

The European Initiative for Democracy and
Human Rights

Strengthening the Defence in Death Penalty
Cases in the People's Republic of China

The Death Penalty in China: a baseline document

Work in Progress

The Rights Practice

December 2003

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Introduction

This document has been written to provide background information on the application of the death penalty in China for participants in the European Commission funded project, *Strengthening the defence of death penalty cases in the People's Republic of China*.

We have tried to illustrate the scope of the death penalty in China, the role of defence lawyers and the courts and the relevant legislation and administrative regulations. For reasons discussed in the document it is not possible to provide reliable data on the use of the death penalty in China. Our survey of cases in the public domain suggests a high number of executions are taking place each year in China. The evidence indicates a presumption in favour of the death penalty when sentencing for a wide range of serious offences. Very partial information on the numbers sentenced to death in individual court districts, if extrapolated nationally, suggests a significant number of executions. We hope that China will soon make data on its use of the death penalty public.

The document lists the large number of capital offences in China and highlights the debate on what constitutes "the most serious crimes". We have also outlined, in some detail, Chinese criminal procedure. Any reduction in the use of the death penalty in China will not only entail reducing the numbers of capital crimes, but will also have to address the need to substantially improve legal safeguards for the defendant, in particular access to defence counsel and a meaningful appeals process. The death penalty in China, however, is seldom mandatory and courts have scope to give lesser sentences. In drafting this report we have been impressed by the dogged determination shown by some lawyers in defence of their clients and this bodes well for the project's focus on strengthening the defence of death penalty cases.

This document has been published by The Rights Practice and we take full responsibility for the opinions expressed and any factual errors. We are grateful to a number of individuals and organisations in China and overseas that provided information, background and comment. We welcome comments and corrections to what is intended to be a working tool.

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The Rights Practice (瑞慈人权合作中心)
December 2003

Abbreviations:

CL	Criminal Law
CPL	Criminal Procedure Law
NPC	National People's Congress
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate

Chapter I The Scope of the Death Penalty in China

Historical background

China today has more capital offences in its criminal law than any other country.

Historically, China may not have executed proportionately more prisoners than Europe did during a comparable period. But China's traditional view of the law was distinctive. Law was codified and interpreted by the state and there was no independent judiciary. Death sentences, however, were required to be reviewed by the local magistrate's superiors and technically it was the emperor himself who approved the final decision on execution. The political and social context of an offence was critical and crimes against the emperor and his family or against state property were the most serious. In the Confucian hierarchy crimes by sons against fathers or wives against husbands were treated more harshly than offences of fathers against their sons or wives. Punishments, including executions, could also be commuted for cash: 1,200 taels of silver were needed to commute a sentence of strangulation or beheading¹.

Although the communist government repealed legislation from the brief Republican era no substantive or procedural criminal laws were published until the end of the Cultural Revolution and the beginning of the reform period at the end of the 1970s. Criminal justice in the Maoist era was dominated by the political context and punishments were influenced by the offender's class status, his attitude to his offence and the prevailing political line². The severest punishments, including execution, were reserved for those defined by Mao, in his 1957 speech "On the Correct Handling of Contradictions among the People" as "the enemy". These included, "reactionaries, exploiters, counterrevolutionaries, landlords, bureaucrat-capitalists, robbers, swindlers, murderers, arsonists, hooligans and other scoundrels who seriously disrupt social order". Mass campaigns and mass trials sentenced hundreds of thousands to their death in the anti-Rightist campaign of the late 1950s and the Cultural Revolution. Public executions had a deterrent and propaganda function, "killing the chicken to scare the monkeys".

The 1979 Criminal Law was one of the first laws to be passed following the end of the Cultural Revolution and the adoption of the reform programme and Open Door policy. One of the aims of legislators was to signal an end to the arbitrary punishments and widespread abuse which marked the political upheavals of the earlier period. Nevertheless, the political nature of many offences remained and Article 103 provided that counterrevolutionaries "may be sentenced to death when the harm to the state and the people is especially serious and the circumstances especially odious".

The Criminal Law listed 28 capital crimes in 15 different articles. Of these capital crimes fifteen were defined as counter-revolutionary offences, eight were crimes endangering public security, three were offences against the security of the person and two were property offences including robbery and corruption³.

From the early 1980s, however, the Standing Committee of the National People's Congress, through a series of new regulations, approved the death penalty for an increasing number of offences including new economic crimes and other non-violent

¹ Jonathan D. Spence, *The Search for Modern China*, (1999) New York: W. W. Norton, p. 125.

² Shao-Chuan Leng and Hungdah Chiu, *Criminal Justice in Post-Mao China: analysis and documents*, (1985) Albany: State University of New York Press, p. 26.

³ See Appendix I for a listing of capital crimes.

offences. Despite the economic success of the reforms there was growing political anxiety at the rising crime rate and the increase in corruption in the transition to a market economy. In 1983 the first of a series of Strike Hard (严打) campaigns was adopted targeting criminal gangs and other violent crimes. By 1996 there were perhaps as many as 80 capital crimes on the Chinese statute books.

1997 Revisions to the Criminal Law

In 1996 China revised its Criminal Procedure Law and the following year its Criminal Law after nearly two decades during which legislative activity had focused on the need to regulate the growing market economy. The revised Criminal Law lists 68 capital crimes in 47 articles; it includes seven capital crimes against national security; fourteen crimes endangering public security; fifteen economic crimes; five crimes infringing the rights of the person; two crimes against property; eight public order crimes; two crimes against the interest of national defence; two crimes of corruption and thirteen capital crimes relating to military offences (see Appendix 1).

During the drafting stage several prominent scholars had argued for a reduction in capital crimes and, in particular, for ending the death penalty for non-violent offences. In the end the revised legislation reflected the current use of the death penalty and was not an attempt to either further increase or reduce the number of capital crimes. A number of offences were re-categorised; many counterrevolutionary crimes became the new offences of Endangering National Security while several other counterrevolutionary offences, including organising a mass prison escape (聚众劫狱罪), became public order crimes (1979 CL art. 95 and 1997 CL art. 317). Capital crimes such as counterrevolutionary murder and counterrevolutionary wounding both disappeared from the new Criminal Law. Perhaps the most notable change in the revised legislation was the removal of ordinary theft from the list of capital crimes. This should have had resulted in a significant decline in the use of the death penalty, but in the absence of reliable data this cannot be verified. An official list of the names of crimes was approved by the Supreme People's Court in a 1997 Regulation⁴.

Aggravating Factors

Under the 1979 Criminal Law the death penalty was never mandatory. It was only during the 1980s as the Standing Committee of the NPC passed various supplementary regulations that mandatory use of the death penalty for certain offences was introduced. Under the revised Criminal Law the death penalty is now mandatory (绝对死刑) for a limited number of criminal offences. These are hijacking (CL art. 121), kidnapping resulting in death (CL art. 239) and human trafficking (CL art. 240) and leading a jailbreak (CL art. 317) where the "circumstances are especially serious" and embezzlement or receipt of bribes of over 100,000 RMB (10,000 €) where "the circumstances are especially serious" (arts. 383 and 386).

For the majority of capital crimes, however, the imposition of the death penalty by the courts is discretionary. Article 33 of the Criminal Law lists the death sentence as one of five principal punishments; from public surveillance, criminal detention, fixed-term imprisonment, life imprisonment to the death penalty. The order in which punishments for

⁴ See 9 December 1997 SPC "关于执行中华人民共和国刑法确定罪名的规定".

a particular offence are listed indicates the order in which the courts will consider alternative sentences. In articles describing capital offences the death penalty may be listed as the first or last option in sentences ranging in possibility from five years' imprisonment to the death penalty.

In sentencing Chinese courts place importance on the consequences and circumstances of an offence. Many articles in the Criminal Law refer generally to the "especially serious" consequences of an offence resulting in death, serious injury or substantial economic loss. With other offences the emphasis is on the circumstances: for example, article 151 describes the crime of smuggling; where the "circumstances are especially serious" (情节特别严重的) the defendant "shall" be sentenced to life imprisonment or the death penalty.

In some cases the serious consequences of an offence that result in the death penalty are defined and this limits the ability of the court to exercise discretion. Where deaths have occurred the death penalty will automatically be considered reflecting the traditional idea that one should pay with one's life for murder ("杀人偿命"). A reading of court reports suggests that in cases where deaths have resulted the courts must justify, by reference to mitigating circumstances, why the death penalty is not given. It certainly appears that the likelihood of being sentenced to death for a capital crime, particularly murder, in China is high. This may be a relevant factor in any study of the deterrent value of the death penalty.

Article 199 provides for life imprisonment or the death penalty for a number of financial crimes where the "amount involved is especially huge, and especially heavy losses are caused to the interests of the State and the people". However, as with other property offences China employs a variety of standards across the country to distinguish the seriousness of offences. These standards reflect local standards of living and mean that economic losses will be viewed very differently between China's poor rural interior and its wealthy coastal region.

Likewise regional variations in sentencing also occur as a result of local "guidelines" on sentencing for drugs offences. Article 347 of the Criminal Law sets a threshold of 50 grams of heroin for various drug-related offences that may incur the death penalty. However, provincial practice varies and the threshold for provinces, such as Yunnan where drug trafficking is more widespread, is markedly higher than for many other provinces.

In some articles the Criminal Law lists other aggravating factors that will lead to a heavier sentence including the death penalty. For example, in article 263 the aggravating factors for robbery (抢劫) leading to a sentence of a fixed term imprisonment of not less than 10 years, life imprisonment or death include i) intrusion into another person's residence, ii) armed robbery and iii) robbery on board public transportation. However, many Chinese capital crimes are ill-defined. For example, teaching another person to commit a crime (传授犯罪方法罪 1997 CL art 295) or spreading poison (投毒罪 1997 CL art. 115) are both crimes which can result in a prison sentence of not less than 10 years, life imprisonment or the death penalty.

From time to time the Supreme People's Court publishes Judicial Interpretations which aim to provide some guidance to the courts. One of the more recent Interpretations was published on 13 May 2003 in the wake of the outbreak of SARS and provides for the death penalty for anyone who intentionally spreads disease pathogens which endanger public security or lead to serious injury, death or heavy loss of property. The Interpretation provides clarification of offences in Articles 103 (splitting the state), 115 (spreading poison), 141 (production or sale of fake medicine), 232 (intentional homicide),

234 (wounding with intent) , 263 (robbery) and 289 (“beating, smashing or looting”) of the Criminal Law, each of which may carry the death sentence. However, although the Interpretation reminds courts of the various offences which may be committed by those intentionally spreading SARS the Interpretation does not provide unambiguous guidance on the particular circumstances which would merit the death penalty.

Murder and other violent crimes

As already mentioned above those found guilty of murder stand a high probability of being sentenced to death. Article 232 lists the sentencing options for the crime of intentional homicide (故意杀人罪). They are, in this order, the death penalty, life imprisonment or fixed-term imprisonment of not less than 10 years. However, if the “circumstances are relatively minor” (情节较轻的) the sentence can be reduced to a fixed-term imprisonment of not less than three years.

On the 27th October 1999 the Supreme People’s Court published guidelines on the use of the death penalty for intentional homicide as part of a summary of a national meeting on criminal trial work aimed at ensuring rural stability.⁵ The guidelines stated that the decision to apply a death sentence should not only depend on whether the injured person died, but should also take into account all the circumstances of the case. Where homicide has taken place within the family, or as a result of a quarrel among neighbours or a dispute between ordinary people the death penalty should only be applied in the most serious or distinctive cases. The guidelines call for courts to distinguish between direct (直接故意杀人) and indirect homicide (间接故意杀人), and where death is a result of an intentional wounding (故意伤害人) the death penalty should only be applied in cases of particularly ruthless attacks. The publication of this guidance aimed at courts in rural areas suggests that the Supreme People’s Court was becoming concerned at the high numbers of death sentences passed and the impact this was having on local sentiment. The guidance seems to call on courts to use the death sentence more sparingly and not as the automatic sentence for homicide.

A survey of selected Chinese cases, apparently published to guide the lower courts and others, indicates that among the aggravating factors which are likely to lead to the death sentence for homicide are: use of particularly cruel or ruthless means, destruction of property, kidnapping and multiple homicides.

Ringleaders of gangs involved in violence, though not necessarily murder, will also be treated more harshly than other gang members. In the case, for example, of Zhang Jun (张君) he and 13 others were sentenced to death with immediate effect for their leading roles in a violent criminal gang (暴力犯罪集团), but fellow gang members were given suspended death sentences and life imprisonment reflecting their lesser roles⁶.

The 1979 Criminal Law did not list the crime of wounding with intent (故意伤害罪) as a capital offence, but in response to anxiety at rising crime the 1983 “Decision of the Standing Committee of the NPC regarding the Severe Punishment of Criminal Elements Who Seriously Endanger Public Security” stated that the death sentence may be imposed on “those who intentionally injure the persons of others, causing a person’s serious injury or death, when the circumstances are odious, or those who commit violence and do injury

⁵ 27 October 1999 SPC, “全国法院维护农村稳定刑事审判工作座谈会纪要”.

⁶ China Law Yearbook 2002, p 953.

to state personnel and citizens who accuse, expose or arrest criminal elements and stop criminal conduct". The vague use of expressions such as "when the circumstances are odious" (情节恶劣) led to reports of excessive use of the death penalty. The 1997 Criminal Law attempts to define the circumstances which merit heavier punishment, including the death penalty, as: "if he causes death to the person or, by resorting to especially cruel means, causes severe injury to the person, reducing the person to utter disability" (art. 234).

Economic crimes and other non-violent offences

Article 150 of the 1979 Criminal Law had provided for the possibility of the death penalty for robbery "by violence, coercion or other means" of public or private property "when the circumstances are serious or a person's serious injury or death is caused". But it is the March 1982 Decision of the Standing Committee of the National People's Congress (NPC) "Regarding the Severe Punishment of Criminals who Seriously Undermine the Economy" that illustrates the growing severity with which China was prepared to deal with economic crimes. This Decision made heavier sentences available in cases of theft (CL Art. 152): "when the circumstances are particularly serious, the sentence is to be not less than ten years of fixed-term imprisonment, life imprisonment or death". Serious circumstances generally implied particularly large sums of money. In a 1984 explanation published by the Supreme People's Court and the Supreme People's Procuratorate the death penalty was recommended for theft of money or articles with a value exceeding 30,000 RMB⁷ (3,000 €).

Although many economic crimes remained capital offences under the revised legislation theft on its own no longer results in the death penalty. Before the 1997 revision it has been argued that 30-50% of death sentences were for theft and that the vast majority of those executed were peasants⁸.

The following cases illustrate the scale with which the death penalty was used for theft. On 6th May 1996, before the revision to the criminal law, Zhengzhou intermediate court in Henan province sentenced Song Damin and seven co-defendants to death for theft. On appeal the sentence for one of the defendants was reduced to a two year suspended sentence, but the death sentence for the other seven defendants was confirmed. Amnesty International reported a number of cases of the death penalty for theft in 1996 including the execution of eight people in Ningde, Fujian province on 13 August for stealing pigs worth 14,432 RMB and the execution on 13 May of Zhang Xizhong in Sichuan following conviction for stealing 14 cattle⁹.

