

China Against the Death Penalty (CADP)

China Against the Death Penalty (CADP) is the first NGO that aims at promoting the abolition of the death penalty in mainland China. It was initiated by Chinese human rights lawyer Teng Biao.

CADP aims at abolishing the death penalty in China, through legal aid, discussion conferences, citizen education, documentary and movie-screening, most importantly, we will do independent research through collecting and analyzing specific death penalty cases in China and publish annual reports on the death penalty in China. In addition, CADP will also take an active part in correcting wrongly-sentenced death penalty cases through our legal aid program, promoting legal reform and ultimately abolish death penalty in China.

China is the country that uses capital punishment most frequently. Based on the statistics supplied by Amnesty International, at least seventy percent of executions take place in China. This number could be much higher, up to ninety percent. In Chinese criminal law there are 55 capital offenses, violent and nonviolent. From the cases that are exposed in domestic media, several people who were convicted, even executed, turned out to be innocent, including Nie Shubin in Hebei Province, Teng Xingshan in Hunan Province, Hugu Jiletu in Inner Mongolia and Zhao Zuohai in Henan Province.

According to the experience of a number of countries around the globe which have already abolished the death penalty, this work requires great effort on the legal, political, cultural and ideological front, long-time communication of ideas and thoughts, and specific social movements. It also requires us to start working when most people in the society still cannot accept the idea of abolishing the death penalty.

To abolish the death penalty in China requires long-term commitment, yet there are some pressing work needs to be addressed. For instance, CADP is providing legal aid to the Chen Guoqing case in Hebei Province; Huang Zhiqiang case in Jiangxi Province; Gan Jinhua case in Guangdong province; Lin Ruiqiang case in Guangdong province and many other obviously wrongly-sentenced death penalty cases. In all these cases, the accused were forced to plead guilty under extremely cruel torture, but the court made the decision despite serious defects in the evidence.

Our Main Activities

■ Legal aid

Providing legal defense or legal aid to defendants in death penalty cases, especially in cases that are miscarriages of justice, that involve the use of torture or that have procedural defects, or that in which the defendant suffers from mental illness.

■Research reports

Carrying out independent research on the issue of the abolition of death penalty. Current research projects include: the implementation of the Supreme People's Court review of death penalty cases; research on non-violent crime death penalty, the causes of wrongly-convicted death penalty cases and other ordinary death penalty cases. We will write a series of "China Death Penalty Annual Reports" to summarize and analyze data on the situation of the death penalty in China, report specific legislative and judicial reforms on the death penalty in China, and present our legislative and policy suggestions.

■Citizen education

Cooperating with the media, we plan to carry out discussions or debates on the abolition or moratorium on the use of the death penalty. We will educate the public on the issue in the form of discussing conferences, documentaries, movie-screening and public debates. We will edit, translate, publish related research reports, brochures and media works.

■Professional website:

Build a professional website on the issue of the death penalty, collect and publish research reports, death penalty cases, papers, and news on China's legal reform in this area and international legal news related to the death penalty.

China has started; we will always be committed to the abolition cause. And we hope to share your insight and experience on the death penalty issue and add to your knowledge on the progress of China through our own effort. Your concern and help are extremely welcome. If you wish to have any further contact with us, please contact us at the following address;

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China Against the Death Penalty

Report 2012¹

Introduction

In ancient society, the death penalty was seen to hold an important position in both Chinese and foreign legal systems. However, nowadays more and more people in modern society consider the death penalty to be a form of murder institutionalised by the state.

Not only is it seen as anti-humanitarian, it also fails to act as a deterrent to crime. The global movement against the death penalty is growing rapidly however the use of the death penalty in China remains particularly prominent. Regarding the number of capital crimes, the number of death sentences and the actual recorded executions, China continues to rank as the world number one execution state.

The modern legal system in China developed relatively late having followed a turbulent journey alongside the political movements in the latter half of the 20th century. At that time the concept of class struggle was particularly prevalent and the idea of totalitarianism was still in practice. To this day malpractice is still widely present in the Chinese judicial system and includes the frequent occurrence of unlawful verdicts. Sentences tend to be harsh and abuse of the death penalty is witnessed far and wide.

