret Files*, Andrew J. Nathan and Bruce Gilley, Granta Books, London 2003. p. 191.

³ According to UN figures, Singapore executed 285 people between 1994-1999, accounting for an annual rate of 13.57 people per million of population, where Singapore has a population of 3.5m. (UN doc E/CN.15/2001/10.) By the same standard but over a different period (1997-2001) and based on the estimate of 15,000 executions per year, China executed 11.54 people per million per year, where China has a population of 1.3bn.

⁴ “China executes 10,000 people a year: NPC delegate”, AFP 15 March 2004.

further by a de-centralised legal administration operating well in excess of its capacity, and therefore prone to serious errors.

National and local “strike hard” anti-crime campaigns provide the context for accelerated rates of executions in China. The current national “strike hard” campaign started in April 2001. Luo Gan, a politburo standing committee member and director of the Central Committee for the Management of Public Security, has urged security organs to “[...] continue to adhere to the ‘strike hard’ principles” in on-going security work.⁵ Luo Gan also called for the campaign to be extended for another year on 18 July 2003,⁶ although it is unclear whether this resulted in an actual policy decision for the campaign to continue on a national level. Xiao Yang, president of the Supreme People’s Court, also called in December 2003 for the campaign to continue in response to continually rising levels of crime in China.⁷

“Any crime which the law regards as serious should certainly receive serious penalties, and any crime which is punishable by the death penalty according to the law, should certainly receive the death penalty. This will ensure the healthy progress of strike hard.”

Hu Jintao, former Secretary of the Standing Committee of the CCP Central Political Bureau (Legal Daily 4 May 1996), now President of the People’s Republic of China and Chairman of the CCP.

According to official national statistics, the conviction rate for all crimes for the five years from 1998 to 2002 was 99.1%.⁸ An almost ‘perfect’ conviction rate is deeply worrisome in the context of factors demonstrated in this document, such as increased detentions and arrests, torture to extort confessions, restricted access to legal representation, the absence of a presumption of innocence, extreme pressure on the police, procuratorate and courts to secure convictions during “strike hard”, and courts passing guilty verdicts through a sense of political obligation and a desire to maintain resolve rather than rigor. Under such

⁵ “China’s Luo Gan stresses ‘strike hard’ struggle during Guangxi inspection tour”, Xinhua 15 April 2003. (BBC Mon AS1 AsPol ron.)

⁶ “Luo Gan urges continuation of China’s ‘strike hard’ campaign”, Xinhua 18 July 2003. (BBC Mon AS1 AsPol tbj.)

⁷ “China says crime rising; calls for ‘Strike Hard’ campaign to continue”, AFP 15 December 2003.

⁸ The Supreme People’s Court reports that between 1998 and 2002, 3,222,000 people were convicted of crimes at their trial of first instance – that is, prior to appeal – and only 26,521, or 0.9% were found innocent. The report offers no statistics on the success or failure rates of appeals. “Supreme People’s Court Work Report”, available (in Chinese) at: www.court.gov.cn dated 11 March 2003.

circumstances, miscarriages of justice are inevitable, and it is possible that people are executed ‘in error’ on an almost daily basis.⁹

Amnesty International opposes capital punishment on the grounds that it constitutes the ultimate cruel, inhuman and degrading punishment, and violates the right to life. Its effectiveness as a unique deterrent to crime has never been proven,¹⁰ and with levels of crime continuing to rise in China, its irrelevance to crime control and prevention cannot be ignored. As ever more countries in the world remove the death penalty from their penal codes, its abhorrence is becoming ever more widely recognised. Amnesty International cites violation of the right to life as proclaimed in the Universal Declaration of Human Rights and numerous other international human rights instruments as grounds for the death penalty to be abolished.

To this end, and in light of the severe and systemic failures in the police, procuratorate and judiciary’s processing of capital cases described in this document, Amnesty International calls upon the People’s Republic of China to impose an immediate moratorium on the use of the death penalty.

A note on sources

The examples of abuses of power and miscarriages of justice reproduced throughout this document from the Chinese media are presented in order to show ‘the tip of the ice-berg’, and to expose them to a wider international audience. They will be supported by other relevant examples of human rights violations from Amnesty International’s own research, and by drawing upon the published research of other governmental and non-governmental organisations. A small amount of information in this document was sourced from confidential sources, and will not be referenced to protect the identity of those sources.

1. International standards on the death penalty

The international community of states has adopted many standards concerning the death penalty.

In 1977 the United Nations (UN) General Assembly agreed that “[...] the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment” (resolution 32/61 of 8 December 1977).

The International Covenant on Civil and Political Rights (ICCPR) entered into force in 1976. Article 6 of the ICCPR states:

⁹ It should be noted that Amnesty International has not encountered a single official admission that an individual has been executed ‘in error’ under China’s current Criminal Law, resulting for example in a posthumous pardon.

¹⁰ See: *The Death Penalty – A Worldwide Perspective* (third edition), Roger Hood, Oxford University Press, 2002. pp. 208-232.

- 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.**
- 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.**
- 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.**
- 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.**
- 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.**
- 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.**

Other articles of the ICCPR are also relevant to death penalty cases, including Article 14 on the right to a fair trial.

In 1982 the UN Human Rights Committee, the expert body charged with monitoring compliance with the ICCPR, concluded in a general comment constituting authoritative interpretation of Article 6 of the ICCPR that the death penalty should be “[...] a quite exceptional measure”, and that “[...] all measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life”.

In 1984 the UN Economic and Social Council (ECOSOC) adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (ECOSOC Safeguards). Among other things, these Safeguards state that the scope of the death penalty “[...] should not go beyond intentional crimes with lethal or other extremely grave consequences”, and that any legal process resulting in an execution must give “[...] all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights”.

Later ECOSOC resolutions called for information on the death penalty to be made public (resolution 1989/64 of 24 May 1989), and for the observance in death penalty cases of other UN human rights standards such as the Basic Principles on the Role of Lawyers (resolution 1996/15 of 24 May 1989).

In 1990 the UN Convention on the Rights of the Child (CRC) entered into force. Like the ICCPR, the CRC prohibits the use of the death penalty against child offenders – people convicted of crimes committed when they were under 18 years old.

International treaties are binding on states that have become parties to them. In ratifying a human rights treaty such as the CRC, China has formally agreed to respect its provisions. An event such as the execution of a child offender in Jiangsu Province in January 2003 is in clear violation of China’s obligations under the CRC.

Signature of a treaty indicates an intention to become a party to the treaty by ratifying it at a later date. In signing the ICCPR, China has signalled its intention to ratify that treaty. Although China is not yet formally bound by the ICCPR, it should be assumed that China will observe the major provisions of that treaty pending ratification. Under international law, a state that has signed a treaty must do nothing to defeat the “object and purpose” of that treaty.

Alongside human rights treaties, the UN has adopted many resolutions setting out standards for the protection of human rights. Although not formally binding under international law, these “soft law” instruments should not be regarded as mere recommendations which governments are free to observe or ignore. Many of these resolutions have been adopted without a vote, a sign of strong agreement by states that their provisions should be followed. Thus, the 1984 ECOSOC Safeguards were subsequently endorsed by the UN General Assembly in a resolution adopted without a vote, and the 1989 and 1996 ECOSOC resolutions also were adopted without a vote.

2. The scope of the death penalty in China

2.1 Categories of people excluded from the death penalty in China

Article 6(5) of the ICCPR states: *Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.*

Article 37(a) of the Convention on the Rights of the Child states: [...] *Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.*

Article 1 of ECOSOC Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1989/64) recommends: [...] *that member states take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by: [...]*

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

Article 49 of the 1997 Criminal Law of the People's Republic of China excludes from being sentenced to death pregnant women and people who were juveniles (under 18) at the time of committing a capital crime.

Amnesty International has not monitored any instances of pregnant women being executed. A pregnant woman convicted in October 2003 of involvement in the murder of her stepson was reportedly sentenced to life imprisonment rather than the death penalty because she was pregnant at the time of trial.¹¹ The Supreme People's Court has ruled that if a pregnant woman miscarries in detention while awaiting trial for a capital crime, she cannot then be sentenced to death.¹²

Amnesty International has monitored a report of a man executed in January 2003 when he was 18 years old for a murder he allegedly committed when he was 16 years old. According to a press report on the case, police and judicial authorities were aware that Zhao Lin was a juvenile at the time of the crime, but his execution still went ahead.¹³ Such an execution is in clear violation of China's obligations under the UN Convention on the Rights of the Child (CRC).

China ratified the CRC on 1 April 1992. In May 1996 the UN Committee on the Rights of the Child expressed concern that in China "[...] national legislation appears to allow children between the ages of 16 and 18 to be sentenced to death with a two-year suspension of execution". It recommended that Chinese legislative measures be reviewed to ensure conformity with Article 37 of the CRC, which prohibits imposition of the death penalty for offences committed by persons below 18 years of age.¹⁴

In October 1997 a revision of the Criminal Law came into effect eliminating the practice of imposing death sentences on people convicted of crimes committed when they were below 18 years old. However, reports since 1997 suggest that people under 18 at the time of the offence have continued to be executed because the courts do not take sufficient care to determine their age.¹⁵

¹¹ "Step-mother hires killer to dismember step-son, because the death penalty cannot be carried out on the pregnant , is sentenced to life imprisonment ", Southern Daily, available (in Chinese) at: www.nanfangdaily.com.cn dated 11 October 2003.

¹² "The Supreme People's Court reply to the question on whether at the time of trial the death penalty may applied to a woman who has naturally miscarried in detention", available (in Chinese) at: www.court.gov.cn dated 4 August 1998. Note, the question was raised by Hebei Province High People's Court, presumably in relation to a case before them.

¹³ "A young condemned prisoner's last words a warning to the world", Hebei Legal News, 12 March 2003. Also available (in Chinese) at: www.qsnyf.org dated 20 January 2003.

¹⁴ UN document CRC/C/15/Add.56, paras. 21, 42.

¹⁵ For a full report into the global issue of death sentences passed against juvenile offenders, see: *Stop child executions! Ending the death penalty for child offenders*, Amnesty International 21 January 2004. (AI Index: ACT 50/001/2004.)

There is no upper age limit for application of the death penalty under Chinese law. Wei Youde was reportedly almost 90 years old when he was executed in Hunan Province in December 2002, convicted of murdering a neighbour in a dispute over property.¹⁶

Article 18 of the 1997 Criminal Law defines provisions for diminished criminal responsibility and lesser punishments for offenders who commit crimes whilst mentally ill. However, despite a psychiatric diagnosis that Guo Peilong was mentally ill when he murdered his parents in 1994, he was still sentenced to death by Beijing Number Two Intermediate People’s Court on 20 July 2000.¹⁷

Article 48 of the Criminal Law provides for a death sentence to be suspended for two years “[...] if the immediate execution of a criminal punishable by death is not deemed necessary”. However, there are no guidelines in Chinese law establishing when a suspended death sentence would be more appropriate than immediate execution. Amnesty International is aware of cases where death sentences have later been suspended for two years when the person sentenced has performed a “meritorious service” in prison while awaiting appeal or execution, most usually by supplying information leading to the arrest and conviction of other criminals.

Significantly, and illustrated by examples cited in this report, when appeal courts infrequently exercise their powers to revise death sentences where the facts are unclear or the evidence inadequate, they appear most frequently to simply revise the sentence to a suspended death sentence. Miscarriages of justice are therefore also likely to be prevalent amongst prisoners currently serving suspended death sentences.

Chinese government representatives assert that suspended death sentences are usually commuted to life imprisonment. However, relevant statistics to substantiate these assertions have never been published. Under Article 48 of the Criminal Law, a prisoner sentenced to a suspended death sentence can still be executed if “there is verified evidence that he has intentionally committed a crime” during the period of suspension.

2.2 Committing a “most serious” crime

Article 6(2) of the ICCPR states: *In countries which have not abolished the death penalty, sentence of death may only be imposed for the most serious crimes.*

Article 7 of the UN Human Rights Committee General Comment on ICCPR Article 6 states: *The Committee is of the opinion that the expression “the most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure.*

¹⁶ “A journalist from this paper interviews China’s oldest death row prisoner”, Beijing Legal Daily, 16 December 2002 (in Chinese).

¹⁷ See: *Peoples Republic of China: The death penalty in 2000*, Amnesty International September 2002. (AI Index: ASA 17/032/2002.)

Article 1 of ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984/50) states: *In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.*

Article 48 of China’s 1997 Criminal Law states “The death penalty is only to be applied to criminal elements who commit the most serious crimes.” This principle is echoed in several international instruments on restricting the death penalty, cited directly above.

The UN Human Rights Committee has determined that many categories of crime or specific offences do not fall within the “most serious crimes” stipulated in ICCPR Article 6(2). These include, “theft by force” and “crimes that do not result in loss of life”.¹⁸ Burglary is a capital offence under Article 264 of China’s Criminal Law, and the “serious circumstances” under which many violent offences become capital crimes in Chinese law are not limited to loss of life. Moreover, one of China’s foremost experts and commentators on the death penalty, Professor Zhao Bingzhi from People’s University in Beijing, states that 69% of capital crimes defined in China’s Criminal Law are non-violent.¹⁹

The UN Human Rights Committee has also specified that “[...] it is contrary to the Covenant to impose the death penalty for crimes which are of an economic nature”.²⁰ However, it remains potentially a capital offence under China’s Criminal Law for example to commit tax fraud (Article 205, 206); to produce counterfeit currency (Article 170); to embezzle state property (Article 382); to demand or accept a bribe (Article 383); to smuggle contraband across China’s borders (Article 151) as well as to be a pimp (Article 240) and to kill a panda.²¹

In addition the Committee considers that excessively vague definitions in law of acts for which the death penalty may be imposed are inconsistent with Article 6(2) of the ICCPR.²² The Committee has repeatedly expressed concern about broad definitions of “essentially political offences” couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria and not be confined to “the most serious crimes”.²³ Some crimes under Chinese law, including vaguely worded crimes of “endangering national security”, are also potentially capital offences, including “splitting the

¹⁸ CCPR/c/79/Add.25 (1993)

¹⁹ “The question of gradual abolition of the death penalty for non-violent crime from the point of view of China’s death penalty policies,” Professor Zhao Bingzhi, available (in Chinese) at: www.jcrb.com dated 18 July 2003.

²⁰ CCPR/c.79/Add.1(1992) para. 5

²¹ The Supreme People’s Court issued a notice on 24 July 1987 setting sentence for those who kill a panda and sell its skin at between 10 years and death.

²² CCPR/CO/75/VNM, 26 July 2002 para 7

²³ CCPR/CO/72/PRK (2001)

state” or “undermining national unity” (Article 103) and “supplying state secrets or intelligence overseas” (Article 111).

2.3 The number of capital crimes

There are some discrepancies between observers on the precise number of capital crimes in China, although most Chinese legal scholars in the field claim there are 68 capital crimes contained in 47 Articles of the revised Criminal Law promulgated in 1997.²⁴ However, since then, the scope of certain Articles has been expanded by the Supreme People’s Court and the legislature’s interpretations, applying the death penalty to ever broader sets of circumstances, and thereby increasing the number of people potentially liable to execution.

For example, following amendments to the Criminal Law in December 2001, the death penalty can be applied to vaguely-defined offences of funding or carrying out “terrorist crimes”, and for belonging to a “terrorist organisation”, even if actual membership has involved no other crime.²⁵ A judicial interpretation issued by the Supreme People’s Court in May 2003 could apply the death sentence to people suffering from SARS and who break quarantine under a public order clause in the Criminal Law to prevent the deliberate spread of “contagious-disease pathogens”.²⁶ Another judicial interpretation issued on 8 September 2003 and valid from 1 October 2003 could apply the death sentence to people involved in the unauthorised production, trade and storage of precisely defined quantities of toxic chemicals, commonly used in cases of deliberate poisoning.²⁷

UN General Assembly resolution 32/61 states: [...] *the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty can be imposed with a view to the desirability of abolishing this punishment* [...]