Although the revised legislation lifted the death penalty for ordinary theft a large number of non-violent economic offences remain capital crimes. These include the theft of cultural relics or large amounts from a financial institution; smuggling of cultural relics, precious metals and rare wildlife and wildlife products; counterfeiting currencies, fraudulent use of bills, tax fraud and forgery of VAT invoices.

⁷ 2 November 1984 SPC and SPP "关于当前办理盗窃件中具体应用法律的若干问题的解答" 第6条第2项规定·个人盗窃公私财物数额在3万元以上的,应依法判处死刑.

⁸ 陈光中,丹尼尔·普瑞方廷主编,“联合国刑事司法准则与中国刑事法制”,法律出版社,1998年,第363页.

⁹ Amnesty International, "The Death Penalty in China: Breaking records, breaking rules" p 7 AI Index: ASA 17/38/97.

“the most serious crimes”

Given the number and scope of capital offences in China a number of Chinese scholars¹⁰ have argued that the law does not comply with Article 6(2) of the International Convention on Civil and Political Rights which calls for the death penalty to be restricted to “the most serious crimes”.

Article 48 of the revised Criminal Law requires that the death penalty only be applied in the case of “extremely serious crimes” (罪行极其严重的). While some scholars¹¹ have welcomed the less inflammatory language of the revised legislation as proof of a more ‘scientific’ or rational approach to criminal justice others argue that the wording is less restrictive than the 1979 language which restricted the death penalty to the “most heinous crimes” (罪大恶极的 art. 43).

Minors

Under the 1979 Criminal Law juvenile offenders could be given a two year suspended death sentence. This measure was reviewed in the 1997 revision bringing China more closely into line with international standards and in particular the UN Convention on the Rights of the Child which it ratified in 1991. Under Article 49 of the revised Criminal Law the death penalty may now no longer be applied to persons under the age of 18 at the time the crime was committed.

Amnesty International, however, describe¹² the case of Li Wenyuan (not his real name) who, it was reported by the Qinghai Legal News, had been given a two year suspended death sentence for killing a classmate. Although the article did not give the defendant’s age it said that his name had been changed to preserve his anonymity as he was a minor. Amnesty International expressed concern that this sentence was contrary to Chinese law. A survey of case reports indicates that disputes do arise where the defendant claims to be under 18 and the courts or procuratorate are required to investigate.

Pregnant women

Article 49 also provides that the death penalty cannot be given to women who are pregnant at the time of their trial. The Supreme People’s Court has issued three Interpretations¹³ further clarifying this provision: the court cannot pass a death sentence on women who are found to be pregnant in detention pending trial; neither can a pregnant woman have an induced abortion, either during detention or trial, in order to impose a death sentence. Any woman who has had an induced abortion should be treated as if she were pregnant and cannot be sentenced to death. Furthermore any woman who miscarries while held in detention should also be considered as if she were pregnant for the purposes of sentencing. The ruling against imposing the death penalty on pregnant women should also be interpreted to include a two-year suspended death sentence. The number of SPC Interpretations on this issue is perplexing and it is not clear whether the

¹⁰ see for example 夏勇编 (Xia Yong ed.) “公法”·第二卷, “死刑与‘最严重的犯罪’”(1998) 法律出版社

¹¹ see Xiangtan conference papers.

¹² Amnesty International “The Death Penalty in 2000” September 2002 ASA 17/032/2002.

¹³ Supreme People’s Court 20 September 1983, 30 December 1983, 4 August 1998.

Court is responding to abuses of the law or trying to bring a poorly drafted law into line with international standards.

Chinese scholars have raised several problems with the emphasis of the current legislation on the knowledge of pregnancy at the time of trial¹⁴. These include the possibility that the pregnancy is discovered after the trial with the woman either already pregnant during the trial or made pregnant afterwards. A second possibility exists that a woman given a suspended death sentence is later found to be pregnant and then commits an offence. Under Article 50 of the Criminal Law concerning the application of the suspended death sentence the commission of an “intentional crime” during the two year suspension will, following “verification and approval”, automatically lead to the death sentence. The definition of “at the time of trial” (审判的时候), it is also argued, is a rather vague concept under Chinese law and open to procedural abuse; scholars argue that it should encompass the whole period during which “compulsory measures” may be taken against the suspect and therefore should include time spent on bail (“taking a guarantee waiting trial” 取保候审) giving a woman who becomes pregnant on bail protection from the death penalty.

The Supreme People’s Court has attempted to address these problems in its Interpretation on Several Problems regarding the Criminal Procedure Law. Lower courts are required to halt an execution if the prisoner is found to be pregnant; the matter should then be reported to the court which approved the death sentence for them to pass a ruling. Although this Interpretation by the SPC helps bring Chinese practice into line with the ICCPR (Article 6 (5)) Chinese critics argue it does not have the same force as law. In his presentation to the Xiangtan conference Professor Zhao Bingzhi recommended that the law could be clarified by eliminating any reference to the time of trial and using the language of the UN convention¹⁵, “the death sentence shall not be carried out on pregnant women”.

Upper Age Limit

There is no upper age limit for the use of the death penalty in China. Some defence lawyers have tried to use age as a mitigating factor for a lighter sentence. One newspaper reported the trial of a man born in 1915 and sentenced to death for murder by Hengyang Intermediate Court in Hunan province. In the report of the judgement the court drew attention to the age of the defendant and the appeal for a lighter punishment, but felt that according to the law they must still impose a heavy punishment.

Some Chinese scholars have called for an upper age limit for the use of the death penalty and suggested that this should be 70 years. However, others argue that the law should treat everyone the same and old age should not be made an exception.

¹⁴ These points were raised by Zhao Bingzhi (赵秉志) and Xu Chenglei (许诚磊) in their paper to the Xiangtan conference, 现代死刑适用制度比较研究.

¹⁵ Zhao Bingzhi and Xu Chenglei op cit p. 86.

Chapter II Criminal Procedure and the Death Penalty

Current Chinese criminal procedure is codified in the 1996 Criminal Procedure Law. More detailed regulations for implementation can be found in the various normatively binding decisions subsequently issued by the Ministry of Public Security, the Supreme People's Procuratorate and the Supreme People's Court. The Chinese legislative and rule-making process is complex and different laws, regulations, decisions, notices and so on may be inconsistent. The National People's Congress and local people's congresses, the State Council, ministries and local governments are all able to issue laws¹⁶.

Public security organs are responsible for investigation, detention and the execution of arrests (逮捕) (which normally occur following detention). The Procuratorate has responsibility for approving arrest and preparing the prosecution case; the People's Courts are responsible for adjudication of cases and sentencing.

The revised law provides the defendant with a number of procedural safeguards over the earlier 1979 legislation. This includes the right of defence counsel to participate earlier in the criminal proceedings and measures to strengthen the trial stage and move away from the practice of "decision first, trial later". Despite the improvements both Chinese scholars¹⁷ and the international community¹⁸ have criticised the law for failing to meet international standards to protect the defendant's right to a fair trial.

Defence Lawyers

Role of Defence Lawyers

Under Article 96 of the Criminal Procedure Law the suspect may appoint a defence lawyer following the first interrogation by the police or procuratorate or "from the day compulsory measures are adopted against him", usually meaning detention by the police. Once appointed the lawyer can provide legal advice, apply for bail (取保候审), and file complaints. The lawyer also has the right to be informed of the details of the alleged offence and to meet with the suspect in detention. In practice, the police often procrastinate in granting access to the suspect. Where a case involves state secrets the suspect must also obtain the approval of the investigating body to appoint a lawyer (art. 96).

On 19 January 1998 the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, the legal work committee of the Standing Committee of the NPC jointly issued the regulation, "Concerning various questions regarding the implementation of the

¹⁶ See Randall Peerenboom, *China's Long March toward Rule of Law*, (2002) Cambridge: Cambridge University Press, p. 241 for a fuller discussion of the different law-making authorities.

¹⁷ See for example Chen Weidong (陈卫东) ed. "刑事诉讼法实施问题调研报告" 中国方正出版社, 2000.

¹⁸ See for example, Lawyers Committee for Human Rights, *Opening to Reform? An Analysis of China's Revised Criminal Procedure Law 1996* New York.

Criminal Procedure Law”¹⁹. Article 11 of the regulation makes it clear that investigating bodies cannot use the pretext that the offence concerns state secrets to withhold permission for the lawyer to meet with the suspect in detention. However, state secrets are not defined and in practice the police and the procuratorate often use the excuse of state secrets to withhold permission for the lawyer to meet his client during the investigation phase.

Box 1. Wang Yousi, Heilongjiang

In February 1996 Mudan Jiang Intermediate People’s Court, Heilongjiang province tried Wang Yousi for murder. His defence lawyer claimed that there was no evidence for the time of the offence or for linking the defendant to the scene of the crime, the murder weapon had not been authenticated, there was no evidence to support the defendant’s alleged motive and there was no evidence that the blood found on the defendant was that of the victim. However, the defence lawyer’s view was not accepted by the court and on 2 July 1996 Wang was sentenced to death.

On appeal Wang’s lawyer argued that under article 162 (3) of the Criminal Procedure Law where the evidence is insufficient the defendant cannot be found guilty. Heilongjiang Higher People’s Court ordered a retrial.

At a retrial in Mudan Jiang intermediate court defence counsel again drew attention to the lack of evidence and argued that it was not lawful to rely solely upon a confession. Moreover defence counsel drew the court’s attention to a 1995 Heilongjiang higher court decision regarding blood type analysis and argued that the blood sample in this case was not sufficient for analysis. The defence lawyer also had a witness that the defendant had been tortured during interrogation. Once again, however, the court sentenced Wang to death.

On 30 January 1997 Wang’s family again instructed his lawyer to appeal to the provincial higher court arguing that the “facts were not clear” and that there were contradictions in key evidence. In a judgement passed on 13 September 1997 Heilongjiang higher court agreed that the “facts were not clear and the evidence was insufficient”; they revoked the earlier lower court judgement and ordered another retrial.

On 28 February 2000 Mudan Jiang intermediate court heard the case for the third time and again defence counsel argued that there was insufficient evidence and confession evidence was not sufficient to convict. On the 28 March 2000 the court again delivered a guilty verdict, but sentenced the defendant Wang to a two year suspended death sentence.

However, Wang’s family once more instructed defence counsel to appeal. Heilongjiang higher court agreed that the “facts were not clear” and that the evidence was inconsistent and unreliable. On 8 November 2000 the provincial higher court determined that Wang Yousi was not guilty.

Article 11 also stipulates that the investigating body should arrange for the defence lawyer to meet the suspect within 48 hours, or at the most 5 days for more complex cases involving, for example, drugs, smuggling, corruption or multiple suspects. The 48 hour time limit, however, is still widely breached by the police.

The defence lawyer is not allowed to attend the police or procuratorate interrogation of suspects. Moreover a policeman is allowed to be present during the lawyer-client meeting if deemed necessary or “in light of the seriousness of the crime” (CPL art. 96). A defence lawyer meeting a suspect on a capital crime charge can expect a policeman to be present during all interviews substantially undermining the value of the lawyer-client meeting.

Once the case has entered the prosecution phase the defence lawyer is entitled to access to his client without seeking approval. However, again in practice lawyers are expected to carry with them an official permission letter (同意会见函) from the Procuratorate in order to meet the suspect at the detention centre.

¹⁹ 最高人民法院最高人民检察院公安部国家安全部司法部全国人大常委会法制工作委员会“关于刑事诉讼法实施中若干问题的规定”。

During the prosecution phase the defence lawyer can also “consult, extract and duplicate the judicial documents” and “technical verification material” relating to the case (CPL art. 36). However, disclosure by the procuratorate is often incomplete²⁰.

During the trial the role of the defence lawyer may also be restricted particularly where the trial is being publicised for propaganda purposes. In one of the cases reviewed where a number of defendants were facing the death penalty for gang violence the court president only allowed one lawyer to speak on behalf of each defendant despite the fact that most of them had each engaged two lawyers. Moreover, despite the complexities of this particular case and the number of provinces where offences were alleged to have taken place, the time allowed for the defence to speak was strictly limited. It is notable that this trial took place at the start of a Strike Hard campaign and the court room was packed with representatives of the press.

Defence lawyers have also found themselves subject to criminal proceedings under Article 306 of the Criminal Law for allegedly encouraging their clients to change statements made before the intervention of a lawyer. Article 306 makes it a criminal offence for a lawyer to forge evidence or entice or coerce a witness into “changing his testimony in defiance of the facts or give false testimony”. Where the circumstances are said to be serious this can result in imprisonment for between three and seven years. The prominent Beijing lawyer, Zhang Jianzhong, has been imprisoned since May 2002 on charges under Article 306 and 307 of the Criminal law²¹. Article 306 has certainly dissuaded some defence lawyers from taking on cases. Media coverage of the problem has, however, also highlighted cases where following indictment on charges of helping to fabricate evidence, lawyers have been found not guilty.

The procedural obstacles facing the defence lawyer in China are contrary to the UN safeguards for those facing the death penalty²² which call for adequate legal assistance at all stages of the criminal proceedings. Dogged determination on the part of some lawyers, however, can succeed (see Box 1).

Access to Defence Lawyers and Legal Aid

A defence lawyer is normally identified by the suspect’s family or friends. If a suspect does not entrust the appointment of a lawyer to family or friends the police are required, if requested, to help locate a lawyer through the local lawyer’s association. Under Article 34 of the Criminal Procedure Law anyone who faces the possibility of the death penalty has the right at trial to legal assistance.

During the critical investigatory stages of a case the defence lawyer will normally be paid for privately; free legal assistance is not required until ten days before the court hearing. However, under Article 11 of the Legal Aid Rules²³ (published by the State Council on 31 July 2003 for implementation from 1 September 2003) it is now possible for suspects,

²⁰ Jerome Cohen, “The Plight of Criminal Defence Lawyers”, statement for Congressional-Executive Commission on China roundtable, “Challenges for Criminal Justice in China” 26 July 2002.

²¹ Congressional-Executive Commission on China, “Defence Lawyers turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defence Lawyers in China” www.cecc.gov/pages/news/zhang_052703.php

²² *Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty*, Economic and Social Council resolution 1984/50.

²³ State Council, “法律援助条例”.

without financial means, to apply for legal aid following the first interrogation by the police or the beginning of compulsory measures. It should be noted that although the suspect may apply for legal aid this will not necessarily be approved and the decision will probably reflect local ability to fund legal assistance.

In interviews in Beijing and Shanghai lawyers claimed that the majority of defendants facing the death penalty will privately employ a defence lawyer rather than rely on legal aid; family networks and friends will contribute to the cost where necessary. However, research carried out by Wuhan university reveals that in over fifty percent of the capital crime trials in Hubei the defendant had a lawyer provided through legal aid. The majority of these cases were trials for murder, wounding with intent and robbery.

Lawyers fees vary significantly according to the experience of the lawyer and the location: rural lawyers may charge a couple of hundred RMB while an experienced Beijing defence lawyer may easily charge 10,000 RMB for each of the three stages of the criminal proceedings, police investigation, procuratorate investigation and trial stage. Where possible, diligent Chinese criminal lawyers try to see their client two to three times during the police investigation phase, once or twice during the procuratorate's investigations and a further once or twice when the case has been committed for trial.