The inevitable trend of human society is to completely abolish the death penalty. In China, a growing number of people recognise that the death penalty should be used with caution and eventually become completely eradicated.

In order to achieve this goal, efforts must be made at a legal, political, cultural and ideological level. The continuous exchange of ideas and a sustainable social movement are also needed. Furthermore work on this project should be initiated during a time framework where the majority of people are not adverse to or accepting of the death penalty. Even though we have very far to go, strong efforts must be made early.

China Against the Death Penalty (CADP), an organisation established in 2010 in Beijing, is dedicated to the reduction of injustice, the reversal of unlawful verdicts, the promotion of public discussion and reflection on the death penalty, the scrutiny of policies and laws involving the death penalty, and the establishment of a death penalty observation network within civil society. Its ultimate goal is to abolish the death penalty completely in China. This report is a review of and reflection on the situation of the death penalty from the perspective of CADP.

¹ This is a translation of an edited version of the 2012 Report produced by China Against the Death Penalty for a readership in China.

The original report in Chinese was in three parts. Part I, translated here, outlines the legal system and its application in relation to the death penalty. Part II introduces the use of the death penalty review system following the Supreme People's Court's resumption of its power to review death sentences on January 1st, 2007. Part II also analyses the influence of the death penalty review system on the new criminal procedure law that will come into effect in 2013. Part III introduces a number of death penalty cases.

If you would like further information on some of the death penalty cases mentioned in the Chinese report, please contact us via China Against the Death Penalty (www.cadpnet.org).

Overview of the Death Penalty in China

1. The Criminal Justice System

1.1 The Judicial System is not Independent

Although the Chinese Constitution states that the courts exercise their powers independently, it is in effect far from being an independent judicial system. In fact, there is a lack of independence outside of the judicial system as well as within the courts themselves. There are a few influential factors which hinder their independence:

(A) The CPC (Communist Party of China) Committee and the Politics and Law Commission. China is strictly still a one party state. The Communist Party not only controls the army, legislature and executive, but also exercises its control over the judicial system through the Politics and Law Commission system. Almost all judges are CPC members and this therefore affects the independence of their judgments. The Politics and Law Commission system derives directly from the tradition of the communist party to provide direction to political and legal work. Although there have been some changes made to the role of the commission since 1949, as well as changes to the way in which they influence the work of the police, the procuratorate and the court – from “directly interfering” to “summoning and guiding”, all levels of the commission still get involved in individual cases that come before the courts. Furthermore, all death penalty cases are regarded as “hard cases”. Police chiefs usually act as secretaries of the commission at the same administrative level and subsequently it is common for the investigating department to interfere with or control those who determine guilt and sentencing.

(B) The administrative bodies. The Constitution states that courts are at the same administrative level as the government. However as scholars have pointed out, the reality is that courts are far from achieving this kind of status. “In fact, high courts are regarded as at the bureau level, intermediate courts at the division level and county courts the section level. So for example, important documents need to be distributed to the county

level administration. But they cannot be given to the county level courts because the courts are actually at the section level." More importantly, courts are unable to fully exercise their authority since their personnel, property and resources are all under the control of local government. Some government officials are able to appoint or dismiss court staff at will. The people's court can be understood as a department of the people's government of the same level; responsibility for human resources and funding is localised. Without democratic elections and a free media to constrain public power administrative bodies in practice interfere with the judicial system.

(C) The People's Congress. Democratic representation does not really exist in China. People cannot directly vote for the People's Representatives above county level and even at county level voting is fairly problematic. Elections are manipulated by the government and the few candidates who are brave enough to enter as independent figures almost never succeed. If we take a closer look at the identity of the people's representatives at different levels, at least 60% of them are government officials. All levels of the People's Congress (and its standing committees) are part of the power system of the Party State. Its influence on the judicial system is similar to that of the administrative bodies for example, the courts must report their work to the People's Congress.