The UN Human Rights Committee has stated that: “*Extension of the scope of application of the death penalty raises questions as to the compatibility with Article 6 of the [ICCPR]*.”²⁸

²⁴ For example, Roger Hood, author of *The Death Penalty – A Worldwide Perspective* (third edition, Oxford, 2002, p. 86), states there are “at least 62 and possibly 68 crimes” punishable by death in China; the Congressional-Executive Committee on China 2003 Annual Report states there are 65 capital offences (www.cecc.gov); Zhao Zuojun, a legal scholar at Zhengzhou University Law Academy in Henan Province, states there are 68 offences carrying the death penalty; and Professor Zhao Bingzhi also states there are 68 capital crimes.

²⁵ See: *China’s anti-terrorism legislation and repression in the Xinjiang Uighur Autonomous Region*, March 2002. (AI Index: ASA 17/010/2002.)

²⁶ “Chinese judicial organs issue interpretations on punishing SARS-related crimes”, Xinhua 15 May 2003.

²⁷ “Poisoners face harsh punishment”, China Daily, 8 September 2003.

²⁸ Preliminary observations of the Human Rights Committee on the third periodic report of Peru submitted under Article 40 of the Covenant, UN document No. CCPR/C/79/Add.67, 25 July 1996, paragraph 15.

Extending the scope of the death penalty also appears to be incompatible with China’s own long revered principles. Chinese legal scholars have long noted that Chairman Mao Zedong himself advised caution in applying the death sentence: “[...] we must insist on killing less and must strictly forbid killing without discrimination. To advocate killing more or killing without discrimination is entirely wrong; this would only cause our Party to forfeit sympathy, become alienated from the masses and fall into isolation.”²⁹ Professor Zhao Bingzhi states Chairman Mao’s comments formed the foundation for policy development on the death penalty in China, culminating with the principle “kill less and kill with caution, and if in doubt whether to kill or not, resolutely do not kill”.

Chinese legal academics claim that when the Criminal Law was first adopted in 1979, it was the intention of legislators to strictly limit application of the death penalty in line with this principle. The 1979 Criminal Law listed 28 capital crimes in 15 articles. This intention was soon undermined, however, by what Professor Zhao describes as “heavy sentence-ism” in response to the “[...] rampant spread of serious economic crime and criminal acts”, and by the “strike hard” campaigns initiated in response.³⁰

3. Failings in the criminal justice process which result in human rights violations

Safeguard 5 of the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, states: “*Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected or charged with a crime for which capital punishment may be imposed do adequate legal assistance at all stages of the proceedings.*”

This section documents the extent to which the criminal justice procedure in capital cases in China falls short of these requirements.

3.1 Torture and ill-treatment in detention

“Detention” in Chinese criminal law is the period when interrogation of a suspect takes place, usually in a place of detention such as a police station. Detention differs from “arrest” in that arrest involves the formal pressing of charges.

²⁹ “On some important problems of the Party’s present policy”, The Selected Works of Chairman Mao, Vol. IV.

³⁰ “The question of gradual abolition of the death penalty for non-violent crime from the point of view of China’s death penalty policies,” Professor Zhao Bingzhi, available (in Chinese) at: www.jcrb.com dated 18 July 2003.

For criminal suspects, the actual process of being taken into police custody is often marked by extreme violence. Chinese police officers are known to carry electric shock batons.³¹ Reports are common of people being detained in a violent manner to make the event a public spectacle, with the apparent intention of causing humiliation to the detainee, and presenting a ‘show of force’ to bystanders.

Article 10 of the ICCPR states: *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

Article 6 of the Code of Conduct for Law Enforcement Officials states: *Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.*

Article 7 of the ICCPR states: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

Article 12 of the Convention Against Torture states: *Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.*

Article 13 of the Convention Against Torture states: *Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities.*

Article 15 of the Convention Against Torture states: *Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceeding, except against a person accused of torture as evidence that the statement was made.*

Article 38 of the Constitution of the People’s Republic of China states: *The personal dignity of citizens of the People’s Republic of China is inviolable.*

The use of torture and ill-treatment in China as a means to extort confessions and other incriminating evidence from suspects, defendants and witnesses is widely reported. Indeed torture is a theme running through all of the individual cases presented in this document.

The People’s Republic of China is a state party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),

³¹ See: *Torture – a growing scourge in China – time for action*, Amnesty International March 2001. (AI Index: ASA 17/004/2001.) For information on torture as a global issue, see: *Stopping the torture trade*, Amnesty International June 2001 (AI Index: ACT 40/002/2001); and *The Pain merchants – security equipment and its use in torture and other ill-treatment*, Amnesty International November 2003. (AI Index: ACT 40/008/2003.)

ratified by China on 4 Oct 1988. However, China has not yet acceded to the Optional Protocol to the Convention, adopted by the UN General Assembly on 18 December 2002, which allows for regular visits of inspection to places of detention by national and international bodies.

Whilst China's Criminal Procedure Law and Criminal Law outlaw and criminalize torture for some specific purposes when perpetrated by law enforcement officials, the UN Committee against Torture which monitors States compliance with CAT has determined that this does not amount to the unequivocal prohibition of torture required under the treaty.³² Article 43 of China's Criminal Procedure Law stipulates: "The use of torture to coerce statements and the gathering of evidence by threats, enticement, deceit or other unlawful methods are strictly prohibited."

Amnesty International continues to document cases where police have reportedly 'solved' criminal cases by extorting confessions through torture. The organization has documented torture perpetrated by law enforcement and judicial officials at all levels, ranging from security personnel sub-contracted by police, right through to judges; similarly, torture is known to have taken place in every form of detention facility in China, even in courtrooms. The range of victims of torture is sweeping: In recent years, Amnesty International has monitored reports of torture perpetrated against a new-born baby born "out of plan" as punishment for its parents, through to the torture of a 70-year-old Uighur journalist who died having been tortured to extract information on individuals suspected of involvement in a major political demonstration.³³

Significant numbers of deaths in detention are the direct result of torture inflicted either by security personnel or by other detainees on the orders of security personnel. State press reported in December 2003 that there were 460 deaths and 117 cases of serious injury caused by "abuse of power and dereliction of duty" by law enforcement officials during the first 10 months of 2003.³⁴ Two police officers in Liaoning Province were jailed in December 2003 for one and two years, having tortured two people in separate incidents, both of whom died. One man died a month after he was released from being tied up inside an iron cage under hot lights for around two weeks, and another died after spending a night tied by his hands and feet to the inside of an iron cage.³⁵

On the basis of many years of detailed research, Amnesty International believes that detainees in China are frequently at risk of torture or other cruel, inhuman or degrading treatment at some stage of their passage through the justice system. This likelihood appears to increase significantly if a suspect is in custody on suspicion of committing a major crime which police are eager to 'solve'.

³² See: *Torture in China - a growing scourge in China: Time for action*, Amnesty International January 2001. (AI Index: ASA 17/004/2001.)

³³ *Ibid.*

³⁴ "Abuse of power by police leads to 460 deaths in China this years", AFP 11 December 2003.

³⁵ "Police officers jailed over torture deaths", SCMP 17 December 2003.

Article 46 of the Criminal Procedure Law regulates that a person cannot be convicted solely on the evidence of their confession. Confessions are central to most prosecutions monitored by Amnesty International. In these circumstances police regularly torture suspects and their co-defendants to extort further information which can be used as corroborating ‘evidence’.

A prominent example of this can be seen in the case of Gong Shengliang, a Christian pastor who founded and led an un-registered church in Hubei Province, and who was sentenced to death on 29 December 2001 on charges of rape, causing deliberate injury, and “using a heretical organisation to undermine implementation of the law”.³⁶ Four of his co-defendants were also sentenced to death, and 12 others were sentenced to prison terms ranging from two years to life, all on similar charges.

Gong Shengliang

29 December 2001 – sentenced to death, appeals

22 September 2002 – retrial is ordered

9 October 2002 – sentenced to life imprisonment

Official secrecy surrounding Pastor Gong’s case has led to confusion and doubt over specific details in the legal processes leading to sentencing. Article 152 of the Criminal Procedure Law states that trials involving “personal privacy” should be closed, and it appears that the charges of rape against Pastor Gong dictated that the investigation and trial did indeed involve the “personal privacy” of the alleged rape victims.

However, three women whom Pastor Gong was alleged to have raped have produced written testimonies – smuggled out of prison and out of China – claiming they were tortured by police in an attempt to force them to testify that they had been raped by Pastor Gong. In their testimonies, they also claim that police officers perpetrating the torture repeatedly told them that they had support from their superiors to use any means necessary to obtain evidence in their case against Pastor Gong, and that they would not be held responsible by their superiors for any consequences.³⁷

Zhang Hongjun, who was 20 years old at the time her arrest on 14 August 2001 describes in her testimony the torture police inflicted to force her to say she had been raped by Gong: “They put shackles on my hands and feet, and used electric clubs to touch my whole body, especially my chest. I had no strength to resist such assaults, so I called them ‘rogues’. It enraged them to more violent acts. They forcefully unbuttoned my shirt, tearing off one

³⁶ See: *People’s Republic of China – Urgent Action: Death penalty/ Fear of imminent execution*, Amnesty International 4 January 2002 (AI Index: 17/001/2002) and subsequent updates.

³⁷ The testimonies by Zhang Hongjuan, Li Tongjin and Yang Tongni can be read in English at: www.jubileecampaign.co.uk/world/china6.htm This page also gives comprehensive background information on the case, including official documents ordering the crackdown against Gong Shengliang and his associates.

button, and touched every spot of my chest with the electric club. I yelled at the top of my voice, but they moved the club into my mouth to stop me from crying [...] I was one of many people tortured this way, and my torture was lighter than theirs.”³⁸

Pastor Gong himself was reportedly tortured not only during his detention, but also at all other stages of his custody. Amnesty International has acquired reliable information that he is still suffering ill-treatment, has been close to death on at least one occasion, and that his access to medical treatment is denied, and family contact is severely limited by prison authorities.

In recognition of the widespread scourge of torture, national and local government bodies have recently issued new regulations over police conduct. The Ministry of Public Security announced on 9 September 2003 a new set of regulations aimed at “curbing illegal police activities” in handling administrative cases, which according to accompanying reports include torture as well as on the spot fining of alleged prostitutes and refusing to issue receipts for fines.³⁹

Zhejiang Province promulgated regulations in September 2003 outlining punishments to be directed against police found guilty of using torture to extort confessions in criminal cases. Described in official reports as “enforcing the Ministry of Public Security’s [...] regulations for handling deaths caused by civil police extortion”, the new regulations threaten perpetrators with a variety of administrative and criminal proceedings, depending upon the severity of the case.⁴⁰

However, as with the national regulations described above, Zhejiang’s regulations make no provision for excluding from court confessions or other “evidence” extorted through torture. This significant shortcoming in Chinese law is also a severe impediment to the possibility of defendants receiving a fair trial.

Very often, the first opportunity a defendant has to attempt to recant a confession extorted through torture, or to report it to a higher authority, is when they first appear in court. Victims of torture are either unaware of procedures whereby they can lodge a formal complaint of torture, or these are ignored by security and other personnel complicit in the torture, or they are simply not in place. Chen Guoqing, one of four men accused of murdering two taxi-drivers in 1994 (see p. 25), has said that he intended to tell a procuratorate official reviewing his case that he had been tortured. But when the official arrived, the police officers who had tortured him were also present and he didn’t dare raise the subject.

During Chen Guoqing’s first trial in 1996, he and his three fellow defendants bared their scars to the courtroom, saying that the wounds had been inflicted by police officers

³⁸ *Ibid.*

³⁹ “China issues new regulations curbing illegal police activities”, Xinhua 9 September 2003. (BBC Mon AS1 AsPol ron.) There was no explanation in the report as to why there was a delay in promulgating the regulations until 1 January 2004.

⁴⁰ “Zhejiang bans police extortion of confession through torture”, Xinhua 23 September 2003. (BBC Mon AS1 AsPol dh.)

torturing them to extort their confessions. However, the judge reportedly brushed aside their complaints, saying “[...] that the four defendants confessed is on record. The facts are clear and there is sufficient evidence to convict.”⁴¹ All four were sentenced to death.

3.2 Leg irons and restraints as torture or cruel, inhuman and degrading treatment

Rule 33 of the UN Standard Minimum Rules for the Treatment of Prisoners states: *Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:*

- a) *As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;*
- b) *On medical grounds by direction of the medical officer;*
- c) *By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances, the director shall at once contact the medical officer and report to the higher administrative authority.*⁴²

Contrary to international standards, Chinese law allows for the possibility that a defendant in a capital case could be made to wear handcuffs and ankle-fetters from the moment of formal arrest through to their execution,⁴³ a period usually lasting around a year, but potentially an indefinite period. Indeed, it is common to see images in China’s official media showing groups of detainees prior to actual formal arrest already wearing handcuffs and ankle-fetters.

According to a reliable source, Pastor Gong was made to wear ankle-fetters from his initial detention, through his appeal process until his arrival in prison, a total of 411 days. His feet became numb several days after ankle-fetters were put on him, but complaints and

⁴¹ “Four times sentenced to death and four times a stay of execution?”, Southern Weekend , available (in Chinese) at: www.fayuan.gov.cn dated 31 July 2003.

⁴² The Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955 by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, and the UN Economic and Social Council. The standards set out what is “generally accepted as being good principle and practice” in the treatment of prisoners. In 1971, the UN General Assembly called on member states to implement these rules and to incorporate them into national legislation.

⁴³ A 1985 report on regulations published in 1982 for prison and labour camp wardens stipulates “Both implements [handcuffs and ankle-fetters] may be applied simultaneously to criminals sentenced to death and awaiting execution [...] Apart from the case of condemned prisoners, the period of application of handcuffs or ankle-fetters must not exceed a maximum of 15 days.” Legal Daily 15 February 1985.

requests to see a doctor were ignored. He now has minimal sensation in his feet making walking extremely difficult.

In addition to being a punitive form of cruel and inhumane treatment in itself, the wearing of restraints by detainees also facilitates the act of torture. Numerous accounts of torture in China include details of detainees being suspended from a door or ceiling by handcuffs locked behind their back, or otherwise rendered immobile with chains or ropes. While the detainee is in a prone and defenceless position, officials attack the detainee with truncheons, electric shock batons and other weapons.⁴⁴

3.3 Prolonged and incommunicado detention

Article 9(3) of the ICCPR states: *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*

Article 14(3) of the ICCPR states: *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...]*

(c) To be tried without undue delay;

Principle 19 of The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: *A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.*

The Criminal Procedure Law lays out clearly defined time-periods for the detention of criminal suspects depending upon the severity of the alleged crime. For example, according to Article 69 of the Criminal Procedure Law, people suspected of committing serious crimes, which would include capital crimes, can be detained for 30 days after which formal arrest must take place within a further period of seven days. Police can apply to the procuratorate for the period of pre-arrest detention and detention before trial to be extended in “complicated cases”. However, in Amnesty International’s experience, detention is often arbitrarily prolonged beyond the legal limits.

While torture can and does take place at all stages of detention in China, when a period of detention is prolonged illegally, detainees may be at higher risk of being tortured. This is particularly the case when detainees are held incommunicado, that is without access to legal representation or the right to family visits.