Once a potential death penalty case reaches the trial phase and the defendant has not yet appointed defence counsel the court will designate a lawyer. Court mandated legal aid for those facing the death penalty is provided free of charge and defendants are not required to prove their impecuniousness. Although Chinese criminal law has 68 capital crimes free legal assistance will only be provided where the Procuratorate is seeking a death sentence. The court is not required to appoint a lawyer to provide legal assistance until ten days before the opening of the court session by which time the Procuratorate will have filed the indictment with the court. According to national regulations legal aid centres have three days to find a lawyer leaving the lawyer just a week to prepare. Where no legal aid centre yet exists the court will ask the local Bureau of Justice to provide a lawyer.

Legal aid in China was established following the 1996 Lawyers Law which requires all practising lawyers to provide free legal assistance for up to two cases a year. A national Legal Aid Centre under the auspices of the Ministry of Justice sets overall policy and monitors implementation. At the local level legal aid centres, under the local bureaus of justice, ensure that mandatory legal assistance is provided, where required, to those facing the death penalty and minors, the deaf and mute on criminal charges. Legal aid centres may also provide individuals with additional legal services for other criminal and civil cases according to criteria that reflect locally set poverty levels. Cases for mandatory legal aid services may be provided by the legal aid centre's own professional lawyers or allocated to local law firms which will then appoint a lawyer to the case. A number of cities have also established registers of legal aid volunteers drawn from the legal, academic and government community. Famous lawyers, it seems, rarely take on legal aid cases.

In 2001 there was a total of 58 361 legal aid assisted criminal cases in China out of a total of 178 748 legal aid cases, representing an increase of 20.8% over the previous year. The National Legal Aid Centre claims that it has achieved approximately ninety percent coverage of legal aid centres throughout China down to the county level and that almost all cases requiring mandatory legal assistance are given support²⁴. Local legal aid centres are required to report their results to the national centre every six months; legal aid lawyers and the courts are both required to complete reports on each legal aid case

²⁴ interview, July 2003.

for monitoring by the legal aid centre. It was not possible to obtain data verifying the claim that all defendants facing capital crime charges would have legal assistance, but it was stated in interviews that if there were no defence lawyer present in capital charge trials the verdict would be invalid and the court would be required to rehear the case.

Data from Wuhan shows that over the last three years there was a defence lawyer present at all first and second instance courts hearing cases involving the death penalty. In 2000 the legal aid centre in Wuhan dealt with 127 cases where the defendant faced the death penalty. Of these 48 were for murder; 39 involved grievous bodily harm resulting in death; 12 drugs cases and 28 cases of robbery. In 2001 the centre dealt with 144 death penalty cases of which 60 were for murder, 45 for grievous bodily harm, 17 for drug dealing and 22 for robbery. In 2002 the legal aid centre handled 165 death penalty cases of which 64 were for murder, 53 for grievous bodily harm, 23 for drug dealing and 25 for robbery. Of these 436 cases 289 were sentenced by the court of first instance to death with immediate execution; 53 were given a suspended death sentence and 94 were given life imprisonment. Forty four per cent of these cases were appealed to the higher court and approximately 30% of these cases would be sent for retrial or have their verdicts overturned. In about 80 per cent of these legal aid cases the centre assigned one of its own professional lawyers to the case; the remaining 20 per cent of cases were assigned to lawyers working in other law firms in the city.

The financing of legal aid in China remains highly problematic and is the responsibility of local government. Consequently, poorer regions will have the least developed legal aid services. Apart from meeting the staffing costs and overheads of the local legal aid centre funds are also required for case-related expenditure. The fee paid, for example in Beijing, for a legal aid case has recently risen to about 500 RMB, but in many cases this does not even cover expenses let alone provide any compensation for the lawyer's time. Defence lawyers need to pay the cost of photocopying relevant materials from the court and travel costs to the detention centre which is usually located out of town. Detention centre regulations require two lawyers to be present during any interview with a client thus doubling the cost of travel related expenditure²⁵. In poorer regions legal aid centres do not even have funds to reimburse lawyers' case-related expenditure. Recent State Council regulations on legal aid have clarified the responsibilities of local government to finance legal aid services²⁶. Where lawyers firms refuse to take on legal aid cases the local bureau of justice can administer warnings and sanctions including temporary restrictions on professional licences to practice.

Appeals against a death sentence are heard at the higher court level; these courts are located in provincial capitals or in self-governing municipalities and are areas which are better resourced in terms of both availability of experienced lawyers and funding than intermediate courts located at the level of smaller towns and cities. On 20 November 1997 the SPC ruled that legal aid must be available for defendants appealing against the death penalty²⁷.

²⁵ International Bridges to Justice also recommend that two lawyers are present in interviews at the detention centre to protect lawyers themselves from unjust accusations of interference by the police. Private communication.

²⁶ See above note 22.

²⁷关于第二审人民法院审理死刑案件被告人没有委托辩护人的是否应当为其指定辩护人问题的批复》规定，《刑事诉讼法》第34条第3款关于被告人可能被判处死刑而没有委托辩护人的，人民法院应当指定承担法律援助义务的律师为其提供辩护的规定，也应当适用于第二审死刑案件，即第一审人民法院已判处死刑的被告人提出上诉或人民法院提出抗诉，被告人没有委托辩护人的，第二审法院应当为其指定辩护人。

The All China Lawyers Association and the local level lawyers' associations are responsible for supervising and raising professional standards. A number of sub-committees under the ACLA researches and advises on specific topics including legal representation for minors and criminal defence work. The Legal Aid Centre of China also sponsors a research centre on legal aid for children and young people. Neither the ACLA or the Legal Aid Centre of China publishes specific guidelines to best practice on defending clients charged with a capital crime.

Although the standards of service for both privately and publicly recruited legal assistance are supposed to be the same there is an assumption that privately paid for legal services will be of a higher quality than legal aid. However the main shortcoming for indigent defendants facing the possibility of the death penalty is that they are unlikely to receive legal advice during the critical investigation phases. Implementation of the new State Council regulations allowing suspects to apply for legal aid as soon as they have the right to appoint a lawyer will need to be monitored to evaluate the effectiveness of what is an enabling rather than compulsory measure²⁸. Reports of successful appeals, however, include cases defended by lawyers provided by legal aid.

Courts and Trial Issues

The intermediate court is the court of first instance for most capital crime cases. The case will be heard by a three person collegial panel either comprising three judges or one judge and two people's assessors. Cases should normally be held in public unless they involve minors, state secrets or the private affairs of individuals.

Confession evidence

Although revisions to the Criminal Procedure Law outlawed conviction solely on the grounds of confession evidence (art. 46) there is no doubt that criminal prosecutions in China still place substantial emphasis on confession. Police interrogation rooms have written up in large characters opposite the suspect an exhortation to confess and a warning that failure to do so will be penalised (坦白从宽, 坦拒从严).

The Chinese Criminal Procedure Law gives suspects in interrogation the right not to answer irrelevant questions (art. 93), but recently some local jurisdictions have been experimenting with a more general right to silence (沉默权) or the absence of confession (零口供) (see Box 2). A review of reports of cases where the suspect has asserted his right to silence indicates that the courts view the defendant's silence during interrogations as an admission of guilt and that reluctance to speak is taken to demonstrate a poor attitude to offending likely to result in a harsher punishment. Despite official endorsement of the right to silence it appears the courts were not given training and suspects were not warned of any implications of remaining silent during interrogation. The right to silence (沉默权) and the absence of confession (零口供) are not interchangeable concepts and on their own (and in the short term) cannot challenge traditional Chinese criminal practice. The cases we reviewed led us to the tentative, but disturbing conclusion that asserting a right to silence would result in a harsher penalty.

²⁸ 2003年7月31日国务院公布《法律援助条例》(自2003年9月1日起施行)该《条例》第11条规定, 犯罪嫌疑人被侦查机关第一次讯问后或者采取强制措施之日起, 因经济困难没有聘请律师的, 可以向法律援助机构申请法律援助。

Box 2. Right to Silence: pilot projects

In 1999 police in Qingshan district, Wuhan removed the slogan, “坦白从宽，抗拒从严” from every interrogation room to demonstrate their commitment to the right to silence.

In 2000 police in Dalian and Shenyang, Liaoning province introduced a ‘notification system’ (“告知制度”) to promote the right to silence. The public were told that “if you have not first been informed of your rights, you have the right to remain silent”.

In August 2000 the Procuratorate in Fushun, Liaoning province introduced regulations on the absence of confession (主诉检察官办案零口供规则). The regulations allowed the suspect in criminal investigations to remain silent during interrogation.

Case reports from the press:

Fujian: Under the headline, “Prefers death, does not admit guilt” (宁死不认罪) the Xiamen Evening News reported that burglar, Li Dechun was sentenced to death by the city’s intermediate court. This was Xiamen’s first case of the death penalty where the defendant had not confessed.

Chongqing: In its first ‘absence of confession’ (零口供) case the city’s first intermediate court sentenced Liu Tingwei to death for murder.

Guizhou: In one of its first examples of an ‘absence of confession’ (零口供) case Xu Yancai and six others were sentenced to death for murder in Guiyang.

Torture

The Chinese Criminal Procedure law prohibits investigators from using torture to extort confessions or to collect evidence by threats or inducements (art. 43). Article 247 of the Criminal Law also makes it a criminal offence for any judicial officer to use torture and makes provision for a prison sentence for those found guilty of torture. Despite the law’s good intentions evidence collected by torture is not inadmissible in court and the frequent reports of cases involving torture suggest that it is a widespread problem, particularly during the police investigation phase²⁹. In a large number of the death sentence appeals cases we reviewed defence counsel claimed that torture had been used to extract the confession and that without the confession the evidence was insufficient to convict. Unfortunately in many cases even though the defendant could show physical evidence of torture the initial response of the higher court was to order a retrial rather than declare a not guilty verdict.

Fortunately, some judges and other law enforcement personnel³⁰ are now taking the problem of torture more seriously; there are reports of courts examining the physical evidence and overturning lower court verdicts based solely on confession evidence. The punishment of those found guilty of torture, however, is not normally severe. In many cases the police are given a suspended sentence or an administrative punishment.

²⁹ See for example, Amnesty International, “Torture – a growing scourge in China” AI Index ASA 17/004/2001.

³⁰ Murray Scott Tanner, “Torture in China: Calls for Reform from within China’s Law Enforcement System” prepared statement to accompany testimony before the Congressional-Executive Committee on China 26 July 2002.

Acquittal rates

Chinese criminal cases have a very low acquittal rate by the time cases come to court. Despite the revisions to the Criminal Procedure Law which attempted to strengthen the principle of not guilty (疑罪从无) there is still no widespread acceptance of the idea and the implications for practice. Among the police, procuratorate and judiciary there remains a traditional presumption of 'when in doubt assume guilt' (疑罪从有). According to data in the China Law Yearbook about 99% of all defendants brought to trial are found guilty. Although the court has the opportunity to give a verdict of not guilty due to insufficient evidence this rarely happens. Where the appeal court decides the evidence is insufficient the normal practice is to return the case for retrial (重审) rather than judge the defendant not guilty (see subsequent discussion of appeals).

Expert evidence

Article 119 of the Criminal Procedure Law allows for the consultation of expert witnesses and article 120 provides for additional medical evidence to be provided by a hospital designated by the provincial level government in the event of any dispute. The defendant and the victim both have the right to apply for an additional expert opinion once they have been notified of the expert evidence that will be used in court (CPL art. 121). However, the decision to approve an application for a second expert opinion lies with the investigatory bodies and the court and there is no possibility of appeal if the request is refused.

The law does not establish qualifications for expert witnesses, but such experts are usually drawn from three types of organisations: i) specialist departments within the police, procuratorate or courts; ii) specialists from agencies of the Ministry of Justice and iii) other specialist institutions such as hospitals, research institutes and universities. In practice expert witnesses are most likely to come from departments of the police, procuratorate or courts. There is no examination system or register of qualified experts and no requirement that individual specialists justify their expertise.

There is increasing use of DNA evidence, however, there is as yet no comprehensive legislation governing the use, collection and analysis of DNA evidence. The scientific bases for expert opinions have sometimes been called into question and some of the equipment is reputed to be basic. Moreover, the DNA analysis centres are not independent. Scholars have called for DNA expertise to be based in specialist centres rather than in judicial organisations.

Witnesses and expert witnesses are not required to be in court for cross-questioning of their evidence (CPL art. 157) although if the court has any doubts about the evidence it may decide to adjourn the hearing for further investigations (CPL art. 158). Defence lawyers can find it difficult to challenge the evidence presented by the prosecution since their access to independent expert witnesses is limited.

Court Discretion

The lack of precision in defining aggravating factors that will lead to the death penalty or in defining the crime itself gives Chinese courts enormous discretion in sentencing. This discretion applies to the court as a whole rather than to individual judges since cases

involving serious crimes will be heard by a three judge panel and before deciding a death sentence the panel will normally refer the decision to the court's adjudication committee. The procuratorate will also have an influence on sentencing. When it files its indictment with the court the procuratorate will normally ask for a specific sentence.

The status of Chinese courts has been widely discussed elsewhere³¹. Although Chinese policy now emphasises the independence of individual courts rather than of judges themselves, in practice the different levels of courts remain closely integrated hierarchically and are dependant locally on the government for resources and the people's congress for their positions. At each bureaucratic level there is also a close association between the police, the procuratorate and the courts with many individuals also sharing close personal ties through their college education. In certain high profile cases all three agencies will consult amongst each other and with the local Party committee.

The Supreme People's Court has not issued any formal guidelines advising intermediate and higher courts on the application of the death sentence. Since it ceded its powers to approve the death sentence for many violent crimes Chinese scholars suggest that it has a limited capacity to impose policy in this area on lower courts which are jealous of their independence of the SPC and remain strongly influenced by local government policy. However, in 2002 SPC Vice President Liu Jiachen held a series of two day meetings in Beijing, Wuhan, Chengdu and Guangzhou attended by legal scholars and personnel from the courts on the topic of the correct application of sentences (刑法价值). His message was to encourage the courts to make greater use of lighter sentences and he criticised excessive use of heavy punishments including the death penalty.

Courts are required to prepare a written judgement on each case. These judgements are not publicly available, but are given to the parties in the case. Selected judgements are published for educational and propaganda purposes.

Regional variation in sentencing

Without access to data on all the death sentences passed in China it is not possible to analyse regional variation in sentencing. Among the significant variables are likely to be local poverty levels which will influence attitudes to economic crimes and the availability of well-qualified lawyers and legal aid; local political priorities including regional Strike Hard policies; and the educational and training background of the judges, procurators and police which may influence their respect for procedural safeguards and a stricter interpretation of the aggravating factors which merit the death penalty.

Mitigating circumstances

In determining the appropriate sentence for capital crimes reports show that the courts may take into account mitigating circumstances to justify a lesser punishment. For example, in the report of the murder trial of defendant Ren Yong (任勇) it was noted that the victim had also been seriously at fault (重大过错) and therefore the defendant was sentenced to 15 years³². In the case of Li Jizhou (李纪周) the defendant had accepted

³¹ see for example, Randall Peerenboom, *China's Long March toward Rule of Law*, (2002) Cambridge: Cambridge University Press, chapter 7.

³² “人民法院裁判文书选”，四川 2000 卷，法律出版社，2001 年，第 39 页。

52.76 million RMB in bribes, but was given a two year suspended death sentence in recognition of the fact that he had surrendered to the police, provided intelligence on other cases and showed remorse³³.

