

# PEOPLE'S REPUBLIC OF CHINA

## The Death Penalty in 1997

Amnesty International has recorded 3,152 death sentences and 1,876 confirmed executions in China in 1997. This figure includes a number of sentences handed down in 1996 but reported in 1997. The figure for death sentences does not include 580 probable death sentences deduced from ambiguous reports. Also excluded are the numerous press reports from China in 1997 which refer to "group" executions without revealing individuals names or the number of people executed.

These figures are believed to be far below the actual number of death sentences and executions in China during the year. They are based on the public reports which Amnesty International has monitored, as recorded in the attached log. Only a fraction of death sentences and executions carried out in China are publicly reported, with information selectively released by the relevant authorities.

The official Chinese news agency, *Xinhua*, reported in February 1998 that China had greatly reduced death sentences since adopting the newly revised Criminal Law in October 1997. "The greater restriction on capital punishment shows that China cherishes the lives of criminals", said a judge of the Supreme People's Court.

However, these minimum figures for 1997 reveal a state which sentences to death, on average, over 60 people a week and - as throughout the 1990s - executed more people than the rest of the world put together. Iran recorded the second highest number of executions during the year, with 143.

In September 1998, the Supreme People's Court reported there had been a very large reduction in executions following revisions to the Criminal Law. This assertion would hold more weight if it were accompanied by the facts: the figures and the individual cases behind them. Instead, national statistics on the death penalty remain a state secret in China.

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

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crimes more effectively than other punishments. The Special Rapporteur for the United Nations on extrajudicial, summary or arbitrary executions reported in 1997 that he considered "*the death penalty is not an appropriate tool to fight the growing crime rate in China*" and "*the death penalty should be eliminated for economic and drug related crimes*"<sup>1</sup>. In response, the

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

Chinese government stated that “*China retained the death penalty for a small number of criminals who committed crimes seriously endangering the social order*”<sup>2</sup>.

Amnesty International’s concerns about the death penalty in China are described in detail in “China: No-One is Safe - Political Repression and Abuse of Power in the 1990s” (ASA 17/01/96, March 1996). Debate on these concerns within China is covered in: “People’s Republic of China: the Death Penalty in China: Breaking Records, Breaking Rules” (ASA17/35/97, August 1997) Recent changes in the provisions related to the death penalty in the Criminal Procedure Law are described in:”People’s Republic of China: Law Reform and Human Rights” (ASA 17/14/97, March 1997).

The attached log is a chronological listing of reports of death sentences and executions in China in 1997 monitored by Amnesty International. These come from various sources, including the official Chinese media. Amnesty International is not in a position to assess the accuracy of each report.

## ***ANALYSIS OF SENTENCING TRENDS***

### **1997 Continued “Strike Hard”**

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<sup>2</sup>Xinhua 11 February 1998

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The nationwide “Strike Hard” anti-crime campaign, launched on 28 April 1996, led to mass executions in 1996 on a level unprecedented since 1983 and was marked by numerous cases of summary justice. The campaign continued throughout 1997 and into 1998 against selected crimes, including drug trafficking, corruption and value added tax fraud and “separatism” in Xinjiang. According to a report in the *People’s Daily*, “Strike Hard” was being directed at the most ‘serious’ crimes including murder, robbery, causing explosions, kidnapping, and rape.<sup>3</sup> In a ten-point “directive for public operations in 1997” drafted by the Public Security Ministry, it was stated that “*We must continue and strengthen the “Strike Hard” campaign, with the focus on violent and drug-related crime*”. In April 1997, in Shanghai it was reported that three people who were executed for robbery had received ‘heavier’ and ‘quicker’ punishments than usual because their cases were part of the ‘Spring Crackdown’.

### **Peaks of Sentencing**

As in previous years the numbers of executions per week or month varied according to national holidays: in January, before the Chinese New Year; in September, before Chinese National Day on 1st October, and in May and June around the time of International Anti-Drugs Day on 26 June, the number of death sentences and executions rose dramatically. For example, the number of death sentences in January before Chinese New Year, was nearly four times the number in February. The figure for September was almost eight times that for October. In May and June almost 100 people a week were being sentenced to death.

### **Drug Crimes**

In 1997, at least 662 people were sentenced to death for drug trafficking or possession of drugs, of whom 437 were confirmed to have been executed, most of them on or around 26 June, International Anti-Drugs Day. In December, rallies were held throughout Shaanxi province as part of a ‘collective action’ against drugs. A total of 119 people were sentenced. According to reports the number of drug related cases in the province has risen by 105% since 1996, despite the huge numbers of people executed for drug related offences during the “Strike Hard” anti-crime campaign in 1996 and 1997.

On 26 July in Kunming city, Yunnan province, 27 people were executed for alleged drugs crimes. In propaganda material circulated before the mass rally, it was stated that “Kunming city’s two courts have maintained the direction of “Strike Hard” and sentenced a lot of drugs criminals.” It was reported that all but one of them appealed and all appeals were rejected. Some of the cases dated back to 1995, two years prior to sentencing.