⁴⁴ *Torture in China - a growing scourge in China: Time for action*, Amnesty International January 2001. (AI Index: ASA 17/004/2001.)

The pervasiveness of prolonged detention in China was indicated by an announcement published on the Supreme People’s Procuratorate’s website in August 2003, calling for all cases of prolonged detention of “three years and over” to be cleared by 1 October 2003, and all others to be cleared “by the end of the year”.⁴⁵

In another statement on 14 November 2003, the Supreme People’s Court and the Supreme People’s Procuratorate jointly warned officials that they could be sentenced to seven years in prison if they were found responsible for holding defendants in custody indefinitely.⁴⁶

The Supreme People’s Court then announced on 1 December 2003 that 39 court officials had been dealt “[...] administrative disciplinary punishment” in the first 10 months of 2003 for illegally extending suspects’ periods of detention. The announcement continued that almost 2,000 people’s cases had been redressed, but also that 2,906 people were being held illegally since August 2003⁴⁷ – that is, more new cases were appearing than were being redressed. Even so, the Supreme People’s Court managed to claim on 5 January 2004 that all cases of prolonged detention in China had been resolved.⁴⁸

The 14 November 2003 statement was issued in response to a particularly startling case of prolonged detention. Xie Hongwu was detained on 24 June 1974 and released on 30 September 2002 – over 28 years later and aged 62. According to reports, he was detained during the Cultural Revolution (1966-1976) having been accused of smuggling and concealing “reactionary hand-bills”, an accusation made more serious during the political climate of the time by his “landlord” status.

Xie’s case reportedly only came to light in May 1996 when provincial officials were touring Guangxi Province to explain the newly promulgated Criminal Procedure Law to local-level officials, and he was noticed in a small windowless cell in a police station in Yulin City, Guangxi Province. When the provincial officials checked his file in the police station, the sole item of documentation was a warrant for his detention dated 24 June 1974, since when, no further proceedings had ever been taken against him. Xie is described in the report as now having dementia as well as various physical complaints resulting directly from the conditions of his detention.

While reports explain that Xie’s family assumed he was killed soon after his detention in 1974 and therefore didn’t know of his existence, no complete explanation is given as to why his case was never reviewed by officials in the station where he was held. Furthermore, there is no explanation why Xie was released only in September 2002, fully eight years after his case was discovered by provincial officials. The reports state that Guangxi Province Legal Aid Centre is suing the state on Xie’s behalf for 569,000 Yuan

⁴⁵ “Announcement of the Ministry of Public Security: Clear up all cases of extended detention within the year,” Xinhua, available on the Supreme People’s Procuratorate website at: www.spp.gov.cn dated 14 August 2003.

⁴⁶ “China warns officials against keeping suspects in custody for decades”, AFP 14 November 2003.

⁴⁷ “Chinese judicial workers punished for extending detention period”, Xinhua 1 December 2003. (BBC Mon AS1 AsPol dh.)

⁴⁸ “Illegal detention cases cleared from judicial system”, Xinhuanet 5 January 2004.

(US\$69,000) in compensation, although debate continues over which arm of the judiciary is culpable.⁴⁹

3.4 Legal representation

Article 14(3) of the ICCPR states: *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...]*

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

Principle 1 of The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: *All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*

Principle 8 of the Basic Principles on the Role of Lawyers states: *“All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be in sight, but not within the hearing, of law enforcement officials.”*

Principle 17(1) of The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: *A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after his arrest and shall be provided with reasonable facilities for exercising it.*⁵⁰

According to Article 96 of the Criminal Procedure Law, a criminal suspect “may” retain a lawyer “[...] after being first interrogated by an investigative organ, or from the day coercive measures are taken against him”. The stipulation that a suspect “may” retain a lawyer suggests that a request for access to legal representation can be ‘legitimately’ refused. Certainly it is widely reported to be denied or curtailed in practice. Suspects have no right to confidential access to lawyers or for lawyers to be present during interrogation, a period when they are particularly prone to torture and other illegal coercion. Granting immediate access to all criminal suspects upon detention as of right would severely curtail police opportunities to perpetrate torture.

⁴⁹ “Guangxi’s earth-shaking case of injustice: an innocent man 28 years in prison, after release suffering dementia”, Workers’ Daily 28 May 2003 (in Chinese).

⁵⁰ The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by the UN by consensus in 1988, and contains an authoritative set of internationally recognised standards applicable to all states on how detainees and prisoners should be treated.

For people who may face the death penalty for their alleged crimes, access to legal representation and advice is guaranteed by Article 34 of the Criminal Procedure Law. However, free legal representation is only offered “no later than 10 days” before trial (Article 151), by which stage, a suspect may have spent a considerable period in detention. And by that time, police may have collected a large amount of evidence against a suspect – legally or otherwise – leaving a lawyer possibly only 10 days to review the evidence and prepare a defence.

Amnesty International is unable to confirm whether all people facing a possible death penalty are granted legal representation, as required by Article 34 the Criminal Procedure Law. China’s system of legal aid started in 1996, and is known to be severely under-funded. 600,000 people reportedly applied for legal aid in 2002 – decided on a means-tested basis – but only 120,000 people, or 20% of applicants were successful.⁵¹

Lawyers in China are reportedly reluctant to take on criminal cases when instructed to do so by procuratorate offices. Cha Qingjiu, a columnist on the national *Legal Daily* gives two reasons for this reluctance (aside from the poor and irregular pay defence lawyers receive). The first is that “some courts”, including intermediate courts, have already “researched” a case by the time it comes to trial, and lawyers’ arguments are seen as irrelevant to the proceedings. Most lawyers therefore have no interest in working on criminal cases. The second reason, states Cha, is that since promulgation of the 1997 Criminal Law, “more than 100” lawyers have been prosecuted under Article 306 of the law, prohibiting the “falsification of evidence” by lawyers.

Cha alludes to the nature of this ‘crime’ when he writes: “Imagine for a moment, two opponents presenting conflicting arguments, one of whom has in their hands the power to give or take the freedom of the other. Such a confrontation [...] can fill you with dread.” Lawyers are therefore unwilling to “risk” taking criminal cases, claims Cha.⁵²

A prominent defence lawyer, Zhang Jianzhong was jailed for two years on 9 December 2003 under Article 307 of the Criminal Law, having been accused of falsifying evidence while defending a former director of a bank on charges of embezzlement.⁵³ (The bank director was sentenced to death at his trial in December 2002.) Zhang was originally charged under Article 306, but later tried under Article 307 – a more general prohibition on falsifying evidence. Zhang had defended several prominent former officials and political dissidents in his career, and there are concerns that his trial and sentence were politically motivated. Articles 306 and 307 do not offer any objective definition of what actions might constitute “falsifying evidence”, but observers claim the articles – Article 306 in particular –

⁵¹ “New regulation standardises legal aid”, SCMP 1 August 2003.

⁵² “On the changing face of criminal defence – worries on the falling rates of legal defence in criminal cases”, *Legal Daily* 13 January 2003 (in Chinese).

⁵³ “China jails high-profile defence lawyer”, Reuters 9 December 2003.

have been used to convict lawyers whose client's statements in court differ from evidence presented by police.⁵⁴

In practice, lawyers are often obstructed from assisting their clients. Police, procuratorate offices and courts reportedly tend to view a lawyer's involvement in a case as detrimental to their chances of securing a conviction. Obstructions can take the form of police imposing short time-limits on meetings between a lawyer and suspect – five or ten minutes; limiting the number of meetings to perhaps only one pre-trial meeting; requiring the lawyer to brief police on the questions the lawyer intends to ask their client, with the possibility of police terminating the meeting if the lawyer strays from the approved line of enquiry; severely limiting a lawyer's access to the prosecution's documentary and material evidence; or charging exorbitant fees for supplying copies of documents.⁵⁵

There are grounds for concern that the quality of free legal representation afforded to people on legal aid at the pre-arrest stage of proceedings is not particularly high. An unnamed judge in Sichuan Province made the following comments on lawyers representing defendants in capital cases who are on legal aid: "There's the common problem of a lack of a sense of responsibility. Some lawyers don't read the case file or just skim it, and so when the case comes to court, they're not ready or they're late, and so they just sit there in court. [...] There are even some lawyers who fall asleep in court."⁵⁶

Legal representation and other judicial proceedings under Chinese and international law are frequently ignored in connection with political 'crimes' – people prosecuted for exercising freedom of expression or association – or other crimes that have a bearing on politically sensitive issues. In such instances, it is extremely common for the Chinese judiciary to declare that such cases involve "state secrets", a device that effectively curtails the access of observers, including lawyers, to legal proceedings. "State secrets" provisions in Chinese law are so broad and vaguely worded they are often used as a veil behind which grossly unfair trials take place.

In cases which involve "state secrets", Article 96 of the Criminal Procedure Law regulates that suspects' access to legal representation "[...] shall first be approved by the investigating organ". According to Amnesty International's monitoring and research, such approval is often denied.

Amnesty International is aware of numerous cases where under the provisions for "state secrets", people have been held incommunicado over long periods of time, then tried

⁵⁴ See for example: *Human Rights Watch World Report 2003*, Human Rights Watch, available at: www.hrw.org For a comprehensive analysis of Zhang Jianzhong's case in the context of conditions for China's defence lawyers in general, see: *Defence Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China*, Congressional-Execution Commission on China, available at: www.cecc.gov

⁵⁵ See: *Empty Promises: Human Rights Protections and China's Criminal Law in Practice*, Human Rights in China March 2001, available at: www.hrchina.org

⁵⁶ "The last rights of two condemned prisoners", *Southern Weekend*, available (in Chinese) at: www.nanfangdaily.com.cn dated 13 November 2003.

and sentenced in secret. People are often detained having expressed criticism of the Chinese state – the CCP in particular – and can be sentenced to lengthy prison terms on charges of “subversion” against either the state or the “socialist system”.⁵⁷

A case which involved imposition of the death penalty and “state secrets” was that of Lobsang Dhondup and the Buddhist teacher and cleric, Tenzin Deleg Rinpoche.⁵⁸ Despite attempts by the Chinese authorities to keep proceedings against the two men secret, a large volume of information on their case has been researched and published by observers outside China.⁵⁹

Lobsang Dhondup and Tenzin Deleg Rinpoche

3 April 2002 – Lobsang Dhondup detained on suspicion of causing an explosion

7 April 2002 – Tenzin Deleg Rinpoche detained on suspicion of collusion

2 December 2002 – Lobsang Dhondup sentenced to death; Tenzin Deleg Rinpoche sentenced to death suspended for two years

26 January 2003 – Tenzin Deleg Rinpoche’s appeal rejected, Lobsang Dhondup executed

Lobsang Dhondup, an ethnic Tibetan from the traditionally Tibetan area of western Sichuan Province, was detained on 3 April 2002 in Chengdu, “within 10 minutes” of allegedly detonating a bomb in the city’s main square, according to a report in the official press.⁶⁰ Other official reports claim he was arrested 10 hours after the explosion, whereas witness statements claim he was detained as long as two days after the explosions. He was also eventually charged with “causing explosions” on several other occasions since January 2001 in different locations in western Sichuan Province. Again however, official reports give conflicting accounts of the number of bombs he allegedly detonated, and when and where the explosions occurred.⁶¹

Tenzin Deleg Rinpoche was detained on 7 April 2002 at his monastery in Litang County, Sichuan Province on suspicion of planning and supplying funding for the 3 April

⁵⁷ See for example: *China: Controls tighten as Internet activism grows*, Amnesty International January 2004. (AI Index: 17/005/2004.)

⁵⁸ The characters given for Tenzin Deleg Rinpoche’s name – 阿按扎西 (A’an zhaxi) – represent the Chinese transliteration of his given Tibetan name, Awang Tashi. Tenzin Deleg is his religious name, and Rinpoche is his religious title.

⁵⁹ See, for example: *The execution of Lobsang Dhondup and the case against Tenzin Delek – the law, the courts, and the debate on legality*, Congressional-Executive Commission on China February 2003, available at: www.cecc.gov; *Trials of a Tibetan Monk: The Case of Tenzin Delek*, Human Rights Watch, available at: www.hrw.org February 2004; and *People’s Republic of China: Miscarriage of Justice? The trial of Tenzin Delek Rinpoche and related arrests*, Amnesty International October 2003 (AI Index: 17/029/2003).

⁶⁰ “Blast in Downtown Chengdu, Sichuan”, *People’s Daily* 3 April 2002.

⁶¹ *Trials of a Tibetan Monk: The Case of Tenzin Delek*, Human Rights Watch, available at: www.hrw.org February 2004, pp. 17-18.

2002 explosion in Chengdu. He was also accused of planning and funding several of the other bombings attributed to Lobsang Dhondup.⁶² Both men were also suspected of and charged with producing and distributing "splittist" letters and handbills advocating independence for Tibet, reportedly found at the scenes of the blasts; Lobsang Dhondup was additionally charged with illegally possessing arms and ammunition. Numerous other people associated with Tenzin Delek Rinpoche have been detained, arrested and sentenced to prison or labour camp terms since his initial detention.⁶³

Official reports on the case claim both men confessed to the crimes.⁶⁴ Both were held incommunicado for most of the eight-month period between detention and their eventual trial, and it was during this period of incommunicado detention that Lobsang Dhondup is said to have confessed under torture. It is not known when lawyers were allowed access to the men. Official reports claim both were assigned lawyers by the procuratorate, but the presence of lawyers in court for sentencing at least has been denied by members of the men's families who attended the sentencing hearings. Furthermore, Tenzin Delek Rinpoche is known to have been denied access to lawyers of his choice, possibly due to the stipulation in the Criminal Procedure Law on the need to "seek approval" before gaining access to lawyers in cases involving "state secrets".

3.5 Formal arrest and preparation for trial

The process of formal arrest involves police seeking authority from the procuratorate to formally charge an individual with a crime, based upon initial interrogations and other preliminary evidence. The period of post-arrest detention is ostensibly for police to conduct further investigations into the case, compiling evidence with a view to later presenting a case file to the procuratorate for approval, which would then be transferred to the court for trial.

As previously mentioned in regard to torture (see pp. 13-18), police methods of obtaining and verifying 'evidence' against defendants are often far from legal under Chinese law or in accordance with international standards. Deeply flawed or fabricated evidence for the prosecution regularly appears in courts, even though case files are supposedly reviewed and approved by the procuratorate.

In a case widely reported in China's official media, four men were detained and arrested in 1994 on suspicion of murdering two taxi drivers in Chengde City, Hebei Province. Official reports on the case describe Chengde as a "tourist city" which had seen a spate of similar crimes, and police were therefore particularly anxious to solve the murders. After two months without any progress, police eventually detained Chen Guoqing in a suburb of Chengde; he had come under suspicion following a tip-off that he was "in an unusual mood,

⁶² 'Ganzi' is the Chinese transliteration of the more commonly used Tibetan 'Kardze'.

⁶³ See: *People's Republic of China: Miscarriage of Justice? The trial of Tenzin Delek Rinpoche and related arrests*, Amnesty International October 2003 (AI Index: 17/029/2003)

⁶⁴ "Two Tibetans who caused an explosion in Tianfu Square Chengdu severely punished", available (in Chinese) at: www.tfol.com dated 26 January 2003.

and was gloomy and unhappy.” Three other men, Yang Shiliang, He Guoqiang and Zhu Yanqiang were also detained over the following period. All four men reportedly confessed to the murders during torture, and the investigating police officers were awarded with commendations.

All four were sentenced to death at their first trial early in 1996. However, at their trial of second instance in October 1996, Hebei Province High People’s Court sent the case for retrial, questioning more than 20 items of prosecution evidence gathered by police.