Article 68 of the Criminal law provides for a lighter punishment for criminals who “perform meritorious services”; this is normally understood to mean providing intelligence on other criminal activity or handing oneself in. The Supreme People’s Court issued an Interpretation in 1998 on meritorious behaviour and surrendering to the judicial authorities³⁴. In the Wang Guanshun murder case the Intermediate People’s Court in Sanming, Fujian province sentenced the defendant to death on 23rd May 1997 for intentional homicide. Wang appealed against the sentence and during the second trial informed on Ran Xiaofeng who had stolen an electric detonator and ammunition. The Fujian Higher People’s Court reduced his sentence to a two year suspended death penalty in recognition of his service to the court. Details of this case were published by the Supreme People’s Procuratorate on 21st July 1998. In preparing the defence case it is clearly in the interests of their clients for lawyers to encourage them to pass on criminal intelligence.

Meritorious service, however, is not limited to informing on others. In the unusual case of Chen Bin (陈宾), reported by the Yangcheng Evening News in December 2001, the death penalty for robbery was finally reduced on appeal to a two year suspended death sentence in recognition of his success as an inventor. On 24th October 1995 Yili county Intermediate People’s Court in Xinjiang sentenced Chen Bin to death for burglary. Chen Bin appealed and during the appeal stage the National Patent Office awarded him a patent for a piece of machinery. At his appeal the same sentence was given, but while the court was considering when to carry out the execution the Supreme People’s Court intervened and required Chen Bin to continue his research and improve his product while in prison thereby giving him a temporary stay of execution. The court met once more in March 1996 and again approved the death sentence and fixed 2nd April as the date for execution. However, in the interim Chen Bin was once again awarded patents for his inventions and the Xinjiang Higher People’s Court finally decided that his continued inventions while in prison were an example of meritorious service and commuted his sentence to a two year suspended death penalty.

Diminished Responsibility

Under Article 18 of the Criminal Law a defendant who is deemed mentally incapable at the time of the offence cannot be considered criminally liable, however, defendants with mental illness, but judged to have been mentally competent at the time of the offence *may* be given a mitigated punishment. In its Interpretation Regarding the Implementation of the Criminal Procedure Law the Supreme People’s Court further ruled in June 1998 that where the defendant is mentally ill and the case is delayed the court should discontinue the trial. However, this does not preclude the possibility that a retrial may take place at a later date.

Cases analysed by Robin Munro in his report on political psychiatry in China indicate that a relatively higher proportion of criminal defendants brought before psychiatric evaluation panels are judged to be criminally incapable as a result of insanity than is the norm in

³³ *China Law Yearbook* (2002) p.936.

³⁴ 6 April 1998 “最高人民法院关于处理自首和立功具体应用法律若干问题的解释”.

other countries³⁵. However, he also argues that most of the cases presented for expert medical evaluation are brought by the police or procuratorate rather than the defence counsel as is the case in the West. The argument put forward by Human Rights Watch and the Geneva Initiative on Psychiatry is that the label of insanity is being abused and as a result political prisoners are being subjected to administrative rather than criminal processes.

Leading hospitals, such as the School of Forensic Medicine at West China University of Medical Sciences, are designated by the provincial government to conduct the medical evaluation of mental illness (CPL art. 120). As with other expert evidence the defendant or his lawyer may apply for a second opinion, but the decision lies with the court or investigatory agency. As the case in Box 3 illustrates, the appointment of the medical experts can be a source of significant dispute.

Some Chinese scholars have called for the abolition of the death penalty for the mentally ill, but others have pointed out the need for agreed standards for assessing mental health and IQ and better understanding of the relationship between mental health and criminal behaviour.

Box 3. Zhang Linfa, Zhuhai, Guangdong Province

In an apparent act of revenge against Li Keyao Zhang Linfa threw Li's wife, Li Shuying from the balcony and then climbed onto the railings and jumped down. Li Shuying died and Zhang was badly injured.

Guangdong province mental illness forensic evaluation committee was appointed by Zhuhai police to evaluate Zhang's mental state. They concluded that he was not mentally ill and would have been fully responsible for his actions despite suffering from anxiety.

The Zhuhai procuratorate presented this report to the court in bringing their prosecution against Zhang and claimed that he was criminally liable at the time of the incident. However, the Zhuhai court argued that the evaluation committee was not a provincial government designated hospital as envisaged under Article 120 and ruled that the finding was unlawful. Instead the court appointed a Shenzhen hospital and Shenzhen mental illness forensic evaluation committee to assess Zhang. In their view Zhang was not criminally liable.

But, the procuratorate and the victim's husband would not accept this finding and Zhuhai court then entrusted a Foshan hospital to assess Zhang. In the view of their experts Zhang was deemed partially criminally responsible. The Zhuhai court decided to use the Foshan opinion.

Suspended Death Sentence

Some Chinese scholars have called for greater use of the suspended death sentence as one way of reducing the use of the death penalty in China. Strictly speaking, however, the suspended death sentence is not an alternative sentence, but a way of implementing the death penalty. It is estimated³⁶ that one quarter of the death sentences passed are for a suspended sentence and the rest for immediate execution (死刑立即执行).

³⁵ Human Rights Watch and Geneva Initiative on Psychiatry, *Dangerous Minds: Political Psychiatry in China Today and its Origins in the Mao Era*, (2002).

³⁶ Hu Yunteng, "死刑通论" China University of Politics and Law Publishing House, 1995, p. 271.

Article 48 of the Criminal Law provides for a two year suspension of the execution “if the immediate execution of a criminal punishable by death is not deemed necessary”. Prisoners sentenced to a suspended death sentence will normally be held in prison with those facing life sentences and fixed term sentences of over 10 years. Suspended death sentences are commuted to life imprisonment if the prisoner does not commit an “intentional offence” in the two year period; meritorious service while in prison can result in the sentence being reduced to a fixed term of between fifteen and twenty years. Meritorious service in this context is normally understood to involve providing intelligence on other offenders or offences (see Prison Law art. 29). Where, however, prisoners are found guilty of serious offences while in prison, murder and serious wounding probably being the most frequent, with the higher court approval, the death sentence will be carried out. Although most suspended death sentences are commuted to life imprisonment for some prisoners there is the prospect of a reduced sentence and the eventual possibility of release.

Chinese law does not provide explicit guidelines to establish when the suspended death sentence is appropriate and immediate execution is not necessary. However, the following examples, drawn from individual cases, indicate factors that may result in a suspended death sentence: i) where there is no strong public opinion in favour of execution, for example where the motive and circumstances of a murder are seen to lessen the seriousness of the offence such as in a domestic dispute; ii) where the defendant has turned himself in; iii) where the defendant has performed a “meritorious service” (see earlier discussion), for example leading to the arrest of other drug dealers; iv) where the defendant is one of many defendants and the ringleaders have been sentenced to immediate execution; v) where the victim was also at fault, for example in the case of “manslaughter” rather than murder (Chinese law does not distinguish degrees of murder); and vi) where the evidence is incomplete, for example on appeal a death sentence with immediate execution was reduced to a two year suspended sentence because the murder implement was not found.

It is also clear from a survey of cases that the defendant’s status is likely to influence the court in sentencing. A survey of corruption cases reveals that higher level officials found guilty on serious fraud and corruption charges were more likely than other offenders on similar charges to be given a suspended death sentence. The case of Cheng Kejie was unusual: the Supreme People’s Court approved his death sentence in September 2000 on a \$50 million corruption charge. As the former vice chairman of the NPC he was the most senior government leader to be executed for corruption since 1949.

The use of the suspended death sentence appears in part to satisfy traditionally rooted Chinese demands for the death sentence as a retributive punishment. The suspended death sentence, however, has a particular political and historical significance having been used extensively against political targets. The 1979 Criminal Law reflects this political bias and the emphasis on re-education of offenders. Article 46 codifies the expectation that the prisoner should show repentance during the two year reprieve; “resisting reform in an odious manner” will result in execution. Although the emphasis on re-education has been lifted in the 1997 revision the political heritage of this type of sentence has prompted some scholars to query its continued relevance. Some of those who support the use of the suspended death sentence, however, call for a further revision in the law arguing that the circumstances under which a prisoner may be executed or given a fixed term sentence need to be clarified.

Appeals

In China's two-trial system a judgement in the court of first instance can be appealed to the next higher level court. Defendants have 10 days to lodge an appeal counting from the day after a written judgement is received (CPL art. 183). The court of first instance for capital crime cases is the Intermediate People's Court (CPL art. 20) or above. An appeal against a sentence of the death penalty in an intermediate court will be heard in the Higher People's Court. Appeals may be initiated by the procurator or the defendant and can be delivered in writing or orally (CPL art. 180). Appeals should normally be heard and adjudicated within one month.

The court considering the appeal can review both the facts and the law relating to the initial judgement. Appeals are considered by a collegial panel which will review the case file, but may decide not to hear the case in court. According to article 187 of the Criminal Procedure Law if, after questioning the defendant and hearing the views of the defence lawyer and others, the court concludes that "the facts are clear" then no court hearing is required, unless the case has been appealed by the Procuratorate. Article 253 of the Interpretation of Several Questions of Criminal Procedure by the Supreme People's Court also clarified that "the facts are clear" (事实清楚) once the court has reviewed the case files, interrogated the defendant, heard the views of other relevant people, the defence counsel, and representative of any civil party and found that the facts of the case do not differ from those established during the first trial. In practice since courts usually decide that "the facts are clear" most appeals take place on paper and court hearings are the exception. Many appeals dispense altogether with interviews of the relevant parties.

Box 4. Liu Minghe, Wuhu, Anhui Province

At the murder trial in Anhui of Liu Minghe on the 27 December 1996 the defendant claimed that the police had tortured and enticed him into confessing. His lawyer argued for a verdict of not guilty claiming that there was insufficient evidence. Nevertheless on the 30th December Wuhu intermediate court sentenced Liu to death. Liu Minghe appealed. The defence lawyers for his appeal were Hu Yunteng and Wang Yalin.

At his appeal Liu's lawyers argued that their client had been tortured into making a false confession and that there was insufficient other evidence to convict. The lawyers criticised the first trial on a number of procedural points including the court's refusal to listen to the defendant. In April 1998 Anhui higher court revoked the earlier judgement and called for a retrial.

At his retrial Liu's lawyers again argued that the evidence was insufficient to convict him. Six months later, however, Wuhu court again passed a guilty verdict, but this time sentencing Liu to life imprisonment. Again Liu appealed. The appeal was heard on the 30 April 1999 and Liu was again represented by Hu Yunteng and Wang Yalin.

On the 24th August 1999 Anhui higher court once more revoked the lower court decision and returned the case for a retrial. On the 12th May 2000 Wuhu court yet again found Liu guilty and sentenced him to life imprisonment. However, after three trials and on the third appeal Anhui higher court finally found Liu Minghe not guilty.

In fact it is normal practice with serious cases such as capital crimes for the intermediate court to discuss the case with the higher level court and seek their approval of the lower court judgement. As a result, it is rare for the higher court to overturn an intermediate

court judgement on which it has already been consulted. This is particularly the case under the “erroneous cases investigation system” (错案追究制) which makes lower level court judges reluctant to make independent decisions and later be held responsible for a wrongful conviction. The introduction of a “responsibility” system in the courts and other parts of the judicial system in an effort to improve decision making has resulted in disciplinary measures, including fines, against judges and procurators where cases have been successfully appealed. Disciplinary measures against the procuratorate are intended to censor their decision to prosecute.

Article 189 of the Criminal Procedure Law sets out the three options for the appeal court after considering the case. The court can i) reject the appeal and affirm the original judgement; ii) revise the judgement where there has been an error in the application of the law or an inappropriate sentence, but there was “no error in the determination of the facts” and iii) where the facts are unclear or the evidence is insufficient the court may either revise the judgement or remand the case for a retrial. The law does not specify how many times a case can be retried. In the Liu Minghe case in Box 4 the defendant was tried three times in the intermediate court before finally being judged not guilty by the higher court. This case is not unusual.

Most of the cases we reviewed illustrate that it is very unusual for a lower court to change its verdict following a retrial (重申). Unlike the retrial (再审) procedures established under Article 206, as an outcome of trial supervision, which entail setting up a new collegial panel, retrials following appeal will normally be conducted by the original panel of judges. In the context of the “erroneous cases investigation system” the intermediate court will be reluctant to change its verdict and face disciplinary measures.

Box 5 Liu Rongbin, Hainan

In a case reported by Xinhua on 2 June 2002 and highlighted as “unusual” a Chinese procurator in Hainan withdrew murder and robbery charges against Liu Rongbin despite him having already been sentenced to death. Legal services had been provided by the Hainan Provincial Legal Aid Service which appointed local lawyer Mao Qijun. Mao’s appeal to the provincial higher court focused on proving that there was insufficient evidence to convict and a retrial was ordered leading later to the procuratorate withdrawing charges. The deputy chief of the Procurator’s Office was quoted as saying that they hoped to use Liu Rongbin’s case for education about the rule of law.

The introduction of the State Compensation Law may also have had unintended consequences on the appeals process. Under the law individuals may be compensated for unlawful detention in the event of a verdict of not guilty. However, the costs of compensation are borne by the responsible units rather than the state giving them an incentive to avoid a not guilty verdict following a retrial. The problems are illustrated by the following case reported in the 31 January 2003 Hongwang (红网).

Loudi District intermediate court, Hunan province sentenced Yang Lichun to death for murder in July 1998. Yang appealed the verdict and the provincial higher court decided in November to overturn the original judgement, since the facts were not clear. The case was ordered to be retried. On the 9 September 1999 Loudi district intermediate court retried the case and found Yang not guilty.

The higher court compensation committee investigated and determined that Yang had been detained unlawfully for 662 days from 7 February 1998 to 30 November

1999. According to the national compensation rate of 43.30 RMB per day (based on average wages) Yang was owed 28,665 RMB which should be paid equally by the Loudi court and the procuratorate.

Approval of death sentences

The 1979 Criminal Law (art. 43) and the Criminal Procedure Law (art. 144) both provide that death sentences should be verified and approved by the Supreme People's Court. Approval by the Supreme People's Court was also stipulated in Article 13 of the 1979 Organic Law of the Courts reflecting a decision taken by the National People's Congress in 1957. The purpose of the approval procedure was to avoid miscarriages of justice with respect to the use of the death penalty.

However, not long after the promulgation of this legislation the NPC Standing Committee on 12th February 1980 ruled that during 1980 the Supreme People's Court would delegate the approval of death sentences in the case of murder, rape, robbery, arson and other serious capital crimes to higher courts in the provinces, municipalities and autonomous regions. This measure was extended in a 10 June 1981 resolution³⁷ passed by the NPC Standing Committee which delegated the SPC's right to approve death sentences, except for counter-revolutionaries and embezzlers, to the Higher People's Courts at the provincial and municipal levels from 1981 to 1983. This delegation of authority was formalised in the revision to Article 13 of the Court Organisation Law made by the NPC Standing Committee on 2 September 1983³⁸.

Article 13 of the revised Court Organisation Law now reads:

Except for those cases handed down by the Supreme People's Court, cases involving the death penalty should be reported to the Supreme People's Court for approval. Whenever necessary, the Supreme People's Court may authorize the Higher People's courts in provinces, autonomous regions and municipalities directly under the central authority to exercise the power of approval in cases of murder, rape, robbery, use of explosives and other cases seriously endangering public security and social order which involve the death penalty.

