PEOPLE'S REPUBLIC OF CHINA

The Death Penalty in China: Breaking Records, Breaking Rules

Strike Hard -Yanda

> *"Any crime which the law regards as serious should certainly receive serious penalties, and any crime which is punishable by the death penalty according to the law, should certainly receive the death penalty. This will ensure the healthy progress of strike hard."*
>
> Hu Jintao, Secretary of the Standing Committee of the CCP Central Political Bureau (Legal Daily 4 May 1996)

Much lauded reforms to China's Criminal and Criminal Procedure Law last year ran in parallel with the largest most draconian crackdown on crime seen in China since 1983[1]. There can be few better illustrations of contradictory trends and the stark contrast between law and practice, principles and reality in China today. The 'Strike Hard' campaign harked back to a similar campaign launched in 1983 which has become a byword in Chinese legal circles for the worst abuses of the legal system. It was conducted using 1983 procedures for summary trial and execution which were due for abolition once revisions to the Criminal Law adopted in March 1996 came into force in 1997. The realities of the campaign also contrasted starkly with the principles of "equality before the law", and "punishment that fits the crime" that the Chinese authorities used to promote legal reforms throughout 1996. Specific cases given publicity throughout China during the campaign highlight crucial flaws in the justice system and challenge the authorities' persistent assertion that the death penalty is used in a controlled and limited way. The 'Strike Hard' campaign was characterized by demonstrations of arbitrariness of punishment, speed of criminal procedure resulting in disregard for due process and evidence of the ultimate penalty falling disproportionately on people with a low social status.

The anti crime campaign - termed 'Yanda' ('strike hard' or 'severe crackdown') was initially proclaimed against major crimes of violence and criminal gangs and began on 28 April 1996 for an initial period of 3 months. However the court report given by the president of the Supreme

[1]For more information on the recent legal reforms in China see Amnesty International, People's Republic of China: Law Reform and Human Rights (ASA 17/14/97), March 1997

People's Court, Ren Jianxin, to the National People's Congress in March 1997[2] reveals clearly that the campaign had a wider focus, including: "*dealing severe blows to criminal activities involving drugs"*, corruption, financial crimes and offences of undermining the social order including "*habitual thieves who cause damage to the people in many respects*". Alleged separatist activity in Xinjiang and Tibet was another target. This reflects the Chinese authorities reliance on the most draconian tools of the state to deal with problems emerging through China's social and economic transformation.

Other official reports made clear that crimes found to be committed during the period of 'Strike Hard' were viewed with more seriousness than crimes committed prior to the campaign as the criminals were seen to be actively going against the policy, "*We should deal relentless blows at those who commit crimes in defiance of the ongoing anti-crime campaign*". [3]

Campaign directives were to "*firmly implement the policy of severely and promptly dealing with criminal elements, cracking down on them with surety, accuracy and relentlessness. " "After launching concentrated attacks, public security organs and procuratorial and people's courts must step up preliminary hearings, collection of evidence and tracking of criminal histories; and work hard to achieve the goal of quick approval of arrest, quick prosecution and quick trials... whoever deserves heavy sentences in accordance with the law must be resolutely sentenced accordingly, and whoever deserves the death penalty in accordance with the law must be sentenced to death"*. [4]

One major aspect of the motives behind the authorities' desire to implement the 'Strike Hard' campaign has been the need for public support for the government and the police. A feature of the authorities' justifications of the severe punishments given to criminals has been "to satisfy the masses". In one case, it was said that *"after XX was arrested, the people were very happy and they appealed to execute him right away"*. In this particular case, the prisoner was indeed executed just two weeks after the alleged crime had occurred.

The authorities' frequent use of the subjective claim that "*popular indignation could not be calmed without killing XX*" to justify controversial executions has been criticized in Chinese legal circles. There is concern that responding to perceived public opinion takes precedence over the facts and seriousness of the particular offence. Another case from 1996 illustrates how the quest for public approval can lead to an over zealous application of the death penalty. In a

[2] Xinhua news Agency, Beijing, 20 March 1997.