(D) The Procuratorate. The procuratorate system, which is based on the Soviet Union model, also contrasts with an independent judicial system. Procuratorial power, as part of the power of the executive, is the power to investigate and detain; a power which should be under judicial review. However, in the Chinese judicial system, procuratorates have the right to supervise the work of judicial bodies which is a violation of the judicial power.

(E) Higher courts. In actual judicial practice, there is a custom of higher courts giving instructions to lower courts, with the latter reporting to and consulting the former. Lower courts ask for higher courts' opinion on verdicts and higher courts can also initiate "guidance" to lower courts when cases are "significantly influential". Where there are particularly difficult aspects of specific cases, lower courts can seek an opinion from the Supreme People's Court through provincial level courts. Opinions given by the Supreme People's Court, known as "legal explanations", have become the norm in the Chinese judicial system. The relationship between courts is still similar to that of different levels of administrative bodies.

(F) Chief justices, chief judges and judicial committees. Within the court system itself, judges do not have an independent position. Chief justices, chief judges and judicial committees exert direct influence on specific cases through official and unofficial means such as indicating various assumptions and discussing cases.

(G) Other elements. The above mentioned elements are often intertwined with the Chinese "culture of favours" and "*guanxi* (contacts) networks". Relatives, friends, classmates, colleagues and acquaintances can all express their own opinion in different ways to judges or officials. They can therefore influence and interfere with the judicial

system. The media on one occasion revealed a short note within a file written by the ex-chief judge which was passed to the incumbent deputy chief judge. Most commonly interference is hinted at in phone calls, voiced during meetings or over dinner. It is therefore difficult to prove and provide evidence of this kind of influence.

All of the above illustrates ways in which indirect influence over judges can lead to the judgment being reached before the defendant has had a fair trial. The legal requirements of having legal representation, a defense hearing and presenting evidence are formalities rather than properly functioning elements of the legal system.

1.2 The Relationship between the Public Security Bodies, the Procuratorates and the Courts

According to the Chinese criminal procedure law, the majority of criminal cases should be investigated by the public security agencies. Their role is to detain, investigate, interrogate, and formally arrest suspects. The procuratorates examine and prosecute, raise charges, investigate criminal cases such as those concerning corruption and bribery, and legally supervise the trials carried out by the courts. The courts try and sentence suspects. However, the Chinese criminal judicial practice is very much focused on investigation, and public security bodies have too much power. Although the courts should be in a central position to act as a referee, they often in practice do not have enough power. Scholars describe the relationship between the public security bodies, the procuratorates and the courts in the Chinese criminal judicial practice as a “flow process”. This “flow process” is strongly built into the system as one of the major procedural principles in the criminal procedure law. Furthermore it is stated that “In conducting criminal proceedings, the people’s courts, the people’s procuratorates and the public security bodies should share the responsibility, cooperate with and restrain each other in order to accurately and effectively enforce the law.” The three independent and unrelated stages – investigation, prosecution and judgment, are like three production processes in a factory. The public security body, the procuratorate and the court are likewise the three “operators” on a production line. They work together to achieve the task of attacking crime and punishing criminals through their relaying of work, their cooperation with each other and mutual complementarity. This “flow process” structure leads to the lack of a fair judicial review before the judgment, and the weakening of the power of the court in this process. Before the case comes to court, the procuratorate and police have the authority to decide on compulsory measures including arrest, detention, search, investigation and examination, without approval or review by an impartial judicial organisation. Citizens who are treated unfairly cannot get effective judicial remedy. “The lack of a judicial referee system leads directly to the exacerbation of the position of the prosecuted, the unlimited expansion of the power of the procuratorates and the police as well as the abuse of their power.” (ref) Also, during the trial and sentencing stage, “all principles and systems set to guarantee justice in court trials, such as the collegial system, the challenge system, the two-tier trial system, the open trial system, the defense system and cross examination, exist in name only, and have lost the

value of their existence and supposed procedural functions.”