For example, a major item of evidence was that the blood-type on the alleged murder weapon found at the home of Chen Guoqing – a mass-produced and widely available knife – matched that of one of the victims. However, no evidence of the test was presented in court, and the tests referred to in court were dated before the knife had even been retrieved by police.

Similarly, saliva tests allegedly conducted on the defendants referred to in court but not actually presented, were dated before the men had been detained. Through these the prosecution claimed the defendants’ saliva-types matched those found on cigarette butts at the crime scenes. When the defence lawyers challenged the evidence and asked for another test to be conducted, the prosecution claimed the entire cigarette butt had been destroyed during testing, and it would therefore be impossible to conduct another test. The ‘evidence’ of the saliva tests was presented each subsequent time the men were tried as primary evidence of their link to the crime scenes.

No fingerprints from any of the four men were found at the crime scenes, and evidence linking other people to the crime were never followed up by police. Furthermore, the court refused to accept the men’s alibis as evidence, which in Chen Guoqing’s case included the attendance register from the factory where he was working at the time of the crime, and statements from colleagues testifying that they had seen him at work.⁶⁵

Further details of this case will be used in section 5.2 – ‘Ordering a revision of a judgement or retrial on appeal’ – to illustrate failings in trial and appeal proceedings.

**Chen Guoqing, Yang Shiliang, He Guoqiang
and Zhu Yanqiang**

3 November 1994 to 24 February 1996 – all detained on suspicion of murder
ca 1996 – all four sentenced to death, appeal
12 August 1997 – all four sentenced to death, appeal
13 October 1998 – all four sentenced to death, appeal

⁶⁵ For comprehensive reports and commentaries on this case from China’s media, see for example: “An unresolved capital case of six years exposes big problems in criminal procedure”, *Legal Daily* available (in Chinese) at: www.legaldaily.com.cn dated 5 February 2001; “Four death sentences and four stays of execution?” *Southern Weekend* available (in Chinese) at: www.fayuan.gov.cn dated 31 July 2003; “Hebei Chengde: the ‘robbery and murder’ case of Chen Guoqing et al”, Guo Guosong, undated document available (in Chinese) at: www.shuku.net; and “Judgement for repeatedly rejected death penalty”, available (in Chinese) at: www.people.com.cn dated 27 December 2000.

20 October 2000 – Chen and Yang sentenced to death; He sentenced to death suspended for two years; Zhu sentenced to life imprisonment, appeal
21 July 2003 – tried by Hebei Province High Court, awaiting final verdict

The case of Zhao Fenrong, a woman from rural Shaanxi Province, has similar features of fabricated or incomplete evidence which was used to sentence her to death.

Zhao was accused of murdering two children in her village in December 1998. Zhao apparently became the sole suspect in the murders after attempting suicide on 13 December 1998, two days after the children died having eaten candy laced with rat poison. She had attempted suicide on several previous occasions, reportedly because of marital difficulties, but the timing of this particular attempt immediately opened her to suspicion. She reportedly confessed under torture to poisoning the children.

Police claimed her motive was revenge against the parents of the dead children, who had accidentally broken her home's water supply, but Zhao only found out about the broken water pipe when she was already in detention; a police report from the "crime-scene" – Zhao's home where she allegedly made the poisoned candy – was dated two days before Zhao had even come under suspicion; police took a statement from Zhao's nine-year-old daughter testifying to her mother's "strange mood" (which was used as evidence in court against Zhao), but the interview was conducted without an adult relative present – as required by law; poison was found in the children's stomachs at autopsy, but no tests were carried out on the paper in which the candy was wrapped, nor on other foods ingested by the children. Despite doubts raised by these incomplete and obviously fabricated items of evidence, Zhao Fenrong was sentenced to death in June 1999.⁶⁶

Zhao Fenrong

December 1998 – detained on suspicion of poisoning two children
2 June 1999 – sentenced to death, appeal leads to retrial
ca 27 March 2000 – sentenced to death, appeal leads to retrial
27 April 2001 – sentenced to death, appeals
December 2002 – sentenced to death suspended for two years
Currently in prison having petitioned for a retrial

⁶⁶ See: "A rural woman sentenced to death three times, Shaanxi sees another case of 'hold the execution'", Beijing Youth Daily, available (in Chinese) at: www.southcn.com dated 11 May 2003; and "Sentenced to death three times and retried twice – a rural Shaanxi woman spared", Huashang Bao, available (in Chinese) at: www.huash.com dated 7 November 2003. Note, although Zhao Fenrong's case was widely reported in the Chinese media, the majority of reports were edited versions of the comprehensive reports cited here.

In the case of Pastor Gong cited above (p. 15), little is known with any certainty about the evidence gathered against him by police. It is known however, that Pastor Gong’s church was not registered with the state, and that prior to his detention, his church’s fundraising activities had moved authorities to investigate the church’s other activities. For instance, evidence was gathered into Pastor Gong and his followers allegedly “forcing” people to buy the church’s publications at three Yuan (US\$0.36) per issue, and of “coercing and deceiving” people into depositing funds into accounts controlled by the church. Police also claimed to have evidence that Pastor Gong was personally responsible for beating and attacking people with sulphuric acid if he suspected them of reporting his activities to the police; and as previously mentioned, police also had “evidence” that he raped 10 female members of his congregation, evidence in the form of testimonies extorted through torture.⁶⁷

Because Pastor Gong’s trial was closed, it remains impossible for outside observers to assess the quality of the evidence used against him and his co-defendants, and which was later used to sentence him and four others to death. Amnesty International is concerned that the charges of rape against Pastor Gong were based on testimonies extracted through torture, which brings into question the quality of evidence and legitimacy of the other charges brought against him and his co-defendants.

Pastor Gong’s refusal to register his church with the state was reportedly based on his religious principles, described by observers as “traditional”,⁶⁸ but described in documentary evidence against him as “heretical” and based on “misinterpreting the Bible”. A leaked official document on investigations into his church’s activities states he once called the Chinese government “the devil”, and the CCP “Satan’s kingdom”.⁶⁹

Such pronouncements are likely to have antagonised local government authorities at a time when the state was conducting a nationwide crackdown against “heretical organisations”. This was initiated in response to a demonstration in Beijing in July 1999 by *Falun Gong* practitioners calling for official recognition of their practice as a religion, and which was apparently interpreted by the government as a direct challenge to its authority.⁷⁰ Commentators have noted that the authorities’ enactment of “anti-cult” legislation, used in the prosecution of *Falun Gong* and churches such as Pastor Gong’s, has seriously undermined legal reforms aimed at establishing human rights under the rule of law in China.⁷¹

⁶⁷ See: www.jubileecampaign.co.uk/world/china6.htm for in-depth coverage on the official reaction to Gong Shengliang, his church and his associates.

⁶⁸ Correspondence with Danny Smith, Director of Jubilee Campaign.

⁶⁹ See footnote 68.

⁷⁰ Practitioners and protestors within the *Falun Gong* movement continue to bear the brunt of the crackdown on “heretical organisations” in China. The movement claims, as of March 2004, over 900 people have died in custody having been detained in relation to their adherence to *Falun Gong*; there are also claims that leaked internal documents put the figure at around 1,600 deaths in custody as a result of torture and other forms of physical abuse, such as force-feeding. See the movement’s news website at: www.clearwisdom.net

⁷¹ See for example: *The “Falun Gong Problem”: Politics and the Struggle for the Rule of Law in China*, Ronald C. Keith and Lin Zhiqiu, *China Quarterly* September 2003, number 175, pp. 623-642.

4. Trial of first instance

Capital cases are most usually heard initially by intermediate-level courts in China. Appeals are heard by provincial-level High People’s Courts – the court of second instance.

Article 14(1) of the ICCPR states: *In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal [...]*

Principle 1 of the Basic Principles on the Independence of the Judiciary states: *The independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary*

The need for an independent judiciary has been a subject of debate for some years in China. Commentators see potential for abuse of judicial powers in the fact that courts are funded and judicial personnel are paid by local governments, that judges are appointed by the CCP, and that many judges are themselves CCP members. Luo Gan, a politburo member and a senior official in charge of security and legal affairs, said at a conference of court presidents on 17 December 2003 that judges “[...] must effectively enhance the Party’s leadership in people’s court work”.⁷²

Furthermore, courts at every level in China are supervised by political-legal committees, a panel of appointees selected and supervised in turn by the local People’s Congress.⁷³ Yet another avenue for CCP and political interference in China’s courts is the leading Party-member groups, composed of leading CCP cadres. These committees are common to all state organs in China, and are responsible for implementing CCP policy and decisions within state institutions.

Sentencing patterns are therefore easily influenced by local and national CCP considerations, severely undermining the chances of a defendant receiving a fair trial in the face of CCP and state agendas, such as “strike hard” campaigns.

Nationally, and for the vast majority of normal criminal cases, courts come under extreme pressure to pronounce heavier sentences against defendants during “strike hard” campaigns. Zhao Zuojun, a legal scholar from the law academy at Zhengzhou University in

⁷² “Chinese politburo member addresses rally of court presidents”, Xinhua 17 December 2003. (BBC Mon AS1 AsPol qz.)

⁷³ For discussion and analysis of the relationship between courts and People’s Congresses at all levels, see: *Symbiotic Neighbour or Extra-Court Judge? The Supervision over Courts by Chinese Local People’s Congresses* (Research Report), Young Nam Cho, China Quarterly 176, December 2003, pp. 1068-1083.

Henan Province, claims an un-named court has passed death sentences against its better judgement in the context of “strike hard”.

The court in question “[...] had 43% of the death sentences it passed commuted or sent for retrial at the trial of second instance. It was revealed [...] that this had arisen because they were worried that some leading comrades on the local [CCP] committee would say they were being soft on crime. They thought that there would be a second trial anyway, and therefore it didn’t matter if a few extra death sentences were passed at the trial of first instance because they’d be changed at the second – at least they couldn’t be accused by others of being soft on crime.”⁷⁴

A trial of first instance held at an Intermediate People’s Court is heard by a collegial panel of three judges, who pass verdict by majority decision based upon evidence and testimonies presented in court. However, it is often the case that a verdict has been approved by a court before a defendant even appears in front of the judges. Each court in China has an adjudication committee, which according to Article 149 of the Criminal Procedure Law is established to decide “[...] difficult, complicated and major cases” which includes cases “[...] when a death sentence may be imposed”.⁷⁵ Adjudication committees are composed of CCP officials including at least one judge, who sit in private to examine a case file without ever actually hearing statements or meeting defendants or their lawyers. The adjudication committee’s decision on a case is binding on the collegial panel of judges.

Defendants in capital cases are therefore likely to stand trial in a court which has already decided a verdict and possibly even a sentence. This is a probable explanation for the very short duration of trials: it is common for people to be sentenced to death following a trial of first instance lasting no more than one hour.⁷⁶ (It should also be repeated in this context that between 1998 and 2002, 99.1% of all trials of first instance ended with a guilty verdict.⁷⁷)

The professionalism of judges on collegial panels or adjudication committees in China’s courts in terms of their educational standards, relevant experience and training to assume the post of a judge, has been a topic of sustained debate for several years in China’s legal circles. During a fringe meeting of the National People’s Congress in March 2001, a delegate confronted Xiao Yang, president of the Supreme People’s Court over the issue: “Every year the poor quality of officials is listed as an ongoing problem in the work reports of both the judiciary and the procuratorate [...] Every year it is brought up and we see that nothing changes. This must mean that it is a problem with the system.”⁷⁸ The delegate stated

⁷⁴ “The current legal state of the death penalty and its future prospects”, Zhao Zuojun, available (in Chinese) at: www.law-lib.com dated 27 June 2002.

⁷⁵ Article 114 of the Supreme People’s Court’s “Interpretation on Several Issues Regarding Implementation of the Criminal Procedure Law of the People’s Republic of China”, 28 June 1998.

⁷⁶ For a discussion on the role of adjudication committees in China’s criminal justice system, see: “A suggestion for the abolition of adjudication committees”, Chen Jieren, *Law and Life*, Issue 2, July 2003, available (in Chinese) at: www.sohu.com

⁷⁷ See p. 3, footnote 8.

⁷⁸ “China’s top judge grilled on human rights, legal standards”, AFP 12 March 2001.

that only 20% of China's judges had a higher education.⁷⁹ The Supreme People's Court issued an announcement in October 2003 aimed at improving the "[...] efficiency and quality of judges by no longer allowing the position to be taken by clerks who work their way up."⁸⁰

Chinese legal scholars have recommended that only judges with professional training should be permitted to hear capital cases,⁸¹ implying that in practice, death sentences are being passed by judges with little legal expertise.

4.1 Political interference

The cases of Lobsang Dhondup and Tenzin Deleg Rinpoche, and of Pastor Gong and his co-defendants appear to be examples of the government directly intervening in the judicial process with a view to satisfying overtly political agendas.

Tenzin Deleg Rinpoche was 'a thorn in the side' of Ganzi Tibetan Autonomous Prefecture's authorities in Sichuan Province for many years, apparently due to his popularity as a teacher and respected community leader. Fearing he was about to be arbitrarily detained, he twice fled the area in 1998 and 2000, only returning after local residents took significant risks by signing and submitting petitions to the local authorities. He bypassed the local government when applying for permission to rebuild a monastery by appealing directly to the 10th Panchen Lama in Beijing in 1988, angering local authorities.⁸² Furthermore, while studying in India in the 1980s, he was recognised as the reincarnation of a Buddhist teacher by the Dalai Lama. The Chinese government is extremely wary of any contact by Tibetans within the People's Republic of China with the exiled Dalai Lama, whom Beijing regards as a "splittist".

Lobsang Dhondup was sentenced to death, and Tenzin Deleg Rinpoche was sentenced to death suspended for two years by Ganzi Tibetan Autonomous Prefecture Intermediate People's Court on 2 December 2002 following a closed trial. Both men were charged with "causing explosions" and "incitement to split the nation", and Lobsang Dhondup was also sentenced on a charge of "illegal possession of guns and explosives".

During the sentencing, Lobsang Dhondup is said to have shouted that he was innocent, and that he had never implicated Tenzin Deleg Rinpoche or anyone else in the bombings.⁸³

⁷⁹ According to Article 9(6) of the 1995 Judges Law of the People's Republic of China, graduates in law or graduates with a knowledge of law can become a judge after two years' work experience; graduates with a bachelors degree in law can become a judge after one year of work experience; those with a masters or a doctorate can become a judge upon graduation. The minimum age requirement is 23.

⁸⁰ "China's Supreme People's Court announces stricter standards for judges", Xinhua 27 October 2003. (BBC Mon AS1 AsPol sg.)

⁸¹ See for example, "The current legal state of the death penalty and its future prospects", Zhao Zuojun, available (in Chinese) at: www.law-lib.com dated 27 June 2002.

⁸² See: "Senior Rinpoche detained on 'bombing' charges", Tibet Information Network, available at: www.tibetinfo.net dated 5 May 2002, and related updates.

⁸³ *Trials of a Tibetan Monk: The Case of Tenzin Delek*, Human Rights Watch, available at: www.hrw.org February 2004, p. 20.

Tenzin Deleg Rinpoche also stated his innocence after the trial in a recorded conversation in his cell, smuggled out of China and acquired by Radio Free Asia. “I was wrongly accused because I have always been sincere and devoted to the interests and well-being of Tibetans. The Chinese did not like what I did and what I said. That is the only reason why I was arrested. [...] I have always said we should not even raise our hand at others. It is sinful. I have neither distributed letters or pamphlets nor planted bombs secretly. I have never even thought of such things, and I have no intention to hurt others. [...] Those who are unbiased should investigate my case thoroughly.”⁸⁴

Nothing is publicly known about what evidence was presented against the men in court. The claim that the case involved “state secrets” – which was not reported in the official Chinese-language press – enabled the authorities to bar all observers from the trial and declare all evidence confidential.