[3] Supreme People's Court Vice president Liu Jiachen (Xinhua News Agency 2 July 1997 - in SWB 10 July)

[4] People's Daily 16 May 1996

case reported in Beijing, the procuratorate appealed against the sentence passed on Zhang Yu who was charged with intentional injury of a student with whom he had a fight. Zhang Yu was originally sentenced to death with a two year reprieve. *"The [...] municipal procuratorate regarded the judgment of the first instance light on the grounds that Zhang Yu's circumstances in the criminal case were especially serious and resulted in especially serious results which caused great indignation among the masses. The popular indignation could not be calmed without killing him"*. The Beijing High People's Court reviewed the case and re-sentenced Zhang Yu to death on 12 April. [5]

Sentencing Pressure

Amnesty International is unable to confirm widespread reports that a system of quotas for arrests and sentences was encouraged, similar to that reportedly used during the 1983 Anti-Crime Campaign. However, official reports do show a concern for the quantity of sentences and for the prosecution of exemplary cases: *" In the severe crackdown, a number of major criminal cases should be cracked; a number of criminals at large should be arrested; a number of people who have committed serious crimes should be severely punished. "* [6]

Police, judicial organs and local leaders were under pressure to achieve speedy results. Official pronouncements stressed the penalties for local leaders if the campaign was not wholeheartedly followed. If leaders failed to *"deal blows to crime"* they would be considered *"incompetent at their posts*". Eager to prove their credentials, several provinces began their campaigns by retrying and sentencing to death offenders previously sentenced to fixed terms of imprisonment. For example, Xiang Yi'an and Fan Jing were originally sentenced to 14 years and 12 years respectively for robbery by Huinong County People's Basic Court in Ningxia Province. However it was reported that 'the authorities' decided that their sentences were lenient and ordered a re-trial. The two men were then sentenced to death by Shizuishan City People's Intermediate Court. The sentences were reported as the cities's "first big case" as part of 'Strike Hard'. [7]

Others chose to impose the death penalty for specific crimes for the first time ever in their province. In September 1996 Tao Ronghua was reportedly the first person in Anhui province to be sentenced to death for "luring people into prostitution".

[5]Beijing Youth News 19 May 1996

[6]Xinjiang Daily 29 April 1996

[7]Ningxia Daily 31 July 1997

National and International Concern over 'Strike Hard'

The 'Strike Hard' campaign attracted widespread criticism from the international media and human rights groups. Concern at the spiraling number of capital crimes and death sentences has been expressed both internationally and within China. In his annual report for 1996, on China the United Nations (UN) Special Rapporteur on extrajudicial, summary or arbitrary executions reiterated his conclusion that the death penalty should be eliminated for economic and drug-related crimes. He reiterated his distress over the reportedly increased number of executions in 1996, especially in connection with the 'Strike Hard' campaign, and stated he considered *"the death penalty is not an appropriate tool to fight the growing crime rate in China"*. [8]

The authorities hit back at western criticism of the campaign with a Foreign Ministry spokesman reiterating that *"The crime crackdown conducted by the Chinese government is to fight against serious criminals, such as drug traffickers"*. This statement rests uneasily with the numerous executions of petty criminals, including individual peasant offenders monitored by Amnesty International.

It is not just international commentators who have questioned the efficacy against rising crime of periodic draconian crackdowns using summary procedures and death sentences on a massive scale. A growing body of legal scholars in China have analyzed local examples, regional and national crime statistics to examine whether the use of the death penalty has had any deterrent effect on crime since the 1983-4 'Strike Hard' campaign. They have demonstrated that, despite the extreme crackdown of that period, the overall crime rate began rising dramatically again by mid 1985. Murder, injury and other violent capital crimes have been constantly rising since 1982, and economic crimes have also continued to rise steeply. Scholars also cite local examples of ineffective deterrents including that of Route 302, on the borders of Leping and Wangnian counties, Jiangxi Province, where in recent years prisoners convicted of highway robbery were executed by the roadside. Identical crimes were being perpetrated in the same place within two months.

Within China itself there have been calls for an easing of the present campaign. One report stated that officials from certain poorer provinces had expressed the fear that the majority of crimes committed were linked to survival and that the campaign waged against crime could lead to 'anti- Communist Party' feelings among the lower strata of society. It was also reported that unrest in Yining, in Xinjiang autonomous region in February 1997 was allegedly triggered by popular indignation at local executions of people convicted of separatist activities.

[8] E/CN.4/1997/60/Add.1 p.23.

In June, a signed article was published by three legal experts in China urging for respect for the law during the crackdown and warning against violations of the law in dealing with criminals harshly and speedily.