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<sup>3</sup> 11 September 1997

## Economic Crimes

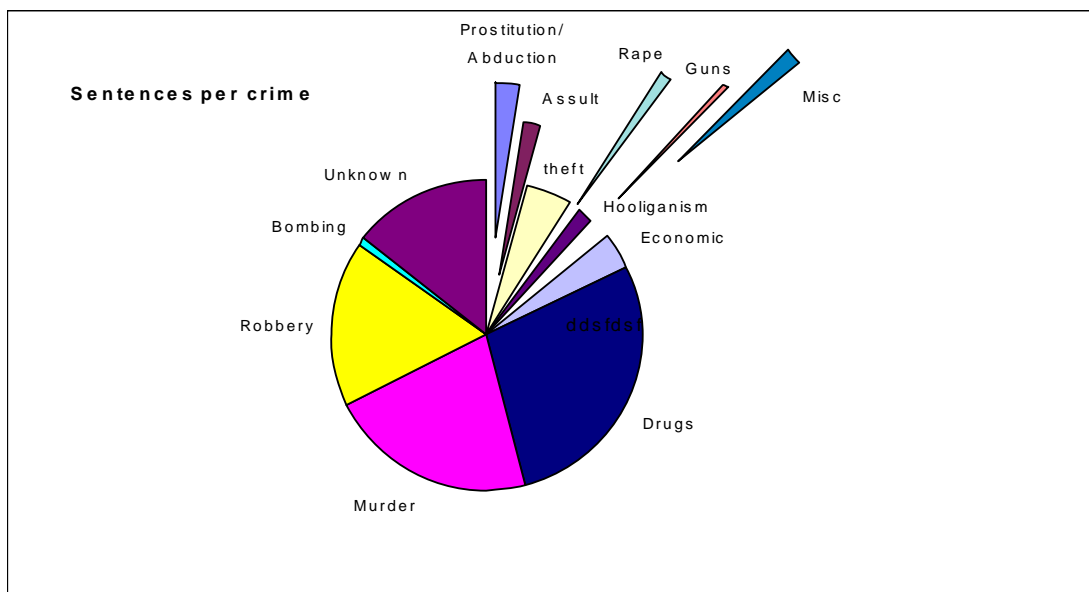
People were sentenced to death for a variety of non violent economic crimes ranging from tax and value added tax fraud, counterfeiting, embezzlement and credit card theft.

For example, in March 1997, Wang Hua was given a death sentence with a two year reprieve for alleged credit card theft of US \$62,650. In Yunnan province, on 24 December 1997, Yang Weixiang was executed for allegedly embezzling US \$72,289 from the bank where he worked.

## Theft

On 29 May 1997, Su Yongfei was executed for the alleged theft and resale of goods worth US \$2,409. On 10 September in Liaoning province, Guo Tingsheng was executed for the alleged theft of railway tracks which he sold for a total of US\$13,253. On 4 March, in Anhui province, Lin Yongqiang and two others were given death sentences, reprieved for two years, for the alleged theft of electric wiring. In April, in Yunnan province, two people were executed for the alleged crime of stealing and selling a total of 61 cattle. In May, two people were executed after being accused of stealing two trucks. Zhao Nao, a peasant from Henan province was sentenced to death in July for poisoning 62 buffaloes with the intention of selling them. On 6 August in Hebei province, five peasants were sentenced to death, two of them were executed, reportedly for attempting to steal natural gas from a pipeline in order to sell it. They reportedly caused an explosion creating "great economic losses".

## State Treasures and Protection of Endangered Species



It was reported that the protection of state treasures was a target for the 1997 “Strike Hard” campaign.

You Qinghua was sentenced to death on 29 January 1997 for allegedly selling panda skins. In April, two people from the same family were sentenced to death after being accused of poaching and skinning two pandas between 1993 and 1994.

On 29 December 1997 in Shaanxi Province, Han Huamin (27) and Sun Guobin, both peasants, were executed for stealing the heads of five Tang Dynasty stone statues. Sun allegedly sold four of the heads for 40,000 Yuan (US\$4,819) giving Han 12,000 Yuan (US\$1,445). The pair were sentenced at a public rally convened by Xianyang City Intermediate Court in front of the statues, and were executed on the spot. Another defendant in the case was accused of renting his tricycle to the two men for 210 Yuan (\$25) and was sentenced to eight years’ imprisonment. Han Huamin appears to have been unaware of the severity of the crime he was accused of. When he was arrested he asked: “How much is the fine? , if it is a few thousand I can collect that from home, any more I don’t have”. The fifth stone head was retrieved ten days after the executions.<sup>4</sup>

### **“Separatism”**

The growing unrest in Xinjiang province and the targeting of “Strike Hard” towards ‘separatism’ has resulted in more executions of ethnic Uighurs in 1997 on charges of “separatism” and other activities deemed to undermine state security, than in previous years. The crackdown on suspected Muslim nationalists, religious “extremists” and alleged terrorists intensified in 1997 after anti-Chinese protests by Uighur nationals and several bombing incidents attributed to underground nationalist groups seeking independence from China.

On 30 January 1997, 18 ethnic Uighurs were executed. At least two of them were convicted of an alleged bombing that occurred in Urumqi in February 1996. On 3 March, five people were allegedly executed having been charged with offences relating to the riots that occurred in Xinjiang in 1996. One of the five was accused of being a prominent leader during the riots. The Chinese authorities however denied that the five had been executed.

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<sup>4</sup> Anhui Legal News 29/03/98.

On 24 April, at a public rally attended by some 5000 people at a stadium in Yili <sup>5</sup> city, three ethnic Uighurs were executed having been charged with offences relating to riots which occurred in the city on 5 and 6 February 1997. Sentences were imposed on 30 Uighurs. On 29 May, eight Uighurs were executed on charges of involvement in a bombing that occurred in Urumqi on 25 February 1997. They had all appealed and all the appeals were rejected. Another four received the death penalty with a two year reprieve.