Without access to details of the evidence used to convict the two men, a full public investigation into the allegations of torture, and information on their ability to appoint lawyers and mount a defence in accordance with international standards, serious doubts about the legality of proceedings against them will remain.

Similar doubts are raised about the possible political motives surrounding the detention, trial and sentencing of Pastor Gong and his co-defendants. As with the trial of Lobsang Dhondup and Tenzin Deleg Rinpoche which was closed because the charges and evidence involved “state secrets”, Pastor Gong’s trial was closed because the charges and evidence against him involved “personal privacy”, namely the charges of rape.

However, according to letters written by Pastor Gong from his prison cell and smuggled out of China, the charges against him of rape were never actually presented in court by the prosecution, but he was still pronounced guilty of rape, and sentenced to death convicted of rape. “As far as the legal procedure is concerned, the defendant had no way at all to know that he was accused of the crime of rape, nor whom he had allegedly raped, nor what her name was”.⁸⁵

It would appear therefore that the court had previously decided his guilt on the charges of rape based on the women’s testimonies extorted through torture. He was also found guilty of “causing deliberate injury”, but it appears few if any witnesses appeared in court to testify against him; neither was any evidence offered that he had acquired or disposed of any sulphuric acid, alleged to be the assault weapon. Pastor Gong was also found guilty of “using a heretical organisation to undermine the implementation of the law”.

If Pastor Gong and his counsel were not given an opportunity in court to cross-examine witnesses for the prosecution this would be a violation of international standards on fair trials. For example, Article 14(3)(e) of the ICCPR gives defendants or their counsel the

⁸⁴ RFA Reports, available at: www.rfa.org dated February 2003.

⁸⁵ “Four letters from Pastor Gong Shengliang in his death cell”, eds. Gary Lane and Bob Fu, September 2002 p. 14, available at: www.persecution.com/newsContent/Gong/pdf/Pastor_Gong_Letters.pdf

right to fully examine prosecution witnesses. The testimony of "anonymous witnesses" also deprives the accused of the necessary information to challenge the witness's reliability.

Pastor Gong remains in prison. In addition to lasting damage caused by wearing ankle fetters for 411 days after his initial detention, he is known to suffer from a serious stomach complaint and has problems breathing – possibly asthma or another ailment brought about by the conditions in which he has been held. He still suffers from wounds inflicted during torture: he is deaf in one ear, and passes blood in his urine and his stools. Prison authorities are severely limiting his access to family visits despite assurances that he is showing "good behaviour", and he is still refused medical treatment.

4.2 Presumption of innocence

Article 14(2) of the ICCPR states: *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."*

When the Criminal Procedure Law was revised and promulgated in 1996, commentators pointed to various articles and clauses which although did not explicitly state that suspects were to be presumed innocent, at least when viewed in unison, the principle of a presumption of innocence could be inferred.

For example, Article 12 of the Criminal Procedure Law states: "No-one shall be convicted without a verdict pronounced by a people's court according to the law." However, Article 12 does not address questions central to the presumption of innocence, such as the burden and standards of proof.⁸⁶

Article 162(3) of the Criminal Procedure Law states the court should deliver: "[...] a verdict of innocent, when the defendant cannot be found guilty because of insufficient evidence". However, Article 35 still places the burden of proof upon the defendant: "The responsibility of a defender is, on the basis of the facts and the law, to present materials and opinions proving that the criminal suspect or defendant is innocent, that the crime is minor, or that the defendant should receive a mitigated punishment or be exempted from criminal responsibility, safeguarding the lawful rights and interests of the defendant."

As previously noted, by the time a case comes to court any presumption of innocence has largely been undermined by the efforts of police to secure a conviction using whatever means are available, legal or otherwise.

When police officers 'solve' a crime by taking a suspect into detention, they can be awarded with various citations, bonuses and promotions, before the case has even gone to court. Professor He Jiahong, vice-director of the criminal research centre at People's

⁸⁶ See: *People's Republic of China: Law Reform and Human Rights*, Amnesty International March 1997, p. 16. (AI Index: ASA 17/049/1997.)

University in Beijing, has written: “When police detain a criminal suspect and obtain a confession, an award ceremony is held and the case is considered solved [...] Whether the defendant is guilty or not cannot be said by the investigating personnel; [...] it is up to the court to ascertain whether the defendant is guilty.”⁸⁷

Other aspects of Chinese trial procedures likely to undermine the presumption of innocence are that defendants – including in capital cases – often appear in court wearing handcuffs and ankle-fetters, sometimes wearing prison uniforms, and sometimes with their heads shaved, to all intents and purposes looking like and treated like convicts.

A stark example of the lack of a presumption of innocence is the case of Wang You’en, who was tried and retried a total of four times on a charge of murder, and sentenced to death each time. At his third trial on 24 February 2000, a judge asked him in court, “What evidence do you have that you didn’t commit the murder?” Wang was finally pronounced not guilty on 8 November 2000 by Heilongjiang High People’s Court on the grounds of lack of evidence, just over six years after his initial detention.⁸⁸

A judge at Chengde Intermediate People’s Court where Chen Guoqing and his three co-defendants were sentenced to death despite obviously incomplete and fabricated evidence, was quoted during an interview as saying, “Although unclear facts and inadequate evidence can lead to innocence according to law, there is some distance between law and reality.”⁸⁹

5. Appeal

Article 14(5) of the ICCPR states: *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

Article 6 of ECOSOC resolution on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1996/15): *[...] calls upon Member States in which the death penalty may be carried out to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question;*

According to Article 183 of the Criminal Procedure Law, defendants convicted of a capital crime may appeal the verdict and sentence passed at their trial of first instance to a higher court within 10 days of receiving written notification of the judgement.

⁸⁷ “The strange case of ‘four times sentenced to death and four times spared’ at Hebei High Court”, Southern Weekend, available at www.china.org.cn dated 31 July 2003.

⁸⁸ “‘Condemned prisoner’ wins 140,000 compensation”, Beijing Youth Daily 28 April 2002 (in Chinese).

⁸⁹ “Hebei Chengde: the ‘robbery and murder’ case of Chen Guoqing et al”, Guo Guosong, available (in Chinese) at: www.shuku.net undated document.

Article 180 of the Criminal Procedure Law stipulates "No pretext may be used to deprive a defendant of his right to appeal". However, there is currently an attempt by courts in China to reduce appeal rates thereby cutting costs and speeding up the judicial process. Courts produce annual reports with general statistics on their performance throughout the year, many of which include figures for the number of appeals. Dongying City Intermediate People's Court in Shandong Province for example, reports that appeals against all sentences dropped 23% in 2002 from the previous year, and another 27% in 2003 from the 2002 figures. The report also claims that the number of cases sent for retrial or which had sentences over-ruled by the appeal court, fell 69% between 2001 and 2002.⁹⁰ The report offers no breakdown of the figures, so it is not known how many appeals were against death sentences.

Some commentators in China are encouraged by the drop in rates of appeal, taking it as an indication that more and more people are convinced of the courts' efficiency and transparency. Others are concerned that too much weight is given to appeal rates as a measure of the courts' abilities, and that "some judges" might attempt to bar defendants from their right to appeal in order to make the appeal rate for their court appear lower.⁹¹

Commentators also point out that a lower rate of appeals is possibly the result of disillusionment with the judicial system, and a sense that appeals can be futile. A reflection of this attitude can be seen in an online survey conducted by Beijing Municipality into Beijing residents' levels of satisfaction with all government services, which in its initial findings revealed that only 2% of respondents were satisfied with the city's judiciary.⁹²

The process of appeal against a death sentence involves review of the case file by a collegial panel of three or five judges at a provincial-level High People's Court – the court of second instance. Upon reviewing the evidence and lawyer's petition in a case file, according to Article 189 of the Criminal Procedure Law the provincial-level court has three possible options: it can reject the appeal and uphold the sentence passed at the original trial; if it believes that the determination of the facts was correct but there was an error in the application of the law or sentence, it can revise the judgement; or if it believes the facts of the case are unclear or the evidence is insufficient, it can revise the judgement after clarifying the facts itself, or revoke the judgement and return the case to the original court for re-trial. There is no limit on the number of times a case can be sent for re-trial. Cases monitored by Amnesty International indicate that an appeal court is far more likely to send a case for retrial than take on the responsibility of revising a judgement itself.

5.1 Revising a sentence on appeal

⁹⁰ "Focus on the 'Dongying Intermediate Court phenomenon' – examining the 'dark horse' that made four great breakthroughs", available (in Chinese) at: www.people.com.cn dated 19 November 2003.

⁹¹ See for example: "Trial appraisals cannot lead to areas of error", Legal Daily 5 November 2002 (in Chinese).

⁹² "Overwhelming numbers of Beijingers dissatisfied with government: poll", AFP 21 November 2003.

Article 189(2) of the Criminal Procedure Law states: “If a determination of the facts in the original judgement contains no error, but there is error in the application of law or the punishment is inappropriately decided, it should revise the judgement”.

Beijing Municipality High People’s Court – a provincial-level court – reported on 8 August 2003 that during a two-year period of the national “strike hard” campaign from April 2001 to March 2003, it had commuted a total of 35 death sentences passed by the city’s intermediate-level courts to death penalties suspended for two years. The report states this was a result of either taking mitigating circumstances into account, or not approving death sentences if there was any doubt about a defendant’s guilt.⁹³ However, it is open to question how many provincial-level high courts in China are willing or able to intervene with any rigour in revising judgements.

If an appeal is lodged by a defendant, according to Article 190 of the Criminal Procedure Law, the sentence cannot be increased by the appeal court. However, if the procuratorate appeals on the grounds that a sentence is too light, that sentence can be increased, for potentially capital crimes to the death penalty. For example, Hua Yan was sentenced to life in prison on 12 September 2002 by Ziyang City Intermediate People’s Court in Sichuan Province on charges of manufacturing large quantities of methamphetamines. Ziyang City People’s Procuratorate protested the sentence to the provincial high court, which then passed a death sentence against Hua on 17 April 2003.⁹⁴

5.2 Ordering a revision of a judgement or retrial on appeal

Article 189(3) of the Criminal Procedure Law states: “If the facts in the original judgement are unclear or the evidence inadequate, [the court] may revise the judgement after clarifying the facts; it may also order revocation of the original judgement and remand the case to the people’s court that originally adjudicated it for a new adjudication.”

Generally, in cases where intermediate courts have passed death sentences based on incomplete evidence or where “the facts are not clear”, it is more common for the appeal court to send the case for re-trial at the court which originally passed verdict and sentence. However, sending a case for retrial is no guarantee that defendants are any more likely to receive a fair trial, and there is no limit under Chinese law to the number of times a case can be re-tried.

⁹³ “Beijing court strictly limits the death penalty – 35 condemned convicts ‘spared’”, Beijing Evening News, available (in Chinese) at www.ben.com.cn dated 8 August 2003. According to Amnesty International’s monitoring of reported death sentences, executions and suspended death sentences passed by intermediate courts in Beijing Municipality between April 2001 and December 2002 (that is, not including the last three months of the period cited), 320 death sentences were passed; 255 executions were carried out; and 22 suspended death sentences were passed.

⁹⁴ “Supreme People’s Court approves passing death sentence against ‘ice king’”, available (in Chinese) at: www.scol.com.cn dated 20 November 2003.

As previously noted, Hebei Province High People's Court sent the case of Chen Guoqing and his three co-defendants for re-trial on 6 October 1996. All four had appealed against the death sentences imposed at their first trial earlier in 1996, and the provincial court sent the case for re-trial on the grounds that more than 20 items of the prosecution's evidence needed clarification.

Chen Guoqing and his three co-defendants were re-tried on 12 August 1997. Despite the doubts raised by Hebei Province High People's Court, Changde City Intermediate People's Court re-sentenced all four men to death, on exactly the same charges and based on exactly the same 'evidence'. The court still refused to investigate the defendants' claims they had been tortured, and would not allow their alibis to be presented as evidence.

A journalist noted that the statement "The facts are clear and there is sufficient evidence to convict" was omitted from the 1997 sentencing documents.⁹⁵

Once again, the men appealed, and on 16 February 1998 the provincial high court ordered a third retrial on the grounds that "the facts are not clear", and yet again, at the third trial on 13 November 1998, all four men were found guilty and sentenced to death on the basis of the same evidence.⁹⁶

The provincial court ordered a fourth retrial following the co-defendants' subsequent appeal, which was held on 20 November 2000, when two of the co-defendants were yet again sentenced to death, while one was sentenced to death suspended for two years, and one was sentenced to life in prison. And once again, all four were sentenced on the basis of the same 'evidence', the court having refused to accept any evidence which could have refuted that of the prosecution. In addition, the prosecution presented identical documents for the trials in 1998 and 2000.

Another profound failing in trial procedures against the four co-defendants in this case was that contrary to Article 192 of the Criminal Procedure Law, which states a new collegial panel of judges be formed for re-trials, sentence was passed by the same sentencing judge at the last three trials. It is highly unlikely that the individual judges would have been willing to reverse their original decision – precisely the situation that Article 192 was apparently intended to prevent.⁹⁷

Chen Xingliang, a prominent legal scholar at Beijing University has commented extensively on this case. Chen notes that although there is a system for investigating miscarriages of justice, if the appeal court orders such an investigation, "[...] this is a great loss of face for the lower-level court". Therefore, claims Chen, appeal courts prefer to send the case for re-trial in the hope that the lower-level court will be willing to correct its own error, on the apparent understanding that a different collegial panel of judges would try the

⁹⁵ "Hebei Chengde: the 'robbery and murder' case of Chen Guoqing et al", Guo Guosong, available (in Chinese) at www.shuku.net undated document.

⁹⁶ "The strange case of 'four times sentenced to death and four times spared' at Hebei High Court", Southern Weekend, available (in Chinese) at www.china.org.cn dated 31 July 2003.

⁹⁷ *Ibid.*

case.⁹⁸ It is unclear from reports why the same sentencing judge was allowed to appear on the panel for three of the trials.

The four defendants’ case was tried for the fourth time on 21 July 2003, this time by Hebei Province High People’s Court sitting as the court of first instance, apparently in response to the authorities’ exasperation that the intermediate-level court could not reach a sound verdict. During the public hearing, all four men were reportedly permitted to submit their alibis to the court, as well as present the wounds sustained during their torture to the court, and to state the names of the police officers who tortured them. One report claims this was the first time the co-defendants had physically been able to show their scars, having appeared in court on all previous occasions wearing handcuffs. Chen Guoqing is described in reports as now having difficulties in speaking or thinking coherently.⁹⁹

Fu Kuanzhi a research fellow with the Legal Studies Institute at the Chinese Academy of Social Sciences has said: “I think the quality of some of the people handling this case has been somewhat lacking. [...] There are some people who should not only raise their professional qualities, but there is also the question of their professional morality.”¹⁰⁰

The provincial court had yet to deliver a final verdict at the time of this document’s release.

The case of Zhao Fenrong, the woman accused of poisoning two children in 1998, has also not yet been resolved despite inconsistencies in evidence similar to the case of Chen Guoqing et al.

Zhao Fenrong was originally sentenced to death in June 1999 by Shangluo City Intermediate People’s Court in Shaanxi Province. The “legal worker” (as opposed to a qualified lawyer) assigned to represent her in court argued that Zhao had indeed laced candy with rat poison which was intended to kill the two children. But because the children’s parents had taken the candy into the house from where it was alleged Zhao had left it on a step the night before, the sentence should be reduced.