However, there are calls for the campaign to continue even now. If it continues in the same manner, then additional and welcome safeguards for defendants introduced in the legal reforms of 1996 have little chance of being implemented in practice. The authorities sincerity and commitment to reform will also be called into question.

Spiraling scope: what is a heinous crime?

> ***" In Countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences. "***
>
> ***Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty***
> **UN Economic and Social Council Resolution 1984/50 adopted by UN General Assembly 14, December 1984**

The number of capital crimes in China have more than tripled since the promulgation of the Criminal Law in 1980. Many of the additions relate to non-violent or economic crimes. For example in 1995 serious tax and insurance fraud were added to the list of capital offences.

For many capital offences, the only clarification given on when the death penalty may be used is in relation to crimes "where the circumstances are particularly serious"or the crime is "heinous". This phrase remains very undefined and has been interpreted very differently in different localities across China, and to fit in with the requirements of periodic crackdowns on crime. Some legal academics in China also consider the trend towards using the death penalty for repeated minor crimes which alone would not attract the penalty as an abuse of the death penalty. They stress this is particularly problematic whilst the legal definition of "many " in relation to repeat offenders is: three or more. However, precisely this use of the penalty was officially endorsed and encouraged during 'Strike Hard', and there are numerous examples of death sentences for repeat petty theft and other minor offences. Overall, particularly severe punishment was clearly imposed on those with a previous criminal conviction or record of administrative penalty.

Hooliganism and repeated crime [9]

Many repeat petty criminals sentenced to death during 'Strike Hard' were charged with "Hooliganism". The crime of hooliganism is ill-defined in Chinese law and has become a catch-all for a wide range of "disruptions to social order". Official clarifications on what constitutes "particularly serious circumstances" where the death penalty may be used, emphasized public disturbances and other activities which "caused great public indignation", including "using weapons resulting in light injuries to many people".[10]

> "The history of the development of China and foreign societies, as well as the history of the development of criminal punishment demonstrates that attempting to use the terror of the Death penalty to prevent and eradicate crime is a delusion... Meanwhile an objective fact which cannot be denied is: China leads the world in death sentences, whilst the crime rate increases".
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> "Our country has carried out the 'Strike Hard' struggle for 10 years, but still the number of capital criminal cases increases constantly, there has been no fundamental improvement in social order and the number of some serious crimes is ever rising. Such facts are enough to demonstrate that increasing the use of the death penalty is of limited utility. This being the case, shouldn't we change our point of view and look for other more effective ways of preventing crime? Furthermore, the side-effects of excessive use of the death penalty should not be underestimated".
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> *Reform Opening Up and the Criminal Law* China Procuratorate Publishing House 1993

In a well publicized example in 1996, a man was sentenced to death for repeatedly causing what appears to be only minor harm to others. Lu Qigang was sentenced to death for the crime of 'hooliganism' by Beijing No 1 Intermediate People's Court. It was reported that Lu, a worker at a horticultural farm, stuck thorns and pointed sticks or needles into the buttocks of female cyclists in the local area. Lu was executed with six others, all charged with hooliganism and related offences. It was reported that all seven had previous criminal or administrative punishment records. Lu was allegedly stated to have 'acted indecently towards women in broad daylight'. The Beijing Daily reported that because of Lu Qigang's activities " *young women didn't dare to work[...] it seriously harmed the peace and aroused strong indignation from the masses"*.

[9] For more details of the cases listed in this paper, please see Amnesty International; People's republic of China: Death Penalty Log parts I to III, July 1997 (ASA 17/35/97).

[10] See Supreme People's Court (SPC), Supreme People's Procuratorate (SPP), Ministry of Public Security "Opinions on how to recognize and deal with hooligan groups" and SPC, SPP "Answers to certain questions on the specific use of the law in dealing with current hooligan cases" 1984. These also stipulate that Hooligan crimes committed with or against foreigners "causing very bad political impact" may also attract the death penalty.

Under recent revisions to the Criminal Law, which will take effect in October 1997, the general charge of 'hooliganism' has been replaced by several more specifically defined offences.

Theft

Under the Criminal Law, and in subsequent legislative and judicial decisions and interpretations on the crime of theft, "particularly serious circumstances" attracting punishment between 10 years imprisonment and death are clarified as stealing exceptionally large amounts of 20-30,000 yuan (US $2,409 - $3,614) and above, with other particularly serious circumstances compounding the seriousness of the crime.