1.3 Evidence System

Evidence rules are very important to the criminal justice system. Unfortunately there is no single, unified evidence law in China, and the rules of evidence in the criminal procedure law are fractured. The “two rules of evidence” which came out in 2010 (“Provisions on Several Issues concerning the Examination and Judgment of Evidence in Death Penalty Cases ” and “Provisions on Several Issues concerning the Exclusion of Illegal Evidence in Criminal Cases” approved by five bodies including the Supreme People’s Court and the Supreme People’s Procuratorate) and the new criminal procedure law in 2012 have to a certain degree improved the treatment of evidence. However the problems of lagging legislation and enforcement difficulties still remain. Criminal justice guidance still places more weight on punishment and less on safeguarding human rights; more on substantive truth, less on procedural justice.

1.4 The Legal Profession

The legal profession in China was almost totally ruined during the “cultural revolution”. It was not until the enactment of the “Interim Regulation on Lawyers” in 1980 that the profession was re-instated. In 1986, the national lawyers’ qualification exam was introduced and the All Lawyers’ Association was established. Since the Lawyers Law of 1996 the prospects for the bar exam and law firms have gradually improved. This has led to a steady increase in the number of qualified and practicing lawyers. The performance and quality of lawyers in China has also improved, whilst the role they play in public life has become more important. However, due to the structural outline there are still huge flaws within the system. To list the major ones: **(A) The profession is not self-governing.** Although there are several tiers of lawyers’ associations in China none of them enjoy real independence in practice. They are all affiliated to the local departments of justice; it is compulsory for all lawyers to be affiliated to a lawyers’ association in which they cannot elect any representation. Nor can lawyers independently hold exams, discipline members or review the quality of lawyers. **(B) The practice of annually inspecting lawyers’ licenses.** The practice of annually inspecting lawyers’ licenses is like the sword of Damocles hanging over all lawyers. Many cases have shown that the authorities can deprive a lawyer of their right to practice simply by not allowing them to pass formal inspections. Alternatively, they can overtly threaten human rights lawyers and prevent them from presenting “sensitive cases”. **(C) “Perjury by lawyers”.** Article 306 of the criminal law relating to perjury is the only article identifying lawyers as potential perpetrators of a crime. The maximum sentence under Article 306 is seven years. This legislation has led to the arrest of lawyers with a chilling effect on the enthusiasm of lawyers to undertake criminal cases. Consequently, many criminal cases cannot find a lawyer to represent them in court and many lawyers avoid any involvement. **(D) Lawyers’ rights including the right to see their client, have access to the relevant files, investigate a case for evidence, cross examine in court and make defense**

statements, are often not guaranteed. Lawyers can be restricted in court from making lengthy arguments, prevented from speaking and even barred from court in particularly sensitive cases. Trials for criminal cases are usually concluded within 1-2 hours, even for the most serious and complex death penalty cases. Based on our experience representing clients subject to the death penalty, the majority of cases were dealt within 2-3 hours. Trials are so short not only because witnesses are rarely called and limits are placed on the ability of defense counsel to speak, but also because trials are largely just for show. The real party deciding the verdict is not the judge sitting in the court, but organisations or individuals external to the court. As a result there have been cases where a defendant subject to capital punishment has been refused legal representation during a trial.

II. Problems Concerning Policy and Practice of the Death Penalty

2.1 "Strike Hard"

Some scholars believe that Mao Zedong and his successors held a "kill less and kill cautiously" policy towards the use of capital punishment. We believe that although they publicly adhered to the rule to "kill cautiously", all of them explicitly expressed their disapproval of abolishing the death penalty in China. In judicial practice, the death penalty is so widely used that the statistics have to be kept a state secret. Worse still is that the key policy-making body is obsessed with the power of heavy sentences and capital punishment to act as a deterrent for crime. There is no consideration of human rights in policymaking and political movements such as "Strike Hard" on crime and statements that "homicide cases must be solved" appear repeatedly in criminal policies. During the years of Strike Hard campaigns the use of the death penalty increased and many defendants charged with a crime punishable up to a death sentence were given the maximum sentence of immediate execution. Some minor offences, including theft, were also met with capital punishment and innocent citizens were unfairly executed.