Zhao’s husband persuaded two lawyers to review his wife’s case file before the appeal hearing, and it was they who found the inconsistencies: a police report from the crime scene – Zhao’s home – was dated two days before Zhao had come under suspicion; the police stated Zhao’s motive was revenge against the children’s parents for breaking her home’s water supply, but Zhao only heard that the children’s parents had broken the pipe when she was already in custody (and no one testified to any other disputes between the otherwise friendly neighbours); a statement from Zhao’s 9-year-old daughter testifying to her mother’s “strange mood” was taken by police with no adult relative present – as required by law; no

⁹⁸ “An unresolved capital case of six years exposes big problems in criminal procedure”, *Legal Daily* available (in Chinese) at: www.legaldaily.com.cn dated 5 February 2001.

⁹⁹ “The strange case of ‘four times sentenced to death and four times spared’ at Hebei High Court”, *Southern Weekend*, available (in Chinese) at: www.china.org.cn dated 31 July 2003.

¹⁰⁰ “Death sentence repeatedly refused – four Hebei youths held in extended detention for nine years”, *Beijing Youth Daily* available (in Chinese) at: www.zqslaw.com dated 2 November 2003.

evidence was presented linking Zhao to the candy, and an autopsy proved no connection between the rat poison in the dead children's stomachs and the candy.

Shaanxi Province High People's Court sent the case for retrial at Shangluo City Intermediate People's Court in March 2000. On the basis of the inconsistencies in the case file, the two lawyers instructed Zhao to plead not guilty. The two lawyers believed Zhao's case was strengthened having themselves investigated her claim she had been tortured, and produced statements in court from two of Zhao's cellmates from detention testifying that they had seen bruises and lacerations on her legs and back. However, the inconsistencies and the testimonies were apparently ignored by the court, and Zhao was sentenced to death for a second time. Zhao appealed again.

Several months later, one of the lawyers happened to be at the provincial high court on other business. In passing she asked a judge on the progress of Zhao's appeal, and was told, "The [execution] order hasn't been signed yet". The two lawyers filed an urgent petition to Shaanxi Province High People's Court, and Zhao's stay of execution was reportedly received on 20 September 2000 by the detention centre where she was being held, on the evening before her execution.

It is not clear from reports why an order for Zhao's execution was drafted despite her pending appeal. Significantly, two years later, the same court, Shaanxi Province High People's Court, also failed to inform Dong Wei's lawyer of the failure of his appeal in closed session, and of the order for his execution (see pp. 40-41).

Zhao was sent for retrial a third time on 27 April 2001 by the high court repeating its call for clarification of inconsistencies in the evidence against her. However, once again, Shangluo City Intermediate People's Court sentenced her to death, with the prosecution stating, "[...] only death will satisfy the indignation of the masses and comply with the nation's law".

Zhao's latest appeal was heard by Shaanxi High People's Court in December 2002. None of the reports in the Chinese media offer an explanation as to why her appeal took 20 months to be heard. Despite evidence to the contrary, the high court agreed with Shangluo Intermediate People's Court that "the facts are clear", and sentenced Zhao Fenrong to death, this time suspended for two years.¹⁰¹

She remains in the provincial women's prison. Under Article 203 of the Criminal Procedure Law, her lawyers reportedly filed a petition in April 2003 to Shaanxi High People's Court requesting a retrial, but no response to this petition has yet been monitored.

In the case of Pastor Gong and his 16 co-defendants, Hubei Province High People's Court ordered a re-trial reportedly on the grounds that there was not enough evidence to convict, and that "the facts are not clear". The re-trial was held at Jingmen City Intermediate People's Court on 9 and 10 October 2002, but because the trial was again closed, little is

¹⁰¹ "A rural woman sentenced to death three times, Shaanxi sees another case of 'hold the execution'", Beijing Youth Daily, available (in Chinese) at: www.southcn.com dated 11 May 2003.

known about which aspects of the evidence against Pastor Gong and his co-defendants were queried by the high court.

However, it is known that all charges relating to “using a heretical organisation to undermine implementation of the law” were dropped at the re-trial, resulting in criminal charges against four of Pastor Gong’s co-defendants being dropped, and significant sentence reductions for all other defendants. However, the four women who had criminal charges against them dropped, were sent to re-education through labour camps having accused the authorities of torturing them into supplying testimonies against Pastor Gong.¹⁰² Pastor Gong’s death sentence was commuted to life imprisonment for the charges of rape and assault, while of the four others sentenced to death at their first trial, two received sentences of life in prison and two received prison sentences of 15 years.¹⁰³

The Chinese authorities have never offered an official explanation as to why the “heretical organisation” charges were dropped at Gong Shengliang’s re-trial. However, observers suggest a possible reason is that the re-trial took place just two weeks before Jiang Zemin was due to visit the United States on his last foreign engagement as China’s state president and CCP chairman. To have upheld the death sentence against Pastor Gong and three of his co-defendants on charges relating to their religious activities might have raised the issue of human rights and religious freedom in China higher on the Washington-Beijing agenda than Chinese government officials would have wished.¹⁰⁴

6. Review and approval of death sentences by the Supreme People’s Court

Article 189(1) of the 1996 Criminal Procedure Law states: “If a determination of the facts and the application of the law in the original judgement are correct and the punishment is appropriate, [the court] should order a rejection of the appeal or protest and confirm the original judgement”.

Once an appeal against a death sentence has been rejected, Article 199 of the 1996 Criminal Procedure Law clearly states: “Death sentences are to be approved by the Supreme People’s Court.” However, various regulations and amendments over the years have delegated the responsibility of approving executions for certain crimes from the Supreme People’s Court down to the provincial High People’s Courts.

This delegation of responsibility for approving death sentences first appeared in February 1980,¹⁰⁵ just months after promulgation of the 1979 Criminal Procedure Law, which had regulated for approvals to be handled by the Supreme People’s Court.

¹⁰² “Christian Prisoner Reported Dangerously Ill”, HRiC 10 June 2003.

¹⁰³ “China withdraws death sentences for church leaders”, Reuters 10 October 2002.

¹⁰⁴ “Church leader sentenced to life in jail”, SCMP 11 October 2002.

¹⁰⁵ “Who exercises the right of death penalty review?” Guo Guangdong, Southern Weekend, available (in Chinese) at: www.people.com.cn dated 18 July 2002.

In 1983, at the outset of China's first "strike hard" campaign, the Supreme People's Court was simply unable to manage the huge numbers of approvals needed for the glut of death sentences being passed by courts throughout the country. In that same year, a notice from the Supreme People's Court gave provincial-level high courts the right to review and approve death sentences they themselves had passed for the crimes of "[...] homicide, rape, causing explosions and others gravely endangering public security and disrupting social order".¹⁰⁶ (The 1979 Organic Law of the People's Courts was also amended at the same time to enable this shift in responsibility.)

Between 1991 and 1997, the Supreme People's Court delegated the authority to approve death sentences specifically for drug-related charges to high courts in six provinces, all of which experience particularly high incidences of drug-related crime.

Another notice from the Supreme People's Court was released in 1997, timed to coincide with promulgation of the revised Criminal Law and Criminal Procedure Law, and the 1996 "strike hard" campaign. The 1997 notice added economic crimes to those which the provincial-level high courts could approve the death penalty without the Supreme People's Court's authority, such as corruption, bribery and other crimes "[...] that disturb the order of the socialist market economy."¹⁰⁷

Therefore, stipulations carried in the 1996 Criminal Procedure Law – drafted by the National People's Congress – that cases where the death penalty has been imposed must be reviewed by the Supreme People's Court, have been over-ridden by notices released by the Supreme People's Court.

Chinese commentators argue that this practice is an infringement of Articles 62 and 67 of the Constitution of the People's Republic of China, which assigns the National People's Congress the highest legislative powers in China. In other words, notices from the Supreme People's Court or decisions of the standing committee of the National People's Congress should not trump national laws.

This system of death sentence review came under intense scrutiny in China in 2002 due to the case of a farmer, Dong Wei, who was sentenced to death on 21 December 2001 having killed a man during a fight outside a dance hall in Yan'an City, Shaanxi Province. His lawyer appealed against the sentence, claiming Dong had killed the man in self-defence. Much of the reporting on the case in China's press supported this defence, pointing out that Dong had been physically attacked at least once by the murder victim before retaliating.¹⁰⁸ Shaanxi Province High People's Court "reviewed" their own decision and rejected the appeal in a closed session, and on 22 April 2002 issued an order for Dong to be executed on 29 April. Dong's lawyer was not informed of the decision, and only found out on 27 April – two days

¹⁰⁶ "Notice regarding entrusting to the higher people's courts the authority to review and approve certain death penalty cases", Supreme People's Court 1983.

¹⁰⁷ "Notice regarding authorising higher people's courts and people's liberation army military affairs courts to review and approve certain death penalty cases", Supreme People's Court 1997.

¹⁰⁸ See for example: "A great misfortune for a society ruled by law", available (in Chinese) at www.lawyer-group.com undated document.

before execution was due – because he took the trouble to visit the high court and enquire on the progress of the appeal.

In an attempt to halt the chain of events leading to execution, the lawyer then travelled to Beijing at his own expense to appeal the case in person at the Supreme People’s Court, but he was refused entry and turned away. (The court’s telephone system was reportedly out of service at the time.)

On the morning of the execution, the lawyer managed to gain access to the Supreme People’s Court under false pretences, and persuade a judge to review the case file. The judge agreed with the lawyer that Dong’s case needed a more thorough review than it had received, and the execution was only stopped when the judge contacted the execution ground with a borrowed mobile phone, reportedly just four minutes before it was due to take place.¹⁰⁹ (Despite a further review of the case by Shaanxi Province High People’s Court on the orders of the Supreme People’s Court, Dong was executed on 5 September 2002.)

In light of Dong Wei’s case, where his execution was initially approved by a provincial-level court at a closed appeal hearing, five prominent Chinese legal scholars have said “[...] the biggest problem exposed by this case is that the current death penalty review process exists only in name.”¹¹⁰

An article in the US press in January 2004 reported that reforms are being discussed at a high level in China which would revert authority to review and approve death sentences back to the Supreme People’s Court.¹¹¹ Amnesty International understands from well-placed sources in China that this re-centralised review system could be in place by 2005, although resistance from certain senior security officials could slow the process. Sources believe that if such a system was re-introduced, the number of executions in China would probably fall significantly. The main reason for this fall would be that the review system for death penalties would work as it was originally intended, rather than in its current de-centralised, inconsistent and locally-influenced form. The source suggested that “getting rid of the influence of local CCP committees and governments” would further reduce the number of executions.

Xiao Yang, president of the Supreme People’s Court was reported to have said on 10 March 2004 the court “[...] is now considering taking back the right to verify and approve death sentences”. The statement was made at a minor fringe meeting of the National People’s

¹⁰⁹ For detailed reports and commentaries on this case, see for example: “From ‘hold the execution’ to ‘hold the law’”, Chen Xingliang, *Peking University Law Journal* Vol. 15, No. 1 (2003) pp. 98-106 (in Chinese); “Main protagonist in ‘hold the execution’ case executed yesterday”, *Beijing Evening News* available (in Chinese) at: www.ben.com.cn dated 6 September 2002.

¹¹⁰ “Who exercises the right of death penalty review?”, Guo Guangdong, *Southern Weekend*, available (in Chinese) at: www.people.com.cn dated 18 July 2002. The five scholars are Chen Xingliang, Chen Ruihua and He Weifang from the academy of law at Beijing University, Chen Weidong from the academy of law at People’s University, and Fan Chongyi from the University of Politics and Law.

¹¹¹ “Chinese Move to Relax Severe Judicial Penalties”, *Washington Post* 18 January 2004.

Congress in Beijing but reported in the official press, lending the statement some weight and authority. However, he gave no timetable for the reform.¹¹²

Sources also suggested that judges at the Supreme People's Court would be better versed in international human rights standards than their colleagues at intermediate- and provincial-level courts. It should be noted however, that there is no provision in Chinese law for judges to refer to international law when making rulings. A Chinese court is yet to set the precedent of referring to international law when ruling on a criminal case.

In the case of Lobsang Dhondup and Tenzin Deleg Rinpoche, the death penalty review process was highly irregular under both Chinese and international law.

Official reports claim that Lobsang Dhondup did not appeal the death sentence handed down to him on 2 December 2002, but that Tenzin Deleg Rinpoche did appeal his suspended death sentence.¹¹³ However, an initial report by Agence France Presse quoted a court official as saying both men had appealed.¹¹⁴ There is a suspicion therefore that Lobsang Dhondup was denied his right to appeal to a higher tribunal.

According to Article 200 of the Criminal Procedure Law, if a defendant does not appeal against a death sentence, as official reports claim was the case with Lobsang Dhondup, the case "[...] shall be submitted to the Supreme People's Court for approval after review by a higher people's court".

In addition, the 1997 notice authorising provincial-level courts to approve certain death sentences, also clearly states that all cases involving "state secrets" should be sent to the Supreme People's Court for approval.¹¹⁵

Therefore, both Lobsang Dhondup's sentence and Tenzin Deleg Rinpoche's sentence should have been approved by the Supreme People's Court.

Lorne Craner, Assistant US Secretary of State for Democracy, Human Rights and Labour, was repeatedly assured by Supreme People's Court officials during a meeting in Beijing in mid-December 2002, that the cases would receive a "lengthy" review. Similar assurances were given to EU officials.¹¹⁶

It was widely assumed, therefore, that when Lobsang Dhondup and Tenzin Deleg Rinpoche's appeals were rejected by Sichuan Province High People's Court on 26 January 2003, the case files would then be sent to the Supreme People's Court for review. However, they were not.

¹¹² "China's top court may limit death penalty", Reuters 10 March 2004.

¹¹³ "Bomb explosion in Tianfu Square – A'an Zhaxi and Luosang Dengzhu sentenced to death", available (in Chinese) at: www.tfol.com dated 26 January 2003.

¹¹⁴ "Two condemned Tibetan separatists appeal death sentence", AFP 13 December 2003.

¹¹⁵ See p. 42, footnote 107.

¹¹⁶ *The execution of Lobsang Dhondup and the case against Tenzin Delek – the law, the courts, and debate on legality*, Congressional-Executive Committee on China, available at: www.cecc.gov dated 10 February 2003.

Tenzin Deleg Rinpoche started serving the two years of his suspended death sentence on 26 January 2003, the day his appeal was rejected by Sichuan Province High People’s Court. According to Article 210(2) of the Criminal Procedure Law, so long as he does not “[...] premeditatedly commit crimes” during this period of suspension (which expires on 2 December 2004), his sentence will be commuted to life imprisonment. Otherwise, he will be executed.

Lobsang Dhondup was executed within hours of Tenzin Deleg Rinpoche’s appeal being rejected. As the key witness and accomplice to Tenzin Deleg Rinpoche’s alleged crimes, the execution of Lobsang Dhondup has seriously undermined any future attempts by Tenzin Deleg Rinpoche to petition for a further review of his case.¹¹⁷

7. Final “Adjudication Supervision” by the Supreme People’s Court

Under Article 205 of the Criminal Procedure Law where the Supreme People’s Court finds “errors in judgements” it is empowered to re-try or direct a lower court to retry cases, even after the final judgement has become effective. These powers of “adjudication supervision” were reportedly exercised for the first time by the Supreme People’s Court in an ordinary criminal case on 18-22 December 2003. In this case the State’s desire to be seen to be tough on crime took precedence over safeguarding defendant’s rights to due process and protection from human rights violations, including torture.