This was followed by the 7 September 1983 Notice from the Supreme People's Court confirming the delegation of authority for approval of death sentences for certain public security and social order offences to the higher courts in provinces, autonomous regions, municipalities and military courts. Subsequently, on 6 June 1991 the SPC gave the higher court in Yunnan province authority to approve the death penalty for drugs related capital offences. This was followed by a similar delegation of authority regarding drugs offences on 18 August 1993 to Guangdong; on 19 March 1996 to Guangxi Autonomous Region, Sichuan and Gansu provinces and on 23 June 1997 to Guizhou. However, higher court approval of the death sentence for drugs offences in these provinces did not include cases involving foreigners or citizens of Hong Kong, Macau or Taiwan.

Chinese legal experts have drawn attention to the fact that the delegation of authority by the Supreme People's Court to the higher courts to approve death sentences was a

³⁷ Decision Concerning the Approval of Death Sentences.

³⁸ 全国人大常委会通过关于修该中华人民共和国人法院组织法的决定.

temporary policy introduced in response to an increase in serious crime and a lack of sufficient personnel in the SPC to review death penalty decisions. Moreover, many now argue that current practice is an abuse of Chinese law³⁹. Both the 1996 revised Criminal Procedure Law and the 1997 revised Criminal Law state that the Supreme People's Court shall approve the death sentence before execution. However a 1997 Notice from the Supreme People's Court⁴⁰ continues to refer to the legal delegation of authority to approve certain death sentences to the higher courts⁴¹. Chinese experts argue that this reference to the earlier Court Organisation Law is invalid in the light of the subsequent legislation.

Delegating the approval of most death sentences to the higher courts has resulted in both the appeal and the approval taking place in the same court. This can easily result in the two procedures becoming a single process weakening a procedural safeguard intended to help protect the defendant from any miscarriage of justice. Even if the two procedures do not take place contemporaneously and are considered by different collegiate panels the fact is that both decisions, concerning as they do major or difficult cases, will be reviewed by the same leaders of the court adjudicative committee (审判委员会). Moreover the approval procedure consists entirely of a review of documents, neither the defendant or witnesses can be called and there is no role for the defence lawyer. This was made clear by the Supreme People's Court on 27 January 1992⁴². The SPC later also decreed that to improve higher court efficiency there was no need to separately approve a death sentence where the court had already rejected an appeal against the judgement of the intermediate court⁴³.

Hu Yunteng⁴⁴ has published data indicating that in some 10-20% of the cases referred to the Supreme People's Court approval was not granted; this percentage is far greater than the numbers of death sentences not approved by the higher courts. The cases which can be dealt with by the higher courts represent a significant proportion of death sentences, particularly those involving violence; the delegation to the provincial level of the power to approve the death sentence risks undermining consistency in applying national standards of justice. Regional variation in sentencing is likely to be particularly marked where courts are required to consider rather abstract concepts such as serious consequences or circumstances. Local political pressure during Strike Hard campaigns will further undermine the approvals process. Chinese critics point out that even in imperial times

³⁹ Congressional-Executive Commission on China, "The Execution of Lobsang Dondrub and the Case against Tenzin Deleg, The Law, the Courts and the Debate on Legality" pp7-10 summarises the debate, www.cecc.gov.

⁴⁰ 29 June 1998 SPC Interpretation of Several Questions Concerning the Criminal Procedure Law article 274.

⁴¹ 最高人民法院依据《人民法院组织法》第13条的规定发出《关于授权高级人民法院和解放军军事法院核准部分死刑案件的通知》，规定“除本院判处的死刑案件外，各地对刑法分则第一章规定的危害国家安全罪，第三章规定的破坏社会主义市场经济秩序罪，第八章规定的贪污贿赂罪判处死刑的案件，高级法院、解放军军事法院二审或复核同意后，仍应报本院核准。对刑法分则第二章，第四章，第五章，第六章（毒品犯罪除外），第七章，第十章规定的犯罪，判处死刑的案件（本院判决和核准的除外）的核准权，本院依据《人民法院组织法》第13条的规定，仍授权由各省、自治区、直辖市高级人民法院和解放军军事法院行使。对于但涉港澳台死刑案件在一审宣判前仍需报本院内核。对于毒品犯罪死刑案件，除已获得授权的高级人民法院可以行使部分案件核准权外，其他高级人民法院和解放军军事法院在二审和复核同意后，仍应报本院核准”。

⁴² “关于律师参与第二审和死刑复核诉讼活动的几个问题的电话答复”：“死刑复核程序是一种不同于第一审和第二审的特殊程序。在死刑复核程序中，律师可否参加诉讼的问题，法律没有规定，因此不能按照第一审，第二审程序中关于律师参加诉讼的有关规定办理”。

⁴³ article 169 of the 1994 SPC Regulations on the Trial Procedures of Criminal Cases (“关于审理刑事案件程序的具体规定”）。

⁴⁴ “南方周末”，第987期 A6 法治版。

the emperor was required to approve death sentences. Returning the power to give final approval of death sentences to the Supreme People's Court should help set consistent criteria for standards of seriousness, address regional variation in sentencing, and reduce the use of the death penalty.

Several Chinese critics believe that the justification for delegating approval authority on the basis of shortage of personnel within the SPC is a spurious one and the real problem is political. However, for the SPC to recover its authority may prove rather difficult given the provincial power base of the higher courts. In response there is a proposal to introduce regional circuit courts with special responsibility for approving death sentences thereby avoiding the need for cases to be sent to Beijing for consideration. The approval process, however it is constituted, should nevertheless be truly independent of the higher court and have the power to hear representations from the defendant.

Adjudication supervision, petitions and amnesties

Chinese criminal law also has a procedure for "adjudication supervision" (审判监督) under which parties may question legally effective court judgements on the basis of new evidence or errors in the application of the law. Judgements may be considered by an adjudication committee, reviewed by an upper court or the original court may be ordered to conduct a retrial (再审). However, where executions are often carried out within days of the final court decision, particularly as part of Strike Hard campaigns, this procedure has limited relevance to many defendants facing the death penalty.

Once approval of the death sentence has been granted the execution should take place within seven days (art. 211). Theoretically, therefore, this period represents one last chance for the sentence to be reconsidered. Article 211 of the Criminal Procedure Law states that the sentence should be suspended in the following circumstances: i) there may have been an error in the judgement; ii) the prisoner renders a "significant meritorious service" or, iii) the prisoner is pregnant. In each case the lower court should submit a report to the Supreme People's Court to enable it to reconsider the order to carry out the execution. The Procuratorate, who have a supervisory role in the conduct of executions, are also required under Article 416 of the Criminal Procedure Regulations of the Procuratorate to advise the courts to suspend the execution if they suspect that there has been a miscarriage of justice or that the execution should not be carried out immediately (非应当执行死刑).

The speed with which the lower courts usually carry out an execution, particularly during Strike Hard campaigns, leaves little prospect that the sentence will be reconsidered. There have, however, been reported instances where the prisoner claims there is a case of mistaken identity and a DNA test has had to be carried out while the execution was suspended at the very last moment⁴⁵.

In its response to the UN Safeguards Survey in 1987 the Chinese government describes a process whereby a defendant can present a petition "after final judgment is announced but before it is submitted to the Supreme People's Court for approval and an order to execute the sentence of death is issued, or within seven days before execution after receiving the order to execute the death sentence"⁴⁶. This procedure, like those outlined above, has very limited relevance, if in fact it is still applicable. Few death sentences are

⁴⁵ <http://www.people.com.cn/GB/guandian/29/173/20020719/780143.html>

⁴⁶ Quoted in Roger Hood, *The Death Penalty: a Worldwide Perspective* (2002) Oxford: OUP, p. 164.

submitted to the Supreme People's Court for approval and in most cases the death sentence is carried out within days. Although petitions by prisoners are common it is widely believed that these are ignored.

The Chinese Constitution confers power on the President to order special pardons (art. 80 特赦令). Although in theory this provides the possibility of an amnesty for prisoners facing the death penalty in practice Chinese scholars point out that the measure has only been applied in particular historic and political circumstances and has not been used since 1975⁴⁷. It, therefore, does not constitute a right to seek a pardon as called for in Article 7 of the UN Safeguards For Those Facing the Death Penalty or Article 6 (4) of the UN Convention on Civil and Political Rights. Likewise, although Chinese law provides for the possibility of a suspended death sentence to be commuted to life imprisonment or a fixed term sentence this is a process initiated by the justice system and no prisoner facing the death sentence has the right to apply for his sentence to be commuted as required by international standards.

⁴⁷ Special pardons have been granted on the following occasions: 17 September 1959; 19 November 1960; 16th December 1961; 30th March 1963; 12 December 1964; 29 March 1966 and 17 March 1975. Source National People's Congress Standing Committee.

Chapter III The Use of the Death Penalty

Numbers executed

Article 212 of China's Criminal Procedure Law provides that the execution of death sentences should be announced publicly and that after the execution of the sentence the Supreme People's Court should receive a report and the family of the dead man notified.

China, however, does not make public the number of executions carried out nationally. The Chinese authorities have not replied to any of the UN Secretary General's quinquennial requests for data on the use of the death penalty. In the proceedings of the 2nd EU-China Legal Expert Seminar the Chinese side did not respond to questions about why the country does not provide crime statistics and statistics on the death penalty⁴⁸. In a meeting with a Swedish human rights delegation in 2000 the Supreme People's Court told members of the delegation that they did not have complete information on the numbers of death sentences in China and attributed this to their delegation of final approval to provincial courts⁴⁹. However, courts are obliged to report their death sentences to the SPC which is therefore in a position to compile aggregate data. The data, however, is clearly a state secret⁵⁰. Some Chinese scholars speculate that the figures will eventually be released, but that for the time being they are "too high"⁵¹. Recent research efforts to extrapolate national statistics from selected provincial court records ran into difficulties once the significance of the research was understood by the authorities⁵².

In the absence of official data Amnesty International compiles an annual Death Penalty Log for China drawing on publicly available data from media sources across China. In 2002 Amnesty reported that at least 1,060 people were executed in China⁵³; in 2001 they recorded 2,468 executions and 4,015 death sentences⁵⁴ and in 2000 there were 1,356 confirmed executions and 1,939 death sentences⁵⁵. Amnesty, however, believe that their Death Penalty Logs seriously underestimate the true extent of the use of the death penalty in China. They note that, for example, in Xinjiang in 2002 there were very few media reports of executions despite the area being a focus for the government's campaigns again "splittism" and terrorism and a renewed Strike Hard campaign being

⁴⁸ Manfred Nowak and Xin Chunying, eds. *EU-China Human Rights Dialogue: Proceedings of the Second EU-China Legal Experts Seminar Held in Beijing on 19 and 20 October 1998* (2000) Studienreihe des Ludwig Blotzmann Instituts für Menschenrechte, vol. iv., Vienna: Verlag Österreich, p.13.

⁴⁹ Svensson, Marina, "State Coercion, Deterrence and the Death Penalty in the PRC" paper presented to the Annual Meeting of the Association for Asian Studies, Chicago, Illinois 22-25 March 2001, footnote 18.

⁵⁰ Above note 48 op cit footnote 17 Svensson quotes 'Various regulations concerning judicial statistical work of the People's Courts' SPC 21 November 1985, "Strict control must be maintained over the scope of distribution of all-year aggregate statistical material relating to individual provinces, autonomous regions and directly-administered municipalities, especially in the case of statistical material on death penalty cases".

⁵¹ Chen Zexian, "Restrictions on the Imposition of the Death Penalty" paper published for Xiangtan conference, December 2002, available in English on China Law Net (中国法学网).

⁵² private communication July 2003.

⁵³ Amnesty International, "Facts and Figures on the Death Penalty" AI index: ACT 50/005/2003.

⁵⁴ Amnesty International, "The Death Penalty Worldwide: Developments in 2001" AI index: ACT 50/001/2002.

⁵⁵ Amnesty International, AI Index: ACT 17/032/2002.

underway. Amnesty suspects that there is an official policy to repress information on the death penalty.

Amnesty International believe that throughout the 1990s China executed more people than the rest of the world put together⁵⁶. Between 70 and 80 per cent of known judicial executions worldwide take place in China⁵⁷. Amnesty International compile their reports on the basis of published information, but Gilley and Nathan⁵⁸, citing internal Party reports, claim that about 15,000 people are executed in China each year.

Crime rate and sentencing

While data on the death penalty remains a state secret it is impossible to compile a reliable picture of the numbers executed either as a proportion of the population or in relation to specific offences. However, an analysis of selected provincial court reports and information published on the China Court Network illustrates a tendency for heavy sentencing. Recent data from a number of provinces shows that 30 - 40% of the sentences in criminal trials were for five years and above although national data suggests 25%. For example, in Guangdong province in the two years from April 2001 to April 2003 126,931 people were sentenced in 102,591 cases, an increase over the previous two year period of 21.6% and 44.8% were given sentences of five years and more including the death penalty. Data from Wuhan indicates that in a three year period of those facing the possibility of a death sentence 66% were sentenced by the intermediate court to death with immediate execution, 12% were given a suspended death sentence and the remaining 22% were given life sentences.

Data on China's recorded crime rate is also revealing. The 2002 China Law Yearbook provides information on criminal cases from 2001. There is a reported annual increase of 14.46% in the serious crime rate with 343,485 cases involving offences including murder, rape, burglary, causing explosions, organised prostitution and kidnapping. Of these there were 16,056 murder cases, 26,770 rape cases and 2,189 cases of kidnapping; each of these is a capital offence.

The 2003 Shaanxi Higher People's Court work report recorded that each year the court, with the delegated authority from the Supreme People's Court, approves approximately 580 major cases involving sentences of life imprisonment or above. Shaanxi statistics covering the five year period 1998-2003 reveal that 3174 people were sentenced to life imprisonment or the death penalty, including suspended death sentences. In the same five year period nine people were sentenced to death (including suspended death sentence) for serious financial crimes. A Shaanxi newspaper report also indicated that over half of the total number of death sentences were for murder.

The Court Network of China reported on 9 April 2003⁵⁹ that the intermediate court in Yulin town, Guangxi province had sentenced 61 people to death (18 suspended sentences) in the eight month period from April to November 2001. At the end of 1994 there were 391 intermediate level courts in China. If the data from Yulin is representative, at least of Strike Hard campaigns, then the figures Nathan and Gilley report are credible.

⁵⁶ Ibid.

⁵⁷ Roger Hood p. 88.

⁵⁸ Andrew J. Nathan and Bruce Gilley (eds.) *China's New Rulers: the Secret Files* (2002), Granta.

⁵⁹ 中国法院网, www.chinacourt.org

Offenders

There is no official data in China on the profile or status of those sentenced to death. According to the China Law Yearbook peasants comprise about 63% of those convicted of a criminal offence, reflecting their overall proportion of the population. The unemployed constitute a further 20% and workers about 5%. Well under one percent of those convicted are women. Amnesty International claim that the death penalty in China falls predominantly on people with a low educational and social standing⁶⁰.

Much serious crime in the cities is blamed on the migrant population who travel to urban areas in search of employment in factories, on construction sites and in the informal sector. There is no comprehensive data, but reports from various cities suggest that migrants are convicted for about 40-50% of criminal offences, although the figures vary widely from a high of 97% in Shenzhen to 30% in Tianjin.