On 10 June, a further three unnamed Uighurs were allegedly executed on charges relating to riots in February 1997 in Xinjiang. On 22 July, nine people, mainly Uighurs, were executed on charges relating to the riots in Yining city. The sentencing rally, held at a stadium, was televised and over 4,000 people reportedly attended. The defendants were paraded through the city streets. Other people received varying terms of imprisonment, including a 16 year old Uighur who received an 18 year sentence. At the end of July, a further three were executed on similar charges and on 15 September two people were sentenced to death on charges that included "separatism".

In Tibet the "Strike Hard" campaign focused on "*sabotage activities by splittists and crimes that severely threatened public order...*"... "*...Those crimes that called for severe punishment, we resolutely punished severely; and were not softhearted about those crimes which called for the death penalty.*"<sup>6</sup>

For example, in Tibet, on 11 July 1997, two people were sentenced to death who were among a group of people sentenced to varying terms of imprisonment for alleged crimes which included "counter revolutionary incitement".

## Defendants

The death penalty still falls predominantly on those people with a low educational and social standing. It is significant that the largely white-collar crimes of corruption, embezzlement and fraud appear to be more frequently punished by a two-year suspended death sentence than other capital crimes. For example, the former Mayor of Jiangjiang city in Jiangsu province, Wang Xinmin, who was also the Deputy Communist Party Secretary, was accused of 50 counts of corruption, taking bribes of US \$50,000 as well as gambling and the rape of four young girls. He received a death sentence with a two year reprieve in September 1997. In comparison, Liu Lei, an unemployed person from Liaoning province was executed in July, for the alleged theft of oil worth US \$14,457.

In many cases, the defendants appear to have been in ignorance of the law and sometimes unaware that they had even committed a crime. In Shaanxi province in September, Liu Zishi, a twenty seven year old peasant, was executed for the murder of his half brother in a fight in 1991. He was apprehended in 1994. During questioning his father said that he had not informed the

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<sup>5</sup> Also known as Gulja city (in the Uighur language)

<sup>6</sup> Report of the Tibetan Regional Authority High Court, 20 May 1997

authorities because both the victim and the culprit were his sons, thus the matter did not concern anyone else and had been solved within the family.<sup>7</sup>

### ***MEDIA COVERAGE***

Amnesty International has been able to monitor fewer death sentences and executions in 1997 than 1996 but cannot verify whether this represents a real reduction in sentencing. It may simply reflect reduced media coverage since the frenzied reporting in 1996 at the height of the “Strike Hard” campaign, when the media was encouraged to report cases. The level of reported death sentences and executions in 1996 was exceptional, and the figures for 1997 are comparable to those monitored in the previous three years.

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<sup>7</sup> Shaanxi Daily 06/10/97

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National statistics on the use of the death penalty remain a state secret even though Article 212 of the Criminal Procedure Law stipulates that, “*execution of death sentences shall be publicly announced but shall not take place in public view*”. Domestic criticism of this continuing secrecy has not been heeded. Rather, the same article of the law has been cited by Kunming Intermediate People’s Court as justification for continued secrecy around the number and nature of executions by lethal injection it has authorized.<sup>8</sup>

In 1997, there were many ambiguous reports of executions which referred to “many” or “group” executions rather than citing individual names or specific numbers of people executed. There was a reduction in the number of media reports that state whether or not an execution was actually carried out. Whereas in previous years official newspapers generally reported on capital cases once death sentences had been passed by the courts, or executions carried out, there was a noticeable shift during 1997 towards reporting much earlier in the process, often during the investigation stage.

When death penalty cases were publicized, the language of media reports remained, overall, excessive and inflammatory. For example the *Xinmin Evening News* in Shanghai reported the execution of two drug traffickers on 19 December 1997 by stating that the “shots of justice” sent the two “on the way to hell”. Their executions followed a public rally. Often such overblown language is used to describe alleged public approval of executions, with the often quoted assertion that “popular indignation at the criminals could not be calmed” without their execution. Developments this year call into question whether the media reports, both officially controlled or condoned, are leading “popular indignation” rather than reflecting it, and interfering in the outcome of cases, not simply reporting them.<sup>9</sup>

Reports of criminal investigations or trials published before defendants have been convicted, through their language, tone and timing often appear to assume guilt in advance of the judicial process. This contradicts revisions to the Criminal Procedure Law which stipulate that “*no one shall be determined guilty without a verdict according to law by a People’s Court*” (Article 12).

The following are some of the examples of biased reporting identified by Amnesty International. On one case, reportedly still under investigation: “*Wenzhou is the last station in her life, police*

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<sup>8</sup> According to Yunnan Legal Daily, 7 November 1997: “The news from Kunming Intermediate Court (IPC) shows, as the relevant laws have already stipulated, the Supreme People’s Court will decide if other courts shall use this method or not. To spread the use of this system, Kunming Intermediate Court has already: designed relevant apparatus, specified a location for executions, revised the form for note-taking at an execution, set the specific language to be used in publicizing an execution and started to stipulate the scope for implementation. Up to now Kunming IPC has used lethal injections 6 times, the exact number of people is to be kept secret”.

<sup>9</sup> In February 1997 the Ministry of Justice’s Legal System Propaganda division reported on scrutiny of legal publications for the year: “We must persist in doing a good job of scrutinizing after publication, and word hard at directing before publication” The division was generally satisfied with coverage of cases, reporting only that “attention must be paid to adding commentary, editorial and opinion when reporting cases, to achieve the aim of using cases to illustrate the law and educating the masses...Opinions have got louder in volume. Many papers have made opinion the lead story in each issue, strengthening the dynamic for directing public opinion, achieving quite beneficial results for society.” Inner Mongolia Legal News, 4 February 1997.