In a landmark ruling, Liaoning Provincial Higher People’s Court had taken seriously allegations of torture and reduced a death sentence on appeal to a suspended death sentence on the basis it could not “[...] exclude the possibility that public security organs during their investigation extorted a confession by torture” for a charge of murder. The Supreme People’s Court retried the case and ordered an immediate execution, determining that these grounds were “not sufficient” to exempt the defendant from execution “[...] based on the evidence heard at the re-trial”.¹¹⁸

The high-profile case involved Liu Yong, a wealthy well-placed entrepreneur and member of Shenyang City People’s Congress, Liaoning Province, who had been implicated in vice and violent criminal gang activities, as well as a high-level corruption scandal which had resulted in the execution of the city’s vice-mayor. Previous attempts to investigate and prosecute Liu had reportedly been blocked by his well-placed relatives and contacts.

Liu Yong was detained in July 2000, trying to cross into Russia. He was detained for nearly six months before being formally arrested. Liu was tried on 17 April 2002 at Tieling City Intermediate People’s on 32 charges including multiple counts of tax evasion, assault, possession of firearms, extortion, kidnapping, and a charge of ordering the murder of a tobacco vendor working in the city without Liu’s ‘permission’. He was sentenced to death for

¹¹⁷ *Ibid.*

¹¹⁸ See the complete Supreme People’s Court ruling on the case (in Chinese) at: www.dffy.com/sifashijian/ws/200312/20031223202412-3.htm

his part in ordering the murder of the tobacco vendor and given prison terms and fines totalling 15m Yuan (US\$1.8m) for his other crimes.

At his appeal to Liaoning Province High People's Court on 15 August 2003, Liu's lawyer presented testimonies from eight serving and retired prison officers that Liu's confession to the murder had been extorted through torture they had witnessed. In addition, only one of the eight men charged with carrying out the murder on Liu's orders testified that Liu had indeed ordered it.

The reduction from a death sentence to a sentence suspended for two years caused outrage in sections of the Chinese media. On Internet bulletin boards, suspicions were voiced that Liu had bribed his way out of his death sentence, calling into question the government's resolve in their anti-corruption drive.

Following sentence by the Supreme People's Court in December 2003, Liu Yong was immediately taken to a mobile execution chamber in the grounds of a crematorium near the courthouse and given a lethal injection.

Commentators allege that the powerful central Political-Legal Committee ordered the retrial, against the advice of judges in the Supreme People's Court and other legal experts, because it was not prepared to see a precedent set of a sentence reduced on the grounds of a confession extorted through torture.¹¹⁹

8. Execution

Executions in the People's Republic of China are carried out either by firing 'squad' or, since revisions to the Criminal Procedure Law in 1996, by lethal injection.

Article 211 of the Criminal Procedure Law states: "After receiving an order to execute the death sentence from the Supreme People's Court, the people's courts at lower levels shall, within seven days, deliver the criminal for execution of the sentence." However, as previously noted, in contravention of Article 211, orders from the Supreme People's Court are not actually needed for the majority of executions in China, which are instead carried out by an intermediate-level court with the approval of the provincial-level court.

Condemned prisoners are often executed just minutes or hours after their appeal has failed, as was the case with Lobsang Dhondup. Other condemned prisoners are held in a place of detention until the day of their execution, perhaps for a week (in accordance with Article 211), but also longer if it suits the authorities' agenda to execute people in larger numbers on significant dates. For example, the glut of executions in late June to mark World Anti-Drugs Day suggests condemned prisoners can be held on death row for months, awaiting an 'appropriate' time to be executed.¹²⁰

¹¹⁹ See: "Execution reveals Party's grip in China", Washington Post 23 December 2003.

¹²⁰ Amnesty International's provisional count of death sentences in China for drugs-related charges in the single week preceding 26 June 2003 includes 54 reported executions.

Amnesty International has noted that some courts in China have introduced measures to alleviate aspects of a prisoner’s suffering as they await execution. For example, Beijing Municipality High People’s Court announced in September 2003 that it was urging all intermediate-level courts in the municipality to set aside rooms for condemned prisoners to meet for a final time with their family. According to accompanying reports, a market-stall holder named Li Jun who was convicted of murder in April 2003, was allowed to meet his wife for an allotted 15 minutes in one such room at Beijing Number One Intermediate People’s Court. Guards (and a journalist) were present as the couple conversed over a telephone link either side of a partition wall and through a sheet of reinforced glass. The room was described as a manifestation of the high court’s “humane loving care”.¹²¹ Elsewhere, reports persist of relatives being denied access to condemned prisoners, or of executions carried out without relatives even being informed of the failure of final appeals.

Procedures surrounding the sentencing to death and execution of prisoners in China are more usually less concerned with the welfare of the prisoner than with presenting the court and the judiciary as being firm-handed and responsive to the demands of the CCP and the state.

For example, during sentencing hearings, condemned prisoners have been lined up in front of the court’s public gallery to hear their sentence, sometimes with photographers and television cameras focused on their faces to capture their expression as sentence is passed. Such images are commonly used to publicize periodic crackdowns targeting specific crimes such as drug-related crimes, crimes involving criminal syndicates and gangs, and official corruption.

Often, following sentencing, prisoners continue to be paraded in an open truck through busy streets to the execution ground, with a placard bearing their name crossed out in red strung around their neck, and surrounded by People’s Armed Police. This is despite the Supreme Court’s Interpretation of Specific Questions on the Implementation of the Criminal Procedure Law issued in 1998, which states “Parading in public or other actions which humiliate the person being executed are forbidden”.

In May 2000, Chinese government representatives reported to the UN Committee Against Torture, “China prohibits the practice such as parading in the streets the criminals to be executed, hanging big character name posters on criminals or tying them up with ropes. The people’s courts at all levels have done a great deal of work to reduce and eliminate such practice. At the moment such phenomena no longer exist. Should they occur in some individual places, they will be seriously dealt with according to law”.¹²²

¹²¹ “The first meeting room for condemned prisoners and their families in Beijing, a manifestation of the court’s humane loving care”, available (in Chinese) at: www.people.com.cn dated 18 September 2003. The report does not mention the date of Li’s execution.

¹²² See: *Torture – a growing scourge in China – time for action*, Amnesty International March 2001. (AI Index: ASA 17/004/2001.)

8.1 Execution by bullet

Sources for the following account of an execution by firing squad include unofficial accounts that are difficult to verify, but are consistent with a wide variety of reports received by Amnesty International over recent years.

According to most accounts, the night before condemned prisoners are due to be executed, they are granted a last meal of their own choice and an unlimited supply of cigarettes, but no alcohol. Some accounts also say that condemned prisoners are offered a shower and a change of clothes.

On the morning of an execution, court and police officials come to the prisoner's cell and read the sentencing documents to the condemned prisoner. The prisoner is then placed in handcuffs and ankle-fetters if not already wearing them, then escorted to the execution ground by court bailiffs, officers of the People's Armed Police and other court officials including the sentencing judge.

According to one account, crowds of people sometimes follow the open trucks with condemned prisoners on board to the execution ground.¹²³ For individual condemned prisoners, their journey to the execution ground is usually made in a court vehicle, which by some accounts is discreet and un-marked to avoid arousing attention or alarm en route.¹²⁴

Some prison facilities have an execution ground within their walls, so the journey from cell to execution ground for a condemned prisoner is short. There are apparently no standardised regulations governing procedures for executions in prisons. A contributor to a web-based legal forum claiming to be a prison official who had witnessed "several" executions pointed out inconsistencies and areas of doubt in the process of execution:

"In many aspects [execution of the death penalty] lacks a clear legal basis. For instance, can the prison's armed police execute the death penalty themselves? If so, how should one determine the specific selection of personnel for the execution of the death penalty? Can the prison take the criminal sentenced to death to the arena and display them to the prison population before the execution of the death penalty, and use them as a live model for legal education? If so, what legal procedures must be carried out? Is the criminal sentenced to death allowed to make a speech at the arena? How long should the display of the criminal at the arena last? Does the prison definitely have to provide a last meal for the criminal? What are the criteria for the provision of this last meal? Does the prison have to allow the criminal to take a shower before the execution? Does the prison have to provide pen and paper for the criminal to write their last testament? Through what procedures is this testament meant to be

¹²³ "Eye-witness to an execution", Ren Ping, available (in Chinese) at: www.chinamonitor.org undated document.

¹²⁴ "How is China's death penalty carried out?", available (in Chinese) at: www.chinamonitor.org undated document.

conveyed into the hands of its recipients? By what rules do the audience of the execution have to abide?”¹²⁵

Some cities in China are known to have permanent execution grounds within their jurisdiction, other than those in prisons. However, others apparently do not. According to an account of an execution in Zhengzhou City in Henan Province, finding a suitable site to carry out an execution can be difficult. Court bailiffs are sent into the city’s suburbs to scout for a site which would ideally be close but not too close to a major road, spacious but hidden away from observers, and with some sort of natural barrier to stop a potentially stray bullet.¹²⁶

An un-named court bailiff has said, “I once found an execution ground I was particularly pleased with, but we could only use it twice before it was bricked up by the locals, and this meant it was ruined.”¹²⁷

Amnesty International has not monitored a report of a public execution in China since 1998. However, members of the public do attend some executions even without the event being ‘staged’ by police or other authorities. Passers by or people who have followed an open truck parading condemned prisoners can sometimes gain a vantage point over the execution ground to observe proceedings.¹²⁸

According to most accounts, condemned prisoners are forced to kneel on the ground with their hands tied behind their back. A firing ‘squad’ consists of a single member of the People’s Armed Police, who fires a single high-calibre bullet usually into the back of the prisoner’s head from point-blank range.

When more than one condemned prisoner is to be executed, all prisoners are lined up side by side, each with a People’s Armed Police officer standing behind them with a rifle. All are shot simultaneously upon the order to fire from the commanding officer.¹²⁹

However, there is also the possibility that condemned prisoners are made to wait while others are executed ahead of them, thereby witnessing executions preceding their own. For instance, 18 people were executed in Beijing on 6 November 2001, and accompanying reports claimed 10 of these people were executed within the space of 15 minutes.¹³⁰

¹²⁵ “A perfect ‘Law for the carrying out of executions’ should be drafted”, Deng Qingbo, contributor to a web-based legal forum, dated 29 April 2003. The writer was moved to write in response to a press report of a condemned man who was allowed to visit with his immediate family so that a group photograph could be taken. The writer was concerned that no law exists to provide for this and other measures. (The posting is no longer available on the Internet.)

¹²⁶ “How is China’s death penalty carried out?”, available (in Chinese) at: www.chinamonitor.org undated document.

¹²⁷ *Ibid.*

¹²⁸ “Eye-witness to an execution”, Ren Ping, available (in Chinese) at: www.chinamonitor.org undated document.

¹²⁹ *Ibid.*

¹³⁰ “Criminals executed in Beijing for rampage while impersonating police”, AFP 9 November 2001.

In case the gun-shot wound from a single round is not immediately fatal, according to one account, a second People's Armed Police officer is on hand to shoot the prisoner again.¹³¹ One eye-witness to an execution wrote that a condemned prisoner was still alive five minutes after he was shot. The commanding officer of the People's Armed Police unit ordered an officer to shoot the prisoner again, but when this still did not prove fatal, two officers then kicked the prisoner to death.¹³²

Once death has been confirmed by a court coroner, and a photograph taken of the corpse for the records, an executed prisoner is then taken to a morgue either in a medical facility such as a local clinic or hospital, or within the prison.

8.2 Execution by lethal injection

Lethal injection as a means of execution was legislated for in the 1997 Criminal Procedure Law. Kunming City Intermediate People's Court in Yunnan Province was reportedly the first court in China to use lethal injection on 28 March 1997 against two convicts. Between then and 1 March 2003, Kunming City Intermediate People's Court alone (one of 18 intermediate-level courts in the province) reportedly executed 112 people by means of lethal injection, approximately three people per month.¹³³

Lethal injection does not overcome fundamental objections to the death penalty. Such executions remain a violation of the right to life. Furthermore it is still cruel, inhuman and degrading that a convicted prisoner – whether innocent or guilty as charged – still faces the psychological torment of impending death at the hands of the state while being held in extremely harsh conditions. Promoting a "humane" way for the state to execute should not be considered the sign of a "civilized" society.

Described in official reports in China as "scientific" and "a civilised development",¹³⁴ lethal injection as a means of execution is being rapidly adopted by courts on a province by province basis throughout China. Repeating the official line, media reports of executions observed by journalists or officials, commonly assert: "All those present thought that drug injection is a very civilised and scientific method for carrying out death sentences".¹³⁵ It is unlikely that the intention is to fully replace execution by firing squad with execution by lethal injection: Shen Deyong, a vice-president of the Supreme People's Court stated in 2000

¹³¹ "How is China's death penalty carried out?", available (in Chinese) at: www.chinamonitor.org undated document.

¹³² "Eye-witness to an execution", Ren Ping, available (in Chinese) at: www.chinamonitor.org undated document.

¹³³ "Yunnan province comprehensively promotes lethal injection as a method of carrying out the death penalty, a civilised development in the execution system", available (in Chinese) at: www.xinhua.org dated 1 March 2003.

¹³⁴ *Ibid.*

¹³⁵ "Convict dies in a daze, Yunnan judge describes the process of the first execution by lethal injection", available (in Chinese) at: www.sina.com dated 18 September 2001.

that execution by firing squad would still continue despite the widespread use of lethal injection.¹³⁶

Shen added that the Supreme People’s Court had instructed the Chinese Academy of Medical Sciences to research and devise the drugs to be used. The World Medical Association, which includes the People’s Republic of China amongst its membership, has resolved that “[...] it is unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process.”¹³⁷ Nevertheless, physicians were apparently involved in the process of formulating drugs to be used in lethal injections, and court coroners are also present at executions in China, both by firing squad and by lethal injection.

Devising the drugs used in lethal injections reportedly involved animal experiments conducted first on mice, then rats, then dogs and then monkeys.¹³⁸ Executioners are taught to locate veins in prisoners’ arms by practising on rabbits.¹³⁹ The drugs used are probably very similar to those used in the USA for lethal injections, namely a mixture of an anaesthetic (such as pentothal), a muscle paralysing agent (such as pancuronium bromide) and a heart-stopping agent (potassium chloride). Pancuronium bromide ends the prisoner’s capacity to breathe by paralysing the diaphragm, and the potassium chloride lethally disrupts the body’s electrical signals to the heart.

Yunnan Province announced on 1 March 2003 its intention to exclusively use lethal injection as a means of execution throughout the province.¹⁴⁰ Yunnan Province, which appears to be taking the lead in China on the use of lethal injection, invested in 18 mobile execution chambers in March 2003, in which convicts in remote areas (and congested areas where a suitable site for a firing squad cannot be found), can be administered a lethal injection.¹⁴¹ In December 2003, the Supreme People’s Court urged all courts throughout China to purchase mobile execution chambers “[...] that can put to death convicted criminals immediately after sentencing”.¹⁴²

Press reports detailing the use of lethal injections have been more common than reporting on execution by firing squad, apparently for the reason that its use is seen as “a form of social progress” deemed worthy of praise, and that the method is still seen as ‘novel’ in

¹³⁶ “Injection to become execution method”, SCMP 1 September 2000.

¹³⁷ Adopted by the 34th World Medical Assembly Lisbon, Portugal, 28 September – 2 October 1981 and amended by the 52nd WMA General Assembly in Edinburgh, Scotland in October 2000. See: www.wma.net

¹³⁸ “Liaoning carries out first execution by lethal injection, 5 major details of execution process revealed”, available (in Chinese) at: www.china.org.cn dated 21 November 2001.