A 1994 survey from Beijing⁶¹ of the background of 452 migrants convicted and sentenced for serious offences indicates that over 55% were aged between 18 and 25 years⁶². About 8% of the sample were illiterate and the majority had no more than a primary school education. The majority (64%) were peasants and a further 21% unemployed. Seven of those investigated had escaped from re-education through labour camps.

The educational and financial status of those detained by the police has implications for the provision of legal aid and the accessibility of information on their rights to defence counsel and other procedural protections. The demands on local legal aid resources are likely to be significant with research indicating that legal aid is provided in at least half the death penalty cases.

Strike Hard

Since 1983 China has launched periodic crackdowns on crime known as Strike Hard (严打). At the heart of the different Strike Hard campaigns is the requirement for speedy justice and harsh punishment (从重从快). The first of these political campaigns took place from August 1983 to January 1987; the second campaign was launched in April 1996 and a third campaign launched in April 2001 was officially declared over in July 2003.

The 2 September 1983 Decision of the Standing Committee of the NPC “Regarding the Rapid Adjudication of Cases Involving Criminal Elements Who Seriously Endanger Public Security” called for the speedy adjudication of cases “on whom death sentences should be imposed for killing another, rape, robbery, causing explosions” and similar public security offences where “the main criminal facts are clear and the evidence irrefutable

⁶⁰ Amnesty International, “People’s Republic of China: The Death Penalty in 2000”, July 2002, AI Index ASA 17/032/2002.

⁶¹ 王晓东: “外地来京人员严重刑事犯罪的特点及其心理成因与对策”, 载《犯罪与改造研究》, 1995年第7期.

⁶² Svensson op cit p.17 reports accounts that indicate that in the early 1990s more than 50% of those executed were between 18 and 25 years of age.

and the people's indignation is very great". In dealing with such cases the Decision released courts from the provisions of Article 110 regarding the delivery of various court notices and the time limit for lodging an appeal in Article 131 was reduced from 10 days to 3 days. Although the 1996 revision of the Criminal Procedure Law did not explicitly overrule this "Decision" the later law should take precedence and the time frame for appeals restored to 10 days. However, in practice during a Strike Hard campaign the appeals process for those facing the death penalty is frequently curtailed.

China Court Network reported that during the last two years of the most recent campaign Hefei intermediate court, Anhui had dealt with 682 Strike Hard cases. Not a single case had been overturned in the higher court or sent for retrial (重申) nor had any defendant or the procuratorate appealed. This record earned the intermediate court the award of an advanced collective (先进集体) by Anhui higher court.

The time taken to deal with cases has become a criterion for judging success in Strike Hard campaigns. In 2001 using summary procedures Nanyang intermediate court in Henan province reduced the average time for dealing with priority cases to 18 days. Other procedures which are speeded up during a Strike Hard campaign include the approval procedure for the death sentence which, a review of cases reveals, frequently takes place at the same time as the appeal. In many Strike Hard cases the execution of the death sentence takes place on the same day as the final court judgement.

Strike Hard campaigns continue as a way of focusing police resources on specific crimes. Strike Hard campaigns may be both national and local and do not always involve extremely serious offences particularly at the local level. Some Chinese colleagues believe that Strike Hard campaigns today may be less abusive of due process as a result of the recent campaign to promote the rule of law. However, it is agreed that campaigns do lead to an increase in sentencing for particular offences and that targeted offences are treated more harshly during a campaign.

The targets selected for Strike Hard campaigns reflect public anxieties at rising crime and the incidence of specific offences. Campaigns from the mid-1990s against the trafficking of women and children had public support. Significant numbers of executions have been reported for this offence⁶³ particularly since the death penalty is mandatory for "especially serious" cases of kidnapping and trafficking in women and children (CL art. 240). The campaign continues with the media reporting cases such as that of Qian Changxiong and his 10 co-defendants who were sentenced to death by Henan Higher Court on 10 September 2002 in a major case of trafficking children.

Drug dealing is a common target of Strike Hard campaigns and around International Drug Awareness Day on 26th June there are always a proportionately higher number of executions for drugs offences to ensure maximum impact and support anti-drugs awareness. On 25 June 2003 Hunan province held several mass sentencing rallies in which 16 people were sentenced to death for drugs offences and four of the most serious cases were executed immediately. Reports show that middle school and university students were organised to attend the rallies.

Strike Hard campaigns are essentially political events and police successes are widely reported in the media reinforcing messages about the effectiveness of the State in guaranteeing security. Public sentencing rallies, media coverage and, the earlier public (but illegal) executions have an important propaganda role. Some regions, including

⁶³ Svensson, op cit pp.22-26.

Xi'an and Jiangxi, have also reportedly held public arrest rallies. These have been criticised by scholars for undermining a presumption of not guilty pre-trial.

There has been widespread international and Chinese criticism of Strike Hard campaigns⁶⁴. Chinese scholars have questioned the impact of Strike Hard on the serious crime rate. They have also challenged the legal basis for the addition of new capital crimes during the 1980s and the truncated criminal procedures such as the devolution of authority to approve many death sentences to the higher courts.

Execution of Death Sentences

The 1979 Criminal Law specified in article 45 that the death penalty should be carried out by shooting. The revised Criminal Procedure Law specifies that death sentences shall be carried out by "such means as" shooting, normally a bullet from a pistol in the back of the head, or lethal injection. Although executions are not limited to shooting or lethal injections the SPC in its June 1998 Interpretation on the CPL required that the SPC should approve other means of execution.

Public executions are not allowed under either the original or the revised Criminal Procedure Law although Amnesty International reported widespread abuse during the 1980s including the parading and public humiliation of condemned prisoners. As recently as 1998 Amnesty reported a public execution, but there is no evidence that these have taken place in recent years. In order to ensure that executions do not take place in public view the shooting of prisoners increasingly takes place within the prison grounds. Over the years China has been widely criticised for the speed with which it carries out the execution of death sentences. Roger Hood draws attention to reports from Amnesty that Chinese prisoners on death row are kept handcuffed and with their feet shackled despite the prohibition under international prison standards on leg-irons and chains as instruments of restraint⁶⁵. Chinese lawyers also report that defendants on capital crime charges are normally brought to interviews at the detention centre in chains⁶⁶.

Lethal injections

Yunnan was the first province authorised to conduct lethal injections on an experimental basis following the introduction of injections as an alternative to shooting in the revised Criminal Procedure Law. On 13 September 2001 the SPC convened a court work conference on lethal injections to promote the practice nationwide. On 4 September prior to the conference the SPC Adjudication Committee passed a number of regulations on the use of lethal injections. The conference called on higher courts to introduce the use of lethal injections as soon as resources allowed. Establishing the facilities for administering lethal injections are reputed to cost over 10,000 RMB, but the operational costs are low since fewer personnel are required and the drugs are inexpensive.

⁶⁴ Amnesty International, "The Death Penalty in China: Breaking Records, Breaking Rules", August 1997 AI Index ASA 17/38/97.

⁶⁵ Hood op cit, p 111.

⁶⁶ private communications July 2003.

In February 2003 Yunnan announced that all future executions in the province will be by lethal injection. The province also announced that it had established 18 mobile execution vans for administering lethal injections. The very afternoon these were distributed to the courts Yuxi intermediate court executed two men whose death sentences had been approved. Four people are required to carry out the executions using the vans: the executioner, a member of the court, a member of the procuratorate and a forensic doctor. There is a windowless execution chamber at the back of the converted 24-seater bus containing a metal bed on which the prisoner is strapped down⁶⁷.

The Supreme People's Court clearly favours the use of lethal injections arguing that it is more "civilised and humane"⁶⁸ and Chinese scholars too have welcomed the development; but not all public opinion favours a "more painless" execution. In the six years Yunnan has authorised lethal injections "only" 112 have been carried out. Letters to the Yunnan higher court criticise lethal injections as "too good for him" (太便宜他了), revealing a preference for execution by shooting. There are no regulations yet to determine which method of execution should be used in individual cases. There is no proposal to give the prisoner the right to choose the form of execution.

Regulations require the participation of forensic doctors at executions by lethal injection. The doctors are responsible for supervising the execution, directing the use of the lethal drugs and certifying death. There are no reports of any debate within China on the medical ethics of doctors participating in executions; with growing use of lethal injections the involvement of the medical profession in executions will increase. It seems that the international ethical debate on this topic has not circulated among Chinese forensic doctors⁶⁹. In a response to a question on this topic the authors were informed that forensic doctors are not like other doctors and, therefore, the ethics of their participation in executions was not an issue.

Doctors in China have been further criticised by international human rights organisations⁷⁰ for their participation in the procurement of transplantable organs from executed prisoners. Chinese regulations ("On the use of Dead Bodies or Organs from Condemned Criminals" 1984 Provisional Regulations) allow the use of organs with the consent of the condemned prisoner. Human rights organisations, however, argue that informed consent within the prison environment is problematic and criticise the profiteering by participating hospitals (usually military) and the bribery of police, court and prison officials and the connivance of wealthy patients, including foreigners, who have benefited from the trade. There are critics who argue that the increase in use of lethal injections is facilitating the use of organs from prisoners since it makes for a much higher success rate in procuring transplantable organs.

⁶⁷ Amnesty International *Death Penalty News* March 2003.

⁶⁸ quoted in Zhao Bingzhi and Xu Chenglei op cit, p. 94.

⁶⁹ Human Rights Watch and the Geneva Initiative on Psychiatry, above note 34, discusses this issue in relation to forensic psychiatrists.

⁷⁰ See for example, Laogai Research Foundation, *Stolen and Sold: new evidence of China's booming organ trade*, 18 January 2002 or Human Rights Watch, *Judicial Execution and Organ Procurement in China*, (1994).

Chapter IV Towards the Abolition of the Death Penalty

China's official position on the death penalty is that, under current circumstances, it should be retained, but limited in its application⁷¹. The death penalty is normally justified as a deterrent against serious crime and in terms of China's "level of economic development".

Chinese academics believe that in the long term, given international trends, China will abolish the death penalty⁷², but many also argue that the time is not yet ripe. It has been suggested that in taking the long view the Chinese are thinking in terms of at least a hundred years, referring to the several centuries it took before eventual abolition in Europe⁷³. Professor Ma Changsheng, Xiangtan University, however, has advocated a three step process of reducing the numbers of capital crimes and restricting the conditions in which the death sentence would be given. This could be achieved, he argues, by 2020 by which time China would be a middle income country⁷⁴.

It is widely agreed among reformist legal scholars that China should limit its use of the death penalty. They refer specifically to Article 6(2) of the International Convention on Civil and Political Rights which calls for retentionist countries to impose the death sentence only for the most serious crimes. A number of strategies are recommended: the reduction in the number of capital crimes; more discretionary use of the death penalty and greater use of the suspended death sentence; tighter sentencing guidelines and reinstatement of the role of the Supreme People's Court regarding the approval of death sentences. As China prepares to ratify the UN Convention on Civil and Political Rights, which it signed in 1998, there is a need for the NPC to revise both the Criminal Law and the Criminal Procedure Law in line with international standards. This process would clearly be an opportunity to address both the number of capital crimes and the procedural shortcomings of current legislation. Speculation that legislation will be revised over the next couple of years, however, is thought to be premature.

There is also a minority of scholars in China who argue that the country could abolish the death penalty immediately citing the experience of European countries which took the political decision to abolish the death penalty despite continued support in favour of retention amongst the wider public. A number of these views can be found on the Chinese language website www.chinamonitor.org (中国死刑观察) which carries reports on the death penalty in China.

The Supreme People's Court has also been discussing the use of the death penalty and appears concerned that it is being used excessively. The court agrees that in due course the death penalty should be abolished, but argues that this is not possible immediately.

⁷¹ See for example the statement made by Sun Yuxi, spokesman for China's Foreign Ministry on 12 June 2002: "是否废除死刑, 要看死刑是否有利于维护人民的利益, 是否有利于维护广大人民的人权。过早地取消死刑, 只会纵容犯罪。中国认为, 各国制度不同, 需要根据本国的具体情况来决定保留还是废除死刑。孙玉玺还说, 中国刑法对死刑的判决作了极其严格的限制性规定, 在司法实践中, 量刑非常慎重, 实行着严格的死刑复核制度。与此同时, 中国刑法还规定了死刑缓期执行的制度, 这项制度是中国刑法在死刑制度上的独创, 把死刑这种严厉的刑罚控制在最小的范围内。"

⁷² This was the position taken by many of the papers presented at the Xiangtan international conference, December 2002.

⁷³ Nowak and Xin Chunying op cit p 11.

⁷⁴ 13 January 2003 Hong Kong Daily, see also reports on www.chinamonitor.org

Meanwhile, they are encouraging lower courts to use the death penalty cautiously and to reduce its use⁷⁵.

Public opinion

Public support is normally given as one of the main reasons for China retaining the use of the death penalty. High profile incidents such as the 2003 killing of Sun Zhigang in police custody in Guangzhou and the 2001 explosion in an apartment building in Shijiazhuang in which 108 people died brought public calls for severe punishment. Popular opinion is firmly of the view that the death penalty is a deterrent. There is concern at rising levels of serious crime and the death penalty is thought to be the most effective way of deterring offenders. There is also widespread support for the death penalty as retribution for crimes of violence, particularly murder.

The only published public opinion poll on the death penalty was conducted in China in 1995 by the Institute of Law, CASS and the State Statistical Bureau⁷⁶. A sample of 5000 people were asked their opinion on the number of capital crimes under Chinese criminal law: 3% felt there were too many, 42% “not too much”, 31% “just enough” and 22% not enough. Less than one percent of the interviewees felt that the death penalty should be applicable to any crime. These results, which are widely cited, clearly indicate public support for retaining the death penalty as a punishment. Interviewees were not asked, however, whether the public had confidence that it was being applied fairly or excessively or whether the public would support alternatives to the death penalty such as life imprisonment or greater use of the suspended death sentence.

Articles on the death penalty appear occasionally in the Chinese press. They have included stories about lawyers who have successfully defended clients against the death penalty. These latter may reveal a growing awareness that the death penalty is being used too frequently and with too little regard for due process. However, following the publication of critical papers from the Xiangtan conference on the Institute of Law website there was a flurry of comments in support of the death penalty from the public. Academics believe that ordinary public opinion remains firmly in favour of the death penalty.

Chinese Research

A number of Chinese scholars have been working on the subject of the death penalty. There is no specialist research unit examining the death penalty in any Chinese university, but scholars at the Institute of Law, Chinese Academy of Social Sciences have a working group. Scholars in the law departments at People’s University, China University of Politics and Law, Wuhan University, Xiangtan University and Peking University are among those who have published papers on the subject.

The first international conference on the death penalty in China was held in December 2002 with financial support from the Danish Centre for Human Rights. It was organised

⁷⁵ Notes of a meeting on 11/9/03 between Lord Howe, President of the Great Britain-China Centre and Cao Jianming, Executive Vice President of the Supreme People’s Court.

⁷⁶ Hu Yunteng, “On the death penalty at the turning of the century” in Manfred Nowak and Xin Chunying eds. *op cit*.

by the Institute of Law in conjunction with the Law Department, Xiangtan University, Hunan province.