Since the enactment of the criminal law and criminal procedure law in 1979, three large-scale "Strike Hard" campaigns took place in 1983, 1996 and 2001. The fourth "Strike Hard" took place as recently as June 2010. Alongside these large scale crackdowns, there have also been numerous smaller, specific crackdowns. However following protests from academia and an enhanced social awareness of the rule of law, the militarization and political movement characteristics of "Strike Hard" have gradually declined.

"Strike Hard" campaigns are known to be extremely harmful to the rule of law and the rights of Chinese citizens. Take the 1983 crackdown as an example: the National People's Congress passed the "Decision on Severely Punishing Criminal Elements Seriously Compromising Social Order" therefore raising the maximum sentence of some crimes to the death penalty. The "Decision of the Procedure for Prompt Adjudication of Cases Involving Criminals Who Seriously Endanger Public Security" reduced the period of appeal from 10 days to 3 days. These two pieces of legislation led to cases whereby people

charged for indecent assault were sentenced to death. Through these legislations, the police, the procuratorates and the courts worked together to violate basic rights of the defendants and to ignore legal procedures. During the 1983 crackdown, the power to implement the death sentence was also given to county level courts. Judges as well as communist party leaders at county level were permitted to give out the death sentence. A review of death penalty cases and the power given with it was taken up by provincial level courts and was not taken back by the Supreme People's Court until as late as 2007. From August 1983 to July 1984, police across the country arrested 1,027,000 criminals who committed murder, arson, robbery, rape or sexual offenses. The procuratorates prosecuted 975,000 of them and the courts sentenced 861,000. Twenty four thousand were given the death sentence. Some scholars estimate that during the 1983 crackdown about 74% of those sentenced were executed immediately, and in some courts the figure was as high as 85%.

2.2 "Homicide Cases Must be Solved"

On November 3rd to 5th 2004, the Ministry of Public Security held a national conference in Nanjing on solving homicide cases. The national target of "solving all homicide cases" was established at this conference with the aim of attacking all kinds of crime through solving homicide cases. It was stated that by the end of 2007, the target of "nationally reducing the number of homicide cases, escaped murderers and raising the rate of solving homicide cases" must be achieved. Blindly pursuing the rate of case solving, this policy was not only unscientific and against the spirit of the rule of law, but also against the principle of human rights. Consequently, there was a big increase in unlawful arrests, trials and verdicts during this period. Police who were unable to solve cases faced pressure from both their bosses and the general public. Under this pressure, they detained innocent citizens and extorted confessions and evidence through the use of torture. In order to achieve performance targets some police arrested people with mental illness as scapegoats for various crimes.

2.3 Lawyers and Judges in the Death Penalty Cases

According to the criminal procedural law, if a defendant subject to the death sentence does not have a lawyer, the court should provide legal aid lawyers. However, due to structural flaws in the legal system, lawyers can only play very limited roles in criminal cases. Article 306 of the criminal law – "Perjury of lawyers", means lawyers are put constantly at risk when investigating and gathering evidence. In criminal cases only 10% (or even less) of witnesses attend hearings and investigators and expert witnesses do not appear in court for cross examination. The prosecutor usually reads a written statement in court and there is a lack of cross examination. This largely restricts the lawyers' right and ability to defend. Judges also tend to have a biased view towards criminal cases. In producing verdicts, many Chinese judges do not follow a standard procedure, which means that their verdicts lack legal reasoning. They also very often intentionally omit evidence provided by the defendants and certain key points that can be used in a defense. During a second instance

trial of a death penalty case hearings are not always carried out and verdicts are based on a file with a lack of regard to the arguments of both the prosecution and defense. It was not until 2006 that this practice was amended.

2.4 Extorting Confessions by Torture

Although extorting confession by torture is prohibited by law, in reality it is still a common phenomenon. Prior to the 2010 "Provisions on Several Issues concerning the Examination and Judgment of Evidence in Death Penalty Cases" there was almost no clear operational rules of evidence. Evidence through torture was generally accepted by judges. Judges normally refused to acknowledge the defendant's claims and evidence of torture and investigators relied heavily on oral confessions from the suspect as the basis of their case. Police and procuratorates who use torture are not likely to be prosecuted. Furthermore even if they were prosecuted they were likely to face a light punishment. According to the regulations, "a witness statement obtained by illegal means such as violence and coercion, cannot be used as the basis for determining cases" (Article 12) and "the defendant's statement obtained by illegal means such as torture and coercion cannot be used as the basis for determining cases" (Article 19). There is therefore no specific regulation on material evidence obtained by illegal means. China, despite having officially ratified the "Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment" in 1988 and agreeing to be reviewed by the United Nations Committee Against Torture, cannot produce evidence to confirm a reduction in the use of torture.