*from three districts have linked arms and finally trapped this savage witch". On suspects only just arrested: "what awaits him is the harshest punishment in law". On cases not yet brought to trial: "what faces [the four suspects] is the ultimate punishment under the law, but a perfect full stop cannot be drawn on the case because xx remain at large ... A race that concentrates on building material civilization and neglects spiritual civilization is a weak willed, decadent and moribund race. All brothers of Han should remain forever vigilant. The struggle is far from over".*

In several other cases known to Amnesty International, media reports included lengthy details of incriminating evidence which the police allegedly found in the suspects' possession, although this evidence had not apparently been cited at any time during the case.

In one case in the past year, which resulted in the execution of a policeman, media coverage was widely acknowledged to have influenced the verdict. On 24 August 1997 Zhang Jinzhu, a policeman from Zhengzhou City, Henan Province, drove the wrong way down a street while drunk. He knocked down and killed an 11 year-old boy, dragged his injured father beneath the car for over one kilometre, then stopped and ran away. The tabloid newspaper *Southern Weekend*, reported in sensational detail on the incident, vilifying the policeman. Provincial and national papers soon followed. The family's civil suit for compensation was accompanied by a criminal trial.

On 12 January 1998 Zhengzhou City Intermediate People's Court sentenced Zhang to death and deprivation of his political rights for life for the crime of intentional injury, and to three years' imprisonment for causing a traffic accident. Zhang maintained he had been unaware anyone was being dragged under the car. His defence lawyer argued that because Zhang was drunk, the car windows were shut, with the air-conditioning and radio on, he could not have known, and the injury was therefore not intentional. The family were awarded 70,000 Yuan (US \$8,434) in compensation for the injuries the father sustained, and 25,000 Yuan (US \$3,012) for the death of the child.

*Southern Weekly's* coverage of the case did not extend to publishing a letter from a Beijing Professor<sup>10</sup> arguing that the paper's heavy criticism of the policeman should have been matched by criticism of the decision to execute the officer, a punishment he found excessive<sup>11</sup>. Zhang failed in his appeal against the sentence. On 26 February 1998, on the orders of the President of the Henan Higher People's Court, he was executed immediately after a public sentencing rally.

## **Public Rallies and the Parading of Prisoners**

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<sup>10</sup> Reported in the *Far Eastern Economic Review*, 7 May 1998.

<sup>11</sup> Revisions to the Criminal Law had redefined more tightly the crime of "intentional injury" and the range of punishments applicable. Under the law (article 234), punishment ranging from not less than 10 years imprisonment to life imprisonment or the death penalty was applicable only to most serious cases of intentional injury "using particularly ruthless means causing serious injury resulting in grave deformity or death".

Public spectacle remains firmly part of the death penalty process in China. The Criminal Procedure

Law does not prohibit the public display of prisoners sentenced to death. Parading and humiliating condemned prisoners at mass rallies or in trucks on the way to the execution ground remains common, even though a series of regulations outlawing the practice have been issued by government departments and judicial authorities since the 1980s. As in 1996, mass rallies, public sentencing rallies and televised events were held throughout the country in 1997, with many people executed immediately after these rallies.

For example, on 26 September 1997 in Sichuan province, over 30,000 people attended the sentencing rally of 15 people sentenced to death<sup>12</sup>. Crowds of school children have reportedly attended such rallies in Shenzhen, where, on 4 December 1997, a group of 22 people, mainly migrant peasants, were paraded in trucks from a sentencing rally to the execution ground through the streets of the city. The defendants included a prostitute accused of killing a client after an argument.<sup>13</sup> In one miscarriage of justice reported in 1997, suspects in a capital case were paraded in shackles at the scene of the crime even before the investigation was completed.

One execution carried out on 29 December 1997 and widely reported in China appears to have violated Article 212 of the Criminal Procedure Law which stipulates that executions "shall not take place in public view". Two peasants, Han Huamin and Sun Guobin (see above: State treasures) were sentenced to death for stealing the heads of five Tang dynasty statues. They were reportedly executed "on the spot" after a public sentencing rally held in front of the statues.

## **CHANGES IN THE CRIMINAL LAW**

Revisions to the 1980 Criminal Law were passed at the National People's Congress (NPC) in March 1997 and came into force in October 1997. Revisions to capital offences were reportedly the subject of much debate among law drafters both before and at the Congress, with some NPC delegates calling for great reductions in the number of capital offences. However, the revised Criminal Law includes nearly three times as many capital offences as the 1980 version, since almost all of the capital crimes introduced in the interim, through decisions of the NPC Standing Committee, have been included. Many of these are for economic crimes. For some crimes (for example, theft and robbery) the definition of "particularly serious circumstances" under which the death penalty may be applied has been clarified.

### **Under 18's and Pregnant Women**

Revisions in the Criminal Law withdrew the applicability of the death penalty for all people under the age of eighteen at the time of the alleged offence and pregnant women. Previously, juveniles between the ages of sixteen and eighteen and pregnant women could be sentenced to the death penalty with a two year reprieve. Amnesty International welcomes this legal reform by

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<sup>12</sup> Sichuan Daily 29/09/97

<sup>13</sup> South China Morning Post 6/12/97, Mingbao 5/12/97

the Chinese authorities. It is not clear whether those already under suspended death sentences will have their sentence commuted. As a very small number of such cases were reported in the past, it is unlikely that these revisions will cause a significant decrease in the overall number of reports of death sentences.