¹³⁹ “Injection to become execution method”, SCMP 1 September 2000.

¹⁴⁰ “Chinese province rules on use of lethal injection for executions”, Xinhua 1 March 2003. (BBC Mon Alert AS1 AsPol sg.)

¹⁴¹ “Death, Yunnan Style”, Beijing Today, available at: www.bjtoday.ynet.com dated 7 March 2003.

See also p. 2.

¹⁴² “Chinese courts purchasing mobile execution units”, AFP 18 December 2003.

China.¹⁴³ Another justification often cited in the official media for the use of lethal injection in China is that the method is also used in the USA.

A report of court bailiffs’ involvement in the procedure was published in March 2003, describing how a unit of bailiffs from Yuxi City Intermediate People’s Court in Yunnan Province was divided into five smaller groups: one outer- and one inner-cordon security team, a first and second execution team, and an escort team. The outer-cordon security team cleared the area where the mobile execution chamber was parked, while the inner-cordon security team took up positions close to the vehicle itself. In the report of the executions, the execution team then took one of two un-named prisoners to be executed that day from the prison van to the mobile execution chamber “[...] after skilfully tying him up”.¹⁴⁴

A journalist on the Lanzhou Morning News in Gansu Province was part of a delegation of “dozens” of people from all levels of court in the province invited to witness the process of administering a lethal injection. Lanzhou City Intermediate People’s Court executed 11 people on 17 January 2003 – described as the fourth such group to be executed by lethal injection in Lanzhou. The executions took place at a detention centre in an undisclosed rural suburb of Lanzhou, and witnesses were divided into nine groups to watch the executions taking place in two different rooms. The journalist watched the execution of the last prisoner to be executed that day, Dong Jun, who had been sentenced to death for robbery.

“Dong Jun’s ankle chains had already been taken off when he was taken into the execution chamber. He seemed calm and his face was expressionless. On the direction of the person carrying out the execution, Dong Jun climbed onto the execution bed on his own volition, and then put his arm through a hole in a one-way mirror to the other side. Specialist personnel quickly inserted a needle into Dong Jun’s arm, connecting a hypodermic pump to a vein. The executing personnel then started the pump and the injecting work was underway. Dong Jun closed his eyes, and there was no sign of pain in his expression. Around a minute later, the computer showed that Dong Jun was brain dead with the monitor displaying a flat line. His heart gradually slowed until it eventually stopped beating.”¹⁴⁵

Another report claimed that a condemned prisoner was first injected with a general anaesthetic and left unconscious before he was given a lethal injection.¹⁴⁶ This is general practice in the USA, where prisoners are anaesthetised as a first step to being executed, using a fast-acting anaesthetic such as sodium pentothal.

¹⁴³ “The entire nation promotes lethal injection for executions”, available at: www.sina.com.cn dated 14 September 2001.

¹⁴⁴ “A unit of court bailiffs at Yuxi City Intermediate People’s Court carry out execution by lethal injection”, available (in Chinese) at: www.yn.xinhuanet.com dated 16 March 2003.

¹⁴⁵ “11 criminals executed by lethal injection yesterday in Lanzhou, witnessing the execution process”, available (in Chinese) at: www.jcrb.com dated 18 January 2003.

¹⁴⁶ “Special report: entire process of execution by lethal injection revealed”, available (in Chinese) at: www.chinamonitor.org dated 24 October 2001.

Reports vary on the length of time the drugs take to cause death. Some reports say two minutes and 50 seconds;¹⁴⁷ other reports say the executions observed took between 35 and 50 seconds.¹⁴⁸ Variables causing differences in the duration of time from injection to clinical death are the general physical health of the prisoner, and their body-mass in relation to the quantity of drugs injected.

Experience in other jurisdictions demonstrates that lethal injections can cause prolonged pain and suffering, and that death is far from swift and clinical. For example, at the first execution by lethal injection in Guatemala, the technician inserting the needle was so nervous that the entire process took far longer than intended, and proved deeply traumatic for the convict and for his wife and child who were permitted to witness the execution. There is also the problem of finding a suitable vein – especially with intravenous drug users whose veins are damaged by chronic needle use. In the USA, alternate points on the body for needle insertion sometimes have to be sought, such as on the hand or in the groin. Doctors in the USA have had to make deep incisions into the body of drug-users being executed in order to locate a vein into which a needle could be inserted.¹⁴⁹

It has also been documented in medical practice for the effect of the anaesthetic sodium pentothal to wear off before the end of a surgical procedure, so that patients during an operation remain conscious and aware of what is happening to them, but are unable to move or make any signal of the pain they are experiencing. A prisoner who ceases to be anaesthetised but remains paralysed during an execution would be awake and could feel pain but be unable to signal wakefulness.¹⁵⁰ To date there is no clear evidence of such an outcome in a lethal injection execution but the possibility has led to legal action in the USA.¹⁵¹

9. Organ harvesting

One by-product of the death penalty in China has been the harvesting and marketing of human organs following execution. This practice is contrary to World Health Organization

¹⁴⁷ “Execution by lethal injection was once a top secret topic for the courts”, available (in Chinese) at www.people.com.cn dated 25 September 2001.

¹⁴⁸ “Special report: entire process of execution by lethal injection revealed”, available (in Chinese) at: www.chinamonitor.org dated 24 October 2001.

¹⁴⁹ See: *Post-Furman botched executions*, Michael L. Radelet, University of Colorado. Available at: www.deathpenaltyinfo.org

¹⁵⁰ See “Complaint for Injunctive Relief and Declaratory Judgment in the United States District Court for the Northern District of Georgia Atlanta Division”, in *Fugate v. Dept of Corrections and Jim Wetherington*, available at: www.schr.org/news/docs/fugate_complaint.pdf dated 12 August 2002. (The complaint as submitted to the court appended declarations of Dr. Mark Heath, M.D., a cardiac anesthesiologist, and Dr. Randall L. Tackett, Ph.D., a professor of pharmacology at the University of Georgia’s College of Pharmacy.)

¹⁵¹ See: *Abu-Ali Abdur’Rahman v. Don Sundquist et al* (No. 02-2236-III), Chancery Court for the State of Tennessee Twentieth Judicial District, Davidson County. (The appeal was denied; see ruling at: www.tsc.state.tn.us/opinions/tsc/capcases/rahman/06022003/ruling.pdf)

guidelines on human organ procurement and transplantation¹⁵² and the involvement of transplantation surgeons in such procedures breaches ethical guidance of the international Transplantation Society and the World Medical Association.¹⁵³ All member countries including China accepted these guidelines when they were adopted by vote in 1991.

Amnesty International reported the practice of harvesting organs from executed prisoners in 1993, and called at that time for the Chinese government to ban the practice without the free and informed consent of the prisoner.¹⁵⁴ In 1995 the organization reported that "[...] the use of organs from this source continues in China, reportedly on a widespread scale"¹⁵⁵ and cited a paper suggesting that as many as 90% of organs used in transplantations in China came from executed prisoners.¹⁵⁶ A 1994 report on this subject published by Human Rights Watch¹⁵⁷ provided compelling evidence of the practice, including the text of a government decree on the subject.¹⁵⁸

Episodic reports of the use of organs from executed prisoners continued over the rest of the decade with articles appearing in medical literature on the practice.¹⁵⁹ In 1999 for example, Cameron and Hoffenberg cited Professor Lei Shili as informing them that 1,600 prisoners had been the source of 3,200 kidneys in 1996.¹⁶⁰

The New York-based *Village Voice* reported in 2001 on the experiences of US transplant surgeon Dr Thomas Diflo, who said that he was seeing patients who had received

¹⁵² *Guiding principles on human organ transplantation*, World Health Organization, available at: www.who.int 1991.

¹⁵³ *Policy Statement: Ethics of the Transplantation Society*, The Transplantation Society, available at: www.transplantation-soc.org. This concludes with a statement that "Transplantation Society members must not be involved in obtaining or transplanting organs from executed prisoners." This position was reiterated in 2002: "Transplantation Society reiterates position against selling organs", press release, 30 August 2002. See also WMA. *World Medical Association Statement on Human Organ & Tissue Donation and Transplantation*. Ferney Voltaire, 2000, available at: www.wma.net

¹⁵⁴ *China: Victims in their thousands: the death penalty in 1992*, AI Index: ASA 17/09/93. The basis for Amnesty International's concern about this practice was the intimate link between transplantation and executions, the effect this had on the ethical practice of medicine with prisoners, and the impact on reform of the death penalty. The extent to which prisoners can consent within an inherently coercive environment has led many medical bodies to limit the use of consent as a measure by which the ethical acceptability of transplantation procedures involving prisoners can be measured.

¹⁵⁵ *China: Medical concern: the use of organs from executed prisoners*. AI Index: ASA 17/01/95, March 1995.

¹⁵⁶ *On the use of organs from executed prisoners*, RD Guttman, *Transplantation Reviews* 1992, 6:189-93.

¹⁵⁷ *China: Organ Procurement and Judicial Execution in China*, Human Rights Watch, August 1994, available at: www.hrw.org

¹⁵⁸ See: "Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals", 9 October 1984. *ibid* Appendix 2.

¹⁵⁹ See, for example, *The use of organs from executed prisoners in China*, JD Briggs, *Nephrology, Dialysis, Transplantation* 1996; 11:238-40.

¹⁶⁰ *The ethics of organ transplantation reconsidered: paid organ donation and the use of executed prisoners as donors*, JS Cameron, R Hoffenberg, *Kidney International* 1999; 55:724-32.

transplanted kidneys in China. He was certain from his experiences, and from the testimonies of his patients, that the source of these organs was executed prisoners in China.¹⁶¹

In China, a weekly newspaper in Jiangxi Province published in April 2001 an article about the intention of the family of executed prisoner Fu Xinrong to sue the authorities for the illegal sale of his organs following his execution in 2000.¹⁶²

On 27 June 2001 Dr Wang Guoqi testified to the US Congressional Subcommittee on International Relations and Human Rights that during his medical practice in China, he had personally removed organs from over 100 executed prisoners, mainly their skin, kidneys and corneas. Dr Wang also testified that police and medical institutions co-ordinated their activities, timing executions to coincide with a patient’s pre-operative procedures.¹⁶³

Professor Chen Zhonghua, director of the organ donation research institute at Yongji Hospital in Wuhan, said in January 2004 in relation to executed prisoners: “Taking these organs without permission is a stain on the history of medical practice in China.”¹⁶⁴

Methods of execution are reported to vary depending which organs are to be harvested from a prisoner. For example, if a prisoner’s corneas are to be taken, a bullet is fired into the prisoner’s neck or heart to avoid causing damage to the eyes.¹⁶⁵

The Chinese media and the Chinese government generally remain silent on the issue of organ harvesting. There are some signs suggestive of change, however. Legislation adopted on 1 October 2003 in Shenzhen, Guangdong Province, passes the administration and practice of organ transplants exclusively to the Red Cross. Under Shenzhen’s legislation, a patient’s or their family’s consent must be given in writing, or orally to two doctors for their organs to be used after their death.¹⁶⁶ This is the first legislation of this kind to have been passed in China, reportedly aimed at reducing the illegal trade in organs, where people attempt to sell a kidney for example by advertising on the Internet or by placing advertisements in hospitals.¹⁶⁷ However, the Shenzhen regulations do not extend to prisoners awaiting execution.

Conclusion and recommendations

¹⁶¹ “China’s execution, Inc”, *Village Voice*, available at: www.villagevoice.com dated 2-8 May 2001.

¹⁶² “Rare Chinese newspaper exposé details prisoner organ harvests”, *Washington Post* 31 July 2001. Reuters reported two days later that a journalist involved in publishing this story had been dismissed “a month ago”. See “China paper sacks organ trade reporter”, *Reuters* 2 August 2001.

¹⁶³ “Doctor testifies to China’s reuse of prisoners’ organs”, *British Medical Journal* 2001;323:69, available at www.bmj.com dated 14 July 2001.

¹⁶⁴ “Shanghai seeks to curb illegal organ trade”, *SCMP* 17 January 2004.

¹⁶⁵ See for example: *Eighteen Layers of Hell – Stories from the Chinese Gulag*, Kate Saunders, Cassel, London 1996, p. 48.

¹⁶⁶ “Chinese city outlaws sale of human organs”, *British Medical Journal* 2003;327:520, available at: www.bmj.com dated 6 September 2003.

¹⁶⁷ “Shanghai seeks to curb illegal organ trade”, *SCMP* 17 January 2004.

The number of people executed in the People's Republic of China recorded by Amnesty International continues to be more than the number recorded for the rest of the world combined.

As individuals suspected of committing a capital crime proceed through the criminal justice system in China towards execution, their progress is marked by numerous violations of their fundamental human rights. These rights are violated not only in contravention of international standards including binding legal obligations undertaken by the Chinese government, but also in contravention of China's own national laws.

However, even if criminal proceedings were handled to the letter of China's laws as they presently stand, the variance of these laws with international standards would still leave scope for the continued violation of human rights. Indeed, even if the People's Republic of China were to bring its system of criminal justice into line with international standards followed by ratification of the International Covenant on Civil and Political Rights, human rights violations would undoubtedly still occur within China's de-centralised, overtly politically influenced and poorly funded systems of justice. This forecast can be underlined by citing the judicial execution of a juvenile in rural China in January 2003, despite the prohibition in Chinese law on executing juveniles, and despite China's ratification of the UN Convention on the Rights of the Child.

Amnesty International is aware that some of the reforms to laws and institutional practices needed to create watertight safeguards against miscarriages of justice will be a long-term process. However, in light of the catastrophic failures in the Chinese criminal justice system highlighted in this document, Amnesty International calls upon the Chinese government to impose an immediate moratorium on executions as a first step towards abolition of the death penalty which it has repeatedly signalled to foreign governments is its aim.

Amnesty International maintains that execution is the ultimate failure of justice; execution in the absence of justice ranks among the ultimate failures of humanity.

Recommendations

A: General recommendations on international standards and law

1. Impose an immediate moratorium on executions in China with a view to total abolition of the death penalty;
2. As a further step towards abolition of the death penalty, reduce the range of crimes for which the death penalty is applicable, in line with international standards;
3. Immediately ratify the International Covenant on Civil and Political Rights at the earliest opportunity;

4. Immediately ratify the Convention against Torture’s optional protocol, allowing for regular visits of inspection to places of detention by national and international bodies;
5. Fully observe the Standard Minimum Rules for the Treatment of Prisoners, in particular ban the use of physical restraints and the public parading of convicts, and guarantee immediate access to medical attention upon detention;
6. Fully observe the General Principles on the Role of Lawyers, in particular allowing for immediate, full and uninterrupted contact between a detainee and a lawyer of their choice.

B: Specific recommendations on legal reform

7. Institute for all suspects all necessary guarantees on the presumption of innocence, including the right to avoid self-incrimination, the right to silence, and equality of arms;
8. Bring an immediate halt to the practice of awarding police officers bonuses, citations and promotions when a suspect is detained, to wait instead until all legal proceeding against a suspect are complete;
9. Include a specific provision in the Criminal Procedure Law explicitly banning the use in court of testimony extorted through torture, in line with China’s obligations under the Convention against Torture;
10. Abolish adjudication committees in courts as a practical step towards eliminating the practice of “verdict before trial” and other political interference in trials;
11. Intensify efforts to abolish prolonged or arbitrary detention for all categories of prisoner;
12. Convene an investigative committee responsible to the Standing Committee of the NPC, to investigate all miscarriages of justice, including but not limited to the cases raised here, with a view to rectifying relevant faults in China’s criminal justice system.