2.5 Conduct of the Death Penalty.

An administrative agency, prisons, has responsibility for implementing both fixed term imprisonment and life sentences; executions, however, are carried out by the court. This confusion between judicial and administrative powers has been challenged by some scholars who have suggested "a separation of sentencing and execution" powers, in order to restrict the use of capital punishment. From 1949 the execution of death row criminals had always been by firing squad. After the amendment of the 1997 criminal procedure law the courts started using lethal injections alongside firing squads. However, since the use of lethal injections entails higher costs and equipment, and executed prisoners' organs are used for transplant procedures, execution by firing squad is still the most common method of execution. Lethal injection is usually reserved for offenders such as high level government officials, or those involved in very high profile cases. There is no equal treatment with capital punishment. The 1997 criminal procedure law stipulates that "no death penalty should be carried out in public". This is an improvement to the previous practice of parading the prisoner and then executing them by a public firing squad.

The illegal harvesting of prisoners' organs deserves our attention. Huang Jiefu, deputy minister at the Ministry of Health said, "as there is a lack of voluntary donation, organs from executed criminals have become a major resource for transplants...At the moment, 1.5 million patients need transplants urgently, however the organs available each year do

not even meet 1% of that need.” There is also another report showing that “for a long time executed criminals provided over 90% of the organs.” According to the statistics in 2009 from the Ministry of Health, over 65% of organs for transplant derive from executions. Other reports suggest that organs are taken without the consent of prisoners themselves.

Because of the systematic problems in criminal legislation, policy and judicial practice outlined above, miscarriages of justice in capital punishment happen frequently. Reported public instances include: Nie Shubin, Teng Xingshan, Hugejiltu, Cao Haixin, She Xianglin, Du Peiwu and others. These are cases where innocent citizens have been unlawfully or unfairly sentenced to death and executed. Furthermore in some cases the death sentence has been given when there are still over 20 major doubts surrounding the evidence in each case. An example of this is the case of Gan Jinhua. In some justifiable defense cases or at most over-defense cases, defendants are sentenced to death, such as in the Xia Junfeng case. In other cases, the defendant may be mentally ill, yet the courts refuse to carry out any forensic psychiatric examination; examples of such cases include the case of Qiu Xinghua in Shaanxi, Zheng Minsheng in Nanping, Fujian, the Yang Jia case in Shanghai, the Ma Jiajue case in Yunnan and the He Shengkai case in Guizhou. All the prisoners have already been executed but both academics and the general public continue to have doubts about the mental health of these defendants. The current forensic psychiatric examination system in China is far from perfect.

III. Crimes Punishable by Death and Execution Statistics

3.1 Crimes Punishable by Law

There are 68 crimes punishable by death in the current criminal law legislation (1997), 24 of which are violent crimes and 44 which are non-violent. Of the non-violent crimes, 6 of them concern endangering national security, 3 regard endangering public security, 16 disturbing the order of the socialist market economy, 10 concern soldiers violating military duties, and the remaining nine concern theft, corruption, bribery, drug-related crimes and organising prostitution.

In 2011, the NPC passed the “Amendment VIII to the Criminal Law of the People’s Republic of China”, which removed the death penalty as a sentence for 13 non-violent economic crimes. This has had a positive effort in restricting the overall amount of death penalty sentences and is in line with modern development of the rule of law. This has been a big step in reforming the Chinese death penalty system and was probably influenced by the global movement against the death penalty.

It is, however, generally believed that the death penalty was seldom imposed in practice upon these 13 non-violent economic crimes. It is mainly violent crimes such as murder, intentional injury and robbery, or drug-related crimes that most commonly result in the death sentence. However as the number of death penalties imposed on individuals is regarded as a state secret, we do not know the exact figures and sentences given for each

crime.