During 1997 there have been several cases of young people whose exact ages have been in question being sentenced to the death penalty. For example, Zou Qingwen was executed in January 1997 for robbery. His family argued that he was under 18 at the time of the alleged offence, but the court ruled otherwise.

### **Counter Revolutionary Crimes**

“Counter-revolutionary” crimes were removed from the revised Criminal Law but were replaced by a range of almost identical crimes of “endangering national security”. These remain punishable by the death penalty in “especially serious cases”. No attempt has been made in the revised law to define the concept of “endangering national security” clearly and precisely. The new offences are so broad and vaguely worded that they appear to have increased the scope for punishing people exercising fundamental freedoms. As the United Nations Working Group on Arbitrary Detention observed, “...*the jurisdiction of the state has been allowed to expand, and acts of individuals in exercise of freedom of expression and of opinion may well be regarded as acts endangering national security*”.<sup>14</sup>

According to the foreign press, four unnamed pilots were reportedly executed on 27 September 1997. They were accused of the counter-revolutionary crime of attempted “defection” to Japan and Korea during a training exercise.<sup>15</sup> “Defecting to the enemy and turning traitor” is retained as a “Crime of Endangering National Security” in the revised law and remains punishable by the death penalty “when the harm to the state and people is especially serious and the circumstances especially odious”. As the example shows, “especially serious” circumstances are open to wide interpretation.

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<sup>14</sup> WGAD Report December 1997 (E/Cn.4/1998/44/Add.2)

<sup>15</sup> China Focus Vol. 6, No.1

Since the revised law came into force, reports indicate that people have been sentenced to death on charges of endangering national security and “separatism” in particular, just as they were for “counter revolutionary” crimes in the past. For example, 16 people, 13 of whom were ethnic Uighurs were executed on 29 December 1997 on charges of robbery, murder and “separatism” relating to ethnic unrest and pro-independence activities in Xinjiang in February 1997.<sup>16</sup>

## **Theft**

Under the revised Criminal Law - the death penalty should only be applicable to crimes of theft involving “theft of particularly large sums from financial institutions” and “serious theft of precious cultural relics”. In theory, this should lead to a large reduction in executions for theft, and the Supreme People’s Court reported in September 1998 that such a reduction had taken place, without revealing the relevant figures. Executions for theft have continued since revisions to the Criminal Law came into force in October 1997, but reports cite few details of the alleged crimes. It remains to be seen how far the changes in the law will be consistently implemented in practice. Cases documented by Amnesty International during the 1996 “Strike Hard” campaign revealed that even the wider definitions of theft in force at that time were not being followed in practice.

Another case from 1997 illustrates how long it may take for the changes in the law to take effect in practice. On 6 October 1997 in Yuanping city, Shanxi province, six days after the implementation of the revised law, but six months after it was promulgated, two prisoners narrowly escaped execution for habitual theft. They were taken from the execution ground at the last minute and had their sentences commuted to life imprisonment as a result of the intervention of a vigilant and persistent young procurator. Accounts of the case reveal an almost unstoppable momentum towards execution once the verdict has been announced.

## **Hooliganism**

Under the revised Criminal Law, the crime of ‘Hooliganism’ was deleted and several new, more specific crimes were added to the law. ‘Hooliganism’ had been used as a ‘catch all’ offence against people accused of many things from fighting, petty thieving and harassment of women to general anti-social behaviour. Many people had been executed for the crime which was punishable by the death penalty in “serious” cases.

Early indications reveal that the offences as re-defined still retain much ambiguity. For example, on 16 October 1997, Shanghai No.1 Intermediate People’s Court used the new, and still vague, charge of “stirring up fights and causing trouble” to sentence to death Wang Huodong. In practice, it appears that one “catch-all” may have been replaced by several, and there is as yet no evidence to suggest that the repeal of the crime of ‘Hooliganism’ has resulted in a reduction in the number of death sentences passed.

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<sup>16</sup> Reuters 15 January 1998

## **CHANGES IN CRIMINAL PROCEDURES**

### **Access to a Lawyer**

Revisions to the Criminal Procedure Law (CPL),<sup>17</sup> reinforced by subsequent regulations issued by the highest judicial bodies, include positive improvements on access to lawyers. However provisions still fail to meet international standards which require that detainees be given prompt and regular access to lawyers<sup>18</sup>, that they be immediately informed of their right to be assisted by a lawyer upon arrest or detention or when charged<sup>19</sup>, and that lawyers can “defend them in all stages of criminal proceedings”.<sup>20</sup>

Under the 1979 CPL, detainees were guaranteed access to a defence lawyer only at the trial stage

The revised law makes access to a lawyer possible much earlier – shortly after detention, but it does not guarantee this as being clearly part of the “right to defence” until an advanced stage in the criminal process. Given the limited provisions for legal aid in the law, and a legal aid system in its infancy, the benefits of this early access to lawyers are likely to be limited to those who can afford to hire a lawyer. Defendants in death penalty cases are overwhelmingly of a low socio-economic status and therefore unlikely to benefit.

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<sup>17</sup> For further details see “People’s Republic of China: Law Reform and Human Rights, Amnesty International (ASA 17/14/97, March 1997).

18. See the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (hereafter, *Body of Principles*), Principles 15, 17 and 18.