Examples of the use of the death penalty for theft during 'Strike Hard' include;
Eight people were executed in Ningde, Fujian province, on 13 August 1996 for stealing pigs worth 14,432 yuan (US $1,738);

Zhang Xizhong, a man who was executed in Sichuan province on 13 May 1996 after being convicted of stealing 14 cattle;

On 9 May 1996, two peasants from Heilongjiang were sentenced to death for the theft of 61 head of livestock. They were sentenced by Jiamusi City Intermediate People's Court after the court decided to 'accelerate adjudication against peasant offenders' as part of the national Strike Hard campaign[11];

Two men, Zhang Sheng and Su Shihu were sentenced to death in Leshan, Sichuan on 10 December for stealing a car which they sold for 10,000 yuan (US $1,204). Yuan Jinhai, who was executed in Fujian province on 17 June 1996 for stealing six motorcycles;

Chen Zhong and two other men executed in Sichuan province on 26 June 1996 for attempting to steal Value Added Tax receipts from a tax office;

Chen Guangru, was executed on 31 July in Guangxi province for stealing electric cable on seven occasions - he either sold the cable for very small amounts of money or discarded it. According to the report he was not aware that his actions amounted to theft. [12]

In many other cases, reports indicate that those sentenced to death were unaware they had committed a crime, or had committed a serious offence. The onus is therefore on the Chinese

[11]Heilongjiang Legal News 18 July 1996

[12]Public Security Times 27 August 1996

authorities to demonstrate how justice is served, or how the ultimate penalty serves, as an effective deterrent in such circumstances.

For example, a Decision by the Standing Committee of the National People's Congress (NPC) in June 1991 made looting "ancient cultural relics designated major national or provincial protected relics" a crime punishable by sentences ranging from 10 years' imprisonment to the death penalty. In a widely publicized case, Wang Hongjun, a farmer from Chengdu province, was sentenced to death on 29 March 1996 by the Chongqing Municipal People's Intermediate People's Court for stealing a cultural artifact. He was charged with stealing the severed head of a Statue of Buddha. Media reports stated that in court he was not represented by a lawyer and that he believed that his crime represented a petty theft as he had sold the head for 300 Yuan (approximately US $36). He also had no idea of the value of the head until the judge informed him of its value, at which time "his handcuffed hands did not stop shaking". Similar cases are expected to occur in the future as the revised Criminal Law retains the crime and extends it to include "looting ancient human and vertebrate fossils that have scientific value".

In addition, it is not clear how far a defendant's mental state is considered in sentencing. For example, a peasant man from Ganluo county, Sichuan province, was reported to believe that he was in communication with a 'sorcerer' who informed him that his as yet unborn baby was a 'dragon bone'. Allegedly one night he was told by the 'sorcerer' that a 'living ghost' would enter the village that night and the family of the first person to see him would be in great danger. The man believed this and when he saw a man arriving in the darkness he killed him out of fear. He was executed on 3 July 1996.[13]

Critics in China have also stressed the anomaly that theft and armed or other violent robbery frequently attract the same penalty. Several have attributed the relentless increase in robbery with violence to this anomaly. Determined criminals have nothing to lose under these laws by arming themselves and committing violence.

Corruption

In contrast to the criteria set for crimes of theft, "particularly serious circumstances" in corruption cases for which the death penalty is applicable have been established as "involving 50,000 yuan or more with other particularly serious circumstance to compound the crime.[14]

[13]Yangcheng Evening News 23 September 1996

[14]Revisions to the Criminal Law which come into force in October 1997 increase this amount to 100,000 , whilst cases involving less than 2,000 yuan will not attract any criminal punishment.

During 1996 Amnesty International recorded 58 death sentences for corruption and embezzlement, of which nine were confirmed to have been carried out while and 19 sentences were passed with suspension of execution for two years. At least 30 people were sentenced to death and 14 confirmed to have been executed for fraud, tax offences, and counterfeiting or smuggling money.

Within China, criticism of the use of the death penalty is particularly strong on its use against economic crimes.