3.2 Death Sentence Statistics

The number of death sentences has always been regarded as a top level state secret. Indeed, the annual report given by the president of the Supreme People's Court to the National People's Congress includes only the number of custodial sentences of 5 years and above. This does not include numbers that could shed light on the death sentence. Scholars generally believe that "the statistics surrounding the death penalty could cause damage to national security because the number is too high." According to an Amnesty International report, the number of executions in China are as follows: in 2000, at least 1000 people in China were executed; 2002, 1060+ executed; 2005, 1770+ executed (and 8000 given the death penalty); 2006, 2010+ executed (7500 to 8000 sentenced); 2007, 470 executed and 1860 sentenced; 2008, 1718+ executed (7003 sentenced). These numbers are commonly cited as authoritative data but Amnesty International has always emphasised that the actual number of executions is likely much larger than those cited in the report. As for the more recent figures for 2010 and 2011, Amnesty International no longer estimates using their traditional methodology, but rather refers to "thousands of persons". Some other organisations and scholars have reached different estimates of numbers. At the 2007 World Congress against the Death Penalty, John Kahn stated that in the last ten years, at least 100,000 people were executed whilst other human rights experts believe that executions in China every year number around 10,000 to 15,000. After the Supreme People's Court reinstated its power to review the death penalty, the numbers being sentenced and executed appear to have fallen but there are still no exact figures to verify this. The Duihua Foundation stated in a recent report (December 2011) that since 2007, the numbers of death sentences have halved. However there are still estimates that China executes over 4000 people every year.

Crimes punished most commonly by the death penalty centre around five serious offenses: murder, intentional injury, robbery, rape and drug offenses (production, smuggling and selling). Again, the exact figures for death sentences by crimes, location and social class cannot be obtained. Professor Chen Guangzhong once speculated that "Over 80% of death penalty cases are for homicide." According to the publicly published "Record of the People's Police of Hangzhou", the armed police division of the Hangzhou Public Security Bureau of Zhejiang province carried out 88 executions for the court in 1990, 65 in 1991, 64 in 1992, and 58 in 1995; the annual average being 71. For the whole of Zhejiang Province, this figure is estimated to be around 500. Lawyers estimate that in non-crackdown years, the annual number of executions in Henan province was over 500, and during crackdowns this figure could have been as high as 800. Following the same logic nationwide, it is highly possible that the number of annual executions in China has been around 10,000 persons.

IV. Social Attitudes towards the Death Penalty and the Outlook for Abolishing the Death Penalty in China

4.1 Social attitudes towards the death penalty

Very few surveys have ever been carried out in recent years on people's attitude towards the death penalty. Those which have been carried out have only been conducted on a small scale. According to the Institute of Law of the Chinese Academy of Social Sciences survey in 1995, of the 4983 completed questionnaires, over 95% of respondents supported the death penalty. A survey of 1873 university students by the Northwest Politics and Law University in 2003 suggested that 75.6% were in favour of retaining capital punishment. The 2004 survey by the Law Faculty of Wuhan University showed 67.3% of respondents stated that they "support" or "strongly support" the "death penalty system under the current criminal law", and 11.3% were "against" or "strongly against" it. More recently, in 2007-2008 the Max Planck Institute of Freiburg, Germany, carried out a survey in Beijing, Hubei province and Guangdong province. The result showed that 57.8% of respondents supported the death penalty and 14% were against it. When asked about their support for the death penalty where an alternative punishment was available only 30.6% supported retaining the death penalty and 40.5% supported abolition.

Without freedom of speech or information, doubt remains over the accuracy of surveys based on opinion. For the general public in China, there are limited channels through which they can learn about international movements that seek to abolish the death penalty. This can be said to be the same for research into the effectiveness of capital punishment on deterrence, and information on unjust and wrongful cases. There are also very few in-depth discussions on the death penalty within education or in the media. However, given enough information and freedom of discussion, the general public's attitude towards the death penalty may not be that far off from that in western countries. At present however, there is still a wide base of support for capital punishment and so the abolition of the death penalty is a long way off. Judging from the history and trajectory of many other countries, the abolition of the death penalty does not need to wait until the majority of its people are in support. Indeed most countries that abolished the death penalty did so without a public referendum.