19. UN *Basic Principles on the Role of Lawyers*, 1990, Principle 5.

20. *Basic Principles on the Role of Lawyers*, Principle 1.

*In any case, under the revised CPL the role of a lawyer in the initial stages of an investigation<sup>21</sup> is limited to demanding to know the offence imputed, filing complaints and petitions, and applying for bail. The investigating authorities are under no legal requirement to inform suspects of the possibility of engaging a lawyer at this stage. Should a suspect request a lawyer, subsequent regulations stipulate only that these request should be transmitted to lawyers "in a timely manner".<sup>22</sup>*

*In cases involving state secrets, which includes potentially capital offences, investigators are empowered to approve or deny the suspect's request to engage a lawyer at this stage, and approve or deny requests for meetings between lawyers and their clients.*

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<sup>21</sup> The revised CPL extends the maximum period of pre-trial detention for investigation from three to seven months, further extensions are also permitted for certain types of cases. As under the 1979 CPL, indefinite extension is also permitted, for "especially major and complex" cases, with the approval of the NPC Standing Committee.

<sup>22</sup> Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice, NPC Standing Committee Legislative Affairs Commission "Regulations concerning certain questions on the implementation of the Criminal Procedure Law" 19 January 1998. Article 10.

For other cases, regulations stipulate that lawyer's requests for a meeting with suspects must be arranged within 48 hours, or within 5 days in "serious complicated joint crimes involving two or more people including crimes of organizing leading or participating in triads, participating in terrorist organizations, smuggling, drug trafficking, corruption etc." <sup>23</sup> all of which are potentially capital offences. Early access to lawyers is crucial in preventing miscarriages of justice and abuses such as torture. It should be available to all suspects. The regulations give no explanation for the delay in such cases. In Amnesty International's experience, torture commonly occurs during the initial interrogation of suspects in serious crimes. Early access to lawyers should not be delayed for detainees who are suspected of serious crimes and risk the death penalty.

Criminal suspects have the "right" to retain a "defender" from the time the case is transferred to the procuracy for review and decision on whether to prosecute - i.e. at the end of the period of "investigation". Defenders can be either lawyers, relatives or guardians of the accused, or other authorized citizens. At this stage defenders may also read and duplicate some of the documents on the case, but this does not include specific evidence against the suspect. Defenders who are not lawyers have to obtain approval before reading such documents and may therefore be denied access.

Under the revised CPL, defendants facing the death penalty who have not hired a defence lawyer have the right to have one designated for them by the court hearing the case.<sup>24</sup> The law does not stipulate precisely when in the process this should happen, only that it should take place "no later than

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<sup>23</sup> Ibid, Article 11.

<sup>24</sup> This right is only extended to those potentially facing the death penalty, and blind, deaf, mute, or juvenile defendants. (Article 34).

10 days” before the trial. This is a significant improvement over the 1979 CPL, but 10 days leaves little time to prepare an adequate defence in death penalty cases. International standards require that people charged with offences for which the death penalty may be imposed be given “adequate legal assistance at all stages of the proceedings” <sup>25</sup>

It is also clear from individual case reports, local regulations and admonitions issued by local officials, that a huge gap between law and practice persists. If the limited reforms in the CPL are to provide enhanced protections for defendants, then a revolutionary change in the relationship between lawyers, police and judicial authorities and the nature of trials will be necessary.

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<sup>25</sup> Article 5, UN *Safeguards guaranteeing protection of the rights of those facing the death penalty*, approved by Economic and Social Council resolution 1984/50 of 25 May 1984.



A striking example of the obstacles facing lawyers who take their newly enhanced role seriously comes from a death penalty case in Shanxi province, which also illustrates the continuing inadequacies of appeal and review mechanisms. In March 1997, the case of Wang Ligang and four other defendants sentenced to death on 21 July 1996 was returned for re-trial to Taiyuan City Intermediate People's Court by Shanxi Higher People's Court. The court did not follow legal requirements to set up a new collegial panel: the presiding judge was the same as for the original trial. This judge only allowed the defendants to make new statements, he refused to let their defence lawyers ask questions or conduct a defence. The judge interrupted one of Wang Ligang's lawyers three times before stopping him completely. When restating the evidence at the end of the re-trial, the judge asked Wang's other lawyer whether he had any defence comments. When the lawyer complained about his colleague being thwarted in his duty to defend, the judge ordered he be forcibly evicted from the courthouse by two court policemen. Reports of this case do not indicate the outcome of the re-trial, only that the Shanxi lawyers association would be looking into the treatment of the lawyer.<sup>26</sup>

## Appeals

Few reported appeals by defendants in death penalty cases are successful. In some cases monitored by Amnesty International, the procuratorate appealed against the original sentence which was, after review, increased to a death sentence. It is not uncommon for a defendant and the procuratorate to appeal at the same time and for the sentence to be increased at the end of the process.

On 9 April 1997, Zhang Chenglong was sentenced to death for the alleged crime of murder. He was originally charged with injury causing death, but a local court decided the charge was too light and transferred the case to a higher court on the charge of murder.

## Approval of Sentences

Much significance has been given, by the authorities, to the retention in the revised CPL of the need to obtain approval of the Supreme People's Court before any death sentence may be carried out. This has been presented as a significant strengthening of safeguards against overuse of the death penalty. However, there has been little indication in the press reports monitored by Amnesty International since revisions to the law that Supreme People's Court approval is being sought in practice. The majority of press reports indicate only that executions were carried out on the orders of provincial Higher People's Courts, which would appear to indicate that they have in practice retained the final power of approval delegated to them via the organic law of the courts and subsequent regulations. This is confirmed in regulations published after the revisions to the CPL which state only that Supreme People's Court approval is required when the court of second instance increases the sentence to the death penalty.<sup>27</sup>

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<sup>26</sup> Qinghai Legal News 17 March 1997

<sup>27</sup> Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice, NPC Standing Committee Legislative Affairs Commission "Regulations concerning certain questions on the implementation of the Criminal Procedure Law" 19 January 1998. Article 46.