For example, one scholar wrote that although *"The death penalty is not a miracle cure for economic and financial crimes. Since the introduction of the death penalty for certain economic crimes, there has been no reversal of the spiralling trend of economic crime[...] Relying on the death penalty is no way to curb these crimes... primarily because economic crimes emerge from economic, political, legal and other factors. Elements such as weaknesses in state policy, chaos in economic management, corruption in political organs, the interference of the "contacts network" in the administration, weakness of social supervision and the inadequacies of the criminal law all play their part. "* [15]

Another opinion is that although *"the use of the death penalty against economic crimes has a limited preventive and terrorizing effect , society pays a high price for it. Allowing the state to use the death penalty on economic criminals, creates the bad side effect of establishing for society that the state by law can kill for economic benefit, undermining the value of life, and destroying ideas of the absolute primacy of human life. "*[16]

Drug Trafficking

At least 534 people were sentenced to death for drug 'smuggling, trading trafficking, transporting or manufacturing' of whom 447 were confirmed to have been executed, most of them on or around 26 June 1996, to mark International Anti-Drugs day.

Despite the huge numbers of prisoners that have been executed for drug related crimes there is no evidence to suggest that the death penalty has any identifiable effect in alleviating

[15] Yang Dunxian, Chen Xingliang, "Retention or abolition of the death penalty and human rights protections" in *Chinese and Foreign Legal Studies* No 6. 1991.

[16]Liang Genlin, Zhang Wen, "Thoughts on the reasons for using the death penalty for economic crimes" *Faxue Yanjiu* January 1997.

trafficking and abuse. Drug addiction continues to grow in China as does the discovery of more and more manufacturing bases and smuggling routes. The United Nations has never given any endorsement to the use of the death penalty against drug related offences, and the UN Special Rapporteur on Summary or Arbitrary Executions has called on China to end the use of the death penalty for drug trafficking. However the authorities continue to mark International Anti-Drugs day with large-scale executions following public rallies.

Critics within China have also pointed out that inevitably the majority of those charged with drug offences are the minor players, often illiterate peasant women from economically marginal areas.

As in many countries, in reality it is possession of drugs rather than intention to traffick that becomes the deciding factor for sentencing in such cases. In a case that is illustrative of many more, a young woman, returning to Guangzhou province from her honeymoon in Kunming in January 1996, agreed to take a package for an acquaintance in return for some money. Acting as a courier in this manner is common practice in China. It was reported that during the train journey she became suspicious about the contents of the package and tried to open it. When she found she couldn't open it she began to realize it was drugs. She then allegedly became so nervous and agitated that the ticket checker on train became suspicious and discovered the package. She was sentenced to death on 26 June 1996 by Guangxi High People's Court.

Separatism

Throughout the 'Strike Hard' campaign, statements were issued against those involved in 'separatist' activities in the increasingly troubled areas of Tibet and Xinjiang. The president of the Tibet High People's Court stated that *"We must develop the 'Strike Hard' campaign to end secessionism in all its forms and halt the terrorist activities of our enemies"*. He called for the "extermination of bad elements. "[17] In May there were reports that the Chinese authorities had allegedly admitted to the recent detention of over 1,700 people, including "terrorists, separatists and criminals". In all, during 1996, 42 people were given the death penalty in Tibet and 160 in Xinjiang. For example, in July 1996 , twenty one people were sentenced at a rally in Changdu district, Tibet. Most defendants were charged with crimes of "counter revolution" and few further details were published.[18]

Inadequate Procedures in the criminal justice system

[17]Tibet daily 26 June 1996

[18] Tibet Daily 12 September 1996

International standards generally require that the most careful legal procedures and all possible safeguards for the accused be guaranteed in death penalty cases, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to have adequate time and facilities to prepare the defence - including the right to have adequate legal assistance at all stages of the proceedings - and the right to seek pardon or commutation of the sentence. Amnesty International has long argued that these safeguards are unavailable or inadequately guaranteed in the Chinese justice system. Some positive changes brought by the revision of the Criminal Procedure Law although passed during the period of review, did not come into force until January 1997.

These inadequacies are not only apparent during 'Strike Hard' campaigns. Throughout the 1990s legal scholars and practitioners in China have pointed to loopholes in the law and the bypassing of procedures which lead to miscarriages of justice and brings the legal system into disrepute.

Death penalty cases have reportedly been heard in the first instance by local level courts rather than intermediate level courts, as stipulated in the Criminal Procedure Law. Intermediate courts have also told local level courts it is 'up to them to decide' cases which they have started but then attempted to pass on to intermediate courts when they realized they attracted the death penalty.