4.2 The Route and Outlook of Abolishing the Death Penalty

Evidence suggests that in the legal field, an increasing number of scholars are in favour of abolishing the death penalty, with the majority thinking that the death penalty should be abolished gradually rather than immediately. The most representative opinion is that the death penalty should be completely abolished in China, but that this is not immediately attainable. Therefore, the application of the death penalty should be gradually restricted. Some scholars, such as Qiu Xinglong, Ou Xinjiu, He Weifang, Xiao Han and Teng Biao, are in support of an immediate stop to the death penalty, whilst a small minority holds the view that the application of the death penalty should be expanded.

Some scholars propose reducing the number of crimes punishable by death, particularly non-violent crimes. Others propose restricting the application of the death penalty from a

judicial perspective, making stricter demands on the standard of evidence. More specifically, some think the suspended death penalty should be applied in all death sentences. Others however think that the legislation on life sentences, fixed-term imprisonment and parole needs to be modified to broach the gap between the death penalty and life sentences. There are some scholars who suggest abolishing the death penalty for all crimes except murder suggesting that this is “the best restrictive plan on the death penalty in a transitional period”. Some scholars give many suggestions for controlling the death penalty, including abolishing the criminal policy of ‘Strike Hard’, compiling sentencing guidance for the death penalty, limiting the situations in which the death penalty is applied, and setting up a pardon system for death row prisoners. In a public petition to the Supreme People’s Court on the case of Gan Jinhua, legal professionals suggested that a three-tier trial system for capital punishment should gradually be established and the time between sentencing and execution should be prolonged in order to avoid the possibility of unjust and wrongful killings.

We believe that there are many ways in which the death penalty could be gradually restricted in China. If the political and legal elite can reach a basic consensus, it is possible that one or more ways of reducing the use of the death penalty could be achieved under certain domestic and international conditions. The possible methods are:

- (A) Halt the use of executions for 5 years. (The United Nations General Assembly resolution on a “Moratorium on the use of the death penalty” in December 2007 suggested this.)
- (B) Abolish immediate execution following death penalty convictions. A two-year suspended death sentence could apply to all cases. The death penalty would only be applied if criminals intentionally re-offend during the probationary period. Alternatively, the proportion of suspended sentences should be greatly increased. Suspended death sentences should in principle be applied to all with immediate execution reserved only as an exception.
- (C) First abolish the death penalty for all non-violent offences, then abolish it for some of the less severe violent offences. Alternatively, following the opinions of the general public, abolish it for all non-violent offences except corruption and bribery.
- (D) State clearly in legislation that the death penalty should not be applied in situations where the victim was culpable, the offense was a crime of passion, the offender was a first-time offender, the offender voluntarily surrendered and other relevant considerations.
- (E) Stop execution by firing squad, only carry out executions by lethal injection.
- (F) State a minimum period to elapse between sentencing and execution, for instance 6 years.

It is a trend of human rights progress and more humane punishment that the death penalty should be abolished. Experience from many other countries indicates that in order to achieve the goal of abolishing the death penalty, efforts must be made on a legal, political,

cultural and ideological level. A long-term exchange of ideas and a sustainable social movement are needed to combat and abolish the death penalty during a time when it is fully accepted and implemented in Chinese society. The way forward is going to be very long, but efforts must be made early. The organisation "China Against the Death Penalty" is working towards this goal. In China, the abolition of the death penalty is closely tied to the political democratisation process. Social conflict is divisive under the current political framework. There is a lack of effective supervision and restrictions of public power, and with many problems in the criminal justice system it is difficult to abolish the death penalty. However, with recognition of universal human rights, higher levels of education amongst citizens, the ideological change of legal professionals and politicians, along with political democratisation and social transition, there will one day be a China where the death penalty no longer exists. We should persevere and work towards this goal in the future.