## Lethal Injections and Organ Transplants

Execution by lethal injection as an alternative to the firing squad was introduced in China in the revised CPL. It was reported that the first such execution took place in Yunnan province on 28 March<sup>28</sup> on the orders of Kunming Intermediate People's Court after "thousands" of experiments on animals. In September it was announced that a total of 22 people had been executed by lethal injections on the orders of this court in 1997.<sup>29</sup> However, in November 1997, the court reported that it now intended to keep secret the exact number of people executed by lethal injection.

The Chinese authorities state that this practice is a more 'humane' method taken up for reasons of 'civilisation'.<sup>30</sup> According to Kunming Intermediate People's Court officials, the adoption of lethal injections brings Chinese practice more into line with international punishments. However, the United States of America is the only other country which uses lethal injection as a normal method of execution.<sup>31</sup>

The official Chinese news agency, *Xinhua* reported that;

*"Lethal injection is an easier and simpler way of execution. It saves manpower, materials and money..." "...With the advent of a more civilised society, an increasingly complete legal system and the people's growing legal awareness, it is already time for China to replace the old way of execution with a more advanced method in a spirit of humanitarianism."*<sup>32</sup>

The report then went on to state that: *"Doctors appointed by the relevant courts administer the injections."*

China's highest judicial bodies are reportedly currently formulating regulations on the use of lethal injections in executions.

Amnesty International believes that the introduction of lethal injection fails to address the major objections to the death penalty, such as risk of execution of the innocent, its arbitrary and biased application, the cruelty of death row and waiting for death, the lack of evidence for execution as

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<sup>28</sup> Legal daily 9/11/97, Xinhua 4/11/97, SCMP 5/11/97

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

<sup>30</sup> Hebei Daily 9/07/97

<sup>31</sup> Guatemala has used it once in 1998 and Taiwan and the Philippines are the only other countries who currently provide for lethal injection, but have not yet used the method. For more details see Amnesty International; Lethal Injection : The Medical Technology of Execution (ACT 50/01/98).

<sup>32</sup> Xinhua 26 February 1998

a deterrent for crime, and the use of execution as a political distraction from implementing effective measures to address crime.

Amnesty International also believes that involving the medical profession, their knowledge and skills in executions is in direct breach of internationally accepted standards of medical ethics. It represents a perversion of medicine.

The use of doctors in executions is widely prohibited by national and international Medical Associations. The introduction of lethal injection will increase the involvement of doctors in executions in breach of medical ethics.<sup>33</sup> In addition, it is possible that this method may be used to facilitate the removal of organs from executed prisoners for transplantation, a practice which has been well documented in China. Lethal injection can be used to execute a person without damaging key organs which may then be retrieved for transplantation. This could lead to an ill-defined boundary between the execution itself and the subsequent resuscitation and removal of organs since medical procedures involved in the transplantation of major organs need to commence while the prisoner is still alive.

In October 1997, the US television network ABC broadcast a programme reportedly giving evidence of attempts to sell kidneys for transplantation from Chinese military hospitals following executions. Chinese Foreign Ministry spokesmen rejected the program's findings. In February 1998, Wang Cheng Yong, a former deputy chief of a branch of Hainan People's Procuratorate was arrested in New York with an alleged accomplice on charges of conspiracy to sell human organs taken from executed Chinese prisoners. The Chinese government responded that "any form of trade in human organs is strictly against related Chinese law and is prohibited by the Chinese government"<sup>34</sup>

The only relevant legal document that Amnesty International has been able to identify is a Notice (tongzhi) issued in April 1996 by the Ministries of Health, Foreign Trade and Economic Cooperation and the Bureau of Customs<sup>35</sup> This states that:

*2. The use of human tissues and organs (including fetuses) in the processing, production or manufacture of preparations is strictly forbidden. The buying or selling of human tissues and organs is not allowed. The donation or exchange of human tissue and organs with organizations or individuals outside national borders is not allowed...*

*At all levels, relevant departments, units and individuals must strictly carry out the above regulations and, seriously investigate violators, solemnly handle the cases, and pursue criminal responsibility.*

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<sup>33</sup> For more information on this subject consult Amnesty International, Lethal Injection: The Medical Technology of Execution (ACT50/01/98/corr)

<sup>34</sup> Reuters 27 February 1998

<sup>35</sup> Directive No.27 "Notice on further strengthening the management of issues of human blood, tissues and organs"...2 "

It is not clear which crimes under the Criminal Law would be relevant in such cases. Whilst the document is a welcome development, credible evidence that organ trafficking persists casts doubts on how far these provisions are enforced or effective in practice. A specific provision in the Criminal Law outlawing organ trafficking and stipulating specific punishments would have greater force in law. In responding to revelations of alleged organ trafficking, the Chinese authorities have not cited any examples of investigations or prosecutions initiated as a result of this notice. Following the arrest of Wang Chengyong, officials from Hainan province insisted only that "the Hainan Provincial Customs Office has never detected or had a due cause to investigate a case involving the illegal shipment of human bodies to foreign countries"<sup>36</sup>.