Both local and intermediate courts, often influenced by public anger in the locality, or pressure to be seen to be tough on crime, have passed death sentences for non-capital crimes.

Appeals and Review of the death Penalty

Those sentenced to death, are entitled to one appeal. If they do not appeal, there is an automatic review of the case by a court at a higher level than that which passed the sentence. Appeals in death penalty cases are usually heard by the high courts. There has been much criticism of the nature of the appeal or review hearing. The Criminal Procedure Law stipulates that it should be conducted in the same manner as the first 'open' trial. However scholars indicate this is not the practice except in selected cases in very few big cities in economically developed areas. Instead, in most cases, the court simply reviews the case papers, examines a written submission from the defence, or occasionally asks the defendant further questions in a closed hearing.

Under the Criminal Procedure Law, an additional mechanism applies in death penalty cases. All sentences must be approved by the Supreme People's Court. However, under a subsequent law and a series of decisions by the Supreme People's Court, this power of approval has been delegated to the High Courts in what scholars claim is the vast majority of cases. As a result there are wide variations and arbitrary use of the death penalty in different provinces. For

example, Gansu Province High People's Court was empowered by the Supreme People's Court to approve *all* executions which do not involve foreigners or compatriots from Hong Kong, Macau or Taiwan. When the High Courts review and then approve their own decision, the additional safeguards established in the Criminal Procedure Law are rendered meaningless. Speeding up procedures only increases the potential for miscarriages of justice.

For example, in a widely publicized case the Jilin provincial High People's Court held a news conference to report on their provincial 'Strike Hard'. They cited one case of three people who broke open a car belonging to a state owned production plant and looted its contents on 21 May. On 24 May the case was 'cracked' and on 27 May the city Intermediate People's Court held an open rally to sentence the three to death. The prisoners then appealed against their sentence. The High People's Court 'immediately' opened a second trial and made their final decision on 28 May, approving the death sentence. The three were executed on 31 May. The reports do not mention any Supreme Court review of the sentence and the speed of the process is specifically praised. This case also brings up the question of whether theft from cars is a crime of a 'serious' nature punishable by death under the law. There have been cases reported where the sentence and the High Court approval of the sentence was read out simultaneously.

It is not generally clear from the reports of such rallies when exactly the prisoners were tried and when the approval of the High Court was requested.

Speed of Proceedings

Although officials deny that there is excessive speed in the time from arrest to execution, there are many instances of cases where the time taken from the alleged crime to execution raises serious questions about the application of due process and a respect for the legal rights of the defendant and adequate investigation of the case. This has been particularly evident during 'Strike Hard', as illustrated by the following cases.

The Legal Daily gave the following example as reflecting the 'Strike Hard' policy of 'dealing quickly with serious crime': Tian Xiaowei was executed on 19 May 1996 for the alleged murder of a policeman on 13 May in Siping city, Jilin Province. This translates as six days from the alleged crime to the final execution of the sentence, including arrest, investigation, first trial, appeal, approval and review. [19]

Four people were sentenced to death by Handan city Intermediate People's Court, as part of 'Strike Hard' on 22 May 1996. It was reported that the case took 16 days from the alleged

[19] Legal Daily 18 June 1996

crime (6 May 1996 - robbery and murder of a taxi driver) to their arrest (13 May) and their sentencing - 22 May.

In another case, Chen Zhihai was sentenced to death for robbery six days after the alleged crime. He was accused of a crime committed on 16 May 1996 and arrested on 18 May. The case was heard on 21 May by Shijiazhuang city People's Intermediate Court and the sentence given on 22 May.

Responding to international concern expressed at the UN about the speed in which death penalty cases were being handled in 1996, leaving no opportunity for adequate defence, the Chinese authorities simply stated that "*the accused has the right to legal defence and [...] the bill of prosecution shall be delivered to the defendant no later than seven days before the opening of the court session.*" This assertion is undermined by the facts revealed in the cases above.

Juveniles

Alarm has also been expressed in China about the proportion of younger people (aged under 25) sentenced to death which goes against the principle of *"mitigated or lesser punishment, education, rehabilitation and reform of young criminals"*. They also state that many have been first-time offenders who by law should be classified as those "it is not necessary to execute immediately".