Much published research on the death penalty has focused on questions of jurisprudence particularly the use of the death penalty for non-violent offences. Many scholars have also been quite outspoken on the dangers of miscarriages of justice as a result of the transfer of the power of approval of many death sentences to higher courts⁷⁷. There is also published research on international experience in the application and abolition of the death penalty. Some Chinese scholars have tried to research the deterrent value of the death penalty using crime figures published in the China Law Yearbooks. On the basis of this rather incomplete set of data it is claimed that the death penalty has no deterrent value since the addition of several new capital offences in the 1980s crackdown on serious crime appeared to have no impact on the crime figures⁷⁸. There has been no other significant empirical research on the death penalty due to the difficulties of obtaining national statistics and using attributable sources for data in the criminal justice field⁷⁹.

Non-Violent Capital Crimes

There seems to be a consensus emerging among legal scholars that it is feasible to abolish the death penalty, in the near term, for some non-violent crimes particularly economic, financial and other property crimes. Some scholars argue that such offences constitute as much as one third of all death sentences in China. Many of the offenders are poor and scholars argue that social problems and poverty lie at the root of much economic crime. However, there are some who suggest that abolishing the death penalty for economic crimes could meet populist opposition if cadres were seen to be getting away with serious corruption. Attitudes to corruption, however, are complex and some economic offences may be seen as less serious, victimless crimes. Abolishing the death penalty for non-violent offences would not, however, extend to drugs offences which are still viewed with the same degree of seriousness as violent crimes.

A number of articles written by scholars at Renmin University advocating the abolition of the death penalty for non-violent offences appeared in several issues of the Legal Daily over the summer 2003. However, the planned series was curtailed in response to pressure on the newspaper's editors. Clearly the debate will not take place, for the time being, in the public domain.

Life Imprisonment

If China were to abolish the death penalty what would be the resource implications? Some populist opinion favours the death penalty as a cheaper option than keeping someone in prison for life. This is likely to be true in China where court procedures are minimalist; this contrasts with the USA where, as a result of the lengthy appeals process, applying the death penalty is more expensive than life imprisonment⁸⁰.

⁷⁷ See for example Chen Zexian op cit.

⁷⁸ Chen Zexian “严格限制死刑适用：废除死刑的必由之路” Xiangtan conference.

⁷⁹ A number of funded initiatives to collect reliable empirical data at the provincial level have been abandoned as Chinese researchers come up against official obstacles.

⁸⁰ Hood op cit p.170.

At present the Chinese government allocates 1100 RMB per prisoner per year for food and board. However, in an interview a prison official claimed that it costs at least 150 RMB per prisoner per month leaving a shortfall of some 7-800 RMB which is made up from prison labour. But, prison labour opportunities, according to this official, were more and more difficult to find. Chinese prison sentences, however, are relatively long and resource savings could, perhaps, be made by greater use of non custodial sentencing for less serious offences.

International Opinion

The death penalty has been abolished throughout the European Union and working towards the abolition of the death penalty worldwide is an EU diplomatic objective. The use of the death penalty in China was a topic at the European and Chinese human rights experts' meetings in Beijing in 1998⁸¹ and Lisbon in 2000. The death penalty has also been raised regularly in bilateral and multilateral official human rights dialogues between Europe and China. For example, the British Foreign Secretary has a Death Penalty Advisory Panel and its members have visited China for discussions.

The European Court of Human Rights upholds rulings against the extradition of suspects to China who may face the death penalty. European attitudes to the use of the death penalty have also affected cooperation with Chinese agencies dealing with narcotics control. Extradition issues for those who may face the death penalty have also arisen in China's legal co-operation with Canada and many other abolitionist countries. The death penalty will remain a serious obstacle to greater international judicial co-operation with China.

⁸¹ Manfred Nowak and Xin Chunying eds. *op cit.*

Appendix I Listing of Capital Crimes

Comparing 1979 and 1997 Criminal Laws

Chinese crime name	Pinyin	English translation	Law
Counterrevolutionary crimes			
背叛祖国罪	<i>beipanzuguo</i>	collusion with foreign state to endanger sovereignty	1979 CL art. 91
阴谋颠覆政府罪	<i>yinmou dianfuzhengfuzui</i>	plot overthrow of government	1979 CL art. 92
阴谋分裂国家罪	<i>yinmou fenlieguojiazui</i>	plot the splitting of the state	1979 CL art. 92
策动反边罪	<i>cedong panbianzui</i>	instigation to defect	1979 CL art. 93
策动叛乱罪	<i>cedong panluan</i>	instigate a rebellion	1979 CL art. 93
投敌叛变罪	<i>toudi panbianzui</i>	defection to the enemy	1979 CL art. 94
持械聚众叛乱	<i>chixie juzhong panluan</i>	armed mass rebellion	1979 CL art. 95
聚众劫狱罪	<i>juzhong jieyuzui</i>	mass prison raid	1979 CL art. 96
组织越狱罪	<i>zuzhi yuyuzui</i>	organise jailbreak	1979 CL art. 96
间谍罪	<i>jiandiezui</i>	espionage	1979 CL art. 97
特务罪	<i>tewuzui</i>	special agent	1979 CL art. 97
资敌罪	<i>zidizui</i>	assistance to the enemy in wartime	1979 CL art. 97
反革命破坏罪	<i>fangemingpohuaizui</i>	counterrevolutionary sabotage	1979 CL art. 100
反革命杀人罪	<i>fangemingsharenzui</i>	counterrevolutionary murder	1979 CL art. 101
反革命伤人罪	<i>fangemingshangrenzui</i>	counterrevolutionary wounding	1979 CL art. 101
Endangering national security			
背叛国家罪	<i>beipanguojiazui</i>	collusion with foreign state to endanger sovereignty	1997 CL art. 102
分裂国家罪	<i>fenlieguojiazui</i>	splitting the state	1997 CL art. 103
武装叛乱，暴乱罪	<i>wuzhuangpanluan, baoluanzui</i>	armed rebellion or riot	1997 CL art. 104
投敌叛变罪	<i>toudipanbianzui</i>	defection to the enemy	1997 CL art. 108
间谍罪	<i>jiandiezui</i>	espionage	1997 CL art. 110
为境外窃取，刺探，收买，非法提供国家秘密，情报罪	<i>weijingwaiqiequ, citan, shoumai, feifa tigong guojiamimizui</i>	supplying state secrets or intelligence overseas	1997 CL art. 111
资敌罪	<i>zidizui</i>	assistance to the enemy in wartime	1997 CL art. 112
Endangering Public Security			
防火罪	<i>fanghuozui</i>	arson	1979 CL art. 106; 1997 CL art. 115
决水罪	<i>jueshuizui</i>	breaching dikes	1979 CL art. 106; 1997 CL art. 115
爆炸罪	<i>baozhazui</i>	causing explosions	1979 CL art. 106; 1997 CL art. 115
投毒罪	<i>touduzui</i>	spreading poison	1979 CL art. 106; 1997 CL art. 115
以其他危险方法危害公共安全罪	<i>yiqitaweixianfangfa weihai gongonganquanzui</i>	other dangerous means that damage public safety	1979 CL art. 106 1997 CL art. 115

破坏交通工具罪	<i>pohuaijiaotonggongjuzui</i>	sabotage communications	1979 CL art. 110; 1997 CL art. 119
破坏交通设备罪	<i>pohuaijiaotongshebei (she)zui</i>	sabotage communication equipment	1979 CL art. 110; 1997 CL art. 119
破坏电力设备罪	<i>pohuidianlisheshebeizui</i>	sabotage of electric power equipment	1997 CL art. 119
破坏易燃易爆设备罪	<i>pohuai yiranyishebeizui</i>	sabotage combustible and explosive materials	1979 CL art. 110; 1997 CL art. 115
劫持航空器罪	<i>jiechihangkongzui</i>	hijack aircraft	1997 CL art. 121
非法制造, 买卖, 运输, 邮寄, 储存枪支, 弹药, 爆炸物罪	<i>feifazhizao, maimai, yunshu, youji, cunqiangzhi, danyao, baozhawuzui</i>	illegal manufacture, trade and transport of guns, ammunition or explosives	1997 CL art. 125
非法买卖, 运输核材料罪	<i>feifamaimai, yunshuhecailliaozui</i>	illegal trade and transport of nuclear materials	1997 CL art. 125
盗窃, 抢夺枪支, 弹药, 爆炸物罪	<i>daoqie, qiangduo qiangzhi, danyao, baozhawuzui</i>	theft of guns, ammunition or explosives	1997 CL art. 127
抢劫枪支, 弹药, 爆炸物罪	<i>qiangjieqiangzhi, danyao, baozhazui</i>	robbery of guns, ammunition or explosives from state organs	1997 CL art. 127
Crimes of Disrupting the Order of the Socialist Market Economy			
生产, 销售假药罪	<i>shengchan, xiaoshou jiayaozui</i>	production or sale of fake medicine	1997 CL art. 141
生产, 销售有毒, 有害食品罪	<i>shengchan, xiaoshou youdu, youhaishipinzui</i>	production or sale of toxic or harmful food products	1997 CL art. 144
走私武器, 弹药罪	<i>zousiwuqi, danyaozui</i>	smuggling weapons and ammunition	1997 CL art. 151
走私核材料罪	<i>zousihēcailiaozui</i>	smuggling nuclear materials	1997 CL art. 151
走私假币罪	<i>zousijiabizui</i>	smuggling counterfeit currency	1997 CL art. 151
走私文物罪	<i>zousiwenwuzui</i>	smuggling cultural relics	1997 CL art. 151
走私贵重金属罪	<i>zousiguizhongjinshuzui</i>	smuggling precious metals	1997 CL art. 151
走私珍贵动物, 珍贵动物制品罪	<i>zousizhenguidongwu. zhenguidongwuzhipinzui</i>	smuggling rare animals and animal products	1997 CL art. 151
走私普通货物, 物品罪	<i>zousiputonghuowu, wupinzui</i>	smuggling goods	1997 CL art. 153
走私废物罪	<i>zousifeiwuzui</i>	smuggling solid waste	1997 CL art. 155
伪造货币罪	<i>weizaohuobizui</i>	counterfeiting currencies	1997 CL art. 170
集资诈骗罪	<i>jiyizhapanzui</i>	fraudulently raising funds	1997 CL art. 192
票据诈骗罪	<i>piaojuzhapanzui</i>	fraudulent use of financial bills	1997 CL art. 194
信用证诈骗罪	<i>xinyongzhengzhapanzui</i>	fraudulent use of letters of credit	1997 CL art. 195
虚开增值税专用发票, 用于骗取出口退税, 抵扣税款发票罪	<i>xukaizengzhishui chuanyongfapiao, yongyupianquchukoutuishui, ??shui</i>	tax fraud	1997 CL art. 205
伪造, 出售伪造的增值税专用发票罪	<i>weizao, chushouweizaode zengzhishui chuanyongfapiaozui</i>	forgery or sale of vat invoices	1997 CL art. 206
Crimes Against the Security of the Person			
故意杀人罪	<i>guyisharenzui</i>	intentional homicide	1979 CL art. 132; 1997 CL art. 232
故意伤害罪	<i>guyishanghaizui</i>	wounding with intent	1997 CL art. 234
强奸妇女罪	<i>qiangjian (funu)zui</i>	rape (of women)	(1979 CL art. 139); 1997 CL

			art. 236
奸淫幼女罪	<i>jianyinyounuzui</i>	sexual relations with underage girl	1979 CL art. 139;
绑架罪	<i>bangjiazui</i>	Kidnapping	1997 CL art. 239
拐卖妇女,儿童罪	<i>guaimaifunu, ertongzui</i>	trafficking of women and children	1997 CL art. 240
Property Crimes			
抢劫罪	<i>qiangjiezui</i>	robbery	1979 CL art. 150; 1997 CL art. 263
贪污罪	<i>tanwuzui</i>	corruption	1979 CL art. 152;
盗窃罪	<i>daoqiezui</i>	burglary	1997 CL art. 264
Crimes Of Obstructing The Administration Of Public Order			
传授犯罪方法罪	<i>chuanshoufananzuifangfazui</i>	teaching another person to commit a crime	1997 CL art. 295
暴动越狱罪	<i>baodongyueyuzui</i>	violent prison escape	1997 CL art. 317
聚众持械越狱罪	<i>juzhongchixieyueyuzui</i>	mass prison escape	1997 CL art. 317
盗掘古文化遗址, 古墓罪	<i>daojuieguwenhuayizhi, gumuzui</i>	robbery of archaeological sites	1997 CL art. 328
盗掘古人类化石, 古脊椎动物化石罪	<i>daojuegungurenlei huashi, gujizhuidongwuhuashizui</i>	robbery of palaeovertebrates	1997 CL art. 328
走私, 贩卖, 运输, 制造毒品罪	<i>zousi, fanmai, yunshu, zaozhidupinzui</i>	smuggling, trafficking of drugs	1997 CL art. 347
组织卖淫罪	<i>zuzhimaiyinzui</i>	organising prostitution	1997 CL art. 358
强迫卖淫罪	<i>qiangpomaiyinzui</i>	forced prostitution	1997 CL art. 358
Impairing the Interests of National Defence			
破坏武器装备, 军事设备罪	<i>pohuaiwuqizhuangbei, junshishebeizui</i>	sabotage of military installations	1997 CL art. 369
故意提供不合格武器装备, 军事设施罪	<i>guyitigong buhege wuqizhuangbei, junshisheshizui</i>	provision of substandard equipment to the military	1997 CL art. 370
Embezzlement and Bribery			
贪污罪	<i>tanwuzui</i>	embezzlement	1997 CL art. 382
贿赂罪	<i>huiluzui</i>	bribery	1997 CL art. 386
Servicemen's Transgression of Duties			
战时违抗命令罪	<i>zhanshiweikandminglingzui</i>	disobeying orders in wartime	1997 CL art. 421
隐瞒, 谎报军情罪	<i>yinman, huangbao junqingzui</i>	false reporting in wartime	1997 CL art. 422
拒传, 假传军令罪	<i>juchuan, jiachuanjunlingzui</i>	refuse to convey a military order or convey a false military order	1997 CL art. 422
投降罪	<i>touxiangzui</i>	surrender	1997 CL art. 423
战士临阵脱逃罪	<i>zhanshi linxiang tuotaozui</i>	desertion	1997 CL art. 424
阻碍执行军事职务罪	<i>zhangaizhixing junshizhiwuzui</i>	obstruction of military duties	1997 CL art. 426
军人叛逃罪	<i>junren pantaozui</i>	defection	1997 CL art. 430
为境外窃取, 刺探, 收买, 非法提供军事秘密罪	<i>weijingwaiqiequ, citan, shoumai, feifatigong junshimimizui</i>	spying	1997 CL art. 431
战时造谣惑众罪	<i>zhanshi zaoyaoganzhongzui</i>	fabrication of rumours during wartime	1997 CL art. 433
盗窃, 抢夺武器装备, 军事物资罪	<i>daoqie, qiangduo wuqizhuangbei, junshiwuzizui</i>	theft or seizure of military equipment	1997 CL art. 438
非法出卖, 转让武器装备罪	<i>feifachumai, zhuanrang wuqizhuangbeizui</i>	illegal sale or transfer of weapons	1997 CL art. 439
战时残骸居民, 掠夺居民财产罪	<i>zhanshi canhai jumin, lueduo jumin caiwuzui</i>	injury to or robbery of civilians during wartime	1997 CL art. 446

Appendix II XX Higher People's Court Rulings

XX Province Higher People's Court Criminal Rulings

[2003] E X Y Zh Zi No XXX

Original public prosecution: People's Procuratorate, Enshi Tujia Nationality & Miao Nationality Autonomous Prefecture, XX province.