### **PROCEDURES IN PRACTICE: MISCARRIAGES OF JUSTICE**

Several miscarriages of justice involving defendants sentenced to death came to light during 1997. All had been subjected to torture by the police to extract confessions, and several were only saved when other prisoners admitted to the crimes they had "confessed". All cases reveal the inadequacy of the investigation and trial process, and lack of effective scrutiny of the police. In two cases, procurators at the initial stages suspected police malpractice, but were content to let it pass and convict when the police simply responded in writing denying torture had taken place.

**Fuyuan County, Yunnan Province**<sup>37</sup> In April 1995, Chen Jinchang (18), Wen Shaorong (15) Wen Shaoguo and Yao Zekun were arrested in connection with the robbery and murder of a driver on nearby route 320. They were detained at Fuyuan County Public Security Bureau where they were tortured for a week. They were convicted of murder and robbery on the basis of forced confessions and falsified evidence obtained by force and deception. Chen was sentenced to death, and the others to prison terms ranging from 5 to 18 years.

At the public security bureau Chen Jinchang was reportedly forced to kneel and was tied up tightly with a wet rope. He was ordered to honestly recount the crime, and when he protested his innocence was beaten, kicked and sworn at for 6 hours. The next morning he was taken to another room, again ordered to kneel, and beaten up so severely that he passed out several times, each time being revived with cold water. During his interrogation, he was only allowed to say "yes" or "no", when he answered "no" he was beaten again.

A pre-prepared confession was reportedly read out to Yao Zekun, and he was asked if it was correct. Whenever he said it was not he was beaten severely. Finally he said it was correct in order to stop the beating. He claimed that during five days detention at the police station he was given only two pieces of bread, and nothing to drink.

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<sup>36</sup> Xinhua News Agency, 27 February 1998

<sup>37</sup> Report in China Youth Daily, 8 May 1998

15 year old Wen Shaorong sustained a broken collar bone and a torn ear as a result of severe beatings, and three years later the wounds from beating and being made to kneel for days are reportedly still visible.

Yao Zekun's house was reportedly ransacked in a search for a murder weapon. His sister was detained and taken to a remote area and made to kneel on broken ground in the hot sun for a day. The police threatened they would leave her there for ever if she did not produce a hammer. She insisted her family did not own one, but in the end she offered to borrow one, and the police officer agreed. This hammer was certified as the murder weapon.

Even though 25 people could provide alibies for them, in May 1996 the higher people's court upheld all the convictions but decided Chen's sentence was too harsh and reduced it to a suspended death sentence. The families subsequently put all the efforts and funds into freeing their sons. However, it was only when another prisoner confessed to the crimes that a reinvestigation was instigated.

During the investigation, the Intermediate People's Court judges admitted that they had suspected the confessions had been obtained by force, but when they received a written response from the police denying that torture had taken place, they were satisfied. Ten policemen were disciplined for their part in the affair, four were sacked and one transferred. The victims were reportedly dissatisfied with the outcome and have talked to lawyers.

**Wuwei City, Gansu Province.**<sup>38</sup> In November 1993, three defendants were wrongly convicted of burglary and murder and two were sentenced to death and one to the suspended death penalty. Yang Liming, Yang Wenli, and Zhang Wenqing were arrested in December 1992. Over 40 police officers who "cracked" the case were decorated. When the case was transferred to the procuratorate 3 months later the defendants immediately retracted their confessions, claiming they had been obtained through up to 10 days of torture.

In November 1993 Yang Liming and Yang Wenli were sentenced to death for burglary and murder, and Zhang Wenqing was sentenced to the suspended death penalty. On appeal the Gansu Higher People's Court found insufficient evidence, unclear links between the defendants and the stolen goods, and contradictions between the statements and the evidence, including the murder weapon. The court ordered a re-adjudication, and the case was eventually returned to the original police station for re-investigation. The defendants remained in custody and there was no evidence that any re-investigation ever took place.

In September 1994 a suspect in another case in Guilin confessed to the crime, however the police kept the three in detention until January 1995 when they were released on medical bail after the families persuaded the Gansu Provincial Party Committee to intervene. The three were formally freed in February 1996.

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<sup>38</sup> Oriental Daily, 12/09/97 & 25/09/97, Xinjiang Legal News 24/10/97, Xinmin Evening News 17/10/97

Investigations reportedly revealed that all three had become suspects primarily because they were known drug users and Yang Liming and Yang Wenli had previous criminal convictions. Much direct evidence collected at the crime scene was ignored. All three were reportedly tortured. Yang Liming was hung from the a metal loop in the ceiling of the police station and beaten with electric batons, truncheons and belts, and revived with water whenever he passed out. Zhang Wenqing was tortured for four days in similar ways, even whilst many of his factory colleagues visited the police station to substantiate his alibies. According to newspaper reports, Yang Wenli is reportedly sterile as a result of damage inflicted on his penis, his spine is crooked and he has numbness in his legs. Yang Liming suffered a blood clot and is paralysed down one side. He has difficulty urinating and is partially deaf, often shaking uncontrollably. Zhang Wenqing sufferers from acute headaches and poor memory.

In August 1997 4 policemen were charged with torture to obtain confessions, two were sentenced to 2 year suspended prison sentence whilst the others were exempted prosecution because of their "good attitude". Seventeen other officers were disciplined.

Anyone wishing further details or to take action on this issue should also consult CHINA Death Penalty Log 1997 (AI Index ASA 17/32/98)