As a State Party to the Convention on the Rights of the Child (CRC), the Chinese government has undertaken that: "... *Neither capital punishment nor life imprisonment without possibility of release shall be imposed* ***for offences committed by persons below 18 years of age***" (Article 37(a)).

Article 44 of China's Criminal Law stipulates that the death penalty *"is not to be applied to persons who have not reached the age of 18 at the time the crime is committed*" . However, the same article allows for those aged 16-18 to be sentenced to death with a two-year suspension of execution *"if the crime committed is particularly grave*". It is through this provision that capital punishment may be imposed in contravention of the CRC.

Additional legal interpretation issued by the Supreme People's Court in 1983 to supplement this article explicitly reinforced this possibility. It states unequivocally that for those " *who were given a suspended death sentence because they were under 18 when they committed a crime, once they have reached 18, and resist reform in an odious manner, and the facts are verified, the death sentence can be carried out as stipulated by the law.* " In the Committee's hearings, the head of China's diplomatic mission to the UN, Ambassador Wu

Jianmin stated that suspended death sentences for juveniles were "invariably commuted", providing no further information. Even within Amnesty International's limited sample there had been signs that this has not always been the case. In May 1996, in their Consideration of China's Report, the Committee on the Rights of the Child determined that the Criminal Law provisions were "*incompatible with the provisions of the Convention*" and "*the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment"*.

Amongst those sentenced to a suspended death in 1996 were: **Luo Guan** (under 18 years of age at the time of the alleged crime in 1995) an unemployed woman from Anshun City, Guizhou Province, sentenced in May 1996 for murder. Her co-defendant Fang Guolan (Female, aged 29) a farmer from Guizhou province, was executed on 14 May 1996. **Xu Weichuan** (17 years of age at the time of the alleged crime in 1992), sentenced on 28 March 1996 by the Zhuhai Intermediate Court to a suspended death sentence plus deprivation of political rights for life for the robbery of Heng Sheng Bank, Macau during which a security guard was killed. A co-defendant Xu Weizong was executed.

Under welcome revisions to the Criminal Law which comes into force in October 1997, suspended death sentences will no longer be imposed on defendants who were under 18 at the time of the alleged offence. It is unclear whether such sentences passed during 1996 will therefore be commuted immediately. Decisions on commutation or execution of suspended death penalty sentences have seldom been publicised, it is now incumbent on the Chinese Authorities to provide the information to demonstrate that changes to the law are reflected in practice.

Cruel, Inhuman or Degrading Treatment

It is common practice for prisoners sentenced to death to be kept in shackles (hand and feet) at least from their first trial until execution. Amnesty International has received reports of condemned prisoners being shackled to boards for many months awaiting execution. Prisoners awaiting the death penalty are specifically excluded from provisions in Chinese law setting limits to the use of shackles and other restraining instruments.

The practice of parading condemned prisoners on the backs of lorries through towns and villages on the way to the execution ground remains commonplace, even though several regulations forbidding the practice have been issued during the 1990s and criticism of such practice is rife among academics. Prisoners are paraded with their hand tied behind their backs, their arms trussed up with rope, rope around their necks, and a placard hanging from their neck listing their crime. Guards force them to bow their heads or upper bodies.

The 'Strike Hard' campaign has also been making wide use of the practice of public sentencing rallies and televised rallies where large numbers of condemned prisoners are paraded and their sentence of execution announced to the crowds.

For example, on 10 May 1996, Jiangxi province held simultaneous separate sentencing rallies in support of Strike Hard for 576 criminals involved in 312 cases. In Fujian province, eight high courts and 45 basic courts held 56 sentencing rallies between 8 and 10 May 1996 which sentenced 1,345 people. It was reported that over 200,000 people attended the rallies. Also, one report around International Anti-Drugs Day stated that people's courts at various levels in 27 provinces and regions held 262 public sentencing rallies sentencing 769 people to life imprisonment or the death penalty. It was estimated that a total 1.75 million people attended the rallies.

Amnesty International believes that such practices constitute cruel inhuman and degrading treatment and aggravate the application of the death penalty.

There are no provisions in law to allow prisoners sentenced to death to see their family before execution. Relatives of Hong Kong men executed for drug trafficking on 15 August 1996 in Guangzhou also reported being given no opportunity to view the bodies to pay their final customary respect: "They burned the body without allowing me to see him for the last time".[20]

[20] South China Morning Post 16 August 1996.