Appellant (Defendant of the first trial) XXX, male, born on 2 February, 1974 in Enshi City, XX province, Han nationality, junior middle school education level, peasant, residing at Group 3, Xijiaoxi Village, Wuyang Office, Enshi City. On 3 December, 1994, the defendant was sentenced to three years imprisonment for robbery, and was released after serving the sentence on 12 May, 1997. On 19 October, 2001, the defendant was detained as a penal punishment for being suspected of committing intentional homicide, and was then arrested on 5 November of the same year. The defendant is detained in Enshi City No.1 House of Detention.

The appointed defence lawyer: Tan Zheng, a lawyer of XXX Law Firm.

Defendant of the first trial Huang Shaoyun, male, born on 24 November, 1976 in Enshi City, XX province, Han nationality, primary school education level, peasant, residing at Group 1, Xijiaoxi Village, Wuyan Office, Enshi City. On 19 October, 2001, the defendant was detained as a penal punishment for being suspected of committing intentional homicide, and was then arrested on 5 November of the same year. The defendant is detained in Enshi City No.1 House of Detention.

XXX Intermediate People's Court, XX province tried the case of People's Procuratorate, Enshi Tujia Nationality & Miao Nationality Autonomous Prefecture accusing defendants of the first trial Liu Dajun and Huang Shaoyun of intentional homicide with incidental civil action plaintiffs of the first trial Wu Jidong and Li Xiangquan initiating the incidental civil action, on 5 December, 2002, the court made the [2002] Enzhou ZFX Ch Zi No xx Criminal and Incidental Civil Judgment. The court determined that Defendant Liu Dajun had committed intentional homicide, was sentenced to death, deprived of his political rights for life; he committed robbery, was sentenced to four years of imprisonment, and was fined 1,000 RMB, it was decided that Lui Dajun was sentenced to death with execution, was deprived of his political rights for life, and fined 1,000 RMB. The court determined that defendant Huang Shaoyun had committed intentional homicide, was sentenced to death with a two year suspension, was deprived of his political rights for life; he committed robbery, was sentenced to four years of imprisonment, and fined 1,000 RMB, it was decided that Huang Shaoyun was sentenced to death with a two year suspension, was deprived of his political rights for life, and fined 1,000 RMB. After the judgment was pronounced, the defendant of the first trial Liu Dajun did not agree with the decision and appealed. This court formed a collegiate panel by law and heard the case. The hearing is now finished.

This court holds: the judgment of the first trial determines that defendants Liu Dajun and Huang Shaoyun had committed intentional homicide but the facts are not clear and the evidence is not sufficient. According to the provisions of Section (3) Article 189 of the "Criminal Procedure Law of the People's Republic of China", it is ruled as follows:

1. Revoke Enzhou Z F X Ch Zi No. xx [2002] Criminal and Incidental Civil Judgment of Enshi Tujia Nationality & Miao Nationality Autonomous Prefecture Intermediate People's Court.

2. Return the case to Enshi Tujia Nationality & Miao Nationality Autonomous Prefecture Intermediate People's Court for retrial.

This ruling is the final ruling.

XXX, Presiding Judge

XXX, Deputy Judge

XXX, Deputy Judge

x x, 2003

XXX, Clerk

XX City Intermediate People's Court, XX Province Criminal Ruling

(2002) W X C Zi No. xx

The public prosecution organisation: XX City People's Procuratorate, XX province

Defendant XXX, female, 32 years old (born in January 1970), Han nationality, place of birth XX city, XX province, primary school education level, peasant, residing at Xiamawan, Fushan Village, Husi Town, Jiangxia District of this city. The defendant was detained as a penal punishment for intentional homicide on 22 September, 2001, arrested on 29 October of the same year. The defendant is detained in Wuhan City No.1 House of Detention.

The appointed defence lawyer: Wang Gang, a lawyer of Wuhan city Legal Aid Centre.

XX City People's Procuratorate, XX Province has brought the action in WJXS (2001) No. xxx Statement of Charge against Defendant XXX for committing intentional homicide, and initiated public prosecution with this court on 7 January 2002. On 10 January 2002, this court placed the case on file, formed a collegiate panel by law, and held an open court to try this case. XX City People's Procuratorate appointed the deputy public procurator Kuang Zhen to appear in court to support public prosecution, the defendant and her appointed defence lawyer came to the court to participate in the legal proceedings. The trial is now finished.

xx City People's Procuratorate's charge: defendant initiated divorce several times because her relationship with her husband Xia Gongsheng had not been good for a long time, but Xia didn't agree. On 17 September, 2001, defendant XXX bought two bottles of "Dushuqiang" (Tetramine rat poison) and brought them home. In the afternoon of 21st of the same month when Xia was not at home, the defendant put one bottle of rat poison into the remaining food he was going to eat. At about 5 o'clock in the afternoon of that day, Xia was poisoned after eating the food, he was sent to hospital, but all rescue

treatment proved ineffective, and he died. The evidence the public prosecution read out and showed at the court are: (1) the process of the public security organ solving the case and seizing the suspect; (2) Testimonies of witnesses Xia Guangxing, Shi Tanghui, Sun Guiying, Zhu Guangming; (3) On-site investigation written record, forensic doctor's report; (4) Photos of physical evidence. The public prosecution held that the defendant's behaviour violated the provisions of Article 232 of the "Criminal Law of the People's Republic of China", and constituted intentional homicide.

Defendant XXX confessed to the criminal facts charged by the public prosecution, but claimed she did not intend to kill Xia Gongsheng. Her defence lawyer stated that the defendant had no previous convictions and was verbally abused and beaten up by Xia.

Trial found out that the defendant and her husband Xia Gongsheng got married in November 1991, and the relationship after marriage was good. They had a daughter (8 years old). From early 2001, the relationship between the defendant and Xia Gongsheng broke down. Before the case took place, XXX once ran away from home and cohabited with another man. When she was taken home, XXX wanted to get a divorce from her husband, but Xia Gongsheng did not agree. One day in mid September 2001, the defendant bought two bottles of "Tetramine", and in the afternoon of 21st of the same month, she put one bottle of "Tetramine" into the remaining food when there was no one else at home. At about 5 o'clock in the afternoon of the same day, Xia Gongsheng ate the food and was poisoned, and died after he was sent to hospital and given emergency treatment. The forensic doctor's report confirmed that the victim Xia Gongsheng was poisoned by the rat poison "Tetramine".

The above facts are supported by the following evidence presented by the procuratorial organ and verified and authenticated by the court:

1. The defendant confessed that she put the rat poison into the basket which contained the remaining food, the empty bottle was put into the big kitchen range, and the unused bottle of poison was put in the middle of the straw pile in front of the house. Following this confession, the public security officers found the small bottle in the straw pile in front of the house, and got one empty bottle which contained the rat poison in the kitchen range. All these were backed by the on-site investigation record and the written record taken on file.
2. The penal scientific study confirmed that the rat poison "Tetramine" was detected in the remaining food, in the glass bottle sent for testing and in the heart blood of the victim Xia Gongsheng, which corroborates the defendant's confession.
3. The cause of death of the victim Xia Gongsheng is proved by forensic doctor's report.
4. The testimonies of witnesses Sun Guiying, Xia Gongsheng prove the fact that Xia Gongsheng was poisoned.
5. The testimony of witness Shi Tanghui proves that in the morning of 18 September a short woman of about 30 years of age bought two bottles of rat poison at his stall; the features of the buyer proved by this witness match with those of XXX.
6. The two rat poison bottles which had been found were handed to the defendant at the court who positively identified them.

This court held that the defendant illegally deprived another person's life on purpose, her behaviour constituted intentional homicide. The criminal facts charged by the public prosecution were tenable, and the charges were accurate. The defendant's claim that she did not intend to kill Xia Gongsheng did not match with the facts and evidence of this case, and was not accepted. According to the provisions of Article 232, Section 1 of Articles 57, it was judged as follows:

The defendant XXX has committed intentional homicide, is sentenced to death, and is deprived of her political rights for life.

If the defendant refuses to accept this judgment, she can lodge an appeal to the Higher People's Court of XX province directly or through this court within 10 days from the second day of receiving the judgment. In the case of written appeal, one original copy of petition for appeal, and two duplicated copies should be submitted.

XXX, Presiding Judge

x x, 2003

XXX, Judge

XXX, Deputy Judge

XXX, Clerk

XX City Intermediate People's Court, XX province tried the case of XX City People's Procuratorate, XX province charging the defendant of the first trial XXX with intentional homicide, and on x day x month, 2002 made the (2001) W X Ch Zi No. xx judgment. The defendant did not accept the judgment and lodged an appeal within the specified time limit. The defendant stated in the appeal that "the victim is at fault, often beating and verbally abused her; the penalty is too harsh". Her defence lawyer argued that "the defendant committed indirect intentional homicide, and she did that not without reason, is not vicious herself, her attitude to offending is good, and asked for a light sentence."

No. 1 Criminal Division of the Higher People's Court in XX province heard this case on x day x month, 2002. The appointed defence lawyer XXX, a lawyer of XX Delong Law Firm, was in court.

The second trial found out that the defendant and her husband Xia Gongsheng got married in November 1991 (without the Marriage Certificate). They had a daughter (8 years old) afterwards. In early 2001, the defendant's relationship with Xia broke down, and she asked for a divorce on several occasions, but Xia didn't agree. In May, Xia Guangli from the same village came to Xia Gongsheng's home to take the buffalo they jointly raised, Xia Gongsheng didn't want him to take it and didn't open the door. But the defendant opened the door letting Xia Guangli to take the buffalo. Xia Gongsheng thought the defendant was helping outsiders as she shouldn't have opened the door. He smacked her nose bridge, and chased Xia Guangli and hit him twice with a carrying pole. The defendant wanted to go back to her mother's home but Xia Gongsheng chased her and took off her trousers. The defendant finally went back to her mother's home with her daughter. While she was there, through somebody's introduction, she cohabited with a man, Yin Yangbao, from another village for over a month. Later Xia Gongsheng and some villagers from Xiamawan took the defendant back home. The defendant claimed that after returning home, Xia Gongsheng still quarrelled with her for some matters, beating and abusing her. The defendant then conceived the idea of poisoning Xia Gongsheng. At about 10 o'clock in the morning of 18 September, 2001, the defendant walked to a street stall opposite the Husi Town Grocery Market and bought two bottles of Tetramine, and placed them in a pair of shoes in a wooden cabinet in her bedroom. At about 5 o'clock in the afternoon of 21st of the same month, the defendant poured one bottle of rat poison into the remaining food when Xia Gongsheng was not at home, mixed it up, put it back on the table, and threw the empty bottle into the cooking stove. The other bottle of rat poison was put into the straw pile on the left of the front door. She then took

her daughter and went back to her mother's home. At about six o'clock that evening, the victim vomited and cramped immediately after eating the food. The head of the village hurried over and phoned the defendant and asked her to come back, meanwhile he reported to the police. Xia Gongsheng died at the town health centre after he was given emergency treatment as all rescue measures proved to be ineffective.

The verified evidence: (1) the defendant has always admitted that she herself put the rat poison into the remaining food and poisoned Xia Gongsheng. (2) Following the defendant's confession, one empty bottle of rat poison which she threw in the cooking stove and another bottle filled with rat poison which she put in the straw pile on the left of the front door have been found. (3) Penal scientific study confirms that the composition of the poison from the empty bottle, the full bottle is the same as the poisoning substance detected in the food collected on the scene and from Xia's stomach and in his heart blood, which is "Tetramine". (4) According to the report of the forensic doctor of Jiangxia District Public Security Bureau, the victim Xia Gongsheng was poisoned by "Tetramine", which matches with the details the defendant confessed that she used the rat poison "424" and poisoned Xia Gongsheng. (5) The defendant said that she bought two bottles of rat poison at a street stall opposite the Husi Town Grocery Market at 10 a.m. on 17 or 18 September 2001. The poison was powdery, at one RMB for one bottle. The people selling the poison were a man and a woman, looking like a couple. Beside the stall there was a person selling steamed bread. That matches with the witness statement provided by Shi Tanghui that the stall he and his wife set up was opposite the Husi Town Market, and next to their stall there was a person selling steamed bread; at 10 o'clock in the morning of 18 September a short woman with local accent bought two bottles of powdery bottles of rat poison at their stall, costing her two RMB in all. Besides, test confirms that the composition of the rat poison collected at his stall is identical with that of the rat poison collected in the empty bottle following the defendant's confession and that of the poison collected from the victim's stomach and his heart blood, which is "Tetramine".

Regarding the date on which the defendant bought the rat poison, the defendant claimed while she was detained by the public security that she bought the poison at a stall opposite Huxi Town Grocery Market at 10 o'clock in the morning of 17 September (1 August of the lunar calendar year), and the person selling the poison was over 40 years old. However witness Shi Tanghui confirmed that he didn't set up the stall on 1 August because he had some visitors at home on that day. He sold the rat poison to a short woman of about 30 years old at 10 o'clock 2 August of the lunar calendar year (18 September), hence the contradiction in time. During the second trial we interrogated XXX; she said that she couldn't remember exactly whether she bought the rat poison on 17 September or 18 September, but it must have been either 17 or 18 September, and the person selling the rat poison was over 40 years old. Except for these two points, other details match with the witness evidence of Shi Tanghui (born in 1933, 70 years old). We also called on witness Shi Tanghui, who was very sure that he didn't set up the stall on the 1 August of the lunar calendar, but did so on 2 August on the lunar calendar year. Therefore it can't be definite on which day the defendant actually bought the rat poison, and the two parties are both saying that they won't recognize each other if they meet again.

The defendant XXX intentionally deprived another person's life, her action has constituted intentional homicide, and the consequence is serious. The defendant appealed stating that the victim Xia Gongsheng was at fault, who often beat and abused her; her defence lawyer stated that the defendant committed the crime not without reason. Investigation confirms that Xia Gongsheng did beat and verbally abused the defendant, a fact which the court has accepted. Her appeal also states that she didn't intend to kill Xia Gongsheng, and she didn't kill him intentionally. Investigation finds that her statement

doest not match with the facts, and does not hold water. The defendant should be sentenced to death for her crime, but in view of the fact that this case is caused by family disputes, it is not necessary to execute the death sentence immediately. The court accepts the opinion raised by her defence lawyer that “after committing the crime, the defendant’s attitude toward the offence is good, it is hoped that she could be punished leniently.” The conviction in the first trial is accurate. The trial procedure conforms with the law. According to the provisions of Section (2), Article 189 of the “Criminal Procedure Law of the People’s Republic of China”, and Article 232, Article 48, Section 1 of Article 57, the defendant XXX is resentenced to death for intentional homicide with two years suspension, and is deprived of her political rights for life.

Note: Tetramine: The chemical name of the main pharmaceutical component is Sicijiajierfengsian (Toxicological name), or “424” as it is called. The rat poisons using this substance are Tetramine, Special Effect Rat Eradicator, No Rat Life, etc. The main symptoms caused by this poison are cramp, vomit, and organ damage is likely, depending on the user’s own resistance and the degree of toxication. There is no special antidote for this poison, the main measures being stomach and intestines washing with targeted treatment according to symptoms, which are usually alleviated within 3-10 days.